

1 **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO**

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3 : :
4 UNITED STATES OF AMERICA, : Case No. 10-00148-N-BLW
5 : :
6 Plaintiff, : **JURY TRIAL**
7 : :
8 vs. : :
9 EDGAR J. STEELE, : :
10 : :
11 Defendant. : :
12 : :
13 - - - - - x

13 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

14 before B. Lynn Winmill, Chief District Judge

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Monday, May 2, 2011

(Jury absent.)

THE CLERK: The court will now hear day five of jury trial in Criminal Case 10-148-N-BLW, United States of America versus Edgar J. Steele.

THE COURT: Good morning, Counsel.

Mr. McAllister, since you're up, I assume there is something you wanted to take up before we bring the jury in?

MR. McALLISTER: Yes, Your Honor. I understand that the so-called draft of the book by Larry Fairfax was sent by his lawyer in a sealed condition to the government, and this morning I've asked for production of it, and they have refused to -- apparently, they have reviewed it, but they have refused to provide a copy to me.

And I would ask the court to order them to provide it to me so that I can review it and determine whether it contains exculpatory material or Brady material or Giglio material that would assist in defending my client.

THE COURT: Okay. Ms. Whelan?

MS. WHELAN: Judge, I think there are a couple of things that need to be clear for the

process, but also about his lawyer and sentencing issues. And the court needs to remember that we are still proceeding on a prosecution with him.

However, I did review it. I reviewed it thoroughly. It took me hours to do this. And the evidence is in no way exculpatory or impeaching.

The notes contain concerns for his family, concerns for his safety, how they will survive financially given his incarceration, his ability -- inability to see them. He talks about his love of his wife and his sons. He gripes about the jail and jail proceedings.

THE COURT: I don't know that we need to reveal here the detail of what's there. Your statement that there is nothing exculpatory probably is sufficient in my view, and, frankly, probably ends the inquiry.

I don't think the court is in -- has any obligation to be -- to scrutinize or review what the government has obtained. I think the only obligation under Brady is, when evidence comes into the government's possession -- you know, again, maybe, Mr. McAllister, you can cite authority to the contrary if you have any. But my

record. First of all, the United States was not in possession of these notes prior to his trial or -- prior to this trial or testimony. And it's not Brady material. Brady material is material that is in the possession of the United States or the prosecution team, as defined by Jackson.

The only way this came to our attention is because you, Your Honor, ordered us to secure it, and we did that. And so I think that that needs to be clear.

The fact that the court asked us and ordered us to do it, we received the notes by FedEx on Saturday, April 30th. The United States was very -- put in a very uncomfortable position of requiring a private citizen to turn over materials from her house without a warrant, but we did it because the court asked us to.

Defense counsel asked this court for a protective order, asked to not allow us to look at it, but we did because the court ordered us to.

What this consists of are notes of 238 handwritten thoughts of Larry Fairfax. In reviewing this, I will tell the court that I was very uncomfortable because there are communications of thoughts about his case and the

view is that evidence that comes into the possession of the government I think would include that which comes up under these circumstances. It's the government's obligation to review it, determine whether it contains anything that's exculpatory or otherwise produceable under Brady or Giglio. And if the government is satisfied that it does not, then there is no obligation to turn it over to the -- to the defense.

Now, Mr. McAllister, if you've got a case or rule to the contrary, I'm certainly all ears. But I don't think it's the court's obligation to scrutinize every document that comes into the government's possession, and particularly those which come into the government's possession under these unique circumstances, where the existence of it, the document, only became apparent during Mr. Fairfax's testimony.

So do you have other authority you want to cite, Mr. McAllister?

MR. McALLISTER: Yes, Your Honor. A couple of responses.

First of all, it didn't become apparent until I cross-examined Mr. Fairfax about it. It didn't become apparent at that time because it

<p style="text-align: center;">1048</p> <p>1 was -- the government was well aware of it based 2 on disclosures I made to them about the testimony 3 of Daryl Hollingsworth, who was also an inmate, 4 who was asked by Mr. Fairfax to design a cover for 5 the book. 6 So this information about the fact that 7 he was writing a book and had a book has been in 8 the government's possession for some time. 9 THE COURT: Well, but that doesn't mean that 10 the document itself was in the government's 11 possession. 12 MR. McALLISTER: This is correct. And, 13 apparently, it was not, based upon the 14 representations made here this morning and the 15 fact that his lawyer had sent it to the 16 government. 17 Now, <u>Brady v. Maryland</u> puts an 18 obligation on the government; there is no doubt 19 about it. But in terms of them reviewing it and 20 simply stating, "We don't think we have any 21 obligation under <u>Brady</u>," doesn't end the inquiry. 22 I think the court should at least, as a 23 minimum, have the -- well, obviously, I'd like to 24 review them myself, but I think the court should 25 have them marked as an exhibit, placed in the</p>	<p style="text-align: center;">1049</p> <p>1 record, and -- so that, if there is a need for a 2 reviewing court to look at it and determine 3 whether the government's allegation is correct, I 4 think they're there. 5 Secondly, I think, in light of his 6 answers on cross-examination, this is a material 7 issue. And, you know, despite the, quote, 8 "personal nature" of what's in there, I think it 9 goes to his credibility and that I should be 10 allowed to impeach him if we choose to call him 11 back as a witness. And he has not been released 12 from his subpoena, because of the fact that he 13 admitted to, quote, "a book" he was writing as 14 opposed to personal notes, as described by 15 Ms. Whelan. 16 So, for those reasons, Your Honor, I 17 ask that we get to review it; and, if the court 18 decides that we can't use it, that it be made part 19 of the record of this case. 20 THE COURT: Ms. Whelan, do you have any 21 objection to making a photocopy and filing it 22 under seal? 23 MS. WHELAN: Yes. 24 THE COURT: What is the concern? 25 MS. WHELAN: Well, Judge, there is a couple</p>
<p style="text-align: center;">1050</p> <p>1 of concerns. 2 One is: Let's not forget that this is 3 a defendant in federal court who hasn't been 4 sentenced yet, and it discusses issues. 5 Second, Counsel is saying it's relevant 6 because I made it relevant. 7 THE COURT: No. All I'm suggesting is it be 8 filed under seal, so -- not that I review it, but 9 so that if an issue arises in the future, a copy 10 is part of the court record, albeit under seal and 11 not reviewable by anyone, including the court. 12 But it gives me an opportunity then to 13 perhaps further research the issue. And if I 14 determine that I need to review it, I will. I 15 don't think I will. I'm quite certain I won't. 16 But if it is simply returned to 17 Mr. Fairfax, then, at that point, we lose the 18 ability to even know what was in it. And if this 19 becomes an issue on appeal, I think it would be 20 far safer just to file it under seal with the 21 court and end it at that point. 22 I've heard Steele's -- or 23 Mr. McAllister's argument. What I haven't heard 24 yet is a case or rule that requires this. And 25 until I see that, I don't think that I should or</p>	<p style="text-align: center;">1051</p> <p>1 must conduct this inquiry, but I want an 2 opportunity to reflect on that. 3 MS. WHELAN: And, Judge, I understand that. 4 The only thing I can say is that there has been no 5 citing to authority. Mr. -- I understand what 6 your question is, but I want to provide some 7 predicate to my answer. 8 He said it was fiction. In there, he 9 says it is fiction. I just don't know that -- if 10 the man is planning to publish a book that we have 11 the -- first of all, that we should have even had 12 the material. 13 Is there any concern? It just seems 14 that it's asking the court to go an extra step. 15 The court has no authority and that -- 16 THE COURT: To simply place it under seal so 17 that it's preserved? 18 MS. WHELAN: It wasn't <u>Brady</u> in the first 19 place, is our position. And with all due respect, 20 Your Honor -- and I do say this respectfully -- 21 the court made it <u>Brady</u> by then making it in our 22 possession. It wasn't something that we were 23 required to have. 24 And now we're just -- we're being asked 25 to provide somebody's private thoughts under seal</p>

1 under the record for absolutely no authority.

2 And I know Mr. Fairfax's attorney is
3 not here, but he did file an objection. And, you
4 know, obviously, I'm going to give it to the court
5 if you order me to give it under seal. I just
6 don't think it's right.

7 THE COURT: All right. Well, at this point,
8 I'm going to direct the U.S. Attorney's Office to
9 preserve it in your possession at least until the
10 end of the day. And then by the end of the day, I
11 want to research that issue, whether I can at
12 least order that it be sealed.

13 At this point, I don't intend to review
14 it until I'm provided with authority. And perhaps
15 Mr. McAllister has until close of business today
16 to cite authority as to why the court is obligated
17 to review documents.

18 This is a unique circumstance. The
19 witness has indicated it was his notes that he was
20 preparing in anticipation of writing a book, that
21 it was fictional. The government has reviewed it,
22 somewhat under protest, determined that it's not
23 exculpatory.

24 I think at that point, that's the end
25 of the court's involvement. And perhaps

1 I think the Brady and Giglio obligation
2 is the obligation of the government, not of the
3 court, although we supervise that. But I think,
4 frankly, it might be more prudent to preserve it
5 in case it becomes an issue later.

6 But with the government objecting even
7 to that, then I will consider that and review it
8 and enter an order. I'll probably wait until
9 tomorrow at some point to enter an order as to
10 what the U.S. Attorney's Office will have to do
11 with the -- Mr. Fairfax's notes.

12 MS. WHELAN: Judge, Ms. Olson pointed out
13 that I acquiesced and said that the court made it
14 Brady. It's the position of the United States it
15 is not Brady material, and I wanted to make sure
16 the record is clear on that.

17 THE COURT: All right.

18 Mr. McAllister?

19 MR. McALLISTER: Your Honor, I will
20 certainly research and look for some additional
21 authority. But the problem here is we don't have
22 a burden to bear in this case. And by putting the
23 burden on us to establish the right to it, if I
24 had known about it, that all of these writings
25 existed, I would have subpoenaed Mr. Fairfax to

1 Ms. Whelan is being kind and not criticizing the
2 court -- but perhaps she is thinking she should --
3 that I shouldn't have even gone as far as I did on
4 Friday so as to order -- it was actually a
5 directive to Mr. Fairfax and his attorney to make
6 it available as much as the government.

7 And Mr. Miller, Mr. Fairfax's attorney,
8 filed a kind of objection and request that it be
9 filed under seal.

10 So, at this point, I just need an
11 opportunity to review it further. So I'll direct
12 the U.S. Attorney's Office to maintain it in their
13 possession until further notice. And then at this
14 point, I'll review it more closely. If I decide
15 that it needs to be filed under seal so as to
16 preserve the record, I may do that.

17 If Mr. McAllister can come up with
18 authority by the end of the day -- or, say, by
19 8:30 tomorrow morning -- indicating that there is
20 an obligation here or an entitlement on the
21 defense's part to have access to this, then I'll
22 consider that. But, at this point, I'm just not
23 persuaded that -- that either the defense is
24 entitled to it -- to see it, nor is the defense
25 entitled to have the court review it.

1 bring them in.

2 THE COURT: But, Mr. McAllister, you knew as
3 much as the government did. You've indicated that
4 you disclosed through this informant or whatever
5 who was in jail with Mr. Fairfax, that you
6 notified the U.S. Attorney's Office.

7 As far as I can tell, you knew as much
8 as they did and had the same ability to subpoena
9 the information as they did.

10 And in terms of putting the burden on
11 you, yes, I think you do have the burden of
12 showing an entitlement to the documents, unless it
13 is Brady material, which the government takes the
14 position it is not. And I think that's the end of
15 the inquiry.

16 Now, if you can persuade me that there
17 is legal precedent or a legal requirement that it
18 be produced, then, as I said, I'm all ears.

19 MR. McALLISTER: I think I could make a much
20 better argument, Judge, if I was allowed to see
21 it.

22 THE COURT: Well, I would hope to shout. I
23 think you would. But that's the point -- at that
24 point, then, whatever your entitlement, you have
25 mooted the issue. The issue is whether you're

1 entitled to see it.

2 MR. McALLISTER: Judge, I disagree,
3 obviously. And I think, had I known that 200-some
4 pages existed, I would have issued a subpoena.
5 And at that point, I assume his lawyer would have
6 done exactly what was done here and given it to
7 you, which is what I think he intended to do here
8 and why he sent it under seal. But the
9 government, apparently, has taken it, opened it,
10 read it, reviewed it.

11 And at that point, I think, under
12 fundamental fairness, I should get a chance to
13 review it, at least, and then make the argument.

14 THE COURT: Well, cite your case and your
15 argument, and we'll consider it.

16 All right. I think we're ready to
17 proceed.

18 Ms. Whelan, did you have something
19 else?

20 MS. WHELAN: No. Thank you, Your Honor.

21 THE COURT: Let's bring the jury in, and
22 we'll proceed.

23 MS. WHELAN: Just for the record, I resealed
24 it, and I gave it to the U.S. Attorney. So our
25 office will keep it.

1 Q. All right. And on one or both of the
2 fuses, you detected or believed that the heat
3 affected the fuse somehow; correct?

4 A. That's right.

5 Q. And have you ever seen a device like
6 this before that had a muffler as the ignition?

7 A. I have not seen a pyrotechnic fuse tied
8 to a muffler as a means of initiation. I have
9 certainly seen pipe bombs strapped underneath
10 vehicles but not this particular unique means of
11 initiation.

12 Q. All right. So this was, in your
13 view -- and you have seen many so-called
14 devices -- this was unique?

15 A. They're all unique. They are
16 improvised explosive devices. But this one was,
17 yes, unique in its actual -- the way it was set up
18 as a means of initiation.

19 Q. All right. And, obviously, we know
20 today it did not initiate; correct?

21 A. Correct.

22 Q. And do you know if this device would
23 have worked -- what has to happen is the fuse has
24 to ignite or get hot enough to burn down and reach
25 the pipe and the gunpowder; correct?

1 (Jury present.)

2 THE COURT: I'll note that all jurors are
3 present. I believe we had --

4 MR. HAWS: Mr. Phillips was on the stand,
5 Your Honor.

6 THE COURT: -- Mr. Phillips on the stand.

7 Sir, if you'll retake the witness
8 stand. I'll remind you, you are still under oath.

9 BRENNAN SHERMAN PHILLIPS,
10 having been previously sworn to tell the whole
11 truth, testified as follows:

12 THE COURT: Mr. Haws, you may --

13 MR. HAWS: Your Honor, I had concluded my
14 examination --

15 THE COURT: That's true.

16 MR. HAWS: -- of the witness.

17 THE COURT: All right. Mr. McAllister,
18 cross.

19 CROSS-EXAMINATION

20 BY MR. McALLISTER:

21 Q. Mr. Phillips, I think on Friday you
22 testified that this particular device had a fuse
23 that was somehow near the muffler; correct?

24 A. Two pyrotechnic fuses running to the
25 exhaust system, yes, sir.

1 A. Right.

2 Q. And that didn't happen in this case?

3 A. Correct.

4 Q. And if, in fact, the fuse was properly
5 designed or ignited, it would have happened as
6 soon as the muffler got hot; correct?

7 A. I don't think we know that. You know,
8 how much exposure, time, heat, I mean, those are
9 all variables that we do not know.

10 Q. Okay. But we know that if a muffler
11 got hot enough, it could have caused the device to
12 do something?

13 A. It could have caused the fuse to
14 ignite, yes.

15 Q. But, based upon your review of the
16 evidence, that didn't happen. The heat just
17 affected or discolored the fuse; correct?

18 A. Correct.

19 Q. And if, in fact, the -- the -- there
20 was enough heat to ignite, that would have
21 happened when the muffler reached its hottest
22 point; correct?

23 A. It would have ignited at some point
24 that it reached sufficient temperature to ignite
25 the fuse, agreed.

1 Q. And in this particular case, you don't
2 have any evidence to provide to us that, in fact,
3 this device left the state of Idaho; correct?

4 A. It's my understanding, through review
5 of the case, the device traveled from Idaho into
6 Oregon.

7 Q. And when you say "from review of the
8 case," that means that you believe Mr. Fairfax's
9 testimony or statements that, in fact, he attached
10 it in Idaho and that Cyndi Steele drove to the
11 Portland, Oregon, area with the device; correct?

12 A. Based on the notes in the -- you know,
13 the ATF investigative files, in a review of the
14 reports of investigation, you know, that is my
15 understanding.

16 Q. All right. But you don't have any
17 proof of that besides Mr. Fairfax's word; correct?

18 A. As I said, as the technician that's,
19 you know, examining the case, you know, I rely on
20 the notes, the reports of investigation from the
21 investigators. And that's what it indicates, is
22 the item was attached, that it drove some
23 distance. But, you know, do I know if it
24 personally moved from Idaho to Oregon and back?
25 No. I obviously didn't witness that.

1 Q. Well, you've reviewed all the case
2 notes, haven't you?

3 A. The reports of investigation. I
4 haven't reviewed -- I did not see a set of
5 fingerprint analysis in the notes that I was
6 provided.

7 Q. And that's because no fingerprints
8 analysis was done; correct?

9 A. I don't know.

10 Q. To the best of your knowledge, no one
11 examined it for fingerprints; correct?

12 A. I do not know.

13 Q. And that's a regular practice, is it
14 not, with the Alcohol, Tobacco and Firearms
15 division?

16 A. Basically, the agents select -- case
17 agents select from a list of things that they want
18 done and write instructions. So there is no
19 standard that every case that comes in is examined
20 for prints or tool marks or any of the various
21 disciplines that we have. It is responsibility of
22 the case agent to make those selections.

23 Q. So it's at the discretion of the case
24 agent; correct?

25 A. The investigators, yeah.

1 Q. All right. And you don't know whether
2 Mr. Fairfax attached the device to Cyndi Steele's
3 vehicle on May the 27th or on June 15th or June
4 14th, do you?

5 A. As I said, you know, I'm the technician
6 who, you know, is looking at the device from that
7 perspective. So I'm probably not the right person
8 to ask that question. Because I do not know,
9 wouldn't know that, in that I'm not an
10 investigator working on that aspect of the case.

11 Q. All right. So the answer is you don't
12 know; correct?

13 A. I don't know.

14 Q. All right. And did you, in the
15 laboratory or in any point, attempt to remove
16 fingerprints from the pipe?

17 A. I did not. But, once again, that's not
18 part of my scope of my duties. You know,
19 fingerprint analysis is an entirely different
20 discipline.

21 Q. Okay. Did anyone from the department
22 of Alcohol, Tobacco and Firearms remove
23 fingerprints from the pipe?

24 A. I do not know the answer to that
25 question.

1 Q. And in this case, no fingerprints -- no
2 one checked for fingerprints on the device;
3 correct?

4 A. I don't know that.

5 Q. Okay. Did you find any evidence that
6 anyone, in fact, checked for fingerprints?

7 A. I don't know. I mean, I simply didn't
8 observe any notes on fingerprints.

9 MR. McALLISTER: Thank you, sir.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. HAWS:

13 Q. Good morning, Mr. Phillips.

14 A. Good morning, sir.

15 Q. This pipe bomb, referring to Exhibit
16 No. 80, the one that was attached to Cyndi
17 Steele's vehicle --

18 A. Yes.

19 Q. -- this was an improvised explosive
20 device; is that correct?

21 A. That's correct.

22 Q. What does "IED," improvised explosive
23 device, mean to you?

24 A. Well, improvised explosive device, as
25 opposed to a military weapon or commercial

1 explosive that's manufactured for a specific
 2 purpose, this is a weapon that is improvised, an
 3 explosive weapon that's improvised for a
 4 particular purpose by an individual or
 5 individuals.
 6 **Q.** If it's improvised, then there is
 7 a -- a standard or required method of ignition?
 8 **A.** No.
 9 **Q.** Are there various methods of ignition
 10 that can be used with IEDs?
 11 **A.** It's really up to the imagination of
 12 the device designer, the builder of the improvised
 13 explosive device.
 14 **Q.** And so the imagination of the designer
 15 could be that the tailpipe would get hot on a car
 16 and would ignite the fuse?
 17 **A.** Yes.
 18 **Q.** The device, No. 80, had the fuse
 19 attached not directly to the muffler, did it, but
 20 to the tailpipe where it connects to the muffler;
 21 isn't that correct?
 22 **A.** Yes.
 23 **Q.** Fingerprint analysis is only used where
 24 there is a question as to the identification of
 25 the person who makes a device; is that correct?

1 as to the intent of the maker of this device?
 2 Would you explain that to the jury?
 3 **A.** Well, it's a way of building redundancy
 4 into the system. If you really want your device
 5 to function, if you want to add in a layer of
 6 certainty, you can add in multiple means of
 7 initiation.
 8 I mean, I do this in my own work. When
 9 I'm doing a bomb disposal task and I need my
 10 explosive device to function because I can't go
 11 downrange and approach it, I use a technique
 12 called "dual initiation."
 13 So it's a standard used within the
 14 explosives world to make sure that your device
 15 works when you need it to work.
 16 **Q.** These two pieces of fuse that went to
 17 the tailpipe of Cyndi Steele's car, you indicated
 18 that where they were attached, they were
 19 discolored?
 20 **A.** That's right.
 21 **Q.** What does that discoloration mean?
 22 Tell the jury, please.
 23 **A.** Well, the discoloration of the fuse, as
 24 I described to you last week, is coated with a
 25 nitrocellulose lacquer, and that lacquer had been

1 **A.** That's correct.
 2 **Q.** So if a case has no question as to
 3 whether -- who made that device, then fingerprint
 4 analysis would not be apposite, would it?
 5 **A.** That's correct, because it is a fairly
 6 limited resource, so we only use it when it's
 7 required.
 8 **Q.** The green fuse that was attached to
 9 Exhibit No. 80 --
 10 **A.** Yes.
 11 **Q.** -- the device on Cyndi Steele's car,
 12 you mentioned had actually two green fuses;
 13 correct?
 14 **A.** That's right.
 15 **Q.** So it was attached in two places to the
 16 exhaust system of the car, the hot exhaust system?
 17 **A.** Yes.
 18 **Q.** And it was attached -- those two fuses
 19 ran, both of them, into the end cap of the
 20 explosive device; is that correct?
 21 **A.** Yes.
 22 **Q.** So there were two methods of ignition?
 23 **A.** Right. The term we use for that is
 24 "dual initiation."
 25 **Q.** What does "dual initiation" mean to you

1 basically burned or discolored, so it's exposed to
 2 a source of heat.
 3 **Q.** That means that the devices had started
 4 the process of ignition; is that correct?
 5 **A.** Yes.
 6 MR. HAWS: Thank you. No further questions.
 7 THE COURT: Any recross?
 8 MR. McALLISTER: Yes, Your Honor.
 9 RE-CROSS-EXAMINATION
 10 BY MR. McALLISTER:
 11 **Q.** As I understand it, in your years of
 12 experience, you have never seen a pipe bomb or a
 13 device or an improvised explosive device like
 14 this, where the ignition was supposed to come from
 15 the tailpipe; correct?
 16 **A.** I have not seen a pyrotechnic fuse tied
 17 to an exhaust system as a means of initiation.
 18 Yes.
 19 **Q.** And as means of an initiation, to set
 20 off the device, what you know in this case is that
 21 it failed; correct?
 22 **A.** It did not function.
 23 **Q.** And there was, therefore, no explosion?
 24 **A.** There was no explosion.
 25 MR. McALLISTER: Thank you, sir.

<p style="text-align: center;">1068</p> <p>1 MR. HAWS: Nothing further, Your Honor.</p> <p>2 THE COURT: All right. You may step down.</p> <p>3 MR. HAWS: Ask that this witness be excused.</p> <p>4 THE COURT: Any objection?</p> <p>5 MR. McALLISTER: None.</p> <p>6 THE COURT: Mr. Phillips, you are excused.</p> <p>7 Thank you.</p> <p>8 THE WITNESS: Thank you, sir.</p> <p>9 THE COURT: Government may call its next</p> <p>10 witness.</p> <p>11 MS. WHELAN: Thank you, Your Honor. Call</p> <p>12 Brent Smith.</p> <p>13 THE COURT: Sir, would you please step</p> <p>14 before the clerk and be sworn as a witness, and</p> <p>15 then follow Ms. Gearhart's directions from there.</p> <p>16 BRENT ANDREW SMITH,</p> <p>17 having been first duly sworn to tell the whole</p> <p>18 truth, testified as follows:</p> <p>19 THE CLERK: Please state your complete name</p> <p>20 and spell your last name for the record.</p> <p>21 THE WITNESS: I'm sorry?</p> <p>22 THE CLERK: Please state your complete name</p> <p>23 and spell your last name for the record.</p> <p>24 THE WITNESS: Brent Andrew Smith, S-M-I-T-H.</p> <p>25 THE COURT: You may inquire, Ms. Whelan.</p>	<p style="text-align: center;">1069</p> <p>1 MS. WHELAN: Thank you, Your Honor.</p> <p>2 DIRECT EXAMINATION</p> <p>3 BY MS. WHELAN:</p> <p>4 Q. Mr. Smith, what do you do for a living?</p> <p>5 A. I'm a special agent with the FBI.</p> <p>6 Q. And how long have you been with the</p> <p>7 FBI?</p> <p>8 A. A little more than 14 years.</p> <p>9 Q. Do you have any prior law enforcement</p> <p>10 experience?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Tell the jury what that is.</p> <p>13 A. I was a police officer in Oakland,</p> <p>14 California.</p> <p>15 Q. For how long?</p> <p>16 A. A little more than six years.</p> <p>17 Q. What were your responsibilities in</p> <p>18 Oakland, generally?</p> <p>19 A. Patrol.</p> <p>20 Q. Now, you're a special agent with the</p> <p>21 FBI. Did you graduate from the Quantico academy?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. And have you had a couple of different</p> <p>24 duty stations?</p> <p>25 A. Yes, ma'am.</p>
<p style="text-align: center;">1070</p> <p>1 Q. Can you just tell the jury a little bit</p> <p>2 about your experience?</p> <p>3 A. I was first stationed in San Francisco,</p> <p>4 California, followed by an assignment at</p> <p>5 headquarters, FBI headquarters, followed by a</p> <p>6 San Diego assignment. And I'm now the assistant</p> <p>7 legal attache in Kiev, Ukraine.</p> <p>8 Q. What is an assistant legal attache?</p> <p>9 A. Well, the legal attache's office is the</p> <p>10 FBI's liaison between the FBI and foreign law</p> <p>11 enforcement partners in the country wherever we're</p> <p>12 stationed or an area of responsibility. Assistant</p> <p>13 legal attache is the assistant to the legal</p> <p>14 attache.</p> <p>15 Q. So what does that mean that you do?</p> <p>16 A. I'm the liaison to law enforcement. I</p> <p>17 assist the FBI with cases that touch in -- well,</p> <p>18 in Ukraine and Belarus, technically, because</p> <p>19 that's our area of responsibility.</p> <p>20 And I also help the Ukrainian</p> <p>21 authorities with investigative needs they have of</p> <p>22 the FBI and the United States or cases --</p> <p>23 Ukrainian cases that touch on the United States.</p> <p>24 Q. How long have you been in the Ukraine?</p> <p>25 A. About 20 months, 21 months, I think it</p>	<p style="text-align: center;">1071</p> <p>1 is.</p> <p>2 Q. Do you speak Ukrainian?</p> <p>3 A. No.</p> <p>4 Q. Do you speak Russian?</p> <p>5 A. I have a rudimentary understanding of</p> <p>6 Russian, yes.</p> <p>7 Q. In late February or early March of</p> <p>8 2011, this year, were you assigned to assist in a</p> <p>9 court-authorized video deposition of a Tatyana</p> <p>10 Loginova?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if Ms. Loginova was willing</p> <p>13 to come to the United States?</p> <p>14 A. Yes, I do. And she was not willing to</p> <p>15 come.</p> <p>16 Q. Since she is not a U.S. citizen or a</p> <p>17 person in the U.S., the United States government</p> <p>18 couldn't force her to come, could we?</p> <p>19 A. That's correct.</p> <p>20 MR. AMENDOLA: Your Honor, I'm going to</p> <p>21 object. Foundation.</p> <p>22 THE COURT: Overruled.</p> <p>23 BY MS. WHELAN:</p> <p>24 Q. Did the deposition occur?</p> <p>25 A. Yes, ma'am.</p>

1 Q. When?
 2 A. March 3rd, I believe.
 3 Q. And where did it occur?
 4 A. It was at a building that is part of
 5 the Embassy, U.S. Embassy facility in Kiev,
 6 Ukraine, called the Artyoma Business Center.
 7 Q. Do you know, were all the parties in
 8 Kiev, Ukraine?
 9 A. Yes.
 10 Q. The defendant and his attorneys, were
 11 they in the courtroom?
 12 A. As far as we could see on the video
 13 monitor, yes.
 14 Q. So they weren't in Kiev. They were in
 15 Coeur d'Alene; is that right?
 16 A. All the parties to -- of the Ukrainian
 17 parties were Kiev. The parties -- all parties to
 18 the deposition, no, they were not all in Kiev.
 19 I'm sorry. I misunderstood the question.
 20 Q. It probably wasn't a very good
 21 question.
 22 Were they in the courtroom in Coeur
 23 d'Alene?
 24 A. They were in the courtroom. I'm
 25 assuming in Coeur d'Alene because that's where we

1 Q. And do you recognize it?
 2 A. Yes, ma'am.
 3 Q. What is it?
 4 A. It appears to be a printout of a
 5 website that was used by Mr. Steele, I'm assuming,
 6 by what is written or what's there.
 7 Q. Was it -- I'm sorry. Was it used
 8 during the deposition of Ms. Loginova?
 9 A. Yes, ma'am.
 10 Q. How do you know it was used during the
 11 deposition?
 12 A. On the bottom right-hand corner, I
 13 wrote "Exhibit 100" on it, as instructed. And
 14 that appears to be my handwriting.
 15 Q. Is it in the same condition as when you
 16 showed it to her?
 17 A. Appears to be, yes.
 18 MS. WHELAN: Your Honor, we would move for
 19 the admission of Exhibit 100.
 20 THE COURT: Any objection?
 21 MR. AMENDOLA: Yes, Your Honor, for all the
 22 reasons that we put in our written objection to
 23 the motion to enter the videotape into evidence.
 24 We also adopt those arguments regarding this
 25 particular exhibit to the deposition.

1 hooked up the video deposition to, the video link.
 2 Q. Could you clearly see us during the
 3 deposition?
 4 A. Yes.
 5 Q. And could you clearly hear us during
 6 the deposition?
 7 A. Yes.
 8 Q. Were you asked during the deposition to
 9 provide certain exhibits to Ms. Loginova?
 10 A. Yes.
 11 Q. You have some exhibits in front of you.
 12 And I'm sorry, I need to --
 13 MS. WHELAN: Your Honor, the presentation
 14 software is not up for the jury, is it?
 15 THE COURT: Now it is not, but we need to
 16 switch it over. It's now on the evidence
 17 presenter.
 18 MS. WHELAN: I'm sorry. I need Ms. Rocca to
 19 do it. This is just for me to look.
 20 THE COURT: All right.
 21 BY MS. WHELAN:
 22 Q. Can you look at what has been marked as
 23 Government's Exhibit 100. It's on the screen in
 24 front of you.
 25 A. Oh, okay. Yes, ma'am.

1 THE COURT: All right. Counsel, I think the
 2 problem is admitting it without the deposition in
 3 which further foundation would be laid. I think
 4 it's premature.
 5 MS. WHELAN: Okay. Can we -- okay.
 6 THE COURT: It's the cart before -- you
 7 know, chicken and egg, cart before the horse.
 8 MS. WHELAN: Yes, Your Honor. I --
 9 THE COURT: I think it's just a question of
 10 timing here.
 11 MS. WHELAN: You know what? I can go in a
 12 different order, and that might help.
 13 THE COURT: I think having this witness
 14 confirm that it was the same exhibit shown at the
 15 deposition is an important part of the foundation,
 16 but it's not a full foundation, if that makes
 17 sense.
 18 MS. WHELAN: It does, Your Honor. I think,
 19 in order to save time, we'll show him the
 20 exhibits, ask him to identify them. And then at
 21 the conclusion, we'll move for the admission.
 22 THE COURT: All right.
 23 MS. WHELAN: Can you then -- Ms. Rocca, can
 24 you put up Exhibit 101.
 25 BY MS. WHELAN:

1 Q. Again, Mr. Smith, it's the same
 2 questions: Are you able to recognize Exhibit 101?
 3 A. Yes, ma'am.
 4 Q. Was it used during the deposition of
 5 Ms. Loginova?
 6 A. Yes, ma'am.
 7 Q. And how do you know it was used during
 8 the deposition of Ms. Loginova?
 9 A. Again, I was asked to mark what we used
 10 as Exhibit 101, and in the lower right-hand corner
 11 appears to be my handwriting -- or printing,
 12 actually. It says "Exhibit 101."
 13 Q. Is it in the same condition as when you
 14 showed it to her?
 15 A. Yes, ma'am.
 16 Q. And did you cause that, then, after the
 17 deposition, to be sent to the FBI in Coeur
 18 d'Alene?
 19 A. Yes, ma'am.
 20 Q. And the same with Exhibit 100?
 21 A. Yes, ma'am.
 22 Q. Now, in front of you, because it's a
 23 larger exhibit, you have what's been marked as
 24 Government's Exhibit 2. I don't want you to show
 25 the jury. I just want you to look at it yourself.

1 said she received from Mr. Steele.
 2 Q. And did she provide those originals to
 3 you?
 4 A. Yes.
 5 Q. And what did you do with it?
 6 A. I created an evidence chain and sent
 7 them, along with the other documents, to the FBI
 8 in Coeur d'Alene.
 9 Q. Could you please look at what's been
 10 marked as United States Exhibit 2A, again, without
 11 showing it to anybody.
 12 A. Yes, ma'am.
 13 Q. Do you recognize it?
 14 A. Yes, ma'am.
 15 Q. Is it the original that Ms. Loginova
 16 provided you?
 17 A. Yes, ma'am.
 18 Q. How do you know that it is the
 19 original?
 20 A. Because it's got my original chain of
 21 evidence form on top.
 22 Q. Special Agent Smith, do you know if the
 23 deposition was recorded?
 24 A. Yes, ma'am.
 25 Q. And do you have in front of you

1 Do you have it in front of you, sir?
 2 A. Yes, ma'am.
 3 Q. Do you recognize it?
 4 A. Yes, ma'am.
 5 Q. Was it used during the deposition of
 6 Ms. Loginova?
 7 A. Yes, ma'am.
 8 Q. And how do you know it was used during
 9 the deposition of Ms. Loginova?
 10 A. Because of the evidence chain that I
 11 completed after the -- after providing it at the
 12 deposition.
 13 Q. Is it in the same condition as when you
 14 showed it to her?
 15 A. Yes, ma'am.
 16 Q. And did you also cause that to be sent
 17 to the FBI in Coeur d'Alene once the deposition
 18 was over?
 19 A. Yes, ma'am.
 20 Q. Did Ms. Loginova bring anything with
 21 her to the deposition?
 22 A. Yes, ma'am.
 23 Q. What?
 24 A. She brought copies -- or I mean --
 25 sorry. She brought originals of letters that she

1 Exhibit 68?
 2 A. Yes, ma'am.
 3 Q. Do you recognize it?
 4 A. Yes, ma'am.
 5 Q. What is it?
 6 A. Compact disk of what was the video --
 7 or the recording of the video deposition.
 8 Q. Did you review Exhibit 68?
 9 A. Yes, ma'am.
 10 Q. And did you make any marks on it?
 11 A. Yes, ma'am. I put my initials and the
 12 date that I reviewed it.
 13 Q. When you reviewed that, that disk, the
 14 copy of the deposition, was it the same as the
 15 deposition that occurred?
 16 A. Yes, ma'am.
 17 MS. WHELAN: Your Honor, I would move now
 18 for the admission of Exhibit 68 and permission to
 19 publish it to the jury.
 20 THE COURT: All right. Other than the
 21 objections previously noted, are there any
 22 additional objections?
 23 MR. AMENDOLA: No, Your Honor.
 24 THE COURT: All right. Exhibit 68 will be
 25 admitted based upon the reasons the court

<p style="text-align: right;">1080</p> <p>1 articulated in a signed order in this matter. 2 (Government's Exhibit 68 admitted.) 3 THE COURT: Do you intend to play it now? 4 MS. WHELAN: I do. Ms. Rocca needs just a 5 moment, since I switched up the order. 6 THE COURT: Let me instruct the jury on 7 this. 8 Ladies and gentlemen, the court has 9 previously determined that Ms. Loginova was not 10 available in the sense that she could not be 11 compelled to attend trial in the United States. 12 When a person is unavailable to testify 13 at trial, the deposition of that person may be 14 used. A deposition is the sworn testimony of a 15 witness taken before trial. The witness is placed 16 under oath to tell the truth, and lawyers for each 17 party may then ask questions. The questions and 18 answers are then recorded. 19 The deposition of Ms. Loginova is about 20 to be presented to you. You should consider 21 deposition testimony in the same way that you 22 would consider the testimony of the witnesses who 23 have appeared before you and testified in person. 24 So, with that, I'll allow the 25 deposition to be played.</p>	<p style="text-align: right;">1081</p> <p>1 Are you ready? 2 MS. WHELAN: Yes, Your Honor. If we -- I 3 have just a couple of questions to set the stage. 4 Your Honor, is it possible to -- well, 5 sometimes -- can I move to see? 6 THE COURT: You may. But you'll need -- 7 there is a microphone there at the end of the 8 table if you need to -- 9 MS. WHELAN: Judge, I'm just wondering if we 10 can -- I don't know. It's difficult for me to 11 say. I guess the jury can let you know if they 12 can't see it very well. 13 THE COURT: Ladies and gentlemen, any of the 14 jurors -- I know it's -- well, it is what it is. 15 Are you able to see? 16 It appears the jurors are comfortable 17 with what they're able to see. 18 MS. WHELAN: Thank you, Your Honor. 19 BY MS. WHELAN: 20 Q. Mr. Smith, before we start, I'd like to 21 ask you a couple of questions. Can you show the 22 jury where -- which one of the women is 23 Ms. Loginova? 24 A. Ms. Loginova is the woman in the middle 25 of the three women with a peach-sort-of-colored</p>
<p style="text-align: right;">1082</p> <p>1 top and black sweater on. 2 Q. And this woman right here, do you know 3 who she is? 4 A. That should be Ms. Olga Evashachenko. 5 She is a representative from the General 6 Prosecutor's Office of Ukraine. 7 Q. And who is this fellow right here? 8 A. That would be me. 9 Q. And then the only other remaining 10 woman, who is she? 11 A. She was a translator that we had come 12 with the -- from the General Prosecutor's Office 13 of Ukraine to protect Ms. Loginova's rights and so 14 that she would have her own translator there in 15 case there was a misunderstanding with the 16 translator that was in Coeur d'Alene. 17 Q. And down here at the bottom, there is a 18 little screen within the screen. Is that what you 19 could see of the parties in Coeur d'Alene? 20 A. I believe so. On my screen here, there 21 is a task bar that blocks out about half of that 22 screen. So I can see the top half of that inset 23 from my screen here. 24 Q. Okay. 25 A. But it looks to be the same thing.</p>	<p style="text-align: right;">1083</p> <p>1 MS. WHELAN: Your Honor, with that, would 2 the court allow me to sit down while we play this? 3 THE COURT: Yes. 4 MS. WHELAN: Thank you. 5 THE COURT: And I assume counsel will waive 6 reporting of the playing of the deposition. 7 MS. WHELAN: Yes, Your Honor. 8 MR. AMENDOLA: Yes, Your Honor. 9 THE COURT: Thank you. 10 (Government's Exhibit 68 published.) 11 MR. AMENDOLA: Your Honor, may we have a 12 moment? 13 THE COURT: Stop the recording. 14 MR. AMENDOLA: Your Honor, may we have a 15 short sidebar, please? 16 THE COURT: Yes. 17 (Sidebar commences as follows:) 18 THE COURT: Mr. Amendola, step to the mic. 19 MR. AMENDOLA: Your Honor, at this time, I'd 20 ask that you reconsider whether to admit the 21 deposition on this basis: That is, that it's 22 clear that neither the interpreter in Kiev nor the 23 prosecutor in Kiev were administered any oath. 24 And I will represent to the court that both 25 participate to some extent and talk with</p>

1 Ms. Loginova during the deposition.
 2 What they say, I don't know, because
 3 that's not translated. But they both participate,
 4 and neither were placed under oath.
 5 THE COURT: Ms. Whelan?
 6 MS. WHELAN: Judge, I think that this is
 7 certainly something that could have been brought
 8 up before as far as the testimony -- it is
 9 Ms. Loginova's testimony that the jury is being
 10 asked -- the court had merely asked me to ask the
 11 general prosecutor if she could swear her in or
 12 did. And we don't swear our lawyers in here,
 13 either.
 14 THE COURT: No. The question is the
 15 interpreter, whether the interpreter here in the
 16 United States was sworn.
 17 MS. WHELAN: No. The interpreter in the
 18 United States was sworn in.
 19 MR. AMENDOLA: The interpreter in Kiev --
 20 THE COURT: Oh, in Kiev?
 21 MR. AMENDOLA: -- was not.
 22 THE COURT: Oh, I'm sorry.
 23 MR. AMENDOLA: And the interpreter does have
 24 discussions during --
 25 THE COURT: Okay. I'm going to overrule the

1 MS. WHELAN: I'm going to wait until the
 2 end. I just don't want to stop the video
 3 repeatedly.
 4 THE COURT: That's fine.
 5 (Publication of Exhibit 68 continued.)
 6 (Publication concluded.)
 7 MS. WHELAN: Judge, now that the deposition
 8 has been played, we would move for the admission
 9 of exhibit -- we already did 100 -- 101, 2, and
 10 2A.
 11 THE COURT: I'm sorry. 101 -- oh, 2 and 2A;
 12 correct?
 13 MS. WHELAN: Yes, Your Honor.
 14 THE COURT: Other than as previously noted,
 15 any objections?
 16 MR. AMENDOLA: Yes, Your Honor.
 17 THE COURT: All right.
 18 MR. AMENDOLA: May we approach?
 19 THE COURT: Yes.
 20 (Sidebar commenced as follows:)
 21 THE COURT: Mr. Amendola?
 22 MR. AMENDOLA: Yes, Your Honor. I think the
 23 objections apply to both 2 and 2A in the same way.
 24 The objection -- the witness testified --
 25 Ms. Loginova testified that she does not --

1 objection.
 2 (Sidebar concluded.)
 3 THE COURT: Proceed.
 4 MS. WHELAN: Thank you, Your Honor.
 5 (Publication of Exhibit 68 continued.)
 6 (Publication interrupted.)
 7 MS. WHELAN: Your Honor, before he displays
 8 that to the camera, which would, in effect,
 9 display it to the jury, I would move for the
 10 admission of Exhibit 100.
 11 THE COURT: Any objection other than as
 12 previously noted?
 13 MR. AMENDOLA: No, Your Honor.
 14 THE COURT: Exhibit 100 will be admitted.
 15 (Government's Exhibit 100 admitted.)
 16 MS. WHELAN: And, Your Honor, just so I
 17 don't have to stop and restart, as he displays
 18 Exhibit 101, I will also be moving for the
 19 admission if the court can hold that in reserve.
 20 THE COURT: All right.
 21 MS. WHELAN: We can show it to the jury.
 22 THE COURT: Exhibit 100 will be admitted.
 23 Do you want to show it in any way to
 24 the jury at that point, or are you simply going to
 25 wait until the end of the --

1 THE COURT: Just a moment while -- I think I
 2 need the civil rules, but go ahead.
 3 MR. AMENDOLA: Ms. Loginova testified that
 4 she does not know his handwriting. She testified
 5 that she does not read or speak English. She
 6 testified that she did not know for sure who wrote
 7 the letter. Therefore, I don't think they have
 8 laid a foundation sufficient to admit either
 9 Exhibit 2 or Exhibit 2A.
 10 THE COURT: Okay. Ms. Whelan?
 11 MS. WHELAN: Judge, as to 2A, that is a
 12 letter that she brought with her that she
 13 indicated came from Edgar Steele. The letter is
 14 addressed to Ms. Loginova. It is signed by
 15 Mr. Steele.
 16 She discussed the fact that they had
 17 had contact, that she had provided her home
 18 address, and that there was -- that she believed
 19 it came from him.
 20 I think the jury --
 21 THE COURT: And the letter is signed by him
 22 or at least contains --
 23 MS. WHELAN: Yes.
 24 THE COURT: -- Edgar Steele's signature or a
 25 signature --

1 MS. WHELAN: Yes.

2 THE COURT: -- purporting to be that of
3 Edgar Steele?

4 MS. WHELAN: Yes, sir. And she identified
5 -- the reason we had her identify Exhibit 100 was
6 that that was the same person she was emailing
7 with. And she identified him in court.

8 She then talked about the fact that
9 they had exchanged emails and that, during that,
10 they talked about -- she had discussed what was in
11 those emails with the person with Skype, who she
12 identified as the defendant.

13 She provided the fact that she gave the
14 address and that the address was then sent to her
15 house.

16 And so we have laid the foundation.
17 The jury can look at it and decide.

18 THE COURT: All right. I'm going to
19 overrule the objection. 901(a) indicates that the
20 requirement of authentication is satisfied by
21 evidence sufficient to support a finding that the
22 matter is -- in question is what its proponent
23 claims.

24 And I think, you know, certainly the
25 jury can decide that it's not, in fact, a letter

1 had provided him with an address to which this
2 letter was, in fact, mailed. I think that's
3 sufficient.

4 You know, again, understand, it's not a
5 very high bar to have to clear to get an exhibit
6 admitted. It just has to be sufficient such that
7 the finder of fact can find that it is, in fact, a
8 letter from Edgar Steele. And I think that has
9 been shown, that that level of evidence has been
10 presented.

11 So I'll overrule the objection.

12 MS. WHELAN: Thank you, Your Honor.
13 (Sidebar concluded.)

14 THE COURT: Exhibit 2, 2A, and 101 will be
15 admitted.

16 (Government's Exhibits 2, 2A and 101
17 admitted.)

18 MS. WHELAN: Thank you, Your Honor.

19 Ms. Gearhart -- I think she wants you
20 to take it off the jury display, if you would,
21 please.

22 This has been an admitted exhibit now.

23 THE COURT: All right.

24 BY MS. WHELAN:

25 Q. Special Agent Smith, Exhibit 100, you

1 from Mr. Steele. But where there is so much
2 circumstantial evidence indicating that it is, in
3 fact, from Mr. Steele, based upon the things that
4 Ms. Whelan pointed out, I think that you've met --
5 the government has met that fairly low hurdle to
6 admit the exhibit.

7 Now, you can argue that it, in fact, is
8 not authentic, that she couldn't recognize his
9 handwriting. And those certainly go to the
10 weight, but I don't think it bars the
11 admissibility of the exhibit.

12 MR. AMENDOLA: May I say one quick thing,
13 Your Honor?

14 THE COURT: Yes, you may.

15 MR. AMENDOLA: Other than the fact that
16 Mr. Steele was, at least according to her, given
17 her address, all the other things that have to do
18 with foundation have nothing to do with the
19 letter. They have to do with emails, perhaps, and
20 Skype, perhaps, but not anything to do with the
21 letter.

22 THE COURT: Only that it was -- it creates a
23 context in which the letter then shows up. In
24 other words, where she was in communication with
25 Mr. Steele, they had exchanged information. She

1 indicated that was what Ms. Loginova identified?

2 A. Yes.

3 Q. Could we please publish Exhibit 101.

4 And that is the profile that
5 Ms. Loginova identified as herself?

6 A. Yes.

7 Q. And then as to Exhibit --

8 MS. WHELAN: That is the -- it's redacted,
9 obviously, Judge because of the requirements and
10 the rules --

11 BY MR. WHELAN:

12 Q. But that is the copy of the envelope
13 that she identified, and the original had her
14 address; correct?

15 A. Yes.

16 Q. Mr. Smith, Special Agent Smith, I would
17 like to publish parts of letter -- Exhibit 2 to
18 the jury. And you're sitting there, so I'm going
19 to ask you to read them in order to publish them
20 to the jury. Can you do that?

21 A. Yes.

22 MS. WHELAN: And, Ms. Rocca, can you bring
23 up --

24 MR. AMENDOLA: Your Honor?

25 THE COURT: Yes.

<p style="text-align: right;">1092</p> <p>1 MR. AMENDOLA: I object to this witness 2 reading the letter. Certainly, it's published. 3 The jury can read it, but I don't see the point. 4 THE COURT: Counsel, I tend to agree. I 5 think you can highlight it, let the jury read it, 6 and then move on to the next section. If you want 7 to -- I don't know if you have the ability to 8 actually put temporary highlighting. 9 MS. WHELAN: I don't, Your Honor. 10 THE COURT: Can you do callouts or anything 11 from the -- 12 MS. WHELAN: No. What I -- I'll tell the 13 court the reason I thought is it was easier -- I 14 can highlight it and make it bigger. It just 15 seemed easier to have somebody read it than to 16 have to look to the jury to see if they've 17 finished the reading the pages. 18 I've picked out -- not all of it. But 19 we can certainly make it bigger and show it to the 20 jury if the court prefers that. 21 THE COURT: I think we should proceed in 22 that fashion. And then I'll ask the jury whether 23 they're done reading that section, and then we can 24 move on. 25 MS. WHELAN:</p>	<p style="text-align: right;">1093</p> <p>1 THE COURT: Unless counsel would prefer just 2 to have it read rather than -- I mean, I'll leave 3 it to Mr. Amendola, your preference as to which 4 way to proceed. 5 It is somewhat repetitious to have the 6 witness read it, but the alternative is to wait 7 for the jury to confirm they have all read it. 8 MR. AMENDOLA: Your Honor, I just don't 9 think it's appropriate for the witness to be 10 reading the exhibit. 11 THE COURT: Very well. All right. We will 12 proceed in the manner that I described then. 13 Ms. Whelan. 14 MS. WHELAN: Thank you, Your Honor. 15 BY MS. WHELAN: 16 Q. I do have a question, though, 17 Mr. Smith. The very first line -- oh, excuse me. 18 I couldn't read it very well. Never mind. You 19 don't need to read it. You just need to sit 20 there, please. 21 THE COURT: Ladies and gentlemen, when 22 you're done -- we'll give you just a few seconds 23 to read this. Then, when you're done, I'll 24 probably ask if anyone has not yet finished 25 reading it, but let's wait just a moment here.</p>
<p style="text-align: right;">1094</p> <p>1 It looks like the jury is finished 2 reading it. Go ahead. 3 All right. Go ahead and go to the 4 next -- 5 It appears the jury has finished 6 reading that section. 7 All right. It appears the jury has 8 finished reading this section. 9 All right. 10 Counsel, it just struck me: What 11 worries me now is it's not clear what was being 12 shown to the jury. And, Of course, that problem 13 is resolved by having the witness read it. 14 I think I'm going to exercise my 15 discretion here. 16 How much more do you have as far as -- 17 MS. WHELAN: You know, probably just maybe a 18 couple of pages. 19 THE COURT: I'm going overrule 20 Mr. Amendola's objection, in part because the 21 alternative is to identify the page, and I think 22 it's probably just easier to have the witness read 23 it. 24 But, ladies and gentlemen, although I'm 25 going to allow the witness to read the text to</p>	<p style="text-align: right;">1095</p> <p>1 you, you are not to give any undue weight to it 2 because you're hearing -- seeing it or hearing it 3 in two different forms here. It's really more 4 almost a matter of housekeeping for the court, so 5 we can keep straight what, in fact, has been shown 6 to the jury. 7 I don't know if there's some way -- I 8 don't want to go back and repeat what's already 9 been done. But if counsel could -- perhaps, 10 Mr. Haws, you can help us. If you have that 11 excerpt, tell us what pages have been shown 12 already, if they're numbered. 13 MS. WHELAN: Your Honor, can I take care of 14 that right now? 15 THE COURT: Yes. 16 MS. WHELAN: We displayed the envelope, 17 which was the front of the exhibit. We started 18 at -- with June 25th, was the date on the exhibit, 19 and it has a number "5" at the top. We read -- or 20 we showed all of that. And then the next date was 21 June 26th and 27th. We showed all of the 26th to 22 the jury. We showed the 27th. And it's probably 23 easier -- I don't want to be redundant. It was 24 the bottom two lines of the page and the top four 25 lines of page 7. And that's -- that's all we</p>

1 showed so far.
 2 THE COURT: All right. Agent Smith, I'm
 3 going to have you read it. But, again, read it
 4 somewhat deadpan, no inflection. Just simply
 5 state the words as they're shown.
 6 THE WITNESS: Yes, sir.
 7 THE COURT: All right. Go ahead and
 8 proceed.
 9 BY MS. WHELAN:
 10 Q. If you could then read that.
 11 A. This portion here?
 12 Q. What's in front of you. Ms. Rocca will
 13 put it in front of you.
 14 A. "Needless to say, I miss you something
 15 terrible. It has been nearly three weeks since we
 16 last saw each other via Skype. Had I known this
 17 would happen, I would never have let you go that
 18 morning."
 19 Q. If you could continue to read. This is
 20 page 12.
 21 A. "I know that I am supposed to act as
 22 though I am genuinely interested in other girls,
 23 too. I know that I should play hard to get. I
 24 know that I should act as though I am the prize
 25 here, not you. I don't want to play games with

1 larger land mass.
 2 "I have been doodling with months and
 3 countries. I'm determined to live outside America
 4 when this is all over. Listen, Sweetheart, to
 5 what I have come up with and tell me what you
 6 think. May slash -- May dash September, five
 7 months, Ukraine. October dash December, three
 8 months, USA. 12 slash 28 dash 1 slash 15, half
 9 month, Ukraine. January 15th dash April,
 10 three-and-a-half months, Panama," in parentheses,
 11 "or" with a question mark.
 12 "So we spend winter someplace warm, and
 13 we both get to spend Christmas with our families.
 14 Ukraine would be over home" --
 15 Q. Would that be "our home"?
 16 A. "Our home base," yes. "-- our home
 17 base. With our permanent family home there, we
 18 would rent or stay in hotels wherever" -- sorry --
 19 "whenever outside Ukraine.
 20 "I can write anywhere, of course, and
 21 would plan on producing two books each year, easy
 22 to do, and will provide us a very comfortable
 23 income, too.
 24 "You could, perhaps, go to school in
 25 Panama, if you like, or summer school in Ukraine,

1 you. Always, I have told you the simple truth
 2 about how I feel about you, and I promise always
 3 to do just that.
 4 "You will come to Kiev for a couple of
 5 days after I first arrive. And then, all too
 6 soon, I will have to take you to the airport for
 7 your flight back to Lugansk. I know that I will
 8 then be even more lost without you than I am now.
 9 I will come to Lugansk sooner than I planned and
 10 find reasons to hang around. Think seriously on
 11 coming with me on a tour of Crimea, Sweetheart.
 12 "I drive myself crazy thinking of these
 13 times and of you, Tanya. I so long to finally be
 14 at your side and hear that sparkling laugh and see
 15 your beautiful smile in person, my love."
 16 Q. Special Agent Smith, there was a thing
 17 about going to the Crimea?
 18 A. Going to Crimea.
 19 Q. What is Crimea?
 20 A. It's an area of Ukraine. It's the
 21 Autonomous Republic of Crimea, basically a
 22 peninsula that sticks out into the Black Sea. A
 23 resort area -- along the Coast is a resort area.
 24 Q. But it is a resort?
 25 A. One area is. It's actually a rather

1 or we could find you something to do -- work at
 2 something, language instructions," with a question
 3 mark, "take care of our babies, make love to me,
 4 whatever will make you happy.
 5 "You get to be near friends, family for
 6 half of every year. I get the same for three
 7 months each year. We both get to be warm for the
 8 winter, which can be like a huge, extended
 9 vacation each year. Our kids learn both Russian
 10 and English as they grow up. It sounds great to
 11 me. What do you think, my love?"
 12 July 3, "I wish my son would come back
 13 up."
 14 MS. WHELAN: Judge, it's just a tad bit
 15 more.
 16 THE COURT: I'm sorry?
 17 MS. WHELAN: There's just a tad bit more
 18 that I've highlighted.
 19 THE WITNESS: "Your surprise was sitting on
 20 the table in my house when all this happened. My
 21 ex promised me that she would mail it to you over
 22 a month ago, but I just learned that she never
 23 mailed it to you. I'm so sorry, Sweetheart. I'm
 24 trying to get one of the kids to get it from her
 25 and get it mailed to you.

<p style="text-align: center;">1100</p> <p>1 "Your surprise," in quotations, "is a 2 teddy bear that I have named 'Eddie Bear,' a copy 3 of my book, and a copy of a magazine about the 4 area. 5 "I hope you haven't given up on me, 6 Tanya. This truly has been out of my control. 7 Remember how much I care for you always. I begin 8 to suspect that my ex was" -- 9 MS. WHELAN: Okay. Ms. Rocca, can you -- 10 BY MS. WHELAN: 11 Q. Go ahead. 12 A. "I hope you haven't given up on me, 13 Tanya. This truly has been out of my control. 14 Remember how much I care for you always. I begin 15 to suspect that my ex may be behind all this. I 16 will tell you all about her another time. She 17 knows that you are very special to me, and I am 18 sure that's why she hasn't sent your box, as she 19 promised me that she would do." 20 Q. Special Agent Smith, just to close a 21 gap, you were asked during the deposition -- or 22 Ms. Tatyana was asked during the deposition if you 23 could have sent her the emails. You never sent 24 her any emails, did you? 25 A. No, ma'am.</p>	<p style="text-align: center;">1101</p> <p>1 MS. WHELAN: Thank you, Your Honor. Nothing 2 else. 3 THE COURT: Cross-examination, if any? 4 MR. AMENDOLA: Yes, Your Honor. 5 THE COURT: Mr. Amendola. 6 CROSS-EXAMINATION 7 BY MR. AMENDOLA: 8 Q. Agent Smith, before the deposition, did 9 you have an opportunity to speak with 10 Ms. Loginova? 11 A. I spoke with all three of them, yes. 12 Q. Did you ever speak with her directly? 13 A. No. 14 Q. How about after the deposition? 15 A. No. 16 Q. Did you ever hear her speak English? 17 A. No. 18 Q. It's your understanding that she does 19 not speak English except perhaps in a very, very 20 limited way? 21 A. It's my understanding she doesn't speak 22 English at all. 23 Q. Agent Smith, you have Exhibit 2 or 2A 24 in front of you? 25 A. I have both.</p>
<p style="text-align: center;">1102</p> <p>1 Q. I'm going to show you a couple of 2 paragraphs and ask that you please read them. Can 3 you do so? 4 A. Yes, sir. 5 Q. Would you please read that. 6 A. "Two weeks ago, I was arrested on a 7 phoney charge and now sit in jail, awaiting my 8 trial" -- in quotation marks -- "now set for the 9 end of August. This will be the trial of my life. 10 I hope to win it, of course." 11 Q. Please read that. 12 A. "Never before have I ever been in jail 13 or even arrested. This has been a huge shock to 14 me but not really a surprise. They have been 15 after me for a long time because of my outspoken 16 criticism of U.S. government and power brokers, 17 both in my writing and in my public speeches. 18 "This is a side of me that I am sure 19 you have yet to discover, my love. I was to tell 20 you -- I was to tell you all about it when we 21 meet" -- "when we met," sorry, "or," in 22 parenthesis, "meet," question mark, "in Kiev this 23 year, and I still will." 24 Q. And please read those two paragraphs. 25 A. "The charge against me is false,"</p>	<p style="text-align: center;">1103</p> <p>1 underlined, "Tanya. Here is what happened: 2 "A man who worked for me stole silver 3 bullion that I had hidden on my property, about 4 U.S. \$45,000," in parenthesis. "He tried to kill 5 me before I discovered the theft but failed. Then 6 he went to the ADL, an American Jewish 7 organization, that has hated me for many years 8 because of cases I have tried as a lawyer and 9 because of my writings and speeches. 10 "The ADL manufactured audiotapes using 11 recordings this man secretly had made of me 12 talking and also using some of many thousands of 13 hours of audio of mine available over the 14 Internet. The phoney tapes make it sound like I 15 tried to hire the man to kill my ex-wife." 16 MR. AMENDOLA: Nothing further, Your Honor. 17 THE COURT: Redirect? 18 REDIRECT EXAMINATION 19 BY MS. WHELAN: 20 Q. Special Agent Smith, you indicated that 21 Ms. Loginova -- you didn't hear her speak English; 22 correct? 23 A. Correct. 24 Q. Are you aware that these dating 25 websites provide translators for individuals so</p>

1 they can talk?

2 MR. AMENDOLA: Objection. Foundation.

3 THE COURT: The question is: Are you aware?

4 Yes or no. Do you know anything about that?

5 THE WITNESS: I know from this case that

6 they provide translators. I don't have personal

7 knowledge.

8 THE COURT: All right. Then I'll sustain

9 the objection.

10 BY MS. WHELAN:

11 Q. Let me ask: You said you're aware from

12 this case?

13 A. Yes.

14 Q. Wait. Are you aware from this case?

15 A. Yes.

16 Q. And so, based upon that, is that part

17 of your knowledge?

18 MR. AMENDOLA: Your Honor, I think he has

19 already answered the question. I object to

20 further inquiry.

21 THE COURT: Well, I don't know -- well, I'll

22 sustain the objection. If the witness doesn't

23 have firsthand knowledge unless he has actually

24 experienced or used the Internet site in some way,

25 either -- I don't know how he can testify except

1 MS. WHELAN: Your Honor, at this time, prior

2 to resting, we would like to take up some matters

3 outside the presence of the jury.

4 THE COURT: Ladies and gentlemen, why don't

5 we have you retire to the jury room so I can take

6 up some matters with counsel.

7 Counsel, we'll only go for five or ten

8 minutes before we take a break unless -- I just

9 don't know how long you need.

10 I'm going to again admonish you not to

11 discuss the case among yourselves or with anyone

12 else, nor should you form or express any opinions

13 about the case until it is finally submitted to

14 you.

15 So, with that, Mr. Severson, if you'll

16 escort the jury into the jury room.

17 Ladies and gentlemen, this will be the

18 morning break, as well, just so you know. So it

19 will be at least 20 minutes or so before we

20 resume.

21 (Jury absent.)

22 THE COURT: Ms. Whelan?

23 MS. WHELAN: Your Honor, the United States

24 intends to rest, but there was something Mr. Haws

25 brought up this weekend that I just wanted to

1 by hearsay.

2 MS. WHELAN: Well, my concern is -- well,

3 let me try to go about it --

4 BY MS. WHELAN:

5 Q. Did you speak to the agency or to the

6 General Prosecutor's Office about the agency?

7 A. I did not, no.

8 Q. Okay. Where -- without telling us what

9 it is, where would your knowledge come from?

10 A. From interaction in this case, from

11 reading what has already been done on the case.

12 Q. Okay. So it's not anything where you

13 talked to somebody directly?

14 A. No.

15 Q. Okay. And as part of your legat work,

16 have you had occasion to work with these dating

17 websites?

18 A. Work with them, no.

19 MS. WHELAN: Nothing else, Your Honor.

20 Thank you.

21 THE COURT: Mr. Amendola, anything else?

22 MR. AMENDOLA: No, Your Honor.

23 THE COURT: All right. You may step down,

24 Agent Smith. Thank you.

25 Call your next witness.

1 check with the court prior to resting.

2 It is our understanding, based upon the

3 court's preproof jury instructions and how the

4 court has instructed the jury, that the jury need

5 not find that murder is in violation of Idaho

6 state law; that that's a matter for the court to

7 instruct them on.

8 The statute says murder in violation of

9 any law of any state. That's a matter for the

10 court. It would be similar to a jury instruction

11 that the court provides defining what interstate

12 transportation is.

13 However, if the court or counsel is of

14 a different opinion, we can bring in a witness to

15 provide that. We just want to make sure everyone

16 is on the same page and there is no questions once

17 we rest.

18 THE COURT: Mr. McAllister or Mr. Amendola?

19 MR. McALLISTER: I think it's a legal issue,

20 Your Honor, and the court will decide.

21 THE COURT: Just deal with it in jury

22 instructions?

23 MR. McALLISTER: Pardon, Your Honor?

24 THE COURT: So we would just deal with it in

25 jury instructions?

1 MR. McALLISTER: I believe so.
 2 THE COURT: All right. Well, I think that
 3 solves the problem.
 4 MS. WHELAN: We just wanted to make sure.
 5 THE COURT: All right. Anything else?
 6 MS. WHELAN: No. Thank you, Your Honor. If
 7 we could take our morning break.
 8 THE COURT: All right. Counsel -- well,
 9 maybe I'll just wait. I have given some thought
 10 -- I want to mull it over just a little more, but
 11 this whole deal with regard to Mr. Fairfax's
 12 handwritten letters or whatever -- notes or diary
 13 or whatever it is he has kept, I'm -- I'm going to
 14 think it over just a bit more, but I have got some
 15 tentative thoughts.
 16 I, frankly, must concede -- I think I
 17 probably put my foot in it when I shouldn't have.
 18 I don't think I have seen in, you know, quite a
 19 few years on the bench, ever seen that happen
 20 where a document showed up on cross-examination
 21 that apparently either no one knew about or no one
 22 had bothered to subpoena. And I acted in an
 23 effort to try to protect the defendant's rights,
 24 but perhaps I would have been better served to
 25 simply sit back and say -- instruct the defense to

1 that, knowing the flights from Coeur d'Alene, if
 2 the court wants Mr. Miller here in person --
 3 because he would want to be here if Mr. Fairfax is
 4 called back -- I think there is a 6:00 a.m. and I
 5 think there's a 4:00 p.m. flight.
 6 THE COURT: Well, we obviously won't make
 7 the 6:00 a.m. Perhaps a 4:00 p.m. flight may
 8 still be doable.
 9 We'll be in recess -- Mr. McAllister?
 10 MR. McALLISTER: I intend to make a Rule 29
 11 motion. Do you want to take that up before the
 12 jury comes back?
 13 THE COURT: Yes, we will. But the problem
 14 is -- how long do you intend to take?
 15 MR. McALLISTER: Not that long.
 16 THE COURT: All right. Well, I'll give you
 17 five minutes. And if you can't finish it up,
 18 we'll take the break and come back.
 19 Mr. McAllister.
 20 RULE 29 MOTIONS BY DEFENSE
 21 MR. McALLISTER: Thank you, Your Honor.
 22 At this time the defense moves,
 23 pursuant to Rule 29 of the Federal Rules of
 24 Criminal Procedure, for judgment of acquittal on
 25 all counts.

1 do what they needed to do, which might include
 2 trying to subpoena that document. And then we
 3 would have confronted the issue in that context
 4 rather than involve the government in the way that
 5 I did.
 6 But, in any event, I'm going to give it
 7 some more thought and then decide how we need to
 8 proceed. I think it's clear that the defense
 9 wants a copy. They have made that very clear
 10 today. And perhaps the way to deal with it now is
 11 to essentially treat it as though they had
 12 subpoenaed that and the -- Mr. Fairfax, through
 13 his attorney, had objected -- which they have --
 14 and then deal with it in that context in
 15 essentially a motion to quash the subpoena or a
 16 motion for protective order.
 17 I'm mulling that over now as I -- over
 18 the next few minutes, and we may get Mr. Miller
 19 involved in that discussion and keep the
 20 government out of it from this point forward.
 21 So, in any event, that's what I'm
 22 thinking. I had to act what seemed like the right
 23 thing to do at the time but, upon reflection,
 24 perhaps wasn't the best course of conduct.
 25 MS. WHELAN: Judge, I would just tell you

1 And, Judge, I have the superseding
 2 indictment before me. I know the court has it.
 3 And the language in Count 1 states, in part, "that
 4 the defendant, Edgar Steele, attempted and caused
 5 another to travel in interstate commerce from
 6 Idaho to Oregon with intent that the murders of
 7 his wife, CKS, and mother-in-law be committed in
 8 violation of the laws of the State of Idaho and
 9 Oregon."
 10 That is the charge. And in this
 11 particular case, taking the evidence in the light
 12 most favorable to the government does not support
 13 the charge.
 14 The only evidence that we have comes
 15 from the witness Larry Fairfax. He indicated that
 16 he made a trip on May 31st and that the purpose of
 17 the trip was to remove, if he could find it, a
 18 device, an explosive device that he had
 19 manufactured, designed, and built, never shown to
 20 the defendant, and that he was going to remove it
 21 or determine whether it still existed. Because,
 22 according to his testimony, nothing had happened
 23 with it. It had not -- well, I think his words
 24 were nothing had happened and that he had designed
 25 it not to go off.

1 And he went into some detail about how
2 he designed it on cross-examination, by breaking
3 the fuse, by double wrapping it in tape, and by
4 putting it near the tailpipe, a place apparently,
5 according to the government's evidence, that was
6 not sufficient to ignite it.

7 Now, as I understand it, he took a
8 second trip -- and both of these were with James
9 Maher, his cousin, but he took a second trip on
10 the night of June 10th and got there -- got to the
11 Portland area, I think, early-morning hours of
12 June 11th.

13 And at that point in time, his
14 testimony is he was, quote, "working for the FBI,"
15 and that he had no intention of driving
16 Mrs. Steele and her mother off the road. He had
17 no intention of harming them. And he did
18 not intend in the second trip to murder
19 Mrs. Steele or her mother-in-law.

20 In addition, Your Honor, there is an
21 absence of evidence in this case to show that the
22 device itself ever went across state lines and
23 traveled in interstate commerce.

24 As a matter of fact, the evidence,
25 again, from Mr. Fairfax is that he asked his

1 according to Counts 2 and 3. So all we have is
2 the trip that was taken on May 31st.

3 The testimony is from Mr. Fairfax that
4 he built the device, he planned the device, he
5 attached the device to Mrs. Steele's car, and he
6 doesn't know what happened to it after that except
7 for the fact that it was discovered to be the same
8 device on June the 13th, I believe is the date
9 when it was discovered.

10 So I don't believe there is any
11 sufficient proof to establish that he somehow
12 aided and abetted in the knowing use of an
13 explosive device. As a matter of fact, the
14 testimony is he has never seen it. And he
15 certainly -- there is no evidence to show that he
16 built it, used it, designed it in any way in an
17 attempt to use -- to commit use of interstate
18 commerce facilities for murder for hire.

19 And, again, as I stated previously,
20 there is insufficient evidence here to show any
21 interstate commerce or any connection with
22 interstate commerce based on the testimony in the
23 record.

24 Count 4 is tampering with the victim.
25 And the evidence on that is the conversation

1 cousin, Mr. Maher, to look for the device on Cyndi
2 Steele's car. And his testimony was, "I thought
3 it had fallen off." He didn't see anything
4 hanging down.

5 And, therefore, I don't think the
6 government at this point has proven in any way
7 that, in fact, the device traveled in interstate
8 commerce.

9 Counts 2 and 3 relate to use of an
10 explosive material to commit a federal felony and
11 possession of a destructive device in relation to
12 a crime of violence. And on both of these counts,
13 I submit, taking the evidence in a light most
14 favorable for the government, there is
15 insufficient evidence to allow the jury to decide
16 the case.

17 Count 2 says "between or about the 27th
18 and 31st of May," and the same time period is
19 listed in Count 3.

20 Now, that eliminates, I presume, the
21 second trip and the discussion about -- the
22 purported discussion or the alleged discussion
23 about somehow climbing in the back seat of Cyndi
24 Steele's car or driving Cyndi Steele and/or her
25 mother-in-law off the road. That's not charged,

1 between Cyndi Steele and Mr. Steele. And it's
2 clear from the evidence and Mrs. Steele's
3 testimony -- she was called by the government, of
4 course -- that she was not influenced, and in no
5 way was she tampered with.

6 As a matter of fact, she specifically
7 says on the recording that, "It's not they who
8 want to listen to the tapes, it is me. I want to
9 make my own decision."

10 Based upon those reasons, Your Honor,
11 we request that the court grant a motion for
12 judgment of acquittal pursuant to Rule 29.

13 THE COURT: Ms. Whelan or Mr. Haws?

14 Mr. Haws, I'm going to give you -- I'm
15 going to take a break in five minutes. It depends
16 on how much time you need. You may get
17 interrupted in your argument unless you can do it
18 in about the same amount of time that
19 Mr. McAllister did.

20 RESPONSE BY THE GOVERNMENT

21 MR. HAWS: No, I don't plan to take much
22 longer than that, either, Your Honor.

23 Mr. McAllister has correctly stated the
24 standard that the court must find, which is
25 viewing the evidence in the light most favorable

<p style="text-align: center;">1116</p> <p>1 to the government. And the issue is whether a 2 rational trier of fact could have found evidence 3 sufficient to conclude that these crimes were 4 committed.</p> <p>5 Count 1 charges the use of the 6 interstate facilities -- the highways, traveling 7 across state lines -- to accomplish murder. It's 8 not just the specific pipe bomb; it's the ongoing 9 plan, starting with the talk back in the early 10 spring, in March and April, and then developing 11 the plan, putting the pipe bombs on. But it 12 carries through even to the intent to commit 13 murder, which is reflected in the June 9 and June 14 10 conversations.</p> <p>15 THE COURT: Now, specifically, though, the 16 interstate commerce is Mr. Fairfax's travel to 17 Oregon with the -- at least Mr. Steele's intent 18 that he commit a murder there through the use, 19 presumably, of vehicles rather than pipe bombs.</p> <p>20 MR. HAWS: We would contend, Your Honor, 21 that the interstate travel occurs in several 22 different ways. Under the statute, it says that 23 even the victim -- if he causes the victim to 24 travel interstate, that that could be part of the 25 evidence here.</p>	<p style="text-align: center;">1117</p> <p>1 What we have here is --</p> <p>2 THE COURT: But she traveled to help her 3 mother in the Portland area, not at the behest of 4 the defendant. Am I incorrect about that?</p> <p>5 MR. HAWS: You're correct that that was her 6 intent, but that wasn't his intent. His intent 7 was he knew that she was traveling for that 8 purpose, and he was using the fact that she was 9 traveling to be with her mother.</p> <p>10 THE COURT: But the statute requires that 11 the defendant cause another to travel.</p> <p>12 MR. HAWS: Well, he knew that she was 13 traveling, and he placed the pipe bomb on there so 14 that it would go off as she traveled. We would 15 argue that that is one way in which to interpret 16 it.</p> <p>17 In addition to that, because the pipe 18 bomb was placed on her car and she did travel 19 across state lines, and Mr. Fairfax's testimony is 20 that he built that device in Idaho and her car -- 21 and he did that on the 27th of May. On the 28th 22 of May, she traveled. On the 31st of May, 23 Mr. Fairfax himself was sent down to check on that 24 bomb.</p> <p>25 That's part of the travel as part of</p>
<p style="text-align: center;">1118</p> <p>1 the scheme to commit this murder in interstate 2 travel.</p> <p>3 And, besides that, when the FBI 4 officers went to check on Mrs. Steele on the 5 morning of the 11th, they found her and her car 6 there. Her car was then in Idaho on the 28th, the 7 27th and 28th of May. It's found in Oregon on 8 the -- on the 11th of June.</p> <p>9 And then it's back in Idaho to complete 10 the saga. It's back in Idaho when she has 11 her -- when she comes back on the 13th and she 12 goes to have her oil changed on the 15th.</p> <p>13 So the car with the pipe bomb has 14 traveled across interstate commerce to Oregon and 15 then back. And Mr. Fairfax himself, his testimony 16 was -- and it's corroborated by the receipts from 17 the Thrifty Car Rental -- that he traveled to 18 Oregon to check on that as part of the murder 19 plan.</p> <p>20 I don't think there is any question 21 that that is -- that that charge has been 22 accomplished.</p> <p>23 I believe that the other day, 24 Your Honor requested some briefing with regard to 25 Counts 2 and Count 3. That hasn't been raised</p>	<p style="text-align: center;">1119</p> <p>1 here, and so I won't speak to that issue.</p> <p>2 But the -- Count 2 and Count 3 3 specifically apply to simply the 27th through the 4 31st of May. That is the bomb part.</p> <p>5 The murder part, as I said, in Count 1 6 continues until -- into June, but the pipe bomb 7 part applying to just the manufacture of the 8 bombs, that was done -- the use and possession of 9 the bombs was done in the 27th through the 31st of 10 May.</p> <p>11 So that's why -- that's why those 12 charges are charged with those particular dates.</p> <p>13 But it is not any kind of a violation 14 of double jeopardy or anything like that to have 15 both counts 18 U.S.C. 844(h) and 18 U.S.C. 924(c). 16 There is no double jeopardy by having both of 17 those counts charged with regard to the bombs, 18 Your Honor.</p> <p>19 So we would submit that those have been 20 established.</p> <p>21 With regard to Count 4, which is the 22 tampering with a witness, the -- the evidence is 23 very clear. The recording itself of the 24 conversation between Mr. Fairfax and his wife 25 clearly shows what his intent is. His intent is</p>

1 to direct her as to how to react at the time that
2 he anticipates that she is going to be shown and
3 listen to the tape recordings of himself and
4 Mr. Fairfax.

5 And he says, "No matter what you think,
6 no matter what you feel, this is what you must
7 say. Otherwise" -- and then he tells her what the
8 result is going to be -- "you're going to spend
9 the rest of your life explaining to your kids why
10 you put me in jail."

11 That is -- that is clearly attempting
12 on his part to hinder and to prevent her from
13 giving truthful testimony. That is corrupt
14 persuasion under the terms and language of the
15 statute, Your Honor.

16 So that recording, by itself,
17 establishes that charge beyond a reasonable doubt.
18 It's -- it's material whether or not his objective
19 was accomplished. Regardless of where Cyndi
20 Steele came out on that and whether she -- it was
21 her decision to listen to the tapes and not the
22 FBI's, and how she came out on that is immaterial.

23 The fact is that tape shows that he
24 attempted to hinder, prevent, and corruptly
25 persuade. And that charge -- that recording, by

1 interstate commerce with the intent that a murder
2 be committed. And I think that would apply
3 both -- to both trips to Oregon.

4 The first was to -- presumably, to
5 check on the pipe bomb. And the -- and, of
6 course, even if it's to remove it so as to avoid
7 detection, I think that, in and of itself, as part
8 of an ongoing effort to commit murder as the
9 government alleges here, would be sufficient to
10 constitute causing another to travel in interstate
11 commerce with the intent that a murder be
12 committed.

13 More pointedly and more clearly, I
14 think the trip in June is just almost
15 paradigmatically an example of traveling in
16 interstate commerce with intent that a murder be
17 committed or causing another to do so.

18 And so I think, for that reason, there
19 is clearly and without a doubt sufficient evidence
20 for that matter to go to the jury.

21 Counts 2 and 3 I have expressed some
22 concerns about --

23 (Phone ringing.)

24 I would hope that's a warning for
25 everybody in the courtroom to check their cell

1 itself, establishes the elements of that crime
2 beyond a reasonable doubt.

3 THE COURT: Okay. All right. Counsel, I'm
4 going to take the matter under advisement over the
5 recess and then announce a decision after we
6 reconvene. We'll be in recess for 15 or 20
7 minutes. Court will be in recess.

8 (Recess.)

9 (Jury absent.)

10 COURT'S RULING ON RULE 29 MOTIONS

11 THE COURT: Let me just note two items.
12 First, I am going to deny the Rule 29 motions. I
13 think the -- the problem here is we have to focus
14 on the right intent.

15 And in making my comments here, I'm not
16 suggesting that I have concluded what Mr. Steele's
17 intent was or was not. I'm only evaluating this
18 in terms of what a reasonable jury might conclude
19 from the evidence and whether there is sufficient
20 evidence to support a finding beyond a reasonable
21 doubt as to his intent.

22 Viewed in that way, it seems to me
23 that, quite clearly, that the intent of Mr. Steele
24 for a period of time through the spring and into
25 June of 2010 was to cause Mr. Fairfax to travel in

1 phones and turn them off, since there is about ten
2 signs between here and the elevator reminding
3 people to do so.

4 But I think, still, the idea of aiding
5 and abetting -- and, again, the focus is on
6 Mr. Steele's intent at the time to use an
7 explosive device to commit the crime of use of
8 interstate commerce facilities in the commission
9 of a murder for hire -- I think, again, the
10 evidence is sufficient to submit that issue to the
11 jury.

12 Even if Mr. Fairfax believed that he
13 had constructed the device in such a way that it
14 would not actually go off, I think it was still
15 clearly an explosive device, and it was
16 Mr. Steele's intent to aid and abet Mr. Fairfax in
17 using that explosive device to commit the crime of
18 interstate -- using interstate commerce facilities
19 in the commission of a murder for hire.

20 As to Count 4, again, it's a question
21 of Mr. Steele's intent. Even if Mrs. Steele did
22 not feel intimidated, did not feel that she was in
23 any way being influenced, the question is: What
24 was Mr. Steele's intent?

25 And I think, from listening to the

1 recording itself, the words used, I think a
2 reasonable jury could conclude that that was
3 Mr. Steele's intent.

4 So, for those reasons, I'm going to
5 deny the Rule 29 motions.

6 Of course, we'll wrestle with this to a
7 certain extent in formulating jury instructions,
8 as well.

9 With regard to the issue of what I'll
10 call "the Fairfax notes," as I alluded to earlier,
11 I think I, frankly, did not handle this well.

12 What I should have done is simply
13 inquire of the government whether they have
14 possession of those notes or have ever had
15 possession of those notes; and if the answer was
16 "no" -- which is, I think, what Ms. Whelan has
17 said -- then I should have ended my involvement at
18 that point.

19 The probable or possible next step
20 would have been for Mr. McAllister or Mr. Amendola
21 to file -- obtain a subpoena for those documents.
22 And then, of course, it would be free for
23 Mr. Miller, as Mr. Fairfax's attorney, to object
24 and perhaps request either an in camera review or
25 to otherwise challenge having those documents

1 frankly, did not handle it well. It's the first
2 time I -- I don't think I have ever seen that
3 happen before, where a document of that nature
4 showed up in the middle of a trial.

5 If I had to do it over again, I would
6 have followed the procedure I indicated, which is
7 to put the ball back in the defense court and got
8 the government out of the middle of this, since I
9 have no reason to question Ms. Whelan's statement
10 that the government has not seen and had no --
11 until they were ordered to review it by me, had no
12 knowledge of the documents.

13 So that's where we're at.

14 MR. McALLISTER: Judge, just because of the
15 timing on this, Mr. Amendola knows Mr. Miller, and
16 they have been in contact. That's how we knew
17 that the U.S. Attorney was going to get a
18 sealed -- get the documents under seal. We
19 thought they weren't going to open them until it
20 was raised with the court, or review them. But
21 that's been done.

22 So what I would ask now is that we
23 contact Mr. Miller, tell him what the court has
24 said. If he requires a subpoena, we'll fax it to
25 him, get it to him. I don't think he will,

1 turned over.

2 The challenge now, of course, is that
3 the documents are not in Mr. Fairfax or
4 Mr. Miller's possession. They're in the
5 possession of the United States Attorney's Office
6 at my direction. It seems to me, then, it's
7 essentially up to the defense, if you want the
8 documents, feel you're entitled to them, you will
9 have to file a subpoena.

10 I'm going to direct the U.S. Attorney's
11 Office to go ahead and return them to whoever sent
12 them but to perhaps hold them until the end of the
13 day.

14 And if the defense feels that they want
15 to or are entitled -- and are entitled to review
16 them, they can so indicate. If that is their
17 intention to file a subpoena, perhaps we can even
18 avoid having to go through that process, have the
19 documents turned over to the court to be held
20 without review until Mr. Miller has had a chance
21 to file his objections.

22 I think it's clear that he will, since
23 he did file an objection on Friday to their being
24 turned over to the government.

25 So I think that's where we're at. I,

1 necessarily. But I'd like to get the issue or
2 whatever motion he wants to file before the court
3 by the end of today and take it up tomorrow
4 morning.

5 THE COURT: That's what my intention was. I
6 assumed you did want to see it. I wasn't certain
7 because no subpoena was forthcoming, although I
8 was -- it was suggested that you were aware of the
9 notes somehow from the jailhouse informant that,
10 apparently, may yet testify.

11 Regardless, I think that's where we're
12 at. So I'll leave it up to you, then, to
13 communicate with Mr. Miller. And he can either
14 file -- probably file a new motion today, and then
15 we'll probably tee it up for tomorrow morning, and
16 hopefully he can be here. If not, I will allow
17 him to appear by phone, and we'll argue this
18 matter tomorrow morning.

19 MS. WHELAN: Judge, just because we are
20 still involved in the prosecution of Mr. Fairfax,
21 Mr. McAllister, a couple times, has said that the
22 government opened it. Could we just have the
23 record reflect that the reason we opened it is we
24 were contacted by the court and told to open it?

25 THE COURT: I was -- that's accurate, and

1 the record will so reflect.

2 MS. WHELAN: Thank you, Your Honor.

3 THE COURT: That's part of what I'm trying
4 to repent for. It's something I shouldn't have
5 done, but I did, and now I have to deal with it.
6 MR. McALLISTER: Judge, again, so the record
7 is clear, what we, on the defense side, were aware
8 of was the fact that he said he was writing a
9 book, and he asked Mr. Hollingsworth to design the
10 cover. And we're going to call Mr. Hollingsworth
11 in our case.

12 I had no idea that there were some 200
13 pages until Ms. Whelan told me about it this
14 morning. I didn't know whether we were going to
15 get a cover or the pages. That was all news to me
16 when I cross-examined him when he said, "I'm
17 writing" -- "I'm actually writing a book," or "I
18 have written a book."

19 So that's our statement about the
20 factual basis. And based upon his testimony and
21 what the court said, I thought we would get an
22 opportunity to review it. I understand the
23 court's ruling now. We'll move forward.

24 THE COURT: All right.

25 MS. WHELAN: Judge, just -- I'm sorry. One

1 you want to take that up, but we're going to be
2 objecting to that line of questioning.

3 THE COURT: Well, if it's retained
4 jurisdiction, he's got a felony conviction.

5 MS. WHELAN: He's got -- he's got at least
6 one felony conviction, Judge. And that we
7 provided to defense counsel a long time ago. It's
8 Exhibit 95.

9 Just this morning, the Clark County
10 Prosecutor's Office and court sent me a bunch of
11 documents having to do with other felony
12 convictions, and I provided the statute to counsel
13 as well as his other convictions.

14 And, you know, there is some things I
15 might want to go into that I would want to make
16 sure he has counsel, Judge, in inquiring.

17 THE COURT: Well, I don't know how we can
18 have his counsel here by 11:30. Likewise, I don't
19 know how we can even arrange to have someone here
20 locally appear and advise him.

21 If you intend to ask questions that
22 might be incriminating on a case that's not
23 already been resolved by a conviction, then I
24 think that's a very legitimate concern, and I may
25 restrict you from asking those questions until we

1 more matter. Defense counsel indicated they are
2 going to be calling Mr. Hollingsworth. And I
3 figure now is a good time to bring it up.

4 Mr. Hollingsworth has a conviction out
5 of Bonner County that he is on a retained
6 jurisdiction for. He has warrants outstanding for
7 him in another jurisdiction. I do intend to
8 impeach him with prior convictions, as well, or at
9 least ask him about it. I don't know if it's
10 impeachment.

11 But I don't know if the court considers
12 whether he needs to have any counsel appointed for
13 him. It's something I just thought of. But if
14 they are going to call him, I don't know if it's a
15 precaution the court wants to take.

16 THE COURT: Well, when do you intend to call
17 him? Is he scheduled to testify this afternoon or
18 today?

19 MR. McALLISTER: 11:30 we told the marshals.

20 MR. AMENDOLA: We expect that he will
21 testify today, Your Honor. And I have reviewed
22 the documentation provided to us by the government
23 this morning regarding various crimes. Whether
24 they are appropriate as impeachment or even to be
25 asked about, I disagree. And so I'm not sure when

1 can arrange for representation. And so we may
2 have to see where it goes and discuss that at a
3 sidebar.

4 But that may be a reason why I would,
5 under Rule 403, limit what the government can get
6 into. Unless it's very probative, I think the
7 delay and confusion of the issues becomes a
8 concern.

9 If these are recent felony convictions,
10 why would they not be, per se, admissible to
11 impeach the witness under Rule 609?

12 MR. AMENDOLA: Well, Your Honor, the most
13 current conviction is aggravated assault. And, of
14 course, there is nothing about aggravated assault
15 that goes to his ability to be honest or
16 trustworthy. That's number one.

17 Three or four of the prior convictions
18 that they're talking about happened in 1991 and in
19 the 1990s, and they're beyond the ten-year limit.

20 In addition, there is no -- I don't
21 know how they're going to get evidence into this
22 court that some particular Washington conviction
23 qualifies under the statute as a felony; i.e.,
24 that incarceration for a year or more. I'm not
25 aware of any witness that they have proffered up

<p style="text-align: center;">1132</p> <p>1 that would be able to do that. And that applies 2 to all of the other convictions. 3 There is one -- there's two convictions 4 that actually do fall into the category within the 5 ten-year period that is most favored by the court 6 in terms of allowing them to impeach a person. 7 One of them is malicious mischief in the second 8 degree. 9 Again, I don't know how there is going 10 to be a proffer to the court that it is -- 11 qualifies as a felony. In addition, I don't see 12 why it has anything to do with honesty or 13 integrity. 14 THE COURT: Just so we're clear, the honesty 15 and integrity applies to anything -- generally, 16 it's a nonfelony. Generally, any felony is 17 admissible for impeachment purposes, is it not? 18 MR. AMENDOLA: Not if it's beyond ten years. 19 THE COURT: Well, no. Well, I thought we 20 were talking at least his most recent conviction 21 of aggravated assault or something was within the 22 last ten years. 23 MR. AMENDOLA: That's -- no, Your Honor. 24 Well -- 25 THE COURT: See, I don't know. I don't</p>	<p style="text-align: center;">1133</p> <p>1 have -- 2 MS. WHELAN: I can tell you what they are. 3 That might be easier. 4 THE COURT: All right. Ms. Whelan? 5 MS. WHELAN: We have got a malicious injury 6 to property with a judgment and sentence which is 7 stamped May 14th, 2004. And I gave counsel -- I 8 ran off the Washington revised code, which shows 9 that it's a Class C felony. And that's a matter 10 for the court, not the jury, to find. 11 And then we have -- for the kidnapping 12 and robbery, which I -- clearly, I just got. I 13 handed it to him right before the break. That's 14 stamped 1992. That's outside of the ten years. 15 THE COURT: Do you intend to get into that? 16 MS. WHELAN: I didn't provide written notice 17 as provided by the rule, so I won't. 18 THE COURT: All right. 19 MS. WHELAN: There is a possession of stolen 20 property conviction, which is -- it looks like 21 this one -- this possession of stolen property is 22 1991, so it's outside the ten years. Although I 23 would say it's probative, I didn't have time to do 24 written, so I won't go into it. 25 There is another malicious -- excuse</p>
<p style="text-align: center;">1134</p> <p>1 me. There is a forgery from May 14th of 2004 out 2 of Clark County, which is a felony. I intend to 3 go into that. 4 And there is a malicious mischief which 5 it looks like he did some time for. Let's see 6 here. And that's dated 2000 -- January 19th, 7 2000 -- just one second, Judge. I thought that 8 this one made it by -- nope. It's January 19th, 9 2000, so it is outside of the ten years. 10 So we have the forgery. We have the 11 malicious mischief. We have the aggravated 12 assault out of Bonner County. 13 THE COURT: What's the date on that? 14 MS. WHELAN: The Bonner County -- 15 Ms. Rocca, can you give me Exhibit 95? 16 That one is the one he is on retained 17 jurisdiction for, and that date is the 31st of 18 March, 2011. 19 THE COURT: All right. Well, I have a hard 20 time seeing how the two -- the 2004, that is the 21 forgery and malicious injury, and the 2011 22 aggravated assault, if those are all felonies -- 23 and certainly I think they are -- the malicious 24 injury under Washington law, I'm not sure, but 25 Ms. Whelan said that she has provided counsel with</p>	<p style="text-align: center;">1135</p> <p>1 a copy of the statute indicating that it is a 2 Class C felony and, presumptively, is then 3 punishable by more than one year incarceration. 4 It seems to me that those are all three 5 admissible for impeachment purposes, Mr. Amendola, 6 but the others would not. 7 Now, do you agree with that, or do you 8 want to submit argument as to why that is not the 9 case? 10 MR. AMENDOLA: Your Honor, I think I've -- 11 well, yes, Your Honor. There is no -- I don't 12 know about the exhibit number. I haven't looked 13 at that recently, but I don't believe that that is 14 a certified copy of a conviction, nor are either 15 of the 2004 convictions. 16 And I don't see how this court can 17 simply presume that they are felonies from another 18 jurisdiction. And so I don't know how they intend 19 to prove up that, in fact, they're simply a 20 felony. 21 Therefore, if you go under Rule 609, 22 the second subsection, which says "regardless of 23 the length of punishment," then you're in a 24 situation where they have to be probative of 25 dishonesty or false statement.</p>

<p style="text-align: center;">1136</p> <p>1 THE COURT: Are you saying forgery, under</p> <p>2 Idaho law, is not a --</p> <p>3 MR. AMENDOLA: No. The forgery one --</p> <p>4 THE COURT: And how is that not --</p> <p>5 MR. AMENDOLA: -- I don't have a great</p> <p>6 argument for that. But ag assault and malicious</p> <p>7 injury to property, neither of those jump out as</p> <p>8 evidence of dishonesty or false statement.</p> <p>9 So I think, at best, they can use the</p> <p>10 forgery one; and I disagree with that because of</p> <p>11 the foundational issues.</p> <p>12 THE COURT: You disagree with the forgery on</p> <p>13 foundational issues?</p> <p>14 MR. AMENDOLA: Yes, Your Honor.</p> <p>15 THE COURT: How so?</p> <p>16 MR. AMENDOLA: I am not willing to concede</p> <p>17 that, in Washington, every forgery is a felony. I</p> <p>18 mean, I know what this court thinks, and I know</p> <p>19 what my experience is. But if we're talking a</p> <p>20 matter of evidence, it's not there.</p> <p>21 THE COURT: Ms. Whelan?</p> <p>22 MS. WHELAN: Well, Judge, I just had Exhibit</p> <p>23 95 in my hand, and it has disappeared. But</p> <p>24 counsel is wrong. We don't have to prove it's a</p> <p>25 felony, and he is just drawing his interpretation</p>	<p style="text-align: center;">1137</p> <p>1 of 609.</p> <p>2 And, furthermore, the Bonner County,</p> <p>3 Exhibit 95 -- which somehow the gremlins have</p> <p>4 stolen; or not stolen, but it's missing here -- it</p> <p>5 was a certified copy.</p> <p>6 And the other ones, if he admits it,</p> <p>7 they don't come in.</p> <p>8 THE COURT: Well, that's the way -- it's not</p> <p>9 normally done through certified copies. Normally</p> <p>10 you ask the witness whether he was convicted, and</p> <p>11 he can deny it or admit it. If he admits it,</p> <p>12 that's probably as good a way as any of</p> <p>13 establishing a conviction. If he denies it, then</p> <p>14 we move on.</p> <p>15 All right. Well, I think you have got</p> <p>16 the general ground rules. Are we ready to</p> <p>17 proceed, then, with the jury?</p> <p>18 MR. McALLISTER: Yes, Your Honor.</p> <p>19 MS. WHELAN: I just need to formally rest,</p> <p>20 Your Honor.</p> <p>21 THE COURT: Yes. We'll do that in front of</p> <p>22 the jury here. Let's bring the jury in.</p> <p>23 (Jury present.)</p> <p>24 THE COURT: Ms. Whelan.</p> <p>25 THE GOVERNMENT RESTS</p>
<p style="text-align: center;">1138</p> <p>1 MS. WHELAN: Your Honor, the United States</p> <p>2 rests.</p> <p>3 THE COURT: All right. Is the defense ready</p> <p>4 to proceed?</p> <p>5 MR. McALLISTER: Yes, Your Honor.</p> <p>6 THE COURT: Call your first witness.</p> <p>7 MR. McALLISTER: Defense would call as our</p> <p>8 first witness, Jeff Miller.</p> <p>9 THE COURT: Mr. Miller, please step before</p> <p>10 the clerk and be sworn, and follow Ms. Gearhart's</p> <p>11 directions from there.</p> <p>12 JEFF MILLER,</p> <p>13 having been first duly sworn to tell the whole</p> <p>14 truth, testified as follows:</p> <p>15 THE CLERK: Please state your complete name</p> <p>16 and spell your last name for the record.</p> <p>17 THE WITNESS: Jeff Miller, M-I-L-L-E-R.</p> <p>18 THE COURT: You may inquire, Mr. McAllister.</p> <p>19 MR. McALLISTER: Thank you, Your Honor.</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MR. McALLISTER:</p> <p>22 Q. Mr. Miller, where do you reside?</p> <p>23 A. Bay area, San Francisco Bay area,</p> <p>24 California.</p> <p>25 Q. All right. And could you tell us a</p>	<p style="text-align: center;">1139</p> <p>1 little bit about yourself, where you grew up,</p> <p>2 where you went to school.</p> <p>3 A. Born in Utah, grew up mostly in the</p> <p>4 west coast area. Went to school at University of</p> <p>5 California, Berkeley, and met Ed Steele about 40</p> <p>6 years ago.</p> <p>7 Q. All right. Was that your undergraduate</p> <p>8 degree at the University of California, Berkeley?</p> <p>9 A. Both.</p> <p>10 Q. All right. And what is your second</p> <p>11 degree?</p> <p>12 A. Engineering, as well, master's in.</p> <p>13 Q. Can you tell us what you do for a</p> <p>14 living today? What kind of work do you do?</p> <p>15 A. Got two jobs. One job is building</p> <p>16 cyclotrons. It's a particle accelerator for</p> <p>17 making radioactive isotopes. If anyone has ever</p> <p>18 heard of a PET scan, they use isotopes that are</p> <p>19 made from a cyclotron to do a scan.</p> <p>20 And the partner in that business owns a</p> <p>21 vineyard and winery in Napa, California. So we</p> <p>22 make wine, as well.</p> <p>23 Q. All right. What types of work have you</p> <p>24 done in your career?</p> <p>25 A. Mostly engineering and operations</p>

1 management at various factories for various
2 companies since 1970.

3 Q. Okay. Do you know Edgar Steele?

4 A. Yep.

5 Q. When did you first meet him?

6 A. Through a mutual friend approximately
7 1970, late '60s. I'm not sure. I worked with
8 this friend, and he knew Ed.

9 Q. Is it fair to say you've known him for
10 over 40 years?

11 A. Correct.

12 Q. Have you had continuous contact during
13 that time period?

14 A. Well, a little more -- a little less
15 contact once he left the Bay area. I'm thinking
16 about 20 years ago, when he first to Bend and then
17 to northern Idaho.

18 So, since then, we have had email
19 exchanges and, oh, I would say a couple of,
20 three-times-a-year phone calls sort of things and
21 get together once every six or seven years.

22 My family kind of grew up about the
23 same age as his, so we did a lot of social stuff
24 when he lived in the Bay area. He came down there
25 once and stayed with me. I have come up to Bend

1 But he had problems with that practice,
2 so he took a period of time to come down and try
3 and fix -- he was trying to run the practice
4 remotely, which is very difficult and something I
5 advised him not to try and do. But he attempted
6 and had a lot of problems. So he came down there,
7 rented an apartment, and tried to fix it.

8 Q. All right. Do you know if he ever
9 returned to Oregon or Idaho?

10 A. During that --

11 Q. After that period, when he --

12 A. Yes, yes.

13 Q. All right. And do you know if, in
14 fact, Cyndi and Edgar Steele ever got divorced?

15 A. Divorce never entered the picture.

16 Q. All right. So there was no divorce?

17 A. No.

18 Q. Okay.

19 A. To my knowledge.

20 Q. All right. Now, I take it, after the
21 year 2000, your family would do things with the
22 Steele family, like ski vacations?

23 A. Correct.

24 Q. And you stayed in contact?

25 A. Yes.

1 once and then once to Idaho, where he lives, with
2 my family.

3 Q. When did you first meet Cyndi Steele?

4 A. Oh, about a year before they married,
5 maybe two. I can't remember. So 28 years ago,
6 something like that.

7 Q. All right. And have you maintained
8 contact with Cyndi Steele, as well?

9 A. Sure.

10 Q. All right. Were you the best man at
11 the wedding of Edgar and Cyndi Steele?

12 A. Yes.

13 Q. Are you aware of the fact that a
14 petition for divorce was filed in 2000?

15 A. I learned that last night.

16 Q. All right. Did you observe Edgar
17 Steele at that point in time?

18 A. You mean during the period?

19 Q. In the year 2000.

20 A. Yes.

21 Q. All right. Where?

22 A. He had a law practice in San Mateo,
23 which is on the other side of the Bay area from
24 where I live, say, an hour plus. Obviously,
25 depends on traffic, as everything in the Bay area.

1 Q. All right. Would you describe yourself
2 as a good friend of Edgar Steele?

3 A. Yes.

4 Q. All right. In the 40 years or so that
5 you've known Edgar Steele, have you ever known him
6 to threaten anyone?

7 A. No.

8 Q. Have you ever known him at any time to
9 threaten, physically, his wife Cyndi Steele?

10 A. No.

11 Q. Have you ever heard him or seen him
12 abuse Cyndi Steele?

13 A. No.

14 Q. In the 40 years -- well, I guess in the
15 last 20 or 30 years, have you ever known him to
16 physically abuse his children?

17 A. No.

18 MS. WHELAN: Objection. Relevance.

19 THE COURT: Overruled.

20 BY MR. McALLISTER:

21 Q. And in those -- in that time period,
22 have you ever known him to verbally abuse his
23 children?

24 A. No. Ed is a very strict parent, as am
25 I. So sometimes you come down on your kids, but

1 that's our job.
 2 **Q.** Have you ever known him to threaten
 3 anyone?
 4 **A.** No.
 5 **Q.** Have you ever known him to ever been
 6 arrested?
 7 **A.** No.
 8 **Q.** Is it fair to say, when these charges
 9 were brought, you were shocked?
 10 **A.** Very shocked. His son called me. And
 11 his son still calls me "Uncle Jeff," because we
 12 were pretty close. So it was quite a shock.
 13 **Q.** All right. Is there anything, in your
 14 40 years of knowing Edgar Steele, that would lead
 15 you to believe he could be charged with something
 16 like this?
 17 **MS. WHELAN:** Your Honor, I'm going to object
 18 as an opinion on the ultimate issue.
 19 **THE COURT:** Rephrase the question. Rephrase
 20 the question, Mr. McAllister, if you would.
 21 **MR. McALLISTER:** I will, Your Honor.
 22 **BY MR. McALLISTER:**
 23 **Q.** Let me ask it this way, Mr. Miller: Is
 24 there anything in Mr. Steele's background or
 25 activities in the last 40 years that would lead

1 **REDIRECT EXAMINATION**
 2 **BY MR. McALLISTER:**
 3 **Q.** Ms. Whelan asked you about Edgar Steele
 4 being on an Internet dating site; correct?
 5 **A.** Correct.
 6 **Q.** You were aware of the fact that
 7 Mr. Steele was investigating a so-called Russian
 8 bride scam; correct?
 9 **A.** Well, this is quite some time later.
 10 **Q.** Okay. When did you become aware of
 11 that?
 12 **A.** Well, my wife and I both work at the
 13 winery. And our busy time, our harvest period, is
 14 in the fall. And I was driving to work one day,
 15 and Ed called on my cell phone and said -- started
 16 playing games --
 17 **MS. WHELAN:** Your Honor, I'm going to object
 18 as to hearsay.
 19 **THE COURT:** Sustained.
 20 **BY MR. McALLISTER:**
 21 **Q.** What is it that you did with Edgar
 22 Steele involving the so-called Russian bride scam?
 23 **A.** He asked me to go to this website and
 24 find a particular person, because there were many
 25 choices. He said it would cost me a couple

1 you to believe that he could be charged for
 2 murdering Cyndi?
 3 **A.** No, nothing.
 4 **MR. McALLISTER:** Thank you, sir.
 5 **THE COURT:** Cross?
 6 **CROSS-EXAMINATION**
 7 **BY MS. WHELAN:**
 8 **Q.** Mr. Miller, when the issue of -- in the
 9 2000s was happening, you indicated you did not
 10 know anything about a divorce petition or
 11 complaint that Mrs. Steele filed, did you?
 12 **A.** Correct.
 13 **Q.** You just learned about that last night?
 14 **A.** Correct.
 15 **Q.** Edgar -- excuse me. The defendant was
 16 not confiding in you about that during that period
 17 of time?
 18 **A.** I don't know that he knew. He never
 19 talked to me about it.
 20 **Q.** He didn't tell you that he had been on
 21 Match.com looking for women to date, did he?
 22 **A.** No.
 23 **MS. WHELAN:** Nothing else, Your Honor.
 24 **THE COURT:** Redirect?
 25 **MR. McALLISTER:** Yes, Your Honor.

1 hundred dollars, and I was to choose a particular
 2 person to --
 3 **MS. WHELAN:** Judge, I object again. It's
 4 hearsay.
 5 **THE COURT:** Sustained.
 6 **BY MR. McALLISTER:**
 7 **Q.** Tell us what you did, sir.
 8 **A.** Oh. What did I do?
 9 **Q.** Mm-hmm.
 10 **A.** I did not do what he wanted me to do.
 11 **Q.** All right.
 12 **A.** Because my wife said you have to submit
 13 my credit card, personal pictures of myself, and
 14 my location, and that she just didn't want that
 15 kind of information, even though it was assisting
 16 Ed in a -- in some case he was working on.
 17 **Q.** All right. Were you aware of the fact
 18 that Cyndi Steele knew about Edgar Steele's work
 19 in investigating the Russian bride scam?
 20 **A.** No, I did not know that.
 21 **Q.** All right. Did you at any time further
 22 assist him after your wife thought it was a bad
 23 idea?
 24 **A.** No. I called him, in fact, back that
 25 same day and told him that my wife wouldn't let me

1 do it. I closed the conversation with him saying
 2 that I would. And then, once we got to work, my
 3 wife changed my mind.
 4 **Q.** What was your understanding of the
 5 Russian bride scam?
 6 **MS. WHELAN:** Objection, Your Honor.
 7 **THE COURT:** Sustained.
 8 **BY MR. McALLISTER:**
 9 **Q.** Did you research it at all, look at the
 10 websites?
 11 **A.** No.
 12 **MR. McALLISTER:** All right. Thank you, sir.
 13 **THE COURT:** Anything else, Ms. Whelan?
 14 **MS. WHELAN:** No, Your Honor. Thank you.
 15 **THE COURT:** All right. You may step down.
 16 Thank you very much for being here.
 17 May Mr. Miller be excused and released
 18 from any --
 19 **MR. McALLISTER:** Yes, Your Honor.
 20 **MS. WHELAN:** No objection, Your Honor.
 21 **THE COURT:** All right. Thank you, sir.
 22 Call your next witness.
 23 **MR. McALLISTER:** James Maher.
 24 **MS. WHELAN:** Your Honor, just as a
 25 housekeeping matter, defense counsel had no

1 **A.** Sagle.
 2 **Q.** And what is your relationship with
 3 Larry Fairfax?
 4 **A.** He is my cousin.
 5 **Q.** All right. How long have you known
 6 him?
 7 **A.** Forty-seven years.
 8 **Q.** All right. How old are you?
 9 **A.** Forty-seven.
 10 **Q.** All right. Have you maintained contact
 11 with him through the entire period?
 12 **A.** No.
 13 **Q.** All right. When did you reestablish
 14 your contact with him, Larry Fairfax?
 15 **A.** '96, '97, somewhere in there.
 16 **Q.** And since that period, have you both
 17 lived in the Sagle area?
 18 **A.** Correct.
 19 **Q.** And you've done things with him, I take
 20 it?
 21 **A.** Yes, sir.
 22 **Q.** All right. Do you know him well?
 23 **A.** I think so.
 24 **Q.** All right. Directing your attention,
 25 sir, to May the 31st of 2009. Did you travel with

1 objection to Mr. Smith being excused, so we went
 2 ahead and let him leave. I hope the court is okay
 3 with that.
 4 **THE COURT:** That's fine.
 5 I'm sorry. What was the next witness?
 6 **MR. McALLISTER:** James Maher.
 7 **THE COURT:** Mr. Maher, would you please step
 8 before the clerk and be sworn.
 9 **JAMES MAHER,**
 10 having been first duly sworn to tell the whole
 11 truth, testified as follows:
 12 **THE CLERK:** Please state your complete name
 13 and spell your last name for the record.
 14 **THE WITNESS:** James Maher, M-A-H-E-R.
 15 **THE COURT:** You may inquire.
 16 **DIRECT EXAMINATION**
 17 **BY MR. McALLISTER:**
 18 **Q.** Mr. Maher, where do you reside?
 19 **A.** Sagle, Idaho.
 20 **Q.** And how long have you lived there?
 21 **A.** Thirteen years.
 22 **Q.** Are you familiar with an individual
 23 known as Larry Fairfax?
 24 **A.** Yes, I am.
 25 **Q.** Where does he reside?

1 him to the Portland area?
 2 **A.** Yes, I did.
 3 **Q.** During that time, did you discuss with
 4 him what it was he was going to do or you were
 5 going to do in the Portland area?
 6 **A.** Well, at first, it was going to be
 7 checking on recycling prices.
 8 **Q.** All right. Did you do that?
 9 **A.** No.
 10 **Q.** What happened?
 11 **A.** Got to the Portland area and rented a
 12 car.
 13 **Q.** All right. Who rented the car?
 14 **A.** I did.
 15 **Q.** And you've reviewed the rental receipts
 16 for that, have you not?
 17 **A.** I have.
 18 **Q.** And it's your signature?
 19 **A.** It is.
 20 **Q.** Why did you rent the car?
 21 **A.** Because his credit card wouldn't work.
 22 **Q.** All right. Did you know why you were
 23 renting a car after you drove over to the Portland
 24 area?
 25 **A.** I did.

1 Q. Why?
 2 A. Because Larry didn't want his truck
 3 seen.
 4 Q. All right. What did you do after
 5 renting the car?
 6 A. Drove around for about four hours.
 7 Q. All right. Where did you end up?
 8 A. Oregon City.
 9 Q. All right. Do you know -- did
 10 Mr. Fairfax indicate where you should go?
 11 A. He had a really poor map.
 12 Q. Okay. Did you find the location that
 13 Mr. Fairfax wanted to go to?
 14 A. We did.
 15 Q. All right. What was your understanding
 16 of who lived there or what was there?
 17 A. Cyndi Steele's mother's house.
 18 Q. All right. Did you see -- how close
 19 did you get to what you believed to be Cyndi
 20 Steele's mother's house?
 21 A. Twenty-five, thirty feet.
 22 Q. All right. Tell us what you did and
 23 what Mr. Fairfax did at Cyndi Steele's mother's
 24 house.
 25 A. Mr. Fairfax did nothing there.

1 bit," can you describe for the judge and jury
 2 exactly what you did.
 3 A. If something was hanging down from the
 4 car, I was to locate it. If I could, grab it and
 5 go.
 6 Q. All right. And when you say "locate
 7 it" and "grab it," you were to take it off the
 8 vehicle?
 9 A. I was.
 10 Q. All right. What did you -- first of
 11 all, how close did you get to Cyndi Steele's car?
 12 A. Twenty-five, thirty feet, maybe. I
 13 don't know.
 14 Q. All right. Did you actually get
 15 underneath the car?
 16 A. I did not.
 17 Q. All right. Could you see anything
 18 hanging from the car --
 19 A. I --
 20 Q. -- below -- below the passenger's side?
 21 A. Below the passenger's side, no.
 22 Q. I'm sorry. From the driver's side?
 23 A. No.
 24 Q. All right. Did you remove anything
 25 from the car?

1 Q. All right. Did he drive you there?
 2 A. He did.
 3 Q. And did you, at his direction, go out
 4 of the car?
 5 A. I did.
 6 Q. What did you do?
 7 A. Walked up to the horse stable.
 8 Q. All right. Can you describe the area
 9 that you were at?
 10 A. A bunch of houses all clumped together
 11 at the end of a dirt road.
 12 Q. All right. And what was your intention
 13 or purpose in going by the horse barn?
 14 A. To see if the vehicle was there.
 15 Q. Okay. What vehicle?
 16 A. Cyndi Steele's black vehicle.
 17 Q. Okay. A Mitsubishi?
 18 A. I assume so.
 19 Q. All right. Did you see that vehicle
 20 there?
 21 A. I did.
 22 Q. All right. And did you in any way
 23 attempt to inspect it?
 24 A. A little bit.
 25 Q. All right. When you say "a little

1 A. I did not.
 2 Q. Did you go back to Larry Fairfax's --
 3 did you go back to the rental car and talk with
 4 Larry Fairfax?
 5 A. I did.
 6 Q. What did you tell him?
 7 A. That I didn't see anything hanging
 8 down.
 9 Q. All right. Did you tell him whether
 10 you actually went under the vehicle?
 11 A. I did not.
 12 Q. Did you tell him that you were nervous
 13 and concerned about what you were doing?
 14 A. I had told him that I didn't get under
 15 the car because of all the neighbors watching me.
 16 Q. All right. And that concerned you;
 17 right?
 18 A. It did.
 19 Q. You were concerned that you might get
 20 picked up or arrested?
 21 A. That I would get in trouble.
 22 Q. All right. And you've been in trouble
 23 before, have you not, Mr. Maher?
 24 A. A time or two.
 25 Q. All right. When you say "a time or

1 two," how many times?
 2 A. Several.
 3 Q. What for?
 4 A. Different things in my past when I was
 5 younger.
 6 Q. All right. And Mr. Fairfax knew all
 7 about that, did he not?
 8 A. He did.
 9 Q. All right. Now, when you got back in
 10 the rental vehicle, what exactly did you tell
 11 Mr. Fairfax?
 12 A. "I saw nothing hanging down from the
 13 vehicle."
 14 Q. All right. Why is it that you were
 15 willing to remove something from the vehicle?
 16 A. Because I thought Cyndi Steele was a
 17 really nice lady.
 18 Q. All right. And did you understand that
 19 what you might be removing or what you were going
 20 to remove was an explosive device?
 21 A. Not to my understanding.
 22 Q. What was your understanding?
 23 A. Pretty much a north Idaho firework,
 24 something that wouldn't go off.
 25 Q. All right. And what is a "north

1 Q. All right. Now, going back to when you
 2 were near Cyndi Steele's car, I believe you said
 3 you were willing to take something off of there
 4 because it was a north Idaho firecracker; correct?
 5 A. Correct.
 6 Q. It wasn't your understanding that it
 7 was a car bomb designed to explode?
 8 A. That was my understanding.
 9 Q. And based upon what Mr. Fairfax told
 10 you, you weren't -- you didn't believe you were at
 11 any risk; correct?
 12 A. I didn't believe I was in danger, no.
 13 Q. All right. Did you return to the
 14 Spokane or Coeur d'Alene area after leaving Cyndi
 15 Steele's mother's house?
 16 A. No.
 17 Q. All right. Where did you go?
 18 A. Home.
 19 Q. Okay. To Sagle -- I'm sorry --
 20 correct? The Sagle area?
 21 A. Correct.
 22 Q. On the way home, you talked with Larry
 23 Fairfax; correct?
 24 A. Yes.
 25 Q. And you talked about the fact that he

1 Idaho firework"?
 2 First of all, who do you use that
 3 expression with?
 4 A. Friends and family.
 5 Q. With Larry Fairfax?
 6 A. I assume so.
 7 Q. All right. When you say "I assume so,"
 8 does that mean you actually have an experience
 9 making north Idaho firecrackers with him?
 10 A. Yeah.
 11 Q. And what is that experience? What did
 12 you do in the past?
 13 A. Making loud booms for the 4th of July.
 14 Q. All right. Did you use a pipe?
 15 A. Not metal.
 16 Q. All right. Plastic pipes?
 17 A. Yes.
 18 Q. All right. And you've built these with
 19 Mr. Fairfax in the past on the 4th of July?
 20 A. I have never built them with Larry, no.
 21 Q. All right. You just -- you just
 22 observed them going off?
 23 A. Correct.
 24 Q. And Mr. Fairfax set them off?
 25 A. At times.

1 wanted to be on the "Oprah" show; correct?
 2 A. No.
 3 MS. WHELAN: Objection, Your Honor.
 4 Hearsay.
 5 MR. McALLISTER: Well, I asked if he talked
 6 about it.
 7 THE COURT: Sustained. Counsel --
 8 THE WITNESS: No.
 9 THE COURT: -- rephrase the question.
 10 MR. McALLISTER: I will, Your Honor.
 11 BY MR. McALLISTER:
 12 Q. What did you talk about?
 13 MS. WHELAN: Objection. I think it's too
 14 broad. It needs to be specifically with this
 15 witness.
 16 THE COURT: Sustained.
 17 BY MR. McALLISTER:
 18 Q. What did you say to Larry Fairfax?
 19 A. In regards to?
 20 THE COURT: Just refer to what you told him.
 21 BY MR. McALLISTER:
 22 Q. In regards to your going to Cyndi
 23 Steele's mother's house and attempting -- or
 24 anything you did at Cyndi Steele's house, what did
 25 you say to him?

1 **A.** I told him I didn't see anything under
 2 the car and that I wouldn't even go back to the
 3 car if it was at her mother's house.
 4 **Q.** All right. Why not?
 5 **A.** Because of all the neighbors watching
 6 me.
 7 **Q.** All right. Did you discuss with him at
 8 any time -- did you say anything about the "Oprah"
 9 show?
 10 **A.** On the first trip, no.
 11 **Q.** All right. How about -- well, let
 12 me -- let me put this in context. Did you make a
 13 second trip to the Portland area?
 14 **A.** I did.
 15 **Q.** And did you do that on the night of
 16 June 10th and the early-morning hours of June
 17 11th?
 18 **A.** I believe so.
 19 **Q.** All right. And prior to going to the
 20 Portland area, did you see Mr. Fairfax meet with
 21 police officers?
 22 **A.** I believe so.
 23 **Q.** All right. Where was that at?
 24 **A.** The Westmond Chevron.
 25 **Q.** And did you see the police officers or

1 **Q.** Yes.
 2 **A.** Yes. After, yeah.
 3 **Q.** What did you say?
 4 **THE COURT:** Limit yourself just to what you
 5 said.
 6 **THE WITNESS:** I'm not understanding.
 7 **THE COURT:** What did you say to Mr. Fairfax?
 8 **THE WITNESS:** About the "Oprah" show or --
 9 **BY MR. McALLISTER:**
 10 **Q.** Yes.
 11 **A.** "Cool." I'm not understanding --
 12 **THE COURT:** No. You're actually -- I'm only
 13 chuckling. You're doing fine. You're doing fine.
 14 **THE WITNESS:** It was small talk.
 15 **THE COURT:** I understand.
 16 **Mr. McAllister.**
 17 **BY MR. McALLISTER:**
 18 **Q.** Without telling us what was said by
 19 Mr. Fairfax, was he bragging to you?
 20 **MS. WHELAN:** Objection. Hearsay.
 21 **MR. McALLISTER:** I'm asking about the
 22 context of the conversations, Judge, as
 23 opposed to --
 24 **THE COURT:** Well, I'll allow that question
 25 but not the follow-up as to specifically what was

1 anyone give Mr. Fairfax \$500?
 2 **A.** I saw something handed, but I don't
 3 know what -- what it was.
 4 **Q.** All right. From the policeman to
 5 Mr. Fairfax?
 6 **A.** Correct.
 7 **Q.** All right. Do you know what your
 8 instructions were at that point in time?
 9 **A.** We were heading back to Portland.
 10 **Q.** All right. Were you aware of the fact
 11 that your cousin, Mr. Fairfax, at that point in
 12 time was working with the FBI?
 13 **A.** I learned that about a mile before the
 14 Westmond store.
 15 **Q.** All right. And what was your purpose
 16 in going back to the Portland area again?
 17 **A.** We were doing it in whatever deal that
 18 Larry had worked out with the feds.
 19 **Q.** Okay. When you say "the feds," does
 20 that mean the FBI?
 21 **A.** Whoever it was. I don't particularly
 22 know.
 23 **Q.** All right. And in driving back, did
 24 you talk to him about the "Oprah" show?
 25 **A.** On the second trip?

1 said. You may --
 2 **THE WITNESS:** There was no braggatry
 3 involved.
 4 **BY MR. McALLISTER:**
 5 **Q.** Okay. Did you think he was serious?
 6 **A.** About the "Oprah"? That was like an
 7 over-the-top thing. But, yeah, I thought he -- it
 8 might work out for him. I didn't know.
 9 **MS. WHELAN:** Objection. Move to strike.
 10 **THE COURT:** Counsel, I'm going to sustain
 11 the objection and strike the last response.
 12 **MR. McALLISTER:** Judge, may we approach?
 13 **THE COURT:** Or you can cite an exception
 14 under the hearsay rule.
 15 **MR. McALLISTER:** That's what I intend to do.
 16 **THE COURT:** Can you just, without
 17 a speaking --
 18 **MR. McALLISTER:** Co-conspirator exception to
 19 the hearsay rule.
 20 **THE COURT:** Approach.
 21 (Sidebar commences as follows:)
 22 **THE COURT:** The problem is it has to be in
 23 furtherance of the conspiracy. How does
 24 Mr. Steele -- Mr. Fairfax bragging about that he
 25 may be on the "Oprah" show, how does that further

1 the conspiracy?

2 MR. McALLISTER: The hearsay that has been
3 objected to by the government is the fact that he
4 said he was going to save Cyndi Steele and, at the
5 same time, take money off of Edgar Steele, and it
6 was a win-win situation. And that's why they were
7 going there, because --

8 THE COURT: I think that's almost what
9 Mr. Fairfax -- or Mr. -- yeah, Mr. Fairfax
10 testified to.

11 So you're saying now that Mr. Maher is
12 part of that conspiracy?

13 MR. McALLISTER: Absolutely, I am.

14 THE COURT: Well, was he participating in
15 it? I mean, he indicated he didn't even know why
16 he was there until after they had already arrived.

17 MR. McALLISTER: Yeah. But once he arrived,
18 he -- Mr. --

19 THE COURT: Ms. Whelan, I'm not sure that
20 statement is inconsistent with what Mr. Fairfax
21 testified to, anyway.

22 MS. WHELAN: I don't know if it's
23 inconsistent, but it's still hearsay.

24 THE COURT: Well, unless it's a
25 co-conspirator statement.

1 the conspiracy. Because he is, A, suggesting that
2 he wasn't really serious in whatever it was they
3 were doing on the earlier trip; and that this
4 witness is not -- does not seem to be part of
5 that.

6 I'll allow you to try to lay a further
7 foundation as to his involvement in that
8 conspiracy, but I think the statement is really
9 outside the conspiracy. He is talking about
10 things he was doing on his own.

11 Ms. Whelan, what --

12 MS. WHELAN: I'm trying to look at the --

13 THE COURT: It's 801(d)(2)(E).

14 MS. WHELAN: That's where I'm at.

15 MR. HAWS: It's in the course of and in
16 furtherance of --

17 MS. WHELAN: The problem here is there's no
18 showing that he's speaking on behalf of --

19 THE COURT: That's what I'm saying.

20 MS. WHELAN: -- Larry Fairfax.

21 THE COURT: He doesn't have to be, if he is
22 making a statement in furtherance of a conspiracy
23 and he is -- while he is a member of that
24 conspiracy.

25 I just don't see that it's in

1 MS. WHELAN: And the other issue is he just
2 testified about that -- about a mile before they
3 got to the Westmond store, that then he found out
4 that Fairfax was working with the feds. Okay?
5 And then this conversation occurs after that that
6 they're talking about. There is no conspiracy.

7 THE COURT: How -- this doesn't tie
8 together. If he was bragging to Mr. Maher about
9 saving Cyndi Steele, "I'm going to get on the
10 'Oprah' show," but this statement is made after --
11 during the second visit to Portland --

12 MR. McALLISTER: That is correct.

13 THE COURT: -- and after Mr. Maher is aware
14 that Mr. Fairfax is actually working with the
15 government, how does that further any conspiracy?

16 MR. McALLISTER: Because I think it would
17 lead the jury to believe that Mr. Fairfax wasn't
18 really working with the government. He was taking
19 money from them, and he was taking money from
20 Edgar Steele, and he wanted to be the hero.

21 THE COURT: Well, even if he wanted to be
22 the hero, unless this defendant was part of his
23 trying to be a hero, then, I don't see how that's
24 in furtherance of any conspiracy.

25 If anything, it's kind of contrary to

1 furtherance of a conspiracy. Now, if you want to
2 take an effort -- you know, I've laid out what the
3 grounds rules are. And this individual has to be
4 part of that conspiracy in order for it to apply.
5 All right?

6 (Sidebar concluded.)

7 THE COURT: Mr. McAllister, proceed.

8 MR. McALLISTER: Thank you, Your Honor.

9 BY MR. McALLISTER:

10 Q. Mr. Maher, is it fair to say, on your
11 first trip on May 31st, that Larry Fairfax wanted
12 you to help him do some things?

13 A. On May 31st, Larry wanted me to go on a
14 trip with him to keep him company.

15 Q. All right. And then, once you got to
16 the Portland area, he explained to you certain
17 details; correct?

18 A. Very few.

19 Q. All right. And then later that day,
20 you went to Cyndi Steele's mother's house;
21 correct?

22 A. Correct.

23 Q. And he told you what it is he wanted
24 you to do; correct?

25 A. Correct.

1 Q. He enlisted your help; correct?
 2 A. Correct.
 3 Q. What is it that he wanted you to do?
 4 MS. WHELAN: Objection. Hearsay.
 5 MR. McALLISTER: That's --
 6 THE COURT: At this point, I'm going to
 7 overrule the objection. Because at this point, I
 8 think we are within the realm of 801(d)(2)(E).
 9 So you may answer.
 10 BY MR. McALLISTER:
 11 Q. What did he say? What did he tell you?
 12 A. To go up and look under the car and see
 13 if anything was hanging down.
 14 Q. Did he tell you he had put something on
 15 the car?
 16 A. He did.
 17 Q. What did he say?
 18 A. He said there was a device under the
 19 car that I was supposed to remove if it was there
 20 hanging down.
 21 Q. All right. And did he say you wouldn't
 22 get hurt doing it?
 23 A. Not in so many words, but he indicated
 24 it.
 25 Q. All right. How did he indicate it?

1 THE COURT: Just a moment, Counsel.
 2 Counsel, I -- thanks to, well, the
 3 request that I review that again, the statement
 4 also has to be offered against the party. And
 5 here, it's being proffered by the party.
 6 MR. McALLISTER: Well, Judge, again, I
 7 can -- I can make a few more arguments.
 8 THE COURT: No. I'm going to sustain the
 9 objection. I'm looking at 801(d)(2), the
 10 introductory portion, and then subsection (E).
 11 I'm going to sustain the objection.
 12 BY MR. McALLISTER:
 13 Q. Directing your attention to the second
 14 trip that you took during the night of June 10th
 15 into the early-morning hours of June 11th, at that
 16 point, Mr. Fairfax told you he was working for the
 17 feds?
 18 A. Correct.
 19 Q. And you saw him meet with law
 20 enforcement officers; correct?
 21 A. Or who I assumed was law enforcement,
 22 yes.
 23 Q. And you didn't know whether they were
 24 with the FBI or with the state troopers, or you
 25 didn't know who they were; correct?

1 A. Tone of voice, mannerisms.
 2 Q. Okay. You thought it was similar to
 3 what you described as a north Idaho firecracker?
 4 A. Correct.
 5 Q. And you were willing to do that, were
 6 you not?
 7 A. For Larry, almost anything.
 8 Q. Okay. Did he tell you why he didn't
 9 want to remove it?
 10 A. He didn't want to be seen by Cyndi,
 11 because then the jig would be up.
 12 Q. Okay. Did he tell you he wanted to be
 13 a hero?
 14 A. At that time, no.
 15 Q. Later?
 16 A. Possibly.
 17 Q. Okay. You say "possibly." Didn't he,
 18 in fact, make that statement?
 19 A. Maybe not in so many words. But, like
 20 I said, in mannerism, expression, that's the way I
 21 felt.
 22 Q. Okay. Did he also tell you that he was
 23 trying to get money from Edgar Steele?
 24 MS. WHELAN: Your Honor, I'm going to object
 25 as leading and hearsay.

1 A. I didn't know.
 2 Q. Okay. And you believed that he was
 3 working for the feds; correct?
 4 A. Yes.
 5 Q. All right. And what did he tell you,
 6 at that point in time, your purpose was in making
 7 this trip?
 8 MS. WHELAN: Objection. Hearsay.
 9 MR. McALLISTER: It's an admission against
 10 interest by a party at this point working for the
 11 government.
 12 THE COURT: I think I'm going to overrule
 13 the objection. I think that 801(d)(2), I think
 14 it's (D), probably comes into play. Again, it has
 15 the same preamble, but at this point --
 16 MS. WHELAN: Judge, is the court looking at
 17 (d)(1)?
 18 THE COURT: 801(d)(2)(D). But it has to be
 19 a statement made in -- within the scope of that
 20 person's agency. So that's why I wanted to look
 21 exactly at the question, Counsel.
 22 I'm going to overrule the objection and
 23 allow the witness to answer.
 24 THE WITNESS: Repeat, please.
 25 BY MR. McALLISTER:

1 Q. Yes. What did Larry Fairfax tell you
2 his purpose or your purpose jointly was on the
3 second trip?
4 A. He was requested to go.
5 Q. All right. And did he tell you at that
6 point in time that you were going to go back to
7 Cyndi Steele's mother's house?
8 A. No.
9 Q. Did he say anything about removing the
10 device?
11 MS. WHELAN: Objection. Leading.
12 THE COURT: Sustained.
13 BY MR. McALLISTER:
14 Q. What did he say about the device, if
15 anything?
16 A. He said we -- that Cyndi Steele's
17 mother had a doctor's appointment that morning.
18 Q. All right. What did he say about any
19 possible explosive device on her car?
20 A. Well, that's what I thought. I
21 assumed, on my own, was that we were going to go
22 take it off her car at the doctor's appointment,
23 but nothing was said directly.
24 Q. All right. Why did you want to take it
25 off at the doctor's office?

1 something, yeah.
2 Q. All right. And what did -- what were
3 you told, or what did you do at that point in
4 time?
5 A. I'm not understanding.
6 Q. All right. When this person came in,
7 did they talk with you?
8 A. Small talk; correct.
9 Q. Did Mr. Fairfax come and join the
10 conversation?
11 A. He did not.
12 Q. All right. Did you go to Cyndi
13 Steele's mother's house or doctor's office after
14 meeting with this person?
15 A. Did not.
16 Q. What did you do?
17 A. Went to Popeye's Chicken and went home.
18 Q. Did you make any attempt, after this
19 person visited you at breakfast, to remove an
20 explosive device?
21 A. I did not.
22 MR. McALLISTER: Thank you, sir. That's all
23 I have.
24 THE COURT: Cross?
25 CROSS-EXAMINATION

1 A. Anywhere public other than in her
2 driveway, where the neighbors looking at me knew
3 it wasn't my car.
4 Q. All right. So you were more
5 comfortable being in a public place as opposed to
6 in a neighborhood?
7 A. Correct.
8 Q. All right. And did you go to the
9 doctor's office and remove the device?
10 A. I did not.
11 Q. All right. What happened that morning
12 when you arrived outside of Portland?
13 A. Stopped at the truck stop in Troutdale
14 and ate breakfast.
15 Q. All right. Did anyone come in and see
16 you and Mr. Fairfax at the truck stop either
17 before or during or after breakfast?
18 A. Someone came and sat down next to me
19 while I was eating. But Mr. Fairfax, Larry, was
20 sleeping out in the vehicle because he had driven
21 that whole way at that point.
22 Q. Did you know who this person was?
23 A. I did not.
24 Q. Did you believe him to be an FBI agent?
25 A. I believed some kind of marshal or

1 BY MS. WHELAN:
2 Q. Mr. Maher, you indicated that you used
3 your credit card to rent the car. But after your
4 credit card, Mr. Fairfax used cash to pay for it,
5 didn't he?
6 A. Yes, he did.
7 Q. And, in fact, you were frustrated
8 because there still ended up being a charge on
9 your credit card that you had to argue with them
10 about?
11 A. Correct.
12 Q. But that -- but Mr. Fairfax did pay
13 cash?
14 A. He did.
15 Q. You didn't spend much time looking
16 under that -- that car, did you?
17 A. No, I did not.
18 Q. Can you tell the jury about how many
19 seconds you think you looked?
20 A. Ten.
21 Q. That was from 25 to 30 feet away?
22 A. Correct.
23 Q. And this is a "do you know," so I just
24 want you to answer "yes" or "no." Okay?
25 Do you know who provided the map that

1 Larry Fairfax had?
 2 A. I do not.
 3 Q. Okay. Can you describe -- you were 25
 4 to 30 feet away for that ten seconds you looked.
 5 Was the car below you, even with you, or above
 6 you?
 7 A. Above me by a little bit.
 8 Q. Okay. Could you see underneath it very
 9 well?
 10 A. I could see there wasn't anything
 11 hanging down.
 12 Q. Okay. You didn't see anything
 13 underneath the door frame, did you?
 14 A. I -- no.
 15 MS. WHELAN: Thank you. Nothing else, sir.
 16 THE COURT: Anything else?
 17 MR. McALLISTER: No, Your Honor.
 18 THE COURT: You may step down. Thank you.
 19 THE WITNESS: Am I done?
 20 THE COURT: May the witness be excused and
 21 released from any subpoena?
 22 MR. McALLISTER: Yes, Your Honor.
 23 MS. WHELAN: Yes, Your Honor.
 24 Could we approach? Sorry. It will
 25 take very quick, but I want to --

1 THE COURT: Could you have Mr. Amendola or
 2 somebody who can step out and visit with him for
 3 just a moment, while we're --
 4 MR. McALLISTER: Yes.
 5 (Sidebar concluded.)
 6 THE COURT: You are excused. Thank you for
 7 being here.
 8 Call your next witness.
 9 MR. McALLISTER: Dr. Al Banks.
 10 THE COURT: Dr. Banks, will you please step
 11 before the clerk and be sworn.
 12 ALLEN BANKS,
 13 having been first duly sworn to tell the whole
 14 truth, testified as follows:
 15 THE CLERK: Please state your complete name
 16 and spell your last name for the record.
 17 THE WITNESS: Allen Banks, B-A-N-K-S.
 18 THE COURT: You may inquire, Mr. McAllister.
 19 DIRECT EXAMINATION
 20 BY MR. McALLISTER:
 21 Q. Where did you grow up?
 22 A. Puget Sound area. Born in Seattle,
 23 graduated from Bellingham High School, attended
 24 the University of Washington, majored in
 25 chemistry. Entered the Army in 1968, spent two

1 THE COURT: All right.
 2 (Sidebar commences as follows:)
 3 MS. WHELAN: Judge, it's really not for me,
 4 but the witness indicated that the defense told
 5 him they would give him \$500 for expenses, that
 6 they gave him half of it, and that he hasn't
 7 received the money. He doesn't have any lunch
 8 money. He doesn't have anything.
 9 And I know he's -- he doesn't know if
 10 he can bring it up with you. And I know I
 11 shouldn't, but I don't know what to do with it.
 12 MR. McALLISTER: I don't think it's a
 13 problem.
 14 THE COURT: You'll take care of it?
 15 MR. McALLISTER: I will.
 16 THE COURT: All right.
 17 MS. WHELAN: Okay. So --
 18 MR. McALLISTER: I mean, somebody from the
 19 defense will take care of it; I won't. But there
 20 was a representation made to him that his expenses
 21 would be paid but only half of them until he
 22 actually testified. That's all understood.
 23 MS. WHELAN: And I don't think counsel
 24 wasn't going to do it. He just wants to know how
 25 he is supposed to get home and get --

1 years and went back to school, obtained my
 2 master's and Ph.D. in chemistry at the University
 3 of Colorado and, since that time, have been
 4 engaged in medical research.
 5 Q. All right. And do you live in the
 6 Sagle, Idaho, area?
 7 A. Just south of Sagle.
 8 Q. All right. For how long have you lived
 9 there?
 10 A. Twenty years.
 11 Q. Do you know Edgar Steele?
 12 A. I do.
 13 Q. Do you know Cyndi Steele?
 14 A. I do.
 15 Q. For how long have you known them?
 16 A. Approximately 15 years.
 17 Q. All right. Can you tell us about your
 18 interaction or relationship with Edgar and Cyndi
 19 Steele?
 20 A. They're good friends. We have shared
 21 4-H duties together. One year at the fair, we
 22 would take their children and camp with them at
 23 the fair with the animals. And the next year,
 24 they would do it with their camper and their
 25 supervision of our children.

1 So we shared those duties over the
2 years as our children were growing up. Our
3 children, obviously, are friends and have been for
4 many years.

5 And we have been friends with the
6 Steeles, attended parties at their house. They
7 have attended parties at our house. We have gone
8 to dinner together. We have gone to social events
9 together and so on over the years.

10 Q. Fair to say you're good friends?

11 A. We're good friends.

12 Q. All right. Let me direct your
13 attention to the morning of June 11th, 2010. Do
14 you recall what you did that morning?

15 A. That morning, I drove to meet with Ed.
16 He had called me a couple of days before and asked
17 me to ride with him while he was picking up
18 building supplies in Spokane.

19 And I asked him why would I want to do
20 that. And he said, "Well, I'm feeling like I
21 probably am not really up to doing it myself. I
22 would like some company just in case something bad
23 happens. And I'd like you to go along with me."

24 I said, "Sure, I'll do it."

25 And by "bad happening," I mean, you

1 BY MR. McALLISTER:

2 Q. Are you aware of the fact that he spent
3 an extensive period in the ICU at the hospital?

4 A. I am.

5 Q. That's "intensive care unit"?

6 A. He was -- I can tell you that his wife
7 drove him to Bonner General Hospital. He was
8 flown by air ambulance from Bonner General
9 Hospital to Kootenai Medical Center. A surgical
10 team met him at the air ambulance and immediately
11 began procedures on him, which led to his being
12 sedated for a period of about a week and a half in
13 intensive care.

14 Q. Was he on a respirator at that point in
15 time?

16 A. It's my understanding he was on a
17 respirator and then had a lengthy recovery period
18 both in Life Care, post-surgical care places, as
19 well as at home.

20 And I saw him shortly after --

21 MR. HAWS: Objection. Narration.

22 BY MR. McALLISTER:

23 Q. When did you next see him?

24 A. I saw him shortly after he got home.
25 And he was very, very weak.

1 know, he had had a number of health problems, and
2 he was weak, and he was shaky. And he was
3 concerned about his health.

4 Q. Are you aware of his health problems?

5 A. Oh, yes.

6 Q. All right. Can you describe your
7 knowledge about his health problems?

8 A. Well, on November 21st, I believe, of
9 2009, basically his heart came apart. His aorta
10 separated from his heart. And, apparently, less
11 than 1 percent of people survive this kind of a
12 heart attack. And somehow, through a coincidence
13 of a number of miraculous occurrences, he survived
14 long enough to make it to surgery. And --

15 MR. HAWS: Your Honor, I object to this
16 testimony. I don't think there is a foundation
17 laid, competence to be testifying about medical
18 condition.

19 THE COURT: Well, the witness can testify as
20 a friend as to what he knows happened. But I
21 think in terms of the detail, that probably
22 exceeds the proper scope of a nonexpert witness.

23 So I'll sustain the objection as to
24 that last comment.

25 Rephrase, and let's move on.

1 Q. All right. Let me direct your
2 attention now from November to May --
3 approximately May the 5th, 2009 -- 2010, excuse
4 me. Were you aware of a second medical emergency?

5 A. I received a telephone call from Ed
6 asking me to drive him to Kootenai Medical Center
7 for a surgery. And I asked why that would be and
8 was informed that he had had a second aneurysm,
9 this time in his nasal --

10 MR. HAWS: Objection. Narration.

11 THE COURT: Sustained.

12 BY MR. McALLISTER:

13 Q. What was the medical emergency at that
14 point in time?

15 A. He had an aneurysm in his nose which
16 would not stop bleeding, and it required surgery
17 to stop the bleeding.

18 Q. All right. And you took him to the
19 hospital; correct?

20 A. I drove him to the hospital at Kootenai
21 Medical Center.

22 Q. And they were able to help him;
23 correct?

24 A. I believe so, because he is here now.

25 Q. All right. And after May 5th, did you

1 visit him when he was recuperating?
 2 A. On many occasions, yes.
 3 Q. And did you observe him?
 4 A. I did.
 5 Q. Is it fair to say he was weak?
 6 A. Yes.
 7 Q. Is it fair to say he was heavily
 8 medicated?
 9 MR. HAWS: Objection. Leading.
 10 THE COURT: Sustained.
 11 BY MR. McALLISTER:
 12 Q. What was your observations?
 13 A. My observation was that he appeared to
 14 be weak, somewhat disoriented. He definitely was
 15 not a hundred percent, nowhere near a hundred
 16 percent.
 17 Q. All right. Directing your attention
 18 back to -- well, do you know if he was on
 19 medication?
 20 A. He told me he was, but I didn't
 21 actually see him consume any medications or read
 22 the labels of the bottles or anything to verify
 23 what the medication was.
 24 Q. All right. Directing your attention
 25 now to June 10th, 2010. I believe I asked you

1 Q. All right. And were you allowed to see
 2 Ed Steele?
 3 A. I went to the door, not knowing what
 4 was going on, and knocked on the door and was
 5 greeted by Idaho State Police officers, who said
 6 that --
 7 MR. HAWS: Objection. Hearsay.
 8 THE COURT: Sustained.
 9 BY MR. McALLISTER:
 10 Q. Were you allowed to see --
 11 THE COURT: I'm sustaining the objection.
 12 Go ahead and ask another question.
 13 BY MR. McALLISTER:
 14 Q. Were you allowed to see Mr. Steele at
 15 that point in time?
 16 A. I was not.
 17 Q. What did you do?
 18 A. I was directed by the Idaho State
 19 Police officers to wait over by the trailer that
 20 was hooked up to the truck that we were going to
 21 take to Spokane. My understanding was that, when
 22 they were done talking to him -- they informed me
 23 it was a family matter, they said --
 24 MR. HAWS: Objection. Hearsay.
 25 MR. McALLISTER: I don't think it's

1 what you were doing that day, and you described
 2 going to --
 3 A. I think you mean June 11th.
 4 Q. I'm sorry. I do mean June 11th. On
 5 June 11th -- which was a Friday; correct?
 6 A. Yes.
 7 Q. You went to Mr. Steele's residence?
 8 A. Correct.
 9 Q. All right. What did you observe?
 10 A. Well, if I could back up just a bit.
 11 Ed was supposed to drive down and meet
 12 me where I would park my car on the highway, and I
 13 would then ride with him to Spokane and back. But
 14 he called me and said he had just been asked to
 15 return by the Idaho State Patrol to his house
 16 because they wished to discuss something with him,
 17 and could I meet him there.
 18 Q. Did you go to the house?
 19 A. And I -- so I went to the house, and I
 20 arrived at the house at approximately 8:35.
 21 Q. What did you observe?
 22 A. I observed Idaho State Police cars
 23 parked outside as well as a large gold-colored
 24 SUV-type vehicle, Ford product, with Boundary
 25 County plates.

1 really --
 2 THE COURT: Just a moment.
 3 Sustained.
 4 THE WITNESS: And --
 5 THE COURT: Just a moment. Put another
 6 question back before the witness.
 7 MR. McALLISTER: I will.
 8 BY MR. McALLISTER:
 9 Q. Without telling us what someone else
 10 told you, what happened? What did you do?
 11 A. I waited for an hour and 15 minutes or
 12 so, until Ed came out. Unfortunately --
 13 MR. HAWS: Objection --
 14 THE COURT: Just a moment. There is an
 15 objection?
 16 MR. HAWS: Narration.
 17 MR. McALLISTER: I'll ask another question.
 18 THE COURT: The question was: What did you
 19 do? I think that's a proper question. Go ahead.
 20 You can proceed.
 21 BY MR. McALLISTER:
 22 Q. What did you do, Mr. Banks --
 23 Dr. Banks?
 24 A. I waited outside. And while I was
 25 waiting, a Bonner County Sheriff's deputy

1 approached me and stood next to me for, oh,
2 probably five or ten minutes before Ed came out of
3 the house. And we chatted.

4 **Q.** All right. And did you observe that,
5 when Mr. Steele came out of the house, he was
6 handcuffed?

7 **A.** He was handcuffed with his hands cuffed
8 behind his back, and his face looked puffy.

9 **Q.** Okay. What happened next?

10 **A.** He was loaded into an Idaho State
11 Police car and driven away. And a man with a
12 black baseball cap, dark glasses, came over and
13 asked me to answer the questions that would be
14 asked me by the sheriff's deputy. And so that's
15 what I did.

16 **Q.** Did you answer all the questions?

17 **A.** I did.

18 **Q.** Explain why you were there?

19 **A.** Yes.

20 **Q.** All right. After Mr. Steele was
21 arrested and taken away, what did you do?

22 **A.** I went home.

23 **Q.** And did you have an occasion to return
24 to the Steele residence later that day?

25 **A.** I did.

1 **A.** Yes.

2 **Q.** All right. After three hours, what did
3 you do?

4 **A.** I did as instructed. I fed and watered
5 the cats, checked on the horses, removed
6 containers of dog food and dishes from the garage
7 before the garage door was closed so that the next
8 person who was going to come and look after the
9 dogs could do so without having to enter the
10 house.

11 **Q.** All right. How long -- I think you
12 said you have known Edgar Steele for 16 years?

13 **A.** Approximately 15, 16 years, somewhere
14 in that area.

15 **Q.** Have you ever known him to physically
16 assault Cyndi Steele?

17 **A.** No.

18 **Q.** Have you ever known him to verbally
19 abuse Cyndi Steele?

20 **A.** No.

21 **Q.** Have you ever known him to harm his
22 children in any way?

23 **A.** No.

24 **MR. HAWS:** Objection. Relevance.

25 **THE COURT:** Overruled.

1 **Q.** And for what purpose?

2 **A.** Well, I was -- again, I was contacted
3 by Cyndi, who was in Oregon, by telephone. And
4 she said that --

5 **MR. HAWS:** Objection. Hearsay.

6 **THE COURT:** Sustained.

7 **BY MR. McALLISTER:**

8 **Q.** Without going into what Cyndi Steele
9 told you, what did you do?

10 **A.** What I did was, I did as instructed and
11 went to the Steele residence and attempted to,
12 number one, make my presence known to the agents
13 who were there searching the house, that I had
14 been sent to look after the animals, that I would
15 be responsible for the animals there on their
16 property, and that they need not be impounded.

17 **Q.** All right. And were you allowed to
18 take care of the animals?

19 **A.** Ultimately, yes. However, I had to
20 wait outside for about three hours until I was
21 finally allowed to do so.

22 **Q.** All right. And at that point in time,
23 there was a search being conducted that you
24 observed, correct, or what appeared to be a
25 search?

1 **THE WITNESS:** No.

2 **BY MR. McALLISTER:**

3 **Q.** Has he ever talked about his
4 mother-in-law?

5 **A.** Yes.

6 **Q.** All right. And, based upon those
7 conversations, do you think that he would kill his
8 mother-in-law?

9 **A.** No.

10 **Q.** Or hire someone to kill his
11 mother-in-law?

12 **MR. HAWS:** I object to that question, Your
13 Honor, as calling for opinion. The witness --

14 **THE COURT:** Sustained. Sustained.

15 **BY MR. McALLISTER:**

16 **Q.** In this particular case, you're
17 familiar with the charges, are you not?

18 **A.** I think so.

19 **Q.** All right. And is it fair to say that
20 you're shocked by the charges?

21 **A.** Definitely.

22 **Q.** Why?

23 **A.** Because it's completely out of
24 character.

25 **Q.** Completely out of character for who?

1 A. For Ed.
 2 Q. Edgar Steele?
 3 A. Yes.
 4 MR. McALLISTER: Thank you, sir.
 5 THE COURT: Mr. Haws, cross?
 6 CROSS-EXAMINATION
 7 BY MR. HAWS:
 8 Q. Good morning, Mr. Banks. My name is
 9 Marc Haws. I'm an assistant United States
 10 attorney. I would like to ask you a couple of
 11 questions.
 12 You and the Steeles are good friends,
 13 as you say?
 14 A. Yes.
 15 Q. You would do just about anything for
 16 them, wouldn't you?
 17 A. No.
 18 Q. Well, you're certainly willing to go
 19 take care of their animals?
 20 A. Definitely.
 21 Q. Help go do the chores?
 22 A. Yes.
 23 Q. And make sure that they're all right?
 24 A. Correct.
 25 Q. You care about them?

1 A. Correct.
 2 Q. And how far of -- how long of a drive,
 3 time-wise, is it to travel from Sagle, Idaho, to
 4 Spokane, Washington?
 5 A. Depending upon where you go, an hour to
 6 an hour and a half.
 7 Q. So if you left at 8:00, if you met in
 8 Sagle at 8:00, by 9:30 or so, you would be in
 9 Spokane?
 10 A. Yes.
 11 Q. And that was to pick up building
 12 supplies, wasn't it?
 13 A. That's what I was told.
 14 Q. And for that reason, Mr. Steele was
 15 going to take his truck that day, wasn't he?
 16 A. And a big, long trailer.
 17 Q. A flatbed trailer?
 18 A. Yes.
 19 Q. And when you pulled into Mr. Steele's
 20 driveway on Friday morning, June the 11th, because
 21 he had not met you at the prearranged location,
 22 you saw that truck?
 23 A. Yes.
 24 Q. It's a red truck?
 25 A. Yes.

1 A. Yes.
 2 Q. On June the 9th -- was it June the 9th
 3 that you received a call from Edgar Steele?
 4 A. You know, at the time, I didn't think
 5 it very significant, but my best recollection is
 6 June the 9th, Wednesday --
 7 Q. That was --
 8 A. -- Wednesday -- the Wednesday before
 9 the arrest.
 10 Q. Right. On Wednesday, June the 9th, you
 11 got a call from Mr. Steele when? In the evening
 12 hours?
 13 A. You know, I can't remember whether it
 14 was during the day or in the evening or what.
 15 Q. And Mr. Steele called you and asked you
 16 to accompany him on an errand on Saturday -- on
 17 Friday morning; is that correct -- on Friday, June
 18 the 11th?
 19 A. Yes.
 20 Q. And that was clear, it was Friday, June
 21 the 11th?
 22 A. Yes.
 23 Q. And it was in the morning?
 24 A. Definitely around 8:00.
 25 Q. Around 8:00 you were going to meet?

1 Q. Diesel?
 2 A. Yes.
 3 Q. And the large flatbed trailer was
 4 attached --
 5 A. Yes.
 6 Q. -- to it?
 7 A. Yes.
 8 Q. You're aware that he had set out in the
 9 truck and trailer to meet you, didn't you?
 10 A. I don't -- that's what he told me.
 11 Q. Mm-hmm. You didn't have any trouble
 12 understanding Mr. Steele when you talked to him,
 13 did you?
 14 A. No.
 15 Q. Mr. Steele is a very articulate person?
 16 He speaks clearly?
 17 A. Yes.
 18 Q. And so on -- when you spoke with him on
 19 the phone on June 9th, you didn't have any trouble
 20 understanding him?
 21 A. No.
 22 Q. He seemed to be himself?
 23 A. Well, he was --
 24 Q. That's a yes-or-no question.
 25 A. The answer is he was definitely

1 recognizable as Edgar.

2 Q. And when you -- when you interacted
3 with him, did you interact with him between the
4 time that you took him to Kootenai Memorial
5 Hospital and the time that you were to meet him on
6 June the 11th? Did you have any face-to-face
7 dealings with him during that time?

8 A. Yes.

9 Q. And where was that? At his place?

10 A. You know, I can't remember the exact
11 dates and times, but we had lunch together at
12 least once, a couple of times, probably.

13 Q. Did you meet in Sagle to have lunch?
14 Where did you have lunch at?

15 A. We would usually go to either the View
16 Cafe on Westmond or the Stacey's Country Kitchen
17 in Sagle.

18 Q. And when you met him on that occasion
19 and had lunch, he was doing fine?

20 A. Well, it depends what you mean by
21 "fine."

22 Q. I mean, he was -- he was able to
23 interact with you?

24 A. He was able to interact with me.

25 Q. He carried on intelligible

1 Q. Did you have any discussion about
2 current events at that time?

3 A. I can't recall that part.

4 Q. But there was nothing about him that
5 morning or whenever you had lunch with him that
6 told you, "My friend needs help"?

7 A. Which morning?

8 Q. The morning -- morning or lunch that
9 you had had lunch with him, that you were just
10 referring to.

11 A. Sometime during the time in May is what
12 you're saying?

13 Q. Correct.

14 A. No.

15 Q. Because if he had had something wrong
16 with him, you would have seen that he got help,
17 wouldn't you?

18 A. That's true.

19 Q. Because you're a good friend?

20 A. I think the question that you're
21 asking --

22 Q. No. Just answer the question. You're
23 a good friend?

24 A. I am a good friend.

25 Q. And so if you had seen a mental

1 conversation?

2 A. Correct.

3 Q. He is an intelligent person?

4 A. Seems to be.

5 Q. His words were clear?

6 A. Yes.

7 Q. He knew where he was?

8 A. Yes.

9 Q. He knew why he was there?

10 A. Yes.

11 Q. He ordered? What did -- did he order
12 off the menu?

13 A. He did order off the menu. I would
14 point out, if you -- if you'd like to hear, that
15 he was cold all the time. And so we would often
16 have to sit right next to the wood-burning stove
17 in the restaurant in order so that he could be
18 warm enough so that he could sit there.

19 Q. He was not incoherent?

20 A. He was not incoherent, but he was weak.

21 Q. He was weak -- not incoherent? He was
22 weak, but he was intelligible?

23 A. Yes.

24 Q. He was oriented as to time and place?

25 A. Yes.

1 condition which you didn't see before, you would
2 have said, "Something is wrong here"?

3 A. Well --

4 Q. Correct? You would have said that if
5 you had seen it.

6 A. You haven't asked me about mental
7 conditions.

8 Q. Well, I just asked you about it.

9 A. Well --

10 Q. If you had seen a mental condition --

11 A. You're asking for my --

12 THE COURT: Just a moment. Wait for counsel
13 to finish the question.

14 BY MR. HAWS:

15 Q. If you had seen a mental condition,
16 would you have noted it?

17 A. I -- I -- I would have, and I did.

18 Q. And did you refer him for help?

19 A. I did not. What I -- what I did and
20 what I'd like -- what I'd like to be able to say
21 to you is that --

22 Q. Excuse me. I think, rather than hear
23 your narration, you can answer that on redirect,
24 if you'd like.

25 But you did not seek any help for

1 Mr. Steele on that occasion, did you?
 2 A. No.
 3 Q. You didn't say, "Let's go to the
 4 doctor"?
 5 A. No.
 6 Q. "Let's go to the hospital"?
 7 A. No.
 8 Q. The Steele family trusted you enough to
 9 have you help dispose of some of their assets,
 10 didn't they?
 11 A. You'll have to clarify that question.
 12 Q. Do you know who Rex Steele is?
 13 A. I do.
 14 Q. And did Rex Steele on any occasion ask
 15 you to accompany him as he disposed of silver on
 16 behalf of the Steeles?
 17 A. No.
 18 Q. In the latter part of June of 2010,
 19 were you asked by Rex Steele to accompany you to
 20 help cash in silver?
 21 A. Absolutely not.
 22 Q. Okay. On -- in June of 2010, did
 23 Mr. Steele, Edgar Steele, ask you to help his son
 24 cash in silver?
 25 A. No.

1 that he got better. And month by month and week
 2 by week, as I saw him and checked up on him, he
 3 got better and better, and he got closer and
 4 closer to the Ed that I had known before the heart
 5 attack.
 6 However -- and this is what I wanted to
 7 say -- he was still not a hundred percent. And if
 8 he had been getting worse, then I would have
 9 followed what Mr. Haws suggested, which would have
 10 been I would have said, "You know, you need to go
 11 back and see the doctor."
 12 But he was getting better, a little
 13 better, each time I saw him. So I was encouraged
 14 by that, and I thought he was going to make a full
 15 recovery. And so I didn't -- I didn't -- I didn't
 16 push him to go see a doctor, but he wasn't a
 17 hundred percent. He was just getting better and
 18 better.
 19 Q. Do you know anything about the Russian
 20 bride scam?
 21 A. Oh, yes.
 22 Q. What do you know?
 23 MR. HAWS: Objection. Beyond the scope.
 24 THE COURT: Sustained.
 25 MR. McALLISTER: Judge, I don't want to

1 Q. On June 24th or thereabouts, did
 2 Mr. Steele ask you to assist Rex in selling assets
 3 for the family?
 4 A. You know, I don't recall that.
 5 Q. Do you recall whether Rex, in fact, did
 6 ask you to help sell assets for the family?
 7 A. I'm certain that he did not.
 8 Q. He did not? Okay.
 9 MR. HAWS: I have no further questions.
 10 Thank you, Mr. Banks.
 11 THE COURT: Redirect.
 12 REDIRECT EXAMINATION
 13 BY MR. McALLISTER:
 14 Q. Dr. Banks, what is it that you wanted
 15 to say that you observed about Edgar Steele's
 16 mental condition?
 17 A. Well, what I wanted to say was that,
 18 when I visited Ed in December after he had gotten
 19 out of the hospital, it was plain that he was
 20 mentally impaired and that he was -- not only was
 21 he weak; but, mentally, he was not the person that
 22 I had known before his heart attack. He was -- he
 23 was -- he was weak. He was -- in many ways, he
 24 was delusional. And he was sick.
 25 But I noticed that over the months,

1 recall him, but --
 2 THE COURT: Well, I'll give you just a
 3 limited number of questions.
 4 MR. McALLISTER: Thank you, Your Honor.
 5 BY MR. McALLISTER:
 6 Q. Can you tell us what you know in
 7 relation to Edgar Steele about the Russian bride
 8 scam?
 9 A. I visited the Steele's house one day,
 10 and Ed called me over to his computer to see his
 11 Russian girlfriends. And Cyndi was there. And we
 12 looked at these photographs of I think, at that
 13 time, five or six different Russian --
 14 Ukrainian -- I guess they were Ukrainian. I'm
 15 sorry; I misspoke -- Ukrainian women who had been
 16 contacted as part of a legal case --
 17 MR. HAWS: Objection. Foundation.
 18 THE COURT: Sustained.
 19 BY MR. McALLISTER:
 20 Q. What was your understanding about why
 21 Mr. Steele showed you these five Russian women on
 22 the Internet or on the computer?
 23 A. I learned that they were part of a
 24 legal case, that he had contacted them, that
 25 within --

1 MR. HAWS: Objection, Your Honor. This is
2 not foundation.

3 THE COURT: Sustained.

4 BY MR. McALLISTER:

5 Q. Cyndi Steele was present?

6 A. Cyndi was present.

7 Q. Did you laugh about this?

8 A. We laughed about it. We looked at the
9 pictures. They are very pretty girls, young
10 girls, plainly attractive and part of a website
11 in -- that's headquartered in the Ukraine that
12 encourages American men --

13 MR. HAWS: Objection. Narration and
14 foundation.

15 THE COURT: Sustained. Instruct the jury to
16 disregard the last response.

17 BY MR. McALLISTER:

18 Q. Did you, based upon what you saw or
19 observed, believe that Edgar Steele was trying to
20 get -- truly get romantically linked with anybody
21 in the Ukraine?

22 A. That was not the intent.

23 Q. How do you know?

24 MR. HAWS: Objection. Foundation.

25 THE COURT: Sustained.

1 with Mr. Steele as he was recuperating, he
2 appeared to be weak, but he was close to a hundred
3 percent. Is that what you said?

4 A. Yes. He was getting better and getting
5 closer and closer to a hundred percent.

6 MR. HAWS: Thank you. No further questions.

7 THE COURT: Anything else?

8 MR. McALLISTER: No, Your Honor.

9 THE COURT: You may step down. Thank you.
10 Call your next witness.

11 MR. McALLISTER: Defense would call Dr. Bob
12 Stoll.

13 THE COURT: Dr. Stoll, would you please step
14 before the clerk and be sworn.

15 THE WITNESS: I'm sorry. I didn't hear what
16 you said.

17 THE COURT: Would you please step before the
18 clerk here to be sworn as a witness and then
19 follow Ms. Gearhart's directions from there.

20 THE WITNESS: Sure.

21 ROBERT WILLIAM STOLL,
22 having been first duly sworn to tell the whole
23 truth, testified as follows:

24 THE CLERK: Please state your complete name
25 and spell your last name for the record.

1 BY MR. McALLISTER:

2 Q. Cyndi Steele was present when you were
3 laughing about this?

4 A. Cyndi was --

5 MR. HAWS: Leading.

6 THE COURT: Sustained.

7 BY MR. McALLISTER:

8 Q. Who was present?

9 A. Cyndi was present. Ed was present. I
10 was present. And the computer with the
11 photographs on it was present.

12 Q. And you were laughing about it?

13 A. That's correct.

14 MR. HAWS: Objection. Leading.

15 MR. McALLISTER: That's all I have,
16 Your Honor.

17 THE COURT: Mr. Haws, redirect -- I mean,
18 recross. Excuse me.

19 MR. HAWS: Just one question. Thank you,
20 Your Honor.

21 RECCROSS-EXAMINATION

22 BY MR. HAWS:

23 Q. I believe in your first -- in the first
24 part of your testimony today, you answered a
25 question for Mr. McAllister that when you visited

1 THE WITNESS: Dr. Robert William Stoll,
2 S-T-O-L-L, D.V.M.

3 DIRECT EXAMINATION

4 BY MR. McALLISTER:

5 Q. What does the "D.V.M." stand for?

6 A. Doctor of veterinary medicine.

7 Q. So I take it you're a vet?

8 A. Yes, I'm a vet.

9 Q. For how long have you been a
10 veterinarian?

11 A. Over 30 years.

12 Q. All right. Where did you go to school?

13 A. Most of the -- I graduated from
14 University of Minnesota, St. Paul, and I spent a
15 year exchange at the University of Utrecht in
16 Holland.

17 Q. Okay. After -- after receiving your
18 degrees, did you actively practice as a
19 veterinarian?

20 A. Immediately.

21 Q. All right. And tell us briefly about
22 what you would do and where you were.

23 A. I'm an old-fashioned country vet, one
24 of the last, probably. Worked on all species,
25 ambulatory work. Had a small office to do

1 small-animal procedures on. And worked on cattle,
2 horses, and kicked by cattle and horses. And that
3 was my life.

4 Q. All right.

5 A. My professional life.

6 Q. Where do you live?

7 A. I live on East Shingle Mill Road in
8 Sandpoint, Idaho.

9 Q. All right. Where do you practice
10 today?

11 A. Sandpoint, Idaho.

12 Q. All right. And the surrounding north
13 Idaho areas?

14 A. Surrounding two counties.

15 Q. Okay. Do you know Edgar Steele?

16 A. Yes, I do.

17 Q. Do you know Cyndi Steele?

18 A. Yes, I do.

19 Q. For how long have you known them?

20 A. About ten years.

21 Q. Okay. And has most of your involvement
22 been with Cyndi Steele as opposed to Edgar Steele?

23 A. I don't like the word "involvement,"
24 but --

25 Q. I apologize. Let me rephrase it.

1 the residence?

2 A. I tended my patient.

3 Q. The horse?

4 A. Yeah.

5 Q. Okay. Without going into any great
6 detail, did you take care of the horse, the
7 horse's medical needs?

8 A. Yeah. It was a pretty minor
9 laceration. And I cleaned it and used a new
10 long-acting shot of antibiotics so that Edgar did
11 not happen -- did not have to deal with the horse
12 after what he had told me. I wanted to make this
13 carefree.

14 Q. All right. After treating the horse or
15 taking care of the horse, did you have a
16 discussion with Edgar Steele?

17 A. Yes, I did.

18 Q. And about what time of the day was it?

19 A. Mid p.m., afternoon sometime.

20 Q. All right. And what is it that you
21 said to Edgar Steele? Did you tell him anything
22 that you knew about his medical history or
23 condition?

24 A. No. I -- for 30 years, I've been
25 trained to learn by looking, and I noticed he was

1 Was most of your interactions with
2 Cyndi Steele?

3 A. Yeah. We had a professional
4 relationship where I saw and cared for her
5 animals, and her and Edgar loved them very much.

6 Q. All right.

7 A. I would say in the top 5 percent of my
8 clientele, in fact, as far as love of animals go
9 and husbandry.

10 Q. Directing your attention to June the
11 10th, 2010, were you at the Steele residence?

12 A. That was the day before Edgar was
13 arrested?

14 Q. And were you there --

15 A. Was there, yes.

16 Q. Okay. For what purpose?

17 A. There was a gelding that had a minor
18 cut on his fetlock.

19 Q. Okay. And who was present?

20 A. Edgar.

21 Q. Where was Cyndi Steele?

22 A. Edgar had -- I had learned from Edgar
23 that Cyndi was taking care of his -- her mom in
24 Oregon.

25 Q. Okay. What did you do when you got to

1 breathing a little hard. And I didn't say
2 anything.

3 And then I finally believe I said, "Is
4 everything okay?"

5 He said, "You don't know?"

6 And I said, "I guess I don't know."

7 He said, recently, he had a torn
8 ascending aorta that put him in the hospital.

9 And I said, "In the hospital? That
10 would put you in the grave, Ed. What happened?"

11 And he said, "Well, luckily, I had -- I
12 knew something was wrong, and I held it still, and
13 the doctor said it was fortunate that I was not on
14 aspirin."

15 MS. WHELAN: Judge, I'll object. It's
16 hearsay on top of hearsay.

17 THE COURT: Sustained.

18 BY MR. McALLISTER:

19 Q. Tell us, Dr. Stoll, what it is you said
20 to Edgar Steele on the afternoon of June 10th.

21 A. Okay. I see. I see. So get off the
22 part that Ed was telling me he had this happen.
23 Okay.

24 Because I wouldn't have just blurted
25 this out normally. I'm very private about my

1 faith. I said, "Ed, do you believe in God?" I'm
 2 a very staunch Christian, and I said, "Do you
 3 believe in God?"
 4 And he said, "Absolutely."
 5 And I said, "What did this do to you to
 6 go through this?"
 7 I'm always interested in near-death
 8 experiences. It gives us an insight into what's
 9 beyond.
 10 And he -- he --
 11 MS. WHELAN: Objection. Hearsay, relevance.
 12 THE COURT: Just a moment. Just a moment.
 13 Counsel, I'm going to have to sustain the
 14 objection on relevance grounds. I'm not sure
 15 where it's going, but I see some problems. And it
 16 does strike me as not relevant at this point.
 17 THE WITNESS: Oh, boy, this is relevant.
 18 THE COURT: I'll be the judge of that.
 19 Thank you.
 20 Proceed.
 21 THE WITNESS: Yes, Judge.
 22 BY MR. McALLISTER:
 23 Q. But what is it that you said?
 24 A. I said, "Have you ever read the Bible?"
 25 Can I answer what his answer was?

1 BY MR. McALLISTER:
 2 Q. Were you being sincere and serious in
 3 what you were saying?
 4 A. That's all I do anymore.
 5 Q. All right. What is it that you said?
 6 A. I told him about my interest in
 7 near-death experiences because it tells us a
 8 little about the hereafter.
 9 MS. WHELAN: Objection. Relevance.
 10 THE COURT: Sustained.
 11 BY MR. McALLISTER:
 12 Q. In your discussion, without going into
 13 what Edgar Steele said, was Cyndi Steele
 14 mentioned?
 15 A. Yes.
 16 Q. Okay. Based upon your discussion that
 17 afternoon on June 10th, did you think that Edgar
 18 Steele was going to hire somebody to murder his
 19 wife?
 20 MS. WHELAN: Objection. Calls for
 21 conclusion on the ultimate issue.
 22 THE COURT: Sustained.
 23 BY MR. McALLISTER:
 24 Q. Have you, in the years that you have
 25 known Edgar Steele, ever known him to threaten

1 Q. No, not at this time.
 2 A. Okay.
 3 Q. What did you say next?
 4 A. I said, "That's interesting, because I
 5 don't think I've ever read it cover to cover."
 6 Q. All right. How would you describe
 7 Edgar Steele's demeanor in this conversation?
 8 A. Bright, alert, what I knew of Edgar;
 9 but physically distressed. Scale of one to five,
 10 two.
 11 Q. Okay. And without going into what
 12 Edgar Steele said, was this a sincere and serious
 13 conversation you were having?
 14 MS. WHELAN: Objection. Foundation.
 15 MR. McALLISTER: I think --
 16 THE COURT: Well, I --
 17 THE WITNESS: I only have sincere --
 18 THE COURT: Just a moment. Just a moment.
 19 Sustained.
 20 MR. McALLISTER: Okay.
 21 THE WITNESS: I only have --
 22 MR. McALLISTER: Hold on.
 23 THE COURT: There is not a question pending.
 24 Wait until the question is asked.
 25 THE WITNESS: Okay.

1 Cyndi Steele?
 2 A. Edgar is a sweet, kind man. And, no --
 3 I'm sorry. I didn't answer. No, he has never.
 4 Q. Have you ever heard him or seen him
 5 physically abuse Cyndi Steele?
 6 A. No. No. No. No.
 7 Q. All right. And you're familiar with
 8 the charges in this case; correct?
 9 A. Vaguely. I listened a little bit
 10 today. I really haven't been following it, but I
 11 think there was a criminal that was supposedly
 12 hired by --
 13 MS. WHELAN: Objection. Narrative,
 14 foundation, speculation.
 15 THE COURT: Sustained.
 16 BY MR. McALLISTER:
 17 Q. Is it fair to say that the Edgar Steele
 18 you know through the years would be totally out of
 19 character to do anything like the --
 20 A. Completely out of character.
 21 MR. McALLISTER: Thank you.
 22 THE COURT: Cross-examination?
 23 MS. WHELAN: No, Your Honor. Thank you.
 24 THE COURT: All right. You may step down.
 25 Thank you.

<p style="text-align: center;">1216</p> <p>1 THE WITNESS: She doesn't want to talk to 2 me. 3 THE COURT: I will instruct the jury to 4 disregard the witness's last comment. 5 You may call your next witness. Well, 6 counsel, I think we're at probably the breaking 7 point. Let's take the second break. 8 We'll be in recess for 15 or -- 15 9 minutes. Court will be in recess. 10 (Recess.) 11 (Jury present.) 12 THE COURT: For the record, I'll note that 13 all jurors are present. 14 Mr. Amendola, would you announce the 15 name of your next witness. 16 MR. AMENDOLA: Yes, Your Honor. Daryl 17 Hollingsworth. 18 THE COURT: Mr. Hollingsworth, would you 19 please stand in place. Ms. Gearhart will place 20 you under oath. 21 DARYL JAMES HOLLINGSWORTH, 22 having been first duly sworn to tell the whole 23 truth, testified as follows: 24 THE CLERK: Please state your complete name 25 and spell your last name for the record.</p>	<p style="text-align: center;">1217</p> <p>1 THE WITNESS: Daryl James Hollingsworth, 2 H-O-L-L-I-N-G-S-W-O-R-T-H. 3 THE COURT: You may inquire, Mr. Amendola. 4 DIRECT EXAMINATION 5 BY MR. AMENDOLA: 6 Q. Mr. Hollingsworth, how old are you? 7 A. Forty. 8 Q. Where do you live right now? 9 A. I'm actually incarcerated right now. 10 Q. Okay. And that's because you were 11 convicted of and sentenced for an aggravated 12 assault charge out of Bonner County, Idaho, and 13 you were sentenced about two months ago? 14 A. About three weeks ago. 15 Q. Three weeks ago. Okay. 16 And prior to your sentencing on that 17 charge, you were -- spent quite a bit of time in 18 the Bonner County Jail, did you not? 19 A. That's correct. 20 Q. During the time that you were at the 21 Bonner County Jail, there was a period of time 22 where you were in the same area of the jail as 23 Larry Fairfax; true? 24 A. That's correct. 25 Q. And during that time, you talked to</p>
<p style="text-align: center;">1218</p> <p>1 Larry Fairfax about things related to this case, 2 did you not? 3 A. Yes, I did. 4 Q. At some point, did Larry Fairfax tell 5 you about how he came into contact with the FBI? 6 MS. WHELAN: Objection. Hearsay. 7 MR. AMENDOLA: Calls for a yes or no, 8 Your Honor. 9 THE COURT: The witness may answer yes or 10 no. 11 THE WITNESS: Yes. 12 BY MR. AMENDOLA: 13 Q. What did Larry Fairfax tell you about 14 him contacting the FBI or the FBI contacting him? 15 MS. WHELAN: Objection. Hearsay. 16 THE COURT: Counsel, I'll allow the inquiry 17 if it's impeachment, but it would have to be 18 directly inconsistent with Mr. Fairfax's 19 testimony. And I, obviously, don't know what the 20 answer is. 21 MR. AMENDOLA: It is, Your Honor. 22 THE COURT: I'm going to allow it. 23 Ladies and gentlemen, I'll allow the 24 witness to answer the question, but it's only 25 being offered for the purpose of impeachment,</p>	<p style="text-align: center;">1219</p> <p>1 which means to show a prior inconsistent statement 2 by someone who has already testified before the 3 jury. It's to be considered only for that purpose 4 as it may bear upon Mr. Fairfax's veracity. 5 You may proceed. 6 BY MR. AMENDOLA: 7 Q. What did Larry Fairfax tell you? 8 A. He told me that he was being pursued by 9 the FBI about some bombs or whatever that was 10 attached to some vehicles. And that they came to 11 him and offered him a deal that if he would set up 12 Edgar Steele, that they would forget about the 13 stuff that they were pursuing him over. 14 Q. And do you remember about when this -- 15 when he told you this? 16 A. Not exact date, but it was, like, the 17 first couple weeks I was in the same pod as he 18 was. 19 MS. WHELAN: Judge, respectfully, I would 20 object. There was no question -- what was just 21 testified to was never asked of Mr. Fairfax on 22 direct. It's something entirely different than -- 23 I would move to strike. 24 THE COURT: Well, I -- I'm going to allow it 25 to stand. I'll allow the jury to draw its own</p>

1 conclusions as to whether it's inconsistent or not
2 with Mr. Fairfax's testimony.

3 I have indicated to the jury it's only
4 considered for that purpose. If they conclude
5 that it's not inconsistent, then you're to
6 disregard the witness' testimony entirely.

7 Proceed.

8 BY MR. AMENDOLA:

9 Q. So you're saying that Larry Fairfax
10 told you that the FBI asked him to set up Edgar
11 Steele?

12 A. Yes.

13 Q. During the time you were in the same
14 area of the jail with Larry Fairfax, did he ask
15 you to assist him with a book that he was either
16 writing or going to write at some point?

17 A. Yes.

18 Q. And what did he ask you to do?

19 A. He asked me -- well, I'm an artist, so
20 he asked me to design a cover for a book that he
21 was writing that had to do with this case.

22 So I asked him in detail certain
23 aspects of how he wanted it drawn in order for me
24 to assess how I was going to put the picture on
25 the book -- or on the cover of the book. So I

1 Edgar Steele was?

2 A. It was actually the same pod. After
3 they sent Larry wherever they sent him, they put
4 Edgar back in the same cell that Larry just came
5 out of. So, yeah.

6 Q. Okay. During that time, did Edgar
7 Steele ever offer to pay you for your testimony?

8 A. Oh, no.

9 Q. Pardon me?

10 A. No.

11 Q. Did he -- how about any other time?

12 A. Not at all.

13 Q. Did he ever ask you to lie on his
14 behalf?

15 A. No, he didn't.

16 Q. Did he ever ask you to testify on
17 behalf -- his behalf?

18 A. Yes, he did ask me.

19 Q. And was that because he found out what
20 Larry Fairfax had told you?

21 A. That's true.

22 MR. AMENDOLA: Nothing further, Your Honor.

23 THE COURT: Cross?

24 CROSS-EXAMINATION

25 BY MS. WHELAN:

1 needed details.

2 Q. And based on what he told you, did you
3 actually draw something for him?

4 A. Yes, I did.

5 Q. And did you give it to him?

6 A. Yes, I did.

7 Q. And do you know what he did with it?

8 A. I don't know. He got shipped out to
9 another county, like, the next couple days after
10 that, after I finished. So I don't know.

11 Q. But whatever you did you gave to him?

12 A. Yeah. And I signed the bottom with
13 "Spokane Artist," which is my name I use.

14 Q. Based on all of that, what was the --
15 what was the cover -- what did the cover of the
16 book look like? Can you describe it -- or what
17 you drew?

18 MS. WHELAN: Objection. Relevance.

19 THE COURT: Sustained. I've sustained the
20 objection.

21 Mr. Amendola?

22 BY MR. AMENDOLA:

23 Q. During the time you were in the Bonner
24 County Jail, Mr. Hollingsworth, did you also spend
25 a period of time in the area of the jail where

1 Q. Mr. Hollingsworth, you -- Mr. Steele,
2 when he came into the jail, told you he was a
3 lawyer, didn't he?

4 A. Eventually, yeah.

5 Q. Okay. Offered to help you in any way
6 he could?

7 A. No.

8 Q. Did he tell you who he was a lawyer
9 for?

10 A. Himself.

11 Q. Okay. Did he ever tell you that he had
12 represented Richard Butler?

13 A. At one time, yeah.

14 Q. Okay. You're familiar with Richard
15 Butler?

16 A. Not really.

17 Q. You're familiar with the Aryan Nations?

18 A. Not really.

19 Q. You know who they are?

20 A. I know that there is an Aryan Nation.
21 I'm not affiliated.

22 Q. You know that they hold out
23 race-superiority views; correct?

24 A. I don't know. Can you repeat that?

25 Q. Aryan Nations, generally, one of their

1 thoughts is that whites are better than others.
 2 Do you agree with that?
 3 A. No.
 4 Q. You don't agree that that's their
 5 belief?
 6 A. I don't know anything about them. I
 7 don't deal with them.
 8 Q. How long have you lived in the area?
 9 A. In Idaho?
 10 Q. Mm-hmm.
 11 A. I was only there a couple months before
 12 I got arrested.
 13 Q. What about Washington?
 14 A. Thirteen years.
 15 Q. You've lived in the inland Pacific
 16 Northwest for quite a while, haven't you?
 17 A. That's true.
 18 Q. And you're telling this jury you don't
 19 know what the doctrine is or the fact that the
 20 Aryan Nations believe in white superiority?
 21 MR. AMENDOLA: Objection. Asked and
 22 answered.
 23 THE COURT: Overruled. Counsel, I'm going
 24 to allow one question along this line, and then
 25 we'll move on.

1 impeachment.
 2 MS. WHELAN: Yes.
 3 THE COURT: Overruled.
 4 Ladies and gentlemen, the same thing.
 5 I'm going to allow the witness to answer only as
 6 it may bear upon the witness's credibility and any
 7 bias or prejudice for or against any party.
 8 MR. AMENDOLA: Your Honor, may we have a
 9 short sidebar?
 10 THE COURT: Yes.
 11 (Sidebar commences as follows:)
 12 THE COURT: Just so we're clear, bias or
 13 prejudice by a witness is always relevant. And I
 14 assume what Ms. Whelan is trying to establish is
 15 that if he is a sympathizer with Aryan Nations or
 16 people of that sort, that he might be inclined to
 17 slant his testimony based upon the fact that
 18 Mr. Steele had previously represented them.
 19 MR. AMENDOLA: Well, but he already knows --
 20 already said he knows little or nothing about the
 21 Aryan Nations.
 22 THE COURT: Well, I think counsel is testing
 23 that and testing that about -- and I think she is
 24 entitled to do so.
 25 But, you know, you're stuck with the

1 THE WITNESS: Can you repeat that?
 2 BY MS. WHELAN:
 3 Q. Yeah. You're telling the jury that,
 4 even though you've lived in this area, you don't
 5 know that the Aryan Nations hold themselves out
 6 that whites are superior to others?
 7 A. You know, I don't follow racism.
 8 THE COURT: Just a moment. Okay. The
 9 question is whether you know, just yes or no.
 10 THE WITNESS: Sure. I don't know.
 11 MS. WHELAN: I don't understand the answer.
 12 THE COURT: Restate the question.
 13 And listen carefully to the question.
 14 And, if you can, just answer it yes or no.
 15 BY MS. WHELAN:
 16 Q. Having lived in the Pacific Northwest
 17 for the length of time that you have, you are
 18 aware that the Aryan Nations believe that whites
 19 are superior; correct?
 20 A. Yeah. Yes.
 21 Q. And, in fact, you, yourself, have used
 22 racial epithets before, haven't you?
 23 MR. AMENDOLA: Objection. Beyond the scope,
 24 relevance.
 25 THE COURT: I'm assuming it's a form of

1 witness's answer.
 2 MS. WHELAN: I agree, Judge. We've got a
 3 police report that says he got in trouble for
 4 calling -- one of his arrests was for calling a
 5 black man the "N" word. And I think that goes
 6 directly to why he is willing to testify to what
 7 he does.
 8 MR. AMENDOLA: How -- I don't see the
 9 connection, Judge, at all.
 10 THE COURT: Well, I see the connection, but
 11 I think it's pretty thin. I mean, no indication
 12 that he is really like a skinhead or a member of
 13 any jail groups that are white-supremacy --
 14 MS. WHELAN: You know, I haven't had a
 15 chance to go through everything. That's the first
 16 thing I saw. It goes to show bias.
 17 MR. AMENDOLA: Well, I don't know the
 18 context of it, Judge. But the offhanded use of
 19 a -- of something like that, I don't see how
 20 that's relevant to his beliefs --
 21 THE COURT: Was it --
 22 MR. AMENDOLA: -- at all.
 23 THE COURT: What was the context in which
 24 that was -- I mean, was he charged with something?
 25 MS. WHELAN: He was charged with something.

1 I've got that report.
 2 THE COURT: Related to his use of that
 3 racial epithet?
 4 MS. WHELAN: Yes.
 5 MR. AMENDOLA: I guess I say: So what?
 6 THE COURT: Well, I'll allow it, but you're
 7 stuck with his answer.
 8 (Sidebar concluded.)
 9 BY MS. WHELAN:
 10 Q. Isn't it true, sir, that you used a
 11 racial epithet to refer to a black man?
 12 A. No.
 13 THE COURT: Do you intend to show the
 14 witness something?
 15 MS. WHELAN: I am. It's going to take me a
 16 minute, Judge. I'm sorry.
 17 BY MS. WHELAN:
 18 Q. Mr. Hollingsworth, your conviction in
 19 Bonner County for aggravated assault isn't your
 20 only conviction that you have, is it?
 21 A. No, it's not.
 22 Q. You were convicted in 2004 in the
 23 Superior Court of Washington, County of Clark, for
 24 forgery?
 25 A. Yes.

1 this to Mr. Severson?
 2 THE COURT: Yes. That might be the best way
 3 to do it.
 4 I assume you've seen this,
 5 Mr. Amendola, or --
 6 MR. AMENDOLA: No, Your Honor, I have not.
 7 MS. WHELAN: Judge, we provided all copies
 8 to defense counsel. They do have it. There is
 9 two copies.
 10 THE COURT: Mr. Amendola, do you have
 11 anything to add to what's been provided in terms
 12 of the Washington statute?
 13 MR. AMENDOLA: I don't have a copy of that,
 14 Your Honor.
 15 THE COURT: All right.
 16 MS. WHELAN: Judge, we printed it off this
 17 morning. I --
 18 THE COURT: All right. Here is a copy here.
 19 MR. AMENDOLA: Your Honor, I have nothing
 20 further to add.
 21 THE COURT: I'll overrule the objection.
 22 MS. WHELAN: Now, the jury camera is off;
 23 correct, Your Honor?
 24 THE COURT: It is.
 25 MS. WHELAN: And the document camera, is it

1 Q. You were convicted in, again, the
 2 Superior Court of Washington, Clark County, for
 3 malicious mischief in the second degree; correct?
 4 A. Yep.
 5 MR. AMENDOLA: Your Honor, in spite of the
 6 fact that he has answered this, I object on
 7 relevance, and it's not within the scope of 608,
 8 609.
 9 THE COURT: It's not within the scope of
 10 what?
 11 MR. AMENDOLA: The evidence rules, 608, 609,
 12 610.
 13 THE COURT: Well, I think counsel is
 14 entitled to explore that to determine. I'll
 15 strike the response if it's not established that
 16 it does fall within Rule 609.
 17 BY MS. WHELAN:
 18 Q. You agreed that you were convicted of
 19 malicious mischief in the second degree; correct?
 20 A. Yes.
 21 Q. Okay.
 22 THE COURT: Counsel, the other option is, if
 23 you want to provide me with the relevant statute,
 24 I can review that.
 25 MS. WHELAN: Yes, Your Honor. May I provide

1 on?
 2 THE COURT: It is.
 3 MS. WHELAN: Thank you.
 4 BY MS. WHELAN:
 5 Q. Mr. Hollingsworth, I'm going to ask you
 6 to look at this. You can read and write the
 7 English language; correct, sir?
 8 A. Yes.
 9 Q. Okay. Let me try to get closer so
 10 it's -- do you see that "probable cause"
 11 statement?
 12 THE COURT: You need to zoom out a little
 13 bit. You're cutting off both edges. There.
 14 THE WITNESS: Yeah, I can see it.
 15 BY MS. WHELAN:
 16 Q. Have you had a chance to read that?
 17 A. Yes, ma'am.
 18 Q. And is it still your testimony that you
 19 have never used a racial epithet when referring to
 20 another individual?
 21 A. I guess I have. So long ago.
 22 Q. Now, Mr. Steele asked you to testify
 23 because you told him about this -- what you say
 24 Larry Fairfax said to you?
 25 A. Yeah.

1 **Q.** It's what you said Larry Fairfax said;
 2 correct?
 3 **A.** That's what Larry Fairfax told me.
 4 **Q.** And so you have three prior
 5 convictions; correct?
 6 **MR. AMENDOLA:** Your Honor, that's not -- I
 7 object. It's not relevant, and it's beyond the
 8 scope of what Rule 609 allows for.
 9 **THE COURT:** Well, I'm going to sustain the
 10 objection because I think it's cumulative. The
 11 witness already indicated that he has been
 12 convicted of three felonies. Let's move on.
 13 **MS. WHELAN:** It was just my wrap-up
 14 question, Judge. Thank you.
 15 **THE COURT:** Mr. Amendola, anything else?
 16 **MR. AMENDOLA:** No, Your Honor.
 17 **THE COURT:** You may step down.
 18 May the witness be excused?
 19 **MS. WHELAN:** Yes, Your Honor. Thank you.
 20 **MR. AMENDOLA:** No, Your Honor. We're going
 21 to -- unfortunately, we're going to ask that he
 22 remain under subpoena or under the writ. The
 23 reason is because --
 24 **THE COURT:** I don't need to know the reason.
 25 If you're asking that he be retained under the

1 After that accident, my husband and our
 2 two kids at the time moved up to Sandpoint, Idaho,
 3 where I resided for about 18 years. Went back to
 4 school, got my nursing license. And currently I
 5 am working as a charge nurse over in Shodo,
 6 Montana.
 7 **Q.** Okay. And are you familiar with Edgar
 8 and Cyndi Steele?
 9 **A.** I am.
 10 **Q.** All right. How long have you known
 11 them?
 12 **A.** I have known them for about ten years.
 13 I was a 4-H horse and swine leader for 15 years.
 14 And about nine, ten years ago, their kids joined
 15 my horse club and, a couple years later, my swine
 16 club.
 17 **Q.** Is it fair to say you're one of Cyndi
 18 Steele's best friends?
 19 **A.** Absolutely.
 20 **Q.** All right. Directing your attention to
 21 June 11th, or shortly thereafter, of 2010, did
 22 Cyndi Steele ask to move into your house?
 23 **A.** She -- on the 11th, I was traveling to
 24 Seattle because my daughter was graduating from
 25 college. And she was -- had called me several

1 writ, then we'll --
 2 **MR. AMENDOLA:** We have to do that at this
 3 point.
 4 **THE COURT:** All right. Call your next
 5 witness.
 6 **MR. McALLISTER:** Defense would call Billy
 7 Cochran.
 8 **THE COURT:** Step before the clerk, please,
 9 and be sworn.
 10 **BILLIE ELIZABETH COCHRAN,**
 11 having been first duly sworn to tell the whole
 12 truth, testified as follows:
 13 **THE CLERK:** Please state your complete name
 14 and spell your last name for the record.
 15 **THE WITNESS:** Billie Elizabeth Cochran,
 16 C-O-C-H-R-A-N.
 17 **THE COURT:** You may inquire.
 18 **MR. McALLISTER:** Thank you, Your Honor.
 19 **DIRECT EXAMINATION**
 20 **BY MR. McALLISTER:**
 21 **Q.** Ms. Cochran, can you tell us a little
 22 bit about yourself, please.
 23 **A.** I am a retired California Highway
 24 Patrol officer, worked down in south L.A. for
 25 about two years, when I got hit by a drunk driver.

1 times. We were in the process of putting on a
 2 horse expo; so I didn't answer the calls, the
 3 first five or six of them, because I thought it
 4 was just horse expo stuff and I didn't want to
 5 deal with it right then. I just wanted to enjoy
 6 the weekend with my daughter.
 7 I did finally listen to one of the
 8 messages that night and called her back and found
 9 out what had happened. Did the graduation with my
 10 daughter that Saturday, which would have been the
 11 12th, and we headed home immediately on Sunday.
 12 And Cyndi -- I told her she could stay with me
 13 because she felt totally unsafe being at her
 14 house. So she did.
 15 **Q.** All right. And how long did she stay
 16 at your house?
 17 **A.** Pretty much until August. Somewhere
 18 towards the end of July, beginning of August.
 19 **Q.** All right. Did you observe her
 20 basically daily?
 21 **A.** Yes, every day.
 22 **Q.** Was she conducting her own
 23 investigation into this case?
 24 **A.** That's what she told me.
 25 **MS. WHELAN:** Objection. Hearsay,

1 foundation, relevance.
 2 THE COURT: Sustained.
 3 BY MR. McALLISTER:
 4 Q. Well, did you observe her conducting
 5 her own investigation into the facts of this case?
 6 A. I did. I was able to hear a couple of
 7 phone calls she made and then times she was
 8 spending on the Internet.
 9 Q. All right. And this went on for some
 10 period of time; correct?
 11 A. Correct.
 12 Q. Has Cyndi ever, at any time, confided
 13 in you that she has been abused in any way by
 14 Edgar Steele?
 15 A. Absolutely not.
 16 Q. Has she ever said she has even been
 17 verbally assaulted or attacked by Edgar Steele?
 18 A. Absolutely not.
 19 MS. WHELAN: Objection. Hearsay. Move to
 20 strike. I think the witness --
 21 THE COURT: Sustained. Instruct the jury to
 22 disregard the last response.
 23 BY MR. McALLISTER:
 24 Q. Have you observed them together --
 25 A. I have.

1 counsel whether she is retained on subpoena or
 2 not.
 3 Call your next witness.
 4 MR. McALLISTER: Kelsie Steele.
 5 THE COURT: Ms. Steele, would you please
 6 step before the clerk and be sworn.
 7 KELSIE STEELE,
 8 having been first duly sworn to tell the whole
 9 truth, testified as follows:
 10 THE CLERK: Please state your complete name
 11 and spell your last name for the record.
 12 THE WITNESS: Kelsie Marguerite Steele,
 13 S-T-E-E-L-E.
 14 THE COURT: You may inquire, Mr. McAllister.
 15 MR. McALLISTER: Thank you, Your Honor.
 16 DIRECT EXAMINATION
 17 BY MR. McALLISTER:
 18 Q. Ms. Steele, it's not generally my
 19 practice to ask a lady her age, but would you tell
 20 us how old you are?
 21 A. I'm 20 years old.
 22 Q. All right. You are the daughter of
 23 Edgar and Cyndi Steele; correct?
 24 A. That is correct.
 25 Q. Did you grow up as a family in their

1 Q. -- through the last ten years?
 2 A. Yes.
 3 Q. Have you ever seen them act out to each
 4 other?
 5 A. No.
 6 MR. McALLISTER: All right. Thank you,
 7 ma'am.
 8 THE COURT: Cross, Ms. Whelan?
 9 CROSS-EXAMINATION
 10 BY MS. WHELAN:
 11 Q. Ma'am, you were not at the Steele place
 12 on June 9th, 10th, or 11th, were you?
 13 A. No, I was not.
 14 Q. You were not a party to conversations
 15 between the defendant and Larry Fairfax, were you?
 16 A. No, I was not.
 17 MS. WHELAN: Nothing else, Your Honor.
 18 Thank you.
 19 THE COURT: Anything else, Mr. McAllister?
 20 MR. McALLISTER: No, Your Honor.
 21 THE COURT: All right. You may step down,
 22 Ms. Cochran. Thank you for being here.
 23 Is there any need to keep this witness?
 24 MS. WHELAN: No objection.
 25 THE COURT: All right. I'll leave it up to

1 home?
 2 A. Yes, with my brother and sister, my mom
 3 and dad. We grew up as a happy family.
 4 Q. All right. And can you tell us today a
 5 little bit about yourself: what you're doing,
 6 where you reside, et cetera.
 7 A. I currently, actually, just recently
 8 moved to Oregon City, Oregon. I moved in with my
 9 grandma. She is currently going through chemo
 10 with cancer. I moved in her to help her out
 11 through the chemo.
 12 Q. If you could go just a little slower,
 13 it would be very helpful for our record.
 14 A. All right. I got -- I've been -- I
 15 work full time in retail. I've been with a
 16 company for a year-and-a-half as an assistant
 17 manager. And I currently got myself back into
 18 school, enrolled at Clackamas Community College.
 19 Q. All right. And have you been working
 20 with your mother since June 11, 2010?
 21 A. You mean with the case?
 22 Q. Yes.
 23 A. I wouldn't say "working with."
 24 Definitely -- I can definitely testify she wanted
 25 to come with her own conclusion, her -- stand on

1 her own, come up with what she believed, what she
 2 knew as to be the truth. And same with my brother
 3 and sister and myself.
 4 MS. WHELAN: I would object. It's vouching.
 5 THE COURT: It's what?
 6 MS. WHELAN: I believe it's vouching.
 7 THE COURT: I don't know if it's vouching
 8 yet, but it -- well, I'm going to allow the
 9 witness's response to stand. Probably the concern
 10 may be over the subsequent questions, and you will
 11 reinterpose the objection at that time.
 12 Mr. McAllister.
 13 BY MR. McALLISTER:
 14 Q. In the course of -- well, let me ask it
 15 this way, if I can: Have you listened to the
 16 recordings in this case?
 17 A. Yes, I have.
 18 Q. On how many occasions?
 19 A. Several.
 20 Q. And these are the recordings that you
 21 heard in the courtroom of June 9th and June 10th?
 22 A. Yes.
 23 Q. And you've heard them several times
 24 before, outside the courtroom, have you not?
 25 A. Yes, I have.

1 that.
 2 MS. WHELAN: And I have one other request.
 3 The gallery behind me is getting very verbal about
 4 objections and everything else.
 5 THE COURT: I will instruct that if there is
 6 any further comments or outbursts, I will instruct
 7 the court security officer to remove anybody from
 8 the courtroom.
 9 MS. WHELAN: Thank you.
 10 MR. McALLISTER: Judge, I don't know that
 11 there has been any outbursts.
 12 THE COURT: There hasn't been outbursts.
 13 But if they are making comments that are loud
 14 enough for counsel to hear, they may be loud
 15 enough to be heard by the jury.
 16 (Sidebar concluded.)
 17 THE COURT: I'm going to overrule the
 18 objection.
 19 I would caution those in the gallery
 20 that it's extremely important that there not be
 21 any expressions -- in fact, there really shouldn't
 22 even be any discussion, even quiet whispering
 23 among yourselves. If you need to visit or want to
 24 make a comment, please step into the hallway to do
 25 so.

1 Q. Based upon living with your father for
 2 the last 20 years, do you believe that it's his
 3 voice on the recordings?
 4 MS. WHELAN: Objection. Foundation.
 5 THE COURT: Well, approach.
 6 (Sidebar commences as follows:)
 7 THE COURT: Counsel, I think that it's
 8 actually Rule 901(5) indicates that -- it's
 9 901(b)(5) -- "the identification of a voice,
 10 whether heard firsthand or through mechanic or
 11 electronic transmission or recording, by opinion
 12 based upon hearing the voice at any time under
 13 circumstances connecting it with the alleged
 14 speaker."
 15 I think that's classic what counsel is
 16 doing. I think the witness can testify, "It
 17 doesn't sound like my father's voice," period.
 18 That's about all she can say.
 19 MS. WHELAN: And, Judge, my concern is that
 20 we are trying to somehow get into the Papcun
 21 evidence through Ms. Steele and --
 22 THE COURT: I understand your concern. But
 23 if this witness is going to testify it doesn't
 24 sound like her father's voice, then, that's what
 25 she can testify to. I don't know how to preclude

1 And if you cannot do so, then I will
 2 direct the court security officer to remove anyone
 3 who feels unwilling or unable to comply with the
 4 court's order in that regard.
 5 Mr. McAllister, proceed.
 6 BY MR. McALLISTER:
 7 Q. Directing your attention back again to
 8 the recordings that you have listened to that have
 9 been identified as being made on June 9th and June
 10 10th, do you recognize your father's voice on
 11 those recordings?
 12 A. There is -- there are sounds of
 13 similarity, but the consistency of sentence
 14 structures and grammar and vocabulary is
 15 completely off.
 16 MS. WHELAN: Judge, I would object as to
 17 foundation. This witness hasn't indicated any
 18 expertise in those areas.
 19 THE COURT: Just a moment. I'm going to
 20 sustain the objection. I think the witness can
 21 testify as to the sounds. But unless there is
 22 some further foundation of background of -- I
 23 think we're getting into something more than what
 24 we discussed at sidebar.
 25 So the witness can testify as to the

1 sounds and whether she recognizes the voice; but
 2 anything beyond that, I'll sustain the objection.
 3 BY MR. McALLISTER:
 4 Q. Same question, Ms. Steele: Do you
 5 recognize the sounds as your father's voice?
 6 A. So I can properly answer the question,
 7 can you rephrase it for me?
 8 Q. Sure. Does the voice on the recording
 9 sound like your father?
 10 A. Honestly, most parts.
 11 Q. Okay. But there are parts where it
 12 does not; correct?
 13 A. No.
 14 Q. Have you been in the barn on your
 15 family's property?
 16 A. I grew up in that barn.
 17 Q. All right. Can you hear birds chirping
 18 or singing in the barn?
 19 A. Yeah. We had, actually, there up in
 20 the railing, ceiling of the barn, we had actually
 21 some birds' nests. And, you know, on occasion,
 22 maybe in the mornings, we would hear birds; maybe
 23 some throughout the day.
 24 Q. You listened to the recordings of June
 25 9th and June 10th, and there are some bird noises;

1 somebody one day is -- I base off of their
 2 relationship.
 3 Q. You've heard testimony here that your
 4 mother and father -- I'll restate that.
 5 You heard testimony here that your
 6 mother actually filed for a divorce when you were
 7 about ten years old.
 8 A. Yes. That's correct.
 9 Q. Do you recall anything about that?
 10 A. Yes, I do.
 11 Q. What is that?
 12 A. I do recall, yes, they had brought it
 13 up to myself, my brother, and my sister. Yes, I
 14 remember that day.
 15 It was -- honestly, it was a brief
 16 period that -- you know, every relationship has
 17 its problems. And they fixed their problems, and
 18 they were stronger than ever.
 19 And since that day, I have seen many
 20 acts of love from both of them: never forgetting
 21 anniversaries, birthdays, always telling each
 22 other they love each other, always talking on the
 23 phone when the other is gone.
 24 MR. McALLISTER: Thank you, Ms. Steele.
 25 THE COURT: Before -- Counsel, I did want to

1 correct?
 2 A. Yes.
 3 Q. Do you think they're real?
 4 MS. WHELAN: Objection. Foundation.
 5 THE COURT: Sustained.
 6 BY MR. McALLISTER:
 7 Q. In listening to the recordings, there
 8 is also sounds of a train whistle; correct?
 9 A. Yes, there is.
 10 Q. In your experience, can you hear any
 11 train whistle on your family's property?
 12 A. I have never heard a train while I was
 13 within that barn.
 14 Q. Okay. While you were growing up, did
 15 your father ever, in any way, threaten you?
 16 A. Oh, goodness, no.
 17 Q. Did he ever, in any way, physically
 18 harm you?
 19 A. No.
 20 Q. Did you observe him with your mother?
 21 A. Yes.
 22 Q. What did you observe about their
 23 relationship?
 24 A. They love each other. Definitely what
 25 I look for -- what I want in a relationship with

1 clarify my prior ruling. And I'll refer you to
 2 the rule, and perhaps I'll allow Mr. McAllister to
 3 reopen.
 4 But Rule 901(b)(4), I don't think the
 5 foundation was laid for that through this witness,
 6 although that may have been where counsel was
 7 going. If counsel were -- I'll leave it to that.
 8 If you want to review the rule and if
 9 you want to talk about specific characteristics as
 10 opposed to just simply a general observation, I
 11 may well allow that line of inquiry into what, I
 12 think, speech patterns that Ms. Steele referred
 13 to.
 14 MR. McALLISTER: Judge, I'll try to ask a
 15 few more questions and see if I'm in accordance
 16 with the rule.
 17 THE COURT: All right.
 18 BY MR. McALLISTER:
 19 Q. When you were listening to these
 20 recordings, did you attempt to listen to them with
 21 a typed transcript?
 22 A. Honestly, I listened to them with the
 23 transcript and without the transcript. That way,
 24 I could analyze not only what was written on the
 25 transcript, also just being able to listen,

1 listening to how things were said.
 2 **Q.** All right. And I think you said in
 3 some parts, you thought it was your father's
 4 voice; and in other parts, you did not think it
 5 was your father's voice; correct?
 6 **A.** True.
 7 **Q.** All right. Were you listening for
 8 typical phrases that he uses?
 9 **A.** I wasn't necessarily listening for
 10 typical phrases that he used. I mean, there were
 11 some things that came out that, yes, he says that;
 12 so do several other people say that -- that were
 13 said that I did notice. The main thing that I
 14 noticed throughout it is it's just not the way
 15 that he talks.
 16 **MR. McALLISTER:** Thank you.
 17 **THE COURT:** Ms. Whelan.
 18 **CROSS-EXAMINATION**
 19 **BY MS. WHELAN:**
 20 **Q.** Ms. Steele, you were not living in
 21 Idaho on June 9th, 10th, or 11th, were you?
 22 **A.** No, I was not.
 23 **Q.** You were living in Texas?
 24 **A.** That's correct.
 25 **Q.** How long had you been living there?

1 it, Judge?
 2 **THE COURT:** No, it is not.
 3 **BY MS. WHELAN:**
 4 **Q.** Looking at that document, that comports
 5 with what your investigation found, too, doesn't
 6 it?
 7 **A.** Yes.
 8 **MS. WHELAN:** Your Honor, we would move to
 9 admit Exhibit 25.
 10 **MR. McALLISTER:** I object on hearsay grounds
 11 and lack of authentication. It also talks
 12 about --
 13 **THE COURT:** It would appear to be hearsay,
 14 Counsel. I don't know if you want to offer an
 15 exception to the hearsay rule or --
 16 **MS. WHELAN:** Well, I think I'll just ask a
 17 couple more questions, Judge.
 18 **BY MS. WHELAN:**
 19 **Q.** Trains pass by Sagle, Idaho, on --
 20 excuse me. Your investigation confirmed that
 21 trains passed through Sagle, Idaho; and that on
 22 June 9th, it passed between 6:00 and 6:45? That
 23 was what your investigation showed; correct?
 24 **A.** It was what was brought to my
 25 attention, yes.

1 **A.** I was living in Texas for, I believe, a
 2 year-and-a-half.
 3 **Q.** Are you aware that, according to the
 4 BNSF Railroad, there is a train that goes in Sagle
 5 from 6:00 to 6:45 p.m. on June 10th?
 6 **A.** One train --
 7 **Q.** Okay. And it happens --
 8 **A.** -- yes. Three miles -- approximately
 9 three miles away.
 10 **Q.** And it happens at nighttime?
 11 **THE COURT:** We need to go one at a time.
 12 Wait until Ms. Whelan has completed the question
 13 before you start to respond.
 14 And, Ms. Whelan, wait for the response
 15 to be completed before you ask your next question.
 16 Proceed.
 17 **BY MS. WHELAN:**
 18 **Q.** The train comes at night, doesn't it?
 19 **A.** Within that time period of the
 20 recording, there is one train that goes by.
 21 **Q.** Okay. And you know that because you
 22 checked, as well?
 23 **A.** Yes, that's correct.
 24 **Q.** And so I'd like you to look --
 25 **MS. WHELAN:** The jury camera isn't on, is

1 **Q.** Okay. And on June 10th, it passed from
 2 6:00 p.m. to 6:40 p.m.? That's consistent with
 3 your investigation, isn't it?
 4 **A.** I'm going to be one hundred percent
 5 completely honest. It's what was directly brought
 6 to my attention. I'm not sure if those -- that
 7 exact time range. I think I actually had a
 8 broader time range.
 9 **Q.** And when you listened to these
 10 recordings -- in fact, you had a conversation with
 11 your father and told him you didn't know if you
 12 were supposed to be listening to them, didn't you?
 13 **A.** To the recordings?
 14 **Q.** Mm-hmm.
 15 **A.** Back then, at one point, you know, I
 16 kind of hesitated. I wasn't -- I wasn't sure.
 17 And then it was brought to my attention that I
 18 was. And then I kind of had a "Oh, wait," like --
 19 but, you know, it was brought to my attention that
 20 it was okay.
 21 **Q.** And you listened to those recordings at
 22 your mother's lawyer's office?
 23 **A.** I was -- I listened to them with the
 24 lawyers, yes.
 25 **Q.** Right. Now, you don't want to believe

1 that your dad would want your mother killed, do
 2 you?
 3 A. I don't believe it.
 4 Q. You wouldn't want to believe it,
 5 either, would you?
 6 A. I don't believe it.
 7 Q. I understand. My question is, Miss:
 8 You don't want to believe it?
 9 A. Of course, I don't want to. And I
 10 don't. And it's not because I don't want to.
 11 MS. WHELAN: Your Honor, I would move to
 12 strike the last part, please.
 13 THE COURT: I'll strike the last comment.
 14 The question was pretty direct. So if
 15 you would just answer counsel's question.
 16 Mr. McAllister will have a chance to allow you to
 17 explain your answer a little more fully, if you
 18 wish.
 19 Ms. Whelan.
 20 BY MS. WHELAN:
 21 Q. You -- and your father asked you to do
 22 numerous things from jail, didn't he?
 23 A. Well, yes, like send him books.
 24 Q. You sent him books and magazines?
 25 A. Yes, that's correct.

1 A. Yes. And I did my best to get him the
 2 books that he wanted. Not all of them were
 3 available, though, in the paperback restrictive
 4 that the jail wanted.
 5 Q. And if you sent your father the wrong
 6 book, he made sure and corrected you, didn't he?
 7 A. He would let me know if I messed up.
 8 Q. Did you ever hear your dad use the term
 9 "Mission Impossible"?
 10 A. To be completely honest, I don't
 11 recall.
 12 Q. And you -- what's your education
 13 background?
 14 A. My education background is I -- I did a
 15 mixture of home school and public schooling. I
 16 attended Sandpoint High School specifically for
 17 music classes. Of course, I wanted to go to more
 18 music classes than I could with the academics at
 19 the high school. So, in my choice, I took up
 20 Internet courses so I could study more music at
 21 the local high school. And then, I mean, from
 22 there, I did go and obtain my GED.
 23 Q. Okay. Any college degree?
 24 A. No college degree. I had started at
 25 Spokane Falls Community College; though, due to

1 Q. Books on Russian?
 2 A. Yes, that's correct.
 3 Q. Where did the money come to send those?
 4 A. Some of the money my mom did supply for
 5 me. I did pay for quite a bit of it at the
 6 beginning. And then, from there, yes, we did
 7 actually, at one point, started receiving
 8 donations from people who believed in my dad.
 9 Q. And you used that money, didn't you?
 10 A. To pay for books and magazines.
 11 Q. And sometimes you sent the wrong
 12 magazines, didn't you?
 13 A. What do you mean, sent the wrong ones?
 14 Q. You sent magazines that your dad hadn't
 15 asked for, or he didn't want those, did he?
 16 A. Well, I sent some that I thought he
 17 might be interested in, as well, to keep him
 18 occupied. He didn't have anything else to do.
 19 Q. And even from jail, he called you and
 20 told you that those were the wrong ones and to
 21 take care of it, didn't he?
 22 A. From there, I would try getting him the
 23 right books.
 24 Q. Your father was very particular as to
 25 what he wanted, wasn't he?

1 nobody would hire me because I was going to
 2 school -- I didn't have the free schedule -- and I
 3 needed to pay rent on the place I was living at
 4 somehow, I ended up having to get a job. And,
 5 unfortunately, I had to drop out.
 6 And thankfully, finally, I have been
 7 able to financially be able to get myself back
 8 into school to be able to obtain a college degree.
 9 Q. But you don't currently have a college
 10 degree; correct?
 11 A. No. I don't think most 20-year-olds
 12 do.
 13 MS. WHELAN: Your Honor, I'd move to strike.
 14 I'm just trying to establish a foundation.
 15 THE WITNESS: I do not.
 16 BY MS. WHELAN:
 17 Q. You don't have a background in audio
 18 engineering?
 19 A. No, I do not.
 20 Q. You don't have a background in
 21 phonetics?
 22 A. No.
 23 Q. You aren't a speech therapist?
 24 A. No.
 25 Q. You have no specialty in speech

1 patterns or speech identification of anything, do
 2 you?
 3 A. No, I do not.
 4 MS. WHELAN: May I have just a moment,
 5 Your Honor?
 6 THE COURT: Yes.
 7 MS. WHELAN: Thank you. Nothing else,
 8 Your Honor.
 9 THE COURT: Redirect?
 10 REDIRECT EXAMINATION
 11 BY MR. McALLISTER:
 12 Q. Ms. Whelan asked you questions about
 13 Russian books. Do you recall that?
 14 A. Yes.
 15 Q. You were aware of the fact that your
 16 father was working a case involving a Russian
 17 bride scam; correct?
 18 A. Yes, I was.
 19 Q. Was your mother aware of it?
 20 A. Yes, she was.
 21 Q. What was your perception of it?
 22 A. Again, to be completely honest with
 23 you, it was something that I didn't know a whole
 24 lot about. It was kind of -- honestly, my dad and
 25 I would talk some about his legal courses and so

1 wanted to express?
 2 MS. WHELAN: Your Honor, I object to the
 3 form of the question.
 4 THE COURT: Counsel, I'm going to sustain
 5 the objection.
 6 The witness can testify as to specific
 7 factors regarding -- you know, that may lead her
 8 to her belief, but her belief is not relevant.
 9 And I think that's where we're going, directly or
 10 indirectly, regardless.
 11 So I'm going to sustain the objection.
 12 BY MR. McALLISTER:
 13 Q. Based upon your own investigation in
 14 listening to the tapes, you've reached your own
 15 personal conclusion, have you not?
 16 A. Yes.
 17 Q. And you're still supporting your
 18 father; correct?
 19 A. Yes, 100 percent.
 20 MR. McALLISTER: Thank you.
 21 THE COURT: Anything else?
 22 MS. WHELAN: No, Your Honor. Thank you.
 23 THE COURT: You may step down. Thank you.
 24 Call your next witness.
 25 MR. McALLISTER: The government [sic] would

1 forth. You know, it would kind of come up with,
 2 "Oh, what's new with you?" especially when I would
 3 come home to visit.
 4 You know, he told me about it one day.
 5 And it tends to be -- honestly, with a lot of the
 6 legal courses, he would -- we would kind of
 7 wrestle around the conversation, and I would kind
 8 of back out just because it was -- it wasn't a
 9 huge interest for me. I was interested in what he
 10 was doing, which is why we got to the topic. But
 11 getting into more details, it was kind of not a
 12 huge common interest at the time.
 13 Q. Was it also kind of a joke around your
 14 house?
 15 A. Yes.
 16 Q. All right. Ms. Whelan asked you --
 17 well, I'll ask the question this way: Why don't
 18 you believe that your father would hire someone to
 19 kill your mother?
 20 MS. WHELAN: Objection. Relevance, and I
 21 believe it's ultimate issue, 609.
 22 THE COURT: Sustained.
 23 BY MR. McALLISTER:
 24 Q. When Ms. Whelan wouldn't let you answer
 25 the question, was there some reason that you

1 recall Cyndi Steele.
 2 THE COURT: Ms. Steele, would you please
 3 retake the witness stand. I don't think we
 4 released you; and, therefore, you're still under
 5 oath.
 6 CYNDI STEELE,
 7 having been previously sworn to tell the whole
 8 truth, testified as follows:
 9 THE COURT: I'd just remind the witness, you
 10 are still under oath.
 11 You may inquire of the witness.
 12 DIRECT EXAMINATION
 13 BY MR. McALLISTER:
 14 Q. Ms. Steele, just for the record, you're
 15 the same Cyndi Steele that testified earlier in
 16 this trial; correct?
 17 A. Yes.
 18 Q. I've placed on the monitor Exhibit
 19 2001. If you could review that, please.
 20 A. I have.
 21 Q. Are you familiar with this document?
 22 A. Yes, I am.
 23 Q. Did you assist in having your mother
 24 sign the document?
 25 A. Yes, I did.

<p style="text-align: right;">1260</p> <p>1 Q. Did you see her sign the document?</p> <p>2 A. Yes.</p> <p>3 Q. Was the document written as a letter of</p> <p>4 authorization to allow your mother's son-in-law,</p> <p>5 Edgar Steele, to serve as a power of attorney?</p> <p>6 A. Yes, it was.</p> <p>7 Q. And was it used in accordance with</p> <p>8 attempting to modify the loan on your mother's</p> <p>9 house?</p> <p>10 A. It was -- well, modify -- it was -- we</p> <p>11 were -- it was an attempt to possibly get what</p> <p>12 they call a reverse mortgage, so that maybe she</p> <p>13 could stay in the home, which didn't work. So</p> <p>14 then it went into a modification. And then,</p> <p>15 eventually, it went into helping her because none</p> <p>16 of those were working, and her house was going to</p> <p>17 be foreclosed on. So all issues around her --</p> <p>18 helping her with her house.</p> <p>19 Q. All right. In other words, your mother</p> <p>20 gave your husband a power of attorney?</p> <p>21 A. Yes, she did.</p> <p>22 MR. McALLISTER: I would offer Exhibit 2001,</p> <p>23 Your Honor.</p> <p>24 THE COURT: Any objection?</p> <p>25 MR. HAWS: Relevance, Your Honor.</p>	<p style="text-align: right;">1261</p> <p>1 THE COURT: I'm not sure I see the relevance</p> <p>2 myself. Perhaps -- could you, through some</p> <p>3 further questions, perhaps tie it in? I'm --</p> <p>4 MR. McALLISTER: Well --</p> <p>5 THE COURT: Or, if not, we can discuss it at</p> <p>6 sidebar, but I prefer not to if we can just --</p> <p>7 MR. McALLISTER: Judge, I think I best make</p> <p>8 the argument to you at sidebar.</p> <p>9 THE COURT: All right. Approach.</p> <p>10 (Sidebar commences as follows:)</p> <p>11 THE COURT: Mr. McAllister, I may be getting</p> <p>12 dense. As I understand, it's a power of attorney</p> <p>13 issued by Mrs. Steele's mother granting Mr. Steele</p> <p>14 a power of attorney to represent her in doing some</p> <p>15 business with regard to a loan.</p> <p>16 MR. McALLISTER: That's correct.</p> <p>17 THE COURT: Now, why is that relevant?</p> <p>18 MR. McALLISTER: Because they have charged</p> <p>19 him with attempting to kill her. And this is</p> <p>20 inconsistent with the charges. It's right on</p> <p>21 point, Judge. Why would --</p> <p>22 THE COURT: Why is it inconsistent with the</p> <p>23 charges?</p> <p>24 MR. McALLISTER: Because why would somebody</p> <p>25 spend their own money, why would somebody act as a</p>
<p style="text-align: right;">1262</p> <p>1 power of attorney if they intended in any way to</p> <p>2 harm her or kill her?</p> <p>3 I think it goes to the heart of the</p> <p>4 charges. It's conduct inconsistent with the</p> <p>5 government's charges.</p> <p>6 THE COURT: Conduct by who?</p> <p>7 MR. McALLISTER: By Edgar Steele, by</p> <p>8 agreeing to do it. By -- and the next exhibit is</p> <p>9 the check he wrote.</p> <p>10 THE COURT: So if you have a power of</p> <p>11 attorney for someone, that precludes you from</p> <p>12 developing the intent to kill them if you're --</p> <p>13 have some interest in -- I'm just not seeing the</p> <p>14 connection.</p> <p>15 MR. McALLISTER: Certainly does not preclude</p> <p>16 you from killing them, but it certainly is strong</p> <p>17 evidence of inconsistency of the fact that you had</p> <p>18 no intent to kill them.</p> <p>19 If the government wants to say it was</p> <p>20 somehow a ruse, that's fine, but I'm just showing</p> <p>21 his conduct that's inconsistent with a man who is</p> <p>22 going to murder his mother-in-law.</p> <p>23 THE COURT: Mr. Haws, do you want to weigh</p> <p>24 in?</p> <p>25 MR. HAWS: Well, what these charges are</p>	<p style="text-align: right;">1263</p> <p>1 about, Your Honor --</p> <p>2 THE COURT: Step to the mic.</p> <p>3 MR. HAWS: What these charges are about is</p> <p>4 the defendant's intention to kill his</p> <p>5 mother-in-law and his -- and his wife. It has</p> <p>6 nothing to do with whether he was willing to do</p> <p>7 legal work for them back six months earlier. And</p> <p>8 it's just not relevant to what we're doing here.</p> <p>9 Besides, this witness is really not in</p> <p>10 a position to testify as to the legal arrangement</p> <p>11 or speak for her mother or speak for the</p> <p>12 defendant, either one.</p> <p>13 So I think we've got the wrong witness</p> <p>14 if we want to cover this in any event. It's not</p> <p>15 relevant, and there is certainly not sufficient</p> <p>16 foundation for it.</p> <p>17 THE COURT: Well, Mr. McAllister, I just</p> <p>18 don't see the connection. I mean, if all it did</p> <p>19 is indicate that Mr. Steele was given a power of</p> <p>20 attorney by Ms. Kunzman -- now, I'm not suggesting</p> <p>21 that the motive here was financial or that</p> <p>22 Mr. Steele was in some way trying to obtain some</p> <p>23 financial benefit through, you know, murdering his</p> <p>24 mother-in-law, assuming the government's -- you</p> <p>25 know, accepting the government's allegations here.</p>

1 But, even so, I just don't see the
2 connection between the two. Now, maybe -- that's
3 why I suggested maybe there is a next step that
4 might tie this in and make it relevant. But at
5 this point, I just don't see its relevance.

6 MR. McALLISTER: Well, the next exhibit,
7 Judge, is the check that was used to pay the
8 mother-in-law's mortgage. And I'm going to offer
9 that, as well.

10 These were all -- the foundation has
11 been laid for these through Cyndi Steele. She
12 said it was his [sic] mother's signature. She
13 said she was involved in working with her mother
14 and her husband in getting this done.

15 MR. HAWS: If I may respond, Your Honor.

16 THE COURT: Yes.

17 MR. HAWS: Under the rule of relevance, it's
18 whether or not this makes an issue in the case
19 more or less likely. And these documents don't do
20 that.

21 THE COURT: Well, the issue that
22 Mr. McAllister is arguing is that he had -- it's
23 inconsistent with an intent to murder the person
24 from whom he had a power of attorney, but I -- I'm
25 sorry. I just don't see the connection. I'll

1 THE COURT: Well, what's --

2 MR. HAWS: The power of attorney -- I'm
3 sorry.

4 THE COURT: The power of attorney is in
5 December of --

6 MR. McALLISTER: The power of attorney is in
7 December, and the check and the letter are in May.

8 MR. HAWS: These letters don't say anything
9 with regard to an intent, Your Honor. These
10 letters don't say anything with regard to intent,
11 the defendant's intent, which is relevant here.

12 MR. McALLISTER: It's the defendant's
13 actions, what he did, that -- obviously, they
14 don't talk about his intent, but they show his
15 intent by his actions.

16 Why would he give her \$2,779.37? Why
17 would he take the trouble to write a letter to
18 Wachovia Mortgage if he was going to kill her?
19 That's the argument.

20 MR. HAWS: Well, the other side of the
21 argument is that: Why wouldn't he do that? And
22 that has nothing to do with his intent to commit
23 murder. It's not necessarily inconsistent.

24 MR. McALLISTER: He would do it because he
25 had no intention to kill his mother-in-law, and he

1 sustain the objection.

2 MR. McALLISTER: And I take it --

3 THE COURT: You have a continuing objection.
4 Let's just deal with that as to 2001.

5 MR. McALLISTER: I'm going to offer this --
6 the next two, as well, Judge, if you want to deal
7 with those, as well.

8 THE COURT: Well, if you can do it now or
9 just offer them, however you want. But I -- you
10 know, if you want --

11 MR. McALLISTER: Well, it's -- individually,
12 on the power of attorney, Judge, it -- it's my
13 position that the issue that the government has to
14 prove is that he intended to kill his
15 mother-in-law and that these activities -- the
16 power of attorney, the check, and the letter to
17 Wachovia Mortgage -- all show a pattern of
18 conduct, actual actions that he took that are
19 relevant to the point of whether or not he formed
20 an intent to kill her. That's why they're
21 relevant.

22 THE COURT: And these were all in December
23 of 2009?

24 MR. McALLISTER: No. It's May 20th, 2010.
25 And it's --

1 was trying to help her. That's why he did it.

2 And the proof is in the funds that he spent.

3 THE COURT: Well, so it's funds he actually
4 spent on her behalf?

5 MR. McALLISTER: That is it.

6 THE COURT: Or funds that he received
7 through her power of attorney and then forwarded
8 to her?

9 MR. McALLISTER: No, no. I don't think he
10 received these funds through the power of
11 attorney. I think that --

12 THE COURT: So the check comes from the
13 bank?

14 MR. McALLISTER: Yes.

15 THE COURT: Okay. I'm still sustaining the
16 objection. That's as to 2001.

17 What are the other exhibits, so that
18 we don't -- unless you want to offer them in front
19 of the jury. It's 2001 and -2 and -3?

20 MR. McALLISTER: Yes.

21 THE COURT: All right. That will be the
22 court's ruling.

23 MR. McALLISTER: As to all three?

24 THE COURT: Except these are not marked
25 properly. I think -- did I --

<p style="text-align: center;">1268</p> <p>1 MR. HAWS: Those ones were brought up here, 2 Your Honor. 3 THE COURT: Okay. Yeah. 2001, -2, and -3, 4 I have an extra copy here. All right. 5 (Sidebar concluded.) 6 THE COURT: The objection is sustained. 7 BY MR. McALLISTER: 8 Q. Mrs. Steele, in May of 20 -- in May of 9 2000 -- May 19th, 2010, did you and your husband 10 provide the funds necessary to basically save your 11 mother's house from foreclosure? 12 MR. HAWS: Objection. Relevance. 13 THE COURT: Counsel, with that further 14 explanation, which I don't think was provided at 15 sidebar, I'll allow the witness to answer. And 16 then I may reconsider on my prior ruling. 17 Go ahead. You may answer. 18 THE WITNESS: Please ask it again. 19 BY MR. McALLISTER: 20 Q. On May the 19th, 2010, did you and your 21 husband provide a check in the amount of \$2,779.37 22 to Wachovia Mortgage to save your mother's house 23 from foreclosure? 24 A. I thought it was the 20th, but it could 25 have been the 19th. I think the check was written</p>	<p style="text-align: center;">1269</p> <p>1 on the 19th, and it was mailed on the 20th. But, 2 yes, we did, in that amount. 3 Q. All right. And did your mother get to 4 keep her house? 5 A. No. But it was a decision -- because 6 of her health and that, she decided to put it on 7 short sale. She did get it sold -- oh, I can't -- 8 things have been so mixed up, but a few months ago 9 and has since moved. Because of her health 10 continually decreasing, she just -- it became an 11 issue of not -- her not being able to handle the 12 place. 13 Q. All right. And it was put up for sale 14 ultimately? 15 A. Yes, it was. 16 Q. All right. 17 MR. McALLISTER: Your Honor, I would offer 18 2001, 2002, and 2003. 19 THE COURT: Would you put them on the screen 20 so I can look at them again? 21 MR. McALLISTER: That is 2001. 22 THE COURT: All right. Now 2002. And the 23 2003. 24 All right. I'm going to allow the 25 exhibits. I'm going to reconsider and admit 2001,</p>
<p style="text-align: center;">1270</p> <p>1 2002, and 2003. 2 (Defendant's Exhibits 2001, 2002, and 3 2003 admitted.) 4 THE COURT: I don't -- do you want to show 5 them to the jury? 6 MR. McALLISTER: Yes, Your Honor, briefly. 7 BY MR. McALLISTER: 8 Q. Mrs. Steele, do you recognize what's 9 been marked as Exhibit 2003? 10 A. Yes, I do. 11 Q. And it's dated May 19th, 2010; correct? 12 A. Yes, it is. 13 Q. And it's a check in the amount of 14 \$2779.37, payable to Wachovia Mortgage; correct? 15 A. Yes. 16 Q. And underneath it, it says -- it says, 17 "Re: J. Kunzman loan," and the number; correct? 18 A. Yes, it does. 19 Q. And that is your mother, is it not? 20 A. Yes, Jacquanette Kunzman. 21 Q. Where did these funds come from? 22 A. It came from -- well, it came out of 23 our banking account, which was off of the silver 24 that was -- that was being sold. 25 Q. All right. And did your husband</p>	<p style="text-align: center;">1271</p> <p>1 approve of this? 2 A. Actually, it was his offer to do that 3 for my mom. And because she is my mom, I mean, I 4 certainly agreed, but he made the offer to do that 5 instead of allowing her to leave -- to lose her 6 home, so that she could have a place to live 7 longer until we could get the house -- or my mom 8 could get the house sold. 9 Q. And if you could look at Exhibit 2002. 10 That's a letter written on your husband's 11 stationery addressed to the mortgage company 12 telling them that the check is enclosed; correct? 13 A. Correct. 14 Q. All right. As I understand it, the 15 first time you heard that your husband was accused 16 of attempting to murder you was from FBI Agent 17 Sotka or the other FBI agents when you were at 18 your mother's house on June 11th; correct? 19 A. It was -- well, the first was the two 20 agents; the one that testified the other day, and 21 the other was a gal who I don't remember her name. 22 That was the first time I had heard that. 23 And then -- and then Agent Sotka 24 confirmed it by a phone conversation when the 25 agents got him on the phone.</p>

1 Q. All right. Did you ask to hear the
2 recordings that were described to you in part by
3 Agent Sotka originally on June 11th?

4 A. You know, I believe I asked for the
5 tapes. I'm not sure I asked Sergeant Sotka at
6 that time, because I was in such disbelief that --
7 but I do know that the next day, I was asking
8 for them.

9 MR. HAWS: Object to the -- object to the
10 rambling answer, which is nonresponsive. I also
11 object to the fact that this has already been
12 covered in prior examination of this witness.

13 THE COURT: Well, I'm not sure I would
14 describe it as "rambling." If you want to say
15 it's a narrative response, that's a little more
16 polite way to put it, Mr. Haws. But I think
17 that's the point you're making, and it is probably
18 objectionable for that reason.

19 I'm also concerned, though, that we not
20 replot the same ground that may have been covered
21 on the cross-examination of Ms. Steele when she
22 was called as a witness for the government.

23 So let's step back and ask a question
24 of the witness and try to stay away from areas
25 that have already been covered.

1 telling me I was going to be killed. I had
2 to -- I wouldn't -- I wouldn't have been human --

3 Q. What did you --

4 A. -- if I hadn't questioned.

5 Q. Did anything help you resolve those
6 doubts?

7 A. Mostly, once I listened to the tapes
8 with an open mind -- because that was -- I had to
9 decide, because my life was at stake, to make a
10 true -- I don't want to say "analysis," but to
11 listen to those tapes and know what the truth was,
12 whether I liked it or not. Plus, putting things
13 together that I was investigating that were either
14 matching or a lot of times not matching what I
15 knew was true.

16 Q. All right. Now, you used the word
17 "tapes." And I used the word "recordings." So
18 whenever you say "tapes," you really mean the
19 recordings; correct?

20 A. Well, yes. I've heard both terms and
21 know that there is a difference. And now I'm so
22 confused which is the right technical word. So,
23 yes.

24 Q. All right. In other words, you have
25 never seen a tape-recording. You have seen disks

1 Proceed.

2 BY MR. McALLISTER:

3 Q. When were you first able to hear the
4 recordings?

5 A. June 21st.

6 Q. And in the recordings -- or let me
7 rephrase that question.

8 In a telephone conversation with your
9 husband from the jail to you, you talked to him
10 about some doubts you had; correct?

11 MR. HAWS: Objection. Foundation. And I
12 believe that it's also been covered already.

13 THE COURT: I don't recall. I'm going to
14 give the witness -- or counsel some leeway here
15 because I frankly just don't recall.

16 Proceed.

17 BY MR. McALLISTER:

18 Q. In your phone call with your husband on
19 June 13th, 2010, from the jail, did you make the
20 statement: "Yes, I wouldn't be human if I didn't
21 have doubts when the FBI is telling me that my
22 husband wanted to kill me." Correct?

23 A. I don't know I said that, but I had --
24 I told him I had doubts. And I -- you know, I had
25 doubts. I was examining everything. The FBI was

1 that contain a recording; correct?

2 A. Disks.

3 Q. All right. Now, on June 21st, when you
4 were allowed to listen to the recordings, did that
5 help resolve any doubts?

6 A. Absolutely.

7 Q. Why?

8 A. Well, actually, for many reasons.

9 Q. Let's take them one at a time, if we
10 can.

11 A. Noise. Back -- you know, the
12 background didn't match what I knew from the barn.
13 Birds chirped in the morning. Trains I couldn't
14 hear out at the barn. The tapes -- the recordings
15 were both on --

16 MR. HAWS: Objection, Your Honor --

17 THE WITNESS: -- June 9th and 10th.

18 THE COURT: Excuse me. Just a moment. When
19 there is an objection, please stop your answer so
20 I can rule.

21 Now, what's the objection?

22 MR. HAWS: The objection is foundation for
23 this person to be able to offer the opinions that
24 she is offering.

25 THE COURT: Well, as I noted previously up

1 to this point, the witness can identify things on
2 the recording compared to her own experience. But
3 in terms of offering an opinion, that will be
4 objectionable, and I will sustain the objection.

5 Mr. McAllister, let's put questions
6 before the witness. I would even direct you to
7 lead the witness somewhat to avoid kind of
8 narrative responses that cannot be properly
9 addressed by Mr. Haws.

10 So if you would, at least in terms of
11 foundation and getting the witness focused, I
12 would ask you to ask leading questions.

13 Proceed.

14 MR. McALLISTER: Thank you, Your Honor.

15 BY MR. McALLISTER:

16 Q. Mrs. Steele, in 26 years of marriage to
17 Edgar Steele, you're pretty familiar with his
18 voice; correct?

19 A. Yes, I am.

20 Q. And when you listened to these
21 recordings, did you -- based upon your 26 years of
22 listening to him, did you see some problems, hear
23 some problems?

24 A. Throughout the tapes, I saw many
25 inconsistencies and problems.

1 was or was not his voice, she can testify about
2 specific characteristics that were not consistent,
3 but I think the actual conclusion would
4 necessarily call for expertise, if that's clear.
5 I hope that's clear enough that we can proceed.

6 Go ahead.

7 BY MR. McALLISTER:

8 Q. What characteristics did you listen to
9 that convinced you one way or another?

10 A. His intonation, his syntax, the way he
11 takes breaks. He is very -- his intonation is
12 very up and -- I mean, very up and down. He --

13 MR. HAWS: Objection, Your Honor. This
14 calls -- the witness is expressing opinions that
15 are in the province of an expert. She has not
16 laid -- the foundation is not there.

17 MR. McALLISTER: Judge, I think she's --

18 THE COURT: Just a minute. I'm going to
19 overrule the objection. I think what the witness
20 is now describing is comparison between her
21 experience and what she listened to on the tape,
22 and it's limited just to that, because she is not
23 qualified as an expert. But she is permitted to
24 testify based upon her own experience in talking
25 to Mr. Steele.

1 Q. Was there problems in how the words
2 were spoken in terms of a flat affect or emphasis?

3 A. It was monotone.

4 MR. HAWS: Objection again, Your Honor, as
5 to foundation of this witness to be able to
6 testify as to the recordings.

7 THE COURT: Sustained. The witness can
8 testify as to variations between what she heard
9 and her experience in hearing Mr. Steele's voice,
10 but I think we have to be careful of the
11 terminology that's used, because the witness is
12 not an expert.

13 BY MR. McALLISTER:

14 Q. Based upon your 26 years of speaking
15 with your husband, did you think it was actually
16 his voice?

17 A. Did I think it was actually his voice?

18 Q. Yes.

19 A. Not actually his voice, no.

20 Q. All right. Are you saying that about
21 the entire recording or parts of it?

22 MR. HAWS: Objection. Same basis.

23 THE COURT: Just a minute.

24 Counsel, I think, for the witness to
25 testify as to what she -- whether she thinks it

1 So the objection is overruled.

2 BY MR. McALLISTER:

3 Q. Based upon your 26 years of speaking
4 and listening to your husband, you believed that
5 the grammar was inconsistent with the way he spoke
6 to you in those 26 years; correct?

7 A. Yes.

8 Q. And based upon your experience, you
9 thought that the speech pattern was inconsistent;
10 correct?

11 A. Yes.

12 Q. And based upon the intonation, you
13 believed that there were inconsistencies; correct?

14 A. Yes, I did.

15 Q. Specifically, on the recordings, there
16 is a discussion about someone remaining a
17 paraplegic. Have you ever discussed that with
18 your husband?

19 A. My husband and I -- well, my husband
20 discussed that in years past. But primarily after
21 his aortic aneurysm, he discussed that a lot
22 and -- because they had told me he could have been
23 a vegetable. And he would always talk about not
24 wanting to be left like that.

25 And, you know, because of his state of

<p style="text-align: right;">1280</p> <p>1 it being so important to his life, I can't be 2 assured he didn't tell other people that. Because 3 he told me he would not -- 4 MR. HAWS: Objection, Your Honor. 5 THE WITNESS: -- want to be left as a -- 6 THE COURT: Just a moment. There is an 7 objection. 8 MR. HAWS: Objection. Narration, exceeding 9 the scope of the question. 10 THE COURT: Sustained. The question was: 11 Have you ever discussed that with your husband? 12 And that could have been answered yes or no. 13 Mr. McAllister, could you put 14 another -- 15 Again, Ms. Steele, it's difficult. 16 Mr. Haws has the right to object when a response 17 he feels is not in keeping with the rules of 18 evidence, but he can't interpose an objection if 19 what you're testifying to is in a narrative form. 20 If you'll listen carefully to 21 Mr. McAllister's questions, just answer them 22 directly, I think that will facilitate our moving 23 forward a little more efficiently. 24 Mr. McAllister. 25 BY MR. McALLISTER:</p>	<p style="text-align: right;">1281</p> <p>1 Q. In the recordings, Mrs. Steele, there 2 is a discussion about life insurance; correct? 3 A. Please repeat that. 4 Q. In the recordings, there was a 5 discussion about insurance; correct? 6 A. Yes. 7 Q. And isn't it true that you do not have 8 a life insurance policy? 9 A. No. We canceled it. 10 MR. HAWS: Objection. Relevance. 11 THE COURT: Overruled. 12 BY MR. McALLISTER: 13 Q. Go ahead, Mrs. Steele. 14 A. We had canceled it a few years ago. 15 Our children were grown, and we couldn't really 16 afford it. 17 Q. All right. On the recordings, there is 18 a discussion about you having a boyfriend. Do you 19 recall that? 20 A. Yes. 21 Q. Did you ever have a boyfriend? 22 A. No. 23 Q. Did Agent Sotka question you about 24 that? 25 A. Actually, told me that I had -- that</p>
<p style="text-align: right;">1282</p> <p>1 they had an investigator -- 2 MR. HAWS: Objection. 3 THE WITNESS: -- and pictures. 4 THE COURT: Just a moment. 5 MR. HAWS: Objection, Your Honor. Hearsay. 6 MR. McALLISTER: I think it's -- 7 THE COURT: Just a minute. Overruled. 8 Well, I'm going to overrule the objection. It was 9 a statement -- actually, there was a question 10 about whether a question was asked by the FBI 11 agent, who, I think, would -- under 801(d)(2)(D), 12 would not be hearsay. 13 Rephrase the question, though, if you 14 would. 15 BY MR. McALLISTER: 16 Q. Did Agent Sotka actually accuse you of 17 having a boyfriend? 18 A. Yes. 19 MR. HAWS: Objection. Form of the question. 20 THE COURT: Sustained. 21 BY MR. McALLISTER: 22 Q. I'll ask the question this way: Agent 23 Sotka raised the issue to you about whether or not 24 you had a boyfriend; correct? 25 A. Yes.</p>	<p style="text-align: right;">1283</p> <p>1 Q. And you denied that to him, did you 2 not? 3 A. Yes. 4 Q. And that was the truth? 5 A. Yes. 6 Q. In your investigation, did you 7 frequently talk with Agent Sotka? And when I say 8 "frequently," how many times did you talk to Agent 9 Sotka? 10 A. I have never really counted, but 11 between -- between June 11th until, oh, 12 somewhere -- I don't know -- it might have been 13 August, end of July. I mean, you know, several 14 times. 15 Q. Did he ever tell you that Larry Fairfax 16 had admitted to putting a bomb on your car before 17 June the 15th, when it was discovered? 18 A. No. 19 Q. Okay. Did you find issues or problems 20 with the information you received from FBI Agent 21 Sotka? 22 A. Yes. 23 MR. HAWS: Objection. Relevance. 24 Objection. Foundation. 25 THE COURT: Sustained.</p>

1 BY MR. McALLISTER:

2 Q. Do you know who the individuals are
3 that were mentioned by Larry Fairfax?

4 MR. HAWS: Objection. Foundation.

5 THE COURT: Counsel, I think the question is
6 vague. I don't know -- in what context?

7 MR. McALLISTER: I'll ask it this way,
8 Judge.

9 BY MR. McALLISTER:

10 Q. Are you familiar with an individual who
11 represented Larry Fairfax named Michaud?

12 A. Yes, I am. Yes.

13 THE COURT: Just yes or no. Thank you.

14 BY MR. McALLISTER:

15 Q. Are you familiar with any other
16 individuals that Larry Fairfax mentioned?

17 A. I was familiar with the name of James
18 Maher -- Maher, Maher.

19 Q. Were you familiar with one of your
20 neighbors' names that Larry Fairfax mentioned?

21 MR. HAWS: Objection. Form of the question,
22 foundation.

23 THE COURT: Well, I -- if the witness can
24 answer, you can answer. The question is --

25 THE WITNESS: Well, he mentioned Linscott

1 BY MR. McALLISTER:

2 Q. How long ago was the dispute between
3 your husband and Mr. Linscott?

4 A. Well, it was 10, 15 years ago. It's
5 been a long time. It was when we first had moved
6 into the area.

7 Q. And was it over some work or some
8 cement?

9 A. It was either cement or -- and/or
10 gravel.

11 Q. Okay. Did it get resolved?

12 A. Yes.

13 Q. Did you ever hear your husband threaten
14 him or talk about him in a negative way?

15 A. No. The dispute got settled, and we
16 moved on.

17 Q. Mr. Fairfax said that your husband
18 wanted to have Judge Michaud killed. Do you
19 recall his testimony on that?

20 A. Yes.

21 Q. Who is Judge Michaud?

22 A. He is a judge that my husband had done
23 a few cases or such in front of. And I learned
24 later that he was also the -- well, retired judge
25 that was representing Larry Fairfax.

1 and neighbors. And so I'm not sure if you were
2 after the neighbors' names or just Linscott.

3 BY MR. McALLISTER:

4 Q. I'm interested in knowing whether you
5 know who Linscott is.

6 A. I'm aware of it. I met him on
7 occasion, but I know who he is.

8 MR. HAWS: Objection. Relevance,
9 Your Honor.

10 THE COURT: Well, I don't know yet. I'll
11 give counsel some leeway, but you need to tie in
12 the relevance pretty quickly, or I will sustain
13 the objection.

14 BY MR. McALLISTER:

15 Q. Mr. Fairfax stated that your husband
16 wanted to kill Mr. Linscott; correct?

17 A. That's what he stated.

18 Q. All right. And Mr. Linscott was in a
19 dispute with your husband, was he not?

20 MR. HAWS: Objection. Objection.
21 Relevance.

22 THE COURT: Overruled. I mean, if --

23 MR. HAWS: Objection. Foundation, as well.

24 THE COURT: The witness can testify as to
25 what she observed. Overruled.

1 Q. Are you aware -- did your husband ever
2 express any hostility towards Judge Michaud in
3 your presence?

4 A. No, because he always felt Michaud
5 ruled in his favor.

6 MR. HAWS: Objection.

7 THE COURT: Just a moment. Just a moment.

8 MR. HAWS: Objection to the narrative
9 answer.

10 THE COURT: Sustained. Sustained. Well --
11 sustained.

12 BY MR. McALLISTER:

13 Q. Without going into an explanation, you
14 never heard your husband in any way say anything
15 threatening or disparaging about Judge Michaud?

16 A. No.

17 Q. Do you believe that when you listened
18 to the recordings, that you had an open mind?

19 A. Absolutely.

20 Q. And after listening to them, what
21 was -- what was your state of mind?

22 MR. HAWS: Objection. Relevance.

23 THE COURT: Sustained.

24 BY MR. McALLISTER:

25 Q. After listening to the recordings, it

1 didn't change your opinion, did it?
 2 MR. HAWS: Objection.
 3 THE COURT: Sustained.
 4 MR. HAWS: Relevance.
 5 BY MR. McALLISTER:
 6 Q. The recordings did not do anything to
 7 assist you in believing that there was a murder
 8 plot to kill you by your husband?
 9 MR. HAWS: Objection. Same objection,
 10 Your Honor.
 11 THE COURT: Sustained. Counsel, the
 12 witness' personal beliefs are not relevant. I'll
 13 continue to sustain the objection if the questions
 14 are pointed towards that.
 15 MR. McALLISTER: Thank you, Your Honor.
 16 THE COURT: Cross-examination?
 17 MR. HAWS: Yes, Your Honor.
 18 CROSS-EXAMINATION
 19 BY MR. HAWS:
 20 Q. Good afternoon, Mrs. Steele.
 21 A. Good afternoon.
 22 Q. Let me ask you about the insurance
 23 issue. You were asked whether there was a life
 24 insurance policy, whether the Steeles had a life
 25 insurance policy. And I believe you answered that

1 Q. That's a standard provision in most
 2 policies. And it was in your policy; isn't that
 3 correct?
 4 A. Yes.
 5 Q. Okay. At one point, your husband did
 6 have some concerns about your old friends, your
 7 old boyfriends over in the Oregon City area,
 8 didn't he?
 9 A. No.
 10 Q. Didn't you testify about that the other
 11 day, when -- on direct examination with
 12 Ms. Whelan? And that he might -- your husband
 13 might have had some concerns about your
 14 interaction with old friends?
 15 A. No.
 16 Q. Your testimony -- you don't recollect
 17 that testimony?
 18 A. I don't recollect that. It seems --
 19 your question seems out of context.
 20 Q. Well, it's not out of context. I'm
 21 asking you whether you -- your husband expressed
 22 concerns about friends that you may have had in
 23 the Oregon City area?
 24 A. He never had concerns about friends I
 25 had in Oregon City.

1 you didn't have a life insurance policy; is that
 2 correct?
 3 A. Did you say I was asked?
 4 Q. I'm asking you --
 5 A. Did you ask that if I was asked?
 6 Q. Let me rephrase the question. Did you
 7 have a life insurance policy?
 8 A. No.
 9 Q. Did your husband have a life insurance
 10 policy?
 11 A. No.
 12 Q. Now, you had a black Mitsubishi
 13 Endeavor; correct?
 14 A. Yes.
 15 Q. That Endeavor was licensed in the state
 16 of Idaho?
 17 A. Yes.
 18 Q. And so in the state of Idaho, in order
 19 to operate that vehicle, you had automobile
 20 insurance on that vehicle, did you not?
 21 A. Yes, auto.
 22 Q. And you had -- included in that
 23 automobile insurance was an uninsured motorist
 24 provision and coverage, was it not?
 25 A. Yes, it's uninsured motorists.

1 Q. Was that an issue back during the
 2 divorce in 2000?
 3 A. That was never what our divorce was
 4 about in 2000.
 5 Q. No. But did that come up as an issue?
 6 Did he express that as an issue back then?
 7 A. In 2000?
 8 Q. During the -- during the divorce
 9 proceedings in 2000.
 10 A. No, that was not an issue.
 11 Q. So it's your testimony that there never
 12 was a concern raised by your husband with regard
 13 to his suspicions or jealousies about former
 14 boyfriends or old friends in the Oregon City area?
 15 A. He has never accused me or made any
 16 accusations on boyfriends.
 17 Q. So you and your husband paid \$2,779 to
 18 save your mother's house from foreclosure? Is
 19 that your testimony?
 20 A. Yes, it is.
 21 Q. Did you ask your husband to do that for
 22 you?
 23 A. No, I didn't. He -- I asked him for --
 24 if he could help my mom with legal advice. And
 25 when it came to the foreclosure, he volunteered to

1 pay that and also was willing to pay the
 2 additional 15,000 that would have caught her
 3 completely up, if necessary.
 4 **Q.** Okay. Let me -- let me just direct the
 5 questions here, Ms. Steele.
 6 But the point is that, between you and
 7 your husband, out of joint accounts, you assisted
 8 your mother with \$2,779 in the form of a check,
 9 which is Exhibit -- Defendant's Exhibit 2003;
 10 correct?
 11 **A.** I approved it, but my husband did that.
 12 **Q.** Your husband was given a power of
 13 attorney by your mother --
 14 **A.** Yes.
 15 **Q.** -- is that correct?
 16 Now, do you remember back in
 17 November -- was it November of 2009 that he had
 18 his -- his health issue with the aortic aneurysm?
 19 **A.** November 21st.
 20 **Q.** November 21st.
 21 **A.** 2009.
 22 **Q.** 2009.
 23 And that was a major event, was it not?
 24 **A.** Yes.
 25 **Q.** And he was in very poor health for a

1 **Q.** He was released December the 9th?
 2 **A.** Yes.
 3 **Q.** And he was still, then, recovering from
 4 this major event?
 5 **A.** Yes.
 6 **Q.** And it was in December -- on December
 7 11th, then, he took power of attorney to handle
 8 your mother's legal affairs?
 9 **A.** I didn't -- I -- I didn't take note of
 10 that exact date, but it was about that time, yes,
 11 because it was --
 12 **Q.** As shown -- excuse me. As shown in
 13 Exhibit 2001; correct?
 14 **A.** I didn't take it -- I can't see it.
 15 **Q.** Let me put that on the document camera
 16 for you.
 17 **THE COURT:** I'm sorry, Counsel. That's
 18 Exhibit 2001?
 19 **MR. HAWS:** 2001.
 20 **THE COURT:** Thank you.
 21 **MR. HAWS:** It's been admitted as --
 22 **THE WITNESS:** That was about the time. I
 23 mean, I can say it was that date.
 24 **BY MR. HAWS:**
 25 **Q.** So 12/11 of 2009, Ms. Kunzman signed

1 long time on account of that?
 2 **A.** Well, yes. I mean, various degrees,
 3 but, yes.
 4 **Q.** He wasn't working?
 5 **A.** He didn't have the strength to work at
 6 that time.
 7 **Q.** So in November of 2009, he didn't
 8 continue to do legal work?
 9 **A.** He had some pending cases, you know. I
 10 know that it depends on when you're talking about.
 11 Because he --
 12 **Q.** He didn't have the strength -- he
 13 didn't have the strength to do legal work, did he,
 14 at that time?
 15 **A.** He had the strength to work at his
 16 computer. When you say "strength," I'm thinking
 17 of physical strength.
 18 **Q.** Let me --
 19 **A.** I'm thinking of physical strength when
 20 you say that because we would work on the ranch
 21 together, also.
 22 **Q.** Well, let me restrict my question to
 23 November and December of 2009. In December, was
 24 he still in the hospital?
 25 **A.** Not after December 9th.

1 over power of attorney for your husband to look
 2 after her legal affairs?
 3 **A.** Yes.
 4 **Q.** When you do the chores around your
 5 place there at 1569 Talache Road and you're out
 6 around the riding arena; correct?
 7 **A.** Yes.
 8 **Q.** Feeding the horses, do you remember
 9 doing that?
 10 **A.** All the time.
 11 **Q.** Watering the horses?
 12 **A.** Yes.
 13 **Q.** And the sounds of gates opening and
 14 closing in the arena, do you remember that?
 15 **A.** Yes.
 16 **Q.** And birds chirping in the arena, do you
 17 remember that?
 18 **A.** You know, various times. Mostly in the
 19 mornings.
 20 **Q.** And you know also that the train, which
 21 is some distance away, can be heard when there is
 22 a still evening, don't you?
 23 **A.** When there is -- I didn't hear the --
 24 **Q.** Still evening. When the evening is
 25 quiet, you can hear that train from your place,

1 can't you?
 2 A. Not unless I'm outside the barn.
 3 Q. But outside the barn, you can hear
 4 that?
 5 A. Outside the barn, off in the distance,
 6 yes.
 7 Q. Okay. Now, you weren't present for the
 8 recordings that took place between Mr. Fairfax and
 9 Mr. Steele on June the 9th, were you?
 10 A. No.
 11 Q. So you did not hear how your husband
 12 spoke on that occasion, did you? The answer is
 13 yes or no.
 14 A. I can't answer that yes or no.
 15 Q. Did you hear him speak on that
 16 occasion, on June the 9th --
 17 A. No, I didn't.
 18 Q. And on June the 10th, when Mr. Steele
 19 was speaking with Mr. Fairfax outside the riding
 20 arena, you were not present for that conversation;
 21 isn't that correct?
 22 A. No, I wasn't.
 23 Q. You know, don't you, Mrs. Steele, that
 24 the voice on the June 9th, 2010, recording is the
 25 voice of your husband and the voice of Larry

1 Q. On June the 13th, which has been
 2 admitted -- that conversation of the jailhouse
 3 call from Mr. Steele to you on June 13th which has
 4 been admitted here in evidence, do you remember
 5 him saying that he thought you might have a
 6 boyfriend over in Oregon City? Do you remember
 7 that in the recording?
 8 A. He said it was a passing thought.
 9 Q. So you know that your husband did
 10 entertain the suspicion of you having a boyfriend;
 11 is that correct? That's a yes-or-no question.
 12 A. Yes.
 13 MR. HAWS: Thank you. No further questions.
 14 THE COURT: Redirect?
 15 REDIRECT EXAMINATION
 16 BY MR. McALLISTER:
 17 Q. Mrs. Steele, you have spent a good deal
 18 of time reviewing the cell phone records of your
 19 husband and your own records in this case;
 20 correct?
 21 A. Yes, I have.
 22 Q. And on June the 10th, at approximately
 23 around 9:00, there is a lengthy telephone
 24 conversation between you and your husband;
 25 correct?

1 Fairfax?
 2 A. Parts, but not all of it.
 3 Q. And you know that the voice that's
 4 heard on the recording of June 10th, 2010, is the
 5 voice of Edgar Steele and Larry Fairfax, don't
 6 you?
 7 A. No, I don't.
 8 Q. Do you remember a recording that was
 9 played here in court during your direct
 10 examination of a telephone call that was placed by
 11 Mr. Steele on June the 13th to you?
 12 A. Yes.
 13 Q. So that was shortly after his arrest on
 14 June 11th; correct?
 15 A. Yes.
 16 Q. Was that the first time you and he had
 17 had a chance to speak after his arrest, was June
 18 13th?
 19 A. No.
 20 Q. So you had spoken on another occasion,
 21 another phone call?
 22 A. Yes.
 23 Q. In fact, you had many phone calls with
 24 Mr. Steele while he was in jail, didn't you?
 25 A. Until the 15th.

1 A. Yes.
 2 Q. I believe it's 34 minutes long,
 3 according to the telephone billing records.
 4 MR. HAWS: Your Honor, I believe that we're
 5 going beyond the scope of cross-examination.
 6 THE COURT: I don't know if we are or not.
 7 I'll give you some leeway.
 8 BY MR. McALLISTER:
 9 Q. Did you have that type of phone
 10 conversation with him?
 11 A. Yes, I did. It was a long -- I don't
 12 know how long, but it was long.
 13 Q. Do you recognize the --
 14 A. I -- I --
 15 Q. Go ahead.
 16 A. What?
 17 Q. You recognized his voice?
 18 A. Yes, I did.
 19 Q. And you discussed various issues and
 20 problems of concern to both of you; correct?
 21 A. Yes.
 22 Q. Do you remember what you talked about
 23 on June 10th, the night before he was arrested?
 24 MR. HAWS: Objection. Relevance.
 25 THE COURT: Just yes or no. Do you recall?

1 THE WITNESS: Yes.

2 BY MR. McALLISTER:

3 Q. Was there anything in that telephone
4 conversation that was, in your opinion, a fight
5 between you?

6 A. No, not at all.

7 Q. Okay. What was the conversation about?

8 A. It was about my -- working on my mom's
9 house to try to get it short-saled and her health
10 issues and -- and what the next steps were, and
11 then how I was looking forward to going home and
12 he was looking forward for me going home and --
13 and saying we loved and missed each other.

14 You know, that -- because other than
15 the "love and miss you," it was primarily on how
16 to save my mom's home.

17 Q. All right. In the 26 years of your
18 marriage, has your husband, Edgar Steele, ever hit
19 you?

20 A. No.

21 Q. How many times do you think he has even
22 raised his voice to you?

23 MR. HAWS: Objection. Foundation. Form of
24 the question. Relevance. Speculation.

25 THE COURT: Overruled.

1 THE COURT: You may step down, Ms. Steele.
2 Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: Counsel, we're probably at a
5 point where we ought to just go ahead and take the
6 afternoon recess.

7 Counsel, there is the matter that we
8 discussed this morning before we started with the
9 jury. I'm not sure if that's going to be teed up
10 for us at -- I think what we might do is have the
11 jury come in about 15 minutes later, because I'm
12 not sure -- there is a time difference if -- well,
13 actually, I guess the time difference won't be an
14 issue.

15 I think there is a chance, rather than
16 have the jury come and just sit, let's have the
17 jury come 15 minutes later. We'll start at 8:45
18 with the jury and 8:15 with counsel for that
19 issue. I just don't know how long that argument
20 may take.

21 So I think, for that reason, I think
22 we're going to have to take that -- we'll just
23 proceed in that fashion and start with the jury
24 just a little bit later.

25 Ladies and gentlemen, as we take the

1 BY MR. McALLISTER:

2 Q. My question was: Do you recall on how
3 many occasions that your husband has even raised
4 his voice at you?

5 A. Well, raised his voice? He has a
6 strong voice. I can't recall because it wasn't --
7 nothing memorable. I mean, it was -- I raise my
8 voice sometimes when I'm excited.

9 Q. All right. Is it fair to say that, in
10 this case, you do not believe the charges filed
11 against your husband?

12 A. (Inaudible) --

13 MR. HAWS: Objection, Your Honor. Calls for
14 speculation.

15 THE COURT: Sustained.

16 MR. HAWS: Move to strike.

17 THE COURT: Sustained. The jury is
18 instructed to disregard the witness's last
19 response.

20 Counsel, I have already given a pretty
21 clear indication on the court's ruling on that, so
22 I'm going to ask you to refrain from those
23 questions in the future.

24 Mr. Haws, do you have any recross?

25 MR. HAWS: No further questions, Your Honor.

1 recess, I'm going to again admonish you not to
2 discuss the case among yourselves or with anyone
3 else. You are not to form or express any opinions
4 about the case until it is submitted to you.

5 Continue to follow the court's
6 admonition about juror conduct on the evening
7 recess. And I won't repeat it all except, again,
8 to remind you not to -- to be very careful to
9 avoid reading any newspaper accounts or watching
10 or listening to any radio or television accounts
11 concerning the trial. And, likewise, continue to
12 follow all of the court's directions in that
13 regard.

14 And, likewise, there are some
15 individuals who are in the courtroom today that
16 were not earlier. I have instructed everyone in
17 the courtroom to give the jurors wide berth as
18 they leave the courthouse. Allow them to proceed
19 first down in the elevators. And only after they
20 have cleared out will you be allowed to go ahead
21 and enter the general entry area around the
22 elevators.

23 And then tomorrow morning, I think the
24 jury assembly room should be free. So we'll just
25 have you reconvene at -- try to be here a few

1 minutes early. If you're here early and we're
2 done with the matter we need to take up, we'll
3 start a little sooner than 8:45, but at least be
4 here by 8:45 and be ready to go.

5 (Recess.)

6 (Jury absent.)

7 THE COURT: You're indicating that you
8 intend to call Dr. Papcun?

9 MR. McALLISTER: Well, in light of the
10 court's ruling, I thought I would raise the issue
11 at this time and determine whether or not the
12 court is going to permit the calling of Dr. Papcun
13 in light of the testimony from Kelsie Steele and
14 Cyndi Steele regarding the --

15 THE COURT: Well, I was pretty clear in
16 indicating it was -- that there would need to be
17 testimony from whatever source -- and I didn't
18 indicate what the source would be -- that the jury
19 could conclude or at least raise an issue with the
20 jury that the voices on the recording were not
21 those of Mr. Steele or that there was some
22 evidence that there had been some modification.

23 Mr. Haws, I don't want to rule without
24 hearing your side of it. If you want to take that
25 up tomorrow morning -- I don't know how that

1 that he is permitted to testify, it will be
2 difficult.

3 THE COURT: The only thing I can say is be
4 here at either 4:30 or 5:00. I've got a hearing
5 at 3:30 that will take at least an hour. And I've
6 got a conference call right now that I'm late for
7 and I have to take.

8 MR. McALLISTER: 4:30 or 5:00, or 4:30?

9 THE COURT: Well, 4:30. You may have to
10 wait until I'm done with the hearing. I've got a
11 summary judgment motion in a civil matter at 3:30.
12 All right.

13 (Court recessed at 2:31 p.m.)

14 (Court resumed; jury absent.)

15 THE COURT: What I was trying to do, and, of
16 course, I was ruling from the bench, I did not
17 have a chance to write out the decision, simply my
18 attempt to articulate my concerns.

19 I obviously found that Mr. Walsh was
20 not qualified by experience, training or education
21 to offer the opinions that he was offering. I
22 concluded that Dr. Papcun was so qualified, but
23 that his opinions would not be relevant to this
24 proceeding at that point because an issue had not
25 been raised, and his expertise would assist the

1 affects the defense in terms of getting Mr. Papcun
2 here if I permit it. But it might be better just
3 to include that on the list of things we'll cover
4 tomorrow morning. Perhaps start at 8:00 instead
5 of 8:15.

6 MS. WHELAN: Judge, I would just ask that
7 you look at the transcript that was created from
8 your ruling. Because what you said wasn't if the
9 voices were different; it was "if somebody
10 testifies that something was said that doesn't
11 appear on the tape or that something wasn't said
12 that does appear on the tape."

13 THE COURT: I understand that is what I
14 said. I guess I had envisioned there would be
15 some testimony from someone to that effect, but I
16 tried to be careful not to limit how that might
17 occur.

18 MS. WHELAN: I'm just asking that you look
19 at the transcript.

20 THE COURT: I will. I will. Is that going
21 to be a problem if we just address it tomorrow
22 morning at 8:00?

23 MR. McALLISTER: Yes, Your Honor, it will
24 be, in terms of -- in terms of getting him
25 available and having him -- if the court rules

1 jury.

2 Primarily there was no evidence that,
3 particularly given Dr. Papcun's limited testimony,
4 which was only that there were, I don't recall the
5 exact term, I will refer to them as artifacts. I
6 think there was electronic signatures and several
7 other terms used that those were unusual and
8 perhaps in greater number than he would have
9 anticipated, but he was not -- he was very careful
10 to say, "I'm not going to indicate what caused
11 those."

12 Given that limited opinion that would
13 only become relevant if, in fact, there was some
14 indication that perhaps what was on the tape was
15 not an accurate rendition of what occurred during
16 the time the conversations were being, allegedly
17 were being, recorded.

18 I will indicate that my intent was more
19 to provide an example of how I thought this was
20 going to likely come before the Court, which would
21 be some testimony that, in fact, there were
22 statements made at that time not recorded or that
23 there were items on the recording that were not,
24 in fact, said at the time.

25 Obviously we have not had that

1 predicate provided up to this point. I
2 anticipated it might come either through cross-
3 examination of Mr. Fairfax, perhaps by Mr. Steele
4 taking the witness stand. So far neither has
5 occurred.

6 What has occurred was testimony from
7 two individuals familiar with Mr. Steele's voice,
8 his cadence, his syntax, although I am not sure
9 that we should have allowed that without someone's
10 qualification to know what syntax is. But my
11 inclination now is that was probably adequate
12 under what my general intent was in ruling on
13 Dr. Papcun's testimony.

14 But I am willing to hear very brief
15 argument on the point, starting with the
16 Government since my inclination is to permit
17 Dr. Papcun to testify.

18 Again, don't push me with my own petard use
19 of the language because I know what I said, but
20 understand I was trying to think of the context in
21 which I thought that would be presented. I did
22 not anticipate that it might come in the way that
23 it did here and, therefore, my rulings kind of
24 focused more on what the underlying thought
25 process was, not the specific way in which it is

1 Communication and Technology found there was no
2 scientific process that enables one to uniquely
3 characterize a person's voice or to ID with
4 absolute certainty an individual from his or her
5 own voice.

6 THE COURT: I am assuming they are talking
7 about voice patterns captured electronically in
8 some fashion.

9 MS. WHELAN: And they may have been.

10 THE COURT: I don't know how you can say
11 scientifically a person can or cannot recognize a
12 person's voice. Go ahead. Maybe we are talking
13 about two different things. Go ahead.

14 MS. WHELAN: I don't think it is you can't
15 recognize, it is that you can't say specifically,
16 That is not the voice. And here is, Judge, what I
17 think is important.

18 What we have is the testimony of
19 Mrs. Steele and Ms. Steele saying part of the
20 tapes sounded like Mr. Steele's voice, but it
21 didn't convince them to change their mind. They
22 were not part of the conversation and, in fact,
23 they weren't even in the state when those
24 conversations occurred. It is just a lay person
25 who has spoken to somebody saying that didn't

1 presented.

2 Ms. Whelan.

3 MS. WHELAN: There is no petard in my
4 argument, Judge.

5 THE COURT: We'll see.

6 MS. WHELAN: Here is the problem: During
7 the *Daubert* hearing on the 20th and 21st, Defense
8 counsel specifically said it was not seeking to
9 introduce evidence of voice identification. There
10 is a difference. And because that was solely the
11 opinion of Mr. Walsh, it had nothing to do with
12 Dr. Papcun. And when they said they were not
13 going into it, the United States did not go into
14 the numerous independent experts and voice
15 comparisons who have shown there is no scientific
16 validity for the voice comparison. And we had a
17 stack of those starting from '79 to 2009.

18 THE COURT: I'm not sure I am tracking with
19 you. No scientific validity of voice comparison
20 where an individual can listen to a recording and
21 say, That sounds like someone I know or isn't
22 someone I know? Are you talking about electronic
23 comparisons of voice?

24 MS. WHELAN: Judge, what I can tell you is
25 in 2003 the European Conference on Speech

1 sound like his voice.

2 Now, what does the jury have? The jury
3 has the June 9 recording, the jury has the June 10
4 recording, the jury has the June 13 recording
5 between the Defendant and Rex Steele, and the jury
6 has the June 13 recording from Mr. Steele and
7 Mrs. Steele. They can listen to that and say
8 whether they believe it's the voice. They can
9 hear what is there.

10 But to bring in what Dr. Papcun is
11 going to testify about, the transients and
12 electronic signatures, and again those issues, I
13 think the Court called them artifacts, the United
14 States believes that it will result in confusion.
15 The jury can make the determination. The question
16 goes to voice identification.

17 Nobody has brought up, at least in
18 testimony, the issues with the recording. And
19 while counsel may say that it was part of the
20 letter that was written to Ms. Loginova,
21 Mr. Steele had not heard those tapes. It was his
22 speculation at that point on the dates that he
23 sent that as to what he thought could have
24 happened.

25 Judge, under *U.S. v. Castaneda*, which

1 is a Ninth Circuit case, 94 F.3d 592, the Ninth
2 Circuit held that Rule of Evidence 403 limitations
3 apply to expert testimony. That they can be
4 excluded if the probative value is substantially
5 outweighed by the danger of unfair prejudice,
6 confusion of issues, and is misleading to the
7 jury.

8 As the Supreme Court observed in
9 *Daubert*, "Expert evidence can be both powerful and
10 quite misleading because of the difficulty in
11 evaluating it. Because of this risk, the judge in
12 weighing the possible prejudice against probative
13 force under 403 exercises more control." Defense
14 said they were not going into voice
15 identification. What has been brought up is voice
16 identification. It is confusing to the jury and
17 it should not be brought up.

18 And I didn't bring up anything about
19 your ruling.

20 THE COURT: You were kind. Thank you.
21 Mr. McAllister.

22 MR. MCALLISTER: Thank you, Judge. I do not
23 intend to wax eloquently for very long at all.

24 In fairness to the Court, and I suppose
25 in fairness to the Government, it would be our

1 have before. I want everybody to know that at the
2 outset.

3 Judge, in addition to Cindy Steele and
4 Kelsie Steele's testimony, there is in this record
5 Government's Exhibit 1-A and 2, which is the
6 telephone call and the letter to Tatyana. In the
7 letter that the Government has presented it says
8 that, "A man who worked for me stole silver
9 bullion that I had hidden on my property, about
10 45,000. Then he went to the ADL, an
11 American-Jewish organization that has hated me for
12 many years I have tried as a lawyer, and because
13 of my writings and speeches the ADL manufactured
14 audiotapes using recordings this man secretly made
15 of me talking, and also using some of the many
16 thousands of hours of audio, mine available over
17 the Internet. The phoney tapes make it sound like
18 I tried to hire the man to kill my ex-wife."

19 Now, the Government put this exhibit in
20 evidence. Told the jury that, in fact, it was
21 written by Edgar Steele and that is the state of
22 the record, and he was a participant to the
23 conversation. And he is stating in writing that,
24 in fact, that someone has made phoney tapes to
25 make it sound like I tried to hire the man to kill

1 intention to call Dr. George Papcun as the next
2 witness. However, there is another issue that has
3 arisen that I think I better explain before I make
4 my argument on his testimony.

5 He is not in the country at the moment;
6 he is on a trip outside the United States with his
7 wife. This trip had been planned for I don't know
8 how long. She had recovered from a very serious
9 medical problem. It was planned, it was paid for,
10 and the Defense did not put him under subpoena
11 before he left.

12 He has been in contact with his e-mail
13 daily and he is available to testify by video
14 conference, if we could set it up by Skype just
15 like we have heard about in this trial. He is
16 prepared to do that. But I don't think he can
17 voluntarily -- I don't think he will come back
18 voluntarily to be here in person. I don't think
19 he can physically get here.

20 THE COURT: Where is he at?

21 MR. McALLISTER: Bora Bora in the south
22 seas. I want to tell the Court that. I am
23 assuming the Government is going to object to it,
24 although I think if the Court permitted a video
25 conference they could cross-examine him as they

1 my wife.

2 In addition, in the recording that was
3 played to the jury between Mr. Steele and
4 Mrs. Steele on June 13, 2010, there is a statement
5 by Mr. Steele, "This is going to be a mission
6 impossible, a world-class level production. It
7 probably is going to be multiple recordings put
8 together from me into something highly improbable,
9 and you are going to be convinced it is me
10 talking, saying these. I guarantee it isn't,
11 sweetheart. I love you dearly. I would never
12 hire, I would never be so stupid as to hire
13 somebody, least of all to kill you."

14 That is in evidence. Those are
15 statements by the Defendant that I think fall
16 under the Court's previous ruling as to
17 Mr. Papcun.

18 I want to say one more thing, Judge,
19 and that is there is no issue here that the
20 Government can't rebut this. Obviously you heard
21 their witness, and what we are asking is just that
22 the jury be able to hear both of them or any
23 additional witnesses the Government wants to call
24 in addition to who they presented at the hearing
25 on this issue previously.

<p style="text-align: right;">1316</p> <p>1 They have two other experts endorsed, 2 too, that they didn't call at the hearing. We 3 could do it all by video conferencing so we 4 wouldn't have to bring their witness back from 5 Washington and we could accomplish that. Both 6 sides would have an opportunity to cross-examine. 7 THE COURT: Let me ask you, has Dr. Papcun 8 done any further studies or evaluations such that 9 his opinions will vary from what is set forth in 10 his report or what he testified to last week? 11 MR. McALLISTER: No, he hasn't done anything 12 further. 13 THE COURT: You do not anticipate he will 14 testify any differently? 15 MR. McALLISTER: I do not. Thank you. 16 THE COURT: Response, Ms. Whelan. 17 MS. WHELAN: Judge, again, this is not 18 evidence like DNA, it is not evidence like 19 fingerprints. It is evidence of listening to and 20 deciding if it is somebody's voice. The jury has 21 two unconverted known samples -- unconverted is 22 not the right word -- uncontested known samples of 23 the June 13 calls between Mr. Steele and his son, 24 Mr. Steele and Mrs. Steele. 25 The Defense can make their arguments.</p>	<p style="text-align: right;">1317</p> <p>1 They can argue based upon what they have, and the 2 jury can compare those and listen to those. But 3 this is not DNA evidence. It is not something 4 with scientific need. 5 As far as having him testify from Bora 6 Bora, Judge, I tried to be accommodating, but 7 given this witness's unique testifying style, and 8 how he addressed himself and conducted himself in 9 court as far as answering or not answering 10 witnesses, I would want him physically present. 11 So we would object to him appearing 12 over Skype or the Internet or anything. Plus, my 13 understanding is the Court does not accept Skype. 14 What we had to do with Ms. Loginova an it was not 15 Skype, it was -- 16 THE COURT: I'm not sure. Let me say we do 17 not do Skype. The only time I have allowed 18 witnesses to testify from a remote location was 19 when an arrangement could be made to make that 20 connection using typically court-to-court, where 21 someone would appear in a court somewhere else 22 here in the United States. 23 I have no idea whether he can appear 24 from Bora Bora, and it is now after 5:00, our 25 technical folks are gone. You would have to visit</p>
<p style="text-align: right;">1318</p> <p>1 with them in the morning whether it can be done or 2 not. Our system may not be at all compatible. I 3 just don't know. If it can be arranged, that is 4 one thing. If not, that is another, and it may be 5 that he won't be the next witness to testify 6 regardless because of that. I understand your 7 point, though. 8 MS. WHELAN: In short, Judge, again, we 9 object, one, because of the type of evidence it is 10 and the jury can't test it. We object, two, 11 because we don't believe the foundation has been 12 laid. We object three, because it is confusing. 13 And fourth, because he is not available. 14 Thank you. 15 MR. McALLISTER: Judge, we know where he is. 16 I believe he is at a business center -- he will be 17 at a Four Seasons hotel. And Your Honor is right, 18 we don't know at this point whether we can make 19 the technical arrangements, but we believe we 20 could. 21 THE COURT: Here is my view: First of all, 22 I understand, Ms. Whelan, what you are saying 23 about the challenge of relying upon a witness's 24 testimony concerning whether or not it is a 25 particular individual speaking on a tape.</p>	<p style="text-align: right;">1319</p> <p>1 But as I noted, I think at one of our 2 sidebars, Rule 901(a) -- excuse me, (b)(5), 3 specifically anticipates that identifying a voice 4 is precisely the kind of thing that lay witnesses 5 would do. It sets forth the minimalist foundation 6 that would need to be laid to authenticate that 7 recording. 8 And it seems to me the opposite is 9 true, that if we can rely upon witnesses to 10 identify that this is, in fact, the voice of an 11 individual, then again, the opposite is true: You 12 can also have witnesses say that is not the voice 13 of my father or that is not the voice of my 14 husband. And that, moreover, in terms of the 15 cadence, intonation, grammar, that is not 16 consistent with the way our husband or father 17 talks. I think that raises an issue. Now, 18 whether the jury is persuaded, that is another 19 matter altogether. 20 But I think given those circumstances, 21 consistent with my pretrial ruling, and I tried to 22 make clear that I was not suggesting -- the 23 newspapers picked it up in an odd way. They 24 picked up that I was excluding Dr. Papcun, and 25 there was some reference that he might be allowed</p>

1 to testify, but I fully anticipated that we would
2 address the issue again in some posture and then I
3 would have to rule at that point.

4 But I think at this point I would allow
5 him to testify, if arrangements can be made, and,
6 of course, Dr. Papcun will have to be placed under
7 oath. It is what is good for the goose is good
8 for the gander argument. We certainly allowed
9 that with Ms. Loginova and I think we are roughly
10 in the same position here.

11 I do think, however, that Dr. Papcun
12 will need to be kept on a very tight leash, and I
13 do not anticipate allowing him to testify to
14 anything different from A, in his report and B, in
15 his examination last week.

16 I think counsel has transcripts, I am
17 assuming, and we will be able to approach that
18 appropriately. If Dr. Papcun starts wandering,
19 then I will intervene, although it is difficult to
20 do so in a live remote broadcast.

21 That will be the ruling of the Court.
22 What this does to our schedule, I don't know. We
23 will perhaps discuss that tomorrow morning. We
24 will meet at 8:15 and take up the issue of the
25 Fairfax writing, a budding Nobel author, Nobel

1 Prize for literature. We will see how that shakes
2 out tomorrow morning.

3 We will be in recess until 8:15
4 tomorrow morning.

5 (Proceedings concluded at 5:05 p.m.)
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R E P O R T E R ' S C E R T I F I C A T E

I, L i s a K . Y a n t, O f f i c i a l C o u r t

R e p o r t e r, S t a t e o f I d a h o, d o e s h e r e b y c e r t i f y :

T h a t I a m t h e r e p o r t e r w h o t r a n s c r i b e d
t h e p r o c e e d i n g s h a d i n t h e a b o v e - e n t i t l e d a c t i o n
i n m a c h i n e s h o r t h a n d a n d t h e r e a f t e r t h e s a m e w a s
r e d u c e d i n t o t y p e w r i t i n g u n d e r m y d i r e c t
s u p e r v i s i o n ; a n d

T h a t t h e f o r e g o i n g t r a n s c r i p t c o n t a i n s a
f u l l, t r u e, a n d a c c u r a t e r e c o r d o f t h e p r o c e e d i n g s
h a d i n t h e a b o v e a n d f o r e g o i n g c a u s e .

I N W I T N E S S W H E R E O F, I h a v e h e r e u n t o s e t
m y h a n d J u n e 2 4, 2 0 1 1 .

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L i s a K . Y a n t

O f f i c i a l C o u r t R e p o r t e r

C S R N o . 2 7 9

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