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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

IN RE THE INVESTIGATION)
CONCERNING:)
) GRAND JURY
) NO.
BRADLEY SMITH.)
)
)
)

Fresno, California Thursday, March 1, 2007

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS

APPEARANCES: DOUGLAS KERN, AUSA
DAVID ALLRED, AUSA
DAVID GAPPA, AUSA
4401 Federal Building
2500 Tulare Street
Fresno, California 93721

ALLEN C. MOORE, C.S.R. 2027

MOORE COURT REPORTERS (559) 732-3225/800-563-3572

000108

9 (Witness entering the hearing room at 1:02
10 p.m.)

11 THE FOREPERSON: Come on over to this chair,
12 if you would, please.

13 Mr. Smith, I'd like to swear you in,
14 please.

15 BRADLEY J. SMITH

16 being first duly sworn, was examined and
17 testified as is hereinafter set forth:

18 THE WITNESS: Yes, sir.

19 THE FOREPERSON: Would you state your full
20 name, and spell your last name for us.

21 THE WITNESS: Bradley J. Smith. S-m-i-t-h.

22 THE FOREPERSON: Thank you. You may be
23 seated.

24 EXAMINATION

25 BY MR. KERN:

26 Q Good afternoon, sir. Before we get into

1 the questions that I need to ask you today, I need to
2 review some of your rights with you. Now, before we get
3 too far gone on this, did we have the opportunity to
4 discuss your rights yesterday evening a little bit?

5 A Yes, sir.

6 Q And at that time were you able to -- were
7 you able to understand the rights as we explained them?

8 A Yeah. As far as I'm not able to have an
9 attorney appointed for me right now so we could discuss
10 my rights as far as whether I should talk.

11 Q Okay. But you understood what was said,
12 correct? Were you clear on that?

13 A Yes, sir.

14 Q Okay. I'd like to review some of those
15 rights just so we're very clear on the record. First
16 and foremost, are you here under a subpoena or are you
17 here voluntarily today?

18 A I'm here voluntarily.

19 Q Okay. Now, as you are providing testimony
20 before this grand jury today, just a moment ago you were
21 given an oath, is that correct?

22 A Yes, sir.

23 Q And that oath was to tell the truth, right?

24 A Yes.

25 Q Now, you're aware that that oath requires
26 you to give complete and candid responses to every

1 question I ask today, correct?

2 A Yes, sir.

3 Q Or whatever the grand jury may ask you?

4 A Yes, sir.

5 Q Now, sir, are you aware if you fail to give
6 complete and candid answers, or testify falsely to any
7 question asked you could be charged with perjury under
8 federal law? Are you aware of that?

9 A Yes, sir.

10 Q Now, as you provide testimony today, the
11 Fifth Amendment of the United States Constitution gives
12 you the right against self-incrimination. You are not
13 under any obligation to answer any question that anybody
14 asks if the answer to that question would tend to
15 incriminate you. Are you aware of that?

16 A Yes, sir.

17 Q If at any time I or any member of the grand
18 jury puts to you a question the answer to which would
19 tend to incriminate you, can you promise that you will
20 simply say anything to the effect of "Fifth Amendment",
21 or something like that, so we can pause the proceedings
22 and prevent anything bad from happening? Can we do
23 that?

24 A Yes, sir.

25 Q Okay. Now, under the Fifth Amendment of
26 the United States Constitution there is a right to an

1 attorney. Now, just to be very clear, today are you
2 represented by an attorney?

3 A No, sir.

4 Q Okay. Now, had you been represented by an
5 attorney today, that attorney could not be with you
6 physically in this proceeding, however, if that attorney
7 were to be present, that attorney could be present
8 outside in the hall. And were that attorney present,
9 you could call a pause to the proceeding at any time you
10 felt it necessary to confer with that attorney. But,
11 again, that attorney could not be here with you. Do you
12 understand that?

13 A Yes, sir.

14 Q Okay.

15 GRAND JUROR: Would you ask him to move the
16 microphone over so we can hear him a little better.
17 Thank you.

18 BY MR. KERN:

19 Q Now, sir, you're aware that this grand jury
20 is investigating certain allegations of possible racial
21 harassment as they apply to Mr. Alfred Henderson,
22 correct?

23 A I didn't know exactly what -- I understood
24 that you guys were investigating something, but I never
25 knew the full extent.

26 Q Okay. But you generally understand it

1 involves those allegations as they apply to Mr.
2 Henderson, correct?

3 A Yes, sir.

4 Q Now, you understand that you are a target
5 being considered for this investigation, correct?

6 A Yes, sir.

7 Q In light of the information that I've just
8 discussed, and all the rights and so forth that have
9 been considered, is it your intention to waive those
10 rights for purposes of today's grand jury investigation,
11 and provide to this grand jury testimony about the
12 incident with Mr. Henderson?

13 A Yes.

14 Q All right. Just so we're clear, has anyone
15 made any kind of threat to you to compel you to
16 participate in this proceeding?

17 A No, sir.

18 Q Have you been coerced or pressured in any
19 way to participate?

20 A No, sir.

21 Q Has anyone offered you anything of value to
22 participate today?

23 A No, sir.

24 Q Are you under the influence of any kind of
25 medication that makes it difficult for you to tell the
26 truth or remember things?

1 A No, sir.

2 Q Do you suffer from any medical condition
3 that makes it difficult for you to tell the truth or
4 relate things?

5 A (Shaking head.)

6 Q I'm going to be asking you quite a few
7 questions, as will the grand jury, and in the course of
8 those questions it's possible that you may not hear me
9 or that I or a member of the grand jury may use language
10 that you don't understand. If you don't hear a
11 question, or if you don't understand a question, can you
12 promise that you'll make that known to us so we can stop
13 and sort it out?

14 A Yes, sir.

15 BY MR. ALLRED:

16 Q Mr. Smith, you said that you're here
17 voluntarily, is that right?

18 A Yes, sir.

19 Q In fact, did you contact the FBI office and
20 ask them for permission to come and testify to the grand
21 jury?

22 A Yes, sir.

23 Q And is that the reason that you're hear
24 today?

25 A I wanted the grand jury to also hear what I
26 said, instead of everyone --

1 Q Okay. And, also, let me ask you, you said
2 earlier that you weren't sure about the scope of the
3 investigation the grand jury was looking at here. What
4 questions do you have about that?

5 A He just he told me what it was just now.

6 Q Okay. Are you satisfied that you
7 understand what the scope of the investigation is?

8 A Yes, sir.

9 Q Do you still want to continue with
10 testifying before the grand jury?

11 A Yes, sir.

12 Q Okay. And, finally, you said something
13 about yesterday we talked about potentially having an
14 attorney appointed at some point. Do you want to
15 continue to testify before the grand jury knowing that
16 you don't have an attorney and that one is not going to
17 be appointed for you?

18 A Yes, sir.

19 Q So this is something you want to do?

20 A Yes, sir.

21 MR. ALLRED Okay.

22 BY MR. KERN:

23 Q Sir, can you tell us, are you employed at
24 this time?

25 A Yes.

26 Q How are you employed? What do you do?

1 A I work for a fire -- fire extinguisher
2 company.

3 Q What company is that?

4 A Jorgensen.

5 Q I'm sorry?

6 A Jorgensen.

7 Q Where is that company located?

8 A Modesto, California.

9 Q How long have you been employed there?

10 A About three months, roughly.

11 Q So, prior to your employment with this
12 Jorgensen, were you employed before that? Did you have
13 a job before that?

14 A Flooring Liquidators.

15 Q Okay.

16 A I've had a couple of them.

17 Q Okay. Flooring Liquidators, is that also
18 in Modesto?

19 A Yes.

20 Q Have you been consecutively employed for
21 the last few years, or have there been some intervals
22 when you were not employed?

23 A There were intervals where I was not
24 employed.

25 Q Have you ever worked in a self-employed
26 capacity?

1 A Meaning?

2 Q Meaning have you ever worked for yourself
3 in a business of your own, or any attempt to make money
4 doing something by yourself, not working for anyone?

5 A Yes, sir.

6 Q What kind of things would you do when you
7 were working like that?

8 A Flooring.

9 Q Have you ever worked for yourself doing any
10 kind of CB radio repair?

11 A I worked on stuff, yes. I would fix it,
12 yes.

13 Q Okay. Now, is that something that you do
14 full time or a part time gig?

15 A That was just extra stuff.

16 Q Extra stuff? Now, sir, are you active in
17 the CB radio community in Modesto?

18 A I was, yes.

19 Q When did you first become active in that?
20 Approximately?

21 A Eight years ago.

22 Q And do you own CB radio equipment,
23 equipment that you use to project your voice over the CB
24 radio?

25 A Yes, sir.

26 Q Have you owned that for the same amount of

1 time, eight years?

2 A Just by increments.

3 Q Is it fair to say that you bought different
4 units of CB radio equipment over the years?

5 A Yes, sir.

6 Q Just so we're clear, did you use a
7 particular call sign in the Modesto CB radio community?
8 Did you go by a certain name?

9 A Yes, sir.

10 Q What was that name?

11 A Obie.

12 Q Obie. Now, was it just Obie or was it Obie
13 Won?

14 A Obie Won.

15 Q Okay. In the course of your participation
16 in the Modesto CB radio community, did you have occasion
17 to meet or speak to an individual named Alfred
18 Henderson?

19 A Yes, sir.

20 Q When did you first have the opportunity to
21 speak to Mr. Henderson on CB radio, approximately?

22 A Like I think we went about a year and a
23 half.

24 Q A year and a half?

25 A Yeah. A year and a half, almost two years
26 ago.

1 GRAND JUROR: Could you pull the mike towards
2 you a little bit? They're having a little bit of
3 difficulty hearing you up there. You've got a quiet
4 voice and it doesn't carry very well. Thank you very
5 much.

6 BY MR. KERN:

7 Q Now, sir, I'm going to ask you, in just a
8 few minutes here, a number of questions about your
9 relationship with Mr. Henderson, and how that all came
10 to pass. However, before I do that, what I want to do,
11 I guess, is pause you a little bit. What I'd like to do
12 is give you a chance to perhaps tell the grand jury in
13 your own words about what has happened between you and
14 Mr. Henderson. I can ask a bunch of questions, and I
15 will, but I know that you came to this grand jury --
16 excuse me -- I believe that you came to this grand jury
17 because you had some thoughts that you wanted to share
18 with them. So, before I ask my questions, what I'd like
19 to do is just give you a chance, and tell us what that
20 relationship was like and, in your own words, explain to
21 us basically what's going on.

22 A Well, about a year, year and a half ago --
23 I've been into the radio community for roughly eight
24 years, as I was growing up, intermittently, until I
25 moved out on my own. And I heard Mr. Henderson for the
26 first time roughly a year and a half ago to two years.

1 That's what I'm going to guesstimate the time as.

2 I -- whenever Mr. Henderson and I both
3 talked roughly the first -- or, the third or the fifth
4 time, it was very clear that, you know, both of us were
5 bumping heads at the same time. We -- we both were
6 uptight, I guess you could say, you know. Maybe it was
7 different character -- characteristics of each other's
8 person. That is where we started having problems.

9 He would come in and he was going to take
10 out the whole, you know, Modesto. He made it very clear
11 that he was going to do that. And myself and other
12 people were on the radio at the time while he was doing
13 this.

14 As it goes on, Alfred Henderson and I
15 exchange words with one another verbally. And we've
16 just -- I don't -- Mr. Henderson, around November
17 30th -- or November of -- was it 2005? Had me arrested
18 civilly. I'm guessing. I haven't actually seen the
19 police report. I had to bail out of Stanislaus County
20 Jail for five thousand dollars.

21 Once Mr. Henderson had me arrested, I was
22 kind of furious and so forth. But he's always made it
23 clear that he was going to put me in prison. And he
24 always laughed about how he took five thousand dollars
25 away from me.

26 Mr. Henderson would make me say things

1 because he would be talking about my child. He went --
2 you know, I -- he went -- you know, he would always
3 talk about, you know, my son was going to come out
4 black.

5 And, you know, we both irritated each
6 other. And if he wasn't picking on -- or, if I wasn't
7 picking on him, or if he wasn't picking on me, he would
8 make it clear that -- to do it to someone else.

9 Mr. Henderson and I, we reconciled with one
10 another many times. Many times. And it just wouldn't
11 -- it wouldn't always, you know, be worthy, you know.
12 The friendship would always break off for some reason or
13 another.

14 I don't know, I'm kind of scatter brained
15 right now, you know. Please, you know, I just want
16 everybody to know that I am the only person sitting
17 before a grand jury right now instead of everybody else
18 that has given him problems or him calling me white
19 trash and, you know, white honkey. And these are all
20 the stuff that I had to, you know, put up with and he
21 had to put up with me.

22 He has stated numerous times that he is
23 going to put me in prison and he was going to make an
24 example of me.

25 We both have problems. He's not only had
26 problems with me, but other people in Modesto. I -- I

1 mean, if you guys want to ask me, you know, ask me
2 questions. I mean, there is just, you know, a lot. I
3 mean, I've tried to get a restraining order on him.
4 Even though, you know, even though I had recordings of
5 him bothering me, it still, you know, the district
6 attorney didn't do anything. So, you know, he's made it
7 clear to everybody that his dad was an FBI Agent, or
8 retired FBI Agent, and that this is why, you know, all
9 this is going on.

10 Mr. Henderson has had problems with the
11 people that have even testified on this grand jury. The
12 individuals that have testified before you guys -- you
13 ladies and gentlemen have had problems with me and I've
14 had problems with them. And what I mean by that is that
15 most of those people have had problems with him and that
16 have called him negative things and they have, you know,
17 testified -- they're testifying -- I believe that
18 they're testifying against me to save themselves.
19 That's honestly what I think. And I don't know, I mean,
20 just --

21 Q Okay. As I promised, I'm going to ask you
22 a few more questions about this situation. But I just
23 want to be clear that what you just told us now, is it
24 pretty fair to say that was what you wanted to let this
25 grand jury know today?

26 A Well, I mean, I want them -- I want them to

1 know that in no way, shape or form am I someone that --
2 on the radio, it's almost like a character. It's kind
3 of like if you're on the Internet and you're talking to
4 someone. And the radio is -- is -- is something that,
5 you know, it's fun, but sometimes people take it out of
6 context. You don't need to understand radio. If you
7 were there listening to it you would understand what I'm
8 talking about, what I'm -- it's -- you're, you know,
9 you're someone that, you know, it's something else, you
10 know. You want to be recognized out there in the radio
11 community. And it's almost like a popularity thing, I
12 guess you could say.

13 But, yeah, I mean, I -- I'd like to think,
14 too, you know, but -- go ahead and ask me your
15 questions.

16 Q Okay. Now, you told us a few minutes ago
17 that you and Mr. Henderson had been bumping heads and
18 that you had eventually come to exchange words, is that
19 correct?

20 A Yes, sir.

21 Q We're going to get into the substance of
22 that in a moment. But, first, can you just clarify for
23 us when that dispute began? At what point did things
24 start to go downhill with you and Mr. Henderson?
25 Approximately?

26 A About whenever we -- he started gettin' out

1 -- out there on the radio.

2 Q So would it be fair to say that almost
3 immediately when he started transmitting there were
4 problems?

5 A Yes, sir.

6 Q Now, Mr. Smith, when did you first become
7 aware that Mr. Henderson was black?

8 A I cannot honestly say when I, you know, I
9 found out that.

10 Q Can you tell us generally? Were you
11 immediately aware if he was black?

12 A I cannot honestly say. You know, I've
13 thought about this, and I cannot honestly say, you know,
14 for sure if he was black. I mean, on a CB radio you
15 can't -- you cannot physically see them. People sound,
16 you know, different on the radio.

17 Q When did you first believe that he sounded
18 black?

19 A There is no sound of black. Did I think
20 that he, by the name of his, you know, his call sign,
21 you can say. Slave Driver.

22 Q So, when you first heard Mr. Henderson,
23 would it be fair to say you thought he might be black?

24 A I cannot honestly say that that was going
25 through my head.

26 Q Okay. So, from the time that you first

1 heard Mr. Henderson to the time that you ultimately
2 first met Mr. Henderson, it's your testimony that during
3 that interval of time you did not know what his race
4 was?

5 A Yes, sir.

6 Q Okay. Now, Mr. Smith, in the course of
7 your -- in the course of your exchanging words, as you
8 put it, with Mr. Henderson, did there come a time when
9 certain racial words got used by you?

10 A During the beginning of our --

11 Q Well, at any time.

12 A Yes, sir.

13 Q Now, just to be specific, and, again, I beg
14 your pardon and the pardon of the grand jury for this
15 kind of language, did there come a point when you used
16 the word nigger in reference to Mr. Henderson?

17 A Yes, sir.

18 Q Okay. And do you recall when -- when the
19 first time is that you used the word nigger in reference
20 to Mr. Henderson?

21 A No, I cannot, sir.

22 Q You cannot recall?

23 A I don't -- I don't recall when it was the
24 first time that I had said that word.

25 Q Okay. So you used that word in reference
26 to Mr. Henderson, but you can't tell us today when the

1 first time is that you used that word --

2 A Yes, sir.

3 Q -- is that correct?

4 Okay. Now, in the course of your exchange
5 of words with Mr. Henderson, do you recall what sort of
6 things you would say? And we've established that the
7 word nigger was used. Do you recall any other kind of
8 statements that you made when you were having words with
9 Mr. Henderson?

10 A Give you an example, right? And please,
11 everybody, excuse the way that I am going to speak, but
12 in one -- in one way I would be on the radio -- and I'm
13 giving you an example. I'm giving you an example of
14 this, because it's the only way you guys would
15 understand. If I was talking on the radio and another
16 person, say Greg Lloyd was talkin' on the radio, and
17 Slave Driver got out there and was talkin' --

18 Q We've heard Slave Driver. Just so we're
19 clear, that's Mr. Henderson, correct?

20 A So, Mr. Slave Driver would key over on top
21 of Greg. And we would say, you know, "Shut up nigger,"
22 or, you know, something in that nature. You know -- you
23 know, that was one, yes.

24 Q Okay.

25 A Did I ever use the nigger form, you know,
26 straight to his face, and violently do something? No.

1 Q Okay. Just let me see if I understand your
2 testimony. You used the word nigger when referring to
3 Mr. Henderson, but it's your testimony that you never
4 directly called him nigger?

5 A I directly, yes, I did.

6 Q Okay.

7 A But, you know, it's the same thing as him
8 calling me white trash or my baby is going to die. I
9 mean, I'm not going to -- I'm not going to sit here and
10 lie to you guys. It was a name calling game. That's
11 what it was. We were childish, and it was a name
12 calling game. And not only myself, but other people out
13 there that are not here before the grand jury have --
14 have said things, worse things than what I've said.

15 Q Okay. When you were having your exchange
16 of words with Mr. Henderson, did you ever have occasion
17 to talk about a hanging?

18 A You asked me this question yesterday. I
19 told you yesterday that yes, I did. I believe I did. I
20 don't -- I cannot sit here and say, you know, honestly,
21 unless someone has it on recording, you know. Who can
22 remember what they said a year and a half ago or a year
23 ago?

24 Q What about harm to Mr. Henderson's
25 property? Do you recall saying anything to Mr.
26 Henderson to the effect that you were going to bring

1 harm to his home and anything that he owned?

2 A I do not recall that, sir.

3 Q Okay. Harm to his house, maybe? Any
4 recollection of statements involving harm to his house?

5 A No, sir.

6 Q Now, when you say no, is it your testimony
7 today that you never said anything about that or is it
8 simply your testimony you don't remember saying anything
9 about that?

10 A I -- I don't remember if I had said that.
11 Like I said, you know, him and I -- we've probably
12 talked two to three hundred times.

13 Q Okay. Is it possible, then, that you said
14 something like that?

15 A Could -- I'm not going to dismiss that.

16 Q You're not going to dismiss that?

17 A That's correct.

18 Q Okay. Have you ever had occasion to talk
19 about a Molotov cocktail or a Moloti cocktail in
20 reference to Mr. Henderson?

21 A No, sir.

22 Q You know the kind of object I'm talking
23 about, right?

24 A I've -- yes, I do. And I -- I can't even
25 say the word, all right? And -- no. Have I heard it
26 said on the radio towards him? Yes, I have.

1 Q Okay. Now, again just so we're clear, is
2 it your testimony today that you never made reference to
3 any kind of cocktail in reference to Mr. Henderson or
4 that you just can't recall doing so?

5 A I don't think I said that.

6 Q It's your testimony that you don't think
7 you said that?

8 A Yeah.

9 Q So just so I'm clear, you're saying there
10 is no possibility that you could have said that?

11 A Yeah.

12 Q Okay. Now you said that you heard other
13 people say that in regards to Mr. Henderson, is that
14 correct?

15 A Yes, sir.

16 Q Do you recall when that was said in
17 reference to Mr. Henderson?

18 A I would say two months ago. You know, I'm
19 guessing two months ago.

20 Q And are you aware of who said that?

21 A Yes, sir.

22 Q Who was it?

23 A Kevin.

24 Q Who is Kevin?

25 A He goes by Goodwrench on the radio.

26 Q Do you know what his last name is in real

1 life?

2 A No, sir.

3 Q Do you know where he lives?

4 A Yes, sir. I don't know the -- I know where
5 his house is.

6 Q Generally speaking, where is his house?

7 A On the airport side of Modesto.

8 Q Have you met this Kevin in real life?

9 A On -- you know, he was at a store, or
10 something like that. I forgot what it was. It was a
11 while back ago.

12 Q How did you know it was him?

13 A Well, he had came up to my vehicle, and he
14 saw my, you know, my truck, and then I saw his, and we
15 both stared at each other, and I just went over there
16 and I introduced myself.

17 Q You introduced yourself by your real name
18 or Obie Won, or both?

19 A Both.

20 Q And what did he say in response?

21 A That he was Goodwrench.

22 Q He identified himself as such?

23 A Yes, sir.

24 Q Can you give us a real quick sense of what
25 this guy looks like?

26 A He's about my height, five -- six foot, and

1 Q Very clear? There is no doubt in your
2 mind?

3 A Oh, no.

4 Q Okay.

5 A A lot of people on the radio can -- you
6 know, they've been out there for so long you get a sense
7 of their -- of their voice.

8 Q Is it fair to say, then, if somebody is
9 pretty active in the CB radio community it's very likely
10 that they'd be able to recognize the voice of different
11 people who pop up there a lot? Is that fair to say?

12 A Uh-huh.

13 Q Turning back to the kind of language that
14 was used between yourself and Mr. Henderson. Did you
15 have occasion to speak to Mr. Henderson, ever, about a
16 cross, building a cross, giving him a cross, anything
17 like that?

18 A There was talk about that even on the
19 radio.

20 Q Okay. But were you the one doing the
21 talking about that?

22 A I don't -- I cannot honestly -- I don't --
23 I hear from people that I did say it and then I hear
24 from people that say I didn't say it.

25 Q Do you remember saying it?

26 A No.

1 Q Okay. Now, again, I don't want to sound
2 like a broken record, but is it your testimony today
3 that you never said anything like that or is it your
4 testimony today you just don't remember saying anything
5 like that?

6 A I don't remember actually, pulling back in
7 my brain, stating that.

8 Q Okay. Is it possible you said something
9 like that?

10 A Again, I won't dismiss it.

11 Q I want to speak for a moment, again on the
12 same subject, about the KKK, the Klu Klux Klan. Did you
13 ever say anything about that to Mr. Henderson in your
14 communications with him?

15 A I would like to take my right on that.

16 Q Fifth Amendment right?

17 A Yes, sir.

18 Q Okay.

19 A I have also heard that on the radio.

20 Q I'd like now to ask you about Mr.
21 Henderson's wife. Do you have any recollection about
22 discussing Mr. Henderson's wife with him? Anything
23 about her appearance or about her well-being?

24 A Yes.

25 Q Can you tell us what you said?

26 A Around the time that my son was born, and

1 Mr. Henderson -- or, it was before my son was born. Mr.
2 Henderson had always said that my son was going to come
3 out black, and that he was my baby's daddy, and that --
4 and then one day his wife was -- something happened with
5 his wife. She -- I -- I think that she went into the
6 hospital for something. And then I said something like
7 I don't -- I can't honestly say what I said, but it was
8 something in the nature of -- I don't -- I think it was
9 something like well, she's going to die, or something
10 like that, or --

11 Q Okay.

12 A Or, you know, I -- something like that. I
13 can't -- I don't remember, you know. So long ago. I
14 mean, it's been between him and I. Ever since I got the
15 restraining order it's been, you know, mild on the radio
16 for the last six months, seven months.

17 Q Okay. Do you recall making any kind of
18 sort of mean-spirited reference to Mr. Henderson's wife,
19 perhaps calling her a cheetah? Any recollection of
20 that?

21 A Yes, sir.

22 Q Just so I'm clear, did you, yourself, call
23 her that?

24 A Yes, sir.

25 Q Why did you call her that?

26 A One day when we were in court, Mr.

1 Henderson and his wife both came in there. And Mr.
2 Henderson got out of getting -- going to court because
3 he said that he was not properly served as far as the
4 certified mail goes. So whenever him and his wife and
5 another gentleman were there, I did not say that to them
6 right there in the courtroom. He got on the radio
7 whenever he left and he was saying -- he was flaunting
8 that, you know, after the court date, that, you know, he
9 got out of it. And then I said, "Well, you and your
10 wife" -- or, I said, "You and your cheetah, we're going
11 to have to come back again." Because the bailiff told
12 them to go to the front counter so that he gets another
13 court date.

14 Q I guess I'm still not seeing why did you
15 call his wife a cheetah? I mean, you have all the words
16 in the world to call someone, why did you call her a
17 cheetah?

18 A Well, she had a coat on, it was a leopard,
19 or it was -- it was a -- that. It was a coat.

20 Q Okay. Do you have any recollection of
21 making any threats about his wife's well-being?

22 A Any -- as far as?

23 Q As far as performing any kind of harm upon
24 her?

25 A I can't -- I don't think -- I mean, her and
26 I spoke very minimal on the radio.

1 Q Let me ask you again: Do you have any
2 recollection of at any time expressing to Mr. Henderson
3 any intent to harm Mrs. Henderson?

4 A As far as me going up there and doing what
5 to her?

6 Q You tell me.

7 A No. Mr. Henderson and I were the --

8 Q Let me ask the question a little bit more
9 specifically. Do you recall ever saying anything on the
10 CB radio to Mr. Henderson expressing any kind of desire
11 to sexually assault Mrs. Henderson?

12 A No.

13 Q Let me be even more specific. And, again I
14 beg the indulgence of all present. Do you recollect
15 ever saying anything about fist fucking Mrs. Henderson?

16 A Those same words were used against me
17 against William Weiss and his wife. Those -- those
18 exact words. William Weiss and his wife won a
19 restraining order against me because of those exact
20 words.

21 I do not honestly believe that I said that
22 to his wife. All they -- his wife and I, you know, we
23 didn't -- she's the one who tried to mellow it out
24 between the both of us. But I cannot sit here and say
25 that I said that to her upon what other people are
26 saying to you.

1 Q Okay. Just so we're very clear, is it your
2 testimony today that you never expressed any kind of
3 intention to fist fuck Mrs. Henderson, or is it simply
4 your testimony that you have no recollection of doing
5 so?

6 A I don't think I said that to her, no.

7 Q Well, is it even possible this you could
8 have said that?

9 A I don't think so.

10 Q You don't think so. Okay. During your
11 exchanges of words with Mr. Henderson, do you recall
12 ever expressing a desire to run him out of town, to have
13 him leave Modesto and live somewhere else?

14 A Those were his words towards me.

15 Q What were your words towards him?

16 A He interpreted that because he comes into
17 Modesto and he's going to run things his way, myself and
18 other people would tell him go back to Richmond, you
19 know. Because that's where he said that, you know, if
20 -- for an example, he would state out there on the radio
21 if I was saying something, or I had, you know, if I was
22 talking about my ex-old lady he would say, "Well, out in
23 Richmond we don't talk about that." Well, then myself
24 and other people would always say, "Well, why don't you
25 just go back to Richmond and talk on the radio."

26 And he's always -- you know, it's always

1 been -- whenever he first moved into town, you know, or
2 whenever he first started coming around town or
3 whenever, I don't know when he moved into town, but he's
4 always said that, you know, he's always thinking that
5 I'm going to run him out of town.

6 Q Okay. Now, just so I'm clear, it's your
7 testimony that from time to time you suggested to him
8 that he ought to leave town but it's your testimony that
9 you did not -- you were not suggesting that you were
10 going to run him out of town?

11 Let me ask the question a different way.
12 Did you ever say to him, "We're going to run you out of
13 town," or, "I'm going to run you out of town," or words
14 to that effect?

15 A How would I run him out of town?

16 Q Sir, I'm asking you the question did you
17 ever say those words?

18 A I don't know. I mean, you know, these
19 are -- I mean, if you guys have it on a recording then,
20 you know, please -- please let me hear it, you know.
21 You guys -- I'm going off of what other people have
22 said, what other people are saying on the radio. I
23 mean -- I mean, all the people that were in the grand
24 jury have talked about it on the radio. Mr. Henderson
25 has said it over the radio, and other people are
26 listening to him. You know what I'm saying?

1 Q I'm asking you to base this on what you
2 know to be the case based on your recollection of what
3 you did. Did you speak those words?

4 A I'm cannot honestly say right now that I
5 remember saying anything like that. I cannot honestly
6 say that. But do -- do I think that I could have said
7 something in the manner that you just said? Yes. Do I
8 think that I said, you know, you're going to leave town,
9 you know, and all this other stuff, you know? I don't
10 know.

11 Q Now again, sir, I have to ask you. You've
12 testified you do not recall saying that. Does it seem
13 possible that's something you could have said?

14 A Yes.

15 Q Okay.

16 A Anything is possible.

17 BY MR. ALLRED:

18 Q Mr. Smith, is there any reason that you
19 wouldn't remember some of the things that you said on
20 the radio? And I'm thinking in terms of either you were
21 taking medication or maybe you had too much to drink or
22 something like that.

23 A No. Just -- just all this stuff happened
24 so long ago. I mean, I would sit on the radio for -- I
25 was a radio junkie, meaning I basically hung out next to
26 the radio all the time. I always had a radio with me.

1 And I -- I just, you know, it was so long ago.

2 You know, once the FBI talked to me, you
3 know, however long it was, I -- and it's going on a
4 year, you know. I don't -- I cannot honestly say that,
5 you know, that I remember much of anything, because him
6 and I had so many conversations with one another, and we
7 both said negative things about one another and to other
8 people.

9 BY MR. KERN:

10 Q Just so we're clear, the time frame that
11 you talked about for these exchanging of words, this is
12 basically 2005 and the early part of 2006, is that
13 correct?

14 A Yes, sir.

15 Q So is it fair to say that this conflict
16 really began in earnest in early 2005, roughly?

17 A Yeah. I don't -- something like that,
18 yeah.

19 Q Okay. I just wanted to clarify.

20 In your exchanges of words with Mr.
21 Henderson, do you ever recall saying anything suggesting
22 that you wanted to cut off his head?

23 A No.

24 Q No recollection of ever using words to that
25 effect?

26 A No, sir.

1 A Yes, sir.

2 Q And it's also true that you spoke to the
3 FBI on May 23rd, 2006, a couple of days later, is that
4 correct?

5 A I don't -- I -- I believe so, yes, sir. I
6 don't recall exact dates.

7 Q Right. Now, Mr. Smith, did the FBI contact
8 you to arrange those interviews or did you contact the
9 FBI?

10 A I first met with the FBI -- we heard on the
11 radio, everybody was stating that the FBI was in town.
12 And one day I was dropping by, it's on the same street
13 as Slave Driver's, Mr. T's house, and I stopped by Mr.
14 T's house, and that's when I met one FBI agent. That
15 was Mr. Kenneth Tamm.

16 Q Again, it was it you who contacted Agent
17 Tamm?

18 A No. I walked in and met him.

19 Q Okay.

20 A He was interviewing Mr. T.

21 Q Just so we're clear, who is Mr. T? What's
22 his name in real life?

23 A Tom Lucas.

24 Q So at that time you met Agent Tamm. Did
25 you contact him later and ask for a chance to talk to
26 him?

1 A I asked -- I think -- I think I asked him
2 there, "Well, are you going to talk to me?" And he says
3 yeah, he's going to talk to me. And he got my number
4 and stuff like that. So he called me, and then he met
5 at my house with another FBI Agent.

6 Q When you first met him, just so I'm clear,
7 did you express to him at that time that you'd be
8 interested in talking to him?

9 A Yes, sir.

10 Q Okay. And in regard to the May 23rd
11 conversation. Once again, did Agent Tamm contact you to
12 initiate that or did you contact Agent Tamm?

13 A On the 23rd?

14 Q The second time you talked.

15 A I think he -- I think he called me. Okay.
16 I think is that the date that him and the other agent
17 came to my house?

18 Q I'll put it to you like this. I am aware
19 there are two dates when you sat down and gave -- to my
20 understanding, there are two dates when you sat down and
21 gave pretty thorough statements, one being the 15th and
22 one being the 23rd. I guess what I'm asking is the
23 second time when you made a statement to Mr. Tamm, who
24 initiated that statement?

25 A I'm kind of lost.

26 Q Let me see if I can make it simpler.

1 A I'm sorry.

2 Q Do you recall after you made your first
3 statement to Agent Tamm, do you recall a couple of days
4 later calling Agent Tamm and explaining that you had two
5 more things that you needed for him to know?

6 A Yes, sir. Okay. There you go.

7 Q Can you tell us about that? What prompted
8 you to want to do that?

9 A Um, I had some recordings that I wanted to
10 give him in which I still have a bunch, you know, that
11 I've been recording, you know, off and on. I've told
12 Mr. Tamm even here recently that other people that have
13 recordings of me that have been playing them back on the
14 radio. I told Mr. Tamm.

15 Q Okay.

16 A I believe -- I believe I told Mr. Tamm that
17 -- I don't remember what I --

18 Q Okay. But just so we're clear, in the
19 times that you've spoken to Agent Tamm, those are
20 voluntary statements, correct? You chose to tell him
21 what was on your mind?

22 A Yes, sir.

23 Q Okay. Now, when you spoke to Agent Tamm,
24 did Agent Tamm make it clear to you that the statements
25 were voluntary and that you were not obliged to tell him
26 anything that you didn't want to?

1 A Well, whenever he came to my house the
2 first time, he told me that.

3 Q Okay. It was clear in your mind that these
4 were voluntary statements you were making?

5 A I thought by telling him, you know, that it
6 would make him listen to the radio and get a gist of
7 what was going on.

8 Q So you wanted to talk to him, you wanted to
9 let him know certain things, correct?

10 A Yes, sir.

11 Q Okay. Now, when you spoke to Agent Tamm on
12 the occasions when you spoke to him, it was your
13 intention to tell him the truth, correct?

14 A Uh-huh.

15 Q You had no intention to deceive him, did
16 you?

17 A No.

18 Q You were trying to relate to him the truth
19 as you best understood it, is that correct?

20 A Correct.

21 Q Okay. And you have no recollection of
22 wanting to tell Agent Tamm any lies, is that correct?

23 A No.

24 Q Okay. I'd like to ask you, if I could,
25 about some of the statements that you made to Agent
26 Tamm. Do you recall making a statement to Agent Tamm in

1 which you indicated -- after Agent Tamm had asked you
2 about the Molotov cocktail business?

3 A Uh-huh.

4 Q Do you recall making to him a statement to
5 the effect that, "Even if I did throw a Molotov cocktail
6 or burn a cross in Henderson's lawn I'd go to jail"? Do
7 you recall saying words like that?

8 A I do remember saying words like that.

9 Q Can you tell us about what you meant when
10 you said that?

11 A Well, you know, what I meant was is that I
12 -- I don't remember -- I remember him sitting in my, you
13 know, in my garage.

14 Q Him being?

15 A Mr. Tamm. And I remember the other agent
16 sittin' in my garage. We -- you know, we talked for a
17 good, I think it was an hour, hour and a half. But what
18 I meant like that, what I meant by that is that if I
19 would have thrown it, you know, at -- at his house, you
20 know, then I would go to jail, you know. Even if
21 someone else was to throw it, you know, or even if --
22 even if -- even, you know, if a piece of hair fell off
23 of Alfred Henderson's head I would be the one that went
24 to jail. I -- I mean, I believe that's the way you
25 interpreted, you know, the question towards me.

26 But Mr. Henderson, you know, has, you

1 know -- ever since I got arrested, he's always had this
2 protection by police. Everything that I have told the
3 police department they've always dismissed. Everything.

4 Q Now, you've also indicated to Agent Tamm
5 that you would never follow through on any statements
6 that you made to Mr. Henderson during your arguments.
7 Do you recall saying something like that?

8 A Well, I wouldn't.

9 Q I beg your pardon?

10 A I, you know, just because I say something
11 doesn't mean I will do it.

12 Q Okay. So I just want to be sure I
13 understand. If I understand this correctly, was it your
14 statement to Agent Tamm that, you know, "I'm just not
15 the kind of guy who would follow through on these crazy
16 Obie Won type stuff. I wouldn't follow through on
17 that"? I mean, is that the upshot of it?

18 A Yeah. I mean, depending on, you know, if
19 it was a threat, no. I'm not a violent guy. No, I'm
20 not.

21 Q Okay.

22 A I mean, look at how big I am compared to
23 Mr. Henderson. I mean, whenever I first met Mr.
24 Henderson, you know, he's the one that told me he had a
25 forty-five underneath his seat. I didn't have a gun or
26 anything else. I mean, even the time I went -- I went

1 to his house, even the time that I was down the street,
2 every time I get out of the vehicle, look how big he is
3 compared to me.

4 Q Just so I'm clear, is it your testimony
5 today just as it was your statement to Agent Tamm, that
6 just being the guy who you are, being the human being
7 who you are, you wouldn't follow through on these
8 threats, that is not the kind of human being you are?
9 Is that what you're telling us today?

10 A I don't know what threats, you know.

11 Q Well, if I may interject. What threats did
12 you mean when you were telling Agent Tamm that
13 statement?

14 A I don't remember what I told Mr. Tamm.

15 Q You don't remember?

16 A I told Mr. Tamm things, yes, but there was
17 also things on the radio that were being said, so that,
18 you know, I believe that I said them.

19 Q You believe that you said them?

20 A Uh-huh. People that were taking Alfred's
21 side, you know. I was -- once the FBI got around in
22 town, you know, people were talking about it on the
23 radio. Everybody even at barbecues, you know. They
24 were talking about it on the radio. Even what I said on
25 the radio or off the radio, people are going to find out
26 about it because they all talk with one another.

1 Q Okay. Do you recall telling Agent Tamm
2 about I guess it was a time in 2005 when you attempted
3 to move closer to Mr. Henderson?

4 A Yes, sir.

5 Q Okay. Can you tell us what that was all
6 about? Explain to us why you did that?

7 A Well, I need a place to live. Okay? I had
8 -- I was going to -- you're talking about the house
9 around the block from him, right?

10 Q I believe so, yes.

11 A All right. There was -- once -- there was
12 a house for rent around the block from -- from Slave
13 Driver. And around the block from Slave Driver was my
14 very good friend Larry. Larry Owens. Okay? Larry
15 pointed me to this house. I always joked around and
16 said, you know, it would be kind of cool to walk over to
17 Slave Driver. So, you know, just because, I mean, I
18 lived in that neighborhood, I had a house, you know,
19 burn down to the ground, you know, you know, before Mr.
20 Henderson. I've always lived on this side of town.

21 Q Do you recall telling Agent Tamm that part
22 of your motivation for wanting to live there was for the
23 explicit purpose of making it harder for Mr. Henderson
24 to project CB radio?

25 A Yes.

26 Q Okay.

1 A So, just like what he's done to me.

2 Q Uh-huh. Now, do you recall Agent Tamm, in
3 one of his -- one of your statements with him, do you
4 recall him asking you if you had ever expressed a desire
5 to have Mr. Henderson hung from a tree? Do you recall
6 if he asked you that?

7 A No, I don't.

8 Q No recollection? Do you recall telling
9 Agent Tamm that you did not ever express a desire to see
10 Mr. Henderson hung?

11 A I -- I -- that one I have to plead the
12 Fifth.

13 Q Okay.

14 A Because --

15 GRAND JUROR: Excuse me. May we take a short
16 break?

17 MR. KERN: It's not for me to say.

18 THE FOREPERSON: Do you need to take a break?
19 We've been here an hour and a quarter.

20 GRAND JUROR: Well, I need to take a break.

21 THE FOREPERSON: Okay. Take a short
22 five-minute break.

23 (The proceedings were recessed at 1:55 p.m.
24 and reconvened at 1:59 p.m.)

25 MR. KERN: Good to go? I guess we're back on
26 the record.

1 Q Mr. Smith, I'd like to talk to you about an
2 incident that appears to have taken place in November of
3 2005. And I believe that's an incident that ended in
4 your being arrested. Do you know the evening I'm
5 talking about?

6 A Yes, sir.

7 Q I have some questions I'd like to ask you
8 about that, but, before I do, can you tell us in your
9 own words how it all broke down that night?

10 A I remember specifically something was funny
11 on the radio. Slave Driver was saying someone was going
12 to jail. Everybody was -- and then I was at Gary's
13 house. Me and John were at --

14 Q What's John's last name?

15 A Dykstra. Me and John and Gary. I was at
16 Gary's louse.

17 Q What's Gary's last name?

18 A Edwards.

19 Q Okay.

20 A So, anyway, Gary -- I was sittin' -- I was
21 sittin' there. It was nighttime, around -- I don't
22 remember the time. And then I was sittin' there talkin'
23 with Gary. And he was telling me that the police
24 department came and talked to him in the -- in his shop,
25 and that, you know, he wasn't -- anyway, I forgot what
26 it was.

1 But, anyway, the police -- or someone
2 called me. Some unidentified number. And they told me
3 that there was something wrong at my house. And so I
4 lived maybe a mile, mile and a half away from Gary's
5 house, so I hurried home. Whenever I came around the
6 corner, Modesto Police Department swarmed me and
7 arrested me. They searched my house and everything.

8 Q Now, earlier that evening had you,
9 yourself, been talking on the radio?

10 A At Gary's house, yes.

11 Q Okay. And do you recall what it is you
12 were talking about that evening?

13 A No.

14 Q Do you recall making any statements
15 directed towards Mr. Henderson that evening?

16 A They arrested me, from what I understood,
17 from two nights before.

18 Q Okay. So that particular evening do you
19 recall if you were saying anything to Mr. Henderson?

20 A No, sir.

21 Q Do you recall what you would have been
22 saying to Henderson the two nights previous?

23 A That's the night that I was at Mr.
24 Henderson's house.

25 Q Okay. Why don't you tell us about how that
26 happened?

1 A Well, Mr. Henderson and I had exchanged
2 words, and I went over there to his house. Me and my
3 friend went over there to his house. Because he always
4 called me a boy and that I wasn't man enough. So I went
5 to his house.

6 Q Did you go by yourself or were there other
7 people with you?

8 A No. There was other people.

9 Q Who were the other people?

10 A Just my friends.

11 Q How many? Roughly?

12 A Six, seven.

13 Q Six or seven?

14 A Something. I -- you know. John and me.

15 Q This is the same John Dykstra as before?

16 A Yes.

17 Q And yourself? Do you recall anyone else
18 that was with you that night?

19 A Brandon.

20 Q What's Brandon's last name? If you recall?

21 A Yeah. Lan -- Landucci.

22 Q And what's his call sign, if he has one?

23 A He didn't -- he wasn't big into radio. He
24 didn't even have one in his truck yet.

25 Q And where does he live?

26 A Waterford.

1 Q Okay. What other friends were there?

2 A CJ.

3 Q And what's CJ's full name, if you know?

4 A I don't. I know him as CJ.

5 Q And is that his call sign, or does he have
6 a different one?

7 A No. I mean, people called him County Jail.
8 Because he was CJ, you know, not because he was arrested
9 or anything like that.

10 Q Okay.

11 A You know, all of my friends were never put
12 in jail or anything like that.

13 Q And who else was there, that you remember?

14 A Christina. And, I don't know, I think
15 there was -- I don't know if there was any more people,
16 but I just don't remember.

17 Q Okay. Christina. What's her last name, do
18 you know?

19 A No, I don't recall. That was Brandon's
20 girlfriend.

21 Q Does she have a call sign? Is she on the
22 radio at all?

23 A (Shaking head)

24 Q She's Brandon's girlfriend, is that what
25 you said?

26 A Uh-huh.

1 Q Okay.

2 A Earlier that night we were talking on the
3 radio. Everyone was at my house, we had a little
4 gathering, and everybody was taking turns on the radio.

5 Q Including you?

6 A Yes.

7 Q What sort of things was everyone saying on
8 the radio that night?

9 A Just, you know, we were talking -- I don't
10 know what we were talking about. I don't know how it
11 came about, but Slave Driver kept on antagonizing us,
12 and so we antagonized back.

13 Q When you say that you antagonized Mr.
14 Henderson back, do you recall exactly what it is that
15 you said to him? Or what anybody said to him, for that
16 matter?

17 A I cannot -- I know that I -- I don't
18 remember exact words and so forth. I know that there
19 was some negativity that was said on the -- on the radio
20 that night.

21 Q Were you one of the people expressing
22 negativity, as you call it?

23 A I could have been, yes.

24 Q You could have been. And do you recall in
25 the course of that conversation any kind of racial slurs
26 being used?

1 A No, that was -- no. I probably did.

2 Q Probably did. Were you one of the people
3 who was using racial slurs?

4 A I can't say that I wasn't.

5 Q Okay. Can't say what you weren't?

6 A After I got arrested that day I didn't -- I
7 didn't say any more.

8 Q Uh-huh. During the course of your exchange
9 of antagonism and racial slurs against Mr. Henderson, do
10 you recall if you made any kind of threats to Mr.
11 Henderson at that time?

12 A No.

13 Q Do you recall if anyone that was in your
14 home made any threats at that time?

15 A I can't.

16 Q Did you have occasion to let it be known on
17 the radio that you and your friends were going to Mr.
18 Henderson's house?

19 A Well, yeah, you know. He -- he always said
20 that I was a little boy hiding behind the microphone --

21 Q Uh-huh.

22 A -- you know. And just like him and I met
23 the first time, you know. That's how we met. And we
24 didn't have any violence. So I thought maybe, you
25 know -- I don't know really what I thought, because that
26 was a while ago. And but the very first time that we

1 met there was no violence.

2 Q So --

3 A I thought maybe we could go over there, you
4 know, and just maybe -- maybe, you know -- because I
5 went over there and I -- I was going to see, you know,
6 what -- what's the deal? I mean, everyone is tired of
7 it on the radio.

8 Q So it's your testimony that you let it be
9 known on the radio, after the antagonism and after the
10 racial slurs, it's your testimony that you let it be
11 known that you were going over to Mr. Henderson's house,
12 is that correct?

13 A On the radio.

14 Q On the radio?

15 A Yeah.

16 Q And did you also let it be known that your
17 friends were coming with you?

18 A Uh-huh.

19 Q Did they in fact come with you?

20 A Yeah.

21 Q How many cars went all together?

22 A Two.

23 Q Two. Yours and somebody else's?

24 A Uh-huh.

25 Q Everybody fit in?

26 A No. Only one person had rode with me.

1 Q Where did all the rest of them ride? The
2 other car?

3 A No, they took their own car.

4 Q So all together it's your car, somebody
5 else's car. How many cars?

6 A I think there was just two. But they --
7 whenever I pulled up in front of slave driver's house --

8 Q Uh-huh.

9 A -- they parked down, you know, they parked
10 across the street, making sure that he wasn't going to
11 come out, you know, and do anything.

12 Q Okay. So, let me see if I'm clear. It's
13 your testimony that you brought along six or seven of
14 your friends, and that the reason that they came, if I
15 understand correctly, was to make sure that Mr.
16 Henderson wasn't going to do anything?

17 A Uh-huh. That's what I'm -- you know, I
18 can't -- I can't sit here and say that, you know, why
19 they didn't or why they did. But I can say that Mr.
20 Henderson and I had -- have, indeed, met before, you
21 know. And, you know, Mr. Henderson -- I don't think --
22 I don't know. He has that, you know -- I don't know.

23 Q When you met Mr. Henderson in the previous
24 instance, did you bring six or seven of your friend with
25 you for that?

26 A No. I mean, I know where you're comin'

1 from. I know what you're saying. Just because I bring
2 friends, that means that I'm going to do something
3 negative. But that doesn't mean that. Because, did
4 anything happen that night? It did not. Was there any
5 crosses in the back of my truck? No, there was not.
6 Was there any liquor in the back of my truck? Which he
7 stated. No, there was not. Was there any guns? No,
8 there was not. Nor was there any bats? No, there
9 wasn't. No weapons. No anything that night. Has there
10 ever been any weapons, or any racial remarks, or any --
11 any skinhead or anything like that? No, there has not.

12 Has other people said things at the same
13 time that I have said things on the radio towards him?
14 Yes. Has there been other people out there that -- that
15 have said that they're going to go over there and throw
16 things at him, and harm him, and, you know, go over
17 there and tear his tower down and stuff like that?
18 Yeah.

19 But I'm the only one sittin' right here in
20 front of you answering all of your hard questions. And
21 I feel that I'm the only -- the only person, you know,
22 the only person.

23 And I came here to tell everybody, you
24 know, that I am not that way. And that this gentleman
25 has stated that he wants to put me in prison. If you
26 guys want to put me in prison, you know, you guys have

1 made up your mind. But I'm telling you that the guy
2 laughs at me whenever he made me go to jail and spend
3 five thousand dollars. He has bragged about it. Him
4 and other people, you know. He has bragged about it.
5 He has called me names. White trash, white honkey. He
6 has stated that he wants my child to die.

7 It's a two-way road. And, you know, I
8 seriously believe that he's playing that race card, and
9 he's playing it good. And if it's true that his father
10 is an FBI agent then, you know, that explains it. I
11 mean, I knew where his father lived. I didn't go by his
12 father's house and do anything like that. In fact, my
13 landlord is a black gentleman. I don't go up to him
14 and, you know, say that to him, you know.

15 Q I'd like to ask you a few questions about
16 this John Dykstra individual you mentioned a moment
17 ago. This Mr. Dykstra, I understand he's a friend of
18 yours?

19 A He was, yes.

20 Q He was. He's not now?

21 A Well, he's just -- he is, but he's not.

22 Q Is he an acquaintance, would you say?

23 A He lived with me, yes. He lived with me.

24 Q When did he first start to live with you?

25 A I don't remember dates.

26 Q Approximately? Last summer? Last spring?

1 A It was last -- it was -- I'd say it was
2 October '05 to May of '06.

3 Q Why did he move out?

4 A Because he got a DUI and he couldn't -- I
5 couldn't drive him to work.

6 Q Okay. Am I to understand he had to find
7 somebody who could drive him to work?

8 A Yeah. His mom and dad. He moved back to
9 his mom and dad's house out in Waterford.

10 Q How old a man is Mr. Dykstra?

11 A He's twenty-one now.

12 Q So he would have been nineteen when he
13 lived with you, roughly?

14 A No. Twenty.

15 Q Twenty?

16 A Because he got a DUI. He had one drink at
17 the Yosemite Bowl, the one I was telling you about
18 yesterday.

19 Q Was Mr. Dykstra active on the CB radio?

20 A Yes and no.

21 Q Can you explain?

22 A He would get out there whenever I was on my
23 mobile, or he would get out there just -- I mean, he
24 wasn't -- he wasn't an everyday, avid CBer.

25 Q Just a once-in-awhile kind of guy, be fair
26 to say?

1 A Yes.

2 Q Did he have a call sign of his own? What
3 handle did he go by?

4 A Big John.

5 Q Big John. Did he identify himself as Big
6 John when he was out there?

7 A Yeah.

8 Q Am I correct in understanding it's your
9 testimony that he occasionally used your equipment?

10 A Yes.

11 Q Every once in awhile might get out to say
12 something, get off, is that fair to say?

13 A Yes.

14 Q Okay.

15 A A lot of people came over to my house and
16 they wanted to use my equipment. I never had any
17 objection.

18 Q Okay. We're nearing the end. I want to
19 ask you a few questions about some of the other folks
20 you have talked about today. Have you -- strike that.
21 Let me ask the question a different way.

22 You mentioned a few minutes ago that you
23 were aware of certain other people who you think have
24 testified before this grand jury, is that correct?

25 A Do I believe other people that I know?

26 Q You're aware of who they are?

1 A Yes.

2 Q You have some names in your mind, correct?

3 A Yes, sir.

4 Q Okay. Did anyone tell you about that?

5 Anyone talk to you about who was here or what might have
6 been said?

7 A Yes, sir.

8 Q Can you tell us who talked to you about
9 that?

10 A Gary Edwards.

11 Q When did he talk to you about that?

12 A March -- or, I think it was -- I -- I don't
13 know dates, I'm sorry. I think February 1st was the --
14 was when they were supposed to be here. It was the day
15 -- it was a day or two after that he had spoke with the
16 -- with the federal grand jury.

17 Q Did anyone else talk to you about it?

18 A On the radio.

19 Q Who?

20 A Corey Ayers. Well, I overheard -- he maybe
21 didn't talk to me, but they -- everybody, Mr. T, Tom
22 Dooley, Taz Man, everybody basically talked on the
23 radio.

24 Q Okay. You mentioned call signs to us. Can
25 you identify the real life names of people you just
26 mentioned?

1 A Tom Dooley is Jim -- Jim something. I
2 don't know his last name. Lloyd. Jim Lloyd. It's Greg
3 Lloyd. Gary Edwards as Nature Boy. Taz Man as Taz.
4 Taz Man as Manuel. Taz as --- I can't even think of his
5 name. But it's Taz. And I think it's -- I forgot what
6 it is.

7 Q Okay.

8 A But anyway, you know.

9 Q Did you, yourself, seek anybody out to talk
10 to them about what was said?

11 A No.

12 Q Now, before this alleged grand jury
13 testimony took place, did you try to talk to anybody
14 about what they might want to say or what they ought to
15 say to the grand jury?

16 A No. I -- I heard rumors that there was --
17 that someone got subpoenaed, and so I called that
18 person. In fact, I called Taz Man. And Taz Man said --
19 I said, "Is it true that you got subpoenaed?" And he
20 says, "Yeah." And he goes, "well" -- I go, "Well, when
21 did you get that?" And he told me the date. And then
22 that was it. I said, "Okay."

23 Q Did you have occasion to speak to Tom Lucas
24 about any kind of testimony he might be called to give?

25 A No. When?

26 Q Anytime?

1 A No.

2 Q No recollection? Either on the radio or in
3 person or on the phone, any recollection of talking to
4 him about what he might testify to?

5 A No. Tom and I, you know, Tom has been
6 trying to, you know, get Slave Driver off the radio
7 because he lives right next to him and he can't ever
8 hear anything. Everybody -- everybody that has
9 testified before the grand jury, from what I know of the
10 people, they could have just been saying it to, you
11 know, but everybody on the radio has either said that
12 they were over here, you know, or they are talking about
13 it on the radio.

14 Q Okay. At any time have you ever told
15 anybody what they ought to be testifying to when they
16 testify?

17 A No.

18 Q Mr. Smith, we are just about at the
19 end, but I need to ask you, since we're about to wrap
20 this up and open it to questions from the grand jury, is
21 there any question I have not asked you that this grand
22 jury needs to hear the answer to? Any piece of
23 information that this grand jury needs to hear that
24 hasn't already been discussed in order to fully and
25 fairly assess what's going on here?

26 A The -- a -- I told Kenneth Tamm, you know,

1 the people that he should go talk to, you know, that
2 were on my side. You know what I mean? That were, you
3 know, being harassed by Slave Driver, as well, you
4 know. Slave Driver harassed everybody that even came to
5 the grand jury, you know. That's about it, sir.

6 Q Okay. If you think of something that you
7 have left out that you feel needs to be corrected, or if
8 you remember something that this grand jury needs to
9 hear that's different than what you told us, can you
10 promise that if you became aware of that that you'll
11 contact Agent Tamm or someone else at the FBI so that we
12 can take care of that?

13 A Yes, sir.

14 MR. KERN: That concludes my questioning and I
15 now turn it over to the members of the grand jury, for
16 your questions.

17 GRAND JUROR: There were two dates that we
18 talked about in the beginning, Mr. Smith. You said
19 something about you were arrested on November the 30th
20 and then we talked about a November the 5th date. Were
21 there two separate occasions?

22 THE WITNESS: No. I got arrested one time,
23 sir. I might have got dates messed up, I'm sorry. I
24 only got arrested one time.

25 GRAND JUROR: So it was November the 5th --

26 THE WITNESS: I guess.

1 GRAND JUROR: -- when you were arrested?

2 THE WITNESS: Yeah, I think so. Because my
3 birthday is November 10th.

4 GRAND JUROR: Okay.

5 GRAND JUROR: I have a question for you here.
6 Have you repaired CB radios for other people?

7 THE WITNESS: Have I?

8 GRAND JUROR: Yeah.

9 THE WITNESS: Uh-huh.

10 GRAND JUROR: Have they been happy with your
11 service?

12 THE WITNESS: Sometimes yes, sometimes no.

13 GRAND JUROR: Okay. So, in your experience,
14 do you think that you have offended anybody over the CB
15 radio?

16 THE WITNESS: I'm sorry?

17 GRAND JUROR: Besides Mr. Henderson?

18 THE WITNESS: Have I helped --

19 GRAND JUROR: Offended.

20 THE WITNESS: Offended? Yeah.

21 GRAND JUROR: Because of -- because of the way
22 they talk?

23 THE WITNESS: Well, Taz.

24 GRAND JUROR: Okay. Because it might irritate
25 you first, then you just shoot back to defend yours, or,
26 you know, or you start the fight just to liven up the CB

1 conversation?

2 THE WITNESS: Well, on the CB radio, sir,
3 people pick out the littlest of things. And that's
4 their weapon towards you. Okay? They'll use anything
5 against you. Just like being a celebrity, you know.
6 And I hate to put it that way, because I don't consider
7 myself a celebrity of any kind. I'm just a normal human
8 being.

9 There are people such as Taz, you know. I
10 mean, I try to be fair and honest with everybody. But,
11 for instance, Tom Lucas. Okay? I sold him a radio.
12 All right? I don't know the date, but I sold him a
13 radio. I bought it for five hundred dollars. It was
14 just something that he wanted, so I sold it to him for
15 two hundred fifty dollars. Okay? The radio had some
16 issues. I took the radio, I sent it all the way down
17 to, you know, to the repair center. And I paid a
18 hundred forty some-odd dollars. Okay? I get it back
19 and it still had the same problem. Him and his wife
20 both wanted me to buy him a six hundred dollar radio
21 because that's what he felt that he was getting. But I
22 was like well, I can't do that for you because you gave
23 me two hundred fifty dollars, and if I'm giving you your
24 two hundred fifty dollars back then I'm out the radio,
25 you know, because it still needs repaired, and the
26 hundred some-odd dollars, you know.

1 I mean, there are some times where you're
2 not going to please everybody. And they will use that
3 against you. They will get on the radio and, you know,
4 I will have to defend myself. Just like Mr. Henderson
5 has stated that he, you know, he's going to tell
6 everybody and he broadcast it that I do terrible work.
7 Even replacing a bulb or whatnot.

8 GRAND JUROR: How many people, in your
9 experience, have you come in contact with over the CB
10 repair issues? You know, like two, three, four, five?
11 Can you give me a count?

12 THE WITNESS: I don't -- I don't know that,
13 sir. I mean, I have, you know, one or two a week.

14 GRAND JUROR: So over the period of -- you say
15 that you been doing this for about eight years, right?

16 THE WITNESS: Well, I've only been -- I've
17 only been doing stuff like that for -- I mean, everybody
18 works on their own stuff, you know. Everybody, you
19 know, opens up their own radios, you know. There is not
20 nobody that I haven't mentioned today that hasn't been
21 in their own radio, you know. Tom Lucas does his own
22 stuff now, you know. Taz Man does his own stuff. There
23 are plenty of CB shops around our house now that do CB
24 repair, you know. I would sell brand new stuff, yes.

25 GRAND JUROR: I'm asking you you're going to
26 perform radio repair for other people, and in your

1 experience how many radio or how many business have you
2 done that way, you know, repair for other people?

3 THE WITNESS: I've only been doing that maybe,
4 you know, like helping people out like that for maybe
5 two years, because that was when my house fire was.

6 GRAND JUROR: About how many? Once a week?
7 Twice a week?

8 THE WITNESS: Something like that, yeah.

9 GRAND JUROR: So over the period it's fair to
10 say that you deal with at least about thirty individuals
11 to repair radio?

12 THE WITNESS: Uh-huh.

13 GRAND JUROR: Can you give me an estimate like
14 say how satisfy them from your service?

15 THE WITNESS: Depends on what it was.

16 GRAND JUROR: Like --

17 THE WITNESS: If -- if they brought me a
18 radio -- for instance, Gary Edwards brought me a radio.
19 Okay? And he had gotten into it the night before, you
20 know. He would turn everything, because he thought he
21 would, you know, get it back. Well, he brought it to
22 me, and I put it on the scope and I got it, you know,
23 aligned, and he was fine. And he was -- you know, he
24 thanked me and everything else. You know, he was, you
25 know, cussing a storm about me, saying that I did a
26 great job.

1 But then there is Taz, for instance, where
2 he went to jail. I took -- I bought his -- well, he
3 owed me money because I had fixed his amplifier, you
4 know. I was out the money, you know, for the
5 amplifier. He got out of jail, he didn't have any
6 money, I told him -- I gave him -- numerous of times I
7 certified mailed him stuff stating, you know, you know,
8 explaining that to him. Because he was going to take me
9 to small claims court. Well, he has since then used
10 that against me and said that I ripped him off and
11 everything else.

12 Everybody out there thought that just
13 because I had radio equipment that I should give them
14 something. Everybody wanted a handout out there. Do
15 you see what I'm saying, sir?

16 And I'm sorry if I'm not explaining myself
17 very well. But the CB -- the CB, you know, community
18 out there -- it's like William Weiss and Corey Ayers.
19 They're two of the guys out there that build amplifiers,
20 you know. And they're the ones who is talking over
21 everybody in Modesto right now. You know, running
22 competition stuff.

23 Corey Ayers is the one that runs -- that,
24 you know, does CB work in Modesto right now. He's the
25 one that's been doing it. Ever since a good two months
26 ago I've, you know, I haven't taken anything in or had

1 to -- even want to talk on the radio. I'm taken
2 everything just about out of line because of radio.

3 GRAND JUROR: Have you checked radios for
4 individuals and not returned it to them?

5 THE WITNESS: I have taken a radio from an
6 individual? Yes. And never gave it to him? Yes.

7 GRAND JUROR: Just promising to repair it and
8 you just take it?

9 THE WITNESS: No. No. The -- I believe I
10 know which one you're talking about. And the
11 circumstances with that is that, you know, the gentleman
12 promised me, you know, that he was going to do something
13 for me. I was going to fix the radio, you know. I
14 would -- if I needed -- for instance, if I needed my
15 tower put up. Okay? You know, I would, you know, I
16 would say hey, if you do this I'll do this. Kind of
17 like a bartering thing, you know. And they -- you
18 know, I would take the radio and he would take, you
19 know, whatever. Go weld something.

20 Like what Jim did, you know. Jim was
21 supposed to weld up some things for me for my tower.
22 Well, it turns out that during that time he never did
23 that. And so he took my parts, you know.

24 Now, there was an incident where I had a
25 house fire. I had some people's equipment. I lost it.
26 They, you know, they were -- I told them all if they

1 wanted their money, because I could not tell the
2 insurance company, you know, oh this is -- this was
3 theirs, you know. You know, I told them all. And I had
4 a certain time to do it. And I even had a year to do
5 it, you know, to file the claim. But some of those
6 individuals wanted that same exact thing back. And I
7 couldn't give it back to them because it was either too
8 old or it was not -- and then the value of it. We
9 looked on E-Bay, it was piddly. But it was a big deal.
10 There was some people I could not please and then there
11 was some people that I could.

12 GRAND JUROR: If somebody did the same thing
13 to you, would you get very angry?

14 THE WITNESS: Yeah. And I have.

15 GRAND JUROR: I'm just asking, because he
16 claim -- I'm just asking.

17 THE WITNESS: Well, it's not a business, sir.

18 GRAND JUROR: Throughout his testimony seem
19 like he a victim of the CB community.

20 THE WITNESS: Here is the thing --

21 GRAND JUROR: But that's not part of this.

22 THE WITNESS: Here is the thing, you know. A
23 lot of people out there have said things to me, you
24 know. And they always -- how should I say it? Like I
25 said, the littlest thing. If my child came out deformed
26 it would be known as the retard child on the radio.

1 Okay?

2 And that's what people would call me.
3 People call me a hack out there on the radio. They --
4 they say negative things about me. People take out my
5 receive. Because if I was talking to someone else,
6 trying to troubleshoot something, they would take out my
7 receive or transmit so I could not transmit no longer.

8 And people would hold grudges against me.
9 And then this person would always say, "Oh, well, I'm
10 going to tell everybody about it." I mean, it wasn't a
11 business for me. I did not make a living off of it.

12 GRAND JUROR: I have a comment to make. We
13 were just listening to your testimony, and that's what
14 we heard today. And I have listened intently to
15 everything you had to say. My comment to you, young
16 man, is that if all this was causing all this conflict
17 not only in your life, but obviously everyone around
18 you, your wife, your about-to-be child, I am assuming
19 you have the child now, did you ever think to just maybe
20 let go of all that and concentrate on what's really
21 important in life and let all these things go so you're
22 not in this kind of mess?

23 THE WITNESS: Yes, ma'am. In fact, you know,
24 it's kind of painful to say that my family -- CB radio
25 is an addiction. That was my addiction.

26 GRAND JUROR: So kick it.

1 MR. ALLRED: Let me see if I can get us
2 refocused. Does anyone have any more questions?

3 (The proceedings were recessed at 2:30 p.m.
4 and reconvened at 2:31 p.m.)

5 MR. ALLRED: Sir, did you have a question you
6 wanted to ask the witness?

7 GRAND JUROR: Yes. You mentioned that you
8 suggested to some of your friends to present their side
9 of the story. You mentioned their names to Agent Tamm?

10 THE WITNESS: Yes, sir.

11 GRAND JUROR: Could you just give us a brief
12 outline of what they could present, and perhaps their
13 names?

14 THE WITNESS: The witnesses Susanna Meyers,
15 you know. Like the reason why, you know, other people
16 in the radio community I would want to hear -- you guys
17 to hear from is to get really not only the positive and
18 the negative side, but everything that was towards them
19 and towards other people, you know. Even in the skip
20 community.

21 GRAND JUROR: What does that mean?

22 THE WITNESS: I'm sorry sir. Skip -- skip
23 community is the -- sometimes during the day, night,
24 it's just how the atmosphere is, your signal can be, you
25 know, you broadcast in Modesto it can be picked up in
26 New York, Florida, Georgia, Texas and so forth. So, you

1 know, there has been, you know, other people that would
2 shed more light, you know, on how negative both of us,
3 you know, and other people were towards him and me.

4 I don't consider myself innocent for what
5 I've said, and -- I don't. I think that what I've done
6 and how I've acted. I'm sorry. Am I racist? No.
7 That's just the truth.

8 MR. ALLRED: Are there any other questions?

9 GRAND JUROR: I have one. I'd like to know,
10 Mr. Smith, if you ever called Mr. Henderson a black
11 chicken over your CB radio?

12 THE WITNESS: Yes, ma'am.

13 GRAND JUROR: And you testified that you
14 really didn't understand why you were arrested?

15 THE WITNESS: I got arrested for terrorist
16 threats.

17 GRAND JUROR: For terrorist threats?

18 THE WITNESS: That's all I know.

19 GRAND JUROR: And that happened how many days
20 after you had been at Mr. Henderson's house?

21 THE WITNESS: Two days.

22 GRAND JUROR: Two days?

23 THE WITNESS: I didn't come up with the name
24 black chicken.

25 GRAND JUROR: I'm not concerned about that.

26 THE WITNESS: Greg Lloyd.

1 GRAND JUROR: What I'm concerned about was
2 your not knowing why you were arrested. Now you know,
3 you're telling us it was terrorist threats?

4 THE WITNESS: The officer arrested me and
5 stated that I was under arrest for, I don't know what
6 the Penal Code is, but it was for terrorist threats.
7 And terrorist threats I always thought --

8 GRAND JUROR: You were arrested two days after
9 you had gone to Mr. Henderson's with your friends?

10 THE WITNESS: Yes, ma'am.

11 GRAND JUROR: Did they tell you what they were
12 searching for in your home?

13 THE WITNESS: Yes.

14 GRAND JUROR: What were they searching for?

15 THE WITNESS: Anything to do with -- I can't
16 exactly recall what exactly they, you know, word for
17 word, but anything -- they looked for wood in my
18 garage. They looked -- I don't know exactly what they
19 were looking for, but they were looking for evidence to
20 go against me.

21 GRAND JUROR: So they didn't tell you what
22 they were exactly searching for?

23 THE WITNESS: They told me that it was dealing
24 with a race case.

25 GRAND JUROR: Okay. Thank you.

26 THE WITNESS: A hate crime.

1 MR. ALLRED: Any other questions?

2 GRAND JUROR: How did you associate the name
3 to the real name and locate where they live?

4 THE WITNESS: How can I tell who they are?

5 GRAND JUROR: Yeah.

6 THE WITNESS: Whenever you're out there on the
7 radio just you know it's -- you know, you hear people,
8 and you hear the sound of their radio. There are some
9 people, though, that sound alike, you know. Like I get
10 confused with another gentleman out there on the radio.
11 It's just -- and you know where people live, you know,
12 because, you know, you'll be driving in your vehicle one
13 day and you'll see your signal meter, you know, go up,
14 or, you know, they'll tell you where they live.

15 MR. ALLRED: Any other questions?

16 BY MR. KERN:

17 Q If I may interject. Who was the individual
18 who you were confused with?

19 A I'm sorry?

20 Q You say that you're sometimes confused with
21 another person. Who is that other person?

22 A Tipper.

23 Q What's Tipper's name in real life?

24 A Justin.

25 Q Do you know what his last name is?

26 A No.

1 Q Do you know where he lives?

2 A I don't -- I know where he lives, I don't
3 know the address.

4 Q Approximately what city?

5 A Modesto. Oh. He lives in Modesto.

6 Q And who has confused him with you?

7 A People -- he's got out there and given --
8 he's harassed people on the radio and they'll think that
9 it's me. And then I'll get out there and then --

10 Q Who has he harassed?

11 A Oh, just people up in the mountains or
12 whatnot. Just talking to them saying, "Hey, I'll be
13 right up there." You know, just playing around.

14 But, see, there is, you know, like Corey
15 Ayers has a program where he can, you know, duplicate my
16 voice and then he can talk into the computer.

17 MR. KERN: Any other questions? Is there
18 anything else?

19 MR. ALLRED: Any other questions? Is there
20 anything else you want to say to the grand jury before
21 we finish today?

22 THE WITNESS: Thank you, ladies and gentlemen,
23 for hearing my side of it. I know it wasn't pretty, nor
24 am I happy about this. And I have stopped all radio.
25 And that's about it. Thank you.

26 MR. ALLRED: Thank you. You can leave.

1 THE FOREPERSON: Thank you, Mr. Smith.
2 (Witness leaving the hearing room at 2:38
3 p.m.)