



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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UNITED STATES OF AMERICA,
Plaintiff,

VS.

JAMES VIEFHAUS and
CAROL HOWE,
Defendants.

No. 97-CR-00005-BU

* * *

TRANSCRIPT OF PROCEEDINGS

SEALED HEARING

BEFORE HONORABLE MICHAEL BURRAGE, JUDGE

APRIL 24, 1997; 3:30 P.M.

* * *

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KARLA S. McWHORTER
UNITED STATES COURT REPORTER

FOR THE PLAINTIFF: KIRKPATRICK, LEITCH

PROCEEDINGS

1
2 THE COURT: United States of America versus
3 Viefhaus and Howe. Would counsel state their appearances,
4 please?

5 MR, KIRKPATRICK: Good afternoon, Your Honor. Neil
6 Kirkpatrick, Assistant U.S. Attorney on behalf of the United
7 states.

8 MR. BREWSTER: Your Honor, Clark O. Brewster for
9 Carol Howe.

10 MR. BRYANT: Craig Bryant appearing with
11 Mr. Viefhaus.

12 THE COURT: I appreciate y'all coming over here
13 today. There was delivered to my chambers submitted
14 in-camera under seal these files, the ATF files. I guess
15 that's how they are documented, but, anyway, there are three
16 files. And then later in the afternoon I received
17 Mr. Brewster's grounds and contentions in support of
18 delivery of Government files relating to Carol E. Howe.
19 So what I did is I took the files and started going through
20 them looking at the documents that are in the files. I
21 didn't listen to any of the tapes yet, but it appears from
22 going through the files that there is -- or there may very
23 well be some Brady material in the files. I noticed in one
24 document where there was a reference that Ms. Howe didn't want
25 the last part of the tape put on there about the buildings or

1 something, and there are other documents in there, but I don't
2 know under 16, Rule 16, what part of the files may relate to
3 an on-going investigation. So it's difficult for me to know
4 unless I'm advised some way as to what information is not
5 subject to disclosure that relates to an investigation or
6 prosecution of a case under 16(2).

7 MR. KIRKPATRICK: Your Honor, if I might, we are
8 prepared today to present testimony of the ATF agent involved
9 who would testify as to the length and the nature of the
10 ATF's relationship with Ms. Howe. I think this would answer
11 a number of the Court's question in this regard. Essentially,
12 Agent Gram, formerly Finley, now Agent Gram, is here and can
13 testify that as -- first of all, as to how she began her
14 relationship with Ms. Howe, how long that initial relationship
15 continued, she can testify as to why it ended in 1985 --
16 pardon me, 1995, I believe, for the first time, how it was
17 reactivated following the Oklahoma City bombing, and how it
18 for all practical purposes ended shortly thereafter.

19 Ms. Howe will also explain that Ms. -- or, pardon me,
20 Ms. Gram will also explain that Ms. Howe was kept on the books
21 as an active informant simply because of at least her initial
22 statements made to the ATF and the FBI following the Oklahoma
23 City bombing, but that nothing ever came of that.

24 THE COURT: She was actually kept on the books up
25 through '96, wasn't she?

1 MR. KIRKPATRICK: That's correct. She was kept on
2 the books up through December of 1996, when Mr. Viefhaus was
3 arrested and when the ATF was informed of the FBI's action.

4 I would also like to point out for the Court that -- in
5 essence, the testimony is going to be that from December of
6 1996 back through March of 1996, which is when Ms. Howe --
7 Ms. Gram last had contact with Ms. Howe, there was nothing
8 occurring of an informant nature between March and December of
9 1996, and the contact in March of 1996 was simply to advise
10 Ms. Howe and to warn her that her status as an informant had
11 been furnished to the defense team in the Oklahoma City
12 bombing case and that since she had been an ATF informant she
13 might conceivably be in some sort of danger. That was the
14 nature of the contact between Ms. Gram and Ms. Howe in 1996,
15 but there was no contact from March through December, perhaps
16 a phone call between March and December of 1996. I would also
17 like to point out for the Court this case, the case now before
18 the Court is an FBI case, it's not an ATF case. In fact, the
19 *|| ATF had nothing to do with this case; it is in it now only
20 because of the past relationship that the parties have.

21 THE COURT: All right. You may proceed then with
22 your testimony.

23 MR. KIRKPATRICK: Thank you. Call Agent Gram.

24 ANGELA GRAM, PLAINTIFF'S WITNESS, SWORN

25 DIRECT EXAMINATION

KARLA S. McWHORTER
UNITED STATES COURT REPORTER

1 BY MR. KIRKPATRICK:

2 Q Ma'am, would you please tell the Court your name and
3 occupation?

4 A Yes. My name is Angela Gram. I'm a special agent with
5 the Bureau of Alcohol, Tobacco and Firearms.

6 Q How long have you been a special agent, Ms. Gram?

7 A Approximately five and a half years.

8 Q Were you formerly known as Angela Finley?

9 A Yes, I was.

10 Q When did you become Angela Gram?

11 A December of 1995.

12 Q Now, Ms. Gram, do you know the defendants in this case,
13 or do you know Ms. Carol Howe? And if you do, can you point
14 to her, please?

15 A Yes, I do. She is sitting at the table over there.

16 Q Are you referring to the lady in the -- what appears
17 to be a brown checkered skirt and a black blouse?

18 A Yes.

19 MR. KIRKPATRICK: May the record reflect that the
20 witness has correctly identified the defendant, Your Honor?

21 THE COURT: The record may reflect that she has
22 identified the defendant Howe.

23 BY MR. KIRKPATRICK:

24 Q How did you come to know Ms. Howe?

25 A I had received a police report from a Tulsa police

1 officer, Jack Pike, and through that report he had information
2 that she might have a firearm of interest. So I contacted her
3 in regard -- just to meet with her, see what she had, see what
4 she knew about it. He said she might be somebody interesting
5 to talk to. So I contacted her and had her come up to the
6 ATF office.

7 Q When was that?

8 A Approximately August of '94?

9 A Was that here in Tulsa?

10 A Yes, it was.

11 Q Okay. And what was the subject of your conversation
12 with Ms. Howe?

13 A In general it was talking about Dennis Mahon, her
14 relationship with him, and that was the context of the police
15 report, she had filed a complaint, some type of harassment
16 complaint against him, and his association with the white
17 supremacist movement.

18 Q Is his name M-A-H-O-N?

19 A Yes, it is.

20 Q Do you know what, if any, relationship Mr. Mahon does
21 have with white supremacist type organizations?

22 A He is the area leader of the White Area Resistance, WAR.

23 Q What is WAR?

24 A White Area Resistance. It's a white supremacist type
25 organization.

1 Q To your knowledge, does that organization have contacts
2 with Nazis?

3 A Yes.

4 Q Okay. So it's your testimony, ma'am, that your -- that
5 your conversation with Ms. Howe dealt with her relationship
6 with Mr. Mahon and with the white supremacist movement in the
7 Tulsa area in general?

8 A Yes.

9 Q What, if any, other contact did you have with Ms. Howe
10 following that?

11 A I documented her as an informant and we were going to
12 use her with her information she had in regard to Elhoim City.

13 Q Would that be Elhoim City?

14 A Yes.

15 Q That's E-L-H-O-I-M. Is that correct?

16 A Yes.

17 Q When you say "documented her as an informant," what did
18 you mean by that?

19 A We had her come to the ATF office and I believe first we
20 had a polygraph where we check her for her credibility and
21 she passed the polygraph, so I had the informant agreement,
22 which is a contract between ATF and the informant, stating
23 responsibilities. Also, I take down her personal information
24 and we photograph them and that is sent to Dallas, our
25 division office.

1 Q Now, are all of the things that you referred to, the
2 polygraph results, the informant agreement, the photograph
3 and all the rest of that, contained in your ATF file?

4 A Yes, it's an informant file.

5 Q Okay. And was that file one of the files that you
6 turned over to me?

7 A Yes, it was.

8 Q Okay. Now, could you briefly describe this informant
9 agreement for the Court?

10 A An informant agreement basically has a list of
11 responsibilities of the informant, that they will not present
12 themselves as an ATF agent, just basically what their
13 responsibilities are going to be. It's very general.

14 Q Does it contain a clause requiring the informant not to
15 break any laws, that sort of thing?

16 A Yes.

17 Q Or commit any acts of violence?

18 A Right.

19 Q Now, after Ms. Howe became an informant for the ATF,
20 what, if any, action, did she take on behalf of the Bureau?

21 A She made numerous contacts with Dennis Mahon. She also
22 made numerous trips out to Elhoim City. Basically, we were
23 looking at Dennis Mahon from the beginning to determine
24 whether or not -- she was alleging that he was making hand
25 grenades and doing that type of action in the white

1 supremacist movement and those actions at Elhoim City. So,
2 we were looking at Dennis for the violations of making hand
3 grenades and possibly altering firearms to make them fully
4 automatic. Then we started gathering intelligence through
5 her of certain people at Elhoim City.

6 Q Now, when she would go to Elhoim City was she wired?

7 A No.

8 Q Were there occasions when Ms. Howe was wired?

9 A Certainly.

10 Q Could you describe those occasions for the Court?

11 A Her meetings with Dennis Mahon. When she would meet
12 with him, we could supervise those meetings. What I mean is
13 for her safety if she did have a wire and it was found out,
14 we could take immediate action, if necessary. So usually
15 with her meetings with Dennis, but never at Elhoim City.

16 Q Now, was Ms. Howe's residence also wired?

17 A Yes. We had wired a video and audio unit up in her
18 residence on Delaware.

19 Q Can you tell me or tell the Court rather on how many
20 occasions you believe that Ms. Howe wore a wire and produced
21 a recording on behalf of the ATF?

22 A Approximately 38, and then we had two video-audio tapes
23 from her residence.

24 Q And those tapes, the video and audio tapes, were
25 maintained in the ATF file here in Tulsa?

1 A Yes.

2 Q And those were turned over by you to me. Is that right?

3 A Yes.

4 Q Now, were there any more videotapes other than those
5 two?

6 A We had two air surveillance tapes that we took of Elhoim
7 City.

// 8 Q So a total of four videotapes?

9 A Correct.

10 Q Now, the two videotapes involved conferences or meetings
11 between Ms. Howe and various persons. Is that correct?

12 A That's correct.

13 Q Who were the persons she met with in those videotapes?

14 A One was exclusively Howe and Tom Metsker, and then the
15 other one was Howe and Andreas Strassmeir and a couple of
16 other guys from Elhoim City, and I can't recall their names.

17 Q Now, who is Tom Metsker?

18 A He is a very well-known white supremacist leader.

19 Q If California?

20 A Yes.

21 Q Who is Andreas Strassmeir, if you know?

22 A He is a German national living at Elhoim City.

23 Q At the time that this meeting took place?

24 A Correct.

25 Q Now, I'll ask you again, Ms. Howe, were there -- pardon

1 me, Ms. Gram, were there any other videotapes besides the
2 four that you have described?

3 A No.

4 Q And are there any other tape recordings besides the 38
5 or so so that you have described?

6 A No.

7 Q Okay. Now, give us, if you would, a time frame for all
8 of this activity. It started, I believe you said, in August
9 of 1994. Is that correct?

10 A That's correct.

11 Q When did it end? How long did it extend?

12 A It continued through, I guess, May of '95, or whenever
13 we sent her back out to Elhoim City for the last time, so
14 late spring or early summer of '95.

15 Q A period of seven or eight months?

16 A Yes.

17 Q And what, if anything, occurred after the last trip to
18 Elhoim City regarding her status as an informant?

19 A Uh --

20 Q Well, let me ask you this. Were you able -- based on
21 what should did from August of 1994 through May of 1995, were
22 you able to develop any cases based on anything that she
23 furnished?

24 A No.

25 Q Now, I want to go back, if you would, to the fall of

1 1995. Did you have occasion to purchase some grenade hulls
2 on her behalf?

3 A You mean the fall of 1994?

4 Q I beg your pardon, 1994.

5 A Yes, we did.

6 Q How did that come about?

7 A We were going to purchase some hand grenades and paint
8 them and hand them to Dennis Mahon, hopefully for him to
9 construct a destructive device, and that way we would be able
10 to identify the grenades.

11 Q Had Ms. Howe up to that time given you any objects of
12 interest, or to the ATF?

13 A Yes.

14 Q What?

15 A She had given me a couple of pieces of grenade shrapnel,
16 that Mahon allegedly had detonated some grenades at Elhoim
17 City and she brought me back a couple of pieces of shrapnel.
18 I think there were two pieces that she had brought back.

19 Q Was there anything -- did she furnish anything else of
20 interest to you, any other objects?

21 A Not that I can think of.

22 Q Okay. Now, when was it that you bought these -- enter
23 grenades?

24 A In the fall of '94.

25 Q And you said they were painted?

1 A Yes.

2 Q What color were they painted?

3 A Well, it was approximately in October when we purchased
4 them. We painted them orange or she painted them orange with
5 green and painted faces on them to resemble jack-o-lanterns.

6 Q Okay. Now, the green that you are referring to, I take
7 it that the body of the grenade was painted orange?

8 A That's correct.

9 Q This is what is known as a lemon type grenade as
10 opposed to a pineapple grenade. Is that correct?

11 A Right.

12 Q That would mean it has a smooth body. Right?

13 A Yes.

14 Q And it has a -- it has a fuse that would be the
15 receptacle for the spoons of an actual grenade on top; isn't
16 that right?

17 A That's correct.

18 Q The spoon being the handle of a --

19 A That's correct.

20 Q But there were no spoons in this grenade, were there?

21 A No.

22 Q Was there any fuse in the --

23 A No.

24 Q No fuse at all?

25 A No.

1 Q And was the body of the grenade empty at the time you
2 gave it to Ms. Howe?

3 A Yes.

4 Q It had a hole in the bottom?

5 A Correct.

6 Q Now she painted those, and then what?

7 A They were going to try to get Dennis Mahon to construct
8 a device from those and be able to identify them from the --
9 from painting them and he wouldn't do it.

10 Q So if Mahon then had constructed a grenade and exploded
11 it, then you would have had orange fragments --

12 A At least I could identify the fragments that came back.

13 Q Okay. I take it then, Mr. Mahon never did that?

14 A No.

15 Q Okay. And what, if anything, happened to those grenades?

16 A I got them back.

17 Q Okay. And were they maintained in your office?

18 A Yes.

19 Q Do you recall when the videotapes of Metsker and
20 Strassmeir were made?

21 A Fall of '94.

22 Q Is it your testimony, ma'am, that the last active
23 mission that Ms. Howe undertook for you was in May of 1995?

24 A Correct.

25 Q Now, was she ever at that point -- after that point

1 deactivated as an informant?

2 A We had deactivated her prior to May of '94.

3 Q That's right. I beg your pardon.

4 A And --

5 Q When was it that you deactivated her?

6 A March of '95, we deactivated her for several reasons.

7 Q What were the reasons that you deactivated her?

8 A Basically, the main reason was instability. I received
9 a phone call from her landlord stating that she was unstable
10 and had been put in Parkside, which is a mental facility here
11 in Tulsa, and I had also received a call that she had -- I
12 might have received a police report too, where she had gone to
13 St. Francis with several cuts which were believed to be self-
14 inflicted. And I think I also had reason to believe that she
15 was associating with skin heads, which was kind of a
16 contradiction at the time to what should be supposed to be
17 doing working for the Government. So for those several
18 reasons, I requested an emergency removal of her as an
19 informant.

20 Q How is that done?

21 A We submit or FAX down to our divisional a request form
22 just saying the specific reasons why she needed to be removed
23 and it's approved.

24 Q Okay. And that, in fact, was approved?

25 A Yes, it was.

1 Q Are those documents also contained in the various
2 ATF files?

3 A Yes.

4 Q Does that reflect your deactivation or emergency
5 deactivation?

6 A That's correct.

7 Q Now, I take it in May of 1995 she was reactivated?

8 A Yes.

9 Q How?

10 A I had received a call from her the day after the
11 bombing. I was in Oklahoma City and she said she thought she
12 could identify John Doe Number 2. So we put in an emergency
13 request for reactivation, which is seldom done, but
14 considering the nature of what had happened they reactivated
15 her and that was based on an emergency situation that she was
16 reactivated.

17 Q Was that immediately after the bombing, the day after
18 the bombing?

19 A Absolutely.

20 Q Why was it necessary to reactivate her? Why couldn't
21 you just go talk to her?

22 A Because she had been determined unstable, you know we
23 had all of these reasons why we had deactivated her, so we
24 had to have approval to use her or, you know, see if our
25 division would allow us to use her.

1 Q Did you, in fact, interview her along with somebody
2 else?

3 A Yes, I did.

4 Q Who was with you?

5 A Special Agent Jim Blanchard with FBI.

6 Q Where did that interview take place?

7 A In Oklahoma City.

8 Q Did you take her to Oklahoma City?

9 A Yes. Another agent and I picked her up in Tulsa and
10 took her back to Oklahoma City.

11 Q When was that other agent?

12 A John Riley with ATF.

13 Q Is he with the ATF in Oklahoma City?

14 A No, sir, he is in Colorado.

15 Q Was he a part of the -- what is called the Oklahoma
16 bombing task force?

17 A Yes, yes.

18 Q That's call oak bomb, isn't it?

19 A Correct.

20 Q Now, what, if anything, occurred as a result of that
21 interview with Ms. Howe in Oklahoma City? Was she able to
22 furnish you any usable information?

23 A Not really. At the time, for all practical purposes,
24 she just reiterated anything that I had already uncovered in
25 our prior investigation. She told me that she thought she

1 could identify John Doe Number 2. With that, we to sent her
2 back into Elhoim City to see if she could identify anybody
3 out there or confirm what she thought and we did that and she
4 came out and didn't identify anybody out there as John Doe
5 Number 2, or anything else. She came back with really no
6 pertinent information.

7 Q And when was that trip to Elhoim City, if you know?

8 A Shortly after the bombing. I'm not exactly sure
9 when it was.

10 Q Within a month?

11 A Yes.

12 Q Following that trip to Elhoim City did you use
13 Ms. Howe any more?

14 A No, we did not.

15 Q Did you have any further contact with her?

16 A Yes.

17 Q When was your next contact with Ms. Howe?

18 A My next contact with her was approximately eight months
19 later, I would guess. I received a call from an agent in
20 Oklahoma City stating that Ms. Howe had been compromised and
21 that the FBI had disclosed her identity in one of their
22 reports and upon notification of that I was instructed by my
23 supervisor and our divisional office that I should contact her
24 and make available any type of protection or offer her any
25 kind of assistance that we could, just damage control.

1 Q Okay. Did you, in fact, contact her?

2 A Yes, I did.

3 Q Do you recall when that conversation took place?

4 A Just very shortly after I found out.

5 Q When did you find out? Was that in March of 1996?

6 A I think so.

7 Q Now, what did you tell Ms. Howe at that particular
8 point in time?

9 A I told her exactly what had happened, that she had been
10 compromised, I told her how she had been compromised, I told
11 her if we could do anything in any way to help her, put her up
12 or anything, just to let me know and we would do it.

13 Q And what was her response?

14 A She thought she would be fine, she didn't need any
15 help.

16 Q Was she frightened?

17 A Didn't appear to be.

18 Q Did you have any contact with Ms. Howe after that --

19 I take it that was a personal interview. you went and saw her
20 in person?

21 A Yes.

22 Q Did you have any contact either in person or by
23 telephone after that interview?

24 A Yes. I might have had no more than two calls. I know
25 I had one call from her and she was scared that there might

see p 21 //
L12

1 be some men in suits walking around her place, agents or
2 something like that, but that's the only type of contact I
3 had with her.

4 Q Okay. Ms. Gram, from March of -- let's see, I guess
5 from May of 1995 or June of 1995, when she made her last trip

6 to Elhoim City on your behalf; to December of 1996, was
7 Ms. Howe employed by -- as an agent in any way with the BATF?

8 A She was never employed as an agent.

9 Q I use the term agent, but informant.

// 10 A I understand. She never did anything else for us.

11 Q All right. Now, regarding the actions she did do for
12 you, was she at any time in the fall of '94 through -- up
13 through the spring of '95 under instructions to obtain illicit
14 material for the ATF?

15 A Certainly, certainly.

16 Q What sort of illicit materials were you interested in
17 obtaining?

// 18 A Any information we could get regarding explosives,
19 illegal firearms, just basically our regulations that
20 we cover.

21 Q Did she, in fact, furnish you with --

// 22 A She furnished me some grenade parts.

23 Q Did she furnish anything else to you?

// 24 A No.

// 25 Q Was there a can of gun powder that she brought one

1 time?

2 A Yes. It was something that we didn't keep, but I made
3 a photocopy of it. It supposedly belonged to Dennis Mahon.

4 Q Okay. What was the procedure regarding those items

5 that she obtained for you? I mean, was she to turn them
6 over to you within a particular period of time?

7 A Yes. I mean, if she recovered anything of any question,
8 grenade shrapnel or just anything she could obtain, she would
9 call me and let me know she had it and I would usually go pick
10 it up.

11 Q That was from a period of time from the fall of '94
12 through the spring of '95?

13 A That's right.

14 Q Now, drawing your attention again to the summer of 1996
15 through December of 1996, did -- was Ms. Howe under any
16 instructions at that time to obtain illicit materials for you?

17 A I had not spoken to Ms. Howe at all, so no.

18 Q Were you ever notified by her that she had done anything
19 like that?

20 A No.

21 Q Okay. Prior to December of 1996, were you aware of her
22 association with Mr. Viefhaus?

23 A I knew that she was living with somebody named Bones,
24 but I don't know why I thought that it was going to be the
25 same guy, but -- I was not aware that it was Viefhaus.

See p 19
224.

1 Q Were you aware of her activity in the National
2 Socialist Alliance of Oklahoma?

3 A No, I was not.

4 Q Were you aware of the hot line and mailing service
5 that NSAO maintained?

6 A No, no.

7 MR. KIRKPATRICK: One moment, Judge.

8 (PAUSE)

9 BY MR. KIRKPATRICK:

10 Q Ms. Finley, Ms. Gram, was there any other agent at ATF
11 who dealt with Ms. Howe besides yourself?

12 A My supervisor, David Roberts.

13 Q On how many occasions would Mr. Roberts have spoke to
14 Ms. Howe?

15 A Probably a fourth of the time that I did.

16 Q Are you aware of any contact that Mr. Roberts would have
17 had with Ms. Howe from May of 1996 through December of 1996,
18 May of 1995 rather, the summer of 1995 through December of
19 1996?

20 A None.

21 MR. KIRKPATRICK: Thank you. That's all the
22 questions I have.

23 THE COURT: Is there still an investigation on-going
24 at this time with regard to Mr. Mahon?

25 THE WITNESS: No, sir, no, sir, we closed that a

1 long time ago and we just kept her open -- just what we kept
2 -- we kept her active because of the bombing investigation,
3 not because of Mr. Mahon.

4 MR. KIRKPATRICK: Let me develop that, Judge, if
5 I might.

6 BY MR. KIRKPATRICK:

7 Q I take it from the summer of 1995, when she made the
8 last trip to Elhoim City, through December of 1996, Ms. Howe
9 was still on the books as an active informant. Is that
10 correct?

11 A That's correct.

12 Q Why?

13 A Because our division office would not let us close her
14 out or deactivate her because of the on-going investigation
15 in Oklahoma City and we did not want any files to be
16 destroyed, which is what we do with the files on an informant.
17 When they remove the files from the division, I think they
18 destroy them. We did not want to destroy anything that could
19 be important or maybe pertinent to the investigation in
20 Oklahoma City. That's the only reason we kept her as an
21 active informant.

22 MR. KIRKPATRICK: Thank you, Judge.

23 MR. BREWSTER: Your Honor, may I inquire?

24 THE COURT: Yes.

25 CROSS EXAMINATION

KARLA S. McWHORTER
UNITED STATES COURT REPORTER

1 BY MR. BREWSTER:

2 Q Did I understand, Ms. Gram, that the file that you have,
3 that the ATF has on Ms. Howe, is not related to the
4 investigation of this case?

5 A Absolutely not.

6 Q Okay. So that's -- it has nothing to do with this
7 case?

8 A Absolutely not.

9 Q Is that an affirmative? I mean, we might be having
10 double negatives.

11 A It has nothing do with this case.

12 Q Now, have you told us about all of Ms. Howe's actions
13 at the direction of the BATF?

14 A The ones I was specifically asked about, yes.

15 Q Okay. Did you ever have her do a controlled drug buy?

16 A Yes, I did.

17 Q When would that have been?

18 A That would have probably been sometime in the fall of
19 1994.

20 Q Are you sure? Are you sure of the dates?

21 A Yes.

22 Q Okay. You told me that -- or I think you said on
23 direct examination, for example, that your name changed in
24 December of 1995. It actually changed in December of '94,
25 didn't it, from Finley to Gram when your divorce was final?

*Totally
improper
-illegal*

1 A No, sir.

2 Q Oh, okay. Did you -- do you mean to tell me that the
3 drug buy that you had Mr. Howe do was in 1994?

4 A Yes.

5 Q Would the documentation reflect that? Would your
6 documentation of the file reflect that?

7 A It should.

8 Q Did you have Ms. Howe enter a residence and buy some
9 LSD?

10 A Yes, I did.

11 Q Did she return with that -- with that drug buy?

12 A Yes.

13 Q Did you make any arrest?

14 A No, I did not.

15 Q Did any law enforcement agency make any arrest as result
16 of that illegal activity?

17 A No, we did not, no.

18 Q Did you determine whether those were illegal drugs,
19 that LSD?

20 A No. We were doing that to base -- to find out about
21 her credibility. That's the only reason we were doing that.

22 Q Okay. So you had Ms. Howe enter into a place where
23 illegal drugs were sold to buy illegal drugs to determine
24 whether she was credible?

25 A That's correct.

1 Q Did she pass?

2 A Yes.

3 Q Okay. Now, you said that she joined -- somehow you
4 deactivated her for a period of time in 1995 as a result of
5 her becoming involved with a skin head group. Did I
6 understand that testimony correctly?

7 A Yes, the people that she had already identified to me
8 as being skin heads.

9 Q Did you investigate those individuals?

10 A No.

11 Q Did she assist you in identifying those individuals?

12 A No.

13 Q Bones and Otter?

14 A That's all I had to go by.

15 Q Oh, did she not give you the names and did you not
16 initiate an investigation of one of the gentleman who had a
17 child that burned up?

18 A I did not initiate an investigation.

19 Q Did you ask questions about a burned child that -- a
20 little boy that burned up in a house?

21 A I relayed that information to, I think, S.I.D, T.P.D.

22 Q Right. Did you not ask Ms. Howe to attend the funeral
23 and report back to you with regard to these individuals in
24 connection with the burned child?

25 A I might have, but I was not doing an investigation on

1 them.

2 Q She was forthcoming about the individuals that she was
3 associating with in the skin head group, wasn't she?

4 A (NO RESPONSE)

5 Q Was she forthcoming by identifying the individuals by
6 name to you?

7 A Yes.

8 Q And did she provide information at your request
9 regarding those individuals?

10 A She was very sketchy on the information that she would
11 provide to me and that's because, I believe, she was starting
12 to get back in with them.

13 Q Okay. Did you make a note of that in your file?

14 A No. I wasn't doing an investigation on those people.

15 Q Were you ever in Ms. Howe's home over at 116 Marshall?

16 A Marshall?

17 A Yes.

18 Q On Marshall.

19 A No.

20 Q You never were in her home on --

21 A On Delaware.

22 Q Okay. Were you -- you were not in the Marshall home,
23 but you were in the Delaware home?

24 A I was in her residence at Delaware.

25 Q Were you free to come into her home? I mean, did you

1 ever knock on her home and she said at any time that you
2 couldn't enter?

3 A No.

4 Q Was she pretty forthcoming with you in that regard?

5 A She usually knew when I was coming.

6 Q How many contacts would you say you had with her from,
7 let's see, August of 1994 until the Oklahoma City bombing?
8 Hundreds?

9 A No, not hundreds. I'm not that busy with her. I
10 really have no way of estimating that. I didn't document
11 every time I met with her.

12 Q Did she provide any information with regard to
13 Mr. Strassmeir that you felt was noteworthy enough to take
14 action?

15 A Absolutely.

16 Q What did she tell you?

17 A She just identified who he was. It wasn't from what she
18 told me that I was able to -- how am I trying to say this?
19 She helped identify who he was and we knew based on what --
20 who she told me he was, who he was, but as far as violations
21 go, she didn't really have any way of telling me that he was
22 in violation of anything because she had no way of knowing his
23 status as a citizen or an alien or --

24 Did you issue any alerts or bulletins with regard to
25 Mr. Strassmeir based upon what Ms. Howe told you?

1 A I did not.

2 Q Did you cause any bulletins or requests throughout the
3 department or throughout other --

4 A I know what you are getting at and I did not request
5 that a bulletin be made. It was made without my request,
6 without my agreement.

7 Q Was it to contact Angie Finley with regard to the
8 arrest of Andreas Strassmeir?

9 A That probably was what it said. I don't remember
10 exactly what it said, but that's -- it was supposed to be a
11 bulletin for their safety, Oklahoma Highway Patrol safety,
12 and that's the only reason I gave them any information because
13 we did not have an arrest warrant, we did not have any reason
14 for them to apprehend somebody, it was for their safety.

15 Q Did you understand that that bulletin was being placed
16 out there on Mr. Strassmeir?

17 A I didn't know that.

18 Q Well, how did that come to happen? Do you know?

19 A How did it? By me meeting with Oklahoma Highway Patrol.
20 They are the ones who flew us over Elhoim City and in meeting
21 with them they knew what the nature of our investigation was,
22 and I just basically told them what we were doing. I didn't
23 have any reason to hide it from them and they didn't have no
24 reason to tell them, except for their own safety.

25 Q Did that bulletin indicate that Mr. Strassmier carried

1 a 45 automatic?

2 A I think so.

3 Q And that he was an illegal alien?

4 A I don't know if it said that or not.

5 Q And that Angie Finley was to be contacted upon his
6 arrest?

7 A It probably -- no, we never asked for his arrest.

8 Q Did it say that Angie Finley was to be contacted upon
9 his arrest?

10 A I don't remember what it said. I did not put the
11 bulletin out.

12 Q Now, you were interested in knowing as much as you could
13 about Mr. Strassmeir, weren't you?

14 A Yes.

15 Q And what kind of guns he had?

16 A Yes.

17 Q And the kind of threats he made about -- to blow up
18 Federal buildings? You were interested in that, weren't you?

19 A I was interested in anything I could find out about any
20 violation.

21 Q And Ms. Howe told you about Mr. Strassmeir's threats to
22 blow up Federal buildings, didn't she?

23 A In general, yes.

24 Q And that was before the Oklahoma City bombing?

25 A Yes.

1 Q Now, Ms. Howe actually took some of these people from
2 Elhoim City at your direction to Oklahoma City, didn't she?

3 A She went with them. I don't know if she -- she probably
4 did drive.

5 Q She called you before and said, "These folks from
6 Elhoim City want to go over and look at Oklahoma City."

7 A She had specific places they were going.

8 Q As a matter of fact, she --

9 A It did not include the Federal building.

10 Q You asked her to take them, didn't you?

11 A I asked her to do whatever they were doing, and
12 apparently they were going to visit some relatives in
13 Oklahoma City and a church and that is what they were doing;
14 so she was going along with the group.

15 Q And you told her to go over to Elhoim City from Tulsa,
16 Oklahoma, pick up some of those folks and take them over to
17 Oklahoma City and tell you where they wanted to look.

18 A No, I didn't give her specific instructions to go to
19 Oklahoma City. It was already determined by the people at
20 Elhoim City that they were going to go visit their relatives
21 and a church in Oklahoma City. I didn't know what they were
22 going to do.

23 Q The fact is she called you and told you that, that
24 Elhoim City individuals wanted to go to Oklahoma City?

25 A Yes.

1 Q And she told you before that and asked you, "Should I
2 take them?"

3 A I don't remember that. All I know is that I knew she
4 took the people over there and went with them.

5 Q And this was the place that Mr. Strassmier was living,
6 Elhoim City?

7 A Yes.

8 Q And this is the gentleman that she told you about that
9 had intentions to blow up Federal buildings?

10 A That is the general militia rhetoric. Everyone out
11 there is saying the same thing.

12 Q And this trip to Oklahoma City by these Elhoim City
13 residents occurred before the bombing in Oklahoma City
14 actually just by about a few weeks, didn't it?

15 A No, it would be months.

16 Q Oh, would it? ~~When did that occur?~~

17 A The fall of 1994.

18 Q Are you sure about that?

19 A Yes.

20 Q It wasn't --

21 A The last time Carol went out to Elhoim City was December
22 of 1994 for my investigation, and then we sent her again out
23 after the bombing.

24 Q So it wasn't the third week of February of 1995, ma'am?

25 A We did -- I'm sorry. We did send her back out. That

1 was the last trip she made and then I lost contact with her.

2 Q No, ma'am. I'm asking you whether it is a fact that
3 Ms. Howe picked up people from Elhoim City after informing
4 you of the request to go to Oklahoma City and took them to

5 Oklahoma City in February, the third week, of 1995?

6 A I would have to look at my reported again. It's been
7 a long time since I did my investigation, but that's --

8 Q Okay. The very next day you asked Ms. Howe to take you
9 to Oklahoma City and show you the places they visited, didn't
10 you?

11 A I don't know if it was the next day, but, yes, I had
12 her -- I took her to Oklahoma City and asked her the places.

13 Q She was cooperative in all respects?

14 A Yes.

15 Q And she told you that they stayed overnight at a
16 military person's house?

17 A Somebody's relative.

18 Q And he had set off an explosive device, a potato
19 launcher. She told you about that, didn't she?

20 A A potato gun?

21 Q Yes.

22 A Probably.

23 Q Now, not only did Ms. Howe give you the exploded
24 shrapnel, she gave you black powder on occasion, didn't she,
25 ammunition powder?

1 A She gave me a can, which supposedly came from Mahon,
2 that I had to give back. We couldn't keep it. He would want
3 it back.

4 Q She also gave you a green cannon fuse?

5 A It supposedly belonged to Mahon.

6 Q And she gave you what she considered to be metal parts
7 for the composition of a bomb. It was a drill bit, some
8 seven-eighths inch bolts.

9 A I don't remember that. I just remember those other
10 components.

11 Q She gave those to you willingly?

12 A Yes.

13 Q All right. As a matter of fact, she volunteered them.
14 She would get things for you and bring them to you. Right?

15 A Yes. I didn't know she had those things. She would
16 just bring them.

17 Q Did she bring you any propaganda on this white movement
18 that contained written rhetoric?

19 A You mean like a "Spotlight" or some type of newspaper?

20 A Oh, any type of white power propaganda.

21 A Stuff she would get from Mahon, which was something
22 anybody could get.

23 Q Would she bring it to you?

24 A Yeah.

25 Q For example, didn't she even bring you a copy of the

1 Turner Diaries and said, "Make sure you read this?"

2 A I gave it back to her.

3 Q I didn't ask you --

4 A Yes, yes.

5 Q She brought you the Turner Diaries and said, "Make
6 sure you read this."

7 A Yes.

8 Q And she inquired several time, "Have you read that yet."

9 A Yes, yes.

10 Q She brought you a copy of the book called The Silent
11 Brotherhood, didn't she?

12 A I don't know if she got me a copy of it or I -- I don't
13 remember that.

14 Q She actually brought you the tape, videotape of her and
15 Mr. Mahon being interviewed on German T.V., didn't she?

16 A Yes.

17 Q Now, I'm kind of confused about the contact by Ms. Howe
18 after the Oklahoma City bombing. Is it your testimony that
19 you didn't call her?

20 A I did not call her.

21 Q You didn't call her and ask her to come to the BATF
22 office and --

23 A After she contacted me. She paged me and contacted me
24 and said she thought she could identify John Doe Number 2.
25 So then I called her back and asked her if she could come to

1 Oklahoma City.

2 Q First of all, you had her come to the Tulsa office and
3 call Dennis Mahon and tape it, didn't you?

4 A I think we called from Oklahoma City.

5 Q Oh, okay. You didn't ask Ms. Howe to come to Tulsa,
6 Oklahoma to your office and call Dennis Mahon in Illinois and
7 tape record the conversation?

8 A No. The only one I remember is the one in Oklahoma
9 City. That was after -- anything that happened after the
10 bombing was under the direction of the FBI. I just
11 facilitated her for that use.

12 Q Was the FBI present when she called Dennis Mahon?

13 A Well, I think the attempt was made, but no contact was
14 made.

15 Q That's because you immediately suspected that
16 Mr. Mahon had involvement in the Oklahoma City bombing,
17 didn't you?

18 A We wanted to see where he was, and that's all based on
19 what the FBI wanted to do with her.

20 Q No, no, ma'am. I'm asking you a simple question. You
21 immediately suspected that Dennis Mahon was involved in the
22 Oklahoma City bombing.

7. 23 A No, I did not.

24 Q Did you instruct from time to time Ms. Howe on how to
25 conduct these conversations with these white separatist

1 individuals so that she could elicit the most valuable
2 information from them?

3 A I would give her suggestions on questions to ask,
4 things to look for.

5 Q Did you tell her to use violent rhetoric?

6 A No.

7 Q Did you tell her to engage in a discussion about
8 blowing up Federal buildings?

9 A No.

10 Q Were you present or did you, in fact, yourself instruct
11 Ms. Howe in the identification of certain firearms?

12 A Yes.

13 Q And did you tell her or have someone instruct her on
14 how to convert or how to determine whether a gun has been
15 converted to fully automatic?

16 A We did not instruct her on how to convert anything.
17 We tried to instruct her on how to function check a firearm
18 to see if it was fully automatic.

19 Q And was she in your presence at -- on an occasion when
20 firearms were actually fired on the range?

21 A On our range?

22 Q Yes, or on a range.

23 A Not that I recall.

24 Q Did she provide for your review a book called
25 Conversion of an AR-15?

1 A Did she what?

2 Q Did she provide for your review a book called
3 Conversion of an AR-15?

4 A I don't remember the book.

5 Q Was Ms. Howe paid?

6 A Yes.

7 Q How was she paid?

8 A With what -- agent cashier.

9 Q I don't understand.

10 A It's subsistence pay. We paid her about twenty or
11 twenty-five dollars a day when she did work.

12 Q And it's just a government check?

13 A Cash, which we got a receipt for.

14 Q Did you tell Ms. Howe whether she should report this
15 on her income tax?

16 A Yes, I did. The first time before we ever started into
17 this we said, "That's what you are supposed to do."

18 Q What did you tell her?

19 A That that's what you are supposed to do. It's
20 reportable income.

21 Q You told her not to report it, didn't you, ma'am?

22 A No. I can't tell somebody not to report it.

23 Q Did you tell her that the BATF was also a racist
24 organization?

25 A No.

1 Q I'm wanting to understand a little bit about this
2 activation of her as an informant in 1995. When did that --
3 when did that actually occur relative to the Oklahoma City
4 bombing? You said there was a process, that you had to have
5 approval.

6 A Yes.

7 Q Who would the approval -- who would that have come from?

8 A Our Dallas division office, ultimately our special
9 agent in charge.

10 Q Who would that be?

11 A Lester Marks.

12 Q Was that approval rather prompt in coming? In other
13 words, was --

14 A Yes.

15 Q So, in other words, from the time she contacted you and
16 you got the approval, she was back on the payroll basically?

17 A We were waiting to see what we could do with her, what
18 the FBI wanted to do with her.

19 Q From August of 1994, if I understand you correctly,
20 until December of 1996, there would have only been about a
21 two month period of time when she wasn't an active informant
22 or at least an activated informant.

* // 23 A Probably about three months.

24 Q Okay. Sometime let's say -- if I understand your
25 testimony, sometime from about January until about -- or

1 maybe February until about April?

2 A No, from about March until May. I'm guessing we didn't
3 do anything with her or get her reactivated until after the
4 bombing.

5 Q Well, you took her to Oklahoma City and she spent the
6 night there, didn't she?

7 A Yes.

8 Q Actually, she spent the night in the room identified
9 as Angie Finley's room.

10 A Yes. We paid for it with a government credit card.

11 Q Paid her for that trip too, didn't you?

12 A Yes.

13 Q So are you telling me that you were paying an informant
14 that wasn't activated?

15 A No, she was reactivated.

16 Q Well, if that was on April 19th and she was down
17 there about April 20th or 21st in Oklahoma City, a day or two
18 after, it would have been April 22nd when she was reactivated.

19 A Whenever we took her back.

20 Q So she was not -- she was deactivated in March and
21 reactivated in late April.

22 A I guess so.

23 Q Now, did you inform the FBI that you thought she was
24 unstable?

25 A I told the FBI whatever they wanted to know about her.

1 Q Did you inform Resident Agent In-Charge Marks that this
2 lady is unstable?

3 A Yes, yes, absolutely. He knew that from my
4 correspondence that he had received when I asked for an
5 emergency removal.

6 Q And then whose idea was it to send her back to Elhoim
7 City?

8 A Under the direction of the FBI.

9 Q Mr. Blanchard?

10 A Whoever makes the decision. I don't know if he made the
11 decision or some -- or the supervisors.

12 Q Didn't she have to report to you when she was at Elhoim
13 City?

14 A I was the go-between. I was the go-between between her
15 and the FBI, and that's all.

16 Q Did you indicate to her you didn't really care much for
17 the FBI?

18 A At that time, no. I told her to tell them whatever they
19 asked her. I freely gave her to them and said whatever you
20 want to do, fine.

21 Q Did you tell her that you personally did not like the --

22 A I told her after she was disclosed I was very upset
23 with the FBI.

24 Q Did you tell her in Oklahoma City that you didn't want
25 the FBI to interview her?

1 A No. I believe I took her there to be interviewed.

2 Q Did you tell her that you didn't trust the FBI?

3 A I told her to tell them whatever they wanted to know.

4 Q No, no. Did you tell her that you didn't trust the
5 FBI?

6 A No.

7 Q Did you tell her in the presence of other witnesses
8 that?

9 A Did I tell her that I did not trust the FBI?

10 Q Yes, that you did not like the FBI and you did not
11 trust the FBI.

12 A No.

13 Q Okay. Did you tell her that Agent Blanchard screwed up
14 the report and had her as a suspect instead of an informant
15 and that you had to fix it?

16 A No. I told her that he must have messed up the report
17 in order for it to be disclosed, or somebody did.

18 Q Oh, in other words, if he did it properly, it wouldn't
19 have been disclosed.

20 A That's the way I understood it. I don't know what
21 happened with the forms.

22 Q Did you know that she had gone on her own to see
23 Special Agent Rickle in 1996?

24 A No.

25 Q Would you explain to me what you meant when you said

1 you learned that she had been, quote, "compromised," close
2 quote?

3 A One more time.

4 Q I don't understand what you mean by the term "that she
5 had been compromised."

6 A That her identity had been compromised. That's just a
7 word I use meaning that she had been disclosed and she could
8 be in danger.

9 Q Disclosed in what fashion?

10 A That apparently due to the fact her name was not
11 withheld from certain FBI reports and it was given to the
12 defense in discovery, that her name had been -- had come out.

13 Q Well, had you heard Government statements that there
14 was never an informant at Elhoim City in the fall of 1994?

15 A I haven't heard that.

16 Q You have never seen those reports that the Government
17 took the position in connection with the McVeigh trial --

18 A No, I haven't.

19 Q You would know that to be untrue though, that
20 statement?

21 A Yes, I would know that.

22 Q Was there a period of time when Carol actually stayed
23 about a month in Elhoim City?

24 A She said she had stayed one extended time.

25 Q In her trip to Elhoim City in 1995, I believe perhaps

1 in early May, did she have a rather increased stipend of
2 compensation for that trip?

3 A For the one when we sent her back after the bombing?

4 Not that I'm aware of. We couldn't really vary her payments
5 to her.

6 Q Did you pay her \$400.00 a day?

7 A I don't remember how much we paid her.

8 Q Did you pay her a little extra money for combat danger
9 in that regard?

10 A I don't remember how much we paid her.

11 Q Would your records reflect that?

12 A Sure.

13 Q Would you have receipts in your file?

14 A Sure.

15 Q You mentioned to Mr. Kirkpatrick that this information
16 was in the informant file. Does the BATF have more than one
17 file relative to Ms. Howe?

18 A We just have one informant file, which is her
19 information. The other file would be my investigative file,
20 which is in relation to my investigation which would be the
21 Dennis Mahon, White Area Resistance file.

22 Q That would be the file that --

23 A That's my working file.

24 Q That would be the file you were basing some of the
25 information received from Ms. Howe on in your investigation

1 of others?

2 A Absolutely.

3 Q What do you call those files?

4 A I call it our investigative file.

5 Q Investigative file. Would it be under an individual's
6 name?

7 A Well, it can be under an individual's name. They all
8 have a number, they are numbered files.

9 Q What would be the numbers of the files -- could we
10 determine the number of the files, for example, of suspects
11 where Ms. Howe provided information to you to investigate?

12 A I had a number in the file which related to Dennis
13 Mahon.

14 Q And you would have one, I assume, for Mr. Strassmair?

15 A No, I did not have a separate file. He was part of the
16 investigative file. He was discovered during that
17 investigation, so it's all under one number.

18 Q So, for example, if you did investigative work on Tony
19 Ward or Pete Ward or Mike Breshia or Robert Maylor or other
20 individuals that information was provided by Ms. Howe to you
21 on, that would be in your investigative file?

22 A Right.

23 Q Were there any other files created as a result of
24 Ms. Howe's work for you, with the exception of the informant
25 file and the investigative file?

1 A We had another investigative file on Fay Dysart, who
2 was the one we brought the drugs from, which is totally
3 unrelated and that is why we had a separate file, and then
4 just my overflow file, which is my file -- my main file was
5 too full of information, so I just had another extended file
6 for that.

7 Q Okay. So what we have here are essentially four files;
8 we have the ^①informant file, we have the ^②investigative file,
9 we have the Fay Dysart -- is that ^③D-Y-S-A-R-T?

10 A Uh-huh.

11 Q -- file, and ^④we have the Mahon and others, or I mean
12 the overflow file. Right?

13 A Right.

14 Q Okay. So there are four files. One more area that I
15 would like to ask about. When Ms. Howe brought to you this
16 shrapnel did she tell you that that shrapnel came from an
17 exploded grenade or --

18 A Yes.

19 Q Did she tell you how that came about? Was it exploded
20 over there at Elhoim City?

21 A That was my understanding.

22 Q And did she tell you that she -- as a result of her
23 role for you, that she had participated in the exploding of
24 that, so she actually visualized or witnessed it?

25 A That was my understanding.

1 Q Why didn't you place her under arrest?

2 A Because she was acting as the eyes and ears for ATF.

3 MR. BREWSTER: Thank you. No further questions.

4 MR. BRYANT: Just a few questions, Your Honor.

5 THE COURT: All right.

6 FURTHER CROSS EXAMINATION

7 BY MR. BRYANT:

8 Q Agent Gram, you testified that you first came in
9 contact with Carol Howe after a Tulsa police officer had
10 mentioned to you that she had a certain firearm. Is that
11 correct?

12 A I just received a police report and after reviewing it
13 -- I think that was the main interest, that she might have had
14 an AK-47. That was my understanding at the time.

15 Q Did she, in fact, have an AK-47?

16 A No.

17 Q You testified that there were 38 different videotapes
18 and then four audio tapes.

19 A No, sir, that's not correct.

20 Q Excuse me.

21 A We had 38 audio tapes and then four videotapes.

22 Q Four videotapes. I got that backwards. And those were
23 tapes that she had made working in conjunction with you.

24 Correct?

25 A Except for two of the videotapes, which were just what

1 we received on our own by doing air surveillance, all of them
2 were, yes.

3 Q Were there any tapes that Ms. Howe made independently
4 and then provided to you?

5 A Yes.

6 Q How many tapes did she make independently?

7 A I don't know the specific number, but they were usually
8 phone calls because anything she did -- like if she met with
9 somebody, I would be monitoring that as well, which would be
10 a tape that I would make if she -- or she would have a body
11 mike on, so I would make it from the wire; otherwise, it would
12 be a phone conversation that she could tape on her own.

13 Q Okay.

14 A I don't know exactly how many.

15 Q All right. Are there many such tapes? Do you still
16 have those?

17 A Yes. They have been turned over.

18 Q Agent Gram, have you ever met Jim Viefhaus?

19 A No.

20 Q Did Ms. Howe ever refer to Jim Viefhaus?

21 A I have no memory of the Viefhaus name.

22 Q During the time that Carol Howe was an informant for
23 the ATF did you encourage her to maintain ties with white
24 supremacist groups?

25 A Yes, in order to gain information or intelligence.

1 Q Did you ever encourage her to create her own white
2 supremacist group?

3 A No.

4 Q Did you ever encourage her to create a hot line?

5 A No.

6 Q Or a newsletter of some kind?

7 A No.

8 Q I don't believe you ever answered the question about
9 how many times you met with Carol Howe during the period of
10 August of 1994 through March of '95.

11 Q have no idea of knowing. I didn't document every time
12 I met with her.

13 Q Could you give us an estimate?

14 A Probably 50 to 75, that would be the high end.

15 Q Okay. Did you ever ask Carol Howe to recruit anyone
16 else to serve as an informant?

17 A No.

18 Q When Carol Howe traveled from Tulsa to Elhoim City did
19 anyone travel with her?

20 A Sometimes she went with Dennis Mahon and -- and that's
21 all I remember her taking out there or going with. I don't
22 remember who drove.

23 Q But you were aware ahead of time that she was planning
24 trips down there?

25 A Yes.

1 Q You mentioned that you had an investigative file on
2 Dennis Mahon and WAR.

3 A It's the same file, White Area Resistance.

4 Q What were the nature of the offenses you were
5 investigating?

6 A Anything from explosives to illegal firearms.

7 Q How long did that investigation go on?

8 A I believe I closed my investigation -- it began around
9 August of 1994 and I think it went through -- technically we
10 close out the investigation when all of the property -- what
11 am I trying to say -- when the property of the investigation
12 has been disposed of, but my investigation actually stopped,
13 we stopped doing anything with that after I had had her
14 deactivated as an informant.

15 Q So at that point --

16 A I requested disposition for the property and after
17 receiving that I had a request that the investigation be
18 closed.

19 Q You still have the file that --

20 A Yes.

21 Q Any property that Ms. Howe had turned over to you has
22 been destroyed. Is that --


23 A Any tangible property has been destroyed. Electronic
24 property, videotapes, audio tapes has to be maintained for
25 five years in the vault.

1 MR. BRYANT: Thank you.

2 MR. KIRKPATRICK: Okay. None based on those, Your
3 Honor.

4 THE COURT: All right. Thank you. You may step
5 down. Let me ask a question. If these files have been closed
6 out and there is no -- there is no on-going investigation, is
7 there any necessity for sealing them?
8 What is in there that is secret?

9 MR. KIRKPATRICK: Judge, the files contain
10 information relating to how the BATF does its investigations,
11 how informants are documented. In this case the file also
12 contains the names of other persons who were not suspects,
13 but were involved in the investigation, none of which is
14 relevant to this case and a lot of which may very well prove
15 to be damaging to those individuals that are involved. It's
16 just simply, as far as we are concerned, that -- it's just
17 not necessary to disclose that information. I'm frankly
18 concerned, and I expressed this to your clerk, that any
19 information that Mr. Brewster and Mr. Bryant receive as a
20 result of this not go anywhere else, and I'm sorely afraid
21 that they may be acting consciously or unconsciously as a
22 stalking horse for the defense in the trial in Denver.

 23 Now, it would be our request that if the Court determines
24 that parts of the file are necessary for the defendants, that
25 the defendants be directed not to disclose that information to

1 anyone else prior to the trial of this case.

2 THE COURT: Well, I'm not sure that there is much,
3 if anything, in the files that relate to this case, but --

4 MR. KIRKPATRICK: There aren't, and that is the
5 essence of my objection here, Judge, is that there is just
6 simply no reason. What Ms. Howe did on behalf of the BATF
7 over a period of several months in 1994 and 1995, and then
8 again for a very short time following the Oklahoma City
9 bombing simply is not relevant to this case. The
10 investigative agency is not the same. This case is an FBI
11 case, it's a complete FBI case, it's not an BATF case. The
12 parties are not the same, the allegations, the offenses
13 alleged are not the same. It just simply has no relation
14 whatever to this particular case. It's just not necessary,
15 first, that the information be disclosed or, second, that it
16 come into trial in any way.

17 THE COURT: There was one document in here that
18 relates to the tape that is talked about in this indictment,
19 or I believe it talks about that tape.

20 MR. KIRKPATRICK: Yes, Judge. There is a copy of
21 the FBI 302 that was generated as a result of this case that
22 was furnished to the BATF in December of 1996, but not before
23 then. In other words, it was only after the arrest of
24 Viefhaus that the ATF was informed of the FBI investigation.

25 MR. BREWSTER: Your Honor, we would have n

1 o objection to the withdrawal of that page or those pages
2 relating to that tape pursuant to 16 -- Rule 16(a)(1)(2), or
3 I mean it's (a)(2). I'm sorry. With regard to the rest of
4 the files, since it does relate to this case --

5 THE COURT: What -- well, let me tell you, we are
6 going to try this case and this indictment when this case goes
7 to trial, but I want you to have whatever you think you need
8 to prepare for your defense.

9 MR. BREWSTER: I appreciate that.

10 THE COURT: I don't want to make you disclose in
11 open court what you think your defense may be, but I would
12 like to know how these files that talk about Mahon and going
13 down to Elhoim City relate to the charges in this indictment.

14 MR. BREWSTER: Oh, Your Honor, they are the very
15 essence of what this indictment is all about. There is just
16 no question about it.

17 THE COURT: Well, tell me how.

18 MR. BREWSTER: All right. First of all, there are
19 two parts to it in my opinion. First of all, I went on
20 Tuesday to the FBI office to see all of this seized evidence,
21 all of this horribly incriminating evidence, and what I saw
22 was this very evidence that Ms. Howe had obtained and had
23 given to Ms. Gram; the Turner Diaries, the Silent
24 Brotherhood, the white propaganda. All of the things that
25 she had gathered up and accumulated and given to Ms. Finley

1 and had her review and then took back they use now as evidence
2 in the case to indict her.

3 THE COURT: Is that right?

4 MR. BREWSTER: That's a fact.

5 MR. KIRKPATRICK: The evidence file in this case
6 does contain a copy of the Turner Diaries. I have no idea
7 whether that is the same copy of the Turner Diaries that
8 counsel is referring to. It does contain white supremacist
9 literature, but the National Socialist Alliance of Oklahoma
10 was a white supremacist racist or whatever it was run by
11 the defendants. It simply would not be unusual for them to
12 have stuff like that.

13 THE COURT: I guess what my question is, getting
14 down to it, is did Ms. Howe furnish Ms. Gram physical
15 evidence, bring it to her pursuant to her being an ATF
16 informant, let Ms. Gram look at it and so forth and then give
17 it back to Ms. Howe, and then a search warrant comes along
18 and she takes that evidence and it is used in this case for
19 an indictment?

20 MR. BREWSTER: That's exactly the case.

21 THE COURT: That's my question.

22 MR. KIRKPATRICK: Well, Judge, no. What we have in
23 this case -- we have plenty of evidence other than this, what
24 Mr. Brewster is talking about. The only thing that even is
25 possibly that way would be a can of -- a particular can of

1 gun powder, but we have several cans of gun powder in this
2 case, not just the one that was documented in the ATF file.
3 That's it. The grenade hulls, the painted grenade hulls were
4 maintained by the BATF and they have been shown to counsel.
5 We produced them on Tuesday. I can tell the Court there is a
6 wealth of evidence in this case that has no conceivable
7 connection with Ms. Howe's connection with the BATF, and
8 counsel's assertion that all of it does is simply wrong.

9 MR. BREWSTER: Your Honor, this reminds me of a
10 situation where somebody is moving for summary judgment and
11 they have got a serious question concerning the facts. It is
12 the defense's theory, and twelve jurors may or may not believe
13 the defense, they may or may not believe the prosecution, but
14 it is the defense's theory at least that much of the evidence
15 confiscated and seized from the Viefhaus home was evidence of
16 the exact or similar nature provided to Ms. Gram over a period
17 of months. Obviously, the file that Your Honor has reviewed
18 would document, corroborate and support that.

19 THE COURT: Not much of it, as to what was
20 actually delivered. Now, there was -- there is some
21 documentation of some things delivered, there is some
22 documentation as to some powder and it's got a picture or a
23 photocopy of the powder, and there may have been two or three
24 other things, but it would appear to me it would be real easy
25 to take what this file says that she delivered to the ATF and

1 compare it to what it is and sort this out pretty quick.

2 MR. BREWSTER: Well, that's one -- that would be
3 helpful and reviewing that file is absolutely necessary for
4 us in order to accomplish that objective. There is little
5 doubt in mind, and I think we are going to show this, a lot
6 of times submissions of evidence or documentation to
7 Ms. Finley occurred without maybe her making a note in her
8 file because if we match up her testimony here today, for
9 example, and go back to her file, perhaps she did not make a
10 note that she received the Turner Diaries, but we know now
11 that she did, for example. But the whole flavor of the
12 relationship for Ms. Howe, the fact that she was an activated
13 informant for most of the time, all of the time of the alleged
14 conspiracy. They have indicted her for conspiracy and she was
15 an active informant for the ATF at this time, an activated
16 informant. All of that is very, very rich and relevant
17 information going to the defense of Ms. Howe. Take that away
18 and what we have is her word against the Government's, which in
19 cases like this is very, very uneven because the Government's
20 word most of the time is followed by the jurors. So, this
21 document, the documents in this file are absolutely critical.
22 I mean, I can't imagine --

23 THE COURT: But they go to the issue of the evidence
24 at the house. Right?

25 MR. BREWSTER: That's one thing they go to.

1 THE COURT: All right. What else do they go to?

2 MR. BREWSTER: The flavor of the relationship, the
3 nature of the relationship. In other words, the fact that she
4 met 50 to 75 times with the ATF agent, was willing to meet,
5 followed directions, went out of state for them, all of this.
6 The nature and depth of that relationship itself is very,
7 very relevant information for a jury to consider as to whether
8 they think that she formed the intent to commit some kind of
9 crime here. I mean, that is very, very important information.
10 The key point, I think, is that there is no protection for the
11 Government here. Rule 16 says provide it, unless it is a file
12 pertaining to this case. That's it, it is absolutely
13 discoverable. They have no privilege.

14 THE COURT: I don't think they are arguing a
15 privilege. It's whether it relates to this case or not.

16 MR. BREWSTER: Right.

17 THE COURT: That's what we are talking about.

18 MR. BREWSTER: Well, that's the key terms for Rule
19 16(a)(2), is that they are not to disclose or not required to
20 disclose documents, memoranda or discovery in connection with
21 the investigation or prosecution of this case. Well, that's
22 not the situation. Those files don't pertain -- and that's
23 one of the things I determined early on in my examination,
24 and he did as well, they don't pertain to this case.

25 THE COURT: I agree with you.

1 MR. BREWSTER: That's the key point. So Rule
2 16(a)(2) does not permit the Government not to provide them,
3 if they are material. So the question is are they material,
4 and I think the materiality in this case is very clear. I
5 mean, the fact that she has this long-term relationship, it's
6 kind of like the bias of a witness or a relationship of a
7 juror to one of the parties. The fact that there is this
8 relationship that she had with the Government that was going
9 to this extent cannot be proved without that file, unless I
10 call Ms. Howe to the stand, which she has a right not to take
11 the stand. So -- and the circumstances here, Judge, they are
12 -- they are absolutely material. I would consider them to be
13 essentially Brady material, the fact that she had this
14 long-term relationship that was very cooperative, leading
15 right up to the time that there was the search of her home.

16 THE COURT: I think you are going to be sorely
17 disappointed, Mr. Brewster, with these claims that are making
18 of what these files show.

19 MR. BREWSTER: Very well.

20 THE COURT: But I -- I want you to have the
21 opportunity to see exactly what we are talking about. I'm
22 not just going to turn the files over. They do have some
23 sensitive matters in them that I don't think is proper just
24 to turn copies out and -- so that they can be disseminated.
25 I will sit down and go over the file with you and you can see

1 exactly what we are talking about here; and then if there is
2 some other -- after after you see it, because you are at a
3 real disadvantage because you haven't seen anything --

4 MR. BREWSTER: I agree.

5 THE COURT: And when you are in your position you
6 are wanting everything, so to speak.

7 MR. BREWSTER: Well, you know, when you're
8 prosecuting someone in a crime this important, I would think
9 the Government would want to give you everything. Why do we
10 hide and play games? Just give it up and stop hiding or
11 playing games. I'm taking a legitimate legal position.

12 Your Honor, may we also believe that Your Honor takes the
13 position or takes the view that, Your Honor -- obviously no
14 disrespect to the Court, but I have spent a great deal of
15 time with my client. I have an understanding of --

16 THE COURT: That's what the probation office tells
17 me.

18 MR. BREWSTER: Good, good, I have. I have worked
19 hard on this case, but there may well be a lot more work to
20 do. But these other files, have you seen all four files that
21 she has described?

22 THE COURT: Got them all right here.

23 MR. BREWSTER: All four of them?

24 THE COURT: I believe they are all here.

25 MR. KIRKPATRICK: Judge, you do not have the Dysart

1 file.

2 THE COURT: That one I may not have, but, yes, this
3 is what we are talking about.

4 MR. BREWSTER: Okay. I'm assuming, Your Honor,
5 pursuant to your order those would be the files that were
6 from Denver and also the Dallas office?

7 MR. KIRKPATRICK: That's right, that's right. That
8 would be the three files which she had, the investigative
9 file, the informant's file and the overflow file, not
10 including the Dysart file at this time. The informant file
11 is actually the Dallas file.

12 THE COURT: The Dallas file. The files that she
13 described were her investigative file, the overflow file, the
14 Dallas file, and except for the one mentioned in her
15 testimony today, it appears that they are all right here.

16 MR. BREWSTER: Okay. Another point, Your Honor,
17 and I appreciate being allowed an opportunity to look at those
18 files. There is another point. There are the actual physical
19 materials that Ms. Howe gave over to the BATF, the audio
20 tapes, the videotapes.

21 THE COURT: They are right here.

22 MR. BREWSTER: Okay.

23 THE COURT: Now, the physical material, the shrapnel
24 and stuff, I guess it's gone.

25 MR. KIRKPATRICK: It's been destroyed, Judge.

1 THE COURT: Okay.

2 MR. BREWSTER: And I'm assuming -- I don't know
3 what happened to the drugs.

4 THE COURT: I don't think they are in here.

5 MR. BREWSTER: Maybe the disposition of them would
6 be made known by virtue of the examination of the Dysart
7 file.

8 MR. KIRKPATRICK: Well, gee, Judge, I mean, we are
9 not going to give Mr. Brewster any LSD. I would have to
10 arrest him at that point and I just don't feel up to that.

11 THE COURT: Is there any of this material that are
12 in these files that has already been turned over?

13 MR. KIRKPATRICK: I believe that it has. Certainly
14 the FBI 302 that the Court referred to.

15 THE COURT: All right. That's the one that I saw
16 that --

17 MR. KIRKPATRICK: Yes, sir.

18 THE COURT: What about you, Mr. Bryant? Do you want
19 to look at any of this?

20 MR. BYRANT: I do, Your Honor, I do. I want to be
21 included in that.

22 MR. KIRKPATRICK: Judge, I had those in order.
23 Mr. Leach will think (inaudible) of me. He keeps -- he is
24 trying to keep me straight. I'm trying to keep them straight.

25 THE COURT: I have kept them pretty straight. The

1 deal that -- did he prepare that deal that accompanied the
2 letter, the inventory of it?

3 MR. KIRKPATRICK: I did the initial on that.

4 THE COURT: Okay. Well, what about Wednesday of
5 next week? What's your schedule?

6 MR. BREWSTER: With regard to what, Your Honor?

7 THE COURT: Sitting down and going through this file

8 MR. BREWSTER: Okay. Your Honor, I don't have my
9 calender. I think in terms of numbers. I don't know what
10 date that would be.

11 THE COURT: April 30th. Do you want to check and
12 let me know?

13 MR. BREWSTER: I better check, sir. And, Your
14 Honor, I would think that that is going to take some amount
15 of time, at least from my standpoint.

16 THE COURT: It will take -- we are probably looking
17 at a couple of hours because there is a lot of duplication,
18 or there is some duplication in there. Some of that has got
19 plastic covers that makes it a little bit thicker on some
20 notes that I presume are from your client.

21 MR. KIRKPATRICK: Yeah, Judge, we put the plastic
22 covers on those.

23 THE COURT: Those are all in plastic covers, so
24 that makes it a little bit thicker.

25 MR. BREWSTER: Your Honor, would it be -- would it

1 be possible just to obtain copies of the entire files and --
2 with an understanding or a protective order for a period of
3 time and -- I mean, that would allow at least counsel to have
4 an opportunity to go through them in a little more leisurely
5 fashion rather than --

6 THE COURT: Well, let me just ask you this,
7 Mr. Brewster. A lot of this makes for good conversation,
8 like the trip to Oklahoma City, you know, before the bombing
9 and so forth and it makes for sensationalism, and I don't know
10 that it really has anything to do with the Oklahoma City
11 bombing, but I saw where you were coming from. With that
12 McVeigh trial going on, I don't want anything getting out of
13 here that would compromise that trial in any way.

14 MR. BREWSTER: What do you mean by compromise? Do
15 you mean shared with the McVeigh lawyers?

16 THE COURT: Yes, or something that would come up --
17 you know, we have got evidence that the ATF took a trip with
18 somebody that said buildings were going to be blown up in
19 Oklahoma City before it was blown up or something of that
20 nature, and try to connect it to McVeigh in some way or
21 something.

22 MR. BREWSTER: That would be up to their
23 representation of their client in some regard, Your Honor.
24 If you are asking me not to share any documentation from
25 these files with those lawyers, then I won't.

1 THE COURT: Well, are you talking to them?

2 MR. BREWSTER: I have spoken with one of the lawyers
3 on that team, yes, one time.

4 THE COURT: Okay. In connection with this case?

5 MR. BREWSTER: In connection with this case. They
6 obviously have an interest in Ms. Howe becoming a potential
7 witness there and I told them they would have to subpoena her.

8 THE COURT: Well, that's what concerns me.

9 MR. BREWSTER: But, Your Honor --

10 MR. KIRKPATRICK: In the interest of fairness,
11 Judge, let me disclose that I have spoken to one of the
12 attorneys on the trial team for the Government, but only in
13 regard to obtaining the files themselves. We have not
14 discussed anything that was contained in them.

15 THE COURT: Your Honor, I'm kind of a believer in
16 that the cross examination method really works in a courtroom
17 and if there is anything in those documents -- well, if Your
18 Honor tells me not to share them with those lawyers, that's
19 fine. I'm interested in one person in this courtroom and
20 that's Ms. Howe, but if there is a document in there that
21 would tend to suggest that someone is not telling the truth
22 or tend to suggest that there is something more than just
23 Mr. McVeigh being the person that blew up the Oklahoma City
24 Federal building, I think that would be good to have in their
25 hands because then they could prove the truth. So I'm a great

1 believer -- I don't think it really causes confusion as much
2 as it spreads light.

3 MR. KIRKAPTRICK: Judge, let me proffer to the
4 Court that there has been a disclosure made to the defense in
5 the Oklahoma City bombing case regarding Ms. Howe. Obviously
6 there was -- and Ms. Howe herself has appeared in the press
7 and whatnot explaining --

8 THE COURT: Oh, I have seen all of that.

9 MR. KIRKPATRICK: Yeah. It's all -- I mean, it's
10 all out there for them anyway. What I'm concerned about is
11 that releasing these files, which are not connected with this
12 offense in any way -- I understand what Mr. Brewster is
13 saying and maybe -- there may be some merit to individual
14 objects which are described, which may be described in those
15 files which may or may not have been taken to the FBI office,
16 maybe that's appropriate, and in fact I would be willing to
17 concede that was appropriate in this case, but as far as
18 wholesale turning over of the file to Mr. Brewster, we just
19 urge the Court not to do that. I think the Court's discussion
20 about or the Court's suggestion that -- I don't care. I think
21 I know what his theory of defense is anyway and I don't care
22 to sit in on any kind of meeting with you and him and the
23 file. If you guys want to do that, that's fine with me.

24 MR. BREWSTER: Your Honor, I'm used to looking at
25 complex files and I'll tell you that in medical cases that I

1 routinely try, you can look at a document and you can look at
2 it about a hundred times and you think of something you never
3 thought of before about the fifteenth day you look at it. So
4 I would really like to have an opportunity to have the files
5 copied and have an opportunity -- and if there is a protective
6 order in place, as an officer of the Court I'll respect it to
7 the letter. And if, in fact, I feel somewhere along the way
8 that the protective order needs to be challenged, then I
9 would bring the appropriate motion. I will not violate your
10 order, but those files, I would like to have a copy of them
11 and I believe they are clearly material as the materiality
12 standard has been expressed in the Armstrong case recently.

13 MR. KIRKPATRICK: It's going to be our contention
14 that they are not material, Judge, although a small portion
15 of them may be. The whole file in itself simply is not
16 material to this indictment, to this case. The Court itself
17 indicated in a few moments ago that we are going to try this
18 indictment and that's the case we intend to try. I mean, it
19 was certainly not our intention to put on any of this kind of
20 evidence in our case-in-chief. We are going to try the case
21 that is indicted and we would appreciate it if the defense did
22 the same thing.

23 THE COURT: Do we have a list of what was taken out
24 of the house in connection with the search warrant?

25 MR. KIRKPATRICK: Yes, yes.

1 THE COURT: Okay. I want a copy of that.

2 MR. KIRKPATRICK: Yes, sir.

3 THE COURT: Let me think about your request and see
4 how the best way to handle this is. I'm going to give you
5 access to the files so that you can see what is in there. I
6 think that's the only way to have an intelligent discussion
7 about the files, so that you can actually see what we are
8 talking about. At this time I'm not going to order that
9 copies of the files be turned over to you, but I am going to
10 make them available so that you can look at them and then if
11 you think that some of this is relevant or you need copies
12 of it for your defense, if it gets there in any shape or form,
13 I'm going to let you use in it in connection with your
14 defense.

15 MR. KIRKPATRICK: Judge, I have a suggestion, if you
16 don't mind. I could certainly give Mr. Brewster a copy of the
17 inventory of the file that was prepared. That might help.

18 THE COURT: All right. That's fine. But I want to
19 -- you know, I want you to be able to see exactly what is
20 there and then we will go from there about what is copied and
21 what is removed. I can do that next week. You look at your
22 schedule.

23 MR. BREWSTER: Would Your Honor want to be present?

24 THE COURT: Yes, I want to -- I don't guess I have
25 to be present when you go through it initially, but I just

1 want the file retained in my chambers and you are welcome to
2 come there to look at it initially. And I can be here if
3 there is -- or I cannot be here, Mr. Brewster. It doesn't
4 matter.

5 MR. BREWSTER: It's your preference, Your Honor.

6 THE COURT: No, I'm going to give you the file and
7 let you go through it and give you an opportunity to think
8 about it and look at the documents and then -- so you can see
9 what is there, and then we may have another hearing shortly
10 thereafter about what is going to be turned over to you.

11 MR. BREWSTER: Very well, sir. Could I get back
12 with Rosanne perhaps with a couple of times or dates next
13 week?

14 THE COURT: Yeah. Tuesday -- well, at least Tuesday
15 I have got to be in Muskogee for sure, but I do have a little
16 bit of time next week; so that's the way we will handle it.

17 MR. BREWSTER: Thank you, Your Honor.

18 THE COURT: Craig, if you want to be there, if you
19 want to come and look --

20 MR. BRYANT: I do, Your Honor.

21 THE COURT: I don't know that there is really
22 anything in there about your client, except the one document
23 that was already described.

24 MR. KIRKPATRICK: Judge, if I might, counsel and I
25 have had discussions regarding handwriting exemplars from

1 Ms. Howe. We are making at this point an oral motion to the
2 Court to ask the defendant Howe to provide such exemplars to
3 the FBI.

4 MR. BREWSTER: Your Honor, I would like to have an
5 opportunity to respond and I would like counsel to proceed in
6 the proper fashion by written motion and I would like to
7 respond to it.

8 THE COURT: All right.

9 MR. KIRKPATRICK: Well, I just wanted to alert the
10 Court that I tried to do this without a written motion.

11 THE COURT: All right.

12 MR. BREWSTER: Your Honor, with regard to the
13 physical items, like all of the tapes that she turned over and
14 those kinds of things, could I get copies of all of those? I
15 mean, those are items that the charged defendant has actually
16 turned over. Rule 16 really allows --

17 THE COURT: It covers that. Do you have any
18 problem with that?

19 MR. KIRKPATRICK: No.

20 THE COURT: Okay.

21 MR. BREWSTER: As far as the duplication process on
22 those tapes, Your Honor, would -- we would be happy to pay
23 for that. I'm just wondering how we would go about --

24 THE COURT: How is the best way to get those,
25 Mr. Kirkpatrick?

1 MR. KIRKPATRICK: The best way is to have us make
2 them, Your Honor.

3 THE COURT: Well, here they are.

4 MR. KIRKPATRICK: This is one set, Judge. These are
5 copies of some of the tapes that were maintained in Denver.
6 The other with the yellow bags is the -- is the -- right,
7 that's the one.

8 THE COURT: Okay. Then if you will furnish Rosanne
9 a copy of the return on the inventory on the search warrant.

10 MR. KIRKPATRICK: Yes, Judge. Is there anything
11 else we need to take up today?

12 MR. BREWSTER: I don't think so, Your Honor.

13 MR. KIRKPATRICK: No, Your Honor.

14 MR. BRYANT: No, sir.

15 THE COURT: Okay. Thanks.

16 (END OF PROCEEDINGS)

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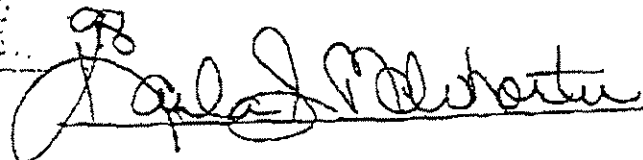
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