

1 ASKED HIM TO GO THROUGH THEM. THIS IS WHAT HE SHOULD HAVE, PLEASE  
2 MAKE SURE THAT HE HAD IT.

3 THE COURT: IN OTHER WORDS, THEY ARE HARD COPIES OF ALL  
4 THE PREVIOUS CORRESPONDENCE, SO IT WAS A WAY OF GIVING HIM A  
5 WRITTEN INVENTORY OF WHAT HAD BEEN PREVIOUSLY PRODUCED TO OTHER  
6 LAWYERS.

7 MS. DUARTE: THAT IS CORRECT. AND I -- I MEAN,  
8 OBVIOUSLY, THIS ISN'T AN INQUIRY ABOUT MY CONDUCT AND I KNOW THAT,  
9 YOUR HONOR, BUT I'VE ALSO AS I'VE DONE WITH ALL ATTORNEYS I MADE  
10 MYSELF AVAILABLE FOR ADDITIONAL CONSULTATION BUT I THOUGHT THAT  
11 THAT WAS THE EASIEST WAY TO SHOW HIM WHAT HAD HAPPENED BECAUSE I  
12 KNEW THAT HE WAS STEPPING INTO A DIFFICULT CASE AT THIS POINT.

13 AND IN THAT LETTER, I ALSO TOLD HIM THAT MR. HARRIS AND  
14 I HAD HAD A MEET-AND-CONFER; THAT THE COURT HAD ORDERED WHEN  
15 MR. HARRIS WAS RELIEVED, THE ISSUE ABOUT THE MISSING -- AND I PUT  
16 THE TERM IN QUOTES, CD'S FROM BUREAU OF PRISONS HAD BEEN BROUGHT  
17 UP BY MR. SUTCLIFFE. SO MR. HARRIS AND I HAD A MEET AND CONFER  
18 ABOUT THE EVIDENCE THAT WAS TURNED OVER TO HIM AND WE HAD FIGURED  
19 OUT WHICH THREE CD'S, IF YOU WILL, HE SUPPOSEDLY NO LONGER HAD AND  
20 I LISTED THOSE FOR MR. NICOLAYSEN AND I TOLD HIM THAT THEY WERE  
21 FROM -- I'M SORRY.

22 THE COURT: GO AHEAD.

23 MS. DUARTE: THAT THEY WERE FROM THAT BATCH OF CD'S AND  
24 FLOPPIES THAT WE HAD EARLIER RETURNED DEEMING TO HAVE NO  
25 EVIDENTIARY VALUE WHATSOEVER. THEY WERE EITHER PROGRAMS, SOME

1 WERE GAMES, SOME WERE DAMAGED, AND THAT I DIDN'T CONSIDER THAT TO  
2 BE AN ISSUE BUT TO LET ME KNOW IF ANYBODY NEEDED ANYTHING ELSE.

3 THE COURT: IN OTHER WORDS, THOSE THREE SO-CALLED  
4 MISSING CD'S WERE SIMPLY FROM THE MATERIAL YOU WERE RETURNING TO  
5 HIM.

6 MS. DUARTE: TO THE BEST OF MR. HARRIS AND I'S  
7 DETERMINATION WHEN WE MEET, THAT'S TRUE. HE INFORMED ME WHAT  
8 NUMBERS WE WERE MISSING, I SHOWED HIM THE RECEIPT AND LOOKED UP  
9 THE NUMBERS AND FROM THAT I WAS ABLE TO ASCERTAIN WHAT WAS  
10 MISSING.

11 AND SINCE THEN, YOUR HONOR, I HAVE NOT CREATED ANY  
12 ADDITIONAL ELECTRONIC EVIDENCE, I HAVE NOT TURNED OVER ANY  
13 ADDITIONAL ELECTRONIC EVIDENCE, AND THAT'S A BRIEF CHRONOLOGY.  
14 AND THAT'S WHY SOMETIMES WHEN THE COURT IS TALKING ABOUT CD'S AND  
15 FLOPPIES AND HARD DRIVES, IT'S DIFFICULT BECAUSE WE DO HAVE SOME  
16 CD'S THAT ARE FROM THE HARD DRIVE WHICH IS WHAT WE CONSIDER TO  
17 HAVE EVIDENTIARY VALUE. WE TURNED OVER ALL OF IT LONG AGO FOR THE  
18 PURPOSE THAT DEFENSE COULD DO THE SAME -- OH, THE AUGUST CD, WHICH  
19 I ALREADY MENTIONED, YOUR HONOR. THE CD WHICH I SENT  
20 MR. SUTCLIFFE AT MDC LAST MONTH, I ALREADY BROUGHT THAT UP, YOUR  
21 HONOR, AND THAT JUST -- I SENT THAT OVER BECAUSE WE HAD CAPTURED  
22 IT OFF THE WEB AND I THOUGHT HE SHOULD HAVE A COPY BUT I'M NOT  
23 USING THAT. I JUST BECAME AWARE OF IT BEFORE WE COPIED IT. ASIDE  
24 FROM THAT, I HAVE NOT CREATED ANYMORE EXHIBITS OR TURNED ANYTHING  
25 ELSE OVER AND THAT'S WHY IT'S DIFFICULT SOMETIMES TO TALK ABOUT IT

1 BECAUSE THE HARD DRIVES WERE COPIED IN THEIR TRUE FORM, THEY WERE  
2 ALL TURNED OVER. AND SINCE THEN, OUR EXPERT HAS USED THEM AND  
3 MADE SOME CD'S OUT OF THEM BUT THE HARD DRIVES I'VE NEVER EVEN  
4 SEEN THEM SINCE. THIS IS NOT SOMETHING THAT WE WALK AROUND AND  
5 USE IN OUR COMPUTERS, WE ONLY USE THE CD'S AND FLOPPIES.

6 THE COURT: THANKS, VERY MUCH. I CAN SEE WHY YOU WANTED  
7 TO ARTICULATE THAT AND YOU'RE RIGHT. AT NO TIME HAD I EVER EVEN  
8 THOUGHT THAT THE GOVERNMENT OR YOU PERSONALLY DID ANYTHING  
9 INAPPROPRIATE OR UNETHICAL, NOT AT ALL. NOW, MR. REED, YOU JUST  
10 HEARD WHAT MS. DUARTE TOLD ME. HOW MUCH OF THAT MATERIAL THAT SHE  
11 JUST DESCRIBED DO YOU BELIEVE YOU HAVE IN YOUR PHYSICAL  
12 POSSESSION?

13 MR. REED: I HAVE NONE, YOUR HONOR. I JUST HAVE THE  
14 MYWEBS CD. THAT'S ALL I OBTAINED.

15 THE COURT: DO YOU KNOW WHERE IT IS NOW?

16 MR. REED: I DON'T, YOUR HONOR.

17 THE COURT: HOW MUCH OF THAT MATERIAL THAT MS. DUARTE  
18 JUST TOLD ME ABOUT, JUST THE MATERIAL THAT SHE DESCRIBED IN COURT,  
19 MR. SUTCLIFFE, DO YOU HAVE IN YOUR PHYSICAL POSSESSION?

20 MR. SUTCLIFFE: I HAVE THE MYWEBS CD WHICH I RECEIVED AT  
21 DEVENS. I'VE NEVER BEEN ABLE TO REVIEW AND I HAVE THE ONE SHE  
22 JUST SENT ME SHE'S SPEAKING ABOUT WHICH I RECEIVED SEVERAL DAYS  
23 AGO. THAT'S ALL I HAVE. I MIGHT HAVE ONE FLOPPY, EXCUSE ME. IT  
24 WAS SENT TO ME THE SAME TIME AS THE MYWEBS. I BELIEVE IT'  
25 DON'T KNOW. I DON'T RECALL IT. I THREW IT IN A FOLDER AN

1 THERE WITH MY WEB CD ROM EVER SINCE THEN.

2 THE COURT: SPEAK UP.

3 MR. SUTCLIFFE: I'VE NOT BEEN ABLE TO VIEW IT SO I  
4 REALLY DIDN'T CARE WHAT WAS ON IT.

5 THE COURT: ALL RIGHT. ONE REASON I TOOK THE BENCH  
6 THREE OR FOUR MINUTES LATE THIS AFTERNOON IS I WAS DRAFTING AN  
7 ORDER I WAS INTENDED AND TOLD YOU I WOULD ISSUE TO THE PRIOR  
8 LAWYERS IN THIS CASE, AND I'M GOING TO TAILOR THAT ORDER TO WHAT I  
9 BELIEVE AND NOW UNDERSTAND BASED UPON WHAT THE LAWYERS AND  
10 MR. SUTCLIFFE JUST TOLD ME. BECAUSE I AM UTTERLY ASTONISHED,  
11 BAFFLED, AND UPSET THAT DESPITE MY EFFORTS AND ORDERS THAT THE  
12 MATERIAL HAS NOT BEEN TRANSFERRED FROM ONE LAWYER TO THE  
13 SUCCESSIVE LAWYER AND IS NOT IN THE CURRENT POSSESSION OF THE  
14 STANDBY LAWYER OR THE DEFENDANT. I DON'T SEE HOW WE CAN PROCEED  
15 TO TRIAL, EVEN PUTTING ASIDE ISSUES OF WHO REPRESENTS  
16 MR. SUTCLIFFE UNDER THAT STATE OF AFFAIRS AND I DON'T INTEND TO DO  
17 SO.

18 WHAT IS THE CALCULATIONS ON THE SPEEDY TRIAL ACT THAT I  
19 ASKED TO YOU LOOK INTO?

20 MS. DUARTE: YOUR HONOR, WHEN I HAD DONE IT PREVIOUSLY,  
21 I HAD SAID THAT ACCORDING TO MY CALCULATIONS, THE LAST DAY THAT WE  
22 COULD START TRIAL WOULD BE OCTOBER 10TH. THAT HAS NOT CHANGED  
23 BECAUSE YOU DID NOT EXCLUDE TIME LAST TIME.

24 THE COURT: YEAH. MR. SUTCLIFFE DID NOT WAIVE TIME AND  
25 THAT WAS HIS RIGHT.

1 MS. DUARTE: RIGHT. SO JUST TO LET YOU KNOW, YOUR  
2 HONOR, I BELIEVE IT IS STILL THE SAME BECAUSE I HAD DONE IT OUT  
3 TILL OCTOBER 10TH.

4 THE COURT: OKAY. NOW, MR. SUTCLIFFE, THIS IS DIRECTED  
5 TO YOU.

6 MR. SUTCLIFFE: YES, SIR.

7 THE COURT: I ASKED YOU TO TAKE INTO ACCOUNT THE FEW  
8 COMMENTS I MADE ABOUT THIS ISSUE OF SELF-REPRESENTATION BEFORE WE  
9 HAD THE LUNCH BREAK.

10 MR. SUTCLIFFE: UH-HUH.

11 THE COURT: THE LAW IS PRETTY CLEAR, AND I DID NOT  
12 FOLLOW IT, AT LEAST IN SOME RESPECTS, I DIDN'T FOLLOW IT  
13 LITERALLY, CONCERNING THE NOTICE THAT A JUDGE IS REQUIRED TO GIVE  
14 AN INDIVIDUAL ABOUT ACTING IN HIS OWN DEFENSE. I ALREADY TOLD YOU  
15 MANY TIMES, AND I DON'T THINK WE HAVE TO CONTINUALLY BELABOR THIS,  
16 THAT I REALIZE YOU NEVER SAID TO ME I WANT TO BE MY OWN LAWYER, SO  
17 PLEASE UNDERSTAND THAT I'M NOT SITTING HERE THINKING YOU  
18 AFFIRMATIVELY EXPRESSED IN WORDS A DESIRE TO GO WITHOUT A LAWYER.

19 BUT I FOUND, FOR I THINK VERY AMPLE REASON, THAT YOUR  
20 CONDUCT AMOUNTED TO THAT CHOICE AND THAT YOU MADE THAT CHOICE FOR  
21 TACTICAL PURPOSES AND WILLINGLY.

22 HOWEVER, I ALSO THINK THAT THE PARAMOUNT OBLIGATION I  
23 HAVE IS TO FOLLOW THE LAW AND TO MAKE SURE THAT PEOPLE WHO COME TO  
24 TRIAL IN THIS COURT, NO MATTER WHAT KIND OF CASE, GET A FAIR  
25 TRIAL. SO I DO NOT INTEND TO HOLD YOU TO THAT FINDING OF WAIVER

1 UNLESS YOU NOW WANT TO EXPRESS A VIEW, A PREFERENCE, IN LIGHT OF  
2 ALL THE WARNINGS I'VE GIVEN YOU, INCLUDING RECENT ONES, INCLUDING  
3 ONES IN WRITING, AND ONES THAT I WILL SUPPLEMENT WITH BASICALLY  
4 REPEATED COMMENTS HERE IN COURT IN JUST A MINUTE.

5 IF YOU TELL ME YOU WANT TO BE YOUR OWN LAWYER AND YOU  
6 WANT TO GO TO TRIAL, THAT WILL BE YOUR CHOICE, ALTHOUGH I WILL GO  
7 THE EXTRA MILE FIGURATIVELY SPEAKING AND TELL YOU ABOUT SOME OF  
8 THE THINGS I'VE MORE THAN ONCE DISSEMINATED AND COMMUNICATED TO  
9 YOU IN WRITING JUST THIS WEEK.

10 THE BOTTOM LINE IS THAT I'M TELLING YOU THAT IF YOU WANT  
11 TO BE REPRESENTED BY COUNSEL, I WOULD HONOR THAT CHOICE, AND IF  
12 YOU WANT TO REPRESENT YOURSELF, I WOULD BE REQUIRED TO HONOR THAT  
13 CHOICE AND IT WOULD BE, I THINK, A VALID AND BINDING CHOICE,  
14 ALTHOUGH I WOULD GIVE YOU MORE TIME FOR THE TRIAL NO MATTER WHAT  
15 AND GO THROUGH THE ROUTINE OF TELLING YOU IN COURT WHAT YOU'VE NOW  
16 BEEN TOLD MANY TIMES IN WRITING. SO PLEASE TELL ME WHAT YOUR  
17 PREFERENCE IS.

18 MR. SUTCLIFFE: YOU ARE CORRECT THAT IT'S A NON SECULAR  
19 ISSUE, THAT YOU HAVE COUNSELED ME EXTENSIVELY ON THE DANGERS AND I  
20 PAID VERY CLOSE ATTENTION AND SAT UP WHEN YOU SAID YOU'D COME OFF  
21 THAT BENCH AND NOT BEAT ME IN THE HEAD AND KICK ME IN THE SHINS,  
22 SO I APPRECIATE THAT. I'M KIND OF CONFUSED THOUGH -- TO MAKE A  
23 CHOICE THE U.S. ATTORNEY HAS PROVIDED ME WITH A DOCUMENT, WHICH IS  
24 MARKED GOVERNMENT'S SPECIAL TRIAL MEMORANDUM, AND IT SPEAKS  
25 SPECIFICALLY OF BEHAVIOR, AND IN THERE IT SEEMS THAT I'M SUPPOSED