

1 about this question of use in the courtroom and talk only
2 about that. I have read it carefully, everything you've
3 said. I have read carefully every response that has gotten
4 to us and I'm satisfied and I'm making a finding that all
5 of your contentions about lost, destroyed, unaccounted-for
6 evidence are unfounded.

7 THE DEFENDANT: Well, then, I would point --

8 THE COURT: Excuse me. I'm not finished. I'll
9 give you a chance. Do not interrupt me.

10 THE DEFENDANT: I didn't interrupt. I was making
11 an objection, Your Honor.

12 THE COURT: Now, the court has been working very
13 hard to make sure that under the unusual circumstances where
14 you are representing yourself and you are under -- in
15 custody, you have access to what there is. I am wholly
16 satisfied that what there is has been provided to you. And
17 once the SCSI is made available, I'm almost satisfied that
18 you have unmitigated access to it, except now I'm learning
19 that ZIP drives or ZIP disks.

20 Mr. Saavedra, what's the story on that?

21 MR. SAAVEDRA: Excuse me, Your Honor. He is
22 correct. They did send him a 100-megabyte ZIP. Now,
23 stating that his are 250, he is correct. He won't read it.

24 THE COURT: So how long have you known that the
25 ZIP disk has not been useable by Mr. Sutcliffe?

1 MR. SAAVEDRA: When he told me that a couple weeks
2 ago. He didn't even have a ZIP disk. And of the evidence
3 that I was sent in to MDC, there is not one ZIP disk
4 anywhere.

5 THE DEFENDANT: That's correct.

6 THE COURT: Now, I'm baffled here. We had
7 considerable colloquy about getting the necessary ZIP-type
8 equipment to Mr. Sutcliffe. And are you representing to me,
9 Mr. Saavedra, that there is no need for it?

10 MR. SAAVEDRA: As of right now, he has no access
11 to ZIP drive -- I mean disks.

12 THE COURT: That's not the question I asked.

13 Mr. Sutcliffe, what do you think you need a ZIP
14 disks to accomplish? How will a ZIP disk assist you in
15 defending yourself?

16 THE DEFENDANT: Well, it's kind of hard to day
17 without seeing them, isn't it, Your Honor?

18 THE COURT: If you had the 250 that you just told
19 me about, what would it enable you to do?

20 THE DEFENDANT: The ZIP 250 player, it would be
21 able to play ZIP 250 disks.

22 THE COURT: Ms. Duarte, are there any ZIP 250
23 disks in the array of evidence that's been made available in
24 the prison to Mr. Sutcliffe?

25 MS. DUARTE: Your Honor, I'm relying on memory

1 now, but I'm fairly certain that there were four ZIP disks
2 that in my earlier declaration I witnessed exchanged between
3 Mr. Nicolaysen's representative and Mr. Reed when Mr. Reed
4 assumed responsibility. And we did the inventory and I
5 presented the court with a declaration. That was not the
6 October 17th, that was the prior one, Your Honor, and it
7 should be in there. It's not in front of me right now, but
8 I believe there are four ZIP disks.

9 Your Honor, I do want to emphasize that these were
10 copies of ZIP disks seized from the defendant's residence,
11 so to the extent there is anything in them that he needs, he
12 would be aware of the content. However, I do remember there
13 were four ZIP disks. And my discovery letters and my
14 declaration should reflect that.

15 THE COURT: Mr. Reed, can you help me out?

16 MR. REED: Yes, Your Honor, there were four ZIP
17 disks in the boxes that I sent to MDC. I basically took all
18 the discovery, all the computer-based discovery from Mr.
19 Nicolaysen. We took it up to the U.S. Attorney's Office.
20 We spent a considerable period of time comparing all of the
21 materials. There were definitely four ZIP disks in the box.
22 I took those boxes to my office, didn't touch them and then
23 I did transfer them, however, everything from that box into
24 a new better box and I didn't leave anything out. And there
25 were four ZIP disks in the boxes that I delivered to MDC, so

1 I don't know what happened to them, Your Honor.

2 THE DEFENDANT: I am still not in possession of
3 the audiotapes either, Your Honor, that I believe he's
4 represented have been turned over to me. And I received a
5 letter from MDC that some audiotapes had been mailed to me
6 last week or just slightly before last week, but they were
7 returned to sender and it was -- his previous assistant,
8 what's her name?

9 MR. REED: Sarah.

10 THE DEFENDANT: Sarah Ribbs, thank you. So I am
11 still not in possessions of those either.

12 THE COURT: All right. Well, let the record
13 reflect that on September 29th, Ms. Duarte filed a
14 declaration. It was the subject of a previous hearing in
15 part. In paragraph 3 she accounts for the material that was
16 given to Ms. Potashner on July 29th. Among the recitals was
17 a reference to four ZIP disks. Paragraph 10, she said that
18 later on in this scenario she saw Mr. Nicolaysen's
19 representative provide to Mr. Reed a number of things,
20 including ZIP disks.

21 I don't know what happened between -- if anything,
22 between the delivery by Mr. Reed of the box in which there
23 were ZIP disks and today, and I'm not making a finding that
24 the ZIP disks are missing just merely on the basis of what I
25 am told, but either they are there or they are not there.

1 If they're not there, Mr. Sutcliffe can take appropriate
2 action relating to whatever rights he has and whatever
3 violations of his rights there may be from the missing ZIP
4 disks. If he could establish what happened, that they are
5 messing, then it's attributable to the government. But I
6 don't really want to waste any time on that, so I'm ordering
7 the government and you, Mr. Saavedra, to get the 250 ZIP --
8 what is it called the ZIP drive?

9 MR. SAAVEDRA: ZIP drive.

10 THE COURT: -- you get that over to at government
11 expense, because this is something I've already tried to
12 have happen before. I am very displeased that I issue
13 orders and they don't seem to be complied with because
14 people think that they are no longer necessary, they are
15 moot, I was mistaken in the first place. I want the 250 ZIP
16 drives to be made available to Mr. Sutcliffe as soon as
17 possible. When can you do that?

18 MR. SAAVEDRA: I can do that tomorrow morning,
19 sir.

20 THE COURT: Okay. That's an order that you do
21 that. And I'm not going to make any other changes in how I
22 plan for this with respect to -- in what capacity or through
23 what methodology and equipment the evidence is displayed at
24 trial.

25 I intend to speak separately and directly without