

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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UNITED STATES OF AMERICA,)
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 PLAINTIFF,)
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 VS.)
)
 STEVEN WILLIAM SUTCLIFFE,)
)
)
 DEFENDANT.)

DOCKET NUMBER
CR-2002-350 (A) -AHM

LOS ANGELES, CALIFORNIA
SEPTEMBER 26, 2003

TRANSCRIPT OF PROCEEDINGS
BEFORE THE ~~HONORABLE~~ A. HOWARD MATZ,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

ELENA J. DUARTE,
ASST. U.S. ATTORNEY
LOS ANGELES, CA

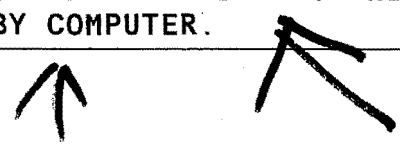
FOR THE DEFENDANT:

STEVEN WILLIAM SUTCLIFFE,
PRO SE
DAVID R. REED, **STAND-BY COUNSEL**
ATTORNEY AT LAW
LOS ANGELES, CA

COURT REPORTER:

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER.



1 (IN LOS ANGELES, LOS ANGELES COUNTY, CALIFORNIA; FRIDAY,
2 9-26-03, IN OPEN COURT.)

3 THE DEPUTY CLERK: CALLING ITEM NUMBER ONE,
4 CR-02-350(A), USA VS. STEPHEN WILLIAM SUTCLIFFE.

5 COUNSEL, STATE YOUR APPEARANCES PLEASE.

6 MS. DUARTE: GOOD MORNING, YOUR HONOR. ELAINE A. DUARTE
7 FOR THE UNITED STATES. WITH ME ARE JASON GONZALEZ, A.U.S.A. AND
8 JEFF CUGNO FROM THE F.B.I.

9 THE COURT: OKAY. GOOD MORNING TO ALL OF YOU.

10 MR. SUTCLIFFE: GOOD MORNING, YOUR HONOR. STEVEN
11 SUTCLIFFE, PRESENT IN COURT.

12 THE COURT: GOOD MORNING, MR. SUTCLIFFE.

13 MR. REED: GOOD MORNING, YOUR HONOR. DAVID REED,
14 STANDBY COUNSEL.

15 THE COURT: AND GOOD MORNING TO YOU AS WELL. WE HAVE A
16 LOT OF ITEMS THAT WE NEED TO DISCUSS, AND IN RESPECTS TO THE FIRST
17 AND THRESHOLD ONE SHOULD BE THE STATUS OF MR. SUTCLIFFE'S
18 PREPARATION AND OPPORTUNITY TO PREPARE FOR TRIAL AND HIS
19 REPRESENTATION, AND I THINK WE WILL GET TO THAT VERY SHORTLY BUT
20 AS AN ACCOMMODATION AND INTENDED COURTESY TO A NUMBER OF OTHER
21 PEOPLE WHO HAVE COME TO ADDRESS DIFFERENT ISSUES SO THAT THEY
22 WON'T HAVE TO RETURN AT THE LUNCH BREAK, I'M GOING TO START WITH
23 THOSE. SO WE WILL TALK ABOUT MR. SUTCLIFFE'S REQUESTS, INCLUDING
24 THOSE THAT WERE SENT TO ME AND RECEIVED IN LETTER FORM. I GOT 'EM
25 LATE LAST NIGHT CAUSED THEM TO BE FILED TODAY.

1 BUT BEFORE WE DO THAT, ASSUMING, AND I DON'T HAVE A
2 FINAL VIEW ON THIS, THAT THE DEFENSE OF MR. SUTCLIFFE WILL BE
3 PROVIDED PRIMARILY BY MR. SUTCLIFFE WITH MR. REED SERVING AS
4 STANDBY COUNSEL AND THAT THE TRIAL WILL BEGIN NEXT WEEK. I HAVE
5 ASKED TO COME TO COURT REPRESENTATIVES OF THE MARSHAL'S OFFICE AND
6 THE CSO'S, AND ALSO JAMES SETTLE. IS HE HERE?

7 MR. SETTLE: YES, YOUR HONOR.

8 THE COURT: AND JAMES SETTLE WHO'S A VERY, VERY SKILLFUL
9 AND ABLE HEAD OF THE COURT'S TELECOMMUNICATION SYSTEMS, INCLUDING
10 COMPUTERS, BECAUSE MR. SUTCLIFFE WILL BE IN NEED OF AND WILL GET
11 THE ACCESS TO THE -- AT LEAST THE CORE KIND OF ELECTRONIC
12 EQUIPMENT HIS DEFENSE ENTITLES HIM TO, BUT WE NEED TO MAKE SURE
13 THAT THERE IS CLARITY ABOUT THAT.

14 SO LET'S START. I'VE BEEN TOLD BY MY CLERK, JUST ON THE
15 ASSUMPTION THAT THE TRIAL WILL BEGIN NEXT WEEK, THERE ARE A COUPLE
16 OF CONSIDERATIONS THAT AFFECT SOME OF THE OTHER ITEMS THAT I
17 MENTIONED IN THE NOT VERY -- IN THE EXPANSIVE BUT NOT NECESSARILY
18 COMPLETE AGENDA THAT I CIRCULATED IN WRITING FOR PURPOSES OF
19 ALERTING THE PARTIES TO WHAT I WANTED TO COVER IN TODAY'S STATUS
20 CONFERENCE.

21 NOW, IN THIS CASE, ASSUMING THAT MR. SUTCLIFFE IS
22 REPRESENTING HIMSELF, WE ARE GOING TO NEED, IN FAIRNESS TO HIM,
23 AND IN THE INTEREST OF JUSTICE, TO MAKE CERTAIN CHANGES, AND WHAT
24 I ORDINARILY ARRANGE FOR VARIOUS PROCEDURES INCLUDING, FOR
25 EXAMPLE, SELECTION OF JURORS.

1 I WANT MR. SUTCLIFFE TO BE ABLE TO ADDRESS THE COURT,
2 ADDRESS WITNESSES, AND ADDRESS THE JURORS IN A WAY AS CLOSE AS
3 POSSIBLE TO THE NORMAL WAY A PRO SE CRIMINAL DEFENDANT WOULD DO
4 THAT, BUT FOR REASONS REFLECTED, I THINK SUFFICIENTLY, IN THE
5 RECORD IN THIS CASE RIGHT FROM THE BEGINNING, MY RESPONSIBILITIES
6 WHEN THERE WAS A FIRST OF TWO BAIL APPLICATION HEARINGS I BELIEVE
7 THAT CERTAIN RESTRICTIONS ON MR. SUTCLIFFE'S FREEDOM OF MOVEMENT
8 ARE WARRANTED AND NEED TO BE MAINTAINED.

9 WHAT I CURRENTLY INTEND TO DO IS TO PERMIT MR. SUTCLIFFE
10 TO ADDRESS ALL INDIVIDUALS; THE COURT, THE JURORS, WITNESSES FROM
11 COUNSEL TABLE. THERE WILL BE NO CUFFS ON HIM -- NO HANDCUFFS ON
12 HIM AND HE WILL HAVE THE OPPORTUNITY TO RISE AND SIT AND MOVE
13 ABOUT AS IS NEEDED. GIVEN THE CONFIGURATION OF COUNSEL TABLE
14 WHERE HE WILL BE SEATED -- AND FOR THE RECORD I WANT TO DESCRIBE
15 THIS AS I THINK MOST JUDGES WOULD EXPECT IF THEY WERE READING THE
16 TRANSCRIPT -- THE TABLE AT WHICH ALL THE LAWYERS AND ALL OF THE
17 PARTIES IN CASES BEFORE THIS COURT SIT HAS A PANEL THAT PRECLUDES
18 SOMEONE FROM SEEING BELOW THE WAIST LEVEL -- IT'S ACTUALLY HIGHER
19 THAN THE WAIST, BUT A LITTLE BEFORE THE TOP LEVEL OF THE DESK OR
20 TABLES.

21 IN SHORT, WHAT THAT MEANS IS THAT NO JURORS WOULD BE
22 ABLE TO SEE WHETHER MR. SUTCLIFFE IS CONFINED THROUGH THE FORM OF
23 WHAT I THINK IS APPROPRIATE HERE, WHICH WOULD BE LIMITED -- NOT
24 THE MOST INTRUSIVE -- I'M NOT EVEN SURE WHAT THE RIGHT WORD IS.
25 WHAT'S AN ANKLE BRACE COMMONLY CALLED? CAN SOMEONE WHO'S HERE

1 FROM THE MARSHALS' OFFICE TELL ME.

2 MARSHAL: LEG RESTRAINTS.

3 THE COURT: LEG RESTRAINTS. WHAT IS THE LEAST INTRUSIVE
4 LEG RESTRAINT THAT THE MARSHAL HAS AVAILABLE?

5 MARSHAL: THE LEG RESTRAINTS HE'S CURRENTLY WEARING WILL
6 WORK.

7 THE COURT: COULD YOU DESCRIBE THOSE FOR THE RECORD,
8 PLEASE.

9 MARSHAL: BRANDY MARTIN FROM THE U.S. MARSHALS.

10 THE COURT: DESCRIBE THE ONES HE'S CURRENTLY WEARING. I
11 CAN'T EVEN SEE THEM MYSELF.

12 MARSHAL: JUST LIKE THE SAME BRACELET HE WOULD HAVE ON
13 HIS HAND IS AROUND HIS ANKLE. THERE'S A CANE IN BETWEEN.
14 HOWEVER, TO CUT DOWN ON THE NOISE, WE HAVE AN ANKLE RESTRAINT LIKE
15 THAT WHERE THE CHAIN IN BETWEEN IS COVERED WITH PLASTIC AND THAT
16 WAY IF HE DOES RISE AND HITS THE CHAIR, WE'RE NOT MAKING ANY
17 NOISE.

18 THE COURT: OKAY. WHAT WOULD BE THE NORMAL PRACTICE FOR
19 THE MARSHALS AND/OR THE CSO'S IN TERMS OF HAVING SUFFICIENT
20 PRESENCE IN THE COURTROOM IN A TRIAL, EVEN ASSUMING THAT
21 MR. SUTCLIFFE WERE REPRESENTED BY COUNSEL? HOW MANY PEOPLE?

22 MARSHAL: IN THIS SITUATION, YOUR HONOR, WE WERE GOING
23 TO HAVE FOUR PEOPLE IN THIS COURTROOM.

24 THE COURT: FOUR PEOPLE?

25 MARSHAL: YES. TO COVER THAT EXIT AND THAT EXIT AND FOR

1 HIM TOO. NO MATTER WHERE THEY'RE PLACED FOR THE COMFORT OF THE
2 COURT AND FOR THE JURORS TO NOT BE INFLUENCED IN ANY WAY.

3 THE COURT: OKAY. I CAN WORK OUT THE DETAILS LATER AND
4 GIVE MR. SUTCLIFFE AN OPPORTUNITY TO RESPOND TO THESE ISSUES AND
5 EVERY ISSUE. I WANT YOU TO BE SURE THAT YOU WILL BE HEARD ABOUT
6 EVERYTHING. BUT JUST PLEASE CONTINUE TO BE PATIENT AS YOU HAVE
7 BEEN, AND I APPRECIATE THAT.

8 MR. SUTCLIFFE: THANK YOU.

9 THE COURT: NOW, WERE YOU PLANNING TO SEND FOUR PEOPLE
10 TO COVER THE TWO DIFFERENT DOORS THAT PROVIDE ACCESS TO THE
11 CORRIDOR WHERE JURORS OFTEN WALK, AND FOR -- WHERE WERE YOU
12 PROPOSING THE OTHERS BE STATIONED?

13 MARSHAL: I WAS GOING TO HAVE ONE OVER HERE THIS END,
14 YOUR HONOR. SITTING BACK AGAINST THE WALL. THE CLOSEST TABLE
15 HERE USUALLY MAKES 'EM BLEND IN WITH EVERYBODY SO IT DOESN'T LOOK
16 LIKE THEY'RE ACTUALLY WITH THE U.S. MARSHALS. THE POSITION AT
17 THIS END WOULD ACTUALLY BE SITTING OUT IN THE PUBLIC AREA SO THAT
18 WAY THEY WOULDN'T LOOK LIKE THEY'RE INSIDE. THE TWO INDIVIDUALS
19 THAT NORMALLY SIT BACK HERE WITH THE PRISONER, THE INDIVIDUAL ON
20 TRIAL. AGAIN, CLOSE TO THIS TABLE WOULD BE ONE PERSON, THIS
21 PERSON SITTING HERE AND ONE MORE JUST BEHIND HERE SO AS NOT TO
22 MAKE IT LOOK LIKE YOU HAVE MARSHALS ALL AROUND THE PLACE.

23 THE COURT: OKAY. WELL, THAT SOUNDS LIKE TO ME A
24 SENSIBLE APPROACH. BUT IT'S VERY IMPORTANT THAT ALL FEASIBLE
25 STEPS BE TAKEN TO PREVENT JURORS FROM SEEING THESE LEG RESTRAINTS.

1 SO THERE WILL BE NO SIDE BAR CONFERENCES. IF IN THE VERY RARE BUT
2 CONCEIVABLY REAL CIRCUMSTANCE THAT A SIDE BAR IS APPROPRIATE,
3 WHOEVER SEEKS ONE, WHETHER IT'S A LAWYER FOR THE GOVERNMENT,
4 MR. SUTCLIFFE AND/OR HIS LAWYER SHOULD SIMPLY ASK FOR ONE, AND IF
5 I CONSIDER THAT ONE IS WARRANTED, I WILL EXCUSE THE JURORS. THERE
6 WILL BE NO NEED FOR COUNSEL OR MR. SUTCLIFFE OR COUNSEL FOR THE
7 GOVERNMENT TO GO OFF TO THE CORNER OF THE COURTROOM THAT I
8 TYPICALLY USE WHERE I BRING THE COURT REPORTER TO CONDUCT SIDE BAR
9 CONFERENCES.

10 WE WILL MAKE CHANGES AS WELL IN THE PROCEDURE I
11 OTHERWISE ORDINARILY FOLLOW FOR EXCHANGING INFORMATION ONE SIDE TO
12 THE OTHER ABOUT PROPOSED EXERCISE OF PEREMPTORY OBJECTIONS. SO
13 THAT IN ART TERMS IT WILL MEAN THAT THE CHANGE FUNDAMENTALLY WILL
14 BE THAT THE DISCLOSURE TO THE OTHER SIDE OF WHO YOU WOULD TEND TO
15 EXCUSE WILL NOT BE MADE AT THE LECTERN AND WILL NOT REQUIRE
16 MOVEMENT AROUND THE COURTROOM.

17 I WILL GO OVER THOSE PROCEDURES AT A LATER TIME SO AS TO
18 FREE UP THE VARIOUS PEOPLE THAT COME TO COURT TODAY.

19 NOW, THERE'S AN UNUSUAL TWIST. IF THE TRIAL STARTS ON
20 TUESDAY, THERE'S AN UNUSUAL TWIST I WANT TO ALERT THE PARTIES TO,
21 BECAUSE IT'S VERY IMPORTANT THAT CAREFUL THOUGHT BE GIVEN TO THIS
22 AND THAT ALL APPROPRIATE STEPS BE TAKEN TO AVOID A PROBLEM. I
23 HAVE BEEN INFORMED THAT THERE WILL BE SOMETIME ON WEDNESDAY OF
24 NEXT WEEK A DRILL, AN EVACUATION DRILL, BUILDING-WIDE. BY THEN WE
25 WILL HAVE JURORS IMPANELED AND, OF COURSE, THE PARTIES WILL BE

1 PRESENT. ORDINARILY AN EVACUATION DRILL, EVEN GIVEN THE NEED TO
2 PROCEED DELIBERATELY AND CALMLY AND FOLLOWING WHATEVER
3 INSTRUCTIONS -- AND I REALLY TRULY DON'T KNOW EXACTLY WHAT THE
4 INSTRUCTIONS AND CIRCUMSTANCES THAT THE CSO'S WERE PLANNING TO
5 IMPLEMENT AS TO SPECTATORS, AS TO GOVERNMENT COUNSEL; BUT I WILL
6 BE WORKING WITH, AT LEAST THROUGH MY CLERK AND POSSIBLY DIRECTLY
7 WITH THE MARSHALS, TO ASSURE THAT THE JURORS EXIT IN ONE DIRECTION
8 AND ONE WAY FIRST AND THAT MR. SUTCLIFFE IS GIVEN THE OPPORTUNITY
9 TO EXIT THE BUILDING AT A DIFFERENT EXIT, OUTSIDE THEIR VIEW AND
10 THAT THEY'RE KEPT SEPARATE SO THAT THE LEG RESTRAINTS THAT HE WILL
11 BE WEARING, ANY OTHER RESTRAINTS OUTSIDE THE COURTROOM, IF THE
12 MARSHALS THOUGHT THAT HAND RESTRAINTS WERE APPROPRIATE, THAT WOULD
13 BE THEIR RIGHT TO USE. BUT I DON'T WANT THERE TO BE ANY
14 INADVERTENT RISK THAT THE JURORS UPON LEAVING THE COURTROOM OR
15 RETURNING TO THE COURTROOM AT THE CONCLUSION OF THE EVACUATION
16 DRILL, ASSUMING IT TAKES PLACE, AND I DON'T KNOW WHAT TIME IT WILL
17 TAKE PLACE -- BUT ASSUMING IT TAKES PLACE DURING COURT HOURS, WILL
18 SEE MR. SUTCLIFFE.

19 SO THAT IS EXTREMELY IMPORTANT AND I AM ORDERING --
20 WOULD IT BE YOU, MR. MARTIN, WHO WOULD BE RESPONSIBLE FOR
21 IMPLEMENTING THOSE ARRANGEMENTS?

22 MARSHAL: I'LL MAKE THE ARRANGEMENTS. DEPUTY
23 HESSELRODE (PHONETIC) IS THE DEPUTY IN CHARGE THAT WILL BE HERE
24 EACH DAY FOR YOU. MR. SUTCLIFFE WILL ACTUALLY EXIT THROUGH THAT
25 DOOR THERE NEXT TO THE JUROR BOX. AFTER THE JURY IS COMPLETELY

1 GONE, THAT'S WHEN HE WILL EXIT.

2 THE COURT: ALL RIGHT. AND AT ALL TIMES MR. SUTCLIFFE
3 IS TO BE IN THE COURTROOM AND AT COUNSEL TABLE BEFORE THE JURORS
4 ARE BROUGHT IN. IS THAT UNDERSTOOD, MR. HESSELRODE?

5 MARSHAL: YES, SIR.

6 THE COURT: OKAY. ARE THERE ANY QUESTIONS THAT YOU HAVE
7 SO FAR ABOUT SECURITY CONSIDERATIONS, MR. SUTCLIFFE?

8 MR. SUTCLIFFE: YEAH. I JUST WONDER, YOUR HONOR. I WAS
9 BROUGHT HERE THIS MORNING INSTEAD OF USUALLY THROUGH THE ELEVATOR
10 AS I'VE BEEN FOR THE LAST 18 MONTHS WHILE I'VE BEEN INCARCERATED,
11 AND TODAY I HAD A SPECIAL TRIP DOWN A LONG, WINDING TUNNEL, UP AND
12 DOWN STAIRS; AND WHEN I ASKED THE MARSHAL WHY I WAS BEING UP AND
13 DOWN, WHICH I CONSIDER DANGEROUS TO MY HEALTH SEEING AS I'M
14 SHACKLED AROUND THE ANKLES AND THE WAIST AND WRIST AT THE TIME, I
15 DON'T WANT TO FALL DOWN THE STAIRS, I WAS TOLD TO TALK TO
16 MANAGEMENT --

17 THE COURT: TALK TO WHAT?

18 MR. SUTCLIFFE: MANAGEMENT. WHEN I INQUIRED AS TO WHO
19 WAS MANAGEMENT? THEY SAID THAT YOU ARE MANAGEMENT. SO ERGO I'D
20 LIKE TO KNOW WHY --

21 THE COURT: OKAY. I DON'T GET INVOLVED IN DETERMINING
22 WHAT ACCESS ROUTES ARE TAKEN BY MARSHALS IN ANY CASE AND I DON'T
23 INTEND TO INTERFERE WITH THEIR AUTHORITY AND DISCRETION IN THIS
24 CASE, BUT I AM REQUESTING AND ORDERING THEM TO MAKE SURE THAT ANY
25 ROUTE THAT IS TAKEN AND ANY ACCOMPANIMENT -- ANY ASSISTANCE OR ANY

1 PRESENCE OF MARSHALS ACCOMPANYING MR. SUTCLIFFE BE INTENDED TO
2 MAKE SURE THAT EVERYONE, INCLUDING THE MARSHALS, TRAVEL SAFELY. I
3 CAN'T GET INVOLVED IN FIGURING OUT WHICH OTHER ROUTES ARE
4 AVAILABLE, BUT IN TERMS OF THE SECURITY MEASURES INSIDE THE
5 COURTROOM THAT I JUST TALKED ABOUT, DO YOU HAVE ANY QUESTIONS OR
6 OBJECTIONS?

7 MR. SUTCLIFFE: NO, YOUR HONOR.

8 THE COURT: OKAY. ANY RESPONSES OR QUESTIONS FROM THE
9 GOVERNMENT?

10 MS. DUARTE: NONE, YOUR HONOR.

11 THE COURT: ALL RIGHT. NOW, LET'S TALK FOR A MINUTE --
12 AND I WANT TO THANK THE MARSHALS AND CSO'S FOR BRINGING THE
13 APPROPRIATE SUPERVISORS HERE. I'M NOT POSITIVE THAT I'VE
14 ADDRESSED EVERY CONCEIVABLE ISSUE THAT MAY ARISE IN THIS UNUSUAL
15 CASE, BUT IF THERE ARE OTHER CONSIDERATIONS THAT THE MARSHALS HAVE
16 ABOUT BRINGING MR. SUTCLIFFE TO COURT, REMOVING HIM FROM COURT,
17 MAKING SURE THAT NO PROSPECTIVE JUROR OR ACTUAL JUROR -- AND THAT
18 WILL REQUIRE, BY THE WAY -- AND I'M INSTRUCTING THE COURTROOM
19 DEPUTY THAT ALL PROSPECTIVE JURORS WHO ARE FIRST BROUGHT DOWN TO
20 THE COURTROOM FOR INITIAL VOIR DIRE BE KEPT ON THE LEFT SIDE OF
21 THE COURTROOM, FACING THE BENCH.

22 SO AS THEY ENTER THE COURTROOM, THEY'LL BE BROUGHT LEFT
23 SO THEY WILL NOT HAVE THE OPPORTUNITY TO -- FROM SITTING ON THE
24 OTHER SIDE OF THE COURTROOM OBSERVE ANYTHING BELOW THE COUNSEL
25 TABLE TOP OR DESKTOP.

1 NOW, ANYTHING ELSE THAT THE MARSHALS CAN THINK OF ON THE
2 ISSUE OF SECURITY THAT I NEED TO ADDRESS?

3 MARSHAL: JUST ONE THING FOR -- WHEN JURY SELECTION
4 STARTS, YOUR HONOR, IT WOULD PROBABLY BE BEST IF WE WERE CALLED
5 AND WHEN IT'S TIME FOR HIM TO COME UP IN CASE THERE ARE SOME
6 POTENTIAL JURORS LINGERING. SO THAT WAY, YOU KNOW, WE DON'T JUST
7 COME RIGHT UP AT A SPECIFIC TIME AND WE COULD POSSIBLY RUN INTO
8 SOMEBODY IN THE COURTROOM WHO WOULD SEE HIM IN RESTRAINTS. I
9 DON'T KNOW IF YOU WANT TO BRING HIM UP A HALF-HOUR EARLIER OR CALL
10 US?

11 THE COURT: I'LL TELL YOU, AND I'M NOT SURE IT WILL BE
12 THE SAME THING EVERY DAY, BUT I DO KNOW THAT HE WILL ALWAYS BE
13 HERE BEFORE THE JURY ARRIVES.

14 MARSHAL: I WAS WORRIED ABOUT JURY SELECTION.

15 THE COURT: I KNOW. WE'LL PROBABLY HAVE THE JURORS COME
16 DOWN BECAUSE WE'RE GOING TO COVER A LOT OF GROUND TODAY, SOME OF
17 WHICH WILL HAVE TO BE THIS AFTERNOON. PROBABLY HAVE THE JURORS
18 COME DOWN, NOT BEFORE 9:00 ON TUESDAY MORNING OR POSSIBLE
19 IMPANELMENT. SO THAT MEANS THAT I WOULD LIKE MR. SUTCLIFFE WHO
20 WOULD NEED ACCESS TO BATHROOMS AND THE LIKE, WHO MIGHT NEED TO SET
21 UP FILES ON THE COUNSEL TABLE, MAY NEED TO TURN ON COMPUTER
22 EQUIPMENT, HE SHOULD BE UP IN THIS COURTROOM, UNLESS I ORDER THAT
23 IT BE SOONER FOR ADDITIONAL CONFERENCES, HE SHOULD BE HERE IN THE
24 COURTROOM AND AT COUNSEL TABLE BY NOT LATER THAN 8:30 ON TUESDAY
25 MORNING.

1 MARSHAL: YES, YOUR HONOR.

2 THE COURT: ANYTHING ELSE, MR. MARTIN?

3 MARSHAL: NO, SIR.

4 THE COURT: PLEASE STAND BY AND DON'T LEAVE YET. NOW,
5 IN TERMS OF COMPUTER EQUIPMENT, I HAVE READ YOUR SUBMISSIONS. I
6 HAVE CAUSED THEM TO BE COPIED, FILED, AND MADE AVAILABLE TO THE
7 GOVERNMENT AND COUNSEL FOR MR. REED. I'D LIKE TO GIVE YOU AN
8 OPPORTUNITY, MR. SUTCLIFFE, TO STATE IN THE PRESENCE OF MR. JAMES
9 SETTLE, THE COURT COORDINATOR FOR TELECOMMUNICATIONS EQUIPMENT,
10 WHAT KIND OF COMPUTER EQUIPMENT YOU THINK YOU NEED TO DEFEND
11 YOURSELF FAIRLY HERE IN THE COURTROOM AT YOUR COUNSEL TABLE.

12 MR. SUTCLIFFE: I CAN'T MAKE THAT REQUEST AT THIS TIME,
13 YOUR HONOR, AS I'M NOT AWARE OF WHAT I'M TO EXPECT TO BE GIVEN TO
14 ME AS FAR AS HARDWARE FROM THE GOVERNMENT. THEY HAVE TURNED OVER
15 -- I'M IN RECEIPT OF NO CD ROMS. I'M IN RECEIPT OF NO ZIP DISK,
16 I'M IN RECEIPT OF NO FLOPPY DISK, I'M IN RECEIPT OF NO OPTICAL
17 DISK, I'M IN RECEIPT OF NO TAPES, SO I CAN'T ANSWER THAT QUESTION
18 AT THIS POINT.

19 THE COURT: WELL, I'M A LITTLE PUZZLED BY THAT RESPONSE,
20 MR. SUTCLIFFE, BECAUSE THE LETTERS I GOT LATE LAST NIGHT, WHICH
21 ARE CAUSED TO BE FILED TODAY, AMONG OTHER THINGS, I BELIEVE IT'S
22 YOUR HANDWRITING, I KNOW IT CAME FROM YOU, YOU HAVE STATED ON PAGE
23 TWO --

24 MR. SUTCLIFFE: WHICH DOCUMENT ARE YOU REFERRING TO,
25 YOUR HONOR?

1 THE COURT: IT'S ATTACHED TO MINUTE ORDER IS WHAT I GOT
2 FROM YOU LAST NIGHT. ONE IS A LETTER TO THE CLERK OF THE COURT.
3 THE OTHER IS A SECOND RELATED BUT DIFFERENT LETTER --

4 MR. SUTCLIFFE: OKAY. I SEE IT.

5 THE COURT: -- TO ME.

6 MR. SUTCLIFFE: YES. I THINK I SEE THE ONE YOU'RE
7 TALKING ABOUT, YES.

8 THE COURT: PAGE TWO YOU SAY THAT YOU GOT A LETTER FROM
9 THE PROSECUTOR ON SEPTEMBER 17TH, NINE DAYS AGO, AND IT CONTAINED
10 A CD ROM DISK. AND YOU THEN GO ON TO TELL ME ALL KINDS OF THINGS
11 ABOUT HOW YOU NEED TO GET COMPUTERS TO MAKE USE OF THE CD ROM
12 DISK.

13 MR. SUTCLIFFE: RIGHT.

14 THE COURT: BEFORE I ASK YOU TO CLARIFY WHAT YOU WERE
15 SAYING IN THE LETTER AND WHAT YOU'RE SAYING NOW, LET'S JUST MAKE
16 SURE WE HAVE A CLEAR RECORD HERE AS TO WHAT, IF ANY, ELECTRONIC
17 EVIDENCE AND CONCRETE TANGIBLE EVIDENCE HAS BEEN PROVIDED TO
18 MR. SUTCLIFFE TO THE KNOWLEDGE OF THE LEAD PROSECUTOR, MS. DUARTE.
19 AND I MEAN TO MR. SUTCLIFFE PERSONALLY AND NOT TO ANY OF HIS MANY
20 PRIOR ATTORNEYS.

21 MS. DUARTE: JUST TO MR. SUTCLIFFE PERSONALLY?

22 THE COURT: YEAH.

23 MS. DUARTE: BECAUSE --

24 THE COURT: AND IF YOU WERE TOLD BY ONE OF THE OTHER
25 LAWYERS THAT THEY HAD PHYSICALLY GIVEN TO HIM WHATEVER YOU'RE

1 ABOUT TO ACCOUNT FOR AS THE ELECTRONIC EVIDENCE, YOU CAN TELL ME
2 ABOUT THAT.

3 MS. DUARTE: OKAY. YOUR HONOR, MAY I BE PERMITTED -- I
4 WILL DO THAT. MAY I BE PERMITTED ALSO TO MAKE A RECORD AS TO WHAT
5 HAS BEEN DISCOVERED TO MR. SUTCLIFFE'S ATTORNEYS PREVIOUSLY.

6 THE COURT: YES.

7 MS. DUARTE: IT WON'T TAKE ME VERY LONG, BUT I DID SPEND
8 A LOT OF TIME ON IT LAST NIGHT. MAY I APPROACH THE PODIUM TO DO
9 THAT?

10 THE COURT: ALL RIGHT.

11 MS. DUARTE: YOUR HONOR, ACCORDING TO MY RECORDS --

12 THE COURT: TELL YOU WHAT, MS. DUARTE, I WANT TO GET
13 THROUGH THE QUESTION OF EQUIPMENT IN THE COURTROOM. I'LL GIVE YOU
14 THE OPPORTUNITY TO GO THROUGH YOUR RECITALS ABOUT WHAT DISCOVERY
15 WAS PROVIDED LATER ON IN THE DAY, BUT MR. SETTLE IS HERE NOW. I
16 DON'T WANT TO HAVE TO BE DOING SOMETHING UNNECESSARILY. NOW, IN
17 TERMS OF -- I THINK THE REAL QUESTION IS WHAT ARE YOU -- NOT SO
18 MUCH WHAT MR. SUTCLIFFE HAS BEEN GIVEN SO FAR DIRECTLY OR
19 INDIRECTLY BUT WHAT KIND OF ELECTRONIC EQUIPMENT AND EVIDENCE DO
20 YOU INTEND TO USE AT TRIAL?

21 MS. DUARTE: I INTEND TO USE CD ROMS AND FLOPPY DISKS,
22 YOUR HONOR.

23 THE COURT: WHAT KIND OF EQUIPMENT TO USE THOSE CD ROMS
24 OR FLOPPY DISK ARE YOU GOING TO BE USING, EITHER AT COUNSEL TABLE
25 OR AT THE ELECTRONIC PLATFORM NEXT TO THE LECTERN?

1 MS. DUARTE: BASICALLY TWO LAPTOP COMPUTERS. IF YOUR
2 HONOR WANTS SPECIFICS AS TO CABLING AND OTHER EXTERNAL DRIVES THAT
3 WILL BE USED, I WOULD PROBABLY HAVE TO --

4 THE COURT: I DON'T NEED THAT.

5 MS. DUARTE: LET ME THEN -- I UNDERSTAND THAT THIS COURT
6 WANTS THIS LATER. MAY I ANSWER JUST ONE OF THE COURT'S QUESTIONS
7 ABOUT THAT CD ROM THAT WAS VERY RECENTLY SENT TO MR. SUTCLIFFE?

8 THE COURT: YES.

9 MS. DUARTE: JUST SO I CAN CLEAR THIS UP, AND A LETTER
10 ACCOMPANYING WHICH EXPLAINED THIS TO MR. SUTCLIFFE AND TO
11 MR. REED. THE CD ROM THAT WAS VERY RECENTLY, I BELIEVE, ON
12 SEPTEMBER 17TH, SENT TO MR. SUTCLIFFE, WAS A VERY RECENT DISCOVERY
13 OF THE GOVERNMENT THAT THERE APPEARED TO BE A COPY, AT LEAST A
14 PARTIAL COPY, OF THE WEBSITE ORIGINALLY ENTITLED EVIL GX.COM STILL
15 ALIVE, IF YOU WILL, THROUGH THE INTERNET THROUGH A SERVER CALLED
16 G-0 CITIES. WHEN WE DISCOVERED THAT, IT STILL MIGHT BE ON THE
17 INTERNET, I ASKED THE AGENTS TO MAKE A COPY. THEY MADE A COPY AND
18 AS SOON AS I GOT THE COPY ON CD I PROVIDED A COPY TO
19 MR. SUTCLIFFE. THAT IS NOT SOMETHING THAT I'M GOING TO USE IN
20 EVIDENCE OF THIS CASE, YOUR HONOR. IT HAPPENED -- IT'S ON THE
21 INTERNET, COULD STILL BE ON THE INTERNET NOW, I DON'T KNOW; BUT
22 BECAUSE I HAD A COPY OF IT, I PROVIDED IT TO MR. SUTCLIFFE. IT'S
23 NOT EVIDENCE, IT'S NOT PRIOR DISCOVERY THAT WASN'T PROVIDED, IT'S
24 A VERY NEW DISCOVERY.

25 TO THE QUESTIONS OF MY PERSONAL KNOWLEDGE, I DON'T KNOW

1 PERSONALLY THAT HE'S RECEIVED, HIM PERSONALLY, ANY OTHER
2 ELECTRONIC EVIDENCE IN THIS CASE. I HAVE BEEN TOLD BY BOTH
3 MR. HARRIS AND MR. NICOLAYSEN AT VARIOUS TIMES THAT THEY HAVE GONE
4 THROUGH WITH HIM AND DISCUSSED VARIOUS PIECES OF ELECTRONIC
5 EVIDENCE, PARTICULARLY MR. NICOLAYSEN. MR. NICOLAYSEN AND I
6 CONVERSED QUITE A BIT ABOUT THE MYWEBS CD -- M-Y-W-E-B-S -- WHICH
7 WILL BE INTRODUCED AT TRIAL AS GOVERNMENT'S EXHIBIT 65, AND I DO
8 HAVE A RECORD OF WHEN I FIRST TURNED THAT CD OVER, BUT I'LL WAIT
9 TO LET YOU KNOW THAT.

10 OTHER THAN THAT, I DIDN'T KEEP SPECIFIC RECORDS AS TO
11 WHEN I TALKED TO DEFENSE ATTORNEY ABOUT WHAT PARTICULAR EXHIBITS
12 IN REGARD TO THEIR PROVISION DIRECTLY TO MR. SUTCLIFFE, SO I JUST
13 DON'T KNOW.

14 THE COURT: OKAY. YOU CAN BE SEATED IF YOU'D LIKE. TO
15 SPEED THINGS ALONG, IF YOU WANT TO ADDRESS ME AT COUNSEL TABLE,
16 THAT'S OKAY TOO, AT LEAST FOR THE CURRENT TIME.

17 NOW, MR. SUTCLIFFE, ASSUMING THAT THE GOVERNMENT'S GOING
18 TO BE USING CD ROMS AND FLOPPY DISKS AND TO USE THOSE AND DISPLAY
19 THOSE, IT'S GOING TO HAVE LAPTOP COMPUTERS AND YOU WANT TO HAVE
20 ACCESS TO WHATEVER THEY DISPLAY. WHAT YOU NEED IS A LAPTOP
21 COMPUTER, RIGHT?

22 MR. SUTCLIFFE: IF I HEARD MRS. DUARTE CORRECTLY, SHE'S
23 GOING TO BE USING TWO LAPTOPS SO LAPTOP TO BE JUST AS PREPARED.
24 JUST LIKE A D.J. YOU SPIN ONE READY AND GET THE OTHER ONE PREPPED.
25 YOU SHOW WHAT'S ON HERE WHILE YOU'RE RESEARCHING THE OTHER ONE.

1 MAKES YOU A LOT MORE EFFICIENT. I USED IT ALL THE TIME WHEN I WAS
2 A COMPUTER CONSULTANT.

3 THE COURT: OKAY.

4 MS. DUARTE: IF I MAY, THE REASON WHY WE'RE USING TWO
5 COMPUTERS, OR AT LEAST PLANNING TO AS OF NOW, IS BECAUSE THE
6 COMPUTER ITSELF ONLY HAS SPACE FOR ONE DRIVE HERE TO A CD PLAYER,
7 IF YOU WILL, OR A FLOPPY PLAYER. WE HAVE SOME EXHIBITS THAT ARE
8 FLOPPIES AND SOME THAT ARE CD'S, ALL WHICH HAVE PREVIOUSLY BEEN
9 PROVIDED. IN ORDER SO THAT WE DON'T HAVE TO ACTUALLY CHANGE THE
10 INTERNAL DRIVES DURING THE PRESENTATION OF THE TESTIMONY, WE WANT
11 ONE COMPUTER WITH CD, ONE WITH FLOPPY. IT'S NOT TO DO TWO THINGS
12 AT ONCE. IT'S TO MAKE THINGS GO MORE QUICKLY WHEN WE HAVE TO
13 CHANGE THE TYPE OF EXHIBIT.

14 THE COURT: I'LL GIVE YOU A MOMENT TO RESPOND, BUT IT
15 MAY NOT BE NECESSARY, MR. SUTCLIFFE. THANK YOU. JUST SIT DOWN
16 FOR A MINUTE. MR. SUTCLIFFE, CAN YOU PROVIDE FOR THE DEFENSE
17 TEAM, AND THAT MEANS AT THE DEFENSE TABLE, TWO LAPTOPS.

18 MR. SETTLE: ABSOLUTELY.

19 THE COURT: OKAY. YOU'LL HAVE TWO LAPTOP COMPUTERS.
20 NOW, WHAT KIND OF COMPUTERS DO YOU PROPOSE TO PROVIDE?

21 MR. SETTLE: IF IT'S YOUR INTENTION TO PROVIDE HIM EQUAL
22 EQUIPMENT WITH WHAT THE U.S. ATTORNEYS ARE USING, WE'LL PROVIDE
23 HIM WITH A PENTIUM LEVEL LAPTOP. I DON'T KNOW SPECIFICALLY WHAT
24 SPEED IT WILL BE RIGHT OFFHAND BUT ONE WILL HAVE CD DRIVE AND ONE
25 WILL HAVE A FLOPPY DRIVE BECAUSE THEY ALL HAVE INTERCHANGEABLE

1 DRIVES. WE'LL PROVIDE HIM WITH LIKE TO LIKE AND A SWITCHER TO
2 TURN TO HAVE ONE DISPLAYED AT A TIME AND IT WILL DISPLAY JUST AS
3 ALL YOUR EQUIPMENT DOES. YOU'LL HAVE A DISPLAY ON YOUR BENCH SO
4 THE JURORS CAN SEE IT AND IT WILL BE UP ON COUNSEL TABLE.

5 THE COURT: SO IT WILL BE HOOKED UP TO THE MONITORS?

6 MR. SETTLE: UH-HUH.

7 THE COURT: THAT'S A YES?

8 MR. SETTLE: THAT'S A YES.

9 THE COURT: ALL RIGHT. IN ORDER FOR EVIDENCE TO BE
10 USED, DEMONSTRATED, RETRIEVED, DISPLAYED, MANIPULATED FOR PURPOSES
11 OF EITHER QUESTIONING OR ARGUMENT, WILL THE LAPTOP COMPUTERS BE
12 HOOKED UP INTO THE SYSTEM THAT IS ALREADY AVAILABLE, ELECTRONIC
13 MEDIA SYSTEM THAT'S FUNDAMENTALLY A ONGOING PIECE OF EQUIPMENT IN
14 THE COURTROOM BE SUFFICIENT, MR. SETTLE?

15 MR. SETTLE: YES, YOUR HONOR.

16 THE COURT: YOU CAN'T ANTICIPATE ANY INABILITY ON THE
17 PART OF WHOEVER IS USING THE COMPUTERS THAT YOU WILL PREPARE TO
18 MAKE COMPLETE USE OF THEM FOR PURPOSES OF A TRIAL; IS THAT
19 CORRECT?

20 MR. SETTLE: THERE'S ALWAYS A POTENTIAL FOR SOME ERROR
21 BUT WE'LL BE HERE TO SUPPORT IT AND PRETEST IT TO MAKE SURE THAT
22 THERE ARE NO PROBLEMS.

23 THE COURT: OKAY. AND WHEN WILL YOU BE ABLE TO INSTALL
24 THAT EQUIPMENT?

25 MS. SETTLE: WE CAN HAVE IT INSTALLED MONDAY.

1 THE COURT: OKAY. WELL, I HAVE A LOT OF PEOPLE COMING
2 THROUGHOUT MONDAY FOR OTHER MATTERS, BUT I'D LIKE IT INSTALLED BY
3 MID TO LATE AFTERNOON ON MONDAY AT THE LATEST.

4 NOW, DO YOU HAVE ANY QUESTIONS SO FAR, MR. SUTCLIFFE?

5 MR. SUTCLIFFE: YES, THANK YOU, YOUR HONOR. I WOULD
6 LIKE TO LODGE AN OBJECTION TO WHAT MS. DUARTE JUST SAID TO THE
7 COURT. I BELIEVE SHE MISSPOKE OR IS TOTALLY LYING, ONE OF THE
8 TWO. I'M NOT GOING TO SPECULATE, BUT SHE SAID THAT ALL CD ROMS
9 AND FLOPPIES HAVE PREVIOUSLY BEEN PROVIDED TO ME. THAT IS A
10 FALSEHOOD. I HAVE NOT RECEIVED ALL THE DISCOVERY IN THIS CASE,
11 AND I HAVE PAPERWORK, AND THE COURT RECORD CLEARLY REFLECTS THAT.

12 I'D LIKE A CHANCE TO ARGUE THAT POINT AT ANY TIME THIS
13 COURT WOULD GRANT ME THAT MOTION.

14 THE COURT: OKAY. MR. REED, I'D LIKE TO ADDRESS SOME
15 QUESTIONS TO YOU, PLEASE.

16 MR. REED: YES, YOUR HONOR.

17 THE COURT: PARTICULARLY FOCUSING ON ELECTRONIC EVIDENCE
18 OR EVIDENCE IN DOCUMENTARY FORM SUCH AS PRINTOUTS THAT WERE
19 DOWNLOADED FROM ELECTRONIC EVIDENCE. CAN YOU TELL ME, PLEASE,
20 WHAT, IF ANY, EVIDENCE, EITHER GENERATED BY AS PART OF THE WORK
21 PRODUCT OF PRIOR ATTORNEYS THE LAWYERS WHO PREVIOUSLY REPRESENTED
22 MR. SUTCLIFFE OR TURNED OVER AS PART OF DISCOVERY TO ANY LAWYER AT
23 ANY PREVIOUS TIME BY THE GOVERNMENT, YOU PERSONALLY HAVE BEEN
24 GIVEN? JUST DESCRIBE THAT GENERICALLY.

25 MR. REED: YOUR HONOR, I'VE BEEN GIVEN A SIGNIFICANT

1 AMOUNT OF DOWNLOADED WEB PAGES. I DON'T HAVE THEM MEMORIZED.

2 THE COURT: NO. I DON'T THINK YOU NEED TO GIVE ME AN
3 INVENTORY.

4 MR. REED: I HAVE A SIGNIFICANT NUMBER OF WITNESS
5 INTERVIEWS, 302'S, THINGS OF THAT NATURE. MR. NICOLAYSEN LAST
6 WEEK GAVE ME THE CD ROM MYWEBS. I DID PICK THAT UP AND I DO HAVE
7 THAT WITH ME TODAY. AND THAT'S THE NATURE OF THE EVIDENCE THAT
8 I'VE BEEN GIVEN, YOUR HONOR.

9 THE COURT: NOW, I DON'T THINK IT IS INAPPROPRIATE FOR
10 THE RECORD TO NOTE THAT I'VE PREVIOUSLY AUTHORIZED EXPERTS, OR AT
11 LEAST ONE EXPERT, I DON'T GO BACK AND CHECK THE FILE BUT AT LEAST
12 ONE EXPERT, AND I THINK COULD HAVE BEEN MORE THAN ONE, SOMEBODY
13 WITH SPECIFIC SKILL AND ADVANCED SKILL IN COMPUTER TECHNOLOGY AND
14 INTERNET TECHNOLOGY AS WELL TO BE APPOINTED TO REPRESENT OR ASSIST
15 PRIOR COUNSEL. HAVE YOU SEEN ANY EXPERT REPORTS?

16 MR. REED: NO. NOT AT ALL, YOUR HONOR.

17 THE COURT: HAS ANYBODY DISCUSSED WITH YOU ANY OF
18 MR. SUTCLIFFE'S PRIOR LAWYERS, ANY EXPERT REPORTS THAT MAY HAVE
19 BEEN GENERATED?

20 MR. REED: NO, YOUR HONOR.

21 THE COURT: DO YOU HAVE THE EQUIPMENT AT YOUR OFFICE,
22 MR. REED, THAT ENABLES YOU TO USE AND, IF NECESSARY, DOWNLOAD
23 MATERIAL FROM CD ROMS AND FLOPPY DISK UNDER MYWEBS CD ROM, FOR
24 EXAMPLE?

25 MR. REED: I BELIEVE I DO, YOUR HONOR.

1 THE COURT: OKAY. IT COULD BE THAT I AM MISTAKEN IN MY
2 UNDERSTANDING AS TO WHETHER OR NOT PRIOR EXPERTS WERE LINED UP AND
3 I HAVE NO IDEA ONE WAY OR THE OTHER WHETHER THEY DID ANYTHING IF
4 THEY WERE LINED UP. BUT FOR THE RECORD, I'M GOING TO INSTRUCT MY
5 CLERK TO CONTACT ALL OF THE PRIOR COUNSEL IN THIS CASE AND ORDER
6 THEM TO FILE, POSSIBLY BY LATER TODAY, AND IN ANY EVENT EARLY
7 MONDAY MORNING, UNDER SEAL AND IN CAMERA, A REPORT AS TO WHAT, IF
8 ANY, EXPERT TESTIMONY OR EXPERT ASSISTANCE, EVEN IF IT WASN'T
9 INTENDED TO BE TESTIMONY, THEY OBTAINED OR RECEIVED, WHAT, IF ANY,
10 WORK PRODUCT FROM EXPERTS THEY OBTAINED OR RECEIVED.

11 AND IF THEY DID GET ANY, WHERE IT IS, WHAT THEY DID WITH
12 IT, WHETHER THEY TURNED IT OVER TO ANYONE. IF SO, WHO AND THE
13 WHEN AND THE LIKE. THAT WILL BE FILED UNDER SEAL AND IN CAMERA
14 AND I'LL EVALUATE IT, AND DEPENDING ON WHAT I LEARN, TAKE
15 APPROPRIATE STEPS TO ENSURE THAT MR. SUTCLIFFE'S RIGHTS ARE
16 PROTECTED.

17 MEANTIME, MR. REED, I WOULD APPRECIATE IT IF YOU, OVER
18 THE LUNCH BREAK, AND WE WILL HAVE TO TAKE A LUNCH BREAK, MAKE AN
19 INQUIRY YOURSELF, AT LEAST OF MR. NICOLAYSEN. AND HE'S PROBABLY
20 THE ONLY LAWYER THAT YOU -- OF THE FOUR THAT PREVIOUSLY
21 REPRESENTED MR. SUTCLIFFE, THAT YOU'VE DEALT WITH; IS THAT
22 CORRECT?

23 MR. REED: CORRECT, YOUR HONOR.

24 THE COURT: OKAY. SO SEE IF YOU CAN TRACK HIM DOWN,
25 FIND OUT ABOUT THAT; ALL RIGHT, MR. REED?

1 NOW, MR. SETTLE, SINCE YOU'RE THE EXPERT ABOUT ALL
2 THINGS ELECTRONIC AND VIDEO EQUIPMENT AND COURTROOM TECHNOLOGY, IS
3 THERE ANY CONSIDERATION THAT I SHOULD HAVE ASKED ABOUT THAT I DID
4 NOT MENTION?

5 MR. SETTLE: THE CONCERNS THAT I WOULD HAVE ARE I THINK
6 THE COURT SHOULD HAVE AS FAR AS PRESENTING EXHIBITS OR EVIDENCE IN
7 THIS MATTER IS THAT, ONE, THAT THEY ARE VIEWED BY THE COURT AND WE
8 KNOW WHAT'S PRESENTED AND THAT IT'S VALIDATED THAT BOTH SIDES,
9 SINCE WE'RE USING DIFFERENT MEDIUMS, ARE ACTUALLY SHOWING THE SAME
10 -- PROJECTING THE SAME IMAGES.

11 IN OTHER WORDS, THAT ONE IMAGE HASN'T BEEN ALTERED TO
12 REFLECT SOMETHING THAT ISN'T ON THE OTHER COMPUTER, BECAUSE WE'LL
13 BE BASICALLY TRYING TO SHARE THE SAME DOCUMENTS OR EVIDENCE BUT
14 FROM DIFFERENT COMPUTERS; SO THERE'S ALWAYS THE POTENTIAL THAT ONE
15 HAS BEEN ALTERED OR CHANGED OR ISN'T EXACTLY AS THE OTHER. AND
16 THAT WOULD BE THE CONCERN THAT I HAVE.

17 THE COURT: AND HOW COULD SOMEBODY ALLAY OR AVOID THAT
18 CONCERN?

19 MR. SETTLE: BY USING THE SAME SOURCE, HAVING ONE SET OF
20 DISKS THAT ARE POSSIBLY SHARED OR FROM THE SAME COMPUTER TO BE
21 USED AS EXHIBITS OR EVIDENCE -- HOW THE FAIREST WAY TO DO THAT I'M
22 NOT REAL SURE ON BUT I'M SURE WE CAN WORK OUT THE DETAILS.

23 THE COURT: DO YOU HAVE ANY OBJECTION, MS. DUARTE, OVER
24 THE LUNCH BREAK OR TO UNAVOIDABLY HAVE TO BE A LITTLE BIT EXTENDED
25 BEYOND WHAT I USUALLY TAKE TO SITTING DOWN WITH MR. SETTLE AND

1 MR. SUTCLIFFE AND WITH MR. REED IN A SAFE AND SECURE FASHION
2 PURSUING THAT OBJECTIVE THAT MR. SETTLE JUST TALKED TO US ABOUT.

3 MS. DUARTE: YOUR HONOR, MAY MY CO-COUNSEL AND CASE
4 AGENT BE PRESENT AS WELL?

5 THE COURT: YES.

6 MS. DUARTE: I DON'T HAVE AN OBJECTION. I CAN TELL THE
7 COURT RIGHT NOW THAT I THINK THE -- WE CAN TALK ABOUT IT AND THEN
8 TALK ABOUT IT WITH THE COURT AFTER LUNCH.

9 THE COURT: OKAY. THAT'S WHAT YOU SHOULD DO, BECAUSE I
10 DON'T KNOW IF THAT'S AN ACTUAL CONCERN. I KNOW YOU'RE TRYING TO
11 BE HELPFUL BY ALERTING ME TO POTENTIAL CONSIDERATIONS, BUT IT MAY
12 NOT BE AN ACTUAL CONCERN. AND IF IT IS AN ACTUAL CONCERN AND
13 THERE ARE ALTERNATIVE MEANS OF ADDRESSING IT BESIDES EITHER
14 DUPLICATING OR -- THE EVIDENCE AGAIN OR ASSURING A SINGLE SOURCE,
15 PLEASE BRING THAT UP AT THE DISCUSSIONS. ALL RIGHT, MR. SETTLE?

16 MR. SETTLE: YES, YOUR HONOR.

17 THE COURT: OKAY. NOW, MY STAFF AND I ARE GOING TO HAVE
18 TO LEAVE THE COURTROOM, BUT I WANT TO SET THE CONTEXT FOR WHAT --
19 APART FROM GETTING FEEDBACK ABOUT THIS ISSUE OF THE COMPUTERS WHEN
20 WE RESUME, WHICH WILL BE ABOUT 2:00, I WANT TO TELL YOU WHAT MY
21 THOUGHTS ARE ABOUT THE STATUS OF REPRESENTATION HERE BECAUSE MY
22 OBJECTIVE IS TO HAVE MR. SUTCLIFFE -- GIVE MR. SUTCLIFFE
23 ADDITIONAL TIME TO THINK ABOUT THE SITUATION AND TO DISCUSS IT
24 SEPARATELY AND PRIVATELY WITH MR. REED IF HE WOULD LIKE TO, AND
25 FOR ALL SIDES TO KNOW WHAT I THINK IS THE STATE OF THE RECORD AND

1 THE STATE OF THE CONCERNS.

2 THE SOMEWHAT TORTURED HISTORY OF THIS CASE, AS REFLECTED
3 BY TRANSCRIPTS WHICH I HAVE GOTTEN AND REVIEWED IN RECENT DAYS OR
4 WEEKS, REFLECTS THAT ON SEVERAL OCCASIONS, THE FIRST BEING AT
5 LEAST AUGUST 22ND OF 2002 THERE WERE COLLOQUIES THAT I HAD WITH
6 MR. SUTCLIFFE CONCERNING BOTH HIS RIGHT AND THE PERIL HE WOULD
7 INVITE IF HE EXERCISED HIS RIGHT TO REPRESENT HIMSELF.
8 MR. SUTCLIFFE HAS NEVER SAID I WANT TO BE MY OWN LAWYER. I'VE
9 NOTED THAT BEFORE AND I'M NOT GOING TO SIT UP HERE AND REVIEW
10 EVERY SINGLE COLLOQUY WE HAD. ULTIMATELY, I FOUND THAT BY HIS
11 CONDUCT HE HAD WAIVED HIS RIGHT TO YET ANOTHER APPOINTED COUNSEL
12 AFTER HAVING EXHAUSTED FOUR AND DONE SO UNDER CIRCUMSTANCES WHICH,
13 IN SEVERAL OCCASIONS TURN OUT TO BE REMARKABLY ANTAGONISTIC AND
14 CONFRONTATIONAL.

15 NOW, ON VARIOUS OCCASIONS MR. SUTCLIFFE, IN FACT,
16 ACKNOWLEDGED TO ME THAT IT WOULD BE A MISTAKE FOR HIM TO REPRESENT
17 HIMSELF AND I ALLUDED TO SOME OF THE PERILS AND SOME OF THE
18 DANGERS ON SEVERAL DIFFERENT OCCASIONS AND HE SAID HE UNDERSTOOD
19 THOSE. THE FILING THAT I RECEIVED FROM MR. SUTCLIFFE LAST NIGHT,
20 WHICH I'VE ATTACHED TO AN ORDER AND CIRCULATED TO THE PARTIES,
21 BASICALLY PROVIDES, IF IT'S ACCURATE ACCOUNT OF THE SITUATION, A
22 STRONG INDICATION THAT IN TRYING TO REPRESENT HIMSELF IN THE LAST
23 FEW WEEKS MR. SUTCLIFFE HAS ENCOUNTERED A LOT OF SEVERE CHALLENGES
24 AND OBSTACLES, WHICH I'LL GIVE HIM AN OPPORTUNITY TO SUPPLEMENT IF
25 HE WANTS WHEN WE COME BACK HERE. AND IT'S A LITTLE HARD FOR ME TO

1 READ MR. SUTCLIFFE'S MIND, BUT I CAN'T BE SURE WHAT THAT LETTER,
2 WHICH IS NOW PART OF THE FILE, WAS INTENDED TO COMMUNICATE AND
3 WHETHER IT WAS A REQUEST TO HAVE A CONDITIONAL CHANCE TO BE
4 REPRESENTED BY COUNSEL.

5 I'VE TAKEN LOTS OF MEASURES IN THE LAST FEW WEEKS TO DO
6 WHATEVER I THOUGHT I COULD DO FEASIBLY AND COULD DO RESPONSIBLY TO
7 ASSIST MR. SUTCLIFFE WITHOUT TAKING SIDES IN THIS CASE. I HAVE
8 ISSUED CERTAIN ORDERS ABOUT HOW THINGS AND WHEN THINGS COULD BE
9 SERVED UPON HIM. I TRACKED DOWN THE HEAD OF THE METROPOLITAN
10 DETENTION CENTER IN ANOTHER STATE, NOT REALIZING HE WAS ON
11 VACATION TO ARRANGE FOR -- ON A SPECIAL EXCEPTION BASIS MATERIALS
12 TO BE RECEIVED THAT ARE HAND-DELIVERED TO GET -- MAKE SURE THEY
13 GET TO MR. SUTCLIFFE SOONER THAN THEY OTHERWISE WOULD IF THEY WERE
14 SENT BY THE MAILS, WHICH IS THE ORDINARY REQUIREMENT THAT THE MDC
15 IMPOSES.

16 I HAVE TAKEN IT UPON MYSELF TO ALLOW MATERIALS WHICH ARE
17 NOT IN COMPLIANCE WITH THE LOCAL COURT RULES CONCERNING FILING TO
18 BE FILED. WE HAVE XEROXED THEM, WE HAVE SERVED THEM ON -- OR
19 ARRANGED TO HAVE THEM MADE AVAILABLE TO THE PROSECUTION IN THIS
20 CASE. I RESPONDED, ALTHOUGH MR. SUTCLIFFE THINKS IT WAS NOT
21 ADEQUATE, TO REQUESTS CONCERNING THE ISSUANCE OF SUBPOENAS.

22 NOTWITHSTANDING ALL OF THAT, I AM CONCERNED THAT
23 MR. SUTCLIFFE'S RIGHT TO A FAIR TRIAL, WHICH IS INHERENTLY
24 AFFECTED AS IT WOULD BE FOR ANYBODY WHO CHOOSES TO REPRESENT
25 HIMSELF, BY THE FACT THAT HE'S ON HIS OWN, IT'S COMPLICATED AND

1 COMPOUNDED IN WAYS THAT I DID NOT PREVIOUSLY KNOW ABOUT BY VIRTUE
2 OF HIS CURRENT INCARCERATION.

3 NOW, THE RECORD IN THIS CASE REFLECTS, ON SEVERAL
4 OCCASIONS, THAT I EXPLORED WITH MR. SUTCLIFFE THE RISKS HE WOULD
5 TAKE IF HE, BY HIS CONDUCT; PUT HIMSELF IN A POSITION BY ALLOWING
6 HIM NO CHOICE BUT TO DEEM THAT HE WAIVES HIS RIGHT TO COUNSEL.

7 — I, HOWEVER, DID NOT BUILD THE NECESSARY RECORD THAT I
8 THINK WOULD BE REQUIRED TO ASSURE THAT HE WAS INFORMED IN ADVANCE
9 OF ALL OF THOSE RISKS. AND IN PARTICULAR, I ERRED BY NOT
10 ARTICULATING THE ELEMENTS OF THE CASE, MEANING OF THE TWO
11 DIFFERENT SETS OF CRIME THAT ARE ALLEGED THAT HE COMMITTED AND THE
12 PENALTIES. I COULD HAVE BEEN MORE EXPANSIVE ABOUT SOME OF THE
13 MECHANICAL -- NOT MECHANICAL, BUT SOME OF THE FUNCTIONAL OBSTACLES
14 ANYBODY WOULD FACE IN REPRESENTING THEMSELF IN A CRIMINAL TRIAL.
15 MUCH OF THAT HAS BEEN ADDRESSED AND WAS ADDRESSED BEFORE I GOT
16 MR. SUTCLIFFE'S FILING LAST NIGHT THROUGH A FEW ORDERS THAT I'VE
17 ISSUED, BOTH DIRECTLY BY MYSELF AND THROUGH ORDERS ISSUED BY THE
18 PROSECUTION TO SET FORTH IN WRITING AND TO SERVE AND HANDSERVE
19 UPON MR. SUTCLIFFE MANY DISCLOSURES ABOUT THESE CONSIDERATIONS.

20 WHAT I WOULD WANT YOU TO DO OVER THE LUNCH BREAK, IF YOU
21 CHOOSE TO, MR. SUTCLIFFE, IS TO EVALUATE WHERE YOU STAND IN TERMS
22 OF READINESS FOR TRIAL ON TUESDAY, DISCUSS WITH MR. REED WHATEVER
23 YOU THINK WOULD BE APPROPRIATE AND HE WOULD THINK WOULD BE
24 APPROPRIATE ABOUT REPRESENTATION ON A FULL BASIS HE COULD PROVIDE
25 YOU, EVALUATE YOUR RIGHTS UNDER THE SPEEDY TRIAL ACT. I KNOW THAT

1 YOU HAVE NOT WAIVED THOSE RIGHTS AND YOU'LL HAVE TO, MS. DUARTE,
2 DO ANOTHER CALCULATION ABOUT HOW MUCH TIME WILL BE AVAILABLE UNDER
3 THE SPEEDY TRIAL ACT, IF THE CASE DOES NOT PROCEED ON TUESDAY.

4 I WILL INVITE YOU TO ADDRESS THE COURT WHEN WE RETURN,
5 MR. SUTCLIFFE, TO TELL ME WHAT YOUR POSITION IS AFTER NOW HAVING
6 RECEIVED IN WRITING AND ON SEVERAL OCCASIONS ORALLY FROM THE COURT
7 AND FROM THE BENCH UNUSUAL AND DETAILED DISCLOSURES ABOUT PRO SE
8 REPRESENTATION.

9 SO THAT'S SOMETHING THAT NEEDS TO BE ADDRESSED. WE'RE
10 GOING TO BE ADJOURNED UNTIL 2:00. WE'LL RESUME THEN. MR. SETTLE
11 IS EXCUSED AND THOSE SPECIAL REPRESENTATIVES OF THE MARSHALS AND
12 THE CSO'S THAT CAME TO ADDRESS THE SECURITY CONCERNS NEED NOT
13 RETURN EITHER AT 2:00.

14 (RECESS.)

15 THE COURT: I'LL JUST LET THE RECORD REFLECT THAT
16 MR. SUTCLIFFE AND MR. REED ARE PRESENT AT THEIR COUNSEL TABLE AND
17 SO IS THE PROSECUTION TEAM.

18 ALL RIGHT. FOLLOWING UP ON SOME OF THE MATTERS WE GOT
19 TO BEFORE THE BREAK, I'D LIKE TO START BY ASKING YOU, MS. DUARTE,
20 TO FIRST TELL ME ABOUT THE OUTCOME. YOU DON'T HAVE TO GET INTO
21 EVERY SINGLE DETAIL, BUT THE DISCUSSION CONCERNING THE COMPUTERS.

22 MS. DUARTE: OH. YES, YOUR HONOR. WE DID HAVE A
23 DISCUSSION ABOUT THE COMPUTERS AND THE PRIMARY CONCERN WAS THAT
24 THE EVIDENCE -- IF MR. SUTCLIFFE BRINGS IN ELECTRONIC EVIDENCE AND
25 IT'S SUBJECT TO ALTERATION, WHICH IT WOULD JUST BY ITS VERY NATURE

1 BE, THEN THERE WOULD BE AN EVIDENTIARY ISSUE. WHAT WE ALL SEEM TO
2 HAVE AGREED ON IS THE NEED TO USE A CONSISTENT SET OF EXHIBITS,
3 WHICH WOULD BE THE GOVERNMENT EXHIBITS; BUT, OF COURSE,
4 MR. SUTCLIFFE WOULD BE ABLE TO VIEW THEM, USE THEM, AND ADD TO
5 THEM.

6 IN OTHER WORDS, I HAVE TOLD MR. SUTCLIFFE AND MR. REED
7 THAT IF THERE'S SOMETHING THAT YOU'VE GIVEN THEM IN THE PAST IN
8 DISCOVERY, WHICH WE CAN GET INTO LATER, WHICH HE WANTS TO EXHIBIT
9 AND HE LET'S ME KNOW ABOUT THAT, WE WILL MAKE IT AVAILABLE, HE CAN
10 EXHIBIT IT AND EITHER THE GOVERNMENT OR THE DEFENSE CAN INTRODUCE
11 IT.

12 SO I THINK THAT WE'RE OKAY THERE. AND THEN WE ALSO --
13 THE COURT: I'M NOT OKAY BECAUSE I DON'T THINK I
14 UNDERSTAND IT. I SURMISE THAT THERE'S GOING TO BE A -- SOME KIND
15 OF A DISCUSSION WITH DISCLOSURE CONCERNING JUST WHAT EVIDENCE HAS
16 PHYSICALLY MADE ITS WAY TO THE DEFENDANT BUT --

17 MS. DUARTE: I DIDN'T KNOW THAT YOU WERE TALKING ABOUT
18 THAT, YOUR HONOR. I'M SORRY.

19 THE COURT: NO. I'M NOT. I'M NOT TALKING ABOUT THAT SO
20 LET ME CONTINUE. FROM WHAT YOU SAID IT STRIKES ME -- LET ME JUST
21 ASK YOU. THIS PROPOSAL AND THIS SOLUTION THAT YOU JUST SUMMARIZED
22 RIGHT NOW COULD NOT BE IMPLEMENTED ACCORDING TO YOUR UNDERSTANDING
23 BECAUSE MR. SUTCLIFFE DOESN'T HAVE THAT DISCOVERY; IS THAT
24 CORRECT?

25 MS. DUARTE: THAT'S MY UNDERSTANDING FROM MR. SUTCLIFFE.

1 THE COURT: OKAY. NOW, ASSUMING THAT HE GETS IT BEFORE,
2 OF COURSE, THE START OF THE TRIAL, WHAT IS IT THAT HE WILL GET?
3 WILL HE BE ABLE TO TAKE IT WITH HIM TO THE MDC? AT HIS OWN CHOICE
4 WILL HE BE ABLE TO ACCESS IT IF SOMETHING ELSE IS BEING DISPLAYED
5 DURING THE TRIAL? IF YOU'RE SHOWING A WEBSITE PAGE OF A WITNESS
6 AND HE DOESN'T CARE TO FOLLOW THAT EVIDENCE AND HE WANTS TO ACCESS
7 THE COMPUTER TO LOOK FOR SOMETHING ELSE THAT HE THINKS MIGHT BE
8 IMPORTANT FOR HIS DEFENSE, WILL HE BE ABLE TO DO IT? WEBSITE.

9 MS. DUARTE: IT'S HARD TO ANSWER THAT, YOUR HONOR,
10 BECAUSE I DON'T KNOW. I TALKED WITH MR. REED AND MR. SUTCLIFFE
11 ABOUT THIS OVER THE BREAK. I DON'T KNOW WHAT HE WANTS, AND I CAN
12 EXPLAIN TO YOU THE NATURE OF THE ELECTRONIC EVIDENCE AND THE WAY
13 IT'S BEEN TURNED OVER. IF HE WANTS ANY OF WHAT WE'RE EXHIBITING
14 PART OF WHICH IS ACTUALLY TO ADDRESS HIS CONCERN THAT THE ENTIRE
15 WEBSITE -- YOU KNOW, HIS CONCERN IS THAT THE ENTIRE WEBSITE IS NOT
16 GOING TO BE EXHIBITED.

17 WHAT I HAVE TOLD COUNSEL AND COUNSEL IN THE PAST IS THAT
18 I'M NOT NECESSARILY GOING TO EXHIBIT THE ENTIRE WEBSITE, THAT'S A
19 FACT. HOWEVER, I WILL MAKE IT AVAILABLE. I WILL EVEN MAKE IT A
20 GOVERNMENT'S EXHIBIT AND I'VE ALSO TURNED OVER COPIES BUT I WILL
21 ALSO MAKE IT AVAILABLE HERE AS AN EXHIBIT IN TRIAL SHOULD DEFENSE
22 CARE TO SHOW SOME ADDITIONAL THAT I DON'T SHOW.

23 THE COURT: OKAY. THAT'S FINE AND I'M PLEASED ABOUT
24 THAT, BUT I'M LOOKING AT THIS IN A VERY CONCRETE AND PRACTICAL
25 WAY. DURING THE COURSE OF ANY TRIAL, THE LAWYER REPRESENTING THE

1 CLIENT FREQUENTLY LOOKS FOR OTHER EVIDENCE, A TRANSCRIPT PAGE, AN
2 EXHIBIT, A PIECE OF OTHER TANGIBLE EVIDENCE WHILE SOMETHING ELSE
3 IS UNDERWAY IN THE COURT, IN THE TRIAL. NOW, THAT COULD BE WHAT
4 MR. SUTCLIFFE CHOOSES TO DO, AND I JUST WANT TO KNOW, SINCE SO
5 MUCH OF THE EVIDENCE IN THIS CASE IS GOING TO BE -- IS GOING TO
6 CONSIST OF MATERIAL THAT WAS ON THE INTERNET THAT WAS IN THE
7 WEBSITE THAT MAY BE DOWNLOADED OR PRINTED OUT FOR VIEWING BY THE
8 JURORS, THAT HE WILL HAVE ACCESS TO WHATEVER IS IN THE ARRAY OF
9 EVIDENCE THAT THE GOVERNMENT WAS REQUIRED TO TURN OVER OR CHOSE TO
10 TURN OVER AT HIS CHOICE, WHEN HE WANTS IT, AND I MEAN IN THE
11 COURTROOM ONLY. I'M NOT PROMISING OR EVEN SUGGESTING THAT HE
12 WOULD HAVE THIS COMPUTER MATERIAL AVAILABLE AT THE PRISON.

13 BUT CAN HE TROLL THROUGH THIS DISCOVERY, SITTING AT HIS
14 COUNSEL TABLE WHEN YOU'RE PUTTING ON YOUR CASE?

15 MS. DUARTE: COULD I JUST HAVE A MOMENT, YOUR HONOR?

16 (COUNSEL CONFERRED SOTTO VOCE.)

17 MS. DUARTE: YOUR HONOR, SPEAKING ABOUT THE DISCOVERY
18 NOW AND NOT JUST THE EVIDENCE THAT THE GOVERNMENT IS EXHIBITING AT
19 TRIAL, IT'S AN ENORMOUS AMOUNT OF INFORMATION. IS IT POSSIBLE FOR
20 ALL THAT INFORMATION TO ACTUALLY BE ACCESSIBLE TO MR. SUTCLIFFE
21 DURING THE COURSE OF THE TRIAL? IF THAT'S THE QUESTION --

22 THE COURT: TO THE EXTENT THAT AT LEAST, FOR EXAMPLE,
23 IT'S RETRIEVABLE IN PRINCIPAL THROUGH A COMPUTER. IF TO USE A
24 BIZARRE EXAMPLE, IF A PIECE OF THE EVIDENCE WAS A HAT THAT
25 SOMEBODY WORE ON ITS HEAD, I WOULDN'T EXPECT THAT OF COURSE. AND

1 IT WAS ONE SUCH HAT AND IT WAS IN THE CUSTODY OF THE GOVERNMENT, I
2 WOULDN'T EXPECT THAT TO BE AVAILABLE FOR HIS TOUCHING AT ANY POINT
3 THAT HE FELT LIKE IT. BUT IF IT'S SOMETHING THAT IS PART OF THE
4 ARRAY OF ELECTRONIC EVIDENCE OR EVIDENCE TAKEN FROM ELECTRONIC
5 MEDIA, IT SEEMS TO ME TO BE NECESSARY AND IN ANY EVENT FAIR FOR
6 HIM TO HAVE UNFETTERED ACCESS TO IT AT LEAST WHILE THE TRIAL IS
7 UNDERWAY HERE IN THE COURTROOM SO THAT'S WHAT I'M TRYING TO
8 UNDERSTAND.

9 MS. DUARTE: I DON'T THINK WE ALONE COULD MAKE THAT
10 POSSIBLE BECAUSE IT'S TOO MUCH INFORMATION AND IT'S MULTIPLE HARD
11 DRIVES THAT YOU'RE TALKING ABOUT. WE'D HAVE TO -- I THINK WE'D
12 HAVE TO CHECK WITH MR. SETTLE AS -- MR. SETTLE?

13 THE COURT: SETTLE. AND HE'S BEEN GOOD ENOUGH TO COME
14 BACK HERE.

15 MS. DUARTE: HE HAS, AS TO WHETHER OR NOT THAT WOULD BE
16 POSSIBLE. BUT, YOUR HONOR, TO USE A SIMILAR ANALOGY, I THINK --
17 MAYBE I WON'T EVEN TRY -- PART OF THE REASON WHY, AND I KNOW YOU
18 WANT TO ADDRESS THIS LATER, BUT PART OF THE REASON WHY IN A CASE
19 LIKE THIS IT HAS BEEN TURNED OVER SO FAR IN ADVANCE AND THE COURT
20 MADE THIS CASE COMPLEX, I THINK RIGHTFULLY SO, BECAUSE OF THE HUGE
21 AMOUNT OF ELECTRONIC EVIDENCE WAS SO THAT THE DEFENSE TEAM COULD
22 WORK THROUGH THIS, PUT WHAT THEY WANTED TO DISPLAY TODAY,
23 CUSTOMARILY RUN IT BY THE GOVERNMENT, WE COULD AGREE THAT IT'S ALL
24 FORENSICALLY SOUND, THERE HAVE BEEN NO ALTERATIONS AND THIS WOULD
25 BE DONE.

1 WHETHER OR NOT THIS CAN BE DONE WITH THIS AMOUNT OF
2 INFORMATION BASICALLY ON THE FLY BY MR. SUTCLIFFE IS A WHOLE
3 DIFFERENT QUESTION AND I DON'T KNOW THE ANSWER. BUT NOW THAT
4 CUSTOMARILY THE REASON IT WOULD NEED TO BE DONE IS BECAUSE THIS
5 ALL WOULD HAVE BEEN SORTED OUT FROM THE DISCOVERY PROVIDED.

6 THE COURT: WELL, I KNOW THAT YOU'VE REPRESENTED TO ME
7 ON MORE THAN ONE OCCASION THAT YOU'VE TURNED OVER DISCOVERY TO
8 VARIOUS LAWYERS WHO PREVIOUSLY REPRESENTED THE DEFENDANT. YOU
9 PROPOSE STIPULATIONS, WHICH THE DEFENDANT DECLINED TO ENTER INTO,
10 SO IF THAT'S WHAT YOU'RE REFERRING TO IN TERMS OF THE PAST
11 HISTORY, I'M A LITTLE BIT OF AWARE OF THAT.

12 MR. SETTLE, DO YOU KNOW WHAT I'M DRIVING AT? CAN YOU
13 UNDERSTAND WHAT I'M TRYING TO ASCERTAIN?

14 MR. SETTLE: YES, YOUR HONOR.

15 THE COURT: IN TERMS OF THE CAPACITY OF THE TECHNOLOGY,
16 THOSE TWO LAPTOP COMPUTERS AND THE ACCOMPANYING EQUIPMENT THAT
17 WOULD BE NECESSARY TO ACCOMPLISH THEIR PURPOSE IN A TRIAL, COULD
18 THAT BE DONE? COULD MR. SUTCLIFFE, IN THE COURSE OF THE TRIAL,
19 HAVE UNFETTERED ACCESS TO THIS BROAD ARRAY OF INFORMATION?

20 MR. SETTLE: YOUR HONOR, I BELIEVE THERE WOULD BE SOME
21 LIMITATIONS. IT'S MY UNDERSTANDING THAT HE HAD SEVERAL HARD
22 DRIVES, VERY LARGE HARD DRIVES THAT WOULD BE MUCH GREATER THAN THE
23 CAPACITY OF THE LAPTOPS THAT WE WOULD MAKE AVAILABLE AT ANY ONE
24 PLACE. HOWEVER, IT'S BEEN -- I'VE BEEN LED TO BELIEVE THAT THE
25 ACTUAL AMOUNT OF WHAT'S ON THE HARD DRIVE WOULD BE USED WOULD BE

1 SMALL ENOUGH TO FIT ON EITHER ONE OF THE HARD DRIVES BUT WE WOULD
2 NEED TO IDENTIFY -- HAVE SOME SORT OF FINITE IDENTIFICATION OF
3 WHAT'S TO BE USED, THE SIZE OF THE DATA.

4 THE COURT: OKAY. THANK YOU. AND I MAY GET BACK TO YOU
5 IN ONE MOMENT. MS. DUARTE, ASSUMING FOR THE MOMENT THAT THE --
6 BOTH SIDES AGREE ON WHAT THE UNIVERSE OF POTENTIALLY RELEVANT
7 EVIDENCE IS AND THAT IT'S CONSIDERABLY LESS AND THE EVIDENCE IN
8 ITS RAW FORM THAT WOULD BE ON THESE VARIOUS HARD DRIVES, SOME OF
9 WHICH ARE PACKED WITH LOTS OF DATA, IS IT YOUR UNDERSTANDING THAT
10 IF YOUR ASSESSMENT OF WHAT'S POTENTIALLY RELEVANT EVIDENCE WERE
11 ACCEPTED BY THE DEFENDANT IT COULD BE PLACED ON TO TWO DISKS,
12 EITHER ONE OF WHICH WOULD GO -- TWO HARD DRIVES, EITHER ONE OF
13 WHICH WOULD GO INTO ONE OF THOSE LAPTOPS AND THEREFORE BE
14 ACCESSIBLE AT WILL DURING THE COURSE OF THE TRIAL?

15 MS. DUARTE: I DON'T THINK THE COURT NECESSARILY MEANS
16 HARD DRIVES BECAUSE THE HARD DRIVES WOULDN'T -- OR MAYBE IT DOES.

17 THE COURT: DON'T ASSUME I KNOW WHAT I'M TALKING ABOUT.
18 SO JUST CORRECT ME IF I'M WRONG.

19 MS. DUARTE: DO YOU MEAN, YOUR HONOR, THAT WE COULD
20 ACTUALLY HAVE TWO --

21 THE COURT: HOW ARE YOU GOING TO BRING YOUR EVIDENCE TO
22 THE COURT IN TERMS OF THE EXTENT TO WHICH YOU SEEK TO ACCESS IF
23 THROUGH YOUR LAPTOPS? JUST DESCRIBE THAT.

24 MS. DUARTE: FLOPPIES AND CD ROMS. WHAT WE HAVE DONE --
25 THIS HAS ALL BEEN TURNED OVER. WHAT WE HAVE DONE IS FOR EACH OF

1 THE CHARGED ACCOUNTS. EACH OF THE CHARGED ACCOUNTS IN THE
2 INDICTMENT, OF WHICH THERE ARE NINE, WE'VE PREPARED ANYWHERE
3 BETWEEN THREE AND I BELIEVE THE MOST HAS 19 OR 18, VERY SMALL
4 PAGES. IT'S EITHER A FLOPPY OR A CD ROM WHICH WE CAN JUST TAKE IN
5 AND OUT AT WILL AS WE START TO DISCUSS THE COUNTS AND SHOW WHICH
6 ARE DOWNLOADS, WHICH ARE PAGES THAT ARE RESTORED FROM THE
7 WEBSITES. THE WITNESSES WILL AUTHENTICATE THEM BECAUSE THEY SAW
8 THEM ON THE INTERNET, SUCH AS THEY WOULD PHOTOGRAPHS. AND WE ALSO
9 HAVE PRINTED COPIES OF THOSE AVAILABLE IN CASE THERE'S AN ISSUE OR
10 A TECHNICAL PROBLEM. THAT IS THE WAY THAT WE WERE GOING TO PUT ON
11 OUR CASE.

12 THE COURT: OKAY. IF THOSE FLOPPIES AND THOSE CD ROMS
13 CONTAINING THE EXACT CONTENTS AS YOU HAVE SAID WERE PROVIDED TO
14 MR. SUTCLIFFE AND AVAILABLE TO HIM IN THE COURTROOM, MR. SETTLE,
15 UNDER THAT HYPOTHETICAL, WOULD HE HAVE ACCESS TO WHATEVER HE
16 WANTED TO LOOK FOR DURING THE ONGOING COURSE OF THE TRIAL?

17 MR. SETTLE: YES, YOUR HONOR.

18 THE COURT: OKAY. NOW, DID YOU REACH ANY KIND OF
19 UNDERSTANDING THAT YOU THINK WAS BILATERAL DURING THE CONVERSATION
20 OVER LUNCH AS TO THE MATERIAL THAT -- IF IT COULD BE DUPLICATED
21 AND MADE AVAILABLE TO MR. SUTCLIFFE, WOULD BE ALL THE MATERIAL
22 THAT HE WANTED?

23 MS. DUARTE: WE DID NOT REACH AN UNDERSTANDING AT ALL.
24 I DON'T THINK IT'S THROUGH ANY FAILURE TO TRY. IT SEEMS TO BE
25 THAT I DON'T UNDERSTAND WHAT HE'S LOOKING FOR AND HE DOESN'T -- I

1 DON'T THINK HE KNOWS OR UNDERSTANDS WHAT I HAVE TO OFFER BECAUSE
2 HE HASN'T RECEIVED IT APPARENTLY. THAT'S THE PROBLEM.

3 THE COURT: OKAY. SO WHAT DID YOU MEAN TO THE EXTENT
4 THAT YOU WERE INDICATED, WHEN YOU FIRST STOOD UP THIS AFTERNOON,
5 THAT THERE HAD BEEN AN AGREEMENT ON THE NEED TO USE CONSISTENT SET
6 OF EXHIBITS AND THE WAY TO ACCOMPLISH THAT?

7 MS. DUARTE: WELL, WHAT I MEANT WAS IS THAT WHAT I
8 TALKED WITH MR. SUTCLIFFE AND MR. REED ABOUT WAS THAT IF WE CAN
9 MAKE KNOWN TO MR. SUTCLIFFE AND MR. REED WHAT WE HAVE; AND IN
10 ADDITION TO WHAT I DESCRIBED TO THE COURT WE ALSO HAVE SEVERAL
11 OTHER CD'S THAT WE WERE GOING TO MAKE AVAILABLE AS EXHIBIT THAT
12 HAVE COMPLETE DOWNLOAD OF THE WEBSITE, WHICH IS WHAT I UNDERSTOOD
13 MR. SUTCLIFFE -- AS I UNDERSTOOD IN THE MOTION RESPONSE. AFTER
14 TALKING WITH HIM, I'M NOT SURE HE'S SEEN THOSE.

15 THE COURT: YOU'RE NOT SURE HE'S SEEN WHICH?

16 MS. DUARTE: MY DOWNLOADS, SO I DON'T THINK HE REALLY
17 UNDERSTANDS WHAT I HAVE. I THINK IF HE WERE TO HAVE WHAT I HAVE
18 AND TO SEE IT I'M OPTIMISTIC THAT IT WOULD ACTUALLY BE WHAT HE
19 NEEDS AND THAT WE COULD WORK THIS OUT.

20 THE COURT: OKAY. THANK YOU, MS. DUARTE.

21 MR. SUTCLIFFE, WHAT DO YOU THINK YOU WANT?

22 MR. SUTCLIFFE: JUST IN CASE YOU MISUNDERSTOOD WHAT SHE
23 SAID. WHEN SHE SAID "MY DOWNLOADS," SHE DIDN'T MEAN "MY" MEANING
24 "HER." THE NAME OF THE FOLDER CALLED "MY DOWNLOADS." JUST TO
25 CLARIFY THAT. PLAY OF WORDS.

1 THE COURT: I'M AWARE OF THE --

2 MR. SUTCLIFFE: I DON'T KNOW IF YOU'VE SEEN THE CD ROMS.

3 THE COURT: NO. I HAVEN'T SEEN ANY OF IT.

4 MR. SUTCLIFFE: IT'S LABELED MY DOWNLOAD.

5 THE COURT: TRY TO BE PRACTICAL. PLEASE, IN LIGHT OF
6 WHAT MS. DUARTE JUST EXPLAINED, MR. SETTLE JUST EXPLAINED. WHAT
7 DO YOU THINK YOUR RIGHTS TO SELF-DEFENSE AND TO A FAIR TRIAL
8 ENTITLE YOU TO GET?

9 MR. SUTCLIFFE: I'LL TRY TO BE FAIR. OKAY. I AGREE
10 WITH WHAT YOU SAID, WHICH IS I SHOULD HAVE ACCESS TO THE ARRAY OF
11 ALL ELECTRONIC HARD DATA THAT HAS BEEN GENERATED, TURNED OVER, OR
12 SUBPOENAED TO DATE AND I SHOULD HAVE FULL UNFETTERED ACCESS TO IT
13 DURING THE TRIAL AT ANY TIME, ANYPLACE DURING THAT TRIAL. IT
14 SHOULD BE RETRIEVABLE TO ME. I SHOULD NOT HAVE TO SEARCH FOR IT,
15 ASK SOMEBODY TO GO GET IT, IT SHOULD BE AVAILABLE TO ME. I THINK
16 IT SHOULD HAVE BEEN AVAILABLE A LONG TIME AGO BUT THAT'S TO SAY
17 THE LEAST. AND I RESERVE THE RIGHT TO AMEND THAT AS WE GO ON.

18 MS. DUARTE: YOUR HONOR.

19 THE COURT: YES.

20 MS. DUARTE: I GUESS I DIDN'T UNDERSTAND THAT, BUT --

21 THE COURT: NEITHER DID I.

22 MS. DUARTE: WOULD THE COURT LIKE ME JUST VERY QUICKLY
23 TO GO THROUGH WHAT I'VE TURNED OVER? THIS IS STRICTLY --

24 THE COURT: I KNOW YOU'RE ANXIOUS TO DO THAT AND I TOLD
25 YOU I WILL GIVE YOU THE CHANCE SO PLEASE BE PATIENT.

1 MS. DUARTE: I'M SORRY. ALL RIGHT. I APOLOGIZE.

2 THE COURT: ALL RIGHT. MR. REED, DID YOU REACH
3 MR. NICOLAYSEN?

4 MR. REED: DIDN'T PERSONALLY BUT WE EXCHANGED VOICE MAIL
5 MESSAGES AND I THINK I HAVE THE INFORMATION THAT THE COURT WANTED
6 ME TO FIND OUT.

7 THE COURT: COULD YOU REPORT TO US PLEASE, THEN.

8 MR. REED: YES, YOUR HONOR. THE COURT WANTED TO FIND
9 OUT THE HISTORY OF WHETHER EXPERTS WERE OBTAINED IN THIS CASE, AND
10 MR. NICOLAYSEN INDICATED TO ME THAT HE DID MAKE CONTACT WITH A
11 COMPANY IN THE BAY AREA. THE NAME OF THE COMPANY IS CALLED MOBILE
12 --

13 THE COURT: YOU DON'T NECESSARILY HAVE TO TELL ME THAT
14 NOW.

15 MR. REED: HE INDICATED THAT HE MADE CONTACT WITH AN
16 EXPERT. THERE WAS LOGISTICAL PROBLEMS AS TO WHETHER OR NOT THESE
17 EXPERTS COULD BE AVAILABLE DOWN HERE IN LOS ANGELES. THERE WERE
18 PROBLEMS BACK AND FORTH BETWEEN MR. NICOLAYSEN AND THEIR
19 AVAILABILITY TO DO THINGS; AND THEN EVENTUALLY, MR. NICOLAYSEN
20 REPORTED THIS TO ME, HE INDICATED THAT THE GOVERNMENT TURNED OVER
21 TO HIM A CD ROM ENTITLED "MYWEBS." LET ME GET THAT MORE
22 ACCURATELY.

23 MYWEBS, W-E-B-S. AND THIS PARTICULAR CD ROM
24 MR. NICOLAYSEN WAS UNDER THE IMPRESSION THAT IF CAPTURED, FOR THE
25 GREAT PART, THE EVIL GX.COM WEBSITE, AND HE FELT THAT BECAUSE IT

1 DID CAPTURE IT, IT CAPTURED IT IN SUCH A WAY THAT HE COULD
2 MANEUVER THROUGH IT FROM ONE HYPERLINK TO ANOTHER HYPERLINK, THAT
3 HE WASN'T GOING TO NEED AN EXPERT IN THE CASE AND THAT'S BECAUSE
4 OF A CERTAIN DEFENSE THAT HE HAD IN MIND, WHICH I PREFER TO KEEP
5 SECRET AT THIS TIME.

6 THE COURT: YEAH. I DON'T WANT YOU TO GO INTO THAT.

7 MR. REED: AND THAT'S WHY I DIDN'T GO THROUGH WITH THE
8 EXPERT --

9 THE COURT: THAT'S WHY WHAT?

10 MR. REED: THAT'S WHY HE DIDN'T GO THROUGH WITH ACTUALLY
11 FOLLOWING THROUGH, GETTING THE EXPERTS, HAVING THEM COME TESTIFY;
12 HE FELT THAT HE HAD SUFFICIENT INFORMATION WITH THAT CD ROM TO
13 ACCOMPLISH WHAT HE NEEDED THROUGH CROSS-EXAMINATION OF WITNESSES
14 AND THROUGH OTHER MEANS.

15 THE COURT: NOW, YOU TOLD ME BEFORE THE BREAK, I THINK,
16 THAT THAT CD ROM, THE MYWEBS, IS SOMETHING THAT YOU PERSONALLY
17 HAVE IN YOUR POSSESSION.

18 MR. REED: I DO. I HAVE IT RIGHT HERE.

19 THE COURT: TO YOUR KNOWLEDGE, DOES MR. SUTCLIFFE HAVE
20 IT IN HIS POSSESSION?

21 MR. REED: I'M NOT SURE ABOUT THAT, YOUR HONOR. I HAVE
22 IT AVAILABLE.

23 THE COURT: OKAY. GO AHEAD, MS. DUARTE, SINCE MAYBE
24 IT'S GOING TO AFFECT SOME OF THE THINGS THAT I CHOOSE TO DO. IF
25 YOU WANT TO, WITHOUT GETTING INTO EVERY SCRAP OF PAPER, JUST

1 ENLIGHTEN ME ABOUT WHAT IT IS THAT YOU THINK YOU'VE DONE TO FOSTER
2 THE EXCHANGE OF INFORMATION NECESSARY TO ENABLE SOMEONE, WITH OR
3 WITHOUT A LAWYER, TO DEFEND HIMSELF UNDER THESE CHARGES? WHAT
4 HAVE YOU PRODUCED?

5 MS. DUARTE: WELL, YOUR HONOR, THIS IS JUST -- I WENT
6 THROUGH AND DID A BRIEF CHRONOLOGY, IT'S VERY BRIEF, AS TO THE
7 ELECTRONIC EVIDENCE, OKAY. AND I CAN DO THE REST IF YOU WANT AND
8 I CAN FILE IT IN THE FORM OF A DECLARATION.

9 THE COURT: I THINK YOU SHOULD.

10 MS. DUARTE: ON JUNE 4TH, 2002, ACCORDING TO MY RECORDS,
11 I TURNED OVER TO MS. POTASHNER AT THE FEDERAL DEFENDER'S OFFICE
12 EIGHT CD'S. THEY WERE ENTITLED HOSTING SOLUTIONS, ABOVE INC., WEB
13 GROUP, A SERIES OF PRESERVATIONS DATED OCTOBER 6TH, DECEMBER 7TH,
14 DECEMBER 2ND, FEBRUARY 28TH, AND MARCH 5TH. THAT WAS A SINGLE CD.
15 A PRESERVATION FOR MARCH 28TH, A CD ENTITLED GX BACKUP, A CD
16 ENTITLED 12-12-01, AND A CD BY THE SHORT NAME OF PAUL CARPENTER.

17 NOW, THESE CD'S CONSISTED OF, AMONG OTHER THINGS,
18 MULTIPLE DOWNLOADS OF THE EVIL GX WEBSITE FROM THE INTERNET IN AS
19 COMPLETE A FORM AS POSSIBLY CAN BE CAPTURED ON THE DATES NOTED.

20 THE COURT: WHO HAD EXECUTED THOSE DOWNLOADS?

21 MS. DUARTE: THE F.B.I. AGENTS AND MEMBERS OF GLOBAL
22 CROSSING AND THE BEVERLY HILLS POLICE DEPARTMENT.

23 THE COURT: OKAY. AND THAT WAS -- AND THE DOWNLOADS
24 WERE RECORDED BY DATE SO THAT IT WAS THE VERSION OF THE WEBSITE
25 THAT COULD BE ESTABLISHED AT LEAST ON SOME KIND OF IDENTIFYING TAG

1 ON THE DOWNLOAD.

2 MS. DUARTE: THAT IS CORRECT, YOUR HONOR. THE THREE
3 THAT I MENTIONED, THE ONES FROM HOSTING SOLUTIONS, ABOVE INC., AND
4 WEB GROUP, THOSE ARE ALL INTERNET SERVICE PROVIDERS, AND THOSE
5 EITHER CONSISTED OF A COMPLETE DOWNLOAD OF THE WEBSITE FROM THE
6 ACTUAL INTERNET SERVICE PROVIDER THAT HAD IT. I KNOW IN
7 PARTICULAR THE ONES FROM HOSTING SOLUTIONS WAS PURSUANT TO A
8 SEARCH WARRANT, WHICH I TURNED OVER.

9 THE COURT: I HAVE TO INTERRUPT YOU BECAUSE I'M NOT SURE
10 HOW FAR DOWN THE ROAD YOU'RE GOING TO TAKE ME ON THIS. YOUR
11 PURPOSE IS TO ESTABLISH WHAT THE GOVERNMENT DID IN GOOD FAITH THAT
12 IS TO PROVIDE EVIDENCE AS IT'S REQUIRED TO MAYBE BEYOND WHAT IT'S
13 REQUIRED TO DO TO SOME OF THE PRIOR LAWYERS IN THAT CASE, RIGHT?

14 MS. DUARTE: NOT JUST THAT, YOUR HONOR, BUT I THOUGHT IT
15 WOULD AID IN OUR DISCUSSION OF THE VARIOUS TERMINOLOGY, FLOPPIES,
16 CD'S, AND HARD DRIVES. IF I COULD AT LEAST GET TO THE POINT, LET
17 THE COURT KNOW WHAT I TURNED OVER FROM DEFENDANT'S HARD DRIVE.

18 THE COURT: GO AHEAD.

19 MS. DUARTE: I WANT TO MAKE CLEAR THAT THESE EIGHT CD'S
20 OUTSIDE FROM DEFENDANT'S COMPUTER EVIDENCE. ALL FROM INTERNET OR
21 INTERNET HOST PROVIDERS.

22 THEN ON JULY THE 29TH, 2002, THIS IS WHEN I TURNED OVER
23 TO THE FEDERAL DEFENDER'S OFFICE COPIES OF THE ENTIRE CONTENTS OF
24 DEFENDANT'S COMPUTER THAT HAD BEEN SEIZED FROM HIS HOME. AND WHAT
25 I TURNED OVER CONSISTED OF EIGHT I.D.E.'S, WHICH ARE A FORM OF

1 HARD DRIVE, I.D.E. DRIVES. IT'S IMPORTANT TO NOTE, YOUR HONOR,
2 THAT TWO WERE DAMAGED AND TWO WERE BLANK. I WAS MERELY RETURNING
3 THEM TO THE FEDERAL DEFENDER'S OFFICE. FOUR HAD DATA ON THEM FROM
4 DEFENDANT'S COMPUTER. FOUR DIFFERENT I.D.E. HARD DRIVES AND TWO
5 SCSI DRIVES KNOWN AS SCSI DRIVES. SO THAT'S A TOTAL OF SIX HARD
6 DRIVES CONTAINING INFORMATION.

7 23 CD'S, FOUR ZIP DRIVES AND -- ZIP DISKS, EXCUSE ME.
8 AND 29 FLOPPIES, FLOPPY DISKS. AND THAT WAS THE CONTENT OF THE
9 DEFENDANT'S COMPUTER AT HOME ON JULY 29TH THAT I TURNED OVER.

10 THEN DURING THE REST OF THE INVESTIGATION AND THE CASE,
11 AND I KNOW YOU DON'T WANT ME TO GO THROUGH THIS IN DETAIL RIGHT
12 NOW, BUT I TURNED OVER AS I OBTAINED THEM, VARIOUS OTHER CD'S
13 WHICH CONTAINED OTHER DOWNLOADS.

14 THE COURT: TO THE PUBLIC DEFENDER'S OFFICE OR OTHER
15 COUNSEL?

16 MS. DUARTE: SO FAR THE PUBLIC DEFENDER'S OFFICE ON
17 AUGUST THE 5TH, TWO CD'S AND AUGUST THE 9TH DUPLICATIVES. THEY
18 APPARENTLY LOOKED AT THEM AND DETERMINED THAT THEY WERE FLAWED.
19 THEY ASKED ME FOR DUPLICATES AND AUGUST THE 9TH I TURNED OVER
20 DUPLICATES INCLUDING DUPLICATE OF THE BACKUP -- EXCUSE ME -- THE
21 BACKUP OF THE WEBSITE MADE BY GLOBAL CROSSING WHICH WERE MULTIPLE,
22 I CAN'T EVEN NAME ALL THE DATES, YOUR HONOR. THERE WERE AT LEAST
23 -- I'D REPRESENT RIGHT NOW WITHOUT LOOKING, THERE WERE AT LEAST
24 20, 25 DIFFERENT DATES.

25 THE COURT: BACKUPS OF THE EVIL GX WEBSITE?

1 MS. DUARTE: YES. DOWNLOADED STRAIGHT FROM THE INTERNET
2 BY GLOBAL CROSSING. THEN MR. HARRIS CAME IN. THERE WERE A COUPLE
3 OF OTHER EVENTS BUT THEY'RE NOT SIGNIFICANT, YOUR HONOR. AND THEN
4 MR. HARRIS CAME IN, AND I THINK THIS IS IMPORTANT BECAUSE THIS IS
5 WHERE THIS PRIOR DEBATE ABOUT THE, QUOTE, UNQUOTE, MISSING CD
6 STARTED. MR. HARRIS CAME IN ON OCTOBER 20TH, AND I RETURNED TO
7 HIM ON THAT DATE 103 CD'S AND FLOPPIES. I HAVE A RECEIPT. I TOLD
8 HIM THAT THESE WERE ORIGINAL EVIDENCE. THEY WERE SEIZED FROM
9 DEFENDANT'S HOUSE BACK IN NEW HAMPSHIRE, AND WE HAD DETERMINED --
10 THEY DETERMINED THAT THE F.B.I., THAT THEY HAD NO EVIDENTIARY
11 VALUE. I WAS NOT USING ANYTHING FROM THEM AND I WAS RETURNING
12 THEM AS ORIGINAL EVIDENCE BACK TO HIM.

13 THE COURT: IN OTHER WORDS, WITHOUT EXPECTING IT TO BE
14 PART OF YOUR EVIDENCE AT TRIAL?

15 MS. DUARTE: CORRECT.

16 THE COURT: DID YOU KEEP A COPY OF IT, OF THESE 103
17 CD'S.

18 MS. DUARTE: I DON'T HAVE A COPY. THE ONLY THING THAT
19 MIGHT HAVE OCCURRED, ALTHOUGH I DON'T THINK IT DID. LET ME ASK
20 THE CASE AGENT IF IT WAS IMAGED, YOUR HONOR? NO. IT WASN'T EVEN
21 IMAGED BY THE F.B.I. BECAUSE IT WAS SO **UNCLEAR** IT DIDN'T HAVE
22 EVIDENTIARY VALUE.

23 THE COURT: BASICALLY, YOU'RE SAYING WE TOOK THIS FROM
24 THE COMPUTER, FROM THE THINGS THAT WE SEIZED WHEN WE CONDUCTED THE
25 SEARCH AND WE DON'T NEED 'EM AND THEY'RE YOURS.

1 MS. DUARTE: TAKE 'EM BACK. THAT'S CORRECT, YOUR HONOR.
2 AT THE SAME TIME, THERE WAS ALSO SOME DISCUSSION OF THE
3 DOCUMENTARY EVIDENCE SEIZED AND THE P.D.'S OFFICE HAD GONE THROUGH
4 IT.

5 THE COURT: OKAY. BUT YOU DIDN'T GIVE TO MR. HARRIS THE
6 EIGHT CD'S AND OTHER MATERIAL THAT YOU TALKED TO ME ABOUT THAT YOU
7 GAVE TO POTASHNER ON JUNE 4TH NOR THE CONTENTS OF HIS COMPUTER
8 THAT YOU GAVE TO F.P.D. ON JULY 29TH.

9 MS. DUARTE: THAT'S CORRECT. I WAS NOT ASKED TO NOR DID
10 I REDO THAT DISCOVERY.

11 THE COURT: OKAY. HAVE YOU EVER REDONE THE DISCOVERY?

12 MS. DUARTE: NO. AND I'VE NEVER BEEN ASKED TO. I'VE
13 NEVER BEEN TOLD THERE WAS A PROBLEM.

14 THE COURT: SO YOU DIDN'T GIVE IT A NEW OR A SECOND TIME
15 TO MR. NICOLAYSEN EITHER?

16 MS. DUARTE: NO. MR. NICOLAYSEN CAME ON AND BY THIS
17 TIME I HAD TURNED OVER -- BY THE TIME MR. NICOLAYSEN CAME ON, I
18 HAD TURNED OVER TO MR. HARRIS IN ADDITION TO WHAT I JUST SAID. ON
19 NOVEMBER 22ND I HAD TURNED OVER SEVEN CD'S WHICH WERE PREPARED BY
20 OUR EXPERT.

21 THE COURT: THIS IS TO MR. NICOLAYSEN?

22 MS. DUARTE: NO-NO-NO. THIS IS STILL MR. HARRIS, YOUR
23 HONOR.

24 THE COURT: NOVEMBER 22ND OF 2002?

25 MS. DUARTE: THAT IS CORRECT, YOUR HONOR.

1 THE COURT: WHAT DID YOU GIVE HIM?

2 MS. DUARTE: SEVEN CD'S PREPARED BY THE EXPERT. NOW,
3 THESE CD'S, AND AMONG THEM, I BELIEVE, YOUR HONOR, IT WAS MYWEBS,
4 THE ONE THAT EVERYBODY HAS BEEN TALKING ABOUT. SO THAT WAS
5 NOVEMBER 22ND. AND THESE CD'S CONTAINED COMPILATIONS THAT WERE
6 CREATED BY THE EXPERT, MADE FROM THE EVIDENCE ALREADY TURNED OVER
7 WHICH WAS A PART OF MR. SUTCLIFFE'S COMPUTER. SO WHAT MY EXPERT
8 HAD DONE WAS GONE THROUGH ALL THOSE HARD DRIVES, FLOPPIES, THINGS
9 I MENTIONED BEFORE THAT HAD BEEN TURNED OVER AND MADE A
10 COMPILATION. MADE SEVEN CD'S THAT WERE COMPILATION THAT WE FELT
11 WERE EVIDENTIARY VALUE BECAUSE THEY MIRRORED THE COUNTS IN THE
12 INDICTMENT.

13 AND WE FOUND WEB PAGES ON HIS COMPUTER THAT DID THAT, SO
14 WE COPIED THEM AND WE MADE THEM CD'S FOR LATER TO THE EXHIBITS.

15 THE COURT: BUT EVERYTHING THAT WERE ON THESE SEVEN CD'S
16 -- WHEN YOU SAY THE EXPERT, YOU MEAN THE GOVERNMENT'S EXPERT.

17 MS. DUARTE: THE GOVERNMENT'S EXPERT.

18 THE COURT: EVERYTHING THAT HE DID IN THE WAY OF
19 SYNTHESIZING FROM OTHER MATERIAL, IT WAS FROM OTHER MATERIAL THAT
20 HAD BEEN PREVIOUSLY GIVEN TO ONE OF THE LAWYERS; RIGHT?

21 MS. DUARTE: THAT IS CORRECT. ON NOVEMBER 30TH I TURNED
22 OVER THREE MORE CD'S, SAME THING. COMPILATIONS BY THE EXPERT THAT
23 I INTEND TO POSSIBLY USE AS EVIDENCE AT TRIAL. THESE WERE ALSO
24 EVIDENCE TURNED OVER. ON JANUARY 13, THE DAY BEFORE WE WERE
25 SCHEDULED TO GO TO TRIAL IN HERE ON THE 14TH, I HAVE A LETTER FROM

1 MR. HARRIS WHERE I GAVE HIM TWO CD'S AND FIVE FLOPPIES, WHICH WERE
2 THE GOVERNMENT'S TRIAL EXHIBITS, WHICH, AGAIN, WERE COMPILATIONS
3 FROM THE DOWNLOADS I HAD ALREADY TURNED OVER. BUT I TOLD HIM THAT
4 THESE HAD BEEN CREATED BY US SHOWING SPECIFIC WEB PAGES THAT
5 MIRRORED THE COUNTS AND THIS IS WHAT WE WERE USING AT TRIAL, AND I
6 GAVE HIM ADVANCE COPIES SO THAT IN THE EVENT THAT HE WANTED TO
7 SHOW MORE THAN WE WERE SHOWING, WHICH I THOUGHT HE MIGHT, HE WOULD
8 KNOW WHAT WE WERE SHOWING AND HE COULD DO IT.

9 THE COURT: WHAT DID HE TURN OVER ON NOVEMBER 30?

10 MS. DUARTE: NOVEMBER 30TH?

11 THE COURT: YEAH. YOU HAD MENTIONED THAT.

12 MS. DUARTE: THREE MORE CD'S OF THE SAME TYPE AS THOSE
13 TURNED OVER ON NOVEMBER 22ND, AND THOSE WERE ALSO COMPILATIONS BY
14 THE EXPERT FOR A TOTAL OF TEN I BELIEVE HE'S DONE TO DATE.

15 THE COURT: AND THAT WAS TO MR. HARRIS?

16 MS. DUARTE: THAT WAS TO MR. HARRIS, AND THAT WAS -- WE
17 WERE GETTING READY FOR TRIAL AGAIN AND THE EXPERT HAD DONE MORE
18 WORK AND HE HAD DONE A FEW MORE COMPILATIONS SO I TURNED THEM
19 OVER. THE REPORT HAD BEEN TURNED OVER LONG BEFORE THAT BUT I'M
20 ONLY TALKING ABOUT ELECTRONIC EVIDENCE.

21 THEN MR. NICOLAYSEN CAME ON AND ON JANUARY 28TH OF THIS
22 YEAR I WROTE HIM A LETTER, AND I HAVE THAT, AND IN THAT LETTER I
23 ENCLOSED HARD COPIES OF ALL PREVIOUS CORRESPONDENCE THAT HAD
24 ANYTHING TO DO WITH DISCOVERY, INCLUDING THE LETTERS THAT I'VE
25 BEEN QUOTING FOR THE COURT IN MAKING THIS REPRESENTATION. AND I

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-CONFERENCE; 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 CONFERENCE
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

1 TO -- I'LL BE REMOVED IF I CONDUCT DISRUPTIVE BEHAVIOR; BUT ON
2 PAGE FOUR OF THAT DOCUMENT IT SAYS THAT I MAY NOT INTERRUPT THE
3 GOVERNMENT'S QUESTIONING OF WITNESSES EXCEPT TO RAISE AN
4 OBJECTION. CORRECT ME IF I'M WRONG, BUT THAT'S WHAT GOT ME SENT
5 OFF FOR TREATMENT, OBJECTING AND INTERRUPTING. BUT NOW I'M BEING
6 DIRECTED TO DO THAT, SO I'VE NEVER WAIVED MY RIGHT TO ASSISTANCE
7 OF COUNSEL. I'VE DEMANDED IT SINCE I'VE GOT HERE. I'M WHERE I
8 AM.

9 THE COURT: WELL, THAT LAST SENTENCE DOESN'T MEAN
10 ANYTHING CLEARER TO ME BECAUSE IT'S REMINISCENT OF OTHER KINDS OF
11 ANSWERS YOU'VE GIVEN WHEN I'VE TRIED TO PIN YOU DOWN AS TO WHAT
12 YOU WANT. BUT LET ME TRY TO EXPLAIN SOMETHING TO YOU ABOUT THE
13 FIRST POINT YOU RAISED.

14 IT IS NOT CORRECT THAT YOU WOUND UP BEING SUBJECTED TO
15 MORE THAN ONE EXAMINATION BECAUSE YOU INTERRUPTED THE GOVERNMENT
16 LAWYER, AND IT'S NOT CORRECT THAT YOU DID THAT BECAUSE YOU
17 INTERRUPTED ME MANY TIMES. TODAY YOU HAVEN'T AND I'M GRATEFUL
18 THAT YOU HAVEN'T. I EXPECT THAT YOU WANT, AND IF YOU DO, YOU'LL
19 PAY THE CONSEQUENCE. BUT IN ANY EVENT, WITHOUT GOING BACK INTO
20 THOSE ISSUES BECAUSE THOSE ARE LONG SINCE RESOLVED YOU'RE NOT
21 CORRECT AS TO WHY THERE WERE SERIOUS QUESTIONS AS TO YOUR
22 COMPETENCY THAT REQUIRED THESE EXAMINATIONS TO BE CONDUCTED. NOW,
23 YOU'VE BEEN FOUND TO BE COMPETENT, I'VE ALWAYS KNOWN YOU'RE VERY
24 SHARP. THAT'S NOT AN ISSUE THAT WE'RE HERE TO RECONSIDER. IN
25 TERMS OF REPRESENTING YOURSELF AT TRIAL, YOU WOULD BE REQUIRED TO

1 FOLLOW THE SAME STANDARDS AND THE SAME REQUIREMENTS AS A LAWYER
 2 WOULD, AND ON THE QUESTION OF INTERRUPTION, YOU WOULD BE ENTITLED
 3 TO STAND UP, WHICH IS A PHYSICAL WAY OF SIGNALING TO ME YOU WANT
 4 TO VOICE AN OBJECTION. AND AT THE CONCLUSION OF THE QUESTION AND
 5 BEFORE ANY ANSWER IS BEGUN TO BE GIVEN TO SAY YOU OBJECT.

6 THERE WILL BE LIMITATIONS ON YOU LIKE THERE ARE ON EVERY
 7 LAWYER AS TO HOW YOU GO ABOUT DOING THAT. YOU CAN'T SIMPLY GIVE A
 8 LONG SPEECH AND POUND THE TABLE FIGURATIVELY OR LITERALLY ABOUT
 9 WHY IT'S UNFAIR FOR THAT QUESTION TO BE ASKED OR ANYTHING ABOUT
 10 THE MOTIVES OF THE QUESTION OR ANYTHING LIKE THAT. THAT'S WAY
 11 BEYOND BOUNDS. BUT YOU WOULD BE ENTITLED TO OBJECT AS LONG AS YOU
 12 FOLLOW THE RULES. I'M NOT GOING TO TELL YOU ALL THE RULES.

13 MR. REED, IF HE FUNCTIONS EVEN IN THE CAPACITY ONLY OF STANDBY
 14 COUNSEL, CAN REVIEW SOME OF THOSE WITH YOU, BUT THOSE HAVE ALREADY
 15 BEEN ADVERTED TO, AT THE VERY LEAST IN SOME OF THE DISCLOSURES
 16 THAT I MADE TO YOU IN WRITING AND ORALLY.

17 NOW, THERE ARE FUNDAMENTAL CONCEPTS WHICH YOU'RE VERY
 18 SMART ENOUGH TO UNDERSTAND ABOUT A TRIAL, AND THAT IS THAT JURORS
 19 ARE TREATED WITH DIGNITY. THE PROCESS IS TREATED WITH DIGNITY.
 20 TANTRUMS ARE NOT TOLERATED. CIVILITY IS NECESSARY AND RULES ARE
 21 ~~FOLLOWED.~~

22 MR. SUTCLIFFE: BY EVERYBODY?

23 THE COURT: BY EVERYBODY. AND THAT INCLUDES THE JUDGE,
 24 AND I'M TRYING TO FOLLOW THEM RIGHT NOW BY GIVING YOU THIS SECOND
 25 OPPORTUNITY. YOU HAVE THE POWER AND -- YOU HAVE THE RIGHT TO

1 MAKE YOUR CHOICE. YOU NEED TO TELL ME WHAT YOUR CHOICE IS. IF
2 YOU CHOOSE TO EXERCISE YOUR RIGHT TO SELF-REPRESENTATION, THAT
3 WILL BE GRANTED, IT WILL BE HONORED. IF YOU CHOOSE TO HEDGE AND
4 EQUIVOCATE, I'M NOT SURE WHAT I'LL DO. IF YOU CHOOSE TO SAY, YOU
5 KNOW WHAT, I GOT A LOT AT STAKE HERE AND I HAVE FIGURED OUT A
6 DEFENSE AND I DON'T KNOW WHICH ONE THAT MR. NICOLAYSEN THOUGHT
7 MIGHT WORK, I DON'T KNOW WHAT MR. REED'S VIEWS ARE. I DON'T
8 EXPECT HIM, AND HE'S NOT BEING ASKED TO ARTICULATE ANY. I CAN
9 BEGIN TO SEE WHAT SOME OF YOURS ARE AND MAYBE THIS IS A VERY
10 TRIABLE CASE, MAYBE YOUR -- MAYBE IN THIS CASE IS NOT AS
11 FOREORDAINED OR CERTAIN AS SOME PEOPLE MIGHT THINK.

12 SO A PRUDENT THING TO DO FOR SOMEBODY IN YOUR SITUATION
13 WOULD BE IS I'LL TAKE MY BEST SHOT AT IT. YOU CAN TAKE YOUR BEST
14 SHOT AT BEING YOUR OWN LAWYER, IF YOU WANT, OR YOU CAN BE A
15 LAWYER. BUT IF YOU DO THE SAME THING AGAIN, MR. SUTCLIFFE, OR THE
16 SAME THING HAS BEEN ESTABLISHED ON FOUR DIFFERENT OCCASIONS WHERE
17 YOU HAVE TRIED TO CONTROL AND DIRECT AND LIMIT THE LAWYER WHO HAS
18 BEEN DOING HER BEST OR HIS BEST TO REPRESENT YOU AND HAVE
19 INTERFERED WITH THE RIGHT AND THE NEED AND THE OBLIGATION AND THE
20 DUTY OF THAT LAWYER TO EXERCISE INDEPENDENT JUDGMENT AND
21 PROFESSIONAL CARE IN REPRESENTING YOU, AND IF AS HAPPENED FOUR
22 PREVIOUS TIME -- AT LEAST -- I'M NOT SURE. IT'S FAIR TO SAY IT
23 HAPPENED AD NAUSEAM. YOU TURN ON THE LAWYER AND YOU SUE THE
24 LAWYER AND YOU REFUSE TO TALK TO THE LAWYER AND YOU THREATEN THE
25 LAWYER, THEN THAT WILL BE A REINFORCED DEFINITIVE STATEMENT BY

1 CONDUCT ON YOUR PART THAT YOU DON'T WANT A LAWYER. IT WILL NOT BE
2 A BASIS TO FIND YOU'RE INCOMPETENT. IT WILL BE A BASIS TO FIND
3 THAT YOU MADE YOUR CHOICE AND YOUR CHOICE IS GO IT ALONE.

4 THOSE ARE THE ALTERNATIVES AVAILABLE TO YOU. RIGHT NOW
5 I DON'T THINK THIS CASE IS READY FOR TRIAL AND MUCH OF THE REASON
6 IS NOT IMMEDIATELY ATTRIBUTABLE TO YOU. SOME OF IT IS NOT
7 ATTRIBUTABLE TO YOU AT ALL. ALL OF THIS MYSTERIOUS CONFUSION
8 ABOUT WHAT HAPPENED TO THE EVIDENCE THAT THE GOVERNMENT LONG AGO
9 DISCLOSED TO YOUR PRIOR LAWYERS WOULD NEVER HAVE ARISEN IF THERE
10 NEVER HAD BEEN ALL OF THESE EFFORTS WHICH ARE TOTALLY
11 INAPPROPRIATE OR OBSTRUCTIVE ON YOUR PART TO INTERFERE WITH THEIR
12 WORK, BUT YOU'RE NOT RESPONSIBLE FOR THE FACT THAT ONE LAWYER
13 DIDN'T TURN OVER TO THE NEXT LAWYER WHAT THAT LAWYER WAS
14 INSTRUCTED TO TURN OVER BY ME AND AGREED TO TURN OVER. I'M GOING
15 TO GET TO THE ROOT OF THIS ONE WAY OR ANOTHER BECAUSE IT'S
16 ABSOLUTELY UNACCEPTABLE. MR. REED IS IN NO POSITION TO PROVIDE
17 EVEN STAND BY POSITION THAT WOULD BE INFORMED IN TERMS OF THE
18 EVIDENCE, IF NOT IN TERMS OF THE CONDUCT A LAWYER GOES THROUGH AND
19 MANEUVERS AND STEPS AND STRATEGIES AND CONDUCT THAT A LAWYER
20 DISPLAYS IN REPRESENTING A PERSON AT TRIAL BECAUSE HE DOESN'T EVEN
21 HAVE THE EVIDENCE.

22 NOW, WE'RE NOT GOING TO GO TO TRIAL ON TUESDAY. IF YOU
23 DON'T WAIVE ANY OF YOUR RIGHTS, WE'LL GO TO TRIAL A WEEK LATER AND
24 I DON'T THINK THE SPEEDY TRIAL ACT WILL BE VIOLATED, BUT YOU HAVE
25 TO TELL ME WHAT YOU WANT TO DO.

1 MR. SUTCLIFFE: IT'S PAINFUL OBVIOUS TO ME THAT THIS
2 COURT IS -- THESE PEOPLE IN THIS COURT ARE DOING WHATEVER THEY
3 WANT TO DO. NOBODY IS ASSISTING ME IN SQUAT, OKAY. COMMUNICATION
4 IS A TWO-WAY STREET, YOUR HONOR. YOU'VE LAID AT MY FEET THE BLAME
5 BY NOT COMMUNICATING AND THREATENING, AS YOU PUT IT, AND NOT
6 SPEAKING TO THESE PEOPLE. WELL, THOSE ARE ASSUMPTIONS BECAUSE
7 YOU'VE ONLY HEARD ONE SIDE TO THE STORY AND THERE'S TWO SIDES TO
8 EVERY COIN. YOU REFUSE TO LISTEN TO MY SIDE OF THE STORY WHEN I
9 BELIEVE YOU SHOULD HAVE BECAUSE I COULD HAVE BROUGHT TO THE LIGHT
10 WHAT WAS GOING ON AND YOU COULD HAVE STOPPED IT, YOU HAD THE POWER
11 TO STOP IT. YOU HAVE THAT POWER AND I RECOGNIZE THAT POWER. IT'S
12 INHERENT IN THIS COURTROOM.

13 THE COURT: BUT LET THE RECORD REFLECT, MR. SUTCLIFFE,
14 BECAUSE I'VE LOOKED AT THE TRANSCRIPT. I GAVE YOU THE RIGHT. I
15 ALWAYS GIVE A PERSON A RIGHT WHEN A PERSON TELLS ME HE OR SHE IS
16 MOVING TO WITHDRAW. YOU HAD AN OPPORTUNITY TO EXPLAIN YOUR
17 PERCEPTION, YOUR MEMORY, OR YOUR VERSION OF WHAT HAS GONE ON. THE
18 RECORD WILL REFLECT WHAT IT WILL. I DON'T DOUBT FOR A MINUTE, AND
19 I UNDERSTAND WHY YOU FEEL AGGRIEVED. PROBABLY EVERYONE ELSE IN
20 THE COURTROOM MAYBE, ESPECIALLY ME, BUT YOU STILL HAVE TO
21 UNDERSTAND THAT THE DECISION THAT YOU NEED TO MAKE, NOT
22 NECESSARILY AT THIS PRECISE MINUTE BECAUSE I WILL GIVE YOU AN
23 OPPORTUNITY THIS AFTERNOON TO THINK ABOUT IT, TO TALK TO MR. REED,
24 IF YOU WANTED TO, IS WHETHER YOU WANT TO REPRESENT YOURSELF OR
25 NOT.

1 MR. SUTCLIFFE: I THINK I'VE MADE A VERY KNOWINGLY AND
2 INTELLIGENT CHOICE FROM DAY ONE, FROM THE TIME YOU TOLD ME YOU'D
3 COME OFF THAT BENCH AND POP ME UPSIDE THE HEAD. I DON'T WANT TO
4 BE MY OWN LAWYER. I'M NOT SKILLED TO BE MY OWN COUNSEL. I'M NOT
5 A TRAINED DOCTOR JURIST, DOCTORATE. MAYBE I CAN HANDLE A PARKING
6 TICKET BUT THAT'S ABOUT IT. NO. I DON'T WANT TO FACE THE
7 GOVERNMENT, UNITED STATES OF AMERICA BY MYSELF. NO. I'VE NEVER
8 WAIVED COUNSEL. I'D BE A FOOL. YOU SHOULD SEND ME TO DEVENS IF I
9 DID. NO, SIR. AND I DON'T WAIVE MY SPEEDY TRIAL. I WANT MY
10 TRIAL TO START TUESDAY. I WANT THIS NIGHTMARE OVER WITH, YOUR
11 HONOR. I WANT MY DAY IN COURT. I BELIEVE I HAVE MY RIGHT TO MY
12 DAY IN COURT. THEY'RE READY TO GO. LET'S GO. LET'S GET THIS DOG
13 AND PONY SHOW OVER WITH OR ON WITH OR HOWEVER WE DO IT, PLEASE. I
14 WANT MY DAY IN COURT, THAT'S ALL I WANT.

15 THE COURT: YOU'LL HAVE YOUR DAY IN COURT.

16 MR. SUTCLIFFE: NEXT TUESDAY.

17 THE COURT: MR. REED, YOU'VE HEARD WHAT THE PROSECUTOR
18 SAID ABOUT THIS ARRAY OF EVIDENCE. NOW, IT'S GOING TO TAKE ME
19 MORE THAN A FEW DAYS, I ASSUME, TO TRACK DOWN WHERE IT IS AND WHY
20 IT'S WHERE IT IS, WHEREVER IT IS. AND IT'S REALLY A QUESTION OF
21 WHY IT'S NOT WITH YOU AND/OR WITH MR. SUTCLIFFE. HOW LONG WOULD
22 IT TAKE YOU TO PUT IN MR. SUTCLIFFE'S AND IN MR. REED'S HANDS WHAT
23 I THINK IS THE KEY AND RELEVANT AND APPROPRIATE ARRAY OF EVIDENCE?
24 AND IF I FOLLOW WHAT YOU'VE TOLD ME, THAT WOULD CONSIST OF
25 EIGHT CD'S OR SO THAT WERE TURNED OVER ON JUNE 4TH OF 200

1 EIGHT I.D.E. ITEMS, TWO OF WHICH WERE REALLY INOPERATIVE BUT SIX
2 IN TWO DIFFERENT CATEGORIES CONTAIN EVIDENCE AND THE ZIP DISKS AND
3 THE FLOPPIES AS WELL THAT YOU TURNED OVER ON JULY 29TH OF 2002.

4 THE DUPLICATES OF THE BACKUP OF THE EVIL GX THAT GLOBAL
5 CROSSING TURNED OVER TO YOU THAT WERE MADE AVAILABLE TO THE
6 FEDERAL PUBLIC DEFENDER, AND THE TWO CD'S ON AUGUST 5TH OF 2002.
7 NOT -- YOU DON'T EVEN HAVE ANY MORE OF THE MATERIAL THAT WAS GIVEN
8 TO HARRIS ON OCTOBER 20TH, THAT WOULDN'T BE PART OF IT. THE 70
9 CD'S THAT YOU TURNED OVER TO HARRIS ON NOVEMBER 22ND WHICH ARE
10 PART OF THE GOVERNMENT'S EXHIBITS.

11 AND IF THERE WERE THREE SUPPLEMENTAL ONES THAT YOU
12 TURNED OVER TO HIM EIGHT DAYS LATER, NOVEMBER 30TH, THOSE AS WELL.
13 THE TRIAL EXHIBITS, TWO CD'S, AND THE FIVE FLOPPIES THAT YOU
14 TURNED OVER THE DAY BEFORE THE SCHEDULED JANUARY 14TH.

15 AND THAT'S IT.

16 MS. DUARTE: YOUR HONOR, THE PROBLEM, AND THE REASON
17 WE'RE DISCUSSING IT AT THE TABLE, ABSENT THE HARD DRIVES WHICH ARE
18 THE I.D.E.'S AND THE SCUZZIES, ABSENT THE HARD DRIVES, IT'S HARD
19 TO SAY. JUST WITH CD'S AND FLOPPIES IT'S A LOT OF MEDIA. IF WE
20 CAN GET EVERYBODY WORKING ON IT, IT WOULD PROBABLY TAKE AT LEAST A
21 WEEK GIVEN THAT IT'S FRIDAY. IT WOULD BE THE END OF NEXT WEEK I
22 WOULD IMAGINE, BECAUSE WE HAVE TO GET -- WE DON'T JUST HAVE BIG
23 STORES OF THE MEDIA WE'D HAVE TO GET ALL THE BLANKS AND THEN COPY
24 THEM ALL INDIVIDUALLY. THE HARD DRIVES MIGHT EVEN TAKE A LITTLE
25 BIT LONGER THAN THAT BECAUSE THE F.B.I. ALSO DOESN'T KEEP THE H/

1 DRIVES THAT WE CAN USE TO MAKE COPIES SO WE HAVE TO GET THEM,
2 BRING THEM IN, COPY, BRING THEM OUT.

3 THE COURT: YOU KNOW, I HAVE A HIGH LEVEL OF CONFIDENCE,
4 AND I'M NOT SAYING THIS IN A SMUG OR SARCASTIC WAY, THAT WITH YOUR
5 RESOURCEFULNESS, WHICH I THINK IS CONSIDERABLE, AND THE RESOURCES
6 AVAILABLE TO YOUR OFFICE, YOU COULD ACCELERATE THAT PROCESS BY
7 SEVERAL DAYS OR PARTS OF IT; AND NOT EVERYTHING ELSE HAS TO WAIT
8 UNTIL EVERYTHING ELSE IS COMPLETED.

9 THIS IS AN UNUSUAL CASE AND A LOT OF THE DIFFICULTIES IN
10 THIS CASE, INCLUDING THE NUISANCE TO YOU AND YOUR COLLEAGUES OF
11 NOT BEING SURE WHEN YOU'RE GOING TO TRIAL, IF THAT'S IN THE BACK
12 OF YOUR MIND, ARE NOT YOUR FAULT. BUT THE FACT IS THE RIGHT THING
13 HAS GOT TO BE DONE.

14 MS. DUARTE: I UNDERSTAND, YOUR HONOR, AND I'M NOT --

15 THE COURT: IT'S NOT IN ANY SIDE'S INTEREST TO RACE TO
16 TRIAL BEFORE THE GUN IS ACTUALLY SHOT WHEN THERE'S GOING TO BE
17 ERROR BUILT INTO THE PROCESS.

18 MS. DUARTE: WELL, I AGREE WITH THAT AND I'M NOT ASKING
19 TO RACE TO TRIAL. AS A MATTER OF FACT, GIVEN THE SITUATION, IF
20 MR. SUTCLIFFE OR THE COURT WERE GOING TO CONTINUE THE TRIAL AND
21 EXCLUDE SPEEDY TRIAL TIME, WE WOULD AGREE TO THAT BECAUSE I DON'T
22 REALLY KNOW AS I EXPRESSED TO THE COURT EXACTLY WHAT'S GONE ON.

23 THE COURT: YOU'RE INVITED TO FILE A MEMORANDUM AS TO
24 GROUNDS AND AUTHORIZATION, IF THEY EXIST, AND I DON'T KNOW IF THEY
25 EXIST, UNDER THESE CIRCUMSTANCES OR TAILORED CIRCUMSTANCES LIKE

1 THIS, EVEN AGAINST THE DEFENDANT'S WISHES. THAT WOULD BE A LAWFUL
2 THING FOR ME TO DO. I DON'T HAVE A VIEW ONE WAY OR THE OTHER.

3 MS. DUARTE: I DON'T KNOW EITHER, YOUR HONOR, AND I WILL
4 DO SOME RESEARCH ON IT. I DO WANT TO -- LET ME ADD ONE MORE
5 COMMENT TO THE COPYING SITUATION, AND THEN I JUST WANT TO ADDRESS
6 ONE OTHER THING. IN TERMS OF THE COPYING, I APPRECIATE THAT THE
7 COURT THINKS THAT I'M RESOURCEFUL AND I CERTAINLY WOULD TRY. I'LL
8 MAKE THAT REPRESENTATION THAT I WILL TRY AS HARD AS I CAN. NOT
9 JUST UP TO ME AND NOT UP TO THE PEOPLE THAT I'M ASKING TO DO IT.
10 IT'S ACTUALLY A HARDWARE LIMITATION.

11 THE COURT: HOLD ON FOR A SECOND, MR. SUTCLIFFE, IS
12 THERE ANY ASSISTANCE THAT THE CLERK OF THE COURT COULD PROVIDE?

13 MR. SETTLE: YEAH. I BELIEVE WE COULD HAVE ASSISTANCE
14 FOR HER, YOUR HONOR.

15 THE COURT: THAT WOULD ENABLE THESE HARD DRIVES, FOR
16 EXAMPLE, TO BE DUPLICATED?

17 MS. DUARTE: YES.

18 THE COURT: MR. SETTLE.

19 MR. SETTLE: WE COULD PROVIDE SOME LEVEL OF ASSISTANCE,
20 BUT I DON'T KNOW THAT WE COULD DO ALL OF IT FOR THEM. I WOULD
21 HAVE TO CONFER TO THE CLERK OF THE COURT.

22 MS. DUARTE: THE PROBLEM WITH RELEASING THE HARD DRIVES,
23 YOUR HONOR, IS CHAIN OF CUSTODY PROBLEM.

24 THE COURT: OH, THOSE COULD BE --

25 MS. DUARTE: WOULD THE COURT GIVE ME JUST A SECOND

1 YOUR HONOR, THERE'S A POSSIBILITY THAT I'D HAVE TO EXPLORE THAT IF
2 THE COURT WANTED SOMETHING QUICKER, WE COULD ACTUALLY TRY TO GET A
3 COPY FROM THE GOVERNMENT'S EXPERT WHO HAS PROVIDED COPIES OF WHAT
4 HE'S DONE, PROBABLY QUICKER THAN WE CAN GET IT FROM THE F.B.I.
5 AND THEN WE COULD FOLLOW UP WITH ACTUAL EVIDENTIARY SECURE COPIES
6 STRAIGHT FROM THE F.B.I. BUT I CAN TELL, YOUR HONOR, THAT TO GET
7 THE F.B.I. TO RELEASE EVIDENCE FOR COPYING HERE, THAT -- PLEASE
8 DON'T MAKE ME TRY TO DO THAT, YOUR HONOR.

9 WHAT I CAN DO IS SPEED THAT UP ALONG AS MUCH AS POSSIBLE
10 WITHIN THE CONSTRAINTS, AND I CAN GET THE ENCASE CASE COPIES,
11 THAT'S A COPYING TOOL, YOUR HONOR, CAPTURE TOOL, THAT MY EXPERT
12 MADE SO THAT AT LEAST THEY CAN KNOW WHAT'S ON IT. I CAN DO THAT.
13 AND EVERYTHING BUT THE HARD DRIVES IS GOING TO TAKE A LONG TIME TO
14 LOOK THROUGH, YOUR HONOR. I MEAN, IT'S GOING TO TAKE A LONG --

15 THE COURT: WELL, I KNOW IT'S NOT UNCOMMON FOR LAWYERS
16 TO EXERCISE JUDGMENT AND CLIENTS TO EXERCISE JUDGMENT AS TO HOW
17 FAR THEY START AND HOW FAR THEY GO AND WHAT'S RELEVANT AND WHAT
18 ISN'T. IT'S PRETTY CLEAR FROM YOUR COMMENTS TODAY I'M CERTAIN
19 BOTH TO MR. SUTCLIFFE AND TO MR. REED, AND I'LL DISCUSS WITH
20 MR. REED WHERE HE STANDS SHORTLY, WHAT IS REALLY -- WHAT REALLY
21 MATTERS HERE. I MEAN, I'M TRYING TO BE VERY EXPANSIVE IN LOOKING
22 OUT FOR THE INTEREST OF THE DEFENDANT, BUT NOT ALL THIS STUFF IS
23 GOING TO HAVE ANY BEARING WHATSOEVER ON HIS FUNDAMENTAL RIGHTS.
24 HIS FUNDAMENTAL RIGHTS ARE GOING TO BE PROTECTED, BUT NOT ALL
25 THIS IS AT ISSUE.

1 NOW, I'M GOING TO SPEAK IN TERMS OF AN ORDER,
2 MR. SETTLE, BUT I RESPECT YOU A LOT AND THE EXECUTIVE FOR WHOM YOU
3 WORK SO IT'S NOT MEANT TO BE CONFRONTATIONAL, BUT I AM ORDERING
4 THE CLERK ORALLY TO PROVIDE MAXIMUM FEASIBLE ASSISTANCE TO THE
5 U.S. ATTORNEY'S OFFICE TO DUPLICATE AS MUCH OF THE EVIDENCE THAT
6 HAS NOW BEEN CHRONICLED AND NOT IN THE CURRENT POSSESSION OF
7 EITHER MR. REED OR MR. SUTCLIFFE AS QUICKLY AS POSSIBLE. AND I'LL
8 JUST LEAVE IT TO THE CLERK'S OFFICE AND TO THE U.S. ATTORNEY'S
9 OFFICE TO FIGURE OUT WHAT'S DOABLE.

10 AND I'M ORDERING THE U.S. ATTORNEY TO PURSUE EVERY
11 POSSIBLE MEANS, INCLUDING CONTACTING THE EXPERT TO HAVE ANOTHER
12 COPY MADE OF WHATEVER THE EXPERT HAS.

13 NOW, MR. REED, I DON'T KNOW WHETHER CONSISTENT WITH THE
14 LAW AND THE APPLICATION OF THE SPEEDY TRIAL ACT THAT THE RIGHTS OF
15 A DEFENDANT WOULD BE PROTECTED IF A JURY WERE IMPANELED AND THE
16 ACTUAL PROSECUTION OF THE CASE, THE OPENING STATEMENTS, AND THE
17 SUBMISSION OF EVIDENCE WERE TO FOLLOW AT SOME RELATIVELY BRIEF
18 INTERVAL AFTER THAT. YOU ARE SITTING HERE WITH A UNDERSTANDABLE
19 WORRIED LOOK, IF NOT A SCOWL ON YOUR FACE, AND I UNDERSTAND WHY
20 AND I'M CONCERNED ABOUT THAT. BUT YOU NEED TO TELL ME, PLEASE,
21 WHAT YOUR SCHEDULE IS.

22 MR. REED: OBVIOUSLY, I'M FREE NEXT WEEK. I'M ACTUALLY
23 FREE THE FOLLOWING WEEK, YOUR HONOR, AND I AM FREE THE FOLLOWING
24 WEEK, OCTOBER 14TH. I HAVE NO TRIALS. I'M ALSO FREE OCTOBER
25 21ST, THAT WEEK. I'M PRETTY FREE THE ENTIRE MONTH OF OCTOBER

1 YOUR HONOR.

2 THE COURT: WELL, IF, MR. REED, I MAKE A FINDING THIS
3 AFTERNOON THAT BECAUSE OF MY NEGLECT TO GO THROUGH, TO CROSS EVERY
4 T AND EVERY I THAT I THOUGHT HAD BEEN ADEQUATELY COVERED --
5 BECAUSE THE MESSAGE CLEARLY GOT THROUGH TO MR. SUTCLIFFE, HE'S
6 CONFIRMED THAT YET AGAIN TWICE TODAY THAT I CONSISTENTLY TOLD HIM
7 IT WAS NOT IN HIS INTEREST TO, BY CONDUCT OR OTHERWISE, GO IT
8 ALONE AND WAIVE HIS RIGHT TO A LAWYER; BUT I DON'T THINK UNDER THE
9 CURRENT RECORD IT WOULD BE FAIR TO HIM OR CONSISTENT WITH THE 9TH
10 CIRCUIT'S REQUIREMENTS TO PROCEED WITH THE FINDING I MADE, BECAUSE
11 THAT FINDING CAME AFTER PLENTY OF WARNINGS BUT IT DIDN'T COME
12 AFTER A RECITAL OF THE ELEMENTS OF THE CASE AND THE POSSIBLE
13 PENALTIES, THAT WAS WHERE I ERRED.

14 SO I AM, IN LIGHT OF MR. SUTCLIFFE'S STATEMENTS TO ME
15 THIS AFTERNOON, POISED TO APPOINT YOU AS COUNSEL, NOT AS BACKUP
16 COUNSEL. AND I WANT YOU TO BE ABLE TO DO YOUR JOB AND
17 CONSISTENTLY PROFESSIONAL AND, FROM MY EXPERIENCE, EXCELLENT
18 FASHION YOU DO IT AND I DON'T DOUBT FOR A SECOND THAT A LAWYER
19 NEEDS TIME TO PREPARE.

20 YES, MR. SUTCLIFFE.

21 MR. SUTCLIFFE: I WILL OBJECT TO THAT.

22 THE COURT: WHY?

23 MR. SUTCLIFFE: BECAUSE THIS MAN HAS JUST ADMITTED THAT
24 HE HAS NOT SEEN THE EVIDENCE, HE HAS NOT BEEN PROVIDED WITH THE
25 EVIDENCE. THE LEAST THAT YOU'VE GIVEN THE PREVIOUS LAWYERS WAS

1 THREE MONTHS. YOU SAID IN THE TRANSCRIPT OF JANUARY 17TH --
2 EXCUSE ME ONE SECOND TO FIND IT -- MRS. DUARTE POINTED IT OUT IN
3 HER REQUEST THAT HE BE APPOINTED -- GIVE ME ONE SECOND TO FIND THE
4 PAGE, YOUR HONOR.

5 YES. HERE IT IS. JANUARY 14TH, REPORTER'S TRANSCRIPT,
6 PAGE 18. YOU DON'T THINK YOU HAVE THE ABILITY TO DEFEND YOURSELF
7 AGAINST THE UNITED STATES OF AMERICA AND YOU'RE RIGHT ABOUT THAT,
8 I AGREE WITH YOU 100 PERCENT. THAT MEANS IF YOU DON'T DEFEND
9 YOURSELF WHICH IN PRINCIPLE WOULD BE YOUR RIGHT. IT WOULD BE
10 CRAZY TO DO IT BUT IT WOULD BE YOUR RIGHT AND YOU'RE GOING TO HAVE
11 ANOTHER LAWYER. THAT LAWYER IS GOING TO HAVE TO GO THROUGH THE
12 SAME LEARNING CURVE THAT ALL PREVIOUS LAWYERS WENT THROUGH. IN
13 HER MEMORANDUM OF POINTS AND AUTHORITY, SHE STOPS THERE. WHERE IF
14 WE GO TO THE ORIGINAL TRANSCRIPT ON PAGE 18 IT SAYS THERE'S GOING
15 TO BE A LONG DELAY. I OBJECT TO ANY LONG DELAYS. I THINK 18
16 MONTHS IS A EXTREMELY LONG DELAY BASED ON THE NATURE OF THIS CASE,
17 AND I WOULD OBJECT STRONGLY TO THAT --

18 THE COURT: THERE ARE TWO DIFFERENT OBJECTIONS YOU SEEM
19 TO BE MAKING. ONE IS TO DELAY, WHICH IS ONE THING, AND THE SECOND
20 IS TO APPOINT OF A LAWYER. NOW, LET'S DEAL WITH THE SECOND FIRST.

21 MR. SUTCLIFFE: OKAY.

22 THE COURT: ARE YOU OBJECTING TO THE APPOINTMENT OF A
23 LAWYER, YES OR NO? PUT ASIDE THE ISSUE OF DELAY FOR A SECOND.

24 MR. SUTCLIFFE: I'M OBJECTING TO HAVING TO MAKE THIS
25 CHOICE. I'M OBJECTING TO --

1 THE COURT: MR. SUTCLIFFE, PLEASE ANSWER THE QUESTION OR
2 ELSE YOU'LL LEAVE ME NO CHOICE BUT TO FIND THAT BY REFUSING TO
3 ANSWER THE QUESTION YOU'RE PLAYING A CAGEY GAME.

4 MR. SUTCLIFFE: NO. I WOULD SUGGEST THAT YOU'RE PLAYING
5 A CAGEY GAME.

6 THE COURT: NOW, THE QUESTION THAT I'LL GIVE YOU AN
7 OPPORTUNITY ONE MORE TIME TO ANSWER IS: DO YOU OBJECT TO HAVING A
8 LAWYER REPRESENT YOU?

9 MR. SUTCLIFFE: I'LL STAND ON MY FERETTA RIGHTS.

10 THE COURT: WELL, YOUR FERETTA RIGHTS ARE TO HAVE NO
11 LAWYER. IS THAT A WAY OF YOU TELLING ME THAT --

12 MR. SUTCLIFFE: NO. MY FERETTA RIGHTS ARE -- WELL,
13 LET'S LOOK AT FERETTA AND LET'S READ FERETTA.

14 THE COURT: WE'RE NOT GOING TO SIT HERE AND READ
15 FERETTA, AND, MR. SUTCLIFFE, WE'RE NOT GOING TO DEBATE THE LAW.
16 THAT'S ONE THING THAT YOU'RE NEVER GOING TO ARRANGE TO DO IN ANY
17 COURT, INCLUDING THIS ONE. THE QUESTION IS PRETTY
18 STRAIGHTFORWARD. ASSUMING FOR A MOMENT THAT YOUR RIGHTS TO HAVE A
19 LAWYER REPRESENT YOU HAVE ENOUGH TIME TO GET UP TO SPEED TO
20 REPRESENT YOU EFFECTIVELY COULD BE CREATED, DO YOU WANT A LAWYER,
21 YES OR NO?

22 MR. SUTCLIFFE: I DON'T UNDERSTAND YOUR QUESTION. IF
23 YOU'RE ASKING ME: DO I WANT THE ASSISTANCE OF COUNSEL, WHICH IS
24 GUARANTEED TO ME BY THE 6TH AMENDMENT, YOU BET. I'VE ALWAYS
25 WANTED THAT AND I'VE ALWAYS TOLD YOU THAT. DO I WANT SOMEONE TO

1 REPRESENT ME? NO. ONLY THE ACCUSED WILL SPEAK FOR THE ACCUSED,
2 AS I CITED IN FERETTA, AND TOLD YOU ON JANUARY 14TH.

3 THE COURT: WELL, A LAWYER WOULD BE THE ONLY ONE
4 SPEAKING FOR YOU. IF YOU'RE TELLING ME THAT YOU WANT YOUR 6TH
5 AMENDMENT RIGHTS PROTECTED AND THE LAWYER IS NOT GOING TO DO
6 ANYTHING OR ONLY DO WHAT YOU ALLOW HIM TO DO, THEN MAKE THAT CLEAR
7 RIGHT NOW.

8 MR. SUTCLIFFE: WELL --

9 THE COURT: YOU HAVE A LAWYER, MR. SUTCLIFFE, YOU DON'T
10 QUESTION THE WITNESSES, YOU DON'T ADDRESS THAT JURY.

11 MR. SUTCLIFFE: WHERE IS THAT WRITTEN IN THE
12 CONSTITUTION? I CAN'T FIND THAT ANYWHERE, YOUR HONOR.

13 THE COURT: WELL, YOU MAY HAVE TO LOOK IN A DIFFERENT
14 PLACE, MR. SUTCLIFFE. I'M NOT GOING TO DEBATE THAT. IF YOU HAVE
15 A LAWYER, THE LAWYER ACTS AS THE LAWYER AND YOU SIT THERE AND ACT
16 AS A CLIENT.

17 MR. SUTCLIFFE: THAT'S REPRESENTATIVE. THAT'S WHAT
18 YOU'RE SPEAKING OF.

19 THE COURT: PARDON ME?

20 MR. SUTCLIFFE: YOU'RE SPEAKING OF A REPRESENTATIVE,
21 SOMEONE WHO REPRESENTS ME? IS THAT WHAT YOU'RE REFLECTING?

22 THE COURT: YEAH. THAT'S WHAT I'M SPEAKING OF.

23 MR. SUTCLIFFE: I'M ASKING FOR ASSISTANCE OF COUNSEL.
24 FERETTA CLEARLY DISTINGUISHES DIFFERENTLY. YOU GAVE ME A MOUSE
25 ALREADY. HE THREATENED ME. MR. NICOLAYSEN WAS YOUR

1 REPRESENTATIVE.

2 THE COURT: MR. SUTCLIFFE, IF I APPOINT MR. REED, ARE
3 YOU GOING TO INTERFERE WITH HIS AUTHORITY AND DUTY TO DELIVER AN
4 OPENING STATEMENT? YES OR NO?

5 MR. SUTCLIFFE: I'VE NEVER INTERFERED WITH ANY LAWYER --
6 IN ANSWER TO YOUR QUESTION --

7 THE COURT: TELL ME WHAT YOU'RE GOING TO DO IF I APPOINT
8 MR. REED.

9 MR. SUTCLIFFE: I CAN'T STOP YOU FROM DOING ANYTHING YOU
10 WANT TO DO. YOU'RE OBVIOUSLY GOING TO DO WHATEVER YOU WANT TO DO
11 SO WHY AM I BEING ASKED? I DON'T UNDERSTAND WHY YOU'RE EVEN
12 ASKING ME, YOUR HONOR. IF YOU'RE GOING TO DO IT, DO IT.

13 THE COURT: OKAY. I THINK THE RECORD WILL BE PRETTY
14 CLEAR.

15 MR. SUTCLIFFE: YOU MADE HIM MY OWN LAWYER ON THE 27TH
16 AND NOW YOU'RE TELLING ME I HAVE TO CHOOSE DO I WANT A LAWYER.
17 THAT MAKES ABSOLUTELY NO SENSE TO ME AT ALL. YOU MADE HIM MY
18 LAWYER. OKAY. I SPEAK FOR MYSELF NOW. YOU MADE ME. YOU'VE MADE
19 THIS ANIMAL. I'LL STAY WITH SPEAKING FOR MYSELF. YOU ORDERED ME.

20 THE COURT: OKAY. I'M GOING TO MAKE SOME FINDINGS ON
21 THE RECORD, AND THE FINDINGS ARE DESPITE MY BEST EFFORT, ALTHOUGH
22 I'VE BEEN CONTRACTED FOR MORE TIME THAN ALREADY HAS BEEN CONSUMED,
23 I CAN'T GET A DIRECT AND RESPONSIVE ANSWER FROM MR. SUTCLIFFE AS
24 TO HIS CHOICE AS TO REPRESENTING HIMSELF OR REPRESENTING A LAWYER
25 -- OR BEING REPRESENTED BY A LAWYER AND THERE APPEARS TO BE A VIEW

1 THAT MR. SUTCLIFFE HAS AS TO WHAT THE ROLE OF A LAWYER IS THAT
2 DESPITE MANY EFFORTS TO, SOMETIMES OUTSIDE THE PRESENCE OF THE
3 PROSECUTOR, DEMONSTRATE WHAT THE PROPER ROLE AND NECESSARY
4 AUTHORITY OF A LAWYER IS, I DON'T SEEM TO HAVE SUCCEEDED IN
5 GETTING HIM TO UNDERSTAND.

6 NEVERTHELESS, MY FINDING IS THAT ON THE BASIS OF THE
7 RECORD COMING INTO THE COURTROOM TODAY AND MR. SUTCLIFFE'S
8 GUARDED, MANIPULATIVE, CAGEY BUT SELF-INTERESTED STATEMENTS THAT
9 HE WANTS TO HAVE A LAWYER AND HE WOULD BE CRAZY NOT TO HAVE A
10 LAWYER, PRUDENT SUGGEST THAT I APPOINT MR. REED, AT LEAST FOR THE
11 TIME BEING AND WITH THE HOPE AND THE INTENTION THAT IT WOULD BE
12 FOR THE CONCLUSION AND DURATION OF THIS CASE, AS THE LAWYER FOR
13 MR. SUTCLIFFE. AND THAT'S MY FINDING AND THAT'S MY RULING.

14 IF MR. SUTCLIFFE ENGAGES IN CONDUCT THAT MR. REED
15 CONCLUDED AND DEMONSTRATED IN ANY HEARING THAT MIGHT HAVE TO BE
16 UNDERTAKEN IN THE COURT WOULD INTERFERE WITH HIS ABILITY TO CARRY
17 OUT HIS PROFESSIONAL DUTIES THE WAY A LAWYER IS UNDERSTOOD AND
18 ENTITLED TO CARRY THEM OUT, THEN I WOULD HAVE TO RELIEVE MR. REED
19 OF THAT RESPONSIBILITY. I HOPE IT DOESN'T COME TO THAT. IF IT
20 EVER COMES TO THAT, MR. SUTCLIFFE WILL BE GIVEN AN OPPORTUNITY, AS
21 HE ALWAYS HAS BEEN, TO STEP FORTH ON THE RECORD HIS VIEWS AS TO
22 THE ROLE AND THE PERFORMANCE OF MR. REED AND HIS LAWYERS.

23 THE TRIAL WILL NOT PROCEED ON TUESDAY. THE GOVERNMENT
24 IS DIRECTED TO DO ALL THAT I ALREADY SAID CONCERNING THE
25 DUPLICATION OF EVIDENCE. WE WILL SET THIS DATE FOR TRIAL. I WANT

1 TO SPEAK TO MY CLERK. HOLD ON.

2 MR. REED: YOUR HONOR, BEFORE YOU DO THAT, CAN I MAKE
3 SOME SUGGESTIONS NOW THAT I'M THE ATTORNEY OF RECORD IN THE CASE?

4 THE COURT: YES.

5 MR. REED: I WAS JUST GOING TO INDICATE TO THE COURT,
6 YOUR HONOR, THAT THE COURT MAY WANT TO HAVE JUST A VERY BRIEF
7 STATUS HEARING IN THIS MATTER PERHAPS AT 9:00 ON MONDAY, WE CAN
8 CALL MR. NICOLAYSEN, AND PERHAPS MR. NICOLAYSEN STILL IS IN
9 POSSESSION OF ALL THE DISKS, ALL THE DISCOVERY WILL REPORT TO
10 COURT. THAT WAY IF THEY'RE THERE, THE GOVERNMENT WON'T HAVE TO
11 TAKE THE TIME TO DUPLICATE ALL OF THESE CD'S AND THAT MIGHT BE A
12 WAY TO ALLEVIATE THAT PROBLEM. I JUST SUSPECT, AND THIS IS JUST A
13 SUSPICION, THAT WHEN MR. NICOLAYSEN WAS TOLD -- HE WAS
14 COMMUNICATED TO WITH RESPECT TO THE DISCOVERY IN THIS CASE HE WAS
15 PROBABLY THINKING THAT HE WAS RESPONSIBLE FOR -- SINCE
16 MR. SUTCLIFFE WAS IN PRO PER AT THAT TIME, THAT HE WAS RESPONSIBLE
17 FOR SENDING THE CD'S OVER TO MDC.

18 THE COURT: WELL, I HAVE A DIFFERENT RECOLLECTION. YOU
19 MAY BE RIGHT, BUT MY RECOLLECTION IS THAT HE WAS ORDERED AND
20 AGREED TO MAKE THEM AVAILABLE TO YOU AS WELL.

21 MR. REED: THERE MAY HAVE BEEN SOME MISCOMMUNICATION
22 ABOUT THAT. IN ANY CASE, MR. SUTCLIFFE COULDN'T HAVE SEEN THE
23 CD'S OVER THERE OR WORKED ON THE CD'S IN PRO PER ANY WAY. HE
24 DOESN'T HAVE A COMPUTER AVAILABLE TO HIM SO IT'S MOOT. BUT I WAS
25 THINKING IF WE COULD MEET MONDAY MORNING --

1 THE COURT: WELL, STEVE, BRING YOUR CALENDAR FOR MONDAY.
2 I'M NOT SURE WE NEED TO MEET IN COURT. IF YOU CAN GET IT FROM
3 MR. NICOLAYSEN AND YOU CAN COMMUNICATE THAT TO MS. DUARTE,
4 WOULDN'T THAT BE SUFFICIENT?

5 MR. REED: MAYBE WE SHOULD BE ORDERED TO MEET AT THE
6 U.S. ATTORNEY'S OFFICE AT 9:00. THAT WAY I CAN JUST CONFIRM THAT
7 THE CD'S THAT MR. NICOLAYSEN RETURNS TO ME MATCH UP PERFECTLY WITH
8 THE LIST THAT THE GOVERNMENT HAS GOT SO THAT WE'LL ALL KNOW AT
9 THAT TIME THAT I'VE GOT EVERYTHING THAT I'M SUPPOSED TO HAVE.

10 BUT MORE IMPORTANTLY, YOUR HONOR, I NEED SOMETHING
11 THAT'S MORE IMPORTANT THAN THAT IN ORDER TO PREPARE FOR THIS CASE.
12 I NEED TO BE WITH MR. SUTCLIFFE AT MDC AND HAVE A COMPUTER
13 AVAILABLE TO BOTH OF US SO THAT WE CAN GO THROUGH ALL OF THESE
14 DIFFERENT FILES, SO THAT HE CAN DIRECT ME WITH RESPECT TO THE
15 DEFENSE OF THE CASE. AND I'M NOT SURE --

16 THE COURT: DO YOU HAVE A LAPTOP YOURSELF?

17 MR. REED: I DO, YOUR HONOR. BUT IT'S A BIG -- NO. I
18 DON'T HAVE A LAPTOP. I JUST HAVE A PC. I DON'T HAVE A PORTABLE
19 COMPUTER.

20 THE COURT: WELL, SEEMS TO ME THAT CONSISTENT WITH THE
21 AUTHORITY THAT I HAVE UNDER THE CRIMINAL JUSTICE ACT, I CAN
22 AUTHORIZE THAT FUNDS BE PROVIDED FOR YOU TO RENT A LAPTOP, AND I
23 AM AUTHORIZING THAT.

24 NOW, I DON'T KNOW WHAT KIND OF PROVISIONS I WOULD
25 TO ARRANGE FOR WITH THE WARDEN OF THE MDC TO ALLOW YOU TO E

1 THAT LAPTOP IN AND TO USE IT IN A SECURED ROOM WITH MR. SUTCLIFFE,
2 BUT WHATEVER IT TAKES, I WILL DO IT, OR AT LEAST TRY TO DO IT, AND
3 I'M PRETTY CONFIDENT I WILL SUCCEED IN DOING IT. SO THE
4 GOVERNMENT WILL PAY FOR YOUR RENTAL OF A LAPTOP. MR. SUTCLIFFE
5 HAS GOT CONSIDERABLE PROWESS AND INSIGHT INTO MOST THINGS HAVING
6 TO DO WITH ELECTRONIC EVIDENCE AND COMPUTERS AS YOU WELL KNOW AND
7 YOU'RE WELCOME TO SEEK HIS VIEWS AS WELL ABOUT OTHER THINGS THAT
8 YOU MIGHT NEED TO MAKE THE OPPORTUNITY WORK.

9 I WILL ALSO --

10 MR. REED: WE'RE GOING TO NEED A PRINTER.

11 THE COURT: RENT IT. I WILL ALSO MAKE WHATEVER EFFORTS
12 ARE NECESSARY TO ASSURE SPECIAL ACCESS IN TERMS OF AMOUNTS OF TIME
13 OR FREQUENCY OF VISITS, BUT YOU'LL HAVE TO LET MY CLERK KNOW WHEN
14 YOU -- OR WHAT REGIMEN OF VISITS AND TIME YOU THINK IS APPROPRIATE
15 TO SPEND SO I CAN DO SOME ADVANCED WORK. AND I'M TELLING THE
16 GOVERNMENT THAT I WOULD BE DOING THIS EX PARTE IN THE SENSE OF
17 CALLING THE WARDEN AND ASSURING THAT MR. REED AND MR. SUTCLIFFE
18 ARE GIVEN MAXIMAL, FEASIBLE OPPORTUNITY TO WORK WITH EACH OTHER.
19 WHAT ELSE DID YOU WANT TO ALERT ME TO?

20 MR. REED: HE NEEDS FULL ACCESS TO THE LAW LIBRARY.

21 THE COURT: WELL, THAT'S A DIFFERENT ISSUE, AND I DON'T
22 THINK THAT MY -- I KNOW THAT MY UNDERSTANDING ABOUT WHAT A LAW
23 LIBRARY ACCESS IS IS DIFFERENT THAN WHAT MR. SUTCLIFFE SAID, BUT
24 SO LONG AS YOU'RE HIS LAWYER, YOU HAVE ACCESS TO A LAW LIBRARY,
25 AND I DON'T THINK THAT'S A NEED THAT HAS TO BE OR RIGHTLY MUST BE

1 ADDRESSED SO THAT'S NOT SOMETHING THAT I'M GOING TO MAKE ANY
2 SPECIAL ARRANGEMENTS FOR.

3 ANYTHING ELSE, MR. REED?

4 MR. REED: YOUR HONOR, ONCE THE CD ROMS ARE PROVIDED TO
5 ME, SINCE THEY ARE RATHER COMPLEX, MR. SUTCLIFFE NEEDS ACCESS TO
6 THOSE CD ROMS AND THE ABILITY TO THEN TAKE THEM TO THE LIBRARY
7 THERE AT MDC WHERE THEY HAVE A COMPUTER WHERE HE CAN PUT THEM IN
8 AND VIEW THEM. SOMETIMES WITHOUT ME BEING PRESENT. AND HE NEEDS
9 A PRINTER THERE AT THAT LOCATION TO PRINT OUT WEB PAGES.

10 THE COURT: I DON'T THINK HE NEEDS A PRINTER AND I'M NOT
11 GOING TO GO TO THAT -- A FAIR DEFENSE, AND I KNOW THAT YOU
12 UNDERSTAND HOW THAT IS ORDINARILY DEFINED ON A CASE-BY-CASE BASIS
13 AND EFFECTIVE ASSISTANCE ARE ONE THING; BUT RIGHTS, PRIVILEGES,
14 PREROGATIVES, AND ADVANTAGES THAT MOST DEFENDANTS NEVER HAVE,
15 INCLUDING DEFENDANTS WHO ARE NOT IN CUSTODY, IS ANOTHER THING.

16 AND I'M WILLING TO GO TO THE EXTREME LIMITS -- I'M NOT
17 SURE THEY'RE EXTREME BUT TO CERTAIN LIMITS, BUT I'M NOT GOING TO
18 ORDER, AT A GOVERNMENT EXPENSE, MR. SUTCLIFFE HAVE SPECIAL
19 EQUIPMENT INSTALLED IN THE LIBRARY. AND IF THAT'S REVERSIBLE
20 ERROR, SO BE IT. ANYTHING ELSE, MR. REED?

21 MR. REED: NO, YOUR HONOR.

22 THE COURT: YES, MS. DUARTE.

23 MS. DUARTE: YOUR HONOR, IT'S MY UNDERSTANDING THAT IN
24 ORDER TO VIEW THE COPIES THAT WE'RE GOING TO MAKE, IN ADDITION TO
25 WHAT MR. REED HAS NOTED, THEY MAY ALSO NEED A ZIP DRIVE, Z-I-P,

1 ZIP DRIVE. BECAUSE IF WE'RE GOING TO DUPLICATE THE ORIGINAL
2 EVIDENCE, THERE WERE SOME ZIP DISKS; AND ALSO A -- LAPTOPS
3 GENERALLY DON'T HAVE THE ABILITY TO VIEW HARD DRIVES WITHOUT AN
4 OUTSIDE VIEWER WHERE YOU MOUNT THE HARD DRIVE AND VIEW IT ON THE
5 LAPTOP. HE WOULD NEED THAT EQUIPMENT AS WELL.

6 THE COURT: WELL, I'M NOT GOING TO SIT HERE AND BE SURE
7 TO INVITE EDUCATION ABOUT EVERY COMPONENT PART OF WHAT HE NEEDS.
8 YOU DETERMINE IN YOUR BEST PROFESSIONAL JUDGMENT WHAT YOU NEED AND
9 GET IT AND IT WILL BE PAID FOR AN A RENTAL BASIS.

10 MS. DUARTE: THANK YOU, YOUR HONOR.

11 THE COURT: ANYTHING ELSE?

12 MR. REED: WHEN IS THE TRIAL DATE?

13 THE COURT: YEAH. THAT'S WHAT I'M ABOUT TO --

14 OKAY. THE TRIAL DATE IS CONTINUED TO OCTOBER 7TH, AND
15 DEPENDING UPON THE RESEARCH, AND I MAY DO SOME ON MY OWN, BUT I
16 WANT THE GOVERNMENT TO BRIEF THIS ISSUE, IT MIGHT BE EXTENDED
17 BEYOND THAT. IT'S CONCEIVABLE TO ME THAT A JURY COULD BE PICKED
18 ON OR BEFORE OCTOBER 10TH WITH THE ACTUAL PRESENTATION OF EVIDENCE
19 TO FOLLOW AT SOME LATER TIME WITH THE RIGHTS OF A DEFENDANT UNDER
20 THE SPEEDY TRIAL ACT NOT BEING VIOLATED.

21 SO I WANT THOSE POSSIBILITIES TO BE AT LEAST CONSIDERED
22 AND ADDRESSED IN THE MEMORANDUM YOU FILE.

23 MS. DUARTE: AS TO WHETHER OR NOT THERE'S A BASIS FOR
24 THE WAIVER ABSENT DEFENDANT'S CONSENT, YOUR HONOR, JUST TO MAKE
25 SURE I GOT IT RIGHT.

1 THE COURT: THAT'S ONE THING. AND ANOTHER THING IS
2 WHETHER THE RIGHTS OF THE DEFENDANT ARE ACCOMPLISHED IF THE JURY
3 IS PICKED, EVEN IF THE EVIDENCE IS NOT ACTUALLY COMMENCED AT THAT
4 IMMEDIATE TIME AND UNDER WHAT CIRCUMSTANCES, IF ANY, A SLIGHT
5 DELAY CAN BE PROVIDED. MAYBE ONE ISN'T NECESSARY, IT REALLY
6 DEPENDS -- YOU KNOW, I DON'T THINK -- I THINK I UNDERSTAND THIS
7 CASE FAR BETTER NOW IN PART BECAUSE OF CERTAIN THINGS I'VE READ
8 RECENTLY AND IT DOESN'T STRIKE ME AS THAT COMPLICATED A CASE. THE
9 NATURE OF THE EVIDENCE IS A LITTLE BIT FOREIGN TO ME BECAUSE I'M
10 NOT GOOD AT THE -- BUT THE NATURE OF THE ISSUES ARE PRETTY
11 STRAIGHTFORWARD AND CLEAR. SO I THINK WITHOUT PREJUDGING IT THAT
12 IT MAY NOT BE NECESSARY TO CONSUME SIGNIFICANT AMOUNTS OF TIME TO
13 ASSURE THAT MR. REED FEELS IN GOOD FAITH IN HIS MIND THAT HE'S UP
14 TO SPEED.

15 THERE ARE MANY OTHER ISSUES THAT I WAS GOING TO ADDRESS
16 BUT GIVEN THE LATE HOUR AND THE FINDINGS THAT I MADE IN THE
17 POSTPONEMENT OF THE TRIAL DATE I'M NOT GOING TO GO INTO MOST OF
18 THOSE ISSUES.

19 THE -- THERE'S ONE THING I WANT TO ALERT YOU TO,
20 MR. REED. I'M SURE YOU MAY HAVE ALREADY SURMISED THIS AND WOULD
21 ADDRESS IT, BUT I NOTICED ON THE GOVERNMENT'S WITNESS LIST THE
22 NAME ORLEY MANN (PHONETIC), I BELIEVE SHE'S EITHER THE CURRENT OR
23 FORMER WIFE OF MR. SUTCLIFFE. THAT RAISES POTENTIAL ISSUES OF
24 PRIVILEGE. I HAVE NO IDEA WHAT CIRCUMSTANCES, IF ANY, RESULTED IN
25 HER BEING A DESIGNATED WITNESS IN THIS CASE, BUT TO MAKE SURE THAT

1 YOU DON'T HAVE A GAP IN YOUR UNDERSTANDING I WANTED TO MENTION
2 THAT TO YOU.

3 YOU CAN ARRANGE FOR ALL SUBPOENAS. I WANT THE JURY
4 INSTRUCTIONS THAT WERE PREVIOUSLY AGREED TO, TO MAKE SURE YOU MAKE
5 THOSE AVAILABLE TO MR. REED AND I NEED A DISKETTE, BECAUSE I LOST
6 THE ONE OR WE CAN'T FIND THE ONE. THERE SEEMS TO BE A GOBLIN
7 SURROUNDING THIS CASE, AND I WANT TO FIDDLE WITH IT SO I WOULD
8 BENEFIT FROM THE DISKETTE. I THINK THAT COVERS IT. THANK YOU,
9 COUNSEL.

10 MR. REED: YOUR HONOR, THERE WERE SOME MOTIONS THAT
11 MR. SUTCLIFFE DID FILE.

12 THE COURT: I CAN'T RULE ON THOSE MOTIONS EXCEPT AS ONE
13 CLARIFICATION. THE GOVERNMENT CAN FILE AN OPPOSITION BUT I THINK
14 THAT'S IMPORTANT TO NOTICE. THERE'S A MOTION TO DISMISS THE
15 THREAT COUNTS UNDER RULE 29.

16 MR. REED: WELL, THAT'S GOING TO BE WITHHELD, YOUR
17 HONOR.

18 THE COURT: YEAH. I WOULD THINK SO. THAT'S REALLY A
19 MOTION TO BE MADE DURING THE COURSE OF THE TRIAL. THERE IS A
20 RENEWED MOTION CONCERNING THE RECONSTRUCTION ELECTRONICALLY OF THE
21 EVIL.GX.COM WEBSITE. NOW, I ISSUED A RULING ON THAT BEFORE I
22 RECEIVED THIS RENEWED MOTION. I'M NOT SURE IF MR. SUTCLIFFE GOT
23 THE RULING.

24 MR. SUTCLIFFE: YES, I DID, YOUR HONOR.

25 THE COURT: AND THAT RULING DENIED THE MOTION

1 CONDITIONED UPON THE GOVERNMENT CONFIRMING A COUPLE OF ITEMS SO
2 PLEASE RISE, MS. DUARTE. ONE IS THAT IT'S BEEN ADDRESSED. IT WAS
3 THAT THE DEFENDANT HAS POSSESSION OR ACCESS TO THE DOWNLOADS
4 CAPTURED BY THE GOVERNMENT INCLUDING THOSE BY ANDREW RAMSEY. HE
5 DOESN'T HAVE POSSESSION. HE DID HAVE ACCESS, ALTHOUGH NOT IN HIS
6 OWN CAPACITY, TO TURN ON A COMPUTER. BUT FOR SOME REASON THE
7 ACCESS, MEANING THAT AVAILABLE THROUGH HIS PRIOR LAWYERS WAS NOT
8 TAKEN ADVANTAGE OF.

9 SO I'M GOING TO HOLD OFF A DENIAL UNTIL I'M SATISFIED
10 THAT MR. REED DOES HAVE POSSESSION TO THOSE DOWNLOADS CAPTURED BY
11 THE GOVERNMENT AND IN ITS POSSESSION, INCLUDING THOSE AT GLOBAL
12 CROSSING, TURNED OVER. AND YOU ALREADY DESCRIBED WHAT THOSE ARE,
13 SO I THINK THE RECORD DOESN'T HAVE TO BE SUPPLEMENTED.

14 MS. DUARTE: I DID, YOUR HONOR, AND I'LL MAKE THOSE A
15 PRIORITY. I CAN GET THOSE OVER TO MR. REED, IF HE CAN'T GET THEM
16 FROM MR. NICOLAYSEN, I'D SAY BY MONDAY AFTERNOON.

17 THE COURT: OKAY. AND THE SECOND PART WAS THAT HE HAS
18 POSSESSION OF THE EVIDENCE OF CONTEXT. I THINK THE PARTIES KNOW
19 WHAT THAT MEANS. AND IT WAS SPECIFICALLY KIND OF DESCRIBED IN
20 FOOTNOTE TWO OF YOUR OPPOSITION. GIVE THAT MATERIAL TO MR. REED,
21 JUST FILE A DECLARATION CONFIRMING THAT IT'S BEEN DONE, AND THEN
22 THIS CONDITIONAL ORDER DENYING THE MOTION FOR RECONSTRUCTION OF
23 EVIL GX.COM WEBSITE WILL BECOME FINAL.

24 MS. DUARTE: THANK YOU.

25 THE COURT: ANOTHER MOTION -- IT WASN'T REALLY A MOTION

1 BUT IT WAS A KIND OF INHERENT REQUEST CONCERNING ACCESS TO
2 COMPUTERS AT THE MDC AND THE LIKE, ACCESS TO THE LIBRARY HAS BEEN
3 ADDRESSED BY MR. REED'S STATEMENTS SO I THINK I'VE ADDRESSED
4 THOSE. IS THERE ANYTHING ELSE, MR. REED, OR, MR. SUTCLIFFE, THAT
5 YOU THINK WAS SUBMITTED TO ME IN THE WAY OF A MOTION EXPLICIT OR
6 IMPLIED THAT REQUIRES A RULING?

7 MR. REED: MAY I JUST HAVE A MOMENT, YOUR HONOR?

8 THE COURT: SURE.

9 MR. REED: YES, YOUR HONOR. IT WAS THE NOTICE OF MOTION
10 AND MOTION TO DISMISS THE THREAT CHARGES.

11 THE COURT: I DIDN'T ARTICULATE THAT YET? OKAY. THAT'S
12 THE ONE I WANT TO HAVE THE GOVERNMENT FILE AN OPPOSITION TO.
13 THAT'S UNDER SUBMISSION.

14 MR. REED: THANK YOU.

15 THE COURT: NOW, I THINK IT'S PRUDENT, AND I'M NOT
16 INTENDING TO RAISE ANY LEVEL OF ACRIMONY BY DOING THIS, BUT GIVEN
17 MY PRIOR COMMENTS AND THE REGRETTABLY TORTURED HISTORY OF THIS
18 CASE, I AM NOW GOING TO ORALLY SUPPLEMENT THE WRITTEN WARNINGS
19 THAT HAVE BEEN CIRCULATED AND MADE AVAILABLE AND SERVED UPON
20 MR. SUTCLIFFE MORE THAN ONCE CONCERNING THE RISKS OF
21 SELF-REPRESENTATION. AND I WANT IT TO BE VERY CLEAR THAT I WILL
22 FIND THAT BY CONDUCT THERE IS A CHOICE OF SELF-REPRESENTATION
23 UNDER THE CIRCUMSTANCES I ALREADY DESCRIBED, WHICH I HOPE WON'T
24 HAPPEN IF MR. REED'S CAPACITY TO FUNCTION PROPERLY AS A LAWYER IS
25 DISRUPTED OR INTERFERED WITH.

1 TO SET A STATUS CONFERENCE RIGHT NOW BECAUSE I THINK IT WOULD BE
2 PREMATURE BUT I'LL BE HAPPY TO RESPOND AND SET ONE UP AS QUICKLY
3 AS POSSIBLE IF IT'S NECESSARY.

4 MS. DUARTE: THANK YOU, YOUR HONOR.

5 (COURT WAS ADJOURNED IN THE MATTER AT 3:45.)
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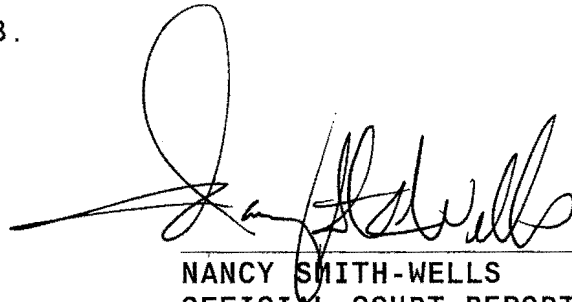
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C E R T I F I C A T E

UNITED STATES OF AMERICA
CENTRAL DISTRICT OF CALIFORNIA

I, NANCY SMITH-WELLS, OFFICIAL COURT REPORTER OF
THE UNITED STATES DISTRICT COURT, FOR THE CENTRAL
DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT THE FOREGOING 83
PAGES CONSTITUTE A TRUE TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE
SAID COURT, HELD IN THE CITY OF LOS ANGELES, CALIFORNIA, IN THE
MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS, THE
12TH DAY OF NOVEMBER 2003.



NANCY SMITH-WELLS
OFFICIAL COURT REPORTER
CENTRAL DISTRICT OF CALIFORNIA