

**CERTIFIED
COPY**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	CASE NO. CR 02-00350-AHM
	)	
	)	
STEVEN WILLIAM SUTCLIFFE,	)	
	)	LOS ANGELES, CALIFORNIA
	)	APRIL 12, 2002
	)	
DEFENDANT.	)	
	)	

BAIL REVIEW HEARING
BEFORE THE HONORABLE CARLA WOHRLE
UNITED STATES MAGISTRATE JUDGE

FOR THE PLAINTIFF:	JOHN S. GORDON
	UNITED STATES ATTORNEY
	RONALD CHENG
	CHIEF, CRIMINAL DIVISION
	ASSISTANT UNITED STATES ATTORNEY
	BY: ELENA J. DUARTE
	ASSISTANT UNITED STATES ATTORNEY
	312 NORTH SPRING STREET
	LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT:	MARIA E. STRATTON
	FEDERAL PUBLIC DEFENDER
	BY: HILARY POTASHNER
	DEPUTY FEDERAL PUBLIC DEFENDER
	321 EAST 2ND STREET
	LOS ANGELES, CALIFORNIA 90012

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 APPEARANCES: (CONTINUED)

2 ALSO PRESENT: JEFF CUNEO, SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

3 COURTROOM DEPUTY/ DONNA THOMAS
4 RECORDER:

5 TRANSCRIBER: DOROTHY BABYKIN
6 COURT HOUSE SERVICES
1218 VALEBROOK PLACE
7 GLENDORA, CALIFORNIA 91740
(626) 963-0566

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I N D E X

CASE NO. CR 02-00350-AHM

APRIL 12, 2002

PROCEEDINGS: BAIL REVIEW/DETENTION HEARING.

1 LOS ANGELES, CALIFORNIA; FRIDAY, APRIL 12, 2002

2 THE CLERK: CR 02-00350, UNITED STATES OF AMERICA
3 VERSUS STEVEN WILLIAM SUTCLIFFE.

4 MS. DUARTE: GOOD AFTERNOON, YOUR HONOR.

5 ELENA DUARTE FOR THE GOVERNMENT. AND WITH ME AT
6 COUNSEL TABLE IS SPECIAL AGENT JEFF CUNEO FROM THE FBI, WHO
7 WITH THE COURT'S PERMISSION WILL REMAIN AT COUNSEL TABLE WITH
8 ME.

9 THE COURT: SURE.

10 MS. DUARTE: THANK YOU.

11 THE COURT: GOOD AFTERNOON.

12 MS. POTASHNER: GOOD AFTERNOON, YOUR HONOR.

13 HILARY POTASHNER FOR MR. SUTCLIFFE, WHO'S PRESENT
14 BEFORE YOUR HONOR.

15 THE COURT: GOOD AFTERNOON. THANK YOU.

16 OKAY. WE'RE HERE FOR WHAT WE TREATED AS A MOTION
17 FOR RECONSIDERATION OF THE DETENTION ORDER ISSUED IN -- IS IT
18 THE DISTRICT OF NEW HAMPSHIRE?

19 MS. POTASHNER: YES, YOUR HONOR.

20 THE COURT: ALL RIGHT. SO, I'VE BEEN ABLE TO
21 REVIEW THE PRETRIAL SERVICES REPORT AND THE FILE.

22 I CAN TELL YOU THAT IT APPEARS TO ME THAT I'M NOT
23 GOING TO BE PREPARED TO CHANGE THIS ORDER, BUT I'LL HEAR FROM
24 BOTH PARTIES.

25 MS. POTASHNER: WELL, IF I CAN START, YOUR HONOR?

1 THE COURT: YES.

2 MS. POTASHNER: IN TERMS OF PROCEDURALLY, I'M A
3 LITTLE CONFUSED HOW TO HANDLE THIS SITUATION BECAUSE THERE
4 WAS A LONG DETENTION HEARING THAT WAS HEARD BACK IN NEW
5 HAMPSHIRE, WHERE THERE ARE A LOT -- A LOT OF INFORMATION CAME
6 OUT DURING THE HEARING ITSELF THAT IS NOT REFLECTED IN THE
7 FACE OF THE DOCUMENTS IN THE FILE.

8 SO, IF I CAN PROFFER TO YOUR HONOR WHAT CAME OUT AT
9 THE HEARING, WHICH I THINK IS IMPORTANT TO PUT WHAT'S WRITTEN
10 IN THE INDICTMENT AND WHAT'S WRITTEN IN THE COMPLAINT AND THE
11 AFFIDAVIT IN SUPPORT OF THE COMPLAINT INTO CONTEXT, I THINK
12 THAT WOULD MAKE SENSE. I'M NOT SURE IF YOUR HONOR WANTS ME
13 TO DO IT BY WAY OF ASKING TO EXAMINE THE CASE AGENT, OR IF
14 YOUR HONOR JUST WANTS ME TO EXPLAIN IN MY OPINION WHAT
15 HAPPENED AT THAT HEARING THAT IS IMPORTANT FOR YOUR HONOR TO
16 KNOW.

17 THE COURT: OKAY.

18 MS. DUARTE: IF I MAY, YOUR HONOR.

19 THE COURT: YES.

20 MS. DUARTE: MY OBJECTION TO THAT HAS NOTHING TO DO
21 WITH THE CONTENTS OF THE HEARING BECAUSE I'M HAPPY TO HAVE
22 THE COURT REVIEW THAT. HOWEVER, THAT SAID, I THINK THAT
23 THAT'S -- THE CONTEXT OF THAT HEARING IS IRRELEVANT TO OUR
24 PURPOSES HERE TODAY. BECAUSE OUR PURPOSE HERE TODAY IS WHAT
25 DOES SHE HAVE -- WHAT DOES THE DEFENDANT HAVE TO PRESENT TO

1 THE COURT THAT WAS NOT PRODUCED OR AVAILABLE AT THE TIME
2 OF THE ORIGINAL DETENTION ORDER. THAT MAGISTRATE JUDGE HEARD
3 EVERYTHING THAT CAME OUT AT THE HEARING THAT DEFENDANT IS NOW
4 PROFFERING AND HELD THE DEFENDANT TO ANSWER IN CUSTODY.

5 SO, THAT SAID, THAT'S WHY I THINK THAT THAT WHOLE
6 TRANSCRIPT AT THIS JUNCTION FOR THIS COURT IS IRRELEVANT. I
7 DID PROVIDE COUNSEL WITH THE COPY. I HAVE NOTHING TO HIDE IN
8 THE TRANSCRIPT. HOWEVER, I REALLY DON'T THINK THAT THAT IS
9 RELEVANT TO THIS PROCEEDING BECAUSE OF THE NATURE OF THIS
10 PARTICULAR PROCEEDING.

11 MS. POTASHNER: WELL, I WOULD PROBABLY AGREE WITH
12 COUNSEL IF IT WERE NOT FOR THE BASIS OF THE RECOMMENDATION IN
13 TODAY'S REPORT FROM PRETRIAL SERVICES. TODAY'S REPORT
14 INCLUDES AS A BASIS FOR CONTINUED DETENTION IN THIS CASE THE
15 ALLEGATIONS IN THE INSTANT CASE. AND THE SUMMARY, AS
16 REFLECTED ON PAGE 9, SAYS THAT THE ALLEGATION IS THAT THE
17 DEFENDANT IS ALLEGED TO HAVE USED THE INTERNET TO POST
18 THREATS TO INJURE OR KILL GLOBAL CROSSING COMPANY EXECUTIVES
19 AND TO DISPLAY PERSONAL INFORMATION.

20 IF THE COURT IS TO CONSIDER WHAT HAPPENED AS
21 THREATS OF DEATH, THEN, I THINK IT'S IMPORTANT TO UNDERSTAND
22 THE CONTEXT. AND ALL OF THAT INFORMATION BECAUSE WE'RE IN
23 DIFFERENT JURISDICTIONS YOUR HONOR DOESN'T HAVE THAT
24 INFORMATION UNLESS I PROVIDE THAT INFORMATION.

25 I WOULD AGREE IF THIS WAS A STANDARD MOTION FOR

1 RECONSIDERATION WHERE IT WAS THE SAME DISTRICT, AND THAT
2 INFORMATION WAS READILY AVAILABLE. THEN, I WOULDN'T NEED TO
3 REITERATE WHAT HAPPENED.

4 BUT UNDER THESE CIRCUMSTANCES, I THINK IT'S
5 IMPORTANT.

6 AND FOR COUNSEL'S INFORMATION AND YOUR HONOR'S
7 INFORMATION, I DO HAVE ADDITIONAL INFORMATION.

8 SPECIFICALLY, IN THE --

9 THE COURT: WELL, OKAY. JUST TO PUT THIS IN
10 CONTEXT.

11 MS. POTASHNER: OKAY.

12 THE COURT: YES, I THINK THAT THE WAY THIS
13 LOGICALLY WORKS -- I MEAN, ANYTIME THERE'S A DETENTION ORDER,
14 IT'S ALWAYS WITHOUT PREJUDICE SO THAT IF ANYTHING CHANGES, IT
15 CAN BE REVISITED. AND IT'S ALWAYS A BIT TRICKY WHEN IT'S
16 MULTIPLE JURISDICTIONS BECAUSE THERE MAY BE THINGS THAT THEY
17 KNOW ABOUT THE DEFENDANT AND HAVE ACCESSIBLE IN ONE DISTRICT
18 THAT YOU DON'T HAVE IN THE OTHER.

19 I COULDN'T REALLY EVEN TELL -- I DON'T THINK WE
20 DISAGREE THAT IT'S RECONSIDERATION BECAUSE WE ARE LOOKING TO
21 SEE WHETHER THERE'S SOMETHING NEW THAT CHANGES THE ASSESSMENT
22 THAT WAS MADE. BUT I COULDN'T EVEN TELL IF THERE WAS
23 SOMETHING NEW WITHOUT KNOWING WHAT THERE WAS BEFORE. SO, IT
24 SEEMS TO ME THAT A SUMMARY OF WHAT WAS PRESENTED BEFORE IS
25 NOT AT ALL ILLOGICAL. AND THE FACT THAT I WANT TO KNOW WHAT

1 WAS BEFORE THE JUDGE IN NEW HAMPSHIRE DOESN'T MEAN THAT I'M
2 REVISITING AN ASSESSMENT THAT'S ALREADY BEEN MADE. BUT IT
3 CERTAINLY PUTS INTO CONTEXT WHAT, IF ANYTHING, THERE IS
4 THAT'S NEW.

5 INESCAPABLY, FOR ME, AND IT APPEARS WAS TRUE FOR
6 THE JUDGE IN NEW HAMPSHIRE, THE ALLEGATIONS OF THE COMPLAINT
7 IN THIS CASE -- I DO HAVE THE COMPLAINT AND NOT JUST THE
8 INDICTMENT -- ARE CERTAINLY AN IMPORTANT FACTOR IN THIS CASE.

9 MS. DUARTE: MY ONLY CONCERN, YOUR HONOR, IS THAT
10 IF THE COURT IS INCLINED TO CONSIDER THE CONTENTS OF THE
11 TRANSCRIPT, I OBJECT TO THE DEFENSE COUNSEL SUMMARIZING IT.
12 BECAUSE AS THE COURT WILL SEE IF THE COURT TAKES A LOOK AT
13 THIS TRANSCRIPT, THERE'S A LOT TO SUMMARIZE, AND A LOT OF
14 BACK AND FORTH THAT WENT ON BETWEEN THE PARTIES. THIS WAS A
15 VERY INVOLVED ACTIVE HEARING ON EVERYONE'S PART. AND IT ALSO
16 INVOLVED LOOKING AT THE CURRENT CONTENTS OF THE WEBSITE ON
17 THE COMPUTER. PRESS WERE PRESENT. IT WAS OBVIOUS THERE WERE
18 PRESS IN THE COURTROOM.

19 WHAT I WOULD SUGGEST IF THE COURT IS INCLINED TO
20 CONSIDER THE TRANSCRIPT, AGAIN, TO WHICH IN AND OF ITSELF I
21 HAVE NO OBJECTION, IS THAT WE GIVE THE COURT A COPY OF THE
22 TRANSCRIPT, HAVE THE COURT PERUSE IT. AND IF WE NEED TO PUT
23 THIS OVER FOR THE COURT TO BE ABLE TO DO THAT, WE WOULD ASK
24 FOR THAT RATHER THAN JUST RELY ON A SUMMARY THAT THEN I HAVE
25 TO GET UP AND REBUT AND, POTENTIALLY, MS. POTASHNER AND I END

1 UP IN A WAR OF THE WORDS WHEN IT'S BETTER FOR THE COURT TO
2 JUST SEE WHAT HAPPENED.

3 THE COURT: ALL RIGHT.

4 MS. POTASHNER: I AGREE THE COURT SHOULD LOOK AT
5 THAT. I WOULD ASK THE COURT NOT TO PUT IT OVER. I THINK IF
6 I'M ABLE TO BRIEFLY SAY WHAT I WANT TO SAY ABOUT THE
7 TRANSCRIPT, I DON'T THINK IT WILL BE A MAJOR POINT OF
8 CONTENTION.

9 SO, I AGREE THAT THE COURT SHOULD HAVE A COPY OF
10 THE TRANSCRIPT, BUT I WOULD LIKE TO BE HEARD TODAY BECAUSE
11 THIS IS A REAL PERSON WHO IS IN CUSTODY RIGHT NOW --

12 THE COURT: SURE.

13 MS. POTASHNER: -- AND PUTTING IT OVER LEAVES HIM
14 IN CUSTODY.

15 THE COURT: NO, I -- THAT'S FINE.

16 AND IF I DECIDE THAT I WANT TO READ THE TRANSCRIPT
17 BEFORE I DECIDE, THEN, I'LL CERTAINLY DO THAT.

18 SO, WHY DON'T YOU SAY WHAT YOU BRIEFLY WANT TO SAY.

19 MS. POTASHNER: OKAY. WHAT I'D LIKE TO SAY IS ON
20 THE FACE OF THE -- FIRST OF ALL, ON THE FACE OF THE
21 INDICTMENT, I'M ASSUMING, AND THE COURT SHOULD CORRECT IF I'M
22 WRONG, I'M ASSUMING THAT THE ISSUE OF DANGEROUSNESS GOES TO
23 THE THREATS THAT WERE MADE IN COUNTS -- ALLEGEDLY IN COUNTS
24 ONE THROUGH FOUR. I'M ASSUMING THAT WE'RE NOT TALKING ABOUT
25 THE BALANCE OF THE INDICTMENT. BECAUSE THAT HAS TO DO WITH

1 THE SOCIAL SECURITY NUMBERS. SO, I'M ASSUMING THAT I SHOULD
2 FOCUS MY ARGUMENT ON THOSE FOUR COUNTS.

3 THE COURT: WELL, THAT'S PROBABLY THE FOCUS, BUT
4 THE ALLEGATIONS WITH THE RESPECT TO THE SOCIAL SECURITY
5 NUMBERS AND THAT ALLEGED USE OF THE INTERNET IS A CONCERN TO
6 ME --

7 MS. POTASHNER: OKAY.

8 THE COURT: -- IN ASSESSING THE DANGER TO THE
9 COMMUNITY AS WELL AS SEEING ALL THAT IN LIGHT OF SOME PRIOR
10 CRIMINAL ACTIVITY -- CONVICTIONS THAT ARE NOT FELONY
11 CONVICTIONS, BUT THE PRIOR CONVICTIONS. THE ALLEGATIONS OF
12 THE COMPLAINT WITH RESPECT TO OTHER THREATENING CONDUCT. YOU
13 KNOW, THESE ARE OF, YOU KNOW, RELATIVELY LESSER SIGNIFICANCE.
14 BUT THEN THE DOMESTIC VIOLENCE COMPLAINT IS ALSO A CONCERN.

15 MS. POTASHNER: OKAY. IF I COULD FIRST ADDRESS, I
16 THINK THAT THERE WERE THREE FOCAL POINTS IN THE PRELIMINARY
17 HEARING THAT WAS HELD IN NEW HAMPSHIRE IN CONJUNCTION WITH
18 THE DETENTION HEARING.

19 THERE WAS A FOCAL POINT OF KILLERCOP.COM. AND
20 THERE'S A MENTION OF THAT IN THE AFFIDAVIT SUPPORTING THE
21 COMPLAINT IN THIS CASE.

22 I THINK WHAT WAS IMPORTANT THAT CAME OUT IN THE
23 HEARING THAT'S NOT ON THE FACE OF THE AFFIDAVIT IS THAT IN
24 THAT CASE ON THE BOTTOM OF EVERY WEB PAGE, WITH THE EXCEPTION
25 OF THE OPENING WEB PAGE, THERE WAS A CLEAR STATEMENT THAT

1 SAID -- THAT NOTED, QUOTE, UNQUOTE, FICTION A.D. AND/OR
2 PERSONALITY PARODY.

3 AND IT WAS PRESENT THE -- COPIES OF THE WEB PAGE
4 WERE PRESENTED TO HIS HONOR BACK IN NEW HAMPSHIRE TO SEE THAT
5 THE VERY BOTTOM SAID THIS IS A PARODY.

6 THE OTHER SIGNIFICANT THING I BELIEVE THAT CAME OUT
7 IN THAT HEARING WAS WITH RESPECT TO KILLERCOP.COM, THAT THE
8 AFFIDAVIT ONLY SPEAKS TO PART OF WHAT'S ON THAT -- WAS ON
9 THAT WEBSITE. IT DOESN'T SPEAK TO EVERYTHING. IT TAKES IT
10 OUT OF CONTEXT AND MAKES IT SEEM LIKE A MUCH MORE DANGEROUS
11 WEBSITE THAN WHAT IT WAS.

12 THE AFFIDAVIT DOESN'T MENTION THE FACT THAT IT SAYS
13 THAT IT'S A PARODY. THE AFFIDAVIT DOESN'T MENTION THE FACT
14 THAT ON THE FIRST PAGE WHEN THE WEBSITE IS OPENED, IT SAYS --
15 THERE'S A DISCLAIMER THAT SAYS:

16 "WHILE THIS SITE OFFERS REWARDS AND BENEFITS
17 TO PEOPLE WHO ENGAGE IN LAWFUL CONDUCT TO
18 SUPPORT THIS SITE, THIS SITE DOES NOT ADVOCATE,
19 ENCOURAGE OR CONDONE ANY CONDUCT THAT IS ILLEGAL
20 AT ANY TIME BY ANY PERSON OR ENTITY AGAINST ANY
21 OTHER PERSON OR ENTITY."

22 AND THAT IS REFLECTED ON PAGE APPROXIMATELY 76 OF
23 THE TRANSCRIPT OF THE HEARING. SO, THERE WAS A CLEAR MESSAGE
24 ON KILLERCOP.COM THAT THIS WAS NOT -- THIS WAS NOT A SITE
25 THAT WAS INTENDED TO INCITE PEOPLE TO DO UNLAWFUL THINGS.

1 FURTHER, ON EVERY PAGE ONCE YOU GET PAST THAT
2 DISCLAIMER, IT SAYS ON THE BOTTOM THIS IS A PARODY,
3 BASICALLY.

4 THE LAST THING ABOUT KILLERCOP.COM THAT I THINK IS
5 IMPORTANT THAT I REVIEWED IN THE TRANSCRIPT IS THAT IT DOES
6 TALK ABOUT -- APPARENTLY. I HAVEN'T BEEN ABLE TO OPEN IT
7 MYSELF -- BUT IT MAKES REFERENCE TO SALES OF VARIOUS WEAPONS.
8 BUT WHAT THE AFFIDAVIT DOES NOT SAY OR LIST WERE THE MORE
9 OUTRAGEOUS OBVIOUSLY SARCASTIC, NON-REALITY BASED WEAPONS
10 THAT SUPPOSEDLY WERE AVAILABLE FOR SALE, WHICH INCLUDED WHAT
11 WAS CALLED A "BEE KILLER," WHICH APPARENTLY WAS A DEVICE --

12 THE DEFENDANT: "BEE STINGER."

13 MS. POTASHNER: "BEE STINGER." THANK YOU.

14 -- APPARENTLY WAS A DEVICE WHERE YOU COULD SHOOT
15 BEES TOWARDS A POLICE OFFICER AND HAVE THE POLICE OFFICER
16 STUNG BY BEES.

17 SO, IT WAS OBVIOUSLY A RIDICULOUS WEAPON THAT
18 DOESN'T EXIST.

19 MS. DUARTE: I'M SORRY, YOUR HONOR. COULD WE HAVE
20 A PAGE CITE ON THAT, THE BEE STINGER REFERENCE.

21 MS. POTASHNER: I BELIEVE THAT'S ON PAGE 65, LINE
22 25.

23 MS. DUARTE: THANK YOU.

24 (DEFENDANT SPEAKING.)

25 MS. POTASHNER: HOLD ON. HOLD ON.

1 LASTLY, WHAT I THINK IS ALSO IMPORTANT THAT --
2 WELL, TWO THINGS, AND THEN I'LL MOVE OFF OF KILLERCOP.COM.

3 IT WAS BROUGHT TO LIGHT IN THE HEARING, AND IT'S
4 NOT APPARENT FROM THE AFFIDAVIT ITSELF THAT THERE WAS NEVER
5 ANY ACTUAL SALES FROM KILLERCOP.COM. THERE WAS NO EVIDENCE
6 THAT ANYONE EVER ATTEMPTED TO BUY A WEAPON THROUGH
7 KILLERCOP.COM OR THAT ANY WEAPONS WERE EVEN AVAILABLE
8 THROUGH KILLERCOP.COM. IT WAS SIMPLY A SITE THAT WAS A
9 PARODY. AND THAT CAME OUT IN THE HEARING.

10 AND, LASTLY, WHAT'S SIGNIFICANT FROM THE HEARING
11 WAS THAT THE LAPD HAD BEEN INVESTIGATING THIS SITE,
12 KILLERCOP.COM, AND DID NOT -- AND THE D.A.'S OFFICE DID NOT
13 PROSECUTE IN ANY REGARDS TO THIS SITE. AND THIS WAS JUST
14 INFORMATION THAT WAS BEING PROVIDED. IT WAS NOT THE BASIS OF
15 ANY CRIME, INCLUDING WHAT MR. SUTCLIFFE IS CURRENTLY CHARGED
16 WITH.

17 SO, THAT'S IN TERMS OF KILLERCOP.COM.

18 TURNING TO WHAT APPEARS TO BE A CONCERN IN THE
19 PRETRIAL SERVICES REPORT AS WELL AS IN YOUR HONOR'S MIND, THE
20 DOMESTIC VIOLENCE ISSUE.

21 THERE WAS TESTIMONY TAKEN ABOUT THE TEMPORARY
22 RESTRAINING ORDER AND THE BASIS OF THE TEMPORARY RESTRAINING
23 ORDER IN THAT HEARING. I APOLOGIZE. I DON'T THINK I HAVE A
24 CITE FOR THAT -- OH, I DO. I WOULD LIKE TO HIGHLIGHT WHAT'S
25 ON PAGE 120, LINE 7.

1 APPARENTLY, AND I'M SPEAKING THROUGH -- I HAVE NOT
2 SEEN A COPY OF THE TRO. I'M SPEAKING THROUGH MY
3 UNDERSTANDING OF WHAT IT WAS. THE BASIS OF THE TRO WAS A
4 STATEMENT THAT WAS SUPPOSEDLY MADE TO MR. SUTCLIFFE'S THREE
5 YEAR OLD DAUGHTER REGARDING HER MOTHER, HIS WIFE, WHICH WAS,
6 "I'M GOING TO KILL YOUR MOTHER."

7 APPARENTLY, THE BASIS OF THE TRO WAS THAT THAT WAS
8 MADE AT THE DINNER TABLE, AND SHE FOUND THAT TO BE
9 THREATENING. AND THAT'S WHY THE TRO WAS OBTAINED.

10 WHAT WAS IMPORTANT IN THE TRANSCRIPT WAS THAT THERE
11 WAS A PROBATION OFFICER WHO INTERVIEWED ORLY MANN REGARDING
12 THIS UNDERLYING ACTIVITY THAT IS THE BASIS OF THE RESTRAINING
13 ORDER. AND ACCORDING TO THE PROBATION OFFICER, SHE TOLD HIM
14 THAT THIS STATEMENT WAS MADE IN A PLAYFUL OR JOKING MANNER,
15 OR, I GUESS TO PUT IT AS ACCURATELY AS I CAN, THAT HE
16 PERCEIVED THAT IT WAS A PLAYFUL OR JOKING MANNER AS OPPOSED
17 TO AN ACTUAL THREAT.

18 SO, IN TERMS OF THE DOMESTIC VIOLENCE, I THINK THAT
19 THE PROBATION OFFICER'S ASSESSMENT OF THE ACTUAL PERSON WHO
20 TOOK OUT THE RESTRAINING ORDER I THINK IS HIGHLY SIGNIFICANT
21 AND SHOULD BE TAKEN INTO ACCOUNT WHEN THE COURT LOOKS AT
22 WHETHER THAT SHOULD BE A FACTOR IN TERMS OF DANGEROUSNESS IN
23 THIS CASE.

24 THE COURT: THE TESTIMONY AT THE HEARING WAS BY THE
25 PROBATION OFFICER?

1 MS. POTASHNER: YES, YOUR HONOR. AND I APOLOGIZE.
2 I DON'T REMEMBER HIS NAME. BUT I KNOW THAT WHAT I'M
3 HIGHLIGHTING WAS ON PAGE 120. AND THAT'S IN THE MIDDLE OF
4 HIS TESTIMONY.

5 THE COURT: OKAY.

6 MS. DUARTE: IT WAS MR. GILDEA, G-I-L-D-E-A, CALLED
7 BY THE DEFENSE.

8 THE COURT: THANK YOU.

9 MS. POTASHNER: LASTLY, IN TERMS OF THE ALLEGATIONS
10 THAT ARE REFLECTED IN THE INDICTMENT, I BELIEVE THAT THE
11 PRELIM -- THE PRELIMINARY HEARING AND THE DETENTION HEARING
12 DID GIVE CONTEXT TO IT IN THAT IT HIGHLIGHTED THAT THERE WAS
13 ONLY ONE --

14 EXCUSE ME.

15 (DEFENDANT TALKING TO MS. POTASHNER.)

16 MS. POTASHNER: YES. THERE WAS ONLY ONE EMAIL THAT
17 ACTUALLY WENT OUT TO ANYONE WHO WAS REMOTELY ASSOCIATED TO
18 THE COMPANY IN QUESTION HERE.

19 BASICALLY WHAT WAS BROUGHT TO LIGHT IN THE
20 PRELIMINARY HEARING WAS THAT THIS WAS A SITE THAT WAS
21 CREATED. AND IN ORDER TO -- THE DEFENSE ATTORNEY AT THE TIME
22 WAS CALLING IT A PASSIVE STATEMENT BECAUSE IT WAS A STATEMENT
23 THAT WAS ON THE COMPUTER, THAT IN ORDER FOR THE THREAT TO
24 EVEN BE -- OR ALLEGED THREAT TO EVEN BE CONVEYED, THE PERSON
25 WOULD HAVE TO GO TO THE SITE AND READ THE SITE AS OPPOSED TO

1 IT BEING PUT TO THAT PERSON, IT BEING CONVEYED IN ANY WAY TO
2 THAT PERSON. IT WAS SOMETHING THAT THE PERSON WOULD NEED TO
3 LOOK ON THE SITE IN ORDER TO FIND WHERE THAT PERSON WOULD BE
4 PERCEIVING AS A THREAT.

5 SO, I THOUGHT THAT WAS A SIGNIFICANT POINT BROUGHT
6 OUT.

7 MS. DUARTE: I'M SORRY. WAS THERE A PAGE NUMBER?
8 IT'S MY FAULT. I THINK I MISSED IT.

9 MS. POTASHNER: NO, THERE WAS NO PAGE NUMBER. I
10 APOLOGIZE. I READ IT REALLY QUICKLY THIS MORNING, AND I GOT
11 ALL THE PAGE NUMBERS I COULD, BUT.

12 MS. DUARTE: OKAY.

13 THE COURT: WAS THERE A SINGLE HEARING THAT WAS
14 BOTH A PROBABLE CAUSE DETERMINATION AND THE DETENTION
15 HEARING?

16 MS. POTASHNER: YES, YOUR HONOR.

17 AND, LASTLY, ON PAGE 163, LINE 11, THE COURT IN
18 MAKING ITS RULING AND ULTIMATELY DETAINING MR. SUTCLIFFE DID
19 NOTE THAT THE COURT WOULD NOT FIND HIM A DANGER TO THIS
20 COMMUNITY, MEANING THE COMMUNITY IN NEW HAMPSHIRE.

21 AND I THINK THAT'S SIGNIFICANT BECAUSE HIS HONOR
22 BACK IN NEW HAMPSHIRE WAS ABLE TO SEE ALL OF THE PEOPLE, SEE
23 HIS FAMILY, HEAR FROM THE PROBATION OFFICER, ASSESS THE
24 SITUATION WITH HIS WIFE, AND BASED ON THAT THE COURT DID NOT
25 BELIEVE THAT HE POSED A THREAT TO THAT LOCAL COMMUNITY.

1 BUT THE ISSUE REMAINED IN THAT HEARING, AND THE
2 REASON THAT HE WAS ULTIMATELY DETAINED, ACCORDING TO THE
3 ORDER, WAS THAT IT WAS UNCLEAR WHAT HIS SITUATION WOULD BE
4 WHEN HE GOT TO CALIFORNIA -- WHETHER OR NOT HE WOULD POSE A
5 THREAT TO THIS COMMUNITY.

6 AND THAT WAS MY UNDERSTANDING FROM THE HEARING.

7 NOW, TURNING TO -- THAT'S WHAT I'D LIKE THE COURT
8 TO NOTE IN THE HEARING.

9 TURNING TO WHETHER OR NOT HE'S A DANGER RELATING TO
10 THE FOUR -- RELATING TO THE FOUR THREATS, COUNTS ONE THROUGH
11 FOUR. I THINK IT'S IMPORTANT, AND THE COURT CAN COMPARE,
12 WHAT IS REFLECTED ON THE INDICTMENT IN COUNT ONE TO WHAT'S
13 REFLECTED IN THE SUPPORTING AFFIDAVIT OF THE COMPLAINT, WHICH
14 IS ON PAGE 9.

15 I THINK IT'S IMPORTANT THAT -- IT APPEARS ON THE
16 INDICTMENT THAT HE SIMPLY STATED, "I WILL PERSONALLY SEND YOU
17 BACK TO THE HELL FROM WHERE YOU CAME."

18 THAT IS TAKEN OUT OF CONTEXT. WHEN YOU LOOK AT
19 WHAT THE FULL CONTEXT IS, IT'S REALLY NOT AN UNCONDITIONAL
20 IMMEDIATE TYPE OF THREAT. WHAT IT DOES SAY IN FULL ACCORDING
21 TO THE AFFIDAVIT IS, "TO CLOSE, IF YOU CALL MY HOUSE AGAIN OR
22 THREATEN ME OR MY FAMILY OR EVER APPEAR NEAR ME OR MY FAMILY,
23 I WILL PERSONALLY SEND YOU BACK."

24 AND, THEN, THAT'S WHERE THE STATEMENT COMES. I
25 THINK IT'S IMPORTANT NOT TO TAKE IT OUT OF CONTEXT.

1 I THINK THAT IF THE COURT WENT THROUGH EACH AND
2 EVERY ONE OF THESE STATEMENTS -- FOR EXAMPLE, THE STATEMENT
3 REFLECTED IN COUNT THREE, "KEEP YOUR DOGS AT BAY ... I AM NOW
4 ARMED."

5 IF THE COURT WERE TO LOOK AT PAGE 14 OF THE
6 AFFIDAVIT, THAT AGAIN IS A STATEMENT TAKEN OUT OF CONTEXT.
7 THE STATEMENT THERE, IF YOU LOOK AT THE WHOLE STATEMENT, WHAT
8 HE'S ARMED WITH IS INFORMATION REGARDING THE COMPANY. HE'S
9 ARMED WITH SECURITY REGIONS IN CLASS I AND II AND INFORMATION
10 ABOUT THE EMPLOYEES OF THE COMPANY. HE'S NOT SAYING HE'S
11 PHYSICALLY ARMED. HE'S NOT SAYING THAT HE'S PHYSICALLY
12 THREATENING THIS PERSON. IT'S AN ARMING OF INFORMATION.

13 AND I THINK THAT TAKES IT-- I THINK IT'S TAKEN OUT
14 OF CONTEXT WHEN YOU LOOK AT JUST THE LANGUAGE OF COUNT THREE
15 OF THE INDICTMENT.

16 SO, IT TERMS OF WHETHER OR NOT MR. SUTCLIFFE IS A
17 DANGER, I THINK IT'S IMPORTANT TO NOTE THAT THESE STATEMENTS,
18 WHETHER OR NOT THEY ARE ULTIMATELY CONSTRUED AS THREATS, THAT
19 THEY WERE PUT ON AN INTERNET SITE THAT PEOPLE HAD TO GO TO IN
20 ORDER TO EVEN READ IT. IT'S A CYBER WORLD. IT'S NOT A REAL
21 WORLD. MR. SUTCLIFFE DID NOT THREATEN, DID NOT WALK UP TO
22 ANYONE, DID NOT CALL ANYONE, DID NOT GET IN ANYONE'S FACE AND
23 THREATEN THEM. THIS WAS STUFF THAT WAS SIMPLY BEING POSTED
24 ON THE INTERNET. IT'S A FANTASY WORLD. IT IS NOT A REAL
25 WORLD.

1 IF YOU LOOK AT HIS BACKGROUND, IF YOU LOOK AT HIS
2 HISTORY, IF YOU LOOK AT HIS CRIMINAL RECORD, APART FROM ONE
3 MISDEMEANOR CONVICTION IN 1997, THERE'S NOTHING ON HIS RECORD
4 FOR 13 YEARS. HE'S NOT A PERSON WHO HAS A HISTORY OF
5 REPEATED VIOLENCE THROUGHOUT HIS LIFE.

6 AND THAT'S NOT WHO WE HAVE HERE. WE HAVE A
7 PROFESSIONAL, A COMPUTER PERSON HERE WHO WAS VENTING ON HIS
8 COMPUTER. HE WAS NOT POSING, AND CONTINUES NOT TO POSE A
9 REAL THREAT TO ANYONE.

10 IN FACT, IN THE MIDST OF THESE CONVERSATIONS OR
11 COMMENTS THAT WERE BEING PUT ON THE COMPUTER, MR. SUTCLIFFE
12 HIMSELF GOT SCARED, GOT SCARED OF GLOBAL COMPANY. AND HE
13 REMOVED FROM LOS ANGELES AND TOOK HIMSELF ALL THE WAY ACROSS
14 THE COUNTRY TO NEW HAMPSHIRE TO GET AWAY FROM THEM.

15 THIS IS WHAT HIS ACTION WAS. HIS ACTION WAS NOT TO
16 GO FIND THEM. HIS ACTION WAS NOT TO GO THREATEN THEM
17 PERSONALLY BUT TO REMOVE HIMSELF FROM THE SITUATION.

18 I THINK WHEN YOU LOOK AT THE FACT THAT HE WAS
19 MAKING THESE STATEMENTS AS HE WAS LEAVING TO GET AS FAR AWAY
20 FROM THESE PEOPLE AS POSSIBLE, THAT HE IS NOT ACTUALLY POSING
21 A REAL THREAT TO ANYONE. HE'S SIMPLY VENTING AND VOICING HIS
22 FEELING OF BEING UPSET. AND THAT IS VERY DIFFERENT THAN A
23 PHYSICAL THREAT OF VIOLENCE.

24 AND WHEN YOU LOOK AT THE WHOLE CONTEXT, THAT'S NOT
25 WHAT YOU HAVE HERE. YOU DON'T HAVE PHYSICAL THREAT OF

1 VIOLENCE. WHAT YOU HAVE IS A THREAT OF DISSEMINATION OF
2 PUBLIC INFORMATION. AND THAT'S IT. SO, I THINK THAT'S
3 IMPORTANT.

4 NOW, IN TERMS OF WHAT IS DIFFERENT NOW THAN WHAT
5 WAS DIFFERENT WHEN THIS WAS HEARD IN NEW HAMPSHIRE IS THAT I
6 HAVE INFORMATION ABOUT WHAT MR. SUTCLIFFE'S SITUATION WOULD
7 BE IF THE COURT WERE TO RELEASE HIM TO L.A. -- TO LIVE IN
8 L.A.

9 HE HAS THREE PEOPLE WHO ARE HERE TODAY IN COURT,
10 ATTORNEY LESLIE MC AFFEE, ED HOVER, AND RICHARD WETHERMAN.

11 MR. MC AFFEE HAS PRACTICED LAW FOR, I BELIEVE, 13
12 YEARS IN OUR COMMUNITY. HE IS WILLING TO PERSONALLY SIGN AN
13 APPEARANCE BOND ON BEHALF OF MR. SUTCLIFFE. AND HE IS ALSO
14 WILLING TO ALLOW MR. SUTCLIFFE TO LIVE IN HIS HOME.

15 NOW, HE KNOWS MR. SUTCLIFFE WELL. HE REPRESENTS
16 MR. SUTCLIFFE IN THE CIVIL MATTER THAT IS ALSO, I BELIEVE,
17 PENDING CURRENTLY BETWEEN MR. SUTCLIFFE AND GLOBAL.

18 AND, SO, HE IS INTIMATELY FAMILIAR WITH WHAT'S BEEN
19 GOING ON BACK AND FORTH. AND I THINK IT'S IMPORTANT TO NOTE
20 THAT HE'S NOT SCARED OF MR. SUTCLIFFE. IN FACT, HE THINKS
21 THAT MR. SUTCLIFFE IS A REASONABLE PERSON. HE DOESN'T THINK
22 HE'S A VIOLENT PERSON. AND HE'S WILLING TO ALLOW HIM INTO
23 HIS OWN HOME TO LIVE WITH HIMSELF, HIS WIFE, AND HIS FAMILY.
24 I THINK THAT SPEAKS VOLUMES BECAUSE HE REALLY KNOWS MR.
25 SUTCLIFFE.

1 NOW, BACK IN NEW HAMPSHIRE, THE COURT DIDN'T KNOW
2 THAT MR. SUTCLIFFE WOULD HAVE A PLACE TO LIVE HERE, LET ALONE
3 A PLACE WITH AN ATTORNEY, WITH HIS FAMILY, THE PERSON WHO'S
4 WILLING AS AN OFFICER OF THE COURT TO VOUCH FOR MR. SUTCLIFFE
5 AND, EVEN IF THE COURT WANTED HIM TO, TO ACT AS A CUSTODIAN
6 TO MR. SUTCLIFFE.

7 SO, WE HAVE THAT PERSON. AND HE IS SITTING IN THE
8 BACK ROW.

9 WE ALSO HAVE TWO PEOPLE WHO ARE PROFESSIONALS IN
10 THE COMPUTER WORLD, WHO ARE WILLING TO TAKE TIME OUT OF THEIR
11 BUSY DAY TO COME DOWN HERE TO SAY, I KNOW STEVEN SUTCLIFFE.
12 I DON'T FIND HIM TO BE DANGEROUS. AND, IN FACT, I'M WILLING
13 TO SIGN APPEARANCE BONDS ON HIS BEHALF.

14 UNFORTUNATELY, THEY DON'T OWN PROPERTY. BUT I DON'T
15 THINK THE ISSUE REALLY IS A FLIGHT ISSUE HERE. I THINK AN
16 APPEARANCE -- THE FACT THAT THREE PEOPLE FROM OUR COMMUNITY,
17 WELL-RESPECTED PEOPLE, ARE WILLING TO STEP UP TO THE PLATE
18 FOR MR. SUTCLIFFE SPEAKS VOLUMES ABOUT WHETHER OR NOT HE'S
19 ACTUALLY A DANGER TO THIS COMMUNITY.

20 THAT WAS NOT INFORMATION THAT THE COURT HAD BEFORE.

21 IF I COULD JUST BRIEFLY RESPOND TO -- I ALSO THINK
22 IT'S IMPORTANT TO NOTE THAT THE EVALUATION HAS CHANGED IN
23 TERMS OF PRETRIAL SERVICES. IT'S CLEAR FROM THE FIRST --
24 BACK IN NEW HAMPSHIRE -- NOW, WHILE THIS OBVIOUSLY DOES NOT
25 TRUMP THE COURT'S RULING, THEY DID BELIEVE THAT THERE WERE

1 CONDITIONS THAT COULD BE SET TO ALLOW MR. SUTCLIFFE TO RESIDE
2 IN THE COMMUNITY WHILE THIS CASE WAS PENDING. AND THEY
3 RECOMMENDED RELEASE PENDING CERTAIN CONDITIONS.

4 ULTIMATELY, THAT WASN'T FOLLOWED. BUT THAT WAS THE
5 RECOMMENDATION INITIALLY.

6 NOW THE RECOMMENDATION APPEARS TO BE FOR DETENTION.
7 I THINK IF YOU LOOKED DOWN THE FACTORS, I DON'T BELIEVE THE
8 INITIAL -- THE COURT IN NEW HAMPSHIRE FOUND THAT THERE WAS A
9 RISK OF FLIGHT.

10 I DON'T KNOW IF YOUR HONOR WANTS ME TO ADDRESS THAT
11 ISSUE BECAUSE I DON'T BELIEVE THAT WAS THE BASIS OF THE
12 DETENTION IN THE FIRST PLACE.

13 BUT LOOKING THROUGH THE REASONS THAT -- THE FACTORS
14 THAT THEY INDICATE RISK OF NON-APPEARANCE:

15 FOREIGN TRAVEL EXPERIENCE. I THINK THAT -- I DON'T
16 THINK THAT'S A FAIR BASIS. AND I THINK IF IT'S A CONCERN, IF
17 HE HAS A PASSPORT, HE CAN TURN HIS PASSPORT IN.

18 THE COURT: WELL, I DON'T THINK -- I THINK YOU'RE
19 RIGHT. I DON'T THINK RISK OF FLIGHT WAS A BASIS FOR THE --
20 WELL, IT WAS THE LACK OF TIES TO CALIFORNIA. IT SEEMS TO
21 HAVE BEEN A DECISION BASED ON DANGER TO THE COMMUNITY. BUT
22 FACTORED INTO THAT WAS THE COURT'S CONCERN THAT THE LACK OF
23 TIES TO CALIFORNIA SEEMED TO SUPPORT THE VIEW THAT THERE
24 MIGHT BE A DANGER HERE.

25 MS. POTASHNER: YES, YOUR HONOR.

1 THE COURT: SO, I DON'T THINK I WOULD BE REVISITING
2 THE RISK OF FLIGHT.

3 MS. POTASHNER: OKAY. AND, THEN, I WILL SKIP THE
4 RISK THAT THEY'RE NOTING.

5 THE COURT: I'LL LET THE GOVERNMENT ADDRESS THAT IF
6 THEY HAVE A DIFFERENT VIEW.

7 MS. POTASHNER: SO, DROPPING DOWN TO THE FACTORS
8 THAT INDICATE A DANGER, IN TERMS OF THE PRESENT ALLEGATIONS,
9 I THINK WHEN THE COURT HAS A CHANCE TO LOOK AT THE TRANSCRIPT
10 AND LOOK AT THIS CASE IN ITS ENTIRETY, I DO NOT BELIEVE THAT
11 THE THREATS ARE OF SUCH A NATURE THAT THERE ARE NO CONDITIONS
12 THAT COULD BE IMPOSED TO ALLOW MR. SUTCLIFFE TO BE RELEASED
13 FROM CUSTODY PENDING TRIAL.

14 I BELIEVE THERE ARE CONDITIONS. AND I CAN SUGGEST
15 TO YOUR HONOR, NUMBER ONE, OBVIOUSLY, A COMPUTER IS NOT A
16 GOOD THING FOR MR. SUTCLIFFE, AND THAT MR. SUTCLIFFE SHOULD
17 BE BARRED FROM USING THE COMPUTER DURING THE PENDENCY OF THIS
18 CASE. I DON'T HAVE A PROBLEM WITH THAT. I THINK THAT'S VERY
19 REASONABLE.

20 NUMBER TWO, MR. SUTCLIFFE SHOULD, ALTHOUGH I DON'T
21 THINK THERE'S ANY HISTORY OF IT, HE SHOULD NOT BE ALLOWED TO
22 GO ANYWHERE WHERE ANY OF THESE INDIVIDUALS LIVE OR WORK. I
23 THINK THAT'S A REASONABLE CONDITION.

24 NUMBER THREE, I THINK THAT IF THE COURT WANTED TO
25 IN AN ABUNDANCE OF CAUTION COULD APPOINT MR. MC AFFEE AS A

1 CUSTODIAN TO HAVE THE AFFIRMATIVE DUTY TO KEEP AN EYE ON MR.
2 SUTCLIFFE AND TO REPORT TO THE COURT IMMEDIATELY IF MR.
3 SUTCLIFFE IS NOT CONFORMING TO ALL THE CONDITIONS OF
4 SUPERVISION.

5 AND, LASTLY, INTENSIVE SUPERVISION. I THINK THAT
6 THAT WOULD BE A REASONABLE CONDITION IN THIS CASE.

7 I THINK I'VE ADDRESSED WHY I DON'T THINK THAT THE
8 PRESENT ALLEGATIONS SUPPORT DISTENTION IN THIS CASE.

9 IN TERMS OF THE PRIOR CRIMINAL HISTORY, IF YOU TAKE
10 A MINUTE TO LOOK AT WHAT THEY'RE TALKING ABOUT, IT'S ANCIENT
11 HISTORY. HE'S A 40-YEAR MAN, AND THERE IS REFERENCE TO
12 JUVENILE HISTORY THAT OCCURRED IN 1978.

13 I THINK THAT ANYTHING THAT'S AT ALL SIGNIFICANT --
14 I MEAN, BASICALLY, THERE'S SOME THEFT, THERE'S SOME DVD STUFF
15 ON HERE. THERE'S SOMETHING IN 1987 THAT HAS TO DO WITH
16 VIOLENCE. IT'S UNCLEAR. I DON'T KNOW WHAT SPLIT SENTENCE
17 MEANS IN MASSACHUSETTS. BUT NO MATTER WHAT, THAT'S A 1985
18 CONVICTION. AND IT'S NOW 2002. THAT'S -- WHAT IS THAT? --
19 17 YEARS OLD.

20 THE ONLY THING HE HAS ON HIS RECORD CURRENTLY -- I
21 MEAN, THAT'S, I BELIEVE, AT ALL RELEVANT IS SOMETHING FROM
22 1997, WHICH IS A DISTURBING THE PEACE. I DON'T THINK THAT A
23 MISDEMEANOR DISTURBING THE PEACE SHOULD BE A BASIS FOR
24 DETAINING SOMEBODY IN CUSTODY PENDING THIS TRIAL.

25 IN TERMS OF THE TEMPORARY DOMESTIC VIOLENCE ORDER,

1 I'VE ADDRESSED IT ALREADY. AND WHAT WAS SAID IN COURT, I
2 HAVE NOT HAD THE OPPORTUNITY TO SPEAK TO HIS WIFE. BUT WHAT
3 I DO KNOW IS THAT SHE'S BACK IN NEW HAMPSHIRE. IF THE COURT
4 WANTS MR. SUTCLIFFE TO REMAIN IN CALIFORNIA, HE WILL REMAIN
5 IN CALIFORNIA DURING THE ENTIRE PENDENCY OF THIS TRIAL. SO,
6 I DON'T THINK THAT THERE'S A REAL ISSUE OF DOMESTIC VIOLENCE
7 BECAUSE SHE IS NOT HERE AND IS NOT INTENDING TO COME HERE.

8 THAT BEING SAID, I DO HAVE SUGGESTIONS FOR THE
9 COURT IN TERMS OF ALTERNATIVES. I'VE SPOKEN TO MR.
10 SUTCLIFFE'S BROTHER WHO DOES LIVE BACK IN NEW HAMPSHIRE, AND
11 HE ALSO TELLS ME THAT HE'S WILLING TO SIGN AN APPEARANCE BOND
12 AND HAVE MR. SUTCLIFFE LIVE WITH HIM BACK IN NEW HAMPSHIRE.
13 THAT WOULD REQUIRE MR. SUTCLIFFE TO COME BACK TO CALIFORNIA
14 FOR COURT APPEARANCES, WHICH HE DOES NOT HAVE THE FUNDS TO
15 DO. HOWEVER, I KNOW THAT THERE IS AUTHORITY THAT THE
16 MARSHAL'S DEPARTMENT COULD PAY FOR TRANSPORTATION IF THE
17 COURT ORDERED THAT.

18 SO, ONE ALTERNATIVE IS TO PUT MR. SUTCLIFFE BACK IN
19 HIS HOMETOWN WITH HIS EXTENDED FAMILY AROUND HIM, LIVING AT
20 HIS BROTHER'S HOUSE.

21 IF THE COURT'S NOT COMFORTABLE WITH THAT, THEN, THE
22 OTHER ALTERNATIVE IS TO PUT MR. SUTCLIFFE IN TO THE CUSTODY
23 OF ATTORNEY LESLIE MC AFFEE.

24 I THINK EITHER SITUATION, COUPLED WITH THE OTHER
25 TERMS THAT I'VE SUGGESTED, WOULD CREATE A SITUATION WHERE MR.

1 SUTCLIFFE COULD SAFELY BE RELEASED TO THE COMMUNITY TO FIGHT
2 THIS CASE WHILE NOT INCARCERATED.

3 MS. DUARTE: THAT'S A LOT TO ANSWER, YOUR HONOR.

4 THE COURT: YOU CAN FOCUS ON --

5 MS. DUARTE: YES. DOES THE COURT HAVE ANY
6 PARTICULAR FOCUS? AND THEN I CAN --

7 THE COURT: WELL, IT'S APPARENT TO ME JUST FROM
8 LOOKING AT WHAT YOU HAVE THERE IN THE TRANSCRIPT AND THE
9 NUMBER OF CITATIONS THAT THERE ARE, THAT THIS IS NOT A CASE
10 WHERE YOU HAD SORT OF A CURSORY PROCEEDING IN THE RULE 40
11 DISTRICT AND, THEN, YOU KNOW, REALLY IT WAS LEFT TO THIS
12 COURT. I MEAN, THERE WAS OBVIOUSLY -- OBVIOUSLY A FAIRLY
13 HARD-FOUGHT PROBABLE CAUSE DETERMINATION AND THEN THE
14 DETENTION HEARING ON TOP OF THAT.

15 SO, FOR PURPOSES OF ASSESSING THE INFORMATION ABOUT
16 THE SCOPE OF THE THREATS AND THE INTERPRETATION AND WHAT, IF
17 ANYTHING, THE DOMESTIC VIOLENCE IMPACT WOULD BE IN THE PRIOR
18 RECORD, ALL THAT -- YOU KNOW, I WOULD DEFER TO THE MAGISTRATE
19 JUDGE THERE.

20 BUT IT DOES SEEM THAT JUST FROM THE RULING --
21 THAT'S ALL I'VE SEEN THUS FAR -- THAT THERE WAS REALLY A
22 DEARTH OF INFORMATION ABOUT THE DEFENDANT'S CALIFORNIA
23 SITUATION. AND I CAN CERTAINLY UNDERSTAND IF I WERE MAKING
24 THAT DETERMINATION ABOUT WHAT WAS GOING TO HAPPEN TO SOMEONE
25 IN NEW HAMPSHIRE, I WOULD ERR ON THE SIDE OF BEING CONCERNED

1 ABOUT POTENTIAL DANGER, PARTICULARLY, IN LIGHT OF THIS
2 COMPLAINT. THE COMPLAINT IS VERY TROUBLING. AND THESE KINDS
3 OF ALLEGATIONS ARE VERY TROUBLING, AND THEY PRESENT A REAL
4 DANGER. EVEN IF IT'S NOT ACTUALLY GOING UP TO SOMEONE
5 PHYSICALLY AND MAKING A THREAT, THERE'S A REAL CONCERN OF
6 DANGER.

7 I'M SIGNIFICANTLY INFLUENCED, I THINK, BY THE FACT
8 THAT THERE'S SOMEONE HERE WHO IS PREPARED TO TAKE MR.
9 SUTCLIFFE INTO HIS HOME. A RESPONSIBLE MEMBER OF THE
10 COMMUNITY. THAT SEEMS TO ME TO BE A PRETTY IMPORTANT FACTOR.
11 AND IF I WERE TO SAY WHAT IT IS THAT ANYTHING THAT COUNSEL
12 HAS SAID THAT COULD PERSUADE ME TO REVISIT IT, IT WOULD BE
13 THE POSSIBILITY OF SETTING CONDITIONS THAT INCLUDE HAVING MR.
14 MC AFFEE ACT AS A THIRD-PARTY CUSTODIAN COUPLED WITH OTHER
15 FORMS OF MONITORING.

16 SO, THAT COULD FOCUS YOU. IN TERMS OF REEVALUATING
17 WHAT WAS SAID AT THE HEARING, I TAKE IT THAT THAT WAS DONE
18 VERY CAREFULLY AND VERY EXTENSIVELY THERE.

19 MS. DUARTE: RIGHT. AND IF I MAY, YOUR HONOR.

20 THE COURT: YES.

21 MS. DUARTE: I CAN JUST SPEAK TO THAT BRIEFLY, AND
22 THEN YOU CAN TELL ME IF THERE'S ADDITIONAL QUESTIONS.

23 THE COURT: MM-HMM.

24 MS. DUARTE: I TEND TO BE BRIEF, BUT.

25 ADDRESSING THE COURT'S CONCERN IN A MINUTE. BUT

1 JUST ABOUT THE HEARING, I JUST WANT TO POINT OUT THAT THE
2 HEARING, AS THE COURT NOTED, WAS EXTENSIVE AND WAS VERY --
3 AND I DON'T THINK MS. POTASHNER DISAGREES WITH THIS -- WAS
4 VERY WELL FLUSHED OUT. I MEAN, ALL THE BAD THINGS ABOUT THE
5 GOVERNMENT'S CASE IN TERMS OF THE PARODIES -- WHICH, BY THE
6 WAY, WERE ON ALL THE PAGES EXCEPT FOR THE MAIN ONE THAT THE
7 SPECIAL AGENT TESTIFIED ABOUT AND THE ONE WE PUT IN THE
8 COMPLAINT BECAUSE TO US IT WAS SIGNIFICANT THAT THAT WAS NOT
9 PARODY. MR. SUTCLIFFE WAS OBVIOUSLY VERY CAREFUL WITH WHAT
10 HE PUT "PARODY" ON AND WHAT HE DIDN'T. SO, THAT'S
11 SIGNIFICANT THAT IT WASN'T PARODY.

12 BUT THERE WAS NOTHING HIDDEN. EVERYTHING WAS VERY
13 WELL FLUSHED OUT. AND ALL THE WEAKNESSES IN THE GOVERNMENT'S
14 CASE WERE ABUNDANTLY CLEAR.

15 PLUS -- AND I DON'T UNDERSTAND THIS, YOUR HONOR, SO
16 I'M NOT GOING TO TRY TO JUSTIFY IT BECAUSE FRANKLY I DON'T
17 UNDERSTAND IT -- PRETRIAL THERE DID RECOMMEND RELEASE ON
18 CONDITIONS. AND THE PROBATION OFFICER TOOK THE STAND ON
19 BEHALF OF DEFENSE -- ALTHOUGH IN A MINUTE I WOULD LIKE TO
20 PROFFER ADDITIONAL TESTIMONY THAT I THINK IS EXTREMELY
21 RELEVANT TO ADD TO WHAT COUNSEL PROFFERED THAT CAME OUT OF
22 THAT.

23 BUT THE PROBATION OFFICER DID TAKE THE STAND AND
24 BASICALLY SAID AS PART OF A LOT OF OTHER TESTIMONY, WELL, SHE
25 INDICATED THAT THE THREAT TO KILL WAS IN A JOKING TONE. AND,

1 OF COURSE, THIS THREAT IS ANCILLARY. THIS IS NOT ONE OF THE
2 THREATS ALLEGED IN THE COMPLAINT.

3 SO, I DO WANT TO POINT OUT THAT THE FACT THAT IT
4 WAS ALL FLUSHED OUT, PRETRIAL RECOMMENDED RELEASE. PROBATION
5 TAKES THE STAND ON DEFENSE'S SIDE. AND THE JUDGE STILL HELD
6 MR. SUTCLIFFE OVER AND DETAINED HIM. I KNOW IT WAS WITHOUT
7 PREJUDICE.

8 BUT I'M SAYING THAT THAT'S ACTUALLY -- I'M GOING TO
9 PRESENT THAT, YOUR HONOR, ALL THOSE THINGS, AS A POINT IN THE
10 GOVERNMENT'S -- POINTS IN THE GOVERNMENT'S FAVOR, IN FAVOR OF
11 THE GOVERNMENT'S ARGUMENT FOR DETENTION. BECAUSE DESPITE THE
12 FACT THAT ALL THESE THINGS OCCURRED, AS MS. POTASHNER
13 DESCRIBES PRETTY MUCH ACCURATELY -- WE BOTH JUST GOT THE
14 TRANSCRIPT SO IT'S HARD FOR BOTH OF US. BUT ALL THESE THINGS
15 DID OCCUR, AND HE WAS STILL HELD OVER.

16 SO, THAT SAID, LET ME ADDRESS THE COURT'S PRIMARY
17 CONCERN HERE.

18 MY READING OF THE TRANSCRIPT, AND I COULD FIND THE
19 CITE IF WE NEED IT, BUT MS. POTASHNER PROBABLY KNOWS IT
20 BETTER THAN I DO, I THINK THAT TOWARD THE END IT WAS BROUGHT
21 UP BY THE DEFENSE ATTORNEY -- AND I CAN LOOK THIS UP IF I
22 NEED TO -- THAT MR. -- MC AFFEE?

23 MS. POTASHNER: YES.

24 MS. DUARTE: -- MR. MC AFFEE HERE IN CALIFORNIA,
25 THE ATTORNEY, WAS AVAILABLE IF THE COURT WOULD CONSIDER

1 LETTING MR. SUTCLIFFE LIVE WITH MR. MC AFFEE.

2 AND ONE OF THE THINGS THE COURT IN NEW HAMPSHIRE
3 INSINUATED WAS THAT I DON'T HAVE ENOUGH INFORMATION. THAT'S
4 ACCURATE. HOWEVER, THAT POINT WAS BROUGHT UP. AND AT THE
5 TIME IT WAS PROFFERED THAT MR. MC AFFEE WAS MR. SUTCLIFFE'S
6 ATTORNEY, AND WOULD BE REPRESENTING HIM IN THE CASE OUT HERE.

7 WELL, YOUR HONOR, MR. MC AFFEE MAY BE HERE IN THE
8 COURTROOM, AND HE MAY WANT TO ADDRESS THIS, I DON'T KNOW, BUT
9 HE'S CERTAINLY NOT REPRESENTING HIM IN THE CRIMINAL CASE
10 HERE. I DON'T KNOW WHY. I DO KNOW THAT APPARENTLY MR. MC
11 AFFEE TOLD THE PRETRIAL SERVICES OFFICER -- IF I COULD HAVE
12 JUST A MOMENT.

13 (PAUSE IN PROCEEDINGS.)

14 MS. DUARTE: -- EARLY ON IN THE REPORT THAT HE WAS
15 NOT WILLING TO POST PROPERTY OR A CASH DEPOSIT IN DEFENDANT'S
16 FAVOR. ALTHOUGH HE DID SAY APPARENTLY THAT HE WAS WILLING TO
17 HAVE HIM STAY WITH HIM, THAT IS ACTUALLY NOT IN THE PRETRIAL
18 SERVICES REPORT.

19 THE COURT: RIGHT.

20 MS. DUARTE: SO, IN THE EVENT THAT THE COURT IS
21 EVEN INCLINED AFTER ARGUMENT TO CONSIDER THAT, I WOULD, OF
22 COURSE, ASK THAT THIS REQUEST BE EVALUATED BY PRETRIAL
23 SERVICES BEFORE THE COURT ACTUALLY ORDERS IT.

24 BUT LET ME PROCEED, YOUR HONOR. SO, THAT FACT IS
25 NOT IN THE PRETRIAL SERVICES REPORT. THE OTHER TWO SURETIES

1 PROPOSED BY DEFENDANT RICHARD WETHERMAN TOLD THE PRETRIAL
2 OFFICER THAT HE FELT THE COURT WAS COMMITTING EXTORTION BY
3 DEMANDING BAIL. THAT'S AN INTERESTING PHILOSOPHY. I DON'T
4 REALLY NEED TO COMMENT ON IT. BUT I SUGGEST TO THE COURT
5 THAT PERHAPS SOMEONE WHO FEELS THAT WAY IS POSSIBLY NOT THE
6 BEST PERSON TO VOUCH FOR THE DEFENDANT'S RESPECT FOR THIS
7 COURT AND THIS COURT'S RULES TO THIS COURT.

8 AND, ALSO, WE HAVE MR. OBER, WHO AT THE TIME THE
9 PRETRIAL REPORT WAS WRITTEN WASN'T REALLY CLEAR WHAT HE WAS
10 GOING TO DO BUT, APPARENTLY, HAS DECIDED THAT HE WANTS TO
11 SPEAK IN FAVOR OF MR. SUTCLIFFE.

12 SO, THOSE ARE THE THREE PEOPLE THAT ARE HERE THAT
13 WE'RE TALKING ABOUT.

14 AND I WOULD ALSO NOTE THAT APPARENTLY, ALTHOUGH
15 THIS WOULD NEED TO BE FLUSHED OUT, MR. MC AFFEE TOLD THE
16 PRETRIAL SERVICES OFFICER THAT HE HAD EMPLOYED DEFENDANT AS
17 AN INDEPENDENT CONTRACTOR WITH COMPUTER NEEDS, WHICH, OF
18 COURSE, I DON'T KNOW WHETHER OR NOT THAT'S ACCURATE. IT MAY
19 WELL BE. BUT THERE'S NO MENTION IN HERE OF THE FACT THAT MR.
20 MC AFFEE IS OR IS NOT REPRESENTING MR. SUTCLIFFE IN CRIMINAL
21 OR CIVIL MATTERS.

22 AND THE COURT WILL NOTE FROM THE COMPLAINT, IF THE
23 COURT DOESN'T REMEMBER THIS, THAT IT IS MR. MC AFFEE'S LAW
24 OFFICES ADDRESS IN BURBANK THAT WAS ACTUALLY USED BY MR.
25 SUTCLIFFE TO REGISTER NOT ONLY THE EVILGX.COM WEBSITE, BUT AT

1 LEAST ONE, IF I'M RIGHT, OF THE EMAIL ACCOUNTS THAT WAS USED
2 TO DISSEMINATE THIS INFORMATION.

3 AND THAT LEAVES ME TO ONE MORE POINT THAT I WANT TO
4 MAKE -- SO MUCH WAS SAID -- ABOUT THE PASSIVE NATURE OF THESE
5 THREATS. YOUR HONOR, AS WAS STATED IN THE COMPLAINT, AND
6 THIS WAS NEVER CHALLENGED AT THE HEARING -- UNLESS MS.
7 POTASHNER WANTS TO CORRECT ME. I DON'T BELIEVE IT WAS -- THE
8 EMAIL THAT WAS SENT OUT BY MR. SUTCLIFFE, ONE OF THE EMAILS
9 WHICH ENABLED THE GOVERNMENT TO FIND OUT WHERE HE WAS, WAS
10 SENT OUT UNDER THE NAME OF GARY WINNICK, WHO IS CHAIRMAN OF
11 THE BOARD OF GLOBAL CROSSING. AND IT WAS SENT UNDER HIS NAME
12 TO GLOBAL CROSSING EMPLOYEES.

13 AND IT SAID, TAKE A LOOK AT THIS, LOOK AT MY SITE.
14 SOMETHING ALONG THOSE LINES. AND THE ONLY THING IN THE EMAIL
15 WAS A HYPERTECH LINK TO WWW.EVILGX.COM., SOLICITING THROUGH
16 THE NAME OF THE CHAIRMAN OF THE BOARD AN EMAIL SENT BY MR.
17 SUTCLIFFE SOLICITING THE EMPLOYEES OF THE COMPANY, HEY, COME
18 TO THIS WEBSITE.

19 HE ALSO PICKETED WITH THE WEBSITE ON A PICKET SIGN
20 IN FRONT OF THE COMPANY FOR A MONTH.

21 SO, IT MAY BE PASSIVE, YOUR HONOR, BUT HE'S
22 ACTIVELY ENCOURAGING EVERYBODY INVOLVED AND EVERYBODY WHOSE
23 INFORMATION, WHOSE HOME ADDRESS, WHO'S LINKED TO A YAHOO MAP
24 THAT SHOWS THE WAY TO THEIR HOUSE AND, IN ONE CASE, THEIR
25 PICTURE IS ON THIS WEBSITE, HE'S ENCOURAGING THEM TO CHECK IT

1 OUT.

2 SO, THE NATURE MAY BE PASSIVE, BUT THE INTERSTATE
3 TRANSMISSION IS THERE AS WELL AS THE FACT THAT THIS WAS NOT
4 MEANT TO BE SOMETHING THAT JUST SAT ON THE WEBSITE. IT WAS
5 MEANT TO BE LOOKED AT. IT WAS MEANT TO BE READ.

6 SO, I WANTED TO SAY THAT ABOUT THAT.

7 MAY I JUST CHECK MY NOTES FOR JUST A MINUTE?

8 THE COURT: MM-HMM.

9 MS. DUARTE: I THINK I'M ABOUT DONE.

10 (PAUSE IN PROCEEDINGS.)

11 MS. DUARTE: I JUST WANT TO MENTION, YOUR HONOR,
12 AND THIS IS IN THE COMPLAINT, AND IT WAS NOT CHALLENGED AS
13 FAR AS I KNOW, WAS THAT MR. SUTCLIFFE, ALTHOUGH HE MAY HAVE A
14 MINIMAL -- ALTHOUGH I SUBMIT IT'S ALARMING, BUT A MINIMAL
15 CRIMINAL HISTORY IN THAT MOST OF HIS INFRACTIONS AND
16 MISDEMEANORS ARE MINOR THINGS.

17 BUT IT DOES SHOW AN OPEN FLOUTING OF THE LAW. IN
18 ADDITION, IT'S NOT JUST THESE '90 AND '97 MISDEMEANORS THAT
19 ARE FAIRLY RECENT, BUT IT'S ALSO HIS ACTIVITY AS ALLEGED IN
20 THE COMPLAINT IN ACTUALLY APPROACHING THE LAPD OFFICERS AND
21 VERBALLY TANGLING WITH THEM, WHICH RESULTED IN YET ANOTHER
22 ARREST. AND THESE WERE THE SAME OFFICERS THAT HE HAD UP ON
23 HIS WEBSITE. AND HE WAS HARASSING --

24 THE COURT: THIS IS THE 1997 ARREST?

25 MS. DUARTE: YES.

1 THE COURT: YES.

2 MS. DUARTE: SO, YOUR HONOR, WHAT WE SEE IS AN
3 ESCALATION. THERE MAY BE A PASSIVE THREAT ON THE WEBSITE AT
4 FIRST, JUST AS THERE WAS IN THE CASE OF THE LAPD OFFICERS.
5 BUT THEN WE ESCALATE TO AGGRESSIVE BEHAVIOR.

6 SO, I SUBMIT TO YOU THAT IT IS NOT AT ALL A LONG
7 SHOT TO SAY THAT THIS KIND OF BEHAVIOR, ALTHOUGH PASSIVE, MAY
8 AGGRESS. LOOK AT THE DOMESTIC VIOLENCE SITUATION THAT
9 APPARENTLY IS GOING ON. I KNOW MS. POTASHNER TOLD THE
10 PRETRIAL SERVICES OFFICER -- AND SHE PROBABLY GOT THE
11 INFORMATION FROM HER CLIENT. SO, THAT'S QUITE REASONABLE.

12 MS. POTASHNER: WELL, IF I CAN INTERRUPT BEFORE YOU
13 CHARACTERIZE THAT. THAT'S A MISSTATEMENT. I SAID I WASN'T
14 UNCLEAR ABOUT WHAT THIS CURRENT SITUATION WAS, BUT I BELIEVE
15 IT WAS IN THE PROCESS OF BEING RESCINDED.

16 MS. DUARTE: OKAY. AND THAT TURNS OUT THAT'S NOT
17 ACCURATE. JUST TO LET THE COURT KNOW AND THAT'S IN THE
18 PRETRIAL SERVICES REPORT. AND, AGAIN, I'M SURE IT WAS NOT
19 INTENTIONAL, AND I DIDN'T MEAN TO SAY THAT IT WAS.

20 BUT ALSO, YOUR HONOR, I WANT TO PROFFER THE
21 FOLLOWING FACTS IN ADDITION TO THE COMPLAINT AND THE
22 INDICTMENT VERY BRIEFLY. ONLY THAT AT THE TIME THAT MR.
23 SUTCLIFFE WAS ARRESTED, HE INDICATED TO THE ARRESTING
24 OFFICERS -- LET'S SEE IF I CAN GET IT RIGHT HERE -- HE DID
25 NOT RECOGNIZE THE AUTHORITY OF THE MANCHESTER POLICE. HE DID

1 NOT RECOGNIZE THE AUTHORITY OF THE FBI. AT HIS INITIAL
2 APPEARANCE BEFORE THIS COURT HE INDICATED THAT HE DID NOT
3 RECOGNIZE THE COURT'S JURISDICTION, AND HE WOULD CHALLENGE
4 SUBJECT MATTER JURISDICTION.

5 AND EVEN THOUGH THE COURT HAS DECIDED OR HAS
6 INDICATED IT'S LEANING TOWARD FLIGHT RISK, SUBMITTING ON THE
7 NEW HAMPSHIRE COURT, ACTUALLY THE GOVERNMENT IS ARGUING, AND
8 WILL CONTINUE TO ARGUE, ALTHOUGH I'LL SUBMIT, FLIGHT RISK IN
9 THIS CASE AS WELL FOR THE SAME REASONS PRETRIAL SERVICES
10 FOUND, FOR THE SAME REASONS WE ARGUED BEFORE, AND FOR THE
11 SAME REASONS, PLUS, THIS ADDITIONAL INFORMATION THAT I ARGUE
12 NOW, IN THAT DEFENDANT DOES NOT HAVE TIES.

13 HE DOES NOT RECOGNIZE THE AUTHORITY. HE HAS A LONG
14 HISTORY OF NOT RECOGNIZING THE AUTHORITY OF LAW ENFORCEMENT.
15 HE DOES NOT RECOGNIZE THE AUTHORITY OF THE FEDERAL GOVERNMENT
16 OR, QUITE PROBABLY, THIS COURT. HE HAS FAILURES TO APPEAR IN
17 HIS PAST. THE BEHAVIOR HAS ESCALATED. HE HAS -- THERE'S
18 JUST TOO MANY THINGS OUT THERE, YOUR HONOR.

19 AND THE THREE SURETIES, I'M SURE THEY'RE FINE
20 PEOPLE. I'M SURE THEY'RE HERE TODAY TO REPRESENT THEIR
21 FRIEND. BUT, YOUR HONOR, THEIR NAMES AND HOME ADDRESSES AND
22 PICTURES AND PICTURES OF THEIR KIDS AND LINKS TO MAPS TO
23 THEIR HOUSE ARE NOT ON MR. SUTCLIFFE'S WEBSITE. IT'S THE
24 PEOPLE THAT AREN'T HERE THAT ARE SCARED OF HIM, THAT ARE
25 LIVING RIGHT AROUND HERE THAT ARE ON HIS WEBSITE.

1 AND AS FAR AS I KNOW, AND SHE CAN CORRECT ME IF I'M
2 WRONG, IT DID NOT TAKE PARODY UNDER THOSE THREATS ON THE
3 WEBSITE WHEN IT WENT TO THOSE PEOPLE IN CALIFORNIA RECENTLY.
4 AND THOSE ARE THE RECENT THREATS THAT ARE CHARGED.

5 SO, YOUR HONOR, I'LL ANSWER ANY QUESTIONS. AND I'M
6 SORRY TO TAKE SO LONG, BUT I'LL SUBMIT IT ON THAT.

7 THE COURT: WELL, LET ME JUST ASK. THE POINT ABOUT
8 MR. MC AFFEE'S ADDRESS BEING USED TO REGISTER THE WEBSITES,
9 THAT'S MR. MC AFFEE'S LAW OFFICE ADDRESS?

10 MS. DUARTE: YES, YOUR HONOR.

11 THE COURT: OKAY. AND OTHER THAN THAT, DOES THE
12 GOVERNMENT HAVE ANY INFORMATION ABOUT MR. MC AFFEE'S
13 INVOLVEMENT IN ANY OF THE ACTIVITIES THAT'S ALLEGED IN THE
14 COMPLAINT?

15 MS. DUARTE: NO, YOUR HONOR. WE DO NOT HAVE ANY
16 INFORMATION. OF COURSE, IT'S VERY DIFFICULT FOR US TO GET
17 INFORMATION BECAUSE WE OBVIOUSLY DON'T LOOK AT
18 ATTORNEY-CLIENT PRIVILEGE MATERIALS. AND WE HAVE NOT LOOKED
19 AT ANY THAT HAVE PRESENTED THEMSELVES IN THIS CASE, ALTHOUGH
20 THERE HAVE BEEN CERTAIN ONES THAT HAVE BEEN NOTED AND LEFT
21 ALONE.

22 I'M NOT INSINUATING FOR PURPOSES OF THE HEARING
23 TODAY BY ANY MEANS THAT MR. MC AFFEE IS INVOLVED IN ANY
24 CRIMINAL ACTIVITY. THAT IS ACCURATE. I DO NOT HAVE ANY
25 INFORMATION, ANY ADDITIONAL INFORMATION ON HIS INVOLVEMENT.

1 MY ONLY POINT TO THE COURT, AND I PERHAPS COULD
2 HAVE MADE IT BETTER, SO I DIDN'T MEAN TO MAKE ANY IMPROPER
3 INSINUATIONS. MY ONLY POINT TO THE COURT IS THAT WE DON'T
4 REALLY KNOW A LOT ABOUT WHO THIS GENTLEMAN IS AND WHAT IT IS
5 TO MR. SUTCLIFFE, HIS BELIEF SYSTEMS. HE'S HIS LAWYER.
6 MAYBE. CERTAINLY CIVIL. POSSIBLY CRIMINAL. HE EMPLOYED HIM
7 WE JUST LEARNED. BUT HE EMPLOYED HIM AT SOME TIME. HE WON'T
8 PUT MONEY OR PROPERTY. IT DOESN'T SAY HE DOESN'T HAVE ANY.
9 BECAUSE HE WON'T. SO, WE WOULD NEED TO FLUSH THAT OUT.

10 AND HE MUST KNOW HE'S IN THE COMPLAINT. SO, I JUST
11 AM UNCERTAIN OF THE STATUS OF ALL THIS. AND I'M POINTING OUT
12 TO THE COURT THE UNCERTAINTY, AND I'M NOT DOING ANYTHING
13 ELSE.

14 THE COURT: OKAY.

15 MS. POTASHNER: IN RESPONSE, I THINK IT'S PRETTY
16 CLEAR THAT MR. MC AFFEE IS NOT REPRESENTING MR. SUTCLIFFE IN
17 HIS CRIMINAL OFFENSE, BECAUSE I AM.

18 THE COURT: WHAT -- WHAT --

19 MS. POTASHNER: HE'S A CIVIL LAWYER.

20 THE COURT: WHAT IS THE STATUS OF CIVIL LITIGATION?
21 WHAT'S THAT ABOUT?

22 MS. POTASHNER: PERHAPS, THE COURT WANTS TO HEAR
23 FROM MR. MC AFFEE BECAUSE I REALLY COULDN'T ANSWER THAT
24 QUESTION WELL.

25 THE COURT: OKAY.

1 MS. POTASHNER: MR. MC AFFEE.

2 THE COURT: ACTUALLY, MR. MC AFFEE, WHY DON'T YOU
3 WAIT JUST A SECOND AND LET ME JUST -- THANK YOU. LET ME JUST
4 LET MS. PRETRIAL SERVICES FINISH WHAT OTHER RESPONSES YOU
5 WANT TO MAKE.

6 MS. POTASHNER: OKAY. SO, IN TERMS OF MR. -- WHAT
7 I WOULD SAY ABOUT MR. MC AFFEE IS THAT HIS ADDRESS IS ON
8 WEBSITE AS HIS LEGAL COUNSEL, AND I DON'T THINK THERE'S
9 ANYTHING IMPROPER ABOUT THAT. HE REPRESENTS MR. SUTCLIFFE
10 CIVILLY. SO, I DON'T THINK THERE'S ANYTHING IMPROPER.

11 AND AS THE GOVERNMENT HAS SAID, I DON'T THINK
12 THERE'S ANY -- THEY'RE INTENDING TO INSINUATE THAT HE'S DOING
13 SOMETHING IMPROPERLY. I DON'T RECALL WHAT EXACTLY WAS SAID
14 ABOUT HIM IN NEW HAMPSHIRE IN TERMS OF WHETHER HE COULD ACT
15 AS A SURETY. I DO NOT BELIEVE THAT IT WAS BROUGHT UP THAT HE
16 COULD -- THAT MR. SUTCLIFFE COULD LIVE AT HIS HOME, AND THAT
17 HE WOULD BE A CUSTODIAN TO MR. SUTCLIFFE. I DO NOT BELIEVE
18 THAT WAS BROUGHT UP.

19 IN ANY EVENT, I AM QUITE SURE THAT HE WAS NOT
20 PRESENT BEFORE THE COURT IN NEW HAMPSHIRE TO ADDRESS THE
21 COURT AND TO EXPLAIN HIS SITUATION AND HIS OWN HISTORY AND
22 WHY HE WOULD BE A REASONABLE THIRD-PARTY SURETY. SO, I DON'T
23 THINK THE COURT HAD SUFFICIENT INFORMATION.

24 I THINK IT'S QUITE CLEAR, FROM BOTH THE TRANSCRIPT
25 AND THE ORDER, THAT THE COURT WAS NOT SAYING THAT THEY'RE

1 ASSUMING THAT, YOU KNOW, IT'S THE WORST CASE SCENARIO FOR MR.
2 SUTCLIFFE IN CALIFORNIA, BUT THEY'RE JUST SORT OF LEAVING IT
3 OPEN BY LEAVING IT WITHOUT PREJUDICE.

4 I THINK THAT THERE WAS A TRUE INQUIRY AS TO WHAT
5 THE SITUATION WOULD BE IN CALIFORNIA, AND THEY DID NOT HAVE
6 FULL INFORMATION. AND THEY CERTAINLY DID NOT HAVE FULL
7 INFORMATION ABOUT MR. MC AFFEE.

8 IN TERMS OF -- THE OTHER THING THAT I WANTED TO
9 POINT OUT THAT I THINK IS SIGNIFICANT IS AFTER THIS WHOLE
10 CASE WAS FLUSHED OUT IN FRONT OF A COURT IN NEW HAMPSHIRE,
11 THE ALLEGATIONS REGARDING SOCIAL SECURITY NUMBERS BEING
12 PUBLISHED, NAMES BEING PUBLISHED, ADDRESSES BEING PUBLISHED,
13 THAT WAS ALL THROWN OUT OF COURT. IT WAS FOUND THAT THERE
14 WAS NO PROBABLE CAUSE TO HOLD HIM TO ANSWER FOR A CRIME IN
15 RELATION TO THAT. HE WAS MERELY PUBLISHING ON THE INTERNET
16 INFORMATION THAT HE HAD WITHOUT ANY SORT OF CRIMINAL INTENT
17 ASSOCIATED TO IT. AND THAT WAS ADDRESSED IN THE COURT'S
18 CLOSING REMARKS AND IN THE FINAL ORDER DISMISSING THAT COUNT.

19 UNFORTUNATELY, SIMULTANEOUSLY OR AFTERWARDS, I'M
20 NOT QUITE SURE OF THE ORDER, IT WAS PRESENTED TO A GRAND JURY
21 IN CALIFORNIA. AND, NOW, HE'S INDICTED ON WHAT HAS ALREADY
22 BEEN DISMISSED.

23 BUT I THINK IT IS SIGNIFICANT TO KNOW THAT A COURT
24 LISTENED TO THE EVIDENCE IN RELATION TO THAT WHOLE COUNT AND
25 WAS GOING ON WITH THE SOCIAL SECURITY NUMBERS, THE NAMES AND

1 ADDRESSES AND DISMISSED IT. SO, I THINK THE COURT SHOULD
2 TAKE THAT INTO ACCOUNT.

3 AND IN TERMS OF MR. SUTCLIFFE NOT REPRESENTING --
4 NOT RECOGNIZING AUTHORITY, I THINK WE'VE ALL HAD EXPERIENCES
5 IN THIS COURTROOM WITH PEOPLE WHO FLOUT THE LAW. THEY HAVE
6 LONG CRIMINAL HISTORIES. THEY HAVE REPEATED ARRESTS,
7 REPEATED CONTACTS WITH LAW ENFORCEMENT, REPEATED DISTURBING
8 THE PEACES, REPEATING 148S, REPEATED ASSAULTS.

9 HE DOESN'T HAVE THAT ON HIS RECORD. HE'S GOT ONE
10 THING ON HIS RECORD IN THE LAST 13 YEARS. AND FROM WHAT I
11 UNDERSTAND, AND, AGAIN, I HAVE NOT LOOKED AT THE RECORD, BUT
12 I UNDERSTAND THAT THIS DISTURBING THE PEACE WAS EVEN REDUCED
13 TO AN INFRACTION. IT'S NOT EVEN A MISDEMEANOR LIKE I THOUGHT
14 IT'S SIMPLY AN INFRACTION. AND THAT MAKES SENSE WHEN YOU
15 LOOK AT WHAT THE SENTENCE WAS, WHICH WAS SIMPLY A FINE.

16 AND MY PRIOR EXPERIENCE TELLS ME THAT IF IT'S A
17 MISDEMEANOR, A PERSON GETS PROBATION OF SOME SORT. AS AN
18 INFRACTION, THEY DO NOT. SO, I THINK THAT THAT'S
19 SIGNIFICANT, THAT THE ONLY THING THAT HE'S HAD SINCE 1989 IS
20 MERELY ONE INFRACTION. THIS IS A PERSON WHO IS NOT GOING TO
21 FLOUT THE LAW. THIS IS A PERSON WHO'S NOT GOING TO BE, YOU
22 KNOW, DOING ANYTHING VIOLENT. IF HE WAS GOING TO, IF HE HAD
23 THOSE EXTREME THOUGHTS, IF HE HAD THE THOUGHTS THAT HE COULD
24 DO WHATEVER HE WANTED TO DO PHYSICALLY, WE'D SEE A MUCH
25 LONGER RAP SHEET. SO, I REALLY DO NOT THINK THAT HE'S POSING

1 THAT TYPE OF DANGER.

2 YES, HE DID SAY THAT HE -- IN THE INITIAL
3 APPEARANCE THAT HE QUESTIONED THE JURISDICTION OF THIS COURT,
4 I THINK THAT'S WITHIN HIS RIGHTS. I THINK IT'S WITHIN HIS
5 RIGHTS TO LOOK AT PERSONAL JURISDICTION AND SUBJECT MATTER
6 JURISDICTION TO SEE IF THIS COURT HAS JURISDICTION. I DON'T
7 THINK THAT'S FLOUTING THE LAW.

8 THE COURT: YES. HE'S CERTAINLY ENTITLED TO HIS
9 VIEWS.

10 MS. POTASHNER: NOW, IF THE COURT COULD HEAR FROM
11 MR. MC AFFEE, HE COULD EXPLAIN WHAT THE SITUATION WOULD BE.

12 MS. DUARTE: YOUR HONOR --

13 THE COURT: YES? COUNSEL.

14 MS. DUARTE: IF MR. MC AFFEE IS GOING TO BE HEARD
15 FROM, I WOULD BE ASK THAT HE SUBJECT TO CROSS-EXAMINATION
16 UNLESS THE COURT IS JUST GOING TO CONDUCT THE LIMITED INQUIRY
17 ON THE CIVIL MATTER.

18 THE COURT: WELL, I WAS GOING TO ALSO ASK HIM ABOUT
19 THE STANDARD QUESTIONS THAT I ASK SURETIES. AND I WOULD
20 PLACE HIM UNDER OATH.

21 MS. DUARTE: OKAY.

22 THE COURT: IF MR. MC AFFEE IS WILLING. THAT'S HIS
23 -- HE CERTAINLY HAS NO OBLIGATION TO DO THAT.

24 MS. DUARTE: I JUST MISUNDERSTOOD. I DIDN'T KNOW
25 IF THE COURT WAS PLANNING ON PLACING HIM UNDER OATH AND THEN

1 SUBJECTING HIM TO CROSS-EXAMINATION, IF NEEDED.

2 THE COURT: I DON'T CONSIDER IT A PROFFER IN TERMS
3 OF THE SUBSTANCE OF THE OFFENSE AT ALL.

4 MS. DUARTE: OKAY. JUST THE ABILITY TO SERVE AS A
5 SURETY.

6 THE COURT: YES.

7 MS. DUARTE: ALL RIGHT. I UNDERSTAND.

8 THE COURT: YES. BUT IF THE GOVERNMENT HAS
9 QUESTIONS, THEN, YOU'LL CERTAINLY BE ENTITLED TO ASK THEM.
10 YES.

11 MS. DUARTE: OKAY.

12 YOUR HONOR, BEFORE WE HEAR FROM MR. MC AFFEE, COULD
13 I JUST MAKE ONE POINT --

14 THE COURT: YES, SURE.

15 MS. DUARTE: -- IN ANSWER TO MS. POTASHNER'S
16 ARGUMENT. IS THAT AS IT DOES SAY IN THE DETENTION HEARING,
17 DEFENDANT WAS ONLY -- DETENTION ORDER, DEFENDANT WAS ONLY
18 HELD TO ANSWER UNDER THE 875(C). THAT'S ACCURATE.

19 HOWEVER, WHEN THE COURT LOOKS AT THE TRANSCRIPT,
20 THE COURT WILL SEE THAT THE CHARGE WAS NOT THROWN OUT. NONE
21 OF THE -- PER SE. NONE OF THOSE ALLEGATIONS WERE FOUND NOT
22 TO BE ACCURATE.

23 WHAT THE MAGISTRATE COURT IN NEW HAMPSHIRE DID NOT
24 SEE -- AND I MEAN ARGUABLY, AND I CAN OBVIOUSLY ARGUE THIS
25 LATER IN FRONT OF A DISTRICT COURT IN A RULE 29 MOTION IF I

1 NEED TO, BUT MY POINT TO THE COURT IS THAT EVERYTHING THAT
2 CAME OUT THAT'S IN THE COMPLAINT WAS NOT FOUND TO BE
3 INACCURATE IN ANY WAY.

4 WHAT HAPPENED IS THE ACTUAL CONNECT ON 1028(A)7
5 REQUIRES ALL THIS PUBLICATION TRANSFER, WHATEVER YOU HAVE,
6 WITH THE INTENT TO COMMIT OR AID AND ABET ANOTHER FELONY. WE
7 CHARGED THAT AS 42408(A)(7)(B), WHICH IS MISUSE -- UNLAWFUL
8 USE OF A SOCIAL SECURITY NUMBER. THE REASON WE DID THAT WAS
9 BECAUSE THERE WERE VARIOUS HYPERTECH -- TECH LINKS ON THE
10 WEBSITE. IN ONE PARTICULAR CASE IT PUBLISHED THE YOUNG,
11 PROCESS SERVER'S LICENSE PLATE NUMBER. AND IT SAID SOMETHING
12 ALONG THE LINES OF, SO, YOU'RE UPSET, YOU'RE ANGRY AT HAVING
13 THIS NUMBER PUBLISHED. TRUST ME WHEN I SAY IT CAN GET MUCH,
14 MUCH WORSE. THE HYPERTECH LINK WENT TO AN ARTICLE ON THIS
15 VERY TOPIC.

16 THAT'S THE GOVERNMENT'S THEORY OF THE CASE. IT'S
17 MY UNDERSTANDING, AND THE COURT CAN TAKE A LOOK AT THE
18 TRANSCRIPT, BUT IT'S QUITE CLEAR THAT IT WAS THAT EXTRA LINK,
19 IF YOU WILL, THAT THE JUDGE DIDN'T QUITE SEE -- AGAIN, WHICH
20 IS FINE. BUT JUST SO THE COURT IS AWARE, IT HAD NOTHING TO
21 DO WITH THE VERACITY OF THE ALLEGATION AT ALL. IT ONLY HAD
22 TO DO WITH THAT TECHNICAL LINK TO THE FELONY.

23 THE COURT: YES. I THINK IT'S FAIR TO SAY --
24 PROBABLY NEITHER OF YOU ARGUED -- IT'S A CASE THAT THE
25 GOVERNMENT CERTAINLY MAY WIN, AND CLEARLY HAS A VERY

1 CAREFULLY THOUGHT OUT THEORY OF CRIMINALITY IN THIS CONDUCT,
2 BOTH WHAT MAKES, YOU KNOW, AN ARGUABLY PASSIVE WEBSITE AN
3 ACTIVE THREAT. AND I CAN SEE THAT THOSE ARE ARGUMENTS THAT
4 YOU LARGELY PREVAILED ON IN NEW HAMPSHIRE AND, AGAIN, MAY
5 VERY WELL PREVAIL ON IN THIS CASE.

6 IT'S PROBABLY FAIR TO SAY, THOUGH, THAT IT'S NOT --
7 IT'S A CASE WHERE -- IT'S POTENTIALLY DEFENSIBLE. I MEAN,
8 IT'S PROBABLY NOT THE MOST CLEAR CUT STRONG CASE THAT THE
9 DEFENDANT -- THAT THE GOVERNMENT HAS EVER BROUGHT.
10 OBVIOUSLY, IT REQUIRED SOME THOUGHT AND SOME PROOF.

11 MS. DUARTE: IT DID, YOUR HONOR.

12 THE COURT: OKAY. AND THAT'S YOUR JOB.

13 MS. DUARTE: RIGHT.

14 THE COURT: AND YOU'VE DONE IT WELL.

15 FOR MY PURPOSES IN TERMS OF ASSESSING A DETENTION
16 ORDER IN A CASE WHERE THERE'S NOT A PRESUMPTION, AND WHERE
17 OBVIOUSLY A LOT OF THOUGHT WENT INTO IT BEFORE THE COURT IN
18 NEW HAMPSHIRE -- BUT I THINK I CAN READILY PUT MYSELF IN THE
19 POSITION OF THE COURT IN NEW HAMPSHIRE AND MAKE THE KINDS OF
20 CALLS THAT WERE PROBABLY MADE THERE, ABOUT WHERE INFORMATION
21 COULD BE BETTER ASSESSED.

22 MS. DUARTE: AND MY ONLY POINT WITH THAT, YOUR
23 HONOR, ISN'T ARGUING MY THEORY OBVIOUSLY. MY ONLY POINT IS
24 UNLIKE -- FOR INSTANCE, SOMETIMES IN A DETENTION HEARING WE
25 APPEAR, AND IT'S A BANK ROBBERY. AND THE COMPLAINT SAYS, THE

1 FOUR DEFENDANTS DID THIS AND THIS.

2 THE COURT: AND IT TURNS OUT THEY DIDN'T --

3 MS. DUARTE: AND, THEN, YOU HEAR THAT MAYBE
4 SOMEBODY WAS THE DRIVER, AND IT WASN'T EVEN HIS CAR. THAT IN
5 THIS PARTICULAR CASE --

6 THE COURT: THAT'S NOT WHAT -- THIS WAS A LEGAL
7 POINT.

8 MS. DUARTE: IT'S NOT THE FACTS. IT'S A LEGAL
9 POINT. AND, OF COURSE, I'M NOT ASKING THE COURT TO CONSIDER
10 THE LEGAL POINTS. IT'S THE FACTS -- THAT I WANT TO MAKE SURE
11 THE COURT IS AWARE THAT THE FACTS ARE STILL THERE.

12 THE COURT: YES.

13 MS. POTASHNER: WELL --

14 THE COURT: AND THEY SAID THE FACTS ARE TROUBLING.

15 MS. DUARTE: RIGHT. WITH THE MODIFICATIONS --

16 THE COURT: BUT WHAT I HAVE TO DECIDE IS WHETHER
17 THERE ARE ANY CONDITIONS OR COMBINATION OF CONDITIONS THAT
18 WILL REASONABLY ASSURE THE SAFETY OF ANY PERSON OR THE
19 COMMUNITY.

20 SO, THAT'S WHAT I'M STRUGGLING WITH. AND, QUITE
21 HONESTLY, MR. MC AFFEE IS IMPORTANT TO ME ON THAT POINT.

22 SO, MR. MC AFFEE, THANK YOU FOR COMING FORWARD.
23 AND I REALLY DO WANT YOU TO UNDERSTAND THAT I APPRECIATE THAT
24 YOU HAVE NO OBLIGATION TO BE HERE AND NO OBLIGATION TO ANSWER
25 MY QUESTIONS. BUT I DO TYPICALLY ASK QUESTIONS OF PEOPLE WHO

1 ARE OFFERING TO SERVE AS SURETIES.

2 WE HAVE A SITUATION HERE WHERE I THINK FAIRLY IT'S
3 NOT COMPLETELY CLEAR TO ME FROM THE PRETRIAL REPORT WHAT YOUR
4 RELATIONSHIP TO MR. SUTCLIFFE IS AND YOU'RE WILLINGNESS TO
5 STAND AS A SURETY.

6 SO, I WOULD WANT TO ASK YOU SOMETHING ABOUT THE
7 BACKGROUND OF YOUR RELATIONSHIP WITH MR. SUTCLIFFE IF YOU'RE
8 WILLING TO DO THAT. AND, THEN, AT ANY TIME IF YOU DON'T
9 WANT, THEN, YOU KNOW, YOU'RE FREE TO STOP.

10 I'D ASK MY CLERK TO PLACE YOU UNDER OATH.

11 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

12 LESLIE SCOTT MC AFFEE, SWORN:

13 THE WITNESS: I DO.

14 THE CLERK: PLEASE STATE YOUR NAME FOR THE RECORD.

15 THE WITNESS: LESLIE SCOTT MC AFFEE.

16 THE COURT: AND, MR. MC AFFEE, YOU'RE A MEMBER OF
17 THE STATE BAR OF CALIFORNIA?

18 THE WITNESS: I AM, YOUR HONOR. SINCE 1988.

19 THE COURT: HAVE YOU BEEN A RESIDENT OF LOS ANGELES
20 -- WELL, FOR HOW LONG HAVE YOU BEEN A RESIDENT OF LOS
21 ANGELES?

22 THE WITNESS: APPROXIMATELY 46 YEARS.

23 THE COURT: YOU'VE NEVER BEEN CONVICTED OF A
24 FELONY?

25 THE WITNESS: I'VE NEVER BEEN CONVICTED OF

1 ANYTHING.

2 THE COURT: AND WHERE DO YOU RESIDE?

3 THE WITNESS: I RESIDE IN SYLMAR IN CALIFORNIA.

4 THE COURT: AND COULD I HAVE THE ADDRESS.

5 THE WITNESS: SURE. IT'S 13311 SYLMAR AVENUE --

6 I'M SORRY -- NORRIS AVENUE, N-O-R-R-I-S, IN SYLMAR,

7 CALIFORNIA.

8 THE COURT: AND YOU'RE MARRIED?

9 THE WITNESS: I AM.

10 THE COURT: AND YOUR WIFE LIVES THERE WITH YOU?

11 THE WITNESS: SHE DOES.

12 THE COURT: AND YOU HAVE CHILDREN?

13 THE WITNESS: I HAVE ONE 20-YEAR-OLD CHILD STILL

14 REMAINING IN THE HOUSE. THE OTHER TWO ARE ADULTS LIVING

15 OUTSIDE THE HOUSE.

16 THE COURT: AND YOU OWN THE HOME?

17 THE WITNESS: I DO -- OR WE DO.

18 THE COURT: AND WHERE DO YOU PRACTICE LAW?

19 THE WITNESS: IN BURBANK, CALIFORNIA.

20 THE COURT: AND WHAT CAN YOU TELL ME ABOUT YOUR

21 REPRESENTATION OF MR. SUTCLIFFE, JUST THE GENERAL SCOPE AND

22 SUBJECT MATTER AND WHAT THE STATUS OF THE CASE IS.

23 THE WITNESS: ALL RIGHT. I PRESENTLY REPRESENT MR.

24 SUTCLIFFE AS HIS COUNSEL IN A CASE CALLED GLOBAL CROSSING

25 DEVELOPMENT COMPANY VERSUS STEVEN SUTCLIFFE, WHICH IS PENDING

1 IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES,
2 DEPARTMENT 49 IN THE CENTRAL DISTRICT OF LOS ANGELES.

3 THAT CASE IS PRESENTLY SET FOR A STATUS CONFERENCE
4 ON MONDAY. THE CASE HAS BEEN STAYED BECAUSE OF THE
5 BANKRUPTCY FILING OF GLOBAL CROSSING.

6 PRIOR TO THE FILING OF THE GLOBAL CROSSING
7 BANKRUPTCY, MR. SUTCLIFFE HAD INTENDED TO FILE AN ANSWER IN
8 THAT MATTER. AND I HAD PREPARED AND AM PREPARED TO FILE A
9 CROSS-COMPLAINT AGAINST GLOBAL CROSSING TO SUE THEM FOR
10 VIOLATION -- FOR A NUMBER OF VIOLATIONS OF CIVIL RIGHTS.
11 HOWEVER, THAT ACTION IS STAYED BECAUSE OF THE BANKRUPTCY
12 FILING.

13 I PREVIOUSLY REPRESENTED MR. SUTCLIFFE IN HIS --
14 HE'LL PROBABLY HAVE TO HELP ME WITH THIS -- IN HIS CIVIL
15 LAWSUIT AGAINST THE LAPD AND THE CITY OF LOS ANGELES FOR THE
16 ALLEGED WRONGFUL ARREST OF MR. SUTCLIFFE BY THE LAPD. DURING
17 WHICH TIME A NUMBER OF DEPOSITIONS OCCURRED INVOLVING LAPD
18 OFFICERS, FOR WHICH I COULD TESTIFY TO IF THE COURT WAS
19 INTERESTED, AS TO MR. SUTCLIFFE'S DEMEANOR AGAINST THE
20 OFFICERS THAT HE CLAIMED HAD WRONGFULLY ARRESTED HIM AND
21 WHETHER HE POSED ANY THREAT OF HARM TO THEM.

22 THE COURT: WHAT WAS THE OUTCOME OR THE CURRENT
23 STATUS OF THAT CASE?

24 MR. MC AFFEE: THAT CASE WAS DISMISSED BY THE COURT
25 ON A LEGAL BASIS THAT WE SOUGHT TO APPEAL AND THEN DID NOT

1 APPEAL.

2 THE COURT: AND WAS THAT A SUPERIOR COURT CASE?

3 MR. MC AFFEE: IT WAS, YOUR HONOR.

4 THE COURT: AND WHAT'S THE SUBJECT MATTER OF THE
5 GLOBAL CROSSING LAWSUIT?

6 MR. MC AFFEE: GLOBAL CROSSING HAS ALLEGED THAT MR.
7 SUTCLIFFE HAS STOLEN PERSONAL INFORMATION OF THE EMPLOYEES OF
8 THE COMPANY AND VIOLATED HIS CONTRACT BY BREACHING A PRIVACY
9 AGREEMENT. I THINK I'M PARAPHRASING THAT ACCURATELY.

10 I WOULD ADVISE THE COURT GLOBAL CROSSING SOUGHT A
11 TEMPORARY RESTRAINING ORDER AND, IN FACT, OBTAINED AN
12 INJUNCTION THAT PREVENTS MR. SUTCLIFFE OR ANY OF HIS AGENTS,
13 INCLUDING MYSELF, OR ANY WEBSITE FROM PUBLISHING ANY
14 INFORMATION THAT MR. SUTCLIFFE OBTAINED WHILE EMPLOYED. THAT
15 ORDER WAS ISSUED PROBABLY IN SEPTEMBER, OCTOBER OF 1991.
16 THERE'S BEEN NO EFFORT TO BRING ANY ORDERS OF CONTEMPT FOR
17 VIOLATING THAT ORDER. THE EVILGX WEBSITE HAS BEEN ON LINE
18 FAR LONGER THAN THAT ORDER. BUT AS FAR AS I KNOW, THAT
19 RESTRAINING ORDER IS STILL IN EFFECT.

20 THE COURT: AND HOW LONG HAVE YOU KNOWN MR.
21 SUTCLIFFE?

22 MR. MC AFFEE: AT LEAST THREE YEARS. I HAVE TO GO
23 BACK IN MY RECORDS BUT AT LEAST THREE YEARS.

24 THE COURT: YOU UNDERSTAND WHAT THE
25 RESPONSIBILITIES OF A SURETY WOULD BE?

1 MR. MC AFFEE: I DO, YOUR HONOR.

2 THE COURT: AND YOU'RE PREPARED TO SIGN AN
3 APPEARANCE BOND?

4 MR. MC AFFEE: I AM, YOUR HONOR.

5 THE COURT: OKAY. AND I DON'T KNOW IF YOU'VE
6 DONE FEDERAL COURT CRIMINAL WORK AT ALL --

7 MR. MC AFFEE: NOT CRIMINAL, BUT I AM LICENSED TO
8 APPEAR IN EVERY FEDERAL DISTRICT COURT IN THE STATE OF
9 CALIFORNIA. AND I HAVE APPEARED IN EVERY FEDERAL DISTRICT
10 COURT, INCLUDING THE NINTH CIRCUIT COURT OF APPEAL.

11 THE COURT: AND YOU DO UNDERSTAND THAT THE EFFECT
12 OF THE APPEARANCE BOND WOULD -- JUST TO CUT THROUGH IT -- IF
13 HE VIOLATED THE CONDITIONS OF THE RELEASE, IT WOULD BE A SLAM
14 DUNK SUMMARY JUDGMENT AGAINST YOU IN THE AMOUNT -- I MEAN,
15 THEY DON'T EVEN HAVE TO FILE A LAWSUIT. THEY TAKE THE
16 APPEARANCE BOND DOWN, AND THEY HAVE A JUDGMENT AGAINST YOU
17 AND YOUR PROPERTY.

18 IS YOUR PROPERTY OWNED IN YOUR NAME?

19 MR. MC AFFEE: IN MY AND MY WIFE'S NAME.

20 THE COURT: OKAY. AND YOUR LAW PRACTICE IS -- IS
21 IT A SOLE PRACTITIONER'S?

22 MR. MC AFFEE: IT IS, YOUR HONOR.

23 THE COURT: OKAY. WHAT KIND OF AN INCOME DO YOU
24 MAKE?

25 MR. MC AFFEE: WELL, IT'S OVER SIX FIGURES. DOES

1 THAT HELP? DO YOU WANT ME TO GO ANY MORE SPECIFIC THAN THAT?

2 THE COURT: NO, THAT'S ALL RIGHT.

3 SO, YOU UNDERSTAND THAT IT'S AUTOMATICALLY AT RISK
4 IF --

5 MR. MC AFFEE: I DO UNDERSTAND THE NATURE AND THE
6 SEVERITY OF THE OBLIGATION THAT I WOULD UNDERTAKE.

7 THE COURT: SO, WHY ARE YOU WILLING TO DO IT?

8 MR. MC AFFEE: WELL, I CAN GIVE YOU A LONG
9 EXPLANATION. I'LL GIVE YOU THE SHORT EXPLANATION. I KNOW
10 MR. SUTCLIFFE. I DON'T KNOW ANYBODY WHO HAS A GREATER
11 RESPECT FOR THE LAW THAN MR. SUTCLIFFE, NOTWITHSTANDING WHAT
12 THE FEDERAL PROSECUTOR HAS IMPLIED.

13 I HAVE BEEN MR. SUTCLIFFE'S ATTORNEY FOR THE
14 PURPOSE OF HELPING HIM UNDERSTAND THE LAW SO THAT HE COULD
15 CHALLENGE IT WITHOUT GOING OVER THE LINE. I THINK THAT'S
16 BEEN MY FUNCTION. I'VE NEVER KNOWN HIM TO BE PHYSICALLY
17 VIOLENT, THREATENING, EVEN IN SITUATIONS WHERE WE HAVE BEEN
18 THREATENED BY A GUN BY A POLICE OFFICER FOR NO REASON.

19 MR. SUTCLIFFE CERTAINLY HAS HAD MANY OPPORTUNITIES
20 TO BE UPSET OVER WHAT'S HAPPENED TO HIM, AND HE'S NEVER
21 EXHIBITED THEM IN A PHYSICAL MANIFESTATION WHATSOEVER.

22 I HAVE NO QUALMS THAT HE WILL MAKE ALL THE
23 APPOINTMENTS THAT THE COURT SETS FOR HIM, COMPLY WITH ALL THE
24 RULES AND REGULATIONS OR THE TERMS AND CONDITIONS THE COURT
25 SETS FOR HIM. AND I HAVE NO HESITATION WHATSOEVER TO PUT HIM

1 IN MY HOME. NONE WHATSOEVER.

2 THE COURT: OKAY. DOES THE GOVERNMENT HAVE
3 SPECIFIC QUESTIONS YOU NEED ME TO ASK.

4 MS. DUARTE: I DO, YOUR HONOR. IF THE COURT COULD
5 JUST INQUIRE OF MR. "MA CAFE" ON WHAT DATE --

6 MR. MC AFFEE: MC AFFEE.

7 MS. DUARTE: I'M SORRY?

8 MR. MC AFFEE: MC AFFEE.

9 MS. DUARTE: -- MC AFFEE, ON WHAT DATE THAT
10 PRELIMINARY INJUNCTION WAS ACTUALLY SERVED ON MR. SUTCLIFFE?

11 MR. MC AFFEE: WELL, SINCE IT'S NOT MY OBLIGATION
12 TO SERVE IT, I HAVE NO IDEA. YOU HAVE TO ASK THE PARTIES
13 WHOSE OBLIGATION IT IS TO SERVE.

14 MS. DUARTE: WELL, THE PARTIES WHOSE OBLIGATION TO
15 SERVE HAVE INDICATED TO THE BEST OF MY AND THE CASE AGENT'S
16 KNOWLEDGE THAT THEY WERE UNABLE TO LOCATE MR. SUTCLIFFE TO
17 SERVE IT. AND WE DID DETERMINE THAT IT WAS RIGHT AROUND THAT
18 TIME THAT HE DID MOVE TO NEW HAMPSHIRE FROM CALIFORNIA WHEN
19 SERVICE WAS ATTEMPTED. SO, THAT'S WHY -- BECAUSE THAT'S MY
20 UNDERSTANDING. THAT'S WHY I WAS WONDERING IF MR. MC AFFEE
21 HAD A BETTER UNDERSTANDING.

22 MR. MC AFFEE: I CAN ADDRESS AT LEAST -- WE DID
23 HAVE A COURT APPEARANCE BEFORE THE JUDGE WHO ISSUED THE
24 INJUNCTION AT WHICH THE PLAINTIFF'S COUNSEL ARGUED AN
25 INABILITY TO LOCATE MR. SUTCLIFFE. AND THE COURT APPRISED

1 THAT COUNSEL THAT THERE WERE OTHER MEANS OF OBTAINING SERVICE
2 BY THE COURT IF THEY COULD NOT LOCATE MR. SUTCLIFFE. AND TO
3 MY KNOWLEDGE, SINCE I'M THE ATTORNEY OF RECORD FOR MR.
4 SUTCLIFFE FOR THE DEFENSE, NO EFFORTS HAVE BEEN MADE TO
5 OBTAIN ANY KIND OF SERVICE OR AN ALTERNATE FORM OF SERVICE.
6 AND THAT'S BEEN AT LEAST SINCE OCTOBER OF LAST YEAR.

7 THE COURT: BUT THE COURT ISSUED AN INJUNCTION.
8 AND I TAKE IT THAT ONE OF THE CONDITIONS OF RELEASE WAS THAT
9 MR. SUTCLIFFE COMPLY WITH THE TERMS OF THAT INJUNCTION, THAT
10 THAT WOULD BE SPECIFIC ENOUGH THAT EVERYONE COULD UNDERSTAND
11 WHAT THOSE TERMS ARE.

12 MR. MC AFFEE: I BELIEVE THEY WOULD BE, YOUR HONOR.

13 THE COURT: OKAY. SO, IF THERE'S A DOUBT ABOUT
14 WHETHER MR. SUTCLIFFE REGARDS HIMSELF AS BEING SUBJECT TO
15 THAT INJUNCTION BECAUSE IT WASN'T SERVED, WE COULD GET PAST
16 THAT?

17 MR. MC AFFEE: SURE. BECAUSE THE INJUNCTION
18 PREVENTS HIM FROM PUBLISHING INFORMATION THAT HE OBTAINED
19 WHILE EMPLOYED.

20 SINCE I PRESUME ONE OF THE CONDITIONS THE COURT
21 WOULD ENJOIN HERE IF THE COURT WERE INCLINED TO RELEASE HIM
22 WOULD BE THAT HE WOULD HAVE NO ACCESS TO OR RIGHT TO USE A
23 COMPUTER OR ACCESS TO THE INTERNET. SO, THAT WOULD SEEM TO
24 ASSUAGE THAT PROBLEM.

25 THE COURT: COUNSEL, DID YOU HAVE SOMETHING YOU

1 WANTED --

2 MS. DUARTE: I WAS JUST GOING TO ADDRESS THE FACT
3 THAT -- TO REMIND THE COURT THERE'S ACTUALLY NO ALLEGATION
4 THAT THE NUMBERS WERE OBTAINED DURING THE COURSE OF --
5 NECESSARILY DURING THE TIME MR. SUTCLIFFE WAS EMPLOYED. IN
6 OTHER WORDS, THERE'S THE ALLEGATION, BUT THERE'S NO CHARGE
7 THAT INVOLVES UNLAWFUL INTRUSION INTO GLOBAL CROSSINGS'
8 SYSTEMS OR ANYTHING OF THAT NATURE.

9 THE COURT: RIGHT. WELL, THIS WOULDN'T BE -- I
10 THOUGHT, PERHAPS, YOU WERE CONCERNED THAT THERE WAS A
11 REPRESENTATION THAT THERE WAS AN INJUNCTION ISSUED, BUT HE'S
12 NOT REALLY SUBJECT TO THE INJUNCTION BECAUSE HE EVADED --

13 MS. DUARTE: THAT WAS MY --

14 THE COURT: -- SERVICE OR WHATEVER.

15 MS. DUARTE: THAT WAS MY CONCERN WAS THAT IT'S MY
16 UNDERSTANDING THAT HE WAS NEVER SERVED AND THAT HE LEFT THE
17 STATE. BUT YOU'VE ADDRESSED THAT, AND I APPRECIATE THAT.

18 YOUR HONOR, JUST SO I UNDERSTAND, THIS IS
19 CONTEMPLATING FOR MR. MC AFFEE AN UNSECURED APPEARANCE BOND;
20 IS THAT RIGHT?

21 THE COURT: IT WOULD BE A JUSTIFIED AFFIDAVIT OF
22 SURETY, WHICH REQUIRES THAT THE PROPERTY BE IDENTIFIED.

23 I THINK THAT MR. MC AFFEE IS AN APPROPRIATE SURETY
24 AND A RESPONSIBLE SURETY FROM WHAT'S BEFORE ME. AND I DON'T
25 THINK THAT A DEEDING OF PROPERTY WHEN THERE'S AN AFFIDAVIT OF

1 SURETY IS A NECESSARY CONDITION TO ASSURE -- REASONABLY
2 ASSURE APPEARANCE.

3 I MEAN, I WOULD HAVE A NUMBER OF CONDITIONS,
4 INCLUDING HAVING MR. MC AFFEE ACT AS A THIRD-PARTY CUSTODIAN,
5 WHICH DOES IMPOSE AN OBLIGATION OF REPORTING TO THE COURT
6 WITH RESPECT TO ANY VIOLATION OF THE CONDITIONS OF RELEASE.
7 AND THE CONDITIONS OF RELEASE WOULD INCLUDE THE INTENSIVE
8 PRETRIAL SERVICES MONITORING AND A CURFEW ON MR. SUTCLIFFE,
9 AND ANY NUMBER OF -- NO USE OF THE COMPUTER, AND, YOU KNOW,
10 KEEP-AWAY ORDERS FROM ANYONE WHO IS LISTED IN THE COMPLAINT
11 AS A POTENTIAL VICTIM. WE COULD GO THROUGH THE LIST OF
12 THEM. BUT THE SECURITY FOR THE BOND IS NOT A CRITICAL FACTOR
13 TO ME.

14 MS. DUARTE: I WAS JUST TRYING TO CLARIFY IT.

15 THE COURT: YES.

16 MS. DUARTE: SO, I -- WELL, I DON'T HAVE ANY MORE
17 FURTHER QUESTIONS OF MR. MC AFFEE, YOUR HONOR. I REMAIN
18 OPPOSED TO RELEASE.

19 AND, AGAIN, IF THE COURT -- I DON'T KNOW HOW CLOSE
20 THE COURT IS TO MAKING ITS DECISION. IF THE COURT IS
21 INCLINED TO RELEASE MR. MC AFFEE, I WOULD -- EXCUSE ME --
22 RELEASE MR. SUTCLIFFE TO MR. MC AFFEE, I WOULD REITERATE MY
23 REQUEST THAT THIS BE SUBJECT TO FURTHER INTERVIEW BY PRETRIAL
24 SERVICES, TO BE FOLLOWED BY ANOTHER HEARING IF PRETRIAL
25 SERVICES HAS ANY QUESTION WHATSOEVER ABOUT MR. MC AFFEE'S

1 FITNESS.

2 AND I WOULD ALSO ASK THE COURT ULTIMATELY TO STAY
3 THE ORDER UNTIL -- *Interrupt*

4 THE COURT: WELL, I WOULD CERTAINLY STAY THE ORDER
5 --

6 MS. DUARTE: THANK YOU. *Interrupt*

7 THE COURT: -- TO ALLOW YOU TO APPEAL IT. *Interrupt*

8 I'M SATISFIED BASED ON MY OWN INQUIRY OF MR. MC
9 AFFEE THAT -- YOU KNOW, COUPLED WITH THE RESIDENCE OF THE
10 THIRD-PARTY CUSTODIAN.

11 MS. DUARTE: WELL, OBVIOUSLY, YOUR HONOR, THERE ARE
12 A NUMBER OF QUESTIONS I WOULD LIKE TO ASK MR. MC AFFEE. IT
13 WAS MY UNDERSTANDING FROM WHAT WE DISCUSSED EARLIER THAT THAT
14 WASN'T THE COURT'S INTENTION. I WOULD LIKE TO ASK HIM IF HE
15 KNEW WHAT MR. SUTCLIFFE WAS DOING WITH THE WEBSITE, WHY HE
16 ALLOWED HIS LAW PRACTICE TO BE USED AS MR. SUTCLIFFE'S
17 ADDRESS, WHY HE ALLOWED MR. SUTCLIFFE TO ACTUALLY USE HIS
18 ADDRESS WHEN HE WAS SOLICITING MONEY TO CRACK, IF YOU WILL,
19 OR TO GET INTO THE PASSWORD PROTECTION ELEMENT OF HIS
20 WEBSITE. AND THAT'S ALL IN THE COMPLAINT.

21 I WOULD BE VERY INTERESTED IN ALL THAT. AGAIN, I'M
22 NOT CHALLENGING SPECIFICALLY MR. MC AFFEE'S FITNESS NOR
23 CERTAINLY HIS RESPECT OF THE LAW, BUT THERE ARE A NUMBER OF
24 VERY TROUBLING AND INTERESTING ASPECTS THAT I WOULD WANT TO
25 INQUIRE ABOUT.

1 HOWEVER, I UNDERSTAND THAT THE COURT HAS LIMITED
2 INQUIRIES INTO THE SURETIES. BUT JUST SO IT'S CLEAR,
3 OBVIOUSLY I HAVE A NUMBER OF THINGS I WOULD LIKE TO --

4 THE COURT: AND I DO UNDERSTAND THAT. *Interrupt*

5 MS. DUARTE: -- TO DISCUSS. BUT JUST SO THE COURT
6 UNDERSTAND THAT, THEN, I DON'T CHALLENGE THE COURT'S
7 PROCESSES. I HAVE GREAT RESPECT FOR THAT.

8 BUT BECAUSE I'VE NEVER HAD A HEARING -- A DETENTION
9 HEARING BEFORE THIS COURT, I'M NOT AT WHAT STAGE OF THE
10 PROCESS THE COURT IS IN, AND THAT'S WHY I WAS JUST CAREFUL TO
11 LAY OUT WHAT MY REQUEST WOULD BE.

12 THE COURT: WELL, WHAT I DON'T WANT TO LOSE SIGHT
13 OF IS WHAT THE PURPOSE OF THE DETENTION HEARING IS.

14 AND I UNDERSTAND THE GOVERNMENT'S QUESTIONS WITH
15 RESPECT TO -- WHICH, I TAKE IT, ARE ISSUES THAT THE
16 GOVERNMENT WOULD CONSIDER TO AFFECT MR. MC AFFEE'S
17 APPROPRIATENESS AS A SURETY AND A THIRD-PARTY CUSTODIAN.

18 I AM TAKING INTO CONSIDERATION THE FACT THAT THE
19 GOVERNMENT IS NOT A HUNDRED PERCENT COMFORTABLE WITH MR. MC
20 AFFEE'S ROLE. BUT A THIRD-PARTY SURETY IS JUST ONE OF THE
21 CONDITIONS THAT I'M LOOKING AT TO AFFECT -- TO DETERMINE
22 WHETHER THERE ARE -- YOU KNOW, MY ALTERNATIVE IS, ARE THERE
23 ANY TERMS AND CONDITIONS THAT I CAN SET THAT WILL REASONABLY
24 ASSURE ME THAT THERE'S NOT A DANGER TO THE COMMUNITY VERSUS
25 MAKING A DETERMINATION THAT THE DETENTION ORDER WITHOUT

1 PREJUDICE WOULD NOT BE REVISITED. AND THAT WAS A DETENTION
2 ORDER THAT THE JUDGE DID NOT SEE ANY TERMS AND CONDITIONS.

3 I DO APPRECIATE THE GOVERNMENT'S CONCERNS. I DON'T
4 THINK IT'S GOING TO BE APPROPRIATE FOR THE SCOPE OF THIS
5 PROCEEDING TO PUT MR. MC AFFEE IN A POSITION WHERE HE'S
6 ANSWERING ESSENTIALLY POTENTIALLY INCRIMINATING --

7 MS. DUARTE: DIFFICULT QUESTIONS, YOUR HONOR.

8 THE COURT: OKAY. RIGHT.

9 MS. DUARTE: I UNDERSTAND.

10 THE COURT: BUT I CERTAINLY -- I CERTAINLY
11 UNDERSTAND THAT THE GOVERNMENT HAS THOSE CONCERNS. AND I'M
12 FACTORING THAT IN.

13 MS. DUARTE: AND AS IS OBVIOUS, YOUR HONOR, FROM
14 THE COMPLAINT AND FROM THE TRANSCRIPT OF THE HEARING AND FROM
15 A VARIETY OF OTHER SOURCES, MR. SUTCLIFFE HAS WHAT SOME MIGHT
16 CONSIDER SOME UNORTHODOX BELIEFS -- WHICH IS FINE. THAT'S
17 HIS RIGHT. THAT'S NO PROBLEM.

18 BUT, AGAIN, AS TO THE APPROPRIATENESS OF THE
19 SURETY, IF THESE BELIEFS ARE PERHAPS SHARED BY MR. MC AFFEE,
20 WHO MAY AS WELL -- I MEAN, IT'S MY UNDERSTANDING, AND PLEASE
21 TELL ME IF I'M WRONG, THAT HE'S THE ONE THAT THE COURT IS
22 BASICALLY COUNTING ON TO NOT JUST PUT UP HIS REPUTATION AND,
23 I UNDERSTAND, HIS MONEY, BUT ALSO TO -- HE'S THE ONE IN A
24 POSITION TO REPORT BASICALLY BESIDES PRETRIAL SERVICES -- TO
25 REPORT PROBLEMS AND VIOLATIONS.

1 AGAIN, THE COURT UNDERSTANDS MY CONCERN. I JUST
2 WANT TO STATE IT FOR THE RECORD.

3 THE COURT: YES. AND YOU'RE ABSOLUTELY RIGHT.
4 IT'S IN ADDITION TO PRETRIAL SERVICES.

5 MS. DUARTE: AND THAT'S SOMETHING THAT THE
6 GOVERNMENT --

Interrupt

7 THE COURT: YOU KNOW, WE REALLY -- YOU'VE PUT YOUR
8 FINGER ON SOMETHING THAT IS A CONCERN. WE REALLY HAVE TO BE
9 CAREFUL -- I MEAN, EVEN WHEN YOU START OUT WITH A CASE
10 THAT'S BASED ON SPEECH OVER THE INTERNET, YOU OBVIOUSLY GAVE
11 A LOT OF THOUGHT, AND THE LEGISLATURE HAS GIVEN A LOT OF
12 THOUGHT TO CRAFTING LAWS THAT BALANCE FREE SPEECH AGAINST
13 THREATS TO SOCIETY.

14 I'M NOT QUESTIONING AT ALL THAT THIS IS AN
15 APPROPRIATE CASE TO BRING. AND AS I SAID, THESE ARE WHAT I
16 CONSIDER TO BE SERIOUS CHARGES. BUT THE FIRST AMENDMENT IS
17 LOOMING THERE AS A GLOBAL CONTEXT FOR THE ENTIRE PROSECUTION.
18 AND, THEN, YOU'RE RIGHT, IT DOES APPEAR, AT LEAST THERE'S
19 SOME SUGGESTION, THAT MR. SUTCLIFFE WOULD HOLD SOME
20 UNCONVENTIONAL VIEWS.

21 BUT NEITHER IS THAT CRIMINAL -- WHICH NO ONE IS
22 SUGGESTING AT ALL -- NOR IS IT DANGEROUS.

23 MS. DUARTE: NOT NECESSARILY DANGEROUS, YOUR HONOR.

24 THE COURT: NOT NECESSARILY DANGEROUS.

25 MS. DUARTE: BUT IN THIS CONTEXT, THESE THREATS --

1 I MEAN, I DON'T KNOW IF I BROUGHT IT UP EARLIER, BUT, YOU
2 KNOW, EVEN THE "I AM NOW ARMED," YES, THERE'S A CONTEXT
3 AROUND IT, WHICH, PERHAPS, SUGGESTS THAT IT ALSO IS BUSINESS
4 CONNECTED --

5 THE COURT: BUT EVEN IF IT'S ARMED WITH
6 INFORMATION, IF IT'S INFORMATION THAT COULD BE ABUSED, THAT'S
7 A -- I'M NOT QUESTIONING THAT THE PEOPLE --

8 MS. DUARTE: BUT HE WAS ARMED AS WELL. I MEAN, A
9 RIFLE WAS FOUND IN HIS HOUSE AT THE TIME OF THE WARRANT.

10 THE COURT: YES.

11 MS. DUARTE: I MEAN, I'M NOT JUST TALKING ABOUT
12 SPEECH. I JUST WANT THE COURT TO BE CLEAR ON THAT.

13 THE COURT: NO, NO, I UNDERSTAND THAT. AND I
14 UNDERSTAND THE CONCERN THAT THIS COULD ESCALATE. AND BELIEVE
15 ME, IF THERE WERE -- IF THERE WERE REAL INDICIA OF THAT, THAT
16 I DIDN'T -- YOU KNOW, IF THERE WAS ANYTHING ABOUT USING THAT
17 RIFLE, OR ANYTHING IN HIS PAST CONDUCT -- I MEAN, YOU HAVE
18 SOME CRIMINAL RECORD, BUT IT'S NOT -- IT REALLY WOULD NOT
19 RISE TO THE LEVEL, I DON'T THINK, IN AND OF ITSELF CERTAINLY,
20 OF POSING A REALISTIC THREAT OF VIOLENCE.

21 MS. DUARTE: BUT CERTAINLY, YOUR HONOR, THAT IS NOT
22 PART OF THE 875(C), AND I KNOW THE COURT'S NOT SAYING IT IS.
23 BUT 875(C) DOESN'T EVEN NECESSARILY REQUIRE AN INTENT TO
24 CARRY OUT OR ANY OF THOSE THINGS.

25 THE COURT: NO, NO. I'M NOT SUGGESTING THAT IT'S

1 AN ELEMENT OF THE OFFENSE AT ALL.

2 MS. DUARTE: AND WE HAVE VERY REAL FEAR HERE ON THE
3 PART OF THE PEOPLE WHO HAVE TO LOOK AT THEMSELVES IN THEIR
4 HOUSES AND MR. SUTCLIFFE'S THREATS AND LISTEN TO SOUND WAVE
5 FILES SAYING -- CALLING THEM, FORGIVE MY LANGUAGE, YOUR
6 HONOR, "BITCH" AND ALL KINDS OF OTHER THINGS, AND KNOW THAT
7 THIS MAN BASICALLY HAS IT IN FOR THEM.

8 AND WHETHER OR NOT IT'S PART OF HIS, IF YOU WILL,
9 FREE SPEECH, I MEAN, THAT'S SOMETHING THAT 875 -- IN 875
10 CHARGES, THEY'RE REGULARLY EMAILS, THINGS OF THAT NATURE.
11 WHERE YOU DON'T HAVE TO BE STANDING RIGHT THERE WITH THE GUN
12 TO SOMEBODY'S HEAD FOR IT TO BE THREATENING.

13 THE COURT: CLEARLY. CLEARLY NOT. CLEARLY YOU
14 COULD PROVE THIS CASE WITHOUT ANY THREAT OF VIOLENCE AT ALL.

15 AGAIN, I JUST -- I DON'T WANT TO LOSE SIGHT -- AND
16 I APPRECIATE THAT THIS MUST HAVE BEEN FLUSHED OUT IN TERMS OF
17 THE CHARGES MUCH MORE IN NEW HAMPSHIRE.

18 BUT WHAT CAME OUT OF THAT WAS A FINDING THAT THE
19 DEFENDANT'S LACK OF TIES IN CALIFORNIA IN A SPECIFIC
20 DIRECTION -- IF THERE WERE MORE INFORMATION THAT ESTABLISHED
21 HIS TIES IN CALIFORNIA, THAT THAT WOULD MAKE A DIFFERENCE.
22 AND I THINK IT'S INESCAPABLE THAT THERE IS THAT INFORMATION.

23 MS. DUARTE: BUT HOW DO HIS TIES NEGATE THE DANGER,
24 YOUR HONOR? I MEAN, THE COURT DIDN'T FIND THAT IT WAS A
25 FLIGHT RISK, WHICH --

1 THE COURT: NO, BUT HIS TIES -- BUT THAT WAS A
2 CONSIDERATION FOR THE COURT, AND IN A WAY THAT MAKES SENSE TO
3 ME. AS I SAID, I COULD REALLY PUT MYSELF IN THE POSITION OF
4 THE JUDGE THERE, WHO'S LOOKING AT THESE ALLEGATIONS THAT ARE
5 SERIOUS ALLEGATIONS OF CONDUCT THAT ANY OF US WOULD FIND
6 FRIGHTENING IF IT WERE DIRECTED TO US. I COULDN'T UNDERSTAND
7 THAT MORE.

8 AND NOT KNOWING WHAT MR. SUTCLIFFE'S SITUATION
9 WOULD BE IN TERMS OF TIES IN CALIFORNIA. KNOWING THAT,
10 OBVIOUSLY, HE HAD SOME TIES HERE, BUT THEY DIDN'T APPEAR TO
11 BE VERY COMMENDABLE TIES. THEY APPEARED TO RELATE TO A
12 DISPUTE THAT HAD LED TO THIS CONDUCT.

13 THE AVAILABILITY OF A MEMBER OF THE BAR WITHOUT ANY
14 CRIMINAL RECORD OF HIS OWN, WHO IS CERTAINLY ECONOMICALLY A
15 RESPONSIBLE SURETY, AS AN ADDITIONAL FACTOR TO PRETRIAL
16 SERVICES' SUPERVISION, WHICH I WOULD ALWAYS CONSIDER VERY
17 SERIOUSLY IN THIS KIND OF A CASE, IS A FACTOR THAT'S -- I'M
18 FINDING IT HARD TO SAY THAT IN LIGHT OF THAT PROFFER, IN
19 LIGHT OF MR. MC AFFEE'S AVAILABILITY, AND ALL OF THE OTHER
20 CONDITIONS THAT WE'RE TALKING ABOUT BEING ABLE TO CRAFT, THAT
21 THESE ARE NOT CONDITIONS THAT COULD REASONABLY ASSURE THE
22 SAFETY OF THE COMMUNITY.

23 MS. POTASHNER: YOUR HONOR, COULD I --

24 THE COURT: I'LL CONSIDER ADDING ELECTRONIC
25 MONITORING TO IT.

1 MS. DUARTE: I WAS JUST GOING TO ASK IF THE COURT
2 WOULD CONSIDER THAT.

3 THE COURT: BECAUSE THAT WOULD ADDRESS AN ADDITIONAL
4 ISSUE.

5 MS. DUARTE: BECAUSE WE WOULD -- OBVIOUSLY WE WOULD
6 REQUEST THAT IF THE COURT IS INCLINED TO --

7 THE COURT: YES.

8 I'M SORRY. GO AHEAD, COUNSEL.

9 MS. POTASHNER: THANK YOU, YOUR HONOR.

10 I JUST WANTED TO PUT A COUPLE OF THINGS ON THE
11 RECORD BECAUSE APPARENTLY THIS IS -- THEY'RE GOING TO BE
12 ASKING FOR A STAY.

13 I THINK IT'S IMPORTANT -- THE FACT THAT MR. MC
14 AFFEE IS HERE BEFORE THE COURT, I THINK THAT DOES SPEAK TO
15 HIS -- TO THE LEVEL OF DANGEROUSNESS THAT THE COMMUNITY WOULD
16 HAVE WITH MR. SUTCLIFFE OUT THERE IN THE COMMUNITY. WHEN HE
17 WAS IN NEW HAMPSHIRE, IT WAS PROBABLY ENVISIONED THAT HE
18 WOULD JUST BE WANDERING THE STREETS OF LOS ANGELES. AND THAT
19 WOULD MAKE HIM A MUCH MORE DANGEROUS PERSON THAN SOMEBODY
20 WHO'S UNDER THE WING OF A PERSON WHO IS A MEMBER OF THE
21 CALIFORNIA STATE BAR.

22 AND I ALSO THINK IN TERMS OF MR. MC AFFEE'S
23 REPUTATION AND IN TERMS OF HIM BEING APPROPRIATE, IT'S VERY
24 SIGNIFICANT TO REMEMBER THAT HE IS A MEMBER OF THE BAR. AND
25 THAT MEANS SOMETHING. HE'S GONE THROUGH RIGOROUS TESTING OF

1 HIS MORAL TURPITUDE. HE WAS DEEMED TO BE APPROPRIATE TO BE A
2 MEMBER OF THE BAR. THAT IS NOT SOMETHING THAT SHOULD BE
3 TAKEN LIGHTLY. THAT'S SOMETHING THAT THERE ARE COMMITTEES AND
4 THERE ARE INTERVIEWS. AND THERE'S HISTORY. ALL OF THAT IS
5 LOOKED AT WHEN SOMEBODY BECOMES A MEMBER OF THE BAR.

6 IN ADDITION, IT'S IMPORTANT TO KNOW THAT HE IS IN
7 GOOD STANDING WITH THE BAR. THAT WASN'T BROUGHT UP BEFORE.
8 THAT HE DOESN'T HAVE ANY DISCIPLINARY RECORD. SO, HE IS A
9 SOLID MEMBER OF THE BAR. I THINK THAT IS EXTREMELY
10 SIGNIFICANT, AND IT SPEAKS DIRECTLY TO WHETHER OR NOT STEVEN
11 SUTCLIFFE WOULD BE DANGEROUS IF HE WAS IN THE COMMUNITY.

12 I WOULD ASK THE COURT TO CONSIDER -- I UNDERSTAND
13 THE COURT IS CONSIDERING ELECTRONIC MONITORING. I'D ASK THE
14 COURT TO CONSIDER NOT IMPOSING ELECTRONIC MONITORING AT THIS
15 TIME, BUT ALLOWING INTENSIVE SUPERVISION, ALLOWING MR. MC
16 AFFEE TO REPORT ANY SORT OF DISCREPANCY.

17 A CURFEW IS APPROPRIATE. NO USE OF THE COMPUTER IS
18 APPROPRIATE. A KEEP-AWAY ORDER IS APPROPRIATE AS WELL.

19 BUT I DON'T THINK THAT ELECTRONIC MONITORING IS
20 NECESSARY WHEN YOU HAVE SOMEONE BEING APPOINTED AS A
21 CUSTODIAN ON TOP OF INTENSIVE SUPERVISION.

22 AND I'D SUBMIT ON THOSE POINTS.

23 THE COURT: ALL RIGHT.

24 DO YOU WANT TO BE HEARD FURTHER?

25 MS. DUARTE: I DO WANT TO REITERATE MY REQUEST FOR

1 ELECTRONIC MONITORING AND NOTE THAT MR. MC CATHY MAY BE A --

2 MR. MC AFFEE: MC AFFEE.

3 MS. DUARTE: MC AFFEE, EXCUSE ME.

4 -- MAY BE A CUSTODIAN. HOWEVER, IT'S CLEAR FROM
5 HIS SIX-FIGURE INCOME THAT HE DOES WORK AND HE DOES COME AND
6 GO FROM THE HOUSE. AND HE'S NOT GOING TO BE THERE WATCHING
7 MR. SUTCLIFFE ALL THE TIME BY ANY MEANS.

8 SO, WE WOULD ASK FOR THE MONITORING CONDITION AGAIN
9 IF THE COURT IS INCLINED, OVER OUR OBJECTION, TO RELEASE MR.
10 SUTCLIFFE.

11 THE COURT: OKAY. I THINK I WOULD IMPOSE THE
12 ELECTRONIC MONITORING.

13 ALL RIGHT. I'M GOING TO SET THE BOND IN THE AMOUNT
14 OF A 75,000-DOLLAR APPEARANCE BOND WITH A JUSTIFIED AFFIDAVIT
15 OF SURETY TO BE SIGNED BY MR. MC AFFEE.

16 THE DEFENDANT IS TO BE SUBJECT TO INTENSIVE
17 PRETRIAL SERVICES' SUPERVISION. HE'S TO SURRENDER PASSPORT,
18 IF HE HAS ONE, TO THE CLERK OF THE COURT. NO PASSPORT, THEN,
19 I NEED A DECLARATION THAT HE DOESN'T HAVE A PASSPORT.

20 TRAVEL IS RESTRICTED TO THE CENTRAL DISTRICT OF
21 CALIFORNIA WITHOUT COURT PERMISSION.

22 I HAVE ONE OTHER SURETY REQUIREMENT. I'M GOING TO
23 REQUIRE THAT HIS BROTHER SIGN A 10,000-DOLLAR AFFIDAVIT OF
24 SURETY AS WELL. THAT DOES NOT NEED TO BE JUSTIFIED, BUT I
25 WANT A FAMILY MEMBER ALSO TO BE A SURETY.

1 THE DEFENDANT IS NOT TO ENTER THE PREMISES OF ANY
2 AIRPORT, SEAPORT, RAILROAD OR BUS TERMINAL THAT PERMITS EXIT
3 FROM THE CONTINENTAL UNITED STATES OR THE AREA OF RESTRICTED
4 TRAVEL WITHOUT COURT PERMISSION.

5 THE DEFENDANT IS TO RESIDE WITH MR. MC AFFEE.

6 THE DEFENDANT IS TO AVOID ALL CONTACT, DIRECTLY OR
7 INDIRECTLY, WITH ANY PERSON WHO IS IDENTIFIED AS A VICTIM IN
8 THE COMPLAINT. AND THAT WOULD INCLUDE ANY OF THE GLOBAL
9 CROSSING EMPLOYEES, ANY PAST OR CURRENT GLOBAL CROSSING
10 EMPLOYEE, WHOSE INFORMATION IS AT ISSUE THERE IN THE
11 COMPLAINT.

12 THE DEFENDANT IS NOT TO POSSESS ANY FIREARM,
13 AMMUNITION, DESTRUCTIVE DEVICE, OR ANY OTHER DANGEROUS
14 WEAPON. AND IN ORDER TO DETERMINE COMPLIANCE WITH THAT
15 PROVISION, THE DEFENDANT IS TO AGREE TO SUBMIT TO A SEARCH OF
16 HIS PERSON OR PROPERTY BY PRETRIAL SERVICES IN CONNECTION
17 WITH THE UNITED STATES MARSHAL.

18 ALL RIGHT. THE DEFENDANT IS TO PARTICIPATE IN A
19 HOME-CONFINEMENT PROGRAM AND TO ABIDE BY THE REQUIREMENTS OF
20 THE PROGRAM, INCLUDING ELECTRONIC MONITORING OR OTHER
21 LOCATION VERIFICATION SYSTEM, AS DETERMINED BY PRETRIAL
22 SERVICES. AND IF PRETRIAL DETERMINES THAT THE DEFENDANT IS
23 ABLE TO PAY ALL OR PART OF THE COSTS OF THAT MONITORING,
24 THEN, HE'S ORDERED TO PAY THE COSTS.

25 ALL RIGHT. AND IT'S A HOME DETENTION REQUIREMENT,

1 WHICH IS THAT THE DEFENDANT IS RESTRICTED TO HIS RESIDENCE AT
2 ALL TIMES, EXCEPT FOR EMPLOYMENT, EDUCATION, RELIGIOUS
3 SERVICES, MEDICAL, SUBSTANCE ABUSE OR MENTAL HEALTH
4 TREATMENT, ATTORNEY VISITS AND COURT OBLIGATIONS, EXCEPT AS
5 APPROVED -- THOSE ALL HAVE TO BE PREAPPROVED BY PRETRIAL
6 SERVICES.

7 ALL RIGHT. THE DEFENDANT IS NOT TO POSSESS OR BE
8 AFFORDED ACCESS, EITHER IN THE HOME OR THE WORK PLACE OR TO
9 ANY OTHER LOCATION -- OR IN ANY OTHER LOCATION TO ANY DEVICE
10 THAT ALLOWS INTERNET ACCESS EXCEPT AS APPROVED BY PRETRIAL
11 SERVICES.

12 AND TO INSURE COMPLIANCE WITH THAT CONDITION, THE
13 DEFENDANT IS TO AGREE TO A SEARCH OF HIS PERSON OR PROPERTY
14 BY PRETRIAL SERVICES IN CONJUNCTION WITH THE MARSHAL.

15 ALL RIGHT -- OH. AND, THEN, IN ADDITION, THE
16 DEFENDANT IS TO COMPLY WITH ALL TERMS OF THE PRELIMINARY
17 INJUNCTION ISSUED IN THE STATE COURT GLOBAL CROSSING VERSUS
18 SUTCLIFFE ACTION.

19 MS. DUARTE: YOUR HONOR, JUST ONE CLARIFICATION.
20 THE COURT INDICATED THAT HE WAS NOT TO HAVE ANY CONTACT WITH
21 ANY DEVICE PERMITTING INTERNET ACCESS.

22 IS THE COURT ALSO RESTRICTING, AND WE ASK THAT THE
23 COURT ALSO RESTRICT HIS ACCESS TO COMPUTERS IN GENERAL.
24 BECAUSE THERE ARE A VARIETY OF WAYS FOR SOMEONE WHO'S VERY
25 SKILLED TO CIRCUMVENT ACCESS, AND THAT'S WHY WE ASK FOR THAT

1 PROVISION.

2 MS. POTASHNER: WELL, IF I COULD JUST BE HEARD ON
3 THAT.

4 THE COURT: YES.

5 MS. POTASHNER: I THINK THAT IT IS OBVIOUSLY
6 APPROPRIATE NOT TO HAVE ANY INTERNET ACCESS. HOWEVER, IF HE
7 IS GOING TO BE CONFINED TO HIS HOME, AND IF HE'S INTERESTED
8 IN LOOKING AND HELPING IN HIS LEGAL DEFENSE, HE MAY BE
9 WANTING TO LOOK AT CD ROMS WITH LAW ON IT. AND THAT WOULD BE
10 REALLY THE ONLY WAY THAT HE WOULD HAVE ANY ACCESS TO LEGAL
11 MATERIALS.

12 SO, I THINK THAT -- UNLESS HE HAS ACCESS TO HARD
13 BOOKS, THAT'S THE ONLY WAY HE CAN LOOK AT LAW. AND I EXPECT
14 THAT HE'S GOING TO WANT TO PARTICIPATE VIGOROUSLY IN HIS
15 DEFENSE. SO, I WOULD -- I THINK THAT KEEPING SOMEONE OFF THE
16 INTERNET IS SUFFICIENT BECAUSE IT'S CONTAINED THEN.

17 THE COURT: YES. I THINK THAT THE COMPUTER -- I
18 MEAN, IF YOU HAD IT ON A LAPTOP WITHOUT A MODEM OR SOMETHING
19 LIKE THAT, I DON'T --

20 MS. DUARTE: PERHAPS IF YOU --

21 THE COURT: I MEAN, GRANTED I DON'T UNDERSTAND IT.
22 IT'S SORT OF MAGICAL TO ME. BUT I CAN'T SEE HOW YOU COULD
23 ACCESS ANYTHING.

24 MS. DUARTE: DOES MR. MC AFFEE HAVE INTERNET ACCESS
25 ON HIS COMPUTER AT HOME? -- MAY I ASK? ON THE COMPUTER THAT

1 MR. SUTCLIFFE WOULD BE USING, IS THERE A STATIC OR DYNAMIC IP
2 ADDRESS ASSOCIATED WITH THAT? DOES HE HAVE ACCESS?

3 MR. MC AFFEE: IF I MAY ADDRESS THE COURT?

4 THE COURT: MM-HMM.

5 MR. MC AFFEE: I HAVE A PORTABLE COMPUTER THAT MR.
6 SUTCLIFFE CAN HAVE ACCESS TO THAT. ALSO, IT HAS A PROGRAM
7 LOADED FOR THE USE OF CD ROM LIBRARY -- LEGAL LIBRARY. IT'S
8 PORTABLE. SO, IT'S NOT HOOKED UP TO THE INTERNET.

9 THE COURT: OKAY. WHAT IF WE RESTRICT HIS COMPUTER
10 USE TO A LAPTOP PORTABLE COMPUTER.

11 MS. DUARTE: MAY I HAVE JUST A MOMENT, YOUR HONOR.

12 (PAUSE IN PROCEEDINGS.)

13 MS. POTASHNER: WHAT MR. MC AFFEE IS SAYING TO ME,
14 AND TO JUST THE COURT EVEN MORE INFORMATION, WHAT HE'S SAYING
15 IS HE BELIEVES THAT FOR HIM TO BE A CUSTODIAN -- A GOOD
16 CUSTODIAN TO STEVEN SUTCLIFFE, HE WOULD WANT TO BRING HIM TO
17 HIS LAW OFFICE EVERYDAY SO HE COULD PHYSICALLY BE IN HIS
18 PRESENCE. LEAVING HIM AT HOME, PERHAPS ALONE, HE'S A LITTLE
19 MORE WORRIED.

20 I DON'T KNOW WHAT THE COURT WANTS TO DO WITH THAT
21 INFORMATION, BUT THERE IS SOME LOGIC TO THAT.

22 MR. MC AFFEE: MAY I? I'M SORRY, YOUR HONOR.

23 THE COURT: MM-HMM.

24 MR. MC AFFEE: HAVING HIM IN MY OFFICE ALSO GIVES
25 HIM ACCESS TO THE LEGAL LIBRARY IN MY OFFICE. I COULD PUT

1 HIM TO WORK AND MAKE HIM USEFUL. HE WON'T BE SITTING AT HOME
2 STEWING AS IT WERE. AND I HAVE A BETTER CONTROL. I HAVE A
3 SOLO PRACTICE. IT'S A SMALL OFFICE. HE CAN'T HIDE IN MY
4 OFFICE. AND I HAVE JUST BETTER ABILITY TO CONTROL WHAT HE
5 DOES, YOU KNOW, WHEN I COULD PHYSICALLY BE THERE WITH HIM.

6 WHEN I GO TO COURT, HE CAN COME TO COURT WITH ME
7 AND SIT IN THE BACK OF THE COURT WHILE I DO MY THING.

8 IT SEEMS TO ME THAT I CAN BE A MUCH BETTER AND
9 EFFECTIVE CUSTODIAN OVER HIM IF I AM TRULY BEING HIS
10 CUSTODIAN AND NOT BEING A BABYSITTER THAT LEAVES HIM FOR
11 EIGHT OR NINE OR TEN HOURS A DAY TO HIS OWN DEVICES.

12 THE COURT: WELL --

13 MS. DUARTE: WE OBJECT TO THAT, YOUR HONOR.

14 THE COURT: I'M GOING TO LEAVE IT RIGHT NOW WITH
15 THE HOME DETENTION AND THE ELECTRONIC MONITORING AND THE LACK
16 OF COMPUTER ACCESS.

17 BY BEING HIS CUSTODIAN -- I MEAN, I UNDERSTAND, AND
18 I APPRECIATE THE DILIGENCE, BUT I DON'T EXPECT IT'S POSSIBLE
19 FOR YOU TO KEEP MR. SUTCLIFFE PHYSICALLY IN YOUR CONTROL 24
20 HOURS A DAY.

21 MR. SUTCLIFFE, YOU HAVE TO BE RESPONSIBLE FOR
22 YOURSELF IN A LOT OF WAYS.

23 YOU UNDERSTAND THAT, CORRECT?

24 OKAY. I'M GOING TO LIMIT THE COMPUTER ACCESS TO A
25 LAPTOP WITH NO CONNECTIONS. AND THE NO INTERNET ACCESS

1 APPLIES TO THINGS OTHER THAN THE COMPUTER TOO. I KNOW YOU
2 CAN DO THAT ON YOUR PALM PILOT NOW.

3 NOTHING THAT ALLOWS INTERNET ACCESS. AND THE HOME
4 DETENTION ORDER WILL STAND WITH THE ELECTRONIC MONITORING
5 BECAUSE I'M GOING TO BE RELYING ON PRETRIAL SERVICES A LOT
6 TOO.

7 ALL RIGHT.

8 MS. POTASHNER: TWO OTHER BRIEF THINGS, YOUR HONOR.

9 THE COURT: YES.

10 MS. POTASHNER: NUMBER ONE, APPARENTLY THERE ARE
11 REGISTERED FIREARMS THAT ARE LOCKED UP APPROPRIATELY IN MR.
12 MC AFFEE'S HOUSE. I WANTED TO ALERT THE COURT TO THAT.
13 BECAUSE YOU SAID NO ACCESS TO FIREARMS. I DON'T BELIEVE HE'S
14 GOT ACCESS, BUT I JUST WANT YOU TO KNOW THEY ARE IN THE
15 HOUSE.

16 MS. DUARTE: WE ASK THAT THOSE BE REMOVED.

17 MR. MC AFFEE: YOUR HONOR, LET ME JUST -- AGAIN, MY
18 WIFE AND I ARE LICENSED FOSTER PARENTS. THE GUNS -- FIRST OF
19 ALL, MR. SUTCLIFFE DOES NOT AND WOULD NOT HAVE ACCESS TO
20 THEM. AND AS REQUIRED BY THE COUNTY OF LOS ANGELES, THEY ARE
21 LOCKED SECURELY IN A CABINET THAT HE CANNOT GAIN ACCESS TO.
22 IT WOULD BE VERY DIFFICULT TO REMOVE THEM. THERE ARE A
23 NUMBER OF FIREARMS IN THAT CABINET. HE DOESN'T KNOW WHERE
24 THE CABINET IS. THERE'S SIMPLY NO WAY HE COULD HAVE ACCESS
25 TO IT. BECAUSE WE HAVE CHILDREN IN THE HOME ON OCCASION

1 THROUGH THE FOSTER CARE SYSTEM. SO, THAT'S ALREADY BEEN
2 ADDRESSED BY THE COUNTY OF LOS ANGELES.

3 MS. DUARTE: YOUR HONOR, I THINK UNLESS THE COURT
4 IS INCLINED TO ORDER OTHERWISE, I THINK THAT EVEN IF THE
5 COURT WERE INCLINED TO ALLOW THAT, THAT PRETRIAL SERVICES
6 WOULD HAVE A SERIOUS PROBLEM WITH THAT. I THINK THAT THEY
7 REGULARLY REQUIRE THAT THERE BE NO FIREARMS IN THE HOME.

8 BUT I WOULD, AGAIN, RENEW MY REQUEST THAT THAT --
9 THOSE FIREARMS BE TAKEN OUT OF THAT HOME AND PUT SOMEWHERE
10 SAFE AND AWAY FROM MR. SUTCLIFFE AS SOON AS POSSIBLE BEFORE
11 HE'S ACTUALLY RELEASED TO MONITORING IN THAT SITUATION.

12 THE COURT: YOU KNOW, MR. MC AFFEE, I'LL JUST TELL
13 YOU, I COULDN'T HAVE HIM LIVE IN THE HOME IF THE FIREARMS ARE
14 THERE. AND I APPRECIATE YOU FULLY PROTECT THEM. AND YOU HAVE
15 A LOT OF MOTIVATION WITH THE CHILDREN NOT TO HAVE THEM.

16 BUT IT'S A PERSONAL THING AS MUCH AS ANYTHING, THAT
17 THAT WOULD BE A REQUIREMENT THAT THERE NOT BE FIREARMS IN THE
18 HOME.

19 MR. MC AFFEE: YOUR HONOR, I'LL HAVE TO TALK TO
20 COUNSEL ABOUT THIS. THE TWO CONDITIONS THAT THE COURT IS
21 IMPOSING, WHICH I THINK ARE IMPRACTICAL FOR MY ACTING AS A
22 SURETY, HAVE TO BE ADDRESSED.

23 I DON'T BELIEVE THAT I'M COMFORTABLE ACTING AS A
24 SURETY, THE CUSTODIAN FOR A PERSON OVER WHOM I DON'T HAVE THE
25 RIGHT TO PHYSICALLY CONTROL THEIR ACTIONS.

1 THE COURT: MM-HMM.

2 MR. MC AFFEE: I'M CONCERNED ABOUT THAT.

3 THE ISSUE OF THE FIREARMS ALSO CONCERNS ME.

4 THERE'S ABSOLUTELY NO HISTORY OF MR. SUTCLIFFE OF EVER USING
5 A FIREARM OR THREATENING WITH A FIREARM OR EVER PHYSICALLY
6 THREATENING ANYBODY WITHOUT A FIREARM. AND TO IMPOSE THAT
7 KIND OF AN OBLIGATION ON ME AND MY FAMILY AND ON HIM, I'D
8 HAVE TO GIVE THIS SERIOUS CONSIDERATION. BECAUSE I DO -- I
9 AM A COLLECTOR. I DO HAVE A VERY LARGE COLLECTION OF
10 FIREARMS. IT WOULD BE AN INCREDIBLY DIFFICULT THING TO
11 TRANSPORT THAT THREE-TON CABINET SOMEWHERE ELSE. I DON'T
12 KNOW IF I COULD PHYSICALLY MOVE IT WITHOUT HIRING A SERVICE
13 TO MOVE IT.

14 THOSE WEAPONS COULDN'T BE MORE SECURE IF THEY WERE
15 IN YOUR JUDGE'S CHAMBERS.

16 BUT THAT CONCERNS ME LESS THAN NOT BEING ABLE TO BE
17 PHYSICALLY ABLE TO WATCH OVER HIM. I'M NOT COMFORTABLE WITH
18 HIM BEING ALONE IN MY HOUSE, EIGHT, NINE HOURS A DAY, WITHOUT
19 ANYBODY BEING THERE AND GUARANTEEING TO THE COURT THAT HE
20 CANNOT GET ACCESS TO THE INTERNET. I HAVE COMPUTERS AT MY
21 HOME. THEY ALL HAVE COMPUTER INTERNET ACCESS ABILITY. IF
22 I'M NOT THERE TO WATCH HIM, OR MY WIFE ISN'T THERE TO WATCH
23 HIM, AND I DO TRUST MR. SUTCLIFFE TO BE RESPONSIBLE FOR
24 HIMSELF, BUT YOU'RE ASKING MY FAMILY TO PUT UP A SECURITY FOR
25 A PERSON OVER WHOM I DON'T HAVE CONTROL OVER.

1 SO, IF YOU GIVE ME CONTROL OVER HIM, I'D BE HAPPY
2 TO DO THAT. IF YOU'RE NOT GOING TO GIVE ME CONTROL OVER HIM,
3 I'M NOT SURE I'M WILLING TO DO THAT. AND I WOULD THEN HAVE
4 TO TALK TO MY FAMILY ABOUT THAT.

5 THE COURT: WELL, I UNDERSTAND THAT. YOU KNOW, I'M
6 NOT ASKING YOU TO DO IT. I'M REALLY NOT. I CAN UNDERSTAND
7 YOUR HAVING GREAT RESERVATIONS.

8 WELL, I SUPPOSE IT'S CONCEIVABLE THAT THE FIREARMS
9 ARE VERY SAFE. AND I HAVE NO REASON TO DOUBT YOUR SCRUPULOUS
10 CONTROL OVER THEM. BUT THE CONDITIONS THAT I'VE IMPOSED ARE
11 THE CONDITIONS THAT ALLOW ME TO SET THIS BOND. THEY DO NOT
12 REQUIRE THAT YOU UNDERTAKE THAT OBLIGATION BY ANY MEANS. AND
13 IT'S POSSIBLE THAT THERE ARE ALTERNATIVE SITUATIONS THAT
14 COULD BE PRESENTED TO ME THAT WOULD SATISFY ME JUST AS WELL.

15 BUT, YOU KNOW, YOU'VE BEEN HERE THROUGH THIS WHOLE
16 PROCESS, AND IT OBVIOUSLY FOLLOWS ON A LONG PROCESS THAT
17 HAPPENED A COUPLE OF DAYS AGO. THIS IS NOT AN EASY CALL.

18 SO, I'M DRAWING A LINE WHERE I'M COMFORTABLE
19 DRAWING THE LINE. YOU ARE CERTAINLY UNDER NO OBLIGATION.
20 AND I WOULD UNDERSTAND IT. AND I WOULD EXPECT MR. SUTCLIFFE
21 WOULD UNDERSTAND IF YOU WERE NOT COMFORTABLE UNDERTAKING
22 THOSE RESPONSIBILITIES.

23 BUT I HAVE TO -- I'M PREPARED TO ACCEPT YOUR
24 ASSESSMENT OF YOUR WILLINGNESS TO ACT AS A RESPONSIBLE PARTY.

25 BUT YOU WOULD NEVER BE THE PRIMARY RESPONSIBLE

1 PARTY. THE PRIMARY RESPONSIBLE PARTY IS SITTING RIGHT THERE.
2 AND NEITHER YOU NOR I CAN ASSURE HIS COMPLIANCE.

3 I'VE SET THE CONDITIONS THAT DEFINE MY COMFORT
4 LEVEL. AND THAT'S ALL I CAN DO.

5 MS. POTASHNER: YOUR HONOR, IS HE BEING ORDERED
6 RELEASED UPON FILING OF BOTH OF THE AFFIDAVITS?

7 MS. DUARTE: WE ASK FOR A STAY, YOUR HONOR.

8 THE COURT: WELL, I WILL -- YES, I WILL. I'LL STAY
9 IT UNTIL --

10 MS. DUARTE: TUESDAY CLOSE OF BUSINESS, YOUR HONOR.

11

12 THE COURT: TUESDAY, CLOSE OF BUSINESS?

13 MS. DUARTE: PIA IS MONDAY MORNING.

14 THE COURT: UNTIL MONDAY CLOSE OF BUSINESS.

15 BECAUSE IF YOU WANT TO --

16 MS. DUARTE: CAN I HAVE TUESDAY, 10 O'CLOCK. ONLY
17 BECAUSE THE CLERK'S OFFICE, CLOSING SO EARLY, AND SOMETIMES
18 PIA GOES LATE. AND I WOULD HAVE TO DETERMINE THE JUDGE AND
19 THEN FILL OUT THE APPROPRIATE FORMS AND GET THEM SUBMITTED.
20 SO, I HAVE TUESDAY, TEN O'CLOCK, I HAVE AN HOUR AND A HALF
21 AFTER THE CLERK'S OFFICE OPENS.

22 THE COURT: THAT'S FINE. BECAUSE IT'S GOING TO BE
23 RELEASED TO PRETRIAL ONLY ANYWAY BECAUSE THEY'RE GOING TO
24 HAVE TO SET UP THE --

25 MS. DUARTE: I WAS GOING TO SAY, I DON'T ENVISION

1 IT ACTUALLY HAPPENING ANY SOONER THAN THAT.

2 THE COURT: NO, YOU'RE RIGHT. YOU'RE RIGHT.

3 MS. DUARTE: I'M NOT TRYING TO BE OBSTRUCTIONISTIC.

4 THE COURT: NO, NO, I UNDERSTAND. I UNDERSTAND.

5 OKAY. ALL RIGHT. ANYTHING FURTHER?

6 MS. POTASHNER: NO, I DON'T THINK SO, YOUR HONOR.

7 THE COURT: OKAY. THANK YOU.

8 MS. DUARTE: CAN I JUST HAVE A MOMENT, YOUR HONOR?

9 THE COURT: OH, DID YOU -- DID YOU HAVE --

10 MS. POTASHNER: SHE ASKED FOR A MOMENT.

11 (GOVERNMENT COUNSEL CONFERRING WITH AGENT.)

12 MS. DUARTE: NO, YOUR HONOR. THANK YOU.

13 THE COURT: ALL RIGHT. THANK YOU.

14 MS. POTASHNER: THANK YOU, YOUR HONOR.

15 (PROCEEDINGS CONCLUDED.)

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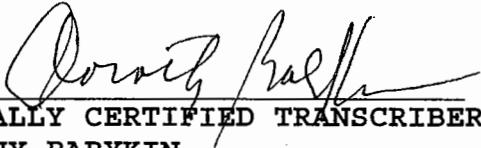
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C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.


FEDERALLY CERTIFIED TRANSCRIBER
DOROTHY BABYKIN

2/19/05
DATED