

COPY

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 ---

4 HONORABLE A. HOWARD MATZ, DISTRICT JUDGE PRESIDING

5 ---

6 UNITED STATES OF AMERICA,)
7)
8 PLAINTIFF,)
9)
10 VS.) CASE NO. CR 02-350(A)-AHM
11 STEVEN WILLIAM SUTCLIFFE,)
12)
13 DEFENDANT.)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS
14 MOTIONS CALENDAR

16 LOS ANGELES, CALIFORNIA
17 MONDAY, MARCH 1, 2004

18 MARGARET J. BABYKIN
19 COURT REPORTER
20 429J - U. S. DISTRICT COURTHOUSE
21 312 NORTH SPRING STREET
22 LOS ANGELES, CALIFORNIA 90012
23
24
25

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFF:

3 DEBRA W. YANG
4 UNITED STATES ATTORNEY
5 JOHN C. HUESTON
6 ASSISTANT UNITED STATES ATTORNEY
7 CHIEF, CRIMINAL DIVISION
8 BY: ELENA J. DUARTE
9 ASSISTANT UNITED STATES ATTORNEY
10 UNITED STATES DISTRICT COURT
11 312 NORTH SPRING STREET
12 LOS ANGELES, CALIFORNIA 90012
13

14 ON BEHALF OF THE DEFENDANT:

15 STEVEN WILLIAM SUTCLIFFE
16 PRO SE

17 **STAND-BY COUNSEL**
18 DAVID REED
19 ATTORNEY AT LAW
20 3699 WILSHIRE BOULEVARD
21 SUITE 850
22 LOS ANGELES, CALIFORNIA 90010
23

24 ALSO PRESENT:

25 JACK R. WILLIS
ATTORNEY AT LAW
3255 WILSHIRE BOULEVARD
SUITE 1701
LOS ANGELES, CALIFORNIA 90010

I N D E X

CR 02-350(A) -AHM

MARCH 1, 2004

PROCEEDINGS: HEARING ON ORDER TO SHOW CAUSE RE: CONTEMPT

1 LOS ANGELES, CALIFORNIA; MONDAY, MARCH 1, 2004; 4:10 P.M.

2 THE CLERK: ALL RISE. THIS COURT IS AGAIN IN
3 SESSION.

4 THE HONORABLE A. HOWARD MATZ PRESIDING.

5 THE COURT: GOOD AFTERNOON. WELCOME.

6 PLEASE BE SEATED.

7 THE CLERK: CALLING ITEM NUMBER 8,
8 CR 02-350(A), U.S.A. VERSUS STEVEN WILLIAM SUTCLIFFE.

9 COUNSEL, STATE YOUR APPEARANCES, PLEASE.

10 MS. DUARTE: GOOD AFTERNOON, YOUR HONOR.

11 ELENA DUARTE FOR THE UNITED STATES.

12 THE COURT: GOOD AFTERNOON.

13 THE DEFENDANT: GOOD AFTERNOON.

14 STEVEN WILLIAM SUTCLIFFE PRESENT, CHAINED.

15 THE COURT: GOOD AFTERNOON.

16 MR. WILLIS: JACK WILLIS APPEARING SPECIALLY FOR
17 MR. MCAFEE, APPEARING SPECIALLY ALSO.

18 MR. REED: AND GOOD AFTERNOON, YOUR HONOR.

19 DAVID REED, ADVISORY COUNSEL.

20 THE COURT: OKAY. THANK YOU, MR. REED, FOR
21 APPEARING. I WILL DEAL WITH MR. WILLIS' STATUS SHORTLY.

22 WE ARE HERE ON THE APPLICATION OF THE GOVERNMENT
23 FOR AN ORDER HOLDING MR. SUTCLIFFE IN CIVIL CONTEMPT FOR
24 FAILING TO RETURN CERTAIN EVIDENCE AND OTHER MATERIALS THAT
25 HE WAS ORDERED TO RETURN.

1 SINCE THAT APPLICATION WAS FILED, THERE HAVE BEEN A
2 NUMBER OF DEVELOPMENTS, PRIMARILY, I THINK IT'S FAIR TO SAY,
3 INVOLVING MR. MCAFEE, WHO IS NOT HERE. BUT AS I SAID, I WILL
4 DEAL WITH HIS ABSENCE LATER.

5 I WANT YOU TO BRING ME UP-TO-DATE ON WHAT IS THE
6 ULTIMATE PRACTICAL QUESTION OF IMPORTANCE, WHICH IS, WHAT DO
7 YOU HAVE THAT YOU ARE ENTITLED TO GET. AND AS A RESULT OF MY
8 PREVIOUS ORDERS, WHAT ARE YOU MISSING.

9 MS. DUARTE: YOUR HONOR, THE STATUS ON WHAT I HAVE
10 AS VERSUS PREVIOUS ORDERS REMAINS THE SAME AS IN MY -- IF I
11 COULD HAVE JUST A MOMENT -- MY JANUARY 20TH STATUS FILING
12 WHEREIN I TOLD THE COURT IN MY DECLARATION THAT I HAD
13 RECEIVED SIX CDS FROM MR. SUTCLIFFE -- FIVE OF WHICH APPEARED
14 TO BE RESPONSIVE TO THIS COURT'S ORDER. SINCE THEN, I HAVE
15 NOT RECEIVED ANY ADDITIONAL ITEMS.

16 THE COURT: WELL, WHAT ABOUT THE MATERIAL THAT
17 ACCORDING TO HIS LETTERS MR. MCAFEE SAID WAS AVAILABLE TO BE
18 PICKED UP.

19 DID YOU ATTEMPT TO PICK IT UP?

20 MS. DUARTE: I DID NOT.

21 THE COURT: CAN YOU EXPLAIN WHY.

22 MS. DUARTE: YES, YOUR HONOR.

23 IN THE FIRST LETTER, WHICH IS DATED FEBRUARY 23RD,
24 I RECEIVED THAT THE AFTERNOON OF FEBRUARY 25TH. I WAS
25 PREPARING FOR TRIAL. I ALSO KNEW THAT I WAS SCHEDULED TO BE

1 IN THIS COURT MONDAY. SO, I DID NOT ASK THE AGENTS WHETHER
2 THEY WOULD BE WILLING TO GO PICK IT UP, NOR DID I MAKE ANY
3 ARRANGEMENTS.

4 AND THEN I RECEIVED THE SECOND LETTER, I BELIEVE ON
5 FRIDAY, WHICH WAS BY FAX, WHEREIN MR. MCAFEE WAS A LITTLE BIT
6 MORE CONTENTIOUS ON MY READING OF IT. AND I THOUGHT IT BEST
7 IF I SEE HOW TODAY WAS RESOLVED BEFORE I MADE ANY EFFORT TO
8 ACTUALLY SEND THE AGENTS TO MEET WITH MR. MCAFEE.

9 ADDITIONALLY, YOUR HONOR, HIS LETTERS TO ME
10 INDICATED THAT HE HAD 48 FLOPPY DISKS AND NOTHING ELSE, WHICH
11 IS NOT EVEN CLOSE TO WHAT I EXPECT THERE TO BE.

12 AND, SO, I DIDN'T -- I DIDN'T REALLY KNOW HOW TO
13 INTERPRET IT, YOUR HONOR.

14 THE COURT: WELL, I THINK IT'S REGRETTABLE THAT YOU
15 DIDN'T PICK UP WHAT HE IS OFFERING TO MAKE AVAILABLE BECAUSE
16 --

17 MS. DUARTE: WELL, I GOT --

18 THE COURT: -- HAD THAT BEEN DONE, OR, AT LEAST,
19 HAD IT BEEN ATTEMPTED, WHATEVER IS OF PRACTICAL CONCERN IN
20 THE SENSE THAT IT'S REQUIRED TO BE PRODUCED DIRECTLY OR
21 INDIRECTLY BY MR. SUTCLIFFE OR AGENTS WORKING WITH OR ON HIS
22 BEHALF, SUCH AS MCAFEE, WOULD BE CLEARER.

23 BEFORE I TRY TO FIGURE OUT HOW TO DEAL WITH THE
24 UNCERTAINTY OF RESULTS FROM THE FACT THAT MCAFEE'S OFFER
25 HASN'T BEEN TESTED YET, AND THE SINCERITY AND THE GOOD FAITH

1 OF IT HASN'T BEEN DETERMINED, I WANT TO MAKE SURE I
2 UNDERSTAND WHAT YOU ARE AND I AM DEALING WITH IN TERMS OF
3 SUPPOSED FAILURE BY MR. SUTCLIFFE TO PROVIDE THE REQUIRED
4 INFORMATION.

5 IN THE FEBRUARY 18TH EX PARTE APPLICATION, MS.
6 DUARTE, ON PAGE --

7 DO YOU HAVE THAT HERE?

8 MS. DUARTE: I DO.

9 THE COURT: ON PAGE 3, IN THE PART THAT IS THE
10 MEMORANDUM OF POINTS AND AUTHORITY.

11 MS. DUARTE: YES, YOUR HONOR.

12 THE COURT: IN PARAGRAPH 1 AND ESPECIALLY ON LINES
13 10 AND 11, YOU SAY THAT THERE IS AN EXCEPTION TO WHAT YOU ARE
14 -- TO WHAT I ORDERED BE RETURNED -- THAT EXCEPTION BEING,
15 QUOTE,

16 "THE ORIGINAL ELECTRONIC EVIDENCE THAT WAS
17 PREVIOUSLY RETURNED TO MR. SUTCLIFFE IN ITS
18 ORIGINAL ELECTRONIC FORM."

19 ARE YOU BY THAT LANGUAGE REFERRING TO THE MATERIAL
20 THAT WAS DISCUSSED SEVERAL TIMES DURING THE COURSE OF THE
21 TRIAL THAT THE GOVERNMENT DEEMED NOT TO BE RELEVANT AND DID
22 NOT DUPLICATE?

23 MS. DUARTE: CORRECT.

24 THE COURT: AND THAT'S THE ONLY EXCEPTION?

25 MS. DUARTE: CORRECT.

1 THE COURT: NOW, I TAKE IT IT'S -- BECAUSE IT SEEMS
2 TO BE IMPLICIT IN THE GOVERNMENT'S POSITION THAT
3 REPRESENTATIVES OF THE BUREAU OF PRISONS HAVE ATTEMPTED TO
4 CARRY OUT THEIR AUTHORIZED POWER TO SEARCH MR. SUTCLIFFE'S
5 ACTUAL CELL AND REMOVE UNAUTHORIZED EQUIPMENT.

6 IS THAT CORRECT?

7 MS. DUARTE: NO, YOUR HONOR. IT'S MY UNDERSTANDING
8 THAT THEY WERE NOT WILLING TO SEARCH HIS CELL.

9 THE COURT: WHAT'S THAT UNDERSTANDING BASED ON?

10 MS. DUARTE: BASED ON THE COMMENTS MADE TO ME BY
11 MS. STANDERFER, WHO IS A LEGAL ADVISOR FOR BOP.

12 THEY HAD RETURNED TO ME -- AND BY THAT I MEAN, MDC
13 HAD RETURNED TO ME THROUGH MS. STANDERFER THE ITEMS IN THEIR
14 POSSESSION, WHICH WERE THE HARD DRIVES. AND WHEN I ASKED
15 ABOUT THE ITEMS WHICH WOULD BE IN MR. SUTCLIFFE'S CELL, THEY
16 SAID THAT MDC CONSIDERED THOSE TO BE HIS PERSONAL PROPERTY,
17 AND THAT I WOULD GET THOSE FROM HIM. THAT IS THE BEST --

18 THE COURT: AND THAT YOU WOULD GET THOSE FROM HIM?
19 WHAT --

20 MS. DUARTE: THAT I WOULD HAVE TO GET -- THAT I
21 WOULD GET THOSE FROM HIM.

22 THAT'S MY BEST RECOLLECTION OF IT, YOUR HONOR.

23 THE COURT: IS SHE HERE TODAY OR ANY REPRESENTATIVE
24 --

25 MS. DUARTE: NO, YOUR HONOR. THIS WAS BACK IN

1 DECEMBER.

2 THE COURT: AND THEREAFTER, MR. SUTCLIFFE DID
3 PROVIDE DIRECTLY TO THE AGENTS, I TAKE IT, SOME ITEMS,
4 RIGHT?

5 MS. DUARTE: SIX CDS. THAT'S CORRECT.

6 THE COURT: AND WHAT IS YOUR UNDERSTANDING? I
7 REALIZE IT MAY NOT BE CURRENT. AND IT MAY NOT BE COMPLETE OR
8 DIRECT. BUT WHAT IS YOUR UNDERSTANDING, AND WHAT IS YOUR
9 POSITION AS TO WHETHER MR. SUTCLIFFE AS OPPOSED TO ANYONE
10 ELSE IN THE WORLD HAS THE MATERIAL IN HIS POSSESSION AT MDC
11 THAT HE WAS ORDERED TO PRODUCE.

12 MS. DUARTE: I KNOW THAT HE HAD IT AT THE TIME OF
13 THE TRIAL BECAUSE THIS COURT ORDERED THAT IT BE PROVIDED TO
14 HIM. AND HE WAS WORKING WITH IT WITHIN HIS CELL. AND HE WAS
15 BRINGING IT TO COURT.

16 AND THEN FOUR DAYS AFTER THE CONCLUSION OF THE
17 TRIAL -- I SHOULD -- LET ME GO BACK.

18 AT THE CONCLUSION OF THE TRIAL, I OFFERED THIS
19 COURT A PROPOSED ORDER. THIS COURT ADDRESSED WHAT TO DO
20 ABOUT THE ELECTRONIC EVIDENCE. I OFFERED TO PROPOSE AN
21 ORDER. I DID SO. THE COURT SIGNED THE ORIGINAL ORDER FOR
22 RETURN OF EVIDENCE AND DISCOVERY FOUR DAYS AFTER THE
23 CONCLUSION OF THE TRIAL.

24 THE COURT: YES. THAT WAS ON DECEMBER 8TH. I HAVE
25 THAT HERE.

1 MS. DUARTE: CORRECT. SO, AT THE TIME THAT THE
2 COURT SIGNED THE ORDER, I WAS EXPECTING TO GET EVERYTHING
3 BACK THAT I PROVIDED TO MR. SUTCLIFFE THAT WAS COVERED BY THE
4 ORDER.

5 I DON'T HAVE ANY PERSONAL KNOWLEDGE IF ANYTHING
6 HAPPENED WITHIN THOSE FOUR DAYS.

7 THE COURT: BUT I AM VERY CONFUSED STILL.

8 WHAT IS IT -- DO YOU HAVE AN UNDERSTANDING NOW AS
9 TO WHETHER MR. SUTCLIFFE HAS ANY OF THESE MATERIALS IN HIS
10 POSSESSION?

11 MS. DUARTE: I DON'T KNOW WHETHER HE HAS THEM STILL
12 OR NOT.

13 THE COURT: AND WHAT WOULD -- WHAT WOULD BE YOUR
14 POSITION IF I WERE TO CONCLUDE EITHER THAT HE DOESN'T HAVE
15 THEM OR THAT THE GOVERNMENT HASN'T ESTABLISHED BY CLEAR AND
16 CONVINCING EVIDENCE THAT HE DOES HAVE THEM.

17 WHAT WOULD BE YOUR POSITION AS TO THIS APPLICATION
18 TO HOLD MR. SUTCLIFFE IN CONTEMPT?

19 MS. DUARTE: WELL, AS I STATED IN MY PAPERS, YOUR
20 HONOR, IT'S MY UNDERSTANDING THAT EITHER HE HAS THEM BY
21 CIRCUMSTANTIAL EVIDENCE, THE FACT THAT WE KNOW HE HAD THEM
22 DURING THE TRIAL, THE FACT THAT FOUR DAYS AFTERWARD THE COURT
23 ORDERED THEM -- ORDERED HIM TO GIVE THEM BACK, OR IN THE
24 INTERIM WHILE UNDER THE COURT'S ORIGINAL ORDER, HE HAS
25 DIVESTED HIMSELF OF THEM, WHICH MEANS THAT IT'S SELF-INDUCED

1 INABILITY TO COMPLY, WHICH THEN WOULD BE GROUNDS FOR CRIMINAL
2 CONTEMPT, THE WAY THAT I UNDERSTAND THE LAW.

3 THE COURT: BUT YOU ARE NOT SEEKING CRIMINAL
4 CONTEMPT.

5 MS. DUARTE: NOT AT THIS TIME BECAUSE I WANT THE
6 INFORMATION BACK.

7 THE COURT: YOU WANT THE INFORMATION. AND YOU WANT
8 THE EVIDENCE. AND THAT'S WHAT THE PURPOSE OF CIVIL CONTEMPT
9 WOULD BE.

10 ALL RIGHT. I WILL RETURN TO YOU LATER, MS.
11 DUARTE.

12 MR. SUTCLIFFE, LET ME JUST BE SURE THAT YOU
13 UNDERSTAND THE NATURE OF THIS PROCEEDING. YOU ARE WELCOME TO
14 SIT DOWN IF IT IS MORE COMFORTABLE FOR YOU TO DO SO.

15 THIS IS AN APPLICATION TO HOLD YOU IN CIVIL
16 CONTEMPT, NOT CRIMINAL CONTEMPT. THE GOVERNMENT WOULD HAVE
17 TO ESTABLISH THE BASIS FOR AN ORDER OF CONTEMPT TO ISSUE BY
18 CLEAR AND CONVINCING EVIDENCE.

19 THE PURPOSE OF THE APPLICATION IS BASICALLY TO GET
20 THE EVIDENCE -- NOT TO PUNISH YOU.

21 THE RIGHTS THAT YOU HAVE, AMONG OTHER THINGS, ARE
22 TO BE REPRESENTED BY COUNSEL. YOU JUST HEARD THE GOVERNMENT
23 LAWYER SAY IN RESPONSE TO A QUESTION I ASKED THAT -- I THINK
24 IT'S FAIR TO CONSTRUE HER RESPONSE TO BE THAT IF THERE IS NO
25 FINDING THAT YOU CURRENTLY IN YOUR POSSESSION AT MDC HAVE

1 THIS -- I'LL CALL IT "MISSING EVIDENCE," IT, THE GOVERNMENT,
2 MIGHT THEN SEEK -- AND I THINK IT WOULD PROBABLY HAVE TO DO
3 SO IN WRITING -- TO HOLD YOU IN CRIMINAL CONTEMPT FOR HAVING
4 VIOLATED THE DECEMBER 8TH, 2003 ORDER.

5 AND AS I THINK YOU ALREADY KNOW, IN TERMS OF THAT
6 POSSIBILITY, MEANING POSSIBILITY BEING HELD IN CRIMINAL
7 CONTEMPT, IT'S MY DUTY, I BELIEVE, TO ADVISE YOU THAT YOU
8 HAVE A RIGHT UNDER THE FIFTH AMENDMENT NOT TO DISCLOSE
9 INFORMATION THAT COULD TEND TO INCRIMINATE YOU OR WOULD
10 INCRIMINATE YOU OR PROVIDE A LEAD TO INFORMATION OR EVIDENCE
11 THAT WOULD PLACE YOU AT RISK OF BEING PROSECUTED AND/OR FOUND
12 GUILTY OF SOME KIND OF CRIME. AND IT WOULD BE A CRIME UNDER
13 CERTAIN CIRCUMSTANCES WILLFULLY AND KNOWINGLY TO DISOBEY A
14 COURT ORDER.

15 SO, I AM DOING THIS OFF THE TOP OF MY HEAD. BUT I
16 AM BASICALLY TRYING TO TELL YOU THAT ALTHOUGH I WOULD WELCOME
17 -- AND I HAVE A GUT FEELING IT MIGHT BENEFIT YOU -- TO KNOW
18 FROM YOUR LIPS WHAT IS GOING ON RIGHT NOW. WHAT -- AND BY
19 THAT I MEAN WHETHER YOU HAVE ANY OF THIS EVIDENCE IN YOUR
20 CUSTODY AT THE MDC -- YOU MIGHT BE WELL ADVISED NOT TO TELL
21 ME ONE WAY OR THE OTHER IN LIGHT OF THE RISK OF CRIMINAL
22 PROSECUTION THAT, AT LEAST BASED UPON MS. DUARTE'S COMMENTS,
23 MIGHT BE SOUGHT BY THE GOVERNMENT.

24 NOW, MR. REED IS HERE.

25 MR. REED, WOULD YOU ADDRESS THE COURT, PLEASE.

1 HAVE YOU DISCUSSED ANY OF THESE MATTERS WITH MR.
2 SUTCLIFFE?

3 MR. REED: NO, YOUR HONOR.

4 THE COURT: AND YOU DON'T HAVE ANY DIRECT OR
5 PERSONAL KNOWLEDGE ABOUT THE EVIDENCE THAT I DID ORDER TO BE
6 RETURNED TO THE GOVERNMENT.

7 IS THAT CORRECT?

8 MR. REED: THAT'S CORRECT. I DON'T.

9 THE COURT: OKAY.

10 MR. SUTCLIFFE, WOULD YOU LIKE MR. REED TO APPEAR
11 FOR YOU?

12 THE DEFENDANT: AS MUCH AS I WOULD LIKE TO SAY YES,
13 AT THIS POINT, THERE IS AN INHERENT **CONFLICT OF INTEREST**
14 BETWEEN MR. REED AND MYSELF. SO, HE WOULD BE UNABLE TO
15 EFFECTIVELY ASSIST ME ON --

16 THE COURT: INHERENT IN WHAT, MR. SUTCLIFFE?

17 THE DEFENDANT: IN THAT WE HAVE AN ONGOING CONFLICT
18 PURSUANT TO RELATED PREVIOUS HEARINGS OF WHICH HAVE NOT BEEN
19 RESOLVED OR MIGHT BE RESOLVED, BUT THEY ARE STILL OPEN. SO,
20 UNTIL THEY ARE CLOSED, THERE IS THAT CONFLICT.

21 SO, UNDER THE SIXTH AMENDMENT, HE COULD NOT
22 EFFECTIVELY ASSIST ME AS COUNSEL. HOWEVER, I WOULD
23 RESPECTFULLY REQUEST ASSISTANCE OF COUNSEL UNDER THE SIXTH
24 AMENDMENT AND PURSUANT TO THE GENERAL ORDERS AND THE RULES OF
25 THIS COURT AND THE CENTRAL DISTRICT AND NOT A

1 REPRESENTATIVE.

2 THE COURT: YOU WOULD REQUEST APPOINTMENT OF
3 COUNSEL IF THE MATTER TURNS CRIMINAL.

4 THE DEFENDANT: THAT IS CORRECT.

5 IT IS MY UNDERSTANDING READING THE ORDER BY THE
6 U.S. ATTORNEY FILED FEBRUARY 18TH, PAGE 7, NOTE 4,

7 "IN THE INSTANT CASE, IF IT IS" -- I AM READING
8 FROM IT NOW --

9 "IN THE INSTANT CASE, IF IT IS DETERMINED THAT
10 DEFENDANT IS UNABLE TO COMPLY WITH THE COURT'S
11 ORDERS, HIS, QUOTE, INABILITY, END QUOTE, WILL
12 NO DOUBT BE SELF-INDUCED AS HE WAS LAST IN
13 POSSESSION OF THE ITEMS SOUGHT BY THE ORDERS.
14 ADVANCING HIS POTENTIAL DEFENSE TO THE
15 CHARGE OF CIVIL CONTEMPT WILL, THUS, EFFECTIVELY
16 EXPOSE DEFENDANT TO CRIMINAL CONTEMPT SANCTIONS."

17 I THINK THAT JUST SPEAKS VOLUMES. SO, I WILL
18 INVOKE MY FIFTH AMENDMENT RIGHT NOT TO SAY ANYTHING IN MY --
19 THAT CAN BE USED AGAINST ME IN A COURT OF LAW.

20 AND I WILL SUBMIT TO, IF SHE WANTS TO BRING FORTH
21 CRIMINAL CHARGES, MY RIGHT UNDER THE SIXTH AMENDMENT TO
22 EFFECTIVE ASSISTANCE OF COUNSEL IN MY DEFENSE. AND I AGAIN
23 STRESS NOT A REPRESENTATIVE.

24 THE COURT: OKAY. I THINK ANOTHER THING YOU SHOULD
25 BE AWARE OF IS THAT IF I WERE TO MAKE A FINDING THAT YOU ARE

1 CIVILLY IN CONTEMPT OF AN OUTSTANDING COURT ORDER, THE
2 CONSEQUENCE OF THAT FINDING COULD BE THAT YOU ARE REQUIRED TO
3 SERVE AN ADDITIONAL PERIOD OF TIME IN CUSTODY UNTIL YOU CURED
4 THE CONTEMPT BY EITHER PRODUCING OR CAUSING TO BE PRODUCED
5 THE ITEMS THAT ARE COVERED BY MY PREVIOUS ORDER.

6 THE WAY THAT WOULD WORK -- THE LAW IS PRETTY CLEAR
7 ON THIS. I AM NOT SURE IF IT WAS BRIEFED BY THE GOVERNMENT
8 OR NOT -- IS THAT THE PERIOD OF CONFINEMENT MEANT TO COMPEL
9 YOU OR INDUCE YOU TO COMPLY WITH AN OUTSTANDING ORDER JUST TO
10 GET IT ACCOMPLISHED AND NOT FOR PUNISHMENT WOULD BE ADDED ON
11 TO WHATEVER TIME YOU HAVE ALREADY SERVED AND MIGHT CONTINUE
12 TO SERVE DEPENDING ON WHAT THE SENTENCE WILL BE.

13 FOR PRACTICAL PURPOSES, THAT WOULD BE EQUIVALENT TO
14 A CONSECUTIVE SENTENCE. THE LAW DEEMS IT TO BE AN
15 INTERRUPTION IN THE SENTENCE YOU ARE SERVING. SO, YOU
16 WOULDN'T GET CREDIT FOR THAT TIME. I AM NOT SURE HOW IT
17 WOULD SHAKE OUT. BUT THE BOTTOM LINE IS YOU WOULD SERVE MORE
18 TIME IN JAIL IF YOU FAILED TO COMPLY, EVEN IF YOU WERE NOT --
19 IF I HELD YOU IN CIVIL CONTEMPT, BUT EVEN IF YOU WERE NOT
20 FOUND GUILTY OF CRIMINAL CONTEMPT. SO, I WANTED TO ADVISE
21 YOU ABOUT THAT.

22 NOW, MR. WILLIS, I WANT YOU TO UNDERSTAND THAT
23 THERE IS NO SUCH THING AS SPECIAL APPEARANCES. I ASSUME YOU
24 ARE AN ATTORNEY.

25 ARE YOU A MEMBER OF THE BAR OF THIS COURT?

1 MR. WILLIS: YES, SIR.

2 THE COURT: AS A COURTESY TO YOU FOR HAVING COME
3 DOWN HERE, I WILL ALLOW YOU TO TELL ME -- ALTHOUGH, I AM NOT
4 SURE IT WILL HAVE ANY BEARING WHATSOEVER ON WHAT I INTEND TO
5 DO -- OF WHAT YOU KNOW ABOUT WHY MR. MCAFEE ISN'T HERE.

6 MR. WILLIS: WELL, FIRST OF ALL, YOUR HONOR, YOU
7 SHOULD BE AWARE THAT MR. MCAFEE IS CURRENTLY SUBJECT TO
8 KIDNEY STONE ATTACKS. THUS, HE IS INCAPABLE OF PREDICTING
9 HIS AVAILABILITY AT ALL.

10 SECONDLY, AS HAS BEEN DEMONSTRATED --

11 THE COURT: ARE YOU REPRESENTING TO ME -- I AM
12 INTERRUPTING YOU. BUT ARE YOU REPRESENTING TO ME THAT HE IS
13 NOT HERE BECAUSE HE JUST HAD AN ATTACK RELATING TO HIS KIDNEY
14 CONDITION?

15 MR. WILLIS: NO, SIR.

16 THE COURT: OKAY. WHAT IS YOUR SECOND POINT.

17 MR. WILLIS: SECONDLY, IT IS QUITE CLEAR THAT MR.
18 MCAFEE HAS TRIED TO COOPERATE WITH THIS -- THE REQUEST OF THE
19 U.S. ATTORNEY PRIOR TO RECEIVING ANY KIND OF INSTRUCTION FROM
20 THE COURT.

21 IN OTHER WORDS, BEFORE THERE WAS ANY EVEN ATTEMPT
22 TO NOTIFY HIM OF ANYTHING, HE TALKED TO THE U.S. ATTORNEY VIA
23 MAIL AND SAID COME AND GET THIS STUFF. AND, OBVIOUSLY, THE
24 U.S. ATTORNEY HAS INDICATED THAT SHE HAS NOT DONE THAT OR
25 MADE NO ATTEMPT TO DO THAT.

1 SECONDLY, I AM NOT FAMILIAR WITH A CODE SECTION OR
2 A RULE OF THE COURT, NOR IS THE U.S. ATTORNEY ABLE TO CITE ME
3 ONE JUST A MOMENT AGO, WHICH PERMITTED IN PERSONAM
4 JURISDICTION TO APPLY TO ANYBODY WHO IS A MEMBER OF THE
5 COURT. I WOULD APPRECIATE THE COURT'S INFORMATION ON THAT
6 SUBJECT, SO THAT I COULD CONSULT WITH MR. MCAFEE AND
7 APPROPRIATELY ADVISE HIM.

8 THE COURT: DO YOUR OWN HOMEWORK. OR HAVE HIM DO
9 HIS OWN HOMEWORK. IF YOU HAVE A DOUBT ABOUT MY JURISDICTION
10 TO ISSUE AN ORDER REQUIRING HIM TO APPEAR, YOU BETTER LOOK
11 INTO IT. I AM NOT GOING TO DO YOUR HOMEWORK FOR YOU.

12 AND I AM GOING TO ISSUE AN ORDER TO SHOW CAUSE
13 DIRECTED AT MR. MCAFEE AS TO WHY HE SHOULD NOT BE HELD IN
14 CONTEMPT AND SUBJECT TO SANCTIONS FOR FAILING TO APPEAR
15 TODAY.

16 IN THAT ORDER, I WILL RECITE THE FACT THAT AT LEAST
17 AS OF A FEW DAYS AGO, HE REPRESENTED IN WRITING TO THE
18 PROSECUTOR THAT HE WOULD BE PRESENT TODAY, EVEN THOUGH HE
19 DOUBTED, AS HE PUT IT, MY JURISDICTION TO ISSUE AN ORDER THAT
20 HE BE HERE.

21 MR. MCAFEE'S ABSENCE IS A TOTALLY DIFFERENT ISSUE,
22 HOWEVER, THAN THE QUESTION OF WHETHER MR. SUTCLIFFE IS
23 SUBJECT TO SOME KIND OF FINDING OF CONTEMPT AND SOME KIND OF
24 CONSEQUENCE FOR BEING IN CONTEMPT.

25 AND AS TO THAT, I DON'T -- I THINK PEOPLE HERE KNOW

1 ME WELL ENOUGH TO KNOW I DON'T LIKE TO MAKE A RULING THAT
2 WOULD BE LARGELY HYPOTHETICAL OR IN SOME WAY AT LEAST A
3 REFLECTION OF LESS THAN COMPLETE AND CURRENT INFORMATION.

4 SO, I AM DIRECTING THE GOVERNMENT TO -- I AM NOT --
5 I AM GOING TO TAKE THIS APPLICATION UNDER SUBMISSION. I AM
6 NOT GOING TO GRANT IT.

7 I AM DIRECTING THE GOVERNMENT PROMPTLY TO SEND OUT
8 THE AGENTS -- AND I MEAN TODAY, IF IT'S STILL FEASIBLE -- AND
9 OBTAIN EXACTLY AND COMPLETELY WHATEVER IT IS THAT MCAFEE
10 HAS.

11 IT'S A LITTLE UNCLEAR TO ME WHAT'S IN THESE BOXES
12 AND WHAT HE KEPT AND WHAT HE DIDN'T KEEP AND WHAT IT WILL
13 SHOW AS TO WHAT MR. SUTCLIFFE HAS. BUT THAT'S WHAT THE
14 GOVERNMENT SHOULD DO.

15 AND THEN YOU CAN FILE A SUPPLEMENTAL DECLARATION.

16 AND AFTER YOU DO THAT, I WILL SEE WHAT, IF ANY,
17 REMAINING BASIS TO CONSIDER THAT THERE IS NON-PRODUCTION
18 REMAINING -- DEFIANCE OR FAILURE TO COMPLY WITH ANY OF THE
19 TWO PREVIOUSLY ISSUED ORDERS FOR THE RETURN OF THE EVIDENCE.
20 AND ON THAT CLEARER AND MORE CURRENT RECORD, I MAY FIND IT
21 APPROPRIATE TO TAKE FURTHER ACTION.

22 I AM ALSO GOING TO ISSUE A WRITTEN ORDER TO THE
23 MARSHAL. AND I AM GIVING YOU THIS NOTICE SO IT DOESN'T COME
24 AS A SURPRISE TO YOU. I DON'T MEAN TO THE MARSHAL. I MEANT
25 TO THE BUREAU OF PRISONS -- TO OBTAIN FROM MR. SUTCLIFFE'S

1 CELL, IF THERE IS ANYTHING STILL THERE THAT HE WAS REQUIRED
2 TO RETURN, AND BRING HERE. AND TO HAVE IT BROUGHT HERE OR
3 BROUGHT AT LEAST TO THE GOVERNMENT.

4 WHAT I INTEND TO DO IS ATTACH THE COPY OF THE
5 INITIAL ORDER THAT I ISSUED ON DECEMBER 8TH BECAUSE THAT'S
6 ALL THAT MR. SUTCLIFFE WAS REQUIRED TO DO.

7 AND I WILL LEAVE IT TO THE PEOPLE WHO HAVE ACCESS
8 TO THIS EVIDENCE, IF ANY OF IT IS PRESENT, TO DECIDE WHETHER
9 OR NOT IT'S INCORPORATED INTO THE ORDER.

10 IF THERE IS STILL STUFF AT THE PRISON, AND THE BOP
11 GETS IT, AND TURNS IT OVER, IT MAY MOOT YET ADDITIONAL
12 PORTIONS OR ALL OF WHATEVER IT IS THAT CAUSED US TO HAVE TO
13 ASSEMBLE HERE THIS AFTERNOON.

14 DO YOU WANT TO BE HEARD?

15 MS. DUARTE: YES, I DO, YOUR HONOR.

16 I CAN TELL YOU THAT THE BOP WILL WANT TO BE HEARD
17 ON THIS BEFORE THE COURT ISSUES AN ORDER. SO, I AM LETTING
18 THE COURT KNOW THAT I AM FAIRLY CERTAIN THAT WHEN I TELL BOP
19 THE COURT'S ORDER, THEY WILL INDICATE THAT THEY SHOULD HAVE
20 BEEN HEARD ON IT.

21 THE COURT: WELL, I CAN -- YOU KNOW, I TEND TO GIVE
22 PEOPLE A RIGHT TO BE HEARD. I EVEN GAVE MR. WILLIS A RIGHT
23 TO BE HEARD. I CAN DEAL WITH THAT PROCEDURALLY. SO --

24 MR. WILLIS: IN THAT REGARD, YOUR HONOR --

25 THE COURT: -- THANKS FOR THE HEADS-UP.

1 MR. WILLIS: IN THAT REGARD, YOUR HONOR, I AM
2 PERFECTLY WILLING TO MAKE ARRANGEMENTS FOR PICK UP TOMORROW
3 AT MY OFFICE OF ALL THE MATERIAL MR. MCAFEE OFFERED.

4 THE COURT: YOU HAVE IT NOW, MR. WILLIS?

5 MR. WILLIS: NO. I SAID I WOULD MAKE ARRANGEMENTS
6 FOR IT TOMORROW AFTERNOON -- FOR TOMORROW AFTERNOON.

7 THE COURT: I DON'T RECOGNIZE YOU AS THE EQUIVALENT
8 OF MR. MCAFEE. YOU HAVE TO UNDERSTAND THAT. IF YOU WANT TO
9 WORK SOMETHING OUT WITH THE PROSECUTOR, I AM NOT GOING TO
10 BLOCK YOU. BUT I AM NOT GOING TO ACCEPT YOUR OFFER AS SOME
11 FORM OF COMPLIANCE OR GOOD FAITH ON THE PART OF MR. MCAFEE.
12 SO, YOU CAN EXPLAIN THAT TO HIM. AND YOU CAN PROCEED
13 ACCORDINGLY.

14 IF YOU WANT TO EXPEDITE THE -- WHAT I REGARD AS
15 VERY PRACTICAL DELIVERY BECAUSE I THINK THERE ARE FEWER
16 PROBLEMS HERE THAN WOULD APPEAR TO BE THE CASE, THAT'S FINE.
17 BUT YOUR GRANDSTAND STATEMENT DOESN'T ACCOMPLISH WHAT MR.
18 MCAFEE WAS REQUIRED TO DO.

19 MR. WILLIS: MR. MCAFEE --

20 THE COURT: MR. SUTCLIFFE -- MR. SUTCLIFFE, WOULD
21 YOU LIKE TO BE HEARD?

22 THE DEFENDANT: YES, YOUR HONOR.

23 I ANTICIPATED THE COURT RULING AS SUCH. AND I
24 BROUGHT WITH ME A PACKAGE OF MISCELLANEOUS -- WELL, ACTUALLY,
25 IT'S ALL THAT I COULD FIND THROUGHOUT MY -- I WENT THROUGH

1 EVERY FILE. I WENT THROUGH EVERY FOLDER. I WENT THROUGH
2 EVERY BASKET THAT I HAD IN MY CELL. AND THIS IS EVERYTHING
3 THAT IS IS MY CELL. SO, I ANTICIPATED THE COURT LOOKING FOR
4 SUCH MATERIAL. SO, I BROUGHT IT WITH ME. I AM WILLING TO
5 STIPULATE IF SOMEBODY WILL GIVE ME AN ITEMIZED LIST OF WHAT
6 THEY ARE TAKING HERE SO THAT WHATEVER IS NOT TAKEN CAN BE
7 RETURNED BACK OR IDENTIFIED. BECAUSE THAT'S BEEN MY PROBLEM
8 ALL ALONG, YOUR HONOR. I DON'T FEEL COMFORTABLE -- AND I'LL
9 STIPULATE NOW TO THE COURT -- THAT'S WHY I DID NOT TURN --
10 AFTER I MET WITH AGENT CUGNO AND GAVE HIM THE SIX I KNEW THAT
11 -- I KNOW HE WANTED ON THERE -- I KNEW CONTAINED VAST
12 AMOUNTS OF PERSONAL DATA THAT THE COURT AND EVERYBODY WAS
13 CONCERNED ABOUT. I EVEN WENT SO FAR TO GIVE HIM AN EXTRA ONE
14 THAT I WASN'T EVEN SURE OF WHICH THEY HAVE SAID IT WASN'T
15 NEEDED TO BE TURNED OVER. BUT I STILL BELIEVE IT WAS. BUT
16 THAT'S NEITHER HERE NOR THERE RIGHT NOW.

17 BUT EVERY TIME SOMETHING GOES INTO THE BOP'S
18 POSSESSION, IT SEEMS IT GETS LOST, OR IT GETS STOLEN, OR IT
19 TURNS UP MISSING, OR IT'S MISHANDLED, OR IT'S NEVER BROUGHT
20 INTO ME AT ALL AND SWORN THAT IT IS.

21 AND I REFER BACK TO THE VERY LADY WHO WE ARE
22 TALKING ABOUT HERE, MRS. STANDERFER, WHO I HAVE ALLEGED HAS
23 COMMITTED A VIOLATION OF 18 USC 1623 (A), TRYING TO COVER UP
24 HER INCOMPETENCE IN HANDLING THIS SENSITIVE MATERIAL. I
25 RECOGNIZE IT'S SENSITIVE. AND I'VE TAKEN EVERY PRECAUTION I

1 CAN TO PROTECT IT. IT'S NOT BEING DONE THE SAME WAY AT THE
2 BUREAU OF PRISONS. AND WHEN THEY SCREW UP, THEY SEEM TO
3 SCREW UP REALLY BIG. AND, THEN, THEY TRY TO COVER THEIR
4 BUTTS. AND I'LL REFER TO WAY BACK WHEN WHEN THE THREE
5 ORIGINAL CDS WERE TURNED UP MISSING.

6 ON THAT NOTE, YOUR HONOR --

7 THE COURT: OKAY. I'LL DIRECT THE CLERK TO PICK UP
8 THE FOLDER THAT'S ON THE DEFENSE TABLE.

9 (PAUSE IN PROCEEDINGS.)

10 THE DEFENDANT: AND I'D LIKE TO -- THERE IS
11 APPROXIMATELY -- I BELIEVE THERE IS APPROXIMATELY, AS I LAST
12 COUNTED, 44 -- BUT I WOULD LIKE IT RECONFIRMED -- INDIVIDUAL
13 CD ROMS. THREE FLOPPY DISKS WRAPPED UP IN RUBBERBANDS.

14 THE COURT: OKAY. THE MATERIAL THAT THE COURTROOM
15 DEPUTY CLERK HAS JUST PICKED UP WILL BE PLACED IN A SEALED
16 ENVELOPE. AND IT WILL BE GIVEN A LABEL THAT SAYS, "COURT
17 EXHIBIT AA."

18 I AM ORALLY DIRECTING THE CLERK TO GIVE AFTER THAT
19 THAT HAS BEEN DONE THE ENVELOPE AND ITS CONTENTS TO MS.
20 DUARTE.

21 I AM ORALLY DIRECTING MS. -- AND ORDERING MS.
22 DUARTE TO PROVIDE THE EQUIVALENT OF WHAT I THINK MR.
23 SUTCLIFFE WAS REQUESTING, WHICH IS, I THINK, A FAIR REQUEST,
24 NAMELY, A RECEIPT OR AN INVENTORY OF WHAT IT IS THAT IS IN
25 THAT MATERIAL. AND TO DO SO BY NOT LATER AND HAVE IT IN HIS

1 POSSESSION, MR. SUTCLIFFE'S POSSESSION, BY NOT LATER THAN
2 FRIDAY OF THIS WEEK. SO, I GUESS THAT WOULD BE MARCH 5TH.

3 AND YOU THEN CAN TAKE WHATEVER ADDITIONAL STEPS YOU
4 THINK ARE NECESSARY AND FACTUALLY WARRANTED AFTER YOU HAVE
5 DEALT WITH MCAFEE AND AFTER YOU HAVE DETERMINED WHAT IT IS
6 THAT'S IN THIS LIST.

7 FILE -- LODGE, I SHOULD SAY, WITH THE COURT A COPY
8 OF WHATEVER YOU PROVIDE TO MR. SUTCLIFFE ON FRIDAY SO THE
9 COURT RECORDS WILL REFLECT WHAT IT IS THAT HE TURNED OVER
10 TODAY.

11 I MAY HOLD OFF ON ISSUING THE ORDER TO THE BOP
12 PENDING RECEIPT OF THAT STATEMENT. I MAY NOT. I WILL HAVE
13 TO THINK ABOUT IT FURTHER.

14 I THINK THAT TAKES CARE OF ALL WE NEED TO NOW
15 BECAUSE I AM NOT FINDING MR. SUTCLIFFE IN CIVIL CONTEMPT.

16 AND I AM NOT IN ANY WAY VACATING THE PREVIOUS
17 ORDERS I ISSUED FOR THE PRODUCTION OF DOCUMENTS, NOR AM I
18 MAKING A FINDING THAT HE COMPLIED WITH THAT ORDER. I DON'T
19 THINK THE EVIDENCE AND THE FACTUAL RECORD BEFORE ME
20 SUFFICIENTLY CLEAR TO MAKE THAT FINDING.

21 MS. DUARTE: A QUESTION, YOUR HONOR.

22 THE COURT: YES.

23 MS. DUARTE: IF I MAIL THE LIST THAT THE COURT
24 WANTS TO MR. SUTCLIFFE AT MDC TOMORROW, TUESDAY, WILL THAT
25 COMPLY WITH THE --

1 THE COURT: YES. THAT WILL COMPLY.

2 MS. DUARTE: OKAY.

3 THE COURT: THAT'S FINE.

4 MS. DUARTE: AND THEN LODGE A COPY WITH THE COURT.

5 THE COURT: RIGHT.

6 MR. SUTCLIFFE.

7 THE DEFENDANT: YES, YOUR HONOR. THANK YOU.

8 I JUST WANTED TO BRING TO THE COURT'S ATTENTION
9 BEFORE WE ADJOURNED A -- YOUR CLERK WAS NICE ENOUGH TO MAKE
10 COPIES OF THIS FOR ME. I DEPOSITED -- IT WAS RECEIVED, BUT
11 NOT FILED. I NEVER HEARD ANYTHING BACK FROM ANYBODY. SO, I
12 AM JUST FOLLOWING UP ON IT. SO --

13 THE COURT: YOU JUST WANT TO --

14 THE DEFENDANT: IT'S JUST FOR --

15 THE COURT: -- FILE ANOTHER DOCUMENT.

16 IS THAT WHAT YOU ARE SAYING?

17 THE DEFENDANT: YES, YOUR HONOR.

18 IT WAS FOR DISCOVERY PURPOSES --

19 THE COURT: OKAY. WELL, I WILL LOOK AT THAT BACK
20 IN CHAMBERS.

21 THE DEFENDANT: YEAH.

22 THE COURT: AND I HAVE BEEN CONSISTENTLY AS A
23 MATTER OF, I THINK, FAIRNESS AND ALSO TO BE SIMPLE AND
24 PRACTICAL ABOUT THIS AUTHORIZED THESE DOCUMENTS TO BE FILED.
25 WE DUPLICATE THEM. WE SERVE THEM ON THE GOVERNMENT. AND WE

1 PRESERVE YOUR APPELLATE RIGHTS. SO, THAT'S PROBABLY WHAT I
2 WILL DO THIS TIME, TOO.

3 NOW, THE ONE THING I WANT TO POINT OUT IS THAT --
4 --

5 IS THERE ANYTHING ELSE YOU WANTED TO SAY?

6 MS. DUARTE: NO, YOUR HONOR.

7 THE COURT: WE HAVE A SENTENCE SCHEDULED FOR, I
8 BELIEVE, MARCH 22ND. IT APPEARS THAT THE PRESENTENCE REPORT
9 HAS BEEN CIRCULATED. I THINK I SAW SOME SENTENCING
10 MEMORANDUM THAT THE GOVERNMENT GAVE. I APPOINTED MR. REED TO
11 FUNCTION AS COUNSEL FOR MR. SUTCLIFFE FOR PURPOSES OF THIS
12 SENTENCING PROCEEDING. I DO THAT KNOWING THAT THUS FAR MR.
13 SUTCLIFFE HAS BEEN REPRESENTING HIMSELF WITH MR. REED AS
14 STANDBY COUNSEL.

15 YOU ARE NOT ONLY WELCOME, MR. SUTCLIFFE, BUT
16 STRONGLY ENCOURAGED TO FILE DIRECTLY AND IN YOUR OWN BEHALF
17 WHATEVER YOU WISH TO FILE FOR PURPOSES OF HAVING THE COURT
18 CONSIDER YOUR POSITION AS TO THE APPROPRIATE SENTENCE.

19 YOU NEED TO DO THAT PRETTY SOON.

20 THE DEFENDANT: WELL, YOUR HONOR, MY UNDERSTANDING
21 UNDER RULE 32(B) -- CORRECT ME IF I AM WRONG, PLEASE -- THAT
22 I AM SUPPOSED TO HAVE A COPY OF THE PSI AT LEAST 35 DAYS
23 BEFORE SENTENCING HEARING.

24 IS THAT CORRECT?

25 THE COURT: PSR.

1 THE DEFENDANT: PSR.

2 IS THAT CORRECT?

3 THE COURT: YES.

4 THE DEFENDANT: I CALCULATED THAT TO BE THE 17TH OF
5 LAST MONTH. I HAVE RECEIVED ZIP. ZERO. ZILCH.

6 THE COURT: IT MAY HAVE BEEN SENT TO MR. REED. I
7 DON'T KNOW WHAT THE PROBATION OFFICE --

8 MR. REED: GOOD POINT, YOUR HONOR. I HAVEN'T BEEN
9 NOTIFIED THAT THIS HAS BEEN ACCOMPLISHED. I PERSONALLY LEFT
10 MESSAGES WITH THE PROBATION OFFICE THAT AS SOON AS THAT
11 REPORT WAS DONE, I WANTED TO BE NOTIFIED.

12 IT WAS A COMPLETE SURPRISE WHEN THE COURT JUST SAID
13 THAT THIS PSR HAD BEEN FINISHED.

14 THE COURT: YES. I DON'T KNOW --

15 MR. REED: I HAVEN'T EVEN SEEN IT.

16 THE COURT: I DON'T KNOW WHEN IT WAS FINISHED. AND
17 I DON'T KNOW WHEN IT WAS LODGED WITH ME.

18 THE DEFENDANT: AND I STILL ONLY HAVE 14 DAYS --

19 MR. REED: AND I AM CERTAINLY NOT GOING TO BE READY
20 TO DO A BRIEF BY THE 22ND.

21 THE COURT: WELL, WE WILL HAVE TO CONTINUE THE
22 SENTENCE.

23 THE DEFENDANT: I DON'T --

24 THE COURT: I AM NOT GOING TO -- I AM NOT GOING TO
25 ACCELERATE THE SENTENCE.

1 THE DEFENDANT: WELL, I OBJECT TO THAT. AND I
2 DON'T WAIVE ANY RIGHTS RELATED TO THAT, YOUR HONOR. I AM
3 SURE THE COURT IS AWARE OF THAT.

4 I MEAN, I --

5 THE COURT: I WILL DEAL --

6 THE DEFENDANT: I DIDN'T ASK TO BE MADE -- I DIDN'T
7 ASK TO BE MADE MY OWN COUNSEL. BUT IF YOU ARE GOING TO MAKE
8 ME MY OWN COUNSEL, I WOULD AT LEAST HOPE THAT I WOULD BE
9 TREATED AS SUCH. AND I DON'T FEEL I AM EVEN GETTING TREATED
10 AS SUCH.

11 THE COURT: I DON'T UNDERSTAND WHAT YOUR POSITION
12 IS.

13 YOU DO WANT TO FILE SOMETHING DIRECTLY OR YOU
14 DON'T?

15 THE DEFENDANT: WELL, NO. I BELIEVE THAT ACCORDING
16 TO RULE 32, I HAD A RIGHT TO AT LEAST SEE THE REPORT 35 DAYS
17 SO I COULD AT LEAST START PREPARING ONE. SO, I HAVE 14 DAYS
18 TO FILE IT.

19 THE COURT: YOU'RE PROBABLY RIGHT. YOU WILL BE
20 GIVEN THAT OPPORTUNITY.

21 THE DEFENDANT: RIGHT. BUT, NOW, IT'S GOING TO BE
22 DELAYED.

23 IS THAT CORRECT?

24 THE COURT: WHAT'S GOING TO BE DELAYED?

25 THE DEFENDANT: MY SENTENCING.

1 THE COURT: YES, IF YOU WANT TO EXERCISE YOUR
2 RIGHTS. AND I THINK YOU SHOULD UNDER RULE 35.

3 THE DEFENDANT: RIGHT. BUT THAT AFFECTS OTHER
4 RIGHTS BY THE DELAY.

5 THE COURT: UNDER RULE 32, I THINK IT IS.

6 THE DEFENDANT: RIGHT.

7 THE COURT: WELL, THAT MAY BE, MR. SUTCLIFFE. BUT
8 IT'S RATHER --

9 THE DEFENDANT: AND THEN I HAVE ASKED FOR
10 DISCOVERY. I HAVE AT LEAST GIVEN EVERYBODY NOTICE THAT THERE
11 IS AN ONGOING CONTINUED VIOLATION OF MY RIGHTS TO DISCOVERY,
12 WHICH GOES TO GUILT. AND I WOULD REQUEST A FULL HEARING
13 RELATED TO THAT.

14 THE COURT: OKAY. WELL --

15 THE DEFENDANT: AND I WOULD ASK FOR --

16 THE COURT: I KNOW THAT YOU FILED A NUMBER OF
17 MOTIONS. SOME OF THEM I HAVE DENIED. AND SOME OF THEM, I AM
18 AWAITING A RESPONSE FROM THE GOVERNMENT.

19 MS. DUARTE: YOUR HONOR, IF I MAY BE HEARD
20 BRIEFLY.

21 I WILL GO BACK TO MY OFFICE, IF THE COURT WANTS ME
22 TO, AND COPY THE PSR AND SEND IT WHEN I MAIL MR. SUTCLIFFE'S
23 THING TOMORROW TO HIM THAT THE COURT ORDERED. I WILL SEND
24 HIM A COPY OF THE PSR WITH THAT.

25 THE COURT: AND FILE A PROOF OF SERVICE THAT YOU

1 DID SO.

2 MS. DUARTE: OKAY. AND I WILL ALSO --

3 THE COURT: AND MAKE A COPY FOR MR. REED.

4 MS. DUARTE: -- A COPY TO MR. REED AS WELL.

5 THE COURT: MR. REED, THE WRITER OF THE PSR APPEARS
6 TO BE --

7 MR. REED: NANCY O'CONNOR.

8 THE COURT: NO. YES, NANCY O'CONNOR. IT WAS
9 APPROVED BY SOMEBODY ELSE.

10 YOU CAN COMMUNICATE WITH HER, TOO.

11 BUT I DO WANT YOU, MR. REED, UNDER THE APPLICABLE
12 PROCEDURES, RULES, AND TIME SEQUENCES, CERTAINLY AS TO THE
13 LEGAL ISSUES, IF ANY, THAT MAY BE -- AND I HAVEN'T READ THE
14 PSR -- I WANT YOU TO FILE AS AN OFFICER OF THE COURT, AND IN
15 YOUR CAPACITY AS STANDBY COUNSEL, A SENTENCING MEMORANDUM ON
16 BEHALF OF MR. SUTCLIFFE.

17 AND HE, MR. SUTCLIFFE, CAN FILE HIS OWN AS WELL.

18 MR. REED: WILL DO, YOUR HONOR.

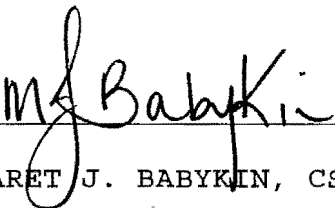
19 THE COURT: OKAY. ALL RIGHT. I THINK THAT TAKES
20 CARE OF EVERYTHING.

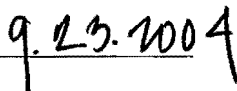
21 WE ARE ADJOURNED.

22 (PROCEEDINGS ADJOURNED AT 4:45 P.M.)
23
24
25

C E R T I F I C A T E

I, MARGARET J. BABYKIN, HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD
OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.


MARGARET J. BABYKIN, CSR


DATED