

1 UNITED STATES OF AMERICA
2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 WESTERN DIVISION
5 - - -

6 HONORABLE ~~A.~~ HOWARD MATZ
7 UNITED STATES DISTRICT JUDGE PRESIDING
8 - - -

9 UNITED STATES OF AMERICA,)
10 PLAINTIFF,)
11 VS.) CR-02-350 AHM
12 STEVEN WILLIAM SUTCLIFFE,) (UNDER SEAL)
13 DEFENDANT.)
14 _____)
15)

16 STATUS CONFERENCE

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 FRIDAY, MARCH 14, 2003

19 LOS ANGELES, CALIFORNIA

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DIRECT EXAMINATION BY MR. NICOLAYSEN: PG. 12, LN. 04

CROSS-EXAMINATION BY MS. DUARTE: PG. 49, LN. 03

1 LOS ANGELES, CALIFORNIA, FRIDAY, MARCH 14, 2003

2
3 (COURT IN SESSION AT 11:00 A.M.)

4 THE CLERK: CALLING ITEM NUMBER 1, CR-02-350, UNITED
5 STATES VERSUS STEVEN WILLIAM SUTCLIFFE.

6 COUNSEL, STATE YOUR APPEARANCES, PLEASE.

7 MS. DUARTE: GOOD MORNING, YOUR HONOR. ELENA DUARTE FOR
8 THE UNITED STATES.

9 THE COURT: GOOD MORNING.

10 MR. NICOLAYSEN: GOOD MORNING, YOUR HONOR. GREG
11 NICOLAYSEN FOR THE DEFENDANT, WHO IS PRESENT.

12 THE COURT: GOOD MORNING TO BOTH OF YOU. ALL RIGHT.
13 EVERYONE MAY BE SEATED.

14 THE DEFENDANT: YOUR HONOR, MAY I STAY OUTSIDE OF THE
15 BAR. COURT APPOINTED COUNSEL HAS HAD ME FORCEFULLY REMOVED
16 OUTSIDE OF THE BAR. I WILL STAY OUTSIDE OF THE BAR.

17 THE COURT: YOU CAN STAY THERE, MR. SUTCLIFFE.

18 THE DEFENDANT: THANK YOU, YOUR HONOR.

19 THE COURT: WE'RE HERE FOR A NUMBER OF REASONS, AND I
20 THINK THE SEQUENCE IN WHICH WE SHOULD TAKE THEM FIRST IS THE
21 FOLLOW UP.

22 THIS WAS CALLED AS A STATUS CONFERENCE, BUT WHAT
23 TRIGGERED IT WAS THE RECEIPT OF DR. RUSHTON BACKER'S REPORT,
24 AND SO, I WANT TO DEAL WITH THE ISSUE OF MR. SUTCLIFFE'S
25 COMPETENCE TO PROCEED TO TRIAL FIRST.

1 THERE IS ALSO A NEED TO CONFIRM THE ARRANGEMENTS FOR THE
2 TRIAL, BECAUSE I THINK IT'S LIKELY TO BE, THAT I WILL ADOPT THE
3 FINDINGS OF DR. BACKER, THAT MR. SUTCLIFFE IS COMPETENT TO
4 PROCEED.

5 AND THE THIRD ITEM, ACTUALLY, I CAN TAKE CARE OF NOW.
6 I'M NOT SURE IF COUNSEL KNOW THIS, BUT IT WAS HANDED TO ME
7 TODAY, A PETITION FOR WRIT OF HABEAS CORPUS THAT WAS FILED, I
8 GUESS, YESTERDAY, BY MR. SUTCLIFFE DIRECTLY, AND ASSIGNED TO ME
9 AS IT NEEDED TO BE. NEITHER SIDE --

10 THE DEFENDANT: I WOULD MOVE THAT THE JUDGE RECUSE
11 HIMSELF FROM RULING ON THAT HABEAS CORPUS.

12 THE COURT: OKAY. WELL, I DENY THAT MOTION TO RECUSE
13 MYSELF, AND I DENY THE MOTION FOR HABEAS CORPUS, AND NO FURTHER
14 BRIEFING IS NECESSARY. THE PETITION IS FACTUALLY DEFECTIVE ON
15 ITS FACE.

16 THE DEFENDANT: I OBJECT TO THAT.

*later upheld - admitted
unlawful ruling*

17 THE COURT: NOW, TURNING TO THE FIRST QUESTION RELATING
18 TO THE ISSUE OF COMPETENCE; DID YOU RECEIVE, DR. BACKER'S
19 REPORT, MS. DUARTE?

20 MS. DUARTE: I DID, YOUR HONOR.

21 THE COURT: DID YOU RECEIVE IT?

22 MR. NICOLAYSEN: I DID, YOUR HONOR. THANK YOU.

23 THE DEFENDANT: YOUR HONOR, I MOVE AT THIS POINT, TO
24 REMOVE THIS MAN AS MY COUNSEL, AS HE NO LONGER SPEAKS FOR ME.

25 THE COURT: ALL RIGHT. SIT DOWN, AND I'LL DEAL WITH

1 THAT MOTION LATER.

2 THE DEFENDANT: EXCUSE ME, YOUR HONOR.

3 THE COURT: YESTERDAY I CONTACTED DR. BACKER, AND HE'S
4 PRESENT IN COURT.

5 WHICH ONE OF YOU IS DR. BACKER?

6 DR BACKER: (NO VERBAL RESPONSE.)

7 THE COURT: ALL RIGHT. HE HAS SIGNED THAT HE IS
8 PRESENT HERE IN COURT. AND WITH YOU IS SOMEONE ELSE FROM YOUR
9 UNIT?

10 DR. BACKER: (NO VERBAL RESPONSE.)

11 THE COURT: WHAT'S YOUR NAME, SIR?

12 DR. IHLE: DR. IHLE, YOUR HONOR. CHIEF PSYCHOLOGIST UP
13 AT METROPOLITAN --

14 THE COURT: ALL RIGHT. THANK YOU FOR COMING AS WELL.
15 DR. BACKER, I REQUESTED IN A VERY BRIEF CONVERSATION WITH YOU
16 YESTERDAY, THAT YOU PROVIDE A COPY OF YOUR REPORT TO MR.
17 SUTCLIFFE YESTERDAY; DID YOU DO SO?

18 DR. BACKER: I DID, SIR.

19 THE DEFENDANT: OBJECTION.

20 THE COURT: ALL RIGHT.

21 THE DEFENDANT: YOUR HONOR, IF THIS MAN IS GOING TO BE
22 TESTIFYING, I DEMAND MY RIGHT UNDER THE CONSTITUTION CLAUSE
23 THAT HE BE SWORN IN, UNDER OATH, BEFORE ANYTHING IS ENTERED
24 INTO THE RECORD.

25 THE COURT: IF HE TESTIFIES, THAT MOTION WILL BE

1 GRANTED.

2 THE DEFENDANT: I ALSO WANT TO ADD TO THE RECORD, THAT
3 PRIOR TO THIS JUDGE ENTERING INTO THE COURTROOM, HIS CLERK
4 APPROACHED THE JUDGE'S COURT APPOINTED COUNSEL AND THEY HAD AN
5 EX PARTE COMMUNICATION OUTSIDE MY PRESENCE, WHICH WAS
6 WHISPERED. THE COUNSEL CONFIRMED TO ME THAT THE CLERK HAD
7 ASKED HIM CERTAIN QUESTIONS REGARDING CONVERSATIONS THAT HE AND
8 I HAD DOWNSTAIRS REGARDING THIS CASE; FURTHERMORE, THAT AFTER
9 DR. BACKER ENTERED INTO THE COURTROOM AND THE U.S. ATTORNEY
10 ENTERED INTO THE COURTROOM, ALL THREE PARTIES THEN EXITED INTO
11 THE HALLWAY AND HAD ANOTHER LITTLE COMMUNICATION, EX PARTE.

12 I ALSO WANT TO MAKE IT ON THE RECORD, THAT I BELIEVE
13 THAT PREVIOUS COUNSEL ALSO HAD EX PARTE COMMUNICATIONS WITH
14 THIS COURTROOM, AND I INTEND TO PROVE THAT.

15 THE COURT: OKAY. NOW, MS. DUARTE, DO YOU THINK THERE'S
16 ANY NEED FOR ANY FURTHER TESTIMONY FOR PURPOSES OF MAKING A
17 RULING ON THE ISSUE OF COMPETENCE?

18 MS. DUARTE: YOUR HONOR, FROM WHAT I'VE READ IN THE
19 REPORT, AND FROM WHAT I KNOW ABOUT THE CASE, I DO NOT FEEL THE
20 NEED.

21 THE COURT: OKAY. MR. NICOLAYSEN, DO YOU?

22 THE DEFENDANT: OBJECTION. HE DOES NOT SPEAK FOR THE
23 ACCUSED.

24 THE COURT: YOUR MOTION --

25 THE DEFENDANT: HE DOES NOT SPEAK FOR THE ACCUSED.

1 THE COURT: BE QUIET.

2 THE DEFENDANT: HE HAS STIPULATED TO THAT. HE HAS
3 STIPULATED TO THAT.

4 THE COURT: MR. SUTCLIFFE, SIT DOWN FOR ONE MINUTE.

5 THE DEFENDANT: HE DOES NOT SPEAK FOR THE ACCUSED. HE
6 IS DISMISSED WITH EXTREME PREJUDICE.

7 THE U.S. MARSHALL: IS IT OKAY IF HE'S REMOVED?

8 THE COURT: YES. ALL RIGHT. I'M GOING TO MAKE A
9 FINDING AND A STATEMENT FIRST.

10 THE DEFENDANT: YOUR HONOR?

11 THE COURT: MR. SUTCLIFFE, IF YOU HAVE ONE MORE
12 OUTBURST, YOU WILL BE REMOVED FROM THIS COURTROOM.

13 THE DEFENDANT: DEFINE OUTBURST. DEFINE OUTBURST. I'M
14 TRYING TO MAKE A RECORD HERE.

15 THE COURT: IF YOU SPEAK --

16 THE DEFENDANT: IF I RAISE MY VOICE, I'M SORRY. THAT'S
17 JUST THE WAY I MAKE MY RECORD.

18 THE COURT: IF YOU SPEAK BEFORE YOU'RE CALLED UPON --
19 AND I'LL GIVE YOU A CHANCE TO SPEAK -- AND IF YOU INTERRUPT
20 ANYBODY ELSE, THAT IS AN OUTBURST. ONE MORE OUTBURST, ONE MORE
21 ATTEMPT TO CONTROL THE PROCEEDING TODAY, IN WHICH YOUR RIGHTS
22 WILL BE FULLY RESPECTED, WITHOUT PERMISSION TO DO SO, AND IN A
23 WAY THAT INTERRUPTS THE PROCEEDINGS OR ANY OTHER PERSON WHO'S
24 SPEAKING IS AN OUTBURST. ONE MORE OUTBURST AND YOU WILL BE
25 REMOVED.

1 THE DEFENDANT: MAY I RESPOND?

2 THE COURT: YOU MAY RESPOND NOW.

3 THE DEFENDANT: IF I UNDERSTAND YOUR HONOR CORRECTLY,
4 WHAT YOU'VE JUST EXPLAINED TO ME WAS THAT I CAN MAKE A FULL
5 RECORD. I CAN SPEAK. NOBODY WILL INTERRUPT ME, AND SO LONG AS
6 I DON'T INTERRUPT ANYBODY ELSE. AND I DIDN'T QUITE GET THE
7 PART ABOUT PERMISSION.

8 THE COURT: I'M NOT GOING TO, MR. SUTCLIFFE, REITERATE
9 WHAT I SAID OR EXPLAIN IT. THE LANGUAGE IS CLEAR. YOU PROCEED
10 UNDER THOSE INSTRUCTIONS, AND IF YOU DON'T, YOU WILL BE
11 REMOVED; AND WE WILL CONTINUE THE HEARING, AND I WILL MAKE
12 CERTAIN FINDINGS.

13 NOW, UNTIL AND UNLESS I RULE UPON YOUR MOTION, WHICH I
14 INTEND TO DO AT SOME POINT IN THIS MORNING'S PROCEEDINGS, BUT
15 AFTER FURTHER INFORMATION.

16 MR. NICOLAYSEN IS YOUR LAWYER. I AM GOING TO BE CALLING
17 UPON MR. NICOLAYSEN. I'M GOING TO BE HEARING FROM MR.
18 NICOLAYSEN. YOU WILL SIT THERE QUIETLY WHILE HE ADDRESSES ME.
19 I WILL GIVE YOU AN OPPORTUNITY TO ADD TO THE RECORD AND RESPOND
20 TO WHAT HE SAYS, BUT YOU WILL NOT PREVENT HIM. AND IF YOU TRY
21 TO PREVENT HIM, IT WILL BE CAUSE FOR EXPULSION FOR RESPONDING
22 TO MY QUESTIONS AND FROM FUNCTIONING AS YOUR LAWYER, UNTIL AND
23 UNLESS I RELIEVE HIM OF HIS DUTIES; DO YOU UNDERSTAND THAT?

24 THE DEFENDANT: YES. BUT I WOULD JUST LIKE TO MAKE IT
25 ON THE RECORD, THAT IF HE'S GOING TO BE A WITNESS AGAINST ME,

1 OR IF HE'S GOING TO TALK ABOUT ANY COMMUNICATIONS BETWEEN HIM
2 AND I AND ATTORNEYS -- I ALSO WANTED TO MAKE ON THE RECORD,
3 SPEAKING OF WHICH, THAT I BELIEVE THIS COURT HAS VIOLATED ITS
4 OWN COURT ORDER AND HAS RELEASED TO THE U.S. ATTORNEY,
5 CONFIDENTIAL, PRIVATE ATTORNEY/CLIENT COMMUNICATIONS OUTSIDE OF
6 THE SEAL, ITS OWN SEALED ORDER.

7 AND THAT IF THIS COURT APPOINTED COUNSEL, MR. NICOLAYSEN
8 IS GOING TO SPEAK IN ANY WAY, SHAPE, OR FORM ABOUT ANY
9 COMMUNICATIONS, I WILL NOT ALLOW -- I DO NOT ALLOW THAT; AND IF
10 HE'S GOING TO SAY ANYTHING AGAINST ME, I DEMAND THAT HE BE
11 SWORN IN, UNDER OATH, PUT ON THE STAND, AND I HAVE THE RIGHT TO
12 CONFRONT HIM, AND CROSS-EXAMINE HIM TO ANYTHING HE SAYS, WHICH
13 CAN BE USED AGAINST ME IN ANY WAY, SHAPE, OR FORM, AS TO EITHER
14 MY COMPETENCY OR ANY COMMUNICATIONS WE'VE HAD BETWEEN
15 OURSELVES.

16 THANK YOU VERY MUCH FOR ALLOWING ME TO SPEAK.

17 THE COURT: ALL RIGHT. NOW, MR. SUTCLIFFE, THERE'S A
18 DIFFERENCE BETWEEN AN ATTORNEY ADDRESSING A JUDGE OR OTHER
19 PERSON ADDRESSING A JUDGE AND TESTIMONY. IF AND WHEN THERE'S
20 TESTIMONY, THERE WILL BE SWORN TESTIMONY.

21 YOU NEED TO UNDERSTAND THE DIFFERENCE, BUT I'M NOT GOING
22 TO HIGHLIGHT IT ANY FURTHER.

23 NOW, MR. NICOLAYSEN, RESPOND, PLEASE, TO MY QUESTION, IF
24 YOU CAN REMEMBER WHAT IT WAS.

25 MR. NICOLAYSEN: I THINK I DO, YOUR HONOR. THANK YOU.

1 I WOULD APPRECIATE THE OPPORTUNITY TO EXAMINE DR. BACKER SO
2 THAT WE FLUSH OUT SOME OF THE ASPECT OF HIS REPORT, IF THE
3 COURT PLEASE.

4 I'M NOT PREPARED TO SIMPLY ACCEPT, AT FACE VALUE, THE
5 CONCLUSION IN THE REPORT, THAT MY CLIENT IS COMPETENT.

6 THE COURT: ALL RIGHT. DR. BACKER, WILL YOU APPROACH,
7 TO PLEASE BE SWORN.

8 (WITNESS SWORN.)

9 THE CLERK: PLEASE BE SEATED.

10 MR. NICOLAYSEN: YOUR HONOR, MAY I ASK THE COURT TO
11 DIRECT THE WITNESS TO BRING A COPY OF HIS REPORT TO THE STAND.

12 THE COURT: DO YOU HAVE ONE WITH YOU?

13 DR. BACKER: I HAVE ONE.

14 THE DEFENDANT: YOUR HONOR, I WOULD LIKE TO MAKE ON THE
15 RECORD THAT 4247(B), THAT THIS REPORT AND ALL TESTIMONY SHOULD
16 BE STRICKEN AND NOT BE ALLOWED INTO THE RECORD AS IT SURPASSES
17 WHAT THE LAW AUTHORIZES; AND IT WOULD BE BEYOND THE 30-DAY
18 SCOPE; THEREFORE, IT'S INADMISSIBLE AND SHOULD BE SUPPRESSED.

19 THE COURT: OKAY. THAT MOTION IS DENIED.

20 THE CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD,
21 AND SPELL YOUR LAST NAME.

22 DR. BACKER: IT IS RUSHTON A. BACKER. B A C K E R.

23 THE COURT: YOU MAY PROCEED, MR. NICOLAYSEN.

24 MR. NICOLAYSEN: YOUR HONOR, THANK YOU.

25 RUSHTON A. BACKER

1 BEING FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. NICOLAYSEN:

4 Q. GOOD MORNING, DR. BACKER.

5 A. GOOD MORNING.

6 Q. DR. BACKER, YOU AND I HAVE SPOKEN PRIOR TO TODAY'S
7 PROCEEDINGS, HAVE WE NOT?

8 A. YES, WE HAVE.

9 Q. WE SPOKE ON THE TELEPHONE FOR, I BELIEVE, AN HOUR TO AN
10 HOUR AND A HALF AT ONE POINT, DIDN'T WE?

11 A. I DON'T REMEMBER IT BEING THAT LONG, BUT IT WAS A LONG
12 CONVERSATION, YES.

13 Q. AND WE SPOKE BRIEFLY OUT IN THE HALLWAY BEFORE TODAY'S
14 PROCEEDINGS, CORRECT?

15 A. YES, WE DID.

16 Q. ALL RIGHT. AND, DR. BACKER, OUR DISCUSSION OVER THE
17 PHONE WAS FACTORED INTO YOUR --

18 THE DEFENDANT: THEY'RE DOING THEIR OWN SHOW. LET ME
19 OUT OF HERE. YOU'RE NOT LISTENING TO ME.

20 THE COURT: ALL RIGHT. REMOVE MR. SUTCLIFFE FROM THE
21 COURTROOM. BRING HIM DOWN AND HOLD HIM IN THE CELL.

22 MR. NICOLAYSEN: YOUR HONOR, MAY I HAVE THE COURT'S
23 PERMISSION TO HAVE HIM KEPT IN THE WITNESS ROOM, SO HE'S
24 AVAILABLE TO THE COURT?

25 THE COURT: YES. PLEASE KEEP HIM ACROSS THE HALLWAY IN

1 THE WITNESS ROOM. MAKE SURE NO ONE ELSE IS IN THERE.

2 YOU MAY PROCEED, MR. NICOLAYSEN.

3 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

4 Q. DR. BACKER, OUR DISCUSSIONS -- OUR DISCUSSION OVER THE
5 PHONE WAS ONE OF THE SOURCES THAT YOU DREW FROM IN PUTTING THIS
6 REPORT TOGETHER AND IN REACHING THE CONCLUSION THAT YOU DID,
7 WAS IT NOT?

8 A. PARTIALLY IT WAS.

9 Q. YES. AND AS YOU REFLECTED IN THE REPORT, YOU'VE
10 OBSERVED TWO FACETS TO MR. SUTCLIFFE. ONE FACET BEING, THAT HE
11 HAS THE ABILITY, IN FACT, EVEN DEMONSTRATED TO YOU, A RATIONAL,
12 COHERENT, ATTENTIVE ABILITY TO DISCUSS, BOTH HIMSELF AND THE
13 ISSUES; AND ANOTHER FACET, WHICH YOU CHARACTERIZE AS INDICATIVE
14 OF A PARANOID CONDITION; IS THAT FAIR?

15 A. I THINK --

16 THE COURT: ANOTHER FACET OF WHAT, MR. NICOLAYSEN? I
17 DIDN'T FOLLOW YOU.

18 Q. ANOTHER FACET OF HIS PERSONALITY, WHICH YOU CHARACTERIZE
19 IN THE REPORT AS BEING INDICATIVE OF A PERSONALITY DISORDER, OR
20 I SHOULD SAY, A PARANOID CONDITION?

21 A. YEAH. IF I CAN ELABORATE ON THAT, WHAT I CONCLUDED WAS,
22 I FELT, BASED ON ALL THE INFORMATION, THAT HE MET THE CRITERIA
23 FOR A PARANOID PERSONALITY DISORDER, AND THAT HAS CERTAIN
24 FEATURES, WHICH I THINK HE DEMONSTRATES -- HE DEMONSTRATED MOST
25 OF THE TIMES WHEN I WAS INTERACTING WITH HIM.

1 BUT HE ALSO -- OUR INTERACTIONS WERE NOT
2 CONFRONTATIONAL; AND AT THOSE TIMES, HE COULD BE VERY RATIONAL.
3 HE COULD DESCRIBE WHAT HIS INTENTION WAS AS FAR AS HIS
4 APPROACH. HOW HE WAS GOING TO APPROACH WORKING WITH YOU. HOW
5 HE WANTED TO APPROACH WORKING WITH THE COURT.

6 AND AGAIN, I'M NOT AN ATTORNEY, SO I'M NOT ABLE TO
7 COMMENT ON HOW SOUND HIS LEGAL ARGUMENTS WERE, BUT HE SEEMED
8 TO, AT LEAST, BE ABLE TO PRESENT A PRETTY RATIONAL APPROACH.

9 Q. WOULD YOU AGREE, THAT ONE OF THE THINGS WE CAN GLEAN
10 FROM YOUR REPORT IS THAT A PARANOID PERSONALITY DISORDER CAN
11 EXIST COEXTENSIVELY; THAT IS, TOGETHER WITH A RATIONAL AND
12 COHERENT AND ARTICULATE PERSONALITY AS WELL, FAIR ENOUGH?

13 A. AGAIN, I THINK A BETTER WAY TO PUT IS THAT A -- IF A
14 SOMEBODY HAS A PERSONALITY DISORDER, IT IS THERE ALL THE TIME.
15 IT'S THE PERSON'S MAKEUP. SOMETIMES IT INTERFERES WITH HOW
16 THEY'RE ABLE TO HANDLE CERTAIN TASKS, AND SOMETIMES IT DOESN'T.

17 SO IF, AGAIN, AT TIMES WHEN WE INTERACTED, IF CERTAIN
18 THINGS WEREN'T TRIGGERED FOR HIM, HE COULD BE QUITE RATIONAL
19 AND UNDERSTANDING AND COOPERATIVE.

20 Q. YOU USED THE WORD, TRIGGER. THE TERM, TRIGGER, IN FACT,
21 IS AN EXCEPTED TERM IN THE PSYCHOLOGY FIELD IN DESCRIBING THE
22 TYPES OF EVENTS OR CIRCUMSTANCES, POSSIBLY REMARKS, THAT MIGHT
23 CAUSE A MANIFESTATION OF A CERTAIN DISORDER. SUCH AS A PARANOID
24 DISORDER, TRUE?

25 A. WELL, FIRST OF ALL, YOU KEEP CALLING IT A PARANOID

1 DISORDER, AND THAT TYPICALLY REFERS TO A PARANOID DELUSIONAL
2 DISORDER, WHICH I DID NOT FIND.

3 SO A PARANOID PERSON -- AND, UNFORTUNATELY, THE
4 TERMINOLOGY GETS CONFUSING. BUT LIKE I SAID, THE PARANOID
5 PERSONALITY DISORDER IS THERE ALL THE TIME. THOSE FEATURES ARE
6 THERE ALL THE TIME. IT JUST DEPENDS ON WHETHER THE SUBJECT
7 MATTER, I GUESS, ELICITS A CERTAIN RESPONSE FROM THE PERSON.

8 Q. IF YOU WOULD, PLEASE TURN --

9 THE COURT: LET ME INTERRUPT FOR A SECOND, MR.
10 NICOLAYSEN.

11 MR. NICOLAYSEN: YES.

12 THE COURT: I THINK FOR PURPOSES OF MAKING SURE WE HAVE
13 AN ADEQUATE RECORD -- BECAUSE I THINK, IN THIS CASE ESPECIALLY,
14 WE WILL NEED ONE.

15 I PROPOSE TO IDENTIFY AND MARK AS COURT'S EXHIBIT 1 TO
16 BE FILED, BUT UNDER SEAL, DR. BACKER'S REPORT. SO IT WILL BE
17 PART OF THE PERMANENT FILE IN THIS CASE. ANY OBJECTION?

18 MR. NICOLAYSEN: NO OBJECTION, YOUR HONOR. THANK YOU.

19 THE COURT: ANY OBJECTION, MS. DUARTE?

20 MS. DUARTE: NO OBJECTION.

21 (COURT'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION.)

22 THE COURT: ALL RIGHT. THAT WILL BE DONE AFTER THE
23 CONCLUSION OF THE HEARING.

24 MR. NICOLAYSEN: THANK YOU.

25 Q. DR. BACKER, IF YOU WOULD, PLEASE, TURN TO YOUR REPORT,

1 WHICH IS EXHIBIT 1 IN EVIDENCE FOR PURPOSES OF TODAY'S
2 PROCEEDINGS, AND PAGE 13 OF THAT REPORT, AND TELL US, PLEASE,
3 WHEN YOU'RE THERE.

4 A. I'M THERE.

5 Q. ALL RIGHT. IN THE MIDDLE OF PAGE 13, WE SEE THE THREE
6 ACCESS DELINEATIONS. AND THIS IS FROM THE DSM-4 MANUAL, IS IT
7 NOT?

8 A. CORRECT.

9 Q. AND ACCESS TWO, YOU REFERRED TO IN THIS CASE, BY THE
10 TERM, PARANOID PERSONALITY DISORDER; DO YOU SEE WHERE I'M
11 REFERRING?

12 A. YES, I DO.

13 Q. IS THAT A DIAGNOSTIC CONCLUSION THAT YOU REACHED IN
14 REGARD TO MR. SUTCLIFFE?

15 A. YES, IT IS.

16 Q. SO AS FAR AS YOU'RE CONCERNED, BASED ON YOUR ANALYSIS
17 AND OBSERVATIONS, YOU'RE SATISFIED THAT HE HAS, AS REFLECTED IN
18 ACCESS TWO, A PARANOID PERSONALITY DISORDER; ARE YOU, SIR?

19 A. YES.

20 Q. NOW, YOU SPOKE OF TRIGGERS. WOULD IT BE FAIR TO SAY
21 THAT THERE ARE CERTAIN CIRCUMSTANCES OR EVENTS OR, PERHAPS,
22 EVEN REMARKS THAT PEOPLE CAN MAKE THAT MIGHT TRIGGER THE
23 PARANOID PERSONALITY DISORDER?

24 A. I THINK IF YOU -- LET ME SEE IF I CAN EXPLAIN THIS. IF
25 YOU READ A LITTLE FURTHER IN ON PAGE 13 -- AND ACTUALLY, I

1 BELIEVE IT'S IN PAGE 14.

2 Q. THE BOTTOM OF PAGE 14. LAST PARAGRAPH ON THE TOP OF 14,
3 BY ANY CHANCE?

4 A. YES. AND, ALSO ACTUALLY, THE SECOND PARAGRAPH ON 14.

5 Q. HMM-HMM.

6 A. I TRY TO DESCRIBE WHAT A PARANOID PERSONALITY DISORDER
7 IS LIKE; AND THEY TYPICALLY CAN BE PRETTY ABRASIVE. THEY CAN
8 BE --

9 THE COURT: DR. BACKER, I THINK --

10 THE WITNESS: YES.

11 THE COURT: -- WHILE YOUR REPORT IS VERY HELPFUL, AND I
12 THINK GIFTED WITH GOOD PLAIN LANGUAGE, I THINK I CAN UNDERSTAND
13 WHAT IS IN THE REPORT, AT LEAST IN TERMS OF THE LANGUAGE, SO I
14 DON'T THINK YOU NEED TO REFER TO THAT AGAIN.

15 THE SIMPLE QUESTION IS, WHAT ARE THE TRIGGERS? ARE
16 THERE SUCH A THING AS TRIGGERS WHICH WOULD CAUSE SOMEONE WITH A
17 PARANOID PERSONALITY DISORDER TO ACT OUT? AND IF SO, WHAT ARE
18 SOME OF THOSE TRIGGERS; IS THAT WHAT YOU'RE TRYING TO
19 ESTABLISH?

20 MR. NICOLAYSEN: THAT IS IT, YOUR HONOR. THANK YOU.

21 A. AGAIN, BECAUSE I THINK A PERSONALITY IS SO PERVASIVE. I
22 DON'T THINK IT'S NECESSARILY A PARTICULAR ITEM. IT'S IF
23 SOMETHING CLASHES WITH THEIR PERSONALITY.

24 SO MR. SUTCLIFFE IS PRETTY OMNIPOTENT AT TIMES. HE --

25 THE COURT: HE THINKS HE'S OMNIPOTENT.

1 THE WITNESS: YES. IN HIS MIND, HE'S OMNIPOTENT.

2 THE COURT: I DON'T KNOW OF ANYONE WHO IS.

3 A. AND SO, IF HE'S NOT TREATED IN A WAY THAT HE WANTS TO BE
4 TREATED, HE GETS UPSET. AND AS I TRIED TO MENTION IN THE
5 REPORT, I THINK THAT'S NOT JUST IN THESE PROCEEDINGS. I THINK
6 THAT'S HOW HE IS OUT IN THE WORLD AT ALL TIMES.

7 SO I THINK, IF HE PERCEIVES THAT PEOPLE AREN'T LISTENING
8 TO HIM, AREN'T DOING WHAT HE THINKS IS CORRECT, THEN HE DOES
9 GET UPSET.

10 Q. ARE YOU IN A POSITION TO OFFER ANY GUIDANCE TO THIS
11 COURT AS TO WHETHER OR -- TO WHAT EXTENT THE PARANOID
12 PERSONALITY DISORDER IN MR. SUTCLIFFE'S CASE WOULD INTERFERE
13 WITH AN ATTORNEY/CLIENT RELATIONSHIP?

14 A. (PAUSE.) AS I STATED IN THE REPORT, I THINK HE HAS THE
15 CAPACITY; OR I FELT, BASED ON MY INTERACTIONS WITH HIM, THAT HE
16 HAD THE CAPACITY TO WORK WITH AN ATTORNEY. I FELT THAT THE
17 ATTORNEY, AND PROBABLY EVERYBODY INVOLVED, WOULD HAVE TO TAKE
18 INTO ACCOUNT THE DESCRIPTIONS OF HIS PERSONALITY AND HOW HE
19 TENDS TO REACT.

20 I GUESS THE ULTIMATE PROOF WOULD BE -- WELL, AND ONE
21 OTHER THING I'LL SAY IS, I DID SPEND A GOOD DEAL OF TIME WITH
22 HIM TALKING ABOUT APPROPRIATE BEHAVIOR.

23 THE COURT: LET'S HAVE THE RECORD REFLECT HOW MUCH TIME
24 THAT GOOD DEAL WAS, AND I DON'T THINK IT'S CLEAR IN THE WRITTEN
25 REPORT.

1 A. I DIDN'T KEEP EXACT TIMES, BUT I WOULD ESTIMATE BETWEEN
2 TWELVE AND FIFTEEN HOURS. WE MET TOGETHER ON ABOUT FIVE
3 OCCASIONS FOR ABOUT THREE HOURS EACH TIME, LENGTHY SESSIONS.

4 AND AGAIN, IN MY INTERACTIONS WITH HIM, HE DEMONSTRATED
5 THE CAPACITY TO BE VERY RELATIVELY CALM. WHEN HE DID GET
6 UPSET, HE COULD CALM HIMSELF DOWN, AND HE, AT LEAST,
7 ACKNOWLEDGED APPROPRIATE COURTROOM BEHAVIOR. I THINK THE --
8 PROBABLY THE ULTIMATE PROOF IS HOW HE IS ABLE TO INTERACT WITH
9 YOU NOW.

10 AND AGAIN, IF EVERYBODY TAKES INTO ACCOUNT THE FACT THAT
11 THIS MAN IS GOING TO REACT IN CERTAIN WAYS, NOT NECESSARILY THE
12 WAY WE SAW JUST NOW, BUT IN LET'S SAY, LESS -- IN A MORE
13 COOPERATIVE WAY THAN WE SAW TODAY. I WOULD THINK HE'D BE ABLE
14 TO WORK WITH AN ATTORNEY.

15 THE COURT: BUT WHAT IF HE ENCOUNTERED SOMETHING IN THE
16 COURSE OF ANY STAGE OF THE TRIAL, SUCH AS JURY SELECTION, AND
17 ANYTHING ELSE THAT HE THOUGHT WAS UNACCEPTABLE AS HE PERCEIVED
18 THINGS THE WAY THINGS SHOULD BE, AND HE REACTED IN A FASHION
19 THAT YOU'VE JUST OBSERVED, WHICH IS TO INTERRUPT WHOEVER IS
20 SPEAKING; TO RAISE HIS VOICE; TO, IN OBVIOUS WAYS, THAT I
21 HAVEN'T RESPONDED TO THIS MORNING, DISPLAY A FORM OF CONTEMPT
22 IN THE LEGAL SENSE OF THE TERM, BY NOT ENGAGING IN CUSTOMARY
23 AND APPROPRIATE BEHAVIOR, SUCH AS RISING, SUCH AS SITTING WHERE
24 HE'S SUPPOSED TO. AND, IN PARTICULAR, IF HE ENGAGES IN THAT
25 BEHAVIOR BY LASHING OUT AT ANYONE, WHO IS, AT THAT POINT,

1 FUNCTIONING, PROPERLY FUNCTIONING, ESPECIALLY AS HIS LAWYER,
2 HOW WOULD THAT AFFECT YOUR VIEW AS TO HIS COMPETENCE TO ASSIST
3 COUNSEL?

4 THE WITNESS: I THINK BASED ON WHAT I SAW TODAY, I'M
5 MORE CONCERNED ABOUT HIS ABILITY TO BE -- TO COOPERATE WITH
6 HIS COUNSEL. AND WHAT I MEAN BY THAT IS, BASED ON THE
7 INFORMATION I HAD, I FEEL PRETTY COMFORTABLE. ACTUARY, I FEEL
8 PRETTY COMFORTABLE WITH THE DIAGNOSIS.

9 AND I FELT, GIVEN THE AMOUNT OF TIME WE SPOKE, AND THE
10 TYPES OF THINGS WE DISCUSSED, ALMOST COACHING AT TIMES, THAT HE
11 EXPRESSED A WILLINGNESS TO TRY TO COOPERATE.

12 I GUESS WHAT CONCERNS ME TODAY AND WHAT I JUST SAW, IS
13 THAT IN SPITE OF THAT, HE STILL REACTED THE WAY THAT HE DID.

14 THE COURT: WELL, AGAIN, FOR PURPOSES, BOTH OF
15 UNDERSTANDING YOU, DR. BACKER, AND HAVING A RECORD THAT IS
16 USEFUL AND COMPLETE, PLEASE DESCRIBE WHAT YOU THINK IS THE WAY
17 HE REACTED IN YOUR WORDS.

18 IN OTHER WORDS, TELL US, FOR THE RECORD, WHAT IT IS THAT
19 YOU SAW THAT PLACES -- THAT CAUSED YOU TO HAVE GREATER CONCERN,
20 AS YOU PUT IT.

21 A. HE WAS EXTREMELY ANGRY AND WAS UNWILLING TO LISTEN TO
22 YOUR INSTRUCTIONS, IN SPITE OF THEM BEING PRESENTED IN A VERY
23 PROFESSIONAL AND TOLERANT WAY.

24 SO I THINK HE SHOWED A -- MAYBE TO A DEGREE THAT WAS
25 STRONGER THAT -- CERTAINLY, TO A DEGREE STRONGER THAN WHAT I

1 SAW WHEN I INTERACTED WITH HIM. TOTAL DISREGARD FOR THE
2 AUTHORITY OF THE COURT AND FOR THE PROCESS.

3 THE COURT: AND YOU CAN CONTINUE, IF YOU LIKE.

4 MR. NICOLAYSEN: YES. THANK YOU, YOUR HONOR.

5 Q. LET ME DIRECT YOUR ATTENTION TO THE SETTING IN WHICH
6 YOUR DISCUSSIONS WITH MR. SUTCLIFFE TOOK PLACE.

7 IT IS WITHIN THAT SETTING THAT YOU OBSERVED THE RATIONAL
8 AND ARTICULATE AND ATTENTIVE PART OF MR. SUTCLIFFE THAT IS
9 REFLECTED IN THE REPORT, TRUE?

10 A. CORRECT.

11 Q. ALL RIGHT. NOW, THAT SETTING WAS A MEETING ROOM
12 ENVIRONMENT, WAS IT? TELL US. IF YOU WOULD DESCRIBE IT.

13 A. IT WAS AN OFFICE ON THE PSYCHOLOGY UNIT, OR THE
14 PSYCHOLOGY DEPARTMENT AREA.

15 Q. CONFERENCE ROOM SETTING, GENERALLY?

16 A. JUST A REGULAR OFFICE.

17 Q. ALL RIGHT.

18 A. DESK. COUCH.

19 Q. AND WAS THE NATURE OF THE INTERACTION IN THE FORM OF AN
20 INTERVIEW?

21 A. YES.

22 Q. AN INTERVIEW IS DIFFERENT FROM A THERAPY SESSION, PER
23 SE, IS IT NOT?

24 A. CORRECT.

25 Q. YOU WERE NOT ENGAGING MR. SUTCLIFFE IN A THERAPY TYPE OF

1 DIALOGUE AS IF HE WAS A CLIENT AND YOU WERE A THERAPIST; AM I
2 CORRECT?

3 A. I'D SAY, FOR THE MOST PART, THAT'S CORRECT. I THINK AT
4 TIMES, I CLEARLY WASN'T CONDUCTING THERAPY WITH HIM. THERE
5 WERE TIMES WHEN, I THINK, I USED THE WORD, COACHING, BUT I WAS
6 TRYING TO, PERHAPS, REASON WITH HIM AS TO WHAT'S APPROPRIATE
7 BEHAVIOR; SO I THINK THAT CALLS UPON SOME CLINICAL TYPES OF
8 CLINICAL TONE, PERHAPS, BUT IT CLEARLY WASN'T THERAPY.

9 Q. ARE YOU, YOURSELF A LICENSED PSYCHOLOGIST?

10 A. YES, I AM.

11 Q. SO YOU'RE AUTHORIZED BY LAW TO CONDUCT THERAPY?

12 A. I AM.

13 Q. IN PROFESSIONAL BACKGROUND, HAVE YOU, IN FACT, CONDUCTED
14 THERAPY WITH CLIENTS?

15 A. YES.

16 Q. SO YOU ARE FAMILIAR WITH THE TYPE OF DYNAMIC BETWEEN A
17 THERAPIST AND A PATIENT?

18 THE COURT: DR. BACKER, AGAIN, I NEED TO INTERRUPT. ✓
19 COULD YOU JUST QUICKLY TELL US AS IF YOU WERE TESTIFYING AS AN
20 EXPERT, IN LAYING OUT THE CORE ASPECTS OF YOUR CV. TELL US
21 WHAT YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND IS.

22 THE WITNESS: CERTAINLY. I HAVE A PH.D. IN CLINICAL
23 PSYCHOLOGY FROM THE CALIFORNIA SCHOOL OF PROFESSIONAL
24 PSYCHOLOGY IN SAN DIEGO. I RECEIVED THAT IN 1986.

25 I'VE BEEN LICENSED BY THE STATE OF CALIFORNIA SINCE

1 1989. I'VE BEEN EMPLOYED BY THE BUREAU OF PRISONS SINCE 1987.
2 I'M CURRENTLY THE CHIEF PSYCHOLOGIST AT THE METROPOLITAN
3 CORRECTIONAL CENTER IN SAN DIEGO; AND I'VE BEEN IN THAT
4 POSITION SINCE 1996.

5 THE COURT: IS IT CORRECT, THAT AT LEAST, SINCE 1987,
6 YOUR ENTIRE PROFESSIONAL CAREER AS A FUNCTIONING PSYCHOLOGIST,
7 AND AFTER '89 AS A LICENSED PSYCHOLOGIST, HAS BEEN WITH THE
8 BUREAU OF PRISONS?

9 THE WITNESS: THAT IS CORRECT.

10 THE COURT: OKAY. SO YOU'VE NOT BEEN PRACTICING
11 PRIVATELY?

12 THE WITNESS: NO, I HAVE NOT.

13 THE COURT: AND COULD YOU TELL US WHAT KIND OF
14 RESPONSIBILITIES YOU HAVE DISCHARGED SINCE 1987 FOR THE BUREAU
15 OF PRISONS.

16 THE WITNESS: CERTAINLY. THE FIRST YEAR AND A HALF, I
17 WAS A STAFF PSYCHOLOGIST AT THE UNITED STATES PENITENTIARY IN
18 LOMPOC, CALIFORNIA DOING GENERAL PSYCHOLOGY ASSESSMENTS, CRISIS
19 INTERVENTION.

20 FROM 1989 THROUGH 1990, I WAS THE CHIEF PSYCHOLOGIST AT
21 THE METROPOLITAN DETENTION CENTER HERE IN LOS ANGELES. AT THAT
22 TIME, I DID SEVERAL FORENSIC EVALUATIONS FOR THE LOCAL COURTS
23 HERE.

24 FROM 1990 THROUGH 1994, I WAS A PSYCHOLOGIST AT THE
25 FEDERAL CORRECTIONAL INSTITUTION IN BUTNER, NORTH CAROLINA ON

1 THE FORENSIC UNIT; SO MY JOB WAS TO -- IT WAS AT A PSYCHIATRIC
2 HOSPITALS, SO I WORKED WITH IN-PATIENTS AND CONDUCTED FORENSIC
3 EVALUATIONS.

4 FROM 1994 THROUGH 1996, I WAS THE RESIDENTIAL DRUG ABUSE
5 PROGRAM COORDINATOR AT THE FEDERAL CORRECTIONAL INSTITUTION IN
6 TERMINAL ISLAND, WHERE I OVERSAW THE PROGRAM.

7 AND THEN, SINCE '96, I'M THE CHIEF PSYCHOLOGIST IN SAN
8 DIEGO. I'VE DONE FORENSIC EVALUATIONS DOWN THERE. I OVERSEE A
9 FORENSIC EXAMINER DOWN THERE; RUN THE DEPARTMENT; DO CRISIS
10 INTERVENTION, THAT TYPE OF STUFF.

11 THE COURT: HAVE YOU TAKEN ANY COURSES APART FROM THE
12 VERY CONSIDERABLE AND IMPRESSIVE FUNCTIONING EXPERIENCE YOU'VE
13 HAD AS A PSYCHOLOGIST? HAVE YOU GOTTEN ANY ADDITIONAL
14 TRAINING, PARTICULARLY, IN FORENSIC PSYCHOLOGY, POST-DOC
15 TRAINING SINCE 1986?

16 THE WITNESS: YES. I'VE TAKEN A NUMBER OF COURSES OVER
17 THE YEARS. WE'RE REQUIRED TO TAKE COURSES IN ORDER TO RENEW
18 OUR LICENSES. AND I TYPICALLY TAKE COURSES ON EITHER FORENSICS
19 OR TESTING; AND THEN THE FOUR YEARS I WAS AT THE INSTITUTION IN
20 BUTNER, WE HAD A LOT OF ONGOING TRAINING IN FORENSICS.

21 THE COURT: HAVE YOU PRESENTED ANY PAPERS OR WRITTEN ANY
22 -- PUBLISHED ANY WRITTEN MATERIALS?

23 THE WITNESS: NO, I HAVE NOT.

24 THE COURT: HAVE YOU GOTTEN OR RECEIVED ANY SPECIAL
25 COMMENDATIONS FOR YOUR WORK AS A PSYCHOLOGIST?

1 THE WITNESS: I'VE RECEIVED LETTERS FROM JUDGES IN THE
2 PAST FOR REPORTS I'VE WRITTEN.

3 THE COURT: AND HAVE YOU EVER HAD OCCASION TO TESTIFY IN
4 COURT IN SUPPORT OF A CONCLUSION YOU DREW THAT A PERSON ACCUSED
5 OF A CRIME IN FEDERAL COURT WAS NOT COMPETENT TO PROCEED?

6 THE WITNESS: OH, YES, SIR.

7 THE COURT: AND I KNOW THAT YOU UNDERSTAND THE STANDARDS
8 FOR COMPETENCE. THEY'RE RECITED IN YOUR REPORT; AND THEY'RE
9 RECITED CORRECTLY; AND I WON'T BELABOR THOSE.

10 DO YOU SEE ANY OF THE FACTORS THAT YOU TOOK INTO ACCOUNT
11 ON THOSE OCCASIONS WHEN YOU CONCLUDED SOMEBODY WAS NOT
12 COMPETENT, IN MR. SUTCLIFFE?

13 THE WITNESS: WELL, TYPICALLY, THE PEOPLE I FOUND -- OR
14 I OFFERED THE OPINION THAT THEY WERE NOT COMPETENT, TYPICALLY,
15 HAD A VERY SEVERE ACCESS ONE DISORDER, SUCH AS, SCHIZOPHRENIA,
16 SOMETIMES A DELUSIONAL DISORDER. I DID NOT SEE THOSE WITH MR.
17 SUTCLIFFE.

18 HOWEVER, WHAT CONCERNS ME TODAY IS, AGAIN, HIS BEHAVIOR
19 IN COURT. PARTICULARLY, AFTER ALL THE -- WHAT I FEEL WAS
20 GROUNDWORK LAID WITH HIM BY MYSELF AND ALSO COMMENTS HE MADE
21 ABOUT MR. NICOLAYSEN YESTERDAY, WHICH WERE VERY POSITIVE.

22 THE COURT: WELL, IN THAT REGARD, TELL US WHAT THE
23 COMMENTS WERE THAT HE MADE YESTERDAY ABOUT MR. NICOLAYSEN.

24 THE WITNESS: OKAY. IF I MAY PUT IT IN CONTEXT. AFTER
25 YOU AND I SPOKE, I BROUGHT HIM UP TO SEE ME. I PRESENTED HIM

1 WITH A COPY OF THE EVALUATION; HAD HIM SIT OUTSIDE AND READ IT;
2 THEN CALLED HIM BACK IN MY OFFICE; AND DURING THAT TIME, I
3 ASKED HIM HOW THINGS WERE GOING WITH MR. NICOLAYSEN, AND HE
4 SAID -- HE WAS ACTUALLY QUITE REASONABLE, AND HE SAID THAT THEY
5 WERE GOING WELL.

6 I WAS ACTUALLY VERY ENCOURAGED BY THE THINGS HE SAID
7 ABOUT THE RELATIONSHIP. FOR EXAMPLE, HE STARTED TO SAY THAT
8 MR. NICOLAYSEN HAD DONE SEVERAL THINGS HE'D ASKED HIM TO DO. I
9 GUESS OBTAIN --

10 THE COURT: YOU DON'T HAVE TO TELL ME --

11 THE WITNESS: OKAY.

12 THE COURT: -- WHAT THOSE WERE.

13 THE WITNESS: HOWEVER, HE THEN STATED -- HE CAUGHT
14 HIMSELF, AND HE SAID, WELL, NO. HE'S DONE ABOUT HALF OF WHAT I
15 ASKED HIM TO. AND HE DIDN'T SEEM UPSET BY THAT. AND I SAID,
16 WELL, HOW DO YOU FEEL ABOUT THAT? AND HE WAS -- THAT'S OKAY.
17 I MEAN, HE APPEARED VERY REASONABLE; AND I SAID, SO YOU DON'T
18 EXPECT HIM TO DO EVERY SINGLE THING? YOU'RE BEING PATIENT?
19 YOU'RE WORKING WITH HIM? AND HE SAID, YEAH.

20 AND, AGAIN, HIS DEMEANOR WAS VERY CALM, AND HE CAME
21 ACROSS AS VERY REASONABLE. AND SO, BASED ON THAT, AND THEN TO
22 SEE HOW UPSET HE WAS TODAY, CONCERNS ME A BIT.

23 THE COURT: OKAY. GO AHEAD.

24 BY MR. NICOLAYSEN:

25 Q. DR. BACKER, I'D LIKE TO CONTINUE, IF THE COURT PLEASE,

1 WITH THE DISTINCTIONS, A COUPLE OF DISTINCTIONS; AND ONE WE
2 WERE TALKING ABOUT JUST A FEW MOMENTS AGO, WAS THE DISTINCTION
3 BETWEEN THE TYPE OF INTERVIEW SETTING IN WHICH YOU CONDUCTED
4 YOUR DISCUSSIONS WITH MR. SUTCLIFFE, AND THE TYPE OF
5 INTERACTION THAT A THERAPY SESSION WOULD HAVE WITH A CLIENT;
6 AND THEN I WILL ASK YOU TO DISCUSS THE DISTINCTION BETWEEN THE
7 TYPES OF INTERVIEWS YOU HAD WITH MR. SUTCLIFFE, AND WHAT AN
8 ATTORNEY/CLIENT RELATIONSHIP MIGHT BE.

9 WOULD YOU AGREE, THAT IN THE THERAPY CONTEXT -- AND
10 YOU'VE ALREADY TOLD US ON THE RECORD THAT YOU HAVE A
11 PROFESSIONAL BACKGROUND IN CONDUCTING THERAPY -- THERE IS
12 TYPICALLY MORE OF A STRUCTURE AND AN ATTEMPT TO ENGAGE THE
13 CLIENT IN AN EFFORT TO ACHIEVE CORRECTIVE BEHAVIORS AND HIGHER
14 LEVELS OF SELF-AWARENESS?

15 A. I'D SAY, GENERALLY, YES.

16 Q. WOULD YOU AGREE, THAT AT TIMES, A THERAPY RELATIONSHIP
17 CAN BE CONFRONTED, THAT THAT IS PART OF THE THERAPEUTIC
18 PROCESS?

19 A. YES.

20 Q. WOULD YOU AGREE, THAT A THERAPEUTIC RELATIONSHIP CAN, AT
21 TIMES, DEPENDING ON THE NEEDS OF THAT RELATIONSHIP, INVOLVE THE
22 THERAPIST CHALLENGING THE CLIENT TO MAKE DECISIONS OR TO
23 RECOGNIZE OPTIONS?

24 A. IN CERTAIN TYPES OF THERAPY, YES.

25 Q. WOULD YOU AGREE, THAT, AGAIN, DEPENDING ON THE TYPE OF

1 THERAPY AT ISSUE, THE THERAPY RELATIONSHIP CAN INVOLVE THE
2 THERAPIST CHALLENGING A CLIENT TO TAKE RESPONSIBILITY FOR
3 CERTAIN ACTIONS OR FOR CERTAIN BEHAVIORS?

4 A. YES.

5 Q. WOULD YOU ALSO AGREE, THAT NONE OF THESE THINGS THAT I
6 JUST OUTLINED WITH YOU IN REFERENCE TO THE THERAPY RELATIONSHIP
7 WAS INVOLVED IN YOUR DISCUSSION WITH MR. SUTCLIFFE FOR PURPOSES
8 OF THE COMPETENCY EVALUATION?

9 A. I WOULDN'T SAY THAT NONE WERE. I MEAN, WE TALKED ABOUT
10 HIS TAKING RESPONSIBILITY FOR HIS ACTIONS IN COURT. I GAVE HIM
11 MY OPINION ABOUT HOW I THOUGHT -- WHEN HE DESCRIBED WHAT
12 HAPPENED IN COURT, HOW I THOUGHT A PERSON MIGHT -- A NEUTRAL
13 PERSON WOULD REACT TO HOW HE BEHAVED, PARTICULARLY, TOWARDS THE
14 JUDGE; SO SOME OF THAT WAS THERE.

15 Q. DID YOU GO SO FAR AS TO ASK MR. SUTCLIFFE TO MAKE
16 DECISIONS ABOUT THIS CASE SPECIFICALLY?

17 A. WELL, HE MADE DECISIONS. I MEAN, HIS COMING BACK --
18 AGAIN, I DON'T KNOW IF THIS IS ANSWERING YOUR QUESTION -- BUT
19 HE DID -- HIS WILLINGNESS TO COME BACK AND TALK TO ME, I MEAN,
20 HE WAS MAKING DECISIONS AS TO WHETHER HE WAS GOING TO
21 PARTICIPATE OR NOT, EVEN THOUGH IT HAD TO BE BY HIS RULES A
22 BIT.

23 EVEN HIS WILLINGNESS TO SPEAK WITH YOU WAS -- THE FIRST
24 TIME I CALLED YOU, PART OF IT WAS BECAUSE HE WAS PRETTY UPSET
25 AT WHAT HE PERCEIVED WAS YOUR NOT HAVING COME TO SEE HIM. I'M

1 NOT MAKING ANY JUDGMENT ON THAT, BUT THAT'S WHAT HE WAS UPSET
2 ABOUT. AND THAT -- WHICH IS ONE OF THE REASONS WHY I CALLED
3 YOU, TO KIND OF GIVE YOU A HEADS UP.

4 BUT WE TALKED A LOT ABOUT HIS TRYING TO MEET YOU WITH AN
5 OPEN MIND, AND TO NOT BE LYING IN WEIGHT, WHICH HE WAS PLANNING
6 TO DO INITIALLY; AND FROM WHAT I UNDERSTOOD, HE ACTUALLY WAS
7 ABLE TO MEET YOU ON A FAIRLY REASONABLE LEVEL, CERTAINLY, MUCH
8 MORE SO THAN HE WAS INTENDING ON HIS OWN.

9 SO I THINK IN SOME SENSE, YOU KNOW, I DID ASK HIM TO --
10 OR ASK HIM TO DO SOMETHING RELATED TO HIS CASE AND HE SEEMED
11 ABLE TO DO IT.

12 Q. YOU DIDN'T ENGAGE HIM IN DISCUSSIONS THAT A LAWYER WOULD
13 TYPICALLY ENGAGE IN, SUCH AS, THE DECISION WHETHER TO PLEAD
14 GUILTY OR GO TO TRIAL, DID YOU?

15 A. WE TALKED ABOUT THAT IN GENERAL, AS FAR AS -- THAT'S
16 PART OF A COMPETENCY QUESTION THAT YOU WOULD ASK SOMEBODY.
17 CLEARLY, I'M NOT HIS ATTORNEY, BUT I JUST WAS TRYING TO SEE IF
18 HE WOULD EVEN CONSIDER CERTAIN THINGS, SO WE TALKED ABOUT THAT.

19 Q. YOU DIDN'T ACTUALLY ASK HIM TO MAKE A DECISION, THOUGH,
20 DID YOU?

21 A. NO.

22 Q. AND ASKING HIM TO ACTUALLY MAKE A DECISION WOULD NOT BE
23 AN APPROPRIATE PART OF THE PURPOSE OF YOUR DISCUSSION, WOULD
24 IT?

25 A. ABSOLUTELY CORRECT.

1 Q. AND YOU AGREE, DO YOU NOT, THAT THERE ARE OTHER TYPES OF
2 DECISIONS SUCH AS DECISIONS ON WHAT LEGAL OBJECTIONS TO RAISE;
3 WHAT SENTENCING ISSUES MIGHT APPLY; WHAT MOTIONS TO FILE, ARE
4 DECISIONS BEST LEFT TO THE ATTORNEY/CLIENT RELATIONSHIP,
5 CORRECT?

6 A. ABSOLUTELY.

7 Q. AND YOU STEERED CLEAR OF THOSE TYPES OF ISSUES AND THOSE
8 TYPES OF DECISIONS PURPOSELY, BECAUSE IT WAS NOT PART OF YOUR
9 ASSIGNMENT, CORRECT?

10 A. CORRECT.

11 Q. ALL RIGHT. WOULD YOU AGREE, THAT THE INTERVIEW PROCESS
12 THAT YOU ENGAGED MR. SUTCLIFFE IN, DID NOT CHALLENGE HIM TO
13 MAKE KEY DECISIONS THAT A LAWYER MIGHT NEED TO ENGAGE MR.
14 SUTCLIFFE ABOUT IN THE ATTORNEY/CLIENT RELATIONSHIP?

15 A. YES.

16 Q. WOULD YOU AGREE, THAT THERE IS A DISTINCTION BETWEEN THE
17 LEVEL OF -- I'M JUST GOING TO USE THE WORD, PRESSURE, IF YOU
18 WILL -- THE LEVEL OF PRESSURE THAT MR. SUTCLIFFE WAS SUBJECTED
19 TO IN THE COURSE OF YOUR INTERVIEWS, AND THE TYPE OF PRESSURE
20 THAT WOULD NECESSARILY ARISE IN AN ATTORNEY/CLIENT
21 RELATIONSHIP?

22 A. YES.

23 Q. WOULD YOU ALSO AGREE, AS YOU'VE NOW TOLD US ABOUT THE
24 PARANOID DISORDER, AND WITH REFERENCE TO SOME OF THE THINGS
25 THAT MIGHT TRIGGER THAT BEHAVIOR, WOULD YOU AGREE, THAT THE

1 PRESSURES THAT ARE INHERENT IN THE ATTORNEY/CLIENT
2 RELATIONSHIP, MIGHT TRIGGER MANIFESTATIONS OF THE PARANOID
3 DISORDER?

4 A. I THINK A BETTER WAY THAT I WOULD LIKE TO PUT IT, IF I
5 MAY.

6 Q. SURE.

7 A. IS, I THINK THAT AN ATTORNEY WOULD BE ASKING A CLIENT TO
8 MAKE SOME DECISIONS THAT WOULD BE -- OR WOULD BE IN A POSITION
9 TO BE IN CONFLICT WITH A PERSON MORE THAN I WOULD IN MY ROLE.

10 Q. LET ME USE YOUR WORD, CONFLICT. WOULD YOU AGREE THAT IN
11 THE DYNAMIC THAT IS INHERENT IN THE ATTORNEY/CLIENT
12 RELATIONSHIP, THERE IS A GREATER POTENTIAL FOR CONFLICT WITH AN
13 INDIVIDUAL WHO HAS THE PARANOID DISORDER THAT YOU ENGAGE --
14 THAT YOU OBSERVED IN MR. SUTCLIFFE, MORE SO THAN THE TYPE OF
15 INTERVIEW ENVIRONMENT THAT YOU HAD?

16 A. IT'S PROBABLY SPLITTING HAIRS. I THINK -- I DON'T KNOW
17 IF I CAN ANSWER THAT. I THINK -- I THINK THE TASKS ARE VERY
18 DIFFERENT. FOR EXAMPLE, RIGHT OFF THE BAT, HE DIDN'T WANT TO
19 PARTICIPATE; AND I THINK PART OF THE REASON HE DID PARTICIPATE
20 WAS THE WAY I WAS ABLE TO DEAL WITH HIM. AGAIN, WE HAD
21 DIFFERENT TASKS; SO OVER TIME, HE WAS WILLING TO COOPERATE.

22 I WASN'T ASKING HIM TO MAKE A DECISION THAT MAYBE WAS
23 COUNTER TO WHAT HE FELT WAS APPROPRIATE TO DO; AND I THINK HAD
24 I BEEN PUT IN THAT POSITION, I WOULD HAVE GOTTEN A STRONGER,
25 NEGATIVE REACTION OUT OF HIM.

1 Q. WOULD YOU BE WILLING TO ACKNOWLEDGE THAT IN THE
2 ATTORNEY/CLIENT RELATIONSHIP, DEMANDS WOULD NECESSARILY BE
3 PLACED ON MR. SUTCLIFFE IN REGARD TO HOW TO MANAGE THE
4 LITIGATION, WHICH ARE LIKELY TO CAUSE MANIFESTATIONS OF THE
5 PARANOID DISORDER THAT CAN INTERFERE WITH THAT RELATIONSHIP?

6 A. YES.

7 Q. AND WOULD YOU ALSO AGREE, THAT IN THE NATURE OF THE
8 INTERVIEW ENVIRONMENT THAT YOU HAD, YOU WOULDN'T NECESSARILY
9 HAVE OCCASION TO CAUSE THOSE TYPES OF CONFLICTS?

10 A. NOT TO THE SAME DEGREE, NO.

11 Q. SO WOULD IT ALSO BE FAIR TO SAY, THAT WHILE YOU'RE
12 SATISFIED, BASED ON THE INTERVIEW ENVIRONMENT THAT YOU HAD,
13 THAT MR. SUTCLIFFE IS COMPETENT, YOU'RE OPEN TO THE POSSIBILITY
14 THAT IN A DIFFERENT SETTING, SUCH AS THE ATTORNEY/CLIENT
15 RELATIONSHIP, WHICH HAS A DIFFERENT POTENTIAL FOR CONFLICT,
16 GIVEN THE PARANOID DISORDER YOU'VE DISCUSSED, THERE IS, INDEED,
17 A POSSIBILITY THAT THE RELATIONSHIP CANNOT FUNCTION? THAT THE
18 PARANOID DISORDER WILL MANIFEST ITSELF? which q?

19 A. YES.

20 Q. AND MANIFEST ITSELF TO A MUCH GREATER DEGREE THAN WHAT
21 YOU OBSERVED IN THE INTERVIEW SETTING THAT YOU HAD?

22 A. YES.

23 Q. YOU'VE SPOKEN IN YOUR REPORT ABOUT MR. SUTCLIFFE
24 DECLINING TO BE INTERVIEWED ABOUT HIS PERSONAL HISTORY AND
25 DECLINING TO TAKE CERTAIN TESTS.

1 A. CORRECT.

2 Q. AND I BELIEVE YOU'VE COMMENTED THAT, BECAUSE YOU DON'T
3 HAVE THE PERSONAL HISTORY OR THE TESTING DATA, THAT, IDEALLY,
4 YOU WOULD HAVE LIKED TO HAVE HAD -- YOU'RE NOT IN A POSITION TO
5 GIVE US AN ACCESS ONE DIAGNOSIS; IS THAT SO?

6 A. I THINK THE WAY I'D RATHER PUT IT IS, THAT BASED ON
7 EVERYTHING AVAILABLE TO ME, I DID NOT SEE AN ACCESS ONE
8 DIAGNOSIS. I'M PRETTY CAUTIOUS WHEN I WRITE, SO IN THAT
9 PARTICULAR CASE, I'M ACKNOWLEDGING THAT THERE ARE FACTS OUT
10 THERE THAT I DIDN'T HAVE ACCESS TO. AND THERE'S A POSSIBILITY
11 THAT HAD I HAD THOSE FACTS, I MIGHT HAVE COME TO A DIFFERENT
12 CONCLUSION, BUT I --

13 THE COURT: IS AMONG THE KIND OF FACTS THAT MIGHT HAVE
14 RESULTED IN YOUR REACHING A DIFFERENT CONCLUSION, WOULD
15 PERFORMING AN ACCESS ONE TEST BE INCLUDED? WOULD THAT TEST,
16 POSSIBLY HAVE CAUSED YOU TO REACH A DIFFERENT CONCLUSION?

17 THE WITNESS: THERE'S NOT AN ACCESS ONE TEST, PER SE. I
18 THINK, HAD I GIVEN HIM A PERSONALITY -- THE MMPI TWO, WHICH IS
19 ONE OF THE TESTS HE REFUSED TO TAKE; THAT WOULD HAVE GIVEN ME A
20 LITTLE MORE INFORMATION ABOUT HIM.

21 I THINK IT'S -- THE TESTING DOESN'T BOTHER ME SO MUCH.
22 IT'S THE LACK OF OBJECTIVE DATA ABOUT HIS PAST.

23 THE COURT: OKAY. AT PAGE TWO OF YOUR REPORT, YOU SAY
24 THAT HE REFUSED TO TAKE THE COMPETENCY ASSESSMENT INSTRUMENT
25 CAI 14-PART SEMISTRUCTURED INTERVIEW; IS THAT AN INTERVIEW THAT

1 IS CONDUCTED ACCORDING TO A PRESCRIBED PROCEDURE AND FORM IN
2 WHICH THE EXAMINER, SUCH AS YOU, ASKS STANDARD QUESTIONS AND
3 TAKE DOWN THE ANSWERS?

4 THE WITNESS: YES, BUT IT'S NOT A SCORED TEST. IT'S NOT
5 REALLY A TEST IN THE SENSE OF LET'S SAY, IN AN MPI OR THE
6 WECHSLER TEST WHERE THERE ARE SCALES AND NORMS.

7 WHAT IT IS, IS A STRUCTURED INTERVIEW. AS A MATTER OF
8 FACT, AT OTHER PLACES I'VE WORKED, I DIDN'T EVEN USE THAT SAME
9 FORM, BUT IT'S JUST A STRUCTURED WAY. YOU DON'T SCORE IT OUT.
10 IT JUST GIVES YOU A WAY TO HAVE YOUR KEY QUESTIONS RELATED TO
11 COMPETENCY LAYED OUT.

12 THE COURT: CAN YOU TELL ME WHETHER THERE WERE ANY
13 QUESTIONS OR INQUIRIES INCLUDED AS PART OF THAT CAI, WHICH, IF
14 YOU GOT A RESPONSIVE ANSWER TO, MIGHT HAVE, DEPENDING ON AN
15 ANSWER, OF COURSE, CAUSED YOU TO REACH A DIFFERENT CONCLUSION,
16 EVEN BEFORE YOU CAME TO COURT TODAY?

17 THE WITNESS: CERTAINLY.

18 THE COURT: WHAT ARE THE KINDS OF QUESTIONS TO WHICH YOU
19 ACTUALLY WERE NOT PERMITTED TO RECEIVE ANSWERS THAT COULD HAVE
20 RESULTED IN A DIFFERENT CONCLUSION?

21 THE WITNESS: WELL, IF I MAY BACK UP FOR A SECOND. AND
22 I THINK I'VE DESCRIBED THIS IN THE REPORT. AT ONE POINT, HE
23 WAS GOING TO ACTUALLY AGREE TO TAKE -- TO ANSWER THESE
24 QUESTIONS. I THINK IT WAS IN THE EVENING. THE FOLLOWING DAY
25 WHEN I BROUGHT HIM DOWN, HE HAD CHANGED HIS MIND. I PUT THE

1 FORM ASIDE. WE CONTINUED TO TALK. I ASKED HIM SEVERAL OF THE
2 QUESTIONS; AND AS LONG AS I DIDN'T HAVE THAT PIECE OF PAPER IN
3 FRONT OF ME, HE ANSWERED IT; SO I WAS ABLE TO ACTUALLY ANSWER
4 OR FILL IN SEVERAL OF THOSE ANSWERS TO SEVERAL OF THOSE
5 QUESTIONS -- ACTUALLY, THE MAJORITY OF THOSE QUESTIONS.

6 BUT TO GO TO YOUR QUESTION, FOR EXAMPLE, IF I'D ASKED
7 HIM, DO YOU THINK YOU CAN WORK WITH THE JUDGE? AND HE STARTED
8 TO GO OFF ABOUT, NO. HOW THE JUDGE WAS PART OF SOME HUGE
9 CONSPIRACY; OR IF ALL JUDGES -- YOU KNOW, THERE WAS NO JUDGE HE
10 COULD WORK WITH BECAUSE THEY WERE ALL PART OF A CONSPIRACY,
11 THEN THAT WOULD LEAD ME TO BELIEVE THAT I WOULD HAVE HAD A
12 DIFFERENT RESPONSE; BUT HE DIDN'T GIVE ME THAT KIND OF ANSWER.

13 HE, ACTUALLY, AGAIN, IN A LESS STRESSFUL ENVIRONMENT,
14 APPEARED SURPRISINGLY COOPERATIVE. HE -- HE DISCUSSED HIS
15 DISAGREEMENTS WITH CERTAIN THINGS THAT YOUR HONOR HAD DONE, BUT
16 HE -- AGAIN, HE WAS MUCH CALMER. HE SAID HE WAS WILLING TO BE
17 OPEN MINDED; AND HE ALSO SAID HE WAS WILLING TO -- YOU KNOW,
18 OTHER JUDGES HE WAS WILLING TO WORK WITH.

19 SO HE DIDN'T SHOW THIS ABSOLUTE STANCE THAT THERE'S NO
20 WAY HE CAN BE TREATED FAIRLY. HE SEEMED TO -- AGAIN, IN A LESS
21 STRESSFUL ENVIRONMENT, HE WAS -- HE GAVE A REASONABLE RESPONSE.

22 THE COURT: WHAT KIND OF INFORMATION IS ELICITED IN AN
23 MPI-2 TEST OR MMPI-2 TEST THAT WOULD ACTUALLY MEASURE OR
24 PROVIDE INDICES OF MENTAL DISORDERS THAT YOU THUS FAR HAVE NOT
25 BEEN ABLE TO OBTAIN?

1 THE WITNESS: WELL, THE MMPI-2 HAS -- IT'S 567
2 TRUE/FALSE ITEM QUESTIONS; AND YOU END UP WITH A PROFILE; AND
3 THEN YOU COMPARE AN INDIVIDUAL'S PROFILE WITH STATISTICS THAT
4 SHOW -- THAT PROVIDE DESCRIPTORS OF PEOPLE WITH SIMILAR TYPES
5 OF PROFILES.

6 SO IN THIS PARTICULAR CASE, YOU KNOW, IT WOULD HAVE BEEN
7 POSSIBLE FOR HIM TO COME UP WITH A PROFILE THAT SUGGESTS MORE
8 OF AN ANTISOCIAL TYPE OF PERSON. IT COULD HAVE SHOWN A PERSON
9 THAT'S QUITE PARANOID.

10 IN HIS CASE, BECAUSE I SPEND A LOT OF TIME WITH HIM, I'M
11 NOT -- I'M NOT SO SURE THAT I WOULD HAVE SEEN SOMETHING ON THE
12 MMPI THAT WOULD HAVE REALLY SURPRISED ME. I MEAN, I THINK HE
13 WOULD HAVE GIVEN A REALLY GUARDED PROFILE. THERE ARE VALIDITY
14 SCALES IN THERE THAT HELP YOU DETERMINE WHETHER A PERSON'S LIKE
15 EXAGGERATING THEIR PATHOLOGY, OR REALLY TRYING TO HIDE IT.

16 MY GUESS IS, HIS PROBABLY WOULD HAVE BEEN A VERY GUARDED
17 TYPE OF PROFILE WHERE HE DENIED MOST PROBLEMS, SO --

18 THE COURT: YOU KNOW, DR. BACKER, I UNDERSTAND IT'S
19 INHERENT IN THE DIFFERENCES BETWEEN A COURTROOM SETTING AND
20 EITHER AN EXAMINATION OR THERAPEUTIC SETTING, BUT IT SEEMS TO
21 ME, THAT THE INQUIRIES THAT ARE THE ISSUE OF TRYING TO
22 DETERMINE IN A FAIR FASHION CONSISTENT WITH THE LEGAL
23 STANDARDS, WHETHER SOMEONE IS COMPETENT, INHERENTLY, ARE
24 DEFICIENT, BECAUSE THEY DON'T PROVIDE THE EXPERT WITH THE
25 CONTEXT AND THE FORM IN WHICH TO MAKE THE MOST CONSIDERED

1 EVALUATION; WOULD YOU AGREE WITH THAT?

2 I'M NOT SAYING THERE'S MUCH WE CAN DO ABOUT IT. WE'RE
3 DOING IT PROCEDURALLY THE WAY WE'RE EXPECTED AND AUTHORIZED TO
4 DO, BUT DON'T YOU THINK THIS PROCEDURE IS FLAWED?

5 THE WITNESS: WELL, HAVING DONE THESE TYPES OF
6 EVALUATIONS IN A NUMBER OF SETTINGS, I THINK, IN GENERAL, I
7 DON'T BELIEVE THEY'RE FLAWED. I THINK IN CERTAIN CASES,
8 CERTAIN VERY DIFFICULT CASES, THEY PROBABLY ARE, AND I THINK
9 THIS IS A VERY DIFFICULT CASE.

10 I MEAN, IN MOST OF THE CASES I'VE BEEN INVOLVED WITH,
11 THE BEHAVIOR THAT I'VE SEEN SEEMS TO TRANSLATE INTO WHAT
12 HAPPENS IN THE COURTROOM, I THINK. AGAIN, WE'RE DEALING WITH A
13 VERY DIFFICULT INDIVIDUAL HERE, AND I THINK THAT -- I DON'T
14 KNOW IF I WOULD GENERALIZE THAT TO ALL THE EVALUATIONS.

15 THE COURT: OKAY.

16 THE WITNESS: OR THE PROCESS.

17 THE COURT: KEEP GOING, MR. NICOLAYSEN.

18 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

19 BY MR. NICOLAYSEN:

20 Q. DR. BACKER, LET ME STAY WITH THE ISSUE OF ACCESS ONE
21 DIAGNOSES, WHICH IS WHERE WE LEFT OFF. SUCH DIAGNOSES,
22 INCLUDE, AMONG OTHER THINGS, SCHIZOPHRENIA AND DELUSIONAL AND
23 PSYCHOTIC DISORDERS; DO THEY NOT?

24 A. THEY DO.

25 Q. THESE TYPES OF DISORDERS THAT FALL WITHIN ACCESS ONE,

1 TEND TO BE THE TYPES OF DISORDERS THAT CONCERN CLINICIANS MOST
2 FROM THE PERSPECTIVE OF COMPETENCY; DO THEY NOT?

3 A. I WOULD SAY, YES.

4 Q. I BELIEVE YOU TESTIFIED EARLIER IN THIS HEARING, THAT IN
5 YOUR PROFESSIONAL HISTORY IN DOING COMPETENCY EVALUATIONS, IN
6 THOSE CASES WHERE YOU CONCLUDED THAT A DEFENDANT WAS
7 INCOMPETENT, TYPICALLY INVOLVED A CASE WHERE YOU DID FIND AN
8 ACCESS ONE DISORDER, SUCH AS, SCHIZOPHRENIA?

9 A. CORRECT.

10 Q. NOW, BECAUSE YOU HAVE NOT BEEN ABLE TO GIVE US ANY
11 DEFINITIVE CONCLUSION HERE AS TO AN ACCESS ONE DISORDER, AND
12 WITHOUT, IN ANY WAY AT ALL BEING CRITICAL, BUT JUST BASED ON
13 WHAT WAS MADE AVAILABLE TO YOU; WOULDN'T IT BE FAIR TO SAY,
14 THAT JUDGMENT NEEDS TO BE RESERVED AS TO WHETHER MR. SUTCLIFFE
15 IS LEGALLY COMPETENT?

16 AND THEN, WHEN I ASK YOU THAT QUESTION, WITH THE
17 COURTS'S PERMISSION, I ASK -- INVITE YOU TO FACTOR INTO YOUR
18 ASSESSMENT WHAT YOU SAW TODAY.

19 A. COULD YOU REPEAT QUESTION?

20 Q. SURE. IT'S A TYPICAL LONG QUESTION. MY FAULT.

21 A. YES.

22 Q. WE AGREE THAT YOUR HISTORY AS AN EVALUATOR OF COMPETENCY
23 HAS GENERALLY BEEN SUCH THAT, WHERE YOU HAVE FOUND A DEFENDANT
24 INCOMPETENT UNDER THE STATUTE HAS BEEN THOSE CASES WHERE THE
25 DEFENDANT TYPICALLY HAD AN ACCESS ONE DISORDER SUCH AS

1 SCHIZOPHRENIA?

2 A. CORRECT.

3 Q. ALL RIGHT. LET'S START WITH THAT PREMISE. THE SECOND
4 PREMISE IS IN YOUR REPORT HERE, EXHIBIT 1, AS TO MR. SUTCLIFFE.
5 YOU HAVE NOT YET BEEN ABLE TO REACH A DEFINITIVE FINDING AS TO
6 WHETHER AN ACCESS ONE DISORDER EXISTS OR NOT, CORRECT? BECAUSE
7 OF THE LACK OF ADEQUATE PERSONAL HISTORY, AND THE LACK OF
8 TESTING DATA?

9 A. SEE, I DON'T THINK THAT'S QUITE ACCURATE. FOR EXAMPLE,
10 I'M -- I FEEL VERY STRONGLY HE DOESN'T HAVE SCHIZOPHRENIA. I
11 FEEL VERY STRONGLY THERE'S CERTAIN OTHER DISORDERS THAT HE
12 DOESN'T HAVE.

13 AGAIN, I PUT THAT IN THERE BECAUSE, YOU KNOW, IT'S
14 POSSIBLE THAT THERE IS SOME HISTORICAL DATA OUT THERE THAT
15 MAYBE -- THAT MIGHT LEAD ME TO A DIFFERENT CONCLUSION.

16 Q. ALL RIGHT. I'M NOT TRYING TO IMPEACH YOUR TESTIMONY.
17 BUT FOR THE RECORD, LET ME REFER YOU TO PAGE 13 OF YOUR REPORT.

18 A. OKAY.

19 Q. IN THE MIDDLE PARAGRAPH.

20 MR. NICOLAYSEN: AND, IF THE COURT PLEASE, I WILL JUST
21 READ INTO THE RECORD, TWO SENTENCES.

22 Q. QUOTE, BASED ON THE AVAILABLE INFORMATION AND
23 INTERACTIONS WITH MR. SUTCLIFFE, HE DOES NOT APPEAR TO BE
24 PRESENTLY SUFFERING FROM AN ACCESS ONE DISORDER; HOWEVER, DUE
25 TO THE LACK OF A COMPLETE HISTORY AND TESTING DATA, THIS IS

1 DEFERRED. PERIOD. END QUOTE; DO YOU SEE WHERE I'M REFERRING?

2 A. I DON'T. WHICH PARAGRAPH IS THAT?

3 Q. IT'S THE MIDDLE PARAGRAPH ON PAGE 13, BEGINNING WITH THE
4 WORD, BASED, AND ENDING WITH THE WORD, DEFERRED.

5 A. OKAY. I SEE WHAT YOU'RE SAYING. YES.

6 Q. I HAVE NOW READ THESE TWO STATEMENTS, THESE TWO
7 SENTENCES INTO THE RECORD. WOULD YOU AGREE, THAT AS YOU
8 TESTIFY THIS MORNING, WHAT I READ INTO THE RECORD, WHICH IS ON
9 PAGE 13, STILL REFLECTS YOUR ASSESSMENT OF THIS CASE?

10 A. YES.

11 Q. STAYING WITH THE CONCEPT OF DEFERRAL OF AN ACCESS ONE
12 DISORDER, AND KEEPING IN MIND, THAT IN YOUR PROFESSIONAL
13 HISTORY, YOUR FINDINGS OF INCOMPETENCE HAVE GENERALLY INVOLVED
14 A FINDING OF AN ACCESS ONE DISORDER; WOULDN'T IT BE FAIR TO SAY
15 THAT WE'RE NOT REALLY READY TO REACH A DEFINITIVE CONCLUSION AS
16 TO WHETHER MR. SUTCLIFFE IS OR IS NOT COMPETENT UNTIL WE HAVE
17 A BETTER HANDLE ON WHETHER AN ACCESS ONE DISORDER EXISTS HERE?

18 A. I'D PREFER TO SAY IT THAT WAY, IF I MAY. MY CONCERNS
19 ARE NOT SO MUCH WITH A DIAGNOSIS. BECAUSE, ACTUALLY, A PERSON
20 CAN BE SCHIZOPHRENIC. THEY CAN HAVE A DELUSIONAL DISORDER, AND
21 THEY CAN STILL BE COMPETENT.

22 AS A MATTER OF FACT, I'VE FOUND PEOPLE -- I'VE OFFERED
23 THOSE OPINIONS IN THE PAST. SO RIGHT NOW, I'M NOT SO WORRIED
24 ABOUT THE DIAGNOSIS SO MUCH AS THE SEVERITY OF THE SYMPTOMS I
25 ALREADY DESCRIBED. THE SEVERITY THAT -- WITH WHICH I SAW THEM

1 DISPLAYED TODAY, I GUESS THAT'S A BETTER WAY TO PUT IT.

2 Q. WOULD YOU AGREE, THEN, THAT AN INDIVIDUAL, A DEFENDANT
3 WITH AN ACCESS TWO DISORDER CAN, UNDER CERTAIN CIRCUMSTANCES,
4 BE INCOMPETENT?

5 A. YES.

6 Q. WOULD YOU AGREE WITH THE ADDITIONAL VIEW, THAT A
7 DEFENDANT WITH THE PARTICULAR ACCESS TWO DISORDER OF PARANOID
8 PERSONALITY DISORDER, CAN, UNDER CERTAIN CIRCUMSTANCES, BE
9 INCOMPETENT?

10 A. YES.

11 Q. WOULD YOU THEN AGREE, THAT THE QUESTION OF COMPETENCY IS
12 NOT SO MUCH A FUNCTION OF WHICH OF THE TWO ACCESSES MR.
13 SUTCLIFFE FALLS UNDER, WHETHER IT'S ACCESS ONE OR ACCESS TWO,
14 BUT -- AND NOW I'M BORROWING YOUR LAST ANSWER -- THE DEGREE OF
15 THE DISORDER AT ISSUE?

16 A. YES.

17 Q. WOULD YOU ALSO AGREE, THAT WHAT YOU OBSERVED THIS
18 MORNING IS SOMETHING THAT YOU DID NOT OBSERVE IN THE SETTING OF
19 YOUR INTERVIEW ENVIRONMENT?

20 A. YES.

21 Q. AND WOULD YOU AGREE, THAT WHAT YOU OBSERVED THIS
22 MORNING, ALLOWED YOU TO OBSERVE INFORMATION ABOUT MR. SUTCLIFFE
23 THAT BROUGHT INTO CONSIDERATION THE DEGREE OF HIS DISORDER?

24 A. YES.

25 Q. SUCH THAT, MAYBE THE DEGREE OF THE DISORDER IS GREATER

1 THAN WHAT YOU HAD IN MIND WHEN YOU WERE WRITING THIS REPORT; IS
2 THAT A POSSIBILITY?

3 A. YES.

4 Q. AND NOW THAT YOU'VE HAD THE OPPORTUNITY TO MAKE THESE
5 OBSERVATIONS HERE IN COURT THIS MORNING, ARE YOU OPEN TO THE
6 VIEW THAT FURTHER INQUIRY OR EVALUATION IS APPROPRIATE BEFORE A
7 DEFINITIVE CONCLUSION ON THE ISSUE OF COMPETENCY IS MADE?

8 A. AM I OPEN TO IT? YES.

9 Q. WOULD -- AGAIN, I SPEAK AS A LAY PERSON, SO I DON'T
10 PRETEND TO USE CLINICAL TERMS; BUT WOULD FURTHER EVALUATION OR
11 ASSESSMENT BY YOURSELF OR ANY OTHER CLINICAL ENVIRONMENT THE
12 PRUDENT THING TO DO BEFORE A DISTRICT COURT REACHES A
13 DEFINITIVE FINDING ON THE ISSUE OF COMPETENCE AS TO MR.
14 SUTCLIFFE?

15 A. I THINK BASED ON WHAT I'VE SEEN TODAY, IT WOULD PROBABLY
16 BE PRUDENT.

17 Q. LET ME -- AND I'M NOT GOING TO BELABOR THIS. I'M ALMOST
18 DONE. IT'S WORTH TALKING. WE'VE BEEN DISCUSSING SETTING.
19 WE'VE TALKED ABOUT THE SETTING OF THE INTERVIEW SESSIONS; THE
20 SETTING OF A THERAPY RELATIONSHIP; AND THE SETTING, IF YOU
21 WILL, OF AN ATTORNEY/CLIENT ENVIRONMENT.

22 THE LAST ENVIRONMENT I WOULD ASK YOU TO SPEAK TO IS THE
23 SETTING OF THIS VERY COURTROOM, AND, OF COURSE, THIS MORNING AS
24 AN EXAMPLE OF WHAT WE'RE ABOUT TO ADDRESS.

25 WOULD YOU AGREE, THAT THE PERSONALITY DISORDER AS A

1 PERSONALITY DISORDER IS A CHARACTER TRAIT, IF YOU WILL, THAT
2 CAN REACT TO THE TYPE OF ENVIRONMENT THAT A COURTROOM SETTING
3 PRESENTS?

4 A. I MEAN, IN AN ABSTRACT ANSWER TO YOUR QUESTION, YES.
5 I'M NOT SO SURE THAT'S WHAT'S GOING ON WITH MR. SUTCLIFFE.

6 Q. THAT WAS MY FIRST QUESTION. THE SECOND QUESTION IS,
7 WHAT YOU OBSERVED THIS MORNING IN MR. SUTCLIFFE'S BEHAVIOR
8 TOWARD THIS COURT, WOULD YOU SAY THAT THAT TYPE OF BEHAVIOR IS
9 CONSISTENT WITH THE WAY SOMEONE SUFFERING FROM A PERSONALITY
10 DISORDER WOULD BEHAVE GIVEN THE VARIABLES INVOLVED IN A
11 COURTROOM SETTING, SUCH AS, THE AUTHORITY OF THE COURT; THE
12 INHERENT PRESSURES IN A PENDING LEGAL PROCEEDING; AND SO ON?

13 A. I -- IF I CAN ANSWER IT THIS WAY, I THINK MOST PEOPLE
14 WITH PERSONALITY DISORDERS WOULD STILL BE ABLE TO -- WOULD
15 STILL BE ABLE -- PARTICULARLY, AFTER THE AMOUNT OF TIME WE
16 SPENT TOGETHER, WOULD STILL BE ABLE TO CONTROL THEIR BEHAVIOUR.
17 I THINK THAT WAS FAIRLY EXTREME.

18 Q. WHEN YOU SAY, THIS IS FAIRLY EXTREME, ARE YOU, PERHAPS,
19 SUGGESTING THAT WHAT YOU OBSERVED THIS MORNING IS NOT
20 NECESSARILY INDICATIVE OF A PERSONALITY DISORDER PER SE, BUT
21 THE DEGREE OF THAT DISORDER?

22 A. YES.

23 Q. AND --

24 A. AND THE DEGREE OF THE -- THE IMPAIRMENT IN THE ABILITY
25 TO FUNCTION.

1 Q. HELP US OUT WITH THAT LAST PHRASE. IMPAIRMENT OF THE
2 ABILITY TO FUNCTION; IS THAT A COMMENT THAT IS PART OF THE
3 PERSONALITY DISORDER, OR DOES THAT TAKE US, PERHAPS, INTO THE
4 REALM OF, YET, ANOTHER DISORDER?

5 A. NO. I THINK ONE OF THE HALLMARKS OF THE PERSONALITY
6 DISORDER IS THAT THE PERSON'S RIGID PERSONALITY TRAITS IMPAIR
7 THEM, IMPAIR THEIR ABILITY TO FUNCTION IN ALL KINDS OF
8 SETTINGS; AND THERE'S A DEGREE OF SEVERITY. AND I THINK, GIVEN
9 WHAT HE AND I'VE TALKED ABOUT, HIS APPARENT OR REPORTED
10 POSITIVE INTERACTIONS WITH YOU PREVIOUSLY, THE FACT THAT HE WAS
11 SO UPSET TODAY, I THINK -- I THINK THAT WAS PRETTY SEVERE.

12 IF I'D SEEN THAT PRIOR TO THE EVALUATION, I WOULD BE
13 LESS CONCERNED, BECAUSE I WOULD SAY, WELL, HE HASN'T HAD A
14 CHANCE TO REALLY COOL DOWN; TO TALK; TO SORT OF GET AN IDEA OF
15 WHAT'S GOING ON; TO TALK TO SOMEBODY.

16 BUT GIVEN THE WAY HE REACTED LIKE THIS AFTER WE'VE SPENT
17 A LOT OF TIME TOGETHER, I'M MORE CONCERNED.

18 Q. WOULDN'T YOU ALSO AGREE, THAT THE FACT THAT THIS CASE
19 HAS BEEN PENDING FOR A YEAR, WHICH IS, THAT THIS CASE IS NOT
20 NEW TO HIM. IT'S NOT PART OF AN INITIAL ANXIETY TO THE IDEA OF
21 BEING INDICTED AND PROSECUTED, IS ALSO SOMETHING OF A CONCERN
22 TO YOU IN ASSESSING THE FACT THAT HE DID BEHAVE THE WAY HE DID
23 AND THE DEGREE OF HIS BEHAVIOR?

24 A. I GUESS I WOULD AGREE WITH THAT.

25 Q. YOU DEVELOPED WHAT YOU WOULD CONSIDER TO BE A GOOD

1 PROFESSIONAL RELATIONSHIP WITH MR. SUTCLIFFE, WOULDN'T YOU SAY?

2 A. YES, I BELIEVE SO.

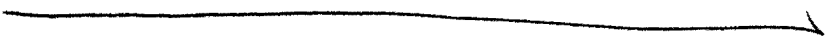
3 Q. WOULD YOU ALSO AGREE THEN, THAT YOU WERE CONCERNED THAT
4 HIS BEHAVIOUR THIS MORNING OCCURRED NOT WITHSTANDING THE FACT
5 THAT YOU WERE PRESENT IN THE COURTROOM, AND HE KNEW YOU WERE
6 THERE?

7 A. YEAH. I'M NOT SO SURE THAT THAT -- I'M JUST MORE
8 DISTURBED THAT IT HAPPENED AT ALL. I'M NOT SURE WHAT EFFECT MY
9 PRESENCE HERE WOULD HAVE HAD HIM ON HIM.

10 Q. AS I WRAP THIS UP, THE DISTINCTIONS BETWEEN THE
11 ENVIRONMENT THIS MORNING AND WHAT WE MIGHT SEE AT TRIAL, WOULD
12 YOU AGREE THAT THIS MORNING DID NOT PRESENT MR. SUTCLIFFE WITH
13 ANY PRESSURES? I MEAN, YOUR HONOR WAS VERY, VERY DIPLOMATIC
14 WITH HIM, AND THERE WAS NOTHING INHERENT IN THE PROCEEDINGS
15 THAT HAD TAKEN PLACE TO NECESSARILY CAUSE A SPECIFIC REACTION;
16 WOULDN'T YOU AGREE, THAT HIS REACTION DIDN'T COME -- STRIKE
17 THAT. I'M NOT BEING CLEAR. PERMIT ME TO START OVER.

18 WOULD YOU AGREE, THAT YOUR CONCERNS ABOUT THE BEHAVIOUR
19 THIS MORNING WERE BASED, IN PART, ON THE FACT THAT YOU DID NOT
20 OBSERVE ANYTHING INHERENT IN THE PROCEEDINGS IN THIS COURTROOM
21 THAT MIGHT TRIGGER A REACTION LIKE THIS; AND YOU WERE THERE FOR
22 CONCERN WHEN YOU SAW THE REACTION THAT YOU DID?

23 A. IF I MAY. I DIDN'T SEE ANYTHING OBJECTIVELY THAT SHOULD
24 HAVE CAUSED THAT KIND OF REACTION, IF THAT'S WHAT YOU MEAN. I
25 THINK, KNOWING HIM, I DON'T KNOW WHAT HAPPENED EARLIER THIS



1 MORNING. I KNOW THERE WAS SOME KIND OF ISSUE, BUT I THINK --

2 THE COURT: TO WHAT DOES THAT REFER? WHAT KIND OF ISSUE
3 DO YOU KNOW ABOUT?

4 THE WITNESS: WHEN WE WERE TALKING BEFORE OUTSIDE; HE
5 MENTIONED THAT -- HE DIDN'T GO INTO DETAILS; BUT HE'D BEEN
6 UPSET WITH SOMETHING THAT YOU HAD SPOKEN TO HIM ABOUT.

7 THE COURT: YOU'RE REFERRING TO SOMETHING MR. NICOLAYSEN
8 WAS SPEAKING TO HIM ABOUT?

9 THE WITNESS: YES. I'M SORRY. THERE WAS A CONVERSATION
10 BETWEEN MR. NICOLAYSEN AND MR. SUTCLIFFE, WHICH I DON'T KNOW
11 WHAT THE CONTENT WAS, BUT --

12 THE COURT: OKAY.

13 THE WITNESS: -- OR I DON'T RECALL IF HE TOLD ME.

14 Q. WOULD YOU AGREE, DR. BACKER, THAT BASED ON THE
15 ENVIRONMENT OF THE COURTROOM THIS MORNING AND THE TYPE OF
16 REACTION THAT YOU OBSERVED, THAT YOU HAVE REAL CONCERNS; THAT
17 IN A TRIAL ENVIRONMENT, WITH WITNESSES AND A JURY AND ALL OF
18 THE VARIABLES INVOLVED IN A TRIAL PROCEEDING, THAT THERE IS AN
19 EVEN GREATER LIKELIHOOD OF THE KIND OF BEHAVIOUR THAT WE
20 OBSERVED THIS MORNING?

21 A. I DON'T KNOW IF I CAN SAY IT'S A GREATER LIKELIHOOD.
22 I'M CONCERNED THAT HE WOULD ENGAGE IN THAT KIND OF BEHAVIOR AT
23 ALL; AND I'M -- I HAVE NO REASON TO BELIEVE THAT HE WOULDN'T
24 ENGAGE IN THAT IN THE FUTURE.

25 Q. AND WHEN YOU SAY YOU HAVE NO REASON TO BELIEVE HE

1 WOULDNT'T, ARE YOU ALLUDING TO POINTS MADE IN YOUR REPORT THAT
2 THE PARANOID DISORDER IS SOMEWHAT ROOTED IN THE CHARACTER OF
3 THE INDIVIDUALS, PART OF WHO THEY ARE?

4 A. RIGHT. CORRECT.

5 Q. ARE YOU INCLINED TO RECOMMEND TO THIS COURT ANY CLINICAL
6 ENVIRONMENT OR ANY SETTING IN WHICH A PRODUCTIVE UNDERTAKING
7 CAN BE MADE AS TO WHAT THE STATUS OF MR. SUTCLIFFE'S COMPETENCY
8 IS, OR WHETHER IT'S THE COMPLETION OF AN ACCESS ONE ASSESSMENT,
9 OR THE FURTHEST ESTIMATE OF THE ACCESS TWO DIAGNOSIS THAT HAS
10 ALREADY BEEN MADE?

11 THE COURT: DR. IHLE, I SEE -- EXCUSE ME, MR.
12 NICOLAYSEN.

13 MR. NICOLAYSEN: CERTAINLY.

14 THE COURT: DR. IHLE, IF YOU'RE PLANNING TO LEAVE THE
15 COURTROOM, I'D LIKE YOU TO STAY, UNLESS THERE'S SOME COMPELLING
16 REASON YOU HAVE TO LEAVE.

17 MR. NICOLAYSEN: THIS IS WRAPPING IT UP.

18 DR. IHLE: I WANTED TO SHUT THE DOOR. IT'S KIND OF
19 NOISY, SO --

20 Q. OH, OKAY. AND, DR. BACKER, THIS IS REALLY THE FINAL
21 QUESTION.

22 CAN YOU RECOMMEND OR PROPOSE TO THIS COURT A CLINICAL
23 ENVIRONMENT WITHIN THE BUREAU OF PRISONS WHERE A FURTHER
24 EVALUATION CAN BE MADE TO GUIDE THIS COURT TO A BETTER
25 CONCLUSION ONE WAY OR THE OTHER, AS TO WHETHER MY CLIENT IS OR

1 ISN'T COMPETENT; WHETHER THAT MEANS BEING ABLE TO MAKE THE
2 ACCESS ONE ASSESSMENT OR DIAGNOSIS THAT HAS BEEN DEFERRED, OR
3 WHETHER IT MEANS EVALUATING MORE FULLY THE DEGREE OF THE ACCESS
4 TWO DIAGNOSIS THAT HAS ALREADY BEEN MADE; I.E., THE PARANOID
5 DISORDER?

6 A. WELL, TYPICALLY, IF A PERSON -- IF AFTER A COMPETENCY
7 EVALUATION SUCH AS THE ONE I DID -- LET ME BACK UP FOR A
8 SECOND. I THINK MY CONTINUING TO SEE HIM, I'M NOT SURE HOW
9 MUCH MORE I'M GOING TO GET FROM HIM.

10 SO TYPICALLY, IF A PERSON IS -- AFTER INITIAL
11 EVALUATION, IF IT APPEARS THEY'RE NOT COMPETENT, THERE IS SOME
12 CONCERN ABOUT THAT. THEN, TYPICALLY, THE NEXT STEP IS TO SEND
13 THEM TO ONE OF THE MEDICAL CENTERS.

14 Q. AND DO YOU FEEL THAT THIS IS PRUDENT IN A CIRCUMSTANCE
15 SUCH AS THIS? AND IF THE COURT PLEASE, I INVITE YOU TO FACTOR
16 WHAT YOU OBSERVED THIS MORNING IN ANSWERING THAT QUESTION.

17 A. BASED ON WHAT I SAW THIS MORNING, I THINK THAT'S
18 PROBABLY PRUDENT.

19 Q. THANK YOU, DR. BACKER.

20 MR. NICOLAYSEN: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: OKAY. I'LL HAVE A COUPLE QUESTIONS IN A
22 MINUTE, BUT DO YOU WANT TO ASK ANY QUESTIONS?

23 MS. DUARTE: I DO, YOUR HONOR.

24 THE COURT: GO AHEAD.

25 MS. DUARTE: HAVE SOME QUESTIONS.

CROSS-EXAMINATION

BY MS. DUARTE:

Q. DR. BACKER, WHEN WE'RE REFERRING TO WHAT YOU SAW THIS MORNING, WE'RE REFERRING TO MR. SUTCLIFFE'S BEHAVIOUR HERE IN THE COURT BEFORE HE WAS EXPELLED, CORRECT?

A. CORRECT.

Q. NOW, WHEN YOU AND I SPOKE ON THE PHONE ABOUT THIS CASE, DO YOU REMEMBER THAT I DESCRIBED TO YOU SEVERAL OTHER DISRUPTIVE INCIDENTS THAT I HAD WITNESSED WITH MR. SUTCLIFFE?

A. YES.

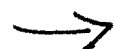
Q. AND, YOU, OBVIOUSLY, DIDN'T WITNESS THOSE INCIDENTS, THOUGH, CORRECT?

A. CORRECT.

Q. WHEN YOU CONSIDERED THOSE INCIDENTS AS PART OF YOUR KNOWLEDGE OF THE HISTORY OF HIM IN HIS CASE, DID YOU CONSIDER THEM TO BE SOMEWHAT LIKE WHAT YOU WITNESSED TODAY? OR HOW DID THEY COMPARE, IN YOUR MIND TO WHAT YOU WITNESSED TODAY?

A. IF I RECALL CORRECTLY, I THINK WE'RE TALKING ABOUT THE HEARING WHERE THE COMPETENCY EVALUATION WAS REQUESTED. I GUESS HE STOOD UP, AND THERE WAS AN OUTBURST OF SOME TYPE; SO THIS SEEMS LIKE WHAT YOU DESCRIBED TO ME.

Q. SO YOU'RE ASSUMING, WHEN YOU EXPRESS CONCERN ABOUT WHAT HAPPENED TODAY, AND TELL ME IF I'M WRONG. YOU'RE NOT ASSUMING THIS WAS THE FIRST TIME THIS HAPPENED. YOU'RE ASSUMING THIS HAS HAPPENED BEFORE?



1 A. CORRECT.

2 Q. SO YOUR CONCERN LIES WITH THE FACT THAT YOU EXPLAINED TO
3 HIM THAT THAT WAS INAPPROPRIATE, YET, HE DID IT ANYWAY?

4 A. CORRECT. I MEAN, IT'S A LITTLE MORE THAN THAT, BUT IN A
5 SIMPLE ANSWER, YES.

6 Q. CAN YOU JUST TELL ME BRIEFLY WHAT ELSE? WHAT AM I
7 MISSING? BECAUSE I DIDN'T MEAN TO UNDEREMPHASIZE IT.

8 A. NO. I THINK THE FACT IS THAT HE -- THAT A STUDY WAS
9 ORDERED, WHICH I THINK HE HAD SOME CONCERNS ABOUT. WE SAT
10 DOWN. WE TALKED A LOT ABOUT THE REASON FOR THIS; THE NEED FOR
11 HIM TO BE COMPETENT; THE KIND OF BEHAVIOR HE NEEDS TO ENGAGE IN
12 TO DEMONSTRATE THAT HE'S COMPETENT. I'M SURPRISED THAT IN
13 SPITE OF ALL THAT HE BLEW UP LIKE THIS, OR HE REACTED LIKE
14 THIS.

15 IF I MAY DIGRESS FOR A SECOND. OFTEN WITH PEOPLE WHO,
16 LET'S SAY, HAVE A DELUSIONAL DISORDER, OR EVEN SOME OTHER
17 DISORDERS, WHEN YOU'RE -- PARTICULARLY, WITH COMPETENCY
18 RESTORATION, YOU ACTUALLY ARE COACHING THEM SOMETIMES. I MEAN,
19 YOU'RE NOT EVEN TRYING TO ARGUE WITH THEM WHETHER THEIR BELIEFS
20 ARE TRUE OR NOT. YOU'RE TRYING TO SAY, LOOK, IF YOU WANT TO
21 GET THROUGH THIS, DON'T TALK ABOUT THIS. FOCUS ON THIS. AND
22 I'VE WORKED WITH PEOPLE WHO ARE PARANOID; WHO ARE ABLE TO DO
23 THAT. MAYBE THEY DON'T DO IT RIGHT AWAY, BUT THEY GET THE
24 MESSAGE; AND THEY'RE, FOR LACK OF A BETTER WORD, OR BETTER
25 PHRASE, THEY'RE GOAL ORIENTED, SO THEY'LL PUT ASIDE SOME OF

1 THEIR BELIEFS, AND THEY'LL FOCUS ON THE TASK AT HAND.

2 HE'S GOT THE CAPACITY TO DO THAT. I THOUGHT THAT -- I THOUGHT
3 THROUGH MY MANY INTERACTIONS WITH HIM, THAT HE WAS GETTING
4 THAT. SO TO HAVE HIM REACT LIKE HE DID TODAY, WHICH IS COUNTER
5 TO EVERYTHING WE TALKED ABOUT, RAISES IN MY MIND, ANYWAY, THE
6 CONCERN THAT -- THAT HIS ABILITY TO COOPERATE IS MORE IMPAIRED
7 THAN I THOUGHT.

8 Q. BUT NOW, WE TALKED ABOUT A TRIGGER, AND YOU TALKED ABOUT
9 IT IN YOUR TESTIMONY, TRIGGER?

10 A. RIGHT.

11 Q. AND BY TRIGGER, I TAKE IT, YOU MEAN SOMETHING THAT'S
12 UNIQUE TO THAT PERSON THAT TRIGGERS SOME EMOTIONAL OUTBURST OR
13 PARANOIA? IN OTHER WORDS, IT'S NOT SOMETHING LIKE, TO SOMEONE
14 WHO'S ALLERGIC TO A FOOD, EATING THAT FOOD? IT'S SOMETHING
15 THAT'S GOING TO MAKE HIM MISBEHAVE, BASICALLY; IS THAT CORRECT?

16 A. I THINK THAT'S CORRECT.

17 Q. OKAY. AND WHEN YOU WERE TALKING WITH MR. SUTCLIFFE, DID
18 YOU TALK ABOUT -- I KNOW THAT YOU DISCUSSED THE CONCEPT OF
19 PLEADING GUILTY.

20 A. CORRECT.

21 Q. DID YOU TALK WITH HIM ABOUT WHETHER OR NOT -- AND YOU
22 DON'T HAVE TO -- PLEASE DON'T TELL ME WHAT THE ANSWER WAS --
23 BUT DID YOU DISCUSS WITH HIM WHETHER OR NOT HE WAS GUILTY?

24 THE COURT: WHAT'S THE RELEVANCE OF THAT?

25 MS. DUARTE: I THINK THAT A TRIGGER HAD TO DO WITH A

1 PLEA OFFER THAT WE DISCUSSED LAST NIGHT; AND THAT, PROBABLY
2 ALTHOUGH I'M NOT PRIVY TO ATTORNEY/CLIENT COMMUNICATIONS, WAS
3 DISCUSSED WITH HIM THIS MORNING BEFORE THE HEARING.

4 THE COURT: WHEN YOU SAY, WE DISCUSSED LAST NIGHT, WHO
5 ARE YOU REFERRING TO?

6 MS. DUARTE: HIS ATTORNEY AND I.

7 THE COURT: ALL RIGHT. I'LL PERMIT AN ANSWER TO THE
8 QUESTION.

9 A. WE DISCUSSED IT.

10 Q. OKAY. AND IN YOUR DISCUSSIONS, I TAKE IT, IT DID NOT
11 OCCUR TO YOU, AND IT WOULD NOT BE YOUR PLACE TO ACTUALLY
12 SUGGEST TO MR. SUTCLIFFE, IN ANY WAY, THAT HE WAS GUILTY?

13 A. CORRECT.

14 Q. OKAY. SO YOU DIDN'T HAVE TO DEAL WITH THAT?

15 A. RIGHT. IF I CAN CLARIFY ONE THING. I NEVER DIRECTLY
16 ASKED HIM, DID YOU DO THIS OR NOT. I'M JUST SAYING, THAT IN
17 THE CONTEXT OF ALL WE WERE TALKING ABOUT, HE DESCRIBED SOME OF
18 THE THINGS THAT HE DID.

19 Q. RIGHT. NOW, THE OUTBURST THAT YOU SAW THIS MORNING, I
20 WANT YOU TO ASSUME, JUST FOR A MINUTE, IF YOU WILL, ASSUME THAT
21 MR. SUTCLIFFE HAD, FOR THE FIRST TIME, WITH THIS ATTORNEY, MR.
22 NICOLAYSEN, WHO'S HIS FORTH ATTORNEY, WAS BROACHED -- THAT THE
23 SUBJECT WAS BROACHED BY HIS ATTORNEY THIS MORNING AS TO WHETHER
24 OR NOT MR. SUTCLIFFE WANTED TO PLEAD GUILTY; DO YOU KNOW ENOUGH
25 ABOUT MR. SUTCLIFFE IN YOUR CONVERSATIONS YOU'VE HAD WITH HIM,

1 TO HAVE AN OPINION ON WHETHER THAT COULD BE A TRIGGER? AGAIN,
2 NOTHING HAVING TO DO WITH HIS ACTUAL GUILT. BUT ON WHETHER
3 THAT DISCUSSION COULD CAUSE HIM TO, FOR LACK OF A BETTER WORD,
4 GO OFF?

5 A. WELL, HE MADE IT CLEAR THAT HE DIDN'T WANT -- AGAIN,
6 BECAUSE ONE OF THE QUESTION YOU ASK IN COMPETENCY IS, WE TALK
7 ABOUT PLEA BARGAIN, AND HE WAS NOT INTERESTED IN A PLEA
8 BARGAIN. I GUESS BASED ON -- AGAIN, I DON'T KNOW WHAT WAS
9 DISCUSSED, BUT BASED ON MY INTERACTIONS WITH HIM, I WOULD HAVE
10 EXPECTED HE WOULD HAVE SAID, NO. I'M NOT GOING TO DO IT. AND
11 HE WOULD HAVE BEEN FAIRLY CALM ABOUT IT. SO, AGAIN, I'M
12 SPECULATING, BECAUSE I DON'T KNOW WHAT WAS SAID.

13 BUT, YOU KNOW, THIS SEEMED TO REALLY ESCALATE TODAY TO
14 DREDGING UP A WHOLE BUNCH OF THINGS, INCLUDING RECUSING THE
15 JUDGE, AND ALL THAT STUFF; SO I'M JUST SURPRISED. I WOULD HAVE
16 THOUGHT AFTER HAVING SPENT A LOT OF TIME WITH HIM, THAT HE
17 MIGHT HAVE SAID, YOU KNOW, "BLANK," NO, I'M NOT GOING TO DO
18 THAT, BUT HE WOULD HAVE LEFT IT AT THAT.

19 Q. DID YOU HAVE DISCUSSIONS WITH HIM ABOUT THE TIMING OF
20 HIS FIRING OR REFUSING TO WORK WITH HIS PRIOR ATTORNEYS IN THIS
21 CASE, AND AS TO WHETHER OR NOT IT COINCIDED WITH SETTLEMENT
22 OFFERS DISCUSSED BY THOSE ATTORNEYS?

23 A. I DIDN'T ASK HIM THAT SPECIFICALLY. I'M TRYING TO THINK
24 IF THAT CAME UP.

25 (PAUSE.)

1 A. I DON'T REMEMBER SPECIFICALLY. I REMEMBER WHAT HE TOLD
2 ME ABOUT THE LAST ATTORNEY, AND I DON'T REMEMBER THAT COMING UP
3 AT ALL. I DON'T KNOW ABOUT THE FIRST ATTORNEYS.

4 Q. OKAY. ALL RIGHT. THE REASON I'M ASKING YOU THESE
5 QUESTIONS IS, IS THAT IF I -- IF I WERE TO TELL YOU -- AND,
6 AGAIN, THIS IS -- I GUESS HAS TO BE A HYPOTHETICAL QUESTION --
7 BUT THE BREAKDOWN OF COMMUNICATIONS BETWEEN MR. SUTCLIFFE AND
8 HIS PRIOR THREE ATTORNEYS, AS WELL AS MR. NICOLAYSEN -- AND BY,
9 BREAKDOWN, I DESCRIBE WHAT YOU SAW THIS MORNING.

10 A. HMM-HMM.

11 Q. DIRECTLY FOLLOWED DISCUSSIONS OF PLEADING GUILTY AND
12 WHAT MR. SUTCLIFFE WOULD HAVE TO DO AND HAVE TO ADMIT TO IN
13 ORDER TO RESOLVE THE CASE, IS IT POSSIBLE THAT, PERHAPS, MR.
14 SUTCLIFFE SIMPLY GETS VERY, VERY ANGRY TO THE POINT WHERE HE
15 REFUSES TO CONTROL HIMSELF, AND INSTEAD, EXPRESSES HIS ANGER
16 WHEN HE'S CONFRONTED WITH THE FACT THAT IT'S MAYBE TIME TO
17 EITHER SETTLE THE CASE OR GET READY FOR TRIAL?

18 MR. NICOLAYSEN: YOUR HONOR, PERMIT ME. I DON'T MEAN TO
19 OBJECT IN THIS TYPE OF PROCEEDING, BUT I DON'T WANT THE RECORD
20 TO SUGGEST THAT THE ASSUMPTION IS, IN FACT, CORRECT.

21 THE COURT: YES. I DON'T THINK THE RECORD DOES SUGGEST
22 THAT. I DON'T CONSTRUE IT TO BE ANYTHING OTHER THAN A
23 HYPOTHETICAL QUESTION. I DON'T HAVE ANY ASSUMPTION, AND I'M
24 CERTAINLY NOT MAKING ANY FINDINGS.

25 BUT I THINK THE WAY TO REALLY GET THE QUESTION FRAMED IN

1 A WAY THAT I THINK WOULD ASSIST ME, IS TO ASK IT THIS WAY,
2 DOCTOR.

3 TO THE EXTENT THAT IT'S AN INHERENT FUNCTION OF A
4 CRIMINAL DEFENSE ATTORNEY IN REPRESENTING EFFECTIVELY THE BEST
5 INTEREST OF HIS CLIENT, TO EXPLORE WITH THE PROSECUTOR, A
6 REASONABLE PLEA AGREEMENT THAT MIGHT LIMIT SOME DOWNSIDE RISKS
7 TO THE DEFENDANT; AND, TWO, SECONDLY, TO THE EXTENT THAT THAT
8 ATTORNEY THEN HAS AN OBLIGATION TO DISCUSS WITH THE DEFENDANT,
9 THE DISCUSSIONS THE ATTORNEY MAY HAVE HAD WITH THE PROSECUTOR;
10 DO YOU THINK THAT THE COMBINATION OF THOSE TWO THINGS WOULD
11 MAKE IT DIFFICULT FOR MR. SUTCLIFFE TO WORK WITH HIS ATTORNEY,
12 WHOEVER THAT ATTORNEY IS?

13 THE WITNESS: I THINK BASED ON WHAT I SAW TODAY, YES.
14 IF I MAY ELABORATE. WE TALKED ABOUT PLEA AGREEMENTS. I MEAN,
15 THE CONCEPT OF IT, AND HE WAS NOT -- WHEN I SPOKE WITH HIM --
16 AGAIN, HE -- HE SEEMED REASONABLE THAT HE WOULD LOOK AT ALL
17 KINDS OF OPTIONS OR WHATEVER.

18 SO I THINK BASED ON MY INTERACTIONS WITH HIM, IF SIMPLY
19 TODAY A PLEA AGREEMENT WAS SUGGESTED TO HIM, I'M JUST SURPRISED
20 THAT HE GOT THAT UPSET.

21 THE COURT: OKAY. WELL, WE DON'T KNOW IF ONE WAS
22 SUGGESTED TO HIM. WE'RE NOT GOING TO MAKE ANY EFFORT TO FIND
23 OUT.

24 THE WITNESS: OKAY.

25 THE COURT: LET'S JUST MOVE ON TO A DIFFERENT SUBJECT.

1 BY MS. DUARTE:

2 Q. MR. NICOLAYSEN MENTIONED -- I'M ALMOST DONE, YOUR HONOR.
3 MR. NICOLAYSEN MENTIONED THE PROXIMITY OF THE CHARGING AND OF
4 THE INDICTMENT AS SOMETHING THAT MIGHT CAUSE A DEFENDANT TO
5 FEEL ANXIETY; DO YOU REMEMBER WHEN HE TALKED TO YOU ABOUT THAT
6 A LITTLE BIT?

7 A. I WASN'T COMPLETELY CLEAR ON THAT. IF YOU COULD MAYBE
8 -- I MEAN --

9 Q. I THINK THAT HE MENTIONED THAT, PERHAPS, A DEFENDANT
10 WOULD TEND TO BE MORE ANXIOUS AROUND THE INITIATION OF THE
11 CASE, AND THAT THIS CASE WAS ABOUT A YEAR ALONG, SO THE
12 NOVELTY, IF YOU WILL, HAD WORN OFF; AND HE ASKED YOUR OPINION
13 AS TO -- HE ASKED WHETHER OR NOT THAT FACTORED INTO YOUR
14 OPINION ON MR. SUTCLIFFE, AND YOU'RE SURPRISED AT HIS OUTBURST.

15 A. YEAH. I'M NOT EXACTLY -- I'M NOT RECALLING EXACTLY MY
16 RESPONSE, BUT I KNOW THAT --

17 THE COURT: WELL, RIGHT NOW, YOU DON'T HAVE TO ADD
18 ANYTHING.

19 THE WITNESS: OKAY.

20 THE COURT: SHE'S JUST TRYING TO PROVIDE A CONTEXT FOR
21 HER NEXT QUESTION. ASK THE QUESTION.

22 Q. WHAT I WANTED TO ASK IS, IS THE PENDENCY OF TRIAL, THE
23 PROXIMITY OF TRIAL, THE FACT THAT TRIAL IS A WEEK AWAY, TWO
24 WEEKS AWAY, IN YOUR EXPERIENCE, IF YOU HAVE THE EXPERIENCE, IS
25 THAT ALSO A THING THAT WOULD PROVOKE ANXIETY IN A DEFENDANT?

1 A. SURE. I THINK THAT -- AND -- YES.

2 Q. MIGHT THAT PROVOKE A DEFENDANT WHO IS, IN FACT,
3 COMPETENT TO ACT OUT OR ACT UP IF HE WEREN'T OTHERWISE
4 INCLINED?

5 A. I DON'T THINK THAT TO THE DEGREE THAT I SAW TODAY.

6 Q. OKAY. ALL RIGHT. AND LASTLY, JUST TO CLARIFY, YOU HAD
7 TALKED ABOUT PARANOID DELUSIONAL VERSUS JUST PARANOID; IS THAT
8 FAIR?

9 A. PARANOID DELUSIONAL DISORDER VERSUS PARANOID PERSONALITY
10 DISORDER.

11 Q. OKAY. GOOD. THANK YOU. FOR PARANOID DELUSIONAL, YOU
12 FOUND THAT MR. SUTCLIFFE YOU DID NOT FEEL WAS, IN FACT,
13 DELUSIONAL; IS THAT RIGHT?

14 A. CORRECT.

15 Q. I WANT TO PUT IT IN LAYMAN'S TERMS AND MAKE SURE I GET
16 IT RIGHT, BUT PLEASE DON'T ALLOW ME TO GET IT WRONG.

17 IS THAT BASICALLY SAYING, WHEN HE'S NOT DELUSIONAL, BUT
18 HE DOES HAVE PARANOID PERSONALITY TRAITS, IS THAT BASICALLY
19 SAYING THAT HE'S NOT MAKING THINGS UP, NECESSARILY, AND
20 IMAGINING THINGS THAT AREN'T THERE; HOWEVER, HE MAY BE MAKING
21 MORE OF THINGS THAN -- IN OTHER WORDS, HE'S NOT MAKING THINGS
22 UP, BUT, PERHAPS, HE'S MAKING TOO MUCH OF THINGS THAT ARE REAL?

23 A. THAT IS MORE ALONG THE LINES OF A PARANOID PERSONALITY
24 DISORDER.

25 Q. OKAY. SO THAT WOULD DESCRIBE MR. SUTCLIFFE? AGAIN, NOT

1 MAKING THINGS UP OUT OF THIN AIR, BUT PERHAPS, READING TOO MUCH
2 INTO THINGS?

3 A. OVER REACTING. MISINTERPRETING.

4 Q. BUT NOT DELUSIONAL, IN THAT, HE DOESN'T UNDERSTAND REAL
5 VERSUS NOT REAL?

6 A. CORRECT.

7 Q. OKAY. AND YOUR RECOMMENDATION AT THIS POINT -- AND
8 PLEASE DON'T LET ME PUT WORDS IN YOUR MOUTH -- IS IT THAT HE BE
9 FURTHER TESTED AT A FEDERAL MEDICAL FACILITY?

10 A. I THINK THAT'S THE PRUDENT THING TO DO.

11 Q. OKAY.

12 MS. DUARTE: I HAVE NOTHING FURTHER. THANK YOU, YOUR
13 HONOR.

14 THE COURT: OKAY. YOU DON'T HAVE ANYTHING FURTHER, DO
15 YOU?

16 MR. NICOLAYSEN: NOTHING. THANK YOU.

17 THE COURT: OKAY. DR. BACKER, A COUPLE OF THINGS. THE
18 REPORT THAT HAS BEEN -- OR WILL BE MARKED AND PLACED IN THIS
19 RECORD CONTAINS SOME TYPOS. AND KNOWING WHAT WE ALL KNOW ABOUT
20 MR. SUTCLIFFE'S UNDERSTANDABLE DESIRE TO MAKE SURE EVERYTHING
21 IS DONE RIGHT, I WANT TO CONFIRM THAT THIS ENTIRE REPORT IS
22 ABOUT STEVEN WILLIAM SUTCLIFFE.

23 WHAT I'M REFERRING TO IS, THAT AT THE TOP OF PAGE 3, AND
24 FOR SEVERAL ENSUING PAGES, THE NAME OF THE PATIENT IS INDICATED
25 AS DAVID SUTCLIFFE.

1 THE WITNESS: OH.

2 THE COURT: AND THE CONCLUDING PAGE OR TWO, IT'S LISTED
3 AS DAVID SNYDER; BUT THAT'S JUST SOME SECRETARY'S TYPO, RIGHT?

4 THE WITNESS: CORRECT, SIR.

5 THE COURT: AND ALL OF THE MATERIAL OF PAGES 1 THROUGH
6 15 IN THIS REPORT ARE ABOUT, AND DESCRIBE ONLY, STEVEN WILLIAM
7 SUTCLIFFE, CORRECT?

8 THE WITNESS: THAT'S CORRECT.

9 THE COURT: OKAY. NOW, NEXT, I WOULD LIKE YOU TO TELL
10 ME, ASSUMING THAT OTHER QUALIFIED EXAMINERS, INCLUDING AT A
11 MEDICAL CENTER, AT SOME POINT CONCLUDE THAT WHATEVER MR.
12 SUTCLIFFE'S CONDITION IS, IT IS NOT AN ACCESS ONE DISORDER; ARE
13 THERE ANY MEASURES THAT SOMEONE LICENSED TO DO THIS KIND OF
14 THING, NAMELY, A MEDICAL PHYSICIAN, NOT NECESSARILY A
15 PSYCHOLOGIST, BUT SOMEONE, WHO, PERHAPS, MAY BE A PSYCHIATRIST
16 OR SOME OTHER KIND OF MEDICAL PHYSICIAN, A DOCTOR; ARE THERE
17 ANY MEASURES SUCH A PERSON CAN DO, PSYCHOTROPICLY OR OTHERWISE,
18 TO ASSIST A PERSON WHO HAS EXHIBITED A CONTINUED, NOT ONLY
19 TENDENCY, BUT A CONTINUED PATTERN OF DISRUPTIVE PROCEEDINGS, SO
20 THAT IF THERE ARE FURTHER PROCEEDINGS, THE RISK IS MINIMIZED?
21 ARE THERE TRANQUILIZERS? ARE THERE OTHER KINDS OF MEDICATIONS
22 THAT CAN BE ADMINISTERED TO SOMEONE TO MAKE IT POSSIBLE FOR THE
23 PROCEEDINGS TO BE CONDUCTED IN A FAIR AND APPROPRIATE WAY?

24 THE WITNESS: ~~YES.~~

25 THE COURT: AND IN YOUR EXPERIENCE, AND WORKING WITH THE

1 BUREAU OF PRISONS, IS THAT SOMETHING THAT YOU OR YOUR
2 COLLEAGUES HAVE EVER DONE?

3 THE WITNESS: YES.

4 THE COURT: TO ENHANCE THE BASIS FOR ASSURING THAT A
5 CONCLUSION OF COMPETENCE IS ACTUALLY REENFORCED BY COMPETENT
6 BEHAVIOUR DURING THE TRIAL?

7 THE WITNESS: IF I UNDERSTAND YOUR QUESTION CORRECTLY,
8 PERHAPS, THE BEST WAY I CAN ANSWER IT IS, DESCRIBE WHAT IT'S
9 DONE IF HE GOES TO A MEDICAL CENTER, WHERE THE MEDICATION ISSUE
10 CAN BE ADDRESSED.

11 IF THEY FIRST TRY AND GET A PERSON TO VOLUNTARILY AGREE
12 TO TAKE MEDICATION, I DOUBT HE WOULD. THEN THEY HAVE TO, IF
13 THE TREATING CLINICIAN PHYSICIANS BELIEVE HE NEEDS MEDICATION
14 THEN, AND IT'S INVOLUNTARY, THEY HAVE TO HOLD A HEARING,
15 BECAUSE THERE'S A WHOLE PROCESS THAT HAS TO BE DONE.

16 AND THEN, IF IT'S DETERMINED THAT HE DOES MEET THE
17 CRITERIA, AND MEDICATION IS ADMINISTERED, PARTICULARLY, WITH
18 DELUSIONAL DISORDERS, WHETHER IT'S A -- PARTICULARLY, WITH A
19 DELUSIONAL -- PARANOID DELUSIONAL DISORDER, THOSE TYPES OF
20 DISORDERS TEND TO NOT BE HIGHLY RESPONSIVE TO MEDICATION.

21 IT DOESN'T MEAN IT CAN'T HAPPEN, BUT IT'S NOT UNCOMMON
22 FOR A PERSON WHO HAS A PARANOID DELUSIONAL DISORDER TO BE ON
23 MEDICATION AND THE DELUSION DOESN'T GO AWAY, MAYBE THEY DON'T
24 TALK ABOUT IT QUITE AS MUCH OR WHATEVER. SO UNLIKE -- LET'S
25 SAY SCHIZOPHRENIA OR SOME OTHER DISORDERS, WHICH TEND TO BE

1 MORE RESPONSIVE TO MEDICATION.

2 SO ANYWAY, IF HE WERE TO GO THERE; IF THEY FELT HE
3 WARRANTED MEDICATION; IF THEY DID A HEARING AND INVOLUNTARILY
4 MEDICATED HIM, IT'S POSSIBLE IT COULD HAVE SOME POSITIVE AFFECT
5 ON HIM, BUT THERE'S NO GUARANTEE.

6 THE COURT: OKAY. NOW, MY NEXT QUESTION IS, HOW LONG,
7 TYPICALLY, WOULD IT TAKE, INCLUDING TRAVEL TIME, KNOWING THAT
8 MR. SUTCLIFFE IS HERE IN LOS ANGELES AND THE MEDICAL CENTERS
9 ARE EITHER IN SPRINGFIELD, MISSOURI OR ROCHESTER, MINNESOTA,
10 THOSE ARE THE ONLY TWO ALTERNATIVES, RIGHT?

11 THE WITNESS: THERE'S BUTNER, NORTH CAROLINA.

12 THE COURT: OKAY. AND POSSIBLY BUTNER. HOW LONG WOULD
13 IT TAKE FOR THE EVALUATION TO BE COMPLETED AND A REPORT TO BE
14 SUBMITTED TO THE COURT, INCLUDING, FOR THE SAKE OF ANSWERING
15 THIS QUESTION, WITH A PART OF THE ENTIRE PROCEDURE CONSISTING
16 OF THIS HEARING THAT YOU JUST DESCRIBED RELATING TO THE
17 POSSIBLE USE OF PSYCHOTROPIC DRUGS?

18 THE WITNESS: I THINK THE STATUTE GIVING THEM -- IF IT'S
19 COMPETENCY RESTORATION, A 41(D), THEY GET FOUR MONTHS IS HOW
20 LONG THEY'RE GIVEN. I CAN'T SPEAK TO HOW QUICKLY THE MARSHALS
21 WILL BRING THEM OR NOT.

22 THE COURT: OKAY. NOW, IN MY PREVIOUS ORDER, I ISSUED
23 IN BIG, STRONG, BOLD, CAPITAL LETTERS A STRONG RECOMMENDATION,
24 WHICH WAS NOT FOLLOWED, THAT THE EVALUATION BE CONDUCTED EITHER
25 IN ROCHESTER OR IN SPRINGFIELD. I TAKE IT, YOU WOULD AGREE,

1 THAT IF I DON'T SIMPLY RECOMMEND, BUT I SIMPLY VERY CLEARLY AND
2 WITHOUT QUALIFICATION, ORDER THAT IT BE DONE, THERE'S NOT GOING
3 TO BE ANY IMPEDIMENT?

4 THE WITNESS: IF YOU ORDER A 41(D), THEY CAN ONLY BE
5 DONE IN A MEDICAL CENTER.

6 THE COURT: A 41(D) IS REFERRING TO WHAT?

7 THE WITNESS: I'M SORRY. 4241(D), IT'S THE COMPETENCY
8 THE COMPETENCY RESTORATION. SO, FOR EXAMPLE, IF FOLLOWING THIS
9 HEARING YOU DETERMINE HE IS NOT COMPETENT, THEN THE NEXT STEP
10 IS A 41(D), AND THOSE CAN ONLY BE DONE IN A MEDICAL CENTER.

11 THE COURT: BUT IN ORDER TO HAVE AN EXAMINATION IN A
12 MEDICAL CENTER, DO I FIRST HAVE TO FIND HE'S NOT COMPETENT? OR
13 CAN I ALSO FIND THAT THERE IS SUFFICIENT QUESTIONS AS TO
14 WHETHER HE'S COMPETENT TO REQUIRE THAT?

15 THE WITNESS: I THINK THE LATTER IS VERY ACCEPTABLE.
16 I'VE WRITTEN REPORTS WITH SIMILAR TYPE OF WORDING FOR OTHER
17 JUDGES, WHERE, YOU KNOW, WE CAN'T GUARANTEE THAT THE PERSON IS
18 COMPETENT; THEREFORE, WE RECOMMEND THEY GO FOR A PERIOD OF
19 RESTORATION.

20 THE COURT: WELL, THAT'S WHAT I'M INCLINED TO DO. ALL
21 RIGHT. DO EITHER OF YOU HAVE ANY QUESTIONS THAT ARE FOLLOW UP
22 QUESTIONS TO THE QUESTIONS I JUST ASKED DR. BACKER?

23 MR. NICOLAYSEN: NO, YOUR HONOR. THANK YOU.

24 MS. DUARTE: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. YOU MAY STEP DOWN, BUT STAY IN

1 THE COURTROOM, PLEASE.

2 HERE'S WHAT I'M GOING TO DO, COUNSEL. I AM MAKING A
3 FINDING, AND LET ME DO THAT FIRST. THE FINDING IS THAT NOT
4 ONLY PRUDENCE, BUT THE INTEREST OF JUSTICE REQUIRE THAT MR.
5 SUTCLIFFE BE SUBJECTED TO A THOROUGH EXAMINATION AT A BUREAU OF
6 PRISONS FEDERAL MEDICAL CENTER UNDER 18 U.S.C. 1441(D). THE
7 FINDING IS BASED ON A COMBINATION OF FACTORS, INCLUDING THE
8 COMPLETE TESTIMONY OF DR. BACKER; THE REPORT HE PREPARED; AND
9 THE RECORD IN THIS CASE.

10 NOW, WITH RESPECT TO THE PROCEEDS THAT OCCURRED IN THIS
11 COURTROOM ABOUT WHICH THERE'S BEEN CONSIDERABLE QUESTIONING AND
12 ANSWERING, I'M NOT SURE IT'S SUFFICIENTLY CLEAR, SO I WANT THE
13 RECORD TO REFLECT THAT BEFORE MR. SUTCLIFFE DEMANDED TO BE
14 EXCUSED, AND I SENT HIM OUT OF THE COURTROOM, HE REFUSED TO SIT
15 WHERE THE DEFENDANT IS REQUIRED TO SIT, NAMELY, AT COUNSEL
16 TABLE, AND NEXT TO HIS LAWYER; AND THAT THROUGHOUT THE
17 PROCEEDINGS, THAT THE TRANSCRIPT REFLECTS HE WAS PRESENT FOR,
18 AND SPEAKING, OFTEN INTERRUPTING, HE WAS IN A BACK ROW BENCH;
19 NOT AT THE FURTHEST ROW, BUT BACK IN THE PORTION OF THE
20 COURTROOM WHERE VISITORS SIT.

21 WHEN HE DID SPEAK, IT WAS ALMOST ALWAYS IN AN EXTREMELY
22 LOUD VOICE. AND ON OCCASION, HIS FACE GOT NOTICEABLY RED. THE
23 REST OF WHAT HE SAID, I'M SURE, IS GOING TO BE REFLECTED IN THE
24 TRANSCRIPT, AND I WON'T BELABOR THAT.

25 SECONDLY, I AM ORDERING THAT THE U.S. ATTORNEY ORDER A

1 TRANSCRIPT OF THIS PROCEEDING; THAT THE TRANSCRIPT BE ORDERED
2 UNDER THE CIRCUMSTANCES UNDER WHICH IT WOULD BE COMPLETED AND
3 MADE AVAILABLE TO MR. SUTCLIFFE IN NOT MORE THAN ONE WEEK. I
4 WANT HIM TO HAVE THE TRANSCRIPT OF ALL THE PROCEEDINGS THAT
5 OCCURRED OUTSIDE OF HIS PRESENCE, AND BEFORE HE'S TRANSFERRED
6 TO ANY ADDITIONAL OR ALTERNATIVE FACILITY.

7 MS. DUARTE: YOUR HONOR, I SHOULD MAKE THAT AVAILABLE TO
8 MR. NICOLAYSEN?

9 THE COURT: YES.

10 MS. DUARTE: OKAY.

11 THE COURT: COUNSEL CAN HAVE IT AS WELL, AND I WANT A
12 COPY. BUT THIS IS A WAY TO DO IT RIGHT, AND FROM THE POINT OF
13 VIEW OF MR. SUTCLIFFE AND THE COURT REPORTER; SO YOU PREPARE
14 THE NECESSARY REQUESTS.

15 THIRD, MS. DUARTE, YOU PREPARE A COUPLE OF DOCUMENTS;
16 ONE IS AN ORDER WORKING OFF OF THE ONE THAT I FILED ON JANUARY
17 17TH; BUT THIS TIME, INCLUDING THE NECESSARY FINDINGS FOR
18 PURPOSES OF COMPLIANCE WITH THE SPEEDY TRIAL ACT. THE LAST
19 TIME I ENGAGED IN THIS PROCEDURE, I ISSUED A SEPARATE ORDER,
20 BECAUSE IT HAD BEEN INADVERTENTLY OMITTED FROM THE ORDER ABOUT
21 COMPETENCY.

22 I WANT THERE TO BE A SINGLE ORDER, AND YOU CAN
23 INCORPORATE IT INTO THE ORDER BY SWEEPING REFERENCE, THE
24 MATTERS THAT OCCURRED HERE IN COURT, AND THE FINDINGS THAT I
25 MADE; BUT THE ORDER SHOULD RECITE THAT DR. BARKER HIMSELF

1 CONCLUDED THAT IT WAS PRUDENT THAT MR. SUTCLIFFE BE GIVEN THE
2 OPPORTUNITY TO UNDERGO A FURTHER EXAMINATION.

3 NOW, ON THE ISSUE OF MR. SUTCLIFFE'S COUNSEL, AND YOUR
4 STATUS, MR. NICOLAYSEN, WHAT I INTEND TO DO NOW IS INSTRUCT THE
5 THE MARSHALS TO BRING MR. SUTCLIFFE BACK INTO THE COURTROOM.
6 I'M GOING TO TELL MR. SUTCLIFFE THAT I'LL PERMIT HIM TO STAY IN
7 THE COURTROOM, IF, AND ONLY IF, HE IS PREPARED TO LISTEN TO
8 WHAT I HAVE TO TELL HIM, BECAUSE THERE ARE NO FURTHER
9 PROCEEDINGS BEFORE THE COURT; AND THERE ARE NO BASES FOR ME TO
10 HEAR ANY FURTHER INFORMATION FROM HIM OR ANY LAWYER.

11 AND THEN I'M GOING TO TELL HIM THAT I'M GOING TO TAKE
12 HIS MOTION TO RELIEVE YOU UNDER CONSIDERATION; THAT YOU WILL
13 NOT BE RELIEVED; AND THAT HE WILL GET THE TRANSCRIPT OF THIS
14 PROCEEDING; AND THAT THE QUESTION OF YOUR STATUS WILL BE
15 SOMETHING THAT I RULE UPON AT THE CONCLUSION OF GETTING ANY
16 OTHER REPORT; IS THAT SATISFACTORY TO YOU?

17 MR. NICOLAYSEN: IT IS, YOUR HONOR. THANK YOU. I AM
18 NOT MOVING TO BE RELIEVED.

19 THE COURT: I KNOW YOU'RE NOT; AND I'M NOT SUGGESTING TO
20 YOU THAT I THINK RELIEVING YOU WOULD BE WARRANTED.

21 BUT MR. SUTCLIFFE WILL HAVE TO CONSIDER VARIOUS
22 ALTERNATIVES AND CONSEQUENCES OF DOING SO THAT I ALREADY TOLD
23 HIM ABOUT AT THE TIME THAT YOU WERE APPOINTED; BUT I DON'T WANT
24 TO GET INTO THAT KIND OF COLLOQUY NOW.

25 ANYTHING FURTHER FROM YOU, MS. DUARTE?

1 MS. DUARTE: YOUR HONOR, JUST FOR CLARIFICATION, YOU
2 WANT ME TO ACTUALLY SEND A COPY OF THE TRANSCRIPT DIRECTLY TO
3 MR. SUTCLIFFE AT MDC AS WELL AS HIS ATTORNEY AND THE COURT?

4 THE COURT: YES. I WANT HIM TO HAVE IT.

5 MS. DUARTE: OKAY. SO NOT THROUGH HIS ATTORNEY?

6 THE COURT: WELL, I DON'T CARE EXACTLY WHAT THE ROUTE
7 IS.

8 MS. DUARTE: OKAY.

9 THE COURT: AS LONG AS IT GETS THERE QUICKLY, BECAUSE I
10 WANT HIM TO HAVE IT WITHIN ONE WEEK OF TODAY, AND NOT LATER,
11 AND POSSIBLY BEFORE.

12 IF YOU WANT TO DO IT THROUGH MR. NICOLAYSEN, IT MIGHT,
13 FOR COSMETIC REASONS, BE PREFERABLE.

14 MR. NICOLAYSEN: I THINK FOR THE APPEARANCES, IT WOULD
15 FAVOR GOING THROUGH ME.

16 THE COURT: YES. YOU DON'T HAVE TO SAY ANYTHING
17 FURTHER. THAT'S WHAT WE'LL DO.

18 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

19 MS. DUARTE: I WILL DO THAT. AND BASED ON MY PAST
20 EXPERIENCE, I SHOULD EASILY BE ABLE TO DO THAT WITHIN TWO DAYS.

21 THE COURT: OKAY. ALL RIGHT. LET'S BRING IN MR.
22 SUTCLIFFE, PLEASE.

23 MR. NICOLAYSEN: YOUR HONOR?

24 THE COURT: YOU CAN PLACE HIM, GIVEN THE CIRCUMSTANCES,
25 WHERE HE WAS SITTING BEFORE. YOU DON'T HAVE TO BRING HIM UP TO

1 THE COUNSEL TABLE.

2 NOW, HOLD ON A SECOND, MR. NICOLAYSEN.

3 MR. NICOLAYSEN: YOUR HONOR, MAY I BE HEARD BRIEFLY ON
4 THIS ISSUE?

5 I'M WONDERING WHETHER IT'S WISE TO HAVE GOVERNMENT
6 COUNSEL HERE, ONLY BECAUSE I CAN'T PREDICT IF MY CLIENT WILL,
7 SUI SPONTE, JUST VOLUNTEER ASPECTS OF ATTORNEY/CLIENT
8 DISCUSSIONS, WHICH ARE REALLY NOT APPROPRIATE.

9 THE COURT: OKAY. I DON'T INTEND TO RECEIVE ANY
10 INFORMATION FROM ANYBODY FURTHER, BUT I WILL ASK BOTH OF THE
11 REPRESENTATIVES FROM THE BUREAU OF PRISONS AND MS. DUARTE TO
12 WAIT OUTSIDE FOR FURTHER INSTRUCTIONS.

13 MR. NICOLAYSEN: YOUR HONOR, ACTUALLY, IF I MIGHT HAVE
14 THE CLINICIANS HERE, BECAUSE IT MIGHT BE HELPFUL IF THERE IS
15 ANY TYPE OF BEHAVIOUR THAT MAY WEIGH RELEVANTLY TO THE
16 ASSESSMENT. I'M ONLY AFRAID OF GOVERNMENT COUNSEL AS THE
17 PROSECUTOR.

18 THE COURT: ALL RIGHT. IT'S, AS THE TERM HAS BEEN USED,
19 PRUDENT. YOU BOTH MAY STAY.

20 MR. NICOLAYSEN: THANK YOU.

21 MS. DUARTE: SHALL I WAIT UNTIL HE STEPS IN TO STEP OUT?

22 THE COURT: NO. YOU SHOULD STEP OUTSIDE NOW, PLEASE.
23 PLEASE BRING MR. SUTCLIFFE INTO THE COURTROOM.

24 (MS. DUARTE EXITED THE COURTROOM.)

25 U.S. MARSHAL: YES, YOUR HONOR.

1 (DEFENDANT SUTCLIFFE WAS ESCORTED INTO THE COURTROOM.)

2 THE COURT: OKAY. MR. SUTCLIFFE, I'M PERMITTING YOU TO
3 COME BACK INTO THE COURTROOM, BECAUSE I WANT TO EXPLAIN CERTAIN
4 DEVELOPMENTS TO YOU.

5 I AM NOT GOING TO BE RECEIVING ANY ADDITIONAL
6 INFORMATION FROM ANYBODY, INCLUDING YOU, OR MR. NICOLAYSEN OR
7 THE PROSECUTOR, WHO'S NOT IN THE COURTROOM AT THE TIME.

8 FIRST OF ALL, YOU SHOULD KNOW THAT A TRANSCRIPT OF THE
9 PROCEEDINGS THAT HAVE JUST BEEN COMPLETED WILL BE COMPILED; AND
10 MR. NICOLAYSEN WILL GET IT TO YOU, AND WE WILL DO SO, I
11 ANTICIPATE, DEPENDING UPON THE TIMING OF THE COURT REPORTER,
12 NOT MORE THAN ONE WEEK FROM TODAY; SO YOU WILL HAVE A
13 TRANSCRIPT OF EVERYTHING THAT WAS SAID, AND EVERYTHING THAT WAS
14 SAID WAS TRANSCRIBED. IT WAS ALL DONE ON THE RECORD.

15 SECONDLY, I HAVE REACHED THE CONCLUSION, FOR VARIOUS
16 REASONS, THAT WILL BE RECITED IN A WRITTEN ORDER, THAT THE
17 INTEREST OF JUSTICE REQUIRE THAT YOU BE EXAMINED FURTHER. YOU
18 WILL BE EXAMINED AT A FEDERAL MEDICAL CENTER OPERATED BY THE
19 BUREAU OF PRISONS; THAT IS A FACILITY THAT IS NOT IN LOS
20 ANGELES. IT REMAINS TO BE SEEN WHICH FACILITY IT WILL BE IN.
21 THE EXAMINATION WILL BE DIFFERENT FROM, AND TAKE LONGER THAN
22 THE ONE THAT HAS JUST BEEN PRELIMINARILY CONDUCTED.

23 AN ORDER REFLECTING THAT CONCLUSION WILL BE PREPARED AND
24 FILED, AND THE BUREAU OF PRISONS WILL BE REQUIRED TO COMPLY
25 WITH THAT ACCORDINGLY. AT THE CONCLUSION OF THAT PROCEEDING,

1 MR. SUTCLIFFE, I WILL GET ANOTHER REPORT. THE EXAMINER WILL
2 NOT BE DR. BACKER. IT WILL BE SOMEBODY ELSE. AND AFTER I GET
3 THAT REPORT, WE WILL HAVE ANOTHER HEARING. AT THE TIME WE HAVE
4 THE SECOND HEARING, I WILL ALLOW YOU TO RE- -- OR I WILL
5 REVISIT AND MAY RULE UPON, DEPENDING UPON THE STATE OF THE
6 RECORD, YOUR PENDING MOTION TO RELIEVE MR. NICOLAYSEN. UNTIL
7 THAT HEARING, AND UNTIL I MAKE ANY FURTHER RULING, MR.
8 NICOLAYSEN IS NOT RELIEVED OF DUTIES AS YOUR LAWYER; AND HE
9 WILL CONTINUE TO FUNCTION AS YOUR COUNSEL OF RECORD.

10 ALL OF THE OTHER ORDERS THAT I PREVIOUSLY ISSUED WILL
11 REMAIN IN EFFECT CONCERNING YOUR RELATIONSHIP WITH COUNSEL AND
12 WITH THE COURT; AND WITH THAT, I THINK IT COVERS EVERYTHING
13 THAT NEEDS TO BE ADDRESSED; SO THIS MATTER IS ADJOURNED.

14 THE DEFENDANT: I CHALLENGE THE JURISDICTION OF THIS
15 COURT. THIS EXAMINATION IS UNLAWFUL; AND YOU'RE HOLDING ME
16 UNLAWFULLY; AND I FULLY SEEK TO EXERCISE EVERY REMEDY UNDER THE
17 LAW TO MAKE SURE THAT YOU FEEL HOW YOU'RE MAKING ME FEEL. YOU
18 HAVE NO HONOR. YOU HAVE LOST ALL SENSE OF HONOR IN THIS
19 COURTROOM. "KANGAROO COURT."

20 THE COURT: ALL RIGHT. WE'RE ADJOURNED.

21 (OFF THE RECORD.)

22 THE COURT: ALL RIGHT. OFF THE RECORD MR. NICOLAYSEN
23 ASKED WHETHER THE ORDER THAT I'VE REQUESTED MS. DUARTE TO
24 PREPARE WILL CONFIRM THAT THE CURRENTLY OR PREVIOUSLY SET TRIAL
25 DATE OF MARCH 25TH IS VACATED, AND IT SHOULD, AND IT WILL,

1 ALONG WITH THE RECITALS.

2 NOW, I THINK THAT YOU SHOULD, FOR PURPOSES OF -- I
3 SUPPOSE WHAT ARE CONSIDERED TO BE STANDARD ADMINISTRATIVE
4 PURPOSES, PICK A DIFFERENT DATE AND MAKE IT -- MAKE IT 16 WEEKS
5 FROM THIS COMING TUESDAY.

6 MR. NICOLAYSEN: THAT WOULD BE FOR THE FOLLOW UP
7 HEARING?

8 THE COURT: YES. THAT WOULD BE FOR THE FOLLOW UP
9 HEARING. THE FOLLOW UP HEARING CAN BE IN THE AFTERNOON, 16
10 WEEKS FROM THIS COMING TUESDAY. WILL THAT GIVE THE BUREAU OF
11 PRISONS ENOUGH TIME?

12 DR. IHLE: THAT'S EXACTLY FOUR MONTHS FROM NOW.

13 THE COURT: I DIDN'T MEAN TO SAY 16. I DON'T KNOW WHEN
14 WE'LL GET THE REPORT FROM THE BUREAU OF PRISONS. SO, I THINK,
15 WHAT I'LL DO IS SET A STATUS CONFERENCE FOR 18 WEEKS FROM A
16 DATE NEXT WEEK. WHAT DAY WOULD BE BEST DURING THE WEEK? A
17 WEDNESDAY, STEVE?

18 THE CLERK: YES. LET ME GIVE YOU A DATE.

19 THE COURT: ONE MINUTE.

20 (OFF THE RECORD.)

21 THE CLERK: HOW MANY WEEKS DID YOU SAY?

22 THE COURT: EIGHTEEN WEEKS FROM NEXT WEDNESDAY.

23 MEANWHILE, WHILE YOU'RE CALENDARING THAT, STEVE, DID YOU WANT
24 TO BE HEARD?

25 MS. DUARTE: YES, YOUR HONOR.

1 THE COURT: NO, I'M ASKING FOR A MOMENT, MS, DUARTE, THE
2 GENTLEMAN FROM THE BUREAU OF PRISONS IS STANDING.

3 THE COURT: THIS IS DR. IHLE. I H L E?

4 DR. IHLE: YES. I H L E. I JUST WANTED TO MAKE A
5 SUGGESTION THAT, PERHAPS, THE COURT ORDER SPECIFY A TIME FRAME
6 FOR WHICH THE MARSHALS SHOULD PICK UP MR. SUTCLIFFE AND GET HIM
7 TO THE MEDICAL CENTER, BECAUSE OTHERWISE, IT COULD STRETCH OUT
8 FOR SOME TIME.

9 THE COURT: OKAY. THAT'S A GOOD IDEA. WE'LL DO THAT.

10 DR. IHLE: AND ANOTHER THING IS, I JUST WANTED TO MAKE
11 CLEAR, YOUR HONOR, THAT IT WAS A 4241(D) AS IN DOG THAT WAS
12 ORDERED?

13 THE COURT: YES.

14 DR. IHLE: DOES THAT ENSURE US THAT THERE'LL BE AN
15 EVALUATION.

16 THE COURT: YES. AND MS. DUARTE IS GOING TO CONTAIN THE
17 LANGUAGE. AND I DON'T WANT IT TO BE THAT I'VE MADE A FINDING
18 THAT HE NEEDS TO BE REHABILITATED OR TREATED, BUT INSTEAD, HAVE
19 MADE A FINDING, THAT THE INTEREST OF JUSTICE, BASED UPON THE
20 COMPLETE RECORD, REQUIRE A FURTHER EXAMINATION.

21 NOW, IN TERMS OF THE DATE IN THE ORDER, I THINK I'LL
22 PREPARE A SEPARATE ORDER AS TO THE MARSHAL PICKING UP MR.
23 SUTCLIFFE. DON'T PUT THAT IN THE COMPETENCY ORDER.

24 AND HOW LONG DO YOU THINK IT'LL TAKE, HOPE, FOR A
25 TRANSCRIPT TO BE AVAILABLE?

1 THE COURT REPORTER: PROBABLY BY TUESDAY.

2 THE COURT: TUESDAY. OKAY. SO I THINK I'LL HAVE THEM
3 PICK HIM UP ON FRIDAY -- THURSDAY OR FRIDAY OF NEXT WEEK.

4 AND I DON'T KNOW WHETHER THEY CARE ABOUT WEEKEND TRAVEL,
5 OR HOW THEY'LL GET HIM THERE; BUT WON'T A DESIGNATION HAVE TO
6 BE MADE BY THEN? HOW DO THE MARSHALS KNOW WHERE TO TAKE HIM?

7 DR. IHLE: WELL, YOUR HONOR, IF THERE'S A DEFINITE TIME
8 FRAME SPECIFIED, THAT WOULD RESULT IN THE MARSHALS IN GETTING
9 THE PAPERWORK, THE PROPER PAPERWORK TO THE INDIVIDUALS,
10 SPECIFICALLY, THE CCM'S OFFICE, WHERE THEY PUT TOGETHER A
11 PACKET FOR THE PERSON TO BE DESIGNATED.

12 A ONE-WEEK PERIOD MIGHT NOT BE SUFFICIENT TIME FOR THAT
13 TO ALL HAPPEN, BECAUSE WHAT HAPPENS THEN, YOUR HONOR ISSUES TO
14 SIGN THE COURT ORDER; THE CLERK GETS IT TO THE MARSHALS; THE
15 MARSHALS THEN GIVE IT TO OUR DESIGNATIONS OFFICE; AND THEN IT
16 TAKES ROUGHLY, TWO TO THREE DAYS AFTER THAT PROCESS IS SET IN
17 MOTION FOR A DESIGNATION TO COME THROUGH; SO PERHAPS, A TWO
18 WEEK PERIOD IS BETTER.

19 THE COURT: TWO WEEKS FOR WHAT TO HAPPEN? I'M A LITTLE
20 CONFUSED.

21 DR. IHLE: YOUR HONOR, FOR EVERYTHING TO OCCUR, FOR THE
22 DESIGNATION TO HAPPEN, AND THAT THE MARSHALS KNOW THAT WITHIN
23 TWO WEEKS, THEY ARE TO PICK MR. SUTCLIFFE UP AND MOVE HIM,
24 TRANSPORT HIM TO --

25 THE COURT: TWO WEEKS FROM TODAY?

1 DR. IHLE: -- THE DESIGNATED FACILITY.

2 THE COURT: ARE YOU SAYING, TWO WEEKS FROM TODAY?

3 DR. IHLE: YES.

4 THE COURT: NOW, CAN'T I JUST ORDER THAT IT EITHER
5 ROCHESTER, BUTNER, OR SPRINGFIELD? OR DOES IT DEPEND ON SOME
6 FURTHER --

7 DR. IHLE: IT WILL DEPEND ON BED SPACE, YOUR HONOR. BUT
8 GIVEN THAT IT'S A 4142(D), IT DOES GUARANTEE THAT WILL GO TO
9 THE MEDICAL CENTER, BECAUSE IT GOES UNDER THE UMBRELLA OF
10 TREATMENT; SO IT WILL EITHER BE SPRINGFIELD, ROCHESTER, BUTNER
11 NORTH, CAROLINA; AND CERTAINLY YOUR HONOR CAN MAKE A
12 RECOMMENDATION OF WHICH ONE OF THOSE FACILITIES HE WOULD LIKE
13 HIM TO GO TO, AND THE BUREAU OF PRISONS WILL TAKE THAT INTO
14 CONSIDERATION WHEN THEY'RE LOOKING AT WHERE TO DESIGNATE HIM.

15 THE COURT: WELL, I HAVE NO BASIS TO MAKE A
16 RECOMMENDATION, ACCORDING TO ANY PROFESSIONAL CONSIDERATIONS.
17 THE ONLY THING I CARE ABOUT IS THAT BIT DONE IS SWIFTLY, AND
18 THAT WILL SUTCLIFFE'S INTERESTS IN COMPLETING THE PROCEDURE,
19 AND IF HE'S COMPETENT, PROCEEDING TO TRIAL BE ACCOMMODATED.

20 NOW, I DON'T KNOW HOW LONG IT TAKES TO GET FROM ONE
21 PLACE TO ANOTHER. IT'S PROBABLY AIR FRIGHT, RIGHT?

22 DR. IHLE: YES. BUT THEY DON'T -- UNLESS YOUR HONOR
23 SPECIFIES IN THE COURT ORDER, OR BY SOME OTHER MEANS, FOR THE
24 MARSHALS TO TAKE HIM DIRECTLY TO THE FEDERAL MEDICAL CENTER,
25 MOST LIKELY, THE MARSHALS WILL TAKE HIM BY WAY OF OKLAHOMA

1 CITY.

2 HE MAY SIT IN OKLAHOMA CITY FOR A BIT OF TIME. THEY MAY
3 TAKE HIM TO ANOTHER FACILITY, AND IT WILL BE BY FLIGHT, BUT
4 THEY HAVE HUBS THAT THEY GO TO.

5 THE COURT: WELL, I'LL JUST PUT DOWN ROCHESTER. I'M
6 JUST GOING TO PUT IT IN THE ORDER; AND I'M DIRECTING MS. DUARTE
7 TO DO THAT.

8 DR. IHLE: THAT'S THE MOST LIKELY PLACE HE'LL BE
9 DESIGNATED TO, BECAUSE SPRINGFIELD IS A HIGH SECURITY MEDICAL
10 CENTER, AND HE'S NOT HIGH SECURITY.

11 THE COURT: WELL, IF THE BUREAU OF PRISONS DOESN'T LIKE
12 IT, THEY CAN COME BACK TO ME. BUT IN ORDER TO GIVE CLEAR
13 DIRECTION TO THE MARSHAL, THE ORDER IS TO RECITE THAT HE IS TO
14 BE EXAMINED AT THE FEDERAL MEDICAL CENTER IN ROCHESTER,
15 MINNESOTA. THE ADDRESS IS ALREADY IN MY PRIOR ORDER; AND I
16 WILL ISSUE A SEPARATE ORDER DIRECTING THE MARSHALS TO DELIVER
17 HIM TO THAT FACILITY BY NOT LATER THAN TWO WEEKS FROM THIS
18 COMING MONDAY.

19 MR. NICOLAYSEN: WOULD YOUR HONOR GO SO FAR AS TO
20 RECOMMEND A DIRECT FLIGHT? IT SOUNDS AS THOUGH THAT MIGHT BE
21 AN OPTION, BUT IT NEEDS TO BE SO SPECIFIED IN THE COURT ORDER.

22 THE COURT: I'LL PUT THAT IN.

23 DR. IHLE: FOR THE PURPOSES OF THE INTEREST OF TIME,
24 GIVE THE MARSHALS TWO WEEKS TO GET IT TOGETHER AND MOVE HIM,
25 THAT'S REASONABLE. BUT THEN, IF IT'S NOT A DIRECT FLIGHT, IT

1 CAN TAKE UP TO TWO MORE WEEKS.

2 THE COURT: I'LL PUT DOWN DIRECT FLIGHT. I WANT HIM IN
3 THAT FACILITY IN ROCHESTER BY APRIL -- BY MARCH 31ST; THAT'S
4 TWO WEEKS FROM MONDAY.

5 DR. IHLE: YOUR HONOR, WHEN I -- ON MONDAY, WHEN I'M
6 BACK AT WORK, I WILL ACTUALLY SEND THE MESSAGE TO THE MEDICAL
7 DESIGNATORS TO ENSURE THAT HE IS DESIGNATED TO ROCHESTER.

8 THE COURT: OKAY.

9 DR. IHLE: THANK YOU.

10 THE COURT: ALL RIGHT. ANY FURTHER QUESTIONS, COUNSEL?

11 MR. NICOLAYSEN: NO, YOUR HONOR. THANK YOU.

12 MS. DUARTE: YES, YOUR HONOR. THE STATUS CONFERENCE --

13 THE COURT: YES. WE'RE ABOUT TO GIVE YOU A DATE.

14 THE CLERK: WEDNESDAY, JULY 23RD AT 3 P.M.

15 MS. DUARTE: AND, YOUR HONOR, I DON'T KNOW IF THE
16 COURT'S DETERMINED THIS. IF IT'S NOT WITHIN THE INITIAL FOUR
17 MONTHS THAT ARE SPECIFIED UNDER 4142(D), AND THERE IS A
18 PROVISION FOR THEM TO ASK FOR MORE TIME -- ASK THE COURT FOR
19 MORE TIME IF THEY'RE NOT GOING TO BE ABLE TO COMPLETE THEIR
20 REPORT IN TIME.

21 IT DOESN'T LOOK LIKE IT'S UP TO ME. ALTHOUGH, I'D BE
22 HAPPY TO FACILITATE IT. IT LOOKS LIKE IT WOULD BE UP TO THE
23 FACILITY UNDER 4142(D)(2)(A). AND I CAN MONITOR THAT. WHAT I
24 WANTED TO TRY TO MAKE SURE, WAS THAT OUR INITIAL STATUS HEARING
25 WAS WITHIN THAT FOUR MONTHS, SO THAT IF WE NEED TO CONTINUE IT,

1 WE CAN, BUT THAT WILL BE OUR GO BY. WE'LL BE WITHIN THE
2 STATUTE.

3 MR. NICOLAYSEN: AND I PREFER THAT THE FACILITY INITIATE
4 THE REQUEST FOR MORE TIME, THAN WE JUST TAKE IT ON OURSELVES TO
5 BUILD MORE TIME INTO OUR TIMETABLE HERE.

6 MS. DUARTE: RIGHT. WELL, THAT'S NOT MY REQUEST.

7 THE COURT: I THINK YOU MAY HAVE MISSPOKE. IT'S JUST A
8 SLIGHT THING. IT'S 4241, NOT 4142.

9 MS. DUARTE: I'M SORRY, YOUR HONOR.

10 THE COURT: JUST FOR THE CLARITY OF THE RECORD. NOW, I
11 DON'T FOLLOW WHAT YOU'RE SAYING.

12 MS. DUARTE: 4241(D) INDICATES, 1 -- I'M SORRY. 1 --
13 (D) (1).

14 THE COURT: IT'S FOR A REASONABLE PERIOD OF TIME, NOT TO
15 EXCEED FOUR MONTHS.

16 MS. DUARTE: SO I WAS JUST ASKING FOR OUR STATUS ON THIS
17 COMMITMENT -- ON THE EVAL, WITHIN THE FOUR MONTHS, OR AT THE
18 END OF THE FOUR MONTHS, SO THAT WE'RE NOT ALREADY POTENTIALLY
19 EXCEEDING IT EVEN BY SETTING OUR STATUS.

20 THE COURT: WELL, THAT FOUR MONTHS IS FOR TREATMENT.

21 MS. DUARTE: OKAY.

22 THE COURT: IT'S NOT FOR THE TIME THAT THE ORDER GOES
23 OUT TO THE NEXT APPEARANCE IN COURT.

24 SO IF YOU PREPARE AN ORDER THAT SAYS HE'S GOING TO
25 TRANSFERRED TO ROCHESTER FOR TREATMENT 4241(D) UNDER THE

1 FINDINGS THAT I'VE ALREADY MENTIONED, FOR A REASONABLE PERIOD
2 NOT TO EXCEED FOUR MONTHS. IF WE SET A STATUS CONFERENCE FOR A
3 COUPLE OF WEEKS AFTER THAT FOUR-MONTH PERIOD, WHICH FOR CURRENT
4 PLANNING PURPOSES, WE SHOULD JUST ASSUME IS 16 WEEKS. IF WE
5 SET IT FOR TWO WEEKS AFTER THAT, I THINK THERE'S NO RISK OF ANY
6 UNINTENDED VIOLATION OF ANYONE'S RIGHTS, INCLUDING MR.
7 SUTCLIFFE; DON'T YOU AGREE, MR. NICOLAYSEN?

8 MR. NICOLAYSEN: I CONCUR. THE FOUR MONTHS, AS I READ
9 THE STATUTE IS FOR THE EVALUATION AND TREATMENT. IT'S NOT THAT
10 WE HAVE TO HAVE OUR STATUS CONFERENCE WITHIN THE FOUR MONTHS;
11 SO MY RECOMMENDATION IS, WE START WITH APRIL 1, AND ASSUME
12 HE'LL PHYSICALLY BE IN ROCHESTER, PER YOUR ORDER, BY APRIL 1;
13 AND AT THAT POINT, WE RUN THE 16 WEEKS, AND THEN ADD TWO WEEKS
14 THEREAFTER; SO THAT WOULD BE APRIL, MAY, JUNE, AND JULY. AND
15 THEN ADD TWO WEEKS, MAYBE THE MIDDLE OF AUGUST, IF THE COURT IS
16 IN SESSION IN THE MONTH OF AUGUST; THAT MIGHT INTERFERE WITH
17 THE JUDGE'S CONFERENCE.

18 BUT SOMETIME IN THE MIDDLE OR LATTER PART OF AUGUST
19 WOULD BE MY VOTE.

20 THE COURT: FOR WHAT? FOR THE TRIAL?

21 MR. NICOLAYSEN: NO, FOR THE STATUS CONFERENCE, AND WE
22 NEED 16 -- OR WE CAN BREAK THE FOUR MONTHS DOWN AND SEE HOW
23 WE'RE COMING ALONG TWO AND A HALF MONTHS INTO THE FOUR-MONTH
24 PERIOD. WE MAY, IN FACT, HAVE FEEDBACK THAT EARLY.

25 THE COURT: I CAN ALWAYS EXPEDITE THIS STATUS

1 CONFERENCE. I WANT THE STATUS CONFERENCE TO BE SET IN THE
2 WEEKS, STEVE, THAT IS THE 18TH WEEK AFTER MARCH 31ST. HE'S TO
3 BE PLACED AT ROCHESTER BY NOT LATER THAN MARCH 31ST. HE'S TO
4 BE THERE FOR FOUR MONTHS, UNLESS WE GET SOME ORDER, THAT I'M
5 HOPING WE DON'T GET. WE'LL REQUEST TO EXTEND IT. WE'LL HAVE
6 THE REPORT, AND WE CAN SET A STATUS CONFERENCE TWO WEEKS AFTER
7 THAT.

8 MR. NICOLAYSEN: I BELIEVE THAT PUTS US INTO AUGUST.
9 AND I CONCUR WITH THAT.

10 THE CLERK: THE WEEK OF WEDNESDAY, AUGUST 6TH AT 3 P.M.

11 THE COURT: OKAY. WEDNESDAY, AUGUST 6TH FOR A STATUS
12 CONFERENCE. AND WE WILL SET A TRIAL DATE. THIS SHOULD GO INTO
13 THE PROVISIONAL TRIAL DATE FOR, LET'S SAY, FOUR WEEKS AFTER
14 THAT.

15 BUT, MR. NICOLAYSEN, I WANT YOU TO PROCEED ON THE
16 ASSUMPTION -- AND I'M NOT MAKING ANY FINDINGS. I HAVEN'T MADE
17 UP MY MIND. I'LL LISTEN TO MR. SUTCLIFFE; BUT I WANT YOU TO
18 PROCEED ON THE ASSUMPTION THAT YOU WILL BE EITHER HIS TRIAL
19 COUNSEL, OR, IF NOT, HIS STANDBY TRIAL COUNSEL.

20 MR. NICOLAYSEN: NO. I APPRECIATE THAT, YOUR HONOR.

21 THE COURT: LET ME FINISH. I WANT YOU TO GET READY.
22 MASTER THE DISCOVERY, AND DO WHATEVER YOU CAN TO BE READY TO
23 TRY THE CASE ON THE DATE THAT I'M NOW ABOUT TO SET AS THE NEW
24 TRIAL DATE, WHICH I THINK SHOULD BE THE FIRST WEEK OF
25 SEPTEMBER, AFTER LABOR DAY.

1 MR. NICOLAYSEN: NOW, I THANK YOUR HONOR FOR THAT,
2 BECAUSE I'M PLANNING TO SUBMIT AN EX PARTE APPLICATION FOR
3 SOMEONE I FINALLY WAS ABLE TO FIND AS A LOCAL EXPERT ON THE
4 COMPUTER ISSUE, AND I WAS HOPING YOUR HONOR WOULD BE RECEPTIVE
5 TO SUCH AN APPLICATION, AND NOT SAY IT'S PREMATURE, AND WE HAVE
6 A COMPETENCY ISSUE STILL PENDING.

7 THE COURT: NO. I WILL SIGN THE APPLICATION.

8 MR. NICOLAYSEN: THANK YOU. I APPRECIATE THAT.

9 MS. DUARTE: THE FIRST WEEK IN SEPTEMBER, THEN?

10 THE COURT: FOR TRIAL.

11 MS. DUARTE: SHOULD I PUT THAT IN THE ORDER?

12 THE COURT: YES. WHAT'S THE DATE, STEVE?

13 THE CLERK: SEPTEMBER 2ND.

14 THE COURT: NO. MAKE IT 9TH.

15 MR. NICOLAYSEN: FOR TRIAL?

16 THE COURT: YES.

17 MS. DUARTE: YOUR HONOR, I WILL ALSO SUBMIT THIS ORDER
18 ON A DISK.

19 THE COURT: YES. BECAUSE I MAY FIDDLE WITH IT.

20 MS. DUARTE: AND ONE LAST THING, YOUR HONOR. I THINK
21 THE RECORD SHOULD PROBABLY REFLECT, THAT AS MR. SUTCLIFFE
22 EXITED THE COURTROOM AND SAW ME, HE TURNED AND ATTEMPTED TO
23 COME TOWARD ME. THE MARSHALS PULLED HIM BACK SEVERAL TIMES.
24 HE REFUSED TO TURN AROUND. HE KEPT STARING AT ME, AND THEN HE
25 STARTED YELLING, TELL MY DAUGHTER I SAID HELLO.

1 MR. NICOLAYSEN: YOUR HONOR, I HAVE TO OBJECT TO THAT,
2 BECAUSE THAT SUGGESTS THREATENING BEHAVIOR, WHICH IS THE
3 ESSENCE OF THIS CASE; AND IT INVITES ALL SORTS OF PREJUDICIAL
4 INTERPRETATIONS; AND I WOULD ASK YOUR HONOR NOT TO ATTRIBUTE
5 ANY NEGATIVE INFERENCE TO WHAT WAS JUST DESCRIBED; AND I DON'T
6 WANT TO --

7 THE COURT: OKAY. YOU DON'T HAVE TO BELABOR IT. I'M
8 NOT ATTRIBUTING ANY INFERENCES AT ALL, BUT I WANT TO MAKE IT
9 CLEAR WHAT I'M DOING. I'M NOT -- IT'S IN THE RECORD, AND IF
10 THE JUDGE SAYS THAT SOMETHING SHOULD BE STRICKEN, IT'S NEVER
11 STRICKEN IN THE LITERAL SENSE; BUT I'M NOT GOING TO SAY IT
12 SHOULD BE STRICKEN; HOWEVER, I AM DIRECTING DR. BACKER TO
13 SUPPLEMENT THE REPORT, NOT WITH ANY EVALUATIONS, NOT WITH ANY
14 CONCLUSION, NOT WITH ANY ATTEMPT TO SUMMARIZE WHAT YOUR
15 TESTIMONY WAS, BUT IT'S TO SUPPLEMENT YOUR WRITTEN REPORT WITH
16 A DESCRIPTION OF WHAT YOU SAW IN THE COURTROOM, NEUTRAL AND
17 COMPLETE AND CORRECT AS BEST AS YOU CAN, CONCERNING MR.
18 SUTCLIFFE'S BEHAVIOUR; AND LODGE THAT WITH THIS COURT. SEND
19 COPIES TO MR. NICOLAYSEN AND MS. DUARTE. NOW, YOUR
20 REPORT, I'M DIRECTING THAT YOU MAKE YOUR REPORT, INCLUDING THIS
21 ADDITIONAL SUPPLEMENTAL DESCRIPTION OF THE PROCEEDINGS TODAY,
22 AND THE TRANSCRIPT, THOSE TWO THINGS; THE REPORT AS
23 SUPPLEMENTED AND THE TRANSCRIPT, MAKE THOSE AVAILABLE TO THE
24 PHYSICIANS AT ROCHESTER.

25 AND WHEN YOU CONTACT WHOEVER YOU'LL BE SPEAKING TO, DR.

1 IHLE, YOU SHOULD TELL THEM THOSE WILL BE COMING; DO YOU
2 UNDERSTAND THAT?

3 MR. IHLE: YES, SIR.

4 THE COURT: ANYTHING FURTHER?

5 MS. DUARTE: YOUR HONOR, I SHOULD JUST ADD, THAT I HOPE
6 THE COURT AND COUNSEL REALIZE, I IN NO WAY, MEAN TO PREJUDICE
7 MR. SUTCLIFFE. I'VE LEARNED FROM EIGHT YEARS OF DOING THIS,
8 THAT WHEN SOMETHING OCCURS OUTSIDE THE COURT, WHETHER IT'S A
9 JURY CONTACT OR A CONTACT WITH THE DEFENDANT OR ANY KIND OF
10 CONTACT, IT'S BETTER TO PUT IT ON THE RECORD. THAT'S WHAT I'M
11 TRAINED TO DO.

12 THE COURT: ALL RIGHT. I'M SURE OF THAT. I THINK
13 YOU'RE AN EXTREMELY PROFESSIONAL LAWYER, AND I'M VERY PLEASED
14 WITH THE WAY YOU CONDUCT YOURSELF, SO I DIDN'T ATTACH ANY
15 INFERENCES AT ALL.

16 MS. DUARTE: WELL, I APPRECIATE THAT. THANK YOU.

17 THE COURT: ALL RIGHT. WE'RE ADJOURNED.

18 MR. NICOLAYSEN: THANK YOU, YOUR HONOR.

19 (THE PROCEEDINGS CONCLUDED.)
20
21
22
23
24
25

CERTIFICATE OF REPORTER

COUNTY OF LOS ANGELES)
) SS.
STATE OF CALIFORNIA)

I, HOPE IRENE GOLDSMITH, OFFICIAL REAL-TIME COURT REPORTER,
REGISTERED PROFESSIONAL REPORTER, IN AND FOR THE UNITED STATES
DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO
HEREBY CERTIFY THAT I REPORTED, STENOGRAPHICALLY, THE FOREGOING
PROCEEDINGS AT THE TIME AND PLACE HEREINBEFORE SET FORTH; THAT
THE SAME WAS THEREAFTER REDUCED TO TYPEWRITTEN FORM BY MEANS OF
COMPUTER-AIDED TRANSCRIPTION; AND I DO FURTHER CERTIFY THAT
THIS IS A TRUE AND CORRECT TRANSCRIPTION OF MY STENOGRAPHIC
NOTES.

Hope Irene Goldsmith
HOPE IRENE GOLDSMITH, RPR
FEDERAL OFFICIAL COURT REPORTER

DATE:

5/19/63