

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
HONORABLE LARRY ALAN BURNS, JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
) PLAINTIFF,) CASE NO.: 4:11-CR-00187-LAB
) VS.)
) TUCSON, ARIZONA
) MARCH 9, 2011
 JARED LEE LOUGHNER,) 1:30 P.M.
)
) DEFENDANT.)
)

REPORTER'S TRANSCRIPT

ARRAIGNMENT
STATUS CONFERENCE

MOTION HEARING

APPEARANCES:

FOR THE GOVERNMENT:

DENNIS K. BURKE, U.S. ATTORNEY
BY: BEVERLY ANDERSON, ESQ.
MARY SUE FELDMEIER, ESQ.
WALLACE KLEINDIENST, ESQ.
ASSISTANT U.S. ATTORNEYS
405 W. CONGRESS ST., STE. 4800
TUCSON, ARIZONA 85701

FOR THE DEFENDANT:

FEDERAL DEFENDERS, INC.
BY: JUDY CLARKE, ESQ.
MARK FLEMING, ESQ.
REUBEN CAHN, ESQ.
220 BROADWAY, STE. 900
SAN DIEGO, CA 92101

FOR PHOENIX NEWSPAPERS, ET AL:

STEPTOE & JOHNSON LLP
BY: DAVID J. BODNEY, ESQ.
201 E WASHINGTON STR., STE. 1600
PHOENIX, AZ 85004

COURT REPORTER:

EVA OEMICK
OFFICIAL COURT REPORTER
UNITED STATES COURTHOUSE
940 FRONT STREET, STE. 2190
SAN DIEGO, CA 92101
TEL: (619) 615-3103

1 **TUCSON, ARIZONA - WEDNESDAY, MARCH 9, 2011-1:30 P.M.**

2 THE CLERK: NO. 1, 4CR0187, UNITED STATES OF AMERICA
3 VERSUS JARED LOUGHNER.

4 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE
5 RECORD.

6 MR. KLEINDIENST: GOOD AFTERNOON, YOUR HONOR.

7 WALLACE KLEINDIENST, MARY SUE FELDMEIER AND BEVERLY
8 ANDERSON FOR THE UNITED STATES, YOUR HONOR.

9 THE COURT: GOOD AFTERNOON.

10 MS. CLARKE: JUDY CLARKE, REUBEN CAHN AND MARK
11 FLEMING ON BEHALF OF MR. LOUGHNER WHO IS ALSO PRESENT AND
12 BEFORE THE COURT.

13 THE COURT: GOOD AFTERNOON.

14 I AM INFORMED THAT A SUPERSEDING INDICTMENT HAS BEEN
15 RETURNED. AND IT IS APPROPRIATE THAT THE DEFENDANT BE
16 ARRAIGNED ON THE SUPERSEDING INDICTMENT.

17 SO, MS. CLARKE, IF YOU AND MR. LOUGHNER WILL STAND
18 AND THE CLERK WILL ARRAIGN YOU ON THE NEW CHARGES.

19 THE CLERK: JARED LOUGHNER, IS THAT YOUR TRUE NAME?

20 THE DEFENDANT: YES, IT IS.

21 THE CLERK: YOU ARE INFORMED THAT A SUPERSEDING
22 INDICTMENT HAS BEEN FILED CHARGING YOU WITH:

23 COUNT I, ATTEMPTED ASSASSINATION OF A MEMBER OF
24 CONGRESS;

25 COUNTS 3, 11, 13, ATTEMPTED MURDER OF A FEDERAL

1 EMPLOYEE;

2 COUNTS 2, 4, 6, 9, 12, 14, 16, 19, 22, 25, 28, 31,
3 33, 35, 37, 39, 41, 45, 47, 49, USE, CARRY, BRANDISH AND
4 DISCHARGE OF A FIREARM IN RELATION TO A CRIME OF VIOLENCE;

5 COUNTS 5 AND 8, MURDER OF A FEDERAL EMPLOYEE;

6 COUNTS 7, 10, 17, 20, 23, 26, 29, CAUSING DEATH OF
7 USE OF A FIREARM;

8 COUNTS 15, 18, 21, 24 AND 27, CAUSING DEATH TO
9 PARTICIPANTS AT FEDERALLY PROVIDED ACTIVITY;

10 COUNTS 30, 32, 34, 36, 38, 40, 42, 44, 46 AND 48,
11 ENTERING PARTICIPANTS AT FEDERALLY PROVIDED ACTIVITY.

12 COUNSEL, HAVE YOU RECEIVED A COPY AND DO YOU WAIVE
13 FURTHER READING?

14 MS. CLARKE: WE HAVE RECEIVED A COPY, REVIEWED IT
15 AND WAIVE FURTHER READING.

16 THE CLERK: YOU ARE FURTHER INFORMED THAT YOU HAVE
17 THE RIGHT TO BE REPRESENTED BY COUNSEL AT ALL STAGES OF THE
18 PROCEEDINGS BEFORE THE COURT; YOU HAVE THE RIGHT TO REMAIN
19 SILENT; YOU ARE ENTITLED TO TRIAL BY JURY; YOU HAVE THE RIGHT
20 TO CONFRONT AND CROSS-EXAMINE ANY WITNESSES WHO TESTIFY
21 AGAINST YOU; AND YOU HAVE THE RIGHT TO HAVE WITNESSES
22 SUBPOENAED TO TESTIFY IN YOUR BEHALF.

23 HOW DO YOU PLEAD TO ALL COUNTS OF THE SUPERSEDING
24 INDICTMENT?

25 MS. CLARKE: YOUR HONOR, WE WOULD ASK THAT THE COURT

1 ENTER THE PLEA OF NOT GUILTY.

2 THE COURT: THE COURT ENTERS A NOT-GUILTY PLEA TO
3 ALL CHARGES IN THE INDICTMENT.

4 THERE IS A SPECIAL ALLEGATION ALLEGED. I ASSUME,
5 MS. CLARKE, TO THE EXTENT IT IS NECESSARY, YOU WANT ME TO
6 ENTER A DENIAL AS TO THAT SPECIAL ALLEGATION?

7 MS. CLARKE: THAT WILL BE FINE, YOUR HONOR.

8 THE COURT: DENIAL IS ENTERED AS TO THAT SPECIAL
9 ALLEGATION AS WELL.

10 THERE ARE A NUMBER OF MATTERS BEFORE THE COURT
11 TODAY. AND I PROPOSE THAT WE DEAL FIRST WITH THE CARRY-OVER
12 MATTER. I NOTICE I THINK MR. BODNEY IS HERE. AND THE COURT
13 HAD POSTPONED -- ACTUALLY, THE COURT INDICATED TO MR. BODNEY
14 AND PARTIES AT THE LAST HEARING THAT I WOULD RECONSIDER THE
15 MOTION TO UNSEAL.

16 I HAVE SINCE RECEIVED A SUPPLEMENTAL BRIEF FROM THE
17 MEDIA OUTLETS IN THIS CASE WHICH I HAVE READ AND CONSIDERED.
18 I AM HAPPY TO HEAR FROM COUNSEL, IF THERE IS ANY ADDITIONAL
19 ARGUMENT ON THE POINT AT THIS TIME.

20 MS. CLARKE.

21 MS. CLARKE: NO ADDITIONAL ARGUMENT, YOUR HONOR. WE
22 HAD A HEARING REGARDING THIS MATTER.

23 THE COURT: MR. KLEINDIENST.

24 MS. ANDERSON: NO ADDITIONAL ARGUMENT, YOUR HONOR,
25 ON BEHALF OF THE GOVERNMENT.

1 THE COURT: I AM ASSUMING THAT THE ACTIVE
2 INVESTIGATION OF THIS CASE HAS BEEN COMPLETED BY THE UNITED
3 STATES AT THIS POINT?

4 MS. ANDERSON: YOUR HONOR, JUST THE GRAND JURY
5 INVESTIGATION AT THIS POINT.

6 THE COURT: WELL, I DON'T WANT TO SPLIT HAIRS, BUT I
7 AM TALKING ABOUT AN ACTIVE, AFFIRMATIVE INVESTIGATION.
8 OBVIOUSLY, IF ADDITIONAL INFORMATION COMES TO THE ATTENTION OF
9 LAW ENFORCEMENT THAT THEY'LL DEAL WITH THAT PROCESS.

10 I AM TALKING ABOUT AN AFFIRMATIVE INVESTIGATION THAT
11 LEADS TO A CHARGE. HAS THAT BEEN COMPLETED?

12 MS. ANDERSON: YES, YOUR HONOR.

13 THE COURT: THE GOVERNMENT, I ASSUME, EXPRESSED THAT
14 THESE ARE THE FINAL CHARGES; AT LEAST AT THIS POINT THERE'LL
15 BE NO ADDITIONAL CRIMINAL CHARGES, FEDERAL CRIMINAL CHARGES?

16 MS. ANDERSON: THAT'S CORRECT.

17 THE COURT: MR. BODNEY, I AM HAPPY TO HEAR FROM YOU.

18 MR. BODNEY: GOOD AFTERNOON, YOUR HONOR.

19 THE COURT: GOOD AFTERNOON.

20 MR. BODNEY: THANK YOU AGAIN ON BEHALF OF THE
21 INTERVENERS KPNX AND PHOENIX NEWSPAPERS. WE APPRECIATE THE
22 OPPORTUNITY TO BE HEARD.

23 I THINK WHEN YOUR HONOR HEARD FROM US LAST MONTH,
24 YOU INDICATED THAT IT LIKELY BE A DIFFERENT STORY ON MARCH
25 9TH. I THINK THE QUESTIONS YOUR HONOR ASKED OF COUNSEL

1 INDICATE IT IS A DIFFERENT STORY TODAY. THERE IS NO LONGER AN
2 ACTIVE INVESTIGATION. A SUPERSEDING INDICTMENT HAS BEEN
3 ISSUED. AND CONSEQUENTLY, THE FIRST AMENDMENT RIGHT OF THE
4 PRESS AND PUBLIC TO INSPECT THE SEARCH WARRANT RECORDS
5 ATTACHES. AND THE BURDEN SHIFTS TO THE PARTIES TO JUSTIFY ANY
6 CONTINUED CONCEALMENT OF THOSE SEARCH WARRANT RECORDS.

7 YOUR HONOR GAVE THE PARTIES AN OPPORTUNITY NEARLY
8 THREE WEEKS AGO AT THE HEARING ON FEBRUARY 18TH TO JUSTIFY, IN
9 SOMETHING OTHER THAN A WHOLESAL MANNER, THE REDACTIONS THAT
10 THEY HAD PROPOSED. AND YOUR HONOR HAS GIVEN THEM AN
11 OPPORTUNITY IN THE INTERVENING WEEKS TO JUSTIFY THE KIND OF
12 REDACTIONS THAT THE LAW REQUIRES.

13 I THINK WE HAVE SATISFIED BOTH PRONGS OF THE FIRST
14 AMENDMENT TEST THAT BOTH LOGIC AND EXPERIENCE COMPELLED THE
15 FINDINGS IN SUPPORT OF THE PUBLIC'S RIGHT TO INSPECT THE
16 SEARCH WARRANT RECORDS. AND NOW THEY MUST JUSTIFY, AS WE HAVE
17 NOT HEARD THEM JUSTIFY IN THE PAST SEVERAL WEEKS, THE KINDS OF
18 REDACTIONS THAT THEY HAVE PROPOSED. NAMELY, THAT THE PUBLIC
19 NOT BE ENTITLED TO SEE ANYTHING OTHER THAN THE GOVERNMENT HAS
20 ALLOWED THE PUBLIC TO SEE SO FAR.

21 UNDER THE FIRST AMENDMENT, AS YOUR HONOR IS WELL
22 AWARE, ANY PROPOSED CONCEALMENT OF THOSE SEARCH WARRANT
23 RECORDS WOULD HAVE TO BE NARROWLY TAILORED, LESS DRASTIC
24 ALTERNATIVES TO CLOSURE WOULD NEED TO BE CONSIDERED UNDER THE
25 BROOKLIER TEST. ANY REDACTIONS WOULD HAVE TO BE PROVEN

1 EFFECTIVE.

2 SO WE UNDERSTAND THAT YOUR HONOR HAS REVIEWED THOSE
3 SEARCH WARRANT RECORDS, AND WE KNOW FROM THE LAST HEARING THAT
4 THE COURT APPRECIATES TEMPORAL IMPORTANCE OF THE PUBLIC'S
5 RIGHT TO INSPECT THE SEARCH WARRANT RECORDS PROMPTLY.
6 THEREFORE, WE WOULD ASK THAT THEY BE UNSEALED TODAY.

7 THE COURT: THANK YOU, MR. BODNEY.

8 MR. BODNEY: THANK YOU, YOUR HONOR.

9 THE COURT: THE COURT HAS PREPARED AN ORDER IN THIS
10 CASE. AND THE GIST OF THE ORDER IS IT GRANTS THE MEDIA
11 INTERVENERS' APPLICATION FOR RELEASE OF THE SEARCH WARRANT
12 MATERIAL IN PART.

13 THE COURT WAS GUIDED AT THE FIRST HEARING BY TIMES
14 MIRROR, A NINTH CIRCUIT PRECEDENT WHICH HELD A PRE-INDICTMENT
15 ONGOING INVESTIGATION PROVIDED COMPELLING REASONS TO PREVENT
16 THE PUBLIC FROM READING SEARCH WARRANTS. THAT JUST MAKES
17 SENSE. YOU DON'T WANT TO GIVE UP THE GHOST BEFORE THE
18 INVESTIGATION IS COMPLETED. YOU DON'T WANT TO TAKE A CHANCE
19 THAT THE GRAND JURY WON'T BE ABLE TO FUNCTION PROPERLY AND
20 REACH WHATEVER DECISION THE GRAND JURY IS GOING TO REACH. AND
21 THOSE ARE IMPORTANT COUNTERVAILING REASONS THAT SUPPORT
22 SECRECY IN THE PRE-INDICTMENT INVESTIGATORY PHASE.

23 READING BETWEEN THE LINES OF TIMES MIRROR, IT IS
24 VERY CLEAR THAT THE COURT WAS INTENT ON LIMITING THEIR HOLDING
25 TO THAT PARTICULAR STAGE IN THE CRIMINAL PROCESS.

1 THE COURT HAS CANVASSED THE GENERAL LAW ON THIS
2 SUBJECT. I AGREE WITH MR. BODNEY THAT THE TEST HERE FOR
3 OPENNESS IS WHETHER THERE IS A HISTORY OR TRADITION OF
4 OPENNESS AT THIS POINT, AND WHETHER LOGIC ALSO SUPPORTS THAT.

5 THE LOGIC PRONG HAS BEEN DEFINED BY THE NINTH
6 CIRCUIT AS ESSENTIALLY MEANING WOULD THIS BE HELPFUL TO THE
7 PUBLIC'S UNDERSTANDING OF THE SYSTEM; WOULD IT GUARD AGAINST
8 SOME OF THE DANGERS OF CLOSURE THAT PEOPLE MIGHT BE SKEPTICAL
9 OF THINGS THAT THEY DON'T KNOW, AND THEY MIGHT DEVELOP
10 CYNICISM TOWARD THE SYSTEM THAT THEY MIGHT NOT HAVE THE
11 CONFIDENCE THAT THE SYSTEM IS REACTING PROPERLY TO A SHOCKING
12 EVENT.

13 THE DIFFICULTY I HAD -- I WILL BE HONEST WITH YOU --
14 IS THAT MOST OF THE CASE LAW DEALS WITH THE PRE-INDICTMENT
15 SITUATION, AND THE CASE LAW IS FAIRLY CLEAR ACROSS THE BOARD
16 THAT IN THAT SITUATION THERE IS NO EITHER COMMON-LAW RIGHT OR
17 QUALIFIED FIRST AMENDMENT RIGHT.

18 WHEN IT GETS TO THE STAGE THAT WE ARE AT, THE ACTIVE
19 INVESTIGATION HAS BEEN COMPLETED AND THE GRAND JURY HAS ISSUED
20 WHAT THE PROSECUTORS BELIEVE ARE FINAL INDICTMENT, THEN THE
21 CASE LAW IS MORE MIXED. AND THE COURT FOUND CASES GOING BOTH
22 WAYS.

23 WHAT I ALSO FOUND, HOWEVER, WAS THAT THE GREAT BULK
24 OF AUTHORITIES SINCE WATERGATE IS IN FAVOR OF OPEN GOVERNMENT
25 RECORDS INCLUDING COURT RECORDS. AND THAT TREND TOWARD

1 OPENNESS HAS MANIFESTED ITSELF IN MANY OF THE STATES WITH
2 SPECIFIC STATUTES THAT COMPEL THAT SEARCH WARRANTS BE OPEN AND
3 AFTER THEY ARE EITHER EXECUTED OR SERVED AND WHEN THERE ARE NO
4 COUNTERVAILING CONSIDERATIONS SUCH AS AN ONGOING INVESTIGATION
5 OR A LACK OF CHARGES. THE TREND IS CLEARLY IN FAVOR OF
6 OPENNESS UNDER THOSE CIRCUMSTANCES.

7 THE COURT CONSIDERED THE PURPOSE OF OPENNESS,
8 WHETHER IT'S A COURT PROCEEDING OR DOCUMENTS. AS I SAID,
9 THOSE ARE OUTLINED IN A NUMBER OF THE CASES WHICH THE
10 NEWSPAPER CASE PROBABLY MAKES THE CLAIM BEST.

11 IN 1980, CHIEF JUSTICE BURGER WROTE "WHEN A SHOCKING
12 CRIME OCCURS, THE COMMUNITY REACTION OF OUTRAGE AND PUBLIC
13 PROTEST OFTEN FOLLOWS. THEREAFTER, THE OPEN PROCESSES OF
14 JUSTICE SERVE AN IMPORTANT PROPHYLACTIC PURPOSE, PROVIDING FOR
15 THE OUTLET OF COMMUNITY CONCERN, HOSTILITY AND EMOTION.
16 WITHOUT AN AWARENESS THAT SOCIETY'S RESPONSES TO CRIMINAL
17 CONDUCT ARE UNDERWAY, NATURAL HUMAN REACTION OF OUTRAGE AND
18 PROTEST IS FRUSTRATED AND MAY MANIFEST ITSELF IN SOME FORM OF
19 VENGEFUL SELF-HELP, AS INDEED REGULARLY HAPPENED ON OUR
20 FRONTIERS."

21 I THINK THIS SUMS UP WHY WE HAVE A PREFERENCE FOR
22 OPENNESS IN THIS COUNTRY AND WHY THERE HAVE TO BE GOOD AND
23 COMPELLING REASONS BEFORE WE CLOSE PROCEEDINGS OR DISALLOW
24 ACCESS TO COURT DOCUMENTS.

25 HERE I FIND THAT NOW WE ARE PAST THE POINT WHERE

1 THERE IS A NEED FOR SECRECY THAT THERE IS A QUALIFIED FIRST
2 AMENDMENT RIGHT TO ACCESS THOSE WARRANTS AND THE BURDEN SHIFTS
3 TO THE PARTIES OPPOSING THE OPENING OF WARRANTS TO SHOW ME, AS
4 YOU POINT OUT, MR. BODNEY, COMPELLING REASONS WHY THEY MUST
5 REMAIN CLOSED, MUST CONVINCE ME THAT THERE IS NO ALTERNATIVE
6 THAT WOULD ADEQUATELY GUARD AGAINST THOSE INTERESTS, AND THEY
7 HAVE TO CONVINCE ME ALSO THAT CLOSURE WOULD BE EFFECTIVE IN
8 PROTECTING THE INTEREST THAT'S ASSERTED.

9 THE PARTIES HERE, BOTH THE GOVERNMENT AND THE
10 DEFENDANT, HAVE ASSERTED VALID INTERESTS. ONE OF THEM
11 OBVIOUSLY HAS TO DO WITH THE FAIR TRIAL RIGHTS OF BOTH SIDES
12 IN THIS CASE. THERE HAS BEEN A VIRTUAL MEDIA FRENZY ABOUT
13 THIS CASE, NOT UNEXPECTED, COMPLETELY UNDERSTANDABLE. THIS IS
14 A MATTER OF GREAT PUBLIC CONCERN. IT HAS BEEN HEAVILY
15 COVERED. THERE HAVE BEEN ARTICLES ABOUT THE CIRCUMSTANCES OF
16 THE EVENT, ARTICLES ABOUT THE VICTIMS, ARTICLES ABOUT THE
17 DEFENDANT, ARTICLES ABOUT THE REACTION OF PUBLIC OFFICIALS TO
18 THIS. WE HAVE HAD A FULL GAMUT OF COVERAGE ON THIS CASE. AND
19 AT SOME POINT I THINK THE PARTIES ARE JUSTIFIED IN THINKING
20 THAT THE CASE MIGHT WELL BE TRIED BEFORE IT EVER GETS TO
21 COURT, AND THAT'S THE CONCERN, I THINK, RAISED BY BOTH THE
22 DEFENSE AND THE GOVERNMENT SAYING, "ENOUGH NOW, ENOUGH IS OUT
23 THERE. LET'S WAIT AND LET THE CASE BE TRIED ON COMPETENT,
24 TESTED EVIDENCE IN COURT."

25 THAT'S A LEGITIMATE CONCERN. I HAVE WEIGHED THAT

1 CONCERN AGAINST THE FIRST STATEMENT RIGHT. YOU HAVE ALSO
2 RAISED A CONCERN THAT THIRD PARTIES, WHOSE NAMES ARE MENTIONED
3 IN THE WARRANT AFFIDAVITS, WILL HAVE THEIR PRIVACY INVADED AND
4 MAY BE DAMAGED TO THEIR REPUTATIONS. I THINK THAT'S ALSO A
5 VALID CONCERN, AT LEAST IN A HYPOTHETICAL SENSE.

6 HERE, HAVING REVIEWED THE WARRANT AFFIDAVITS, THE
7 COURT FINDS THAT THERE ARE NOT THIRD-PARTY REPUTATIONAL
8 CONCERNS. NO ONE MENTIONED IN THE AFFIDAVIT THEY ARE
9 SUSPECTED OF WRONG-DOING OTHER THAN THE DEFENDANT.

10 AND SO TO THE EXTENT THE AFFIDAVITS MENTIONED THIRD
11 PARTIES, IT'S ONLY IN THE SENSE THAT THEY ARE CITIZEN
12 WITNESSES PROVIDING INFORMATION THAT SUPPORTS THE ISSUANCE OF
13 THE WARRANTS.

14 IT WOULD BE A DIFFERENT CASE, I THINK, IF THERE WERE
15 UNDERCOVER INFORMANTS OR PEOPLE INVOLVED IN CRIME, AND RELEASE
16 OF THE AFFIDAVIT MIGHT BE ACTUALLY POTENTIALLY HARM THEIR
17 REPUTATIONS. THAT'S NOT THE CASE HERE. I HAVE FULLY
18 CONSIDERED THE IMPACT ON THIS CASE OF RELEASING EVEN MORE
19 INFORMATION. I HAVE DONE MY BEST TO BE SENSIBLE AND WISE AND
20 FLEXIBLE ABOUT THAT.

21 AND ON BALANCE, I JUST DON'T FIND THAT A COMPELLING
22 CASE HAS BEEN SHOWN BY EITHER PROSECUTION OR THE DEFENSE THAT
23 THIS IS LIKELY TO HAPPEN HERE. HERE IS WHY.

24 90 PERCENT -- IT'S HARD TO QUANTIFY, BUT I'D SAY
25 ABOUT 90 PERCENT OF THE INFORMATION IN THE WARRANT MATERIALS

1 IS ALREADY IN THE PUBLIC DOMAIN, ABOUT 90 PERCENT OF IT. AND
2 SO REPUBLICATION OF INFORMATION, I THINK, IS A HARD CASE TO
3 MAKE THAT THAT POSES SOME KIND OF INESCAPABLE THREAT TO THE
4 TRIAL RIGHTS OF THE PARTIES. I AM NOT EVEN SURE -- I AM NOT A
5 NEWS PERSON, BUT I AM NOT EVEN SURE IT'S NEWSWORTHY TO PUBLISH
6 INFORMATION THAT'S ALREADY OUT THERE. MAYBE IT IS. I'LL
7 LEAVE THAT TO THE OTHER PEOPLE'S JUDGMENT.

8 I HAVE LOOKED ALSO AT THE THIRD ISSUE, AND BECAUSE
9 THE FIRST AND THIRD FACTORS, MR. BODNEY, THAT YOU MENTIONED,
10 THE COMPELLING INTEREST AND WHETHER CLOSURE WOULD BE EFFECTIVE
11 IN MAINTAINING THOSE COMPELLING INTERESTS. THEY TEND TO MERGE
12 IN THIS CASE BECAUSE SO MUCH OF THE INFORMATION IS OUT THERE,
13 AND IT REALLY CAN'T BE SAID THAT CONTINUED CLOSURE IS GOING TO
14 HELP GUARD AGAINST THE DANGERS OF TOO MUCH EXPOSURE.

15 I MADE THIS OBSERVATION, I THINK, AT THE FEBRUARY
16 HEARING. I REITERATE IT NOW. THERE IS SOMETHING MYSTIC AND
17 SUSPICIOUS WHEN A COURT WITHHOLDS INFORMATION. I THINK IT
18 LEADS TO MORE SPECULATION. IT MAKES THINGS MORE OMINOUS THAN
19 THEY REALLY ARE. I REALLY BELIEVE THAT THAT WOULD BE THE
20 EFFECT HERE OF NOT RELEASING MATERIALS AT THIS TIME.

21 FINALLY, THE COURT HAS CONSIDERED THE OTHER FACTOR
22 WHICH IS WHETHER THERE ARE OTHER ALTERNATIVES THAT WILL
23 ADEQUATELY AFFECT THE RIGHTS OF THE PARTIES, AND I HAVE
24 DETERMINED THAT THERE ARE SEVERAL.

25 FIRST, THE TRIAL IN THIS CASE IS NOT EXPECTED FOR

1 MONTHS. WE WILL TALK MORE ABOUT THAT AS THE HEARING GOES ON
2 TODAY, BUT IT'S NOT EXPECTED FOR MONTHS. AND EXPERIENCE
3 TEACHES ME THAT THE PASSAGE OF TIME DIMS PEOPLE'S MEMORY ABOUT
4 EVENTS, EVEN SHOCKING EVENTS, AND IT TENDS TO DAMPEN DOWN
5 COMMUNITY REACTION.

6 I SAY THAT WITH GREAT UNDERSTANDING AND EMPATHY FOR
7 WHAT HAS HAPPENED HERE NOW AFFECTING MANY, MANY PEOPLE, BUT
8 THAT IS A REALITY THAT THE TIME TENDS TO DAMPEN DOWN
9 SENTIMENTS. SO I HAVE IN MIND THIS CASE IS NOT GOING TO BE
10 TRIED FOR A WHILE. PERHAPS BY THE TIME IT IS TRIED,
11 CIRCUMSTANCES WILL BE A LITTLE LESS FAMILIAR.

12 NEXT, THE COURT INTENDS, WITH THE ASSISTANCE OF
13 COUNSEL AT SUCH POINT THERE IS A TRIAL AND PRIOR TO IT, TO
14 DEVELOP AN EXTENSIVE JURY QUESTIONNAIRE THAT WILL BE SENT OUT
15 THAT WILL PROBE ALL ASPECTS OF JUROR KNOWLEDGE ABOUT THIS
16 EVENT AND THEIR ATTITUDES TOWARD IT. THAT, IN MY EXPERIENCE,
17 IN THE PAST HAS PROVED A USEFUL TOOL FOR FERRETING OUT THE
18 PEOPLE WHO HAVE FIXED OPINIONS ABOUT THE CASE. I HAVE USED IT
19 BEFORE, AND IT HAS BEEN VERY EFFECTIVE AND SATISFACTORY IN
20 IMPANELING AN IMPARTIAL JURY.

21 NEXT, ALTHOUGH IT'S NOT USUAL IN FEDERAL COURT, I
22 INTEND TO ALLOW THE PARTIES TO EXTENSIVELY PERSONALLY VOIR
23 DIRE THE JURY. AND I THINK THAT THAT WILL BE ADDITIONAL GUARD
24 AGAINST PREJUDICIAL INFORMATION TO AFFECT THE OUTCOME HERE.

25 I ALSO HAVE IN MIND THAT I HAVE AUTHORITY IF THE

1 NEED PRESENTS ITSELF TO GRANT ADDITIONAL PEREMPTORY
2 CHALLENGES, AND I AM PREPARED TO DO THAT IF THE NEED PRESENTS
3 ITSELF DURING VOIR DIRE.

4 FINALLY, MR. BODNEY, I HAVE LOOKED OVER THE
5 MATERIAL, AND I HAVE DETERMINED THAT SOME OF IT SHOULD BE
6 MAINTAINED UNDER SEAL. AND IN MAKING THAT DETERMINATION, I
7 WAS GUIDED BY THE SAME FACTORS THAT HAVE BEEN ARGUED SEVERAL
8 TIMES. I GUARANTEE YOU I AM WELL AWARE OF THOSE FACTORS. I
9 DO FIND THAT THERE IS A COMPELLING NEED TO KEEP SOME OF THE
10 INFORMATION UNDER SEAL.

11 THIS IS INFORMATION THAT GENERALLY FALLS INTO A
12 CATEGORY OF NOT YET BEING IN THE PUBLIC DOMAIN. IT HAS NOT
13 BEEN REPORTED. IT'LL BE NEW INFORMATION. EITHER IT'S
14 INFLAMMATORY AND PROBABLY LESS LIKELY TO BE FORGETTABLE OR
15 INFORMATION THAT I HAVE DETERMINED IS LIKELY NOT TO BE
16 ADMISSIBLE AT TRIAL. I THINK AT THIS POINT THAT THERE IS
17 DANGER TO BOTH SIDES IN LETTING THIS INFORMATION OUT IN THE
18 PUBLIC DOMAIN.

19 THE REDACTIONS I MADE TO THE WARRANTS ARE MUCH LESS
20 SUBSTANTIAL THAN THOSE THAT WERE PROPOSED BY THE PARTIES. IT
21 IS MINIMAL INFORMATION FROM ONE AFFIDAVIT AND FROM THE
22 INVENTORY OF SEIZED PROPERTY. AND THE COURT INTENDS AT THE
23 CONCLUSION OF THIS HEARING TO HOLD AN IN-CAMERA PROCEEDING
24 WITH THE PARTIES AND ON THE RECORD TO EXPLAIN THE REASONS FOR
25 THE CONTINUED WITHHOLDING OF THAT INFORMATION SPECIFICALLY, SO

1 THAT THERE IS A RECORD THAT CAN BE REVIEWED IN THE EVENT THERE
2 IS ANY APPEAL OF MY DETERMINATION.

3 SO THAT RECORD WILL BE AVAILABLE. IT WILL BE A
4 SEALED RECORD THAT I INTEND TO GO THROUGH AND EXPLAIN WITH
5 PARTICULARITY WHY EACH LINE ITEM THAT I HAVE REDACTED SHOULD
6 BE REDACTED IN MY JUDGMENT AND ACCORDING TO THE STANDARDS.

7 SO THAT'S THE RULING OF THE COURT. I HAVE A WRITTEN
8 ORDER THAT WILL BE AVAILABLE AT THE CONCLUSION OF THE HEARING,
9 THE REDACTED APPROVED COPY OF THE WARRANT MATERIALS THAT WILL
10 BE MADE AVAILABLE TO THE INTERVENERS AND THE GENERAL PUBLIC.

11 NEXT, MR. BODNEY, BEFORE YOU GO, WE HAD A SECOND
12 MOTION TO INTERVENE. IF YOU CAN APPROACH THE LECTERN AGAIN,
13 I'D LIKE TO TALK TO YOU ABOUT THAT. I GRANTED THAT MOTION TO
14 ALLOW YOU TO INTERVENE ON THE QUESTION OF SEALED MATERIALS IN
15 THE DOCKET, BUT I DID NOT GRANT THE OTHER REQUEST WHICH IS TO
16 MAKE THOSE SEALED MATERIALS AVAILABLE RIGHT AWAY OR HOLD A
17 HEARING ON THOSE.

18 I AM HAPPY TO HEAR FROM YOU ON THE REQUEST YOU HAVE
19 ABOUT THE SEALED MATERIALS, BUT LET ME MAYBE JUMP IN FRONT AND
20 TELL YOU WHAT I HAVE DONE.

21 AS YOU PROBABLY KNOW AND PROBABLY MUCH TO YOUR
22 FRUSTRATION, IT'S FAIRLY COMMONPLACE AND BOTH STATE AND
23 FEDERAL COURTS FOR PARTIES TO FILE THINGS UNDER SEAL AND
24 RUBBER STAMP THOSE THINGS.

25 AND I UNDERSTAND THAT THAT IS NOT THE PROCEDURE THAT

1 IS REQUIRED BEFORE SEALING TAKES PLACE. I GET THAT. I KNOW
2 YOU ARE AWARE AND SHOULD BE AWARE THAT I HAVE ISSUED AN ORDER
3 REMINDING PARTIES IN THIS CASE THAT SEALING ORDERS HAVE TO BE
4 ACCOMPANIED BY DECLARATIONS THAT SPELL OUT WHY IT IS
5 ESSENTIALLY THE SAME THREE FACTORS THAT YOU HAVE ALLUDED TO
6 AND WHY SEALING IS APPROPRIATE.

7 YOU ARE CONCERNED ABOUT A NUMBER OF ITEMS THAT
8 APPEAR IN THE DOCKET THAT WERE FILED UNDER SEAL. HERE IS WHAT
9 I HAVE LEARNED SINCE MY INVOLVEMENT IN THIS CASE. THE
10 DOCKETING PROCEDURE IN THIS COURT IS DIFFERENT FROM THE COURT
11 WHERE I COME FROM. ANYTHING LODGED WITH THE COURT HERE, EVEN
12 WITH THE REQUEST TO SEAL IS IMMEDIATELY DOCKETED. AND SO IT
13 MAY APPEAR THAT THERE ARE MANY MORE ITEMS IN THE DOCKET THAN
14 THERE ACTUALLY ARE. THEY ARE THERE, THEY ARE WAITING, BUT
15 THEY ARE AWAITING COURT DETERMINATION OF THE MOTION TO SEAL.

16 I CAN'T TELL YOU EXACTLY HOW MANY ITEMS I HAVE
17 ORDERED SEALED, BUT IT'S A VERY FINITE NUMBER, MAYBE FIVE. IN
18 SOME INSTANCES I HAVE NOTIFIED THE PARTIES THAT I DIDN'T FIND
19 GOOD CAUSE FOR SEALING, THAT I DIDN'T FIND COMPELLING NEED FOR
20 SEALING. AND IN THOSE INSTANCES THE PARTIES HAVE -- IN SOME
21 CASES THEY HAVE WITHDRAWN THE MOTION, AND THEY RESUBMITTED IT
22 IN THE PUBLIC FORMAT. A LOT OF WHAT YOU ARE SEEING AND WHAT
23 YOU MAY BE SUSPICIOUS ABOUT I WOULD SUGGEST ARE DUPLICATE
24 ENTRIES. DON'T HOLD ME TO THE NUMBER, BUT IT IS ABOUT FIVE
25 THINGS THAT ARE SEALED, AND I CAN TELL YOU GENERALLY WHAT THEY

1 ARE SEALED. THEY DEAL WITH DEFENSE STRATEGIES OR DEFENSE
2 REQUESTS THAT NO ONE SHOULD KNOW AT THIS POINT, AND IN
3 PARTICULAR IF THEY ARE IN A PUBLIC DOCKET, THE GOVERNMENT
4 WOULD HAVE ACCESS TO THEM. THAT'S NOT THE WAY OUR SYSTEM
5 WORKS. THESE ARE THINGS THAT ARE UNDER SEAL IN THE DOCKET,
6 ARE THINGS THAT I HAVE DETERMINED BASED ON JUDGMENT AND
7 EXPERIENCE THAT APPLY IN THESE FACTORS ARE LEGITIMATELY UNDER
8 SEAL. AND I HAVE TAKEN ADDITIONAL STEPS, AS I SAID, REMINDING
9 COUNSEL AND REQUIRING A SUFFICIENT AFFIDAVIT BEFORE I'LL
10 CONSIDER ITEMS FOR SEALING.

11 SO THE PROBLEM MAY BE MUCH SMALLER THAN YOU HAVE
12 PERCEIVED BASED ON THE NUMBER OF DOCKET ENTRIES. I CAN TELL
13 YOU FOR SURE THAT MORE THINGS HAVE BEEN WITHDRAWN THAN HAVE
14 BEEN SEALED. SO NUMBERS YOU SEE IF YOU WENT THERE AND I
15 ALLOWED YOU TO HAVE ACCESS TO THOSE THINGS, THERE'D BE NOTHING
16 THERE BECAUSE THEY HAVE BEEN WITHDRAWN.

17 I AM SKEPTICAL THAT WE HAVE TO HAVE A HEARING EVERY
18 TIME COUNSEL FILES SOMETHING WITH ME AND ASKS THAT I SEAL IT.
19 AND I WOULD HOPE THAT YOU TRUST MY JUDGMENT. AFTER ALL, YOU
20 SAID THAT I AM CERTAINLY CONVERSANT WITH THE FIELD OF LAW THAT
21 YOU PRACTICE AND WHAT THE STANDARDS ARE, THAT I AM EXERCISING
22 CORRECT JUDGMENT TO FERRET OUT THOSE THINGS THAT OUGHT NOT TO
23 BE SEALED.

24 SO I AM HAPPY TO HAVE YOU INTERVENE IF THERE IS
25 ANYTHING SPECIFIC. I AM NOT INCLINED TO GIVE YOU ACCESS TO

1 WHAT'S SEALED IN THE DOCKET NOW. IT'S SEALED FOR GOOD REASON,
2 AND I AM NOT INCLINED TO HOLD A HEARING EVERY TIME WE GET A
3 MOTION TO SEAL SOMETHING.

4 I AM NOT SURE THAT THAT'S SUPPORTED BY THE CASE LAW.
5 I KNOW THAT THERE ARE PROCEDURAL REQUIREMENTS THAT ATTEND
6 CLOSING A HEARING. I HAVEN'T SEEN A CASE THAT IMPORTS THOSE
7 TO DOCUMENT SEALING.

8 MR. BODNEY: YOUR HONOR, FIRST, I WANT TO THANK YOU
9 ON BEHALF OF PHOENIX NEWSPAPERS, PUBLISHER, ARIZONA PUBLIC,
10 FOR GRANTING OUR APPLICATION TO INTERVENE AND THE OPPORTUNITY
11 TO BE HEARD TODAY. AND I WANT TO EMPHASIZE THAT NEITHER I NOR
12 MY CLIENT WANTS TO SEE ANYTHING THAT WE SHOULDN'T SEE. WE
13 WANT TO MAKE SURE THAT WE AND THE PUBLIC CAN SEE THOSE THINGS
14 THAT THE SUPREME COURT HAS SAID THE FIRST AMENDMENT ENTITLES
15 THE PUBLIC TO SEE FOR PRECISELY THOSE REASONS THAT YOUR HONOR
16 ARTICULATED A MOMENT AGO SO THAT FOLKS DON'T WORRY ABOUT
17 SOMETHING MYSTICAL OR SUSPICIOUS IS HAPPENING IN THIS COURT OF
18 ALL COURTS THAT SHOULD MAKE THEM DISTRUST THE SYSTEM IN ANY
19 WAY.

20 AND WHEN WE REVIEWED THE DOCKET IN THIS CASE, YOUR
21 HONOR, AS WE MENTIONED IN OUR PAPER, WE SAW AT THE TIME --
22 THIS WAS LAST FRIDAY -- THAT SOME 62 OUT OF 126 DOCKET
23 ENTRIES, OR NEARLY HALF, WERE MISSING. THERE WAS NO
24 DESCRIPTION OF WHAT HAD BEEN FILED; THUS, CREATING THE
25 IMPRESSION THAT ROUGHLY HALF OF THE DOCUMENTS SUBMITTED HAVE

1 BEEN SEALED OR OTHERWISE ON SOME SECRET DOCKET THAT THE PUBLIC
2 DOESN'T GET TO KNOW ABOUT.

3 AND SO -- AND WE VERY MUCH APPRECIATE YOUR HONOR'S
4 PREEMPTIVE ORDER. THIS WAS THE ORDER ON FUTURE SEALING
5 REQUESTS THAT THE COURT ISSUED LAST FRIDAY ADDRESSING THIS
6 ISSUE PROSPECTIVELY. AND FROM LANGUAGE IN THAT ORDER THAT
7 OPENNESS IS THE DEFAULT PRESUMPTION AND THE MERE ASSERTION
8 THAT AN OPEN FILING WILL JEOPARDIZE THE RIGHTS OF ANY PARTY IS
9 INADEQUATE TO JUSTIFY SEALING.

10 SO WE ARE IN COMPLETE AGREEMENT WITH THAT APPROACH.
11 AND I WANT TO MAKE SURE YOUR HONOR DOESN'T THINK THAT OUR
12 APPEARANCE HERE TODAY IS ANY SUGGESTION THAT WE BELIEVE THAT
13 WE HAVE A RIGHT TO BE HERE WHENEVER. WE ARE NOT SUGGESTING
14 THAT WE WISH TO SECOND-GUESS YOUR RULINGS. WE HAVE BEEN
15 INSPIRED BY THEM. BUT WE DO WANT TO MAKE SURE THAT PARTIES
16 ARE NOT ROUTINELY FILING DOCUMENTS THAT THE CONSTITUTION SAYS
17 SHOULD BE SUBJECT TO A STRICT SCRUTINY STANDARD. AND WE DO
18 WANT TO MAKE SURE THAT WHEN YOUR HONOR ISSUES A CLOSING ORDER
19 THAT THE PUBLIC SIMPLY BE GIVEN AN OPPORTUNITY TO BE HEARD.
20 AND THAT CAN BE AFTER THE FACT, BECAUSE WE DO TRUST YOUR
21 JUDGMENT, BUT WE NEED TO KNOW THAT A DOCUMENT HAS BEEN SEALED,
22 TO KNOW WHETHER THIS MIGHT BE THE INSTANCE WHEN THE PUBLIC
23 DEMANDS A FURTHER EXPLANATION.

24 THE COURT: IT'S A DIFFICULT POSITION TO BE IN,
25 THOUGH. IF I TELL YOU DOCKET 124 HAS BEEN SEALED, YOU COME

1 BACK TO THE COURT AND SAY, "WELL, WHY?" AND SAY, "LET ME TELL
2 YOU WHY. THE PROSECUTOR HAS GOOD REASONS. THERE IS
3 COMPELLING REASONS AND I GOT A SUFFICIENT DECLARATION." WHERE
4 DOES THE CONVERSATION GO FROM THERE?

5 MR. BODNEY: I THINK THE CONSTITUTION DOES REQUIRE
6 PERHAPS ANOTHER WORD OR TWO OR MAYBE EVEN A SENTENCE BEYOND
7 COMPELLING REASON. I THINK THERE IS A LINE THE COURT COULD
8 WALK BETWEEN SIMPLY REPEATING TALISMANICALLY THE WORDS
9 "COMPELLING INTEREST" AND SAYING SOMETHING THAT GIVES THE
10 PUBLIC SOME SENSE OF WHAT THAT INTEREST MIGHT BE WITHOUT
11 DEFEATING THE INTEREST.

12 THE COURT: IT'S A FINDING, MR. BODNEY, THAT I MAKE
13 BASED ON A SUFFICIENT AFFIDAVIT. I CAN ASSURE YOU IN EVERY
14 CASE NOW OR IN VERY INSTANCE WHERE A DOCUMENT IS FILED UNDER
15 SEAL IT IS NOW ACCOMPANIED BY A SUFFICIENT AFFIDAVIT TELLING
16 ME WHY. AND I SEAL THE AFFIDAVIT, AND I SEAL THE DOCUMENT.
17 AND THERE WILL COME A TIME WHEN THOSE THINGS WILL BE OPEN TO
18 THE PUBLIC OR SHOULD BE, AT LEAST MOST OF IT. THERE MAY BE
19 PRIVILEGE ISSUES THAT PERSIST LONG AFTER THE CASE IS DISPOSED
20 OF. BUT THE BULK OF THOSE THINGS I ANTICIPATE IF YOU CAME
21 BACK TO ME WHEN THIS IS ALL OVER AND SAID THERE IS SOMETHING I
22 WANT TO SEE, YOU WOULD SEE A SUFFICIENT AFFIDAVIT AND YOU
23 WOULD BE ASSURED THAT THE PROPER PROCEDURES HAVE BEEN
24 FOLLOWED.

25 THE DIFFICULTY I AM HAVING IS YOU RELIED ON

1 BROOKLIER, AND BROOKLIER HOLDS GENERALLY HEARINGS SHOULD BE
2 OPEN AND THAT PROCEDURAL REQUIREMENTS THAT ATTEND TO THE
3 CLOSING TO A HEARING. YOU CAN'T JUST SAY "TRUST ME." YOU
4 HAVE A RIGHT TO SHOW UP AND OBJECT AND BE ASSURED.

5 I HAVEN'T FOUND A CASE THAT IMPORTS THOSE PROCEDURAL
6 REQUIREMENTS TO DOCUMENTS. I KNOW THE PERILS. I KNOW BOTH
7 THINGS ARE PRESUMPTIVELY OPEN, THE DOCUMENTS AND SORT OF
8 FOLLOW THE OPENNESS OF COURT PROCEEDINGS.

9 BUT THERE IS A LINE IN BROOKLIER THAT SAYS "IN
10 DETERMINING WHAT STEPS ARE REASONABLE TO EFFECT CLOSURE, THE
11 COURT SHOULD AWAIT ANY THAT MIGHT RESULT IN MATERIAL DELAY IN
12 THE UNDERLYING PROCEEDINGS."

13 NOW, WERE I TO HOLD A HEARING EVERY TIME I GET A
14 REQUEST FOR A SEALED DOCUMENT, I WOULD BE DOING NOTHING MORE
15 THAN HOLDING HEARINGS. SO I DON'T THINK THAT'S INDICATED BY
16 THIS CASE.

17 MR. BODNEY: AND, YOUR HONOR, I WOULD JUST SAY THESE
18 THINGS. THE ONE CASE THAT I THINK, THE NINTH CIRCUIT CASE
19 THAT DOES APPLY THE CONSTITUTIONAL STANDARDS TO DOCUMENTS IS
20 PHOENIX NEWSPAPERS, INCORPORATED VERSUS DISTRICT COURT.

21 THE CASE AROSE OUT OF ASSIGNMENT IN CRIMINAL TRIAL
22 BACK IN THE LATE '90S.

23 THE COURT: I AM FAMILIAR WITH IT. YOU MIGHT LOOK
24 AT THE COPLEY PRESS CASE, TOO, PUBLISHED OPINION, WHERE I DID
25 MY BEST AND TO SOME EXTENT, EVEN THE NINTH CIRCUIT DISAGREED

1 WITH ME ON THE EXTENT OF THE DISCLOSURES. THEY ACTUALLY SAID
2 SOME OF THE STUFF SHOULD NOT COME OUT WHEN I FOUND THAT THERE
3 WAS NO GOOD REASON FOR IT.

4 MAYBE IF YOU CONSIDER WHAT'S HAPPENED SO FAR AND OUR
5 INTERACTION AND YOU LOOK AT THOSE CASES, YOU CAN CONVINCE YOUR
6 CLIENT TO BE A LITTLE MORE CONFIDENT THAT THE JUDGMENTS I AM
7 MAKING ABOUT WHAT OUGHT TO BE SEALED WERE PROBABLY LEGITIMATE
8 ONES.

9 MR. BODNEY: YOUR HONOR, I HAVE NO QUESTION ABOUT
10 THAT. AND I DO WANT TO EMPHASIZE THAT IT IS NOT OUR INTENTION
11 TO HAVE A HEARING EVERY TIME THE COURT CONCLUDES THAT A
12 DOCUMENT SHOULD BE SEALED. BUT I DO THINK THE LAW REQUIRES
13 NOTICE OF SEALING AND AN OPPORTUNITY TO BE HEARD SO THAT THERE
14 IS AT LEAST THAT CHANCE. IT IS TIME CONSUMING FOR YOU AND THE
15 PARTIES. WE UNDERSTAND THAT. WE DON'T WANT TO BE A DRAG ON
16 THE JUSTICE SYSTEM. IT'S EXPENSIVE, FRANKLY, FOR ALL PARTIES
17 CONCERNED EVERY TIME WITH HAVE TO DO IT.

18 THE COURT: THE PRACTICAL PROBLEM WITH THAT IS I
19 HAVE TO HOLD A MINI-HEARING BEFORE WE GET TO THE HEARING TO
20 WHICH THE DOCUMENT IS RELATED, THOUGH. WE HAVE TO HOLD A
21 HEARING, AND THEN I AM REALLY AT A LOSS TO KNOW WHAT YOU WOULD
22 BE ABLE TO SAY. IF YOU CAN'T KNOW WHAT THE CONTENTS ARE, WHAT
23 POSITION ARE YOU GOING TO ARGUE THAT THEY OUGHT TO BE OPEN TO
24 THE PUBLIC?

25 MR. BODNEY: I DO THINK WE ARE ENTITLED -- THE

1 PUBLIC IS ENTITLED TO SEE THE SEALING ORDERS. AND I DO THINK
2 SEALING ORDERS OUGHT TO CONTAIN THE MINIMUM CONSTITUTIONAL
3 JUSTIFICATION FOR SEALING.

4 THE COURT: THAT'S FAIR ENOUGH, BUT IT WILL BE A
5 GENERIC RECITAL. IT'LL SAY THAT I HAVE LOOKED AT THIS,
6 BALANCES THE INTEREST THAT YOU AND I BOTH KNOW APPLY, AND I
7 FOUND THAT THOSE INTERESTS OUTWEIGH THE NEED FOR OPENNESS AS
8 TO PARTICULAR DOCUMENTS. IF YOU WANT ME TO BEGIN FILING THOSE
9 OPENLY, I'LL DO SO.

10 NOW, NECESSARILY, THEY ARE GOING TO BE GENERIC. I
11 CAN'T GIVE UP THE GHOST BY SAYING HERE IS WHAT I AM SEALING.

12 MR. BODNEY: WE UNDERSTAND. AS MUCH INFORMATION AS
13 THE COURT CAN REVEAL TO JUSTIFY WITHOUT DEFEATING THE PURPOSE
14 OF SECRECY I THINK IS WHAT THE PUBLIC IS ENTITLED TO.

15 THE COURT: DOES EITHER COUNSEL, GOVERNMENT OR
16 DEFENSE, HAVE ANY OBJECTION TO ME MODIFYING THE ORDER SEALING
17 SO I'D SAY THE RECITAL THAT MR. BODNEY IS TALKING ABOUT THAT I
18 HAVE LOOKED AT THE THREE-STRONG TEST AND DETERMINED THAT
19 SEALING IS APPROPRIATE. AND I WON'T -- OBVIOUSLY WON'T
20 IDENTIFY THE NATURE OF WHAT'S BEING SEALED OR THE CONTENT OF
21 IT.

22 MS. CLARKE, ANY OBJECTION TO THAT?

23 MS. CLARKE: NO.

24 MR. KLEINDIENST: NO, YOUR HONOR.

25 THE COURT: THAT'S A REASONABLE REQUEST, MR. BODNEY.

1 I'LL DO THAT. AT LEAST YOU HAVE SOME ASSURANCE THAT I HAVE
2 LOOKED AT EVERYTHING AND THINGS AREN'T WILLY-NILLY SEALED. I
3 GIVE YOU THAT ASSURANCE. THAT'S NOT WHAT IS HAPPENING AND NOT
4 WHAT HAS HAPPENED. YOU'LL HAVE IT FORMALIZED WITH MY JOHN
5 HENRY ON IT.

6 MR. BODNEY: WE APPRECIATE THAT. THANK YOU, SIR.

7 THE COURT: THANK YOU, MR. BODNEY.

8 BEFORE THE COURT TODAY ARE SEVERAL OTHER MOTIONS
9 THAT ARE PENDING AND THAT I AM PREPARED TO HEAR ARGUMENT ON.
10 I WANTED TO TALK ABOUT SOME SCHEDULING. I THINK THAT MAY BE
11 PREEMPTED BY ONE OF THE MOTIONS THE GOVERNMENT HAS FILED FOR
12 COMPETENCY HEARING. SO I WOULD -- I DON'T WANT TO PUT THAT
13 OFF.

14 I THINK, MS. CLARK, WITHOUT REGARD TO THE COMPETENCY
15 ISSUE AT THIS POINT, SOME OF THESE THINGS STILL NEED TO BE
16 DISCUSSED AND SHOULD BE DISCUSSED TODAY. THE DISSEMINATION OF
17 INFORMATION, FOR EXAMPLE, THAT IS THE SUBJECT OF A MOTION
18 BROUGHT BY THE DEFENDANT; HANDWRITING EXEMPLAR. I THINK THERE
19 WAS ONE OTHER.

20 I THINK THOSE ARE THE TWO THAT I WOULD PROPOSE THAT
21 WE DISCUSS AND MAYBE GET A DECISION ON TODAY.

22 MS. CLARKE: THAT WOULD BE FINE, YOUR HONOR. WE
23 WILL BE OBJECTING TO THE GOVERNMENT'S MOTION REGARDING THE
24 COMPETENCY PROCEEDING, IN THAT LIGHT DO NOT BELIEVE THAT THE
25 COURT WOULD MAKE FINDINGS FOR REASONABLE CAUSE AT THIS POINT

1 SO THAT WE WOULD BE ABLE TO GO FORWARD WITH SUBSTANTIVE
2 MOTIONS.

3 THE COURT: YOU THINK WE OUGHT TO HANDLE THE
4 COMPETENCY ISSUE FIRST?

5 THE REASON I ASK IS THAT WE HAVE BEEN ABLE TO HANDLE
6 SOME MOTIONS PUBLICLY WHERE MR. LOUGHNER'S PRESENCE HAS BEEN
7 WAIVED BECAUSE THEY WERE ESSENTIALLY MATTERS OF LAW WHERE
8 COUNSEL WAS IN A POSITION TO ANSWER THOSE ON BEHALF OF THE
9 DEFENDANT, DIDN'T PARTICULARLY NEED HIS INPUT. I SEE THESE
10 TWO ISSUES WHETHER HE IS COMPELLED TO GIVE A HANDWRITING
11 EXEMPLAR ESSENTIALLY AN ISSUE OF LAW. THERE IS NO FACTUAL
12 COMPONENT TO IT.

13 SAME THING WITH WHETHER THE BUREAU OF PRISON STAFF
14 DISSEMINATES OBSERVATIONS TO THE GOVERNMENT. AGAIN, I DON'T
15 INTEND TO GET INTO THE PARTICULARS. I DON'T THINK THE
16 PARTICULARS ARE RELEVANT. THEY ARE LEGAL ISSUES THAT HAVE
17 BEEN RAISED BY THE PARTIES. SO THAT'S WHY I PROPOSE WE HANDLE
18 THOSE THINGS BEFORE WE TALK ABOUT THE COMPETENCY MOTION.

19 MS. CLARKE: I UNDERSTAND THAT. AND THE ISSUE WITH
20 COMPETENCY PROCEEDING IS THAT BEFORE WE WOULD ENTER THAT DOOR,
21 THE COURT WOULD HAVE TO MAKE A FINDING THAT THERE IS
22 REASONABLE CAUSE TO BELIEVE THE STATUTORY REQUIREMENTS EXIST,
23 AND THAT'S A GATEWAY TO LITIGATION IN THE CASE.

24 THE COURT: I UNDERSTAND. THEY ARE ONLY ASKING ME
25 TO SET A HEARING ON THAT AND I AM ASSUMING HAVE THE DEFENDANT

1 EXAMINED. IF YOU JUMP AHEAD, WE CAN ON THAT. THEY HAVE
2 PROVIDED SOME MATERIAL THAT I THINK YOU HAVE, YOU HAVE SEEN.
3 AND THEN I LOOKED AT THE GEORGE CASE. HAVE YOU CONSIDERED
4 UNITED STATES VERSUS GEORGE?

5 MS. CLARKE: I HAVE NOT SEEN THE GEORGE CASE, YOUR
6 HONOR.

7 THE COURT: THE GEORGE CASE DEALS WITH PRACTICALLY
8 WHAT A MANDATORY DUTY ON THE PART OF THE COURT UNDER 4241.
9 AND IT DEALT WITH THE PREDECESSOR STATUTE 4244, I THINK, THAT
10 WAS RENUMBERED AS 4241; SAID IT WAS A REQUIREMENT UNDER THAT
11 STATUTE WHEN THE PARTIES MADE A MOTION THAT THE COURT SHALL
12 GRANT IT. THIS STATUTE READS VERY SIMILARLY. ANY DECISION I
13 MAKE IS REVIEWED FOR USE OF DISCRETION.

14 I HAVE TO TELL THAT YOU THE GEORGE CASE IS PRETTY
15 STRONG IN ITS LANGUAGE THAT IF A PARTY HAS A CONCERN ABOUT THE
16 COMPETENCY OF THE DEFENDANT, THAT EITHER PARTY, EITHER THE
17 DEFENDANT OR THE GOVERNMENT OR THE COURT ON ITS OWN MOTION, IS
18 ENTITLED TO RAISE THOSE ISSUES -- THIS ISSUE.

19 THE GOVERNMENT, AS YOU KNOW, HAS PROVIDED ME WITH
20 SOME MATERIALS WHICH I HAVE REVIEWED. AND I HAVE TO TELL YOU
21 I THINK THE REQUEST THEY MAKE AT THIS POINT FOR A HEARING, NOT
22 FOR A DETERMINATION IF THAT'S WHAT HAPPENS BUT FOR A HEARING,
23 IS WELL FOUNDED.

24 MS. CLARKE: WELL, YOUR HONOR, I DON'T HAVE GEORGE
25 IN FRONT OF ME, BUT I HAVE LITIGATED IN THIS ARENA PREVIOUSLY.

1 AND THE STATUTE IS PRETTY CLEAR THAT THE COURT GRANTS THE
2 MOTION IF THERE IS REASONABLE CAUSE TO BELIEVE THAT THE
3 DEFENDANT MAY PRESENTLY BE SUFFERING MENTAL DISEASE OR DEFECT
4 RENDERING HIM MENTALLY INCOMPETENT TO THE EXTENT HE IS UNABLE
5 TO UNDERSTAND THE NATURE AND CONSEQUENCES OF THE PROCEEDING OR
6 TO PARTICIPATE, ASSIST IN HIS DEFENSE.

7 AND I THINK THE CORE OF THE COMPETENCY ISSUE IS
8 REALLY ABOUT THE RELATIONSHIP WITH COUNSEL AND THE ABILITY TO
9 WORK WITH COUNSEL. WE ARE 60 DAYS INTO THE CASE. THE REQUEST
10 FOR COMPETENCY EVALUATION IS ENTIRELY PREMATURE. MY
11 CONCERN -- OUR CONCERN IS THAT COMPETENCY EVALUATION PROCESS
12 AT THIS POINT WILL INTERFERE IN A VERY NEGATIVE WAY WITH OUR
13 ABILITY TO WORK THROUGH ISSUES AND DEVELOP THIS RELATIONSHIP
14 OF TRUST THAT'S REQUIRED IN THE REPRESENTATION.

15 AND AT THIS POINT OF THE PROCEEDINGS 60 DAYS INTO
16 THE CASE AND WITH TRIAL MONTHS AWAY -- AND I REALIZE WE HAVE A
17 SCHEDULING ISSUE TO DEVELOP -- THE TRIAL STILL IS MONTHS AWAY.
18 THE RESPONSE THAT THE COURT WOULD GET WOULD BE LARGELY
19 IRRELEVANT AND MAYBE VERY UNRELIABLE AT THIS STAGE. IT IS
20 TRIAL RIGHT. IT IS AN EVALUATION THAT DEFENSE COUNSEL TAKES
21 VERY SERIOUSLY.

22 THE GOVERNMENT'S POSITION IS THAT IF THERE IS
23 EVIDENCE OF MENTAL ILLNESS, THEN THAT MEANS COMPETENCY
24 HEARING. AND THAT SIMPLY IS NOT THE CASE. THIS COURT HAS
25 VAST EXPERIENCE IN THESE AREAS AND KNOWS THAT THE EXISTENCE OF

1 MENTAL ILLNESS DOES NOT NECESSARILY RENDER SOMEONE
2 INCOMPETENT. IT MAY. WE DON'T EVEN KNOW AT THIS POINT IN
3 TIME WHAT IT IS. AND I KNOW THIS COURT, FROM OUR PLEADINGS
4 REGARDING SCHEDULING, HAS LOOKED AT WHAT WE HAVE DONE AND
5 HAVEN'T DONE, AND TO HAVE A REASONABLE EVALUATION OF
6 COMPETENCY WILL REQUIRE EXPERTS TO HAVE SOME HISTORY THAT WE
7 ARE WORKING VERY DILIGENTLY TO OBTAIN. THE DIAGNOSIS ITSELF
8 IS NOT THE END RESULT OF COMPETENCY. IT DOESN'T TELL THE
9 COURT ANYTHING. THE COMPETENCY DETERMINATION IS A LEGAL
10 DETERMINATION FOR THIS COURT TO MAKE WITH THE INPUT FROM
11 COUNSEL WHO IS WORKING WITH THE DEFENDANT. IT IS NOT A
12 JUDGMENT CALL FOR PSYCHIATRISTS OR PSYCHOLOGISTS TO MAKE.
13 THEY CAN PROVIDE TO THE COURT THEIR OWN ANALYSIS SUPPORTED BY
14 WHATEVER INFORMATION THEY HAVE OF THE EXISTENCE OR
15 NONEXISTENCE OF A MENTAL DISEASE, DEFECT OR OTHER MENTAL
16 CONDITION, A SERIOUS MENTAL ILLNESS, AND THEN THE COURT HAS TO
17 ASK US FOR SOME EVALUATION OF HOW THAT'S AFFECTING OUR
18 RELATIONSHIP AND OUR ABILITY TO WORK WITH THE CLIENT AND TO
19 MOVE FORWARD.

20 THE COURT: I AM NOT SURE IT'S THAT NARROW, BECAUSE
21 IF IT WERE FOCUSED STRICTLY ON -- AND I KNOW THAT'S ONE OF THE
22 COMPONENTS, HIS ABILITY TO ASSIST THE ATTORNEY HIMSELF, BUT
23 ALSO THE OTHER COMPONENT IS TO UNDERSTAND THE NATURE OF THE
24 PROCEEDINGS. AND THE PROBLEM I AM HAVING WITH WHAT YOU ARE
25 SAYING IS IF WE ARE ESSENTIALLY IN LIMBO.

1 UNLESS I AM CONFIDENT THAT HE IS UNDERSTANDING
2 WHAT'S GOING ON HERE, EVERYTHING WE DO IS SUSPECT AND IT'LL BE
3 SET ASIDE LATER. IF HE IS NOT COMPETENT TO UNDERSTAND, THEN
4 ALL THESE PROCEEDINGS ARE FOR NOUGHT.

5 MS. CLARKE: RIGHT, BUT I THINK THE COURT HAS TO
6 LOOK TO THIS SIDE OF THE COURTROOM FOR THE INDICATION THAT
7 THAT IS OR IS NOT HAPPENING.

8 THE COURT: CERTAINLY, ON ONE PART OF IT. CERTAINLY
9 ON THE PART OF WHETHER HE IS ABLE TO COOPERATE WITH YOU. AND
10 I AGREE WITH YOU. I WILL DEFER TO YOU. YOU ARE VERY
11 EXPERIENCED IN YOUR DEALING FIRSTHAND WITH MR. LOUGHNER, BUT
12 THERE IS A SECOND PART OF THAT, AND THAT'S THE PART I ALLUDED
13 TO, THE ABILITY TO UNDERSTAND THE NATURE OF THE PROCEEDINGS.
14 THE STATUTE GIVES THE GOVERNMENT THE RIGHT TO RAISE THIS.
15 THEY CANNOT BE SOLELY DEPENDENT UPON THE DEFENDANT, AND THE
16 COURT CAN RAISE IT SUA SPONTE.

17 AS YOU KNOW FROM THE MATERIALS THAT HAVE BEEN FILED,
18 I THINK THEY HAVE A LEGITIMATE CONCERN ABOUT GOING FORWARD,
19 DOING ANYTHING IN THIS CASE UNTIL THAT THRESHOLD ISSUE IS
20 RESOLVED. THAT'S THE PROBLEM I AM HAVING.

21 I WANT TO GIVE YOU A CITATION. I HAVE GEORGE HERE.
22 85 F. 3RD 1433. AND IF YOU WANT TO -- YOU OR MR. CAHN WANT TO
23 LOOK AT MY COPY, I HAVE IT HERE.

24 BUT ANYWAY, MS. CLARK, THAT'S THE PROBLEM I AM
25 HAVING. WE ARE JUST SORT OF IN LIMBO, AND THAT CREATES ALL

1 KINDS OF PROBLEMS. SPEEDY TRIAL ISSUE, I CAN DEAL WITH
2 OBVIOUSLY, BUT IT KIND OF FREEZES US IN TIME. WE CAN'T DO
3 ANYTHING UNTIL I AM ASSURED THAT MR. LOUGHNER IS ON BOARD
4 HERE, HE IS ABLE TO ASSIST YOU AND HE IS ABLE TO UNDERSTAND
5 WHAT'S GOING ON.

6 MS. CLARKE: I THINK THAT THAT'S AGAIN WHAT THE
7 COURT HAS TO LOOK TO THIS SIDE OF THE COURTROOM FOR. AND AT
8 THE POINT THAT THIS SIDE OF THE COURTROOM, MR. LOUGHNER'S
9 COUNSEL, HAS REASONABLE CAUSE TO BRING TO THE COURT'S
10 ATTENTION, THEN WE MOST ASSUREDLY WILL. I THINK THE COURT CAN
11 REST CONFIDENT IN THAT ASSURANCE.

12 THE POINT NOW IS WHETHER OR NOT THERE IS REASONABLE
13 CAUSE TO BELIEVE. AND WHAT THE GOVERNMENT IS RELYING UPON IS,
14 AS THEIR PLEADINGS INDICATE, SOME SUGGESTION OF A MENTAL
15 ISSUE. WE KNOW THAT THE SERIOUSLY MENTALLY ILL ARE FOUND
16 COMPETENT AND GO FORWARD WITH PROCEEDINGS. SO TO TAKE NOW THE
17 GOVERNMENT'S ASSERTIONS AND DEFAULT US INTO COMPETENCY
18 PROCEEDINGS WHEN WE ARE TELLING YOU WE ARE NOT AT THAT STATE,
19 AND WE THINK THAT THE DOWNSIDE SUBSTANTIALLY OUTWEIGHS THE
20 UPSIDE IN TERMS OF OUR ABILITY TO DEVELOP A RELATIONSHIP AND
21 THE CASE NECESSARY TO MAKE AN EVALUATION WHETHER THERE IS
22 REASONABLY CAUSE TO BRING TO THE COURT'S ATTENTION. I THINK
23 THAT DOWNSIDE FAR OUTWEIGHS.

24 THE COURT: HOW LONG DO YOU THINK IT WOULD TAKE YOU
25 TO GET TO THE POINT WHERE YOU COULD INFORM ME ON THAT?

1 MS. CLARKE: I DON'T KNOW. I DON'T KNOW, YOUR
2 HONOR. YOU HAVE READ OUR PLEADINGS. YOU KNOW THE WORK THAT
3 WE ARE DOING. YOU KNOW THE EXPECTATIONS OF WHAT WE HAVE OR
4 WHAT WE NEED TO BE DOING, AND THIS IS A PROCESS BY WHICH WE
5 GO.

6 I CAN TELL YOU THAT WE WILL RAISE IT WITH THE COURT
7 AS SOON AS WE BELIEVE THAT IT IS AN ISSUE THAT THE COURT NEEDS
8 TO ADDRESS. I CAN ASSURE YOU OF THAT.

9 AS THE COURT KNOWS FROM WORKING WITH COMPETENCY
10 MATTERS, THIS CAN BE AN ISSUE THAT CAN CHANGE. AND 60 DAYS
11 INTO A CASE IS LIKELY TO BE THE MOST IRRELEVANT TIME TO MAKE
12 THAT DETERMINATION, PARTICULARLY WHEN WE WOULD ALL BE RISKING
13 A DERAILMENT OF A RELATIONSHIP THAT IS BEING ESTABLISHED. I
14 THINK THAT'S THE PROBLEM.

15 THE COURT: I HAVE YOUR POSITION ON THAT.

16 WHO SPEAKS FOR THE GOVERNMENT?

17 MR. KLEINDIENST: I DO, YOUR HONOR.

18 THE COURT: MR. KLEINDIENST, I AM HAPPY TO HEAR FROM
19 YOU.

20 MR. KLEINDIENST: I BELIEVE COUNSEL IS WRITING
21 SOMETHING INTO THE STATUTE THAT'S NOT THERE. I HEAR HER
22 SAYING THAT SHE IS THE GATEKEEPER TO DETERMINE WHEN THIS ISSUE
23 SHOULD BE CONSIDERED AND AT WHAT POINT IN TIME. THE STATUTE
24 MAKES IT PLAIN THAT IT CANNOT COME FROM THE DEFENDANT; THAT
25 THE COURT ITSELF OR THE GOVERNMENT CAN RAISE IT AS AN ISSUE.

1 AND IT'S NOT FOR DEFENSE COUNSEL TO BE THE DETERMINER IN THE
2 END WHETHER OR NOT HER CLIENT SHOULD HAVE A COMPETENCY
3 EXAMINATION IF THERE IS REASONABLE GROUNDS BASED ON THE
4 EVIDENCE BY THE GOVERNMENT THAT HE MAY, IN FACT, BE
5 INCOMPETENT.

6 AND, IN FACT, COUNSEL HERSELF HAS ALREADY PLEADINGS
7 FILED IN THIS CASE ON THE 4TH THAT HER CLIENT HAS MENTAL
8 AFFLICTIONS. AND SHE ALSO ADMITS THERE HAVE BEEN PUBLICIZED
9 DETAILS ABOUT MR. LOUGHNER'S MENTAL FUNCTIONS OVER THE LAST
10 FEW YEARS. I DON'T THINK THAT JUST BECAUSE WE ARE 60 DAYS
11 INTO THIS CASE MEANS THERE IS NOT ENOUGH OF A BACKGROUND OR
12 TRACK RECORD WITH THE DEFENDANT TO SAY IT'S JUST PREMATURE.

13 WE HAVE AN IRRATIONAL ACT TO BEGIN WITH ABOUT WHAT
14 HAPPENED ON JANUARY 8. CERTAINLY, EVERY MURDER IS IRRATIONAL,
15 BUT IS MORE IRRATIONAL THAN MANY OTHERS. WE HAVE A PERSON WHO
16 IS IRRATIONALLY OBSESSED WITH CONGRESSWOMAN GIFFORD WHICH LED
17 TO THE SHOOTING, AND WE HAVE SOMEBODY WHO ACTED IN AN
18 IRRATIONAL MANNER THAT DAY AND KILLED SIX AND TRIED TO KILL 13
19 PEOPLE.

20 WE HAVE SUBMITTED TO THE COURT IN THE PUBLIC FILING
21 YOUTUBE VIDEOS THAT HE POSED HIMSELF PRIOR TO JANUARY 8TH
22 WHICH SHOWS THAT SOMEBODY IS VERY SERIOUSLY -- NOT SERIOUSLY
23 DISTURBED BUT HAS SEVERE MENTAL ISSUES. WHAT WE SUBMITTED IN
24 CAMERA UNDER SEAL REINFORCES THAT. AND WHAT WE HAVE GIVEN TO
25 THE COURT IS A SNAPSHOT OF MR. LOUGHNER THAT PREDATES JANUARY

1 8. IT GOES BACK TO LAST YEAR AND THE YEAR BEFORE.

2 THAT RAISES SERIOUS QUESTIONS, AND THERE IS
3 QUESTIONS THAT THE EVIDENCE INDICATES HIS DISTRUST FOR THE
4 GOVERNMENT, HIS DISTRUST FOR JUDGES, HIS BELIEF THAT THE FBI,
5 THE CIA ARE BUGGING HIM; HIS ANIMOSITY TOWARDS THE GOVERNMENT
6 AND THE FACT THAT AT ONE POINT IN TIME HE WAS HEARING VOICES.

7 WE ARE NOT LOOKING AT THINGS 60 DAYS OUT. THIS HAS
8 BEEN GOING ON FOR QUITE A WHILE. THE PROBLEM IS WHEN DO WE
9 ADDRESS THAT ISSUE. IF MS. CLARKE IS CORRECT, SHE IS THE ONE
10 WHO COMES FORWARD AND SAYS, "OKAY, LET'S HAVE A COMPETENCY
11 HEARING." WHEN IS THAT GOING TO HAPPEN?

12 THE COURT: I UNDERSTAND YOUR COMMENTS IN THAT
13 CONTEXT, MR. KLEINDIENST. FOR ALL THE REASONS THAT YOU JUST
14 RECITED, IT IS VERY, VERY DIFFICULT FOR ANY COUNSEL, EVEN
15 EXPERIENCED COUNSEL LIKE MS. CLARKE, TO DEVELOP A RELATIONSHIP
16 WITH THE DEFENDANT.

17 IF WHAT YOU SAY IS TRUE, I CAN IMAGE SHE HAS HER
18 WORK CUT OUT, AS DO THE OTHER DEFENSE COUNSEL, TO DEVELOP A
19 WORK RELATIONSHIP WITH THE DEFENDANT. AND THE WORRY THAT SHE
20 HAS, CUTTING THROUGH EVERYTHING ELSE, PICKING HIM UP AND
21 TOWING HIM AWAY TO SOME GEOGRAPHICALLY DIFFERENT DISTANT PLACE
22 FOR THE PURPOSE OF CONDUCTING A COMPETENCY EXAM IS GOING TO
23 SET THEM BACK IN THE DEVELOPMENT OF THIS ATTORNEY-CLIENT
24 RELATIONSHIP SO THAT SHE IS IN A POSITION TO REPRESENT HIM.
25 THAT'S THE CONCERN.

1 MR. KLEINDIENST: WITH THE CASE I RECOGNIZE THAT,
2 YOUR HONOR. I HAVEN'T SEEN A CASE YET THAT SAYS THAT THAT'S
3 A REASON NOT TO DO IT.

4 THE COURT: LISTEN, I THINK THAT THOSE CONCERNS GO
5 TO THE FIRST PRONG OF THE COMPETENCY DETERMINATION, WHETHER HE
6 IS ABLE TO ASSIST HIS COUNSEL AND DEFEND HIMSELF. I REALLY
7 DO.

8 THERE IS A SECOND PRONG, AND THAT'S -- FOR A LACK OF
9 A BETTER TERM -- A MORE PRACTICAL PRONG. WHERE DO WE GO FROM
10 HERE, AND HOW LONG IS THIS GOING TO TAKE, AND CAN I DO
11 ANYTHING WITH COMPETENCE. AND I DON'T HAVE CONFIDENCE THAT
12 MR. LOUGHNER IS COMPETENT AT THIS POINT TO UNDERSTAND THE
13 PROCEEDINGS. IT SEEMS TO ME THAT'S THE BASIS FOR YOUR
14 ARGUMENT AT THIS POINT.

15 MR. KLEINDIENST: OBVIOUSLY, WE CAN'T DEAL WITH HIM
16 ON A DAILY BASIS, CERTAINLY. WE HAVE TALKED TO THE B.O.P.,
17 YOUR HONOR, AND WE BELIEVE THAT IT IS NOT GOING TO BE A
18 LENGTHY PROCESS OF DETACHMENT FROM THIS TRIAL TEAM. IT CAN BE
19 EXPEDITED.

20 THE COURT: CAN IT BE DONE HERE?

21 MR. KLEINDIENST: IN TUCSON?

22 THE COURT: CAN IT BE DONE HERE SO THAT HE IS NOT
23 DISRUPTED FROM HIS CELL AND THAT COUNSEL CAN CONTINUE TO SEE
24 HIM?

25 MR. KLEINDIENST: B.O.P. HERE DOESN'T HAVE THAT

1 CAPACITY, BUT I SUSPECT WE CAN GET A PSYCHIATRIST TO EXAMINE
2 HIM, JUDGE.

3 THE COURT: I DON'T KNOW WHAT THE PRACTICE IS HERE,
4 BUT IN THE DISTRICT WHERE I AM FROM, WE FREQUENTLY BRING IN AN
5 OUTSIDE PSYCHIATRIST ON COMPETENCY ISSUES WHO GO TO THE JAIL
6 WHERE THE DEFENDANT IS AND DO A CLINICAL EXAMINATION, AND THEN
7 DO A REPORT AND REPORT BACK TO THE COURT. I THINK THAT WOULD
8 BE LESS DISRUPTIVE THAN PULLING HIM AWAY.

9 MR. KLEINDIENST: SAN DIEGO HAS THE CAPACITY.

10 MS. ANDERSON: YES.

11 MR. KLEINDIENST: THAT CERTAINLY WOULD BE MORE
12 CONDUCIVE WHERE HIS LAWYERS RESIDE THAN EVEN TUCSON AND DOING
13 IT THROUGH A LOCAL DOCTOR.

14 THIS IS A VERY -- AS THE COURT KNOWS, THAT IS A VERY
15 SERIOUS CASE, AND THESE ARE VERY SERIOUS ISSUES. WE DON'T
16 WANT TO FIND OURSELVES SIX MONTHS DOWN THE ROAD AND ALL OF A
17 SUDDEN FIND OUT HE HASN'T BEEN COMPETENT FOR FIVE MONTHS.

18 THE COURT: BELIEVE ME, MR. KLEINDIENST, THAT
19 CONCERN RESONATES WITH ME. AT SOME POINT WE ARE GOING TO ASK
20 WHAT ARE WE DOING HERE. AND THE ANSWER IS I DON'T KNOW YET.
21 THAT'S NOT A GOOD ANSWER.

22 MR. KLEINDIENST: I DON'T BELIEVE MS. CLARKE HAS THE
23 RIGHT TO BE THE GATEKEEPER OF THAT WHEN THE DECISION IS
24 MADE.

25 THE COURT: MS. CLARKE, ANYTHING MORE?

1 MS. CLARKE: NO.

2 THE COURT: I THINK I HAVE BOTH SIDES' POSITION.

3 I AM HAPPY TO HEAR FROM YOU IF THERE IS ANY JOINDER.

4 MS. CLARKE: YOUR HONOR, I THINK THE DISTANCE ISSUE
5 THAT THE COURT RECOGNIZED IS AN ISSUE, BUT ALSO BY THE NATURE
6 OF THE COMPETENCY EVALUATION AND THE EXPECTATION THAT THE
7 MEDICAL PROFESSIONAL WILL WANT TO TALK TO COUNSEL ABOUT THEIR
8 INTERACTIONS.

9 THE COURT: RIGHT.

10 MS. CLARKE: THAT LEVEL OF INQUIRY IS DAMAGING TO
11 THE RELATIONSHIP. AND I DON'T KNOW WHAT I CAN DO TO ASSURE
12 THE COURT THAT WE WILL BRING THAT TO THE COURT'S ATTENTION AT
13 THE POINT THAT WE TRULY BELIEVE THAT THE MENTAL ILLNESS HAS
14 BEEN IDENTIFIED AND IS INTERFERING WITH THE ABILITY TO
15 UNDERSTAND THE NATURE OF THE PROCEEDINGS AND TO ASSIST
16 COUNSEL. I CAN'T EXPRESS SERIOUSLY ENOUGH TO THE COURT THE
17 DAMAGE THAT A PREMATURE COMPETENCY EXAMINATION CAN DO. I
18 CANNOT ASSURE THE COURT THAT WE ARE NOT GOING THERE.

19 THE COURT: WHAT IF IT WERE TO BE HELD IN SAN DIEGO
20 SINCE YOU, MR. CAHN, MR. FLEMING ARE BASED THERE, AND IT WOULD
21 BE ACTUALLY EASIER FOR YOU TO COMMUNICATE WITH THE DEFENDANT,
22 I WOULD THINK. IT'S NOT AN HOUR AWAY BY PLANE.

23 MS. CLARKE: THAT ADDRESSES A DISTANCE ISSUE AND IT
24 ALSO PUTS MR. LOUGHNER IN ITS THIRD LOCATION OR FOURTH SINCE
25 HIS ARREST WHICH IS DISRUPTIVE ENOUGH, BUT IT DOESN'T ADDRESS

1 THE QUESTION OF ROLE OF COUNSEL DURING THAT PROCESS AND THE
2 INTERFERENCE THAT THAT ITSELF DOES TO THE RELATIONSHIP THAT
3 COUNSEL ARE ATTEMPTING TO BUILD. I HAVE NO DESIRE TO CONTINUE
4 WITH COURT PROCEEDINGS IF MR. LOUGHNER IS TRULY INCOMPETENT.
5 BUT I DON'T BELIEVE -- OBVIOUSLY, WE HAVE AN OBLIGATION TO
6 COME TO THE COURT WHEN WE THINK THAT THE PRONGS HAVE BEEN MET
7 AND THAT BY VIRTUE OF SERIOUS MENTAL DISEASE OR DEFECT, HE IS
8 RENDERED UNABLE TO ASSIST COUNSEL AND UNDERSTAND THE NATURE OF
9 THE PROCEEDINGS. WE ARE JUST NOT THERE YET, JUDGE, AND I ASK
10 YOU FOR MORE TIME TO WORK ON THIS AND TO COME BACK TO THE
11 COURT AS PROMPTLY AS POSSIBLE.

12 THE COURT: HOW MUCH TIME?

13 THAT'S THE PROBLEM. I KNOW IT'S KIND OF PAINTING
14 YOU IN A CORNER, BUT I DON'T WANT TO BE IN LIMBO ON THIS. I
15 WANT A DETERMINATION. HERE IS ANOTHER THING.

16 COMPETENCY DETERMINATION IS FAR DIFFERENT FROM THE
17 DISPOSITIVE DETERMINATION THAT MAYBE LAY AHEAD ABOUT WHAT HIS
18 FRAME OF MIND WAS AT THE TIME OF THESE ALLEGED ACTS. THAT'S
19 VERY, VERY DIFFERENT. AND I AGREE WITH YOU THAT THAT INVOLVES
20 MORE COMPREHENSIVE DEVELOPMENT.

21 BUT THE ISSUE THAT IS RAISED BY THE GOVERNMENT THERE
22 IS A FAIRLY NARROW ISSUE TO ASK THE PSYCHIATRIST TO LOOK AT
23 TWO THINGS. OBVIOUSLY, YOUR INPUT IS IMPORTANT TO ONE OF
24 THOSE TWO PRONGS. BUT IF WE ARE MISSING THAT THE SHOWING IS
25 MADE ON EITHER OF THE PRONGS, THEN WE'VE GOT A PROBLEM. AND I

1 NEED TO KNOW THAT SOONER RATHER THAN LATER, MS. CLARKE.

2 MS. CLARKE: WELL, THAT'S TRUE, BUT COMPETENCY IS
3 TEMPORAL. IT IS AFFECTED BY WHAT'S GOING ON AT ANY GIVEN
4 TIME.

5 IT'S A SITUATION WHERE THE MENTAL HEALTH
6 PROFESSIONAL IS CALLED UPON TO RENDER AN ANALYSIS IN A VACUUM
7 WITHOUT AN EXTENSIVE HISTORY THAT THEY WOULD WANT TO HAVE IN A
8 CASE LIKE THIS, AND IT WOULD REQUIRE US TO PARTICIPATE IN A
9 WAY THAT I THINK WOULD BE ULTIMATELY DAMAGING.

10 PERHAPS THE BEST THING TO DO IS TO SET THIS FOR A
11 STATUS, LET US BRIEF THE ISSUE TO THE COURT. AND PERHAPS THAT
12 GIVES US A CHANCE FOR MORE TIME, IF THE COURT WOULD SET A
13 STATUS CONFERENCE IN 30 DAYS OR 60 DAYS AND LET US ADDRESS THE
14 ISSUE AGAIN AT THAT TIME. THAT GIVES US THREE OR FOUR MONTHS
15 WORKING WITH MR. LOUGHNER AND MAYBE MAKE BETTER JUDGMENTS AND
16 MORE RELIABLE JUDGMENTS.

17 THE COURT: ANYTHING ELSE?

18 MR. KLEINDIENST: IF THE COURT HAS LOOKED AT THE
19 MATERIALS SUBMITTED, AND LOOKING AT THAT, THE TOTALITY OF ALL
20 THAT, THAT THE COURT HAS REASONABLE GROUNDS TO BELIEVE THAT HE
21 MAY BE INCOMPETENT, THE STATUTE IS QUITE CLEAR THAT IT SAYS
22 THAT THE COURT SHALL -- NOT MAY BUT SHALL -- ORDER A
23 COMPETENCY EXAMINATION.

24 I THINK THAT WE SUBMITTED THE EVIDENCE THAT'S MORE
25 THAN AMPLE AS TO REASONABLE GROUNDS TO BELIEVE THAT HE IS

1 INCOMPETENT.

2 I KNOW THE CONCERNS THAT MS. CLARKE IS TALKING
3 ABOUT. I AM SURE COURTS AND CONGRESS HAVE LOOKED AT AND
4 EXAMINED. I DON'T BELIEVE THAT HER CONCERNS NEGATE THE
5 OVERALL PURPOSE OF HAVE A PROCEEDING THAT IS FAIR TO BOTH
6 SIDES WHERE YOU HAVE A DEFENDANT WHO IS COMPETENT, SO DOWN THE
7 ROAD THIS CASE IS NOT GOING TO BE REVERSED BECAUSE WE LET IT
8 SLIDE AWAY FOR 30 OR 60 DAYS.

9 THE COURT: SECTION 4241 PROVIDES THAT AT ANYTIME
10 AFTER THE COMMENCEMENT OF A PROSECUTION AND PRIOR SENTENCING,
11 THE DEFENDANT OR THE ATTORNEY FOR THE GOVERNMENT MAY FILE A
12 MOTION FOR A HEARING TO DETERMINE THE MENTAL COMPETENCY OF THE
13 DEFENDANT.

14 THE COURT SHALL GRANT THE MOTION OR SHALL ORDER SUCH
15 A HEARING ON ITS OWN MOTION IF THERE IS REASONABLE CAUSE TO
16 BELIEVE THAT THE DEFENDANT MAY PRESENTLY BE SUFFERING FROM A
17 MENTAL DISEASE OR DEFECT RENDERING HIM MENTALLY INCOMPETENT TO
18 THE EXTENT THAT HE IS UNABLE TO UNDERSTAND THE NATURE AND
19 CONSEQUENCES OF A PROCEEDING AGAINST HIM OR TO ASSIST PROPERLY
20 IN HIS DEFENSE.

21 I AM WELL FAMILIAR WITH THE STATUTE. COMPETENCY
22 ISSUES ARISE ALL THE TIME. I THINK THE ARGUMENTS THAT
23 MS. CLARKE HAS MADE ON THE SECOND PRONG -- AND I AGREE WITH
24 HER THAT I WOULD BE DEFERENTIAL TO HER AND THE OTHER
25 EXPERIENCED COUNSEL REGARDING MR. LOUGHNER'S ABILITY TO

1 COOPERATE AND ASSIST THEM IN DEFENDING HIM. I LOOK TO HER
2 FIRST. I THINK IT WOULD BE PRESUMPTUOUS, I THINK, FOR ANYONE
3 ELSE INVOLVED IN THE PROCESS TO TRY TO SECOND-GUESS THAT.

4 I AM ALSO AWARE THAT MS. CLARKE IS A VERY
5 EXPERIENCED LAWYER AND SHE, TOO, HAS DEALT WITH THIS ISSUE
6 BEFORE, AND I TAKE VERY SERIOUSLY HER STATEMENTS TO ME THAT I
7 ASSUME ARE BASED ON EXPERIENCE THAT THIS COULD BE VERY
8 DISRUPTIVE OF HER RELATIONSHIP WITH THE DEFENDANT.

9 I AM BUFFETED TO SOME EXTENT IN APPLYING THIS
10 STANDARD IN THIS CASE, BECAUSE THE TWO DIFFERENT FACTORS SEEM
11 TO BE SOMEWHAT AT ODDS WITH EACH OTHER.

12 ON THE OTHER HAND, THIS IS A LEGAL DECISION TO BE
13 MADE, AND THE STANDARD IS AM I CONVINCED MORE LIKELY THAN NOT
14 BY THE GOVERNMENT'S SHOWING THAT THERE IS WORDS OF A STATUTE
15 REASONABLE CAUSE TO BELIEVE THAT THE DEFENDANT MAY BE
16 PRESENTLY SUFFERING FROM A MENTAL DECEASE OR DEFECT THAT
17 RENDERS HIM UNABLE TO UNDERSTAND THE NATURE AND CONSEQUENCES
18 OF THE PROCEEDINGS.

19 THE GOVERNMENT HAS FILED NOT ONLY PUBLICLY, AS
20 ALLUDED TO BY MR. KLEINDIENST, THE YOUTUBE VIDEOS WHICH I HAVE
21 REVIEWED, BUT ALSO IN CAMERA MATERIALS THAT ARE MUCH MORE
22 RECENT, MUCH MORE APPROXIMATE TO TODAY. TO THE EXTENT THERE
23 WAS A QUESTION ABOUT WHETHER THE DOUBT IS PERCOLATING TODAY OR
24 PERCOLATING A MONTH OR TWO MONTHS AGO, THAT'S RESOLVED, I
25 THINK, BY THE VIEW OF IN CAMERA MATERIALS.

1 I HAVE TO SAY THIS ALSO, MS. CLARKE. I RAISED THIS
2 THE VERY FIRST TIME I CAME IN. I HAVE A CONCERN. FORGET
3 ABOUT THE TAX IN THIS CASE. THERE HAS BEEN ALL KINDS OF
4 PUBLICITY ABOUT THE BACKGROUND OF THE DEFENDANT. I HAVE
5 PICKED UP ON THIS MORE THAN IN ANY OTHER CASE. I HAVE
6 CONCERNS GIVEN THE DEFENDANT'S AFFECT ABOUT WHETHER HE IS
7 FULLY UNDERSTANDING THE NATURE OF THE PROCEEDINGS HERE. I
8 HAVE THAT CONCERN.

9 NOW, I DID NOT RAISE IT SUA SPONTE. I ASKED YOU AT
10 THE FIRST HEARING ABOUT WHETHER YOU WANTED TO RAISE THE
11 CONCERN THEN. I NOW BETTER UNDERSTAND WHY YOU WANTED TO DEFER
12 BASED ON WHAT YOU HAVE EXPLAINED.

13 BUT HERE, I AM DEALING WITH A PARTY WHO HAS A RIGHT
14 TO MAKE THIS REQUEST. I FIND THAT THE SHOWING HAS BEEN MADE.
15 I RELY ON MATERIALS THAT THE GOVERNMENT HAS SUBMITTED. I CAN
16 FIND THAT THERE IS REASONABLE CAUSE FOR ME TO QUESTION WHETHER
17 THE DEFENDANT AT THIS POINT UNDERSTANDS THE NATURE OF THE
18 PROCEEDINGS. I'LL DEFER TO MS. CLARKE ON THE OTHER PART. SHE
19 HAS NOT RAISED THAT ISSUE.

20 AND SO THE COURT GRANTS THE MOTION FOR THE
21 COMPETENCY HEARING.

22 WHAT I'D LIKE TO DO, MR. KLEINDIENST, IS TO
23 ACCOMMODATE THE INTEREST AND CONCERNS THAT THE DEFENSE HAS
24 RAISED TO THE EXTENT POSSIBLE. I WOULD PREFER NOT TO SEND
25 MR. LOUGHNER TO SOME DISTANT PLACE. I DON'T KNOW, I AM NOT

1 SURE, IS THERE A WAY THAT YOU APPOINT A PSYCHIATRIST TO SEE
2 HIM HERE SO THAT HIS HOUSING SITUATION IS NOT DISRUPTED?

3 MR. KLEINDIENST: MAY I HAVE ONE MOMENT?

4 THE COURT: YES.

5 MR. KLEINDIENST: THE DISADVANTAGE OF HAVING IT DONE
6 HERE IS HE IS NOT IN A PRETRIAL DETENTION FACILITY. HE IS IN
7 A MAXIMUM SECURITY PRISON, AND I THINK THERE ARE COMPLICATIONS
8 IN TERMS OF HAVING ACCESS TO HIM THAT INTERFERE WITH THE
9 SECURITY OF THE PRISON.

10 SAN DIEGO HAS TOLD US THAT THEY ARE MORE THAN HAPPY
11 TO DO IT. COUNSEL ARE FROM SAN DIEGO. WE ARE NOT TAKING
12 ABOUT MINNESOTA OR NORTH CAROLINA. WE ARE TALKING ABOUT SAN
13 DIEGO.

14 THE COURT: FOR TODAY ALL I NEED TO DECIDE IS THE
15 DATE TO SET THE COMPETENCY HEARING.

16 WHAT I'D ASK, MS. CLARKE, IS THAT YOU AND OTHER
17 COUNSEL MEET AND CONFER WITH GOVERNMENT COUNSEL AND DECIDE
18 LOGISTICALLY WHAT'S THE BEST IN LIGHT OF THE CONCERNS THAT YOU
19 HAVE RAISED. IF IT REQUIRES AN ORDER BY ME TRANSFERRING HIM
20 TO SAN DIEGO FOR THE PURPOSE OF AN EXAM, I WILL BE HAPPY TO
21 GIVE THAT. IF YOU WANT TO EXPLORE FURTHER WHETHER THERE IS
22 SOMEPLACE HERE WHERE HE CAN BE PRESENTED FOR A CLINICAL EXAM.

23 I WANT TO BE SURE. I HAVE IN MIND THE CONCERNS THAT
24 YOU HAVE RAISED, BUT I ALSO KNOW IN THE RUN OF THE MINE
25 CASE -- THIS IS NOT IT -- IN A RUN OF THE MINE CASE, THE

1 COMPETENCY DETERMINATION IS FREQUENTLY MADE ON THE BASIS OF A
2 CLINICAL INTERVIEW AND MATERIALS. I FIND AT THIS POINT THE
3 MATERIALS IN POSSESSION ON BOTH SIDES ARE SUFFICIENT TO ALLOW
4 A QUALIFIED PSYCHOLOGIST OR PSYCHIATRIST ALONG WITH A CLINICAL
5 INTERVIEW TO MAKE AN ASSESSMENT OF WHETHER THE DEFENDANT
6 UNDERSTANDS THE NATURE OF THE PROCEEDINGS.

7 AGAIN, I SAY THAT WITH ALL RESPECT TO THE POINTS YOU
8 RAISED, MS. CLARKE.

9 SO HOW LONG, MR. KLEINDIENST, DO YOU THINK IT'LL
10 TAKE, WHETHER WE DO NEED TO RESCHEDULE FOR THE ACTUAL HEARING
11 ON THIS?

12 MR. KLEINDIENST: WE WILL BE HAVING AN EXAMINATION?

13 THE COURT: YES.

14 MR. KLEINDIENST: I WOULD DO IT FORTHWITH.

15 THE COURT: I AM TALKING ABOUT SETTING A DATE. THE
16 SECTION TALKS ABOUT ME SETTING A DATE FOR COMPETENCY HEARING.
17 I KNOW WHAT HAS TO TAKE PLACE IN THE INTERIM. I AM JUST
18 ASKING HOW FAR OFF YOU THINK WE NEED TO SET THAT DATE.

19 MR. KLEINDIENST: AFTER THE EXAMINATION?

20 THE COURT: YES. WHEN?

21 MR. KLEINDIENST: 30 DAYS.

22 THE COURT: MS. CLARKE, YOU HAVE INPUT ON THAT?

23 MS. CLARKE: WELL, YOUR HONOR, I THINK THERE IS SOME
24 STEPS TO DEAL WITH. IT MAY TAKE THE PARTIES A FEW DAYS TO GET
25 BACK TO THE COURT, AND WE'LL HAVE SOME ISSUES ON THE LOCATION.

1 THE DESIGNATION OF THE EXAMINER THAT THE COURT MUST DO UNDER
2 4247(B), THE SCHEDULE OF THE EXAMINER, OBVIOUSLY GETTING
3 MATERIALS TO THE EXAMINER.

4 THE COURT: HOW ABOUT MAY 25TH? THAT'S A WEDNESDAY.
5 IT IS A WEEK BEFORE MEMORIAL DAY. IT IS TWO MONTHS HENCE. IT
6 GIVES PLENTY OF TIME FOR THE LOGISTICS TO BE WORKED OUT.
7 THERE IS PLENTY OF TIME WITH RESPECT TO THE SCHEDULE OF
8 DOCTORS TO COME AND VISIT WITH THE DEFENDANT, TALK TO HIM, GET
9 INPUT FROM COUNSEL.

10 OBVIOUSLY, MS. CLARKE, IF YOU WANT TO HAVE A DOCTOR
11 APPOINTED, I AM AMENABLE TO THAT. IT'S A CONTESTED HEARING.
12 YOU HAVE A RIGHT TO HAVE THE EVIDENCE PRESENTED, TOO. THAT
13 GIVES US PLENTY OF LATITUDE. MAY 25TH, AS I RECALL, IS A
14 WEDNESDAY.

15 MR. KLEINDIENST: WE WILL MAKE THAT WORK, JUDGE.

16 MS. CLARKE: WE CAN CERTAINLY COME BACK IF IT'S NOT
17 GOING.

18 THE COURT: I AM GOING TO SET IT TODAY FOR A HEARING
19 ON COMPETENCY. IF THINGS DEVELOP IN THE MEANTIME THAT MAKE IT
20 IMPRACTICAL AND WE HAVE TO CONTINUE THE DATE, THEN YOU CAN
21 CERTAINLY BRING THOSE UP.

22 THAT'S A GO-FORWARD DATE WHERE I EXPECT TO COME BACK
23 AND HAVE REPORTS SUBMITTED TO ME IN ADVANCE AND TAKE TESTIMONY
24 OR WHATEVER WE ARE GOING TO DO REGARDING THE ISSUE OF
25 COMPETENCY. I INTEND TO SETTLE IT THAT DAY IF THAT'S

1 POSSIBLE.

2 MS. CLARKE: WE WILL CERTAINLY AIM FOR THAT, BUT I
3 THINK THERE ARE SOME ISSUES WE ARE GOING TO NEED THE COURT TO
4 ADDRESS. PERHAPS WE NEED TO GET EITHER -- SEE IF WE CAN REACH
5 AGREEMENT OR GET A PLEADING BEFORE THE COURT SO THE COURT CAN
6 RULE ON IT, AND IT WOULD INCLUDE LOCATION AND CONDITIONS AND
7 THE ACTUAL REFERRAL QUESTION, AS I AM UNDERSTANDING, THE COURT
8 FOCUSING ON THE UNDERSTANDING OF THE NATURE OF THE
9 PROCEEDING.

10 THE COURT: I WOULD HAVE THEM DO BOTH. YOU KNOW
11 WHAT MY VIEW IS ON THE FIRST PRONG. I THINK THE SECTION
12 REQUIRES THAT A PSYCHIATRIST OR PSYCHOLOGIST SPEAK TO BOTH OF
13 THOSE PRONGS.

14 I AM DEFERENTIAL TO YOU ON THE FIRST PRONG, I AM.
15 AND NECESSARILY SO. WHETHER HE IS COOPERATING WITH YOU IN THE
16 FIRST INSTANCE IS BEST ANSWERED BY YOU AND HIS OTHER COUNSEL.
17 BUT I AM NOT GOING TO TRY TO LIMIT THE PSYCHIATRIST TO ONE OR
18 TWO PRONGS THAT ARE AT ISSUE IN THE CASE.

19 MS. CLARKE: WELL, WE'LL WANT AT LEAST ADDRESS THAT
20 QUESTION AND THE USE THAT CAN BE MADE OF THE EVALUATION NEEDS
21 TO BE CLARIFIED. THERE ARE JUST SOME ISSUES THAT I'D LIKE THE
22 COURT TO RULE ON. PERHAPS WE COULD FILE SOMETHING BY
23 WEDNESDAY OF NEXT WEEK, IF THAT'S AGREEABLE TO THE COURT.

24 THE COURT: THAT'S FINE. I THINK THAT DATE I HAVE
25 SET, USUALLY THESE HEARINGS ARE SET 30 DAYS OUT. I HAVE SET

1 THIS ONE 60 DAYS OUT WHICH GIVES US PLENTY OF TIME IN THE
2 INTERIM TO WORK OUT THE LOGISTICS AND HAVE THE EXAMINATIONS
3 THAT ARE GOING TO BE DONE DONE, AND WE COME BACK AT -- I'LL
4 SET THE HEARING --

5 MR. CAHN: YOU DO HAVE TO COME THE NIGHT BEFORE IF
6 YOU WANT TO START IN THE MORNING. THE EARLIEST FLIGHT GETS
7 HERE ABOUT 10:00 IN THE MORNING.

8 THE COURT: WELL, WE'LL SET IT THEN FOR 9:30 IN THE
9 MORNING ON MAY 25TH.

10 IS THAT A CONVENIENT TIME FOR YOU, MR. KLEINDIENST?

11 MR. KLEINDIENST: I CAN GET OUT OF BED AND DRIVE THE
12 20 MILES. SO I TAKE IT, THE COURT IS GOING TO ORDER THAT SAN
13 DIEGO DEAL --

14 THE COURT: I AM LEAVING THE PARTICULAR LOGISTICS
15 FIRST TO COUNSEL. IF THEY CAN BE WORKED OUT BETWEEN COUNSEL,
16 I'LL SIGN OFF. IF YOU WANT TO PRESENT A STIPULATION ON WHERE
17 HE GOES, AND SO ON. IN THE ABSENCE OF ANY AGREEMENT, THEN
18 I'LL LET YOU SUBMIT ARGUMENTS AND MAKE A DECISION.

19 ALL I AM DOING AT THIS POINT IS GRANTING THE MOTION
20 FOR A COMPETENCY HEARING WHICH IS WHAT 4241 SPEAKS TO. I AM
21 SETTING IT FOR MAY 25TH AT 9:30 FOR THE DETERMINATION OF THAT
22 ISSUE.

23 MR. KLEINDIENST: DID YOU WANT A STIPULATION AS TO
24 HOW THAT'S TO WORK OUT?

25 THE COURT: YES, STIPULATION OR A MOTION ASKING ME

1 TO TAKE ACTION ONE WAY OR THE OTHER IN THE ABSENCE OF A
2 STIPULATION. AND TO EXTENT THAT EITHER SIDE WANTS TO HIRE A
3 PSYCHIATRIST OR PSYCHOLOGIST, I'D WANT TO HAVE A REPORT FROM
4 THAT PERSON SEVEN DAYS BEFORE THE MAY 25TH HEARING.

5 MS. CLARKE: YOUR HONOR, 4247 ADDRESSES HOW THE
6 EXAMINERS ARE APPOINTED, AND WE'LL ADDRESS EITHER BY
7 STIPULATION OR BY MOTION.

8 THE COURT: ALL RIGHT.

9 WELL, THAT ISSUE HAVING BEEN DECIDED, AS I SAID, I
10 THINK WE CAN STILL GET TO THE OTHER ISSUES, THE ISSUES OF THE
11 LAW.

12 MS. CLARKE, I AM HAPPY TO HEAR FROM YOU ON THE
13 HANDWRITING EXEMPLAR ISSUE. I UNDERSTAND YOU ARE WILLING TO
14 STIPULATE TO CERTAIN THINGS. THEY DON'T WANT TO ACCEPT THAT
15 AND THEY ARE NOT REQUIRED TO. THIS ISN'T AN OVERACHIEVE ISSUE
16 WHERE THEY ASKING THE COURT TO PUT ON EVIDENCE THAT'S HIGHLY
17 INFLAMMATORY LIKE A PRIOR CONVICTION OR SOMETHING. THEY JUST
18 WANT A SAMPLE OF HIS HANDWRITING.

19 I HAVE LOOKED AT THE CASE THAT YOU CITED. THEY ARE
20 NOT -- I DON'T THINK THEY ARE ASKING THAT THEY NARRATE AND HE
21 WRITE A PARTICULAR WORD. IT JUST DOESN'T HAVE THAT KIND OF
22 TESTIMONIAL OR POTENTIAL INCRIMINATION. THEY ARE COMMON.
23 FINGERPRINTS THAT ARE LIKE REQUIRING SOMEBODY TO STAND IN A
24 LINEUP OR A VOICE EXEMPLAR.

25 MS. CLARKE: YOUR HONOR, MR. CAHN ACTUALLY IS GOING

1 TO ADDRESS THAT ISSUE. BUT I'D LIKE TO ASK THE COURT NOT TO
2 GO FORWARD WITH ANY OTHER PROCEEDINGS AT THIS POINT, LEGAL OR
3 FACTUAL OR ANY. ONCE THE COURT HAS MADE A FINDING OF
4 REASONABLE CAUSE TO BELIEVE THAT THE DEFENDANT DOESN'T
5 UNDERSTAND THE NATURE OF THE PROCEEDINGS, I THINK THEY COME TO
6 A HALT.

7 THE COURT: I AM GOING TO DEFER ON THAT ISSUE. I
8 DON'T THINK IT'S A BURNING NEED.

9 WHAT ABOUT THE OTHER ISSUE? THE OTHER ISSUE IS MORE
10 IN THE FORM OF THE DEFENSE SEEKING SOME KIND OF INJUNCTION
11 FROM ME ON ONGOING OBSERVATIONS.

12 MS. CLARKE: THAT'S CORRECT. WITH REGARD TO THAT
13 MOTION, YOUR HONOR, THE GOVERNMENT REPLY TO US BROUGHT NEW
14 INFORMATION THAT THE GOVERNMENT HAD NOT TOLD US ABOUT. WE
15 ACTUALLY SAT DOWN AND MET WITH THEM ON VARIOUS ISSUES.

16 SO THEIR PLEADINGS PROVIDED US WITH INFORMATION WE
17 THINK WE CAN RESPOND AND WE CAN GO FORWARD WITH A RESPONSE.
18 THE QUESTION IS WHETHER WE GO FORWARD WITH THE HEARING. THE
19 COURT CAN DECIDE THAT AFTER SEEING THE RESPONSE.

20 THE COURT: ARE YOU PREPARED TO RESPOND ORALLY? I
21 AM ON TOP OF THE ISSUE. I HAVE LOOKED AT ALL THE REGULATIONS.
22 I HAVE LOOKED AT --

23 MS. CLARKE: NO. WE WOULD LIKE TO RESPOND IN
24 WRITING, BECAUSE THERE IS A STRATEGIC CALL THAT THE GOVERNMENT
25 HAS ALREADY JUMPED, AND WE'D LIKE TO ADDRESS THAT. THAT IS

1 THE USE BY THE UNITED STATES OF A TANK TEAM. WE THINK THAT
2 MERITS OUR THOUGHT AND OUR BRIEFING.

3 THE COURT: MR. KLEINDIENST, YOU HAVE A POSITION ON
4 THAT? I AM INCLINED TO GIVE HER THE TIME. I AM NOT PREPARED
5 TODAY TO ISSUE ANY INJUNCTION. I AM NOT GOING TO. IT'LL BE
6 STATUS QUO. I AM SURE MS. CLARKE KNOWS THAT WHEN SHE SAID SHE
7 WANTS MORE TIME.

8 MR. KLEINDIENST: ONE MOMENT.

9 I THINK, YOUR HONOR, WHAT THE GOVERNMENT ASKS FOR IN
10 THAT MATTER AND IF IT'S AVAILABLE AND DOESN'T VIOLATE THE
11 PRIVILEGE, THAT WOULD BE INFORMATION THAT MIGHT BE HELPFUL TO
12 THE ISSUE OF COMPETENCY, BECAUSE THAT INFORMATION WAS TAKEN
13 DOWN BY THE PSYCHOLOGIST IN THE FEDERAL INSTITUTION WHEN HE
14 ARRIVED, AND THAT MAY BE SOMETHING THAT'S NOT PRIVILEGED THAT
15 SHOULD BE AVAILABLE. I UNDERSTAND THAT SHE MAY NEED MORE TIME
16 TO RESPOND TO OUR ARGUMENT, BUT I WOULD ASK WE PROCEED WITH
17 THAT AND MAKE A DECISION.

18 THE COURT: HOW LONG, MS. CLARKE, YOU THINK YOU'LL
19 NEED TO RESPOND TO THE LAST PORTION OF -- I WANT TO MAKE SURE
20 THAT I AM ON THE SAME PAGE WITH THE TWO OF YOU.

21 THE GOVERNMENT HAS REVEALED THAT THEY HAVE HAD A
22 SO-CALLED GATEKEEPER, A FILTER TEAM THAT HAS BEEN LOOKING AT
23 MATERIALS GENERATED BY THE BUREAU OF PRISONS. IT'S TWO
24 ASSISTANT UNITED STATES ATTORNEYS WHO ARE NOT INVOLVED IN THIS
25 CASE, AND THEIR TEAM ISN'T MEETING BETWEEN THE INVOLVED

1 PROSECUTORS AND THESE FOLKS. THESE TWO ASSIGNED PROSECUTORS
2 ARE LOOKING AT MATERIALS AND MAKE SURE NONE OF IT IS
3 PRIVILEGED AND NONE OF IT IS SEEN BY THE PROSECUTORS WHO ARE
4 WERE ACTUALLY PURSUING THIS CASE.

5 THAT'S THE GIST OF THIS, MR. KLEINDIENST?

6 MR. KLEINDIENST: IT IS, YOUR HONOR.

7 THE COURT: THAT THAT'S SOMETHING YOU DIDN'T KNOW
8 BEFORE YOU GOT THEIR RESPONSE?

9 MS. CLARKE: YES.

10 THE COURT: THAT'S WHAT YOU WANT TO RESPOND TO?

11 MS. CLARKE: THAT'S RIGHT.

12 THE COURT: HOW LONG DO YOU NEED?

13 MS. CLARKE: SINCE WE ARE GOING TO MEETING WITH THE
14 PROSECUTION TEAM TO ADDRESS THOSE LOGISTICAL ISSUES ON THE
15 EVALUATION, PERHAPS WE COULD FILE THAT ON WEDNESDAY AS WELL.

16 THE COURT: THAT'S FINE.

17 I WOULD BE INCLINED, MR. KLEINDIENST, I AM HAPPY TO
18 COME BACK AND MAKE ANOTHER PERSONAL APPEARANCE, BUT I AGREE
19 WITH YOU THAT THAT MAY BE SOMETHING THAT WOULD INFORM THE
20 COMPETENCY EVALUATION AND THE COMPETENCY DETERMINATION; AND
21 THEREFORE, I SHOULD MAKE A DECISION ON WHETHER THESE MATERIALS
22 ARE PRIVILEGED OR NOT PRIVILEGED AT SOME POINT SOON.

23 THAT SAID, DEFENSE COUNSEL ARE IN SAN DIEGO. WE
24 HELD A COUPLE OF OPEN HEARINGS WHERE YOU APPEARED BY
25 TELEPHONE. IF THEY ARE WILLING TO WAIVE THE DEFENDANT'S

1 PRESENCE, THEN I WOULD PROPOSE LET THEM FILE THEIR MATERIALS
2 AND WE WILL SET AN INTERIM DATE BETWEEN NOW AND THE 25TH OF
3 MAY FOR RESOLUTION OF THAT ISSUE. I AM PREPARED ON IT. I
4 HAVE READ ALL THE REGULATIONS.

5 BORING THING TO DO TO READ PRISON REGULATIONS, BUT I
6 HAVE DONE THAT.

7 MR. KLEINDIENST: THE COURT GET THE SUBMISSIONS
8 TODAY.

9 MS. CLARKE: WE DID NOT.

10 THE COURT: I DO HAVE A QUESTION, AND THIS IS
11 NEITHER HERE NOR THERE.

12 I AM ASSUMING THAT THE MATERIAL THAT YOU DON'T GET
13 TO SEE THAT YOUR FILTERS DON'T GET TO YOU WILL BE TURNED OVER
14 TO THE DEFENSE; RIGHT?

15 MR. KLEINDIENST: THE INTENT WAS, AS STATED IN OUR
16 MOTION, THAT THEY RECEIVE A COPY SIMULTANEOUSLY. IF THEY HAVE
17 NOT RECEIVED IT, I'LL MAKE SURE THAT THEY GET IT. BUT THE
18 INTENT IS WE WILL NOT LOOK AT THAT OPTION UNTIL THE COURT
19 DETERMINES THAT PRIVILEGE DOES OR DOES NOT EXIST.

20 THE COURT: YOUR INTENTION IS TO MAKE SURE THEY GET
21 WHAT HAS BEEN FILTERED FROM YOU; RIGHT?

22 MR. KLEINDIENST: THEY ARE GETTING EVERYTHING THAT
23 THE FBI GAVE THE FILTER TEAM WHICH WE HAVE NOT SEEN. THEY ARE
24 GETTING ALL THAT.

25 THE COURT: THAT ANSWERS IT. THEY HAVE

1 COMPREHENSIVELY ALL THE INFORMATION THAT'S IN QUESTION.

2 MR. KLEINDIENST: WHATEVER IS OUT THERE, THEY HAVE.

3 MS. CLARKE: WE DON'T YET, BUT WE WILL RECEIVE IT
4 SOUNDS LIKE.

5 THE COURT: YES, I AM SURPRISED THAT YOU DON'T HAVE
6 IT.

7 MR. KLEINDIENST, LET ME CHECK ON THAT WHILE WE ARE
8 ON IT. THIS IS STILL PROBABLY -- I USE THE TERM "OPEN
9 DISCOVERY." YOU ARE STILL CONTINUING TO PROVIDE DISCOVERY AND
10 NOT WITHHOLD ANYTHING IN THIS CASE; CORRECT?

11 MR. KLEINDIENST: THAT'S CORRECT, YOUR HONOR.

12 MS. CLARKE: ONE POINT OF CLARIFICATION. I THINK I
13 HEARD MR. KLEINDIENST SAY THAT THE PROSECUTION TEAM HAS
14 RECEIVED NOTHING FROM THE BUREAU OF PRISONS; THAT ANYTHING
15 FROM A BUREAU OF PRISONS HAS GONE TO A FILTER TEAM.

16 THE COURT: IS THAT RIGHT, MR. KLEINDIENST?

17 MR. KLEINDIENST: YES.

18 THE COURT: YOU HAVEN'T EVEN SEEN WHAT I HAVE SEEN?

19 MR. KLEINDIENST: NO.

20 MS. CLARKE: THANK YOU, YOUR HONOR.

21 THE COURT: SO THE ISSUE IS FOR DECISION, I THINK.
22 IF YOU WANT TO FILE SOMETHING BY WEDNESDAY, WE'LL SET A
23 FURTHER HEARING ON THAT. I DO THINK IT'S IMPORTANT THAT WE
24 RESOLVE IT AT SOME POINT BEFORE THE COMPETENCY HEARING.

25 MS. CLARKE: THANK YOU, YOUR HONOR.

1 THE COURT: OKAY. I THINK THAT EXHAUSTS THE THINGS
2 THAT WERE BEFORE ME TODAY. I'LL DEFER AND KEEP PENDING THE
3 HANDWRITING MOTION WHICH, OF COURSE, TOLLS TIME ON THE SPEEDY
4 TRIAL ACT.

5 THE COURT ALSO FINDS GIVEN THE QUESTION ABOUT THE
6 DEFENDANT'S COMPETENCY THAT TIME IS TOLLED ON THE SPEEDY TRIAL
7 ON THAT BASIS AS WELL STARTING TODAY AND GOING FORWARD UNTIL
8 MAY 25TH.

9 MS. CLARKE: YOUR HONOR, THERE WAS ONE OTHER MATTER.
10 THIS GOVERNMENT FILED A MOTION REGARDING THE RELEASE OF GRAND
11 JURY MATERIALS, AND THE COURT GRANTED THAT. THERE IS AN ISSUE
12 IN THAT WE WEREN'T ABLE -- DIDN'T HAVE TIME TO DISCUSS, AND
13 THAT WAS THE USE THAT THE DEFENSE CAN MAKE OF THE MATERIALS.
14 THE ORDER COULD BE CONSTRUED AS A LITTLE VAGUE. IT SAYS NO
15 DISSEMINATION OF THE MATERIALS, AND WE DO BELIEVE THAT WE
16 SHOULD HAVE THE RIGHT TO REVIEW MATERIALS WITH WITNESSES AND
17 EXPERTS AND --

18 THE COURT: WITNESSES IS TRICKY. THE EXPERTS I AM
19 WITH YOU.

20 MR. KLEINDIENST, DO YOU HAVE A POSITION ON THAT?

21 MR. KLEINDIENST: AS TO THE EXPERTS, NO PROBLEM. AS
22 TO OTHER WITNESSES, I DON'T KNOW IF IT BE APPROPRIATE.

23 MS. CLARKE: I HAVEN'T SEEN THE MATERIALS TO KNOW
24 THAT WHAT IT IS. BUT I UNDERSTAND THAT THE GRAND JURY DID A
25 RATHER MASSIVE -- THE UNITED STATES DID A RATHER MASSIVE

1 ISSUANCE OF SUBPOENAS FOR THE RECORDS. I THINK GIVING THEM
2 THE PROTECTION OF GRAND JURY MATERIALS UNDER THAT ORDER WOULD
3 BE HINDERING US.

4 THE COURT: LET'S DO THIS. WE MAY NOT HAVE A
5 PROBLEM WITH THIS, MS. CLARKE.

6 MR. KLEINDIENST: I HAVE NO OBJECTION FOR MAKING USE
7 OF ANY SUBPOENAED MATERIAL. OBVIOUSLY, IT IS AN APPROPRIATE
8 USE. THE TESTIMONY OF THE GRAND JURY WITNESSES WE WOULD LIKE
9 TO KEEP OBVIOUSLY INSULATED. SO WITH THEIR EXPERTS, BUT
10 THAT'S THE GOVERNMENT'S CONCERN.

11 THE COURT: WHAT IF SHE WANTS TO INTERVIEW, FOR
12 EXAMPLE -- I DON'T KNOW FROM THE GRAND JURY, BUT LET'S ASSUME
13 THERE WERE LAY WITNESSES CALLED, FACT WITNESSES, AND THEY WANT
14 TO INTERVIEW SOME FACT WITNESSES AND GO OVER THE PORTION OF
15 THE TRANSCRIPT.

16 MR. KLEINDIENST: THAT'S FINE.

17 MS. CLARKE: IT SEEMS LIKE WE OUGHT TO BE ABLE TO
18 SHOW THEM THEIR TESTIMONY, THE INDIVIDUALS' TESTIMONY.

19 THE COURT: YOU DON'T HAVE A PROBLEM WITH THAT?

20 MR. KLEINDIENST: NO.

21 THE COURT: PROBABLY NOT A PROBLEM. YOU MAY USE IT
22 FOR THAT PURPOSE WITH THAT QUALIFICATION HERE IN OPEN COURT.

23 MS. CLARKE: THANK YOU, YOUR HONOR.

24 THE COURT: IF IT'S NOT OUTSIDE OF YOUR OWN
25 INVESTIGATION OR INTERVIEWS WITH WITNESSES OR EXPERTS.

1 MS. CLARKE: WE HADN'T PLANNED TO SEND IT TO THE NEW
2 YORK TIMES.

3 MR. KLEINDIENST: I ASSUME WHAT SHE IS SAYING THAT
4 AS TO THE WITNESSES WHO TESTIFIED SHOW THE GRAND JURY
5 TESTIMONY, BUT NOT GRAND JURY TESTIMONY TO SOMEBODY ELSE.
6 THIS TESTIMONY PERTAINS TO ANOTHER WITNESS. WE WOULD OBJECT
7 TO THAT.

8 THE COURT: THAT'S A FAIR RESTRICTION, MS. CLARKE.
9 IF YOU ARE INTERVIEWING ONE OF THE WITNESSES AND YOU HAVE A
10 WITNESS'S GRAND JURY TRANSCRIPT AND YOU ARE GOING OVER LINE BY
11 LINE AND YOU SAID THIS AND DID YOU REALLY MEAN THAT, IS THERE
12 SOME EXPLANATION, THAT'S FINE.

13 I AM A LITTLE MORE SKEPTICAL ABOUT SHOWING THE GRAND
14 JURY TESTIMONY OF WITNESS A TO WITNESS B. ASSUMING WE ARE NOT
15 TALKING ABOUT EXPERTS HERE. WE ARE TALKING ABOUT LAY OR FACT
16 WITNESSES.

17 MS. CLARKE: SOUNDS LIKE TO ME EXPERTS ARE FAIR
18 GAME.

19 THE COURT: YOU AGREE WITH THAT, MR. KLEINDIENST?

20 MR. KLEINDIENST: YES. OBVIOUSLY, IF IT'S
21 REASONABLE AND NECESSARY, WE HAVE NO OBJECTION.

22 MS. CLARKE: AND THAT THE INDIVIDUAL WHO TESTIFIES
23 CAN REVIEW THEIR TRANSCRIPT AND THAT WE CAN INTERVIEW OTHER
24 WITNESSES ABOUT THE TRANSCRIPT, THE INFORMATION OF TRANSCRIPTS
25 THAT WE HAVE.

1 THE COURT: OF COURSE, THAT GOES WITHOUT SAYING. I
2 WOULDN'T TIE YOUR HANDS THAT WAY SO YOU NOT SPEAK OF IT EXCEPT
3 WITH THE PERSON WHO UTTERED THE WORDS. THAT'S NEVER BEEN A
4 RESTRICTION ON THAT.

5 I THINK ALL HE IS SAYING IS HE DOESN'T WANT YOU TO
6 HAND WITNESS A'S TRANSCRIPT TO WITNESS B WHEN YOU ARE TALKING
7 TO WITNESS B, IF THEY ARE NOT EXPERT WITNESSES.

8 MS. CLARKE: AFTER WE SEE THE TRANSCRIPTS, IF THAT'S
9 A PROBLEM, I'LL LET YOU KNOW. THANK YOU, YOUR HONOR.

10 THE COURT: IS THERE ANYTHING ELSE?

11 MR. KLEINDIENST: NOT FROM THE GOVERNMENT.

12 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

13 MS. CLARKE: NO, YOUR HONOR.

14 THE COURT: MS. CLARKE, I DID MENTION TO MR. BODNEY
15 THAT I INTENDED TO GO OVER THE REDACTIONS THAT I MADE AND THE
16 WARRANT MATERIALS IN AN IN CAMERA PROCEEDING. I'D LIKE TO
17 HAVE YOU AND MR. KLEINDIENST PARTICIPATE IN THAT. YOU CAN
18 REGISTER WHATEVER ADDITIONAL OBJECTIONS YOU WANT. THAT
19 HEARING WILL BE HELD IN CHAMBERS BACK HERE AND WILL BE SEALED.
20 IT IS MY INTENTION TO FORTHWITH RELEASE THE MATERIALS ALONG
21 WITH THE COURT'S ORDER ON THOSE.

22 MS. CLARKE: THANK YOU, YOUR HONOR.

23 THE COURT: WE ARE IN RECESS.

24 --000--
25

1
2 I HEREBY CERTIFY THAT THE TESTIMONY
3 ADDUCED IN THE FOREGOING MATTER IS
4 A TRUE RECORD OF SAID PROCEEDINGS.

5
6 S/EVA OEMICK 3-11-2011

7 EVA OEMICK DATE

8 OFFICIAL COURT REPORTER
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25