

PAGES 1 - 40

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE NATHANAEL M. COUSINS, MAGISTRATE JUDGE

1	UNITED STATES OF AMERICA,	)	
2		)	
3	PLAINTIFF,	)	
4		)	
5	VS.	)	NO. CR 11-573 JSW (NC)
6		)	
7	WALTER LIEW, CHRISTINA LIEW,	)	
8	ROBERT J. MAEGERLE AND USA	)	
9	PERFORMANCE TECHNOLOGY, INC.,	)	
10		)	SAN FRANCISCO, CALIFORNIA
11	DEFENDANTS.	)	WEDNESDAY
		)	JUNE 20, 2012
		)	11:00 O'CLOCK A.M.

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

14	<b>FOR PLAINTIFF:</b>	<b>OFFICE OF THE UNITED STATES ATTORNEY</b>
15		450 GOLDEN GATE AVE.
16		SAN FRANCISCO, CALIFORNIA 94102
17	<b>BY:</b>	<b>PETER AXELROD,</b>
18		<b>ASSISTANT UNITED STATES ATTORNEY</b>

17	<b>FOR DEFENDANTS</b>	<b>KEKER &amp; VAN NEST LLP</b>
18	<b>WALTER LIEW AND USA</b>	633 BATTERY STREET
19	<b>PERFORMANCE</b>	<b>SAN FRANCISCO, CALIFORNIA 94111</b>
20	<b>TECHONOLGY:</b>	<b>BY: STUART L. GASNER, ESQUIRE</b>
		<b>STEVEN P. RAGLAND, ESQUIRE</b>
		<b>SIMONA A. AGNOLUCCI, ATTORNEY AT LAW</b>

FURTHER APPEARANCES ON NEXT PAGE.

**REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR**  
OFFICIAL REPORTER - US DISTRICT COURT

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**FURTHER APPEARANCES :**

**FOR DEFENDANT ROBERT J. MAEGERLE :**

**MCKENNEY & FROELICH**

TWO MIDTOWN PLAZA, SUITE 1250

1349 WEST PEACHTREE STREET, N.W.

ATLANTA, GEORGIA 30390-2920

404-881-8040

**BY: JEROME J. FROELICH, JR., ESQUIRE**

P R O C E E D I N G S

JUNE 20, 2012

11:00 O'CLOCK A.M.

**THE CLERK:** CALLING -- EXCUSE ME. CALLING CRIMINAL  
11-573, UNITED STATES VERSUS WALTER LIEW, ET AL.

**THE COURT:** GOOD MORNING, ALL. APPEARANCES, PLEASE.

**MR. AXELROD:** GOOD MORNING, YOUR HONOR. PETE AXELROD  
FOR THE UNITED STATES.

**MR. AXELROD:** GOOD MORNING.

**MS. AGNOLUCCI:** GOOD MORNING, YOUR HONOR. SIMONA  
AGNOLUCCI, STEVEN RAGLAND AND STUART GASNER FOR DEFENDANTS  
WALTER LIEW AND USAPTI.

**MR. FROELICH:** GOOD MORNING, YOUR HONOR. JERRY  
FROELICH FOR MR. MAEGERLE.

**THE COURT:** MR. FROELICH.

**MR. GLYNN:** GOOD MORNING, YOUR HONOR. CLEMENT GLYNN  
AND MORGAN LOPEZ FOR DUPONT, THIRD PARTY.

**THE COURT:** GOOD MORNING.

GOOD MORNING, MR. LIEW.

**DEFENDANT LIEW:** GOOD MORNING, YOUR HONOR.

**THE COURT:** IS THAT EVERYONE? WE HAVE GOT ALL THE  
PARTIES REPRESENTED HERE?

**MR. AXELROD:** I BELIEVE THAT CHRISTINA LIEW AND HER  
COUNSEL, DORON WEINBERG ARE NOT HERE, AND THEY WAIVED THEIR  
APPEARANCE THE LAST TIME WE WERE BEFORE THE COURT.

1           **THE COURT:** THAT'S CORRECT. AND I DID RECEIVE  
2 MATERIALS FROM EVERYONE BOTH AS TO THE PROTECTIVE ORDER, WHICH  
3 IS THE FIRST MATTER OF BUSINESS TODAY, AND ALSO THE STATUS  
4 REPORTS FROM THE GOVERNMENT AND THE DEFENSE.

5           THE FIRST MATTER OF BUSINESS IS THE DUELING PROPOSED  
6 PROTECTIVE ORDERS. WE'LL THEN TURN BRIEFLY TO THE STATUS OF  
7 DISCOVERY OVER ALL, ALTHOUGH MY INTENTION IS REALLY TO DEFER  
8 THAT UNTIL ANOTHER DAY ONCE WE'VE WORKED OUT A PROTECTIVE ORDER,  
9 AND, OF COURSE, A NUMBER OF THINGS THAT ARE GOING TO OCCUR SOON  
10 AFTER THAT.

11           AND ONCE THOSE THINGS HAVE OCCURRED, I WANT TO COME  
12 BACK HERE AND SEE WHAT HAS OCCURRED AND GET A FURTHER GAME PLAN  
13 ON GOING FORWARD.

14           BASED ON OUR LAST DISCUSSIONS, GETTING THE PROTECTIVE  
15 ORDER RESOLVED IS A SIGNIFICANT EVENT FOR FURTHER DISCOVERY TO  
16 TAKE PLACE. AND THAT'S WHAT WE'RE GOING TO DO TODAY.

17           I'M GOING TO GIVE YOU MY TENTATIVE THOUGHTS SUBJECT  
18 TO EVERYONE'S INPUT, HAVING REVIEWED THE MATERIALS.

19           WE HAVE HERE A BALANCING OF THE RIGHTS AND  
20 OBLIGATIONS THAT HAS TO BE PERFORMED. AND THEY ARE IMPORTANT  
21 RIGHTS AND OBLIGATIONS. AND WE'VE GOT TO FIGURE OUT HOW TO MESH  
22 THEM TOGETHER.

23           FROM DUPONT'S PERSPECTIVE, THEY ARE THE ALLEGED CRIME  
24 VICTIM IN THIS CASE. AND UNDER THE CRIME VICTIM'S ACT THEY HAVE  
25 A RIGHT TO THE CONFER WITH THE GOVERNMENT AND A RIGHT TO NOTICE

1 OF PROCEEDINGS. AND THEY HAVE CERTAIN STATUTORY RIGHTS IN THE  
2 CASE, AS WELL AS CERTAIN INTERESTS IN THE CIVIL LITIGATION THAT  
3 ARE IMPLICATED FROM THE PROCEEDINGS.

4 AND THOSE ARE IMPORTANT RIGHTS AND INTERESTS, AND  
5 THEY HAVE BEEN PERMITTED TO FILE A PROPOSED PROTECTIVE ORDER AND  
6 THE COURT HAS CONSIDERED THAT AND TAKES IT INTO CONSIDERATION.

7 FOR THE GOVERNMENT'S PRIMARILY OBLIGATIONS, THEY ARE  
8 THE PARTY PROCEEDING AS, OF COURSE, THE PROSECUTING PARTY WITH  
9 ALL THE BURDEN IN THE CASE. AND THEY HAVE OBLIGATIONS BOTH  
10 CONSTITUTIONAL AND BY RULE TO TURN OVER MATERIALS TO THE DEFENSE  
11 IN A TIMELY WAY.

12 IT'S A CASE IN WHICH MR. LIEW IS IN CUSTODY AND ALL  
13 THE DEFENDANTS HAVE A RIGHT TO A SPEEDY TRIAL BUT PARTICULARLY  
14 AS TO MR. LIEW, WHO IS IN CUSTODY, HE HAS A RIGHT TO A TRIAL  
15 WITHIN 70 DAYS.

16 THAT TIME PERIOD CAN BE EXTENDED AND HAS BEEN  
17 EXTENDED IN THIS CASE SO THAT HIS ATTORNEYS CAN INVESTIGATE THE  
18 CASE AND THE CHARGES AGAINST HIM. BUT ONE OF THE THINGS THEY  
19 NEED TO DO IS TO REVIEW THE DISCOVERY IN THE CASE TO HAVE AN  
20 OPPORTUNITY TO MOUNT A DEFENSE. AND UNTIL THEY HAVE THOSE  
21 MATERIALS THEY ARE LIMITED IN THEIR ABILITY TO DEFEND THE CASE.  
22 AND SO THEY HAVE AN IMPORTANT -- ALL THE DEFENDANTS HAVE AN  
23 IMPORTANT CONSTITUTIONAL RIGHT TO DEFEND THEMSELVES.

24 AND, THEREFORE, THE GOVERNMENT HAS THE BURDEN TO TURN  
25 THINGS OVER.

1                   FINALLY, FROM THE DEFENSE SIDE, THERE'S -- I  
2 MENTIONED A NUMBER OF THEIR RIGHTS. BUT THEY ARE ALSO INVOLVED  
3 IN CIVIL LITIGATION AGAINST DUPONT. AND THERE ARE CERTAIN RULES  
4 OF DISCOVERY THAT GOVERN THOSE CIVIL PROCEEDINGS, AND THERE IS  
5 SOME CONFLICT BETWEEN THE RULES OF CRIMINAL PROCEDURE AND CIVIL  
6 PROCEDURE.

7                   THE COURT HAS IN MIND BALANCING THOSE RIGHTS. AND  
8 THERE ARE TRADE SECRETS AND OTHER INTERESTS THAT THE DEFENSE HAS  
9 IN NOT TURNING OVER TO DUPONT AND NOT TURNING OVER TO THE  
10 GOVERNMENT THAT ARE AT STAKE HERE.

11                   AND UNDER THE CRIMINAL RULES OF PROCEDURE THERE'S  
12 ALSO RECIPROCAL OBLIGATIONS. THE DEFENSE HAS TO TURN OVER  
13 MATERIALS TO THE GOVERNMENT AND POTENTIALLY THAT DUPONT COULD  
14 HAVE ACCESS TO. AND SO THE PROTECTIVE ORDER HAS TO BEAR IN MIND  
15 HOW ANY -- IT'S A RECIPROCAL RULES, HOW MATERIALS TURNED OVER BY  
16 THE DEFENSE MIGHT BE HANDLED BY THE GOVERNMENT, AND IN WHAT WAY.

17                   SO THOSE ALL ARE ALL THE COMPETING INTERESTS. IN  
18 WEIGHING ALL OF THEM MY INCLINATION OVERALL IS TO FOLLOW THE  
19 PROPOSAL OF THE GOVERNMENT HERE. AND THE REASONS WHY ARE I FIND  
20 THAT IT MOST FOLLOWS WHAT COURTS IN THIS DISTRICT HAVE DONE  
21 PREVIOUSLY.

22                   AND THAT'S THE MING AND ZHANG ORDERS FROM OTHER  
23 DISTRICT COURT -- FROM DISTRICT COURT JUDGES HERE WHO PREVIOUSLY  
24 CONFRONTED THESE DUELING INTERESTS AND HAVE COME FORWARD WITH  
25 PROTECTIVE ORDERS THAT ADDRESS THEM, NOT IN IDENTICAL WAYS. AND

1 I MAY NOT FOLLOW THOSE ORDERS EXACTLY. BUT, GENERALLY SPEAKING,  
2 THAT'S MY INCLINATION IS TO FOLLOW WHAT HAS BEEN DONE BEFORE.

3 AND I FEEL THE GOVERNMENT'S PROPOSAL IS CLOSEST TO  
4 THOSE PRIOR EFFORTS, AND THAT'S WHAT I INTEND TO FOLLOW.

5 AS TO DUPONT'S PROPOSAL, I FIND THAT IT'S REALLY  
6 OVERLY CUMBERSOME TOWARDS THE TIMELY PRODUCTION OF MATERIAL FROM  
7 THE GOVERNMENT TO THE DEFENSE AND WOULD SLOW THINGS DOWN. AND  
8 ALTHOUGH THEY HAVE AN INTEREST WITH CONFERRING WITH THE  
9 GOVERNMENT, I DON'T FIND THAT THERE'S A STATUTORY BASIS TO DO  
10 ALL THE THINGS THAT THEY PROPOSE TO DO.

11 I FIND THAT IF I WERE TO ADOPT IT IN WHOLE IT WOULD  
12 UNFAIRLY LIMIT THE DEFENSE IN ITS PREPARATION OF THE CASE, AND  
13 THAT'S THE REASON THAT I'M NOT GOING TO ADOPT ITS PROPOSAL.

14 THERE ARE SOME COMPONENTS OF THE DEFENSE PROPOSAL  
15 THAT I'M INCLINED TO ADOPT AND SORT OF MELD INTO THE  
16 GOVERNMENT'S PROPOSAL, AND I'LL DISCUSS THOSE.

17 BUT, OVERALL, I FIND THAT THE GOVERNMENT'S PROPOSAL  
18 IS MOST CLOSELY FOLLOWS WHAT'S PREVIOUSLY BEEN PERMITTED IN THIS  
19 DISTRICT, AND I'M PROPOSED TO FOLLOW.

20 I'LL GIVE EVERY PARTY AN OPPORTUNITY TO SPEAK TO  
21 THESE PROPOSALS. I'M GOING TO HIGHLIGHT THE ONES I THINK ARE  
22 THE CLOSEST ISSUES AND ARE THE ONES THAT HAVE BEEN ADDRESSED A  
23 LITTLE BIT DIFFERENTLY BETWEEN THE MING AND ZHANG ORDERS.

24 AND I MIGHT BE, AT MOST, AMENABLE TO HEARING ABOUT IT  
25 AND HAVING MY MIND CHANGED. BUT, AGAIN, I'LL GIVE EVERYBODY A

1 CHANCE TO TELL ME. AND I THINK FOCUSING ON WHAT'S WRONG WITH  
2 THE GOVERNMENT'S PROPOSAL WOULD BE THE MOST HELPFUL FOR THE  
3 OTHER PARTIES HERE.

4 AND THE GOVERNMENT CAN REBUT THOSE IDEAS.

5 SO THE ISSUES THAT I THINK ARE THE CLOSEST ONES ARE  
6 THE IDEA OF WHETHER THE GOVERNMENT SHOULD PROVIDE ACCESS TO  
7 DUPONT OF DOCUMENTS SUBJECT TO PRODUCTION, AND SORT OF WHAT  
8 NOTICE SHOULD BE GIVEN WHEN THAT OCCURS.

9 AND LOOKING AT PARAGRAPH FOUR IN THE MING AND ZHANG  
10 ORDERS, THERE'S REQUIRED NOTICE TO OPPOSING PARTY IF ANY  
11 DOCUMENT IS DISCLOSED TO ANY NON-PARTY. AND THAT WOULD INCLUDE  
12 A NONPARTY VICTIM.

13 SO MY INCLINATION IS TO FOLLOW THAT PROPOSAL AND TO  
14 REQUIRE NOTICE TO OTHER PARTIES IF ANYTHING IS DISCLOSED TO A  
15 NON-PARTY. AND I WOULD INCLUDE DUPONT AS A NON-PARTY.

16 THERE'S AN ISSUE ABOUT THE DISCLOSURE OF THE  
17 CATEGORY-1 MATERIALS TO NONEXPERT WITNESSES AND WHAT SHOULD  
18 OCCUR THERE. AND MY INCLINATION IS, AGAIN, TO FOLLOW THE MING  
19 AND ZHANG ORDERS, PARAGRAPH FOUR, AND TO REQUIRE NOTICE TO  
20 OPPOSING PARTY IF DOCUMENTS ARE DISCLOSED.

21 AND I'M THINKING TO TAKE OUT THE PROVISION THAT THE  
22 GOVERNMENT HAS A RIGHT TO SHOW ANY DOCUMENTS TO DUPONT AT ANY  
23 TIME. I THINK THAT'S A LITTLE BIT TOO MUCH DISCRETION. I'M  
24 THINKING OF HAVING SOMETHING WHERE THERE'S A NOTICE AND PERHAPS  
25 A RETURN TO COURT BEFORE THAT OCCURS. AND WE'LL SORT OF SEE HOW



1 THIS GOES. AND THAT'S SOMETHING THAT WE NEED TO WORK OUT. BUT  
2 THAT'S, AS DRAFTED BY THE GOVERNMENT, I THINK A LITTLE BIT TOO  
3 LOOSE. BUT SOMETHING A LITTLE BIT LESS IS APPROPRIATE.

4 AS TO THE DISCLOSE OF CATEGORY-1 MATERIALS TO EXPERT  
5 WITNESSES I'M INCLINED TO ADOPT THE PROVISIONS IN ZHANG,  
6 PARAGRAPH SIX, WITHOUT MODIFICATIONS.

7 THERE'S A QUESTION ABOUT MAINTAINING DOCUMENTS, THE  
8 CATEGORY-1 DOCUMENTS. THE GOVERNMENT SAYS THERE'S A SMALL  
9 NUMBER, A FEW BOXES OF MATERIALS.

10 THE DEFENSE SAYS, WELL, THEY NEED TO HAVE THESE ON  
11 COMPUTER. MY INCLINATION IS TO ADOPT THE GOVERNMENT'S POSITION  
12 ON THOSE GIVEN THE STATED NUMBER OF MATERIALS. IF THERE WERE  
13 MORE, IF WE WERE TALKING ABOUT A TRUCKLOAD OF MATERIALS I THINK  
14 THAT WOULD LIMIT THE DEFENSE.

15 BUT GIVEN HOW MANY MATERIALS THE GOVERNMENT SAYS IT  
16 HAS IT FALLS IN CATEGORY-1. I THINK HAVING A VERY STRICT  
17 RESTRICTION ON THOSE DOCUMENTS THAT THEY NOT BE ACCESSIBLE BY  
18 INTERNET OR OTHER ELECTRONIC MEANS IS A REASONABLE RESTRICTION  
19 UNDER THE CIRCUMSTANCES.

20 SO MY TENTATIVE VIEW IS TO ADOPT THE GOVERNMENT'S  
21 VIEW ON THOSE, GIVEN THE HIGHLY SENSITIVE NATURE OF THOSE  
22 DOCUMENTS. AND IF LATER IN THE CASE IT TURNS OUT THERE IS MANY  
23 MORE DOCUMENTS IN THAT CATEGORY THAN IS PRESENTLY STATED, WELL,  
24 THEN, MAYBE WE HAVE TO REVISIT THAT. BUT THAT'S MY PRESENT  
25 VIEW, THAT IS TO GIVE A TIGHT RESTRICTION ON THOSE.

1 SO THOSE ARE MY VIEWS ON SORT OF THE CLOSEST ISSUES.  
2 I KNOW THERE'S MANY OTHER CATEGORIES THAT THE PARTIES ARE  
3 INTERESTED IN. BUT I'LL LEAVE IT TO YOU TO PRIORITIZE THE  
4 THINGS THAT ARE MOST IMPORTANT TO YOU.

5 MR. AXELROD, YOU MAY HAVE THE LEAST OBJECTION TO MY  
6 PROPOSAL, BUT I'LL START WITH YOU AS THE GOVERNMENT, AS THE  
7 PLAINTIFF IN THE CASE, TO GIVE YOUR VIEWS ON THE PROTECTIVE  
8 ORDER.

9 **MR. AXELROD:** VERY WELL. THANK YOU, YOUR HONOR.

10 JUST LET ME TRY TO TRACK THE ISSUES THAT THE COURT  
11 HAS RAISED AND RESPOND.

12 THE FIRST ISSUE BEING THE GOVERNMENT'S ACCESS, THE  
13 ABILITY TO, IN ITS DISCRETION, REVIEW MATERIALS WITH DUPONT.

14 **THE COURT:** ALL RIGHT. THIS IS PARAGRAPH THREE OF  
15 YOUR PROPOSED ORDER.

16 **MR. AXELROD:** OKAY. SO THE CONCERN -- AND THE COURT  
17 INDICATED, AS LEAST AS I UNDERSTOOD IT, THAT IT WAS INCLINED TO  
18 IMPOSE SOME NOTICE REQUIREMENT. NOT THAT IT WAS GOING TO  
19 PRECLUDE US FROM CONTINUING TO CONSULT WITH THE VICTIM AS WE  
20 DEEMED APPROPRIATE, BUT THAT IT WOULD REQUIRE SOME NOTICE.

21 AND I'M JUST TRYING TO THINK THROUGH. AND YOU ALSO  
22 MENTIONED THAT THERE MIGHT BE TIMING ISSUES. AND I THINK WHAT  
23 WOULD BE HELPFUL WOULD BE TO SORT OF GIVE THE COURT SOME SENSE  
24 OF THE NATURE OF THE CONSULTATION SO THAT I CAN SORT OF  
25 UNDERSTAND AND HELP THE COURT FIGURE OUT HOW IT WANTS TO HANDLE

1 THIS ISSUE.

2 BUT, OBVIOUSLY, THERE'S NO DISPUTE THAT THERE'S AN  
3 ENORMOUS VOLUME OF MATERIALS IN THIS CASE. THERE'S OBVIOUSLY A  
4 DISPUTE AMONG THE PARTIES AS TO WHOSE TRADE SECRETS WE'RE  
5 TALKING ABOUT, YOU KNOW. BUT, OBVIOUSLY, THE INDICTMENT SPEAKS  
6 FOR ITSELF. THE SEARCH WARRANTS SPEAK FOR THEMSELVES.

7 WALTER LIEW IN HIS OWN WRITING HAS SAID THAT -- YOU  
8 KNOW, AND THESE ARE DOCUMENTS THAT WE PRESENTED TO THE COURT IN  
9 CONTEXT OF THE BAIL PROCEEDINGS -- THAT HIS COMPANY HAS MASTERED  
10 THE COMPLETE DUPONT, YOU KNOW, TITANIUM DIOXIDE TECHNOLOGY.

11 SO THE REALITY IS THE CONCERNS ABOUT DUPONT TRADE  
12 SECRETS BEING IN THE POSSESSION OF WALTER LIEW, THAT IS A REAL  
13 AND PRESENT, EVER PRESENT CONCERN.

14 AND SO WE BELIEVE IT'S ENTIRELY APPROPRIATE TO HAVE  
15 THE ABILITY TO SHOW MATERIALS TO DUPONT, NOT BECAUSE THEY ARE  
16 GOING TO BE THE ONES WHO MAKE THE DECISION. THAT'S OUR CALL. BUT  
17 BECAUSE THEY ARE THE ONES WHO HAVE THE EXPERTISE ABOUT WHAT IS,  
18 IN FACT -- WHAT ARE THEIR TRADE SECRETS.

19 AND I BRING THIS TO THE COURT'S ATTENTION BECAUSE IT  
20 IS THIS PROCESS IS A FLUID ONE. THERE'S AN INDICTMENT. THERE IS  
21 DISCOVERY. THERE'S CHARGES. BUT WE'RE ALWAYS CONTINUING TO LOOK  
22 AT THE EVIDENCE, AND WE LEARN NEW THINGS, AND WE GO BACK AND  
23 WANT TO EXPLORE.

24 THE CONCERN THAT THE GOVERNMENT HAS, THAT I HAVE, IS  
25 THAT -- AND I DON'T KNOW WHAT THE COURT IS EXACTLY THINKING.

1 BUT THEN, WE'RE IN A POSITION WHERE EVERY TIME WE'RE GOING TO  
2 SIT DOWN WITH DUPONT AND SHOW THEM CERTAIN INFORMATION, WE'RE  
3 GOING TO THEN BE SORT OF INTERRUPTING OUR INVESTIGATION TO SAY:

4 "OKAY, WELL HERE'S -- YOU KNOW, HERE'S SOME THINGS  
5 WE'RE GOING TO SHOW DUPONT."

6 AND THEN, YOU KNOW, ARE WE GOING TO BE HERE ON A  
7 REGULAR BASIS SAYING:

8 "WELL, YOU CAN'T SHOW THEM THIS"?

9 AND, YOU KNOW, THAT MAY BE HOW IT GOES. I JUST -- MY  
10 CONCERN IS -- AND I DON'T ENVY THE COURT. THERE ARE A LOT OF  
11 INTERESTS TO BALANCE.

12 THE CONCERN THAT I'M RAISING IS THAT WE END UP IN A  
13 POSITION WHERE THE GOVERNMENT'S ABILITY TO THOROUGHLY  
14 INVESTIGATE ITS CASE -- THERE'S NO QUESTION, YOU KNOW, WE'VE  
15 LAWFULLY OBTAINED ALL THE INFORMATION WE'VE OBTAINED THROUGH THE  
16 PROCESS THAT SUDDENLY THAT'S GOING TO BE HAMPERED BY THIS  
17 SUDDENLY BECOMING AKIN TO A CIVIL CASE, BECAUSE IT'S NOT A CIVIL  
18 CASE. IT'S JUST NOT.

19 IT'S A CRIMINAL CASE. THERE HAVE BEEN FINDINGS OF  
20 PROBABLE CAUSE. IT WOULD BE -- THE FACT THAT THERE'S A CIVIL  
21 CASE THAT EXISTS, OKAY. BUT IT DOESN'T -- IT DOESN'T IMPACT  
22 CERTAINLY OUR RESPONSIBILITIES AND OUR INVESTIGATIVE INTERESTS.

23 AND MY CONCERN IS THAT A REQUIREMENT THAT WE PROVIDE  
24 ADVANCE NOTICE MAY SORT OF PUSH US IN A DIRECTION THAT IS GOING  
25 TO BE CHALLENGING. BUT THAT'S THAT ISSUE.

1 I'M HAPPY TO MOVE ON TO THE NEXT ONE, WHICH IS -- AND  
2 I WOULD SAY ON THIS POINT TO THE EXTENT ANY OF THE DEFENDANTS  
3 WANT TO CLAIM THAT THEY HAVE THEIR OWN TRADE SECRET INTEREST IN  
4 SOME PARTICULAR ITEM, WE INVITE THEM TO SHARE THAT WITH US.

5 I MEAN, IT'S ONE THING TO SAY IT. IT'S ANOTHER THING  
6 TO ACTUALLY, YOU KNOW, PROVE IT UP AND ARTICULATE IT:

7 "WELL, THIS SPECIFIC ITEM, AND HERE'S WHY."

8 WE'RE OPEN TO THAT DISCUSSION. BUT, YOU KNOW, THE  
9 RECORD BEFORE US IS -- WE'VE HAD THE THEFT OF TRADE SECRETS.  
10 AND, YOU KNOW, PERIOD. AND WE NEED TO KEEP DOING OUR JOB. AND  
11 I'M CONCERNED ABOUT LIMITING OUR ABILITY TO CONSULT WITH DUPONT,  
12 YOU KNOW, WITHOUT ENDING UP IN TOO MUCH SORT OF COLLATERAL  
13 LITIGATION.

14 THE EXPERT NOTICE PROVISION, I UNDERSTAND. I THINK  
15 THAT, YOU KNOW, THAT WAS ONE OF THE PROPOSALS THAT WE SAID WAS A  
16 REASONABLE ALTERNATIVE. SO I THINK I GET THAT.

17 AND THEN, THE OTHER ITEM YOU MENTIONED WAS SORT OF  
18 NOT PUTTING THE CONFIDENTIAL ONE MATERIALS ON THE COMPUTER. AND  
19 WE STAND BY EVERYTHING THAT WE'VE SAID IN OUR PAPERS.

20 AND I THINK THAT -- AND I WANT TO MAKE ONE POINT  
21 CLEAR, BECAUSE THIS MAY NOT HAVE BEEN CLEAR.

22 SO THE ITEMS THAT ARE IN THE CONFIDENTIAL ONE  
23 CATEGORY, IT'S A LIMITED UNIVERSE OF MATERIALS. WE DID INDICATE  
24 IN OUR PROPOSED ORDER THAT WE RESERVED THE RIGHT AS WE GO  
25 THROUGH, IF WE DETERMINE, HEY, SOMETHING IS CONFIDENTIAL TWO,

1 BUT NOW WE ACTUALLY THINK THIS IS DERIVATIVE OF A DUPONT TRADE  
2 SECRET, TO THEN SAY, YOU KNOW WHAT? THIS ITEM IS NOW GOT TO  
3 MOVE TO CATEGORY-1.

4 THAT IS PART OF THE DESIGN OF THE ORDER. AND FROM  
5 OUR PERSPECTIVE IT'S: WE NEED TO GET DISCOVERY DO THE DEFENSE.  
6 WE WANT TO MAKE THAT DISCLOSURE AS QUICKLY AS WE CAN, BUT WE  
7 HAVE TO MANAGE THIS PROCESS. AND WE KIND OF CAME TO OUR OWN --  
8 WE TRIED TO STRIKE THE BALANCE AS BEST WE COULD.

9 BUT I WANT TO THE MAKE SURE THAT EVERYONE UNDERSTOOD  
10 THAT THAT WAS SOMETHING WE CONTEMPLATED IN THE ORDER. AND MAYBE  
11 THE COURT ALREADY UNDERSTANDS THAT, BUT I WANTED TO MAKE SURE  
12 THAT THAT WAS CLEAR.

13 **THE COURT:** AND THE GRAY AREA IN THAT IS SORT OF THE  
14 VOLUME OF MATERIALS THAT LATER GET MOVED FROM CATEGORY-2 TO  
15 CATEGORY-1. AND CONCERN THE DEFENSE RAISED WAS THIS IS GOING TO  
16 BE A HUGE AMOUNT OF MATERIAL.

17 AND MY VIEW IS: LET'S WAIT AND SEE.

18 **MR. AXELROD:** UNDERSTOOD.

19 **THE COURT:** ANYTHING ELSE FOR THE COURT TO CONSIDER?

20 **MR. AXELROD:** NO, I DON'T BELIEVE SO, YOUR HONOR.

21 **THE COURT:** ALL RIGHT. LET ME THEN TURN TO THE  
22 DEFENSE NEXT -- AND WE'LL GET TO DUPONT AT THE END -- IN  
23 WHICHEVER ORDER THE DEFENSE WOULD LIKE TO TAKE UP THE ISSUES.

24 **MS. AGNOLUCCI:** AS YOUR HONOR NOTED, THIS EXERCISE  
25 INVOLVES BALANCING A NUMBER OF COMPETING INTERESTS. AND I JUST

1 WANT TO THE RESPOND TO THE CONCERNS RAISED BY THE GOVERNMENT  
2 ABOUT THE NATURE OF THESE DOCUMENTS.

3 **THE COURT:** SURE.

4 **MS. AGNOLUCCI:** IT'S CRITICAL IN FASHIONING A  
5 SOLUTION HERE THAT WE KEEP IN MIND THE VERY UNIQUE NATURE OF THE  
6 DISCOVERY IN THIS CASE.

7 WE'RE DEALING HERE WITH 13 TO 14 TERABYTES OF  
8 DOCUMENTS OR OVER 120 SHIPPING CONTAINERS WORTH OF DOCUMENTS.

9 THESE PRIMARILY WERE SEIZED FROM THE DEFENDANTS. AND  
10 IT'S MASSIVE QUANTITIES OF INFORMATION.

11 I HAVE WITH ME HERE A STACK OF MORE THAN 600 PAGES OF  
12 DOCUMENTS THAT IS A PRINTOUT OF AN INDEX OF THE FOLDERS FROM ONE  
13 SINGLE HARD DRIVE THAT WAS PRODUCED BY THE GOVERNMENT TO THE  
14 DEFENDANTS (INDICATING).

15 AND THIS CONTAINS, YOU KNOW, DEFENDANT'S OWN WORK  
16 PRODUCT. AND IT'S ONLY ONE OF 55 PIECES OF ELECTRONIC MATERIAL  
17 THAT THE GOVERNMENT HAS SEIZED.

18 AND IT'S REALLY IMPORTANT TO KEEP THAT IN MIND IN  
19 FASHIONING A SOLUTION HERE.

20 IN TERMS OF THE ISSUE OF WHETHER DUPONT SHOULD BE THE  
21 GATEKEEPER OF DISCOVERY OR SHOULD HAVE OPEN ACCESS TO DOCUMENTS  
22 WHICH IS VERY IMPORTANT TO US, I WANT TO REMIND YOUR HONOR THAT  
23 I BELIEVE IN ZHANG AND IN MING, YOU KNOW, THE VICTIM WAS NOT  
24 ALLOWED PRESUMPTIVE ACCESS TO DOCUMENTS.

25 AND NOT A SINGLE ONE OF THE PROTECTIVE ORDERS THAT

1 WERE CITED BY THE PARTIES GIVES THAT TYPE OF ACCESS.

2 YOU KNOW, THE GOVERNMENT RAISED THE ISSUE OF  
3 REQUIRING THE EXPERTISE OF DUPONT IN ORDER TO WADE THROUGH AND  
4 MAKE SENSE OF THESE DOCUMENTS. BUT WE DON'T BELIEVE THAT'S  
5 NECESSARY.

6 THIS IS SOMETHING THAT ARISES ALL OF THE TIME IN  
7 CIVIL IP CASES, AND THE PARTIES RETAIN INDEPENDENT, OUTSIDE  
8 EXPERTS TO ASSIST THEM IN EVALUATING THE DOCUMENTS.

9 AND THAT'S ALL --

10 **THE COURT:** LET ME STOP YOU THERE. WHAT  
11 INDEPENDENT -- YOU DON'T NEED TO IDENTIFY THEM BY NAME. BUT CAN  
12 YOU GIVE ME AN EXAMPLE OF WHO AN INDEPENDENT OUTSIDE EXPERT  
13 WOULD BE THAT COULD TELL THE GOVERNMENT WHICH OF THE DUPONT  
14 DOCUMENTS ARE ACTUALLY DUPONT'S TRADE SECRETS?

15 **MR. AXELROD:** WELL, I THINK AN INDEPENDENT EXPERT WHO  
16 UNDERSTANDS THE TITANIUM DIOXIDE PROCESS WOULD BE ABLE TO LOOK  
17 AT A DOCUMENT OF DUPONT'S. AND WE DON'T OBJECT TO THE  
18 GOVERNMENT SHOWING DUPONT ITS OWN DOCUMENTS, BY THE WAY.

19 AND COULD ASSESS WHETHER SOME OTHER DOCUMENT  
20 CONTAINED INFORMATION THAT WAS DERIVATIVE OF IT. OR AN EXPERT  
21 COULD TELL YOU WHETHER CERTAIN INFORMATION WAS IN THE PUBLIC  
22 DOMAIN AND WAS OR WAS NOT, IN FACT, A TRADE SECRET, AND WHETHER  
23 OTHER COMPANIES HAVE BEEN, YOU KNOW, DEVELOPING THE SAME  
24 TECHNOLOGY FOR MANY YEARS.

25 **THE COURT:** SO SOMEONE ELSE IN THE SAME INDUSTRY,



1 YOU'RE SUGGESTING, WOULD HAVE SUFFICIENT EXPERTISE TO KNOW WHAT  
2 DUPONT'S TRADE SECRETS ARE AND WHICH ARE NOT?

3 **MS. AGNOLUCCI:** YES, YOUR HONOR. YES.

4 **THE COURT:** ALL RIGHT. GO AHEAD.

5 **MS. AGNOLUCCI:** AND ALL WE ASK HERE IS THAT THE  
6 GOVERNMENT INDEPENDENTLY EXERCISE ITS JUDGMENT WITHOUT BEING  
7 ABLE TO, YOU KNOW, PRESUMPTIVELY GIVE DUPONT ACCESS TO THE  
8 DOCUMENTS.

9 YOU KNOW, IF YOUR HONOR IS INCLINED TO RULE AS YOU  
10 STATED AT THE OUTSET OF THE HEARING, THEN WE WOULD RESPECTFULLY  
11 REQUEST THE RIGHT TO HAVE SOME KIND OF IN COURT PROCEDURE, AS IN  
12 ZHANG, FOR OBJECTING TO THE SHOWING OF THE DEFENDANTS' DOCUMENTS  
13 TO DUPONT.

14 AND THAT'S EXACTLY WHAT HAPPENED IN THE ZHANG CASE.

15 ON EXPERTS, YOUR HONOR, WE'RE FINE WITH THE  
16 PROVISIONS IN ZHANG. WE THINK THOSE ARE CORRECT BECAUSE THEY,  
17 YOU KNOW, DON'T GIVE DUPONT UNCHECKED VETO POWER. AND, RATHER,  
18 THEY PUT THE DECISION IN THE HANDS OF THE COURT.

19 AND, YOU KNOW, WE UNDERSTAND THAT UNDER ZHANG THE  
20 IDENTITIES OF THE EXPERTS ARE NOT REVEALED. AND THAT IF THE  
21 COURT FEELS THAT IT NEEDS ADDITIONAL BRIEFING FROM THE PARTIES  
22 IT CAN ASK FOR THAT.

23 BUT THAT IN ALL CASES IT WOULD GIVE US THE  
24 OPPORTUNITY TO WITHDRAW THE NAME OF ANY EXPERT BEFORE REVEALING  
25 IT.

1 ON THE ISSUE OF THIRD-PARTY WITNESSES, YOUR HONOR,  
2 THIS IS A SITUATION THAT'S A LITTLE BIT DIFFERENT THAN MING AND  
3 ZHANG, BECAUSE WE'VE PROPOSED SHOWING THE CONFIDENTIAL ONE  
4 DOCUMENTS ONLY TO WITNESSES WHO AUTHORED THEM OR WHO HAD PRIOR  
5 ACCESS TO THEM.

6 WE BELIEVE THAT THIS UNIQUE PROVISION BUILDS IN  
7 SAFEGUARDS AND WOULD NOT FURTHER DISSEMINATE ANY OF DUPONT'S  
8 PURPORTED TRADE SECRETS.

9 ON THE ISSUE OF DEFENDANTS VIEWING THE DISCOVERY, WE  
10 ARE FINE WITH THE DEFENDANTS NOT BEING ABLE TO RETAIN THE  
11 DOCUMENTS, BUT BEING ALLOWED TO VIEW THE DOCUMENTS.

12 AND I BELIEVE DUPONT OFFERS THIS AS A COMPROMISE AT  
13 PAGES 10 TO 11 OF ITS BRIEF. AND THAT'S FINE, OF COURSE,  
14 ASSUMING THAT THE GOVERNMENT'S REPRESENTATION THAT THE  
15 CONFIDENTIAL ONE DOCUMENTS ARE ONLY A FEW BANKERS BOXES BEARS  
16 ITSELF OUT.

17 I BELIEVE THAT COVERS ALL OF THE ISSUES. THERE'S ONE  
18 LAST ISSUE: THE ISSUE OF MAINTAINING THE DOCUMENTS ON A  
19 COMPUTER CONNECTED TO THE INTERNET.

20 AGAIN, WE'RE FINE WITH YOUR HONOR'S PROPOSAL. WE'RE  
21 WILLING TO COMPROMISE AND KEEP THE CONFIDENTIAL ONE DOCUMENTS IN  
22 HARD COPY, BUT WE JUST ASK THAT THIS ISSUE BE REVISITED IF IT  
23 TURNS OUT THAT WE'RE DEALING WITH MORE THAN JUST A FEW BANKERS  
24 BOXES.

25 AND ALSO, WE WOULD LIKE TO RESERVE THE RIGHT TO

1 E-MAIL THE DOCUMENTS WHERE NECESSARY FOR THE DEFENSE. FOR  
2 EXAMPLE, IF ONE OF US IS OUT OF TOWN AND NEEDS TO BE ABLE TO  
3 LOOK AT SOMETHING REMOTELY, IT WOULD BE PROBLEMATIC IF WE  
4 COULDN'T SEND EACH OTHER AN E-MAIL.

5 AND, YOU KNOW, LAW FIRM SERVERS BUILD IN A NUMBER OF  
6 PROTECTIONS. AND, YOU KNOW, WE THINK THAT THOSE WOULD BE  
7 ADEQUATE IN THIS CASE.

8 **THE COURT:** ON THAT ISSUE, I DON'T SHARE YOUR  
9 CONFIDENCE IN THE SECURITY OF E-MAIL AS TO THE CATEGORY-1  
10 DOCUMENTS, BUT I UNDERSTAND YOUR POSITION.

11 **MS. AGNOLUCCI:** AND, YOUR HONOR --

12 **THE COURT:** MR. FROELICH, YOU HAVE ANYTHING TO ADD TO  
13 THAT?

14 **MR. FROELICH:** I DID, YOUR HONOR, BUT --

15 **MR. GASNER:** EXCUSE ME.

16 **THE COURT:** OKAY.

17 **MR. GASNER:** STUART GASNER, ALSO FOR MR. LIEW.

18 I WANTED TO ADDRESS YOUR HONOR'S QUESTION ABOUT HOW  
19 IT TYPICALLY WORKS WITH EXPERTS AND FIGURING OUT WHAT THE OTHER  
20 SIDE HAS.

21 WHEN I'M NOT DOING THIS KIND OF CASE A LOT OF MY  
22 PRACTICE IS INTELLECTUAL PROPERTY LITIGATION. I REPRESENT BIG  
23 COMPANIES IN PATENT WARS WITH INCREDIBLY COMPLICATED TECHNOLOGY.

24 INTEL IS ONE SUCH CLIENT. SO SUCH AS AN EXAMPLE, IF  
25 INTEL FEELS IT'S THE VICTIM OF AMD AND SOME TRADE SECRET OR

1 PATENT INFRINGEMENT WHAT THEY WOULD LOVE TO DO IS PORE THROUGH  
2 ALL OF AMD'S MATERIALS AND IDENTIFY: THERE'S THE INFRINGEMENT.

3 BUT IN CIVIL LITIGATION, WE DON'T DO THAT. WHAT WE DO  
4 IS HIRE INDEPENDENT EXPERTS WHO GET HIGHLY EDUCATED ON WHAT THE  
5 TECHNOLOGY IS ABOUT.

6 AND THEY GO THROUGH THE OTHER SIDE'S DOCUMENTS. SO NO  
7 DOUBT EVERY VICTIM, WHETHER IN A CIVIL CASE OR A CRIMINAL CASE,  
8 WOULD LOVE -- AND IT WOULD BE EASIER FOR THE LAWYERS TO JUST  
9 SAY:

10 "HAVE AT IT, GUYS. LOOK THROUGH ALL OF AMD'S,  
11 YOU KNOW, SPICE MODELS AND TELL US, YOU KNOW, WHERE  
12 THE, YOU KNOW, BULLS-EYE IS."

13 BUT WE DON'T DO IT THAT WAY IN CIVIL LITIGATION.  
14 I'VE BEEN DOING THIS FOR 20 YEARS. AND WE MANAGE QUITE WELL WITH  
15 THE PROCEDURE WHERE WE HIRE EXPERTS. THEY GET HIGHLY EDUCATED.

16 AS SIMONA SAID, THEY CAN BE EDUCATED BY DUPONT.  
17 THERE'S NOTHING WRONG WITH THAT. AND THEN, THEY LOOK AT THE  
18 HIGHLY CONFIDENTIAL STUFF AND REACH THEIR OPINIONS AND EDUCATE  
19 COUNSEL.

20 SO, REALLY, WE DO HAVE A PROBLEM. AND WE APPRECIATE  
21 THE NOTICE PROVISION AND THE ABILITY TO COME BACK TO THE COURT,  
22 BUT IT REALLY SHOULDN'T BE A PROCESS IN WHICH WE ASSUME THAT  
23 DUPONT OUGHT TO BE ABLE TO PAW THROUGH 13 TERABYTES OF STUFF  
24 THAT MR. LIEW AND HIS COMPANY PREPARED OVER TEN YEARS WITH  
25 SCORES OF ENGINEERS SO THAT THEY CAN FIND A NEEDLE IN A FOOTBALL

1 FIELD SIZE HAYSTACK.

2 YOU KNOW, IT'S EASIEST FOR THE GOVERNMENT. IT'S NOT  
3 THE WAY IT'S DONE IN CIVIL LITIGATION, AND NOT THE WAY IT SHOULD  
4 BE DONE HERE.

5 NOW, WE'RE WILLING TO SAY:

6 "WELL, LET'S SEE HOW MUCH THEY WANT TO GIVE TO  
7 DUPONT. AND THE FIRST TIME THEY DO IT, WE WILL BE  
8 BEFORE THE COURT, AND WE WILL HAVE A DISCUSSION ABOUT  
9 IT."

10 BUT I JUST WANTED TO KIND OF FRAME THE ISSUE, BECAUSE  
11 I THINK WE'RE HEADED IN A DIRECTION THAT'S JUST SO FAR FROM THE  
12 WAY THESE KINDS OF ISSUES ARE TYPICALLY LITIGATED, THAT IF  
13 ANYTHING THERE OUGHT TO BE GREATER PROTECTIONS IN CRIMINAL CASE  
14 THAN IN A CIVIL CASE.

15 SO I WANTED TO JUST KIND OF FRAME THE ISSUE FOR  
16 FURTHER CONSIDERATION.

17 **THE COURT:** THANK YOU.

18 ALL RIGHT, MR. FROELICH.

19 **MR. FROELICH:** YES, YOUR HONOR. THANK YOU.

20 YOUR HONOR, I AM IN A LITTLE DIFFERENT POSITION WITH  
21 MR. MAEGERLE. HE'S NOT IN THE CIVIL CASE. AND WE'RE A LITTLE  
22 BIT LIMITED UNIVERSE AS REGARDS TO WHAT IS GOING ON.

23 MY CLIENT'S NOT STANDING UP AND SAYING HE HAS A TRADE  
24 SECRET OR ANYTHING.

25 SO THE DECISION ON THOSE, HOW THE GOVERNMENT HANDLES

1 THAT, I DO HAVE ONE REQUEST.

2 AND HOWEVER YOUR HONOR DECIDES THAT THE GOVERNMENT BE  
3 REQUIRED -- AND I THINK THIS IS GOING TO BE VERY IMPORTANT,  
4 PARTICULARLY COME TRIAL TIME AND EVERYTHING ELSE. THAT THE  
5 GOVERNMENT KEEPS A RECORD OF THE DATES AND TIMES AND DOCUMENTS  
6 THAT IT ACTUALLY SHOWS OR HAS DUPONT REVIEW, BECAUSE I THINK  
7 THAT'S GOING TO BE AN ISSUE THAT COMES DOWN IN THIS CASE.

8 AND I THINK IT WILL BE IMPORTANT.

9 AS FAR AS MY CLIENT, MY CLIENT, YOUR HONOR, IS AN  
10 ENGINEER WHO WORKED FOR DUPONT FOR 20 SOME ODD YEARS AND RETIRED  
11 IN 1991.

12 THE DOCUMENTS IN THE CASE, EVEN THE CONFIDENTIAL ONE  
13 DOCUMENTS, MY CLIENT LIVES IN DELAWARE AND IS BOUND  
14 FOR DELAWARE, HAS TO STAY IN DELAWARE FOR REASONS. AND I'M IN  
15 ATLANTA, GEORGIA.

16 WHAT I WOULD LIKE, THOUGH, IS TO BE ABLE TO -- AND I  
17 WOULD TAKE AN EXTRA PRECAUTION TO HAVE AFFADAVITS FROM HIM AND  
18 ACTUALLY MAYBE PUT MY ACTUAL TIME STAMP AND MY INITIALS TO BE  
19 ABLE TO HAVE HIM POSSESS THE DOCUMENTS, THE CONFIDENTIAL ONE,  
20 FOR AT LEAST A CERTAIN PERIOD OF TIME SO THAT HE CAN READ THEM.

21 AND HE'S AN ENGINEER, AND HE'S GOING TO HAVE A LOT  
22 MORE INPUT, OBVIOUSLY, ON THOSE DOCUMENTS THAN I AM OR EVEN AN  
23 EXPERT PROBABLY, HAVING HAD WORKED FOR DUPONT AND HAVING  
24 ACTUALLY BEEN IN THAT AREA ON THEM.

25 SO THAT'S THE OTHER THING THAT I HAD THAT I WANTED TO

1 RAISE WITH THE COURT.

2 **THE COURT:** LET ME ASK MR. AXELROD WHAT HIS THOUGHTS  
3 ARE ON THE ACCESS OF MR. FROELICH'S CLIENT TO THE CATEGORY-1  
4 DOCUMENTS.

5 **MR. AXELROD:** ABSOLUTELY NOT. AND LET ME EXPLAIN  
6 WHY.

7 ONE OF THE CRITICAL DOCUMENTS IN THIS CASE IS THE  
8 BASIC DATA DOCUMENT, WHICH IS BASICALLY A BLUEPRINT FOR HOW TO  
9 BUILD A STATE OF THE ART TITANIUM DIOXIDE FACILITY FROM THE  
10 GROUND UP.

11 IT IS MY BELIEF THAT DOCUMENT -- IT'S A 400-PAGE  
12 HIGHLY CONFIDENTIAL DOCUMENT. IT'S MY BELIEF THAT --

13 **THE COURT:** AND WHAT'S THE DATE OR WHAT'S THE RANGE  
14 OF THAT DOCUMENT?

15 **MR. AXELROD:** IT WAS -- THAT DOCUMENT WAS A 1985  
16 DOCUMENT. IT WAS ADDRESSED TO HIS CLIENT. AND IT IS -- AND THERE  
17 ARE INSTANCES THAT ARE ALLEGED SPECIFICALLY IN THE INDICTMENT  
18 WHERE THE DATA FROM THAT DOCUMENT IS TRANSMITTED BY HIS CLIENT  
19 TO WALTER LIEW.

20 TO THEN GIVE HIM UNFETTERED ACCESS TO THOSE DOCUMENTS  
21 GIVEN WHAT THE EVIDENCE HAS ALREADY SHOWN AND WILL SHOW AT TRIAL  
22 IS CRAZY. AND ESPECIALLY SO WITH SOMEBODY WHO IS HIGHLY  
23 EXPERIENCED, WHO ACTUALLY CAN APPRECIATE THE VALUE OF THE  
24 INFORMATION AND WOULD HAVE THE, YOU KNOW, SORT OF NETWORK OF  
25 PEOPLE WHERE HE COULD DO MORE DAMAGE.

1 I MEAN, HE'S ALREADY DONE THE DAMAGE ONCE. THAT'S  
2 WHY HE'S BEEN CHARGED IN THIS CASE. TO THEN GIVE HIM ACCESS,  
3 ABSOLUTELY NOT.

4 WE WOULD STRENUOUSLY OBJECT TO THAT.

5 **MR. FROELICH:** WELL, YOUR HONOR, THERE ARE WAYS. AS  
6 I SAID, WE CAN INITIAL AND THINGS LIKE THAT. MY CLIENT'S IN HIS  
7 '70'S.

8 WE'RE GOING TO HAVE A REAL FIGHT IN THIS, YOUR HONOR.  
9 WE'RE TALKING ABOUT 1985, DOCUMENTS THAT EXISTED IN  
10 1985.

11 AND THAT YOU'RE TALKING ALMOST 30 YEARS. 30 YEARS  
12 AGO, YOU'RE TALKING.

13 AND THOSE DOCUMENTS, I HAVE PRETTY MUCH CONFIDENCE  
14 THAT WE ARE GOING TO SHOW THOSE NO MORE ARE TRADE SECRETS. AND  
15 THE DOCUMENTS THAT ARE IN QUESTION WEREN'T SEIZED FROM MY CLIENT  
16 OR ANYTHING.

17 THEY SEARCHED MY CLIENT'S HOUSE. THAT DOCUMENT WAS  
18 NOT FOUND AT MY CLIENT'S HOUSE.

19 AND SO MY CLIENT'S AN ENGINEER. AND THEY ARE GOING  
20 TO -- AND I NEED TO HAVE HIM HAVE THE ABILITY TO STUDY. I  
21 UNDERSTAND NOW HE CAN LOOK AT THEM, BUT HE HAS TO LOOK AT THEM  
22 AT MY OFFICE IS THE WAY I UNDERSTAND IT.

23 **THE COURT:** RIGHT.

24 **MR. FROELICH:** THAT I BELIEVE, YOUR HONOR, WHEN  
25 YOU'RE TALKING ABOUT, YOU KNOW, 30 YEARS AGO, THAT'S GOING TO BE



1 A BIG FIGHT IN THIS CASE. AND I'M GOING TO SHOW THAT THOSE  
2 THINGS ARE ON THE INTERNET.

3 AND, IN FACT, YOUR HONOR, LET ME JUST GIVE YOU AN  
4 EXAMPLE, AND YOUR HONOR CAN LOOK AT IT.

5 THERE WAS THE CIVIL COMPLAINT. MY CLIENT WAS NOT A  
6 PART OF THE CIVIL COMPLAINT. THERE WERE A LOT OF ALLEGATIONS  
7 MADE BY DUPONT THAT ALL THESE CONFIDENTIAL MATERIALS WERE IN THE  
8 CIVIL COMPLAINT.

9 I WAS NOT INVOLVED IN IT. BUT THERE'S LIKE PARAGRAPH  
10 43 THEY TALK ABOUT ALUMINUM. THEY USED ALUMINUM, SOME KIND OF  
11 CONDUCTORS. AND THAT THIS WAS A BIG SECRET OF THEIRS.

12 WELL, IN THE ANSWER, THE LIEWS PRODUCED THE -- ON THE  
13 INTERNET THE DIAGRAM THAT'S FROM A GERMAN CORPORATION THAT'S ON  
14 THE INTERNET.

15 IN PARAGRAPH 44 THEY PRODUCED THE SAME THING. I NEED  
16 TO HAVE MY CLIENT TO BE ABLE TO LOOK FOR THINGS LIKE THAT AND DO  
17 THOSE TYPE OF THINGS.

18 AND I THINK THIS IS AN UNUSUAL SITUATION, BUT I THINK  
19 WHEN YOU'RE TALKING ABOUT DOCUMENTS THAT OLD AND WITH THE  
20 ABILITY TO, YOU KNOW, HAVE HIM SIGN AN AFFIDAVIT. AND MAYBE  
21 THERE'S A PERIOD OF TIME, ONLY 48 OR 50 HOURS. I CAN FEDEX  
22 THEM. OR I CAN FLY THEM UP AND GIVE THEM TO HIM AND LET HIM  
23 STUDY THEM. BUT I CAN'T SIT HIM IN MY OFFICE FOR A WEEK AT A  
24 TIME LOOKING AT THEM.

25 **THE COURT:** ALL RIGHT. ANYTHING ELSE FROM THE

1 DEFENSE?

2 ALL RIGHT. LET ME HAVE DUPONT, THEN, COME UP AND  
3 TELL ME WHERE I'M WRONG.

4 **MR. GLYNN:** WELL, I WON'T START BY SAYING THAT, YOUR  
5 HONOR. THANK YOU FOR GIVING U THE OPPORTUNITY TO ADDRESS THIS  
6 IMPORTANT BALANCING.

7 I'M CLEMENT GLYNN FOR DUPONT.

8 IN DOING THE BALANCING IT'S IMPORTANT THAT THE COURT  
9 HAVE AN UNDERSTANDING OF THE REAL FACTS AS OPPOSED TO POINTS OF  
10 ADVOCACY, WHICH, IF TRUE, WOULD CHANGE THE POINT AT WHICH THE  
11 BALANCE IS STRUCK.

12 AND CLEARLY YOU CANNOT TODAY TRY TO RESOLVE THE  
13 MERITS OF THE CASE. BUT IT IS INTERESTING THAT THE ARGUMENT YOU  
14 JUST HEARD SAYS:

15 "AN EXPERT IS NOT ENOUGH. I HAVE TO HAVE MY  
16 CLIENT, BECAUSE HE USED TO WORK FOR DUPONT. AND THERE  
17 IT REQUIRES HIS EXPERTISE. WE NEED HIM TO BE ABLE TO  
18 LOOK AT IT."

19 BUT THE COUNTERVAILING VIEW IS: BUT DUPONT, THE  
20 AUTHOR OF THIS TECHNOLOGY AND THESE SECRETS MUST BE BLOCKED AS  
21 MUCH AS POSSIBLE.

22 SO THE STANDARDS HERE ARE DOUBLE. AND I THINK IT'S  
23 IMPORTANT THAT WE SEPARATE FACT FROM FICTION. I'D LIKE TO JUST  
24 TAKE A MOMENT TO DESCRIBE THE TECHNOLOGY, NOT ANY IN ANY KIND OF  
25 TECHNICAL WAY, BUT TO GIVE YOU AN IDEA WHAT HAS REALLY HAPPENED

1 HERE.

2 NOBODY IN THIS ROOM WILL DISPUTE THAT DUPONT IS THE  
3 WORLD'S PRODUCER OF THIS PIGMENT. IT'S A WHITE PIGMENT. IT'S  
4 IN THE TOOTHPASTE YOU USED THIS MORNING. IT'S IN THE PAPER THAT  
5 YOU READ --

6 **THE COURT:** ACTUALLY, STOP. I KNOW ALL ABOUT THE  
7 PIGMENT.

8 **MR. GLYNN:** ALL RIGHT.

9 **THE COURT:** GO AHEAD.

10 **MR. GLYNN:** AND I WILL STOP. DUPONT IS THE WORLD  
11 LEADER BECAUSE IT HAS A UNIQUE PRODUCTION PROCESS. AND IT IS  
12 THAT PROCESS WHICH HAS BEEN STOLEN.

13 AND IT IS NOT A COINCIDENCE THAT THE PEOPLE WHO WERE  
14 THE PARTICIPANTS IN THE ENTERPRISE WERE INDIVIDUALS WHO GAINED  
15 THAT INFORMATION FROM DUPONT.

16 ONE OF THEM HAS PLEADED GUILTY. ONE OF THEM HAS  
17 COMMITTED SUICIDE. THAT IS NOT BECAUSE IT'S ALL ON THE INTERNET.  
18 THAT IS BECAUSE PEOPLE UNDERSTAND THE GRAVITY OF WHAT IS BEFORE  
19 THE COURT.

20 NOW, WITH RESPECT TO THE CUMBERSOME -- AND I  
21 ABSOLUTELY RESPECT AND UNDERSTAND THE COURT'S CONCERNS. AND IF  
22 ALL OF THE HYPERBOLE THAT WAS PRESENTED WERE TRUE, THEN I WOULD  
23 HAVE COME OUT EXACTLY THE WAY THE COURT DID.

24 BUT DUPONT DOESN'T ASSERT, FOR EXAMPLE, A RIGHT TO  
25 VETO EXPERTS. THAT'S NOTHING. THE COURT MAKES THE DECISION.

1           DUPONT, DESPITE IT BEING ACCUSED OF BEING A LARGE AND  
2 ARROGANT COMPANY BY MR. GASNER, WHO THEN ADMITTED TO YOU THAT HE  
3 REPRESENTS LARGE, PRESUMABLY NOT ARROGANT, COMPANIES. DUPONT  
4 HAS NO INTEREST IN DOING ANYTHING EXCEPT BEING ABLE TO HAVE A  
5 PLACE AT THE TABLE TO ADVOCATE A POSITION.

6           DUPONT WOULD NEVER BE ABLE TO VETO AN EXPERT. THE  
7 COURT WOULD DECIDE WHETHER CONCERNS EXPRESSED, IF ANY, WERE  
8 VALID CONCERNS.

9           IF THE COURT DISAGREED, THEN DUPONT WOULD HAVE HAD  
10 ITS RIGHTS PROTECTED, AND THE CASE PROCEEDS.

11           LIKewise, THE IDEA THAT DUPONT AS THE OWNER OF WHAT  
12 I'M CONFIDENT WILL BE SHOWN TO BE TRADE SECRETS, AND VERY  
13 CAREFULLY PROTECTED TRADE SECRETS, DUPONT IS THE WORLD'S LEADING  
14 EXPERT ON ITS TECHNOLOGY.

15           TO SAY THAT THERE'S A SIMPLE SOLUTION TO JUST HAVE AN  
16 EXPERT, AND THEN WALL THE CRIME VICTIM OFF FROM BEING ABLE TO  
17 PROTECT ITS INTERESTS AND HELP THE GOVERNMENT PROTECT THE  
18 INTERESTS OF THE UNITED STATES WITH RESPECT TO THAT TECHNOLOGY  
19 IS FRANKLY UNREALISTIC.

20           MOST OF THE EXPERTS ON THIS TECHNOLOGY ARE EITHER  
21 PRESENT OR FORMER DUPONT PERSONNEL. THAT'S JUST THE REALITY.

22           AND I COULD FORESEE THAT THERE WOULD BE MANY OF THE  
23 RELATIVELY SMALL GROUP OF NOMINEES WHO MIGHT BE NOMINATED WHO  
24 WOULD BE PERFECTLY ACCEPTABLE TO DUPONT.

25           SO, AGAIN, IN BALANCING, WE HAVE TO DEAL WITH THE

1 REALITIES, NOT THE RHETORIC THAT POSITS KIND OF AN EXTREME  
2 INTERPRETATION OF SOMETHING THAT ISN'T PROPOSED AS EXTREME.

3 THE OTHER MAJOR FALSE PREMISE HERE THAT THE COURT  
4 REALLY NEEDS TO FOCUS ON AS YOU DO YOUR FINAL BALANCING IS THE  
5 NOTION THAT THERE ARE TRADE SECRETS OF USAPTI THAT ARE ON A  
6 COEQUAL FOOTING THAT DESERVE SOME SORT OF PROTECTION FROM WHICH  
7 FALSE PREMISE WE DO ALL SORTS OF THINGS TO CONTORT THE CASE.

8 DUPONT HAS BEEN IN THIS BUSINESS FOR OVER 50 YEARS.  
9 IT HAS INVESTED HUNDREDS OF MILLIONS OF DOLLARS.

10 AS YOU WILL LEARN, USAPTI, IT HAS NEVER BEEN A PLAYER  
11 IN THIS FIELD. THEY WERE INVISIBLE, AND THEY WERE INVISIBLE FOR  
12 A REASON. BECAUSE THE DEVELOPMENT OF THEIR SO CALLED WORK  
13 PRODUCT, THEIR SO CALLED TRADE SECRETS WAS THE ASSEMBLAGE OF  
14 FORMER DUPONT SCIENTISTS WHO HAD ACCESS TO DOCUMENTS THEY WERE  
15 NOT SUPPOSED TO HAVE ANY LONGER, AS WAS ADMITTED IN THE PLEA BY  
16 MR. TZE CHAO. AND THAT WAS THE WORK PRODUCT. THE WORK PRODUCT  
17 WAS TO ASSEMBLE AN ENTERPRISE OF PEOPLE WILLING TO VIOLATE OSA  
18 TOOK (PHONETIC) AND TO VIOLATE THE LAWS OF THE UNITED STATES.  
19 AND TO THEN RELOGO THOSE DOCUMENTS AND CALL THEM "USAPTI'S  
20 TECHNOLOGY."

21 I NOTED IN THE BRIEFS -- AND I WILL CONCLUDE WITH  
22 THIS, YOUR HONOR -- IN MR. GASNER SPEAKS OF CIVIL LITIGATION  
23 WHICH MERCIFULLY IS WHERE I SPEND THE MAJORITY OF MY TIME.

24 MY FORAY INTO THE CRIMINAL COURTS WAS LONG AGO AND  
25 FAR AWAY.

1 THE ASSERTION -- ORDINARILY IN A CIVIL CASE IF A  
2 LITIGANT WANTED A COURT TO ACCEPT THE PROPOSITION THAT IT HAS  
3 VALUABLE TRADE SECRETS, THE COMPROMISE OF WHICH COULD BE AT  
4 STAKE IN THE BALANCING IN THIS PROTECTIVE ORDER, A SHOWING WOULD  
5 BE MADE.

6 THE COURT WOULD BE PRESENTED WITH EVIDENCE FROM WHICH  
7 IT COULD REASONABLY CONCLUDE AT LEAST A PRIMA FACIE ASSERTION OF  
8 TRADE SECRET BY, IN THIS CASE, USAPTI.

9 I READ THE PAPERS. THERE WAS NOTHING. THERE IS  
10 SIMPLY THE ITALICIZED AND REPEATED ASSERTION THAT FOR TEN YEARS  
11 USAPTI WORKED DILIGENTLY TO CONSTRUCT ITS OWN TRADE SECRETS.

12 WELL, THEY WORKED DILIGENTLY. AND LIKE TERMITES THEY  
13 WORKED QUIETLY. BUT THEY WORKED WITH DUPONT'S TECHNOLOGY, NOT  
14 THEIR OWN.

15 AND UNLESS AND UNTIL THERE IS A SHOWING SATISFACTORY  
16 TO THIS COURT THAT THEY HAVE THEIR OWN INDEPENDENTLY DEVELOPED  
17 TECHNOLOGY, THAT THEY CAN LEGITIMATELY CLAIM IS A TRADE SECRET,  
18 THEN ANY DETERMINATION THE COURT MAKES SHOULD NOT ACCEPT THAT  
19 FALSE PREMISE BECAUSE I WOULD SIMPLY BE WRONG.

20 THANK YOU VERY MUCH FOR GIVING US THE OPPORTUNITY.

21 **MR. FROELICH:** YOUR HONOR, MAY I JUST SAY ONE THING?

22 **THE COURT:** I'LL GIVE EVERYBODY A VERY BRIEF CHANCE  
23 AT REBUTTAL.

24 **MR. FROELICH:** IT'S NOT REBUTTAL, YOUR HONOR. I JUST  
25 FORGOT ONE THING.

1                   **THE COURT:** ALL RIGHT.

2                   **MR. FROELICH:** AS THE EXPERTS, YOUR HONOR, WHAT I  
3 WANTED TO SAY AND FORGOT TO SAY IS THAT I TRY A LOT OF -- I TRY  
4 ALMOST EXCLUSIVELY CRIMINAL. I TRY CASES WHERE THERE ARE  
5 EXPERTS. AND I HIRE EXPERTS NOT ONLY AS WITNESSES, BUT TO TRAIN  
6 ME TO CROSS-EXAMINE OTHER EXPERTS AND TO MAKE OPENING STATEMENTS  
7 AND THINGS LIKE THAT.

8                   I WOULD PREFER, AND I THINK IT'S MORE SUITABLE, AND I  
9 THINK PARTICULARLY IN A CRIMINAL MATTER, THAT WE BRING -- RATHER  
10 THAN GIVING, EVEN THOUGH YOU DON'T DISCLOSURE -- WE'RE TALKING  
11 ABOUT NOT DISCLOSING THE NAME TO THE GOVERNMENT OR WHOEVER. IF  
12 YOU GIVE DETAIL BACKGROUND THEY ARE GOING TO KNOW.

13                   AND PEOPLE -- I'VE FOUND THAT EXPERTS WHO I WANT TO  
14 KEEP IN THE BACKGROUND TO TRAIN ME OR TO TELL ME HOW TO ATTACK,  
15 DON'T -- OR WANT TO BE IN THE BACKGROUND FOR A REASON. AND WHEN  
16 YOU GIVE OUT THAT -- AND SO YOUR HONOR, I WOULD PREFER, AND I  
17 THINK IT'S MORE IMPORTANT THAT WE NOTIFY, IF YOU WANT NOTICE,  
18 NOTIFY THE COURT IN CAMERA AND GIVE THE DETAILED BACKGROUND.

19                   AND THEN, IF THE COURT SEES ANYTHING SUCH AS: DID HE  
20 WORK FOR DUPONT? OR, YOU KNOW, HE WORKED FOR A COMPETITOR FOUR  
21 YEARS AGO, THEN THAT ISSUE IS JOINED.

22                   BUT I'M AFRAID THAT, AS YOUR HONOR HAS SAW IN THE  
23 PLEADINGS -- I THINK THERE'S AN AFFIDAVIT FROM DUPONT -- THAT  
24 THERE'S NOT A LOT OF EXPERTS, AND I KNOW THAT, OUT THERE.

25                   AND I DON'T WANT TO HAVE TO SCARE OFF ANYBODY THAT

1 I'M GOING TO -- YOU KNOW, PERSONS WHO ARE GOING TO TESTIFY ARE  
2 GOING TO BE SCARED OFF.

3 BUT THERE ARE PEOPLE WHO ARE VERY HELPFUL TO A  
4 DEFENSE LAWYER THAT DON'T WANT THE OTHER SIDE TO KNOW. BUT IN  
5 ORDER TO PROTECT IT I THINK WE COULD COME TO THE COURT AND MAKE  
6 THE DISCLOSURES.

7 **THE COURT:** ALL RIGHT. THANK YOU.

8 MR. AXELROD, ANYTHING FURTHER?

9 **MR. AXELROD:** NO, YOUR HONOR. I BELIEVE THE -- JUST  
10 WITH THIS FINAL POINT THAT IT IS, YOU KNOW -- WALTER LIEW IS NOT  
11 A TIO2 EXPERT. HE'S NOT A CHEMICAL ENGINEER. HE'S NOT A  
12 PROCESS ENGINEER.

13 HE'S AN ELECTRICAL ENGINEER WHO, YOU KNOW, TOLD  
14 PEOPLE HE WENT TO STANFORD WHEN HE DIDN'T. I HAVE CONCERN THAT  
15 THERE'S A LOT OF SOUND ABOUT PROTECTING HIS TRADE SECRETS. THAT  
16 IS -- I THINK IT'S IMPORTANT TO POINT OUT THAT THE TRADE SECRETS  
17 THAT ARE AT ISSUE ARE THE ONES THAT WERE STOLEN FROM DUPONT.

18 AND IF THEY HAVE SOMETHING THAT THEY WANT TO  
19 PARTICULARIZE WITH EVIDENCE TO THE CONTRARY, YOU KNOW, THEY CAN  
20 GO AHEAD. BUT, OTHERWISE, IT'S NOT -- IT'S ABSURD.

21 **THE COURT:** ALL RIGHT.

22 **MS. AGNOLUCCI:** YOUR HONOR, JUST A FEW FINAL POINTS.

23 THE ARROGANCE THAT WE REFERRED TO IN OUR BRIEFS IS  
24 THE SAME ARROGANCE THAT WE HEARD HERE IN COURT TODAY. IT'S THE  
25 ASSUMPTION THAT NOTHING THAT THIS MAN DID OVER THE PAST TEN



1 YEARS IS WORTHWHILE.

2 AND THERE'S A PRESUMPTION OF INNOCENCE IN THIS CASE.  
3 THE EVIDENCE WILL SHOW THAT THEY ARE WRONG. AND THAT, IN FACT,  
4 DUPONT IS THE DRIVING FORCE BEHIND THIS CRIMINAL PROSECUTION.

5 NOW, ON THE SORT OF INDIVIDUAL POINTS THAT WE'VE BEEN  
6 DISCUSSING, IF YOUR HONOR IS INCLINED TO STICK WITH HIS  
7 TENTATIVE I DON'T THINK WE NEED TO SAY ANYTHING FURTHER.

8 BUT IF THERE ARE ANY POINTS THAT REQUIRE ADDITIONAL  
9 CLARIFICATION, I'M HAPPY TO PROVIDE IT. AND WE DO HAVE ONE  
10 REQUEST.

11 IF YOUR HONOR RULES THAT DEFENDANTS MUST GIVE -- THAT  
12 THE GOVERNMENT MUST GIVE NOTICE BEFORE SHOWING THE DEFENDANTS'  
13 DOCUMENTS TO DUPONT, THEN WE WOULD RESPECTFULLY REQUEST THAT THE  
14 COURT ORDER THE GOVERNMENT TO TELL US WHICH DOCUMENTS IT ALREADY  
15 HAS SHOWN TO DUPONT, BECAUSE IT'S APPARENT FROM THE BRIEFS OF  
16 BOTH THE GOVERNMENT AND DUPONT THAT THAT ALREADY HAS HAPPENED.

17 **THE COURT:** ALL RIGHT. I'M GOING TAKE THIS ALL UNDER  
18 SUBMISSION. BUT I WILL BE ISSUING A MELDED PROTECTIVE ORDER  
19 VERY SHORTLY.

20 ON THAT NOTE, MR. AXELROD, I DON'T THINK THAT I GOT  
21 AN ELECTRONIC VERSION OF PROPOSED ORDER BOX EITHER IN WORD OR  
22 WORD PERFECT. IF YOU COULD SEND IT AS QUICKLY AS POSSIBLE I  
23 WOULD APPRECIATE IT.

24 **MR. AXELROD:** I WILL.

25 **THE COURT:** IT WILL BE IMMEDIATELY IN EFFECT WHEN I

1 ISSUE IT. AND I EXPECT THE GOVERNMENT WILL START PROVIDING  
2 MATERIALS VERY QUICKLY.

3 WHAT I WANT TO DO IS RETURN HERE ONCE THE GOVERNMENT  
4 HAS HAD A CHANCE TO START TO PRODUCE THOSE MATERIALS FOR THE  
5 PARTIES TO CONFER FURTHER ABOUT THE TIMELY PRODUCTION OF  
6 MATERIALS ONCE THAT PROTECTIVE ORDER HAS BEEN ENTERED, AND TO  
7 GET A MORE DETAILED GAME PLAN FROM THERE.

8 I HEAR THE DEFENSE BASED ON THEIR STATUS REPORT THAT  
9 THEY ARE -- FEEL LIKE SOME THINGS OVERDUE. THE GOVERNMENT SAYS  
10 WELL, ONCE A PROTECTIVE ORDER IS IN PLACE THAT WILL BE PRODUCED.

11 AND THERE'S REALLY A DIFFERENCE OF FACT AS TO WHERE  
12 YOU ARE IN THE NEGOTIATIONS. I THINK THAT WILL ALL BE UNDER THE  
13 BRIDGE ONCE THE GOVERNMENT PRODUCES THE MATERIALS.

14 AND I DON'T MEAN TO KIND OF GO INTO MORE DETAIL ABOUT  
15 WHERE YOU ARE TODAY, BECAUSE YOU'LL BE IN A DIFFERENT PLACE IN A  
16 FEW WEEKS, I THINK.

17 IF YOU ARE NOT, THEN I'LL HEAR FURTHER. SHOULD WHAT  
18 I WANT TO NEGOTIATE HERE IS WHEN WE SHOULD RETURN WITH A FURTHER  
19 PLAN.

20 **MR. RAGLAND:** WELL, YOUR HONOR, STEVEN RAGLAND ON  
21 BEHALF OF MR. LIEW AND USAPTI.

22 I RESPECT THE COURT'S DESIRE NOT TO GET INTO THE MUD  
23 OF THE DISCOVERY ISSUES.

24 **THE COURT:** I WAS GOING TO SAY "WEEDS."

25 **MR. RAGLAND:** RIGHT. I WOULD JUST ASK -- I MEAN, I

1 JUST WANT TO MAKE THE POINT VERY CLEAR FOR THE RECORD THAT ALL  
2 THAT WE TALKED ABOUT IN OUR STATUS REPORT WAS INFORMATION THAT  
3 IS NOT IMPACTED BY THE PROTECTIVE ORDER.

4 AND SO WE'D LIKE A VERY EARLY TIME TO BE BACK IN  
5 FRONT OF YOUR HONOR TO SEE IF ANY -- WE'VE GOTTEN ANY PROGRESS.

6 AND THEN, THE OTHER POINT, TOO, IS I JUST WANTED TO,  
7 BECAUSE I HAVEN'T GOTTEN A RESPONSE YET FROM THE GOVERNMENT.  
8 WE'VE ASKED FOR FILE NAMES OF THE ALLEGED TRADE SECRET DOCUMENTS  
9 THAT EXIST IN ELECTRONIC FORM.

10 AND I HAVEN'T YET GOTTEN ANY CONFIRMATION WHAT WE'RE  
11 TALKING ABOUT. I THINK IT'S OBVIOUS, BUT I WANT TO MAKE SURE IF  
12 THERE'S ANY CONFUSION WE CLEAR THAT UP AND HOPEFULLY WE CAN GET  
13 THAT BEFORE WE'RE IN FRONT OF YOUR HONOR AGAIN.

14 BECAUSE, OTHERWISE, WE HAVE TERABYTES AND WE CAN'T  
15 EVEN SEARCH WHAT THEY CLAIM ARE THE IMPORTANT DOCUMENTS.

16 **THE COURT:** ALL RIGHT.

17 AND MR. AXELROD, THOSE FILE NAMES ARE SUBJECT TO THE  
18 PROTECTIVE ORDER, AND THAT'S AN ISSUE THAT WILL BE CLEAR UP?

19 **MR. AXELROD:** WELL, I THINK THERE -- I GUESS HERE'S  
20 WHAT I'D SAY ABOUT THE FILE NAMES. NUMBER ONE, WE PRODUCED ALL  
21 THE FILE NAMES, WHICH IS WHAT THEY HAD ASKED FOR YESTERDAY.  
22 THAT'S THE STACK THAT COUNSEL WAS REFERRING TO.

23 WITH RESPECT TO THE SPECIFIC FILE NAMES OF TRADE  
24 SECRETS, I GUESS HERE'S THE WAY I WOULD LOOK AT IT. THOSE ARE  
25 GOING TO BE -- EXCEPT FOR CATEGORY-1 THEY ARE GOING TO BE THE

1 HARD COPY DOCUMENTS THAT THEY ARE GOING TO GET.

2 I BELIEVE THAT, YOU KNOW, IF THERE'S A PRINTOUT OF  
3 THOSE THEY WILL PROBABLY HAVE THE ASSOCIATED COMPUTER FILE NAME  
4 IF THAT'S WHERE THEY CAME FROM.

5 YOU KNOW, SO THAT'S SORT OF WHERE WE ARE ON THAT. I,  
6 YOU KNOW, AM HAPPY TO TALK FURTHER WITH COUNSEL ABOUT IT, BUT  
7 THAT'S -- YOU KNOW, TO THE EXTENT THEY WANT THE SORT OF  
8 CONFIDENTIAL-1 FILE NAMES TO LOOK FOR IT IN ELECTRONIC VERSION  
9 IT'S ACTUALLY NOT GOING TO BE THERE. IT'S GOING TO BE PRINTED  
10 OUT IN THE HARD COPY.

11 **THE COURT:** ALL RIGHT.

12 **MR. RAGLAND:** THEN MAYBE WE CAN GET A DATE PRETTY  
13 QUICKLY.

14 **THE COURT:** LET'S GET A DATE. YOU CAN CONFER  
15 FURTHER, AND WE CAN DISCUSS THAT FURTHER IF THERE'S SOMETHING TO  
16 DISCUSS.

17 WHAT DATE SHALL WE RETURN?

18 **MR. AXELROD:** I WOULD SUGGEST IN, YOU KNOW, MAYBE A  
19 MONTH OR SIX WEEKS.

20 **MR. RAGLAND:** I THINK THAT IS WAY TOO FAR OUT, YOUR  
21 HONOR. I WOULD SUGGEST TWO OR THREE WEEKS IS MORE APPROPRIATE.

22 **MR. FROELICH:** YOUR HONOR, I HAVE ONE PROBLEM. I  
23 FILED AND I GOT APPROVAL OF A LEAVE OF ABSENCE FROM THE DISTRICT  
24 COURT. AND I AM LOOKING AT A CALENDAR.

25 I BELIEVE I LEAVE THE NIGHT OF THE 11TH. I HAVE TO

1 BE IN A MEETING IN ZURICH. AND THEN, I'M IN ITALY AND SPAIN.  
2 AND I'LL BE BACK THE NIGHT OF THE 25TH, JULY.

3 **MR. RAGLAND:** COULD WE DO JULY 10 BEFORE MR. FROELICH  
4 HAS TO LEAVE?

5 **THE COURT:** LET ME REFRESH MYSELF.

6 **MR. RAGLAND:** OR THE NINTH, THAT MONDAY OR TUESDAY.

7 **MR. FROELICH:** I HAVE TO LOOK AT MY CALENDAR. I  
8 THINK I HAVE A SENTENCING ON THAT JULY 9TH.

9 **THE COURT:** I THINK THE TENTH IS PROBABLY SOMETHING  
10 THAT WILL WORK OUT.

11 AND MR. AXELROD, I KNOW THAT THAT'S SOONER THAN YOU  
12 WOULD LIKE, BUT I THINK WE WILL BE ABLE TO GET A REPORT ON WHAT  
13 YOU'VE PRODUCED.

14 **MR. AXELROD:** THAT'S FINE. NOT A PROBLEM.

15 **MR. FROELICH:** BUT, YOUR HONOR, THERE ARE SOME THINGS  
16 I HAVE BEEN ASKING FOR A LONG TIME. I HAVEN'T EVEN GOTTEN  
17 EVERYTHING THAT SEIZED FROM MY CLIENT, HIS FINANCIAL RECORDS,  
18 PASSPORTS, THINGS LIKE THAT.

19 AND THERE'S A LOT OF THINGS THAT YOU NEED BEFORE YOU  
20 CAN FILE A MOTION. AND SO THOSE THINGS I THOUGHT SHOULD BE  
21 SPEEDED UP.

22 **THE COURT:** RIGHT. AND I THINK THAT --

23 **MR. AXELROD:** JUST SO EVERYONE IS CLEAR I REPRESENTED  
24 IN THE PLEADINGS AND I'LL REPRESENT HERE AGAIN THERE'S A WHOLE  
25 BUNCH OF STUFF THAT WE HAVE READY TO PRODUCE. AND WE ARE ALSO

1 CONTINUING TO WORK TOWARDS, YOU KNOW, GEARING UP ALL THE OTHER  
2 MATERIAL TO PRODUCE. SO WE UNDERSTAND THE PROTECTIVE ORDER IS  
3 COMING. AND WE UNDERSTAND THAT WE'RE GOING TO BE PRODUCING A  
4 WHOLE BUNCH OF MATERIAL, INCLUDING, I BELIEVE, THE ITEMS FROM  
5 MR. MAEGERLE'S RESIDENCE.

6 THERE'S JUST A LOT. IT'S SORT OF THAT WE'RE JUST  
7 WAITING. AND WE'LL GET IT OUT. AND IF THERE IS A PROBLEM THEY  
8 CAN RAISE IT. BUT THIS ISN'T -- I MEAN WHAT I'M SAYING. SO  
9 WHEN I SAY THAT WE'RE GOING TO PRODUCE THESE THINGS, WE'RE GOING  
10 TO PRODUCE IT.

11 I'VE GOT A TWO TERABYTE HARD DRIVE SITTING IN MY  
12 OFFICE THAT, AS I UNDERSTAND IT, WHEN YOU EXPAND IT IT'S TEN  
13 TERABYTES OF INFORMATION. THEY ARE GOING TO GET THAT ONCE  
14 THERE'S A PROTECTIVE ORDER.

15 SO, YOU KNOW, WE'LL COME BACK. WE'LL ADDRESS THESE  
16 ISSUES WHENEVER IT'S CONVENIENT FOR THE COURT.

17 **THE COURT:** VERY WELL. LET'S SET THIS ON JULY 10TH  
18 AT 1:00 P.M.

19 **MR. FROELICH:** YOUR HONOR, CAN I MAKE ONE -- ALSO ONE  
20 SUGGESTION?

21 **THE COURT:** YES.

22 **MR. FROELICH:** ON THE 10TH, CAN WE DO IT IN THE  
23 MORNING? I'LL TELL YOU WHY, YOUR HONOR.

24 **THE COURT:** I'LL TELL YOU WHY NOT: BECAUSE I HAVE  
25 ANOTHER PROCEEDING AT THAT TIME.

1           **MR. FROELICH:** OH, OKAY.

2           **THE COURT:** SO WE'RE GOING TO SET IT AT ONE P.M. ON  
3 JULY 10TH. AND I WILL ASK THE GOVERNMENT TO ON THE NINTH JUST  
4 TO GIVE US A SUPPLEMENT AS TO WHAT HAS BEEN PRODUCED BEFORE THE  
5 HEARING SO THAT THE COURT WILL BE ADVISED OF THAT.

6           **MR. RAGLAND:** AND, YOUR HONOR, IF THE DEFENSE HAS  
7 CONCERNS ABOUT WHAT HASN'T BEEN PRODUCED?

8           **THE COURT:** ANY OTHER ISSUES YOU WANT TO BRING UP ON  
9 THE DAY BEFORE GIVE ME A SHORT SUMMARY AS TO WHAT THE ISSUES ARE  
10 THAT YOU WOULD LIKE TO DISCUSS AND TO CONFER WITH EACH OTHER TO  
11 SEE IF YOU CAN WORK THEM OUT.

12           **MR. RAGLAND:** YES. AND WE HAVE DO A JOINT REPORT  
13 EVEN IF WE HAVE SEPARATE SESSIONS. IT MIGHT BE EASIER FOR THE  
14 COURT.

15           **THE COURT:** AGREED.

16           **MR. FROELICH:** AND, YOUR HONOR, IF I HAVE A PROBLEM  
17 RATHER THAN DELAYING OR MOVING IT, COULD I FORMALLY WAIVE AND  
18 SIGN, BECAUSE IT'S JUST A DISCOVERY. I MEAN, IT'S --

19           **THE COURT:** YES. AND IF YOU WOULD LIKE TO  
20 PARTICIPATE BY PHONE GIVEN YOUR TRAVEL SCHEDULE, THAT'S  
21 PERMISSIBLE, AS WELL.

22           **MR. FROELICH:** THANK YOU, YOUR HONOR.

23           **THE COURT:** ALL RIGHT. ANYTHING ELSE TODAY?

24           **MR. AXELROD:** NO, YOUR HONOR.

25           **THE COURT:** ALL RIGHT. THANKS VERY MUCH.

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**MR. AXELROD:** THANK YOU, YOUR HONOR.

**MR. GLYNN:** THANK YOU, YOUR HONOR.

**MR. RAGLAND:** THANK YOU, YOUR HONOR.

**MR. GASNER:** THANK YOU, YOUR HONOR.

(THEREUPON, THIS HEARING WAS CONCLUDED.)

STENOGRAPHY CERTIFICATION

"I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER."

/S/ KATHERINE WYATT  
DATE 7-7-12  
KATHERINE WYATT  
TYPED OR PRINTED NAME