

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

5 - - -

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

8 - - -

9 UNITED STATES OF AMERICA,)

10 PLAINTIFF,)

11 VS.) CR-02-350 AHM

12 STEVEN WILLIAM SUTCLIFFE,)

13 DEFENDANT.)

14 _____)

COPY

15 STATUS CONFERENCE

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 MONDAY, APRIL 7, 2003

18 LOS ANGELES, CALIFORNIA

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APPEARANCES OF COUNSEL:

ON BEHALF OF PLAINTIFF, UNITED STATES OF AMERICA:

ELENA DUARTE, AUSA
U.S. DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
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UNITED STATES COURTHOUSE
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ON BEHALF OF DEFENDANT, STEVEN WILLIAM SUTCLIFFE:

GREGORY NICOLAYSEN, ESQ.
16000 VENTURA BOULEVARD
SUITE 500
ENCINO, CA 91436

1 THE COURT: YES.

2 MS. DUARTE: AND IT WAS A PETITION FOR REHEARING. THE
3 COURT'S ALREADY BEEN AFFIRMED ON THE ORDER; AND I SKIMMED IT.
4 AND THE GROUNDS FOR THE PETITION FOR REHEARING WERE THE LACK OF
5 THIS FINDING THAT WE'RE DISCUSSING.

6 IT'S PURELY A COINCEDENCE; AND IT CAME UP AFTER HE AND I
7 NOTICED IT, DISCUSSED IT, AND CAME UP WITH --

8 THE COURT: HE MEANING, MR. NICOLAYSEN?

9 MS. DUARTE: MR. NICOLAYSEN AND I NOTICED IT AND DISCUSSED
10 IT.

11 BUT THE 9TH CIRCUIT HAS NOT ORDERED ANY ACTIONS. FRANKLY,
12 I DON'T EXPECT THEM TO, BUT I WANTED TO MAKE SURE THE COURT WAS
13 AWARE OF THIS.

14 THE COURT: OKAY. WELL, HERE ARE MY FINDINGS. I THINK
15 THAT, PARTICULARLY, IN LIGHT OF WHAT HAPPENED AT THE HEARING, AND
16 THE LANGUAGE IN DR. BACKER'S SUPPLEMENTAL REPORT, THERE IS A
17 SUFFICIENT BASIS TO FIND THAT MR. SUTCLIFF ALREADY IS AFFLICTED
18 WITH A DISEASE OR A DEFECT THAT MAKES HIM INCOMPETENT FOR
19 PURPOSES OF STANDING TRIAL.

20 THE REASON I DIDN'T WANT TO MAKE THAT FINDING AND DECLINED
21 TO MAKE THAT FINDING WAS PRIMARILY BECAUSE I DIDN'T WANT TO
22 INFLAME HIM; NOT BECAUSE I HAD ANY DOUBTS ABOUT APPLYING THE
23 APPLICABLE STANDARDS TO WHAT I PERCEIVED TO BE HIS THEN
24 CONDITION.

25 MY PERCEPTION HAS BEEN REINFORCED BY DR. BACKER'S

1 SUPPLEMENTAL CONCLUSION. AND GIVEN THAT THE TWOFOLD PURPOSE OF
2 ALL THAT'S GOING ON, IS TO DETERMINE WHETHER, IF NOT CURRENTLY,
3 TO GIVE MR. SUTCLIFF A BASIS TO PROCEED PROPERLY TO TRIAL, AS IS
4 HIS RIGHT.

5 AND, SECONDLY, TO ASSURE THAT HE GETS THE FULL BENEFIT OF
6 ALL APPLICABLE PROCEDURES, DIAGNOSES, AND TREATMENT THAT THE
7 BUREAU OF PRISONS CAN PROVIDE. IT'S ACTUALLY FOR THAT TWOFOLD
8 REASON THAT I'LL FEEL COMFORTABLE IN INCORPORATING THIS DIFFERENT
9 LANGUAGE IN THE ORDER THAT I'LL ISSUE NOW.

10 MS. DUARTE GAVE ME A DISK. I MAY FIDDLE WITH SOME OF THE
11 RECITALS, WORKING OFF OF THE DISK; BUT NOW THAT I UNDERSTAND WHAT
12 YOUR THINKING WAS, I'M PREPARED TO ACCEPT IT. I WILL ISSUE
13 EITHER THIS PRECISE ORDER, OR ONE SUBSTANTIALLY SIMILAR, LATER
14 TODAY.

15 MR. NICOLAYSEN: THANK YOU, YOUR HONOR. WE APPRECIATE THE
16 COURT'S TIME.

17 WOULD YOUR HONOR ALSO ALLOW A TRANSCRIPT OF THIS MORNING'S
18 STATUS CONFERENCE, SO WE WOULD HAVE IT?

19 THE COURT: YES. THE U.S. ATTORNEY SHOULD ORDER THE
20 TRANSCRIPT. AND THE TRANSCRIPT SHOULD BE SENT TO -- WHERE IS MR.
21 SUTCLIFFE NOW?

22 MS. DUARTE: HE IS IN TRANSIT. ACCORDING TO MDC, HE IS
23 GONE FROM THERE. AND ACCORDING TO ** DEVINS, I CHECKED BOTH THIS
24 MORNING. DEVINS EXPECTS HIM TO ARRIVE WEDNESDAY OR THURSDAY,
25 APRIL 9TH OR 10TH OF THIS WEEK.

1 MR. NICOLAYSEN: IF YOUR HONOR LOOKED AT THE PROPOSED
2 ORDER, WE HAVE ADJUSTED THE AUGUST TIME, WITH THAT IN MIND.

3 THE COURT: YES. I SAW THAT. WELL, I WANT IT TO BE SENT
4 BOTH TO THE WARDEN WITH SPECIFIC -- "IT" BEING THE TRANSCRIPT --
5 WITH SPECIFIC DIRECTIONS THAT IT BE MADE AVAILABLE TO THOSE
6 RESPONSIBLE, NOT ONLY FOR MR. SUTCLIFFE'S TREATMENT -- DIAGNOSIS
7 AND TREATMENT, BUT ALSO TO THOSE RESPONSIBLE FOR HIS CUSTODY; SO
8 THAT IF HE, FOR SOME REASON, RESPONDS TO THIS, THEY'LL, AT LEAST,
9 BE AWARE OF WHAT MAY HAVE BEEN IN HIS MIND.

10 I ALSO WANT IT TO BE SENT BY MR. NICOLAYSEN DIRECTLY TO
11 MR. SUTCLIFF.

12 MR. NICOLAYSEN: I WILL DO SO, YOUR HONOR, AS I DID THE
13 MARCH 14TH TRANSCRIPT.

14 THE COURT: AND PROMPTLY SO, AT DEVINS, PLEASE.

15 MR. NICOLAYSEN: I WILL DO THAT.

16 (OFF THE RECORD.)

17 THE COURT: IN CASE THE RECORD ISN'T CLEAR, I THINK I
18 ARRANGED LAST WEEK TO HAVE DR. BACKER'S SUPPLEMENTAL REPORT.
19 YES. IT WAS FILED ON APRIL 1ST. IT ACTUALLY WASN'T FILED.

20 THE CLERK: NO, IT WASN'T FILED.

21 THE COURT: WELL, IT SHOULD BE PLACED IN THE FILE. WE
22 SENT OUT A MINUTE ORDER ON APRIL 1ST. IT SAYS, ON APRIL 1ST,
23 2003 THE COURT RECEIVED DR. RUSHTON BACKER'S FORENSIC EVALUATION
24 ADDENDUM DATED MARCH 21ST, 2003, AND HAVE FAXED A COPY OF THIS
25 ADDENDUM UNDER SEPARATE COVER DIRECTLY TO COUNSEL. FILE

1 THAT ADDENDUM UNDER SEAL IN THE FILE OF THIS CASE, AND MAKE SURE,
2 MR. NICOLAYSEN, THAT MR. SUTCLIFF RECEIVES A COPY OF THAT
3 SUPPLEMENTAL REPORT.

4 MR. NICOLAYSEN: I WILL DO SO, THEN. YES, SIR.

5 THE COURT: OKAY. AND YOU SHOULD MAKE SURE THAT THE
6 REPORT GOES TO THE PEOPLE AT ** FMC DEVINS. I THINK IT WAS
7 ALREADY MY RULING THAT IT SHOULD.

8 MS. DUARTE: I WILL DO THAT, YOUR HONOR.

9 THE COURT: ALL RIGHT. THANK YOU. WE'RE ADJOURNED.

10 MR. NICOLAYSEN: THANK YOU, VERY MUCH, YOUR HONOR.

11 MS. DUARTE: THANK YOU, YOUR HONOR.

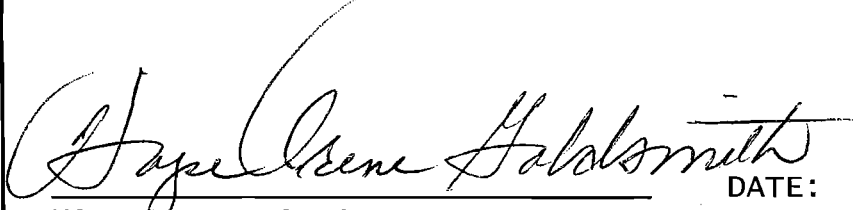
12 (THE PROCEEDINGS CONCLUDED AT 12:05 P.M.)
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CERTIFICATE OF REPORTER

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

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

 DATE: 8-2-04
HOPE IRENE GOLDSMITH, RPR
FEDERAL OFFICIAL COURT REPORTER