

1 the requirements, under United States v. Reed, 726 F.2d 570,
2 and I grant the government's motion to quash the subpoena to
3 Mr. -- intended to be to Mr. Laverick.

4 What's your next motion?

5 MS. DUARTE: Motion to quash the subpoena issued to
6 the FBI field office at 11000 Wilshire Boulevard. This
7 subpoena, it's my understanding, encompasses approximately --
8 if I could have a moment?

9 THE COURT: First of all, I want to construe the
10 subpoena to mean to the custodian of records at the FBI field
11 office, and you should argue your position accordingly.

12 MS. DUARTE: Okay. The custodian of records at the
13 FBI field office. These documents, the documents sought, are
14 for "killercop.com". And I don't think the defendant has a
15 good faith basis for thinking that there are any documents that
16 are discoverable, certainly, related to "killercop.com" in the
17 possession of the FBI.

18 Anything relevant has been turned over to him. And
19 further, I have confirmed with the FBI that they never opened
20 an investigation on "killercop.com".

21 THE COURT: From whom did you confirm that?

22 MS. DUARTE: Supervisory Special Agent Ken McGuire,
23 who did --

24 THE COURT: When did you confirm that?

25 MS. DUARTE: Yesterday.

1 THE COURT: What did he tell you?

2 MS. DUARTE: He told me that the -- could I confirm
3 the database?

4 Your Honor, apparently, he did a word search in the
5 internal FBI database, and that enabled him to pull up anything
6 relevant to "killercop" or anything mentioning "killercop".

7 THE COURT: Did he find anything?

8 MS. DUARTE: He verified that there was no open
9 investigation.

10 THE COURT: Did he find any material?

11 MS. DUARTE: He found one hit. That hit was
12 contained in the file of a separate investigation, and that hit
13 was only to a document which contained Web code. Not Web
14 pages, but Web code from a portion of the "killercop.com"
15 website in the late '90s.

16 THE COURT: When did the investigation of
17 Mr. Sutcliffe that led to the filing of the indictment and the
18 superseding indictment in this case begin?

19 MS. DUARTE: The indictment in this case, it began in
20 the fall 2001, Your Honor.

21 THE COURT: Well, I think that you should produce,
22 without the need for there to be any further authentication,
23 that one document that McGuire found.

24 Now, I want you to make a representation and offer to
25 the Court about just to who McGuire is and what his capacity is

1 to make these representations on behalf of the FBI.

2 MS. DUARTE: Your Honor, he's a supervisory special
3 agent in one of the cybercrime squads. However, I didn't
4 discuss with him in enough detail, I don't think, to actually
5 tell the Court precisely what he did.

6 If the Court wishes, I can supply a declaration.

7 THE COURT: Just have him execute a declaration and
8 attach it to this one document that he was able to find in the
9 FBI records which apparently is source code.

10 Do I understand you correctly?

11 MS. DUARTE: If I could have a moment?

12 We think it's source code, Your Honor. But I'll
13 verify that and I'll put that in a declaration.

14 THE COURT: Categories 2, 3, and 4, on their face,
15 are totally beyond the scope of a proper subpoena. So the item
16 that I have ordered be produced within the accompanying
17 declaration is responsive at least to the very sweeping
18 language of paragraph 1.

19 To that extent, and to that extent only, to that
20 limited extent, I order that the document be produced and made
21 available to Mr. Sutcliffe.

22 Do you want to be heard further?

23 MR. SUTCLIFFE: I have a couple of motions I would
24 like to make.

25 THE COURT: Wait. Wait.