

1 APPEARANCES OF COUNSEL:

2 For the Plaintiff United States of America:
34 DEBRA W. YANG
United States Attorney
5 STEVEN D. CLYMER
Special Assistant United States Attorney
6 Chief, Criminal Division
BY: ELENA J. DUARTE
7 Assistant United States Attorney
1500 United States Courthouse
8 312 North Spring Street
Los Angeles, California 90012
910 For the Defendant Steven William Sutcliffe:
1112 STEVEN WILLIAM SUTCLIFFE
Pro se
Reg No. 02837-049
13 METROPOLITAN DETENTION CENTER
535 North Alameda
14 Los Angeles, California 90012
15

16 Also Present:

17 LAW OFFICES OF DAVID R. REED
BY: DAVID R. REED
18 Advisory Counsel
3699 Wilshire Boulevard, Suite 850
19 Los Angeles, California 90010
2021 JEFFREY R. CUGNO, Special Agent, FBI
22
23
24
25

I N D E X

1					
2					Page
3	Opening Statement - Government.....				304
4	Opening Statement - Defense.....				313
5					
6	GOVERNMENT				
7	WITNESSES	DIRECT	CROSS	REDIRECT	RE CROSS
8	WIESELTIER, Bruce				
9	By Ms. Duarte	319		348	
10	By Mr. Sutcliffe		341		351
11	SALY, Richard				
12	By Ms. Duarte	356			
13	By Mr. Sutcliffe		371		
14	TROXELL, Janet				
15	By Ms. Duarte	396			
16	By Mr. Sutcliffe		402		
17	HARRILL, Frank				
18	By Ms. Duarte	407			
19					
20	GOVERNMENT'S EXHIBITS		FOR IDENTIFICATION		RECEIVED
21	1-5				331
22	9				422
23	10				424
24	64				428
25	19-20				431
26	DEFENDANT'S EXHIBITS		FOR IDENTIFICATION		RECEIVED
27	200				389

1 LOS ANGELES, CALIFORNIA;

2 THURSDAY, NOVEMBER 13, 2003; 8:09 A.M.

3 THE COURT: Good morning and welcome.

4 Counsel and Mr. Sutcliffe, announce your appearances,
5 please.

6 MS. DUARTE: Good morning, Your Honor.

7 Elena Duarte for the United States, with Special
8 Agent Jeffrey Cugno.

9 THE COURT: Good morning.

10 MR. SUTCLIFFE: Good morning, Your Honor.

11 Steven William Sutcliffe, defendant, present.

12 THE COURT: I want to deal with this last-minute
13 issue that developed yesterday morning about subpoenas. I
14 think I know the appropriate way to handle it. I have looked
15 those over.

16 Mr. Gonzalez is here; is that your name?

17 MR. CRUZ: Armando Cruz, sir.

18 THE COURT: Forgive me. Where is Mr. Reed?

19 MR. CRUZ: He just stepped out.

20 THE COURT: Could you go get him, please.

21 I have sorted these into various categories. There
22 are a few that are directed to federal agencies: One to the
23 FBI field office, one to Special Agent James Laverick, one to
24 someone named Sue Hermitage at the Social Security
25 Administration, one to Debra Yang, the U.S. Attorney.

1 I'm going to exercise my inherent authority to hand
2 them to the prosecutor and deem them to be served. You can
3 respond accordingly. If you choose to move to quash any of
4 these subpoenas, you can do it orally. Look at those during
5 the break. Okay?

6 MS. DUARTE: Thank you.

7 THE COURT: The other ones I want to deal with with
8 Mr. Sutcliffe, so I would ask that the representatives of the
9 prosecution or anybody not affiliated with the defense team or
10 Mr. Reed or the investigator leave the room. Those people who
11 are here to install or adapt or repair the equipment necessary
12 for the presentation of evidence, like James is, can remain and
13 can do their work.

14 MS. DUARTE: Your Honor, do you know how long of a
15 break? Should we wait outside?

16 THE COURT: Wait outside. I want this jury in the
17 box at 8:30.

18 MS. DUARTE: All right.

19 THE COURT: But before the jury is brought out, there
20 is one other thing that I'll be dealing with.

21 Mr. Sutcliffe, whether you understand it or not,
22 there are a lot of elements that you have to satisfy, and I'm
23 going to give you an opportunity, quickly, to try to do so,
24 orally, to require that these subpoenas be served.

25 I think I should start by saying that if it was your

1 understanding that the only appropriate person and only
2 authorized person and the only acceptable person to serve them
3 was the U.S. Marshal, that was a fundamentally erroneous
4 conclusion.

5 I never said that you were unauthorized to require
6 that the investigator, Mr. Cruz, that Mr. Reed offered to make
7 available to you, would not be appropriate or could not
8 effectively serve these subpoenas. You choose not to allow him
9 to do so.

10 I authorized you, because it was your right as an
11 indigent defendant, to have the marshal do it, but I didn't
12 limit service to just the marshal. And you were aware that,
13 under the Criminal Justice Act, your rights to have process
14 served could be effectuated through appointed investigators and
15 counsel.

16 Now, you have to establish relevancy. You have to
17 establish admissibility. You have to establish specificity.
18 You have to demonstrate -- and I don't think you can as to
19 some, such as the one to your lawyer, who has been present on
20 many occasions, Mr. McAfee, I think his name is -- that the
21 materials are not available from any other source or could not
22 be produced voluntarily.

23 The opportunity and right of a party that may be
24 subpoenaed to establish absence of relevance, privacy rights,
25 confidentiality rights, absence of specificity, failure to

1 comply with Rule 803(a), has long been recognized in Ninth
2 Circuit and other cases: The Eaton case and Reed case and Maki
3 case. I'm not going to go through all the citations.

4 What I have done is grouped these subpoenas, all of
5 which -- those that have a date that you wrote in, you wrote
6 the date in as October 20th. You have been in the presence of
7 the marshal since then more than once. And according to the
8 information -- and I want it to be filed under seal -- that was
9 handed to me yesterday -- let me give the document to the clerk
10 for filing.

11 It's the document that consists of Mr. Reed's
12 October 8th letter to you and an investigation report referring
13 to events on October 14th. I'm not sure that report has a date
14 on it. It was prepared by Mr. Cruz. And a concluding
15 page relating to an event on October 22nd.

16 Those should be filed, but filed under seal. And I'm
17 handing them to the clerk so that later today she can arrange
18 for that.

19 Now, there seems to be something like five or six
20 subpoenas directed to law enforcement agencies. One is
21 directed to someone named Victor J. Pietrantonio of the L.A.P.D.
22 It appears to seek documents relating to "killercop.com", all
23 documents related to you that this individual worked on, and
24 the names of persons that he had spoken with about those two
25 categories. No date is affixed to that subpoena.

1 Who is this man and what is the relevance of this
2 information?

3 MR. SUTCLIFFE: This man is a member of the L.A.P.D.
4 who, it has been brought to my attention, served a subpoena --
5 a search warrant, excuse me, swore out a search warrant in the
6 summer of 2001. It was allegedly --

7 THE COURT: You can come in, Mr. Settle, if you are
8 here to make sure that the repairs to the audio equipment are
9 implemented in time for the jury to resume at 8:30.

10 Anything you hear that I discuss in the course of
11 this proceeding, you and -- I can't remember your last name,
12 James --

13 MR. AVERY: Avery.

14 THE COURT: -- Mr. Avery are required not to disclose
15 to anybody else. Do you understand that?

16 MR. AVERY: Yes, sir.

17 MR. CRUZ: Yes, Your Honor.

18 THE COURT: Go ahead, Mr. Sutcliffe.

19 MR. SUTCLIFFE: Thank you, Your Honor.

20 It's my understanding that this gentleman was working
21 with two of the detectives who are to be called as government
22 witnesses, and he swore out an affidavit, under penalty of
23 perjury, for a search warrant of my e-mail address, phone
24 records, and sought to search and seize my computer at my home.

25 THE COURT: In what way does this witness qualify as

1 someone who, under the local rules and under the existing case
2 law, is necessary to the adequacy of your defense?

3 MR. SUTCLIFFE: He goes to credibility of the two
4 witnesses who are coming in to testify for the government, the
5 two detectives from the L.A.P.D. I believe it's Mr. Katz and
6 Mr. Willis. Both Mr. Katz's and Mr. Willis's names are within
7 that same search warrant and document report, which is filed in
8 support of that search warrant. Therefore, it goes to
9 credibility of those officers. And this witness is needed for
10 impeachment purposes. It's necessary.

11 THE COURT: Okay. Well, I'll reserve a ruling on
12 him. I'm going to say that if the subpoena is authorized to
13 Pietrantonio, categories 2 and 3, which are totally lacking in
14 specificity, totally lacking in relevance, and obvious efforts
15 to engage in a fishing expedition, will be deleted; but you may
16 have a right to have this subpoena served as to category 1,
17 which reads, "All tangible documents, software files, notes,
18 reports, related to 'www.killercop.com'; you worked with, in or
19 on or assisted."

20 "killercop.com" will have very limited application in
21 this case. But I have issued a motion in limine. And I do
22 anticipate there will be some evidence.

23 The next subpoena is to Robert Campbell. It has four
24 categories, which the first two refer to file numbers, one
25 refers to a CII number, and another refers to "any and all

1 documents related to Tracy Fraser."

2 Why is Campbell essential to your defense? What's
3 the relevance that he has?

4 MR. SUTCLIFFE: Officer Campbell goes to show the
5 conduct -- excuse me. Let me find my file here, Your Honor.

6 Officer Campbell is needed to help me impeach one of
7 the government's witnesses under Rule 609, as well as goes to
8 Rule 608, evidence of character and conduct of that witness.
9 Tracy Fraser, she goes under the name of Tracy Hall.

10 She's accused me of directly threatening her. Her
11 credibility is paramount to impeach my defense. This man had
12 direct contact with this witness. He was the one that arrested
13 this witness. He has written in his reports that this witness
14 has threatened him.

15 He, above all people, will be able to show that the
16 credibility of this witness is that she's a liar, that she's
17 been convicted of perjury. She's been convicted of document
18 tampering. She's currently been arrested for witness
19 intimidation. She has an alcohol problem. She's known to
20 become agitated very quickly and start threatening even law
21 enforcement officers over the phone.

22 THE COURT: Okay. I think I have heard your basis as
23 to Mr. Campbell. I'm not going to authorize the service by
24 Mr. Cruz. And it will be Mr. Cruz who will have the duty to
25 serve those subpoenas I authorize, not the marshals.

1 I'm not going to authorize it for Campbell. I have
2 issued rulings about the scope of examination relating to Tracy
3 Hall or Tracy Hall-Fraser, much of what you said -- almost all
4 of what you said would be absolutely inadmissible and beyond
5 the scope of proper examination and/or it would be totally
6 collateral. And I would never permit it. It's not even close
7 to being admissible. The Campbell subpoena will not be issued.

8 The next one on a law enforcement agency is Adrian
9 Soler, S-o-l-e-r. He's an officer of the L.A.P.D. And the
10 category of documents that would be subject to the command of
11 the subpoena are all notes, documents, files, software,
12 affidavits, and all other tangible things related to either
13 Sutcliffe or "killercop.com" -- I'm paraphrasing a little
14 bit -- which are known -- there is a typo -- or could
15 reasonably be known to him or anyone in the department.

16 What's his -- what's the basis for establishing that
17 that information is necessary to the adequacy of your defense?

18 MR. SUTCLIFFE: Your Honor, before we go that far
19 ahead -- I waited until you finished; I didn't want to
20 interrupt you -- I want the record to reflect that I object to
21 your ruling on the previous officer, and I also want the Court
22 to note that I object to the ruling that I'm not allowed to
23 impeach this witness for dishonesty and false statements.

24 And the law is clearly stated that -- and I will cite
25 U.S. v. Brashier, B-r-a-s-h-i-e-r. That's at 548 F.2d 1315

1 (9th Cir.), where the Court stated, under subdivision (a)(2),
2 that the judge has no discretion to exclude even where the
3 similarity of the prior might make admissibility unduly
4 prejudicial.

5 THE COURT: Now, don't -- you have cited the case.
6 Let me explain something to you, Mr. Sutcliffe, because it will
7 help us all and especially be essential to enable us to all
8 collectively deliver on our promise to the jury about the
9 duration of this case.

10 Anytime you seek something I deny or anytime that I
11 order something that you have opposed or anytime I overrule an
12 objection, your objection is always in the record. It would be
13 there even if I don't say what I'm about to say now, but I'll
14 say it to you, and it will be true, without exception, for the
15 remainder of this trial. You will be deemed to have objected
16 and not to have waived your objection to rulings I make about
17 you.

18 You have to object to something unless I establish,
19 as I often do with lawyers, an objection to similar type of
20 evidence.

21 Let's say I make a ruling on the adequacy of
22 authenticating certificates, and then there are going to be 15
23 documents like that. You would object the first time it came
24 in. I anticipate you probably will. If I think your objection
25 is valid, I'll sustain it. If I think it's overruled, I'll

1 THE COURT: Go ahead, please, with Mr. Soler.

2 MR. SUTCLIFFE: Thank you, Your Honor.

3 Mr. Soler of the L.A.P.D. was present at a meeting
4 with FBI Agents Harrill and Cugno and Detective Katz of the
5 L.A.P.D. on March 11th where "killercop.com" was first
6 introduced, allegedly, to the FBI agents in the form of a
7 CD-ROM and testimony and documents.

8 And I need him for impeachment purposes of the other
9 agent and of the two FBI agents who were present as to what was
10 said in that meeting.

11 THE COURT: What makes you think that there will be
12 inquiry that will be permitted either from the prosecutor or
13 from you as to what was said in that meeting? In other words,
14 why is it relevant?

15 MR. SUTCLIFFE: It's relevant in that the defense
16 believes at this point that there has been a conspiracy going
17 on between several of the members of the L.A.P.D. and maybe one
18 or more agents of the FBI to permanently censor
19 "killercop.com's" author, which is the defendant here, because
20 there has been a concentrated effort to do that for the last
21 five years; however, no charges have ever been filed.

22 So it's the position of the defense at this point
23 that there is a conspiracy to lock up and throw away the key on
24 this guy who they could not get legally, so they figured
25 they'll do it illegally. And there has been a conspiracy. And

1 it's needed for impeachment.

2 THE COURT: Thank you. I don't think that that
3 proffer establishes the sufficient requirements to authorize
4 issuance of that subpoena.

5 The next one is to -- it's not to an individual, but
6 to the records department at L.A.P.D. at Parker Center. The
7 first item sought is a certified copy of something called
8 DR0101 and a few other numbers, and also a certified copy of a
9 search warrant relating to "killercop.com" or any host business
10 of that website within the previous six years.

11 Please tell me what DR -- the file that is referred
12 to there as DR0101.

13 MR. SUTCLIFFE: Yes, Your Honor.

14 DR010122071 is a document that the defense needs
15 which goes to evidence -- evidentiary material which has been
16 introduced in the instant case, which is very relevant to the
17 testimony of the FBI agents and members of the L.A.P.D. who are
18 being brought in. I have no other way of procuring this
19 document.

20 THE COURT: Could you just tell me what's in the
21 document so I --

22 MR. SUTCLIFFE: I really can't, Your Honor. I don't
23 want to disclose the defense that I intend to use --

24 THE COURT: But I need to understand how it's
25 relevant to this case. I'm not saying I won't issue it. You

1 need to establish that you have, under these circumstances,
2 which I won't repeat, a right to have somebody serve the
3 subpoena seeking this document. If the document is about
4 the -- I'm not saying this is the case. But if the document is
5 about the rotation of the planets, then I wouldn't issue the
6 subpoena.

7 MR. SUTCLIFFE: I understand, Your Honor.

8 I assure the Court this is not a fishing expedition.
9 It is a document which goes to Mr. Victor Pietrantonio, the
10 gentleman we first discussed, number one. It relates directly
11 to him. It's his affidavit. It's his search warrant. It's
12 his reports that were filed by the witnesses Katz, Willis, who
13 are direct witnesses against the defense, brought in by the
14 government. It's all related to that.

15 THE COURT: That would be covered by category 1,
16 which I'm inclined -- of Pietrantonio's subpoena anyway. This
17 would be cumulative.

18 And the second category is clearly beyond the scope
19 of permissible, compulsory process in the context of this case.
20 Material going back six years relating to this peripheral issue
21 of "killercop.com" is not relevant and would not be admissible.

22 MR. SUTCLIFFE: May I be heard, Your Honor?

23 THE COURT: No. We can't do that.

24 MR. SUTCLIFFE: One second, please?

25 THE COURT: Let's talk about Rhonda Saunders, please.