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1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

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4 ~~HONORABLE~~ A. HOWARD MATZ, JUDGE PRESIDING

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**CERTIFIED
COPY**

6
7 UNITED STATES OF AMERICA,)

8 PLAINTIFF,)

9) CASE NO.

10 VS.

) CR 02-350(A)-AHM

11 STEVEN WILLIAM SUTCLIFFE,)

12 DEFENDANT.)

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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 LOS ANGELES, CALIFORNIA

18 TUESDAY, SEPTEMBER 2, 2003

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22 LAURA MILLER ELIAS, CSR 10019
23 UNITED STATES COURTHOUSE
24 312 NORTH SPRING STREET
25 ROOM 453
LOS ANGELES, CALIFORNIA 90012
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APPEARANCES OF COUNSEL

ON BEHALF OF THE PLAINTIFF:

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UNITED STATES ATTORNEY

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ON BEHALF OF THE DEFENDANT:
(STAND-BY COUNSEL)

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ALSO PRESENT:

DAVID REED, ESQ.

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1 LOS ANGELES, CALIFORNIA; TUESDAY, SEPT. 2, 2003; 3:20 P.M.

2 ---

3 THE CLERK: Calling Item No. 1. CR 02-350 (A)-AHM.

4 United States versus Steven William Sutcliffe.

5 Counsel, state your appearances.

6 MS. DUARTE: Good afternoon, Your Honor. Elena Duarte
7 for the government.

8 THE DEFENDANT: Good afternoon, Your Honor. Accused
9 only by special appearance. All rights reserved. Object to
10 this hearing in its entirety. Given no due process of this
11 hearing. Fundamental element of due process. I move this
12 hearing be adjourned and further notice be given to me.

13 I also notice that Mr. Michael Brennan is standing at
14 the podium. It appears he's about to speak. I have not
15 recognized anybody to speak for me. I also renew my original
16 demand that this Court proffer its jurisdiction and take
17 judicial notice of my judicial notice challenge and renew that
18 motion.

19 THE COURT: Mr. Sutcliffe, to make this easier to the
20 extent you have a right to be heard or choose to be heard, you
21 don't have to stand up and bend over to be heard through the
22 microphone. You're welcome to sit there and lean over and use
23 the microphone in the way it's now situated.

24 MR. BRENNAN: Michael Brennan stand-by counsel for
25 Mr. Sutcliffe.

1 THE COURT: Mr. Brennan, would you in the event
2 Mr. Sutcliffe has not received the ex parte application you
3 filed last week, please state clearly on the record what it is
4 that you requested from the Court.

5 MR. BRENNAN: Yes, Your Honor. Thank you. After the
6 last court hearing in this matter when the Court did appoint
7 me as stand-by counsel for Mr. Sutcliffe, I reviewed my
8 calendar again and realized that I was not fully explaining to
9 the Court my conflict problems with the September 30th trial
10 date. When I was initially contacted on this matter, I didn't
11 realize there was a speedy trial time problem with respect to
12 setting a new trial date.

13 Having realized my conflicts, I prepared an ex parte
14 application explaining those in detail to the Court including
15 the fact October 1, 2003 I'm scheduled to appear in another
16 two parole hearings at the California Institution for Women in
17 Corona, California. Two clients I have there have parole
18 hearings. Those hearings have been scheduled for some six
19 months now. It's not possible for me to reschedule those
20 hearings at any date that would be even marginally close to
21 the October 1 date.

22 I would have to ask my clients to waive their right to
23 their parole hearings and hope that I could get them
24 rescheduled. But realistically aware of the scheduling that's
25 done by the California Board of Prisons, they wouldn't be able

1 to reschedule for some six months or so at the earliest. I
2 think that would be a serious deprivation of their right to
3 have a regular parole hearing. These are women who are
4 serving life sentences and I have represented for a number of
5 years. That hearing, those two hearings on October 1
6 obviously directly conflicts with the September 30th trial
7 date that this Court set.

8 I also indicated in the application that due to the
9 administrative hearing that I'm involved in on October 7th
10 where I'm representing the University of Southern California,
11 I had planned to spend the better part of the prior week of
12 September 29th meeting with and preparing witnesses who are
13 going to have to testify at that hearing. And obviously that
14 would not be possible if I was involved as stand-by counsel on
15 trial starting September 30th.

16 Unfortunately, these are witnesses who I would not be
17 able to easily meet with in the evenings after this trial had
18 concluded. They are professors and administrative personnel
19 at the University. Hard for me to have them available to me
20 in the evenings to prepare for the hearing.

21 I also indicated to the Court that I'm also in the
22 process of preparing for trial in a multiple defendant case
23 scheduled to be heard starting October 21 in front of Judge
24 Tagasuki. That's also a trial that was scheduled some four
25 months ago. And by all indications, my client is certainly

1 going to proceed to trial. I can't answer for other
2 defendants in that case, but I think it will end up being a
3 case in which at least three or four defendants go to trial.

4 For those reasons and based upon the fact that I was
5 not able to fully explain these conflicts and problems to the
6 Court, I did file a written application asking the Court to
7 relieve me as stand-by counsel and requested that alternate
8 stand-by counsel be appointed.

9 THE COURT: You also represented that you had been in
10 contact with Mr. David Reed?

11 MR. BRENNAN: Yes.

12 THE COURT: State for the record now what you stated.

13 MR. BRENNAN: After the hearing was concluded and I
14 realized the conflict problems I had, I contacted Mr. Reed who
15 I have known professionally for some 20 years and inquired
16 about his possible availability to act as stand-by counsel. I
17 explained as best I know the circumstances surrounding
18 Mr. Sutcliffe's case. I explained the Court's statement
19 during the last hearing concerning the duties of stand-by
20 counsel. I explained the length of the trial as I understood
21 the projected length of the trial being at least a week,
22 possibly longer.

23 Mr. Reed indicated that he was available for a trial
24 beginning October -- September 30th. I'm sorry. And
25 continuing for at least a week or longer. And I explained to

1 him as I said that he would, if the Court appointed him, be
2 acting as stand-by counsel for Mr. Sutcliffe.

3 THE COURT: Okay. First, let me note that I note your
4 objections to the jurisdiction and all the other matters to
5 which you objected, Mr. Sutcliffe, and I deny those
6 objections.

7 Mr. Reed, would you step forward, please. And before
8 I speak to you and hear from you Mr. Reed, what is the
9 government's current estimate for the case-in-chief duration?

10 MS. DUARTE: Four to five court days, Your Honor at
11 the most. The problem is I can't predict cross-examination
12 with 25 witnesses.

13 THE COURT: 25 witnesses?

14 MS. DUARTE: Some are very short, Your Honor. The
15 defendant will not stipulate to anything. Some are quite
16 short.

17 THE COURT: Does that four or five day estimate
18 include the time incurred in picking a jury?

19 MS. DUARTE: Yes.

20 THE COURT: Well, I think it's not going to be less
21 than five days. It wouldn't surprise me if it's more than
22 five days. It's going to be somewhat of an unusual case given
23 Mr. Sutcliffe is proceeding in pro per as a result of my
24 decision to deem his prior conduct and course of conduct as a
25 waiver of his 6th Amendment right to appointed counsel.

1 Now, Mr. Reed, would you step forward, please.

2 MR. REED: Good afternoon, Your Honor.

3 THE COURT: Good afternoon. As I recall if the trial
4 does begin and I expect it to begin, I hope very much to plan
5 to have it begin on September 30th, the day of October 7th
6 you'll be unavailable; right?

7 MS. DUARTE: Actually, Your Honor, it's the 8th.

8 THE COURT: October 8.

9 MS. DUARTE: But Your Honor, I have cancelled my
10 engagement. I'll be thrilled if I picked it back up again,
11 but I don't need to do that if that doesn't work for the
12 Court's calendar.

13 THE COURT: There's no date in the course of the
14 ongoing trial that you'll be unavailable?

15 MS. DUARTE: That is correct.

16 THE COURT: Mr. Reed, are you for sure on a stand-by
17 basis, which I will reiterate, available to proceed as
18 stand-by counsel in the event Mr. Sutcliffe chooses to make
19 himself -- to make good use of your availability for purposes
20 of background guidance are you available for those dates?

21 MR. REED: Yes, I am, Your Honor.

22 THE COURT: Now, you understand as is inherent and
23 understood I think by everyone in the concept of stand-by
24 counsel that the role of stand-by counsel sometimes can result
25 in counsel becoming actual counsel by choice of the pro per

1 client or for other reasons. Are you prepared to proceed with
2 that understanding?

3 MR. REED: Well, that I'm not absolutely certain
4 about. If the case is not too complex, then I certainly can
5 be. There's one month to go before that date approximately
6 and I intend on studying the case, analyzing it. I would
7 like, of course, to speak with Mr. Sutcliffe.

8 THE COURT: And I was going to order that the marshals
9 make him available to meet with you today if that's something
10 that you could do and he chooses to do. Are you available
11 today here in the courthouse?

12 MR. REED: Yes, I am. Very much like to talk to him.

13 THE COURT: Mr. Brennan, did you get any parts of the
14 file thus far from Mr. Nicolaysen?

15 THE DEFENDANT: Neither have I, Your Honor. I have
16 received nothing even though I believe the Court ordered that
17 he was to provide it by Friday once again, which is par for
18 the course. He has ignored the Court's order.

19 THE COURT: Not sure what has happened, if anything.

20 MS. DUARTE: If I may, Your Honor?

21 THE COURT: Yes.

22 MS. DUARTE: I don't know the specifics. I did let
23 Mr. Nicolaysen know the matter was back on Tuesday just
24 because he called me about a different matter and we were
25 discussing it. He was aware that it was back on for possible

1 change of stand-by counsel. I don't know anything further
2 than that.

3 THE COURT: I am ordering the clerk, Mr. Montes at the
4 conclusion of this hearing to contact Mr. Nicolaysen and tell
5 him that Mr. Reed is being substituted in place of
6 Mr. Brennan. That's my decision. And that if he has not
7 already provided a copy of the file to the appropriate person,
8 I think he said it was going to the chief legal officer at
9 MDC, he is to do so immediately, possibly today, if not
10 tomorrow morning. And I don't want there to be any delay for
11 any reason whatsoever. Make sure that you communicate that to
12 him. So to start, Mr. Sutcliffe gets a copy.

13 Now, I'm going to ask the two of you, I assume you
14 know Mr. Nicolaysen and you can get his number from my clerk
15 or from Ms. Duarte. You can get on the phone with him in this
16 courtroom and place a conference call and make arrangements
17 for the material that was otherwise slated to go to you
18 instead to go to Mr. Reed. Okay?

19 Now, Mr. Reed, there is a lengthy history to this
20 case. Whether the case would be deemed by you or another
21 experienced lawyer, and I know how experienced you are. I
22 know you have been before me on many occasions and you have an
23 excellent representation. I can't really be the best judge of
24 that. Two crimes alleged, more than two counts, two different
25 crimes. I assumed you spoke about it a little bit with

1 Mr. Brennan?

2 MR. REED: A little bit.

3 THE COURT: 25 witnesses would suggest that it's a
4 complicated trial, but if it's correct that many of those
5 witnesses would otherwise have been avoided if the defendant
6 didn't exercise his right to refuse to stipulate and that is
7 his right and he's not to be faulted for it, it may not be
8 such a complicated case. But Mr. Sutcliffe is preceding in
9 pro per so whether that leaves you in a difficult position
10 remains to be seen in terms of trial preparation. But I want
11 it to be meaningful because I am absolutely intent on doing
12 what's feasible to assure a fair trial here and I'm sure you
13 understand that.

14 MR. REED: Yes, Your Honor.

15 THE COURT: Okay. Is there anything else that needs
16 to be addressed now?

17 THE DEFENDANT: Yes, Your Honor. First off, I'd like
18 the record to reflect I am not proceeding pro per. If
19 anything, I'll be proceeding sur juris on my own right not on
20 my own behalf. I object to any other counsel be foisted over
21 to me. I object to previous just removed counsel's
22 substituting a man on the spot as to be his replacement.

23 And I further object to this Court not setting up a
24 hearing forthwith to proffer its jurisdiction over the accused
25 on these specific charges being transmitted in interstate

1 commerce. I believe I have the right to challenge the
2 jurisdiction of those charges. It's not personal towards this
3 Court, but it's my understanding that a court which has lawful
4 jurisdiction is a competent court. One that lacks lawful
5 jurisdiction is an incompetent court.

6 I believe that this Court is proceeding as an
7 incompetent court if jurisdiction is proved over me. I have
8 asked for it time and time again. I want that right. And I
9 want notice any time I'm further brought into this courtroom.
10 I don't like being hailed into a court without any notice
11 about what's to take place. I wish this Court to protect that
12 right as well. Other than that, I proceed with all rights
13 reserved until jurisdiction is proved.

14 THE COURT: Would you like to meet with Mr. Reed?

15 THE DEFENDANT: As well as I do not recognize this
16 Court, I do not recognize --

17 THE COURT: So is it your choice not to have anything
18 in the nature of even a preliminary conversation with Mr. Reed
19 this afternoon?

20 THE DEFENDANT: I believe I stated my objection very
21 clearly.

22 THE COURT: Okay. Well, then I think we have reached
23 a point where we can adjourn this hearing. You may continue
24 to take custody of Mr. Sutcliffe. I'm addressing they appoint
25 representatives of the marshal's office and return him to MDC.