

1 it won't be obvious that he's in custody.

2 THE COURT: Okay. Thank you.

3 But I do reiterate the instructions that we discussed  
4 last week about Mr. Sutcliffe having the duty to remain at and  
5 behind counsel table.

6 Now, Mr. Sutcliffe, you rose a few minutes ago. I  
7 said I would turn to whatever you wanted to say later. What  
8 would you like to say?

9 MR. SUTCLIFFE: Well, as I reiterated before, Your  
10 Honor, when I try to make a timely objection, you don't hear me  
11 out, and I tend to forget what my original objection was about.  
12 I really don't appreciate the Court not extending me the same  
13 courtesy as is extended to the prosecution.

14 And on that note, I would like to lodge several  
15 objections at this point regarding issues that were brought up  
16 during the November 7th hearing. And I'll call the Court's  
17 attention to the document, which was provided to me, which is  
18 called -- the title of it says "Statement of the Case." And  
19 there was also a limited instruction regarding "killercop.com".

20 I noticed, when I got back to my prison cell, that  
21 there were two additional papers attached within but I don't  
22 believe we touched upon. One of them was called "Limiting  
23 Instructions Regarding Weapons," and the other one was  
24 "Statement Regarding Pro Per Logistics."

25 I would like to lodge my objection at this time to

1 the limiting instruction regarding "killercop.com".

2 I point to, specifically, the last paragraph  
3 following the semicolon, which says, "Intended to threaten  
4 anyone through the material available on the "evilgx.com"  
5 website; and planned or prepared to communicate such threats."

6 I would object. The content of "killercop.com", as  
7 related to any inference of intent to threaten on "evilgx.com",  
8 is improper, it's highly suggestive, and it's a prejudicial  
9 statement to make to a jury in advance of any evidence but for  
10 the fact that the defendant is alleged to have created both at  
11 different times.

12 The "killercop.com" website has no relationship to  
13 the charges being brought against the defendant, and this is  
14 just -- this is only to suggest that past conduct proves  
15 present conduct and intent.

16 And I would submit, as proof of that, two letters  
17 from the AUSA that were sent: One is dated August 19th,  
18 addressed to Hilary Potashner, Deputy Federal Public Defender;  
19 and the other one is dated September 14th, addressed to Marilyn  
20 Bednarski, Deputy Federal Public Defender. And they are almost  
21 identical. And on page 2 -- in fact, they are identical.

22 On page 2, at the top of the paragraph, the last  
23 sentence says, "Evidence of your client's involvement with the  
24 website "killercop.com" is evidence of knowledge, intent,  
25 identity, and preparation in the instant case."

1           So it's obvious that the government is bringing in  
2 instructions on "killercop.com" specifically for that purpose.  
3 I would object to it strenuously.

4           THE COURT: Okay. The objection is noted and  
5 overruled.

6           MR. SUTCLIFFE: Thank you, Your Honor.

7           THE COURT: The full limiting instruction makes it  
8 explicitly clear that the jury may not consider any evidence  
9 related to "killercop.com" as evidence of any propensity on the  
10 part of Mr. Sutcliffe to commit any crime.

11           There are other provisions in the limiting  
12 instruction that address Mr. Sutcliffe's concern. We've been  
13 through this before. We don't have to go through it again.

14           At the appropriate time, if there is a proffer or  
15 reference to "killercop.com", I'm going to give that limiting  
16 instruction. The same is true on the weapons.

17           What is your next point, Mr. Sutcliffe?

18           MR. SUTCLIFFE: I know you've already ruled regarding  
19 the weapons, but for the record, I would like to object that  
20 the introduction of any evidence that the defendant had  
21 possession of any weapon or ammunition, for any purposes of  
22 proffer, are, again, highly prejudicial. Whether the defendant  
23 had the ability to act on any threat is not an element of any  
24 crime which the defendant is charged.

25           Possession of any weapon and ammunition is not

1 police -- L.A.P.D. through "killercop.com" involved. He has  
2 two direct or indirect communications. His wife is an  
3 attorney. His nephew is in the L.A.P.D.

4 THE COURT: No. His wife has a cousin who is an  
5 attorney.

6 MR. SUTCLIFFE: Okay. I wrote it down wrong, then.

7 THE COURT: Any other basis so far?

8 MR. SUTCLIFFE: No. Those are the two things.

9 THE COURT: That doesn't constitute a sufficient  
10 basis to excuse Mr. Alviso for cause. If he discloses  
11 additional information, when we get to round 3, you'll have the  
12 opportunity to renew your motion as to him.

13 MR. SUTCLIFFE: Thank you, Your Honor.

14 THE COURT: Let's move on to the next one, please.

15 MR. SUTCLIFFE: Juror No. 3, Fandino. He has  
16 extensive law enforcement in his background, a detective in the  
17 L.A.P.D. As you know, some of the government's primary  
18 witnesses are detectives from the L.A.P.D., Detective Katz and  
19 I know there is another detective involved.

20 THE COURT: Steven Katz is with the L.A.P.D.?

21 MS. DUARTE: He is. Steven Katz and Terry Willis.  
22 They are not primary witnesses, Your Honor. They are extremely  
23 brief and --

24 THE COURT: That doesn't matter.

25 MS. DUARTE: And one of them -- he is right. One of

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 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 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 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.

1 including the FBI. They all had a meeting. This is necessary  
2 and relevant to the defense in that it shows that there has  
3 been a concentrated effort by the federal, by the state, by the  
4 district, by the county, by the city, and every other attorney  
5 within -- known to the American justice system to bring  
6 Mr. Sutcliffe, the defendant, to jail for "killercop.com".

7           It is the position of the defense that when they  
8 could not do it legally, they've bent the law now, with these  
9 very brilliant minds, to come up with a way to arrest him for  
10 the very behavior that they were aware of was being done to the  
11 defense.

12           They have all admitted that they have --

13           THE COURT: The behavior that was done to whom?

14           MR. SUTCLIFFE: To these alleged victims.

15           They all will testify -- all right. I believe the  
16 defense can show that they all will admit that they've viewed  
17 this "killercop.com" website. All these government agencies  
18 had meetings or more, one or more meetings.

19           They've seen the very same crimes that the defense is  
20 here accused of, but not one ounce of equal justice, due  
21 process, that has been afforded to these alleged victims in  
22 this case was ever extended to Mr. Sutcliffe.

23           In fact, what they did was they conspired. They got  
24 real creative to issue search warrants, looking for some way to  
25 make a crime to silence Mr. Sutcliffe's speech.

1 THE COURT: Okay. If all of that happened,  
2 Mr. Sutcliffe, it might give you a basis to bring an action  
3 under the Civil Rights Act, under 42 U.S.C., Section 1983. It  
4 would not be a defense to this case.

5 This case is really not about "killercop.com" and  
6 it's not going to become one, even though I understand you have  
7 a sincere belief that that's what it's about, and that because  
8 I permitted -- or intend to permit limited evidence that will  
9 be carefully tailored and that will have that limiting  
10 instruction I have already ordered, you think it's really about  
11 what that website is about.

12 Fundamentally, I think that is a mistake, a  
13 miscalculation in terms of what this case is about.

14 And for those reasons, I think that this information  
15 fails to qualify for the issuance of a subpoena, so I'm going  
16 to deny that one.

17 Sandra Bettencourt is an L.A.P.D. detective. She's  
18 the next individual specified on one of these subpoenas. And I  
19 take it that -- and it seeks all documents regarding  
20 Mr. Sutcliffe, the names and contact information of any agency  
21 Bettencourt ever had contact with and any software regarding  
22 "killercop.com".

23 I take it that your view about Bettencourt is that  
24 she falls in the same basic need that you've pointed to for  
25 people such as Soler and the records department and categories

1 view that you need some information about whatever your theory  
2 is about the limited relevance of "killercop.com", I will  
3 authorize the subpoena on Pietrantonio, and I'm going to cross  
4 out -- maybe I won't.

5 I'm going to cross out, by putting an "X" on 2 and 3  
6 and my initials next to it, those two categories, which are way  
7 beyond the scope of anything that the Rule 17(c) subpoena would  
8 permit.

9 Now, I think that some of the other subpoenas for  
10 local witnesses probably should be served, and let's turn to  
11 those in just a minute.

12 MR. SUTCLIFFE: Just for my records, Your Honor, what  
13 was 2 and 3 again?

14 THE COURT: Categories 2 and 3 of the subpoena of  
15 Pietrantonio. All tangible documents he's ever worked with, on,  
16 or assisted concerning you, the names of all persons he spoke  
17 with, for all the reasons I've tried to establish several times  
18 this morning, those would not be within the scope of a proper  
19 subpoena.

20 Now, Christensen, Miller is a law firm. I know that.  
21 And that seeks e-mails related to "evilgx.com", which is  
22 relevant in this case, and certain specified people. I don't  
23 know exactly who they are. I am going to authorize that one to  
24 be served.

25 I don't have a basis to know precisely how some of

1 these things relate to the case. There are four categories,  
2 and they are at least specified in stark contrast to the others  
3 I've been reviewing, specific e-mails with specific Websites  
4 and references to specific subjects. And I think that one  
5 should be served and it will be.

6 Then you have a subpoena to Ben Mascardo.

7 MR. SUTCLIFFE: Yes, Your Honor.

8 THE COURT: It doesn't call for documents.

9 Do you intend to introduce Mr. Mascardo as a witness  
10 in your case-in-chief?

11 MR. SUTCLIFFE: Yes, I do, Your Honor.

12 THE COURT: And about what subject, generally  
13 speaking?

14 MR. SUTCLIFFE: Well, he has direct evidence of --  
15 knowledge of "killercop.com". He's actually seen, viewed, even  
16 assisted in the creation of that website, as well as other  
17 employees within Global Crossing.

18 THE COURT: Other employees where?

19 MR. SUTCLIFFE: Within Global Crossing.

20 Global Crossing, I believe, is going to try to  
21 impeach the defense by saying that they were -- some of the  
22 witnesses that are testifying against the defense were  
23 frightened out of their lives when they heard "killercop.com".  
24 But it's an unfounded fear and he has direct knowledge of that.

25 Further, Mr. Mascardo was an employee who worked side

1 Global Crossing, but I'll give that one to Mr. Cruz.

2 Leslie McAfee is the next person. He's your lawyer.  
3 I think this is a very peculiar move on your part,  
4 Mr. Sutcliffe. That you fill out a subpoena on October 20th,  
5 you've seen Mr. McAfee since then, he's come to court on at  
6 least two occasions since then, and he's confirmed that he is  
7 your lawyer. And you are asking for a box and a receipt that  
8 you provided to him for safekeeping and documents relating to  
9 the ISP host of "killercop.com", documentation related to any  
10 City Attorney of Los Angeles or State Attorney General of  
11 California.

12 This is stuff that's totally beyond the scope of a  
13 17(c) subpoena, so I'm not going to issue that one.

14 MR. SUTCLIFFE: Is that for the documents or for him?  
15 He's a necessary witness for my defense, Your Honor. My  
16 case-in-chief relies upon legal counsel of which I relied upon  
17 in creating both the Websites in question. It was Mr. McAfee's  
18 legal advice that I sought --

19 THE COURT: Are you representing that he's not going  
20 to come if he's not subpoenaed?

21 MR. SUTCLIFFE: I have spoken with Mr. McAfee on the  
22 phone. Mr. McAfee has requested, if the Court would grant it,  
23 he would be available to be here within one hour's notice.  
24 He's directed, if the Court wishes, I can provide the Court  
25 with his cell phone and his home phone and his office phone.

1 it over the weekend.

2 THE COURT: Let's hear from you first, please.

3 MS. DUARTE: As to the first, Your Honor, a subpoena  
4 for Debra Yang. I don't think that the subpoena has a good  
5 faith basis.

6 Ms. Yang, as far as I know, as far as anyone working  
7 on the case is aware, has no knowledge of the case, would  
8 contribute nothing for either side by testifying. The only  
9 vague relationship that Mr. Sutcliffe himself has hinted that  
10 Ms. Yang may have had with the case is apparently he feels that  
11 at some point she was a judge that heard a matter in the  
12 "killercop" litigation back in the '90s, and that would have  
13 had nothing to do with the instant matter and would not be  
14 relevant.

15 THE COURT: Let's do these one by one.

16 What's your response, Mr. Sutcliffe?

17 MR. SUTCLIFFE: Thank you, Your Honor.

18 My response is that the government is confused.

19 There was no "killercop.com" litigation.

20 THE COURT: What is the basis for attempting to  
21 effectuate summons and subpoena on Ms. Yang?

22 MR. SUTCLIFFE: The basis of that, Your Honor, is it  
23 goes to show motive to prosecute the accused on the -- the  
24 bogus charges have no basis at all in reality, based on the  
25 fact that the U.S. Attorney, who is now prosecuting me, was

1 directly attacked, verbally, for five years, on the Internet  
2 upon a website which received over 2 million hits a month and  
3 was internationally known. She was disparaged. She was  
4 accused of covering up for the prosecutor. She was accused of  
5 assisting the prosecutor in the theft of a tape that contained  
6 evidence of two officers of the LAPD who were trying to cover  
7 up for each other for their crimes. She was disparaged for  
8 letting the prosecutor off for stealing the tape, which the  
9 prosecutor admitted he had no authority to take the tape.

10 THE COURT: This is a different website than any  
11 website involved in this case?

12 MR. SUTCLIFFE: Yes, Your Honor.

13 THE COURT: And the officers are not involved in this  
14 case either; correct?

15 MR. SUTCLIFFE: They are involved in the case. Yes,  
16 they are.

17 THE COURT: Which officers?

18 MR. SUTCLIFFE: Officer Willis and Officer Katz.  
19 They've been directly involved in the investigation of

20 "killercop.com" since its inception. They have --

21 THE COURT: I think I have heard enough.

22 I grant the government's motion to quash the subpoena  
23 on Ms. Yang. Her personal motive, even if it falls into the  
24 classification of motives that you ascribe to her,  
25 Mr. Sutcliffe, is irrelevant to the propriety and adequacy of

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 expect them to go fairly quickly on Monday, and possibly a  
2 couple on Tuesday.

3 Ms. Fuller is the FBI agent from New Hampshire who  
4 seized certain items. She'll be out Monday. Mr. Willis is our  
5 witness from L.A.P.D. on "killercop".

6 And then the three witnesses following -- Mr. Durie,  
7 Medeiros, and Schmidt -- are FBI special agents that copied the  
8 electronic evidence. They didn't do any analysis. I expect  
9 them to go quickly.

10 And Mr. Siebert is the final witness, No. 2 on  
11 page 3. He is the government's expert who will testify to the  
12 contents of Mr. Sutcliffe's computer. And I inadvertently had  
13 excluded Mr. Chavarri, No. 4. He is just another custodian.  
14 He's expected to come out and testify fairly briefly on Monday.

15 THE COURT: Okay. Thank you very much.

16 Everyone should have a good weekend.

17 Mr. Sutcliffe, if you -- I detected zero difficulty  
18 in your ability to cross-examine the witnesses. That's a  
19 reflection of your hard work. But if you really think that you  
20 want to look over the material in the boxes that were brought  
21 here at your request, that is, the material that was with you  
22 at the prison, I'll give you that opportunity this afternoon.

23 You know who the witnesses are. You know, more or  
24 less, who is going to be testifying in what sequence.

25 I need to give to the marshals whatever discretion

1 MS. DUARTE: And second, Special Agent Cugno, as I  
2 know we've discussed previously, is expected to leave town  
3 after Wednesday's court date, assuming he's finished with his  
4 testimony, both on -- obviously, on cross as well. And I  
5 wanted to ask leave of the Court to substitute in Special Agent  
6 Harrill as case agent at that time.

7 THE COURT: That's fine.

8 MS. DUARTE: Okay. And last, Your Honor, I wanted to  
9 let the Court know, as well as the defendant, that at least as  
10 of this morning, upon review of the case, I have made a  
11 decision, which I expect will continue through the close of the  
12 government's evidence, which is, not to elicit testimony  
13 regarding "killercop.com" during the case-in-chief.

14 Now, this may come up on defense's case. Obviously,  
15 if he brings it up, I would ask to reserve the right to get  
16 into it then, as well as rebuttal. But as of right now, I  
17 don't anticipate calling the witness from the L.A.P.D regarding  
18 that particular evidence.

19 I wanted to let the Court and defendant know, in the  
20 event that for some reason defendant was counting on that  
21 witness to testify, he would be aware that the witness is  
22 probably not going to.

23 THE COURT: Who is that witness?

24 MS. DUARTE: That would be Detective Terry Willis.

25 THE COURT: All right.

1 conduct, although not your lips and your words, clearly and  
2 persistently reflected a refusal to be represented by counsel.  
3 And that's why I made the ruling that I did.

4 So the choice for you to be laboring under the  
5 handicaps that you've been describing was your choice. And  
6 after six lawyers, the record is very clear that you are  
7 required to live with that choice.

8 Now, we don't have to explore any further what may be  
9 your subjective beliefs and attempts. I'll accept you at your  
10 word that you don't feel, inside your mind or in your heart, a  
11 desire to display contempt. I have just told you why it  
12 nevertheless can be and would be. And once I make the finding,  
13 it will be contempt for somebody to disregard rulings that are  
14 clear.

15 There may be a lot about what goes on in this trial  
16 that you, as a layman, are unfamiliar with, do not understand,  
17 and have no experience in addressing. That's true. It's not  
18 even a hypothetical possibility.

19 But you understand, when I say "move on; objection  
20 sustained, irrelevant," you know what I'm talking about.

21 Now, we will resume this trial at 8:30 on Monday  
22 morning, but we'll have to be available at 8:00. If you need  
23 to stay in the courtroom to be able to take some documents with  
24 you back to the MDC, as I think you did yesterday, you are  
25 welcome to do it this afternoon, but I have to be out of here

1 at 3:00.

2 MR. SUTCLIFFE: Your Honor, with all due respect, may  
3 I finish what I -- where you interrupted me?

4 THE COURT: Very efficiently, you may.

5 MR. SUTCLIFFE: Thank you, Your Honor.

6 A subpoena was issued to the FBI office on Wilshire  
7 Boulevard in Los Angeles. The Court spoke to the government,  
8 and the government represented that somebody within the FBI  
9 office had only seen one little script, from years ago, related  
10 to "killercop.com".

11 I believe the Court's order was, you wanted some kind  
12 of certification --

13 MS. DUARTE: I can speak to that, Your Honor.

14 MR. SUTCLIFFE: -- of this statement, correct me if  
15 I'm wrong. And it was thereafter that all of a sudden, "Okay,  
16 'killercop.com' is no longer an issue, but we never got a  
17 certification," and I believe that "killercop.com" is very  
18 relevant to this case.

19 THE COURT: If you make it relevant, you are opening  
20 the door to a whole lot of inquiry.

21 I'll permit you to make it relevant. What's your  
22 response?

23 MR. SUTCLIFFE: Your Honor, with all due respect --

24 THE COURT: Mr. Sutcliffe, I'm speaking to the  
25 prosecutor at the moment.

1 MS. DUARTE: Regarding the declaration that I believe  
2 Mr. Sutcliffe is referencing, I do have that prepared for the  
3 Court. I brought it in this morning. However, your clerk, I  
4 think, quite correctly, requested that I caption it slightly  
5 differently for filing, so I will have that for the Court as  
6 soon as possible.

7 THE COURT: Did you bring in a copy for  
8 Mr. Sutcliffe?

9 MS. DUARTE: I did.

10 THE COURT: You can give him the copy so he can be at  
11 least aware over the weekend of whatever it is you are going to  
12 file on Monday.

13 MS. DUARTE: It's an unfiled copy, but I'll give it  
14 to him.

15 THE COURT: Okay.

16 MS. DUARTE: Nothing else, Your Honor.

17 THE COURT: Okay. All right.

18 I think that addresses everything, including what I  
19 think is a nonissue concerning "killercop.com".

20 See you all on Monday.

21 MR. SUTCLIFFE: Thank you, Your Honor.

22 (Adjourned at 1:38 p.m., to be resumed on Monday,  
23 November, 24, 2003, at 8:00 a.m.)

24

25

1 MR. SUTCLIFFE: Okay. Also, I would like the Court  
2 to request the government -- tell the government to explain to  
3 this Court why is it that the government represented, when a  
4 subpoena was issued by the defense to the FBI office on  
5 Wilshire, that, correct me if I'm wrong, she represented that  
6 somebody within the FBI office on Wilshire had said there was  
7 nothing there, insignificant little tiny pieces of code, little  
8 tiny -- fingers together like this, little tiny pieces of code.  
9 And then the next day was, "Oh, well, never mind. We are not  
10 going to use 'killercop.com'" --

11 THE COURT: We've been through this, too. I'm sorry  
12 to interrupt, Mr. Sutcliffe. I don't have unlimited time to  
13 keep going back over ground that's been carefully trod.

14 On November 20th, the government filed a declaration  
15 of Kenneth McGuire. Did you get a copy of it?

16 Did you serve a copy on Mr. Sutcliffe?

17 MS. DUARTE: Yes, Your Honor.

18 MR. SUTCLIFFE: The way -- I didn't catch that.  
19 McGuire? That was on the following day, before we broke for  
20 court last week -- correct? -- the two reports? The small  
21 piece of code has now turned into two reports.

22 THE COURT: Okay. Mr. Sutcliffe, Mr. McGuire's  
23 declaration speaks for itself. There is no issue about the  
24 investigations about "killercop.com".

25 The government complied with my order and my order

1 anticipated getting a proffer from Mr. Sutcliffe as to what he  
2 expects the witness to testify to, preferably out of the  
3 witness's presence. However, I can --

4 THE COURT: Let's try it that way. I have very  
5 limited time. I have another matter at 4:30. I have a very  
6 overworked and valiant court reporter.

7 Step out of the courtroom, Mr. McAfee.

8 (Mr. McAfee left the courtroom.)

9 THE COURT: In essence, Mr. Sutcliffe, give me a  
10 proffer as to what advice you anticipate, in good faith, having  
11 this witness confirm he gave you relating to the specific  
12 communications that have been the subject of either the  
13 indictment, the four specific threats in the indictment, or the  
14 inquiry that the government made of the witnesses about other  
15 contents on these websites.

16 MR. SUTCLIFFE: Well, Your Honor, the defense seeks  
17 to have Mr. McAfee qualified as a Rule 703 expert, as an  
18 attorney who has expertise in constitutional and federal  
19 criminal law and, as the defense intends to show, relies on his  
20 expertise regarding the creation of the website, as well as, if  
21 the government wants to go there, the previous website that he  
22 was retained to give counsel on.

23 THE COURT: That being "killercop.com"?

24 MR. SUTCLIFFE: That's right.

25 THE COURT: Don't harken again to that because the

1 THE COURT: You anticipate that you are going to ask  
2 questions, and he's going to say, "Before Mr. Sutcliffe placed  
3 on a website the language, 'I will personally send you back to  
4 the hell from where you came,' I told him it would be lawful to  
5 do so"?

6 MR. SUTCLIFFE: I believe so, Your Honor.

7 THE COURT: And are you representing that he's going  
8 to say, before you posted on the "evilgx.com" website language  
9 stating, "I will kill you," he said that would be not in  
10 violation of the law?

11 MR. SUTCLIFFE: The defense did not specifically  
12 question him on every page that was created within his website.  
13 However, the defense did rely upon, as he has spoken from the  
14 stand, that we had numerous discussions as to what statement  
15 and what statements do not constitute a threat, and based upon  
16 that advice, that Webpage was created with that advice in mind.

17 He was then notified -- he was notified, not at the  
18 moment of the creation or prior to the creation, of that page,  
19 specifically, on Count Two; however, when I was able to contact  
20 him, I did rely upon his advice, and he advised me at that  
21 point to modify that page because the word "kill," as we have  
22 discussed before, has a real knee-jerk reaction, which is why  
23 "killercop.com" was so infamous.

24 THE COURT: Okay. Let me cut you off here. This is  
25 part of a defense that doesn't come as a surprise. You