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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

- - -

HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

- - -

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 STEVEN WILLIAM SUTCLIFFE, )  
 )  
 Defendant. )

NO. CR 02-350-AHM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, October 1, 2003

**COPY**

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1 APPEARANCES:

2 For the Plaintiff:

3 DEBRA W. YANG  
4 United States Attorney  
5 STEVEN D. CLYMER  
6 Assistant United States Attorney  
7 Chief, Criminal Division  
8 ELENA J. DURATE  
9 JASON GONZALES  
10 Assistant United States Attorneys

11 For the Defendant:

12 STEVEN WILLIAM SUTCLIFFE  
13 In propria Persona  
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15 DAVID R. REED  
16 Attorney at Law (Standby counsel)

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I N D E X

PROCEEDINGS

Status Conference

Defendant's counsel motion to withdraw

1 LOS ANGELES, CALIFORNIA; WEDNESDAY, OCTOBER 1, 2003; 11:45 AM

2 THE CLERK: Calling Item Number 3, CR 02-350(A),  
3 U.S.A. vs. Steven William Sutcliffe.

4 Counsel, state your appearances, please.

5 MS. DUARTE: Good morning, your Honor. Elena  
6 Duarte and Jason Gonzalez on behalf of the United States.

7 THE COURT: Good morning.

8 MR. REED: Good morning, your Honor. David Reed  
9 on behalf of Mr. Sutcliffe. He's present in court. And  
10 with me at the counsel table, your Honor, is Sarah Linn  
11 Ritts, the paralegal.

12 THE COURT: Okay. Welcome to all of you.

13 This is a status conference that the parties  
14 requested and I'm happy to provide. As far as I can  
15 perceive, the items that we need to address are issues  
16 involving the trial date and the speedy trial calculations,  
17 a status of motions -- what are pending basically and what  
18 the briefing schedule and decision-making schedule is or  
19 ought to be -- the status of the electronic evidence and the  
20 other evidence that we discussed last time that various  
21 steps have been ordered to be taken to make sure that  
22 Mr. Reed and/or Mr. Sutcliffe have.

23 Are there any other broad topics that need to be  
24 addressed today?

25 MR. REED: Yes, your Honor. I'm moving to

1 withdraw from the case. And I can give the Court a thorough  
2 rundown and detail as to why, but that's one of the things  
3 that will be on the agenda today. It might be something  
4 that we can take up right away.

5 THE DEFENDANT: I would object if it involves any  
6 attorney-client confidentiality.

7 THE COURT: Well, let's clear the courtroom and  
8 listen to Mr. Reed first.

9 Anybody who is not with the Bureau of Prisons or  
10 the U.S. Marshal will have to leave the courtroom, and the  
11 proceedings, when we resume after everyone has left, will  
12 be, at least temporarily, placed under seal.

13 MS. DUARTE: Your Honor, if I may, may I just ask  
14 the Court for the opportunity, if the Court deems it  
15 reasonable, to be heard before the Court grants Mr. Reed's  
16 motion, if it's inclined to do so?

17 THE COURT: All right.

18 MS. DUARTE: Thank you, your Honor. I appreciate  
19 it.

20 THE COURT: Before you begin to speak, Mr. Reed --  
21 Who are you?

22 MS. STANDEFER: I'm the attorney advisor for the  
23 Los Angeles Bureau of Prisons.

24 THE COURT: Okay. Well, you'll have to wait  
25 outside, also.

1 MS. STANDEFER: Okay. Well, you said it would be  
2 okay, so I thought you meant I could stay.

3 THE COURT: No, I meant for purposes of security,  
4 ma'am. Could you give us your name, please.

5 MS. STANDEFER: Amy Standefer.

6 THE COURT: Okay. You're welcome to be here, but  
7 for the time being you need to be excused.

8 (Prosecutor and other parties not present.)

9 THE COURT: All right, Mr. Reed.

10 MR. REED: Thank you, your Honor.

11 Your Honor, I'm going to try my very best to stay  
12 away from communications made that were confidential, in the  
13 nature of confidential communications between Mr. Sutcliffe  
14 and myself. And let me just take a look at some notes here.

15 But I would indicate, your Honor, that there have  
16 been some things that have been said to me that are not made  
17 in the nature of attorney-client communications, and they  
18 are in the nature of threats that have been made to me by  
19 Mr. Sutcliffe; they were made to me in the presence of my  
20 paralegal just recently, within the last five minutes, and I  
21 do intend to talk about those at the conclusion of my  
22 presentation with respect to my motion to withdraw, and I  
23 will quote, as best I possibly quote with respect to these.  
24 And threats are not included in the attorney-client  
25 privilege. There is case authority to that effect.

1 THE COURT: I agree.

2 MR. REED: And to that extent I do wish the Court  
3 to order that the attorney waiver does not apply.

4 THE COURT: Of course, I don't know what the  
5 language will be, but if they constitute threats there would  
6 be no privilege accompanying them, none attached to them,  
7 and I so indicate.

8 THE DEFENDANT: Can we have him please define  
9 threats?

10 THE COURT: No.

11 THE DEFENDANT: There are legal threats. There  
12 are many different kinds of threats. He's been using a very  
13 broad brush when he's defining the threat here. So I'd like  
14 it to be clarified before he divulges any --

15 THE COURT: Okay. That request is denied.

16 THE DEFENDANT: Excuse me?

17 THE COURT: That request is denied.

18 Please proceed, Mr. Reed.

19 MR. REED: Your Honor, when I came on board in  
20 this case on September 2nd of 2003 to be standby counsel, I  
21 came into this case wanting to do my best for Mr. Sutcliffe.

22 On or about September 4th Mr. Nicolaysen sent me a  
23 large portion of highly relevant discovery. There were key  
24 302's, reports, Web pages, copies of the exhibits book,  
25 witness files, cross-examination strategies and lists. And

1 I must say that Mr. Nicolaysen did a very good job on this  
2 case, and he helped me very much to get up to speed during  
3 that first phase of the case.

4 At first, your Honor, I conferred with  
5 Mr. Sutcliffe at MDC but only on legal issues, such as the  
6 constitutionality of various issues, discussions about the  
7 commerce clause, and motions that I may be able to help him  
8 with while he was in pro se. And after conferring with  
9 Mr. Sutcliffe he did want me to look into various things as  
10 his standby counsel, and I did a tremendous amount of  
11 research for Mr. Sutcliffe, which did result in the  
12 construction of some interesting motions, I thought, which  
13 had to do with the commerce clause.

14 THE COURT: Did you say construction of motions?

15 MR. REED: The construction of motions.

16 THE COURT: Meaning drafting of motions?

17 MR. REED: Drafting of motions, your Honor.

18 THE COURT: But not yet been filed; correct?

19 MR. REED: They have. Actually, your Honor, what  
20 I did was I drafted them, and then I went over to consult  
21 with Mr. Sutcliffe with respect to these motions, and he  
22 basically adopted the work that had been done and filed  
23 them, and they are some of the written, typewritten motions  
24 that have been filed with the Court.

25 THE COURT: You mean the motions to dismiss the

1 threats counts?

2 MR. REED: That's correct.

3 THE COURT: And the Rule 29 motion?

4 MR. REED: And the Rule 29. Somewhat above and  
5 beyond what I was supposed to do as a standby counsel, just  
6 because I wanted to strike up a very good relationship with  
7 Mr. Sutcliffe, and I wanted to help him in every conceivable  
8 way in this case.

9 Mr. Nicolaysen also sent me the My Webs CD, and  
10 that contains most of the relevant files for Mr. Sutcliffe's  
11 case, according to Mr. Nicolaysen. I did review many of  
12 those files, and those files were downloaded -- I've been  
13 told -- downloaded from Mr. Sutcliffe's hard drives. And I  
14 started to study those to get up to speed as the standby  
15 counsel on this case, and I felt that I'd be surely up to  
16 speed as standby counsel by the 29th, which was the day that  
17 the Court originally ordered this case to go to trial.

18 I did not feel that I needed any of the CDs, the  
19 floppies, the hard drives, none of the materials that  
20 Mr. Sutcliffe demanded in order for me to be an adequate  
21 standby counsel. And that is, I think, what contributed a  
22 little bit to the confusion there at the beginning of the  
23 case with respect to whether Mr. Nicolaysen turned over all  
24 this material to me or whether he didn't. In part, I'm at  
25 fault, your Honor, in the sense that I didn't demand from

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1 him that I get all these things because I felt that with the  
2 possession of the My Web CDs it wouldn't be necessary. So I  
3 have to admit some of the fault with respect to that  
4 confusion, your Honor.

5 THE COURT: So you got the My Webs, and you got  
6 certain written discovery from -- that had been provided by  
7 the Government, and you got both those categories from  
8 Nicolaysen, but you didn't get the floppies and what else?

9 MR. REED: I didn't get the floppies, I didn't get  
10 the Zip drives, and I didn't get the actual hard drives in  
11 the case --

12 THE COURT: Okay.

13 MR. REED: -- and I didn't get all the CDs, the  
14 numerous CDs. I did get that one CD, the My Web CDs.

15 Now, getting into certain areas that have to do  
16 with attorney-client communications, I'm going to try to  
17 stay away from them only to tell the Court that after I did  
18 these motions I conferred with Mr. Sutcliffe because I  
19 wanted, as his standby counsel, to once and for all find out  
20 exactly what the defense of the case would be, exactly what  
21 the nature of the files were that he wanted to search for on  
22 all of this vast discovery so that I could aid him in any  
23 way to go to all these CDs, if I ever did get possession of  
24 them, find the file, confer with him and present it in some  
25 way, help him to present it in some way while he was pro se

1 in the trial.

2           And so there were discussions -- and I'm not going  
3 to get into the details of those -- between myself and  
4 Mr. Sutcliffe, asking him help me, cooperate with me, tell  
5 me what you need to see on these CDs, and I'll do everything  
6 I can. And that inquiry was never answered by  
7 Mr. Sutcliffe, except to the extent that there was this  
8 general demand, as there always has been, evidently, in this  
9 case, that Mr. Sutcliffe demands to see all of the  
10 materials, all of the discovery, all the hard drives, all  
11 the CDs. And to this day, your Honor, frankly as his -- now  
12 that I'm full counsel in the case and while I was standby  
13 counsel, to this day I don't know what Mr. Sutcliffe has in  
14 mind regarding what files he's exactly looking for that can  
15 help him win this case, why he needs the CDs, why he needs  
16 to see everything. And I did want to know what were on  
17 those files that would cause him prejudice if it was not  
18 presented at trial. I needed his assistance, and I've never  
19 obtained it, your Honor.

20           Now, then on September 26th the Court,  
21 surprisingly to me, ordered me to be full counsel. I wasn't  
22 coming in last Friday thinking that that was going to occur.  
23 And the Court continued the case until October 7th for me to  
24 get into MDC to confer with Mr. Sutcliffe with the computer  
25 equipment that the Court was going to order, to find out

1 exactly what he needs with respect to this computer  
2 material. And, as the Court probably knows, I did a great  
3 deal of work right after that session over the weekend  
4 preparing applications for a paralegal, applications to get  
5 into MDC with computer equipment, on and on. And not only  
6 that, I was doing a great deal of other work which I have  
7 here, and I haven't filed -- voir dire, which has not been  
8 filed, but I prepared it -- and various other things in  
9 order to be ready for October 7th because I wanted to do the  
10 very best I could for Mr. Sutcliffe.

11           However, when I was starting to prepare those  
12 motions I started to believe that I would not be ready by  
13 October 7th, 2003, by virtue of the technology that I had to  
14 master to show the jury what I really needed to show them,  
15 because I knew basically what my defense was going to be and  
16 it's kind of clearly set forth in the motion to dismiss --  
17 The Court can probably figure it out -- that these were not  
18 transmitted threats. I needed to present Web page material  
19 and how the Web sites were set up to show how extremely  
20 difficult it would have been for a victim to ever find these  
21 threats, and I wanted to do that in a technologically-  
22 advanced way with my paralegal. That was my strategy, and I  
23 felt that I wasn't going to be ready by October 7th because  
24 I had to do that work.

25           And I hoped that with the laptop computer that the

1 Court was going to order, me to take into MDC, along with my  
2 paralegal, I could finally sit down with Mr. Sutcliffe once  
3 and for all with all this material and have him find these  
4 files that he keeps claiming he needs to see in order to  
5 present a defense. So I was really looking forward to that.

6 THE COURT: I think I should note that I did issue  
7 the order authorizing you to, at CJA expense, obtain the  
8 equipment we had discussed at the last hearing, and I issued  
9 an order. Did you get that order?

10 MR. REED: I got the order. The Court's done  
11 everything that it possibly can to make it smooth for me to  
12 represent Mr. Sutcliffe. I got the order, I took it to MDC,  
13 I served it over there, and the order was not followed by  
14 MDC, and I think you'll probably have a Bureau of Prison  
15 personnel person here to explain why.

16 But to make the long and short of it, when I went  
17 over there on Monday with the order to start the work with  
18 Mr. Sutcliffe --

19 THE COURT: Monday being two days ago --

20 MR. REED: Just two days ago.

21 THE COURT: -- for the record?

22 MR. REED: And we're going to get to that. The  
23 MDC officials would not, would not honor it.

24 Now, on Friday the Court made me full counsel in  
25 this case. It made me the attorney of record. I was no

1 longer standby counsel, and my understanding of that  
2 principle, just so that the record is clear -- and I've been  
3 practicing law for many years, your Honor -- is that as the  
4 attorney of record I am technically the person who's in  
5 charge of a defendant's case. As the attorney of record I'm  
6 responsible for treating all of my clients equally, but I  
7 have the control of the strategy of the case. I have the  
8 control to determine what comes into evidence, and I have  
9 complete control over how this case is going to be tried.  
10 And I intended to make that clear to Mr. Sutcliffe on Monday  
11 when I did meet with him, but I didn't get to that point.

12 THE COURT: I think I had already touched on those  
13 things.

14 MR. REED: And there is nothing, basically, that  
15 the defendant can do to take the power away from me to  
16 control the case, except there's one very important area  
17 where I don't have control, and that's the constitutional  
18 right of a defendant to testify or not testify in the case.  
19 I don't have any control over that. And I wanted to explain  
20 that in detail to Mr. Sutcliffe on Monday, but I didn't get  
21 time to do it, but we're going to get into that in a little  
22 bit.

23 And I wanted to, once and for all, while I was the  
24 attorney of record, once and for all when I went go over on  
25 Monday to tell Mr. Sutcliffe that I am the person that's

1 going to be responsible for his case and not you. Once and  
2 for all let's tell me what you're looking for in terms of  
3 these files. Let's stop demanding to see every single piece  
4 of discovery.

5 Now I might add, your Honor, that there's ample  
6 authority in the Ninth Circuit which states that a defendant  
7 does not have the right -- he does not have the right to go  
8 through every single piece of discovery in a case. The  
9 right is with his attorney. And as long as he's represented  
10 by an attorney, that right cannot be breached, and that's  
11 basically the U.S. v. Robinson case. That's 913 F.2d 712.  
12 It's a Ninth Circuit case, 1990. And it basically states  
13 that demand for a defendant to view every file or every  
14 piece of discovery is not a constitutional right. As long  
15 as he's represented by an attorney, it's the attorney's duty  
16 to review that discovery. I wanted to explain that  
17 principle to Mr. Sutcliffe on Monday. I didn't get a chance  
18 to do so, but I did kind of quickly today.

19 Now, getting back to my Monday, over the weekend I  
20 did all the motions. I was ready to file them on Monday and  
21 serve them at MDC, et cetera. I was going to buy a laptop  
22 computer. And what we wanted to do before we did that was  
23 meet with the U.S. Attorney's Office -- by the way, I did  
24 get to know my paralegal over the weekend. We had several  
25 conferences. We talked about the case. But it was very,

1 very important for me to make sure that I had all of the  
2 discovery that the Court was concerned about with respect to  
3 this confusion concerning prior counsel and myself. So  
4 Miss Sarah Ritts did deliver all of the discovery to me that  
5 was in the possession of Greg Nicolaysen on Monday morning,  
6 and we had a meeting -- we set up a meeting with the U.S.  
7 Attorney's Office so that we could meet with them and go  
8 through every single CD, every Zip drive --

9 THE COURT: And this is the same paralegal who had  
10 previously assisted Mr. Nicolaysen.

11 MR. REED: That's correct, your Honor.

12 THE COURT: And that's the one I reappointed to  
13 assist you and Mr. Sutcliffe; right?

14 MR. REED: That's right, your Honor. And she  
15 knows the computer material backwards and forwards in this  
16 case, almost all of it. But she's been extremely helpful to  
17 me because she categorized it for Mr. Nicolaysen previously,  
18 and I felt that she would be very helpful to be my  
19 paralegal, and I appreciate the Court appointing her for me.

20 So she brought me all the discovery, and we made  
21 an appointment to meet with the U.S. Attorney on Monday  
22 morning. I went on Monday morning with the U.S. Attorney  
23 and the case agent, and we confirmed with them that we had  
24 every single piece of discovery that had been sent, issued  
25 to prior counsel. We reviewed -- we sat down in their

1 office. We had CDs on the floor --

2 THE COURT: You know, Miss Duarte filed a  
3 declaration to that effect. Have you read it?

4 MR. REED: No, your Honor. I think it was an  
5 under-seal-type filing. I'm not sure.

6 THE COURT: No, I don't think so. She filed a  
7 document entitled "Status Filing re Electronic Discovery,  
8 Declaration of Elena Duarte." It was filed on September  
9 29th. It contains many attachments, and it describes the  
10 meeting that was held at her office on Monday. So I don't  
11 believe it's under seal at all. I don't see why it would  
12 be, anyway. So a lot of what you're telling me now has  
13 already been a matter in her filing.

14 MR. REED: Very well, your Honor.

15 THE COURT: And you don't have to go into  
16 exquisite detail.

17 MR. REED: Okay, your Honor. Then after we had  
18 our meeting I wanted to run over to Mr. -- now, when I saw  
19 that discovery I said to myself, in view of the fact that  
20 Mr. Sutcliffe wanted to see all these files or had some file  
21 that he was aware of, I knew I was going to be in trouble  
22 being ready for trial by October 7th. I knew in my mind I'd  
23 better ask the Court for a continuance. I just was not  
24 going to be ready, and by that time I hadn't even looked at  
25 instructions.

1           So I went over to Mr. Sutcliffe on -- after our  
2 meeting with the Government on Monday to meet with him. It  
3 was a rushed meeting, admittedly. I did have to be in court  
4 at around 1:15. I met with him for about a half hour, not  
5 quite a half hour. And I indicated to Mr. Sutcliffe words  
6 to the effect, "I'm sorry, Mr. Sutcliffe, I'm simply not  
7 going to be ready in the case. I'm going to need a  
8 continuance." And Mr. Sutcliffe -- basically the nature of  
9 the discussions at that time were that Mr. Sutcliffe did not  
10 want me to make a motion to continue the case, and we got  
11 into a discussion. It wasn't an argument or anything like  
12 that, but I was going to refuse to follow his orders because  
13 I was counsel of record. And I was going to make this  
14 motion to continue today. By the way, I haven't made it  
15 yet. I just want the record to be perfectly clear that I  
16 haven't made that motion.

17           THE COURT: I agree you haven't.

18           MR. REED: But I indicated to him words to the  
19 effect that I intended to, and Mr. Sutcliffe at that time  
20 indicated that I would be violating his due process rights  
21 were I to make such a motion. And I indicated that there's  
22 nothing that I can do about it, I'm going to have to make it  
23 because I'm not going to be ready, and basically the  
24 discussion came up where Mr. Sutcliffe indicated to me that  
25 I better fall on my sword --

IN DEPENDENT

1 THE DEFENDANT: Objection, your Honor. How is  
2 this not attorney-client privileged material?

3 THE COURT: Go ahead, you may continue.

4 MR. REED: -- and that I essentially would be  
5 depriving him of his constitutional right by not going to  
6 trial in an incompetent manner, built incompetence into the  
7 record, my being unprepared and --

8 THE COURT: I don't understand. Was it your  
9 understanding -- this doesn't call for something that was  
10 said -- and I'm asking you about your understanding -- was  
11 it your understanding, from whatever was said, that  
12 Mr. Sutcliffe wanted you to go to trial on the 7th knowing,  
13 him knowing that you thought that you were not prepared to  
14 and thereby creating a basis for him to establish that you  
15 were not competent, if the jury convicted him, and thereby  
16 giving him an issue on appeal?

17 MR. REED: Exactly right, your Honor. And I was  
18 not going to do so.

19 Now, I wanted to meet with Mr. Sutcliffe today  
20 before court to explain to him that I just can't do that in  
21 good conscience. I'm not that kind of lawyer; that I'm an  
22 officer of the Court and can't do it. And I met with him  
23 just briefly before court started. I did want to get to  
24 talk to him earlier, but we had the fire drill, and --

25 THE COURT: There is going to be some day, likely,

1 other judges who read this transcript, and the fire drill  
2 that Mr. Reed was referring to he meant literally the entire  
3 courthouse was evacuated, and it's affected everyone's  
4 schedules.

5 MR. REED: I wanted to basically communicate  
6 information to Mr. Sutcliffe as to several points. One,  
7 that I'm going to be in charge of the case; two, that I'm in  
8 charge of the strategy; three, he is not in charge, not with  
9 me as attorney of record; four, I am going to be asking you,  
10 once and for all, to show me the files; five, I'm going to  
11 be moving for a continuance today, and it's at that point  
12 where we get into the threat.

13 THE COURT: What was the threat?

14 MR. REED: The threat is that Mr. Sutcliffe is  
15 going to sue me. He's sued attorneys in the past. He sued  
16 Mr. Nicolaysen. He's going to make my life miserable. He's  
17 going to sue me until the end of time, quote/unquote. And I  
18 refuse to interact with this gentleman. I've been doing  
19 this too long. My life is too short. I don't need the  
20 threats in my life. I think that there is a complete and  
21 irreconcilable, at least in my part, breakdown in the  
22 attorney-client privilege. I'm not going to talk to this  
23 man. I'm not going to interact with him. And I'm not going  
24 to make a motion for a new trial (sic) today. I'm not going  
25 to do anything to deprive him of his constitutional right to

1 go forward in a speedy trial manner. And I want to make  
2 that clear that I'm not doing it because he's threatened me,  
3 that if I do so, he'll sue me. And that's the nature of the  
4 threats that he told me today, your Honor, and I am asking  
5 the Court to be relived.

6 THE COURT: All right. Thank you, Mr. Reed.

7 Mr. Sutcliffe, do you want to respond?

8 THE DEFENDANT: Yes, sir. Thank you very much,  
9 your Honor.

10 Okay. First, I'd like to bring to the Court's  
11 attention several points that the moral rules of  
12 professional conduct for the federal system says in a  
13 client-lawyer relationship Rule 1.1 starts off with  
14 competence. Mr. Reed has already admitted that it was his  
15 fault, he was not competent for getting the CD-Roms, which  
16 this Court ordered were to be originally turned over to me  
17 in its entirety. Mr. Nicolaysen's threat lives on, and he's  
18 doing his best to sabotage my case. But he was not  
19 prepared. That's his fault, not my fault.

20 Secondly, the scope of representation. The lawyer  
21 shall abide by the client's decisions concerning the  
22 objectives of the representation. I've never told this man  
23 to throw this case. I told him to be prepared for October  
24 7th. I told him he does not have the authority -- I have  
25 not delegated him authority to waive my rights. That's what

1 started the conflict between Mr. Nicolaysen and I down in  
2 that holding room on March 14th before I was brought up  
3 here. He's telling me this is his case. Excuse me, I beg  
4 to differ. This is my case. I'm facing thirty-five years,  
5 not him.

6 Furthermore, I'm sure -- Stephen, your clerk, he  
7 told me that you hadn't received a letter, but I sent you a  
8 letter after Mr. Reed came by on Monday, and it was not for  
9 a half hour; it was for five minutes, maybe six, if you want  
10 to stretch the truth. I sent him a letter, which I have --  
11 I presented a copy to him right here.

12 I'd like to see it back, please. Thank you.

13 I also sent your Honor a letter at the same time.  
14 It was September 29th. And if you'd like to read it, you're  
15 more than welcome.

16 THE COURT: No, not right now.

17 THE DEFENDANT: Okay. I'd like to read it onto  
18 the record.

19 Dear Judge, Honorable Judge Matz, today September  
20 29th, 2003, David Reed came by to visit me briefly. It was  
21 my intent to clarify with Mr. Reed the respective roles each  
22 of us will play in the upcoming trial. First, you  
23 acknowledged in a hearing conducted on 9/26, 2003, that you  
24 had again erred when you determined that my conduct had  
25 acted as a waiver of my Sixth Amendment right to the

1 effective assistance of counsel, guaranteed in the  
2 Constitution of the United States, and that you were again  
3 rescinding an order improperly made.

4           Second, you acknowledge that I have repeatedly  
5 and, in essence, since I first appeared before you demanded  
6 my right to the effective assistance of counsel. I have  
7 never agreed to be represented. I have never delegated by  
8 right in the Constitution to the effective assistance of  
9 counsel, and I do not now, nor will I ever delegate my  
10 constitutional right to the effective assistance of counsel.  
11 And each one of the words assistance is underlined.

12           In all criminal prosecutions the accused shall  
13 enjoy the right to be informed of the nature and cause of  
14 the accusation, to be confronted with the witnesses against  
15 him, to have compulsory process for obtaining witnesses in  
16 his favor, and to have the assistance of counsel. The right  
17 to defend is given directly to the accused for it is he who  
18 suffers the consequences if the defense fails. That's from  
19 directly from Ferretta (phonetic), and I quote from page 588  
20 that it is self-evident that the Amendment -- speaking of  
21 the Sixth -- makes no direct reference to representation. A  
22 representative is -- it speaks of an assistance of counsel  
23 and an assistant, however is -- however expert is still an  
24 assistant. I don't want a representative; I want an  
25 assistant. The right to have assistance of counsel is too

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1 fundamental and to absolute to allow courts to indulge in  
2 nice calculations as to the amount of prejudice arising from  
3 its denial. That's Dutzman vs. U.S., D-u-t-z-m-a-n, 205  
4 Fed.2d 343, cert. denied. 74 Supreme Court 50.

5 I would like this Court to be aware that in our  
6 system --

7 THE COURT: Mr. Sutcliffe, do you oppose  
8 Mr. Reed's motion?

9 THE DEFENDANT: I object to him categorizing me as  
10 threatening him.

11 THE COURT: I asked you a different question,  
12 Mr. Sutcliffe. He has moved --

13 THE DEFENDANT: I haven't finished with my --

14 THE COURT: -- relieve to withdraw.

15 THE DEFENDANT: I'd like to --

16 THE COURT: Answer my question first.

17 THE DEFENDANT: I'd like to finish my point,  
18 first.

19 THE COURT: Answer my question. Do you oppose it,  
20 it, yes or no?

21 THE DEFENDANT: Please frame the question again.

22 THE COURT: Mr. Reed has moved for permission to  
23 withdraw as your lawyer, no longer to be your lawyer. Do  
24 you oppose that motion?

25 THE DEFENDANT: It depends on the role he's

1 playing.

2 THE COURT: If he plays the role that he described  
3 as being the one that he intended to play, do you oppose the  
4 motion?

5 THE DEFENDANT: Yes.

6 THE COURT: So you want him to be the lawyer the  
7 way he said he would be the lawyer, calling the shots?

8 THE DEFENDANT: No.

9 THE COURT: That's the way he would be the lawyer,  
10 and the only way he would be the lawyer.

11 THE DEFENDANT: Well, I attempted to try and  
12 define that role with him on the 29th, but like I say he  
13 came in and --

14 THE COURT: Okay. All right. Mr. Sutcliffe, your  
15 letters -- the letter will be filed. I don't need to hear  
16 more about the letter.

17 Is there anything further you want to say on the  
18 question of Mr. Reed?

19 THE DEFENDANT: Yes, your Honor. He made the  
20 statement that he had never obtained my assistance prior to  
21 September 26. I believe that there's been an intentional  
22 interference with my constitutional right to effective  
23 assistance of counsel, in the fact that he came to see me on  
24 the 15th and the 19th of last month, and we discussed  
25 jurisdiction. And he wanted me to elaborate on the 15th the

1 jurisdictional allegations that I had raised up with this  
2 Court, when I demanded the Court take jurisdictional  
3 notice -- judicial notice, excuse me. The U.S. Attorney  
4 filed some papers between -- it was delivered to me on the  
5 24th and the 25th by Agent Cudnell (phonetic), and within  
6 those stacks of papers was a quote from the U.s. Attorney  
7 that she had spoken with the defense, and that she was  
8 filing this jury instruction to the jurisdictional --  
9 regarding the jurisdiction. Now, seeing as I was appointed  
10 defense in my own, in pro se, by this Court and he wasn't  
11 made attorney of record until the 26th, she's gone to him  
12 and had discussions about my trial tactics and strategies  
13 when he wasn't even my counsel of record. So he's  
14 interfered; she's interfered. So that's a false statement  
15 he's made.

16 I sat with him. He couldn't have filed those  
17 things that he admitted that he gave to me, which I amended,  
18 those motions that were filed, the four of them, unless he  
19 had obtained my assistance. So on the 15th and 19th he did  
20 obtain my assistance, and so his statement that he never  
21 obtained it prior to the 26th is false; it's misleading,  
22 just like he's trying to mislead the Court today, that I  
23 made a threat to him. What I said was if you violate my  
24 constitutional right, I will sue. You bet you -- you bet I  
25 will. That's a conditional threat -- okay -- if it's even a

1 threat. I'm just advising him that I'm going to protect my  
2 rights.

3 THE COURT: Anything else, Mr. Sutcliffe?

4 THE DEFENDANT: Yes. There's one other thing I'd  
5 like to bring to this Court's attention.

6 THE COURT: Make it quick, please.

7 THE DEFENDANT: Okay.

8 THE COURT: I'm supposed to be in a meeting right  
9 now.

10 THE DEFENDANT: I'll try to make it as brief as I  
11 can, your Honor. Thank you.

12 Okay. You said -- This is from the transcript of  
13 August 27th, and I'm speaking on page 59, and you said that,  
14 on line 17, I understand that -- excuse me -- I said I  
15 understand I've been prejudiced extremely by not having a  
16 new lawyer appointed against my objections, come in, try and  
17 get up to speed with a half a million pages of discovery and  
18 fifty CD-Roms ad nauseam, how is that not prejudicing me?

19 And you said we're not going to have a debate  
20 about it, and it was my choice to fire Mr. Harris and to  
21 create the circumstances where I was compelled to grant your  
22 request. And then you went on to cite U.S. Kelm (phonetic)  
23 on page 60, and you said that I have a devious and  
24 manipulative way at the time to refuse to waive my Sixth  
25 Amendment right to counsel.

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1 As to the CD-Roms, which were

2 THE COURT: I don't need to hear more about the  
3 CD-Roms. That's not the motion before me.

4 Anything you want to add, Mr. Reed?

5 THE DEFENDANT: I'd like the record to reflect  
6 that for the period of time that you deemed my waiver of my  
7 right to effective assistance of counsel, not only was I  
8 denied due process, not only was I denied my right to speedy  
9 trial, not only was I subjected to cruel and unusual  
10 punishment because of that because I was not able to have  
11 assistance of counsel to bring bail for those three, four  
12 weeks that I was subjected to those conditions that I was  
13 put under, but to appoint this man and have him now tell me  
14 that he's going to waive my rights, I object to it. It's  
15 subjecting me to further cruel and unusual punishment.

16 I have demanded my right to a speedy trial and not  
17 an entitlement under the Act. I didn't want an entitlement  
18 under the -- for representation. I don't seek that right;  
19 I've never asked for that right; I've never wavered on that.  
20 And if this Court believes that I have delegated anything  
21 close to that seeking for an entitlement of a representative  
22 other than an assistant, as provided by my rights under the  
23 Sixth Amendment, I'd like someone to please put that on the  
24 record where that delegation of authority came from.

25 THE COURT: Okay. Everything has been on the

1 record during this proceeding.

2 Any response, Mr. Reed?

3 MR. REED: Just two, your Honor. I just wanted to  
4 clarify that Miss Ritts was an employee of Greg Nicolaysen  
5 in this case previously. She was never appointed by the  
6 Court. She privately worked for Mr. Nicolaysen. So that  
7 representation by the defendant was incorrect. *where previously stated???*

8 But I just wanted to clarify that at the beginning  
9 of my relationship with Mr. Sutcliffe he did assist me. I  
10 think I did make that clear. He assisted me with respect to  
11 pointing me in the direction of the motions that he did want  
12 to file. I was explaining that to the Court to explain to  
13 the Court that we did have this good relationship at the  
14 beginning, that he did assist me, he did show me some case  
15 authority, and I --

16 THE COURT: Now, you told me, Mr. Reed -- I'm  
17 going to interrupt -- you told me earlier that you had asked  
18 him for his assistance, particularly in explaining to you  
19 exactly what he needed and why he needed it and what he  
20 thought it would do for his defense in the nature of the CDs  
21 and the hard drives, and that you had never -- he had never  
22 told you. Did he refuse to tell you?

23 MR. REED: No, your Honor. That's one area, the  
24 motion practice where Mr. Sutcliffe did help me. The other  
25 thing that I was trying to make very clear is that I needed

*Can't find it!*

1 some direction with respect to finding these files and all  
2 these CDs, these Roms and all of that, and there was never a  
3 specific answer by Mr. Sutcliffe exactly what he needed to  
4 find, and it was basically he needed to see everything; that  
5 he's in pro se; he needed to see everything. I asked him  
6 what it was that he needed to find so I could help him and  
7 he just demanded to see everything. It's that simple.

8 THE DEFENDANT: Your Honor, I object to that. I  
9 specifically told him that I was looking for my PST and PAB  
10 files, which Mr. Harris -- I had also told Mr. Harris when  
11 he was counsel. He had faxed a letter to the AUSA on the  
12 13th, the day before trial, and I specifically said I need  
13 my PAB and my PST files from my hard drive.

14 Did I not ask you to find those files?

15 MR. REED: Yes, he did, your Honor.

16 THE DEFENDANT: That's just one. I gave him  
17 specific instances of what I'm looking for. So, again, he's  
18 misstating the truth. I have been nothing -- I've assisted  
19 him. Remember I told you, your Honor, it's a two-way  
20 street. This is my life.

21 THE COURT: Okay. It's a two-way street --

22 THE DEFENDANT: Thank you, your Honor.

23 THE COURT: -- that's true, in principle.

24 Let's bring the prosecutor in, please.

25 MR. REED: I would indicate to the Court, your

1 Honor, that I brought the entire discovery down here to --

2 THE COURT: You mean it's here in the courtroom?

3 MR. REED: It's in the courtroom. Got all the  
4 CDs, all the files, all the paperwork, virtually everything.

5 (Prosecutor and other parties present.)

6 THE COURT: And when you say virtually everything,  
7 what does it not include?

8 MR. REED: Well, it doesn't include a good deal of  
9 the, I think, printouts of paperwork that are basically not  
10 relevant to the case. There was a significant -- there was  
11 a significant amount of materials that were sent to  
12 Mr. Sutcliffe while he was in pro se, which I think there's  
13 going to be a record of, there is some record of. A lot of  
14 the material that was in there, that was sent to him in pro  
15 se, I did not get. I got the major, relevant reports, the  
16 exhibit books, 302's, witness statements, things of that  
17 nature. What I've got is here, your Honor.

18 THE COURT: Okay. Miss Duarte --

19 MR. REED: I ask that that be sealed, our previous  
20 motion, my motion that I just made be sealed by the  
21 reporter, your Honor.

22 THE COURT: Well, I'm going to disclose what the  
23 motion was. You already said so in the presence of the  
24 whole courtroom.

25 And that is that Mr. Reed moved to be granted

1 permission to withdraw. I haven't ruled on it. I've heard  
2 from Mr. Reed and Mr. Sutcliffe.

3 Did you want to be heard about that?

4 MS. DUARTE: I did, your Honor, briefly because  
5 obviously I don't know what the situation is. But I would  
6 actually urge the Court again, knowing whatever -- with the  
7 addition of whatever the Court knows that I don't know,  
8 obviously, taking precedence, I would urge the Court to, if  
9 at all possible, keep Mr. Reed as Mr. Sutcliffe's counsel  
10 for the short duration that this case is expected to  
11 continue, and continue the case for as brief a time as  
12 necessary, which I anticipate will be no more than about  
13 four weeks, like said in my papers.

14 THE COURT: Well, are you referring to the papers  
15 that you're filing today, that you filed today?

16 MS. DUARTE: No, your Honor. That was the papers  
17 I filed Monday that referred to the remaining time under the  
18 Speedy Trial Act.

19 THE COURT: Okay. Well, I was handed a courtesy  
20 copy of an item filed today --

21 MS. DUARTE: Yes, your Honor.

22 THE COURT: -- entitled "Submission Regarding  
23 Speedy Trial Act Waivers and Compliance." Have you served  
24 that on either Mr. Reed or Mr. Sutcliffe?

25 MS. DUARTE: I have Mr. Reed, your Honor.

1 THE COURT: Do you have that before you, Mr. Reed?

2 MR. REED: Yes, your Honor.

3 THE COURT: Okay. And I haven't actually finished  
4 it, and I haven't even studied it, but I take it that it's  
5 the Government's position that I am the authority,  
6 regardless of whether any given defendant consents to make  
7 findings that the interests of justice requires extension  
8 beyond the seventy-day period.

9 MS. DUARTE: That is correct, your Honor, you do  
10 have the authority, obviously within some limited time  
11 frame, and this case has gone on very long, and we know  
12 this. But I think that the Court does have the authority in  
13 particular to make the finding, and I don't know what  
14 Mr. Reed said to the Court today. I do know that when I  
15 spoke to Mr. Reed earlier about the case we talked about the  
16 possibility of going in I believe it was three or four  
17 weeks, and whether or not he could be ready. If he has  
18 represented to the Court that he would be ready in three to  
19 four weeks, I think it's well within the Court's discretion,  
20 absent even a motion from him and over defendant's  
21 objection, to exclude time in the interests of justice based  
22 on the need for defense preparation, knowing that defense  
23 counsel just got the evidence this past Monday. And even  
24 had he had it earlier, frankly, your Honor, he needed time  
25 to confer with his client about it.

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1 THE COURT: Okay. Well, I don't think I have to  
2 be persuaded that neither Mr. Reed nor any other lawyer on  
3 such short notice would feel subjectively or objectively  
4 ready to proceed to trial on the short time frame that an  
5 October 7th trial would contemplate. I also don't think  
6 that Mr. Sutcliffe would be ready, if he represents himself,  
7 because he has to have the evidence, maybe not all of it and  
8 maybe all of it.

9 Here's what I'm going to do. I'm going to take  
10 the motion under submission --

11 MS. DUARTE: Your Honor, I'm sorry, which  
12 motion --

13 THE COURT: The motion to withdraw.

14 MS. DUARTE: Yes, your Honor.

15 THE COURT: And Mr. Reed has made certain  
16 representations about the state of the file, speaking  
17 generically.

18 Now, Amy Standefer is here. Will you step  
19 forward, please, to the lectern. You are general counsel or  
20 one of the general counsels for the Bureau of Prisons at the  
21 local Metropolitan Detention Center where Mr. Sutcliffe is  
22 housed; is that correct?

23 MS. STANDEFER: That is correct, your Honor.

24 THE COURT: All right. Now please tell me, as an  
25 officer of the Court, what would happen in terms of the

1 logistics and mechanics of getting a file from a lawyer for  
2 Mr. Sutcliffe -- it happens to be Mr. Reed, who's right here  
3 in the courtroom to your right -- he brought to the  
4 courtroom certain items. I don't know exactly what they  
5 are, but generally they're much of the overall file in this  
6 case. And if I were to order him to give them to  
7 Mr. Sutcliffe today here in this courtroom and I intended to  
8 have Mr. Sutcliffe take them with him when he returns to his  
9 cell today and have them in his direct possession in his  
10 cell, how could that be achieved?

11 MS. STANDEFER: I believe he would need to give  
12 the documents to the U.S. Marshals, who would then transport  
13 the documents to MDC/LA. It gets a little tricky --

14 THE COURT: Here's what I'm driving at; okay? I  
15 don't want to get too bogged down in technicalities, and I'd  
16 appreciate it if you don't subject me to them. I don't know  
17 exactly what the ongoing rules and regulations at the MDC  
18 are in terms of getting information, documents, files,  
19 CD-Roms, floppy disks, hard drives into the hands of inmates  
20 who's pending criminal cases involve such evidence.

21 There's been suggested to me that a lawyer can't  
22 simply bring stuff over there and leave it. Instead, it has  
23 to be mailed. I don't want this mailed; okay? I've got the  
24 stuff here in the courtroom. The lawyer is here; the file  
25 is here, and the client is here. So I need your

1 assistance -- and I don't care who carries it. I understand  
2 it would have to be the Marshals, but I want it to arrive in  
3 the cell of Mr. Sutcliffe this afternoon. Now, can that  
4 happen or not?

5 MS. STANDEFER: I believe by the arrangement you  
6 reached with the Warden, in that case it can happen.

7 THE COURT: Okay. And would you be good enough to  
8 tell me, please, Miss Standefer, what you could do to assure  
9 that will happen if I issue that order here in court.

10 MS. STANDEFER: I will go back to the Warden  
11 immediately and tell him that these documents will be coming  
12 in with either the Marshals or Mr. Sutcliffe, and he will  
13 make the arrangements.

14 THE COURT: Who's here from the Marshal's Office?

15 DEPUTY MARSHAL: Deputy Tom Cwohey, C-w-o-h-e-y.

16 Your Honor, if we could have Mr. Reed drop them  
17 off at MDC to the legal department due to the large volume  
18 of it, and plus if there's any items that are not going to  
19 be authorized through MDC.

20 THE COURT: But I don't think there are going to  
21 be any items not authorized. I'm not presuming to interfere  
22 with ongoing legitimate security considerations. If there  
23 were a knife or something like that in this material, you  
24 would have the right to remove it, so I'm not saying it  
25 would be beyond inspection. But I don't want anything

1 removed unless it's a bona fide security concern. Is that  
2 understood?

3 MS. STANDEFER: Yeah, and that's usually what  
4 occurs. In this case it would go to the lobby, like if  
5 that's what -- the way they want to do it, what we've been  
6 doing is having the FBI agent bring it to the lobby, and  
7 then either the FBI agent hands it directly to Mr. Sutcliffe  
8 to make sure that all the documents are there, and then  
9 Mr. Sutcliffe brings the documents up with him, if that's  
10 how your Honor would like to do this.

11 THE COURT: That's fine. So, in other words,  
12 you're agreeing, Miss Standefer, it doesn't have to be the  
13 Marshals who transport it, it could be Mr. Reed.

14 MS. STANDEFER: Yes.

15 MS. DUARTE: Your Honor, may I be heard very  
16 briefly? I just want for clarification, Miss Standefer has  
17 mentioned the documents several times. I think that the  
18 Court -- although tell me if I'm wrong -- I think that the  
19 Court is actually ordering that the electronic evidence,  
20 including disks, CDs and floppy disks, be provided directly  
21 to Mr. Sutcliffe. If it is, I just wanted to make sure that  
22 the Court and Miss Standefer and the Marshals are actually  
23 speaking about the same thing.

24 THE COURT: I said all that. I described what the  
25 file is.

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1 MS. DUARTE: Okay.

2 THE COURT: It includes all that, whatever is in  
3 the file. If a banana peel was in the file, I want it all  
4 to go to Mr. Sutcliffe. And he'll have to figure out what  
5 kind of use of generally available computer equipment he'll  
6 make use of, if I take that route.

7 But until I'm satisfied that not just what you  
8 have here, Mr. Reed, but everything right down to that last  
9 figurative banana peel, has been brought over to the MDC for  
10 delivery directly to Mr. Sutcliffe, I'm not going to grant  
11 your motion to withdraw. Once you file a declaration  
12 showing me that that has happened I am very likely to grant  
13 the motion. And with that likelihood in mind, in order to  
14 create a record and save unnecessary and avoid the  
15 consumption of unnecessary documents -- this case is just  
16 one of many I'm responsible for, and it generates a  
17 considerable amount of activity time and writing -- I would,  
18 if I get to that order, do so based upon the findings that  
19 the necessary communications between lawyer and client -- in  
20 this case Mr. Reed and Mr. Sutcliffe -- have been  
21 irrevocably torn asunder; that the necessary element of  
22 trust has been irrevocably torn asunder; that the necessary  
23 capacity for each other mutually to assist each other in the  
24 common objective of having a lawyer represent a client has  
25 been irrevocably torn asunder; that there is a fundamental

1 disagreement that Mr. Sutcliffe and Mr. Reed have about the  
2 proper role, authority, independence and discretion of a  
3 lawyer. The record which has been generated, which is  
4 currently under seal, reflects those differences.  
5 Mr. Sutcliffe wants an assistant; he doesn't want a  
6 representative. Whatever the distinction is, that's the way  
7 he has characterized it. I make the findings that what  
8 Mr. Reed's characterization of the proper role of a lawyer  
9 is are correct, sound, well-established, consistent with my  
10 understanding and my intention.

11 So those are going to be all the findings, if I  
12 proceed to the next step of permitting Mr. Reed to withdraw.  
13 If I do that, I will, after evaluating this submission --  
14 and I want you to give today to Mr. Sutcliffe your copy of  
15 this document that was filed today. He can take it back to  
16 the MDC with him. It's entitled "Submission Regarding  
17 Speedy Trial Act Waivers and Compliance," and I will  
18 evaluate the alternatives available and what the law is and  
19 determine how much additional time to provide for the case  
20 to be prepared and be ready for trial.

21 Knowing that Mr. Sutcliffe is extremely familiar  
22 with this case, extremely familiar with the evidence in this  
23 case, although it has not been in his direct possession for  
24 a long time, extremely proficient at the use of computers,  
25 computer applications, computer technology, and computer

1 know-how; knowing that Mr. Sutcliffe apparently has  
2 discussed various rights and possible motions that may or  
3 may not be filed in the future -- there's at least two that  
4 have been filed, one is to dismiss the threat counts, and  
5 the second, a related one, is a Rule 29 motion, so I think  
6 that there's no doubt that additional time is necessary.

7 I'd like the record to --

8 You're Mr. McAfee, aren't you?

9 MR. McAFEE: I am, your Honor.

10 THE COURT: Okay. Mr. McAfee, who has represented  
11 Mr. Sutcliffe, with the Court's permission, in these  
12 proceedings, and who was allowed to speak on behalf of  
13 Mr. Sutcliffe at an earlier proceeding, has been attending  
14 court; he's been here all day; he's been in court at the  
15 last meeting. He has access to Mr. Sutcliffe at the jail,  
16 and he's been taking assiduous notes. He appears, from  
17 everything I've been able to see, to be orchestrating, if  
18 not orchestrating, at least assisting Mr. Sutcliffe in  
19 formulating the views that Mr. Sutcliffe has expressed. So  
20 I don't think an open-ended, lengthy period of additional  
21 time would be necessary to assure that Mr. Sutcliffe's  
22 constitutional rights to a fair trial will be protected, in  
23 the event that I find that, by his conduct -- and I am not  
24 going to repeat the observations I made outside the presence  
25 of the prosecutor today -- he has chosen to waive and has

1 indeed waived, if I make that finding, his right to  
2 representation by appointed counsel.

3 I reiterate that Mr. McAfee is welcome, assuming  
4 that he's a member in good standing of the Bar of this  
5 Court, to assume the defense of Mr. Sutcliffe. Mr. McAfee  
6 seems to have plenty of time available to devote to this  
7 cause, and if he wishes to, on a pro bono basis, represent  
8 the defendant I would evaluate -- I'm not necessarily  
9 agreeing -- but I would evaluate his right to substitute in.

10 Okay. Now, the other things that I needed to  
11 address that I mentioned at the beginning of this hearing --  
12 the Speedy Trial Act and the motions, the electronic  
13 evidence -- I think have been provided for.

14 I'll give you one opportunity to respond to what  
15 I've said, Mr. Sutcliffe.

16 THE DEFENDANT: Thank you, your Honor, I  
17 appreciate that.

18 I object to the characterization that I'm  
19 extremely familiar with this case. I have been provided no  
20 electronic discovery. Everybody admits there's a ton of it,  
21 figuratively speaking, and that this Court on August 27th,  
22 page 76, lines 18 through 20 -- Mr. Nicolaysen says, "Can I  
23 give the CD disks to Mr. Brennan?"

24 "The Court: No, no. I want Mr. Sutcliffe to have  
25 them."

U N D E R S E A L

1 I still haven't had them. So I'm not extremely  
2 familiar. This is two years, almost two years going on two  
3 years of my life when I have not seen any of this discovery.

4 THE COURT: Mr. Sutcliffe, if you represent  
5 yourself --

6 THE DEFENDANT: They dumped 8,000 pages in my cell  
7 which I share with another man, the latter part of this last  
8 month. So, no, I'm extremely familiar.

9 THE COURT: If you make a motion to continue the  
10 trial because you don't think you're ready to proceed to  
11 trial on whatever date I set, assuming that you're  
12 representing yourself, which I think is a strong likelihood,  
13 I will entertain that motion.

14 THE DEFENDANT: This reminds me of my choice given  
15 to me by -- between the U.S. Court and Mr. Harris -- you  
16 either go with ineffective assistance of counsel, who's  
17 going to violate your rights, or you can represent yourself.  
18 That's like saying to me, do you want me to kick you in the  
19 head, or do you want me to kick you in the teeth? Neither  
20 one are very appealing to me, your Honor, at this point.  
21 I've demanded effective assistance -- emphasis on  
22 assistance -- of counsel. That's all I've asked for. I've  
23 worked with these -- with this gentleman here, as the other  
24 lawyers, and the record clearly reflects that. However, I  
25 don't like to have my rights violated, and I will not allow

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pg 5

1 anybody to violate my rights. It's my right, and I'm going  
2 to protect it any way I can.

3 THE COURT: Okay. You've made that clear, and  
4 you've been given an opportunity to protect it.

5 Yes?

6 MS. DUARTE: One more housekeeping matter, your  
7 Honor?

8 THE COURT: Yes.

9 MS. DUARTE: Defendant's motion to dismiss based  
10 on the Constitution, his threat counts, he filed that last  
11 Friday, the 26th. The Court ordered me to answer it, did  
12 not, however, set a date that it was due. At the time we  
13 were scheduled for trial on October 7th and I had --

14 THE COURT: When can you file it?

15 MS. DUARTE: I can file it on Monday, the 6th.

16 THE COURT: Okay. File your opposition on the  
17 6th. The trial will be continued beyond October 7th to a  
18 date I will set. It's continued without Mr. Sutcliffe's  
19 explicit concurrence. I'm not making a finding that his  
20 conduct doesn't constitute implicit assent to a continuance  
21 of the trial. I will look into the authorities that have  
22 been presented to me concerning the application of  
23 extensions under the Speedy Trial Act and set another date.

24 MS. DUARTE: And then after I file the motion on  
25 the 6th will Mr. Sutcliffe have a week to reply, and then

1 the Court will take the motion under submission?

2 THE COURT: No. He'll have ten days. Now I want  
3 you to continue, throughout the duration of this case, even  
4 during what may be a very limited period that Mr. Reed is  
5 still counsel of record, to hand-serve at the MDC  
6 Mr. Sutcliffe with everything that you file in this case.  
7 And the Warden of the MDC has been kind enough, professional  
8 enough and responsive enough -- and I want to commend him  
9 for all those qualities -- to assure that whatever are the  
10 ongoing general prohibitions against that happening are not  
11 going to be enforced as to Mr. Sutcliffe, so Mr. Sutcliffe  
12 is receiving additional and special treatment arising out of  
13 and attributable to the strange circumstances of his case.

14 All right. I have to get off the bench,  
15 Mr. Sutcliffe. I'll give you one more chance.

16 THE DEFENDANT: One last thing, your Honor. It's  
17 my understanding that there are going to be ten hard drives  
18 that are -- and two of them have been damaged. That's the  
19 first I found about it last week when we were here. Does  
20 the Court suppose that I'm supposed to build a computer to  
21 view the hard drives? Because as far as I'm concerned, I  
22 don't believe I have one to view these hard drives. They  
23 need to be hooked up. They need special equipment because  
24 some of these are scuzzy drives, some of them are IDE.  
25 There's ten of them, so that's going to require at least two

1 computers to be made available. I'll be glad to build them,  
2 but I need the parts.

3 THE COURT: I'm not going to order the parts,  
4 Mr. Sutcliffe.

5 THE DEFENDANT: Well, you've given me discovery  
6 which I cannot view. I just want the record clear.

7 THE COURT: Miss Standefer, what equipment is  
8 available to inmates to view CD-Roms and floppy disks and  
9 other material accessible and designed for use on computers?

10 MS. STANDEFER: As Mr. Sutcliffe is aware, because  
11 he has been reviewing his discovery in our education  
12 department, we have two or three computers and down in the  
13 visiting room we have another computer that attorneys can  
14 use to view the discovery with their clients.

15 THE COURT: And are there any printers  
16 accompanying those computers?

17 MS. STANDEFER: No, we do not allow printers into  
18 the institution for inmate use.

19 THE COURT: Are there any Zip disks?

20 MS. STANDEFER: Zip drives?

21 THE COURT: Is that what they're called, Zip  
22 drives?

23 THE DEFENDANT: Yes.

24 THE COURT: Are there Zip drives?

25 MS. STANDEFER: Not that I'm aware of.

1 THE COURT: Now, if I arrange to have a Zip drive  
2 made available at the prison, could it be used in  
3 conjunction with whatever laptops or computers are currently  
4 there?

5 MS. STANDEFER: I believe we could accommodate  
6 that, your Honor, maybe in the visiting room, or we'll  
7 figure it out.

8 THE COURT: <sup>Did</sup> ~~Could~~ you get a Zip drive yet,  
9 Mr. Reed? *As ordered previously.*

10 MR. REED: No, we didn't, your Honor. They're not  
11 to expensive, from my understanding, though. They're very  
12 small.

13 THE COURT: Okay. So Mr. Reed, I already issued  
14 an order authorizing you, at CJA expense, to get that. And  
15 I know you're getting the assistance, I hope so at least, of  
16 the skillful insight of the paralegal I appointed. So when  
17 you bring over the material, or if you can't do it at the  
18 first time I want you to, at court expense, ultimately,  
19 bring the Zip drive, but that doesn't go directly to  
20 Mr. Sutcliffe. You make sure that you can coordinate with  
21 Miss Standefer because there may be security concerns that  
22 the MDC has as to under what circumstance it can be used,  
23 but I want it to be in the four corners, figuratively  
24 speaking, of that facility and available for Mr. Sutcliffe's  
25 use. And you're going to one who arranges for it.

1 MR. REED: Yes, your Honor.

2 THE DEFENDANT: One quick point, your Honor. She  
3 brought up the fact that she has seen me viewing CD-Roms,  
4 and what she's referring to, I want the record to reflect,  
5 that she's speaking of the 49 CD-Roms that Mr. Harris  
6 provided while I was at MDC. Miss Duarte has referred to  
7 those last week when we were in here as, quote/unquote,  
8 here, this is the stuff we don't want. You know, here you  
9 can have it back. Well, I'd the record to reflect that  
10 within my records of those 49 CD-Roms are two search warrant  
11 obtained discovery matter, e-mails and from Hosting  
12 Solutions, as well as the last ISP that hosted that was  
13 called -- one second here -- search warrant from the Hosting  
14 Solutions. There was the two e-mails, Gary underscore  
15 <sup>WINNICK</sup> ~~winter~~ 2000 (phonetic), there was the all 80 plus Zip files  
16 that were downloaded from Andrew Ramsey, and it was also the  
17 search warrant on the ISP called the Web Group. So I'm sure  
18 that the U.S. Attorney will have no problems suppressing all  
19 that evidence, and say here you go, you don't need it.

20 THE COURT: Okay. The record will reflect what  
21 you said. We're adjourned.

22 (Proceedings concluded.)

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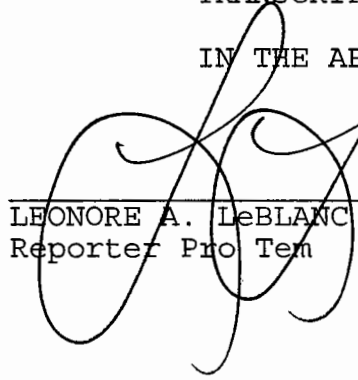
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October 1, 2003

USA v. Sutcliffe

REPORTER'S CERTIFICATE

I CERTIFY THAT THE FOREGOING IS A CORRECT  
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS  
IN THE ABOVE-ENTITLED MATTER.



September 18, 2004

LEONORE A. LeBLANC  
Reporter Pro Tem