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2 IN THE UNITED STATES DISTRICT COURT

3 CENTRAL DISTRICT OF CALIFORNIA
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6 THE HONORABLE A. HOWARD MATZ, JUDGE PRESIDING
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11 UNITED STATES OF AMERICA,)
12 PLAINTIFF,)
13 -v-)
14 STEVEN WILLIAM SUTCLIFFE,)
15 DEFENDANT.)
16 -----

CASE NO. CR 20002-350-AHM

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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS
17 LOS ANGELES, CALIFORNIA
18 THURSDAY, AUGUST 22, 2002
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23 LYNNE SMITH
24 OFFICIAL COURT REPORTER
25 UNITED STATES DISTRICT COURT
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

APPEARANCES:

ON BEHALF OF PLAINTIFF:

OFFICE OF THE UNITED STATES ATTORNEY

BY: ELENA DUARTE

ASSISTANT UNITED STATES ATTORNEY

312 NORTH SPRING STREET

LOS ANGELES, CALIFORNIA 90012

ON BEHALF OF DEFENDANT:

MARIA E. STRATTON

FEDERAL PUBLIC DEFENDER

BY: HILARY POTASHNER

DEPUTY FEDERAL PUBLIC DEFENDER

321 EAST SECOND STREET

LOS ANGELES, CALIFORNIA 90012

1 THURSDAY, AUGUST 22, 2002; LOS ANGELES, CALIFORNIA

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3 THE CLERK: Item Number 2, CR 2002-350-AHM, United
4 States versus Steven William Sutcliffe. Counsel, please state
5 your appearances for the record.

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

8 THE COURT: Good morning.

9 MS. POTASHNER: Good morning, Your Honor. Hilary
10 Potashner for Mr. Sutcliffe.

11 THE COURT: Good morning and welcome to both of you.
12 We're here because I received a request to conduct a status
13 conference. And there are a number of issues that are
14 intertwined, some of which require me to meet only with
15 Ms. Potashner and Mr. Sutcliffe and outside your presence,
16 Ms. Duarte. Some of the material I intend to explore may well
17 be confidential and protected by attorney-client privilege.

18 I'm going to have to excuse from the courtroom all
19 people other than appropriate and recognized representatives of
20 the marshals office, the Bureau of Prisons, Mr. Sutcliffe and
21 his lawyer.

22 And I think I will turn to those matters because they
23 could affect how we approach the issue of calendaring first. So
24 I'm going to ask you to excuse yourself. Please wait outside.

25 Who else is in the courtroom?

1 MS. POTASHNER: Your Honor, there are two people from
2 the public defenders office who are working on the defense for
3 Mr. Sutcliffe. I would ask the court if the court is inclined
4 to allow them to stay in court.

5 THE COURT: Who are they? Say their names for the
6 record.

7 MR. ETNER: Jacob Etner.

8 MS. BELLER: Barbara Beller, paralegal for the public
9 defenders office.

10 THE COURT: I think it would be appropriate for them to
11 stay.

12 Are there any other members of the public or people not
13 affiliated with Mr. Sutcliffe or his defense who are in the
14 courtroom, other than representatives of the marshals office or
15 the court security officers?

16 MS. POTASHNER: Not to my knowledge.

17 (GOVERNMENT COUNSEL AND MEMBERS OF THE PUBLIC EXCUSED)

18 THE COURT: I think it would be most helpful for you to
19 remain at counsel table and Mr. Sutcliffe as well, instead of
20 going to the lectern.

21 First of all, before I inquire into Paragraph 3 of your
22 declaration concerning Mr. Sutcliffe's concerns, and I will hear
23 from Mr. Sutcliffe, I want to know whether the order that I
24 issued in July authorizing an examination at Gateways was
25 carried out.

1 MS. POTASHNER: Your Honor, it's my understanding, and
2 I learned this from Ms. Bednarski, I didn't talk personally to
3 pretrial services. It's my understanding that Gateways did in
4 fact meet with Mr. Sutcliffe. However, Gateways required that
5 Mr. Sutcliffe allow them to administer a blood test and
6 Mr. Sutcliffe did not want his blood drawn in this case. And
7 therefore, based on that I don't believe Gateways found that he
8 was suitable. He was unable to comply with that part of the
9 requirement.

10 THE COURT: Suitable for what?

11 MS. POTASHNER: Potential placement in their program.

12 THE COURT: What did you perceive to be, you and/or
13 your co-counsel, who I realize cannot be here at this time, what
14 did you perceive to be the purpose of that examination?

15 MS. POTASHNER: Your Honor, we were hoping that if he
16 were found suitable that perhaps we could, and based on their
17 evaluations, perhaps that would be new information for Your
18 Honor in order to consider alternative bail conditions.

19 THE COURT: Was there any issue concerning
20 Mr. Sutcliffe's competency to prepare for trial and stand trial
21 and his capacity to cooperate and assist his own lawyers?

22 MS. POTASHNER: Your Honor, at this point I do not see
23 a competency issue.

24 THE COURT: Was there concern at that point? Before we
25 turn to the present time.

1 MS. POTASHNER: No, Your Honor.

2 THE COURT: Keep going. What were you about to say?

3 MS. POTASHNER: I was about to say, Your Honor, that
4 the only concern I have in terms of representing Mr. Sutcliffe
5 in this proceeding is that Mr. Sutcliffe has enunciated to me a
6 number a very serious concerns with my representation, including
7 his belief that I'm attempting to obstruct justice in his case,
8 and a number of things that I think Mr. Sutcliffe may be more
9 appropriate to address the court on. That was my only concern.

10 THE COURT: Okay. I will hear from Mr. Sutcliffe in
11 just a minute. I'm checking on something in the file.

12 Mr. Sutcliffe, would you like to explain to me what
13 your concerns are?

14 THE DEFENDANT: Yes, Your Honor, I would. I have
15 several.

16 THE COURT: If it would help you, you can sit down.
17 You may find it easier to look at your notes.

18 MS. POTASHNER: Your Honor, Mr. Sutcliffe has expressed
19 great difficulty in going through his notes with handcuffs as
20 they are right now. Is it possible that they be altered in
21 another manner where he can go through his paperwork?

22 THE COURT: Do you see any problem with that,
23 representatives of security?

24 THE MARSHAL: Is he able to move his papers like that
25 (INDICATING)?

1 THE COURT: I'm not sure how extensive your need is,
2 going through the notes. I want to make sure you have the
3 opportunity to state on the record --

4 THE DEFENDANT: I'm stating on the record that last
5 night I had taken the time to go through all the discovery, had
6 to put it like in a little context so I could go through it. I
7 will do it like this if Your Honor likes.

8 THE COURT: Talk to me start forward. Then look at the
9 notes. Tell me what is bothering you.

10 THE DEFENDANT: As Ms. Potashner has conveyed to the
11 court, I do have serious concerns at this point that there might
12 be obstruction of justice. I raised that to her supervisor. I
13 was told, don't stir things up.

14 THE COURT: Obstruction of justice by the lawyers who
15 are representing you?

16 THE DEFENDANT: By Ms. Potashner.

17 THE COURT: What do you mean?

18 THE DEFENDANT: When I was first brought into the
19 system I let everybody know that I considered myself a political
20 prisoner. I believe that their malicious prosecution and
21 arbitrary prosecution about to take place against myself, by the
22 government, specifically the FBI, I believe they have been
23 targeting me for the -- since 1998, along with a certain branch
24 of police departments, based on my speech that I have expressed
25 in the past which was directed at those members of law

1 enforcement. I believe that they've misrepresented facts, they
2 have omitted facts. They have tampered with a document.

3 THE COURT: Which document; do you know?

4 THE DEFENDANT: Yes, sir. I have the document right
5 here. It will take me a minute to get it.

6 THE COURT: Go ahead.

7 THE DEFENDANT: Discovery page 65 and discovery page
8 66.

9 THE COURT: Are those references to Bates numbers?

10 THE DEFENDANT: Yes, Your Honor. I would draw
11 Your Honor's attention to the upper right-hand corner of Bates
12 66, page 2 of 2. And note that date to the left of page 2 of
13 66, that was the night I was arrested. That's the night I was
14 tortured in the police department. I have the --

15 THE COURT: That's in the year 2002.

16 THE DEFENDANT: That's correct.

17 THE COURT: Arrested by whom, the police?

18 THE DEFENDANT: Manchester. One officer in there
19 tortured me while the other officers and members of the FBI
20 stood by and watched.

21 THE COURT: Okay. Now I don't have those documents
22 before me. This isn't the appropriate time to find out what
23 happened relating to those documents or on March 26. What is of
24 importance, it's in your interest for you to tell me what it is
25 about your lawyers and their response to your claim that this

1 document was tampered with.

2 THE DEFENDANT: I have been a victim. When I first
3 arrived I first met with the public defender in New Hampshire,
4 Mr. Sax, a very honorable man, gave me a good defense. I
5 expressed to him I was tortured in the police department. He
6 told me to let him know when I got here what happened. I
7 expressed that to Ms. Potashner, that while I was being
8 tortured, my head was being forced, I saw in the upper left hand
9 corner behind, a video tape, a camera pointing down directly at
10 me while I was tortured.

11 I said, "Ms. Potashner, get that tape. I want that
12 tape. It will show everybody standing around watching this
13 happen."

14 She said she would. Months went by. Then I again
15 asked her about the tape. I said did you get the tape. Not
16 yet. I wrote her a letter. I said please tell me why you
17 haven't gotten the tape if you're going to get the tape. If you
18 are not going to, tell me why. That letter was ignored.

19 When I finally went to her boss, over her head, I was
20 told don't stir things up. I was told the next day the subpoena
21 had been issued.

22 THE COURT: I don't know if you're aware, that's just
23 actually what I was about to tell you, the subpoena was issued.
24 It was issued August 9th. And it was directed to the Manchester
25 Police Department. I authorized the issuance of it, commanded

1 the production of the video tape and arrest reports pertaining
2 to the booking and detention of you.

3 THE DEFENDANT: Here is my concern, Your Honor. I met
4 with Ms. Potashner that day in the BOP and she -- the first
5 thing she said to me was that the tape doesn't exist. I said,
6 my question was, how do you know that if you just filed the
7 subpoena today. She said that she had conducted a secret
8 investigation of the police department to see if the tape
9 existed.

10 Well, my limited knowledge of law, for what I have
11 studied, I do have great respect for the law, I have studied law
12 for the past seven years, is that when there's potential
13 exculpatory material the safest thing, to keep it from being
14 destroyed or obstructed, is to put the people on notice that you
15 intend to seek that discovery.

16 Waiting as long as she did and not informing me that
17 that tape was not being sought, I felt misled. I felt misled
18 and I felt betrayed. I have no doubt that tape is no longer
19 there.

20 THE COURT: So then what it comes down to is you think
21 she took too long to try to get it. If she had gotten it
22 whenever that was, maybe it would have been produced.

23 THE DEFENDANT: Or maybe preserved. I still think that
24 the truth can be obtained and justice can be obtained as to what
25 really happened that day and that there was a civilian witness

1 in that room.

2 THE COURT: Well, right now you seem to be
3 acknowledging that as to that particular piece of evidence,
4 which I have to tell you, I'm not sure what the relevance would
5 be. It's my job, I'm going to make sure you get a fair trial.
6 The tape of what happened when you were booked by a local police
7 force New Hampshire, I don't know the tape exists. Where does
8 that leave us now?

9 THE DEFENDANT: That leaves me with a lawyer that I
10 basically don't trust. It's not the only -- there's been other
11 misrepresentations to me from my counsel. I asked her to do
12 certain things and at the 11th hour she's changed them without
13 consulting with me. She's told me -- I don't want to crucify
14 her.

15 MS. POTASHNER: Tell him everything.

16 THE COURT: You have a right to be heard about that.

17 THE DEFENDANT: I do not consider myself a threat to
18 the community or the people involved here. I got as far away
19 from those people as I could possibly get from them. I have no
20 intention of ever coming back to California or ever seeing these
21 people again.

22 I asked Ms. Potashner after my bail as denied, I told
23 her I'm not a threat to anybody. I have been charged, I was
24 charged with more serious stuff than this in the past and I
25 represented myself because my lawyer took all my money and

1 didn't show up. I showed up, I made my appearances on the
2 kidnapping charge, which I'm sure Your Honor has seen in my
3 criminal history.

4 I pled guilty to, I took responsibility for what I did.
5 I never -- I'm not a threat to the community. I asked
6 Ms. Potashner to help me prove that. And she obtained a
7 psychiatric evaluation to be conducted, for purposes of new
8 discovery as she told me, we need new discovery which I
9 understand the case law which I also confirmed.

10 At the 11th hour though she told me that she was
11 waiting on the report, she was waiting on the report. At the
12 11th hour she told me we're not going to use that. I'm going to
13 save it for the trial. I'm like, you're kidding me. Today she
14 tells me there is no report, that it was an oral report. These
15 are all these little new surprises that I can't --

16 THE COURT: Let me tell you before we follow through
17 further, that I don't know Ms. Potashner, except to the limited
18 extent she's been before me. I know a great deal about her
19 office, which I have tremendously high regard for. I used to
20 litigate against them a long time ago. I don't think the office
21 has ever been in as strong a position in terms of the advocacy
22 of its lawyers as it is now. That's very strong.

23 You have a right to a lawyer who provides effective
24 assistance of counsel. That's a constitutional right you have.
25 That doesn't mean that you have a right to have a lawyer, you or

1 anyone has a right to have a lawyer do whatever you think should
2 be done or not to do things that you don't want to be done.

3 The lawyer has an independent duty to you and an
4 independent duty to the profession and to the court system. So
5 very often, maybe if you have an extensive criminal background
6 you know this from your own experience, very often the lawyer
7 and the client are not entirely in sync with each other about
8 what should be done, and the way to do it, and when it should be
9 done, and why it should be done, and a whole host of pretty
10 basic things. Very often that happens.

11 And very often it is something that they work out and
12 almost never is it evidence that the lawyer's failing to do her
13 job. I don't know, and I will hear from Ms. Potashner what her
14 response to this is. But so far what you have told me,
15 Mr. Sutcliffe, the thing that is most important is that you feel
16 betrayed. It doesn't mean you're right to feel betrayed. I
17 don't know if you use the word betrayed but I interpret what you
18 told me to boil down to that.

19 Is that the way you feel?

20 THE DEFENDANT: I feel I haven't had effective
21 assistance of counsel. I have asked her to argue, for instance
22 bail. Her response was, "Well, we're not going to win that, so
23 I'm not going to even go there."

24 THE COURT: She did argue it. I'm the guy who made the
25 decision.

1 THE DEFENDANT: I asked her to appeal that. She said
2 no, I'm not going appeal it because we're not going to even win.
3 It's like why get out of bed and go for a job because I'm not
4 going to find one.

5 THE COURT: Well, it's not like that. A lawyer has the
6 duty to advise her client what is in his interest and what
7 isn't, to advise her client whether there's merit to a plan or
8 to a proposal, where there isn't, what is likely to happen and
9 what isn't likely to happen. How best to allocate the resources
10 that the lawyer has and the client has. Where to pick the
11 battles, how to fight them. Those are all part of a lawyer's
12 job. And if she says we're not going to do it, I don't know
13 what words she uses, but it's going to be a reflection of her
14 conclusion it's not in your interest to do it.

15 I'm not in a position to say whether she's right or
16 wrong. You're talking about a ruling I made. I'm the guy you
17 ought to have the beef with. And she may or may not think
18 somebody on appeal would review that differently. I think no
19 one else would review it differently. I think my ruling was
20 sound and that's why I made it.

21 What is your position on the matters that Mr. Sutcliffe
22 has issued so far?

23 MS. POTASHNER: My biggest concern is reflected in what
24 the court said, he feels betrayed. I have of course strategic
25 reasons that I made the decisions I made. I'm not working in a

1 vacuum. I'm working with a number of people in my office,
2 including Marilyn Bednarski, the other attorney in this case. I
3 know that there are a number -- what I'm concerned about with
4 this particular hearing is that there are a number of motions
5 that Mr. Sutcliffe has raised with me that I have not filed with
6 Your Honor.

7 And I know that that is a big concern of his. I would
8 like him to have the opportunity to address the court about that
9 issue in our case. In terms of our representation of
10 Mr. Sutcliffe, we of course believe that we are doing everything
11 we can do for him. And as Your Honor said, picking and choosing
12 our battles.

13 It is true that I did tell him that I would not appeal
14 Your Honor's decision regarding detention. We were hoping that
15 Gateways would be a viable alternative that Your Honor may
16 consider. I didn't think an appeal on the issue was really an
17 appeal that would go anywhere. I didn't think that would have
18 much merit because as Your Honor is well aware, there's great
19 discretion given to the district court in that regard.

20 And so we did choose not to appeal. Instead, what we
21 decided to do in terms of a bail issue is focus on new
22 information that we could bring Your Honor to make Your Honor
23 comfortable with the idea of possibly releasing Mr. Sutcliffe
24 pretrial. That's what we were doing in terms of that.

25 In terms of the video tape, I'm very troubled by the

1 fact that he thinks I'm obstructing justice by delaying getting
2 the video tape. It is true that I asked the court to issue a
3 subpoena to get the video tape. It's also true that I asked the
4 court to do it August 9th for a September trial date. It's my
5 opinion and belief, and perhaps I differ with Mr. Sutcliffe, but
6 it's my opinion and belief that if a video tape exists it still
7 exists and subpoenaing it would bring it to this forum.

8 THE COURT: It's the only way you can get it.

9 MS. POTASHNER: The reason that I went to the local
10 federal public defenders office was through Jonathan Sax and
11 asked him if he knew the Manchester Police Department's routine,
12 was I thought that would give me more information. I did not,
13 it is not my experience coming from state court that bookings
14 are often video taped.

15 So I asked him if he was aware of whether or not they
16 video tape all bookings. He said in turn that he knew somebody,
17 somebody in his office had very many contacts there and so he
18 would informally find out for me.

19 I received information that they generally do not video
20 tape. But because Mr. Sutcliffe was insistent that there was a
21 video tape I didn't want not to subpoena it. It was not my
22 intention, of course, in any way to obstruct justice or in any
23 way to hope that by delaying somehow this video tape this would
24 disappear. It's not my experience that that would happen.

25 THE COURT: Whatever is the fundamental nature of your

1 relationship with Mr. Sutcliffe, I'm not necessarily in a
2 position to make findings but I do find, based on everything
3 I've been told so far at this hearing and my prior involvement
4 in ruling on your application for the issuance of the subpoena,
5 that there is no basis to find that you or your office are
6 participating in an obstruction of justice.

7 If by that you mean the destruction of this tape,
8 there's absolutely no basis, Mr. Sutcliffe, to find that the
9 public defenders office, assuming the tape ever existed, maybe
10 it did, you were there, you presumably know, there's nothing in
11 the record that would support any findings that the public
12 defender is responsible for its non existence now, either
13 actively or passively or by virtue of when they chose to seek it
14 and how they chose. So I don't think you have a basis to be
15 worried about that.

16 Now what about your relationship with Ms. Bednarski?

17 THE DEFENDANT: My relationship with Ms. Bednarski is
18 okay. I wish I had more of her time. But I trust her.

19 THE COURT: Have you explored with your colleagues,
20 Ms. Potashner, and with Ms. Bednarski and with Mr. Sutcliffe
21 making sure that the primary responsibility in the day-to-day
22 communications with Mr. Sutcliffe are carried out by
23 Ms. Bednarski?

24 MS. POTASHNER: Yes, Your Honor, to some extent I have.
25 Ms. Bednarski does meet with Mr. Sutcliffe more regularly than I

1 do. But in all candor, we are both on this case, Your Honor.
2 We both would be working towards trial in this case. And I
3 would obviously need to be able to communicate with
4 Mr. Sutcliffe as well.

5 THE COURT: Well, I want to be practical about this. I
6 want you to understand what my orientation is and what I'm about
7 to say. This is not a basis for finding that there's any reason
8 objectively looked at to initiate an adjustment in the team that
9 represents Mr. Sutcliffe. I have no basis and no view and no
10 feeling whatsoever that your work so far is in any way
11 substandard or in any way cause for Mr. Sutcliffe's discontent.

12 But the practical solution that will preserve his
13 constitutional rights and the interest that the public has in
14 continued representation and as early a trial date as possible,
15 because if the man is not proven guilty, then he's entitled to
16 be released as early as possible. He has an interest in
17 proceeding to trial as quickly as is in his interest.

18 That militates in favor of keeping the core team in
19 place for him. That team would include presumably the people
20 from your office who were assisting, Dr. Etner and the
21 paralegal. And also Ms. Bednarski.

22 And if he has this view that, even though it's wrong,
23 and even though there's no basis for it, that he cannot have
24 that same level of confidence and trust in you that a client
25 needs to have, then I would suggest that the team be slightly

1 changed and that either Ms. Bednarski handle it alone or someone
2 else who doesn't create these issues for Mr. Sutcliffe take over
3 your involvement.

4 Now I'm not trying to manage the public defenders
5 office but I am trying to achieve the objective that's my duty
6 and responsibility to achieve. And that is the defense that
7 Mr. Sutcliffe's entitled to, and the continued and efficient
8 prosecution and defense of this case.

9 Would that satisfy you, Mr. Sutcliffe?

10 DEFENDANT: One second.

11 THE COURT: Go ahead.

12 (DEFENDANT AND MS. POTASHNER CONFER)

13 MS. POTASHNER: Okay. Your Honor, I understand the
14 court's position, and I will speak to Ms. Bednarski regarding
15 how we can alter the situation in order to make
16 Mr. Sutcliffe more comfortable. Because it is our objective for
17 him to be happy with his defense and for him to feel that he's
18 being defended.

19 That's important to me, regardless of what
20 Mr. Sutcliffe perceives is important to me, that is important to
21 me. So I will go back and speak with Ms. Bednarski regarding
22 that..

23 There was one other thing that I think the court needs
24 to address, if I may say.

25 THE COURT: Before you say the other thing. Go ahead

1 but I have to talk to Mr. Sutcliffe too. What is the other
2 thing?

3 MS. POTASHNER: He had written a few letters to us, I
4 believe a few, and I know definitely one, talking about self
5 representation. I don't know if that's something he's
6 interested in but I would like this to be aired.

7 THE COURT: Yes, I was planning to. Because that was
8 mentioned in your declaration. Are you trying to represent
9 yourself; is that what your objective is?

10 THE DEFENDANT: I felt that certain issues needed to be
11 brought forth to the court, and the court needed to be apprised
12 of these issues, and that if they were not prepared to bring
13 these issues towards the court then let me speak.

14 THE COURT: Well, I am letting you speak. It's
15 important to me that I let you speak as well as, I think, in
16 most respects your right to speak. If you had said to me judge,
17 I want to be my own lawyer, I would have spent a half hour
18 explaining to you why that would be an absolutely mistaken
19 decision on your part. I could take you through all the
20 different little and big aspects of fighting off the government
21 at the trial and before the trial in this case, that you need a
22 lawyer to handle.

23 THE DEFENDANT: I'm very aware of that, Your Honor.

24 THE COURT: If you are not seeking to represent
25 yourself you're making a wise decision. What I'm trying to do,

1 and you probably already understand this, is continue your
2 defense. You're in very good hands. But if, even though you're
3 wrong, you think that the vibes between you and Ms. Potashner
4 are interfering with the defense that you're entitled to, then
5 that could be adjusted and that could be changed.

6 And that's the best outcome for you. It happens to be
7 the best outcome for my responsibilities, which are not to pick
8 sides in the case. I never will. But to make sure your rights
9 are protected and the public's right, which by the way is pretty
10 much in sync with yours, the public's right to have a speedy
11 trial in this case. So here's the bottom line. You should --

12 THE DEFENDANT: I was just informed, couple days ago
13 that my defense team is not prepared to go forth on September
14 3rd, which expedited my feelings of --

15 THE COURT: Were you informed --

16 THE DEFENDANT: I was told that the expert who was
17 examining the hard discs would not be ready until October 15th.
18 I've got a little problem with that. I have been here in jail,
19 in prison as long as the web site has been up. They want to
20 wait an additional two more months longer that the web site has
21 even been alive.

22 THE COURT: Yes, but Mr. Sutcliffe you want it to be
23 done right, rather than done fast and not right.

24 THE DEFENDANT: I agree, Your Honor.

25 With that thought in mind, I would like the court to,

1 when it gets a chance, to review United States versus Gallow,
2 Eastern District of New York, 1986, 653 F.Sup. 320. I would
3 plead with this court to --

4 THE COURT: What does that case say?

5 THE DEFENDANT: The blurb on it is -- I have the case
6 here but the blurb is defendants --

7 THE COURT: If you have the case here, have your lawyer
8 give it to the clerk. I'll look at it right now.

9 THE DEFENDANT: Under the Federal Rules of Criminal
10 Procedure, under length of detention, and it almost parallels my
11 case, except for they talk about four months and I'm looking at
12 another two months. But I would ask the court to reconsider
13 the, after reading the case, to reconsider incarceration and
14 consider remanding to the third party custody of either
15 Mr. McAfee as he is offered in the past.

16 THE COURT: I remember thinking about that. I remember
17 this.

18 THE DEFENDANT: I wish to contribute to my defense.
19 And for all of the reasons that are listed in the Gallow case,
20 they're all applicable to me. It would, specifically in here
21 they said it would be against defendant's interest if any harm
22 were to come to a government's witness. That's common sense.

23 Danger to witness was not appreciably reduced by
24 incarceration of the defendant. Witness may have been profiting
25 financially from defendant's incarceration, emphasis added.

1 Defendant's encountered difficulties in preparing for trial
2 during incarceration.

3 THE COURT: You know, Mr. Sutcliffe --

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: I'm not going to tell you I have read the
6 whole case. It's a pretty long case and it's a judge I respect
7 greatly. He's one of the finest judges in this country. But I
8 can tell you that part of my job requires me to read a zillion
9 cases all the time. And I can scope out the relevant portions
10 of a case pretty quickly. I may not be doing justice to this
11 case, but Vita and Millulosi in this case you're talking to me
12 about were charged with different crimes than you.

13 I don't know if you're guilty or innocent. It won't be
14 for me to decide. But the crime you're accused of involves
15 threats to not only possible witnesses but to other parties as
16 well. These guys were indicted on different crimes. Then the
17 question came whether or not their conduct vis-a-vis potential
18 witnesses warranted being held in custody pending the trial.
19 And this is not an unusual issue. Okay.

20 The question of bail has a very different meaning and,
21 not a meaning but a very different application under the facts
22 of this case. I found that there was sufficient basis to find
23 by probable cause, but there's no final finding, that you did
24 the things you were accused of and that they warranted changing
25 the ruling of Judge Woehrle.

1 This decision by Judge Weinstein would not change that
2 view.

3 THE DEFENDANT: I think what I was trying to get across
4 to Your Honor is that before I was brought here and I spoke to
5 the judge in New Hampshire, and I'd like to quote what he said
6 about the web site, my web site. He says, (reading) "The
7 establishment of the web site tells me two things. One, that
8 your client is extraordinarily talented. That it's a
9 brilliantly conceived and put together web site but it's scary.
10 I don't know whether there's a screw loose with your client or
11 not. That's why I asked you first thing this morning. To my
12 mind that's what makes him dangerous."

13 That I might have a screw loose. Well, then half the
14 people I have met in this world should be locked up. Because
15 everybody's got a little -- and the web site was scary. But
16 like I said, there was a previous web site that I created which
17 I'm actually very proud of, called killercop.com. Which is why
18 I said the FBI is investigating, because of that scary web site.

19 That was a web site I created. I made that scary like
20 that to get people's attention because they seemed to like that.
21 Because it dealt with something that's very scary, which is
22 being kidnapped by the police department, specifically the LAPD.

23 That's what I've alleged from that web site. It was
24 detailed, that web site. It was my learning about the system of
25 the law and justice and the police, and certain other issues

1 which came along this path I had taken.

2 But in five years I was never arrested for anything. I
3 will tell you this much, Your Honor, I was investigated very
4 heavily from every branch of the government; United States
5 Attorneys Office, FBI, Sheriffs Department, LAPD, U.S. -- State
6 Attorney General. Pick an acronym and they were investigating
7 me.

8 I have never been charged with a crime like that, Your
9 Honor. I can be a little scary with my words, but keep in mind
10 my spirit is -- I love above all things my speech because you,
11 Your Honor, should know these are the tools of the law. And
12 while yes, some people might be scared of other people's words.

13 Like I'm from New Hampshire. Live free or die.
14 Someone might say that's scary. You know. It's free, this is a
15 freedom of speech case, Your Honor. I think the facts will bear
16 that out when proven.

17 THE COURT: That may be part of your defense but now I
18 think we're going beyond where I should at this point. Your
19 speech rights may or may not be involved by these charges.

20 THE DEFENDANT: Well --

21 THE COURT: Don't interrupt me. I have listened
22 carefully and patiently to you. Now I want to tell you
23 something. What is in your interest is to get this case ready
24 for trial. And to start the trial not one day too soon. And if
25 at all possible, not one day too late. You're going back over

1 the ground about detention and I don't blame you because I
2 haven't had to be a prisoner but I know what it's like one step
3 removed and it's awful. You want to get out of that situation.

4 But right now there's no motion pending before me. But
5 when there was I found that incarceration was appropriate for
6 the reasons I expressed. And I don't think there's any basis to
7 change the ruling.

8 The real question is what comes next, Mr. Sutcliffe.
9 And what comes next is preparation for trial. And what comes
10 after that is trial. Now if you are relying on and if your
11 lawyers are relying on outside experts to assist in any aspect
12 of the defense, and it wouldn't surprise me if they have to,
13 given the nature of these charges. And if the time necessary,
14 because nobody in this situation is in a position to focus all
15 of her time or all of his time only on your defense. All of us
16 have other obligations. I have other trials, I have other
17 defendants who have a right to a speedy trial.

18 But I will guarantee you that I will set this down for
19 trial and stick to the date, unless there are absolutely
20 compelling conflicts that I can't get out of, to get you to
21 trial as quickly as possible. But I don't want you to start the
22 trial before you're ready. That means your lawyers are ready.
23 And that means the experts are lined up.

24 Now what I'm trying to do, I'm spending a lot of time
25 on this this morning and I don't have unlimited time at all, is

1 to protect your rights. So I will go back and I will look at
2 Gallow and I will return this to you. I put some writing on it.
3 I shouldn't have done it. It's your copy.

4 THE DEFENDANT: It's all right, Your Honor.

5 THE COURT: I don't think that's the issue before us.
6 The issue is whether the continuance of the trial should be
7 granted, and until when. Because you're going to have a team of
8 lawyers that may or may not include Ms. Potashner. Definitely
9 include Ms. Bednarski and others from her office, which is
10 devoting, I can see already, a lot of effort to this. They're
11 going to be helping you out as best they can. I don't know of
12 anybody else who can do it better.

13 Now the question is when do you want to go to trial.
14 And you don't have final say on that. But September 3rd makes
15 no sense at all.

16 THE DEFENDANT: I sent Your Honor a letter. I don't
17 know if you have received it yet. You're probably getting it
18 today or tomorrow.

19 THE COURT: What did you say in the letter?

20 THE DEFENDANT: I said in the letter that I wanted you
21 to order the public defenders office to stop everything they're
22 doing and meet with me immediately and sit down and bring all
23 the discovery, all of the witnesses they intend to produce,
24 everything, A to Z, the whole kitchen sink so that I can figure
25 out what is going to happen on my trial September 3rd. Because

1 at this point in the game, I'm in the dark. I don't know.

2 THE COURT: September 3rd is less than two weeks. And
3 the declaration that Ms. Potashner filed relating to her
4 assessment and that of her office as to what they have to do to
5 complete their analysis of the evidence that the government got
6 and gave to them, approximately ten hard drives, four zip
7 drives, 29 floppy discs, approximately 1500 pages of written
8 discovery. And she mentioned an expert, I don't know who it is,
9 who's already begun to analyze this evidence but won't complete
10 it. Now you say he won't complete his analysis by the middle of
11 October.

12 That strikes me as surprising, Ms. Potashner. If I set
13 a trial date in October, not some time after he completes his
14 analysis in mid October, that ought to be doable.

15 MS. POTASHNER: Your Honor, I was going to suggest to
16 the court an October 29th trial date. That would give us a
17 little bit of time to discuss his analysis with him as well as I
18 know that Mr. Sutcliffe has pretrial motions, unusual pretrial
19 motions that he may want to file or that we may want to file.

20 THE COURT: I'm not going to permit him to file motions
21 on his own. He's going to be dealt with as all defendants. If
22 he's being represented by counsel it's the counsel's duty to
23 file the motions. He has a right to be heard first in terms of
24 his communications with his lawyers and secondly, at the
25 hearings. Not necessarily to argue to the court like this, but

1 that would be heard through lawyers.

2 You work it out and Ms. Bednarski will be primarily
3 responsible for working out what motions should be filed and
4 what they should say and what they should seek.

5 MS. POTASHNER: Of course. I misspoke. What I
6 intended was there are some issues that he's raised that we may
7 want to litigate pretrial. I was going to suggest an October
8 29th trial date with a motions date the previous week. That
9 would give us enough time to file and have a motion schedule
10 set out.

11 THE COURT: Supposedly -- you are talking about written
12 motions, about approximately how many?

13 MS. POTASHNER: At this point Mr. Sutcliffe has raised
14 and we are investigating a possible commerce clause motion,
15 interstate federal jurisdiction motion as well as a possible
16 suppression motion. What we -- another --

17 THE COURT: That will require an evidentiary hearing?

18 MS. POTASHNER: At this point it may or may not. I
19 don't know if the court would find an evidentiary hearing was
20 necessary. But it may.

21 The other issue was that Mr. Sutcliffe was interested
22 in, and if there is merit we too would be interested, is he's
23 concerned with the grand jury and the way the grand jury was
24 convened, as well as the testimony that was given at the grand
25 jury.

1 We are getting the transcript of the grand jury. I
2 know Your Honor has ordered and -- the order for that. Once we
3 review that there may be a motion from that jury transcript.

4 THE COURT: Okay. You know, Mr. Sutcliffe, if things
5 go bad for you and there is a trial, I don't throw the case out
6 before then and you get convicted, you will have a right to
7 appeal. But hear me out now because I want to make sure you
8 understand this.

9 You want to make sure that all bases available to you,
10 to have a higher court review whether what was done was fair and
11 correct are in the record. So if things need to be done that
12 can't be done at a faster pace, and that would require a delay
13 in this trial, it's in your interest to have them done or have
14 them sought at least, like these motions before me, which is a
15 little bit unusual, than to rush to trial, not have them heard
16 or not have them heard on the basis that you need, which is the
17 strongest basis that you can muster up. Because if you don't
18 prevail on those motions, at least the record is complete and a
19 higher court can consider whether or not what happened at this
20 level was right or wrong.

21 That means that you're going to need to have more time.
22 September 3rd is out of the question. Can't be done.

23 THE DEFENDANT: Does that mean I can also appeal
24 Your Honor's ruling for, to apply least restrictive conditions
25 on the bail?

1 THE COURT: You can. I don't know of any procedural,
2 it's not up to me to say yes or no. Whether you choose to is
3 different. I happen to think that the resources of your
4 lawyers, which cannot be devoted only to you. Please accept
5 that. Can't happen. They have too many other responsibilities.

6 Those resources have got to be applied in a way that
7 makes sense for you. If doing something in the nature of a bail
8 appeal, which I'm not ruling on, they can move for
9 reconsideration to me. They could try to get appellate relief
10 by the Ninth Circuit.

11 But if they're doing that it could have an impact on
12 the other things they're trying to do for you and that you want
13 them to do for you. Just take that into account. I'm not
14 saying at all what my ruling would be if the matter of bail
15 comes back to me. And I'm not saying what, whether they should
16 appeal that or move for reconsideration.

17 It will be opposed. And that will involve a lot of
18 skirmishing and trial time and their time and your time. If
19 that happens it's going to probably delay the trial even
20 further. I don't know. So you make the decision after you
21 think about it and after you talk to your lawyers about it.

22 But the question is how much of a continuance. And I
23 would be willing to put some pressure on the government. The
24 material you sent me included a letter from the lawyer for the
25 government that says that earlier she would be available, would

1 be October 22nd.

2 Now I can set this down for October 22nd. I mean I
3 wouldn't want to spend seven days in jail I didn't wind up
4 having to spend. So I can understand why that might be little
5 preferable to Mr. Sutcliffe than October 29th. But it can't be
6 done before October 22nd.

7 And Ms. Potashner, if you could do, if you could be
8 ready to, your office and his team could be ready for a full
9 defense on the 29th they could be ready on the 22nd.

10 MS. POTASHNER: I agree with Your Honor on that.
11 That's fine. With a motion date the week before, that's fine
12 with me.

13 THE COURT: What about you, Mr. Sutcliffe?

14 THE DEFENDANT: I'm just a cog in the wheel at this
15 point.

16 THE COURT: No, you're not. I've been listening to
17 you.

18 THE DEFENDANT: I would request the least restrictive
19 conditions be applied so I can vigorously defend myself on the
20 outside. I'm very limited. I actively want to participate in
21 my defense, which I think I did a pretty good job working with a
22 heck of a public defender in New Hampshire, Mr. Sax. But my
23 hands are totally tied here, as to my access to the law, to
24 study.

25 THE COURT: Go over whether there are any changes in

1 circumstances concerning conditions of confinement and release.
2 And if it's appropriate to make a motion they will make it. If
3 it's appropriate to appeal and they're not procedurally barred
4 from appeal, they can do that and they can just devote the
5 necessary resources to also prepare for trial.

6 I'm going to call back in the prosecutor. And there
7 will need to be findings and a stipulation but I'm going to set
8 it down for trial October 22nd. And I'm making a specific
9 finding that Mr. Sutcliffe has the right to have his lawyers
10 review again with him, whether there's any basis to seek a
11 change in the conditions of his confinement, as well as all of
12 the others things that are necessary to prepare for trial.

13 (GOVERNMENT COUNSEL PRESENT)

14 THE COURT: Ms. Duarte, I have been pursuing and
15 exploring various matters with the defendant and with
16 Ms. Potashner, including the request for a continuance of the
17 trial. I have taken into account a whole host of factors,
18 including what was set forth in your letter dated August 20th.
19 And I am going to order that the trial is continued until
20 October 22nd.

21 But I want that to be, even though I know I have other
22 things on my calendar then. I brought my calendar into the
23 courtroom. I want that be a firm date. So if you get, your
24 schedule changes then line up somebody else from your office
25 because I don't want to have a continuance brought by the

1 government. We're going to go to trial on October 22nd.

2 MS. DUARTE: Understood. And Your Honor, I appreciate
3 the consideration very much.

4 THE COURT: Now I want you, it's not entirely clear how
5 the defense team will be structured. Please consider that your
6 initial effort to communicate with counsel for Mr. Sutcliffe
7 should be directed to Ms. Bednarski.

8 MS. DUARTE: Ms. Bednarski or Ms. Potashner?

9 THE COURT: Ms. Bednarski. That doesn't mean
10 Ms. Potashner is not part of this team doing their best to help
11 him, but Ms. Bednarski is going to be the primary lawyer
12 responsible for the representation of Mr. Sutcliffe.

13 Okay. Is there anything else that needs to be
14 addressed at this hearing?

15 (NO RESPONSE)

16 THE COURT: I want a stipulation and order on the
17 continuance with all the necessary recitals with findings,
18 on the speedy trial act.

19 MS. DUARTE: Exclusion of time, yes, Your Honor.

20 MS. POTASHNER: Your Honor, one thing that was just
21 raised with me, as I'm looking at my calendar, I know October
22 22nd works for my calendar. Ms. Bednarski is obviously not here
23 and could not be here today. I'm assuming that will work for
24 her.

25 THE COURT: So am I. You talk to Maria Stratton and

1 Bednarski and tell them that I'm intent on getting this case to
2 trial on the 22nd. And whatever adjustments and other
3 responsibilities Bednarski has, I want them to be made. In case
4 there's a conflict.

5 MS. POTASHNER: I was not intending to say that I think
6 there is a conflict. I wanted you to be aware that I did not
7 have her calendar. Does Your Honor want to set a tentative
8 motions date?

9 THE COURT: We will have a date for hearing all motions
10 and that would be the 21st.

11 How do we look on the afternoon of the 21st? That's a
12 Monday.

13 (COURT AND CLERK CONFER)

14 You speak to the clerk, Ms. Potashner. Or if you're
15 making motions because if there's going to be a need for an
16 evidentiary hearing, such as there could be on a motion to
17 suppress, set it for earlier than 4:00.

18 Set it for 3:00 on the 21st. File your papers
19 accordingly.

20 Okay. Anything else?

21 MS. DUARTE: No, Your Honor.

22 THE COURT: We're adjourned.

23 MS. POTASHNER: Your Honor, I assume that this
24 proceeding is, the record is sealed.

25 THE COURT: Yes. Except for the portions that

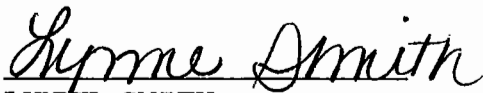
1 Ms. Duarte was permitted to be present for.

2 (PROCEEDINGS ADJOURNED)

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C E R T I F I C A T E

I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT OF THE ABOVE-ENTITLED PROCEEDINGS, PAGES 1-36.
DATED SEPTEMBER 20, 2003; LOS ANGELES, CALIFORNIA.



LYNNE SMITH

OFFICIAL COURT REPORTER