

1 IN THE UNITED STATES DISTRICT COURT

2
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 02-350-AHM

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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS
17 LOS ANGELES, CALIFORNIA

18 December 4, ~~APRIL 16~~, 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

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ON BEHALF OF DEFENDANT:

FEDERAL PUBLIC DEFENDERS OFFICE

BY: HILLARY POTASHNER

DEPUTY FEDERAL PUBLIC DEFENDER

321 NORTH SECOND STREET

LOS ANGELES, CALIFORNIA 90012

1 WEDNESDAY, DECEMBER 4, 2002; LOS ANGELES, CALIFORNIA

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3 THE CLERK: Item Number 2, CR 02-350-AHM, U.S.A. versus
4 Steven William Sutcliffe. Counsel, please state your
5 appearances.

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

8 THE COURT: Good afternoon.

9 MR. HARRIS: Good afternoon, Your Honor. Bill Harris
10 for Steven Sutcliffe. He's present and in custody.

11 THE COURT: Okay. We're here as a result of several
12 motions that have been filed. And the first two were filed
13 directly by Mr. Harris on behalf of Mr. Sutcliffe.

14 Mr. Sutcliffe then filed in his own behalf directly or
15 caused to be filed or at least lodged, handwritten motions
16 relating to the representation of Mr. Harris, and also
17 concerning venue.

18 What I propose to do, unless Mr. Sutcliffe voices an
19 objection, in which event I will have to entertain at least the
20 objection, is to address the substantive motions first. And
21 that means that Mr. Harris will be continuing to function as
22 your lawyer for purposes of those motions. He may be continuing
23 no matter what. And I would only entertain argument from him,
24 no matter what.

25 And then we can turn and I will have to exclude the

1 prosecutor, to the issues raised at least by the motion
2 concerning Mr. Harris' representation. Do you have any
3 objection to that, Mr. Sutcliffe.

4 THE DEFENDANT: No, sir, Your Honor.

5 THE COURT: Let's talk about these two motions as I did
6 last time. Excuse me. I first of all, I assure you I have read
7 everything that's been submitted in many, many cases. The
8 motion that is the motion to dismiss based upon the First
9 Amendment issues obviously tracks very closely the bail motion
10 that I considered and ruled upon last week or the week before
11 then. I reached the same conclusion and intend to deny the
12 motion.

13 Let me address some specific considerations. Again,
14 these are not altogether new by any means. I don't consider
15 that this qualifies remotely as a labor dispute. And certainly
16 not as a labor dispute that is something that creates an issue
17 of speech as opposed to and in delegation of a true threat.

18 Mr. Sutcliffe, one of Mr. Sutcliffe's e-mails itself
19 noted that the antagonism which led to these inherently
20 threatening exchanges was very personal. There's a distinction
21 as I think I noted last time between telling somebody go to hell
22 and telling somebody you're going to send her back to hell.
23 It's not altogether fanciful or imaginary distinction. The text
24 of the letters, all of those, of the communications, all of
25 those in Counts 1 through 4 reflect inherent threats.

The Planned Parenthood case which I described at considerable length last time makes it very clear that those are beyond the pale of the First Amendment. I know, Mr. Harris, that you're going to tell me cert was granted on that case. Am I right, that's what you were going to point out?

MR. HARRIS: No, that's news to me.

THE COURT: Well I think it was. I think cert was granted just this week.

MS. DUARTE: It was, Your Honor.

THE COURT: That doesn't change my view and doesn't change the binding affect on this court of the Ninth Circuit's ruling in the Planned Parenthood case.

So I reject the notion that this pure speech. It is
conduct. It's inherently threatening and there is no basis
whatsoever to grant that motion to dismiss. The threats were
coupled with links as to Counts 5 through 9, as the government
correctly points out, this is not simply posting information.
This is posting information and directing the reader in at least
two of the counts the means under which the information could be
misused to very great and direct detriment and injury of the
victims. It's conduct, it's clearly prosecutable and that's the
basis for my ruling. - US v Cassel, 2005, WL 1217387 (9th Cir May 2005)
US v Brice, 926 F2d 925, 931 (9th Cir 1991)

As to the selective prosecution motion, which is directed only in Counts 1 through 4, that's premised upon this communication, this one E-Mail that Mr. Harris brought to my

1 attention from Joe Schmoe sent directly to the defendant Mr.
2 Sutcliffe. As the government I think fairly and correctly
3 points out, pardon me, that single E-Mail which was a response
4 to a provocative communication previously sent is not in any
5 meaningful respect comparable or like the series of
6 communications that underlie and that constitute Counts 1
7 through 4.

8 The fact is that Mr. Sutcliffe used not only entirely
9 different language but was in a situation, was perceived to be
10 in a situation, was none at the time of the indictment to be in
11 a situation that there was no information suggesting Schmoe,
12 whoever that is, was in. [?] He had a domestic violence conviction
13 or at least accusation. There was a link that he had to this
14 killer cop web site. The number of victims was different. The
15 nature of the communications was different.

16 In Armstrong and all the progeny of Armstrong and
17 related cases that both sides cited it's very clear that the
18 defendant has the burden to establish the existence of selective
19 prosecution. It's a tough burden. Sometimes it's called a
20 demanding burden. It has to be clear evidence. It has to be
21 evidence that clearly establishes not only the discriminatory
22 effect but a discriminatory motive. None of these things has
23 been established. They have been mentioned. None of them has
24 coupled with any showing remotely close to the kind of showing
25 that would warrant throwing the cases out on that basis.

1 And all of the nonsense about the political
2 affiliations of the U.S. attorneys and the changes in
3 administration doesn't even warrant any commentary so I'm not
4 going to do it. I also reject the basis because I don't think
5 the showing has been anything close to sufficient that would
6 defer ruling on that motion as to Counts 1 through 4 pending the
7 discovery of whatever information the government may have had
8 about Joe Schmoe.

9 Okay, Mr. Harris. Those are my, that's a reflection of
10 my thinking. You haven't yet had a chance to address me at to
11 the selective prosecution motion. I think the hearing we had
12 last time on the bail motion is very much involved in the first
13 set of motions that I ruled on. Would you like address me now
14 about the selective prosecution?

15 MR. HARRIS: Yes, Your Honor.

16 THE COURT: Please do.

17 MR. HARRIS: One second to confer, Your Honor.

18 THE COURT: Yes.

19 (BRIEF PAUSE IN PROCEEDINGS)

20 MR. HARRIS: With regard to the first element of
21 similarity of offense, Your Honor, I think we've briefed that
22 and if the court is not persuaded that's similar I would submit
23 that you are not going to get more similar offenses anywhere.
24 It's on exactly the same web site, during the same time frame.
25 In context the same time dispute. And so if that's not

1 sufficient similarity I don't think you're ever going to find a
2 situation where you do have similarity. And so I think that I
3 would suggest that we have met our burden at least on that part
4 of it.

5 As far as the backdrop where Mr. Sutcliffe had domestic
6 violence allegations as the court pointed out, if you look at
7 Exhibits 1 and 3 to the First Amendment issue, it's clear that
8 Mr. Sutcliffe was reacting to prior provocation also.

9 THE COURT: Exhibits 1 and 3.

10 MR. HARRIS: Exhibits 1 and 3 contained in government's
11 opposition to the First Amendment motion.

12 ~~THE COURT:~~ Okay. Exhibit 1 is an E-Mail, or excuse
13 me, it's a page from the evilgx.com posting, in which it's clear
14 that Mr. Sutcliffe asserted that Tracy Hall had been harassing
15 his family and stalking him. So at least Mr. Sutcliffe is
16 claiming provocation. That brings it even further into line.
17 If you look at Exhibit 3 on the return to hell statement, it's
18 clear from that page that Tracy Hall again was provoking
19 Mr. Sutcliffe. At least Mr. Sutcliffe claimed that. That was
20 his assertion.

21 That brings it even into closer congruence. Now
22 whether or not that's true or not, whether she was stalking him
23 and provoking him or not at least that was what appears on the
24 face of the page and that is congruent with what appears on the
25 face of the page by Schmoe.

1 THE COURT: I agree whether it's true or not is not
2 relevant. But I think you're failing to acknowledge that the
3 Schmoe E-Mail was a response to an E-Mail or to posting at
4 least, not an E-Mail but a posting on the web site.

5 What Tracy Hall accused of here was not inherently
6 inviting some kind of response. Showing up to serve papers,
7 carrying out her job as a process server doesn't have anything
8 close to the same kind of background or context as does the Joe
9 Schmoe thing. They're entirely dissimilar in my view.

10 MR. HARRIS: Well --

11 THE COURT: Not only for those reasons but for the
12 others I mentioned before which I won't repeat.

13 MR. HARRIS: We don't have it on the record, what Tracy
14 Hall's background was. We may have to wait to trial for that
15 one to come up.

16 THE COURT: But I also don't have in the record any
17 indication that what Mr. Sutcliffe allegedly did in posting
18 these communications on the web site was in response to
19 something that also consisted of speech that Tracy Hall had
20 engaged in and posted or otherwise disseminated using the
21 Internet.

22 MR. HARRIS: Well, I think the standard is substantial
23 similarity rather than exact.

24 THE COURT: I agree. You don't have it entirely alike
25 in every possible element. Then you wouldn't have any

1 differences at all. But this isn't substantially similar.

2 MR. HARRIS: All right. Well, we assert that it is.
3 As far, Your Honor, as far, just ask the court to consider one
4 thing. As far as the political ramifications of this, we have
5 posited the possibility what if Schmoe was Winnick or some other
6 high ranking official of Global Crossing tied in closely to the
7 upper reaches of the Democratic party.

8 What if, there's no way I can find that out because
9 he's hiding behind a pseudonym. Some of the grammar I'll admit
10 doesn't sound like an educated guy in the upper hierarchy but I
11 don't know that. It could be. And if it was and there was a
12 lack of prosecution on this record I think we have made out our
13 burden. If discovery shows that Schmoe was Winnick for example,
14 I mean the decision, it would be political dynamite to prosecute
15 Winnick in this case. In addition to the strategic problems of
16 having what that would do to this case. It's clear to me that a
17 decision to prosecute --

18 THE COURT: This indictment was returned in the year
19 2002, right?

20 MR. HARRIS: Yes.

21 THE COURT: Did the Democrats control the Justice
22 Department in the year 2002?

23 MR. HARRIS: No, Your Honor.

24 THE COURT: Where is the political dynamite, if
25 anything?

1 MR. HARRIS: Because --

2 THE COURT: If anything, under your premise, which I
3 don't think the record supports that Global Crossing is in bed
4 with or in the camp of the Democratic party. And if Winnick was
5 somebody who could be prosecuted because or would be publicly
6 associated with the Democratic party you would expect that the
7 Republican controlled Department of Justice would leap at the
8 opportunity, at the very least to look into whether there's a
9 serious basis to prosecute.

10 MR. HARRIS: It would -- [Interrupt]

11 THE COURT: Mr. Harris, I don't do this often. I don't
12 mean it in any disrespectful way but I don't have the time to
13 debate this idle point because it's a creative idea on your
14 client's part, on your client's part, both of your part. It is
15 so totally illogical and unsupported that it doesn't warrant
16 further debate.

17 MR. HARRIS: All right.

18 THE COURT: There's nothing about the status of Global
19 Crossing which I bet you almost anything contributed mightily to
20 both parties and to candidates of both parties at various times,
21 that would warrant a finding of selective prosecution here.

22 Do you want to add anything to the other motion?

23 MR. HARRIS: Yes, Your Honor. Briefly, I'd like to
24 zero in just on the Count 3 regarding the statement to Winnick.
25 No. Excuse me. Count 4 to the -- I'm sorry -- Count 4 about

1 collect from you personally.

2 THE COURT: Just a second. Go ahead.

3 MR. HARRIS: Because I think the point as to Count 4
4 carries over to some of the others. You're in the, this is an
5 allegation that Mr. Sutcliffe posted a true threat on this web
6 site when he makes the statement to the counsel for Global
7 Crossing. In essence, you owe me \$15,000 and I'm coming to
8 collect from you personally. And then posted a picture of the
9 lady herself, her daughter and the map to her house. I think
10 that pretty much captures it.

11 THE COURT: Elizabeth Greenwood.

12 MR. HARRIS: Elizabeth Greenwood. This I would submit
13 Your Honor, if that is deemed a true threat there's a lot of
14 bear knuckles commercial litigation in this town where that kind
15 of stuff goes on all the time. I have been on the receiving end
16 of some of that from some very large law firms and they have --

17 THE COURT: Wait a minute. You're telling me that -- I
18 don't know if you're a parent, Mr. Harris but that a picture of
19 a minor child has been used by adversaries in some way to apply
20 pressure on you?

21 MR. HARRIS: No. In terms of saying we're going to
22 collect from you personally, threatening litigation to try to
23 conflict out a firm and saying we know where your house is and
24 pal, if you don't settle or drop this case we're going to come
25 after you and we know you own a house. That kind of stuff just

1 goes on.

2 It's unpleasant but it's sort of part of the business.
3 And the larger the money stakes are involved, I'm sure I don't
4 have to tell the court anything the court is not aware of, the
5 more bare knuckles it gets. And that's kind of part of the
6 nature of the game. And basically what Mr. Sutcliffe was saying
7 there was that you owe me some money. We know you have a house.
8 We know how to serve a writ of execution on you. Pay up. We're
9 going to collect from you personally. How you get --

10 THE COURT: And he makes a spelling pun out of the
11 dedicated and spells it d-e-a-d.

12 MR. HARRIS: He also made a pun about an attorney with
13 the Knee. There's all these puns in the middle there. I'm just
14 worried that if that is criminalized that would seem to
15 sweep within the same kind of ruling. A lot of bare knuckles
16 negotiations and back room litigation tactics go on every day.

17 THE COURT: Well --

18 MR. HARRIS: We submit it's certainly different and I
19 will grant that the picture of the lady and her child, I
20 wouldn't like somebody to do that to me. I don't think that's
21 very nice. But the question is does that go over the line and
22 suggest a threat of physical violence. That's the issue here.

23 I mean how different is that from saying look, we know
24 that you have a family and you need a house over your head and
25 madam, we're going to come take your house if you don't give

1 into our settlement demands.

2 THE COURT: I'm not going to get too far down this
3 trail. But it's very different when the person who, as you see
4 it is communicating pressure has a picture of your child, puts
5 it on a web site for the whole world to see than to simply get a
6 letter from a creditor saying you owe us money and we're going
7 to take house if you don't pay. And we know you have a family
8 that lives there.

9 That child in the second case, if were known, couldn't
10 be detected when she steps on a school bus. At least there's no
11 way to know the person who sent the pressuring letter would be
12 able to do that.

13 When Elizabeth Greenwood sees her daughter posted on
14 the Internet, very different thoughts go into her mind. I'm
15 confident you're raising a legitimate point about where does it
16 end, what could it lead to. These are constant and recurring
17 First Amendment concerns. You're perfectly justified in raising
18 them. In this case it's not even close in my opinion. There
19 isn't any likelihood whatsoever that courts, prosecutors, grand
20 jurors or others would be unable to draw principled and pinnacle
21 distinctions.

22 I don't think that what you're talking about in terms
23 of bare knuckle litigation with which I am familiar is anything
24 comparable to what's in Count 4. I think I have heard enough
25 and I deny the motions on that basis.

1 I think at this point I have to ask you to step
2 outside, Ms. Duarte. We have representatives of the marshals
3 here.

4 UNIDENTIFIED MARSHALS: Yes, Your Honor.

5 THE COURT: Who's in the back of the room?

6 UNIDENTIFIED COURT SECURITY OFFICER: CSO.

7 THE COURT: Okay. I'm instructing you that the portion
8 of this proceeding which will be sealed once Ms. Duarte leaves
9 the room, please wait outside. I will have you called back in.
10 You are not to discuss with anybody else at any time under any
11 circumstances. do you all understand that?

12 UNIDENTIFIED SPEAKERS: Yes, Your Honor.

13 THE COURT: What are your names please.

14 DEPUTY MILES: Deputy Raymond Myles, Your Honor.

15 OFFICER KRISCH: Officer Allen Krisch.

16 DEPUTY JOHNSON: Deputy Monica Johnson.

17 THE COURT: Thank you all. You're welcome to stay.

18 Mr. Sutcliffe, I arranged to have the motion that you sent to me
19 disclosed to Mr. Harris and have a copy made available to him to
20 review.

21 Have you read them, Mr. Harris?

22 MR. HARRIS: Yes.

23 THE COURT: There are actually two motions. There's a
24 change of venue motion and a motion to relieve Mr. Harris of his
25 services and responsibilities as counsel. Have you discussed

1 that with each other?

2 MR. HARRIS: Yes. I went down and had a fairly lengthy
3 meeting yesterday with Mr. Sutcliffe to discuss the contents of
4 both motions.

5 THE COURT: What Mr. Harris -- and maybe you should go
6 to the lectern, please. I don't know where things stand so
7 would you be good enough to help me out please.

8 MR. HARRIS: As things stood yesterday, I asked, I
9 assume by the nature of this motion I'm permitted to answer the
10 court's questions about what I said to Mr. Sutcliffe and what
11 Mr. Sutcliffe said to me.

12 THE COURT: I don't think you have get into chapter and
13 verse but let me give you a little bit of more of helpful
14 guidance. Is it your understanding that your client right now
15 still wants to have you dismissed as his lawyer?

16 MR. HARRIS: No.

17 THE DEFENDANT: Correct.

18 THE COURT: You do.

19 THE DEFENDANT: I filed my motion.

20 THE COURT: I said right now. You filed the motion a
21 couple days ago.

22 THE DEFENDANT: The motion stands as I filed it, Your
23 Honor?

24 THE COURT: What are you asking for, Mr. Sutcliffe?

25 THE DEFENDANT: Justice.

1 THE COURT: What are you asking for concerning who
2 represents you?

3 THE DEFENDANT: Competent counsel.

4 THE COURT: What are you asking for concerning what
5 happens to Mr. Harris?

6 THE DEFENDANT: What happens to Mr. Harris?

7 THE COURT: Whether he serves as you lawyer or not.
8 What are you asking for. Just tell me that, please.

9 THE DEFENDANT: He's done a great job but I think he's
10 incompetent and infective in the instant case and he has not
11 represented, due to the motion that I filed in fact contained in
12 that motion --

13 THE COURT: You are asking that he be replaced?

14 THE DEFENDANT: I'm asking that my motions be grand,^{red}
15 both of them.

16 THE COURT: Why don't you just answer my question.

17 THE DEFENDANT: I have answered you question.

18 THE COURT: You want another lawyer?

19 THE DEFENDANT: I filed my motion and you've made your
20 ruling on it. We proceed along. Everybody is proceeding along
21 as they want to proceed along. It doesn't matter really what I
22 want.

23 THE COURT: That's not the case, Mr. Sutcliffe. What
24 you want matters but it doesn't mean that it controls.

25 THE DEFENDANT: Your rulings, which to me have

1 illogical or unsupported by facts. I believe that to be true.

2 THE COURT: Okay. Mr. Harris, my view is, reading the
3 motion carefully as I did but I want to get your assessment as
4 well, that the factors that Mr. Sutcliffe points to as claimed
5 evidence of your effectiveness or lack of competence and
6 inability to properly to represent him first of all, are not
7 established. Secondly, are wildly exaggerated. And thirdly,
8 would be applicable to almost every lawyer I can, in fact to
9 every lawyer I know of who would be representing Mr. Sutcliffe
10 under these circumstances. No lawyer will be housed as an
11 inmate in MDC.

12 No one will have the opportunity unilaterally to
13 determine what access to a computer Mr. Sutcliffe has. And
14 almost all lawyers would have the same difficulty that he thinks
15 you're having with respect to computer technology and computer
16 usage. I don't think, as I understand this case, and as I
17 understand these charges that have been filed against
18 Mr. Sutcliffe that the mechanics, the technology, the capacity
19 in a sophisticated way to use computers is really much of an
20 issue in this case. I don't think that's what the trial is
21 likely to focus on at all.

22 So I think you could have somebody who has never seen a
23 computer but is a d fine lawyer and a dedicated and hard working
24 one do a perfectly competent, maybe absolutely bank-up job for
25 this defendant. That's my view. I would like to hear what your

1 view is.

2 MR. HARRIS: The only exception to that would be
3 Mr. Sutcliffe indicated in the motion that there may be parts of
4 the government's evidence which were manipulated or edited
5 somehow. That would require some technical expertise but I
6 think Mr. Sutcliffe has that expertise. My statement last time
7 around that I don't think I need an expert was premised on the
8 fact I think I have the best in town, if I get access to him.

9 THE COURT: What has happened since the last hearing
10 in that regard?

11 MR. HARRIS: I have written a letter to Warden Siefert.
12 Could I provide the court with a copy?

13 THE COURT: Yes. Because I want to assist you with
14 this. Give me a moment to read it so I will know what is before
15 me.

16 (PAUSE)

17 THE COURT: Okay. This letter went out today.

18 MR. HARRIS: Yes, I have been speaking to the paralegal
19 there. She basically said --

20 THE COURT: Is that Odem Rodell?

21 MR. HARRIS: She says the warden is a very reasonable
22 guy in this kind of thing. She seemed to agree with my point
23 that there certainly would be a way to do this if he were pro
24 per. So there's got to exist a way to do this.

25 THE COURT: Well, I hope there is. I'm just not

1 sufficiently informed or knowledgeable about some of some of the
2 aspects of what the situation is at MDC. I'm going to go back
3 into my chambers at the conclusion of this hearing assuming that
4 I deny these motions concerning you. And I will contact
5 directly Mr. Siefert.

6 At times I have arranged for certain things to be done.
7 I'm hopeful that my additional call will help. Let me make sure
8 I understand what you're proposing. Namely, that within
9 reasonable limits Mr. Sutcliffe be given access to a computer
10 into which he could insert hard drives or discs that reflect the
11 evidence that has been turned over to I you but with which, with
12 which computer he could not obtain access to the Internet.

13 MR. HARRIS: Exactly.

14 THE COURT: Have you discussed that with Mr. Sutcliffe?

15 MR. HARRIS: Yes. And I think we both believe that
16 certainly would mitigate the situation. Mr. Sutcliffe seems to
17 believe that if you work 20 hours a day between now and January
18 14 he still couldn't, there's not enough time to accomplish the
19 task.

20 I'm not sure that's true. So I think it can be done.
21 I mean there is finite, there's a substantial volume but a
22 finite volume of evidence in this case, and some of it more
23 relevant than others.

24 THE COURT: Have you made efforts thus far to get the
25 prosecutor to specify within this large array, supposedly of

1 evidence on the computer based evidence at what is that she
2 intends to seek to introduce at trial?

3 MR. HARRIS: Yes. And to some extent she's shown her
4 hand on that with the what has been attached to the motions. We
5 have some fairly discreet communications here that are subject
6 matter. We've got four alleged threats that are definite in
7 time and place. They're captured on paper. We know where they
8 are. We know what dates they appeared. We have some Internet
9 postings of social security numbers. We know what the fight is
10 about.

11 A lot of it is maybe superfluous to this case.

12 THE COURT: Could be. I'm not going to play defense
13 lawyer or prosecutor ever. It wouldn't surprise me if the
14 issues that Mr. Sutcliffe chooses to emphasize at trial have to
15 do with intent and context. And those don't depend upon the
16 contents. Well, they could be affected by contents, some of
17 these. If for example there were some evidence that on the next
18 message that he posted he said just fooling or I thought that
19 would get rise out the you. And I'm glad you realize I have a
20 good sense of humor. I really don't mean anything personally.

21 That would be relevant evidence. That would be Brady
22 evidence, that would be exculpatory evidence. The government
23 would have had the duty to alert you about that. So I think you
24 would have know. But sitting here making this up as I think
25 about it, I can see why there might be some material evidence

1 that his defense would benefit from having a look at. So that's
2 what I'm going to try to accomplish.

3 MR. HARRIS: Mr. Sutcliffe is the preeminent expert on
4 that.

5 THE COURT: You don't want any other experts appointed?

6 MR. HARRIS: We could. I know how to apply for an
7 expert. I know how to find it. I will do it if that's in his
8 interest. I will do it if it's in his interest.

9 I believe the problems here will be largely mitigated
10 if we can get computer access to Mr. Sutcliffe. And by way,
11 I've run this by Ms. Duarte and she ran it by the FBI. They
12 have no objection to computer access as long as -- he can't get
13 on the Internet and contact the world. But just look at
14 evidence. The FBI and Ms. Duarte have no objection to that.

15 Plus Ms. Duarte has been gracious about giving me
16 access to their expert. So there's no real hide the ball going
17 on here. It's just we have a large volume of evidence and a
18 finite amount of time to pull this together between now and
19 January 14. So that would help.

20 THE COURT: Do you want to add anything, Mr. Sutcliffe?

21 THE DEFENDANT: Yes. I would like to say something for
22 the record. Regarding the evidence, Mr. Harris came to see me
23 several weeks ago and he reported to me the entire discovery
24 had been turned over by my previous incompetent lawyers provided
25 by the government, and my behalf. Thank you very much. Within

1 that box there was approximately 25, 30 plus or minus five or
2 ten floppy discs. There was approximately 20 CD roms of which
3 upon examination contained approximately six CD roms, some
4 having the word, some not have the word evilgx written on them.

5 THE COURT: That's one series of six letters;
6 evilgx.com.

7 THE DEFENDANT: GX stands for generation X. Global
8 Crossing is a has alluded to, which is a fact not proven. Upon
9 examination of the discs, most of them were found to be useless.
10 They were just secondary software discs from my own personal
11 collection. Out of all of those discs there was approximately
12 six that I put aside and three floppy discs I believe. Or maybe
13 four floppy discs with the six CD roms.

14 I said to Mr. Harris these are the only ones I could
15 see out of this whole box that you brought me that contain
16 partially anything of the volume of data that's reported to be
17 saved and to be used against me in this case, the government
18 supposedly has.

19 I asked him to turn over the rest of the, give away the
20 rest of the stuff. It means nothing to me, and bring back the
21 other six so I can further examine them. But this far from 15.
22 So I have yet to see --

23 [Interrupt]
24 THE COURT: What are you referring to when you say 15?

25 THE DEFENDANT: Discovery. I've been told there's 15
CD roms, five more as I addressed here have been reportedly

1 culled, to be added to that discovery. and now I just found out
2 yesterday that there's an additional three more that they're
3 bringing in on top of that.

4 So I mean, I believe orders were to turn over all your
5 data, forthwith. I heard it very clearly. For this data keep
6 appearing and when I asked see this data I only get a little bit
7 of the data, if any? If that even is the original data, I don't
8 know. Because I haven't seen discovery. I have to prepare for
9 this trial in four weeks.

10 THE COURT: Okay. Mr. Sutcliffe, let me respond by
11 telling you that it isn't a good thing and is often regrettable
12 thing, it's seldom a reversible thing that discovery comes out
13 in bits and pieces and drips and drabs. This isn't the first
14 case and it won't be the last case today that in criminal cases
15 the government turns over material in increments at different
16 times.

17 And later often that the defendant or defense attorney
18 wants it. That's an issue I can try to deal with and I'm sure
19 Mr. Harris has tried to deal with. That has nothing to do with
20 Mr. Harris' representation of you. What you're now describing
21 and informing me about is no way a reflection on his commitment
22 to you, his ability to represent you effectively, his intention
23 to represent you effectively. This has nothing to do with the
24 hearing today.

25 THE DEFENDANT: It respectfully disagree, your Honor.

1 Because the simple fact that when I spoke to Mr. Harris the
2 other day I said to him are you going to attack the grand jury
3 process for being the way it was run through, set up abused. He
4 didn't even know we haven't received the grand jury transcripts.

5 So again, my ineffective previous counsel, failed to do
6 what you told him to do, which bring -- you postpone my right to
7 t speedy trial, at which I said I want my trial. Remember? I
8 said give me the lawyers that you gave me and let them prove
9 whether they're good or bad. I don't really care at this point.
10 I have my right for a trial. I want that trial. You said I'm
11 sorry, Mr. Sutcliffe, we'll have to postpone it for two months.

12 I sat here and cried. Because I knew that was just the
13 beginning of this nightmare. This nightmare is now continuing.
14 My rights to a speedy trial have been denied.

15 You said December 3, Mr. Sutcliffe, I will give you
16 that. We need two months, deny your right to a speedy trial so
17 that they can bring this man up to speed. This man is not up to
18 speed. He doesn't even know I had the grand jury transcripts.
19 Again, I submit that my paperwork is correct. And forcing me to
20 go to trial is devastating. It deprives me of my rights, my God
21 given right to a speedy trial.

22 THE COURT: Well, whoever gave them to you, they're
23 also reflected in the constitution and the law. Now nobody has
24 taken those away. But if you think that that's the case, and
25 depending on what happens in the trial you will have every

1 opportunity to have the Court of Appeals determine that. I
2 don't think that your understanding of the rights under the
3 speedy I trial act are correct. But in any event, I want to
4 bring this hearing to a proper close.

5 The standards in which a court is required to evaluate
6 on a motion to replace a lawyer are not met under these
7 circumstances. There is not a total breakdown of communication
8 between you and Mr. Harris. I think among the first words out
9 of your mouth today when you first addressed me were you think
10 he's done a fantastic job. I think he's done an incredibly
11 imaginative job. That doesn't mean I agree and it doesn't mean
12 that I rule his way or your way. You heard me rule against you
13 both.

14 But that doesn't have anything to do with the adequacy
15 of his representation. He's got a job to do. It's not easy
16 under these circumstances. Nobody can establish and you
17 certainly haven't -- [Interrupt]

18 THE DEFENDANT: I object. He's had two months. He
19 doesn't even know what the data is. How is he going to
20 represent me in four weeks from now if he can't tell a CD rom
21 from a floppy disc?

22 THE COURT: I think we've been through that.

23 THE DEFENDANT: He doesn't know what the discovery is.
24 He's had two months to come up with to par with the discovery.
25 He doesn't know that I have grand jury transcripts.

1 THE COURT: Mr. Harris, do you want to respond to that
2 transcript issue?

3 MR. HARRIS: I don't recall that the transcripts that,
4 that I got that from the federal public defenders office.
5 Normally you get that right before the trial. And it sounds
6 like they were previously produced. So Mr. Sutcliffe was going
7 to bring them today and give them to me. I was going make a
8 copy of them. Read them. If there's a grand jury motion to be
9 made I'll make the motion.

10 THE COURT: You should understand, Mr. Sutcliffe, that
11 every perceived defect in the process, including the
12 investigative process, proceedings before the grand jury,
13 anything else that happens afterward, the bail matters that
14 we've been through more than once, doesn't necessarily warrant a
15 motion. Some have been made.

16 Some have been carefully addressed. I could be right.
17 I could be wrong but I've done my best to rule on them on the
18 merits. But the right to effective assistance of counsel never
19 means, it has never been held to mean that the client determines
20 what happens and the lawyer is required to sacrifice or abandon
21 or disregard his own best professional independent judgment.
22 That would be true no matter who your lawyer is.

23 THE DEFENDANT: I can't expect him admit he's
24 incompetent. I can't expect you to admit that you're violating
25 my rights.

1 THE COURT: Well --

2 THE DEFENDANT: You guys do whatever you want to do.

3 THE COURT: Okay. With my efforts, which I am
4 completing to explain to you in the context in which I am
5 evaluating this motion, I am denying the motion.

6 And Mr. Harris will continue to function as your
7 lawyer. Now there is also a motion about venue that
8 Mr. Sutcliffe made. It's highly unusual for someone still
9 represented by lawyer who wants to have a lawyer to file these
10 things directly. But I looked over that motion as well. It's
11 totally lacking in merit.

12 There is no defect at all about the venue here. All of
13 the factors that govern determinations of venue are satisfied
14 here. The state of residence of a lawyer that you do like and
15 apparently assisted you in a way that you found to be
16 commendable is not one of those factors. So I deny that motion
17 as well.

18 Now let's bring back -- is there anything else either
19 one of you want to address before I bring back the prosecutor?

20 THE DEFENDANT: Yes.

21 THE COURT: Something new?

22 THE DEFENDANT: Address my motion to dismiss this case
23 for denial of my right to a speedy trial. You promised me a
24 trial December 3.

25 THE COURT: There is no such motion as such. But I

1 will consider what you have side to be an oral motion and I deny
2 it. Your rights have been protected under the speedy I trial
3 act and they will continue to be protected.

4 Anything else that you want to add, Mr. Harris?

5 MR. HARRIS: No, Your Honor, not unless the court has
6 any other questions.

7 THE COURT: I don't. Let's bring back the prosecutor.
8 Some things I want to say to her.

9 (MS. DUARTE PRESENT)

10 THE COURT: Ms. Duarte, the trial date in this case is
11 January 14th, right?

12 MS. DUARTE: Yes, sir.

13 THE COURT: Now Mr. Harris has communicated directly
14 with Warden Siefert at the MDC. I have a copy of the letter
15 that he sent. And he informed me that you and even the FBI
16 agent have no opposition to having computer access be provided
17 and extended to Mr. Sutcliffe, provided the Internet connections
18 are not available; is that correct?

19 MS. DUARTE: That's correct.

20 THE COURT: I want this you afternoon, please, to FAX
21 that assurance, even though you may spoken to Siefert or anyone
22 else at MDC I want you on your official letterhead to reiterate
23 that request. You should give a copy this letter, if you have
24 another one, to Ms. Duarte. Do you have one?

25 MR. HARRIS: I previously provided her --

1 THE COURT: You have a copy. You should in your letter
2 please refer to his letter. So that the warden knows that this
3 is a joint request. And please tell the warden that the FBI
4 agent or agents who are working with you on the prosecutive team
5 concur in the request. I'm going to be doing the much the same
6 thing.

7 And that was way we can assure this matter will be
8 properly handled and everyone will be ready to proceed on
9 January 14th. Those are my rulings.

10 Thank you. We're adjourned.

11 (PROCEEDINGS ADJOURNED)

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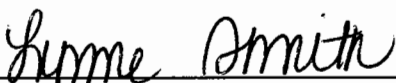
16

C E R T I F I C A T E

17 I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
18 TRANSCRIPT OF THE ABOVE-ENTITLED PROCEEDINGS, PAGES 1-30.
DATED DECEMBER 10, 2004; LOS ANGELES, CALIFORNIA.

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LYNNE SMITH
OFFICIAL COURT REPORTER

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