

1 UNITED STATES OF AMERICA
 2 UNITED STATES DISTRICT COURT
 3 CENTRAL DISTRICT OF CALIFORNIA
 4 WESTERN DIVISION

5 - - -
 6 ~~HONORABLE~~ A. HOWARD MATZ
 7 UNITED STATES DISTRICT JUDGE, PRESIDING
 8 - - -

9 UNITED STATES OF AMERICA,)
 10)
 11 PLAINTIFF,)
 12)
 13 VS.)
 14)
 15 STEVEN WILLIAM SUTCLIFFE,)
 16)
 17 DEFENDANT.)

18 NO. CR 02-350 (A)

19  **COPY**

20 SENTENCING

21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 THURSDAY, APRIL 15, 2004

23 LOS ANGELES, CALIFORNIA

24 02837 - 049

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1 LOS ANGELES, CALIFORNIA; THURSDAY, APRIL 15, 2004

2 - - -

3 (COURT IN SESSION AT 3:18 P.M.)

4 THE CLERK: All rise. This court is now in
5 session, the Honorable A. Howard Matz presiding.

6 THE COURT: Good afternoon and welcome. Please be
7 seated.

8 THE CLERK: Calling Item Number 1, CR02-350(A),
9 U.S.A. versus Steven William Sutcliffe.

10 Counsel, state your appearances, please.

11 MS. DUARTE: Good afternoon, Your Honor. Elena
12 Duarte with case agent Jeffrey Cugno on behalf of the United
13 States.

14 THE COURT: Good afternoon.

15 MR. SUTCLIFFE: Good afternoon, Your Honor. Steven
16 Sutcliffe present.

17 THE COURT: Good afternoon.

18 MR. REED: Good afternoon, Your Honor. David Reed,
19 standby counsel.

20 THE COURT: And good afternoon to you.

21 All right. We're here for the pronouncement of
22 judgment and the imposition of sentence on Mr. Sutcliffe.

23 Let me explain how I think we need to proceed here.
24 First of all, I will do what I do in every sentence and that
25 is recite the materials that have been made available to me

1 that I have considered for purposes of this sentencing or
2 that were sent to me for purposes of the sentencing.

3 After I do that, I will address the question of
4 whether there's been sufficient notice for any departures I
5 may make and I intend to make some because I don't think
6 there's any legal or procedural barrier to that.

7 I want to make sure that at the conclusion of the
8 proceedings, if Mr. Sutcliffe wishes to appeal his conviction
9 and/or his sentence, he has the necessary paperwork to file a
10 timely notice of appeal and to request the appointment of
11 counsel if he wants counsel to represent him on appeal.

12 There are a couple of preliminary housekeeping
13 matters that I want to make sure are disposed of before I
14 turn to what I've just said. And I should mention that I've
15 been informed that Tracy Hall, who is one of the witnesses at
16 trial and who was one of the individuals identified as a
17 victim in the first superseding indictment, is here and
18 wishes to be heard, and she will be given that opportunity.

19 Now, in the housekeeping department, I received
20 some time ago, not very long ago, a request by Mr. Sutcliffe
21 for the various competency reports that were submitted to me
22 long before the trial and Mr. Sutcliffe represented that he
23 needed those for purposes of appeal. I have always believed,
24 and went through considerable efforts to make sure, that
25 those reports were timely made available to Mr. Sutcliffe

1 very shortly after I received those.

2 But in the event for some reason, I know there's
3 been a great deal of back and forth about what happened to
4 information Mr. Sutcliffe's requested or was entitled to and
5 whether it got to him in MDC or not, in an excess of caution
6 and in a continuing desire on my part to give Mr. Sutcliffe
7 all to which he's entitled and that he needs, including for
8 purposes of an appeal, I have asked the clerk to make extra
9 copies.

10 So I would ask the clerk to hand those to
11 Mr. Sutcliffe. And for the record, in the sequence in which
12 I got those -- and some of these, as I'm going to hand them
13 to you, Mr. Sutcliffe, reflect actual minute orders and file
14 stamped copies showing that they were sent to you. But in
15 the event for some reason something happened, I have a report
16 Dr. Becker completed on -- or signed on February 24th; I have
17 his second report from March 21st; and I have Dr. Patenaude's
18 -- that's P-A-T-E-N-A-U-D-E -- from August 14th. All three
19 of those reports were from 2003 directing the clerk to give
20 those to Mr. Sutcliffe, and you can keep those in your
21 possession.

22 MR. SUTCLIFFE: Thank you, Your Honor. Your Honor,
23 is the requested --

24 THE COURT: Could you move the microphone close to
25 you. We have a new court reporter. She's not familiar with

1 your voice or with any of the names in the case so try to be
2 clear as you can.

3 MR. SUTCLIFFE: Yes, Your Honor. Thank you.

4 Um, does this packet I've just been handed contain
5 the certificate pursuant to 4241D that's required by the law?

6 THE COURT: It does not.

7 MR. SUTCLIFFE: It does not? Is there any
8 explanation that the Court can give that this was not
9 provided to the clerk of court? It's my understanding it's
10 supposed to be provided to the clerk and that the clerk was
11 then to provide it to the attorneys.

12 THE COURT: Okay. I'm not going to comment on the
13 accuracy or correctness of your understanding. It may, in
14 fact, be correct and I know what statute you have in mind in
15 pointing that out. So far as I know, we never got a
16 certificate and that's why I don't have anything to give to
17 you.

18 MR. SUTCLIFFE: So for the record, none -- none
19 exists?

20 THE COURT: So far as I know, none exists in this
21 court.

22 MR. SUTCLIFFE: Thank you, Your Honor.

23 THE COURT: All right. Now, having taken care of
24 that housekeeping matter, let me recite what I have read.

25 I read the presentence -- this is not necessarily

1 The behavior that neither resulted in a conviction
2 nor even an arrest but that was facially unlawful, and in any
3 event a very chilling indication of the consideration as to
4 how likely it is that he would commit further crimes is that
5 he undoubtedly and indisputably set up this killercop.com web
6 site; tried to arrest via citizen's arrest a law enforcement
7 officer carrying out his duties in a courthouse; the
8 indication that his wife has made, I'm not making any
9 findings but it's in the record, and it resulted in an
10 issuance of a domestic restraining order in New Hampshire
11 that he was prone to violence or at least she claimed; and
12 the demeanor that she displayed when she testified at the
13 trial I find to be not only consistent with that but probably
14 the result of that. It was a demeanor combining both
15 profound fear and embarrassment as well as enmity.

16 The Martin case, the Goshea case, the Hines case, I
17 read them all, warrant this change in the applicable criminal
18 history category. And I stress that the change under 4A1.3
19 is warranted either where there is an understatement or an
20 underrepresentation of the previous criminal history and its
21 seriousness, which I find indisputably the case here; or an
22 underrepresentation of the likelihood as to whether the
23 defendant will commit further crimes.

24 Now, I'm no prophet and it's hard to make
25 predictions. And the many -- and the people who did write to

1 me about Mr. Sutcliffe, although I got no letter from him,
2 have stated that he has actually expressed remorse, there's
3 nothing in the record that I see that is consistent with
4 that. It could be that he actually feels it and maybe we'll
5 hear from him.

6 But these bizarre acts undertaken by a man who is
7 found to be competent to go to trial and, as Tracy Hall
8 indicated, is possessed with an extremely acute mind, cause
9 me very real concern that the criminal history classification
10 of one totally ignores both aspects that warrant an increase
11 under 4A1.3.

12 Now, I sentence lots of people and I'm frequently
13 asked and I not infrequently agree that a criminal history
14 category overrepresents the seriousness of a person's past
15 criminal behavior or the likelihood that he'll commit crimes
16 in the future. And when I reach that conclusion, I depart
17 downward or I reduce the criminal history classification.

18 This case is so beyond the heartland of category
19 one criminal history offenders who I have the responsibility
20 to sentence that I have no doubt that increasing it is the
21 appropriate and warranted thing to do. So that's what I'm
22 going to do.

23 Now, there is one provision in the presentence
24 report applicable to Counts 5 through 9 that Mr. Reed on
25 behalf of -- I won't say on behalf of, I want to be