

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

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

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

16 Did you serve a copy on Mr. Sutcliffe?

17 MS. DUARTE: Yes, Your Honor.

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

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

25 The government complied with my order and my order

1 has been satisfied.

2 I'm not going to go over all of this ground. You  
3 don't have any right to know why an assertion that's made on  
4 one day is clarified or expanded the next day. That is not the  
5 way the system works, Mr. Sutcliffe.

6 MR. SUTCLIFFE: I understand, Your Honor. But I do  
7 have a right to make a defense and I do have a right for  
8 discovery and I do have a right, I believe, to an explanation  
9 as to why the representation that "it was just a small,  
10 insignificant, tiny little piece of code, computer code" has  
11 now turned into two reports. What else -- that's a  
12 misrepresentation, Your Honor. That's a flagrant  
13 misrepresentation. What else are they hiding?

14 THE COURT: Mr. Sutcliffe, I'm not going to  
15 characterize what it is in the eyes of other people. But I am  
16 going to tell you -- and this is for the last time -- that  
17 there is no -- you are chasing a ghost when you are making an  
18 issue out of either the reference to the "code" or to the  
19 representation of the agent.

20 What you were given finally and conclusively puts to  
21 rest any permissible inquiry. I don't even think there was one  
22 that was required, but I nevertheless ordered McGuire, not  
23 knowing it was McGuire or the FBI, to file a declaration.

24 That's it. We are not going into the circumstances  
25 under which this material was found, in your view, that it

1 differs from the prior representation.

2 MR. SUTCLIFFE: Your Honor --

3 THE COURT: No. Please don't argue that point. If  
4 you have another point, I'm happy to hear it.

5 MR. SUTCLIFFE: I'm just asking, did you read those  
6 reports, Your Honor?

7 THE COURT: I looked at those reports.

8 MR. SUTCLIFFE: Did you note that in those reports  
9 they were referring to "interstate" threats, and there was also  
10 the word "murder" in there? Did you see that, Your Honor?

11 THE COURT: Yes, I saw it.

12 MR. SUTCLIFFE: Is it the Court's representation to  
13 me that the local jurisdiction of the L.A.P.D. handles  
14 "interstate" threats alleging a murder or the FBI?

15 THE COURT: Mr. Sutcliffe, that's not an issue that I  
16 have to address and it's not a question I'm required to answer,  
17 so I decline to do so.

18 MR. SUTCLIFFE: Thank you, Your Honor.

19 One last point not related to this at all. I would  
20 like the Court -- the Court has admonished the jury in the past  
21 that they are to give no regard to the defense that I've been  
22 raising that I didn't steal any of this information that's  
23 being published on the Internet.

24 I would like the Court to clarify to the jury that it  
25 is relevant because -- and I make that point because part of

1 1028(a)(7) says that "whoever knowingly transfers without  
2 lawful authority." That would imply, I believe, to a layman,  
3 that if I had lawful authority, then I can transfer it. If  
4 it's my property, I can transfer it.

5 So there is an inference there that there is a  
6 difference between lawful authority in a transfer and unlawful  
7 authority in a transfer.

8 THE COURT: I think you are right to recite the  
9 elements of the crime. I think you have misconstrued or  
10 misstated what I've told the jury.

11 I said that the government is not required to prove  
12 that you stole this information. That's not inconsistent with  
13 what the government is required to do.

14 I don't think I've, in any way, encroached upon or  
15 limited -- if it is your defense that you acquired this  
16 information lawfully, you'll be entitled to establish that  
17 defense, including by examination of witnesses.

18 The authority that would be at issue, I think, would  
19 be the authority of the persons who are mentioned or whose  
20 social security numbers are referred to in the indictment.

21 Are those people going to testify?

22 MS. DUARTE: Well, Your Honor, Elizabeth Greenwood  
23 has and -- no, the remainder of the people are not going to  
24 testify.

25 THE COURT: Okay.