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1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

3 ---  
4 HONORABLE A. HOWARD MATZ, JUDGE PRESIDING

**CERTIFIED  
COPY**

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6  
7 UNITED STATES OF AMERICA, )  
8 PLAINTIFF, )

) CASE NO.

9  
10 VS.

) CR 02-350(A)-AHM

11 STEVEN WILLIAM SUTCLIFFE, )  
12 DEFENDANT. )

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15  
16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 LOS ANGELES, CALIFORNIA

18 TUESDAY, SEPTEMBER 2, 2003

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21  
22 LAURA MILLER ELIAS, CSR 10019  
23 UNITED STATES COURTHOUSE  
24 312 NORTH SPRING STREET  
25 ROOM 453  
LOS ANGELES, CALIFORNIA 90012  
(213) 620-0890

1 APPEARANCES OF COUNSEL

2 ON BEHALF OF THE PLAINTIFF:

3 DEBRA WANG  
4 UNITED STATES ATTORNEY

5 ELENA J. DUARTE  
6 ASSISTANT UNITED STATES ATTORNEY  
7 1300 UNITED STATES COURTHOUSE  
8 312 NORTH SPRING STREET  
9 LOS ANGELES, CALIFORNIA 90012

10 ON BEHALF OF THE DEFENDANT:  
11 (STAND-BY COUNSEL)

12 MICHAEL BRENNAN, ESQ.  
13 USC LAW CENTER  
14 ROOM 400  
15 LOS ANGELES, CALIFORNIA 90089

16 ALSO PRESENT:

17 DAVID REED, ESQ.  
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RE REPRESENTATION

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1 LOS ANGELES, CALIFORNIA; TUESDAY, SEPT. 2, 2003; 3:20 P.M.

2 ---

3 THE CLERK: Calling Item No. 1. CR 02-350 (A)-AHM.

4 United States versus Steven William Sutcliffe.

5 Counsel, state your appearances.

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

8 THE DEFENDANT: Good afternoon, Your Honor. Accused  
9 only by special appearance. All rights reserved. Object to  
10 this hearing in its entirety. Given no due process of this  
11 hearing. Fundamental element of due process. I move this  
12 hearing be adjourned and further notice be given to me.

13 I also notice that Mr. Michael Brennan is standing at  
14 the podium. It appears he's about to speak. I have not  
15 recognized anybody to speak for me. I also renew my original  
16 demand that this Court proffer its jurisdiction and take  
17 judicial notice of my judicial notice challenge and renew that  
18 motion.

19 THE COURT: Mr. Sutcliffe, to make this easier to the  
20 extent you have a right to be heard or choose to be heard, you  
21 don't have to stand up and bend over to be heard through the  
22 microphone. You're welcome to sit there and lean over and use  
23 the microphone in the way it's now situated.

24 MR. BRENNAN: Michael Brennan stand-by counsel for  
25 Mr. Sutcliffe.

1           THE COURT: Mr. Brennan, would you in the event  
2 Mr. Sutcliffe has not received the ex parte application you  
3 filed last week, please state clearly on the record what it is  
4 that you requested from the Court.

5           MR. BRENNAN: Yes, Your Honor. Thank you. After the  
6 last court hearing in this matter when the Court did appoint  
7 me as stand-by counsel for Mr. Sutcliffe, I reviewed my  
8 calendar again and realized that I was not fully explaining to  
9 the Court my conflict problems with the September 30th trial  
10 date. When I was initially contacted on this matter, I didn't  
11 realize there was a speedy trial time problem with respect to  
12 setting a new trial date.

13           Having realized my conflicts, I prepared an ex parte  
14 application explaining those in detail to the Court including  
15 the fact October 1, 2003 I'm scheduled to appear in another  
16 two parole hearings at the California Institution for Women in  
17 Corona, California. Two clients I have there have parole  
18 hearings. Those hearings have been scheduled for some six  
19 months now. It's not possible for me to reschedule those  
20 hearings at any date that would be even marginally close to  
21 the October 1 date.

22           I would have to ask my clients to waive their right to  
23 their parole hearings and hope that I could get them  
24 rescheduled. But realistically aware of the scheduling that's  
25 done by the California Board of Prisons, they wouldn't be able

1 to reschedule for some six months or so at the earliest. I  
2 think that would be a serious deprivation of their right to  
3 have a regular parole hearing. These are women who are  
4 serving life sentences and I have represented for a number of  
5 years. That hearing, those two hearings on October 1  
6 obviously directly conflicts with the September 30th trial  
7 date that this Court set.

8 I also indicated in the application that due to the  
9 administrative hearing that I'm involved in on October 7th  
10 where I'm representing the University of Southern California,  
11 I had planned to spend the better part of the prior week of  
12 September 29th meeting with and preparing witnesses who are  
13 going to have to testify at that hearing. And obviously that  
14 would not be possible if I was involved as stand-by counsel on  
15 trial starting September 30th.

16 Unfortunately, these are witnesses who I would not be  
17 able to easily meet with in the evenings after this trial had  
18 concluded. They are professors and administrative personnel  
19 at the University. Hard for me to have them available to me  
20 in the evenings to prepare for the hearing.

21 I also indicated to the Court that I'm also in the  
22 process of preparing for trial in a multiple defendant case  
23 scheduled to be heard starting October 21 in front of Judge  
24 Tagasaki. That's also a trial that was scheduled some four  
25 months ago. And by all indications, my client is certainly

1 going to proceed to trial. I can't answer for other  
2 defendants in that case, but I think it will end up being a  
3 case in which at least three or four defendants go to trial.

4 For those reasons and based upon the fact that I was  
5 not able to fully explain these conflicts and problems to the  
6 Court, I did file a written application asking the Court to  
7 relieve me as stand-by counsel and requested that alternate  
8 stand-by counsel be appointed.

9 THE COURT: You also represented that you had been in  
10 contact with Mr. David Reed?

11 MR. BRENNAN: Yes.

12 THE COURT: State for the record now what you stated.

13 MR. BRENNAN: After the hearing was concluded and I  
14 realized the conflict problems I had, I contacted Mr. Reed who  
15 I have known professionally for some 20 years and inquired  
16 about his possible availability to act as stand-by counsel. I  
17 explained as best I know the circumstances surrounding  
18 Mr. Sutcliffe's case. I explained the Court's statement  
19 during the last hearing concerning the duties of stand-by  
20 counsel. I explained the length of the trial as I understood  
21 the projected length of the trial being at least a week,  
22 possibly longer.

23 Mr. Reed indicated that he was available for a trial  
24 beginning October -- September 30th. I'm sorry. And  
25 continuing for at least a week or longer. And I explained to

1 him as I said that he would, if the Court appointed him, be  
2 acting as stand-by counsel for Mr. Sutcliffe.

3 THE COURT: Okay. First, let me note that I note your  
4 objections to the jurisdiction and all the other matters to  
5 which you objected, Mr. Sutcliffe, and I deny those  
6 objections.

7 Mr. Reed, would you step forward, please. And before  
8 I speak to you and hear from you Mr. Reed, what is the  
9 government's current estimate for the case-in-chief duration?

10 MS. DUARTE: Four to five court days, Your Honor at  
11 the most. The problem is I can't predict cross-examination  
12 with 25 witnesses.

13 THE COURT: 25 witnesses?

14 MS. DUARTE: Some are very short, Your Honor. The  
15 defendant will not stipulate to anything. Some are quite  
16 short.

17 THE COURT: Does that four or five day estimate  
18 include the time incurred in picking a jury?

19 MS. DUARTE: Yes.

20 THE COURT: Well, I think it's not going to be less  
21 than five days. It wouldn't surprise me if it's more than  
22 five days. It's going to be somewhat of an unusual case given  
23 Mr. Sutcliffe is proceeding in pro per as a result of my  
24 decision to deem his prior conduct and course of conduct as a  
25 waiver of his 6th Amendment right to appointed counsel.



1 Now, Mr. Reed, would you step forward, please.

2 MR. REED: Good afternoon, Your Honor.

3 THE COURT: Good afternoon. As I recall if the trial  
4 does begin and I expect it to begin, I hope very much to plan  
5 to have it begin on September 30th, the day of October 7th  
6 you'll be unavailable; right?

7 MS. DUARTE: Actually, Your Honor, it's the 8th.

8 THE COURT: October 8.

9 MS. DUARTE: But Your Honor, I have cancelled my  
10 engagement. I'll be thrilled if I picked it back up again,  
11 but I don't need to do that if that doesn't work for the  
12 Court's calendar.

13 THE COURT: There's no date in the course of the  
14 ongoing trial that you'll be unavailable?

15 MS. DUARTE: That is correct.

16 THE COURT: Mr. Reed, are you for sure on a stand-by  
17 basis, which I will reiterate, available to proceed as  
18 stand-by counsel in the event Mr. Sutcliffe chooses to make  
19 himself -- to make good use of your availability for purposes  
20 of background guidance are you available for those dates?

21 MR. REED: Yes, I am, Your Honor.

22 THE COURT: Now, you understand as is inherent and  
23 understood I think by everyone in the concept of stand-by  
24 counsel that the role of stand-by counsel sometimes can result  
25 in counsel becoming actual counsel by choice of the pro per

1 client or for other reasons. Are you prepared to proceed with  
2 that understanding?

3 MR. REED: Well, that I'm not absolutely certain  
4 about. If the case is not too complex, then I certainly can  
5 be. There's one month to go before that date approximately  
6 and I intend on studying the case, analyzing it. I would  
7 like, of course, to speak with Mr. Sutcliffe.

8 THE COURT: And I was going to order that the marshals  
9 make him available to meet with you today if that's something  
10 that you could do and he chooses to do. Are you available  
11 today here in the courthouse?

12 MR. REED: Yes, I am. Very much like to talk to him.

13 THE COURT: Mr. Brennan, did you get any parts of the  
14 file thus far from Mr. Nicolaysen?

15 THE DEFENDANT: Neither have I, Your Honor. I have  
16 received nothing even though I believe the Court ordered that  
17 he was to provide it by Friday once again, which is par for  
18 the course. He has ignored the Court's order.

19 THE COURT: Not sure what has happened, if anything.

20 MS. DUARTE: If I may, Your Honor?

21 THE COURT: Yes.

22 MS. DUARTE: I don't know the specifics. I did let  
23 Mr. Nicolaysen know the matter was back on Tuesday just  
24 because he called me about a different matter and we were  
25 discussing it. He was aware that it was back on for possible

1 change of stand-by counsel. I don't know anything further  
2 than that.

3 THE COURT: I am ordering the clerk, Mr. Montes at the  
4 conclusion of this hearing to contact Mr. Nicolaysen and tell  
5 him that Mr. Reed is being substituted in place of  
6 Mr. Brennan. That's my decision. And that if he has not  
7 already provided a copy of the file to the appropriate person,  
8 I think he said it was going to the chief legal officer at  
9 MDC, he is to do so immediately, possibly today, if not  
10 tomorrow morning. And I don't want there to be any delay for  
11 any reason whatsoever. Make sure that you communicate that to  
12 him. So to start, Mr. Sutcliffe gets a copy.

13 Now, I'm going to ask the two of you, I assume you  
14 know Mr. Nicolaysen and you can get his number from my clerk  
15 or from Ms. Duarte. You can get on the phone with him in this  
16 courtroom and place a conference call and make arrangements  
17 for the material that was otherwise slated to go to you  
18 instead to go to Mr. Reed. Okay?

19 Now, Mr. Reed, there is a lengthy history to this  
20 case. Whether the case would be deemed by you or another  
21 experienced lawyer, and I know how experienced you are. I  
22 know you have been before me on many occasions and you have an  
23 excellent representation. I can't really be the best judge of  
24 that. Two crimes alleged, more than two counts, two different  
25 crimes. I assumed you spoke about it a little bit with

1 Mr. Brennan?

2 MR. REED: A little bit.

3 THE COURT: 25 witnesses would suggest that it's a  
4 complicated trial, but if it's correct that many of those  
5 witnesses would otherwise have been avoided if the defendant  
6 didn't exercise his right to refuse to stipulate and that is  
7 his right and he's not to be faulted for it, it may not be  
8 such a complicated case. But Mr. Sutcliffe is preceding in  
9 pro per so whether that leaves you in a difficult position  
10 remains to be seen in terms of trial preparation. But I want  
11 it to be meaningful because I am absolutely intent on doing  
12 what's feasible to assure a fair trial here and I'm sure you  
13 understand that.

14 MR. REED: Yes, Your Honor.

15 THE COURT: Okay. Is there anything else that needs  
16 to be addressed now?

17 THE DEFENDANT: Yes, Your Honor. First off, I'd like  
18 the record to reflect I am not proceeding pro per. If  
19 anything, I'll be proceeding sur juris on my own right not on  
20 my own behalf. I object to any other counsel be foisted over  
21 to me. I object to previous just removed counsel's  
22 substituting a man on the spot as to be his replacement.

23 And I further object to this Court not setting up a  
24 hearing forthwith to proffer its jurisdiction over the accused  
25 on these specific charges being transmitted in interstate

1 commerce. I believe I have the right to challenge the  
2 jurisdiction of those charges. It's not personal towards this  
3 Court, but it's my understanding that a court which has lawful  
4 jurisdiction is a competent court. One that lacks lawful  
5 jurisdiction is an incompetent court.

6 I believe that this Court is proceeding as an  
7 incompetent court if jurisdiction is proved over me. I have  
8 asked for it time and time again. I want that right. And I  
9 want notice any time I'm further brought into this courtroom.  
10 I don't like being hailed into a court without any notice  
11 about what's to take place. I wish this Court to protect that  
12 right as well. Other than that, I proceed with all rights  
13 reserved until jurisdiction is proved.

14 THE COURT: Would you like to meet with Mr. Reed?

15 THE DEFENDANT: As well as I do not recognize this  
16 Court, I do not recognize --

17 THE COURT: So is it your choice not to have anything  
18 in the nature of even a preliminary conversation with Mr. Reed  
19 this afternoon?

20 THE DEFENDANT: I believe I stated my objection very  
21 clearly.

22 THE COURT: Okay. Well, then I think we have reached  
23 a point where we can adjourn this hearing. You may continue  
24 to take custody of Mr. Sutcliffe. I'm addressing they appoint  
25 representatives of the marshal's office and return him to MDC.

1 When I leave the bench, you both can stay here and make  
2 yourself with Steve's assistance, try to patch in  
3 Mr. Nicolaysen. And I don't think it would be appropriate for  
4 you to be present at that point Ms. Duarte in terms of the  
5 logistics of transferring the file.

6 Mr. Sutcliffe?

7 THE DEFENDANT: Thank you, Your Honor. One last  
8 objection. I do seek sanctions on Mr. Nicolaysen for failing  
9 to turn over that file as ordered. My concerns one, that man  
10 has threatened me in the past if I pressured him or made him  
11 look bad or forced him to do anything, go to Court, he would  
12 make sure I lose. Now, he's got my whole hands, my whole  
13 world are in his hands right now in that file.

14 All weekend he might be taking out stuff. He might be  
15 loosing stuff, misplacing stuff. I don't know. All I know  
16 this man has threatened me in the past to make me lose this  
17 case. Now he's ignoring everybody doing his own thing. I  
18 want that noted for the record.

19 THE COURT: Okay. And it is noted.

20 THE DEFENDANT: Thank you, Your Honor.

21 THE COURT: All right. We're adjourned.

22 (Proceedings were concluded at 3:40 p.m.)  
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CERTIFICATE

I, LAURA MILLER ELIAS, C.S.R. No. 10019, official court reporter, do hereby certify:

That the foregoing 14-page proceedings were taken down by me in shorthand at the time and place stated herein, and represent a true and correct transcript of the proceedings.

I further certify that I am not interested in the event of the action.

Witness my hand this 27<sup>th</sup> day of Dec., 2005.

*Laura Elias*  
OFFICIAL COURT REPORTER