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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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THE HONORABLE A. HOWARD MATZ, U.S. DISTRICT JUDGE PRESIDING

THE UNITED STATES OF )  
AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STEVEN WILLIAM SUTCLIFFE, )  
 )  
Defendant. )  
\_\_\_\_\_ )

COPY

No. CR 03-350 (A)-AAH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, August 27, 2003

A.M. Session

DEBORAH K. GACKLE, CSR, RPR  
United States Courthouse  
312 North Spring Street, Room 402A  
Los Angeles, California 90012  
(213) 620-1149

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STEVEN WILLIAM SUTCLIFFE, IN PRO SE

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, AUGUST 27, 2003;

2 A.M. SESSION

3 - - - - -

4 THE CLERK: Calling item No. 1, CR 02-350(A), USA  
5 versus Steven William Sutcliffe.

6 THE COURT: Before anyone begins to make an  
7 appearance of counsel, let me explain how I think we should and  
8 will proceed this morning.

9 First, I need to recite for the record the fact that  
10 I think on August 25<sup>th</sup>, which I guess was two days ago, Judge  
11 Phillips denied the then-last pending -- or so far as I know  
12 last pending motion to recuse me. So I am authorized to carry  
13 out my responsibilities, and I intend to do so.

14 There are essentially four matters that we need to  
15 address today on the calendar. The first -- and I'm choosing  
16 it first because I think it's practical to do so, and  
17 Mr. Sutcliffe requested that it be done this way -- is the  
18 issue of whether he has now returned to, or is at least in the  
19 status of, competence sufficient to proceed to trial.

20 The second question is who will represent him. And  
21 that, obviously, relates to Mr. Nicolaysen's motion to  
22 withdraw. The third, depending on how I rule on that motion,  
23 will be what options remain available to Mr. Sutcliffe. And  
24 the fourth will be the trial date.

25 So I hope that everyone will understand that it is

1 important to follow this order and to comply with all of the  
2 appropriate procedures.

3 If appearances are made by Mr. Nicolaysen on behalf  
4 of Mr. Sutcliffe, I don't want that to trigger any initial  
5 reaction, because he currently is properly constituted as  
6 counsel. I will not have Mr. Nicolaysen address any of the  
7 merits except to confirm that he filed a certain position on  
8 the issue of competence. So this is how we'll proceed. And,  
9 with that, let's have the appearances of counsel.

10 MS. DUARTE: Good morning, Your Honor. Elena Duarte  
11 and Jason Gonzalez on behalf of the United States.

12 MR. GONZALEZ: Good morning.

13 MR. NICOLAYSEN: Good morning, Your Honor. Greg  
14 Nicolaysen, defense counsel, appearing.

15 MR. McAFEE: Good morning, Your Honor. Leslie McAfee  
16 appearing on behalf of Mr. Sutcliffe, who has been specially  
17 retained for the purposes of competency hearing only.

18 THE COURT: Mr. McAfee, we'll deal with your status.  
19 I'm not necessarily accepting that you have any right, or any  
20 lawyer would have a right, to appear for a special limited  
21 purpose. At this time, I'll ask you to sit in one of the  
22 benches and not at counsel table, and we'll proceed  
23 accordingly.

24 MR. McAFEE: Very well, Your Honor. Lodge my  
25 objection for the record both to your sitting on the bench in

1 this matter and to the court's indication that it has not yet  
2 recognized my right to represent Mr. Sutcliffe.

3 THE COURT: All right. Now please be seated.

4 Okay. Let's turn first to the issue of competence.  
5 I think and hope that, consistent with the order I issued  
6 earlier this month, Dr. Patenaude is currently on the telephone  
7 and listening to these proceedings; is that correct?

8 Are you there, Dr. Patenaude?

9 THE CLERK: Dr. Patenaude?

10 THE COURT: We'll take a temporary hiatus while we  
11 plug him in. He was on the phone, I was told before. I have  
12 not personally spoken to him, ever, but I understand he is  
13 available, if necessary, for purposes of the first issue on  
14 today's agenda.

15 Can you hear us here at this end? Can you hear us,  
16 Dr. Patenaude?

17 DR. PATENAUDE: Yes, I can, Your Honor.

18 THE COURT: Okay. I also directed the U.S. attorney  
19 to make available Dr. Backer.

20 Is he present?

21 DR. BACKER: Present, Your Honor.

22 THE COURT: Dr. Backer is here.

23 And is the chief psychologist at the local MDC also  
24 available?

25 DR. IHLE. Yes.

1 THE COURT: What's your name, sir?

2 DR. IHLE: Dr. Ihle.

3 THE COURT: Dr. Ihle. Okay.

4 I think the parties and the counsel are familiar with  
5 the lengthy procedural background that preceded the order that  
6 was issued -- that I issued on April 7th that led to the  
7 transfer of Mr. Sutcliffe to the facility in Massachusetts --  
8 it's known as Devens -- for purposes of further examination and  
9 diagnoses.

10 Skipping ahead to what really is relevant for  
11 purposes of today's proceeding, on -- not before August 18th.  
12 I'm not sure when it came in. But sometime after August 18th,  
13 I received a forensic report that is dated August 14th. It was  
14 transmitted with a cover letter dated August 18th. It is the  
15 report that Dr. Patenaude prepared.

16 The bottom line, consistent with all of the previous  
17 analyses, is that Dr. Patenaude concluded that Mr. Sutcliffe is  
18 competent to stand trial at this time. I have given a copy of  
19 that report to the clerk. I am going to order that it be filed  
20 as part of the official record in this case. So that will be  
21 part of the official proceedings.

22 On about August 20<sup>th</sup>, Mr. Nicolaysen, as currently  
23 designated official counsel for Mr. Sutcliffe, filed a position  
24 paper in which he concurred with Dr. Patenaude's conclusion and  
25 indicated that he did not anticipate any questioning.

1           On August 20<sup>th</sup>, the government filed a comparable  
2 memorandum in which it stated, through Ms. Duarte, that the  
3 government expects to ask that the court find that the  
4 defendant's competent.

5           I see nothing in the record before me that would  
6 prompt me to reach any conclusion other than that Mr. Sutcliffe  
7 is competent to proceed to trial, but I think it's  
8 particularly, given the history of this case, important to  
9 establish what the appropriate standards are and deal with some  
10 of the procedural rights that Mr. Sutcliffe has.

11           The issue is whether or not -- and there are two  
12 different ways the law has formulated this, but the statute and  
13 the applicable case law are fundamentally comparable. Whether  
14 he, Mr. Sutcliffe, has the sufficient present ability to  
15 consult with his lawyer, or with a lawyer, in a reasonable  
16 degree, with a reasonable degree of rational understanding.  
17 The statute refers to assisting properly in his defense.

18           The second part or second prong of this issue or this  
19 standard for determining competency is whether he has a  
20 rational and factual understanding of the proceeding against  
21 him, or of the nature and consequences of the proceeding  
22 against him, if you use the language from the statute.  
23 Dr. Patenaude dealt with both standards, both elements, and  
24 made certain findings and reached the conclusion that he,  
25 Mr. Sutcliffe, is competent.

1           If there were a contested issue as to that question,  
2 it would be the government's burden of proof to prove that  
3 Mr. Sutcliffe is competent. If Mr. Sutcliffe were arguing that  
4 he is not competent, which is clearly not the case, then he  
5 would have the burden of proving that condition by a  
6 preponderance of evidence.

7           Mr. Sutcliffe has the right to counsel, although, as  
8 with all rights to counsel, that can be waived, by conduct or  
9 by choice. He has the right to testify; he has the right to  
10 present evidence; he has the right to subpoena witnesses; he  
11 has the right to cross-examine. Those are the general contours  
12 of what this kind of hearing entails. Now, let's start with  
13 counsel for the government.

14           Do you wish to question Dr. Patenaude?

15           MS. DUARTE: Your Honor, at this point I'll submit on  
16 the report with no additional questions.

17           THE COURT: Mr. Nicolaysen, am I correct in having  
18 characterized the position paper that you filed?

19           MR. NICOLAYSEN: That's correct, Your Honor.

20           THE COURT: And you do not wish to question  
21 Dr. Patenaude?

22           MR. NICOLAYSEN: I do not.

23           THE COURT: Mr. Sutcliffe, I'll give you the  
24 opportunity to be heard directly. Do you wish to question  
25 Dr. Patenaude?



1           THE DEFENDANT: Thank you, Your Honor, for giving me  
2 the opportunity to speak. I want to state, first off, that I  
3 object to your sitting on the bench, ruling against me in any  
4 way, shape or form under the due process clause of the Fifth  
5 Amendment. I would like you to recuse yourself forthwith and  
6 assign another judge to rule on any further matters.

7           Furthermore, I want the court to take judicial  
8 notice, which it has failed to do on numerous occasions, to my  
9 challenge to the jurisdiction on the subject matter in this  
10 courtroom.

11           Will you take jurisdictional notice of that now?

12           THE COURT: Mr. Sutcliffe, those are matters which  
13 are not appropriate to raise. I deny your motion to recuse  
14 myself. I deny your contention that the court lacks  
15 jurisdiction.

16           Now, please answer my question. Do you wish to  
17 question Dr. Patenaude, through counsel?

18           THE DEFENDANT: The answer to your question is yes.  
19 I object to the court ruling on my competency without a full  
20 hearing under 4247 of Title 18, as well as all rights reserved  
21 on the Bill of Rights of rights, because I received no  
22 treatments, no psychiatric or psychological interventions since  
23 being ruled incompetent on April 7.

24           In the absence of such interventions or treatment,  
25 and with my conduct being exactly the same and consistent

1 throughout my hearings and every proceeding that I've been in  
2 this courtroom, this entire case, I believe I'm entitled to a  
3 hearing to determine on what basis I was deemed incompetent on  
4 the first and second instances so that I can determine what  
5 criteria I can now be deemed incompetent.

6 I don't know how I'm not incompetent since nothing  
7 has changed since the court first found me to be incompetent.  
8 I am not saying I believe I'm incompetent, but I'm not sure of  
9 the criteria based on this court's findings previously decided.  
10 I have yet to even be provided with a copy of Dr. Patenaude's  
11 report. If nothing has changed, then how I can be anything  
12 different than what I was originally?

13 Furthermore, I frankly don't understand why my  
14 presence is needed here today because, as the conduct of the  
15 government, the defense counsel, and this court's own action on  
16 April 7 clearly prove, all of you believe that the accused need  
17 not be present in the courtroom or, for that matter, not  
18 present in the same state to make a finding -- a judicial  
19 finding of fact that the accused is or is not incompetent as  
20 required by the law.

21 A finding of competency is one of a fact, not law.  
22 United States versus Shepard, 538 F.2d 107 at 110; United  
23 States versus Fratus -- F-r-a-t-u-s -- 530 F.2d 644 at  
24 page 647; U.S. versus Winn, 577 F.2d 86 at note 14 on page 88;  
25 Dusky v. United States, 362 U.S. 402, annotations at

1 paragraph 8 on page 2083.

2 Rule 43, which you used to explain my absence  
3 obviously does not apply. And since a finding of incompetence  
4 is one of clearly a fact, not law -- I am not a corporation --  
5 under the first part of Rule 43. And under the right of due  
6 process afforded to an accused in a court, the court could not  
7 abridge that right by that rule. Pursuant to Title 18, section  
8 2072(b), no rule shall abridge, modify or enlarge a substantive  
9 right. Rights trump rules.

10 Further, this court never found me incompetent at the  
11 March 14th hearing, so the hearing on April 7th should have  
12 been conducted pursuant to the protections afforded to an  
13 accused under the Fifth Amendment, due process, and the Sixth  
14 Amendment, compulsory process, of the Bill of Rights of rights,  
15 as well as U.S.C. 4247(d) as in Delta.

16 Bottom line is why my presence was not required  
17 April 17th, the hearing of my incompetence decision, but it's  
18 required today. I'd like the court to please explain these two  
19 differences that I've raised.

20 THE COURT: Are you finished, Mr. Sutcliffe?

21 THE DEFENDANT: Sure.

22 THE COURT: Okay.

23 Dr. Patenaude, have you heard what Mr. Sutcliffe  
24 stated?

25 DR. PATENAUDE: Yes, I have.

1           THE COURT: I know that you're not physically present  
2 to evaluate demeanor, but I will tell you that Mr. Sutcliffe's  
3 demeanor was not inappropriate, he was calm in setting forth  
4 his position, and he was reading from some notes that he  
5 clearly had prepared.

6           With that information before you, does that statement  
7 that Mr. Sutcliffe just completed in any way affect your  
8 opinion?

9           DR. PATENAUDE: No, it does not.

10          THE COURT: And what relevance, if any, do you  
11 think -- relevance to the question of Mr. Sutcliffe's  
12 competence, do you think Mr. Sutcliffe's statement has?

13          DR. PATENAUDE: I don't think it has any. I don't --  
14 you know, I didn't find any evidence for a mental disease or  
15 defect with him, and it sounds that he's controlling himself in  
16 court there.

17          THE COURT: And would your opinion have been affected  
18 if the same precise statement had been articulated with the  
19 exact same words but under circumstances displaying an absence  
20 or unwillingness to manifest self-control appropriate for the  
21 requirements of a court of law?

22          DR. PATENAUDE: I'm sorry, Your Honor. I missed part  
23 of that. There is a rustling noise.

24          THE COURT: Okay. The question I was trying to ask  
25 you is whether what you just told me would have been in any way

1 affected or changed if instead of delivering his position and  
2 stating it in the manner I already told you he did,  
3 Mr. Sutcliffe had done so as part of an uncontrollable  
4 outburst, inappropriate and unwarranted in a court of law?

5 DR. PATENAUDE: Would that change my opinion in any  
6 way?

7 THE COURT: Right.

8 DR. PATENAUDE: No.

9 THE COURT: Could you explain that, please.

10 DR. PATENAUDE: Why that wouldn't change -- well --

11 THE COURT: Yes. I know I'm asking you about a  
12 hypothetical, which is not inappropriate. But please explain  
13 to me why that would not change your opinion.

14 DR. PATENAUDE: Sure, sure. Well, I think  
15 ultimately, regarding the issue of competency, as I understand  
16 it, is that, you know, we're looking for whether or not a  
17 defendant may presently be suffering from a mental disease or  
18 defect that renders him mentally incompetent, speaking from the  
19 statute, and found no evidence for that in him.

20 I believe that Mr. Sutcliffe's behavior is willful,  
21 volitional, goal directed. He certainly -- terms of  
22 rationality, he certainly understands, you know, what he is  
23 doing. He has reasoned that out; he's demonstrated insight and  
24 an ability to introspect regarding his behavior and his  
25 subsequent actions.

1           And regarding just maintaining reasonable behavior,  
2 again, I think that he chooses not to sometimes. I think he  
3 just gets real angry, and that's just a part of who he is. But  
4 I don't think it's, again, due to mental illness.

5           THE COURT: Dr. Patenaude, I didn't arrange  
6 telephonically to have you sworn in. I don't think it's  
7 unwarranted to do that. And after I swear you in, through the  
8 clerk, I will ask you questions about what you've just already  
9 stated for the court.

10           So let's, through the clerk, telephonically swear  
11 Dr. Patenaude in.

12           THE CLERK: Please raise your right hand.

13           DR. PATENAUDE: Okay. It's raised.

14           (Witness sworn)

15           THE COURT: Dr. Patenaude, I know what you've told  
16 us, and it preceded the oath that you've just sworn.

17           Do you confirm that everything you've said thus far,  
18 before you were sworn in, you would have said under oath and is  
19 subject to the same obligation you had to testify truthfully?

20           DR. PATENAUDE: Yes, that is true.

21           THE COURT: Now, Dr. Patenaude, in any of your  
22 discussions with Mr. Sutcliffe -- how many total discussions  
23 did you have, by the way?

24           DR. PATENAUDE: Let me grab my record here.

25           We had, I'd say, eight or nine pretty lengthy --

1 well, no -- eight or nine discussions. Many of them were  
2 pretty lengthy, and then there's general informal discussion.

3 THE COURT: The eight or nine are in some manner, as  
4 you see them, distinctive or distinct from and different from  
5 the informal discussions?

6 DR. PATENAUDE: Yeah. The informal discussions were  
7 just passings on the compound here in the hospital. Just --  
8 they were just general pleasantries about how he was doing,  
9 things like that.

10 THE COURT: Now, Dr. Patenaude, would you please tell  
11 me what your training and professional background is.

12 DR. PATENAUDE: Yeah. I have a doctorate in clinical  
13 psychology, and I've been trained as a forensic psychologist in  
14 -- both while in graduate school, and then my internship  
15 training was in forensic psychology.

16 THE COURT: Where did you receive your doctorate?

17 DR. PATENAUDE: The Illinois School of Professional  
18 Psychology.

19 THE COURT: When did you receive it?

20 DR. PATENAUDE: I received that on -- gosh, when did  
21 I receive that? I believe it was October of '97.

22 THE COURT: October of '97?

23 DR. PATENAUDE: Yes.

24 THE COURT: And did you write a thesis that had  
25 something to do with issues related to mental competency or

1 mental illness in the context of court proceedings?

2 DR. PATENAUDE: Actually, no. My thesis dealt with  
3 children and behavior problems.

4 THE COURT: What experience, training, course work or  
5 otherwise have you had that qualified you to be functioning as  
6 a forensic psychologist?

7 DR. PATENAUDE: Sure. During my clinical training,  
8 before I was awarded my degree, I did a full year internship at  
9 the Northeast Florida State Hospital, which is a combined  
10 civil/forensic hospital and received a year of training in  
11 competency and other evaluations.

12 I also, while in school, did some therapy practicum  
13 and a diagnostic practicum that were in the forensics areas,  
14 and then I've been functioning as a forensic psychologist since  
15 August 2000 with the Federal Bureau of Prisons.

16 THE COURT: And throughout that time, have you been  
17 in the institution you're currently working at?

18 DR. PATENAUDE: Yes, I have, at the Federal Medical  
19 Center at Devens.

20 THE COURT: And how many evaluations have you  
21 conducted to determine whether or not an individual is  
22 competent to proceed to trial?

23 DR. PATENAUDE: I haven't -- I don't have the exact  
24 number, but I would say probably close to 250 to 300.

25 THE COURT: Are you able to tell me with some level



1 of accuracy whether, and, if so, on how many occasions, you've  
2 concluded that an individual was not competent?

3 DR. PATENAUDE: Not with accuracy, but I would say  
4 that maybe one out of 15 or 20 possibly, one out of 15  
5 evaluations that I do.

6 THE COURT: All right. And was there anything  
7 distinctive about the evaluation of -- and the experience that  
8 you had in working with Mr. Sutcliffe that affected your  
9 conclusion?

10 DR. PATENAUDE: Yeah, I think so.

11 THE COURT: That is not -- let me just complete my  
12 question. I know we may have some difficulty speaking over  
13 each other since you're not physically present, but I'll try to  
14 limit that.

15 I just wanted to have you answer that question  
16 without regard to, and without reiterating, what you already  
17 wrote down in your very detailed report.

18 DR. PATENAUDE: Okay. No, I would say that I think  
19 that Mr. -- you know, within my evaluation, I guess I -- there  
20 wasn't anything real surprising in it. But, you know, he --  
21 other than -- than his -- his demonstrative behavior in court,  
22 that I think led to the finding of incompetency, and then his  
23 demonstrated behavior here at the hospital, which was  
24 nondisruptive, and then his -- again, his insight into that  
25 behavior. And then just trying to figure out with him why

1 exactly he behaved that way in court.

2 THE COURT: To what extent do you attach any  
3 significance on the issue of Mr. Sutcliffe's competency to the  
4 fact that, thus far, including Mr. Nicolaysen, there have been  
5 four experienced criminal defense lawyers who have attempted to  
6 represent him, or have represented him, in the course of this  
7 proceeding, three of whom, at either his or their request, but  
8 without any opposition by him, I relieved of their  
9 representation. And I don't know if you have seen the -- have  
10 you seen the motion to withdraw -- to be permitted to withdraw  
11 that Mr. Nicolaysen filed?

12 DR. PATENAUDE: I have. I have not read the entire  
13 motion yet.

14 THE COURT: So you're aware there's pending before  
15 me, as I indicated at the outset of this hearing, a motion to  
16 withdraw brought by the fourth lawyer. And are you aware that  
17 a lawsuit has been filed against him?

18 DR. PATENAUDE: I am.

19 THE COURT: Filed by Mr. Sutcliffe?

20 DR. PATENAUDE: Yes, I'm aware.

21 THE COURT: Have you seen the allegations in that  
22 lawsuit?

23 DR. PATENAUDE: I perused them. I don't have them in  
24 memory.

25 THE COURT: To what extent, if any, does the

1 background concerning Mr. Sutcliffe's relationship with these  
2 four different lawyers affect your opinion as to his  
3 competence, particularly, Dr. Patenaude, under the first prong  
4 relating to whether or not the individual is able to consult  
5 with his attorney and assist properly in his defense with a  
6 reasonable degree of rational understanding?

7 DR. PATENAUDE: Well, Mr. Sutcliffe certainly  
8 possesses a factual and rational understanding of the whole  
9 idea of assisting his attorney in developing legal strategies  
10 and things like that.

11 And I think based on what he said to me, you know,  
12 his reason for wanting to change attorneys is what he terms --  
13 I guess it's a legal term -- "ineffective assistance," and also  
14 that he believes his rights are being violated.

15 Also my opinion that I think part of the difficulty  
16 that he has had in working with his attorneys has been just a  
17 general factor or feature of his personality.

18 Now, in terms of being rational, he's demonstrated  
19 this ability with me and others, you know, to have meaningful  
20 and intelligent conversations and to reason and understand what  
21 is being said to him and weigh consequences, weigh decisions.

22 Yet, again, I think that he, you know, again, due to  
23 his belief that he's not being effectively represented is  
24 interfering with his ability to assist or get along with his  
25 attorneys. And I've seen -- spoken to Mr. Nicolaysen at

1 length, and he seems to me to be, you know, really working hard  
2 to work with Mr. Sutcliffe. So I don't know what the problem  
3 is.

4 THE COURT: The question I would like you to answer,  
5 more succinctly, if possible, in any event, more directly, is  
6 to what extent, if any, is your opinion affected by the  
7 procedural history that I already summarily summarized -- I  
8 already summarized concerning Mr. Sutcliffe and his four  
9 counsel thus far.

10 DR. PATENAUDE: No, no, my opinion was not affected  
11 by that.

12 THE COURT: And please explain why not.

13 DR. PATENAUDE: Well, again, I think that, you know,  
14 I was looking at his present functioning. And it just seems  
15 that what is going on with his present function has -- and if  
16 you focus that in on his relationship with his attorneys, there  
17 is a pattern there. And I believe that his behavior that he  
18 presents with when working with his attorney is willful and  
19 under his control, and it's not the product of a mental disease  
20 or mental defect.

21 THE COURT: Would another way of putting it be that  
22 it would be at least consistent with a desire that has at least  
23 two components, one is to assert and maintain control of the  
24 world and circumstances in which he is functioning, and the  
25 second being to manipulate the proceedings?

































































































































