

“all this is very technical – I tried very hard to follow what you were doing. I don’t think the jury could follow it.”

Trial Day 4, 11.17.2003.

Judge Alvin Howard Matz, Page 809, lines 12-20

A Choice between Incompetent Assistance of Counsel and Self-Representation is No Choice.

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See also [GrandJuryTranscripts](#)

Even if present counsel is competent, a serious breakdown in communications can result in an inadequate defense. *United States v. Musa*, 220 F.3d 1096, 1102 (9th Cir. 2000) (cert. denied, *Musa v. U.S.*, _____ U.S. _____, 121 S.Ct. 498 (2000)). Similarly, a defendant is denied his Sixth Amendment right to counsel when he is "forced into a trial with the assistance of a particular lawyer with whom he [is] dissatisfied, with whom he[will] not cooperate, and with whom he [will] not, in any manner whatsoever, communicate." *Brown v. Craven*, 424 F.2d 1166, 1169 (9th Cir. 1970).

Transcript of 10.21.2003

Page 34, Lines 3-10

Judge: "Okay. Well, I'm going to deny the motions. They are frivolous anyway, so I will issue an order in that regard."

Defendant: "It was your court-appointed counsel [David Reed] that filed, created them as frivolous."

Judge: "I wouldn't say they're frivolous - -"

Defendant: "You said they are frivolous."¹

Judge: "That's really overstating it."

Transcript of 10.01.2003

Page 20, Lines 9-20

Judge: "Now, I don't think it is inappropriate for the record to note that I've previously authorized experts, or at least one expert, I don't go back and check the file but at least one expert, and I think could have been more than one², somebody with specific skill and advanced skill in computer technology as well as to be appointed to represent or assist prior counsel. Have you seen any expert reports?"

Reed: "**No. Not at all, Your Honor.**"

Judge: "Has anybody discussed with you any of Mr. Sutcliffe's prior lawyers, any expert reports that may have been generated?"

Reed: "**No, Your Honor.**"

Page 55, Lines 16-21

"Mr. Reed is in no position to provide even 'stand by' position that would be informed in terms of the evidence....h[e] doesn't even have the evidence."

Page 62, Lines 13-20

Judge: "Now, Mr. Reed, I don't know whether consistent with the law and the application of the Speedy Trial Act that the rights of a defendant would be protected if a jury were impaneled and the actual prosecution of the case, the opening statements, and the submission of evidence were to follow at some relatively brief interval after that. **You are sitting here with a understandable worried look, if not a scowl on your face, and I understand why and I'm concerned about that.**

Page 42, Lines 14-25

Defendant: "This reminds me of my choice given to me by - - between the U.S. Court and Mr. Harris³ - - you either go with ineffective assistance of counsel, who's going to violate your rights, or you can represent yourself. That's like saying to me, do you want

¹ Here the official transcript reads "You said they are river lust."

² There were 3.

³ Previous counsel #2, removed for incompetence.

me to kick you in the head, or do you want me to kick you in the teeth? Neither one are very appealing to me, Your Honor, at this point. I've demanded effective assistance

-- emphasis on assistance -- of counsel. That's all I've asked for. I've worked with these -- with this gentleman here, as the other lawyers, and the record clearly reflects that.

However, I don't like having my rights violated, and I will not allow

Page 43, Lines 1-4

anybody to violate my rights. It's my right, and I'm going to protect it any way I can."

Judge: "Okay. You've made that clear, and you've been given the opportunity to protect it."

Transcript of 01.14.2003

NOTE: The term "ineffective assistance of counsel" is appropriate when referring to Strickland analysis and "incompetent assistance of counsel" is at issue in the present matter

Page 5, Lines 1-2

"You have one choice. Meaning, there are two things from which you can choose. It's either Mr. Harris or yourself."

Defendant: "I will stand on my paperwork."

Docket 78, 79 and 80

See Attached ORDER and Letter to Judge:

Court DENIES defendant's 'requests' and **ORDERS defendant not to communicate directly with the court.**

See Letter attached, which also deals with DISCOVERY ISSUES, and Competency of Counsel William Harris, and right to a Speedy Trial.

Page 2-3 of the letter to Court.

Defendant: "William Harris has informed me he has made no copies of any of the CDS-ROMS for his own file, as he lacks the skill, knowledge and is not competent to do so."

Transcript of 12.04.2002

Docket #71 & 73

Lists "Hillary Potashner" on behalf of the defendant, page 2. Counsel appearing factually was "Bill" Harris, Esq.

INCOMPETENCE OF JUDGE:

Page 18, Lines 13-25

Judge: “I don’t think, as I understand the case, and as I understand these charges⁴ that have been filed against Mr. Sutcliffe that the mechanics, the technology, the capacity in a sophisticated way to use computers is really much of an issue in this case. I don’t think that’s what the trial is likely to focus on at all.⁵ [So I think you could have somebody who has never see a computer but is a d\(sic\) fine lawyer and a dedicated and hard working one do a perfectly competent, maybe absolutely bank-up job for this defendant. That’s my view.”](#)

Going backward to:
Transcript of 11.21.2002
Docket # 65

Page 14, 1–22

Harris: “This is a computer case where counsel for Mr. Sutcliffe is like a child learning the scales and Mr. Sutcliffe is playing Beethoven piano sonatas. And that’s about where it’s at. And in MDC we cannot even have a computer unless I am there, sitting there, with all my other cases, to allow Mr. Sutcliffe to have a computer. So with him –“

Court: “Please explain to me why your ability effectively to represent him is dependent upon some level of insight or prowess concerning computer technology that you currently lack.”

Harris: “Because these websites are on disks, it’s a matter of manipulating the disks, going back and forth, pulling this out, pulling that out, cross-checking. If this second website is allowed to come in, **the task is doubled**⁶.”

Court: “Would your ability effectively to represent him be enhanced if, at government expense, at public expense, you were allowed to retain an expert?”

Harris: “You know, what it would really be – an easier solution would be to direct MDC to let Mr. Sutcliffe have access to that computer in the visiting room without me being there.”

Court: “**That I will not do.**”

Page 14, Line 25 – Page 15, Lines 1-23

Court: “But I thought you’re the one who needs to get the – I don’t mean to minimize what I think you’re telling me, because **I am in the same boat as you...**”

Harris: “[t] **here’s not enough time if I did it 24 hours between now and December 3 that I’d be able to do this thing adequately.**”

⁴ Court never understood Counts 1-4 since the element changed from general intent to specific intent.

⁵ See appointment of Nicolaysen. So called Computer Expert.

⁶ [The other website was, in fact, allowed in on the lie of the prosecutor on January 10, 2003, another reason for the dismissal of Harris for failure to object to her lie.](#)

Court: "In other words, what you're saying is that the evidence that has been turned over to you, you need your client to evaluate?"

Harris: "Right. Its like if he spoke -- **If it was in Chinese and he spoke Chinese and I didn't**, and we're trying to go over and find the gems and uncover them."

Page 17, Lines 14 – 24

Harris: "No, I mean I'm happy to talk to their investigator, and I don't that's as big of a concern as the fact that – the bigger concern is that its tough enough to try represent a client and get ready for trial when they're in custody anyway, other thing being equal; **in a computer case where you've got all sorts of computer evidence coupled with the problem that the client has technical expertise that the lawyer doesn't**, it just compounds the issue. And all I'm saying is if there's a way that we can address flight and danger where -- "

Judge: "Well, that would be my ruling on it."

Page 18, Lines 8-17

Judge: "I'm reaching out for ways to make sure that you, who I know to be a very dedicated, skillful lawyer, will be able to get ready for trial and mount an effective defense so if you find there is some kind of benefit that could accrue to your client if an expert were appointed, and you can locate one and set forth standard information about why and what kind of expertise the individual has and what his hourly rate would be, I would be very inclined to grant that application and, as you know, that application doesn't have to be made available to the prosecution."

Transcript of 09.23.2002

Page 34, Lines 9-10

Judge: "What about **grand jury transcripts**?"

Duarte: "They have been turned over."

Page 27, Lines 8-15

Judge: "How long would you need?"

Bednarski: "It's - - that's a hard thing to say because I know what has taken time in the last six months. That's a different question - -"

Judge: "Yeah. *But he needs a lot less then the usual amount of time* because you've done whatever you've done."

Bednarski: "I would say at least six to eight weeks."

Page 17, Lines 15-17

Defendant: "[t]o grant this request would be to further jeopardize my right to a **speedy trial**, representation, and/or assistance of **competent counsel** and right to my freedom.

Page 12, Lines 19-21

Judge: **"[y]ou want to make sure that at all times you have lawyers who are in a position to represent you effectively and zealously."**

Page 12, Lines 7-11

Judge: "But I think what we all have to do is get to the real issue that's before me today. Your lawyers don't want to be your lawyers. Whatever their reasons are, I can only guess at. *It's not entirely a wild guess.* But the record is the record and I only have the record to rely upon."

Page 11, Lines 16-19

Defendant: "I am willing to waive attorney-client privilege in regards to the alleged secret investigations by Ms. Potashner and the public defenders office as I would like more details on this events(sic)."

Page 7, Lines 23-25

Judge: "Ms. Bednarski, are you telling me in plain language that the communications between your office *or any member of your office* [of the Federal Public Defenders, Central District of California] on the one hand and Mr. Sutcliffe on –

Page 8, Lines 1-5

the other hand have been so impaired that the ability to maintain mutual trust and respect and confidence in each other's respective obligations and positions has been shattered?"

Bednarski: "Yes."

Page 7, Lines 6-9

Judge: "Is that the result of things that were said by one side or the other side in this existing attorney-client relationship?"

Bednarski: "In part."

[Transcript of 04.16.2002](#)

Page 21, Lines 1-10

"Public Defender Potashner: "I believe there was a question of making a civilian arrest. And when Mr. Sutcliffe was in court he attempted, in court, to place the LAPD officers under citizen's arrest."

Judge: "That was the offense when he was thrown out of the criminal courts building?"

Public Defender Potashner: "I don't know if he was thrown out. What I'm being told is that it was the city attorney's office during a deposition and at that point, upon him trying to make a citizens arrest guns were drawn."⁷

Page 18, Lines 17-24

Judge: "It's consistent with what you say, Ms. Potashner because it looks like the LAPD was successful in having the KILLERCOP website removed from the host site. Is that correct?"

Public Defender Potashner: "*I believe so, yes.*"⁸

Prosecutor: "I believe that's correct, Your Honor. *I don't know the details about if and why the case was reviewed or declined by the DA's office.*"

Page 16, Lines 17-25 and Page 17, Lines 1-14

Judge: "Ms. Postashner, if you have an intelligent, sophisticated, deliberately functioning individual⁹ who can incorporate those kind of qualifying terms and disclaimers into anything that's posed(sic). And the mere fact that they are included and incorporated

⁷ Never happened. She doesn't state who is telling her this BS.

⁸ The first answer is the correct answer.

⁹ The Judge in New Hampshire at the preliminary hearing stated "The establishment of this website tells me two things. One, that your client is extraordinarily talented. That's a brilliantly conceived and put together website. But it's scary.

would be on its face sufficient to take away the potential and otherwise clear significance of the threats or the invitations or the means of communicating danger to other people to invasions of their security and privacy. Then what would be the capacity of law enforcement and of the courts to prevent this kind of conduct? [One could be an open invitation to simply put disclaimers on every single time.](#)

Potashner: **“Of course.¹⁰ The disclaimers in and of themselves does not make something that is dangerous not dangerous.”**

Page 8, Lines 20-24

Judge: “Well, I agree with that proposition that it’s a different kind of threat and there may not be a physical threat [if indeed that’s what armed refers](#). You may be right, that’s what it refers to. It’s not entirely clear from the [context](#).”

Page 6, Lines 25 to Page 7, Lines 1-8

Judge: “But getting away is something of an illusion when the form or mechanics that someone chooses to engage in to either [issue threats or engage in other forms of non-immediately physical assault is the computer and the Internet](#). You are not away from anybody. Being in Hew Hampshire is not different than being next door. I don’t really see that it’s being taken out of [context](#),...”

¹⁰ NOT!