"So a prudent thing to do for somebody in your situation would be is I'll take my best shot at it.[1] **You can take your best shot at being your own lawyer, if you want, or you can be a lawyer."**

--Judge A. Howard Matz

09.26.03, Page 54, Lines 12-15

See

A MANUAL ON JURY TRIAL PROCEDURES

Prepared by
The Jury Instructions Committee
of the Ninth Circuit

Members:
Judge George H. King, Chair
Judge Roger L. Hunt
Judge Lawrence K. Karlton
Judge A. Howard Matz
August 2004

CLICK ON LINK BELOW TO VIEW TRANSCRIPT

[1] This is amazing considering the judge has repeatedly advised defendant not to represent himself, even claiming he would come off the bench and assault the defendant, figuratively speaking, he claimed, if the defendant wanted to represent himself. This was done because then the judge knew if the defendant went forward under the illegal waiver then no violations of the Speedy Trial Act would occur; trial was set for only two weeks away, and that the judge's previous ruling that the defendant had 'waived' his right to the Assistance of Counsel, in fact, illegal. Transcript of 09.26.2003, Lines 12-15

For a waiver to be otherwise unlawful, "the error must seriously affect the fairness, integrity or public reputation of judicial proceedings," as that test was employed in United States v. Olano, 507 U.S. 725, 732 (1993)

"Trial Court's failure to conduct adequate inquiry into defendant's timely raised claim that his attorney had conflict of interest constituted violation of Sixth Amendment right to counsel and defendant did not have burden of showing actual prejudice."

See **Holloway v. Arkansas, 435 US 437** (The Court in Holloway held that reversal of a conviction is required if a defendant or his attorney makes a timely objection to a claimed conflict and the trial court fails to conduct an adequate inquiry

"The right to counsel and the right to defend pro se in criminal cases form a single, inseparable bundle of rights, two fases [sic] of the same coin."[2]

Although they may be neither encouraged nor prone to grant hybrid assistance, trial courts nevertheless do permit it. Moreover, they permit hybrid representation more frequently than appellate courts seem inclined to acknowledge; appellate courts commonly refer to hybrid counsel as advisory or standby counsel. By changing the descriptive terms, the practice of granting hybrid assistance is buried in the details of the various cases. See, for example, *infra* Part III.B., which discusses *McKaskle v. Wiggins*, 465 U.S. 168 (1984)

[2] United States v. Plattner, 330 F.2d 271, 276 (2d Cir. 1964)

Going Backwards In Time

3 Months *After* The Trial, 1 Month *Before* Sentencing: Motion For Counsel For Sentencing @ Docket #341 on 02.17.2004 DENIED: @ Docket #368 on 03.11.2004

Going Even Further Backwards In Time 2 Months *After* The Trial, 2 Months *Before* Sentencing: Transcript of 03.01.2004 Docket # 357

Page 25, Lines 10-12
[Judge speaking] "I appointed Mr. Reed to function as counsel for Mr. Sutcliffe for purposes of this sentencing proceeding. I do that knowing that thus far Mr. Sutcliffe has been representing himself with Mr. Reed as '*standby counsel*."[3]
NOTE: UNABLE TO LOCATE WHEN OR WHERE THIS APPOINTMENT EVER TOOK PLACE. THE CLOSEST I CAN LOCATE IS DAY 12, 12.04.2003. Supra

FURTHERMORE, REED IS 'ADVISORY COUNSEL,' NOT 'STANDBY COUNSEL.'
See Page 4, Lines 18-21
[Reed speaking] "And good afternoon, your honor, David Reed, Advisory Counsel."
[Judge speaking] "Okay. Thank you, Mr. Reed, for appearing."

So In Essence The Judge Is Allowing A Hybrid[4] "Standby-Advisory-Representative."
The Proper Role of Standby Counsel is Limited.
See **Standby Counsel v Advisory Counsel**.
See Hybrid Representation: See also Hybrid.

[3] See Docket #357 "Court also reminds counsel that Mr. Reed appointed to represent pro se defendant at his sentencing and that it is acceptable for both Mr. Reed and pro se defendant to file independent position papers."
[4] See Locks v. Sumner, 703 F.2d 403, 407 (9th Cir.) (**describing hybrid representation as a co-counsel situation in which "the attorney may participate directly in the trial proceedings with the defendant (examining witnesses, objecting to evidence, etc**.)"), cert. denied, 464 U.S. 933 (1983).

Cut To Day 12 Of The Trial:
Transcript of 12.04.2003
Docket #323

Page 2194, Lines 2-20
Judge: "Mr. Reed, I'm not going to relieve you of your duties as 'standby counsel.' I am *requesting* that you discuss with Mr. Sutcliffe whether he wants you to prepare the appropriate materials, or any materials, for purposes of sentencing. And if he agrees to have you do so, then I think it would be in his interests and I would prefer that you do so. I will allow you to confer with him about that aspect of the remaining part of the case. And whatever the signal is that Mr. – or statement is that Mr. Sutcliffe gives to you, just file a one-sentence status report with the – you don't even have to do that. Just let the clerk know whether you have ben engaged to handle the sentencing materials. Even if his decision is to not request you or authorize you to handle the materials or sentencing, I may do some research and determine whether that's a right that he has. If he has that right, I'll respect it. If not, I may require you to perform additional services for purposes of sentencing."
Reed: "Yes, Your Honor."
Judge: "That's the way we'll proceed on that."

Going Further And Further Backwards In Time
Cut To Day 6 Of The Trial:
Transcript of 11.19.2003
Docket #299

Page 1212, Lines 5-7
"And I've never experienced this type of – the record clearly reflects I don't want to be here representing myself."

Page 1213, Line 25 to Page 1214, Lines 1-7
Judge:"You are proceeding without counsel because your conduct, ***although not your lips and <u>your words</u>***, clearly and persistently reflected a refusal to be represented by counsel. And that's why I made the ruling that I did. So the choice for you to be laboring under the handicaps that you've been describing was your choice. And after six lawyers, the record is very clear that you are required to live with that choice.

Cut To Day 1 Of The Trial:

Transcript of 11.12.2003
Docket #294

Page 4, Lines 14-15
Reed: "Good morning, Your Honor, David Reed, advisory counsel."

Page 40, Lines 7-9
Judge: "I have arranged for a standby counsel, Mr. David Reed, to be present…"

Page 41, Lines 10-12
Judge: "Are there any of you who believe that the decision that - - ***the fact, I should say***, that Mr. Sutcliffe is representing himself …, anybody who would have a difficulty with that fact?"

Page 43, 11-15
Judge: " **Do you still think that the fact that Mr. Sutcliffe is not going to be represented by a lawyer except by this advisory or standby counsel, who will not be representing him** but will merely be available, that that would prevent you from being fair?"

Page 45, Lines 9-10
Escobar Juror: "…I would be definitely be impartial."
Lines 14-15
Judge: "Mr. Escobar, report back up to the third floor, back up in the jury room."

Page 107, Lines 10-13
Levine Juror: "Yes. The first one was child molestation. That came to a verdict. The second one was selling marijuana. That came to a verdict. The third one was a mugging. That was a hung jury."

Page 109, Lines 19-23
Levine Juror: "And beyond what I have said, I don't think there is anything else unless - **- I don't know whether this is pertinent or not. But in the first case, the first criminal case I was ever on, the defendant did not have a lawyer. He represented himself."**
Judge: "Okay. It's obviously a different case. **That was the child molestation case you told us about?"**

Page 205, Lines 14-20
Judge: "What about - - I didn't say public information. I said any information. **Supposed somebody wanted to put down information about the addresses and social security numbers and employment information of the children of the prospective jurors sitting next to you** and they hadn't been given authorization to, would you think that that presents an issue of free speech?"

Page 118, Lines 23-25 & Page 119, Lines 1-14
Judge:"I do want to take a quick advantage of the fact that we are still on the record to note that Mr. Sutcliffe seems to be still demanding a ruling as to why I found that he, by his conduct, had waived the assistance of counsel. I already stated, and deemed on the record, more then once, that the **views expressed in the September 29th letter** which he had expressed in court **were the primary bases for my finding and for my ruling**. If I had heard only from Mr. Reed, I wouldn't have reached that conclusion, but I didn't hear only from Mr. Reed. I heard from Mr. Sutcliffe as well. I'm not going to revisit that, but that is the response. ***The words*** and conduct that you displayed at that hearing, when I made the finding, **were the primary bases for my determination**, and they are confirmed and reflected in the letter that has now been filed that's dated September 29, 2003, as well as other things. Lastly, I just want to note that I could not and still cannot, even though Mr. Sutcliffe is rising [THIS MEANS I OBJECT] -- and I appreciate him doing so – make any determination whatsoever that the pants he is wearing – the **trousers** he is wearing are in any way part of any prison garb. He looks perfectly respectable and I am pleased that he does. We'll be back in 20 minutes."

Page 156, Lines 2-25, Page 157, Lines 1-24
"Before you vacated the bench last time for the break, you mentioned that – regarding the letter you had reviewed regarding Mr. Reed that I submitted to you."
Judge:"Yes I read it all"
"You mentioned that based on my actions and my conduct on October 1st, I believe, and I would like you to please clarify it for me, because I have no recollection of any conduct I did that day that would have constituted grounds for removal of my counsel. And the speech that you said – that you referred to, that only speech I have a recollection of that went with that conduct was my denying the three allegations that Mr. Reed had raised, which was that I had threatened him, which he admitted was a threat of a lawsuit; two, that he had articulated that I had refused to assist him in preparation of documents; and three, that I had refused to articulate specific files within the discovery to assist him. And so, of that speech and conduct, I still can't ascertain what the court is referring to. I'd like the court to please clear that up for me."
Judge:"Mr. Sutcliffe, you may be seated."
"Thank you, Your Honor."
Judge:"It's tough for anybody to remember exactly what happens at an earlier stage, and it's equally tough for me. And it's impossible for anybody, always, to understand what the other guy says. The record will reflect very clearly what I said. If you don't understand it, it is not my obligation to clarify it. I tried to explain it to you last week. This is the last time I'm going to be heard about this."
"You, by your conduct, you, by your statements, much of which is graphically confirmed **in a letter that you insisted I read and that you sent to the prosecutor** and that has now become part of the open court records in this case, have made it very clear that your view of representation is – that what you consider to be representation is totally unacceptable to you. You've said it many times. You've said it in open court. And you've said it in writing."
"You want assistance. You don't want representation. You said all those things after I explained what the proper role and rights and authority of a lawyer is. And you said it in the context of a series of events that has gone on for a very long time."

"The record is very clear on why I found that you had **waived you right to the further appointment of counsel**. And that's all I'm going to say about it. It is not based only on, and not even based primarily on, what Mr. Reed said. Now that's it. You can challenge it."

Transcript of 10.21.2003
Docket #266

Page 50, Lines 1-17
"He said that I refused to assist him up until our August – excuse me – September 26. That's the first lie. The second lie was: I refused to give him the name of any files, exactly any files to help him with discovery. That's the second miss – second fact he lied about. Those two statements I can refute and prove they were lies."
Page 50, Lines 8-13
Judge: "You don't want Mr. Reed to be your lawyer. Right?"
Defendant: "He's not my lawyer. He's your counsel. I stressed that very closely in the letter to you and I cited U.S. v. Mills. He's not my agent. Ye's(sic) your agent."
Judge: "Okay. Well, I think that's sufficient basis to stop right here. I don't think there is any need for Mr. Reed to respond. And the extent to which you and he had a difference of opinion as to whether an, if so, to what extent you've cooperated before, I relieved him in large measure as a result of your refusal to communicate with him."
Lines 21-24
Defendant: ""That's exactly what I'm talking about. Exactly. You removed him because he said that I refused to assist him at all on October 26. That's a lie and I'd like a chance to refute that."

Page 50, Line 25 to Page 51, Lines 1-
Judge: "Okay. Mr. – we're not going to go through that hearing again, Mr. Sutcliffe. I made findings that based upon your own characterization of what any lawyer who was you lawyer could do and would not be permitted to do and would not meet with your approval and whose efforts on your behalf you would reject, I relieved him of his duties. That ends it. That's my ruling. We are note(sic) going into any further. You have the basis on the record to appeal me if you like, depending on what happens at the trial. Okay, **there is no issue as to – and no relevance anymore and I don't think there is any basis for an issue as to the accuracy of Mr. Reed's statements.** Mr. Reed enjoys a well-deserved reputation as an honorable, diligent and careful lawyer, and I'm not going to subject him or other lawyers of that nature to fishing expeditions that are no longer material or relevant to any of your rights in the trial. That's my ruling. I'm not going to hear any arguments about it. Okay, I think we're adjourned.
[SO MUCH FOR THE DUE-PROCESS AND RIGHT TO BE HEARD]
Focus is on competence to waive right to counsel. The focus should be on the defendant's competence to waive the right to counsel, not legal competence. United States v. Arlt, 41 F.3d 516, 518 (9th Cir. 1994) (citations omitted).

Transcript of 10.01.2003
Docket #242

Page 38, Lines 17-25, Page 39, Lines 1-10
Judge:"…if I get to that order, do so based upon the findings that the necessary communications between lawyer and client – in this case Mr. Reed and Mr. Sutcliffe – have been irrevocably torn asunder; that the necessary capacity for each other mutually to assist each other in the common objective of having a lawyer represent a client has been irrevocably torn asunder; that there is a fundamental disagreement that Mr. Sutcliffe and Mr. Reed have about the proper role, authority, independence and discretion of a lawyer. The record which has been generated, which is currently under seal, reflects those differences. Mr. Sutcliffe wants an assistant; he doesn't want a representative. Whatever the distinction is, that's the way he has characterized it. I make the findings that what Mr. Reed's characterization of the proper role of a lawyer is are correct, sound, well established, consistent with my understanding and my intention."

SEE DOCKET #246 Defendant waived right to 6th Amend. Counsel.

Transcript of 09.26.2003
Docket #236

NOTE: This is transcript is "Produced by Computer"

Page 24, Lines 2-14
Judge:"The somewhat tortured[5] history of this case, as reflected by transcripts which I have gotten and reviewed in recent days or weeks, reflects that on several occasions, the first being at least August 22nd of 2002 there were colloquies that I had with Mr. Sutcliffe concerning both his right and the peril he would invite if he exercised his right to represent himself. Mr. Sutcliffe has never said I want to be my own lawyer. I've noted that before and I'm not going to sit up here and review every single colloquy we had.[6] Ultimately, I found that by his **conduct** he had waived his right to yet another appointed counsel **after having exhausted four** and done so under circumstances which, in several occasions turn out to be remarkably antagonistic and confrontational."

Page 25, Lines 16-18

[5] Defendant informed the court as far back as early 2002 that he had been tortured by the Manchester, New Hampshire police while the F.B.I. stood by and laughed. The court never inquired into this but used statements made during the torture against the defendant.
[6] See competency hearing transcript of August 2003 where he did just that before removing Nicolaysen.

Judge: "I have taken it upon myself to allow materials which are not in compliance with the Local Rules concerning filing to be filed.[7]

Page 26, Lines 7-19
Judge:"I, however, did not build the necessary record that I think would be required to assure that he was informed in advance of all those risks. And in particular, I erred by not articulating the [nature[8]] elements of the case [accusations], meaning of the two different sets of crime that are alleged that he committed and the penalties. I could have been more expansive about some of the mechanical – not mechanical, but some of the functional obstacles anybody would face in representing themself in a criminal trial. Much of that has been addressed and was addressed before I got Mr. Sutcliffe's filing last night through a few orders that I've issued, both directly by myself and through orders issued by the prosecution to set forth in writing and to serve and handserve upon Mr. Sutcliffe many disclosures about these considerations.
Lines 20-25
Judge: "What I would want you to do over the lunch break, if you choose to, Mr. Sutcliffe, is to evaluate where you stand in terms of readiness for trial Tuesday[9], discuss with Mr. Reed whatever you think would be appropriate and he would think would be appropriate about representation on a full basis he could provide you, evaluate your rights under the **Speedy Trial Act.**

Page 31, Lines 19-20
[Prosecutor speaking to Judge] "[a]**nd the court made this case 'complex**.' And I think rightfully so,…"[10]

Page 49, Lines 10-25
Judge: "Because I am utterly **astonished**[11], baffled, and upset that despite my efforts and orders that the material has not been transferred from one lawyer to the successive lawyer and is not in the current possession of the **standby lawyer** or the defendant. I don't see how we can proceed to trial, even putting aside the issues of who represents Mr. Sutcliffe under the state of affairs and I don't intend to do so. What is(sic) the calculations on the Speedy Trial Act that I asked you to look into?"

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[7] Judge refused to allow filings of motions by defendant for violations of Local Rules. Including a Motion to Recuse the judge. It was only after defendant was able to get someone on the "outside" of the prison to file them were they entered. He further refused to rule on them until late 2003 around September, or thereafter, claiming he had already ruled on them.
See docket # 116, 125, 126, 127, 128, 129. The judge then issued an ORDER to Clerk's Office "not to accept for filing any documents submitted to Court directly by defendant." See Docket #135
[8] The accused shall enjoy the right…to be informed of the nature and cause of the accusation. Sixth-Amendment.
[9] Two business days from today.
[10] There is nothing on the record that the court ever made this case complex.
[11] There is only one other time the judge used this phrase, See Docket 383. Judge states he is "Disappointed and Astonished by the intemperate tone and utterly unprofessional content of Gregory Nicolaysen's Response …"

Prosecutor: "Your Honor, when I had done it previously, I had said that according to my calculations, **the last day that we could start trial would be October 10th. That has not changed because you did not exclude time last time."**
Judge: "Yeah. Mr. **Sutcliffe did not waive time and that was his right**."

Page 50, Lines 11-25
Judge:"The law is pretty clear, and I did not follow it, at least in some respects, I didn't follow it literally, concerning the notice that a judge is required to give an individual about acting in his own defense. I already told you many times, and I don't think we have to continually belabor this, that I realize you never said to me I want to be my own lawyer, so please understand that I'm not sitting here thinking you affirmatively expressed in words a desire to go without a lawyer. **But I found, for I think very ample reason**, that your conduct amounted to that choice and that you made that choice for tactical purposes and willingly. However, I also think that the paramount obligation I have is to follow the law and to make sure that people who come to trial in this court, no matter what kind of case, get a fair trial. So I do not intend to hold you to that finding of waiver –"

Page 51, Lines 10-17
Judge:"The bottom line is that I'm telling you that if you want to be represented by counsel, I would honor that choice, and if you want to represent yourself, I would be required to honor that choice and it would be, I think, a valid and binding choice, although I would give you more time [for the trial] no matter what[12]…"

Page 54, Lines 12-25, Page 55, Lines 1-12
Judge:"**So a prudent thing to do for somebody in your situation would be is I'll take my best shot at it.**[13] You can take your best shot at being your own lawyer, if you want, or you can be a lawyer. But if you do the same thing again Mr. Sutcliffe, or the same thing has been established on **four**[14] different occasions where you have tried to **control and direct and limit the lawyer** whose has been doing her best or his best to represent you and have interfered with the **right** and the need and the obligation and the duty of that lawyer to 'exercise independent judgment' and professional care in representing you, and if as happened **four previous time** – at least – I'm not sure. It's fair to say it happened ad nauseam. You turn on a lawyer and you sue the lawyer and you refuse to

[12] "No matter what" is a popular phrase of Judge Matz. See Transcript 01.14.03, pg. 18: "[y]our going to have to undergo a trial. This is going to happen, no matter what! This is no longer a matter of choice."
[13] This is amazing considering the judge has repeatedly advised defendant not to represent himself, even claiming he would come off the bench and assault the defendant, figuratively speaking, he claims, if the defendant wanted to represent himself. This was done because then the judge knew if the defendant went forward under the illegal waiver then no violations of the Speedy Trial Act would occur. See Page 49, lines 10-25.
[14] The record on September 23, 2002 does not support this claim. See page 21, Lines 19-21 wherein the judge states: "And it's not necessary for me to make any findings about who's right and who's wrong. I'm not saying you're wrong. I don't know for sure."

talk to the lawyer and you threaten the lawyer, then that will be a reinforced definitive statement by conduct on your part that you don't want a lawyer. It will not be a basis to find you're incompetent. It will be a basis to find that you made your choice and your choice is to go it alone.
Those are the alternatives available to you. Right now I don't think this case is ready for trial and much of the reason is not immediately attributable to you. Some of it is not attributable to you at all. All of this mysterious confusion about what happened to the evidence that the government long ago disclosed to your prior lawyers would never have arisen if there never had been all of these efforts which are totally inappropriate or obstructive on your part to interfere with their[15] work."

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 55, Lines 23-24
Judge:"[w]e'll go to trial a week later and I don't think the speedy trial 'act' will be violated…"

Page 56, Lines 14-17
Judge:"I gave you the right[16] I always give a person a right when a person tells me he or she is moving to withdraw.[17] You had the opportunity to explain your perception, your memory, or your version of what has go on.[18]"

Page 74, Lines 6-14
Judge:"You know, I don't think – I think I understand this case far better now in part because of certain things I've read recently and it doesn't strike me as that complicated [complex] a case. The **nature** of the evidence is a little bit foreign to me because I'm not good at the – But the nature of the issues are pretty straight forward and clear. So I think without prejudicing it that it may not be necessary to consume significant amounts of time to assure that Mr. Reed feels in good faith in his mind that he's up to speed."

Page 77, Lines 15-25
Judge:"Now, I think it's prudent, and I'm not intending to raise any level of acrimony by doing this, but given my prior comments and the regrettably tortured history of this case, I am not going to orally supplement the written warnings that have been circulated and made available and served upon Mr. Sutcliffe more then once concerning the risks of self-representation. And I want it to be very clear that I will find that by conduct there is a

[15] Which specific prior lawyer and which specific work is left open to one's own interpretation and speculation.
[16] Defendant received no right August 27, 2003 Hearing, page 51, lines 15-25.
[17] Defendant received no such right March 14, 2003, page 5, Lines 23-25, page 6, Lines 1. Line 2 should read as a question, not a statement.
[18] Except at the April 7, 2003 secret hearing where accused was denied the Due Process Clause right to be present at all "Critical stages." See also "A Manual on Jury Trial Procedures Prepared by the Jury Instructions Committee of the Ninth Circuit 2004 Edition, Chapter 1.6. Presence of Defendant (Criminal) at Page 18.

choice of self-representation under the circumstances I already described which I hope won't happen if Mr. Reed's capacity to function properly as a lawyer is disrupted or interfered with."

Page 80, Lines 13-15
Here the court refuses the accused's right to be informed of the nature of the charge. This, naturally lead to the admitted illegal sentence imposed against the defendant of over two additional years time in prison. Instead he refers to them and incorporates them by reference.

Page 80, Lines 16-24
Judge:"I have already told you, Mr. Sutcliffe, but I'll tell you again, that were I forced to make a finding, and I really hope I won't be, that by your conduct **and possibly by your explicit choice,** if that ever happened, you would have to wave your right to have a lawyer represent you. In representing yourself, you would have to follow and abide by the federal rules of evidence, the local rules of this court at sentencing, if it got to that point, you would have to apply and adapt and follow the U.S. Sentencing Guidelines."

Page 82, Lines 17-18
Judge:"[a]ny outbursts would be subject to 'various sanctions.'"

Page 82, Lines 23-25
Judge:"Okay. Those are my additional warnings, and they're not one's that I'm touching on for the first time but I think they're quite definitive. We're adjourned."[19]

See what happened just 24 days earlier:

See Hearing Earlier on 09.02.2003

Page 8
Lines 22-25
Judge: "It's going to be somewhat of an **unusual case** given Mr. Sutcliffe is proceeding pro per as a result of my decision to deem his prior conduct and course of conduct as a waiver of his 6th Amendment right to appointed counsel."

[19] "[w]hile no particular form of interrogation is necessary, **the court must assure itself that the defendant understands** the charges and the manner in which an attorney can be of assistance." United States v. Gillings , 568 F2d 1307, 1308-1309 (CA 9, 1978). See also United States v Balough, 820 F2d 1485 (CA 9, 1987); United States v Aponte, 591 F2d 1247, 1250 (CA 9, 1978).

A Short Trip Down Jurisdiction Lane
Transcript of 08.27.2003
Docket #188[20]

CLICK ON MY FACE

Page 9, Lines 1-15.
Court denies defendant's "contention" but fails to deny the defendant's "Motion" to challenge jurisdiction. It should be noted that Leslie McAfee also filed a motion, which was not ruled upon by the judge at Docket #170.[21] A month later, at a hearing, in which the defendant is given no notice before being hailed into court, the judge finally takes judicial notice and summarily denies the challenge.

Page 51, Lines 3-25
THIS PAGE SPEAKS VOLUMES FOR ITSELF OF THE COURTS ARROGANCE TO CONTROL THE RECORD.

Page 52, Lines 4-14
Here is where the AUSA releases Winnick from the defense subpoena by referring to it as "my" [her] subpoena. The subpoena was never hers. Just as the audiotapes subpoenaed from the BOP by the defense and turned over to her first were not hers.[22]

Page 52, Lines 20-25, page 53, Line 1
Judge:"Okay, now in response to Mr. Sutcliffe's recent request for what the court was – what I was referring to, in noting that I had previously given warnings to Mr. Sutcliffe

[20] Court accommodates defendant by agreeing to GRANT defendant's motion to recuse counsel, specifically noting, however, that court does not find …ineffective assistance of counsel. The court found that Nicolaysen displayed 'admirable professionalism. For reasons stated on the record court finds defendant has waived his right to appointed counsel.
[21] See also Docket #172, "Ex Parte Application…"
[22] It should be noted the defendant was denied the right to obtain those tapes prior to his trial.

that he would be deemed to have waived his Sixth Amendment right to appointed counsel, the transcript of January 14, 2003, which I will make available to Mr. Sutcliffe, which I got in the last couple of days and I don't think has been distributed.[23]"

Page 60, Lines 15-25
Judge:"Mr. Sutcliffe, as the record amply demonstrates, has gone through four attorneys; he's fought with all of them; he's insisted on firing all of them. He has, in a devious and manipulative way, at the same time refused to waive the Sixth Amendment right to counsel. He has actually sued at least one lawyer, the fourth one, as the record today establishes. There is every reason to believe he would continue to do that with additional lawyers who are appointed to represent him in a conventional basis. A defendant has not right to both self-representation and the assistance of counsel[24]"

Page 62, Lines 18-25
Judge:"I've already found that you know the nature of the charges."[25] [See Transcript of 09.26.2003. page 80, Line 13-15, infra] That's been implicit and explicit in the valuation of you by Dr. Patenaude. **But you will have to do you best to understand the range of the penalties, the fines, whether there's supervised release, what it is, any risks of restitution, license loss, any effect on any sentencing of you in the event that the jury convicts you. You will have to learn and comply with the Federal …**See Page 63 and 64 to conclude this ramble.

Page 64, Lines 14-15

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[23] See Docket #113, "Crt also orders this portion of the transcript be kept under seal." See also Docket #167, "Ex Parte Application …for order unsealing hte(sic) Court Transcript … for January 14, 2003." See also Docket # 168, DECLARATION Filed by Leslie McAfee … to 'Unseal' Transcript for January 14, 2003." See also Docket #175, "ORDER filed by Judge A. H. Matz…denying ex parte application motion for order Unsealing hte(sic) Court Transcript…for January 14, 2003"

[24] Actually, the way the law is read this is the ONLY way to get the court to allow this right to the defense. See Page 65, lines 08-13. "Standby counsel…would be able to 'assist' you in some very basic and important aspects."

[25] See January 17, 2003 Transcript, Pages 11-14 wherein the defendant demanded his right to be informed of the ***nature and cause of the accusation***, but was denied by the judge. The court then used this as an excuse to deem the defendant incompetent. See Page 15, ibid. See also April 15, 2002 Transcript, Page 11, Lines, 5-7. "I cannot enter a plea of not guilty until I know the nature of the crime of which I am accused." Page 12, Lines 15-19. Id. "Did you hear and understand … your rights and the appointment of counsel?" "Some, not all." Page 13, Lines 21-25 and Page 14, Line 1. "I'm going to take a not guilty plea from you. But do you want to enter a not guilty plea this morning, Sir?" " I can't answer a claim until I know the nature of the crime which I'm accused."

Judge:"You have had **four attorneys**; **your right has been exhausted**. You were previously warned that you can't play these games."[26]

Page 64, Lines 18-19
Judge:"To the extent there has been delay, it is almost entirely attributable to the course of conduct that you systematically, right through today, have engaged in."

Page 65, Lines 4-6
Judge:"But **your conduct triggers the application** of all the cases I cited, and for those reasons, I deem that you are now required to proceed pro se."

Page 66, Lines 6-9
Judge:" You're the advocate. You have chosen to be the advocate by your conduct. You have insisted on carrying out that role even today. Now we'll see what the trial will be like as you engage in that process."

Page 68, Line 15-16
Judge:"So if you don't like my answer, that's just too bad."

COURT "ACCOMMODATES DEFENDANT BY AGREEING TO GRANT DEFENDANT'S MOTION TO RECUSE COUNSEL.

Adequacy of inquiry. "Before ruling on a motion to substitute counsel due to an irreconcilable conflict, a district court must conduct 'such necessary inquiry as might ease the defendant's dissatisfaction, distrust, and concern.'" United States v. Adelzo-Gonzalez, 268 F.3d 772, 777 (9th Cir. 2001) (quoting United States v. Garcia, 924 F.2d 925, 926 (9th Cir. 1991)). See also United States v. McKenna, 327 F.3d 830, 843–44 (9th Cir.) (denial of defendant's request for new appointed counsel upheld where source of conflict was defendant's insistence that her attorneys file motions that her attorneys felt were not supported by evidence), cert. denied, 124 U.S 359 (2003); United States v. Nguyen, 262 F.3d 998, 1004 (9th Cir. 2001) ("For an inquiry regarding substitution of counsel to be sufficient, the trial court should question the attorney or defendant '**privately and in depth**,' and examine available witnesses.") (quoting United States v. Moore, 159 F.3d 1154, 1160 (9th Cir. 1998)).

See 9th Cir's "preferred procedure" for such waiver. This preferred procedure is set out in US v. Barlough, 820 F2d 1485 (9th Cir 1987)

RELATED: Docket #45 on 09.23.2002. Defense Counsels ex parte application to be relieved. And Docket #44. Transcript of 09.23.2002.
POSSIBLLY RELATED: Docket # --, dated 09/13/02 "Placed In File, Not Used:"[27] and Docket #39, dated 09/18/02 "Notice of Under Seal Filing:"

[26] Judge tries to play a game on 09.26.2003, after realizing this waiver he found was admittedly illegal, by telling the defendant that the "**prudent thing**" to do would be to represent himself.

Transcript of 04.07.2003
Docket #158,157

Page 3, Lines 9-10
Nicolaysen: "Gregory Nicolaysen appearing for the defendant who is not present, Your Honor."
Page 3, Lines 14-17
Judge: "The defendant's personal presence is not necessary, given that he's currently represented by Mr. Nicolaysen. This is primarily an issue, at the very least, a mixed issue of fact and law, probably a legal issue."

Transcript of 03.14.2003
Docket #139

See also 03.14.2003

Page 79, Lines 2-4
[Panel Attorney] "I'm planning to submit an ex parte application for someone **I finally was able to find as a local expert** on the computer issue, …" [TRIAL LESS THEN 2 WEEKS AWAY] on March 26, 2003

Page 79, Lines 17-19
"You Honor, I will also submit this order on a disk."
[Judge speaking to attorney] "Yes. Because I may fiddle with it."

Page 78, Lines 15-25
[Judge speaking to accused's attorney] "But, Mr. Nicolaysen, I want you to proceed on the assumption – and I'm not making any findings. I haven't made up my mind. I'll listen to Mr. Sutcliffe; but I want you to proceed on the assumption that you will either be his trial counsel, or, if not, his standby counsel." [INTERUPTS]
No. I appreciate that, Your Honor."
[Judge speaking to accused's attorney] "Let me finish. I want you to get ready. Master the discovery, and do whatever you can to be ready to try the case on the date that I'm now about to set as the new trial date, which I think should be the first week of September, after Labor Day."

Page 69, Lines 1-19
[Judge speaking at accused] "…I will allow you to re- -- or I will revisit and may rule upon, depending on the state of the record, **your pending motion to relieve Mr. Nicolaysen**. Until that hearing, and until I make any further ruling, Mr. Nicolaysen is not relieved of duties as your lawyer; and he will continue to function as your counsel of record. All of the other orders that I previously issued will remain in effect concerning

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[27] As of 12.16.2003, Sung Park, attorney for defense informed defendant that this item is now "missing" from the file along with the jurisdiction challenge motion "placed in filed, not used."

your relationship with counsel and with the court; and with that, I think it covers everything that needs to be addressed; so this matter is adjourned."

[Accused speaking at court as he is dragged out of court backwards by his chains] " I challenge the jurisdiction of this court. This examination is unlawful; and you're holding me unlawfully; and I fully seek to exercise every remedy under the law to make sure that you feel how you're making me feel. You have no Honor. You have lost all sense of honor in this courtroom. 'Kangaroo Court[28].'" [29]

Page 10, Lines 7-15
[Accused speaking prior to being dragged out of court into room with no ability to hear or see events unfold] "And that if this court appointed counsel, Mr. Nicolaysen is going to speak in any way, shape, or form about any communications, I will not allow – I do not allow that; and if he's going to say anything against me, I demand that he be sworn in, under oath, put on the stand, and I have a right to confront him, and cross-examine him to anything he says, which can be used against me in any way, shape, or form, as to either my competency or any communications we've had between ourselves."

Page 9, Lines 13-23
[Judge speaking at accused] "Now, until and unless I rule upon your motion, WHICH I INTEND TO DO AT SOME POINT IN THIS MORNING'S PROCEEDINGS, BUT AFTER FURTHER INFORMATION. Mr. Nicolaysen is you lawyer. I am going to be calling upon Mr. Nicolaysen. I'm going to be hearing from Mr. Nicolaysen. You will sit there quietly while he addresses me. I will give you an opportunity to add to the record and respond to what he says, but you will not prevent him, it will be cause for expulsion for responding to my questions and from functioning as your lawyer, until and unless I relieve him of his duties; do you understand that?"

Page 8, Lines 18-20
[Judge speaking at accused] "If you speak before you're called upon – and I'll give you a chance to speak – and if you interrupt anybody else, that is an 'outburst.'[30]

Page 8, Lines 1-9
[Judge speaking at accused] "Be quiet."
[Accused speaking at court] "He has stipulated to that. He has stipulated to that."
[Judge speaking at accused] Mr. Sutcliffe, sit down for one minute."

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[28] See also 01.17.2003 Transcript Page

[29] Options available to court
After a disruptive defendant has been warned of the consequences of his or her continued disruptive behavior, the trial court has these options:

1. 1. cite the defendant for contempt;
2. 2. remove the defendant from the courtroom until the defendant promises to conduct himself or herself properly; or 3. permit the defendant to remain in court but have him or her bound and gagged. Illinois v. Allen, 397 U.S. 337 (1970)

[30] See Page 22, Id, Line 18, wherein the judge states: "Dr. Backer, again, I need to interrupt." See also Page 47, Lines 11-20. Ibid.

[Accused speaking at court] "He does not speak for the accused. He is dismissed with extreme prejudice."
[Federal Marshal speaking at court] "Is it ok if he is removed?"
[Judge speaking at accused] "Yes. All right."

Page 7, Lines 22-25
[Accused speaking at court] "Objection, he does not speak for the accused." "Your motion --." "He does not speak for the accused."

Page 7, Lines 2-14
[Accused speaking at court] "I also want to add to the record, that…, and I intend to prove that."

Page 5, Lines 23-25 and Page 6, Lines 1-2
[Accused speaking at court] "Your Honor, I move at this point, to remove this man as my counsel, as he no longer speaks for me." "All right. Sit down, and I'll deal with that motion later. Excuse me, Your Honor?"

Page 4, Lines 15-17
[Accused speaking at court] "Court appointed counsel has had me forcefully removed outside of the bar. I will stay outside of the bar." "You can stay there, Mr. Sutcliffe."

Transcript of 01.17.2003
Docket #113, 114[31], --[32] and 118
Cut To Pre-Trial Hearing:

Docket #118

Arraignment: Superseding Indictment

Page 3
Counsel: "Good Morning, Your Honor. Greg Nicolaysen from the CJA indigent defense panel here at the request of the court to consider the possibility of appointment."
Judge: "Okay. Mr. Nicolaysen, **you were contacted**, I think, by the court clerk because of your membership on the CJA panel, and **especially because of what I have been informed is your unusually extensive experience with computer aw, computer usage and computer technology**."

Page 4

[31] Order re: Competency Examination filed by Judge Matz
[32] PLACED IN FILE – NOT USED, See also Jurisdictional Challenge 01.17.2003 PLACED IN FILE – NOT USED

"You are now appointed as counsel. I have explored with Mr. Sutcliffe certain things…**I explored those things outside the presence of the government**. You may have learned that…[a]cting on my own and exercising my authority under Title 18, I determined that a **competency examination** would not only be warranted but necessary. *The prosecutor has submitted a proposed order which we'll turn to later*." [See Docket# 114 and - - PLACED IN FILE – NOT USED, thereafter][*Prosecutor was never present during any discussions on 01.14.03 of incompetency*]

Page 5
Accused: "I want to object to these proceedings. I have not authorized this man to speak for me. If anybody in the courtroom thinks they have authority to speak for me I want to see their authority right now."
Judge: "Sit down, Mr. Sutcliffe"
Accused: "No man speaks for me unless he can show me his authority that I signed over and delegated him to speak for me."
Judge: "Mr. Nicolaysen is your lawyer and he's proceeding under the authority of the court."
Accused:" No, he's not my lawyer. He's your lawyer. He's not my lawyer. He's your lawyer."
Judge: "Mr. Sutcliffe, you will be arraigned on the Superseding Indictment."
Nicolaysen: "Does Your Honor wish us to remain at counsel table?"
Judge: "You should go to the lectern."
Nicolaysen: "Fine. Come on, Steve."
Accused: "I object. I object. I want to see your authority to speak for me before you attempt to speak for me."

Page 6
Accused: "Acknowledge that, sir. You do not speak for me. Acknowledge that, sir."
Judge: "He has no duty to acknowledge that and you have no authority to interfere with that.
Defendant: "I have not given you authority to speak for me. Your silence acknowledges that. Would this court like to arraign me now?"
Judge: "Yes."
Defendant: "Fine"
NOTE: Defendant is so [incompetent] that on page 9 he catches a misstatement during arraignment, objects to it and the judge corrects the record to sustain the objection!

Page 14
"Those finding in turn arise out of and refer to and include findings that Mr. Sutcliffe has **displayed apparent confusion about the proper rolls of any counsel and all counsel, at least those counsel who have represented him thus far in this case, vis-à-vis the client and particular vi-a-vis him**. Mr. Sutcliffe has displayed some apparent confusion as to the actual charges and what they consist of and what the elements are.
Page 15
Judge: "There is a sufficient and lengthy course of history in this case reflected in unauthorized filings **that I chose to deem authorized or allowed to be filed** that reflect at least a tendency, if not a concerted plan to disregard the role and evidently the advice

and the assistance of his prior counsel. For all the reasons I think there is an existing question as to whether or not under the standards of 18 USC 4241 the defendant, Mr. Sutcliffe, has the competency to proceed to trial. **For that reason on my own and before the government submitted its written motion** I made the determination that a competency examination was warranted. The motion itself in the order itself contains the necessary recitals relating to speedy trial considerations and I adopt those as well."

Page 18, Lines 4-5
Defendant: "I want it on the record that his man is not speaking for me."
Lines 11
Judge: "I deny your motion. Be quite."
Lines 12-17
Defendant: "I object to this whole proceeding. It's a farce."
Judge: Your objection is noted."
Defendant: "It's a kangaroo court."[33]
Judge: "Your objection is noted and denied. Please continue Mr. Nicolaysen."

See Ends of Justice See Faretta
(See Competency) (See Nature And Cause Of Accusation)

Transcript of 01.14.2003

Docket #113

DEALS WITH DISMISAL OF HARRIS: FARETTA, COMPETENCE (Page 9) and WINNICK SUBPOENA.

NOTE THAT HARRIS STATED NOTHING ON 01.10.2003 HEARING BELOW ABOUT ANY "BREAKDOWN" PRIOR TO TODAY. SEE PAGE 8. Id.

Transcript of 01.10.2003

Docket #104

Page 53, Lines 1-3
Judge: "I know a little bit about Mr. Sutcliffe's **perfectly legitimate desire to have maximum input on the case**."

[33] See RT 03.14.2003, Page 69, Lines 14-20
ACCUSED: "I challenge the jurisdiction of this court. This examination is unlawful; and you're holding me unlawfully; and I fully seek to exercise every remedy under the law to make sure you feel how you're making me feel. You have no honor. You have lost all sense of honor in this courtroom. 'Kangaroo Court.'"
JUDGE: "All right. We're adjourned."

Deals with Superseding Indictment, Motions In Limine re killercop.com and Prosecutor's lie to get website allowed in, and Defendant's Rifle, Side Bar, Jurisdiction, and Hall's previous convictions for dishonesty.

Transcript of 12.04.2002

Docket #71 & 73

Page 19, Lines 22-24
Harris: "She [Legal Counsel who Sutcliffe accused of covering up the missing CD-ROMS] seemed to agree with my point that there certainly would be a way to do this [Provide accused with access to PC discovery] if ***he were pro per***."

Page 20, Lines 8-10
Judge: "Namely, that within reasonable limits Mr. Sutcliffe be given access to a computer into which he could insert hard drives or disks …"

Page 20, Lines 21-22
Harris: "[t]here's a ***substantial volume*** but a finite volume of evidence in this case,…"

Page 22, lines 3-8
Harris: "Mr. Sutcliffe is the preeminent expert on that."
Judge: "You don't want any other experts appointed?"
Harris: "We could. I know how to apply for an expert. I know how to find it. I will do it if that's in his interest. I will do it if it's in his interest."

Transcript of 11.21.2002

Docket # 65

Page 14, Lines 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: "Pleas 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[34]."

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."**

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

[34] 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.

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 30, Lines10-13
Judge: "That's when I wanted to reset this date for trial**. I don't want the continuance that's necessitated by this substitution of counsel to delay Mr. Sutcliffe's rights to a speedy trial**."
Page 34, Lines 9-10
Judge: "What about **grand jury transcripts**?"
Duarte: "They have been turned over."
Page 22, Lines 22-24
Judge: "It will require a continuance. You're right that somebody can't take on your defense and do the job for you in four weeks - -"
Page 21,Lines 1-2
Judge: "I don't have any authority to arrange for Mr. Sacks(sic) to represent you here."
Lines 10-11
Judge: "[I]t's called pro hac veche - - "[35]
Lines 16-21
Judge: "I'm not willing to require these lawyers to permit you, against your best interest, to require these lawyers to remain as your lawyers. You've got to much baggage in this case. And it's not necessary for me to make any findings about who's right and who's wrong. I'm not saying you're wrong. I don't know for sure.
Page 19, Lines 10-22
For you to go to bat and take this case to trial or even to pursue a plea, …is going to be against your interest and against my duty to assure that you get **effective assistance of counsel. I have an independent obligation. That's my job. What the lawyers say and what the clients say are very important."** But I have the independent obligation to make sure that the relationship from both perspectives is salvageable and at the very minimum sufficient to make sure that the lawyers can do their job to provide **effective assistance."**
Page 18, Lines 12-19
Judge: "Mr. Sutcliffe, you obviously oppose their motion to be relieved as your lawyers, but in the process of opposing it, **you have set forth in a very eloquent manner a lot of disagreements and objections and dissatisfaction that you have, some of which you told me about last time we were here, none of which seems to be cured, and some of which have been made worse since you were here**. And I think it was August 22.
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

[35] See United States v. Gonzalez-Lopez, 399 F.3d 924 (8th Cir. 2005) (Defendant denied counsel of choice by failure to grant pro hac vice request).

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 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 08.22.2002
Docket #36

Page 18, Lines 12
Judge: "But the practical solution…"
Line 18
Judge: "[m]ilitates in favor of keeping the core team in place for him."
Line 25-Page 19, Lines 1-3
Judge: "[I] would suggest that the team **be slightly changed** and that either Ms. Bednarski handle it alone or someone else who doesn't create these issues for Mr. Sutcliffe take over your involvement."[36]

Page 28, 20-25
Judge: "I'm not going to permit him to file motions on his own. He's going to be dealt with as all defendants. If he's being represented by counsel it's the counsel's duty to file motions. **He has a right to be heard first in terms of his communications with his lawyers** and secondly, at the hearings."

Page 27, Line 7-8
Judge: "Because you're going to have a team of lawyers **that may or may not** include Ms. Potashner.

[36] Ms. Potashner continued on to represent the defendant despite these issues raised until the court removed them over the defendant's motion on 09.23.2002.

Page 25, 18-25
Judge: "**Your speech rights may or may not be involved by these charges.**" "Well –" "**Don't interrupt me.** I have listened carefully and patiently to you. Now I want to tell you something. What is in your interest is to get this case ready for trial. And to start not one day too soon. And if at all possible, not one day too late."

Page 23, 19
Judge: "And this is not an unusual case. Okay"

Page 21, 2-8
Judge: "You're in very good hands. But if, even though you're wrong, you think that the vibes between you and Ms. Potashner are interfering with the defense that you're entitled to, then that could be adjusted and that could be changed. And that's the best outcome for you. It happens to be the best outcome for my responsibilities, which are not to pick sides in the case. I never will.

Page 21, 11-17 (INTERUPTS X 3)

Page 20, 8-25
Judge: "Are you trying to represent yourself; is that what your objective is?
[DEFENDANT] "I felt that certain issues needed to be brought forth to the court, and the court needed to be apprised of these issues, and if they were not prepared to bring these issues towards the court then let me speak."
Judge: "Well, I am letting you speak. It's important to me that I let you speak as well as, I think, in more respects your right to speak. If you had said to me judge, I want to be my own lawyer, I would have spent a half hour explaining to you why that would be an absolutely mistaken decision on your part. I would take you through all the different little and big aspects of fighting off the government at the trial and before the trial in this case, that you need a lawyer to handle."
[DEFENDANT] "I'm very aware of that, Your Honor."
Judge: "If you're not seeking to represent yourself you're making a wise decision."

Page 18, 12-19
Judge:**]** "But the practical solution that will preserve his constitutional rights and the interest that the public has in continued representation and as early a trial date as possible, because if the man is not proven guilty, then he's entitled to be released as early as possible. He has an interest in proceeding to trial as quickly as is in his interest. That militates in favor of keeping the core team in place for him."

Page 15, 13-19
Judge: "It is true that I did tell him [the defendant] that I would not appeal Your Honor's decision regarding detention…. **I didn't think there would have been much merit because as Your Honor is well aware, there's great discretion given to the district court in that regard."**

Page 13, 1-25
WHOLE PAGE

Page 12, 23-25
Judge: "**You have a right to a lawyer who provides effective assistance of counsel. That's a constitutional right you have.** That doesn't mean you have a right to have a lawyer…"

Transcript of 07.22.2002

Page 5, Lines 19-23
"Judge: "Was there any issue concerning Mr. Sutcliffe's competency to prepare for trial and stand trial and his capacity to cooperate and assist his own lawyers?"
Potashner: "Your Honor, at this point **I do not see a competency issue."**

Page 6, Lines 5-7
Potashner: "[M]r. Sutcliffe has enunciated to me a number a very serious concerns with my representation, including his belief that I'm attempting to obstruct justice in his case[37] [38], …"

Page 15, Lines 13-14
Potashner: "It is true that I did tell him that I would not appeal Your Honor's decision regarding detention. "
Lines 17-20
Potashner: "I didn't think that would have much merit **because as Your Honor is well aware, there's great discretion given to the district court in that regard. And so we choose not to appeal."**

RELATED:

(SEE November 21, 2002 TRANSCRIPT, pages 17-19 re: Harris) (SEE ALSO October 1, 2003 TRANSCRIPT, Pages 15-16 re: Reed)(SEE ALSO March 14, 2003, Pages 78-79 re: Nicolaysen)

Reversible Errors
United States v. Hayes, 231 F.3d 1132 (9th Cir. 2000) (Defendant did not voluntarily waive representation).

*United States v. Taylor, 113 F.3d 1136 (10 th Cir. 1997) (Court did not assure a proper waiver of counsel).

United States v. Adelzo-Gonzalez, 268 F.3d 772 (9th Cir. 2001) (Court abused discretion denying substitution of counsel).

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[37] * A star means case needs to be Shepardized to ensure current case law.
[38] *United States v. Shorter, 54 F.3d 1248 (7th Cir.), cert. denied. 516 U.S. 896 (1995) (Actual conflict when the defendant accused counsel of improper behavior).

*United States v. Shorter, 54 F.3d 1248 (7th Cir.), cert. denied. 516 U.S. 896 (1995) (Actual conflict when the defendant accused counsel of improper behavior).

See also:
The trial court failed to sufficiently address and discuss with defendant the dangers and disadvantages inherent in representing one's self in a criminal trial.

*[39]United States v. Moore, 159 F.3d 1154 (9th Cir. 1999) (Irreconcilable conflict between defendant and lawyer).

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).

[39] Needs to be Shepardized.