



JOE SCHMOE, aka JOE COOL

**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.**

**See also Ineffective Assistance of Counsel or Waiver of Counsel**

Page 4, Lines 18-20

Judge: “Mr. Sutcliffe, one of Mr. Sutcliffe’s e-mails itself noted that the antagonism which lead to these inherently threatening exchanges was very personal.<sup>1</sup>

Page 4, Lines 23-25

“The text of the letters(sic), all of those, of the communications, all of those in Counts 1 through 4 reflect ‘inherent’ threats.” [As opposed to ‘Fake,’ ‘False,’ and ‘Un-inherent’ threats, or any other such subjective-adjective.]

Page 5, Lines 13-15

Judge: “So I reject the notion that this pure speech. [It is conduct](#). It’s inherently threatening and there is no basis ... “

Page 5, Lines 21-22

Judge: “It’s conduct, it’s clearly prosecutable and that’s the basis for my ruling.”  
See [U.S. v. Cassel](#) and U.S. v Brice, 926 F.2d 925, 931 (9<sup>th</sup> Cir. 1991)

**Response to Selective Prosecution Motion to Dismiss Based on Joe Schmoie E-Mail**

Page 6, Lines 3-5

Judge: “[t]hat single E-Mail [Joe Schmoie] which was a response to a provocative communication previously sent<sup>2</sup> is not in any meaningful respect comparable or like the series of communications that underlie and that constitute Counts 1 through 4.”

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<sup>1</sup> There is no such e-mail ever sent by the defendant. The only testimony was regarding Greenwoods webpage as well as in the beginning regarding Les and the statement ‘I have instructed Counsel ... personal.’ This was never transmitted via e-mail, nor was it proven accused transmitted to website.

<sup>2</sup> There is no such **provocative communication previously sent**, by the defendant, ever.

**MATZ LINE OF THE DAY:** Page 6, Lines 8-12

“The fact is that Mr. Sutcliffe used not only entirely different language but was in a situation, was perceived to be in a situation, was none at the time of the indictment to be in a situation that there was no information suggesting **Schmoe**, whoever that is, was in.”

Page 6, Lines 14-15

“The **nature** of the communications *was different*..

Page 8, Line 12-25: **THIS IS HARRIS SPEAKING, NOT THE COURT**

Page 9, Line 1-9

“I agree whether its true or not is relevant. But I think you’re failing to acknowledge that the Schmoe E-mail was a response to an E-Mail or to posting at least, not an E-Mail but a **posting** on the web site.”

Page 9, Lines 14-16

Judge: “But that’s not what Mr. Sutcliffe was doing; these were messages and communications directed at specific people as well as others **who chose to log on to the evolgx.com website**.”

Page 10, Lines 1

“But this [[-Mail from Joe Schmoe] isn’t ‘**substantially similar**.’”

Court then proceeds to change the subject from **substantially similar** to “***Did the democrats control the Justice Department in the year 2002?***” Lines 21-22, Ibid.

**INTERUPTS COUNSEL @ Page 11, line 11**

Closes mind to further argument. Lines 12-16, id.

### **Response to Greenwood Count**

Page 14, Lines 16-17

“These are constant and recurring First Amendment concerns.”<sup>3</sup>

Page 21, Lines 13-22

Judge: “It wouldn’t surprise me if the issues that Mr. Sutcliffe chooses to emphasize at trial have to do with ***intent and context***.<sup>4</sup> Well, they could be affected by contents, some of these. If for example there was some evidence that on the next message he posted he said just fooling<sup>5</sup> or I thought that would get a rise out of you. And ... [T]hat would be relevant evidence. That would be Brady evidence, that would be exculpatory evidence.”

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<sup>3</sup> See Transcript of 11.21.2002, Page 10, Lines 17-20

<sup>4</sup> Intent changed from General Intent to Specific Intent. Further, Context was addressed in Motion to Restore Website to Original Context.. Denied by the Court.

<sup>5</sup> See judge’s comment to defendant about ‘kick you in the shins and smack you upside the head.’”