

1 didn't show up. I showed up, I made my appearances on the
2 kidnapping charge, which I'm sure Your Honor has seen in my
3 criminal history.

4 I pled guilty to, I took responsibility for what I did.
5 I never -- I'm not a threat to the community. I asked
6 Ms. Potashner to help me prove that. And she obtained a
7 psychiatric evaluation to be conducted, for purposes of new
8 discovery as she told me, we need new discovery which I
9 understand the case law which I also confirmed.

10 At the 11th hour though she told me that she was
11 waiting on the report, she was waiting on the report. At the
12 11th hour she told me we're not going to use that. I'm going to
13 save it for the trial. I'm like, you're kidding me. Today she
14 tells me there is no report, that it was an oral report. These
15 are all these little new surprises that I can't --

16 THE COURT: Let me tell you before we follow through
17 further, that I don't know Ms. Potashner, except to the limited
18 extent she's been before me. I know a great deal about her
19 office, which I have tremendously high regard for. I used to
20 litigate against them a long time ago. I don't think the office
21 has ever been in as strong a position in terms of the advocacy
22 of its lawyers as it is now. That's very strong.

23 You have a right to a lawyer who provides effective
24 assistance of counsel. That's a constitutional right you have.
25 That doesn't mean that you have a right to have a lawyer, you or

1 anyone has a right to have a lawyer do whatever you think should
2 be done or not to do things that you don't want to be done.

3 The lawyer has an independent duty to you and an
4 independent duty to the profession and to the court system. So
5 very often, maybe if you have an extensive criminal background
6 you know this from your own experience, very often the lawyer
7 and the client are not entirely in sync with each other about
8 what should be done, and the way to do it, and when it should be
9 done, and why it should be done, and a whole host of pretty
10 basic things. Very often that happens.

11 And very often it is something that they work out and
12 almost never is it evidence that the lawyer's failing to do her
13 job. I don't know, and I will hear from Ms. Potashner what her
14 response to this is. But so far what you have told me,
15 Mr. Sutcliffe, the thing that is most important is that you feel
16 betrayed. It doesn't mean you're right to feel betrayed. I
17 don't know if you use the word betrayed but I interpret what you
18 told me to boil down to that.

19 Is that the way you feel?

20 THE DEFENDANT: I feel I haven't had effective
21 assistance of counsel. I have asked her to argue, for instance
22 bail. Her response was, "Well, we're not going to win that, so
23 I'm not going to even go there."

24 THE COURT: She did argue it. I'm the guy who made the
25 decision.

1 THE DEFENDANT: I asked her to appeal that. She said
2 no, I'm not going appeal it because we're not going to even win.
3 It's like why get out of bed and go for a job because I'm not
4 going to find one.

5 THE COURT: Well, it's not like that. A lawyer has the
6 duty to advise her client what is in his interest and what
7 isn't, to advise her client whether there's merit to a plan or
8 to a proposal, where there isn't, what is likely to happen and
9 what isn't likely to happen. How best to allocate the resources
10 that the lawyer has and the client has. Where to pick the
11 battles, how to fight them. Those are all part of a lawyer's
12 job. And if she says we're not going to do it, I don't know
13 what words she uses, but it's going to be a reflection of her
14 conclusion it's not in your interest to do it.

15 I'm not in a position to say whether she's right or
16 wrong. You're talking about a ruling I made. I'm the guy you
17 ought to have the beef with. And she may or may not think
18 somebody on appeal would review that differently. I think no
19 one else would review it differently. I think my ruling was
20 sound and that's why I made it.

21 What is your position on the matters that Mr. Sutcliffe
22 has issued so far?

23 MS. POTASHNER: My biggest concern is reflected in what
24 the court said, he feels betrayed. I have of course strategic
25 reasons that I made the decisions I made. I'm not working in a

1 vacuum. I'm working with a number of people in my office,
2 including Marilyn Bednarski, the other attorney in this case. I
3 know that there are a number -- what I'm concerned about with
4 this particular hearing is that there are a number of motions
5 that Mr. Sutcliffe has raised with me that I have not filed with
6 Your Honor.

7 And I know that that is a big concern of his. I would
8 like him to have the opportunity to address the court about that
9 issue in our case. In terms of our representation of
10 Mr. Sutcliffe, we of course believe that we are doing everything
11 we can do for him. And as Your Honor said, picking and choosing
12 our battles.

13 It is true that I did tell him that I would not appeal
14 Your Honor's decision regarding detention. We were hoping that
15 Gateways would be a viable alternative that Your Honor may
16 consider. I didn't think an appeal on the issue was really an
17 appeal that would go anywhere. I didn't think that would have
18 much merit because as Your Honor is well aware, there's great
19 discretion given to the district court in that regard.

20 And so we did choose not to appeal. Instead, what we
21 decided to do in terms of a bail issue is focus on new
22 information that we could bring Your Honor to make Your Honor
23 comfortable with the idea of possibly releasing Mr. Sutcliffe
24 pretrial. That's what we were doing in terms of that.

25 In terms of the video tape, I'm very troubled by the

1 fact that he thinks I'm obstructing justice by delaying getting
2 the video tape. It is true that I asked the court to issue a
3 subpoena to get the video tape. It's also true that I asked the
4 court to do it August 9th for a September trial date. It's my
5 opinion and belief, and perhaps I differ with Mr. Sutcliffe, but
6 it's my opinion and belief that if a video tape exists it still
7 exists and subpoenaing it would bring it to this forum.

8 THE COURT: It's the only way you can get it.

9 MS. POTASHNER: The reason that I went to the local
10 federal public defenders office was through Jonathan Sax and
11 asked him if he knew the Manchester Police Department's routine,
12 was I thought that would give me more information. I did not,
13 it is not my experience coming from state court that bookings
14 are often video taped.

15 So I asked him if he was aware of whether or not they
16 video tape all bookings. He said in turn that he knew somebody,
17 somebody in his office had very many contacts there and so he
18 would informally find out for me.

19 I received information that they generally do not video
20 tape. But because Mr. Sutcliffe was insistent that there was a
21 video tape I didn't want not to subpoena it. It was not my
22 intention, of course, in any way to obstruct justice or in any
23 way to hope that by delaying somehow this video tape this would
24 disappear. It's not my experience that that would happen.

25 THE COURT: Whatever is the fundamental nature of your

1 relationship with Mr. Sutcliffe, I'm not necessarily in a
2 position to make findings but I do find, based on everything
3 I've been told so far at this hearing and my prior involvement
4 in ruling on your application for the issuance of the subpoena,
5 that there is no basis to find that you or your office are
6 participating in an obstruction of justice.

7 If by that you mean the destruction of this tape,
8 there's absolutely no basis, Mr. Sutcliffe, to find that the
9 public defenders office, assuming the tape ever existed, maybe
10 it did, you were there, you presumably know, there's nothing in
11 the record that would support any findings that the public
12 defender is responsible for its non existence now, either
13 actively or passively or by virtue of when they chose to seek it
14 and how they chose. So I don't think you have a basis to be
15 worried about that.

16 Now what about your relationship with Ms. Bednarski?

17 THE DEFENDANT: My relationship with Ms. Bednarski is
18 okay. I wish I had more of her time. But I trust her.

19 THE COURT: Have you explored with your colleagues,
20 Ms. Potashner, and with Ms. Bednarski and with Mr. Sutcliffe
21 making sure that the primary responsibility in the day-to-day
22 communications with Mr. Sutcliffe are carried out by
23 Ms. Bednarski?

24 MS. POTASHNER: Yes, Your Honor, to some extent I have.
25 Ms. Bednarski does meet with Mr. Sutcliffe more regularly than I