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On What Grounds Does A Defendant Have The Right To Substitute Counsel?

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MEMORANDUM FOR THE OFFICE OF THE PROSECUTOR

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ON WHAT GROUNDS DOES A DEFENDANT HAVE THE RIGHT TO SUBSTITUTE COUNSEL?

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I. INTRODUCTION AND SUMMARY OF CONCLUSION

A. ISSUE

This research memorandum seeks to examine the following issue: What showing by a defendant justifies a substitution of counsel.[1]

B. SCOPE OF THE TRIBUNAL

Having been established by the "Security Council acting under Chapter VII of the Charter of the United Nations, the International Tribunal for the Prosecution of Persons Responsible for genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda … between 1 January 1994 and 31 December 1994"[2] the International Criminal Tribunal For Rwanda Statute [hereinafter referred to as ICTR] follows various jurisdictions in not only allowing for representation by counsel but also assignment of defense counsel for indigent defendants.[3] "The Registrar's Directive on the Assignment of Defen[s]e Counsel (no. 1/94) was adopted by the Tribunal on 11 February 1994. It addresses, inter alia, the right to counsel, the

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[1] See Untied Nations International Criminal Tribunal for Rwanda, Office of the Prosecutor, Legal Research Topics No. eleven. The focus of this paper is derived from the above stated document which asked "[o]n what grounds does a defendant have the right fire an attorney, … [w]hat showing by a defendant justifies a substitution of counsel in various jurisdictions, … might these standards apply to the tribunal?" Id. At 4. [Reproduced in the accumpanying notebook at tab 1]

[2] See John Jones, The Practice of the International Criminal Tribunals For the Former Yugoslavia and Rwanda 4 (1997). [Reproduced in the accumpanying notebook at tab 2]

[3] See John Jones, The Practice of the International Criminal Tribunals For the Former Yugoslavia and Rwanda 175 (1997). [Reproduced in the accumpanying notebook at tab 2]

procedure for assessing the indigency of the accused, … and the procedure for settlement of disputes."[4]

C. SUMMARY OF CONCLUSION

This memorandum contains a comprehensive analysis of United States juris prudence on the question of substitution of counsel to serve as guidance to the ICTR.

On substitution of counsel, the United States courts have addressed the issue on a case by case bases. However they have all followed some set guidelines such as "(1) timeliness of the motion; (2) adequacy of the court's inquiry into the defendant's complaint; and (3) whether the conflict between the defendant and his attorney was so great that it resulted in a total lack of communication preventing an adequate defense."[5]

For example, in cases where the defendant has asked for a motion to change counsel on the day of trial the courts have denied such request as being a delay tactic and untimely.[6] Other examples would be strategic differences with counsel, counsel's failure to properly investigate case, and the failure of counsel to communicate with client.[7]

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[4] See John Jones, The Practice of the International Criminal Tribunals For the Former Yugoslavia and Rwanda 175 (1997). [Reproduced in the accumpanying notebook at tab 2]

[5] See Morris v. Slappy, 103 S.Ct. 1610, 1616 (1983). [Reproduced in the accumpanying notebook at tab 6]

[6] See United States v. Silva, 611 F. 2d. 78, 79 (5th Cir.1980). See discussion at note 58 infra and accompanying text. [Reproduced in the accumpanying notebook at tab 7]

II. FACTUAL BACKGROUND

On April 6, 1994, Rwandan President, Juvenal Habyarimana, was killed when his plane was struck by a surface-to-air missile.[8] The President's death triggered a massive eradication of Tutsis by Hutu extremists, until the Rwanda Patriotic Front finally gained control of the government. Between 500,000 to 1 million civilians are estimated dead because of the widespread murder. [9] Those responsible for the Rwandan genocide represent a group that transcends every segment of society, including: (1) high level government officials who facilitated the genocide, (2) military superiors who supervised the murders, and the (3) first hand accomplices, typically civilians, who were forced to kill by the other two segments.[10]

On November 8, 1994, the Rwandan Tribunal was established to investigate and prosecute individuals involved in the act of committing genocide.[11] Specifically, the adoption of Resolution 955 (Statute of the International Tribunal for Rwanda) is aimed at prosecuting persons responsible for either genocide

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[7] See State v. Brooks, 540 N.W. 2d. 270, 271 (1995). See discussion at note 64 infra and accompanying text. [Reproduced in the accumpanying notebook at tab 8]

[8] See 1 Virginia Morris & Michael P. Scharf, The International Criminal Tribunal for Rwanda 47 (1998). [Reproduced in the accumpanying notebook at tab 3]

[9] See 1 Virginia Morris & Michael P. Scharf, The International Criminal Tribunal for Rwanda 47 (1998). [Reproduced in the accumpanying notebook at tab 3]

[10] See 1 Virginia Morris & Michael P. Scharf, The International Criminal Tribunal for Rwanda 47 (1998). [Reproduced in the accumpanying notebook at tab 3]

[11] See 1 Virginia Morris & Michael P. Scharf, The International Criminal Tribunal for Rwanda 72 (1998).

and/or other violations of international humanitarian law committed between January 1, 1994 and December 31, 1994.[12]

Since its establishment, the Tribunal has convicted Jean Kambanda, Prime Minster of Rwanda, on six counts, namely, genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity (murder) and crimes against humanity (extermination). [13] In upholding the conviction, the Appeals Chamber rejected Kambanda's argument that the Trial Chamber committed reversible error in refusing to grant his request for re-assignment of counsel.[14]

III. LEGAL DISCUSSION

Part 4 Section 2 of Rule 45(h) of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda states the following: "Under exceptional circumstances, at the request of the suspect or accused or his counsel, the Chamber may instruct the Registrar to replace an assigned counsel,

[Reproduced in the accumpanying notebook at tab 3]

[12] See Statute of the International Tribunal for Rwanda, annexed to S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N.Doc. S/RES/955 (1994) [hereinafter ICTR Statute]. [Reproduced in the accumpanying notebook at tab 2]

[13] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

[14] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

upon good cause being shown and after having been satisfied that the request is not designed to delay the proceedings."[15]

A. Jean Kambanda Case

The first case before the ICTR raising the issue of substitution of counsel was that of Jean Kambanda. Kambanda was assigned counsel as directed by The Registrar's Directive on the Assignment of Defen[s]e Counsel (no. 1/94), due to his indigency.[16] Kambanda requested that Mr. Scheers be assigned to represent him, but the requests were turned down by the Registry, which instead assigned Mr. Inglis.[17] On May 1, 1998, Kambanda pleaded guilty to the six counts contained in the indictment against him, namely, genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity (murder) and crimes against humanity (extermination).[18] This plea was accepted by the Trial Chamber. A pre-sentencing hearing was held on September 3, 1998 and the judgment

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[15] See John Jones, The Practice of the International Criminal Tribunals For the Former Yugoslavia and Rwanda 178 (1997). [Reproduced in the accumpanying notebook at tab 2]

[16] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

[17] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

[18] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

pronounced the following day.[19] Kambanda was sentenced to life imprisonment.[20]

On September 7, 1998, Kambanda filed a notice of appeal against sentence containing several grounds of appeal one of which was "failure to consider the denial of the right to be defended by a counsel of one's own choice."[21] Kambanda argued that Mr. Inglis was incompetent and that the refusal of the Registry to substitute counsel, violated his right to legal assistance by counsel of his own choosing and thereby constituted a violation of his right to a fair trial.[22] The Prosecutor, in response argued, that "an indigent accused does not in all cases have the right to counsel of his or her own choosing."[23]

The Appeals Chamber found that Kambanda had not succeeded in showing his Counsel to be incompetent because of solid arguments and relevant facts.[24]

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[19] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

[20] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

[21] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

[22] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

[23] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

[24] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

> With respect to the right to choose one's counsel, the Appellant argues that he ought to have had the right to choose his counsel and that the violation of this right was a violation of his right to a fair trial. The Appeals Chamber refers on this point to the reasoning of Trial Chamber I in the *Ntakirutimana* case and concludes, in the light of a textual and systematic interpretation of the provisions of the Statute and the Rules, read in conjunction with relevant decisions from the Human Rights Committee and the organs of the European Convention for the Protection of Human Rights and Fundamental Freedoms, that the right to free legal assistance by counsel does not confer the right to choose one's counsel.[25]

The Appeals Court thus made clear that failure to appoint an indigent defendant counsel of his choosing does not constitute reversible error. However, the issue of substitution of counsel can arise in a variety of other contexts which were not addressed in the Kambanda Appeals Chamber decision.

The following sections of the memorandum will discuss the orgins of the right to counsel and the contours of the right to substitute counsel under U.S. juris prudence. This can serve as guide to the ICTR's treatment of the issue as it arises in various contexts.

B. Defendant's Right to Counsel

In order to understand the defendant's right to substitute counsel and under what condition it should be allowed, one must first understand the origins of the defendant's right to counsel. The right of a defendant in criminal trials to retain counsel and, more especially, his right to have counsel appointed if he is

[25] See Prosecutor v. Kambanda, Case No. ICTR 97-23-A (October 19, 2000). [Reproduced in the accumpanying notebook at tab 9]

indigent, was recognized at English common law. [26] The scope of this right has broadened over the years.

The Sixth Amendment to the United States Constitution provides a defendant with the right to the assistance of counsel in a criminal prosecution.[27] Prior to 1932, the United States Supreme Court narrowly construed this Sixth Amendment protection as guaranteeing a criminal defendant only the right to retain counsel at his own expense.[28] Before 1932, neither the Constitution nor federal law was interpreted to obligate the federal government and the states to provide free representation to indigent defendants.[29] Also absent from pre-1932 jurisprudence was the meaningful recognition of a defendant's right to the effective assistance of counsel.[30]

The advent of the modern-day right to counsel began in 1932, in Powell decision, in which the Supreme Court held that states must provide free legal

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[26] See William M. Beaney, The Right to Counsel in American Courts 1(1972). [Reproduced in the accumpanying notebook at tab 4]

[27] See U.S. Const. amend. VI. [Reproduced in the accumpanying notebook at tab 5]

[28] See Powell v. Alabama, 287 U.S. 45, 68 (1932) (recognizing that defendants historically enjoyed "the right to the aid of counsel when desired and provided by the party asserting the right").[Reproduced in the accumpanying notebook at tab 10]

[29] See Coates v. State, 25 A.2d 676, 679 (Md. 1942) ("Never in the State Courts has it been held that care for the interests of defendants in the appointment of counsel has been required as an essential element to a valid trial, under constitutional or other requirement").[Reproduced in the accumpanying notebook at tab 11]

[30] See Clarke, supra note 23, at 1339 (noting that prior to Powell, state courts generally denied relief regardless of the egregiousness of counsel's conduct). Courts were reluctant to recognize any grounds for collateral relief based on the misconduct or negligence of a defendant's counsel fearing that such recognition would encourage collusive agreements between defendants and their attorneys seeking to challenge otherwise valid criminal convictions. See id. at 1340.

counsel to indigent defendants in capital cases.[31] The Powell defendants, seven black youths, were sentenced to death for raping two white women in a rural Alabama community.[32] The trial judge appointed counsel to represent the defendants at an arraignment hearing under the mistaken presumption that counsel would continue to represent the youths at trial.[33] On the morning of trial, however, the defendants appeared in court unrepresented by counsel.[34] The trial judge appointed new defense counsel only moments before the trial began.[35] Thus, because appointed counsel was not provided an opportunity to prepare a defense or investigate the case, the defendants were denied the effective assistance of counsel.[36] Writing for the majority, Justice Sutherland noted that because the complexity of criminal law surpassed the comprehension of even the intelligent and educated layman, legal assistance was critical if a defendant's

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[31] See Powell v. Alabama, 287 U.S. 45, 71 (1932) (holding that "in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law").[Reproduced in the accumpanying notebook at tab 10]

[32] See Powell v. Alabama 287 U.S. 45, 50-51 (1932). [Reproduced in the accumpanying notebook at tab 10]

[33] See Powell v. Alabama 287 U.S. 45, 53-56 (1932). [Reproduced in the accumpanying notebook at tab 10]

[34] See Powell v. Alabama 287 U.S. 45, 56 (1932). [Reproduced in the accumpanying notebook at tab 10]

[35] See Powell v. Alabama 287 U.S. 45, 56-57 (1932). [Reproduced in the accumpanying notebook at tab 10]

[36] See Powell v. Alabama 287 U.S. 45, 57 (1932). [Reproduced in the accumpanying notebook at tab 10]

right to be heard was to have any significant meaning.[37]

Although the Powell Court did not expressly hold that a capital defendant's right to the appointment of counsel at trial included the right to the effective assistance of counsel, the Court implied that such an undefined right did exist.[38] The Powell Court's recognition of an indigent's right to the appointment and the effective assistance of counsel provided the foundation for the subsequent evolution of the Sixth Amendment right to counsel. From its modest beginning in Powell, later Supreme Court decisions broadened the right to appointed counsel. The Court has concluded that appointed counsel is essential to a fair trial and, to ultimately, the proper functioning of the entire criminal justice system.[39] The Court interpreted the Sixth Amendment to require appointed counsel for defendants in both federal and state cases involving possible incarceration.[40]

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[37] See Powell v. Alabama 287 U.S. 45, 68-69 (1932). [Reproduced in the accumpanying notebook at tab 10]

[38] See Powell v. Alabama 287 U.S. 45, 71 (1932) The Court reasoned that the nature of the fundamental right to counsel in capital cases derived not from any enumeration within the first eight amendments, but rather from the fundamental requirements of due process of law. See Id. at 67-68. [Reproduced in the accumpanying notebook at tab 10]

[39] See Gideon v. Wainwright, 372 U.S. 335, 345 (1963) (holding that the Sixth Amendment right to the appointment of counsel for indigent defendants applies in state felony trials). The Gideon Court maintained that fundamental fairness is unattainable in an adversarial judicial system without the appointment of counsel. See id. at 344. [Reproduced in the accumpanying notebook at tab 12]

[40] See Johnson v. Zerbst, 304 U.S. 458, 463 (1938). [Reproduced in the accumpanying notebook at tab 13]

C. Defendant's Right to Substitute Counsel

With the defendant's right to counsel comes the defendant's right to substitute that counsel. As the United States Supreme Court stated in the 1999 Martinez case, "[w]here appellate counsel declines to press an innocence claim or other claims that appellant wants to raise, where a conflict arises between lawyer and client, or where counsel renders ineffective assistance, substitution of counsel should be possible, but in practice it is not always granted."[41] The Martinez Court pointed out the difficulty in evaluating whether the reasons for requesting substitution are valid, because appellant and his lawyer cannot reveal much information about the nature of their differences.[42] However, the Court stated that despite these problems, courts should look carefully at requests for substitution of counsel and consider whether the right to effective assistance is implicated.[43]

D. Cases Which Deal With Substitution

As stated earlier in the memorandum U.S. courts have considered the issue of substitution of counsel on a case by case bases, but work within a framework of ideas on which substitution should or should not be granted. The two

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[41] See Martinez v. Court of Appeal of Cal., 1998 U.S. Brief [Reproduced in the accumpanying notebook at tab 14]

[42] See Martinez v. Court of Appeal of Cal., 1998 U.S. Brief [Reproduced in the accumpanying notebook at tab 14]

[43] See Martinez v. Court of Appeal of Cal., 1998 U.S. Brief [Reproduced in the accumpanying notebook at tab 14]

subsections of section “D” will address untimely request for substitution and dissatisfaction with counsel.

i. Dissatisfaction with Counsel

The series of cases addressed in this subsection deals with defendant’s motion to substitute counsel based on some type of dissatisfaction with their counsel. Based on ICTR Prosecutor’s Legal Research Topics# eleven, this section will help address some of the issues which the Prosecutor’s office mite face.

U.S. courts have stated that a defendant must demonstrate sufficient cause to warrant the appointment of substitute counsel.[44] In Smith v. Lockhart the Court laid out what was justifiable dissatisfaction with appointed counsel, "a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant."[45] In Webb, the court stated that "the defendant's right to counsel of his choice and the public's interest in the prompt and efficient administration of justice"[46] must be balanced.

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[44] See State v. Hutchinson, 341 N.W. 2d. 33, 41 (1983). [Reproduced in the accumpanying notebook at tab 15]

[45] See Smith v. Lockhart, 923 F. 2d 1314, 1320 (8th Cir.1991). Defendant convicted on seven counts of terroristic threatening in first degree and seven counts of false imprisonment in first degree petitioned for writ of habeas corpus. District court judge denied writ, and defendant appealed. [Reproduced in the accumpanying notebook at tab 16]

[46] See State v. Webb, 516 N.W. 2d. 824, 828(1994). Defendant was convicted in the District Court, of

In the following case from Iowa, the court applied the rules, which were set out above. Daryl E. Brooks was convicted of three counts of delivery of a controlled substance in violation of Iowa Law.[47] Approximately one week prior to the date scheduled for trial, the defendant wrote to the court requesting the appointment of new counsel.[48] He cited strategic differences with his counsel, counsel's failure to properly investigate his case, and the failure of counsel to communicate with him.[49] Specifically, his letter complained that his lawyer had failed to (1) secure expert testimony concerning difficulties in Caucasians identifying black persons, (2) spend adequate time consulting with him, (3) obtain pictures of a "look-alike" for whom Brooks contends he was mistaken, and (4) check jail records to see if Brooks might have been in jail at the time of the offenses.[50] Brooks' attorney moved to withdraw from the case.[51] She stated that she was

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delivery of cocaine, and he appealed. Defendant raised several issues one of which was ineffective assistance of counsel. [Reproduced in the accumpanying notebook at tab 17]

[47] See State v. Brooks, 540 N.W. 2d. 270, 271 (1995). [Reproduced in the accumpanying notebook at tab 8]

[48] See State v. Brooks, 540 N.W. 2d. 270, 271 (1995). [Reproduced in the accumpanying notebook at tab 8]

[49] See State v. Brooks, 540 N.W. 2d. 270, 271 (1995). [Reproduced in the accumpanying notebook at tab 8]

[50] See State v. Brooks, 540 N.W. 2d. 270, 271 (1995). [Reproduced in the accumpanying notebook at tab 8]

[51] See State v. Brooks, 540 N.W. 2d. 270, 271 (1995). [Reproduced in the accumpanying notebook at tab 8]

prepared for trial, but the defendant's lack of confidence in her made it difficult for her to continue.[52] The court denied both the motion to withdraw and the defendant's request for substitute counsel.[53]

The Court in its ruling stated:

> that a defendant must demonstrate sufficient cause to warrant the appointment of substitute counsel. The court has substantial discretion in ruling on such matters, particularly when the motion is made on the eve of trial, as here. “Sufficient cause” includes a conflict of interest, an irreconcilable conflict with the client, or a complete breakdown in communications between the attorney and the client. A defendant must ordinarily show prejudice, unless he has been denied counsel or counsel has a conflict of interest. We find that none of the claims of pretrial ineffectiveness, including counsel's failure to check the jailhouse roster, were substantial enough to mandate the appointment of substitute counsel, and we find no abuse of discretion in the trial court's refusal to do so.[54]

In Washington State, the Court has said that whether an indigent defendant's dissatisfaction with his court-appointed counsel justifies the appointment of new counsel is a question within the discretion of the trial court.[55] The court may require an indigent defendant to continue with

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[52] See State v. Brooks, 540 N.W. 2d. 270, 271 (1995). [Reproduced in the accumpanying notebook at tab 8]

[53] See State v. Brooks, 540 N.W. 2d. 270, 271 (1995). [Reproduced in the accumpanying notebook at tab 8]

[54] See State v. Brooks, 540 N.W. 2d. 270, 272 (1995). [Reproduced in the accumpanying notebook at tab 8]

[55] See State v. DeWeese, 117 Wash.2d 369, 376 (1991). [Reproduced in the

current counsel if the defendant fails to provide the court with legitimate reasons for the assignment of substitute of counsel.[56] The Washington Supreme Court has discussed such legitimate reasons and factors for the trial court to consider:

> A criminal defendant who is dissatisfied with appointed counsel must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant. Attorney-client conflicts justify the grant of a substitution motion only when counsel and defendant are so at odds as to prevent presentation of an adequate defense. The general loss of confidence or trust alone is not sufficient to substitute new counsel. Factors to be considered in a decision to grant or deny a motion to substitute counsel are (1) the reasons given for the dissatisfaction, (2) the court's own evaluation of counsel, and (3) the effect of any substitution upon the scheduled proceedings.[57]

In People v.Cumbus, the Michigan Court of Appeals reviewed the denial of a motion for substitute counsel based upon a breakdown in the attorney/client relationship.[58] The court determined the breakdown was the fault of the defendant and ruled that the, "[d]efendant was not entitled to substitution of

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accumpanying notebook at tab 18]

[56] See State v. DeWeese, 117 Wash.2d 369, 376 (1991). [Reproduced in the accumpanying notebook at tab 18]

[57] See State v. Stenson, 132 Wash.2d 668, 734 (1997), cert. denied, 523 U.S. 1008 (1998). [Reproduced in the accumpanying notebook at tab 19]

[58] See People v. Cumbus, 371 N.W.2d 493, 496 (1985). [Reproduced in the accumpanying notebook at tab 20]

counsel because the breakdown in his relationship was caused by defendant's admitted refusal to cooperate with his attorney."[59] Discussed in State v. Loftus, 566 N.W.2d 825, 828 (1997) and State v. Goodroad, 563 N.W.2d 126, 131 (1997).

In a United States District Court of California case, Darryl Rawlings appealed his jury conviction and 87-month sentence for possession with intent to distribute cocaine; Rawlings contends that the district court abused its discretion by denying his motion to substitute counsel.[60]

In reviewing the district court's refusal to substitute counsel, the court evaluate three factors: (1) the timeliness of the motion; (2) the adequacy of the district court's inquiry into the defendant's complaint; and (3) whether the asserted conflict was so great as to result in a complete breakdown in communication and a consequent inability to present a defense.[61] The Court stated "a district court has broad discretion to deny a motion for substitution made on the eve of trial if the substitution would require a continuance."[62] The Court found because Rawlings did not move for substitution of counsel until the day of trial, his motion

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[59] See People v. Cumbus, 371 N.W.2d 493, 496 (1985). [Reproduced in the accumpanying notebook at tab 20]

[60] See U.S. v. Rawlings, 95 F. 3d. 1165 (9th Cir.1996). [Reproduced in the accumpanying notebook at tab 21]

[61] See U.S. v. Rawlings, 95 F. 3d. 1165 (9th Cir.1996). [Reproduced in the accumpanying notebook at tab 21]

[62] See U.S. v. Rawlings, 95 F. 3d. 1165 (9th Cir.1996). [Reproduced in the accumpanying notebook at tab 21]

was untimely. In addition, Rawlings had not shown that there was a lack of communication between him and his attorney that resulted in an inadequate defense.[63]

In this final case of defendant's dissatisfaction with counsel, the court denied defendant's request for continuance based on substitute counsel's inadequate trial preparation when substitute counsel claimed prepared and performed adequately at trial.[64] The defendant Mr. Slappy was charged with five serious felonies and the San Francisco Public Defender was appointed to represent him.[65] The Deputy Public Defender who was assigned to his case represented him at the preliminary hearing and supervised an extensive investigation.[66] Shortly before the trial was to begin that Deputy Public Defender was hospitalized for emergency surgery.[67] Six days before the scheduled trial date a senior trial attorney in the Public Defender's Office was assigned to represent Mr. Slappy.[68] Throughout the trial Mr. Slappy claimed that he did not want the

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[63] See U.S. v. Rawlings, 95 F. 3d. 1165 (9th Cir.1996). [Reproduced in the accumpanying notebook at tab 21]

[64] See Morris v. Slappy, 103 S.Ct. 1610, 1617 (1983). [Reproduced in the accumpanying notebook at tab 6]

[65] See Morris v. Slappy, 103 S.Ct. 1610, 1614 (1983). [Reproduced in the accumpanying notebook at tab 6]

[66] See Morris v. Slappy, 103 S.Ct. 1610, 1614 (1983). [Reproduced in the accumpanying notebook at tab 6]

[67] See Morris v. Slappy, 103 S.Ct. 1610, 1614 (1983). [Reproduced in the accumpanying notebook at tab 6]

substitute counsel representing him.[69] The substance of his complaint was that, in his opinion, the new counsel was unprepared.[70] When the court refused to dismiss his counsel, Mr. Slappy "announced that he would not cooperate at all in the trial and asked to be returned to his cell."[71] The court urged him to cooperate with his counsel, but he refused, contending that he had no counsel, since he did not have the attorney he wanted.[72] Mr. Slappy refused to take the stand to testify, although his counsel had advised him that he should. Ultimately, the jury returned a verdict of guilty.[73]

ii. Other Substitution Cases

In considering substitution of counsel U.S. courts take into account the time in which the motion was made. The Court must balance the right of the defendant against the interest of expediency.

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[68] See Morris v. Slappy, 103 S.Ct. 1610, 1614 (1983). [Reproduced in the accumpanying notebook at tab 6]

[69] See Morris v. Slappy, 103 S.Ct. 1610, 1614 (1983). [Reproduced in the accumpanying notebook at tab 6]

[70] See Morris v. Slappy, 103 S.Ct. 1610, 1614 (1983). [Reproduced in the accumpanying notebook at tab 6]

[71] See Morris v. Slappy, 103 S.Ct. 1610, 1614 (1983). [Reproduced in the accumpanying notebook at tab 6]

[72] See Morris v. Slappy, 103 S.Ct. 1610, 1615 (1983). [Reproduced in the accumpanying notebook at tab 6]

[73] See Morris v. Slappy, 103 S.Ct. 1610, 1615 (1983). [Reproduced in the accumpanying notebook at tab 6]

In U.S. v. Richardson, right to choice of counsel was not violated when request for substitute counsel made on morning of trial and court determined that interest of expediency outweighed defendant's request.[74] Defendant was convicted of charges involving possession, importation and carrying on board aircraft approximately 3.1 kilograms of cocaine following jury trial before the United States District Court for the District of Puerto Rico, and he appealed.[75] On appeal, Richardson claimed that he was denied his right to select counsel of his choice before trial in violation of the sixth amendment.[76] Specifically, Richardson argues that the district court erred in denying his request to substitute a privately paid lawyer for his court-appointed lawyer on the morning of his trial.[77] As stated above the Appeals court found no error the decision of the lower court because the interest of expediency outweighed defendant's request.[78]

In the next case the Court finds that there is no absolute and unqualified right to counsel of choice. Two days before trial, the defendant Bass sought permission of the court to dismiss his court-appointed counsel and for a

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[74] See U.S. v. Richardson, 894 F.2d 492 (1st Cir.1990). [Reproduced in the accumpanying notebook at tab 22]

[75] See U.S. v. Richardson, 894 F.2d 492, 493 (1st Cir.1990). [Reproduced in the accumpanying notebook at tab 22]

[76] See U.S. v. Richardson, 894 F.2d 492 (1st Cir.1990). [Reproduced in the accumpanying notebook at tab 22]

[77] See U.S. v. Richardson, 894 F.2d 492 (1st Cir.1990). [Reproduced in the accumpanying notebook at tab 22]

[78] See U.S. v. Richardson, 894 F.2d 492 (1st Cir.1990). [Reproduced in the accumpanying notebook at tab 22]

continuance to permit his representation by new counsel from Alabama, counsel who knew nothing of Bass's case and were just commencing a lengthy trial in Georgia.[79] Bass's case had been set for trial for two months. His stated ground was a sudden loss of personal confidence in his appointed counsel and a desire for new ones specializing in "death cases."[80] After hearing argument, the court refused these requests.[81] Bass asserted that by so doing the court denied him effective assistance of counsel.[82] In its decision, the Bass Court looked to United States v. Silva for language and authorithy.[83] See United States v. Silva, 611 F. 2d. 78, 79 (5th Cir.1980).[84] The Bass court stated, "denial of defendant's motion did not deny defendant his Sixth Amendment right to counsel, since there is no absolute and unqualified right to counsel of choice, even where counsel is retained."[85]

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[79] See Bass v. Estelle, 696 F.2d 1154, 1159 (5th Cir.1983). [Reproduced in the accumpanying notebook at tab 23]

[80] See Bass v. Estelle, 696 F.2d 1154, 1159 (5th Cir. 1983). [Reproduced in the accumpanying notebook at tab 23]

[81] See Bass v. Estelle, 696 F.2d 1154, 1159 (5th Cir. 1983). [Reproduced in the accumpanying notebook at tab 23]

[82] See Bass v. Estelle, 696 F.2d 1154, 1159 (5th Cir. 1983). [Reproduced in the accumpanying notebook at tab 23]

[83] See Bass v. Estelle, 696 F.2d 1154, 1159 (5th Cir. 1983). [Reproduced in the accumpanying notebook at tab 23]

[84] See United States v. Silva, 611 F. 2d. 78, 79 (5th Cir.1980). On the day before trial, the defendant made an oral motion for continuance, informing the district court he wished to substitute retained counsel for court-appointed counsel. [Reproduced in the accumpanying notebook at tab 7]

In this final case the Court addresses the issue of substitution as a means manipulating the Courts time. In U.S. v. Mitchell, the Court held right to counsel of choice was not violated by district court's denial of continuance to enable defendant to secure chosen counsel when the defendant attempted to manipulate court's schedule by retaining attorney known to have scheduling conflict.[86] In this case the defendants were convicted in the United States District Court for the Eastern District of Texas, of numerous violations of the Racketeer Influenced and Corrupt Organizations Act and federal narcotics laws.[87] The District Court, also denied one defendant's motion for new trial and retrial.[88] Defendant appealed.[89] The Court of Appeals, held that: (1) refusal to grant continuance on basis of scheduling conflict of one defendant's counsel, resulting in lack of representation for that defendant throughout trial, was not abuse of discretion; (2) substantive RICO count of indictment adequately defined the "enterprise" involved; (3) evidence established single RICO conspiracy as alleged in indictment; (4) grand jury process was not abused by Government;

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[85] See United States v. Silva, 611 F. 2d. 78, 79 (5th Cir. 1980). [Reproduced in the accumpanying notebook at tab 7]

[86] See U.S. v. Mitchell, 777 F.2d 248, 256-57 (5th Cir.1985), cert. Denied, 476 U.S. 1184 (1986). [Reproduced in the accumpanying notebook at tab 24]

[87] See U.S. v. Mitchell, 777 F.2d 248, 256-57 (5th Cir.1985), cert. Denied, 476 U.S. 1184 (1986). [Reproduced in the accumpanying notebook at tab 24]

[88] See U.S. v. Mitchell, 777 F.2d 248, 256-57 (5th Cir.1985), cert. Denied, 476 U.S. 1184 (1986). [Reproduced in the accumpanying notebook at tab 24]

[89] See U.S. v. Mitchell, 777 F.2d 248, 256-57 (5th Cir.1985), cert. Denied, 476 U.S. 1184 (1986). [Reproduced in the accumpanying notebook at tab 24]

and (5) imposition of consecutive, rather than concurrent, sentences on marijuana conspiracy counts and RICO conspiracy count did not constitute double jeopardy.[90]

IV. CONCLUSION

In summation, substitution of counsel is not an absolute right, it is a right which defendants are allowed use at the discretion of the court. In making that decision, the court must balance the interest of the defendant and of the people. The court must also look at several things such as (1) the reasons given for the substitution, (2) the type of conflict between counsel and client, and (3) the effect of any substitution upon the scheduled proceedings.

In order for the ICTR Prosecutor's office to make strong arguments against a defendants request for substitution of counsel the Prosecutor must point out to judge that even though a defendant has a right to counsel, that right does not give him the right to substitute his counsel as he pleases. The Prosecutor should also argue that a defendant must demonstrate sufficient cause to warrant the appointment of substitute counsel,[91] and that the ICTR should look at (1) the reasons given for the substitution, (2) the type of conflict between counsel and

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[90] See U.S. v. Mitchell, 777 F.2d 248, 256-57 (5th Cir.1985), cert. Denied, 476 U.S. 1184 (1986). [Reproduced in the accumpanying notebook at tab 24]

[91] See State v. Hutchinson, 341 N.W. 2d. 33, 41 (1983). [Reproduced in the accumpanying notebook at tab 15]

client, and (3) the effect of any substitution upon the scheduled proceedings, when making its decision.