

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA : Case No. CR-1-07-060  
Plaintiff, :  
vs. : (Beckwith, Senior Judge)  
 :  
PAUL H. VOLKMAN :  
Defendant. :

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**DEFENDANT'S REPLY TO GOVERNMENT'S RESPONSE  
TO COUNSEL'S MOTION TO WITHDRAW**

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*Now comes* the defendant, by and through counsel, and submits his reply to the Government's Response to Counsel's Motion to Withdraw, states as follows:

Defendant Volkman has requested that the following reply that he drafted be filed of record. *See Exhibit No. 1 attached hereto.*

Respectfully submitted,

s/ Wende C. Cross  
**WENDE C. CROSS (0061531)**  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been filed this 24<sup>th</sup> day of February, 2010 using the CM/ECF system which will send a copy to Timothy Oakley and Karl Kadon, Assistant United States Attorneys.

s/ Wende C. Cross  
**WENDE C. CROSS**

## Defendant Volkman's Response to Feb 22 Govt Response

Mr. Oakley's February 22 response to Mrs. Cross's Motion to Withdraw as Counsel for Dr. Volkman contains multiple inaccuracies and distortions. Dr. V. is characterized as having had "multiple counsel many of which (sic) have expressed difficulty in communicating with the defendant." Dr. V. has in fact had four defense counsels since his indictment and arrest on May 21, 2007. Dennis Lieberman was paid a limited retainer by Dr. V., after which it quickly became apparent to the defendant that his attorney was quite unhappy with the arrangement, which was terminated after several months. Co-counsel Kevin Byers then took over as counsel pro bono, but had to withdraw from the case because of his involvement with the Schneider case in Wichita. There was never any communication issue between Byers and Dr. V. William Gallagher was appointed by the Court in February 2009. Dr. V. raised repeated complaints to Gallagher and ultimately to the Court in June 2009, because Gallagher apparently had no time to spend on his case and did not respond to Dr. V.'s communications, but the Court denied Gallagher's request to withdraw at that time, and urged Gallagher and Dr. V. to cooperate. For the next four months, Gallagher seemed to work effectively on preparations of the defense and he and Dr. V. actually developed some mutual fondness. However, Mr. Gallagher on December 2, 2009 petitioned the Court to withdraw from the case for unspecified personal reasons.

The Court then appointed Wende Cross as counsel on December 2, 2009. Thirty-seven days later, Cross had an initial conference with Dr. V. during which he outlined his overview of the case, his suggested approach, and his desire for an experienced and willing outside counsel. Cross took immediate offense at "being told what to do", but stated that she would consult with Dr. V. before finalizing a request for a CJA budget, but failed to do so before the Jan 19 status and scheduling phone conference. She filed a request for local co-counsel against the wishes of Dr. V., and then made the surprising assertion that "Dr. V. wanted his day in court as soon as possible and that she could certainly be ready for a September 2010 trial date". This comment was stunning to Dr. V., coming as it did from his newly-appointed defense counsel who at that point had little knowledge of the issues of the case or of the volume of materials requiring organization and evaluation. Later that day there ensued an unpleasant phone conversation between Cross and Dr. V., during which he graphically voiced his extreme displeasure at Cross's failure to consult with him on several critical issues. Cross immediately hung up and filed a motion to withdraw as counsel. Dr. V. acknowledges that some of the communication issues are his responsibility, but regardless of what percentage of blame is assigned to whom, there appears to be little chance that Cross and Dr. V. can work together as required. During the *ex parte* meeting of Jan 27, Judge Beckwith informed Cross and Dr. V. that Cross remained as defense counsel pending the present hearing. Nonetheless, in the ensuing 5 weeks Cross has made no effort to contact Dr. V. or to work on any of the urgent discovery and legal issues identified for her by Dr. V. Dr. V.'s support of Cross's motion to withdraw is in fact

an effort to avoid further needless delay engendered by the squandering of many months of pretrial preparation time in an unproductive and completely dysfunctional attorney-client relationship.

The government's allegation that Dr. V. is frivolously attempting to delay the proceedings by intentionally sabotaging communication with court-appointed counsel is not supported by the history of the representation situation, as outlined above. Furthermore, the government's assertion makes little sense on another level, as any delay of the trial postpones the ultimate conclusion of this case and the defendant's expected acquittal. However, it is most certainly not in Dr. V.'s interest or even the justice interests of the plaintiff People of the United States for a tainted trial to proceed 8 months after a newly appointed defense counsel is handed a large and complex case that the government and the other defense counsels have had 3 years to prepare. Furthermore, as a result of his own extensive study of the case materials, Dr. V. has identified multiple discovery and legal issues which will require many months of intensive preparation by his counsel, his experts, and private investigators. No schedule can be realistically set for the above issues since their completion requires the cooperation of the government in supplying documents and materials, which has so far been reluctant and sluggish, at best.

The government's threat to seek the revocation of Dr. V.'s bond is a blatant attempt to intimidate the defendant from exercising his 6<sup>th</sup> Amendment right to **effective assistance of counsel**. The incarceration of Dr. V. would of course end his ability to participate in his defense and would fatally taint all subsequent proceedings. The government has from the beginning attempted to subject Dr. V. to illegal pretrial detention, in clear violation of the provisions of the **Bail Bond Reform Act**, which provides for detention only in the case of documented flight risk or clear and present danger to the community. There was never any evidence produced to substantiate either of these issues. Alternatively, the government may be indirectly alleging that Dr. V.'s behavior constitutes contempt of court. Dr. V.'s present situation is quite difficult and frightening, as he finds himself in a twilight zone in which his court-appointed defense counsel has sought to withdraw, but nominally remains his attorney. Nonetheless, Dr. V. has deep respect for the United States Constitution, the Bill of Rights, all federal laws, the Supreme Court, and certainly for the power and authority of this Court. Dr. V. has no intention of thwarting the proceedings of this case. However, through a combination of circumstances clearly beyond his control, it has proven difficult for Dr. V. to establish the necessary working relationship with 2 Court-appointed counsels. Hopefully, these problems will soon be resolved. Dr. V. also wishes to clarify that he has never sought the Court's permission to represent himself and is not making any such request at this time.

Mr. Oakley's assertion that the government has "even taken steps to offer a source of potential expertise for the defendant's counsel to approach in its defense" is puzzling and confusing, since this is to Dr. V.'s knowledge the first mention of any type of such a proposal. Dr. V. will of course be pleased to receive any sort of genuine assistance and awaits clarification of Mr. Oakley's comment.