

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

AUG 22 2011

JAMES M. HATTEN, Clerk
By: *[Signature]*
Deputy Clerk

UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.)
)
SCOTT HINTZ,)
Defendant)

No. 1:03-CR-131-CC-CCH-AJB
EMERGENCY HEARING REQUESTED

MOTION RE: DISCHARGE OF DENNIS C. O'BRIEN FOR CONFLICTS OF INTEREST

NOW COMES Scott Hintz and respectfully requests leave to file:
This motion to discharge attorney Dennis C. O'Brien. Mr. O'Brien has pending state criminal court proceedings. Mr. O'Brien refuses to call or provide this Defendant with necessary client file items related to the pending habeas appeal. Mr. O'Brien has tampered with evidence and witnesses directly or through others. Mr. O'Brien has refused to notify this Court of his own criminal case and of other troubling events to interfere with these proceedings and state court proceedings involving Mr. O'Brien or his friends and associates.

Because of his conflicts of interest, Mr. O'Brien refuses to file into the record his own criminal actions, or items furthering the just interests of this Defendant. It has been absolutely necessary for Defendant to inform judges directly; see attached and herein incorporated Exhibit A (opened by one or more judges). Mr. O'Brien has hired his own criminal attorney who contacted this Defendant to request this Defendant make Mr. O'Brien's criminal charges "go away" in exchange for this Defendant's client file materials and information. This Defendant reminded Mr. O'Brien's

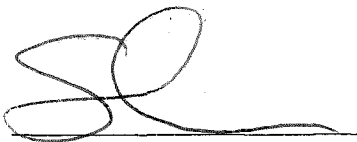
criminal attorney that Mr. O'Brien cannot hold client file items and this case hostage in order to coerce Defendant from pursuing valid criminal charges against Mr. O'Brien; listen to herein incorporated Youtube audio link: <http://www.youtube.com/watch?v=KrcMGLpcPyc>

AFFIDAVIT

I, Scott Hintz, hereby state under the penalty of perjury that the following are true to the best of my knowledge and pursuant to the penalties of perjury pursuant to 28 USC Section 1746:

- (A) The attached Exhibit A emails were sent as addressed. I received notification emails to Judge Alan Baverman and Dennis C. O'Brien were opened over this last weekend.
- (B) I understand Judge Alan Baverman and Judge Clarence Cooper are to testify at 1pm on August 22, 2011, in their individual capacities, regarding their personal "off the record" communications with, and personal knowledge regarding, Dennis C. O'Brien pursuant to the delivered subpoenas (see also Exhibit A emails respectfully requesting judges reply).
- (C) The attached Exhibit B transcript is of the hearing before Judge Clarence Cooper on July 19, 2011.

Stating the above are true statements to the best of my own personal knowledge, I hereby state the above this 22nd day of August 2011.



Scott Hintz

Conclusion

Based upon all of the above, items already in the record, and additional evidence and testimony readily available for a hearing on these matters, this Court should follow its duty to immediately remove conflicted attorney Dennis C. O'Brien.

This 22nd day of August 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'SH', is written over a horizontal line.

Scott Hintz
6025 Sandy Springs #258
Sandy Springs, GA 30328
(404) 665-3553

CERTIFICATE OF SERVICE

I, Scott Hintz, certify I have served upon:

AUSA Leslie J. Abrams
600 U.S. Courthouse
75 Spring Street, SW
Atlanta, GA 30303

A true copy of the foregoing filing.

This 22nd day of August 2011 by hand-delivering same to AUSA Abrams' office.

Respectfully,


Scott Hintz

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of 3 pgs
SH

From: Scott Hintz

Date: Mon, 22 Aug 2011 00:15:32 +0000

To: Dennis C. O'Brien<obriendc.attorney@gmail.com>; Dennis C. O'Brien<obriendc1946@yahoo.com>;
Dennis C. O'Brien<obriendc@bellsouth.net>

ReplyTo: Scott Hintz

Cc: U.S. Magistrate Judge Alan Baverman<alan_j_baverman@gand.uscourts.gov>; U.S. District Judge
Clarence Cooper<clarence_cooper@gand.uscourts.gov>; U.S. Magistrate Judge C. Christopher
Hagy<c_christopher_hagy@gand.uscourts.gov>

Subject: Email from Dennis C. O'Brien's criminal attorney.

Mr. O'Brien,

I received the email below from criminal attorney Lawrence Zimmerman. He called me on Friday and informed me that you hired him as your criminal attorney for your pre-arrest hearing tomorrow.

Mr. Zimmerman stated he was going to call you immediately to ensure you provided me a complete copy of my client file materials and information because he agreed that I was entitled to these items. He appeared troubled by your actions.

He also asked me if I would make the criminal charges against you "go away" if he got me my client file materials and information from you. I have not received my client materials as of the time of this email. I also do not think you should hold my case information, and my case" hostage to make your state criminal charges "go away".

Will you be providing me my complete client file materials and information tomorrow in Fulton County Court before your pre-arrest hearing? The materials and information have been specifically requested of you in several certified letters and emails sent to specifically to your attention.

I have not received a call from you, nor have you filed the motion to revisit Judge King's orders that assist you avoid criminal and civil scrutiny in the state courts, since we were before Judge Cooper on July 19, 2011.

Please reply immediately. Your careful 'gatekeeper' role over the record does not appear ethical.

Scott Hintz

From: lawrence zimmerman <lawjzimm@yahoo.com>

Date: Fri, 19 Aug 2011 13:58:08 -0700 (PDT)

To: Scott Hintz

ReplyTo: lawrence zimmerman <lawjzimm@yahoo.com>

Subject: From Lawrence Zimmerman

Dear Scott,

I am representing Dennis C. O'Brien in his case on Monday in the pre-arrest hearing.

Lawrence J. Zimmerman
The Law Offices of Lawrence J. Zimmerman, P.C.
1800 Peachtree Street, Suite 300
Atlanta, GA 30309
(404) 351-3000
www.atlantanotguilty.com

Exhibit A

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of 3 pgs
SH

From: Scott Hintz
Date: Sun, 21 Aug 2011 09:13:20
To: <alan_j_baverman@gand.uscourts.gov>; <clarence_cooper@gand.uscourts.gov>;
<c_christopher_hagy@gand.uscourts.gov>
Cc: Scott Hintz
Subject: Urgent Matter

Judges Baverman, Cooper and Hagy:

I, again, apologize for having to send this email, but Dennis C. O'Brien absolutely refuses to address these important matters on the record. I understand my last emails have been delivered in regards to the delivered subpoenas of Alan Baverman (in his individual capacity) and Clarence Cooper (in his individual capacity) requesting testimony Monday, August 22, 2011 at 1pm.

Attached is a copy of the delivered subpoenas for the requested testimony at 1pm for the August 22, 2011 hearing in courtroom 1A of the Fulton County Magistrate Court relating to the criminal allegations brought against attorney Dennis C. O'Brien for his actions OUTSIDE the record of case 1:03-CR-131-CC. To date, Dennis C. O'Brien has NOT allowed any motion or notice into the record of my case to evidence his own threats, conflicts of interest, and his pending criminal charges. On Friday, I was contacted by an attorney claiming to be Dennis C. O'Brien's criminal attorney to try to keep Mr. O'Brien from being arrested on Monday.

This same attorney asked me to make the criminal charges 'go away' against Dennis C. O'Brien and suggested I should instead worry about much bigger and more powerful adversaries. The attorney admitted he works in Judge Alan Baverman's old law office and admitted his relationships with many of the people with whom I have had recent unjust problems. In fact, I was yesterday warned by someone communicating with the adversarial group protecting Dennis C. O'Brien (and those he is protecting) that I should be:

"prepared for mudslinging from them. Accusing you of shit that you never said or did...Do not underestimate your opponent (sic)."

Dennis C. O'Brien has through email communications, and through other communications with me, and others, admitted having personal conversations with the three of you (including some about me and my case). These items of evidence and related testimony are available to support the content of Dennis C. O'Brien's statements.

Dennis C. O'Brien has refused to call me since Dennis C. O'Brien and I were last before Judge Clarence Cooper during the July 19, 2011 district court hearing (a copy of the transcript can be found at the following internet link: <http://www.scribd.com/doc/62685905/Dennis-C-O-Brien>). Additionally, I have offered to meet Dennis C. O'Brien ANY DAY at a local police department --- but Mr. O'Brien has also refused these requests to meet. The police department lobby has been suggested as an appropriate meeting place to due to Mr. O'Brien's threats to me and others. Mr. Dennis C. O'Brien has threatened me and has tried to have me not testify truthfully especially in regards to the illegal and unethical activities of his close friends and associates.

Dennis C. O'Brien's own July 5, 2011 and July 6, 2011 words can be heard in the audio clips at the following Youtube internet links: <http://www.youtube.com/watch?v=3QggJHkfP2I> AND <http://www.youtube.com/watch?v=sGHfHMBuNqA> . It is clear that these

Exhibit A

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SH

July 5, 2011 and July 6, 2011 statements of Dennis C. O'Brien show he clearly lied during the July 19, 2011 hearing before Judge Cooper as evidenced in the transcript of the July 19, 2011 hearing available in the paragraph immediately above.

I have specifically requested to proceed Pro Se rather than be forced to use conflicted counsel Dennis C. O'Brien, and I have specifically requested Dennis C. O'Brien submit a motion to revisit Judge King's recent orders which have a likely unintended consequence of protecting my fraudster accusers, and now Dennis C. O'Brien also. The existing order of Magistrate Judge King limits my access to the courts and also prohibits my involvement in investigations and in the questioning of witnesses related to my Pro Se claims against adverse parties in proceedings OUTSIDE of the United States District Court.

Please immediately respond to these important concerns. I respectfully request I be able to communicate directly with the three of you at some time prior to 10 am August 22, 2011 in regards to Dennis C. O'Brien's admitted personal and "off the record" communications with you in regards to me or my court proceedings. These discussions are in regards to matters in which you are witnesses for matters outside the jurisdiction of the United States District Court.

Thank you for your time and consideration of these extremely important matters.

Sincerely,
Scott Hintz

Exhibit A

Exhibit B

July 19, 2011 Transcript of Hearing before U.S. District Court Judge Clarence Cooper

**Dennis C. O'Brien's own recorded words of July 5-6, 2011 that contradict his
statements in the following 48 page transcript can be heard at the Youtube internet
links below:**

<http://www.youtube.com/watch?v=3QggJHkfp2I>

<http://www.youtube.com/watch?v=sGHfHMbuNqA>

48 pages to follow.

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 UNITED STATES OF AMERICA,)
5)
6)
7 -vs-) Indictment No. 1:03-CR-131-CC
8)
9 SCOTT HINTZ,)
10 Defendant.)

11 Transcript of the Motion to Remove Conflicted Counsel
12 Before the Honorable Clarence Cooper,
13 United States District Court Senior Judge
14 July 19, 2011
15 Atlanta, Georgia

16 APPEARANCES OF COUNSEL:

17 On behalf of
18 the Defendant: Dennis C. O'Brien, Esq.

19
20
21
22
23 Amanda Lohnaas, RMR, CRR
24 Official Court Reporter
25 United States District Court
Atlanta, Georgia
(404) 215-1546

SH

1 (Tuesday, July 19, 2011, 11:30 a.m.)

2 THE COURT: Thank you, please be seated. Court is
3 now in session. And good morning.

4 MR. O'BRIEN: Good morning, Judge.

5 THE COURT: Good morning.

6 THE DEFENDANT: Good morning.

7 THE COURT: This is the case of the United States of
8 America versus Scott Hintz.

9 MR. O'BRIEN: Your Honor, he pronounces it Hintz
10 (different pronunciation).

11 THE COURT: Hintz, thank you. The hearing today
12 concerns Defendant's motion to have his attorney Dennis O'Brien
13 removed as counsel and Defendant's renewed request to proceed
14 pro se.

unjust smear campaign begins here

15 The record in this case reflects that Defendant has a
16 history of having problems or conflicts with attorneys both
17 that he has retained and appointed to him by the Court. During
18 the course of the underlying criminal proceedings and the
19 direct appeal, Defendant had a total of four different
20 attorneys: Mark Kadish^{*}, Lynn Fant^{**}, Derek Jones, and Michael
21 Saul. Although I have number four written it's really five
22 when I counted, one, two, three, four, the fifth would be
23 Sandra Michaels, that's been brought to my attention. During
24 the course of the current revocation proceedings, Defendant has
25 had three different attorneys: Brian Mendelsohn of the Federal

**picked by Alan Bawerman*
***appointed by Alan Bawerman*

SH

1 Defender Program here in the Northern District of Georgia;
2 Cynthia Roseberry of the Federal Defender Program of the Middle
3 District of Georgia; and his present attorney, Dennis O'Brien.

4 Dissatisfied with the representation being provided
5 by Brian Mendelsohn, Defendant previously moved the Court to
6 have Mr. Mendelsohn removed and to proceed *pro se*, but then at
7 a hearing before the Court on June 13th, 2011, stated that his
8 preference was not to proceed *pro se* but to have the Court
9 appoint him substitute counsel. *outside of Georgia

10 Defendant also stated that he felt forced to proceed
11 *pro se* because of his perceived inability to obtain
12 conflict-free counsel. Defendant stated emphatically that his
13 waiver of counsel was not knowing and voluntary. The Court
14 denied Defendant's request to proceed *pro se* but allowed
15 Defendant's former attorney, Brian Mendelsohn, to withdraw from
16 representation.

17 At Defendant's request to have an attorney from
18 outside the Northern District of Georgia appointed to represent
19 him, an attorney from the Middle District of Georgia, Cynthia
20 Roseberry, was appointed. Within a week, however, Defendant
21 sought the removal of Ms. Roseberry for alleged conflicts and
22 Ms. Roseberry asked that her office be relieved of the
23 representation due to a conflict of interest, the difficulties
24 of dealing with Defendant, and the financial burden placed on
25 counsel. Ms. Roseberry was relieved of the appointment, and

1 Magistrate Judge Hagy appointed Dennis O'Brien.

2 Defendant now requests that attorney Dennis O'Brien
3 be removed from representing him and that he be allowed to
4 proceed *pro se*. As the Court stated in its order entered on
5 June 13th, 2011, Defendant does not have a constitutional right
6 to proceed *pro se* in these revocation proceedings, and the
7 Court has numerous concerns with permitting Defendant to
8 proceed *pro se*. Among them include Defendant's history of
9 filing redundant motions and notices, which interfere with the
10 orderly administration of justice, and Defendant's inability to
11 focus on relevant issues when appearing before the Court in
12 person and in writing.

13 The Court has set this hearing today to gain a
14 greater understanding of the issues that have arisen between
15 Defendant and Mr. O'Brien and to give fair and thorough
16 consideration to Defendant's renewed request to proceed *pro se*.

17 Having provided that background and set forth the
18 Court's concerns, the Court will now like to hear from
19 Defendant with respect to his motion to have attorney Dennis
20 O'Brien removed as counsel and Defendant's renewed request to
21 proceed *pro se*. Mr. Hintz, you may come forward.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And stand at the podium, which is
24 directly in front of you. Excuse me one minute.

25 (Pause in the proceedings.)

SH

1 THE COURT: Thank you, Mr. Scott.

2 THE DEFENDANT: Hintz, yes.

3 THE COURT: Hintz, yes, go ahead, Mr. Hintz.

4 THE DEFENDANT: Judge Cooper, as a preliminary
5 matter, have you been made aware of the filing that was
6 presented to the clerk this morning in this case?

7 THE COURT: I'm not aware of that but that's not the
8 issue. The issue --

9 THE DEFENDANT: Your Honor, it's specifically in
10 regard to these proceedings. I've got a copy here if you would
11 like to --

12 THE COURT: You might pass it up, just give it to me.
13 Give it to the court security officer. Thank you.

14 THE DEFENDANT: Judge --

15 THE COURT: Wait just one minute.

16 THE DEFENDANT: Certainly.

17 THE COURT: Go ahead.

18 THE DEFENDANT: Judge Cooper, last time we were here,
19 June 13th, 2011, I had requested the tapes for the transcripts
20 because I noticed that there was a couple of mistakes in the
21 transcripts. I haven't received any of the recordings of the
22 last June 13th hearing.

23 Additionally, during that hearing Mr. Mendelsohn said
24 that he did not have a conflict of interest and that he wasn't
25 scared of you.

SH

1 THE COURT: Mr. Hintz --

2 THE DEFENDANT: Well, Your Honor, because it goes to
3 how --

4 THE COURT: Please --

5 THE DEFENDANT: -- how --

6 THE COURT: Please focus on your motion, please.
7 Just go to your motion.

8 THE DEFENDANT: Sir --

9 THE COURT: You brought a motion.

10 THE DEFENDANT: These are items that I believe --

11 THE COURT: Mr. --

12 THE DEFENDANT: -- are --

13 THE COURT REPORTER: I'm sorry, one at a time,
14 please.

15 THE COURT: Let's do it right. I want to hear from
16 you regarding the motion. Just argue your motion, please.

17 THE DEFENDANT: Judge Cooper, that's what I was
18 trying to get to because --

19 THE COURT: Mr. Hintz --

20 THE DEFENDANT: -- the conflict of interest --

21 THE COURT: Let's go on with your motion. Let's
22 argue your motion.

23 THE DEFENDANT: Well, the motion here states, and we
24 had evidence that Brian Mendelsohn stated Judge Baverman has a
25 financial interest in Defendant's underlying case and Judge

SH

1 Cooper has been involved in *ex parte* communications. I have
2 that in the filing to remove conflicted counsel Dennis O'Brien.

3 Now, Mr. O'Brien, right outside court here just a
4 moment ago, stated that our conversations likely got hacked
5 into and that our conversations were on the Internet. I
6 believe that Your Honor has already listened to that evidence
7 that was presented into the court. Is that correct?

8 THE COURT: No.

9 THE DEFENDANT: Your Honor, it's actually in the
10 filing for the hearing that we're doing today and, Your Honor,
11 I had asked that we have recording equipment or a computer for
12 Internet or testimony so that I could provide evidence that
13 Mr. Cooper -- I'm sorry, Mr. O'Brien has specifically stated
14 that he is very good friends with an adverse party, adverse
15 witness in this case that has likely done some illegal
16 activities, which was brought to Your Honor's attention at the
17 last hearing.

18 THE COURT: Who is this adverse person?

19 THE DEFENDANT: Sir, it was Judge -- I'm sorry, Jerry
20 Froelich.

21 THE COURT: Jerry Froelich?

22 THE DEFENDANT: Yes, Judge Cooper. And during the
23 last hearing we talked about a subpoena.

24 THE COURT: Let me ask you this, I want to make sure.
25 Do you understand that the petition filed to revoke your

SH

1 supervised release was brought by the government of the United
2 States and not Mr. Jerry Froelich? Do you understand that?

3 THE DEFENDANT: Judge Cooper --

4 THE COURT: I'm going to hear from you. First of
5 all, do you understand that?

6 THE DEFENDANT: I understand that the movant was
7 Mr. Froelich and he brought to the attention of the government
8 false statements and has provided a false and fraudulent
9 affidavit into the record of this case.

10 THE COURT: Okay. Do you understand that at the
11 hearing as relates to the petition brought to revoke your
12 supervised release, that that was brought by the government of
13 the United States and not Mr. Froelich? Do you understand that
14 Mr. Froelich would not be a part of that hearing?

15 THE DEFENDANT: Judge Cooper, it appears he is
16 because he was able to get a subpoena that during the last
17 hearing you said you have no idea how he was able to get, and
18 it was based off of that subpoena that these proceedings have
19 gone forward. It's also based off of Mr. Froelich's threats
20 and some of his associates' threats that are tied with
21 organized crime that these proceedings were brought forward
22 with his knowingly false statements that have been evidenced,
23 and had I been allowed to present evidence into the court I
24 would have been able to bring testimony and other evidence to
25 prove that exactly what I'm saying is true. SH

1 THE COURT: Let me ask you this.

2 THE DEFENDANT: Again, those have been foreclosed.

3 THE COURT: Do you believe or feel that Mr. O'Brien
4 should be disqualified from representing you because of his
5 friendship with attorney Jerry Froelich?

6 THE DEFENDANT: Judge Cooper, pursuant to this, what
7 I wanted was based off of his admitted conflicts of interest.
8 He has admitted that --

9 THE COURT: Let me ask you this. You're saying it
10 would be a conflict of interest for Mr. O'Brien to represent
11 you in the matter pending before this Court because of his
12 relationship or friendship with Jerry Froelich?

13 THE DEFENDANT: Judge Cooper, that would just be one
14 of numerous conflicts of interest and inadequacies in
15 representation.

16 THE COURT: How is the conflict of interest -- let me
17 hear from you.

18 THE DEFENDANT: Certainly, sir. I had let the Court
19 know before in the past attorney Mark Kadish had said that in
20 the past members of this court and attorneys that are prominent
21 in this district, some of them have received bribes and
22 blackmail, and because of those issues it's possible and quite
23 likely and probably would be able to be proven if we brought
24 some people under sworn testimony that you would see that
25 Mr. O'Brien has financial conflicts of interest in this case,

SH

1 he has personal conflicts of interest in this case.

2 And additionally, when I had contacted him initially
3 right after he was appointed we started discussing the case and
4 he very -- I told him that there was some problems with the
5 preliminary hearing. His own words were he didn't know what a
6 preliminary hearing was, which is real troubling because that's
7 part of a revocation proceeding.

8 Additionally, I explained to him that a preliminary
9 hearing and revocation proceeding is a probable cause hearing.
10 He replied by stating he didn't believe that there's such a
11 thing as probable cause hearings in revocation proceedings.

12 For somebody that's practiced 35 years before this
13 court it's quite troubling that he wouldn't know the basics
14 that somebody that's not an attorney that's trying to represent
15 himself *pro se* would know some more, and more about revocation
16 proceedings than an alleged 35-year veteran of this court.
17 Those things are troubling.

18 Additionally, since we did an investigation and found
19 out he had a lot of conflicts, besides that, he had told me
20 that he had never had a case with Judge Baverman. I have found
21 out since then that that was a lie he told me.

22 He has told me that in his 35 years of practicing
23 that he has never talked to Mark Kadish even once and that also
24 appears to be false.

25 THE COURT: You're alleging that he's a friend of

SH

1 Mark Kadish despite the fact he tells you he's only talked to
2 Mr. --

3 THE DEFENDANT: Mr. O'Brien has admitted he's very
4 good friends with a judge that was involved in the My Lai
5 Massacre here in Fort Benning, which is what brought Judge --
6 I'm sorry, attorney Mark Kadish on to the map. Additionally,
7 back when Mark Kadish was my attorney, Mark Kadish discussed
8 how his influence was able to help Your Honor and some other
9 people in this court with their positions and they discussed
10 some things that appeared to be questionable and to date I've
11 never been able to bring that evidence before the Court.

12 THE COURT: Let's set that aside, let's deal with
13 Mr. Froelich.

14 THE DEFENDANT: Yes, Judge Cooper.

15 THE COURT: You're claiming that Mr. O'Brien and
16 Mr. Froelich -- Mr. O'Brien and Mr. Froelich are good friends.

17 THE DEFENDANT: I'm not alleging that; that was out
18 of his own mouth. I believe the words were "He's a very good
19 friend of mine."

20 THE COURT: And you feel he's in a conflicted
21 situation --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- because of --

24 THE DEFENDANT: Because I'm alleging -- and you've
25 agreed we have no idea how Mr. Froelich got a subpoena.

SH

1 Mr. Mendelsohn has told me specifically that he believes it's
2 illegal because he's not a party to any proceedings. So if his
3 very good friend has done illegal things in this case and has
4 presented a false and fraudulent affidavit and is a witness in
5 this case, yes, that is a conflict because one of his very good
6 friends would -- he'd have to allege criminal activity to
7 defend me in this case and I don't think that he would do that.

8 Now, we've had numerous -- I've tried to have
9 numerous conversations since I brought to his attention his
10 lies to me and the numerous conflicts of interest. He's
11 refused.

12 THE COURT: What lies has he told you?

13 THE DEFENDANT: A couple of lies he's told me is that
14 he's never had a case with Judge Baverman.

15 THE COURT: Well, how many cases has he had with
16 Mr. Baverman that you know?

17 THE DEFENDANT: Several. Actually, I'd like to have
18 Judge Baverman here because maybe he would be able to state
19 under oath that Mr. O'Brien's statement is incorrect.

20 THE COURT: What else has he lied about?

21 THE DEFENDANT: Also lied about never having talked
22 to Mark Kadish ever.

23 THE COURT: And you were able to find out he had
24 talked to him before?

25 THE DEFENDANT: Yes, Your Honor.

SH

1 THE COURT: How were you able to find that out?

2 THE DEFENDANT: By people who have been at mutual
3 social events.

4 THE COURT: What else did he lie about?

5 THE DEFENDANT: He also lied about saying that he was
6 going to provide all the discovery items to me, and that was
7 back, I believe it was on July 6, he said that he would be
8 providing them to me immediately. I sent to him probably about
9 30 to 40 e-mails since this that have been acknowledged as
10 received by him through his assistant and also through e-mail
11 notification. He's disregarded the e-mails, not returned them.

12 I brought to his attention some of the conflicts of
13 interest. I brought to his attention the lies that he's told
14 me. He had told me that he was going to report the crimes of
15 his very good friends to the prosecuting attorneys or the
16 government. To the best of my knowledge he hasn't done that.

17 I've asked every day to have the name, contact number
18 of who he's contacted to say that Jerry Froelich and some of
19 his friends have committed illegal acts specific to these
20 proceedings. He's never returned a single call. The one time
21 I did get through to him, he hung up on me and refused to talk
22 to me on the phone. He's completely broke down the
23 communication, refuses to discuss some of the pertinent items.

24 There's one meeting that he had set up and it was at
25 2:00 when he knew I had a conflict of interest. I requested it

SH

1 be rescheduled or done for some other time. He refused to do
2 so, refused to provide me discovery which I wanted another
3 attorney to review, and has completely refused to give me a
4 call back in regards to the defense of the case.

5 Additionally, he's refused to e-mail me discovery. I
6 asked, if he can't e-mail it, maybe he can make copies and
7 overnight it to me. He's refused to do that. I've sent an
8 e-mail, if you can make copies I'll come to your office and
9 pick them up. He refused to do that. Still today as I stand
10 before you today he still hasn't provided me with items the
11 government provided to him nor has he provided important
12 questions or issues I presented to him.

13 He also said that he was going to try to advocate for
14 subpoenas to my accusers. To my knowledge, and Your Honor
15 could probably answer this, has he called you to date to
16 advocate for any of the subpoenas of the record in this case?

17 THE COURT: Let me ask you this. Is it your
18 contention that you feel that Mr. O'Brien cannot fairly,
19 justly, and aggressively represent your interests in the case
20 pending before this Court?

21 THE DEFENDANT: Judge Cooper, I think that's a
22 limited -- I think that he is unable. He has shown he has an
23 unfamiliarity with the law and the proceedings, of revocation
24 proceedings. He didn't even know what a preliminary hearing
25 was, as evidenced by his own words, didn't know that there's

SH

1 probable cause and he's --

2 THE COURT: So it's your --

3 THE DEFENDANT: -- refused to do anything with the
4 case.

5 THE COURT: It's your contention that he is
6 incompetent?

7 THE DEFENDANT: Your Honor, it appears that he is
8 insufficiently prepared and sufficiently conflicted to not be
9 able to defend this revocation proceeding.

10 THE COURT: Thank you.

11 THE DEFENDANT: And he has willfully ignored
12 communication attempts with him so the communication is broke,
13 the trust is broke. And additionally, because of the conflicts
14 that would possibly incriminate himself, but definitely
15 incriminate some of his very good friends, I feel that there's
16 very actual conflicts of interest.

17 THE COURT: Let me ask you this. Since his
18 appointment how many times have you met with him in good faith
19 about your case?

20 THE DEFENDANT: I went to his office on July 6th. It
21 was that afternoon or evening that I found that he lied. So I
22 had sent him probably, my guess is between July 6 and now,
23 somewhere in the ballpark of 50 communications, probably about
24 20 phone calls. The vast majority of them have been refused.

25 I've also asked him to meet with me on probably about

1 15 or 20 different occasions. I've called and talked to his
2 secretary and she said he's getting the messages but that he is
3 not sharing the case items with her, the paralegal, which he
4 normally does, and that she also stated that it's very likely
5 that they aren't going to do anything because once we discussed
6 the conflicts of interest she had agreed about some of the
7 items that we had discussed and she said it's likely they
8 wouldn't do anything with the defense.

9 Now, it appears that he's talked to people, against
10 what he's promised me not to do, and it appears that he may be
11 out fishing for the other side. Because, as we know, his very
12 good friends, with his own words, are some of the adverse
13 parties and witnesses in this case and obviously using his
14 position as my attorney would clearly help him go out and fish
15 to see what investigations might be out there, what evidence,
16 and also to maybe help sway witnesses to testify or to provide
17 statements that are favorable to the other side and not to me.

18 He hasn't done anything at all of any substance to
19 defend the case and he refuses, flatly refuses to return calls,
20 return e-mails, and even goes so far that I had to call from a
21 blocked number to him, got him on the phone, let him know it
22 was me, and when I tried to discuss the case he hung up.

23 THE COURT: How many e-mails have you sent him about
24 this case?

25 THE DEFENDANT: My guess would be about 50. I had

SH

1 asked to bring some evidence into the court, Internet access,
2 because then we would have been able to play some of the
3 evidence, be able to see some of the things, see some of the
4 e-mails, but, Your Honor, I believe you had refused that order
5 and disallowed me from having any kind of testimony or evidence
6 presented in support of my claims.

7 THE COURT: Let me hear from you again regarding your
8 request that you be allowed to proceed *pro se*.

9 THE DEFENDANT: Well, Your Honor, I would love to
10 have unconflicted counsel. But as you probably saw in the
11 filing that's before the Court that I handed you a moment ago,
12 the problem is that, because of your personal relationships and
13 longtime friendships with some of the people here, whether it's
14 Mark Kadish, Alan Baverman, whether it's in regards to Mark
15 Kadish's statements about him paying you, whether it's in
16 regards to the *ex parte* communications that were witnessed by
17 other people and sworn to and presented into this court, all
18 these items obviously are very uncomfortable to bring to you.

19 The other item is that I've talked to all these
20 conflicted attorneys and they all stated off the record that
21 they're scared of you. And I have evidence of that.

22 THE COURT: Did you ask them why?

23 THE DEFENDANT: Yes. They said that because they
24 have to practice before you, Judge Cooper, and because a lot of
25 these are appointed cases, appointed cases rely on appointments

SH

1 for their income. They also rely on the judge's good graces to
2 make sure that their billings aren't reduced.

3 So typically a conflict of interest doesn't involve a
4 judge; it involves another party. This is very unique in that
5 the conflicts of interest are the attorneys are scared to raise
6 items that would be for the defense of the defendant because it
7 involves the judge presiding in the case. So this is very
8 unique.

9 THE COURT: Was that also true of Mark Kadish?

10 THE DEFENDANT: Mark Kadish was not retained by
11 choice. I had another attorney, Alan Baverman, and Alan
12 Baverman's relative actually insisted I use Mark Kadish and
13 that was not my choice. As the record reflects, my life and my
14 kids' lives were threatened and I was told to fire another
15 attorney, to use Mark Kadish.

16 THE COURT: What about Lynn Fant?

17 THE DEFENDANT: Lynn Fant was appointed by Judge
18 Baverman and the record reflects that she would have pursued
19 direct appeal but she wanted me to stay quiet about the judge
20 that appointed her, which is Judge Alan Baverman, who happens
21 to have a gigantic financial interest. His family has got
22 about a million dollar financial interest, personal conflicts
23 of interest, and his family has done business dealings with one
24 of the accusers, which is Mr. Willison, who is Mr. Froelich's
25 client and good friend. SH

1 THE COURT: What about Sandra Michaels?

2 THE DEFENDANT: Sandra Michaels was, or is -- I don't
3 know if they're still married -- Jack Martin's wife, from what
4 I understand. And she actually brought to my attention,
5 because we had handwriting of Paul Morochnik and Alan Baverman,
6 her husband was involved early on and she conflicted herself
7 out, I believe. I think I brought it to the Court's attention
8 and she agreed.

9 THE COURT: What about Derek Jones?

10 THE DEFENDANT: Derek Jones, he represented somebody
11 that was related to the proceedings of the alleged fraud in the
12 underlying case and he actually agreed immediately that there's
13 a conflict.

14 THE COURT: What about Michael Saul?

15 THE DEFENDANT: Michael Saul wanted to remove himself
16 because at the time there was a lot of media going on and for
17 him to bring up things about the judges involved in the case,
18 and because of his regular practice before the Court, a good
19 portion of his income relies on having judges, you know, or him
20 to stay in good graces with the judges.

21 THE COURT: Is there anything else you would like to
22 say regarding these two motions?

23 THE DEFENDANT: Judge Cooper, as I had mentioned
24 before, I would think that it would be appropriate that you
25 wouldn't be involved because of your personal and other

SH

1 interests with some of the people that are adverse parties in
2 this case.

3 We've presented sworn testimony. I think at this
4 point 12 different sworn individuals have provided evidence
5 that show that there was witness *ex parte* communications in
6 regards to the million dollars that Mark Kadish stated he was
7 going to give part to you, and there was witnessed statements
8 by Jerry Froelich stating that this revocation proceeding has
9 already been predetermined and that he's already discussed
10 things with you. Those are all witness things, they are sworn
11 statements, and the sworn statements have been brought before
12 the Court.

13 We haven't had an evidentiary hearing nor have we
14 been able to have testimony based off any of the subpoenas. To
15 my knowledge not a single subpoena that's been entered into the
16 record has ever been heard and these issues have been before
17 the Court since at least 2004, which is now seven, almost eight
18 years.

19 THE COURT: Thank you, you may be seated.

20 Mr. O'Brien, please come forward. Mr. O'Brien --

21 MR. O'BRIEN: May it please the Court --

22 THE COURT: Let me say, before I give you an
23 opportunity to respond to Defendant Scott Hintz's contention
24 that you should not be permitted to represent him because of an
25 alleged conflict of interest and/or lack of impartiality on
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1 your part, I want to ask you a few questions.

2 MR. O'BRIEN: Yes, Your Honor.

3 THE COURT: First, I want to ask you several
4 questions about your professional qualifications.

5 MR. O'BRIEN: Yes, Your Honor.

6 THE COURT: Second, I want to ask you a few questions
7 about your relationship, if any, to and with attorney Jerry
8 Froelich.

9 MR. O'BRIEN: Yes, Your Honor.

10 THE COURT: And third, I want to ask you a few
11 questions about what has transpired between you and Defendant
12 Scott Hintz since you were appointed by Magistrate Judge Hagy
13 to represent him in a matter brought by the government to
14 revoke his supervised release.

15 MR. O'BRIEN: Yes, Your Honor.

16 THE COURT: My first question, are you a graduate of
17 an accredited law school?

18 MR. O'BRIEN: Your Honor, I have received a Juris
19 Doctorate degree from the University of Louisville in Kentucky
20 in 1973. I also received an LL.M in taxation from the
21 University of Miami in 1974.

22 THE COURT: Thank you. Are you licensed to practice
23 law in the state of Georgia?

24 MR. O'BRIEN: Yes, Your Honor. I've been licensed
25 and in good standing since 1975 in Georgia. I'm also licensed

SH

1 in the state of Florida.

2 THE COURT: Thank you. How long have you been
3 practicing law in Georgia?

4 MR. O'BRIEN: Well, 1975, I guess that's 36 years
5 now.

6 THE COURT: Do you also practice in Florida from time
7 to time?

8 MR. O'BRIEN: Well, I have but not --

9 THE COURT: Not much?

10 MR. O'BRIEN: Not really. I've actually been in
11 federal court in Florida, handled a case in front of Judge
12 Marcus when he was a district court judge.

13 THE COURT: What other states are you licensed to
14 practice other than Georgia and Florida?

15 MR. O'BRIEN: Those are the only two, Your Honor.

16 THE COURT: The only two. What kind of practice do
17 you have?

18 MR. O'BRIEN: Well, for the last ten years, probably
19 primarily federal criminal cases, Your Honor.

20 THE COURT: Federal criminal cases?

21 MR. O'BRIEN: Yes, Your Honor.

22 THE COURT: Throughout the southeast or cases here in
23 Georgia?

24 MR. O'BRIEN: Basically just in Georgia.

25 THE COURT: How many criminal cases have you handled

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1 during your legal career in federal courts here in the state of
2 Georgia?

3 MR. O'BRIEN: Oh, God, it would be a guess, Judge.
4 I've had a number of jury trials and sentencings and pleas.
5 More than -- I don't know, Your Honor. It would be a guess but
6 I'm regularly in federal court --

7 THE COURT: Thank you.

8 MR. O'BRIEN: -- I'll just say that.

9 THE COURT: But you do appear from time to time in
10 state court in connection with criminal matters?

11 MR. O'BRIEN: Yes, Your Honor.

12 THE COURT: Have you handled cases in which the
13 government moved to have a person's supervised release revoked?

14 MR. O'BRIEN: Many, many times in state court;
15 probation revocations are very common. Probably a couple in
16 federal court.

17 THE COURT: Couple in federal court?

18 MR. O'BRIEN: Right.

19 THE COURT: Are you on the Court's CJA list?

20 MR. O'BRIEN: Yes, Your Honor. I have been for many
21 years.

22 THE COURT: Let me ask you a few questions about your
23 relationship, if any, to and with Mr. Jerry Froelich.

24 MR. O'BRIEN: Yes, Your Honor.

25 THE COURT: Do you know attorney Jerry Froelich?

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1 MR. O'BRIEN: Yes, I do know Mr. Froelich.

2 THE COURT: How long have you known attorney
3 Mr. Froelich?

4 MR. O'BRIEN: How long have I known him did you say?

5 THE COURT: Yes, approximately.

6 MR. O'BRIEN: Oh, 20 years, 20, 25 years.

7 THE COURT: Is attorney Jerry Froelich a close
8 personal friend of yours?

9 MR. O'BRIEN: I've never been in his home, he's never
10 been in mine, never been to dinner with him. But, I mean, you
11 know, I consider him a friend, I don't socialize with him, but
12 I mean everybody in the building knows Jerry Froelich. You
13 know, he's a fine man, good lawyer.

14 THE COURT: But you've never been to his home nor has
15 he ever been to your home?

16 MR. O'BRIEN: No, Your Honor.

17 THE COURT: And you never had a meal with him?

18 MR. O'BRIEN: Never what?

19 THE COURT: Had a meal, a lunch.

20 MR. O'BRIEN: Oh, I can't even remember having a meal
21 with him, no.

22 THE COURT: So you know him in a professional
23 context?

24 MR. O'BRIEN: Absolutely. And that's, of course,
25 what I told, you know, my client here, that I know him

SH

1 professionally, as probably every criminal lawyer in the
2 Northern District knows Jerry.

3 THE COURT: Are you aware of any problems that your
4 client has had with Mr. Froelich?

5 MR. O'BRIEN: I know that -- well, let me say this,
6 this is what I know. I've done a lot of work in the case.

7 The people that are alleged to be victims in this
8 case, essentially there are people that claim that Mr. Hintz
9 defrauded them out of some money. I talked to Mr. Froelich, by
10 the way, recently about the case. I interviewed him. He
11 represents some of those people. And Mr. Hintz also filed a
12 civil lawsuit against many of Mr. Froelich's clients. And,
13 tangentially, I know that may be where Mr. Froelich got this
14 subpoena that Mr. Hintz is complaining about.

15 But he initiated a lawsuit. A few weeks after, you
16 know, Ms. Moore petitioned to have his probation revoked. The
17 primary witnesses in the revocation proceeding I think may be
18 Froelich's clients, Mr. Froelich's clients, or one or more of
19 his clients, and I think that perhaps what may have happened is
20 Mr. Froelich may have said if this guy, if you think he stole
21 money from you, here's what you can do, this is a soft spot,
22 he's on probation and perhaps we should alert the probation
23 officer. I think that may be what happened because there is a
24 letter from Mr. Froelich to Ms. Moore outlining what they claim
25 Mr. Hintz did.

SH

1 THE COURT: Let me ask you this. Knowing that
2 Defendant Scott Hintz has had an unpleasant encounter or
3 disagreement with Mr. Froelich, would this in any way adversely
4 affect your representation of Scott Hintz in a matter pending
5 before this Court?

6 MR. O'BRIEN: I can't see of any conceivable way in
7 which it would interfere with my ability to represent
8 Mr. Hintz. In fact, frankly, Your Honor, I would be surprised
9 if Mr. Froelich even shows as a witness. I don't know if he
10 has any relevant testimony.

11 THE COURT: Do you believe or feel it's a conflict of
12 interest for you to represent Mr. Scott Hintz knowing how he
13 feels about your relationship to Mr. Froelich?

14 MR. O'BRIEN: No, Your Honor, I don't think it is at
15 all. I don't think it creates a conflict.

16 THE COURT: Do you believe and feel that you can
17 fairly, justly, and aggressively represent Defendant, the
18 Defendant knowing of his dislike for Mr. Froelich?

19 MR. O'BRIEN: And apparently his dislike for me, but
20 I have no reservations about my ability to aggressively defend
21 Mr. Hintz in these proceedings free and clear of any, you know,
22 conflict or perceived conflict or imagined conflict.

23 THE COURT: Thank you. At this time I'm going to ask
24 you a few more questions.

25 MR. O'BRIEN: Yes, Your Honor.

SH

1 THE COURT: Then I'll give you an opportunity to
2 respond to Mr. Hintz's motion to remove you as counsel of
3 record in this case.

4 MR. O'BRIEN: Yes, Your Honor.

5 THE COURT: When were you appointed to represent
6 Scott Hintz, and for what reason?

7 MR. O'BRIEN: Probably about ten -- probably within
8 the last two weeks. I received a communique over the Internet.
9 When the magistrates are in need of an attorney they usually
10 send an e-mail out to the panel attorneys, is anybody
11 interested. I responded to Ms. Burks in Judge Hagy's chambers,
12 and I said I'm available if you need somebody to handle it.
13 Judge Hagy communicated back to me, you know, if I want to take
14 the case, fine. I said that's fine.

15 So it's probably within the last two weeks, Your
16 Honor. I probably have the voucher in the file here somewhere.
17 It hasn't been that long.

18 THE COURT: Since your appointment how many times
19 have you met with Mr. Hintz?

20 MR. O'BRIEN: Mr. Hintz -- well, Judge, here's the
21 voucher, I was appointed on or about, it looks like July the
22 5th, I think is the date, Your Honor. I think it's July the
23 5th is what the voucher says.

24 Mr. Hintz, when I was appointed, I called Mr. Hintz,
25 I had his phone number, called him. We talked on the phone for

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1 a while. He interviewed me actually more than I interviewed
2 him. But that's all right, I understand, this is a serious
3 matter for Mr. Hintz. I suggested we get together. And I
4 think the next day or so he came by the office with the young
5 lady that's in the courtroom with him. We talked. He told me
6 about the case, what his thoughts were, what he wanted to do in
7 the case. I made notes, you know. Do you want me to tell you
8 what I did in the case?

9 THE COURT: Go ahead.

10 MR. O'BRIEN: Okay. What happened was I accepted the
11 appointment, called Mr. Hintz. We talked on the phone for a
12 while, set up an appointment in the office. And Mr. Hintz came
13 by the office. We met, went over the case, talked about things
14 and things such as that.

15 And at the end of the conversation he suggested, he
16 asked me is there any way that I think that the Court would let
17 him go to the Florida because the young lady's mother was very
18 sick and he wanted to go to Florida. And I said, well, no harm
19 in asking. We immediately filed a petition, which the Court
20 granted, for him to go to Florida.

21 We then obtained all the case materials. Most of
22 it's available, you know, on the Internet. We downloaded all
23 of it. And I will say that my paralegal, I turned it over to
24 her and she's done a marvelous job organizing. This is the
25 file, this is on the revocation. It's all organized and tagged

SH

1 and everything, she did a good job on it.

2 I called the probation officer. I know Ms. Moore.

3 I've had, you know, matters with her before, Lisa Moore.

4 Talked to her about the case, what the spin on it was, how it
5 was initiated, trying to, you know, confirm some of things that
6 Mr. Hintz had told me.

7 She told me about the case and what she had received
8 and things like that, how the case, you know, how the case came
9 up. And I will also say that she said to me she'd never had
10 any trouble with Mr. Hintz, he'd been a good probationer and,
11 you know, she didn't have any cause to initiate any complaint
12 against him until this information came across her desk. So I
13 would just say that too.

14 So then I called Ms. Lisa [sic] Abrams. I've called
15 Ms. Abrams two or three times, the United States attorney in
16 the case, to discuss the case with her. And, you know, I
17 wanted to make sure this is something that they were serious
18 about going forward on, and they are.

19 I called Brian Mendelsohn. Brian was his former
20 lawyer. I know Brian, have had cases with Brian too. And made
21 sure, you know, I made sure that the discovery that Brian had,
22 that he had given it to Mr. Hintz because I wanted to make sure
23 he had what he was asking because he was consistently asking me
24 for the discovery and then come to find out that Mr. Mendelsohn
25 had given him the discovery. So he had the discovery.

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1 But I will say there's a little bit -- a little more
2 discovery I got from the United States attorney than what
3 Mr. Hintz got. He does not have the Bank of America records
4 and I told him that I would make copies and get those to him.

5 I spoke with Ms. Abrams this morning, wanted to make
6 sure that we had everything. She said she's sending me some
7 additional discovery. So, you know, whatever I have he either
8 has or he is going to have.

9 So, anyway, I assigned the case to the paralegal.
10 She organized the file, she did a good job. Mr. Stelmach, who
11 is in the courtroom, is my investigator, I assigned the case to
12 him too. He's got the file and he's looked at it. He's
13 actually interviewing witnesses at my behest.

14 He has interviewed who I consider probably the
15 linchpin witness in the case, Mr. Mike Hamilton. He seems to
16 be the one that the government is building their case about --
17 around. He's interviewed Mr. Hamilton, talked to him. We got
18 a full, complete report and I gave the report to Mr. Hintz. He
19 has a copy of Mr. -- my investigator's interview with
20 Mr. Hamilton.

21 I set up a second appointment for Mr. Hintz and I
22 said I need you to come in, we need to get ready, you know.
23 This is last week. He no showed. He didn't come in. He knew
24 there was a meeting, he just didn't come in. He said he had a
25 conflict. I sent an e-mail back, I said you need to cancel

SH

1 whatever conflict you have, you need to be here, this is
2 important. And he didn't make it, anyway, he didn't make it.

3 And, you know, as I said to him, I said, you know,
4 short of a legal meeting or a medical, you're not supposed to
5 be going anywhere. I said you need to be here in my office,
6 this is important.

7 He couldn't come and I gave him the benefit of the
8 doubt. So I thought, well, maybe he went to Florida even
9 though he said he wasn't going to Florida.

10 So I put together a list of questions, you know, that
11 I was going to go over with him, significant questions I
12 thought touched all the issues in the case and I sent them to
13 Mr. Hintz. He says he got them, he answered them and sent them
14 back to me. He may have. Frankly, Judge, I get so many
15 e-mails from him that it may be attached to one of the e-mails
16 I haven't had a chance to open yet. But I asked him to bring
17 copies of the answers today so I could have them.

18 So, anyway, that's, you know, kind of where we are.
19 I have a very, very, very comprehensive idea of what happened
20 in this case. I know what the government's case is about, I've
21 read all the discovery material, I know what they're saying.
22 And, frankly, it's fairly straightforward, it's not a whodunit,
23 you know.

24 With regard to communicating with Mr. Hintz, we've
25 had meetings, you know, I get -- I mean, I've got more e-mails

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1 than I can imagine; there's no shortage of communication here.
2 I have not responded to all his e-mails; I've responded to the
3 ones that I felt had some meat on the bone that we needed to
4 talk to. Frankly, most of the e-mails, Judge, are the same
5 e-mail, just sent six minutes later, you know, that kind of
6 thing.

7 THE COURT: Let me ask you this, Mr. O'Brien. Orally
8 and in e-mails have you addressed his concerns about an alleged
9 conflict of interest on your part?

10 MR. O'BRIEN: Okay. I have. I've told him my
11 relationship with Mr. Froelich. I said I've not socialized
12 with him. I don't know if I told him but, frankly, I don't see
13 where Froelich is involved in the case, I don't see him as a
14 witness.

15 He's complained to me, and he makes a basic
16 misunderstanding and I give him the benefit of the doubt, it
17 may be in good faith, he says -- there seems to be some
18 understanding that Mr. Froelich used a subpoena to obtain
19 records that may inculpate Mr. Hintz. And I said to him, I
20 said, well, nobody can use a subpoena, you know, it's got to be
21 some connection to a case. People can't just get subpoenas and
22 go get documents. And we agreed on that point and he seemed to
23 think, well, that's what Froelich did.

24 But two things, and perhaps I didn't communicate this
25 enough to him. Number one, unless I might have a fundamental

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1 misunderstanding about the law but Froelich is not an agent of
2 the government and if Froelich goes and uses a subpoena and
3 gets records and turns them over on a silver platter to the
4 United States attorney, that's not a Fourth Amendment issue, it
5 doesn't generate a Fourth Amendment issue unless I'm mistaken.

6 And, secondly, I mean, he may have a civil claim
7 against Mr. Froelich for invasion of privacy or something like
8 that, if in fact he did it, but what I'm thinking happened was
9 when Mr. Hintz filed a lawsuit, which he filed in this court,
10 you know, Froelich is defending those folks, I believe he may
11 have then obtained a subpoena in connection with the lawsuit
12 that Mr. Hintz initiated. Either way I don't -- I see it as a
13 nonissue, frankly, Judge, you know what I mean? So --

14 THE COURT: Did you assure him or attempt to assure
15 him that you would fairly, justly, and aggressively represent
16 his interests before this Court and other courts?

17 MR. O'BRIEN: I have made it clear to him that I will
18 do everything I can to help him. Now, I'm not going to be, you
19 know, jumping in a smokescreen and following red herrings all
20 over the place; I'm going to try to keep my eye on the ball
21 here. I know what the case involves.

22 Anyway, yes, I've told him that. I think we have
23 plenty of communication. I think we may have a disagreement,
24 frankly, Your Honor, as to what is relevant in the case, but
25 that's my call. I'm going to have to make -- I'm going to be

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1 the one that's going to have to question witnesses and present
2 the defense. We may have a disagreement about what's relevant.
3 I haven't completely said to Mr. Hintz that's all nonsense and
4 foolishness. If there's some substance to it, then we'll
5 present it. But we may have some disagreement about what's
6 relevant, you know what I mean?

7 With regard to --

8 THE COURT: Let me ask you this for fear I may
9 forget. Do you fear appearing before me or any other judge on
10 this court?

11 MR. O'BRIEN: Have I appeared?

12 THE COURT: I said do you fear, f-e-a-r, appearing
13 before me or any other judge on this court.

14 MR. O'BRIEN: Well, here's my thought on it, Judge.
15 I have great -- I am in awe of the majesty of this Court, I
16 have great respect for you personally, but I'm not afraid of
17 you. I'm not afraid of any of the judges in this court.

18 And let me address something else, too, with regard
19 to Judge Baverman. I did tell Mr. Hintz that I never had a
20 case with Judge Baverman. But what I meant and what I said to
21 him was that I knew Alan Baverman when he practiced law and
22 before he became a magistrate. And I said I don't remember
23 having a case with him, though, and I never have. But I've
24 been in front of Judge Baverman more times than I can count.
25 He's a magistrate here. I mean, anybody that does criminal

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1 federal cases appears in magistrate court, that's where
2 everything starts. So, you know, I'm not afraid of
3 Judge Baverman, Judge Hagy, Judge Cooper. Judge Thrash scares
4 me a little bit but I'm not afraid of him.

5 THE COURT: Let me ask you this. Have you ever been
6 threatened by me or any other judge on this court?

7 MR. O'BRIEN: Never, Your Honor. In fact -- no,
8 never. I will say this with regard to threats. Mr. Hintz has
9 made it clear to me that he received threats. I've received
10 e-mails that he's getting lifing -- threatening. I immediately
11 called the United States attorney and I said, you know, these
12 are serious, if a man's getting threats and he's involved in a
13 case. She said I take it very seriously too, Mr. O'Brien. She
14 said have your client come in, I will talk to him; or,
15 alternatively, you can reduce it to writing and we'll
16 investigate it.

17 I immediately sent an e-mail to Mr. Hintz. In fact,
18 the United States attorney is agreeable to meet with us after
19 the hearing if we want to go and I told him that and he said
20 he's made other arrangements or something.

21 THE COURT: I asked those two questions because
22 Mr. Hintz himself has indicated that these attorneys who appear
23 before me and other judges are afraid of us.

24 MR. O'BRIEN: They're not. I know them all, they're
25 not afraid of you. I tried a death penalty case with Derek

SH

1 Jones, he's not afraid of anybody. Sandra Michaels, she's not
2 afraid of anybody. Mendelsohn, he'll do what he's got to do.
3 I mean, these are all good lawyers. You know, they may have,
4 again, disagreements as to what's relevant in the case but none
5 of those people that I know of are afraid of anybody. I mean,
6 we all certainly are respectful of the Court, as we're required
7 to be. But, you know, I don't think there's anybody afraid to
8 the point where they won't advance a legitimate defense in the
9 case. That's my position, Judge.

10 And I am more `than well prepared. You know, I don't
11 have to like a guy to defend him and I don't care if he likes
12 me but I'm going to do what I can to soften the landing for
13 Mr. Hintz and, you know, advance every legitimate defense that
14 he has.

15 THE COURT: Thank you, you've answered my questions.
16 Thank you.

17 Mr. Hintz, you have the last say. Let me hear from
18 you, you might want to reply to some of what he said.

19 THE DEFENDANT: Yes, Judge Cooper. I'd like to bring
20 to your attention the filing that was handed to you earlier,
21 page 2, and it says here: "The hearing will allow the
22 presentation of only one side of the story from an extremely
23 conflicted attorney that is expected to provide false but
24 unsworn statements into the record of the hearing to protect
25 the interest of Mr. O'Brien, Judge Cooper, and very good

SH

1 friends and associates of these two individuals. Defendant
2 would have been able to refute these false statements of
3 Mr. O'Brien had he been -- that he is expected to make with
4 available evidence and testimony but Judge Cooper has very
5 specifically foreclosed Defendant's constitutional right to
6 offer proof in support of Defendant's presented claims."

7 With that said, what I was going to let the Court and
8 the record reflect is he stated that he went out of his way to
9 try to let me go to Florida. What he fails to tell you is
10 after this Court provided the order, he sends an e-mail saying
11 that we need to meet right away.

12 I call him; he doesn't return the phone call. I sent
13 e-mails; he doesn't return the e-mails. Obviously, I'm
14 concerned about the defense, I'm concerned about the conflicts
15 of interest in the case. He refuses to return any phone calls,
16 refuses to return any e-mails, and, to be safe, I didn't go
17 down. This young lady's mother was very sick in Florida. I
18 didn't go because I was afraid to leave. I wanted clarity. I
19 sent e-mails; he received them. I talked to his assistant.
20 Never a single return phone call, never a single return e-mail.

21 Additionally, he lies about Mr. Froelich not being a
22 witness. The record will reflect that Mr. Jerry Froelich, or
23 Jerome Froelich, has already signed a sworn statement and put
24 it into the record before this United States District Court.
25 So he is a witness, a sworn witness, albeit a fraudulent

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1 statement before this Court. And those things can be proven
2 had I been able to present evidence today.

3 THE COURT: I want to make sure. Have you brought
4 any legal action against Mr. Froelich?

5 THE DEFENDANT: No -- I correct that, Your Honor. I
6 did but we never went to a proceeding. It was dropped before
7 it ever was and it occurred after Mr. Froelich had gotten the
8 subpoena. Mr. Froelich has never been a party to any case
9 prior, he's never been a record attorney or a party to any
10 lawsuit that I have been involved with prior to him getting a
11 subpoena.

12 THE COURT: Have you ever had an encounter with
13 Mr. Froelich?

14 THE DEFENDANT: Judge Cooper, I did. Actually, you
15 may or may not have seen the CBS Atlanta video. He was in
16 court representing Robbie Willison, which has been in the news
17 for being associated with a \$53 million Ponzi, been associated
18 with *Penthouse* magazine, iBill, the Internet porn company. His
19 associate, Michael Garone, has been recently arrested and
20 convicted for money laundering for some of the largest online
21 gambling companies in the world. And these are my accusers.

22 Jerry Froelich is a retained attorney and a close
23 personal friend of these people. CBS Atlanta showed it and we
24 had -- actually, when I brought criminal charges against some
25 of these people Mr. Froelich made threats to me that were

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1 witnessed by other people. And Mr. Froelich and another
2 attorney, as witnessed by other people, made threats that I
3 needed to lay off the civil RICO claims that I had against the
4 other people or they would cause unwarranted and unjust
5 problems with my revocation.

6 THE COURT: Do you recall specifically what threats
7 Mr. Froelich --

8 THE DEFENDANT: Certainly. What was witnessed and
9 testified to by other people that overheard Mr. Froelich before
10 I was around was in Fulton County. What he had stated was
11 something along the lines, and I don't have the affidavit in
12 front of me, but it was along the lines of he's already talked
13 to Judge Cooper, everything's set, all that's set is for
14 Mr. Hintz to get a sentence and go to jail. He made those very
15 clear to his client and made it clear to other people.

16 Mr. Froelich probably wasn't aware that there was
17 people in plainclothes and that there was other people that he
18 wasn't aware of who they were that were listening. This
19 happened in a public place in the Fulton County court.

20 When somebody came out and told me about some of the
21 conversations, I came in, I had a talk with Mr. Froelich and
22 Mr. Froelich repeated the things also, stating I've already
23 been found guilty in these revocation proceedings, he's already
24 talked to Judge Cooper. And these are his words, and again
25 there's sworn people that have seen these things, and he said

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1 that he's talked to you, Judge Clarence Cooper, about this
2 case, it's been predetermined, and the only thing that's left
3 to do is to send me to jail.

4 THE COURT: Thank you.

5 THE DEFENDANT: And, Judge Cooper, I wasn't finished
6 but --

7 THE COURT: Excuse me.

8 THE DEFENDANT: -- are you asking me to sit down?

9 THE COURT: Wait, what is it?

10 MR. O'BRIEN: I just wanted to say I think it's
11 important, you know, that we communicate. And Mr. Hintz said
12 not one e-mail from me. I have a series of e-mails that I did,
13 just a sample of e-mails I sent to Mr. Hintz. And just to
14 round out the record, perhaps we can seal these up, because I
15 don't think the substance of it is really important, but just
16 to demonstrate that I have responded to many of the e-mails.
17 If you would like to make them part of the --

18 THE DEFENDANT: Judge Cooper, I have an --

19 MR. O'BRIEN: Excuse me, Mr. Hintz, excuse me, when
20 one person is talking let him talk, please.

21 THE DEFENDANT: I thought you were finished.

22 MR. O'BRIEN: Judge, I don't want the substance of
23 the e-mails, because some of his communications are on here
24 too, if we can perhaps just make them part of the record and
25 seal them, to demonstrate that, yes, I have been responding to

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1 Mr. Hintz's e-mails.

2 THE COURT: That will be all right.

3 MR. O'BRIEN: Okay.

4 THE COURT: Go ahead, let's finish up.

5 THE DEFENDANT: Judge Cooper, I believe that as the
6 filing this morning, you know, brought to the Court's
7 attention, Mr. O'Brien has a very vested interest to stay in
8 this case to represent other issues. He's well aware that the
9 accusers that I have in this revocation proceeding have been
10 witnessed as talking and saying that they've met with you and
11 talked with you and have already predetermined these cases.

12 He's aware that during the preliminary hearings --
13 which he didn't even know there was preliminary hearings in
14 these revocation proceedings, didn't know there was probable
15 cause, but after I explained what the revocation proceedings,
16 you know, are, he informed me that he relies a great deal on
17 the courts for his income. From what I understand, Your Honor,
18 is he has to be in good graces with judges so that they assign
19 cases to him. Those cases are his livelihood.

20 Additionally, when he presents the bills to the
21 Court, the Court has the discretion to either approve or write
22 down some of those bills. So he's essentially in a position
23 where if he brings to the Court's attention things that are
24 against the very same people that affect his paycheck, that's a
25 little bit different than representing somebody on the street

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1 that's a drug dealer and another drug dealer has a conflict in
2 it; that's not a judge sitting before this court that affects
3 his financial livelihood.

4 Now, additionally he stated that Mr. Froelich was
5 nothing but a professional friend. He contradicted himself
6 even on this record and said that he is a social friend. He
7 also stated that he hasn't, you know, met him, I believe, and
8 we could always replay the record, that he hasn't met him in a
9 social setting or for a meal. Again, had I been able to bring
10 in sworn testimony or even put him on the witness stand then
11 maybe we would have a resolution to this.

12 The things that he's talking about, the e-mails, he
13 fails to mention that the only replies that he has are
14 self-serving. He has never answered very pertinent questions,
15 including the questions before the Court. How did Mr. Froelich
16 get a subpoena when he was neither a party or a record attorney
17 to any case involving me?

18 Additionally, he and another attorney threatened my
19 attorney, and that was witnessed. These are officers of the
20 Court that provided sworn affidavits into the record of this
21 case that stated that I was threatened to back off, be quiet,
22 leave this stuff alone, or they would cause unwarranted and
23 knowingly unwarranted problems with my revocation proceedings.
24 There's affidavits that state from witnesses that show that
25 they witnessed Mr. Robert Willison make statements that if I

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1 didn't shut the F up about what was going on, all it takes is a
2 couple of people to say the same line and my butt goes back to
3 jail.

4 It's very interesting that they brought it here in
5 this court as opposed to calling the local police or the FBI
6 because had they done that, they wouldn't have had you involved
7 with this, they wouldn't have had the opportunity to avoid a
8 jury trial or my other constitutional rights. They very
9 specifically, and as is stated by some of their own friends,
10 which I would have liked to bring in to have testify today as
11 well, they knew what they were doing. They knew I was
12 innocent, they even signed affidavits, sworn statements. Other
13 people have witnessed it. They all said I did nothing wrong.

14 They've twisted around and they've presented false
15 statements and they know that because they're involved with all
16 these organized crimes -- I mean, obviously online gambling is
17 huge, that's Michael Garone, he was convicted in Baltimore.
18 Robbie Willison, involved in numerous, numerous, numerous
19 questionable activities and most recently with a \$53 million
20 Ponzi in California and with an alleged billion dollar-plus
21 financial fraud scam on the New York Stock Exchange that has
22 since been shut down.

23 THE COURT: Thank you.

24 THE DEFENDANT: And these are the people that he's
25 siding with.

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1 MR. O'BRIEN: Judge --

2 THE COURT: Go ahead, Mr. O'Brien.

3 MR. O'BRIEN: Just one other thing. I don't always
4 start out to be a fool, sometimes it happens just a little bit
5 at a time. But when I talked with Mr. Hintz, that first
6 conversation we talked about the preliminary hearing. I
7 understand the law to be that you don't get a preliminary
8 hearing unless you're in custody on a probation revocation and
9 when he called me he wasn't in custody. And it may have been
10 that I thought you don't get a preliminary hearing if you're
11 not in custody on a probation revocation, maybe I'm mistaken
12 but I think that is the law.

13 And the other thing is, you know, I have no animus
14 whatsoever towards Mr. Hintz. I mean, more than ever now I
15 believe he needs to have a lawyer to help him in these
16 proceedings. You know, you fire me you're going to end up back
17 in the same way with somebody else. And I am prepared to work
18 with Mr. Hintz. I've worked with difficult, troubled people
19 for 35 years and I have no reservations about my ability to
20 defend him.

21 THE COURT: We're going to take a 15-minute break.
22 Thank you.

23 (Recess, 12:28 p.m. to 1:15 p.m.)

24 THE COURT: Let the record reflect the following.

25 The Court having heard from Defendant Scott Hintz and

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1 attorney Dennis O'Brien with respect to Defendant's Motion to
2 Support Previous Requests to Proceed *Pro Se* and the Motion to
3 Remove Conflicted Counsel Dennis O'Brien, the Court hereby
4 denies both motions.

5 The Court finds that the Court's previously stated
6 concerns with respect to allowing Defendant to proceed *pro se*
7 remain and there's not good cause to remove Attorney O'Brien
8 from representing Defendant. Attorney O'Brien has no actual
9 conflict of interest and Mr. O'Brien is a capable attorney who
10 will zealously defend Mr. Hintz in these revocation
11 proceedings.

12 The Court further finds that there has not been a
13 total breakdown in communication or an irreconcilable conflict.
14 Attorney O'Brien has represented to this Court that he will
15 work diligently with Mr. Hintz to prepare a defense to the
16 petition to revoke Mr. Hintz's supervised release.

17 And, Mr. Hintz, you need to cooperate with Attorney
18 O'Brien in the preparation of that defense and rely on his
19 legal expertise, particularly with respect to determining the
20 issues that are relevant in this proceeding.

21 All filings related to these revocation proceedings
22 must be made through Attorney O'Brien. Any filings made by
23 Defendant related to these revocation proceedings will be
24 immediately stricken from the record.

25 Furthermore, insofar as Mr. Hintz's Section 2255

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1 petition is fully briefed and the Court is presently
2 considering the petition and Mr. Hintz's numerous requests to
3 hold an evidentiary hearing in connection with the petition,
4 the Court orders that Mr. Hintz -- strike that. The Court
5 orders Mr. Hintz not to file anything further related to the
6 Section 2255 petition.

7 If the Court determines that an evidentiary hearing
8 on the Section 2255 petition is required, the Court will
9 continue the revocation proceeding scheduled for Monday, July
10 25th, 2011, until the evidentiary hearing on the Section 2255
11 petition can be held and the petition resolved. Moreover, the
12 Court would appoint counsel to represent Mr. Hintz at any such
13 evidentiary hearing and with respect to any other proceedings
14 in the habeas corpus case.

15 Mr. O'Brien, if the Court decides that an evidentiary
16 hearing is required, would you also be willing to represent
17 Mr. Hintz in connection with the Section 2255 proceedings?

18 MR. O'BRIEN: Judge, I don't really know that much
19 about the 2255 background of the case. Can I look into it
20 before I respond?

21 THE COURT: Sure, you can. But if not, I will
22 appoint counsel to represent Mr. Hintz if I decide to hold an
23 evidentiary hearing that he's requested on a number of
24 occasions.

25 The Court expects to issue an order within the next

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1 day regarding whether an evidentiary hearing of a Section 2255
2 petition is necessary.

3 With that, we are in recess. Thank you and good day.

4 (Proceedings concluded at 1:20 p.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT:

NORTHERN DISTRICT OF GEORGIA:

I hereby certify that the foregoing pages, 1 through 47, are a true and correct copy of the proceedings in the case aforesaid.

This the 19th day of August, 2011.

Amanda Lohnaas

Amanda Lohnaas, CCR-B-580, RMR, CRR
Official Court Reporter
United States District Court

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