

APPEARANCES:

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2
3 MR. BRIAN TOWNE,
LaSalle County State's Attorney,
4 -and-
MR. GREG STICKA,
5 Assistant LaSalle County State's Attorney,

6 on behalf of the People;

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8 MS. JULIE AJSTER,
9 Attorney at Law,

10 on behalf of the Defendant.
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1 (Whereupon the following proceedings
2 were held in open court.)

3 THE COURT: Let the record show this is People of
4 the State of Illinois versus Danny French. It's
5 2014-CF-528.

6 This matter is before the Court this
7 afternoon for a hearing on the State's Motion to
8 Disqualify Defense Counsel and Defense Counsel's Motion
9 to Appoint a Special Prosecutor.

10 Could Counsel please identify themselves and
11 their clients for the record?

12 MR. TOWNE: Brian Towne and Greg Sticka on behalf
13 of the State, Your Honor.

14 MS. AJSTER: Julie Ajster on behalf of the
15 Defendant, Danny French.

16 THE COURT: Is the State ready to proceed?

17 MR. TOWNE: Your Honor, before we proceed on those
18 motions, as an officer of the Court, I believe that I
19 have an obligation to bring certain facts to your
20 attention.

21 THE COURT: Okay.

22 MR. TOWNE: I do not wish nor do I intend to
23 relitigate all of the matters that were discussed at
24 last week's hearing involving the motion to increase

1 bail. However, again, as an officer of the Court, I
2 believe that it's pertinent to this Court's earlier
3 decision in this matter that the Court be made aware of
4 a certain fact.

5 That fact is that the State has come -- come
6 into knowledge that an individual made contact with the
7 Peru Police Department indicating that they had
8 observed the defendant, Danny French, at Jumer's Casino
9 over this past weekend. Based on that information, the
10 Peru Police Department and the LaSalle County
11 Sheriff -- LaSalle County State's Attorney's office
12 conducted an investigation and subpoenaed from Jumer's
13 Casino certain surveillance footage which shows
14 Mr. French and Ms. Ajster at Jumer's.

15 Pertinent to this discussion is the fact that
16 Mr. French neither was in a wheelchair, nor did he
17 have Ace bandages around his ankles or his wrists;
18 neither was he in the company of a nurse; and that he
19 was walking freely throughout the casino.

20 I bring this before the Court not to besmirch
21 the character of the defendant but only so that the
22 Court may consider that as part of the fact that the
23 Court did consider the defendant's medical condition,
24 or apparent medical condition, last week and the fact

1 that we've had this mockery of the court system with
2 Mr. French being wheeled in and wheeled out and breaks
3 because of his hands turning purple, which I believe
4 were all intended to make a mockery of this Court and
5 the Court system. I believe that based on the
6 surveillance footage, which you now have pursuant to
7 the subpoena, that was delivered to you this morning
8 and that we are prepared to show in open court, that
9 that would and should be considered by this Court for
10 purposes of once again increasing that bail, for
11 purposes of holding Ms. Ajster in contempt of court for
12 making deliberately false information and submissions
13 to this Court about the medical condition of the
14 defendant; and I will indicate to the Court that as an
15 officer of the Court with Himmel obligations, that I
16 will be turning Ms. Ajster over to the ARDC for these
17 misrepresentations, as well.

18 And we're ready to show the video. It's
19 right over there. So the Court can see how well
20 Mr. French is mobile and has no medical illnesses
21 whatsoever.

22 THE COURT: Ms. Ajster, any response?

23 MS. AJSTER: Your Honor, I don't think that this
24 is relevant to these hearings. There's no motion to

1 reconsider bond.

2 Additionally, as far as -- we're going to
3 have medical testimony on my client's need for a
4 wheelchair. Just briefly, my client did go to a hotel
5 because he's concerned with the LaSalle County
6 Sheriff's Department and the LaSalle County State's
7 Attorney's office, that he does not feel safe in his
8 own home. So before today's proceedings he did go to
9 Jumer's for several days just so he could rest.

10 At that time he did have a wheelchair.
11 Whether the surveillance shows it or not, there was a
12 wheelchair present. Whether he used it or not, I don't
13 know. His assistant --

14 MR. TOWNE: That's a lie, too, Your Honor.

15 THE COURT: Just a minute. Just let her finish,
16 Counsel.

17 Go ahead.

18 MS. AJSTER: My client, as of July of last year,
19 was prescribed a wheelchair, a walker, a cane, and a
20 motorized scooter. Because of the instability in his
21 back, he's to use them from time to time. So it
22 depends on what the circumstance is.

23 He has radiculopathy in his right leg, which
24 causes him to fall. The doctor prescribed these. So

1 sometimes he uses a cane; sometimes he uses a
2 wheelchair; sometimes he has uses a scooter; sometimes
3 he can ambulate on his own. It just depends on, one,
4 if he feels confident enough that he can walk on his
5 own.

6 Additionally, I've raised this concern
7 before, about medical testimony and HIPAA violations,
8 but my client does take medications. And depending on
9 what medication he is taking, it affects his ability to
10 ambulate on his own.

11 So at certain times, if he's taking
12 medication, he needs the assistance of a wheelchair.
13 Sometimes if he doesn't, he can use a cane. It also
14 depends on how far he is walking.

15 So I don't think it's necessary to say that
16 he was at a casino and he walked independently on his
17 own and then sometimes he uses a wheelchair. But at
18 Jumer's he did have a wheelchair. Whether he used it
19 or not was up to his election. Maybe he felt that he
20 should walk and get a little bit of exercise or
21 whatever. It depends on what medications he's taking
22 and how he feels he's going to be able to ambulate.

23 THE COURT: Any additional response?

24 MR. TOWNE: Simply this, Your Honor. It would

1 seem like the times and circumstances surrounding the
2 need for the wheelchair happen to be the same times and
3 circumstances he's in court.

4 And when Ms. Ajster suggests that she wasn't
5 aware of whether he was in a wheelchair or not at
6 Jumer's, she's on the footage walking with him.

7 So, once again, we have another
8 misrepresentation by counsel, and the video will show
9 all of that. I believe it is completely relevant to
10 this issue. And the Court can sua sponte raise or
11 lower bail any time it wants. There's no need to have
12 motions before the Court to do that. Once the Court
13 sees what was misrepresented to the Court last week,
14 the Court may have a different opinion about a lot of
15 things, including the other motions that we're going to
16 hear today.

17 THE COURT: Well, the matter's before the Court
18 this afternoon on a Motion to Disqualify Defense
19 Counsel and to Appoint a Special Prosecutor, and the
20 Court did raise the bond last week. The Court didn't
21 raise it just because the Court believed that -- that
22 Mr. French was confined to a wheelchair.

23 While the Court has the authority, I suppose,
24 to hear it sua sponte, it would be more appropriate to

1 be done by motion, especially given the fact that this
2 would be the third time we've litigated a bond
3 reduction.

4 There was an investigator who came into my
5 courtroom this morning with an envelope. I was in the
6 middle of a contested hearing, which was followed by
7 another hearing, which was followed by an emergency
8 order of protection. I have not seen it. The envelope
9 is still sealed. I have no idea what's in the
10 envelope.

11 At this point, I am not going to entertain an
12 oral motion to modify the bond conditions because we're
13 here today on the motions with regard to the
14 appointment of a special prosecutor and to disqualify
15 counsel. If the State wants to file a motion that they
16 feel is appropriate, they can do it by written motion,
17 and we can go from there.

18 But right now Mr. French is on bond.
19 He's posted \$300,000 of bond, in addition to the fifty
20 that was posted initially on the initial charges and
21 then the subsequent charges. And so at this point the
22 Court is not going to entertain an oral motion to
23 increase the bond reduction. I'm going to hear the
24 motions to appoint special prosecutor and to disqualify

1 defense counsel.

2 So, having said that, are you ready to
3 proceed, Counsel?

4 MR. TOWNE: Your Honor, I would also ask then, in
5 light of that -- I believe that the tapes are relevant
6 with regard to her motion to disqualify, as well, based
7 on the fact that she continually misrepresents things
8 to the Court in this matter. I would also ask, Your
9 Honor, that with regard to the Court's, it would seem,
10 decision to hear these motions together, that,
11 respectfully, I believe that's the inappropriate
12 procedure to -- to -- to follow through with. I
13 believe that the motion to disqualify defense counsel
14 is -- is tantamount -- or it has to be the very first
15 motion that is heard.

16 Basically, what we're talking about here is
17 the defendant's absolute constitutional right to
18 counsel. And if, in fact, there is anything that
19 impinges upon that guaranteed and inherent right that
20 the defendant has, anything that this counsel would say
21 or do regarding any motion of any kind subsequent -- or
22 prior to her disqualification determination is -- is
23 going to have to be relitigated. And there's abundant
24 case law to suggest that all that stuff is relitigated.

1 It's in the Supreme Court Rules. It's in the -- in the
2 Illinois Criminal Code of Procedure, indicating that --
3 and it's the same thing as if a judge were suggested to
4 be disqualified. We'd have to relitigate everything
5 else after that.

6 THE COURT: So my understanding of your argument
7 is that if I allow both sides to present why each side
8 should be disqualified -- what "everything" has to be
9 relitigated?

10 I mean, are you assuming I'm going to deny
11 it?

12 MR. TOWNE: I'm assuming that if you grant the
13 motion to disqualify counsel --

14 THE COURT: Okay.

15 MR. TOWNE: -- we will have to rehear the motion
16 for special prosecutor with a new counsel.

17 THE COURT: Okay. And I don't know that today is
18 going to take -- that's going to add that much time to
19 today. I suppose it's possible under your argument.
20 But where in -- which -- which Supreme Court Rule are
21 you referring to with regard to the fact that I must
22 do --

23 MR. TOWNE: Well --

24 THE COURT: -- your motion --

1 MR. TOWNE: -- there's nothing that says it must
2 be done.

3 THE COURT: So just point -- tell me what you're
4 referring to, as far as --

5 MR. TOWNE: Well, if you look at 725 ILCS 5/114-5,
6 that's for substitution of judge.

7 THE COURT: Right.

8 MR. TOWNE: The concept is the same. The same --
9 and that is that if there is a -- any kind of conflict
10 situation, the -- the law is clear that anything that
11 happened before that was resolved has to be
12 relitigated.

13 THE COURT: Is there any case that deals with a
14 situation where a defendant is asking for a new
15 prosecutor and a prosecutor's asking for a different
16 defense counsel?

17 MR. TOWNE: Not that we found with that specific
18 set of facts.

19 THE COURT: I didn't, either.

20 Did you find anything, Ms. Ajster?

21 MS. AJSTER: No, Your Honor.

22 THE COURT: The reason the Court elected to do
23 them both at the same time, frankly, is because it
24 seemed fair. Both sides want each other removed. If I

1 do one before the other, depending on the ruling, that
2 could affect whether the second one happens.

3 The evidence -- the arguments for both of
4 them are essentially going to be pretty much the same.
5 Both sides are going to make statements as to why they
6 should stay in and why the other side should get out.

7 I recognize that -- you know, there's a lot
8 of fundamental constitutional issues at play here. We
9 have the fundamental right of Mr. French to have
10 counsel of his choice, with certain exceptions.

11 Mr. Towne holds a constitutional office that
12 is discussed in the constitution. So the State,
13 obviously, has an interest in having an elected
14 official remain in the case.

15 At this point, I'm being asked to choose
16 between two fundamental-type constitutional rights.
17 And I elected, in the exercise of my discretion, since
18 I couldn't find any clear guidance from any cases, that
19 I would do both motions at the same time. And if
20 Mr. Towne is correct and if the Court were to
21 disqualify defense counsel and not disqualify the
22 State, then the worst thing that would happen is we
23 would relitigate the -- a motion to disqualify the
24 State if a subsequent attorney deemed it appropriate.

1 And so with all due respect, I think that the
2 fairer thing is to let both sides make their arguments
3 and then let the Court, based on the research its done
4 and -- and the evidence -- or the arguments it hears,
5 make its decision.

6 I just don't think it's going to delay it
7 that much longer to do both today, as opposed to do one
8 today and then see what happens later.

9 So --

10 MR. TOWNE: One last question then, Your Honor?

11 THE COURT: Yes.

12 MR. TOWNE: If we -- if we're going with
13 hypotheticals, if hypothetically you were to rule that
14 the defense is disqualified in this case and that the
15 State is to be removed for a special prosecutor, then
16 how are -- how am I to relitigate the motion for a
17 special prosecutor? Because you will have, in essence,
18 then removed me from the case already.

19 THE COURT: Well, somebody would be appointed
20 hypothetically. And then wouldn't that person --

21 MR. TOWNE: And then that person's going to file a
22 motion to get me back in the case?

23 THE COURT: Or to reconsider. I don't know.

24 But, as you said, this is -- I'm trying to do

1 what I think's fair to both sides.

2 MR. TOWNE: I understand.

3 THE COURT: I think giving both sides a chance a
4 tell me why they think the other side shouldn't be
5 involved is the fairer way to go. I'm not saying it's
6 perfect; and I'm not telling you I have all the
7 answers, but I'm telling you that I think under the
8 circumstances, it strikes me as the most fair balance.
9 I'm not picking one side over the other. I'm not
10 giving one person the leg-up on the other. I'm going
11 to let both sides speak their piece, and then I'm going
12 to make a ruling.

13 And I understand that there may be some
14 issues that come up, but I've come to expect that.

15 So with all -- with all due respect to both
16 arguments, I -- I think we should proceed on the
17 cross-motions.

18 Since the State filed their initial motion to
19 disqualify first, I'm going to have the State start. I
20 will say for the record that the Court did initially
21 deny the State's Motion to Disqualify Defense Counsel,
22 but that decision was made without prejudice.

23 The State has subsequently filed a
24 supplemental motion to disqualify. But since they did

1 file theirs first and then Ms. Ajster filed her Motion
2 to Appoint a Special Prosecutor second, I thought I'd
3 have the State go first, although I'm going to hear
4 both of them at the same time and I'm going to decide
5 them both. So who goes first is more a matter of form
6 than anything.

7 Yes, Ms. Ajster?

8 MR. AJSTER: I just wanted to point out, Your
9 Honor, just to clarify for the record, my Motion For a
10 Special Prosecutor was filed first. Initially, as the
11 first charges, I, II, and III, there was a motion to
12 disqualify.

13 THE COURT: They filed their initial motion to
14 disqualify you before my hearing on March 6th.

15 MS. AJSTER: Yes.

16 THE COURT: You then filed -- you then filed your
17 Motion to Appoint a Special Prosecutor on April 9th.
18 So just so the record's clear, the State filed its
19 initial motion to disqualify you on January 7, 2015.
20 You then filed your motion to disqualify the State, to
21 get a special prosecutor, on April 9th. And then the
22 State filed their successive motion to disqualify you
23 on April 21st.

24 MS. AJSTER: And that's what I was pointing out,

1 is that we already had a hearing on the first motion to
2 disqualify, and -- which was denied. But they were
3 given leave to -- so it was actually a successive
4 motion to disqualify.

5 I just wanted to make --

6 THE COURT: I don't have a preference who goes
7 first.

8 MS. AJSTER: Okay.

9 THE COURT: I really don't care one way or the
10 other. If you'd prefer to go first, that's fine with
11 me. I just thought that since the State had filed
12 their initial one, but -- but, Ms. Ajster --

13 MS. AJSTER: If they want to go first, I have no
14 problem with either side going first, Your Honor.

15 THE COURT: Ms. Ajster, you can go ahead. I'll
16 let you go first.

17 MS. AJSTER: Okay.

18 Your Honor, with regard to my motion for a
19 special prosecutor, it has been alleged it's a
20 constitutional right for Mr. Towne as an elected
21 official to prosecute the case. Additionally, my
22 client has a constitutional right to have an unbiased
23 prosecutor in this particular case. People v. Max says
24 the appointment of a special prosecutor is to remove

1 the appearance of impropriety and promote the
2 underlying policy of just and -- and fair and impartial
3 proceedings.

4 In this particular case is there not only an
5 appearance of impropriety, but this case reeks of
6 impropriety. It's not even an appearance of
7 impropriety.

8 What we have here in my motion for a special
9 prosecutor is actually twofold. One, the first
10 argument is that there is a conflict of interest for
11 Mr. Towne and his office to prosecute my client on
12 behalf of the complainant, Jonathan Brandt. That's
13 given the fact that Mr. Towne and Mr. Brandt are
14 friends; that Mr. Brandt, according to what I found,
15 which is attached to my motion, is the single largest
16 donor of campaign funds to Mr. Towne's election
17 campaign. Mr. Brandt, either individually or through
18 Peru Federal Savings Bank, which he is the
19 Vice-President of, donated nearly \$6,000 to Mr. Towne's
20 election campaign. In total, Mr. Towne only raised
21 about 103,000, so Mr. Brandt has donated almost \$6,000,
22 or six percent, to Mr. Towne's election campaign.

23 Now, there was case law cited by, I believe
24 it was, the -- the State in the case of Baxter versus

1 Peterlin, which is actually a Third District case. And
2 in that particular case, it was raised that there was a
3 conflict of interest based upon a political alliance.

4 Now, in that particular case, the Third
5 District Appellate Court said, "Political alliance may
6 create sufficient conflict of interest to require
7 appointment of a special prosecutor." But in that
8 particular case, the Court didn't expand any further
9 because there was no specific facts. In that case the
10 argument was that the complainant and the State's
11 Attorney were of the same political party.

12 In this particular case, we have actual facts
13 in this particular situation where Mr. Brandt has
14 donated a significant amount of money to Mr. Towne's
15 election campaign.

16 Additionally, my argument is that -- which
17 was attached as Exhibit J to my motion. Additionally,
18 there was Exhibit K, which was a photograph of
19 Mr. Brandt, which I argue would be actively campaigning
20 for Mr. Towne since he's holding some sort of beverage
21 with a "Brian Towne for State's Attorney" can cooler on
22 it, and then also in the picture other people are
23 holding can coolers that say, "Brian Towne for State's
24 Attorney."

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So --

THE COURT: Counsel, let me ask you a question. People versus Max, M-a-x -- and the cite on that is 2012 Ill.App.3d 110385 -- indicates that in order for a special prosecutor, the State's Attorney has to be interested in a cause. And it states that a State's Attorney is interested if he is an actual party in the litigation or he is interested in the cause or proceeding as a private individual.

Given the Third District's language in Max, are you -- you're not alleging that Mr. Towne is an actual party to the litigation, correct?

MS. AJSTER: He is not an actual party to the litigation between the People of the State of Illinois versus Danny French. He is a party to Danny French versus Brian Towne and LaSalle County.

THE COURT: Okay. And then my second question is: So is your basis for disqualification that he's interested in the cause or the proceeding as a private individual?

MS. AJSTER: He -- it is not necessarily that he has an interest in the actual litigation. It's that by accepting a significant amount of campaign funds from the complainant, that that puts a conflict of interest.

1 THE COURT: Do you have any case law that
2 discusses the effect of campaign contributions on an
3 individual's impartiality, like a State's Attorney?

4 MS. AJSTER: There is not. The only case where
5 they said about the political affiliation is the case
6 of Baxter, which is a Third District case. And in that
7 particular case they didn't expand, but they said that
8 political alliance may create sufficient conflict of
9 interest to require appointment of a special
10 prosecutor. But in that particular case, again, the
11 petitioner did not specifically plead facts as with
12 regard to that alliance. He just said they're the same
13 political party.

14 So in this particular case, you know, there
15 are sufficient facts that not only is Mr. Brandt a
16 supporter -- a significant financial supporter of
17 Mr. Towne for his elected position, but then he's also
18 an active campaign -- campaigner for Mr. Towne, given
19 the fact that he attends fundraisers; he carries around
20 can coolers, you know, supporting Brian Towne.

21 In addition, I think that that's a
22 significant conflict of interest. If you have an
23 elected official who now is approached by a complainant
24 and instead of saying, you know, you donate a

1 considerable amount of money to my campaign,
2 like you're the biggest campaign contributor to my
3 campaign, and now you're asking me to bring criminal
4 charges on your behalf, I think that gives an
5 appearance of impropriety and an appearance of a
6 potential conflict of interest.

7 THE COURT: But in a county like LaSalle County,
8 where it's -- we're not a huge county. I mean, what do
9 you think -- isn't there a likelihood that many people
10 are going to contribute to one individual or another's
11 campaign without influencing their decisions?

12 MS. AJSTER: There is a difference between, I
13 believe, contributing, as some firms -- if you look at
14 Mr. Towne's complete election campaign fund
15 contributions, there are donations from other firms of
16 \$250 here, \$250 there. Now, I did look this morning;
17 and as I said, there's significant contributions from
18 Peru Federal Savings Bank.

19 Now, according to the online records for
20 campaign contributions to Mr. Towne, there are only
21 three banks that donated anything to his campaign fund.
22 One was Financial Plus. And I think they donated \$100.
23 And then there was the First National Bank of Ottawa,
24 which donated 500. But, again, on the board of

1 directors is Mr. Cantlin and Mr. Reagan, who are also
2 attorneys.

3 So, other than that, in LaSalle County you
4 have, what, several hundred, if not a thousand, banks?
5 And the only bank that donates thousands and thousands
6 of dollars is the one on which Mr. Brandt sits as
7 vice-president?

8 So I understand that in a small community
9 there may be contributions. What I'm saying is that
10 this is not a situation where you have an attorney's
11 office -- or an attorney who donates 250 or \$500,
12 that's customary. You have an attorney who is donating
13 almost six percent of the campaign funds. And I think
14 when you go to that extreme and you donate far more
15 than anyone else, it does put you in a position where
16 you may be owed a favor back. Or at least goes to the
17 fact of why is Mr. Brandt donating so much money to
18 Mr. Towne. Is it because they have a relationship,
19 because they're friends? I'm assuming Mr. Brandt is
20 going to testify here today as to their relationship.
21 But --

22 THE COURT: Maybe he just thinks he does a really
23 good job. I mean, the point is we're speculating. We
24 don't know.

1 MS. AJSTER: Well, and that's -- we're speculating
2 because we don't know until he's on the stand and we
3 ask, why would you donate \$6,000 to someone? I mean,
4 what is your basis for that?

5 And then as far as Mr. Brandt's concerned, I
6 don't know who else he donates to. I mean, if it's
7 something that he donates \$6,000 to numerous state's
8 attorneys or if it's just that he donates \$6,000 to
9 Mr. Towne. What other campaigns does he donate to?

10 So I think in that particular instance, there
11 is a conflict of interest.

12 Additionally, with regard to the issue of a
13 special prosecutor with regard to a conflict of
14 interest, Mr. Towne had threatened to file an ARDC
15 complaint against me. Now, sometime ago, in early
16 April, I did -- at the time of my filing for a motion
17 for a special prosecutor, I did contact the ARDC as to
18 a specific rule as a prosecutor and conflict of
19 interest because the conflict of interest rule usually
20 pertains to a private attorney and a conflict with a
21 client. You have a state's attorney. They really
22 don't specifically have a client. They represent the
23 People and the State.

24 THE COURT: That was going to be my next question,

1 too. He doesn't represent Mr. Brandt; he represents
2 the People.

3 MS. AJSTER: The People.

4 And so I had a concern about that as to
5 whether 1.7 would pertain to a prosecutor.

6 When I contacted the ARDC for guidance on
7 that specific rule, I was instructed that in order for
8 it to be misconduct, it doesn't have to violate a
9 specific rule. And at their request I did send my
10 motion for a special prosecutor to the ARDC. And,
11 again, this was subsequent to my initial filing. But I
12 would enter in support of that Defendant's Exhibits L
13 and M, which are copies of letters that I received back
14 from the Attorney Registration and Disciplinary
15 Commission regarding my request for investigation of
16 Brian Towne as far as a potential conflict of interest.

17 MR. STICKA: Your Honor, if I could just ask one
18 question.

19 She has just tendered me a couple documents.
20 One of them appears to be all blacked out. Is the one
21 tendered to the Court all blacked out?

22 THE COURT: Yes, it's redacted.

23 Ms. Ajster, what is the point of your
24 tendering Exhibits L and M? Just to say that you made

1 a complaint?

2 MS. AJSTER: No. The point is, is that I had made
3 a complaint to the ARDC. They responded initially with
4 the April 16th letter, saying they've received my
5 communication and that they've initiated an inquiry.

6 Then subsequent to that, I provided them
7 additional documentation. And the basis of my
8 complaint was a conflict of interest, the fact that
9 Mr. Towne is prosecuting a case on behalf of his
10 number-one campaign contributor.

11 Now, the redacted letter of April 29th, I
12 blacked out information that was not with regard to
13 Mr. Towne. And it says, we've received your
14 correspondence, and that they -- they've asked
15 Mr. Towne to respond to the limited issue as to whether
16 or not there's a conflict of interest for him to
17 prosecute cases where the alleged victim is a campaign
18 contributor. However, we've agreed to hold off your
19 investigation on that limited issue until there's a
20 court ruling on the motion for a special prosecutor.

21 So I have made the argument that it is a
22 conflict of interest for Mr. Towne to prosecute my
23 client based upon the complaint of Jonathan Brandt and
24 his allegations of a phone harassment or a harassing

1 phone call.

2 And to substantiate my argument of a conflict
3 of interest, I'm now presenting the Court with
4 documentation that it's not only me that thinks there
5 may be a conflict of interest --

6 MR. STICKA: I'm going to object to that, Your
7 Honor. That's not what the letter says. She's pretty
8 rapidly speculating --

9 THE COURT: Let me stop everybody for a minute.

10 Okay. First of all, are you asking that
11 these correspondences be admitted into the record?

12 MS. AJSTER: Yes, Your Honor.

13 THE COURT: And is the State objecting to these
14 documents?

15 MR. STICKA: The State is. I think they're
16 irrelevant, and I don't really think they say anything.
17 I think she's, with all due respect, somewhat drawing
18 inferences regarding the state of mind of the ARDC,
19 which I think is inappropriate.

20 THE COURT: I don't -- I don't know that this
21 letter draws the inference that you are, Ms. Ajster,
22 that they're waiting until I make my decision to do
23 their investigation. I am not privy to how the ARDC
24 conducts their business, but I don't believe that even

1 having an investigation without more is an indication
2 of wrongful conduct.

3 So I don't know that these letters add
4 anything to what you've already said, which is, I
5 talked to the ARDC and I made a report.

6 MS. AJSTER: Well, it does go farther than that,
7 Your Honor, because when I make a complaint as an
8 officer of the court who has a Himmel obligation and I
9 send a request for a conflict of interest, if they
10 believe there's nothing there based upon what I've
11 presented to them --

12 MR. STICKA: I'm going to object to this, as well,
13 Your Honor, on the basis that she's apparently getting
14 into prior complaints she's made to the ARDC and trying
15 to draw parallels between prior complaints and an ARDC
16 response letter in this complaint and trying to draw
17 inferences, and I have think it's the same thing.

18 THE COURT: Let me focus the case this way. I am
19 not here today to determine whether or not Mr. Towne or
20 anyone in his office violated an ethical rule of the
21 Attorney Registration and Discipline Commission.
22 Whatever that agency does is going to happen after
23 today's ruling.

24 What I want to focus on is the statute, which

1 is 55 ILCS 5/3-9008, which deals with the appointment
2 of a special prosecutor and the case law interpreting
3 that. And all of the things of the ARDC to me are sort
4 of a side issue. My decision today has to be whether
5 the State's Attorney is interested in this case so that
6 he should no longer be allowed to prosecute the case,
7 not whether he violated ethics and not whether he did a
8 lot of other things.

9 Now, the mere fact that someone's made a
10 complaint is not evidence that someone's got a conflict
11 of interest or has an ethical violation. That's my
12 concern with these letters.

13 I'm going to -- I'm not going to consider
14 these letters. I'm going to deny their admission
15 because -- partly because they're hearsay and there's
16 no one here to talk about it, but partly because
17 they're not dispositive to the issue that this Court
18 has to decide. And I want to keep it above those
19 issues. I just want to focus on the merits of the
20 motion.

21 So, Counsel, I didn't mean to distract you
22 before. You can continue with your argument.

23 MS. AJSTER: No. And just to go back to Exhibits
24 L and M, I understand the Court's ruling, but my

1 argument, just to clarify, would be that they are
2 records kept in the ordinary course of business that
3 would be between the ARDC and attorneys.

4 THE COURT: Not redacted.

5 MS. AJSTER: No. And if --

6 THE COURT: But my point is they're not necessary
7 for me --

8 MS. AJSTER: And --

9 THE COURT: -- to make my decision today.

10 MS. AJSTER: And I am not saying to the Court that
11 the Court has to rule on as to whether or not Mr. Towne
12 has violated -- violated any specific rule or rule of
13 professional conduct. What I'm arguing is that it
14 appears that there's a conflict of interest or a
15 potential for a conflict of interest, and that based
16 upon that, I did file a request for the ARDC, and the
17 ARDC did ask Mr. Towne to respond. Because my argument
18 for a special prosecutor is twofold: One, that there's
19 a conflict of interest for Mr. Towne to prosecute a
20 case on behalf of Jonathan Brandt as campaign
21 contributor, and then, secondly, as -- as Your Honor
22 had mentioned, the statute, 55 ILCS 5/3-9008. And the
23 basis of that is when a State's Attorney is interested
24 in any cause or proceeding, civil or criminal, which

1 may make -- may be his duty to prosecute or defend, the
2 Court in which said cause or proceeding is pending may
3 appoint some competent attorney to prosecute or defend
4 such a case or proceeding.

5 In this particular case, my argument is that
6 Mr. Towne has been sued by my client. There is a
7 federal lawsuit pending in the -- in the Northern --
8 or -- Northern District of the Federal Court.
9 Mr. Towne is a named defendant in that civil rights
10 suit.

11 My client -- the basis of that federal civil
12 rights suit is false arrest and malicious prosecution
13 with regard to this particular case. That lawsuit is
14 the result of Mr. Towne not only bringing the charges
15 against my client but continuing to prosecute the case
16 in light of evidence or lack thereof.

17 THE COURT: Is it your position that your client's
18 decision to file a federal lawsuit against Mr. Towne
19 requires that he be removed as the prosecutor on the
20 case?

21 MS. AJSTER: Yes.

22 THE COURT: If that were taken as true, and if the
23 Court were to take that to its logical extreme,
24 wouldn't the Court's decision be inviting every

1 defendant who decided they were mad at the State's
2 Attorney to file a federal lawsuit so that they could
3 get a new State's Attorney?

4 MS. AJSTER: No. Because --

5 THE COURT: Why not?

6 MS. AJSTER: Because in order to file a federal
7 lawsuit, there has to be some evidence of false arrest,
8 malicious prosecution, or some civil rights violation.

9 THE COURT: There has to be allegations.

10 MS. AJSTER: Well, as far as a federal lawsuit
11 goes, and in this particular case, as an officer of the
12 court, I file a federal lawsuit, and I attest that the
13 facts contained therein are true and that I will -- and
14 that they're -- it's a meritorious claim. If I file a
15 federal lawsuit and it is determined that that case is
16 frivolous, then the defendants have a cause of action
17 against me as the attorney of record for attorney's
18 fees.

19 THE COURT: Has a decision been made whether the
20 federal lawsuit's frivolous yet?

21 MS. AJSTER: No.

22 THE COURT: Okay.

23 MS. AJSTER: So -- it could potentially if you had
24 a defendant -- every defendant then file a federal

1 lawsuit. But then it could be dismissed. But in this
2 particular case --

3 THE COURT: But then the Court would be having
4 special prosecutors all over the state. Even if the
5 case were subsequently found to be frivolous, it
6 wouldn't change the fact that constitutionally like,
7 you know, officeholders were now being taken out of
8 cases because defendants decided to file federal
9 lawsuits.

10 MS. AJSTER: I understand --

11 THE COURT: That's a concern.

12 MS. AJSTER: It is a concern. But as far as this
13 particular case and this particular motion, I don't
14 think the Court can concern itself of what other
15 defendants will do. I think the concern is, in this
16 particular case, involving this particular defendant
17 and this particular state's attorney, Mr. French and
18 I filed on his behalf a federal lawsuit. And attached
19 to that lawsuit, I attest that the facts are contained
20 therein. If it was a frivolous lawsuit, I am
21 subjecting myself to liability for attorney's fees in
22 federal court because federal court is not like state
23 court where each party pays their own attorney's fees.
24 The prevailing party is entitled to attorney's fees.

1 So if I file a frivolous lawsuit and it's dismissed,
2 then I'm on the hook for the attorney's fees.

3 So in this particular case, there's been no
4 determination that the case was frivolous. It's
5 actually -- I filed it. It's meritorious. It's based
6 upon actual facts. It's not something where it's just
7 we, you know, think it's a malicious prosecution. It's
8 based on the fact that Mr. Towne had police officers
9 testify at the Grand Jury, and based upon that
10 testimony, my client was indicted, and the testimony is
11 alleged to have been false. Now, that false testimony
12 is based upon a simple reading of the incident report.
13 You have a police officer testifying in August to the
14 Grand Jury that there's this tape out there and the
15 voice on the tape is Dan French, but nobody has ever
16 said that. And it wasn't until December, four months
17 later, that somebody -- Mr. Brandt then decides that he
18 recognizes in December that the voice that he heard in
19 July was Dan French's.

20 So, in this particular case, you have -- we
21 can't speculate as to the merit of the case. It's a
22 federally filed lawsuit. Mr. Towne is a defendant to
23 that lawsuit. He is now under the statute an
24 interested party in the criminal proceeding because

1 Mr. French's damages in the federal lawsuit are based
2 upon the criminal case pending here.

3 If it's a case where the -- Mr. French is
4 found not guilty or the charges are later dismissed,
5 then his damages increase. So Mr. Towne has an
6 interest in continuing the litigation, in the
7 prosecution of my client, in the absence of any
8 evidence. Or he's -- he's biased now because it's to
9 his benefit to continue to prosecute my client.

10 THE COURT: But wasn't that a condition precedent
11 that you yourself caused by filing the federal lawsuit?

12 MS. AJSTER: No.

13 THE COURT: In other words, if your argument is
14 that he now has to continue with the litigation in
15 state court because if he doesn't, it will affect the
16 federal suit, wasn't your filing of the federal suit --
17 assuming everything else you said is true, is the
18 catalyst for him now deciding to continue to go
19 forward, even if --

20 MS. AJSTER: No. Prior to my filing of the
21 federal lawsuit, I had sent a letter to the State's
22 Attorney's office explaining to them the issue with the
23 charge against my client and the fact that there is no
24 evidence. Because at that particular time, at the time

1 of my filing of my federal lawsuit, there was Counts I,
2 II, and III. And at that particular time, the only
3 evidence that the State, by their own admission, had
4 was a tape recording of some voicemail. And my
5 argument was this voicemail was not entered into
6 evidence until three days later. So you have a chain
7 of custody issue.

8 So I went through all the facts and evidence.
9 And I said to the State's Attorney's office, you filed
10 these counts against my client, I and II. And then
11 they tacked on, by their own admission, a Count III for
12 the sole purpose of disqualifying me as Mr. French's
13 attorney. When that didn't work, I gave them the
14 opportunity to re-evaluate, now that they had the
15 evidence. And my federal lawsuit was filed after I
16 received discovery from the State and saw that they
17 were lacking the evidence they needed to, one, first
18 charge my client, and then, two, to continue to
19 prosecute my client. I sent them a letter explaining
20 that and said, here's the situation. If you continue
21 to prosecute, I will have to file a federal lawsuit for
22 malicious prosecution and false arrest.

23 THE COURT: My only question about that is: Don't
24 most -- I mean, are you suggesting that if a criminal

1 defense attorney sent the State a letter that says, you
2 should dismiss the charges because you're wrong, and
3 they don't do it, that that somehow gives rise to a
4 federal lawsuit or then there's a potential conflict?
5 Because my concern is, is that while I accept -- I read
6 your letter because it was part of your motion. I've
7 read all the attachments. But basically isn't your
8 argument that because they didn't do what you asked
9 them to do, they were sued in federal court, and now,
10 because I've sued them in federal court, they can't be
11 a prosecutor anymore?

12 MS. AJSTER: No. My letter was, based upon lack
13 of evidence, you should dismiss the case. It's not me
14 saying, dismiss them or I'm going to sue them.

15 THE COURT: No --

16 MS. AJSTER: It's, you don't have --

17 THE COURT: -- I understand, but, obviously --

18 MS. AJSTER: -- any basis to continue prosecuting
19 my client.

20 THE COURT: But, obviously, the State felt they
21 had a basis because they filed charges. And my
22 question to you is -- and it's more, I suppose,
23 esoteric, but -- you know, I guess I'm trying to
24 understand how a defense counsel's request that a

1 prosecutor dismiss charges because of a defendant's
2 belief that they're unfounded can give rise to the
3 litigation that supports the prosecutor's removal from
4 the case.

5 MS. AJSTER: It doesn't give rise to that. The
6 federal lawsuit is independent of the letter. It was a
7 situation where my client has a cause of action in
8 federal court for false arrest. At this point in time,
9 he's willing to forego that if the case is dismissed.
10 The case is not dismissed, so then he's going
11 to proceed against -- whether they dismissed the
12 charges or not, my client could have still proceeded
13 with his federal lawsuit.

14 THE COURT: And your client has the right as an
15 American to file suits that he feels are meritorious.
16 But I guess -- my point is, so does the State.

17 MS. AJSTER: They do. But in this particular
18 case, the facts that we have are that my client --

19 THE COURT: And I don't want to argue the facts
20 because that will be the trial.

21 MS. AJSTER: No. No.

22 THE COURT: But my point is more -- it's a little
23 bit above that, which is the mere request that the
24 State dismiss charges and then the subsequent filing of

1 a federal suit you believe is sufficient for the State
2 to have a conflict that prevents them from going
3 forward on the case.

4 MS. AJSTER: No. It's a situation where,
5 independent of the federal lawsuit, my client had a
6 right to file it, and it's filed.

7 THE COURT: Right. He has a right to file it.

8 MS. AJSTER: And so we are now in a situation
9 where -- it wasn't a situation where the federal
10 lawsuit was filed for the purpose of dismissing the
11 State's Attorney and asking for a special prosecutor.
12 The case was filed because my client believes -- and
13 I also believe -- that the charges were false, and the
14 prosecution of him is malicious. So he filed a federal
15 lawsuit.

16 Where we're at today is we have a prosecutor
17 prosecuting my client, and my client has a federal
18 lawsuit against the prosecutor. We can't speculate as
19 to what other defendants may do, is this a tool, is it
20 a tactic. We have to look at on its face that
21 Mr. French filed a federal lawsuit. It -- on its face
22 it appears to be meritorious. There's no allegation
23 that it's not. There's been no motion to dismiss the
24 federal lawsuit by Mr. Towne or his attorneys.

1 So at this particular case -- at this
2 particular point in time, we have a prosecutor
3 prosecuting a defendant and the defendant having a
4 federal lawsuit pending against the prosecutor, which
5 then puts Mr. Towne in a position where under the
6 statute he is interested in a cause or proceeding
7 because his interest and the outcome of the criminal
8 charges against my client directly affect the damages
9 in the federal lawsuit.

10 THE COURT: Okay. And we've gone over this a bit
11 now, and I don't mean to keep rehashing the same
12 ground --

13 MS. AJSTER: No.

14 THE COURT: -- so why don't we move -- because I
15 do understand your argument there.

16 MS. AJSTER: Yeah. And then additionally -- and
17 then additionally, I just wanted to point out, as well,
18 is that the statute and the case law, People v. Max --
19 that my client has a right to be prosecuted by a fair
20 and impartial and unbiased prosecutor. And proof in
21 point is that when my client was in custody on May 7th,
22 I contacted the State's Attorney's office numerous
23 times to have a bond hearing. They did not respond. I
24 personally went to the State's Attorney's office and

1 spoke to Jeremiah Adams and asked him if they would be
2 willing to come down and present -- and appear before
3 Your Honor at an emergency bond hearing. And the
4 response to me was, since you sued us --

5 MR. STICKA: I'm going to object to this. I
6 thinks it's really irrelevant.

7 THE COURT: Well --

8 MR. STICKA: And it's -- with all due respect, the
9 State appeared at an emergency motion wherein the two
10 counsel who are sitting at the table today were in the
11 middle of an attempted murder trial.

12 THE COURT: And that is true.

13 MS. AJSTER: It is.

14 THE COURT: And, as I said, I don't want to get
15 into the merits of the complaints back and forth. I
16 want to focus on the allegations that are necessary
17 under the statute. Okay?

18 MS. AJSTER: And it's a situation where clearly
19 now they have a bias towards my client because of the
20 federal lawsuit. Because if they say, well, you sued
21 us and now we're not cooperating, or, we're not
22 agreeing to anything, that clearly shows that they have
23 some bias towards my client now, which is going to
24 affect the prosecution of the case.

1 So my motion for a special prosecutor is
2 twofold: One, that there is a conflict of interest,
3 and then, two, that now that Mr. Towne is --
4 whether the Court deems it's legitimate or not, it is a
5 situation where he is a party to a federal lawsuit and
6 now has a direct interest in the outcome of the
7 criminal proceedings. Because the outcome of the
8 criminal proceedings are going to go directly to my
9 client's damages as part of the federal lawsuit.

10 And that's why I would request that a motion
11 to disqualify the State's Attorney and a motion for a
12 special prosecutor is, under the case law, to remove
13 the appearance of impropriety. And in this particular
14 case, I don't think anybody can argue that there's not
15 an appearance of impropriety. When you -- I mean, it
16 raises the question, you know, does it appear to be
17 inappropriate? And it does. If you have the State's
18 Attorney prosecuting a criminal case on behalf of his
19 number-one campaign contributor, that raises a question
20 of impropriety. And then additionally, when you have a
21 State's Attorney continue to prosecute a case when he's
22 a defendant to a federal lawsuit brought by the
23 defendant, that again creates an appearance of
24 impropriety. And it's not necessarily that the Court

1 needs to find that there is a direct conflict of
2 interest or that under -- that he violating the
3 statute. It's, is there an appearance of impropriety?
4 And if there is, then my client is entitled to have a
5 fair and unbiased prosecutor.

6 Thank you.

7 THE COURT: Thank you.

8 State.

9 MR. STICKA: Thank you, Your Honor.

10 I'd like to start, Your Honor, if I could, by
11 first addressing a couple of the things that Ms. Ajster
12 indicated, a couple things which I believe are -- are
13 not accurate.

14 If Your Honor looks at Count I in the
15 indictment, it was returned by the LaSalle County Grand
16 Jury on December 30, 2014. Ms. Ajster had made a
17 representation regarding something that was said to the
18 Grand Jury back in August. That was not the day that
19 Mr. French was indicted. He was indicted on 12/30,
20 2014.

21 So she clearly must be referring to some type
22 of Grand Jury subpoena or other proceeding, rather than
23 the indictment proceeding. And by 12/30 of 2014,
24 Jonathan Brandt had provided a statement to the Peru

1 Police Department indicating recognition of the caller.

2 A second thing that I would like to
3 correct -- and Ms. Ajster has said this now in a couple
4 of different hearings, but she also said it today --
5 that Count III was tacked on for the purpose of
6 disqualification of her. And that also is false. And
7 she does not have any documentation reflecting that.
8 What she has is an e-mail from Assistant State's
9 Attorney Jeremiah Adams, who indicates that there was a
10 third count tacked on. That word was used. There was
11 never any admission or representation or anything that
12 even could be construed from the State's Attorney's
13 office as indicating that a Count III was tacked on for
14 the purpose of disqualification of her.

15 Count III was added because we have a LaSalle
16 County Sheriff's Department deputy who has written a
17 report regarding him being threatened. And that's what
18 Count III is about.

19 Now, Ms. Ajster also indicated towards the
20 very end of her argument that, in general, there has
21 been a lack of cooperation of the State's Attorney's
22 office. And I guess her best evidence of that was when
23 she came down here when her client got arrested on a
24 warrant that he had been out on for three weeks, and

1 she felt it was an emergency that a motion to reduce
2 bond be heard immediately.

3 When the two counsel who are sitting at the
4 table today, with all due respect, were in the middle
5 of an attempt murder trial, I think it was pretty
6 cooperative, with all due respect to the State's
7 Attorney's office, on two hours' notice to make
8 available to the Court one of our felony assistants,
9 that being Jeremiah Adams.

10 So if that's her best evidence regarding the
11 lack of cooperation and animosity of the State's
12 Attorney's office, that's not much.

13 And now I'll get into the crux of my
14 argument. The motion for appointment of the special
15 prosecutor. I would argue to the -- the Court that
16 Ms. Ajster essentially has two prongs to her argument.

17 The first prong deals with the campaign
18 donation. And, Your Honor, this case has already been
19 mentioned, the People versus Max case, 2012 Ill.App.3d
20 110385. I believe the cite is already in the record.

21 With that particular case, the defendant
22 sought a special prosecutor. There had been a
23 thousand-dollar donation by the victim in the case to
24 the State's Attorney's campaign fund. The Court ruled

1 that the donation to the State's Attorney's campaign
2 fund -- it didn't meet the defendant's burden to
3 establish the appearance of impropriety or justify
4 appointment of a special prosecutor. Mere suspicion or
5 speculation doesn't do it. Mere donation to the
6 State's Attorney campaign fund does not meet the
7 burden.

8 And as far as what I heard here today from
9 Ms. Ajster, with all due respect, a picture of Jonathan
10 Brandt holding a can coozie that said, "Elect Brian
11 Towne," she used that in the same paragraph that she
12 talked about the Baxter case and talked -- and used the
13 phrase, "political alliance." With all due respect,
14 somebody sitting with a can cooler that says, "Elect
15 Brian Towne," are we -- are we really arguing to this
16 Court that that constitutes some type of political
17 alliance as was contemplated under the Baxter case?

18 In a nutshell, State's Attorney Brian Towne,
19 under the Max case and the criteria that was talked
20 about in the Max case -- the State's Attorney, Brian
21 Towne, is not an actual party to the litigation as is
22 contemplated by the Max case. And with all due
23 respect, the State's Attorney does not have any
24 individual interest in this.

1 Now, Ms. Ajster brought up a couple of other
2 things. She indicated that there were campaign
3 contributions from Peru Fed and that there was another
4 bank, Financial Plus, and that there was a third bank.
5 And I don't even remember the third bank, but -- I
6 would say this: Peru Fed and Financial Plus happen to
7 also be Brian Towne's banks.

8 And, also, with respect to Mr. Brandt, the
9 records are what the records are. Mr. Brandt was
10 involved in fundraisers. So he was involved in
11 fundraisers for State's Attorney Towne. And it's my
12 understanding that the situation was some checks were
13 made out directly to Brandt by other donors, and then
14 Brandt cut further checks.

15 So I believe that the 6,000-dollar figure,
16 which with all due respect, for the sake of argument,
17 only represents six percent of campaign funds,
18 roughly -- if you give Ms. Ajster the math, it's only
19 six percent. And as Your -- as Your Honor indicated,
20 as the Court indicated during the colloquy with
21 Ms. Ajster, in a small community it's not uncommon for
22 lawyers to donate to a campaign fund.

23 I don't believe that there's been anything
24 shown here beyond the mere fact that a campaign

1 contribution was made. There's been a hint at
2 political alliance, but the only thing that she's
3 mentioned is this picture with the can coozie, and
4 they're friends, and --

5 I don't think this is the type of evidence
6 that was suggested by the Max case which rises to
7 giving the State's Attorney an individual interest in
8 the case.

9 Now I'm going to talk about the second prong
10 of her argument, her argument that Mr. Towne is an
11 interested party now due to a federal lawsuit that
12 Mr. French chose to file against the State's Attorney's
13 office, Peru Police Department, and the sheriff's
14 department.

15 This particular federal lawsuit, Your Honor,
16 does not make Mr. Towne a party to the criminal case.
17 There's no magical transformation which takes place
18 which suddenly makes Mr. Towne an interested party or a
19 party -- an actual party in the criminal case.

20 The federal lawsuit, with all due respect, is
21 a collateral myth. It's a collateral lawsuit. And I
22 would point out the defendant is the one who chose to
23 file this federal lawsuit. That lawsuit, to correct
24 the record here, is just filed. There's been no

1 finding that the suit has any merit whatsoever. In
2 fact, to my knowledge, there's been very little
3 activity with the suit. It was fairly recently filed.
4 I don't think the Court can draw any conclusions. It's
5 a filed lawsuit. That's what it is. It doesn't make
6 him a party to the criminal case.

7 Moreover, the mere filing of a civil lawsuit,
8 it doesn't change the ethical obligations of a
9 prosecutor. The ethical obligations which I'm talking
10 about are to seek justice and not merely conviction in
11 a case.

12 With all due respect, the obligation of the
13 LaSalle County State's Attorney's office with respect
14 to handling the criminal prosecution of Mr. Danny
15 French, those obligations were the same the day prior
16 to the filing of the federal lawsuit as they did -- as
17 they are the day after the filing of the federal
18 lawsuit. It doesn't change. There's still those
19 ethical obligations. There's still those rules that
20 have to be followed. And those are set by Supreme
21 Court Rule, the ARDC, case law. Those are set by all
22 of those things.

23 I would argue to the Court that the argument
24 that Ms. Ajster is making seems to be that if you file

1 a federal lawsuit, you automatically get a new
2 prosecutor. And while she doesn't want you to take
3 that into account, I think you have to. That's the
4 rule that is being sought here. And with all due
5 respect, there's just no basis for that. There's no
6 grounds for that.

7 There has been no determination that the
8 federal lawsuit is frivolous. Yet. The case is just
9 getting going.

10 You can't -- the defendant filed this
11 lawsuit, and they're arguing that that creates the
12 conflict. With all due respect, the federal lawsuit is
13 a collateral matter, and it doesn't change the ethical
14 obligations of the prosecutor.

15 There was one case, an additional case, that
16 I don't believe has been mentioned in this proceeding
17 thus far, the Arrington case, which the State cited at
18 297 Ill.App.3d 1. And in that particular case, which
19 the State noted in its response, the defendant alleged
20 that the Winnebago County State's Attorney, Paul Logli,
21 L-o-g-l-i, was interested in a robbery case because
22 Mr. Logli's cousins owned the store that the defendant
23 allegedly robbed. And the defendant alleged that
24 Mr. Logli's interests lay in the fear that an acquittal

1 would allow the defendant to sue the store and perhaps
2 recover damages for injuries he suffered during a
3 struggle during the commission of the robbery. And the
4 reason the State looked to that case is it's the
5 closest parallel that we found to something involving a
6 secondary or collateral lawsuit.

7 And in that particular case, the Court found
8 that the trial court did not abuse its discretion in
9 denying the motion for appointment of a special
10 prosecutor.

11 So on the two grounds that Ms. Ajster has
12 cited, the first prong of the argument, I would argue
13 to this Court that -- she has indicated that Mr. Brandt
14 was a campaign donor to Mr. Towne's campaign, and she
15 hasn't shown anything else. There's been nothing else
16 shown. She's alleged that they're friends. And she's
17 shown us a picture of Mr. Brandt drinking from a can
18 coozie that says, "Elect Brian Towne." That's it.
19 That's all.

20 Mere suspicion or speculation does not meet
21 the standard.

22 Mr. Towne is not an actual party to the
23 criminal litigation. And there's been nothing alleged
24 here that I can see that indicates he has any type of

1 individual personal interest.

2 And then the second prong of the argument
3 with respect to the federal lawsuit, it's a collateral
4 issue, doesn't make him a party to the criminal case,
5 doesn't change the ethical obligations of prosecutors
6 to seek justice and not merely convictions.

7 And I don't think the Court can endorse a
8 rule that says, if you file a federal lawsuit, you
9 automatically get to bounce the prosecutor.

10 And I'm not so sure, especially in the
11 unusual circumstances in this case -- Ms. Ajster seems
12 to argue that, you know, the possibility of sanctions
13 and the assessment of attorney's fees is enough to
14 deter the filing of frivolous lawsuits. I don't know.
15 I think that's open for the sake of argument.

16 All you have here with respect to the federal
17 lawsuit, Your Honor, at this point in time, are
18 allegations. And that's it.

19 So, Your Honor, I would respectfully request
20 that this Court deny the motion for appointment of a
21 special prosecutor based on the arguments made and also
22 based on the State's written response that was filed.

23 And I thank you.

24 THE COURT: Thank you.

1 Your response.

2 MS. AJSTER: Thank you, Your Honor.

3 I'm going to try and speed this up.

4 In this particular case, Mr. Brandt had
5 contacted the Peru Police Department and said he
6 received a harassing phone call. There was an
7 investigation.

8 In August of 2014, Mr. Towne presented to the
9 grand jury for the purposes of getting a subpoena.
10 During that is when he elicited false testimony from a
11 police officer that said that this alleged recording
12 was that of Mr. French, although at that time no one
13 had said it.

14 At that point in time, they get cell phone
15 records based upon the subpoena in October, which
16 showed no correlation between Mr. French's phone and
17 Mr. Brandt's phone. So you have zero evidence of any
18 phone calls placed between Mr. French and Mr. Brandt.

19 Then you fast-forward to December, when
20 Mr. Brandt realizes, after his client at the time had
21 his assets seized as a result of my doing an un- --
22 unrelated small claims case -- on that same day he
23 contacts the Peru Police and says, now I recognize the
24 voice on my tape recording from July of being that of

1 Dan French's from October.

2 So right there it's highly suspect as to the
3 timing of this sudden realization that you now
4 recognize this -- this voicemail.

5 So based upon that, in December of 2014 -- I
6 believe it was December 17th -- the LaSalle County
7 State's Attorney's office issued a warrant for my
8 client's arrest based upon one felony count of phone
9 harassment and one count of misdemeanor phone
10 harassment.

11 Subsequent to that, my client on
12 December 23rd, I believe -- he turned himself in once
13 he learned of the warrant.

14 On December 23rd I send a letter to the
15 State's Attorney's office as to Counts I and II, and I
16 advise them that I am going to be representing
17 Mr. French, that I'm entering my appearance, and I give
18 them the whole back story as to how Mr. Brandt
19 conveniently realizes in December, after his client has
20 his assets seized and now he's extremely upset at me --
21 that now he recognizes Mr. French's voice from July as
22 being that when he talked to him back in October.

23 Based upon that, I send a letter, thinking
24 maybe they didn't understand the facts fully; I'll give

1 them a little bit more information.

2 Then the next thing I receive is January 7th,
3 which is an e-mail, which is Exhibit C, from Mr. Adams,
4 that says: We received your entry of appearance and
5 motion for Danny's case. I'm attaching a written
6 objection to your appearance in this matter. Quote, we
7 tacked on another count for threatening a public
8 official from September.

9 Now, first of all, to say, "We tacked on
10 another count," you're talking about a felony count
11 against someone for threatening a public official. I
12 think it needs a little bit more deference than, we
13 just tacked on another one. And it's the timing.
14 December 23rd I say I'm going to be entering my
15 appearance. I enter my appearance, they get it, and
16 they say, well, now we tacked on another count, you're
17 a witness to this count, so now we're going to do a
18 motion to disqualify you.

19 So that's the time -- the timing of this,
20 which is suspect in and of itself because they talk
21 about my client on a completely unrelated matter from
22 September. Now, if in September my client had actually
23 threatened LaSalle County Deputy Hollenbeck, I think
24 that in September my client would have been charged

1 with threatening --

2 MR. STICKA: I'm going to object to -- I'm going
3 to object to this. I mean, it deals with speculation.
4 It's a felony. There's a three-year statute of
5 limitations on a felony. There's all kinds of things
6 that go on with respect to felony investigations and
7 allegations. With all due respect, this is just mere
8 speculation.

9 THE COURT: I'm going to sustain the objection
10 only because I'm not here today to try the criminal
11 case. And I understand the point you're making, which
12 is to show the chain of events. But I don't want to
13 spend a lot of time going into the details because,
14 frankly, that will eventually be decided by a jury.

15 I -- I've read through your motion. I am
16 aware of the timeline that you've identified. I'd like
17 to keep it kind of focused on the "when" as opposed to
18 all the details because I've heard all the details in
19 your original argument. And this is really just a
20 rebuttal to what they've said.

21 MS. AJSTER: And so if -- you're looking at the
22 timing. So my argument would be that they keep adding
23 additional charges for the sole purpose of
24 disqualifying me, because after the motion to

1 disqualify me the first time was denied, they then
2 added five more counts against my client. And now the
3 same motion, she's a witness again.

4 THE COURT: We're going to hear that motion in a
5 minute.

6 MS. AJSTER: And so as far as the allegations with
7 regard to the relationship between Mr. Towne and
8 Mr. Brandt, no one -- Mr. Towne, Mr. Brandt, or
9 Mr. Sticka -- has denied the fact that Mr. Towne and
10 Mr. Brandt are friends. I've said that they're
11 friends, but nobody has testified that they're not.
12 And if they weren't friends, I would assume that
13 somebody would jump on the stand and say, we're not
14 friends; we don't talk to each other; we --

15 MR. STICKA: I'm going to object.

16 MS. AJSTER: -- don't have any -- any
17 relationship.

18 MR. STICKA: Your Honor, with all due respect, I'm
19 going to object. She's speculating on how the State is
20 going to put on its case or how it should put on its
21 case or what she would do, and it's completely
22 irrelevant.

23 THE COURT: Sustained. I mean, I guess -- are you
24 making an argument that the State's Attorney can't know

1 anybody who's a victim in a case?

2 MS. AJSTER: No. I don't that's the situation,
3 because we do live in a small community, that you can't
4 know anybody. But I do believe there's a difference
5 between knowing someone and being a friend with
6 someone.

7 THE COURT: Okay. And that will probably be
8 something that I imagine we'll hear about at the trial.
9 Okay. But, I understand your point. And I -- I mean,
10 I really don't want to belabor it too much because we
11 do have another whole motion to argue.

12 MS. AJSTER: I understand.

13 And so -- and then, additionally, the State
14 has argued that my client has done something wrong in
15 filing a federal lawsuit, and they're claiming that the
16 purpose of the federal lawsuit is to disqualify the
17 State's Attorney. But it's the State's Attorney who
18 created the facts that led to -- to the federal
19 lawsuit.

20 So it's not a situation where, you know, by
21 their allegation my client has created this by filing a
22 federal lawsuit. The federal lawsuit is based upon the
23 actions of the State's Attorney.

24 So in this particular case, my -- my argument

1 is still that -- and just to back up a minute, my
2 client is entitled to a fair and unbiased prosecutor.
3 We have to remove the appearance of impropriety. And
4 in this particular case, even by the State's own
5 actions in this case of filing continuous charge after
6 charge after charge against my client, following him to
7 the extreme of having investigators follow him to
8 casinos and talk to people who have been to Las Vegas
9 with him, in what other case have they done that? Or
10 in what other case where the charge is an alleged
11 harassing voicemail have they gone to such extreme and
12 spent such resources? I don't believe that there's
13 another one out there. I mean, they wouldn't put this
14 much resources into a murder case, much less an alleged
15 phone harassment telephone call.

16 So I think their actions in this particular
17 case are speaking extremely loud in showing their bias
18 towards my client, in addition to the numerous increase
19 of bond, increase of bond, increase of bond. I mean --

20 MR. STICKA: Once again, Your Honor, I'm going to
21 object to how the State -- or her analysis of how the
22 State conducts a prosecution and how she thinks it
23 should be done or how she would do it. It's really
24 irrelevant.

1 THE COURT: Well, I'm going to overrule that
2 objection, only to the extent that her argument is that
3 the State has shown a bias to Mr. French by acting in a
4 way that he (sic) doesn't to other people. And it's --
5 it's relevant, but I don't -- it's not really
6 responsive to what they argued, but a little bit. So
7 I'm going to give you that little bit of latitude, but
8 I don't, like I said, want to belabor this too much.

9 MS. AJSTER: And then, again, getting back to the
10 argument of the political alliance is that it's not a
11 situation where Mr. Brandt casually donates to a
12 State's Attorney here or a State's Attorney there.
13 We're talking about a significant amount of money. No
14 other person or entity in LaSalle County donated as
15 much money as Mr. Brandt.

16 And then the State's Attorney kind of alluded
17 to something which may open up a whole 'nother can of
18 worms, that there was only three banks that have
19 donated to Mr. Towne's campaign. One is Peru Federal
20 Savings Bank. One is First Federal, which they donated
21 \$500. And the other one donated \$100, which was
22 Financial Plus. And the argument is that First Federal
23 and Peru Federal are Mr. Towne's banks.

24 So that leads me to the question of: If Peru

1 Federal is Mr. Towne's bank and the Vice-President who
2 approves loans and financing and things like that is
3 Mr. Brandt, what relationship do they have, in addition
4 to their personal friendship, as far -- as far as
5 business transactions? Because if Mr. Towne is banking
6 at a bank and Mr. Brandt is making decisions as far as
7 maybe a home loan or a mortgage or a car, I mean, does
8 that create another instance -- and I didn't realize
9 that until Mr. Sticka mentioned that Peru Federal is
10 Mr. Towne's bank. So -- without going into that,
11 because, again, it's the appearance of impropriety.
12 It's not -- and we can get -- you know, it's not a case
13 where we're going to have a trial as to the
14 relationship. It's, is there enough already presented
15 that creates the appearance of impropriety? And the
16 argument is -- and the answer is "yes". You have a
17 situation where you have the complainant, who is
18 friends -- because it has not been denied that they are
19 not friends -- is friends with his number-one campaign
20 contributor and brought a criminal case on behalf of
21 that person. And then this criminal case on behalf of
22 his friend has escalated into something that's
23 completely unusual, and there's no other criminal case
24 in LaSalle County or one that's ever been prosecuted by

1 Mr. Towne to the same extent.

2 So in this particular case, you have the
3 relationship between the complainant and Mr. Towne
4 which rises and creates suspicion. Then you
5 additionally have Mr. Towne as a party to a federal
6 lawsuit, which, again, he should not under the statute
7 be -- which makes him an interested party now.

8 Now, granted, he's not a party to the
9 criminal case, but he's now a party to a federal civil
10 case based upon the criminal case and his actions in
11 the criminal case.

12 And so I think for all interested parties --
13 and I don't understand what the interest in continuing
14 to prosecute a case such as this is other than it is
15 personal. And to remove that appearance of
16 impropriety, I think, is the only option, and the
17 motion for a special prosecutor must be granted.

18 THE COURT: Thank you.

19 All right. The second motion is the Motion
20 to Disqualify Defense Counsel.

21 Mr. Sticka, will you be arguing that?

22 MR. STICKA: I will, Your Honor.

23 THE COURT: All right. Are you ready to proceed?

24 MR. STICKA: Sure.

1 THE COURT: Let me ask this. We've been here for
2 an hour. Does anybody need a break?

3 MR. STICKA: Can I just get a quick glass of
4 water?

5 THE COURT: Why don't we take five minutes
6 because -- I want to get this done this afternoon, but
7 I also realize that we have been in here for over an
8 hour.

9 So why don't we take five minutes, and we'll
10 come back and start on your motion.

11 (Break taken.)

12 THE COURT: Let the record show we are back in
13 court on People of the State of Illinois versus Danny
14 French, 2014-CF-528.

15 The record should show the State is present
16 by Mr. Towne and Mr. Sticka. Mr. French is personally
17 present. He's accompanied with his attorney, Julie
18 Ajster.

19 We've just completed the arguments on
20 the request for a special prosecutor. We're now going
21 to commence the arguments on the State's Motion to
22 Disqualify Defense Counsel.

23 Counsel, you may proceed when you're ready.

24 MR. STICKA: Thank you, Your Honor.

1 "If Attorney Ajster were to be a necessary
2 witness, she would only be a witness as to Count III,
3 and not Counts I and II. Therefore, any
4 disqualification because of lawyer as witness would
5 only pertain to Count III."

6 Your Honor, that is an excerpt taken from a
7 response filed on January 27, 2015, by Attorney
8 Julie Ajster in this case. It was part of the Response
9 to Motion to Disqualify.

10 And the reason I bring that up is I'm not
11 quite sure how it is possible to reconcile that,
12 indicating to this Court that you're only a witness as
13 to Count III and not Counts I and II, in light of the
14 March 16, 2015, letter that Ms. Ajster wrote to
15 Assistant State's Attorney Jeremiah Adams.

16 And the next parts of my argument I'm
17 actually going to be arguing from that March 16, 2015,
18 letter, which is actually already part of the record in
19 this case. Ms. Ajster had filed it -- filed it as an
20 attachment to her motion to appoint special prosecutor.
21 It's dated March 16, 2015, addressed to the State's
22 Attorney's office, and addressed specifically to
23 Assistant State's Attorney Jeremiah Adams.

24 THE COURT: And for the record, that is Exhibit D

1 to the motion you've referenced.

2 Go ahead, Counsel.

3 MR. STICKA: Okay.

4 Regarding Count I of the indictment, Your
5 Honor, with respect to assertions that Ms. Ajster makes
6 in the March 16, 2015, letter, as they pertain to
7 Count I of the indictment, harassment by telephone, a
8 Class 4 felony count, alleging harassment of the
9 victim, being Jonathan Brandt, B-r-a-n-d-t, in the
10 March 16, 2015, letter, Ms. Ajster indicates that
11 Mr. French, her client, did not know about the lawsuit,
12 being the lawsuit that Mr. Brandt filed on behalf of a
13 client against Mr. French -- Ms. Ajster indicates that
14 Mr. French did not know about the lawsuit until after
15 she, Ms. Ajster, told him about it.

16 And Ms. Ajster claimed in that letter that
17 this occurred after the threatening phone call to
18 Mr. Brandt had already been placed.

19 Now, I bring this up, Your Honor, for this
20 reason: If true, this would be information tending to
21 negate the defendant's motive and/or animosity toward
22 Mr. Brandt. The second prong from the March 16, 2015,
23 letter, regarding Count I, and probably the most
24 important that I would draw to the Court's attention

1 on, regarding the time frame of the call that was
2 placed to Mr. Brandt, Ms. Ajster claims in the
3 March 16th letter that she was with Mr. French, that
4 she took him to a doctor's appointment, then filled his
5 prescriptions, and then Mr. French then took a Xanax
6 and a Valium and was -- and, quote, was sleeping or
7 more accurately sedated during the time frame in which
8 the calls were placed.

9 Now, Your Honor, I would argue to this Court
10 that this is tantamount to an alibi defense.

11 Ms. Ajster, the lawyer, is saying that Mr. French was
12 asleep, or more properly the term being -- or more
13 accurately sedated during the time frames of the calls,
14 the inference being, therefore, he could not have made
15 the calls.

16 And I would argue to the Court that there is
17 simply no way that any competent defense lawyer would
18 not put this evidence on at trial.

19 THE COURT: Let me interrupt you and ask you the
20 questions -- one of the questions that is in my mind.

21 Let's assume everything that you've just
22 argued is true and that she would not be able to
23 testify. The Rule of Professional Conduct dealing with
24 lawyer as a witness, Rule 3.7, states that a lawyer

1 shall not act as an advocate at a trial in which the
2 lawyer is likely to be a necessary witness unless --
3 and then there are three exceptions.

4 My specific question to you is: Should she
5 be excluded from the case now even though we're not at
6 trial? Because the rule specifically says, "at trial."
7 And I'm interested to know your take on the rule.

8 MR. STICKA: And my take on it, Your Honor, is,
9 yes, she should be excluded now.

10 THE COURT: And why?

11 MR. STICKA: For multiple reasons.

12 One of the first things is the People versus
13 Rivera case, because in that particular case, the
14 lawyer was disqualified -- it was a motion to suppress
15 hearing where the lawyer basically went to the police
16 department during the early stages of the
17 investigation; there was contact between client,
18 lawyer, and police; and during that contact, there was
19 issues as to whether the police -- whether there was a
20 demand -- a right to remain silent, whether Miranda was
21 properly done. The lawyer was there.

22 At such point in time as there are contested
23 motions in a case and the lawyer has to appear as a
24 witness, I believe based on the Rivera case that

1 indicates that this applies during contested hearings.
2 You're correct; the term "trial" is used.

3 THE COURT: Okay. Let me ask you another question
4 then, because you've actually dovetailed into the
5 question I wanted to ask.

6 Rule 3.7 of the Rules of Professional Conduct
7 was amended in -- effective January 1, 2010. And prior
8 to January 1, 2010, the rule provided that -- a lawyer
9 who is going to be a witness at a hearing. But then it
10 got changed to "trial".

11 The Rivera case, which -- was decided in
12 2013, after the amendment, but it was based on the rule
13 that existed before the amendment. And so my question
14 to you is: Do you believe that it still applies to any
15 contested hearing even though Rivera was being decided
16 under the old form of the rule?

17 MR. STICKA: It is my contention that it would
18 apply at any contested hearing because the -- the
19 spirit and scope of the rule, Your Honor, with all due
20 respect, is that a lawyer can't act as advocate and
21 counsel at the same proceeding.

22 And further on in my argument, I actually
23 have some argument for you regarding the fact that this
24 has already taken place in this case. And I have some

1 specific examples that I'm going to cite to the Court
2 with respect to that.

3 I think at -- at a contested hearing, where
4 there are contested issues and a lawyer is testifying
5 regarded -- regarding a contested issue and it's not
6 about just payment of services or the other exceptions
7 to the rule -- I think it implicates the constitutional
8 rights of the defendant because this is about effective
9 representation of a -- of a defendant. And I believe
10 that there are certain reasons why specifically in this
11 particular case -- and I'll get into this a little bit
12 later in my argument, as well -- as to why Ms. Ajster
13 has real problems in this case.

14 THE COURT: And just so the record's clear, under
15 Rule 3.7 as -- as it existed at the time that the
16 Rivera case was decided, it states that a lawyer shall
17 not accept or continue employment in contemplated or
18 pending litigation if the lawyer knows or reasonably
19 should know that the lawyer may be called as a witness
20 on behalf of the client. And then it has the
21 exceptions.

22 And so that was the way it was decided under
23 Rivera.

24 Now the statute talks about trial. You've

1 explained to me the difference. But I want the record
2 to be clear that Rivera was decided under the old form
3 of the Rule of Professional Conduct.

4 My research did not disclose any cases
5 decided under the new rule. Did the State find any
6 cases under the new rule?

7 MR. STICKA: No, Your Honor.

8 THE COURT: Okay. Then -- I just wanted to bring
9 that -- go ahead with your argument then.

10 MR. STICKA: Okay.

11 Still focusing on Count I, I've made the
12 argument about why Ms. Ajster is a witness as to
13 motive, and negating motive if what she says is true in
14 the letter.

15 Number two, I've talked about Ms. Ajster
16 providing what I would argue to the Court is tantamount
17 to an alibi defense.

18 I'm still on Count I. Ms. Ajster claims in
19 the March 16th letter to have seen Mr. Brandt drive by
20 her house during this time frame. And based on the
21 context of that letter, it appears to me that she is
22 indicating that -- or making an attempt or insinuating
23 at an attempt to discredit Mr. Brandt or attribute some
24 type of improper motive to him with respect to the

1 statements that he made and asking for charges in this
2 particular case.

3 And, finally, Your Honor, in the March 16th
4 letter, Ms. Ajster makes a comment regarding it not
5 being true that Mr. French was agitated the night of
6 the card game. And without getting into specifics
7 about the card game, the State will be arguing that at
8 this particular card game and to the subjects -- to
9 some of the subjects in the card game that there were
10 certain statements that were made which were somewhat
11 incriminating. And, in fact, Ms. Ajster indicates that
12 Mr. French had his medication. She had filled the
13 prescription and had the records, and that discredits a
14 witness, according to her, named Michael Venturelli,
15 V-e-n-t-u-r-e-l-l-i. Ms. Ajster indicated that
16 Mr. French was not agitated the night of the card game
17 and he did have his medication.

18 So all of those four prongs, I would argue to
19 the Court, go to Count I and show that she is, in fact,
20 a necessary witness as to Count I, the most important
21 being the provision of that -- what I will call an
22 alibi defense.

23 Now, these are all assertions from her
24 March 16th letter. This was a letter to the State ten

1 days after the March 6th hearing. At the March 6th
2 hearing, the issue that this Court heard was whether
3 she would be disqualified. And I understand and will
4 say to this Court that the State focused on Count III
5 at that particular hearing. That was the basis. But
6 that was the knowledge that the State had at the time.

7 And I'm going to use a term that Ms. Ajster
8 has used today and in other court proceedings. She
9 always indicates, "as an officer of the court." "As an
10 officer of the court."

11 Well, with all due respect, Your Honor, at
12 the March 6th hearing, if this Court is conducting a
13 proceeding into whether she should be quali- --
14 disqualified as defense counsel and if she has
15 knowledge that she's a witness with regard to the other
16 counts, as an officer of the court, I think that should
17 have been relayed to the court.

18 What she was doing the night of the alleged
19 phone calls to Mr. Brandt she's known since that night,
20 which was well before the March 6th hearing.

21 And the reason I bring this up, Your Honor,
22 is I understand that this is a successive motion, but I
23 would argue to the Court that this Court ruled on
24 March 6th without knowing all of the facts.

1 That is the crux of my argument. And the
2 Court should have had these facts available to it when
3 it was ruling on Ms. Ajster's disqualification.

4 Now I'm going to talk about Count II. These
5 are the phone calls, the phone harassment, the
6 misdemeanor count, allegedly to Mr. Brandt's secretary.
7 The interesting thing is for these particular calls,
8 phone records come back to (815) 878-5312. Or show
9 calls from that number to Brandt's office. The reason
10 I bring that up, that number's going to come up
11 following in my argument, as well.

12 In the March 16th letter, that phone number,
13 (815) 878-5312 -- Ms. Ajster indicates in that letter
14 that that phone number's registered to Julie Ajster.
15 She indicates that this phone belongs to the Ajster Law
16 Office.

17 Your Honor, who had possession of this phone?
18 Who had access to this phone at the time the calls were
19 made on Count II? There's no way that's not a key
20 issue in this case.

21 And since, to my knowledge, Ms. Ajster is the
22 Ajster Law Office -- to my knowledge, I'm not aware of
23 any other lawyers there. I'm not 100-percent sure
24 about that, but that's my understanding. That

1 testimony comes from her. Who had access to her
2 phones?

3 And that, Your Honor, is a situation where
4 she may be compelled to provide testimony adverse to
5 her client, which raises a whole host of other issues.

6 And just to consider a corollary, if
7 Ms. Ajster is going to say that she made those calls,
8 then she's absolutely a necessary witness.

9 Let's talk a little bit about Count III, the
10 threat to the officer.

11 Once again, it involves Phone Number
12 (815) 878-5312, a phone, by the March 16th letter,
13 which is registered to the Ajster Law Office. She
14 indicates that.

15 Moreover, with respect to this Count III,
16 Ms. Ajster claims to have been present during the call,
17 would therefore know who the deputy was speaking to,
18 who had the phone, once again, who had access to the
19 phone. It's a phone that's registered to her -- her
20 law office.

21 And Ms. Ajster also makes a claim in the
22 March 16th letter regarding the Caller ID and how it
23 read that day when the deputy called. All of those
24 factors with respect to Count III, I would argue to

1 Your Honor, make her a necessary witness on Count III.

2 Now I'm going to talk about the Brett King
3 counts. And for speeding this up, I'm going to lump
4 those together.

5 Your Honor, with respect to the Brett King
6 counts -- and if you'll recall, as part of the motion
7 to reduce bail, there was an affidavit attached. And
8 that affidavit in the motion to reduce bail details a
9 conversation that Ms. Ajster claims to have had with
10 Brett King. Brett King is the victim on what I'm
11 calling the Brett King counts. That affidavit is part
12 of the record.

13 In fact, if you recall, this was an affidavit
14 which at one point in time the State had filed a motion
15 to strike it due to it not being notarized. That's the
16 affidavit that I'm referring to.

17 THE COURT: And for the record, I believe it's
18 Exhibit G.

19 MR. STICKA: Yeah.

20 And that affidavit has since been notarized.
21 And if Your Honor -- I'm not going to go through
22 everything on that affidavit, but I am going to say
23 this: If that affidavit is true -- because with all
24 due respect, these cases, like so many criminal cases,

1 to a large degree hinge on credibility. And with
2 respect to that affidavit, with some of the things that
3 Brett King will testify to, there is no seasoned
4 defense lawyer that would not want to call Ms. Ajster
5 to try to somehow discredit Mr. King. And that
6 affidavit is part of the record. She is a necessary
7 witness as to the Brett King counts.

8 Now, I'm going to move on. I'm going to talk
9 about the new count. Last week when we were in court,
10 the State filed -- I believe it's Count IX. It's a
11 misdemeanor count, the victim being a man named Andrew
12 Biewer, B-i-e-w-e-r. Again, phone communication coming
13 from (815) 878-5312, that phone that Ms. Ajster
14 indicated in her March 16th letter is registered to her
15 law firm.

16 And this I find fascinating. Last week at
17 the hearing, the State filed this count, Count IX. And
18 I'm going to the transcript from the proceedings last
19 week, because within just minutes of when this Count IX
20 was filed in this particular case, Ms. Ajster says
21 this. And this was -- just to give you some context,
22 Mr. Towne had asked for some bond conditions. And this
23 is what Ms. Ajster says. "I would object to that.
24 Mr. Biewer has an 8,000-dollar Ranger of mine sitting

1 in his garage, which I attempted to get last week,
2 which was the reason for him coming up with these
3 allegations. And then, additionally, he tried to break
4 into my storage facility. So I would like to at least
5 get my property back from him. I can do that with a
6 LaSalle County Sheriff's deputy and perhaps a K-9 dog
7 so they can search his premises."

8 And what I'm getting at, Your Honor, and why
9 I'm looking at that is, with respect to this Count IX,
10 in a matter of ten minutes in this hearing, or 15
11 minutes probably, from when Count IX was filed,
12 Ms. Ajster indicates that this property dispute about
13 the Ranger was the reason for him coming up with these
14 allegations.

15 She is already touching and scratching at the
16 surface of becoming a witness on Count IX.

17 I would respectfully argue to this Court that
18 she is a witness with respect to Counts I through IX.
19 She is intertwined with this case at a level that is
20 simply unparalleled.

21 In terms of evaluating a case, how is she
22 going to properly evaluate a case, properly advise him,
23 when weighing the evidence in these cases, Your Honor?
24 Because she's intertwined with each and every count, it

1 involves determining her own credibility and how well
2 she'll do.

3 This issue is a problem, is ongoing, and has
4 to be dealt with. And, frankly, the way this is
5 setting up, what are we going to wait for? Are we
6 going to wait till the first day of trial when we start
7 calling witnesses before Ms. Ajster realizes that she's
8 got a real problem here and she's a witness?

9 In the Rivera case, which is 2013 IL 112467,
10 it was alleged that the defendant, present with his
11 attorney at the police station, asserted his right to
12 remain silent, asserted he did not want to be
13 questioned, that he was subsequently questioned and
14 made statements in violation of Edwards versus Arizona.
15 Defense counsel was a witness with respect to the
16 pretrial suppression hearing on the defendant's
17 statements. The Court disqualified him. After the
18 hearing on the motion to suppress, the defense made an
19 argument that the lawyer should not be disqualified for
20 representation at the trial because the issue was done.
21 And the State alleged that there existed a possibility
22 that the lawyer would be a witness at the trial.

23 Your Honor, this was a pretrial suppression
24 issue, and the Court properly disqualified defense

1 counsel.

2 I would argue that in this case, you have
3 before you Ms. Ajster, who is a witness, who is going
4 to -- to some degree, based on the assertions that she
5 has made, she's going to be testifying, and her
6 testimony is going to be analyzed in terms of the
7 ultimate issues of the trial, not merely a motion to
8 suppress.

9 I would argue that this case, in terms of her
10 being intertwined with the case, is much more
11 significant than you saw, than the pretrial suppression
12 issue in Rivera, where it was found that the Court
13 properly exercised its discretion. In this particular
14 case she has portrayed herself as an alibi witness.

15 Balanced against the defendant's Sixth
16 Amendment right to counsel of choice, which is an
17 important right, the Courts have an independent
18 interest in ensuring that criminal trials are conducted
19 within the ethical standards of the profession and that
20 their judgments remain intact on appeal.

21 And while the right to select and be
22 represented by one's preferred attorney is comprehended
23 by the Sixth Amendment, the essential aim of the
24 amendment is to guarantee an effective advocate for

1 each criminal defendant, rather than to ensure the
2 defendant will be inexorably represented by the lawyer
3 whom he prefers.

4 And that's Wheat, W-h-e-a-t, versus United
5 States, 486 US 153.

6 Another case, People versus Koen, K-o-e-n,
7 2014 Ill.App. 112082. Mr. Koen collected rents from
8 the tenants of a building. Mr. Koen was not the owner
9 of the building. His son, an attorney, also had
10 involvement with the tenants. The State alleged that
11 the son, the attorney, was a necessary witness, and the
12 Court found that Mr. Koen Jr.'s involvement in the
13 events surrounding this matter was sufficient, that he
14 reasonably should have known he would likely be called
15 as a witness. He was disqualified.

16 And, once again, I would argue that
17 Ms. Ajster is much more intertwined with this case than
18 either of those prior two cases where the Court -- it
19 was found that the Court properly exercised its
20 discretion in granting a motion to disqualify.

21 THE COURT: And just so it's clear, the Koen case
22 to which you referred was also decided under the old
23 Rule 3.7, correct?

24 MR. STICKA: I believe that to be true.

1 THE COURT: Okay.

2 MR. STICKA: Yeah.

3 THE COURT: Okay. Go ahead.

4 MR. STICKA: Now, Your Honor, prior to trial, this
5 lawyer as witness has already been an issue in this
6 case. It is an issue and already has been an issue.
7 And I'm going to bring something up, and I'll try to be
8 brief with it. But at the last court proceeding, in
9 the motion revisiting the bail -- and there's a reason
10 why I'm bringing this up -- we have a defendant that
11 within the last three weeks, or roughly the last three
12 weeks, Counsel had obtained a waiver to proceed in his
13 absence from him. Within a relatively short time frame
14 of that, on Thursday, May 7, 2015, according to the
15 police report -- according to testimony that you heard
16 at the hearing last week, Ms. Ajster claimed in a 911
17 call he had not been taking his medication. You heard
18 evidence and argument regarding a form of barricade to
19 the door at his residence. Pretty much uncontroverted
20 testimony that the defendant had locked himself in a
21 gun safe.

22 Then the accounts started to diverge a little
23 bit. But you had argument that he had made threats to
24 shoot the police and file lawsuits. He claimed the

1 devil got ahold of him. But then you have testimony
2 from Mr. French. You have diverting testimony at that
3 point in time.

4 But the reason I bring this up is this
5 reason: There have been defense lawyers on a lot less
6 evidence than that who have filed a motion to have
7 their client evaluated for fitness.

8 Now, with respect to a fitness hearing, the
9 Court can ask for it. The State can ask for it under
10 the statute. And so can the defendant. But for
11 practical purposes, it's usually the defense. For this
12 reason: The defense counsel is the one who
13 communicates with the defendant and has access to him.

14 Now, this is not normal behavior, locking
15 yourself in a gun safe, barricading the door, not
16 taking your medication, talking about the devil getting
17 ahold of you. That is now in the record in this case.
18 And the reason I bring this up is this. Ms. Ajster
19 lives with the defendant. He is her boyfriend. She
20 saw his behavior. She is, once again, a witness
21 regarding the issue of fitness.

22 Now, the State hasn't filed a fitness motion.
23 We think -- I didn't think that there was a reason to
24 do so with the pending motion to disqualify. However,

1 once again, if there are continued proceedings in this
2 case, it is a hot ticket item for the Appellate Court.
3 And it is in front of the Court that this incident
4 occurred. This is a mental-health-type incident,
5 rather than a physical incident. And with the
6 assertions that were made by Ms. Ajster, going to the
7 hospital -- the doctor at the hospital evaluates people
8 to see if they're in immediate danger to themselves (sic)
9 or others. That's not a fitness evaluation. Those are
10 two different things. And with respect to this, the
11 next logical step in this case, if the defense doesn't
12 do it, the State may be put in a position to have to
13 file a motion for fitness because if the Appellate
14 Court finds that there should have been a fitness
15 evaluation, everything starts all over again, and we do
16 everything twice. And the position that Ms. Ajster is
17 in -- and, frankly, it's an awkward position because --
18 it would be an awkward position to have to contemplate
19 filing a fitness evaluation with respect to a defendant
20 that is your boyfriend. And I think that that's a
21 concern.

22 Now, another concern. In criminal trials and
23 even in criminal motions, the State almost always files
24 a motion to exclude witnesses in a case. That is a

1 whole 'nother can of worms. And with respect to this,
2 Your Honor, prior to trial, this has already been an
3 issue. Last week at the motion to increase -- the
4 motion to revisit bail, or whatever you want to call
5 it, once again I'm going to go to the transcript to
6 give an example of this.

7 *Ms. Ajster: Yes. With regard to the bond in*
8 *these additional -- so contrary to what Mr. Towne*
9 *has alleged about my client assaulting police*
10 *officers, spitting at them, flailing his arms*
11 *around, that did not occur. It's not contained in*
12 *Deputy Winner's report. Deputy Winner's concern at*
13 *the time was that my client receive medical*
14 *treatment.*

15 *Now, at the time that Mr. French was taken to*
16 *the hospital, it was for a condition for his low*
17 *back, which his doctor had faxed a note for him to*
18 *be evaluated.*

19 *Additionally, his blood pressure, which was*
20 *taken by me, was extremely high that night. He was*
21 *extremely agitated and not being able to speak*
22 *coherently. So for that concern, I had called*
23 *emergency medical personnel to come to the house and*
24 *treat him, which they did. Subsequent to once he*

1 was at the hospital, he was signed in on the 24-hour
2 involuntary hold just because of his mental status.

3 Mr. Towne: Your Honor, I'm going to
4 object at this point in time. Once again -- and
5 this has been an issue through this entire case --
6 Ms. Ajster is now a witness in the case, and she's
7 not under oath up there testifying, but she's
8 telling you the whole story.

9 The Court: What's your response? Because I
10 think that point is well-taken.

11 Ms. Ajster: If you want to put me under oath,
12 I can testify.

13 The Court: I don't want anyone under oath,
14 but --

15 Ms. Ajster: I will tell under oath as to what
16 was there since I am a witness to this.

17 I'm talking about the proceeding which, with
18 all due respect -- and I just know the similar facts to
19 what the Court knows and what the Court heard last week
20 and what's in those police reports about this issue.
21 But we have a defendant in front of this Court who
22 locked himself in a safe, barricaded the door, and,
23 with all due respect, made comments about the devil and
24 somehow -- I think you may have a bona fide fitness

1 issue. And if it's determined that there is, with all
2 due respect, the next -- the next issue in this case is
3 that. Because if that fitness issue is not resolved
4 and other hearings are made -- and this is where we get
5 into other interests, such as the Court and the State
6 for criminal cases to go through ethically, be
7 conducted professionally, and, with all due respect, in
8 the event that convictions are obtained, convictions do
9 stick and not just come back. And Ms. Ajster is in a
10 trick bag. It is hard to think of a case where the
11 defense lawyer, if it's appropriate, had to contemplate
12 a fitness motion with respect to her boyfriend. Or
13 girlfriend. It's awkward.

14 And with all due respect, how I started this
15 argument about the assertions that Ms. Ajster made to
16 the Court regarding only being a witness on Count III,
17 she's not a witness on Counts I and II -- the reason I
18 started this that way was because the only one that can
19 communicate with Mr. French is Ms. Ajster. And when
20 there has been suspect -- I will use the word
21 "suspect" -- communications to the Court, such as what
22 was not disclosed by her during the March 6th hearing,
23 which was, we later found out, in the March 16th
24 letter, I don't know that her word as an officer of the

1 court regarding her client's fitness is going to cut
2 it.

3 Now -- and here's another issue. And I kind
4 of -- and I'll end on this point. In all criminal
5 cases, typically an offer is made. Can that offer --
6 can she legitimately convey the merits of that offer
7 when her client, husband, fiance, boyfriend, whatever
8 he is, would then be jeopardizing potential damages in
9 the federal lawsuit, assuming that the State hasn't
10 been dismissed out by that point, while also being
11 frivolous?

12 There are all kinds of issues. And I think
13 these issues are why the lawyer-as-advocate rule comes
14 into play. And with all due respect, these issues are
15 imminent. They are coming up in the upcoming motions.
16 They are imminent. That fitness thing that the State
17 talks about, that is a great deal of concern for us.

18 These issues are imminent, and that's why the
19 motion to disqualify, with all due respect, should be
20 granted now.

21 THE COURT: Thank you, Counsel.

22 MS. AJSTER: Your Honor --

23 THE COURT: Response?

24 MS. AJSTER: Yes.

1 Just to point out, as Your -- Your Honor
2 already has, Rule 3.7 says a lawyer shall not act as
3 advocate at trial, the operative word being "trial".
4 We are not at trial. And we're nowhere near a trial
5 with regard to this case as additional counts were just
6 added last week.

7 There is a trial date set for July. But I
8 assume that that's not going to be going, or at least
9 I'll be filing a motion to continue that, given the
10 fact that every time we appear there's additional
11 charges.

12 So with regard to the issue of lawyer as
13 witness at trial, the allegations that I may be a
14 witness at trial are premature at best. And it's
15 actually twofold. My client has a constitutional right
16 under the Sixth and Fourteenth Amendments to counsel of
17 choice. And I am his counsel of choice. At this
18 particular time, as I said -- stated at the previous
19 motion, I represent Mr. French in numerous lawsuits, as
20 a plaintiff, as a defendant. I am his only attorney
21 and the only attorney he's had for 13 years, in
22 addition to his attorney that was co-counsel on his
23 worker's compensation case.

24 So he has a constitutional right. The right

1 is so substantial that the case law, as previously
2 stated at the prior hearing under Insurance Company
3 versus City of Chicago, which is 268 Ill.App.3d 289,
4 attorney disqualification is a drastic measure which
5 Courts should employ as a last resort because
6 disqualification motions can be misused for the purpose
7 of harassment.

8 Now, if anything sums up this particular
9 case, it's this. Because I think my client has been
10 charged now with nine counts, and six of those have
11 been brought for the purpose of disqualifying me as his
12 attorney. Because after they're filed, there's an
13 immediate motion to disqualify me as his attorney.

14 Additionally, under the Klehm case, which is
15 363 Ill.App.3d 373, since disqualification serves to
16 destroy the attorney-client relationship by preventing
17 a party from freely retaining counsel of his choice, it
18 is regarded as a drastic measure that Courts should
19 only apply when absolutely necessary.

20 Then there's other case law talking about how
21 it has to be a necessary witness, not a potential
22 witness.

23 And then, again, there's the People versus
24 Montville case, which is 393 Ill. 590, where it says,

1 the right to counsel is guaranteed by the Sixth and
2 Fourteenth Amendments of the federal constitution.

3 He has a right to be represented by his
4 counsel of choice. The right is -- is so significant
5 that under Illinois Supreme Court Rule 306, if defense
6 counsel is disqualified, if I were disqualified, I
7 could take an interlocutory appeal, because his right
8 is so significant. Because it is his constitutional
9 right to have counsel of choice.

10 THE COURT: But you do acknowledge it's not
11 absolute.

12 MS. AJSTER: It is not absolute.

13 THE COURT: It is significant but not absolute.

14 MS. AJSTER: It's significant.

15 And deference should be given to my client's
16 choice of counsel.

17 Now, the Rivera cases, again, were prior to
18 the amendment of -- when it pertained to lawyer at
19 hearing.

20 Now, again, going back to lawyer as witness
21 at trial, so even if I were to be a witness at trial,
22 it says, "A lawyer cannot be the witness at trial
23 unless." So there's always an exception to the rule.
24 So I'm not even a witness, but if I were a witness,

1 there's an exclusion, under three, disqualification of
2 the lawyer would work substantial hardship on the
3 client.

4 And as I argued previously, I believe that it
5 would create a financial hardship on my client, but
6 more importantly, an emotional hardship on my client,
7 as I am the only attorney that he trusts that handles
8 any of his cases. I think it's obvious that my client
9 has a significant distrust of lawyers altogether. And
10 to establish an attorney-client relationship that's
11 been in the process for 13 years and then ask him on a
12 whim to then trust an attorney to represent him on nine
13 criminal counts, I think, would create a substantial
14 hardship to him in his -- his, I guess, emotional
15 health because now you're taking away his right to
16 counsel of choice and forcing him to now establish an
17 attorney-client relationship with another attorney,
18 which I don't think would be able to be -- be done. I
19 mean, I just don't think he would have it. And it's a
20 situation where if I'm disqualified -- I represented
21 Mr. French years ago in another criminal matter. I was
22 disqualified not because of a lawyer as witness but
23 because I was representing his co-counsel, as well. In
24 that particular case, he continued pro se, because

1 without me as his attorney, he refused to hire another
2 attorney and continued pro se.

3 In this particular case, Mr. French is
4 probably -- and I would -- he's already expressed to
5 me that if I'm disqualified, he is going to proceed pro
6 se.

7 THE COURT: But that's -- that would be his
8 choice.

9 MS. AJSTER: It would be his choice. But I think
10 it would create a hardship to him, as he is not an
11 attorney. He's not well-versed in the law.

12 THE COURT: Counsel, do you -- let me cut to the
13 chase on the argument.

14 Do you believe that if the trial started on
15 Monday, you would be able to represent Mr. French in
16 the trial?

17 MS. AJSTER: Yes. And I don't believe that the
18 case is going to start to trial on Monday. And that's
19 my argument, too. We are so far away from trial.

20 THE COURT: But my point -- what I'm first trying
21 to establish with you is whether you believe there is a
22 conflict under Rule 3.7 that would prevent you from
23 being his attorney at trial if we started trial.

24 MS. AJSTER: No, because there's nine charges

1 pending. Those nine charges are not going to be tried
2 together.

3 Under the case of People versus Board,
4 B-o-a-n-d -- it's -- I don't have the citation to it.
5 But in that particular case, charges to be brought
6 together for purposes of trial have to be similar in
7 nature, involve the same parties. And here we have
8 nine counts involving five alleged victims, four
9 separate circumstances.

10 So just to break them down, we have Counts I
11 and II that are dealing with Jonathan Brandt and Laura
12 White. We have Count III, which deals with Deputy
13 Hollenbeck. We have Counts IV through VIII, which deal
14 with Brett King. And we now have a Count IX that deals
15 with Andrew Biewer. I don't think these are all going
16 to be tried together. We're looking at four separate
17 trials.

18 THE COURT: So what if we just look at the first
19 three?

20 MS. AJSTER: Okay. So let's look at the first --

21 THE COURT: Well, however you phrase it. If you
22 want to say "II" and "I" or however, but are you a
23 necessary witness --

24 MS. AJSTER: No.

1 THE COURT: -- for trial?

2 MS. AJSTER: And here is why.

3 As to Count I, the State alleges because I
4 know facts, that then I am a necessary witness. What I
5 know can also be proved at trial independent of my
6 testimony. Okay?

7 They claim that I'm going to testify that on
8 July 24, 2014, my client was at a doctor's appointment.
9 Mr. French can testify that he was at a doctor's
10 appointment. His doctor can testify that he was at a
11 doctor's appointment. The medical records will
12 evidence that he was at a doctor's appointment and the
13 date and the time and what time he left. I don't need
14 to testify, and I'm not a necessary witness to show
15 that he was at the doctor's office.

16 THE COURT: If you weren't representing him and
17 another person possessed the information you have,
18 would you want that person to testify to corroborate
19 his statements?

20 MS. AJSTER: No, because I think it's
21 self-evident. If -- if you -- I mean, as far as me
22 testifying that he was at a doctor's appointment, I
23 think the best evidence would be the doctor.

24 THE COURT: Let's ask -- let me ask this: Your

1 letter says that he could not have the made the calls
2 because he was unaware that he'd been served because I
3 didn't tell him until after the alleged incident. If
4 he were to testify, I didn't know that they -- I
5 was served because Ms. Ajster didn't tell me, if you
6 weren't the lawyer, would you want you to testify to
7 corroborate his assertion?

8 MS. AJSTER: No, because the evidence speaks for
9 itself, and the service date is after the alleged phone
10 call.

11 THE COURT: Okay. I -- I thought that the service
12 date --

13 MS. AJSTER: No. The service date --

14 THE COURT: I thought your statement was that
15 you -- he couldn't have done it because he didn't know
16 he was served.

17 I don't have the Bureau County -- I don't
18 know when the service actually occurred. I don't
19 have --

20 MS. AJSTER: The service was actually on July
21 25th, after the alleged phone call.

22 THE COURT: All right. I just -- I wanted to ask
23 you that because it was on my mind.

24 MS. AJSTER: Yeah. So the proof of service itself

1 would speak for itself.

2 Additionally, as to Count I, just to address
3 the State's arguments about the prescriptions, again, I
4 think the records of when Mr. French had the
5 prescriptions filled and when he took them --
6 additionally, he has an assistant, who -- who helps him
7 take medications. So I think she could testify
8 independently, as well as others. It's not that it's a
9 situation where Mr. French and I live in a bubble and
10 that there's not other people that he talks to or comes
11 in contact with that can't testify to the same thing.
12 If he says he filled a prescription and you have a
13 record from Walgreen's showing that it was filled, I
14 don't think you would need the testimony of --
15 of myself to say that the prescription had been filled.
16 I think that speaks for itself.

17 Additionally, they raised this argument about
18 Mr. Brandt stalking. I don't know if he is stalking my
19 client or me. But, again, I don't think my testimony
20 is necessary for that. I have witnessed him drive by
21 my house numerous times. However, Mr. French's
22 assistant documents every single time he drives by the
23 house; as well as security cameras would document how
24 many times he drives past Mr. French's house.

1 So I don't think my testimony as to that is
2 necessary as there's independent means and better means
3 of proving that Mr. Brandt continues to drive by my
4 client's house.

5 Additionally, as to Counts (sic) II -- and it
6 gets to the actual substance of charges, Counts (sic) I
7 and Counts (sic) II. We're talking about a trial.

8 Now, the State is assuming that at trial
9 there would actually be a defense. I mean, based
10 upon -- we don't even know if there's going to be a
11 defense at trial. Count I is based upon the alleged
12 testimony of Mr. Brandt saying he recognized my
13 client's voice. Other than that, there's no evidence
14 of phone records between the two of them. There's no
15 evidence that the voice on this alleged tape is my
16 client's. The alleged voicemail was recorded. I don't
17 even know if it would be admissible at court since it
18 wasn't entered into evidence until three days after it
19 was taken.

20 So, again, as far as Counts I and II, there
21 are going to be motions to dismiss, motions to suppress
22 evidence. I don't even know if they're going to get to
23 a trial. We're jumping to the end, saying, well, all
24 these cases and all these counts are going to go to

1 trial. But it's highly unlikely that they -- that they
2 will. That's why I'm saying, at this point in time, it
3 is so premature as to Counts I, II, III -- well, all
4 nine counts, because as far as Counts IV through VIII,
5 I currently have before Your Honor motions to dismiss
6 and motions to quash the indictments. So we don't even
7 know if these are viable claims and counts at this
8 time.

9 So are we're talking about trying these
10 counts when we don't even know if they're going survive
11 motions to dismiss or motions to squash.

12 Additionally, as to Count IX, the State says,
13 well, she's touching on the surface of being a witness.
14 Well, that is not a necessary witness. And what am I
15 going to testify to as to Mr. Biewer?

16 So as far as Counts I and II, I'm not a
17 necessary witness because anything I would testify to
18 can be proved independently and with better evidence
19 than my testimony. Because, again, it goes to
20 credibility.

21 If they say, well, you know, she resides with
22 the defendant and they have a relationship, well, then
23 my testimony at trial -- the better testimony would be
24 that of the unbiased doctor saying, I saw Mr. French on

1 this particular day; I'm the pharmacist; I filled the
2 prescription.

3 So there's other people who are -- who would
4 be able to provide the same evidence.

5 Now, as far as Deputy Hollenbeck, the State
6 argues credibility. Again, it's a situation where
7 Count III is based solely on Deputy Hollenbeck saying,
8 well, on this particular day, I talked to Dan French,
9 and he threatened to shoot me. Okay, great. But where
10 is the evidence of that other than your testimony? And
11 the credibility of a witness is always a concern. And
12 Deputy Hollenbeck is one of the four deputies involved
13 in the Dana Holmes strip search case, and he has also
14 a conviction with (sic) aggravated assault with a
15 deadly weapon. So I don't really think that his
16 testimony is very credible. So if you go to trial on
17 Count III and Deputy Hollenbeck testifies, I don't
18 think you'd even have to present a defense because
19 directed verdicts -- because they'd have no evidence
20 other than the testimony of Deputy Hollenbeck.

21 And then as far as Brett King, those counts
22 again, there's motions to quash the indictments, and we
23 haven't even touched on the fact that the State's
24 Attorney's office, when asked about jurisdiction over

1 those counts, say, well, we'll figure that out.

2 Because we're talking about --

3 MR. STICKA: Objection. I have no idea where that
4 came from. I'm certain they never said that.

5 THE COURT: Where does that argument come from?

6 MS. AJSTER: Counts IV through VIII are based upon
7 telephone calls alleged to have occurred between Brett
8 King, who is in Florida, and my client, who best-case
9 scenario would have been in Bureau County but most
10 likely during these calls may have been in Las Vegas or
11 Indiana for medical treatment. And when asked -- the
12 State's Attorney was asked about jurisdiction, the
13 response to me was, we'll figure it out.

14 Well --

15 MR. STICKA: Once again, same objection. I have
16 no idea where that's coming from.

17 THE COURT: I'm not -- I understand the point
18 you're trying to make is that we're not to trial yet
19 and you should get to stay in the case before trial.
20 But I don't want to try the issues today.

21 MS. AJSTER: No. And I'm just saying that
22 there's -- we're not to -- to trial because of all
23 these lack-of-evidence issues, evidentiary issues. So
24 the chances -- we have to sort out and flush out all

1 these until we determine what counts we're going to
2 actually go to trial on, what evidence there's going to
3 be, and what testimony needs to be presented in
4 response to that evidence.

5 At this point in time they're arguing, well,
6 she's going to be a witness because she's going to
7 testify to this, and she's going to testify to that.
8 But we don't even know that because right now we
9 haven't had any evidentiary hearings. We don't know
10 what evidence is going to be presented at trial.

11 So my argument is that at this particular
12 time, yes, the counts have been filed. As to the
13 merits of each count, we don't know that yet. And so
14 the motion to disqualify me is premature. To deprive
15 my client of his constitutional right to counsel of
16 choice at this particular time, saying, well, she's
17 going to be a witness at trial, is premature because we
18 may disqualify me and then tomorrow the State's
19 Attorney's office dismiss all of these charges. Or
20 subsequent motions may be quashed or dismissed.

21 THE COURT: What about Counsel's argument about
22 fitness?

23 MS. AJSTER: Well, one, I don't think that's an
24 argument for this particular motion. I think that

1 should have been a separate motion.

2 THE COURT: He's not asking for a fitness
3 determination. He's making the argument, if I
4 understood it properly, that your relationship with
5 your client and the facts of the case make it difficult
6 for you to objectively evaluate whether he should have
7 a fitness evaluation. And then the effect not having
8 one would have on litigation.

9 MS. AJSTER: And that is an issue that has been
10 raised before. I discussed it with Mr. Adams.

11 Now, with regard to my client's fitness, I
12 would have an obligation to raise that. Regardless of
13 my personal relationship, if I thought my client was
14 unfit for trial, I would ask for a fitness hearing.

15 It doesn't reflect poorly on me if he's
16 having mental health issues. That's his issue.

17 Now, as far as his recent episode and the
18 24-hour involuntary hold, the purpose of that -- and I
19 don't have the medical records, but it was for a drug
20 interaction. Immediately prior to this recent episode,
21 Mr. French was taking two medications, both prescribed
22 by his doctor, which have a drug interaction with
23 adverse effects. He is now since not taking that --

24 MR. STICKA: Objection to her --

1 MS. AJSTER: -- and I don't believe that fitness
2 is an issue.

3 MR. STICKA: She's starting to testify now.

4 THE COURT: I'm going to sustain it to the extent
5 that I don't want you to make arguments based on things
6 you know in your personal knowledge. That's an issue
7 we ran into on the bond reduction hearing.

8 MS. AJSTER: And so at this particular time, I
9 have no concern about my client's fitness at this
10 particular time. If I did, I would raise it myself.

11 Now, there was, as the State argues, an
12 issue, but at this particular time, I don't believe
13 it's an issue any longer. And I believe that he is fit
14 to proceed on with trial.

15 Now, if I determine as his counsel that I
16 don't believe he's fit for trial, then I will raise
17 that. But for them to say that I am not going to raise
18 a fitness issue because of a personal relationship,
19 that's not correct. If I thought that there was an
20 issue of fitness, I would raise it myself and ask for
21 an evaluation. But, again, it's a situation where
22 they're speculating as to my representation of my
23 client in asserting his rights when they're his rights
24 to assert.

1 THE COURT: Let's say for the sake of argument
2 that I deny the motion to disqualify, we go through all
3 the pretrial motions and they're denied, and we get to
4 trial. What happens if at that point you realize you
5 are a necessary witness? What happens to all the work
6 that we did up to that point? I mean, what effect does
7 your continued representation of him have if you
8 subsequently determine that you have a conflict because
9 you're going to testify at trial?

10 MS. AJSTER: I don't believe there's any.

11 THE COURT: So if there's a subsequent conviction
12 at the trial, that won't be raised as a -- as an issue
13 on appeal, that for some reason, your being a witness
14 made it less effective assistance of counsel than he
15 would have had otherwise?

16 MS. AJSTER: Are you talking about if we get up to
17 trial and then additional counsel is representing
18 Mr. French and I'm a witness?

19 THE COURT: Right.

20 MS. AJSTER: I don't think anything prior to that
21 would affect any conviction or the trial itself
22 because what I'm doing now is preliminary evidentiary
23 matters, trying to get to the final nugget of evidence
24 and the final case that's going to be presented at

1 trial. And I think that, again, at this particular
2 time, to address those issues is premature. I think
3 once we get to a point where we're able to actually sit
4 down and set the matter for trial again and we know
5 what evidence is going to be presented, what counts are
6 going to proceed, you know -- because right now, as
7 I've stated, there's motions to dismiss. There's
8 motions to quash and to disqualify me now, and then
9 have those later not be viable counts would be
10 premature. My argument is that, one, I'm not a
11 necessary witness at this point because we're not
12 anywhere near a trial date.

13 If I were a necessary witness for trial after
14 all of the evidentiary hearings and we know what's
15 actually -- the charges that are going to go to trial
16 and when those are going to go to trial -- because as I
17 stated, there's going to be four separate trials on
18 these counts, most likely, which ones I may be a
19 witness to, which ones I would be a witness to. But at
20 this point in time, it's all speculation as to what I
21 would testify to. We haven't even exchanged discovery
22 on all of the subsequent charges. We only exchanged
23 discovery as I, II, and -- I, II, and III. So I don't
24 even know what the evidence is at this point in time or

1 how to defend against it.

2 But, again, you have motions pending to
3 dismiss, motions to quash. And, then again, it comes
4 to the point where it's twofold. Am I a necessary
5 witness at trial? At this point in time, I don't
6 believe so. And then even if I were, I believe that
7 disqualifying me would create a substantial hardship to
8 my client such that I would be able to continue as his
9 counsel at trial.

10 THE COURT: Okay. Thank you.

11 State.

12 MR. STICKA: Just briefly, Your Honor. We'll
13 stand on our prior arguments. I would argue she's a
14 witness on every count. There's a lot of things --
15 when you -- when Your Honor was asking her about was
16 she a necessary witness, there's a lot of things that
17 she glossed over or didn't mention, such as who's going
18 to testify about the alibi defense that in their house,
19 that he took a Xanax and a Valium and was sleeping
20 and -- or more accurately, sedated during the time
21 frame in which calls were placed. There is simply
22 not -- and that's just one example.

23 There is no independent evidence that can be
24 put on with respect to all of those issues.

1 Now, I've argued all of those things
2 extensively in the first argument. I'm not going to go
3 back through them. I think for -- with all due
4 respect, her answers are disingenuous with respect to
5 if you're Mr. French's defense lawyer do you call you
6 as a witness. Because I think any defense lawyer would
7 want to call her as a witness based on the assertions
8 that she made in the March 16th letter. She likes to
9 make a big deal out of she has motions to dismiss out
10 there. When it comes down to the issue of credibility
11 and you had in front of Your Honor -- Mr. Brandt
12 acknowledged and gave a statement he recognized his
13 voice. That's not something that gets dismissed out at
14 a motion to dismiss or on directed verdict. It's a
15 credibility question. Credibility questions go to the
16 jury. Or go to the judge. They go to the finder of
17 fact. That's -- that's -- it's -- when the issue is
18 credibility, they go to the jury. Credibility
19 questions are certainly ones that immediately go to the
20 jury.

21 Her answers, I think, are disingenuous about
22 whether she would call herself as a witness. Some of
23 them are even hard to believe based on the March 16th
24 assertions that she wouldn't want to call herself as a

1 witness.

2 She wants to decide if she's a witness. She
3 wants to decide the fitness issue. With all due
4 respect, Your Honor asked the question about are these
5 issues going to be raised. At the trial, I mean, if
6 she testifies as a witness, she's going to have a
7 different -- he's going to have a different appellate
8 lawyer. I think that's disingenuous. I think I would
9 argue to you one of the first things that the appellate
10 lawyer is probably going to argue is the problems with
11 her representation. And I -- I just don't see how that
12 doesn't happen. I don't see how you don't end up doing
13 everything twice under these circumstances. And that's
14 why the State is so concerned and why the State is
15 concerned about the fitness issue, as well. If he is
16 unfit and she decides she doesn't need to testify, how
17 does that ensure the best interests of the defendant's
18 constitutional rights? When she answered those
19 questions about not being a witness, she's protecting
20 herself in representing him. I would argue that that
21 is a clear example of her jeopardizing her
22 representation of him.

23 The State didn't write the March 16th letter.
24 She did. She intertwined herself with this case. And

1 it's just -- she is just extremely intertwined with the
2 case. And I just don't see how she can continue under
3 these circumstances.

4 And I rest on the -- the arguments made
5 during the State's first argument. I would ask
6 respectfully that she be disqualified from the case.

7 THE COURT: Thank you, Counsel.

8 This matter is before the Court this
9 afternoon for a hearing on two separate motions. And
10 I'll start with the motion we heard first, which was
11 the Defendant's Motion to Appoint Special Prosecutor.
12 The Court has read all the pleadings in the case. The
13 Court has read the parties' submissions. And the
14 decision about whether to appoint a special prosecutor
15 lies within the discretion of the trial judge. As
16 stated earlier, the statute that applies is 55 ILCS
17 5/3-908 (sic).

18 There are a number of cases that have
19 interpreted that statute and have looked at it. And
20 there are a few general principles that bear repeating.
21 As indicated, the State's Attorney does not represent
22 individuals or specific witnesses during the course of
23 the criminal prosecution. Prosecutions are commenced
24 in the name of and on behalf of the People of the State

1 of Illinois.

2 The office of State's Attorney is one that's
3 provided for in the Illinois Constitution. It is an
4 elected office. The State's Attorney has certain
5 powers and duties and responsibilities. As has been
6 stated previously, it is the obligation of the State's
7 Attorney to seek justice and not merely convict.

8 The Max case, which has been cited a couple
9 of times, is a Third District case, and it indicates
10 that a State's Attorney is an interested party in a
11 case and subject to the appointment of a special
12 prosecutor if he is, one, an actual party in the
13 litigation, or, two, he is interested in the cause or
14 proceedings as a private individual.

15 That case further points out that mere
16 speculation or suspicion is not enough to justify the
17 appointment of a special prosecutor.

18 Two issues are raised by the defendant with
19 regard to the State's Attorney. The first deals with
20 the fact that there's a conflict of interest because
21 Jon Brandt, who is a victim under one of the counts,
22 under the -- one of the initial counts, was a campaign
23 donor and raised funds for Mr. Towne. This Court has
24 not found any cases that specifically indicate that the

1 raising of campaign funds without more gives rise to a
2 sufficient relationship that would require there to be
3 a special prosecutor appointed in place of the State's
4 Attorney.

5 LaSalle County, like many counties in this
6 state, is small, relatively speaking, where people get
7 actively involved in their politics. They get involved
8 in campaigns, and they support people. And the mere
9 fact that someone donates time or money to someone's
10 Office of State's Attorney race, in this Court's view,
11 is not sufficient to find that there's a conflict of
12 interest. If it was, then a lot of State's Attorneys
13 in smaller counties than LaSalle County would have a
14 difficult time prosecuting any cases. Like Putnam
15 County. Putnam County is a very small county. It
16 just doesn't make sense that the mere fact that someone
17 donates, even to the extent of six percent of the total
18 amount of funds raised, would be enough to qualify
19 someone for appointment of a special prosecutor.

20 The second issue raised is that there has
21 been a federal lawsuit filed and that prevents
22 Mr. Towne from being the prosecuting attorney
23 because -- I suppose the argument would be that he has
24 now got an interest in the litigation.

1 As the Court indicated by its questioning, it
2 is troubled by the idea that the filing of a federal
3 lawsuit without more could give rise to the need for a
4 special prosecutor. The Court thinks that sets a
5 dangerous precedent. I do not believe that it was
6 intended that the mere filing of a lawsuit should make
7 a State's Attorney a party that would disqualify him.
8 I recognize that the lawsuit was filed by what
9 Ms. Ajster says was good faith. And I accept that the
10 defendant believes that his federal lawsuit has merit.
11 But at this point, the Court does not find that is
12 sufficient to disqualify the State's Attorney.

13 A Grand Jury of this county found probable
14 cause to issue indictments on the charges alleged.
15 Without regard to the allegations as to Mr. Towne's
16 interests, people who do not have an interest felt
17 there was enough information for this case to go
18 forward.

19 Based on the evidence -- actually, based on
20 the -- the arguments presented, the Court finds that
21 there is not sufficient grounds to appoint a special
22 prosecutor, and therefore the Defendant's Motion to
23 Appoint a Special Prosecutor is denied.

24 The second motion is more difficult, in this

1 Court's mind. The Court is aware that the Sixth
2 Amendment right to counsel is a strong and -- and large
3 fundamental right. It's -- it's one of the fundamental
4 rights set out in the Bill of Rights. It is not to be
5 taken lightly.

6 There are a number of cases that were
7 cited -- the Court has read those cases -- that stand
8 for the proposition that a defendant does have the
9 right to counsel of his choice. It is also, however,
10 true that that right is not absolute.

11 As indicated in the People versus Rivera
12 case, it does talk about the fact that the Sixth
13 Amendment guarantees a criminal defendant the right to
14 assistance of counsel, which encompasses the right to
15 effective representation, as well as the right to
16 select and be represented by one's preferred attorney.
17 However, they go on to say in the next line: The right
18 to counsel of choice is not absolute. It is
19 circumscribed in several respects, which may include
20 the disqualification of chosen counsel in the event of
21 a conflict of interest.

22 That opinion further goes on to say that
23 balanced against the defendant's Sixth Amendment right
24 to counsel of choice, Courts have an independent

1 interest in ensuring that criminal trials are conducted
2 within the ethical standards of the profession and that
3 their judgments remain intact on appeal.

4 In this case, the Court previously had the
5 opportunity to consider a Motion to Disqualify Defense
6 Counsel on March 6th. At the time that that motion was
7 heard, the Court did not believe that the State had put
8 forth sufficient evidence to adequately demonstrate
9 that there was an actual conflict that would have
10 required Ms. Ajster to not represent Mr. French in this
11 case. The Court felt that it was premature. It even
12 talked about it in -- in its ruling.

13 The Court indicated that motion was without
14 prejudice, in the event that something came up.

15 The reason the Court denied the motion
16 initially was because the Court felt that it was
17 speculative because at that point the Court did not
18 have sufficient information as to what Ms. Ajster might
19 or could say at a trial.

20 Since the filing of that motion, there have
21 been multiple pleadings filed by the parties which
22 includes the defendant's motion to appoint a special
23 prosecutor. Contained within that motion was a letter
24 dated March 16th of 2015. There were a number of

1 statements in that letter from Ms. Ajster which caused
2 the Court some concern as to whether she can continue
3 in this case because of the fact that she may need to
4 be a witness. I would note that in Exhibit A to that
5 motion, which is a letter dated December 23rd, there is
6 the statement that Mr. French was unaware of the small
7 claims suit because she accepted service on his behalf
8 and did not tell him until a week later. This, in the
9 Court's view, could potentially go to an alibi defense
10 as to why he did or did not act in a certain way at a
11 certain time.

12 In Exhibit D, which is the letter of
13 March 16, 2015, Ms. Ajster indicates that she has seen
14 Mr. Brandt drive by Mr. French's house twice. That may
15 be evidence that should be elicited at a trial to
16 demonstrate that Mr. Brandt has a bias and goes to his
17 credibility. She indicates that an incident occurred
18 outside the Bureau County Courthouse in which
19 Mr. Brandt made a disparaging statement using vulgar
20 language. And she was present for that. It indicates
21 that, again, she's the one who accepted service on
22 behalf of Mr. French and that she was aware of the fact
23 that they were attempting service on July 23rd because
24 there had been a truck parked and a note left and that

1 she had picked it up on a different date but didn't
2 tell Mr. French until later. And, candidly, if this
3 case gets to the point where we're at trial, the Court
4 cannot imagine that Ms. Ajster would not testify as a
5 witness, an alibi witness or a witness to corroborate
6 her client's assertions that he didn't do the things
7 alleged because he had no reason to do them because he
8 didn't know he was being sued.

9 There is also indications that she spoke with
10 Deputy Hollenbeck. And her conversations with Deputy
11 Hollenbeck are something that is foreseeably relevant
12 at a trial.

13 And so unlike the first time the Court heard
14 the motion, when there was speculation, the Court now
15 has specific instances of statements from Counsel
16 wherein she explains what information she has and
17 knows. And these go to Counts I and II, as well as
18 Count III.

19 And so whether the State added on, as the
20 defense claims, the additional charge, those go
21 directly to Counts I and II, which are different than
22 Count III.

23 The real issue for the Court and the reason
24 why the Court is struggling with this is because the

1 plain language of the rule, 3.7, is that a lawyer shall
2 not act as an advocate at a trial in which the lawyer
3 is likely to be a necessary witness.

4 Now, it is relevant that the term is
5 "likely", as opposed to "certainly". It isn't -- the
6 Court doesn't have -- it doesn't have to be an absolute
7 certainty that the lawyer will testify, but there only
8 has to be a likelihood that the lawyer will testify.

9 What makes this difficult is that there's no
10 cases to interpret it. The rule was changed from what
11 it said previously, and there's very little guidance.

12 What troubles the Court the most and the one
13 answer that I cannot answer is what does a Court do, or
14 what does a person do, when it's clear that they may
15 testify at trial but we're not yet to trial.

16 And that's what we have here. I -- this
17 Court believes that Ms. Ajster is likely to be a
18 necessary witness. So the question is: At what point
19 in the pretrial proceedings do you cross over from
20 being a necessary witness who could still represent a
21 client to being a necessary witness who can't represent
22 a client? There's no clear guidance as to where that
23 line exists.

24 Ms. Ajster would argue that the line exists

1 at some point prior to trial but after the pretrial
2 motions. The State argues that it happens during the
3 entire pretrial proceeding because if it's subsequently
4 determined there was a conflict, then the defendant
5 would have issues on appeal as to the effectiveness of
6 his representation.

7 There's -- there's no cases. There's no
8 place that the Court can look to to find the answer to
9 that. So I've given this a lot of thought. And it's
10 the part that troubles me the most, because this Court
11 does recognize the right to counsel, and the Court does
12 recognize that there is a high value placed on being
13 able to choose a lawyer of your own.

14 The Court's also aware of the fact that it
15 has an obligation to adhere to the high ethical
16 standards that lawyers follow and to assure that the
17 judgments in the case are subsequently affirmed.

18 Given the totality of the facts in this case,
19 given the fact that there had been instances where
20 representations and arguments have been made by defense
21 counsel which crossed from advocacy to testimony
22 seamlessly, this Court is of the opinion that defense
23 counsel is so deeply intertwined in the facts and
24 relationship of the case that it is necessary that she

1 be disqualified as the attorney for Mr. French. And I
2 do not make this decision lightly. And I do recognize
3 that there is a Supreme Court Rule that deals with
4 interlocutory appeals under this issue. And I am fully
5 aware of the import of this.

6 But I truly believe in everything I've read
7 and in what I've heard here today that the process
8 requires that Mr. French retain someone else to
9 represent him.

10 Now, Ms. Ajster can still provide him
11 counsel. She can still give him advice. She just
12 can't do it in court where she's going to be a witness.
13 It isn't like she has to move out and go somewhere
14 else. She is still able to be there for him. She just
15 can't do it as his attorney.

16 But given all of the information that's been
17 presented to this Court, this Court, in the exercise of
18 its discretion, does feel that disqualification of
19 counsel is -- is warranted under the facts. And so I'm
20 going to grant the motion to disqualify.

21 Now, we do have a trial date set in July.
22 And we have an OMHD date set, and we have a final
23 pretrial date set. I think that it would probably be
24 prudent to come back on a status at some point prior to

1 that so that we can ascertain what Mr. French's
2 intentions are with regard to other counsel. And I was
3 going to suggest, if counsel is available -- I'm going
4 to be back out here on June 10th in the afternoon for a
5 status.

6 MR. STICKA: Your Honor, the only thing that I
7 would say is I think when counsel -- when new counsel
8 is getting in, I want to say -- and I can't point Your
9 Honor directly to it -- that there has to be a -- a
10 status within 21 days. And that's probably --

11 THE COURT: That may be a little outside the
12 status date then.

13 I think that's going to be about 20 days,
14 unless my math is wrong.

15 MR. STICKA: And I didn't do the -- I didn't do
16 the math, so --

17 THE COURT: I think it's close.

18 MR. STICKA: That's fine.

19 THE COURT: But I'm scheduled to come back on the
20 Harris case that day for a pretrial --

21 THE DEFENDANT: Your Honor --

22 THE COURT: -- and so --

23 MR. TOWNE: The 10th did you say?

24 THE COURT: I said June 10th at 3:00.

1 So I will ask you, sir: Are you available
2 that day?

3 THE DEFENDANT: I'm not for sure because I have to
4 have back surgery, but I definitely want to represent
5 myself on this case. I do not want nobody else.
6 That's my constitutional rights.

7 THE COURT: Okay.

8 THE DEFENDANT: And right now at this time my back
9 is broken. And both of my hands. So I will have to
10 see a surgeon. And I would love to -- I'll represent
11 myself because on this case here, the cases, I
12 understand everything about it. And I've been on the
13 same medication for 13 years, so I know about
14 everything else, so -- yeah, I'd love to do it myself,
15 but I don't think I'll be ready for what he's talking
16 about.

17 THE COURT: No, no. The June -- June 10th date,
18 Mr. French, is simply a status date so that the Court
19 can figure out where we are and where we're going.

20 THE DEFENDANT: Okay. Yeah, I understand where
21 you're coming from.

22 THE COURT: Because Ms. Ajster had filed some
23 motions on your behalf.

24 If you intend to go forward on your motions,

1 then I need to set them for a hearing.

2 THE DEFENDANT: Yeah, I understand that. I
3 just -- the doctor says I have to get in right away on
4 my back. So what happens if -- I want to represent
5 myself, but my back injury's causing me that shoot-down
6 pain down my legs and everything else, and if I don't
7 get the surgery, I could go paralyzed. So I want to
8 represent myself, but in the mean case (sic), I don't
9 want to be coming to court every second because they
10 want me to come here to paralyze me. That's not --

11 THE COURT: Well, I can assure you, Mr. French,
12 that this Court has no interest in making you come
13 unnecessarily. But there are certain rules that the
14 Court is bound to follow. And one of those rules is
15 that we set a status date within 21 days, which is why
16 you need to come back.

17 THE DEFENDANT: Okay.

18 THE COURT: Now, I can't give you any legal advice
19 as to what's going to happen if --

20 THE DEFENDANT: Now, I got --

21 THE COURT: -- something happens with you
22 medically. I simply can't give you any legal advice.
23 But my point to you is that this Court does not intend
24 to have any more court appearances than are necessary.

1 THE DEFENDANT: Well, I got this for Your Honor,
2 because I know the last time you said -- but I talked
3 to the Mayo Clinic, and I talked to a couple places
4 who -- out in Las Vegas. There's a place out in
5 California. Now, they say -- the last time I went out
6 to Las Vegas, they said that if I didn't have the
7 surgery right away, if I fell again or reharmed again,
8 they say that I could be paralyzed. So I'm more
9 concerned about that than anything.

10 So I should be able to have my constitutional
11 rights with my -- because I'm on disability, and I have
12 a woman that helps me. Every day she's there. And she
13 went to Las Vegas. She's -- everything else with me.
14 And she's the one that gives my medication to me in the
15 morning because it takes me about four hours to get out
16 of bed in the morning. So I would recommend if this
17 case could go like in the afternoon because if -- if
18 I've got to represent myself, it takes me four hours to
19 get out of bed.

20 THE COURT: I was setting it at 3:00.

21 THE DEFENDANT: Okay. That would be fine. But --
22 now, who do I call -- because I only have a disability
23 phone. I don't own no phone. I own a disability phone
24 from the State of Illinois. They give it to me.

1 So there's no bill. There's nothing. Do you see what
2 I'm trying to say? So on that phone, who would I call?

3 THE COURT: I think you're asking me -- I think
4 you're asking me to give you legal advice about what
5 should happen in the event of certain contingencies. I
6 simply can't do that.

7 THE DEFENDANT: No, who do I call on the phone to
8 make sure I'm going to be here? Because I never miss a
9 court date. That's what I'm trying to say. I don't
10 want to miss no court dates. Do you see what I'm
11 saying? Because I want to be in Illinois --

12 THE COURT: You just have to show up.

13 THE DEFENDANT: Okay.

14 THE COURT: You've just got to be here.

15 THE DEFENDANT: At 3:00.

16 But I'm just saying, if -- because with my
17 back, it will knock me out, and sometimes -- I don't
18 want there to be a warrant out.

19 UNIDENTIFIED AUDIENCE MEMBER: I'll take care of
20 it.

21 THE COURT: I understand, but you need -- and you
22 were admonished about this previously. You are
23 required, obviously, to come back to court every time,
24 whether you have an attorney or not.

1 THE DEFENDANT: Yeah, I understand that. I
2 understand that.

3 THE COURT: If not, there could be a trial in your
4 absence and sentencing. And you've been admonished as
5 to that.

6 THE DEFENDANT: Okay. So that's --

7 THE COURT: You just need to be here.

8 THE DEFENDANT: Oh, okay. Well, that's not a
9 problem there. It's just that, you know -- there.

10 So the 21st at 3:00.

11 THE COURT: No. June 10th.

12 THE DEFENDANT: Okay. June 10th at 3:00. No
13 problem.

14 THE COURT: Counsel's going to put together an
15 order, which I'll look at. And if it says what I said,
16 then I'm going to sign it, and you'll get a copy of it.

17 THE DEFENDANT: Okay.

18 Now, I've got a question, because both of my
19 hands -- I can't use them. Now, can I use my assistant
20 to write all the stuff down so I can, you know, be able
21 to be prepared?

22 THE COURT: At a hearing? We'll deal -- we can
23 deal with that when it comes up, sir.

24 THE DEFENDANT: Because I can't be sitting here

1 writing stuff down and stuff.

2 THE COURT: I understand.

3 For today -- you know, we've done a lot
4 today, so at this point the Court is not in a position
5 to offer advice.

6 THE DEFENDANT: That's fine, Your Honor. I'll be
7 here.

8 THE COURT: Do you have that order?

9 THE DEFENDANT: 100 percent.

10 MR. TOWNE: We do, Your Honor. Just one last
11 thing for the purposes of the order.

12 You received this morning from an
13 investigator some materials that are continued to be
14 sealed. I believe that they were relevant for the
15 Court to sua sponte issue -- determine any changes in
16 the bond or bond conditions. The Court did not choose
17 to review that, which is fine; but I also believe that
18 those materials under Himmel need to be presented to
19 the ARDC.

20 So I guess I would be asking that the
21 materials from that subpoena be released to me or that
22 the Court in turn submit them to the ARDC, one or the
23 other.

24 THE COURT: Well, as far as the Court -- as I

1 said, the Court received this at about 11:15, 11:30. I
2 finished hearings at about ten after 12, opted to have
3 lunch. I haven't had a chance to look at it because
4 I've been out here all afternoon doing criminal cases.

5 So it isn't a matter of the Court making a
6 choice not to look at it. It's just that, well,
7 frankly, the Court's been busy.

8 MR. TOWNE: Well, is the Court --

9 THE COURT: I will -- I will review the contents,
10 and if they comply with the subpoena, the Court will
11 turn them over. I believe that they are --

12 MS. AJSTER: Well, see --

13 THE COURT: They're DVDs or something.

14 MS. AJSTER: To back up, I mean, I was --

15 MR. TOWNE: Your Honor, she's not counsel in this
16 case anymore.

17 MS. AJSTER: Well, I was at the time the subpoena
18 was issued, and nobody gave me a copy of it.

19 THE COURT: Well, the Court has been asked to
20 determine whether a DVD or a CD complies with a request
21 for subpoenaed information. The Court did not have
22 access to review it before. It's now quarter to 5 --

23 THE DEFENDANT: Yeah.

24 THE COURT: -- 15 minutes beyond when Court

1 closes. And so I guess my question is, Mr. Towne, are
2 you asking the Court to stay and review the CD --

3 MR. TOWNE: No --

4 THE COURT: -- and then give it to you?

5 MR. TOWNE: -- Your Honor. I just didn't know
6 what you wanted to put in the order with regard to
7 those materials, if anything.

8 THE COURT: Well, the Court, obviously, has an
9 obligation to look at it and decide whether it complies
10 to turn it over. So that's going to happen.
11 Whether --

12 MR. TOWNE: That's fine. We can --

13 THE COURT: I just don't know that it's going to
14 happen this evening.

15 MR. TOWNE: We can wait on that, Your Honor.

16 THE DEFENDANT: Your Honor, can I have one last
17 thing now?

18 THE COURT: Yes.

19 THE DEFENDANT: Now, I got the tapes and all kinds
20 of evidence of -- of people going in the house and
21 stuff. I've been in bed for three years. Now, with my
22 doctor and everything else, now -- now, do I have to
23 run that by you, give you the tapes and everything
24 else, people talking on the phone and everything else?

1 THE COURT: This Court's function is to
2 decide motions and evidence as they're presented. The
3 Court cannot give advice as to --

4 THE DEFENDANT: Okay. Well, no, I was just -- I
5 was just asking. I was just asking. Okay. That's
6 fine.

7 THE COURT: The reason these came to me was
8 because they came by subpoena. That's the only reason.

9 THE DEFENDANT: Okay. That's fine. All right.
10 No problem.

11 MS. AJSTER: Your Honor, I would just ask that
12 Mr. French be given a copy of the subpoena as it
13 relates to those DVDs.

14 THE DEFENDANT: Yeah, because I never got no
15 paperwork, ever.

16 THE COURT: Do you have any objection to him
17 getting a copy of your subpoena?

18 MR. TOWNE: Absolutely not, Your Honor.

19 THE COURT: Yeah, you'll get a copy.

20 THE DEFENDANT: All right. Thank you, Your Honor.

21 THE COURT: Anything else we need to do on the
22 record?

23 (No response.)

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(Which were all the proceedings held in
said matter on said date.)

