

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,	*	Criminal Action
	*	Mag. No. 10-014
Plaintiff,	*	
	*	Section (6)
v.	*	
	*	New Orleans, Louisiana
ASHTON O'DWYER,	*	February 1, 2010
	*	
Defendant.	*	
* * * * *		

HEARING ON APPOINTMENT OF COUNSEL
AND DETENTION HEARING,
BEFORE THE HONORABLE LOUIS MOORE, JR.,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:	United States Attorney's Office By: GREG KENNEDY, ESQ. Hale Boggs Federal Building 500 Poydras Street, Room 210B New Orleans, Louisiana 70130
For the Defendant:	ASHTON O'DWYER, In Propria Persona
Court Audio Operator:	(Magistrate Clerical)
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I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>WITNESSES:</u>				
Timothy Gantner	41	49	--	--
Ashton O'Dwyer	86	108	--	--

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P R O C E E D I N G S

(Monday, February 1, 2010)

THE CLERK: Criminal Action 2010-14, United States of America v Ashton O'Dwyer set for a determination of counsel and possible detention hearing.

THE COURT: Thank you.

Would Counsel make your appearance, please?

MR. KENNEDY: Good afternoon, Your Honor; Greg Kennedy on behalf of the United States.

THE COURT: Thank you, Mr. Kennedy.

DEFENDANT O'DWYER: And Ashton O'Dwyer representing himself in propria persona, Your Honor.

THE COURT: Very well. Mr. O'Dwyer, you're here for -- you've already had an initial appearance, as I understand it.

DEFENDANT O'DWYER: Yes, sir, Saturday morning. What --

THE COURT: All right, I have it. Just a minute --

DEFENDANT O'DWYER: All right.

THE COURT: -- let me tell you about your rights.

DEFENDANT O'DWYER: I know my rights, Your Honor.

THE COURT: And I'll give you an opportunity to speak. I'm going to give you an opportunity to speak.

DEFENDANT O'DWYER: Thank you.

THE COURT: Yes, ma'am?

1 MS. CIMINO: Good afternoon, Your Honor; Cynthia
2 Cimino from the Federal Public Defenders' Office.

3 I just wanted to inform the Court that on Saturday
4 there was no official determination of counsel at that time and
5 I don't believe that the financial resources of Mr. O'Dwyer
6 were reviewed. However, I've spoken with Mr. O'Dwyer. I was
7 present in court on Saturday. And it is my understanding
8 having spoken with his cousin, Joseph Hecker, in Baton Rouge
9 that he plans on being before the Court, if the Court would
10 continue this matter to tomorrow, to represent Mr. O'Dwyer in
11 regards to detention as well as taking this case.

12 DEFENDANT O'DWYER: Incorrect, Your Honor.

13 THE COURT: What say you -- well, let me tell you
14 this, Mr. O'Dwyer, you have the right to remain silent. I know
15 you should know that.

16 DEFENDANT O'DWYER: Which I waive --

17 THE COURT: Just a minute --

18 DEFENDANT O'DWYER: -- expressly.

19 THE COURT: Well, let me explain to you I'm required
20 under the law to tell you that --

21 DEFENDANT O'DWYER: I know that, Your Honor.

22 THE COURT: -- and if you make an intelligent
23 decision that that's what you want to do, the Court --

24 DEFENDANT O'DWYER: I've already made an intelligent
25 decision --

1 THE COURT: Well --

2 DEFENDANT O'DWYER: -- I wish to speak, just tell me
3 when.

4 THE COURT: You will speak after I tell you what your
5 rights are for the record.

6 You have the right to remain silent. You do not have
7 to make a statement against yourself, because anything you say
8 can and probably will be used against you. So, be careful what
9 you say.

10 You have the right to have an attorney to represent
11 you, one of your own free choice or choosing. If you qualify
12 by answering questions concerning your financials, an attorney
13 would be appointed to represent you. You also have the right
14 to represent yourself, as you have announced that you intend to
15 do, but am I required to tell you these things.

16 You are charged, and I have to tell you that and then
17 I'm going to let you speak, in a criminal complaint. This is
18 not an indictment. This is a criminal complaint which charges
19 a felony, United States of America v Ashton R. O'Dwyer, Jr.

20 "I, the undersigned complainant state the following is true and
21 correct to the best of my knowledge and belief. On or
22 about" --

23 DEFENDANT O'DWYER: Your Honor, we waive the reading
24 of it.

25 THE COURT: "On or about January 29th, 2010 in

1 Orleans Parish in the Eastern District of Louisiana, Defendant
2 transmitted in interstate commerce a communication containing a
3 threat to injure the person of another in violation of 18
4 United States Code Section 875," signed by the Special Agent of
5 the FBI sworn to before a Federal Magistrate Judge.

6 You need to know this. Again, I'm going to let you
7 speak. I'm not going to restrain you.

8 In the event there was a grand jury indictment and
9 the Defendant went to trial on it, was found guilty, or he
10 should plead guilty on an indictment, what type of sentencing
11 range may he be facing if that would occur, Mr. Kennedy?

12 MR. KENNEDY: Yes, Your Honor.

13 Mr. O'Dwyer, you face up to five years imprisonment,
14 followed by up to three years of supervised release, a fine of
15 up to \$250,000, and a \$100 special assessment.

16 DEFENDANT O'DWYER: You told me that on Saturday and
17 I said I understood.

18 MR. KENNEDY: Great. Thank you.

19 THE COURT: Very well.

20 Now, let me say this to you, you've heard the
21 expressions coming from the Assistant Federal Public Defenders.
22 You said earlier that that was incorrect. Now is your
23 opportunity to speak to that issue.

24 DEFENDANT O'DWYER: Yes, thank you, Your Honor.

25 THE COURT: All right, sir.

1 DEFENDANT O'DWYER: The detention hearing I thought
2 was today and that's --

3 THE COURT: Well, I was getting ready to tell you
4 about that, but I will after you finish.

5 DEFENDANT O'DWYER: But that's the statement that I
6 intend to make. The only thing that I have agreed to continue
7 is the appointment of Ms. Cimino as my counsel. And I
8 suggested to her that it was not necessary to take Your Honor's
9 time, counsel's time, or the other litigants' time by asking me
10 questions about my financial situation, all of which is
11 meticulously described in Case No. 09-12627 in this Bankruptcy
12 Court. So, if Your Honor will have the time between now and
13 whenever it is I appear before you again to look at that
14 meticulously detailed financial information, there's no need to
15 do it now.

16 THE COURT: That's not the way I do things for the
17 last 24 going on 25 years.

18 DEFENDANT O'DWYER: All right.

19 THE COURT: You can submit a copy of that along with
20 a financial affidavit if you would like to appoint -- have an
21 attorney appointed to represent you. However, the procedure is
22 this, you don't even have to do that because you said you
23 wanted to represent yourself. But it is a short form and you
24 don't have to fill it out. If you want to make a copy of that
25 and have it attached and sign off on it and swear that that's

1 your representation of what your financial status is, you
2 certainly can do that. I'm not going to prevent that.

3 But to say to me, "You can go and you can do that,"
4 it's on you to show me. I'm supposed to find out from the
5 citizen who's so charged just what their financial situation is
6 if they want to apply for appointed counsel.

7 Now, you originally said you were going to try -- you
8 were going to represent yourself and also Attorney Cimino said
9 that you wanted -- that your cousin or some relative, a Joseph
10 Hector -- Hecker, was interested in providing you legal
11 counsel. Which is it?

12 DEFENDANT O'DWYER: Well, I haven't talked to him
13 yet. We haven't discussed it. I'm going to see him tomorrow
14 according to Ms. Cimino. And in the meantime I was told that
15 you could not appoint Ms. Cimino because you didn't have all of
16 my financial information --

17 THE COURT: That's correct.

18 DEFENDANT O'DWYER: -- and that you were going to
19 ask me about it today. I said that wasn't necessary. So that
20 part of these proceedings I will consent to continue until
21 tomorrow. I would like to proceed with the detention hearing.

22 THE COURT: How can you proceed with a detention
23 hearing when you don't have counsel?

24 DEFENDANT O'DWYER: In propria persona. I'm going to
25 represent myself for that.

1 THE COURT: Well, the only thing I can tell you,
2 you're certainly welcome to do that. That's your right to do
3 that, but you're going to have to sign a Waiver of Counsel
4 Form.

5 DEFENDANT O'DWYER: Bring it on and I'll sign it.

6 THE COURT: Well -- okay, it's no problem. I'm just
7 going to by-pass yours for a while and take care the rest of
8 these people --

9 DEFENDANT O'DWYER: Sure.

10 THE COURT: -- and we'll take care of it --

11 DEFENDANT O'DWYER: As long as I get an opportunity
12 to speak I'm happy.

13 THE COURT: I'm not finished with you yet.

14 DEFENDANT O'DWYER: Oh, I'm sorry.

15 THE COURT: Look, you're going to get your --

16 DEFENDANT O'DWYER: I thought I was dismissed.

17 THE COURT: No, sir, you are going to get your
18 opportunity to speak, you know. What I want you to know is you
19 had, I'm told, a portion of your initial appearance on
20 Saturday. The other part of it, of course, is to have bail
21 consideration given and to find out if there's a motion for
22 bail, or if there's a motion for detention. Evidently, the
23 Government moved for detention, because there's a detention
24 hearing now scheduled, correct?

25 DEFENDANT O'DWYER: That's the way I understand it.

1 And I also understand that they're going to recommend
2 detention. I don't know what their grounds are, but I would
3 like to hear them. I have something to say in response.

4 THE COURT: And let me say this to you, you also have
5 the opportunity to review or your counsel the Pretrial Services
6 Report. Have you done such?

7 DEFENDANT O'DWYER: It hasn't been tendered to me.

8 THE COURT: Very well. So I guess if it hasn't been
9 tendered to you, you haven't discussed it with a Pretrial
10 Services Officer?

11 DEFENDANT O'DWYER: It has not been tendered to me
12 and they have not approached me with any information
13 whatsoever.

14 THE COURT: All right. Now, --

15 DEFENDANT O'DWYER: I was fully cooperative with
16 them.

17 THE COURT: Very well. The only thing I'm trying to
18 find out at this point is whether or not -- there's a question
19 in my mind right now as to whether or not these proceedings can
20 go on --

21 DEFENDANT O'DWYER: Oh, they can go on.

22 THE COURT: -- in this particular type of atmosphere.
23 What I'm trying to figure out is just to find out where we are.
24 I see Pretrial --

25 DEFENDANT O'DWYER: Any atmosphere is better than the

1 atmosphere in the St. Bernard Parish Jail.

2 THE COURT: Very well. The Court is going to
3 recognize Pretrial Trial Services Officer Gantner. What do you
4 have to say?

5 MR. GANTNER: Yes, Judge Moore, I do have a copy of
6 the Pretrial Services Report and I can certainly give it to
7 Mr. O'Dwyer. We were not aware that he was going to be
8 representing himself today. I was not aware there won't be
9 counsel with him.

10 THE COURT: Well, thank you, Officer. Normally that
11 goes to the attorneys.

12 So the only thing I'm trying to find out is I want
13 you to understand if you want to waive counsel and you want
14 to --

15 Give him a Waiver of Counsel Form for the day only
16 and then we'll have him have a seat and he can read over that
17 report.

18 Just a moment. Are you sure that's what you want to
19 do for today only?

20 DEFENDANT O'DWYER: Positive, Your Honor.

21 THE COURT: All right, very well.

22 MR. KENNEDY: Your Honor, I don't know if this has
23 any effect on the proceedings today or not, but it's the
24 Government's intention to file a motion for a competency
25 examination of Mr. O'Dwyer. And given that in light of -- the

1 name escapes me regarding the Supreme Court's recent decision
2 last year regarding minimal mental requirements in order to
3 represent ones self, I don't know that that would have any
4 bearing upon Mr. O'Dwyer's intentions of representing himself
5 today.

6 DEFENDANT O'DWYER: And I submit to any examination
7 the Government wishes to put me through to determine my
8 competency. And I will remind Counsel of the case, the
9 celebrated case that established the Bivens doctrine.

10 MR. KENNEDY: Well, I'm just --

11 DEFENDANT O'DWYER: That's not a threat, it's a
12 promise.

13 MR. KENNEDY: Your Honor, I'm just going by recent
14 Supreme Court decisions in which honestly that appear the same
15 question. I'll remind the Court as to when Ms. Boyer wanted to
16 represent herself and we had to address whether or not she was
17 mentally competent.

18 THE COURT: You don't have enough information to file
19 such a motion?

20 MR. KENNEDY: I think based upon Mr. O'Dwyer's
21 actions as well as his comments in court today, I believe there
22 is a basis for at least an examination of Mr. O'Dwyer.

23 DEFENDANT O'DWYER: He's the one that needs a
24 psychiatric examination, not me.

25 MR. KENNEDY: Well, Your Honor, be that as it may, I

1 think that that's something I need to bring to the Court's
2 attention before we go forward.

3 THE COURT: Well, you know the Court can do it on its
4 own motion if I had enough information. The only thing I have
5 access to, and I have not read the Pretrial Services Report
6 yet, but I've read the entire complaint. Those are just
7 allegations and --

8 MR. KENNEDY: They are allegations, Your Honor, but
9 at this point I think that those allegations are sufficient at
10 least to merit an examination of Mr. O'Dwyer and have somebody
11 in the medical profession to make a determination as to whether
12 or not he's competent to proceed at this point.

13 THE COURT: Well, under 18 United States Code
14 Section 4241 and sequences, there are provisions made for a
15 determination of mental competency to stand trial or to undergo
16 pretrial release proceedings. Under 4242, 18 USC, there are
17 provisions that provide for a determination of the existence of
18 insanity at the time of the offense. We haven't even gotten to
19 that point at all, if we ever. But right now we're at a
20 preliminary stage. What I don't want to do is do this two or
21 three times, determination of mental competency to stand trial
22 to undergo pre -- it says "post-release" on this as well.

23 DEFENDANT O'DWYER: Your Honor, --

24 THE COURT: Yes, sir?

25 DEFENDANT O'DWYER: -- we don't --

1 THE COURT: The Government has made -- has now
2 brought that up, but I'm just going to tell you what it says
3 and then I'll decide which way we're going to go. That's why I
4 was wondering if there's an issue.

5 DEFENDANT O'DWYER: He's brought it up out of the
6 thin air. There is no factual, or medical, or legal basis for
7 his bringing it up. His intent is to muzzle me because I have
8 embarrassed the United States of America and its agencies, the
9 Federal Bureau of Constipation and the --

10 THE COURT: Well, I've read all that. I think --

11 DEFENDANT O'DWYER: -- and the --

12 THE COURT: Look --

13 DEFENDANT O'DWYER: -- United States Department of
14 Injustice.

15 THE COURT: Let me say this to you, you seem to be
16 repeating a lot of things that are in this complaint.

17 DEFENDANT O'DWYER: Which they would like to keep me
18 muzzled on.

19 THE COURT: Well, just a minute. I'm just going to
20 tell you, it seems like you're repeating a lot of things that
21 were said or reported in this complaint. I read it all
22 thoroughly.

23 DEFENDANT O'DWYER: None of which have anything to do
24 with the charge.

25 THE COURT: Well, that's a legal question we'll look

1 into.

2 DEFENDANT O'DWYER: It's not a legal question, it's a
3 fact.

4 THE COURT: At any time --

5 DEFENDANT O'DWYER: If you won't admit it, then
6 you've just demonstrated your own bias and prejudice.

7 THE COURT: What I think you ought to do is kind of
8 hold off and wait until you talk to an attorney.

9 DEFENDANT O'DWYER: I'm not holding off anything. I
10 want to proceed with the competency hearing -- I'm sorry, with
11 the detention hearing in propria persona. Just tell me when I
12 can open my mouth. Let me go sit in the corner. I'll read the
13 Pretrial Services Report. I'll sign the waiver. And then you
14 can proceed with the docket and let me know when I can speak
15 again. We won't have to keep everybody waiting.

16 THE COURT: Well, this is the part of this -- I've
17 gone through this so many times, that doesn't impact upon me at
18 all what you're saying in terms of all of that. I'm trying to
19 follow the law. A determination of mental competency --

20 DEFENDANT O'DWYER: I wouldn't be here if you were
21 trying to follow the law.

22 THE COURT: I have not made a decision on your case
23 at all. Another Magistrate Judge signed the complaint that was
24 sworn against you, sir. This is my first time having the
25 opportunity to address you in court concerning allegations

1 brought against you. If you listen up you'll see what this is
2 all about.

3 A motion to determine competency of a defendant under
4 4241: "At any time after the commencement of a prosecution for
5 an offense and prior to sentencing of a defendant, or at any
6 time after commencement of probation or supervised release and
7 prior to completion of the sentence the defendant or the
8 attorney for the Government may file a motion for a hearing to
9 determine mental competency of the defendant. The court shall
10 grant the motion or shall order such a hearing on its own
11 motion if there is reasonable cause to believe that the
12 defendant may presently be suffering from a mental disease or
13 defect rendering him mentally incompetent to the extent that he
14 is unable to understand the nature and consequences of the
15 proceedings against him or to assist properly in his defense."
16 Now that's what I'm looking at here.

17 You have told me that you want to represent yourself.

18 DEFENDANT O'DWYER: I'm telling you they have no
19 reasonable cause --

20 THE COURT: That's all right. Just a minute. I
21 don't know yet, --

22 DEFENDANT O'DWYER: -- and that I want to represent
23 myself.

24 THE COURT: -- I have to wait and see.

25 DEFENDANT O'DWYER: I know all of my rights and I

1 want to proceed. That's what I'm telling you. They have no
2 reasonable cause. You know it, I know it, and they know it.
3 This is a charade.

4 THE COURT: Do you know what you're doing right now?

5 DEFENDANT O'DWYER: I know what I'm doing right now.
6 I'm embarrassing the United States of America. And you are
7 trying to muzzle me because you belong to the same system that
8 he belongs to, and that Danny Knowles belongs to, and that
9 Stanwood R. Duval belongs to.

10 THE COURT: Do you know what I think is going to have
11 to happen here? And I'm just about convinced, that's why I
12 wanted to speak to you.

13 DEFENDANT O'DWYER: Convinced of what?

14 THE COURT: Convinced of the need to have you
15 examined.

16 DEFENDANT O'DWYER: Oh, really?

17 THE COURT: Yes, I am.

18 DEFENDANT O'DWYER: On what basis?

19 THE COURT: Let me just wait a while and we'll see.

20 DEFENDANT O'DWYER: What is your -- what is your
21 competency to determine that there is some reasonable basis for
22 what you just said? Do you have a medical degree?

23 THE COURT: Do you have one?

24 DEFENDANT O'DWYER: No, I don't have one, but I --

25 THE COURT: I don't have to have a degree.

1 DEFENDANT O'DWYER: -- haven't been under the care of
2 any --

3 THE COURT: But did you hear the law that I just
4 read?

5 DEFENDANT O'DWYER: Reasonable cause. I have not
6 seen any evidence of reasonable cause to trigger your power
7 under that statute.

8 THE COURT: Let me say this to you --

9 DEFENDANT O'DWYER: You are like the Government
10 reaching for things out of thin air.

11 THE COURT: -- do you know what I'm thinking you are
12 doing? I'm just thinking --

13 DEFENDANT O'DWYER: I don't care what you think I'm
14 doing. I know what I'm doing. You're not my jury. I'm
15 entitled to a jury trial.

16 THE COURT: You didn't give me a chance to tell you
17 all that either, did you? I think (Inaudible, Defendant
18 speaking over Judge)

19 DEFENDANT O'DWYER: I know what I'm entitled to.
20 You're not going to judge my case.

21 THE COURT: No, I won't.

22 DEFENDANT O'DWYER: No, I know you won't. I'll see
23 to that.

24 THE COURT: Mr. O'Dwyer, I think what you are doing
25 is continuing to talk and talk. I think you should wait until

1 you talk to your lawyer (Inaudible, Defendant speaking over
2 Judge)

3 DEFENDANT O'DWYER: I don't need to talk to a lawyer
4 right now. I want an opportunity to be heard. My liberty has
5 been taken away from me since Friday night about 9:30. And if
6 I'm reading the tea leaves correctly, you're going to send me
7 back to the slammer. And that's a deprivation of my
8 constitutional rights and I want to be heard on the subject.
9 And if you won't let me, then you are violating your oath, sir,
10 and you're waiving any immunity that you have because you wear
11 a black robe. So think about that.

12 THE COURT: I don't have to think about it.

13 DEFENDANT O'DWYER: Not to mention -- not to mention
14 a little detail contained in the complaint that was filed
15 against me to the effect that an inappropriate communications
16 investigation has been undergoing in this very building since
17 October 27, 2007. Did you see that?

18 THE COURT: I read all of it.

19 DEFENDANT O'DWYER: It's at the top of Page 2.

20 THE COURT: I read all of that. And I also read
21 where you've also included the Supreme Court of Louisiana
22 Justice as being the subject of one of your complaints.

23 DEFENDANT O'DWYER: She's a felon, sir.

24 THE COURT: Well, that needs to be proven. The only
25 thing I can tell you is you just have a seat and we'll get back

1 to you in just a few minutes. We're going to continue these
2 proceedings in just a few minutes. Let me get through with the
3 rest of the docket --

4 MR. KENNEDY: Thank you, Your Honor.

5 THE COURT: -- and we'll give Mr. O'Dwyer a chance to
6 be heard.

7 All right, call the next matter.

8 (Continuation of Docket; USA v O'Dwyer continued until
9 3:49 p.m.)

10 * * * * *

11 THE COURT: Next matter.

12 THE CLERK: Recall Criminal Action 2010-14,
13 United States of America v Ashton O'Dwyer, Jr. set for a
14 detention hearing.

15 THE COURT: Very well, Mr. O'Dwyer, and Counsels.

16 MR. KENNEDY: Your Honor, Greg Kennedy again on
17 behalf of the Government.

18 THE COURT: Thank you.

19 DEFENDANT O'DWYER: And Ashton O'Dwyer, Your Honor,
20 in propria persona.

21 THE COURT: Thank you.

22 Mr. O'Dwyer, I am in receipt of a Waiver by Defendant
23 of Assistance of Counsel wherein you stated, "I, Ashton R.
24 O'Dwyer, Jr., defendant in the above numbered and entitled
25 proceeding having been advised of my constitutional right to

1 have the assistance of counsel for my defense hereby declare
2 that I do not desire the assistance of counsel and hereby waive
3 my right to have the assistance of counsel for my defense."

4 And on the side you have "detention hearing." Signed by
5 Mr. Ashton O'Dwyer, Jr. this 1st day of February, 2010.

6 That is your desire?

7 DEFENDANT O'DWYER: Yes, it is, Your Honor.

8 THE COURT: Very well, let it become a part of the
9 record.

10 All right, is the Government ready to proceed with
11 the detention hearing?

12 MR. KENNEDY: Yes, Your Honor, but you know I don't
13 know if the Judge -- the Court wanted to address any competency
14 issues. I did reference a case earlier and the case I was
15 referencing was Indiana v Edwards where it talked about a
16 minimal competency threshold.

17 DEFENDANT O'DWYER: Excuse me, Your Honor, --

18 MR. KENNEDY: Your Honor, I'm not finished.

19 THE COURT: Wait, let him finish and then I'll hear
20 you.

21 DEFENDANT O'DWYER: All right.

22 MR. KENNEDY: You know a minimal competence
23 threshold. Obviously what the court addressed in that Supreme
24 Court case was two separate competency levels. One is
25 competency to stand trial, but then there's a further issue

1 that the Court must examine when a defendant who wishes to
2 represent himself has a minimum competency level in order to
3 represent himself which is separate and apart from that of
4 which to stand trial. And as I said, I would point that out to
5 the Court. I have a copy of it here for the Court's perusal.
6 It's at 128 Supreme Court 2379. It's a U.S. Supreme Court case
7 that was decided on June 19th, 2008.

8 THE COURT: Wait, say that again, 128 Supreme Court
9 what?

10 MR. KENNEDY: One twenty-eight Supreme Court 2379.
11 It's Indiana v Edwards and it was decided on June 19th of 2008,
12 citing a defendant representing himself at trial.

13 THE COURT: That's at trial.

14 MR. KENNEDY: Yes, Your Honor.

15 THE COURT: What does it say about the preliminary
16 stage?

17 MR. KENNEDY: It does not address the preliminary
18 hearing issue or a detention hearing issue. Just simply it
19 goes to a defendant who had several competency examinations and
20 then elected to -- or actually wanted to represent himself at
21 trial. The State of Indiana insisted on appointed counsel.
22 And it went up to the Supreme Court and the Supreme Court
23 established a threshold amount, a threshold competency level
24 for self-representation.

25 THE COURT: And that threshold level was?

1 MR. KENNEDY: Your Honor, it did not state exactly
2 what it was. It was a determination by the trial court in
3 order to make that based upon competent examinations and also
4 all the evidence that would be available to the trial court.
5 That's why I would point out that if the Defendant were to
6 represent himself given his prior comments to the Court, the
7 way in which he comported himself to the Court, as well as the
8 allegations that are contained in the complaint against the
9 Defendant, I think that there are some serious questions of
10 whether or not the Defendant has the mental competency to
11 represent himself in this proceeding.

12 THE COURT: All right, Mr. O'Dwyer, it's your turn.

13 DEFENDANT O'DWYER: Thank you, Your Honor.

14 Let me address the last thing that Counsel stated
15 first and that is that in addition to the Bivens doctrine with
16 which we are all familiar, --

17 THE COURT: It's been around a long time.

18 DEFENDANT O'DWYER: -- he only has qualified immunity
19 from a suit for defamation. He has no reasonable basis on
20 which to represent to this Court that there exists reasonable
21 cause for my competency to represent myself either at the
22 pretrial or trial stage. And I'm warning him that he will
23 either retract that statement or he is liable for a defamation
24 suit from Ashton O'Dwyer. I don't expect him to reply or to
25 withdraw his statement, but it's coming.

1 Next issue: Your Honor, I now wish to address two
2 very serious constitutional issues that are raised by these
3 proceedings both of which involve procedural and/or substantive
4 due process. First of all, on Saturday I was told that I would
5 have a court appearance today, Monday, the 1st of February, and
6 that the issue to be decided today was not only detention but
7 also whether or not I qualified for in forma pauperis status so
8 as to allow Ms. Cimino to be --

9 THE COURT: Or whomever the Public Defender --

10 DEFENDANT O'DWYER: -- appointed.

11 THE COURT: -- would assign, yes.

12 DEFENDANT O'DWYER: All right, okay. Anyway, I get
13 here today and I find out that, well, we're really not going to
14 do the in forma pauperis matter today because Your Honor has to
15 become more familiar with my financial situation.

16 THE COURT: No, no, no, no, that's not what I told
17 you. I told you you could answer a financial affidavit. You
18 referred me to a bankruptcy document.

19 DEFENDANT O'DWYER: I'm telling you what
20 Ms. Cimino --

21 THE COURT: Do you remember you told me --

22 DEFENDANT O'DWYER: Yes, Your Honor.

23 THE COURT: Oh, you're telling me what Ms. Cimino
24 said.

25 DEFENDANT O'DWYER: I'm telling you what she told me

1 and that's not the point; this is the point. The point is that
2 the Government has very masterfully changed like a chameleon
3 from brown to green. And now the issue becomes out of the
4 clear blue sky my competency to proceed. No one every told me
5 that on Saturday. I learned that by ambush for the first time
6 today.

7 This gentleman knows, because I am a lawyer by
8 education although I concede that I am disbarred, disgraced,
9 embarrassed, and humiliated in public by the same system that
10 has you sitting there wearing a black robe, that he at least
11 owed me the courtesy of sharing with me the authority that he
12 just cited to Your Honor, which I can't rebut because I haven't
13 seen it. I mean this is trial by ambush.

14 The second due process issue impacted by these
15 proceedings is something I don't expect you to be familiar with
16 because we don't have a transcript yet of the proceedings
17 before Magistrate Knowles on Saturday. I would ask, however,
18 that in connection with Your Honor's considering my in forma
19 pauperis status you please give consideration, assuming I am
20 granted that status, to allowing me to be furnished free of
21 charge transcripts of Saturday's proceedings and these
22 proceedings, because I'm making a record because this is going
23 to go up I'm sure and because constitutional rights are
24 seriously involved, which leads me to my point.

25 On Saturday at the beginning of the proceedings I

1 told Judge Knowles in no uncertain terms that it is Ashton
2 O'Dwyer's position that he and no Magistrate of this court, and
3 that includes you, no Eastern District Judge, the U.S.
4 Attorney's Office for the Eastern District, I'm going to add
5 the FBI and any other agency of the United States Department of
6 Justice should be proceeding in matters against me. They have
7 inherent conflicts of interest. I don't mean any --

8 THE COURT: That's in accordance -- that's your
9 understanding.

10 DEFENDANT O'DWYER: I beg your pardon?

11 THE COURT: That's in accordance with your
12 understanding.

13 DEFENDANT O'DWYER: Well, it's in accordance with
14 what the legal standard is according to the United States
15 Supreme Court which is namely whether reasonable minds looking
16 at all of the facts and circumstances would conclude that the
17 appearance of impropriety exists. That is the standard.

18 Coincidentally, it went to the Supreme Court on a case
19 from this very court involving Liljeberg, which is very focal
20 to the problems that Judge Porteous currently finds himself in.
21 It's the Liljeberg decision from the Supreme Court. The Fifth
22 Circuit was affirmed, if I'm not mistaken, in that case. I
23 could be corrected on that. But that's where the very liberal
24 standard of not actual impropriety, not actual bias or
25 prejudice, but whether or not reasonable minds looking at all

1 of the facts and circumstances would conclude that the
2 appearance for impropriety exists.

3 Now, I --

4 THE COURT: Now, Mr. O'Dwyer, let me just -- let me
5 stop you. I'm going to let you go a little bit further.

6 DEFENDANT O'DWYER: All right.

7 THE COURT: What I'm only suggesting is for you --

8 DEFENDANT O'DWYER: Your Honor, my trousers are
9 falling down. I feel very uncomfortable.

10 THE COURT: Yeah. Let me just say this to you -- try
11 to pull them up.

12 DEFENDANT O'DWYER: I'm trying. Okay.

13 THE COURT: What I'm trying to say to you, you can't
14 have your cake and eat it too. Either you're going to apply to
15 proceed in forma pauperis or not. That's one of the things we
16 have to decide whether or not you want to do. If you're going
17 to proceed in forma pauperis, as I suggested to you, you're
18 going to have to answer a financial affidavit --

19 DEFENDANT O'DWYER: All right.

20 THE COURT: -- as the Court puts it to you or as you
21 may provide to the Court.

22 DEFENDANT O'DWYER: All right.

23 THE COURT: If you qualify, the Court will either
24 appoint Counsel to represent you and then you can start asking
25 for these things that you are asking for --

1 DEFENDANT O'DWYER: All right.

2 THE COURT: -- that is transcripts and stuff like
3 that, and if you qualify for it you're going to get it just
4 like any other citizen would get it. But until -- we're at
5 step number one in the process of whether or not you're going
6 to represent yourself or not, or whether or not you're going to
7 ask to proceed in forma pauperis.

8 I can't make that decision without information being
9 given to me. That's all I'm saying.

10 DEFENDANT O'DWYER: All right, I'm prepared to give
11 you that information, but I am letting you know that there is a
12 threshold issue --

13 THE COURT: Oh, I understand that.

14 DEFENDANT O'DWYER: -- involving my constitutional
15 rights --

16 THE COURT: Look, you --

17 DEFENDANT O'DWYER: -- that we may have to address
18 before I ever get to the pauper affidavit.

19 THE COURT: No, no, no. This is in a criminal
20 proceeding. Once a criminal proceeding is started the Federal
21 Rules of Criminal Procedure will prevail on this, as well as
22 the constitutional issues, but you have to follow the rules.
23 Now, the rules are either -- either you're going to represent
24 yourself, or you're going to hire a lawyer, or you're going to
25 -- there are also provisions for standby counsel. But that

1 takes a procedure to go through that.

2 Now, my only issue before me today is whether or not,
3 you know, you're going to be constitutionally represented by
4 yourself, or by appointed counsel, or hired counsel. That's
5 all I'm trying to figure out for you.

6 DEFENDANT O'DWYER: That's not the issue that I
7 thought I was standing here for.

8 THE COURT: Well, that's always the issue when you
9 get ready to come for any type of hearing.

10 DEFENDANT O'DWYER: But you see, Your Honor, --

11 THE COURT: You just waived counsel. Then you asked
12 to be -- for you wanted copies of different things. You wanted
13 a copy of the transcript that happened Saturday and you wanted
14 a copy of the transcript that's being prepared from the
15 computer or tape that's going on right now.

16 I'm saying to you under the Criminal Justice Act you
17 can get it, but you won't get it until you qualify for it.
18 That's all I can tell you.

19 DEFENDANT O'DWYER: All right, Your Honor. Well, you
20 keep changing the subject on me too.

21 THE COURT: No, you keep telling me -- let me tell
22 you something; it's very simply what you need to do. You need
23 to either say, look, I want to see if I qualify for appointed
24 counsel. Give the lawyer a chance, or whoever is going to be,
25 a Public Defender or whoever, a chance to help you. Also, it

1 was represented that there was a gentleman who is supposed to
2 be coming from out of town, a relative of yours, tomorrow who
3 may be of some assistance to you. And I wrote the name down,
4 Hector --

5 DEFENDANT O'DWYER: Joseph Hecker.

6 THE COURT: Yeah, Hecker. Have you talked to him?

7 DEFENDANT O'DWYER: No, I haven't. I got one phone
8 call and I made it to someone other than Mr. Hecker.

9 THE COURT: Okay, yeah, Joseph Hecker.

10 Now, one of two things are going to happen, either
11 you're going to go forward with this without the assistance of
12 counsel, and I'm trying to get you to understand --

13 DEFENDANT O'DWYER: I'm going forward with this
14 without the assistance of counsel.

15 THE COURT: All right, do you have any evidence that
16 you want to present?

17 DEFENDANT O'DWYER: Your Honor, I will stipulate
18 that anything that I have said or will say in Your Honor's
19 presence today is made under penalty of perjury pursuant to
20 28 USC 1746.

21 THE COURT: Now, you know that subjects you to cross-
22 examination; you know that, don't you?

23 DEFENDANT O'DWYER: That's all right, I don't care.

24 THE COURT: Let me say this to you, --

25 DEFENDANT O'DWYER: Look, I was neither homicidal nor

1 suicidal and I threatened no one. So bring it on, let's go. I
2 am stipulating that anything I represent to you is under
3 penalty of perjury subjecting me to indictment and
4 incarceration --

5 THE COURT: Let me tell you something that concerns
6 me --

7 DEFENDANT O'DWYER: -- if it's false.

8 THE COURT: Let me tell you something that concerns
9 me. And I don't know enough about you where I can make a
10 determination yet, but what I'm looking at, there's an
11 allegation -- you don't have to say anything about it --
12 there's an allegation that you hadn't received your medicine,
13 what that is.

14 DEFENDANT O'DWYER: I'm medicated.

15 THE COURT: That's what I'm saying, there's an
16 allegation about that in this complaint.

17 DEFENDANT O'DWYER: I am now medicated. I had the
18 best night's sleep last night that I've had in a week.

19 THE COURT: Is that right?

20 DEFENDANT O'DWYER: Yeah.

21 THE COURT: Okay, I just wanted -- I know that was
22 one of our complaints and I read that.

23 DEFENDANT O'DWYER: I thank the Federal Government
24 for taking care of me. If Judge Brown had done what he should
25 have done on Friday, none of us would be here, but he cut and

1 ran.

2 THE COURT: What's the medication you received?

3 DEFENDANT O'DWYER: It's the -- either Paxil
4 controlled release or the generic equivalent.

5 THE COURT: All right.

6 DEFENDANT O'DWYER: It's an antidepressant
7 medication.

8 THE COURT: Okay, I thought I read something about
9 you being on an antidepressant.

10 DEFENDANT O'DWYER: Well, I don't need it, I want it.

11 THE COURT: Not now, you got it. Listen to what I'm
12 saying to you. I believe that it would be unwise for anyone,
13 even an attorney such as yourself, and I believe you practiced
14 law a long time, and if you are able to take care of this
15 business that's your business. But I have to be convinced that
16 you are making this decision intelligently and of your own free
17 will and that you --

18 DEFENDANT O'DWYER: Yes to both of those.

19 THE COURT: -- know what you are doing --

20 DEFENDANT O'DWYER: I know what I'm doing.

21 THE COURT: -- in doing this. And the reason I'm
22 saying that because this is a criminal case and you have
23 serious consequences that could come about if in fact a formal
24 charge comes about and there's a trial. We're just at the step
25 with regard to a complaint. You're entitled to have, and I

1 know they probably set a preliminary hearing for you, didn't
2 they?

3 DEFENDANT O'DWYER: No, not that I'm aware of.

4 THE COURT: See, that's another thing I wanted to
5 tell you about, you're entitled to have that and you're still
6 entitled to have it within 14 days from the time of the
7 complaint. See, that's something else that should have been
8 told you. I'm telling you --

9 DEFENDANT O'DWYER: Fine.

10 THE COURT: -- 14 days from the complaint --

11 DEFENDANT O'DWYER: And I appreciate that --

12 THE COURT: -- okay, that's a probable cause hearing.

13 DEFENDANT O'DWYER: -- and I don't care. I would
14 like to go forward and make my record.

15 THE COURT: Well, I'm going to let you do that. But
16 I believe this too -- well, the Government has the burden of
17 proof, if the Government would like to make a presentation.
18 The Government has asked for what they believe to be an
19 examination. I require a formal motion where something can be
20 spelled out where I'll have to know what's going on. I don't
21 have enough yet. Do you understand what I'm saying?

22 DEFENDANT O'DWYER: Yes, sir.

23 THE COURT: I don't have enough. I don't know
24 anything about your medication other than what you told me
25 about it. All I know is what's in this complaint.

1 DEFENDANT O'DWYER: Your Honor, --

2 THE COURT: These are serious charges in this
3 complaint.

4 DEFENDANT O'DWYER: I know that.

5 THE COURT: And --

6 DEFENDANT O'DWYER: There is one serious charge, only
7 one, and it's in the last paragraph --

8 THE COURT: Well, let me say this to you --

9 DEFENDANT O'DWYER: -- and in the preamble to the
10 affidavit.

11 THE COURT: Let me say something to you. You're an
12 attorney and you know that anything in that complaint if the
13 Government can substantiate it you could be charged with those
14 things if they would come to that --

15 DEFENDANT O'DWYER: None of them are crimes.

16 THE COURT: I don't know. I don't know that. The
17 only thing I know is I looked at the law before I came in here,
18 18 --

19 DEFENDANT O'DWYER: I know it.

20 THE COURT: -- it's 875, 18 USC, I read it. The only
21 thing I can tell you is that if you want to go forward the
22 Government --

23 Is the Government ready to go forward on this
24 detention hearing?

25 MR. KENNEDY: Yes, Your Honor.

1 THE COURT: Let's have it.

2 DEFENDANT O'DWYER: All right, Your Honor, before --

3 THE COURT: No, no, you don't go first. It's the
4 Government's responsibility to go forward.

5 DEFENDANT O'DWYER: But, wait, I was objecting to the
6 nature of the proceedings. We'll get into the factual
7 issues --

8 THE COURT: All right, you're on your third issue.
9 What's your third objection?

10 DEFENDANT O'DWYER: All right, my third objection was
11 that you, Your Honor, and I don't know for sure whether you are
12 biased, prejudiced, and unable to be impartial, but because you
13 wear a black robe in this court and sit at the pleasure of the
14 District Judges, who I --

15 THE COURT: There's a procedure to remove me.
16 There's a procedure to remove me.

17 DEFENDANT O'DWYER: Well, how am I supposed to do
18 that --

19 THE COURT: The Judges can remove me. You can file a
20 motion.

21 DEFENDANT O'DWYER: -- with leg and hand manacles on
22 when I'm confined in a state parish jail between Saturday and
23 Monday? How am I supposed to do that?

24 THE COURT: You either use a lawyer to do it or --

25 DEFENDANT O'DWYER: Your Honor, you cut me off.

1 THE COURT: -- you do it yourself.

2 DEFENDANT O'DWYER: Just let me make my record,
3 please.

4 THE COURT: But you had stopped. You look like
5 you're trying to bait me to give you the answer, so I just
6 answered what had been presented to me. I apologize. Go
7 forward.

8 DEFENDANT O'DWYER: Thank you, Your Honor.

9 What I wanted to say is that I came in here today
10 prepared for you to deny my release and to order me detained.
11 I do not believe that anything that I have said yet or will say
12 would cause you to change your decision. If I am wrong --

13 THE COURT: Well, if you --

14 DEFENDANT O'DWYER: Your Honor, you're cutting me off
15 again.

16 If am I wrong and that it was your intent to release
17 me, but if you --

18 THE COURT: I don't know what I'm going to do, not
19 even yet.

20 DEFENDANT O'DWYER: -- if you listen to my arguments
21 there at least exists the possibility that you will say to
22 yourself, "You know something? O'Dwyer is right and he's been
23 done a severe injustice not only in this case, but in other
24 litigation in this court that he's been fighting for totally
25 innocent people for, for nothing for the past four and a half

1 years."

2 Point two --

3 THE COURT: Well you just had point three.

4 DEFENDANT O'DWYER: No, that was point two. The
5 first point --

6 THE COURT: No, you came up with the Constitution --
7 I'm keeping up with it.

8 DEFENDANT O'DWYER: The first point was the
9 procedural and substantive due process involving recusal as
10 well as --

11 THE COURT: That's a changed subject matter now.
12 You're going somewhere else.

13 DEFENDANT O'DWYER: -- the changing nature of the
14 proceeding. Now we've hit number two. Now I'm going to go to
15 number three I believe. Is it number three?

16 THE COURT: Go ahead.

17 DEFENDANT O'DWYER: Number three: The Federal Agent
18 who signed the affidavit against me, his name is Special Agent
19 Christopher DiMenta (phonetic) -- excuse me, DiMenent
20 (phonetic) --

21 THE COURT: It's in the record, it's right here.
22 It's right in the record.

23 DEFENDANT O'DWYER: -- DiMenna. I have already given
24 him a nickname. Heretofore Special Agent Christopher will be
25 known as "Special Agent Demented."

1 THE COURT: Now, listen --

2 DEFENDANT O'DWYER: I have never --

3 THE COURT: -- I'm not going to sit here --

4 DEFENDANT O'DWYER: All right.

5 THE COURT: -- and let you --

6 DEFENDANT O'DWYER: I'll withdraw the statement.

7 THE COURT: -- or anybody else -- because all through
8 this --

9 DEFENDANT O'DWYER: Well, wait, I'm going to tell you
10 why he's got --

11 THE COURT: -- all through this complaint --

12 DEFENDANT O'DWYER: -- that nickname --

13 THE COURT: No, no, no, no. I'm going to cut these
14 proceedings off.

15 DEFENDANT O'DWYER: Your Honor, --

16 THE COURT: Let me tell you what I'm going to do.

17 DEFENDANT O'DWYER: Your Honor, --

18 THE COURT: Yes, I'm going to tell what I'm going to
19 do, because I think what you're --

20 DEFENDANT O'DWYER: Your Honor --

21 THE COURT: Just a minute. I'm going to have you do
22 this, you file your motion to dismiss in accordance with the
23 Federal Rules. It's the Government's obligation under the law
24 to try to prove a citizen dangerous or a risk of flight. Have
25 a seat. We'll listen to the testimony, then we'll give you a

1 chance to present yours.

2 DEFENDANT O'DWYER: Okay.

3 THE COURT: I'm not going to sit here and listen to
4 all of that. You're going to reduce it to writing and file
5 something where they can address it.

6 DEFENDANT O'DWYER: Can I have a pad and pencil?

7 THE COURT: Oh, yeah, they can get that for you.

8 DEFENDANT O'DWYER: And could somebody pull my
9 trousers up, please? This is humiliating. It constitutes
10 cruel and unusual punishment.

11 THE COURT: Have a seat now, sir.

12 DEFENDANT O'DWYER: If I do I'm afraid my trousers
13 are going to fall off, Your Honor. I'm not kidding.

14 THE COURT: Marshals, can you all put this man in a
15 situation where he can sit down, please?

16 DEFENDANT O'DWYER: Thank you.

17 THE COURT: Now, I want the record to reflect that
18 we're going on with the detention hearing. I've given
19 Mr. O'Dwyer a chance to speak -- I'm sorry -- and I'm saying
20 you reduce whatever you have to say to writing. Also, the
21 record will speak for itself. And if you want, I've given you
22 several opportunities this afternoon to apply to proceed in
23 forma pauperis, to which you have not answered the financial
24 affidavit of your own free volition. And I can't make you do
25 it, so that's why I'm granting your motion to proceed in forma

1 pauperis -- not in forma pauperis but --

2 DEFENDANT O'DWYER: Can I ask one question?

3 THE COURT: You've waived counsel for these
4 proceedings only.

5 What's your question, sir?

6 DEFENDANT O'DWYER: My question is in accordance with
7 Rule 16 procedures. What are we doing here? Is he going to
8 call witnesses against me?

9 THE COURT: Yes, he is under --

10 DEFENDANT O'DWYER: All right.

11 THE COURT: -- the detention hearing rule.

12 DEFENDANT O'DWYER: Oh.

13 THE COURT: Sit down. I know you are --

14 DEFENDANT O'DWYER: Is he going to testify and
15 stipulate that everything he says is subject to 28 USC 1746?
16 That's the declaration under penalty of perjury rule. Because
17 if he's going to make arguments that he does not --

18 THE COURT: You've got to wait and see --

19 DEFENDANT O'DWYER: -- have evidence on, --

20 THE COURT: Listen, listen, listen --

21 DEFENDANT O'DWYER: -- then I object.

22 THE COURT: Listen, your objection is noted. We've
23 got to wait and see what he is going to present. You sat here
24 today. You've seen several detention hearings and
25 stipulations. You know what's going on here.

1 DEFENDANT O'DWYER: Yeah, I know --

2 THE COURT: You've been a lawyer --

3 DEFENDANT O'DWYER: I know when I'm being --

4 THE COURT: You've been a lawyer. You've been a
5 lawyer a long time.

6 DEFENDANT O'DWYER: -- railroaded.

7 THE COURT: That's another one of the allegations
8 that you have in the complaint. I read it all.

9 Let's go forward with the hearing. Call you first
10 witness.

11 MR. KENNEDY: Thank you, Your Honor. Call Pretrial
12 Services Officer Timothy Gantner.

13 THE COURT: All right, Mr. Gantner.

14 * * * * *

15 **TIMOTHY GANTNER, GOVERNMENT'S WITNESS, SWORN**

16 * * * * *

17 THE CLERK: Please state your name for the record.

18 THE WITNESS: My name is Timothy Gantner.

19 * * * * *

20 DIRECT EXAMINATION

21 BY MR. KENNEDY:

22 Q. Officer Gantner, could you state for whom you work,
23 please?

24 A. Yes, sir. I'm a United States Pretrial Services Officer
25 here in the Eastern District of Louisiana.

1 Q. And in conjunction with those responsibilities were you
2 assigned the case of United States v Ashton O'Dwyer?

3 A. I was.

4 Q. And pursuant to that did you have an opportunity to meet
5 with Mr. O'Dwyer on Saturday morning previous, I believe it was
6 January 31st?

7 A. January 30th actually, yes, sir.

8 Q. Or January 30th, excuse me, in Judge Knowles courtroom?

9 A. That's correct.

10 Q. Did you have an opportunity to interview Mr. O'Dwyer?

11 A. I did.

12 Q. And did he provide you a number of pieces of information
13 that are contained in your report itself?

14 A. Correct. In fact the Defendant Information Sheet is the
15 last two pages of the report attached.

16 Q. Okay.

17 A. It's the handwritten pages that are the questions that I
18 asked and the answers that he gave.

19 Q. Okay. And I just want to show you just for purposes of
20 identification what I'll mark as Government's Exhibit Number 1.
21 Is this the totality of your report including a copy of the
22 handwritten report that you prepared with Mr. O'Dwyer?

23 A. Yes, sir, it is.

24 Q. Thank you.

25 Did you provide a copy of this to Mr. O'Dwyer?

1 A. I did.

2 Q. Mr. Gantner, I'm not going to go through the entire
3 report.

4 MR. KENNEDY: Your Honor, at this time I would offer
5 Pretrial Services Officer Timothy Gantner's report as
6 Government Number 1. I would offer it into the record at this
7 time.

8 THE COURT: Reports are never offered in the record.

9 THE WITNESS: Yeah.

10 THE COURT: His testimony would be. I believe he has
11 -- I never receive these things in the record.

12 MR. KENNEDY: Well, I --

13 THE COURT: I mean it all depends on what your
14 opponent is saying. If he wants to stipulate that what's said
15 would be the testimony of Mr. Gantner, that's fine. If not,
16 you know the Court gets it anyway.

17 MR. KENNEDY: Yes, Your Honor. But I just for
18 purposes --

19 THE COURT: You know I get it anyway.

20 MR. KENNEDY: -- of the record.

21 THE WITNESS: And, Judge, if I may point out as noted
22 on the cover page of the report, according to 18 USC 3153(c)(1)
23 the report has to remain confidential --

24 THE COURT: That's correct.

25 THE WITNESS: -- except for purposes of bill

1 determination. So, I mean it's always been the practice that
2 it is not actually entered into the record itself.

3 MR. KENNEDY: Well, Your Honor, --

4 THE COURT: Well, Mr. O'Dwyer gets a copy to read,
5 and if he had a lawyer representing him too they couldn't get
6 it. They could read it, but they can't make a copy of it.

7 MR. KENNEDY: Your Honor, that's fine. I won't offer
8 it. I'll withdraw it for purposes of the record itself and
9 then just simply ask Officer Gantner the questions regarding it
10 that are contained in it.

11 THE COURT: Yes, sir.

12 BY MR. KENNEDY:

13 Q. Officer Gantner, as you stated before, this is information
14 provided you by the Defendant, Mr. O'Dwyer?

15 A. The last two pages are the direct information, the
16 questions asked, and the answers given.

17 Q. Okay.

18 A. In the body of the report itself some of the information
19 was obtained from some other sources.

20 Q. And regarding Mr. O'Dwyer's physical health and as far as
21 his history of mental -- his mental condition, did you have an
22 opportunity to review him specifically regarding that?

23 A. Yes, sir.

24 Q. Did he indicate to you whether or not he has a history of
25 any type of mental illness?

1 A. He told me that --

2 DEFENDANT O'DWYER: I object, Your Honor. I object
3 to the use of the term "mental illness." And I also want to
4 make sure that if he's going to use the term "mental illness,"
5 he and the Witness are on the same page. I do not suffer from
6 any mental illness.

7 THE COURT: Objection noted. Rephrase the question.

8 BY MR. KENNEDY:

9 Q. Did Mr. O'Dwyer state to you or did you interview him
10 regarding any mental problems or any condition in which he
11 would be receiving medication for?

12 A. Yes, sir. Under Section "F" of the Defendant Information
13 Sheet concerning health there is a section involving anything
14 in the mental health area. And he advised me that I believe in
15 December 2002 or January 2003 he began receiving medication for
16 depression.

17 Q. Okay. Did he indicate to you whether that was still
18 ongoing?

19 A. As I understand it, he was prescribed several medications
20 including the generic versions of Paxil and Remeron.

21 Q. Now, also pursuant to this did you have an opportunity to
22 interview any family members of Mr. O'Dwyer?

23 A. Yes, sir. This morning, late this morning I spoke with
24 his mother, Ms. Shirley O'Dwyer, as well as a brother, Michael
25 O'Dwyer, and --

1 DEFENDANT O'DWYER: Anticipating testimony,
2 Your Honor, I object to hearsay.

3 MR. KENNEDY: Your Honor --

4 THE COURT: Overruled. Hearsay is admissible in a
5 detention hearing. Continue.

6 MR. KENNEDY: Thank you.

7 BY MR. KENNEDY:

8 Q. You said that you had an opportunity to speak to his
9 mother as well as a brother?

10 A. Correct. When I spoke with his mother there were some
11 areas she wasn't comfortable discussing and she referred me to
12 his brother.

13 Q. Okay. Did she indicate to you why she was not comfortable
14 discussing those?

15 A. It came across basically she wasn't sure procedurally
16 what she should or shouldn't say and I mean it was things
17 involving such as I asked her if she planned on being at the
18 hearing today and she said she wasn't sure if she should be
19 here or not. And I asked her about whether or not she would be
20 willing to or able to assist with bond and she said she wanted
21 to talk to her other son before she spoke to me about those
22 issues.

23 Q. You indicate in your report that you could talk to and you
24 also testified that you spoke to Michael O'Dwyer. Is that the
25 Defendant's brother?

1 A. That is my understanding, yes, sir.

2 Q. Okay. And he indicated to you that he has some concerns
3 about his brother's behavior. Did he explain what those
4 concerns were?

5 A. He did not.

6 Q. And did he at any point state that he was willing to make
7 or assist the Defendant in making a bond in this case?

8 A. He did not address himself being involved in assisting
9 with bond. He did mention that he did not think that his
10 mother, Ms. Shirley O'Dwyer, would be in a position. As I
11 understand it, Ms. Shirley O'Dwyer has a mortgage that she's
12 holding on the Defendant's home and that I think Mr. Michael
13 O'Dwyer was concerned about since the fact she already has some
14 financial investment here that he was concerned about her being
15 invested further. He did not go into a lot of detail about
16 that, so I took him at his word on it.

17 Q. Now, you go on to say that there's -- regarding the
18 assessment of danger, you said that you consider the Defendant
19 a danger to the community. Could you explain to the Court why
20 you wrote that, please?

21 A. When looking at the nature of the allegations there
22 certainly is some concern. The complaint itself contained
23 allegations not necessary of crimes necessarily but seemed to
24 indicate, and as was presented to me, an ongoing escalation
25 possibly of contacts and concerns about violent type spoken

1 behavior, not actually violent behavior. And, of course, this
2 situation as far as the depression is concerned and the fact
3 that as I understood it the Defendant was not medicated, or had
4 not been medicated in at least a matter of days, and as noted
5 the history of the threatening statements.

6 Q. Okay. Did you also have an opportunity as you may have
7 indicated before that you did review the complaint against the
8 Defendant?

9 A. That's correct.

10 Q. And are you aware of the fact the Defendant was armed when
11 he was taken into custody?

12 A. That's my understanding.

13 Q. Did that enter into your calculations as to an assessment
14 of dangerousness on the part of the Defendant?

15 A. As I understood the situation, when the Marshal Service
16 went to arrest Mr. O'Dwyer at his home he had been told that
17 they were actually there or coming there to take him to get his
18 mediation. And as it was told to me, that when they took him
19 into custody he had a firearm, a loaded .38 in his possession.
20 The concern that I had and -- as I understand it was at his
21 home and it was his gun and he would certainly have a right to
22 that. I would say that I certainly have concerns about the
23 fact that if someone is going to be meeting with officers of
24 Federal Court, the United States Marshal Service, that they
25 would arm themselves when the Marshals arrived. That was

1 certainly a concern for me.

2 Q. Officer Gantner, based upon your experience as well as
3 your familiarity with the facts of this particular case, do you
4 believe or is it your opinion that the Defendant would be a
5 danger to the community if he was released?

6 A. I certainly have --

7 DEFENDANT O'DWYER: Objection, Your Honor. There's
8 no rational foundation for his giving that opinion.

9 THE COURT: Overruled. You may testify.

10 THE WITNESS: I certainly have that concern, yes,
11 sir.

12 MR. KENNEDY: Okay, I tender the Witness. Thank you.

13 THE COURT: Cross-examination, Mr. O'Dwyer.

14 DEFENDANT O'DWYER: Yes, Your Honor.

15 * * * * *

16 CROSS-EXAMINATION

17 BY DEFENDANT O'DWYER:

18 Q. Good afternoon, Mr. Gantner.

19 A. Good afternoon, sir.

20 Q. First question: What is your educational background? Do
21 you include in your CV any degrees as a clinical psychologist,
22 social worker, or anything else in the medical psychosomatic
23 field?

24 A. I have a Bachelor's Degree, Bachelor of Arts in
25 Psychology.

1 Q. Okay. Next question: As to the firearm, were you told --
2 did you ask Mr. O'Dwyer any questions about why he had the
3 firearm in his possession, how he disclosed its presence to the
4 federal officers, and the circumstances surrounding their
5 taking it from him?

6 A. No, sir. As was explained when I --

7 Q. Okay.

8 A. -- did the Advice of Rights, I don't ask about the actual
9 offense --

10 Q. So, you would not --

11 THE COURT: Let him finish answering.

12 DEFENDANT O'DWYER: All right.

13 THE WITNESS: Yeah. I mean as is noted in the Advice
14 of Rights that we reviewed --

15 DEFENDANT O'DWYER: All right.

16 THE WITNESS: -- I don't actually ask about the
17 offense itself (Inaudible, Defendant speaking over Witness)

18 BY DEFENDANT O'DWYER:

19 Q. Do you have any information about whether or not
20 Mr. O'Dwyer's firearm was legally permitted?

21 A. The only statement I got is from your brother, Michael,
22 who told me that he said that you had a permit for the gun.

23 Q. Okay.

24 A. But I have not independently verified that information.

25 Q. Okay. All right, and to that extent then what you learned

1 from my brother contradicts a paragraph in the complaint which
2 suggested that the State of Louisiana had not renewed my
3 permit, correct?

4 A. Your brother's statement contradicted that statement, yes,
5 sir.

6 Q. All right. And if I were to represent to you that I hold
7 a current permit from the Louisiana State Police authorizing me
8 to carry a concealed weapon, which that particular evening
9 included my Smith & Wesson titanium .38 with a laser sight, you
10 wouldn't have any way of contradicting that, would you?

11 A. Not at this time, no, sir.

12 Q. All right. Now, sir, do you know of any threats to
13 Mr. O'Dwyer's life since August 29, 2005 which would give him
14 some excuse for carrying a gun on his person at all times, not
15 when he's with Federal Marshals, but at all times?

16 A. No, sir, I have no information on that.

17 Q. Okay. Next point, your testimony I believe is based on
18 your interview and other information, you concluded that the
19 Defendant is considered a danger to the community and you list
20 three reasons. Number one, nature of the instant offense,
21 okay.

22 A. Correct.

23 Q. What is your understanding of the nature of the instant
24 offense, sir?

25 A. As I understand it, you are charged with making threats.

1 Q. Where did you get that understanding from?

2 A. From the criminal complaint.

3 Q. All right. Now, are you familiar with the last paragraph
4 of the criminal complaint?

5 A. I have a copy of it, yes, sir.

6 Q. All right. The allegedly criminal e-mail, can you point
7 out to me in black and white anywhere in this complaint where
8 Mr. O'Dwyer "made a threat"? Were those your words, "made a
9 threat"?

10 A. That is the charge as I understand it, yes, sir, --

11 Q. Oh, okay, well --

12 A. -- a threatening communication.

13 Q. Well, where did Mr. O'Dwyer make a threat in that e-mail,
14 sir?

15 A. I would assume that the charge arises from the statements,
16 "Maybe my creditors would benefit from my suicide. But suppose
17 I became homicidal. Given the recent 'security breach' at
18 500 Poydras Street a number of scoundrels might be at risk if I
19 do become homicidal."

20 Q. Okay, now where is the threat contained therein, sir?

21 MR. KENNEDY: Your Honor, I'm going to object. The
22 statement speaks for itself. He's become argumentative with
23 the Witness himself.

24 THE COURT: Objection maintained.

25 DEFENDANT O'DWYER: Well --

1 THE COURT: The statement speaks for itself.

2 DEFENDANT O'DWYER: The statement speaks for itself.

3 Well, then you tell me where the threat is. I said I was not
4 homicidal. I did not make a threat against anyone.

5 THE COURT: Look, stop testifying. You can testify
6 if you like. Just go on, I made a ruling. Keep going.

7 DEFENDANT O'DWYER: All right, Your Honor.

8 BY DEFENDANT O'DWYER:

9 Q. Next point, mental health status. What in Mr. O'Dwyer's
10 mental health history caused you to conclude that he is
11 "considered a danger to the community"?

12 A. Yes, sir. Number one, as you self-reported, the history
13 of depression and the fact that you were off your medication.

14 Q. Well, I'm sorry, sir. Where does that say that that
15 caused me to be a danger to the community? Where does
16 depression result in the conclusion that one is a danger to the
17 community? Where does being off ones medication result in ones
18 being considered a danger to the community?

19 MR. KENNEDY: Judge, I'm going to object on two
20 grounds. One, Officer Gantner didn't have an opportunity to
21 finish his previous answer, and, two, Mr. O'Dwyer moved on to a
22 very compound question with about four questions contained in
23 one.

24 THE COURT: He did.

25 MR. KENNEDY: If he would have the opportunity to

1 finish his first answer.

2 THE COURT: Do you remember the first question?

3 THE WITNESS: Not exactly, Judge.

4 THE COURT: Then we'll proceed with that question --

5 DEFENDANT O'DWYER: I'll rephrase it.

6 THE COURT: -- and rephrase your question.

7 BY DEFENDANT O'DWYER:

8 Q. What medical literature can you refer this honorable Court
9 to to support your conclusion that depression causes someone to
10 be "a danger to the community"?

11 A. It does not guarantee it. The listing of assessment of
12 danger is when we look at the totality of the situation. Your
13 self-reported history, as well as the offense itself --

14 Q. Well, I don't see anything about totality --

15 MR. KENNEDY: Again he's interrupting the Witness,
16 Your Honor.

17 DEFENDANT O'DWYER: -- of the situation --

18 THE COURT: Let him finish.

19 DEFENDANT O'DWYER: -- in your report, sir.

20 THE COURT: Let him finish. Let him finish and then
21 you can ask.

22 THE WITNESS: Again, this is not a report that was
23 just -- this form was not created today. This is an ongoing,
24 long-term report that we use for this Court as far as the
25 format is concerned. When we list the assessments of danger

1 and assessments of non-appearance those are things that we look
2 at. By looking at the totality of the investigation including
3 the alleged offense, then we look at that, then we give what
4 our recommendation to the Court is concerning, what our
5 concerns are.

6 BY DEFENDANT O'DWYER:

7 Q. Well, besides Mr. O'Dwyer's having a history of depression
8 and that he was acutely not on his medication, what else from
9 the quote "totality of the circumstances" caused you to
10 conclude that he was a danger to the community?

11 A. Well, there's certainly some issues that are a concern
12 within the criminal complaint, some of the alleged prior
13 communications that led up to the current communication.

14 Q. We're only focusing on the mental health status at the
15 moment, sir.

16 A. Yes, sir.

17 Q. All right.

18 A. Yes, sir.

19 Q. What?

20 A. And the information on -- information from past concerning
21 communications leading up to the communication on -- that you
22 were charged in in this case and as well, quite frankly, some
23 of the concerns about behavior in court during the initial
24 appearance.

25 Q. Wait a minute. We're talking about his mental health

1 status.

2 A. Yes, sir.

3 Q. We're not talk about his behavior, which I don't see in
4 one, two, or three on the last page of the typewritten part of
5 your report.

6 A. Correct.

7 Q. All right.

8 MR. KENNEDY: Your Honor, I'm going to object at this
9 point. It's been asked and answered and it's getting
10 argumentative with the Witness.

11 THE COURT: It is argumentative, but I'm going to let
12 him finish that question.

13 THE WITNESS: Okay.

14 THE COURT: Finish your question.

15 BY DEFENDANT O'DWYER:

16 Q. I simply want to know, sir, what else besides his history
17 of depression and his being off his medication acutely caused
18 you to say that he was a danger to the community?

19 A. Again, the information contained in the complaint and the
20 affidavit as well as some of the behavior at the initial
21 appearance.

22 Q. Well, what medical information is there anywhere that you
23 know of other than the depression and the being off the
24 medication?

25 A. I'm not basing that statement on a previous diagnosis.

1 I'm basing it on observation both from past behavior as well
2 what I witnessed at the initial appearance, --

3 Q. Okay.

4 A. -- the concerns. I'm not saying that there is in fact
5 definitely a mental health issue that goes beyond depression.

6 Q. Fine.

7 A. What I'm saying is that some of the behaviors led me to be
8 concerned about the possibility.

9 Q. Fine, then tell me --

10 A. And personally I think that an evaluation --

11 Q. -- tell me what --

12 A. -- would be in order.

13 Q. -- behaviors not addressed --

14 THE COURT: What was the last statement?

15 DEFENDANT O'DWYER: -- in your report --

16 THE COURT: Just a minute.

17 What was the last statement about an evaluation,
18 what?

19 THE WITNESS: I said personally I think that would be
20 a good idea in this case to get an evaluation to see if there
21 was any other issues.

22 THE COURT: Go on, next question.

23 BY DEFENDANT O'DWYER:

24 Q. What behaviors that do not appear in your report led to
25 you conclude that O'Dwyer was a danger to the community? We've

1 already talked about the allegedly criminal e-mail --

2 A. Correct.

3 Q. -- which the Judge wouldn't let me ask you to point out
4 where I made a threat. What else?

5 THE COURT: Wait, just a minute, just a minute. I
6 take exception to that. This man, this officer read the entire
7 paragraph to you and I told you the language spoke for itself.

8 DEFENDANT O'DWYER: Okay.

9 THE COURT: Now characterizing my ruling as something
10 like that, I'm not going to tolerate that under the law --

11 DEFENDANT O'DWYER: Well, --

12 THE COURT: -- because you're misstating what the
13 Court did and I have an obligation --

14 DEFENDANT O'DWYER: All right, I'm sorry.

15 THE COURT: -- to correct that.

16 DEFENDANT O'DWYER: I didn't mean I was going to
17 touch a nerve, but I still object to you --

18 THE COURT: You're not touching my nerve.

19 DEFENDANT O'DWYER: -- not letting me --

20 THE COURT: What you're doing is --

21 DEFENDANT O'DWYER: -- ask the question --

22 THE COURT: What you're doing --

23 DEFENDANT O'DWYER: -- and get an answer to it.

24 THE COURT: -- is trying to take over these
25 proceedings and I'm not going to allow that to happen. I'm not

1 going to allow it.

2 Go forward.

3 BY DEFENDANT O'DWYER:

4 Q. Behavior.

5 A. Yes, sir.

6 Q. Not in your report. What behavior?

7 A. I think that the behavior that I witnessed at the initial
8 appearance, the unwillingness to allow people to finish
9 sentences, being very combative in court, very boisterous in
10 court gave me concerns.

11 Q. Oh. Well, did I attempt to attack you physically?

12 A. You did not.

13 Q. Did I attempt to attack anyone else in the court
14 physically?

15 A. You did not.

16 Q. Did you know that I maintained that my liberty had been
17 taken away from me unconstitutionally and wrongly?

18 A. Yes, sir, you said that.

19 Q. All right. Do you think that I had reason to be anxious
20 or maybe even angry?

21 A. I believe that you had reason to be anxious and/or angry,
22 yes, sir.

23 Q. And do you agree that people can be anxious and angry
24 without being violent towards other people?

25 A. I believe they could be without being violent as well as

1 without --

2 Q. And did you --

3 A. -- losing control in a setting where you're essentially
4 being unreasonable in your behavior in court, as well as the
5 fact that at times you're almost behaving in a manner to
6 purposely make yourself look bad in the eyes of the Court.

7 Q. Wow!

8 A. By refusing to allow the Court to proceed. I mean you can
9 be angry and not happy with the proceedings without screaming
10 at people and without cursing.

11 DEFENDANT O'DWYER: Now who's being argumentative,
12 Your Honor?

13 THE COURT: No, you asked him the question. He gave
14 you the answer. You put it to him, so be careful what you ask.

15 BY DEFENDANT O'DWYER:

16 Q. Well, you don't have a law degree, do you, sir?

17 A. I do not.

18 Q. And you wouldn't know whether the Constitution of the
19 United States and the Bill of Rights which guarantee me freedom
20 of expression, the right to petition the Government for redress
21 of grievances, and procedural and substantive due process,
22 whether those rights were unreasonable denied me in this
23 instance, do you?

24 A. I do not have any (Inaudible, Defendant speaking) --

25 Q. All right, fine.

1 A. -- no, sir.

2 Q. Now other than the behavior at the pretrial or -- yeah,
3 pretrial proceeding, what other behavior not addressed in your
4 report caused you to conclude that O'Dwyer is to be considered
5 a danger to the community?

6 A. The only behaviors that I have are the behaviors that are
7 contained in the affidavit and the complaint and at the initial
8 appearance.

9 Q. All right. And specifically what behavior in the
10 complaint did you rely on, if any?

11 THE COURT: That's been asked and answered.

12 DEFENDANT O'DWYER: No, it hasn't, Your Honor.

13 THE COURT: Answer the question. We'll see. I know
14 I heard it.

15 THE WITNESS: In reading about the previous issues
16 involving contact with -- I mean there's a multitude of issues
17 in here, but just some of the vulgar and the -- what do you
18 call it -- veiled statements that point to the possibility, or
19 at least give the appearance of the possibility, the pound of
20 flesh, or taking it out of your flesh statement I believe is
21 one of the early ones. Those types of statements that I
22 certainly found were a concern.

23 BY DEFENDANT O'DWYER:

24 Q. All right, we're going to get to them in a second, but do
25 you know of one instance in O'Dwyer's lifetime where he ever

1 visited physical violence on another human being?

2 A. I do not.

3 Q. Now, you said multiple instances, you said "vulgar," you
4 said "flesh." Let's take just the three of them.

5 A. Yes.

6 Q. What are the multiple instances that you say constituted
7 behavior that caused you to conclude that he should be
8 considered to be a danger to the community?

9 A. Well, again there are -- I mean you can go through the
10 entire affidavit and --

11 Q. Oh, but no, sir, no, sir. You gave an opinion --

12 A. Yes, sir.

13 Q. You're supposedly tendered as some sort of an expert.

14 THE COURT: No, he is not an expert --

15 DEFENDANT O'DWYER: All right, well --

16 THE COURT: -- and that's where you're getting off of
17 that. This is not an expert.

18 BY DEFENDANT O'DWYER:

19 Q. But I have you under cross-examination.

20 A. Correct.

21 Q. Let's hear it, what behavior?

22 A. Again, you would like me to go through the entire
23 affidavit point by point?

24 Q. Sir, I want to know what you relied on.

25 MR. KENNEDY: Your Honor, I'm going to object. I

1 believe the complaint speaks for itself. It goes through
2 paragraph by paragraph. The Court can draw its own inferences.
3 Agent Gantner or Officer Gantner has already testified that he
4 relied on the complaint in its totality. I believe that it's
5 redundant to go through every single paragraph in this and
6 that --

7 DEFENDANT O'DWYER: I'll clear it up this way --

8 MR. KENNEDY: -- certainly the Court can draw its own
9 conclusions from the complaint coupled with Officer Gantner's
10 testimony.

11 DEFENDANT O'DWYER: I'll clear it up this way.

12 THE COURT: Just a minute. I'm going to overrule the
13 objection if you can clear it up.

14 DEFENDANT O'DWYER: I'm going to clear it up.

15 THE COURT: Because I'm not going to be here all day
16 on that same question.

17 BY DEFENDANT O'DWYER:

18 Q. Mr. Gantner, did you make any independent verification of
19 the truth, correctness, and veracity of the statements
20 contained in each of the 39 paragraphs in the complaint?

21 A. I did not.

22 THE COURT: Proof, correct --

23 DEFENDANT O'DWYER: Yeah, in other words --

24 THE COURT: -- and veracity -- wait just a minute.
25 What was your answer?

1 THE WITNESS: I did not have any independent proof or
2 veracity.

3 THE COURT: All right, go ahead.

4 DEFENDANT O'DWYER: Okay.

5 THE WITNESS: I relied on the affidavit -- the
6 complaint and the attached affidavit.

7 THE COURT: All right.

8 BY DEFENDANT O'DWYER:

9 Q. Now, let's take the word "vulgar" for a minute.

10 A. Yes, sir.

11 Q. Do you know of any instance where O'Dwyer used vulgar
12 language to threaten another human being in his lifetime?

13 MR. KENNEDY: Your Honor, I think that that's a
14 little broad given the context in which we're here today.

15 DEFENDANT O'DWYER: He's saying that he --

16 MR. KENNEDY: In Mr. O'Dwyer's entire lifetime, and I
17 think it goes outside the context of the proceeding.

18 THE COURT: I'm going to maintain that objection. So
19 ordered.

20 BY DEFENDANT O'DWYER:

21 Q. Do you know of any instance in which O'Dwyer coupled
22 vulgar language with any sort of a threat, or actual violence
23 against another human being?

24 A. If you're asking concerning a direct threat or actual
25 violence?

1 Q. Yes.

2 A. No, sir.

3 Q. All right. And you concede of course that people can be
4 "vulgar" in polite society and that they may be embarrassed
5 about their vulgarity being made public, but that they have a
6 right to say it, and that they can say it without any threat or
7 actual violence?

8 MR. KENNEDY: I object, Judge. It's not relevant
9 what somebody may do in polite society. We're here about the
10 Defendant's actions in this case.

11 THE COURT: Maintain the objection. You're going
12 afar.

13 DEFENDANT O'DWYER: All right.

14 BY DEFENDANT O'DWYER:

15 Q. Next point, the flesh issue.

16 A. Yes, sir.

17 Q. First of all, the alleged threat that got O'Dwyer arrested
18 by a politically connected lawyer from Causeway Boulevard for
19 threatening retribution in flesh, is that what you're talking
20 about?

21 MR. KENNEDY: Judge, I'm going to object.

22 Mr. O'Dwyer is testifying now. He's not asking a question. If
23 he could basically limit himself to the document itself.

24 THE COURT: I've read all of this stuff, and he is
25 doing that.

1 So, you're going to have to settle down and get to
2 your point and --

3 DEFENDANT O'DWYER: All right. We did talk about
4 this on Saturday, Mr. Gantner and I, and that's where this is
5 going.

6 THE COURT: Well, I'm going to allow you to ask that
7 question. Let's move on about this flesh thing. You're going
8 through the whole thing about a lawyer and all this type of
9 thing.

10 DEFENDANT O'DWYER: All right.

11 BY DEFENDANT O'DWYER:

12 Q. Mr. Gantner, when you --

13 A. Yes, sir.

14 Q. -- and I talked on Saturday --

15 A. Yes, sir.

16 Q. -- you asked me if I'd ever been arrested before.

17 A. Correct.

18 Q. And one of the instances was this incident, an arrest by
19 the JP Sheriff's Office.

20 A. Correct.

21 Q. All right. And I asked you at the time or pointed out to
22 you the *Merchant of Venice*, correct?

23 A. I can't say honestly that I recollect the reference to
24 the --

25 Q. You don't recall that?

1 A. -- *Merchant of Venice* --

2 Q. Okay.

3 A. -- but it's possible.

4 Q. Are you familiar with the *Merchant of Venice*?

5 MR. KENNEDY: Judge, I'm going to object.

6 THE COURT: No, I'm going to -- I'm going to maintain
7 that. Just get to the question about that. You don't have to
8 give us lesson concerning all that.

9 DEFENDANT O'DWYER: Your Honor, I'm --

10 THE COURT: Ask the question that you need answering
11 or that you need answered.

12 BY DEFENDANT O'DWYER:

13 Q. Do you concede that the "threat" about retribution in
14 flesh does not contain any statement about blood in addition to
15 flesh?

16 MR. KENNEDY: Objection, Your Honor. The statement
17 again speaks for itself.

18 THE COURT: Listen, listen, y'all --

19 MR. KENNEDY: You know that's what the Court has to
20 consider.

21 DEFENDANT O'DWYER: Your Honor, I'm on a different
22 intellectual level than the Federal Government and their
23 Witnesses.

24 THE COURT: Let me just say this --

25 MR. KENNEDY: Be that as it may, Judge, the level

1 that we're on --

2 DEFENDANT O'DWYER: This was a --

3 THE COURT: Look, you all shut up, both of you.

4 Listen, I've directed you to ask a specific question.

5 Now, we all know what's in the complaint and you have, if

6 you've read it, you know what's in here. Now, if you have

7 discussed something outside of what's in the complaint with

8 this Officer which caused him to have an opinion I want to know

9 it.

10 DEFENDANT O'DWYER: All right.

11 THE COURT: Now, get to that.

12 THE WITNESS: And, Judge, I may be able to clear this

13 up very easily. I don't recall the specific mention of a

14 mention of the *Merchant -- Venice --*

15 DEFENDANT O'DWYER: *Merchant of Venice.*

16 THE WITNESS: -- *Merchant of Venice.*

17 THE COURT: You said that.

18 THE WITNESS: I'm not saying that he didn't bring

19 that up. I do remember there was a metaphor about a pound of

20 flesh.

21 DEFENDANT O'DWYER: Right.

22 THE WITNESS: I can't -- I don't recall independently

23 it being about the *Merchant of Venice.*

24 BY DEFENDANT O'DWYER:

25 Q. One last question and we'll move on --

1 A. Yes, sir.

2 Q. -- on this score. Do you know whether O'Dwyer was even
3 arraigned, much less prosecuted, and convicted of making a
4 threat against the Causeway Boulevard lawyer?

5 A. I know there was no record in the Jefferson Parish Clerk
6 of Court, --

7 Q. Fine.

8 A. -- so either the charges were refused or dropped.

9 Q. Now, last point on your report, sir, --

10 A. Yes, sir.

11 Q. -- "History of making threatening statements." What
12 history are you referring to, sir?

13 A. Again, the statements in the affidavit and that's how it
14 was presented to me by the Government.

15 Q. Yes, sir, but what besides the flesh statement, if
16 anything, point me one place where there is a history of making
17 threatening statements.

18 A. In Section 19, again not an overt threat, Section 19 of
19 the affidavit attached to the complaint. Again, most of these
20 are not direct threats. They are --

21 Q. Oh, you mean they're not threats --

22 A. -- most of them --

23 Q. -- of physical violence.

24 A. They're not directly stated as threats.

25 Q. Oh, okay.

1 A. They certainly come across as being implied threatening-
2 type language.

3 Q. Oh, that's your interpretation.

4 A. That is my interpretation, yes, sir.

5 Q. All right, well point me to the language in Paragraph 19
6 that you say is not a threat of physical violence --

7 A. Right.

8 Q. -- but could be interpreted as being a threat of some type
9 not involving physical violence?

10 MR. KENNEDY: Again, Judge, I believe that the
11 document --

12 DEFENDANT O'DWYER: I mean this is ridiculous,
13 Your Honor.

14 THE COURT: Look, let me say something. That
15 objection is maintained. I'm not going to go through every one
16 of these paragraphs with the Witness when the only thing he did
17 was read the complaint like you and I did.

18 Now, the whole matter of this would have gone to this
19 agent who swore this out. This is something that's been sworn
20 to. This gentleman, who's speaking now, has told you the best
21 I guess of how he came to his conclusion and the last three
22 elements, and that's what it looks like to me that you're
23 looking at the Pretrial Services Report, you're trying to
24 negate his conclusions under assessment of danger.

25 DEFENDANT O'DWYER: They don't have the guts.

1 THE COURT: That's what you're talking about.

2 DEFENDANT O'DWYER: They don't have the guts to call
3 the arresting -- the complaining agent.

4 THE COURT: That's not an issue here. The issue --
5 BY DEFENDANT O'DWYER:

6 Q. One last --

7 THE COURT: The issue --

8 BY DEFENDANT O'DWYER:

9 Q. One last point --

10 THE COURT: The issue is how far are you going to go
11 with this in terms of getting this where you're trying to go?

12 DEFENDANT O'DWYER: Your Honor, I'm going to take the
13 stand. I mean --

14 THE COURT: Well, we're going to do that tomorrow.

15 DEFENDANT O'DWYER: Oh, okay.

16 THE COURT: I can tell you that now. We're going to
17 go to five o'clock and I'm going to stop. I've sat here all
18 day. I'm not going to sit here all night.

19 BY DEFENDANT O'DWYER:

20 Q. Is there one place --

21 THE COURT: We'll start tomorrow.

22 BY DEFENDANT O'DWYER:

23 Q. -- in Paragraph 19 where O'Dwyer threatened anyone with
24 physical violence?

25 A. A direct threat of physical violence, no, sir.

1 Q. All right. And is that the only paragraph that you
2 maintain supported your conclusion that I should be considered
3 a danger to the community because I had a history of making
4 threatening statements? That is 19 plus the flesh facts.

5 A. I mean, okay, Section 23.

6 Q. Oh, Section 23.

7 DEFENDANT O'DWYER: Just a second. I'm losing my
8 trousers again.

9 THE COURT: Oh, pull his pants up somebody.

10 DEFENDANT O'DWYER: I mean this is the kind of stuff
11 that's been going on for four and a half years, Judge.

12 THE COURT: You don't have to tell the defendants.
13 You've got to keep pulling that stuff up. Now if you're --

14 DEFENDANT O'DWYER: Well, it's never happened to me
15 before and it's demeaning.

16 THE COURT: Listen, listen, listen to me. If you
17 want to sit down at the table, you can do it and question him
18 from there. Maybe that will help you out if you can
19 concentrate better. You think you can do that?

20 DEFENDANT O'DWYER: I'm all right. I'm all right.

21 THE COURT: You're all right? Okay, go ahead.

22 BY DEFENDANT O'DWYER:

23 Q. All right, 23.

24 A. Yes, sir.

25 Q. What statement there contains a threat of physical

1 violence against anyone?

2 A. The last sentence in Section 23. "As Judge Feldman was
3 walking out of the business, O'Dwyer screamed at the Judge,
4 'Tell the FBI about me, and tell them to bring the guns.'"

5 Q. All right.

6 DEFENDANT O'DWYER: Well, I'm sorry, but I don't see
7 a threat. Is that -- does that speak for itself too, Judge?

8 BY DEFENDANT O'DWYER:

9 Q. I mean did I threaten Judge Feldman with physical
10 violence?

11 A. No, sir.

12 Q. All right. Did I threaten the FBI with physical violence?

13 A. That would seem to be the implication, yes, sir.

14 Q. Oh, oh, it wouldn't be a reasonable interpretation that
15 they should bring guns to make an arrest against felons who to
16 this day are roaming the streets of New Orleans having
17 committed federal crimes unapprehended and unprosecuted?

18 MR. KENNEDY: Judge, that's argumentative.

19 THE COURT: It certainly is.

20 DEFENDANT O'DWYER: Well, he's jumping to all kinds
21 of conclusions about me and making arguments.

22 THE COURT: Well, you're asking for it. He's
23 answering the questions, and then you're arguing about it
24 because you don't like the answer that you're getting. So,
25 it's been asked and answered and there's an objection to it and

1 he's answered the question. That's all.

2 DEFENDANT O'DWYER: Judge, --

3 THE COURT: I mean that's all there is to it. He's
4 answered your question.

5 DEFENDANT O'DWYER: Fine.

6 BY DEFENDANT O'DWYER:

7 Q. Anything else, sir?

8 A. No, sir.

9 Q. All right.

10 DEFENDANT O'DWYER: That's it. Thank you very much.

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you.

13 Next witness.

14 MR. KENNEDY: Your Honor, I believe in the record
15 already is the complaint by the Government and I would offer
16 the complaint again at this time for purposes of this hearing,
17 and, Your Honor, we have no further witnesses.

18 THE COURT: The complaint is already in the record.

19 Let it --

20 DEFENDANT O'DWYER: Well, I object to the complaint
21 being in the record because --

22 THE COURT: You can object to that.

23 DEFENDANT O'DWYER: All right. But that is part of
24 the record that I wanted to make today that I hope you will let
25 me finish before we recess until tomorrow.

1 THE COURT: Well, I might not recess until tomorrow.

2 DEFENDANT O'DWYER: Oh.

3 THE COURT: I realize that I've been sitting here
4 almost three hours, like you have been, so we're going to keep
5 going for a while.

6 DEFENDANT O'DWYER: All right.

7 THE COURT: The Government has rested.

8 DEFENDANT O'DWYER: Oh, the Government rested.

9 THE COURT: Yeah, it's your turn now.

10 DEFENDANT O'DWYER: All right, well --

11 THE COURT: Do you have witnesses to call?

12 DEFENDANT O'DWYER: -- in that case -- in that case,
13 Your Honor, I then move for O'Dwyer's immediate release upon
14 the following grounds to wit: Number 1, there has been no
15 competent evidence adduced that O'Dwyer remotely --

16 THE COURT: Look, this is the wrong time for that.
17 This is not a preliminary hearing. This is a detention
18 hearing. Do you understand what I'm saying?

19 DEFENDANT O'DWYER: Yeah, but I'm --

20 THE COURT: And you're talking about dismissing the
21 complaint, this is not appropriate at this point. You have to
22 file that. You can file a motion to dismiss at any time, of
23 course, but this is -- you know they have the right --

24 DEFENDANT O'DWYER: I'm sorry then, I misspoke. What
25 I was asking --

1 THE COURT: Yeah, we haven't had a preliminary
2 hearing. We're talking about a detention hearing right now.

3 DEFENDANT O'DWYER: What I was asking or what I
4 intended to ask you for which my mouth probably moved faster
5 than my brain was a motion remanding me back to my home at
6 6034 St. Charles Avenue rather than that hellhole in
7 St. Bernard Parish for the evening.

8 The Government had the burden of proving to you that
9 I constituted some sort of a reasonable danger to the public.
10 And, one, I've never -- I've never harmed anyone in my life
11 other than a few schoolyard fights when I was at Jesuit High
12 School having graduated from there in 1965 --

13 MR. KENNEDY: Your Honor, I'm going to object. I
14 believe that what Mr. O'Dwyer right now is doing is making
15 arguments to the Court --

16 THE COURT: And he is.

17 MR. KENNEDY: -- and we have not finished the
18 testimonial portion of the hearing itself.

19 THE COURT: Well --

20 MR. KENNEDY: And I believe it's kind of the cart
21 before the horse.

22 THE COURT: Well, he has the right to either take the
23 stand, give testimony, or make a concession that he doesn't
24 have anything else and make his closing remarks.

25 DEFENDANT O'DWYER: No, --

1 THE COURT: That's what I thought you were doing.

2 DEFENDANT O'DWYER: -- this is in the nature of what
3 we used to call a Rule 54(b) motion for an involuntary
4 dismissal.

5 THE COURT: That's in a civil case. That has nothing
6 to do with a criminal case.

7 DEFENDANT O'DWYER: Oh?

8 THE COURT: That's in a civil case. It's different.
9 There are different rules.

10 DEFENDANT O'DWYER: Well, if the Government has not
11 proven a prima facie case --

12 THE COURT: That's different.

13 DEFENDANT O'DWYER: -- after they rest, that's the
14 motion I'm making now and asking you to agree with me that they
15 have not proven that I'm a danger to anyone much less a
16 reasonable danger to anyone and that I should be sent home.
17 Get these manacles off me.

18 THE COURT: Motion denied.

19 DEFENDANT O'DWYER: All right.

20 THE COURT: Now, make your presentation for your
21 defense --

22 DEFENDANT O'DWYER: All right, do I get --

23 THE COURT: -- in so far as whatever you'd like to
24 present.

25 DEFENDANT O'DWYER: Do I get to make -- do I get to

1 finish my objections to the proceedings before I take the
2 stand?

3 THE COURT: You already put those forth.

4 DEFENDANT O'DWYER: No, I have two more to go,
5 Your Honor. You didn't hear them. We started the testimony,
6 remember?

7 THE COURT: Go ahead.

8 DEFENDANT O'DWYER: All right.

9 THE COURT: But make them brief and succinct, please.

10 DEFENDANT O'DWYER: All right. I will apologize to
11 Special Agent DiMenna for using an admittedly disparaging term
12 to him. It was unprofessional and in retrospect I shouldn't
13 have done it. Dedicated civil servants like him certainly
14 deserve more.

15 Having said that, I have a few problems with his
16 complaint. First of all --

17 THE COURT: Now, look, what you're doing now, and
18 lawyers that come in here on a daily basis, we don't go through
19 all of that. I want you to hit what you say you're relying on.
20 I don't need to have a long argument. I need for you to make
21 your points so I can evaluate them. I don't need for you to go
22 over everything that's been said.

23 DEFENDANT O'DWYER: Well --

24 THE COURT: As a matter of fact, the Fifth Circuit
25 has said these detention hearings are not trials, and you're

1 not being tried here, sir. It's not a trial.

2 DEFENDANT O'DWYER: Your Honor, my liberty is being
3 tried.

4 THE COURT: Certainly, it's being tried.

5 DEFENDANT O'DWYER: My freedom is being tried. What
6 do you call that?

7 THE COURT: But this is not a trial, all right. All
8 you have to do is put forth --

9 DEFENDANT O'DWYER: All right.

10 THE COURT: -- what you think are your arguments and
11 that's all.

12 DEFENDANT O'DWYER: The argument in connection with
13 this point is that Ashton O'Dwyer stands here before you today
14 as a political prisoner. And if I were a Muslim, or if I were
15 a member of a minority group this courtroom would be packed
16 with the media. It is perfectly obvious to me, and I
17 respectfully submit that it should be obvious to anyone with a
18 functioning human brain, that what is going on here is that I
19 present an embarrassment to the United States Department of
20 Justice, the FBI --

21 THE COURT: You said all of that earlier.

22 DEFENDANT O'DWYER: -- and other agencies of the
23 Federal Government. All right, but --

24 THE COURT: But you said all of that already.

25 DEFENDANT O'DWYER: Okay, then I'll move to the last

1 point. The last point is and the proof of the pudding is in
2 the eating, when you read Article 37 which contains the
3 allegedly criminal e-mail that doesn't contain a threat at all,
4 Your Honor, if you read it a couple of times you'll see it does
5 not contain a threat. It was a means of getting the attention
6 of Judge Brown to sign an order allowing me to pay Walgreens so
7 I could get my medicine before he left the office at 4:30 on
8 Friday afternoon. What date was that -- the 29th. He didn't
9 do it. He got the e-mail and he reacted in knee jerk fashion.
10 He called the FBI --

11 MR. KENNEDY: Your Honor, I'm going to object this is
12 testifying again at this point --

13 DEFENDANT O'DWYER: I'm making --

14 MR. KENNEDY: It's got nothing to do with whatever
15 Mr. O'Dwyer says is the procedural aspects of this proceeding
16 itself. What he's here arguing about are the facts of the case
17 and he's testifying at this point. And again I renew my
18 objection, either we're going to take testimony, or we're going
19 to move to argument.

20 THE COURT: Well --

21 DEFENDANT O'DWYER: We're going to take testimony,
22 because I'm going to get on the stand in a few minutes.

23 THE COURT: Let me say this to you, you've gone over
24 all this before and you told me your three objections. Now,
25 what's the fourth one?

1 DEFENDANT O'DWYER: All right, the --

2 THE COURT: I've got the political prisoner thing.
3 I've got the embarrassment to the Government DOJ.

4 DEFENDANT O'DWYER: All right.

5 THE COURT: And you've told me about Paragraph 37
6 which you say is -- you referred to it as Article 37 of the
7 complaint which brings the allegations that refer to
8 Judge Brown --

9 DEFENDANT O'DWYER: The allegedly criminal e-mail.

10 THE COURT: -- so I understand. Yes, go ahead.

11 DEFENDANT O'DWYER: All right. The last point I'd
12 make to you is, --

13 THE COURT: All right.

14 DEFENDANT O'DWYER: -- and I do this with all due
15 respect, but I've been in proceedings like this, not criminal
16 before, but many, many in civil before, because you used to do
17 civil Magistrate work in addition to what --

18 THE COURT: Yes, I did.

19 DEFENDANT O'DWYER: -- you're doing now.

20 THE COURT: Yes.

21 DEFENDANT O'DWYER: And you look good for the 15 to
22 20 years since we last saw each other, Judge, I might mention
23 that.

24 THE COURT: I remember seeing you at the Judicial
25 Conferences and places.

1 DEFENDANT O'DWYER: Well, I'm a little heavier now
2 than I was, but you look pretty good.

3 THE COURT: Come on.

4 DEFENDANT O'DWYER: Article 11, I know that it is
5 easy for a judge to make a record, just like I'm trying to make
6 a record, and say things like, "Well, you know, I really do
7 think that considering all of the evidence before me you may
8 constitute a danger to the public and, therefore, I'm going to
9 remand you to the custody of the Federal Marshals and send you
10 back to prison." All right. And there's not much I can do
11 about that, not much anybody can do about it. But I'm going to
12 direct your attention to Article 11. And what Article 11 --

13 THE COURT: Article 11 of what, sir?

14 DEFENDANT O'DWYER: Of the complaint.

15 THE COURT: Yeah.

16 DEFENDANT O'DWYER: Article 11 of the complaint
17 contains --

18 THE COURT: That's Page 2, top of it.

19 DEFENDANT O'DWYER: -- what I call a -- I'm not sure
20 what the French term is --

21 THE COURT: Just say what you saying and let's go on.
22 The French I mean (Inaudible, Defendant speaking over Judge)

23 DEFENDANT O'DWYER: It discloses for the first time
24 to my knowledge that since October 27, 2008 --

25 THE COURT: Yeah, I see that.

1 DEFENDANT O'DWYER: -- there has been ongoing in this
2 very building an "inappropriate communications investigation"
3 being conducted by the United States Marshal Service. And
4 that's the first time in my lengthy legal career that I've ever
5 heard the term "inappropriate communications investigation."
6 And I mean no disrespect to you, but I'm going to remind you of
7 something and I'm going to remind any other Judge in these
8 proceedings who happens to look at this transcript. Sitting in
9 a federal penal institution right now wearing a jump suit much
10 like what I have on is a former United States District Judge
11 from Galveston by the name of Sam Kent.

12 THE COURT: Look, you don't have to remind me at all.

13 DEFENDANT O'DWYER: Oh, yes, Your Honor, just a
14 moment, --

15 THE COURT: Listen, listen, let's go forward --

16 DEFENDANT O'DWYER: -- this is directly relevant.
17 It's directly relevant to these proceedings. Sam Kent --

18 MR. KENNEDY: Your Honor, I'm going to object, Judge.

19 THE COURT: Look, look, look, look --

20 MR. KENNEDY: Just because Mr. O'Dwyer says it's
21 relevant doesn't make it relevant. We're here to determine
22 whether or not he's a danger or a flight risk. That's why
23 we're here.

24 THE COURT: What does Sam Kent have to do with this
25 case?

1 DEFENDANT O'DWYER: Sam Kent is in prison because he
2 pleaded guilty to one count of obstruction of justice.

3 THE COURT: What does that have to do with this?

4 MR. KENNEDY: Your Honor, I renew my objection.

5 DEFENDANT O'DWYER: It has everything to do with
6 this.

7 THE COURT: Let the objection be noted.

8 Now, what are you talking about? What does it have
9 to do with this?

10 DEFENDANT O'DWYER: If --

11 THE COURT: That case has already been litigated.
12 Are you citing it for some precedential value?

13 DEFENDANT O'DWYER: If an individual including a
14 Federal Magistrate, or a District, or Appellate Court Judge
15 answers falsely the question of a criminal investigator, then
16 he can wind up in the same type of institution Judge Kent now
17 occupies wearing a nice jumpsuit just like mine.

18 THE COURT: And what are you trying to say? What are
19 you saying?

20 DEFENDANT O'DWYER: I'm just making the point,
21 Your Honor.

22 THE COURT: Well, that's the whole thing about it,
23 it's irrelevant. Go to some other area. You've given me your
24 full views now.

25 DEFENDANT O'DWYER: I'm ready to take the stand now.

1 THE COURT: Well, I'm going to take a ten-minute
2 recess then we're going to start.

3 DEFENDANT O'DWYER: All right.

4 THE COURT: We're not going back over this tomorrow.
5 I'm not going to stop; I'm going to keep going. Ten minutes, a
6 ten-minute recess.

7 (Recess from 4:55 p.m., until 5:12 p.m.)

8 DEFENDANT O'DWYER: I realize that this procedure is
9 a bit out of the ordinary and I'm going to try to do my utmost
10 to make it fair to both parties.

11 THE COURT: All right, let's have Mr. Ashton R.
12 O'Dwyer, Jr. sworn to tell the truth. He's taking the stand.

13 DEFENDANT O'DWYER: I've already stipulated that
14 everything I say in this courtroom today or on Saturday is
15 subject to penalty of perjury pursuant to 28 USC 1746.

16 THE COURT: But that's not the procedure in a
17 criminal case.

18 DEFENDANT O'DWYER: Okay.

19 THE COURT: You have to an oath to tell the truth.
20 All right, swear him in, please.

21 * * * * *

22 **ASHTON R. O'DWYER, JR., DEFENDANT, SWORN**

23 * * * * *

24 THE CLERK: Please state your name for the record.

25 THE WITNESS: Ashton Robert O'Dwyer, Jr.

O'Dwyer - Direct

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DIRECT EXAMINATION

THE COURT: All right, Mr. O'Dwyer, now is your opportunity to testify with regard to this detention hearing.

THE WITNESS: Okay, all right.

Preliminarily, Your Honor, --

THE COURT: We don't need the preliminaries now. Just state what you think your situation is and how you believe that you're not a flight risk and a danger and that you should be released --

THE WITNESS: All right.

THE COURT: -- on a bond.

THE WITNESS: Number one, the issues that I addressed with Mr. Gantner on flight risk are that I would surrender my passport. It is my intent never to step foot on an airplane for the rest of my life. That I am housebound because my Louisiana driver's license has been suspended for non-payment of overdue parking tickets, and my automobile insurance cancelled. I took a chance once since the license was suspended, was driving to the cleaners on Willow Street and was stopped for speeding, suspended license, no insurance, expired license plate, and expired brake tag, and the two officers who stopped me let me go. I took that as a sign from God and swore I would never drive again while my license was suspended. So, I'm essentially -- I am essentially confined to my quarters,

1 which are very comfortable at 6034 St. Charles Avenue.

2 The only court appearances that I've ever missed in
3 my life were a couple of times during the almost 40 years that
4 I was a civil lawyer in this very courthouse and only one of
5 which resulted in any sanction to my knowledge. Judge
6 Duplantier, rest his soul, put me in jail for contempt for
7 missing a status conference once. That made the rounds in the
8 legal community here in New Orleans. But other than that, I've
9 never been known to miss a serious court appearance, certainly
10 nothing like a trial, or pretrial conference, or anything like
11 that.

12 Like the man who -- Mr. Henderson's family who was
13 sitting in the back, my family has been very supportive and I
14 feel confident in being able to represent for the Court that
15 I'll be given a ride, assuming I don't have the dollar and a
16 quarter for a streetcar which passes right in front of my
17 house, to get down here whenever you tell me I have to be here.

18 All right, now the serious one, the clear and present
19 danger. I'm very disappointed in the Government's and
20 Mr. Gantner's position here today. I stipulate that while at
21 Jesuit High School as a young adolescent boy whose blood was
22 up, but it takes two to tango, so somebody else's blood had to
23 be up too, I had three fights. The most celebrated one was
24 with Brod Bagert, who was in my class. You may remember Brod
25 through his --

1 THE COURT: I know Brod Bagert.

2 DEFENDANT O'DWYER: -- Councilman's --

3 THE COURT: I used to work in his daddy's court at
4 Tulane at Broad. I know Brod.

5 DEFENDANT O'DWYER: -- Councilmatic position. Oh,
6 okay, and Judge Bernard Bagert.

7 THE COURT: Yeah, I worked for him.

8 DEFENDANT O'DWYER: And Brod and I are good friends
9 now and we laugh about it. You know other than bloody noses
10 and that kind of stuff, it didn't involve real physical
11 violence.

12 THE COURT: Go forward, go on.

13 DEFENDANT O'DWYER: I was in the Army. I was taught
14 gun handling from a very tender age. I own a lot of guns.
15 I'll concede that the one gun that the FBI took from me on
16 Friday night isn't the only gun I own. The other guns are all
17 identified in my bankruptcy filings. If you want to restrict
18 my access to guns, I'll do that gladly. But I would ask you to
19 consider the threats that have been made against me since
20 August 29, 2005, and my affirmative testimony that the only
21 reason I had a gun on my person last Friday night was for my
22 own protection. And it was entirely legal and permitted by the
23 Louisiana State Police, contrary to the inference contained in
24 the complaint against me which is just plain wrong, which leads
25 me to the next point.

1 I am a little amazed at some of the allegations made
2 against me. And with the Government's permission and
3 Your Honor's permission I was going to go through them and tell
4 you where they're wrong, but my overall comment before we start
5 doing that is --

6 THE COURT: I don't need you to do all of that. I've
7 looked at every one and you've already argued them already.

8 DEFENDANT O'DWYER: I mean because something --

9 THE COURT: That's why we're trying to stop you --

10 DEFENDANT O'DWYER: -- something as serious as taking
11 away a man's liberty and giving him a felonious criminal record
12 one would have thought that that the very least the Government
13 would not have included so many typographical errors in the
14 complaint --

15 THE COURT: Come on now.

16 DEFENDANT O'DWYER: -- much less substantive errors.
17 And I do think that the substantive errors have to be
18 addressed.

19 I apologize to the public at large and to the Court
20 as an institution for a lot of the admittedly strident language
21 that is contained in the complaint. I would ask Your Honor to
22 consider that I think 99 percent of it was private e-mails
23 between me and other lawyers that I never expected to be made
24 public. I had a reasonable expectation of privacy I
25 respectfully submit for that. And the most offensive e-mail to

1 you probably is the BGMB comment that I made in a personal and
2 confidential handwritten note to Judge Lemelle which he decided
3 to make public.

4 I would also say that I believe that there is a clear
5 double standard when a white man uses the "N" word versus when
6 a black man uses the "N" word. I'll only cite as an example I
7 was in the company --

8 THE COURT: How come you keep going through all that?
9 I don't need to know anything about all that.

10 DEFENDANT O'DWYER: Well, it's important because
11 you're a black man and I feel very embarrassed --

12 THE COURT: What's that got to do with anything?

13 DEFENDANT O'DWYER: I feel very embarrassed over my
14 choice of words towards Judge Lemelle. And I gave up counting
15 at 250 today in the holding cell the times I heard the "N" word
16 used, and I use it once and all the sudden I've committed the
17 worse offense on the face of the earth. It's federally
18 protected free speech and I don't apologize to Lemelle. And he
19 knows what I was saying, and you know what I saying; and I
20 don't apologize for it. I would never use that term towards
21 you, okay? I don't know whether that matters to you or not,
22 but I'm making that representation on the record.

23 The last thing before we get into the specific
24 allegations of the complaint --

25 THE COURT: I thought that's what you were doing --

1 DEFENDANT O'DWYER: When you --

2 THE COURT: -- because all that's a part of the
3 complaint (Inaudible, Defendant speaking over Judge)

4 DEFENDANT O'DWYER: When you read the allegedly --

5 THE COURT: Did you hear what I was saying, sir?

6 DEFENDANT O'DWYER: I did.

7 THE COURT: All right, well let's keep going.

8 DEFENDANT O'DWYER: I'm not going to go over that
9 again.

10 THE COURT: I was going to say if you go back over
11 stuff you've gone over --

12 DEFENDANT O'DWYER: No, I'm not going to, I'm not
13 going to do it.

14 THE COURT: All right.

15 DEFENDANT O'DWYER: When you read the allegedly
16 criminal e-mail of January 29th, I respectfully submit, and I'm
17 talking about this in terms of its relevance to the detention
18 hearing, you've got to have the whole chain of e-mails
19 exchanged between me and Mr. Sean McGinn on Friday. It began
20 with an e-mail from me to him. Then he sent me one back. Then
21 the one that's quoted in Article 37 was sent by me to him.
22 Then he sent me one back. And then lastly I sent one to him.
23 You need all, is it five or six of those e-mails and I
24 respectfully submit that a reading particularly of the last one
25 clearly shows that it was never in my mind to --

1 THE COURT: That's something you can take up with the
2 Prosecutor, not --

3 DEFENDANT O'DWYER: -- to make a threat --

4 THE COURT: -- here.

5 DEFENDANT O'DWYER: -- against anyone, okay.

6 THE COURT: Do you hear what I'm saying, sir?

7 DEFENDANT O'DWYER: All right.

8 THE COURT: That's something you can take up with the
9 Prosecutor, but not here.

10 DEFENDANT O'DWYER: And I will also say something
11 else on the record, and I don't apologize for this admittedly
12 strident language, I haven't said it in front of you, but I've
13 said it in front of other Judges including Judge Brown and
14 Judge Knowles. If Ashton O'Dwyer had intended bodily harm to
15 anyone, then they would already be dead.

16 THE COURT: You've already said that.

17 DEFENDANT O'DWYER: And I mean that.

18 THE COURT: That's already been plain.

19 DEFENDANT O'DWYER: Okay, here we go.

20 THE COURT: Am I right? Didn't you say that? Isn't
21 that one of the things that came in the complaint or did I
22 misread that?

23 MR. KENNEDY: I don't think that was in the
24 complaint, Your Honor.

25 DEFENDANT O'DWYER: It is in the complaint.

1 MR. KENNEDY: Maybe it is.

2 THE COURT: It's somewhere in there.

3 MR. KENNEDY: I might have missed it.

4 DEFENDANT O'DWYER: It's in there --

5 THE COURT: I read it. I read that.

6 DEFENDANT O'DWYER: -- in reference to the liar and
7 scoundrel Plattsmier who should be sitting here in a red suit
8 in manacles instead of me.

9 All right, the first thing I wanted to say was --

10 THE COURT: Mr. O'Dwyer, listen, listen -- just a
11 minute, just a second.

12 MR. KENNEDY: Judge, I would point out that Paragraph
13 Number 28 where there's basically the same thing that
14 Mr. O'Dwyer just testified to.

15 THE COURT: I know I had read it somewhere. Here it
16 is.

17 MR. KENNEDY: It's in Paragraph 28.

18 THE COURT: Twenty what?

19 MR. KENNEDY: Twenty-eight, Your Honor.

20 THE COURT: Yeah. But the expletives here were
21 deleted. I know I had read that already.

22 DEFENDANT O'DWYER: That was in my --

23 THE COURT: Well, you did repeat all of that.

24 DEFENDANT O'DWYER: No, that was in my affidavit to
25 the Louisiana State Police who I thought were going to

1 investigate the civil rights violations against me --

2 THE COURT: No, you tell me what you said when you
3 say these things, "They would be dead already," and all that
4 kind of stuff. That's all -- that's what got my attention.
5 You shouldn't -- you shouldn't talk about that.

6 DEFENDANT O'DWYER: Why not? It's legal for me to
7 say that. It's protected speech under the --

8 THE COURT: Just because it's legal --

9 DEFENDANT O'DWYER: -- First Amendment.

10 THE COURT: -- because it's legal to say it that
11 doesn't mean you ought to always say it. Go on. Continue. Go
12 ahead.

13 DEFENDANT O'DWYER: All right. The first thing I
14 wanted to address, the "escalating course of conduct." I
15 respectfully submit that if you take away the admittedly
16 strident language and inflammatory rhetoric and focus on what
17 has been done to me in the course of the victims of Katrina
18 litigation much of which but not all of which is outlined in
19 this complaint, you will see that my so-called escalation in
20 language, not acts or deeds, has been in direct response to
21 escalating pressure being put on me by a corrupt system.

22 THE COURT: You said that earlier today and you
23 continue to say it.

24 DEFENDANT O'DWYER: Okay.

25 THE COURT: All right, go ahead.

1 DEFENDANT O'DWYER: Next, Paragraph 7 or Article 7,
2 "Actions perpetrated." There is not one action that is
3 described in this complaint which can reasonable be concluded
4 as constituting criminal conduct. Everything that I did in
5 here has an explanation or everything is protected by free
6 speech, although I will stipulate that the Government claims
7 that Article 37 contains or quotes some e-mail that they say
8 constituted criminal conduct. I haven't been charged with
9 anything else at this point and nothing that I see here could
10 remotely constitute criminal conduct including Article 37.

11 Now, we'll go to Articles 8, 9, and 10, the Causeway
12 lawyer --

13 THE COURT: Let me just say this to you, you're not
14 charged with that. These are the events that as you said led
15 to an escalation which landed in that last paragraph which
16 you're saying you were charged in -- not the last paragraph but
17 37 where you were charged with a violation to which you came to
18 court on, 18 USC 875.

19 DEFENDANT O'DWYER: All right, but --

20 THE COURT: These are the things -- you're not
21 charged with those. You're charged with this specific --

22 DEFENDANT O'DWYER: But Mr. Gantner specifically
23 referred to the Causeway lawyer language --

24 THE COURT: Well, he could do that. He could do it.
25 And you're giving your explanation to me just like --

1 DEFENDANT O'DWYER: Sure, but that formed part of his
2 basis for telling you that I constitute a danger to the
3 community. And I'm about to explain to you why that is just
4 unadulterated poppycock, okay?

5 Anyone is remotely familiar with the *Merchant of*
6 *Venice* would remember -- it's a William Shakespeare play.

7 THE COURT: But we're not here about William
8 Shakespeare.

9 DEFENDANT O'DWYER: But, Your Honor, --

10 THE COURT: Just make your point.

11 DEFENDANT O'DWYER: -- I'm explaining my e-mail --
12 fax to that lawyer.

13 The bond in the *Merchant of Venice* allowed Shylock to
14 exact a pound of flesh in the event the donor of the bond
15 defaulted. When the donor defaulted and he tried to get
16 someone else to guarantee his indebtedness, the end result was
17 because the bond only referred to flesh and not blood and flesh
18 that the bond was unenforceable.

19 Now, I think that's funny, okay; it's irony. It's
20 allegory. It's a story. And --

21 THE COURT: Yeah, but that's not in court. This is
22 something different.

23 DEFENDANT O'DWYER: But, but --

24 THE COURT: Come on.

25 DEFENDANT O'DWYER: -- the point is that this was my

1 way of getting this lawyer's attention and that he should not
2 take the roughly \$1 million that my wife gave him in cash and
3 allow him or his investment advisor that he introduced my wife
4 to to invest it riskily and lose her money. And they did.

5 THE COURT: Listen --

6 DEFENDANT O'DWYER: They did. They should be sitting
7 here, not me. I told them what was going to happen. I wanted
8 to get their attention. I wasn't threatening them. That's why
9 I left blood out. Do you get it? I mean I'm on one
10 intellectual level and the Government is down here in the
11 gutter. I'm not a criminal. I've never done anything wrong in
12 my life.

13 THE COURT: You're about to convince me that you do
14 have some type of problem.

15 DEFENDANT O'DWYER: Yes, I do have a problem. It's
16 called the United States of America because they won't do what
17 they're supposed to do.

18 THE COURT: All right, continue. I warned you. I
19 tried to say to you I thought you should wait and talk to a
20 lawyer before you're going on, but you --

21 DEFENDANT O'DWYER: Article --

22 THE COURT: -- insisted.

23 DEFENDANT O'DWYER: Article 11 --

24 THE COURT: But you -- I'm telling you, you seem like
25 to me you're too emotionally involved in order to deal with

1 this.

2 DEFENDANT O'DWYER: My freedom has been denied me,
3 Your Honor. My reputation has been sullied. I've been
4 disbarred. I've been driven into bankruptcy. All they can do
5 now is either kill me or put me away and that's what's going on
6 here. You don't see it though, do you?

7 All right, Number 11, how could the Government make
8 this claim when, one, Judge Duval cannot commit legal
9 malpractice? They don't even accurately summarize what Civil
10 Action Number 07-2 -- I'm sorry, it's 08-4728 alleges, okay --

11 MR. KENNEDY: Judge, I'm going to object.

12 THE COURT: What's the objection?

13 MR. KENNEDY: I think the objection is he's talking
14 about facts that are irrelevant to this particular thing
15 regarding --

16 THE COURT: And I agree.

17 DEFENDANT O'DWYER: They're in the complaint for
18 crying out loud, --

19 MR. KENNEDY: Your Honor, --

20 DEFENDANT O'DWYER: -- how can they be irrelevant?

21 MR. KENNEDY: -- if I could be heard?

22 THE COURT: Yes.

23 MR. KENNEDY: What he wants to argue is the basis for
24 other legal proceedings that are outside the basis of this
25 court.

1 THE COURT: That's exactly what's going on.

2 MR. KENNEDY: What we're concerned with today is
3 whether or not that those threats made by Mr. O'Dwyer and
4 whether or not he's a threat to the community, or whether or
5 not he's a flight risk. He wants to argue other ancillary --

6 THE COURT: That's exactly what's going on.

7 MR. KENNEDY: -- legal proceedings and I think it's
8 irrelevant.

9 DEFENDANT O'DWYER: Your Honor, one last point and
10 I'll move on.

11 THE COURT: Well, let me say this, you all included
12 all this stuff in the complaint and, therefore, he's trying to
13 address it. But I agree with you, it's highly irrelevant, but
14 once it's in the complaint he has a right to address it and
15 make a comment on it.

16 DEFENDANT O'DWYER: Thank you.

17 MR. KENNEDY: I agree, Judge.

18 DEFENDANT O'DWYER: Thank you, Your Honor.

19 THE COURT: There's no doubt about that.

20 MR. KENNEDY: Judge, I agree, but I think that he
21 wants to argue the basis for his other legal arguments here
22 rather than the justification for the threat.

23 THE COURT: Now, that part I agree with you on.

24 MR. KENNEDY: That's what I'm specifically objecting
25 to.

1 THE COURT: I agree with you on that.

2 DEFENDANT O'DWYER: Let me say --

3 THE COURT: What I want you to do, and I'm directing
4 you, hit your point and move on.

5 DEFENDANT O'DWYER: All right. This is the point,
6 falsus in uno, falsus in omnibus --

7 THE COURT: Look, please don't go through all of
8 this.

9 DEFENDANT O'DWYER: If they could get this --

10 THE COURT: Sir, sir --

11 DEFENDANT O'DWYER: -- little detail wrong, what else
12 have they gotten wrong?

13 THE COURT: That's argument.

14 DEFENDANT O'DWYER: And there are no New Orleans
15 officials named as defendants in that litigation.

16 THE COURT: What's your next point?

17 DEFENDANT O'DWYER: Next point, just a second. I was
18 not aware that Judge Feldman had administratively closed Civil
19 Action Number 08-4728.

20 THE COURT: Well, that's included in one of the
21 paragraphs about --

22 DEFENDANT O'DWYER: But if he did --

23 THE COURT: -- you going and confronting him --

24 DEFENDANT O'DWYER: No, that's a different --

25 THE COURT: -- and speaking (Inaudible, Defendant

1 speaking over Judge)

2 DEFENDANT O'DWYER: -- paragraph. That's a different
3 paragraph. We're on Paragraph 12 right now.

4 If Judge Feldman administratively closed that civil
5 action --

6 THE COURT: That's something you should have taken up
7 there.

8 DEFENDANT O'DWYER: I didn't get notice of it. It
9 was done in violation of due process. He had no right to do
10 that without any sort of hearing sua sponte, if indeed he did
11 it like the Government says he did. It's news to me is what
12 I'm telling you under oath.

13 Number 13 speaks for itself.

14 Number 14, I find it extremely interesting that even
15 though Judge Duval supposedly was not involved, according to
16 Judge Lemelle whose credibility is seriously at issue --

17 THE COURT: Now, listen, all this is surplusage and
18 all this -- I'm not going to go through any more of that
19 because I think that these other things that you're talking
20 about don't have anything to do with the final charge. The
21 charge has been made for a specific allegation --

22 DEFENDANT O'DWYER: Okay.

23 THE COURT: -- based on that e-mail --

24 DEFENDANT O'DWYER: All right.

25 THE COURT: -- that was sent to Judge --

1 DEFENDANT O'DWYER: Well, you're cutting me off.

2 THE COURT: -- Brown's --

3 DEFENDANT O'DWYER: Judge Brown's office.

4 THE COURT: -- office. Do you understand what I am
5 saying?

6 DEFENDANT O'DWYER: Sean McGinn, who I believe is his
7 Case Manager, --

8 THE COURT: Whomever.

9 DEFENDANT O'DWYER: -- for my case.

10 THE COURT: But I'm just saying to you right now all
11 these other things, that's surplusage.

12 DEFENDANT O'DWYER: All right.

13 THE COURT: You know, you're not charged with that.

14 DEFENDANT O'DWYER: I'm going to give the Government
15 a little edge, okay? Even though I don't have the chain of e-
16 mails in front of me, I wish I did, I can address the e-mail on
17 Page 6, Article 37 as follows. I asked --

18 THE COURT: You already did that earlier when you
19 were trying to get the thing dismissed. It's not going to
20 change from what you said before.

21 DEFENDANT O'DWYER: I did that while I was examining
22 Mr. Gantner. I haven't given my own affirmative testimony
23 under oath.

24 Number one, nothing in the e-mail contains a direct
25 or indirect threat against any human being. Now, let's think

1 for a moment instead of --

2 THE COURT: No, that's argument. You just go on and
3 give your testimony. Don't say about "Let's think."

4 DEFENDANT O'DWYER: Number one, if a threat was made,
5 if a threat was to be made let's say -- if a threat was to be
6 made, then the threat would necessarily involve some degree of
7 homicidal intent. When you read this e-mail, I'm denying that
8 I'm in any way homicidal, because I say in clear and
9 unmistakable language --

10 THE COURT: Look, look, I don't have to go through
11 interpreting that right now. I don't have to make a decision
12 on that now. You've already made that point several times.
13 You already said if you intend to do something they'd be dead
14 already.

15 DEFENDANT O'DWYER: Okay.

16 THE COURT: So let's don't keep going over this over
17 and over again. I don't need to keep hearing that. That's not
18 going to -- it doesn't make any difference.

19 DEFENDANT O'DWYER: I maintain that I did not
20 threaten any human being in the e-mail.

21 THE COURT: And that's your position. All right.

22 MS. CIMINO: Yes.

23 THE COURT: All right.

24 DEFENDANT O'DWYER: And even if I did, I don't now,
25 that's for sure. I'm not going to kill anybody for crying out

1 loud. I'd have done it already if I wanted anybody dead and I
2 don't want anybody dead. I value human life too much, unlike
3 the people who have unleashed what has been unleashed against
4 me.

5 Now, I gather from what you've told me already that
6 you'd prefer me not to go through paragraph by paragraph like I
7 wanted to do.

8 THE COURT: But why is it when you're charged --

9 DEFENDANT O'DWYER: All right.

10 THE COURT: -- you are charged with one paragraph
11 down there.

12 DEFENDANT O'DWYER: I am charged with one paragraph.
13 Then why did they throw everything else in?

14 THE COURT: That's a charging instrument, that's all.

15 DEFENDANT O'DWYER: And they reason they did it is
16 because they want to marginalize me, embarrass me, and
17 humiliate me so that my message does not get out there, because
18 my message will be embarrassing to the Federal Government, to
19 the FBI, and other agencies.

20 THE COURT: That's been your central theme.

21 DEFENDANT O'DWYER: All right. Now, let me tell you
22 one other thing you may not know --

23 THE COURT: I've been listening to this a long time.

24 DEFENDANT O'DWYER: -- one other thing you may not
25 know. Were you a victim of Katrina?

1 MR. KENNEDY: Judge, I'm going to object. That's not
2 relevant.

3 THE COURT: Go ahead. I'm not going to go through
4 all of that. It's not the point of whether I was a victim or
5 not.

6 DEFENDANT O'DWYER: It's very quick. Were you a
7 victim of Katrina?

8 THE COURT: Look, look, no, no, no --

9 DEFENDANT O'DWYER: Did you --

10 THE COURT: I'm not going to engage in that. Let's
11 go. Move on.

12 DEFENDANT O'DWYER: All right. The United States of
13 America disclosed during the Robinson trial in Judge Duval's
14 courtroom in late April 2009 for the very first time a
15 heretofore secret agreement that they had entered into with the
16 State of Louisiana back in July of '07. The agreement is
17 entitled "Joint Defense and Cost Share Agreement." Now, I
18 don't know everything that's going on. I didn't know about the
19 existence of this agreement until the Government disclosed its
20 existence in late April of '09, but I do know this, since July
21 of '07 when the agreement was executed and maybe even before
22 then our own Government has been engaged in a partnership with
23 the State of Louisiana to defeat the claims of innocent victims
24 of Katrina against the state even if the United States is
25 immune.

1 MR. KENNEDY: Objection, Your Honor, none of this is
2 relevant.

3 THE COURT: Objection maintained.

4 DEFENDANT O'DWYER: That is a reprehensible --

5 THE COURT: Look, --

6 DEFENDANT O'DWYER: -- position for our Government --

7 THE COURT: Look --

8 DEFENDANT O'DWYER: -- to take, Your Honor.

9 THE COURT: -- what does that have to do with you and
10 this whole thing?

11 DEFENDANT O'DWYER: It has everything to do with me.

12 THE COURT: What does that have to do with this
13 complaint?

14 DEFENDANT O'DWYER: If I was John Doe no complaint
15 would ever have been filed, particularly if you had the chain
16 of the pre and post e-mails that should be read in conjunction
17 with this.

18 THE COURT: All right, let's go to the next point.
19 Go to your next point.

20 DEFENDANT O'DWYER: The next point is I've offered to
21 give you my guns.

22 THE COURT: You've already gone through it. I've
23 been keeping up with all this stuff.

24 DEFENDANT O'DWYER: Well, I'm not --

25 THE COURT: And I don't want --

1 DEFENDANT O'DWYER: What evidence --

2 THE COURT: -- to keep going over this.

3 DEFENDANT O'DWYER: -- does the Government -- what
4 real evidence other than argument does --

5 THE COURT: Listen, listen, listen, I'm going to
6 submit to you and just stop you because you've already told me,
7 and I've been keeping up, you're willing to turn in your
8 passport, you're willing to be housebound, your automobile
9 insurance has been cancelled, your driver's license suspended,
10 you only missed one court appointment; I've been keeping up
11 with this.

12 DEFENDANT O'DWYER: All right, Judge.

13 THE COURT: Wait, wait -- your family is supportive.
14 You would catch the streetcar to come down here. "I had maybe
15 three fights." You went through all of that.

16 DEFENDANT O'DWYER: I have no money --

17 THE COURT: That's coming up.

18 DEFENDANT O'DWYER: I'm not a flight risk.

19 THE COURT: You have no money. You're not a flight
20 risk and you go on and on. I'm keeping notes on all this.

21 DEFENDANT O'DWYER: Okay.

22 THE COURT: Come on. Come on --

23 DEFENDANT O'DWYER: I have no money. I'm not a
24 flight risk.

25 THE COURT: -- let's get to it. Let's go to it.

1 DEFENDANT O'DWYER: This is it; there's no more.
2 There's nothing else I want to say.

3 THE COURT: Cross-examination.

4 MR. KENNEDY: Yes, Your Honor.

5 * * * * *

6 CROSS-EXAMINATION

7 BY MR. KENNEDY:

8 Q. Mr. O'Dwyer, you've had an opportunity obviously to read
9 through this entire complaint, isn't that correct?

10 A. That's the only thing I've had to do for the past two and
11 a half days.

12 Q. Okay.

13 A. I've been staring at four walls. I'm in the equivalent of
14 what constitutes extended lockdown. I'm in solitary. I had no
15 reading material. I had no radio. I had no pencil. I don't
16 have a toothbrush. I just got my first shower last night.

17 Q. Okay.

18 A. They haven't even allowed me to shave.

19 Q. Is that a yes that you did read through this?

20 A. Of course I've read through it.

21 Q. Okay. So, basically every correspondence or every
22 communication that's listed in this document you did in fact
23 make. I'm not asking about your intent in it, but it's clear
24 that you did in fact make -- sent all the e-mails that are
25 alleged to be sent here?

1 A. I think so, but a lot of it's left out. I have a lot more
2 to show you if you want --

3 Q. Well, I'm just asking you --

4 A. -- if you want to look at them.

5 Q. -- what's contained in these particular -- in this
6 document the e-mails that are contained.

7 A. I can't verify that they're each quoted correctly. I have
8 to --

9 Q. I'm not asking you if they're quoted correctly. I'm
10 asking you did you in fact send those e-mails?

11 A. Yes.

12 Q. Okay. And did you in fact have a communication with
13 Judge Feldman outside of a restaurant that's contained --

14 A. Yes. My recollection is just a little bit different from
15 his.

16 Q. Okay. But you did in fact have that conversation that is
17 alleged in the complaint itself?

18 A. Yes. You want to tell me the circumstances --

19 Q. No, sir. I'm just asking --

20 A. -- and why I reacted to him like I did?

21 Q. No, sir. I'm just asking you if you in fact had that
22 communication. Now, is there any --

23 A. Marty Feldman provoked me, --

24 Q. Mr. O'Dwyer, --

25 A. -- threw milk --

1 Q. -- I just asked you a question as to whether or not you
2 had that communication. I'm not asking you for the basis for
3 it.

4 A. No. His recollection is different from mine.

5 Q. Well, let's -- but you did in fact have a communication
6 with Judge Feldman?

7 A. What paragraph are we on, Counsel?

8 Q. I'll ask you specifically regarding Paragraph 23.

9 A. Twenty-three.

10 Q. "We had a chance meeting with District Judge,
11 Judge Feldman at a local business in New Orleans."

12 A. Just --

13 Q. And you had a conversation with him, isn't that correct?

14 A. I was in the Wine Cellar on Prytania Street, the corner of
15 Robert, and he walks in and looks at me and shakes his head and
16 gives me his little smirk.

17 Q. Okay. But did you in fact have that conversation with
18 Judge Feldman?

19 A. I told Judge Feldman that I was going to have some of the
20 scumbags that you sit with impeached.

21 Q. Right. And that's what's contained in the paragraph
22 itself.

23 A. Well, not exactly the way I just said it, sir, --

24 Q. Okay.

25 A. -- it's different.

1 Q. And you went further on to say, "Tell the FBI about me,
2 and tell them to bring guns."

3 A. My recollection is that what I said was -- he then said
4 something back to me and I said, "Well, if you feel that way,
5 then why don't you report it to the FBI so they can come after
6 me? But if they do, tell them to bring guns."

7 Q. Now, starting on Paragraph 19 there's a series of e-mails
8 that are sent to Robin Smith --

9 A. You didn't ask me what I meant by that though, did you?

10 Q. Mr. O'Dwyer, --

11 A. Maybe I was suggesting that they --

12 Q. Mr. O'Dwyer, I'm asking you --

13 A. -- go two blocks from my house --

14 Q. Sir, --

15 A. -- and arrest Calvin Fayard.

16 Q. Sir, I'm asking you a question here on Paragraph 19 --

17 A. Or the judge who lives on Henry Clay a few blocks from my
18 house.

19 Q. Did you in fact send the e-mails to Robin Smith that are
20 contained --

21 THE COURT: Look, listen to me, look --

22 BY MR. KENNEDY:

23 Q. -- in the document?

24 THE COURT: -- you've got to stop volunteering
25 information and it seems to me you're losing control of

1 yourself.

2 THE WITNESS: I'm in perfect control.

3 THE COURT: It doesn't seem like it to me.

4 THE WITNESS: Well, I'm very sorry.

5 MR. KENNEDY: Well, if I could --

6 THE WITNESS: You don't know me very well.

7 THE COURT: No, I probably don't.

8 BY MR. KENNEDY:

9 Q. Mr. O'Dwyer, I'm going to take you back to Paragraph 19
10 where it starts a series of e-mails to Robin Smith. Did you in
11 fact send those e-mails to Ms. Smith?

12 A. Mr. Smith.

13 Q. Mr. Smith, excuse me.

14 A. Yeah.

15 Q. I'm not familiar with the person.

16 A. He's about to get another one if I ever get out of here.

17 Q. Okay. Well, thank you for volunteering that, but did you
18 send these e-mails?

19 A. The first one, yes, 19, yes.

20 Q. Okay, and then go --

21 A. April 2, yes.

22 Q. -- going on further --

23 A. April 3, yes.

24 Q. Thank you.

25 A. April 6, yes.

1 Q. All right. And then if we could just continue on
2 regarding --

3 A. I can't guarantee there weren't others in between though
4 that were just as expletive, shall I say, --

5 Q. Again, thank you for volunteering --

6 A. -- and telling him what he should do if he was doing what
7 he sworn an oath to do --

8 Q. Okay.

9 A. -- which is to represent the people.

10 Q. If I could just direct you to Paragraph 24, that's further
11 e-mails that you sent, isn't that correct, on April 14th?

12 A. Yes.

13 Q. April 15th?

14 A. Yes.

15 Q. April 17th?

16 A. Yes.

17 Q. Okay, and then Paragraph 27 --

18 THE COURT: I'm convinced right now --

19 MR. KENNEDY: Judge, I'm just trying to verify that
20 he is in fact the person --

21 THE COURT: I'm going to suspend these proceedings --

22 MR. KENNEDY: -- who sent these.

23 THE COURT: -- and I'm going to order that this
24 gentleman, he's going to -- I'm going to have to find out
25 whether or not he's capable of representing himself. I don't

1 know what else I can do.

2 MR. KENNEDY: Well, Judge, --

3 THE COURT: I mean I've sat here. I've gone over it.
4 I've listened very patiently. I've tried to be reasonable. I
5 don't see that we can go on questioning. I'm just convinced
6 that (Inaudible, Defendant speaking over Judge)

7 THE WITNESS: We should take up your recusal first.

8 MR. KENNEDY: What --

9 THE COURT: Let me say this to you, it doesn't matter
10 to me what you file. It doesn't matter to me what anybody
11 files.

12 DEFENDANT O'DWYER: I'm not in a position to file
13 much of anything.

14 THE COURT: It doesn't matter to me. All I'm going
15 to do --

16 DEFENDANT O'DWYER: But you shouldn't be deciding
17 substantive issues in this case.

18 MR. KENNEDY: Judge, --

19 DEFENDANT O'DWYER: You should be recused.

20 THE COURT: What I'm saying to you is --

21 DEFENDANT O'DWYER: I knew it was going to happen
22 when I came here.

23 THE COURT: Listen, what I'm saying to you is that
24 you should try to control yourself and try to seek to do the
25 things that you can do under the law. And I think what you're

1 doing now is you're trying to make a mockery out of this entire
2 proceeding and (Inaudible, Defendant speaking over Judge)

3 DEFENDANT O'DWYER: This proceeding is a mockery.

4 MR. KENNEDY: I just have --

5 THE COURT: Finish your cross-examination.

6 MR. KENNEDY: Thank you, Your Honor.

7 BY MR. KENNEDY:

8 Q. You mentioned to the Judge regarding guns that you have.
9 Isn't it a fact you told Judge Brown in your bankruptcy
10 proceeding that you have two revolvers, three 12-gauge
11 shotguns, and another 12-gauge shotgun which you termed as a
12 "riot shotgun," isn't that correct?

13 A. Probably. Whatever I put in my schedules.

14 Q. Okay. And you've already admitted --

15 A. But they're all legal.

16 Q. Thank you. And you've already admitted that --

17 A. And they're under lock and key --

18 Q. Okay.

19 A. -- with the exception of the other Smith & Wesson
20 revolver. It's on the top shelf of one of my closets in my
21 bedroom dressing area --

22 Q. And all --

23 A. -- and I had another one, but the NOPD stole it after
24 Katrina.

25 Q. But the guns that you referenced to Judge Brown those are

1 all in your house on St. Charles Avenue?

2 A. Yes.

3 Q. Okay, thank you.

4 And the computer --

5 A. Why, you're going to seize them?

6 Q. The computer that you used to send all these e-mails, this
7 is also located in your house on St. Charles, isn't it, as
8 well?

9 A. Yes.

10 Q. Okay. And as far as any property, have you ever
11 instructed anybody, your daughter, or anybody else to remove
12 any property from your house?

13 A. Of course not.

14 Q. Okay.

15 A. What are you doing now accusing me of perjury? You have
16 an obligation too you know.

17 Q. Mr. O'Dwyer, is there any communications in this complaint
18 that you did not send?

19 A. Any what in this complaint?

20 Q. Any communications that are listed in this complaint in
21 Paragraphs 1 through 37 that you did not send --

22 A. You're going to have to --

23 Q. -- or you did not make?

24 A. -- give me a minute, Counsel.

25 Q. Just so we're clear.

1 DEFENDANT O'DWYER: Judge, why if none of the other
2 allegations go to the complaint are you letting him ask me
3 about all this other stuff?

4 THE COURT: Because you talked about almost
5 everything he's asking you about, --

6 DEFENDANT O'DWYER: Okay.

7 THE COURT: -- that's why.

8 DEFENDANT O'DWYER: All right, that's the answer to
9 my question.

10 Just a second.

11 Paragraph 8 to the shyster on Causeway Boulevard. I
12 sent it or instructed my secretary to send it.

13 The lawsuit referred to in Article 11, I filed it in
14 accordance with my right to petition for redress of grievances,
15 and it included a RICO complaint against Duval.

16 BY MR. KENNEDY:

17 Q. Mr. O'Dwyer, --

18 A. Did you get it? Did you read it? Did you do anything
19 about it?

20 Q. Mr. O'Dwyer, I'm just asking you if you made -- if there's
21 any communications listed in this document that you did not
22 make, that's all.

23 A. Just a minute.

24 I had nothing to do with what Ms. Daly told the Marshal
25 Service in Paragraph 14 and I'd like to know just what the heck

1 she was doing talking to anybody in this building about me,
2 because I didn't have --

3 Q. Mr. O'Dwyer, --

4 A. -- my disciplinary proceedings weren't pending before
5 her --

6 Q. -- I'm asking about your communications.

7 A. I said I had nothing to do with Number 14.

8 Q. That's not alleged to you. I'm asking about
9 communications that are attributed to you in this document. Is
10 there anything in there that you did not make?

11 A. Just a minute.

12 I didn't make the documents referred to in Article 16,
13 Lemle and/or Vance did after conspiring with Duval.

14 Everything on Page 4 seems to be I made them. The same
15 with Page 3 -- sorry, I got my pages mixed up. That's Page 5,
16 it was on the floor. Okay, everything on Page 5 I made. And,
17 of course, the e-mail in Article 37 that's quoted on Page 6,
18 Article 37 I made.

19 Q. Thank you.

20 A. But you've got to read that one in conjunction with the
21 stream of e-mails sent between me and Mr. McGinn on the same
22 day.

23 MR. KENNEDY: Thank you. I have no further
24 questions.

25 THE COURT: All right.

1 Do you have any other witnesses you want to call?

2 DEFENDANT O'DWYER: No.

3 THE COURT: All right, then you may step down.

4 DEFENDANT O'DWYER: No, Your Honor.

5 THE COURT: All right, sir.

6 DEFENDANT O'DWYER: Can I stay here, Judge, because
7 my pants are falling down again?

8 THE COURT: Well, you can have a seat at the table.

9 Is there going to be any rebuttal?

10 MR. KENNEDY: No, Your Honor.

11 THE COURT: All right.

12 DEFENDANT O'DWYER: I told you they wouldn't have the
13 guts to call DiMenna.

14 THE COURT: Listen, listen, just have a seat. I want
15 you to go back over and have a seat at the table. Take your
16 time and step down.

17 At this point I am convinced after listening to this
18 completely at this point there are no conditions of release
19 that I can schedule that would reasonable assure the safety of
20 the community and --

21 DEFENDANT O'DWYER: Ha! What have you heard that
22 says that I would present a danger to the safety of the
23 community --

24 THE COURT: Excuse me, I'm speaking right now --

25 DEFENDANT O'DWYER: -- that could reasonable be

1 relied on?

2 THE COURT: I'm speaking right now.

3 Throughout all these proceedings that I've been
4 listening to today --

5 DEFENDANT O'DWYER: I'll tell you this, --

6 THE COURT: Are you going to --

7 DEFENDANT O'DWYER: -- I'm more dangerous to the
8 Government --

9 THE COURT: Are you going to --

10 DEFENDANT O'DWYER: -- in jail than I am out of jail.

11 THE COURT: Are you going to allow me to finish
12 speaking?

13 DEFENDANT O'DWYER: I had those guys in my holding
14 cell today eating out of my hand. I'm going to get a whole
15 bunch of clients.

16 THE COURT: I am move over convinced that all of the
17 outbursts that have been made by Mr. O'Dwyer render his ability
18 to represent himself questionable.

19 Also, I don't know if it's based on a mental defect
20 or disease, I can't tell, but he is not reacting or acting as I
21 would think a responsible person with regard to understanding
22 the seriousness of these proceedings. So, --

23 DEFENDANT O'DWYER: I know these manacles --

24 THE COURT: Just a minute --

25 DEFENDANT O'DWYER: -- are serious as a heart attack.

1 THE COURT: -- I'm still speaking and I think that
2 the record is picking up everything that you're saying. And
3 whomever reviews what I am saying here today, I think they'll
4 be able to find that these findings are well-founded with
5 regard to what's been presented.

6 I do also make a finding, and I think that it's
7 unreasonable but is his right not to have a lawyer to represent
8 him. I've given him every opportunity and even I'm questioning
9 now his ability to waive counsel. If I had more information
10 about his finances, he's told me that he --

11 DEFENDANT O'DWYER: I'm broke.

12 THE COURT: -- bankrupt, but he refuses to do it --

13 DEFENDANT O'DWYER: What more do you need? I'm
14 busted.

15 THE COURT: He refuses to answer or file a copy of
16 his financial statement under oath to me. If he qualifies I'd
17 be more than happy to appoint someone to represent him, that
18 is, the Federal Public Defender can assign someone if that were
19 the case. Nor can I force that upon him.

20 However, after listening to this, and the outbursts,
21 and the uncontrolled answers, and I've had to literally
22 continue to try to steer him in the right direction, I don't
23 know if he recognizes the seriousness of these charges, as well
24 as his rights to go forward, and how to conduct himself in a
25 serious proceeding such as this.

1 DEFENDANT O'DWYER: That's another one --

2 THE COURT: I'm not finished.

3 DEFENDANT O'DWYER: -- you're wrong about, Judge.

4 THE COURT: I am not finished. You can take an
5 appeal on all of this.

6 What I'm going to do is I'm going to provisionally
7 appoint the Office of the Federal Public Defender in order that
8 they seek a copy which he wanting me to have of his financial
9 affidavit that he's given the Bankruptcy Court. And if he is
10 willing to swear that this is correct in this Court, I will
11 assign somebody or either standby counsel. And then I'll know
12 where to go from here. But for right now, you know, you don't
13 leave me too much of a choice after listening to all of this.
14 I mean we have to as judicial officers and officers of the
15 court, we have to try to approach these issues in a civil,
16 lawful manner such that we --

17 DEFENDANT O'DWYER: My status --

18 THE COURT: I'm not finished yet.

19 DEFENDANT O'DWYER: -- has been taken --

20 THE COURT: I listened to you.

21 DEFENDANT O'DWYER: -- from me.

22 THE COURT: I listened to you.

23 DEFENDANT O'DWYER: I am no longer an officer of the
24 court. I'm a citizen of the United States of America and I'm
25 exercising my constitutional rights whether you like it or not.

1 THE COURT: It's not a point of whether I like
2 anything or not. The point is that you're sitting there and
3 I'm sitting here, that's the point. That is the other point.

4 DEFENDANT O'DWYER: What are you going to do, put me
5 in jail?

6 THE COURT: No, (Inaudible, Defendant speaking over
7 Judge)

8 DEFENDANT O'DWYER: I'm already in extended lockdown.

9 THE COURT: I believe anyone reviewing this record
10 will hear the vociferous noise coming from this gentleman who
11 just intends and has his intent on over-talking any and
12 everybody in this building. He's (Inaudible, Defendant
13 speaking over Judge)

14 DEFENDANT O'DWYER: Got that right. Got that right.

15 THE COURT: Especially in this courtroom.

16 DEFENDANT O'DWYER: That's the first time you've been
17 right today, Judge.

18 THE COURT: So, therefore, I believe that a
19 competency examination is necessary. I'm doing to direct --

20 DEFENDANT O'DWYER: We're going to hit recusal --

21 THE COURT: I'm going to direct --

22 DEFENDANT O'DWYER: -- before we get to that one.

23 THE COURT: You can file whatever you'd like and I'm
24 sure it will be litigated before somebody. But if the
25 Government doesn't file it, somebody needs to file --

1 DEFENDANT O'DWYER: The should be recused --

2 THE COURT: -- the Court is going to file it.

3 DEFENDANT O'DWYER: -- too.

4 THE COURT: Look, under the law the Government can
5 file it or the Court can do it on its own motion. I direct
6 them to consider it and look and see. But I'm convinced right
7 now that there's something wrong, sir, --

8 DEFENDANT O'DWYER: Yeah, there's definitely
9 something --

10 THE COURT: -- from the way you're reacting --

11 DEFENDANT O'DWYER: -- wrong.

12 THE COURT: No, no, I'm not --

13 DEFENDANT O'DWYER: I'll tell you what's wrong.

14 THE COURT: I'm not finished. I'm not finished.

15 DEFENDANT O'DWYER: I'm not either.

16 THE COURT: I'm giving you my reasons. Now, you're
17 going to be ordered --

18 DEFENDANT O'DWYER: I'll put mine on the record --

19 THE COURT: -- detained --

20 DEFENDANT O'DWYER: -- after you leave.

21 THE COURT: -- and you are hereby ordered detained as
22 dangerous.

23 DEFENDANT O'DWYER: Sorry?

24 THE COURT: As dangerous. That's what I'm saying,
25 you're dangerous.

1 DEFENDANT O'DWYER: Oh. To which ruling of the
2 Court --

3 THE COURT: There are no conditions --

4 DEFENDANT O'DWYER: -- Defendant respectfully --

5 THE COURT: I'm not finished yet.

6 DEFENDANT O'DWYER: -- excepts --

7 THE COURT: I have not finished and the record is
8 going to bear it out that this Defendant refuses to let the
9 Court give its reasons for its ruling having sat here through
10 it all giving him fair opportunity to express himself. The
11 Federal Public Defender is sitting here with an Assistant and I
12 cannot make him accept that representation --

13 DEFENDANT O'DWYER: You'd made up your mind before --

14 THE COURT: -- but they are right here. They are
15 right here.

16 DEFENDANT O'DWYER: -- you walked in today.

17 THE COURT: What's that?

18 DEFENDANT O'DWYER: You'd made up your mind before
19 you ever walked in today. Wait until you're asked under oath
20 by a federal investigative officer whether you discussed my
21 case with anyone before assuming the bench today. I'd like to
22 hear your answer to that one.

23 THE COURT: Take him away. He is remanded --

24 MR. KENNEDY: Your Honor, --

25 THE COURT: -- to the custody of the U.S. Marshal

1 until further orders of the Court.

2 MR. KENNEDY: Your Honor, one thing before the
3 Defendant --

4 DEFENDANT O'DWYER: I'm not finished --

5 THE COURT: You are finished as far as I'm concerned.

6 MR. KENNEDY: Judge, I did have one issue before he's
7 escorted away or actually after he's escorted away. The FBI
8 Agent is required by law to take a DNA sample from the
9 Defendant pursuant to his arrest and we ask that the Defendant
10 comply with that. The FBI Agents are here ready to take one.

11 THE COURT: I'm not going to order that. He can do
12 it -- if not he runs the consequences of what he has to pay.
13 How am I going to do that? You all have to ask for that by a
14 motion of some sort.

15 MR. KENNEDY: I'll move for it then, Judge. That's
16 fine.

17 THE COURT: Do you see what I'm saying?

18 MR. KENNEDY: Yes.

19 THE COURT: I don't operate that way. If he wants to
20 give it, that's fine. If he doesn't --

21 MR. KENNEDY: No, by policy we have to --

22 THE COURT: -- you know what the law is, --

23 MR. KENNEDY: By policy we have to do a DNA sample.

24 THE COURT: -- cite the law so he can have a chance
25 to respond to it. He's remanded.

1 DEFENDANT O'DWYER: This is a kangaroo court.

2 THE COURT: I've heard that before. I should say
3 I've read that before. I don't know.

4 THE CLERK: That concludes the docket.

5 THE COURT: Thank you.

6 * * * * *

7 (Hearing Concluded)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above-entitled matter.

S/Ann B. Schleismann
ANN B. SCHLEISMANN

2/9/10
DATE