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STATE OF NEW YORK

COUNTY COURT : COUNTY OF CHEMUNG

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In the Matter of the Retention of

KEVIN SAUNDERS,

Index No.  
2003-1568  
RJI No.  
2003-0316

A Patient Admitted to the  
Elmira Psychiatric Center.  
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Justice Building  
William Street  
Elmira, New York  
April 24, 2003

B E F O R E: HONORABLE JAMES T. HAYDEN, Judge.

A P P E A R A N C E S:

For the Petitioner: Attorney General's Office  
44 Hawley Street  
State Office Building, 17th Floor  
Binghamton, NY 13901-4433  
By: Carol Cocchiola

For the Patient: Mental Hygiene Legal Service  
44 Hawley Street  
State Office Building, 16th Floor  
Binghamton, NY 13901-4435  
By: Richard J. Wenig

The Defendant: In Person

Court Reporter: Michele L. Lear, RPR, RMR

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I N D E X

WITNESSES

For the People:      DIRECT    CROSS    REDIRECT    RECROSS

1. Paul Povinelli	3	16	--	--
2. April Roberts	27	44	--	--
3. Janet Stevens	54	60	--	--

For the Defendant:

1. Kevin Saunders	66	102	--	--
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1 THE COURT: Okay. This is an application on  
2 behalf of Mr. Saunders for release.

3 MR. WENIG: Yes, your Honor.

4 THE COURT: Okay. Ready to proceed?

5 MR. WENIG: Yes, your Honor.

6 MS. COCCHIOLA: Yes, we are, Judge.

7 THE COURT: Okay. Go ahead.

8 MS. COCCHIOLA: Thank you. The State would  
9 call Dr. Povinelli.

10 P A U L P O V I N E L L I, having been called as a  
11 witness, being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. COCCHIOLA:

14 Q. Doctor, do you want to have the chart or the --  
15 your report?

16 A. I have my report right here.

17 Q. I'm sorry. If you would start, please, by  
18 telling us your name for the record.

19 A. My name is Dr. Paul T. Povinelli. I'm a licensed  
20 clinical psychologist on admissions service at Elmira  
21 Psychiatric Center.

22 Q. And what is your position there?

23 A. I'm the psychologist on the admission service, a  
24 licensed PhD. I examine most of the patients that come  
25 through.

1 Q. And could you tell us about your educational  
2 background.

3 A. I received my doctorate at the University of  
4 Southern California, my internship at Cal State  
5 Northridge and I've been employed by the State since  
6 1980.

7 Q. Doctor, let me ask you: Are you familiar with a  
8 patient currently at the Elmira Psychiatric Center by  
9 the name of Kevin Saunders?

10 A. Yes, I am.

11 Q. How are you familiar with Mr. Saunders?

12 A. I'm familiar with Mr. Saunders on two levels.  
13 One, recently he was remanded to our care at Elmira  
14 Psychiatric Center and I was assigned to treat him.  
15 That was on 4/4 of this year. And prior to that I did  
16 an examination of him for the Tompkins County Court in  
17 1997.

18 Q. And what would that type of examination have  
19 been?

20 A. He was a 730.20. It was for a standing trial,  
21 competency to stand trial.

22 Q. And can you tell us, did you examine Mr. Saunders  
23 at that time?

24 A. At that time I most certainly did. I  
25 administered a full battery of psychological tests, made

1 my recommendations to the Court.

2 Q. And can you tell us about --

3 MR. WENIG: Your Honor, excuse me. May  
4 counsel approach?

5 THE COURT: Sure.

6 (Bench conference)

7 MR. WENIG: I apologize, Judge. I should  
8 have brought this up before the hearing began. I  
9 just want to note on the record that during the  
10 course of Mr. Saunders' 1997 criminal incident  
11 when he was prosecuted by the Tompkins County  
12 District Attorney's Office, April Smith from our  
13 office, who's currently a senior attorney with  
14 the Mental Health Legal Services in Binghamton,  
15 was employed by the Tompkins County District  
16 Attorney's Office.

17 She had no relationship with the case  
18 concerning Mr. Saunders while working with the  
19 District Attorney and she has had no relationship  
20 with the case currently with Mr. Saunders as an  
21 MHLS attorney.

22 THE COURT: May I presume you are just  
23 laying background of his familiarity?

24 MS. COCCHIOLA: Right, Judge.

25 THE COURT: We are not going to be getting

1 into the '97 diagnosis and --

2 MS. COCCHIOLA: Well, only as it regards  
3 Dr. Povinelli's opinion because he saw him then,  
4 he sees him now. And, in fact, Judge, there's an  
5 application before Judge Raleigh scheduled to be  
6 heard Monday on the CPL 330 aspect of the case.

7 THE COURT: That case is still pending?

8 MS. COCCHIOLA: Well, the hospital has  
9 applied for recommitment.

10 THE COURT: I see.

11 MS. COCCHIOLA: He's been out on conditions  
12 for five years.

13 THE COURT: I understand. But Ms. Smith had  
14 no connection with the actual working of the  
15 case?

16 MR. WENIG: That's correct, your Honor.

17 MS. COCCHIOLA: The ADA was Gary Surdell.

18 THE COURT: Okay. I don't see any problem  
19 here.

20 MR. WENIG: I just wanted to present that  
21 for the Court after counsel --

22 THE COURT: That's fine. Thank you.

23 MS. COCCHIOLA: Thank you.

24 MR. WENIG: Thank you, Judge.

25 (End bench conference)

1 THE COURT: Go ahead.

2 MS. COCCHIOLA: Thank you.

3 BY MS. COCCHIOLA:

4 Q. Doctor, you examined Mr. Saunders at that time?

5 A. At the request of the Court, yes, I did.

6 Q. Where was he located there?

7 A. I examined him in the Tompkins County court  
8 building at the time.

9 Q. All right. And you made a report for the Court  
10 there?

11 A. Made a report for the Court at that time.

12 Q. And did you also examine Mr. Saunders when you  
13 saw him on his most -- on his admission earlier this  
14 month?

15 A. Yes, I did. I did not administer a full battery  
16 of tests, I did a simple mental examination.

17 Q. Would Mr. Saunders agree to let you administer  
18 the full battery of tests?

19 A. I didn't wish to do it at that time because I saw  
20 essentially the same thing I saw in 1997.

21 Q. All right. Now, as far as the -- his appearance  
22 when you interviewed him earlier this month, can you  
23 describe for us how his mental state was.

24 A. He was kind of confused when I saw him, he was  
25 experiencing auditory hallucinations, he said he was

1 hearing gibbering voices talking to him, telling him to  
2 hurt himself, but he assured me he wouldn't hurt himself  
3 but the gibbering voices were there. He was very  
4 vigilant and fearing that people were conspiring against  
5 him, that people were poisoning marijuana that he was  
6 smoking, that the conspiracy is against him.

7 Q. Now, when you saw him in 1997, did you make some  
8 diagnosis?

9 A. At that time I called him major affective  
10 disorder with psychiatric features exacerbated by  
11 chronic marijuana abuse.

12 Q. And how about his diagnosis at this time?

13 A. At this time he carries affective disorder, again  
14 bipolar disorder manic phase with psychotic features,  
15 again, exacerbated by marijuana.

16 Q. Now, has Mr. Saunders told you --

17 THE COURT: Hold on. You are going a little  
18 bit quick for me.

19 MS. COCCHIOLA: I think we're talking too  
20 fast.

21 THE COURT: I can only write so fast.

22 THE WITNESS: I'll slow down.

23 Q. You said it was a major affective disorder?

24 A. Basically encompassing bipolar disorder, has  
25 major affective disorder.



1 THE COURT: Okay, go ahead.

2 Q. Now, you indicated marijuana use. Did  
3 Mr. Saunders admit --

4 A. Yes, he did.

5 Q. -- marijuana use?

6 A. Yes.

7 Q. And what did he tell you as far as frequency?

8 A. He tells me he smokes quite frequently, sometimes  
9 daily, and it has no relation to his psychiatric state.

10 Q. That's his opinion?

11 A. That's his opinion, yes.

12 Q. And is that consistent with when you saw him in  
13 1997?

14 A. Exactly the same.

15 Q. Now, as far as his -- that's an Axis I diagnosis?

16 A. Right.

17 Q. Does he have another diagnosis?

18 A. Axis II, we felt that he was somewhat borderline  
19 narcissistic in his personality. The primary diagnosis  
20 is Axis I.

21 Q. Does he have a cannabis dependence in any --

22 A. As far as I'm concerned he does, yes.

23 Q. And that's also something that --

24 A. Axis I.

25 Q. Okay. Now, Doctor, I note you prepared a report

1 in connection with your most recent examination that  
2 includes gender identity disorder adult.

3 A. Right.

4 Q. What is that related to?

5 A. He's a cross-dresser.

6 Q. And he admits to that?

7 A. He admits to that. He's been doing that since he  
8 was a teenager.

9 Q. Now, Doctor, when you saw him, did you -- when  
10 you said you conducted a mental status exam, what did  
11 that include?

12 A. Basic questions as to his mental state, how he  
13 was functioning, how he was thinking, his orientation.  
14 His judgment, his insight.

15 Q. And can you tell us -- first I guess I'll start  
16 with the last. His judgment and insight, does he  
17 believe he has a mental illness?

18 A. He believes he has a mental illness when I saw  
19 him, that he wasn't thinking straight and was secondary  
20 to a systemic infection. He believes he has a systemic  
21 infection causing the problems.

22 Q. And what infection was he referring to?

23 A. He stated he had an infection in his foot that  
24 wasn't being treated properly, that had generalized to a  
25 general body infection. I did not examine his foot, I

1 left that to the medical department.

2 Q. And as far as that possibility, is that something  
3 you took into consideration?

4 A. Yes, but I did not think that's what I was  
5 seeing.

6 Q. And why would you rule that out?

7 A. If he had meningitis, he would be in ICU  
8 somewhere, he wouldn't be sitting before me in a  
9 psychiatric service.

10 Q. Now, he told you about his marijuana use. Did he  
11 see that it might have precipitated his admission?

12 A. He felt his marijuana may have been spiked.  
13 Someone might have put something in the marijuana.

14 Q. Did he talk to you about the events that led up  
15 to his admission to the hospital in the beginning of  
16 this month?

17 A. Briefly. Briefly. That he had been brought by  
18 ambulance to the medical center, that he had been  
19 hospitalized there briefly.

20 Q. All right. And does he have any recollection of  
21 what occurred?

22 A. Well, when he spoke to me at that time, his  
23 recollection was spotty. He was having memory problems.

24 Q. What did he tell you?

25 A. That he wasn't thinking straight, that he was

1 hearing voices, that there were plots going on against  
2 him and he wasn't able to give me a clear sequence of  
3 events.

4 Q. While at Elmira has he exhibited any odd --  
5 evidence of auditory or visual hallucinations?

6 A. At the beginning he certainly did upon  
7 admission. Staff had reported that he's been mumbling  
8 to himself. But right now I don't see any visual  
9 hallucinations, auditory hallucinations. There were on  
10 admission.

11 Q. And as far as programs are concerned, does he go  
12 to programs?

13 A. No, he doesn't. He's on ward restriction since  
14 he's come in.

15 Q. Why is that?

16 A. Because of his unpredictable behavior and he's a  
17 CPL.

18 Q. What do you mean by unpredictable behavior?

19 A. When he came in, he became very violent. He  
20 attacked staff, he spit at them, he had to be  
21 restrained. He had to be medicated and strapped down to  
22 the bed.

23 Q. And as far as since that time?

24 A. He is untrustworthy, people don't trust him.

25 Q. So, he's still on the restriction?

1 A. He's still on the restriction at this time, yes.

2 Q. Now, Doctor, is he compliant with any medication  
3 recommended by his doctor?

4 A. He has refused all psychotropic medications. He  
5 feels he does not have a psychiatric problem, it was  
6 physical.

7 Q. All right. Was that similar to his --

8 A. That was identical -- very much identical to  
9 1997. At that time he felt he had a psychosis secondary  
10 to the medications he was being given back then.

11 Q. All right. And as far as the underlying offense,  
12 what was that related to?

13 A. He burnt down his girlfriend's trailer. He set  
14 it on fire. He was responding to auditory  
15 hallucinations at that time.

16 Q. And was it -- did he also have any of the gender  
17 identity issues there?

18 A. He did dress in female's clothing and he stated  
19 it had something to do with tableau from Silence of the  
20 Lambs.

21 Q. Now, Doctor, did you examine Mr. Saunders today  
22 in fact?

23 A. Yes, I did. This morning I spoke with him.

24 Q. And can you tell us what he had to say regarding  
25 his mental health issues.

1       A.    Well, he feels the mental health issues are  
2 secondary to a physical illness. That it was due to a  
3 breakdown of medications in his system that poisoned  
4 him. He also referred back to Silence of the Lambs  
5 again, which he did back in 1997. It didn't change at  
6 all. The same story. It was very rambling and his  
7 logic didn't follow in the proper sequence.

8       Q.    Now, what do you mean? What was he saying about  
9 Silence of the Lambs today?

10       A.    He was basically equating himself to Hannibal  
11 Lecter and coincidences in his own life regarding  
12 Silence of the Lambs and how he has responded.

13       Q.    Now, as far as his need for inpatient care and  
14 treatment, do you believe that he continues to need to  
15 be at the Elmira Psychiatric Center?

16       A.    I believe he needs treatment, that he should be  
17 treated and he should be taking medications to  
18 stabilize.

19       Q.    And what is the interaction between the cannabis  
20 or the marijuana use and his illness?

21       A.    In my experience, I found people who had a  
22 psychotic disorder, bipolar disorder with psychotic  
23 features, marijuana can exacerbate it and make it more  
24 paranoid.

25       Q.    Can it affect if you are in a manic phase versus

1 a depressive phase?

2 A. Either stage it can bring out more paranoia.

3 Q. Now, Doctor, do you feel if he were released  
4 right now -- first of all, would he be compliant with  
5 any kind of outpatient treatment?

6 A. He has not been compliant with his conditions as  
7 a CPL patient for five years now. And based on past  
8 behavior, I have no expectation he would follow through  
9 today.

10 Q. Does he tell you that he would?

11 A. He tells me there's nothing wrong with him except  
12 for a physical illness.

13 Q. And, Doctor, do you feel if he were released  
14 today, would he pose a risk of danger to himself or  
15 others?

16 A. I believe if he got back to the marijuana again,  
17 he might certainly pose a risk.

18 Q. Now, Doctor, when you give your opinion -- let me  
19 ask you. What have you reviewed regarding his most  
20 recent admission prior to coming to court?

21 A. I reviewed his past history. He's going back to  
22 1997, CPL papers, reports from various doctors at  
23 Rochester psych, as well as the reports of Cayuga  
24 Medical.

25 Q. As far as the issues regarding his behavior right

1 before admission, would those be significant to you in  
2 rendering the opinion you just gave us?

3 A. Yes. Yes, absolutely.

4 Q. What were the circumstances surrounding his  
5 admission?

6 A. He had gone to Cayuga Medical, he was acting very  
7 bizarrely. It was reported that he was running around  
8 town naked, he wasn't thinking clearly, he felt there  
9 was a conspiracy with regard to Adolf Hitler. He was  
10 seen to be severe enough in his behavior that the folks  
11 at Cayuga Medical Center sent him down to us.

12 Q. Was he sent down when -- after that behavior on  
13 the same day?

14 A. I'd have to check the record.

15 Q. Okay. Within a day or so?

16 A. Within a day or so, yes.

17 Q. Okay. Thank you.

18 MS. COCCHIOLA: I have nothing further of  
19 Dr. Povinelli.

20 CROSS-EXAMINATION

21 BY MR. WENIG:

22 Q. Good morning, Doctor. You made the statement  
23 earlier that Kevin's on ward restrictions because  
24 "people don't trust him"?

25 A. His behavior has been very erratic. When he came



1 in -- he was very violent when he came in. He's not  
2 taking any medications.

3 Q. Which people are we talking about that don't  
4 trust him, Doctor?

5 A. The psychiatric staff. The people on staff,  
6 medical staff treating him.

7 Q. Wouldn't the progress notes reflect that at least  
8 in recent days Kevin's been compliant with --

9 A. He has not accepted any medications or any  
10 treatment. He has not caused any major problems.

11 Q. Let's see. Regarding Kevin's rejection of  
12 treatment and medications, that's been the case pretty  
13 much since his condition was implemented five years ago?

14 A. That's when the case as far as a number of  
15 years --

16 Q. But your statement was he isn't complying with  
17 the CPL conditions.

18 A. He hasn't been.

19 Q. Which conditions?

20 A. The conditions of taking medications.

21 Q. Anything else?

22 A. I haven't followed him, so.... I know he is  
23 keeping his appointments. But he was not taking  
24 prescribed medications.

25 Q. Okay. What medications were prescribed five

1 years ago?

2 A. I'd have to go and look at the chart.

3 Q. You don't know?

4 A. I don't know that.

5 Q. Do you know if any medications were, in fact,  
6 prescribed five years ago?

7 A. At the time I presume they were.

8 Q. That's a presumption on your part?

9 A. It's a presumption. I don't have the chart with  
10 me.

11 Q. So, you don't know? So, in fact, no medication  
12 may not have been prescribed?

13 A. The last hearing he had -- he had a CPL hearing  
14 several weeks ago. At that hearing I was told he has  
15 not been in compliance.

16 Q. What hearing is that?

17 A. You were present at it, at Elmira Psychiatric  
18 Center.

19 Q. You characterize that as a hearing, I'm sorry?

20 A. It was a hearing, yes. It was a presentation for  
21 extension of -- I was under the assumption it was.

22 Q. So, you are referring to the forensic committee  
23 meeting at Elmira Psychiatric Center two weeks ago. So,  
24 there was no hearing involved?

25 A. It was a hearing before the forensic committee.

1 Q. Okay. And at that meeting the committee  
2 determined that Mr. Saunders should have his order of  
3 conditions renewed?

4 A. That was the general consensus.

5 Q. And, again, the statement was purportedly made to  
6 the committee that Mr. Saunders has not been taking his  
7 prescribed medication?

8 A. His outpatient -- the outpatient folks told me  
9 that at that meeting.

10 Q. Was Dr. Belsare his treating psychiatrist at that  
11 meeting?

12 A. She's the treating psychiatrist. I don't  
13 recall -- was she at the meeting? I don't recall. I  
14 think she was. She was sitting across from me.

15 Q. Do you recall what medication, if any, was  
16 prescribed or purportedly prescribed?

17 A. I didn't go over the medication, that's not my  
18 department.

19 Q. So, you are not sure what the medication is?

20 A. It is not my department to go over the  
21 medications.

22 Q. But you are saying Mr. Saunders is not complying  
23 with or something he may not be complying with?

24 A. I was told that at that meeting.

25 Q. Okay. So, you don't know?

1 A. Firsthand, no.

2 Q. Thank you.

3 A. I don't order the medications, that's not my  
4 department.

5 Q. All right. And, again, as you testified, as far  
6 as you know, Mr. Saunders was complying with all the  
7 other requirements of the CPL?

8 A. As far as I know.

9 Q. So, he was attending the monthly meetings and --

10 A. He was going to meetings, that's what I was told.

11 Q. Okay. You said you had a chance to review some  
12 of Mr. Saunders records that were maintained by the  
13 Psychiatric Center and the clinic?

14 A. Yes, I reviewed --

15 Q. Did you have a chance to review any of the  
16 records when he was being seen by the mental health  
17 clinic up in Ithaca?

18 A. No, I didn't review those records.

19 Q. So, you have no, you have no knowledge of what  
20 transpired during that time?

21 A. At Ithaca I have no knowledge.

22 Q. So, the review of the records pertaining to the  
23 last year or so at Ithaca --

24 A. Last year and my prior records in 1997, I had  
25 seen him back then. During the ensuing years I did not

1 treat him.

2 Q. I'm sorry?

3 A. During the ensuing years I did not treat him.

4 Q. So, as you testified, when Mr. Saunders came to  
5 the psychiatric center a few weeks ago he was quite  
6 disoriented --

7 A. He was disoriented, he was psychotic, he was  
8 hallucinating.

9 Q. And you also testified those visual and auditory  
10 hallucinations seemed to have dissipated?

11 A. At this point in time they have essentially  
12 dissipated.

13 Q. You said that Mr. Saunders needs treatment in  
14 order to stabilize. What kind of treatment are you  
15 proposing?

16 A. I believe that he should have continued  
17 medication for bipolar disorder.

18 Q. Does anybody else concur with that assessment?

19 A. I think my colleagues would concur with it.

20 Q. But you don't know?

21 MS. COCCHIOLA: Objection as to the form.  
22 Anybody, that means anybody in the world.

23 Meaning Mr. Saunders? Is there a specific --

24 A. My colleagues right now concur with me.

25 THE COURT: All right. Overruled. I

1 understood.

2 Q. Which colleagues concur?

3 A. You can ask Dr. Roberts when she takes the stand.

4 Q. Is that the only colleague that would concur?

5 A. The other physicians at the hospital would.

6 Q. Such as?

7 A. Deputy director Dr. Garayli, Dr. Zelcio

8 (phonetic).

9 Q. Have they all seen Mr. Saunders?

10 A. I presume they have.

11 Q. You presume. You don't know?

12 A. I don't sit in on the meetings, Mr. Wenig.

13 Q. But you are guessing.

14 A. I'm testifying as to what went on at the hearing  
15 at the forensic meeting several weeks ago, my  
16 examination of the patient.

17 Q. But I'm trying to ascertain about your colleagues  
18 concurring. You don't know whether they concur or not,  
19 do you?

20 MS. COCCHIOLA: I'm going to object again.

21 THE COURT: Sustained.

22 A. They told me they concur with the diagnosis.

23 THE COURT: Doctor, I sustained the  
24 objection.

25 Q. Doctor, have you had a chance to read a report

1 presented to the District Attorney for Tompkins County  
2 in a letter dated April 7th, 2003? Those are the  
3 minutes from the, quote, unquote, hearing you have  
4 mentioned a few minutes ago.

5 A. I haven't read the minutes of it, no.

6 Q. Doctor, what kind of medication is Trileptal?

7 A. I'd leave it up to Dr. Roberts to talk about the  
8 medications.

9 Q. You've been talking about the medications freely,  
10 haven't you?

11 A. You've been asking me actual prescribed  
12 medications, that's her department.

13 Q. Back in 1997 you said Mr. Saunders was talking  
14 about Hannibal Lecter and Silence of the Lambs?

15 A. Right.

16 Q. When was he talking about that?

17 A. Back then he had said there was a tableau that he  
18 experienced at the time he burnt down the trailer that  
19 he was responding to visual hallucinations of hands  
20 directing him towards flammable materials and the hands  
21 similar to those of Hannibal Lecter's in Silence of the  
22 Lambs from what I recall.

23 Q. And you mentioned this conversation that occurred  
24 earlier today he had --

25 A. He was speaking again about Hannibal Lecture and

1 about Silence of the Lambs to a social worker,  
2 psychiatrist and myself.

3 Q. In what context, sir?

4 A. In the context of his behavior, coincidences of  
5 his behavior. That was this morning.

6 Q. So, that was a current discussion of  
7 Mr. Saunders' state of mind or was that just you were  
8 asking about what happened in 1997?

9 A. It was a current discussion of where he was at  
10 this morning. The three of us got together and looked  
11 at him and spoke with him.

12 Q. Doctor, did you discuss any of the diagnoses that  
13 you mentioned a few minutes ago with Mr. Saunders?

14 A. I specifically didn't today, no.

15 Q. Have you, have you done that since he's been  
16 admitted?

17 A. I've told him that I believe he has bipolar  
18 disorder and needs medication.

19 Q. Doctor, would it surprise you that there's some  
20 disagreement between the clinicians at the Psychiatric  
21 Center just to what Mr. Saunders' Axis I diagnosis is?

22 A. There's no disagreement between Dr. Roberts and  
23 myself. We're treating him right now, we're consistent.

24 Q. Would it surprise you that the reports have been  
25 to the District Attorney stated that the Axis I



1 diagnoses were generalized anxiety disorder, psychotic  
2 disorder not otherwise specified and cannabis  
3 dependence?

4 A. Not otherwise specified. Basically you see a  
5 psychiatrist to get more information on the disorder.  
6 That diagnosis was changed.

7 Q. By whom?

8 A. By Dr. Roberts and myself who were treating him.  
9 He carries a diagnosis of bipolar disorder manic with  
10 psychotic features.

11 Q. Going back to that meeting last month concerning  
12 Mr. Saunders order of conditions, the meeting that took  
13 place at the Psychiatric Center that you said you were  
14 present at.

15 A. Right.

16 Q. Do you recall what the psychiatrist said  
17 Mr. Saunders diagnosis was?

18 A. I don't recall at that point in time.

19 Q. Doctor, from your experience, is it possible that  
20 certain medical conditions can lead to what would appear  
21 to be psychotic symptoms?

22 A. It's possible, yes.

23 Q. And that's Mr. Saunders assertion that he had a  
24 medical condition --

25 A. That's been his assertion since I first saw him

1 in 1997.

2 Q. And that's also his position --

3 A. That he suffered from a medical condition, not  
4 psychosis.

5 Q. And the medical condition was an infection in his  
6 foot?

7 A. That's what he told us at that time on his  
8 admission.

9 Q. What was the medical condition he discussed in  
10 1997?

11 A. He said he had a bad reaction to the medications  
12 he was being given and the combination of medications.

13 Q. Do you know what those medications were?

14 A. He was on SSR antidepressants. I think it was  
15 Prozac.

16 Q. Are you aware of any studies or incidences,  
17 Doctor, where Prozac or other similar medications have  
18 had an adverse affect on individuals?

19 A. There have been rare studies, rare incidences  
20 where that has happened.

21 Q. And have you reviewed any of Mr. Saunders prior  
22 record where he has debated and analyzed the rationale  
23 behind the statement about the medications affecting his  
24 behavior back in 1997?

25 A. He has told us about it, medication reactions, at

1 length.

2 Q. But you haven't reviewed any of the --

3 A. Not recently, no.

4 Q. All right. Thank you, Doctor.

5 MR. WENIG: I have no further questions.

6 MS. COCCHIOLA: I have nothing further of

7 Dr. Povinelli.

8 THE COURT: The witness is excused.

9 (Whereupon the witness was excused)

10 MS. COCCHIOLA: The State would call

11 Dr. Roberts.

12 A P R I L R O B E R T S, having been called as a  
13 witness, being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. COCCHIOLA:

16 Q. If you would begin, please, by giving us your  
17 name for the record.

18 A. Yes. My name is April Roberts.

19 Q. And would you tell us where you are employed.

20 A. Elmira Psychiatric Center.

21 Q. And can you tell us your position there.

22 A. I'm employed as a psychiatrist.

23 Q. And are you licensed to practice medicine in the  
24 State of New York?

25 A. Yes.

1 Q. Would you tell us about your educational  
2 background.

3 A. Yes. I completed medical school at Michigan  
4 State University and I completed my residency training  
5 in psychiatry at the Medical College of Wisconsin.

6 Q. And can you tell us about your clinical  
7 experience.

8 A. Yes. I've been employed by the State of New York  
9 as a psychiatrist since 1988.

10 Q. And what types of facilities or types of clinical  
11 work have you done since 1988?

12 A. I've worked in state hospitals with New York  
13 State OMH, Office of Mental Health, and I've worked in  
14 outpatient clinics and inpatient clinics on admissions  
15 units, geriatric, psychiatry and its chronic treatment  
16 units and units which specialize in treatment of  
17 violence.

18 Q. Now, Doctor, are you familiar with a patient  
19 currently at the Elmira Psychiatric Center by the name  
20 of Kevin Saunders?

21 A. Yes, I am.

22 Q. How are you familiar with Mr. Saunders?

23 A. I admitted Mr. Saunders to Elmira Psychiatric  
24 Center on 4/4/03.

25 Q. So, were you there when he was brought in then by

1 ambulance?

2 A. I wasn't there when he was actually brought in by  
3 the ambulance, but I -- he was taken to the admission  
4 unit and I came to perform the admission evaluation.

5 Q. Can you describe his appearance, how he -- what  
6 his behavior was when you saw him?

7 A. Yes. His behavior, his appearance was -- he was  
8 very wild appearing.

9 Q. What do you mean by that? What sort of a  
10 conclusion --

11 A. Just like jumping around and moving around in the  
12 chair and looking at the walls and talking to the walls  
13 and then talking to me intermittently. He had illogical  
14 thought processes with flight ideas with an abundance of  
15 speech which was pressured. He was disoriented to time  
16 and place.

17 Q. Meaning he didn't know what day it was or --

18 A. No.

19 Q. -- where he was?

20 A. No, he did not know where he was or the day,  
21 month or year. And when I asked him would he try to  
22 determine whether he was oriented to person, he  
23 responded in an irrelevant manner completely unrelated  
24 to the question. He also expressed delusions and he  
25 appeared to be talking to unseen -- someone who wasn't

1 in the room.

2 Q. What was he saying?

3 A. He was saying things like -- making a lot of  
4 incoherent statements. At one point he mentioned  
5 something about God and, and he would make real bizarre  
6 sounds while looking at the walls and looking up in the  
7 air. And sometimes he would talk to me directly.

8 Q. All right. And as far as when you were, when you  
9 were speaking with him and talking with him, did you  
10 feel that he was under the influence of any drug?

11 A. Yes. In fact, I asked him if that was possible,  
12 because his mental status evaluation findings were so  
13 flamboyant, which is typical of some sort of substance  
14 intoxication. And he told me that he had been smoking  
15 marijuana on a daily basis.

16 Q. All right. And as far as his behavior then on  
17 the unit -- you admitted him I assume?

18 A. Yes, I did.

19 Q. And then his behavior on the unit -- can you  
20 describe for us how he's been behaving since admission  
21 on April 4th.

22 A. Yes. On 4/6/03 he assaulted a staff member.

23 Q. How did he do that?

24 A. He grabbed her by the hair and swung her around.

25 And he required stat IM medication and he began spitting

1 and fighting with the staff. So, then he was placed in  
2 four-point restraint and they had to elevate that to  
3 five-point restraint. And he was also refusing to keep  
4 his clothes on. He had to be redirected to keep his  
5 clothes on and stay out of the dorm areas where females  
6 were. He has not been taking any medication.

7 Q. What does he say about that?

8 A. He says he does not need medication.

9 Q. Does he believe he has a mental illness?

10 A. No, he does not believe he has a mental illness.

11 Q. And as far as his interaction with peers, how has  
12 that been?

13 A. From what I observed, he seems to interact with  
14 peers. He interacts very well with one peer I know of  
15 who smoked marijuana as much as he can, too. So, he  
16 interacts with peers who he has -- they have common --  
17 things in common, who have things in common with him.

18 Q. Now, as far as that was on the 6th when he became  
19 assaultive?

20 A. Yes.

21 Q. And then since that time how would you describe  
22 his, his behavior and his actions?

23 A. I would describe his behavior as avoidant  
24 relative to myself.

25 Q. Why, why do you say that, Doctor?

1           A.     Because when I speak with Mr. Saunders, initially  
2     he's very congenial and he will engage in some  
3     conversations, some superficial conversation with me.  
4     And he will listen when I recommend medication. But  
5     when I try to make any sort of real assessment about how  
6     he's thinking, he avoids answering the question or he  
7     changes the subject entirely.

8                     And he seems to be suspicious. Like one day I  
9     was sitting behind the nurses station reviewing some --  
10    something written, some written documents, and the  
11    social worker was sitting beside me. And the phone was  
12    there. And he wanted to speak with his lawyer. And he  
13    would -- he insisted that I leave. So, I left, but he,  
14    he -- generally he doesn't want me to know what he's  
15    thinking.

16           Q.     All right. Now, as far as the transfer from  
17    Cayuga Medical Center to Elmira Psychiatric Center, was  
18    that significant to you when you are determining his  
19    treatment and care? Did anything unusual occur?

20           A.     Yes, it did. Something unusual did occur. He  
21    was having shake -- let me see exactly what it said. He  
22    was having shaking -- okay. During the ambulance ride  
23    he had periods of somnolence, meaning he was probably  
24    sedated or lethargic alternating with periods of  
25    screaming and violent shaking every 10 to 15 minutes.



1 And they wrote on the ambulance report that this  
2 occurred on four separate occasions.

3 Q. Now, Doctor, you've had an opportunity to examine  
4 Mr. Saunders since his admission. Can you tell us,  
5 does -- do you have an opinion within a reasonable  
6 degree of medical certainty as to whether he suffers  
7 from a mental illness?

8 A. Yes, I do.

9 Q. What is your opinion?

10 A. My opinion is that he does suffer with mental  
11 illness.

12 Q. And what is his diagnosis as far as you're  
13 concerned now?

14 A. At this point I feel that he has marijuana  
15 dependence and bipolar disorder with psychotic features.

16 Q. Now, Doctor, I note that initially it was thought  
17 he had psychotic disorder not otherwise specified.

18 A. Yes.

19 Q. Was that earlier in his admission?

20 A. Yes. And what, what that -- that is sort of like  
21 a generic term. And in his instance I gave that  
22 diagnosis because his presentation on admission was so  
23 flamboyant.

24 Q. What do you mean by flamboyant? Is that a term  
25 of art?

1           A.     Just real exaggerated, movements are exaggerated,  
2     he's moving around, you know, talking to the  
3     (indicating) -- talking to the walls. He's very -- he  
4     was very flamboyant. It was -- it could have been a  
5     substance induced psychosis. And in addition to the  
6     fact that he said he had been smoking marijuana every  
7     day, I wanted to take into consideration that he may  
8     have had a psychotic reaction to something he had used,  
9     some drug.

10          Q.     Was he willing to give you screens like blood or  
11     urine?

12          A.     No.

13          Q.     Was he willing to do that at Cayuga?

14          A.     I didn't see that they --

15          Q.     That was done?

16          A.     -- obtained one, they were able to obtain it.

17          Q.     All right. So, you modified you feel your  
18     diagnosis?

19          A.     Considerably, yes.

20          Q.     And why do you feel, why do you feel you have  
21     changed from the psychotic disorder NOS or you modified  
22     it to the bipolar?

23          A.     Because his mental status has changed from being  
24     very flamboyant to having some of the symptoms -- some  
25     other symptoms of bipolar disorder.

1 Q. Such as?

2 A. We met with him this morning. He had a  
3 preoccupation with being -- not persecuted, but  
4 mistreated, which he would not let me really explore  
5 with him further. He had pressured speech, which was  
6 abundant, with flight of ideas. He had irritability and  
7 he became visibly angry at certain points during the  
8 interview.

9 And when asked why he ignited the trailer of his  
10 girlfriend, he began talking about Silence of the Lambs  
11 and how the character in the Silence of the Lambs was  
12 related to his girlfriend. I can't remember if he said  
13 she resembled him -- resembled the girl, Jodie Foster,  
14 in Silence of the Lambs or the lady -- but he started --  
15 he was preoccupied with talking about that.

16 Q. Now, Doctor, do you feel that Mr. Saunders is in  
17 need of inpatient care and treatment?

18 A. Yes, I do.

19 Q. And what do you feel inpatient care and treatment  
20 will do for Mr. Saunders?

21 A. I think inpatient care and treatment will treat\*  
22 his mania.

23 Q. And how do you propose to go about that given  
24 that he's refusing his medications?

25 A. I've applied for treatment, an order for

1 treatment over objection.

2 Q. You prepared the papers for that?

3 A. Yes.

4 Q. And what do you prescribe or recommend that he  
5 won't take?

6 A. Right now I'm prescribing Olanzapine.

7 Q. What is that?

8 A. It is an antimanic agent and an antipsychotic.

9 Q. And do you feel that that might address some of  
10 his symptoms?

11 A. Yes.

12 Q. Now, Doctor, does he go to programs or does he  
13 participate in any --

14 A. No.

15 Q. What does he do?

16 A. He generally stays on the ward.

17 Q. Okay. And as far as the incidents you've talked  
18 about where he was assaultive and following females  
19 and -- has that behavior subsided to some degree?

20 A. It does appear to have subsided, yes.

21 Q. As far as disrobing, he is not doing that  
22 anymore?

23 A. That's correct.

24 Q. Now, Doctor, as far as his claim that this is a  
25 physical infection that affected his behavior, were you

1 able to attempt to rule that out or have you thought  
2 about that?

3 A. Yes. I spoke with the medical team about that.  
4 And he -- there's no physical condition which would be  
5 causing him to behave in that manner.

6 Q. What did he have as far as his infection or this  
7 foot problem?

8 A. He had a site of -- it was -- at the time I spoke  
9 with the medical team they described it as like almost  
10 like as small as a pimple would be, it was a little  
11 infection on his leg.

12 Q. And how were they treating it?

13 A. With antibiotics.

14 Q. And did you confer with them regarding this claim  
15 about the physical ailments versus the mental illness?

16 A. Yes.

17 Q. Have you ruled that out, the physical?

18 A. Yes.

19 Q. Now, Doctor, as far as his medications are  
20 concerned, if he were compliant with medications, what  
21 would you expect to see?

22 A. I would expect to see better control with his  
23 anger and his irritability. And I would expect that he  
24 would, he would be able to interact with the mental  
25 health care system without being preoccupied with

1 persecutory thinking, that he's being mistreated or he's  
2 being neglected or he's not getting any treatment at  
3 all. And nobody knows what his real problems are.

4 I think that he would probably not repeat acts of  
5 violence even if he did smoke marijuana. If he's taking  
6 antimanic agents, maybe he wouldn't be as prone to run  
7 around with his clothes off in the streets or  
8 threatening toward other people or harming himself as  
9 was reported in the papers from Cayuga Medical.

10 Q. What do you mean by harming himself?

11 A. In the papers they said he was putting his hand  
12 under -- or fingers under scalding hot water and he was  
13 hitting himself and --

14 MR. WENIG: Objection, hearsay, your Honor.

15 THE WITNESS: It's in the report. I have it  
16 here.

17 THE COURT: Hold on.

18 MS. COCCHIOLA: Your Honor, let me ask.

19 THE COURT: Foundation.

20 Q. Is this something that you reviewed as part of  
21 your --

22 A. Yes.

23 Q. Let me finish my question. -- evaluation of  
24 Mr. Saunders medical -- or mental status?

25 A. Yes. This is part of the history that I reviewed

1 to find out why the patient was where -- at the facility  
2 he was in before.

3 Q. Why he was admitted?

4 A. Why he was at the facility he was in before he  
5 came to my facility, to our facility.

6 Q. And have you read that in reports that are  
7 generated by Cayuga Medical Center?

8 A. Yes.

9 MS. COCCHIOLA: I would ask whether she  
10 could use it in her evaluation of the patient.

11 MR. WENIG: Your Honor, I submit there's no  
12 foundation as to whether any statements were made  
13 by an employee of Cayuga Medical Center. If they  
14 were not made by an employee of Cayuga Medical  
15 Center, there's no business document relationship  
16 here and should not be admitted.

17 MS. COCCHIOLA: Well, I am not offering --  
18 going to offer them.

19 THE COURT: His objection is to the source  
20 of the information contained in the report.

21 MS. COCCHIOLA: I understand that. But my  
22 point is I'm not asking to admit that, I'm asking  
23 whether she can use that in formulating her  
24 opinion as to retention.

25 THE COURT: Okay. Objection is sustained.

1 BY MS. COCCHIOLA:

2 Q. Now, Doctor, as far as the retention is  
3 concerned, you indicated that you're hopeful that the  
4 medication might be effective. As far as if he were  
5 discharged right now, has he indicated he would be  
6 willing to comply with medication?

7 A. No, he has not indicated a willingness to comply  
8 with medication.

9 Q. And what's the interaction between the daily  
10 marijuana use and his mental illness?

11 A. Well, marijuana is included in the category of  
12 hallucinogenic. And meaning that it can, it can cause  
13 one to become psychotic and hallucinate. And if he  
14 already has a mental illness and a predisposition  
15 towards becoming psychotic or manic, use -- it's a  
16 well-known fact that use of substances such as even  
17 alcohol sometimes can, can induce people to become more  
18 depressed.

19 So, they can induce disturbances of mood and they  
20 can cause people to become psychotic. But if you  
21 already have a preexisting mental disorder involving a  
22 disorder with mood and psychosis, then you can --  
23 smoking marijuana places you at risk for having an  
24 exacerbation of those symptoms.

25 Q. Do you see that that's a possibility in this



1 case?

2 A. Yes.

3 Q. As far as how he presented to you on admission?

4 A. Yes.

5 Q. And he hasn't had any marijuana, we assume, since  
6 admission?

7 A. I have never seen him smoke marijuana.

8 Q. All right. As far as in the facility?

9 A. That's correct.

10 Q. Now, as far as his ward restriction, is that  
11 something that you have to determine, whether that's  
12 appropriate?

13 A. That's something which we determine as a team.

14 Q. All right. And is he currently on a ward  
15 restriction?

16 A. Yes, he is.

17 Q. What does that mean?

18 A. It means that he does not go to programs and in  
19 the hall, he remains on the ward.

20 Q. And is that something that you feel is  
21 appropriate to continue at this point?

22 A. Yes, because he remains untreated.

23 Q. And should he agree to take medication, would  
24 that be something that could be reconsidered?

25 A. It could be reconsidered when his mental status

1 shows some improvement.

2 Q. Now, Doctor, do you feel if he were released  
3 right now he would pose a risk of danger to himself or  
4 others?

5 A. Yes.

6 Q. And why do you say that?

7 A. Well, he admitted he smokes marijuana on a daily  
8 basis. So, when he smokes marijuana, it's likely that  
9 he will become psychotic and depressed or manic --

10 MR. WENIG: Objection, this is pure  
11 speculation.

12 MS. COCCHIOLA: This is --

13 THE COURT: Overruled.

14 MS. COCCHIOLA: Okay. Thank you.

15 A. And in addition to that, when we asked him about  
16 his reasons for igniting the trailer, he still shows  
17 preoccupation with things from Silence of the Lambs,  
18 which is what he was doing -- which he had at the time  
19 that he ignited the trailer.

20 Q. And as far as any risk to others or himself, can  
21 you tell us how he would be a risk.

22 A. Yes. He did admit that he -- one -- he also  
23 stated that one of the reasons, one of the factors  
24 involved was anger which he had toward his girlfriend  
25 which caused him to ignite the trailer. And he

1 continues to have -- like I said earlier, he continues  
2 to have periods of irritability and visible anger which  
3 is out of proportion to the situation. And his thinking  
4 is illogical.

5 Q. And what do you mean by that?

6 A. Okay. When we interviewed him today and we asked  
7 him what happened that caused him to come back to Elmira  
8 Psychiatric Center or come back into the inpatient  
9 mental health setting, he said that his behavior wasn't  
10 right because of a medical problem. However, when he  
11 was admitted to Elmira Psychiatric Center, antibiotics  
12 were prescribed for the medical problem and he refused  
13 to take them. And when -- during attempts to ask him  
14 about this line of logic or illogic, he became angry and  
15 he changed the subject. And he refused to even allow  
16 the discussion to continue.

17 Q. Now, as far as any screens or urine screens, is  
18 he allowing those up until now even?

19 A. He's been refusing them.

20 Q. So, as far as any, any traces of any kind of drug  
21 or marijuana, you wouldn't be able to tell?

22 A. That's correct.

23 Q. Thank you.

24 MS. COCCHIOLA: I have nothing further of  
25 Dr. Roberts.

1 CROSS-EXAMINATION

2 BY MR. WENIG:

3 Q. Doctor, you testified that you interviewed Kevin  
4 when he first came into the psychiatric center?

5 A. Yes.

6 Q. That was on April 1st?

7 A. Yes.

8 Q. When were your subsequent interviews performed?

9 A. I saw him April 4th, was a Friday, I saw him the  
10 following week but the notes -- either they're -- here  
11 they are. They are out of order. Okay. I saw him on  
12 4 -- 4/7 I saw him. And I saw him on -- do you want the  
13 exact dates?

14 Q. Yes, please.

15 A. Okay. 4/7 and -- the notes are out of order, so  
16 I'm having a little.... 4/11, 4/10, 4/11 and -- 4/11 I  
17 saw him twice. 4/24, which is today. Yeah, okay.

18 Q. So, the initial interview, about how long did you  
19 spend with Kevin?

20 A. Let's see, the initial interview. Maybe about 40  
21 minutes.

22 Q. And on April 7th, how long was that interview?

23 A. I don't know. I don't time myself.

24 Q. Was it a few minutes or a lengthy one? Long or  
25 short?

1 A. I don't remember. I don't time. I don't clock  
2 watch.

3 Q. Did you sit down with him individually or just,  
4 hi, how you doing?

5 A. On 4/7?

6 Q. Yes.

7 A. Probably not. Because if he was assaultive on  
8 4/6, I probably stood behind the nurses station while I  
9 talked to him.

10 Q. And would that same thing have occurred on  
11 April 10th and April 11th?

12 A. I don't remember. I don't write down where I  
13 was.

14 Q. And after that it was today, the 24th?

15 A. Yes.

16 Q. So, between the 11th and the 24th, which is  
17 almost two weeks, have you seen a marked difference in  
18 his behavior?

19 A. Yes, I have.

20 Q. Did he appear to be hallucinating or delusional  
21 in any way?

22 A. I didn't see any hallucinations, but he does --  
23 he does appear to have some persecutory -- I don't know  
24 if they were quite conclusions because he would not let  
25 me -- he will not let me answer -- ask him anything

1 extensive because he will respond by talking a lot or  
2 changing the subject. So, whenever I tried to find out  
3 his -- to try to uncover his line of thinking, he, he's  
4 very guarded and evasive.

5 Q. And you feel the persecutory aspect of his  
6 personality relates to the mental health system or to  
7 something else?

8 A. I think it definitely relates to his  
9 hospitalizations.

10 Q. Okay. Which hospitalization?

11 A. This one.

12 Q. This one?

13 A. Yes. And his outpatient -- yeah, probably the  
14 mental health system because he seems very suspicious  
15 about -- and hostile towards his outpatient providers as  
16 well.

17 Q. I think that you mentioned something along the  
18 lines that he felt he wasn't getting any treatment at  
19 all?

20 A. Yes. He insists he's not getting any treatment,  
21 even for his leg infection.

22 Q. Did you have a chance to review anything from the  
23 several years he was being seen by the mental health  
24 clinic up in Ithaca?

25 A. Is that Cayuga?

1 Q. No. This is the --

2 A. What's the name of the hospital? I don't know  
3 the area.

4 Q. I'm sorry. Mr. Saunders, as you're aware, is on  
5 a CPL, Criminal Procedure Law, Article 330?

6 A. Track three, yeah.

7 Q. Track three?

8 A. Right.

9 Q. Order of conditions, which is about to expire.  
10 So, for the past five years he's been seen by various  
11 clinicians on a regular basis?

12 A. Yes.

13 Q. You're aware of that?

14 A. Yes, I am.

15 Q. Were you aware of the fact that for several years  
16 he was seen up in Ithaca at the mental health clinic  
17 there?

18 A. I do recall seeing something about -- was it EAP  
19 in Cornell University? I don't know where clinics are  
20 in this area. I don't --

21 Q. What I am getting at, Doctor, are you familiar  
22 with any of those interviews or meetings or therapy  
23 sessions that Kevin had up in Ithaca over those last  
24 several years?

25 A. I've read about things since 1993, but whether

1 they're in Ithaca, I couldn't tell you that.

2 Q. So, do you know whether he is actually receiving  
3 treatment at these sessions or not?

4 A. I remember seeing something about psychotherapy  
5 at someplace in Cornell. Whether it's Ithaca, I don't  
6 know. I mean, I know Cornell is in Ithaca, but that's  
7 all I know.

8 Q. So, you don't know anything about the mental  
9 health clinic up there?

10 A. No, I don't.

11 Q. And that he was being seen under the auspices of  
12 the Office of Mental Health by a mental health clinic  
13 for therapy?

14 A. As it relates to Ithaca itself, I don't know. I  
15 took no notation as to locations.

16 Q. So, you can't say either way whether Kevin was  
17 actually getting therapy or not at that time?

18 A. What time?

19 Q. The last five years.

20 A. I assume. I mean, he was getting therapy if he's  
21 taking medication. That would be my assumption. But,  
22 again, it's only an assumption.

23 Q. Doctor, are you aware of any other admissions  
24 during the last five years to any other psychiatric  
25 facility?



1           A.    The only thing that I'm aware of is something  
2 here that says -- this form from Cayuga Medical that  
3 says something about a 4/2/03 admission inpatient. I  
4 don't know if you want me to look at it, but it says  
5 something about inpatient at Cayuga Medical.

6           Q.    So, you are not aware of any other admissions  
7 during the last five years?

8           A.    Let's see. Oh, yeah, he was at Rochester  
9 Forensic Center, forensic hospital in 1998. I'm  
10 familiar with that.

11          Q.    Did that pertain to the Criminal Procedure Law  
12 evaluations conducted by the Office of Mental Health?

13          A.    Yes.

14          Q.    But since then, the last five years, do you know  
15 of any other admissions that he's had?

16          A.    No.

17          Q.    Thank you, Doctor.

18          A.    You're welcome.

19          Q.    As you testified, it's been a clinical decision  
20 of the team at the Psychiatric Center to put  
21 Mr. Saunders on ward restriction?

22          A.    Yes.

23          Q.    So, he doesn't -- he isn't able to go to any of  
24 the programs there?

25          A.    No.

1 Q. How does Kevin fill his days on the unit without  
2 any programs?

3 A. When I see him, he's talking on the phone, he's  
4 reading some files or documents or -- talking to his  
5 lawyer or talking to the peer which I told you he seems  
6 to share something in common with.

7 Q. So, in other words, he's not getting any  
8 substantive therapy by the staff during --

9 A. He's not what?

10 Q. He's not getting any substantive therapy from the  
11 staff at the center during his stay there?

12 A. No. He's high risk for violence.

13 Q. But there's no program in place to give  
14 Mr. Saunders, or anybody else on ward restriction, any  
15 kind of ongoing therapy on the unit?

16 A. When someone has been violent and they're not  
17 treated, generally they don't -- they are not allowed to  
18 be around the other peers and in settings where they  
19 could assault other people without the ward staff being  
20 there to help.

21 Q. Are there other peers on the unit with  
22 Mr. Saunders?

23 A. I would imagine there are other violent patients  
24 who have violence in their history or who are not  
25 complying. This is our procedure.

1 Q. In the last couple of weeks has Mr. Saunders been  
2 violent towards any of the other patients?

3 A. Not that I have heard of, no. Oh, and another  
4 problem is that he will not let me evaluate his thinking  
5 and his mental status thoroughly to make a determination  
6 about his intent.

7 Q. In your discussions with Mr. Saunders did you  
8 discuss the diagnosis that you have for him, the bipolar  
9 disorder?

10 A. I tried.

11 Q. When you say you tried, how did you try? I'm  
12 sorry.

13 A. Well, when I tried to talk to him, he becomes  
14 very talkative, you can't interrupt him, he will tell  
15 you that -- he will start talking about Prozac and  
16 Trazodone and MCPP and how the doctors don't believe  
17 that his problem back then was really from MCPP and he  
18 really doesn't need any medication. And he just had a  
19 physical problem and he won't -- he will not let me talk  
20 about that.

21 Q. Let's see, regarding antibiotics, you testified  
22 he refused them when he was admitted?

23 A. He refused them -- yes.

24 Q. Did he eventually agree to take them?

25 A. Yes, he did.

1 Q. Has he stated that he thinks that you have helped  
2 him since he was admitted?

3 A. Yes, he did.

4 Q. So, now he apparently has insight into the  
5 infection and his need for the antibiotics?

6 A. It appeared he did, yes. That may have been a  
7 physical problem he was referring to because he said he  
8 had a substance which was causing his behavior to change  
9 and the infection was perhaps the source of the  
10 substance that he feels he had, which was never  
11 diagnosed.

12 Q. Well, Doctor, is it possible that, say, if  
13 somebody's physically ill, they are not sleeping and  
14 they may have an infection, could that adversely affect  
15 their thinking in some way?

16 A. If what?

17 Q. If somebody has a lack of sleep or has an  
18 infection, could that lead to adverse behavior?

19 A. Not a little infection like that, no. Maybe if  
20 they had meningitis, which is an infection in the brain,  
21 perhaps. But he did not have meningitis or head trauma.

22 Q. Did you discuss the April 6 assault that --  
23 between Kevin and one of the staff members there with  
24 Kevin?

25 A. I tried to.

1 Q. And did you get any discourse on that?

2 A. Just the usual. Just the usual I don't remember  
3 or, if I did it, it was because of a physical illness.  
4 This is, this is all I'm getting.

5 Q. Now, you also testified that you suggest  
6 Olanzapine antipsychotic is an appropriate medication  
7 for Mr. Saunders at this time?

8 A. That is a good first agent to try, yes, it is.

9 Q. And have you tried to talk to Mr. Saunders about  
10 the medication and whether you wanted to prescribe it?

11 A. Yes, I have.

12 Q. Have you had any dialogue at all about that?

13 A. I have tried. I have to try to get through the  
14 MCPPP and the Prozac and the Trazodone and the medical  
15 problem and the sepsis.

16 Q. Doctor, what would be the effect of the  
17 Olanzapine order or any other major antipsychotic on  
18 somebody that did not have a mental illness, if you gave  
19 it to you or me?

20 A. Well, I've never given it to anyone that didn't  
21 have a mental illness and I'm not aware of any studies  
22 that it was given to anyone without a mental illness.

23 Q. So, you are not aware of any possible adverse  
24 effects it might have?

25 A. The only adverse effects I've ever read were from

1 people who had a mental illness and were taking it.

2 Q. All right. Thank you, Doctor.

3 MR. WENIG: I have no further questions.

4 MS. COCCHIOLA: I have nothing further of  
5 Dr. Roberts.

6 (Whereupon the witness was excused)

7 MS. COCCHIOLA: The State calls Janet  
8 Stevens.

9 J A N E T S T E V E N S, having been called as a  
10 witness, being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. COCCHIOLA:

13 Q. Would you state your name for the record, please.

14 A. Janet L. Stevens.

15 Q. And would you tell us where you are employed.

16 A. Elmira Psychiatric Center, outpatient clinic.

17 Q. How long have you been employed there?

18 A. Three years.

19 Q. And can you tell us what your duties and  
20 responsibilities are.

21 A. Actually, I'm a primary therapist for 30  
22 individuals in the outpatient clinic and Mr. Saunders  
23 was one of them.

24 Q. And can you tell us about your educational  
25 background.

1           A.    I have a masters degree from Marywood  
2 University.  I received that in 1995.

3           Q.    And are you licensed by the state as far as --

4           A.    Yes, certified social worker.

5           Q.    Now, I want to ask you about your ongoing  
6 relationship as far as a clinical basis with  
7 Mr. Saunders.  Did there come a time in May of 2002 when  
8 he was transferred to the Elmira Psychiatric Center  
9 outpatient clinic?

10          A.    Right, that's correct.  He was transferred from  
11 Tompkins County Mental Health Clinic due to  
12 noncompliance with that program thinking maybe coming to  
13 the outpatient clinic in Elmira he might be more  
14 compliant with our recommendations.

15          Q.    Had he been terminated at Tompkins?

16          A.    I think it was a transfer on their CPL status is  
17 what I understood through the forensic bureau.

18          Q.    Okay.  And so did you see Mr. Saunders on a  
19 regular basis?

20          A.    Initially for once a week just to gather  
21 information and, you know, get the background and just,  
22 you know, formulate some goals for him while he's at the  
23 clinic.  And since then I've been seeing him on a  
24 monthly basis.

25          Q.    And as far as psychiatrist there --

1 A. Is Dr. Belsare.

2 Q. B-E-L-S-A-R-E. And did that doctor see  
3 Mr. Saunders on a regular basis?

4 A. Initially she was to see him on a monthly basis,  
5 okay. She saw him in May, I think it was the 23rd, for  
6 an extensive period of time. I did sit in periodic --  
7 or a brief time during that session. He -- she  
8 prescribed medication, which he was unwilling. She saw  
9 him again the next month, decided that, you know, he was  
10 not compliant with recommendations. So, she decided to  
11 see him on a quarterly basis just as a monitoring  
12 situation.

13 Q. Now, did you talk to Mr. Saunders about taking  
14 medication?

15 A. Yes. And so did Dr. Belsare. He had no  
16 interest, refused. She had given him a prescription for  
17 Trileptal. When he came in to session, I asked him if  
18 he had had it filled. He said no. And he has not had  
19 it filled since. And each time I would ask him if he,  
20 you know, was interested in having it filled or  
21 whatever. And he wouldn't do that, so....

22 Q. Now, as far as prior to that time, you've  
23 reviewed the records from Tompkins County?

24 A. Briefly, yes. Yeah. We had -- you know, it's  
25 extensive material from five and six years. And during



1 the time, from what I can see from Tompkins County, it  
2 was the same situation where he was seeing Linda Riley  
3 for the majority of the time.

4 Q. She's a social worker?

5 A. Right, social worker and CSW. And from what I  
6 gathered, it was very similar to what he would present  
7 with me. He would come to the appointments on a regular  
8 basis, very compliant with keeping his appointments, but  
9 during sessions just focused on personal issues, his  
10 computer business or legalization of marijuana. That  
11 was a real focus coming to my office. And he would  
12 provide material for me each session.

13 Q. Now, they prescribed Zyprexa at some point there?

14 A. That I don't know for sure. I know there was  
15 medication prescribed and I don't have that here.

16 Q. Okay.

17 A. But that was again refused.

18 Q. Now, did he admit to you that he was smoking  
19 marijuana or ingesting marijuana daily?

20 A. On an -- initially he said daily and then he  
21 would say on a regular basis. Initially he would say he  
22 would smoke a part of a joint a day he would say and  
23 then it was more vague as time went on.

24 Q. Now, as far as the other conditions of his order  
25 of conditions, is that something that you were familiar

1 with?

2 A. Mm-mm. Right. Our concern was the treatment  
3 recommendations, which was the, you know, the clinical  
4 appointments, the medication and urine drug screens,  
5 which he refused. And --

6 Q. You would ask him to submit --

7 A. Each session. Each session before he would leave  
8 I would ask him if he had -- would be willing to do a  
9 urine drug screen and he refused.

10 Q. What would he say?

11 A. He would just say no and kind of smile and that  
12 was it, you know, nothing more than that.

13 Q. He had been -- do you know if he had been  
14 positive in the past?

15 A. I believe twice when he was in Tompkins County it  
16 was recorded that he had been positive. '99 and maybe  
17 2000. I'm not quite sure. But since then I believe he  
18 had refused there, too, on an ongoing basis.

19 Q. You mean refused to give a screen?

20 A. Right. Right.

21 Q. Now, as far as his order of conditions, is he  
22 required to do that?

23 A. It's based on what the treatment recommendations  
24 are. And from what I read here and seen, yes, that's a  
25 requirement that we are to -- you know, if we see -- the

1 treatment recommendation, if it is to have medications,  
2 clinical appointments and urine drug screens, alcohol  
3 and drug screens, yes, it's one of the conditions  
4 listed.

5 Q. And in addition refrain from ingesting --

6 A. Right.

7 Q. -- items such as marijuana?

8 A. Right.

9 Q. Now, when you were seeing him on a, on a monthly  
10 basis, can you tell us, did there come a time when you  
11 recommended that his conditions be extended, made a  
12 recommendation of the Court?

13 A. It was in March. We -- he had been noncompliant  
14 with our recommendations; however, he was in compliance  
15 for his appointments. We felt that because of that,  
16 that we needed to monitor him because we -- for research  
17 and some anger and the anger outbursts and we were  
18 concerned about that. And one of the recommendations  
19 from the, the forensic committee or -- at that forensic  
20 committee was to continue to meet with him to just kind  
21 of observe him for any indication of the changes in  
22 behavior.

23 Q. Did you notice any changes when you saw him in  
24 the middle of March?

25 A. I saw him after the, the forensic meeting. He

1 was quite upset. I reviewed what was recommended. He  
2 became more anxious, very pressured in speech and, and  
3 angry with what was going on. He felt it wasn't, you  
4 know, necessary, that it should have been discontinued  
5 at that point.

6 Q. Does he feel he has a mental illness?

7 A. No. Absolutely not. Totally denies it.

8 Q. Thank you.

9 MS. COCCHIOLA: I have nothing further of  
10 Ms. Stevens.

11 MR. WENIG: Excuse me, your Honor.

12 (Whereupon a discussion was held off the  
13 record)

14 CROSS-EXAMINATION

15 BY MR. WENIG:

16 Q. Ms. Stevens, how long have you been dealing  
17 directly with Mr. Saunders?

18 A. Since May of 2002.

19 Q. And how frequently have you been able to meet  
20 with him?

21 A. On a monthly basis.

22 Q. And that's required under the order of  
23 conditions?

24 A. It's required -- whatever the treatment team  
25 recommended, okay. Which was monthly sessions. It

1 wasn't so much a therapeutic session as it was a  
2 monitoring session because he's been noncompliant with  
3 recommendations.

4 Q. Which recommendations, I'm sorry? Which  
5 recommendations?

6 A. The medication and the -- you know, the urine  
7 drug screen recommendations. And sessions were -- as  
8 mentioned before, were specifically focused on his  
9 personal concerns and denying mental health issues. So,  
10 there was no progress, no way to make progress without,  
11 you know, cooperation.

12 Q. So, you testified that you and the team  
13 apparently were concerned about angry outbursts?

14 A. Mm-mm. His history and.... He was very, very  
15 pressured when he would come to session. Appeared very  
16 anxious. He would keep it in control to a point and  
17 halfway through the session he would be perspiring  
18 profusely, appeared much more anxious if anything was  
19 brought up about the past incident that caused the CPL  
20 status. If that was not brought up, he could keep it  
21 under control in session. So that's.... That's where  
22 it was at most of the time with the sessions.

23 Q. Did you ever inquire as to why he was so upset  
24 about that?

25 A. We've -- we talked. We went back there a couple

1 of different times during sessions and it was -- the  
2 issue with the not -- the belief or misbelief that there  
3 could have possibly been an interaction with the  
4 medications, that we, you know, as professionals didn't  
5 understand that that was possible it could have caused  
6 his psychotic state.

7 Q. Okay. Did you ever discuss with Kevin his  
8 attempts to have that possibility reviewed with any of  
9 his clinicians?

10 A. He's mentioned, yes, that throughout his history  
11 he has talked with other clinical staff, whether it's in  
12 a therapy session or, or other evaluation purposes, that  
13 that could be -- you know, should be investigated.

14 Q. To your knowledge, has anybody who's been  
15 treating Kevin, any clinicians, actually done that?

16 A. I don't know offhand without looking, you know,  
17 further. He had extensive work while he was at  
18 Rochester Psychiatric Center. I know that from history.

19 Q. That was five years ago?

20 A. Yeah. Whatever was recommended for him, but it  
21 was medical or psychiatric.

22 Q. Do you know if he received any medications while  
23 he was at the psychiatric center up in Rochester?

24 A. That I couldn't tell you.

25 Q. And you testified that you weren't sure whether

1 he was prescribed any medications when he was being seen  
2 by the mental health clinic in Ithaca?

3 A. I believe he was. I probably can look through  
4 here, if you want me to, and see.

5 Q. But you don't recall specifically?

6 A. Exactly, no. No. I mean, I've seen him since  
7 May of 2002 and our focus was trying to provide  
8 treatment in our clinic the best we knew how.

9 Q. You also testified that it was a decision of OMH,  
10 Office of Mental Health, to have Mr. Saunders come down  
11 here to Elmira after being seen in Ithaca for several  
12 years, is that correct?

13 A. Mm-mm.

14 Q. I'm sorry, yes?

15 A. It was the forensic bureau I believe made the  
16 recommendation. I would have to check further. I mean,  
17 that may be, you know, a misinterpretation, but the  
18 recommendation was that because of his noncompliance,  
19 felt that he may be better served in our outpatient  
20 clinic.

21 Q. Okay. And was that decision recently reversed?

22 A. No. Not that I know of.

23 Q. No?

24 A. We're waiting the final recommendation on the  
25 recommendation from us for a continuation of the CPL

1 status.

2 Q. Okay. And was it your recommendation that -- the  
3 team's recommendation at the last meeting to have  
4 Mr. Saunders transferred back to the Tompkins County  
5 Mental Health Clinic for follow-up services?

6 A. We thought for his, for his convenience, that was  
7 the reason for that. He makes the trip down, he's been  
8 very faithful about coming to his appointments. And  
9 during the winter months it has been very difficult for  
10 him. So, the idea was to help him, make it more  
11 convenient for him.

12 Q. Did you get a chance to review any of Linda  
13 Riley's therapy sessions?

14 A. Not, not, not to that extent. I think that the  
15 idea, with what I could read from reviewing her material  
16 and extensive information from five and six years ago,  
17 that the general consensus with the noncompliance, okay,  
18 and that's the.....

19 Q. You're aware that during the course of the last  
20 five years Mr. Saunders has been running his own  
21 business up in Trumansburg?

22 A. Mm-mm.

23 Q. That's a computer business?

24 A. Yes.

25 Q. And he runs that all by himself?



1 A. According to what he tells me, yes. Mm-mm.

2 Q. All right. Thank you.

3 MR. WENIG: I have no other questions.

4 MS. COCCHIOLA: I have nothing further.

5 Thank you.

6 (Whereupon the witness was excused)

7 MS. COCCHIOLA: The State would rest, Judge.

8 MR. WENIG: Your Honor, may I ask for a  
9 break? My client needs to use the rest room.

10 THE COURT: Do you intend to introduce  
11 evidence?

12 MR. WENIG: Yes, your Honor.

13 THE COURT: How much?

14 MR. WENIG: I suspect Mr. Saunders is going  
15 to testify at length.

16 THE COURT: What's at length?

17 MR. WENIG: I'm sorry?

18 THE COURT: What's at length?

19 MR. WENIG: Oh, I'd say at least a half an  
20 hour to 45 minutes.

21 THE COURT: Matter is recessed until 3:30  
22 this afternoon.

23 (Whereupon the proceedings were recessed for  
24 other unrelated proceedings)

25 THE COURT: Mr. Wenig.

1 MR. WENIG: Thank you, Judge. Your Honor,  
2 Mr. Saunders would like to testify.

3 K E V I N S A U N D E R S, having been called as a  
4 witness, being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WENIG:

7 Q. Would you state your name for the record.

8 A. Kevin Eric Saunders.

9 Q. Mr. Saunders, how old are you?

10 A. Forty-six.

11 Q. And where do you reside?

12 A. 1668 Trumansburg Road, Ithaca, New York.

13 Q. And how long have you lived there?

14 A. About nine years.

15 Q. Do you own the property?

16 A. Yes, I do.

17 Q. And what's -- how are you employed?

18 A. Well, it's a little complicated because I formed  
19 a corporation. I own the corporation. So, technically  
20 I'm the president of the corporation as well as the sole  
21 stockholder. Basically I'm self-employed, but it's more  
22 complicated.

23 Q. And what's the nature of your business?

24 A. I develop, distribute and support McIntosh  
25 Telecommunications Software. It's a terminal emulation

1 package which has extensive features. It's called  
2 DataComet, D-A-T-A-C-O-M-E-T. There are other variants  
3 called DataComet Secure and DataComet Secure VX which  
4 adds security features and support for McIntosh OS-10.

5 Q. Are these software programs that you design  
6 personally?

7 A. Yes, they are.

8 Q. Is anybody else in your business besides you?

9 A. As a matter of fact, now there are I believe two  
10 other vendors that are selling software for McIntosh  
11 OS-10 in my area, in this area here. So, the field has  
12 narrowed considerably.

13 Q. But those aren't people who are employed by you?

14 A. No, they are not.

15 Q. So, you are basically the whole business?

16 A. I thought you were asking about competitors.

17 Q. I'm sorry, forgive me.

18 A. Okay.

19 Q. So, there's nobody else on the staff, so to  
20 speak?

21 A. No, there is not. I am the sole employee.

22 Q. And what's your educational background?

23 A. I have a bachelor's degree from the University of  
24 Texas at Austin, which I received in 1977 in economics  
25 and philosophy. I also was inducted into Phi Beta

1 Kappa. The degree was with high honors.

2 Q. And what year did you receive that degree?

3 A. 1977.

4 Q. And how long have you been in the Ithaca area?

5 A. Oh, since 1979. So, that makes it 23, 24 years.

6 Q. What led you to moving up to Ithaca?

7 A. I entered graduate school at Cornell University  
8 in economics in 1979.

9 Q. Did you complete the degree program?

10 A. I did not.

11 Q. And briefly explain to the Court your job  
12 opportunities after you left graduate school.

13 A. Well, I decided to stay in the Ithaca area. Soon  
14 after I came to Ithaca, after I left graduate school,  
15 again, in late 1980, I met my future wife, Ann Marie  
16 Whelan, who is a student in swail (phonetic)  
17 microbiology at Cornell University. She's a graduate  
18 student. And so this influenced me to stay in Ithaca.  
19 She was pursuing her masters and completed it eventually  
20 in 1984.

21 Q. And where were you employed subsequent to 1980?

22 A. Well, first off, I worked in several jobs. I  
23 worked as a pizza delivery person, I worked as a  
24 bookkeeper in a couple of places. Jobs were difficult  
25 to find in Ithaca. So, basically underskilled

1 employment.

2 Q. And when did you get involved in the computer  
3 programming?

4 A. Well, actually, I first became involved when I  
5 was a student at the University of Texas. I was  
6 employed in 1978 as a computer programmer for the  
7 University of Arkansas in Little Rock, where I worked  
8 for a year. Then after I left graduate school, I  
9 decided that the best employment opportunity for me and  
10 the best use of my talents would be in computer  
11 programming. And so I studied various text on computer  
12 programming and kept up with the field.

13 And eventually in 1986, after a lot of  
14 involvement with user groups on the Cornell campus and  
15 other activities, got a job at Cornell University in  
16 network programming, developing the product which I now  
17 am selling.

18 Q. And how long did you work for Cornell?

19 A. About eight years.

20 Q. And when did you start your own business?

21 A. It was 1994. I had left Cornell, worked briefly  
22 for another corporation up in Rochester. And then took  
23 the opportunity to get a license from Cornell University  
24 for the software that I developed, which made it  
25 possible for me to further develop and re-sell the

1 software paying a 7.5 percent license fee to the Cornell  
2 Research Foundation on my gross sales.

3 Q. And has this job been enough to support you?

4 A. Yes, it has.

5 Q. Well, the testimony with Dr. Povinelli and  
6 Dr. Roberts went back to the 1997 incident that led to  
7 your Criminal Procedure Law status. What month did that  
8 occur in?

9 A. February. The very beginning of February.  
10 However, I was ill from, from the beginning of January  
11 1997.

12 Q. And the incident occurred in February of 1997?

13 A. It was February 6, 1997.

14 Q. Okay. And were you -- prior to the incident,  
15 were you taking any medication?

16 A. Yes, I was.

17 Q. What kind of medication were you taking?

18 A. Prozac, briefly for a week at the beginning --  
19 from January 4th to January 11th I was taking  
20 Trazodone. And then because I had a bad reaction to the  
21 Trazodone, I was switched over to Vistaril to help me  
22 sleep. That was the idea. And the Vistaril  
23 prescription was on the 16th of January.

24 Q. So, these medications were under the supervision  
25 of the doctor?

1 A. Dr. Hamlish (phonetic) of Family & Children  
2 Service in Ithaca.

3 Q. And why did you feel you initially needed the  
4 Prozac?

5 A. Well, I had suffered from depression at times. I  
6 was looking for something which might possibly work  
7 better for me than marijuana. I was open to the  
8 suggestion that Prozac might be a drug that would work  
9 well for me.

10 Q. And after the incident in February of 1997, what  
11 occurred? Where did you go after the incident, what  
12 happened?

13 A. After?

14 Q. After.

15 A. Well, I went to jail. I went straight to jail.  
16 I was in jail for five weeks. Five-and-a-half weeks.

17 Q. Excuse me, that was Tompkins County?

18 A. Tompkins County, yes.

19 Q. And what happened after that?

20 A. I was released on bail which my mother, I'm very  
21 grateful, provided for me in the amount of \$50,000. And  
22 at that point I was released from jail and was able to  
23 return to my business. And able to keep it going. And  
24 able to deal more effectively with the court  
25 proceedings.

1 Q. And were you being supervised by any clinicians  
2 at this point?

3 A. No, I was not.

4 Q. Were you taking any medication at this point?

5 A. No. Well, actually, in fact, I was taking  
6 Prozac.

7 Q. You are still taking Prozac at this time?

8 A. Yes, I was.

9 Q. And how long did you continue with the Prozac?

10 A. Through June.

11 Q. Through 1997?

12 A. Yes.

13 Q. And in the course of the criminal proceedings,  
14 what was the next step in the process?

15 A. Well, soon after I was out on bail, we filed a  
16 petition for -- to enter a plea of not responsible by  
17 reason of mental disease or defect. I underwent a  
18 number of examinations, a couple of the two 730  
19 examinations in which I was both found able to stand  
20 trial, and then started some expert evaluations  
21 including an expert evaluation for the prosecution by  
22 Dr. Povinelli. This was not -- this was not an  
23 evaluation for the Court itself, it was an evaluation  
24 for the prosecution in this case.

25 Q. And what happened after that?



1           A.    Well, there were -- actually, there was a  
2 previous examination by Dr. Bezirganian that was May  
3 1st. The date stands out for me because it's my  
4 birthday. Then there was another expert evaluation for  
5 the defense by Dr. Les Wing (phonetic), who was a  
6 professor at Syracuse University.

7           Q.    And so this is continuing through 1997?

8           A.    Well, this is up to about June 1997. And July  
9 1997 the District Attorney's Office decided to accept  
10 the plea of not responsible. And then Judge Barrett for  
11 the People of New York State determined that this was in  
12 the best interests of the People. So, he accepted the  
13 filing of this plea so we did not have to pursue a  
14 courtroom trial.

15          Q.    And there was discussions with Dr. Povinelli and  
16 Dr. Roberts about you going to Rochester at some point?

17          A.    No, there was not. Dr. Povinelli and Dr. Roberts  
18 were nowhere near the scene in 1997.

19          Q.    No, I was referring to their testimony today.

20          A.    No, they were suggesting that I go to Rochester,  
21 yes.

22          Q.    No, I meant -- in 1997 was there a point where  
23 you went to Rochester Psychiatric Center?

24          A.    Yes. Well, in 1997, in fact, when the plea was  
25 accepted, District Attorney -- well, Assistant District

1 Attorney Gary Surdell, who had been arguing for the  
2 prosecution, made a kind of about face and suddenly was  
3 arguing that I was a dangerously mentally ill person  
4 rather than a guilty person and I should be shipped  
5 immediately to Rochester for -- to be in a secure  
6 facility. And Judge Barrett --

7 MS. COCCHIOLA: I am going to object as to  
8 this. I think at this point this is hearsay and  
9 I don't think -- see how it is relevant at this  
10 point.

11 THE COURT: I am going to give him some  
12 latitude to lay his background. Go ahead.

13 A. Judge Barrett, Judge Barrett overruled this  
14 motion by the District Attorney and decided that we  
15 should have an outpatient examination. And at that time  
16 the OMH was presented with the findings of the case and  
17 managed sometime in October to actually schedule an  
18 outpatient interview. So, it took some -- let's see,  
19 August, September and some time into October, over two  
20 months for the OMH to arrange for an outpatient  
21 interview.

22 I was still -- I, I was still not seeing any  
23 therapist. I had realized at the time that I was in  
24 prison that my previous therapist had lied to me about  
25 my diagnoses, she had concealed my diagnoses from me.

1 Q. And so at what point did you enter Rochester  
2 Psychiatric Center for an evaluation?

3 A. Well, after conducting a couple of outpatient  
4 interviews, they decided that they needed to have me on  
5 an inpatient basis. So, they asked for an order for an  
6 inpatient examination. And this is required by law if  
7 they request it. So, Judge Barrett ordered the  
8 examination. It was deferred until the beginning of  
9 February 1998. That initial examination was extended  
10 for another month, so it turned out to be a two-month  
11 examination.

12 Q. Did you take any medication while you were a  
13 patient at Rochester?

14 A. I did not.

15 Q. Was any medication offered to you?

16 A. No.

17 Q. So, when you got out of Rochester Psychiatric  
18 Center, how were things structured?

19 A. Well, I waited. The case was referred to the  
20 Office of Mental Health. There was to be a  
21 determination on the order of conditions that I was  
22 supposed to be under. It took about a month or a  
23 month-and-a-half for the Office of Mental Health to  
24 determine that the case should be managed out of Elmira  
25 rather than Binghamton. There was an issue of where the

1 catchment area was. So, it was determined eventually  
2 that I should be showing up for therapy with Linda Riley  
3 at Tompkins County Mental Health, which I did.

4 Q. And how long did you see Ms. Riley for?

5 A. Four years.

6 Q. And how often did you see her?

7 A. Initially frequently. Initially I was going in I  
8 think a couple of times a week. And then we had less  
9 frequent meetings. I think as Ms. Riley determined that  
10 I was safe, that I was functioning relatively well and  
11 as we established rapport.

12 Q. Did you see any psychiatrists during those four  
13 years?

14 A. Yes, I did.

15 Q. And how often did you get to see a psychiatrist?

16 A. Well, at Tompkins County Mental Health I  
17 regularly saw a couple of psychiatrists. Occasionally I  
18 saw a Dr. Annette Brink, Tompkins County Mental Health.  
19 At one point she did, in fact, suggest that I try  
20 Depakote, but I decided that would not be a good  
21 medication for me. She also did not provide me with a  
22 clear diagnosis at any time. I had only I believe three  
23 meetings with Dr. Brink.

24 Q. And would you see a psychiatrist during those  
25 four years every once in a while or a regular basis?

1       A.    Well, I retained a private psychiatrist,  
2       Dr. Ronald Leifer of Ithaca, New York.  And I saw him  
3       for some 22 sessions over the period from 1998, late  
4       1998 -- actually, that's about right, up to early 2000.  
5       I saw him about every three weeks.

6       Q.    And at whose expense were you --

7       A.    My own expense.

8       Q.    Were you being charged for the meetings at the  
9       mental health clinic?

10      A.    Yes, I was.

11      Q.    And regarding any drug or alcohol testing, was  
12      that brought up at any time?

13      A.    Yes.  I was required to submit urine screens for  
14      Tompkins County Mental Health.

15      Q.    And did you, in fact, submit those?

16      A.    I did.  I did.

17      Q.    And for how long did you submit those screens?

18      A.    Several years.

19      Q.    And whose expense was that?

20      A.    At my expense.  They cost me over \$35 per urine  
21      sample.  My total cost as I estimate it was about \$700.

22      Q.    And did there come a time when you stopped  
23      providing urine tests at their request?

24      A.    Yes, I did.

25      Q.    Why was that?

1       A.     That was when around June 2000 I finally -- I had  
2     been researching possible causes of what had caused my  
3     illness in January 1997 and February 1997. I had been  
4     researching this from the time that it happened. It was  
5     terrifying, I was psychotic, I was experiencing auditory  
6     hallucinations. This had never happened to me before.

7             And so I was interested in finding any cause in  
8     treating it, whether it was some kind of indigenous  
9     illness or anything else. I believed at the time in  
10    1997 that I was suffering from a neurological disorder  
11    because of the extreme symptoms that I experienced  
12    including loss of sensation in my arms and legs during  
13    sleep, urinary retention -- the list of symptoms goes on  
14    and on. They included also complete absence of hunger.  
15    Confusion, delirium eventually. And so I wanted to  
16    figure out what had happened so I could prevent it from  
17    happening again.

18       Q.     So, did you draw any conclusion from your  
19    research?

20       A.     And in June 2000 I finally came across crucial  
21    documentation on Trazodone. Now, I had been  
22    administered Prozac, Trazodone and Vistaril. As it  
23    turns out, Trazodone not only causes numbness in the  
24    extremities or can cause numbness in the extremities,  
25    which explained the numbness, Prozac can also cause

1 numbness in the extremities all on its own. There is a  
2 by-product of Trazodone called MCPP,  
3 meta-chlorphenylpiperazine.

4 THE WITNESS: Would you like me to spell  
5 that? Okay.

6 A. At any rate, this is -- this drug is used for  
7 testing anxiolytic drugs, tranquilizers. It's used to  
8 induce anxiety in experimental subjects and then they  
9 administer the tranquilizer to find how effective a  
10 tranquilizer is. Trazodone produces this by-product  
11 MCPP. MCPP is used in this drug testing. They usually  
12 administer it in doses of about 30 milligrams orally.

13 Now, that is capable of inducing panic attacks in  
14 one in three of the subjects. That's the -- that's  
15 according to the research that I have found. Moreover,  
16 MCPP has hallucinogenic properties. And, moreover,  
17 Prozac -- well, MCPP is metabolized by the P4502D6  
18 enzyme. Prozac blocks metabolism on the P4502D6  
19 enzyme. It is known as a very powerful agent for doing  
20 this.

21 It's one of the problems with Prozac as an  
22 antidepressant, that it causes difficulties when other  
23 medications are administered concurrently. There are  
24 warnings, there are clear warnings on the Prozac  
25 monograph stating that there are these interactions,

1 they are very clear. And state you must use caution  
2 when prescribing drugs, they are metabolated on  
3 P4502D6.

4 Now, Trazodone is metabolized by a different  
5 enzyme, which is P4503A4. That is somewhat blocked by  
6 the by-product of Trazodone, another by-product -- not  
7 of Trazodone, pardon me, but Prozac, which is the -- let  
8 me think. Prozac is fluoxetine, the other by-product of  
9 fluoxetine is -- I can't recall. But it's also a  
10 powerful blocker of these enzymatic interactions.

11 So, essentially MCPP may accumulate in the system  
12 as a result of concurrent administration of Prozac. And  
13 realizing this, it explained the symptoms I had  
14 experienced. MCPP can cause -- the most striking thing  
15 to me is it is -- it can cause absence of hunger in rats  
16 who are administered this drug. It's a -- what is it  
17 called? It's a -- well, it slips my mind at the moment.

18 Q. You accumulated all this information through your  
19 research?

20 A. Yes, correct.

21 Q. And did you present this at any time to the  
22 clinicians who were supervising your case?

23 A. Yes, I did. I submitted a package both to you,  
24 Richard Wenig, and to Linda Riley and to Donna Faber of  
25 the Elmira Psychiatric Center in June 2000 with a letter



1 detailing my understanding of what had occurred, a  
2 letter which also noted very numerous and troubling  
3 errors that had cropped up in my history as reported  
4 by -- as reported in the reports provided by the  
5 Rochester regional forensic unit.

6 I mailed not just this letter, but also a rather  
7 complete list of the abstracts supporting the argument,  
8 which came to some 50 pages. The abstracts that I had  
9 selected from Med Line, the US information service on  
10 medical, all kinds of medical publications that's very  
11 easy to search. It's a wonderful resource.

12 Q. Have you ever received any feedback on  
13 information you provided to your clinicians?

14 A. No, I have never received any feedback.

15 Q. Nothing from your treating psychiatrist at the  
16 mental health clinic in Ithaca?

17 A. No.

18 Q. Nothing from the Office of Mental Health  
19 clinicians?

20 A. No.

21 Q. These include the clinicians that are supervising  
22 your case here in Elmira?

23 A. Yes.

24 Q. And it would also --

25 A. They are included and they have never responded

1 with any kind of rational comment or, indeed, any  
2 comment on what I am told today, on what I hear today is  
3 a -- was that was a misbelief. That's what Janet  
4 Stevens said on the stand, that I had a misbelief. She  
5 never, however, stated to me that I was incorrect. I  
6 would make these arguments and the arguments fell upon  
7 deaf ears. And I never received any rational response.

8 Q. Has anybody told you that this might be a  
9 delusion on your part?

10 A. I never heard that until I saw the documentation  
11 that Dr. Roberts has provided for the retention hearing,  
12 for the -- not the retention hearing, but the  
13 recommitment hearing which is to take place on Monday in  
14 Tompkins County Court in which she claims that I have  
15 delusional beliefs about the metabolism of medications.  
16 She has never attempted to argue me out of these beliefs  
17 or give me any rational arguments, counter-arguments. I  
18 provided extensive documentation based on sound science,  
19 reputable scientific terms.

20 Q. Nobody has ever tried to sit down with you and  
21 discuss or debate or dissuade you from these beliefs?

22 A. Not once.

23 Q. So, you feel this is a plausible explanation as  
24 to what happened to you back in 1997?

25 A. Yes, I do.

1 Q. And prior to the incident with the trailer that  
2 led to your arrest, was there a period of a couple of  
3 days or a couple of weeks where you felt, you felt  
4 yourself decompensating in any way?

5 A. I was ill for the whole month of January. Within  
6 three days of when I started the Trazodone I was  
7 profoundly out of it. And I knew I was unwell. On the  
8 11th of January, 1997, I went down to the emergency room  
9 at Cayuga Medical Center complaining of my physical  
10 symptoms. And they were dismissed.

11 Q. And after the incident when you were placed in  
12 jail, about how long do you -- how long was it before  
13 you felt, yourself, you were clearing mentally?

14 A. Several days. During those days initially when I  
15 was in jail. I was held for I believe ten days in the  
16 holding cell. I guess I was there for observation. And  
17 I was not being given Prozac during that time. They  
18 resumed giving me Prozac once they transferred me to one  
19 of the dormitory units.

20 And after several days of rather florid psychosis  
21 -- I was, I was experiencing auditory hallucinations,  
22 believing I was engaging in telepathic conversations  
23 with Hannibal Lecter -- who I do not resemble in any  
24 way, by the way, and I've never said I do. Then I  
25 started to realize that these were hallucinations.

1 Q. And did you ever experience that kind of behavior  
2 or episode again?

3 A. No.

4 Q. Not since that time?

5 A. No.

6 Q. So, in the past five years you've been seeing  
7 your clinicians regularly under the Criminal Procedure  
8 Law ordered conditions?

9 A. Yes.

10 Q. You have been going to at least the monthly  
11 meetings with your social worker or your psychiatrist?

12 A. Yes.

13 Q. When you were transferred from Ithaca to here  
14 about a year ago, to Elmira.

15 A. Mm-mm.

16 Q. Do you recall when Dr. Belsare started to talk  
17 about prescribing medications to you?

18 A. On our second meeting. It was, in fact, the  
19 meeting after the first meeting at which I had described  
20 the very thing I just talked about, the adverse  
21 interaction which had caused me to be so ill. And then  
22 I came in on the second meeting and she said, I want you  
23 to take this prescription. And she laid a prescription  
24 form in front of me for Trileptal, something which no  
25 other doctor had done before.

1 Q. Do you know what kind of medication Trileptal is?

2 A. It's an anti-epileptic.

3 Q. Did the doctor -- did Dr. Belsare discuss with  
4 you why she wanted you to take the medication?

5 A. Yes, she did. She thought I would be "more  
6 successful" if I took this medication. She claimed that  
7 I "could not talk in a straight line."

8 Q. Was that the only medication that was suggested  
9 for you in the last year?

10 A. Not until -- until recently, yes. At a recent  
11 meeting the -- on March 14th, which was described by  
12 Dr. Povinelli as a hearing when, in fact, I was told it  
13 was a treatment team meeting. The first time I had ever  
14 met my treatment team in the entire five years, my order  
15 of conditions, Dr. Belsare at the end of the meeting  
16 described me as suffering from paranoid schizophrenia  
17 due to a paranoid refusal of medication. And then said  
18 something that would be good for that would be  
19 Risperidone. She did not actually make a prescription  
20 at that time.

21 Q. Is that the first you heard of that diagnosis  
22 from Dr. Belsare?

23 A. That's the first diagnosis of paranoid  
24 schizophrenia for me I have ever heard at any time.

25 Q. Was that also the first time that Dr. Belsare

1 prescribed an antipsychotic for you?

2 A. That was the first time, yes.

3 Q. I should say suggested, it wasn't prescribed.

4 A. That was the first time she suggested it, yes.

5 Q. And that was roughly a month or so ago?

6 A. Yes.

7 Q. So, subsequent to that meeting, you obviously  
8 developed some adverse behavior which resulted in your  
9 admission to the Elmira Psychiatric Center?

10 A. And what?

11 Q. Led to your admission here at the Elmira  
12 Psychiatric Center.

13 A. I was under an immense amount of stress. I  
14 expected a meeting at which we would discuss the  
15 issues. After all, that was the first meeting I had  
16 ever had with my treatment team. Instead, I was  
17 presented with a list of accusations, allegations of  
18 criminal behavior which I had never engaged in.  
19 Supposedly I -- these are the false beliefs I had  
20 attempted to correct in my letter in June 2000.

21 They are false beliefs which I attempted to  
22 correct by having my former wife, Ann Marie Whelan,  
23 submit a letter, which was sent to you and then was  
24 shared with the folks at the Elmira Psychiatric Center  
25 outpatient unit including Janet Stevens. You should

1 have read that letter. In which she states that I am  
2 not a violent person. She lived with me for 14 years.

3 Now, after this meeting at which it was stated I  
4 guess there are -- that kind of allegation was repeated  
5 again. And it's terribly upsetting to me to try to  
6 correct the record repeatedly and to repeatedly have the  
7 record continue to accumulate false allegations, which  
8 is what happened just a few weeks -- a couple of weeks  
9 ago with another meeting with my treatment team here at  
10 Elmira Psychiatric Center inpatient. These allegations  
11 were extremely upsetting to me. After the meeting on  
12 March 14th, I lost a complete nights of sleep. I could  
13 not sleep that night. I was so distressed. I felt that  
14 it was emotional abuse.

15 Q. So, for the next two weeks what exactly happened  
16 in terms of your behavior?

17 A. Well, primarily the next day, March 15th, I had  
18 planned to complete my corporate income taxes. It is a  
19 small corporation, I know how to do the bookkeeping  
20 pretty well. It is not a huge job. However,  
21 unfortunately, I was too upset to follow through with  
22 that. So, instead, I filed an extension for both my  
23 New York State and federal corporate taxes. Now, in a  
24 state upset like that, I can't work very well. It is  
25 difficult for me to concentrate on computer programming

1 when I'm faced with bizarre allegations of misconduct  
2 coming from people who can't seem to respond to my  
3 community.

4 I also provided a letter from my housemate, Alice  
5 H. Richardson, describing my behavior, talking about my  
6 behavior. An essentially supportive letter. This  
7 doesn't seem to have any impact, this doesn't seem to  
8 have any impact and it doesn't seem to have any impact  
9 on their thinking. So, basically I just -- when I'm  
10 distressed like that, I can't concentrate on computer  
11 programming very well.

12 It's actually very dangerous to try to do the  
13 kind of applied logic, reasoning, systems design when  
14 you're upset. I have always in my life when I'm in that  
15 kind of state, you know, which happens once in a while,  
16 try not to do real serious programming work because  
17 there's too much danger of a single slip. And a failure  
18 in my program could wind up not just financially  
19 affecting my customers, it could wind up causing people  
20 to die. My software is used in many, many places  
21 including health centers. Many physicians use my  
22 software.

23 Q. So, focusing on the last couple of weeks of March  
24 of this year, did you feel yourself getting worse in  
25 terms of your behavior?



1       A.    No.  No.  Not at all.  It was not until April the  
2       2nd or April the 3rd that this problem occurred.  I  
3       really can't tell precisely what time I started to be  
4       out of it.  However, I mean, it is true, it does make me  
5       feel that I am being persecuted when I attempt  
6       repeatedly to try to correct an incorrect record and it  
7       just doesn't happen.  And I end up a couple weeks ago  
8       going into a meeting and being accused of a history of  
9       extreme violence towards women, which is libelous.  So,  
10      it does make me feel -- it makes me feel puzzled, it  
11      makes me feel misunderstood certainly.  Because no one  
12      in my environment, no one in my family ever used this  
13      kind of stuff including my former wife.

14                So, focusing back on April 2nd or 3rd of this  
15      month.

16      Q.    What was happening with your behavior?

17      A.    Well, I had been doing just fine handling work  
18      and stuff.  I mean, processing orders doesn't require a  
19      super level of logic.  Handling the telephone calls that  
20      I get.  I was working on, on some -- after a couple of  
21      days after that incident, March 14th, I was getting back  
22      into the swing of things and I was doing programming.  I  
23      had some -- I had been working on getting out a new  
24      version of DataComet Secure for McIntosh Classic OS,  
25      which has been interrupted by this commitment.  Also

1 working on other enhancements to the program which have  
2 been requested by users where there have been a couple  
3 of bugs. So, I was doing okay up until then.

4 I think that really when I started getting ill I  
5 did go out naked outside on my property. My property is  
6 more than 800 feet away from Route 96. It's shielded by  
7 trees. It's my private property. I don't believe  
8 anybody can even see me back out there. It's highly  
9 unlikely that anyone would. And so I felt, I don't  
10 know, communing with nature might be a good idea. I  
11 felt also I think that there's a stress, I felt -- I  
12 felt stress coming with the war in Iraq. That's  
13 definitely the case, too.

14 However, I don't think my behavior turned too  
15 bizarre until after that, which would have been after I  
16 had gone out, walked around on the ground without any  
17 moccasins or anything on. I looked for moccasins or  
18 something, but I went out and did that anyway, so....  
19 That is where I got the puncture in my foot and it is  
20 clear that I had an infection.

21 Q. So, how did you come to be at Cayuga Medical  
22 Center for an evaluation?

23 A. Well, I guess on the 4th of April my housemate,  
24 Alice Richardson, had suggested I was ill. And I felt  
25 that I was ill, also. I mean, my behavior was I knew

1 getting pretty out there. I felt like that. Alice  
2 asked me if I thought that I was delusional and I  
3 agreed, yeah, I think I'm delusional. And so I agreed  
4 to go in to Cayuga Medical Center. So, eventually we  
5 called an ambulance and when the ambulance came, I got  
6 into the ambulance and went down to Cayuga Medical  
7 Center. My feet at that time felt as if they were on  
8 fire. My feet hurt tremendously.

9 Q. So, did they tell you they were going to be  
10 admitting you to Elmira Psychiatric Center?

11 A. I don't know. I was out of it, okay.

12 Q. Were you given any medication while at Cayuga  
13 Medical Center?

14 A. Well, according to what I am told, supposedly I  
15 was given an antibiotic. I was unaware at the time that  
16 I was being -- that I was given Lorazepam, the  
17 tranquilizer.

18 Q. And do you recall what your behavior was like  
19 when you arrived at the psychiatric center?

20 A. Yeah. Well, I do recall getting into the  
21 ambulance. I was asked to get into another ambulance to  
22 go someplace else. And I went and got into the  
23 ambulance, which was to bring me here. I don't recall  
24 arriving at the Elmira Psychiatric Center. I do not  
25 recall arriving. I don't recall most of the ambulance

1 ride. I recall getting in the ambulance and that's  
2 about it.

3 Q. Well, when you first got to the Elmira  
4 Psychiatric Center, were you disoriented or did you know  
5 where you were?

6 A. I can't recall. I must have been disoriented. I  
7 was -- I certainly did not know where I was, having  
8 never been there before. And I was definitely  
9 delusional, no doubt about it.

10 Q. Do you recall the incident with the staff member  
11 where you assaulted her?

12 A. No, I do not. I recall roaming up and down the  
13 halls. This is part of the delusional system. I mean,  
14 I believed I was in some kind of underground place.  
15 Actually had something to do with Saddam Hussein and the  
16 end of the world. But at any rate, I thought it was  
17 some kind of underground facility because you can't see  
18 out the windows unless the drapes are open. There are  
19 the bizarre black floors, the general bizarre appearance  
20 of the facility which has been tapped over with many  
21 upgrades and modifications that don't -- are not  
22 visually coherent.

23 So, in my confused state I thought this place was  
24 really some bizarre version of hell. One end of -- one  
25 end of the fifth floor you can hear the throbbing of the

1 ventilation units. It's, it's a powerful throbbing  
2 noise. So, I thought that that was some kind of like  
3 submarine end of the unit. I was delusional and I was  
4 confused. I don't recall anything to do with the  
5 nurse.

6           However, I will say I realized later on -- I knew  
7 that my room number was 516. And I found out later on  
8 that there are two room 516s on that floor. Every room  
9 number is doubled on that floor. 501, 502, 503, 504.  
10 They are mirror images, the men's and women's units.  
11 And the doors are not closed, they are hardly ever  
12 closed. I've only seen them closed once in the three  
13 weeks I've been there. And there is no indication that  
14 one is a men's unit and the other is the women's. None  
15 at all. Those doors are left open all night and I was  
16 roaming up and down the corridors all night. Well, I  
17 don't know for how long. Until I got into trouble.  
18 That's how long it was.

19           At which time I do remember being placed in the  
20 restraint. It hurt like hell. I had a previously  
21 cracked rib from an incident in 1996. And that was  
22 cracked again, which is the reason I was prescribed -- I  
23 was offered Motrin for the pain from that. Fortunately,  
24 it doesn't seem like it was really grievously broken or  
25 anything, it is just aggravated.

1 Q. And after that incident when you first came in,  
2 at what time did you feel yourself clearing mentally?

3 A. Monday. By Monday, Tuesday. By Tuesday I felt  
4 that I had recovered.

5 Q. Which date was that?

6 A. Well, it would have been the 8th. I had --

7 Q. I'm sorry, do you recall meeting with  
8 Dr. Povinelli or Dr. Roberts at that time?

9 A. Vaguely I do. I do recall meeting with  
10 Dr. Povinelli. Dr. Roberts, the interview with  
11 Dr. Roberts is very unclear. I do recall being seen by  
12 the physician's assistant, whose office, by the way, has  
13 some very bizarre doormats including a picture of babies  
14 in little pots.

15 Q. So, do you recall the first time Dr. Roberts, or  
16 anybody on the staff, offered you some psychotropic or  
17 mood stabilizer medication?

18 A. In fact, they never offered it. It appeared. I  
19 was being offered the drug Keflex, K-E-F-L-E-X, for the  
20 infection and I was told at first I rejected it. I  
21 probably just didn't know what it was and instinctly  
22 (sic) reject something when I don't know what it is. I  
23 started taking that. And then the Zyprexa or Olanzapine  
24 started appearing.

25 I guess I'm not sure exactly when it was. It was

1       sometime I believe after I had recovered my sanity. And  
2       when I saw it, what's this? This is Zyprexa. And then  
3       I -- well, Olanzapine, I recognized what it was. I  
4       said, well, I don't need this and I never took any of  
5       it. I never took one pill.

6       Q.     Dr. Roberts testified that she met with you  
7       several times subsequent to April 8th. And that she  
8       tried to discuss things with you or that you were  
9       becoming evasive or tangential in some way. Do you  
10      recall any of those conversations?

11      A.     In fact, besides that first meeting and very  
12      brief second meeting which was regarding my requesting  
13      privileges, which would have been about the 8th, in  
14      fact, she never brought this up with me.

15      Q.     The meeting this morning with Mr. Povinelli and  
16      Dr. Roberts, how long did that last for?

17      A.     And Megan?

18      Q.     And Megan.

19      A.     How long did it last? Oh, I guess it must have  
20      been 30 minutes.

21      Q.     Okay. The testimony this morning from  
22      Dr. Roberts and Dr. Povinelli indicated that the  
23      circumstances of your 1997 incident came up and your  
24      rationale for them?

25      A.     Yes.

1 Q. And they talked about the Silence of the Lambs  
2 and Hannibal Lecter. Do you recall talking about that?

3 A. Indeed I do.

4 Q. And how was that brought up?

5 A. They asked me what went on to cause the incident  
6 with the trailer, the arson. They asked me what were  
7 the circumstances. And so I attempted to explain the  
8 circumstances. Dr. Povinelli on the stand claimed that  
9 I brought this up spontaneously. In fact, I was asked  
10 the question. The question was posed, what happened  
11 February 6? They didn't use the date 1997. Why did you  
12 burn down the trailer? And I attempted to respond.

13 Well, first off, I was made ill by these  
14 psychiatric medications, I was in a confused state. And  
15 eventually I was physically better, but I was not truly  
16 mentally better. I believed that since physically I had  
17 recovered I was going to be okay. I had known at the  
18 beginning of January I was in a dreadful mental state,  
19 but it didn't concern me much because I was incapable of  
20 getting out of bed practically.

21 But then the, the beginning of February because  
22 my former girlfriend, Susan Hamann, had repeatedly  
23 discussed one of the features of the book Silence of the  
24 Lambs, Jame Gumb's little dog and the justification or  
25 excuse -- not justification or excuse, but an



1 explanation that he is not a bad person even though he  
2 might be psychopathic, which was that he still loved his  
3 little dog. And Susan Hamann had mentioned this several  
4 times in our conversations. And so I decided to read  
5 the book and take a look at it. I can go on and  
6 elaborate, but it will be a long story.

7 Q. Well --

8 A. The issue was brought up. I'm not sure whether  
9 it was Dr. Roberts or Dr. Povinelli, who brought it up.

10 Q. Did you state at any time that this was a current  
11 state of mind today?

12 A. Well, the truth is that I still believe that  
13 Susan Hamann resembles the character in the book in  
14 important respects. And I don't believe any of that  
15 belief is delusional, it's coincidental. Strictly a  
16 matter of coincidence.

17 Q. And did you convey that to the two doctors this  
18 morning?

19 A. I attempted to.

20 Q. Was any medication discussed this morning with  
21 the two doctors?

22 A. Not that I can recall, no.

23 Q. Did they discuss any course of treatment for you?

24 A. No.

25 Q. What was the substance of the meeting then? What

1 exactly went on?

2 A. Well, what prompted the meeting is this court  
3 appearance.

4 Q. Did they discuss any diagnosis for you?

5 A. Gosh, they were asking me questions. No, not  
6 really. Dr. Povinelli asked me a question about my  
7 marijuana use. He asked whether my marijuana use --  
8 whether I believed that it had ever affected my judgment  
9 or ever caused me any problems. And I said, no, I did  
10 not believe it has. There were no specific questions  
11 that I can recall. I mean, definitely no one has ever  
12 discussed the bipolar disorder diagnosis with me.

13 Q. The testimony this morning indicated you were on  
14 ward restriction, which means you don't go to any  
15 programs?

16 A. Yes.

17 Q. How do you fill your day on the unit?

18 A. Gosh, it's hard. It's difficult to read in  
19 there. It's noisy. Watch some TV. The one good aspect  
20 of this commitment has been I got to watch the statute  
21 of Saddam Hussein fall. I saw the whole thing in real  
22 time on CNN.

23 Q. Do you get any kind of therapy?

24 A. I kill time.

25 Q. So, you don't do anything constructive in terms

1 of therapy or --

2 A. No. I'm not allowed outside. I have been  
3 allowed outside, in fact, by staff, because staff see  
4 that I'm responsible, I'm cooperative. If they ask me  
5 to do something, I will do it as long as it's -- well, I  
6 will do it, you know, if they don't ask anything really  
7 unreasonable, so....

8 Q. And what's been the status of your computer  
9 business since you've been admitted?

10 A. I have gotten a friend of mine, Bill Garrison --  
11 he is the person who helped keep my business going when  
12 I was in Rochester back in 1998. So, he can process  
13 orders for me. It took awhile to get him going with it  
14 again because he had to get a key to my house from my  
15 former wife, Ann Marie Whelan. But he is -- he can't  
16 really deal with support questions.

17 He has brought over support questions for me to  
18 write out answers in longhand to and then hand back to  
19 him so he can E-mail my irate clients, who some of them  
20 have been waiting for more than ten days for a  
21 registration code. In general, I promise five days,  
22 five working days to get a registration code from an  
23 on-line order.

24 And, for example, one strange incident was I have  
25 a prospective client, the Anchorage Public School

1 System, which is looking at a \$2,500 license. Soon  
2 after the incident, soon after I was brought in here,  
3 they actually sent the Tompkins -- they called up the  
4 Tompkins County Sheriff's Department and had them send  
5 over a patrol car to find out what was happening because  
6 they couldn't get through to my business. As it turns  
7 out, the phones were dead because the -- my phone wires  
8 had somehow become waterlogged due to the down power.

9 Q. What do you think would happen to your business  
10 if you continue to stay at the Psychiatric Center?

11 A. Eventually it will collapse. The people in  
12 Anchorage are quite upset that I haven't been able to  
13 communicate with them. Bill Garrison has held them off  
14 by stating, well, Mr. Saunders expects he will be out in  
15 another week and then -- out of the hospital in another  
16 week and will be able to handle your support questions.  
17 They are performing an evaluation of the software and  
18 they need a little bit of handholding in order to get  
19 going.

20 Q. Do you know if you are being billed for your stay  
21 at the Psychiatric Center?

22 A. I certainly will be billed for my stay.

23 Q. I'm sorry?

24 A. I am a private patient. I am not on Social  
25 Security Disability, although I am qualified for Social

1 Security Disability. My application was rejected back  
2 in 1998. I am not on Medicaid and cannot qualify for  
3 Medicaid because I have assets. And I have no  
4 insurance. There is no way I could ever be able to get  
5 health insurance with the diagnoses that have been made,  
6 so....

7 Q. Do you know how much money is being billed for  
8 your stay?

9 A. Well, after two weeks, Megan finally came back  
10 with something close to an answer. Which is it will be  
11 from \$700 to \$800 a day.

12 Q. Do you have the resources to pay that kind of  
13 money?

14 A. I do not.

15 Q. Mr. Saunders, do you feel you are getting any  
16 kind of substance and treatment staying at the Elmira  
17 Psychiatric Center?

18 A. I do not.

19 Q. Do you feel that you are currently a threat to  
20 anybody including yourself?

21 A. No.

22 Q. What would your plan be if you were released from  
23 the hospital?

24 A. Go home actually and first greet my friends, my  
25 mother who has come up here to help support me through

1 this. And my friend Alice, who's been tremendously  
2 helpful. And our cats. That's the first thing. And  
3 then take care of business, try to make sure that any  
4 critical support questions are being answered and in  
5 particular the folks in Anchorage. It's \$2,500 on the  
6 line for me. That's a significant amount of money.

7 Q. Thank you, Mr. Saunders.

8 MR. WENIG: I don't have any other  
9 questions.

10 CROSS-EXAMINATION

11 BY MS. COCCHIOLA:

12 Q. Mr. Saunders, do you use another name, Bonze  
13 Blayk?

14 A. Well, it's usually pronounced Bonze Blayk.

15 Q. Excuse me?

16 A. Spelled B-O-N-Z-E.

17 Q. B --

18 A. B-L-A-Y-K.

19 Q. Right.

20 A. Yes.

21 Q. And what do you use that word -- or that name  
22 for?

23 A. It's a stage name.

24 Q. And are you an actor?

25 A. No. I am a musician.

1 Q. And when have you last performed as a musician  
2 under that name?

3 A. Actually, it was several years ago. A number of  
4 years ago. Since this plea was entered and since I  
5 entered the supervision of the OMH, I have become rather  
6 shy about going out. In general, you see, I use my  
7 whole name on my software, I include the a/k/a so the  
8 DataComet window that comes up lists my name is Kevin  
9 Eric Saunders, a/k/a Bonze Blayk.

10 Q. So, you have some computer printouts that will  
11 have that on there?

12 A. Well, if you view it on screen, it comes up on  
13 the screen. It includes my copyright notice. If you  
14 haven't registered, it's brought up automatically.

15 Q. Now, I wanted to ask. You indicated that you  
16 worked for Cornell?

17 A. Yes.

18 Q. You felt it was around 1985 or '86 did you say?

19 A. I started in 1986 I believe.

20 Q. And you were -- actually you were placed on  
21 administrative leave twice, isn't that true?

22 A. That's false.

23 Q. So, if it's included in a report from the  
24 Rochester Psychiatric Center based on conversations with  
25 you, that would be inaccurate?

1       A.    Yes.  In fact, they claimed there was a referral  
2       in 1990, which never took place.

3       Q.    And another in '92?

4       A.    They're in error derived from an error on my  
5       part.  I made a typographical error and listed the one  
6       referral I had as occurring in 1990.  In fact, there is  
7       only one referral, it was in 1992.

8       Q.    Oh, okay.  So, actually it lists two.  So, there  
9       really was only one?

10      A.    There was one.

11      Q.    In '92 when you were referred to the EAP program?

12      A.    That's correct.

13      Q.    As sort of a mediation between yourself and  
14      supervisors?

15      A.    Well, the issue, the big question was whether I  
16      had threatened to release a computer virus.  There was a  
17      rumor going around that I had threatened "to bring  
18      Cornell computer services to its knees."  That rumor  
19      came from unknown sources and was totally false.  At  
20      that time I was upset that another employee was going to  
21      be brought on our team.  We had six months to complete a  
22      very, very difficult, complex computer project involving  
23      dial-up access to the Cornell backbone.  We were going  
24      to write custom software which was run on Zylogic  
25      (phonetic) routers.



1 Q. Let me ask you this.

2 A. Yes.

3 Q. There came a point when you were asked to leave  
4 the program, you were asked --

5 A. That's false.

6 Q. Well, didn't they ask you to find employment  
7 elsewhere and they seceded the rights of the work  
8 product to you for \$250?

9 A. False.

10 Q. And you left your job at Cornell and went to  
11 Millennium Computer in Rochester then?

12 A. That's true.

13 Q. That part of it is true?

14 A. In fact.

15 Q. You quit there as well, right?

16 A. Hum?

17 Q. Millennium Computer, you quit there as well?

18 A. Yes, I did quit after nine months.

19 Q. Now, you also -- you indicated just briefly that  
20 you had -- you were feeling delusional thoughts at the  
21 time of the arson in 1997?

22 A. Oh, yes.

23 Q. And part of the delusional thoughts related to  
24 your reading of the book Silence of the Lambs?

25 A. Yes.

1 Q. And part of that delusional behavior you were  
2 dressed up in an evening gown, right?

3 A. It wasn't a gown.

4 Q. Well, it was a skirt? Ankle length with a slit?

5 A. The slit was in front.

6 Q. Okay. You had high heels on?

7 A. Indeed.

8 Q. And your hair was as it is now?

9 A. Yes.

10 Q. Or did you have a wig on?

11 A. I don't wear wigs.

12 Q. Okay. And you also were dressed up in this, in  
13 the heels and the dress, and went to the trailer?

14 A. Yes.

15 Q. And at that time you were feeling that the --  
16 there was a three-fingered left hand in her trailer?

17 A. In fact.

18 Q. That was related to Hannibal Lecter's hand,  
19 right?

20 A. Yeah.

21 Q. And you saw this in your mind across from a can  
22 of flammable material?

23 A. That's not correct. In fact, there was a  
24 three-foot-high fingered hand that was confirmed by  
25 Susan Hamann when I spoke with her.

1 Q. The three-foot-tall three-fingered left hand was  
2 real?

3 A. It was real according to Susan. She picked it up  
4 off the roadside somewhere.

5 Q. Well, you saw this?

6 A. Yeah.

7 Q. And you also saw some hat racks and summer hats?

8 A. Yes.

9 Q. And you felt this to be a --

10 A. That was not a hallucination, it was real.

11 Q. But you felt that was related to Silence of the  
12 Lambs?

13 A. Well, actually, later on I realized that it  
14 probably was in some way. I mean, it is just  
15 coincidence.

16 Q. A tableau you said?

17 A. Yes, the tableau.

18 Q. Tableau?

19 A. It was a tableau.

20 Q. So, you saw this tableau which you felt was, was  
21 similar to the prominent theme of Silence of the Lambs?

22 A. Well, that's a theme that runs through the entire  
23 book.

24 Q. So, that's yes?

25 A. Yes.

1 Q. And then you also felt that your girlfriend  
2 Susan's character and her characteristics fit nicely to  
3 the character of Clarice Starling, isn't that right?

4 A. That's true.

5 Q. And that you -- they actually used the key image  
6 of Clarice without referring to a source you said? Did  
7 you say that they -- you actually used the key image of  
8 Clarice, but you did not use it -- refer to it as a  
9 source? You thought that Susan and Clarice were like  
10 the same person?

11 A. No. I felt that the book had been --

12 Q. Based on her?

13 A. -- based on her somehow.

14 Q. But didn't refer to her?

15 A. I thought that Susan had a mysterious past. I  
16 still feel that she did have a mysterious past, some of  
17 which she was not completely open with me about.

18 Q. I see.

19 A. And that that was part of it. Of course, I was  
20 delusional, I was under the influence of drugs.

21 Q. And you mean the psychiatric drugs that were  
22 prescribed?

23 A. Yes.

24 Q. And so then you put the flammable material around  
25 and set the fire, right?

1 A. Yes. It took about 15 seconds.

2 Q. And then it also -- it burned the trailer to the  
3 ground, right?

4 A. It did.

5 Q. And destroyed her car?

6 A. It did.

7 Q. And this was reported by a neighbor who saw it  
8 happening?

9 A. Yes.

10 Q. And you actually gave a statement to the police  
11 admitting your involvement?

12 A. Yes. The statement was altered by the officer  
13 who recorded it, though. My statement was modified.  
14 Typed into to correct it at the time.

15 Q. Then at some point you entered a plea of not  
16 responsible by reason of mental disease or defect?

17 A. Mm-mm.

18 Q. Initially you did have an outpatient appointment  
19 at Rochester Psychiatric Center, but they actually asked  
20 you to come in for inpatient, isn't that right?

21 A. That's correct.

22 Q. And isn't that because they wanted you to stop  
23 smoking marijuana before the examination?

24 A. They never once asked me to stop smoking.

25 Q. Well, they knew you were smoking marijuana at the

1 time of the outpatient?

2 A. Yes. They did know. They never once said I  
3 should stop.

4 Q. And they asked you, though, to come in and do an  
5 out -- or inpatient exam?

6 A. They asked the Court to require an inpatient  
7 exam.

8 Q. Right. Because they didn't feel that they could  
9 do an adequate examination with you outpatient using  
10 marijuana? Does that make sense?

11 A. In fact, no, it doesn't make sense to me.

12 Q. To you. Okay.

13 A. Yes.

14 Q. Well, in any event, you went inpatient and they  
15 did the examinations and they reviewed --

16 A. That's true.

17 Q. In fact, they did -- wait a minute, let me  
18 finish. They did physical examinations of you?

19 A. Yes.

20 Q. They did EEGs, they did --

21 A. Correct.

22 Q. They ruled out a lot of physical problems?

23 A. Correct.

24 Q. Didn't they?

25 A. Yes.

1 Q. Isn't it true that when you were there a few days  
2 being off marijuana that you started complaining about  
3 this numbness and tingling in your extremities?

4 A. That's not correct.

5 Q. So, if that's in the report, that's incorrect as  
6 well?

7 A. There are many errors in those reports.

8 Q. Let me ask. You indicated that in the days and  
9 months leading up to February of 1997 at the time of the  
10 arson that you were feeling ill and sick?

11 A. No.

12 Q. You were feeling sick?

13 A. No, I was not.

14 Q. So, you weren't?

15 A. I had noted when I saw Dr. Stackman that I had  
16 felt that for some months I had been feeling this kind  
17 of oddness in my extremities, in my lower legs in  
18 particular.

19 Q. I see.

20 A. Dr. Stackman noted in his report that Prozac can  
21 induce these paresthesia.

22 Q. Let me ask you. Did you also get arrested in  
23 December of 1996 for driving under the influence of  
24 marijuana?

25 A. False.

1 Q. You weren't arrested for that?

2 A. No. I was arrested for DWI.

3 Q. It wasn't DUI?

4 A. It was not. That's false.

5 Q. So, you were under the influence of alcohol then?

6 A. Yes.

7 Q. And not marijuana at the time?

8 A. I had not been smoking marijuana at that time. I  
9 had not been smoking for more than two weeks I believe.

10 Q. I'm talking about December of '96.

11 A. That's correct.

12 Q. So, you hadn't been on marijuana at all?

13 A. I was not smoking at that time.

14 Q. Were you ingesting it otherwise?

15 A. No, I was not.

16 Q. Do you ingest it?

17 A. I have not eaten marijuana in any form for over  
18 like, what, 23 years.

19 Q. So, you only smoke?

20 A. That's correct.

21 Q. And you smoke on a daily basis?

22 A. Generally when I am smoking I do.

23 Q. And about how much would you say you smoke on a  
24 daily basis?

25 A. With very small amounts but over the entire day,



1 less than a quarter of a joint, about .25 grams. And I  
2 prefer low grade, medium grade Mexican, not strong  
3 stuff, mild stuff.

4 Q. So, you don't grow it yourself?

5 A. I do not. It's a federal felony.

6 Q. But you buy it from someone?

7 A. (Shrugs)

8 Q. Is that a yes or a no?

9 A. Yes.

10 Q. And from whom do you buy it?

11 A. On that I will not comment.

12 MS. COCCHIOLA: Judge, I am asking him to be  
13 directed to answer the question.

14 THE COURT: What's the relevance of who he  
15 buys from?

16 MS. COCCHIOLA: I'm wondering if he, in  
17 fact, has other individuals that he's using  
18 marijuana with on a more frequent basis.

19 THE COURT: That's not what you asked him.

20 Q. Let me ask you this. You said you smoke it  
21 daily?

22 A. Mm-mm.

23 Q. And you have been doing this for several years.

24 A. In general, it's not true. The treatment team  
25 stated, as they did in the meeting on March the 14th,

1 they have a statement that I had been smoking  
2 continuously since I was 23. That's not true. In  
3 general, I prefer to smoke daily. I have at different  
4 times not smoked. As for example, when I entered  
5 therapy at Family & Children Services.

6 Q. Well, weren't you terminated from Family &  
7 Children Services because they wanted you to stop  
8 smoking marijuana?

9 A. In fact, they wanted to refer me to a --

10 Q. Detox?

11 A. -- inpatient treatment for detox.

12 Q. Right.

13 A. My illness was not caused by marijuana.

14 Q. So, you disagreed with their, their conclusions?

15 A. Yes.

16 Q. Now, let me ask you this. You indicated that  
17 you've told this treatment team at Elmira Psychiatric  
18 Center that you feel that you can control your anxiety  
19 with marijuana?

20 A. That's -- no.

21 Q. You didn't say that?

22 A. No. That's not correct.

23 Q. Have you told them that you can't work unless you  
24 use marijuana?

25 A. That's not quite true. I'm more productive when

1 I smoke.

2 Q. I see.

3 A. It helps me concentrate, it helps me focus.

4 Q. Did you tell Dr. Roberts on admission that you  
5 will only take marijuana as far as any kind of drugs or  
6 treatment?

7 A. I don't really recall my conversation with  
8 Dr. Roberts, so I can't say. I was in a state of  
9 confusion.

10 Q. Now, when you talk about they aren't doing  
11 anything for you as far as treatment --

12 A. Yes.

13 Q. -- and so forth, isn't it true that when you have  
14 met with the -- with Megan Lawrence, the social worker,  
15 and she talks about treatment and treatment planning and  
16 groups, you've indicated you are not sick, you don't  
17 intend to participate?

18 A. What I've indicated is -- first off, I've had  
19 very few discussions with Megan outside of the practical  
20 matters. In terms of participation in groups and so  
21 forth, what I've said is I'm not interested in group  
22 therapy. My therapist in Tompkins County whose notes  
23 have clearly not been consulted, the four years of  
24 therapy that I went through with Linda Riley, who is an  
25 expert forensic counselor, have never really been

1 consulted. Linda Riley's opinions, who have been  
2 ignored --

3 Q. Let me ask you this --

4 A. Her opinion was that I have an untreatable  
5 personality disorder, okay.

6 Q. Let me ask you. Isn't it true that you have  
7 declined participation in the groups when you've talked  
8 to Ms. Lawrence, you've indicated that you don't intend  
9 to participate?

10 A. I said that I'm interested in -- I'll go with  
11 whatever is recreational. At this point in time --  
12 given the fact that my treatment team in Elmira  
13 Psychiatric Center has held many wild beliefs, they have  
14 presented to me wild allegations about a criminal past  
15 which are false, they have never corrected these  
16 allegations --

17 Q. Well, let me ask you --

18 A. So, I don't see a foundation for therapy in a --  
19 without a revision of the history.

20 Q. Now, you have indicated your concern with the  
21 discrepancies that are in your case.

22 A. Yes.

23 Q. And, in fact, you have brought that up to  
24 Ms. Stevens on occasion?

25 A. Repeatedly.

1 Q. In fact, one of the discrepancies is the fact  
2 that while it's reported in the records that you were in  
3 possession of two knives and a meat cleaver after the  
4 instant offense, after the arson, that it was actually  
5 four knives?

6 A. No. In fact, I was reported in possession of two  
7 knives and the statements that police made, they made  
8 these under oath, they claim that I had two knives. And  
9 the truth is that I had four knives, two of those knives  
10 were suppressed. They engaged in a totally illegal and  
11 immoral --

12 Q. Isn't that what I just asked you?

13 A. No, you said two -- you said that in the record  
14 there are two knives and a meat cleaver. Okay?

15 Q. But you had the meat cleaver?

16 A. You said three knives. I don't remember what I  
17 had because the knives weren't all that significant.

18 Q. I see. Now, as far as a mental illness, you  
19 don't believe you have a mental illness?

20 A. That's false.

21 Q. Do you believe you have a mental illness?

22 A. I already acknowledged having a personality  
23 disorder.

24 Q. Well, when --

25 A. I have suffered from depression.

1 Q. When the doctors talk to you, don't you deny to  
2 them you have a mental illness?

3 A. I deny of a mental illness sufficient to -- under  
4 the legal requirements that I require care, treatment  
5 and rehabilitation. I have been trying to argue this  
6 with them. They argue from a false history with me.  
7 This is extremely distressful.

8 Q. Now -- and you indicated it was distressful for  
9 you to be advised in March that they were going to  
10 recommend extension of the order of conditions?

11 A. There had been no prior discussion, yes.

12 Q. And that was distressful to you that they were  
13 going to continue to have you on this order of  
14 conditions, right?

15 A. Yes.

16 Q. And the order of conditions include an order that  
17 you submit to appropriate laboratory testing, to take  
18 medications as directed by the treating physician,  
19 that's one of the conditions, right?

20 A. It says may include.

21 Q. But is not limited to, right. That's one of the  
22 conditions here, isn't that right?

23 A. I think their requirement of medical rationality  
24 which have to be met --

25 Q. Oh, you think because you --

1 A. In fact --

2 Q. You would disagree that if someone recommends  
3 this, that it's not really an order, part of the judge's  
4 order?

5 A. To begin with, I did legal research, also. And I  
6 believe that that is a laundry list. It is a form that  
7 was provided.

8 THE COURT: Okay. Hold on. We are not  
9 going to litigate the Tompkins County Court  
10 order.

11 MS. COCCHIOLA: I agree, Judge, you're  
12 right.

13 THE COURT: Please.

14 Q. Let me just ask. You admit that you are not in  
15 compliance with what's recommended?

16 A. I believe that I have substantially fulfilled my  
17 duties to try to prevent recurrences of illness.

18 Q. And that's what you feel is your obligation?

19 A. I believe that the EPC has not helped me. In  
20 fact, they have harmed me psychologically by subjecting  
21 me to psychological distress with these false  
22 accusations.

23 Q. Let me just ask you. When you were admitted in  
24 the beginning of the month at Cayuga Medical Center, you  
25 weren't on Trazodone, right?

1 A. That's true.

2 Q. You weren't on Prozac?

3 A. That's absolutely true.

4 Q. You weren't on Vistaril?

5 A. That's true.

6 Q. It's your testimony that your mental state was  
7 caused by this infection that you had?

8 A. I'm not sure.

9 Q. Oh, so --

10 A. That's what I tend --

11 Q. That's what you --

12 A. That's a major factor.

13 Q. -- you are saying?

14 A. I believe that's a major factor.

15 Q. You were out of it, you were outside naked, all  
16 of those things --

17 A. Outside naked is, is not even criminal I believe.

18 Q. I didn't say it was criminal, I'm just asking if  
19 it occurred.

20 A. Yes, it's rational behavior.

21 Q. And you were naked on the ward at the Elmira  
22 Psychiatric Center?

23 A. By that time I was definitely out of it, okay.

24 Q. Okay. So, you were definitely suffering from  
25 some mental disorder?



1 A. Yes.

2 Q. And you don't recall the ride to Elmira  
3 Psychiatric Center, so you very well could have been  
4 screaming and yelling?

5 A. I, I don't know. Quite possibly, yes.

6 Q. And as far as your, your admission, you declined  
7 to give a screen to the doctors as far as any urine or  
8 blood? Isn't that true?

9 A. After a week had elapsed, I refused to accept any  
10 further orders from Dr. Roberts.

11 Q. So, you're declining to, to do anything she asks  
12 you to do?

13 A. I'm declining any orders from Dr. Roberts. The  
14 Olanzapine suddenly appeared and I thought it was  
15 inappropriate not to discuss -- not to have a real  
16 discussion with me what is the medication supposed to  
17 do, what the side effects might be. Instead, I was just  
18 offered the medication and told I was supposed to take  
19 it.

20 Q. Well, didn't she tell you on April 11th about it  
21 and you said you are not taking any medication  
22 whatsoever?

23 A. By April 11th I had fully recovered from sanity.  
24 I was rational on April 11th. And that was -- was that  
25 before or after this treatment team meeting?

1 Q. I'm asking you. Did you tell her on April 11th  
2 that you are not taking any medication whatsoever?

3 A. Well, I was in fact taking the Keflex.

4 Q. I'm talking about the psychotropic -- when she  
5 offered you the Zydis.

6 A. I don't believe it's Zydis, it's Zyprexa.

7 MS. COCCHIOLA: I have nothing further.

8 Thank you.

9 THE COURT: All right. The witness is  
10 excused.

11 (Whereupon the witness was excused)

12 MR. WENIG: Your Honor, I have no other  
13 evidence to present. I'd like to make a brief  
14 closing statement.

15 THE COURT: Sure. Evidence closed?

16 MS. COCCHIOLA: Yes, Judge.

17 MR. WENIG: Your Honor, as the testimony  
18 today indicated, Mr. Saunders was admitted to the  
19 Elmira Psychiatric Center on April 4th for  
20 bizarre behavior. And as his testimony  
21 indicated, he freely admits that he was acting  
22 bizarrely, irrationally, delusional at that time.

23 In fact, there was an episode where he  
24 struck a staff member. And as Mr. Saunders  
25 testified, he cannot recall the facts surrounding

1 that incident, but Mr. Saunders did testify that  
2 his behavior and his mental state has cleared  
3 dramatically since that time.

4 And as he testified for roughly the last  
5 hour-and-a-quarter, your Honor, I would ask the  
6 Court to review its notes and its recollection of  
7 his testimony to see whether the Court observed  
8 any irrational, tangential or bizarre behavior.  
9 This is the kind of behavior that was described  
10 by Dr. Povinelli and Dr. Roberts in their  
11 individual testimony earlier today.

12 They have been painting Mr. Saunders as  
13 continually ill, irrational and unusual in his  
14 behavior. As he's testified here today, in the  
15 process of being at the Psychiatric Center his  
16 mental state has cleared to the point where he  
17 feels he's ready to return to the community.  
18 He's a businessman, he runs the business by  
19 himself. His business, as he's testified, is  
20 suffering dramatically in his absence and he's  
21 also being subjected to the burden and stress  
22 financially of having to pay eventually for his  
23 stay here at the Psychiatric Center where he's  
24 admitted against his will.

25 I should also point out, your Honor, that

1 Mr. Saunders has not received any psychotropic  
2 medication aside from the administration during  
3 his assaultive episode on April 6th since he was  
4 admitted. And even without the medication, he's  
5 been able to clear mentally to the point where he  
6 can speak rationally, cogently and fairly about  
7 not only his positive aspects, but also the  
8 negative aspects of his behavior not just now,  
9 but also back in 1997 which led to his  
10 designation as a Criminal Procedure Law patient  
11 on order of conditions.

12 As Mr. Saunders testified, he has been  
13 regularly going for his visits for the last five  
14 years with his various clinicians in the  
15 community, he has tried to tow the line. He has  
16 done this for the most part at his own expense,  
17 including the various drug screenings that have  
18 been requested of him. And as he testified, he  
19 kept doing this to the point where he felt it was  
20 not no longer fair or clinically warranted in his  
21 case.

22 Again, Mr. Saunders has tried to present his  
23 perspective based on his own personal research  
24 with his clinicians as to why the events of  
25 January 1990 -- excuse me, February of 1997

1 occurred that led to his arrest. And as he's  
2 testified, he has not had any substantive  
3 dialogue with his clinicians on this issue. His  
4 clinicians appear to characterize this as a  
5 conclusion that is not based in fact. When from  
6 Mr. Saunders' perspective it is based in fact and  
7 no one has been able to persuade him or even  
8 discuss with him it is a conclusion of some kind.

9 Your Honor, I submit that Mr. Saunders has  
10 reached the point clinically where he should be  
11 released from the center and he can return home  
12 and continue with his business and deal with the  
13 various court proceedings that he is now facing  
14 with the Office of Mental Health for the  
15 recommitment to a secure facility, which is to  
16 occur Monday as the Court was informed, and also  
17 for the renewal of his order of conditions.

18 Mr. Saunders has indicated he, he will  
19 continue with the treatment program that's being  
20 offered him through the Office of Mental Health  
21 and he just wants a chance to succeed. Thank  
22 you, Judge.

23 MS. COCCHIOLA: Judge, I think if you listen  
24 to Mr. Saunders testimony, I don't think that  
25 you're talking to someone who is actually

1           testifying based on a rational review of facts.  
2           I think -- and being a layman, I feel if you look  
3           and listen to his testimony, you are going to  
4           find that he is actually grandiose, he has --  
5           still has bizarre beliefs about the instant  
6           offense, the arson. He is just not willing to  
7           agree that he has an illness that needs  
8           treatment.

9                     And I don't think it's a coincidence that  
10           he's been in the Elmira Psychiatric Center for a  
11           matter of three weeks without any marijuana and  
12           he has not had any -- he is basically detoxified  
13           the first week. Doctors testified that having  
14           bipolar illness untreated using marijuana will  
15           cause somebody to become more manic. That's what  
16           they were looking at on April 4th when he had  
17           his -- what you might call his break with  
18           reality.

19                     By his own admission, he says he was out of  
20           it and he was losing it and stressed. He wants  
21           to attribute that to he had some infection with  
22           his foot maybe he's thinking. He can't give a  
23           rational explanation. He wasn't on these  
24           psychotropic medications at the time.

25                     It's -- the doctors are not painting him as

1 continually irrational. They admit that he's  
2 improved. But their fear is when he is out in  
3 the community, he will go back to be doing what  
4 he was doing, that he won't accept his diagnosis,  
5 that he will continue to use marijuana and become  
6 ill again. And the fact is he was not  
7 cooperative with the treatment plan, but he was  
8 only being monitored -- as Ms. Stevens said, they  
9 were doing the best they can do just to keep,  
10 keep an eye on him, so to speak, so when  
11 something like this happened, that he could get  
12 the appropriate, necessary treatment.

13 And I ask that the Court deny his request  
14 for relief.

15 THE COURT: I suspect the most interesting  
16 thing that has occurred during this afternoon's  
17 hearing is that Dr. Roberts has probably learned  
18 more about her patient this afternoon than she  
19 has at any moment in time up until now. This is  
20 probably the most that Mr. Saunders has discussed  
21 himself in the presence of Dr. Roberts since his  
22 hospitalization.

23 The sadness is that, according to  
24 Dr. Roberts, when she has attempted to engage in  
25 meaningful discussions with Mr. Saunders, he has

1           avoided doing so. Thereby frustrating her  
2           ability to appropriately and accurately develop a  
3           diagnosis and, after that having been done, to  
4           identify appropriate treatment for Mr. Saunders.

5           Because it is absolutely clear -- and,  
6           frankly, Mr. Saunders acknowledges -- that there  
7           have been moments in his life where he has become  
8           extremely psychotic, experiencing auditory  
9           hallucinations and extreme symptoms to the extent  
10          of terrifying even himself. That's, in the  
11          Court's mind at least, a beginning for  
12          Mr. Saunders to acknowledge this. And that's  
13          '97, though, that he's talking about.

14          I'm not sure that Mr. Saunders has come to  
15          full grips with what occurred to him earlier in  
16          April of this year which led to his present  
17          hospitalization. And that is evident that he is  
18          much more -- he grasps much more acutely the  
19          event of 1997 than he grasps the early week of  
20          April 2003 and what led to his psychotic episode  
21          that got him hospitalized in the first place.

22          I am not going to try to be -- hold myself  
23          out as a physician or psychologist or  
24          psychiatrist, I am not. I am a judge. But it  
25          does seem somewhat preposterous that a simple



1 puncture and infection to a foot and attempted  
2 treatment of it would lead to the kind of  
3 psychotic episode that he experienced in April,  
4 which led to his present hospitalization.  
5 Something much more serious has to have been at  
6 work. And that's exactly what I believe  
7 Dr. Roberts and Dr. Povinelli are trying to get  
8 at.

9 Mr. Wenig, I agree with you. I've listened  
10 to your client, he is quite articulate, but there  
11 is a difference between intelligent articulation  
12 and coherent understanding of ones mental  
13 illness.

14 I've been in this business a long time and  
15 some of the most terribly mentally ill people  
16 I've met have been extremely brilliant people and  
17 capable of amazing feats of intelligence and  
18 articulate discussion. And I expect Mr. Saunders  
19 is in that category. I expect he's an extremely  
20 intelligent man.

21 It's just that right now he's doing battle  
22 with himself as to what got him hospitalized back  
23 in April. And it worries the Court that by doing  
24 this battle within himself he is frustrating the  
25 efforts of the doctors who he sees. And that's

1 clear. There is a level of paranoia that even a  
2 layman can see. He sees Dr. Roberts and  
3 Dr. Povinelli as his enemy, as doing him harm and  
4 he sees that as their purpose. And the Court  
5 does not accept that premise.

6 He's been diagnosed by Dr. Roberts as  
7 bipolar with psychotic features. The Court  
8 accepts that diagnosis and it -- and the fact  
9 that it is exacerbated by his marijuana  
10 dependence. And the Court is concerned that he  
11 is not accepting or receptive of this effort to  
12 diagnose and treat him. And that demonstrates to  
13 me that he does not -- as intelligent as he is,  
14 he does not truly comprehend what it is that  
15 afflicts him and brings him to these  
16 extraordinary psychotic episodes, by his own  
17 statement. Episodes which are so powerful that  
18 they terrify even him.

19 The Court is convinced that he needs  
20 hospitalization to continue to hopefully from  
21 this day forward engage, however grudgingly --  
22 and I suspect it will be grudging, because of his  
23 mistrust. But if his dialogue with Dr. Roberts  
24 can be said -- well, if today's testimony can  
25 operate as a springboard, I guess that's the way

1 I meant to say it, to greater dialogue with  
2 Dr. Roberts and Dr. Povinelli, the Court would  
3 hope that may be a significant breakthrough to  
4 identify a medication that is appropriate or  
5 treatment that is appropriate and that is  
6 acceptable to Mr. Saunders that he will hopefully  
7 achieve that level of mental health that he is  
8 not yet at.

9 Yes, it's clear, if I compare his measured  
10 speech today and calm exterior to the  
11 descriptions of what he was like when he was  
12 admitted, of course there's been improvement.  
13 But improvement is not the standard by which  
14 courts are instructed to assess applications for  
15 release from medical or psychiatric facilities.

16 The Court is satisfied that the mental  
17 illness of this patient has been established, the  
18 treatment in a hospital is necessary and that as  
19 of today his judgment is impaired by his  
20 inability to realistically come to grasp or  
21 attempt to come to grasp with what it is that  
22 leads him to these psychotic episodes.

23 And until he does that and makes a conscious  
24 and bona fide effort to do that, he does present  
25 a risk to himself and to others when he enters

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the psychotic episodes as manifested by the '97  
arson committed while he was in one of these  
states and by an attack on a staff member at the  
Elmira Psychiatric Center while he was in one of  
these states.

The goal is to get him to a level of  
appreciation by either medication or treatment or  
both which will hopefully operate to guard  
against him ever entering one of these psychotic  
states again where he might injure himself or  
someone else.

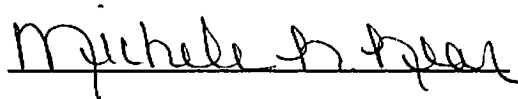
Application for release from the Psychiatric  
Center upon -- for the reasons stated is denied.

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C E R T I F I C A T E

I, Michele L. Lear, do hereby certify that the foregoing pages constitute a full, true and accurate transcript, to the best of my ability, utilizing computer-aided transcription, of the proceedings had in the aforesaid action on the 24th day of April, 2003.

Dated: September 9, 2003.



Michele L. Lear

Official Court Reporter

**MENTAL HYGIENE LEGAL SERVICE  
ROCHESTER, NEW YORK**

**SEP 11 2003**

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