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I N D E X

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P R O C E E D I N G S

MORNING SESSION

(March 4, 2010)

THE COURT: Good morning.

THE CLERK: Court is in session.

THE COURT: You can be seated. We're here in the matter of 10-034, United States versus Ashton O'Dwyer. And we're here this morning for a continuation of a hearing on a Motion to Reconsider the Issue of Pre-Trial Relief or Detention and on the government's Motion for a Competency Evaluation.

Is the government ready to proceed?

MR. KENNEDY: Yes, Your Honor. Greg Kennedy appearing on behalf of the United States.

THE COURT: And is the defendant ready to proceed?

THE DEFENDANT: Yes, Your Honor. Ashton O'Dwyer appearing in Propria Persona. We are participating in the judicial system this morning with reservation of rights. And Ms. Schlueter, who is the Public Defender for the Eastern District, is going to handle the proceedings with my consent.

THE COURT: All right. Thank you.

THE DEFENDANT: Thank you, Your Honor.

MS. SCHLUETER: Your Honor, at this point, I

1 think that for the record there has been a recusal of the
2 entire Eastern District of Louisiana Court. There was an
3 Order of Reference to an out of district judge and we have
4 been told that we are starting anew, meaning this is Ashton
5 O'Dwyer's detention hearing.

6 Am I correct in that regard?

7 THE COURT: It's a motion of -- my
8 understanding is that up to the point that we -- I am not
9 going to re-plow every issue that has been raised. I have
10 read all the transcripts of the previous hearing. And I am
11 certainly going to consider the issue, but there was a
12 ruling by the Magistrate Judge who had this matter prior to
13 my involvement in it.

14 Now are you asking whether I am willing to
15 consider this de novo?

16 MS. SCHLUETER: Yes, Judge, I am because in fact
17 if the Court, and we contend it appropriately recused
18 itself, and we were told on the record that everything that
19 happened thus far has been a nullity and it would be redone
20 with an independent or a different judge from another
21 district. Our position is very clear that with reference to
22 this for flight or danger to the community, the ultimate
23 issue of whether or not Ashton O'Dwyer should remain in
24 custody since his arrest on January 29th is a matter that
25 you must determine and the government has the burden of

1 proof. Regrettably it has taken us, one, over a month to
2 get here. But nonetheless, our position is very clear this
3 is his first day in court.

4 THE COURT: All right. I understand what you are
5 saying. And I, for purposes of what my ruling is going to
6 be, I am going to take a de novo look at this. But for
7 purposes of putting evidence in the record, I am not going
8 to need any evidence, any testimony, any evidence that has
9 already been presented to be represented. I have read that.

10 MS. SCHLUETER: Completely agreeable, Judge. I
11 understand that you requested the transcripts. Those are
12 available to us. We will not repeat any testimony such as
13 Dr. Jeanfreau's that was presented before. Our position
14 though is rather clear that the government has the burden to
15 prove and that your decision is not bound in any way by the
16 previous decision that was entered by Judge Louis Moore.

17 THE COURT: All right.

18 MR. KENNEDY: Judge, if I could be heard, please,
19 just briefly regarding that issue. Judge, it's the
20 government's position that Judge Moore had an opportunity to
21 sit through an entire detention hearing and Judge Moore
22 ruled on that based on evidence that he heard. That was
23 prior to any recusal. I am not aware of anything we could
24 go back and nullify Magistrate Moore's decision. The
25 defense has filed a Motion to Reconsider Detention, not to

1 open or to start anew. It's my understanding that we were
2 coming in here today on two issues. A Motion to Reconsider
3 Detention as well as the Motion for Competency by the
4 government itself. I am not aware of anything that would
5 nullify Judge Moore's previous order in this case and
6 testimony and the hearings that were done. So, therefore,
7 to say that it's the government's burden at this point, I
8 would disagree with because we have a valid ruling by a
9 Court sitting with proper venue and jurisdiction over Mr.
10 O'Dwyer at the time and there is nothing in the record that
11 goes back and says that any previous action that was taken
12 by Judge Moore should not be considered or should not be
13 held as valid up to this point. So, therefore, it should be
14 the defense has now moved to reconsider this, the government
15 has put on all the evidence that it's capable of putting on
16 up until this point and we're here simply to reconsider the
17 detention. And certainly the Court can consider all the
18 evidence and testimony that was given before in making this
19 new determination. But I don't think it's the government's
20 burden at this point on a Motion to Reconsider when we have
21 already carried our burden at a previous hearing. And the
22 only thing that we're here for from the government's
23 position is to reconsider and the motion for competency.

24 MS. SCHLUETER: Obviously, Judge, we are in total
25 disagreement.

1 THE COURT: Obviously.

2 MS. SCHLUETER: The reason that the Court recused
3 itself is there was by the recusal an expression that
4 whether or not it be an appearance of impropriety or
5 impropriety, but it deferred to an out of district judge.

6 THE COURT: I have to agree with that.

7 MS. SCHLUETER: Thank you.

8 THE COURT: And for that purpose, I do believe
9 that it is the government's burden to make that showing
10 regarding it. So for that purpose, as far as needing to put
11 on additional evidence, I don't think that you do need to.
12 The evidence that I have seen today leaves me without --
13 up to date leaves me without any problem from the risk of
14 flight standpoint. I don't have any issue with that. I do
15 have some current concerns with danger to the community. I
16 haven't made a determination on that yet in any way. And so
17 that is the issue that I am here to hear evidence on today.
18 And as far as who's carrying the burden of proof, that, we
19 will just have to wait and see.

20 MR. KENNEDY: Well, Judge, in one of the Court's
21 rulings, the only thing that I would add then is obviously I
22 would offer into the record the previous testimony that was
23 given throughout the previous hearing as well as the
24 detention hearing on Mr. O'Dwyer that was considered.
25 Excuse me. The initial appearance of Mr. O'Dwyer that was

1 considered by Judge Moore, the evidence that came up
2 regarding that. The only other additional thing I would add
3 would be the transcript of Mr. O'Dwyer's appearance on
4 February 18th. I don't know if the Court was familiar with
5 that.

6 THE COURT: I already read it.

7 MR. KENNEDY: But I would offer that into the
8 record. And the government has no further evidence at this
9 point other than what it's previously presented.

10 MS. SCHLUETER: Your Honor, we do have witnesses
11 with reference to the question of danger to the community.
12 Our first witness would be Patrick O'Keefe.

13 MR. KENNEDY: Your Honor, I would ask for a
14 sequestration by any other witnesses.

15 THE COURT: You have other witnesses?

16 MS. SCHLUETER: Your Honor, we have three lawyers
17 and we have -- I have selected three lawyers that I think
18 represent 200 years and knowing Ashton O'Dwyer. There are
19 others present in the courtroom that I could call who would
20 be, I think, cumulative and not particularly helpful other
21 than by their very presence here today who would testify
22 similarly.

23 With that in mind, every one of the lawyers who I
24 would call, Patrick O'Keefe, Larry Wiedemann and Dwight
25 LeBlanc are all officers of the Court. If the government

1 wants those lawyers sequestered?

2 MR. KENNEDY: I do, Your Honor. And I understand
3 they're officers of the Court and they are attorneys, but if
4 they're going to get up here giving factual testimony I
5 don't want them to be influenced by each other.

6 THE COURT: The rule has been invoked and for
7 purposes of this proceeding their witnesses.

8 MS. SCHLUETER: In addition, Judge, I have two
9 professional witnesses who are doctors. A psychologist, Dr.
10 Marc Zimmermann and a psychiatrist, Dr. Mallik, who are both
11 in the courtroom and thought that it would be helpful to
12 hear the witnesses. I would suggest that they are expert
13 witnesses and not subject to the ruling of the
14 sequestration. In fact, I would think the government would
15 want those experts to hear their lifetime of experience with
16 Mr. O'Dwyer to help inform and advise their opinion.

17 MR. KENNEDY: Judge, my only response is this is
18 the first time I am hearing of any expert testimony was
19 going to be presented at this hearing. Not only that, if
20 they are going to testify I would ask at this point for any
21 reports that were done in conjunction with their evaluation
22 of Mr. O'Dwyer. And I would ask for that to be produced at
23 this point.

24 THE COURT: Have there been reports produced?

25 MS. SCHLUETER: No, Judge, none. This has been a

1 very short turnaround.

2 THE COURT: I understand. And I do recall from
3 the transcript from Judge Moore's last hearing that he
4 actually requested testimony from a psychiatric expert and
5 if these are the ones that are being offered then I think
6 the government probably had notice. I am going to exempt
7 them from the rule. But the other three witnesses would be
8 placed under the rule.

9 MS. SCHLUETER: Then we would call Patrick
10 O'Keefe. And we would ask Mr. Dwight LeBlanc and Mr. Larry
11 Wiedemann to step out of the courtroom and be subject to the
12 rules of sequestration.

13 THE CLERK: Step up here, please. Raise your
14 right hand, please.

15 **PATRICK EDWARD O'KEEFE, WITNESS, SWORN**

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

18 THE WITNESS: My name is Patrick Edward O'Keefe.
19 My last name is spelled O-'-K-E-E-F-E.

20 THE CLERK: Thank you. Have a seat.

21 **DIRECT EXAMINATION**

22 BY MS. SCHLUETER:

23 Q. Mr. O'Keefe, your name for the record was Patrick
24 O'Keefe?

25 A. Yes, ma'am.

1 Q. And you are by profession a lawyer?

2 A. Yes, ma'am.

3 Q. Where do you practice?

4 A. I practice at Montgomery Barnett Reed Hammond & Mintz.

5 Q. You're familiar with the federal court?

6 A. Yes, ma'am.

7 Q. Am I correct that you have previously been associated
8 with the Federal Bar Association for the Eastern District of
9 Louisiana?

10 A. With you, ma'am, I shared the distinction of being
11 President of the Chapter here in New Orleans.

12 Q. And in that capacity, did you have an opportunity to
13 know many of the federal practitioners in and around this
14 area?

15 A. A great many.

16 Q. Your area of expertise?

17 A. Predominantly maritime law.

18 Q. Sir, how did you come to court today?

19 A. I contacted you a day or so ago upon hearing a rumor to
20 the effect that Mr. O'Dwyer would be the subject of
21 proceedings this morning and I thought I could have some
22 assistance in enlightening the Court.

23 Q. And how do you know Mr. O'Dwyer?

24 A. Mr. O'Dwyer and I met initially in 1968 at Loyola
25 University as undergraduates.

1 Q. And have you been in contact with Mr. O'Dwyer over that
2 period of at least 40 years?

3 A. Yes, ma'am.

4 Q. And during that period of time, have your professional
5 paths crossed?

6 A. Several times. In fact, quite often.

7 Q. And what is his area of expertise, if any?

8 A. His predominant field of expertise was maritime law as
9 well.

10 Q. So it was frequent contact?

11 A. Yes, ma'am.

12 Q. As adversaries?

13 A. We both are, were defense attorneys. But we would very
14 often be adversaries as co-defendants can be in maritime
15 cases.

16 Q. During this period of professional association with Mr.
17 O'Dwyer, have you ever seen him act in a way that was
18 physically aggressive?

19 A. No, ma'am.

20 Q. In the 40 years that comprise your personal
21 relationship with Mr. O'Dwyer, did you know him in other
22 capacities other than as a law student and later as a
23 practitioner in the same area, admiralty law?

24 A. We were both in the same Army ROTC Unit. He was
25 somewhat senior to me. I think he is a year or so older

1 than I am.

2 Q. In your dealings with Mr. O'Dwyer over those 40 years,
3 have you come to view him in a particular way in terms of a
4 danger or not a danger?

5 A. From the moment I met Ashton O'Dwyer in 1968 to this
6 very moment, I have never been given any reason to believe
7 that he is physically dangerous to himself or anyone else.

8 Q. And being an active member of the Federal Bar, you are
9 no doubt aware that from time to time he has been involved
10 in Katrina litigation?

11 A. Famously.

12 Q. Hotly contested?

13 A. Yes, ma'am.

14 Q. Aggressively pursued?

15 A. Yes, ma'am.

16 Q. With recourse to the courts?

17 A. Frequently.

18 Q. Do you think if this Judge were to release Mr. O'Dwyer
19 as a condition of bond that without any restraint in either
20 a halfway house or a jail that he would present a threat?

21 MR. KENNEDY: Your Honor, I am going to object to
22 that. I think it's the ultimate issue for the Court, not
23 from Mr. O'Keefe to decide.

24 MS. SCHLUETER: On the contrary, Judge, we have
25 the benefit of someone who has known him a very long period

1 of time. While it is not an expert opinion, it is certainly
2 a lay opinion that this Court can rely on.

3 MR. KENNEDY: And, Judge, that's my objection
4 that he's basically testifying to the ultimate issue. He
5 can testify to facts and circumstances as to his knowledge
6 of Mr. O'Dwyer. But ultimately it's up to the Court to
7 decide whether or not he would be a danger.

8 THE COURT: I would sustain the objection. You
9 can testify about your own knowledge of this person and your
10 dealings with him and I don't have a problem with that.

11 MS. SCHLUETER: I tender the witness.

12 **CROSS-EXAMINATION**

13 BY MR. KENNEDY:

14 Q. Good afternoon, Mr. O'Keefe. My name is Greg Kennedy.
15 I represent the government. I just have a few questions for
16 you.

17 Sir, what's the last time you had an opportunity to
18 speak to Mr. O'Dwyer outside of court?

19 A. I can't recall. Probably before the hurricane.

20 Q. So you haven't had any contact with Mr. O'Dwyer in the
21 past four to five years?

22 A. I think that's probably true, yes.

23 Q. So you have no personal knowledge of your own as far as
24 his actions or communications or anything else that he may
25 have taken in those last five years?

1 A. Certainly there has been a great deal that has been
2 reported. But if you want to know as between the two of us,
3 no, I can't recall anything between the two of us.

4 Q. You're basically going on what was reported, what you
5 have heard of Mr. O'Dwyer in either the paper or through
6 colleagues?

7 A. Yes.

8 Q. And are you aware of any psychological examinations
9 that have been done with Mr. O'Dwyer in that five year
10 period?

11 A. I am not a psychologist or a psychiatrist. I really
12 don't know.

13 Q. Are you aware of whether or not he was even under the
14 treatment of a psychologist or psychiatrist in the last four
15 to five years?

16 A. Again, that's not my field of professional capability.
17 I really don't know.

18 Q. And have you been to his house in the last four to five
19 years?

20 A. I have never been to his house.

21 Q. And are you aware of any gun collection that Mr.
22 O'Dwyer had?

23 A. I recall that he was a firearms enthusiast, yes.

24 Q. And are you aware specifically of any guns that he
25 possessed in the last -- I mean over any time period over

1 the last 10 or 15 years?

2 A. I believe that he has owned firearms for several years,
3 yes.

4 Q. And as far as your opinion of Mr. O'Dwyer, that would
5 be based upon whatever information or association you have
6 with Mr. O'Dwyer prior to Hurricane Katrina, isn't that
7 correct?

8 A. Substantial life experience with Mr. O'Dwyer prior to
9 Hurricane Katrina, yes.

10 Q. Right. But you said that you were aware of Mr.
11 O'Dwyer's involvement in Hurricane Katrina litigation post-
12 Katrina?

13 A. Certainly it has been reported in the popular press.

14 Q. Okay. Were you aware that Mr. O'Dwyer was disbarred
15 from the Federal Court because of his actions toward the
16 Court and his actions during that litigation?

17 A. Yes, I am aware of that.

18 Q. And are you also -- did you have the opportunity to
19 read the Complaint in this matter?

20 A. I believe so, yes.

21 Q. And you're aware --

22 MS. SCHLUETER: Objection, Your Honor, as to the
23 underlying Indictment in this case is what is going to
24 control. The government is trying to go into a Complaint
25 that includes very vulgar, racist, inappropriate language

1 which is beyond discussion. However, it is not relevant to
2 this matter and the prejudice certainly outweighs any
3 probative value of any language included in that Complaint,
4 Your Honor.

5 MR. KENNEDY: Your Honor, if I may respond.
6 Obviously, it has to do with his knowledge, with this
7 witness' knowledge of the defendant, what he may have
8 learned post the Indictment and whether or not that had any
9 affect upon his belief as to whether or not Mr. O'Dwyer was
10 a danger or not a danger. I have a right to inquire as to
11 how that may bias or not bias his testimony.

12 THE COURT: I am going to overrule the objection
13 and allow it.

14 BY MR. KENNEDY:

15 Q. You said that you had an opportunity to read through
16 the Complaint itself?

17 A. Yes. Briefly.

18 Q. So you're aware of all of those communications that Mr.
19 O'Dwyer -- well, I don't want to say alleged. The
20 communications that are contained in the Complaint, isn't
21 that correct?

22 A. I am -- I have briefly read the contents of the
23 Complaint and I am aware of what it reflects. Yes.

24 Q. And as far as those communications, are you aware of
25 the fact that Mr. O'Dwyer on previous testimony in front of

1 Judge Moore admitted to making those communications?

2 A. I am not aware of that. But if you say so.

3 Q. And with those communications, you said that you didn't
4 have any evidence before as to whether any believe in your
5 association with Mr. O'Dwyer that he was capable of any type
6 of dangerous actions prior to Hurricane Katrina when you did
7 know Mr. O'Dwyer personally. Sorry if that's not real
8 clear. A. Yeah, I am not sure I know what the question is.

9 Q. Sure. Let me try that again. You previously testified
10 that you're not aware of any dangerousness on the part of
11 Mr. O'Dwyer during your association with him, isn't that
12 correct?

13 A. That's correct.

14 Q. But you did not know him in this time period where he
15 made all those complaints and communications to the Court,
16 isn't that correct?

17 A. Well, certainly I knew him. I can't say that I was in
18 touch with him.

19 Q. You had no association with him at all?

20 A. We had no exchange of views, we didn't talk or
21 correspond.

22 Q. No communication with him at that point?

23 A. That's correct.

24 Q. So whatever he was doing in that time period from 2005
25 post-Katrina, you had no knowledge whatsoever as far as his

1 communications that were being made to the Court or any
2 other person, do you?

3 MS. SCHLUETER: Objection, Your Honor. That's
4 misleading. In fact he said he followed it very closely.

5 MR. KENNEDY: No personal. The key being
6 personal knowledge, Your Honor.

7 THE COURT: With the clarification you're asking
8 about personal knowledge.

9 BY MR. KENNEDY:

10 Q. You had no personal knowledge of that, isn't that
11 correct?

12 A. Mr. O'Dwyer and I have, to the best of my recollection,
13 had no personal contact since Hurricane Katrina.

14 Q. So, again, Mr. O'Keefe, everything you're basing your
15 opinion on is up to the point of Hurricane Katrina and your
16 personal contact with him up to that point?

17 A. That's correct.

18 MR. KENNEDY: Thank you. I have no further
19 questions.

20 **REDIRECT EXAMINATION**

21 BY MS. SCHLUETER:

22 Q. Mr. O'Keefe, some reference was made to psychiatric
23 treatment. If you were to be advised that post-Katrina Mr.
24 O'Dwyer, like many people, suffered depression, would that
25 cause you to change your opinion?

1 A. No, ma'am.

2 Q. Would the fact that he went to a licensed psychiatrist
3 and was prescribed Paxil and taking it, 75 milligrams a day,
4 to address the problem post-Katrina of depression, would
5 that cause you to change your opinion?

6 A. No, ma'am.

7 Q. Throughout the duration of your knowledge of Mr.
8 O'Dwyer, are you familiar with where he lives?

9 A. I believe on St. Charles Avenue uptown somewhere.

10 Q. And he has lived in that area for how many years?

11 A. As long as I can recall knowing him.

12 Q. He has strong ties to this community?

13 A. Oh, that's absolutely true. Yes, ma'am.

14 Q. Both by way of professional associations and personal
15 associations?

16 A. Yes, ma'am.

17 Q. There was an indication that he had been disbarred by
18 the Federal Court. That ruling was discussed, was it not,
19 by other members of our legal community?

20 A. I am sure it was broadly chatted about, yes.

21 Q. But there has been no permanent disbarment by the Bar
22 Association of the State of Louisiana that you are aware of?

23 A. Not to my knowledge; no, ma'am.

24 Q. In fact, that disbarment that was referenced, if it had
25 an order that Ashton O'Dwyer could not enter the Federal

1 Court without a Federal Court Order, would that increase
2 your comfort level if he had followed meticulously that
3 order?

4 MR. KENNEDY: Your Honor, I object. First of
5 all, that's outside the course of cross-examination. It was
6 not brought up on direct examination. Therefore, it's
7 irrelevant.

8 MS. SCHLUETER: No, Judge, the government brought
9 up the question of disbarment by the Federal Bar and I am
10 simply plumbing that field.

11 MR. KENNEDY: I didn't talk anything at all about
12 whether or not he had access to the Courts, Judge.

13 MS. SCHLUETER: Well, Your Honor, for the Court's
14 record --

15 THE COURT: I think he opened the door. You can
16 go ahead and answer.

17 BY MS. SCHLUETER:

18 Q. In the readings or the conversations that you have had
19 with other people in reference to that ruling by the Federal
20 Court that he not come into the Federal Court, have you
21 heard that he was in any way volatile of that order?

22 A. No, ma'am. As a matter of fact, it would surprise me
23 if at any time he wasn't strictly and scrupulously intent
24 upon following exactly the limits that were imposed.

25 Q. Now the Complaint that was referenced by the

1 government, you did have an opportunity to read it?

2 A. Yes, ma'am.

3 Q. And the supporting Indictment that followed, you had an
4 opportunity to read that as well?

5 A. Are you referring to an affidavit, ma'am?

6 Q. No. It's a Federal Grand Jury Return that indicted Mr.
7 O'Dwyer for questionable language in an e-mail to an
8 employee in the Federal Court system.

9 A. I think I remember that document.

10 Q. That document referenced his efforts -- you are
11 aware, are you not, that he was in bankruptcy?

12 A. Yes, ma'am, I believe I knew that.

13 Q. In bankruptcy as a result of a federal order concerning
14 a default judgment in which he became the debtor for an
15 expert witness?

16 MR. KENNEDY: Your Honor, I would object to just
17 the leading nature. The continuing leading nature of the
18 question and testimony in the part of the questions.

19 THE COURT: Sustained. It's leading.

20 BY MS. SCHLUETER:

21 Q. Are you aware that he was in bankruptcy?

22 A. Yes, ma'am.

23 Q. I know you are not a practitioner in that area, but the
24 e-mail that you -- that caused Mr. O'Dwyer to be arrested
25 referenced authorization or permission from the Court to

1 receive his medication for depression, did it not?

2 MR. KENNEDY: Judge, again, I am going to renew
3 my objection. We're getting far afield from my cross-
4 examination. There was nothing at all in my cross-
5 examination about the Indictment or the contents of the
6 Indictment whatsoever at all. And this is going beyond
7 redirect. It's going into all new fields.

8 MS. SCHLUETER: Your Honor, we're talking about a
9 psychiatric illness that was referenced. I am simply tying
10 it into the Indictment which was his steadfast and
11 meticulous following of Court orders seeking permission to
12 buy his psychiatric medications. I think it's --

13 THE COURT: It's a great argument but I am not
14 sure it's appropriate for this witness. I am going to
15 sustain the objection.

16 MS. SCHLUETER: No further questions, Judge. Oh,
17 one, Judge.

18 BY MS. SCHLUETER:

19 Q. Would it give you a better comfort level knowing Mr.
20 O'Dwyer's interest in firearms that the government executed
21 a search warrant and removed every firearm from his home?

22 A. To be honest with you, counsel, I think it would be
23 irrelevant to me. I don't think that Ashton's interest in
24 firearms ever extended to using them on human beings.

25 MS. SCHLUETER: Thank you. Judge, my second

1 witness would be Mr. Wiedemann.

2 THE CLERK: Larry Wiedemann. Raise your right
3 hand, please.

4 **LAWRENCE WIEDEMANN, WITNESS, SWORN**

5 THE CLERK: Please state your name and spell it
6 for the record.

7 THE WITNESS: Lawrence Wiedemann. L-A-W-R-E-N-C-E
8 W-I-E-D-E-M-A-N-N.

9 **DIRECT EXAMINATION**

10 BY MS. SCHLUETER:

11 Q. Mr. Wiedemann, how are you employed? Or how do you
12 earn a living?

13 A. I am an attorney. My firm is Wiedemann and Wiedemann
14 on Baronne Street in New Orleans.

15 Q. And what is the address?

16 A. 821 Baronne.

17 Q. And what is your position with Wiedemann and Wiedemann?

18 A. I am the senior partner.

19 Q. How long have you been practicing law, sir?

20 A. Since 1955.

21 Q. How long have you -- do you in fact know Mr. O'Dwyer?

22 A. Yes, I do.

23 Q. Mr. Wiedemann, did you contact our office in reference
24 to this question of Mr. O'Dwyer's detention?

25 A. I believe y'all contacted -- I don't remember whether

1 I contacted you or you contacted me, but we did get in
2 contact.

3 Q. And I believe you met with an investigator ultimately
4 in our office?

5 A. I did. Mr. Cassey.

6 Q. And have you had any contact in those 25 years, in the
7 last five years following Hurricane Katrina with Mr.
8 O'Dwyer?

9 A. Yes. Ashton moved into my office I believe sometime in
10 2006 after the hurricane. He had had an office at One Canal
11 Place and we both were involved in the barge litigation and
12 he was having some problems I believe financially and I had
13 space in my office, so he came into my office sometime in
14 2006. Not working for my firm, but I gave him office space.

15 Q. And out of that professional relationship, did there
16 forge a friendship?

17 A. Yes.

18 Q. As a result of that professional and personal
19 relationship, have you been in a position to offer to the
20 Court an opinion about whether or not Ashton O'Dwyer should
21 be detained or released from custody?

22 MR. KENNEDY: Judge, again, I'm going to renew my
23 previous objection. Ms. Schlueter is asking him to testify
24 to the ultimate issues. Certainly, again, the same thing,
25 facts and circumstances surrounding information that he

1 knows. But ultimately it's up to the Court to decide
2 whether or not he should be detained. I don't think that
3 this witness can testify to that.

4 THE COURT: You want to rephrase the question?

5 BY MS. SCHLUETER:

6 Q. You saw Mr. O'Dwyer since 2006 on somewhat of a regular
7 schedule?

8 A. On pretty much a daily basis. Although he didn't work
9 for me, he was upstairs on the second floor in my office. I
10 would see him coming and going. He would stop and we talked
11 just about every day. And more often sometimes involving
12 the barge litigation on which I was on the Claim Committee.

13 Q. And during this period of time, that was after he was
14 no longer associated with his previous firm in Canal Place,
15 is that correct?

16 A. Yes.

17 Q. Were you aware, sir, that he was subsequently arrested
18 and detained as a result of an e-mail?

19 A. Yes.

20 Q. In your experience, having dealt with Mr. O'Dwyer, have
21 you ever seen him raise his hand in violence or in
22 aggression to anyone?

23 A. Never.

24 Q. Have you ever heard, in your years of experience with
25 him in our legal community, of hearing that he had exerted

1 any effort towards violence?

2 A. No. Ashton was an aggressive advocate and like most
3 advocates and he was outspoken. But he was never -- he
4 was never violent. And quite frankly if I thought that he
5 was violent, he would not have been in my office. His
6 office is still in my office although he hasn't been there
7 since January.

8 Q. Has he ever gone to your home?

9 A. Yes.

10 Q. You invited him into your home?

11 A. Yes, I have.

12 Q. If you had thought him a danger, would you have done
13 so?

14 A. No.

15 MS. SCHLUETER: Thank you, Mr. Wiedemann.

16 **CROSS-EXAMINATION**

17 BY MR. KENNEDY:

18 Q. Just to make sure it's still morning. Good morning,
19 Mr. Wiedemann. My name is Greg Kennedy.

20 A. Good morning.

21 Q. I just have a few questions for you, sir. You said
22 that Mr. O'Dwyer came to your office in 2006, is that
23 correct?

24 A. That's my recollection, about that.

25 Q. He would kind of come and go as he pleased, I guess?

1 A. Yes. He didn't work with me. He had his own office
2 and all I did, I furnished him with an office and the
3 receptionist. But he didn't work for me. He came and went.

4 Q. And you referenced previously, you said that he was no
5 longer with his firm on Canal Street, is that correct?

6 A. Well, on Canal Street he wasn't really with a firm. He
7 had left Lemle & Kelleher and was working on his own. As I
8 recall, they had sort of a cooperative office where they had
9 a secretary and a number of people.

10 Q. Are you familiar with why he left Lemle & Kelleher?

11 A. I am not certain as to why, only what I have heard from
12 him or other people.

13 Q. Well, could you explain to the Court why he left,
14 please, to the best of your knowledge?

15 A. Well, I don't know. I don't frankly know whether he
16 left voluntarily or whether he left because he was
17 discharged. I don't know what the technical aspect of it
18 was. I know he left. He was a partner for years and he
19 left.

20 Q. He was a partner and then he wasn't?

21 A. Yes. Well, I mean --

22 Q. And then you said that he came to work for you in 2000
23 -- or worked in your office in 2006. I think you
24 previously said the last time you even saw him in the office
25 would be in January. That would be a year ago?

1 A. No. No. When he got -- when he got arrested is the
2 last time I saw him.

3 Q. And were you aware, during this time period in the last
4 three or four years or the last several years, that he was
5 sending communications, sending e-mails to the Federal
6 District Court members?

7 A. No, I was not aware.

8 Q. You had no knowledge of that?

9 A. No. I have become somewhat familiar.

10 Q. So whatever he was doing in his private life, you had
11 no knowledge of, do you?

12 A. No. I mean, I don't have anything to do with his
13 private life. I know pretty much what he did with his
14 professional life.

15 Q. Exactly. That's the point I'm getting to. You know
16 Mr. O'Dwyer professionally?

17 A. I knew him professionally and I knew him personally.
18 He's been to my house. But most of my relationship has been
19 professionally on a day-by-day basis. Insofar as the barge
20 litigation, he would come to meetings we would have in the
21 office.

22 Q. When was the last time that you associated with Mr.
23 O'Dwyer personally?

24 A. Well, he was in my office up until the time he got
25 arrested.

1 Q. But I am saying outside the office, personally going to
2 dinner with him, hang, you know, spend an evening with him?

3 A. Well, I didn't go to dinner with him. He has been to
4 my house and I have been out to lunch with him. You know,
5 associated with him in that fashion. I didn't know his
6 wife. I was not -- but I knew him for years.

7 Q. So it's fair to say the two of you are not social
8 friends, you're professional friends?

9 A. Well, we were primarily professional friends, but we
10 also were social friends.

11 Q. And when was the last time you were at his house?

12 A. Oh, I picked him up at his house a number of times
13 because he didn't -- I don't think he had a car. I would
14 pick him up sometimes and drop him off at his house.

15 Q. Well, I'm asking, Mr. Wiedemann, when was the last time
16 you were in his house, spending time at his house?

17 A. I don't believe I have ever been in his house.

18 Q. And as far as going with him, see whatever he had in
19 his house, or whatever he did in his house, you have no
20 knowledge of, do you?

21 A. No.

22 Q. Whatever he did outside of your presence as far as, you
23 know, communications or personal interaction with any
24 Federal Court Judges, you have no knowledge of that as well,
25 do you?

1 A. I have no knowledge of what he did when he is not in my
2 presence. I know what he did when he was in my presence.
3 And I have a way of -- at least I would expect that I
4 would have some realization of what his mannerisms and the
5 way he acted, you know.

6 Q. And were you aware of any suits that he filed against
7 any members of law enforcement, the Courts alleging personal
8 injury to him?

9 A. I have never looked at a lawsuit. I know that he --
10 I believe that he filed a suit involving his arrest.

11 MS. SCHLUETER: Objection, Your Honor. There is
12 some negative inference in his filing a lawsuit. In fact,
13 that's proper recourse to the Courts in reference to a
14 violation that he felt he had suffered. It's more evidence
15 that he addresses the matters legally.

16 MR. KENNEDY: Your Honor, I am examining his
17 knowledge of Mr. O'Dwyer's actions and what he has done in
18 the last three or four years as far as any -- obviously,
19 this whole case centers around legal action, legal
20 communications. I am trying to find out what this witness'
21 knowledge is regarding the lawsuits.

22 THE COURT: I am going to allow you to ask him
23 about his personal knowledge. But if you would try to
24 refrain from testifying about the contents of the lawsuit
25 while you ask what he knows.

1 MR. KENNEDY: I will. Thank you, Your Honor.

2 BY MR. KENNEDY:

3 Q. Are you aware of the contents of that lawsuit, sir?

4 A. I am aware that he claimed that he was abused when he
5 was in custody. That they shocked him with cattle prodders
6 and he was quite upset about how he had been treated in
7 custody and why he was arrested.

8 Q. And you were aware in subsequent communication that he
9 made regarding that lawsuit to members of the Federal Bar?

10 A. I am not aware of that.

11 MR. KENNEDY: That's all the questions I have.
12 Thank you, Mr. Wiedemann.

13 THE WITNESS: Thank you.

14 **REDIRECT EXAMINATION**

15 BY MS. SCHLUETER:

16 Q. You were with him eight hours a day, a regular business
17 day --

18 A. Yes.

19 Q. -- since Katrina?

20 A. Yes.

21 Q. Did you ever see him speaking to imaginary people? Did
22 you ever see him hearing voices? Did you ever see him
23 acting in a way that was bizarre and peculiar or that would
24 have caused you any concern for yourself or your employees?

25 A. No. If I had seen something like that, I have an

1 office with secretaries and workers, I certainly wouldn't
2 have somebody like what you're describing in my office if I
3 thought that they were a danger to my people or myself or
4 anybody else.

5 Q. You gave him a ride to and from work?

6 A. Sometimes. Not every day. But he didn't have a car
7 for a period of time and he wouldn't ask me to pick him up
8 every day. But if he were going to some function, the Court
9 or otherwise, I would pick him up sometimes and drop him
10 off.

11 Q. Would you have ever had any reluctance to go into his
12 home if the need so required?

13 A. No.

14 MS. SCHLUETER: Thank you very much. I would
15 like to call Mr. Dwight LeBlanc.

16 THE CLERK: Raise your right hand, please.

17 **J. DWIGHT LEBLANC, JR., WITNESS, SWORN**

18 THE CLERK: Please state your name and spelling
19 for the record.

20 THE WITNESS: J. Dwight LeBlanc, Jr. D-W-I-G-H-T
21 L-E-B-L-A-N-C. J-R.

22 **DIRECT EXAMINATION**

23 BY MS. SCHLUETER:

24 Q. Mr. LeBlanc, would you please state your professional
25 association with your law firm?

1 A. Yes. I am with the law firm of Chaffe McCall Phillips
2 -- well, excuse me. Chaffe McCall. We've changed our
3 name. Q. And do you know Ashton O'Dwyer?

4 A. I have known Ashton since I think he first started at
5 Lemle. I might have known him very slightly before that.
6 But I knew him when he first started practicing. And I had
7 had several cases with him over the years.

8 Q. That professional relationship that you had with Ashton
9 O'Dwyer over this period of time involved an adversary
10 position, or were you on the same side, or were you
11 representing co-defendants?

12 A. No. He was with Lemle & Kelleher and we were always -
13 - I don't think we ever had a case where we were sort of on
14 the same side. Most, virtually all of the cases we were
15 adversaries.

16 Q. And in that capacity, would you say that he
17 aggressively represented the rights of his clients?

18 A. Ashton was, in my opinion, sometimes too aggressive.
19 He was always very detailed. He was an excellent lawyer.
20 He sometimes caused other counsel to become upset because of
21 his dogging this over particular matters.

22 Q. And those efforts that he made too aggressively to
23 represent his client, were all of those efforts within the
24 scripture of the Code of Procedure and the laws that define
25 what is right and what is wrong?

1 A. Ashton, we have had some very contentious depositions
2 over the period of time, particularly in one case, the Inca
3 Tupac Yupanqui, and Ashton had never either by word or by
4 actions in any way threatened me or indicated in any way
5 that there would be physical bodily harm to me.

6 Q. To that end, you have come to court and I am certain it
7 is with a certain caution that you would offer an opinion
8 concerning whether or not you feel Ashton is a danger to
9 himself or others if released from custody, am I correct?

10 A. Yes. I had trepidations about that. In fact, I
11 talked, as I told you when you called me, that I had to
12 clear it through my managing partner because of the
13 celebrity status of this matter. But I thought that it was
14 right that I should appear and testify.

15 Q. In order to prepare yourself to give an opinion of such
16 importance, did you have an opportunity to speak with
17 Ashton?

18 A. Yes, it was -- I think I had talked with Ed of your
19 office and I told him that if I was going to testify or be
20 asked to testify, that I would want to talk to Ashton. So I
21 went out, I think it was Monday of this week. It was either
22 Monday or Tuesday of this week and sat down and chatted with
23 Ashton at that time.

24 Q. Did anything that transpired during your meeting --
25 where was he when you met him, by the way?

1 A. Well, it was in St. Bernard Parish Jail and they let us
2 use the chapel that's part of that facility.

3 Q. You were not separated by glass or bars from Ashton
4 O'Dwyer?

5 A. Oh, no. No. Absolutely not.

6 Q. At any time during your discussion with Mr. O'Dwyer,
7 did you feel that he was dangerous?

8 A. Absolutely not. In fact, he was very lucid. Had some
9 papers that he was discussing with me and he obviously was
10 very competent. And in my opinion the old Ashton.

11 Q. He was -- you are aware, of course, that he was
12 arrested on January 29th?

13 A. It's hard to live in New Orleans and not know that,
14 particularly if you're in the legal community.

15 Q. And prior to that time, he was living in this area? Do
16 you know where he lived?

17 A. Well, I know he lived on St. Charles Avenue because
18 that's where he and his wife Kitty lived.

19 Q. He has very strong ties to the community?

20 A. Absolutely.

21 Q. How would you describe those ties? It's by children,
22 by spouse, by friends? Could you give us some examples of
23 the strength of his ties to this community?

24 A. Well, I know, for instance, that he was on the Board of
25 Trade and I know he did a lot of other civic type things.

1 And as far as I know he was always an excellent member of
2 the Board of Trade.

3 Q. Are you aware of his family associations? You
4 mentioned his wife. Do you know his wife?

5 A. Yes. In fact, shortly after the storm and, of course,
6 everybody had at least read the newspaper articles about the
7 situation, I was, I think it was the first time I came back
8 to the City I was uptown, New Orleans, thought I would just
9 knock on the door. And he and Kitty were there and we sat
10 down and chatted and had a very congenial conversation. It
11 was obvious that he was very distraught about what had
12 occurred after Katrina. And other than that he was okay. I
13 mean, he was -- not that there was anything wrong with
14 him, but he was obviously very upset with what they had done
15 with him after Katrina when they came on his property and
16 removed him.

17 Q. You made reference to the Board of Trade. Are you
18 familiar with Mr. Gene Hymel, the past Director of the Board
19 of Trade?

20 A. Absolutely. Gene and I were on the Transportation
21 Committee of the World Trade Center for as long as I have
22 been a member of the World Trade Center and Gene is a very
23 respected member of the community.

24 Q. Is he present in the courtroom?

25 A. Yes, he is. Or he was. There. Yes, he is still here.

1 Q. To your knowledge, is there any criminal conviction
2 that you are aware of that Ashton O'Dwyer has been convicted
3 of?

4 A. I would be shocked. Ashton is a stickler for the law.
5 He was a lawyer and he pushed any law to the utmost but it
6 would never violate any law. That doesn't mean that he is
7 the most agreeable person.

8 MS. SCHLUETER: I understand. One moment,
9 please. Thank you. Please answer the questions of the
10 prosecutor.

11 **CROSS-EXAMINATION**

12 BY MR. KENNEDY:

13 Q. Good morning, Mr. LeBlanc. My name is Greg Kennedy. I
14 just have, again, a few questions.

15 You said that at the time that you had an opportunity
16 to speak to Mr. O'Dwyer shortly after his arrest after
17 Hurricane Katrina, is that correct?

18 A. I don't know if you would say it was shortly because
19 Katrina was, what, late August, as I recall. And I don't
20 think, even though our firm got back into the City about two
21 weeks after that to get some of our computer records out, I
22 don't believe it was at that time that I saw him. I want to
23 say it was probably a month or two after Katrina. Whenever
24 we could come back. Because I did come back by boat one
25 time to get things out of my home but I don't think it was

1 during that time that I saw him.

2 Q. Approximately a month or two. And I am not holding you
3 obviously to any particular date. Approximately a month or
4 two?

5 A. A month, two, three months, whatever it is when you
6 could come back into the City.

7 Q. In that time frame. But when you did speak to him, you
8 said that he was still very upset and distraught I believe
9 were your words.

10 A. Well, if I said distraught, he was very upset. And
11 distraught, by the word distraught I do not mean distraught
12 in the sense that he was after anybody or anything of that
13 nature. He simply thought that he had been mistreated and
14 he could not understand why he had been treated like that
15 when he had been on his own property. Because needless to
16 say when we were chatting I asked him about it.

17 Q. Okay. But I think you specifically said he was upset
18 at them. Who is them?

19 A. Well, whoever it was who came onto his property and
20 removed him from his property. I assume that's either the
21 State or City Police or the FBI. I don't know whom it was,
22 but it was some law enforcement.

23 Q. At that point, did he tell you what action he planned
24 to take against them?

25 A. No. He said that he was filing suit. In fact, I think

1 he had already filed a suit, if I am not mistaken, by that
2 time.

3 Q. And you said that this conversation took place with he
4 and his wife there?

5 A. Oh, yes.

6 Q. And is that the last time that you had a personal
7 conversation with Mr. O'Keefe -- or excuse me -- Mr.
8 O'Dwyer?

9 A. No. No. No. After that, Ashton -- I mean, I will be
10 perfectly candid. I felt very sorry for him because his
11 situation was such that I don't think he could -- he was
12 just so upset about this thing that he had blinders on about
13 the suit and about what took place thereafter. And I know
14 we went to lunch together at least two or three times
15 thereafter, I can't tell you the exact number, because I
16 told Ashton quite bluntly that, I said, "Ashton I said you
17 have just got to put this behind you and move on."

18 Q. But he wasn't doing that, was he?

19 A. Well, you know, he -- I don't think he will ever give
20 up the thought that he was mistreated and improperly treated
21 after the storm. I don't think that's in Ashton's makeup.
22 And I must say if it happened to me I may be of like mind.

23 Q. But, again, you're getting Mr. O'Dwyer's side of the
24 story, isn't that correct, as to what took place?

25 A. Well, I mean, you know, I can't believe what I read in

1 the papers but I read the papers about what was going on. I
2 mean, it was I think mentioned in the Wall Street Journal.
3 I think there was an interview on a TV program.

4 Q. But those were interviews with Mr. O'Dwyer and what Mr.
5 O'Dwyer was saying and the accusations against him, isn't
6 that correct?

7 A. Oh, absolutely. I did not go talk to the police or
8 anyone else.

9 Q. Right. So you had an opportunity to go to lunch, to
10 meet Mr. O'Dwyer, and Mr. O'Dwyer would basically tell you
11 all the terrible things that happened to him, isn't that
12 correct?

13 A. No, it wasn't so much the terrible things that were
14 happening to him at that time. It was more the situation
15 that he was concerned with the legal system and thought that
16 he was getting a bad deal in the legal system.

17 Q. Mr. LeBlanc, it's fair to say that you kept in touch
18 with him because you were concerned about his deteriorated
19 condition?

20 A. No, I was not concerned.

21 MS. SCHLUETER: Objection, Your Honor. Leading.
22 Misleading. I'm sorry.

23 THE COURT: Sustained.

24 MR. KENNEDY: Judge, Mr. LeBlanc testified before
25 that he was concerned about Mr. O'Dwyer and that's the

1 reason for the continuing lunches. I am merely exploring
2 what was the basis for his concern and what formed his
3 opinion.

4 THE COURT: I understand. I think instead of
5 putting words in his mouth, why don't you ask him that
6 question.

7 MR. KENNEDY: Okay.

8 BY MR. KENNEDY:

9 Q. You went to lunch with him because you were concerned
10 about his situation?

11 A. Well, you know, Ashton had been with a prominent law
12 firm of Lemle & Kelleher. He was, in my opinion, one of the
13 best or best lawyers in their admiralty section at Lemle and
14 he was now getting all this horrible press. And I don't
15 know if you have ever met with the press after something
16 that has happened, but a lot of times they can mistrue your
17 words and I was concerned for him because maybe these people
18 were taking advantage of him and taking advantage in these
19 articles that they were writing.

20 Q. So, Mr. LeBlanc, you're aware of the fact that after
21 the storm he was no longer a partner at his law firm of
22 Lemle Kelleher, isn't that correct?

23 A. Well, you know, this is a small community. You're a
24 New Orleanian I am sure you know that everyone in the legal
25 community knows what's going on. I mean, I am a personal

1 friend with Chuck Tally, the person who came and talked to
2 him. I mean, Chuck and Allison I have known for years.

3 Q. Well, I understand that. I am just asking, just
4 trying, yes or no, if you're aware of the fact that he is no
5 longer a partner after the storm?

6 A. Absolutely.

7 Q. And you're also aware of the fact that after that he
8 filed for personal bankruptcy, isn't that correct?

9 A. Well, I did not know that actually until I met with
10 Ashton I think it was Monday, Tuesday of this week.

11 Q. Were you aware of the fact that he and his wife have
12 divorced?

13 MS. SCHLUETER: Objection, Your Honor.
14 Misleading and incorrect.

15 MR. KENNEDY: I am trying to determine. That's
16 what Mr. O'Dwyer has testified to or stated in his previous
17 hearings.

18 MS. SCHLUETER: Your Honor, the proper way to
19 phrase that, if it isn't misleading, is what is his marital
20 status.

21 MR. KENNEDY: Judge, I am going by the basis of
22 what was contained in transcripts before. Mr. O'Dwyer's own
23 statements regarding his divorce from his wife and his
24 property settlement with his wife and what happened to that
25 money and therefore the fact that it left him destitute.

1 MS. SCHLUETER: Well, Your Honor, there can be a
2 voluntary separation as opposed to legal separation as
3 opposed to divorces. In fact, they are and still remain
4 married.

5 THE COURT: Ask if he is aware of his marital
6 status.

7 BY MR. KENNEDY:

8 Q. Are you aware of Mr. O'Dwyer's marital status?

9 A. I was not aware of his marital status. I knew that he
10 and Kitty were not living together before Monday or Tuesday.
11 But Monday or Tuesday when I met with him, he told me that
12 they were separated but there had been no legal papers
13 filed.

14 Q. Are you aware of any financial settlement Mr. O'Dwyer
15 reached with his either ex or current wife?

16 A. I believe -- I was not aware of any financial --

17 MS. SCHLUETER: Objection. Relevance, Your
18 Honor.

19 MR. KENNEDY: Your Honor, it is relevant because it
20 goes to whether or not Mr. O'Dwyer's condition both
21 mentally, financially and physically and all the factors,
22 whether or not this witness has any knowledge.

23 THE COURT: You can answer the question.

24 MR. KENNEDY: Thank you.

25 THE WITNESS: I'm sorry, would you repeat the

1 question.

2 BY MR. KENNEDY:

3 Q. Yes. Are you aware of any financial settlement that
4 Mr. O'Dwyer reached with his --

5 A. I was not aware of any financial settlement that Ashton
6 had reached until I met with him on Monday, Tuesday of this
7 week and he told me that he had given his wife a certain
8 amount of money and he had suggested to her and then to
9 whoever she was going to for financial help that she should
10 not put it in the stock market because he thought the market
11 was going to cradle.

12 Q. And you are aware of a communication that he had with
13 his either wife or ex-wife's attorney regarding that money?

14 A. I am not aware of it. I have heard about it but I have
15 not seen the actual communication or whatever it was.

16 Q. So you personally did not read the Complaint against
17 Mr. O'Dwyer?

18 A. The Complaint? I think I read the count that was --
19 that I think is before the Court and why he was
20 incarcerated.

21 Q. The Indictment against Mr. O'Dwyer but not --

22 MS. SCHLUETER: Excuse me. I didn't hear that.

23 MR. KENNEDY: The Indictment.

24 THE COURT: He said he read the count.

25 MR. KENNEDY: Right.

1 BY MR. KENNEDY:

2 Q. I am trying to clarify that would be the Indictment.

3 A. And I am a lawyer but I am not a criminal lawyer. I
4 read something that had a Count 1 and I assumed that's the
5 Indictment.

6 Q. But no other documents underlying the basis of Mr.
7 O'Dwyer's arrest?

8 A. No, that's not quite correct. I think this morning I
9 was given a copy of, I believe of an affidavit. I think it
10 was from an FBI person, Your Honor, but I didn't really pay
11 attention to who made it. I just sort of skimmed through it
12 very quickly.

13 Q. And when was the last time that you had personal
14 contact with Mr. O'Dwyer prior to your meeting in jail
15 earlier this week?

16 A. I would say probably six months to a year. I can't
17 give you an exact date.

18 Q. And how many times would you say that you met with Mr.
19 O'Dwyer in the past three to four years?

20 A. I think I stated previously that I thought it was three
21 or four times. But I am not certain.

22 Q. And I think at the beginning of your direct testimony
23 you said that Mr. O'Dwyer had a reputation or a legal
24 demeanor of maybe being too aggressive or being too dogged
25 in his approach toward cases?

1 A. No. I think you're misstating what I testified.

2 Q. I --

3 A. No, I think you're misstating. I said Ashton was very
4 aggressive and Ashton had a tendency to aggravate lawyers
5 considerably who did not know him and did not know that
6 Ashton -- Ashton is one of the people if there is a point
7 he will carry that point, in my opinion, sometime to the
8 extreme.

9 Q. I think I wrote down what you said. You said he would
10 go up too far. Isn't that correct?

11 A. No. If I said that, I misspoke. I think that what it
12 was, was that the attorney that he was giving trouble to
13 thought he went too far.

14 MR. KENNEDY: I have no further questions. Thank
15 you.

16 THE COURT: Redirect?

17 MS. SCHLUETER: No, Your Honor. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MS. SCHLUETER: Judge, could we please call Dr.
21 Zimmermann to the stand?

22 MR. LEBLANC: Your Honor, is it all right to stay
23 in the courtroom?

24 THE COURT: Any objection to him remaining in the
25 courtroom?

1 MR. KENNEDY: No, Your Honor.

2 THE CLERK: Please raise your right hand.

3 **DR. MARC L. ZIMMERMANN, WITNESS, SWORN**

4 THE CLERK: Please state your name and spelling
5 for the record.

6 THE WITNESS: Marc L. Zimmermann. Marc is
7 spelled M-A-R-C. Zimmermann is spelled, Z-I-M-M-E-R-M-A-N-N.

8 **VOIR DIRE EXAMINATION**

9 BY MS. SCHLUETER:

10 Q. Dr. Zimmermann, you prepared and presented a curriculum
11 vitae in reference to your professional accomplishments
12 which I have given to the Court and given to the prosecutor.
13 Could you explain what education, specific education you
14 have that would prepare you to appear as an expert in this
15 case today to testify with reference to the question of
16 whether or not, a limited question of whether or not Mr.
17 O'Dwyer is a danger to himself or others.

18 A. I have a Bachelor of Science Degree from North Texas
19 State University which I received in 1967. I have a Master
20 of Education Degree in Counseling Psychology from Our Lady
21 of the Lake University in San Antonio which I received in
22 1971. I have a Master of Science Degree in Psychology which
23 I received from Texas A&M University of Commerce in 1976. I
24 have my Doctor from the same university in 1977. And I have
25 a post-doctoral master's degree which I received in 1999

1 from the California School of Professional Psychology which
2 is affiliated with Alliant University. And I am not sure
3 which name they go by at this point.

4 Q. Sir, in reference to your being then a licensed
5 psychologist, did you have any prior experience in opining
6 on the same type of question presented today to any other
7 Court?

8 A. Yes. I have been asked by the Courts, usually the
9 State Courts. I think always the State Courts to opine as
10 to someone's dangerousness and their competency.

11 Q. Now when you indicated by the Court, have you been
12 selected as the doctor or psychologist to examine
13 individuals whose dangerousness is being questioned?

14 A. Yes, ma'am.

15 Q. So it is a Court appointment, is it not?

16 A. Yes, ma'am.

17 Q. And you are paid by the Court, generally?

18 A. I believe so. But I honestly from the last 20 years
19 don't know who pays what. My secretary handles that.

20 Q. And what Courts have you been asked to offer expert
21 opinions in?

22 A. Mostly the 19th Judicial District. I have also -- I
23 think the 18th as I recall. And I've forgotten which
24 District it is but Tangipahoa Parish.

25 Q. And those are State Courts?

1 A. Yes, ma'am.

2 Q. In addition to that, have you ever been qualified to
3 testify as an expert in any Federal Court?

4 A. I have.

5 Q. And what Courts might that be?

6 A. I believe it's the Middle District in Baton Rouge. And
7 I have testified in Georgia. And I have been to this
8 courthouse but I don't know if I had actually testified.

9 Q. The tests that a psychologist would run in order to
10 make this determination of dangerousness, are you familiar
11 with those tests?

12 A. Yes, ma'am.

13 Q. What tests would those be?

14 A. They would be what we call personality tests.

15 Q. And what battery of tests might be encompassed with a
16 personality test?

17 A. Well the old standby is the Minnesota Multiphasic
18 Personality Inventory. One might also use the Personality
19 Assessment Inventory. One might use the Milan Multiaxial
20 Clinical -- pardon me. The Milan Clinical Multiaxial
21 Inventory. There are others. It just depends on the one
22 that the psychologist prefers. When I do these kinds of
23 things, I also use projective tests such as the Rorschach,
24 the Thematic Apperception Test and again the psychologist
25 selecting it would choose the one that they are most

1 confident in.

2 MS. SCHLUETER: Your Honor, I would offer Dr. --

3 BY MS. SCHLUETER:

4 Q. How many times have you administered those tests?

5 A. I have been licensed and in practice for over 30 years.
6 So hundreds, if not thousands.

7 MS. SCHLUETER: Judge, I would offer Dr.
8 Zimmermann as an expert in the field of Psychology and the
9 Administration of Tests to determine personalities
10 specifically to deal with the issue of dangerousness.

11 MR. KENNEDY: I have no objection.

12 THE COURT: He is accepted.

13 MS. SCHLUETER: Thank you.

14 **DIRECT EXAMINATION**

15 BY MS. SCHLUETER:

16 Q. In conjunction with your professional profession, did
17 you have an opportunity to confer with a psychiatrist in
18 reference to Mr. Ashton O'Dwyer?

19 A. Yes, ma'am, I did.

20 Q. And who was that psychiatrist?

21 A. Dr. Mallik.

22 Q. And between the psychologist and psychiatrist, the
23 battery of appropriate tests was determined?

24 A. I asked him what kind of information he would need and
25 then I determined which tests I would give.

1 Q. Did you have information available to you to assist you
2 in customizing a battery of tests to determine Mr. O'Dwyer's
3 dangerousness to himself or to others?

4 A. I have read, I believe it was called, the Affidavit.
5 It was eight or nine pages. And this may not be the proper
6 legal term, allegations of what he had done.

7 Q. That was a sworn statement so it was an affidavit. It
8 was signed by the FBI, am I correct?

9 A. I believe that's correct. I don't remember the
10 officer's name.

11 Q. That would have been the Complaint. In addition to
12 that, did you have an opportunity to speak with witnesses
13 that might assist you in determining whether or not Mr.
14 O'Dwyer is a danger?

15 A. I have.

16 Q. Was there any information that you requested that you
17 were not given to assist in the formulation of your
18 professional opinion?

19 A. No, ma'am.

20 Q. Did you share -- ultimately, what tests did you
21 administer to Mr. O'Dwyer?

22 A. I administered the Minnesota Multiphasic Personality
23 Inventory, Second Edition. The Rorschach Technique and the
24 House-Tree-Person Technique. In addition, I gave him a
25 screening test for the Luria-Nebraska Neuropsychological

1 Battery and the Short Category Test.

2 Q. Some of those tests are subjective, am I correct?

3 A. Yes, ma'am.

4 Q. Are any of those tests objective?

5 A. The Minnesota Multiphasic Personality Inventory 2 is.

6 The Short Category Test is and the screening test for Luria-

7 Nebraska Neuropsychological Battery is.

8 Q. Now when you make reference to the Second Edition of
9 the MMPI, the First Edition came out of Minnesota, am I
10 correct, in the '40s?

11 A. Yes, ma'am, in the mid-'40s.

12 Q. And that subject test group included whom?

13 A. They were patients at the State Hospital and family
14 members of the patient at the State Hospital.

15 Q. There was a second iteration of that testing, the
16 MMPI-2 that was, am I correct, in the '80s?

17 A. Late '80s. Yes, ma'am.

18 Q. And who was the test group there?

19 A. They did a broader test group which encompassed a sub-
20 population from across the United States.

21 Q. The questions that are asked in the MMPI-2, that was
22 generally sent to the sub-population, meaning people in and
23 out of custody, in and out of mental institutions, includes
24 a large battery of questions?

25 A. Yes, ma'am, 567.

1 Q. Do any of those questions by their very nature, when
2 administered to someone who is in custody, color the results
3 of the MMPI, or inform the results?

4 A. They alter the results in the sense that there are
5 certain questions that if they're answered honestly and you
6 are incarcerated you're going to answer in a way that tends
7 to make you look more paranoid.

8 Q. What would be an example of one such question?

9 A. People are watching me.

10 Q. So that would -- so a question if answered properly
11 would actually indicate some type of paranoid but would in
12 fact be true of anyone in custody?

13 A. Yes, ma'am. And the way these tests are set up, when
14 you have someone who reaches a significant level, you have
15 to look at all the circumstances in that person's life
16 before you interpret the tests. So that when someone is in
17 custody, you have to allow for the fact that they are indeed
18 being watched, they are scrutinized more than the average
19 person, there are people who are controlling their lives,
20 they have less to say about their lives than the average
21 person.

22 Q. In the administration of the tests that you performed,
23 were you able to reach a conclusion as to whether or not
24 Ashton O'Dwyer is a danger to himself or others?

25 A. Not with the tests themselves. We have to put that

1 into totality of everything we know about this gentleman.

2 But, yes, I have come to a conclusion.

3 Q. When you administered those tests, did you have any
4 reason to believe that he was not being cooperative?

5 A. No, ma'am. And the MMPI-2 has a set of scales we call
6 the Validity Scales to let us know if the person is out of
7 touch with reality or if they're overtly lying or if they're
8 lying to themselves. And all of his were within acceptable
9 range.

10 Q. Did those tests indicate to you that there was any
11 psychosis involved?

12 A. No, ma'am.

13 Q. Any problem with cognitive function that might cause
14 him to become dangerous?

15 A. No, ma'am.

16 Q. Did you share the results of those tests with Dr.
17 Mallik.

18 A. Yes, ma'am.

19 Q. And is that the normal order of business, a
20 psychologist would share the required tests with the
21 psychiatrist?

22 A. Well, typically there is an exchange of information
23 amongst anybody who's doing the evaluation. So, yes.

24 Q. And approximately how long did you spend with Mr.
25 O'Dwyer, as you say, in the prison?

1 A. I was with him probably, and I didn't take exact times,
2 but probably four and a half hours.

3 Q. And at any time did you find any evidence that he was
4 trying to mislead you about his mental situation and his
5 possible dangerousness?

6 A. No, ma'am.

7 Q. On the basis of the test that you just outlined and
8 your extensive evaluation of Mr. O'Dwyer, your consultation
9 with Dr. Mallik and speaking with the witnesses that were
10 able to inform a very lengthy relationship with Mr. O'Dwyer,
11 what opinion did you reach with reference to dangerousness?

12 A. I do not believe that he is dangerous to himself or to
13 others.

14 Q. This is the type of question that you are often called
15 upon to offer expert testimony on?

16 A. Depending on how you define the term "often". I am
17 called upon to offer it, yes, ma'am.

18 Q. And those Courts that you referenced, the 18th Judicial
19 District, the 19th Judicial District, are mostly around the
20 Baton Rouge area, is that correct?

21 A. Yes, ma'am.

22 Q. Where Courts rely on your opinion as to dangerousness?

23 A. Yes, ma'am.

24 Q. And would you say that this opinion that you have just
25 tendered, or other opinions either that a person is

1 dangerous or is not dangerous has been offered how many
2 times in either a federal court or a state court?

3 A. It's hard to say. I have been doing it for nearly 30
4 years, so.

5 Q. Would it be 50 to 100, over 100?

6 A. I would say in minimum more than 50.

7 MS. SCHLUETER: Thank you. I tender you as an
8 expert witness to the government.

9 MR. KENNEDY: Thank you.

10 **CROSS-EXAMINATION**

11 BY MR. KENNEDY:

12 Q. Dr. Zimmermann, my name is Greg Kennedy. I represent
13 the government in this matter.

14 Doctor, you said that you had an opportunity to speak
15 with Dr. Mallik. Did you have an opportunity to go and talk
16 to Mr. O'Dwyer's consulting or his treating psychiatrist
17 prior to your evaluation?

18 A. I certainly had an opportunity. I did not do that.

19 Q. But you didn't speak to him?

20 A. No.

21 Q. So did you have an opportunity to review any previous
22 records or any medical records that psychiatrists may have
23 had regarding Mr. O'Dwyer?

24 A. I did not review those. No.

25 Q. Did you review any other medical records of Mr.

1 O'Dwyer?

2 A. No.

3 Q. And as far as your evaluation of Mr. O'Dwyer, you said
4 that that consisted of about a four and a half hour
5 interview where these tests were administered?

6 A. I was with him about four and a half hours. And then I
7 spent another couple of hours scoring and interpreting the
8 tests.

9 Q. But you weren't interacting with Mr. O'Dwyer at that
10 time?

11 A. That's correct.

12 Q. So basically four and a half hours with Mr. O'Dwyer in
13 the jail itself?

14 A. Yes.

15 Q. And you had no knowledge of Mr. O'Dwyer prior to your
16 going and meeting him, is that correct?

17 A. That's correct.

18 Q. And --

19 A. Well, no, let me be accurate about this. Ms. Schlueter
20 had sent me some what I would call discovery. It may not
21 actually be discovery, but that's what I would call it. It
22 was the affidavit that I referenced, an auditory disk of a
23 hearing. And I think there were other things but I can't
24 recall what they were.

25 Q. An auditory disk of what hearing?

1 A. I think it was the issue of, and I am not certain, but
2 I think it was the first time it was determined whether or
3 not he should be held in custody.

4 Q. I just want to clarify. Was that when he first made an
5 appearance in front of Judge Knowles or in front of Judge
6 Moore, if you know?

7 A. I don't remember which Judge.

8 Q. Did you listen to the entirety of that tape?

9 A. Yes.

10 Q. Approximately how long was it?

11 A. I don't recall.

12 Q. You know, short, long?

13 MS. SCHLUETER: Objection, Your Honor. That's
14 all relative.

15 MR. KENNEDY: It's not relative. I am trying to
16 get his impressions.

17 MS. SCHLUETER: Short and long are difficult to
18 describe.

19 THE COURT: Why don't you be more specific.

20 BY MR. KENNEDY:

21 Q. Was it half an hour, was it longer than an hour, was it
22 several hours?

23 A. It was not -- I mean, it was less than an hour.

24 Q. And so that you believe that it was less than an hour?

25 A. I believe so, yes.

1 Q. And that was the only thing that you listened to?

2 A. Yes.

3 Q. Did Ms. Schlueter send you any transcripts of any
4 hearings?

5 A. I honestly -- honestly don't recall if there were any
6 transcripts. I would have to look at my file, which I don't
7 have with me.

8 Q. And you already testified you didn't have any medical
9 records. Ms. Schlueter didn't send you any prior medical
10 records of Mr. O'Dwyer?

11 A. That's correct.

12 Q. Did you have an opportunity to review any medication
13 Mr. O'Dwyer had been on the last few years?

14 A. I spoke with him about medications that he had been on.

15 Q. So based upon his testimony, or in his conversations
16 with you, but did you do any outside independent
17 investigation what meds he was on?

18 A. I did not.

19 Q. These tests that you're talking about, so basically you
20 relied upon Mr. O'Dwyer's answers to those tests, isn't that
21 correct?

22 A. That's correct.

23 Q. And as far as interviewing persons, who did you
24 interview that had personal interaction with Mr. O'Dwyer?

25 A. Well, I interviewed the three attorneys that have

1 previously testified. A gentleman that was working with him
2 on the Board of Trade. Another gentleman who had worked
3 with him on maritime issues but was not an attorney. So
4 those five people.

5 Q. So these are all persons that were referred to you by
6 Ms. Schlueter?

7 A. Yes.

8 Q. So you didn't do any independent investigation, go and
9 interview anybody else outside of anybody who was
10 recommended by Ms. Schlueter?

11 A. That's correct.

12 Q. These tests, you said a number of tests, did you have
13 an opportunity to administer an IQ test to Mr. O'Dwyer?

14 A. I did not. Well, I had the opportunity. I did not
15 administer one, yes.

16 Q. I will make that clear. Did you?

17 A. I did not.

18 Q. Thank you. And you testified before that it was your
19 belief that as far as the tests themselves that I believe
20 you said a couple of those were subjective tests. Which
21 tests were subjective?

22 A. Well, we call them projective tests and they are
23 subjective in the interpretation. The Rorschach Technique
24 and the House-Tree-Person.

25 Q. And those are subject to, I guess, subjective

1 interpretations, the results?

2 A. Yes. Yes, sir.

3 Q. And as far as the testing itself, the objective
4 portions, I believe was the MTIP-2 -- or MPI-2 --
5 MMPI-2, the screening tests as well as the short -- I
6 forget.

7 A. Short Category Test.

8 Q. Thank you. I can't understand my handwriting. Short
9 Category Test. So those answers, the results of that would
10 depend on whatever it was that Mr. O'Dwyer was telling you
11 at the time?

12 A. Yes.

13 Q. You have had no personal interaction with Mr. O'Dwyer
14 before, so you have no idea as far as his personal demeanor
15 or his ability to lie or to tell the truth prior to your
16 meeting with him, isn't that correct?

17 A. That's correct.

18 Q. And as far as determining his dangerousness, did you
19 talk to any of the persons that -- you said you read the
20 affidavit, isn't that correct?

21 A. That's correct.

22 Q. Did you talk to any of the persons that were referenced
23 in the affidavit?

24 A. I did not.

25 Q. So you're basing your entire opinion upon the answers

1 of what Mr. O'Dwyer told you regarding those tests, isn't
2 that correct?

3 A. Plus the information I gained from the previously
4 mentioned individuals.

5 Q. But no independent investigation of your own?

6 A. That's correct.

7 MR. KENNEDY: Thank you. I have no further
8 questions.

9 THE COURT: Redirect?

10 MS. SCHLUETER: Thank you, Judge.

11 **REDIRECT EXAMINATION**

12 BY MS. SCHLUETER:

13 Q. Dr. Zimmermann, did you perhaps receive e-mails as late
14 as last evening from our office?

15 A. I did.

16 Q. There were attachments which included transcripts. You
17 may not be familiar with that. Did you receive the
18 transcripts?

19 A. The 70-page transcript?

20 Q. Yes, sir.

21 A. Yes, ma'am. I started to read it, but I didn't get
22 through it.

23 Q. I think the point is that our office -- when the
24 transcripts became available they were forwarded to you?

25 A. Yes, ma'am.

1 Q. That's fair to say? In an effort to help you inform
2 your opinion, we did arrange for witnesses who had known him
3 for longer than four and a half hours, correct? Made those
4 witnesses available to you in private for you to ask any
5 questions you thought might be pertinent?

6 A. Yes, ma'am. The witnesses I spoke to, their
7 association with him goes back some 40 or 40-plus years.
8 Mr. O'Keefe, in particular, all the way back to
9 undergraduate school. And he has known him, and I find this
10 kind of interesting, he has known him and interacted with
11 him for 40 years plus and I think he has a pretty good
12 knowledge of him.

13 Q. And that helped you form an opinion?

14 A. Yes.

15 Q. It certainly did not change your opinion, but rather
16 would reenforce it?

17 A. That's correct.

18 Q. Also present in the courtroom would be a very long, a
19 very large base of family support. The fact that perhaps
20 his mother, sister, daughter, cousins, and other
21 professional colleagues are here, would that cause you to
22 feel stronger about your opinion, that is, that he has a
23 strong base of family support?

24 A. He clearly has a strong basis of family support. These
25 people coming forward to indicate that they didn't think --

1 and, of course, I don't know what they would say, but I am
2 assuming they're here to say they don't think he's dangerous
3 would reenforce, but it wouldn't make it stronger. I mean,
4 the opinion is the opinion.

5 Q. And you had an opportunity to discuss with him any
6 medications he was on?

7 A. Yes, ma'am.

8 Q. And did he share with you that he suffered from any
9 mental problems?

10 A. He's suffered with depression for some time; yes,
11 ma'am.

12 Q. That is not unusual, is it?

13 A. No, it is not.

14 Q. Post-Katrina living in New Orleans, that would be even
15 less unusual?

16 A. Yes, ma'am.

17 Q. Paxil is a medication that is not given to psychotics,
18 but rather to people who are suffering from depression, am I
19 correct?

20 A. That's correct.

21 Q. I note that you have a degree in Clinical Pharmacology
22 which is not the norm. Am I correct that is a degree above
23 your Ph.D.?

24 A. Yes, ma'am. It's a post-doctorate degree.

25 Q. And the medication Paxil, are you familiar with that

1 medication?

2 A. I am.

3 Q. Are you familiar with what any of the contra-
4 indications are for an abrupt withdrawal from Paxil?

5 MR. KENNEDY: Judge, I am going to object. This
6 is going way outside the scope of cross-examination. None
7 of this was brought up on direct or on cross and I think
8 we're getting into a new field here. And I am not going to
9 have an opportunity to cross-examine Dr. Zimmermann
10 regarding this, so I think it should not be allowed.

11 MS. SCHLUETER: Well, Your Honor, I would
12 certainly defer if the government wanted to follow-up on
13 Pharmacological questions. We did have Dr. Jeanfreau who is
14 his attending family physician who prescribed the Paxil who
15 testified. And the Court will take previously under
16 oath as an expert that one of the results of an abrupt
17 withdrawal --

18 MR. KENNEDY: Judge, this is testifying at this
19 point and I object.

20 THE COURT: I read the testimony from the doctor.
21 But I am going to allow this question of this witness. And
22 if you want to cross-examine on this point, I am going to
23 allow that as well.

24 MR. KENNEDY: Thank you.

25 BY MS. SCHLUETER:

1 Q. Dr. Zimmermann, are you familiar with the contra-
2 indications of an abrupt withdrawal?

3 A. Yes, ma'am.

4 Q. Are you familiar with the fact that the four corners of
5 the e-mails that were sent to the Bankruptcy Court
6 requesting permission to purchase that medication referenced
7 Paxil?

8 A. Yes, ma'am.

9 Q. What other results -- well, number one, a normal
10 dosage of Paxil, are you familiar with what a normal dosage
11 would be?

12 A. I think up to 40 milligrams a day.

13 Q. If the records were to indicate that Mr. O'Dwyer is now
14 receiving, and has been for a significant period of time, 75
15 milligrams a day of Paxil, would that indicate to you a
16 large dosage?

17 A. I think that -- as I recall, that's at the upper
18 limits of what can be prescribed.

19 Q. And the higher the limit I would expect the greater the
20 result or the contra-indications following withdrawal?

21 A. The rare to infrequent side effect of homicidal or
22 suicidal ideation following abrupt withdrawal, I have not
23 seen all the studies, I am not sure that they're
24 particularly linked with the amount given, but the abrupt
25 discontinuation.

1 Q. And, in fact, Mr. O'Dwyer is compliant in that he is
2 taking the medicines, that he was beseeching the Court to
3 allow him to purchase, at this point in custody?

4 A. Yes, ma'am.

5 Q. Is there a heightened nervousness or anxiousness that
6 comes with withdrawal?

7 A. One can see agitation with withdrawal, abrupt
8 withdrawal of Paxil, yes.

9 MS. SCHLUETER: Thank you very much.

10 **RECROSS-EXAMINATION**

11 BY MR. KENNEDY:

12 Q. Dr. Zimmermann, on the issue of Paxil, you know whether
13 or not Mr. O'Dwyer had been keeping up with his Paxil, you
14 know, the two or three years prior to him being
15 incarcerated?

16 A. He told me that he did, yes.

17 Q. So he would have been on Paxil and taking this high
18 dose of medication when he would send out all the
19 communications that are alleged in the affidavit, isn't that
20 correct?

21 MS. SCHLUETER: Objection, Your Honor.

22 Misleading, "all the communications." The communications
23 that formed the basis of this Indictment was because he was
24 not on the Paxil, meaning he is trying to purchase the
25 Paxil. So I would ask the government to specifically

1 address which e-mail they're referring to.

2 MR. KENNEDY: Well, Judge, I am referring to all
3 of the e-mails because Mr. O'Dwyer previously testified that
4 he did in fact send those communications. And certainly the
5 Court is not limited to the Indictment itself.

6 THE COURT: The issue is not whether he sent the
7 communications, though. It's whether he was on his Paxil at
8 the time.

9 MR. KENNEDY: And that's exactly what I am asking
10 from this witness, whether or not he is aware of the fact
11 whether or not Mr. O'Dwyer -- he just testified that Mr.
12 O'Dwyer said he was in fact on Paxil within the last two
13 years, two or three years because Mr. O'Dwyer told him such.
14 So, therefore, I am trying to establish the fact that Mr.
15 O'Dwyer was in fact taking this Paxil when he sent those
16 communications in the last time period.

17 THE COURT: And I think that the defense
18 attorney's point, though, is, I believe her position is that
19 he was on his Paxil at the time he sent the communications
20 which is the subject of the Indictment.

21 MS. SCHLUETER: Yes, Judge.

22 THE COURT: Are you saying that he was on his
23 Paxil at that time?

24 MR. KENNEDY: No, Judge. What I am suggesting is
25 at this point --

1 THE COURT: Clarify your question.

2 MR. KENNEDY: I will. And I will clarify that.

3 BY MR. KENNEDY:

4 Q. So, Dr. Zimmermann, Mr. O'Dwyer told you in fact that
5 he was on Paxil in the period preceding his incarceration
6 where he had sent those alleged communications?

7 A. Well, there was one specifically where he indicated
8 that he was out of the medication and was trying to get
9 permission to purchase the medication.

10 Q. And that would be the last communication in the
11 Indictment. Let me reference you back to the prior
12 communications that are contained in the affidavit.

13 A. I don't recall all of the dates on them, but I would
14 say up until approximately the time that the last
15 communication went out, yes, he was on the Paxil.

16 Q. So at no point in time, other than that last
17 communication, did Mr. O'Dwyer tell you that he was not
18 taking his Paxil in the preceding period, isn't that
19 correct?

20 A. That's correct.

21 Q. So whatever effect that may have had on him at the
22 time, you're not aware of because you were not his treating
23 psychologist at the time, were you?

24 A. That's correct.

25 Q. And did you ever go to any other source to determine

1 what the basis for his depression was?

2 A. I did not.

3 Q. And you're aware of the potential actions of somebody,
4 physical actions of somebody that suffers from depression?

5 A. Yes.

6 Q. Yeah, they have a possibility of becoming very
7 dangerous if --

8 MS. SCHLUETER: Objection, Your Honor. It's not
9 a question, it's testimony.

10 MR. KENNEDY: Judge, it's a leading question and
11 this is an expert witness. I am asking him simply within
12 his area of expertise.

13 THE COURT: All right. I agree he's an expert
14 witness and you can ask him a leading question.

15 MR. KENNEDY: Thank you.

16 BY MR. KENNEDY:

17 Q. Dr. Zimmermann, so you're aware that somebody that does
18 suffer from depression has the ability to become violent
19 given, I guess, for what could be termed, I am not a medical
20 expert, some breaking point or some intervening factor that
21 could cause somebody to become dangerous, isn't that
22 correct?

23 MS. SCHLUETER: Your Honor, could he rephrase the
24 question. I really don't think he understands it.

25 MR. KENNEDY: Your Honor, it's up to the witness

1 to determine whether or not he can understand.

2 THE COURT: Do you understand the question?

3 THE WITNESS: I believe I do.

4 THE COURT: You can answer.

5 THE WITNESS: There are some people who under
6 some circumstances who are being treated for depression do
7 become dangerous, but it's a very small number of people.

8 BY MR. KENNEDY:

9 Q. But you don't know whether or not Mr. O'Dwyer would
10 fall under that small number, do you?

11 A. I can only give you an opinion on it.

12 Q. And that would be based on your four and a half hour
13 interview with Mr. O'Dwyer?

14 A. Plus my discussion with the people who have known him
15 for over 40 years and when you combine it, well over a
16 hundred years.

17 Q. But you can give an opinion, but you can't state to a
18 medical certainty, isn't that correct?

19 A. I can't say -- if I knew everything about everybody's
20 life in this courtroom, I couldn't say who certainly would
21 become violent and who certainly would not.

22 Q. And you have no way of knowing whether or not Mr.
23 O'Dwyer would even stay on his meds if he was released,
24 isn't that correct?

25 A. I can't guarantee anything. But he sure fought to stay

1 on them or to get on them while he was running out of them.

2 Q. But, again, you have no way of knowing that?

3 A. My crystal ball is in the shop. I can't tell you that.

4 MR. KENNEDY: Thank you. I have no further
5 questions.

6 MS. SCHLUETER: Thank you very much, Doctor. I
7 have no other questions. Judge, I would call Dr. Mallik to
8 the stand.

9 **HARMINDER MALLIK, M.D., WITNESS, SWORN**

10 THE WITNESS: My name is Harminder, spelled
11 H-A-R-M-I-N-D-E-R. Last name is Mallik, -A-L-L-I-K.

12 **VOIR DIRE EXAMINATION**

13 BY MS. SCHLUETER:

14 Q. Dr. Mallik, what's your occupation, sir?

15 A. I am a Board Certified Forensic Psychiatrist.

16 Q. And where did you receive your special training as a
17 psychiatrist?

18 A. My psychiatric residency was at the Long Island Jewish
19 Medical Center which is the Long Island Campus, the Albert
20 Einstein School of Medicine in New York. I did that between
21 the years of 1989 and 1993.

22 In 1994, I proceeded to the University of Maryland to
23 do a one year fellowship in Forensic Psychiatry and was
24 fortunate enough to be hired by Tulane in September of '94
25 upon my graduation.

1 Q. And do you remain professionally, I guess, a medical
2 instructor through the Tulane Medical School?

3 A. Yes, for the last 15 years.

4 Q. So your practice is private as well as teaching?

5 A. Yes.

6 Q. Does your practice also involve appearances in court or
7 evaluations done to assist the Court?

8 A. Yes.

9 Q. In particular, which court?

10 A. Since 1994, I have been appearing in the Orleans Parish
11 District Court, Criminal District Court on a weekly basis as
12 part of the Sanity Commission. I am doing work for several
13 of the Judges in that courtroom. I am also on the Sanity
14 Commission for the 23rd Judicial District which is the
15 parishes of Ascension, Assumption, and St. James. And
16 periodically I have been assigned to the Sanity Commission
17 in St. Tammany, East Baton Rouge, West Baton Rouge,
18 Jefferson.

19 Q. You indicated that you are Board Certified. In what
20 area, sir?

21 A. In General Adult Psychiatry and in Forensic Psychiatry.

22 Q. What is the difference between General Adult Psychiatry
23 and Forensic Psychiatry?

24 A. Well, every psychiatrist, when they finish their four
25 year residency, sit for the Board Certification which is

1 kind of like the national standard of demonstrating your
2 competency in the field. And then, if you go forward and do
3 a subspecialty training which, you know, my case was
4 Forensic Psychiatry, I sat for the Forensic Psychiatry
5 Board, which is an additional qualification to the American
6 Board of Psychiatry, and Neurology.

7 Q. Does forensic generally mean within a criminal system?

8 A. Actually, any issue dealing with law, whether it be
9 criminal or civil.

10 Q. And because of this Board Certification in the area of
11 Forensic Psychiatry, you have been asked to give opinions as
12 to different elements of a person's mental status to, and
13 including, dangerousness, have you not?

14 A. Yes.

15 Q. And you have done that on behalf of the Court?

16 A. Yes.

17 Q. Have you ever testified in Federal Court before?

18 A. I have testified once, but I have given opinions
19 through a report on numerous occasions for different Judges
20 in the Eastern District.

21 Q. And to your knowledge, those official written reports
22 that you provided were accepted by the Federal Court? In
23 fact, the Federal Court in the Eastern District of
24 Louisiana?

25 A. Yes.

1 Q. You have also in your employment, past work experience,
2 worked for, since 1994, at the Forensic Division of the
3 Jackson, Louisiana Mental Health System, is that correct?

4 A. Yes.

5 Q. And is this something that you're a consultant for or a
6 staff psychiatrist for?

7 A. Tulane University actually has the contract to provide
8 services to the Forensic Division -- Forensic and Civil
9 Division of the Eastern Louisiana Mental Health System. I
10 have been there as a staff psychiatrist, as a chief
11 psychiatrist for the community residence unit for about four
12 years. And then for the admissions building which is where
13 most of the patients are brought in as their first step into
14 the facility. I am actually the chief psychiatrist of that
15 unit. There are 75 beds in that unit.

16 Q. Are you presently also a staff psychiatrist for the
17 Elayn Hunt Correctional Center?

18 A. No. I was there for 13 years. Again, that was a
19 Tulane contract. I stopped working there about two years
20 ago.

21 Q. You have done a substantial amount of experience
22 dealing with the area of psychiatric evaluations of people
23 who are accused of crimes?

24 A. Yes.

25 Q. Did you, in fact, consult with Dr. Zimmermann in

1 reference to Mr. O'Dwyer's case?

2 A. Yes, I did.

3 Q. And that was pursuant to a request from our office?

4 A. Actually, I had asked you that I needed some
5 psychological testing done and you had dealings with Dr.
6 Zimmermann prior and that was the individual that was
7 chosen. I have known Dr. Zimmermann over the years. I ran
8 across his work on many occasions in Baton Rouge, I believe
9 and also the 23rd Judicial, and in Orleans.

10 Q. When you mention Dr. Zimmermann, there were several
11 psychologists that whose names you gave me, is that correct?

12 A. Yes.

13 Q. And our office contacted every one of those
14 psychologists, correct?

15 A. I think you did.

16 Q. And were any of them available during the Mardi Gras
17 period of time to do the testing that would be required to
18 allow you to opine on this issue?

19 A. Not to my knowledge.

20 MS. SCHLUETER: Judge, before I go any further, I
21 would offer Dr. Mallik as an expert in the area of Forensic
22 Psychiatry and as a Board Certified Forensic Psychiatrist
23 and to ask him to opine in the area of dangerousness.

24 MR. KENNEDY: I have no objection.

25 THE COURT: He is received.

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DIRECT EXAMINATION

BY MS. SCHLUETER:

Q. Going back now, Dr. Mallik, to the original opinion that you're here to present. Can you tell the Court what information you were given with reference to Mr. O'Dwyer's case? For instance, yes or no, were you given the Complaint?

A. Yes.

Q. Were you given the Indictment?

A. Yes.

Q. Were you given audio disks available from the Magistrate's hearings in which Mr. O'Dwyer's voice is on the tapes?

A. I didn't get the audio cassettes but I got the transcripts.

Q. In the materials that you were given, you were also given access to civil suits that had been filed by Mr. O'Dwyer?

A. Yes.

Q. Were you also given access to medical records that had been able to be compiled?

A. Yes.

Q. And that included medical records from a psychiatrist who prescribed Paxil for Mr. O'Dwyer?

A. Yes. Dr. Christopher Meyers.

1 Q. And --

2 A. Actually, there were several medical records provided
3 in addition to that also.

4 Q. Right. Which other medical records were you provided?

5 A. I was given Dr. Meyers' records which dated from
6 November of 2006 until August 5th of 2009. I was provided
7 medical records of Dr. Wallace Jeanfreau, who is his
8 personal care physician. Medical records of Dr. Lutz from
9 the period of September, 2005 to October, 2005 in relation
10 to the injuries that he had sustained post-Katrina following
11 his arrest. And I was given a sheet of paper which was like
12 a physician's note of Dr. -- I am not sure of the
13 pronunciation, but Kwan Lei, L-E-I. And I was also given a
14 report, and I don't know the name of the physician, he is
15 the psychiatrist for the St. Bernard Jail who apparently saw
16 him on the 23rd of February. I could not make the name out.
17 It was a page and a half report.

18 Q. Did you also receive medical records from Dr. Charles
19 Chester?

20 A. Dr. Chester's name was actually shared with me by Mr.
21 O'Dwyer's sister yesterday because nobody could mention the
22 name of the physician before. I know Dr. Chester but I was
23 not provided the records. Apparently, he saw him for one
24 visit.

25 Q. And the information that you received from seeing Dr.

1 Chris Meyers, Dr. Chester, and Dr. Jeanfreau, did it
2 indicate that he was suffering from any mental problems?

3 A. Yes.

4 Q. And what was that?

5 A. Dr. Meyers' records are actually very sketchy but the
6 gist of the records were that he was treated for an
7 underlying major depressive disorder. He had prescribed him
8 an anti-depressant medication, which was Paxil CR, which is
9 controlled release at a dose of 25 milligrams and three
10 tablets of those a day, which is a fairly significant high
11 dose. And Dr. Meyers continued to follow Mr. O'Dwyer's case
12 up until, I think, the last notation was -- if you give me
13 a minute -- October of '09 when he actually gave -- it
14 was mainly a prescription that was called into Walgreen's
15 for 11 refills.

16 Q. You are familiar, are you not, with the e-mail that
17 caused Mr. O'Dwyer to be arrested?

18 A. Yes.

19 Q. And the text or the substance of that e-mail?

20 A. Yes.

21 Q. Was it in any way related to Paxil?

22 A. I think the substance of the e-mail was in relation to
23 Paxil. But he was trying to get somebody's attention to
24 have access to some funds so that he could pay for the
25 medication given that he was off of it for five days.

1 Q. And was that a result of his entire financial estate
2 being under the control of a Bankruptcy Judge?

3 A. That is what I was informed.

4 Q. Pursuant to contact from our office, did you feel that
5 it was necessary to evaluate Mr. O'Dwyer before coming into
6 this court to offer an opinion?

7 A. Definitely.

8 Q. How many times did you feel an evaluation was required?

9 A. Well, I saw him on two separate occasions. The first
10 one was on February 15, which was for approximately three
11 and a half hours at the St. Bernard Parish Jail. And my
12 second evaluation was yesterday, again at the St. Bernard
13 Parish Jail for three hours.

14 Q. And did you order testing to assist you in the
15 determination that you have to ultimately make to this
16 Court?

17 A. It was after my first interview with Mr. O'Dwyer that I
18 felt that I wanted to get some psychological testing done.
19 I use psychological testing as a great tool to compliment
20 the clinical interview that is being conducted. There are a
21 lot of information that can be derived from psychological
22 testing that sometimes a clinician may miss. In particular,
23 I wanted to address the issue of whether there was any
24 underlying psychotic process. This came from based on the
25 content that Mr. O'Dwyer was sharing with me related to --

1 the word he used was "conspiracy" over the last past several
2 years which he went into great detail which had to do with
3 the victims of Katrina and the litigation that he was
4 involved with. And he was very articulate. Having been a
5 resident of New Orleans for the last several years, you
6 know, I can only read what's in the paper. But in my
7 conference with you, you had also shared that there was a
8 lot of information that was substantiated. But he was
9 saying stuff that made sense. But I wanted to make sure
10 that there was no underlying psychotic process that I was
11 dealing with over here just to rule that out.

12 Q. And the information that I imported to you was about
13 the size of these large class action suits and the attacks
14 on, the legal attacks on the Army Corps of Engineers or the
15 United States Government in terms of what damages might be
16 appropriate, is that correct?

17 A. True.

18 Q. And what suits had been filed in this Court that Mr.
19 O'Dwyer was originally representing clients in, is that
20 correct?

21 A. Yes.

22 Q. Those legal documents were given to you in their
23 entirety, xeroxed copies in reference to Katrina litigation,
24 case assignments, the judicial decider of the facts, is that
25 correct?

1 A. I am not sure if I got all of them. I have a few of
2 them. I mean, I didn't get a chance to read all of them.
3 But there was a stack of information that was provided.

4 Q. And also included in those materials was the personal
5 litigation that he brought concerning what had happened
6 after his arrest following Hurricane Katrina?

7 A. Yes.

8 Q. That information that was given to you caused you to
9 associate with Dr. Zimmermann and to administer tests. Have
10 you had an opportunity to discuss with Dr. Zimmermann his
11 scoring of those tests?

12 A. Well, Dr. Zimmermann shared his general opinion shortly
13 after he had administered the tests, which was on a Sunday.
14 I think it was last Sunday. And then again yesterday I had
15 a chance to speak with him briefly in reference to his
16 findings.

17 Q. And, in your opinion, the tests that were administered
18 were appropriate to determine the issue before this Court?

19 A. Definitely.

20 Q. And the information that you received from the
21 consultant psychologist, that information you found to be
22 valid?

23 A. Yes.

24 Q. And on the basis of your own sequential evaluations of
25 Mr. O'Dwyer, could you advise the Court whether or not you

1 found him to be cooperative?

2 A. Very much so.

3 Q. Responsive?

4 A. Yes.

5 Q. Is it a fair statement that he intends to litigate and
6 to continue to litigate the issues that he thinks should be
7 flushed out in court?

8 A. Yes.

9 Q. With that aside, have you been able to formulate an
10 opinion as to whether or not if this Court were to determine
11 that he is not a danger to himself or others and that he
12 should be released from jail, if that would be an
13 appropriate decision, more specifically are you able to, as
14 an expert in the area of Forensic Psychiatry, able to offer
15 an opinion on that subject?

16 A. Yes, I am.

17 Q. And what is that opinion, Doctor?

18 A. In my opinion, to a reasonable degree of medical
19 certainty, Mr. O'Dwyer currently does not, based on an
20 underlying psychiatric disorder, constitute a danger to
21 himself or to others.

22 Q. The depression that was referenced before, this is a
23 pretty -- I am not going to say normal -- but it is not
24 the serious type of mental illness such as schizophrenia
25 that might cause you a different level of concern, am I

1 correct about that? There are different types of psychosis
2 which would accelerate your concern or increase your concern
3 about danger?

4 A. Well, there's an issue of diagnosis. There is also an
5 issue of severity of each particular diagnosis. And I think
6 if you look at the time when Mr. O'Dwyer initially sought
7 treatment, which was back in 2002, he was to the point, as
8 he mentioned, of being suicidal. And this was documented in
9 Dr. Meyers' reports also. He subsequently placed him on
10 medication and as the months and years progressed the only
11 other review of documents that I found that diagnoses which
12 talks about the progression of the illness was when Dr.
13 Meyers had to fill out a concealed weapon application on
14 behalf of Mr. O'Dwyer and the diagnosis was actually
15 downgraded to more of an adjustment disorder with mixed
16 emotions. And he had continued the medication at the same
17 dosage as he had done over the last eight years.

18 Q. And that earlier consultation of Dr. Meyers as a
19 psychiatrist was because of depression in the year 2002?

20 A. I think there were several events that were going on at
21 that time in his life. That depression was one of the
22 issues that actually Dr. Meyers apparently was a neighbor
23 and in that capacity and then became a professional that he
24 consulted with.

25 Q. And that was a down turn in his own legal practice, is

1 that a fair statement?

2 A. I'm sorry.

3 Q. The motivators for seeking the psychiatric assistance
4 and the diagnosis of depression with proper medication was
5 that he was experiencing some difficulty in his own legal
6 profession?

7 A. That was one of the issues, yes.

8 Q. And he sought treatment?

9 A. Yes.

10 Q. I would assume that is an appropriate way for one
11 dealing with a mental problem to proceed?

12 A. Yes.

13 Q. He was prescribed medication?

14 A. Yes, he was.

15 Q. All the records that you have indicated, he remained on
16 the prescribed medication?

17 A. There is no indication that he was ever non-compliant.

18 Q. The first evidence -- what is the first evidence that
19 perhaps he is having difficulty getting medication?

20 A. Is the e-mail that is in question.

21 Q. And that was the e-mail that resulted in his being
22 arrested on January 29th?

23 A. Yes.

24 Q. In the documents that were provided to you there was a
25 Dr. Lei who offered an opinion to the St. Bernard Jail where

1 Mr. O'Dwyer has been in custody since January 29th. Do you
2 recall what his position was with reference to whether or
3 not Mr. O'Dwyer is homicidal or suicidal?

4 A. I think Dr. Lei was consulted to see if Mr. O'Dwyer
5 could be taken off suicide watch. He had been in
6 confinement for five days, stripped of his clothes, and he
7 opined that, or gave an opinion that Mr. O'Dwyer was not
8 suicidal and subsequent to that he was taken off suicide
9 watch.

10 Q. And the document to which you refer and the illegible
11 handwriting from a doctor at that same prison, there is an
12 indication that the authorities that have Mr. O'Dwyer in
13 custody asked for a second opinion, is that correct, a
14 different physician, a psychiatrist?

15 A. I am --

16 Q. You were provided with a copy of the document from the
17 St. Bernard Parish Prison and a signature which is illegible
18 but is the treating psychiatrist?

19 A. Correct.

20 Q. Did that treating psychiatrist at the St. Bernard
21 Correctional Center feel that he was homicidal or suicidal
22 or should be put back on special watch?

23 A. No.

24 Q. So the opinion that you offered today is buttressed by
25 the opinion of Dr. Lei, that second illegible psychiatrist,

1 Dr. Zimmermann, and yourself, is that correct?

2 A. Correct.

3 Q. You are aware, are you not, that --

4 A. And, if I may add, and also consulting with family
5 members.

6 Q. You are aware, are you not, that there was a very
7 hurried detention hearing in which Mr. O'Dwyer representing
8 himself immediately after his arrest?

9 A. Yes.

10 Q. And you are equally aware that a Pre-Trial Services
11 officer who holds an undergraduate degree in Psychology
12 offered an opinion that he thought he was dangerous?

13 A. Yes.

14 Q. In fact, am I correct that you tried to get a copy of
15 that report but legally it is unavailable?

16 A. I have requested it, but you said you didn't have it
17 available for me to review.

18 Q. By law, for the record, that information, the Pre-Trial
19 Services' report, is confidential and is not given to either
20 counsel. I just -- so we have on one hand your considered
21 opinion in juxtaposition to the Pre-Trial Services' officer
22 and you also have the opinion of the psychiatrist who
23 administered the tests?

24 A. If I may add something. Mr. Gantner actually testified
25 again in a subsequent hearing commenting on the improvement

1 that he had seen in Mr. O'Dwyer's demeanor, part of which is
2 what he states his opinion on in the first hearing.

3 Q. Thank you, sir.

4 MS. SCHLUETER: Judge, might I ask Mr. Gantner,
5 it's my understanding that the Pre-Trial Services rules
6 indicate that those reports are only available in the
7 courtroom and Mr. O'Dwyer's point is very well taken.
8 Perhaps I could at this time ask Mr. Gantner for his report,
9 give it to Dr. Mallik and ask him if that would cause him to
10 change his opinion.

11 MR. KENNEDY: Judge, Mr. Gantner previously
12 testified and the entirety of what is contained in that
13 report was already testified to by Mr. Gantner. And Dr.
14 Mallik has said that he already had the opportunity to
15 review that. Certainly he is familiar with Mr. Gantner's
16 position. There's no need to bring the report and continue
17 on something Dr. Mallik is already familiar with.

18 MS. SCHLUETER: I find it unconscionable that the
19 government would take that position that we could not want a
20 Board Certified Forensic Psychiatrist to look at the report
21 from the Federal Pre-Trial Officer.

22 THE COURT: I think he's saying it's unnecessary.
23 But I am going to go ahead and let him look at it just to
24 verify that the report contains everything that was
25 testified to in the Pre-Trial Services' officer's previous

1 testimony.

2 (Exhibited to the witness.)

3 THE COURT: The witness has indicated he finished
4 reviewing the document.

5 BY MS. SCHLUETER:

6 Q. Sir, would you look down at the date on the last page
7 that follows the recommendation.

8 A. It's February 1, 2010.

9 MS. SCHLUETER: Might I ask the Court to take
10 judicial notice of that date, February 1, 2010.

11 BY MS. SCHLUETER:

12 Q. And the time, would you read the time, please, Doctor?

13 A. 12:23 a.m.

14 Q. In reference to Mr. Gantner's assessment of danger,
15 there are three factors. The first being the nature of the
16 instant offense. Have you taken into consideration with all
17 of the available information provided to you the nature of
18 the instant offense?

19 A. Yes.

20 Q. And have you also had the opportunity to consider his
21 mental health status?

22 A. Yes.

23 Q. And have you also been given information which would
24 inform in reference to the history of making threatening
25 statements?

1 A. Yes.

2 Q. Having seen this report, is there, for instance, is
3 there any indication how long Mr. Gantner met with Mr.
4 O'Dwyer on that Saturday morning before doing his report?

5 A. There's nothing documented as to when he saw him or how
6 long he saw him for.

7 Q. And is there any reference to a second interview such
8 as the second evaluation that you did in this case?

9 A. I'm sorry.

10 Q. Is there any indication that there was more than one
11 interview done by Mr. Gantner?

12 A. No. The added document that is stapled here looks like
13 the handwritten notes that were probably used to generate
14 the typewritten which is dated.

15 Q. In this official Pre-Trial Services report, is the
16 opinion that was offered by Mr. Gantner in any way supported
17 by psychological testing?

18 A. Nothing is written here.

19 Q. Was there any reference to medical records that were
20 available?

21 A. He did mention that he has a history of treatment
22 starting in December of 2002 via medication.

23 Q. Other than the patient or the defendant's own personal
24 history as reported, is there anything in this document that
25 indicates he was privy to the medical records that were

1 compiled and delivered to you?

2 A. No.

3 MS. SCHLUETER: Thank you. I tender you. Excuse
4 me one minute.

5 BY MR. KENNEDY:

6 Q. I guess now it's afternoon, Dr. Mallik.

7 MS. SCHLUETER: Wait just one second.

8 MR. KENNEDY: Oh, I'm sorry. I thought you were
9 finished. I apologize.

10 BY MS. SCHLUETER:

11 Q. I just directed your attention to the three factors on
12 which Mr. Gantner relied. Could you please inform the Court
13 what caused you to reach, in your analysis, your independent
14 analysis, to address those three separate factors and come
15 to a different conclusion?

16 A. I think in coming to a conclusion of dangerousness, you
17 first have to understand the individual. And that was my
18 main evaluation of Mr. O'Dwyer is trying to find out who is
19 this individual, what has brought him to the point where he
20 is today. And I think by talking to him and by talking to
21 family members this is a gentleman who basically New Orleans
22 has been his home, has been raised in a family that is well
23 to do in the community, reached a point in his career where
24 he was a partner in a prominent law firm and practiced there
25 for approximately 30-plus years. And one important

1 information alone that was as Mr. O'Dwyer described was very
2 important. What were the three things that were important
3 in his life? Which is actually shared, some of those things
4 were shared by the family members as to what they found
5 important stuff as being eventual stressors in his life.
6 Mr. O'Dwyer described his schooling years at Jesuit as being
7 a very important part of his life. His tender at Lemle &
8 Kelleher and his marriage to Kitty. And he said post-
9 Katrina, two of those were basically dissolved, referring to
10 his career and referring to his marriage. And he still
11 stood by the fact that he was educated in a very prominent
12 private school in the City of New Orleans. He also
13 described approximately ten years ago, as he put it,
14 somebody just turned the spigot off and could not explain
15 what had happened, that his career basically spiraled down
16 to the point where he is today bankrupt, sitting in jail,
17 and has basically lost everything. The things that he has
18 retained is his years as an attorney and as his sister
19 described his prize possession, his trophy is his home. Mr.
20 O'Dwyer explained the fact that it was the lack of his
21 career or the lack of cases coming, for whatever reason,
22 which led him to become, led him into a major depressive
23 episode.

24 When you do a psychiatric evaluation, you're looking at
25 other factors that potentially could have played in the

1 individual's life and which he had mentioned and then which
2 was also echoed by the family members was the demise of his
3 father in December of 2001. And the family looked at over
4 the course of the next eight years things that were partly
5 responsible, stressors that actually played in his life were
6 first the demise of his father, second his career basically
7 not flourishing the way it was. And I think the family
8 shared that part of it was that several of the partners of
9 the law firm had moved out and opened their own firms or own
10 practices which left Mr. O'Dwyer there. That was one
11 factor. He couldn't explain why things went sour. And he
12 basically tried his best to regain his practice to the level
13 it was. And added to that equation was the consumption of
14 alcohol which I think Mr. O'Dwyer has alluded to the fact
15 that he has a history, but I think it's of a major concern
16 of the family. And they also felt that that was a
17 significant role. That's a significant piece of information
18 that played a role in his so-called downward spiral over the
19 years. This eventually led to him being -- this
20 eventually led to him leaving Lemle & Kelleher. It
21 eventually led to him being disbarred. It eventually led to
22 him being not allowed in this courtroom without a court
23 order. And he took it upon himself the victims of Katrina
24 as his new goal, so to speak, and to be the advocate for
25 those individuals because he himself was the victim of

1 Katrina. And according to the family members that in
2 particular played a very significant role, the beatings, the
3 torture, the arrest that he shared with me that were then
4 provided by photographs to me and were also documented in
5 medical records. That there has been no resolution or
6 explanation given to why this man was arrested a day after
7 he filed for a civil litigation against the victims of
8 Katrina, the class action suit. And the one asset that is
9 described by everybody about Mr. O'Dwyer is, and which was
10 also shared by his colleagues who have known him for the
11 past 40-plus years, that he doesn't give up. He is a man
12 who lives by an honor code. He described that he craved
13 liberty and freedom and that is actually what has been taken
14 away from him. And the one tool that he used over the years
15 that made him the man that he was, which was his voice, he
16 didn't have an audience now to speak to. And the more he
17 spoke, the more people didn't listen. And as he put it,
18 "They wanted to muscle him up." He also described, in
19 addition to the voice, he then used his pen or the keyboard
20 to file lawsuits to get people to hear. And the more he
21 spoke about how much he got involved in the cases, the more
22 he realized how the different players were participating in
23 it. The players he identified as attorneys, plaintiffs'
24 attorneys, judges, and which eventually became part of the
25 lawsuit that he had filed and which also led for the Eastern

1 District of Louisiana to recuse themselves from this
2 particular hearing because of the lawsuits that they were
3 named in.

4 The way I look at it is, here is a man who tried
5 everything that he could and using whatever form of
6 language, vulgar, he described as being ugly, the family
7 described him as being an embarrassment at times, but he
8 used his one tool as he also put it within the confines of
9 the legal system to get his point across. And the last e-
10 mail, the e-mailing question over here is -- and the other
11 thing is he also used a lot of metaphors that actually are
12 taken out of context. And as Dr. Zimmermann said, when this
13 man speaks certain words, it's not with the same impact of
14 what a layman would speak because he uses it more
15 metaphorically. That was related to the one e-mail related
16 to his wife's attorney that was sent which was referred to,
17 the pound of flesh which is viewed as a threat.

18 Likewise, he also states that he likes to push the
19 envelope because by pushing the envelope people back down
20 and regret the statements made in the last e-mail about my
21 creditors would benefit --

22 MS. SCHLUETER: Judge, I would ask that the
23 doctor's question -- the doctor's answer to my very
24 general question not address the actual substance of this
25 offense at this point. The question which was rather open-

1 ended was to deal with the nature of the instant offense,
2 the mental health status, and the history of making
3 threatening statements.

4 MR. KENNEDY: Judge, I object. And the basis of
5 my objection is Dr. Mallik was in fact answering Ms.
6 Schlueter's question. She may not like the answer but
7 certainly the doctor has the ability to. He's a
8 professional, he's an expert, he has a right to give an
9 opinion and he has the right to opine on what the basis for
10 his opinion is. And that's simply what he is doing at this
11 point. He should be allowed to finish.

12 MS. SCHLUETER: On the contrary, Judge, this
13 issue is limited to whether or not he is a danger. This is
14 not a trial. There is not a jury. The question of whether
15 or not the defendant, in fact, made specific statements
16 about that e-mail is irrelevant to this proceeding.

17 Mr. O'Dwyer, Your Honor, represents himself and I
18 am his stand by counsel and I have been advised that Dr.
19 Mallik should continue with his answer.

20 THE COURT: All right. So you're withdrawing the
21 objection at the request of your client?

22 MS. SCHLUETER: Yes, I do, Judge.

23 THE COURT: I understand. You can continue to
24 answer.

25 THE WITNESS: I think when you are looking at

1 statements that are made by individuals that can be viewed
2 as being inflammatory or threatening, you actually ask the
3 individual what was the basis of making the statement. And
4 as Mr. -- as I explained how he used his tool, which was
5 his voice and his word, Mr. O'Dwyer stated that he had taken
6 a calculated risk by putting on these statements. He had
7 made statements in the e-mail to poke at the system and at
8 the same time wanted to get somebody's attention that he was
9 in dire need of his medication given that he had been off
10 the medication for approximately five days. The 24th of
11 February of the -- sorry -- the 24th of January was the
12 last time he had taken a dose and this was the 29th. And it
13 being a Friday evening he wanted to send some last, make a
14 last effort to get somebody's attention so that he could get
15 funds to get his medication. Looking back he regrets making
16 those statements. I didn't view that statement as being
17 somebody who is actually suicidal or homicidal. But given
18 in the context of what I explained, I didn't think that was
19 a threat.

20 BY MS. SCHLUETER:

21 Q. Would you continue with the critique of Mr. Gantner's
22 opinion?

23 A. What I just spoke was talking about the nature of the
24 instant offense. The second point that Mr. Gantner made was
25 the mental health status. The mental health status is

1 documented. He has been under treatment. There is no
2 indication in Dr. Meyers' report that he is psychotic,
3 homicidal or suicidal. There is no indication in Dr.
4 Jeanfreau's report and documentations that he is in any
5 shape or form a danger. Looking at the reports from --
6 actually those followed. Which is Dr. Lutz's report
7 actually follows. So those are the two reports. And making
8 -- commenting on the third one, history of making
9 threatening statements is basically the same answer as I
10 gave for the first one which relates to the nature of the
11 initial offense.

12 Q. Did Mr. O'Dwyer explain to you about the reference to a
13 "pound of flesh?"

14 A. Yes, he did.

15 Q. Did he suggest it was a literary reference?

16 A. Yes.

17 Q. Was he able to give you the author of the writing from
18 which that metaphor was used?

19 A. Yes.

20 Q. And is that William Shakespeare in the "Merchant of
21 Venice?"

22 A. Yes, it was.

23 Q. The conclusion of that literary writing resulted in
24 that -- are you familiar with it? Has he explained it to
25 you?

1 THE COURT: Maybe I can short circuit this a
2 little bit. I am familiar with it and I recall what
3 happened in the end of the "Merchant of Venice." So unless
4 it has something to do with this witness' opinion, I don't
5 know that it's necessary for us to go into it.

6 BY MS. SCHLUETER:

7 Q. So you disagree with Mr. Gantner's conclusion that he
8 presents a danger?

9 A. I think Mr. Gantner himself corrected himself during
10 the second time when he testified that there was a
11 significant improvement. And, yes, I do disagree with that.

12 MS. SCHLUETER: Thank you. I have no further
13 questions.

14 **CROSS-EXAMINATION**

15 BY MR. KENNEDY:

16 Q. Dr. Mallik, I think you testified before that you said
17 that a number of people have told you the defendant doesn't
18 know when to give up, isn't that correct? That was your
19 previous testimony?

20 A. Yes.

21 Q. And that could also be interpreted as not knowing when
22 to stop as well, isn't that correct?

23 A. It could be; yes.

24 Q. So in Mr. O'Dwyer's case, you said also that he would
25 take calculated risks, isn't that correct?

1 A. That's a word he used.

2 Q. His use of it. And what he would do basically is go up
3 and tow the line. And you testified previously as to his
4 use of metaphors, isn't that correct?

5 A. Correct.

6 Q. So he would be smart enough to know to use a metaphor
7 in place of an actual threat, isn't that correct?

8 A. I am sure.

9 Q. But a person on the receiving end of that metaphor, or
10 e-mail, or communication, can certainly perceive that to be
11 a threat, isn't that correct?

12 A. Sure.

13 Q. Okay. And you testified before that Mr. O'Dwyer --

14 MS. SCHLUETER: May I lodge an objection, Your
15 Honor?

16 THE COURT: You may.

17 MS. SCHLUETER: There has been no one identified
18 as the specific victim or the intended recipient of that e-
19 mail and it's not identifiable so asking the psychiatrist if
20 "they" is rather vague and not really pertinent to this
21 issue.

22 MR. KENNEDY: Judge, I believe my question was
23 the person on the receiving end of that communication and
24 this is certainly within the area of expertise of Dr. Mallik
25 that if the defendant told him that he sends metaphors and

1 goes up to the boundary in communications, then certainly I
2 have an opportunity to inquire of this expert what the
3 perceived opinion would be from the person receiving that
4 communication.

5 THE COURT: I am going to allow the question.

6 BY MR. KENNEDY:

7 Q. And so that can be perceived as a threat, isn't that
8 correct?

9 A. Sure.

10 Q. You testified before, as I said, that Mr. O'Dwyer was
11 familiar with the intricacies of -- I think I forget your
12 exact words, but he was very intricately knowledgeable of
13 the legal process, isn't that correct?

14 MS. SCHLUETER: Your Honor, I would like to lodge
15 an objection. The ultimate issue as to whether or not the
16 specific words uttered were a threat is a legal decision
17 that will be made by either 12 jurors or a Judge at a later
18 point in time. Asking a medical doctor to opine as to
19 whether the specific verbiage used in that was a threat is
20 improper.

21 MR. KENNEDY: Well, Your Honor, they have
22 inquired a number of times as far as whether or not there
23 was actual wording of a particular threat to a particular
24 person. And they have inquired into that regarding the
25 dangerousness of Mr. O'Dwyer. I certainly have a right to

1 inquire into the perceived threat of those communications by
2 Mr. O'Dwyer and how they can be interpreted as to be a
3 threat and therefore be reflective upon the dangerousness of
4 Mr. O'Dwyer in his actions and in his course of actions if
5 he were to be released.

6 MS. SCHLUETER: Judge, I would say it's totally
7 immaterial what the perceived threat is. I think this Court
8 can take judicial notice of the fact that an e-mail went out
9 on January 29th and Mr. O'Dwyer has been in custody ever
10 since.

11 THE COURT: All right. I don't think that
12 whether somebody else perceived it to be a threat is really
13 relevant to the issue of whether Mr. O'Dwyer constitutes a
14 danger. But I do think that you're entitled to go into this
15 witness' reasoning as to why those e-mails don't give any
16 reason for me to believe that he is a danger.

17 MR. KENNEDY: I'm sorry, I didn't hear the last
18 part, Judge.

19 THE COURT: A reason for me to believe he's a
20 danger. I am the one who has to decide that. So if there
21 is something in -- and, again, I have read the transcript,
22 I have read the Complaint, so unless there is something that
23 you think this witness can add to whatever those e-mails say
24 in there for themselves, let's not dwell on it too much.

25 BY MR. KENNEDY:

1 Q. Without going into the context of what Mr. O'Dwyer
2 said, that he is familiar with the intricacy of the legal
3 process and how to basically tow that line or not tow that
4 line regarding legal pleadings or legal actions, isn't that
5 correct?

6 A. I didn't ask that specifically, but I would say, yes.

7 Q. And as far as you said that you were familiar with the
8 Complaint, isn't that correct?

9 A. Yes, I am.

10 Q. Without going into the individual words used in that,
11 however, wouldn't you agree that somebody that would be
12 knowledgeable as far as legal workings and things like that,
13 that Complaint would indicate a lack of self control on the
14 part of Mr. O'Dwyer in being able to control his emotions,
15 his actions, knowing full well being familiar with the legal
16 consequences of his actions but yet still sending those
17 communications?

18 MS. SCHLUETER: Objection, Your Honor. That
19 requires a conclusion that the doctor is not in a position
20 to make of whether or not the specific words were, in fact,
21 a threat would determine whether or not he has a lack of
22 self control. It may be that his specific awareness of the
23 legal intricacies and his precise use of words studiously
24 avoided a reference to killing or shooting or murdering.
25 And in that specific selection of words he may have avoided

1 any technical violation of the law.

2 MR. KENNEDY: Judge, if I could respond. I asked
3 Dr. Mallik about Mr. O'Dwyer's ability for self control and
4 that's the basis for the question. Obviously, the ability
5 or inability to control one's self goes to the issue of
6 dangerousness.

7 THE COURT: I agree with that. I am going to
8 allow him to answer for that reason.

9 THE DEFENDANT: Read the question back, Your
10 Honor?

11 MR. KENNEDY: Your Honor --

12 BY MR. KENNEDY:

13 Q. Dr. Mallik, I am asking you, wouldn't that be
14 indicative --

15 MS. SCHLUETER: Excuse me. That's a perfectly
16 reasonable request. Could the court reporter please read
17 Mr. Kennedy's question back?

18 MR. KENNEDY: I have no objection to that, Judge.

19 THE REPORTER: "You testified before, as I said,
20 that Mr. O'Dwyer was familiar with the intricacies -- I
21 think I forget your exact words -- but he was very
22 intricately knowledgeable of the legal process, isn't that
23 correct?"

24 THE DEFENDANT: Ms. Reporter, that wasn't the
25 question.

1 THE COURT: I don't believe that's the question
2 asked. But do you want to restate the question?

3 MR. KENNEDY: Yeah. I'll be happy to. That's
4 what I was trying to do.

5 THE COURT: Let's do it that way.

6 MR. KENNEDY: Thank you.

7 BY MR. KENNEDY:

8 Q. Dr. Mallik, my question was, and I don't know the
9 verbatim, but basically I am asking, wouldn't that
10 Complaint, the allegations contained in that Complaint
11 indicate a lack of self control on the part of Mr. O'Dwyer
12 given that he has told you that he is very knowledgeable
13 with the intricacies of the legal process?

14 A. I think I answered that by saying Mr. O'Dwyer basically
15 spoke that there were a lot of misstatements that were in
16 that Complaint. I am not sure if you're referring to the
17 statements made by Mr. O'Dwyer, or are you referring to the
18 statements in the Complaint?

19 Q. The statements that are alleged in the Complaint. Are
20 you aware of the fact that Mr. O'Dwyer previously testified
21 that he did, in fact, send those communications and make
22 those communications?

23 A. Yes. That was in the transcript.

24 Q. You're familiar with the facts. So, therefore, taking
25 that to be factually true that they were sent by Mr.

1 O'Dwyer, and that's what I am referring to, the
2 communications by Mr. O'Dwyer, would that indicate a lack of
3 self control on the part of Mr. O'Dwyer?

4 A. Well, again, lack of self control is more a subjective
5 interpretation of it. Mr. O'Dwyer, in his own flare and in
6 his own way of pushing the envelope, chose words that were
7 very inflammatory. So I am not sure if that's the lack of
8 self control. That's the actual control that he was
9 exercising.

10 Q. Would you say calling a Federal Judge --

11 MS. SCHLUETER: Your Honor, I would object.

12 MR. KENNEDY: Judge, I am inquiring into the
13 defendant's ability to control one's self.

14 THE COURT: Overruled. I'm going to allow him to
15 ask the question.

16 BY MR. KENNEDY:

17 Q. Would you consider calling a Federal Judge racially
18 insensitive words an ability to control one's self if when a
19 lawyer sends that to a Federal Court Judge?

20 A. Well, it's not something that I think should be done,
21 but that was done. Whether that's a lack of self control, I
22 am not sure if I can answer that.

23 Q. What about as far as making communications in person to
24 another Federal Court Judge that's contained in the
25 Affidavit itself where he made a threatening comment to

1 Judge Feldman?

2 A. I mean, I don't remember the exact threat, but --

3 Q. Where he told the FBI that, you know, "Send the FBI and
4 tell them to bring guns."

5 A. Again, that's a statement he made; you're right.

6 Q. Would you again consider that to be a lack of self
7 control on his part?

8 A. Again, I mean, I am going to describe to you, as I
9 described to you, Mr. O'Dwyer used any means that he could
10 to get attention. At times he made statements that another
11 attorney may choose not to. Now, I am not sure if that is a
12 lack of self control, or if that is actually what his
13 intention was.

14 Q. Did you have an opportunity to review each and every
15 individual communication in the Affidavit?

16 A. I was only given the Complaint and paragraphs laid out.

17 Q. And would you agree it shows a natural progression on
18 the part of Mr. O'Dwyer to become more and more inflamed or
19 more inflammatory in his remarks to persons?

20 A. It would support it, but I said that when he doesn't
21 get the audience, he ups the ante a little bit more and
22 makes statements that would get somebody's attention.

23 Q. And then that refers to my next point. If he doesn't
24 get satisfaction, he continues on and takes it to a higher
25 level continuously, doesn't he?

1 A. That's how it was depicted; yes.

2 Q. And as far as Mr. O'Dwyer's underlying evaluation from
3 Dr. Meyers, you said that he suffered from, I think your
4 words were a major, I don't have it in front of me,
5 basically a major depression?

6 A. Depression.

7 Q. And you said that it was significant enough to the
8 point where he would have to be prescribed 75 milligrams of
9 Paxil, am I correct?

10 A. That's what Dr. Meyers had prescribed.

11 Q. So this is not just somebody suffering from a little
12 depression, this is somebody that's severely depressed?

13 A. Again, I've never prescribed 75 milligrams. And I am
14 not sure that would have been my choice, but that is what
15 Dr. Meyers chose. Especially in a controlled release tablet
16 I have never gone over 45 milligrams.

17 Q. And he maintained that di -- excuse me -- that
18 prescriptive level throughout the last eight years I believe
19 you testified to, isn't that correct?

20 A. Yes, he did.

21 Q. In that time period, Dr. Meyers actually changed his
22 diagnosis?

23 A. There was one reference to it and when he had filled
24 out the form that had to do with his concealed weapon. So
25 adjustment disorder with mixed emotions.

1 Q. Who filled that out?

2 A. Dr. Meyers.

3 Q. Dr. Meyers put that on there. So he didn't put
4 depression on there, major depressive disorder, but in fact
5 put some type of other diagnosis that would allow Mr.
6 O'Dwyer to obtain a concealed weapons permit?

7 A. I am not sure if that document got him the permit or if
8 that was just a requirement to have that permit continued.

9 Q. But while Mr. O'Dwyer is receiving 75 milligrams of
10 Paxil, he also has a weapon to carry a concealed weapon?
11 Or, excuse me, a license to carry a concealed weapon, isn't
12 that correct?

13 A. Yes.

14 Q. And, in fact, Mr. O'Dwyer was possessing a weapon when
15 he went to meet the Marshals. Are you familiar with that as
16 well?

17 A. Yes. But I am sure Dr. Meyers took all of that into
18 consideration when he's filling out, that he has a patient
19 on medication, that he is filling out for a concealed weapon
20 license.

21 Q. That didn't cause you any concern that the defendant is
22 going to meet two U.S. Marshals and he goes to that meeting
23 armed with a completely loaded handgun at that point, that
24 causes you no concern concerning dangerousness of the
25 defendant?

1 A. You have to look at how he -- I can go by how he
2 presented himself.

3 Q. I am asking from an objective point of view.

4 A. Right, that's how I am going to answer it. He
5 presented himself that he carried it at all times. He was
6 actually told that they were coming to take him to
7 Walgreen's and so he is carrying the weapon just like he
8 would at any other occasion. Except when he stepped out of
9 the house he is under arrest. And when he puts his hands
10 up, as he demonstrated to me, they find the weapon.

11 Q. Would that cause you some concern that the defendant
12 didn't have the sense enough to know not to carry an armed
13 weapon when he is going to meet two federal law enforcement
14 officers?

15 MS. SCHLUETER: Objection, Your Honor.
16 Argumentative. It's already been answered.

17 MR. KENNEDY: It goes to the defendant's state of
18 mind.

19 THE COURT: It has been asked and answered. I am
20 going to sustain that objection.

21 MR. KENNEDY: Judge, specifically if he had any
22 concern regarding whether or not it caused him any concern
23 knowing he is going to meet the Marshals. I don't believe
24 he's answered that question as to whether or not he --

25 THE COURT: It's my understanding this witness

1 testified that he was told by the defendant he didn't know
2 that he was being arrested and he thought he was being
3 escorted to the drug store by those marshals.

4 MR. KENNEDY: I agree, Judge. My follow-up
5 question is, but the mere fact that he is going to meet two
6 law enforcement officers carrying a concealed weapon, does
7 that cause the doctor any concern?

8 THE COURT: All right. You can answer that
9 question.

10 THE WITNESS: No. According to him, that was his
11 practice. He carried it at all times.

12 BY MR. KENNEDY:

13 Q. I am asking you from an objective point of view.

14 A. Well, I have to take the whole circumstance into
15 consideration when I make that statement. Based upon what I
16 heard, no.

17 Q. But I am saying from somebody else taking Mr. O'Dwyer,
18 a sane rational person, would you expect them to carry a
19 concealed weapon to go meet two law enforcement officers in
20 order to go get drugs from Walgreen's?

21 A. I am not sure if I can answer that.

22 Q. Okay. Now you said also, you said that the more stress
23 he got, the more he reacted, isn't that correct?

24 A. I don't know if I made that statement.

25 Q. Well, maybe I am paraphrasing, but obviously you said

1 that there were a number of stressors in his life that were
2 causing him, obviously, more stress and that may have been
3 involved in his actions.

4 A. I think I said there were several stressors that
5 impacted his so-called spiral downward, the way he is today.

6 Q. And that would be the dissolution of his career and
7 marriage, isn't that correct, two of them?

8 A. Correct.

9 Q. And you also said that the defendant, based upon your
10 interviews, has a history of alcohol abuse as well, isn't
11 that correct?

12 MS. SCHLUETER: Objection, Your Honor. That is
13 misleading. There is no indication of alcohol abuse. The
14 use of alcohol, not excessive alcohol, has been the only
15 reference that was made.

16 MR. KENNEDY: Well, I am asking this doctor if he
17 has knowledge of his history of abuse of alcohol.

18 THE WITNESS: I mean, Mr. O'Dwyer mentioned that
19 he drinks socially. The family members said he drinks, but
20 they have never seen him drunk. He actually made a joke
21 that a southern man should be able to hold his liquor. No.
22 Drinking one drink a day, two drinks a day, but not to the
23 point of being drunk. He made it a comment to say that the
24 reason he has never been drunk is because he never wanted to
25 be out of control and out of character.

1 BY MR. KENNEDY:

2 Q. Are you aware that he even petitioned the Bankruptcy
3 Court to release money so that he could pay the Wine Cellar
4 for wine?

5 THE DEFENDANT: Stipulated, Your Honor.

6 BY MR. KENNEDY:

7 Q. That he basically needed money to release from the
8 Bankruptcy Court so he could keep drinking, are you aware of
9 that?

10 A. No, I was not.

11 Q. What is the result of the interaction between alcohol
12 and Paxil?

13 A. Well, I advise all patients when they're taking
14 medications that they should not drink.

15 Q. So this eight year period when Mr. O'Dwyer was in fact
16 on Paxil, by his own admission, he continued to drink
17 alcohol, is that correct?

18 A. Yes.

19 Q. That would have a negative effect on his behavior,
20 isn't that correct?

21 A. Sure.

22 Q. And also you indicated his original diagnosis was he
23 was potentially suicidal by Dr. Meyers, isn't that correct?

24 A. And by Mr. O'Dwyer.

25 Q. And by Mr. O'Dwyer himself. And isn't it a fact that

1 somebody who is suicidal, given some intervening factor, can
2 also turn to be homicidal, isn't that correct?

3 A. Most depressed patients take the anger upon themselves,
4 not on others.

5 Q. I am not asking most. I am saying, isn't that a
6 possibility somebody can turn homicidal given an intervening
7 factor?

8 A. That is a pretty general statement. Again I'll give
9 you a general answer and say, yes, anything is possible.

10 Q. Now as far as persons that you interviewed, those
11 persons were referred to you by Ms. Schlueter, isn't that
12 correct?

13 A. No. I actually asked Mr. O'Dwyer to get his permission
14 to speak to family members.

15 Q. Okay. So you spoke to family members. Did you speak
16 to anybody else outside of his family?

17 A. No. I didn't have the time. I finished my evaluation
18 yesterday. And that's why I was present in court today so I
19 could hear from some of the other witnesses.

20 Q. And as far as your evaluation, you said that you relied
21 upon Dr. Zimmermann's testing, isn't that correct?

22 A. Yes.

23 Q. And you testified previously that he liked the use of
24 metaphors, isn't that correct, in his communications?

25 A. Yes.

1 Q. And I believe you testified that as far as it was the
2 "Merchant of Venice," I believe, where he got that from?

3 A. Correct.

4 Q. And you're familiar with the fact that Lago (sic) was
5 not actually trying to extract his pound of flesh, aren't
6 you?

7 A. I am, yes.

8 MR. KENNEDY: Thank you. I have no further
9 questions.

10 **REDIRECT EXAMINATION**

11 BY MS. SCHLUETER:

12 Q. One question, Doctor. Based on everything you know
13 about Mr. O'Dwyer's medical records, transcripts,
14 evaluations, what is your opinion as to whether or not he is
15 a danger to himself or others?

16 A. As I stated earlier, it's my opinion to a reasonable
17 degree of medical certainty that Mr. O'Dwyer currently does
18 not pose a danger to himself or others based on a
19 psychiatric disorder.

20 MS. SCHLUETER: Thank you, sir.

21 THE COURT: I have one question. You said that
22 you recommend that your patients do not use alcohol at all
23 when they're taking Paxil or their anti-depressant
24 medication. What could be the effect of combining those two
25 drugs?

1 THE WITNESS: There are a lot of negative effects
2 you can see. Just the basic effects of alcohol. I mean,
3 the intoxicant being extenuated. The chemical makeup is
4 different and it's hard to predict how a patient may react.
5 Doctors say that patients don't do it. My experience in the
6 last 20 years, patients ignore what doctors say to them most
7 of the time and they actually continue to drink. But I
8 think that would be something that I would recommend that if
9 he is to be released that there would be certain provisions
10 be placed so that to make sure for a clinical follow-up,
11 maybe some evaluation of substance abuse, tested for it, and
12 other stipulations.

13 THE COURT: And is there testing that can done to
14 assure me that, for example, if I were to release Mr.
15 O'Dwyer that he were continuing to be compliant with taking
16 his medications? Is there testing that can tell you whether
17 he was skipping medications or would that have to be a daily
18 test? I mean, there is not a residual for Paxil, is there?

19 THE WITNESS: No, there are no blood tests that
20 you do for this anti-depressant. There is no blood level
21 that you can get. There are other medications. I did speak
22 with Mr. O'Dwyer as to the potential of considering other
23 medicines. And if that is to be looked into, I could
24 provide that to the Court. Ms. Schlueter had asked me if at
25 all if we were at that point, if he were to be released,

1 there would be anybody that can provide him treatment. And
2 I could provide that treatment also.

3 THE COURT: That's all the questions I have. You
4 can step down. Any other witness?

5 MS. SCHLUETER: Yes. Mr. O'Dwyer would like to
6 take the stand.

7 THE COURT: All right.

8 **ASHTON ROBERT O'DWYER, JR., DEFENDANT, SWORN**

9 THE CLERK: Please state your name and spelling
10 for the record.

11 THE WITNESS: Ashton Robert O'Dwyer.
12 O-'-D-W-Y-E-R, Jr.

13 **DIRECT EXAMINATION**

14 BY MS. SCHLUETER:

15 Q. Mr. O'Dwyer, prior to your arrest, where did you live?

16 A. 6034 St. Charles Avenue.

17 Q. Prior to your arrest, where did you work?

18 A. 821 Baronne Street. Also at my home because I have a
19 laptop. And sometimes I wouldn't go to the office, I would
20 just stay home at the kitchen counter and use a laptop.

21 Q. You continued to litigate as an attorney of record
22 after Katrina, is that correct?

23 A. Yes. But I am disbarred now. I can't litigate
24 anything.

25 Ms. Schlueter, let me just say a couple of things to

1 the Court. This whole --

2 MR. KENNEDY: Judge, I am going to object. If
3 we're doing testimony here, then I don't think it gives him
4 an open-ended invitation to address the Court at this point.
5 I think it has to be coming through the usual process of
6 questions and answers and not a stream of consciousness on
7 the part of Mr. O'Dwyer.

8 THE WITNESS: We went through this with Judge
9 Moore. And Mr. Kennedy was allowed great latitude in cross-
10 examining me, Your Honor. There are certain things that I
11 feel like I have to say to you personally because this
12 proceeding today has demonstrated to me that once you're in
13 the legal system the case doesn't unfold exactly the way the
14 defendant thinks it is going to unfold. And I wanted to
15 articulate that and then raise a few points that I believe
16 are important to the Court, to members of the Bar who are in
17 the audience, and to the FBI who I see sitting back there
18 and to the United States Attorney's Office of the Eastern
19 District of Louisiana who is well represented here. These
20 things have to be said. And they are critical to the
21 decision that I respectfully submit Your Honor is being
22 asked to make today which affects my liberty and my freedom.

23 THE COURT: All right.

24 MR. KENNEDY: Judge, I withdraw my objection.

25 THE COURT: If they have something to do with my

1 determination as to whether you present a danger to the
2 community or to yourself, then they are relevant.
3 Otherwise, if they go to the merits of the case against
4 you --

5 THE WITNESS: Oh, no, we're not going to do that.

6 THE COURT: -- you have to wait until a further
7 time for that. All right. Tell me what you want to tell
8 me.

9 THE WITNESS: All right, Your Honor. Thank you.
10 First of all, Your Honor, you and I have absolutely no
11 history. I just learned your name for the first time day
12 before yesterday. But I can tell you that the infliction of
13 bodily harm on any person, Court official, Judge,
14 Magistrate, law clerk, was the furthestest thing from my mind
15 when I authored the allegedly criminal e-mail approximately
16 1230 hours, 12:30 p.m. on Friday, January 29 of 2010.

17 That particular e-mail is one of five that I
18 exchanged with Mr. Sean McGinn, who is Judge Brown's case
19 manager, that day all addressing the medication, whether
20 Judge Brown would sign the order allowing me to pay
21 Walgreen's from my Social Security check before he left the
22 office at 5:00. He leaves at 4:30. At 4:30 that Friday
23 afternoon. So by noon, when I hadn't heard from him, from
24 them, from the Court, I felt I had to do something. And if
25 you read the next e-mail and the one preceding it in

1 sequence, you will see that it was not a threat. It was a
2 cry for help, please let me get my medicine before you leave
3 the office at 4:30 today. I did want to get their
4 attention. And as I told Judge Knowles at the first
5 appearance on January 30th, after four and a half plus years
6 I finally got the attention of the FBI, but not in the way I
7 wanted to.

8 Let me explain that statement. I am not going to
9 go far afield. We're not going to get into the merits.
10 But, Your Honor, the members of the Bar who are in the
11 audience, my family, the FBI, the United States Attorney's
12 Office should know that Ashton O'Dwyer sits here today as a
13 political prisoner. I have deigned to aver that certain
14 individuals who wear black robes on the Eastern District of
15 Louisiana bench are corrupt. And that this corruption has
16 infected irreparably the Victims of Katrina Litigation in
17 which I represent a couple of thousand totally, totally
18 innocent people who have been denied regress of grievances
19 for the past four and a half years because the decisions
20 emanating out of Section "K" of this Court have been
21 corruptly influenced by a crooked Judge and his crooked rich
22 and powerful lawyer friends to who he has handed control and
23 management of the litigation. I reported this to the FBI.
24 I have reported this to the United States Attorney. I have
25 reported this to the United States Department of Justice in

1 Washington, D.C. I have reported it to the Inspector
2 General of the Department of Justice. And I have gotten
3 nowhere.

4 I personally was the victim of a false arrest,
5 abduction, brutalization, torture, false imprisonment, and
6 actual physical injuries in the aftermath of Katrina. I was
7 pepper sprayed 30 to 40 times while my hands were cuffed
8 behind my back. And I was shot at point blank range with a
9 .12 gauge shotgun loaded with bean bag rounds in both
10 thighs. I initially said six to eight times. When I
11 recently counted the number of wounds that were inflicted on
12 my lower torso, lower extremities, excuse me, I actually
13 counted 11 separate hits. These were not idle threats, they
14 were actual brutal physical injuries that so-called law
15 enforcement inflicted on me.

16 Ms. Mann, who is sitting at counsel table who I
17 have known since we have been children, I am talking about
18 five or six years old, knows about this. Mr. Kennedy's
19 colleague, Michael Magner, knows about this. In fact, he
20 was at Camp Amtrack when the shots were fired inside. Have
21 you ever fired a shotgun indoors? Have you ever fired a .12
22 gauge shotgun 11 times indoors? Believe me, he knew what
23 was going on. Mr. DiMenna's colleagues know about this
24 because I have been to their office at least twice giving
25 them the pictures, giving them the pleadings, giving them

1 the legal arguments that I presented to the Court. Nothing
2 has happened. So I am not making this up.

3 As for my disbarment, I stand before the Court as
4 a disgraced, embarrassed, and humiliated lawyer by
5 education. I maintain that my disbarment truly has nothing
6 to do with these proceedings. But it is related because I
7 am here as a political prisoner. It was in retribution or
8 retaliation for my attempting to expose what is going on in
9 the Victims of Katrina Litigation. I have become an
10 embarrassment to the United States of America and to its
11 lawyers who, if they will not do something about the problem
12 that I have brought to their attention, are part of the
13 problem and accomplices after the fact and co-conspirators.

14 My arrest, and if you read that Complaint, you
15 will have to come to the conclusion that the Complaint was
16 in the works for a long time prior to January 29, 2010. I
17 don't know whether Mr. DiMenna started it. The government
18 didn't have the intestinal fortitude to call him as a
19 witness at my initial detention hearing and I assume that,
20 because he's been in the courtroom during the proceedings
21 today the entire time, that they don't intend to call him
22 now. But that would be the first question I asked him,
23 "When did you start preparing this Complaint against Ashton
24 O'Dwyer?" They don't want to try me criminally on the one
25 offensive e-mail. They want to smear me with my admittedly

1 vulgar, coarse, ungentlemanly, strident language. And
2 marginalize me, embarrass me, and humiliate me so that
3 nobody listens to my message.

4 I am not a danger to anyone, Your Honor. I hope
5 that you think long and hard before you decide whether or
6 not you're going to send me back to the Windsor Court St.
7 Bernard. I am in solitary. The way I look at it, somebody
8 owes Ashton O'Dwyer for the past 35 days. If you do send me
9 back, I will deal with it just like I have dealt with all
10 the other misfortunes that have been visited on me since
11 Katrina. But I hope you let me go. I hope you believe what
12 Dr. Zimmermann and Dr. Mallik said and that you conclude
13 that there was no reasonable basis for Mr. Gantner, on the
14 strength of a ten-minute interview during which I was told
15 he was going to be examining me about what assets could be
16 posted to secure my bond, and who issued a conclusion about
17 my dangerousness to the community. An issue that I was
18 totally blindsided on, had not been warned about by my
19 lawyers, and simply did not expect. I cross-examined him, I
20 thought, fairly effectively at that hearing on January 30th
21 of 2010, which you say you read, Your Honor. I did not have
22 DSM-4 handy or available to me to cross-examine me --
23 cross-examine him in depth. But the three issues that he
24 testified supported his conclusion were issues that he just
25 grabbed out of the air and had nothing to do with reality.

1 People who are depressed are not homicidal, particularly
2 this depressed individual who isn't depressed, its
3 depression is stabilized and under control by the
4 psychotropic drug Paxil.

5 Dr. Mallik wants to fiddle with the medication. I
6 am willing to try anything he or a pharmacologist wants.
7 But I would like to do that with an ankle bracelet or
8 confined to my home rather than from 1900 Paris Avenue in
9 Chalmette, Louisiana.

10 The only other thing I would say, Your Honor, I
11 know that the Complaint got me in a lot of trouble. The
12 ladies in the audience, I am sure, are terribly offended by
13 my language for which I apologize. But none of the language
14 is criminal, I respectfully submit. Even though you may
15 disagree with it and conclude that it was vulgar, coarse,
16 and whatever other descriptive term you want to use toward
17 it, it's constitutionally protected free speech. And was
18 contained primarily in lawyer-to-lawyer e-mails in which
19 Ashton O'Dwyer had a reasonable expectation of privacy. I
20 never thought that a lawyer working for the Federal
21 Government with the U.S. Department of Justice would ignore
22 the message and reveal those e-mails to the word, or that
23 the FBI would arrest me as a result of that.

24 One last point, and I will submit myself to cross-
25 examination, to make sure you understand. The reference to

1 "retribution in flesh," not a pound of flesh in the
2 "Merchant of Venice" was to get Mr. Cabral's attention. I
3 did not want him investing my wife's money and putting it at
4 risk, which I had handed her in cash. If you recall the
5 "Merchant of Venice" accurately, you will remember that the
6 bond that was given to Shylock was unenforceable because it
7 only referred to a pound of flesh. It excluded blood.
8 Well, I intentionally omitted reference to blood in my e-
9 mail to Mr. Cabral because I knew or suspected reasonably
10 that at some point in time somebody might say, "O'Dwyer, you
11 threatened the man". No, I didn't. If I had, I would have
12 included blood in the retribution of flesh and I didn't.

13 I am yours, Mr. Kennedy, unless the Judge has any
14 questions for me.

15 THE COURT: Cross-examination.

16 **CROSS-EXAMINATION**

17 BY MR. KENNEDY:

18 Q. Mr. O'Dwyer, you know this, I mean, you know exactly
19 what words to put in a communication and what not to put in
20 a communication, isn't that correct?

21 A. No.

22 Q. Well, evidently --

23 A. I sure screwed up this time.

24 Q. Well, according to your testimony here --

25 A. I sure screwed up this time, Mr. Kennedy.

1 Q. So based upon what you said is that you intentionally
2 put threatening words in there but didn't convey that as a
3 threat?

4 A. I didn't threaten anyone, sir.

5 Q. I am not saying you threatened. That's what I just
6 said, you're saying that you put words in there but your
7 testimony now is that you didn't even convey that as a
8 threat because you left out the word blood?

9 A. Oh, the e-mail to Mr. Cabral?

10 Q. Yes.

11 A. That is correct. That was not a threat. I had no
12 intention of carrying the warning that I was giving him to
13 even remotely inflict bodily harm on him or damage to his
14 property or anything or anyone else.

15 Q. So you know how to artfully design a communication to
16 somebody that gives you plausible deniability later on when
17 you're confronted with it, isn't that correct?

18 A. If you're asking me if I am a liar, the answer is no,
19 sir. I have always tried to live my life by the honor code
20 that is subscribed to by people who are given entry to the
21 United States Military Academy at West Point. Now I'll tell
22 you this, sir. Quote, "I don't lie, cheat, or steal or
23 tolerate those who do."

24 Q. But that code of honor that you ascribe to would
25 include your racial epitaphs against Judges as well as --

1 A. I don't apologize for that. He is a blue gum-nigger
2 bastard. And I don't care who hears that.

3 Q. Okay. So that's your testimony today in court?

4 A. That is correct, sir. And I said it to him personally
5 in a personal and confidential communication in writing
6 signed by me and he decided to make it public, not me. He
7 knows what he is. I know what he is, and you know what he
8 is.

9 Q. Is he -- Mr. O'Dwyer, is he your attorney or
10 anything? Is there any expectation? You're a lawyer, why
11 would you have an expectation of privacy with that, for that
12 communication when you send it to a Federal Judge?

13 A. I didn't say I had an expectation of privacy with
14 respect to that. I was talking about the e-mails that I
15 sent to Mr. Robin Smith that contained admittedly bad
16 language. As to the handwritten note that I sent to Judge
17 Lemelle, I sent it to him only, personal and confidential,
18 and he decided to publicize it; not me, sir.

19 Q. And that bothers you that he publicized that?

20 A. Yes, it bothers me. I am ashamed of it. But I don't
21 apologize for it. And I would do it again.

22 Q. You stand by it?

23 A. Yes. That is correct.

24 Q. And given the opportunity to get out of here, you would
25 do it again?

1 MS. SCHLUETER: Objection, Your Honor. It's
2 really irrelevant. That was not a threat. It's an
3 inflammatory argumentative discussion --

4 MR. KENNEDY: Exactly.

5 MS. SCHLUETER: -- that is meant to start a
6 diatribe.

7 THE DEFENDANT: It's not your criminal. It's
8 constitutionally protective free speech.

9 THE COURT: Wait. There's an objection before
10 the Court.

11 MR. KENNEDY: Judge, obviously, this is cross-
12 examination. I have a right to go into the defendant's
13 state of mind not only when he sent those communications but
14 how his state of mind is now and how that is reflective upon
15 his ability or his dangerousness to society and what he
16 would continue to do if he were released. As he just
17 testified to, he would continue.

18 THE COURT: I sustain the objection insofar as I
19 don't really see how the contents of that e-mail has
20 anything to do with whether this defendant is a danger. He
21 can be insulting to Judge Lemelle without being a danger to
22 him.

23 MR. KENNEDY: Judge, I am asking the Court to
24 take in totality the actual e-mail communications.

25 THE COURT: I have read the e-mails and I have

1 read the Complaint and I have read the prior transcripts, so
2 we're plowing the same ground. Let's not.

3 THE DEFENDANT: Your Honor, since we're on the
4 subject, I want to say something. I am trying to remain
5 calm but the bottom line, insofar as Ivan L. R. Lemelle is
6 concerned, Mr. Kennedy, he is where he is today only by
7 virtue of his skin color, sir. No white man as lazy,
8 stupid, and corrupt as he is would ever have been confirmed
9 to be a Federal Judge by the United States Congress.

10 BY MR. KENNEDY:

11 Q. Judge Lemelle makes you very angry, doesn't he?

12 A. Yes, he does. He suspended me and later disbarred me.
13 And when he disbarred me, he didn't even give me an oral
14 hearing, Mr. Kennedy. You call that a denial of due process
15 of law, sir, guaranteed by the Fifth and Fourteenth
16 Amendments of the Constitution. Or is it Fourth and
17 Fourteenth?

18 Q. And you continue to harbor this anger towards Judge
19 Lemelle, don't you?

20 A. I think he should be impeached, sir.

21 Q. And you continue to harbor this anger towards Judge
22 Duval as well, as you previously stated?

23 A. Absolutely. I have reported both Judges to the House
24 Judiciary Committee, which is the same august body that is
25 considering the impeachment of another Judge from this

1 Court, G.T. Ortous.

2 Q. Okay. You also consider -- or continue to harbor
3 anger against Judge Dennis in the Fifth Circuit, isn't that
4 correct?

5 A. Oh, yes indeed.

6 Q. And as far as your communication with them, I think you
7 just testified right now and also previously testified at
8 your detention hearing that given the opportunity you would
9 continue to communicate with those persons, isn't that
10 correct?

11 A. Communicate with them? No, sir. The only
12 communication that I have with them has been via my
13 Complaint of Judicial Misconduct which I have filed and
14 amended several times and submitted to the United States
15 Court of Appeals for the Fifth Circuit. I have not yet been
16 contacted by anyone investigating the complaints of
17 misconduct against those three jurists that I have lodged
18 with the Fifth Circuit, so I don't know the status. And I
19 am not communicating with them. And as I appreciate it,
20 Your Honor, if in your wisdom today you allow me to return
21 to my home rather than the Windsor Court St. Bernard, I am
22 going to be prohibited from communicating with anyone who is
23 identified in the Grand Jury Indictment that was returned.
24 That's how I appreciate it.

25 Q. You would say you would not be prohibited against

1 communicating with persons that aren't named in the
2 Indictment? Is that what you're saying?

3 A. Well, I am not going to communicate with Judge Duval,
4 Judge Lemelle or Judge Dennis; no, sir.

5 Q. But you did previously. You just testified that even
6 after your disbarment by Judge Lemelle, that's when you sent
7 the note to Judge Lemelle, isn't that correct?

8 A. No. I sent the note to Judge Lemelle after Judge
9 Lemelle struck my answer and defenses in the litigation
10 filed against me by an expert witness in which I had good
11 and valid defenses. And then without hearing a word of
12 evidence, entered a default judgment against me for a sum of
13 money between \$150,000 and \$200,000 which put my continued
14 occupation of and ownership of my home in jeopardy, sir,
15 because I could not afford a suspensive appeal bond. That's
16 when I told Judge Lemelle, in writing, what I thought of
17 him. And still think of him.

18 Q. So that was after negative legal action against you?

19 A. I call a default judgment for almost \$200,000 legal --
20 illegal action. Excuse me.

21 Q. And I think you testified previously something to the
22 basis that this is all a big conspiracy by the black robes
23 against you because of your representation of Hurricane
24 Katrina victims?

25 A. No. You're being inarticulate again, Mr. Kennedy.

1 Q. Well, I apologize.

2 A. I know that your judgment, sir, is seriously at issue
3 because your colleague, Mr. Magner, was complicit in my
4 abduction, brutalization, torture, and false imprisonment,
5 and you work shoulder-to-shoulder with him in the terrorism
6 group at the U.S. Attorney's Office. Now why are you
7 prosecuting me instead of him? You're prosecuting me for a
8 threat when I put on your table earlier today the
9 photographs of my wounds and my medical records with actual
10 physical injuries done to my person while Magner sat by and
11 let it happen.

12 Q. So it's your position that the U.S. Attorney's Office
13 is part of this conspiracy against you?

14 A. Absolutely.

15 Q. Okay. Along with all the black robes that you
16 previously testified to?

17 A. Not all of them. I think that Lemelle and Duval are
18 the two prime suspects. They have no doubt been aided and
19 abetted by well intentioned but misguided other Judges. And
20 I think of Judge Berrigan and Judge Vance as probably
21 falling in those categories.

22 Q. So you view this whole prosecution as a vindictive
23 action on the part of the U.S. Government against you, not
24 as a legitimate prosecution based upon your communications
25 to persons, isn't that correct?

1 A. That is correct. And let me give you some extrigent
2 evidence of that. If the FBI, or whoever it was, Judge
3 Brown contacted after Sean McGinn put the allegedly criminal
4 e-mail on his desk had actually believed that I constituted
5 a threat to anyone -- I remind you the e-mail is conned at
6 approximately 1230 hours, 12:30 p.m. -- they didn't come
7 to my home until 2130 hours, 9:30 that night, how many
8 people could I have killed in the nine hours it took them to
9 take action, Mr. Kennedy, if I had intended anyone bodily
10 harm?

11 Q. Is that something you contemplated, Mr. O'Dwyer?

12 A. No. But I am asking you. They sure couldn't have
13 been --

14 MS. SCHLUETER: Objection.

15 THE DEFENDANT: They sure couldn't have been
16 worried about my threat to the safety of other human beings,
17 it took them nine hours to act.

18 THE COURT: There's an objection.

19 MS. SCHLUETER: Objection, Your Honor. When we
20 talk about the substance of this offense, that's for another
21 forum, that's for a trial, that's for a jury and it's
22 absolutely improper for Mr. Kennedy to ask what he intended
23 at a detention hearing.

24 MR. KENNEDY: Your Honor, this is something that
25 Mr. O'Dwyer, in his own statement, brought up. He went on

1 and on and on about the substance of the charges and the
2 communications and his perception as to why he was arrested.
3 This is merely cross-examination of what Mr. O'Dwyer has
4 already testified to.

5 THE COURT: I agree with you on that point.
6 However, this is all sounding awfully familiar to me. I
7 heard this all, or read this all in the transcripts of the
8 previous hearings. So unless there is something new that we
9 can add to this information, then I don't know that it's
10 really necessary to go through this.

11 THE DEFENDANT: Your Honor, I hear you a hundred
12 percent. And the only thing that I would say is new is the
13 fact that if you read the Complaint and conclude, as I did,
14 that it had been in the works for some time prior to January
15 29, 2010, the government was looking for any pretense to
16 arrest Ashton O'Dwyer.

17 THE COURT: I heard that.

18 THE DEFENDANT: Unfortunately, I gave it to them.
19 I shot myself in the head, not in the foot.

20 BY MR. KENNEDY:

21 Q. You were arrested after that last communication. But
22 you weren't arrested prior to any of those other
23 communications, were you, Mr. O'Dwyer?

24 A. No, I wasn't, Mr. Kennedy.

25 Q. I'm just asking you, Mr. O'Dwyer.

1 A. You know I wasn't, sir.

2 MR. KENNEDY: Thank you. I have no further
3 questions.

4 MS. SCHLUETER: Your Honor, this concludes the
5 presentation. I would hope, though, that you would allow me
6 to argue.

7 We have submitted to the Court not only scientific
8 evidence by both a psychologist and a psychiatrist that Mr.
9 O'Dwyer, despite his strident inappropriate vulgar language,
10 is not dangerous.

11 At this point, Your Honor, I have suggested that
12 he has the most extraordinary family ties I have ever seen.
13 He has a daughter who is a lawyer present in the courtroom.
14 A sister who is here who has offered to the Court, and we
15 have presented the representation, that if this Court deemed
16 it appropriate to release Mr. O'Dwyer that she would
17 personally see to his transportation, if there were Court
18 ordered counseling or psychiatric evaluations, or some
19 review done by the Pre-Trial Services Office. We have also
20 indicated that being mindful of this Court's concern that
21 any time he has to be in this courthouse, because he is
22 noticed to appear, either I or a member of my staff will
23 meet him at the courthouse door, we will pre-advise the
24 court security officers and the United States Marshal that
25 he will be in the office. And we will escort him through

1 the Court to conduct the business that is required, and out
2 of the building.

3 There are members of our legal community, Judge,
4 who say if, for instance, there was a complication with
5 getting him to Court ordered anger management or mental
6 health counseling, they would step up to the plate and
7 transport him from his home.

8 Essentially, he is going to go from Paris Avenue
9 which, of course, is the St. Bernard Parish Jail, to his own
10 home on St. Charles Avenue where he will continue to reside
11 with his daughter, continue to work on his cases. And with
12 the exception of coming to court, or going to a medical
13 doctor, he will remain in his home. He has been instructed
14 that he cannot have e-mail communications with anybody that
15 might be considered a victim or an intended victim of his
16 previous missives.

17 I want to frame this case in terms of his long
18 distinguished legal career, the fact that he has an absolute
19 absence of criminal record, professional associations that I
20 would be proud to have, and that he has a support system.
21 He knows no other area but New Orleans. We certainly don't
22 want, unless you want me to belabor the point, suggest that
23 he would ever leave this community. A risk of flight, I
24 think not. A man able to sign his own bond with the value
25 of a St. Charles Avenue home, yes, Judge, I think that is

1 what's appropriate, the he signs that. And if he in any way
2 fails to follow the scripture of the bond terms securing his
3 release, that there is a financial downside to it. While he
4 does have a \$200,000 judgment in favor of an expert witness
5 out of the Eastern District of Louisiana that is impinging
6 on the value of his home, and he has a small indebtedness to
7 his mother, relatively small -- I shouldn't use that term.
8 I am not really accustomed to it. But, not more than
9 \$250,000 against the value of the home which is a million
10 and a quarter. With those exceptions, he is trying to
11 suggest to the Court that his pension is to follow due
12 process of law, to follow the specific scriptures that this
13 Court has, and to litigate appropriately.

14 And when you look at the definition and the four
15 corners of the missive that he sent to Judge Brown's
16 courtroom deputy, it was to ask for permission to get the
17 medication to keep him on track. It was one of five, as I
18 understand it. There were e-mails that followed at the
19 conclusion of the day essentially saying, "I assume the
20 Judge didn't rule. Thank you." And whether or not it was
21 littered with sarcasm in that he continued to appeal to a
22 Court for legal permission when he got his Social Security
23 check which came into existence at the end of 2009, there
24 was a Court Order which he construed strictly that said
25 before he expend any money, he needed Court authorization

1 and therein began the e-mails in which he tried to get
2 funding.

3 We have had him examined to give this Court
4 comfort. He has dutifully and I say rather patiently sat in
5 jail and participated with whatever tests needed to be given
6 to satisfy both Dr. Zimmermann and Dr. Mallik that he is not
7 a danger. And we think we presented an extraordinary case
8 where what's appropriate is to basically confine him to his
9 home and let us, allow us to litigate this properly. Thank
10 you.

11 MR. KENNEDY: Your Honor, I will submit to the
12 Court that the best evidence in this case is going to be the
13 Complaint and the actions of Mr. O'Dwyer himself. If you go
14 back and look at the history of Mr. O'Dwyer and the
15 communications he sent, they're indicative of a pattern of
16 behavior by Mr. O'Dwyer and his inability to control himself
17 given that whenever he perceives a wrong, whether he is
18 correct or incorrect regarding the arrest of -- the prior
19 arrest, whenever he perceives a wrong he cannot control his
20 actions. And I think that the e-mails and communications
21 are indicative of that as well as the testimony that Mr.
22 O'Dwyer gave in court today, as well as the previous
23 testimony that he gave.

24 You can kind of see his anger trying to bubble to
25 the surface. It didn't quite get to that point. But you

1 can see it's obviously percolating around there. Judge, Mr.
2 O'Dwyer, in a lot of respects, is kind of like the tax
3 protestor or government protestor. Basically he perceives
4 that there is this big conspiracy against him on the part of
5 the government, on the part of law enforcement to take
6 action against him. But he's never willing to look inward
7 to his own actions as possibly being the cause of his
8 incarceration today and the cause of his problems. He is
9 sitting there blaming it on other persons and other entities
10 and it's fueling his anger and lack of self control.

11 The defense is asking you to release him pursuant
12 to Court orders. Judge, Mr. O'Dwyer has been under Court
13 orders for the last three or four years and look at the
14 response that has gotten. It's simply borne out in his
15 communications that are sent to the Court, that are sent to
16 Judge Lemelle and communications to Judge Feldman and Judge
17 Dennis and threats against them that is borne out by the
18 communications. He has a total lack of respect for the
19 court system, for court orders, for the judicial process
20 itself. And there is no guarantee that he would adhere to
21 any type of a court order were he to be released.

22 You only have to look at his prior behavior, his
23 prior actions to determine that he is still hostile, he
24 still harbors anger, he's still harboring resentment towards
25 those persons. And that is borne out by his testimony as

1 well as again by his communications.

2 As far as his actual clinical diagnosis, I think
3 it's kind of curious that the defense, out of all the
4 experts that they called, that they have yet to call his
5 actual psychiatrist who has been treating him over the last
6 eight years. I think that that would be evidence that the
7 Court would want to be able to make a determination of what
8 has his behavior been over the last eight years.

9 As the Court has seen, Mr. O'Dwyer has the ability
10 to turn on and turn off his personality when he so chooses.
11 I would submit to you that the testimony by Dr. Mallik and
12 Dr. Zimmermann said he was compliant and responsive while he
13 was in jail. Yeah, that's what he had to be. He is
14 certainly not going to, you know, do something offensive to
15 them because those are the persons that basically are going
16 to come in here and testify and essentially hold the key to
17 the jail in which he is held. So certainly he's going to be
18 on his best behavior. But the fact is they didn't call
19 anybody that has a personal intimate knowledge of Mr.
20 O'Dwyer over the last eight years. Any medical
21 professionals that deal with the psychosis of the
22 psychiatric examination of Mr. O'Dwyer. He is on 75
23 milligrams of Paxil. That's a substantial amount. What is
24 the underlying basis for that? What is the underlying
25 diagnosis of Mr. O'Dwyer? Nobody has ever testified to

1 that. The best person for that would have been the
2 psychiatrist. I submit to you there's a reason why the
3 defense did not call that person, because it would not have
4 been helpful to Mr. O'Dwyer's situation in allowing him to
5 be released. Certainly --

6 MS. SCHLUETER: Objection, Your Honor. There is
7 no reason to reach that conclusion. That's argument.

8 MR. KENNEDY: It is argument. Exactly. That's
9 exactly what I am doing, Judge,

10 MS. SCHLUETER: Your Honor, suggesting that the
11 fact that other physicians that saw him before in a very
12 short period of time would have been able to amass and
13 collect medical records, well, this Court has had his
14 private family physician come in and testify. The
15 psychiatric records that we were able to put together, we
16 have delivered to the doctors that presented the opinions
17 today. There has been complete disclosure to medical
18 experts.

19 MR. KENNEDY: Judge, you know, first of all, the
20 doctor that was presented was his internal doctor.
21 Basically his general practitioner.

22 THE COURT: Prior doctor. I understand that.

23 MR. KENNEDY: He was not a psychiatrist. And he
24 could not testify to the underlying mental problems of Mr.
25 O'Dwyer, didn't know why he was on Paxil. All he knew was

1 that he was on it and he was willing to prescribe additional
2 Paxil for Mr. O'Dwyer.

3 Regarding the medical records, I find it curious
4 also that none of those records were sent to the government.
5 We have yet -- I have never seen them. I have had no
6 opportunity to cross-examine from them that form the basis
7 for Dr. Mallik's opinion. I asked before we even got into
8 the hearing this morning if there were any reports prepared
9 by Dr. Mallik. I would assume that that would include any
10 reports relied upon by Dr. Mallik to form his opinion. We
11 had no opportunity to view those whatsoever at all. To say
12 that there is complete disclosure in this case is not true.
13 There was disclosure here that Ms. Schlueter chose to give
14 to her own experts. But certainly, again, going back to the
15 original diagnosis, and this is argument, that then I
16 believe that Dr. Meyers would have been the best person to
17 come in here and testify to the ongoing and continual
18 history of Mr. O'Dwyer. But he was not called by the
19 defense. So, Judge, I would just submit to the Court that
20 if you look at Mr. O'Dwyer, as testified to by the number of
21 persons here, Mr. O'Dwyer's life, for lack of a better term,
22 has been in a complete downward spiral over the last four to
23 five years. Maybe even over the last ten years if you
24 believe it's 2001 where the witness testified that his law
25 practice began to fall apart. Maybe Hurricane Katrina was

1 finally the snapping point for Mr. O'Dwyer, but certainly
2 the Court can look to the record and show that's really
3 where most of his legal problems began. And they have not
4 gotten better, Judge. He has not curbed or stopped his
5 behavior in any manner. As a matter of fact, it has gotten
6 progressively worse. And that's the basis for the Complaint
7 is to show the progression of Mr. O'Dwyer over the past
8 several years and his actions. And that is why we ask the
9 Court to take that into consideration in determining the
10 dangerousness of Mr. O'Dwyer and his ability to be released
11 back into society. He can't control himself, Judge. Never
12 has been. He suffers from -- I am not a psychiatrist, but
13 anybody can see he has got anger management issues. He
14 can't control his anger, he's on Paxil, he drinks. All of
15 these factors combined would lead to nothing but the
16 conclusion that the defendant is a danger to himself and to
17 other persons.

18 If you look at his actions, which he has admitted
19 to, which is sending those communications and knowing when
20 to tow the line and when not to tow the line, but this veil
21 threat, these metaphors that he's sent, look at the totality
22 of everything, the downward spiral, the bankruptcy, the
23 dissolution of his marriage, the problems that he has had
24 with law enforcement, his arrest, you know, for public
25 drunkenness and other reasons and also his perceived

1 victimness, for lack of a better term, at the hands of the
2 federal government, all of those factors combined don't show
3 him getting any better. In fact, they show him getting a
4 whole lot worse.

5 And the reason why Mr. O'Dwyer is here today, and
6 he fails to grasp, is the fact that he is here today because
7 of his actions. There's not this big conspiracy on the part
8 of any Court. He is here because of what he has done and
9 now he has finally crossed over that line and that is the
10 basis for the Indictment of Mr. O'Dwyer. So I would ask the
11 Court to look at everything in its totality and arrive at a
12 conclusion that Mr. O'Dwyer is a danger to either himself or
13 to the public at large and that he should be detained.
14 Thank you.

15 THE DEFENDANT: Your Honor, four brief points in
16 rebuttal, Your Honor.

17 THE COURT: Let your lawyer talk for a minute.

18 MS. SCHLUETER: Let me just say in response,
19 Judge, the first time we had a hearing Mr. O'Dwyer
20 represented himself. The second time we had a hearing, we
21 brought the attending physician that prescribed the Paxil.
22 We brought a document from the St. Bernard Prison signed by
23 Dr. Lei. We brought a document from Lieutenant Shannon
24 DeRoche explaining what those extended observations had
25 disclosed.

1 Mr. Kennedy was on a tare because we didn't bring
2 in those witnesses, yet those witnesses are equally
3 available to him. What we could do or should do and why
4 can't we find every doctor that has examined in the past Mr.
5 O'Dwyer seems to be the only concern that the government
6 has. I would say that I almost didn't have the people
7 sitting in the back of the courtroom come today because I
8 really did think it was dated information, it was cumulative
9 information, and that I was more respectful of the Court's
10 time. I selected someone with whom he worked until the day
11 the government arrested him in an office eight hours a day.
12 I selected a lawyer who cared enough to go to the prison
13 before he opined to this Court that this man is not a danger
14 and a man who has known him from Jesuit High School through
15 the Army, through law school, and through the practice of
16 admiralty and maritime law. You have sisters, you have
17 mothers, you have daughters. I frankly thought my bringing
18 in current doctors to give you the comfort level that you
19 needed to release a man who has been sitting in jail as a
20 result of that momentary push of an e-mail to a Judge's
21 clerk might satisfy this Court.

22 And I am not asking that you let him go off
23 without protection or control, as Mr. Kennedy would say.
24 This Court is supposed to find the least restrictive set of
25 circumstances that would allow for his appearance in court

1 and to protect everyone involved. Those least restrictive
2 conditions do not involve being on lockdown at the St.
3 Bernard Parish Prison and for over a month while we get new
4 doctors who didn't know him before, who are not associated
5 in any way, who testified during the court proceedings on
6 whose opinion other courts, state and federal, relied.
7 These are not people that we have known before. These are
8 not paid experts that give lightly their opinions. They are
9 people that on Lundi Gras are out there examining him for
10 four hours and on their Sundays, in order to accommodate
11 this Court's schedule are spending four hours. And are
12 conferring and are asking for records. No one is giving a
13 light opinion. The conditions that we have here will insure
14 that all of the Court's orders are followed scrupulously.

15 I can't offer -- this is as good as it gets. A
16 man has no prior criminal record, a man has money
17 substantial, property owner in this City, all of his ties
18 are close and strong with family and professional people.
19 It is, I suggest, inappropriate to keep him confined and
20 that a bond is appropriate.

21 THE DEFENDANT: Judge --

22 THE COURT: I don't think it's necessary for you
23 to say anything else. I am going to find that there are
24 conditions that we can impose that will allow you to be
25 released. So if you want to have a seat --

1 THE DEFENDANT: Thank you.

2 THE COURT: -- we're going to talk about what
3 those conditions are. I do want you released with
4 electronic monitoring. I do want prior notification to this
5 Court prior to, or to the CFOs, the Marshal Service, and
6 that can be through your attorney prior to your having to
7 come to court because I realize the Public Defenders'
8 Office, I believe, is located in this building.

9 MS. SCHLUETER: Yes, Judge. But, I mean, we
10 would be happy, for the Court's comfort, to go there when
11 necessary. He lives on St. Charles Avenue.

12 THE COURT: Right. So if he has to come here,
13 there has to be prior notification because I understand that
14 there are some Judges who, no matter how Mr. O'Dwyer may
15 perceive the communications he has made, there are some
16 Judges here who have some discomfort with them and I want to
17 make sure we address that. I do not want any e-mails or
18 other communications with any of the, as you said, victims
19 or possible intended victims of any of the prior
20 communications or of any federal judicial officer or member
21 of the U.S. Attorney's Office or the Marshal Service or the
22 FBI. You need to have all of your communications be through
23 your attorney, not directly from you.

24 I am also going to require that you undergo
25 psychological treatment as advised by Dr. Mallik. He said

1 he was willing to undertake that. It appears to me that
2 some anger management is in order. If he is not the one to
3 do that kind of therapy, then I am going to have him order
4 it and have the appropriate psychologist undertake that.

5 I don't want any use of alcohol at all. It's not
6 just abuse, but because you are on a very high dose of Paxil
7 it appears to me that could have some affect on your ability
8 to moderate your behavior at times.

9 And I do want electronic monitoring. Now the only
10 other question that I have, I do not see any point in a
11 property bond. In my experience, I think that in this case
12 the electronic monitoring and these other conditions that we
13 have are enough. And the repercussions should you violate
14 any of those conditions, Mr. O'Dwyer, would be that you
15 would be put back in jail. And I don't give people second
16 chances. I will put you in jail if you violate any of those
17 conditions. The government generally doesn't like dealing
18 with property bonds and particularly not bonds that have
19 liens and other judgments against it. So I am not sure that
20 I am inclined to do that.

21 Those are really the conditions that I would
22 believe we would need. No firearms, no dangerous weapons.
23 I believe those have already been removed from the home by
24 the FBI. If they want to double check that before they let
25 him go home, that's fine. The use of the computer is the

1 only other issue that I have some concerns about. But it
2 appears to me that for purposes of communication with you
3 and for purposes of trial preparation, it would be useful.
4 However, Mr. O'Dwyer, if you think that you can refrain from
5 sending any e-mails to anybody that might fall into the
6 categories that we have discussed?

7 THE DEFENDANT: I won't be sending any
8 inflammatory e-mails, Your Honor.

9 THE COURT: All right. Well, of course, the
10 other issue is you are dealing with current bankruptcy and
11 what got you in trouble in the first place was your
12 communication with the Bankruptcy Court and it got you
13 indicted. And so for purposes of communication with that
14 entity, I do have some concern. There may be some necessary
15 communications, but I don't want any direct communications
16 from you.

17 MS. SCHLUETER: And, Judge, we have gotten some
18 clarification. On January 29, which was Friday at 5:00
19 p.m., when the communication through e-mail ceased, on
20 Monday an instructive order that normal household expenses
21 do not require the specific approval of the Bankruptcy
22 Judge. Had he known that before, there would have been no
23 communication at all.

24 THE COURT: We wouldn't be here today. I
25 understand.

1 MS. SCHLUETER: So I am actually probably going
2 to ask Mr. O'Dwyer to file a Motion to Stay the Bankruptcy
3 proceeding. He has recently suggested to the Bar
4 Association that he would like to stay the official
5 disbarment proceedings which followed the Grand Jury
6 Indictment and just sort of take it step-by-step.

7 THE COURT: All right. Then what I am going to
8 require is that prior to filing any such motion, Mr.
9 O'Dwyer, you are to run that past, whatever you're going to
10 file, you run it past your attorney and make sure that she
11 agrees with the language of it before and you're to take her
12 advice on any alterations in the language of any filing.

13 THE DEFENDANT: Instructions and knowledge and
14 understood, Your Honor.

15 THE COURT: All right. For home confinement,
16 there are some -- do I have a probation officer?

17 MS. SCHLUETER: Yes, you do.

18 MR. GANTNER (PRE-TRIAL SERVICES): Pre-Trial
19 Services.

20 THE COURT: Pre-Trial Services officer. I know
21 that for electronic monitoring to be set up, you're not
22 going to be able to have caller ID or call waiting or any of
23 those things on your phone. Is that correct?

24 MR. GANTNER (PRE-TRIAL SERVICES): Correct, Your
25 Honor. He needs to have a land line with no special

1 services.

2 MS. SCHLUETER: And all of those precautions have
3 been taken. Everything has been stripped. He has a single
4 land line.

5 THE COURT: All right. And so how long will it
6 take you to get that in place?

7 MR. GANTNER (PRE-TRIAL SERVICES): Judge,
8 whenever you want to release him we will make sure he gets
9 placed on electronic monitoring that day.

10 THE COURT: All right. Well, I mean, he will be
11 released as soon as possible. He has been sitting in jail
12 since January 29.

13 MR. GANTNER (PRE-TRIAL SERVICES): Yes, Judge.
14 We're prepared to place him on the program this afternoon.

15 MS. SCHLUETER: Thank you, Judge.

16 THE DEFENDANT: Thank you very much.

17 THE COURT: I am going to impose an unsecured
18 bond, which means, of course, no money is put up.
19 And I am going to put that in the amount of \$100,000
20 unsecured.

21 Now there is one more thing. I see everybody
22 standing up. We do have one more issue before the Court and
23 that is the government's Motion for a Psychiatric
24 Evaluation. In light of the evaluation that has been
25 performed by Dr. Mallik, are you still going to move forward

1 with the Motion for a Psychiatric Evaluation?

2 MR. KENNEDY: Yes, Your Honor, because we have
3 not had the opportunity to have the government witness
4 testify -- or examine him and also that only went to the
5 issue of dangerousness, not as to competency either to
6 represent himself at trial or even to stand trial.

7 THE COURT: So what I am going to do then, I am
8 going to grant the government's Motion for a Psychiatric
9 Evaluation, but I am not going to send Mr. O'Dwyer off for
10 that evaluation. We're going to find somebody local who can
11 perform an evaluation at the government's expense. And, Mr.
12 O'Dwyer, you're to make yourself available to the
13 psychiatrist or psychologist or other healthcare
14 professional that is identified by the government. Do you
15 have a particular doctor that you can use?

16 MR. KENNEDY: Your Honor, I don't. I have a
17 couple of names. But certainly I would submit those to the
18 Court later on once I confirm that availability of the
19 doctor.

20 THE COURT: If you would run those by Mr.
21 O'Dwyer's attorney beforehand and if the two of you can
22 agree that there is somebody that you would accept, that
23 would be fine.

24 MR. KENNEDY: Certainly, Your Honor.

25 MS. SCHLUETER: Judge, Dr. Mallik indicates that

1 he would suggest Dr. Andrew Morson, -O-R-S-O-N, as the
2 treating mental health counselor or psychologist.

3 THE COURT: All right.

4 MS. SCHLUETER: I can prepare an order for your
5 signature, Your Honor, where it is Court ordered mental
6 health counseling. I think --

7 THE COURT: You can do that. And I am ordering
8 mental health counseling as recommended by the psychiatrist
9 who has evaluated him. If you want a separate order, if you
10 think that's necessary.

11 MS. SCHLUETER: I think it is, Judge.

12 THE COURT: And I am also ordering that because
13 he is *informa pauperis* in this matter and has appointed
14 counsel that that also be at government expense. If you
15 need that in order for the psychiatrist to be paid,
16 certainly I would sign such an order.

17 MS. SCHLUETER: Thank you.

18 MR. KENNEDY: Judge, just one other issue.
19 Special Agent Christopher DiMenna is here. The FBI executed
20 a search warrant. Two search warrants. One seizing Mr.
21 O'Dwyer's computer. The second one was to search the
22 contents of the computer. They were unable to make a return
23 on the second search warrant because of the fact that the
24 Courts here have been recused. Agent DiMenna is in court
25 today and would like to make the return when you're

1 available to, Your Honor.

2 THE COURT: He certainly can. Although it's my
3 understanding, and in this respect the reason I am here
4 today so late is because I have been at an advisory meeting
5 in Washington, and it's my understanding actually those
6 returns can now be made electronically and the Judge does
7 not need to sign a warrant return. If you're in the
8 courtroom and you want me to sign something, I certainly
9 will be glad to.

10 MR. KENNEDY: Thank you.

11 MS. SCHLUETER: And, Judge, in reference to that
12 computer, I had my computer systems administrator purchase a
13 brand new hard drive. It's less than \$100. I know that the
14 government is in possession of the computer. But what we
15 would like to do is ask the FBI to replicate the hard drive
16 so that we also have available to us the materials that were
17 on the hard drive, the other e-mails that were referenced
18 before and after this e-mail. And I will tender it to Agent
19 DiMenna.

20 THE COURT: It certainly seems reasonable.

21 MR. KENNEDY: Judge, I have no objection. We can
22 certainly work out the logistics of doing that between
23 ourselves.

24 THE COURT: So ordered. Anything else?

25 MR. KENNEDY: Not by the government, Your Honor.

1 MS. SCHLUETER: No, Your Honor.

2 THE COURT: Now let me just mention this. I have
3 to say that normally the criminal cases that I handle are
4 confined to Judge James who is the District Judge in Monroe
5 that I deal with. Judge Walter is handling this one. He
6 does a lot of his own scheduling. But what I am going to do
7 is based on my experience with the Shreveport Judges, I am
8 going to go ahead and order with the two lawyers a status
9 conference. We need to do that in about two weeks. And
10 that will be for the purpose of discussing the status of
11 discovery, possible trial dates, possible dates for any kind
12 of dispositive motions that might be filed so that we can
13 get a handle on keeping this thing moving.

14 MS. SCHLUETER: Yes, Judge.

15 THE COURT: So if we could do that. I don't have
16 my calendar with me. What I am going to do is my clerk, Law
17 Clerk Bill Barkley is sitting here with me and I am going to
18 have him just call both lawyers, get some dates and just
19 keep in mind that you're going to be having a telephone
20 conference with me within the next couple of weeks. The
21 government will initiate the call.

22 MR. KENNEDY: Yes, Your Honor.

23 THE COURT: Anything else?

24 MR. KENNEDY: No, Your Honor.

25 THE COURT: Thank you all. I appreciate your

1 patience.

2 (End of proceedings.)

REPORTER'S CERTIFICATE

I, Arlene Movahed, Official Court Reporter, for the United States District Court for the Eastern District of Louisiana, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date herein before set forth and I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/ Arlene Movahed
ARLENE MOVAHED, CCR
Official Court Reporter
United States District Court
Eastern District of Louisiana