IN THE IOWA DISTRICT COURT FOR **BLACK HAWK** COUNTY

STATE OF IOWA,	)	
	)	
Plaintiff,	)	**CASE NO. FECR155500**
	)	
vs.	)	
	)	
NICHOLAS CLAYTON RHOADES,	)	**TRANSCRIPT OF PROCEEDINGS**
	)	
Defendant.	)	

The above-entitled matter came on for plea and sentence hearing before the **Honorable Bradley J. Harris** on **the 1st day of May, 2009,** at the Black Hawk County Courthouse, in the City of Waterloo, Black Hawk County, Iowa.

A P P E A R A N C E S

FOR THE STATE:

MS. LINDA FANGMAN
Assistant County Attorney
Black Hawk County Courthouse
316 East Fifth Street
Waterloo, IA 50703

FOR THE DEFENDANT:

MR. JAMES METCALF
Attorney at Law
318 East Fourth Street
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DATE ORDERED: MAY 4, 2010
DATE DELIVERED: MAY 17, 2010

JULIE A. DEBNER, RMR-CSR
Official Court Reporter
Black Hawk County Courthouse
316 East Fifth Street
Waterloo, IA 50703

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(Hearing in this matter commenced at 10:25 a.m. with the court, counsel for the state, counsel for the defendant and the defendant present.)

THE COURT: Let the record show that we're in open court in Black Hawk County case 155500. State of Iowa versus Nick Clayton Rhoades.

Are you Mr. Rhoades?

THE DEFENDANT: Yes, sir.

THE COURT: Defendant is personally present in court with his attorney Jim Metcalf. The state of Iowa is represented by assistant county attorney Linda Fangman. This matter is set for further proceedings on this date.

Mr. Metcalf, how does your client wish to proceed?

MR. METCALF: Judge, we're prepared to go forward with a plea of guilty, waive rights to all motions, presentence investigation has been completed and we go to immediate sentencing.

THE COURT: Is there any plea agreement in this matter?

MS. FANGMAN: There is not.

THE COURT: Mr. Rhoades, did you hear the statement of your attorney and the county attorney?

THE DEFENDANT: I did, Your Honor.

THE COURT: Before I can accept your plea there are several things that I need to go over with you to make sure that you understand what it is you're pleading guilty to, the consequences of your plea and the rights that you're giving up.

How old are you?

THE DEFENDANT: I'm 34.

THE COURT: And are you a U.S. citizen?

THE DEFENDANT: Yes.

THE COURT: Can you read, write and understand the English language?

THE DEFENDANT: I do.

THE COURT: How far did you go in school?

THE DEFENDANT: Some college.

THE COURT: Are you under the care of a doctor or physician at this time?

THE DEFENDANT: I am.

THE COURT: And is that for anything that would affect your ability to understand what you're doing here today?

THE DEFENDANT: No, sir.

THE COURT: Any question about your ability to understand what you're doing here today?

THE DEFENDANT: No, sir.

THE COURT: Are you under the influence of any

medicine, alcohol or drugs at this time?

THE DEFENDANT: I am not.

THE COURT: Have there been any threats or promises made to get you to plead guilty?

THE DEFENDANT: There are none.

THE COURT: Are you on probation or parole for any other matters?

THE DEFENDANT: No, sir.

THE COURT: Do you have any other charges pending?

THE DEFENDANT: No, I do not.

THE COURT: Have you had enough time to discuss this matter with your attorney Mr. Metcalf?

THE DEFENDANT: Yes, sir.

THE COURT: Do you need additional time before we proceed?

THE DEFENDANT: No, sir.

THE COURT: Are you satisfied with the services that he has given you?

THE DEFENDANT: Yes, sir.

THE COURT: You need to understand your rights. You have a right to have an attorney represent you during -- throughout these proceedings, and if you can't afford an attorney, one would be provided for you at state expense.

Do you understand that right?

THE DEFENDANT: I do.

THE COURT: You have a right to have a trial in this case. That trial could either be in front of a jury of 12 people or to a judge alone. If you tried your case to a jury, all 12 people would have to agree you were guilty. It would require a unanimous verdict.

If you tried your case to either a jury or to a judge, you'd have a right to a speedy, public trial. You'd have a right to be present during that trial. At that trial you would be presumed innocent unless or until the state proved you guilty, and they would have to prove you guilty beyond a reasonable doubt. You'd have a right to be present when all of the state's witnesses testified, and through your attorney you could confront and cross-examine those witnesses. You'd have a right to bring in witnesses of your own. If they wanted to come in and testify, you could have them here. If they didn't want to be here, you can get a subpoena which is an order from this court requiring them to come in and testify.

At the trial you'd have a right against self-incrimination. No one could force you to testify. If you wanted to, you could, but if you didn't want to, you wouldn't have to, and if you didn't testify, the state couldn't comment on that fact.

Do you understand all of those trial rights?

THE DEFENDANT: I do.

THE COURT: Now, if you enter a plea of guilty, you have to give up those rights because there isn't going to be a jury, there won't be any witnesses, there won't be a trial. Instead, what we'll have is just this proceeding. Do you understand that?

THE DEFENDANT: I do.

THE COURT: And with that in mind do you waive and give up your trial rights?

THE DEFENDANT: I do.

THE COURT: What you're pleading guilty to in this case is what's called a class B felony. It is a criminal transmission of human immunodeficiency virus. It carries a maximum penalty of 25 years in prison. That there is no mandatory or minimum fines in this matter. You would be required to have a lifetime parole under the director of adult corrections in this matter, and you would have to submit to DNA testing along with being on the sexual offender registry.

Is that a correct statement of the maximum and minimum penalties, state?

MS. FANGMAN: I believe so.

THE COURT: Mr. Metcalf?

MR. METCALF: Yes. I think both parties believe

it is not a forcible felony.

THE COURT: I believe that is correct as well. Does the state concur?

MS. FANGMAN: I do.

THE COURT: Do you understand the maximum and minimum penalties, Mr. Rhoades?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What the state would have to prove is that on or about June 26th of 2008, here in Black Hawk County, Iowa, you did knowing that you had human -- and I -- I apologize. Have a hard time saying the word -- immunodeficiency virus, that you knew that you had that, that you were positive for that and that you engaged in intimate contact with another person and you didn't acknowledge or that person didn't know that you had the virus.

Do you understand what it is you would -- the state would have to prove?

THE DEFENDANT: I do.

THE COURT: Were you here in Black Hawk County on June 26th?

THE DEFENDANT: I was.

THE COURT: And at that time were you positive for the human immunodeficiency virus?

THE DEFENDANT: Yes, sir.

THE COURT: You were aware of that?

THE DEFENDANT: Yes, sir.

THE COURT: And did you engage in intimate contact with another person?

THE DEFENDANT: Yes, sir.

THE COURT: And did that person not know that you had this virus?

THE DEFENDANT: No, sir.

THE COURT: Can the court rely upon the minutes for a factual basis, state?

MS. FANGMAN: Yes, Your Honor.

THE COURT: Any further factual basis requested?

MS. FANGMAN: No, Your Honor.

THE COURT: Can the court rely upon the minutes, Mr. Metcalf?

MR. METCALF: Yes, sir.

THE COURT: Any further factual basis?

MR. METCALF: No, sir.

THE COURT: Mr. Rhoades, keeping in mind the rights that we have talked about, the penalties and everything else that we have talked about, what is your plea to this offense; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Any reason why I should not accept the defendant's plea, state?

THE DEFENDANT: No, Your Honor.

THE COURT: Mr. Metcalf?

MR. METCALF: No, Your Honor.

THE COURT: I do accept your plea at this time, Mr. Rhoades. I find that you have voluntarily entered your plea, that you understand your rights, you've made an understanding waiver of those rights, and you understand the consequences of your plea, and that there is a factual basis, and I do therefore find you guilty.

It is my understanding that you wish to go to immediate sentencing; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: Before we can do that there are a couple other things that I need to talk to you about.

First of all, you have a right to wait 15 days before sentencing. Naturally, if you get sentenced today, you have to waive that right. So do you waive your right to wait 15 days?

THE DEFENDANT: I do.

THE COURT: Secondly, you have a right to file what's called a motion in arrest of judgment. That's a motion to challenge this plea proceeding and say that there was some mistake made in taking your plea here today. That motion has to be filed not later than 45 days from today's date, but it also needs to be filed 5 days

before you're sentenced. So if you get sentenced today, you'd have to waive your right to file that motion.

Do you waive your right to file a motion in arrest of judgment?

THE DEFENDANT: I do.

THE COURT: Any reason why we should not proceed to sentencing, state?

MS. FANGMAN: No, Your Honor.

THE COURT: Mr. Metcalf?

MR. METCALF: No, Your Honor.

THE COURT: The court prior to coming in was provided with a presentence investigation report as well several letters which were provided to me by Mr. Metcalf on behalf of the defendant.

Has the state received copies or had an opportunity to review those items?

MS. FANGMAN: I have, Your Honor.

THE COURT: Any objection to the court's relying upon those items or any additions or corrections?

MS. FANGMAN: Not to my knowledge.

THE COURT: Mr. Metcalf, have you received copies of those?

MR. METCALF: Yes, Your Honor.

THE COURT: Any additions or corrections?

MR. METCALF: No, sir.

THE COURT: It is my understanding, state, that the victim in this matter would like to read a victim impact statement; is that correct?

MS. FANGMAN: That is correct. Where would you like to do that or --

THE COURT: He'll read it from the witness chair so the court reporter can hear him.

Sir, come on up, please.

Would you please state your name, please, for the record?

MR. PLENDL: Adam Joseph Plendl.

THE COURT: And go ahead and read your statement, please.

MR. PLENDL: Let me begin this morning by telling you about this crime. I met Nick online and invited him over for a drink. We hit it off and the evening progressed to include sexual contact. Prior to any sexual contact I asked Nick if he was clean, i.e. are you free from sexually transmitted infections. He said that he was or I would not have been intimate with him. Two days later I spoke to an acquaintance and mentioned Nick. This acquaintance also knew him and said I should avoid Nick because he was "trouble." My acquaintance added that Nick was HIV positive. I had a severe panic attack, went downstairs at my house and the two of us

began closely looking at Nick's online profile. I wanted to make sure that the Nick he knew as being HIV positive was, in fact, the man with whom I had sexual contact. We confirmed that it was the same person and immediately went to Sartori hospital emergency room. It was around 1 a.m. I was so traumatized which was worsened when the medical providers interviewing me presumed I was heterosexual, i.e. so your girlfriend didn't tell you she had HIV. I begged for anxiety medication because my heart was racing. I was shaking, crying hysterically and hyperventilating. I was a complete train wreck because of the terror that I feared I had contracted HIV. I felt completely out of control. I was placed alone in a hospital room for an extended period of time while I was inconsolably distraught. Two friends had accompanied me to the hospital but were asked to wait in the waiting area even while I remained alone in the room with no medical provider present. I couldn't stand how isolated and alone I felt. While I waited for a doctor I called my mom using my cell phone. The longer I waited for care, the more panicked I became. I am somewhat informed concerning HIV issues, and I knew when there was an exposure, time is of the essence because prophylactic medications must be administered quickly if there is any chance for them to be effective. When the doctor finally arrived, I was given a

physical examination. The doctor seemed very disconnected and unfamiliar with this area of medical practice. I could tell that I was more knowledgeable about preventive medications used after an HIV exposure that he was. He seemed very unwilling to let me actively participate in any treatment decisions. I literally begged for the prophylactic medication, and he continued to question whether I was an appropriate candidate for this type of treatment, and what the treatment would even involve. My anxiety magnified as the doctor was unable to answer my questions, and my friends shared that they had overheard the front desk nurse making multiple phone calls to other hospitals asking what should we do. I decided to leave. I was certain that I could not trust this doctor with my life, and I believed that I was being denied lifesaving medical care. Although I was there for an hour and a half to two hours, none of the Sartori staff informed me that there was a crime for which the police should be summoned directly to the hospital. Note, I learned this later when I sought help from a different hospital.

I called my general practitioner Dr. Bruce Forystek, UNI health clinic physician, at his home around 2:30 a.m. I had previously seen Dr. Forystek for health-related care and felt I could confide in him. I had a panicked discussion with him and asked if he could

prescribe the medications I needed. He advised me to call the University of Iowa Hospitals and Clinics. Again my panic increased because the clock was ticking and Iowa City was 90 minutes away. I decided I couldn't afford the extra travel time, and my friend phoned Covenant Hospital and spoke with the ER doctor on call. The doctor seemed compassionate and attuned to my sense of urgency. We headed to Covenant. I was still feeling debilitating anxiety, but the nurse there was caring, comforting and consoling. I tried to focus my immediate needs on what I could do to protect my health. She took my blood pressure which was extraordinarily high. A physician researched HIV exposure protocol and found a Center for Disease Control study on the internet which advocated the use of three particular drugs administered in a cocktail format for my exposure. They explained the side effects that would accompany the use of these drugs and explained the potential benefits. I asked for these medications and by 4 a.m. I had take -- taken the first dosage of the meds. I was given another day's worth of meds and prescription for another five. I was encouraged to follow up with the medical providers in five days, but a specific referral was not given. I was then tested for other sexually transmitted diseases and my blood was drawn.

The police were called but the hospital staff

presumed I lived in Waterloo because the hospital was located there. Waterloo police arrived and learned that they did not have jurisdiction for my case which had occurred in Cedar Falls. Approximately 45 minutes later a Cedar Falls police officer came into the room where I was waiting with my two friends and asked which one of us was the sexual assault victim. This made me feel like I might be treated with respect and compassion. I provided a statement to this officer while we were at the hospital.

As a result of this crime I was physically injured in a multitude of ways. I experienced severe joint pain, constant diarrhea and nausea as a result of prophylactic medication prescribed for the HIV exposure. I lost 15 pounds during the month I was taking these medications. Dr. Bruce Forystek at UNI health clinic treated me for these conditions. I've also felt afraid of the possibility of heart damage because I was told at both emergency rooms that my blood pressure and pulse were severely elevated after I learned of Nick's HIV status. I experienced full blown panic attacks at both Sartori and Covenant hospital emergency rooms.

As a result of this crime I've had to face multiple economic obstacles. Initially I missed five to six weeks at Wal-Mart in Waterloo. In November a job promotion became available at Wal-Mart. However, I could

not receive consideration because I missed a period of job coaching that was to have occurred during the six weeks post-crime that I was unable to work. I had to take second leave of absence of work when my stress and mood swings became so severe that I checked into a psychiatric hospital. I missed another month of work as a result. At Wal-Mart employees may take leaves of absences for medical reasons. However, these leaves may not exceed 12 weeks within a given calendar year. Because of Nick I've used 10 of my 12 weeks of available leave time. If I or my family have any substantial health problems during the rest of the year, taking unpaid leave is now a severely restricted option for me.

I was -- I was enrolled and registered for fall classes at the University of Northern Iowa when Nick made his selfish decision to expose me to HIV. College is extremely expensive. The emotional strain, anxiety and stress of the crime escalated to the point that I had to medically withdraw from all of my classes. I received no academic credit for the semester. Although I paid $2,475 in tuition and fees, I lost all that -- of this money as a direct result of this crime. In addition, having to withdraw has delayed when I will receive my masters degree by a full semester which in turn delays my ability to get a substantially higher paying job. I think that it is

only just that restitution for these expenses be ordered.

Although the financial loss has been significant, it in no way compares to what being a victim of this crime has done to me psychologically. The vast amount of anxiety I suffered from all of this is immeasurable. From the instant I knew I had been exposed to HIV I was unindated with anxiety. It was nearly impossible to think of anything else. I did not sleep for two days. I had frequent and severe panic attacks. I also had safety concerns because Nick followed my friends and was outside my apartment, parked down the street observing my home at 2:30 a.m. one week following our intimate contact. That morning he followed my friends for over two miles through residential side streets, frightening my friends to the extent that they had to call the police for help. I was afraid for my safety and that of my friends. Nick shared that he had used multiple illicit substances. I was also afraid that his drug-using supporters would try to hurt me in retaliation. These fears were so strong that I stopped leaving any windows open at my home. I installed additional locks and slept with my bedroom door locked with a baseball bat beside the bed and carried another bat in my car. For several weeks after the incident I stayed at friends' homes or I asked friends to spend the night with me because I did not feel

safe alone.

On December 31, 2008, I received a voicemail message from the physician I had been seeing at Mayo's Infectious Disease Clinic. The message said "I just reviewed your results and everything is okay. It's negative, so you're good." This was what I had desperately needed to hear for 186 days. I felt as though I would collapse. I felt like I had gotten a second chance to live my life. I don't think I had thoroughly understood the day-to-day burden that all of this had placed upon me until I got that call, the call that told me whether this was a new beginning or the call with a diagnosis of being HIV positive and the premature ending of my life.

For 186 days I lived in terror that I had contracted HIV. Some days I lie in bed all day long just because I couldn't even summon the strength to get out of bed. I had to either put on a facade or disclose why I was feeling depressed and out of touch with reality which wasn't safe either because I could only confide in a handful of people about what was actually happening in my life. On top of this anxiety the criminal process was very unfamiliar and moved very slowly, increasing my anxiety even further. Then I began receiving aggressive calls by Wheaton Franciscan demanding payment for the care

that I had received at Sartori and Covenant hospitals, although I had submitted these expenses to the Iowa Crime Victim Compensation Program, they were backlogged and the compensation was behind schedule.

As a victim and someone who is interested in attending law school in the future, I understand that defendants have rights. However, as the victim, I feel as though I've had no rights throughout this process. I visit Iowa Courts Online weekly to try to get updates about my case. For me there is a great deal of emotional preparation to get ready to talk about this crime in a courtroom setting. Each time I try and prepare for this the trial is moved and I experience a huge emotional setback including extreme mood swings associated with my bipolar disorder. For example, two weeks prior to the original trial date I had not yet spoken with the prosecuting attorney face-to-face, the crime victim witness assistance coordinator or even given my deposition. My anxiety peaked to an all-time high and threw me into a severe manic episode, which resulted in my admittance into inpatient psychiatric program in Rochester, Minnesota.

I also felt very ashamed that I couldn't function as a student because this is a huge part of my identity and of my self esteem, self will and sense of

life purpose. And instead of focusing my time and energies on self betterment, I had to survive minute-to-minute because of Nick. Eventually things became so unmanageable I went to go into an inpatient psychiatric facility and to withdraw from the fall 2008 semester at UNI.

Prior to my inpatient psychological care I had individual counseling sessions with Linda Bartollas at Psychiatric Associates in Waterloo to obtain support for what Nick did to me. She and I met from July through November of 2008. When school started I augmented these sessions with appointments with a UNI counseling center therapist, Gretchen Honsell. Gretchen and I have met weekly or twice weekly since August of 2008. The impact of this case is unfathomable and cannot be described in words or on paper. I do not know how long I will need counseling. Trial preparation, including being in limbo until quite recently about whether a trial would even occur, has created additional stress. Depending upon sentencing, et cetera, my life may continue to be negatively impacted, necessitating continued counseling.

Nick's irresponsible actions did not only affect me as his victim. This crime has had a tremendous impact on my mother. I asked her to describe in her own words how she was affected, and this is what she wrote:

Nick, living with this diagnosis you have experienced many of the feelings and emotions that Adam has been through since you chose to knowingly expose him to HIV. Knowing the pain and suffering that he could experience did not impact you enough to be upfront and honest and share your HIV status? Did you maliciously decide misery loves company? Knowing firsthand the level of fear and emotional duress that one endures with this, for me, makes knowingly exposing someone just that much more unconscionable. Denying your status when asked or not telling potential partners prior to sexual encounters is unforgivable and both morally and legally wrong. Would you with a clear conscience walk into a darkened room full of people with a loaded gun, shooting without clear vision, taking a chance that you would or would not hit someone? Chancing that you may or may not kill someone?

You were fully aware of your HIV status at the time of your encounter with Adam. You knew the implications of your decision for him, yet you chose to deny your status and risk his life. Adam has spent months on a roller coaster of emotions ever since he found out by chance that you are HIV positive at the time of your encounter and knew it. He endured inadequate medical care at one local hospital the night he sought medical treatment, ending up ultimately at Mayo Clinic in an

attempt to receive the best possible treatment to improve his outcome.

The treatment caused immense fatigue, loss of appetite, nausea and severe joint pain. He lost time at work as a result and spent much of his time sleeping. This entire event has triggered his bipolar illness into a series of sharp ups and downs throughout his treatment and has continued as a result of this entire proceeding. He continues to go to therapy and is working on medication management with his psychiatrist to attempt to regain balance in his life. As a direct result of this instability he was unable to complete his fall semester at UNI.

As a mother and as a nurse I have watched the devastation this unspeakable and unnecessary act delivered upon my son. This has been incredibly difficult for me as I have experienced incredible stress, worry and some physical issues as a result. Sleepless nights, days of endless worry and the uncertainty of waiting have all taken their toll on my family. All because of your dishonesty and poor judgment in not disclosing your HIV status, and Adam's misfortune to encounter you.

I am not sure what a sufficient punishment for such a heinous crime is. I'm trusting that the court will listen today, review all the information at hand and with

the grace of God impose an adequate sentence today that will stop you from further exposing or infecting others and preventing anyone else from going through the last 10 months we have been through.

Thank you for allowing me to express my feelings. Sue Sitzmann, Adam's mother.

Other relationships were affected as well. Because I would never do to anyone else what Nick did to me, my romantic relationships were impacted. After an HIV exposure it takes six months to know with certainty whether you have contracted the virus. I felt an obligation to inform anyone I had sexual contact with after Nick about this exposure. This was very stigmatizing and I feared being ostracized by the gay community from whom I have traditionally received much support. I felt as though I was untouchable in my own queer community slash social network. I endured these emotions for 186 days.

Nick has pled guilty as charged, and today we are here addressing the issue of sentencing. I have thought a great deal about what I believe to be just punishment for this crime. First, I feel this is an extremely serious crime, and my opinion about this is reinforced by the severe sentencing guidelines for the criminal transmission of HIV. My research on HIV aids has

indicated that one's lifespan can be reduced by 27 years on average once infected with the virus. It is appalling to me that Nick would place his own sexual urges and desire for sexual gratification above 27 years of my life. The law compels him to disclose his HIV status to a potential partner. His magnitude of selfishness became surreal to me when he left me a particular and -- and final voicemail message. At this point in time I had already reported the crime to the police, and Nick had given his initial statement to the investigator. Nick's message begged and implored me to "drop the charges" and to think about the impact all of this was having on him and to just stop this "craziness."

I should have a right to choose whether to be intimate with someone who's HIV positive. Instead Nick was manipulative and denied me that right. He advertised his HIV status on his online profile as negative. He lied to me online and he lied to me in person when I asked him directly if he was clean. My ability to make an informed decision about a serious threat to my health was completely removed without my knowledge, without my consent, without any consideration at all for my emotional and physical well-being. This ordeal has completely changed my life forever.

Nick had a legal obligation to tell me that he

had HIV. I fear that he could claim he was drug-impaired and this is why he failed to disclose. However, he was not impaired to the extent that he did not know right from wrong. Nick and I were having deep, coherent conversations about mental health issues, relationship issues and employment issues immediately prior to us having any sexual contact. That's how I know he was not too impaired to reveal his HIV status.

I also have strong suspicions that I am not his only victim. His photograph to date has not been published in any newspaper coverage of this offense. As such, others with whom he likely had sexual contact do not know that he withheld his HIV status. Nick Rhoades's online provocative personal ads would still be posted with lies about his HIV status if I had not come forward as a victim. In other words, I feel he has done it before and would do it again if given the opportunity. Therefore, in my mind, for justice to be served and for the statute to act as even a moderately effective deterrent to hedonistically knowingly exposing others to a deadly and debilitating virus, a 25-year prison sentence is the only appropriate means to serve justice for both legal and community standards.

I have ruminated about what this law seeks to prevent. Nick has taken the liberty of not only

devastating my life but also my family and friends. His behavior is also an atrocity to the physicians, the researchers, the police officers, the attorneys and the judges who have been collectively fighting an epidemic that has been plaguing our society for so long as I have been alive. Nick's pathology for deceit, contempt for upholding common community health standards and his lack of a moral code of decency necessitate the 25-year prison sentence. In fact, I feel that if justice would be truly served, he would be in prison for 27 years, the length my life would have or could have been reduced had he infected me.

THE COURT: Thank you. Do you want that to be put part of the file? Do you have a copy already?

MS. FANGMAN: I don't have a copy but yes, we do want it.

THE COURT: Thank you. And for the record that was read from a written text which has been -- a copy has provided to the court and will be made a part of the presentence investigation report.

Further evidence on behalf of the state?

MS. FANGMAN: No further evidence.

THE COURT: Evidence on behalf of the defendant?

MR. METCALF: Yes, Your Honor. I have three witnesses here. I have a doctor in Iowa City who's

expecting a call about 10:30. I don't care how you -- whatever you would like to do to proceed.

THE COURT: If you want to try to get ahold of the doctor.

MR. METCALF: Certainly.

DONALD WAYNE BLACK,

was called as a witness on behalf of the DEFENDANT, having been first duly sworn by the court, was examined and testified as follows:

THE COURT: Thank you very much. And I would ask if counsel want, if they are having a difficult time hearing, if they want to move closer, go ahead.

Mr. Metcalf?

DIRECT EXAMINATION

BY MR. METCALF:

Q. Can you hear me, Dr. Black?

A. Very well.

Q. All right. Thank you. Just in a summary fashion would you tell us about your educational background and what you're doing in Iowa City?

A. Okay. I received my bachelors degree from Stanford University in California, received my medical degree from the University of Hawaii School of Medicine, received my training in psychiatry at University of Iowa, and I've been a faculty member at University of Iowa

College of Medicine since 1986 and am a full-tenured professor.

Q. Are you a psychiatrist, sir?

A. I am a psychiatrist.

Q. What duties do you have at Iowa City?

A. I take care of patients approximately one-third of my time. I conduct research, I teach and I lecture.

Q. Approximately 10 months ago did you have an opportunity to treat Nick -- Nicholas Clayton Rhoades?

A. Yes, I did.

Q. How long did you know Nick?

A. Well, he was admitted August 9 of 2008, and discharged September 29. I took care of him the month of September.

Q. And for what reason was he at the Iowa City hospitals?

A. He had attempted suicide, was very depressed and had been admitted for treatment.

Q. Just to give this case some direction, I think you know this, he was the point of an investigation being conducted in Cedar Falls, and I think by agreement of the state and Mr. Rhoades, we kept him at University of Iowa hospitals in a secure setting, is that fair?

A. He was kept in a secure setting because we were concerned that he might be suicidal outside the hospital.

Q. And after some treatment then he was allowed to be released to the Black Hawk County jail. Is that what happened?

A. Yes, that's correct. He improved and was ready to be discharged by the end of September.

Q. Do you know why -- do you know why he was depressed?

A. Because of the legal situation that he had been involved in.

Q. And how would you describe what he was going through?

A. Well, he was quite devastated by the -- by the arrest, by the publicity, by the actions that were happening. This led him to become very depressed, to be suicidal, to attempt suicide; and he was quite personally devastated by this. Now, he had a fairly lengthy history of -- of mood instability and mood problems, but this was quite unique for him to have to deal with and try to get through.

Q. Did he show any remorse during the period that you treated him?

A. Absolutely. I spent many hours talking with Nick about his situation and his problems. He was very remorseful about what had happened and told me that he took responsibility for his behavior; that he understood

was wrong.

Q. Did he have concern for the victim, doctor?

A. Yes, he did.

Q. And did you see that on different occasions?

A. Yes. We had an opportunity to speak about these events on multiple occasions as I helped him work through all that and cope and deal with the aftermath.

Q. At the time you treated him did you know he was HIV positive?

A. I did.

Q. And what -- was he being treated for that at University of Iowa hospitals?

A. Yes. Yes. He's been under the care of a -- a clinic at the hospital for a number of years.

Q. Dr. Jeff Meier is here and Kris Davis from the hospital. Are they in that unit?

A. Yes, they are.

Q. And what function does that serve, do you know?

A. I'm not sure exactly, but I know Kris in particular who I've chatted with has taken care of Nick in the outpatient clinic for some time.

Q. All right. State of Iowa is asking that Mr. Rhoades go to prison. Given your background and your exposure to him over the months do you see any purpose that prison would serve?

A. No. I don't see what purpose that would serve. He's -- in my opinion he has been punished sufficiently through the public humiliation, the fact that he has been incarcerated for a lengthy period of time so far and from the fact that he has expressed remorse to me and others as well.

Q. In the event he were placed in a structured setting where he could be watched even for his entire lifetime and given the proper medications and even medical help, do you see that as a -- a remedy to or a punitive measure that might fit Nick?

A. Could you state that again? I didn't quite understand the question.

Q. We're going to ask that Mr. Rhoades be placed in the Waterloo residential facility where he would likely remain for several months. Kind of a structured setting, get medical treatment, and he'd be on lifelong parole. Do you see that as suitable in Mr. Rhoades's case?

A. As an alternative to prison I think that's preferable. I think being under supervision, having medical and psychiatric follow up is what would help more than anything.

Q. And you understand that he's been locked up for several months now?

A. Yes. I understand that.

MR. METCALF: Thank you, doctor. I think the state may have some questions.

MS. FANGMAN: Actually, nothing.

THE COURT: Would you state your full name, doctor?

THE WITNESS: Donald Wayne Black.

THE COURT: Nothing further. Thank you, doctor.

THE WITNESS: Okay. Thank you.

MR. METCALF: Call Dr. Meier.

JEFFERY LINN MEIER,

was called as a witness on behalf of the DEFENDANT, having been first duly sworn by the court, was examined and testified as follows:

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MR. METCALF:

Q. Would you state your full name and maybe spell your last name, please?

A. Jeffery, e-r-y, Linn, L-i-n-n, Meier, M-e-i-e-r.

Q. What do you do for a living, sir?

A. I'm a physician.

Q. Where do you work?

A. Work at University of Iowa Hospitals and Clinics and VA -- Iowa City VA Medical Center.

Q. Could you give Judge Harris a thumbnail sketch

of your background and qualifications?

A. Okay. I obtained my medical degree from the University of Iowa. I did internal medicine at University of Wisconsin in Madison. Infectious Disease Training Board, the National Institute of Health, and I returned to Iowa to become faculty and associate professor of medicine, tenured.

Q. On a daily basis what are your job duties?

A. Okay. As a infectious disease specialist with a special focus in HIV medicine, and so I spend about a third of my time seeing patients doing clinical care, part of my time teaching, giving lectures and also doing research and some of that involves HIV research.

Q. And during the course of your tenure at Iowa did you treat Nick Rhoades?

A. I'm Kris Davis's supervisor and Kris cared for Nick and I had met Nick in the past in the clinic; yes.

Q. So you would have been directly supervising his care through Ms. Davis?

A. Yes.

Q. What's her function there?

A. Kris is an advanced nurse practitioner and has many years of experience doing HIV medicine.

Q. Dr. Meier, my purpose in calling you is to just explore what the HIV virus is all about and what the risks

are. You know some of the facts of this case. I may ask you a short hypothetical question. Can you tell the judge what HIV is and how it is contracted?

A. Okay. So that's immunodeficiency virus. This is a virus which is transmitted through sex. It is transmitted through blood or blood products. So it is found in vaginal cervical fluids, in semen. It is not something that's transmitted through saliva.

Q. I think you've heard testimony the young man in this matter who had sex with Mr. Rhoades was not found to be HIV positive after maybe about six months. Was that your understanding?

A. Yes.

Q. What does that mean in terms of what you see on a daily basis and what risk there would be now of him contracting the positive virus?

A. So with a negative result at six months there is no reason to believe that he would show up later positive of HIV. That would be extraordinarily rare.

Q. Is it fair that from what you heard he likely sought the right treatment?

A. Yes. It sounds like that's the case.

Q. And you understand his concerns?

A. Yes.

Q. And things he talked about. You get to see some

of those people day-to-day in your job?

A. Yes. In fact, somebody who -- one of my employees -- One of the other occupations I'm involved with some directly, the Midwest Aids Education and Training Center, and one of my employees who helps me go out and teach and provide education statewide, it is directed toward care providers, dentists, pharmacists, doctors, nurses, nurse practitioners, so forth. Anyway, this employee is a sexual assault nurse and so I -- I hear fair amount about rape, sexual assault and at least at our university I've helped her develop a protocol for post prophylactics so I'm familiar with this topic.

Q. Apparently these two men met on the internet. You find that common in your field?

A. Yes.

Q. Mr. Rhoades indicated on his internet blog that he was HIV negative. What perspective do you have about that in your line of work, the fact that he held himself out as being negative even though he was positive?

A. Uh-huh. So -- so this comes up with -- this comes down to the issue of disclosure, and as we know, I mean, there is a law in Iowa that, you know, mandates that we disclose that, your HIV status. How often does nondisclosure of HIV positive occur? Well, it happens to a certain degree. For example, like I can talk about a

study that we did in our clinic in the university. We provide care for 475 patients with HIV, living with HIV, and we did a study in 2005. It was done anonymously. We asked individuals, you know, if they are having sex in the past three months, you know, did they disclose, and we found that about 25 percent of individuals at one point in time had not disclosed their status and had sex. And so we asked the question is this abborency? Is it something unique to our clinic in Iowa? No, it is not. It is typical of what we find around the country.

Q. Do you talk with other people in your position in different states about what they have seen and heard in terms of HIV positive? Are there people like you in Wisconsin and Minnesota?

A. Yes.

Q. And other states?

A. Yes.

Q. Do you communicate with those folks?

A. Yes.

Q. And you understand just it -- that -- that may be against the law or for some people it may be wrong but that --

A. Yes.

Q. -- those were your statistical analysis?

A. Correct. Correct. This is a human issue, and

there is -- I don't know exactly how many states have a disclosure law but this is universal. Many states do not, so the issue is, you know, if you're going to have a disclosure law, what -- how should that law be framed? What should be the language in that law, and has that law actually been a good deterrent of nondisclosure. And I guess this is a matter of debate within the HIV community and the professional community in my line of work.

Q. You know that the judge can't change that. This is not a legislative forum?

A. That's correct. I know. Yes.

Q. In -- in terms -- I want you to -- I'm going to ask you a quick hypothetical in terms of Nick Rhoades, and you know about his HIV positive status?

A. Yes.

Q. If he were to have sex with a young man in his 20's and -- and -- and have protected -- I mean, with anal sex with that person, what are the chances that he would pass the positive virus?

A. So this is -- this is hypothetically with protection, with a condom? We would believe that the condom would be fairly effective at preventing transmission, so one would have to take some factors into consideration, and I don't want to go into too much detail, but it depends on the sexual act. And so if we

say anal -- receptive anal sex, then it would sort of depend on whether or not the insertive partner had a viral load that was detectible in the bloodstream or not. Okay. And if a person had been on HIV treatment and had no detectible virus in their blood, they are much less risk of transmitting, okay, than somebody who had detectible virus.

Q. In this case on the knowledge that you had of him, do you know what his viral load was or whether it was detectible?

A. His viral load was undetectible so -- so I guess what I'm trying to say if -- I'm sorry -- but what I'm trying to say is that you take these various factors into consideration and you come up with an estimate. Okay. And so the estimate would probably be with an undetectible viral load with condom, by that mode of sex, okay, would probably be less than one in 100,000.

Q. If there was unprotected oral sex and given the same set of facts and Mr. Rhoades, what are the statistics -- look like in terms of risk?

A. So that was unprotected oral sex?

Q. Yes.

A. Then I would say that, again, that oral sex is much less likely that receptive anal sex transmit so there we're talking less than one out of 100,000, and I would

say probably with the condom and undetectible viral load, one in a million or so.

Q. So it could be one in a million?

A. Yeah.

Q. But there is a risk, is there not?

A. I would say there is not zero risk. Yes, there is a risk.

Q. The judge knows his job. I mean, he knows what the punitive measures are. I'm asking you in your position do you see, given the background that you have with Nick, do you see a purpose that would be served after these months incarcerated sending him to prison?

A. No.

Q. Why do you say that?

A. Well, I think that I heard for the first time sort of what had happened when Nick was in the hospital treating for his depression, so that even further strengthens my opinion of this. I think -- so that you know, I think I'm not saying that it is -- it is that disclosure is not important. It is important. Disclosure is very important, and but I think that the crime needs to fit the sentencing. And I just don't see how putting somebody in prison for an extended period of time is going to remedy this problem any further than -- than what can be remedied by other alternative ways of sentencing.

Q. If the court were to give him some structure perhaps even for the rest of his life which may be allowed for under the law and he got proper medications, do you see him as being a danger to the community?

A. No.

MR. METCALF: That's all I have, Dr. Meier.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. FANGMAN:

Q. Doctor, were you aware that he was using a fake name?

A. No.

Q. Does that deceit concern you?

A. I don't know how often this happens on the internet.

Q. I'm not asking you about how often something happens. You just gave a recommendation that you don't see any purpose in this. Knowing that Mr. Rhoades uses a fake name and is deceitful to the people that he meets, does that cause you concern?

A. I would say again it is not something that I would condone, but is it -- is -- is it something that you put -- do you put people in prison for that?

Q. Well, if somebody knows that Nick Rhoades is HIV positive but they think that they are with a completely

separate person, that certainly puts them at risk, doesn't it?

A. Yes.

Q. And he puts on his profile that he is HIV negative. You've heard that?

A. Yes.

Q. Now, just because maybe other people might also lie about it certainly doesn't make it right, does it?

A. Correct.

Q. And I would assume in your position you teach or give educational information that people need to disclose and not lie and need to take precautions?

A. Yes, we do. We -- actually we -- we go to great lengths to do risk assessments and with clinical visits on patients at least, you know, at least once or twice a year when we see them because that can change. And so they are well aware of the disclosure law, and it is very complicated as to why people do not disclose.

Q. So then Mr. Rhoades would have been one of those people that you educated about the need to disclose and the risks of not disclosing?

A. Personally I would not have done that. Kris Davis would have done that. She is his care provider -- direct care provider.

Q. But it would be under your supervision?

A. Yes.

Q. He would be aware of the law. He would be aware of the risks and the need to tell people?

A. Yes.

Q. Do you also tell them how important it is to stay on their HIV medicine?

A. Yes.

Q. And were you aware that a mere six months before this incident he had stopped taking his antiviral medicine?

A. I did not know that.

Q. But if the medical records say that he had stopped taking it in 2007, would that be of concern?

A. I think there is, you know, this is a very complicated question because there are a variety of reasons why people can stop their HIV medication, and I would have to know more about that. So there is a variety of different reasons why people sometimes come off. Mental health is one of them.

Q. But as a physician and as the person who is in charge of this department would it cause you concern to know that a patient you're treating has stopped taking their antiviral medicine?

A. Yes.

Q. And you heard the victim indicate that he had

asked Mr. Rhoades if Mr. Rhoades was clean --

A. Yes.

Q. -- right? And Mr. Rhoades lied and said yes, he was clean?

A. Yes.

Q. And, in fact, Mr. Rhoades has other sexually-transmitted diseases other than HIV, doesn't he?

A. Does he have a past history of that? Is that what you're asking me?

Q. No. He has other sexually-transmitted diseases, does he not?

A. I would have to say that -- other than HIV?

Q. Other than HIV; correct.

A. That are active, is what you're asking me?

Q. He has herpes, doesn't he?

A. Okay.

Q. Yes?

A. I would have to say that I'm not exactly sure. I would have to ask Kris. I don't have his medical record. I didn't review his medical record prior to coming here.

Q. So if he also has herpes and anal warts, those would be issues that would classify him as not clean either, wouldn't it?

A. Herpes is pretty common in this population of

people and also saying HPV is extremely, extremely common --

Q. So because it's common, it is okay to lie about it?

THE COURT: Let him finish his answer. Go ahead.

A. I don't -- first of all, the question is what does -- what does being clean mean? Okay. HPV -- most HPV is so clinical, you couldn't see it. You don't find lesions. But it is extremely common, okay. That's why we advocate for all our patients, if you're going to have sex, have protected sex if they are sex with positives. Okay. Use protective sex because you got HPV and all these other things to worry about. But, you know, the perception is in the community, gay community, it is not uncommon to know -- sort of not knowing of those sorts of things like particularly HPV as gee whiz, I have HPV. I better let everybody know it. And, in fact, most people who have herpes and HPV don't know.

Q. Since Mr. Rhoades is being treated for both of those he clearly does know it, doesn't he?

A. Yes.

Q. Did you know that when the police questioned him about it, he lied to the police and said he didn't have any sexual contact with the victim?

A. I did not know that.

Q. That also be concerning, wouldn't it?

A. Yes.

Q. And you heard the victim talk about how Mr. Rhoades called and begged him not to press charges against him because it was affecting him. Did you hear that?

A. Yes.

Q. Would that also cause you concern?

A. I don't know. Not necessarily.

MS. FANGMAN: I have no further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. METCALF:

Q. Dr. Meier, does this change your view that given what you do know about this case, even the things that the prosecutor has talked to you about, does it change your view that prison is not going to do anything further to protect the public?

A. No, it doesn't change my view.

Q. And does the University of Iowa as you know it, given Dr. Black and your unit and other units, do they remain there for Nick in terms of treatment?

A. Yes.

MR. METCALF: Thank you. That's all I have.

THE COURT: Recross?

MS. FANGMAN: Nothing.

THE COURT: Thank you. You may step down, doctor.

MR. METCALF: Call Kris Davis.

KRISTINE DAVIS,

was called as a witness on behalf of the DEFENDANT, having been first duly sworn by the court, was examined and testified as follows:

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MR. METCALF:

Q. Would you state and spell your name, please?

A. Kristine Davis. K-r-i-s-t-i-n-e. A. D-a-v-i-s.

Q. And what do you do for a living, ma'am?

A. I'm a nurse practitioner at University of Iowa with the HIV program.

Q. And you and I have met on a few occasions. You've come to my office a couple times, have you not?

A. Yes.

Q. And written to me and called me?

A. Yes.

Q. How do you know Nick Rhoades?

A. I've known him as a clinic patient off and on since about 1998.

Q. And do you see a number of people who have the HIV virus?

A. Yes. We have group of about 460 people who come to the clinic and about 150 of those are my own patients.

Q. And you were here for Dr. Meier's testimony; right?

A. Yes.

Q. And you know that persons who engaged in sexual acts who -- one of whom has HIV virus, that there is some risks involved?

A. Yes.

Q. And there are times when you've heard that risk even defined as a death sentence, have you not?

A. Yes.

Q. What does that mean to you?

A. I think, you know, that reflects, you know, the understanding of the virus. You know, historically is that people's view when they hear HIV, they think of that as being a death sentence. It now really is more treated as a chronic illness. So it is definitely a serious illness but, you know, people -- people, you know, live up to 30 years or longer with HIV. So some of the first people that I met in the clinic in 19 --, you know, 1988 are still -- are still there as patients.

Q. And you know that Nick has been treated through

your office?

A. Yes.

Q. How often were you seeing him before he was arrested for this act?

A. Oh, probably every three to six months.

Q. Was there time when he went off his medications?

A. Yes.

Q. What do you know about that?

A. I'm not -- I'm not certain at that time. I know at times there may have been issues with side affects. I know other times because he becomes very depressed and feels hopeless that he would stop his medications.

Q. Now, were you treating him or seeing him at the time Dr. Black was seeing him at psychiatric unit?

A. Yes.

Q. What did you see in Nick at the time? We've heard Dr. Black's testimony.

A. He was on his treatment. I made sure in the unit that they were checking his labs, you know, and if he was detectible. His virus was not detectible.

Q. Was he depressed?

A. Yes.

Q. Do you know who Dr. Black is?

A. Yes.

Q. You work with him?

A. Uh-huh.
Q. Wasn't your job to treat the depression, was it?
A. No.
Q. Did Nick talk to you during that period of time?
A. Yes.
Q. Did he get better?
A. Yes. He got very much better.
Q. What did you see in that regard?
A. It was a good opportunity for him to have maybe more intensive psychotherapy, and they found some medications that worked better with him than had the ones in the past. So he really made very good improvement during that time.
Q. And he's continued to improve even at the jail?
A. I haven't seen very much of him, but he seems to be doing pretty well.
Q. He has been seeing the jail psychiatrist as well?
A. Yes.
Q. The times that you were with him and after did he acknowledge that he committed this act?
A. Yes.
Q. And you knew about the lack of disclosure, did you not?
A. Yes.

Q. Do you think that happens from time-to-time with sexual partners who have HIV?

A. I think it does. And, you know, I don't agree, but I can sometimes understand the stigma with HIV people are afraid to have that, you know, that information broadcast out in the community because of just the discrimination that takes place. So I think that sometimes people will feel that if they are safe in their behavior as far as using condoms and taking their medications or, you know, doing sexual practices that have less risk that -- that, you know, that they feel in their own minds that they are being safe.

Q. You're not saying that it is right or it is not against the law?

A. No.

Q. And you wouldn't expect anybody to go on an internet blog and declare that they were HIV positive and look for partners, would you?

A. Probably a few people do, but I would guess that I wouldn't, you know -- I guess I wouldn't personally trust that as being my protection.

Q. We were able to keep Mr. Rhoades at the Iowa City hospitals even though he had been placed under arrest --

A. Yes.

Q. -- is that right? And he was kept in a secure setting there until he improved?

A. Yes.

Q. And then he came to Black Hawk County, did he not?

A. Yes.

Q. During the period before he came to Black Hawk County, I know you haven't seen him recently, but did he express any remorse for what he had done?

A. Yes.

Q. Could you tell us about that?

A. We talked, you know, when he was in the unit, and he was feeling very remorseful and very upset about what had happened and very regretful.

Q. Well, as the nurse practitioner in that unit do you see a purpose that would be served by placing him in prison?

A. No.

Q. And could you just quickly state any reasons behind that opinion?

A. I do feel that he has learned from this experience. He has been in jail and in the hospital for, you know, going on a year. I feel he is very able to understand, you know, the mistake that he made and to keep from doing it again. And I think it is very important

that he continue to have very good medical care and very good psychiatric care.

Q. In a structured setting would the Iowa City hospitals still be available to him for treatment?

A. Yeah.

MR. METCALF: That's all I have.

THE COURT: Cross-examination?

MS. FANGMAN: Nothing.

THE COURT: You may step down. Thank you.

MR. METCALF: Call Kathy VanArkle.

KATHY VANARKLE,

was called as a witness on behalf of the DEFENDANT, having been first duly sworn by the court, was examined and testified as follows:

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MR. METCALF:

Q. Would you state and spell your name, ma'am?

A. My name is Kathryn Sue VanArkle. K-a-t-h-r-y-n. Sue, S-u-e. V-a-n cap A-r-k-l-e.

Q. Are you related to Nick in some way?

A. Yes. I'm his mother.

Q. And what do you do for a living?

A. I'm a registered nurse.

Q. And where do you work?

A. I work at Allen Hospital. I'm a psychiatric nurse.

Q. Just in general terms while Nick was going through this incident and long before, you were there on a regular basis with him?

THE COURT: Excuse me. Is that a recorder or is that just your phone? Would you turn it off, please?

Thank you. Proceed.

Q. Were you close to -- close with Nick around the time all this was happening?

A. Yes.

Q. You knew he was HIV positive?

A. Yes.

Q. And you and I have had the chance to talk on a number of occasions, have we not?

A. Yes.

Q. Were you surprised that this had happened?

A. Shocked.

Q. Why do you say that?

A. Because Nick has always been open about his status. We've had several -- well, many intimate talks about what would you do in a situation where you would meet someone that you cared about? How would you handle this? And, I mean, it wasn't just a fly-by-night conversation. It was extremely serious. He just never

hid it. He never hid it from his friends. Never hid it from the family. I know one time we talked, and he said, you know, he had met someone. How did you meet him? On the internet. I said how do you do it as far as your status. He said -- he said, "Mom, I want to meet someone," and, you know, you can't meet anybody if you say you're positive. He said, "I meet them." He said, "If there is something that I feel strong -- if I feel strongly towards a person and I think that there is a chance that we may have a relationship, I tell them." And I've met one of his friends that he did tell, and but he said, "If I don't care about this person, they don't need to know."

Q. And then do they have sex?

A. No. No.

Q. So you were shocked?

A. I was shocked. He's -- he -- he would never -- and I know I'm his mom -- but he would never hurt anybody deliberately ever.

Q. During the period when he was being treated by Dr. Black and Dr. Meier and Kris Davis were you able to see him at the Iowa hospitals?

A. You mean last summer?

Q. When he was in a secure setting?

A. Yes.

Q. Did he show any remorse to you?

A. Yes.

Q. And did you see that often?

A. Yes.

Q. And in terms of his psychiatric problems, his depression, was that -- you're a psychiatric nurse -- was it pretty debilitating?

A. It was awful.

Q. And there were times that you couldn't even talk to him, is that fair?

A. Yes.

Q. Did you see him improve, Kathy?

A. Yes.

Q. What did you see?

A. He is still to this day continues to show his remorse towards what happened. I've seen him -- I don't know how to say it. He's -- I know the cliche 'they go to jail and they become more spiritual', but I've seen him open up to it. I've seen him through letters and visits at the jail. He has told me that he's -- I'm sorry. I can't get my words out very good.

Q. We -- we had to move the presentence investigation along just probably because of a -- just a failure in communication. Miss Shepard worked on it the last two days, did she not?

A. Yes.

Q. She met with Nick for some time. Did she meet with you as well?

A. She called me on the phone.

Q. We have talked with the family about perhaps the residential facility, some structured setting where he could continue to get help. Do you think that's realistic?

A. I think it is a very good start. I don't think it should just end there.

Q. Miss Shepard talked to you about the availability of the dual diagnosis program, did she not?

A. Yes.

Q. And you know about that as a psychiatric nurse?

A. Yes. Yes.

Q. And given his depression, his mental state and just given his health, would that seem to fit? Did she say whether they could take care of that?

A. She sounded optimistic about that. That -- that might be a way to go.

Q. And you understand I've told you it is not specific in her recommendation, is it? You did not see that?

A. Right. Right.

Q. I know we've been through this a number of

times. Do you -- and knowing this young man as you do -- do you see any purpose that would be served for society or for the victim or for Nick to place him in prison?

A. No, sir.

MR. METCALF: That's all I have.

THE COURT: Cross-examination?

MS. FANGMAN: Nothing.

THE COURT: You may step down. Thank you, ma'am.

Further evidence?

MR. METCALF: We're not calling any further witnesses, judge.

THE COURT: The state have any rebuttal witnesses?

MS. FANGMAN: No rebuttal witnesses.

THE COURT: State wish to be heard?

MS. FANGMAN: Thank you.

The state joins in the recommendation made by the PSI. The PSI recommendation is specific. It specifically recommends 25 years in prison, sex offender treatment programming, $200 civil penalty, register as a sex offender and be subject to lifetime supervision under 903B.

The state joins in that recommendation and finds it to be appropriate. The only thing we would add to that

recommendation is that we would ask for a no contact order to be imposed preventing the defendant from having any contact whatsoever at all with the victim in this case.

Your Honor, the state agrees with the PSI report. That -- this is a very serious offense, and it has potentially life-threatening ramification. Obviously the legislature also feels that it is a very serious offense by mandating it being a class B felony regardless of whether the AIDS virus is contracted by the victim or not.

The state does see a number of reasons why the prison sentence is appropriate based on the seriousness of the events and the life-threatening ramifications.

First of all, in this case I think what you have is you have someone who perhaps to his friends and family and people who know him well he is open about his status and probably because quite frankly there is no way he could hide it. He is on medications. He is dealing with hospital visits. He is having problems keeping a job; that sort of thing. So obviously his friends and family who are close to him are going to know it, but it seems like when you look at all the medical information and you look at all the minutes of testimony, you have a person here who's basically kind of living a double life. When he signs on to the computer, he is not signing on as Nick

Rhoades so that people who know him or people who know him from the community know that he has HIV. He is signing on as Nick Weber. Why is he signing on as a fake person if he wants to be open? So he signs on as a fake person. He lies about his HIV status.

Now, the people from Iowa City say, well, that's pretty common. Well, to me that seems to be more of a reason to show the public that the law is serious and that if you violate this law, there will be repercussions. For all the people out there that the people down in Iowa City are seeing not disclosing or lying about their disclosure, if they start picking up a newspaper and reading that if you do lie and you have sex with somebody without telling them, you're looking at a prison sentence, then maybe more people will disclose. So there is that reason for the disclosure.

So he has a fake name. He says that he is negative. He apparently makes a comment to his mom that if he is going to have a relationship with somebody, fine, he will tell them, but if I don't care about the person, they don't need to know. Well, you're talking about him meeting someone online, going over to meet with a person the same night, drinking, and he never does tell Adam his correct name. When Adam is trying to find out about him, he still thinks his name is Nick Weber which suggests this

is a person that Mr. Rhoades did not think needed to know his status. And, in fact, when Adam asked him his status, he says he is clean. He doesn't say he has herpes which he is being treated for in July of 2008 according to the medical records. He doesn't say anything about with having HPV; again, which he is being treated for in July of 2008. And he certainly doesn't indicate that he's HIV positive. All of those things place Adam at risk and certainly suggests that this was not a person that he cared about. He engaged in what was consensual sex, but the reason it was consensual was because Adam wasn't disclosed to everything.

He lies to the police. When he is asked if there is any sexual contact, he point blank says no. If his life is so open and he is always honest about these situations, why is he lying about it? And he calls the victim afterwards and leaves messages saying please don't press charges. Please don't get me in trouble. I'm sure Mr. Rhoades is sorry now. He is probably sorry because A, he got caught, and he is probably sorry because he spent almost a year now in jail. And maybe he even is sorry that he did this. However, that doesn't mean that he is not still a risk to anybody else. The next time he gets depressed, gets off his medication, decides to binge drink, decides to engage in using methamphetamine, and he

meets somebody online under his fake name, that he doesn't care about, he is subjecting that person to a risk.

The court has to look at not only punishment for Mr. Rhoades which certainly the prison sentence would punish, it needs to look at deterrence and deterrence not only for Mr. Rhoades but deterrence for anybody who is placed in a like circumstance. So anybody else who might think it is okay for me to do this because look, Nick Rhoades did it and nothing happened to him, they need to know, yes, in fact something does happen. It is taken very seriously. If you break the law, you're going to be held for the repercussions.

And so for all those reasons we think that Mr. Rhoades needs to be sent to prison. It does protect the public because it narrows the public that he has access to that he could later infect. This is something unfortunately Mr. Rhoades is going to live with for the rest of his life, and he is always at risk. There would be no difference than if Mr. Rhoades's situation was that he shot at Adam Plendl with a gun and we said "We're going to give you your gun. Don't do it again because we don't want you to do it again." Nobody would suggest putting him back in the same situation with a dangerous weapon would be appropriate, and any time he comes in contact with somebody because of this life-threatening disease, he

is at risk.

And so to protect the public, to deter the public and to hold Mr. Rhoades accountable for his actions, we feel the court should follow the state's recommendation.

Thank you.

THE COURT: Thank you. Mr. Metcalf?

MR. METCALF: Thank you.

The State of Iowa through Ms. Fangman has adequately pointed out that he violated the law. And he has come to you and told you he did violate the law. And the law is here, and we're not talking about lifestyle changes. We're not talking about the way things are. He violated the law. His nondisclosure is not a good thing. What he did is a very bad thing. And -- and it is our law and upheld by the Iowa Supreme Court back in 2001.

But we don't have disclosure in robberies, and we don't have disclosure in kidnaps. We don't have disclosure in rapes, and we don't have disclosure in people who cook methamphetamine. We don't have disclosure with young people carrying guns in our streets and breaking into homes. None of those people disclose, and those are bad things too.

And Nick knows that nondisclosure is -- is painful. He has felt it for the last year. That his

doctors treating it know it is painful. We're not going to get robbers or kidnappers or gunmen to come up and say "We're going to do the bank this afternoon."

I would venture to say on the basis of this record, and having heard Adam and anybody's heart would go out to Adam and his mother. I know Nick's does and his family's does, and they would like to turn back the hands of time just as all the other people that you hear at sentencing often would. But would he do this again? Would he not disclose again? The odds of that should be one in a million. It is just hard to fathom that he would do this again.

Since this law was passed, as you know, the legislature carved out room. We're not asking for a deferred judgment. We're asking that he go on a period -- suspended sentence and go into the residential facility when a bed becomes available, a very secure structure. He is going to be on the sexual abuse registry. He is going to have a probation officer like Miss Shepard who has seen incidents like this. He is going to be watched. He is going to receive medical treatment. And the odds of him being danger -- dangerous to the community again would seem to be more remote and remote.

After this law was passed, and it was in our district that an Aids transmission case was passed -- was

handed down out of Dubuque and taken up to the Supreme Court, and in that case the victim was mentally handicapped. The partners in this case are both adults. In that case that guy had been charged with luring boys to his residence. That isn't happening here. And he ended up pleading -- it was in our district in Dubuque -- ended up pleading to a willful injury by way of *Alford* plea, and other cases where people have been infected with HIV, a large number of the cases have gotten suspended sentences except in cases where multiple acts took place against young boys, where one case was two counts against an 11-year-old girl, a 15-year-old girl and an 11-year-old boy.

And we know you know what your job is. We understand we're not here to talk about lifestyle choices. We wanted you to hear and see all this about his blood and his viral load and his ability to be dangerous. He stepped up to the plate. This is not the young man that I met last year, and he is taking care of himself. He has worked all of his adult life. We just hope that you can give him a chance I don't think he is going to get in prison.

And he has a few words to tell the court.

Nick, if you would stand.

THE COURT: Mr. Rhoades, you do have a right to

address the court. Is there anything that you want to say?

THE DEFENDANT: I guess there are just a couple issues I would like to clarify.

I never lied about my name. That was said multiple times by counselor Fangman. My name is Nick. Other than my first name and Weber never came up. Adam had my phone number, knew my place of work, had a picture of me, and it is a small community. I mean, there would be no reason why I would lie about my name.

In the voicemail that I left him, the previous voicemail I left him before I even realized that there was any criminal investigation, was one of concern for his well-being which was in the police report. And the last voicemail I left that -- that's been brought up multiple times I did ask him to please not go forward with this. But I did not -- I'm trying to think how he put it. Anyway, I was very panicked at the time. I've never really been in trouble. This is not even school. Nothing. It was I just was extremely scared.

Also, the comments made about me stalking him or driving, following his friends around are absolutely false. If I remember from the police report, it even said that the person was taken away by the Cedar Falls police department. That was not me. I was never taken away.

Anyway, all of these things aside, that's not -- these are really side issues. I was not honest on my profile. There is a huge stigma, and I should have been more -- I should have been more noble, to be honest about it. I've been in positions with management in my line of work, and that also made things a little touchier for me. But this obviously has been a sobering experience in every sense of the word.

I -- I think we both agreed that we just met for social purposes. We spent seven hours together. We both drank very heavily. Prescription pills were brought into the situation, and Mr. Plendl's prescription pills were brought by him to the situation after hours and hours of drinking. And I -- I should not have accepted those pills. I should not have been drinking in excess as I was. There was nothing specifically malicious.

Also, in the conversation between Mr. Plendl and myself that was recorded, I was completely candid. And I, you know, offered -- I told him that I was HIV positive before he asked. I had tried to call him before to invite him to a barbeque because I knew I needed to talk to him. I have absolutely zero recollection of any conversation taking place about my status, but that, you know, doesn't make it any better, you know. Obviously that needed to come out clearly, and I'm well aware of that. After all

the alcohol and then the pills we were talking. We were connecting because we both -- the only reason we connected because we both have very similar struggles emotionally and anxiety-wise and, you know, we commiserated and connected on that level. This is not anything intentional but does that make it okay? No, it does not. Did Mr. Plendl force me to drink to excess? No, he did not. Did he force me to take his pills? No, he did not. I did those things, and that was my poor judgment, and I take full responsibility for it.

I was dishonest when I was interrogated. I was panicked like I said and that also was wrong. There are many wrongs here. I -- I have always considered myself to be a person of integrity. I've served on the board of CAAP which is the Community Aids Assistance Program. I was a board member for over a year. I've assisted the benefits to raise money for people in the Cedar Valley who are afflicted with this virus. I donated personal money and any resources I've had through any of my businesses. This is a cause that I feel strongly about. I've always wanted to be a part of the solution and not part of the problem, and clearly I've fallen short in this case. And I regret those -- it goes much further than I can even articulate.

I do think I have some idea of how Mr. Plendl

felt during the months when he was unsure about what was going to be happening to him as obviously I went through a similar situation. And because of that fact that I felt -- I felt betrayed and I felt angry and I felt terror and I felt all those things, and for me to -- for that to happen to someone else because of me, I can't tell you how sorry I am about that, and it is -- it is not in my character. There is -- is a lot of poor judgment involved here. I -- I -- also I think it is fair to say that out of everybody in this room I -- I know better than anybody how this virus can affect someone; physically, financially, emotionally, and socially. Friendships can be difficult because the stigma is so high. Job opportunities even can -- can be difficult. But there is a huge social aspect to it. All these things I know very well, and I'm absolutely ashamed by the fact that all of the things that I know and that I've gone through, that I have unnecessarily put Mr. Plendl in a situation to go through those same feelings and events.

I'm relieved that he is HIV negative, but it did not negate what has happened, and I fully realize that, and I do take responsibility for it. I also know that there are about a million people in the country, if I'm not mistaken, that are infected, and last I knew, one in five of those people did not know it, and that 20 percent

are the people who are going to spread this illness. And that's why I wanted to make sure to get to Mr. Plendl before he had heard from a third party, but I was too late, and I never should have even obviously gotten to that point. But I have always -- I know what's going on and my judgment that night was inexcusable, and I fully admit that.

If there is anything positive that has come from that situation, I've -- I've had nine months of concentrated psychiatric care. My psychotropic formula has been adjusted multiple times to a point where I think that my psychiatrist would agree I'm -- I've, current circumstances aside, I feel emotionally and psychologically better that I can remember. You know, before this all happened even it was my desire to -- to move back to Texas because unfortunately larger communities have a larger population of people who I would be -- my identity wouldn't be associated to specifically with HIV. I was striving for a life of transparency and I had a plan, and I messed it all up. But it has always been important to me because I did feel like there was a bit of a double life as Miss Fangman said, but not a double life that was some sort of evil, malicious Nick and then the Nick that everyone else knew, but all of the people that were close to me and not just because of my

medications or my doctor visits, but I'm very close to my friends and people in the gay community knew. But I also would like people to judge me on my character first, and once I have that relationship, then my status comes out. If there is any sort of sexual situation that is potentially looming, I've always believed that I would be forthcoming. I have just no recollection of any discussion, and I've always thought it was on a need-to-know basis. Well, clearly Mr. Plendl had a need to know. He should have had that choice and -- and again, I fell short there.

But I've digressed a little bit, but so I've had this concentrated therapy, medication regulation, and I've had several months of time to reflect on what's happened in my life in general and who I wanted to be and where I want to take my life. I've chosen to stay in A pod. I'm not sure if you're familiar, but there is no TV's. There is no distractions. I've spent most of my time reading. My parents have sent me several books on spirituality, and I know many people find Jesus in jail, but it is something that's -- that's new to me and I'm exploring, and I think that there is all of this I think comes around. I haven't really had a high opinion of myself, so I'm working on that. So I've had time to get things into perspective.

And may I address Mr. Plendl and his family?

THE COURT: Just speak to the court, but you can tell me what you would like to say.

THE DEFENDANT: Okay. I -- I knew, Adam, I knew that how badly this had affected you from the first phone call, and my heart sank and I -- I was so disappointed in myself and so scared for you. And I could tell how scared you were, and it was reminiscent of my fear, and it just compounded my remorse and my guilt. And I -- I know that I've taken a large chunk of your life away and most likely your trust in people in general. And -- and I hope that that can slowly be rebuilt in you. I never meant to hurt you. I never meant -- I never meant to hurt anybody ever, and I don't take this illness lightly at all.

I've admired you for the fact that we had similar emotional struggles, and you are continuing college and you are getting your masters, and I found that so impressive and because I -- I've stumbled and I should not have done this to someone who I respected, and I did. I do care about that this made this all the worse. Things that were mentioned on the stand I had no idea about. I knew that your pain and the damage was extensive, but you've brought things to my attention that I was completely unaware of, and it gives me much more to think about. And I also am aware of the ripple effect.

As far as Mr. Plendl's mother goes, I know how

my mother felt. It devastated her, and I know how his mother must have felt. How she must feel right now. And I don't blame her one bit, and I apologize for putting her son at risk and for scaring her and his family and his friends and colleagues and anyone in his life who cares about him. This has affected -- this has magnified much further beyond Mr. Plendl, and I'm aware of that. And to all of those people whose lives I have affected, it -- it is -- it is not enough. It is an understatement, but I'm deeply, deeply sorry and regretful, and I have learned a very valuable lesson in who I need to be.

And -- and Miss Fangman was also right. I'm basically carrying a concealed weapon I guess you could say. I feel terrible but I -- I would like this court to please try to understand or to try to know that this is not representative of my true character. It was a terrible mistake, and as I said before, I take responsibility. And it has been a pivotal time in my life to say the least, and this has gone on too long, I'm sure, but whatever this court decides; prison; what not; I've come to a point of acceptance. That I will accept without any sort of argument whatever is decided, but I do vow to no matter what, continue diligently with all of my physical, medical appointments and medications as well as my psychiatric care.

Whatever sort of stipulations are set forth by this court, I will absolutely not have any problems in adhering too. I would just ask for the opportunity to show that this is not -- this is not me. Clearly I need to stay sober. Having this illness and putting myself in a situation where I lost control of my faculties after drinking and taking those pills was reckless, and so long as I stay sober, which absolutely would not be a problem, this would not be a problem. But as I said, I can't say I'm sorry enough to Adam and his family, and I appreciate everyone coming in and everyone's consideration and -- and thank you.

THE COURT: Thank you very much.

You may be seated.

Any reason why the court cannot pronounce judgment and sentence at this time? State?

MS. FANGMAN: No, Your Honor.

THE COURT: Mr. Metcalf?

MR. METCALF: No.

THE COURT: You don't need to rise.

Nick Clayton Rhoades, the court having found you guilty of criminal trespass [*sic*] of HIV, a class B felony, you are adjudged guilty of that offense.

You can tell this is a close call, and this is very difficult case for the court to look at as well. Mr.

Rhoades, I am going to send you to prison. I'm going to give you the 25-year sentence. I am also, however, going to retain jurisdiction so that this can come back on a reconsideration after you've seen prison and you see what you're looking at down there.

Mr. Plendl, this sentence of this court is not in any way trying to say that you are not harmed and injured. I fully understand the pain that you went through and continue to go through. The sentence of this court is not going to be able to -- to make you well or help you either. You're on the road to doing that on your own. You need to continue to do that, and I have a great deal of respect for what you've done with your life and what you've done since this occurred to move on, and you need to continue to do that whether Mr. Rhoades is in prison or not.

I will continue the no contact order for five years to be certain that he has no contact with you. He will be required to be on the sexual offender registry.

He is going to be sentenced to 25 years in prison at this time under the director of adult corrections. That will include the lifetime parole provision that goes with that and the DNA testing as well.

There are several items and things that have come out in this -- in this hearing today that -- that

struck the court. There was a comment that 25 percent of people do not disclose. Simply because it happens regularly that people don't disclose doesn't mean that it is safe. The legislature has seen fit to put a law in place that people must disclose. That's because it is not safe for people not to. And that 25 percent people ignore that -- or 25 percent of the people ignore that doesn't make it okay. Just makes it dangerous.

There was -- there was some testimony that this is not a death sentence but rather a chronic illness. A chronic illness still affects and changes people's lives, and again, it is a dangerous situation that cannot be ignored simply because it doesn't mean death. It does change your life. And as you said, Mr. Rhoades, you more than anyone else in this courtroom knew that and should have known that. I truly believe you are remorseful. Although originally it may have been a remorse that you'd been caught or in trouble, I think that you have come to an understanding of what you did that night and what you've done to Mr -- Mr. Plendl. That realization I hope will guide you to make sure that this never happens again.

You need to continue with your medication. You need to continue on with your counseling. I agree with many of the witnesses that testified on behalf of you, Mr. Rhoades. Prison very rarely provides rehabilitation, is

very rarely good for anybody we send to prison. It is you're being sent there as a punishment. You're being sent there so that you will learn and keep in mind what the danger that you pose and you have for others.

One thing that makes this case difficult is you don't look like our usual criminals. You don't look dangerous sitting there. Often times for the court it is easy to tell when someone is dangerous. They pull the gun. They have done an armed robbery. But you created a situation that was just as dangerous as anyone who did that, and that's the reason for this court's sentence.

You do have a right to appeal this judgment and sentence. You do that by filing a notice of appeal. It has to be filed within 30 days of today's date. If you fail to file that notice, you'll lose your right to appeal. If you can't afford an attorney or transcripts, those will be provided at state expense.

Bond on appeal is set in the amount of $100,000 cash or corporate surety.

Anything further, state?

MS. FANGMAN: Judge, assume as part of his programming you'll order sex offender treatment program?

THE COURT: Yes. That will be included.

MS. FANGMAN: And court costs and restitution?

THE COURT: Yes.

MR. METCALF: We have nothing further.

THE COURT: We stand adjourned.

(Hearing concluded at 12:12 p.m.)

C E R T I F I C A T E

I, the undersigned, one of the official shorthand reporters in and for the First Judicial District of Iowa, which embraces the County of Black Hawk, hereby certifies that I acted as such reporter on the proceedings of the above-entitled cause in the Iowa District Court of Iowa in and for Black Hawk County, before the judge stated in the title page attached to this transcript, and took down in writing the testimony offered and proceedings had on said hearing.

That the foregoing pages of typewritten matter are a full, true and complete transcript of the said shorthand notes so taken by me in said cause, and that said transcript contains all of the testimony offered and proceedings had on said hearing at the times therein shown.

Dated in Waterloo, Iowa, on MAY 17, 2010.

Julie A. Delmer

Certified Court Reporter,
First Judicial District
of Iowa