

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATTER OF: )  
)  
The Necessity for the )  
Hospitalization of William S. )  
Bigley )  
)  
)

Case No. 3AN-08-1252 PR

\*\*\* ~~CONFIDENTIAL~~ \*\*\*

Not Confidential  
Jim Gottstein

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE J. LACK  
Superior Court Judge

Anchorage, Alaska  
October 21, 2008  
1:53 P.M.

APPEARANCES:

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EXHIBITS

(No exhibits were admitted.)

(Transcriptionist's note: When Mr. Bigley was asked a direct question and responded, this has been transcribed; however, I did not attempt to transcribe Mr. Bigley speaking in the background during the proceedings.)

3AN27B08176

1:52:54

PROCEEDINGS

THE COURT: Good morning. Good morning. You may be seated. All right.

We are on record in Case No. 3AN-08-1252. This is the time set for the hospitalization hearing for William S. Bigley.

In the courtroom is Mr. Bigley. He is here with his attorney, Ms. Leonard.

Thank you very much.

And then Mr. -- Mr. --

MR. BIGLEY: Can I speak for myself? (Indiscernible.)

THE COURT: Just hold on, Mr. Bigley. Mr. Gottstein is here, as well.

Mr. Gottstein, were you entering an appearance?

MR. GOTTSTEIN: Yes. I didn't have a chance to file. I thought I would file it here.

THE COURT: Okay.

MR. GOTTSTEIN: And I've got limited entry of appearance in some document (indiscernible), Alaska Supreme Court, where they granted a stay pending (indiscernible) of a forced-drugging order (indiscernible), which I think (indiscernible) --

THE COURT: Well, let's start --

MR. GOTTSTEIN: -- the Court would take judicial notice --

THE COURT: -- let's start with the entry of appearance.

MR. GOTTSTEIN: If I could --

THE COURT: Just hold on. We've got a limited entry appearance from Mr. Gottstein for purposes of the meds petition only; is that correct?

UNIDENTIFIED SPEAKER: That is correct.

THE COURT: All right. So will --

MR. BIGLEY: (Indiscernible), Judge.

THE COURT: Mr. Bigley, Mr. Bigley, I need you -- I can't hear, so I need you to be quiet, okay? Can you do that for me? Can you be quiet for me? All right. Thank you very much.

And then Ms. Derry is here for the State, as is -- and Ms. Vassar, the Court visitor is here.

Who else do we have in the courtroom?

MR. HUGHES: I'm Jonathan Hughes. I'm with OPA (indiscernible) guardian (indiscernible) Mr. Bigley.

THE COURT: Okay. Mr. Hughes is here from OPA.

And then Dr. Khari is here.

Is everybody else an assistant from the facility?

MS. DERRY: They're all from -- they're all from API, Your Honor.

THE COURT: Okay. Thank you.

Ms. Derry, how do you want to proceed?

MS. DERRY: Your Honor, I would -- if you'll please speak loudly for me, also.

THE COURT: Yes.

MS. DERRY: I'd like to proceed with the 30-day commitment.

THE COURT: Just a second.

UNIDENTIFIED SPEAKER: (Indiscernible) is the right next to the mike?

THE COURT: Yeah. You can go ahead and sit, so that way you're next to the mike so that --

Mr. Bigley? Mr. Bigley, I really need you to keep quiet.

1 MR. BIGLEY: Twenty years, man.  
 2 THE COURT: I know. We're going to hear from  
 3 you in a minute. And so if you can -- if you can just  
 4 try and be quiet. All right. Okay.  
 5 MR. BIGLEY: Please (indiscernible).  
 6 THE COURT: We're -- all right.  
 7 Ms. Derry, go ahead.  
 8 MS. DERRY: Yes, Your Honor. I'd like to  
 9 proceed with the 30-day commitment, please.  
 10 THE COURT: All right. Who's your first  
 11 witness?  
 12 MS. DERRY: Dr. Lawrence Maile, Your  
 13 Honor.  
 14 MS. LEONARD: Judge, just as a procedural  
 15 matter, could I do a couple of things before we start  
 16 with witnesses?  
 17 THE COURT: Sure.  
 18 MS. LEONARD: One is, it appears that the  
 19 statute calls for --  
 20 THE COURT: Actually, Ms. Leonard, why don't  
 21 you be seated, as well. You're -- that way, you're  
 22 closer to the microphone --  
 23 MS. LEONARD: Thank you.  
 24 THE COURT: -- because of the extenuating  
 25 circumstances.

1 MS. LEONARD: Don't want to be impolite.  
 2 THE COURT: No. That's all right.  
 3 MS. LEONARD: Thank you. The statute appears  
 4 to call for the question of open or closed.  
 5 And then when we determine -- even if we  
 6 determine that it's going to be open, I would like to  
 7 invoke the rule on witnesses, so that witnesses will  
 8 take turns testifying privately, without the other  
 9 witnesses.  
 10 THE COURT: All right. Ms. Derry, do you  
 11 have any objection to the hearing being closed?  
 12 MS. DERRY: No, Your Honor. That's fine.  
 13 THE COURT: All right. We'll let you stay,  
 14 (indiscernible). Does that resolve that issue?  
 15 Unless --  
 16 MS. LEONARD: I think it's Mr. Bigley's  
 17 choice about open or closed. I guess I wasn't saying  
 18 I wanted it closed. We hadn't heard from him on  
 19 whether he wanted --  
 20 THE COURT: Okay. Why don't you consult with  
 21 your client.  
 22 (Attorney-client discussion.)  
 23 MS. DERRY: Your Honor, I would put it on the  
 24 record that we -- I think leave the doors closed, as a  
 25 matter of confidentiality.

1 THE COURT: Well, hold on. Let me --  
 2 MR. BIGLEY: You didn't vote for Bush.  
 3 George W. Bush, do you know who he is?  
 4 THE COURT: Just hold on, Mr. Bigley.  
 5 MR. BIGLEY: (Indiscernible.)  
 6 THE COURT: Mr. Bigley, we are trying to help  
 7 you out, okay? So if you can let me hear from your  
 8 attorneys.  
 9 MR. BIGLEY: (Indiscernible.)  
 10 MS. LEONARD: We have a small decision to  
 11 make here. Open the doors or close the doors?  
 12 MR. BIGLEY: (Indiscernible) John Kennedy  
 13 anyway. And I said, John F. Kennedy, president of the  
 14 United States --  
 15 MS. LEONARD: Do you want the doors open or  
 16 closed?  
 17 MR. BIGLEY: Why? We're only going to get  
 18 slaughtered.  
 19 MS. LEONARD: Your choice.  
 20 MR. BIGLEY: Why? Tell me why.  
 21 MS. LEONARD: Okay. We'll have them open.  
 22 THE COURT: Mr. Bigley, do you -- do you want  
 23 people to be able to sit in the courtroom and hear the  
 24 proceedings?  
 25 MR. BIGLEY: (Indiscernible) on TV right now,

1 TV.  
 2 THE COURT: Yes, we're on TV.  
 3 MR. BIGLEY: I know that.  
 4 THE COURT: Yes. Do you want -- but do you  
 5 want people to be in the courtroom or not?  
 6 MR. BIGLEY: (Indiscernible) touching you and  
 7 shit. Get over your (indiscernible) or go back to  
 8 Cuba and (indiscernible) right there.  
 9 THE COURT: All right. Just a second,  
 10 please.  
 11 Mr. Gottstein, do you have a position?  
 12 MR. GOTTSTEIN: Huh?  
 13 THE COURT: Do you have a position?  
 14 MR. GOTTSTEIN: I think it's his decision.  
 15 And it's -- it's -- which he's not obviously making.  
 16 In the past, he's uniformly asked for it to  
 17 be open, so -- but I don't -- I don't have a position  
 18 on it.  
 19 THE COURT: All right.  
 20 MR. GOTTSTEIN: Do you want open court, like  
 21 you have in the past?  
 22 MR. BIGLEY: The Court loves me.  
 23 (Indiscernible.)  
 24 THE COURT: I don't blame you for that.  
 25 Here's how --

1 MS. LEONARD: On Mr. Bigley's behalf, I  
2 prefer open.  
3 THE COURT: Here's how I'm going to -- here's  
4 how I'm going to deal with it, all right?  
5 Since it does not appear that Mr. Bigley is  
6 capable of asking either for it to be closed, and a  
7 closed proceeding would be an extraordinary step,  
8 without a request for it from Mr. Bigley, I'm not  
9 going to close the proceedings.  
10 That being said, if you're not Mr. -- Dr. --  
11 is it Maile?  
12 MS. DERRY: Dr. Maile.  
13 THE COURT: -- Dr. Maile or somebody from --  
14 who is an attendant, then I -- any potential -- any  
15 witnesses, aside from Dr. Maile, need to step out into  
16 the hall. We'll call you when we're ready.  
17 Oh, are you going to call the guardian?  
18 MS. DERRY: I'm sorry?  
19 THE COURT: Are you going to call  
20 Mr. Hughes?  
21 MS. DERRY: Yes.  
22 MS. LEONARD: No. You --  
23 THE COURT: Ms. Leonard --  
24 MS. LEONARD: The attendants --  
25 THE COURT: The attendants can stay.

1 Ms. Leonard, since Mr. Hughes is the  
2 guardian, is he subject to the exclusionary rule?  
3 MS. LEONARD: I wouldn't think so, sir.  
4 THE COURT: All right. Mr. Hughes, you can  
5 stay.  
6 Dr. Maile, why don't you come on up. And  
7 actually, is your phone on? Because the -- all  
8 right. The Bluetooth messes with the recording  
9 equipment.  
10 MR. BIGLEY: (Indiscernible.)  
11 THE COURT: Mr. Bigley, I can't hear what's  
12 going on. Mr. Bigley, I can't hear what's going on.  
13 If you can't stop talking, we're going to have to have  
14 you leave. Do you understand? And you're not going  
15 to be able to participate in the proceedings.  
16 So if you can be quiet, you can stay. If you  
17 want to go and sit with -- if you want to go sit with  
18 Mr. Gottstein -- why don't you go sit with  
19 Mr. Gottstein, and he can answer your questions on the  
20 side, okay?  
21 MR. BIGLEY: (Indiscernible.)  
22 THE COURT: If you don't want to, you don't  
23 have to. You can sit right there, but you have to be  
24 quiet. If you're not quiet during the proceedings,  
25 we're going to have you removed, okay, and we'll

1 proceed without you.  
2 And I think you want to be here, because I  
3 want to hear from you, all right? But it'll be in a  
4 bit. All right. Thank you very much, Mr. Bigley.  
5 Dr. Maile, if you'll stand and raise your  
6 right hand.  
7 (Oath administered.)  
8 THE WITNESS: I do.  
9 THE CLERK: You can have a seat. Sir, will  
10 you please state your full name, spell your last name,  
11 and give your occupation?  
12 THE WITNESS: Lawrence J. Maile, M-A-I-L-E,  
13 and I'm a clinical psychologist.  
14 THE CLERK: Thank you.  
15 THE COURT: Ms. Derry.  
16 MS. DERRY: Yes, Your Honor. Would you like  
17 me to qualify him as a witness -- Dr. Maile as a  
18 witness?  
19 THE COURT: Ms. Leonard, do you have any  
20 objection to him being qualified as a witness?  
21 MS. LEONARD: No.  
22 THE COURT: We'll find that Dr. Maile is  
23 qualified as an expert in -- psychology?  
24 THE WITNESS: Yes, Your Honor.  
25 THE COURT: Okay. Go ahead.

1 MS. DERRY: Yes. Thank you.  
2 LAWRENCE J. MAILE, Ph.D.  
3 called as a witness on behalf of the State, testified  
4 as follows on:  
5 DIRECT EXAMINATION  
6 BY MS. DERRY:  
7 Q Dr. Maile, could you please tell us how  
8 you're -- if you are familiar with Mr. Bigley?  
9 A I am familiar with Mr. Bigley. I'm --  
10 MR. BIGLEY: Twenty years.  
11 THE WITNESS: Just about.  
12 I'm the director of the unit on which he's  
13 currently housed. And he has been on my unit for the  
14 last several admissions.  
15 I've known Mr. Bigley for some period of  
16 time. I don't think it's quite 20 years, but I've  
17 known him through civil and forensic admissions, and  
18 have done evaluations of Mr. Bigley for the Court, in  
19 terms of his competency to proceed, five or six of  
20 those I think dating back to 1997.  
21 BY MS. DERRY:  
22 Q So since 1997, you have had clinical  
23 experience with Mr. Bigley?  
24 A Yes, ma'am, I have.  
25 Q And recently, within -- really since May of

1 this year, May of 2008 -- have you had experiences  
2 with him since May of 2008?

3 A I have. And I'm afraid you're probably going  
4 to ask me next how many admissions that is, and I'm  
5 not really sure. But he has had several admissions to  
6 my unit, and is currently housed on my unit.

7 Q And have you worked with him in treatment  
8 since May of 2008?

9 A Well, I -- I guess I would have to say a  
10 qualified yes. We make every effort to attempt  
11 treatment with Mr. Bigley. We're limited by his  
12 willingness to participate in his condition at the  
13 time.

14 Q And his most recent admission was Monday  
15 morning at 3:45 in the morning, so that would have  
16 been December 20th (sic); is that correct?

17 A Yes.

18 Q And how did he present that morning?

19 A I saw Mr. Bigley when he -- when I came in.  
20 And when I saw him, he was fairly quiet, for him.

21 His condition varies from quietly delusional,  
22 if you will, to loudly and aggressively delusional.

23 Monday morning, he was somewhat quieter, and  
24 deteriorated over the day to becoming more aggressive  
25 and threatening, up to and including, today,

1 masturbating in front of staff and other patients,  
2 disrobing, striking the walls, slamming doors, et  
3 cetera.

4 So over the course of these two days, I've  
5 seen sort of his range of condition, as he's  
6 unmedicated, from quietly delusional to loudly and  
7 aggressively delusional and threatening and otherwise  
8 inappropriate.

9 Q And so he's been in the hospital for two  
10 days; is that correct?

11 A Well, since Monday morning --

12 Q Since Monday morning?

13 A -- so 36 hours, more or less.

14 Q And what attempts at treatment have you made  
15 in the last day and a half?

16 A Well, it -- in this admission, and in each of  
17 his admissions, we offer the usual food and clothes  
18 sorts of things, and unit activities.

19 We ask Mr. Bigley if he would consent to  
20 medications each time he comes in, and we --

21 THE COURT: Mr. Bigley --

22 THE WITNESS: -- we ask him what he would  
23 like to do in terms of staying or going. So we've  
24 done each of those things in this admission.

25 THE COURT: I'm sorry. Dr. Maile, can you

1 repeat that? What have you done?

2 THE WITNESS: Your Honor, we've done the  
3 usual food and clothing, activities of daily living  
4 things, offered him food, clean clothes, a place to  
5 sleep, shower, what have you.

6 We make attempts to talk to him. We ask him  
7 if he would consent to medication, if he'd like to  
8 stay in the hospital. And as I was saying, we do that  
9 in each of his admissions, and have done so this time,  
10 as well.

11 THE COURT: Go ahead.

12 BY MS. DERRY:

13 Q Dr. Maile, will you speak loudly for me,  
14 also?

15 A Sure.

16 Q So you have -- you have been attempting to  
17 work with him. And how -- when he arrived at the  
18 hospital, how did he -- how -- how was he brought to  
19 the hospital?

20 A My understanding is he was brought by APD on  
21 a -- on a screening order.

22 Q On a screening order?

23 THE COURT: All right. Stop.

24 Mr. Bigley, I can't hear. I need to hear  
25 this.

1 MR. BIGLEY: They're lying to you, okay?

2 THE COURT: All right. Well, but I can't  
3 hear whether they're lying or telling the truth  
4 because you're talking.

5 If you talk again, you're going back to API,  
6 and we are going to proceed with this hearing without  
7 you, okay?

8 I really want you here. I need to have you  
9 here. But if you can't be quiet and I can't hear the  
10 testimony, you're going to have to leave. Do you  
11 understand?

12 I need you to be quiet so I can hear the  
13 testimony. If you're not quiet, you're going to have  
14 to leave, and then you're not going to be able to  
15 participate in the hearing. Do you understand?

16 MR. BIGLEY: (Indiscernible.)

17 THE COURT: All right. So be quiet. Thank  
18 you.

19 Go ahead. Sorry.

20 MS. DERRY: Yes. I'm sorry. Let me gather  
21 my thought again, Your Honor.

22 THE COURT: Go ahead.

23 BY MS. DERRY:

24 Q Oh, and you believe that he arrived from the  
25 Anchorage Police Department on a screening order?

1 A That's my understanding.

2 Q And in -- and then this time, you also said  
3 that he has had the complete range of unmedicated  
4 behaviors.

5 Has he exhibited -- have you witnessed any  
6 behaviors that would seem like he's threatening  
7 others?

8 A Yes. I've heard him threaten others.

9 Q And he's verbally threatening them?

10 A Yes.

11 Q Does he posture in any kind of threatening  
12 ways?

13 A It's difficult to say. In some of these  
14 proceedings in the past, I was asked if he was a  
15 physical threat, and --

16 THE COURT: I do need you -- and this is a  
17 common issue in these proceedings.

18 I need to focus on what brought him to court  
19 today. The fact that he may have been physically  
20 aggressive at some other period is less relevant.

21 MS. DERRY: Okay.

22 BY MS. DERRY:

23 Q In the last two days, have you seen him  
24 posture in what would be a threatening manner for  
25 someone like me, someone who's not working at API?

1 A I guess I would have to say a qualified yes.  
2 He clenches his fists, he yells loudly, he approaches  
3 people to inside their personal space. So I would say  
4 yes.

5 Q And also, does -- you said that he strikes --  
6 he struck the wall?

7 A Yes.

8 Q And this is in this admission?

9 A Yes.

10 Q And in behavior such as that, does he destroy  
11 property?

12 A The property is very difficult to destroy.

13 Q At API. Have you -- do you know if, in this  
14 admission, he was brought in having threatened  
15 anyone?

16 A I am not aware.

17 Q And did he -- do you know if he had actually  
18 destroyed any property before he was admitted?

19 A Previous to this. I mean, that brought him  
20 in, I don't know. It's not my understanding that he  
21 did.

22 Q Okay. And do you know, Dr. Maile, if while  
23 he was at Anchorage Police Department in the day prior  
24 to arriving at API, if he was medicated at the jail?

25 A My understanding is that he wasn't.

1 Q He wasn't? And, Dr. Maile, you are familiar  
2 with Mr. Bigley, you know, for several years, since  
3 1997.

4 And as far as him being gravely disabled, do  
5 you -- have you noticed in this admission whether or  
6 not he has been able to be -- supporting his own  
7 nutrition while he was out in the community?

8 A Out in the community -- I wouldn't be able to  
9 comment on out in the community. I haven't seen him.  
10 He has done so since he's been in API.

11 Q And do you know if he -- if he -- well, just  
12 looking at him, has he lost weight since the last time  
13 you've seen him?

14 A His weight is approximately the same as it  
15 was in his last admission --

16 Q And -- okay.

17 A -- 103 or 104, something like that,  
18 103 pounds.

19 Q A hundred and three pounds. How tall is he  
20 about?

21 A Five, four.

22 Q And do you -- when he arrived at the  
23 hospital, what was his physical presentation, as far  
24 as -- was he disheveled?

25 A Approximately the same as it is now, same

1 clothes, same basic presentation.

2 Q Do you know -- well, no, never mind. I'm  
3 going to withdraw that question.

4 Since he's been in the hospital, and you had  
5 testified that he indeed is threatening, does it  
6 appear that the threats that he makes could -- that he  
7 could actually follow through with them?

8 A He's threatened to shoot people, particularly  
9 my staff. I would say that I would have to err on the  
10 side of assuming that he could.

11 What I don't know is what access he has to  
12 weapons to shoot people with. But I have to assume,  
13 given his statements, that he has the intent to.

14 MS. DERRY: Let the record reflect that when  
15 I asked Dr. Maile if he could follow through with  
16 threats, and Dr. Maile brought up that he threatens to  
17 shoot people, that Mr. Bigley replied: Do you blame  
18 me.

19 THE COURT: I'm sorry?

20 MS. DERRY: He replied: Do you blame me.

21 BY MS. DERRY:

22 Q Let's see. Dr. Maile, do you have any --  
23 have you noticed whether or not the weather outside  
24 has affected Mr. Bigley's overall health?

25 THE COURT: Mr. Bigley --

1 THE WITNESS: Has it affected his what?  
 2 BY MS. DERRY:  
 3 Q His health.  
 4 A I haven't noticed that immediately.  
 5 But if I might, I saw Mr. Bigley about a week  
 6 ago outside of API, and he commented that he's lost  
 7 his winter jacket and his hat and his gloves, et  
 8 cetera, and had no place to go get them.  
 9 So that would be a concern for me, that he's  
 10 not adequately --  
 11 Q And when -- I'm sorry.  
 12 A -- provisioned.  
 13 Q Would you repeat that?  
 14 A I said it would be a concern if he's not  
 15 adequately provisioned.  
 16 Q And when you saw him out in the community,  
 17 did you notice that he indeed did not have a coat?  
 18 A Yes.  
 19 Q And he did not have a hat?  
 20 A Right.  
 21 Q And he did not have gloves?  
 22 A Right.  
 23 Q And he did not have -- it didn't look like at  
 24 that time that he had a way of staying warm?  
 25 A No. That's correct.

1 Q And in your expert opinion, does Mr. -- what  
 2 is Mr. Bigley's diagnosis?  
 3 A Mr. Bigley's diagnosis, through several  
 4 admissions, has been schizophrenia, paranoid type.  
 5 Q And -- and in this latest admission, have you  
 6 noticed that he is suffering from paranoia --  
 7 paranoia?  
 8 A Very much so.  
 9 Q And is he delusional?  
 10 A Yes, he is.  
 11 Q Do you have evidence -- could you give me an  
 12 example of that?  
 13 A Mr. Bigley has stated that he's the son of  
 14 God, that he has personal communications with the  
 15 president, Mr. George Bush.  
 16 I would consider those delusional. There is  
 17 no evidence that either is true. So I guess I would  
 18 offer those as evidence. I can't think of any more  
 19 right this second.  
 20 MS. DERRY: And also, if we could also let  
 21 the record reflect that when I asked Dr. Maile if  
 22 he -- if Mr. Bigley suffers from delusions,  
 23 Mr. Bigley, behind me --  
 24 THE COURT: All right. Let's -- Mr. Bigley  
 25 has a right to not -- the tape will reflect what the

1 tape reflects. Let's do that.  
 2 But I'm going to not really consider  
 3 Mr. Bigley's statements that are happening in the  
 4 courtroom against him at this point.  
 5 MS. DERRY: Okay.  
 6 THE COURT: So let's focus on the diagnosis  
 7 and how we're going to deal with that.  
 8 MS. DERRY: Yes. Thank you, Your Honor.  
 9 BY MS. DERRY:  
 10 Q And in your expert opinion, Dr. Maile, do you  
 11 believe that Mr. Bigley is capable of any form of  
 12 effective communication?  
 13 A Not at this point.  
 14 Q Do you feel that he can accurately tell us  
 15 what he wants?  
 16 A No, I don't think so.  
 17 Q And do you think that he could care for  
 18 himself in society?  
 19 A No, not in his present condition.  
 20 Q And do you think that if he stays at the  
 21 hospital, that he can benefit from a stay at the  
 22 hospital?  
 23 A Yes, I do. He benefits from the structure  
 24 and the regular provision of food and clothing, those  
 25 sorts of -- sustenance sorts of things.

1 Q When he receives appropriate nutrition, do  
 2 you notice any behavioral differences or anything --  
 3 any psychological differences in him when he's well  
 4 fed?  
 5 A Yes. He improves, in terms of moving in the  
 6 direction of more psychiatric stability.  
 7 It's not been my observation that -- that he  
 8 has a complete remission of symptoms, but he becomes  
 9 less irritable when adequately fed.  
 10 MS. DERRY: Okay. No further questions.  
 11 Thank you.  
 12 THE COURT: Ms. Leonard, do you have cross  
 13 examination?  
 14 MS. LEONARD: Yeah. I have a few  
 15 questions.  
 16 LAWRENCE J. MAILE, Ph.D.  
 17 testified as follows on:  
 18 CROSS EXAMINATION  
 19 BY MS. LEONARD:  
 20 Q Could you explain -- I don't know much about  
 21 API. And you are in a particular unit, and he's in  
 22 your unit. What is that unit? I mean, is it divided  
 23 by numbers, or is there a particular diagnosis for  
 24 people in your unit?  
 25 A What is my unit? My unit is a forensic

1 evaluation unit, and it's the most restrictive unit in  
2 API by virtue of physical facility and staffing, as  
3 well.

4 People are housed there who are in the  
5 process of evaluation or treatment through the  
6 criminal justice system and those who are most  
7 behaviorally unstable, who are civil patients.

8 Q Okay. And is that where he would go -- if  
9 the judge signed this order today, would he go back to  
10 your unit --

11 A Yes, he would.

12 Q -- or he would go into another unit?

13 A Yes. He would come to my unit, at least  
14 initially.

15 Q Okay. Were you on duty on Monday morning,  
16 when he was brought into API?

17 A No. I came on duty at 7:30.

18 Q Okay. So was 7:30 the beginning of your  
19 observation of him?

20 A Yes.

21 Q And you -- you described that there was a  
22 progression to some degree, where initially he seemed  
23 more calm and then he became less calm. Did I hear  
24 that right?

25 A Yes.

1 Q When was he more calm? What was the range of  
2 that?

3 THE COURT: Just a second.

4 Ms. Derry, you need to not talk to him.

5 MS. DERRY: Yes, sir.

6 THE COURT: Focus forward. Thank you.

7 Go ahead, Ms. Leonard.

8 BY MS. LEONARD:

9 Q Do you remember my question? Should I do  
10 that again? Okay.

11 You said there had been a range of behavior,  
12 and he began by being more compliant, quiet -- I  
13 forget what your word was. But he became more --  
14 progressively more upset; is that what I understood  
15 you to say?

16 A Yes.

17 Q What is the progression? When did it -- when  
18 was he more calm and when did he progress to being  
19 less calm?

20 A He was calm when I initially checked on him  
21 in the unit. I just spoke to him briefly about -- I'm  
22 not sure what. Nothing in particular.

23 When I came back to the unit about 9:00, he  
24 was somewhat louder at that point.

25 During that -- that period of my stay, we

1 have (indiscernible) on Monday morning, so I was there  
2 for that period of time. He was -- he was quieter  
3 than he was later in the day.

4 During the course of the treatment team, I  
5 asked him if he would like to stay at API or leave.  
6 He said he would like to leave. And I conveyed that  
7 to the treatment team.

8 By the end of the treatment team, he was  
9 louder and more demanding in terms of leaving,  
10 swearing at the staff, et cetera. So over the course  
11 of approximately three hours from the start of my  
12 shift.

13 Q And to me, you're describing that it was kind  
14 of on the question of whether he was going to be  
15 allowed to leave, and it apparently was his wish to  
16 leave. And --

17 A Apparently it was. It's not clear to me that  
18 that was the trigger, if you will.

19 Q It's not clear to you that that was the  
20 trigger?

21 A No. As I said, he was calm when I first saw  
22 him at 7:30; he was less calm at 9:30. So it's  
23 difficult for me to tell if that wasn't a slide that  
24 was started.

25 Q To tell if --

1 A If he wasn't deteriorating already.

2 Q Oh, I see. I see. Okay. So it could just  
3 be coincidence that this is going along with the  
4 decision to keep him there?

5 A It could.

6 Q Okay. Okay. In the course of -- let's see,  
7 now. So from Monday morning, this is Wednesday  
8 afternoon. In the course of the two days -- two full  
9 days that he's been there, have there been times when  
10 he has been in the presence of other people as opposed  
11 to in a locked room?

12 A Yes.

13 Q Would you give us an idea of how much of the  
14 time he's been in the physical presence of other  
15 people, not restrained in a locked room?

16 A He -- first off, please, he hasn't been  
17 restrained, nor has he been locked in.

18 Q Okay.

19 A But he has been either in his room or in the  
20 quiet room for varying periods. Most of the time,  
21 though, he's out in the hall until such time as he  
22 yells or threatens or swears at the other personnel,  
23 and patients, as well. We have some concern that  
24 Mr. Bigley is going to incite someone else to harm  
25 him.



1 THE COURT: Dr. Maile, can you pull the  
2 microphone closer to you?

3 BY MS. LEONARD:

4 Q So I'll characterize what I hear you saying,  
5 and you agree or disagree if this sounds right.

6 So you're saying that he's in a room where he  
7 can come in and go out of -- freely?

8 A Yes.

9 Q And he comes out and gets involved in  
10 situations with people, then he goes back into his  
11 room?

12 A Or we ask him to go back in.

13 Q Okay. So if you ask him to go back in, does  
14 he just go back in?

15 A Most of the time he does.

16 Q Okay. Have there been any occasions of him  
17 laying hands on anyone else?

18 A Not in this admission that I know of.

19 Q Okay. And in this admission, when you say --  
20 I think when you were talking about his conduct, you  
21 said something like clenched fists and getting in  
22 people's personal space?

23 A I did.

24 Q Can you give us the incident? Is it one  
25 incident or many of getting in people's personal

1 space?

2 A Many.

3 Q Will you describe what you're -- what you --  
4 what you saw? Give us an incident that seems  
5 characteristic.

6 A I can give you a general, having seen  
7 several.

8 Mr. Bigley frequently yells about things that  
9 often make little sense to me. In doing so, he gets  
10 more and more agitated as he goes, and gets closer and  
11 closer to people as he does.

12 Sometimes he accuses us of trying to kill  
13 him. That would be a time. Sometimes he threatens to  
14 kill us. That would be a time.

15 But again, his behavior is, in essence,  
16 non-stop. And he may, just estimating, threaten  
17 people 30 or 40 times a day.

18 Q Uh-huh. And it's hurt you, kill you, that  
19 sort of thing?

20 A Sometimes.

21 Q Okay. Okay. But in no instance has he  
22 raised hands or put hands on somebody?

23 A Correct.

24 Q And as to your concern for other people and  
25 whether they might hurt him -- well, I'll just leave

1 that alone.

2 You do have that concern, as well, that his  
3 behavior is provocative enough to get someone else to  
4 hurt him?

5 A It is.

6 Q Okay. Did you -- do you do a physical  
7 evaluation of a person when they come into API? Has  
8 Mr. Bigley been looked at for any physical injuries he  
9 may have on his body?

10 A We attempted to, but he has the right to  
11 refuse.

12 Q Okay.

13 THE COURT: I'm sorry; what was your  
14 answer?

15 THE WITNESS: I said we attempt to, but he  
16 has the right to refuse. He refused it in this  
17 admission.

18 THE COURT: He refused?

19 THE WITNESS: Yes.

20 BY MS. LEONARD:

21 Q So are you aware of any physical injuries he  
22 may have from this kind of provocative behavior,  
23 causing other people to harm him?

24 A I am not.

25 Q You are not. Okay. Okay. You -- you said

1 that you offered him clothing. Did he accept any  
2 offer of clothing?

3 A Yes, he has.

4 Q So the clothes that he's wearing now are not  
5 the clothes he came in with?

6 A These are his clothes. But he was in  
7 hospital clothes until he changed to come down here to  
8 court.

9 Q Okay. Is he allowed to stay in his street  
10 clothes while he's there?

11 A No, he didn't.

12 Q Okay. So you just exchange clothes for him  
13 because that's the procedure at API?

14 A Right.

15 THE COURT: Mr. Bigley --  
16 Just a second, Ms. Leonard.

17 Mr. Bigley, I know it's very difficult,  
18 because there is information you want to share with  
19 me. Ms. Leonard is trying to help you, but I can't  
20 hear Ms. Leonard's questions or the answers that will  
21 help you if you're talking. So you need to be  
22 quiet.

23 MR. BIGLEY: (Indiscernible) committed.

24 THE COURT: You're going to have an  
25 opportunity to talk, but I need you to be quiet, okay?

1 Can you help me?  
 2 MR. BIGLEY: (Indiscernible.)  
 3 THE COURT: Okay. We'll -- I'll hear all  
 4 that in a minute. But I need to hear from  
 5 Ms. Leonard, and then Dr. Maile, first, okay? So --  
 6 MR. BIGLEY: (Indiscernible.)  
 7 THE COURT: Mr. Bigley, you need to be quiet.  
 8 Go ahead, Ms. Leonard.  
 9 MS. LEONARD: Okay.  
 10 BY MS. LEONARD:  
 11 Q So the clothing that he has are basically  
 12 appropriate to street wear?  
 13 A Yes.  
 14 Q Okay. And then one of the things that you  
 15 mentioned was something about that he was asking or  
 16 said he had lost his hat, coat, gloves?  
 17 A Yes. I mentioned that I saw him outside of  
 18 API.  
 19 Q Was that on another occasion?  
 20 A Yes.  
 21 Q Okay. So you saw him without those things,  
 22 but that's not related to this admission. That just  
 23 happened in recent times, that you saw him without  
 24 those things?  
 25 A Yes.

1 Q Okay. Okay. What did you do about his lack  
 2 of having gloves at that time?  
 3 A At that time I did nothing, other than to buy  
 4 him a cup of coffee.  
 5 Q Buy him a cup of coffee? Oh, you were  
 6 somewhere else, not -- you said you were at API?  
 7 A No. I said I was outside of API.  
 8 Q Okay. Did you buy him a cup of coffee at  
 9 API?  
 10 A No.  
 11 Q Somewhere else?  
 12 A Yes.  
 13 Q Okay. And then he went his way and you went  
 14 your way?  
 15 A Correct.  
 16 Q Okay. In the clothing that he had, without  
 17 the hat --  
 18 A Right.  
 19 Q -- and the gloves? Okay. Okay.  
 20 And then as to food, did you say he looks  
 21 like he is the same weight as he was the last time you  
 22 saw him and in recent times?  
 23 A Yes.  
 24 Q Okay. And do you notice anything in -- I  
 25 think you said his physical appearance was the same.

1 Is there any particulars you can give to support  
 2 concern that he's not eating or needs -- needs better  
 3 nutrition?  
 4 A No, not at this time.  
 5 Q Not at this time?  
 6 A No.  
 7 THE COURT: I'm sorry. The question, just so  
 8 we've got a clear recording, was about concerns that  
 9 Dr. Maile might have about him (indiscernible)  
 10 physical (indiscernible)?  
 11 MS. LEONARD: If he had any observation that  
 12 Mr. Bigley was harmed by any lack of nutrition in  
 13 the -- in this time period.  
 14 THE COURT: And, Dr. Maile, your response?  
 15 THE WITNESS: No.  
 16 THE COURT: No. Okay.  
 17 THE WITNESS: Short answer, no.  
 18 BY MS. LEONARD:  
 19 Q Okay. And you said he had not destroyed any  
 20 property at API at this point?  
 21 A No.  
 22 Q Striking the wall, is that associated with  
 23 words spoken, in effect emphasizing the words that  
 24 he's speaking?  
 25 A Not that I can tell.

1 Q Okay. He strikes the walls just unrelated to  
 2 anything else, walks along and strikes walls?  
 3 A As near as I can tell, yes.  
 4 Q Okay. I -- I have yet to see him not quiet,  
 5 so I wonder that there's times that he's quiet and  
 6 walks around striking walls. There are times when he  
 7 is not running a monologue?  
 8 A They're rare, but yes. Mostly he's quiet  
 9 when he's sleeping, but --  
 10 Q Quiet when he's sleeping, and that's about  
 11 it?  
 12 A For the most part, yes.  
 13 Q Okay. And when -- when he first saw you on  
 14 that Monday morning, do you recall whether he  
 15 expressed that he wanted to be out of there?  
 16 A No, not when he first saw me.  
 17 Q Okay. And then you just saw him in passing,  
 18 and then you had team meetings and began the process  
 19 of determining whether he was free to go or whether he  
 20 was going to stay?  
 21 A Yes.  
 22 Q Okay. And it's over the course of -- over  
 23 the course of that first day, it became clear to him  
 24 that your -- the team's intention was to keep him  
 25 there --

1 A Yes.  
 2 Q -- is that right? Okay.  
 3 (Whispered conversation.)  
 4 BY MS. LEONARD:  
 5 Q I guess just to be on the safe side,  
 6 Mr. Gottstein reminds me that -- I think it's a matter  
 7 of record that there never has actually been an  
 8 assaultive -- assaultive conduct, physically  
 9 assaultive conduct, by Mr. Bigley towards anyone. Do  
 10 you dispute that?  
 11 A Pardon?  
 12 THE COURT: The question is, do you know if  
 13 Mr. Bigley's ever actually been physically assaultive  
 14 with another person?  
 15 THE WITNESS: I don't actually recall  
 16 (indiscernible).  
 17 MS. DERRY: I'm sorry; what was the answer to  
 18 that?  
 19 THE COURT: He can't recall at this moment.  
 20 MS. LEONARD: Okay. Satisfied with that  
 21 answer.  
 22 And those are all my questions. Thank  
 23 you.  
 24 THE COURT: Ms. Derry, do you have  
 25 redirect?

1 not adequately treated him, in terms of providing him  
 2 the treatment that would alleviate his symptoms, make  
 3 him less paranoid and less tortured, and likely less  
 4 likely to decline over the years.  
 5 Mr. Bigley is far more ill than when I first  
 6 met him, so I've witnessed in Mr. Bigley a progression  
 7 of his illness that is disturbing to me as a provider  
 8 of human services.  
 9 MS. DERRY: No further questions. Thank you.  
 10 THE COURT: Ms. Leonard, did you have any  
 11 follow-up based on that testimony?  
 12 MS. LEONARD: No, nothing. Thank you.  
 13 THE COURT: Thank you, Dr. Maile. You can be  
 14 excused.  
 15 (Witness excused.)  
 16 THE COURT: We have to take a quick recess to  
 17 take care of some physical (indiscernible) issues. We  
 18 are going to take a break and then we'll be right back  
 19 (indiscernible).  
 20 MS. DERRY: Do you mind if I move this so I  
 21 can hear and see?  
 22 THE COURT: Oh, no. That's fine, if you want  
 23 to scoot it up or whatever.  
 24 2:29:56  
 25 (Off record.)

1 LAWRENCE J. MAILE, Ph.D.  
 2 testified as follows on:  
 3 REDIRECT EXAMINATION  
 4 BY MS. DERRY:  
 5 Q Dr. Maile, do you have safety concerns for  
 6 Mr. Bigley?  
 7 A I do.  
 8 Q And what are they?  
 9 THE COURT: Mr. Bigley, I need to be able to  
 10 hear.  
 11 MR. BIGLEY: That doesn't matter. They're  
 12 all heroes.  
 13 BY MS. DERRY:  
 14 Q How are you concerned for his safety?  
 15 A Thank you. My concerns for Mr. Bigley are  
 16 several-fold.  
 17 One is that he won't adequately care for  
 18 himself outside of API.  
 19 Another is that his behavior is often so  
 20 egregious that he makes himself a target for others.  
 21 And in general, I -- I'm sad to say that  
 22 we -- one of my concerns is more global, that we, as a  
 23 system, have failed Mr. Bigley, in that we have not  
 24 adequately treated him over the years. He's -- he's  
 25 severely afflicted by his mental illness, and we have

1 2:35:34  
 2 THE COURT: All right. We are back on record  
 3 in Case No. 3AN-08-1252.  
 4 We had just finished up with the testimony of  
 5 Dr. Maile.  
 6 Mr. Jonathan Hughes from OPA is on here. I  
 7 assume, Ms. Derry, you are calling him as the next  
 8 witness?  
 9 MS. DERRY: Yes, I am. Thank you, Your  
 10 Honor.  
 11 THE COURT: Mr. Hughes, if you would raise  
 12 your right hand.  
 13 (Oath administered.)  
 14 THE WITNESS: I do.  
 15 THE COURT: Okay. You can be seated.  
 16 Would you state your full name, spelling your  
 17 last name for the record?  
 18 THE WITNESS: Jonathan Hughes. First name is  
 19 J-O-N-A-T-H-A-N, and Hughes is H-U-G-H-E-S.  
 20 THE COURT: And your mailing address is  
 21 through OPA?  
 22 THE WITNESS: Yes. 900 West 5th Avenue,  
 23 Suite 525, Anchorage, 99501.  
 24 THE COURT: Thank you.  
 25 Ms. Derry.

1 MS. DERRY: Yes. Thank you, Your Honor.  
 2 JONATHAN HUGHES  
 3 called as a witness on behalf of the State, testified  
 4 as follows on:  
 5 DIRECT EXAMINATION  
 6 BY MS. DERRY:  
 7 Q Mr. Hughes, how are you familiar with  
 8 Mr. Bigley?  
 9 A I am the OPA guardian that's assigned to his  
 10 case.  
 11 Q And how long have you been working with him?  
 12 A It's been -- it's been over a year, maybe a  
 13 year and a half, I think.  
 14 Q How long have you known him, though?  
 15 A For -- in January, it'll be three years.  
 16 Q And what is -- how is your relationship with  
 17 him?  
 18 A It has deteriorated. I was originally  
 19 assigned to be his guardian from Steve Young, because  
 20 we've -- at the time, it was thought that perhaps  
 21 switching to a new guardian might improve  
 22 relationships between Bill and our office, and be able  
 23 to serve him better.  
 24 THE COURT: Mr. Bigley, Mr. Bigley,  
 25 Mr. Bigley, I need you to be quiet.

1 Mr. Hughes is your guardian. He's here  
 2 testifying for you, so we can make the right decisions  
 3 for you. So I need you to be quiet so I can hear from  
 4 him, and then Ms. Leonard is going to ask him  
 5 questions, too. So I need you to be quiet, okay?  
 6 If you could have a seat -- Mr. Bigley, can  
 7 you have a seat in your chair, please?  
 8 MR. GOTTSTEIN: (Indiscernible.)  
 9 MR. BIGLEY: (Indiscernible.)  
 10 MR. GOTTSTEIN: Have a chair.  
 11 MR. BIGLEY: Okay. (Indiscernible) trash.  
 12 THE COURT: Thank you for taking your seat,  
 13 Mr. Bigley. And if you could remain quiet, that would  
 14 be appreciated.  
 15 Ms. Derry.  
 16 MS. DERRY: Yes.  
 17 BY MS. DERRY:  
 18 Q I'll ask a similar but different question.  
 19 What are -- what is your role for Mr. Bigley?  
 20 A We're supposed to make legal, financial, and  
 21 medical decisions for Mr. Bigley. It -- I find that  
 22 very difficult to do.  
 23 THE COURT: Mr. Bigley --  
 24 THE WITNESS: I receive his income, I budget  
 25 out his income, I work with him regarding housing and

1 mental health and medical services, that sort of  
 2 thing.  
 3 BY MS. DERRY:  
 4 Q Do you have a personal relationship with him  
 5 at all?  
 6 A Outside of work?  
 7 Q I mean, is there any connection between the  
 8 two of you?  
 9 A I would have to say it's deteriorated. I try  
 10 to talk to him. He -- he's very abrasive, cursing,  
 11 yelling. He doesn't listen to me, doesn't -- I'm not  
 12 able to have a two-way conversation, where I can find  
 13 out what his desires are so I can take that  
 14 information and turn that into services that he would  
 15 like.  
 16 Q Are you able to help him?  
 17 A Every once in a while. And an example would  
 18 be, he needed a hat. It was raining. I walked to the  
 19 store with him. He picked out a hat, I purchased the  
 20 hat. I mean, various simple things like that.  
 21 Another time in August -- or September,  
 22 actually, we walked over --  
 23 THE COURT: Mr. Bigley, stop.  
 24 Go ahead.  
 25 THE WITNESS: We walked over to Snow City and

1 were able to make a purchase and eat outside and not  
 2 get kicked out because we were eating outside. He was  
 3 still very much like he is right now, pressured speech  
 4 and yelling and things like that.  
 5 But apart from really short interactions like  
 6 that, I'm not able to -- you know, I guess take his --  
 7 take what he desires into account because I can't  
 8 elicit what those are in a way -- he says he wants to  
 9 go to Cuba. He says he wants to go to the Starship  
 10 Enterprise, things like that. I am not able to  
 11 entertain that as far as housing options.  
 12 BY MS. DERRY:  
 13 Q Aside from what you're obligated to do, as  
 14 your duty of a guardian, what can you do for him?  
 15 What are you able, based on --  
 16 A What I've been able to do, receive his  
 17 income, keep him on benefits. I split up -- I budget  
 18 his money. Right now he's -- you know, we're working  
 19 with Paradise Inn for housing in the interim, when  
 20 he's not in jail. He's been able -- I've been able to  
 21 cut up an allowance check, that kind of thing.  
 22 Q And how often does he come to your office?  
 23 A Right now he's banned from the office. He  
 24 is -- he's not able to come personally to the office  
 25 because -- because of his behavior, because of the

1 destructive behavior, and also the building management  
2 does not want him there.

3 Q And the building is owned by someone other  
4 than the Office of Public Assistance?

5 A It is. It -- other than OPA, they are. And  
6 they've had complaints from other floors because he --  
7 he --

8 THE COURT: Mr. Bigley.

9 THE WITNESS: -- he goes into other floors  
10 and bothers the other residents there. So he's  
11 actually been jeopardizing our -- our office's ability  
12 to remain in that building.

13 BY MS. DERRY:

14 Q And what was your most recent interaction  
15 with Mr. Bigley?

16 A It was about two weeks ago.

17 Q And --

18 A I've been away in Juneau, and then before  
19 that I was in Nashville for a conference, so --

20 Q And were you told of the situation that  
21 happened this week, as his guardian?

22 A Yes. I was -- I was on the --

23 MS. LEONARD: Well, I guess I object to that.  
24 We're going to have a hearsay rendition of an  
25 incident.

1 THE COURT: Okay.

2 THE WITNESS: Okay.

3 THE COURT: There is a hearsay objection.

4 BY MS. DERRY:

5 Q As his guardian, are you aware of what  
6 brought him to API on --

7 A I was on a conference call when the incident  
8 happened. I was on a conference call in Anchorage,  
9 yes.

10 Q You were on a conference call with the police  
11 department?

12 A No. It was with the guardian who was  
13 handling the situation in Anchorage.

14 Q Oh, so you were present on the phone when  
15 the -- when this incident on the --

16 THE COURT: Mr. Bigley, I have tried to be  
17 very, very patient.

18 MR. BIGLEY: I (indiscernible).

19 THE COURT: Mr. Bigley, stop. I really,  
20 really want you here, Mr. Bigley. I really do. But  
21 if you can't be quiet, I can't hear the testimony.

22 MR. BIGLEY: I got hurt. They did it.

23 THE COURT: I understand you got hurt. We're  
24 going to hear from you later, if you can be quiet. If  
25 you can't be quiet, you are going to have to leave.

1 MR. BIGLEY: (Indiscernible.)

2 THE COURT: Do you want to leave now?

3 MR. BIGLEY: (Indiscernible) justice, okay?

4 THE COURT: All right. We're going to get  
5 some justice for you, but I need you to be quiet. All  
6 right.

7 Ms. Derry.

8 MS. DERRY: Yes.

9 BY MS. DERRY:

10 Q Mr. Hughes, you were present on the phone.  
11 And what date was that?

12 A This was -- this was last Thursday.

13 Q So (indiscernible)?

14 A Okay. I was present for the conference call  
15 in the aftermath. It was not as the situation was  
16 happening.

17 Q Oh, okay. But as his guardian, you are  
18 entitled to that information?

19 A Well, yes. They briefed me about what  
20 happened.

21 Q Can you tell me what you understand to have  
22 happened on 10 -- on October 16th?

23 MS. LEONARD: Hearsay.

24 THE COURT: I am going to sustain the  
25 objection.

1 BY MS. DERRY:

2 Q Have you had -- so it's been two weeks since  
3 your last interaction with Mr. Bigley?

4 A It has, because I've been out of town. I've  
5 responded only with e-mails and things like that.  
6 That's been how I've been working.

7 Steve Young has been handling for me. He  
8 unfortunately is out on vacation now.

9 Q Okay. But even October 16th aside, you do  
10 have frequent interaction with Mr. Bigley?

11 A Almost daily when he's at the office. Even  
12 though he's banned, I -- typically the way I deal with  
13 him is I say: Bill, you know, you can't be here.

14 Then I walk out the door. I try to get him  
15 to follow me, and we escort -- or try to get him to  
16 come out of the building so he can talk to me.

17 And I try to ask him important questions that  
18 I have, like where would you like to live? What --  
19 would you like mental health services? What kind of  
20 services would you like those to look like? But we're  
21 not able to engage in a conversation like that.  
22 He's --

23 Q Have you had any interaction with him today?

24 A Just here in the courtroom.

25 Q And was -- when we weren't on record, did you

1 talk to him at all? Did he approach you?

2 A I didn't talk to him. He pointed at me. He  
3 flipped me off. He pulled his shirt up, showed me how  
4 skinny he was. He said -- he said that I -- or he  
5 claimed that I had murdered him. He said he'd kill  
6 me.

7 That all happened. He speaks very quickly.  
8 This all happened in a short amount of time.

9 Q And his threatening to kill you, does that  
10 happen often?

11 A It does. He's -- he's threatened me many  
12 times.

13 Q I'm sorry. Go ahead.

14 A Oh, for example, he says: I'm very  
15 dangerous. You don't know what I'm capable of. He  
16 says: I'll cut your balls off. He said --

17 THE COURT: Mr. Hughes, do you have any  
18 belief that he would exercise any of -- or take action  
19 on any of those threats?

20 THE WITNESS: If I can -- an event that  
21 happened on August 25th I can tell you, kind of  
22 actually the worst interaction I've ever had with him.

23 THE COURT: Okay.

24 THE WITNESS: Would that be useful?

25 It was -- it was one of those situations

1 where I was trying to get him out of the building --

2 THE COURT: All right. Mr. Bigley, thank  
3 you.

4 THE WITNESS: I was trying to get him out of  
5 the building. We went downstairs. Jesse Smith, who's  
6 also in the office, he is an IT fellow, he was there,  
7 as well.

8 And what had happened was I was asking him to  
9 leave, asking him to leave, asking him to leave. I  
10 escorted him out. He followed me out.

11 We were at the crosswalk. He walked out in  
12 front of me. He was just making eye contact with me.  
13 He walked out into traffic. I said: Bill, you're in  
14 traffic. You need to get out. So I backed up. He  
15 followed me out of traffic.

16 So for his own safety, I said: Bill, you  
17 can't come back in. You need to stay out.

18 I walked back in the building, he walked back  
19 in the building. He got up within inches of my face.

20 I raised my voice, because at this time, I  
21 had lost my patience with him, and I just started  
22 saying: Bill, you need to get out of here. Get out.  
23 And I was yelling.

24 He just kept going. He just kept getting up  
25 in my face. He was very -- he was -- he was yelling

1 back.

2 At that point, I realized that I had lost  
3 control, so I said, then I am going to get out. And  
4 so I disengaged from him and I went out of the  
5 building quickly. He followed me.

6 I was -- at that point, I was just going to  
7 walk right across the street. It was up to him if he  
8 was going to follow me.

9 Luckily, Steve Young had just come back from  
10 another visit, saw the situation going on, stepped  
11 between me and Bill Bigley, who was following me  
12 still, and interrupted it. I took off to take a  
13 breather, take a break.

14 I think if Steve hadn't been there, he would  
15 have followed me right across the street, not looking  
16 at cars. I think he could have been injured.

17 Q And in your knowing Mr. Bigley for three  
18 years, is -- has he deteriorated?

19 A He has. I know a big -- a big concern of  
20 people is that he'll piss off the wrong person. And  
21 that happened in July.

22 He came into the office. He had -- he had  
23 cuts on his palm, his left palm actually. It was all  
24 scabbed up. And it came out that he had been pushed.  
25 He had been pushed down the street.

1 He said he didn't care, said he wasn't  
2 scared. Somebody had pushed him.

3 And I feel that that is already happening.  
4 He's already angering the wrong people. He's already  
5 getting himself into danger, and that he -- it's  
6 unsafe for him to be living the current way that he  
7 is.

8 Q And so while you, yourself, don't necessarily  
9 feel threatened, you do believe that other people in  
10 the community could harm him?

11 A Could and have.

12 Q And have. And you are a trained OPA  
13 guardian; is that correct?

14 A I'm what?

15 Q You have training as an OPA guardian?

16 A Right. I am registered in the national  
17 guardianship association. I just went to a conference  
18 for more training. We have continuing education  
19 requirements and that sort of thing, yes.

20 Q And how long have you worked as a guardian in  
21 total?

22 A For two years.

23 Q For two years?

24 A Well, excuse me. Yeah, it'll be three years  
25 in January.

1 Q And so you've had many instances of dealing  
2 with people who have mental illness?

3 A Yes.

4 Q And so typically people are safe --

5 THE COURT: Mr. Bigley.

6 BY MS. DERRY:

7 Q -- when they're with you? Is that -- people  
8 are safe when they're with you?

9 A I -- yes. Oh, safe around me? Yes.

10 Q And you -- you're able to bring a crisis  
11 situation back down?

12 A Typically, yes. And I have, working with  
13 Bill, sometimes six times a day gone through that same  
14 thing. This was just an example I said where it had  
15 gone too much. He was -- he was pushing, pushing,  
16 pushing, and there had been just too much.

17 Q Do you believe that if -- because you -- you  
18 aren't with Mr. Bigley 24 hours a day, seven days a  
19 week?

20 A Correct.

21 Q Do you believe that without intervention,  
22 that he could actually hurt someone?

23 A I think if he were -- if he were pushed, he  
24 would. I think -- I think that if he thought it  
25 would -- I don't know. If it would -- if it would get

1 him what he wants, I think that he could -- he's  
2 capable of doing it.

3 Q What do you think would happen if someone  
4 were to touch him or physically hurt him in any way?

5 A I think that he could retaliate, I mean, to  
6 the best of his ability. He is small.

7 Q Okay. And Mr. -- you're his guardian, so you  
8 were appraised of the situations with him. How many  
9 times has he been arrested in the last several months?

10 A Quite a few. I can't give you an exact  
11 number, but it's been about once a week.

12 He's -- he's -- I got an e-mail that I just  
13 read from emergency services that they are making  
14 contact with him in jail at least two times a month --  
15 two to three times a month. So that doesn't just  
16 include the times that he's arrested and then released  
17 immediately.

18 Q And do you know if, when he's in jail, he  
19 receives any form of medications?

20 A He gets emergency meds there. They don't  
21 tell me when that happens. Corrections -- corrections  
22 is involuntarily medicating him when he does show up  
23 there. I don't know if that's every time.

24 Q Why does he typically get picked up by the  
25 police?

1 A Trespassing charges.

2 Q Trespassing against --

3 A He -- he -- yeah. He'll go somewhere, refuse  
4 to leave, he'll cause a scene. He'll be damaging,  
5 spill things, knock things over, that sort of thing.

6 Q And he does damage other people's property?

7 A He did a bunch of damage in our lobby, yes.

8 Q Okay. Do you -- does he come to your office  
9 needing money?

10 A He comes demanding cash. He wants cash. He  
11 is very angry because we hold his money. He -- he has  
12 unrealistic ideas about what his money situation is.

13 He feels that we are blocking him access from his  
14 money so -- I'm sorry, can you repeat the question?

15 Q I was just asking if he comes -- because he  
16 needs money, he comes to your office?

17 A Well, I wouldn't say he needs money, because  
18 he -- I've budgeted his -- I send \$50 -- right now  
19 it's \$50 a week to Paradise Inn, because Anchorage  
20 Community Mental Health won't handle money, Choices  
21 won't handle money, API will no longer handle money  
22 for him.

23 We can't issue checks here, here being the  
24 Office of Public Advocacy, directly to him because  
25 he's banned. It's a fight I've been trying to fight

1 with the mental health service providers.

2 We asked if his attorney would be willing to  
3 pass out checks from his place, and that's not an  
4 option. So we've really tried to look at ways that  
5 Bill could get money. We tried debit cards -- not  
6 debit cards, but, like, the pre-paid Visa card kind of  
7 thing. He would lose those.

8 THE COURT: Mr. Bigley --

9 MR. BIGLEY: I'm (indiscernible).

10 THE COURT: Okay. Well, you're going to be  
11 leaving the courtroom if you can't be quiet, so be  
12 quiet.

13 Ms. Derry.

14 THE WITNESS: So I guess he does come  
15 requesting money, and he's often very frustrated  
16 because those costs aren't immediately satisfied.

17 I mean, you know, I'll give him a copy of his  
18 budget. I'll explain, this is where you need to get  
19 money.

20 I go down to Paradise Inn. Is it okay with  
21 the money? You know, is that going okay? I mean, I  
22 don't think that that's the most optimal system, but  
23 that's what I have.

24 BY MS. DERRY:

25 Q Does he ever come to your office asking for

1 food?

2 A He -- he says that he's demanding food. I  
3 have actually purchased food. I have food at the  
4 office in the refrigerator. I asked API what kind of  
5 Ensure that he likes. I've offered it to him; he  
6 refuses.

7 I've offered him chips. Just any kind of  
8 food I have in the office, I've often offered it to  
9 him. He always has refused.

10 I've had other people in the office offer it  
11 to him, see if maybe it was just me because I am the  
12 enemy, offer him food. He's always refused food from  
13 our office.

14 But if I walk down with him, like I did to  
15 Snow City, he will -- if he touches it and I don't  
16 touch it, and I just pay for it, that's the only way  
17 he'll take food from me.

18 Q And in knowing him, have you noticed any  
19 deterioration in his health?

20 A It's hard to get information about his  
21 health, because I always ask when I talk to API about  
22 his health, and he typically refuses the medical exam  
23 that they'll do. He doesn't voluntarily go into a  
24 doctor.

25 He -- he -- you know, Lisa Smith over at

1 Mr. Gottstein's office has expressed concerns about  
2 his health. I've -- I've tried to -- you know, I've  
3 tried to talk to him about his health, his coughing,  
4 other things that he's had issues with, and I have not  
5 really been able to successfully -- I have not been  
6 able to successfully get him any medical attention.

7 Q And do you -- you deal with him on a  
8 day-to-day basis?

9 A When he's out of jail.

10 When he's in jail, he obviously doesn't come  
11 in.

12 Q And do you believe that he's capable of  
13 getting his basic needs without help?

14 A Not at all.

15 Q And are you able to help him fully as his  
16 guardian?

17 A No. But I -- I make attempts to. I know  
18 that he gets -- I know Mr. Gottstein had told me that  
19 he's often bought him lunch. You know, different  
20 people in the community try to help that do like him,  
21 but it's been fewer and far between as time goes  
22 on.

23 Q And in the last several months, has he lost  
24 relationships that he had always had in the past?

25 A I'm sorry?

1 Q Has he lost relationships that he had in the  
2 past?

3 A For example, he used to go to Side Street  
4 Espresso and he used to get soup there. He's now  
5 banned from there. He can't go back.

6 We try to set up a food program over at the  
7 Sandwich Deck. That deteriorated.

8 Those were relationships we developed to try  
9 to get him food, you know, like Burger Jim's, things  
10 like that. But he -- he makes himself -- his behavior  
11 is such that the places just won't deal with it  
12 anymore.

13 Q Could you list for me, just off the top of  
14 your head --

15 A Well --

16 Q -- all of the places -- all of the places  
17 you've -- that he is banned from at this time?

18 THE COURT: I don't need an additional  
19 list. I think that's enough information on the  
20 record.

21 MS. DERRY: Okay.

22 THE COURT: (Indiscernible).

23 MS. DERRY: No further questions then. Thank  
24 you.

25 THE COURT: Ms. Leonard.

1 JONATHAN HUGHES  
2 testified as follows on:

3 CROSS EXAMINATION  
4 BY MS. LEONARD:

5 Q Could we focus for a minute on the Paradise  
6 Inn. Right now, he has housing at Paradise Inn; is  
7 that correct?

8 A Yes. He's paid -- Steve Young was able to  
9 negotiate a monthly rate. Previously it had been a  
10 weekly rate, but we got a monthly rate for October.  
11 He's paid up through the end of this month.

12 Q Okay. And they're willing to take him there?

13 A They have been, yes.

14 THE COURT: All right. Mr. Bigley, I --

15 MR. BIGLEY: I want out of this God-damned  
16 (indiscernible) right now. (Indiscernible) God-damn  
17 minute.

18 THE COURT: Well, what we're going to do is  
19 we're going to assist you with that, all right? We're  
20 going to have you leave now, all right?

21 MR. BIGLEY: Oh, what, back to the  
22 institution?

23 THE COURT: Yeah. You're going to go with  
24 the two gentlemen, and they're going to take you back  
25 to API now, okay?



1 MR. BIGLEY: (Indiscernible.)  
 2 THE COURT: Is that your bag?  
 3 MR. BIGLEY: I don't care. I don't want it.  
 4 MS. LEONARD: That's mine, Judge.  
 5 MR. BIGLEY: I don't want nothing. I want  
 6 (indiscernible).  
 7 THE COURT: Go with those gentlemen; they'll  
 8 help you out.  
 9 MR. BIGLEY: (Indiscernible.) That's all I  
 10 want. (Indiscernible.)  
 11 MS. LEONARD: Do you think maybe it would be  
 12 enough for him to sit outside, so that he would have a  
 13 chance just to come back in and tell you what he would  
 14 want?  
 15 THE COURT: Actually, Officer -- Officer, do  
 16 you think it's safe for him to stay outside in the --  
 17 in the lobby?  
 18 THE OFFICER: Yes.  
 19 THE COURT: Why don't we hold him in the  
 20 lobby. If it gets to be a problem, come tell me.  
 21 MR. GOTTSTEIN: Your Honor, if we could get  
 22 him -- let him have a cigarette, it would really help,  
 23 too. I didn't -- I didn't bring some for him today.  
 24 THE COURT: I would be surprised if there's  
 25 any cigarettes in this building.

1 MR. GOTTSTEIN: In the past, he's gone  
 2 outside and smoked and has come back a little calmer.  
 3 THE COURT: I'll tell you what --  
 4 MS. LEONARD: Are you raising your hand  
 5 because you've got cigarettes?  
 6 THE WITNESS: I do, but not with me. They  
 7 are at the office. They are his cigarettes.  
 8 MS. DERRY: Your Honor, I'm not -- those  
 9 attendants are working with API, and they are  
 10 forbidden to allow him to smoke.  
 11 THE COURT: Well, I'm not going to get into  
 12 that. Why don't we take a couple-minute break.  
 13 Mr. Gottstein, why don't you go out -- if you  
 14 think it's -- if, in coordination with Officer Sanvay  
 15 (phonetic), if they believe they can secure him  
 16 outside, that's fine. If they can't and Officer  
 17 Sanvay says it's not safe for him to be outside of the  
 18 building, then no.  
 19 MR. GOTTSTEIN: I'll go -- I'll do that and  
 20 go buy some cigarettes and --  
 21 THE COURT: Do you mind if we (indiscernible)  
 22 the proceeding without you, or do you want us to wait  
 23 while you're purchasing cigarettes?  
 24 MR. GOTTSTEIN: No. I think you can proceed,  
 25 and then I'll be back. I assume this'll be going on

1 for a while before we get to my issue.  
 2 THE COURT: Okay. So you're comfortable  
 3 proceeding, at least under the 30-day commitment,  
 4 without your presence?  
 5 MR. GOTTSTEIN: Yeah.  
 6 THE COURT: Okay.  
 7 MS. DERRY: Oh, I'm -- I'm sorry. Are we  
 8 still on the record?  
 9 THE COURT: We are still on the record, but  
 10 we are taking an on-record break, if that makes any  
 11 sense.  
 12 MS. DERRY: Okay.  
 13 THE COURT: And I'll let you regroup.  
 14 MS. DERRY: Okay.  
 15 THE COURT: But actually, I think it was your  
 16 questioning, wasn't it, Ms. Leonard?  
 17 MS. DERRY: Yes. We were on Ms. Leonard.  
 18 THE COURT: So, Ms. Leonard, do you need to  
 19 regroup?  
 20 MS. LEONARD: No.  
 21 THE COURT: Okay.  
 22 MS. LEONARD: I'm ready.  
 23 THE COURT: Thank you. Go ahead.  
 24 BY MS. LEONARD:  
 25 Q So he's at Paradise Inn and you've got him on

1 a monthly rate there?  
 2 A Right now we do, yeah.  
 3 Q And he's not banned from there. He's still  
 4 in good standing?  
 5 A Well, good standing as long as the things  
 6 that he breaks are paid for. We replaced a window, we  
 7 replaced the back door, which was glass. That's all I  
 8 can remember off the top of my head. He broke a radio  
 9 and a television and the phone. We didn't have to pay  
 10 for the phone, but the other things we have replaced  
 11 out of his -- out of his trust, which is dwindling.  
 12 So yes, as long as -- it's not an easy life  
 13 there. They've been -- they've been willing. As long  
 14 as they know that I'm still there, I am checking up,  
 15 they have been willing to work with him.  
 16 Q Very nice. Okay. And the \$50 a week is for  
 17 food for him?  
 18 A There was a food check included with the  
 19 Paradise Inn. They have a restaurant. I am not able  
 20 to discern if he's still using that.  
 21 The idea was that he would have a food credit  
 22 there at the restaurant, and then the \$50 for whatever  
 23 else he wanted, and then -- you know, allowance or  
 24 other food items.  
 25 At the weekly rate, it was so expensive that

1 he really didn't have much. So it was, I think, \$10 a  
2 day at the restaurant.

3 Q Okay. But what you're saying is he has  
4 access to the cafeteria -- restaurant there and food  
5 three times a day?

6 A He doesn't typically eat breakfast. But yes,  
7 if he wanted to, yeah. If he wanted to and his  
8 behavior was appropriate, he could use the restaurant.

9 I don't know if he's been -- if he's still  
10 allowed to use the restaurant. I didn't check on  
11 that.

12 Q Okay. Okay. So as far as you know, he still  
13 has food available to him in the place that he's  
14 living?

15 A Right.

16 Q And as to the next month, November, they  
17 haven't said no to that; you just haven't paid in  
18 advance because we wait and see what happens?

19 A Right. No. I wouldn't pay this early,  
20 anyway.

21 Q Okay. And then I want to go back to a couple  
22 of incidents that you talked about. It sounds like  
23 traditionally, what -- traditionally, ever since he's  
24 been banned from the OPA office, what your effort has  
25 been is, come on, follow me, and you get him to follow

1 you?

2 A Typically. Sometimes that doesn't work. I  
3 would say that works half the time. Oftentimes the  
4 police have to come and escort him off the property.

5 Q Okay. Okay. On this time that you were  
6 concerned that he came out into traffic, you had said,  
7 come on, follow me?

8 A Not out into traffic. Over up --

9 Q To get out of the building?

10 A Yes. Up on the fifth floor, come follow me,  
11 let's talk outside, yes.

12 Q And as you were talking, was he getting more  
13 and more excited?

14 A Yes.

15 Q Okay. And so then you get to outside, and at  
16 that point he is more excited than he's been in the  
17 whole process of getting outside?

18 A Gosh, it's hard -- it's hard to say that he  
19 was more excited. He's always at the, you know, level  
20 ten. He's yelling, he's angry. It's hard to say that  
21 he was much -- just maybe a little more or a little  
22 less. I can't tell. I was certainly becoming more  
23 excited.

24 Q Okay. You were -- you admitted you were the  
25 one who started the yelling or -- you said, I was

1 yelling and he was yelling back, as if you had  
2 escalated it at some point?

3 A Because he wasn't listening. I was trying to  
4 break through his -- his pressured speech into, you  
5 need to follow this direction.

6 Q Okay. Okay. And on that occasion, nothing  
7 happened with the traffic, but it had your concern  
8 because it didn't seem like he was paying adequate  
9 attention to where you were standing and talking?

10 A Correct, he was not at all. He doesn't care  
11 about the traffic. He was focused on me and not --  
12 it's something that he's said often: I'm fearless, I  
13 have no fear. He feels that he has powers that he  
14 doesn't have, that he'll be safe.

15 I've seen him walk in front of traffic on  
16 another occasion, which I viewed from the window of  
17 the fifth floor. It's something that's not new to  
18 him. He's done that before.

19 Q Okay. Okay. And then that was on an  
20 occasion when you hadn't had any interaction; you just  
21 saw him out there. And he's maybe coming up to your  
22 office, but you saw that he invaded the space of  
23 traffic?

24 A On the other occasion?

25 Q Yeah, the other occasion.

1 A Yes. Or I --

2 Q Before you had had any contact, he had  
3 walked --

4 A Correct.

5 Q Okay. Nothing happened that time, either?

6 A Oh, the car screeched to a halt. The guy  
7 started yelling at him. I could see yelling  
8 happening. Bill was flipping him off.

9 The guy was about to get out, and then he --  
10 then Bill was gesticulating so much, I think the guy  
11 understood this person's not mentally stable so I'm  
12 not going to engage. So it looked like it was going  
13 to turn into a fight.

14 First it looked like a car accident, then it  
15 looked like it was going to turn into a fight, and  
16 then that other person, through his own actions,  
17 stopped.

18 Q And drove away?

19 A Waited until the light turned and then drove  
20 away, yeah.

21 Q Okay. Okay. It was a red light?

22 A It was a red light by the time -- by the time  
23 the situation had changed. It was a green light. I  
24 looked. It was a green light.

25 Bill walked in front. He had stopped --

1 stopped right there on the line, and then the light  
2 changed to red.

3 Q Okay. And then if you'll tell us a little  
4 bit more about the time you said you saw some injuries  
5 on his hand. Could you tell us some more about  
6 that?

7 A He -- he had skin abrasions, scabbing, two  
8 large scabs on his palm.

9 And I asked him: What happened? What  
10 happened? He doesn't directly answer my questions,  
11 but the -- I wrote it in my notes. He said -- because  
12 I asked about it a few more times.

13 And then he screamed, he says: So I got  
14 shoved down the street. Big fucking deal. Who the  
15 fuck cares. That's exactly what he said.

16 Q So kind of a concrete burn, as if he had  
17 fallen to -- it was consistent with --

18 A Right.

19 Q -- as if he had fallen to the ground, and he  
20 had a burn on his hand from catching himself, the way  
21 one does on cement?

22 A Yeah. I mean, it was pretty deep, though.  
23 But yes. It looked to me like he had fallen.

24 Q Okay. Okay.

25 A So --

1 Q Okay. And any other occasion where he's been  
2 hurt by somebody?

3 A There was an occasion that -- another time  
4 that happened when I was walking him down. This was  
5 pretty recent.

6 Q Your best guess of timeframe?

7 A Oh, it was about three weeks ago.

8 Q Okay.

9 A Another one of our clients that's very  
10 difficult to serve was down there. I was in the main  
11 lobby of the OPA -- or at the main offices, next to  
12 Bradley Reed. It was me and these two men.

13 Both were trying to speak to me at the same  
14 time. I was asking Bill to leave. And the other  
15 person, he's tall, very muscular, and he said -- he  
16 realized, I'm not going to get Jonathan's attention  
17 here until this guy gets out.

18 Jonathan's asking this guy out, and he said:  
19 Get out. Get out. Get your mother-fucking ass out of  
20 here. I'm going to stomp you. I'm going to stomp  
21 your ass. And he started taking steps towards  
22 Mr. Bigley.

23 I got between them, said: No, no, no, stop.  
24 I don't need any help. I don't need any help. Just  
25 go upstairs. Go talk to your guardian. Bill and I

1 will handle this.

2 So I prevented a situation with a person who  
3 has a record of assault, from assaulting Bill.

4 Q Okay. But you were able to, just with words,  
5 stop that situation?

6 A And body positioning.

7 Q Okay. Okay. Very good. And did you take  
8 any action in that -- in that incident that you're  
9 describing, where you interfered with two clients?  
10 Did you take any action, in terms of reporting  
11 anybody, in terms of getting anybody committed for  
12 their own safety or any --

13 A I did go up and tell that guardian about --  
14 all about that, yeah.

15 Q Okay. In terms of getting Mr. Bigley  
16 committed, protected, did you take any action?

17 A I felt that it was more an issue on the other  
18 fellow's part.

19 I guess -- so I guess the answer is, no, I  
20 didn't -- I didn't in that situation.

21 Q And in the July situation where he had the  
22 concrete burn on his hand, did you take any action to  
23 protect Mr. Bigley?

24 A Other than put it in my notes and talk to my  
25 boss about it.

1 Q No further action?

2 A No.

3 Q Okay. Okay. How much money does Mr. Bigley  
4 have?

5 A He gets Social Security Disability; I want to  
6 say it's around \$1,300 a month.

7 He qualifies for Medicaid, so he uses an  
8 income trust. So about 1,200 of that is available to  
9 him. The rest of it, it goes into an income trust.  
10 So he has about 1,200 a month to live on.

11 He was paying about \$400 a week at the --  
12 \$400 a week at Paradise Inn, which if you do the math  
13 doesn't work.

14 So what had happened was he'd go for a few  
15 days, then he'd be in jail for a week, and then he'd  
16 get out and he'd go for a few days, and then he'd be  
17 in jail, then he'd get out.

18 So it was basically a correctional system  
19 subsidy for his money until we were able to negotiate  
20 a 900-something dollar a month rate, which is what we  
21 now have, which will be much more preferable.

22 MS. LEONARD: Okay. I don't think I have any  
23 further questions. Thank you.

24 THE COURT: Ms. Derry, follow-up?

25 MS. DERRY: Briefly, Your Honor.

1 JONATHAN HUGHES

2 testified as follows on:

3 REDIRECT EXAMINATION

4 BY MS. DERRY:

5 Q Mr. Hughes, you have been familiar with  
6 Mr. Bigley for three years?

7 A Uh-huh.

8 Q And in this time, since 2005, have you  
9 noticed that Mr. Bigley is actually deteriorating in  
10 his ability to function independently?

11 A Yes. I -- I used to see him -- Steve Young,  
12 the previous guardian, I used to see Bill meet Steve  
13 after work, and they would go out, go shopping. He  
14 would take care of those needs.

15 And you know, he was able to go with  
16 somebody, go to a store, go shopping, get groceries,  
17 and meet day-to-day -- he was living in an apartment  
18 back then.

19 I've tried putting him in an apartment. He  
20 got himself evicted. I tried putting him in assisted  
21 living; he is no longer able to -- able to function in  
22 assisted living.

23 I got him on the highest -- highest  
24 reimbursement rate from the Division of Behavioral  
25 Health. There is four slots statewide. I was able to

1 THE COURT: Ms. Leonard, do you have any  
2 witnesses?

3 MS. LEONARD: No, sir. I -- if Mr. Bigley  
4 wants to talk to you, it probably would help him to  
5 feel that he was talking to you and had a chance to  
6 say things. And I'd like him to feel that it's his  
7 hearing.

8 THE COURT: You want to step out in the hall  
9 and ask him if he --

10 MS. LEONARD: Is he back up here?

11 MR. GOTTSTEIN: We just went down.

12 MS. LEONARD: Just went down. So --

13 THE COURT: Why don't we take a little break.  
14 And if you'll let me know when you get back.

15 MS. LEONARD: All right. Thank you very  
16 much.

17 3:11:10

18 (Off record.)

19 3:20:22

20 THE COURT: Thank you. Be seated.

21 Mr. Bigley, you're going to testify now.

22 THE OFFICER: Go there to the witness chair,  
23 please, Bill. Have a chair. Have a chair.

24 (Indiscernible) stand up and (indiscernible).

25 MR. BIGLEY: (Indiscernible) mind one bit.

1 get him one of those slots. It took a lot of work,  
2 and it completely imploded.

3 The woman out at the -- Big Lake Country Club  
4 is the name of the assisted-living home out in Big  
5 Lake -- said it's not worth it. I'm not -- I'm not --  
6 he can't stay here anymore. He's damaging things,  
7 he's running off, he's -- you know, I can't work with  
8 him.

9 So I guess the point is that this housing  
10 situation he has now is definitely not optimal. I  
11 realize that. But given all the other things we've  
12 tried, that's what we're with right now.

13 MS. DERRY: No further questions.

14 THE COURT: Ms. Leonard?

15 MS. LEONARD: Nothing further.

16 THE COURT: All right. Thank you very much,  
17 Mr. Hughes.

18 (Witness excused.)

19 THE COURT: Ms. Derry, is Dr. Khari your next  
20 witness?

21 MS. DERRY: Your Honor, I'm only going to  
22 call Dr. Khari if we move on to the meds petition.

23 THE COURT: Okay. So did you have any other  
24 witnesses?

25 MS. DERRY: Not at this time, Your Honor.

1 THE OFFICER: Okay. No swearing. Have a  
2 chair.

3 MR. BIGLEY: I'm sorry.

4 THE OFFICER: (Indiscernible.)

5 MR. BIGLEY: I'll make sure. You hear?

6 THE OFFICER: Sit down. You need to talk to  
7 the judge.

8 THE COURT: All right. Mr. Bigley,  
9 Ms. Leonard is going to ask you some questions, okay?  
10 Okay? All right.

11 Ms. Leonard, go ahead.

12 WILLIAM BIGLEY

13 called as a witness on behalf of himself, testified as  
14 follows on:

15 DIRECT EXAMINATION

16 BY MS. LEONARD:

17 Q I just want to ask you that -- we were  
18 talking outside, Mr. Bigley. Do you want to go to API  
19 or you want your freedom? Tell me what -- tell the  
20 judge what you told me.

21 A The whole world knows me, okay?

22 Q Say it again.

23 A I'm a free man.

24 Q You want your freedom?

25 A I always did. You (indiscernible).

1 Q Okay.  
 2 A (Indiscernible.) He tells me  
 3 (indiscernible).  
 4 Q Okay. I just --  
 5 A Hey, I'm talking. All you guys know, huh?  
 6 Q Okay. No, no. Go ahead.  
 7 THE COURT: Go ahead. Finish --  
 8 MR. BIGLEY: Can I talk?  
 9 THE COURT: Yeah.  
 10 BY MS. LEONARD:  
 11 Q Yeah.  
 12 A (Indiscernible.) I saw Bush face to face in  
 13 the White House, (indiscernible) flying around all  
 14 over the place, couldn't see.  
 15 Five minutes with Bush, he runs the damned  
 16 world. Okay. You know (indiscernible) this guy's  
 17 such a dick, you know, these two killers  
 18 (indiscernible). He knew. He said, save me.  
 19 (Indiscernible) I said (indiscernible).  
 20 I saw (indiscernible). You knew.  
 21 (Indiscernible.) He ordered these things because he's  
 22 the (indiscernible). You see that (indiscernible).  
 23 At this God damn -- you knew. You all knew. Murder  
 24 deserves murder (indiscernible).  
 25 These are high, top fucking military

1 (indiscernible). And he said he wants (indiscernible)  
 2 damned world. All this (illustrating). You've seen  
 3 it. (Indiscernible) gas pumps, to gas, to  
 4 (indiscernible).  
 5 And he knew. (Indiscernible), numbers for  
 6 the -- (indiscernible). I said, what? Told me the  
 7 number of banks they robbed. He knew. The person  
 8 (indiscernible). Even (indiscernible). He knew.  
 9 Murder deserves murder. It's all -- what happens --  
 10 no. I'm still talking.  
 11 Q Mr. Bigley, Mr. Bigley?  
 12 THE COURT: She's got an additional question  
 13 for you.  
 14 BY MS. LEONARD:  
 15 Q When we were outside and we were talking  
 16 about whether you wanted to go to API or you wanted  
 17 your freedom, and you said the judge already knew.  
 18 But I'm afraid the judge doesn't know, and he  
 19 wants to hear from you what it is you want. Do you  
 20 want to go free or do you want to go to API? Will you  
 21 please tell the judge which it is you want?  
 22 A (Indiscernible) on the damned record, and  
 23 Bush called. I was in Sitka, Alaska. Kids started  
 24 playing music you never heard before. Too much shit.  
 25 He knew I had it.

1 And I went to Reagan --  
 2 THE COURT: Mr. Bigley, can I ask you --  
 3 MR. BIGLEY: I'm a (indiscernible). I have a  
 4 million dollars in the bank.  
 5 THE COURT: Okay. Just hold on.  
 6 MR. BIGLEY: (Indiscernible) bank --  
 7 THE COURT: Let me ask you a question here.  
 8 MR. BIGLEY: (Indiscernible.) Can you do it  
 9 right now?  
 10 THE COURT: No. Let me ask you a question.  
 11 Do you want to -- do you want to go back to  
 12 API?  
 13 MR. BIGLEY: I'm waiting for Bush's orders.  
 14 THE COURT: Okay. I understand.  
 15 MR. BIGLEY: That's what I'm waiting for  
 16 right now.  
 17 THE COURT: You --  
 18 MR. BIGLEY: (Indiscernible) making contact.  
 19 He can't be found.  
 20 THE COURT: That's -- that's between you and  
 21 the president.  
 22 MR. BIGLEY: Yeah, yeah, yeah. Bill  
 23 Clinton --  
 24 THE COURT: Do you want to go to API?  
 25 MR. BIGLEY: I want -- I want to be free.

1 THE COURT: You want to be free. All right.  
 2 Thank you.  
 3 MR. BIGLEY: Oh, I have to (indiscernible).  
 4 You know who I am? I'm president of the United  
 5 States, too.  
 6 THE COURT: Okay.  
 7 MR. BIGLEY: Me and Bush (indiscernible).  
 8 I'm waiting. Bush will always be Bush.  
 9 THE COURT: Okay.  
 10 Ms. Leonard, anything --  
 11 MR. BIGLEY: (Indiscernible) waiting for  
 12 those orders from the secret service.  
 13 MS. LEONARD: No. Thank you, Your Honor.  
 14 THE COURT: Ms. Derry?  
 15 MR. BIGLEY: This (indiscernible).  
 16 MS. DERRY: No, thank you, Your Honor.  
 17 MR. BIGLEY: Can I talk?  
 18 THE COURT: Sure.  
 19 MR. BIGLEY: He had (indiscernible) only. He  
 20 is a prisoner. Do you know that? Do you know what?  
 21 I'll show you something. Okay. You know what they  
 22 are? (Indiscernible.)  
 23 THE COURT: You need to remain seated,  
 24 Mr. Bigley.  
 25 MR. BIGLEY: Can I say something?

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1 THE COURT: You can say anything you want,  
2 but you need to remain seated.  
3 MR. BIGLEY: (Indiscernible), okay?  
4 THE OFFICER: Sit down.  
5 MR. BIGLEY: Okay. Hollywood, he's a  
6 prisoner. He doesn't know. He looks like you. You,  
7 you know. You know what I mean? I found out --  
8 THE COURT: Is that (indiscernible),  
9 Ms. Leonard?  
10 MS. LEONARD: That is. Thank you.  
11 MR. BIGLEY: (Indiscernible) things that I've  
12 seen, okay?  
13 THE COURT: Thank you so much. You can go  
14 back to your other chair, okay?  
15 MR. BIGLEY: I seen them.  
16 THE COURT: You can go back to your other  
17 chair.  
18 THE OFFICER: Hey, Bill, go back to the other  
19 chair.  
20 MR. BIGLEY: Okay. The president of the  
21 United States, I thought (indiscernible), okay?  
22 THE COURT: Ms. Derry -- or, I'm sorry,  
23 Ms. Leonard, any other witnesses?  
24 MS. LEONARD: No, Judge.  
25 THE COURT: Thank you very much.

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1 Ms. Derry?  
2 MS. DERRY: Yes. I'd like to make a closing  
3 statement, please.  
4 THE COURT: Okay.  
5 MS. DERRY: Your Honor, today we're  
6 requesting this 30-day involuntary commitment.  
7 And we have -- we have met our burden in  
8 proving that, indeed, Mr. Bigley is mentally ill,  
9 suffering from schizophrenia, paranoid delusions.  
10 He not only is gravely disabled, as evidence  
11 of the fact that he cannot care for himself; he is  
12 having a difficult time meeting his basic needs, such  
13 as providing himself with food and clothing.  
14 He apparently has shelter, but continues to  
15 have to go to -- he continues to be jailed due to  
16 trespassing. Although we can't even make a projection  
17 on how many times he's jailed, we know that it's been  
18 at least twice a month in the last several months,  
19 since May.  
20 While he's in jail, he appears to be  
21 involuntarily medicated in jail because he reaches a  
22 crisis and they fear for his physical safety, as well  
23 as for the --  
24 THE COURT: Mr. Bigley --  
25 MS. DERRY: As well as for the -- I'm

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1 sorry -- as well as for the safety of others.  
2 He obviously meets -- he meets the criteria  
3 for gravely disabled. And most significantly, it  
4 appears that -- failing to allow him to return to API  
5 and continue to be treated is most significantly  
6 making him unable to meet any kind of baseline.  
7 And he has -- he is significantly impaired.  
8 He is significantly impaired of judgment, of reason.  
9 His behavior causes a disruption to members of the  
10 community, and even here in the courtroom today.  
11 He -- his -- we have heard testimony that  
12 there is -- that he has substantially deteriorated in  
13 the last few months, so much so that his own guardian  
14 can barely give him any of the care that a normal  
15 human being is required, let alone anybody with mental  
16 illness and any kind of significant care that's  
17 required.  
18 His guardian has gone to substantial lengths  
19 in order to try to get Mr. Bigley housing, as well as  
20 trying to get him other forms of treatment, and even  
21 to make sure that he's safe within the community. And  
22 this continues to fail, as he again continues to be  
23 jailed.  
24 He -- this substantial deterioration is  
25 actually prohibiting his ability to function

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1 independently in the community. He even has  
2 disrupted, so that he cannot go to places he used to  
3 go to before. He doesn't -- he can't go get coffee as  
4 he used to before. He can't -- he can't even cash  
5 checks.  
6 And he's even having difficulty with his own  
7 OPA guardian, as well as his attorney who represents  
8 him in medical forced medication matters.  
9 Mr. Bigley obviously is gravely disabled, and  
10 we need to go ahead and commit him to API for 30 days  
11 in order to try to help him in some way, especially to  
12 stabilize him and try to calm him down so that he  
13 could function normally in society.  
14 Also -- he also does meet the criteria of --  
15 that he's likely to be a risk of harm to others or  
16 himself, Your Honor. The standard actually, according  
17 to the statute, which is Alaska Statute  
18 47.30.915(10)(A) through (C), which defines, "likely  
19 to cause serious harm." Actually doesn't limit this  
20 to simply actually causing physical harm to others or  
21 to himself; it also includes a substantially -- a  
22 substantial likelihood to cause property damage of  
23 another person.  
24 And while we can't make projections about  
25 whether or not Mr. Bigley would indeed harm someone

1 else or himself, there has been testimony today that  
2 shows that his disjointed thinking, as well as his  
3 paranoid delusions and his ineffective ability to  
4 communicate is leading him to put himself in  
5 situations where he may actually be harmed by others  
6 in the community, or simply by some -- some safety  
7 considerations, such as traffic, or even simply  
8 feeding himself.

9 And for these reasons, I'd like to see that  
10 our petition for the 30-day commitment is granted  
11 today. Thank you.

12 THE COURT: Ms. Derry -- before I go to you,  
13 Ms. Leonard.

14 On the issue of gravely disabled, what is  
15 your argument regarding whether or not his mental  
16 condition can be improved by a course of treatment?

17 MS. DERRY: Yes, Your Honor. My position is  
18 that by the stability -- that Mr. Bigley could be  
19 benefited by treatment at the Alaska Psychiatric  
20 Institute for, if nothing else, stability, and to be  
21 in that environment where we know that he is -- his  
22 physical care is provided as well as food and we know  
23 that he is at least safe.

24 But he actually could be -- there could be  
25 beneficial treatment by having him in API, and we

1 especially will look for further treatment by -- if  
2 he -- if he does indeed meet the criteria to be -- to  
3 be admitted into API, we would also look to  
4 medications as one of the forms of treatment that in  
5 the past has proven to be very beneficial.

6 THE COURT: Mr. Bigley, Ms. -- Mr. Bigley,  
7 you need to be quiet.

8 Ms. Derry, what was your statement  
9 regarding -- you said something about the meds  
10 petition.

11 MS. DERRY: Yes, Your Honor. Among other  
12 things, what normal treatment, keeping him in a secure  
13 environment, ensuring that his physical safety as well  
14 as basic needs, such as food, are met, as well as  
15 hopefully treating him for any medical conditions that  
16 he has, which he will definitely benefit from by being  
17 in the hospital.

18 He -- we also -- if we meet this petition and  
19 the 30-day petition is granted, he has had successful  
20 treatment in the past with involuntary medications,  
21 and that would be one of the ways that the hospital  
22 would treat him to his benefit, if that's allowed.

23 THE COURT: Ms. Leonard.

24 MS. LEONARD: Yeah. That last part that she  
25 started talking about is a little bit complicated for

1 me. My understanding --

2 THE COURT: It's complicated for me, so  
3 you --

4 MS. LEONARD: Yeah. Because --

5 THE COURT: -- can move on with your  
6 position.

7 MS. LEONARD: My understanding of the record  
8 is that that's not supported in the record, that there  
9 has been any beneficial effect.

10 But I just completely disagree with any  
11 finding that this meets the test. I think what's been  
12 proven here is that Mr. Bigley is disruptive and he's  
13 inconvenient, and there's problems providing for him  
14 in the way that people want to provide for him. But I  
15 don't think this meets the statute whatsoever.

16 And I do want to point out that on the --  
17 we've heard talk about an incident back in July when  
18 maybe he walked into traffic or stepped into traffic.  
19 Apparently that's a long-standing issue and, you know,  
20 I think it's of no consequence, since it's a  
21 long-standing issue. And nothing was done on that  
22 occasion. On the occasion when he had a scraped hand,  
23 again, no action was taken at that point.

24 It would look to me to be irrelevant, or even  
25 establish less of a grounds for doing anything at this

1 point because it shows that actually nothing has  
2 changed. What's happened here is that we're just  
3 going around the same circle that he goes around on.

4 And it's very problematic to me to hear that  
5 there's concerns about he wants -- he wants his money  
6 in cash or that the building won't let him in. Those  
7 are just administrative issues.

8 And it's boggling to believe that because a  
9 person is given a -- has his money taken away and is  
10 given a guardian, the owner of the building doesn't  
11 want people coming there, and they continue to make  
12 that be their place of business. I mean, that's just  
13 not an acceptable reason to incarcerate somebody --

14 THE COURT: Mr. Bigley --

15 MS. LEONARD: -- to put somebody -- it's not  
16 an acceptable reason to put somebody unwillingly into  
17 a psychiatric facility. It's very objectionable on  
18 its face.

19 The whole question of housing and food, they  
20 haven't shown that there's any problem with food. He  
21 apparently eats when he's hungry. He apparently has  
22 facilities over there to eat when he chooses to avail  
23 himself of that.

24 THE COURT: Ms. Leonard, can I ask you a  
25 legal question?

1 MS. LEONARD: Yes.

2 THE COURT: In terms of -- it's my  
3 understanding that the statute requires that if I find  
4 him to be gravely disabled, that I have to find that  
5 the course of treatment sought would improve his  
6 condition.

7 Do I need to find that the course of  
8 treatment sought would improve his condition under the  
9 likely to cause harm to himself and others?

10 MS. LEONARD: Yes, I think so.

11 THE COURT: Ms. Derry, do you have a position  
12 on that?

13 MS. DERRY: I -- yes, Your Honor. Thank you.  
14 I would argue that that is not the case, as that's --  
15 the statute clearly shows that those are two different  
16 criteria.

17 THE COURT: Mr. Bigley, please be quiet.  
18 Thank you.

19 MS. DERRY: But --

20 MR. BIGLEY: (Indiscernible.)

21 THE COURT: Mr. Bigley, stop. This is a  
22 complex legal issue, and I need to try my best to make  
23 the right decision, so please be quiet.

24 Ms. Derry.

25 MS. DERRY: Yeah. Under 47.30.700, Your

1 Honor, it -- the statute makes it clear that  
2 essentially, there are two prongs of this, that we --  
3 that the State proves that Mr. Bigley is mentally ill,  
4 and we can either prove that he's likely to cause harm  
5 to himself or others or that he's gravely disabled,  
6 and that grave disability is likely to be improved  
7 with treatment.

8 So clearly under that statute, which is  
9 47.30.700, if that were -- it specifically says that  
10 grave disability is likely to improve with treatment.  
11 It does not make that requirement that harm to self  
12 and others would be required to be treatable --  
13 treatable under that statute, especially because  
14 whether or not we can commit someone to the  
15 institution is separate in those two facts, whether  
16 mentally ill likely to harm -- cause harm to self or  
17 others, or mentally ill and gravely disabled, Your  
18 Honor.

19 THE COURT: Ms. --

20 THE OFFICER: Do you want us to wait outside?

21 THE COURT: Sure.

22 Mr. Bigley, why don't you step outside.

23 (Mr. Bigley excused.)

24 MS. LEONARD: Where is your statutory  
25 concern? Will you direct us there?

1 THE COURT: Well, I -- I apologize, because I  
2 read -- reread the statute earlier, and then I'm  
3 looking at the petition.

4 And I understand the petition forms don't  
5 always match the statute, though people do their best  
6 to -- when drafting these. But under -- where'd it  
7 go? Under 47.30.730, the -- there is -- I can -- if I  
8 find that he's mentally ill, then the second part is  
9 that I have to find that as a result of that mental  
10 illness, he is, one, likely to cause harm to himself  
11 or others, or two, gravely disabled.

12 And my question is, from the petition, it  
13 appears that the interpretation of whoever drafted the  
14 petition is that I only need to find that his  
15 condition to be improved by treatment under the  
16 gravely disabled provision. It's not clear whether I  
17 need to find whether or not the course of treatment  
18 would improve his condition is required under harm to  
19 himself or others.

20 MS. LEONARD: Well, I think it's -- I have  
21 the statute in front of me. And the end of that  
22 sentence, of "less-restrictive alternatives," seems to  
23 answer that question. Where it says "a less  
24 restrictive involuntary form of treatment...specify  
25 the treatment and the basis for supporting it." So it

1 does --

2 THE COURT: I'm sorry; where are you?

3 MS. LEONARD: Well, under Section (2), where  
4 it's talking about less-restrictive alternatives.

5 MS. DERRY: What -- I'm sorry, could we -- I  
6 lost the statute number.

7 THE COURT: Right. 47.30.730.

8 MS. LEONARD: 30.7 --

9 THE COURT: (a)(2).

10 MS. DERRY: 47.30.7 --

11 THE COURT: No. 47.30.730(a)(2). It's page  
12 965 of my statute book.

13 MS. LEONARD: I think by implication, what  
14 that says is that, yes, it is important that you find  
15 that the treatment is going to change the situation,  
16 as opposed to just -- and I'm not sure that the  
17 (indiscernible) stability is an adequate substitute  
18 for medical benefit.

19 THE COURT: Well, under section (3), it says,  
20 "allege with respect to a gravely disabled respondent"  
21 -- "respondent that there is reason to believe that  
22 the respondent's mental condition could be improved by  
23 the course of treatment sought." But that's -- that  
24 specifically applies to a gravely disabled respondent.

25 There's no -- one would think that in



1 drafting the statute, if you were making that  
2 requirement for harm to self and others, that would --  
3 there would be a section -- it would -- the harm to  
4 self or others would be either included in that  
5 section or there would be a similar modifier for that  
6 section.

7 And I apologize for putting you on the spot.

8 MS. LEONARD: Yeah. I just haven't looked at  
9 it that carefully, and I guess I don't have an  
10 informed answer on that.

11 But I -- I just don't think this comes close  
12 to getting us in a place to be concerned about any of  
13 that.

14 What I heard today is that there's an  
15 inconvenient person who, when he needs to eat, he  
16 eats, and when he needs to go somewhere to sleep, he  
17 goes there.

18 I think it's known that there's hundreds of  
19 homeless people in Anchorage, and they make it through  
20 the winter and they have facilities and they go when  
21 they want to.

22 To me, the situation is nothing but saying  
23 he's inconvenient and let's do this. And you know, we  
24 don't have a good system here, and so Mr. Bigley's  
25 going to be locked up as a consequence of it.

1 statute is whether there's a less-restrictive  
2 alternative available that would adequately protect  
3 the respondent or others.

4 And my difficulty with this is while there is  
5 a less-restrictive alternative available for him to  
6 live, there is not a less-restrictive alternative for  
7 treatment.

8 And what's happening to Mr. Bigley now is  
9 that that less-restrictive alternative of where he's  
10 living is lending to him being jailed and then  
11 forcibly restrained and then administered  
12 intramuscular forms of -- of psychotropic medication  
13 in order to calm him down to the point where he isn't  
14 a threat to others or to himself.

15 And I have a very difficult time seeing that  
16 a less-restrictive alternative of where someone lives  
17 doesn't go to follow that it also should include that  
18 he is not subjected to being constantly jailed and  
19 have other circumstances -- you know, so that he isn't  
20 allowed to go to many places in the community.

21 And if liberty is what's at stake here, which  
22 obviously is the case under Myers and Wetherhorn,  
23 liberty itself can't just be limited to basic freedom,  
24 because at the moment we're dealing with Mr. Bigley  
25 not being able to participate in really any activities

1 Mr. Bigley's going to be the one who goes to API  
2 because the guardian doesn't have a better place to  
3 work this out.

4 I think if we weren't in a situation where we  
5 actually heard that he has housing arranged, he has a  
6 place with food arranged, he has a place to go, as  
7 long as that situation is true, I just don't think  
8 this is justified. I can't imagine that it comes  
9 close to being justified at a time when there is  
10 housing and that's what he wants and that's what he'll  
11 do.

12 I know he does speak in a very disorganized  
13 way, and we've all been enduring that this afternoon.  
14 But I think we all can hear that he engages when he  
15 wants to, and he does seem capable of understanding --  
16 I mean, he'd be quiet sometimes when you told him to.  
17 He seems to understand and to do the minimum that he  
18 needs to do to take care of himself. He looks to me  
19 like he's capable of at least that. And I think  
20 that's all a person has to do to have their freedom.

21 THE COURT: All right. Anything else,  
22 Ms. Derry?

23 MS. DERRY: Yes, Your Honor.

24 While Mr. Bigley is indeed a difficult client  
25 for an OPA guardian to care for, the question in the

1 of his choosing, where he is actually accepted.

2 And you know, liberty, while he may have  
3 liberty when he goes to the hotel that he's living in,  
4 that liberty is revoked immediately upon his  
5 trespassing and he goes to jail. And if that is a  
6 less-restrictive alternative, then we have a problem  
7 here.

8 A less-restrictive alternative for treatment  
9 that is available rather than jail is for him to go to  
10 API and for them to treat him as is medically  
11 necessary according to the standard of care for people  
12 with his disability and his diagnosis.

13 THE COURT: All right. Based on the  
14 petition, the testimony, I am going to find by clear  
15 and convincing evidence today that Mr. Bigley is  
16 mentally ill, and as a result of his mental illness is  
17 likely to cause harm to himself or others.

18 I'm also going to find that based on his  
19 condition, he is gravely disabled. I am going to find  
20 that at a minimum, his diagnosis, in the testimony  
21 from Dr. Maile, does indicate that even regular care  
22 and feeding and dietary improvement would improve his  
23 condition.

24 There is no additional testimony, and I --  
25 I'm very troubled that the State has been unable to

1 address Mr. Bigley's holistic needs.  
 2 I agree with Ms. Leonard that the fact that  
 3 the State has been unable -- OPA has been unable to  
 4 accommodate a person with Mr. Bigley's disability may  
 5 be frustrating to the Office of Public Assistance and  
 6 others who come into Mr. Bigley, but it's not an  
 7 excuse for their inability to address those issues.

8 And please, Mr. Hughes, that's not a  
 9 commentary on you. I certainly understand the  
 10 limitations that are placed on you.

11 But at some point, if the State of Alaska  
 12 cannot meet Mr. Bigley's needs -- well, that's not an  
 13 option. They have to meet Mr. Bigley's needs. I  
 14 don't know how I can address that in this -- the  
 15 nature of this proceeding, but the State is not doing  
 16 enough.

17 And again, Mr. Hughes, that is not a  
 18 commentary on your performance as the guardian. It's  
 19 a commentary on the nature of the system that we're  
 20 faced with. So don't take away my comments as an  
 21 attack on your performance. You do commendable work  
 22 with what you have. My commentary is that you don't  
 23 have enough.

24 So I will grant the petition. And I'll have  
 25 a written ruling that will go out later today.

1 the master's report and my recommendation, then we  
 2 would also have potentially a recommendation on the  
 3 meds petition that then he could listen to that tape,  
 4 as well. So we're going to go ahead and proceed.

5 MR. GOTTSTEIN: Your Honor, may I address  
 6 that?

7 I think under Wetherhorn, and even Myers,  
 8 that is clearly improper. Both of those cases say  
 9 that a med petition cannot even really be filed until  
 10 the person has been committed. It's a two-step  
 11 process. Until there is an order of commitment, it's  
 12 improper to proceed.

13 THE COURT: What's the statute again, Mr. --

14 MR. GOTTSTEIN: It's 8 -- 47.30.839. But  
 15 it's Wetherhorn and Myers.

16 THE COURT: Right. Mr. Gottstein, you don't  
 17 happen to have a copy of Wetherhorn with you?

18 MR. GOTTSTEIN: You know, I don't.

19 MS. DERRY: I do, Your Honor.

20 THE COURT: Okay. Ms. --

21 MS. DERRY: And Myers specifically --

22 THE COURT: Goes to the meds petition?

23 MS. DERRY: Well, both of them do. But Myers  
 24 right here, I have highlighted. But it's requiring a  
 25 bifurcation.

1 Next issue.

2 MS. DERRY: The State would like to have an  
 3 involuntary medication petition, Your Honor.

4 THE COURT: Okay. Mr. Gottstein.

5 MR. GOTTSTEIN: Yes. I think it's -- I have  
 6 a number of comments, and even motions. But one is  
 7 that it's premature. There's no superior court order  
 8 granting the commitment.

9 Mr. Bigley has the opportunity to object to  
 10 your recommendation. And in fact, the supreme court  
 11 recently held in the (indiscernible) case,  
 12 August 29th, that the superior court has to actually  
 13 either look at a transcript or listen to the recording  
 14 in order to discharge its adjudicatory --

15 THE COURT: Right.

16 MR. GOTTSTEIN: And so I think it's  
 17 premature, in that --

18 THE COURT: The way I'm going to deal with  
 19 that, Mr. Gottstein, and I'm aware of the Wayne B.  
 20 decision. With my -- with my written master's report  
 21 will go a copy of the disk for Judge Morse to listen  
 22 to, to avoid having to come back, in the case that  
 23 judge -- it's highly possible that Judge Morse could  
 24 disagree with my findings today.

25 But in the case that he does sign -- approve

1 So the -- the Court says under Alaska law, to  
 2 administer psychotropic drugs in a non-crisis  
 3 situation without first obtaining the patient's  
 4 consent, the State must follow a two-step judicial  
 5 process. The first step requires the State to  
 6 petition for the person's commitment to a treatment  
 7 facility.

8 Persons may be involuntarily committed in  
 9 Alaska if the State can show by clear and convincing  
 10 evidence that they are either mentally ill, and as a  
 11 result likely to cause harm to themselves or others,  
 12 or are gravely disabled. Persons are deemed gravely  
 13 disabled when they are --

14 THE COURT: Just a second.

15 THE OFFICER: Mr. Bigley is getting very  
 16 restless.

17 THE COURT: Officer, do you believe that it's  
 18 in the interest of the public safety that he be  
 19 returned to API at this point?

20 THE OFFICER: I do.

21 THE COURT: Mr. Gottstein, the officer has  
 22 indicated that there is a problem with Mr. Bigley out  
 23 in the hallway. I had had him removed earlier but had  
 24 kept him, at Ms. Leonard's request, so he could  
 25 testify for the 30-day commitment.

1 At this point, I am willing to order him back  
2 to API for the safety of the people in the building.  
3 Do you have objection to proceeding on the meds  
4 petition without his presence?

5 MR. GOTTSTEIN: Your Honor, I think that we  
6 cannot proceed on the meds petition today.

7 THE COURT: I understand that.

8 MR. GOTTSTEIN: But in terms of that part of  
9 it, no, I'm not prepared. I only found out about this  
10 a few hours ago. So there are all kinds of reasons I  
11 don't think we can proceed.

12 But in terms of him going back, I -- I think  
13 that's inevitable at this point.

14 THE COURT: Okay. Thank you, Officer. You  
15 can have him returned to the facility.

16 Thank you, Mr. Gottstein, for addressing the  
17 issue.

18 MS. DERRY: Would you rather just read this,  
19 Your Honor?

20 THE COURT: I would. The question that is --  
21 is raised is of somewhat beyond I think Wetherhorn and  
22 Myers, in that as a master, my recommendation is not a  
23 final order.

24 And so the question before the Court that's  
25 raised by Mr. Gottstein is can we proceed on a meds

1 MS. DERRY: Yes.

2 THE COURT: All right. We are going to go  
3 off record. I am going to make a phone call. I'll be  
4 back.

5 3:53:25

6 (Off record.)

7 3:57:05

8 THE COURT: I called Judge Christen, and he's  
9 of the opinion -- and this is not a legal decision but  
10 more of a -- how should I put this -- a procedural  
11 decision as opposed to a ruling on the law.

12 That at this point, because of unsurety as to  
13 the law, that we're going to not hear the meds  
14 petition today, that it would be set for hearing when  
15 and if Judge Morse approves the commitment petition.  
16 And so you'll get notice of a hearing.

17 MS. DERRY: I do have -- boy. I have a  
18 question regarding emergency meds within that order,  
19 Your Honor. May I ask a question about that?

20 THE COURT: Sure.

21 MS. DERRY: At -- this gets into a different  
22 area. We have a petition -- he -- Mr. Gottstein and  
23 Mr. Twomey in my office, who no longer represents the  
24 Psychiatric Institute, have an appeal with the supreme  
25 court; is that correct?

1 petition without a final order on the 30-day  
2 commitment. And I'm willing to be elucidated as to  
3 your thoughts.

4 And my guess is that the answer isn't going  
5 to be found in Wetherhorn or Myers.

6 MS. DERRY: There --

7 MR. GOTTSTEIN: You know what I think it is,  
8 it says -- in both of them, it says a committed  
9 patient. And he is not committed until that order is  
10 signed.

11 And you know, frankly, Your Honor, I have  
12 addressed this issue with the presiding judge --

13 THE COURT: Do you know what the presiding  
14 judge's position was?

15 MR. GOTTSTEIN: Well, there is a mental  
16 health probate rule -- subcommittee on mental health  
17 rules at that meeting, and it hasn't really been  
18 addressed. And so the Wayne B. case has kind of taken  
19 precedence recently. We had a meeting actually  
20 yesterday. So there hasn't really been a resolution  
21 of it.

22 THE COURT: All right. Just a second.

23 Ms. Derry, why don't we go off record. Could  
24 you consult with Dr. Khari and find out whether or not  
25 this can wait 24 hours?

1 THE COURT: Go ahead.

2 MS. DERRY: And one of the issues on that is  
3 that on the 20th of May, Mr. Gottstein asked for a  
4 stay on medications based on that petition.

5 THE COURT: Right.

6 MS. DERRY: And so since that time, one of  
7 the things that the hospital's response to was based  
8 on that med petition is that they feel as though they  
9 couldn't treat Mr. Bigley in any way. And so they've  
10 been watching his deterioration. And that's why today  
11 we had requested the medication order.

12 And so as -- in honor of that stay, not  
13 knowing whether or not that would actually be what's  
14 adjudicated, they have not emergency medicated him.  
15 Rather, they have tried to help him in other ways, and  
16 then release him as soon as possible, which is usually  
17 within a day or two, and then he goes back to jail,  
18 and then he's emergency medicated in jail.

19 And so my question today would be whether --  
20 whether or not the stay that was executed on I believe  
21 May 27th --

22 Is that correct, Mr. Gottstein?

23 -- was when it was actually filed in court,  
24 if that would only pertain to that case at hand, which  
25 was 3AN-08-00493 PR, if that stay only affects that

1 particular trial court case or if it affects all  
2 further and future proceedings until the -- until the  
3 case is appealed to the supreme court.

4 MR. GOTTSTEIN: Your Honor, if I may.  
5 And I provided copies of --

6 THE COURT: Right.

7 MR. GOTTSTEIN: -- that order and the State's  
8 motion to reconsider and then -- I will say that I  
9 think Ms. Derry accurately described the situation,  
10 that it is -- I think it's somewhat ambiguous.

11 THE COURT: I think it's a lot ambiguous.

12 MS. DERRY: Yeah.

13 MR. GOTTSTEIN: But they -- yeah. I agree.  
14 But they represented in -- you know, in their motion  
15 for reconsideration that the stay effectively  
16 precludes API from administering medication for  
17 Mr. Bigley during this or any future commitment  
18 periods.

19 THE COURT: Well --

20 MR. GOTTSTEIN: But I think --

21 THE COURT: -- I --

22 MR. GOTTSTEIN: But I raise the question  
23 whether or not that applied only to any additional  
24 petitions under that case number or a new one. And I  
25 think that's ambiguity.

1 But it seems to me that the proper place to  
2 address this is to go to the supreme court and ask  
3 them.

4 THE COURT: Here's how we're going to resolve  
5 this issue. The -- since we're not going to hear the  
6 meds petition today, and there's a stay on the  
7 previous petitions issued by the supreme court, it  
8 seems to me the issue of whether that stay applies to  
9 the current petition or not is not ripe for  
10 consideration because the new petition isn't before  
11 us.

12 Whether -- let me ask, Ms. Derry, were you  
13 asking about non-court ordered emergency meds?

14 MS. DERRY: Yes, Your Honor. Because as --  
15 as it stands, the concern is that -- what API's  
16 position is, is that because we are unable to help him  
17 based on that stay, that he goes back out into the  
18 community, and then he is jailed and then --

19 THE COURT: Well, the testimony was that if  
20 he was fed on a regular basis, that that would help  
21 him. So independent of meds, it's my understanding  
22 the facility can assist him by -- and stabilize his  
23 condition somewhat, maybe not to the level desired,  
24 but at least somewhat, by giving him three squares a  
25 day. Or I guess he's not a breakfast eater, so two

1 squares a day.

2 I think any question on whether or not that  
3 stay issued by the supreme court applies to emergency  
4 non-ordered meds is a question counsel is going to  
5 have to take to the fifth floor. You're going to have  
6 to ask them that question.

7 MS. DERRY: No. I -- I -- I'm just looking  
8 through this quickly in my mind to make sure I don't  
9 have any further questions.

10 THE COURT: That's all right. There's new  
11 issues I assume for maybe three out of four if not  
12 four out of four of us. So I'm happy to spend the  
13 time on it.

14 MS. DERRY: It's just so not -- my concern is  
15 that it's not clear in this -- the petition whether or  
16 not that also included emergency medications in any  
17 way.

18 And so my concern is that if Mr. Bigley is in  
19 API and does present a threat to others or himself, if  
20 they -- if they -- if he would meet the statutory  
21 criteria that API uses for all of their patients -- we  
22 don't -- yeah, we don't know.

23 THE COURT: I can't -- I can't answer that  
24 question. And that's -- because of the stay, I think  
25 that question is potentially best asked of the supreme

1 court and not me.

2 MS. DERRY: And I would like to put it on the  
3 record, Your Honor, that I am going to recommend to  
4 the Alaska Psychiatric Institute that under no  
5 circumstances are they to medicate him until there is  
6 further litigation on the matter.

7 THE COURT: Ms. Leonard, I guess we're -- do  
8 you have any questions?

9 MS. LEONARD: No.

10 THE COURT: Okay. Mr. Gottstein, do you have  
11 questions?

12 MR. GOTTSTEIN: No, Your Honor. I guess I  
13 would like a copy of the disk and maybe the log notes  
14 and a copy formatted for transcription, as well.

15 THE COURT: I have no idea how that works.  
16 After we're off record, if you talk to the clerk real  
17 nicely, I'm sure she'll be able to help you as best as  
18 possible.

19 MS. LEONARD: Same request.

20 THE COURT: And my guess is Ms. Derry  
21 probably has the same request, as well.

22 MS. DERRY: I know how to get it, though,  
23 Your Honor.

24 THE COURT: Okay. All right. Anything else?

25 MS. DERRY: No, Your Honor. Thank you.

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1 THE COURT: All right. If Judge Morse  
 2 approves the petition, we'll do a hearing notice. It  
 3 would go to you, Mr. Gottstein, but Ms. Leonard, we'll  
 4 courtesy you on it, as well.  
 5 MS. LEONARD: Very nice. Thank you.  
 6 THE COURT: Ms. Derry, anything else?  
 7 MS. DERRY: Nothing further. Thank you.  
 8 THE COURT: Mr. Hughes?  
 9 MR. HUGHES: No. Thank you, Your Honor.  
 10 THE COURT: Ms. Vassar.  
 11 MS. VASSAR: No, Your Honor.  
 12 THE COURT: Thank you. And obviously, you'll  
 13 get notice of the hearing.  
 14 MS. VASSAR: Yeah. Hopefully it won't be on  
 15 a -- do I have -- pick a Friday.  
 16 MS. DERRY: Mr. Gottstein is suggesting that  
 17 I might have to give notice of intending to possibly  
 18 make objections to the findings. Do I have to give  
 19 notice of that? If so, I do give notice of --  
 20 THE COURT: Okay.  
 21 MS. DERRY: -- intention to object.  
 22 THE COURT: Notice is given.  
 23 Let's do this. I'm going to go ahead and  
 24 print the order so you have it. Since I haven't  
 25 proofed it, please don't file any objections regarding

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1 spelling errors.  
 2 UNIDENTIFIED SPEAKER: And will you tell us  
 3 how to do what we have to do?  
 4 MS. DERRY: You just go over to the probate  
 5 court, to the number right there, which is 0436, and  
 6 talk to them and be very nice to them, and they'll do  
 7 anything that you want.  
 8 (Whispered conversation.)  
 9 THE COURT: All right. Mr. Gottstein, why  
 10 don't you come forward. I'll give you copies of these  
 11 orders, one for you and one for Ms. Leonard, and  
 12 then -- did I staple this right?  
 13 Ms. Derry, you can come forward and get a  
 14 copy of the order, as well.  
 15 Ms. --  
 16 MS. VASSAR: I don't need the commitment  
 17 order.  
 18 THE COURT: -- Vassar.  
 19 Any other questions?  
 20 MS. DERRY: Not from me, Your Honor.  
 21 THE COURT: Mr. Gottstein?  
 22 MR. GOTTSTEIN: Your Honor, I -- just looking  
 23 at it, I notice the box isn't actually checked.  
 24 THE COURT: Oh, I apologize. If you'll all  
 25 indulge me and check both boxes under section 1 on

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1 page 1.  
 2 Anything else?  
 3 MS. LEONARD: Thank you very much.  
 4 THE COURT: I will note that there is a  
 5 student from Eagle River High School who is here  
 6 watching the proceedings. Does anybody object if he  
 7 has questions of me, not regarding substance but  
 8 procedure today, if he talks to me?  
 9 MS. DERRY: No, Your Honor.  
 10 THE COURT: All right.  
 11 (Off record.)  
 12 4:08:56  
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1 TRANSCRIBER'S CERTIFICATE  
 2 I, Jeanette Blalock, hereby certify that the  
 3 foregoing pages numbered 1 through 112 are a true,  
 4 accurate, and complete transcript of proceedings in  
 5 Case No. 3AN-08-1252 PR, In the Matter of the  
 6 Necessity for the Hospitalization of William S.  
 7 Bigley, Hearing held on October 21, 2008, transcribed  
 8 by me from a copy of the electronic sound recording,  
 9 to the best of my knowledge and ability.  
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Date                      Jeanette Blalock, Transcriber