

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 WILLIAM F. MORSE
Superior Court Judge

Anchorage, Alaska
November 5, 2008
9:26 A.M.

APPEARANCES:

FOR THE STATE: Laura Derry, Esq.
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1 (Transcriptionist's note: When Mr. Bigley was asked a
2 direct question and responded, this has been
3 transcribed; however, I did not attempt to transcribe
4 Mr. Bigley speaking in the background during the
5 proceedings.)
6 3AN6108-194
7 9:26:40
8 P R O C E E D I N G S
9 THE CLERK: We are on record. Can you hear
10 me?
11 THE COURT: Yes, we can.
12 THE CLERK: Thank you.
13 THE COURT: All right. We are on the record
14 in 3AN-08-01252 PR.
15 (Indiscernible) I've got -- let's go around
16 the table and identify who you are, who you represent,
17 and we'll take up some preliminary procedural matters.
18 MR. GOTTSTEIN: This is Jim Gottstein. If
19 you could let us know if you can't hear, that would be
20 great.
21 I'm kind of wondering where Mr. Bigley is.
22 THE COURT: Me, too. Go ahead.
23 MS. SMITH: Lisa Smith, Jim Gottstein's
24 assistant.
25 MS. BEECHER: Linda Beecher from Public

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1 Defender on behalf of Mr. Bigley.
2 MS. GIBSON: Kelly Gibson, the Public
3 Defender's Office, on behalf of Mr. Bigley.
4 MS. VASSAR: Maria Vassar, court visitor.
5 MS. DERRY: Laura Derry. I represent the
6 hospital for the State.
7 MS. POHLAND: Erin Pohland, (indiscernible).
8 THE COURT: And, Doctor, if you would
9 identify yourself.
10 DR. KHARI: I am Dr. Khari, a psychiatrist at
11 API.
12 THE COURT: And is -- as I understood it,
13 Mr. Bigley is not here?
14 MR. GOTTSTEIN: Well, I just saw him. He was
15 confirming with the Public Defender agency.
16 THE COURT: That's -- but he's not in the
17 room right now. So is he somewhere close by?
18 UNIDENTIFIED SPEAKER: I think he was getting
19 a cup of coffee (indiscernible).
20 MR. GOTTSTEIN: Well, can we talk about
21 this -- maybe the smoking issue?
22 THE COURT: Yes. You what -- you want him
23 here first?
24 MR. GOTTSTEIN: I think we can probably talk
25 about the smoking issue first.

1 THE COURT: All right. Well, what is
2 (indiscernible)?
3 MR. GOTTSTEIN: Well --
4 DR. KHARI: Well -- sorry.
5 MS. DERRY: What would you like to do,
6 Mr. Gottstein?
7 MR. GOTTSTEIN: Well, I was here early to try
8 and arrange for Mr. Bigley to go out and have a smoke
9 because it really would help him (indiscernible), I
10 think. He likes it (indiscernible).
11 And so anyway, so we're at the point now
12 where I guess it's up to Dr. Khari. And in the past,
13 I think he's been allowed. He certainly
14 (indiscernible). So --
15 MS. DERRY: And, Your Honor, the hospital is
16 against that policy. They are a JCAHO-regulated
17 facility and do not allow anyone to smoke on campus.
18 In order to allow Mr. Bigley to smoke, he
19 would have to be taken off campus. So I'm assuming
20 that Lisa would have to take him in her car away from
21 campus, and I don't know if that would include
22 attendants.
23 And then Dr. Khari will also discuss her
24 clinical opinion of whether or not he should be
25 allowed to smoke.

1 Dr. Khari?
2 DR. KHARI: He is in acute crisis, and I do
3 not recommend that for him, to be outside of this
4 facility at this time.
5 THE COURT: What about just the medical
6 wisdom of -- not the medical wisdom, but just sort of
7 the behavioral wisdom of him smoking as a direct calm
8 down or preparation for this?
9 DR. KHARI: I have heard -- I have heard that
10 smoking does calm him down in past. But I have person
11 (indiscernible) that, because our facility doesn't
12 allow individuals to smoke.
13 But however, he is very -- his behavior very
14 disorganized, hostile, belligerent, and I don't really
15 recommend, for his own -- his safety and other's
16 safety.
17 THE COURT: And does he normally -- is he
18 normally permitted off campus with supervision?
19 DR. KHARI: No. At cases, we give individual
20 patients to go for pass, not for the smoking, for pass
21 when they are stable. And Bill is not at this state
22 to be stable enough for us to approve the pass.
23 THE COURT: Mr. Bigley, why -- why don't you
24 come on and take a seat here next to Mr. Gottstein.
25 MR. GOTTSTEIN: If you want.

1 THE COURT: If you feel more comfortable
2 standing for a while, that's all right by me.
3 MR. BIGLEY: I don't think she knows, around
4 the world. (Indiscernible) judge me, (indiscernible),
5 whatever.
6 THE COURT: Mr. Bigley, my name is William
7 Morse. I am a superior court judge. I am going to be
8 the judge presiding --
9 MR. BIGLEY: (Indiscernible?)
10 THE COURT: Excuse me?
11 MR. BIGLEY: (Indiscernible?)
12 THE COURT: Uh-huh. You can sit if you want
13 or you can stand quietly. It's your choice. If you
14 want to sit -- if you want to sit --
15 MR. BIGLEY: (Indiscernible.)
16 THE COURT: Okay. That's fine. If you want
17 to move over at some point, you may do that.
18 MR. BIGLEY: I won't. I (indiscernible).
19 THE COURT: I'm going to not allow Mr. Bigley
20 to smoke. I think it would be an interruption to the
21 proceeding, and would be in violation of a campus
22 rule, and I am not going to require them to take him
23 off campus.
24 I just received the visitor's report of the
25 other participants. Did you see that?

1 MS. DERRY: Yes, Your Honor.
2 MR. GOTTSTEIN: Yes, Your Honor.
3 MS. BEECHER: Your Honor, the PD's office has
4 a question. I (indiscernible) represent the
5 representation issue.
6 THE COURT: Okay. I'll give you a copy here
7 in a moment. I'll give you a copy.
8 UNIDENTIFIED SPEAKER: I can --
9 UNIDENTIFIED SPEAKER: I can give her a copy
10 if it's okay. I didn't know they were a party.
11 THE COURT: I (indiscernible).
12 UNIDENTIFIED SPEAKER: I don't think they
13 know if they're a party.
14 THE COURT: Master Duggan appointed a public
15 defender. I'm not sure exactly -- exactly when. But
16 in the earlier -- I think in the beginning of the
17 first -- response of the first petition to have him
18 committed back on October 20th.
19 And then there was a second petition on
20 October 27. I think Master Duggan appointed a public
21 defender then, as well.
22 And Mr. Gottstein has represented to me, and
23 correct me if I'm wrong, that he is here representing
24 Mr. Bigley on behalf -- essentially a limited
25 appearance for the -- on the petition for involuntary

1 medication.
2 If -- if that's the limitation of your -- of
3 your representation, then the public defender remains
4 appointed on the -- which has already been granted. I
5 thought that it made sense that the public defender
6 participate -- if there was (indiscernible)
7 representation, that you be here, and he's here
8 because there obviously is an overlap in some of the
9 medical and factual issues.

10 MS. BEECHER: Well, Your Honor, we have an
11 issue with this representation, which we have
12 addressed numerous times. And (indiscernible).

13 But factually, it essentially makes us
14 co-counsel. And because of that, if Mr. Gottstein
15 doesn't consult with us regarding anything that he
16 (indiscernible).

17 MR. GOTTSTEIN: Oh, I think (indiscernible).

18 MS. BEECHER: If he files things in prior
19 cases, (indiscernible) very disparaging
20 (indiscernible) the public defender's office
21 representation.

22 So it puts us in an awkward position to be
23 co-counsel with a person who doesn't consult with us,
24 who acting without our (indiscernible) does it.

25 And it impacts -- I mean, it impacts the

1 hearings. I mean, I don't believe he'd do a limited
2 appearance regarding (indiscernible). Either he is in
3 the case, Your Honor, (indiscernible) representing
4 Mr. Bigley, or he's out of the case.

5 The second issue is I had talked to --

6 THE COURT: Wait a minute. That's not what
7 the bar rules now -- at least the civil rules, Civil
8 Rule 81 permits limited appearance.

9 Now, I haven't looked at it specifically to
10 determine (indiscernible). But you think that there
11 is some authority that says it is prohibited?
12 (Indiscernible), then I'll (indiscernible).

13 MR. GOTTSTEIN: (Indiscernible.)

14 MS. BEECHER: Well, Your Honor,
15 (indiscernible) the point, we would need to
16 (indiscernible). So I think there is a distinction
17 (indiscernible) whether a limited entry of appearance
18 over our objection (indiscernible) by the Court.

19 We have not briefed that yet to the Court,
20 and unfortunately, it looks like the issue of
21 representation is not clearly (indiscernible) at the
22 hearing on the 21st.

23 But when we addressed this in the past with
24 Judge Smith, he made (indiscernible) not accept
25 limited appearance (indiscernible) public defender

1 been appointed.

2 It's frankly not completely clear what
3 Mr. Bigley's choice of counsel may be. If Mr. Bigley
4 wanted to substitute in Mr. Gottstein (indiscernible)
5 that choice, we (indiscernible) concur and allow
6 Mr. Gottstein to represent him.

7 But in our view, that would be have to be
8 sequential representation, not representation at the
9 same time.

10 And again, the (indiscernible) court. It is
11 our understanding that (indiscernible) Judge Smith, it
12 was made clear and a legal determination was made that
13 it would be sequential representation (indiscernible).

14 If in fact Mr. Bigley wanted Mr. Gottstein
15 (indiscernible) clear. Again, I'm having a little
16 trouble ascertaining Mr. Bigley's (indiscernible)
17 desires. Certainly we are prepared to continue to
18 represent him per the appointment (indiscernible) not
19 in (indiscernible).

20 THE COURT: (Indiscernible.)

21 THE CLERK: I'm sorry to interrupt. This is
22 the court clerk.

23 Whoever is speaking at this time, they keep
24 kind of drowning down their volume. I need you to
25 keep your volume up, please.

1 MR. GOTTSTEIN: Did you get that?

2 THE COURT: Let's turn (indiscernible) to
3 Mr. Gottstein right now.

4 Mr. Gottstein, what is your -- would you
5 explain to me the basis of your representation and
6 your understanding of the limitation with any of your
7 representation?

8 MR. GOTTSTEIN: I -- I filed a limited entry
9 of appearance with respect to the forced drugging.
10 And -- and I think that's pretty clear. So there is a
11 separate petition on forced drugging, AS 47.30.839.
12 So I am representing him with respect to that,
13 whatever counts that might be.

14 And with respect to -- I think it's Civil
15 Rule 81(d) allow -- I think that -- well, I'm not --
16 here's my understanding, is that I am allowed to file
17 a limited appearance. And in order for the public
18 defender to withdraw, they need to have someone
19 willing to substitute. And I am not willing to
20 substitute.

21 The sequential issue which I have addressed
22 to the Court before is that there is a pretty -- you
23 know, a not -- not insubstantial probability that a
24 90-day petition would be filed.

25 And then also I think that the public

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1 defender needs the -- really, you know, is obligated
2 to appeal. I mean, they have no -- the attorney
3 general's office made that representation to the
4 supreme court in a case, but I didn't bring that.
5 But in any event, the point is, I think my
6 view is that there are two petitions on
7 (indiscernible). There's only one (indiscernible)
8 petition right now, which is AS 47.830.839 --
9 47.30.839, one.
10 And then -- but then the rule provides for a
11 subsequent 90-day petition being filed, and I think
12 that the public defenders are (indiscernible) that. I
13 mean, I suppose directly they could withdraw now and
14 then come back in at the 90-day petition.
15 THE COURT: Does the State have a position?
16 MS. DERRY: Your Honor, I would ask --
17 MR. GOTTSTEIN: Do we want to turn that
18 around?
19 MS. DERRY: I can speak loudly.
20 Can you hear me?
21 THE CLERK: Yes.
22 MS. DERRY: The State (indiscernible)
23 Rule 81. The question is that is the party being -- a
24 party in a non-criminal case may appear through an
25 attorney.

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1 And so my question to the Court would be, did
2 Mr. Bigley hire Mr. Gottstein? Is Mr. Bigley
3 (indiscernible) representation, and is Mr. Bigley
4 (indiscernible) his attorney whether or not
5 (indiscernible) really wanted to have represent him?
6 Because he does have the public defender agency
7 (indiscernible).
8 THE COURT: Let's assume just for purposes of
9 this question that he does -- Mr. Bigley has in the
10 past asked Mr. Gottstein to represent him in a limited
11 capacity. And I appreciate that that's
12 (indiscernible). Let's assume that he has done that.
13 Do you think that the public defender can get
14 out?
15 MS. DERRY: Your Honor, I don't -- I don't --
16 THE COURT: Or whether Mr. Gottstein can
17 appear on simply the (indiscernible) psychotropic
18 medication issue?
19 MS. DERRY: Your Honor, I don't believe that
20 Mr. Gottstein can appear just on the psychotropic
21 medication issue, because it is such a larger issue
22 that goes hand in hand with the -- with the commitment
23 proceeding.
24 And because of the entire history of
25 Mr. Bigley, it -- Mr. Bigley (indiscernible) is

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1 limited because of his lack of capacity since long
2 before Mr. Gottstein was ever a party to any of these
3 proceedings.
4 And because there was a guardian prior to
5 Mr. Gottstein's involvement, I don't see how there
6 could have ever been representation -- legal
7 representation from Mr. Bigley that he actually indeed
8 did hire Mr. Gottstein. And I mean, looking out for
9 his best interests, which I require, I (indiscernible)
10 that there should be limited representation at all,
11 based on his inability to ordinarily give informed
12 consent (indiscernible) capacity from any of his daily
13 needs.
14 MS. POHLAND: You know, the State is
15 concerned about inconsistent positions being taken.
16 THE COURT: (Indiscernible) one
17 (indiscernible) for the State. I don't care who it
18 is, but --
19 MS. DERRY: Yes, Your Honor.
20 THE COURT: 81(d) -- c -- I'm sorry -- (d)(2)
21 says the entry of appearance (indiscernible) the
22 limitations by date, time period, or subject matter.
23 That suggests to me that subject matter could
24 include a distinction between the petition to
25 (indiscernible) commitment and the more limited

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1 related petition for involuntary psychotropic
2 medication.
3 Why couldn't -- doesn't that reference to
4 subject matter suggest that there can be concurrent
5 representation (indiscernible) for that?
6 If you want to speak, turn that mike around.
7 MS. BEECHER: In interest (indiscernible)
8 like an opportunity to (indiscernible).
9 I think that's the -- and I think that the
10 language may suggest a concurrent representation.
11 But the problem we have, this case is not
12 concurrent representation. At times it's adverse.
13 Mr. Gottstein doesn't limit his appearance to just the
14 medication petition. He was here for the commitment
15 petition. He addressed the Court on the issue of
16 whether the hearing should be closed. He has e-mailed
17 our office, given us advice. He's advised Mr. Bigley
18 on issues that are exclusively within the public
19 defender's range.
20 So the problem is he's not limiting himself
21 to his limited entry of appearance. So I'm not
22 sure -- I think that (indiscernible). He's saying
23 that, but he's actually influencing Mr. Bigley and
24 addressing issues far beyond the medication
25 (indiscernible).

1 We have to agree to that. I mean,
2 essentially, I have (indiscernible). There has to be
3 some agreement by the underlying attorneys to agree to
4 a limited representation on a particular issue.

5 We have never been given the option to either
6 object to his limited representation or to agree to
7 it. And we haven't -- I mean, we have said we have
8 not agreed because our representation is not
9 congruent. We are not working together for the
10 benefit of Mr. Bigley.

11 THE COURT: Let's assume -- if I allow
12 Mr. Gottstein to represent on the petition for
13 involuntary medication, and he can make whatever
14 arguments he wants regarding the procedural processing
15 of that petition, (indiscernible) of the hearing and
16 you can (indiscernible) appeal on that.

17 But let the public defender -- for example,
18 for this hearing, you can stay if you want, but you
19 can leave if you want. And if the petition is denied,
20 then (indiscernible) appealed by (indiscernible),
21 otherwise is (indiscernible) grant it, then
22 (indiscernible). If it's (indiscernible) granted, he
23 can appeal.

24 But if there is a petition for a longer
25 commitment, he will not participate.

1 representation, which means (indiscernible)
2 Mr. Gottstein come in and petition the case
3 (indiscernible).

4 THE COURT: I don't think that's a correct
5 reading of (d)(2). Because (d)(2) (indiscernible)
6 time period. That whole (indiscernible) is sequential
7 representation for a limited cause, a limited
8 (indiscernible). And the reference to the subject
9 matter, we (indiscernible) additional structural
10 supervision.

11 So I am going to allow Mr. Gottstein to
12 represent him on the involuntary medication. The
13 public defender (indiscernible) free to remain as an
14 observer or free to leave from this proceeding. I
15 think there is a (indiscernible) petition
16 (indiscernible) that appointment -- the existing
17 appointment (indiscernible).

18 MS. BEECHER: Are you going to make an
19 inquiry with Mr. Bigley if this is what he wants, Your
20 Honor?

21 THE COURT: No. I don't think that I desire
22 to ask a client whether or not -- I don't think that
23 inquiry is appropriate. I'm not going to do it.

24 MS. BEECHER: So (indiscernible) whether he's
25 actually hired Mr. Gottstein and requested him to

1 MR. GOTTSTEIN: I'm sorry; I didn't catch
2 that last part.

3 THE COURT: If there is a new petition, for
4 example for the 90-day (indiscernible), you cannot
5 (indiscernible) would be limited to the involuntary
6 medication issue.

7 MR. GOTTSTEIN: Yes, Your Honor, that is my
8 understanding. Although I would like to have the
9 opportunity to, you know, attend the hearings
10 (indiscernible).

11 THE COURT: And you can attend
12 (indiscernible) represented.

13 MR. GOTTSTEIN: Yes. And that has been my
14 understanding of what was going on. I mean, I did
15 actually mention that he should -- whether or not the
16 hearing was open or closed because nobody was
17 addressing it and I thought (indiscernible).

18 MS. BEECHER: The public defender's position,
19 Your Honor, is we would request maybe (indiscernible)
20 substitute in after there is an inquiry of Mr. Bigley
21 (indiscernible).

22 We disagree that he can enter an appearance
23 for a limited issue (indiscernible), and we would
24 concur or agree with Judge Smith in his prior oral
25 decision which said (indiscernible) sequential

1 participate in this?

2 THE COURT: I am not going to make the
3 (indiscernible). You can appeal that if you would
4 like.

5 And I don't disagree that the issue of
6 representation and competency (indiscernible) are a
7 difficult issue. But I'm not going to (indiscernible)
8 make that inquiry today.

9 So are you going to stay or leave?

10 MS. BEECHER: We'll stay, Your Honor.

11 THE COURT: All right. Is there anything we
12 need to take up before we hear from the State
13 (indiscernible)?

14 MS. DERRY: The State has requested another
15 protective order (indiscernible).

16 You granted a protective order until
17 November 12th. But out in the waiting room is a
18 member of the media who would like to come in.

19 And while (indiscernible), I would like to
20 request that due to Mr. Gottstein's long history of
21 humiliating doctors and making it difficult for them
22 to obtain employment after they leave API, that
23 (indiscernible), so that nothing that is discussed
24 today is -- can be published in the newspaper until
25 the -- until after the (indiscernible) close. I think

1 just keep that protective order (indiscernible)
2 appropriate.

3 Also, because Mr. Bigley's capacity of the
4 issue, the State and the hospital is uncomfortable
5 with (indiscernible) him as an exhibit rather than
6 trying to (indiscernible) the hospital to
7 (indiscernible) patient (indiscernible).

8 MR. GOTTSTEIN: Your Honor, I think we just
9 had a contempt of court here. You ordered that the
10 public be allowed in and a person of the media has
11 been excluded. I'm outraged.

12 THE COURT: It doesn't quite work that way.
13 Members of the press have certain rules that are
14 applicable to them. For example, photographing and
15 cameras are subject to certain rules, and they have to
16 make (indiscernible) that's what they want to do.

17 If they just simply want to sit in and
18 participate -- I mean, observe the members of the
19 public, they are entitled to do that. If they want to
20 use some sort of photographic or some other thing,
21 then they have to follow the rules applicable to that.

22 MR. GOTTSTEIN: Yeah. I understand. But
23 (indiscernible).

24 MS. DERRY: Did you need her for -- I'm
25 sorry, Your Honor. I --

1 (indiscernible) or do something, he needs to do that
2 at a courthouse. There is no prohibition in existence
3 against utilizing the (indiscernible) open court.

4 MS. DERRY: Oh, and --

5 THE COURT: Go ahead. Is there something
6 else?

7 MS. DERRY: Yes. Your Honor, we filed a
8 motion in limine. And we requested that in that
9 motion, that Mr. Gottstein not refer to involuntary
10 medications as forced drugging, that he refers to them
11 as per the statute.

12 Also, we would like to have the written
13 testimony that he has supplied stricken and not
14 accepted as evidence today. It is irrelevant, the
15 experts aren't certified, it's hearsay, and we have --
16 we haven't had the ability to cross examine any of the
17 witnesses (indiscernible).

18 THE COURT: I am going to allow you to raise
19 those. Until he presents a particular document or
20 some witness as part of this hearing, I'm not -- I'm
21 not going to make -- you can make those objections
22 when he makes some application to use it. The mere
23 fact that he filed the thing is (indiscernible)
24 proceeding doesn't mean (indiscernible) use of it.

25 In terms of -- in terms of forcing him to use

1 THE COURT: Why is this person not here?

2 MS. DERRY: Well, we weren't sure
3 procedurally what would happen regarding the
4 protective order. She's right -- she's available, if
5 we were just going through all these preliminary
6 things before --

7 THE COURT: Remind me of the terms of the
8 protective order that you were concerned about.

9 MS. DERRY: That any -- anything that
10 occurred in the deposition or in court in the next few
11 days couldn't be published on Mr. Gottstein's Web site
12 or for the public to read, as though API was doing
13 something wrong in requesting the medication petition.

14 THE COURT: That protective order remains in
15 place.

16 MR. GOTTSTEIN: I don't -- I think the
17 protective order was strictly for depositions. And
18 then we -- my understanding was that this hearing was
19 going to be open.

20 THE COURT: The protective order regarding
21 (indiscernible) the depositions remains in place. And
22 that included the ability to utilize the content of
23 the deposition, like it would in any (indiscernible)
24 sitting in open court.

25 And if he wants to utilize a transcript to

1 certain words or not (indiscernible), he can utilize
2 the language that he chooses to utilize, as long as he
3 is respectful. I don't think that using the term
4 forced -- forced drugging versus involuntary
5 administration of psychotropic medication is a cross
6 between the line (indiscernible) appropriate
7 (indiscernible).

8 MR. GOTTSTEIN: Your Honor, point of
9 clarification. My intent, and what I thought that
10 I --

11 MR. BIGLEY: Judge, do I look sharp?

12 THE COURT: Put your (indiscernible). You're
13 looking pretty good today.

14 MR. BIGLEY: I'm healthy?

15 THE COURT: You are looking pretty healthy.

16 MR. GOTTSTEIN: Your Honor, I -- I filed that
17 written testimony on I believe the 28th
18 (indiscernible) with the notice that I was filing it
19 for purposes as written testimony for this proceeding.
20 So I feel like I've already done that. And that's --
21 and I (indiscernible).

22 THE COURT: I assume that you're
23 (indiscernible) objection. Why isn't that -- why
24 isn't that a valid objection?

25 MR. GOTTSTEIN: (Indiscernible) in a

1 (indiscernible).

2 THE COURT: (Indiscernible) as an
3 out-of-court declarance.

4 MR. GOTTSTEIN: (Indiscernible) written
5 testimony; it's an affidavit.

6 THE COURT: How are they going to cross
7 examine?

8 MR. GOTTSTEIN: They are available for cross
9 examination (indiscernible), and they -- they had the
10 opportunity to do that -- they had the testimony
11 numerous times. They (indiscernible).

12 THE COURT: I'm going to deal with your --
13 your case when it's your turn to put it on. I want to
14 get this -- the member of the press in here.

15 And is there anything else you need
16 (indiscernible) before you put on your first witness?

17 MS. DERRY: No, Your Honor.

18 THE COURT: Is there anything else you need
19 to take up before (indiscernible)?

20 MS. DERRY: (Indiscernible) is giving the
21 (indiscernible) reporter right now, Your Honor.

22 THE COURT: Mr. Bigley, it would be helpful
23 if you were a little quieter. I'll let you talk, but
24 if you were a little quieter, it would help.

25 MR. BIGLEY: Okay.

1 MS. BEECHER: Your Honor, is it okay if I
2 make a phone call (indiscernible)?

3 MR. GOTTSTEIN: Your Honor, I guess I should
4 just note for the record that I do object to the
5 member of the press having been excluded from the
6 proceeding. But (indiscernible).

7 THE COURT: My preference would have been if
8 this person would have been allowed into this open
9 courtroom rather than excluded by a unilateral
10 decision of the State. But I can't undo what has been
11 done.

12 MS. BEECHER: Your Honor, could I step out
13 briefly? I need to check on the status of an
14 emergency.

15 THE COURT: Fine.

16 MR. GOTTSTEIN: Take a little break.

17 THE COURT: Right. Why don't we take -- I'd
18 like to read the visitor's report anyway, so we can
19 all take a -- why don't we take a five-minute break.
20 Or if you need a little more, that's fine. But
21 (indiscernible) break. I'm going to step outside and
22 read the -- go off record.

23 9:54:53

24 (Off record.)

25 10:00:19

1 THE CLERK: We are on record now, and yes, I
2 can.

3 THE COURT: Okay. Thank you.

4 MR. GOTTSTEIN: Your Honor, could -- I think
5 there are a couple of other things. One is --

6 THE CLERK: If I can interject, it's kind of
7 difficult for me to log who is actually speaking. If
8 they can identify themselves just briefly, Mr. so and
9 so speaking for the record, so I can log who is
10 actually addressing the Court.

11 THE COURT: And I'll try and police that.

12 Everyone, before you speak, identify who you
13 are.

14 MR. GOTTSTEIN: Jim Gottstein. And I'm very
15 concerned about the recording.

16 But could I get a copy of the recording at
17 the end of the (indiscernible) and give it to me when
18 (indiscernible)?

19 THE COURT: You can request a copy. The
20 in-court will make it for you, or you can request it
21 down in the basement of the transcription area.

22 MR. GOTTSTEIN: Okay. Well, all right. I'd
23 like to have it expedited so I can get it. And one of
24 the --

25 THE COURT: Madame Clerk, would you, at the

1 conclusion of today's hearing, make a CD for
2 Mr. Gottstein?

3 Does any other party like one?

4 UNIDENTIFIED SPEAKER: (Indiscernible.)

5 MS. DERRY: (Indiscernible), the State would
6 like to know that they filed (indiscernible) order
7 this morning to keep confidential both the deposition
8 testimony and the proceeding at issue here
9 (indiscernible) Mr. Bigley and protection of the
10 doctors and other witnesses.

11 THE COURT: Madame Clerk, if you would make
12 three copies, please, one for Mr. Gottstein, one for
13 the public defender, and one for the attorney
14 general's office.

15 THE CLERK: Yes.

16 THE COURT: And do I have a copy of that -- I
17 assume I have a copy of that motion?

18 MS. DERRY: Your Honor, it's being filed
19 (indiscernible) copy, yes. We can (indiscernible)
20 e-mail my paralegal and have them fax it over.

21 THE COURT: And what does it say?

22 MS. POHLAND: It essentially requests that
23 the Court keep these proceedings and all discovery
24 that has taken place in this proceeding confidential,
25 based on Mr. Gottstein's past actions --

1 THE COURT: What do you mean by confidential?
2 Meaning that we can't talk about it in open court?

3 MS. POHLAND: No. That Mr. Gottstein or any
4 other party cannot use it -- cannot publicize the
5 information (indiscernible) publication in the New
6 York Times (indiscernible).

7 THE COURT: And what would be the authority
8 for that request?

9 MS. POHLAND: Under the Rule 26
10 (indiscernible) of the (indiscernible).

11 THE CLERK: Whoever is speaking right now, I
12 cannot hear them and I do not know who that is.

13 MS. POHLAND: Erin Pohland, for the State.

14 MR. GOTTSTEIN: Your Honor, I --

15 THE COURT: Let me -- Civil Rule 26, is that
16 what you're talking about?

17 MS. POHLAND: Correct.

18 MR. GOTTSTEIN: Your Honor, if I may.

19 THE COURT: Let me read the rule. Because
20 we've been doing this orally, I don't have a written
21 protective order in front of me.

22 My recollection, correct me if I'm wrong, is
23 that the prior protective order precludes any party or
24 attorney from publishing the deposition, but they
25 may -- any party may use those depositions in the --

1 not been aware of that, and I -- that the guardian was
2 deciding that issue.

3 THE COURT: I don't know whether he has or
4 not. But the guardian has an appointed role, and
5 he -- I don't know why he's not in here now, but if he
6 wants to be here, he is free to be here.

7 I am not going to order him in here. If he
8 doesn't know how to get in a proceeding involving his
9 ward, I'm troubled by it.

10 MS. BEECHER: I think he was waiting in the
11 lobby because he was on the witness list and didn't
12 know if it would be appropriate for him to be here
13 today (indiscernible).

14 THE COURT: Is there an objection to a
15 protective order that would preclude any party from
16 disclosing discovery materials to third parties,
17 except as is disclosed in this open proceeding?

18 MR. GOTTSTEIN: Your Honor, what I -- what I
19 understood had happened, and what I think should
20 happen, is that -- and what I suggested when this
21 first came up, is that these deposition materials be
22 kept confidential for a week, in order to allow the
23 State to make -- file a proper motion for a protective
24 order under Rule 26(c), I think it is.

25 When they knew (indiscernible) know -- know

1 in this proceeding or related proceedings. And that
2 would preclude any party from publishing it in any
3 other fashion, through other people.

4 MS. POHLAND: Correct.

5 THE COURT: And what in addition to that are
6 you seeking by the second motion?

7 MS. POHLAND: To extend to this proceeding,
8 to all (indiscernible) proceedings. We just wanted to
9 have it (indiscernible) procedure, without the
10 (indiscernible).

11 THE COURT: So you're asking that the -- that
12 other discovery that any party already received not
13 also be published through a third party?

14 MS. POHLAND: Correct. (Indiscernible.)

15 THE COURT: Go ahead.

16 MS. POHLAND: One other point that the State
17 neglected to make earlier, in previous proceedings,
18 Mr. Bigley's guardian had a say in whether or not a
19 reporter from the Anchorage Daily News could be
20 present in the proceedings. His guardian is here if
21 Your Honor would like to talk with him about
22 (indiscernible).

23 THE COURT: Where is -- Mr. Hughes?

24 MS. POHLAND: Yes. He's in the lobby.

25 MR. GOTTSTEIN: Excuse me. I have certainly

1 what the contents that they are objecting to, and the
2 Court would make a ruling on whether or not it's
3 appropriate to issue a protective order under that
4 rule, since we got (indiscernible). And I thought
5 that's what had been ruled upon.

6 MS. POHLAND: We have filed that protective
7 order. It's (indiscernible).

8 THE COURT: It's not an opportunity for you
9 to sit at this table and have an argument. You
10 address your comments to me, you address your comments
11 to me, and I will make a decision.

12 Do you have any objection to me issuing a
13 protective order that says until ten days from now, no
14 party may disseminate discovery materials or
15 deposition materials to any third party? And then --
16 and then if anyone wants to publish, that person must
17 apply and say, I want to publish the following
18 material. Because then other third parties can weigh
19 in on why that should or should not be
20 (indiscernible).

21 Do you have any -- does the State have any
22 problem with that?

23 MS. POHLAND: No, Your Honor, the State does
24 not.

25 THE COURT: Mr. Gottstein?

1 MR. GOTTSTEIN: I think that -- I think that
 2 the proper procedure would be for the State to move
 3 for a protective order.
 4 THE COURT: They have.
 5 MR. GOTTSTEIN: They --
 6 THE COURT: Do you have an objection to me
 7 issuing that order in ten -- having it in place for
 8 ten days, and then anyone who wants to --
 9 MR. GOTTSTEIN: No, Your Honor.
 10 THE COURT: -- to publish would identify what
 11 it is they want to publish and I will rule on that
 12 after hearing from you?
 13 MR. GOTTSTEIN: No objection, Your Honor.
 14 THE COURT: Okay. That's the order.
 15 Let's be clear. What's today's date? The
 16 5th -- so (indiscernible) the 15th? Does anyone know?
 17 UNIDENTIFIED SPEAKER: The 15th is
 18 (indiscernible).
 19 THE COURT: A Saturday?
 20 UNIDENTIFIED SPEAKER: Yes, Saturday.
 21 THE COURT: So 16th -- make it the 17th. In
 22 place until the 17th.
 23 MR. GOTTSTEIN: And then, Your Honor --
 24 THE COURT: I'm not -- I'm going to do it
 25 differently because -- by the 17th, anyone who wants

1 to publish has to file a motion to publish.
 2 (Indiscernible) identifying (indiscernible) --
 3 identifying what it is you want to publish and why and
 4 to whom.
 5 MR. GOTTSTEIN: Your Honor, one of the
 6 problems with that is that it wouldn't necessarily
 7 have a transcript at that point.
 8 And if I may suggest, I don't have any
 9 objection to an order that says at any time, but no
 10 less than -- no sooner than the 17th, and if a party
 11 wanted to publish anything that would make
 12 application, (indiscernible) may at any time after
 13 that should be okay. There shouldn't be a deadline
 14 for making an application.
 15 THE COURT: I am going to (indiscernible)
 16 require the application (indiscernible) 17th for
 17 (indiscernible) in existence. If something happens on
 18 the 16th and there hasn't been a transcript, you can
 19 extend that and I'll extend that.
 20 I just want to put a deadline in place so
 21 instead of having the protective order expire on the
 22 17th, it will remain into place and we can try and
 23 crystallize whether something is going out rather than
 24 just wait for it to come (indiscernible).
 25 MR. GOTTSTEIN: Your Honor, if I may. I

1 wasn't suggesting, based on your ruling, that the
 2 protective order (indiscernible). I'm suggesting that
 3 if at any point that any party desires to
 4 (indiscernible), that they would have to make
 5 application.
 6 THE COURT: I am going to probably require
 7 that to keep it in place. But right now, I am going
 8 to set at least a target date of the 17th to get -- to
 9 try and front-end that process. Particularly because
 10 I think that either side is likely to make an
 11 expedited appeal to the supreme court based on the
 12 (indiscernible). Let's front-end all of this stuff so
 13 that the appeal process is not (indiscernible).
 14 Do you have other procedural matters?
 15 MR. GOTTSTEIN: Yes, Your Honor. I think
 16 under Civil Rule 56, the -- there is the issue of the
 17 summary judgment motion. And I do (indiscernible) --
 18 THE COURT: I am denying it now.
 19 MR. GOTTSTEIN: And that there is a right
 20 (indiscernible).
 21 THE COURT: (Indiscernible.) We'll do that
 22 right now. (Indiscernible) motion.
 23 MR. GOTTSTEIN: I -- I think that -- Your
 24 Honor, that the rule -- rule says if you have
 25 affidavits and other admissible evidence presented

1 into -- and (indiscernible) summary judgment motion,
 2 the other side is obligated to come in with admissible
 3 evidence on the other side to the (indiscernible)
 4 relying on their pleading is not sufficient.
 5 We have established that with un rebutted
 6 testimony at this point, that these drugs shorten
 7 people's lives by 25 years, that they are not
 8 effective for many people, that they -- that they
 9 cause brain damage, that they dramatically reduce
 10 recovery rates, based on a review of the record that
 11 an expert in psychopharmacology, Dr. Grace Jackson,
 12 formulated an opinion, which she is entitled to do
 13 based on her review of the records, that Mr. Bigley
 14 probably had -- is suffering from dysmentia or
 15 dementia, and that every dose of -- of these drugs
 16 will likely cause him damage, that -- that -- that no
 17 psychiatric label should be attached to Mr. Bigley
 18 until the issue of organic brain damage caused by the
 19 drugs, which is chemical brain injury, is determined.
 20 And that it seems to me that under these
 21 circumstances, it cannot possibly be found that the --
 22 you know, forcing Mr. Bigley to take these drugs is in
 23 his best interest.
 24 In addition to that, we have un rebutted
 25 evidence about the availability, the -- a different

1 approach to people in Mr. Bigley's situation that does
2 not involve drugging, that involves engagement and no
3 coercion, but that's very successful, in that we
4 had -- actually, we had testimony about the
5 availability of those services here in Anchorage,
6 although (indiscernible) the availability of those
7 services.

8 And so -- and really, Your Honor, that's I
9 think kind of the key issue from my perspective in
10 this case, is that Mr. Bigley is entitled to -- once
11 the State has invoked its awesome power to lock him
12 up, and then come in and ask this court to administer
13 the very strong and (indiscernible) -- very harmful
14 drugs, which of course a judge will weigh and
15 determine its benefit and risks, that the Alaska
16 Supreme Court has ruled that we have the right to a
17 less-intrusive alternative.

18 There is some ambiguity, what the Court means
19 when it says that there is no less-intrusive
20 alternative available. And I would suggest that the
21 State cannot get out of that obligation by choosing
22 not to provide that.

23 And in the testimony that -- I don't think I
24 submitted that testimony. But (indiscernible) my
25 train of thought. And that I -- beside that

1 authority, I think the (indiscernible) case is that
2 the State is not allowed to provide social services in
3 an unconstitutional manner.

4 And in that case, the federal government said
5 no, Alabama, you've got to have these mental
6 institutions provide a certain constitutional level of
7 services. And then I cited the Hooch case in Alaska,
8 where the Alaska Supreme Court says we would not
9 hesitate to step in where the constitution required.
10 And so there's no -- that is un rebutted evidence of
11 (indiscernible) pursuant to summary judgment motion.

12 There is no contrary affidavits or other
13 records, and I think that Mr. Bigley is entitled to
14 that as a matter of law.

15 THE COURT: Do you have a position on that?

16 MS. DERRY: Yes. Thank you, Your Honor.

17 At issue here today is whether or not
18 Mr. Bigley needs to be medicated for mental health
19 services. And according to statute, which of course
20 we're falling under, .839, there are essentially two
21 elements that need to be proven by me today, which is
22 whether or not Mr. Bigley refuses medications, and
23 whether or not he is capable of informed consent.

24 The Myers case then extends us to make sure
25 that also that the medication was in his best interest

1 and whether or not medicating is the least-restrictive
2 alternative.

3 But if you actually read the entire text of
4 Myers, when it discusses the least-intrusive-means
5 requirement, rather than just at the very conclusion
6 where it says the least-restrictive alternative
7 available, it actually says that it's the
8 least-restrictive alternative in order to protect the
9 patient, not simply to make the least-restrictive
10 alternative available that could ever be conceived by
11 any clinician, regardless of whether or not they've
12 ever actually met Mr. Bigley or have ever actually
13 seen him within the last six months.

14 And what we have here today is that
15 Mr. Bigley has experts, such as Grace Jackson, who's
16 never met Bill Bigley, but she certainly has reviewed
17 his records, but has not reviewed them in the last six
18 months.

19 Grace Jackson was never proven to be an
20 expert witness by the State, and they are -- and
21 evidence she has presented can certainly be refuted if
22 the State was given years in order to come up with
23 information.

24 However, very briefly, the State could
25 present other information, such as information that's

1 actually present on the National Institute of Mental
2 Health Web site, that will discuss in great detail
3 even the issues of Zyprexa and other issues at hand.
4 So --

5 THE COURT: You can't tell me
6 (indiscernible). You have to deal with what is in the
7 file by virtue of affidavits or other (indiscernible).

8 MS. DERRY: And, Your Honor, because the form
9 issue at hand here today are whether or not Mr. Bigley
10 refuses medication, is capable of informed consent, if
11 they are in his best interest, and whether or not it's
12 the least-restrictive alternative available to protect
13 him, that the State doesn't feel that we need to
14 present further evidence to the greater issue of
15 whether or not the medications are -- whether or not
16 these medications are dangerous, which is a highly
17 controversial subject.

18 But we can present through our experts, and
19 we will --

20 THE COURT: (Indiscernible.)

21 MS. DERRY: But, Your Honor, that goes into
22 the playing out of the best interests, being something
23 that is -- that's actually a court determination.
24 It's not something that the doctors necessarily have
25 to determine.

1 And it's the best interests that actually
2 have to look at what we see Mr. Bigley -- as he
3 presents today, what we see as the long-term effects
4 of him not having medications in the last six months,
5 and how this has come out to play, and that there are
6 many, many material facts in dispute of, is Mr. Bigley
7 actually being benefited by not being treated. He can
8 have -- we do have testimony to support that, that
9 Mr. Bigley in the last six months has suffered greatly
10 from not being medicated.

11 There are other issues of material fact of --
12 of what the State has been trying to do in order to
13 help him in other ways. And we look at the -- the
14 actual question from Myers of, is this within the best
15 interest of the patient, rather than expanding this
16 to -- it's a very theoretical and really difficult
17 ethics question of medication.

18 We are looking at, you know, what's the
19 medical standard of care, if that's appropriate across
20 the United States, and things like that are material
21 facts that can only be presented by the doctors. And
22 then also by discussing things with the -- the further
23 testimony of the guardian of what he sees are actually
24 in the best interests of a ward that he continually
25 tries to help and (indiscernible).

1 THE COURT: (Indiscernible.)
2 MR. GOTTSTEIN: Yes, Your Honor. First the
3 affidavit -- the affidavit of Paul Cornils was
4 submitted in support. He has extensive experience
5 with Mr. Bigley in the community. And he provided an
6 affidavit with regard to that experience and the
7 (indiscernible) alternative. So we do have that.

8 What the State -- and Ms. Derry, she wasn't
9 there, so I guess she can be forgiven for misstating
10 the record. But Dr. Jackson was qualified as an
11 expert in psychopharmacology in that case. They had
12 the opportunity to cross examine her, and did cross
13 examine her, and that testimony is also presented.

14 And the -- it's very interesting, because
15 what the State is saying here is that they get to
16 ignore the science about the brain damage, ignore the
17 fact that people are dying (indiscernible) years
18 earlier, ignore the fact that -- that --

19 THE COURT: Isn't that a question of fact?
20 MR. GOTTSTEIN: Not anymore. Because there
21 is a summary judgment motion. We provided all this
22 evidence, affidavits and other admissible testimony,
23 under Civil Rule 56. They were obligated to come up
24 with other evidence, and they haven't done that. And
25 that is the purpose.

1 And, Your Honor, what we have here is a
2 situation where the respondents are at an extreme
3 disadvantage because -- because the State holds all
4 the cards, and they file the petition. They expected,
5 you know, the first time that the hearing would be
6 held that same day. They had -- the first testimony
7 that was submitted in support was presented to the
8 State in March of 2003.

9 The Whitaker affidavit and Cornils affidavit,
10 Sarah Porter's testimony, Paul Cornils's testimony was
11 presented over a year ago. Dr. Jackson's further
12 scientific testimony was presented in May.

13 And they had all this time, and they have
14 never come up with any reputation, any admissible
15 evidence against it. And I think that when I come in
16 and file all this evidence, that they -- they need to
17 come in with counter evidence. Otherwise, it's -- it
18 is inherently unfair for them to just walk in and
19 expect to be able to ignore all that.

20 And that's -- that's why I filed the motion.
21 The petition was filed on October 27th, and these
22 motion --

23 THE COURT: (Indiscernible.)
24 MR. GOTTSTEIN: No. There (indiscernible).
25 But in any event, it's been -- you know, they

1 (indiscernible) schedule. I got it in as soon as
2 possible, and they've had all of this evidence for
3 quite some time. And they (indiscernible) -- when
4 they file a petition, they should be prepared at that
5 point. They are obligated to prove all
6 (indiscernible) to Your Honor. At the time when they
7 file that petition, they should be able to prove all
8 the (indiscernible).

9 And so they should not have any problem with
10 being able to present evidence to what I presume
11 (indiscernible) as evidence here.

12 THE COURT: Thank you. I'm denying the
13 motion for summary judgment.

14 There are material facts based on the entire
15 file and the history of Mr. Bigley on all of the
16 issues, and I will expect that the State will -- the
17 State will be held (indiscernible) on the statutory
18 requirement, 839, as well as Myers Wetherhorn
19 amplification of those, in order to make them
20 constitutional.

21 Simply in terms of -- do you have any other
22 issue before we begin the --

23 MR. GOTTSTEIN: Yes, actually. Thank you,
24 Your Honor. A couple of things.

25 At the last hearing, I was a little bit, I

1 guess, slow at the switch. But they -- Ms. Derry said
2 that they were now having -- having to deviate from
3 the statute, which to me means that -- it's basically
4 an admission that they've been drugging him illegally
5 under the 47.30.838. And I think that this court
6 should --

7 THE COURT: My recollection of her comments,
8 and you can correct me if I'm wrong, is that referring
9 to the timing aspect of it, which were -- require
10 certain things to happen within 72 hours, other things
11 to happen rather quickly regarding both commitment and
12 the (indiscernible) psychotropic (indiscernible), and
13 that (indiscernible) you ought (indiscernible)
14 additional time to prepare the discovery.

15 And I think this would have been likely
16 unconstitutional to stick with the 72-hour requirement
17 at the expense of discovery. (Indiscernible) context
18 of her comments about the deviation was because of
19 the -- of the request -- I find to be well-founded for
20 additional time to (indiscernible) discovery.

21 MR. GOTTSTEIN: That wasn't my understanding,
22 so I guess we can look at the transcript.

23 And my concern is that -- and I tried to
24 bring this up at the hearing, remember, when we talked
25 about mootness and timing, and I mentioned that they

1 MS. DERRY: Yes. Your Honor, what I was
2 referring to is that the statute, under 83(h), which
3 is the psychotropic medications and emergencies, does
4 mandate that the hospital -- if future crisis
5 situations -- or if they feel that crisis situations
6 are continuing or that they will continue in the
7 future, then they are required, after the 72-hour
8 crisis period, to file a court order -- administration
9 of medication petition.

10 And then under that petition -- well,
11 according to the statute is that they -- they cannot
12 administer medication through no more than three
13 crisis periods without the patient's informed consent,
14 only with court approval, under the statute.

15 And what I -- what I had said was that what's
16 happening here is that we're being forced to deviate
17 outside of that 72 hours. And I actually said that
18 the State feels like we are actually putting
19 Mr. Bigley's due process rights at risk, because in
20 order to ensure his due process -- that he is not
21 medicated until he's been adjudicated that he needs
22 the medication, that it would be putting his --
23 putting him at risk and putting the hospital in a
24 situation where they would have to continue to
25 emergency medicate him if that were a last resort in

1 had three 20 -- three basically 72-hour periods before
2 they ran out.

3 And then what I understand their comment to
4 be is they felt like they were now in the position to
5 deviate from that. If they're not (indiscernible).

6 MS. DERRY: (Indiscernible.)

7 MR. GOTTSTEIN: And --

8 THE COURT: Now, wait, wait. I'm going to
9 have Mr. Bigley step outside.

10 MR. BIGLEY: Okay. I'm sorry. I'm sorry,
11 sir. (Indiscernible.)

12 THE COURT: Mr. Bigley, I will let you
13 remain. I will let you come back today, but I cannot
14 have you talk.

15 And the reason is that these are very
16 important issues that I need to be able to hear. So
17 if you keep talking, I'm going to have you leave.

18 So my suggestion is that you consider
19 stepping outside now, and then you can come back in
20 and see how things are going.

21 But if you keep talking so I can't hear, I'm
22 going to have you leave.

23 MR. BIGLEY: I'm sorry.

24 THE COURT: She is going to explain to her --
25 her comment regarding the timing.

1 order to protect him and protect other patients.

2 However, regardless of what was said in that
3 hearing, which that -- now that that's clarified, that
4 I was actually referring to, his due process rights is
5 actually at risk because of prolonging the hearing
6 further, then the hospital has not medicated him
7 since --

8 THE COURT: Has not?

9 MS. DERRY: -- has not emergency medicated
10 him since the 27th. And that was -- so that is now
11 not an issue.

12 Because the hospital did give him one
13 administration of emergency medication on the 21st,
14 and then again on the 27th. And he has not been
15 emergency medicated. So not only are -- did the
16 hospital not violate the statute by not furthering to
17 medicate him, but they also have been protecting his
18 due process rights by continuing to encourage him to
19 take medication and -- and not administering
20 medications, because they do not believe that he is
21 capable of informed consent, even if he agrees.

22 THE COURT: Any other issues?

23 MR. GOTTSTEIN: Yes, Your Honor. And I
24 apologize for not calling you. I think I e-mailed
25 you.

1 I listed Dorothy Pickles on our witness list,
2 and she is literally on the road tomorrow. And I was
3 wondering if she could testify to -- out of order. I
4 subpoenaed her and asked her to come at 11 for today.

5 THE COURT: How long will her testimony take?

6 MR. GOTTSTEIN: I think the direct, no more
7 than 15 minutes.

8 MS. DERRY: And, Your Honor, the only issue
9 that I have is that we submitted a motion for a
10 telephonic appearance by Wendi Shackelford because she
11 is (indiscernible). And she is scheduled, and we
12 planned on calling her at 11:15 in order to ensure
13 that she could testify.

14 MR. GOTTSTEIN: Did I say -- I said 11,
15 didn't I?

16 MS. DERRY: Yeah.

17 MR. GOTTSTEIN: Yeah, yeah. I think we could
18 take her after Wendi. I mean, I know this is out of
19 order, so --

20 THE COURT: I will accommodate her, and both
21 of you will (indiscernible) is in a conference. We
22 will take her at the 11:15 time.

23 And then at some point after that, we can
24 call your witness out of order.

25 MS. DERRY: And, Your Honor, one more thing

1 before I begin questioning my witnesses.

2 I would like to ask the guardian whether he
3 thinks it's appropriate for Anchorage Daily News to be
4 in the courtroom today and perhaps publish any
5 information about this court.

6 UNIDENTIFIED SPEAKER: Can I (indiscernible)
7 counsel (indiscernible) that my understanding is that
8 it's been open.

9 THE COURT: Anything further before we begin?

10 MR. GOTTSTEIN: Your Honor, normally we -- I
11 have the opportunity to cross examine the visitor, and
12 so I don't want to lose sight of that (indiscernible).

13 So I don't know when -- I'm not sure -- she
14 was appointed by the Court to assist the Court. So I
15 don't know when in the procedures you want to do that,
16 but I just would want to point that out.

17 THE COURT: I am vaguely recalling, but I'm
18 not positive it's either in the probate rule or
19 perhaps -- I think maybe it's the (indiscernible)
20 rule, that the visitor is -- is allowed to testify and
21 is subject to cross examination.

22 Is there any dispute to that?

23 MS. DERRY: No, Your Honor. She is not my
24 witness. She is the court --

25 THE COURT: No. But I think there's -- I

1 believe that she's subject to cross examination. So
2 while she's --

3 I assume you don't have any -- I assume you
4 have plenty to do, but if you don't have any pressing
5 things that require you to go out of order --

6 MS. VASSAR: When is my order? Is it
7 tomorrow or today?

8 THE COURT: It's unclear.

9 MS. VASSAR: Okay.

10 THE COURT: Let me get a sense for
11 everybody.

12 How long -- you told me before that you may
13 have more precise information now. Do you have a
14 sense of how long your direct will take?

15 MS. DERRY: Yes, Your Honor. If I --
16 sticking to those four issues, I hope to be done by
17 1:30 today.

18 THE COURT: Okay. And that assumes no cross,
19 just --

20 MS. DERRY: No. Even with cross examination,
21 I think that we can get through it by 1:30, Your
22 Honor, if (indiscernible).

23 THE COURT: Okay. So --

24 MS. VASSAR: That would be fine.

25 THE COURT: We would probably -- I will

1 accommodate your schedule. If we let the State sort
2 of run through its witnesses today, my guess is it
3 won't be as expeditious as that.

4 I'm willing to take you first thing tomorrow
5 morning, if that would be convenient, or some other
6 time today.

7 MS. VASSAR: I have a contested hearing
8 scheduled for 8:30 to 10:30 tomorrow. This -- and I
9 have -- and I don't have anything this afternoon
10 except for an appointment at 2:30, which could
11 possibly be pushed to 3. So if it happens today --

12 THE COURT: I have hearings all afternoon, so
13 it'll have to be between 8:30 and 1:30 tomorrow or --
14 today or tomorrow.

15 MS. VASSAR: 8:30 --

16 THE COURT: Or some other time.

17 MS. VASSAR: Today would be preferable.

18 THE COURT: And do you have a sense of how
19 long your cross might be?

20 Would it be helpful for you to be cross -- to
21 be questioned now, and then you could leave?

22 MS. VASSAR: That would be great.

23 MR. GOTTSTEIN: Fifteen, 20 minutes I think,
24 maybe not even.

25 THE COURT: Let's do -- then let's do that.

1 I will have the visitor questioned first. You can
2 (indiscernible) the same ability to ask questions.

3 Does anyone need a restroom break before we
4 begin this?

5 MR. GOTTSTEIN: I never pass up that
6 opportunity, Your Honor.

7 THE COURT: Then let's just take five minutes
8 to stretch. We will be off record for just roughly
9 five minutes. We will keep the phone line open.

10 10:34:55

11 (Off record.)

12 10:41:00

13 THE CLERK: We are on record. Please keep
14 your voice up. Thank you.

15 THE COURT: And the counsel for the public
16 defender's office was leaving.

17 And we'll see you later. Thank you for
18 attending.

19 The public guardian remains.

20 All right. And we're going to -- Ms. Vassar
21 is the court visitor.

22 Ms. Vassar, I have your report. It's been
23 distributed to everyone. Let me give you an
24 opportunity to -- give you a path (indiscernible), if
25 you -- if there's any oral (indiscernible) you would

1 like regarding the report, that would be fine. If
2 not, that's fine.

3 And then I will allow Mr. Gottstein and the
4 State's counsel to ask any questions of you.

5 MS. VASSAR: Thank you, Your Honor.

6 I just had one correction --

7 THE COURT: Just because you're not a loud
8 person, I'm going to --

9 MS. VASSAR: I'll try to be loud, because I
10 know (indiscernible). Is that okay?

11 THE CLERK: Can the party, before addressing
12 the Court, spell their name for the log note, please?
13 Thank you.

14 MS. VASSAR: Yes. My name is Marieann
15 Vassar. Last name is V, as in Victor, A-S-S-A-R. I
16 am the court visitor in this proceeding.

17 THE COURT: All right. Ms. Vassar, do you
18 want to add anything to your written report?

19 MS. VASSAR: I do want to make one
20 correction.

21 THE COURT: Certainly.

22 MS. VASSAR: And that's on the second page,
23 in the second paragraph, in the second sentence, I
24 have indicated that Mr. Bigley had not been given any
25 medication between the 20th and the 29th.

1 And when I spoke with Dr. Khari this morning,
2 she told me that he had received emergency medication
3 on the 22nd, as well as the 27th. And that is the
4 last time he has received medication here at the
5 hospital.

6 I think that came up a little bit earlier.

7 THE COURT: So on the 22nd and the 27th?

8 MS. VASSAR: Yes. Those are the dates he
9 received emergency IM medication.

10 THE COURT: So if we -- if we -- he basically
11 has been administered emergency medication since his
12 admission, on 22 and 27 October?

13 MS. VASSAR: That's correct, Your Honor.

14 THE COURT: All right. Anything further?

15 MS. VASSAR: And I also indicated in my
16 report that I was going to attempt to speak with
17 Mr. Bigley this morning.

18 When I arrived here, counsel was present for
19 Mr. Bigley, and he wanted me to meet with him. And I
20 had some discussions about smoking, with staff, and
21 I -- I finally did get to speak with Mr. Bigley.

22 He didn't really want to be -- speak with me
23 in the presence of his counsel, but we moved to the
24 other side of the room and he seemed okay with that.
25 We were in the kitchen area or the cafeteria area.

1 But he was quite agitated, even more agitated
2 than you saw him in the courtroom today. And I really
3 did not have the opportunity to get any farther -- or
4 any further with capacity assessment than I did on
5 the -- in my previous attempt to administer that.

6 I'm just looking at my notes to see what he
7 told me today. He was -- you know, he was telling me
8 he was the president of the United States, that he
9 wants to go to Cuba, that he wants to be free.

10 I tried to ask him some of the questions that
11 appear on this capacity assessment. Do you think you
12 have a mental illness? He would just respond with, do
13 I? I couldn't get him to really engage meaningfully
14 with me.

15 I asked him why he didn't want to take
16 medication, and he told me it kills his brain.
17 They've been cutting me up on the unit. They'll kill
18 me no matter what. So I didn't get much further with
19 talking with him this morning than I did the first
20 time.

21 So with those additions, I think everyone's
22 had an opportunity to read the report, and I'm happy
23 to take questions.

24 THE COURT: Thank you very much.
25 Mr. Gottstein.

1 MARIEANN VASSAR
2 called as a witness on behalf of the Court, testified
3 as follows on:

4 CROSS EXAMINATION

5 BY MR. GOTTSTEIN:

6 Q Yeah. In your list of people that you
7 contacted, you didn't contact his attorney, did you?

8 A No, I didn't.

9 Q Doesn't it seem like maybe his attorney might
10 have (indiscernible)?

11 A In these matters, because my role is
12 restricted to capacity to give or withhold informed
13 consent, I think I'm best able to make a
14 recommendation and determination of that by dealing
15 with the respondent.

16 Q But aren't you also supposed to
17 (indiscernible) documentation of prior express wishes?

18 A Yes. And that's included in the report, that
19 I did talk with --

20 THE CLERK: The witness kind of fades in her
21 testimony. I can hear Mr. Gottstein well, but the
22 witness needs to speak up a little.

23 MS. VASSAR: I'm sorry, Your Honor.
24 I'm sorry. I'll speak up.

25 THE COURT: In normal circumstances that

1 MR. GOTTSTEIN: I'm sorry.

2 BY MR. GOTTSTEIN:

3 Q So you didn't -- okay. You already answered
4 that. Okay.

5 I noticed on the first substantive paragraph,
6 you say that he answered every question with: It
7 doesn't matter?

8 A Right.

9 Q Now, how long have you been doing these?

10 A I've probably been doing these since Faith
11 Myers, which would have been about 2000.

12 Q So I guess --

13 A Eight years or so.

14 Q You mean before the -- did you do then the --
15 the (indiscernible) Myers decision case?

16 A No. I started with -- Faith Myers was
17 actually the first case I worked on.

18 Q Oh. And why was that?

19 A Why was that?

20 Q Yeah. I mean, aren't you appointed --
21 weren't you appointed in every case?

22 A Well, there is a long history here. And I
23 don't know if the Court will really find this
24 relevant, but I certainly can explain the history.

25 Q Yeah, actually, I do think it's relevant.

1 would speak highly of you, but it is (indiscernible)
2 need to --

3 MS. VASSAR: I need to be assertive. Yes.
4 All right. Thank you.

5 I did make inquiry as to advanced directive.
6 I talked with his guardian. That person usually would
7 have knowledge if there is an advanced directive.

8 I talked with an outside care provider --
9 service provider, Ms. Davis, who was also the
10 petitioner in this matter. She was not aware of an
11 advanced directive.

12 There was someone else I talked with, as
13 well. Let me look back in my report here.

14 THE COURT: I didn't hear. You said --

15 MS. VASSAR: I spoke with the guardian, I
16 spoke with Ms. Davis of Anchorage Community Mental
17 Health and -- oh, and the file here at API. There was
18 no evidence of an advanced directive.

19 BY MR. GOTTSTEIN:

20 Q So -- and I guess my -- my point was that it
21 seems like when you're looking for documentation, that
22 it would make sense to talk to the lawyer to see if he
23 had some. But you know, frankly, I think -- anyway,
24 that's the point.

25 THE COURT: Ask a question, please.

1 A Okay. Prior to Faith Myers, a visitor was
2 appointed, and had been appointed for about 18 years.
3 I've been doing this work for about 12.

4 And at that time, there was a PD that worked
5 for the -- worked at representing clients at the
6 hospital that indicated that she did not want a court
7 visitor to speak with her client. And she talked with
8 the lead court visitor at that time, and they sort of
9 agreed that since the visitor could not speak with the
10 respondent, she didn't choose to do that, that there
11 was no need for the visitor to be involved.

12 The Court went along with that, and for --
13 until -- until Faith.

14 And there were times when sometimes that
15 particular PD would believe that it might be in the
16 client's best interests to speak to a court visitor,
17 and there would be occasional time when she would
18 request it.

19 And that was the case with Faith Myers. She
20 did request that I come out and visit. And that's
21 what I did. I may not be remembering that correctly.

22 I didn't do the initial assessment on Faith,
23 but Betty Stanley, the other court visitor, did that.
24 I became involved with Faith at the superior court
25 level and talked with her then.

1 But there was a substantial period of
2 non-compliance with the statute, in terms of the
3 visitor. And I give credit to you for the fact that
4 I'm here today.

5 Q So -- so in other words, there was an order
6 issued in every -- was there an order issued in every
7 case?

8 THE COURT: I'm not sure why (indiscernible)
9 of compliance in other cases in other years has much
10 relevance to this proceeding. Can you --

11 MR. GOTTSTEIN: I'll move on, Your Honor.

12 THE COURT: -- help me? Well, move on to
13 another topic or explain it to me so I can make a
14 ruling. Because I don't -- I don't see the relevance.

15 MR. GOTTSTEIN: Okay. I just want to -- one
16 of my points is there's kind of a pattern to ignoring
17 statutory criteria in these proceedings when they've
18 been done, you know, in the -- and this was one piece
19 of the --

20 THE COURT: That may well be. Even assuming
21 that it's true, and I'm not making that ruling, how
22 does that have any bearing on what the visitor's
23 opinion is on the topics that she is required to opine
24 about?

25 MR. GOTTSTEIN: It seemed relevant to me,

1 Your Honor, but --

2 THE COURT: Move on to --

3 MR. GOTTSTEIN: Okay.

4 THE COURT: -- this case.

5 MR. GOTTSTEIN: Okay. So -- oh, actually, I
6 remembered. So the -- I'm sorry. The reason why I
7 was doing that -- I'm sorry, Your Honor; I'm not at my
8 best at the moment -- is that he answered every
9 question with: It doesn't matter.

10 And what was the -- can I explain -- the idea
11 is that --

12 THE COURT: You can explain if you can
13 respond to it as, essentially, my tentative distant
14 relevant -- yes, explain to me why, what happens six
15 years ago, that's relevant.

16 MR. GOTTSTEIN: Is that the -- the public
17 defender didn't feel like (indiscernible) the reports
18 were being done fairly, so they were excluded.

19 So that, I think, puts some context around
20 the response that it doesn't matter, that no matter
21 what Mr. Bigley would say, that --

22 THE COURT: Are you suggesting Mr. Bigley was
23 making a comment upon the prior practice of the public
24 defender's office when he said it doesn't matter?

25 MR. GOTTSTEIN: No. I think he was making a

1 comment about -- that he -- that it didn't matter.

2 THE COURT: You can make inquiries to her
3 about what Mr. Bigley meant, but --

4 MR. GOTTSTEIN: Okay.

5 THE COURT: -- unless you can make a showing
6 that Mr. Bigley is aware of this history, this is not
7 relevant.

8 BY MR. GOTTSTEIN:

9 Q How many -- now, how many competency
10 evaluations have you done for this purpose?

11 A Oh, my, I'm basically here every Tuesday and
12 Friday. Sometimes I get (indiscernible), you know,
13 but --

14 Q So (indiscernible)?

15 A I would say yes.

16 Q How many (indiscernible) person was
17 (indiscernible)?

18 A Not many. Probably -- you mean -- I don't
19 find; I make recommendations.

20 Q Recommendations, right.

21 A How many recommendations I've made. Probably
22 say three or four.

23 Q Okay. Now, you indicate that he -- he
24 refused all psychotropic medications, in your report;
25 is that correct?

1 A Here at the hospital, yes.

2 Q Yeah. And so -- right. And so -- and to me,
3 that -- that suggests that if he accepted them, that
4 they would be --

5 MS. DERRY: Objection.

6 THE COURT: Ask a question. I don't want a
7 speech; I want a question.

8 BY MR. GOTTSTEIN:

9 Q Is it your understanding that if he had
10 accepted the medication, it would be given to him?

11 A That's my understanding of the policy at the
12 hospital at this time.

13 Q And isn't it -- is it your understanding that
14 a person has to be competent to accept the medication
15 as well as (indiscernible) concerned?

16 A I think by statute, a person is supposed to
17 be competent to make a decision before the hospital
18 gives them the -- gives them the medication.

19 Q So that -- and that was -- and that was
20 documented in the chart, is that correct, that he was
21 offered and refused?

22 A I imagine it's documented. I -- I can't -- I
23 don't remember actually reading it, but I imagine that
24 it is documented that they offered and he refused.

25 Q Oh, and where did you get that information

1 that he refused all psychotropic medications?
 2 A I talked with (indiscernible), I talked with
 3 Dr. Khari. I do review the chart.
 4 MR. GOTTSTEIN: And, Your Honor, I'm sorry, I
 5 don't have these marked as exhibits, but I'm going to
 6 hand you this.
 7 MS. VASSAR: Thank you.
 8 MR. GOTTSTEIN: Maybe I should put an A on
 9 it.
 10 THE COURT: Mark it in some way.
 11 UNIDENTIFIED SPEAKER: Do you want me to mark
 12 it?
 13 THE COURT: We're going to mark it Exhibit A.
 14 UNIDENTIFIED SPEAKER: Exhibit A.
 15 UNIDENTIFIED SPEAKER: May I please have one?
 16 MR. GOTTSTEIN: Oh, I'm sorry.
 17 BY MR. GOTTSTEIN:
 18 Q Does this -- do you recognize this format?
 19 A I do.
 20 MR. GOTTSTEIN: I'm sorry, Your Honor,
 21 (indiscernible).
 22 BY MR. GOTTSTEIN:
 23 Q Is this a regular hospital record?
 24 A Yes.
 25 MS. DERRY: Objection, Your Honor. This is

1 from (indiscernible). This is the initial date of
 2 1/17/06.
 3 THE COURT: I appreciate that. I'm going to
 4 give some leeway, if you're laying the groundwork for
 5 the format of the reports.
 6 MR. GOTTSTEIN: Your Honor, the purpose of --
 7 THE COURT: Okay.
 8 MR. GOTTSTEIN: Okay.
 9 BY MR. GOTTSTEIN:
 10 Q So could you read the --
 11 MR. GOTTSTEIN: Can I ask her to read that
 12 highlighted area?
 13 THE COURT: Ask her a question.
 14 BY MR. GOTTSTEIN:
 15 Q Did this say Mr. Bigley received outpatient
 16 follow-up care through Dr. Thompson?
 17 MS. DERRY: Objection, Your Honor. Does this
 18 say that he (indiscernible), because we're looking at
 19 it from 2006. It is not relevant to the
 20 (indiscernible) case at hand.
 21 THE COURT: I'll give you some leeway. But
 22 you're going to have to tie this two-year-old document
 23 up to the visitor's report in some fashion.
 24 MR. GOTTSTEIN: Well, I just -- you asked me
 25 to ask questions, and I asked if it says that.

1 BY MR. GOTTSTEIN:
 2 Q So does it say that he receives -- he came to
 3 API bimonthly for risperidone (indiscernible)
 4 injection?
 5 A Yes.
 6 Q So is this the documentation of him
 7 voluntarily coming and taking medication?
 8 A Yeah.
 9 Q Okay.
 10 A He was on an outpatient basis at that time.
 11 MR. GOTTSTEIN: I need -- can we get this
 12 admitted? I move to admit.
 13 THE COURT: Is there objection?
 14 MS. DERRY: I object, Your Honor. This is a
 15 record from 2006, and it has no relevance to the case
 16 at hand, other than to establish that it is a record
 17 from Mr. Bigley's medical chart. And I
 18 (indiscernible).
 19 THE COURT: (Indiscernible) admitted.
 20 (Exhibit A admitted.)
 21 BY MR. GOTTSTEIN:
 22 Q Okay. I'm going to hand you --
 23 THE CLERK: I'm sorry. For the record, was
 24 the exhibit admitted?
 25 THE COURT: Exhibit A is admitted.

1 THE CLERK: Thank you.
 2 BY MR. GOTTSTEIN:
 3 Q Okay. B is a packet of documents. Do these
 4 look like hospital records?
 5 A Yes.
 6 MR. GOTTSTEIN: Move to admit.
 7 MS. DERRY: Objection, Your Honor. These are
 8 also from earlier admissions, not the admission at
 9 hand, where we have already won the 30-day commitment
 10 and would like to move on to medication petitions
 11 before issues can be discussed at the hearing today.
 12 And also, I also object to -- Ms. Vassar does
 13 not create these records. She can certainly say that
 14 she can read and repeat what the record says, but that
 15 is (indiscernible).
 16 THE COURT: B is admitted.
 17 (Exhibit B admitted.)
 18 BY MR. GOTTSTEIN:
 19 Q So on page 2 --
 20 A Okay.
 21 Q -- down at the bottom, does it say: The
 22 patient refuses psychiatric treatment, and this
 23 refusal is facilitated by an attorney?
 24 MS. DERRY: Objection, relevance.
 25 THE COURT: (Indiscernible.)

1 THE WITNESS: That's what it says.
 2 BY MR. GOTTSTEIN:
 3 Q Okay. So is this documentation that he was
 4 offered medication --
 5 MS. DERRY: Objection, calls for speculation.
 6 THE WITNESS: Was it overruled? I'm sorry.
 7 THE COURT: Overruled.
 8 THE WITNESS: I'm sorry.
 9 THE COURT: Ask the question again.
 10 BY MR. GOTTSTEIN:
 11 Q Is this documentation that he was offered
 12 medication and refused it?
 13 A Well, it says that he refused it, so I assume
 14 there was an offer (indiscernible) in there.
 15 Q And the same -- on page 5, isn't the same
 16 true (indiscernible)?
 17 A Which part are you looking at on page 5?
 18 Q The very bottom, down on prognosis.
 19 A The patient is non-compliant with
 20 psychotropic medications, with his attorney's
 21 encouragement?
 22 Q Yeah.
 23 A I don't know that that indicates that
 24 medication was being offered. I think it's just a
 25 statement by the examiner.

1 Q If you look at the next page, does it say
 2 that he consistently refused psychotropic medication?
 3 A Yes.
 4 Q So would you read that as saying that he was
 5 offered it?
 6 MS. DERRY: Objection, calls for speculation,
 7 relevance.
 8 MR. GOTTSTEIN: And I'm going to
 9 (indiscernible).
 10 THE WITNESS: I think any time it indicates
 11 he refused, there is an implication that there was an
 12 offer somewhere along the way of the medication.
 13 BY MR. GOTTSTEIN:
 14 Q Okay. If you look at page 20.
 15 A Okay.
 16 Q Does it say that he was given Ativan -- or
 17 that he voluntarily took Ativan and Haldol?
 18 A Yes.
 19 MS. POHLAND: Objection.
 20 THE COURT: Okay. Let's see.
 21 MS. DERRY: And, Your Honor, I object. This
 22 is --
 23 THE COURT: Wait. You two -- one of you can
 24 object; both of you cannot. You can consult, but one
 25 people -- one of you speaks for the State.

1 MS. POHLAND: I'll object.
 2 MS. DERRY: Erin Pohland will speak for the
 3 State on this objection.
 4 MS. POHLAND: On the objection, these are
 5 records from Providence Medical Center. I don't
 6 believe these are from API.
 7 So again, I'm not entirely sure what the
 8 relevance is of (indiscernible) issue with API.
 9 THE COURT: Which -- let me -- I thought
 10 perhaps you hadn't had an opportunity to look at this
 11 carefully (indiscernible). I thought, and correct me
 12 if I'm wrong, that these were documents that were in
 13 the API chart that you had reviewed. Am I correct on
 14 that?
 15 MS. VASSAR: Well, some of these are older.
 16 And the chart that I reviewed -- Mr. Bigley has many
 17 charts here.
 18 THE COURT: I appreciate that.
 19 MS. VASSAR: And usually what I do is review
 20 what relates to the current admission. So I would not
 21 necessarily for this proceeding go back and review
 22 charts and records from '06.
 23 And no, I have not reviewed them. I may have
 24 reviewed them in the past, but I have not reviewed
 25 records from '06 for this proceeding. I have not

1 reviewed any records prior to October 20th, really, at
 2 API in the chart for this proceeding.
 3 THE COURT: All right. (Indiscernible.)
 4 MS. VASSAR: I mean, these are records --
 5 THE COURT: Does anyone -- does anyone
 6 dispute that these are in the current API file, even
 7 though some of them were generated apparently at
 8 Providence, correct, particularly this October 7th
 9 one?
 10 MS. VASSAR: I am -- I -- these kinds of
 11 records do appear in the chart. I mean, if someone is
 12 originally treated at (indiscernible), then those
 13 records will be transferred with the patient to API.
 14 THE COURT: All right.
 15 MS. VASSAR: I can't be sure where they came
 16 from, but I have seen records like this in the chart
 17 at API.
 18 THE COURT: But in terms of preparing for the
 19 particular report, you don't recall looking at this
 20 October 7th document -- October 7th, '08 document,
 21 which is page 20?
 22 MS. VASSAR: I did not. Not in preparation
 23 for this hearing.
 24 THE COURT: Next question.
 25 MS. POHLAND: Your Honor, I just want to call

1 the Court's attention to (indiscernible) Shackelford
 2 (indiscernible).
 3 THE COURT: What time does she need to be
 4 called?
 5 MS. POHLAND: 11:15 (indiscernible).
 6 BY MR. GOTTSTEIN:
 7 Q Okay. I'm handing you what's marked C.
 8 A Thank you.
 9 Q And is this a -- look like a hospital record?
 10 MS. POHLAND: Objection, relevance. This
 11 record is from 2006.
 12 MR. GOTTSTEIN: Your Honor, the statute says
 13 may pass an expression of wishes (indiscernible).
 14 THE COURT: Let's assume that she has not
 15 reviewed that. I don't know (indiscernible).
 16 MR. GOTTSTEIN: Okay. Well, I'd like to move
 17 to admit.
 18 MS. POHLAND: We admit based on relevance.
 19 (Indiscernible) when Mr. Bigley is competent.
 20 MR. GOTTSTEIN: And he was accepting
 21 (indiscernible) and (indiscernible).
 22 MS. POHLAND: (Indiscernible.)
 23 THE COURT: I'm going to admit it. I'm not
 24 (indiscernible) -- I think that examples of offers of
 25 medication to him at various times are relevant to his

1 history of desire and his history of wanting to accept
 2 that.
 3 I don't know that merely saying yes or no
 4 tells us much of anything about whether or not he is
 5 capable and competent at that time to make a decision.
 6 But I'll -- C is admitted.
 7 (Exhibit C admitted.)
 8 BY MR. GOTTSTEIN:
 9 Q Okay. Moving to page -- page 4
 10 (indiscernible) of your report.
 11 A Page 4 of my report?
 12 Q Yes. So you say -- did you write that
 13 consultations from Mr. Bigley's recent incarceration
 14 reveal that possible side effects from administered
 15 medications were sedated (indiscernible)?
 16 A That's correct. I included those
 17 attachments, yes.
 18 Q Did you review Dr. Jackson's testimony before
 19 this?
 20 A I did not.
 21 MS. POHLAND: Objection, relevance.
 22 THE COURT: Overruled.
 23 BY MR. GOTTSTEIN:
 24 Q You received that, didn't you?
 25 A I did.

1 Q Okay. And then you -- you attach a list of
 2 police calls for service; is that correct?
 3 A That's correct.
 4 Q Was that part of your assignment in the court
 5 order?
 6 A I -- it may go a little beyond what is called
 7 for in (indiscernible) assignment, yes.
 8 Q So why did you do that?
 9 A I thought it was of interest. It might be of
 10 interest to the Court to -- for the Court to see how
 11 Mr. Bigley was interacting in the community.
 12 Q So you took it upon yourself to basically
 13 present evidence which supported the petition?
 14 MS. POHLAND: Objection, asked and answered.
 15 THE COURT: Overruled. You may answer.
 16 MS. VASSAR: Yes. Okay. I included it
 17 because I thought it might be of interest to the Court
 18 to get a better idea about how Mr. Bigley functions
 19 when he's outside of the protective setting of API.
 20 That was my only agenda.
 21 BY MR. GOTTSTEIN:
 22 Q Now, did you say that Mr. Bigley has spent
 23 over 200 days in custody over at API in the past year?
 24 A That's what Ms. Davis reported to me,
 25 Ms. Lisa Davis, who was the original petitioner in

1 this matter.
 2 Q Is it your understanding that patients are
 3 billed about \$1,000 a day --
 4 MS. POHLAND: Objection, relevance.
 5 BY MR. GOTTSTEIN:
 6 Q -- at API?
 7 THE COURT: What is the relevance of the
 8 cost?
 9 MR. GOTTSTEIN: To the proceeding? It's for
 10 the less-intrusive alternative basically, kind of lay
 11 groundwork that they're spending this much on what
 12 they're doing, and if they just provided a
 13 (indiscernible) alternative --
 14 MS. POHLAND: Your Honor, if I may, the
 15 less-intrusive alternative is the alternative
 16 (indiscernible) the patient. It has little if nothing
 17 to do with the cost to the State of the treatment.
 18 (Indiscernible) the cost (indiscernible).
 19 THE COURT: If what you're trying to make
 20 that, by doing these admissions, the State is
 21 indicating a willingness to spend \$1,000, and you want
 22 to take that (indiscernible) and suggest that it
 23 should be spent differently?
 24 MR. GOTTSTEIN: I think at a minimum, yes,
 25 that that's a constitutional requirement under Myers.

1 MS. POHLAND: The State (indiscernible) has
2 any knowledge of (indiscernible) or the jail's billing
3 practices or charges.

4 MR. GOTTSTEIN: That's (indiscernible).

5 THE COURT: I don't think this is the --
6 well, let me ask.

7 Do you have any idea about the billing
8 practices or the costs?

9 MS. VASSAR: I have no idea, Your Honor.

10 THE COURT: Okay. The foundation
11 (indiscernible).

12 MR. GOTTSTEIN: Okay. Well, that was my
13 (indiscernible), Your Honor.

14 I have no further questions.

15 THE COURT: I will allow the State an
16 opportunity to question you.

17 MS. VASSAR: Sure.

18 THE COURT: (Indiscernible) 11:15.

19 MS. VASSAR: Okay. That's fine.

20 THE COURT: Mr. Bigley, I'm going to ask you
21 to step outside again, because we're going to do a
22 person on this telephone that's going to be hard to
23 hear, okay? You can come back a little later, okay?

24 MR. BIGLEY: (Indiscernible.)

25 THE COURT: I'll give it to you later.

1 MS. DERRY: Your Honor, not to be
2 inconvenient, but I am going to wait until closer to
3 11:15, because Ms. Shackelford is actually returning
4 to her hotel room, Your Honor, to have our call at
5 11:15.

6 THE COURT: (Indiscernible) give her a call
7 and see if she's there. If she's not there --

8 MS. DERRY: Yes, Your Honor.

9 Madame Clerk?

10 THE CLERK: Yes.

11 MS. DERRY: Could you please call this phone
12 number for me, which is 404-577-1234, and then ask for
13 room 1960.

14 THE COURT: (Indiscernible.)

15 THE CLERK: Am I putting this person on the
16 record, as well?

17 THE COURT: There is little chance that we
18 are going to be able to hear this witness if she is
19 being projected over a --

20 THE CLERK: Am I putting this person on the
21 record as well as a conference call, or am I just
22 confirming the person is available?

23 MS. DERRY: She's going to testify.

24 THE COURT: Whatever it takes to get ahold of
25 her. We'll see if we can hear her. I am skeptical.

1 Just bill it to the court.

2 But we're going to have to be -- if we can't
3 hear her, we're going to have to figure out some other
4 way to have her testify telephonically. I don't know
5 if this phone -- can we phone her from this phone?

6 MS. DERRY: I think we could. Let me -- if
7 you (indiscernible), Your Honor, I'll (indiscernible).

8 THE COURT: All right. Madame Clerk, don't
9 do this. We are going to try a different recording
10 thing. We are going to try and call her through this
11 phone.

12 MS. DERRY: And Mr. Hughes knows how to
13 conference on this type of phone. Are we
14 (indiscernible).

15 THE CLERK: Okay. You cut out. I heard
16 courtroom and something about everybody.

17 MS. DERRY: That's because we transferred.
18 So you're on speakerphone.

19 THE WITNESS: Yeah. I'm going to put you on
20 speaker. I'm going to see if you can hear me.

21 MS. DERRY: Okay.

22 THE WITNESS: Can you hear me okay?

23 THE COURT: Yes, we can.

24 And, Madame Clerk, are we on the record?

25 THE CLERK: We have not gone off record. And

1 I do hear the person on the phone.

2 THE COURT: You can hear us all right?

3 THE WITNESS: Yes, I can.

4 THE COURT: All right. And Madame Clerk can
5 hear us?

6 THE CLERK: Correct.

7 THE COURT: All right. Ms. Shackelford, my
8 name is William Morse. I am a superior court judge.

9 We are holding a hearing regarding William
10 Bigley. The State is calling you as a witness.

11 Present in the courtroom is Mr. Gottstein,
12 Mr. Bigley's attorney, a representative from API, the
13 public guardian, and (indiscernible) for the State.
14 I'll have each of the attorneys identify themselves as
15 they question you.

16 Would you please stand and raise your right
17 hand.

18 THE WITNESS: Yes, Your Honor. Go ahead.
19 (Oath administered.)

20 THE WITNESS: Yes, I do.

21 THE COURT: (Indiscernible.)

22 THE WITNESS: Yes, I do.

23 THE COURT: Would you please state and spell
24 your full name, please.

25 THE WITNESS: Wendi, W-E-N-D-I, L is my

1 middle initial, Shackelford, S-H-A-C-K-E-L-F-O-R-D.
 2 THE COURT: All right. Now, you may proceed.
 3 MS. DERRY: Thank you, Your Honor.
 4 WENDI L. SHACKELFORD
 5 called as a witness on behalf of the State, testified
 6 telephonically as follows on:
 7 DIRECT EXAMINATION
 8 BY MS. DERRY:
 9 Q Ms. Shackelford, are you familiar with
 10 Mr. Bigley?
 11 THE COURT: Tell her your name, please.
 12 BY MS. DERRY:
 13 Q Oh, this is Laura Derry.
 14 A Yes, I am familiar with him.
 15 Q And how are you familiar with Mr. Bigley?
 16 A Through my crisis intervention team contacts.
 17 That's our mental-health-related division within the
 18 police department.
 19 Q And what do you know to have been happening
 20 in Mr. Bigley's life in the last six months?
 21 A Well, he's been having a lot of police
 22 contacts.
 23 And so what I did is I requested all of the
 24 calls for service related to Mr. Bigley, and I put
 25 them in a spreadsheet so that I could have a visual

1 look at what might be going on, looking for patterns,
 2 trying -- trying to maybe come up with some ideas or
 3 problem solving.
 4 And I created a three-page spreadsheet dating
 5 from March 10th, 2008 to August 10th, 2008, just
 6 documenting, you know, things like the date, the time,
 7 the incident or case number, who was the person
 8 calling, what the location was, what was the gist of
 9 the call related to, how it was resolved, whether
 10 there was a CIT officer or not involved, and whether
 11 he was transported, and if he was transported, where
 12 to.
 13 MS. POHLAND: (Indiscernible.)
 14 MS. DERRY: Yes. And I'd like to note for
 15 the record that the spreadsheet that Ms. Shackelford
 16 is referring to was included in the visitor's report.
 17 BY MS. DERRY:
 18 Q And, Ms. Shackelford, Mr. Gottstein has
 19 had -- I'm sorry, Mr. Bigley has had over --
 20 THE COURT: Are you (indiscernible)?
 21 MS. DERRY: No. I'm going to start over.
 22 BY MS. DERRY:
 23 Q Ms. Shackelford, to your knowledge, how many
 24 times in the last six months has Mr. Bigley actually
 25 been arrested and taken to jail?

1 A Well, I can tell you that between March 10th
 2 of '08 and August 10th of '08, on this spreadsheet --
 3 give me just a second to count them.
 4 And then I had -- our APD keeps internal
 5 records related to, you know, who needs to go to court
 6 in order to get paperwork done and where it needs to
 7 go type of thing. And so I asked the records
 8 supervisor -- let's see.
 9 The date of the e-mail is October 27th. It's
 10 to me from Kimberly Norton. She was the supervisor on
 11 duty that day when I asked.
 12 And what I asked her for was a list from May
 13 of 2008 to current, so to current meaning
 14 October 27th, when she sent this, anything that he had
 15 been arrested for and the charges and whether it was
 16 municipal or state.
 17 And from that e-mail, there was -- do you
 18 want the charges or do you want just the arrests --
 19 number of arrests?
 20 Q Both. I want the number of charges.
 21 A Well, the number -- well, the type of
 22 charges, I should be more specific.
 23 On June 22nd of 2008, a disorderly conduct
 24 along with a criminal mischief.
 25 And that was a state case. All the others

1 from this point on are municipal prosecution.
 2 He was arrested on July 11th of '08, charged
 3 with trespass.
 4 July 23rd of '08, charged with trespass and
 5 disorderly conduct.
 6 August 10th of '08, charged with trespass.
 7 August 25th of '08, trespass.
 8 September 5th of '08, trespass.
 9 September 18th of '08, trespass and violation
 10 of conditions of release.
 11 September 27th of '08, trespass.
 12 And then October 16th of '08, trespass.
 13 In my spreadsheet, which goes a little bit
 14 further back in March -- give me just a second while I
 15 check those. There is an arrest, and I don't know
 16 whether it's city or state. There is an arrest for
 17 trespass on April 10th, 2008. The complainant was
 18 First National Bank. There was an arrest for trespass
 19 on April 10th, four hours later. So the first
 20 April 10th was at 10:12 a.m.; the second arrest on
 21 April 10th, 2008 was at 1:48 p.m. The complainant was
 22 First National Bank. He was arrested and charged
 23 again with trespass.
 24 On -- and then the next one I have is
 25 June 22nd, as far as arrests. But there's multiple

1 contacts between where there wasn't an arrest.

2 Q And do you know of any arrests in September
3 or October?

4 A Yes. Those are the ones I just read. In
5 September -- on September 5th trespass, September 18th
6 trespass and violation of conditions of release
7 September 27th trespass, and October 16th trespass.

8 Q And could you list, aside from the bank,
9 where -- some of those familiar places that Mr. Bigley
10 either makes police contact -- or has the police
11 called upon him or is arrested?

12 A Sure. And that was one of the patterns I was
13 looking for. Kaladi Brothers downtown, Chelsea Inn.
14 From Mr. Gottstein's office specifically, there's been
15 one, two, three, four, five, six, seven, eight, nine,
16 ten, 11, 12, 13 phone calls from Mr. Gottstein's
17 address on G Street, basically related to refusing to
18 leave, trespassing type stuff.

19 There is a couple from the Midtown Lodge,
20 First National Bank. One was from the Anchorage jail,
21 the Office of Public Advocacy, the legislature
22 building, Holy Family Cathedral. Sourdough Motel
23 there's -- in three days, there's three calls to the
24 Sourdough Motel.

25 There's several from the Office of Public

1 understands what he does is wrong when he does --
2 makes these police -- when the police are called for
3 him?

4 A I actually work for the Anchorage Police
5 Department. And can you ask me what you -- can you
6 ask me that --

7 Q Does Mr. Bigley intentionally trespass?

8 A I'm sorry. There is a little bit of an echo.

9 Q Does Mr. Bigley understand that he's
10 trespassing?

11 A I don't know because I haven't directly
12 talked to him when that incident has occurred.

13 Q And do the police -- they -- what makes them
14 decide whether or not to arrest him?

15 A Well, based on probably the contact at the
16 scene with the person who represents the agency that's
17 called, and they're given information as to, you know,
18 he's been trespassed before.

19 Some of the officers actually have personal
20 knowledge of his trespass, locations and such. The
21 officers who work downtown often are aware of some of
22 the places he's been trespassed from.

23 But I -- I'm going to assume, since it's
24 procedure, that there's been a private person's arrest
25 completed and the victim is indicating they want to

1 Advocacy, Country Kitchen, the Nesbitt Courthouse, the
2 Bus Accommodation Center, Alaska Regional,
3 Starbucks -- multiple Starbucks. One is the
4 magistrate's office, as well.

5 Q Okay. And when Mr. Bigley has run-ins with
6 police, what typically happens as far as police
7 procedure goes with Mr. Bigley?

8 A Many times he leaves before we get there, and
9 other times he's been given a trespass warning. Or if
10 the victim wants to press charges, he's been arrested
11 for trespass or disorderly conduct, or something along
12 those lines.

13 Q And have you actually had any contact with
14 Bill Bigley in the last six months?

15 A No. I'm assuming you mean direct, face
16 (indiscernible) interactions?

17 Q (Indiscernible.)

18 A No. And I haven't had phone contact with
19 him, either.

20 Q And you are part of a working group trying to
21 help Mr. Bigley; is that correct?

22 A Yes. Trying to come up with some
23 problem-solving ideas.

24 Q And as your work for the department of
25 corrections, do you believe that Mr. Bigley

1 press charges.

2 Q And to your knowledge in the police reports
3 that you read, do -- is Mr. Bigley ever out of hand
4 while he's being transported to jail?

5 A I've heard recordings of him. Can you define
6 out of hand?

7 Q Is he -- is he very upset?

8 A Yeah. He's been -- yeah, verbally ranting
9 and raving is the common thing that I see in the --
10 you know, in the officer verbiage, delusional, those
11 kinds of things. Very -- he's very verbal. I'm
12 looking at some of the list here. Sometimes it's
13 cursing, screaming at people, that -- that type of
14 behavior.

15 Q And when Mr. Bigley goes to jail, what
16 happens at the jail?

17 A I don't know. That would probably be a
18 question for Laura Brooks. I don't know if -- I don't
19 know about his behavior there at the jail other than,
20 you know, what I've been told by them.

21 Q Okay. And do you -- do you believe that
22 Mr. Bigley -- that these police run-ins will continue
23 without assistance from the community and the
24 hospital?

25 A Yes. I'm -- I'm concerned Mr. Bigley's -- my

1 biggest concern is that he's going to engage with
2 somebody who doesn't understand mental health issues
3 and doesn't understand what's going on, and they are
4 going to overreact and hurt him. Because he's very
5 animated, he's loud, he's boisterous, and it scares
6 people.

7 And I am concerned for his safety, and for
8 the safety of people who are frequenting the
9 businesses where he likes to frequent himself.

10 MS. DERRY: No further questions from me,
11 Ms. Shackelford. Thank you.

12 THE COURT: Mr. Gottstein?

13 MR. GOTTSTEIN: Yes. This is Jim Gottstein.

14 THE WITNESS: Hi, Mr. Gottstein.

15 MR. GOTTSTEIN: Excuse me?

16 THE WITNESS: I said hello, Mr. Gottstein.

17 WENDI L. SHACKELFORD

18 testified telephonically as follows on:

19 CROSS EXAMINATION

20 BY MR. GOTTSTEIN:

21 Q You haven't returned my calls. I feel
22 slighted.

23 A I've been in Atlanta.

24 Q Anyway, there were other ones, too. But in
25 any event, is it fair to say that the community is in

1 an uproar over Mr. Bigley's behavior?

2 MS. POHLAND: Objection, calls for
3 speculation.

4 THE COURT: Based on your experience, ma'am,
5 can you answer that? Don't speculate.

6 THE WITNESS: Sure. Can you tell me what you
7 mean by "uproar"?

8 BY MR. GOTTSTEIN:

9 Q Well, I -- I -- do we -- are people upset
10 that Mr. Bigley is engaging in -- is the community
11 generally upset about what's happening with Mr. Bigley
12 in the community?

13 MS. POHLAND: Objection, calls for
14 speculation.

15 BY MR. GOTTSTEIN:

16 Q In your experience.

17 THE COURT: Ma'am, you can answer just based
18 on your interaction with those who have run across
19 him. You don't --

20 THE WITNESS: Sure.

21 THE COURT: -- need to speculate about some
22 larger community.

23 THE WITNESS: Okay. Well, basically my --
24 what I -- how I can best answer it is what I've read
25 in the -- in the paperwork that I used to put the

1 spreadsheet together. Would that -- would that be an
2 appropriate way to answer what you're asking me,
3 Mr. Gottstein?

4 THE COURT: Go ahead.

5 THE WITNESS: And I'll just kind of read some
6 of the examples that are here. Things like refusing
7 to leave, get -- these are the words that were used in
8 the documentation, so that's what I'm going to give
9 you.

10 Yelling, getting out of hand, screaming he is
11 God and Adolf Hitler and going to hurt people,
12 subject's not supposed to be in the bank, he is here
13 with his guardian who is trying to calm him down, he
14 is in a verbal argument in the bank with the guardian,
15 he is asking people if they want to fight, he's
16 getting in people's faces, he's yelling racial slurs,
17 he's ranting and raving.

18 BY MR. GOTTSTEIN:

19 Q I'm sorry. I hate to interrupt you, but I
20 think I phrased my question poorly.

21 Are you aware that -- of a medication that
22 API has basically been providing --

23 MS. POHLAND: Objection. Is Mr. Gottstein
24 testifying?

25 THE COURT: Let him ask the question then you

1 can make your objection.

2 BY MR. GOTTSTEIN:

3 Q Are you aware of a stay or some other legal
4 prohibition from API medicating Mr. Bigley as they
5 have in the past?

6 MS. POHLAND: Objection.

7 THE WITNESS: I know there's issues related
8 to medication. I don't know all the details, but I do
9 know that there is an issue related to medication.

10 I am not sure if it's just API. I know it's
11 come up related to DOC, so I'm not sure -- is that
12 what you're talking about?

13 BY MR. GOTTSTEIN:

14 Q Well, is -- is there a pattern of Mr. Bigley
15 being arrested and then charges dismissed because he's
16 found to be incompetent to stand trial? Are you aware
17 of that pattern?

18 A Yes.

19 Q Okay. Are you aware of (indiscernible) made
20 that when he's taken to API, that he's -- until
21 recent -- until this admission, discharged pretty
22 immediately?

23 MS. POHLAND: Objection, calls for
24 speculation, summation.

25 THE COURT: If -- we're only asking for your

1 personal knowledge. If you don't know, ma'am, please
2 don't speculate.

3 THE WITNESS: There -- Mr. Gottstein, can you
4 ask me the question again, please?

5 BY MR. GOTTSTEIN:

6 Q Are you aware of a pattern of -- this May, of
7 Mr. Bigley being taken to API, say from after being --
8 the charges being dismissed for evaluation, and then
9 released by API pretty immediately?

10 A I don't know if I would call it a pattern. I
11 do know of several specific incidents where that's
12 happened.

13 Q And are you -- do you know similarly of
14 instances where that's happened, say when emergency
15 services has been involved?

16 A I'm aware of -- I know that emergency
17 services came out in the field when APD had contact
18 and did an evaluation on him, and completed and
19 obtained an ex parte order for him to go to API. I
20 want to say that was two or three weeks ago, maybe a
21 month.

22 I don't -- I don't know about -- Providence
23 is not usually involved to my knowledge. I know
24 there's been maybe one or two instances as of late.
25 But it's usually corrections and API that are kind of

1 order for a person to go to API or they can recommend
2 that the person go to Providence Psych. I don't know
3 if they transport people anymore. I know they have in
4 the past.

5 THE COURT: Thank you.

6 THE WITNESS: They have called us, too, to go
7 out into the field and contact people, and they'll
8 report, you know, what the conversation was, for
9 example, on the phone, and officers go out in the
10 field and examine the situation.

11 THE COURT: Thank you.

12 Mr. Gottstein.

13 BY MR. GOTTSTEIN:

14 Q So is it fair -- is it your -- do you
15 understand that when emergency services does an
16 evaluation, it might then file an ex parte application
17 when the -- when they believe the person meets
18 commitment criteria?

19 A I'm sorry. There is a little bit of an echo
20 in the phone. Can you ask that one more time,
21 please?

22 Q Does emergency service do evaluations and
23 then file ex parte applications when they believe
24 someone meets commitment criteria?

25 MS. POHLAND: Objection, relevance.

1 the direct contact.

2 THE COURT: This is Judge Morse. Just so --
3 I'm not sure of the term that was used, emergency
4 services. Is that a title of an entity, or is that
5 just a generic --

6 THE WITNESS: I'm understanding you to mean
7 Mobile Crisis; am I incorrect?

8 MR. GOTTSTEIN: That's correct.

9 THE COURT: And could you tell me what Mobile
10 Crisis is?

11 THE WITNESS: Say that again, Your Honor.

12 THE COURT: Could you just describe what
13 Mobile Crisis is?

14 THE WITNESS: Sure. Basically, there is a
15 group -- they are employed by the Anchorage Community
16 Mental Health Services, formerly Southcentral
17 Counseling. They work in the psychiatric emergency
18 room at Providence Hospital. They run the crisis
19 line, for example, out of that hospital.

20 And they'll go into the field on occasion to
21 do, you know, in-the-field type of consult,
22 evaluation.

23 If they feel someone meets the title 47
24 standard of gravely disabled or likely to cause harm
25 to self or others, they can go obtain an ex parte

1 BY MR. GOTTSTEIN:

2 Q Is that your -- is that your understanding?

3 A I don't know what level the evaluation is.

4 And I'm using that just as a generic term
5 because, you know, the evaluation and the
6 (indiscernible) psychiatric emergency room means one
7 thing, evaluation at API means one thing.

8 So what I am saying is Mobile Crisis can go
9 into the field and meet with that person in the
10 circumstance and determine if they have probable cause
11 to apply for an ex parte order. Does that answer what
12 you're asking me?

13 Q Yes. And if I can maybe --

14 THE COURT: Go ahead.

15 BY MR. GOTTSTEIN:

16 Q -- repeat my -- so am I correct that it's
17 your understanding that emergency services will, if
18 they think it's appropriate, file ex parte petitions
19 when they think someone meets commitment criteria?

20 MS. POHLAND: Objection, relevance. This
21 hearing is regarding medication, not commitment.

22 THE COURT: But isn't this -- the State
23 thought it was relevant for the Court to understand
24 his since-March history with police. Isn't this just
25 a follow-up on -- and a clarification of the type of

1 interaction?
 2 MS. POHLAND: I don't believe the commitment
 3 issue is, no.
 4 I believe the State's testimony -- or what
 5 the State was bringing up of Ms. Shackelford goes to
 6 Mr. Bigley's competence and to less-intrusive
 7 alternatives, in that medication might be his
 8 less-intrusive alternative to repeated arrests and
 9 incarcerations.
 10 THE COURT: I'll allow the -- overrule the
 11 objection. You may continue.
 12 I am not interested in whether or not an -- I
 13 mean, I am interested in the fact that Mobile services
 14 makes some sort of screening criteria and has the
 15 capacity and the history of occasionally filing a
 16 Title 47 petition. And I appreciate that they are
 17 crisis intervention folks who attempt to help an
 18 individual, and that may include a Title 47 petition.
 19 That, I understand.
 20 Now --
 21 BY MR. GOTTSTEIN:
 22 Q So it's your understanding that -- well, do
 23 you remember the question? Was that a "yes"?
 24 A I'm going to need you to ask it again, if you
 25 would.

1 Q So do you understand that emergency services
 2 will file an ex parte application if they believe the
 3 person meets commitment criteria?
 4 A I don't work for Mobile Crisis. I don't know
 5 what their internal conversations are related to
 6 whether they file or not.
 7 I do know they have the capability, if they
 8 have probable cause under Title 47, that they can
 9 apply for an ex parte order, just like a police
 10 officer can or anyone else.
 11 Q Okay. And I -- what I'm trying to get is --
 12 is are you aware of a -- really any change in the way
 13 that -- perception of the change in the way that API
 14 is handling these since May of this year, when
 15 Mr. Bigley gets brought to API?
 16 MS. POHLAND: Objection, calls for
 17 speculation.
 18 THE COURT: If you don't know, ma'am, don't
 19 speculate.
 20 THE WITNESS: I don't know, so I'm not really
 21 sure how to answer that question.
 22 BY MR. GOTTSTEIN:
 23 Q Well, that's what I asked is if you were
 24 aware.
 25 Do you -- are you aware of any pressure on

1 API to do something about Mr. Bigley now?
 2 MS. POHLAND: Objection, calls for
 3 speculation, relevance.
 4 THE COURT: Overruled. He is laying a
 5 foundation.
 6 Go ahead, you may answer the question, ma'am.
 7 THE WITNESS: Am I aware of pressure to do
 8 something about Mr. Bigley; is that what you asked?
 9 BY MR. GOTTSTEIN:
 10 Q Yes.
 11 A I'm not really sure what you're referring to.
 12 Q Okay. Well, I'll rephrase. You know, I just
 13 want to find out what you know about this.
 14 Do -- do you know if anybody has been
 15 complaining about API discharging Mr. Bigley too --
 16 you know, very quickly since May?
 17 MS. POHLAND: Objection, asked and answered.
 18 THE COURT: You may answer, ma'am.
 19 Overruled.
 20 THE WITNESS: Am I aware that they're
 21 discharging him too quickly since May?
 22 BY MR. GOTTSTEIN:
 23 Q Yeah. In other words, is there -- is there a
 24 feeling that there's a difference since May?
 25 A A difference since May. I -- I don't really

1 see a difference. I have a spreadsheet here that goes
 2 back to March that's -- I mean, it's the same for six
 3 months of time, the same issues over and over again.
 4 Q Okay. Now, are -- are you aware of a group
 5 of people that -- that meet to talk about individuals
 6 such as Mr. Bigley who come into contact -- you know,
 7 people diagnosed with mental illness that come into
 8 contacts with the police and, you know, some people
 9 call them frequent fliers. Are you aware of that
 10 group that meets and talks about those type of people,
 11 that includes talking about Mr. Bigley's situation?
 12 A I am aware of a group of us that have met to
 13 try to come up with solutions to remedy the situation
 14 with Mr. Bigley, Mr. Bigley being criminalized because
 15 he's ill, trying to -- and that's why I put this
 16 spreadsheet together was to try to see in a visual way
 17 patterns, what's going on. He needs mental health
 18 treatment, not incarceration.
 19 So I have been at two of those meetings, one
 20 was in person and one was on the phone, to try to
 21 problem solve and figure out, how do we get this out
 22 of the criminal court with him being charged with
 23 crimes related to his illness that he needs assistance
 24 with.
 25 Q Okay. Are you aware of his efforts not to be

1 given psychotropic medications against his will?
 2 MS. POHLAND: Objection, calls for
 3 speculation.
 4 THE COURT: Overruled.
 5 You can answer that question if you know,
 6 ma'am. If you don't, don't speculate.
 7 THE WITNESS: I know that you are directly
 8 involved in the medication issue. I don't know
 9 personally from Mr. Bigley himself what his stand is
 10 on medication.
 11 BY MR. GOTTSTEIN:
 12 Q Okay. Are you suggesting that I'm putting
 13 him up to it?
 14 A No. I'm suggesting that I know you're
 15 involved in the issue related to medication with
 16 Mr. Bigley, but I have not had a personal conversation
 17 with Mr. Bigley in which he has personally told me his
 18 stand related to medication.
 19 Q Okay. Now, who's on that group?
 20 A You could contact Mr. Girod. He could tell
 21 you who's been there probably. I believe he's
 22 Division of Behavioral Health. I'm trying to remember
 23 his first name. It starts with a G.
 24 MS. DERRY: His name is George Girod, Your
 25 Honor.

1 THE WITNESS: George, yes.
 2 BY MR. GOTTSTEIN:
 3 Q Okay. So has anybody, to your knowledge,
 4 suggested that I get involved in conversations about
 5 problem solving for Mr. Bigley?
 6 MS. DERRY: Objection, relevance.
 7 THE COURT: Sustained.
 8 THE WITNESS: I'm sorry; I couldn't
 9 understand what --
 10 THE COURT: He's going to ask another
 11 question.
 12 BY MR. GOTTSTEIN:
 13 Q Do -- if you have an opinion, say it. If
 14 not, don't.
 15 Do you think it would be helpful for
 16 Mr. Bigley if there was someone who was with him in
 17 the community?
 18 A Let me just make sure I -- again, there is an
 19 echo. You are asking me do I think it would be
 20 beneficial for him to have somebody with him in the
 21 community?
 22 Q Yes.
 23 A It's my understanding that Mr. Bigley -- it
 24 takes time for people -- for him to let them into his
 25 personal circle, that there's issues, you know, with

1 trust and developing that relationship.
 2 I know that -- I know Mr. Cornils, when he
 3 was working with Choices, was trying to do that.
 4 That's been a little time ago. It was August of
 5 '07 last time I talked with Paul about that kind of an
 6 interaction.
 7 It seems to me, since you're asking what I
 8 see in my opinion, when I look at these -- just this
 9 six-month snapshot of interaction in community, it
 10 seems pretty clear to me that he's not interacting
 11 well in the community with anyone.
 12 Q Right. And my question was whether you
 13 thought -- if he had someone that was with him,
 14 helping him stay out of trouble or trying to --
 15 whether that would be -- do you think that would be
 16 beneficial?
 17 MS. POHLAND: Objection (indiscernible).
 18 THE WITNESS: I --
 19 THE COURT: Well, it was asked but not
 20 answered.
 21 THE WITNESS: I didn't hear whether there was
 22 an objection and whether it was sustained or --
 23 THE COURT: You may answer the question,
 24 ma'am.
 25 THE WITNESS: I can? Is that what you said?

1 I don't -- personally I don't think that
 2 Mr. Bigley would engage with somebody in the
 3 community.
 4 BY MR. GOTTSTEIN:
 5 Q Is -- well -- I -- is it -- would it be a
 6 fair characterization that none of the criminal
 7 involvements would be considered serious crimes?
 8 A Can you define "serious crime"?
 9 Q I mean they don't involve any harm to anyone,
 10 do they?
 11 A Well, you can assault somebody by words or
 12 conduct and not having touched them. So sometimes
 13 serious crime is subjective. If somebody feels
 14 afraid, that could be a serious crime when you're on
 15 the receiving end of that.
 16 If you're talking about has he punched
 17 someone, has he stabbed someone, no.
 18 So I don't know if maybe you want to be more
 19 specific, or does that answer what you're trying to
 20 ask me?
 21 MR. GOTTSTEIN: No. That's -- that's the
 22 answer that I'm looking for.
 23 Thank you. I have no other questions.
 24 THE COURT: Any additional questions?
 25 MS. DERRY: Briefly, Your Honor.

1 WENDI SHACKELFORD

2 testified telephonically as follows on:

3 REDIRECT EXAMINATION

4 BY MS. DERRY:

5 Q Ms. Shackelford, this is Laura Derry again.

6 Does Mr. Bigley get arrested from his
7 attorney's office?

8 A No.

9 Q Does he have contact with the police from his
10 attorney's office?

11 A Do you mean -- do you mean do we go to the
12 attorney's office, or do you mean do we talk to
13 Mr. Bigley at his attorney's office?

14 Q Do the police get called because
15 Mr. Gottstein called them?

16 A Well, I don't know each time who specifically
17 called, but they are calling from Mr. Gottstein's
18 address.

19 Q And calling from that address, the police
20 often do arrive to the address of Mr. Gottstein's
21 office?

22 A I can tell you exactly when and where and
23 what the gist of the calls were in that six-month
24 period, if you would like me to be specific on that.

25 Q No. You answered that earlier. I was just

1 however, for example on April 10th, we had one, two,
2 three, four, five, six, seven calls between 8:19 in
3 the morning and 3:30 in the afternoon related to
4 Mr. Bigley.

5 Q Okay. Thank you. No further questions.

6 WENDI SHACKELFORD

7 testified telephonically as follows on:

8 RECROSS EXAMINATION

9 BY MR. GOTTSTEIN:

10 Q So would you -- would you think it's a fair
11 characterization that the calls from my office are
12 similar to the calls from his guardian's office?

13 A Give me just a moment and I will be able to
14 answer that.

15 The issues, for example, with OPA, the Office
16 of Public Advocacy, and your office, Mr. Gottstein,
17 are very similar things, like refusing to leave,
18 verbal, disruptive, screaming, trespassing multiple
19 times, has been trespassed. Yes, I would say they're
20 very similar.

21 MR. GOTTSTEIN: I have no further questions.

22 THE COURT: Ms. Shackelford, thank you very
23 much.

24 THE WITNESS: Yes, Your Honor. May I be
25 excused?

1 recapping this.

2 But is it your personal opinion that
3 Mr. Bigley is criminalized by having police contact at
4 Mr. Gottstein's address?

5 A He's criminalized -- yes, to that specific
6 address. But in all of the other 30 entries that I
7 have related to his trespassing, his behavior that
8 scares people, him being arrested for trespass, that
9 doesn't address his mental health situation. His
10 behavior relates to his mental health condition, just
11 like a heart attack relates to heart condition.

12 Q And in your -- in your opinion of what you
13 know of Mr. Bigley, he is incapable of helping
14 himself; is that correct?

15 A It appears to me that whatever he is doing or
16 not doing is not working, when I sit here and look at
17 six months' worth of calls.

18 Q And he -- the calls have increased in the
19 last year, from 2007 to 2008; is that correct?

20 A That I don't know specifically because I
21 don't have the -- the other dates here with me. I
22 just specifically snapshotted this six-month period of
23 time.

24 Q Okay.

25 A I could tell you in that six-month snapshot,

1 THE COURT: You may be excused, and you may
2 hang up.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 THE COURT: And we were -- I don't remember
6 where we ended with Ms. --

7 MS. DERRY: I believe that it was my turn
8 to --

9 THE COURT: You were done with Ms. Vassar?

10 MR. GOTTSTEIN: Yes.

11 THE COURT: All right. So let's do redirect
12 and we'll try to get her (indiscernible).

13 MARIEANN VASSAR

14 testified as follows on:

15 REDIRECT EXAMINATION

16 BY MS. DERRY:

17 Q Ms. Vassar, have you -- how long have you
18 known Bill Bigley?

19 A Got to be coming up on five years now I
20 think.

21 Q And have you seen him in this last year,
22 2008?

23 A Yes.

24 Q What is your personal opinion of Bill's
25 ability to -- of Mr. Bigley's ability to tell you his

1 needs and wants in this last year?

2 A I see Bill out in the community when he's in
3 the community at times.

4 THE COURT: You need to speak louder.

5 THE WITNESS: Of course I see Bill when he is
6 here. And you know, usually when I see him, he tells
7 me what he wants. I don't know if it's necessarily
8 what he needs.

9 But if he's here, he wants to be out. If
10 he's on the street, he wants the million dollars he
11 believes that the public guardian is holding for him
12 or stealing from him, depending on the day what it
13 is.

14 So is he able to articulate that he needs a
15 safe place to stay, food to eat? No. He doesn't talk
16 about those kinds of things with me. He talks
17 about -- a lot of times the things that he talks about
18 are somewhat delusionally based, that he wants to go
19 to California to see Al Pacino or now he wants to go
20 to Cuba. He wants the money that he believes he has.

21 But he doesn't really talk about basic needs
22 and how he's going to meet those needs with me.

23 BY MS. DERRY:

24 Q When Bill says to you -- when Mr. Bigley,
25 pardon me, says to you, hey, that's okay, what does

1 that mean to you?

2 A You mean, it doesn't matter or --

3 Q No -- or even, that's okay.

4 A That's okay, that's okay? It depends on what
5 I've asked him. I mean, he's -- I'm not quite sure
6 what you mean.

7 Q Well, do you -- when Bill tells you if he's
8 hungry, do you accept that as consent?

9 A I don't think he's ever told me he's hungry.
10 He's asked me for a cup of coffee. I've bought him a
11 cup of coffee when he's out in the community and I see
12 him in coffee shops. And we have that kind of
13 transaction, that kind of exchange sometimes. But
14 that's pretty limited to circumstances.

15 Q And does he often refuse to speak to you here
16 at the hospital?

17 A He will usually speak to me, but he will not
18 speak to me in a directed fashion or not -- when I
19 tell him what I'm here for -- usually when I see Bill
20 at the hospital, it's because of a medication
21 petition, and I come to him to speak about that.

22 And of late, I would say within the last
23 couple of years, it's been harder for him to attend to
24 discussing and focusing on that issue when I speak
25 with him.

1 In the past when I have spoken with him about
2 this matter, he's been a little better able to focus
3 on why he doesn't want medications or what his
4 position is on taking medications at that time.

5 There was a time, probably more than two
6 years ago now, when he was better able to articulate
7 and give me direction about what he wanted. I am
8 seeing that become more and more compromised. It's
9 harder for him to focus on the topic at hand. It's
10 harder for him to articulate what he wants.

11 Q And do you believe that Mr. Bigley has
12 capacity at this time?

13 A No, I do not.

14 Q And do you believe that he's capable of
15 insight regarding his mental illness?

16 A He has no insight regarding his mental
17 illness.

18 Q Do you think that he knows that he has a
19 mental illness?

20 A No, I don't think --

21 THE CLERK: This is the clerk speaking.
22 You're fading again. And actually Ms. Shackelford was
23 a lot louder than the witness in the courtroom. So if
24 you can just keep your voice up, please.

25 MS. VASSAR: Okay. I will.

1 BY MS. DERRY:

2 Q And do -- oh, I asked that. Is he capable
3 of -- if you believe he's capable of informed consent?

4 A I do not believe he is capable of informed
5 consent --

6 Q And --

7 A -- at this time.

8 Q And from your past experience from him, he
9 was medicated in the past?

10 A He has been medicated in the past, yes.

11 Q And you -- does he -- that was what I asked.
12 I asked you did he -- do you think he understands that
13 he has a mental illness?

14 A No, I do not believe that he understands
15 that.

16 MS. DERRY: And -- no further questions.

17 MR. GOTTSTEIN: May I, Your Honor?

18 THE COURT: Yes.

19 MARIEANN VASSAR

20 testified as follows on:

21 RE-CROSS EXAMINATION

22 BY MR. GOTTSTEIN:

23 Q Now, you said at this time you don't think
24 he's capable of giving informed consent?

25 A That's correct.

1 Q (Indiscernible) some (indiscernible)?

2 A No, I don't think I've ever -- I don't think
3 I've ever been involved in a proceeding where I
4 believed Mr. Bigley had the capacity to give or
5 withhold informed consent.

6 But that doesn't mean in the future he -- he
7 may have capacity. I mean, it's on a case-by-case
8 basis. And at this time, in this case, I don't
9 believe he has capacity.

10 Q So do you think -- (indiscernible) you think
11 outside a proceeding that he ever had capacity
12 (indiscernible)?

13 A Outside --

14 Q Outside of a proceeding. You said in --
15 you've never been in a proceeding where you felt he
16 had --

17 A I would have no way of knowing.

18 MS. POHLAND: Object.

19 BY MR. GOTTSTEIN:

20 Q Okay. I was just wondering why you said at
21 this time. Okay. Don't you think that Mr. Bigley
22 knows that your testimony often causes him to be
23 drugged against his will?

24 MS. POHLAND: Objection, calls for
25 speculation.

1 THE COURT: Overruled. You may answer.

2 THE WITNESS: Okay. You know, I've often
3 wondered about that. Because there are times -- Bill
4 always recognizes me. He always knows who I am.

5 And it's true, I have given testimony in
6 court with him present that he doesn't agree with and
7 is not happy about. But I don't know that he always
8 understands exactly what I do.

9 There are times, and you've been there, where
10 we were in court and he decided I don't want to sit
11 next to you, I want to come and sit by Marieann. You
12 know, and he'll talk with me and -- so I don't know
13 how -- I have often wondered how he processes what I
14 do and who I am.

15 BY MR. GOTTSTEIN:

16 Q So don't you think that his, you know,
17 unwillingness to engage with you on this might be
18 related to -- or is related to his knowledge that your
19 testimony has caused him to be drugged against his
20 will?

21 MS. POHLAND: Objection, (indiscernible),
22 calls for speculation.

23 THE COURT: Overruled.

24 THE WITNESS: Okay. I -- I have thought
25 about that, as well. And you know, I don't think so.

1 I really don't think so. Because he's always willing
2 to engage me on some level. I mean, it may be about
3 Al Pacino and going to Cuba.

4 But he has never said, I do not want to talk
5 with that woman. And believe me, I have patients here
6 that see me and do not want to talk with me.

7 But Bill has always -- I think -- I think
8 right now it's hard for Bill to focus. I think he
9 wants to engage. He will never -- he has never said
10 he doesn't want to speak with me. But I don't think
11 he has the ability to focus on what, right now, is the
12 topic at hand.

13 I have seen him better able to focus, but not
14 in the last couple of years. It's -- it's really hard
15 for me to watch Bill deteriorate the way he has.

16 BY MR. GOTTSTEIN:

17 Q Is this -- would it be fair -- is it fair to
18 say that Bill has a lot to say?

19 A Bill has a tremendous amount to say.

20 Q Do you think that he would like to, you know,
21 have someone around to talk to, say what he has a lot
22 to say all the time?

23 MS. POHLAND: Objection, calls for
24 speculation.

25 THE COURT: Overruled (indiscernible).

1 THE WITNESS: Bill is a sociable guy. He --
2 and when he is more competent, he's even more social.

3 He had at one time a really good relationship
4 with his guardian, not Mr. Hughes unfortunately. It's
5 not because Mr. Hughes isn't a wonderful person. But
6 I think at the time when he was interacting with
7 Mr. Young, he had a very good relationship with him.
8 And he would tell me, he would tell everybody,
9 Mr. Young is a good man. And he would go out in the
10 community with Mr. Young and shop.

11 But right now, I say I have to agree with
12 Ms. Shackelford, he just doesn't have the ability to
13 form a real alliance with another human being. I
14 think he did when he was dealing with Mr. Young.
15 And coincidentally or not, he was medication
16 compliant at that time. But he formed a bond with him
17 and I saw that.

18 And I do -- I think you are right. I think
19 he -- I think he benefited from that relationship. I
20 have not seen Mr. Bigley form that kind of bond with
21 another human being since that time.

22 Even -- you know, you help Mr. Bigley a great
23 deal, but I -- I don't see that bond with him. And
24 it's not because you're not just as wonderful of a man
25 as Mr. Young. He just doesn't have that ability right

1 now to make that connection.
2 MR. GOTTSTEIN: I forgot what my question
3 was, so I guess I'm done.

4 THE COURT: I have some questions.
5 Has Mr. Bigley -- in any of your non-API
6 contacts, has he ever talked -- has he ever initiated
7 a conversation regarding medication?

8 MS. VASSAR: No. Not outside of API.

9 THE COURT: All right. And when you are at
10 API and you are typically talking to him, among other
11 things, about his willingness -- his attitude towards
12 medication, can he talk about medication in any way?

13 MS. VASSAR: I haven't seen that in the last
14 couple of years. There was a time when he could sit
15 down and tell me, you know, I have sexual dysfunction,
16 I am on medication. And he was very straightforward
17 with that. And that is a reasonable objection to
18 taking medication.

19 He doesn't tell me that now. He says, it's
20 poison, it's killing my mind.

21 THE COURT: So he --

22 MS. VASSAR: But he can't give me specifics.

23 THE COURT: He at least --

24 MS. VASSAR: Or he doesn't give me --

25 THE COURT: He at least articulates some

1 want it, it's poison, it's killing my brain.

2 I, if you're asking a philosophical, would
3 assume that there's maybe some reflection, and I don't
4 feel there's any reflection when I speak with him.

5 THE COURT: Have there been times in your
6 experience with him -- and I'm most interested in the
7 more recent times, but you had a long history with
8 him. Have there been times when he has been taking
9 medication and he has increased his cogency, his
10 focus? Have you dealt with him in those occasions?

11 MS. VASSAR: I was tangentially involved with
12 him when he had this period of compliance. Mr. Bigley
13 even brought some of the records from that period when
14 he did come to API twice a month and received
15 Risperdal Consta in injection form.

16 He was responsible for getting himself here.
17 He knew the bus schedules. He would get on the bus.
18 He would keep these appointments. He would come here.
19 He did not want to deal with an outside care provider.
20 He really liked Dr. Thompson --

21 THE COURT: Did you have occasion during any
22 of your interaction with him during that period of
23 relative stability to talk to him about medication in
24 general or the particular regime that he was on?

25 MS. VASSAR: I did not. I did not

1 things about medication recently when you --

2 MS. VASSAR: Yes.

3 THE COURT: -- raise that topic?

4 MS. VASSAR: Today he did.

5 THE COURT: And he typically said -- correct
6 me if I'm wrong. He says, I don't want to take it, it
7 will poison me, and what other?

8 MS. VASSAR: It kills my brain, I think is
9 what he said today.

10 THE COURT: Okay. And when he --

11 MS. VASSAR: It kills my brain.

12 THE COURT: When he -- when he makes those
13 sorts of pronouncements, is it your impression that he
14 is making -- that he's thinking about a specific
15 medication, that he is thinking about, you know, drug
16 X versus drug Y, or is he making some larger -- I
17 hesitate to use the word philosophical statement. Can
18 you give me a sense of what you think the content of
19 that statement is?

20 MS. VASSAR: I don't think he's thinking of a
21 specific drug. He's -- the statements of late have
22 been made when he is very agitated, escalating, and he
23 is upset. And it's -- when I ask him about that,
24 there's never -- you know, you never see a moment of
25 consideration. It's just right back at you. I don't

1 unfortunately.

2 THE COURT: And can you give me a rough
3 sense, if you know --

4 MS. VASSAR: Or fortunately, because he was
5 stable. So that's why I was --

6 THE COURT: I thought perhaps you may have
7 run into him at API, you know, not to visit him
8 specifically, but because you were here and he was
9 here.

10 MS. VASSAR: He wasn't -- no, I didn't see
11 him when he was here, like, to get the shots. That
12 was something he did -- I don't know exactly what time
13 of day. I think it was in the middle of the day,
14 3:00 --

15 THE COURT: Are you aware at all whether at
16 any time when he was -- when he was medicated and
17 relatively stable on that medication whether --
18 when -- just a possibility of a healthcare directive
19 that was discussed with him?

20 MS. VASSAR: I am not aware of any. We've
21 looked. It would have been a good time to do one.
22 And I -- I always encourage outside care providers to
23 get that sort of information from someone.

24 THE COURT: And just a couple other
25 questions. Is there -- other than the fact that he

1 and his other guardian or he and another doctor just
2 clicked for reasons that are, you know, unique to why
3 people are friends, is there anything that you can
4 identify that he finds most comforting with somebody?

5 Is it people who, you know, interact with him
6 in a certain way? Is it someone who talks to him
7 about baseball? I'm just sort of throwing out random
8 examples. But is there some kind of -- is there a
9 behavior or an attribute of a caregiver or a guardian
10 or a doctor that we should be looking for that might
11 increase the chances of him bonding with that person?

12 MS. VASSAR: Well, they certainly have to
13 have a calm personality, a patient personality. And
14 the people that he has bonded with do exhibit that
15 trait, just -- they've generally been men, it seems to
16 me.

17 THE COURT: And maybe this is just simply too
18 difficult to question. Your comment about quiet
19 people, do you think that's specific to him?

20 My observation was many people with a broad
21 spectrum of mental health issues react negatively to
22 agitation and (indiscernible), and so to the extent
23 that you just simply are really calm and don't take
24 the bait, that helps them calm down.

25 Is it any more than that, or do you think

1 MS. VASSAR: Yeah. He had to tell him
2 several times to be quiet.

3 And I think it's more effective when you
4 can -- when he's on your level and you can turn to him
5 and just very quietly redirect him. And also give him
6 the option of leaving, that's helpful.

7 THE COURT: So if we were to be in a more
8 formal court setting, one of the things that you think
9 would be helpful for him is if the judge and other
10 participants were all sitting, not necessarily in a
11 circle, but closer together? For example, instead of
12 me sitting on the bench, sitting in a chair across
13 from counsel table, or (indiscernible) chair, you
14 know, on the courtroom floor?

15 MS. VASSAR: Before you even asked me this, I
16 was thinking that this seems to work better. This
17 works better than the smaller courtroom down the hall
18 because he can get up a little bit, walk around.

19 Of all the venues I've seen Bill in, in
20 different courtrooms, including the probate courtroom
21 and the superior courtroom, I think he's done the best
22 today. And he -- and he hasn't been medicated.

23 THE COURT: And that -- just so that I
24 understand, for him individually, that would mean a
25 place for him to sort of be at the same level --

1 that he just happens to really like quiet people?

2 MS. VASSAR: I think he does respond to a
3 quieter -- just in court today, I noticed the way you
4 dealt with him, very low key, you know, and it may
5 even be more -- like a better word --

6 THE COURT: (Indiscernible.)

7 MS. VASSAR: -- therapeutic here, you can see
8 him, you're at the same level with him, you can turn
9 to him and quietly sort of redirect him.

10 And the other thing that is helpful that I
11 noticed today is that you said, you know, I think it's
12 time for you to leave, and I was surprised at how he
13 accepted that and walked towards the door.

14 THE COURT: Let me ask you on a different
15 topic, because you raised up an interesting point
16 that -- have you observed him in a formal courtroom?

17 MS. VASSAR: I have.

18 THE COURT: And one of the -- just the
19 physical aspects of most courtrooms is that the judge
20 is up higher. Is that problematic for him?

21 MS. VASSAR: I think it is. The last hearing
22 we had -- Master (indiscernible) is a very nice man,
23 but he's up high. He has to speak louder.

24 THE COURT: I've heard him. I listened to
25 the hearing.

1 height level as the other players, and an ability to
2 be withdrawn --

3 MS. VASSAR: Yes.

4 THE COURT: -- from the table proper, and an
5 area to be able to walk around a little bit, and also
6 a place where he can retreat?

7 MS. VASSAR: Yes.

8 THE COURT: (Indiscernible.)

9 MS. VASSAR: Absolutely, yeah. I mean,
10 especially long hearings like this. I'm sure he's
11 hungry. I mean, I think he may be having lunch now,
12 and that -- and I'd like to be able to meet that need
13 during a hearing.

14 So here he is. He's not having lunch.

15 THE COURT: I appreciate your observations.
16 You are excused.

17 MR. GOTTSTEIN: May I ask one follow-up
18 question?

19 MS. VASSAR: Sure.

20 MARIEANN VASSAR
21 testified as follows on:

22 RE CROSS EXAMINATION

23 BY MR. GOTTSTEIN:

24 Q I'm sorry. But you were talking about this
25 relatively long period of compliance. So --

1 A Uh-huh.
 2 Q (Indiscernible) that -- that for some reason,
 3 he made the decision to discontinue his granting
 4 consent; is that correct?
 5 A Yeah.
 6 Q Are you aware of the circumstances of that?
 7 A I -- you know, there's a lot of rumors about
 8 that, Mr. Gottstein, and --
 9 Q Okay. You don't know?
 10 A I don't know, yes.
 11 THE COURT: All right. You may leave.
 12 MS. VASSAR: Thank you.
 13 (Witness excused.)
 14 THE COURT: We'll take a quick break here.
 15 Before we do that, let's just talk about
 16 where are we. It's 12:15 now. I think I have a 1:30
 17 hearing. Let's -- you know, I'm not sure. So I
 18 probably should stop at 1, 1:15. Frankly, I'll make a
 19 call during the break and see exactly when
 20 (indiscernible).
 21 MS. DERRY: (Indiscernible.)
 22 MR. GOTTSTEIN: So much for the public
 23 courtroom.
 24 THE COURT: What is the State's
 25 (indiscernible)?

1 Mr. Bigley, take a seat and be quiet. We're
 2 trying to talk quietly today.
 3 MS. DERRY: I'm sorry, Your Honor; I didn't
 4 hear you.
 5 THE COURT: What's next?
 6 MS. DERRY: Dr. Khari, I would like to
 7 (indiscernible).
 8 MR. GOTTSTEIN: Your Honor, (indiscernible)
 9 Dorothy Pickles.
 10 THE COURT: What?
 11 MR. GOTTSTEIN: Ms. Pickles we were going to
 12 take out of order.
 13 THE COURT: Oh, right. How long
 14 (indiscernible) 15 minutes?
 15 MR. GOTTSTEIN: Fifteen. She's on the road.
 16 THE COURT: Let's assume, just for -- how
 17 long (indiscernible) doctor's testimony will be?
 18 Relatively long?
 19 MS. DERRY: Well, including (indiscernible).
 20 But as far as what I could ask her, 15 minutes.
 21 THE COURT: What I'm going to suggest is that
 22 we -- it's probably more helpful for all of us that we
 23 not break up the doctor's testimony.
 24 So what I'm going to suggest is that we take
 25 a quick break, and then we take your witness out of

1 order, and then we -- I don't know if you have
 2 another, like, shorter witness that can perhaps fill
 3 in. If not, that's fine.
 4 But then we'll convene again tomorrow at 8:30
 5 or 9, or whatever it is, and take the doctor's
 6 testimony.
 7 MR. GOTTSTEIN: Where are we going to do that
 8 tomorrow?
 9 THE COURT: We'll do it right here.
 10 MS. DERRY: And, Your Honor, I do have a
 11 witness that can be quicker this afternoon, and she
 12 also will be out of town tomorrow. So I would be
 13 happy to allow Mr. Gottstein to have (indiscernible)
 14 out of order, and then just briefly (indiscernible)
 15 testified to.
 16 THE COURT: Okay. We'll take a quick break,
 17 and then we'll get the other folks on the phone, and
 18 then we'll --
 19 Doctor, you are free to remain here now, but
 20 you don't have to.
 21 MS. DERRY: Can we ask for Your Honor to
 22 clarify? Then we are not going to (indiscernible)
 23 because of your hearing?
 24 THE COURT: No. I have a hearing all
 25 afternoon.

1 MR. GOTTSTEIN: And what time is it tomorrow
 2 morning?
 3 THE COURT: I will start at 9:00. I mean, if
 4 this is available at 8:30, I'd prefer to start at
 5 8:30.
 6 UNIDENTIFIED SPEAKER: It shouldn't be a
 7 problem.
 8 THE COURT: So 8:30 tomorrow. And my
 9 expectation is that we'll go again until approximately
 10 1:30. And we'll go from there.
 11 Let's take, you know, five, ten-minute break.
 12 12:17:30
 13 (Off record.)
 14 12:25:56
 15 THE CLERK: On record.
 16 THE COURT: All right. We are back on
 17 record.
 18 Mr. Gottstein, you were going to call an
 19 out-of-order witness.
 20 The record should reflect the presence of
 21 counsel, the guardian. Mr. Bigley is standing outside
 22 the hearing room. You may proceed.
 23 MR. GOTTSTEIN: Thank you, Your Honor.
 24 Could you tell us -- tell the --
 25 THE COURT: Excuse me. May I have your name?

1 THE WITNESS: My name is Dorothy Pickles.
 2 THE COURT: Would you stand, please, and
 3 raise your right hand.
 4 THE WITNESS: Yes.
 5 (Oath administered.)
 6 THE WITNESS: I do.
 7 THE COURT: You may be seated.
 8 And (indiscernible) name and spell it,
 9 please.
 10 THE WITNESS: Dorothy Pickles, D-O-R-O-T-H-Y,
 11 Pickles, P-I-C-K-L-E-S.
 12 THE COURT: Mr. Gottstein, you may
 13 proceed.
 14 Ma'am, we are recording this back in the
 15 courtroom, so we need to speak -- you need to speak
 16 louder than you might normally do.
 17 THE WITNESS: Okay.
 18 THE COURT: Go ahead, Mr. Gottstein.
 19 DOROTHY PICKLES
 20 called as a witness on behalf of Respondent, testified
 21 as follows on:
 22 DIRECT EXAMINATION
 23 BY MR. GOTTSTEIN:
 24 Q Could you tell the Court your background and
 25 experience?

1 A Sure. I am a --
 2 THE CLERK: Who is conducting the direct
 3 exam? Is it Mr. Gottstein?
 4 MR. GOTTSTEIN: Mr. Gottstein. I'm sorry.
 5 THE CLERK: Thank you.
 6 THE WITNESS: I am, by profession and
 7 training, a social worker with a bachelor's in social
 8 work from the University of Alaska Anchorage.
 9 I have a master's in social work from Boston
 10 University.
 11 I am also a mental health consumer, having
 12 been treated for mental illness for 30 years at this
 13 point. Hospitalized many times, twice at API.
 14 I worked at API for a brief time, 2003 to
 15 2004 -- no, 2004 to 2005, as a consumer and family
 16 specialist. And my responsibilities were to answer
 17 complaints, be an advocate for -- well,
 18 (indiscernible) let me just say as an advocate, but I
 19 was an advocate for patients, and helped them
 20 understand the system and how to best negotiate it.
 21 Q Now, is there some significance in your mind
 22 to your being -- first off, could you say what a
 23 mental health consumer is? Well, you did describe
 24 that.
 25 A Yes.

1 Q All right.
 2 MR. GOTTSTEIN: Do you understand, Your
 3 Honor?
 4 BY MR. GOTTSTEIN:
 5 Q So is there some significance to that, you
 6 think, in your work?
 7 A Yes. Because I have experienced both sides
 8 of the coin. I have been a patient. I take my meds
 9 every day. I have been hospitalized both at API and
 10 other hospitals.
 11 And I have the training and the knowledge of
 12 a social worker to know more of the clinical
 13 background and the theories and the -- both pieces of
 14 the pie.
 15 Q And do you find that that helps in relating
 16 to patients?
 17 A Very much. Because I've been there. I've
 18 had my clothes taken away from me. I've been locked
 19 up in a ward.
 20 Q And are you aware of any research that
 21 supports that? Maybe I shouldn't -- strike that.
 22 Strike that. That's your experience. Okay.
 23 I'm going to show you a letter.
 24 MR. GOTTSTEIN: She brought me a signed
 25 copy.

1 BY MR. GOTTSTEIN:
 2 Q Could you identify that?
 3 A Yes. This is a letter that I wrote to the
 4 head of the -- Governor Palin's transition team.
 5 THE CLERK: Is this an exhibit?
 6 MR. GOTTSTEIN: I'm marking it as D.
 7 THE COURT: D, as in David?
 8 THE WITNESS: In response to their
 9 consideration of renaming Ron Adler as the director of
 10 NCEO, of the Alaska Psychiatric Center.
 11 Q So you wrote that letter?
 12 A Yes, sir.
 13 MR. GOTTSTEIN: Move to admit.
 14 MS. POHLAND: I'm going to object based on
 15 relevance. I don't see a --
 16 THE COURT: What is the relevance of this?
 17 MR. GOTTSTEIN: Huh?
 18 THE COURT: What is the relevance of this?
 19 MR. GOTTSTEIN: The relevance is API's --
 20 well, that a -- whether there is a pattern of ignoring
 21 people's (indiscernible) at API.
 22 MS. DERRY: And, Your Honor, I would ask if I
 23 could voir dire the witness to establish whether or
 24 not she has anything (indiscernible) if she, you know,
 25 has any personal knowledge.

1 THE COURT: I'm not -- I don't see why --
2 explain to me why it is relevant that API has some
3 pattern in some fashion. What is the pattern that you
4 are claiming they have, just in a nutshell?

5 And then secondarily, why is that relevant to
6 the issues regarding Mr. Bigley.

7 MR. GOTTSTEIN: Well, I think that -- I think
8 it's very relevant whether there's a pattern of
9 ignoring people's rights --

10 THE COURT: Well, tell me (indiscernible).

11 MR. GOTTSTEIN: For one thing, it -- one of
12 the questions I would ask is whether -- if staff
13 members might fear retaliation if they testify as to
14 what (indiscernible).

15 MS. POHLAND: Your Honor, I fail to see how
16 that's relevant to --

17 THE COURT: Let -- let -- is there anything
18 else?

19 MR. GOTTSTEIN: Well, I think the -- if there
20 is a pattern of ignoring legal rights, that that's
21 very -- that that itself is relevant.

22 THE COURT: Can you give me some example of
23 what (indiscernible) talking about?

24 MR. GOTTSTEIN: Whether or not people have
25 the right to, you know, withhold informed consent, are

1 January 8th, 2007. Not only does that not pertain to
2 Mr. Bigley's most recent admission and the petition
3 for court-ordered medication, it was written well
4 before API changed its regulations in July 2007. It's
5 completely irrelevant to the petition at hand.

6 And I would argue that unless Ms. Pickles has
7 had specific contact with the patient in recent times,
8 so that she can provide some clarity to the Court on
9 the issue at hand, Mr. Bigley's capacity to consent,
10 that she be stricken as a witness.

11 THE COURT: Anything further?

12 MR. GOTTSTEIN: No, Your Honor.

13 THE COURT: Well, I am not going to allow
14 this testimony. I don't find that it's relevant --

15 MR. GOTTSTEIN: Thank you.

16 THE COURT: -- given the --

17 MR. GOTTSTEIN: But can I --

18 THE COURT: Given the date of the topics of
19 the letter and the lack of connection with this
20 particular treatment -- with Mr. Bigley's treatment
21 team.

22 I am going to -- you can mark Exhibit D. It
23 is offered; it has not been admitted. It's part of
24 the record. It's not admitted as part of the record,
25 but it's part of the record for purposes of --

1 they informed of that right.

2 THE COURT: And let's assume, just so I
3 understand the logic here, that I was convinced that
4 on several occasions, five, six, ten, some number of
5 occasions in some time period, some other set of
6 patients were medicated too quickly, what would I do
7 with that regarding Mr. Bigley?

8 MR. GOTTSTEIN: Well, I think it -- it would
9 go to your evaluation of other -- other witness'
10 testimony, credibility --

11 THE COURT: (Indiscernible) testimony that
12 you're intending to proffer specific to the treating
13 physicians for Mr. Bigley?

14 MR. GOTTSTEIN: No.

15 THE COURT: So it is some other staff with
16 other patients who have, in the witness's opinion,
17 medicated inappropriately or too quickly?

18 MR. GOTTSTEIN: Well, I don't think
19 Ms. Pickles knows about the current stats, so it would
20 be about a pattern that -- kind of a corporate
21 culture, if you would, in the facility.

22 THE COURT: Do you want to be heard?

23 MS. POHLAND: Yes, Your Honor.

24 First this letter, this exhibit that
25 Mr. Gottstein would like to introduce, was drafted on

1 MR. GOTTSTEIN: Your Honor, can I ask her a
2 couple -- there's a --

3 THE COURT: (Indiscernible) other topics.

4 MR. GOTTSTEIN: The copies that you -- that I
5 handed out were unsigned. This one has a copy signed
6 that she brought with her. So I'd just like to
7 authenticate it that way. This should probably be the
8 one in the record.

9 May I make an offer of proof on this, Your
10 Honor?

11 THE COURT: You may.

12 BY MR. GOTTSTEIN:

13 Q Is everything in this letter true and
14 correct, to --

15 A Yes.

16 Q Do you think people's jobs would be in
17 jeopardy if they testified against Mr. Adler's
18 wishes?

19 MS. DERRY: Objection, relevance.

20 THE COURT: Now, he just -- this is not
21 testimony. This is an offer of proof. I am not going
22 to allow -- I am not considering this testimony, but
23 at least there is an offer of proof so that
24 (indiscernible) supreme court decide whether I have
25 committed any error (indiscernible).

1 UNIDENTIFIED SPEAKER: Definitely.
 2 MR. GOTTSTEIN: This is -- uh-huh. Okay.
 3 I'll move to another topic then.
 4 BY MR. GOTTSTEIN:
 5 Q Are you familiar with -- well, first could
 6 you say what charting is?
 7 A Charting is the notation in the official
 8 medical record of the actions observed and -- within
 9 a -- within the person's experience on a patient.
 10 Q In your experience, do -- are things
 11 exaggerated in the charts to achieve certain purposes?
 12 MS. POHLAND: Objection, leading.
 13 THE COURT: It was a leading question, but
 14 I'll allow it. But let's -- I prefer direct
 15 testimony -- direct questions. Ask your next
 16 question.
 17 MR. GOTTSTEIN: (Indiscernible) allowed, but
 18 you want me to rephrase it?
 19 THE COURT: I'm sorry. I thought she said
 20 yes.
 21 Did you answer the question?
 22 THE WITNESS: No. Because she objected.
 23 THE COURT: Go ahead, answer the question.
 24 THE WITNESS: I believe, from my experience,
 25 that charting is done often to achieve the purpose of

1 the staff rather than what is necessarily reality for
 2 what -- its objective. One person would say one thing
 3 and one might say another, per their own bias and/or
 4 agenda.
 5 MS. DERRY: Your Honor, may I move to voir
 6 dire the witness in order to establish her relevance
 7 of being here today, the relevance of her
 8 testimony?
 9 THE COURT: No. You may make objections to
 10 the questions and I'll (indiscernible). You can cross
 11 examine on the topics that I allow her to testify
 12 about.
 13 BY MR. GOTTSTEIN:
 14 Q So is -- agitated is a common term used?
 15 MS. POHLAND: Objection, relevance.
 16 THE COURT: Overruled.
 17 THE WITNESS: Yes.
 18 BY MR. GOTTSTEIN:
 19 Q What does that mean?
 20 A It means the patient -- in my opinion,
 21 someone who would be agitated might be pacing, talking
 22 with pressure, might be aggressive, under -- seeming
 23 to be very not calm, or as a -- but -- and that's all
 24 subjective to what the person's calm state is. What
 25 is agitated for me is not agitated for you or for the

1 judge or for anyone else because our baseline
 2 (indiscernible).
 3 MR. GOTTSTEIN: You know, I think I'll -- I
 4 don't need to ask any more questions.
 5 THE COURT: Cross?
 6 MS. DERRY: Yes.
 7 This is Laura Derry for the State, Madame
 8 Clerk.
 9 DOROTHY PICKLES
 10 testified as follows on:
 11 CROSS EXAMINATION
 12 BY MS. DERRY:
 13 Q Ms. Pickles, have you had any interaction
 14 with Mr. Bigley in the last six months?
 15 A No.
 16 Q When was the last --
 17 A May I correct that? Yes. I observed him
 18 here at the hospital while I was waiting for the
 19 (indiscernible) to testify.
 20 Q Today?
 21 A Yes.
 22 Q When was the last time you worked for the
 23 hospital?
 24 A 2005, January.
 25 Q January 2005? Have you continued to stay

1 apprised of the hospital policies and procedures and
 2 state regulations regarding the hospital since your
 3 end of working at the facility?
 4 A Generally.
 5 Q Generally? And are you aware that Mr. Bigley
 6 has been having frequent contact with the police in
 7 the last six months?
 8 A I am not aware of it. I wouldn't be
 9 surprised.
 10 Q Why wouldn't you be surprised by that?
 11 A Having known Mr. Bigley in the past.
 12 Q Did you know Mr. Bigley when he was
 13 medicated?
 14 A Yes.
 15 Q Did he ever say to you that he didn't want to
 16 be medicated?
 17 A Yes.
 18 Q Did he say that to you after you prompted
 19 him, or did he say that out of the blue?
 20 A No. Just in general. I have had
 21 conversations with patients about what it was and what
 22 they were doing and how they were doing.
 23 Q And was that when he was complying with
 24 medications?
 25 A Yes.

1 MS. DERRY: No further questions.
 2 DOROTHY PICKLES
 3 testified as follows on:
 4 REDIRECT EXAMINATION
 5 BY MR. GOTTSTEIN:
 6 Q So did he ever express desire not to take
 7 medications?
 8 MS. POHLAND: Objection, relevance.
 9 THE COURT: Overruled.
 10 THE WITNESS: Yes.
 11 BY MR. GOTTSTEIN:
 12 Q In your opinion, was that ever -- was he ever
 13 competent when he made that expression?
 14 MS. POHLAND: Objection, relevance.
 15 THE COURT: Overruled.
 16 THE WITNESS: I guess it depends on your
 17 definition of competent.
 18 But yes. He was on medication. He was
 19 lucid. He was not acting particularly psychotic. His
 20 line of thought was easily expressed and followable.
 21 On his way out of the building (indiscernible).
 22 MR. GOTTSTEIN: No further questions.
 23 MS. POHLAND: Your Honor, at this time the
 24 State would like to move to strike this witness's
 25 testimony as irrelevant to the issue of Mr. Bigley's

1 present capacity, simply because she's had no
 2 interaction other than brief observation
 3 (indiscernible) today.
 4 THE COURT: It's overruled. (Indiscernible.)
 5 Ma'am, can you tell me when you had this
 6 conversation with him where you talked about his
 7 desire to be medicated?
 8 THE WITNESS: I cannot tell you a specific
 9 date, no.
 10 THE COURT: Can you give me a ballpark figure
 11 of roughly when that was? For example, was it when
 12 you were still working here?
 13 THE WITNESS: Yes, it was while I was working
 14 here.
 15 THE COURT: And if you worked in '04 and '05,
 16 was that roughly (indiscernible)?
 17 THE WITNESS: It was (indiscernible).
 18 THE COURT: So can you give me any sense of
 19 where in that nine months that would have been?
 20 THE WITNESS: No.
 21 THE COURT: How many conversations do you
 22 think you've had with Mr. Bigley?
 23 THE WITNESS: Oh, I would --
 24 THE COURT: Not -- let me ask the question.
 25 Not on incidental things, seeing him in the hall or

1 whatnot. Where you've talked to him about medication.
 2 THE WITNESS: Oh, probably five or six.
 3 THE COURT: And were -- on each -- was he
 4 under a variety of medication states?
 5 THE WITNESS: Yes, sir.
 6 THE COURT: Ranging from not medicated to --
 7 I think we can say just about to be discharged, so I
 8 can assume he was --
 9 THE WITNESS: Yes.
 10 THE COURT: -- maximally --
 11 THE WITNESS: There were times within that
 12 nine months as I recall that he was discharged and
 13 readmitted.
 14 THE COURT: So you are recalling roughly six
 15 times when you talked to him on the topic of
 16 medication?
 17 THE WITNESS: Yes, sir.
 18 THE COURT: And on one occasion, he told you
 19 that he did not want to be medicated?
 20 THE WITNESS: On more than one occasion.
 21 THE COURT: Can you tell me roughly how many
 22 times?
 23 THE WITNESS: It's pretty constant in his
 24 desire. He does not desire -- when he talked with me,
 25 he always said he did not want to be medicated ever.

1 THE COURT: Were there times when he made
 2 those comments when you believed, given whatever your
 3 definition of competence would be, that he was
 4 competent to make that decision?
 5 THE WITNESS: Yes.
 6 THE COURT: Of the roughly six times that
 7 you've talked with him, can you give me a sense of how
 8 many of those six times he was not competent?
 9 THE WITNESS: Only a couple. Because it's
 10 very hard to engage Mr. Bigley in a conversation when
 11 he's not.
 12 THE COURT: So can I assume from that that of
 13 the six times, perhaps twice he was not competent, but
 14 on four occasions, he was competent?
 15 THE WITNESS: Yes.
 16 THE COURT: And on all six times, he made
 17 some expression of, I don't want to be medicated?
 18 THE WITNESS: Right.
 19 THE COURT: And was he -- did he articulate a
 20 preference or a lack of preference for a particular
 21 medication?
 22 THE WITNESS: No, he did not.
 23 THE COURT: And was he -- was he making
 24 comments -- did he explain that in any way, his desire
 25 not to be medicated? Did he give content to it, other

1 than to say I don't want to give medication?

2 THE WITNESS: Yes. But if you ask me exactly
3 what he said, I can't tell you. It was more than just
4 the (indiscernible), because we would often discuss
5 more than just that (indiscernible).

6 It -- of the whys, the hows that you were on,
7 how do you feel -- how is it when you're off, do you
8 feel kind of -- those kinds of discussion. And I
9 can't tell you exactly after this time exactly the
10 words he would have used.

11 THE COURT: Thank you.

12 Anything further of this witness?

13 MR. GOTTSTEIN: No, Your Honor.

14 THE COURT: All right. Thank you,
15 Ms. Pickles. You may be excused.

16 THE WITNESS: Thank you, sir.
17 (Witness excused.)

18 THE COURT: And we had a --

19 MS. DERRY: Excuse me for one moment. Let me
20 grab that -- get that witness, Your Honor.

21 MR. GOTTSTEIN: I'm just going to
22 (indiscernible).

23 (Pause.)

24 THE COURT: What is the name of the next
25 witness?

1 tell us your name and spell your first and last name,
2 please.

3 THE WITNESS: Malinda Natanek, M-A-L-I-N-D-A,
4 N-A-T-A-N-E-K.

5 THE COURT: You may proceed.

6 MS. DERRY: Yes. Thank you.

7 MALINDA NATANEK
8 called as a witness on behalf of the State, testified
9 as follows on:

10 DIRECT EXAMINATION

11 BY MS. DERRY:

12 Q Ms. Natanek, can you tell me how long you've
13 known Mr. Bigley?

14 A I first met Mr. Bigley in 2002.

15 Q And what was your relationship to him at that
16 time?

17 A I was a clinician working at Southcentral
18 Counseling Center, which is now Anchorage Community
19 Mental Health Center.

20 Q And what was your role there?

21 A My role, I did group work, I did individual
22 therapy, I did medication deliveries to folks in the
23 community.

24 Q And did you deliver medications to
25 Mr. Bigley?

1 MS. DERRY: Her name is Malinda Natanek, Your
2 Honor, M-A-L-I-N-D-A, and her last name is
3 N-A-T-A-N-E-K.

4 MR. GOTTSTEIN: I hope I didn't hold you up.

5 THE COURT: We're waiting for the witness.

6 UNIDENTIFIED SPEAKER: I have a visitor who
7 would like to come in and sit in the hearing. Is that
8 okay?

9 MS. DERRY: But it's not Malinda, is it?

10 UNIDENTIFIED SPEAKER: No.

11 MS. DERRY: I was, like, is that -- come sit
12 right by me.

13 MR. GOTTSTEIN: Who are you calling?

14 MS. DERRY: Malinda Natanek.

15 UNIDENTIFIED SPEAKER: I will ask you to be
16 loud because the court reporter is on the phone. So
17 be sure you keep your volume up.

18 THE COURT: Madame Clerk, can you hear us?

19 THE CLERK: I can.

20 THE COURT: All right. Thank you.

21 Ma'am, could you please stand, please. Could
22 you raise your right hand?

23 (Oath administered.)

24 THE WITNESS: I do.

25 THE COURT: You may be seated. If you would

1 A Yes.

2 Q And how did you deliver those medications?

3 A Myself and a case manager would go out to
4 Mr. Bigley's home six days a week and deliver
5 medications to him twice a day, once for his morning
6 medications and then again for the evening
7 medications.

8 Q And actually walk me through that,
9 Ms. Natanek. You (indiscernible)? I mean, how did
10 the procedure actually work?

11 A Yes. We would -- the medications we would
12 get at the center. They would come individually
13 packaged.

14 We would drive out to Mr. Bigley's house. At
15 that time -- at that time he was living in Government
16 Hill. We would knock on his door.

17 Usually we would get there between --
18 anywhere between 8 and 10 in the morning. Bill would
19 answer the door. He -- our job was to hand him the
20 medications, which he would then take himself. We
21 weren't allowed to, you know, physically make him take
22 the medications.

23 We would knock on the door. Bill recognized
24 us. We would give him the meds, he would take them,
25 maybe chat with him for five minutes, and then leave.

1 Q And when -- tell me again the years of this?
 2 A I worked there between April 2002 until I
 3 believe September 2004.
 4 Q And so you would knock on the door?
 5 A Yes.
 6 Q Mr. Bigley would answer the door?
 7 A Yes.
 8 Q You would -- you had medications prepared for
 9 him?
 10 A Yes.
 11 Q You would explain them to him?
 12 A Uh-huh.
 13 Q He knew what they were for?
 14 A He would identify the meds, yes.
 15 Q And you just placed them in his hand and he
 16 took the medications?
 17 A Yes.
 18 Q And having -- you knew him at this time.
 19 What was his personality like then?
 20 A Bill -- we would take him out typically once
 21 a week for coffee, go to a coffee shop. I was able to
 22 engage with him in conversation. And we seemed to get
 23 along, have a good time. We could joke and laugh and
 24 go out in the community and do activities together.
 25 Q And Mr. Bigley is a social man; is that

1 correct?
 2 A Yes, I would say yes.
 3 Q And he likes to chat and he loves coffee?
 4 A Yes.
 5 Q And what is your -- what is your position
 6 now, today, at API?
 7 A Today, I am one of the social workers. I
 8 work on the forensic unit, the Taku unit.
 9 Q And when did you start working at API?
 10 A I began working here in July of 2005.
 11 Q And you have had continued contact with
 12 Mr. Bigley since your employment here?
 13 A Yes.
 14 Q And so from 2002 -- April of 2002, when you
 15 first began working with Mr. Bigley and assisting him
 16 with medications that he willingly took, how have you
 17 noticed his personality and behaviors to have changed
 18 since then?
 19 A Before, when I first met Bill, like I said,
 20 we were able -- I could engage him in conversation.
 21 We could talk about general topics, the weather, what
 22 he was going to do for the day.
 23 And this past year when I've been working
 24 with Bill when he's come on to the Taku unit, I have
 25 tried to engage him. I don't know if he remembers me

1 from before. He does not talk to me. Typically he
 2 just kind of yells, and I am not able to understand
 3 him a lot of times because I believe he's too
 4 psychotic to engage in a conversation with me.
 5 Q And in this admission, what behaviors have
 6 you observed in Mr. Bigley?
 7 THE COURT: What are we talking, this
 8 admission?
 9 MS. DERRY: I'm sorry. This --
 10 BY MS. DERRY:
 11 Q From October 21st to the present, what have
 12 you -- what observations have you made of Mr. Bigley?
 13 A I have not been able to engage with him at
 14 all. When I try to talk to Mr. Bigley, typically he
 15 walks away or calls me derogatory names. Oftentimes
 16 he'll -- proper way to say it, he would flip me the
 17 bird, those types of things.
 18 Q And when you worked with Mr. Bigley prior to
 19 your working here at API, you say that was six days a
 20 week you delivered medications to him twice a day?
 21 A Yes. It wasn't necessarily myself six days a
 22 week. But since he was on my caseload, I had to see
 23 him at least one time a week.
 24 Q And when you knocked on his door, did he ever
 25 tell you to go away? You personally, did he ever tell

1 you to go away when you were trying to help him with
 2 medications?
 3 A Not to my recollection. Sometimes he would
 4 be upset because we had woke him up in the early
 5 morning hours.
 6 Q Did he ever yell or cuss at you and tell you
 7 that he didn't want you there?
 8 A Sometimes he would get angry and yell. But
 9 he would eventually take the meds and we would be able
 10 to, you know, kind of plan a week for him, what his
 11 day would be.
 12 Q And in that time, from April of 2002 until
 13 September of 2004, did he ever tell you that he did
 14 not want to take those medications?
 15 A I don't know that I would recall that.
 16 Q Did he ever refuse those medications, where
 17 you could not help him take them?
 18 A At times he would refuse, yes.
 19 Q But not regularly?
 20 A No.
 21 Q And now, to your knowledge, he refuses -- he
 22 has refused medications here at the hospital since
 23 October 21st of 2008?
 24 A Yes.
 25 Q And do you -- as a social -- as a social

1 worker here at API, what is your general role for
2 patients, not just Mr. Bigley?

3 A On the forensic unit specifically, my role is
4 to kind of coordinate the transportation of the
5 patients, make sure their discharge is arranged.

6 I work a lot with the attorneys because these
7 are the -- this is the criminal unit. Making sure
8 Dr. Michaud has everything she needs for the
9 evaluations.

10 When I get civil patients on the unit, mainly
11 my job is their discharge plans, housing, medications,
12 follow-up appointments, making sure all of that is
13 accounted for before they leave.

14 Q And Mr. Bigley is a civil patient; is that
15 correct?

16 A Correct.

17 Q And so you attempt to find him a place to
18 live after he leaves API?

19 A Correct.

20 Q You attempt to find care providers if he
21 needs them?

22 A Yes.

23 Q You attempt to make sure that he has -- that
24 he has good contact with his guardian before he leaves
25 here so that nothing happens to him?

1 A Yes.

2 Q And how is that working for you now? Are you
3 able to help Bill?

4 A Bill, I work with his guardian on the
5 housing, which his guardian has been able to arrange
6 for him. He has -- we have brought in three different
7 case managers from ACMHS in attempt to engage him, but
8 he has not been able to engage with them and has
9 refused to meet with them upon a discharge.

10 Q So he is refusing your help as a social
11 worker?

12 A Yes.

13 Q Does he refuse food?

14 A At times.

15 Q Does he tell you why?

16 A He believes it's poisoned.

17 Q And he does refuse medication. And do you
18 know why he is refusing them at this time?

19 A I don't know. I am not able to fully
20 understand what his rationale is for refusing that.

21 Q So I go back to -- so we have the full circle
22 from 2002 to present, you did recall him occasionally
23 refusing to take medications in 2002. Do you recall
24 why he would not take medications on that day?

25 A No.

1 Q Knowing Mr. Bigley in 2002 and present, what
2 is your personal opinion of his need for medication?

3 A Oh, I feel Mr. Bigley benefits from the
4 medications. He had lived in Government Hill for well
5 over a year. And I know that when he was coming to
6 API on an outpatient basis, again, he was able to
7 maintain an apartment for over a year.

8 And now I -- you know, I see him kind of
9 bouncing from different hotels, and he is not able to
10 stay out in the community and live. He's -- from what
11 I've noticed, he appears to be bouncing from API to
12 the correctional system and back.

13 Q Has Mr. Bigley ever said to you, whether it
14 was in 2002 or yesterday or today, that he believes
15 that -- that he -- well, let me back up.

16 Has Mr. Bigley ever expressed to you that he
17 understands that he is mentally ill?

18 A No.

19 Q Has he ever expressed to you that he
20 understands the complicated issues of medication?

21 THE COURT: Excuse me. I wasn't sure I heard
22 that. Did you time qualify that question?

23 MS. DERRY: I said in the time that she has
24 known him, from 2002 until present, if he has ever --
25 if she feels he is capable of understanding that he's

1 mentally ill.

2 BY MS. DERRY:

3 Q Did he understand that he is mentally ill?

4 A To my knowledge, no.

5 Q And is it your belief, based on your personal
6 experience with Mr. Bigley, that he is capable of
7 understanding the full spectrum of medications and
8 their implications?

9 A From 2002 until present? I believe he was
10 definitely more capable in 2002 when he was on the
11 medications. Like I said, he could identify the meds.
12 I don't believe now he can make that decision, though.

13 Q What do you think, as Bill's -- as
14 Mr. Bigley's social worker, would be his best
15 interest? As of today, what would you like to see
16 happen with Mr. Bigley?

17 A Personally, I would like to see Bill back on
18 the medication. I believe that the Risperdal Consta
19 that he was on worked best because it wasn't a daily
20 medication. It was something he only had to take
21 every two weeks. And he could go out and live his
22 life and just, you know, not have to worry about those
23 meds on a daily basis. And it allowed him to live
24 independently in the community.

25 Q And he -- Mr. Bigley came to the hospital by

1 himself to take that Risperdal Consta shots; is that
2 correct?

3 A To my knowledge, yes.

4 Q And he didn't have an attendant with him?

5 A No.

6 Q And he was never -- he never had to be
7 restrained in order to take that medication?

8 A No.

9 MS. DERRY: No further questions.

10 MR. GOTTSTEIN: This is Jim Gottstein.

11 MALINDA NATANEK

12 testified as follows on:

13 CROSS EXAMINATION

14 BY MR. GOTTSTEIN:

15 Q So part of your job in discharge plans is to
16 arrange for him to hopefully be in the community
17 successfully; is that correct?

18 A Yes.

19 Q Okay. Now, you testified that you think he
20 should be on the medications; is that correct?

21 A Correct.

22 Q And you also know that he doesn't want to be
23 on them (indiscernible)?

24 MS. POHLAND: Objection.

25 THE COURT: Overruled.

1 BY MR. GOTTSTEIN:

2 Q And what does a case manager do?

3 A A case manager, to my knowledge, is someone
4 that can physically go out to the person's home. They
5 can take them grocery shopping, they can take them to
6 do fun activities, be it, you know, going hiking,
7 going for -- to get coffee. Just someone that they
8 have as a support in the community to kind of check on
9 them and make sure things are going okay.

10 Q So are you familiar with the level of
11 contacts that case managers are having these days with
12 patients?

13 A From which agency?

14 MS. POHLAND: Calls for speculation.

15 MR. GOTTSTEIN: (Indiscernible.)

16 THE COURT: Overruled. Overruled.

17 THE WITNESS: From a specific agency or --

18 BY MR. GOTTSTEIN:

19 Q Well, let's say Anchorage Community Mental
20 Health Services.

21 A To my knowledge, they are required to meet
22 with the patients once a week.

23 Q Okay. So it wouldn't be someone that would
24 spend a lot of time, like being with him in the
25 community; is that correct?

1 THE WITNESS: I don't know that -- I don't
2 know that Bill can make that decision at this point.

3 BY MR. GOTTSTEIN:

4 Q But he expresses that he doesn't want to,
5 doesn't he?

6 A Yes.

7 Q Okay. So in a discharge plan, are you trying
8 to arrange a program for him to be successful in the
9 community without (indiscernible)?

10 A Yeah.

11 Q I mean, what program are you trying to
12 arrange in the community to be successful without
13 taking the drugs?

14 A At this point, the main thing we are trying
15 to set up would be case management, someone that could
16 check on him in his housing, perhaps take him out in
17 the community for an activity.

18 THE COURT: Mr. Bigley, remember I asked you
19 to be quiet? You have to be quiet. Otherwise we're
20 going to ask you to leave. I'd like you to stay, but
21 you have to be quiet, okay?

22 THE WITNESS: I have not worked to set up any
23 appointments for medications. I am not trying at this
24 point to connect him with a doctor, just with a case
25 manager.

1 A Being with him on a daily basis or --

2 Q Yeah, yeah. Like --

3 A -- that --

4 Q -- spend hours with him. Have coffee with
5 him, for example.

6 A That would be up to that agency. I don't
7 know. When I worked there, there were patients I saw
8 on a daily basis.

9 Q But you wouldn't, you know, spend a whole day
10 with them, would you?

11 A No.

12 Q Okay. Do you think it would be helpful for
13 him if he had someone to spend a whole day with him,
14 help him stay out of trouble (indiscernible)?

15 A The whole day?

16 Q Yeah.

17 A No.

18 Q Why not?

19 A I -- I mean, if Bill needs someone to spend
20 the whole day with him, to me, he would need, you
21 know, to be possibly in an assisted-living setting,
22 where they can provide that, which he is not able to
23 do when he's not taking medication.

24 Q But he doesn't like assisted living, so he's
25 said.

1 A I've not been able to approach that with him
2 because part of their recommendation is they take
3 meds.

4 Q So yeah, they require -- require meds?

5 A Correct.

6 Q Okay. So my question was, do you think it
7 would be helpful to him if someone spent all -- you
8 know, just -- sort of like a -- you know, have
9 breakfast with him, have coffee with him, you know, go
10 out and have a cigarette with him. You know, if he's
11 starting to get in trouble with someone, kind of, you
12 know, trying to help him from getting in trouble with
13 someone, don't you think that would be helpful?

14 MS. POHLAND: Object to form.

15 THE COURT: (Indiscernible.) You may answer.

16 THE WITNESS: Yes. If you could identify
17 that person.

18 MR. GOTTSTEIN: No further questions.

19 THE COURT: I just have a couple of
20 questions.

21 Back in '02, or this period when you were
22 delivering medications to him, it was typically a team
23 that would have a group of clients?

24 THE WITNESS: Correct.

25 THE COURT: And would that mean that on a

1 particular day -- I mean, a particular week, you might
2 see Mr. Bigley every day, twice a day?

3 THE WITNESS: That was possible, yes.

4 THE COURT: Okay. And other periods, you'd
5 be seeing the other three people or four people,
6 whatever it is, and one of your team members would be
7 seeing him that -- that amount of time?

8 THE WITNESS: Yes.

9 THE COURT: Okay. And you said that
10 occasionally he would decline -- you would offer him
11 the actual pills, and he could recognize them and say,
12 I need the pink one or the blue one but not the green
13 one, something like that?

14 THE WITNESS: Yes.

15 THE COURT: And that occasionally he declined
16 his medications during that period?

17 THE WITNESS: Yes.

18 THE COURT: And when he did that, would he --
19 was there a typical length of time during which he
20 declined medication? Was this like no in the morning
21 but he'd say yes in the afternoon, or it'd be three
22 days in a row, or can you give me some sense of --

23 THE WITNESS: It would vary.

24 THE COURT: Give me that sense of the range
25 of the time periods he would decline.

1 THE WITNESS: There were times when Bill
2 perhaps wouldn't be home in the evening, so he
3 wouldn't get that dose.

4 THE COURT: I'm not talking about him being
5 not there, but him being there and saying no to your
6 offer of medication.

7 THE WITNESS: Yes.

8 THE COURT: Can you give me a sense of how
9 often that occurred?

10 THE WITNESS: I don't recall how often that
11 occurred, no.

12 THE COURT: Is it somewhere in the ballpark
13 of once a month? If you can't remember, that's fine,
14 but I'm just trying to get a sense of frequency
15 (indiscernible).

16 THE WITNESS: You know, it really varied. He
17 could go three weeks with taking the meds day and
18 evening, and then there might be a stretch where he
19 would refuse them for two or three days at a time.

20 THE COURT: Can you give me a sense of -- is
21 that about the longest period of time that he would
22 decline, two or three days at a stretch?

23 THE WITNESS: From what I recall, part of my
24 job was if I felt he was declining the meds and was
25 beginning to decompensate, at that point typically I

1 would initiate an ex parte.

2 I don't recall how many days in a row he
3 would go without the medication before that would
4 occur.

5 THE COURT: And let's say he -- am I correct
6 in assuming that there were times when he declined
7 only for, you know, one morning or maybe twice a day
8 or three times in two days, you know, and then would
9 then start back up again?

10 THE WITNESS: Yes.

11 THE COURT: And did he -- was there ever a
12 time he did not start back up again on his own
13 volition, as opposed to you folks bringing him here or
14 initiating something more forceful, if you will?

15 THE WITNESS: I -- yes.

16 THE COURT: So he usually -- he usually would
17 start up on his own for whatever set of reasons?

18 THE WITNESS: Yes. But there were also
19 occasions when he would not.

20 THE COURT: Okay. And can you give me -- I'm
21 just going to try and -- let's assume that you
22 experienced ten times when he declined. Can you give
23 me a sense out of those ten how often he would start
24 back up again on -- excuse me, on his own, versus
25 having to have some more -- some greater intervention,

1 if you can remember? If you can't, that's fine.
 2 THE WITNESS: Yeah. I don't know that I can
 3 recall that.
 4 THE COURT: I'm just going over my notes.
 5 (Pause.)
 6 THE COURT: Is there any --
 7 MR. GOTTSTEIN: Can I just ask a follow-up
 8 question?
 9 MALINDA NATANEK
 10 testified as follows on:
 11 RECROSS EXAMINATION
 12 BY MR. GOTTSTEIN:
 13 Q Don't you think he liked being able to make
 14 that decision for himself?
 15 A To take the meds or not?
 16 Q Yeah.
 17 A When he was able to make that decision, yeah.
 18 Q Well, he was always able to decide whether he
 19 wanted to or not, didn't he?
 20 A When he was not actively psychotic and
 21 delusional, yes.
 22 Q Even if he's psychotic and delusional, he
 23 knows -- he could know whether he wanted to take them
 24 or not, couldn't he?
 25 A I don't know.

1 Q Wouldn't you like to be able to decide, if it
 2 was you?
 3 MS. POHLAND: Objection, relevance.
 4 THE COURT: Overruled.
 5 THE WITNESS: If I would like to take
 6 medication? Sure.
 7 MR. GOTTSTEIN: No further questions.
 8 MS. DERRY: May I do follow-up, please
 9 (indiscernible)?
 10 MALINDA NATANEK
 11 testified as follows on:
 12 REDIRECT EXAMINATION
 13 BY MS. DERRY:
 14 Q Ms. Natanek, as someone who at this time
 15 appears to be fully capacitated and be able to make
 16 your own decisions, if you believe that you were at
 17 risk of mental health issues, what would you do to
 18 ensure that your medication wishes were followed
 19 through?
 20 A Could you repeat that? Sorry.
 21 Q Ms. Natanek, if you didn't want to take
 22 medications now, and you're competent, what would you
 23 do in order to ensure you don't have to take
 24 medications if you do become sick?
 25 A I'm not sure I understand that question.

1 MS. DERRY: All right. I'm going to withdraw
 2 those questions, Your Honor.
 3 BY MS. DERRY:
 4 Q What's available to Mr. Bigley now in the
 5 community?
 6 A At this point in the community, I know
 7 Anchorage Community Mental Health Services is trying
 8 to make a connection with him. That was the agency
 9 that had brought in the three different case managers
 10 to see if perhaps Bill would have a better rapport
 11 with them. That's all we've been able to identify at
 12 this point.
 13 Q Did -- out in the hallway this morning, did
 14 Mr. Bigley tell you that he wants you to send him to
 15 Cuba?
 16 A Yes.
 17 Q Are you able to do this?
 18 A To my knowledge, no.
 19 Q Do you believe that that's Mr. Bigley's true
 20 wish?
 21 A No.
 22 Q Do you believe that he's competent to make
 23 the decision to fly to Cuba today?
 24 A No.
 25 Q Do you believe he's competent to make the

1 decision of whether or not to take medications today?
 2 A No.
 3 Q Do you believe that often when he refused
 4 medication in the past, it was due to the fact that he
 5 was psychotic and did not have the capability of
 6 informed consent at that time?
 7 A At times, yeah.
 8 Q And you -- do you know what triggered
 9 Mr. Bigley to refuse medications since 2005 -- to
 10 consistently refuse medication since 2005?
 11 A I believe it was through his attorney.
 12 Q And you're his social worker, so you know --
 13 you have read the medical chart and you know what goes
 14 on. And you do not believe that Mr. Bigley is capable
 15 of informed consent at this time?
 16 A No.
 17 Q And Mr. Bigley has refused food?
 18 A Yes.
 19 Q But you continue to offer him food?
 20 A Yes.
 21 Q And he has refused medications, but they
 22 continue to be offered?
 23 A Yes.
 24 Q If he says to you, I want to take medication,
 25 do you believe that he is capable of informed consent

1 at that time?

2 A In the present?

3 Q Uh-huh.

4 A No.

5 Q And you, as a social worker, also protect
6 Bill -- protect Mr. Bigley and his best interests?

7 A Yes.

8 Q And you would not support anyone at the
9 hospital assuming that Mr. Bigley consent if he -- if
10 at this time, in his present state, he says that he
11 wants to take medication?

12 A Repeat that, please.

13 Q Do you believe that -- if Mr. Bigley says to
14 you right now, I want to take medication, do you
15 believe that's what he truly wants?

16 A That depends. I don't know that I can answer
17 that.

18 Q If he said that at this immediate minute --
19 immediate second, what would you think?

20 A I'd have to say no.

21 Q And that's because --

22 A I don't know at this point if Bill could make
23 a decision of what the medications are and what the
24 benefit of that would be.

25 MS. DERRY: No further questions.

1 THE COURT: Just let me follow up here.
2 Mr. Bigley, you've got to be quiet.

3 Back when you were giving him the meds during
4 that year, do you recall how long it would take, if he
5 wasn't taking them, for him to begin to deteriorate?
6 I mean, it's not a -- you know, an immediate
7 phenomenon. For him, do you have a sense of how
8 quickly he would go -- how soon he would be troublly
9 concerning, in your observation?

10 THE WITNESS: It would have to be typically
11 after I recall -- I would say after five days, five to
12 six days.

13 THE COURT: So were there -- you said there
14 was sometimes when you were seen as more aggressive
15 efforts, more intervening to get him to take his meds
16 because he hadn't sort of voluntarily started back up
17 again. Would that be before this five-day period?

18 THE WITNESS: Would you repeat that?

19 THE COURT: You said it would take about five
20 days for him to start to deteriorate significantly if
21 he was not taking medication. And you said also that
22 on many occasions, he would start back up again
23 voluntarily, sometimes relatively quickly, later that
24 afternoon, the next day. And other times you had to
25 sort of intervene to get him to start again.

1 THE WITNESS: Uh-huh.

2 THE COURT: And what I'm wondering is, would
3 you wait the full five days, before he started to
4 really deteriorate, or would you, after two days or
5 three days, say, hey, wait a minute, you know, this is
6 getting -- we're on the cusp of problems here; we'd
7 better get him in here to convince him?

8 THE WITNESS: Yes. And I know at times when
9 Mr. Bigley was -- had been previously at API, we had
10 him released on what was called an early release, so
11 that if he did refuse or miss the medications, we did
12 have the option of readmitting him to the hospital.

13 THE COURT: So just let me -- and I guess I
14 want to clarify what this intervention was, and I
15 think you've just done that.

16 If he had gone for, I don't know, two days,
17 three days, in that general ballpark, of not taking
18 the medication, then if you thought, wait a minute,
19 we're getting -- he's getting dangerous here -- that's
20 the wrong word -- it's getting problematic about his
21 medication today, then to intervene, would that mean
22 you would send a bigger team out there, or would you
23 actually bring him back to API?

24 THE WITNESS: Both. You know --

25 THE COURT: That's what I want you to explain

1 to me. The whole -- what would it take, if you didn't
2 actually bring him back to API, to get him to start up
3 again when you were trying to convince him to do that?

4 THE WITNESS: Sometimes, you know, Bill had
5 staff that he liked better than other staff. So we
6 would try to get those staff to be the folks that were
7 going out twice a day, and maybe making an extra trip
8 out, you know, just to try to talk to Bill and see
9 what he needed and -- but kind of focusing in on the
10 case managers that he had a preference for and he
11 liked.

12 THE COURT: Okay. So one tactic was to
13 bring, you know, somebody he had a bond with or
14 connection with, some API staff out there. Let's
15 assume you tried that and that didn't work very well,
16 what would be the next tactic, if you can think of an
17 example?

18 THE WITNESS: If he continued to refuse, if I
19 felt at that point that he was deteriorated enough
20 that would warrant an admission, I know at times I did
21 file an ex parte, if he was not on an early release.
22 If he was on the early release, then we would serve
23 him that notice -- I think it's a 24-hour notice to be
24 recommitted.

25 THE COURT: So if he's on this early release

1 thing, you have a -- an ability to bring him back in
2 to the institution?

3 THE WITNESS: Yes.

4 THE COURT: And does that require a judicial
5 oversight, or is that just simply a decision that API
6 gets to make?

7 THE WITNESS: It was a -- what would happen
8 is Mr. Bigley would be on a 30-day or a 90-day
9 commitment to API. He would be released prior to that
10 90-day commitment expiring, and that would be the link
11 of the early release, so we did not have to go back to
12 court.

13 We had -- I know there was a form that we had
14 to present to Mr. Bigley saying that because of, you
15 know, step one that said you would take your meds --

16 THE COURT: You had the authority to commit
17 him for 30 or 90; you made a discretionary call and
18 said, let him stay at Government Hill?

19 THE WITNESS: Right.

20 THE COURT: And you were able to just -- the
21 team of treating folks (indiscernible) back in, and
22 you would just simply do that?

23 THE WITNESS: Yes.

24 THE COURT: And then if he's not on early
25 release and he was not technically committed, but

1 second time they were here for perhaps ten minutes,
2 and the most recent time I don't know that it lasted a
3 whole minute.

4 THE COURT: The last one was less than a
5 minute?

6 THE WITNESS: Yes. And this is due to Bill's
7 refusal to meet with them and talk to them.

8 THE COURT: All right.

9 MR. GOTTSTEIN: Can I ask a couple of
10 questions (indiscernible)?

11 THE COURT: (Indiscernible.)

12 MALINDA NATANEK
13 testified as follows on:

14 RECROSS EXAMINATION

15 BY MR. GOTTSTEIN:

16 Q So when you say the five days, that was on
17 Risperdal Consta, right, this long-acting one? Five
18 days he started to deteriorate?

19 A In 2002, in that --

20 Q Yes.

21 A I don't recall what medication he was on at
22 that time.

23 Q Was it -- so you don't (indiscernible)?

24 A Yeah, I don't.

25 Q Okay.

1 still out in the community taking the medication, if
2 it got so bad because he'd stop taking it, then you
3 would resort to some sort of a forced evaluation or --
4 and/or judicial petition?

5 THE WITNESS: Yes.

6 THE COURT: And the community health --
7 community mental health case managers, they've sent
8 three folks out. And the hope is that that person
9 would be able to watch him with weekly visits of
10 relatively short duration in each visit?

11 THE WITNESS: Yes.

12 THE COURT: And the three people, that's just
13 to sort of, here, Bill, here's this guy, let's see if
14 you two click, that kind of thing. And I assume he
15 likes some people more than he likes other people. Is
16 that what the experiment is doing with each of these
17 three managers?

18 THE WITNESS: Yes.

19 THE COURT: And can you give me a sense of
20 how long -- let's say that manager -- manager No. 1,
21 has come out today. Does he stay here for an hour?
22 Ten minutes? All day? What's the -- what's the
23 honeymoon? What's it look like?

24 THE WITNESS: To my knowledge, the first
25 individual was here for a couple of minutes. The

1 A I would have to --

2 Q So --

3 A I would have to say no, since he was taking
4 daily medication.

5 Q So is it -- the difference between early
6 release and ex parte is on the early release, he had
7 to do -- to order back for not taking meds; is that
8 correct?

9 A Correct. The early release is set up so that
10 there is a list of rules that he would have to sign
11 off that he would agree to comply with.

12 Typically they were meeting with the case
13 manager, taking meds every day, and keeping his
14 doctor's appointments. Those are usually the general
15 conditions.

16 Q Okay. So you don't know that that's
17 illegal -- that that arrangement was illegal, do you?

18 THE COURT: Ask -- ask the question.

19 BY MR. GOTTSTEIN:

20 Q But you must think that that was -- do you
21 think that was legal criteria for ordering back from
22 early release?

23 MS. POHLAND: Objection, the witness is
24 (indiscernible).

25 THE COURT: If you know, answer it. If not,

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1 don't answer it.
2 THE WITNESS: Can you repeat it?
3 MR. GOTTSTEIN: I'd like to move on.
4 BY MR. GOTTSTEIN:
5 Q If he's -- currently if he's -- Mr. Bigley
6 accepted the medication, he would be given it,
7 wouldn't he?
8 A Yes.
9 Q Okay. So --
10 A It would have to go through the doctor.
11 Q There would have to be an order for it?
12 MS. DERRY: I object. That question --
13 excuse me.
14 THE COURT: You can make an objection, but
15 what is the objection?
16 MS. DERRY: That that question was asked and
17 answered by me in the brief statement. That question
18 was confusing.
19 THE COURT: Overruled.
20 MR. GOTTSTEIN: I think she did answer it.
21 You said yes, right?
22 THE COURT: You can ask the next question?
23 MR. GOTTSTEIN: Okay.
24 BY MR. GOTTSTEIN:
25 Q So you really don't think he wants to go to

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1 Cuba?
2 A (No audible response.)
3 Q You don't think that he wants to escape for
4 (indiscernible)?
5 A What's going on here? I --
6 Q (Indiscernible?)
7 A -- couldn't understand that. I can't assess
8 his happiness.
9 Q And -- is he angry a lot here?
10 A He also laughs a lot here.
11 Q Is this behavior here significant -- in the
12 courtroom now significantly better than it has been
13 earlier today on the unit?
14 A I haven't been on the unit today.
15 Q Oh, you've seen him (indiscernible), like
16 yesterday?
17 THE COURT: I'm going to stop this. You can
18 follow up on what I did. You had an opportunity to
19 (indiscernible).
20 MR. GOTTSTEIN: Okay. All right.
21 THE COURT: And you didn't choose to go into
22 this topic.
23 MR. GOTTSTEIN: All right.
24 THE COURT: All right. So you are excused.
25 (Witness excused.)

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1 THE COURT: We will reconvene tomorrow at
2 8:30. Is there anything -- we will reconvene at 8:30.
3 (Off record.)
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1 TRANSCRIBER'S CERTIFICATE
2 I, Jeanette Blalock, hereby certify that the
3 foregoing pages numbered 1 through 180 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 November 5, 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