

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 6, 2008
8:35 A.M.

APPEARANCES:

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Page 2

1 I-N-D-E-X
2
3 PAGE
4 KAHNAZ KHARI, MD
5 Direct Examination by Ms. Derry 10
6 Cross Examination by Mr. Gottstein 33
7 Redirect Examination by Ms. Derry 167
8 Recross Examination by Mr. Gottstein 185
9
10
11 EXHIBITS
12 F Listing of admissions 57
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 4

1 THE COURT: Okay. I'll (indiscernible). Is
2 there (indiscernible) before we hear additional
3 evidence?
4 MR. GOTTSTEIN: I think there's a couple of
5 things, Your Honor.
6 I got served with motions to strike and for
7 protective order yesterday at 4:30. I don't know if
8 those are moot from -- I don't know why that's
9 something that the Court -- are those --
10 MS. POHLAND: That would be the protective
11 order that we discussed yesterday morning, Your Honor.
12 And it's just when my (indiscernible) staff wanted to
13 wait until I got back to (indiscernible). I was going
14 to have (indiscernible).
15 THE COURT: So the protective order's been
16 addressed early yesterday morning. And the motion to
17 strike is directed at the written testimony that
18 Mr. Gottstein --
19 MS. DERRY: No, Your Honor. The motion to
20 strike is actually directed at the deposition
21 testimony of the deponent on Monday and Tuesday.
22 The --
23 THE COURT: Well, let's deal with that issue
24 if and when Mr. Gottstein attempts to utilize it.
25 MS. DERRY: Okay. Thank you.

Page 3

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 3AN6108-196
7 8:35:38
8 PROCEEDINGS
9 THE COURT: All right. We are on record in
10 3AN-08-01252 PR. Mr. Bigley, Mr. Hughes, Dr. Khari,
11 and I'm sorry --
12 MS. DERRY: Ms. Derry.
13 MS. POHLAND: Ms. Pohland.
14 THE COURT: (Indiscernible) and Mr. Bigley
15 are all present.
16 From yesterday, the -- Mr. Gottstein and the
17 State should have the log notes and the CD. I think
18 the public defender wanted one (indiscernible)?
19 MR. GOTTSTEIN: Yes.
20 THE COURT: Are they by any chance going to
21 be here, not in this hearing, but in the regular
22 30-day hearing?
23 MS. DERRY: No. The hearing we're on the
24 afternoon, the Friday, Your Honor, they shouldn't be
25 here today.

Page 5

1 MR. GOTTSTEIN: One of my concerns is I'm
2 confused as to exactly what I'm prohibited from doing.
3 And so -- and I, you know, (indiscernible) problem
4 with that. So I want to know exactly what it is.
5 So for example, would I be prohibited from
6 posting the motions that they filed yesterday?
7 (Indiscernible.)
8 THE COURT: Be specific. Which motions are
9 you talking about?
10 MR. GOTTSTEIN: The motion to strike and the
11 motion for protective order.
12 THE COURT: (Indiscernible.)
13 MR. GOTTSTEIN: So --
14 THE COURT: Those are (indiscernible)?
15 MR. GOTTSTEIN: Yes, I think so.
16 THE COURT: So this is the one that was
17 (indiscernible) yesterday that was required by
18 (indiscernible) motion to strike. And the motion for
19 protective order is the one that (indiscernible)
20 yesterday. Those are the two that (indiscernible).
21 MR. GOTTSTEIN: Did you sign it?
22 THE COURT: No, I haven't signed it.
23 MR. GOTTSTEIN: Oh, from that --
24 THE COURT: Right. Yeah.
25 MR. GOTTSTEIN: Okay. And here's -- just --

1 THE COURT: This is the documents that you're
2 talking about --

3 MR. GOTTSTEIN: Yes.

4 THE COURT: -- and I assume the attachment?

5 MR. GOTTSTEIN: Yes.

6 THE COURT: What is the State's position
7 on -- let's start with the motion to strike.

8 MS. DERRY: The State's position is that all
9 proceedings in this case should remain confidential
10 pursuant to the protective order.

11 We don't actually see the purpose of posting
12 them on Mr. Gottstein's Web site. (Indiscernible)
13 wants to make an application to the Court and have a
14 chance for argument, as he specified yesterday with
15 regard to some of those proceedings in this case, and
16 we can argue it at that point (indiscernible).

17 THE COURT: Let's do this. Let's take this
18 up later.

19 I assume you're not wanting to post these
20 today?

21 MR. GOTTSTEIN: Well, Your Honor, what this
22 is -- for example, is the Web page. And I -- as a
23 matter of course, I (indiscernible) post -- post
24 things as we go along, just as a matter of course,
25 when they (indiscernible) -- well, I actually -- and

1 if you want to order me to take them down, I -- I
2 started to post these, too. And I thought, well, I
3 thought you said that this applies to deposition
4 testimony, and so that this would be okay.

5 And then I thought, well, gee, I better make
6 sure what it is. But if the motions are listed
7 here -- but it's not posted. I didn't put the links
8 on.

9 THE COURT: All right. But (indiscernible).

10 MR. GOTTSTEIN: We can wait until the end of
11 the day.

12 THE COURT: The end of the day, just so we
13 can get evidence (indiscernible). And we may -- let's
14 use as much of our time today (indiscernible).

15 MR. GOTTSTEIN: (Indiscernible.)

16 THE COURT: Before the end of the day, we'll
17 deal with those other issues.

18 MR. GOTTSTEIN: Couple other things. One is,
19 I just (indiscernible) relate to some of the questions
20 that I have.

21 I'm going to at some point -- and if I need
22 to do it now, I make the motion now. I move
23 (indiscernible) court order a settlement conference.
24 So -- and just to alert you to that, so you
25 (indiscernible).

1 THE COURT: Does the State have any interest
2 in a settlement conference?

3 MS. POHLAND: I don't understand what the
4 purpose of the settlement conference would be, because
5 I believe it's Your Honor's determination that
6 Mr. Bigley (indiscernible).

7 THE COURT: (Indiscernible.)

8 UNIDENTIFIED SPEAKER: No, Your Honor, we do
9 not.

10 THE COURT: (Indiscernible.)

11 MR. GOTTSTEIN: And then I'd like to just --
12 the timing of witnesses, you know, I've got some
13 witnesses -- Dr. Wolf, he's available pretty much all
14 day today.

15 And he examined Mr. Bigley at the request of
16 the hospital, I believe. And he was listed on their
17 witness list. But he's -- he's got to be somewhere at
18 1 today. Tomorrow morning's no good. He's only in
19 Anchorage on Monday next week, and so there's that.

20 THE COURT: (Indiscernible) that.

21 MR. GOTTSTEIN: Huh?

22 THE COURT: Hopefully we can do
23 (indiscernible).

24 MR. GOTTSTEIN: Yeah. And then Jerry
25 Jenkins, he is the CEO of Alaska Community Mental

1 Health Services, and I'd like to be able to kind of
2 get him -- be able to call him and say, show up in
3 half an hour, or whenever.

4 And then Ron Bassman, he's available for
5 cross examination from 10:30 to 11:30 today. And we
6 can arrange other times. The State didn't -- didn't
7 want to cross examine him last time. As a matter of
8 fact, (indiscernible) businessman who, for some short
9 testimony, maybe we could call them (indiscernible).

10 THE COURT: Anything else?

11 MS. POHLAND: Your Honor, I would just note
12 for the clerk that on yesterday's transcript, that I'm
13 listed as the attorney for Mr. Bigley. And that would
14 be Mr. Gottstein. I am Erin Pohland, the attorney for
15 the State. Thank you.

16 THE COURT: All right. Anything else?

17 MS. DERRY: Not from the State, Your Honor.
18 Your Honor, I'd like Dr. Khari to testify.

19 THE COURT: Please stand and raise your right
20 hand.

21 (Oath administered.)

22 THE WITNESS: I do.

23 THE COURT: You may be seated. Please
24 spell -- state and spell your first and last name,
25 please.

1 THE WITNESS: Kahnaz Khari, K-A-H-N-A-Z, the
2 last name K-H-A-R-I.

3 THE COURT: Madame Clerk, are you picking her
4 up? Is her voice loud enough?

5 THE CLERK: She is doing fine. I'll let you
6 know if she fades.

7 THE COURT: Thank you. Go ahead.

8 KAHNAZ KHARI, MD
9 called as a witness on behalf of the State, testified
10 as follows on:

11 DIRECT EXAMINATION

12 BY MS. DERRY:

13 Q Dr. Khari, are you familiar with Mr. Bigley?

14 A Yes.

15 Q And could you give us a brief rundown of your
16 credentials as a psychiatrist, please?

17 A I finished my medical school in Dominican
18 Republic.

19 I did my residency in the University of
20 Missouri, Kansas City.

21 And since graduation from that program, I
22 have been working for API.

23 Q And you have --

24 A Also, I am board certified.

25 Q Board certified psychiatrist?

1 have a long-standing, (indiscernible) to the
2 medication.

3 So this is (indiscernible) have focus on
4 risperidone.

5 Q And what do you anticipate the dosage to be?

6 A The medication, the dosage for the
7 (indiscernible) form, injection form, which is every
8 two weeks, it starts on 25 milligram every two weeks,
9 with the maximum 50 milligram.

10 And however, when we start that medication in
11 the injection form, it takes about four to eight weeks
12 to get to a level -- actually, it takes two to four
13 injections. That makes it -- let's say it's four
14 injections, every injection is two weeks, almost eight
15 weeks to get to a steady level that we would like to
16 have him.

17 And then usually the recommendation is to
18 (indiscernible) individual with the oral medication of
19 the same medication until the injection form starts
20 showing effect in the system. So (indiscernible)
21 start him initially on a (indiscernible) in the
22 morning, 2 milligram at bedtime in the oral form, and
23 also give him the first injection of the risperidone
24 (indiscernible) 25 milligram. And --

25 THE COURT: The shot, how many?

1 A Yes.

2 Q And since October 20th, you have been the
3 treating psychiatrist for Mr. Bigley?

4 A Yes.

5 Q Have you tried to discuss medications with
6 Mr. Bigley?

7 A Yes. On several occasions.

8 Q And was he able to discuss medications with
9 you?

10 A No.

11 Q What medications do you wish to prescribe?

12 A In his case -- well, usually, I would try to
13 see what -- I would attempt to have engagement with my
14 patient and discuss the choices of medication.

15 But unfortunately, in Mr. Bigley's case,
16 his -- his psychotic symptoms and his level of
17 cooperation and his thinking process limits him to
18 really have a rational engagement with me.

19 And in that situation, by looking at the
20 history of his medication and what he responded best
21 were risperidone, which is a newer antipsychotic
22 medication.

23 And it is another reason that I am thinking
24 of risperidone is (indiscernible) long-acting form of
25 injection, which is recommended for individuals who

1 THE WITNESS: Twenty-five milligram
2 initially.

3 And the reason -- usually the (indiscernible)
4 is recommended when we start an individual on a
5 medication, especially for the depo form, since they
6 may have a side effect. We do not want to expose them
7 immediately, give them oral medication for a week or
8 two weeks, to just make sure they don't have any
9 adverse effects.

10 But in the case of Mr. Bigley, it's a little
11 bit different. He has been exposed to that medication
12 for longer-standing terms, (indiscernible). So I know
13 that his body is used to the medication. And that is
14 another reason that I am kind of acting a little bit
15 quicker, from the aspect that I know that Mr. Bigley
16 does not want to stay in the hospital. And I --

17 THE COURT: Just a moment. Mr. Bigley,
18 (indiscernible) you have to be quiet. We want you to
19 stay. You need to be quiet for (indiscernible), okay?

20 BY MS. DERRY:

21 Q And, Dr. Khari, Mr. Bigley has taken
22 long-acting risperidone before; is that correct?

23 A Yes. Not while under my care. Actually, it
24 was taken on another (indiscernible) at the present
25 time. He was giving him risperidone (indiscernible)

1 for a good -- I'm not exactly sure the duration, but I
2 understand it was for good extended time.

3 Q And do you know if Mr. Bigley had any side
4 effects to the medication at that time?

5 A As I said, I -- what I have seen in the
6 chart. I did look at his chart. I scanned through
7 2006, 2007, and 2008.

8 And some part of the review of the chart had
9 indicated he did have some mild (indiscernible) of
10 dyskinesia. But it did not indicate which medication
11 caused that.

12 So I -- I am not really -- or it may have
13 (indiscernible). I'm not really sure. But I cannot
14 pinpoint what -- I did not see directly any side
15 effects recorded with the risperidone.

16 Q And when he came to the -- from what you know
17 of the chart, when he was on risperidone, he came to
18 the hospital to get that injection?

19 A Yes. I understood he came while
20 (indiscernible) every two weeks, and (indiscernible)
21 injection.

22 Q Is there any indication in the chart that the
23 medication helped him?

24 A Well, I would not -- I summarize from the
25 treatment team and staff, that they have known him for

1 (indiscernible) about the issue of this medication.

2 Q Do you think that Mr. Bigley knows that he
3 has mental illness?

4 A No. He has no insight.

5 But it's interesting, in one of the occasions
6 when I was talking with him, he (indiscernible).

7 Actually, I should give you (indiscernible)
8 from the aspect, my contact with him (indiscernible),
9 his other hospitalization which he -- he recognizes me
10 as an agent of medication. So he has a lot of
11 resentment and anger, even from first aspect, because
12 the situation became with the court order on
13 medication.

14 But to his credit, this week (indiscernible)
15 because he's able to have more rest at night, he is
16 actually requesting to talk with me. Usually he
17 was -- he would (indiscernible) me, he yells at me, he
18 scream at me, you know, verbal, you know, anger, some
19 profanity.

20 But for this week, every day, actually when I
21 (indiscernible) me to go talk with him, and didn't
22 want to (indiscernible). He actually asked me: Do I
23 have schizophrenia?

24 I have told him, yes, you do have
25 schizophrenia. And I actually start to discuss

1 a longer period, perhaps (indiscernible) degree of the
2 chart. And also the evidence that he was living in
3 the community, he -- he did not have the degree of the
4 number of the hospitalization that he is facing right
5 now, and he did not have the number of the staying in
6 the correctional facility that he is facing.

7 So summarizing that, yes, I did
8 (indiscernible) evidence based on those comments, that
9 he had -- he was maintaining a life in the community.

10 Q And you have evaluated Mr. Bigley at multiple
11 times since October 20th of 2008?

12 A I actually have visited with him on a daily
13 basis, and even on the weekends. This Saturday I came
14 by to make sure he was -- you know, he was -- what his
15 state of mind. And so (indiscernible), on a weekly
16 basis, I have visited with him.

17 Q Was Saturday your day off?

18 A Yes.

19 Q And so you tried to discuss medications with
20 him?

21 A Yes.

22 Q And it's not successful?

23 A Actually, it becomes very upsetting to him.
24 So (indiscernible), I try not to bring up that issue
25 in order not -- really not escalate his anger and his

1 further. He (indiscernible) question or validating
2 that he does have schizophrenia was unpleasant for him
3 to hear, and then he became upset.

4 So does he have insight or not? Does he
5 have -- you know, this is very difficult question from
6 the aspect, does he have (indiscernible) moments that
7 he does realize he does have a mental illness, and if
8 he does, was that part of the reason he asked the
9 question or was he being confrontational to see what I
10 think if he has (indiscernible) prove that.

11 But my understanding is perhaps he may have
12 moments, which is very short, of looking into where he
13 is at and what he is facing.

14 But as a whole, in (indiscernible), he has no
15 insight to his mental illness, which is impacting on
16 his judgment (indiscernible).

17 Q And when you talked to him, when he asked you
18 if he was schizophrenic and that made him upset, did
19 he say anything else after that?

20 A No. He just (indiscernible), and I cannot
21 remember exactly (indiscernible). But usually when he
22 was -- when making delusional comments and, if I
23 remember -- I have to look at my notes
24 (indiscernible).

25 I think he started (indiscernible) about

1 knowing the president, going back to his delusional
2 contact.

3 Q Okay. And do you feel that he can assimilate
4 relevant facts about his illness?

5 A No, he does not.

6 Q Does he understand the information that you
7 try to give him about his illness?

8 A First of all, as I said, our engagement or
9 our having rational conversation is -- doesn't exist.
10 So I never reached to that point to be able. Even
11 though I have attempted it, I really never reached
12 that point, mainly because he would start raising his
13 voice, he would make -- making sounds that is not
14 understandable. Basically he is trying to insult me,
15 not wanting to really maintain the engagement on that
16 conversation.

17 Q And do you try other forms of treatment with
18 him also while he's here?

19 A Well, I don't exactly -- your question from
20 that aspect. But from my aspect, I try -- trying to
21 approach him, just put aside even as a doctor, just as
22 a human to human (indiscernible) engagement with him,
23 just trying to see, you know, how is he doing, is he
24 having a better day.

25 But of course, as I said, he sees me

1 patient that he did not get along very well and did
2 not want to be present.

3 So we, you know, had breakfast together, and
4 he was two tables away from us. So I tried sometimes
5 just -- tried to tell him, you know -- tried to
6 (indiscernible) the time he was outside hospital
7 (indiscernible) maintaining.

8 But as I said, inside the hospital, I did not
9 have any level of that much contact with him.

10 Q When was that that you took him to breakfast?

11 A I think it was -- I could be wrong on my
12 dates. I would say probably was late 2007.

13 Q Okay. So it was over a year ago?

14 A Yes.

15 Q Okay. And was he medicated at that time; do
16 you know?

17 A (Indiscernible) facility, they would not
18 access his (indiscernible) medication. So I assume
19 that he was on medication at that time.

20 Q So he was in an assisted-living facility?

21 A Yeah.

22 Q And must have been on medication, because the
23 requirement to be in assisted living?

24 A (Indiscernible) facility, yes.

25 Q Okay. And when he says that he doesn't want

1 connected with the medication.

2 And I try to -- on one occasion, I
3 actually -- I had one contact with him in the -- on
4 outpatient -- not outpatient. Off the API facility.
5 Actually I went to one (indiscernible) facility once
6 to take one of my -- the social workers of my team
7 wanted to take one of my patients, who was in the
8 hospital for a long time and was doing really well in
9 there, outside API to take him out for breakfast. And
10 Mr. Bigley happened to be at the same time in the same
11 facility.

12 Actually, I wasn't aware of it. When I
13 walked in there, I had a bit of concern because I know
14 that I usually use my (indiscernible). So I tried to
15 be low key and try to (indiscernible), you know, not
16 to create that (indiscernible) for him.

17 And so -- but (indiscernible), he actually
18 approached me. We didn't have really long
19 conversation. So I acknowledged him. I told him I am
20 taking another individual to breakfast, and if he
21 would like to join us, I would be happy to take him
22 out for breakfast, as well.

23 And to my surprise, he agreed. He said he
24 would come, but he would not be willing to sit on the
25 same table, not because of us, because the other

1 to be on medication, does he tell you why?

2 A No. He -- sometimes -- as I said, he does
3 not make really sense, unfortunately. I wish I could
4 have known him in a better state of mind.

5 But he does say that I am killing his brain.
6 So I don't understand, does that mean the medication
7 is -- is he talking about the side effect? Is he
8 worried about the concern of the side effect? But he
9 does tell me that it kills his brain, and then after
10 that he goes into the other -- a lot of other
11 delusional -- then he start making delusional
12 statements that is not related to medication.

13 So I can't understand really, is he trying to
14 tell me he is concerned about the side effect, is it
15 because it's damaging to his thinking, what impact
16 does it have as overall to his brain. So I really
17 can't help good on that.

18 Q Okay. Do you think that he's capable -- no,
19 I'm not going to ask -- I already asked that question.

20 What do you think will happen if Mr. Bigley
21 continues to not be treated with the full spectrum of
22 what API can provide him?

23 A Unfortunately, schizophrenia at the present
24 time (indiscernible) medicine is a field that -- in
25 every field of medicine, not just that type, they are

1 progressing on a daily basis.
2 At the present time, we still continue to
3 consider schizophrenia as a chronic disease. And in
4 his situation, he has a severe level of schizophrenia.
5 He has had long-standing institutionalized life, you
6 know, by coming to API as a result of his -- his
7 illness.

8 Unfortunately, a lot of the studies have
9 shown that when the individual does not receive the
10 (indiscernible) care over the treatment, they continue
11 would deteriorate. Their prognosis becomes
12 (indiscernible) or they continue to (indiscernible)
13 prognosis and (indiscernible).

14 And they unfortunately at that point would
15 become that as they do not receive treatment, their
16 level of functioning declines. So what the
17 baseline -- what I mean by that, if they maintain a
18 baseline today at this level, can the individual have
19 the same baseline later, even like few months later.

20 Even (indiscernible) treat them at that time,
21 because the baseline may have already changed. So
22 basically, we are taking more and more his level of
23 functioning as we are -- as we delay and prolong
24 administering the treatment and care.

25 Q So you believe that not treating with

1 medications that were successful in the past, that you
2 actually -- we actually may be putting him in a
3 situation that makes it difficult for him to ever
4 achieve the baseline he was at before?

5 A Yes. And then also, the newer studies
6 (indiscernible) studies --

7 MR. GOTTSTEIN: Objection. I don't think
8 she's been qualified to testify as to the scientific
9 evidence.

10 And I asked her at her deposition to bring
11 everything that she is going to rely on for scientific
12 evidence. And so I haven't been provided those
13 studies.

14 THE COURT: Would you lay a foundation as to
15 her ability to reference those (indiscernible). And
16 then whatever it is that you are eliciting, has that
17 been provided?

18 MS. DERRY: No. Other than Dr. Khari
19 testified in the court, in probate, as an expert.

20 THE COURT: Well (indiscernible) I'm not
21 talking about. But if she is going to rely on a
22 specific study and was -- has that study been
23 provided -- was there a request for it to be provided,
24 and if so, has that been complied with?

25 MS. DERRY: I think that there was confusion

1 over the subpoena. It was requesting an essay
2 essentially of everything that Dr. Khari knows and
3 what her opinion is of Mr. Bigley. And she, as a
4 clinician, wasn't prepared to do that.

5 But she -- we can -- if there was a single
6 study. I think we had established during the
7 deposition that her testimony comes from her years of
8 experience and all of the various continuing education
9 that she has, and in general. And there wasn't a
10 specific reference to anything that she specifically
11 relied upon, more than the standard of care that is
12 trained (indiscernible).

13 MR. GOTTSTEIN: Your Honor, if I can --

14 THE COURT: Do you have the -- either the
15 deposition request or the subpoena, or wherever the
16 request for information (indiscernible)?

17 MR. GOTTSTEIN: Yes. It was -- the same
18 attachment was both to the deposition and for here.

19 MS. DERRY: And, Your Honor, we also objected
20 to --

21 THE COURT: Let me read it.

22 So it was the first bullet point
23 (indiscernible)?

24 MR. GOTTSTEIN: Yes.

25 THE COURT: And (indiscernible) deposition

1 (indiscernible) --

2 MS. DERRY: Yes. And, Your Honor, we
3 objected that the timeliness of the notice made it
4 very difficult to present all of the information that
5 he had requested. We had -- Dr. Khari was served on
6 Thursday or Friday morning, and then there was various
7 problems with scheduling and Dr. Khari being at work
8 and she wasn't -- with the timeliness of the
9 depositions (indiscernible).

10 THE COURT: Was she about to tell me about a
11 specific study or just sort of, in my years of
12 experience?

13 MS. DERRY: Are you talking about a specific
14 study or years of experience?

15 THE WITNESS: No. Experience and the daily
16 reading and updating myself, as a summary, not
17 focusing on one article.

18 But if they want me to focus, I could look
19 for article. I'm not thinking of one specific
20 article. I'm just -- based on my profession, I have
21 to update with all the time from (indiscernible) of
22 the information that I read.

23 MS. DERRY: And I would be happy to
24 establish --

25 THE COURT: I am going to overrule the

1 objection. I don't think that this -- I don't think
2 that to the extent there is a "give me everything
3 you've ever read" request, that that's a reasonable
4 request.

5 To the extent that the request is, show me
6 something that you specifically relied upon
7 (indiscernible), it doesn't appear that there was
8 something that you -- a specific article that you
9 relied upon, as opposed to the general knowledge.

10 So I'll overrule the objection.

11 MS. DERRY: Your Honor, would you like me to
12 have her establish further foundation of her general
13 knowledge of the risks and benefits of medication?

14 THE COURT: Explain to me your objection to
15 her ability to testify about the use of medication.

16 MR. GOTTSTEIN: It's -- my -- if she's going
17 to cite to studies and scientific evidence, I just
18 want to know what she's citing to so I can review it
19 and then have a chance to rebut it. That's all I'm
20 trying to do.

21 THE COURT: I don't have any problems with
22 that if she's talking about specific articles. But I
23 am not understanding that she is (indiscernible).

24 MR. GOTTSTEIN: She said studies say, so it
25 seems to me I ought to be able to look at what studies

1 it is that she's saying says that.

2 THE COURT: (Indiscernible.) I'm going to
3 let her testify about her general knowledge
4 (indiscernible) impact of the medication and what is
5 the effect of not medicating.

6 Do you want her to give you a list of
7 articles (indiscernible) this testimony?

8 MR. GOTTSTEIN: Yes. And, Your Honor, I
9 mean, one of the things is that, for example, the
10 written testimony that was submitted cites a lot of
11 studies. And so then it really never has been
12 rebutted.

13 And then she comes in and says, well, studies
14 say this, and I -- I want -- I just want to see that.

15 THE COURT: My concern -- I mean, my concern
16 is this. Someone asked me to say, lay out the
17 documents you are referring to when you were thinking
18 about due process. I can't do that. I've been a
19 lawyer for 30 years. I have read a lot of stuff.

20 MR. GOTTSTEIN: And I am not asking for that.
21 Excuse me for interrupting.

22 THE COURT: But on the other hand, if I was
23 sitting here saying, what case have you read in this
24 thing, I'd say here's Myers, here's Wetherhorn, and
25 that would be a fair requirement.

1 I don't see so far that there's been
2 testimony elicited -- or that the questions have
3 elicited something more specific than a general
4 knowledge.

5 I'll let you voir dire or cross on the
6 specificity of her testimony and the references. And
7 if there is something out there that is more specific
8 than this general knowledge, she'll provide it for
9 you.

10 Just let me do one thing, because I want to
11 be sure that I -- would you spell the drug?

12 THE WITNESS: R-I-S -- R-I-S-P-E-R-D-O-N-E
13 (sic). That's -- or Risperdal, R-I-S-P-E-R-D-O-L
14 (sic).

15 THE COURT: Do you have a reference to
16 that -- I can never follow (indiscernible).
17 Risperidone. Okay.

18 BY MS. DERRY:

19 Q And, Dr. Khari, risperidone, is that the
20 specific drug name or is that the generic drug name?

21 A One is the name brand and one is generic
22 name. Risperidone is -- risperidone is generic name,
23 and Risperdal is a brand name. So actually making
24 (indiscernible).

25 MS. DERRY: And that's the brand name, Your

1 Honor.

2 BY MS. DERRY:

3 Q Dr. Khari, we were discussing earlier whether
4 or not -- what the effects are of not being on
5 medication for Mr. Bigley.

6 A On the (indiscernible) I was going to
7 (indiscernible) him based on my information,
8 basically, as I said, part of our profession, we have
9 to do continuing medical education and we continue to,
10 you know, read articles from different journals,
11 from -- you know, there are abundant of them out
12 there. So --

13 Q How many articles do you read a month keeping
14 yourself appraised of --

15 A Well, I can't (indiscernible). I try to pick
16 up whatever (indiscernible) or the psychiatry
17 (indiscernible), or my APA magazine or other articles
18 that (indiscernible) journals from home. So I do try
19 to read some article four or five times a week, but I
20 cannot -- you know, but there may be more and other
21 weeks.

22 And I also -- we do -- we go to continuing
23 medical education at least twice a year, so we
24 should -- again, it's a global summary of the
25 advancements in the field of psychiatry and newer --

1 newer approach to looking at the illnesses
2 (indiscernible).

3 So going back to Mr. Bigley and the
4 individual schizophrenia, actually we are showing that
5 the new antipsychotic medication is actually neuro
6 protective, from the aspect --

7 MR. GOTTSTEIN: Objection. Can I have a
8 continuing objection to -- because that's one of --
9 it's the same one about the studies. So you just want
10 me -- anything that she says, you just want me to
11 cross examine on?

12 THE COURT: You can -- you've got a standing
13 objection. And I will require her to provide -- if
14 you refer to a specific article, copies
15 (indiscernible) they are. You can follow up in cross
16 (indiscernible).

17 BY MS. DERRY:

18 Q Dr. Khari, Mr. Bigley has not been on regular
19 medication at least for the last six months?

20 A Since I have known him, yes, he is not
21 been -- yes, he has not been on --

22 Q What do you think the effects of Mr. Bigley
23 not being treated with the full spectrum that API can
24 offer has done to him?

25 A Well, again, the studies -- not a specific

1 case management, to have -- to be able to have a state
2 of life of -- that (indiscernible) to him.

3 And then also the fact that he is not
4 receiving treatment, he is becoming -- his chances in
5 the community become limited from the aspect --
6 (indiscernible) specifically are not accepting him.

7 Another (indiscernible) he cannot go. He is
8 reaching to the point that even to -- as his basic
9 needs, many of the facility that they provide food and
10 shelter, those are all -- he's banned from it.

11 And one of the organizations, that is Choice,
12 I am not really too much familiar with it. But my
13 understanding is actually -- I think Mr. Gottstein is
14 more (indiscernible) or may be involved with that.

15 If a facility is actually trying to see -- to
16 see if they could have an individual patient, if they
17 could avoid perhaps not to (indiscernible) just
18 medication (indiscernible) psychosocial treatment,
19 focusing more on treatment.

20 And the help of the case management, they
21 involve actually in 2007 where the (indiscernible).
22 In 2007, they involved them to see if they would
23 accept Bill as a client to provide that. And
24 unfortunately, after a month of -- they did referral.
25 Within a month after they have the contact with him

1 study, overall understanding, if an individual does
2 not take the medication, they are not (indiscernible)
3 to the medication, we will see poor functional
4 outcome, like the poor mental state, poor physical
5 health, being in a state of victimization, being more
6 (indiscernible), more violent, more conduct --
7 misconduct, and more victim of the crime. So those
8 are some of the outcome of not taking the medication.
9 Which again, if you look at -- as was testified
10 yesterday, that the number of (indiscernible) and
11 the --

12 MR. GOTTSTEIN: Excuse me. I didn't
13 understand. The number of what?

14 THE WITNESS: The number of times that he has
15 been in the correctional facility, I should say.

16 The number for contact that he have with the
17 department of corrections, along with -- I'm sorry, I
18 lost the -- I forgot, what was the question? I
19 apologize.

20 BY MS. DERRY:

21 Q What -- where Bill is -- where Mr. Bigley is
22 now with having not been treated.

23 A Well, the -- we look at it before he was able
24 to have stable -- some level of stability in the
25 community, to have his own place. He has to have a

1 and evaluated him, they dropped his case because of
2 the high liability, and also they felt that they
3 cannot provide the service he need.

4 So what my point -- I am not focusing on one
5 agency. What my point is, that first of all, the
6 state of Alaska health community in Anchorage doesn't
7 have that (indiscernible) resources. But
8 (indiscernible) the one -- the main one we have, like
9 kind of they are closing their doors. They are not --
10 so those are some of the outcome that he is facing.

11 And he cannot process the information
12 himself. And I think myself, as a clinician, and API,
13 a state facility, has an obligation and
14 (indiscernible). They are the guardian of communities
15 (indiscernible) and others, (indiscernible) as a
16 community. I think you have obligation to look at the
17 best outcome for somebody like Mr. Bigley, and not to
18 be (indiscernible) just because he has mental illness
19 and he cannot process it.

20 MS. DERRY: No further questions.

21 KAHNAZ KHARI, MD

22 testified as follows on:

23 CROSS EXAMINATION

24 BY MR. GOTTSTEIN:

25 Q Okay. First of all to this, now, you

1 testified that he has mild tardive dyskinesia; is that
2 correct?

3 A I (indiscernible) chart. I did not
4 (indiscernible). In one of the charts, they did add
5 this, about tardive dyskinesia. And they said it was
6 mild, yes.

7 Q Okay. And isn't tardive dyskinesia a
8 manifestation of brain damage?

9 A I would not -- this is (indiscernible) takes
10 place in the brain. But I would not know exactly what
11 you mean by the manifestation of brain damage.

12 Q So don't all of the neuroleptics block
13 dopamine in the basal ganglia?

14 A Well, I will say that, yes, all the older and
15 newer antipsychotic, they work (indiscernible) on
16 dopamine.

17 But the (indiscernible) also on the
18 (indiscernible). And basal ganglia is not really
19 (indiscernible), rather it's a part of the brain. So
20 basically what they are talking about, the medication
21 works on different part of the brain.

22 The older antipsychotic medications, which
23 have more (indiscernible) specific (indiscernible) of
24 dopamine acted on basal ganglia (indiscernible)
25 actually is not (indiscernible) or specific

1 (indiscernible) cause that unfortunate abnormal motor
2 movement that (indiscernible).

3 Q Okay. So I think you're agreeing with me,
4 right, that the -- at least with respect to the older
5 ones, that they affected the basal ganglia, which is
6 the area of the brain that causes -- which controls
7 motor movements, and that that is the cause for
8 tardive dyskinesia; is that fair?

9 A Well, as I said, the only thing I say that
10 when the individuals take the medications, different
11 changes takes place in the brain.

12 You are right from the aspect, yes, the basal
13 ganglia is impacted and is also part of dyskinesia,
14 but also the antipsychotic medication impact on other
15 part of the brain, like gray matter, different part of
16 (indiscernible) of the brain, which also become
17 (indiscernible).

18 Q And you are going to provide me with that
19 study, that study --

20 A It's not a specific study. But if you want
21 me to go find some article that talks about it, I will
22 be happy to do that. I don't have any specific study
23 in my mind, but I'm sure that (indiscernible) study
24 out there. And if you want me to look for one or two
25 articles, I will be happy to do that.

1 MR. GOTTSTEIN: I think -- isn't she supposed
2 to give me those studies, correct?

3 MS. DERRY: Your Honor, just --

4 THE COURT: No. I don't believe that this
5 is -- she isn't referring to a specific article.

6 BY MR. GOTTSTEIN:

7 Q Now, I think you said -- said that the newer
8 neuroleptics, such as -- Risperdal is one of the newer
9 ones, right? I mean --

10 A Yes.

11 Q -- some people call them neuroleptics and
12 some people call them antipsychotic --

13 MS. DERRY: Objection. Is there a question,
14 or are you testifying?

15 THE COURT: I assume there is a question. I
16 can assure you that if there is a statement being made
17 that is not the basis of a question, it's not
18 (indiscernible).

19 MS. DERRY: Thank you, Your Honor.

20 THE COURT: If it forms the basis of a
21 question and the doctor says yes, for example, then
22 (indiscernible) leading questions (indiscernible).

23 BY MR. GOTTSTEIN:

24 Q Okay. So are neuroleptics also known as
25 atypicals -- I mean, antipsychotic?

1 A Neuroleptic has two class. One is
2 (indiscernible), one is atypical.

3 Q Right. And they're both -- and they're both
4 called antipsychotic; is that right?

5 A Yes.

6 Q So neuroleptic -- what I'm trying to get is,
7 neuroleptic is to be considered synonymous with
8 antipsychotic?

9 A Yes.

10 Q Okay. Now, I believe -- and I'm not sure, so
11 tell me if I'm wrong. But I believe you testified
12 that the newer ones -- newer ones, such as Risperdal,
13 caused less tardive dyskinesia; is that correct?

14 A Yes.

15 Q Could you cite me to a study that says that?

16 A As I said, I cannot recall any particular
17 studies. But there is many evidence that studies that
18 caused -- newer antipsychotic medication has lower
19 risk of tardive dyskinesia. And some of them have
20 none.

21 Q Okay. Now, you testified I think that he --
22 Mr. Bigley was taking Risperdal for some time and then
23 stopped. Do you know why he stopped?

24 A No, I do not know.

25 MR. GOTTSTEIN: I think I will -- well -- I

1 thought I was organized. I apologize, Your Honor.

2 BY MR. GOTTSTEIN:

3 Q Okay. And then I -- I'm sorry; I didn't get
4 your testimony down exactly right. But you said
5 something about that the -- his prognosis -- that
6 basically his prognosis is worse by delaying the
7 administration of the neuroleptic?

8 MS. DERRY: Object to mischaracterization.

9 THE COURT: Overruled. Go ahead.

10 THE WITNESS: What I recall, I -- the
11 question was the way that I responded, that an
12 individual with schizophrenia who does not take
13 treatment, the prognosis declines (indiscernible).
14 It's a continuous prognosis becoming poorer.

15 BY MR. GOTTSTEIN:

16 Q Okay. And -- okay. And do you have any
17 studies to (indiscernible) to that?

18 A I do not have any -- (indiscernible) daily
19 knowledge and (indiscernible), and going to
20 (indiscernible).

21 Q Now, you indicate that you do a lot of
22 reading to try and keep up to date; is that correct?

23 A Yes.

24 Q And I assume that's actually -- I assume
25 you're very busy, right?

1 A But that's part of my life.

2 Q Right. And so -- so that you try and keep
3 up?

4 A Yes.

5 Q Now, do you mainly, as you're looking at a
6 study, read the whole article or just the abstract?

7 A It depends. But usually -- it depends when
8 I'm reading, is it because -- for example, I am adult
9 psychiatrist. I (indiscernible) may want to read in
10 detail what other area of the psychiatry, but I want
11 to be up to date, for example, as (indiscernible).

12 So I may (indiscernible) abstract of it, and
13 if it interests me -- because usually I always read
14 the abstract first to see if the article is something
15 new to deliver or something that I'm interested, or if
16 I have a case or a patient that I'd like to learn more
17 about with the newer approach or something that, you
18 know, may add to benefit my patients.

19 So -- however, in the cases, I look at the
20 whole thing. And I try to look at the information
21 that is mental analysis, from the aspect that is not
22 only simple, one way (indiscernible), look at the
23 whole aspect (indiscernible).

24 Q Now, do you assume, when you just read the
25 abstract, that it's -- what the abstract says is

1 supported by the article?

2 A Every case is different. You know, I try --
3 when I do read article (indiscernible), what are
4 resources. And then again in their study, what they
5 have considered, how many number of controls they
6 have, what is the number of the patient population
7 they had, and did they focus only on one thing or
8 valuable things. Because human life is not simple;
9 it's very complex. And I try to also -- to see where
10 that information coming from. And so --

11 Q Now, do you ever kind of, like, reanalyze the
12 data?

13 A Well, I don't really know exactly what you
14 mean by that. But any time that we do something, we
15 have to summarize in our mind somehow. Is that --

16 Q No. I mean, for example, lots of times,
17 they'll have a table, right, that says these patients,
18 and there are all these numbers and stuff. And do you
19 ever go and say, gee, well, if you take this data and
20 look at it this way, I wonder what it would show?

21 A Well, this is what I said earlier, when I
22 said I try to look at what are variables they are
23 looking at, and then (indiscernible), see if they
24 consider other things (indiscernible).

25 Q So you wouldn't go and take the data and then

1 try and do a different analysis on the same data?

2 A My job is not in research. I just get the
3 information, read about it, and try to see again, even
4 when you did all of this information, every patient is
5 individualized.

6 I have to look at, for example in this case,
7 Mr. Bigley, where he is at, what (indiscernible), and
8 what is right now (indiscernible) at this medicine,
9 and what can -- and what specifically are working and
10 what can I provide for this individual.

11 Q And I think that most clinicians, wouldn't
12 they do the same thing?

13 A Yes.

14 Q Okay. Now, if I -- I have asked this before,
15 I apologize, but I just want to make sure.

16 You testified that if he doesn't take the
17 medication, that it'll have -- I think you said poor
18 functional outcome. But would that be, like, a
19 worsened -- you said poor functional outcome. What
20 does -- I'm sorry.

21 Is it fair to say that your testimony is that
22 if he doesn't take the medication, that he'll have a
23 worse functional outcome than if he does?

24 A Well, my whole thing is he's declining. And
25 I think it is (indiscernible), we are seeing that

1 since he has not been taking medication, since I have
2 known him, how many times he have been in correctional
3 facility, how many times he's been here. What is his
4 level of functioning in the community when he is
5 outside? How safe is he? How safe is people around
6 him? And how much a torture of mind -- a state of
7 mind he is facing, and how much he gets
8 (indiscernible) in the community and also continues to
9 (indiscernible) correctional facility (indiscernible)
10 community.

11 Q Okay. So did you -- you didn't listen when
12 Dr. Jackson testified last night in that -- you
13 testified earlier?

14 MS. DERRY: Objection, (indiscernible).

15 THE COURT: Overruled.

16 THE WITNESS: No.

17 BY MR. GOTTSTEIN:

18 Q Okay. And have you read her -- did you read
19 the transcript of her testimony?

20 A I don't recall.

21 Q Did you read the -- the -- either of the
22 affidavits that she submitted then?

23 MS. DERRY: Actually, that's calling for
24 evidence not in evidence (indiscernible).

25 MR. GOTTSTEIN: It is in evidence. I filed

1 it.

2 MS. DERRY: Not in this case.

3 MR. GOTTSTEIN: I did file it. I --

4 THE COURT: People, excuse me.

5 MR. GOTTSTEIN: I'm sorry, Your Honor.

6 THE COURT: The objection is overruled.

7 (Indiscernible) of her knowledge about this individual
8 and prior testimony about (indiscernible).

9 The questions itself doesn't mean that the
10 prior testimony is not part of it, but it's towards
11 her knowledge -- (indiscernible) knowledge.

12 THE WITNESS: Actually, I'd like to take my
13 sentence back. I do think that I don't have a vivid,
14 exactly remembering what she said.

15 But I do remember reading something in the
16 chart, (indiscernible) chart, something about her --
17 where you have -- (indiscernible). If I do remember,
18 I read something, but you have to refresh my mind --

19 BY MR. GOTTSTEIN:

20 Q Okay.

21 A -- what she was focusing on, then I could
22 give you more feedback.

23 Q Yeah. So -- okay. But one of them is, would
24 it be -- well, let me say this. Do you recall if she
25 gave the opinion that Mr. Bigley's current functioning

1 is a result of the brain damage from, you know, the
2 almost 30 years of being administered psychiatric
3 drugs?

4 A Probably. But also, I want to bring some
5 issue. First of all, I don't know Dr. Jackson, her
6 name or -- is it he or she?

7 Q She.

8 A She. Her name is not very much recognized.

9 And then also the other thing that I would be
10 concerned, when -- what is the (indiscernible) study,
11 and then how much kind of support.

12 And also the main part is, did she actually
13 have physical evaluation of the patient? Because I
14 (indiscernible) an individual -- an illness of a
15 (indiscernible) clinical aspect. But I cannot
16 really -- I can -- the validity of it (indiscernible)
17 is when (indiscernible) has -- what her question would
18 be, did that physician actually assess and evaluated
19 that patient.

20 Q Okay. Now, so this is where I understand
21 things are at, is that your testimony is that he is
22 getting worsening functional baseline, or whatever,
23 because he is not taking the drugs.

24 And her opinion is that he's getting
25 worsening baseline functioning because of the brain

1 damage caused by the drugs. Is that --

2 MS. DERRY: Objection --

3 BY MR. GOTTSTEIN:

4 Q -- is that --

5 MS. DERRY: -- calls for speculation.

6 THE COURT: Overruled.

7 THE WITNESS: But the only thing I would say,
8 I indicate what I said, that individual that
9 (indiscernible) has the schizophrenia, obviously has a
10 severe case of the -- is not benefiting him not to be
11 on -- on the antipsychotic medication. And we have
12 seen that, by review of the chart, there is a decline
13 in his level of functioning.

14 BY MR. GOTTSTEIN:

15 Q Okay. So -- now, is there anything that you
16 can think of in Dr. Jackson's testimony that -- that
17 you can -- that you dispute --

18 A Well, again --

19 Q -- right now?

20 MS. DERRY: Objection, foundation, calls for
21 speculation.

22 THE COURT: If you don't remember it, that's
23 fine.

24 THE WITNESS: I did not know it was on her
25 set or not from (indiscernible) matter of long-term

1 impact.

2 There was some article or -- or she may have
3 referred to it, I'm not really sure, that they talked
4 about -- there was some hypothesis which did not get
5 far. The hypothesis didn't get (indiscernible) that
6 they were presenting, that I think it's called
7 (indiscernible) psychosis that can't happen by taking
8 antipsychotic medication, which as I said, that was a
9 theory that did not get very accepted, but it was one
10 of the hypothesis.

11 BY MR. GOTTSTEIN:

12 Q So is that the hypothesis -- well, actually,
13 was that the -- that one of the series of studies that
14 showed that when people were given these drugs, that
15 the brain -- that the brain compensated for the
16 blockage of the D2 -- D2 -- (indiscernible) D2
17 receptors by growing more dopamine receptors, is
18 that --

19 A Well, what (indiscernible) I recall the
20 study -- first of all, as I say, it was very -- it
21 was -- I'm trying to get the word down -- it wasn't a
22 study that -- was a limited study, did not look at the
23 whole picture.

24 It -- and it was saying that, yes, the number
25 of the dopamine -- actually, I think it was saying

1 that eventually the number of receptor has increased;
2 however, they saw more enlarged of the dopamine. And
3 that is why they (indiscernible) it would cause that
4 D1 reaction.

5 But again, I'd have to look at the study
6 again. I cannot -- I haven't seen it, you know, for
7 quite some time. But the study, as far as I remember,
8 did not -- did not move forward too much.

9 Q So if I'm explaining this right or
10 (indiscernible) your understanding, is what this study
11 showed was that -- was that because of the increased
12 dopamine receptors caused by the -- the long-term
13 administration of the neuroleptics, that when someone
14 quit them, that the quitting of it caused relapses; is
15 that correct?

16 A The way I look at it wasn't a stipulation,
17 and it did not prove -- it didn't -- as I said, you
18 know, it was something that -- it was stipulated, and
19 the study (indiscernible) the controlled numbers. I
20 don't really know.

21 But I remember when I was looking at that
22 article, it seemed like there was a lot of
23 (indiscernible) in that study. But I believe that's
24 what they concluded.

25 But that is one thing, the hypothesis did not

1 move forward too much, because the study was -- was
2 not very strong to support.

3 Q So -- now, wasn't there then another study
4 that showed that when people come off the drugs, that
5 those receptors -- over time those extra receptors can
6 actually go away?

7 A As I said, I don't know what study you are
8 referring to. If you have a specific study, I would
9 be happy if you give it to me, read it, and then I
10 could give my understanding on it.

11 Q Yeah. I (indiscernible) Whitaker's affidavit
12 and (indiscernible).

13 So -- and then -- okay. And that some
14 people, there is a study that shows that some people,
15 if they are allowed to get off the drugs and get
16 through that period, can really be much better?

17 MS. DERRY: Objection, foundation. Dr. Khari
18 hasn't testified that she knows of any of these
19 studies. And I don't know if we're going to --

20 THE COURT: She -- you don't agree with her
21 understanding the premise of the question to state
22 that.

23 THE WITNESS: As I say, I kind of -- I like
24 to know what article exactly we are talking about, for
25 me to look at them, then I could give more realistic

1 and better response, or better understanding of the
2 article.

3 BY MR. GOTTSTEIN:

4 Q Okay. And so then you don't recall
5 Dr. Jackson testifying as to this in her testimony?

6 A As I said, I know I read something. If it
7 was that or not, I am not really -- I said from
8 beginning, I am not sure exactly what she was
9 focusing.

10 I do know I encountered about -- in the
11 chart, but I can't remember exactly the details. And
12 I guess -- as I said initially, I was guessing that
13 may be what she was referring, but I'm not really
14 sure.

15 Q Now, you testified -- and I'm not sure what
16 context -- I think it was in -- to be discharged, do
17 you have to have case management? Is that --

18 A Yes. Yes.

19 Q Okay. All right. I'm going to move to
20 another area.

21 Now, you testified about an agency that
22 worked with him a little bit in January of 2007, I
23 think.

24 A Are you saying to Choice?

25 Q Yes.

1 A I said that I -- yeah. I referred to them
 2 based on what I read in the chart. I was not the
 3 clinician at that time. And that was in late 2007.
 4 MR. GOTTSTEIN: This is -- these, I can tell
 5 you, have been filed here. I think I should make an
 6 exhibit of it. I mean, I -- I don't --
 7 THE COURT: Go ahead.
 8 MR. GOTTSTEIN: -- I don't (indiscernible) --
 9 well, I have to -- okay. So this would be E.
 10 (Indiscernible.)
 11 BY MR. GOTTSTEIN:
 12 Q Have you seen -- seen this documentation?
 13 A No, I didn't.
 14 MS. DERRY: I am going to object based on
 15 relevance.
 16 THE COURT: He hasn't offered it yet, though.
 17 MR. GOTTSTEIN: I'm not really necessarily
 18 going to offer it. I'm just going to ask about it.
 19 THE COURT: So far she said she's never seen
 20 it before.
 21 MR. GOTTSTEIN: But she testified about --
 22 about -- okay.
 23 BY MR. GOTTSTEIN:
 24 Q Now, you said -- if you look at paragraph B,
 25 I'll paraphrase it, does it say that -- that basically

1 confirms what you said, correct?
 2 A Well --
 3 MS. DERRY: Objection, relevance.
 4 THE COURT: Overruled.
 5 THE WITNESS: The only thing I'll say, when I
 6 sign the chart, which also I'll put it in my summary
 7 of the note, that the chart indicated it in the other
 8 chart. (Indiscernible) on 9/11/2007, at the
 9 evaluation assessment and few placements, such as
 10 (indiscernible) appointment, (indiscernible).
 11 But on 10/24/2007, Choices dropped the
 12 services for this patient as concern to grave
 13 liability and not having adequate resources for Bill.
 14 That's all I signed the chart, and that's what I
 15 brought today to the Court. (Indiscernible) beyond
 16 that, I do not have any knowledge.
 17 Q Okay. So is it true that what this affidavit
 18 says is: When the costs of services exceeded \$5,000,
 19 Psych Rights said it could not afford to continue
 20 paying, and Mr. Bigley informed me he did not want to
 21 work with me anymore, so services were discontinued?
 22 MS. DERRY: I'm going to object based on
 23 relevance, foundation. Dr. Khari has already stated
 24 that she doesn't know.
 25 And I am also going to object on the fact

1 that this has not been introduced into evidence.
 2 Mr. Gottstein should not be reading it. I mean, is he
 3 going to introduce it?
 4 THE COURT: I take this -- I take this to be
 5 essentially a Rule 612 (indiscernible) to refresh
 6 memory. If it doesn't refresh her memory, it doesn't.
 7 It's not going to be admitted as evidence; it's being
 8 used to refresh her recollection.
 9 She -- it is not going to be utilized as
 10 hearsay. I mean, right now, it's being used in cross
 11 to refresh, as far as I can tell, and if it doesn't
 12 refresh, she'll say so.
 13 MR. GOTTSTEIN: This document has been filed
 14 in this case.
 15 THE COURT: It may be filed, but it doesn't
 16 mean it's admissible. Anybody can file whatever you
 17 want. That doesn't mean it's admissible
 18 (indiscernible).
 19 MR. GOTTSTEIN: Okay. Yeah.
 20 THE COURT: And no one's offered it yet, so
 21 (indiscernible).
 22 MR. GOTTSTEIN: I (indiscernible) I haven't
 23 offered it here, and other than to say that I've filed
 24 it, as I said, on October 28th, my notice said I --
 25 THE COURT: You have filed it. You haven't

1 offered it as an exhibit.
 2 The fact that you have filed it doesn't mean
 3 it is admissible evidence. It might be, but you
 4 haven't offered anything. From your (indiscernible),
 5 you filed something attached to a piece of paper
 6 called motion or notice doesn't make it admissible
 7 evidence.
 8 You can attempt to admit this document and
 9 any other document, and the State will file
 10 whatever -- make whatever objection, and I'll make a
 11 ruling on it to admissibility.
 12 Its admissibility may depend on what purposes
 13 you use it for, so the mere fact that it's a piece of
 14 paper doesn't make it admissible.
 15 MR. GOTTSTEIN: No. I understand that. And
 16 so -- but what I am confused about is that I believe I
 17 have submitted it in evidence, and I did it on
 18 October 28th, is what I said. So if the State has an
 19 objection to the admissibility --
 20 THE COURT: Just so that you're clear, I
 21 don't take the fact that you filed documents as an
 22 offer of their being used in this proceeding as
 23 evidence.
 24 So to be -- so you can be clear, if you want
 25 to utilize a specific piece of paper, whether it's

1 been filed or not, if you want it to be admitted as a
2 document in evidence, you should specifically do so at
3 any particular point where you think it's appropriate,
4 giving the State the opportunity to object in the
5 context of the (indiscernible).

6 MR. GOTTSTEIN: Okay. So I move that they be
7 admitted.

8 MS. DERRY: The State is objecting on the
9 relevance. There is an affidavit in a previous court
10 proceeding, September 12th, 2007. I can't connect the
11 relevance at all to this witness, and it doesn't
12 appear to be relevant to Mr. Bigley's current capacity
13 to consent or (indiscernible) consent to medication.

14 MR. GOTTSTEIN: This is going to the
15 less-intrusive alternative. And it -- it presents
16 testimony with respect to the availability of the
17 less-intrusive alternative.

18 THE COURT: I'm going to -- I think it is
19 relevant.

20 On the other hand, I think it's hearsay.
21 It's not on the basis of (indiscernible) hearsay
22 objection, the (indiscernible) is denied.

23 MR. GOTTSTEIN: It's made on -- Your Honor,
24 it's made on personal knowledge by the affiant.

25 THE COURT: Yes, it is. But the -- this is

1 an out-of-court declaration. The individual is not
2 here and available for cross examination. It's
3 hearsay and (indiscernible).

4 MR. GOTTSTEIN: All right. So I actually
5 raised this on October -- at the hearing on
6 October 28th. I -- you know, and said well, if -- if
7 I --

8 THE COURT: I'll say it again, so you're
9 clear.

10 Regardless of what I said, if I thought
11 (indiscernible), I'll be clear. The mere fact that
12 you filed paperwork does not make it admissible. If
13 you want any paperwork, whether you previously filed
14 it or you haven't previously filed it, you want it to
15 be admissible in this proceeding, you must make a
16 document-by-document offer, so that the State can make
17 an objection in context.

18 As of now, there have been (indiscernible) A
19 through E have been offered, and I have admitted -- I
20 have denied entry of the two, including E.

21 MR. GOTTSTEIN: All right. And the reason
22 why I brought that up was because -- because --

23 THE COURT: So there is a pile of stuff that
24 you filed. As of now, none of that has been offered
25 and none of it is admitted. If you want to attempt to

1 get it in, you are going to have to make that request
2 (indiscernible).

3 MR. GOTTSTEIN: Of course, whether it's
4 offered for (indiscernible) summary judgment motion.

5 THE COURT: I will say it again. That is not
6 (indiscernible). Roll your eyes, but it is not
7 evidence. Not in an evidentiary --

8 MR. GOTTSTEIN: Not in a hearing, yes. Yes.
9 Okay.

10 BY MR. GOTTSTEIN:

11 Q Okay. I'm showing you something that's been
12 marked as F. It's a listing of admissions and
13 discharge dates. Is that what it appears to be?

14 A Yes.

15 MS. DERRY: I'm going to --

16 MR. GOTTSTEIN: I don't really -- I'm going
17 to move -- I'm going to move to admit it. If you
18 object to it then --

19 MS. DERRY: I'm going to object. This is
20 under the (indiscernible) rule, for one. We have the
21 charts. And I don't understand how a receipt of
22 admissions (indiscernible) Mr. Gottstein received
23 medical records.

24 THE COURT: If I'm understanding what you are
25 attempting to do is to say -- this obviously is a

1 receipt of chart notes, but also I think what you're
2 trying to do is say this shows his admission and
3 discharge dates because it's offered for that. That's
4 all it's being offered for.

5 Is that an accurate statement? I mean,
6 that's the question. Does this track his admission
7 and discharges over time?

8 THE WITNESS: Yes.

9 THE COURT: (Indiscernible) objection to the
10 (indiscernible) use of this --

11 MS. DERRY: For that limited use, the State
12 has no objection.

13 MR. GOTTSTEIN: Okay.

14 THE COURT: F is admitted.
15 (Exhibit F admitted.)

16 BY MR. GOTTSTEIN:

17 Q How many -- do you see that first entry,
18 11/29/06?

19 A Yes.

20 Q How many days is that?

21 MS. DERRY: I'm going to object -- well, I
22 guess you can answer that question.

23 But Dr. Khari wasn't employed by API at that
24 time.

25 THE COURT: I'm pretty sure that Dr. Khari

1 can probably do that. But I don't really think that I
 2 need to have her do (indiscernible).
 3 MR. GOTTSTEIN: Okay. Well, all right.
 4 Actually (indiscernible).
 5 THE COURT: (Indiscernible.)
 6 MR. GOTTSTEIN: Okay.
 7 THE COURT: You know, there's some months
 8 have a certain number of days and others have a
 9 different number of days. I can do that.
 10 MR. GOTTSTEIN: Okay.
 11 BY MR. GOTTSTEIN:
 12 Q Is it -- now, there's an entry of 4/25/08 to
 13 6/4/08; do you see that?
 14 A Yes.
 15 Q Okay. And that is -- let me see -- so is
 16 that approximately 39 days or so, somewhere around
 17 there?
 18 A Yes.
 19 THE COURT: What was the period of time?
 20 MS. DERRY: What was the period of time,
 21 please?
 22 MR. GOTTSTEIN: It's 4/25 to 6/4. Okay.
 23 BY MR. GOTTSTEIN:
 24 Q And is it your understanding that the supreme
 25 court stay came into effect during that admission?

1 A I'm not sure (indiscernible).
 2 Q Okay. Okay. Then the next admission,
 3 6/26/08 through 6/30/08, that's four days, correct?
 4 A Yes.
 5 Q Can you tell me about that admission?
 6 A No. I do not remember.
 7 MS. DERRY: Objection.
 8 THE WITNESS: Because I only -- we get so
 9 many admissions, and every presentation is different.
 10 I only could tell you about this, unless I look at the
 11 whole chart (indiscernible) be able to give you better
 12 (indiscernible).
 13 BY MR. GOTTSTEIN:
 14 Q Could you -- could you do that?
 15 MS. DERRY: Do you want her to do that now,
 16 Your Honor, read a voluminous chart from that date?
 17 THE WITNESS: (Indiscernible.)
 18 MR. GOTTSTEIN: What I'm looking for is, you
 19 know, kind of how -- what he came in -- what -- the
 20 reason why he came in, you know, was it
 21 (indiscernible), was it Title 12, you know, what
 22 happened, and kind of why he got discharged. I just
 23 want to kind of have a summary of these admissions.
 24 MS. DERRY: I'm going to go ahead and object
 25 to form. I'm not sure how many (indiscernible).

1 THE COURT: I think it would be helpful to
 2 know what happened basically during each of the
 3 admissions. So if that requires -- and I assume,
 4 perhaps I'm wrong, that this particular treating team
 5 or physician with a patient who has been here lots of
 6 times will look back at the recent chart and see how
 7 did he do back then, how is he doing now, how does
 8 that relate. So yes. Charts are also there, so we
 9 don't rely on memories (indiscernible) rely on
 10 recorded information.
 11 MS. DERRY: Your Honor, would it be
 12 appropriate -- because Dr. Khari does have knowledge
 13 of the chart in general and has certainly looked back
 14 in the chart --
 15 THE COURT: Well, what I -- I think --
 16 MS. DERRY: -- to summarize --
 17 THE COURT: Well, would it make sense --
 18 (indiscernible), if you're going to (indiscernible)
 19 ask her to summarize the -- his status and progress
 20 during all the admissions from April on, let's say,
 21 then simply let her take a break, let her review the
 22 charts, and then we can go and more efficiently use
 23 our time.
 24 MR. GOTTSTEIN: Yeah. And actually, I was
 25 kind of -- I ran out of time here. It was my

1 understanding -- can I just kind of --
 2 THE COURT: If that's what you want -- if you
 3 want her to summarize the charts, I'll let her review
 4 them off record and you can ask questions.
 5 MR. GOTTSTEIN: Okay.
 6 THE COURT: So you don't waste time --
 7 (indiscernible). I shouldn't say that. But it
 8 wouldn't surprise me if she would prefer to rely on
 9 the charts rather than memory.
 10 MR. GOTTSTEIN: No, no. I know. I actually
 11 tried to put all this stuff together and ran out of
 12 time. I've got actually a pretty good --
 13 THE COURT: If you're going to ask her, based
 14 on your summary, my expectation is she is going to
 15 say, I don't know, I've got to read the chart.
 16 MR. GOTTSTEIN: Right.
 17 THE COURT: So I'd rather let her have time
 18 to skim the chart, and then you can see if she will
 19 confirm your summary. And if she does, that's great.
 20 That would be an efficient way of doing it.
 21 MS. DERRY: And, Your Honor, I'm sorry --
 22 THE COURT: I'm going to give her time off
 23 record to just go through whatever period of time you
 24 intend to go (indiscernible).
 25 MR. GOTTSTEIN: It's that -- I mean, the

1 basic point is that --

2 THE COURT: You want her to start on
3 April 16th? I don't recall the start
4 (indiscernible) -- or April 25th, I mean.

5 MS. DERRY: I thought his first question was
6 from June 25th about what happened.

7 MR. GOTTSTEIN: No. I think we can start
8 with 4/25, yes.

9 THE COURT: So let's take a break.
10 Doctor, can you take a review of those --
11 skim those charts.

12 Just so that you give her a basic idea of
13 what you want her to say regarding each period.

14 MR. GOTTSTEIN: Okay. So for example, on
15 June 26th, (indiscernible) as (indiscernible)
16 respondent was arrested on June 23rd for disorderly
17 conduct, loud noises, criminal mischief, was ordered
18 to API for psychiatric examination on June 24th.

19 The charge was dismissed July 2nd for
20 incompetent to stand trial, and respondent discharged
21 on July the (indiscernible).

22 THE COURT: So basically what technical
23 mechanism got him here, was it a police officer
24 bringing him in or another facility, or Providence
25 Hospital, that --

1 MR. GOTTSTEIN: Well, yeah. And then --
2 well, yes.

3 THE COURT: And is there a criminal charge
4 attached. Was it a criminal -- you know, admission on
5 a criminal thing. If you know what happened to the
6 criminal case, and if it -- I think you really want to
7 know is was he discharged -- was the case dismissed
8 because of incompetence.

9 MR. GOTTSTEIN: Well, no. I really want to
10 know why he was discharged, too.

11 THE COURT: Okay. Then tell (indiscernible)
12 what got him in and what got him out.

13 MR. GOTTSTEIN: Okay. And if I may, just to
14 be as -- there was an admission from the psych ER,
15 where he had been brought in to the police for --
16 because they were concerned he was walking in traffic,
17 so he was probably (indiscernible).

18 THE COURT: (Indiscernible.)

19 MR. GOTTSTEIN: Tell us just a basic summary.

20 THE COURT: What got him here.

21 MS. DERRY: And, Your Honor, she -- Dr. Khari
22 does have a little prep sheet of that, and she would
23 be happy to read this off right now, if that would
24 help expedite this process.

25 THE COURT: I don't care one way or the

1 other. I just wanted to give her time off record to
2 go through the charts to answer those basic questions.

3 If you think that you've already done that
4 and you can do this without reviewing the charts and
5 just go off of your notes, that's fine.

6 THE WITNESS: I don't have it to that detail.
7 What I understand I am being asked, (indiscernible)
8 patient, what specifically is the patient here from,
9 and if before he came to a facility, (indiscernible)
10 facility, why was he discharged and what charges
11 and -- but in summary, (indiscernible) at the charts,
12 based on a summary I've been looking at, number one,
13 most of the times that -- what I -- when I reviewed
14 the chart, they were when he was taken to the
15 correctional facility.

16 And yesterday the testimony gave good detail,
17 much better explanation I could give what got him to
18 the correctional facility. And in correctional
19 facility, most of the cases was dropped because he was
20 incompetent to stand trial, and it was not
21 (indiscernible), as far as I understand.

22 And also the other thing is that most of the
23 time, the patient had come on POA, what I understand,
24 except on 4/16, he came on ex parte, and then the
25 hospital petition --

1 THE COURT: Do you want to ask the questions
2 now? Do you want to review the charts further? If
3 not --

4 THE WITNESS: As I said, if those are the
5 questions, some of it I have here. Exactly. I don't
6 know Mr. Gottstein, is he going to go more detail --

7 THE COURT: We're going to take a break.

8 THE WITNESS: Okay.

9 THE COURT: You can review the charts if you
10 want to. Then you can (indiscernible) and ask
11 (indiscernible).

12 9:58:43

13 (Off record.)

14 10:24:50

15 THE CLERK: On record.

16 THE COURT: All right. Mr. Gottstein, you
17 can ask her your questions.

18 BY MR. GOTTSTEIN:

19 Q With respect to the April 25th, 2008
20 admission, could you just -- could you just summarize
21 that admission?

22 A Well, basically the patient was admitted on a
23 POA (indiscernible) screening. That gives 24 hours
24 for a clinician to evaluate the patient and then
25 decide the next step.

1 From there, they have -- yes. And then they
2 have -- they -- from POA, they file for ex parte. And
3 from ex parte, they request for the commitment, which
4 was granted, but without medication. And then patient
5 got discharged after that.

6 Q What was that last part about medication?

7 A I said the 30-day commitment was given, but
8 there were no medication commitment. The 30-day
9 commitment has been granted. Medication petition
10 would be hearing (indiscernible) superior court
11 (indiscernible) -- superior court judge, and they
12 didn't give the date.

13 Q Could you look and -- isn't it true that --
14 that on May 19th, the Court granted the medication
15 petition?

16 A As I said, let me see. I hear -- this is
17 what I read -- on May what, you said?

18 Q I think it was May 19th.

19 A May 19th, let me see what it says.

20 Q And then a few days later, the supreme court
21 stayed that?

22 A Okay. Let's see here. I'm sorry. May 19,
23 received order for meds dated 5/19, signed by court
24 judge, yeah, and then discharge on 6/4.

25 Q And then the supreme court issued a stay on

1 May -- a few days after that, I think May 29th?

2 A I don't know what happened May 29th.

3 Q If you don't know, that's --

4 A So I'm just looking at -- so --

5 Q Okay. And so -- so the supreme court, if you
6 assume -- so in other words, there was no effective --
7 but you do know there was no effective medication
8 petition; is that correct? No medication order in
9 effect, correct?

10 A I don't know exactly what you mean by that.

11 Q Well, initially you said that there was no
12 medication?

13 A No. I made a mistake.

14 Q But I think you were basically right, okay,
15 that there was --

16 MS. DERRY: Objection.

17 THE WITNESS: I don't know what this
18 basically means.

19 THE COURT: Ask the question.

20 BY MR. GOTTSTEIN:

21 Q Okay. So -- but my question is --

22 A I'm listening.

23 Q -- isn't it true that you were not able to
24 administer drugs pursuant to AS 47.30.839, and he was
25 discharged at the end of his commitment period?

1 A In his case (indiscernible), court does not
2 grant us to give medication, we cannot give the
3 medication to him. And I'm trying to see -- actually,
4 on 4/25, he did not -- there was no medication
5 (indiscernible) discharge. So I assume that he did
6 not get any medication.

7 Q Okay. And on June 26th, what brought him
8 there?

9 A June -- let's see. June 26, he came for
10 evaluation and observation. That means he came
11 directly from correctional facility.

12 And I don't know his charge. I have to look
13 at the chart to see (indiscernible), probably for --
14 usually, as they said yesterday, it is trespassing or
15 creating some behavioral conduct. But however, he was
16 in the correctional facility. Correctional facility
17 did send him to API for evaluation and observation.

18 Q Now, was there a request for API to hang on
19 to him?

20 A I don't know. (Indiscernible) could ask
21 another facility how to treat some individual.

22 Q Isn't it common for -- for when someone is
23 found -- isn't it common for when Mr. Bigley is found
24 to be not competent to stand trial, that corrections
25 sends him over here for possible civil commitment?

1 A Again, they -- that is an area that Dr. Maile
2 or (indiscernible) or a psychologist could answer.

3 But my understanding, that correctional
4 facility cannot decide how to treat (indiscernible).
5 They could send him for evaluation or to see if the
6 patient is (indiscernible). And if they are in the
7 hospital, at that time, the treating team decides that
8 does he qualify to go to the (indiscernible) or not.

9 Q Okay. And so that was about four days then
10 and discharged when he was found not competent to
11 stand trial?

12 A Yeah.

13 Q So four days. And what brought him on
14 August 1st?

15 A August 1st, on Title 12. Again, he was in
16 the correctional facility. And as far as I know, they
17 dropped the cases and he was (indiscernible), and then
18 he got discharged again.

19 Q And did API determine he was not -- did not
20 meet commitment criteria?

21 A Well, yes. They feel like they meet the
22 criteria, they hold the patient.

23 Q Okay. So September 22nd?

24 A Okay. He was admitted on ex parte. That
25 means somebody in the community, that the guardian or

1 whatever facility, they have taken an action, gone to
2 the magistrate, to the court system, and then
3 requested that the patient to be involuntary committed
4 to the hospital for further evaluation.

5 Q Do you know who filed that ex parte?

6 A I have to look at --

7 Q Was it (indiscernible)?

8 A I think so. I could (indiscernible). I
9 don't exactly the date, but I did see one
10 (indiscernible). If you want me, I could be happy to
11 check.

12 Q Well, what I'm really interested in is
13 what -- what they were concerned about, why they
14 wanted you to -- API to evaluate him.

15 A Well, again, I think that's what extensively
16 was testified yesterday, basically in the community,
17 he had shown -- he had conducted himself
18 (indiscernible) that they were concerned for his
19 safety, for other's safety, and also be gravely
20 disabled and not able to provide the actual care for
21 himself.

22 Q And API -- and API decided that he didn't
23 meet commitment criteria?

24 A But you have to also understand, you know, my
25 sense of feeling is unfortunately, Bill is victim of

1 the legal system right now. I hate to say that
2 aspect.

3 But however, as a clinician, you have
4 obligation for the safety of the patient, what has to
5 be done. But when he does not fully meet the criteria
6 and (indiscernible) what is offered, we have to --
7 even though we may personally as a clinician for him,
8 even though I have a concern, I know that he -- his
9 risk is very high. But if he doesn't fully meet the
10 criteria which the statute direct me, I have to
11 respect that and let him go.

12 Q Okay. And so -- but what was it that the ex
13 parte petition said was the concern?

14 A Well, as I said, usually --

15 MS. DERRY: Objection, asked and answered.

16 MR. GOTTSTEIN: I don't believe it was.

17 THE COURT: Take a look at the
18 (indiscernible).

19 THE WITNESS: Okay. Are you looking for the
20 9/22 or 9/30?

21 BY MR. GOTTSTEIN:

22 Q Yes. 9/22.

23 A This is saying that the patient has been
24 trespassing at the Office of Public Advocacy. He has
25 been demanding, yelling, cussing, intimidating to the

1 staff.

2 He admits to his (indiscernible). Patient is
3 homeless, cannot identify -- (indiscernible) where to
4 get safe food or housing. Cannot identify reasonable
5 plan (indiscernible). He will fly to his -- to H-I,
6 to --

7 MS. DERRY: Hawaii.

8 THE WITNESS: -- to Hawaii tonight, but no
9 money or ticket.

10 He has been given money by guardian for food
11 and housing, but it is gone -- this is gone and
12 patient has neither -- patient has neither -- he is
13 not able to care for self.

14 Patient is diagnosed schizophrenia, paranoid
15 type. He refuses medication. Police are called.
16 They are holding him, but charges not being proved.
17 Guardian wants -- wants --

18 MS. DERRY: Mental health treatment instead.

19 THE WITNESS: Instead --

20 MR. GOTTSTEIN: Thank you for the help
21 (indiscernible).

22 BY MR. GOTTSTEIN:

23 Q Okay. And so again, you -- then API decides
24 he did not meet commitment criteria?

25 A Well, he did come here because the -- API is

1 not -- is acute care facility, is not a housing
2 facility. It has to offer the treatment that they
3 could, and then they cannot offer that they could
4 improve the individual, and then they don't meet the
5 criteria. They have to let the patient go.

6 Q So API determined that he did not meet
7 commitment criteria?

8 A Yes.

9 Q Okay. How about on -- six days later, on
10 September 30th?

11 A September 30th. Let's see.

12 Q Oh, before we do that, so -- in there --
13 during that 9/22 admission, there was no authorization
14 to administer psychotropic drugs, was there?

15 A Let's see, 9/22, ex parte ordered,
16 (indiscernible) petition -- no.

17 Q And that -- and then is that true for both
18 his June 26th and August 1st admission, as well?

19 A What is the question? Was it true?

20 Q That there's no authorization to administer
21 psychotropic medication.

22 A That is what my recall is, yes.

23 Q Okay. I'm sorry for not asking that before.

24 So now, on September 30th, what brought him
25 in?

1 A September 30th, let's see. This is --
 2 Q Let me ask you another question. Why didn't
 3 you seek medication authorization for those
 4 admissions?
 5 A Well, several reason. One reason is that
 6 even though on his -- he was showing his -- the
 7 symptoms and he did not meet the criteria, we did not
 8 think that we could convince probably the Court to
 9 give -- for the Court to grant the treatment.
 10 And also, as I said, medication -- won't take
 11 his medication, was denied. For example on 4/16/2008,
 12 we did go to the Court. We did ask for commitment.
 13 It was denied.
 14 And then since the issue of that -- that
 15 you -- your thing actively involved to provide his
 16 rights, and one of my understanding is the medication
 17 resistance approach for the API, so basically that is
 18 an issue of -- that to look at.
 19 But that is not the issue to consider
 20 somebody for evaluation or to decide. Basically at
 21 that time, if the time come, if the patient -- it
 22 seems there is no improvement, they don't fully meet
 23 the criteria that the Court is looking for, we have no
 24 choice than to let the patient go. I think that is a
 25 (indiscernible) basically.

1 Q Okay. I'm not sure I heard the answer to why
 2 you didn't seek a medication petition.
 3 A Well, as I said, if you didn't go to the
 4 courthouse, I didn't -- I saw that (indiscernible)
 5 clinician at that time, which I -- probably I was --
 6 he did not meet the criteria.
 7 Q So it wasn't because the supreme court stay
 8 was in effect?
 9 A I -- I honestly think that's what is best for
 10 my patient at that time.
 11 Q So if the supreme court stay was in effect --
 12 strike that.
 13 Okay. 9/30. So -- now, let's go back.
 14 MR. GOTTSTEIN: I'm sorry -- I'm sorry, Your
 15 Honor.
 16 BY MR. GOTTSTEIN:
 17 Q So you said that he didn't meet the criteria
 18 for the medication petition. So -- so doesn't that
 19 mean that -- did you -- did you think that he should
 20 have -- that he should have medication at that time?
 21 MS. DERRY: May we be specific as to dates?
 22 BY MR. GOTTSTEIN:
 23 Q Well, let's talk about June 26th, the
 24 June 26th admission.
 25 THE COURT: Let me ask a question first.

1 On June 25th, were you -- or on June 26th,
 2 were you the treating physician, or were you looking
 3 at other people's notes?
 4 THE WITNESS: Probably I was. But let's see,
 5 make sure. June 26th -- no. On June 26th, on that
 6 one, he came on Title 12. Usually when our patient
 7 comes from correctional facility, Dr. Maile and
 8 Dr. Michaud, who are our forensic specialists,
 9 psychologists in the unit, they get involved to do
 10 their competency and capability testing, whatever is
 11 required for that patient. And I become involved in
 12 the -- I become involved in the psychiatric
 13 (indiscernible).
 14 And I believe at that time, I believe it
 15 was --
 16 THE COURT: So were you involved -- I
 17 appreciate the forensic team was the primary group,
 18 but you were involved on that admission, as well?
 19 THE WITNESS: Yes.
 20 BY MR. GOTTSTEIN:
 21 Q So now, do you -- do most people or all
 22 people on -- this is on the Taku unit; is that
 23 correct?
 24 A Yes.
 25 Q Okay. And that's the forensic unit?

1 A Yes. Our most restrictive unit, which is
 2 where Bill is now.
 3 Q Usually it's for people in -- really in the
 4 custody of corrections; is that correct?
 5 A Most cases. Unless we have a patient like in
 6 this situation, Bill, is so --
 7 Q So disruptive?
 8 A When he does, you cannot just take the moment
 9 of the situation. And he's been actually have good
 10 rest, five hours' rest for the last couple of nights.
 11 Q So do you think maybe he would be eligible
 12 for transfer to Katmai now?
 13 A Well, because, you know, they
 14 (indiscernible), he doesn't respond just to the
 15 stimuli. So he's back -- I think unfortunately, it's
 16 not fair for him to be with the forensic population
 17 because he's a civil patient.
 18 But again, for his best benefit, not to
 19 increase the stimuli and make him more vulnerable and
 20 deteriorate, I would prefer to continue to have him in
 21 that unit.
 22 Q So you don't want to try him out in the
 23 Katmai at this point?
 24 A No.
 25 Q So on -- for -- you refer to Title 12 as

1 people that come in the custody of corrections; is
 2 that correct?
 3 A Yes.
 4 Q Okay. So normally when is the
 5 authorization -- are most people in Title 12 on
 6 psychiatric drugs?
 7 A No.
 8 Q Most of them are not?
 9 A No, no, I say most of them -- I don't know
 10 the percentage.
 11 Q So are there -- would it be correct to say
 12 that there are two types of Title 12 patients -- maybe
 13 there are. But the two that I can think of are ones
 14 like these situations for Bill, who have been referred
 15 for evaluation for competence and ones who have -- are
 16 convicted and are really technically in prison and are
 17 there long term; is that correct?
 18 A I am not forensic specialist. I
 19 (indiscernible) forensic -- forensic (indiscernible)
 20 of the patient.
 21 Q Are you -- are you the --
 22 A I am the --
 23 Q -- psychiatrist then?
 24 A Yes, I am.
 25 Q And you don't know what percentage of the

1 patients are on psychiatric drugs?
 2 A Huh-uh.
 3 Q So was Mr. Bigley given psychiatric drugs on
 4 that admission, June 26th?
 5 A On June 26th --
 6 MS. DERRY: Objection, asked and answered.
 7 THE COURT: Well, he actually asked whether
 8 there was an 839 authorization.
 9 Any other -- I would like to know whether
 10 there were other medications (indiscernible).
 11 MS. DERRY: And Your Honor, did you mean
 12 other psychotropic medications or all medications for
 13 his health?
 14 THE WITNESS: There have been no volunteer
 15 medications. He was given willingly a medication,
 16 Ativan, as a needed basis for agitation.
 17 BY MR. GOTTSTEIN:
 18 Q So this -- so in other words, he voluntarily
 19 took it?
 20 A No, no. I'm sorry. He was offered, but he
 21 didn't take it. Thank you. He was offered and he
 22 didn't take it.
 23 And he was -- he was given IM medication,
 24 Haloperidol, I think date says on May 6th. Is that
 25 (indiscernible) May 6th?

1 Q No. That's a previous admission.
 2 THE COURT: I thought we were on the June --
 3 MR. GOTTSTEIN: June 26th.
 4 MS. DERRY: We are on the wrong page, Your
 5 Honor, because we're looking -- (indiscernible). Do
 6 we have that?
 7 THE WITNESS: (Indiscernible.) I apologize
 8 for that.
 9 MS. DERRY: No, no. You can't control
 10 things.
 11 THE WITNESS: No, no scheduled medication.
 12 THE COURT: We are on the June 26th?
 13 THE WITNESS: Yeah. June 26th, no medication
 14 was given.
 15 THE COURT: No medication.
 16 BY MR. GOTTSTEIN:
 17 Q So now, I know that during your deposition,
 18 you -- we talked about notations that would say "no IM
 19 medication." Are there any notations for that period?
 20 A I have to look at the order.
 21 Q For that period.
 22 A Let's see. For -- for 6/26, is that what
 23 you're asking for?
 24 Q Yeah. That admission. Was there a "no IM
 25 medication" notation?

1 A No, I don't see it. Your date --
 2 Q I don't know.
 3 A Your date may be incorrect.
 4 Q No, no. I don't know. From 6/26 to 6/30, I
 5 was just wondering if there was a no IM --
 6 MS. DERRY: No. And may I -- ask you for you
 7 to clarify, do you mean emergency medications or do
 8 you mean intramuscular medications?
 9 BY MR. GOTTSTEIN:
 10 Q Dr. Khari, is -- when you note "no IM
 11 medication," does that mean no emergency medication?
 12 A I have to look at exactly that order to
 13 see --
 14 Q No. If you did -- I've seen that notation.
 15 It says no IM. And I understood from the deposition
 16 that that really means no emergency medications; is
 17 that correct?
 18 A It can be. It could be to the order. But
 19 what I recall, what he showed me in the deposition is
 20 no emergency medication.
 21 Q So now the -- isn't the purpose of that order
 22 to tell the nursing staff what medication to -- to
 23 give, what medication is authorized?
 24 THE COURT: Wait a minute, folks.
 25 (Indiscernible.) She's the witness. You can't

1 (indiscernible). I appreciate that you're
2 (indiscernible).

3 And you need to function with your charts on
4 your own.

5 BY MR. GOTTSTEIN:

6 Q Isn't the purpose of writing orders in the
7 chart to instruct the staff with respect to the
8 administration of medication?

9 A What I remember, that what you showed me in
10 the deposition was written "no emergency medication."
11 And yes, I do remember seeing it and writing that
12 order.

13 Q Yeah. And so my question is, what does that
14 mean?

15 A That means do not give emergency medication
16 and -- do not give emergency medications. And in case
17 the situation arises, they will -- of course, you
18 know, they still need to contact the clinician to talk
19 to us, and we have to evaluate the whole thing.

20 Q And when you say "no IM medication," does
21 that mean the same thing?

22 A A case to case is different.

23 Q So when you write "no IM medication" in this
24 chart, that can mean different things?

25 MS. DERRY: Objection. Is there any

1 if their clinician discusses with the doctor, the
2 patient really doesn't want to take IM medication.
3 And because the medication comes in different form, in
4 liquid form, in tablet form, pill form, and IM form.

5 And IM means just, you know, for whatever
6 reasons for that individual, the IM should not be
7 considered.

8 MS. DERRY: Your Honor, if I might, I think
9 there's some confusion here that the -- between
10 emergency medicine and IM medicine. I think --

11 THE COURT: I would say so.

12 MS. DERRY: I think the IM --

13 BY MR. GOTTSTEIN:

14 Q So didn't you testify -- didn't you say that
15 IM means the same thing to somebody -- or no, maybe
16 you didn't.

17 A No.

18 Q Okay. That's right, you didn't. So then
19 I'll ask, what it does mean? I'm just trying to
20 understand that. I apologize that we didn't figure
21 this out at the deposition. I'm sorry.

22 THE COURT: (Indiscernible.)

23 BY MR. GOTTSTEIN:

24 Q So are you saying that the nursing staff
25 decides what that means?

1 (indiscernible) dates that you're talking about that
2 that was written, or just generally?

3 MR. GOTTSTEIN: No. I'm just asking about
4 proceedings.

5 THE WITNESS: But every setting is different,
6 because a different clinician maybe can look at
7 differently.

8 But as you are referring to emergency
9 medication, in that case -- in emergency medication,
10 when we say IM, in the aspect that when we say "no IM
11 medication emergency," that means do not give it
12 against their wish.

13 But however, if it is oral medication, then
14 that means even though it is emergency situation, you
15 could offer it to them. So IM medication in the
16 emergency setting, yes.

17 BY MR. GOTTSTEIN:

18 Q I'm confused. So could you please tell me
19 again what "no IM medication" means?

20 A If you are specifically focusing for Bill --

21 Q No, no, no, no. Maybe that's the confusion.

22 Just generally, when you write "no IM
23 medication" in a chart, what does the nursing staff
24 understand that to mean?

25 A Well, it could be that the patient -- perhaps

1 A No.

2 Q And you're saying that it depends on the
3 circumstances?

4 A You were connecting IM and emergency, and I
5 wasn't really understanding what direction you were
6 going.

7 Q Well, I guess I'm just trying to get -- I am
8 (indiscernible).

9 THE COURT: (Indiscernible.)

10 MR. GOTTSTEIN: Right.

11 BY MR. GOTTSTEIN:

12 Q So when -- when you write -- is it true that
13 when you write "no emergency medication," that would
14 mean no IM medication and no oral medication?

15 A No. Oral medication is voluntarily. When
16 you give medication as needed basis in oral form, that
17 means you offer to the patient and patient willingly
18 to take.

19 And then IM medication -- but not always.
20 There are times that the patient prefers to get IM and
21 they'd rather not to take the pill. And sometimes
22 (indiscernible) always.

23 But however, for Bill, the last few
24 hospitalizations, if (indiscernible) happens, he has
25 refused on multiple attempts to offer the oral -- oral

1 medication, so the IM would be given to him.

2 Q And this was during the stay by the supreme
3 court?

4 A Well, an emergency situation really -- are
5 you talking about regular IM medication or emergency
6 medication?

7 Q Well, you switched to Bill, so now I'm
8 switching to Bill again. You said he was given IM
9 medication. You said he was refusing oral medication.

10 MS. DERRY: Objection, mischaracterization of
11 testimony. I believe she said --

12 THE COURT: Overruled.

13 THE WITNESS: Well, Bill is not willing to
14 take medication orally.

15 When emergency medication arises, which
16 becomes the safety and the (indiscernible) statute, we
17 are able to give a medication to him that if we think
18 that, as I said, he is at the level that he could be
19 (indiscernible) others.

20 But interesting, even when we give IM
21 medication to Bill, the staff that has given
22 medication against his wish, even though he refuse
23 oral medication, when they -- the nurse comes with the
24 medication with the IM -- actually he did not.
25 Because some of our patients are very psychotic or

1 A Well, if -- if we have an individual who is
2 so psychotic or so aggressive or to the level that
3 they cannot control themselves and they could put
4 themselves or others in an unsafe situation, and they
5 are not -- they have refused PO medication, and all
6 the other -- all the other alternatives that have been
7 offered to them, which becomes the last choice of the
8 IM medication, they are not willing to take it.

9 So yes, there would be a staff to support
10 from the aspect that -- to make it easier for the
11 nurse to give medication, just to make sure the needle
12 doesn't break down or somebody doesn't get hurt, you
13 know, that they need --

14 Q So are there, like, three or four staff
15 members that come in?

16 A Every situation is different. With Bill's
17 situation, again, every time the setting is different,
18 the level of aggression and agitation are different.

19 In some cases, I have seen probably like two
20 CNA staff that was working with him and the nurse came
21 and he put the pants down.

22 Q But yeah, usually he just submits, correct?

23 A Pardon me?

24 Q Usually he just submits, correct?

25 A Usually when he is --

1 very aggressive, that the man -- the mechanical
2 support or man support needed to keep them in order
3 the medication be given.

4 To Bill's credit, again, that might be in the
5 aspect of some (indiscernible) insight. Perhaps even
6 though he said no, he may benefit from medication. He
7 willingly takes his pants down and allows the nurse,
8 without resistance, without the man support to get
9 that medication.

10 BY MR. GOTTSTEIN:

11 Q So would you agree with (indiscernible)
12 characterization that -- that when -- you know, three
13 or four staff come with the -- you know, with the
14 needle, that he does submit -- submit to --

15 MS. DERRY: Objection, calls for speculation.
16 We haven't established that Dr. Khari knows anything
17 about what Dr. Worrall has testified to.

18 BY MR. GOTTSTEIN:

19 Q If --

20 THE COURT: Ask a question without
21 Dr. Worrall.

22 BY MR. GOTTSTEIN:

23 Q Okay. If -- if he didn't pull down his pants
24 and, you know, and basically submit, what would the
25 staff do?

1 Q He just submits? He -- he --

2 A For this hospitalization definitely, yes.

3 Q Okay. But let's talk about someone that's
4 not Bill.

5 A Okay.

6 Q And --

7 MS. DERRY: Objection, Your Honor.

8 THE COURT: What's the relevance of not Bill?

9 MR. GOTTSTEIN: On that one admission, that's
10 the procedure if -- so that --

11 THE COURT: What difference does it make, if
12 it's not been used against him?

13 MR. GOTTSTEIN: Because he knows what it is,
14 and so that I think explains why he does that.

15 THE COURT: You can lay that foundation.
16 I'll let you go there. But (indiscernible)
17 foundation.

18 MR. GOTTSTEIN: All right. I understand.

19 BY MR. GOTTSTEIN:

20 Q In the 85 -- 85 admissions of Bill, has he
21 ever refused to take an IM?

22 MS. DERRY: Objection, calls for speculation.
23 Could we limit it to the ones where Dr. Khari has
24 actually been the treating physician?

25 THE COURT: It's limited to her knowledge,

1 so --

2 THE WITNESS: As I said, he have 82 -- 82
3 hospitalizations. And I would not be surprised if in
4 some of those admissions, he may have shown some
5 resistance.

6 But again, I am not really sure.

7 BY MR. GOTTSTEIN:

8 Q Okay. And if so, what would have -- what
9 would have happened?

10 MS. DERRY: Objection, asked and answered.

11 THE COURT: I'm not going to (indiscernible).
12 I don't think that this witness knows the predicate of
13 whether he has witnessed the administration to a
14 non-cooperative patient.

15 MR. GOTTSTEIN: Actually, my question was
16 experience. But that raises the question.

17 BY MR. GOTTSTEIN:

18 Q Has -- well, on this -- this -- since you've
19 been treating him, has Bill witnessed someone
20 administered the IM medication without submitting to
21 it?

22 A (No audible response.)

23 Q You don't know? Okay. So -- were we on
24 the -- okay. So 6/26 to 6/30, did you figure out if
25 he had been given any medication?

1 A I think I said no, but (indiscernible).

2 Q Okay.

3 THE COURT: So for the April --

4 MR. GOTTSTEIN: June 26th.

5 THE COURT: June 26th to June 30th, he
6 received no judicially authorized psychotropic and no
7 emergency medication; is that fair?

8 THE WITNESS: (No audible response.)

9 THE COURT: All right.

10 BY MR. GOTTSTEIN:

11 Q And is there any notation in that chart about
12 no emergency medication or no IM medication?

13 A No.

14 Q Okay. So on -- how about on August 1st to
15 August 5th, did he receive any medication?

16 Oh, first off -- I'm sorry. Was -- was that
17 a Title 12?

18 MS. DERRY: Objection, asked and answered.

19 THE COURT: Sustained (indiscernible).

20 THE WITNESS: Okay.

21 BY MR. GOTTSTEIN:

22 Q Did he receive --

23 THE COURT: I want you to focus -- I'm going
24 to ask a question, and then I'll let Mr. Gottstein
25 (indiscernible).

1 Would you go back to the April 25th and
2 June 4th admission, very (indiscernible).

3 THE WITNESS: (Indiscernible.)

4 THE COURT: April 25 through June 4th.

5 THE WITNESS: For medication (indiscernible).

6 THE COURT: I'm going to ask -- let me tell
7 you what I'm going to do. I'm going to ask you the
8 same questions for each admission. I want to confirm
9 whether it was a -- a DOC transfer or coming in off
10 of -- from somewhere else.

11 THE WITNESS: 4/25 --

12 THE COURT: Just -- just --

13 THE WITNESS: All right.

14 THE COURT: Then I'm going to find out
15 whether or not he ever had initially authorized the
16 medication. I think that's going to be pretty easy
17 for you to figure out.

18 I want to know, though, whether there was any
19 emergency medication, and then I want to ask you about
20 whether or not -- there's some confusion in my mind
21 about whether or not API thought he should be
22 committed, after the supreme court issued the stay,
23 but you didn't take action towards that because of the
24 stay and/or thought that perhaps he should be
25 medicated, but because of the stay you -- you said,

1 well, you know, we're not going to bother to try
2 because we've got this legal (indiscernible), okay?

3 So starting with the April 25th through
4 June 4th -- here's -- I'm going to tell you what I
5 think you've said already, and please confirm this so
6 I'm (indiscernible).

7 He was brought in on a 24-hour evaluation
8 from somewhere. There was a petition for a 30-day
9 commitment that was granted.

10 There was a superior court authorization for
11 involuntary psychotropic medication (indiscernible)
12 before they could be administered, the order was
13 stayed.

14 And then he was discharged on June 4th, not
15 because he was getting better, but because I think API
16 thought that they could do nothing for him given the
17 stay.

18 And I think you also said, and please confirm
19 this, that during that whatever it is, roughly five
20 weeks, six weeks, there was no emergency medication.
21 Check the emergency medication then (indiscernible)
22 dates.

23 THE WITNESS: It was one emergency medication
24 that was given.

25 THE COURT: Can you give me the date?

1 THE WITNESS: Are we on May, you said?
 2 THE COURT: We are on the April 25th through
 3 June 4.
 4 THE WITNESS: Yes. On May -- May -- this is
 5 May 6th, so we're talking about May. You are talking
 6 about May.
 7 THE COURT: So roughly May 6th?
 8 THE WITNESS: I may have the wrong one. I'm
 9 sorry. I don't think May. I was reading April --
 10 THE COURT: April 25th through June 4th.
 11 THE WITNESS: This is April (indiscernible)
 12 25th to June 6th. Okay. So -- yes. On May 6th, he
 13 received one IM medication, haloperidol. He did
 14 receive one emergency medication.
 15 THE COURT: Was that administered by
 16 injection?
 17 THE WITNESS: Yes.
 18 THE COURT: And what is the -- is this a
 19 medication that's effective for some two weeks? Is
 20 that one of these --
 21 THE WITNESS: No.
 22 THE COURT: -- or a shorter period of time?
 23 THE WITNESS: For shorter period of the time.
 24 THE COURT: Can you give me roughly the
 25 period of its effect?

1 THE WITNESS: Each medication is different.
 2 But for that specific medication, I would imagine that
 3 it would last for 72 hours --
 4 THE COURT: 72 hours. Okay.
 5 THE WITNESS: -- of life. And also -- let me
 6 correct myself, Judge. Also on May 15th, he received
 7 another IM emergency medication of Abilify
 8 (indiscernible).
 9 THE COURT: I'm sorry; was that the same
 10 medication?
 11 THE WITNESS: No.
 12 THE COURT: Different medication?
 13 THE WITNESS: Different medication.
 14 THE COURT: So the first one --
 15 THE WITNESS: Was haloperidol.
 16 THE COURT: Haloperidol.
 17 THE WITNESS: Uh-huh. H-A-L-O-P-E-R-I-D-O-L.
 18 THE COURT: And haloperidol was the second
 19 time?
 20 THE WITNESS: No. The second time was
 21 aripiprazole.
 22 THE COURT: Okay. Spell that for me.
 23 THE WITNESS: A-R-I-P-I-P-R-A-Z-O-L-E. And
 24 in combination with (indiscernible).
 25 THE COURT: Hang on a second. Aripiprazole?

1 MR. GOTTSTEIN: Could you spell it for me?
 2 THE COURT: A-R-I-P-I-P-R-A-Z-O-L-E. And is
 3 that also roughly 72 hours?
 4 THE WITNESS: No. This has a longer --
 5 longer --
 6 THE COURT: Can you give me roughly how long
 7 that is?
 8 THE WITNESS: I would say for -- the
 9 medication in its oral form has about 72 hours, and
 10 then IM form would -- say probably about 24 to 48
 11 hours.
 12 THE COURT: And that was all (indiscernible)?
 13 MS. DERRY: By injection, Dr. Khari?
 14 THE WITNESS: (Indiscernible.)
 15 THE COURT: So no other than just the May 6th
 16 and the May 15th emergency medications are on that --
 17 that (indiscernible)?
 18 THE WITNESS: Yes. And the Abilify was given
 19 with another medication. There were two given the
 20 same time. And the second medication is
 21 diphenhydramine, D-I-P-H-E-N-H-Y-D-R-A-M-I-N-E.
 22 THE COURT: (Indiscernible.)
 23 MS. DERRY: Is it -- I'm sorry. Is Abilify
 24 and aripiprazole the same thing?
 25 THE WITNESS: Uh-huh, yes.

1 MS. DERRY: As the first one, not as the
 2 second one?
 3 THE WITNESS: Abilify and (indiscernible) are
 4 the same.
 5 THE COURT: And both of those two
 6 medications -- all three of those are psychotropic?
 7 THE WITNESS: Yes.
 8 THE COURT: Can you tell from the notes or
 9 from the chart or from your recollection if -- would
 10 API have kept him longer than June 4th if the supreme
 11 court stay was not -- I mean, did they think that he
 12 was -- still met the commitment criteria, but they
 13 couldn't do anything because they couldn't medicate
 14 him anymore, so what's the point of keeping him, or do
 15 you think he got better and would have been released
 16 one way -- you know, without the supreme court?
 17 THE WITNESS: That's a very hard question for
 18 me to answer, but --
 19 THE COURT: If you can't answer it, that's
 20 fine.
 21 THE WITNESS: The best that I could respond
 22 is that as clinician, they have obligation -- again,
 23 if truly a patient, whether it's Bill or somebody
 24 else, regardless of (indiscernible), if truly
 25 (indiscernible) that become imminently danger as they

1 walk out, we have obligation for safety of that
2 individual.

3 But if I put that (indiscernible) in the form
4 of the statute, then the statute, he doesn't meet the
5 criteria. Even though I have a significant concern
6 for the safety and others and stability, but it would
7 stipulate that he probably would stay -- it would
8 stipulate that perhaps he could maintain himself
9 stable for very limited time and (indiscernible) on
10 the aspect of recognizing the statute.

11 Because if at that moment, at that time,
12 because sometime we cannot put that moment at that
13 state that he is getting evaluated at, and he's not
14 meeting the statute, and for me to recognize his right
15 and the statute, it leaves me no choice than to let
16 the person go.

17 But that doesn't mean, as a clinician,
18 somebody in a situation like Bill, that my ethical and
19 my (indiscernible) concern has diminished. It still
20 exists. But there is a (indiscernible) between the
21 two, really. Where do I put (indiscernible) all this
22 challenge, individual like Bill, then I come to that
23 point.

24 THE COURT: Let's turn to the
25 June 26th through June 30th admission. And I'll tell

1 commit him, but because of the stay, we are not going
2 to try?

3 THE WITNESS: I would say yes.

4 THE COURT: Okay. Can you tell me which of
5 the admissions you think API didn't take an action
6 because of its -- because of the existence of the
7 stay?

8 THE WITNESS: Well, I would not say in the
9 form that specifically (indiscernible) admission as a
10 whole, just the fact that the -- the -- the legal
11 issue that evolved around Bill, and knowing that we
12 are really -- as an acute care hospital, we all
13 here -- you know, one of our way to stabilize a
14 patient is through the medication, even though
15 medication is not the only way. And knowing that was
16 not available and not able to really improve him,
17 rather --

18 THE COURT: Go ahead.

19 THE WITNESS: -- not improve over all his
20 state of being, even though we see sometimes some
21 level of (indiscernible) he gets his rest, we give him
22 the nutrition, he becomes, you know, calm --

23 THE COURT: Let me summarize this and make
24 sure I understand it. Because I need to make sure
25 that I can articulate this back.

1 you my notes, and you confirm these for me.

2 He came in from the jail. He was evaluated
3 by the forensic team. They concluded he was not
4 competent to stand trial; the charges were dropped.
5 There was no emergency medication and no judicial
6 authorization.

7 THE WITNESS: Yes.

8 THE COURT: And you were asked whether he met
9 commitment criteria. Now, what I'm trying to figure
10 out is, when API was evaluating him on these various
11 admissions after the supreme court stay, did the fact
12 of that stay enter into the evaluation of whether he
13 should -- whether API should attempt (indiscernible)?

14 THE WITNESS: If the admission is different,
15 and this is why we change --

16 THE COURT: Okay.

17 THE WITNESS: -- we are (indiscernible) for
18 this admission the kind of (indiscernible) admission,
19 his behavior was worsened, like (indiscernible)
20 behavior that we didn't see before. Like he was
21 urinating and defecating --

22 THE COURT: Well, let me ask you this general
23 question. Was there ever a time in these various
24 admissions where API said, we -- if the supreme court
25 hadn't issued the stay, we would file a petition to

1 The very basic level of nutritional
2 assistance, you know, medication for other ailments,
3 just getting him to calm down, you could do that, if
4 necessary, at any given time.

5 But your hands were tied because, given the
6 stay, you could not use psychotropics, except in the
7 emergency situation. But for the non-emergency
8 periods, API said we can't use this, so whereas we
9 would probably keep him here and try and medicate him
10 if the stay wasn't in existence, in this situation,
11 once we got him minimally stable, we are going to let
12 him go?

13 THE WITNESS: I would answer -- the best I
14 could answer it, subconsciously or (indiscernible)
15 consciously did play a role in the decision-making.

16 THE COURT: This is a different question.
17 You also made reference to the API's understanding
18 that Mr. Gottstein was involved, and that he had -- or
19 on Mr. Bigley's behalf, that Mr. Gottstein had
20 expressed a resistance to medication that was very
21 well known to you.

22 Did the challenge of having to deal with that
23 legal resistance, did that also enter into API's
24 consideration as to whether or not it would attempt to
25 seek authority to medicate?

1 THE WITNESS: I have to answer yes.
 2 THE COURT: Okay. Did it -- do you think
 3 that knowing that Mr. Bigley had an aggressive
 4 attorney ever enter into the decision as to whether or
 5 not to give him emergency medication?
 6 MS. DERRY: Can I object and instruct her not
 7 to answer, to the extent that privilege is a factor,
 8 that a complication was -- I know that API is involved
 9 with their attorneys on numerous occasions, but --
 10 THE COURT: That's fine. But I'm not asking
 11 you to reveal any of that.
 12 THE WITNESS: Well, as a clinician --
 13 THE COURT: You can if you want, but --
 14 THE WITNESS: As a clinician, again, when the
 15 time come, regardless of what the -- with all respect
 16 to the legal system, I'm not disrespecting the legal
 17 system -- I feel like my first call as a clinician is
 18 the safety of my patient.
 19 And it's -- my second thing comes to the
 20 legal punishment that I have to face, I suppose I have
 21 to take that at the same time.
 22 So when emergency medication did
 23 (indiscernible), I did not bring that as my first
 24 decision. So I (indiscernible) answering your
 25 question.

1 treating physicians think that emergency medication
 2 was appropriate and necessary and then choose not to
 3 do it because of fear of a lawyer's challenge?
 4 THE WITNESS: (Indiscernible) feelings with
 5 (indiscernible) -- it was felt for myself as a
 6 clinician.
 7 THE COURT: I don't doubt that you thought
 8 about it. I'm wondering whether you said I'm not
 9 going to do medication because I don't want to deal
 10 with the lawyer complaining about it.
 11 THE WITNESS: I do not recall. Mainly what I
 12 do recall, when we did have this court hearing, 30-day
 13 commitment, and -- I can't remember the people
 14 (indiscernible), when we went to downtown court.
 15 MS. DERRY: The 21st.
 16 THE WITNESS: And Mr. Gottstein actually
 17 asked no emergency medication to be given.
 18 When I came back to the hospital, on 22nd, I
 19 was facing the situation that -- or actually, at that
 20 point, even my lawyer, she could correct me, but I
 21 recall she said that, you know, hold on to that.
 22 Because let's clarify that, because the lawyer got
 23 (indiscernible) for that.
 24 But however, I saw the patient in such an
 25 unsafe position that I have gone and given the order

1 THE COURT: Were there times when API chose
 2 not to administer emergency medication because of its
 3 fear of having to go through the legal hassle and
 4 bother that Mr. Gottstein's representation guaranteed?
 5 THE WITNESS: (Indiscernible) never try and
 6 get involved or (indiscernible) get involved.
 7 But (indiscernible) cannot direct a clinician
 8 what to do, because that is the knowledge and the
 9 capacity that this doctor has. So -- so from that
 10 aspect, really, the hospital -- I cannot say the
 11 hospital really can never decide that as -- as
 12 (indiscernible) the emergency medication.
 13 THE COURT: Okay. Well, then take away the
 14 (indiscernible). Did the treatment team -- did the
 15 treatment doctors ever opt not to invoke -- to
 16 administer emergency medication because of a concern
 17 that there would be legal challenge?
 18 THE WITNESS: Again, if -- if emergency
 19 situation -- (indiscernible) emergency situation, a
 20 situation that individual does need the medication.
 21 So it really comes to that point, even if it
 22 is a legal force against it, but become a safety --
 23 actually, to bring a good example of when we went --
 24 THE COURT: What I am hearing you say, and
 25 correct me if I am wrong, is that at no time did the

1 of IM medication. And I don't know, the same day or
 2 next day, Ms. Derry did call me back and said that
 3 they did talk with the Court, and they said that we
 4 are -- we can apply the emergency medication.
 5 So to answer to your question, there were
 6 times that I've even been told, hold on to it, let's
 7 clarify with the Court. I did not seem safe and I
 8 took the action giving him the medication.
 9 THE COURT: So you -- you always exercise
 10 your clinical judgment to give emergency medication,
 11 despite the problem that might come down the road with
 12 a legal challenge?
 13 THE WITNESS: That's what I believe.
 14 THE COURT: Okay. And however, you -- I want
 15 to be clear. I want to make sure I'm not confusing
 16 myself. And you -- the medical team did -- did you
 17 always give emergency medication despite the stay,
 18 emergency medication?
 19 THE WITNESS: Yes. Yes.
 20 THE COURT: So I assume there are times after
 21 the stay was in place that emergency medication was
 22 given, and it was always given when you thought it was
 23 necessary --
 24 THE WITNESS: Yes.
 25 THE COURT: -- when the emergency was so

1 severe?
 2 THE WITNESS: Yes.
 3 THE COURT: Okay. Just wait a minute.
 4 Let's go then to the August 1 to August 5 --
 5 MR. GOTTSTEIN: Can I ask a question of you,
 6 Your Honor?
 7 THE COURT: (Indiscernible.)
 8 The August 1 to August 5, you came in
 9 (indiscernible) transfer. The forensic team found him
 10 not competent. He was discharged, never sought 839
 11 authorization, and gave no emergency medication.
 12 THE WITNESS: You're correct, Your Honor.
 13 THE COURT: And on the September 22 to 24, he
 14 came in from the citizen with some kind of an ex
 15 parte, not DOC transfer, no medications were
 16 authorized, and no emergency medication
 17 (indiscernible); is that correct?
 18 THE WITNESS: Yes.
 19 THE COURT: And API did not seek a 30-day
 20 commitment in part because of the stay and their
 21 thought process that even if we got him committed, we
 22 couldn't medicate him, so once we got him stabilized
 23 and a square meal in him, we couldn't do anything
 24 more, or we certainly couldn't do the medication, so
 25 let's not keep him in this institution because --

1 medical advice.
 2 THE COURT: He left what?
 3 THE WITNESS: Against medical advice. I
 4 offered him to stay and -- but he chose to leave the
 5 facility.
 6 THE COURT: And since October 20th, which is
 7 currently the one I think (indiscernible) -- but let
 8 me get it all down. He has had emergency medication?
 9 THE WITNESS: On 22nd and 27th.
 10 THE COURT: And when he came in on the 20th,
 11 is that a -- is that an ex parte?
 12 THE WITNESS: No. On POA.
 13 THE COURT: And then followed by the -- the
 14 first and then second petition for (indiscernible).
 15 MR. GOTTSTEIN: Medication.
 16 THE COURT: Then medication. There was a
 17 commitment -- there was a petition for commitment,
 18 there was a petition for medication, a second petition
 19 for both, here we are.
 20 MR. GOTTSTEIN: Your Honor, there's only one
 21 commitment petition.
 22 THE COURT: Clearly not my order --
 23 MR. GOTTSTEIN: Excuse me?
 24 THE COURT: He is here on my order?
 25 MR. GOTTSTEIN: Correct.

1 September 30th through October 1, just a short one.
 2 Do you know why he came in on that?
 3 THE WITNESS: December 30th?
 4 THE COURT: September 30th.
 5 THE WITNESS: He came on ex parte from the
 6 community.
 7 THE COURT: Okay. And was he given any
 8 medication -- no emergency meds?
 9 THE WITNESS: No.
 10 THE COURT: And because he was there so
 11 short, I assume there was no request for medication.
 12 On October 8th, was he in on a -- was that an
 13 ex parte, as well? This is a one day.
 14 THE WITNESS: No. He came on POA as a
 15 screening (indiscernible). And --
 16 THE COURT: I'm sorry. He came on what?
 17 THE WITNESS: POA. It stands for --
 18 THE COURT: Is that police --
 19 THE WITNESS: (Indiscernible) police
 20 officer's application, which gives 24 hours to the
 21 clinician to assess the patient and decide the next
 22 step.
 23 THE COURT: No medications -- no emergency
 24 medications?
 25 THE WITNESS: No. And he left against

1 THE COURT: All right. There was one other
 2 topic I wanted to go clarify, and then I'll return
 3 this to Mr. Gottstein.
 4 Let's -- I'm unclear about this offering of
 5 oral medication concept. Let's assume that you think
 6 he is in a crisis and emergency medication may well be
 7 necessary. Is the first thing that you ask him
 8 whether he will voluntarily take some oral medication?
 9 THE WITNESS: If the -- when the crisis
 10 occurs, as well as for Bill or any other patient,
 11 regardless (indiscernible) or the nursing staff, they
 12 try to take all the approach which is less intrusive,
 13 from offering medication that could calm them down,
 14 and let them separate themselves from the stimuli, take
 15 a shower, calm them down, listen to music, go to quiet
 16 room. All of those action is taken. (Indiscernible)
 17 oral medication and medication voluntarily offered to
 18 them.
 19 THE COURT: And if the patient said, sure,
 20 I'll take those medications, is he -- does that -- and
 21 then go ahead and administer --
 22 THE WITNESS: Yes. If they --
 23 THE COURT: Now, here's my question. Isn't
 24 that person not competent at that point because he's
 25 in this crisis and he is not capable of actually

1 understanding what is going on and -- I guess -- I
2 mean, I understand why it would be easier to
3 administer if he takes it. But isn't he incapable of
4 giving consent at that point, as a legal matter -- I
5 mean, in a legal sense?

6 THE WITNESS: You are writing -- raising a
7 very good question, Judge, from the aspect, yes, the
8 individual is -- it depends what the presentation is.

9 In Bill's situation, he has no insight, so
10 informed consent is not really -- he cannot give me
11 informed consent.

12 Right now, you could have another individual
13 who is not psychotic. A lot of it could be just
14 behavioral or anger. They are able to process, but
15 just either -- either --

16 THE COURT: So this is -- I think I
17 understand what you're saying and the distinction
18 you're drawing. I want to make sure that I have it
19 right.

20 I think what you're telling me is that the
21 treating physician, when they think an individual is
22 in an emergency and also believe that he is not
23 legally competent, when they ask him to take the pills
24 and he says yes, he is not actually exercising
25 informed consent. All he's doing is -- because the

1 hospital actually made the decision for him. And all
2 that he's really doing is accepting a smoother
3 administration of the medication.

4 THE WITNESS: Yes, (indiscernible).

5 THE COURT: But it's not exercising consent
6 in the legal sense. But instead of saying, yeah, I'll
7 take it my mouth instead of having you guys stick it
8 in my butt with a needle, (indiscernible). And
9 that -- that's -- I understand that.

10 So I take it that API is not -- is not
11 necessarily asserting that the patient who accepts the
12 offer of voluntary medication is therefore competent?

13 THE WITNESS: No. If there is a crisis and
14 the safety become a concern, and that even if there is
15 a state of crisis, the patient should be respected and
16 be taken the least-restrictive approach. And oral
17 medication considered --

18 THE COURT: So let me just -- I appreciate
19 your answers. I just need to make some notes, and
20 then I'll let Mr. Gottstein --

21 (Pause.)

22 THE COURT: Let me follow up one point that
23 just occurred to me on that. On the choice of oral
24 meds, you said ease of administration versus -- and if
25 the patient says no, then he's going to have an

1 objection, can -- am I correct in assuming that when
2 the choice (indiscernible) capacity, he's not
3 presenting any crisis, when he is offered oral meds
4 versus the implicit, you're going to get a needle, the
5 dosages are the same and the effectiveness of the two
6 forms are the same?

7 THE WITNESS: It depends on medication being
8 used. The IM usually works quicker.

9 And also now, with the newer antipsychotic
10 medication, they have them in dissolvable form. What
11 it means, when they put it in the mouth, rather than
12 ingesting it, I guess dissolve by mouth and get
13 absorbed by (indiscernible) to get to the blood system
14 quicker. So that also works quicker.

15 THE COURT: So with some slight sort of
16 medication intake issues, the two forms are roughly
17 pretty closely the same. You're certainly not saying
18 here is an oral one that's going to be good for 70 --
19 24 hours or 48 hours versus an injection that's two
20 weeks long?

21 THE WITNESS: No.

22 THE COURT: It's going to be -- they're both
23 going to be relatively short acting and relatively
24 similar in their start time and their half life?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 BY MR. GOTTSTEIN:

3 Q Do you have a copy of Exhibit B?

4 MS. DERRY: I just handed it to her, Your
5 Honor.

6 BY MR. GOTTSTEIN:

7 Q Could you turn to page 17?

8 There's a -- I think it's called a progress
9 note, No. 5692; is that correct?

10 A Uh-huh.

11 Q In the -- down towards the bottom, does it
12 say he was ambivalent at medication time, he walked up
13 to the window and asked for his medication, then said
14 maybe I shouldn't, and then maybe I should, back and
15 forth, and then backed away from the window without
16 taking it. He at 2130 hours asked for his medication
17 and it was given as ordered.

18 That -- is that what it says?

19 A That's (indiscernible).

20 Q And that wasn't pursuant to an emergency.
21 That wasn't an emergency administration, was it?

22 A When he came ask for medication? No.

23 Which one are you talking about? He came
24 voluntarily and stated that he wanted to take some
25 medication to help him.

1 Q Yeah. So that was an example where he did
2 exercise his (indiscernible), correct?

3 A Well, actually interesting, because it was to
4 our surprise. I remember (indiscernible) the next
5 day, because that happened nighttime. It was about
6 11:00.

7 When I came next day, reviewed all the
8 charts, that -- he asked for medication, which was
9 again one step forward for Bill, knowing perhaps again
10 (indiscernible) insight, perhaps he would benefit from
11 medication.

12 But again, that (indiscernible), immediately
13 he changed his mind and he withdraw his decision from
14 taking medication, all voluntarily.

15 Q But then he did take it?

16 A Yes. I have to see exactly -- I have to look
17 at what date is that. I have to look at -- 8/4. I
18 don't know. If that is on 8/4, I cannot really make
19 any comments unless I see the chart after -- it wasn't
20 this admission.

21 Q Were you (indiscernible)?

22 A I could look at it.

23 MS. DERRY: August 4th?

24 THE WITNESS: August --

25 MS. DERRY: Is that correct, Mr. Gottstein,

1 Q Okay. And that -- if you look at the
2 previous page, page 16, that's true that -- that
3 highlighted area, that's true for (indiscernible)?

4 A Yes. And that is the medication I mentioned.

5 Q Temazepam?

6 A Yes.

7 Q So -- okay. I want to go back and -- to the
8 September 30th admission. You said it was an ex
9 parte. Was that again by (indiscernible)?

10 MS. DERRY: Objection, asked and answered.

11 MR. GOTTSTEIN: I think I did that for the --

12 THE COURT: What's the date you're talking
13 about?

14 MR. GOTTSTEIN: September the 30th.

15 THE WITNESS: Yes, it was. Yes,
16 (indiscernible).

17 BY MR. GOTTSTEIN:

18 Q And what -- what were -- what were --

19 A (Indiscernible.)

20 Q And what were the reasons stated for --

21 MS. DERRY: Can I object for the relevance?
22 I thought we were doing a medication petition.

23 I also was under the impression that you were
24 exclusively representing Mr. Bigley for the issue of
25 medication, not for commitment.

1 that you're looking at August 4th?

2 THE WITNESS: Yes. But I can -- referring
3 to -- actually happened August 3rd, and they wrote the
4 note -- yeah. It's August 4th. Because I see here on
5 August 3rd, he came and got voluntary medication,
6 which we give on as-needed basis for agitation,
7 anxiety, and insomnia.

8 So I -- that was August -- on August 3rd.

9 THE COURT: Can you tell us what medication
10 he was administered?

11 THE WITNESS: That was at 8:00. Temazepam
12 (indiscernible), another medication. T-E-M-A-Z-E --

13 THE COURT: I'm sorry?

14 THE WITNESS: I'm sorry.

15 THE COURT: Start again.

16 THE WITNESS: T-E-M-A-Z-E-P-A-M.

17 THE COURT: Is that a psychotropic --

18 THE WITNESS: Yes. It is actually
19 anti-anxiety medication. Sometimes we use it for
20 sleep (indiscernible). August 4 --

21 THE COURT: (Indiscernible.)

22 BY MR. GOTTSTEIN:

23 Q So -- but this wasn't an emergency
24 medication; is that correct?

25 A Yes.

1 THE COURT: Overruled.

2 THE WITNESS: You would like --

3 THE COURT: This is relevant to his
4 medication history, and his progress while on and off
5 medication, and his need for medication, and his best
6 interests.

7 THE WITNESS: The petition on 9/30 by
8 (indiscernible), patient arrested again for
9 trespassing on 9/28/2008. Just a couple of days after
10 getting out of API on ex parte, patient is charged --
11 charges are dropped and he is in the jail now, on
12 24-hour mental health hold, and expires today.

13 He is disorganized schizophrenia -- I'm
14 sorry. His diagnosis, schizophrenia paranoid type.
15 He was seen by his -- by (indiscernible) last week.

16 He is even further decompensating today.
17 Since he has had no medication at API, jail, or
18 community, jail guard could not let him out of his
19 cell due to concern of safety (indiscernible)
20 interview done through the window.

21 Bill was unable to follow simple directions.
22 He was belligerent, cussing, (indiscernible), state
23 twice things about killing. When asked if he wanted
24 to hurt someone, he said yes.

25 He was pounding on the window. He had

1 periods of yelling unintelligible sounds repeatedly
 2 and did not seem like he could stop or control,
 3 almost -- almost barking.
 4 He was unable to answer questions and appears
 5 psychotic. He appears to be both a danger to others
 6 and gravely disabled.
 7 BY MR. GOTTSTEIN:
 8 Q And then was he taken to API? I mean,
 9 that's --
 10 A Yes, yes.
 11 Q And then API determined that he did not meet
 12 commitment standards and discharged him?
 13 A (Indiscernible) discharge 9/30 -- yes. This
 14 is the discharge the next day, against medical advice.
 15 Q Could you look at page 18 of Exhibit B. Can
 16 you read that?
 17 A Patient admitted on 9/30/2008 on an ex parte
 18 order. Patient refusing --
 19 Q Is that vital signs?
 20 A -- vital signs, thank you, and
 21 (indiscernible) ordered lab workup and he is labile.
 22 Patient diagnosed -- patient -- oh, patient discharged
 23 against medical advice today. He is on no medication.
 24 Q Okay. So the next page, is that a copy of
 25 his request to leave API?

1 A This is -- he signed in voluntarily.
 2 Q Oh, that's -- okay. So he signed in
 3 voluntarily?
 4 A Yes.
 5 Q Okay. I'm sorry. Okay. And then on
 6 October 8th, he was brought in on a POA. Now, you --
 7 you said that -- do you know the criteria for who can
 8 do what's called a POA, a police officer application?
 9 A Yes. Clinician, I believe a psychologist,
 10 and police.
 11 Q So it's called a POA -- police officer
 12 application, but any doctor can do it, too, right?
 13 A Yes.
 14 Q And it's still called a POA?
 15 A I think it's called police -- I keep
 16 forgetting.
 17 MS. DERRY: Peace.
 18 THE WITNESS: Peace. Peace officer --
 19 MS. DERRY: Application.
 20 THE WITNESS: -- application.
 21 MR. GOTTSTEIN: (Indiscernible.)
 22 BY MR. GOTTSTEIN:
 23 Q Okay. And so on October 8th, was that --
 24 that was a POA I think you said, correct?
 25 A October 8th -- it was a POA, yes.

1 Q Okay. And what were the -- well, let's look
 2 at page 20. Is this the report from -- did he come
 3 from the Providence psychiatric emergency room?
 4 A This looks Providence report, yes.
 5 Q Okay. And so in this case, the POA was a
 6 physician over at Providence that signed it?
 7 A Or some clinician, yeah. It doesn't have to
 8 be physician, only could be a psychologist, a
 9 clinician, psychologist, social worker.
 10 Q Okay. The -- and does it say at the top
 11 just -- the patient was found yelling at traffic and
 12 jumping in and out of traffic --
 13 A Yes.
 14 Q -- by the police, and was almost hit by a car
 15 today and was brought in to the emergency room for
 16 evaluation?
 17 A Yes.
 18 Q Okay. Does it say that he took Ativan and
 19 Haldol voluntarily?
 20 A Yes.
 21 Q Not by API. Okay. Any indication that was
 22 an emergency?
 23 MS. DERRY: I'm going to object to
 24 relevance. This was not administered by API. It was
 25 administered by the emergency room of Providence

1 (indiscernible).
 2 BY MR. GOTTSTEIN:
 3 Q Okay. And then does it say attempt for API
 4 admission?
 5 A Yes.
 6 Q What do you -- what do you make of that?
 7 A What it says.
 8 Q Does it say --
 9 A They tried to admit him, contacted API to
 10 (indiscernible) admission.
 11 Q Okay. And can you tell us who actually did
 12 sign the POA?
 13 A Let's see. It says signed by Dr. Baker.
 14 Q Do you know Dr. Baker?
 15 A No, I don't.
 16 Q So you don't know if he's a psychiatrist or
 17 not?
 18 MS. DERRY: Object, asked and answered.
 19 BY MR. GOTTSTEIN:
 20 Q The patient -- could you -- down below, does
 21 it say, is a danger to himself, jumping in and out of
 22 traffic, but as the patient is chronically medically
 23 non-compliant, the healthcare community may not have
 24 any options to treat the patient's disease?
 25 A Yes, it does say that.

1 Q Okay. Do you get a sense of this, that this
2 physician is frustrated by API's quick discharges of
3 Mr. Bigley in the recent past?

4 MS. DERRY: Objection, mischaracterizes the
5 report and calls for speculation.

6 THE COURT: Don't speculate. You know, if
7 this is something that -- if that suggesting something
8 that you conclude from this report, say so. If not --

9 THE WITNESS: No. Because I don't know what
10 he means by that, no.

11 BY MR. GOTTSTEIN:

12 Q Okay. And then on the current admission,
13 what -- you said it was a POA?

14 A I believe it was POA, but let me look at it.
15 Yes.

16 Q And what was -- what was the grounds for
17 that? Or who -- where did it come from?

18 A I think -- I think it came from jail.

19 THE COURT: Was that from jail?

20 THE WITNESS: Or was -- let me see.
21 (Indiscernible) Anchorage, from Lisa -- Lisa is a
22 licensed practitioner --

23 MS. DERRY: If I may, Davis.

24 THE WITNESS: Davis.

25 THE COURT: Does that say where this

1 Q So isn't that less disturbing behavior than
2 the previous two admissions?

3 A I cannot -- every evaluation is different.
4 I -- when he got admitted in this hospitalization, his
5 behavior was markedly psychotic.

6 As I said, it started having some behavior he
7 didn't have in the past, like urinating, defecating,
8 and was making more threatening statements, was doing
9 more posturing of -- so I -- I could not say that he
10 was (indiscernible).

11 And also sometime -- the report, even though
12 they are valid, it's objective on staff
13 (indiscernible) patient's condition. And also they
14 state that he was (indiscernible) coming to the API
15 (indiscernible) one point and then stay only with
16 (indiscernible) of the evaluation.

17 Q Now, Mr. Bigley is in the courtroom for some
18 time. Does he still meet commitment criteria right
19 now?

20 A This is the best I have seen Bill. He is
21 doing great.

22 And I think part of it is because
23 (indiscernible) structure, and also he has had good
24 sleep. He's had five-and-a-half hours of sleep last
25 night. This is the best I have seen Bill for the last

1 individual practices?

2 THE WITNESS: It says Anchorage Community
3 Mental Health, a clinician.

4 BY MR. GOTTSTEIN:

5 Q And what -- what did she say about why she
6 was (indiscernible)?

7 A (Indiscernible) for the harm to others and
8 refuses to take medication, is (indiscernible) grave
9 disability. He is in CIPP on the criminal trespass
10 charges, found not competent for trial. Recommended
11 psychiatric care.

12 He is disheveled, even after court-ordered
13 med. He is yelling, cursing, threatening to staff.
14 He is focused on getting his money and would like to
15 return to threaten the staff at OPA over money is
16 released. Said if he does not get his money, "you
17 know what I will do to them." Those are in
18 quotations.

19 Saying -- saying he is the son of God and
20 will go see President Bush about his -- President Bush
21 about this (indiscernible) unable to regulate his
22 behavior. He -- I can't read that, something he admit
23 to API and (indiscernible) by history to assault
24 others -- oh -- yeah, assaulted. Diagnosis of a
25 (indiscernible).

1 couple of hospitalizations.

2 So I am impressed. I congratulate him on
3 that.

4 Q So sleep is very important, isn't it, in
5 terms of psychotic conditions?

6 A I think yes, sleep is one of the main things
7 for everybody's -- (indiscernible) for him, yes.

8 Q And isn't it Bill often doesn't get much
9 sleep?

10 A When he gets the most psychotic he becomes,
11 the more limited sleep he have.

12 Q Or maybe even a reverse, that the less sleep
13 he gets, the more psychotic he gets?

14 A We could go back and forth with that, yes.

15 Q Do you have any idea why he got so much sleep
16 last night?

17 A Well, usually when he receives emergency
18 medication, he -- actually (indiscernible) out of his
19 sleep and gradually he escalates.

20 However, this time, as I said, it's usually
21 the -- you know, the sleep gradually declines. For
22 this week, he has been sleeping good (indiscernible).

23 Perhaps he got to emergency medication, he
24 got good nutrition, he is in good structure, the staff
25 support that they work very good with him, especially

1 he has opened a great bond with one of our
2 (indiscernible) staff (indiscernible). So all of
3 those are the kinds of (indiscernible).

4 Q Okay. So when I look at -- well, I'll phrase
5 it as a question.

6 Isn't one of the reasons that you kept on --
7 hung on to him now is because of, kind of, community
8 pressures?

9 A Not specifically. I use my clinical
10 judgment. He was -- he was not experiencing safe
11 behavior and his behavior was deteriorating, as I
12 mentioned earlier some of that.

13 And I became concerned and I wanted to -- you
14 know, I -- I also (indiscernible), he is the victim of
15 the system and I feel (indiscernible) pay the price.
16 And I did not feel that this is the time for him -- I
17 did not find him safe this time to let him go against
18 medical at that point.

19 Q But isn't running out and jumping out in
20 front of cars (indiscernible) more concerned?

21 A He (indiscernible). But again, you evaluate
22 the patient for the (indiscernible) that they are
23 there, so --

24 Q All right. Now, would you let Mr. Bigley
25 come and go from API as he wishes, including being

1 given food, good sleeping conditions, laundry, and
2 toiletry items?

3 A First of all, I am not in administration,
4 but -- administrative situation.

5 Secondly, this is not a placement. This is
6 acute care hospital. And we have to recognize that,
7 but --

8 Q In light of kind of these -- the -- you have
9 been here throughout the testimony, haven't you?

10 A Today, yes.

11 Q Yeah. And yesterday. So you heard
12 Ms. Jackson talk about all the problems in the
13 community and you are aware of the problems in the
14 community, aren't you?

15 A Yes.

16 Q So don't you think it would be -- and isn't
17 Mr. Bigley a -- kind of a special case, or pretty
18 unique?

19 A Every patient is special.

20 Q Does he -- is he one of the -- isn't he one
21 of the most difficult people to have a satisfactory
22 arrangement worked out for him?

23 A Well, I would say that he is not the only
24 one. He does have a severe mental illness and he is
25 not receiving the right care.

1 Q And by not receiving the right care, you --
2 does that mean that because you are not being allowed
3 to give him medication against his will?

4 A That is not the only thing. When I say right
5 care is to get treatment, medication, to be able to
6 have extended case management, care to be able to have
7 outpatient care, to be able to have a healthier
8 relationship with his guardian, to be able to create
9 some level of relationship with people in the
10 community, to keep himself fed, and in the hospital to
11 get medication to get to the level that he can show
12 some level of insight to experience more stability
13 (indiscernible).

14 Q Doesn't Bill have a lot of trouble
15 maintaining housing?

16 A He does.

17 Q And is that because his behavior is such that
18 he gets kicked out of housing pretty regularly?

19 A I am not the one -- (indiscernible)
20 speculation. So I think that --

21 Q Yeah. I don't want you to speculate. No,
22 no, just what you know.

23 But I think you testified, didn't you, that
24 he is not welcome at either of the homeless shelters;
25 is that correct?

1 A Yes.

2 Q So even that is not available to him?

3 A Well, Bill is very limited based on
4 discussing with the treatment team, the social
5 workers, contact with the guardian. The resources --
6 you know, there is limited places for him to live.

7 And the place that he is staying right now I
8 have never visited. I think called Paradise Inn.
9 What I hear is not really humane for somebody with
10 what is offered to him to stay.

11 Q So when he doesn't have any housing, wouldn't
12 it be really helpful for him to be able to come to
13 API?

14 A Again --

15 MS. DERRY: Objection, asked and answered.
16 Dr. Khari has already stated that API is an acute
17 clinic care facility. That option is not available.

18 And furthermore, she doesn't have the ability
19 to make such a petition.

20 THE COURT: (Indiscernible) respond.

21 MR. GOTTSTEIN: I don't think -- I asked her
22 if it would be helpful. I didn't ask if he could, so
23 I think it was a different question.

24 MS. DERRY: Ma'am --

25 THE COURT: You can ask that (indiscernible).

1 Let's move on.

2 BY MR. GOTTSTEIN:

3 Q Hasn't Bill been pretty successfully let out
4 on pass in the past?

5 A I was not his clinician, so -- I think the
6 way I recall, I have to again review the chart,
7 (indiscernible) providing care for him. He -- I could
8 not believe that he had any pass.

9 Q Isn't it true that passes aren't allowed on
10 Taku?

11 A Well, for forensic patient. He is not a
12 forensic patient; he is a civil patient.

13 Q But still, isn't it -- are people not really
14 allowed out on pass from Taku?

15 A As I said, this is a civil patient. If they
16 are stable enough.

17 But if he is in a forensic unit -- when
18 individual comes to forensic unit, that means they are
19 not maintaining some level of stability. However,
20 even in the Taku, I had patient that was very stable
21 and I have authorized a pass for them.

22 Q Okay. So you could give him as pass?

23 A Yes.

24 Q Now, you say that he -- well, do you believe
25 that he could use intensive case management?

1 A Yes.

2 Q Do you think it would be helpful to him to
3 have someone with him in the community?

4 A The answer is yes. But also you have to be
5 in the level of stability that he cannot damage that
6 relationship that (indiscernible). Because you know,
7 he's (indiscernible) benefit from any support that
8 anyone could provide for him, but also has to be at a
9 level that he can create a healthy bond who he is
10 connecting with rather than that he is in the hostile
11 level and psychotic state.

12 He (indiscernible) because there are -- he
13 may again -- just like housing, he burnt his bridges.
14 And then that individual may feel threatened or not
15 too comfortable. So yes, I (indiscernible), but also
16 not -- he needs to be in more stable state.

17 Q Now, didn't you testify that you actually
18 took him out for lunch in the community?

19 A He was stable at that time. He was staying
20 with (indiscernible) facility. I felt safe. I put
21 him in my car with no reservation.

22 Q Do you think that it would help him to get
23 food if someone was to, you know, take him out to
24 lunch every day?

25 A As I said, he would benefit from every kind

1 of support.

2 Q Do you think it would help him in the
3 community to have someone with him when he started
4 getting hostile, to deescalate that situation?

5 A The way I have seen Bill when he gets so
6 hostile, to that state of threatening and psychotic,
7 he has no rational process. He basically -- he
8 (indiscernible) boundary, the space.

9 Even if you try to calm him down, try to give
10 him some statement that is soothing, he is so
11 paranoid, he is so psychotic, he breaks the whole
12 thing.

13 So I really think for his own safety and
14 others, when he is in that state, for him -- for
15 any -- either party to be safe for him to be
16 (indiscernible).

17 Q So --

18 MS. DERRY: Your Honor, could we take a short
19 break, please?

20 THE COURT: What's your sense of how much
21 longer you're going to take?

22 MR. GOTTSTEIN: I think I'm just about --

23 THE COURT: Are you two minutes, three
24 minutes away?

25 MR. GOTTSTEIN: No.

1 THE COURT: How much longer?

2 MR. GOTTSTEIN: Fifteen minutes.

3 THE COURT: Let's take a break now, and then
4 I'll give you a (indiscernible).

5 MS. DERRY: Thank you.

6 THE COURT: So where are we here? Can we go
7 off record? It's -- we'll be at least ten minutes,
8 Madame Clerk. So let's call it 12:15. We'll be back
9 at 12:15.

10 12:06:04

11 (Off record.)

12 12:20:24

13 THE CLERK: And I'm here with the calendar.

14 THE COURT: All right. We're just trying to
15 figure out how much additional time we need. Let's
16 assume that two hours and another hour of cross, we
17 are three hours until the State case is done.

18 How long, Mr. Gottstein, do you think your
19 case will take?

20 MR. GOTTSTEIN: It depends on -- I think we
21 need to deal with -- can we deal with these
22 submissions, and I can figure out if I need to call
23 all these people? Because that's what it depends on,
24 which actually I tried to raise on the 28th. So if
25 I --

1 THE COURT: What are you trying to do? I
2 mean, if you are going to call a witness, then --
3 let's (indiscernible) affidavit (indiscernible),
4 whatever that is, Mr. and Mrs. Mosher, are you going
5 to say here's the affidavit; that's the direct
6 testimony on (indiscernible)?

7 MR. GOTTSTEIN: Here's what I propose. It
8 depends if it's admissible.

9 And first off, for Loren, Loren passed --

10 THE COURT: If you're trying to present it as
11 direct testimony, as a way of speeding things up, then
12 I'll allow that, subject to whatever objection they
13 might raise to the content of the affidavit. But
14 if --

15 MR. GOTTSTEIN: And that's exactly what I --
16 not for Mosher, but for Whitaker, (indiscernible), and
17 Jackson for sure.

18 I don't know about the availability of
19 (indiscernible), because he is no longer with Choices.
20 But that's -- that's exactly what I proposed before.
21 So that's -- yes. He'll be available for cross
22 examination.

23 THE COURT: Whatever those documents are for
24 each of your witnesses, then that's going to be the
25 (indiscernible) of direct testimony. And the State is

1 perfectly capable of -- able to say, all right, I
2 object to (indiscernible) and object to
3 (indiscernible) because it's hearsay.

4 But (indiscernible) hearsay of the actual
5 (indiscernible) if that person is technically
6 available to be cross examined, and must be available
7 to be cross examined.

8 MR. GOTTSTEIN: Yes.

9 THE COURT: And this is a way to short
10 circuit pre-filing of direct testimony. You have all
11 of your ability to make whatever objection, you know,
12 internally, as if he was speaking those identical
13 words.

14 MS. DERRY: The State has already filed a
15 motion in limine on that behalf, and we would object
16 to the introduction of that into whatever
17 (indiscernible) --

18 THE COURT: Your preference is if I spent
19 five hours listening to direct testimony rather than
20 direct testimony be handed as a document?

21 MS. DERRY: Well, I --

22 THE COURT: If that's your preference, then
23 we'll do it that way.

24 MS. DERRY: No, that's not my preference.
25 But, Your Honor, if I may, what I would like to do

1 regarding all those documents is just make a general
2 objection to them as being irrelevant in general, that
3 they are --

4 THE COURT: I told you what they are --
5 pardon me. You can make that objection --

6 MS. DERRY: And that's what I would do,
7 because none of them have contact with Mr. Bigley
8 specifically in the last year, but especially in the
9 last six months. So a blanket objection such as that,
10 I mean, because I see -- I feel they are irrelevant,
11 and especially to the case at hand. And so I --

12 THE COURT: I haven't read the stuff. I have
13 no idea what their content are.

14 MS. DERRY: And that would be my objections
15 (indiscernible).

16 THE COURT: Well, let's assume --

17 MS. DERRY: But --

18 THE COURT: Let's assume that I deny the
19 (indiscernible) objection. I have no idea what
20 (indiscernible).

21 Do you have an objection to presenting that
22 direct testimony in that fashion? Basically it's
23 going to be, Mr. Mosher, here's his affidavit,
24 (indiscernible) cross.

25 MS. DERRY: No, Your Honor. I think that

1 that is a good way to expedite this, especially for
2 the benefit of Mr. Bigley in the hospital, in order to
3 help make decisions for Mr. Bigley.

4 THE COURT: So just --

5 MR. GOTTSTEIN: Okay. So that covers the
6 notice of filing, which is what I thought I had done.

7 The affidavit of Robert Whitaker, the
8 affidavit of Ronald (indiscernible), the affidavit of
9 Paul Cornils. I'll probably have to subpoena him
10 maybe to get him. The affidavit of Grace Jackson
11 dated May 16th, affidavit of Grace Jackson dated
12 May 20th.

13 Now, I would like also, as a way to
14 streamline it, to introduce -- which I also thought
15 that there -- her testimony on May 14th, 2008, in
16 other words, cross examination then, and then
17 redirect. And I don't mind, you know, restarting, you
18 know. But I would like to have that also as kind of
19 part of the written testimony.

20 MS. DERRY: Your Honor, if we may, could we
21 just -- if Mr. Gottstein chooses to introduce
22 something at the point in time in which a witness is
23 testifying, then we can make our objections then. I
24 understand that he is just attaching things and
25 (indiscernible).

1 THE COURT: It really depends on what it is
2 that he's -- I would look (indiscernible).
3 But let's say, for example, it is deposition
4 (indiscernible) require testimony in a hearing.
5 What I'm proposing is instead of using this
6 hearing time to do that, the State has (indiscernible)
7 direct -- the proper direct testimony, that you go
8 through that and have an opportunity to advance -- to
9 say, we make the following objections to these
10 contents of the document based on whatever -- whatever
11 those objections are.
12 And then I will -- and you'll have that
13 (indiscernible) in advance. And I'll probably -- then
14 I'll make a ruling on that. And if something -- you
15 know, three paragraphs of the affidavit are out,
16 they're out.
17 Now the direct testimony will be whittled
18 down to something. The State can cross examine -- do
19 its cross. Okay.
20 On this testimony of her regarding prior
21 transcripts, prior testimony, I assume that there were
22 objections throughout their rulings (indiscernible)
23 make sense to just let that -- you don't have to do
24 that, but (indiscernible) that comes in.
25 And if they're talking -- if they're talking

1 about API's (indiscernible) policies (indiscernible),
2 it's not (indiscernible). You just sort of make those
3 relevancy objections, but make it fine-tuned, and I'll
4 (indiscernible) all in trial.
5 MS. DERRY: If Mr. Gottstein provides all
6 that to the State in proper format prior to him
7 calling the witnesses, we'd be happy to do that, to
8 make the appropriate objections based on
9 (indiscernible).
10 THE COURT: (Indiscernible), whatever that
11 is.
12 MR. GOTTSTEIN: It was -- it was served
13 (indiscernible).
14 THE COURT: (Indiscernible.) With every one
15 of those, I will assume that you are going to tell
16 them by the end of the day whether you are going to
17 pull any of those things, (indiscernible) at which
18 time you are actually going to pull (indiscernible).
19 If you're not going to pull those, you have
20 to make those people available for cross examination.
21 MR. GOTTSTEIN: By the end of the day today?
22 THE COURT: Not by the end of the day today,
23 but whenever this next hearing is going to be, the
24 next hearing (indiscernible).
25 MR. GOTTSTEIN: Okay. And the only one there

1 is a question about is Mr. Cornils.
2 THE COURT: So --
3 MS. DERRY: I'm sorry. So that means that
4 he's going to give us all of the written testimony
5 that he would like to provide us?
6 THE COURT: And he's already done it. He's
7 already done it.
8 MS. DERRY: Okay. Yeah.
9 THE COURT: But yeah. It's going to --
10 MS. DERRY: With the other people he actually
11 intended to call and make available for cross?
12 THE COURT: They are going to be available in
13 some sequence.
14 MR. GOTTSTEIN: Except that there's --
15 THE COURT: If there's some people not
16 available, the testimony is not coming in.
17 MR. GOTTSTEIN: Under 804(B), Dr. Mosher
18 is -- I made that (indiscernible), Your Honor, as
19 (indiscernible) 804(B).
20 MS. DERRY: And, Your Honor, all of these
21 witnesses can be available telephonically for cross
22 examination?
23 THE COURT: I assume they're going to be
24 available here in person or telephonically. And
25 (indiscernible) 804.

1 MR. GOTTSTEIN: Loren Mosher and Sarah
2 (indiscernible). And then (indiscernible).
3 THE COURT: 804, I'm sorry, (B)(1).
4 MR. GOTTSTEIN: (B)(1).
5 MS. DERRY: Your Honor, I -- the State would
6 strenuously object to that, given that although there
7 may have been former testimony --
8 THE COURT: I'm going to let you do that, but
9 I need to have that in front of me. I have no idea
10 whether it meets the criteria of being (indiscernible)
11 proceeding. I'll (indiscernible).
12 But I understand that you are objecting under
13 the -- and I'll rule in advance so that you know
14 (indiscernible).
15 MR. GOTTSTEIN: Well, I can't bring
16 Dr. Mosher because he's dead. And that's why he's
17 unavailable. And that's -- and I believe it's
18 admissible under --
19 THE COURT: (Indiscernible) --
20 MR. GOTTSTEIN: -- 804 --
21 THE COURT: -- not in, it's not in.
22 MR. GOTTSTEIN: Well, but it's admissible
23 under 804(B)(1) for that reason.
24 THE COURT: (Indiscernible) say it's not.
25 MR. GOTTSTEIN: Oh, yeah, yeah. I thought

1 you were ruling now about (indiscernible).

2 THE COURT: But let's say (indiscernible) is
3 available. If I exclude it, then you could bring that
4 person in by telephone and do direct.

5 MR. GOTTSTEIN: Okay. And the -- how about
6 this. With the -- with the grounds for Ms. Porter's
7 unavailability is that she (indiscernible). And if
8 you --

9 THE COURT: She'll probably (indiscernible)
10 telephones there.

11 MR. GOTTSTEIN: Right. So if you want --

12 THE COURT: So the more simple question is
13 whether or not (indiscernible) different proceeding,
14 we see other -- other --

15 MR. GOTTSTEIN: Right.

16 THE COURT: If I rule against you, then you
17 can try and have her available by telephone to take
18 live direct testimony. That's all I'm saying.

19 MR. GOTTSTEIN: Okay. So that -- okay. And
20 that would be on the other grounds? Then you agree
21 she's not available because she's a --

22 THE COURT: I don't know. I don't know. I
23 don't think you are unavailable (indiscernible).

24 MR. GOTTSTEIN: All right. I'm not trying to
25 be difficult. But what I'm saying is --

1 THE COURT: If she's in the middle of, you
2 know -- she's climbing a mountain (indiscernible), she
3 probably isn't available. If she's sitting in
4 (indiscernible) comfortable (indiscernible), she's not
5 unavailable.

6 MR. GOTTSTEIN: She's had a baby, and I
7 haven't been able to find her since then.

8 THE COURT: (Indiscernible.)

9 MS. DERRY: I don't think (indiscernible)
10 raise the air of (indiscernible) unavailable.

11 MR. GOTTSTEIN: Just (indiscernible).

12 THE COURT: Let's assume that (indiscernible)
13 all of that is in. Do you (indiscernible) any sense
14 in how long your cross would be?

15 MS. DERRY: No. If all of that is -- brief.
16 Brief, Your Honor. Because this whole question is
17 whether or not they have personal knowledge of
18 (indiscernible).

19 THE COURT: Then we're probably only going to
20 need a half hour or so (indiscernible). If all you
21 are going to ask them (indiscernible) all you intend
22 to ask them, have you ever seen Mr. Bigley, have you
23 ever evaluated him, can't we stipulate that the answer
24 is no, I've never seen him in all those cases, if
25 that's the right answer.

1 MR. GOTTSTEIN: Yes. And it is, except for
2 Ms. Porter, and that's (indiscernible).

3 MS. DERRY: And I would like to be able to
4 cross examine her.

5 THE COURT: Okay. So can we simply say that
6 the State can make internal objections to the content.
7 You should do that in advance and I will rule, but
8 that -- but that there's no point in having them
9 available for cross examination (indiscernible)
10 stipulate in the (indiscernible) appropriate that that
11 individual has never evaluated Mr. Bigley or has not
12 seen (indiscernible), whatever it is that the
13 questions are?

14 MS. DERRY: The State still would like them
15 to be available for cross examination.

16 THE COURT: Why? If all you're going to --

17 MS. DERRY: Because -- well, I think we need
18 time to review the affidavits and the other testimony
19 (indiscernible).

20 THE COURT: That's fair. Then let's do it
21 this way. What I want you to do is to -- I don't want
22 to (indiscernible) precious hearing time so we can say
23 we don't really need these people.

24 What I want (indiscernible) a list of people
25 where you agree that you don't want any more cross

1 examination, because there's a stipulation that that
2 person has never seen Mr. Bigley and never evaluated
3 or (indiscernible), whatever it is that you
4 (indiscernible).

5 If on the other hand you want to do further
6 evaluation, that's fine. But the one, two, three,
7 five of them that you want, that person will be
8 available. And we'll do that in advance so that
9 everyone is prepared, okay?

10 MS. DERRY: We'll prepare all of the --

11 THE COURT: And the reason -- the reason
12 that's all important, because it sounds to me like
13 (indiscernible) three hours for your (indiscernible)
14 case, and only about 10, 15 minutes of the examination
15 of the one or so here. So I've got a three-and-a-half
16 hour window I've got to find rather than two more
17 days. I can get you three hours more quickly than I
18 can get you two days.

19 MR. GOTTSTEIN: I've got a couple more
20 witnesses, but at this point it's not very much.

21 THE COURT: Okay. So --

22 MR. GOTTSTEIN: Maybe half a day.

23 THE COURT: Are we going to get this done if
24 we go from 8:30 to 1:30 on one additional day?

25 MS. DERRY: Mr. Gottstein?

1 MR. GOTTSTEIN: I don't think so, in light of
2 the number of witnesses you're going to call. I'm
3 being honest about it.
4 THE COURT: Then we need to be more efficient
5 in our use of time. We are going to attempt to be
6 done in one more day.
7 And I'll do that -- next Tuesday is a
8 holiday; Monday is not a holiday. Do you want to do
9 this Monday? That'll give you time to do the sort of
10 objection stuff.
11 MS. DERRY: Yes. We can do that this
12 afternoon.
13 THE COURT: Can you have your people
14 available Monday?
15 MR. GOTTSTEIN: Yes (indiscernible).
16 THE COURT: So, Ellen?
17 THE CLERK: Yes.
18 THE COURT: The only thing I have Monday is
19 my trial -- is the Knowles (phonetic) trial?
20 THE CLERK: Right.
21 THE COURT: Right. Then this trial -- the
22 API hearing will take place 8:30 to 1:30 on Monday.
23 We'll just have to reschedule the completion of the
24 civil trial. But I'll deal with that tomorrow when we
25 resume that.

1 THE CLERK: Okay.
2 MR. GOTTSTEIN: Can -- it'll be here?
3 THE COURT: It's going to be here.
4 MS. DERRY: Your Honor, may I suggest that a
5 way to expedite proceedings, that perhaps we limit
6 testimony, direct, cross, (indiscernible) to
7 Mr. Bigley's current capacity. He has a very long
8 history at API and other facilities.
9 THE COURT: I don't think that --
10 MS. DERRY: And I think that's part --
11 THE COURT: I don't think that when you read
12 (indiscernible), and it says that one of the things
13 that are relevant to more (indiscernible) case
14 history, I (indiscernible).
15 I agree with you that what he did in 2002,
16 for example, has much less relevance than what
17 happened October 8th or in early '08. But we've been
18 focusing on 2008, and that's where we should be
19 focusing.
20 MS. DERRY: If the parties prepared a
21 stipulation that, you know, based on --
22 THE COURT: (Indiscernible) stipulation, I'm
23 a happy man. I'd encourage any stipulation to
24 (indiscernible).
25 MS. DERRY: Because I don't think there's

1 any --
2 MR. GOTTSTEIN: And I would (indiscernible)
3 stipulate to the whole case.
4 THE COURT: Trust me. They won't, nor would
5 you. There is evidence that people are in agreement
6 on (indiscernible) stipulation.
7 MS. DERRY: Your Honor, if I may, I have one
8 housekeeping issue before we resume.
9 We discussed this morning posting court
10 documents proceedings on Mr. Gottstein's Web site.
11 It's kind of my contention that virtually every
12 document in this case, other than what he mentioned
13 this morning, the motion to strike and the protective
14 order, including the court's confidential log notes,
15 has been posted on Mr. Gottstein's Web site, and
16 paralegal (indiscernible) printed these out for me.
17 MR. GOTTSTEIN: I don't believe those are
18 confidential, Your Honor. I think I marked them that
19 way, didn't I?
20 MS. DERRY: The Court marked them
21 confidential; you marked them not confidential.
22 THE COURT: Well, we're going to be fair. My
23 in-court clerk marked them confidential, but they
24 aren't. Typically they are because typically they're
25 closed -- I mean, they are confidential. But since he

1 allowed it to be open, we allowed it to be open,
2 subject to the discovery deposition protective order.
3 But that protective order is not applicable
4 to the log notes.
5 MS. DERRY: I have -- well, the State has
6 asked in its most recent protective order for --
7 THE COURT: What would be the basis for
8 concluding (indiscernible) private, court documents
9 that are not confidential?
10 MS. DERRY: For the protection of the
11 witnesses in this case, specifically Dr. Khari. As
12 stated in our first motion for protective order and
13 (indiscernible) of respondents' -- I don't think that
14 he has the --
15 THE COURT: I think that Mr. Bigley gets to
16 speak to his attorney.
17 MS. DERRY: And with regard to the witnesses,
18 specifically his treating -- treatment team --
19 THE COURT: I have not looked at this motion.
20 What is that (indiscernible) is needed
21 (indiscernible)?
22 MS. DERRY: We would like all of this to be
23 kept confidential.
24 THE COURT: I know that. But why? There has
25 to be a reason.

Page 150

1 MS. DERRY: In the past, Mr. Gottstein has
2 targeted physicians who have treated Mr. Bigley,
3 posting all the court documents and various things.
4 He's filing complaints with the federal
5 government, asking the DA to investigate the treating
6 physicians for various criminal charges.
7 API has had -- these physicians have had
8 trouble attracting and retaining (indiscernible). API
9 has had trouble getting new physicians in because of
10 these issues.
11 The State feels that this is both in
12 Mr. Bigley's best interests and in the hospital and
13 the treating physicians' best interests, to have
14 people who can continue to treat the mentally ill
15 without fear of harassment by Mr. Bigley's attorney.
16 THE COURT: I don't understand why
17 publication of public testimony, or publication of
18 public documents is harassment.
19 MS. DERRY: Is harassment?
20 THE COURT: Why is it harassment?
21 MS. DERRY: I think (indiscernible)
22 Mr. Gottstein to (indiscernible) get doctors to no
23 longer work here.
24 And the fact of the matter is that API has a
25 hard time getting doctors to work here because of

Page 151

1 Mr. Gottstein's actions. These doctors -- many
2 doctors on staff (indiscernible) on here to testify
3 about this, have hired private attorneys to deal with
4 these issues, as well. And the State -- in the best
5 interest of --
6 THE COURT: I'm not concluding -- I am not
7 issuing a protective order beyond the one I've already
8 (indiscernible).
9 MR. GOTTSTEIN: Your Honor, one of the things
10 that I -- and I try -- I tried to (indiscernible), but
11 she kind of expedited this issue about publication of
12 the depositions. But I think I (indiscernible)
13 protective motion. And so are you denying that or
14 just going back to the -- where we were?
15 THE COURT: The protective order regarding
16 depositions and discovery (indiscernible) remains in
17 play. This request I understood to be referring to
18 pleadings and log notes.
19 MR. GOTTSTEIN: It is both.
20 THE COURT: I'm not ruling -- the protective
21 order regarding deposition discovery remains in place.
22 MR. GOTTSTEIN: Okay.
23 THE COURT: It is not extended to log notes
24 or court documents -- court filings. But the more
25 specific protective order regarding depositions and

Page 152

1 discovery trumps the more general -- so --
2 MR. GOTTSTEIN: I understand.
3 THE COURT: So if someone was to file a
4 deposition -- deposition order --
5 MR. GOTTSTEIN: Right. And that was actually
6 my point. And so I don't feel -- (indiscernible)
7 question was (indiscernible). But what I'm saying is
8 now --
9 THE COURT: (Indiscernible) obviously a way
10 that shows me good faith, if you -- but I --
11 MR. GOTTSTEIN: Well, I wouldn't post them.
12 THE COURT: Do not attempt to say it's filed,
13 therefore it's a document in the court file, therefore
14 it trumps the ban on deposition publication. The more
15 specific order (indiscernible).
16 MR. GOTTSTEIN: Right. Unless it's the
17 normal --
18 THE COURT: (Indiscernible.)
19 MR. GOTTSTEIN: Yeah. Or (indiscernible) in
20 the hearing or something like that, right? And you
21 can address it then.
22 THE COURT: I'm not giving you advisory
23 opinions (indiscernible).
24 MR. GOTTSTEIN: Yes, Your Honor.
25 THE COURT: All right. So we're going back

Page 153

1 on record. Or I guess we already were.
2 If we aren't, we are now, and we're going to
3 continue --
4 THE CLERK: We have been on record ever since
5 Ellen came on, so I'm still here. We are on record,
6 and Ellen has left the courtroom.
7 THE COURT: Thank you.
8 MR. GOTTSTEIN: Okay. And I think --
9 THE COURT: You were about to finish up with
10 your cross.
11 MR. GOTTSTEIN: Right. I think there's a
12 problem with Mr. Hughes needing to testify today, and
13 I was wondering if we might take him now. They
14 expressed concern.
15 MS. DERRY: Well, it would be fantastic if we
16 could actually finish with Dr. Khari so she can
17 actually be a doctor again.
18 THE COURT: (Indiscernible.)
19 MR. GOTTSTEIN: All right. And I've got
20 Jerry Jenkins coming, too.
21 THE COURT: (Indiscernible.)
22 BY MR. GOTTSTEIN:
23 Q Okay. Now, I think you testified that on
24 May 16th, that Mr. Bigley was given emergency
25 medication?

1 A That's what I said.

2 Q Okay. Are you aware that that's the day
3 after Dr. Jackson testified on cross and redirect
4 about the brain damage that these drugs were causing
5 him?

6 MS. DERRY: Object, calls for speculation.

7 BY MR. GOTTSTEIN:

8 Q So --

9 THE COURT: Overruled.

10 BY MR. GOTTSTEIN:

11 Q -- if that's true, wouldn't that possibly
12 explain a reason why he would become pretty agitated
13 about being given these drugs?

14 A As I said, I don't have (indiscernible)
15 picture of May 16 in my mind, and as far as if
16 Dr. Jackson has testified --

17 THE CLERK: I need the witness to speak up.
18 She is fading.

19 THE WITNESS: I mentioned that I am not
20 exactly aware -- I don't have a vivid picture in my
21 mind for May 16th -- May 16th, exactly what happened
22 when Dr. Jackson testified. Actually, I need to look
23 at to see what was the clinician even. Is that the
24 2007, 2008 (indiscernible)?

25 BY MR. GOTTSTEIN:

1 THE COURT: Overruled. You can answer that
2 question.

3 THE WITNESS: I'm sorry. Could you please
4 repeat the question?

5 BY MR. GOTTSTEIN:

6 Q I'm just wondering what you meant by that --
7 or what you meant by that thing, that the patient is
8 non-compliant with psychotropic medications with his
9 attorney's encouragement?

10 A It was mentioned (indiscernible) to review
11 that chart. But however, the (indiscernible) simply
12 what it says, that patient is not taking his
13 medication, and his lawyer is supporting that
14 decision.

15 But it is encouragement that is contributing
16 for him not to take the medication now.

17 Q So would that mean to you that normally,
18 patients' non-compliance with psychotropic medication
19 is not supported by their attorneys?

20 MS. DERRY: Objection, relevance. I don't
21 know what the support of you or any other attorney has
22 to do with whether or not he has capacity.

23 THE COURT: (Indiscernible.)

24 MR. GOTTSTEIN: It relates to whether or not
25 they're treating him differently because I'm

1 Q 2008.

2 A 2008.

3 Q I mean, I'm satisfied with the answer at this
4 point, but if you want to supplement it, that's fine.

5 A As I said, I'm not even sure if I was the
6 clinician at that time.

7 Q Looking at page 5 of Exhibit B, we covered
8 this. This is a little bit different. But does it
9 say the patient is non-compliant with psychotropic
10 medications with his attorney's encouragement?

11 A Yes.

12 Q Okay. And what -- what did you mean by that?

13 MS. DERRY: Objection. Dr. Khari did not
14 (indiscernible) this record.

15 BY MR. GOTTSTEIN:

16 Q On page --

17 THE COURT: Say the objection. I didn't
18 hear --

19 MS. DERRY: Objection. Dr. Khari did not
20 author this record. She merely signed off on it, as
21 Mr. Gottstein is aware.

22 THE COURT: She signed off on it?

23 MS. DERRY: Another -- required by the
24 hospital regulations. Another doctor actually
25 authored it.

1 representing him.

2 MS. DERRY: Again, Your Honor --

3 THE COURT: (Indiscernible) that question.

4 BY MR. GOTTSTEIN:

5 Q Are you -- are you treating Mr. Bigley
6 different because of my representation than you would
7 other patients?

8 A Well, that's (indiscernible) on the decision
9 of it. Usually with the -- we would -- there will be
10 patients that they will not be compliant with their
11 medication based on their own either mental state or
12 the way (indiscernible) taking the medication. But it
13 is not very common for me to see that actually a
14 lawyer get involved and encourage the individual not
15 to take the medication.

16 In answer to your question, so that has a way
17 (indiscernible) conscious, subconscious level. And I
18 will go back with what I answered earlier in the
19 testimony.

20 At the end, when the patient is being
21 discharged, I think (indiscernible), we are finding
22 him in the state that he doesn't meet the criteria to
23 stay in the hospital. So there is no reason to give
24 medication in emergency situation.

25 And so that doesn't really have -- I -- as a

1 clinician, I have my obligation to continue to
2 (indiscernible), but would that benefit my patient.
3 So my treatment is not going to change, because still
4 I would continue to say what I think they would
5 benefit from.

6 Q So I -- I -- by this -- when you say
7 attorney's encouragement, do you mean that I'm
8 encouraging him to be none compliant?

9 MS. DERRY: Objection, relevance.

10 THE WITNESS: Again, I did not
11 (indiscernible) this, but I co-signed it.

12 And that statement, yes, I do understand that
13 you do recommend him. And he has mentioned it in some
14 level of his psychosis -- or through the engagement.
15 When medication issue came up, he has told me himself
16 directly few times that you will be in prison,
17 Gottstein will take care of you, and that you cannot
18 give me medication against my wish.

19 And my sense -- my sense and my understanding
20 of the whole (indiscernible) aspect from different --
21 different angles, that and also through the Court, you
22 know, you are not really supporting -- you do not
23 think that he is benefiting from psychotropic
24 medication and he should not take it. From that
25 context, yeah.

1 Q Well, all that mostly (indiscernible) as his
2 attorney, I am trying to represent his rights -- his
3 legal right to not take medications (indiscernible),
4 as well.

5 MS. DERRY: Objection, relevance, foundation,
6 speculation.

7 THE COURT: Make it a question.

8 BY MR. GOTTSTEIN:

9 Q So when you mean encouragement, are you --
10 are you just talking about my -- my representation of
11 him --

12 A Well --

13 Q -- or do you think that I'm actually
14 encouraging him not to take medication?

15 MS. DERRY: Object to form,
16 (indiscernible).

17 THE WITNESS: My understanding is that both
18 apply, both what you are saying, that applies in this
19 case.

20 BY MR. GOTTSTEIN:

21 Q And why -- why would you have that?

22 A What do you mean by that?

23 Q Why would you think that?

24 MS. DERRY: I'd like to renew my objection.
25 Dr. Khari did not author this note.

1 And, Your Honor, may I speak to Dr. Khari
2 privately for just a moment?

3 THE COURT: No.

4 MS. DERRY: You can answer. Absolutely pull
5 no punches.

6 THE WITNESS: I try to be honest with him.

7 MS. DERRY: I'm sorry?

8 THE COURT: When I say you can't consult
9 privately, you can't just then turn around and tell
10 her what you wanted to say privately. You can't talk
11 to your witness during her examination.

12 MS. DERRY: Yes, Your Honor.

13 THE COURT: If I have to move you out of this
14 room, I will do that.

15 Now, I realize that you are in close quarters
16 (indiscernible) proceeding (indiscernible), and I
17 realize I have to tolerate some of that, and I will
18 continue to tolerate some of that. But you may not
19 talk to her when I just told you not to.

20 MS. DERRY: I'm sorry, Your Honor.

21 THE COURT: Please state --

22 MR. GOTTSTEIN: Yeah. No.

23 THE COURT: Ask the question.

24 BY MR. GOTTSTEIN:

25 Q Why -- why do you think that?

1 A I (indiscernible).

2 Q Well, why do you think that I am encouraging
3 Mr. Bigley to be non-compliant?

4 A Well, based on the repeated action that you
5 have (indiscernible) medication should not be given to
6 Mr. Bigley, no medication should be given to him.

7 And based on some of the statement that he
8 has made, he -- he does not -- he feels like he's --
9 you are representing him and you are asking him not to
10 take medication, and if he does take medication when
11 he doesn't want to take it, from his aspect, that's --
12 we will end up to go to jail, you know, all of us
13 together.

14 So how you (indiscernible), basically that
15 you are continually asking that the (indiscernible) no
16 medication to be given on a scheduled dose or in
17 emergency setting situation to be given to him.

18 Q Isn't it true that I've always done that when
19 he doesn't want to?

20 MS. DERRY: Objection. He's asking her to
21 comment on the ultimate legal issue.

22 THE COURT: (Indiscernible.) Do that, but --
23 why is this important?

24 MR. GOTTSTEIN: I was just -- actually, I
25 was -- about, you know, how he's treated differently.

1 But she's already answered that. I'll move on.

2 BY MR. GOTTSTEIN:

3 Q So I guess -- I mean, I guess I'm concerned
4 about your statement about -- I'll ask a question. So
5 the fact that -- does the fact that you co-signed this
6 mean that you don't necessarily understand and agree
7 to everything in it?

8 A No, that's not what I said. I said I support
9 what the information is. I said that I did not review
10 the information, but I -- I support the information
11 that is (indiscernible) information that is in that
12 (indiscernible) report.

13 Q But I think you said you didn't know what
14 that meant, but -- didn't you?

15 A I can't recall that. I cannot recall that.

16 Q Have you assessed Mr. Bigley for possible
17 brain damage?

18 A Every time -- for last few admissions, every
19 time that he did come to hospital, he refuse all form
20 of intervention and -- however, I was hoping at some
21 point if I get him to a stable level, he would benefit
22 from some imaging of the head. But I've never reached
23 the level that he could cooperate with me.

24 But I have done some levels of that -- not
25 many. Most of the time he refuse. But mostly some

1 lab work of (indiscernible) looked -- didn't
2 (indiscernible) or anything because he didn't consent.

3 Q But you haven't done any specific neuro --
4 neuro psych type testing, have you?

5 MS. DERRY: Objection, asked and answered.

6 THE COURT: Overruled.

7 MR. GOTTSTEIN: I think she said no.

8 THE WITNESS: As I said, he did not
9 cooperate, so no neuro psych testing or no imaging of
10 the head has done -- actually done.

11 BY MR. GOTTSTEIN:

12 Q Would you have done that if he -- do you
13 think it's a good idea? Is he cooperating?

14 A I'm not really sure about neuro psych
15 testing. I don't know how much would that provide for
16 me at this point.

17 But I would like to do imaging of the head
18 first, and then from there, based on that result, then
19 I need to think about next step, whatever the result
20 is.

21 Q So that suggesting that you think there very
22 well might be brain damage, (indiscernible)?

23 MS. DERRY: Objection, mischaracterization of
24 witness testimony. She merely --

25 THE COURT: Overruled.

1 THE WITNESS: It's not necessarily I am
2 saying that there is brain injury. But however, as we
3 talked earlier during the -- the -- not the specific
4 study. Overall, the general reading of different
5 report that they -- there is changes in the brain of
6 the individual with schizophrenia.

7 There is one -- plus doing the imaging is
8 just generally to get a good overview of, you know,
9 what the imaging presents.

10 BY MR. GOTTSTEIN:

11 Q So you are asking the Court to approve
12 administering him psychotropic drugs that cause brain
13 damage without knowing his current brain status; is
14 that correct?

15 MS. DERRY: I'm going to object to the
16 statement that psychotropic drugs cause brain damage.

17 THE COURT: Sustained.

18 BY MR. GOTTSTEIN:

19 Q Didn't you testify that psychotropic drugs
20 cause brain damage?

21 A No.

22 Q Didn't you testify that it causes tardive
23 dyskinesia?

24 A Yes.

25 Q And isn't that as a result of damage to the

1 brain?

2 A (Indiscernible) medication, the newer
3 antipsychotic medication (indiscernible) protective.

4 Q But you couldn't cite any studies to that?

5 A But that is the side effect. Side effect is
6 different than the brain damage.

7 Q Oh, I see. So brain damage is just a side
8 effect?

9 A Well, I --

10 MS. DERRY: Objection, mischaracterization of
11 the witness --

12 THE COURT: Sustained. (Indiscernible.)

13 MR. GOTTSTEIN: All right. I'll move on.

14 BY MR. GOTTSTEIN:

15 Q Now, on page 12 of the -- of Exhibit B,
16 10/20/08, it says that Mr. Bigley has one adult
17 daughter. Is that true?

18 A I got that information from the chart, so I'm
19 not really --

20 Q But it's not true, is it?

21 MS. DERRY: Objection, relevance.

22 THE WITNESS: As I said, I got it from --

23 THE COURT: Just wait. (Indiscernible.) Ask
24 that question again (indiscernible).

25 BY MR. GOTTSTEIN:

1 Q So on page 12, the document says one adult
2 daughter. It's not true that Mr. Bigley has only one
3 adult daughter, isn't it?
4 MS. DERRY: Object, relevance.
5 THE COURT: What is the relevance of that?
6 MR. GOTTSTEIN: To show that these records
7 are not necessarily accurate.
8 THE COURT: What is the relevance of whether
9 he has one adult daughter -- what is the relevance
10 (indiscernible) inaccurately about the number of
11 daughters (indiscernible)?
12 MR. GOTTSTEIN: What I am trying to do is
13 establish the general point that these documents are
14 not necessarily accurate.
15 MS. DERRY: Your Honor, this is a document
16 that Mr. Gottstein introduced into evidence, and in
17 the deposition asked if it was a true and correct copy
18 of --
19 THE COURT: Sustained. And I should also
20 note that I didn't realize that there were
21 additions -- I don't mind the highlighting, because
22 (indiscernible) what the added comments
23 (indiscernible) not true are not part of
24 (indiscernible) are excluded from this exhibit.
25 MR. GOTTSTEIN: Would you like me to submit

1 one without -- I'm done.
2 THE COURT: Redirect?
3 KAHNAZ KHARI, MD
4 testified as follows on:
5 REDIRECT EXAMINATION
6 BY MS. DERRY:
7 Q Dr. Khari, isn't it true that one of the
8 reasons why you released Mr. Bigley from API is
9 because you don't think that he can benefit here
10 without all the modalities of treatment available to
11 him?
12 A Yes.
13 Q And isn't it true that that's one of the
14 reasons that --
15 MR. GOTTSTEIN: I'll note that these are
16 leading, but I won't object.
17 MS. DERRY: I would be happy to rephrase my
18 question.
19 THE COURT: If he isn't objecting, you can
20 lead all day long.
21 MS. DERRY: All right.
22 THE COURT: I am perfectly capable of
23 appreciating what a leading question is without -- you
24 object to it, you do. If you don't, you don't.
25 MS. DERRY: Do you object?

1 MR. GOTTSTEIN: If I do, I will to any
2 specific question.
3 BY MS. DERRY:
4 Q Dr. Khari, does Mr. Bigley come from jail to
5 here after being medicated?
6 A There has been incidences that he did receive
7 some medication in jail. I think he was discharged
8 (indiscernible).
9 Q And do you have any control of whether or not
10 DOC gives Mr. Bigley emergency injections?
11 A No.
12 Q Why is it that you released Mr. Bigley from
13 API?
14 A He did not meet the criteria, and on some
15 occasion -- actually any occasion. But he's always
16 given offer to stay longer in the hospital.
17 Q And does he not meet the criteria because, by
18 statute, it requires that -- him being admitted to API
19 would improve his prognosis?
20 A (Indiscernible.)
21 Q Dr. Khari, do people sleep well when they're
22 in jail?
23 A I assume they sleep (indiscernible).
24 Q Do you think that they sleep well when
25 they're out on the street?

1 A Again, the chances of having a good sleep in
2 the street is a lot less than (indiscernible).
3 Q Do people sleep well when they're hungry?
4 A Most probably no.
5 Q Does Mr. Bigley refuse physical exams in any
6 form when he is in API?
7 A Yes.
8 Q Is it impossible to evaluate whether or not
9 Mr. Bigley has brain damage unless you can do a
10 physical examination on him?
11 A Well, the exam -- we can evaluate
12 (indiscernible).
13 Q And do you think that Mr. Bigley would be
14 capable of holding still long enough to have an MRI
15 performed?
16 A As I said, his behavior has been never to the
17 point of being calm to -- (indiscernible) complying
18 with the procedure.
19 Q And, Dr. Khari, I want to move on to -- I
20 want to clear up for the record the difference between
21 IM medications, emergency medications, PO, and all
22 these.
23 Okay. PO is a medical terminology. And what
24 does that mean?
25 A Oral.

1 Q By mouth?
 2 A By mouth, yes.
 3 Q And what does IM mean?
 4 A Injection.
 5 Q And what does an emergency medication mean?
 6 A Emergency, that means there is a crisis. The
 7 patient would benefit from the medication.
 8 Q When you ask someone to take a pill when
 9 they're in a crisis, can that calm them down? Just
 10 asking them to take the pill, can that often
 11 deescalate them?
 12 A Yes.
 13 Q Does making someone feel empowered deescalate
 14 them?
 15 A Yes. They are in control, they are
 16 (indiscernible), they feel like they have some level
 17 of control, yes.
 18 Q When you remove someone from stimuli, does
 19 that also deescalate them?
 20 A Yes.
 21 Q When you remove someone from stimuli and they
 22 are deescalated, is there still an emergency
 23 situation?
 24 A No. If they are deescalated, calmed down,
 25 no.

1 Q And once they are no longer in a crisis, then
 2 you could again ask them if they would like to take
 3 medicine by mouth, and if they say yes, then -- and
 4 you have found them to be competent in their stay here
 5 at API, that is when you would go ahead and give them
 6 their medication?
 7 A Yes. When -- what you mentioned, if you
 8 deescalate, they could manage (indiscernible)
 9 behavior, they are not emergency crisis situation, you
 10 could -- they are able to process what is going to the
 11 (indiscernible).
 12 Q Right. So they're no longer in crisis?
 13 A Yes.
 14 Q And then you can move on to the next stage
 15 after no longer in crisis, and do you talk to them
 16 about why they got angry?
 17 A It depends to what their level of engagement
 18 and how much they could control -- are able to have
 19 rational thought, yes.
 20 Q And when -- or typically, if someone is in a
 21 crisis state, are they raging, moving a lot, making
 22 large movements?
 23 A I think that is a kind of -- in most cases,
 24 natural case. We don't have to --
 25 MR. GOTTSTEIN: Objection. I thought --

1 she's getting into the emergency medication. I
 2 thought we were limited to the other one. I know it's
 3 kind of --
 4 THE COURT: Overruled (indiscernible).
 5 MS. DERRY: I'm sorry.
 6 THE COURT: Those things are related.
 7 MS. DERRY: Yes.
 8 BY MS. DERRY:
 9 Q And let me rephrase my question. Could you
 10 paint us a picture with words of what it looks like
 11 when someone is in a crisis?
 12 A An individual that could be highly agitated,
 13 showing aggressive signs, showing -- being physical in
 14 some situation, actually striking or hitting other
 15 individual, either staff or other patients.
 16 They may be throwing themselves to the walls,
 17 hitting their heads to the wall, yelling, screaming,
 18 and not able to hear any of the direction, even any of
 19 the (indiscernible) is giving. So basically,
 20 (indiscernible) kind of, they are not connecting in a
 21 rational -- rational form.
 22 Q And when Mr. Bigley arrived at the hospital
 23 on October 20th until October 22nd, what were his
 24 behaviors that two -- two-day span?
 25 A Well, initially when he came, he was -- he

1 was labile, he was yelling, he was cursing, using
 2 profanity, with having -- defecating in his room.
 3 And I believe he may have gone multiple times
 4 given -- he was taken to quiet room and -- but he --
 5 he was -- he was invading other people's space, like
 6 very close in vicinity. So gradually, that was
 7 getting worse and (indiscernible), to the point where
 8 he was banging the wall and the (indiscernible) his
 9 body against the wall, and even with the staff that he
 10 had (indiscernible). They were able to have a better
 11 (indiscernible). They could not even intervene.
 12 Q And Mr. Bigley has been without medication
 13 for essentially at least -- let me back up.
 14 Mr. Bigley has been represented by Mr. Gottstein and
 15 refusing medication in 2008, is that --
 16 A I don't know exactly what date Mr. Gottstein
 17 got involved. But yes, I believe that is around the
 18 time.
 19 Q Even without Mr. Gottstein's involvement, do
 20 you know in 2008 that most -- Bill has -- Mr. Bigley
 21 has mostly been non-compliant with medication?
 22 A He has (indiscernible) of non-medication.
 23 Q And has that non-compliance increased in
 24 2008?
 25 A Yeah.

1 Q And he's mostly refused medications
 2 altogether in 2008?
 3 A Yes.
 4 Q And how many times has he been here at API
 5 just in 2008?
 6 A 2008, it's one, two, three, four, five, six,
 7 seven, eight, nine, ten.
 8 Q And say that loudly, please.
 9 A Ten.
 10 Q He's been at API ten times in this last year,
 11 2008?
 12 A Yeah.
 13 Q Do you believe that he has come to API ten
 14 times in 2008 because he is not medicated?
 15 A Yes. And if you look at (indiscernible)
 16 studies, you look at many studies, they say that --
 17 MR. GOTTSTEIN: Objection. (Indiscernible)
 18 laid a foundation for that.
 19 THE COURT: Overruled.
 20 THE WITNESS: That the non-adherence increase
 21 number of hospitalizations, increase the relapse,
 22 so --
 23 MS. DERRY: No further questions.
 24 THE COURT: What is the precise medication
 25 you are asking me to authorize?

1 they stand up -- they stand up quickly without giving
 2 theirself time, so they could experience some light
 3 headedness.
 4 And they -- the side effects that I am
 5 mentioning, not necessarily every patient will
 6 experience them. I would be concerned about the
 7 hyperprolactinemia in a high dose, and some -- I would
 8 be concerned about the metabolic syndrome, and
 9 (indiscernible) tardive dyskinesia (indiscernible).
 10 THE COURT: The third one, before the
 11 tardive, (indiscernible) that is. What --
 12 THE WITNESS: (Indiscernible) side effect,
 13 like (indiscernible), under is that (indiscernible)
 14 reaction, which is involuntary --
 15 THE COURT: (Indiscernible.)
 16 THE WITNESS: I'm sorry?
 17 THE COURT: (Indiscernible) is the twitching?
 18 THE WITNESS: It could be twitching, yes,
 19 (indiscernible) contraction that could (indiscernible)
 20 could be painful. So we should give medication to
 21 help with the side effects of the medication
 22 (indiscernible) with the side effects.
 23 THE COURT: The -- if he was given
 24 risperidone by injection against his -- without his
 25 consent, you offer the oral medication, he says no,

1 THE WITNESS: Risperdal.
 2 THE COURT: Does that drug have any negative
 3 interaction or is it contraindicated with other drugs
 4 or other street drugs or over-the-counter drugs?
 5 THE WITNESS: Overall, we don't recommend
 6 medication to be taken with elicit drugs, with
 7 alcohol, or others. But however, if it is a
 8 medication that is of lesser (indiscernible) when we
 9 look at a drug interaction.
 10 THE COURT: What side effects might it have?
 11 THE WITNESS: My main concern of side
 12 effect -- of course every -- every (indiscernible)
 13 taken to prevent any side effect.
 14 And the next step is try to consider -- at
 15 least to have the least experience of the side effect.
 16 And every side effect can be -- can be disturbing.
 17 But the main significant side effect that I would be
 18 concerned about is weight gain, which in this case it
 19 may benefit him. Also (indiscernible) hypertension.
 20 THE COURT: Say that again.
 21 THE WITNESS: Also static hypertension.
 22 THE COURT: What does that mean?
 23 THE WITNESS: It is when an individual, they
 24 get light-headedness and a little bit dizzy,
 25 especially on a setting where they are sitting and

1 and he had to be given a shot, obviously if he drops
 2 his pants and allowed the shot to be administered,
 3 that would be fairly straightforward.
 4 If he rejected that, is that a painful shot?
 5 THE WITNESS: Well, the -- injections, we all
 6 have (indiscernible) injection. It is very much the
 7 same. But I have heard from many of my patients, with
 8 some of the antipsychotic medication, the pain may be
 9 a little bit more -- not necessarily more severe, but
 10 (indiscernible) they feel a little bit of more muscle
 11 contraction.
 12 THE COURT: Is this the kind of -- I assume
 13 it has to be typically done in the buttocks, the large
 14 muscles?
 15 THE WITNESS: Yeah.
 16 THE COURT: And is it a deep injection, as
 17 these things go --
 18 THE WITNESS: No.
 19 THE COURT: -- relatively, the needle -- the
 20 insertion of the needle is relatively (indiscernible)?
 21 THE WITNESS: Yes. But it's deeper than
 22 (indiscernible) -- when we get our blood or something
 23 like that.
 24 But also, I want to clarify something that
 25 you were asking, when you asked about injection of

1 risperidone, when the patient -- when the
2 individual -- if the Court decides to grant the
3 medication and he refuses his oral medication, and
4 ultimately court grant to say that if they only
5 (indiscernible) risperidone, in the risperidone, we
6 have oral form medication.

7 And the IM medication that we have is in the
8 (indiscernible) long acting. That means we could give
9 every two weeks. But however, when the Court permit
10 to give medication in oral form, and if that patient
11 refuses, then we need to give an IM medication
12 different form, because we do not have -- because we
13 do not have the short-acting IM medication. I just
14 want to make sure that's clear.

15 THE COURT: So if I was to permit the
16 administration, then you would start with the oral.
17 If he took it, that'd be great. If he didn't take it,
18 he would have to go to the two-week injection and --
19 and if I -- (indiscernible) previously, you would be
20 building him up orally preferably anyway?

21 THE WITNESS: Yes. When I -- initially when
22 I -- my goal would be (indiscernible) if the Court
23 give permission, my long-term goal would be to put him
24 on the (indiscernible), risperidone (indiscernible),
25 which is every two weeks. It takes several weeks

1 before we get to that level.

2 And also start oral dose. But he may refuse
3 the oral dose. In that case, I will say if the
4 patient refuse the offer of medication, then to give
5 him IM of a short-acting, like Haloperidol or
6 (indiscernible), until (indiscernible) for a week,
7 then until I feel like the other medication is
8 gradually getting system (indiscernible), and just --

9 THE COURT: We may be making (indiscernible).
10 Can you give me a sense of -- I realize it
11 takes a period of time that you described to get to
12 therapeutic levels. Does -- this won't clear up the
13 use of that term. Does that mean that most people,
14 it's effective after two weeks, but for an individual
15 (indiscernible) monitoring to see whether or not it's
16 working for him? Would it take him longer for it to
17 be effective than the average fellow?

18 THE WITNESS: It would be more severe. But
19 in average, we say it takes three to four injections,
20 that means about eight -- let's say four injection,
21 four times two, eight weeks to show its effect.

22 In order -- if Bill maintains the
23 presentation that he's been having, like yesterday and
24 today, I would -- I would prefer not to give him too
25 many injection of other kind, even if he refused the

1 oral form, and try to work with him to less traumatize
2 them and give a chance for the medication to work.

3 THE COURT: And let's assume it works as well
4 as you would hope, in terms of how long it takes for
5 him to get to where you think (indiscernible) likely
6 the medication would get. Would you think that he
7 would remain at API for another -- how long?

8 THE WITNESS: I would -- as I said, it would
9 take about eight weeks. So I would expect that he
10 would respond well to it by eight weeks or ten weeks,
11 I should have him out -- out of the hospital, for him
12 to reach the state that he could have some level of
13 stability and does not meet the criteria for him to be
14 held in a hospital.

15 THE COURT: I understand the Taku unit is
16 normally the DOC forensic unit. He's there because of
17 his behavior problems on occasion. Would you expect
18 if the medication was administered and he is slowly
19 getting better, that he would get to a point where he
20 would come off of Taku and go to another unit?

21 THE WITNESS: I would like to anticipate
22 that. What I would do if he calmly could manage to
23 get (indiscernible). Because again, a stable patient
24 is not (indiscernible) to be the forensic setting.

25 But however, usually that unit, there is a

1 lot of stimuli. I would still have a concern. So I
2 would see how I could take that approach, try to see
3 how he functions within a day or hours, you know.

4 And the other aspect is, he is the
5 (indiscernible) also a very good relationship with our
6 (indiscernible) Rich. So if that also -- but that
7 shouldn't be any problem, because our staff are
8 available to -- at the hospital very generously.

9 THE COURT: In terms of the physical setting,
10 if he moves out of Taku, is there another unit you
11 would like to take him to?

12 THE WITNESS: We have two (indiscernible) and
13 Katmai. I believe --

14 THE COURT: Go ahead.

15 THE WITNESS: I believe that he mostly was in
16 the unit Katmai. I would attempt to go to the same
17 unit --

18 THE COURT: Be quiet. It's my turn to talk.

19 Now, are the -- is the physical setting of
20 Katmai versus Taku, are they essentially the same?

21 THE WITNESS: Yes, they are just the same.
22 Yes, they are the same.

23 MR. GOTTSTEIN: Taku --

24 THE COURT: Taku and Katmai.

25 THE WITNESS: Oh, Taku, no. Katmai is

1 (indiscernible). They are both actually
 2 (indiscernible).
 3 THE COURT: Compare Katmai with Taku.
 4 THE WITNESS: Well, Katmai has 24 beds --
 5 yeah, 24 beds. And so that is -- and some of the beds
 6 are shared by -- not every patient gets a private
 7 room. And so that (indiscernible) more stimuli, more
 8 number of the patient, less attention.
 9 And (indiscernible) Taku is more structured.
 10 Every individual has their own private room and --
 11 THE COURT: Taku, they have their own private
 12 room?
 13 THE WITNESS: They have their own private
 14 room. And there is less stimuli, there is more
 15 structure. The ratio of the staff to the patient is
 16 more beneficial for the patient.
 17 THE COURT: And is that -- that higher
 18 staff-patient ratio is -- it's a product of the
 19 likelihood the DOC folks are going to be behavioral
 20 problems?
 21 THE WITNESS: That's one of the main reasons,
 22 yes.
 23 THE COURT: And can I assume that if the
 24 medications are successful and you believe that he was
 25 ready to be discharged in ten weeks (indiscernible),

1 that are -- have more challenges, either from the
 2 placement or from level of mental illness.
 3 And when they do get discharged, even though
 4 they are discharged, we don't consider that totally --
 5 legally, they are discharged. They are not under care
 6 of API. But my staff and my social worker, we work
 7 closely from that aspect. We try to see how they are
 8 doing.
 9 We contact the place they are staying,
 10 contact their guardian, and then if some situation --
 11 actually, one patient that I recently discharged who
 12 was very paranoid did not trust any other facility.
 13 We have been able to agree for him to come to take one
 14 of his medication here.
 15 And in some cases, (indiscernible) that
 16 happened in one of the occasion that I had breakfast
 17 with Bill, I would go or my social worker would go out
 18 of the hospital and go and check with them to see how
 19 they are doing.
 20 THE COURT: I assume it would be preferable
 21 for him, almost necessary, that he have medical
 22 supervision available to him upon discharge, so that
 23 even though API lost legal control over him, they
 24 would be assured that he would be monitored?
 25 THE WITNESS: Well, from the monitoring, API

1 that the long-term plan would be that he would be --
 2 continue to receive case management and
 3 (indiscernible) services, and we would need to find
 4 suitable housing for him, given whatever
 5 (indiscernible)?
 6 THE WITNESS: But this is always -- in every
 7 discharge, when we discharge the patient, especially
 8 somebody in the setting like Bill, we do believe that
 9 he will benefit from a place that provides -- a
 10 placement that there is structure from extensive
 11 outpatient care, like case management, clinician,
 12 guardian involvement, and community support.
 13 THE COURT: Let's assume he has now been
 14 medicated, he is about to be discharged, and the --
 15 and some housing and case management is set up,
 16 however the team thinks it's appropriate, what will
 17 you be looking for? What criteria, what behavior will
 18 you be looking for after his discharge to evaluate how
 19 well he is doing?
 20 And I am guessing (indiscernible) police
 21 contacts, among other things. Is there anything else
 22 that you'd be looking at (indiscernible)?
 23 THE WITNESS: With some of my patient -- I
 24 work in the two unit, in the forensic unit and also
 25 the long-term unit. And those are the individuals

1 is not outpatient provider, so when he get -- he does
 2 get connect with (indiscernible), they are trying to
 3 engage with him.
 4 If he gets stable enough that he is able to
 5 agree to work with them and (indiscernible) has, you
 6 know, case management, has a clinician, and they look
 7 at the whole global aspect of his needs.
 8 THE COURT: I don't have any other questions.
 9 I don't know (indiscernible) with your redirect
 10 (indiscernible) cross.
 11 MR. GOTTSTEIN: Yes. Very short -- short.
 12 KAHNAZ KHARI, MD
 13 testified as follows on:
 14 RE CROSS EXAMINATION
 15 BY MR. GOTTSTEIN:
 16 Q Didn't you say that he's always offered to
 17 stay longer?
 18 A Every time, yes. I did offer him to stay
 19 longer.
 20 Q So why -- why won't you let him come when he
 21 needs to if he wants to?
 22 A Well, again, I want to remind you, this is
 23 acute care facility. It is not a (indiscernible)
 24 placement.
 25 THE COURT: Just a follow-up. I assume that

1 if he -- when you got to the point you thought he was
2 dischargeable and should be discharged, and you
3 offered him a voluntary commitment, and he said yes,
4 that doesn't mean he gets to stay as long as he feels
5 like it. I assume -- I assume at some point, the
6 offer -- his voluntary admission is no longer
7 acceptable?

8 THE WITNESS: But he -- every case is
9 different. For Bill, because we didn't know the state
10 of -- the degree that he is experiencing, where
11 actually he stayed longer, we are totally open to it.
12 For example, when he --

13 THE COURT: But at some point, doesn't API
14 say enough is enough and you have to leave now?

15 THE WITNESS: In Bill's case, usually he says
16 before we say. But with some patient, yes, when they
17 get stable and if they are trying -- they feel like
18 they could function outside. Because having an
19 institutionalized life also is not the best benefit of
20 the patient.

21 So if some individual, if they have improved,
22 they are doing good, they are in a voluntary state,
23 they don't meet the criteria, of course the hospital
24 is going to encourage them to get discharged.

25 But however, we will take a situation

1 different from the aspect that (indiscernible) think
2 that he would benefit from more -- even though this is
3 not a house and it is not a placement, he would
4 benefit.

5 If he is asking to leave, he wants to leave,
6 and we think that he would benefit as he shows, like,
7 for example, (indiscernible) just being in a
8 structured facility, receiving that care, he is
9 getting that treatment and hoping that, again, with
10 the hope that he gets to -- some level perhaps does
11 come, agreed to see what the treatment can offer and
12 he could stay compliant with that.

13 THE COURT: Okay. Go ahead.

14
15 BY MR. GOTTSTEIN:

16 Q But don't you assume that once he's
17 discharged, he's going to quit taking the medication?

18 A Every patient is different. Every state of
19 mind different.

20 For Bill, right now he has shown that he is
21 not taking the medication. But again, based on the
22 testimony we have and the chart shows, about two years
23 ago, when he was discharged, he was coming willingly
24 to take the medication.

25 So (indiscernible) knowing what he wants and

1 how he could get it, and part of it is the medication.
2 He may agree to stay compliant and not get off
3 medication.

4 Q But you testified you didn't know why he --
5 what the circumstances were for why he quit taking it
6 back then?

7 A But I wouldn't mind it if he stopped -- if he
8 decided to stop. But no, I wasn't his clinician and I
9 did not look at the chart for that specific
10 (indiscernible).

11 Q So you -- you don't know that there was a --

12 THE COURT: If she doesn't know, she doesn't
13 know.

14 BY MR. GOTTSTEIN:

15 Q Isn't he still delusional, lacking insight,
16 poor judgment on the medication?

17 MS. DERRY: Objection, asked and answered.

18 THE COURT: Overruled.

19 THE WITNESS: Well, individual like Bill,
20 when they have such a severe mental illness, the
21 medication improves the clinical symptoms, but it may
22 not clear -- I believe that based on my evaluation
23 from Bill, I do not expect him to be free of his
24 delusion. He would continue probably -- high
25 probability he will continue to experience those

1 delusional contents.

2 But the difference what it makes, it takes
3 that edge away, gives him some degree of insight, and
4 for him -- even though he has delusions, he wouldn't
5 act on it. He wouldn't continually be in the
6 correctional facility, threatening people, and keeping
7 self in unstable situation. So that is what I am
8 hoping to achieve with medication.

9 Q So isn't it true basically that this approach
10 hasn't worked for 28 years and 80 admissions?

11 A Actually, I --

12 MS. DERRY: Objection. I am objecting to his
13 assuming facts not in evidence.

14 THE COURT: Overruled.

15 THE WITNESS: I'm actually -- I'm glad you
16 did ask the question. I had a patient that has been
17 institutionalized for years with a very severe active
18 psychosis, actually more prominent than what
19 (indiscernible) with Bill.

20 Even though he continues, even to today he
21 continues to have active psychosis, but the medication
22 has stabilized him enough that I would say a year and
23 a half, more than a year, he's been in the community
24 and he has -- has taken more choices in his life and
25 enjoying it and taken -- getting involved in where he

1 is living, the (indiscernible) he is getting, just is
2 amazing how much -- you know, that the fact that he is
3 not living in institutionalized and he is valuing and
4 appreciating that.

5 Q Don't you think he should be given a chance
6 to be successful -- given supports in the community
7 to -- it -- without having to be required to take
8 drugs?

9 MS. DERRY: Objection, asked and answered in
10 your initial cross.

11 THE COURT: Sustained.

12 BY MR. GOTTSTEIN:

13 Q Now, isn't Taku basically -- I mean, isn't it
14 basically a jail?

15 A No, it is not a jail.

16 Q Isn't it set up as a jail?

17 A It is a most restricted unit. It is a unit
18 where we take (indiscernible) forensic criminal cases.

19 But every patient is treated as equally like
20 any other patient in other -- other units. As I said,
21 I have two units. I do not -- the services and care
22 that has been provided in both units is equal.

23 Q No, no. But I'm talking about the unit
24 itself. Isn't it basically treated as part of
25 corrections (indiscernible) jail?

1 TRANSCRIBER'S CERTIFICATE
2 I, Jeanette Blalock, hereby certify that the
3 foregoing pages numbered 1 through 191 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 6, 2008, transcribed
8 by me from a copy of the electronic sound recording,
9 to the best of my knowledge and ability.

10
11
12

Date Jeanette Blalock, Transcriber

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25

1 A I have never (indiscernible).

2 MS. DERRY: Asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: I have never worked in the
5 correctional facility, so I really don't -- I cannot
6 answer that.

7 MR. GOTTSTEIN: No further questions.

8 THE COURT: Thank you. We will be in recess
9 until 8:30 Monday morning.

10 (Off record.)

11 1:34:14

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