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 10, 2008
8:37 A.M.

APPEARANCES:

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I-N-D-E-X

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

3AN6108-199

8:37:29

P R O C E E D I N G S

THE CLERK: On record.

THE COURT: All right. We are back on record. It's Monday, the 10th.

Mr. Bigley is present, counsel for the State, for Mr. Bigley are here.

Are we prepared to take the next witness?

MS. POHLAND: Your Honor, as an initial matter, I just wanted to bring this to the court's attention -- this is Erin Pohland, for the State.

(Indiscernible), Mr. Bigley has been calling me on Thursday and Friday. I didn't discuss anything with him. I told him I did not represent him and could not talk to him.

But I just feel I should bring it to the court's attention. And I have instructed the staff to not let him call me in the future.

THE COURT: Anything else?

MS. POHLAND: That is it, Your Honor.

THE COURT: Mr. Gottstein?

MR. GOTTSTEIN: Just a couple of things. I'm not sure what the court intended to do or wants to do. They filed some objections to the direct testimony on Friday, and I --

THE COURT: Is there a copy of that?

MS. POHLAND: I can give you a copy.

THE COURT: You filed that (indiscernible)?

MS. POHLAND: Yeah.

MR. GOTTSTEIN: And so I don't -- so we need to sort that out, I think. And if they want to cross examine any witness, you know, it was then clear the court allows it in.

And I also want to advise the court that I have been trying to reach Ms. Porter, and I have been unable to do so. I have actually been trying to do it for a few months, and I renewed my efforts over the weekend, and I wasn't able to do that.

I have also filed this morning, which I think the court will recall I said I was trying to get it in earlier but didn't have time, respondent's history. And that's in this package here. And it's basically a chronology that I hope the court will find helpful.

And then the rest of it is documentary backup

that isn't already in there. If I had more time, I probably could have made it shorter. But anyway, I hope the court will find that helpful.

I'm trying to -- one of the issues has been why Mr. Bigley quit taking Risperdal Consta in October of '06, and nobody -- Dr. Khari wasn't able to testify to that, and Dr. Worrall was the treating physician at the time and filed a couple of -- a commitment petition and forced drugging petition at that time.

And so I -- at first I tried to get a stipulation and affidavit. Anyway, we were trying to subpoena him. And tentatively, he's -- he didn't want to come here. He wanted to do it by telephone at 11.

And then Dr. Wolf, who did an independent evaluation, as I've been mentioning before, I wanted to get him to testify. And he's -- he's been subpoenaed and I've asked him to come -- he's only really available between 11:30 and 1 today all this week. So those are -- that's kind of --

MS. POHLAND: Your Honor, Dr. Wolf didn't say that he wanted to testify at 11:00.

He -- he's willing to, as is the State, willing to stipulate that the two documents that Mr. Gottstein has referenced regarding the petitions for 2006 -- I currently don't see their relevance to

the current proceeding, but the State is willing to stipulate to their authenticity and enter them into the record.

MR. GOTTSTEIN: Your Honor, if I may.

THE COURT: Well, if -- you agree to the -- do we agree to the admission of those two documents? Is that (indiscernible) both parties want?

MS. POHLAND: The State's (indiscernible).

MR. GOTTSTEIN: Yes.

THE COURT: All right. What are they? G --

MR. GOTTSTEIN: Yeah. It's both G. There's a petition for 90-day commitment, petition for -- a forced-drugging petition. They are both the same day. And they -- they're --

THE COURT: So G is admitted by stipulation.

(Exhibit G admitted.)

MR. GOTTSTEIN: The question is, what the effect of the admission of the document?

THE COURT: You want to call him?

MR. GOTTSTEIN: I do want to call him.

THE COURT: You can call him.

MR. GOTTSTEIN: Okay.

THE COURT: There is a proposed stipulation that we had talked about (indiscernible) the State is (indiscernible) proposed stipulation (indiscernible)

six witnesses --

MR. GOTTSTEIN: They are being reasonable, yes. They gave us (indiscernible).

THE COURT: And you are willing to -- (indiscernible)?

MS. POHLAND: Well, I sent it to you for you to sign it.

THE COURT: It's been signed. Is that -- so will that necessitate -- does the state want to cross examine any of the six beyond that? Last time you were making some reference to, at least for some of those witnesses, not wanting to cross beyond establishing that fact, other -- any of those six did you want to cross examine?

MS. POHLAND: Well, Dr. Mosher is deceased. (Indiscernible) cross him.

But otherwise, we'd like them all to be available for cross, frankly. Testimony wouldn't be an extensive cross, but --

THE COURT: All right. Then they'll just be available when we -- when we get to that.

Now, let's talk about exactly when that is here as we get further with the State case.

And in terms of these objections, I'll read them later or -- are these objections, the

(indiscernible) internal components of them, or are they objections to everything?

MS. POHLAND: They are objections based on relevance on the admissibility of Dr. Mosher and Ms. Porter's testimony based on their unavailability.

And then there's a further objection that none of these, quote, unquote, affidavits are true affidavits under Alaska law. They are merely notarized letters, other than the affidavit of Paul Cornils.

MR. GOTTSTEIN: And that's -- that's --

THE COURT: But -- they are just objections to -- they're (indiscernible) objections, if you will, as opposed to some internal line is problematic? Okay. (Indiscernible.)

MR. GOTTSTEIN: Okay, Your Honor. And I'd be prepared to address that if you want to at some point, if you feel that's necessary.

THE COURT: Let me read it first, and then we'll take it from there.

So any other preliminary matters? All right. Then the next witness will be --

MS. DERRY: Yes, Your Honor. The State calls Steve Williams.

THE COURT: Mr. Williams, will you stand,

please, and raise your right hand.
(Oath administered.)
THE WITNESS: Yes, I do.
THE COURT: All right. You may be seated. Would you state your first and last name, spelling both?
Could you -- because we're trying to record off of this, if you would trade seats. You can sit next to -- wherever you're comfortable. That way we'll get a better record.
THE WITNESS: My name is Steve Williams, S-T-E-V-E, W-I-L-L-I-A-M-S.
THE COURT: You may proceed.

STEVE WILLIAMS

called as a witness on behalf of the State, testified as follows on:

DIRECT EXAMINATION

BY MS. DERRY:

Q Mr. Williams, how do you know Mr. Bigley?
A I know Mr. Bigley from a couple of different areas of my life.
I used to work for the court system. I worked in the Anchorage mental health court. From time to time, Mr. Bigley would come through that therapeutic court.

I knew Mr. Bigley outside that setting, as well. I would have contact with him at Side Street Espresso from time to time, as well as see him outside First National Bank there on 4th Avenue.
Q And what is your relationship to Mr. Bigley now?
A My -- I don't have a personal relationship with Mr. Bigley right now.
Currently -- well, not currently, but in September, the Alaska Mental Health Trust Authority, where I currently work, was contacted by folks from the Office of Public Advocacy, the police department, and other entities concerned about Mr. Bigley's increased contact with the criminal justice system, and wanting to look at that and maybe come up with a better way of serving Mr. Bigley.
So the trust convened that meeting with the stakeholders. I can -- on behalf of the trust, I can convene that meeting.
Q And at this meeting, what would you say was the greatest concern for Mr. Bigley at that time?
A Probably his health and safety, just when he was not in the custody of Department of Corrections and at API and just out in the community.
Q And what is your understanding of what was

happening with him, to his health and safety outside of incarcerations or at API?
A It's my understanding that Mr. Bigley has unfortunately been trespassed from a few places downtown. There've been times when he would go back to those institutions, and then when we redirected, would not be agreeable to the situation. And at times, the police department had to be called to intervene.
Q And were you made aware by the different people involved with him their concerns for -- well, what is your understanding of what Mr. Bigley's current health is?
A Physical health, there were concerns in regard to --
MR. GOTTSTEIN: Objection, foundation, I guess. Objection.
THE COURT: You need to lay a foundation for his knowledge of physical health.
BY MS. DERRY:
Q Mr. Williams, you convened the meeting in order to address issues such as Mr. Bigley's health, the health concerns of all the multiple parties involved?
A Correct.

Q And were people at the -- represented people from API?
A Yes, representation from API was there.
Q And were people from the Providence regional emergency health center also there?
A Yes.
Q And did these parties discuss the health, welfare, and safety of Mr. Bigley?
A They did, as did the Office of Public Advocacy and a couple other folks that were sitting around that table that spoke to his health, both physical and mental status, although they may not have a physical health background, in terms of education or profession.
Q And without, you know, requiring a diagnosis, what is your understanding of Mr. Bigley in whether or not he can --
MR. GOTTSTEIN: Objection, hearsay. I'm sorry. I probably should have let her finish the question.
THE COURT: Do you want to respond to a hearsay objection?
MS. DERRY: I was asking Mr. Williams what his understanding is, not what he had heard.
THE COURT: You're going to have to elicit

his understanding (indiscernible).
MR. GOTTSTEIN: Your Honor, if I may. There's no really disagreement -- real disagreement that there's great concern in the community and that it would be very helpful to have, you know, some services for him. So I certainly would be willing to stipulate to that.
BY MS. DERRY:
Q Well, Mr. Williams --
MS. DERRY: I'm sorry.
THE COURT: Do you want to stipulate to that? Otherwise, you're going to have to address -- I'll let you elicit his understanding. I'm not really sure what that means.
MS. DERRY: Well, actually, if we -- the State would stipulate that the community is coming together because they are so concerned about Mr. Bigley's health and welfare and safety.
THE COURT: And so can we stipulate that there have been meetings amongst those participants, OPA, APD, API, the trust, Providence, where, among other topics, there is sort of general consensus that Mr. Bigley's physical health has deteriorated in the last six months?
MS. DERRY: Six months, for sure.

THE COURT: And there is concern amongst those entities for his prospective physical health; is that fair?
MR. GOTTSTEIN: Yeah. I didn't want to (indiscernible) his physical health. I know there's concern about that and there's concern about him being in the community.
THE COURT: (Indiscernible) further, his physical health, and also the acceleration of number and perhaps intensity of his interactions with members of the public, including sort of the landlord -- landlord-tenant group around 4th Avenue and other pedestrian -- just people, that there's concern there's been -- these interactions are -- may escalate into harm for Mr. Bigley and/or others. Is that fair?
MR. GOTTSTEIN: Yes. And then I would ask for one additional stipulation.
THE COURT: (Indiscernible.)
MR. GOTTSTEIN: And that's that Mr. Bigley's attorney, at least with respect to the forced-drugging petition, has not been invited to any of these meetings.
THE COURT: Is that a fact, that no one -- there's no disagreement about it?
MS. DERRY: I actually don't have personal

knowledge of who was actually invited. I was one of the invitees.
THE COURT: But you're not willing to stipulate to --
MR. GOTTSTEIN: This witness -- this witness knows.
THE COURT: If (indiscernible) stipulate, that's fine. You can bring it up (indiscernible) cross.
MR. GOTTSTEIN: Okay.
BY MS. DERRY:
Q Okay. Well, Mr. Williams, now that we have stipulated that the community is concerned about Mr. Bigley's health and safety, and also that he's had so many run-ins with the police, especially in the last six months, what is your understanding of the difficulty of providing services to Mr. Bigley?
A I -- my understanding is that one of the largest challenges is actually engaging with Mr. Bigley in a way that is both meaningful for the provider as well as for Mr. Bigley, to get a gauge on what the services are that he desires, as well as what the provider can actually do in the provision of those services or supports.
Q And does it -- does it appear in your

meetings that there are alternatives available at the time -- at this time?
A At the time of the meeting, the services -- service alternatives that were available had been exhausted.
Q And what about now?
A I think one of the outcomes of that meeting was that the Division of Behavioral Health was going to try and look at Mr. Bigley's case specifically and see what could be done, in terms of altering the current behavioral health treatment that could be provided and see if there were other ways of providing those services.
THE COURT: You mentioned a specific department. Could you say that again?
THE WITNESS: The Division of Behavioral Health within the Department of Health and Social Services for the state.
BY MS. DERRY:
Q And do you know if people have been trying to establish relationships with Bill?
A It's my understanding that the Division of Behavioral Health has worked with at least one community behavioral health provider to identify an individual who could work on a consistent basis to try

and engage Mr. Bigley in services. And to my knowledge, they have been working towards that. With what intensity, I can't say.
Q And you said your first meeting was in August, this meeting about Mr. Bigley?
A It was either late August or early September. I think it was actually early September.
Q And so it's been about three months, and you're still looking for alternatives but there aren't any definite alternatives at this time?
A Not that I am aware of.
MS. DERRY: No further questions.
THE COURT: Cross?

STEVE WILLIAMS

testified as follows on:

CROSS EXAMINATION

BY MR. GOTTSTEIN:
Q Now, I wasn't -- I wasn't invited to any of these meetings, was I?
A There's only been one meeting, and no you weren't there. And you weren't invited at that time.
Q Why?
A It was not my -- to my knowledge at that time that you were representing Mr. Bigley.
Q Do you think his lawyer should be invited to

such a meeting?
MS. DERRY: Objection, relevance.
THE COURT: Overruled.
THE WITNESS: Do I think his lawyer should be invited to such a meeting? I can't see why not.
BY MR. GOTTSTEIN:
Q Now, isn't it true that one of the reasons why Mr. Bigley doesn't like to engage in services is that they require him to take drugs he doesn't want to?
MS. POHLAND: Objection, calls for speculation.
THE COURT: You can answer that if you know. Don't speculate.
THE WITNESS: I don't know.
BY MR. GOTTSTEIN:
Q Are -- in the past to your knowledge, aren't all the services that are being offered to Mr. Bigley require him to take psychotropic drugs?
A I don't know.
Q When -- now, you mentioned in the Division of Behavioral Health looking at -- in his case specifically, do you know if that program will require him to take psychiatric drugs?
A I do not know.

Q Wouldn't you assume that it wouldn't?
A No, I wouldn't.
MS. POHLAND: Objection, calls for speculation.
THE COURT: Sustained.
BY MR. GOTTSTEIN:
Q Is the -- the agency that you said is working towards establishing a new relationship with him is Anchorage Community Mental Health Services?
A To my knowledge, that is the agency.
MR. GOTTSTEIN: I have no further questions.
THE COURT: Any redirect?
MS. DERRY: Yes, Your Honor.

STEVE WILLIAMS

testified as follows on:

REDIRECT EXAMINATION

BY MS. DERRY:
Q Mr. Williams, were the public defenders invited to this meeting at the Mental Health Authority?
A I believe they were, yes. But --
Q Did they attend?
A I don't recall off of top of my head. There was representation from the AG's office for the Department of Health and Social Services.

Q When you set up this meeting, was it to discuss whether or not to medicate Mr. Bigley?
A No.
Q Did anyone in that room have the authority to medicate Mr. Bigley?
A Not that I am aware of.
Q And is it your understanding that Mr. Gottstein has limited representation, based on whether or not Mr. Bigley is to be medicated?
A I'm not sure. I don't understand the relationship between Mr. Gottstein and Mr. Bigley.
MS. DERRY: No further questions. Thank you.
THE COURT: Any recross?
MR. GOTTSTEIN: No, Your Honor.
THE COURT: Thank you, Mr. Williams.
Is there any reason why he can't be excused?
MS. POHLAND: No, Your Honor.
THE COURT: Thank you.
(Witness excused.)
THE COURT: Next witness.
MS. DERRY: Yes, Your Honor. The State would like to call Steve Young.
THE COURT: (Indiscernible.) We are trying to record off of this (indiscernible). We need to get (indiscernible).

THE WITNESS: And I'm here in two roles today, Your Honor. Mr. Hughes wasn't able to be here this morning, and so I am standing in for him.
THE COURT: Just stand (indiscernible).
(Oath administered.)
THE WITNESS: I do.
THE COURT: You may be seated. Could you state and spell your full name, please.
THE WITNESS: My name is Steven Young, S-T-E-V-E-N, Y-O-U-N-G.
THE COURT: You may proceed.

STEVEN YOUNG

called as a witness on behalf of the State, testified as follows on:

DIRECT EXAMINATION

BY MS. DERRY:

Q Mr. Young, what is your relationship to Mr. Bigley?

A I am a public guardian with the Office of Public Advocacy, and I was Mr. Bigley's guardian beginning in 2005, and was his guardian until a settlement agreement in the guardianship matter that assigned Mr. Hughes, Jonathan Hughes, as his primary guardian.

And so I worked with Mr. Bigley when he was

discharged from the hospital here in May of 2005. And because he didn't have any direct services at the time, I assisted him with a variety of things, from grocery shopping, to cigarette shopping, to apartment finding and renting, and that sort of thing, for a period of about 16, 18 months.

Q And you -- how would you describe your relationship with him, as his guardian?

A It had its ups and downs. But I think in general we had a pretty good relationship.

I found Mr. Bigley to be a very honest person, somebody who is fairly dependent on other people, fairly well-centered around his priorities, which I think goes something like cigarettes, coffee, food, housing.

And he was discharged in approximately May. My memory might not be perfectly good, but around May. It was an arrangement that I worked on with a social worker here named Ann O'Brien (phonetic), I believe.

And the -- the issue was we had recently been appointed as guardian. I believe API petitioned it and OPA was appointed as a full guardian. Prior to that, we had been only a conservator. We were a conservator for a number of years.

And so the arrangement was to, you know, ask

the hospital to evaluate his medication. He had a long history of not being compliant with medication as soon as he discharged from the hospital.

The hospital was willing to consider the injectable type of medication, the Risperdal. And he -- so he discharged on that with an early release discharge order, so that we could see if he would -- we could get him into services and if he could be more treatment compliant on this (indiscernible) medications. It only required him to consider it once every two weeks instead of every single day.

And we worked hard on that actually, and in finding him an apartment, because he wanted to live on his own in the community.

And you want me to just keep going?

Q Oh, I can ask questions.

THE COURT: You need to speak -- you're soft spoken. I want to make sure you're captured on the --

THE WITNESS: Okay. So on the early release discharge order, Mr. Bigley was required to come to API. API agreed to be his outpatient provider.

And initially that meant that API provided the medication, and Mr. Bigley would come here every two weeks and get an injection of risperidone.

And I think the first time that he had to

come back, he -- he didn't make it. And he had to actually be violated on the early release discharge order.

And the problem with that was that, of course, somebody had to file the violation, an outpatient provider, and then Mr. Bigley had to be brought into the hospital through I believe judicial services, was the ones who served those things.

And so as a result, he was usually upset when he -- when he was brought in that way. And he had to stay more than a couple of days. I think it would be three, four, five days, sometimes a week. And this happened in the very beginning of the early release discharge with him. But then he started coming on his own shortly afterward.

And API soon stopped providing the medication, and instead, because he was a Medicaid recipient, asked a local pharmacy to provide the medication to the hospital.

And then when he would come, if the medication wasn't here the way it was supposed to, he might have to leave and come back the next day, he would come down to my office and explain what happened. And he'd be a little upset because he was put out that he had to come here and then come back.

But he was compliant with this program, and he did fairly well. He stayed in the same apartment from May of 2005 through September of 2006.

And it wasn't without some incident, because there would be times when, you know, he had bad days, even though he was compliant with the medication. And -- but by and large, he was able to, you know, go to the store, buy his own cigarettes most of the time. Sometimes he was told he couldn't come back into the store because he wasn't always appropriate.

And I grocery shopped with him every seven to ten days. And he would go with me. And he knew what he wanted. He could pick out the foods, and we'd put them in the cart. And we'd go through the line. And he was, you know, with -- you know, with some redirection, appropriate.

And then in September -- I can't remember now what precipitated it.

THE COURT: September of --

THE WITNESS: '06. He had -- he had more difficulty -- he was having a lot of mood issues, you know. So he was coming to the Office of Public Advocacy.

And it wasn't that he was completely -- it wasn't -- it wasn't just from, you know, the normal

psychiatric symptoms that we would experience from him. It was mood issues. He was sad. He was -- he'd go from being sad to being angry and sad again, all within the same minute.

And so we -- we asked if that couldn't be considered in his -- in his med regimen. And I believe shortly after that, when he came in on an admission, some mood medication was added to the risperidone.

But prior to that, he had really only been addressed by this one antipsychotic medication.

BY MS. DERRY:

Q And in this time, you said that he was -- did really well from May of 2005 until September of 2006, and that he -- is that correct?

A Yes.

Q And that he came -- he would come to the hospital here, to API, and have a risperidone injection every two weeks?

A Correct.

Q And in that time, between May of 2005 and September of 2006, did he ever refuse medications?

A There were times when he would come to the office shortly after getting his medication and he would say he's never going back. And I would remind

him that if he goes and gets his -- his injection once every two weeks, he may not have to go back, that it's just a matter of getting the medication, and that helps him in the community.

And we wouldn't focus on it. And two weeks later, he would go back without being prompted.

Q And when he came to the hospital, did you bring him to the hospital or did he make it here all by himself?

A He came all on his own.

Q How did he do that?

A He took a bus most times. I think on rare occasion he asked for a cab if the weather was really bad.

Q And so in this time, he never blatantly refused medications, saying that he never wanted medication?

A No. He would say that, and then he would go on his own. He would say that and -- and we would remind him that the medications seemed to be doing good for him, that it's been a long time since he's had to be admitted to the hospital, that he's still in his same apartment, that he's doing a good job keeping the apartment.

When he was taking his medication, for

example, you know, you could -- he would come into the office because he would say his carpet needs to be cleaned or he needs some extra assistance in the apartment. And he could focus on those things, and he would come down and we would make arrangements and they would get done.

In the summertime he would come down and he would ask to go someplace because he'd get bored being in the apartment. So sometimes it was a drive that we took out to Point Woronzof when we did weekly grocery shopping.

Sometimes he would want to do something bigger. One time he went down to one of the bus tours on 4th Avenue, got some information, brought it back. We booked a trip, and he got on the bus and went down to Girdwood.

It didn't go perfectly well. He got brought home with the troopers, but he got part of the trip done. And he -- I think he kind of enjoyed that. So he was able to focus on some of those recreational-related things.

Q And when he would come to the office and tell you that he didn't want to take medications, did he ever explain why?

A No. He would have complaints from time to

time which we would try to follow up on. One time it was his feet. He said his feet hurt and he couldn't walk. I mean, he was walking, but -- so I brought him to a podiatrist. And just turns out he had really long toenails and they needed to be cut.

And another -- another time, you know, he complained about it hurting in his bum where they gave him the injection. But -- and occasionally he would complain of stiffness. And that all made sense to me.

And we would talk to -- initially it was Dr. Thompson who was treating him here, and then it was Dr. Worrall. And we would talk to the doctors and ask them, you know, if this had been looked at, if he could be -- if he's on the right dosage of the medication, and there's some other medication that would assist with the complaints.

And the issue was always, you know, trying to keep things fairly simple so that Bill didn't have to focus any more than necessary on the issue of medication. Because I think it was an issue for him pretty much all the time.

You know, he -- he really didn't like the idea of being -- I mean, he didn't like the idea of being mentally ill. He really didn't think that he was mentally ill. And so to Bill, it was -- the

problems he had were problems that belonged to other people, not necessarily him.

Q And I don't understand what you meant when you talked about a settlement was the reason why you stopped being Mr. Bigley's guardian.

A Yeah. There -- I mean, OPA is appointed in a guardianship matter.

And Mr. Gottstein entered an appearance to represent Mr. Bigley in the guardianship matter. And he -- and he raised a number of complaints on behalf of Mr. Bigley.

And one of those -- one of those points was that I no longer be assigned as his guardian. And there were some other ones, too.

And ultimately, our office felt like we should, you know, be receptive to looking at other ways of doing this, and so we agreed. We tried -- we had assigned the case to somebody else for a while and try these changes.

Q When you stopped being Mr. Bigley's guardian, how did he react?

A Well, he -- I mean, like I said earlier, I think he's a fairly dependent person. So where I used to go out with him and grocery shop and do some of these other things, in December of 2006, when

Mr. Gottstein began representing him, he was no longer taking any medications.

And so by the time the settlement was achieved in mid-'07, I want to say August but it could be off on the date, he has been off medication for so long that it was actually quite difficult to even have him come to the office. So we were no longer grocery shopping with him.

And so when that transition occurred, things had already more or less declined in terms of the quality of the relationship and amount of help we were able to give him.

Q And would you say that Mr. Bigley trusted you when you were his guardian?

A Yeah, I think so. I think that, you know, we'd have our times when he'd be really angry and I'd have to ask him to leave the office. And he didn't always appreciate, you know, what we were doing.

Sometimes if he had an interaction with somebody, like if we went to buy cigarettes and he was reminded he couldn't come into the store, because there were those occasions when he would be told he couldn't come to the store. So we'd go grocery shopping, and then we'd go over to get cigarettes and he'd have to wait outside or something.

And if he made the mistake of coming in, and he would get reminded, then that would serve to escalate him and he'd get agitated around that.

But in general, he would say, you know, this is a good guy. He'd point to me and say, this is a good guy. You can trust him. And if he was having problems with other people, that was typically how he referred to me.

And sometimes when we were grocery shopping, if he couldn't, you know, make it through the whole store, sometimes we'd be picking something out on a shelf and I'd be trying to focus him on the item, does he want this can of beans or that can of beans. If somebody got too close and he started talking about -- he sometimes -- he would sometimes issue a comment to the other shoppers, like, what are you doing here, what are you looking at me for, you know, things like that.

But you know, usually, you know, I could get him redirected or ask him if he wanted to wait for me outside. Usually he'd prefer to go out and smoke actually. But I usually tried to get him to go through the whole routine of the shopping, so that he knew what he had.

And on occasion when he wasn't doing well at

all, I would just go do it. And I probably did that two or three times in that 16 months. Otherwise, he was with me.

Q And while you're not his guardian anymore, do you still have personal knowledge of him and see him around?

A Well, we see him -- yeah. All the public guardians are very familiar with Mr. Bigley. When he's not here or in jail, he spends a fair amount of time in our office. So he comes sometimes daily, sometimes several times a day.

And lately, that's been a problem because it's been impossible to work with him or to get him to leave if there's nothing we can do to help him or --

Q What does he come to your office for now?

A Probably the same things. I mean, he needs housing. Like if he's -- when he was being released from corrections, in the beginning, they would just send him to our office. They'd taxi him to OPA.

And then, you know, we told them -- we would tell DOC where he's housed and that they should instead just taxi him to where he has housing, since there really wasn't anything else we could do.

But he would come for housing. He would come for cigarettes. He would come for money. Jonathan's

been doing some creative things to try and make sure that Mr. Bigley has access to funds. He would buy coffee cards and put money on to coffee cards. And he would pay the Paradise Inn, where Mr. Bigley's been staying, additional funds so he could have a meal a day at the restaurant in the hotel. And things that would more or less prevent the need for Mr. Bigley to come to OPA regularly. But he would come anyway.

Q And you said just now that you would ask for the Department of Corrections to take him immediately to his apartment because there's nothing else we could do. What did you mean by there's nothing else we could do?

A Well, actually, we had to ask Mr. Bigley to stop coming to the office because he was too disruptive. He was too -- he would come in and we couldn't give him a check because he'd been banned from all the banks. And so just giving him a check would just lead to him getting arrested because he was trespassed everywhere.

So the issue was, how do we provide him with access to funds. And so it came down to, you know, like I said, putting money with the hotel for meals, and then getting them to agree -- actually, in the beginning, it was API. We would send a check here,

API would cash it. He'd come here I think once a week and pick up $50 in cash from the hospital.

And then that came to a point where he was too disruptive here and so we tried doing it with the hotel. And that worked for a brief period of time, but then he damaged something at the hotel.

And so things have just progressively worsened to the point where, you know, not only could we not give him a check or provide him with funds or cigarettes or take him shopping, but we couldn't seem to make those arrangements in the community.

You know, he doesn't have an outpatient provider and he didn't have a hospital that could do it. And the places where he was staying, he was getting kicked out of.

Q And you used to be able to take Mr. Bigley grocery shopping, and now what -- can you interact with him? How can you interact with him now?

A Well, actually, on rare -- once in a while, if he's -- if he's been incarcerated for a long period of time or if he's been in the hospital a long period of time, even without medication, there are brief moments when -- like for the first couple hours of a day, the first half a day, he will come to the office and he will be appropriate. But it's a very short

window.

And then pretty much -- and I only have my layperson's theory about what caused it. But he escalates or becomes agitated or decompensates, however you want to term it, to the point where you can't talk to him. He's not listening or he's not able to listen or follow a prompt or a direct or -- you know, he can make demands, but that doesn't really equate to his ability to follow a direction.

And I think that it relates to, you know, problems he experiences everywhere he goes, and how this tends to agitate him or escalate him, to the point where, you know, nothing is working and he's angry. And then he comes to our office and he is angry.

And it's impossible to work with him when he's like that. I mean, because he -- there's a whole string of new behaviors we've started seeing out of him that we had never seen. Okay.

I took him grocery shopping and all that for quite a long period of time. And he had his moments, as I explained, but usually they were -- they were fairly easily dealt with. Even if I -- the worst I had to ask him to do was stay out of the store, or I'll do your shopping and I'll bring it by; will you

be there. And we could count on him being there.
But around late '07, he came to the office. We asked him to leave. He was very angry. And I had to go out to a meeting, so I was trying to escort him out of the office and into the elevator. And I was going to walk him down and through the lobby, just to help him outside before somebody had to call the police.
And he -- he stood in the elevator and he didn't want me to get into the elevator, which I had never seen him do. He's usually -- I mean, I consider him to be pretty -- pretty easygoing and not -- not an aggressive type. I mean verbally maybe, physically no.
And I mean, usually if something bad -- he likes to watch the news. If something bad happened in the news, he would come to the office and he would say -- he'd be upset. He'd say, I didn't do it. I didn't cause it. But I think in his own mind, he sort of believed he was connected.
Later on, you know, it was physically standing in people's way, verbally threatening, and then getting more explicit with the threats. This building is going to blow up. I'm going to blow up this building. I'm going to blow you guys up. And

once -- in the beginning he would come to me and say, you need to get out of here, because I'm going to blow this place up. And you need to be -- you need to be -- you need to know that. And so -- and then, you know, later on it just was more explicit. He didn't -- you know, he just was going to -- he was going to blow the whole building up or something.
Q So now he would blow you up with it also --
A I think so, yeah.
Q -- and not save you?
A Yeah. I think I'm beyond that now.
Q You have known Mr. Bigley for several years. And what do you think his needs are right now?
A Well, since -- all the times I've tried to work with him, the -- the most important element of me -- I believe in order for him to get what he really wants, which is to be free to go about the community, to do the activities that he likes, which is to go purchase cigarettes, to go buy coffee, maybe to take a bus ride.
He used to like going to listen to music at Chilkoots. And he is not a drinker. I think a lot of people have made the error of thinking that just because he went to Chilkoots, he had an alcohol issue. But he really doesn't. In the 16 months of being in

his house every week, I once saw a wine bottle in his refrigerator, and it was two-thirds full. And if he went to Chilkoots, my guess is he had very little to drink. But he listened to the music.
And he'd come by the office the next day claiming that, you know, this music's never been played before. It's never been heard before. And he would be real happy about it.
So I think he -- in order for him to enjoy those things, I think he really needs to be able to integrate in the community, and he needs to be able to be living in his own home. He's never done well in assisted living. He needs to be able to be less fearful of other people, less easily agitated by other people.
He needs to be able to go through the routines -- fairly simple routines, getting on a bus, getting off the bus, knowing which bus to get on.
And the premise for all those things, as far as I am concerned, is the medication. And as much as he's I think at times verbalized a desire not to take the medication or not to come to the hospital, that, to me, clearly, even over the preceding years when we were just his conservator, was his best period.
So I think -- I think that's a real

fundamental to his getting all the other things he needs is that first layer, is treat the worst of the psychiatric issues.
Q And do you think that if he were given a nice house, someone to be a 24-hour care attendant, extra funds, cigarettes, and coffee every day, that he would be able to function well in society without any other assistance with medication?
A No, I don't think so. But I mean, because I don't think those things are possible without some treatment. I mean, I don't think you could find somebody -- I don't think you could staff Mr. Bigley. I don't think you could shift staff Mr. Bigley. It'd be a -- you'd -- it'd be impossible.
Q Do you think he's capable of forming a trust relationship with anyone right now?
A That's the problem. And I don't think -- I mean -- and then without that ability to have any kind of a relationship, the agitation is really high. I mean, his -- his threshold of accommodating everyday events is really low.
In other words, I don't think he could handle the least amount of frustration. I mean, he's -- he could before, but he -- and it would always be low. I mean, really low, like, you know, somebody comes to

within three feet when he's picking a can of beans off the shelf, that's a pretty low tolerance. But that's a medicated low tolerance.

So if we're taking the medication away, he's just hostile constantly. And so then when he engages with somebody in the community who's not being nice to him, then it's sort of over the top.

Then I've seen him recently where he's in the middle of the intersection at 6th and I, a very busy intersection, cars coming down I and turning on to 6th, and cars coming across 6th. And here he is in the middle of the intersection, just sort of, you know, cursing at something up above his head. And --

Q And how recently was that?

A This was just, I don't know, a month ago. And being unable to even yell at him to tell him to get out of the street. And that's pretty unusual.

And that fits with these events that I'd never seen from him. And it seems like some of what we've heard has happened, even here at API, has been new, things that I would guess the hospital's never seen.

Q You -- you've known Mr. Bigley for a long time. Do you think he's happy in the last few months?

A I wouldn't say he's happy.

Q Has he ever been happy?

A Well, he's had times when he -- I don't think he's ever perfectly happy, no. But I think -- because really, a lot of times, he is complaining about this or that.

But I -- but he has a sense of humor when he's doing well. He can laugh. He's -- he can laugh at a lot of things. And he's -- and he's -- like I said, he's actually a pretty nice guy. It's hard to find that these days.

But he -- he'll give things away. He'll give cigarettes away to people, which is, you know, asking a lot for somebody who, you know, lives for cigarettes. He would give money away. I mean, when we were -- when I was working with him, you know, he had a weekly allowance -- spending allowance. And there were times when I would come to his apartment and somebody else will have been there and stayed. So he would have allowed somebody to come in and stay with him.

And so I mean, he's -- he has -- he has a -- and I spoke with his -- once I was kind of curious about -- he had been talking to me about a car. And so out of curiosity, I called his ex-wife to ask about this car, to see if actually there was a real car

somewhere in history. And he has a good recollection of history. I mean, he was accurately telling me a story about a car he once owned that he really loved, that he wanted to get back. It was a long time ago, but -- so his ability to focus and process information and be around other people and tolerate things was much, much better.

MS. DERRY: No further questions.

THE COURT: Cross?

STEVEN YOUNG

testified as follows on:

CROSS EXAMINATION

BY MR. GOTTSTEIN:

Q Have you read Robert Whitaker's affidavit?

A No.

Q Bob? No? And so you haven't read Dr. Jackson's affidavit either?

A No.

Q So are you aware of the claim that Mr. Bigley's deterioration was explained by increasing brain damage caused by the drugs?

A No.

Q So -- but if that was true, wouldn't -- then wouldn't that explain his --

MS. POHLAND: Objection, foundation, calls

for speculation.

THE COURT: Ask your question.

BY MR. GOTTSTEIN:

Q If the cumulative effect of the drugs have caused brain damage, dysmentia, and maybe even dementia increasing over time, wouldn't that also explain -- also be a possible explanation of his deteriorating condition?

A Well, I mean, I'm not -- I'm not an expert in these things. And I can, you know, assimilate the information and evaluate it based on my knowledge of Mr. Bigley.

Medication for Mr. Bigley, from our perspective, or mine when I was in the position of making the decisions, was always based on the sort of a cost-benefit analysis. You know, can he live without the medication? What is the quality of his life without the medication? What sorts of problems does he have without the medication? And what are the potential problems with the medication related to the benefits of taking it?

And had I not seen the improvement that I saw, especially when we asked the hospital to change his medication from the oral medication, which he never got out of the hospital, to the injectable

medication, and then seeing his cooperation with the program and seeing him do considerably better, I would have to really evaluate that information.

Because I -- you know, I would look for additional opinions, in other words. Even with a claim like that, I think I would be looking for additional opinions.

And I would ask myself whether the provider of the information knew him personally, saw him as a patient, that kind of thing.

Q But you haven't sought any -- any initial --

A I didn't read those affidavits that you asked me about. I have read information about the medications Mr. Bigley takes and their side effects, and I have talked with the doctors about side effects.

And I have talked with the doctors about the -- you know, the complaints Mr. Bigley occasionally makes that I mentioned before. But I -- but I am not, you know, in a position to, you know, make a determination about the value or the integrity of that kind of information.

Q But I think you testified, didn't you, that you really tried to set up things so that he's required to take the medication --

MS. POHLAND: Objection. Mischaracterization

of the witness testimony.

THE COURT: Overruled.

You don't have to accept the premise of the question. You can correct him if you --

THE WITNESS: Yeah. I don't agree with it. I -- I do feel that it's important for Mr. Bigley to take medication.

And so looking at a way for him -- it's -- I would -- the first -- the first goal is to help Mr. Bigley stay out of the hospital the longest. And that was the goal in May of 2007, is could Mr. Bigley stay out of the hospital for three months or six months, and what would it take in order to do that.

And feeling that the medication was the primary important thing for that to be achieved, we went forward with, you know, the early release. And I think that that worked quite well, actually. I mean, if anybody should take medication, I believe it's Mr. Bigley.

BY MR. GOTTSTEIN:

Q Could you explain -- well, let me go back.

Now, weren't and aren't you -- or weren't you a proponent of this early release regime?

A Yes.

Q Okay. So -- okay. Now, isn't it true that

assisted-living facilities don't allow people in them if they're not taking their prescribed medications?

A There are some assisted-living homes that would -- would take people without medication, but there would have to be an absence of problems. In other words, an absence of the symptoms that would -- or a severity of the symptoms that would, you know, cause them to have problems with other residents or with the staff. I don't think that Mr. --

THE CLERK: Can I ask the witness to raise his voice. He's starting to fade out.

THE WITNESS: I don't think that Mr. Bigley could live in an assisted-living home without medication. I actually don't think the assisted living is the most appropriate for Mr. Bigley.

BY MR. GOTTSTEIN:

Q Okay. Are you aware that currently people that take these drugs long term now have a life expectancy of 25 years less than the general population?

A I am not --

MS. POHLAND: Objection, calls for speculation.

THE COURT: He's asking for your knowledge, not whether you agree with it or disagree with it or

whether you have the knowledge of that assertion.

THE WITNESS: I don't -- I don't know. I've -- I'm sure that persons who experience a mental illness have a shortened lifespan. I -- I don't know about that assertion.

But I would certainly evaluate the quality of Mr. Bigley's life without medication against, you know, the benefit of having it, even though there may be, you know, demographics that suggest that he could have a shorter lifespan.

I would say that his -- you know, when you talk about somebody who's as severely ill as Mr. Bigley, the likelihood of him doing something careless, but you know, out of agitation, like stepping in front of a moving vehicle, is probably a much higher risk.

BY MR. GOTTSTEIN:

Q Now, there wouldn't be such a risk -- near as high a risk if someone was with him at the time, would there?

A I -- I don't -- I don't agree with that. I think -- I mean, I watched Mr. Bigley. I stood with him on a curb once when the light turned red for walk, against the walk, and he stepped right out into the street. And you know, he just waved his hand like the

world would stop because he's in the street.
So I don't think that he follows the same rules, and I don't think somebody would step out into traffic necessarily to save him.
Q You would not have stopped and grabbed him if he was in real danger?
A I would like to think that I would make some effort, but I don't think I would risk my life for it. I mean, Mr. Bigley at times is really hard to predict. And so you know, I mean, I think that's his greatest risk.
Q So is it -- is it your -- well, are you aware that Dr. Jackson has testified that if he's continued on -- forced to take medications, that they'll kill him within five years?
MS. POHLAND: Objection, foundation. The witness has already testified that he's not familiar with Dr. Jackson's previous testimony and has not read Dr. Jackson's affidavit.
MR. GOTTSTEIN: I will rephrase.
THE COURT: You can rephrase the question.
BY MR. GOTTSTEIN:
Q If -- if Mr. Bigley is required to take these medications, and it will cause him to die within five years, don't you think that should be taken into

consideration?
A Yes. I think that if -- if that information is accurate -- I mean, I think that information should be evaluated, certainly. And that's serious information. You know, if I was his guardian, I would be looking into it, you know, what Dr. Jackson's knowledge is of Mr. Bigley and how often he or she has seen him and what it's based on, and I would be looking for other opinions.
Q How about if she was -- would it matter to you if she was one of the most knowledgeable experts in psychopharmacology?
A Sure. But I would still ask the question about whether she has seen him and what her knowledge of the patient is and what she bases her opinions on.
I think there's -- Mr. Bigley's had excellent psychiatric care really. He's had a tremendous amount of attention through a number of admits. I think it's 80 or 80-plus.
And I know I have met personally with his psychiatrist here, beginning with Dr. Thompson, going on to Dr. Worrall. I've met with Dr. Carol. I've met with a number of the psychiatrists here regarding his care. And my sense is that everyone has given a lot of attention to his range of issues and the side

effects. And I have spoken with these doctors about the side effects and complained.
So my sense is really that although Mr. Bigley may experience some dementia, although he may experience some of the muscle stiffness, he really -- he doesn't appear to me at least to have much in the way of side effects.
And he -- I should say he has some of the dyskinesia. I mean, he doesn't pour coffee as well as he used to. He has some of the more common problems.
But I would also ask, especially Dr. Jackson if this is her opinion, that has she considered all these other things, like the heavy smoking and the heavy coffee drinking, you know, and their potential risks.
I mean, I really think that for us, you know, as his guardian, we have to look at what the quality of his life is, too. And at some point, we have to -- we have to be willing to entertain the possibility that quality of life may even be more important than the quantity.
Q And you think that's your decision to make?
A Well, I think that in part it is, because Mr. Bigley is incapacitated. So let's say that, you know, we could keep him alive for seven years in an

institution or we could keep him alive for five years in the community. Then I think that, you know, our job is to be a surrogate decision-maker, right? And so, you know, we're supposed to focus first on what's called substituted judgment.
So thinking about what Mr. Bigley would have decided to do, would it have been more important for Mr. Bigley to live on his own and live in the community and take medication, or even if it requires him to take medication, but leaving that decision sort of off the -- the Bigley frame, or is it more important for him to live two extra years but be in the institution, I would say, hands down, this man is happier living in his own place and being in the community. There's no question about it to me.
It's so -- it's so far askew to being able to be on his own and have the freedoms that everyone else enjoys in the community. I would say it would have to be a real marked and very reliable piece of information that says he's going to die a long time before he would otherwise. I mean, it's --
Q But -- okay. What about if -- how would you feel if the drugs are causing accelerated dementia or dysmentia, or Dr. Jackson calls it chemical brain injury?

A Well, like -- like -- I mean, dementia is -- is like any other symptom, something to take into consideration.

And you know, I guess I would be looking for studies or more information around this particular etiology of dementia. It's one I'm unfamiliar with.

I'm familiar with age-related dementia. I'm familiar with dementia that's onset from substance abuse. I'm familiar with dementia that's secondary to head injury. These things are fairly common in guardianship cases.

I'm less familiar with dementia caused specifically by psychotropic medication, but would be willing to evaluate it, you know, from a layman's perspective, anyway.

But I -- you know, knowing Mr. Bigley, you know, still and knowing dementia still, the -- the ability to be stable in an environment, to be with consistent and regular patterns is generally a benefit to the person who's losing the ability to, you know, evaluate things and think clearly and apply the thinking in new circumstances, you know, such as a person with dementia.

Q But what if the drugs are causing increasing problems with that?

A I would -- I would want to know, you know, how reliable those studies are and what their predictions are.

And I would certainly, you know, be in favor of Mr. Bigley being fully evaluated. But again, I think that, you know, like every side effect related to medication, it should be taken into consideration against the need or the benefit for taking the medication. I mean --

Q But you've chosen not to read Dr. Jackson's affidavit on the subject, and to a lesser extent, Mr. --

A Well, remember, I'm not the one making decisions. The change is mid-'07. So I haven't exactly had the cause to do this directly.

Q Okay. Now, isn't it -- I'm going to go through a couple of things. Now, isn't it true that when you said he came in '06 -- September of '06 with not his normal psychiatric symptoms, wouldn't that be consistent with increased dementia or dysmentia caused by the drugs?

A No, it wasn't related to that at all. It was the mood issue. You know, it was his -- his mood lability. It was watching him go from being sad and teary to being angry, standing up angry, and --

Q But couldn't that -- couldn't that have been -- couldn't that be caused by increasing dementia or dysmentia?

A Well, my experience with dementia is people get confused and sometimes frustrated.

But, you know, you're asking the wrong person first of all, because I am not a clinical person. But generally speaking, I would say most of the persons I know who have dementia, they get confused and sometimes frustrated.

But they don't have that sort of mood issue going on. They don't have the -- you know, the teariness, the sadness. That is sort of a depression-related thing more than it is a dementia-related thing.

Q Since we're on that period of time, I'm going to show you Exhibit G. It's been admitted.

Is that -- is that an involuntary commitment petition signed and verified by William Worrall, MD?

A Yes.

Q Okay. It's a little bit hard to see. But in the -- on the second page, kind of starting in the -- where it's handwritten, the second line, does that say, not responding to Risperdal alone, refuses mood stabilizer medications?

A The way I read it, patient remains psychotic and pressured speech and irritable, very delusional, not responding to Risperdal alone. Refuses mood stabilizer medication. Refuses assisted-living placement due to impaired judgment for mental illness. Staff -- I can't read the rest. Maybe staff recording various delusional activities, paranoid conspiracies, is what it looks like.

Q Okay. So it does say, not responding to Risperdal alone, refuses mood stabilizer medication?

A Right. Alone. And I remember this, because this was -- this was, you know, when I was still working with him.

And I felt that the -- the mood issues were -- were causing problems for him in his interactions with other people. Like not so bad really that he might get tearful or -- or sad. That didn't seem to cause him horrible problems other than, I think, you know, he was unhappy.

But when he would become irritable, he was going to apartment staff and he was accosting them and they were getting ready to kick him out. And we felt like maybe if this issue could be addressed, then that would improve his ability to stay in the community.

Q Okay. So I'm going to show you the third

page of that. It's what you have there. Is that a forced-medication petition?
THE COURT: Would you just give me the date of the -- the petition we're talking about?
MR. GOTTSTEIN: It's Exhibit G.
THE COURT: Right. I just don't have --
THE WITNESS: October 4, 2006 is the signature date by Dr. Worrall.
BY MR. GOTTSTEIN:
Q Now, can you read -- well, does it say, down at the bottom, the patient has refused mood stabilizer or second antipsychotic?
A Yes.
Q And that's consistent -- that's consistent with Mr. Bigley having -- being -- agreeing to take the Risperdal Consta, but then refusing the addition of -- I think it was Depakote and Seroquel; is that correct? It's a mood stabilizer and antipsychotic?
A Yeah. I think Depakote was one of them and maybe it was Seroquel, yeah. I -- you're saying is this characteristic (indiscernible)?
Q No. I'm just saying is that -- is that your understanding of what happened?
MS. POHLAND: Objection, foundation. The witness was not present.

THE COURT: Overruled.
THE WITNESS: I just want to make sure I get this question right.
BY MR. GOTTSTEIN:
Q Well, let me ask a slightly different question, with your memory perhaps refreshed -- recollection refreshed.
Is it -- isn't it true that Mr. Bigley was voluntarily taking the Risperdal, but when Depakote and Seroquel was thought to be added, he refused to do that?
A It wasn't that simple of a transition. Mr. Bigley was in his own housing in approximately September, just maybe a month before this petition. He lost his apartment because he -- he yelled at the manager one too many times and he wouldn't back down, and so the manager evicted him.
Q Okay. So the Risperdal was no longer working, correct?
A No.
MS. POHLAND: Objection, foundation.
THE WITNESS: Yeah. Actually, I don't know what -- you know, I think I mentioned before that Mr. Bigley had days when he was really -- days that things didn't go very well. And I think this is one

of those times.
But in any case, he got kicked out of his apartment. And he went into the hospital a couple of times this fall, once in September. He had lost his apartment, so when he discharged, we thought, well, let's try to find him assisted living, and that'll give us some time to find him another apartment.
And we asked the hospital to also consider the mood issues, because we thought maybe that was partly what was causing his problem. You know, maybe -- maybe his psychiatric issues were as stable as they could be, but the mood, the irritability was what was causing him the biggest upset. And so if that could be helped in any way, you know, that would be good.
So -- but it was an oral medication, as I recall. And he didn't agree to take it. And so when he was discharged to the assisted-living home, he didn't agree to take it there, either. And so it didn't take long for him to get -- before he was asked to leave the assisted-living home because he was doing the same thing there. He was -- he was, you know, accosting the staff there.
And then he came back into the hospital. And I think he was -- that may have been about the time

that you met him, you know, within another month or so of this, December, so two months. It was two months of this.
BY MR. GOTTSTEIN:
Q So -- but again, the doctor, Dr. Worrall, said that he's not responding to Risperdal alone?
A Right.
Q So I -- isn't that a fair interpretation that the Risperdal was no longer working?
A I don't believe so. I mean, I think the Risperdal was doing its job. I mean, I think from a psychiatric --
THE COURT: (Indiscernible.)
THE WITNESS: When -- you know, what I was trying to say is that instead of being, you know, completely psychotic -- like for Bill, that's coming in and being very -- you know, he'd often come to our office and claimed to have caused all these events that he witnesses in the news or the weather events and things like that.
Well, the frequency of those and their intensity is greatly diminished, but he's still having mood issues. He comes -- he comes up to the office; he starts crying. And if you start to talk to him, then maybe within a few seconds, he's angry. And then

he's crying again, and all within a short period of time. That to me doesn't necessarily point to the fact that the Risperdal is not working, but that there are different issues.

And I had talked to Dr. Thompson about these earlier. Because they -- the mood -- the mood lability was there a long time before, too. It just didn't seem to be quite the issue. And maybe with the -- with the psychiatric issues more or less treated, there was a way to improve things still. So that was kind of (indiscernible).

BY MR. GOTTSTEIN:

Q So -- but then rephrase it a little bit. Isn't it fair to say then that the Risperdal alone was no longer sufficient to keep him in the community?

A That was my question, yeah. That was my question is, you know, if he's getting kicked out -- you know, and it had been a long time. But if the irritability got him kicked out and not some incident, like not some disagreement for which he would be rationally upset, you know, then if there's something else that could and should be done, you know.

And as his guardian, we wouldn't have wanted to overlook the possibility that maybe it's time to refine his treatment to see if it could be improved.

Q So if he was -- you testified I think that he was living relatively successful in the community from, what, about May of 2005 until --

A September.

Q -- September of 2006; is that correct?

A Uh-huh.

Q Just say --

A Yes.

Q And that at that point, the Risperdal Consta regime was no longer able to maintain that status; isn't that correct?

MS. POHLAND: Objection, asked and answered.

THE WITNESS: I still -- I don't agree with the opinion.

THE COURT: You want to get to the point? Are we -- is there something new coming? I mean, I'll let you (indiscernible), but (indiscernible) the question --

MR. GOTTSTEIN: Okay. I wasn't sure that he had answered that question. He said it was working.

THE COURT: You can ask him to clarify. But I understand his comments to be that yes, it appeared that Risperdal alone was not allowing him to live in the community and that there needed to be some fine-tuning of the medication (indiscernible) other

medication (indiscernible) substitutes, or in conjunction, that would have allowed (indiscernible). That is my understanding.

BY MR. GOTTSTEIN:

Q Okay. And then isn't it true that Mr. Bigley then balked at the addition of the mood stabilizer Depakote and neuroleptic Seroquel?

MS. POHLAND: Objection, foundation.

THE COURT: You may answer, if you know the answer.

THE WITNESS: Yes, he refused to take it.

BY MR. GOTTSTEIN:

Q Okay.

MS. POHLAND: Your Honor, if I may for a moment, I (indiscernible) a photographer from the Anchorage Daily News here.

API policy does not allow news (indiscernible), but I explained that we would have to inform the court and let you make a decision. We thought that we also need to get permission from the Department of Health and Social Services.

THE COURT: We are in courtroom right now (indiscernible) API (indiscernible). But that doesn't mean that this person -- this photographer can come in here.

I'll let the person come in, but photography is a different question altogether. So if the news reporter is out there now --

MS. POHLAND: The news reporter is not. It's (indiscernible) photographer.

THE COURT: If the photographer wants to follow the procedures about media -- I'm sorry, photographing, then he or she can make the application.

But is it your understanding that person is doing that, has made an application?

MS. POHLAND: I don't believe he did. He had a form that he'd like me to have (indiscernible).

THE COURT: The form -- the form should be submitted to me. So if that person has a form out there, if it could be brought in, I'll deal with it.

MS. POHLAND: He left.

UNIDENTIFIED SPEAKER: He left.

MS. POHLAND: I'm sorry to interrupt. I just (indiscernible).

BY MR. GOTTSTEIN:

Q Now, one of the things you testified to was that during this Risperdal Consta regime, that he -- didn't -- well, when Mr. Bigley would complain and say he didn't ever want to go back and take the Risperdal

and then go, didn't he know that if he didn't, he would be forced to take it?

A I don't believe so. I don't think -- I mean, he wouldn't have been. He was -- you know, those release -- early release provisions expire, just like any commitment. And so, you know, he would not -- I mean, he would have declined.

And in fact, I believe that happened. If you look at the history of hospitalizations, if he stopped taking the medication, we didn't do anything immediately. We -- we waited until we felt like he was at risk, that he was -- he was endangering himself. And even -- we reluctantly filed.

But we feel that as his guardian, our obligation is to protect his welfare. And so when he's at risk, if there's nobody else who is going to file, then there have been times when I have filed these Title 47 petitions for him.

And of course, that's just a petition for his evaluation, and then he would be evaluated by the hospital and -- and the hospital would take over from there.

But no, I think that actually did occur a couple of times throughout that 16-month period. But I think they were very short hospitalizations. They

were used to get him back on course, and they worked very well.

Q Now, did you testify that -- didn't you testify that some of the side effects -- the side effects he complained about were his feet hurting, he hurt in a bone where it was injected, and then he complained of stiffness?

A Yes. The first one, though, the foot complaint, turned out to be his not trimming his toenails for nine months or something. And I took him to a podiatrist and she did it, and that took care of the problem.

The -- the problem about complaining about his butt hurting when he gets the injections, it would just be the day of.

And the last complaint about stiffness, you know, I think that was a legitimate complaint, and one that I discussed with both Drs. Thompson and Worrall. And that was a -- something that they -- they said is a side effect of the medication.

Q Is that dystonia, to your understanding?

A I don't know what it's referred to formally (indiscernible).

Q Okay. Now, has he ever -- didn't he complain about erectile dysfunction?

A Not so much. I mean, he was sometimes focused on sexual dysfunction, but he didn't relate it to the medication.

It was -- I mean, he -- actually, the bigger complaint was that he -- he would always often come into the office saying he needed to get laid. And that's what -- the way he would refer to it. And you know, that's -- that was more the complaint than, you know, sexual dysfunction.

Q Did he ever complain of what would be described as sedation symptoms?

A No. In fact, Mr. Bigley has sort of the opposite problem, as far as I could tell. He kind of gets jacked up on caffeine because he drinks coffee from morning until night, and then he doesn't sleep. So his complaint would be that he doesn't sleep at night.

And then -- and then sometimes he would get to the point where he claimed he didn't need to sleep. And you know, he would relate it to being God and that, you know, he's different -- different than everybody.

Q When he would come in and -- to your office and be, let's say, good, and then become angry during the course of, you know, your interaction, wasn't he

asking for something generally?

A Oh, I don't know. Sometimes, yeah. Sometimes not.

You know, I mean, there are times when he would come in and ask for something we couldn't give him, like, you know, he would -- he would ask for more money. Maybe we gave him his $50 yesterday, and so he's back a day later and he wants another $50.

But you know, we would have created a budget for him and, you know, we were paying for his rent and everything else. And so -- and buying his groceries. And he is on a budget because he has a fixed income. And so we couldn't just give him another $50. We'd tell him he had to wait. And sometimes that would cause him to be angry and upset.

And we used to tell him to take a break. Go out and have a cigarette. That sometimes helped. Sometimes he'd wander off and not come back for a few hours.

Sometimes he'd refuse to leave, and then we'd have to go through a series of, you know, reminders for him, and eventually, you know, even call the police if necessary. We've had to do that a number of times.

Q Isn't his budget such that his rent only

leaves him about $10 a day spending money?
MS. POHLAND: Objection, relevance.
THE COURT: Where are we going? What's the relevance?
MR. GOTTSTEIN: It's one of the things he gets angry about is not having enough spending money, and also less-intrusive alternative, to get him more spending money.
THE COURT: I will allow it.
THE WITNESS: I don't remember exactly. I know that, you know, Mr. Bigley has approximately one -- let's see. What is it? Well, I can't remember exactly. He has a certain amount of money that is actually at the Medicaid needs standard. Mr. Bigley is a Medicaid recipient.
His Social Security flows into an irrevocable income trust to qualify him for Medicaid. Some money is -- resides in that trust, and then the amount that -- the most amount that he can get, that Medicaid allows, is transferred to a regular working account from which his rent gets paid, like a daily allowance or a weekly allowance would get paid, his groceries, his electric bill.
And then we'd use his income trust to buy cigarettes and pay vendors. And so we were trying to

maximize his -- his availability of income, if you will by, you know, creative use of the trust and the Medicaid needs standard that he is allowed to get. And we pretty much had him maxed out.
You know, he's -- you know, he could spend -- he could spend lots of money if he had it, lots more than I can spend in my life. And it's usually on really -- you know, it's on -- it's on trinkets and things that really don't serve his needs. In other words -- and I know this because I spend a lot of time with him.
He decorated his walls, he decorated the refrigerator, he decorated the lamps, and everything that could be decorated in his house with these sorts of things, like little ceramic animals with clock faces, and buttons from stores, and hats, and things that he would just tack up to the wall, literally.
And he could -- and he would spend exorbitant amounts of money on these things. I mean, when he would come into the office, he would be ecstatic about something he bought, and it would turn out to be some -- some really useless trinket.
I mean, he might be really enamored by it, but it didn't help him buy food, it didn't buy cigarettes, it didn't buy coffee, it didn't do any of

the things that he needed to do. It was money lost.
And so frankly, I thought often he was really taken advantage of. I mean, he would spend more money than anyone I know would have on the same item.
BY MR. GOTTSTEIN:
Q But isn't it true that after -- under this arrangement, that after rent and after his food budget, whatever else is kind of budgeted for that, his spending money is about $10 a day?
A I don't know what it is per day. I think it was about $50 a week when I was working with him. I don't know if it went up or down. It would go up and down depending upon his rent. That would take the biggest chunk of his income.
And so keeping him in a stable apartment, and especially, you know, if you could have the goal of getting him into some kind of subsidized apartment, that would be the best of all worlds for him.
Q And in fact, isn't that one of the goals of the settlement agreement in the guardianship?
MS. POHLAND: Objection, relevance. There is no -- oh, I'm sorry. I thought you (indiscernible).
THE WITNESS: It's been so long since I've read that, Mr. Gottstein, I don't remember. But I

think it's a reasonable goal. I think, you know, getting him into subsidized housing would be an excellent goal.
The -- one of the requirements is an absence of evictions, though, and that's where he runs into trouble. He has to have a stable rent history, or we'd have to get him into a subsidized-living arrangement, where there is a combination of services, you know, through a mental health agency.
BY MR. GOTTSTEIN:
Q But of course, the Division of Behavior Health could just subsidize that housing directly, couldn't it?
MS. POHLAND: Objection, foundation.
THE WITNESS: I don't know what the department can do.
THE COURT: Over -- that's overruled. If you don't know, you don't know.
THE WITNESS: I don't know what the department can do.
I know what's available to normal Medicaid recipients and persons experiencing mental illness in the community. I am very familiar with a variety of mental health housing that is available in Alaska. And I --

BY MR. GOTTSTEIN:
Q And none of that's really available right now to him; is that correct?
A I don't know of it's available to him.
Q But if -- if the division or any other source was found, such as perhaps a trust authority, to pay for housing that would remain available to him, don't you think that would be helpful?
A Yes. Housing would be helpful, especially housing he couldn't lose, if there is such a thing.
Q Do you think it would be helpful for him to find -- to have housing where he's not really going to bother the neighbors?
A I suppose that would be good. I mean, he does bother neighbors. He is terribly intrusive to other tenants in an apartment complex.
MS. POHLAND: (Indiscernible), the State will stipulate that it would be helpful if Mr. Bigley could have some theoretical housing where it would be subsidized, he wouldn't be evicted, and he wouldn't bother neighbors. The State will stipulate to that. But it will be helpful, if such housing ever existed.
MR. GOTTSTEIN: Okay. Good.
BY MR. GOTTSTEIN:
Q Now, wouldn't it -- you talked about his --

wouldn't it be helpful if he had someone that he established a relationship with?
MS. POHLAND: Objection, asked and answered.
THE COURT: Sustained.
MR. GOTTSTEIN: I haven't -- I was going to ask a different question about the spending money.
THE COURT: Ask your question.
BY MR. GOTTSTEIN:
Q Do you -- wouldn't it be helpful, with respect to his -- I guess you would call it improvident spending, if he had someone with him to help him spend his spending money?
A I don't -- I don't think so. I mean, I think -- I think that's part of what he likes, actually, I mean, is the freedom to have availability of his resources.
And I mean, those -- those are the things that we didn't really limit because they are also the things that he got some of the most amount of enjoyment out of, even though we couldn't really see the benefit of, you know, the practical benefit. His happiness, that is a practical issue, I suppose. And having access to his money made him happy.
But there is a limit to it. And I don't think that he would have benefited from having

somebody stand beside him when he went store to store to figure out what -- what caught his attention for the day.
Q How does he get his clothes?
A Actually, mostly his mom, Rosalie (phonetic), goes to, like, Value Village and places and then drops them by his apartment.
And then I think -- I think you've assisted him with some clothing from time to time since December of '06. But throughout the course of our working with him, it's been his mother.
And I -- and I've taken him shopping. You know, I've taken him to Wal-Mart and other places to get clothes, too.
Q Mr. Bigley is -- is an Alaska Native, isn't he?
A Correct.
Q And as an Alaska Native, doesn't he have free medical services?
A He does.
Q So --
A He does, and he -- I mean, even the Native Medical Center is a direct Medicaid biller. I mean, the reality is it's really difficult to get free services. But as an Alaska Native, he is eligible for

Indian Health Services.
Q So he doesn't need Medicaid for --
A No, that's not true. He needs -- he absolutely does need Medicaid.
Q For health services?
A Yes. He needs Medicaid for medications. He needs -- he needs Medicaid for mental health services.
Q If he -- if someone -- if a Native doesn't have Medicaid -- the Native doesn't have Medicaid, don't they get medication through --
MS. POHLAND: Objection, relevance.
BY MR. GOTTSTEIN:
Q Can that (indiscernible)?
A They -- they can if they're willing. If they're -- if they're willing to go to ANMC and to use the ANMC pharmacy and to use the medications that are in the ANMC list of meds that they use, then yeah.
And we tried that with Mr. Bigley, actually. You know, when -- when he came out of the hospital in May of '05, we figured that he had that option, and we actually took him to ANMC. And we got as far as the second floor, and we got into this office before he turned around and ran out.
But he -- he actually -- my concern with him is, one, he doesn't really consider himself to be

Alaska Native, even though I think he (indiscernible). He often refers to his skin color and things as being, like, white as snow, and all. And he -- he often is derogatory towards Alaska Natives. And so he didn't want anything to do with ANMC. And so we just sort of let that go.

I think that was actually part of the -- the decision that was instrumental in going toward Medicaid.

Q Now, isn't it true that in February of 2007, on early release, he was ordered to return because his blood level of Depakote showed he wasn't taking the Depakote?

MS. POHLAND: Objection, relevance.

THE WITNESS: I don't have any recollection, anyway.

MR. GOTTSTEIN: I have no further questions.

THE COURT: Do you have redirect?

MS. DERRY: No, Your Honor.

THE COURT: All right. Thank you. You may be excused.

(Witness excused.)

THE COURT: We'll take a break. Who is next?

MS. DERRY: Adam Rutherford from the Department of Corrections, Your Honor.

THE COURT: (Indiscernible) how long that person will be, do you think, in direct?

MS. DERRY: Half hour.

THE COURT: And then after that?

MS. DERRY: I (indiscernible), Your Honor.

THE COURT: We'll recess, oh, I don't know, 25 till.

Let's do one other thing. Explain to me what this photographer -- what happened, if you know, regarding the photographer coming up and being let back here or not.

MS. POHLAND: I don't know that -- oh, Mr. Adler called me out to the lobby because the photographer was out there.

And Mr. Adler explained that he can't have (indiscernible). And I helped him explain that if he asked the court, you would allow the reporter in. The reporter wasn't (indiscernible), and the photography was a different matter.

THE COURT: So to your knowledge, has this reporter asked to come back here and was denied that?

MS. POHLAND: No, we didn't deny him.

THE COURT: Do you know if --

MS. POHLAND: He said that he was going to call his boss.

THE COURT: Do you know if the reporter asked to have access to this proceeding?

MS. POHLAND: I do not know that.

THE COURT: And you think Mr. Adler is the one who dealt with this?

MS. POHLAND: He and I both went out and talked to him.

THE COURT: I'd like to hear from Adler about what happened.

MS. POHLAND: Okay. (Indiscernible.)

10:25:56

(Off record.)

10:38:04

THE CLERK: Back on record.

MS. DERRY: I think she said back on record. Is that the volume button?

UNIDENTIFIED SPEAKER: Are we back on record now?

THE CLERK: Yes.

THE COURT: All right. Let's -- Mr. Adler -- is it doctor or Mr. Adler?

THE WITNESS: Ron Adler, mister.

THE COURT: If you would stand and raise your right hand, I want to (indiscernible).

(Oath administered.)

THE WITNESS: I do.

THE COURT: You may be seated, please.

Would you state your name and spell both your first and last name, please.

THE WITNESS: Ronald, R-O-N-A-L-D, Adler, A-D-L-E-R.

THE COURT: Mr. Adler, the reason I am calling you as a witness is Ms. Pohland has described to me that there was a photographer out in the lobby who wanted access of some sort, and given the controversy about having hearings here in the facility, whether or not that constitutes an open courtroom.

I want to find out what took place. Could you tell me your -- and maybe you're not the person to tell me this, but if there's someone else, let me know.

Can you tell us what happened when the reporter or photographer showed up and what that person requested?

THE WITNESS: Your Honor, the -- the photographer requested to come in and be present at the hearing.

As a general rule, Your Honor, we do not allow people to come inside the hospital and take

photographs or make videos of any of our patient areas. That's been a long-standing policy at API. And I've -- I've requested to get the telephone number of the HIPAA compliance officer within the Department of Law to see if we could make a reasonable accommodation. I would expect that I'll have an answer within an hour or two.

THE COURT: Did this photographer request to come back into the courtroom?

THE WITNESS: Yes.

THE COURT: And who -- who declined that request?

THE WITNESS: I did.

THE COURT: (Indiscernible) follow-up question?

RONALD ADLER

testified as follows on:

CROSS EXAMINATION

BY MS. POHLAND:

Q Mr. Adler, is it true that you informed the photographer that --

MR. GOTTSTEIN: Objection, leading.

THE COURT: Overruled. This is cross.

BY MS. POHLAND:

Q -- that you informed the photographer that he

would have to check with our HIPAA compliance attorney and then we would inform the court and request that --

A Yes.

MS. POHLAND: No further questions.

THE COURT: Do you have any questions?

MR. GOTTSTEIN: Your Honor, I had him on my witness list. Can I just go ahead and ask just a couple of questions now while he's --

THE COURT: (Indiscernible) ask him any questions on this particular topic.

MR. GOTTSTEIN: I have no questions on this topic.

THE COURT: Any objection to Mr. Gottstein calling Mr. Adler out of order since he's here?

MS. DERRY: I -- Your Honor, I would like to finish my case in chief with Mr. Adler.

THE COURT: All right. We'll do it in the appropriate order.

Thanks, Mr. Adler.

THE WITNESS: May I be excused?

THE COURT: Yes, you may.

(Witness excused.)

THE COURT: In the future, the next time a reporter, member of the press, a photographer, a member of the public seeks access to the courtroom,

that person is to be allowed access.

I find it astonishing that API doesn't get it. I find it -- I found it astonishing last time when the Department of Law precluded a reporter from coming into an open courtroom. I am astonished that it's happened again.

I am not criticizing the two assistant attorney generals on this. I don't understand that you two have been involved.

But API and the Department of Law have got to understand that if they are going to be allowed to have a facility within API, we deem it an open and public courtroom, that means that neither the Department of Law nor API can unilaterally deny a member of the public, including a member of the media, into the courtroom facility.

I don't have any difficulty with API saying while you travel from the lobby into the courtroom, you cannot -- the greater API rules apply. That's perfectly reasonable.

But the use of photographs in what is effectively use of photographs or other media with (indiscernible) public courtroom is governed by court system rules, not API rules.

Call your next witness.

MS. DERRY: Thank you, Your Honor.

The state calls Adam Rutherford.

THE COURT: Oh, I'm sorry. I was waiting for somebody to appear, and I didn't --

Would you please stand and raise your right hand.

THE WITNESS: Yes, sir.

(Oath administered.)

THE WITNESS: I do, sir.

THE COURT: You may be seated. And if you would state and spell your full name, please.

THE WITNESS: It's Adam Rutherford, A-D-A-M, Rutherford, R-U-T-H-E-R-F-O-R-D.

THE COURT: You may be seated.

ADAM RUTHERFORD

called as a witness on behalf of the State, testified as follows on:

DIRECT EXAMINATION

BY MS. DERRY:

Q Mr. Rutherford, where do you work?

A I work for the Department of Corrections. I am a mental health clinician 2 in an acute treatment unit actually for the Department of Corrections.

Q And what does that mean?

A We treat severely and persistently mentally

ill folks that aren't -- that are impaired and aren't able to function in our general population. Very similar to API within the Department of Corrections.

Q And people would go to jail and then you'd see them there?

A Yes, ma'am. Yes, ma'am.

Q Do you actually work for the jail?

A I actually work for the Department of Corrections.

Q And so you don't see inmates or patients unless they go to the Department of Corrections?

A Correct.

Q So they had some kind of contact with the police or been arrested?

A Yes, ma'am.

Q Usually arrested?

A Always arrested. Always arrested.

Q Have you ever had contact with Mr. Bigley at the Department of Corrections?

A Yes, ma'am. Actually, probably more contact with Mr. Bigley than many of the individuals that we actually deal with (indiscernible) institution.

Q And under what circumstances do you have contact with Mr. Bigley?

A Generally when Mr. Bigley is arrested, he

doesn't go into our open population. He comes directly to our mental health unit.

So over the past year, I've had contact with him -- I think he's been arrested approximately 12 times. So each one of those admissions, I have actually been working with Mr. Bigley as his primary mental health clinician.

Q And I'm sorry, you said that he's been -- what was the -- what did you just say about 12 times?

A Within the -- since the beginning of this year, actually since 2008, Mr. Bigley has been arrested on 12 separate occasions and admitted to our unit on 12 separate occasions.

Q And when you say this year, you mean 2008?

A Yes, ma'am. Yes, ma'am. Starting from January 2008.

Q And do you know the circumstances of his arrest?

A Generally speaking, they're usually trespass charges that Mr. Bigley is brought in on. I don't know exact details, but every one of them (indiscernible).

Q And you said that Mr. Bigley goes directly into your unit?

A Yes, ma'am.

Q And I'm sorry, what is your unit called?

A It's called -- Mike Mod actually is what it's called.

Q And what does that -- does Mike stand for something?

A You know, it's actually just a military term to describe M mod, so it's just Mike Mod. And that's just the name that's kind of stuck with it. But it is designated as a mental health treatment unit.

Q Okay. And Mike, meaning the phonetic letter, mike, of the alphabet?

A Yes.

Q So it would be like Mike Mod?

A Yes, ma'am.

Q And you say that usually Mr. Bigley arrives after having trespassed?

A Yes, ma'am.

Q And goes directly back into your unit?

A Yes, ma'am. He is booked in on our east side, and then once he is booked in, he directly comes to us, yes, ma'am.

Q And what happens once he comes to you?

A Generally speaking, he is placed in a cell for observation, just so we can just assess what his mental status -- his current mental status is. We do

a general medical review on intake and a general mental status exam, as well.

Q And how does he generally present to you?

A You know, it really varies. It depends on the length of time since he's been incarcerated or received medication. So generally speaking, he comes in very agitated.

MR. GOTTSTEIN: Objection --

THE WITNESS: Very irritated.

MR. GOTTSTEIN: -- hearsay.

THE COURT: I take it you're the -- are you the evaluator?

THE WITNESS: Yes, sir. Yes, sir.

THE COURT: Overruled.

THE WITNESS: Very irate at times, threatening folks, very delusional, very, very poor condition for the most part, as far as his mental status is.

BY MS. DERRY:

Q And you said that his mental and physical status depends on whether or not he's been in jail prior or how long he's been out of jail. What did you mean by that?

A Generally speaking, Mr. Bigley takes medications when he's incarcerated, and his mental

status improves. The longer that we see him that he's been out of jail, the more decompensated his mental status is upon returning to jail.

Q And why does he take medications when he's in jail?

A We have a process that we go through in reviewing folks and looking at need for medications.

And when we look at that need for medications, we assess individuals' risks for harming themselves, harming others, or whether or not they're gravely disabled.

And generally speaking, I looked back, and the last 12 times that Mr. Bigley's been incarcerated, ten of those times he's met criteria for emergency medications, and three of those times, he's actually met criteria for what we call involuntary medications.

Q What's the difference between emergency and involuntary?

A Emergency medications is a three-day window that we have that's initiated prior to the involuntary medication hearing process that occurs. So that -- at that point, if Mr. -- for example Mr. Bigley may be doing something that is perceived harmful to himself or harmful to others, or if in general he is not -- he (indiscernible) gravely disabled, the Department of

Corrections has a policy that states that medications can be administered three days -- three working days prior to an actual hearing for involuntary medications.

Q Okay. And when he -- when he comes to jail, he goes to a cell by himself?

A Yes, ma'am. Mr. Bigley can't be out in our general population, unfortunately. He -- his general demeanor, his general -- his mental status basically, he's threatening folks, he's spitting at folks, he's throwing food.

In general, when he comes into our institution, very delusional, doesn't believe that he belongs in jail, thinking that people are trying to harm him and hurt him there in jail.

So we do have to exclude him from our open population folks, even within our mental health unit, because of the risk of just harm for Mr. Bigley or possibly harm to someone else.

On a couple different occasions, Mr. Bigley has attempted to spit at other -- at staff members and spit at other inmates. And just for Mr. Bigley's safety mainly, we seclude him in a cell just for -- to make sure that he's safe and that our other population is safe, as well.

Q And is it difficult for the staff to deal with Mr. Bigley?

A When Mr. Bigley comes in, he is very, very irate, very agitated. Because part of his delusional beliefs is that he is a secret agent and that he can show his picture at any time and be released from any correctional facility or any type of facility that he is detained at. He is extremely agitated. He doesn't want to have anything to do with us whatsoever, making threats, even to kill and harm the staff that are actually trying to help him there. So he is difficult initially to engage, yes, ma'am.

Q And did the staff ever have to take any advanced measures in order to contain Mr. Bigley?

A Unfortunately. Within our system, of course, we always use the least-restrictive means. But at times, Mr. Bigley is so out of control, he's hitting, kicking windows, to the point that he's not able to redirect, and unfortunately does have to be restrained within our institution, yes, ma'am.

Q And when you say "restrained," does that mean handcuffed or does that mean put in a cell?

A You know, a variety of different things. When he's pounding and hitting and isn't responding to staff requests or officer requests, unfortunately,

that means he is going to be restrained to the wall and -- in an ankle restraint actually to keep him away from the glass itself and to keep him away from things that he can hit and bang on, yes, ma'am.

Q And you have observed Mr. Bigley when he's been restrained by an ankle restraint?

A Yes, ma'am, unfortunately so.

Q Will you please describe it to me, what happens to him and what he looks like?

A You know, it's really a -- it's not really a clinical term, but really just a pitiful situation to see this frail gentleman that is basically skeletal that's in there pulling on the restraint saying that he doesn't deserve to be there, he doesn't belong there to begin with.

And in his delusional beliefs, he truly doesn't believe he should be incarcerated whatsoever, yelling, screaming, cursing, begging and pleading at the same time to be released and taken out, but not able to control himself at all. So it's really a -- truly a sad situation to observe.

Q When he's restrained, what happens to his mental status?

A Well, any time there's actions taken or something that is agitating to him, the delusional

content just increases and ramps up that much more. And it ranges from everything from knowing President Bush and President Bush is going to have all of our jobs and have us fired, to knowing Lisa Murkowski and having us fired, and Sarah Palin and having us fired, and to the point that he -- you know, he says all kinds of things that are threatening to staff, threatening to his peers. That once he gets off, he'll kill us all, he'll cut our heads off, all kinds of gruesome, vicious things -- statements that he makes when he gets agitated.

Q And what you observe and the actions that you have taken against -- well, toward Mr. Bigley, those are appropriate actions as per your policy for the Department of Corrections?

A Yes, ma'am.

Q And you personally don't operate outside of your policies?

A No, ma'am. No, ma'am.

Q And you say that you know that in the last year, that Mr. Bigley has had at least 12 contacts with you at the Department of Corrections. But do you know of Mr. Bigley prior to this last year, 2008?

A You know, no, ma'am. Just hearsay from working in the community down there. I never had an

opportunity to work with Mr. Bigley.

Q And in this last year, since January to the present, what would you say Mr. -- how would you say Mr. Bigley's mental status has changed?

A You know, it just appears that every time Mr. Bigley comes in, he is decompensating. He'll get stabilized on the medications and then is released out into the community, and he just keeps deteriorating.

I guess something that really, really stuck out to me was maybe the time before last, Mr. Bigley came in pulling his shirt up and rubbing his belly because he is so hungry. And you see this skeletal frame standing there. Yet he thinks the food is poison and is throwing it against the wall.

Whereas my first -- I guess back in September, you know, Mr. Bigley would come in and he would be extremely hungry but he would eat. He would do basic things to try to take care of himself.

The last admissions, he is just so agitated, irritated, and irate, that he's not aware of even what's going on. He thinks that we are trying to harm him, poison, kill him. Just a sad, sad state.

And you know, based on what our nursing staff say, he presents in a malnourished state and just really a frail, frail person. And it seems like the

delusional content, it just keeps expanding and -- to include different individuals each time he comes in, and different conspiracies, thinking that he's Al Pacino, thinking that he's a movie star, thinking that he's killed hundreds and hundreds of people.

Those are things that Mr. Bigley, when I first had contact with him, didn't talk about. He didn't talk about killing people or -- or the number of people that he had killed. But that is something that has just recently, within the past probably three or four admissions, that's really stuck out is that he talks more and more about gruesome acts that he's committed, things that he's done.

Talks about splitting people's heads open and seeing their brains, and just gruesome acts that prior to that, I haven't heard Mr. Bigley talk about before, which is really sad.

Q In your opinion, and in your clinical opinion, what are -- what alternatives are available to Mr. Bigley at this time?

A What I would love to see is I would love to see Mr. Bigley taking his medications. Because when Mr. Bigley takes his medications, there is a drastic change in his mood. He is a lot calmer. He is able to rest. He's able to -- he doesn't appear as

tormented as when he's not on medications. So I would love to see him medication compliant, with some supported case management services in the community.

You know, again, my primary focus - I have worked as a clinician in the community - is to have someone live least restrictive. So I would love to see him in his own apartment with intensive case management checking on him, him taking meds, and having that opportunity, rather than spending the amount of time that he's spending within the jails and the institutions.

So -- but I don't know. You know, it's really scary. The longer -- it appears the longer Mr. Bigley goes without medication, the more his mental status decompensates.

And we are all trained as mental health clinicians that the further you get away from that baseline, the less likely you are to return to that baseline. So I really worry about Mr. Bigley and him -- what his opportunities will be.

I think probably more realistic situation for Mr. Bigley would be assisted living or a long-term residential facility that would care for Mr. Bigley at this point until his mental status shows otherwise, that he is able to function on his own.

Q Do you think that life without -- without medication is possible for Mr. Bigley?
A You know, it's possible. But it's not -- I guess you only look at the quality of life that Mr. Bigley will live.
You know, I see Mr. Bigley when he comes into our institution, tormented thought, delusional content, ranting, raving, can't sleep because of the racing thoughts that are going through his mind.
And then I see him get on medication, and I see the man able to rest, I see the man able to eat meals and not be afraid that we're poisoning him.
So you know, it's possible, but the quality of life that he lives, I don't think any of us would want to see anyone, any family member or anybody, live that quality of life where you're -- you feel like everyone's out to get you, out to harm you.
And you know, we don't have a crystal ball, but just given the -- Mr. Bigley's mental status when he comes into our institution, we all know that Anchorage is becoming a more and more dangerous place to be. And if he were to make some of those delusional statements or threaten someone or spit at someone in the community, we never know what might happen with him. I mean, it's just kind of sad to

say.
And unfortunately, Mr. Bigley does live a big portion of his life out on the -- out on the streets, and could potentially be harmful for him.
And I worry even about his judgment on -- you know, it's getting colder, you know, and he's frail and skinny. There's not much muscle mass there. There's not much body mass there. You know, is he going to be able to keep himself warm, or is it going to be that we pick up the newspaper and see that he -- read in the obituaries and see that he's frozen to death.
Because you know, when Mr. Bigley's not on medications, his judgment and insight is just not there. He doesn't make really rational, good decisions. And so I do worry about what's going to happen to Mr. Bigley if he doesn't get the care that he needs and deserves.
Q And my last question is, could you describe, from the day that Mr. Bigley comes in to the Department of Corrections, gets medicated, and leaves, how his personality changes through that treatment?
A Sure, sure. It really varies. When we talk about Mr. Bigley, because of his mental status, often is in and out of our system in a very quick period of

time.
The longest that we've had Mr. Bigley is 22 days, and that was probably the best that I've ever seen Mr. Bigley do. He was willing to take his medications orally. We were actually starting to bring him out into the milieu.
He would sit down and have a decent conversation. He was able to sleep and eat. He was able to take care of his personal hygiene. You know, much, much more improved. You know, it's -- it's just amazing. His mood is much more even keel. He's not threatening people. He's, you know, actually a pleasant person to engage. He'll sit down on the couch and have a cup of juice or water with you and talk about his mother. He'll talk about Anchorage. He'll talk about a more -- appears like things that he actually enjoys to do, like having a cup of coffee and smoking a cigarette and looking forward to those things.
Whereas when he's off of those medications, it's almost a delusional ranting and rave that you hear from Mr. Bigley. Please hear me. Even on medications, there is delusional content, but it's not as apparent as when he's off medication.
MS. DERRY: And I do have one follow-up

question after what he just said?
BY MS. DERRY:
Q You said that in that 22 days, he took oral medication?
A He did, yes, ma'am.
Q And did you -- how did he take them? I mean, you just put them in his hand and he'd --
A Put them in his hand and he would take them, yes, ma'am.
Q And when was that?
A Oh, you know, I'm sorry, I don't know. It's probably been -- right off the top of my head, I'm sorry, I don't know.
Q But it was this calendar --
A It was this calendar year, yes, ma'am.
MS. DERRY: Okay. Thank you, Mr. Rutherford.
THE WITNESS: You're welcome.
THE COURT: Cross?

ADAM RUTHERFORD

testified as follows on:

CROSS EXAMINATION

BY MR. GOTTSTEIN:
Q Now, Mr. Rutherford, have you observed Mr. Bigley today during the hearing?
A Not as far as his mental status.

Q Right. But you've observed him here, right?
How would you describe his demeanor now, in terms of what you would expect being on meds or not?
A You know, I'd really have to sit down and talk with him before I would be able to give you a description of his demeanor.
I know that based on observations, that he's had to have been redirected a couple of different times, but he isn't as agitated as he generally presents when he comes in to jail, you're correct, sir.
Q So -- so you wouldn't describe him right now as being all rant and rave?
A No, sir. But at the same time, I'm observing mumbling under his breath. And clearly there's some -- some thoughts that are going there through his head. I'm not really exactly -- without sitting down and interviewing him, I couldn't really tell you what his mental status is at this point.
Q Now, didn't you testify that Mike Mod is kind of like API in Corrections?
MS. POHLAND: Objection, mischaracterization of the witness testimony.
THE COURT: Go ahead. You can answer the question.

THE WITNESS: It is an acute treatment facility, yes, sir.
Of course, within the Department of Corrections, there are a lot more restrictions because we are dealing with folks that are convicted of crimes, yes, sir.
BY MR. GOTTSTEIN:
Q So would the cost for care in Mike Mod -- if you know, would it be about the same as API?
A I don't --
MS. POHLAND: Objection, relevance and foundation.
THE WITNESS: I don't know.
THE COURT: If you don't know, you don't know.
BY MR. GOTTSTEIN:
Q Now, you talked about -- for emergency meds, is it correct that he's given emergency meds when he's considered a danger to himself or others?
A That is correct.
Q Okay. Now, what level of danger? Is there some criteria?
A Yes, sir. When we're looking at that, and we're looking at ultimately imminent danger of harming himself or harming others.

For example, even the spitting behaviors, that is considered an assaultive behavior, and at that point could be riskful or harmful to someone else or even harmful to Mr. Bigley if he were to spit at another inmate.
The beating and banging, as frail as Mr. Bigley is, and just unwilling to redirect or unable to redirect and control himself at that point could cause some serious harm to himself.
So we're looking at if we don't intervene at that point, that something is going to imminently happen with Mr. Bigley.
Q Would you say that the amount of harm needs to be life threatening?
A Well, when we're looking at -- not necessarily. When we're looking at harm to self, we're looking at anything that could -- could potentially be life threatening, yes, sir.
But at the same time, we're also looking at, you know, Mr. Bigley's overall welfare and well-being.
Q If -- but if -- if you felt his behavior was life threatening, you would give him emergency medications; is that correct?
A Oh, without a doubt, yes, sir.
Q Okay. And if you would, would you give him

emergency medication if you -- if it was determined or felt that there was risk of serious injury to someone else or --
MS. POHLAND: Objection, asked and answered.
THE COURT: Overruled. (Indiscernible.)
THE WITNESS: I'm sorry; could you repeat it, sir? I'm sorry.
BY MR. GOTTSTEIN:
Q Would you -- would you -- and I'm talking about, you know, the procedures there -- give him emergency medication if you felt -- if you felt his behavior was -- would cause serious injury to himself or others?
A Sure. That's -- that is the process, yes, sir.
Q Okay. And then can you tell me what -- what sorts -- so you consider spitting in that category?
A I think along with other behaviors that were observed, as well. I mean, at the time, he's threatening to cut people's heads off and also cut them apart and look inside their brains.
So it's really in context with the delusional content, as well, and to the point that he's appearing very hostile, very aggressive, yes, sir.
Q Okay. Now, you talked about a hearing.

That's not an actual court hearing, is it?
A It's actually a hearing that happens within the Department of Corrections itself, so no, sir.
Q Okay. Now, isn't it true that at least a couple of times this year, Mr. Bigley hasn't been given drugs while in Corrections?
A There was two times, yes, sir. And that was because he was in and out so quickly. The court system released him so quickly that those procedures weren't initiated.
MR. GOTTSTEIN: I have no further questions.
THE COURT: Redirect?
MS. DERRY: Yes, quickly, Your Honor.

ADAM RUTHERFORD

testified as follows on:

REDIRECT EXAMINATION

BY MS. DERRY:

Q Mr. Rutherford, does Mr. Bigley tend to have a better mental status after he's been locked up for a while?
A You know, that's really a difficult question. Because any time you take someone that's truly mentally ill and they're incarcerated, I don't think it's healthy for them to spend a long time incarcerated.

But for Mr. Bigley, when he gets on medication, yes, ma'am, his mental status does improve, his mood improves, his ability to take care of himself improves, his thought processes appear to improve, and the fact that he's able to have a somewhat logical conversation. He's eating and caring for himself. Those are things that -- that we have observed, you know, in the timeframes that when he has -- has spent extended periods of time.
But again, you know, any time you take someone that's truly mentally ill and incarcerate them, especially -- and this is my personal opinion -- on trespass charges, it's not healthy for that person. It's really a very, very sad, sad situation that the Department of Corrections has become the mental health provider for someone suffering from a mental illness like Mr. Bigley.
Q And do you think it's appropriate to keep Mr. Bigley locked up in API or the Department of Corrections in order to avoid medications?
A I don't think it's fair to Mr. Bigley. I think that Mr. Bigley deserves and has a right to have as best quality of life as Mr. Bigley can have.
So to keep him locked away because he's not taking medications is not fair to Mr. Bigley,

especially when we've seen that medications do help Mr. Bigley.
Q In your opinion, do you feel that without medications, Mr. Bigley can stay out of jail?
A No, ma'am. I think it's obvious. You look -- I had a chance to look back through the records. Up until 2007, Mr. Bigley, one or two times he was involved with incarceration. And this year, he's had 12 incidents.
So it's not likely, if Mr. Bigley doesn't receive medications and doesn't stay on medications, that he's going to stay out of jail, and it's really sad.
Q Do you think that there's a light bulb that can go off in Mr. Bigley's head that says, oh, I'm coming to jail because I'm trespassing, and that he can stop?
A No, no. He's -- you know, when he comes in, his mental status, he is not aware. He thinks -- for example, he gets arrested for trespassing.
THE WITNESS: Actually, I think, Mr. Gottstein, he's been arrested from your office.
He thinks he's truly going there to see his attorney and actually have visits with him, and he truly trusts that attorney and believes that he can go

to that office at any time and see them.
He's also been arrested for going to the governor's office and trespassing there, because he believes that the governor is holding his jet and the governor has a million dollars. So with -- you know, those -- delusional content is lessened with medications.
So long as he's not on medications, no, ma'am, I think we're going to see him constantly recycling back through our -- the Department of Corrections, which is really unfortunate for Mr. Bigley.

BY MS. DERRY:

Q And you said that you believe that incarcerating Mr. Bigley is actually detrimental to his mental health?
A When you look long term. I mean, it's not an environment that is very friendly. It's not a -- it's not the same atmosphere that you would have in the state hospital. There's a lot more stringent rules.
And someone with Mr. Bigley's mental status doesn't always get those rules, and unfortunately ends up negative for him. So I think there's a lot more stress and I think a lot more agitation when Mr. Bigley is incarcerated versus even today what he's

presenting not being incarcerated.
MR. GOTTSTEIN: Your Honor, I'll stipulate that it'd be better for him not to be there.
MS. DERRY: (Indiscernible.)
MR. GOTTSTEIN: All right.
MS. DERRY: And I'm done questioning, Your Honor. Thank you.
THE COURT: Recross?

ADAM RUTHERFORD

testified as follows on:

RECROSS EXAMINATION

BY MR. GOTTSTEIN:

Q Don't you think Mr. Bigley should be allowed to make a decision whether he should be in the hospital without drugs or out of the hospital with drugs?

A I'm a huge advocate for folks and individuals suffering from mental illness making choices. But at some point -- at some point you have to ethically -- as a mental health clinician, I have to look at the quality of life that that individual is living. And if someone is delusional and isn't making -- has such poor judgment and insight, at some point it's our ethical duty to intervene, to make sure that and to help Mr. Bigley live the best quality of life and have

the best quality of life that he can have.
So to answer your question, I'm sorry, sir, at a certain point, I think individuals' mental statuses decompensate enough that it is why we have these processes to make those decisions, because ethically, I'm bound to help Mr. Bigley and to help him live the highest quality of life that he can.
And I truly believe that his quality of life is much better on medications than off medications. So I think that's why we have these processes here, to make those decisions.

Q So you think you -- that you should make the decision rather than Mr. Bigley?

A No, sir. I'm saying this court process should make that decision.

Q But isn't it true that it's your position that the court should order him to take the medications rather than allow him to choose whether to stay in the hospital without medication?

MS. POHLAND: Objection, mischaracterization of witness testimony.
THE COURT: He can -- you may answer that question. But I'm not really sure what difference it makes what this individual thinks the (indiscernible) is what it is.

THE WITNESS: Could you ask the question again? I'm sorry.
MR. GOTTSTEIN: I'll withdraw the question.

BY MR. GOTTSTEIN:

Q Now, didn't you testify that he won't stay out of jail without the medications, that that's (indiscernible)?

A Again, that's -- we don't have a crystal ball, but that's just kind of my belief and the pattern that we've seen over the last year, yes, sir.

Q But isn't it true that he's also been arrested a number of times when he was on medication?

A I'm not quite sure, sir. I've only been working with Mr. Bigley within the corrections system for a year, so --

MR. GOTTSTEIN: No further questions.
THE COURT: (Indiscernible.) Thank you. You may be excused.
(Witness excused.)
THE COURT: The State have any additional witnesses?
MS. DERRY: No, Your Honor.
THE COURT: (Indiscernible.)
MR. GOTTSTEIN: Jerry Jenkins, could you --
UNIDENTIFIED SPEAKER: Sure.

MR. GOTTSTEIN: I know we just had a quick break, but can I (indiscernible)?
THE COURT: Sure.
(Pause.)
THE COURT: Okay. If you would take that seat, we're just waiting for counsel.
THE WITNESS: Directions were to sit next to Mr. Gottstein.
THE COURT: Please stand and raise your right hand.
(Oath administered.)
THE WITNESS: I do.
THE COURT: You may be seated. Could you state and spell your first and last name.
THE WITNESS: Jerry Jenkins, J-E-R-R-Y, J-E-N-K-I-N-S.

JERRY JENKINS

called as a witness on behalf of the Respondent, testified as follows on:

DIRECT EXAMINATION

BY MR. GOTTSTEIN:

Q Mr. Jenkins, could you tell the court what your current position is?

A Executive director of Anchorage Community Mental Health Services.

Q What is Anchorage Community Mental Health Services?
A It's the designated Community Mental Health Center for the Anchorage area.
Q Could you briefly -- or maybe not so briefly. Could you describe your background and education?
A How far back?
Q Just -- you know, just generally what you --
A Elementary -- I'm kidding.
Graduate degree in counselor education, California State, University of Pennsylvania.
I've been practicing in the mental health area since October of '82. My specialty is addictions. I also work with the seriously mentally ill and other people in community mental health.
Q Okay. Are you familiar with Mr. Bigley's situation?
A Only indirectly.
Q And how is that?
A Indirectly, in that I have attended a couple of staffings where he's actually been discussed.
The first time I actually met him was last Thursday when I was here. That's been my involvement.
Q Can you tell us about that staffing and those meetings?

A Within the community are -- times when I get involved, when we have people that don't meet -- or don't fall within the continuing services that we provide. And they show up because they may be frequenting DOC, API, other areas where people don't establish community tenure. I'll use that as a benchmark.
We expect most folks to respond to the available services. When we don't, we collectively work together with other providers to see what we can do differently or better to help people have community tenure.
Q And you had such meetings about Mr. Bigley?
A Yes.
Q Is it fair to say that he is -- has been unwilling to engage with the system?
MS. POHLAND: Objection, leading.
THE WITNESS: I don't know whether he --
THE COURT: Ask a direct question. Restate your question.
BY MR. GOTTSTEIN:
Q Has Mr. Bigley been unwilling to engage in assistance?
A I can't answer that because I never dealt with Mr. Bigley in that way. I just know that there

are indications that the services we have provided have not met his needs or he has not responded to that. Having personal knowledge of his engagement, I do not have that.
Q Has he been in services with ACMHS in the recent past?
A In the recent past, I'd have to look at the discharge summary. But yeah, within the last couple of years he's had some services.
Q Do you know what the daily rate is at API that gets charged --
MS. POHLAND: Objection, foundation, relevance.
THE COURT: I'll allow it.
THE WITNESS: No, I don't know what the daily rate is.
BY MR. GOTTSTEIN:
Q Do you know what it is approximately?
A I would --
MS. POHLAND: Objection, asked and answered.
THE COURT: If he doesn't know, he doesn't know.
BY MR. GOTTSTEIN:
Q Has ACMHS made a proposal regarding providing, let's call them intense services, for

Mr. Bigley?
A Yes.
Q And could you describe that proposal?
A I've been contacted a couple of times -- or several times through staff over the last couple of months about engagement with the Division of Behavioral Health, and asking if we could provide on-call, up to 16 hours a day for people to respond to Mr. Bigley.
And I said yes, we can do that, and provided a basis for cost of that service.
Q And what was that?
A $230,000 for 365 days a year, 16 hours a day availability of people to be either with or respond to Mr. Bigley's needs.
Q And would that be about half of that if it was for eight hours a day?
A That's correct. The rates are set in a formula, so you adjust by the number of hours. So if it's 16, 24, 12, eight.
Q Would you -- if you know, would you expect the cost rates for Mike Mod at Corrections to be about the same as API, whatever they may be?
MS. POHLAND: Objection, foundation. The witness already testified that he doesn't know what

API's rates are, so it's impossible for him to answer.
THE COURT: Sustained.
BY MR. GOTTSTEIN:
Q Do you remember an incident involving an order (indiscernible) from early release involving Mr. Bigley in February or so of 2007?
A I'd have to look -- I'd have to look at clinical documentation. I do not.
Q Do you recall a meeting that we had with -- between yourself and Dr. Curtis?
A Yes.
Q Does that help your recollection?
A I just know that -- and again, I don't have those notes with me to refresh my memory. But I do remember we had a discussion about that return and what the basis was.
Q And you don't recall what that basis was?
A I just remember he --
MS. POHLAND: Objection, asked and answered.
THE COURT: Overruled. You can answer.
BY MR. GOTTSTEIN:
Q You can answer.
A Okay. That there was concern about his return. I think at that time, he was -- Mr. Bigley was being served by IDP, Institutional Discharge

Program.
Q Okay. Was a result of that meeting at ACMHS decided not to participate in early return -- early returns?
A With the early returns, we have some issues - and I'll speak from ACS -- ACMHS - about civil rights implications. When do we make that decision, what are the implications, and can we defend those in trying to first do no harm with the individual. That's what I'm recollecting from that conversation, and I believe -- what did you say, March 2007?
Q Could you -- I'm sorry. Could you say that again?
A No. I'll try. That we had concerns about the civil rights implications of being involved in those returns and -- there are many ways of looking at this. We do not want to be seen as an enforcer, if you would, but rather looking at how is this person doing in the community, whether they are following the orders of the release or not. They may be -- may not be following the orders but may be doing well.
And are they in imminent danger -- is it compliance or are they in danger or endangering others?
Q So was that the issue then, at that -- for

that incident, if you recall?
A I'd have to go back and look. I do not recall. That was 18 months ago.
Q Okay. So do you think that even people diagnosed with very serious mental illness ought to have the right to choose what happens to them and for them?
A As baseline, yes, as long as they have the ability to make that decision.
I have seen situations due to brain damage or whatever, organicity, head injury, where people did not have a rational ability, that I would take with a lot of -- I'll use the financial term, due diligence, making sure that a person's rights were honored as far as they can be.
I've seen folks that do not have the ability to make that decision. It may be dementia, Alzheimer's, it may be a brain injury, or whatever.
Q When you say that, do you mean that in the sense of not being able to express a desire?
A It may be expression, it may be to understand the implications. They may totally not be in contact with reality around them and not have the ability to make a decision -- a coherent decision.
Q Do you think that usually mental health

patients know how the drugs make them feel?
A I would think they know better than anybody else.
MR. GOTTSTEIN: I have no further questions.
JERRY JENKINS
testified as follows on:
CROSS EXAMINATION
BY MS. DERRY:
Q Mr. Jenkins --
A And you are?
Q My name is Laura Derry, and I represent the -- API.
A Thank you.
Q And you -- have you had the opportunity to evaluate Mr. Bigley?
A Negative.
Q Ever, never?
A First time I ever met him was Thursday in the hall, shook hands and said hi.
Q And so are you personally or clinically aware of what his diagnosis is?
A No. Other than what is in the record.
Q And other than meeting him last Thursday, have you ever had any other opportunity to formulate an opinion about whether or not Mr. Bigley is capable

of informed consent?
A No.
Q What is community tenure?
A Community tenure is people living outside of institutions, whether it be jail, API, crisis treatment center. It's people actually living in the community.
Q Okay. And you said that you did an evaluation as far as what you think it would cost to care for Mr. Bigley 365 days a year for 16 hours a day, and that was $230,000?
A Yes, ma'am.
Q And that was just an estimate?
A If I'm paying someone $20 an hour to do the service times the personnel costs, which are insurance, time off, there's a formula that I work. And you take the rate times 1.35, times 1.44, and that gives me my dollar figure, times the number of hours, times the number of days.
Q Okay. And so that's what it would cost for ACMHS to be with Mr. Bigley 365 days a year for 16 hours?
A Yes, ma'am.
Q But do you know whether or not anyone has come up with that amount of money to pay for

(indiscernible)?
A Not that I am aware of.
Q And you said -- one of the things you said, I'd like you to clarify for me, is that you would be hiring people to respond to Mr. Bigley. What does that mean?
A There's two ways of doing this. One is to have a person that's with Mr. Bigley at all times.
The other one is to have someone on call if there is an incident that requires a response. It's kind of like a fire call.
Q And of this 16-hour days, was it supposed to be response -- or, like, on call or to hang out with him?
A It can be either.
Q Either one?
A Yes, ma'am. The issue is capacity. That if someone has to be on call 24 -- or 16 hours a day, that someone be paid to be on call, to be available, just as if they were with him.
Q And so at this time, do you have available staffing to support Mr. Bigley 365 days a year for 16 hours?
A No.
Q Do you feel like you could come up with that

amount of staffing in the future?
A Yes, ma'am.
Q And what is the near future?
A If the State of Alaska petitioned Behavioral Health, said this is what we want you to do, it would probably take us 30 to 45 days to ramp up. Because we have to recruit, train, do some linkages, make sure we have the right personalities involved that would be acceptable by the different parties, which I assume would be guardian, counsel, Division of Behavioral Health, and us, and Mr. Bigley.
Q And Mr. Jenkins, you haven't had the opportunity to evaluate Mr. Bigley and you don't know his diagnosis other than what you've read. Do you feel that at this time you could make a good clinical opinion about whether or not you think that Mr. Bigley would be able to succeed with this plan of 365 days a year, 16-hour-a-day care?
A Being an eternal optimist, yes. But again, it's not been tried, that I'm aware of.
Q And what -- is there a reason why you haven't been able to evaluate Mr. Bigley yet?
A Because I am an executive director. I don't --
Q Oh, okay. So who normally does that?

A Clinical staff, staff psychiatrist, counselors, clinical associates.
Q And have -- as the executive director, have any of them been able to tell you whether or not they think that he would be successful?
A 50/50.
Q And who is Dr. Curtis?
A Dr. Curtis was the medical director for Anchorage Community Mental Health Services.
Q And is no longer --
A That's correct.
Q -- the director?
MS. DERRY: No further questions. Thank you.
THE COURT: Redirect?
JERRY JENKINS
testified as follows on:
REDIRECT EXAMINATION
BY MR. GOTTSTEIN:
Q Do you think Mr. Bigley ought to be given a chance to be successful in the community without being forced to take drugs?
MS. POHLAND: Objection, leading.
THE COURT: You may answer.
THE WITNESS: Let me say categorically, Anchorage Community Mental Health Services believes in

recovery. We believe people ought to be given an opportunity to be in the least-restrictive environment possible.

Now, the different tools that are used to obtain that, there are many tools in the tool box. Medication is one, support is another, environmental design is another. To say that there is one way -- I am not going to say that. But the basis of the question -- the basis of the question, should he be given a chance, yes.

MR. GOTTSTEIN: No further questions.

MS. DERRY: Nothing, Your Honor.

THE COURT: Thank you, sir. You may be excused.

(Witness excused.)

THE COURT: Your next witness.

MR. GOTTSTEIN: I -- is Dr. Wolf here?

UNIDENTIFIED SPEAKER: (Indiscernible.)

MR. GOTTSTEIN: Well, let's call -- let's call Mr. Adler back.

(Pause.)

UNIDENTIFIED SPEAKER: I found Mr. Wolf -- or Dr. Wolf.

THE COURT: (Indiscernible) once you get settled, take your coat off, remain standing, please.

Would you raise your right hand.

(Oath administered.)

THE WITNESS: I do.

THE COURT: You may be seated. And once you are seated, could you spell and state -- state and spell your full name.

THE WITNESS: Aron Wolf, A-R-O-N, W-O-L-F.

THE COURT: You may proceed.

ARON WOLF, MD

called as a witness on behalf of Respondent, testified as follows on:

DIRECT EXAMINATION

BY MR. GOTTSTEIN:

Q Could you briefly describe your education, background, and experience?

A Okay. I have a BA from Dartmouth College with an emphasis in both pre-med -- there was a special pre-med thing -- and psychology.

Medical school was an MD at the University of Maryland, and then a medical internship and a psychiatric residency also at the University of Maryland Medical School campus.

Now, then three years in the Air Force here, and I've been practicing psychiatry here in Alaska since 1967. And also went and got a master's in

medical management from Tulane University in 2000 and, do administrative consulting and -- as well as psychiatry.

And I am also board certified in psychiatry, neurology, and board certified in adult forensic psychiatry.

Q Do you -- have you been qualified as an expert witness before?

A Lots of times.

Q Lots of times? Were you asked by API to evaluate Mr. Bigley's situation?

A I was asked by Mr. Adler to evaluate Mr. Bigley as a second opinion, yes.

Q Do you usually like to be appointed by the court as an independent --

A That's happened less and less over the years. But no, I'm willing to do an independent evaluation for whichever side asks me to do it independently.

Q And it wouldn't -- wouldn't change your testimony, of course, would it?

A It would not.

Q Did you do an evaluation of Mr. Bigley --

A I --

Q -- or of his --

A Of his situation? Mr. Bigley, when I came

here, did not wish to interact with me, other than to say he didn't really want to be in the interview room.

But I reviewed his chart and I reviewed some data and history that your office sent me after your office knew that that request had been asked of me.

Q Did you prepare a written report?

A I did do a written report for Mr. Adler, yes.

Q Did you bring that with you?

A I did.

Q May I have a copy of it? How many copies did you bring?

A Just my own. At the time I was asked, I was asked just to do a second opinion. I didn't know when I was initially asked this had to do with court purposes.

MR. GOTTSTEIN: Okay. I'd like to mark this I think H.

THE COURT: Is this a copy he -- (indiscernible)?

THE WITNESS: He can. I have it on my computer at home. Do you want to make copies before you do that?

MR. GOTTSTEIN: Should we go off record and --

THE COURT: Well, why don't you mark it and

we'll make the copies.
MS. POHLAND: (Indiscernible.)
MR. GOTTSTEIN: Could we have, what, maybe five copies?
THE COURT: You can continue.
BY MR. GOTTSTEIN:
Q Okay. Could you briefly describe the -- your conclusions?
MS. POHLAND: (Indiscernible) objection until such time as (indiscernible) the report (indiscernible), Your Honor.
MR. GOTTSTEIN: What was --
MS. POHLAND: Questions based on the written report.
THE COURT: I don't understand your objection. State it.
MS. POHLAND: That we would like to actually have the report sitting in front of us and have a chance to look at it before questions are asked about the --
THE COURT: (Indiscernible) made available to you by API?
MS. POHLAND: No, Your Honor.
BY MR. GOTTSTEIN:
Q Did you -- did you give this to

(indiscernible)?
A I did -- (indiscernible) Mr. Adler electronically and --
THE COURT: Well, wait. Did you just -- when was it that you were asked to do this and when did you meet with Mr. Bigley?
THE WITNESS: I was asked the last week of October, and I met with Mr. Bigley and reviewed the chart on the 3rd of November.
MS. DERRY: November 3rd?
THE WITNESS: Yes.
THE COURT: And can you just tell us when you provided Mr. Adler with the report?
THE WITNESS: The 5th.
THE COURT: I'm sorry?
THE WITNESS: The 5th, 5th of November.
THE COURT: Sixth?
THE WITNESS: Fifth, five.
THE COURT: Five, got it.
(Pause.)
MR. GOTTSTEIN: I can maybe inquire in another area.
BY MR. GOTTSTEIN:
Q Have you read the -- the -- Mr. Whitaker's affidavit?

A I have.
Q Have you read Dr. Jackson -- there's two, I think, affidavits. But have you read Dr. Jackson's affidavit that discusses generally the drugs and the brain damage and alternatives?
A I have.
Q And have you read Dr. Jackson's affidavit that specifically pertains to -- well, let's talk there.
Do you have any --
A Yes and yes, I have read both of those.
Q Okay. And do you agree with the analysis contained in the Whitaker and Jackson's affidavits?
MS. POHLAND: Object to form. Could we break that down into first one and then the other?
MR. GOTTSTEIN: Sure.
BY MR. GOTTSTEIN:
Q Do you -- well, let's say this. Do you have any disagreements with the analysis in Mr. Whitaker's affidavit?
A About the general data about what psychotropic medicines can do, no, I don't have any.
Q And how about Dr. Jackson's general analysis?
A I don't know what her data is based on, but it -- I have not seen her underlying data. I have no

major difficulties with her general analysis, but I don't know -- I have not seen the data on which her analysis is based.
Q Okay. And I think you testified that you also read the affidavit about where she discusses Mr. Bigley's situation?
A I have.
Q Okay. Okay. Let's (indiscernible).
MR. GOTTSTEIN: Move to admit.
THE COURT: Let's -- let's take five minutes. Let's (indiscernible), read this document, and (indiscernible). So let's just say, oh, I don't know, 12 till.
11:43:58
(Off record.)
11:50:01
THE CLERK: On record.
MR. GOTTSTEIN: I move to admit the report, Exhibit H.
MS. DERRY: I have no objection, Your Honor.
THE COURT: H is admitted.
(Exhibit H admitted.)
BY MR. GOTTSTEIN:
Q I think the report pretty much speaks for itself, but I -- I have -- could you tell the court

what PCA stands for?
A Primary care attendant.
Q And what -- what does that consist of?
A Under Medicaid in Alaska -- federal law, actually, these are individuals who are paid for by Medicaid to be with a person a certain number of hours a week, so that their basic care can be taken care of. A number of states have it for both physical and mental illness. Alaska only has it for physical illness at this point.
Q So the reason why -- I think that's clear enough.
And then -- so first, all these statements in here are true and correct to the best of your ability?
A To the best of my ability.
Q Okay. Have you reviewed the proposal for less-intrusive alternative that was proposed by Mr. Bigley here?
MS. POHLAND: Objection, relevance.
THE COURT: Overruled.
THE WITNESS: I can answer. I have not. The only thing I have reviewed was an e-mail that your office sent that was listed as a further compromise or something like that.

BY MR. GOTTSTEIN:
Q Do you recall if it talked about allowing Mr. Bigley to come to API when he wants to?
A I have it with me. No, that's not it.
Q If you don't remember, that's fine.
A I don't remember.
MR. GOTTSTEIN: Okay. That's fine. I have no further questions.

ARON WOLF, MD

testified as follows on:

CROSS EXAMINATION

BY MS. DERRY:
Q Mr. Wolf, my name is Laura Derry, and I am an attorney for API.
A Hi.
Q You said that you had a chance to review Robert Whitaker's affidavit; is that correct?
A That is correct.
Q And you said that you generally agree that medications -- as to the general premise that medications can have some of the effects that he listed?
A Can have.
Q When you say that, does that mean that you unequivocally agree with Robert Whitaker that

medications are bad?
MR. GOTTSTEIN: Objection, misstates the affidavit.
THE COURT: You may answer.
THE WITNESS: No. I agree that a number of these medications have potential side effects that in the past have not been thoroughly considered and in their prescribing as a totally safe thing. So no, they -- the side effects that can happen with these medications need to be considered when prescribing.
BY MS. DERRY:
Q And you have the clinical training in psychopharmacology, don't you?
A I do.
Q And in your training --
A As much as you get as a resident.
Q As much as a psychiatrist does?
A That's right.
Q And in your experience with psychopharmacology training, you learned about the side effects of medications?
A One does, yes.
Q And you said that you have been practicing here in Alaska since 1967; is that correct?
A That's correct.

Q How much do you think that medications have changed since 1967?
A Well, lot -- there are lots of new medications and new classes of medications that are out since then.
Q And do you keep yourself appraised of medications and their side effects?
A As best I can, yes. One needs to keep up with one's CME, education credits and do that.
Q And in Mr. Whitaker's affidavit, most of his research was prior to 1997; are you aware of that?
A I believe so, yes. I have met Mr. Whitaker.
Q I'm sorry?
A I have met Mr. Whitaker and had a chance to talk to him about that, yes.
Q But you did just say that you believe that his research was prior to 1997?
A I believe so.
Q And do you agree that psychopharmacology has changed dramatically since 1997?
A I think the class of medications he is talking about were already on the market by '97, so the two major classes of antipsychotic were both on the market by '97.
Q And in your opinion, do -- in your personal

practice, do you prescribe antipsychotics?
A I do.
Q And do you weigh the pros and cons of the risk versus the benefits when you prescribe those?
A I do.
Q And in general, what -- how do you make that weight?
A How do I make that weight? Well, number one, whether the individual indeed is showing psychotic symptoms and might very well be in need of some medication that would allow them to do that.
I also, as is now general practice, do an evaluation for the side effects on at least a quarterly basis on every person I have on antipsychotics for any reason.
Q And when you say you do that, is that (indiscernible), you are checking into the physical symptoms that can occur because of the side effects?
A Weigh them, and blood sugar and blood pressure and all of those kinds of things, yes. Lab work and physical.
Q And is it your opinion, as a psychiatrist who uses these antipsychotic medications, that these medications are killing Mr. Bigley?
A I don't -- Mr. Bigley is going downhill. I

mean, more -- he is getting more difficult to deal with. It seems his delusions are more, he's getting into more trouble. Whether that's the natural course of his illness or the medications I think is an unanswered question right now.
Q And, Dr. Wolf, you -- in this letter that you wrote to the hospital here, you didn't have a very good opportunity to evaluate Mr. Bigley at that time, did you?
A He didn't allow me to have that opportunity, no. I had the opportunity, but he didn't wish to exercise it.
Q And did -- in this short period of time that you were trying to have a conversation with Mr. Bigley, did -- were you able to form an opinion of whether or not you think he's capable of informed consent?
A I was not.
Q You were not?
A I was not.
Q And in your reading --
A And I say that because the folks on the unit said he had been unable to interact with them, and he was able to verbalize quite clearly that he didn't want to be with me.

But I certainly didn't get a chance to be with him long enough. He was clear enough and he knew that I was there to evaluate. So there were those things, even in the short interaction.
Q And this is a little bit of a side note. But Mr. Bigley is good about articulating his wants at a specific period of time, do you --
MR. GOTTSTEIN: Objection. Is that a question?
MS. DERRY: I'm sorry. It was a tone of a question without the appropriate beginning.
BY MS. DERRY:
Q Do you -- did Mr. Bigley -- he made it clear to you that he didn't want to speak to you?
A That's correct.
Q Have you been in his presence when he makes it very clear that he would like a cup of coffee?
A Yes.
Q And have you ever been in his presence when he talks about food being poisoned?
A No.
Q Dr. Wolf, are you -- would you consider yourself to be cautious in the prescribing of antipsychotic medications?
A Yes.

Q And you haven't had a chance to really give a good diagnosis or evaluation of Mr. Bigley. But have you been able to determine whether or not he would agree that he is gravely disabled?
A I would agree with that.
Q And what is the basis of that opinion?
A I think that his -- his inability to function outside of a very structured setting over the last couple of years would fall into the definition of gravely disabled, yes.
Q And in your personal experience as a psychiatrist, can medication be in the best interests of an individual?
A It can.
Q And what is your basis of that opinion?
A Well, there are -- there are any number of individuals who respond very well to a variety of psychiatrically focused medications.
Q And, Dr. Wolf, you are very qualified, and I believe you're very qualified to answer this question. What do you think happens to Mr. Bigley or any person with severe mental illness's mental status when they go to jail?
A I actually think that in this state, lots of times that the correctional system is immensely better

than coming here.
Q And why do -- why?
A Because I think, number one, people are there longer, and number two, I really think the folks who run the mental health part of the correctional system are very good.
So, you know, is it good for everybody? No. But are the folks in the correctional system who do mental health good and do they have some good programs? Yes, they do.
Q And when you said people stay longer, did you mean the staff stay longer, or did you mean people like Mr. Bigley?
A People like Mr. Bigley. I mean, they -- they -- they usually -- he hasn't, but they're usually there for a sentence and they are there for more than a week or two weeks. Their sentences are longer, so you can do more therapy and more intervention, actually.
Q And is the basis of that opinion because of the length of the stay, that when they're sentenced, they must stay their amount (indiscernible)?
A I think that's mostly -- I mean, the folks at API try, but, you know, this is a medical system and that's a correctional system, and people are usually

sentenced longer.
And so folks who are there at Mike Mod or at Highland, or even folks out in Palmer, where they've got a really good program, are just there longer and you can work with them better and longer.
Q And to your knowledge, with this more successful treatment at the Department of Corrections, is that usually facilitated by the use of medications?
A Certainly they use some medications. They are pretty judicious about their use of medication. They don't use a whole lot, but yes, they do use medication.
Q But they use medication when you feel it's necessary, you believe?
A They prescribe medications when they feel it's necessary, yes.
Q And through your personal experience, you don't -- you don't feel that they are excessive in their use of medications, in general?
A Corrections? No.
Q And what do you think the effect of the stability of staying in the correctional facility does for someone with mental illness?
A I believe it provides -- for some individuals, it provides them some of the structure

that they don't have out on the street.
Q And what are your -- what is your opinion on the use of physical restraints?
A It's to be avoided as much as it possibly can.
Q Do you believe that the use of physical restraints can be more intrusive for someone with severe mental illness than the use of medication?
A Probably so most of the time.
Q Do you believe that Mr. Bigley is capable of understanding why he's restrained when he's restrained in the Department of Corrections?
MR. GOTTSTEIN: Objection, foundation.
THE WITNESS: And I really don't know.
MS. DERRY: No further questions. Thanks.
THE COURT: I have some questions.
First off, just as a -- you typed your last name with a small W. Is that a typo or is that how (indiscernible)?
THE WITNESS: That's a typo.
THE COURT: And you suggested the use of an MRI to evaluate the condition of brain damage (indiscernible). If he were to be medicated with Risperdal now and the evaluation done at some point after that became effective, two months, would the --

the administration of that drug have any impact on the findings of the MRI?
THE WITNESS: Well, if the Risperdal or that kind of drug were indeed to be causing this, and I don't know that that's the case, then that would be that much more medication over that period of time.
But I -- I don't -- so I mean, that would be a progressive degradation if that were the case.
Now, when I was talking about medication for that, what the radiologists do is give a sufficient amount of Valium or one of -- one of the other benzodiazepines to make the person very relaxed for the test. So that's given 20 minutes before the test for the test itself, which is what I was alluding to for that.
THE COURT: Let's assume that the MRI was done at any given point and brain damage was detected. Is there any ability to determine the etiology of the damage?
THE WITNESS: To my knowledge, there isn't.
But there was an article actually which appeared in the New York Times, by Dr. Nancy Andreassen from the University of Iowa, who had been actually the editor of the American Journal of Psychiatry, as well as a researcher. And she's

developed some protocols.
And because I was working on this, I sent her an e-mail last week asking her whether she would -- and she is an old friend of mine -- whether she would send me the protocols that she's using which in this article basically said, yes, you could. But I've not seen those protocols to date.
THE COURT: Do you have (indiscernible)? Do you have any redirect?

ARON WOLF, MD

testified as follows on:

REDIRECT EXAMINATION

BY MR. GOTTSTEIN:
Q Do you understand Mr. Whitaker to be -- well, first off, you said that you know of Mr. Whitaker; is that correct?
A I have met him, yes.
Q Do you understand Mr. Whitaker to be categorically against the use of neuroleptics?
A I -- how do I answer that without a double negative? I --
Q Well, maybe I can rephrase it.
A Yeah. I don't -- well --
Q Is it your understanding that Mr. Whitaker suggests that they be used selectively?

A Yes, it is my -- that's my understanding.
Q Now, does his affidavit also include quite a bit of research on the newer neuroleptics, since 1997?
A It does both the old ones and the newer ones in the dates that he has, yes.
Q Okay. And it speaks for itself, doesn't it?
A Yes.
Q What is your definition of gravely disabled?
A My definition of gravely disabled is an individual who, because of their illness, is unable to take care of their basic needs outside of a structured setting.
Q So is that a -- like a legal definition or --
A It probably is a legal definition, but it's -- my understanding as a physician of what I need to know relative to -- to having someone come in to this institution against their own wishes.
Q Have you testified in any involuntary commitment case since 2006?
A No.
Q Okay. Do you -- do you ever insist that people take neuroleptics when they don't want to?
MS. POHLAND: Objection, (indiscernible).
THE COURT: What's -- I didn't hear your objection.

MS. POHLAND: Relevance.
THE COURT: Do you want to respond to the objection?
MR. GOTTSTEIN: I think it puts context -- it's relevant to me.
THE COURT: Then try to articulate.
MR. GOTTSTEIN: I understand. It goes to the ability to work with people who don't want to take medication.
THE COURT: Ask -- just ask the question again so I can (indiscernible) context (indiscernible).
BY MR. GOTTSTEIN:
Q Do you remember the question? Could you repeat the question?
A Yeah. The --
THE COURT: No.
MR. GOTTSTEIN: No?
BY MR. GOTTSTEIN:
Q Do you ever require people to take neuroleptics who don't want to?
THE COURT: The objection is sustained.
THE WITNESS: As an outpatient --
MR. GOTTSTEIN: Well, he said -- he --
THE COURT: He's going to ask a different

question.
BY MR. GOTTSTEIN:
Q This may be the same one, but do you usually try -- usually try and get your patients to voluntarily accept the medication if you think it's beneficial?
MS. POHLAND: I'm going to object again based on relevance.
THE COURT: What is relevant of Dr. Wolf's personal opinion on that?
MR. GOTTSTEIN: I'll withdraw.
BY MR. GOTTSTEIN:
Q If the -- if a person was behaving in a way such that either physical or -- physical restraints or emergency medication was going to be used, could the person be asked which they would prefer?
A Boy, I -- I suppose they could. That is usually not hospital protocol, and I don't even mean this hospital. But even -- even in a general hospital I think the usual protocol is medications prior to the use of physical restraints, in a hospital setting.
Q Do you think that asking that question might calm someone down?
A It might. It's usually not asked, but it might.

MR. GOTTSTEIN: I have no further questions.

ARON WOLF, MD

testified as follows on:

RECROSS EXAMINATION

BY MS. DERRY:

Q Dr. Wolf?

A Yes.

Q You said you've read the affidavit also of Dr. Grace Jackson?

A I did.

Q And in that affidavit, she took just a few pieces out of Mr. Bigley's chart. Is that also what you understand of what she did in order to evaluate him?

A I think she didn't see the whole chart, so -- so I really don't know. I mean, I think the preamble said she had reviewed a lot of data.

Q As a clinician, would you make recommendations if you hadn't actually physically evaluated a patient?

A Well, I sort of did in this case. I think one -- where there is extensive data, one can make some recommendations that could very well be relevant because you reviewed an intimate amount of data.

I mean, for instance, one of the nice things

in the present API chart is the social work discharge notes from all 81 admissions, and that was incredibly helpful to see the 30 years' worth of what Mr. Bigley has encountered.

Q And so what I'm understanding is that -- because you couldn't actually evaluate Mr. Bigley in order to diagnose him or work with him further, but you did extensively read his chart?

A I did.

Q And what would you -- what are your personal opinions about what would be in Mr. Bigley's best medical interests at this time, mental health interests, based on your reading of that chart?

A I think API is doing a very nice job of trying to structure things for Mr. Bigley. As I noted in the report, there were a number of notes by staff that after he received medications, that he had several better days after each time. That was their evaluation.

I think much more than what API is doing, I think the concern of what I was asked to look at and a concern voiced to me by Mr. Adler and also in the chart is what would be best for Mr. Bigley when he's out of API on any given occasion. And so that's part of what I was trying to address I think as his care is

going along, you know, he seems to feel the medication doesn't help. The staff feels the medication, at least intermittently, does help.

Since I didn't talk to him directly, I can't weigh in on that. They were pretty divergent views.

MS. DERRY: No further questions.

THE COURT: Thank you, Dr. Wolf.

THE WITNESS: Thank you.

THE COURT: You may be excused.

(Witness excused.)

MR. GOTTSTEIN: Mr. Adler.

THE COURT: Will you find Mr. Adler?

UNIDENTIFIED SPEAKER: I'll find him.

UNIDENTIFIED SPEAKER: May I be excused for just a moment?

(Pause.)

UNIDENTIFIED SPEAKER: He'll be down shortly.

(Pause.)

THE COURT: (Indiscernible.) Actually, sir, why don't you come (indiscernible) get a better recording.

And, Mr. Adler, you are still under oath.

THE WITNESS: Yes, sir.

RONALD ADLER

called as a witness on behalf of the Respondent, testified as follows on:

DIRECT EXAMINATION

BY MR. GOTTSTEIN:

Q Mr. Adler, is the daily rate for people in API -- API a little bit over $1,000 a day?

MS. POHLAND: Objection, relevance.

THE COURT: Overruled. You may --

THE WITNESS: You are talking about our billing rate, not our cost?

BY MR. GOTTSTEIN:

Q Well, is that the rate? Did you testify in your deposition the rate of $1,018 a day?

A That is the Medicaid rate that we charge Medicaid --

Q Okay.

A -- for billable services that are allowed.

Q So is it -- is the cost actually a little bit more than that?

MS. POHLAND: Objection, leading.

THE COURT: Go ahead, you may answer that.

THE WITNESS: It's just about half of that.

THE COURT: I'm sorry; I don't understand.

THE WITNESS: Our actual costs per patient

per day is somewhere between 550 and $600.
And that's what I was trying to explain to Mr. Gottstein at the deposition, is that there's a difference between Medicaid costs -- Medicaid billable services and our actual cost to provide the service.
BY MR. GOTTSTEIN:
Q Do you charge -- do you bill patients when they get discharged at that $1,018 rate?
A Well, first of all, we are for the -- because we are an IMD, we are not allowed to bill Medicaid for patients between the ages of 21 and 65. We are required by the Center for Medical Services to make a good faith effort to collect fees.
Q And is that at the $1,018 rate currently?
A Yes.
MR. GOTTSTEIN: I have no further questions.

RONALD ADLER

testified as follows on:

CROSS EXAMINATION

BY MS. DERRY:
Q Mr. Adler, what is an IMD?
A It's a -- it's an exclusion for state psychiatric hospitals. And that stands for Institution for Mental Disease.
Q And why is it that you can't bill when

someone is between the ages of 21 and 65?
A We technically receive disproportionate share funding to cover patients that do not have -- do not qualify for third-party reimbursement, what you would call an indigent population.
Q And you send out bills, but you don't send out collection agencies when you -- when you are sending bills out for services provided here at API, correct?
A Sometimes we do send out collection notices.
Q And would you send collection notices to someone who is indigent?
A No.
MS. DERRY: No further questions.
MR. GOTTSTEIN: Just if I may, Your Honor.

RONALD ADLER

testified as follows on:

REDIRECT EXAMINATION

BY MR. GOTTSTEIN:
Q Are you familiar with Mike Mod at Department of Corrections?
A I've heard a lot about it. I've never visited there.
Q If you know -- if you don't, you don't. Would you -- would you expect their costs to be

roughly the same as yours?
A I don't know that at all.
MR. GOTTSTEIN: All right. I have no further questions.
THE COURT: You may be excused.
(Witness excused.)
THE COURT: Next witness.
MR. GOTTSTEIN: I don't have anything else, Your Honor.
MS. DERRY: (Indiscernible) case in chief?
MR. GOTTSTEIN: Huh?
MS. DERRY: I'm sorry, Your Honor.
THE COURT: Do you have -- I am not going to allow -- you need to make these individuals available for cross examination.
MR. GOTTSTEIN: Okay. So who do they want to cross examine? I mean, there needs to be some -- okay. I mean, most of them are out of town, and I didn't know when they were. I've been trying to arrange a time.
THE COURT: Today.
MR. GOTTSTEIN: Okay. Who do you want to cross examine?
MS. DERRY: It was my understanding from --
THE COURT: Who do you want to go first?

MS. DERRY: Well, I would like to make sure that we -- that Ms. -- Dr. Mosher is stricken because he cannot, because he --
THE COURT: Let's deal with the people that you want to cross examine.
MS. DERRY: I would like to start with Paul Cornils.
MR. GOTTSTEIN: I --
THE COURT: Will you get him available?
MR. GOTTSTEIN: I can try.
THE COURT: Well, let me --
MR. GOTTSTEIN: I mean, I mean, I didn't --
THE COURT: Step back. Step back. I said that you had to have these people available for cross examination. The hearing was today. Are any of them available?
MR. GOTTSTEIN: I think -- we can -- yeah. I -- they have schedules. I -- I think maybe Dr. Jackson is available. We can try and call her.
THE COURT: Well, let's just -- before we do that --
MR. GOTTSTEIN: I mean --
THE COURT: We're going to have to do it one or two ways. We are either going to go through the shopping list -- I mean, the phone list and see who is

available today, which is a little bit inefficient.
On the other hand, if there is somebody you know is available, we should do that person.
On the other hand, the only other way this is going to happen is if we have yet another day of hearing at which there is a sequence. I don't care who names the sequence, but let's get these individuals all here or available for cross examination.
If they are not available, I am going to be considering not allowing the proposed direct testimony to be admitted, unless there is some exception to that, some reason why it comes in.
So what would you prefer to do? Try and get ahold of everybody now, try to get ahold of some now, and rescheduled for the remainder?
MR. GOTTSTEIN: I was -- I think that we can do it now. I just -- I'm not sure I have everybody's phone number. We could try Dr. Jackson now.
MS. DERRY: Would you like John -- Mr. Hughes to try to do a conference call, the way we did before, Your Honor, the --
THE COURT: I don't care. You want to call her? If she's available, she's available, we'll conference her in.

MS. DERRY: And we (indiscernible).
MR. GOTTSTEIN: I may have the wrong number for her, though.
(Pause.)
MR. GOTTSTEIN: Dr. Jackson, I am here in the courtroom and we'd like to call you for cross examination. Okay. And is this a good number? And the number is 910-208-3278. 910-208-3278. And the court should be calling you shortly. Great. Thanks.
UNIDENTIFIED SPEAKER: Okay. I have to put the clerk on hold to make this happen.
MS. DERRY: (Indiscernible?) Just say, Madame Clerk, I'm putting you on hold.
UNIDENTIFIED SPEAKER: Madame Clerk, I am going to put you on hold quickly here.
THE CLERK: Thank you.
(Pause.)
THE COURT: (Indiscernible) judge of the superior court. Let me just see if the other person is on the line.
Madame Clerk, are you on the line, as well.
THE CLERK: Yes, we are still on record.
THE COURT: All right. Dr. Jackson, you are being called as a witness on behalf of William Bigley in a hearing regarding the State of Alaska's petition

to administer psychotropic medications involuntarily.
Present in the courtroom are counsel for the State, counsel for Mr. Bigley, and other observers. We have already -- Mr. Bigley has submitted direct testimony already on your behalf, so we will begin with cross examination by the State.
Would you please stand and raise your right hand, please.
THE WITNESS: Yes.
(Oath administered.)
THE WITNESS: I do.
THE COURT: You may be seated. If you would state your full name and spell both names, please.
THE WITNESS: Yes. Grace Elizabeth Jackson. That's J-A-C-K-S-O-N. You want me to spell the other names, as well, Your Honor?
THE COURT: I take it Grace is the normal Grace?
THE WITNESS: That's right. And Elizabeth with a Z, E-L-I-Z-A-B-E-T-H.
THE COURT: Please let us know if you have any difficulty hearing, and I will have each of the attorneys identify him or herself before beginning questioning.
THE WITNESS: Great.

THE COURT: Ms. Derry.
MS. POHLAND: Your Honor, as an initial matter, this is Erin Pohland for the State of Alaska. The State would like to note its objection which was filed in the motion with Dr. Jackson's testimony based on relevance, and Dr. Jackson's affidavit is not a proper affidavit under Alaska law.
THE COURT: Both objections are overruled. You may proceed.
MS. DERRY: Thank you, Your Honor.

GRACE JACKSON, MD

called as a witness on behalf of the Respondent, testified telephonically as follows on:

CROSS EXAMINATION

BY MS. DERRY:

Q Dr. Jackson, my name is Laura Derry, and I represent the hospital. I have just a few questions for you.
I have read your report that Mr. Gottstein would like to submit into evidence, and you note in section V, Roman numeral V, that there are limitations to the current report, in that you lack a face-to-face or a telephonic interview with the patient. And could you tell me why you didn't meet with Mr. Bigley face to face or over the phone?

A I'm in the state of North Carolina, and really did not have the means or the time to perform that kind of evaluation.
Q Do you generally meet with patients face to face in order to clinically diagnose them?
A It really -- well, if I'm going to be providing clinical care to a patient, absolutely.
If I'm involved in forensic consultation, there are times when I may be giving opinions to other providers or to family members and patients based on a review of records and my personal expertise. And in those cases, a face-to-face meeting is not always performed.
Q And are you understanding your evaluation of Mr. Bigley to be a forensic evaluation?
A I'm sorry; could you repeat that? I didn't quite hear you -- all of what you said.
Q Yes. Let me -- I'm going to turn the phone real quick. Can you hear me?
A Yes. That's much better. Thanks.
Q Yes. I turned the phone. And is it your understanding that your evaluation of Mr. Bigley's records was for forensic purposes?
A Well, really, it was to answer two questions. Predominantly for the forensic issue at hand, which is

the appropriateness of the forced medication. So it was -- I guess it's, you know -- I guess it's maybe semantics as to whether or not that's a clinical or strictly forensic opinion.
Q Okay. And you also noted that you didn't have access to all of the medical records. Could you tell me why you didn't have that kind of access?
A When I initially performed my consultation at the request of Mr. Gottstein, it was really on very short notice.
And you know, to be honest with you, a full review of records would be instructive in terms of, you know, putting together a full chronology of events. But for the matter at hand, I believe I had sufficient information certainly to pass judgment on the present matter.
Q Okay. And also -- and it says that you had lack of access to collateral sources of information such as interviews with family or friends. Would information such as that perhaps have changed your clinical opinion?
A It would not change my opinion in terms of the appropriateness or the prudence of the proposed course of treatment vis-a-vis the state. But it would perhaps, you know, influence a more comprehensive

treatment plan and perhaps be of benefit in terms of providing the next step.
Q Thank you. And, Dr. Jackson, do you -- you actually worked as a psychiatrist?
A That's correct.
Q And do you prescribe medications to any of your patients?
A No. Actually, what I have done -- well, I should back up and perhaps, if you'd like me to, I want to answer your question directly and not waste words.
My current focus is on research and completing a second book, and then I'll be returning to clinical work full time.
I've had a private practice here locally in Wilmington, North Carolina, but for the past six months has been strictly focused on completing a second book. So I'm not seeing patients right at this current moment. So I have been dividing my time between clinical work.
The last time I was working on a full-time clinical capacity with a heavy volume of patients was two summers ago. And in that capacity, I was continuing medications on patients who were currently medicated, but I was not starting patients on any of

these medications that we're discussing here in the context of Mr. Bigley's care.
Q Okay. And, Dr. Jackson, if someone comes to you and it is clear that they are incapable of informed consent, would you prescribe medications to them?
A I would not prescribe medications to them without understanding the circumstances and who was their guardian or who was the relevant party for making that informed consent decision on their behalf.
Q If a guardian or the other -- someone labeled as an agent in a psychiatric advanced directive, if any party who could help an individual make a mental healthcare decision was interested in medicating someone who was -- who lacked informed consent, would you assist them in giving medications -- in prescribing medications?
A I would assist them with information. However, I believe that there is so much information which -- which argues against the use of neuroleptics or antipsychotics that I, myself, would consider it both unscientific and unethical to administer those medications in -- depending on the context.
So if a family insisted on those treatments, I would, you know, certainly engage in information,

but I would probably direct them to another physician if that's the kind of treatment intervention that they insisted upon receiving.

Q And, Dr. Jackson, do -- in your research and what you're working on right now, do you tend to work with people who have severe mental illness, or are they people who are newly diagnosed with mental illness?

A No. When I was working -- I'll just give you some insight.

A couple of summers ago, almost my entire caseload in a VA clinic, I had the whole chronically mentally ill, severely ill patient population in that clinic.

And in the prison system where I worked here in North Carolina, I was also working in one facility that had the chronically mentally ill. So I would say that most of my work in the past four years has been with the chronically, severely mentally ill. So I have very good first-hand knowledge of -- of what they're up against and the hazards of their medications.

Q And, Dr. Jackson, have you ever practiced psychiatry in the State of Alaska?

A No, I have not.

Q Are you aware of any other -- any less-intrusive alternatives available for mental illness treatment here in Alaska?

A None other than what I've read in the -- in the statements that have been provided by other witnesses on this case and from what Mr. Gottstein has outlined in his affidavit -- or in his opinion for the court, as well.

So I don't know all of the details of that, but I can't imagine it would be that different than my situation here in North Carolina or my situation when I was in the state of Oregon working in a VA clinic two summers ago.

So the short answer to your question is, I don't know all the details of the arrangements there in Alaska, but the other part of the answer is I can't imagine the situation there being any different from what it is here in North Carolina and Oregon.

Q And outside of your research, and not to be political or start a debate, but are antipsychotics and neuroleptics within the appropriate standard of care in the United States?

A I sort of -- I guess I would object to the term "appropriate standard of care." I would say that there are many standards or many ideas about care, but

I'm not familiar with such a thing as "appropriate standard of care." I guess I would have to ask for a clarification of what that means when you say it that way.

Q But it is -- the use of neuroleptics and antipsychotics is within the normal standard of care for psychiatrists in the United States; is that correct?

A I would say that the use of neuroleptics and antipsychotics in psychiatric care is a common, if not prevailing, practice in the United States.

Whether that should be elevated to something that we call a standard or whether that's deemed appropriate is something that's always evolving, and has to evolve for a very good reason, that science is often ahead of the practice of what the herd does or what the consensus is at any one moment in time.

Q When you looked at Mr. Bigley's medical chart -- when was the last time you looked at it?

A Oh, I believe the last hearing that we had. And I'm a little bit fuzzy on the last time I had the telephonic testimony on this case. I remember the report I believe was actually in last May, and -- but I don't recall the last time we had the hearing on this. I think it may have been August. I'm trying to

remember.

Q And --

MR. GOTTSTEIN: We -- I think we actually stipulated to May, right?

MS. POHLAND: May.

BY MS. DERRY:

Q I believe it was May. Does that sound correct?

A That sounds correct.

Q And you haven't been able to read or evaluate Mr. Bigley's medical records since May?

A Nothing other than what I had at that time, correct.

Q And if I tell you that Mr. Bigley has been in jail ten times since May, but prior to that he had much less contact with police, what do you think about that?

A It sounds to me like he's been in and out of jail quite a bit since -- I don't know many details beyond what you said, so I would have to withhold a judgment. I just wouldn't have enough information to really understand that or put that in context. It sounds like things have not been going so well for him.

Q Do you believe that the medications that the

State wishes to provide for Mr. Bigley, which at this time I believe is only Risperdal Consta and increasing that dosage to 50 milligrams, is killing -- would kill him?

A I believe there's -- well, there -- yes and yes. There are two answers to your question.

One is do I believe it kills him in the short term or acutely. And the broader answer to that question is, yes, it kills him in the long term, just in terms of what we know from the life-shortening effects.

So I believe that Risperdal is no less hazardous than any of the older medications. And in fact, there are quite a few doctors who share the opinion that Risperdal has been misclassified as, quote, unquote, an atypical or a so-called unusual antipsychotic that distinguishes it itself on the basis of brain effects or brain hazards relative to the older drugs.

So to answer your question succinctly, do I believe it's a drug that will kill Mr. Bigley? Yes. It's just a matter of time.

Q Do you think that Mr. Bigley is capable of informed consent?

A That, I don't know, in terms of the current

moment in time. I don't know the answer to that, in terms of his ability to understand the risks of treatment and the possible risks and benefits of alternatives to medication.

MS. DERRY: No further questions. Thank you.

THE WITNESS: Thank you.

THE COURT: Mr. Gottstein, do you have any redirect?

MR. GOTTSTEIN: Yes.

GRACE JACKSON, MD

testified telephonically as follows on:

REDIRECT EXAMINATION

BY MR. GOTTSTEIN:

Q Dr. Jackson, in your work in the VA clinic and the North Carolina prison, I believe you said that you worked with people -- I think you referred to them as chronically mentally ill; is that correct?

A That's correct.

MS. POHLAND: I'm going to object to form and clarify whether that was a prison or the VA clinic.

THE COURT: Overruled. You may answer.

THE WITNESS: That would be chronically mentally ill in both locations, both settings.

BY MR. GOTTSTEIN:

Q Did you successfully reduce or withdraw some

of these patients from neuroleptics?

A Successfully reduced. I was -- I was not in either setting to successfully withdraw medications completely, due to the length of time that I was there. And you know, for the length of time or the chronicity of treatments for many of these patients, you know, every single case has to be looked at as a completely unique case. And I did not take any patient completely off medicine -- wait a minute.

I remember one. I remember one younger person who wanted to have a trial off of Prolixin, and we did that for a couple of months. And he was better, and then he wanted to go back on it. And that was something that was his choosing. He understood the risks of it. So with his consent, I put him back on the low dose that he had been on -- well, lower dose than he had been on initially. So we successfully reduced and tried to withdraw.

But every single case is, you know, very, very different. And the most I was able to accomplish in these settings was to really try and reduce risks and to manage some of the medical side effects of the medication.

Q And was -- was that due to the -- partly due to the constraints within the system, as well?

A Yes. With (indiscernible) consent of both the prison, the VA system, I don't think they have any firm policy or any specific awareness of the costs and the bad outcomes that are occurring.

But you know, I think it's -- it's always hoped for that there are lower expenses, number one, in terms of pharmaceutical costs, but even more lower medical costs in terms of the additional physical problems that these patients develop because of these different medications. So it was -- it was certainly not anything that was in opposition to the policies in either location.

Q Do you have any reason to change the opinion you expressed in May that Mr. Bigley should not be forced to take medication in order to reduce them?

A Oh, should not be formed in order to reduce. No. If a patient is currently not on the medicines, and it depends on the time that one is seeing them, but I would not change that opinion. I would not take someone who has -- let me just -- again, it depends.

If somebody has abruptly gone off their treatments and is having withdrawal effects, in that case, it may be more prudent to reinitiate a lower dose to help manage the withdrawal effects.

But for someone who had been off of medicine

and was out of the acute period of a risk of, let's say, a withdrawal seizure or a risk of withdrawal akathisia, then I would -- unless that is the case, then it is more prudent, I believe, to let things -- let things ride and to see how alternative interventions would -- would actually make a difference and make a hopeful benefit.

Q And what period of time would that acute withdrawal period be?

A For the most part, or in most cases, you're usually looking at the first two to six weeks I think. It depends on the actual brain elimination, life -- the half life of a brain washout. So every medication has a very unique profile, in terms of how quickly the brain actually clears or metabolizes the drug.

For Haldol, for instance, Haldol washes out of the brain very slowly. And detectable levels of Haldol may still be in the brain tissue for four to six weeks after the last dose, even though the blood level might be showing zero.

Same with Consta, with Risperdal Consta, it can actually have a very long washout. So these are things that a doctor has to think about when he or she says the patient is now having the return of the underlying illness instead of a withdrawal effect from

previous medication that's still in the system, but in the system in low amounts.

So I usually -- you know, you have to look at the individual medication. But for most medications, the acute withdrawal phase is usually in the first two to six weeks.

Q So could you explain what you mean by withdrawal symptoms?

A Sure. Withdrawal symptoms --

MS. POHLAND: Objection, relevance. Could we limit this to the medications being potentially authorized for Mr. Bigley?

THE COURT: (Indiscernible.)

MR. GOTTSTEIN: She is describing the scientific effects of these drugs and withdrawal from the drugs. I think it's part of the (indiscernible) are and what the effects of the drugs are, side effects.

MS. POHLAND: But, Your Honor, the only ones that are relevant are the ones that Mr. Bigley might potentially be prescribed, that Dr. Khari is seeking to prescribe for Mr. Bigley, not every drug that ever was.

THE COURT: You can ask about the withdrawal of Risperdal (indiscernible).

BY MR. GOTTSTEIN:

Q What would be -- would there be withdrawals -- potential withdrawal symptoms from Risperdal Consta?

A Certainly. What would they be? They could be just about any kind of neurological or behavioral side effect. I should say just about any kind of neurological or behavioral phenomenon that would occur while the drug is still being taken, or it could be an original symptom.

I should probably just back up and say there are two different considerations when a patient is coming off or has stopped a mind-altering substance of any kind. One is a set of symptoms which are called rebound, and that usually refers to the reappearance of the initial problems for which the drug was started.

So for instance, if you're giving a patient with a headache an anti-migraine medication, and that person stops taking those medicines very acutely, very quickly, and the headache returns, we would call that return symptom a rebound headache.

Now, different scenario. Imagine we're giving a person a medicine for an ulcer, and as a side effect, the person develops a headache. Now we take

the person off the ulcer medication and the headache comes back, we would call that a withdrawal headache because it's actually a new symptom that was not part of the original treatment. We were trying to treat an ulcer, but the headache came.

Either way, what a doctor has to think about when he or she is seeing a new problem in the setting of a drug being stopped is whether or not it represents a return of the original condition or whether it represents a brand-new problem that the medicine itself has initiated.

And whether a person is seeing rebound or withdrawal symptoms, either one of those can be exacerbated or enhanced by the prior use of psychiatric drug treatments.

Q So are you saying that psychotic symptoms appearing after withdrawal could be a result of the withdrawal?

MS. POHLAND: Objection, leading.

THE COURT: Overruled.

THE WITNESS: What I'm saying is when a person is taken off of an anti-psychotic medication -- I'll just use the word neuroleptic. That's I think more appropriate. When any person comes off of a neuroleptic, that individual may begin to demonstrate

psychotic symptoms, manic symptoms, depression, and/or anxiety, just as a chemical phenomenon of what the medication has actually done inside the brain.

Q And would that be true of symptoms such as agitation?

A Certainly. That would be one of the most common things to see when a person comes off of any mind-altering substance. We could pick any number of classes of medications, whether they were neuroleptics or anti-depressants or benzodiazepines, which are commonly given for anxiety, or anticonvulsants, any of these chemicals as they are leaving the body, washing out of the brain, and as the brain is beginning to revert into a previous level of cellular adaptations, any of these kinds of phenomena can begin to appear or worsen at that time.

Q So would it be your opinion that someone should be given an extended period of time off the neuroleptics to figure out where they're at, if that's a --

MS. POHLAND: Objection, calls for speculation.

THE COURT: Overruled.

THE WITNESS: I think it's -- I think it's very important.

Unfortunately, this is an area where the science is probably ahead of the curve, in terms of clinical practice.

In other words, people who spend time on the science of these chemical treatments are perhaps in a different place of understanding or awareness than most clinicians have had time to be. And that is, they are probably --

It's probably more correct to speak about two different periods of withdrawal. There is an acute phase of how the body accommodates to a medication leaving the system, and then there is a longer phase of what I would call re-equilibration, or sort of a resetting of the body and the brain's thermostat.

That resetting of the body and the brain may take six to 12 months, if not longer. A very good example of this is LSD, which is basically, you know, the street drug. And basically LSD was very famous in the '60s for causing flashbacks and an hallucinatory phenomenon called palinopsia. And a person could experience that weeks or months after their last exposure to LSD.

So we know from many different examples of mind-altering substances that the effects of those medicines or chemicals may actually have long-lasting

and delayed appearance.

So it is very similar, in terms of withdrawing people from different kinds of prescription medications, that one has to be aware of the possibility that some kinds of effects may not emerge for perhaps for as long as months or even 12 months after the last exposure.

What that means basically is the following. A physician has to pay good attention to what is known about the underlying science and to always be evaluating an individual in the context of their previous chemical exposures, even if those exposures happened many months before.

So yes, to answer your question, could withdrawal happen for a long period of time, and should a person be given the opportunity to get through this withdrawal period before jumping the gun on resuming a medication that will start the whole process over again? Absolutely, that should be a goal of everyone who is involved in the treatment plan.

MR. GOTTSTEIN: I have no further questions.

THE COURT: Recross?

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

THE COURT: Okay. Thank you, Dr. Jackson. You may hang up.

THE WITNESS: Thank you very much.

(Witness excused.)

THE COURT: Who are you going to attempt to get next?

MR. GOTTSTEIN: Bob Whitaker.

THE CLERK: This is the clerk. I just wanted to let Judge Morse and the parties know that the JA advised that if Judge Morse is going to go past 1:30, we have to change court locations down to the basement because of wellness court hearings.

THE COURT: We're not going past -- well, I will let you know in advance if we go past 1:30.

THE CLERK: Thank you.

THE COURT: Let's talk about where we're going. The state wants to cross examine that list of witnesses, and that's not going to happen today, given that -- I could go -- I have a hearing at 3:30 back in court. I could go later today here, if other people are -- are able to do that, than I normally would.

If we don't do it today, I'm spending the next three -- well, tomorrow is a holiday, Wednesday, Thursday, Friday I am dealing with the resumption of a jury trial, not doing this. I have to get that jury trial done. I have canceled (indiscernible) matters to get that done.

So if we -- if we can set another time, let's say a week from today, where all of the witnesses who were going to be available would be available. Would that work?

MS. POHLAND: Your Honor, (indiscernible) the State would like to conclude the hearing today, if possible.

I think Mr. Gottstein has had notice that he was supposed to have these witnesses available for cross for the hearing today if he planned to call them. Because the State intended to finish its case in chief this morning and did so.

THE COURT: (Indiscernible.) How long do you -- do you know how long your cross might be for the total group -- assuming all of them (indiscernible)?

MS. DERRY: In total, Your Honor?

THE COURT: Yes.

MS. DERRY: Not more than an hour. That's all of them. And if we could -- Mr. Cornils is -- of the priority, if his testimony is to be admitted, that is the highest priority for me to be able to cross examine.

MR. GOTTSTEIN: I need to subpoena him. I didn't subpoena him. I probably should have. I

apologize. I'm not sure I can -- he no longer works for Choices, so I --

THE COURT: (Indiscernible) available to be subpoenaed?

MR. GOTTSTEIN: Yes, I believe he is.

THE COURT: How did we get to the middle of the hearing and he's not subpoenaed?

MR. GOTTSTEIN: It's my fault, Your Honor.

MS. POHLAND: Your Honor, the State would move to strike him as a witness and any proposed testimony unless he can be called and be available for cross examination.

THE COURT: His testimony will be struck if he's not available for cross. But I'm not going to require him to be available by -- not today.

If you call him on the phone today, will he take your call?

MR. GOTTSTEIN: He might, Your Honor. I'm not sure I have a current number for him. So if we can take -- you want to take a short break to try and --

THE COURT: What's the order that the state would like to cross, in terms of these? Mr. Cornils? Is that who's first, Cornils?

MS. DERRY: Yes, Your Honor. I would like to

cross examine Paul Cornils if that testimony is to be admitted, his written testimony, which we would object to.

THE COURT: We'll let you cross examine every single one of them. I just want to know the sequence.

MS. DERRY: And then any -- the order doesn't matter, Your Honor, other than Mr. Cornils.

MR. GOTTSTEIN: Do you have his number at (indiscernible)?

MS. DERRY: Oh, no, Mr. Gottstein. He wasn't on my list ever.

THE COURT: Why don't we do this. Why don't we end today's session and have a status hearing Wednesday or Thursday. I don't have my calendar in front of me.

We can get on the phone once you folks are back at your office and look at your own calendar. Figure out a time, Wednesday, Thursday, Friday, when we will figure out when this next day will be.

My expectation is going to be is a week (indiscernible) Monday. I don't know what I have on that calendar, but I am going to interrupt what I've got to finish this. And likely -- likely at 8:30. So that will give you some time to make sure that those people are available at 8:30 for court, in the

morning.

And if they aren't available, then, you know, it is likely -- depending on the reason for the unavailability, it is likely that testimony is not going to be -- well, it depends whether there is prior testimony (indiscernible) affidavit. But if they are not available to cross, it is likely that their testimony -- the direct testimony is going to be stricken.

MS. POHLAND: Your Honor, Ms. Derry won't be available next week. She is going to be out of town for the entire week. I mean, the State has an objection that the hearing be continued and Mr. Bigley be forced to continue emergency medication should that be necessary -- necessitated by circumstances because Mr. Gottstein has not --

THE COURT: Why can't you do it?

MS. POHLAND: Why can't I do it? Well, I can, if that's what you'd like. I mean, but the objection remains --

THE COURT: I'm not going to force either of you to do anything, but both of you were sitting here the entire time.

MS. POHLAND: Correct. I can.

THE COURT: Both of you have been submitting

pleadings.
MS. POHLAND: Your Honor, I can perform it.
But the State's objection remains that if Mr. Gottstein was prepared to call these witnesses on Thursday, he stated that he wanted to call these witnesses and would have them available for cross. The State doesn't believe he should have extra time because he neglected to fulfill his duties.
MR. GOTTSTEIN: Your Honor --
THE COURT: I am going to allow him extra time. So when we get back, we're -- are you folks available just simply by telephone at, let's say, 2:30 today?
And the only purpose of the 2:30 thing is to figure out when on Wednesday, Thursday, or Friday we're going to have a status hearing to make sure we can -- I just want you to have a chance to look at your calendars and make sure that we can -- give you a chance to get these people here on Monday.
In all probability, this is happening first thing Monday morning, and there won't be any further continuances. It will be done Monday.
MS. DERRY: Yes, Your Honor.
MS. POHLAND: Yes, Your Honor.
THE COURT: So let's get on this. We'll be

back -- and I'm not even going to -- well -- I'm not even going to go on the record. I'll just put conference call saying when can we -- I'll have my staff do it, when can we be available Wednesday, Thursday, or Friday for 15 minutes to -- and it can be telephonic. It's not going to be here, it'll just be telephonic, period, to finalize the completion of this. Okay.
Is there anything -- and that will give everybody a little bit of time to sort of regroup and see if there are any thing -- any other sort of evidentiary procedural issues that are still (indiscernible).
I am taking a copy of this. I don't know -- oh, I know. And that will give the State an opportunity -- there is some proposed history of -- history --
MS. POHLAND: (Indiscernible) look at it. The state's going to object because it's more argumentative than just a (indiscernible) history.
THE COURT: If it's argumentative, it's not coming in. If it's chronological (indiscernible).
But anyway, I haven't looked at it. But I'm willing to have -- I think it would be helpful to have a chronology that is neutral.

If that submitted one can be turned into a neutral one, it has a greater chance of coming in. I am not commenting on it now, because I haven't seen it. I have no idea whether (indiscernible). Maybe it's not.
All right. Anything else?
MS. DERRY: I'm just weighing the pros and cons of -- in insisting that we do (indiscernible), Your Honor.
THE COURT: Ask what you want, but now is the time.
MS. POHLAND: Let's -- why don't we discuss it at -- you wanted to (indiscernible) Mr. Cornils; is that correct?
MS. DERRY: (Indiscernible.) I'm sorry.
THE COURT: I'm not admitting anything that's not cross examined, with the possible exception of former testimony because that is slightly different. (Indiscernible) whether they're applicable to it. If there is an affidavit or some sort of a notarized/affidavit that is not backed up by cross examination, it's not being admitted.
MR. GOTTSTEIN: Excuse me. You mean when the person was available for cross examination?
THE COURT: It depends on the -- it depends.

Prior testimony is different than simply an affidavit. So let's see who's available before we argue over whether or not something is coming in or not.
But you can assume that you should get every single one of these people available at the next hearing, and there will not be further continuances.
MR. GOTTSTEIN: Yes, Your Honor.
THE COURT: All right. Anything else?
MS. DERRY: No. Thank you, Your Honor.
THE COURT: Madame Clerk, you can go off record. We are done for the day.
THE CLERK: Thank you. Off record.
(Off record.)
1:05:41

TRANSCRIBER'S CERTIFICATE

I, Jeanette Blalock, hereby certify that the foregoing pages numbered 1 through 189 are a true, accurate, and complete transcript of proceedings in Case No. 3AN-08-1252 PR, In the Matter of the Necessity for the Hospitalization of William S. Bigley, Hearing held on November 10, 2008, transcribed by me from a copy of the electronic sound recording, to the best of my knowledge and ability.

_____ _____

Date Jeanette Blalock, Transcriber