

**Federal Defenders
OF NEW YORK, INC.**

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May 6, 2024

Via Email and ECF
To Be Filed Provisionally Under Seal

The Honorable Marcia M. Henry
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Terrence Wise, 23-CR-9 (DG)

Dear Judge Henry,

We write to update the court on Mr. Wise’s medical status, and to respond to the government’s May 3, 2024 letter.

At the outset, we file this letter provisionally under seal, solely because it responds to a sealed filing. We move to unseal both this filing and ECF No. 26. In its filing, the government writes, “Because this letter discusses the defendant’s personal medical information, the government respectfully requests that it be filed under seal.” ECF No. 26 at 2. We have consulted with Mr. Wise, and he consents to the public filing of the government’s letter, as well as this letter. The Circuit has “reinforce[d] the requirement that district courts avoid sealing judicial documents in their entirety unless necessary. Transparency is pivotal to public perception of the judiciary’s legitimacy and independence.” *United States v. Aref*, 533 F.3d 72, 83 (2d Cir. 2008). Mr. Wise is the only party here with a privacy interest that may potentially justify sealing, and he does not invoke it.

On May 3, 2024, Mr. Wise underwent a needle biopsy and is awaiting the results. He has been advised that he almost certainly has lung cancer, and the purpose of the biopsy is to determine the type and stage of his cancer. Once the cytology and pathology examinations are complete, his doctors will create a treatment plan. The mass in his chest—which measured 3.2 centimeters on February 29, 2024, when MDC Brooklyn sent him for an outside CT scan—has grown to 2.5 inches, or 6.35 centimeters. As he advised MDC Brooklyn on April 11, 17, and 22 in writing, and as he advised multiple members of his unit team in person, he continues to cough up blood, filling a collection container.

On May 2, 2024, this Court ordered MDC Brooklyn to provide a written explanation for its delay in treating Mr. Wise between February 29, 2024, when MDC doctors sent Mr. Wise for a lung CT scan; April 11, 2024, when Mr. Wise first complained of coughing up blood; and April 29, 2024, when MDC doctors sent Mr. Wise to the emergency room after undersigned

counsel intervened. The MDC's written explanation, filed by the government at ECF No. 26, raises grave concerns about the care, or absence of care, provided to Mr. Wise while he was at the MDC. The MDC's admitted mistreatment of Mr. Wise strongly suggests that he should no longer be in their custody. This Court should hold an evidentiary hearing to uncover how this happened, and how it can be prevented in the future.

First, the MDC notes that Mr. Wise had a chest x-ray on November 7, 2023, "and no mass was noted at that time." ECF No. 26 at 1. But chest x-rays are not the appropriate imaging for lung cancer screening. *E.g.*, Edwin JR van Beek et al., *Lung cancer screening: Computed tomography or chest radiographs?* World J. of Radiology (Aug 28, 2015), at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4553249/> ("Clearly, based on the above studies, CT is superior to CXRs for screening in lung cancer.") Rather, the x-ray revealed an unrelated calcified nodule. *Id.* On November 9, 2023, having reviewed the x-ray, the MDC's Dr. Awd requested a lung CT scan. *See* ECF No. 24, Ex. C. But the MDC did not send Mr. Wise out for that requested scan until February 29, 2024, nearly four months later. That scan showed a 3.6 x 2.3 x 3.6cm mass.

Next, the MDC states that "MDC Brooklyn did not receive the results until March 11, 2024." ECF No. 26 at 1. "The results were somehow missed by the health services department, and the delay was unfortunate." The MDC's admission materially glosses over what the health services department "missed:"

- The medical record shows that Mr. Wise's lung CT took place on February 28, 2024. ECF No. 24, Ex. F. The report was signed on February 29, 2024 at 9:02am. The MDC alleges that it received the report on March 11, 2024, but provides no record of this receipt from the hospital. Rather, the Health Services record states that it was "scanned" on March 11, 2024. Then, it was cosigned by Bialor, Bruce, MD, the Clinical Director of the MDC, on March 18, 2024. *Id.* Health services therefore processed the report on March 11, and Dr. Bialor signed it on March 18, 2024, raising several critical questions:

What is the MDC's procedure, and timeline, for seeking and receiving results from outside providers to whom they sent patients in their care? Who in Health Services is responsible for processing results? What does Dr. Bialor mean when he cosigns a test result of a 3.2cm mass on his patient's lung, who his department had sent for outside testing? When he signed the result but "missed" it, did he fail to read what he had signed? Did he read it but fail to recognize its import? Was he not the person who signed his name?

- The MDC "missed" Mr. Wise's March 12, 2024 written request for his test results, which had apparently come into their system the day before. ECF No. 24 at 2.
- The MDC "missed" Federal Defenders' March 13, 2024 subpoena, *Touhy* request, and HIPAA release for Mr. Wise's medical records, filed in accordance with their protocol. *Id.*

- The MDC “missed” Mr. Wise’s April 11, 17, and 22 written “cop-out” requests for medical attention, including that he is seeking the results of his medical tests, and that he is coughing up blood, now a month beyond the MDC’s apparent receipt of his results.
- The MDC “missed” Federal Defenders’ April 24, 2024 email alerting the facility to all of the outstanding requests, advising that he continued to cough up blood, and seeking his test results, failing to see him for another two days.

To be sure, MDC Brooklyn is correct that “the delay was unfortunate.” ECF No. 26 at 1. Deeming their neglect of their patient “unfortunate” denotes a lack of patient-centered care. It reflects a failure to recognize the gravity of their mistake. The MDC’s admission is cold comfort to Mr. Wise, who is sitting in a hospital room, his family banned from his bedside, waiting to learn his fate. Because of their “unfortunate” delay—nearly six months counting from Dr. Awd’s November 9, 2024 order of the CT scan, and two months after his mass measured 3.2cm—the mass more than doubled in size, which may significantly impact Mr. Wise’s treatment options, and accordingly, his chance at survival. To call it “unfortunate” lacks basic humanity. It is an insult to Mr. Wise.

Then, the MDC confoundingly asserts that “Health Services generally responds to sick calls within 2 weeks.” ECF No. 26 at 1. Admitting that “the March 11th sick call was missed,” the MDC seems to justify the delay in responding to Mr. Wise’s April 11, 17, and 22 sick calls on April 26, 2024, following defense counsel’s intervention. This overlooks that Mr. Wise’s April 11, 17, and 22 complaints were that he was *coughing up blood*. ECF No. 24, Ex. H, I, J. That’s an emergency requiring immediate medical attention, particularly for a patient who has a (then-) documented 3.2cm mass on his lungs, not a routine complaint to be handled sometime in the next two weeks. What’s worse, Mr. Wise did not rely only on the written cop-out system, but also complained verbally to numerous Unit 53 corrections officers, including Officers Cox and Willoughby, and even handed them a milk carton containing his bloody sputum. The MDC’s explanation that they “generally respond to sick calls within 2 weeks” suggests that its Health Services Department does not employ any triage system, whether by software or human review.

The written explanation then jumps to April 29, 2024, when Dr. Bialor “submitted an emergency consult and had Mr. Wise admitted to the hospital for further urgent workup including biopsy.” ECF No. 26 at 1. That skips over several notable events. First, no one saw Mr. Wise at all until the April 26, 2024 deadline set by defense counsel in the urgent email seeking the now two-month-old test results. On that date, someone at MDC Brooklyn seems to have read the results indicating the mass for the first time (at least, for the first time since Clinical Director Bialor signed them on March 18, 2024). Those worrisome results were not discussed with Mr. Wise by a doctor, but rather a nurse practitioner, Beverly Timothy. ECF No. 24, Ex. L. Ms. Timothy noted that Mr. Wise had been coughing up blood for one month, whenever he coughs. *Id.* She reviewed with him the chest CT revealing the 3.6cm mass, and his chest x-ray. Then, the nurse practitioner diagnosed the mass as a “benign neoplasm of unspecified bronchus and lung.” *Id.* Given that his cancer specialists require a biopsy of Mr. Wise’s cells to determine its pathology, nurse practitioner Timothy’s ability to diagnose it as benign is suspect at best. Finally, her “disposition” of Mr. Wise’s case was not to call an ambulance or confer with a doctor, but that Mr. Wise should “follow-up at sick call” and “follow-up at chronic care clinic as needed.”

Id. No doctor reviewed her notes, or sent Mr. Wise to the hospital, for an additional three days. Apparently, MDC Health Services, a medical facility, does not provide weekend care.

On April 29, 2024, Dr. Awd cosigned the “benign” medical report at 8:07am. ECF No. 24, Ex. L. At 12:48pm, registered nurse Duvinka Jordan performed a chart review, entering a request for a pulmonology consult by May 3, 2024, requesting “a bronchoscopy and biopsy asap.” *Id.*, Ex. M. At 1:42pm, defense counsel emailed the MDC seeking an urgent update. *Id.*, Ex. N. Only then, at 2:16pm, did Dr. Bialor “submit[] an emergency consult and [have] Mr. Wise admitted to the hospital.” *Id.*, Ex. O; ECF No. 26 at 1. The MDC’s apparent pattern of having unsupervised non-physicians (*e.g.*, a nurse practitioner; a registered nurse) review medical records with patients, make important diagnoses, make outside medical referrals, and make emergent care determinations is highly concerning.

As this Court is aware, Mr. Wise’s case is only the most recent, though in some ways the most alarming, in a series of cases of medical delay and neglect at MDC Brooklyn. On May 1, 2024, Judge DeArcy Hall held an Order to Show Cause Hearing regarding the MDC’s failure to provide medical care to defendant Jonathan Gouldbourne, resulting in a ruptured appendix. *See United States v. Ricketts, et al.*, 22-CR-106 (LDH), ECF No. 330; Ex. A (Tr. of Crim. Cause for Hr’g.). At that hearing, Judge DeArcy Hall held that MDC Brooklyn, in that case, had made “a pattern of misrepresentations to defense counsel and the Court.” Ex. A at 14:19-22. At the hearing, MDC’s lawyer admitted to the Court that members of Health Services had lied to her about a patient’s care. *Id.* at 24:20-21 (THE COURT: So who was it that lied to you? MS. PAPAPETRU: The medical staff.); 25:8-15, 19-22. The Court ordered Dr. Bialor and additional medical personnel to appear at an evidentiary hearing, to turn over their internal email communications, and to take Mr. Gouldbourne for a second medical opinion. *Id.* at 59-64.

Judge DeArcy Hall’s hearing followed Judge Irizarry’s two hearings in *United States v. Young*, 23-CR-475 (DLI), on December 15 and 20, 2023. Ex. B, C. In that case, Judge Irizarry found that MDC Health Services neglected to treat and misdiagnosed Mr. Young’s MRSA infection, finding that the Court is “not satisfied that based on what I have seen that the MDC is qualified in any way, shape, or form to address Mr. Young’s condition,” and ordered his transfer to a medical facility. Ex. B at 14:8-10, 15:1-3. Completely disregarding that order, the MDC instead sent Mr. Young to be examined at a hospital, and then returned him to the MDC. Ex. C. at 4-5. Judge Irizarry held, “The conduct of the MDC here has -- I tried to think of how to describe it. It’s an abomination. Utterly contemptuous of the court. It’s contemptuous of human life and dignity. It’s appalling.” *Id.* at 5:8-11. The MDC’s deliberate indifference in Mr. Wise’s case exponentially reinforces that conclusion.

So that this Court can ascertain how the MDC failed Mr. Wise so completely, and so many times, and so that the Court may make a reasoned determination of whether and where he should be held pending sentencing, we respectfully urge the Court to hold an evidentiary hearing. We request an order requiring the MDC to preserve and produce its internal communications, and those with the government, regarding Mr. Wise’s care. And the MDC should produce all written policies and protocols in its possession regarding its usage of outside medical providers; the receipt, processing, and discussion of test results with patients; and its use of non-physicians for critical patient care.

We will provide an update upon receipt of Mr. Wise's biopsy results and treatment plan.
Thank you for your consideration.

Respectfully Submitted,

/s/

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cc: AUSA Andrew Roddin (by ECF and email)
Chambers of Hon. Diane Gujarati (by ECF and email)
Sophia Papapetru, MDC Brooklyn Legal Department (by email)

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X
 UNITED STATES OF AMERICA, : 22-CR-106(LDH)
 :
 :
 -against- : United States Courthouse
 : Brooklyn, New York
 :
 :
 JONATHAN GOULBOURNE, : Wednesday, May 1, 2024
 : 12:00 p.m.
 Defendant. :
 :
 - - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR HEARING
BEFORE THE HONORABLE LASHANN DEARCY HALL
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Proceedings recorded by computerized stenography.
Transcript produced by Computer-aided Transcription.

Hearing

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1 (In open court.)

2 COURTRROOM DEPUTY: Good afternoon. This is a
3 criminal cause for a hearing in the matter of United States
4 v. Jonathan Goulbourne, Docket No. 22-CR-106.

5 Can counsel please state your appearances for the
6 record starting with the Government.

7 MS. MCGRATH: Good afternoon, your Honor. Tara
8 McGrath and Francisco Navarro for the Government.

9 THE COURT: Good afternoon.

10 MR. NAVARRO: Good afternoon.

11 MS. PAPAPETRIOU: Sophia Papapetriou appearing for
12 MDC Brooklyn.

13 MR. BIALE: Noam Biale on behalf of Jonathan
14 Goulbourne.

15 THE COURT: You all can be seated.

16 All right, folks. Regrettably the Court needed to
17 convene this particular hearing in response to a letter that
18 I received with respect to medical treatment provided to
19 Mr. Goulbourne.

20 I just want to make sure that we're all operating
21 on the same sheet of music with respect to some of the basic
22 facts that transpired here and I'm referring largely to
23 Mr. Goulbourne's letter dated April 30th to the Court.

24 As I understand it, from this letter on
25 April 14th, Mr. Goulbourne began to experience sharp pain in

Hearing

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1 his leg, it worsened to severe pain in his abdomen
2 accompanied by nausea and vomiting repeatedly.

3 As I understand it from this letter,
4 Mr. Goulbourne and his cellmate informed the correction
5 officers about his condition. I further understand that
6 those complaints were effectively ignored and that
7 Mr. Goulbourne was instructed to stop complaining.

8 Subsequently, Mr. Goulbourne collapsed, spent the
9 night in what I imagine was unimaginable pain and he was
10 eventually moved to NYU Langone's Brooklyn emergency room
11 where he was diagnosed with an a ruptured appendix. I'm not
12 a doctor but I will tell you that I do know as a layperson
13 that a ruptured appendix can lead to death. In any event,
14 Mr. Goulbourne underwent an emergency appendectomy and he
15 was discharged on April 18, 2024, and returned to the MDC
16 that day with three prescriptions: One for an antibiotic to
17 be taken twice a day for five days; two, Percocet taken
18 twice a day for three days for pain; and then, finally, a
19 medication that is to be taken for 14 days, Docusate Sodium.

20 Now, Mr. Goulbourne was permitted to carry and
21 self-manage the antibiotics and the Docusate Sodium;
22 however, the Percocet was to be administered by MDC staff.

23 Now, on Saturday, April 20th, two days only after
24 Mr. Goulbourne was returned from the emergency room having
25 just undergone emergency surgery, the MDC went into

Hearing

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1 lockdown. As a result, no, not as a result of the lockdown,
2 coupled with the lockdown, Mr. Goulbourne's identification
3 card had been taken by MDC staff when he went to the
4 hospital and it was not returned to him. And as a result,
5 he was informed that he could not be given the Percocet to
6 manage the pain. As a result, Mr. Goulbourne spent the
7 weekend without pain management medication.

8 On April 23rd, my understanding is that
9 Mr. Goulbourne still had not received any of the pain
10 management medication. There was an exchange that
11 Mr. Goulbourne had with the nurse on that day before he went
12 for an attorney visit. There is some question about that
13 exchange. I'm going to put that aside for now. Upon his
14 conclusion of his legal visit, my understanding is that he
15 was intercepted by MDC staff who placed him in handcuffs and
16 escorted him to the SHU. He was given a ticket for, quote,
17 threatening bodily harm, and I'm quoting from the chart
18 written by Mr. Goulbourne on April 30th, based on the
19 exchange that he had with the nurse. My understanding is
20 that on April 23rd, at the time that Mr. Goulbourne was
21 placed in the SHU, his medication, specifically, the
22 antibiotics and the Docusate Sodium, which were to be
23 self-managed by Mr. Goulbourne were taken away from him.

24 Counsel for Mr. Goulbourne, as I understand this,
25 alerted the MDC that Mr. Goulbourne did not have his pain

Hearing

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1 medication. He did not receive a response. The Government
2 made its first of many efforts to assist Mr. Goulbourne in
3 obtaining his medication, and to my great surprise, the
4 Government also did not receive a response.

5 THE COURT: Ms. Papapetriou, this is actually
6 important stuff. Whatever it is that you're writing, stop
7 and pay attention to the Court. Pretend for me that this is
8 a matter of great importance to the MDC. Can you do that
9 for me?

10 That was a question. Can you do that for me?

11 MS. PAPAPETRIOU: Yes, your Honor, I am following
12 what you're reading.

13 THE COURT: What I said was to pay attention to
14 me.

15 The Government's request for a status was ignored
16 by the MDC on that date. My understanding is that on
17 April 25th the parties again followed up. It was not until
18 April 26th that the MDC staff responded indicating that
19 Mr. Goulbourne had received both medications and that the
20 antibiotics were self-carry. Of course, the response to
21 that was that Mr. Goulbourne was not in possession of the
22 medication because he had been in the SHU and he was unable
23 to take the remaining doses which I understood or understand
24 to be three or four doses.

25 The MDC responded again and then this time the MDC

Hearing

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1 indicated that Mr. Goulbourne's antibiotic medication was
2 completed on April 24th and therefore he would not have
3 those doses in his possession. Counsel again wrote back
4 explaining that the antibiotic prescription could not have
5 been completed on April 24th because Mr. Goulbourne had been
6 sent to the SHU on April 23rd.

7 I received this letter on April 30th because once
8 that letter was sent to the MDC, no response was received to
9 that correspondence by either the defendant or from the
10 Government. The Court got involved yesterday on April 30th
11 in response to the letter that was sent to the Court
12 concerning these issues. I asked for a status update. I
13 spoke with Ms. Papapetriou and Ms. McGrath and asked in no
14 uncertain time, indeed, I confirmed that I wanted an update
15 by 5:15 p.m. concerning the provision of Mr. Goulbourne's
16 antibiotics. To my great surprise, even my request was
17 ignored, and at 5:15 p.m. I did not receive a response from
18 either the Government or the MDC. Imagine my great
19 surprise, at 5:21 p.m., I asked for a follow-up, or I asked
20 my clerk to call for a follow-up with Ms. McGrath who
21 regrettably, or indicated her regret, that she had not
22 contacted the Court at 5:15 p.m. but I was told -- the
23 information that was provided to the Court, the information
24 that's in your letter, they're slightly different. My
25 understanding, what I was told at about 5:25, 5:30 p.m. was

Hearing

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1 that MDC staff was trying to locate the medication that was
2 taken from Mr. Goulbourne at the time he was placed in the
3 SHU. Here again imagine my great surprise given the fact
4 that not once but twice it was represented to defense
5 counsel that Mr. Goulbourne had already been provided with
6 the medication through the 25th of April.

7 So how is it, I asked myself, could the MDC be
8 trying to locate that very same medication? It seems to me
9 that someone at the MDC has made an express
10 misrepresentation to counsel concerning the medical
11 treatment of his client.

12 In any event, at that time the Court determined
13 that an Order to Show Cause was necessary in this case;
14 however, before that order could issue, I received yet
15 another update. Now, that update again is a little
16 different than the way it was stated in your letter. The
17 oral update, as I understood it, was that he could not be
18 provided with additional antibiotics given the amount of
19 time that had lapsed between the date, which I think would
20 have been April 23rd or 24th, and the April 30th date that
21 he could no longer be medically be provided with the
22 remainder of that antibiotic regimen and that to do so maybe
23 a detriment to his health. We're going to get to that.

24 In the letter, as I understand it from
25 Ms. McGrath, what I am hearing here is that -- and this one

Hearing

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1 is I've got to tell you perplexing. As I understand it,
2 during a follow-up call at 6:22 p.m. that the Government
3 initiated MDC --

4 Did MDC initiate any contact with you before 6:22
5 p.m.?

6 MS. MCGRATH: Ms. Papapetriou and I spoke numerous
7 times throughout this.

8 THE COURT: My question is: Did MDC initiate?

9 MS. MCGRATH: Yes. Ms. Papapetriou had called me
10 at some point before 6:22 p.m. on more than one occasion.

11 THE COURT: Before 5:15 p.m.?

12 MS. MCGRATH: I don't -- after we spoke with your
13 Honor the first time, Ms. Papapetriou and I spoke to discuss
14 what was going to transpire between that point at 5:15 p.m.
15 But, no, not otherwise after that before 5:15 p.m.

16 THE COURT: According to your letter, Ms. McGrath,
17 MDC Legal advised that it had spoken to the attendant
18 medical staff at MDC who had treated the defendant following
19 his surgery and found his wounds to be healing well. I
20 don't know what date this was. I think it may have been the
21 25th, I don't know, it's not clear to me. And did not
22 recommend that the defendant be provided with additional
23 antibiotics irrespective of whether he had completed his
24 prior five-day treatment.

25 So now we've moved from he was provided with the

Hearing

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1 antibiotics to, well, you know what, if he doesn't get it,
2 it doesn't really matter irrespective of that, irrespective
3 of what the doctor said following his surgery, let's just
4 move on. That's where we are now according to this letter
5 at 6:22 p.m.

6 He's still recovering well and is otherwise in
7 good health. I guess that pain that he suffered without
8 pain medication was in the MDC's mind, "recovering well."
9 Otherwise, he's in good health.

10 That's what I understand the state of play to be.
11 Did I miss something? Anyone? Anyone? What did I miss,
12 tell me what it was?

13 We'll get to the tickets, I'm talking about the
14 medical stuff.

15 MR. BIALE: Understood.

16 I just want to provide one additional piece of
17 information which is that when I met with Mr. Goulbourne
18 yesterday, he told me that the last dose of antibiotics he
19 took was Tuesday morning, the 23rd. So that was the last
20 dose and I asked him how he was doing in terms of pain, he
21 said I'm still experiencing some pain, it's like a five out
22 of ten. It's especially painful when I eat because the food
23 is very acidic. But otherwise, the pain is lessening but
24 he's still experiencing some pain. So I just wanted to
25 provide those additional details.

Hearing

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1 THE COURT: All right.

2 Yes.

3 MS. MCGRATH: And, your Honor, I can just offer a
4 few points of clarification. So the characterization in the
5 letter is mine of what I understood the doctor to say. So
6 my understanding from the report yesterday at 6:22 p.m. is
7 that although the defendant was meant to have a five-day
8 prescription of antibiotics, because that time had lapsed
9 the solution at this juncture is not to give him just the
10 last remaining dose. To the extent they would be providing
11 him antibiotics, it would be another multiday series and
12 that wasn't determined warranted given the status of his
13 wound. And so, that is what I intended to confer in that
14 clause that your Honor mentioned.

15 THE COURT: Do I have before me anything in terms
16 of written that I can refer to from medical personnel?

17 MS. MCGRATH: I have a copy of the defendant's
18 medical records from the MDC that I'm happy to provide.

19 THE COURT: Does that include the conclusions that
20 you are asserting now?

21 MS. MCGRATH: This includes his visit on
22 April 25th. The conclusions I'm asserting now were conveyed
23 orally, I understand, to Ms. Papapetriou and then to me and
24 then to chambers.

25 THE COURT: Right. So on April 25th, and I just

Hearing

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1 want to so I can understand. The understanding on
2 April 25th is that this gentleman had not been provided with
3 his medication at that point for two days. And was there a
4 determination on April 25th that they no longer wanted to --
5 on April 25th, that they no longer wanted to provide him
6 with the medication?

7 MS. MCGRATH: Your Honor, I entirely defer to
8 MDC Legal on this point because I have not independently
9 spoken to anyone at the medical center there.

10 THE COURT: I'll hear from MDC.

11 MS. PAPAPETRIOU: Your Honor, from what I was told
12 by speaking to the clinical director, who is the medical
13 doctor or head medical doctor.

14 THE COURT: Who is the clinical director?

15 MS. PAPAPETRIOU: Bruce Baylor.

16 THE COURT: Okay.

17 MS. PAPAPETRIOU: He, himself, saw Mr. Goulbourne
18 this morning and based on the assessment from --

19 THE COURT: I haven't gotten to this morning. I
20 want to get to the 25th. I want to understand if,
21 consistent with his medical records, if there was a
22 determination, a finding, on April 25th that this man should
23 not be provided with his antibiotics.

24 MS. PAPAPETRIOU: Yes.

25 THE COURT: On the 25th?

Hearing

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1 MS. PAPAPETRIOU: Yes.

2 THE COURT: Let me see it.

3 (A brief pause in the proceedings was held.)

4 THE COURT: I'm sorry, what sentence are you
5 directing me to?

6 MS. PAPAPETRIOU: Where it says "today he was
7 reevaluated and his incisions and wounds were healed."

8 THE COURT: Today was reevaluated in the West SHU
9 medical room by this provider and HSA. Upon visual
10 assessment, all incisions are closed; healing accordingly.
11 No indication of drainage, no swelling, no redness.

12 Is there another portion that I should be reading?
13 It's not a trick question, you gave me the document.

14 MS. PAPAPETRIOU: Correct.

15 THE COURT: What did you want me to read?

16 MS. PAPAPETRIOU: So, at that point, there was
17 no --

18 THE COURT: That's not the question I asked you.
19 The question I asked you if there was a determination on
20 that date that this gentleman was not to be provided with
21 antibiotics. You said to me, yes. I said, is it in the
22 record? You said yes. I asked for it. You've given it to
23 me. I don't see it there. This is now three times that I
24 believe the MDC has made a misrepresentation. Two to
25 defense counsel and now one to this court. I am keeping

1 track.

2 Where does it say that on April 25th there was a
3 determination on that date that this gentleman should not be
4 provided with antibiotics so that perhaps the bacteria that
5 flooded his system when his appendix ruptured doesn't cause
6 him further harm? Where does it say that?

7 You gave me the document, what should I be looking
8 at?

9 MS. PAPAPETRIOU: That document is what the doctor
10 referred me to saying at that point --

11 THE COURT: What this sounds like to me is that
12 the MDC has come up with a post hac rationalization for not
13 providing this man with the appropriate medical care. This
14 is not an anomaly. I am tired of hearing the defendants
15 that are held at the MDC are not being provided with the
16 necessary medical treatment. I just got off the phone with
17 Judge Irizarry and, you know what, she, too, was not
18 surprised to hear that I was holding a hearing concerning
19 the medical treatment of an individual held at the MDC. And
20 what makes it worse is that it appears to me that at least
21 in this case there is a pattern of misrepresentations to
22 defense counsel and the Court.

23 Now, I'm trying to figure out what to do about
24 that. You are an officer of the Court, you have an
25 obligation to be candid and when you fail in that obligation

Hearing

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1 to be candid. When you fail in that obligation to be
2 candid, there should be consequences. I need to figure out
3 what I need to do because you have failed to be candid with
4 this court.

5 Now, I don't know where the root of this problem
6 lies but I intend to get to it. I want to have -- who is
7 it? I want Baylor in front of me because I need to
8 understand what happened in this case and how it could be
9 that we could be as far along as we are in discussions with
10 the MDC concerning medical treatment. And from the start,
11 from April 14th, when this man complained of pain, the MDC,
12 in my personal opinion, based on what I have in front of me,
13 acted with a flagrant disregard for this man's care. How is
14 it that a man can say I am in pain and be told to stop
15 complaining only for it to be discovered that he had a
16 ruptured appendix. He wasn't malingering, that man was in
17 pain and then he was required to suffer for an entire
18 weekend without pain medication?

19 Why was Mr. Goulbourne's counsel told that he had
20 finished this antibiotic regimen?

21 MS. PAPANETRIOU: Your Honor, I spoke with the
22 doctor and he was provided the antibiotics on the 19th on
23 the evening. So he should have taken his dose on the
24 19th, two doses on the 20th; two doses on the 21st; two
25 doses on the 22nd; and one on the 23rd, which would have put

Hearing

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1 him short two doses.

2 THE COURT: Okay. Short two doses. My question
3 to you was pretty plain.

4 MS. PAPAPETRIOU: Correct.

5 THE COURT: Why was it that defense counsel was
6 told that he had finished the antibiotic regimen.

7 MS. PAPAPETRIOU: I'm relaying information that
8 was relayed to me when I requested this information. So if
9 you could just please bear with me in that respect. I am
10 only getting this information as --

11 THE COURT: How is it that you can get the
12 information today accurately but you couldn't get the
13 information accurately when defense counsel asked for it?

14 MS. PAPAPETRIOU: I can't speak to that. There
15 were multiple parties involved, but --

16 THE COURT: Who are they because I want them all
17 here. Let's just have a party. Who are they, let's go.
18 Give me the names. I want to know what happened here. Who
19 are they? Mr. Baylor. Who else? Who told you what when?
20 I feel like this is an impeachment inquiry. Who knew what
21 when let's go. Give me the names. Give me the names.

22 There were a lot of people involved you said who
23 are they.

24 MS. PAPAPETRIOU: Mr. Glucksnis.

25 THE COURT: Spell that.

Hearing

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1 MS. PAPAPETRIOU: G-l-u-c-k-s-i-n-s.

2 THE COURT: Who else?

3 MS. PAPAPETRIOU: I have to look through some of
4 my e-mails.

5 THE COURT: Go ahead.

6 MS. PAPAPETRIOU: Mr. Beddoe, B-e-d-d-o-e.

7 THE COURT: Okay. Now, Mr. Baylor's role is what?

8 MS. PAPAPETRIOU: He's the clinical director.

9 THE COURT: And he was the also the individual who
10 treated and provided care to Mr. Goulbourne on April 25th,
11 correct?

12 MS. PAPAPETRIOU: Yes. All throughout he's
13 responsible for overseeing the care for him.

14 THE COURT: All right. Mr. Glucksnis? What was
15 this person's role.

16 MS. PAPAPETRIOU: Assistant health service
17 administrator.

18 THE COURT: What was his role with respect to the
19 events that have transpired that are bring us here today?

20 MS. PAPAPETRIOU: He was one of the supervisors in
21 the medical department and he's also a paramedic.

22 THE COURT: What was his role with respect to --

23 MS. PAPAPETRIOU: He was part of the individuals
24 deciphering this information.

25 THE COURT: What information was provided by him

1 to you?

2 MS. PAPAPETRIOU: That he returned from the
3 hospital on the 18th, that a prescription for Percocet was
4 issued for three days, that he had breakthrough pain on the
5 20th which he was provided seven days of Tylenol.

6 THE COURT: Okay. I want to make sure that you're
7 clear about what it is that I'm looking for. I'm trying to
8 find the individuals who were responsible for giving you
9 what is apparently false information concerning the
10 provision of the antibiotics to Mr. Goulbourne once he was
11 placed in the SHU. I understand that these gentlemen are
12 aware of what was prescribed, I think everybody in this room
13 is aware of what was prescribed. Who told you that they had
14 completed -- he had completed his regimen of antibiotics,
15 that's what I want to know.

16 MS. PAPAPETRIOU: These individuals, Mr. Beddoe
17 and Mr. Glucksnis, and what I was able to --

18 THE COURT: How would they have known that, I'm
19 just curious. It was prescribed?

20 MS. PAPAPETRIOU: Correct.

21 THE COURT: The medication was taken to him, taken
22 from him because he was placed in the SHU. Presumably, it
23 was not taken by Mr. Glucksnis or Mr. Beddoe somebody else
24 took it.

25 MS. PAPAPETRIOU: Right. At that point, on the

Hearing

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1 25th, when we were made aware, we had a nurse evaluate him
2 again.

3 THE COURT: That's not what I'm asking you. I
4 want to know about who said that the provision that he had
5 been provided with his antibiotics once he was placed in the
6 SHU? It's a pretty simple question because you all made the
7 representation to Mr. Biale that, in fact, it happened.

8 MS. PAPAPETRIOU: So when they were -- when I
9 requested this information from them, they did not know he
10 was moved to the Special Housing Unit so they did not know
11 he no longer had the medication.

12 THE COURT: You knew because that was part of the
13 problem that was raised by defense counsel in the letter.
14 So you all just didn't discuss that aspect of it? So nobody
15 actually undertook to confirm that, in fact, he was given
16 his medication. It was simply assumed that he had his
17 medication because the prescription called for the
18 medication to be provided. So you all just said, well, if
19 it was prescribed, then he got it even though he has said he
20 didn't get it, his attorney said he didn't get it. You did
21 not take any steps to confirm that this man was provided
22 with potentially life-saving medication following a surgery?

23 MS. PAPAPETRIOU: So we notified the medical
24 department and on the 25th, Nurse Garcia saw him and he made
25 no indication that he did not have the antibiotics.

Hearing

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1 THE COURT: Did you not receive a letter from his
2 lawyer?

3 MS. PAPAPETRIOU: Yes.

4 THE COURT: Saying that he hadn't received his
5 antibiotics?

6 MS. PAPAPETRIOU: Yes.

7 THE COURT: So, again, nothing was done to
8 confirm. Now, you're saying it's Mr. Goulbourne's fault. I
9 mean, that's what you just told me. He didn't say anything.
10 His lawyer spoke on his behalf. So, again, my question is
11 what was done to confirm that this man was provided with the
12 medication, potentially life-saving medication? And I think
13 the answer is nothing and I wish you would just say that.
14 What was done to confirm that the medication was provided?
15 If it was nothing, say it was nothing. Because I'm telling
16 you, with every sentence you're losing credibility with this
17 court. So what was done specifically to confirm that
18 Mr. Goulbourne was provided his medication, that's what I
19 want to know. Not confirm what the prescription was, to
20 confirm that it was provided to Mr. Goulbourne. Simple
21 question.

22 MS. PAPAPETRIOU: I relayed the information to the
23 medical staff.

24 THE COURT: That wasn't the question.

25 MS. PAPAPETRIOU: I could not physically confirm

Hearing

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1 that that -- that he had medication. I was going based off
2 of information --

3 THE COURT: Somebody can physically confirm that.
4 That's what your responsibility is to do. These people are
5 in your care, they are under your charge. If they are
6 prescribed medication, guess what, someone needs to
7 physically confirm that they are given to. That's the way
8 this works. And what you are telling me is you couldn't do
9 that. That's a conversation clearly I need to have with the
10 warden. Sounds like it to me. If what you are telling me
11 today is that it is not possible, it was not possible.

12 MS. PAPAPETRIOU: I didn't say it was not
13 possible.

14 THE COURT: So you just didn't do it? Which one
15 is it?

16 MS. PAPAPETRIOU: I do not track if an inmate has
17 medication?

18 THE COURT: Who does it?

19 MS. PAPAPETRIOU: Medical.

20 THE COURT: Did you confirm that they confirmed
21 that it was provided?

22 MS. PAPAPETRIOU: Yes.

23 THE COURT: It sounds to me that someone would
24 need to have spoken to, I don't know who goes down to the
25 SHU? Is it a captain? Is it a lieutenant? Is it an

Hearing

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1 officer? Who goes down and provides it. Is it a nurse that
2 goes down with a captain? Something happens.

3 And somebody knows whether on April 23rd they gave
4 that man his antibiotics, and guess what, it's twice a day.
5 Did it happen on the 23rd at 9:00 a.m.? No, didn't happen
6 on the 23rd at 9:00 a.m.

7 MS. PAPAPETRIOU: His morning dose because he was
8 still in his housing unit.

9 THE COURT: That was my hypothetical.

10 He was not given all of his antibiotics. This man
11 had a burst appendix, he could have died. First, he was
12 told to stop complaining. Then only after his appendix
13 ruptured did anybody pay attention to him and then only
14 barely.

15 So no one confirmed, in fact, that this man had
16 received his antibiotics. And the representation that was
17 made to defense counsel that he had was a blind
18 representation because the MDC could not care enough to
19 confirm it?

20 MS. PAPAPETRIOU: The medical staff confirmed that
21 to the legal department.

22 THE COURT: They confirmed what?

23 MS. PAPAPETRIOU: That he had his medication.

24 THE COURT: If it was taken away from him, and if
25 yesterday at 6:22 p.m., the message that was given to my

1 chambers was: We're looking for the medication because we
2 don't know where we put it when he was placed in the SHU.
3 Somebody's lying, you see?

4 Those two things are irreconcilable. It cannot be
5 that we confirmed, confirmed, that he had been given all of
6 the doses of his medication. Confirmed it. And I still
7 don't know who you're saying confirmed it but I will find
8 out. And then, yesterday, for me to be told we're looking
9 for it because we don't know where it went. Tell me how I
10 reconcile those? Maybe that's how we should start. You
11 help me out. Tell me how I reconcile the facts that I have
12 before me? Help me.

13 MS. PAPAPETRIOU: Your Honor, I have nothing else
14 to say.

15 THE COURT: No, I asked you a question. How do I
16 reconcile it? I'll tell you how this goes. You've given me
17 these sets of facts, how do I reconcile them?

18 MS. PAPAPETRIOU: Seems like the facts are not
19 sufficient so there is nothing further I can provide you.

20 THE COURT: Are they irreconcilable? Are they
21 irreconcilable, it's direct question. I'm directing you as
22 I sit here on this bench, in this beautiful courtroom, I am
23 directing you to answer my question. Are the facts as
24 you've given them to mean irreconcilable? Yes or no? It's
25 a yes-or-no question.

Hearing

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1 I'm directing you to answer. Are the facts
2 irreconcilable?

3 MS. PAPAPETRIOU: These were the facts that were
4 provided to me.

5 THE COURT: Are they irreconcilable, it's a
6 yes-or-no question.

7 MS. PAPAPETRIOU: No.

8 THE COURT: They're not. Then reconcile them for
9 me.

10 MS. PAPAPETRIOU: Your Honor, I don't have much
11 nor information to provide.

12 THE COURT: You just told me you can reconcile
13 them. I'm asking you to do so.

14 MS. PAPAPETRIOU: The inmate had all his doses
15 with the exception of the remaining two.

16 THE COURT: So when you confirmed that he was
17 given all of his medication, that was not true.

18 MS. PAPAPETRIOU: They were true -- in
19 whole -- what was provided to me, I took as true.

20 THE COURT: So who was it that lied to you?

21 MS. PAPAPETRIOU: The medical staff.

22 THE COURT: Okay. Which medical staff
23 specifically lied to you? No, which specific medical staff
24 lied to you?

25 MS. PAPAPETRIOU: I have to go and read the

Hearing

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1 e-mails, I was not there on Monday.

2 THE COURT: I have all the time in the world
3 today.

4 We're going to take a ten-minute recess. I would
5 like to know who was it on the medical staff that lied to
6 you. Thank you.

7 (A recess in the proceedings was taken.)

8 THE COURT: I think where we left off I was going
9 to be informed who lied, which members of the medical staff
10 lied when you inquired about the provision of the final
11 doses of Mr. Goulbourne's antibiotics.

12 So who was it that lied to you?

13 MS. PAPAPETRIOU: Your Honor, the information was
14 provided to me, not to myself but to Ms. Lynch from
15 Mr. Glucksnis.

16 THE COURT: Wait a minute. So now we have
17 Ms. Lynch. So, Ms. Lynch, who is an attorney as well?

18 MS. PAPAPETRIOU: Correct.

19 THE COURT: And Ms. Lynch inquired as to the
20 provision of Mr. Goulbourne's medication and Ms. Lynch was
21 lied to?

22 MS. PAPAPETRIOU: Yes.

23 THE COURT: I'm sorry.

24 MS. PAPAPETRIOU: Yes, she was provided that
25 information.

Hearing

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1 THE COURT: And that information as we have now
2 concluded today was false, correct?

3 MS. PAPAPETRIOU: Yes.

4 THE COURT: Okay. So she was provided with false
5 information from the medical staff at the MDC concerning the
6 provision of antibiotics to Mr. Goulbourne.

7 Do I have those facts correct?

8 MS. PAPAPETRIOU: That --

9 THE COURT: Let me go back.

10 So I said, Ms. Lynch inquired as to the provision
11 of Mr. Goulbourne's medication, you said yes. I then asked
12 you if the information that she was provided was false and
13 you said yes. Right?

14 So Ms. Lynch was provided with false information
15 concerning the provision of antibiotics to Mr. Goulbourne by
16 the MDC medical staff, correct.

17 MS. PAPAPETRIOU: Correct.

18 THE COURT: And who was it in the MDC medical
19 staff that provided false information concerning the
20 provision of antibiotics to Mr. Goulbourne after having
21 undergone emergency -- an emergency appendectomy which
22 medical staff provided this false information to Ms. Lynch.

23 MS. PAPAPETRIOU: Mr. Glucksnis.

24 THE COURT: Mr. Glucksnis.

25 And who else provided the false information to

Hearing

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1 Ms. Lynch concerning the provision of antibiotics to
2 Mr. Goulbourne following his emergency appendectomy?

3 MS. PAPAPETRIOU: Mr. Glucksnis.

4 THE COURT: Just Mr. Glucksnis? And specifically,
5 the representation was that that Mr. Goulbourne had been
6 provided the final doses of his antibiotics, correct?

7 MS. PAPAPETRIOU: Correct.

8 THE COURT: And, indeed, those antibiotics were
9 never provided to Mr. Goulbourne after he was placed in the
10 SHU, correct?

11 MS. PAPAPETRIOU: Correct.

12 THE COURT: And, on two occasions, by letter, I'm
13 not certain if it was letter or e-mail, but on April 26th,
14 the MDC staff represented that he had been provided the
15 medication and that representation was made to Mr. Biale who
16 are had inquired as to the status of Mr. Goulbourne's
17 medical treatment on April 24th.

18 So, on April 26th, the first misrepresentation was
19 made; is that correct.

20 MR. BIALE: I have the e-mail correspondence if
21 your Honor wants.

22 THE COURT: All right.

23 MR. BIALE: It's in reverse chronological order.

24 THE COURT: Okay. So the first misrepresentation
25 that was made to Mr. Biale occurred on April 26, 2024, at

1 11:11 a.m. which it indicated -- Ms. Lynch had indicated
2 that it was her understanding and you've indicated that was
3 based on misrepresentations, express misrepresentations,
4 made to Ms. Lynch but that he had received the prescribed
5 antibiotics and the pain medication.

6 And then the second misrepresentation occurred on
7 April 29th. And, again, that was based on information
8 Ms. Lynch had received from, one more time, his name.

9 MS. PAPAPETRIOU: Glucksnis.

10 THE COURT: That's part of the issue.

11 So we have the two misrepresentations. So who was
12 it, I want to know, because, obviously, the falsity of that
13 information was revealed yesterday upon the Court's inquiry,
14 and only upon after the Court's inquiry. But, in any event,
15 who was it that discovered that, in fact, the medication had
16 been misplaced or, at a minimum, no one knew where it could
17 be located? That was yesterday.

18 Who was it that discovered that?

19 MS. PAPAPETRIOU: I'm sorry.

20 THE COURT: Yesterday, my chambers was told at
21 approximately 5:25, 5:30 p.m. in the afternoon in response
22 to any inquiry regarding the provision of Mr. Goulbourne's
23 medication that the MDC staff was currently trying to locate
24 the medication and that they were unaware of where it had
25 placed where the medication had been placed once

Hearing

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1 Mr. Goulbourne had been transferred to the SHU. And I want
2 to know who provided that revelation?

3 MS. PAPAPETRIOU: Me.

4 THE COURT: So you learned. And who was it that
5 told you that they couldn't find it?

6 MS. PAPAPETRIOU: I requested that the captain
7 have a specific individual that organizes the property for
8 inmates that come to SHU. And she inventories everything
9 and she -- she's called the SHU property officer -- and she
10 went through his belongings.

11 THE COURT: To discover that the medication wasn't
12 there?

13 MS. PAPAPETRIOU: Correct.

14 THE COURT: Okay. At that time, you were
15 undertaking to locate the medication so that means that at
16 that point in time you understood that the medication hadn't
17 been provided to him. How did you learn yesterday, after my
18 inquiry that in fact the medication had not been provided to
19 him?

20 MS. PAPAPETRIOU: I contacted Mr. Glucksnis.

21 THE COURT: You contact Mr. Glucksnis. And what
22 did you ask Mr. Glucksnis, specifically, exactly?

23 MS. PAPAPETRIOU: Why he provided me the
24 information that he did, in fact, have his antibiotics when
25 he previously said -- when we know that he was moved to SHU.

Hearing

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1 At what point does he know about that medication actually
2 went up with him?

3 THE COURT: And the response that you received was
4 what?

5 MS. PAPAPETRIOU: That he can't confirm, but that
6 the individual was seen on the 25th. And he did not
7 complain that his medications were discontinued.

8 THE COURT: That's a different question. You
9 understand that's a different question?

10 MS. PAPAPETRIOU: Yes, but that's the information.

11 THE COURT: That's what he responded.

12 So you didn't d not receive a response from
13 Mr. Glucksnis as to why it is he previously indicated that
14 the medication had been provided. And instead,
15 Mr. Glucksnis regard relied on no harm, no foul kind of
16 conclusion that was articulated to Ms. McGrath which is,
17 well, he seems to be healing fine anyway in sum and
18 substance, right?

19 That's correct, in sum and substance?

20 MS. PAPAPETRIOU: Yes, ma'am.

21 THE COURT: I will ask these questions of the
22 medical folks but just from a layperson's perspective.
23 There is an understanding, I've got to imagine, from the
24 medical staff that the purpose of the antibiotics is to
25 allow for healing and that simply because someone is healing

Hearing

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1 doesn't mean you just prematurely stop the regimen. In
2 fact, I think everybody's been to the doctor where they say,
3 you know what, just because you're feeling better doesn't
4 mean you stop the antibiotics, that means they're working.
5 But we prescribe them for seven days, you need to go the
6 full seven.

7 Was there any inquiry about the fact that
8 notwithstanding -- I'm just curious -- was there any
9 question by anyone about the fact that notwithstanding the
10 fact that on April 25th that he was healing. Because
11 that's, by the way, all that the record says is that he was
12 healing which is what we hoped to be happening. There is
13 nothing in the record that you provided to me in this
14 medical record that there is a medical determination made
15 that he should not be provided with antibiotics on
16 April 25th. I just want us to be clear. Unless I missed in
17 the record that you showed me but I don't think I did. Am I
18 correct that there is nothing in the record that indicates
19 either expressly or implicitly that he is not to be given
20 his antibiotic regimen?

21 MS. PAPAPETRIOU: Dr. Baylor this morning told me
22 that --

23 THE COURT: That's not what I asked.

24 MS. PAPAPETRIOU: Yes, I'm going to --

25 THE COURT: I am asking about the record.

1 MS. PAPAPETRIOU: That record, specifically, he's
2 saying that that is -- in their medical world -- is implying
3 that no further antibiotics should be administered.

4 THE COURT: So when I get doctors here in front of
5 me, I just want to make sure that I'm clear because I'm no
6 doctor, I didn't go to medical school, right? I just want
7 to make sure that the medical determination at the MDC is
8 that if you prescribe antibiotics for seven days and someone
9 starts to heal that, in fact, medically, there should be a
10 medical intervention to stop the antibiotics.

11 MS. PAPAPETRIOU: That is not what I said, your
12 Honor.

13 THE COURT: What are you saying? Because that's
14 what it sounds like you're saying. Because all that this
15 record says that he was healing and I'm just trying to
16 understand how healing is somehow antithetical to the
17 provision of the remainder of his antibiotics because that
18 is, by the way, what you said. He's healing and you said
19 implicit in noting that this man was healing was that he
20 didn't need antibiotics even though he had been prescribed
21 them. That's what you told me.

22 What did I misunderstand?

23 MS. PAPAPETRIOU: Nothing, your Honor.

24 THE COURT: So when the medical people -- because
25 they're going to come in front of me -- they're going to

Hearing

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1 come tell that when someone is healing as Mr. Goulbourne,
2 that antibiotics are somehow antithetical. The provision or
3 completion, rather, the completion of antibiotics is
4 antithetical to their medical treatment.

5 MS. PAPAPETRIOU: I do not believe someone will
6 tell you that.

7 THE COURT: Okay. So I'm just trying to interpret
8 the records. And my interpretation of the records is that
9 there is nothing in there on April 25th that says that this
10 man should not be given his antibiotics. And, at that point
11 in time, on April 25th, he'd only, in terms of days or
12 hours, we were probably at about 36 hours maybe of not
13 having the medication. And so, to the extent that you could
14 remedy the lack of provision, potentially, it could have
15 been remedied on the 25th. I understand that we might be in
16 a different position on May 1st in terms of the provision of
17 the antibiotics. But on April 25th when he was seen at that
18 point in time, just so that I'm clear, we were at somewhere
19 between 48 and 36 hours that he had not had his antibiotics?

20 MS. PAPAPETRIOU: Correct.

21 THE COURT: Okay. Can you tell me what is the
22 MDC's policy in terms what should occur when an inmate
23 complains of severe abdominal pain? What is the policy in
24 terms of the practice? What should have happened on
25 April 14th? And if what should have happened on April 14th

Hearing

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1 was that Mr. Goulbourne should have been told to stop
2 complaining, I just want to document that.

3 So can you please explain to me, as a matter of
4 policy, when an inmate complains of severe abdominal pain
5 and also complains of nausea accompanied by vomiting, what
6 should occur?

7 MS. PAPAPETRIOU: The unit officer should be
8 notified and Medical should be notified immediately.

9 THE COURT: Do you know what whether that occurred
10 on April 14, 2024, in response to Mr. Goulbourne's
11 complaints of abdominal pain accompanied by nausea and
12 vomiting?

13 MS. PAPAPETRIOU: I do not have that information.

14 THE COURT: All right. You can get that
15 information, though, correct?

16 MS. PAPAPETRIOU: Yes.

17 THE COURT: So the unit officer is supposed to be
18 called and then?

19 MS. PAPAPETRIOU: Notify the medical staff.

20 THE COURT: And then medical staff should be
21 notified. And that medical staff, in this case, that should
22 have been notified is whom?

23 MS. PAPAPETRIOU: Anyone in the medical
24 department.

25 THE COURT: Anybody, okay. So was that just

Hearing

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1 whoever is on duty?

2 MS. PAPAPETRIOU: I'm sorry.

3 THE COURT: Just is that whomever is on duty?

4 MS. PAPAPETRIOU: There are multiple staff. It
5 could have been a paramedic, a nurse, a PA, a doctor,
6 pharmacist.

7 THE COURT: And am I correct to assume that once
8 the medical staff is notified, that consistent with policy,
9 that someone should then go to examine --

10 MS. PAPAPETRIOU: Correct.

11 THE COURT: -- an inmate?

12 Would they be examined in the Special Housing Unit
13 or would they be brought to a medical unit?

14 MS. PAPAPETRIOU: Well, each floor has a medical
15 area.

16 THE COURT: Okay.

17 MS. PAPAPETRIOU: Including the Special Housing
18 Unit, there is a medical office. So they would be brought
19 to that medical area to be examined.

20 THE COURT: So they would be brought to the
21 medical area to be examined? And, to your knowledge, did
22 that occur on April 14, 2024?

23 MS. PAPAPETRIOU: No.

24 THE COURT: It didn't occur?

25 MS. PAPAPETRIOU: Not to my knowledge.

Hearing

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1 THE COURT: Okay.

2 And, as I understand it, Mr. Goulbourne only
3 received medical attention after he had already collapsed
4 and that was in his cell, am I correct?

5 MS. PAPAPETRIOU: Not to my knowledge.

6 THE COURT: I'm sorry.

7 MS. PAPAPETRIOU: To my knowledge, he made
8 complaints again on the 15th and that's when he was seen and
9 taken to the hospital.

10 THE COURT: And, at the hospital, on the 15th, is
11 when he was diagnosed with a ruptured appendix; correct?

12 MS. PAPAPETRIOU: Correct. So, on the 15th, he
13 was initially seen and --

14 THE COURT: At what time?

15 MS. PAPAPETRIOU: 7:50 a.m. And they --

16 THE COURT: When he got to the hospital his
17 appendix had already ruptured because he was diagnosed at
18 the hospital with a ruptured appendix, am I correct?

19 MS. PAPAPETRIOU: No, I believe they
20 surgically -- I need to -- a dilated appendix.

21 THE COURT: So that's, like, I have limited
22 experience with dilation but I'm assuming that it was
23 probably close to rupturing.

24 MS. PAPAPETRIOU: Correct.

25 THE COURT: Okay.

Hearing

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1 MS. PAPAPETRIOU: It's my assumption as well.

2 THE COURT: All right.

3 MS. PAPAPETRIOU: So in the morning of the 15th
4 when he was seen, they provided him antibiotics and it was
5 presumed that he may -- it seemed that he had gastritis so
6 they provided him with medication.

7 THE COURT: I'm sorry, forgive me, my mind had
8 wandered for a second.

9 You're on April 15th.

10 MS. PAPAPETRIOU: Still, yes, in the morning.
11 When he was initially seen a few hours later, he was seen
12 again and that's when they brought him to the emergency
13 room.

14 THE COURT: And a few hours later would be what
15 time?

16 MS. PAPAPETRIOU: At around 1:00 o'clock.

17 THE COURT: So 1:00 p.m. in the afternoon
18 thereabouts?

19 MS. PAPAPETRIOU: Yes.

20 THE COURT: Do you have documented or does anyone
21 know at about what time on April 14, 2024, Mr. Goulbourne
22 made his initial complaint?

23 MR. BIALE: I don't think it's documented. It's
24 not documented in the medical records because --

25 THE COURT: Well, because it wasn't reported to

Hearing

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1 the medical staff.

2 MR. BIALE: I don't know specifically. I think he
3 said it was in the evening.

4 THE COURT: Okay.

5 MR. BIALE: But I can double check that with him.

6 THE COURT: And I also want to be clear: He still
7 had pain medication that had been prescribed to him. So
8 we're not talking about a new prescription of pain
9 medication but rather the initial prescription that was
10 denied him on April 20th after the lockdown had been
11 initiated?

12 MS. PAPAPETRIOU: So, on April 19th, I understand
13 that he did receive the pain medication.

14 THE COURT: Yes, I'm on April 20th.

15 MS. PAPAPETRIOU: Right. And they would not have
16 taken his I.D. from him.

17 THE COURT: Who wouldn't have taken his I.D. from
18 him?

19 MS. PAPAPETRIOU: Anyone wouldn't have taken his
20 I.D., they're required to maintain their identification.

21 THE COURT: My question is whether this man
22 received his Percocet.

23 MS. PAPAPETRIOU: On the 20th, I believe he did
24 not because he refused to provide his identification.

25 THE COURT: I'm just curious because I don't know.

Hearing

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1 The identification is like a little card or something?

2 MS. PAPAPETRIOU: Correct.

3 THE COURT: An I.D. card?

4 MS. PAPAPETRIOU: Yes.

5 THE COURT: And is there a way to determine who
6 that individual is absent that card, I'm just curious. Is
7 there no way or the medical staff to determine who that
8 gentleman was?

9 MS. PAPAPETRIOU: In that specific instance, the
10 medical staff cannot determine in a different way.

11 THE COURT: I don't know what you mean in that
12 specific instance.

13 MS. PAPAPETRIOU: So the Percocet is a controlled
14 substance and any medication that's a controlled substance
15 or narcotic or psychotropic, they are required to bring a
16 specific card to the housing unit.

17 THE COURT: He wasn't in the housing unit on the
18 20th, right, this is just normal housing unit?

19 MS. PAPAPETRIOU: Yes.

20 THE COURT: Not the SHU.

21 MS. PAPAPETRIOU: Correct.

22 THE COURT: I got it, okay.

23 MS. PAPAPETRIOU: If it was in the SHU, that would
24 have been different because the I.D. card is at their door.

25 THE COURT: Okay.

Hearing

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1 MS. PAPAPETRIOU: So when they are in general
2 population, they're required to main their own I.D. card.
3 And when pill line, when there is a medical assistant or a
4 pharmacy technician that comes onto the housing unit, they
5 identify themselves that they're there over the speaker and
6 all the inmates that have medication on pill line line up
7 and they each line up their I.D. card and they provide it to
8 the pharmacist.

9 THE COURT: Okay. And so, I just want to be
10 clear, that the representation by MDC is that this man who
11 was in pain from an appendectomy as he's reported, he's told
12 you can get your pain medication if you showed me your I.D.
13 And that this man, in pain from his appendectomy, that he
14 refused to provide his I.D., and hence the MDC in turn
15 refused to give him his medication.

16 So the reason according to what you're telling me
17 that he was not provided with pain medication is his fault
18 because he refused to provide the I.D.?

19 MS. PAPAPETRIOU: Yes, your Honor. This is the
20 information that was relayed.

21 THE COURT: Who relayed that to you?

22 Give me a second, Mr. Biale.

23 MS. PAPAPETRIOU: Mr. Glucksnis.

24 THE COURT: Mr. Glucksnis.

25 Now, Mr. Glucksnis is the person, I just want to

1 be clear, the same person who we've established gave false
2 information to Ms. Lynch as to why Mr. Goulbourne wasn't
3 provided with his antibiotics. This is the same gentleman
4 that you are relying on to say that the reason why
5 Mr. Goulbourne wasn't provided with his pain medication was
6 because he refused to provide his identification. The same
7 person who provided false information previously is the same
8 person that you're relying on or, well, whether you have a
9 choice or not, but is the same person that you're saying
10 indicated that Mr. Goulbourne simply refused to provide his
11 identification.

12 MS. PAPAPETRIOU: Correct.

13 THE COURT: Now, just out of curiosity, if somehow
14 that identification was misplaced for whatever reason
15 because Mr. Glucksnis said that Mr. Goulbourne refused to
16 provide it, Mr. Goulbourne said he didn't have it.

17 I'm just curious, what procedures are in place at
18 the MDC to ensure that inmates receive, let's say,
19 life-saving medication in the event that they've lost their
20 I.D. I'm just trying to understand if this I.D. somehow
21 becomes the gatekeeper to life-saving measures and
22 medication that one might need that that it, we're done,
23 we're absolved of any responsibility to provide this
24 individual with any medication that they may need because
25 for whatever reason they don't have their I.D. and we have

Hearing

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1 no responsibility at that point because they don't have it.
2 Or do you have a policy in place in the event that an inmate
3 does not have their I.D. on them, have lost it, misplaced
4 it, and it is the time that they are supposed to receive
5 their medication as prescribed by a medical doctor.

6 It's a long question but I think you got it.

7 MS. PAPAPETRIOU: So two separate parts. I can
8 tell you how inmates go about -- their I.D.s are replaced by
9 their unit team staff.

10 THE COURT: That's not my question.

11 I can't even explain to you how much I don't care
12 about the I.D. What I care about is the provision of
13 medication, right?

14 So my question is: What does the MDC do, as
15 matter of policy, or what should the MDC do as a matter of
16 policy, if an inmate has necessary medication that they need
17 to receive, and at the time that that medication is supposed
18 to be provided for whatever reason, they've lost their I.D.,
19 they've misplaced their I.D., what does the MDC have as a
20 policy in place to ensure that this individual is provided
21 with the necessary medication?

22 MS. PAPAPETRIOU: The medical staff would
23 generally make the unit team staff aware that this person is
24 missing an I.D. card.

25 THE COURT: I'm trying to figure out how we get to

Hearing

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1 the medication. Again, I don't care about that I.D. card, I
2 care about the provision of medication.

3 What, if anything, does the MDC do to ensure that
4 this individual who does not have their I.D. card is
5 provided with the medication as prescribed by the medical
6 professionals?

7 MS. PAPAPETRIOU: I cannot provide you with a
8 concrete answer because I can assure you that each
9 individual goes about it differently.

10 THE COURT: So there is no policy at the MDC to
11 ensure that that individuals who have misplaced or for
12 whatever reason don't have their I.D. card at the time that
13 the medication is provided, there is no procedure in place
14 to ensure that those individuals are provided their
15 medication?

16 MS. PAPAPETRIOU: I cannot provide you a
17 sufficient response on that.

18 THE COURT: I don't know what that means.

19 MS. PAPAPETRIOU: I cannot give you a very
20 specific answer. There is life-saving medications that are
21 generally self-carry. The only medications that are
22 provided on pill line are controlled substances, narcotics.

23 THE COURT: But they're prescribed medications.
24 I'm talking about prescribed medications. I'm not talking
25 about over-the-counter medication.

Hearing

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1 I am talking about medications that a medical
2 professional has deemed necessary for this particular
3 individual, that's it. That's the line, that's the bright
4 line, was it prescribed?

5 So are you simply unaware of any policy to ensure
6 that those individuals received their medication or are you
7 telling me there is no policy to ensure that those
8 individuals receive it?

9 MS. PAPAPETRIOU: I prefer to say I am unaware.

10 THE COURT: You prefer to say? What I want you to
11 say is the truth. See, that's the thing, I want the truth.
12 If I need to put you under oath, I'll do it. I don't think
13 you understand what's happening here. Give me the truth.
14 You play fast and loose with the truth any more with me
15 today and you, I promise, you're going to have an individual
16 problem. I'm asking you questions about the MDC and their
17 policies. I think you want this to be an institutional
18 issue but I can make this as an individual issue if you
19 would like. Your option.

20 Are you simply unaware of any policy or is there
21 not a policy? Not what do you prefer the answer to be, what
22 is the answer?

23 MS. PAPAPETRIOU: I am unaware.

24 THE COURT: I need to have an understanding about
25 these SHU tickets here.

Hearing

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1 Yes.

2 MR. BIALE: Before we leave the subject of the
3 I.D. and the Percocet.

4 So what Mr. Goulbourne told me is his I.D. was
5 taken when he was taken to the hospital which makes sense,
6 you know, I don't know that he could have carried it at that
7 time because he was in such severe pain. It was probably
8 given to the marshals who were escorting him. And then he
9 didn't receive it back when he came back to the MDC on the
10 18th.

11 On the 19th, even though he didn't have his I.D.,
12 he was given a Percocet on the pill line. So I'm not sure
13 what happened between the 19th and the 20th, but on the 20th
14 he went back to the pill line and asked for his medication.
15 They asked for his I.D., he explained I don't have it
16 because it was taken from me when I went to the hospital and
17 he was told, well, if you don't have your I.D. then I don't
18 have your medication. That was the explanation that he gave
19 to me.

20 THE COURT: So he was given it on the 19th
21 notwithstanding the fact that he didn't his identification?

22 MR. BIALE: Correct.

23 THE COURT: But he was not given it on the 20th
24 which was a Friday?

25 MR. BIALE: I think it was a Saturday.

Hearing

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1 THE COURT: It was a Saturday, right, it was a
2 Saturday. But it wasn't given to him on the 20th based on
3 the absence of the identification?

4 MR. BIALE: Correct.

5 THE COURT: I want to talk about these SHU
6 tickets.

7 You have something about the medication you want
8 to --

9 MS. PAPAPETRIOU: (Nodding).

10 THE COURT: I want to talk about the SHU tickets.
11 So I asked for a copy of both tickets.

12 Can I have them?

13 So this is the initial and the rewrite?

14 So I have a question here, and certainly, I'll
15 make it clear: This court has no patience and no tolerance
16 for threats that might be made against medical staff. But
17 my concern here is why are these different?

18 MS. PAPAPETRIOU: So I have not had the
19 opportunity to speak to the individual but I could tell you
20 based on my training because I am trained, I went to
21 Colorado and I got extensive training on incident report
22 writing and the H0 process.

23 The first one is factually insufficient on the
24 surface because it does not include the direct -- when
25 you're writing an incident report to sanction an inmate for

Hearing

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1 statements that are made against the individual, which is
2 this person is a medical staff member, you need to include
3 in quote and what the individual...

4 THE COURT: And they did there is a quote here.

5 MS. PAPAPETRIOU: Correct. But it's --

6 THE COURT: What time was the second incident
7 report created?

8 MS. PAPAPETRIOU: It's written on the bottom.
9 It's in, I'm sorry, it should be on the lower, lower, lower
10 section.

11 THE COURT: It was written, I see, thank you.

12 So this report, this second report, was drafted
13 following Mr. Biale's inquiry because his inquiry, the
14 initial one, was April 24th if I'm correct. The date of
15 this second report is April 25th and this second report was
16 April 25th at 1914 hours.

17 So this second report was created after the MDC
18 received an inquiry from Mr. Biale concerning the provision
19 of medication for his client.

20 I'm just curious, was there anything in that
21 initial -- I have it, hold on.

22 MR. BIALE: At some point, I said it's not
23 appropriate to take him to the SHU if he's -- I'm not sure.

24 THE COURT: I want to know if it's -- hold on.

25 So, on April 24th, Mr. Biale writes a letter to --

Hearing

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1 an e-mail, rather, to you, among others, in the legal
2 department. In that letter, Mr. Biale references
3 specifically the fact that Mr. Goulbourne had been placed
4 into the SHU and it was subsequent to this letter that the
5 incident report was changed.

6 MS. PAPAPETRIOU: It was suspended previous.

7 THE COURT: I don't know what that means,
8 "suspended previous."

9 What does that mean?

10 MS. PAPAPETRIOU: So when the investigating
11 officer, which is generally the lieutenant's office, finds
12 that an incident report is not sufficient in the Section 11
13 part, they suspend it and it is rewritten whether there is a
14 clerical error because it is a digital system in which this
15 is generated. So the whole thing need needs to be returned.
16 Whether it had been an empty box or a date missing or a time
17 missing.

18 THE COURT: The initial report includes the quote
19 of what was uttered by Mr. Goulbourne, and so, I'm just
20 curious.

21 MS. PAPAPETRIOU: Correct.

22 THE COURT: You're telling me --

23 MS. PAPAPETRIOU: I'm sorry.

24 THE COURT: No. See, I'm talking.

25 As I read this report, there is a quote that says,

Hearing

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1 "He's going to get me." Now, by the way, I have an issue
2 with the he's going to get me. Regardless, that is what
3 this says. So I'm to understand that this staffer, who
4 believed that he felt threatened, right? He said, "I felt
5 threatened" and didn't directly respond. Presumably, he
6 felt threatened based on the words that were uttered to him
7 or her, I don't know who it was, but that you're telling me
8 that they didn't include all of the words that were uttered
9 to them that provided the bases for their feelings of being
10 threatened.

11 That's what you're telling me.

12 MS. PAPAPETRIOU: Yes.

13 THE COURT: Okay.

14 MS. PAPAPETRIOU: And this is a new staff member.

15 THE COURT: Whether you're new or not, I'm just
16 trying to understand, right, how credible I believe it is
17 that someone says I feel threatened because of what someone
18 said to me. And that instead of putting the worst of what
19 they said to them, they only put something that's not nearly
20 as bad as what was later reported only after Mr. Biale
21 complained about his placement or references his placement
22 in the SHU. It is a little suspicious you could see.

23 MS. PAPAPETRIOU: If I may?

24 THE COURT: Sure.

25 MS. PAPAPETRIOU: This is something that we do

Hearing

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1 oftentimes have an issue relaying to newer staff members
2 that they should, in, fact whether it has foul language or
3 explicit words are used or explicit behaviors used that it
4 should, in fact, be described in the incident report in that
5 it would only help the disciplinary process if all that is
6 included in the substance.

7 THE COURT: But under the facts as I have them
8 before me, you know, putting aside whatever it is that you
9 generically tell folks, I'm talking about the facts in this
10 facts in this case. And the facts in this case is that on
11 April 23rd at 1500 hours when this report, the initial
12 report was completed, there was a quote and it says, "He
13 immediately told me, 'he was going to get me'." That was
14 changed to, "I'm going to fuck you up. I'm going to get
15 you." And that was changed after Mr. Biale's letter to
16 Legal concerning Mr. Goulbourne's denial of his necessary
17 medication and his placement in the SHU.

18 Just as a chronological fact, correct?

19 MS. PAPAPETRIOU: I suppose I didn't --

20 THE COURT: That's just the chronology of the
21 events on April 24th. A letter was sent to MDC specifically
22 to you, among others. That was on April 24th, the day after
23 this incident report was filed. The day after that, after
24 Mr. Biale's letter, is when the incident report was changed;
25 correct?

Hearing

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1 MS. PAPAPETRIOU: Correct.

2 THE COURT: Who was it that reviewed the first
3 incident report and determined that the first incident
4 report was somehow insufficient?

5 MS. PAPAPETRIOU: I don't have a copy of it. It
6 is in the lower-left corner.

7 THE COURT: So the lower-left corner?

8 MS. PAPAPETRIOU: Section 14.

9 THE COURT: That's who the report was delivered.
10 "Incident report delivered to above inmate by."

11 MS. PAPAPETRIOU: Generally, the reviewing
12 individual.

13 THE COURT: So are we certain that you're saying
14 that someone whose last name is Ferguson reviewed the
15 incident report dated April, no, sorry, forgive me
16 Lieutenant Compton.

17 MS. PAPAPETRIOU: That's the rewrite that you're
18 looking at.

19 THE COURT: I understand that.

20 My question to you is, who reviewed the original
21 incident report and determined that it was insufficient?

22 MS. PAPAPETRIOU: If I can look at that first one,
23 I believe that is Lieutenant Ferguson.

24 THE COURT: Sure.

25 MS. PAPAPETRIOU: Lieutenant Ferguson.

Hearing

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1 THE COURT: Is the person who reviewed the
2 original incident report and determined that it was
3 insufficient?

4 MS. PAPAPETRIOU: Correct.

5 THE COURT: And do you know that, in making the
6 determination as to whether the initial incident report was
7 insufficient, it was based on the review of the incident
8 report as I understand it?

9 MS. PAPAPETRIOU: Correct.

10 THE COURT: So he reviewed the report. And on the
11 face of the report made a determination that it was
12 insufficient?

13 MS. PAPAPETRIOU: Correct.

14 THE COURT: So how did he know that other words
15 had been uttered because this information was with the
16 nurse, it was in their head, they hadn't disclosed it in the
17 report. Tell me how it was he knew based on the -- I asked
18 you if it was based on just the face the report.

19 How did that happen?

20 MS. PAPAPETRIOU: I do not have the specific facts
21 on how that information was relayed. But there is a system
22 where it would kick it back and they may have -- I don't
23 have access to that, only the specific lieutenants that work
24 in that --

25 THE COURT: Right. Because you could imagine I

Hearing

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1 would have some concerns if there was a review process under
2 which an individual just reviews it to see if it's salacious
3 and meaty enough to meet the requirements to, I don't know,
4 for placing an individual in the SHU and say, you know what,
5 you might need some more as opposed to simply relaying the
6 facts and the way in which this has been described to me and
7 if you're just saying it was on the face of the incident
8 report. I'm trying to understand the bases that
9 Mr. Ferguson would have determined it insufficient and known
10 that there was additional information that could be
11 included.

12 MS. PAPAPETRIOU: I, of course, can't speak to
13 that.

14 THE COURT: But he could, Mr. Ferguson. I'm just
15 making my list.

16 So Mr. Ferguson is the person who reviewed the
17 original report and made a determination that the original
18 report was insufficient. And, as a result, the process was
19 that, Mr. Ferguson, do you know if he contacted the medical
20 staffer?

21 MS. PAPAPETRIOU: I can't speak to that. I can't
22 speak to any of that.

23 THE COURT: Okay, fair enough.

24 I have to tell you I think that it's no secret
25 that I am not satisfied fully with the responses that I have

1 been given. And that this dissatisfaction stems largely
2 from the fact that there appears to me to have been
3 intentional misrepresentations made by the medical staff
4 that was relayed to the legal department. And the legal
5 department, of course, relayed that to counsel in this case.

6 Certainly, there could be no question that
7 everyone involved was aware that these representations would
8 also be relied on by the Court in assessing the next steps.
9 And so, this is, as they say, the house that Jack built.

10 But I would like to have these individuals in
11 front of me, so I intend to have -- I want to hold an
12 evidentiary hearing on this issue. So I'm going to set a
13 date down for the hearing. I need to look at my calendar
14 but understand that the individuals, based on the
15 representations made by Ms. Papapetriou -- did pronounce it
16 correctly?

17 MS. PAPAPETRIOU: Papapetriou.

18 THE COURT: I apologize, Ms. Papapetriou.

19 My understanding is that the individuals who have
20 answers to the questions that I have, or certainly, at least
21 responsible for some of what transpired here would be
22 Mr. Baylor, Mr. Glucksnis.

23 Spell his name again.

24 MS. PAPAPETRIOU: G-l-u-c-k-s-n-i-s.

25 THE COURT: Ms. Lynch was the person who you have

Hearing

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1 indicated to me Mr. Glucksnis --

2 MS. PAPAPETRIOU: He provided the information to
3 her.

4 THE COURT: He provided the information to her.

5 So I want Ms. Lynch. And there is a captain, a
6 Lieutenant Ferguson, who you said reviewed the second
7 incident report?

8 MS. PAPAPETRIOU: First.

9 THE COURT: Thank you, forgive me. The first
10 incident report, Mr. Ferguson.

11 I want to have a hearing on this because I am not
12 satisfied with the facts that I have and I need to get to
13 the bottom of this. Certainly, it should go without saying
14 that this court has an interest in ensuring that the
15 individuals who are in custody generally, but particularly,
16 individuals. Mr. Goulbourne is awaiting sentencing by this
17 court, so he is in the MDC as a result of affairs that he
18 needs to attend to in this court. So, certainly, I have an
19 interest in ensuring that those individuals, and we all
20 should have an interest in ensuring that all individuals
21 under our charge receive the medical care that they are
22 required.

23 So I intend to hold an evidentiary hearing in this
24 case so that I can further understand what transpired
25 because it seems to me there were intentional

Hearing

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1 misrepresentations that were made with respect to
2 Mr. Goulbourne's care. And I'm going to require Mr. Baylor,
3 Mr. Glucksnis, Ms. Lynch, and Mr. Ferguson to appear.

4 Yes.

5 MR. BIALE: Just, your Honor, just to throw in
6 something else.

7 The person who actually examined him on the 25th,
8 I believe, according to the medical records, is a nurse
9 named Marilyn Garcia. So I don't know.

10 THE COURT: What does is it that you
11 think Ms. Garcia is going to be able to provide me in terms
12 of what I need to know that I don't know?

13 MR. BIALE: I am not sure whether Mr. Glucksnis
14 ever actually examined Mr. Goulbourne.

15 THE COURT: But the determination or absence of a
16 determination -- it appears to me that Mr. Baylor, who is in
17 charge, has assumed responsibility for it, right?

18 MR. BIALE: I'm just saying that given we're
19 trying to figure out what occurred in this time period.

20 THE COURT: What's her name?

21 MR. BIALE: Marilyn Garcia. And then
22 Ms. Papapetriou referenced someone named Beddoe when she
23 provided the list earlier.

24 THE COURT: Would I then ask you who made the
25 misrepresentations, you said specifically Glucksnis. Is

Hearing

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1 that to the exclusion of Beddoe?

2 MS. PAPAPETRIOU: Yes.

3 THE COURT: So Mr. Beddoe, as far as you
4 understand, didn't make any representations concerning the
5 provision of Mr. Goulbourne's antibiotics as of --

6 MS. PAPAPETRIOU: Correct.

7 THE COURT: -- I guess it would have been the
8 23rd.

9 MS. PAPAPETRIOU: Correct.

10 THE COURT: So, not involved.

11 MS. PAPAPETRIOU: Correct. I only spoke to him
12 yesterday evening.

13 THE COURT: Fair enough so he actually assisted in
14 providing you accurate information.

15 MS. PAPAPETRIOU: Yes.

16 THE COURT: Okay. So, to be fair to you, the
17 accurate information only came about when you asked because
18 when Ms. Lynch asked, the accurate information was not
19 provided?

20 MS. PAPAPETRIOU: I guess we could say that,
21 that's correct.

22 THE COURT: All right. Next. Yes?

23 MS. PAPAPETRIOU: If I could just say, the reason
24 the information -- the inquiries came in on Thursday
25 afternoon, I believe.

Hearing

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1 THE COURT: I'm sorry.

2 MS. PAPAPETRIOU: I believe the inquiry came in on
3 Thursday afternoon, that was the 25th.

4 THE COURT: Mr. Biale's on the 24th?

5 MS. PAPAPETRIOU: Right. I'm just trying to put a
6 timeframe together. And I'm just trying to specifically --
7 I can't pull up everything from my phone. But on the 26th,
8 was that Friday, I had on the 25th and 26th, I had Ms. Lynch
9 following up with the information because I was not at the
10 institution I had one of our other attorneys.

11 THE COURT: So you received the inquiry from
12 Mr. Biale on the 24th. You then directed Ms. Lynch to
13 follow up on the inquiry and that's the time when you were
14 given the false information for Mr. Glucksnis concerning the
15 provision?

16 MS. PAPAPETRIOU: Yes.

17 THE COURT: Was there, after Mr. Biale's second
18 missive, Ms. Lynch went back and Mr. Glucksnis made an
19 intentional misrepresentation concerning the provision?

20 MS. PAPAPETRIOU: That's what I understand.

21 THE COURT: Now, you've tried a number of times to
22 tell me that Mr. Goulbourne was seen this morning, correct?

23 MS. PAPAPETRIOU: Yes.

24 THE COURT: All right. And who was he seen by?

25 MS. PAPAPETRIOU: Dr. Baylor.

Hearing

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1 THE COURT: Dr. Baylor.

2 No my understanding, and I want to have an of
3 better understanding of his care, because my understanding
4 with respect to antibiotics is that once you've had a
5 significant lapse in the dosages that there are two options
6 which is, one, is to discontinue the antibiotics altogether,
7 or two, to start a regimen, a new regimen. In this case, it
8 was a seven-day regimen, correct, that was originally
9 prescribed?

10 MS. PAPAPETRIOU: Five.

11 THE COURT: Excuse me, a five-day regimen.

12 And you're saying that today there was a
13 determination made by Mr. Baylor that he should not receive
14 an additional dosage of medication?

15 MS. PAPAPETRIOU: Yes.

16 THE COURT: But that was Mr. Baylor, right?

17 MS. PAPAPETRIOU: Yes.

18 THE COURT: So he was already on my list.

19 What I want, as I indicated, I'm going to have an
20 evidentiary hearing to discuss what has transpired. In the
21 past, however, I want something, a notarized statement from
22 Mr. Baylor, concerning the provision of antibiotics now
23 because I want to have a better understanding of
24 Mr. Goulbourne's treatment today.

25 Yes, Mr. Biale?

Hearing

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1 MR. BIALE: Can I also ask that the Court direct
2 that he be taken to an outside doctor and have that doctor
3 determine whether he needs additional antibiotics?

4 THE COURT: Yes, exactly. That's an excellent
5 point by you.

6 I'm also directing that Mr. Goulbourne be
7 transported to a third-party doctor by the end of day
8 tomorrow so that he can be examined and a determination --
9 we can get a second opinion as to whether he requires
10 antibiotics or other treatment related to his appendectomy.
11 And I expect to have a report by end of day tomorrow and
12 please make sure that what I receive from the third-party is
13 in writing.

14 As I said, I intend to get to the bottom of this.
15 We have a responsibility.

16 MR. NAVARRO: Your Honor, I just want to clarify
17 one point in the Court's last order.

18 Your Honor said that you wanted a report tomorrow
19 regarding whatever the outside evaluator says. Is that a
20 report from the Government or from the MDC that you are
21 looking for?

22 THE COURT: The MDC should provide it to the
23 Government and the Government should provide it to the
24 Court.

25 MR. NAVARRO: My only concern with that, your

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1 Honor, is I don't know what time he will be able to be taken
2 out tomorrow and he don't get the information back
3 necessarily right away. So I don't know whether we will be
4 in a position to provide an update to your Honor by
5 tomorrow.

6 THE COURT: Well, I'm going to assume he's going
7 to be taken out before -- what's the issue?

8 MR. NAVARRO: The issue is, your Honor, if that
9 he's taken to an outside facility, the Government does not
10 have the ability to speak directly to that outside facility.
11 And so, therefore, we have to rely on a couple levels of
12 hearsay to get the information back and that takes some
13 time. And I'm concerned whether we can comply with your
14 Honor's order on the same day that he's seen.

15 THE COURT: I'm assuming if he's evaluated
16 tomorrow when he leaves something can be provided. I mean,
17 presumably, if they believe that he requires antibiotics, he
18 would be given a prescription for it.

19 MR. NAVARRO: That's right, your Honor.

20 I have no doubt that the information will be
21 provided to Mr. Goulbourne or whoever is transporting him.
22 What I'm saying is I have concerns about whether that
23 information can make its way to the Government in a timely
24 enough fashion for us to provide an update tomorrow.

25 What I would suggest, your Honor, if your Honor

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1 was willing, was that we be permitted to provide an update
2 by noon the next day. And if there is an issue with that,
3 we can come back to your Honor rather than have to come back
4 to you tomorrow and say, your Honor, we don't have the
5 information yet. And if we get it sooner, we will provide
6 it sooner.

7 THE COURT: You'll make every effort to get it to
8 me tomorrow but you have until noon on --

9 MR. NAVARRO: Today is the 1st so the 3rd, your
10 Honor. Thank you, your Honor, I appreciate it.

11 THE COURT: I'm trying to figure out if there is
12 anything else. Again, I will figure out when this hearing
13 is going to be, I have to look at my calendar.

14 (Discussion held off the record.)

15 THE COURT: Folks, we're going to do 3:00 o'clock
16 on May 8th and I will confirm this via a minute entry and
17 order and, again, I'm going to require that Mr. Baylor,
18 Mr. Glucksnis, Lynch, Ferguson, and potentially, Garcia to
19 appear.

20 Yes?

21 MR. BIALE: And, your Honor, I think it would be
22 appropriate for the Court to have the internal
23 correspondence that was referenced about the situation in
24 real-time when you're evaluating the testimony that you're
25 going to get from these individuals.

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1 THE COURT: I'm sorry. What are you talking
2 about?

3 MR. BIALE: I'm talking about Ms. Papapetriou
4 referenced that there was e-mail correspondence.

5 THE COURT: Yes.

6 MR. BIALE: Internal e-mail correspondence,
7 presumably, in response to the e-mails that I sent.

8 THE COURT: Yes, I'd like that produced to the
9 Court, thank you, Mr. Biale, by Monday.

10 Understood?

11 MS. PAPAPETRIOU: Yes.

12 THE COURT: Am I forgetting anything else?

13 At a certain point the MDC is going to have to
14 understand that the judges of this court are no longer going
15 to tolerate the mismanagement of the medical care of the
16 defendants that are in their charge. And so, it appears to
17 me that our efforts up until this point haven't been
18 sufficient. And so, I'm going to try another route. Here
19 we go.

20 I appreciate the Government's efforts in
21 attempting to help Mr. Goulbourne receive his medication as
22 required, you laid that out. There's nothing that I see
23 that indicates that you were doing anything but trying to
24 move this process along, am I correct?

25 MR. BIALE: I agree.

1 THE COURT: And so, I appreciate that.

2 It is not always the case that the Government is
3 so involved and it appears, as you've laid it out, that not
4 only did you attempt to help remedy the situation you did so
5 doggedly. The fact that the MDC ignored you as well is mind
6 boggling to me. But, of course, you know, here we are. But
7 this is -- this does not lay at your feet.

8 MS. MCGRATH: Thank you, your Honor.

9 THE COURT: All right. Thank you, folks.

10 MR. BIALE: Thank you.

11 MS. MCGRATH: Thank you.

12 MR. NAVARRO: Thank you.

13 (WHEREUPON, this matter was adjourned to May 8,
14 2024, at 3:00 p.m.)

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* * *

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CERTIFICATE OF REPORTER

19

20

I certify that the foregoing is a correct transcript of the
record of proceedings in the above-entitled matter.

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Anthony D. Frisolone, FAPR, RDR, CRR, CRI
Official Court Reporter

EXHIBIT B

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X	:	23-CR-00475(DLI)
UNITED STATES OF AMERICA,	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	December 15, 2023
	:	10:00 a.m.
JAMES YOUNG,	:	
	:	
Defendant.	:	
- - - - - X	:	

TRANSCRIPT OF CRIMINAL CAUSE FOR SHOW CAUSE HEARING
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government:	BREON PEACE, ESQ. United States Attorney Eastern District of New York 271 Cadman Plaza East Brooklyn, New York 11201
	BY: STEPHANIE PAK, ESQ. Assistant United States Attorney

For the Defendant:	FEDERAL DEFENDERS OF NEW YORK One Pierrepont Plaza 16th Floor Brooklyn, New York 11201-2776
	BY: ALLEGRA GLASHAUSSER, ESQ.

Also Present:	NEHA KHAN, ESQ. MDC Staff Attorney
	BLAKE GLUCKSNIS, MDC Assistant Health Service Administrator

1 A P P E A R A N C E S: (Continued)

2 Court Reporter: DENISE PARISI, RPR, CRR
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4 Brooklyn, New York 11201
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7 Proceedings recorded by computerized stenography. Transcript
8 produced by Computer-aided Transcription.

9 * * * * *

10 (In open court.)

11 THE COURTROOM DEPUTY: Criminal cause for show cause
12 hearing, docket number 23-CR-475, United States versus James
13 Young.

14 Please state your appearances.

15 MS. PAK: Stephanie Pak on behalf of the Government.
16 With me at counsel's table is Neha Khan and Blake Glucksnis of
17 the Bureau of Prisons, Metropolitan Detention Center.

18 Good morning, Your Honor.

19 THE COURT: Good morning to all of you.

20 On behalf of Mr. Young?

21 MS. GLASHAUSSER: Good morning, Your Honor.

22 Allegra Glashausser, representing Mr. Young, who is
23 seated next to me.

24 THE DEFENDANT: James Young.

25 THE COURT: Good morning, sir.

Good morning, Ms. Glashausser.

1 We are here because of the medical situation
2 concerning Mr. Young and, frankly, in this Court's view, the
3 MDC's inappropriate response to his medical condition, and,
4 most importantly, the MDC's -- and just for the record, MDC is
5 the Metropolitan Detention Center here in Brooklyn where our
6 pretrial detention inmates, as well as some sentenced
7 prisoners, are housed, along with prisoners who have cases in
8 the Southern District of New York. Some of them may have also
9 been sentenced. And when I say "BOP," I'm referring to the
10 Bureau of Prisons.

11 What has been most disturbing to me, to this Court,
12 the blatant disregard by the MDC of a very explicit order by
13 Magistrate Judge Levy issued on November 22nd of this year at
14 the arraignment of Mr. Young on the indictment of these
15 charges, an order that, I should add, was entered on the
16 consent of the Government to have Mr. Young transferred the
17 next day, November 23rd by 11:00 a.m., to a medical facility.

18 In addition, that order made it very clear that the
19 magistrate judge wanted the MDC to report back to him with
20 respect to the effectuation of the transfer and the
21 implementation of that order. Instead, that order was
22 ignored.

23 We were here Wednesday when Ms. Glashausser
24 detailed, I would say, about 80 percent of the history of what
25 happened here.

1 In addition on Wednesday, this Court directed the
2 Government, who did nothing -- Ms. Pak did nothing, despite
3 the fact that she was kept informed by being copied on the
4 various email correspondence between Ms. Glashausser and the
5 MDC, to find out why Mr. Young had not been transferred and to
6 address the fact that his medical condition, which is
7 extremely serious -- it's a MRSA infection. He's got other
8 things going on as well as a result of a prior car accident --
9 obviously, he is wheelchair-bound, so he has other limitations
10 as well -- and Ms. Pak did nothing to ensure that Judge Levy's
11 order was effectuated.

12 So here we are today. And the response -- the other
13 thing that the Court did on Wednesday was that the Court
14 itself issued a medical treatment order on Wednesday, and in
15 that medical treatment order, the MDC was notified of the
16 order to show cause and the concern that I had over the
17 failure to obey Judge Levy's November 22nd order. Instead,
18 the response that I got from the MDC was: See the attached
19 medical records. He was seen on Sunday, as indicated.

20 That was from Ms. Khan, the staff attorney.

21 I did see the attached medical records. I read
22 every one of the 99 pages. And, quite frankly, the story that
23 it tells, the picture that it shows, is even worse than what
24 Ms. Glashausser detailed at the conference on Wednesday. In
25 fact, instead of being transferred to a medical facility, at

1 some point, not clear to me exactly when -- I would have to
2 look at the other administrative orders or records, I should
3 say, from the MDC -- he was placed in SHU. Oh, by mistake.
4 That's a pretty darn big mistake. For someone who needs
5 medical treatment, there's no allegation whatsoever, I haven't
6 seen anything anywhere, that Mr. Young violated any of the
7 regulations of the prison; that he threatened anybody; that he
8 engaged in some acts of violence. He was placed in the SHU
9 for medical treatment? Are you serious? And then, oh, that's
10 just a mistake.

11 In addition, his medical supplies were mistakenly
12 thrown out. So for a period of time, just as Ms. Glashausser
13 explained on Wednesday, he didn't have any new gauze to
14 replace his wounds with; he didn't have any kinds of
15 sterilizing chemicals. None of that.

16 And I almost did get the status report that the
17 Court directed the Government to file at five o'clock on
18 Wednesday, and it indicates that the MDC staff advised her
19 that Mr. Young is receiving treatment for an active MRSA
20 infection. And, mind you, their initial response to
21 Ms. Glashausser and the Government's excuse for not acting on
22 Judge Levy's order was that, oh, he doesn't have MRSA, when it
23 was very apparent from the very first medical records from
24 intake. And, in fact, in one of the subsequent
25 examinations -- Mr. Young, I'm really sorry to get into this

1 detail, but I really think that the record needs to be clear,
2 okay -- he had some kind of growth or something, pustule,
3 under his arm that burst. Well, you know what, that can
4 happen while he is trying to clean himself, change clothes,
5 change bandages in his cell where he has a roommate. It took
6 medical staff to clear up that situation for him during that
7 medical visit.

8 I don't know whether Mr. Young is right-handed or
9 left-handed, but he has a fracture on his left hand. That's
10 just appalling. The MDC can't even get a cavity treated, much
11 less something as serious as this. And I'm talking from
12 20 years of experience sitting in this courthouse. And this
13 is nothing new. Because back in the late '80s, the late Judge
14 Weinstein, himself, did a walkthrough and issued a very
15 scathing opinion about what he saw. This is nothing new.

16 And what's more appalling even is that there were
17 two pending litigations here in this very courthouse over the
18 same issues; the conditions at the MDC, the lack of medical
19 treatment, among other things. And the fact that the MDC has
20 the unmitigated gall to completely disregard an order of the
21 Court -- which also is not a first-time thing for the MDC --
22 the person who responds to Ms. Glashausser in her initial
23 inquiry to say, "oh, he doesn't have it" is -- first of all,
24 it is a flat out lie. Or looking at it in the best light
25 possible, the person just was too lazy to look at the records.

1 Either way, it's not good. It is not good.

2 So the Government gets told that the MDC thinks it's
3 able to adequately treat the MRSA and the Government is
4 asking, I suppose, on behalf of the MDC, that this Court
5 withdraw Judge Levy's order; however, there is nothing in the
6 Government's report to the Court, and nothing in the email
7 response that I received from Ms. Khan, that explains why the
8 MDC chose to ignore a Court order. Because I have news for
9 you, representatives of the MDC, you are not above the law.
10 There is a reason why our forefathers decided that there
11 should be three co-equal independent branches of government.
12 This is not the first time that the MDC has ignored a Court
13 order from other judges of this Court and orders that I have
14 issued.

15 So either Ms. Khan or Mr. Glucksnis -- am I
16 pronouncing that correctly?

17 MR. GLUCKSNIS: Glucksnis.

18 THE COURT: Glucksnis. I'm sorry.

19 I would like to hear what was going on in your head
20 that made you think that you were authorized to completely
21 ignore a Court order that also required reporting back on the
22 execution of that order.

23 MS. KHAN: Your Honor, so on November 22nd when we
24 received the Court order, at that time, the labs had not
25 indicated that he had MRSA at that time.

1 However, prior to that when he was on his intake on
2 November 16th, he was treated proactively as if he had MRSA
3 due to the fact that, I believe, prior to coming to MDC
4 Brooklyn he had already had MRSA --

5 THE COURT: Correct. He was in a Rikers medical
6 facility, which ought to speak volumes, because it's Rikers
7 that is probably one of the other most abominable prisons on
8 this planet -- and I've been to Rikers; I've seen Rikers
9 personally -- then that should speak volumes and you should
10 take proactive steps to make sure that he is being treated.
11 So you had that information on the 16th. You had the
12 information. And it was based on that information, that
13 Ms. Glashausser made the application to Judge Levy that the
14 Government consented to the order, and you are not giving me a
15 good reason why you disregarded a Court order. And, at the
16 minimum, you had an obligation to report whatever your reasons
17 were, or to ask the judge -- and, properly, you have lawyers
18 on staff.

19 Are you a lawyer?

20 MS. KHAN: Yes.

21 THE COURT: Okay. So act like one. Act like one.

22 If there is some reason why a Court order -- maybe
23 it's wrong, maybe there's no basis for it -- there is
24 something called a motion for reconsideration. You go back to
25 the judge and, say, Judge, you wanted us to report back to

1 you. This is why we think the order should be vacated; we're
2 asking you to reconsider. Or don't they teach those things in
3 law school anymore? I mean, really, what is your job as an
4 attorney? Just to have that on your doorstep? I mean,
5 really? Or is that what they are teaching in law schools now,
6 judges issue orders, you don't obey them.

7 Because what I'm reading from the medical records
8 that I saw here is that he has a legitimate condition. It has
9 been verified. Not only that, but the medical records also
10 show that, yes, he was given antibiotics and they don't work,
11 because the condition that he has is specifically resistant to
12 some very strong antibiotics. And I know they're very strong
13 because, unfortunately, I've had occasion in my lifetime to
14 have to use them. And they can cause very serious side
15 effects. It is resistant to medication.

16 Not only that, to make matters worse, apparently
17 there isn't even a working laundry on that unit that he is on.
18 So he is being forced to -- and I don't even know how that
19 would work, even if there was a laundry on his floor, because
20 I would think that his things would have to be washed
21 separately from other inmates, then there has to be some sort
22 of disinfection process. So even that is problematic.
23 Whereas, a medical facility does have in place a process for
24 dealing with that.

25 But there isn't even a way that something like that

1 could be instituted because there isn't even a laundry that he
2 could use on his unit, so he's washing in the sink. Is he
3 given disinfectant to clean the sink? Presumably his roommate
4 uses the same sink for his hygiene purposes?

5 You know, I'm not talking about things that are out
6 of this world or of another universe. This is a common sense
7 approach. This is just basic common sense. And for you,
8 specifically as staff attorney, to have been told that the
9 Court has issued an order to show cause, as to why you
10 disregarded Judge Levy's order, not to respond to that and
11 then to think that, oh, it's okay, I'll just send along the
12 medical records, so now you are disregarding my order. I'm a
13 district judge. I expect my orders to be obeyed.

14 So you still haven't told me why you disregarded the
15 order.

16 MS. KHAN: So on November 22nd, the -- I had replied
17 saying that we could treat his condition at MDC Brooklyn --

18 THE COURT: Replied to who?

19 MS. KHAN: I replied to the original email that came
20 in on November 22nd explaining that he would be treated at MDC
21 Brooklyn. There are other inmates with MRSA at MDC Brooklyn
22 that are treated regularly. It's not something that MDC
23 Brooklyn medical staff is unfamiliar with how to treat --

24 THE COURT: Well, that's scary, honestly. That's
25 very scary, because I am not hearing that this is properly

1 being taken care of or addressed. Certainly not in
2 Mr. Young's situation. And everybody's situation is
3 different; there can be different strains.

4 MS. KHAN: So the antibiotic that he was previously
5 on has been changed to suit the type of MRSA he has, as of
6 recently. And I was told by medical staff that his wound is
7 actually doing a lot better as of this week, as early as
8 earlier this week, that the wound is, in fact, healing from
9 this new antibiotic.

10 THE COURT: Do you wish to be heard,
11 Ms. Glashausser?

12 MS. GLASHAUSSER: Your Honor, I think that Your
13 Honor sees what's happened very clearly and correctly. I
14 think that Judge Levy's order was right. He had MRSA then.
15 He still has it. And he has an open wound in his armpit as
16 well as in his groin area, and those are related to a
17 preexisting condition that reoccurs. He understands that he
18 usually needs surgery to clear those wounds. I'm not sure if
19 he will have that in this case. And that's in addition to all
20 of his other medical problems. He's in a wheelchair. He has
21 difficulty moving around, as one of his legs and one of his
22 arms is injured.

23 In the medical records, you can see the order that
24 he is not supposed to have contact with other people. There's
25 one form where it says he could not sign because of his MRSA

1 infection. There's another form saying that he could have
2 gloves.

3 So those medical issues coupled with very serious
4 hygiene issues --

5 THE COURT: He's left-handed.

6 MS. GLASHAUSSER: Right. I think that's why he was
7 raising his left hand --

8 THE COURT: Okay. I wasn't sure. He's left-handed
9 and that is where he's got the bandage.

10 MS. GLASHAUSSER: So I think Your Honor is
11 completely right that MDC is not adequately providing him
12 medical care. Judge Levy's order was correct. Your Honor
13 should reissue it, or whatever the right way to do that is, so
14 he can get appropriate treatment in a medical facility.

15 And, frankly, I'm not sure why MDC and the
16 Government are resisting this. The Government initially
17 agreed, based on my representation from Mr. Young. We didn't
18 have the records then, now we do, and Your Honor is right. It
19 shows something even worse than what I had believed without
20 the records. Their original consent was the right one. We
21 know that MDC has access to medical facilities that could
22 treat Mr. Young. I don't think it would be forever -- these
23 conditions hopefully will resolve -- and then he could be
24 returned to MDC once he is medically able to go there.

25 With respect to the order in particular and

1 Ms. Khan's response, it was that email where Ms. Khan
2 indicated that he did not have MRSA and does not have an
3 infection, so that was wrong. And nothing in the medical
4 records suggests that MDC ever thought that he didn't have
5 MRSA. First it says he came in with a suspected MRSA, and
6 then they have the cultures where it confirms that he has
7 MRSA, has an active infection, and that continues until today,
8 or until the last date on the medical records that we have.

9 THE COURT: I don't take kindly to
10 misrepresentations, especially from lawyers.

11 MS. KHAN: On November 21st was when the culture was
12 taken, and that was the culture that came back as MRSA. So on
13 November 22nd, we didn't have those results yet, which is why
14 I stated he didn't have MRSA because at that time --

15 THE COURT: You had the medical records and you had
16 his intake from November 16th and you knew that he was coming
17 from a medical facility from Rikers Island. This is not a
18 condition that goes away like a bad headache or a cold. So
19 instead of saying, you know what, we took some tests, we need
20 to verify -- which would be the answer in a report directly to
21 the judge -- that's not what you did. And, clearly, he does
22 have it, because that's verified from the medical records.

23 I don't get what your role at the MDC is here,
24 because, quite frankly, your actions are negligent and
25 contemptuous of the Court, because two lawsuits are not enough

1 for the MDC.

2 And, Ms. Pak, you are complicit in all of this
3 because your office, as I said on Wednesday, is very much
4 aware of the two lawsuits because it's the U.S. Attorney's
5 Office representing the MDC as their lawyers in the civil
6 action. Perhaps I should have asked Mr. Eichenholtz to be
7 here today. You didn't even tell a supervisor.

8 I've heard enough. I am not satisfied that based on
9 what I have seen that the MDC is qualified in any way, shape,
10 or form to address Mr. Young's condition, especially given the
11 lack of laundry facilities, and I'm not even sure that the MDC
12 can be trusted to engage in the proper sanitizing regimen that
13 might be required. I think that, given Mr. Young's condition,
14 it would be grossly unfair to impose that on him. The MDC is
15 in utter disregard of the safety and welfare of, at the
16 minimum, Mr. Young's roommate, but other inmates in the
17 facility, and its own staff.

18 And the other thing that I did not address is that,
19 you know, apparently the safety protocols that are followed is
20 basically Mr. Young can't touch anything and he has to wear --
21 what is it? -- a yellow jumpsuit or something like that so
22 that the other inmates know to keep away from him. So he's
23 been ostracized for a medical condition. Let's put a big red
24 letter A on him. Not to mention the initial response of
25 putting him in the SHU for no good reason.

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1 So Mr. Young has to be transferred to a medical
2 facility forthwith, by no later than tomorrow, and I realize
3 it's Saturday, but too bad.

4 MS. KHAN: Judge, if I may?

5 THE COURT: Yes.

6 MS. KHAN: Our staffing capabilities are
7 currently -- are extremely low. If you could, please, allow
8 us at least until whatever the Court finds suitable --

9 THE COURT: Tomorrow.

10 MS. KHAN: It's an impossibility with staffing.
11 Logistically --

12 THE COURT: But this is how you are going to be able
13 to take care of his medical needs.

14 MS. KHAN: Correct, Judge, but unfortunately --

15 THE COURT: Because you have no staff that can do
16 what they are supposed to do.

17 MS. KHAN: Judge, in order to comply with your order
18 properly, I would ask for more time. Tomorrow would be an
19 impossibility for staffing.

20 THE COURT: Well, how much time are you asking for?

21 MS. KHAN: I would be asking for a week.

22 THE COURT: No. Tomorrow.

23 MS. KHAN: Judge, tomorrow would be an impossibility
24 for staffing.

25 THE COURT: A week is too long. A week we're going

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1 into Christmas, and then you're going to say, well, we're
2 short because of Christmas.

3 MS. KHAN: Can we have until Tuesday?

4 THE COURT: Tuesday is too long.

5 MS. KHAN: Monday?

6 THE COURT: Monday the latest by noon. And I want a
7 report back. And I'm serious about that. I will hold you in
8 contempt if you do not comply with my order.

9 Do you understand that?

10 MS. KHAN: Yes.

11 THE COURT: You are on notice. Then you will have
12 to come to court with a lawyer.

13 And I see Ms. Von Dornum in the courtroom and I see
14 senior staff here also from the U.S. Attorney's Office. I
15 think that they will verify that I mean business. This is not
16 a joke. This is not a game. This is a human being's life.
17 And he is in detention pretrial. Okay, yes, he is accused of
18 doing something that, if convicted, he will be punished for,
19 but he's not there yet. He has a presumption of innocence.
20 He has not been proven guilty.

21 If I do not get a report that he has been
22 transferred by Monday noon, rest assured that you will be back
23 here again so fast you will have whiplash.

24 Are we clear?

25 MS. KHAN: Yes, Judge.

1 THE COURT: Is there anything else that I need to
2 address with respect to Mr. Young specifically?

3 MS. GLASHAUSSER: Your Honor, just that Mr. Young is
4 noting -- and I've heard this from my other clients as well --
5 that the medical staff -- and really much of the staff at MDC
6 are not there on the weekend, they're locked in for the
7 weekend, and that is what happened after Judge Levy's medical
8 order. Instead of being transferred, he was locked in for
9 five days over the Thanksgiving weekend, and he believes
10 that's what will happen this weekend as well, which may be why
11 MDC is asking to delay the transfer until Monday.

12 THE COURT: So the Court has just been advised --
13 and I suppose this is why Ms. Khan is saying that tomorrow is
14 impossible -- apparently there is a whole lockdown at the MDC,
15 so all legal calls, videoconferences, social visits, are
16 temporarily suspended, which is, frankly, all the more reason
17 why somebody with a medical condition, who is not a behavior
18 problem, who is not a security problem from an internal safety
19 perspective, needs to be at a medical facility, because I do
20 note that Judge Levy's order was issued on November 22nd, so
21 that was the Wednesday before Thanksgiving. So in order that
22 others may celebrate their Thanksgiving holiday, he was placed
23 in SHU.

24 Is there anything further?

25 By Monday, he will have to be transferred, I said,

1 by noon. I want a report that he has been transferred as of
2 Monday morning. I don't want to hear excuses. There will be
3 no excuses.

4 Is there anything else, Ms. Glashausser or Ms. Pak?
5 Transferred by noon and a report by noon.

6 Anything else?

7 MS. GLASHAUSSER: No, Your Honor.

8 MS. PAK: Not from the Government, Your Honor.

9 THE COURT: Okay. So I still need Ms. Pak and
10 Ms. Glashausser, but not anything necessarily concerning
11 Mr. Young's case directly, so he can be taken back by the
12 marshals, and the MDC folks are excused, but there is one
13 administrative thing that I want to address with Ms. Pak.

14 THE COURTROOM DEPUTY: On the record, Judge?

15 THE COURT: Yes.

16 MR. GLUCKSNIS: Thank you, ma'am.

17 (Pause.)

18 THE COURT: I would like to know, Ms. Pak, why it
19 was that you were not here on Wednesday morning at the time
20 that this case was scheduled.

21 MS. PAK: Your Honor, I, unfortunately, at that time
22 was also handling a -- what I was hoping would not turn into a
23 conflicting appearance in Courtroom 2A. It ultimately --

24 THE COURT: Are you talking about the arraignment
25 part?

Proceedings

19

1 MS. PAK: Yes, Your Honor.

2 THE COURT: Well, I happen to know that there was no
3 arraignment calendar on Wednesday morning.

4 MS. PAK: Your Honor, there was a removal matter
5 that had come in at that time, and I was hoping that the two
6 matters would not overlap in preparing for that arraignment as
7 well --

8 THE COURT: There was no arraignment court, and my
9 understanding was that you were in the arraignment part, and
10 instead you sent poor Mr. Berman over here, a lamb to the
11 slaughter, unarmed with all the pertinent information about
12 the potential issues that could be raised here. And instead
13 probably you should have asked Mr. Berman to handle the
14 removal issue and come here yourself to address the issue, but
15 he was completely blind-sided by the health issue. You should
16 have known that Ms. Glashausser was going to raise that with
17 the Court, given the seriousness of it, and it shows a real
18 lack of judgment on your part. I'm sure that someone else
19 could have handled that removal matter. Your obligation was
20 to be here, especially under these circumstances.

21 MS. PAK: I apologize for that, Your Honor, and it
22 won't happen again.

23 THE COURT: Oh, it won't happen again, because keep
24 in mind this: The only thing that anybody has, but
25 particularly a lawyer, is their reputation, and that involves

1 having integrity, honesty, forthrightness, candor -- those may
 2 be similar, but they're nuanced -- and having the spine to
 3 deal with difficult situations and not to throw other people
 4 under the bus. I've been where Mr. Berman was. It was not a
 5 pleasant situation for him. I actually feel sorry for him.
 6 And I'm glad your supervisors are here to hear that, because
 7 that was not only a serious lack of judgment, but, in some
 8 sense, there was a misrepresentation as to what your
 9 availability was, because unless you had to be in a court
 10 part, you were scheduled to be here, and that was your
 11 priority. You get somebody else to cover the other thing.
 12 This case was scheduled here for that date in advance.
 13 Credibility is everything. It takes forever to build a
 14 reputation. It takes one incident to undermine it. So I
 15 expect that none of this will happen again.

16 MS. PAK: Yes, Your Honor. Understood.

17 THE COURT: You are all excused.

18 Thank you.

19 (Matter concluded.)

20

21 * * * * *

22 I certify that the foregoing is a correct transcript from the
 23 record of proceedings in the above-entitled matter.

24 /s/ Denise Parisi

December 16, 2023

25 _____
 DENISE PARISI

 DATE

EXHIBIT C

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
 UNITED STATES OF AMERICA, : 23-CR-475(DLI)
 -against- : United States Courthouse
 Brooklyn, New York
 JAMES YOUNG, :
 Defendant. : December 20, 2023
 : 10:30 o'clock a.m.
 - - - - - X

TRANSCRIPT OF ORDER TO SHOW CAUSE
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Government: BREON PEACE
 United States Attorney
 BY: MATTHEW HAGGANS
 STEPHANIE PAK
 Assistant United States Attorneys
 271 Cadman Plaza East
 Brooklyn, New York

For the Defendant: FEDERAL DEFENDERS OF NEW YORK INC.
 One Pierrepont Plaza, 16th Floor
 Brooklyn, NY 11201
 BY: ALLEGRA W. GLASHAUSSER, ESQ.

Court Reporter: Charleane M. Heading
 225 Cadman Plaza East
 Brooklyn, New York
 (718) 613-2643

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

1 THE CLERK: Criminal cause for show cause hearing,
2 docket number 23-CR-475, United States versus James Young.

3 Please state your appearances.

4 MR. HAGGANS: Good morning, Your Honor. Matthew
5 Haggans for the United States. I'm joined at counsel table by
6 AUSA Stephanie Pak, Supervisory Staff Attorney at MDC Sophia
7 Papapetru and Staff Attorney at MDC Neha Khan. Good morning,
8 Your Honor.

9 THE COURT: Good morning.

10 MS. GLASHAUSSER: Good morning, Your Honor. Allegra
11 Glashausser representing Mr. Young but I am waiving his
12 appearance today.

13 THE COURT: Thank you.

14 We are here for an order to show cause hearing as to
15 why the MDC should not be held in contempt for its failure to
16 comply with the very clear directive that I gave the MDC, and
17 Ms. Khan was present here that day with another colleague from
18 the MDC as was the government, directing that Mr. Young be
19 transferred by no later than Monday, December 18th, at noon,
20 and the government was charged with providing the court with
21 an update.

22 The representation that was made to the court on
23 Monday by the government was that Mr. Young was scheduled to
24 be transferred before noon, still wasn't by noon, but he was
25 due to be en route to the facility before noon. The

1 government also, Ms. Pak represented that she would further
2 corroborate with the Court that the defendant had been
3 transferred.

4 Well, that corroboration never came on Monday. I
5 wanted to give the MDC the benefit of the doubt that, in fact,
6 it had done what it was charged to do by Monday and, lo and
7 behold, late yesterday afternoon, Ms. Glashausser advised the
8 court that Mr. Young was back at the MDC. Needless to say, I
9 was not pleased. This is, again, very typical of what the MDC
10 does. This was the whole discussion that we had on Friday
11 about the utter contemptuousness and disregard that the MDC
12 has of court orders because, apparently, the Bureau of Prisons
13 thinks that it is above the law, that it does not have to
14 respond to court orders.

15 When your director of the Bureau of Prisons, Colette
16 Peters, came here I think earlier in the year to talk to all
17 of us Judges, District and Magistrate Judges, this was raised
18 with her. In fact, I think I was the one to raised it,
19 although not the only Judge who raised concerns about that.
20 And I think, Ms. Papapetru, you were present at that meeting.
21 And we were given all kinds of assurances about new procedures
22 that would be put in place to deal with what was of the
23 paramount concern at that meeting, medical attention or lack
24 thereof being given to the inmates. There were other things
25 that were also of great concern but that was, that took up a

1 huge chunk of the discussion, but here we are again.

2 So, instead, what I find out is that instead of
3 being transferred to a facility, a medical facility, basically
4 a rehab type of facility where Mr. Young's wounds can be
5 attended to, make sure that he takes the medication when he's
6 supposed to take the medication, where he can get tested to
7 make sure that the medication is still working because,
8 unfortunately, this illness that he has, it's marked by the
9 fact that it becomes resistant to medication and he's already
10 resistant to significant, very strong medication, and he has
11 other issues. He is wheelchair bound. He's got other medical
12 issues, not to mention the lack of a laundry facility in his
13 unit, not to mention that he is, there's no way to avoid him
14 having contact with other people because he's in general
15 population, and putting him in SHU which is what the MDC did
16 in response to Judge Levy's order of November 27th because,
17 heaven forbid, that the MDC's staff should disturb their
18 Thanksgiving holiday and do the right thing which is obey a
19 court order, and it just flippantly gets mentioned in his
20 medical records as, oh, he was mistakenly put in SHU, oh, and
21 by the way, we lost all his medical supplies.

22 So now I find out that he was taken to the hospital.
23 The idea was not that he be taken to the hospital and I don't
24 think that anyone was alleging that he necessarily needed to
25 be hospitalized which apparently was the conclusion of the

1 doctors who treated him there. No one was talking
2 hospitalization. Nonetheless, having been told he does not
3 need to be hospitalized, he should have from there been taken
4 to a medical facility. Instead, he was taken back to the MDC.
5 I promised Ms. Kahn that if they, if you did not obey, if the
6 MDC did not obey my order, that she would be back here so
7 fast, she would get whiplash. I keep my word.

8 The conduct of the MDC here has -- I tried to think
9 of how to describe it. It's an abomination. Utterly
10 contemptuous of the court. It's contemptuous of human life
11 and dignity. It's appalling. It's unprofessional. And for
12 staff attorneys not to comply with court orders, well, you
13 know what, if this was a civil case, you'd be reported to the
14 fitness committees of the state.

15 So now I have on my bench here some new update that
16 apparently based on -- this was from Ms. Pak -- that
17 apparently based on her discussions with the MDC Warden and
18 MDC Counsel, that apparently, as of the writing, I don't know
19 what time that this was written, the defendant is on his way
20 to a nursing home for long-term care.

21 Mr. Haggans, you can remain seated.

22 MR. HAGGANS: Thank you, Your Honor. I'm glad the
23 Court has received the letter. That's based on information
24 from the last 90 minutes or so.

25 I do want to take the opportunity to acknowledge and

1 apologize to the Court. The government has let the Court
2 down. The government has not met the Court's expectations.

3 THE COURT: Oh, you know, I was considering getting
4 a special prosecutor on this case. I was considering going to
5 the Chief Judge of the Circuit to get a special prosecutor on
6 this case just so that you're aware because Ms. Pak also
7 failed to obey a court order. It was her obligation on Monday
8 to give me an update which meant that she should have
9 proactively found out what happened to Mr. Young on Monday.
10 So she too should be facing contempt of court charges.

11 MR. HAGGANS: If I may address that briefly,
12 Your Honor?

13 THE COURT: Yes.

14 MR. HAGGANS: So for the Court's awareness, as is
15 appropriate in our office, when serious and significant
16 matters such as this are raised, they're raised to supervisors
17 and AUSA Pak did so in this case and that was to me. And so
18 when I said --

19 THE COURT: Yes, not until I called for her to come
20 after she sandbagged Mr. Berman.

21 MR. HAGGANS: From last Wednesday?

22 THE COURT: Last Wednesday, correct.

23 MR. HAGGANS: That's correct, Your Honor, and we
24 apologize for that. Your Honor is correct that for a matter
25 of this nature, it would have been far preferable for the

1 Assistant with the most firsthand direct knowledge to have
2 appeared in person and we regret that.

3 I just want to assure the Court that AUSA Pak has
4 been advising her supervisors of the status of this matter. I
5 have been advising my supervisor. It's been briefed to the
6 highest levels of our office including the Civil Division, the
7 Criminal Division and the United States Attorney. It's also
8 been briefed to Mr. Eichenholtz who I know the Court is
9 familiar with from the Office of the Attorney General, the
10 Deputy Attorney General formerly of our office, but I just
11 want to reiterate something, Your Honor.

12 When I said a moment ago that the government fell
13 short of the Court's expectations from Friday, I just want to
14 be very clear that that, that includes me. I should have
15 personally foreseen that while hospital treatment was an
16 improvement, certainly, if he had been admitted to the
17 hospital, as the government believed on Monday was a
18 possibility, if he had been admitted, he would have received
19 the various forms of treatment that the Court was
20 appropriately quite concerned about from Friday and I should
21 have foreseen that if he was not admitted, that we would be
22 back in an uncomfortable situation, not least of which because
23 we would not be in compliance with the Court's order. For
24 that, I personally apologize to Your Honor.

25 THE COURT: Ms. Glashausser, do you wish to be heard

1 at all on this?

2 MS. GLASHAUSSER: No, Your Honor. I'm happy
3 Mr. Young is on his way to the rehabilitation facility which
4 is what we were seeking all along.

5 THE COURT: Ms. Papapetru, do you wish to be heard
6 with respect to the MDC?

7 MS. PAPAPETRU: Your Honor, we just apologize for
8 not completely obeying your order and that we should have
9 expected that he would have returned from the hospital and
10 that we should have been more proactive in responding.

11 THE COURT: He should have been transferred directly
12 from the hospital to a facility.

13 MS. PAPAPETRU: I agree, Your Honor.

14 THE COURT: Because, you know what, he was
15 endangering the safety and well-being -- he had a roommate,
16 for God's sake. He's washing his clothes in a sink that he
17 shares with a roommate. There's no indication that he was
18 given anything to disinfect the areas that invariably he had
19 to touch and that then his roommate would be touching.
20 There's no indication that staff was going in there and
21 disinfecting. I didn't hear anything about that. And then
22 there's no working laundry either. And, of course, there
23 would have to be some sort of disinfecting mechanism there as
24 well. I haven't heard anything about any of that.

25 MS. PAPAPETRU: If I may, Your Honor?

1 THE COURT: Yes.

2 MS. PAPAPETRU: The washing machines were -- there
3 were new washing machines and new dryers placed on that
4 housing unit over a week ago to my knowledge. I do not have
5 specific knowledge when they were brought out of order, but I
6 know that they were replaced with new machines early last
7 week.

8 THE COURT: Early last week? In the meantime, he
9 had been there for three weeks with no laundry facility.

10 MS. PAPAPETRU: Yes. I believe the housing --

11 THE COURT: It still begs the question that when he
12 utilizes something, it needs to be disinfected to avoid
13 everyone else from being infected. The entire conduct of the
14 MDC in this matter has been absolutely, utterly atrocious,
15 beyond the pale of anything that I have seen in the 20 years
16 that I have been on this court, and I've seen some pretty
17 nasty things, and I go regularly to the MDC to look for
18 myself.

19 I totally do expect that moving forward, that when a
20 court issues an order, which should not be necessary because
21 supposedly there had been procedures in place to deal with
22 medical issues, but when a judge issues an order, your
23 obligation is to obey it. And as I told Ms. Kahn, if there's
24 some reason why, perhaps the information, why the order should
25 not have been issued, perhaps the information the order was

1 based on was inaccurate or maybe there was a change that the
2 judge was not made aware of, as I told Ms. Kahn on Friday, be
3 lawyers. You can ask the government to present on your
4 behalf. It's been done in other cases. Move for
5 reconsideration. Move to vacate. Explain why.

6 What was done here, the thing that really riles me
7 is that the MDC decided to be -- you can have a seat, ma'am --
8 the MDC decided, oh, we took him to the hospital and in
9 another week or so, we'll send him over to a facility.

10 Ms. Kahn, I don't know if that was your doing, but I
11 don't know how you can be so flip and think that somehow, that
12 eventually I would not find out about this because the truth
13 always surfaces sooner or later, and that you would somehow
14 think that you would get over and get out from under your
15 obligation to obey a court order, that you would think that
16 you're that slick that you can get over. It is beyond
17 unprofessional.

18 MS. KAHN: I apologize, Your Honor.

19 THE COURT: You know, your apologies are so empty.
20 They are empty. It is disgusting. These are human beings
21 entrusted in your care. And thankfully, finally, in
22 compliance you will be and I expect some kind of verification
23 that, in fact, he is at the facility today.

24 MR. HAGGANS: That's understood, Your Honor.

25 THE COURT: Because we will be back here every

1 single darn day, I don't care if the court is closed, until it
2 gets done. It wouldn't be the first time I spent Christmas in
3 a courtroom. And if I have to send an order to the Marshals
4 to bring you here, I will do that because I already had an
5 order composed to bring your bodies here.

6 MS. PAPAPETRU: Your Honor, I will let you know
7 myself when he's in the facility.

8 THE COURT: Yes, because when Ms. Kahn was advised
9 of the order to show cause by my courtroom deputy, her
10 response was, Oh, he was seen by the doctors on Sunday and
11 here are his medical records. Very flip response.

12 I suggest you have a meeting with your attorney
13 staff and explain to them what their obligations are under the
14 law because I will, I will go to grievance committees and get
15 their licenses pulled. They have no right to act as lawyers.

16 We have a date set for this case already. Is there
17 anything else that needs to be raised at this time?

18 MS. PAK: At this time, Your Honor, nothing further
19 from the government. And I do apologize as well on behalf of
20 what has transpired thus far.

21 THE COURT: You better get your act in order.

22 MS. PAK: Understood, Your Honor.

23 THE COURT: Ms. Papapetru, anything else on behalf
24 of the MDC?

25 MS. PAPAPETRU: We apologize, Your Honor, for our

1 actions and moving forward, we hope to not let you down again.

2 THE COURT: We will be meeting with your new warden
3 in January.

4 MS. PAPAPETRU: Yes.

5 THE COURT: I will make sure he has copies of these
6 transcripts.

7 MS. PAPAPETRU: Your Honor, I actually requested
8 them to provide them to him and I brought him up to speed
9 yesterday and again this morning. And I did arrange for those
10 meetings so you can raise your concern.

11 THE COURT: Ms. Glashausser?

12 MS. GLASHAUSSER: Yes, Your Honor, this is luckily
13 no longer a problem for Mr. Young as he is hopefully already
14 at the rehabilitation facility, but just in reference to the
15 laundry machines, my understanding from another client in the
16 same unit is that it was after Your Honor, after we discussed
17 the issue of laundry machines and Your Honor talked to the MDC
18 about the laundry machines that the unit received one laundry
19 machine and one dryer. The dryer as of yesterday had already
20 broken.

21 THE COURT: I'm not surprised.

22 All right. Thank you.

23 MR. HAGGANS: Thank you, Your Honor.

24 MS. GLASHAUSSER: Thank you, Your Honor.

25 (Matter concluded.)