

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

In The Matter of the Necessity for the )  
Hospitalization of William Bigley, )  
 )  
Respondent )  
Case No. 3AN 08-1252PR

**REPLY TO OPPOSITION TO**  
**MOTION TO HOLD HEARINGS AT COURT HOUSE**

Respondent, by and through counsel, hereby replies to the Opposition to Respondent's Motion to Hold Hearings at Courthouse, filed by the Alaska Psychiatric Institute (API) served on Respondent, October 30, 2008.

**I. RESPONDENT'S CONSTITUTIONAL FREE SPEECH RIGHTS OVERRIDE ANY INTEREST ARTICULATED BY API**

With respect to that part of API's argument that transporting Respondent to the Court House will involve some inconvenience, or requires secure transportation, his Constitutional Free Speech Rights override the relatively minor concerns of API. It also is simply not true that such secure transportation is needed. Hospital staff regularly submit exaggerated (to be charitable) testimony to get their way, which is usually accepted without challenge. This is a well-known phenomenon.<sup>1</sup>

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<sup>1</sup> See, Michael Perlin, The ADA and Persons with Mental Disabilities: Can Sanist Attitudes Be Undone?, 8 J.L. & Health 15, 33 (1993) ("witnesses, especially expert witnesses, show a 'high propensity to purposely distort their testimony in order to achieve desired ends.'"). See, also Torrey, E. Fuller. 1997. *Out of the Shadows: Confronting America's Mental Illness Crisis*. New York: John Wiley and Sons. 152 ("It would probably be difficult to find any American Psychiatrist working with the mentally ill who has not, at a minimum, exaggerated the dangerousness of a mentally ill person's behavior to obtain a judicial order for commitment.").

If API is truly concerned about this, counsel for Respondent will be pleased to pick Respondent up at API and take him to court and take him back.

Moreover, as a matter of law, since Respondent's Constitutional Free Speech right is a "fundamental one," the State is required to "'articulate a compelling [state] interest' and to demonstrate 'the absence of a less restrictive means to advance [that] interest.'"<sup>2</sup> While the concerns expressed by API, if determined to be true after a hearing, might be a sufficient state interest to justify the infringement, it does not appear that API can satisfy the "absence of a less restrictive means" requirement, because API has admitted it can transport him safely.

## **II. RESPONDENT'S CONSTITUTIONAL FREE SPEECH RIGHTS OVERRIDE AS 47.30.735 OR A HEARING MUST BE HELD**

Of course, to the extent that AS 47.30.735 conflicts with Respondent's Constitutional Free Speech rights, it is unconstitutional. However, even leaving that aside, just because API asserts API is "a physical setting least likely to have a harmful effect on the mental or physical health of the respondent, within practical limits" under AS 47.30.735, that doesn't make it so. Respondent believes otherwise and is entitled to a hearing on the issue since it is contested.

As counsel for Respondent wrote in a recent law review article:

Currently, these "hearings" are conducted in a cramped conference room at API without the trappings of a legitimate legal proceeding. This leaves respondents feeling that they have not had their "day in court." In the author's experience, there are a host of negative consequences that flow from

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<sup>2</sup> *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238, 245-6 (Alaska 2006), footnote omitted.

this. For one thing, it can exacerbate the perception of some respondents that people are out to get them. Similarly, since they do not feel it was a legitimate judicial process, it can solidify their resistance to cooperating with hospital staff.<sup>3</sup>

To put this in the language of AS 47.30.735, holding the hearings at API have a harmful effect on the mental health of Respondent.

Dr. Aron Wolf, a well-respected psychiatrist in the community has been listed as a witness by API, and Respondent understands Dr. Wolf has been asked to review Respondent's case and is planning to do so Monday afternoon, November 3, 2008.

Therefore, if the Court has yet to be convinced the hearings should be held at a courthouse, Respondent respectfully suggests the Court hold a hearing Tuesday morning, if possible, November 5, 2008, to hear from Dr. Wolf, and other witnesses, if necessary, to determine whether holding the hearings in a real court room in a court house is "a physical setting least likely to have a harmful effect on the mental or physical health of the respondent, within practical limits."<sup>4</sup> If so, in addition, to Dr. Wolf, Respondent would intend to call, George Gee, an owner of Side Street Espresso, Jerry Winchester, owner of Winchester Alaska, and Lise Falskow, the director of the Alaska World Affairs Council. Perhaps Susan Stefan, too, a former law professor and currently an attorney with the Center for Public Representation in Newton, Massachusetts.

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<sup>3</sup> J. Gottstein, Involuntary Commitment and Forced Psychiatric Drugging in the Trial Courts: Rights Violations as a Matter of Course, 25 Alaska L. Rev. 51, 85-86 (2008), footnotes omitted.

<sup>4</sup> It also seems to Respondent that holding a status conference Tuesday might be beneficial because there are a number of pending motions that will presumably be ripe for decision, potentially obviating the need for any further proceedings at all.

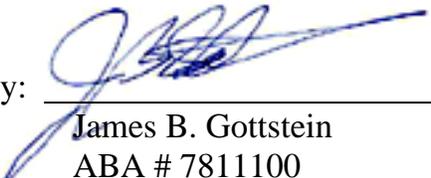
Frankly, though, this seems unnecessary because Respondent believes he has established he is entitled to have the hearings in a real court room at the court house based on the current status of the motion. Any interest API may have is achievable through the less restrictive means it has admitted is available--secure transport.<sup>5</sup> Respondent respectfully suggests this "trumps" the arguments of API.

### **III. CONCLUSION**

For the foregoing reasons, Respondent urges the Court to schedule all public hearings in this matter in a regular court room in a regular court house and publish notice of the hearing in its court calendar as it would for other public hearings.

DATED: October 31, 2008.

Law Project for Psychiatric Rights

By: 

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<sup>5</sup> There is also a problem with delay until Tuesday with respect to where witnesses need to appear and notice to the public of where the hearing is going to take place.