

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

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IN THE MATTER OF:            )  
  )  
The Necessity for the        )  
Hospitalization of            )  
William S. Bigley             )  
  )  
  )  
Case No. 3AN-08-01252 PR

Not Confidential  
per Order of  
January 23, 2009

~~\*\*\*CONFIDENTIAL\*\*\*~~

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TRANSCRIPT OF PROCEEDINGS  
BEFORE  
THE HONORABLE WILLIAM MORSE

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Pages 1 - 13, inclusive

November 20, 2008

4:12 p.m.

APPEARANCES (present telephonically):

For William Bigley: Elizabeth Brennan, Esq.  
For the State of Alaska: Scott Friend, Esq.

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 2 ANCHORAGE, ALASKA; THURSDAY, NOVEMBER 20, 2008; 4:12 p.m.  
 3 ---oOo---  
 4 (4:12:21)  
 5 THE COURT: We're on record in 3AN-08-01252 PR.  
 6 I think I have Ms. Brennan?  
 7 MS. BRENNAN: Yes, Your Honor.  
 8 THE COURT: And Mr. Friend?  
 9 MR. FRIEND: Yes, Your Honor.  
 10 THE COURT: I've been advised that the parties  
 11 want to cancel the hearing tomorrow?  
 12 MS. BRENNAN: Well, I think we're looking more  
 13 at a short continuance, Your Honor. We were served with a  
 14 copy of the 90-day petition today. Our concern is that if  
 15 we don't have a decision on the medication portion yet,  
 16 that Mr. Gottstein represented Mr. Bigley, and we'd like  
 17 to have a decision before we go forward on the 90-day.  
 18 Does affect trial strategy.  
 19 THE COURT: What do the parties intend to do  
 20 with Mr. Bigley since the 30-day order has expired?  
 21 MS. BRENNAN: I was informed by the hospital  
 22 that it expired on Tuesday. I thought it was just coming  
 23 through Tuesday. I didn't realize it might have been two  
 24 days ago. As I said, I would want the continuance to be  
 25 brief because I don't want my client at the hospital.

1 THE COURT: So he'll be released tonight?  
 2 MS. BRENNAN: Well, no, I don't -- I don't  
 3 think -- I'm not sure if I understand the Court. I don't  
 4 think there's any plans to release him.  
 5 THE COURT: What's the authority if the -- maybe  
 6 I'm -- my recollection is that I signed an order on  
 7 October 20th, maybe -- I think that's when I signed it --  
 8 which suggests that it's -- the 30-day is over. So I was  
 9 somewhat surprised that the State didn't timely file the  
 10 petition, but what can you do?  
 11 MS. BRENNAN: Well, in that respect, if it's  
 12 past the date, then I'd ask that he be released tonight.  
 13 MR. FRIEND: Your Honor, I don't have a file in  
 14 front of me, and I spoke with Dr. Kari (ph), and my  
 15 impression from the various people I've spoken with about  
 16 this that it was up on Tuesday. Certainly if, you know --  
 17 I don't know if he's released tonight how we could have a  
 18 hearing scheduled tomorrow anyhow. I mean, certainly the  
 19 State would -- you know, isn't withdrawing -- or the  
 20 hospital is not withdrawing our petition. We would just  
 21 like it continued because it's really a -- you know, the  
 22 hospital needs to know if they're going to be able to  
 23 medicate him. If they're not, I think they're planning on  
 24 releasing him anyhow so there would be no purpose of the  
 25 90-day petition. But again, I apologize for not having a

1 file in front of me. I'm just kind of filling in on this  
 2 matter.  
 3 THE COURT: I appreciate that, but how does  
 4 this -- I guess I'm just -- I don't understand what is  
 5 happening.  
 6 MR. FRIEND: Well, my understanding from my  
 7 conversation with Ms. Brennan is there would be a short  
 8 continuance which would -- they would be essentially  
 9 pulling the time, I guess. I don't know what the  
 10 translation is for API.  
 11 THE COURT: Oh really?  
 12 MS. BRENNAN: Well --  
 13 THE COURT: Would we now? That's not what she  
 14 just said.  
 15 MS. BRENNAN: Yeah. I mean, my concern is that  
 16 I did not calculate the days right. I mean, I wasn't  
 17 there at the 30-day petition, so I might not have realized  
 18 that we were outside of the 30-day petition. But if it's  
 19 outside, then -- I mean, normally what we do is we get the  
 20 90-day before the time is up, and so if we continued it, I  
 21 mean, basically we do pull the time and we allow -- we  
 22 basically agree that the client stays at API until the  
 23 next court hearing.  
 24 THE COURT: Are you agreeing to keep him in  
 25 custody?

1 MS. BRENNAN: I can't do that, Your Honor. My  
 2 client -- I talked to him this morning. I mean, he wants  
 3 to go.  
 4 THE COURT: Then the request for a continuance  
 5 is denied.  
 6 MR. FRIEND: Okay.  
 7 MS. BRENNAN: That what?  
 8 MR. FRIEND: So is -- are we still having the  
 9 hearing tomorrow? I guess I'm confused. If the 30 days  
 10 is up tonight, wouldn't he have to be recommitted?  
 11 THE COURT: I'm going to hold him for another  
 12 night. I think it is stunningly irresponsible to have  
 13 filed a petition in an untimely manner with this man.  
 14 Having sat through five days of hearings where the State  
 15 has been telling me how this man is suffering because he's  
 16 not medicated and would be harmed if he was released, to  
 17 have the State so cavalierly just say, oops, is just  
 18 amazing to me. Now, out of fairness, perhaps I'm  
 19 recalling the expiration date incorrectly, but that  
 20 sure -- he was -- well...  
 21 What's the -- other than -- Ms. Brennan.  
 22 MS. BRENNAN: Yes.  
 23 THE COURT: Is the -- you simply need to be --  
 24 time to prepare; is that all we're talking about?  
 25 MS. BRENNAN: Well, I mean, the medication

1 petition, it does affect trial strategy in terms of what  
2 kind of questions to ask at cross-examination and whether  
3 he can be treated at the hospital.

4 THE COURT: Would it be helpful if I gave you a  
5 decision on the medication decision now?

6 MS. BRENNAN: It would be, and I would need  
7 to -- yes. I can also talk to my client about that in the  
8 morning.

9 THE COURT: If I announce that decision now, are  
10 both sides prepared to go tomorrow morning?

11 MR. FRIEND: Yes.

12 MS. BRENNAN: Your Honor, if my client wants to  
13 go tomorrow morning based on that decision, then I will go  
14 forward.

15 THE COURT: I am 95 percent certain that I'm  
16 going to authorize the involuntary medication. I realize  
17 that's not a definitive answer, but I am in the midst of  
18 reading some additional materials that I haven't read yet.  
19 I don't think they are likely to convince me otherwise,  
20 but I haven't finished. So it is likely, however, that I  
21 am going to grant that. I'm not granting that order now,  
22 so the medication cannot start. Does that enable both  
23 sides to go forward tomorrow?

24 MS. BRENNAN: It is helpful, Your Honor. I  
25 think there's also issues of whether the decision is going

1 to be stayed or not, and that might make -- that would  
2 make a difference as well.

3 THE COURT: I didn't hear you. Say that again.

4 MS. BRENNAN: There are issues about, I think,  
5 whether the decision is going to be stayed or not, and it  
6 would be helpful for me to know whether that's going to --  
7 if the decision is going to be stayed.

8 THE COURT: Well, I asked the parties to be  
9 prepared, and I realize Mr. Gottstein is the one on this,  
10 but I asked the parties to be prepared to talk about that  
11 relationship between the existing stay and this stay and  
12 this order, if I was to grant the request to medication.  
13 So my assumption is that the State wants a stay. Can I  
14 assume -- and my assumption is that -- I'm sorry. My  
15 assumption is the State wants the medication to proceed  
16 immediately?

17 MR. FRIEND: That's correct, Your Honor.

18 THE COURT: And that Mr. Gottstein, on behalf of  
19 Mr. Bigley, will want it to be stayed. And I had  
20 suggested that, in light of the stay, that I was going to  
21 make a decision -- well, I think he should be medicated  
22 now. So I'm going to issue that order. I am going to  
23 stay -- I'm not doing it now, but I'm going to do it here  
24 soon. I'm going to stay my order briefly to allow the --  
25 Mr. Bigley to go to the Supreme Court -- for both sides to

1 go to the Supreme Court and let them deal with what they  
2 want to do, given the new information.

3 I'm aware that there is oral argument December  
4 12 or 15, something like that, in front of the Supreme  
5 Court on the other case, but I want the Supreme Court to  
6 understand that I think that he should be medicated now  
7 despite the former stay -- not the former stay, but  
8 despite the stay in the earlier case. But, on the other  
9 hand, I'm not willing to suddenly order API to do the  
10 medication -- I don't know what API is going to do,  
11 frankly. I shouldn't say that. I think they would be --  
12 they ought to hesitate to medicate him pursuant to my  
13 order in light of the Supreme Court's order.

14 But at any rate, I'm not going to allow the  
15 medication to start until at least there is a short period  
16 of time to get to the Supreme Court, and it would be  
17 helpful for input from the State and Mr. Gottstein as to  
18 how much time is necessary. My guess is -- I had  
19 suggested two days. That might be too short. But  
20 clearly, the Supreme Court, once they're advise of this,  
21 might issue a stay that would last long enough just so  
22 they could review it, I mean not necessarily on the total  
23 merits, but review the request for a stay more thoroughly.  
24 But at any rate, is that somewhat rambling answer at all  
25 helpful?

1 MS. BRENNAN: It is very helpful, Your Honor.  
2 Thank you.

3 MR. FRIEND: I'm sorry, Your Honor. I'm a  
4 little bit confused. Hopefully it's just because I'm  
5 walking into this case a little bit late. So, if I'm  
6 understanding correct, you are predicting, but you haven't  
7 ruled definitively yet, that you are going to grant the  
8 petition for medication, but if you do so, you will also  
9 be issuing a stay of that order so the Supreme Court can  
10 consider the implication of the matter pending already  
11 before the Supreme Court?

12 THE COURT: Correct.

13 MR. FRIEND: So I -- I guess, then, in light of  
14 that, I'm not sure how that plays into the hearing.  
15 Tomorrow I would certainly request a continuance on the  
16 90-day petition, given the fact that, if API isn't allowed  
17 to medicate him, they're planning on releasing him anyhow,  
18 so the --

19 THE COURT: API has to make up its mind, what --  
20 either pull the petition or don't pull the petition. What  
21 do you want to do?

22 MR. FRIEND: We'll have the hearing.

23 THE COURT: Then Ms. Brennan, are you prepared  
24 tomorrow?

25 MS. BRENNAN: I'll do my best, Your Honor. I'm

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1 going to have to give my client this information, and Your  
 2 Honor has seen my client. I'm hoping my position will be  
 3 the same as it is today in terms of if he wants to go  
 4 forward or not. When I spoke to him today, I think he --  
 5 he gave me instructions in a way that I thought that I  
 6 could request what I did, but I think -- I have to talk to  
 7 him again, and if he wants me to go forward, I should be  
 8 ready.  
 9 MR. FRIEND: And just so I'm clear, at the  
 10 hearing tomorrow, assuming that it goes forth, we will not  
 11 be addressing the medication?  
 12 THE COURT: No.  
 13 MR. FRIEND: Okay. Thank you.  
 14 THE COURT: We'll be addressing simply the  
 15 petition for a 90-day commitment.  
 16 MR. FRIEND: Okay. Thank you.  
 17 THE COURT: Is there anything further?  
 18 MS. BRENNAN: No, Your Honor. Thank you.  
 19 10 o'clock tomorrow?  
 20 THE COURT: Yes. But just hold one minute. Let  
 21 me just see if -- I'm going to check my -- the file and  
 22 see if I can recreate the precise date of the original  
 23 30-day commitment order.  
 24 MS. BRENNAN: I'd appreciate that.  
 25 THE COURT: And just hold on.

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1 The order on the 22nd. So 30 days from there  
 2 takes us to --  
 3 MS. BRENNAN: Saturday. Oh, tomorrow.  
 4 THE COURT: November 21. So tomorrow we're  
 5 going, unless the State pulls its petition.  
 6 MR. FRIEND: The State's not planning on pulling  
 7 its petition.  
 8 THE COURT: Is not?  
 9 MR. FRIEND: Is not planning.  
 10 THE COURT: Thank you. All right. Then we'll  
 11 have the hearing tomorrow.  
 12 MS. BRENNAN: Okay.  
 13 THE COURT: At 10 o'clock at API.  
 14 MS. BRENNAN: Okay.  
 15 THE COURT: How long do -- Mr. Friend, given  
 16 what you know now, how long will that hearing last?  
 17 MR. FRIEND: I would think less than an hour if  
 18 we're not dealing with any meds issues, if it's just  
 19 strictly gravely disabled or at risk of harm, whatever the  
 20 standard is, harm to himself or others.  
 21 THE COURT: Ms. Brennan, given what you know  
 22 now, does that sound about right? And I realize that it  
 23 may change.  
 24 MS. BRENNAN: Yes, Your Honor. There's a  
 25 possibility we might have some witnesses, but I don't --

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1 I'll know more tomorrow morning. I don't think it would  
 2 be that long. I mean, I'm hoping that we'd be done  
 3 tomorrow and that it wouldn't go all day or anything like  
 4 that. It might be a little bit longer than an hour.  
 5 That's all I'm trying to say.  
 6 THE COURT: Okay. Thank you.  
 7 MS. BRENNAN: Okay.  
 8 THE COURT: We'll be in recess.  
 9 MS. BRENNAN: Okay. Bye-bye.  
 10 (Proceedings concluded)  
 11 (4:29:49)  
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 2 TRANSCRIBER'S CERTIFICATE  
 3  
 4 I, Deirdre J.F. Radcliffe, hereby certify that the  
 5 foregoing pages numbered 1 through 12 are a true and  
 6 accurate transcript of proceedings in Case Number  
 7 3AN-08-01252 PR, In the Matter of the Necessity for the  
 8 Hospitalization of William Bigley, transcribed by me from  
 9 a copy of the electronic sound recording, to the best of  
 10 my knowledge and ability.  
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 12  
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 14 Date Deirdre J.F. Radcliffe, Transcriber  
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