

James B. Gottstein (7811100)
 Law Project for Psychiatric Rights, Inc.
 406 G Street, Suite 206
 Anchorage, Alaska
 (907) 274-7686



Attorney for Appellant
 William S. Bigley

IN THE SUPREME COURT FOR THE STATE OF ALASKA

WILLIAM S. BIGLEY,)
 Appellant,) Supreme Court No. S-13116
)
 vs.)
)
 ALASKA PSYCHIATRIC INSTITUTE)
 Appellee.)
)
 Trial Court Case No. 3AN 08-493 PR

JUDICIAL NOTICE APPENDIX

Table of Contents

Ex Parte Order, 3AN 06-1039, September 1, 2006 1
 90-Day Commitment Petition, 3AN 06-1039 PR, October 4, 2006..... 2
 Forced Drugging Petition, 3AN 06-1039 PR, October 4, 2006 4
 Forced Drugging Order, 3AN 06-1039 PR, November 3, 2006 5
 Entry of Appearance, 3AN 06-1039 PR, December 20, 2006 9
 Elections, 3AN 06-1039 PR, December 26, 2006..... 10
 Notice of Release, 3AN 06-1039 PR, January 4, 2007 12
 Petition for 30-Day Commitment, 3AN 07-247 PR, February 23, 2007 13
 Order for 30-Day Commitment, 3AN 07-247 PR, March 2, 2007 15
 Forced Drugging Order, 3AN 07-247 PR, March 2, 2007 17
 Petition for 90-Day Commitment, 3AN 07-247 PR, March 21, 2007 20
 90-Day Forced Drugging Petition, 3AN 07-247 PR, , March 21, 2007..... 22
 Entry of Appearance, 3AN 07-247 PR, March 22, 2007 23
 Elections, 3AN 07-247 PR, March 22, 2007..... 24
 Transcript of Proceedings, 3AN 07-247 PR, March 28, 2007 25
 Transcript of Proceedings, 3AN 07-247 PR, April 3, 2007 34
 Special Verdict Form, 3AN 07-247 PR, April 4, 2007 47
 30 Day Commitment Order, 3AN 07-598 PR, May 23, 2007..... 50

<i>Ex Parte</i> Order, 3AN 07-1064 PR, August 29, 2007	56
Petition for 30 Day Commitment, 3AN 07-1064 PR, August 30, 2007.....	57
30-Day Forced Drugging Petition, 3AN 07-1064 PR, August 30, 2007	59
Limited Entry of Appearance, 3AN 07-1064 PR, August 31, 2007	60
Transcript, 3AN 07-1064 PR, August 31, 2007	61
30-Day Commitment Order, 3AN 07-1064 PR, September 4, 2007	82
Pre-Hearing Brief, 3AN 07-1064 PR, September 4, 2007	84
Transcript, 3AN 07-1064 PR, September 5, 2007	117
Transcript, 3AN 07-1064 PR, September 10, 2007	144
Motion for Permanent Mandatory Injunction (Less Intrusive Alternative), 3AN 07-1064 PR, September 12, 2007	149
Affidavit, <i>USA v. Bigley</i> , September 20, 2007	159
Minute Order, <i>USA v. Bigley</i> , September 20, 2007.....	162
Order to Dismiss, <i>USA v. Bigley</i> , October 12, 2007.....	164
Docket, 3AN 07-11795CR, October 21-24, 2007.....	165
<i>Ex Parte</i> Order, 3AN 07-1311 PR, October 23, 2007.....	168
Notice of Arrival, 3AN 07-1311 PR, October 23, 2007.....	169
<i>Ex Parte</i> Petition, 3AN 07-1311 PR, October 23, 2007.....	170
Petition for 30-Day Commitment (Amended), October 25, 2007.....	172
30-Day Forced Drugging Petition, 3AN 07-1311 PR, October 25, 2007	174
30-Day Commitment Order, 3AN 07-1311 PR, November 2, 2007.....	175
30-Day Forced Drugging Order, 3AN 07-1311 PR, November 2, 2007	177
90-Day Commitment Order, 3AN 07-1311 PR, January 7, 2008	179
Status Report, 3AN 07-1311 PR, January 14, 2008.....	182
Notice of Release, 3AN 07-1311 PR, January 21, 2008	183
Petition for 30-Day Commitment, 3AN 08-247 PR, February 26, 2008	184
30-Day Forced Drugging Petition, 3AN 08-247 PR, February 27, 2008.....	186
Entry of Appearance, 3AN 08-247 PR, March 6, 2008	187
Transcript, 3AN 08-247 PR, March 14, 2008	188
Docket, 3AN 08-3805CR, April 10-16, 2008	203
Conditional Limited Entry of Appearance, 3AN 08-416 PR, April 21, 2008.....	207
Order of Dismissal, 3AN 08-416 PR, April 22, 2008	208

Confidential Envelope

Report of Visitor, 3AN 04-0545PR, May 25, 2004	1
--	---

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of the Necessity)
for the Hospitalization of:)
)
William Bigley,)
Respondent.)
_____)

Case No. 3AN-06-1039PR-1

EX PARTE ORDER
(TEMPORARY CUSTODY FOR
EMERGENCY EXAMINATION/
TREATMENT)

FINDING AND CONCLUSIONS

Having considered the allegations of the petition for initiation of involuntary commitment and the evidence presented, the court finds that there is probable cause to believe that the respondent is mentally ill and as a result of that condition is gravely disabled or presents a likelihood of causing serious harm to him/herself or others.

ORDER

Therefore, it is ordered that:

1. Alaska Psychiatric Institute take the respondent into custody and deliver him/her to Alaska Psychiatric Institute, in Anchorage, Alaska, the nearest appropriate evaluation facility for examination.
2. The respondent be examined at the evaluation facility and be evaluated as to mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.
3. The evaluation facility personnel promptly report to the court the date and time of the respondent's arrival.
4. The examination and evaluation be completed within 72 hours of the respondent's arrival at the evaluation facility.
5. A petition for commitment be filed or the respondent be released by the evaluation facility before the end of the 72 hour evaluation period (unless respondent requests voluntary admission for treatment).
6. Public Defender Agency is appointed counsel for respondent in this proceeding and is authorized access to medical, psychiatric or psychological records maintained on the respondent at the evaluation facility.

August 21, 2006

Date


Superior Court Judge

I certify that on 9/1/06
a copy of this order was sent
to: AG, PD, API, RESP

Recommended for Approval
9/1/06

Clerk:smh


Master

MC-305 (12/87) (st.5)
EX PARTE ORDER

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)

William Bigley,)
Respondent.)

Case No. 3AN'06 1039 PR

PETITION FOR 90-DAY COMMITMENT

As a mental health professional who has examined the respondent, the petitioner alleges that:

1. The respondent is mentally ill and as a result is
 - likely to cause harm to himself/herself or others.
 - gravely disabled as previously alleged in the Petition for 30-Day Commitment.
2. The respondent:
 - continues to be gravely disabled and there is reason to believe that the respondent's mental condition could be improved by a continued course of treatment.
 - has attempted to inflict or has inflicted serious bodily harm upon himself/herself or another since his/her acceptance for evaluation.
 - was committed initially as a result of conduct in which he/she attempted or inflicted serious bodily harm upon himself/herself or another.
 - demonstrates a current intent to carry out plans of serious harm to himself/herself or another.
3. The evaluation staff has considered, but has not found, any less restrictive alternatives available that would adequately protect the respondent or others.
4. API is an appropriate treatment facility for the respondent's condition and has agreed to accept the respondent.
5. The respondent has received appropriate and adequate care and treatment during his/her 30-day commitment.
6. The respondent has been advised of the need for, but has not accepted, voluntary treatment.

The petitioner respectfully requests the court to commit the respondent to the above-named treatment facility for not more than 90 days.

Bigley

Case No. 3AN06 1039PR

The facts and specific behavior of the respondent supporting the above allegations are:

factious remains psychotic and gross and speech and irritable, very delusional, not responding to Risperidol alone, refuses mood stabilizer medication. Refuses assisted living placement due to impaired judgment from mental illness, ~~accuses~~ staff of various delusional activities (perceived conspiracies)

The following persons are prospective witnesses, some or all of whom will be asked to testify in favor of the commitment of the respondent at the hearing:

Steve Young OPA guardian - telephonic 269-3541
Melinda N. Task MSW
W. W. Small MD

10-4-06
Date

William W. Small MD
Signature of Professional Person In Charge
or that Person's Professional Designee
William W. Small MD
Print Name and Title

Verification

Petitioner says on oath or affirms that petitioner has read this petition and believes all statements made in the petition are true.

Subscribed and sworn to or affirmed before me at Chickadee
Alaska on 10/4/06
(date)



[Signature]
Clerk of Court, Notary Public or other
person authorized to administer oaths.
My commission expires: 10/5/07

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)

William Bigley)
Respondent.)

Case No. 3AN'06 1037 PR

) PETITION FOR COURT APPROVAL OF
) ADMINISTRATION OF PSYCHOTROPIC
) MEDICATION [AS 47.30.839]

William Worrall MD petitioner, requests a hearing on the respondent's capacity to give or withhold informed consent to the use of psychotropic medication, and alleges that:

There have been, or it appears that there will be, repeated crisis situations requiring the immediate use of medication to preserve the life of, or prevent significant physical harm to, the patient or another person. The facility wishes to use psychotropic medication in future crisis situations.

Petitioner has reason to believe the patient is incapable of giving or withholding informed consent. The facility wishes to use psychotropic medication in a noncrisis situation.

Court approval has been granted during a previous commitment period, and the facility wishes to continue medication during the subsequent commitment period. A 90/180 day petition is being filed. The patient continues to be incapable of giving or withholding informed consent.

The patient has refused has not refused the medication.

10-4-06 *more stabilization medication on second entry psychiatric*
William Worrall MD

Date

Signature

(Representative of evaluation or designated treatment facility)

William Worrall MD

Printed Name

Title Psychiatrist

Verification

Petitioner says on oath or affirms that petitioner has read this petition and believes all statements made in the petition are true.

Subscribed and sworn or affirmed before me at Anchorage,
Alaska on 10/6/06 (date)

Ray Harte

Clerk of Court, Notary Public, or other person authorized to administer oaths.

My commission expires: 10/5/07



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of the)
Necessity for the)
Hospitalization of:)
) Case No. 3AN-06-01039 P/S
)
WILLIAM BIGLEY,)
Respondent.)
)
) FINDINGS AND
) ORDER CONCERNING COURT-ORDERED
) ADMINISTRATION OF MEDICATION

FINDINGS

A petition for court approval of administration of psychotropic medication was filed on OCTOBER 9, 2006.

Respondent was committed on OCTOBER 10, 2006 for a period of time not to exceed 90 days.

A hearing was held on OCTOBER 10, 2006, to inquire into respondent's capacity to give or withhold informed consent to the use of psychotropic medication.

Having considered the allegations of the petition, the evidence presented and the arguments of counsel, the court finds:

- A. The respondent has the capacity to give informed consent concerning administration of psychotropic medication for purposes of AS 47.30.836 as respondent is not found by clear and convincing evidence to be incompetent to make mental health and/or medical decisions.
- XXXX B. By clear and convincing evidence that the respondent is not competent to provide informed consent concerning administration of psychotropic medication and the treating facility's proposed use of psychotropic medication is approved for the respondent's present commitment.

FINDINGS AND ORDER
CONCERNING COURT-ORDERED
ADMINISTRATION OF MEDICATION

Page 2

2. The facts which support the above conclusion are:

Clear and convincing evidence the respondent is unable to give or withhold informed consent concerning antipsychotic medication including the court visitor's report and recommendation and Dr. Worrall's testimony. Ms. Vassar reported that Mr. Bigley was sent to the hospital on an ex parte petition after he allegedly accosted OPA staff. Mr. Bigley told her he was very opposed to medications because they cause sexual dysfunction. The visitor said that Mr. Bigley did not elaborate.

Mr. Bigley's court appointed guardian, Steve Young, testified that he has been Mr. Bigley's guardian for six years and is concerned because Mr. Bigley is getting worse psychiatrically, has poor judgment and becomes easily frustrated. He said that Mr. Bigley is highly delusional and his level of agitation quickly escalates.

ORDER

_____ Therefore, the court having determined that the patient is competent to provide informed consent, it is ordered that the treating facility shall honor respondent's decision about administration of psychotropic medication.

XXXX Therefore, it is ordered that the treating facility's proposed use of psychotropic medication to treat the respondent is approved for the period of the respondent's current commitment.

If the treating facility wishes to continue the use of psychotropic medication without respondent's consent during a period of commitment that occurs after the present commitment period, it shall file a request to continue the medication when it files the petition to continue patient's commitment.

11/3/06
DATE
Nunc pro tunc 10/09/06

[Signature]
SUPERIOR COURT JUDGE

FINDINGS AND ORDER
CONCERNING COURT-ORDERED
ADMINISTRATION OF MEDICATION

Page 3

Dr. Worrall testified that Mr. Bigley has received Risperdal shots for the last two years which have been effective and not caused side effects for Mr. Bigley. The doctor said that Mr. Bigley has taken the Risperdal shots voluntarily but missed a recent shot which probably caused escalation of his symptoms. The doctor said there are no sexual side affects with the prescribed medication and that the prescribed medication is the least intrusive treatment for Mr. Bigley. The doctor opined that Mr. Bigley cannot give an informed consent.

No evidence was presented that Mr. Bigley has executed or otherwise communicated an advance directive concerning prescription of antipsychotic medications.

FINDINGS AND ORDER
CONCERNING COURT-ORDERED
ADMINISTRATION OF MEDICATION

Page 4

Recommended 11/2 for approval on 20 06.
[Signature]
SUPERIOR COURT MASTER

I certify that on 12/14/06
a copy of this order was sent to:

respondent
respondent's attorney
attorney general
treatment facility

Clerk: SI

Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, AK 99501
907-274-7686 phone
907-274-9493 fax

FILLED
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

06 DEC 22 PM 3: 58

CLERK, JUDICIAL COURTS
BY _____ DEPUTY

Attorney for Respondent

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

In The Matter of the Necessity for the)
Hospitalization of William S. Bigley,)
)
Respondent)

Case No. 3AN 06-01039 P/S

ENTRY OF APPEARANCE

The Law Project for Psychiatric Rights (PsychRights) hereby enters its appearance on behalf of, William S. Bigley, the Respondent in this matter.

DATED: December 20, 2006.

Law Project for Psychiatric Rights

By: 

James B. Gottstein
ABA # 7811100

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

LAW OFFICE OF STEVEN J. PRIDDLE
700 Hollywood Drive
Anchorage, Alaska 99501
Tel. (907) 339-9572 · Fax (907) 339-9576

1 Law Project for Psychiatric Rights
2 406 G Street, Suite 206
3 Anchorage, AK 99501
4 907-274-7686 phone
5 907-274-9493 fax

6 Attorney for Respondent

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

9 In The Matter of the Necessity for the)
10 Hospitalization of William S. Bigley,)
11 Respondent)

12 Case No. 3AN 06-01039 P/S

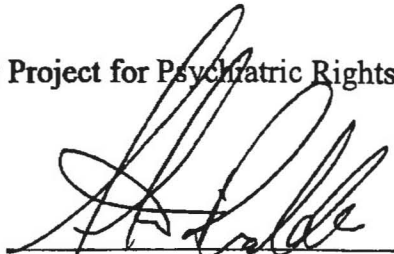
Elections

13 In the event a 180 Day Commitment Petition is filed against Respondent in
14 this matter, the following elections are being made:

- 15 1. A jury trial pursuant to AS 47.30.770(b), which incorporates AS
- 16 47.30.745(c);
- 17 2. To have the hearing in a real court room pursuant to AS 47.30.735(b), and
- 18 3. To be free of the effects of medication pursuant to AS 47.30725(e), as
- 19 incorporated into this proceeding through AS 47.30.745(a) and AS 47.20.770(b)

20 DATED: December 26, 2006, at Anchorage, Alaska..

21 Law Project for Psychiatric Rights

22 By: 
23 Steven J. Priddle

24 Affidavit of Service

1 I hereby certify that the foregoing was served on December 26, 2006, by fax and USPS mail upon:

2 Public Defender Agency
3 900 West Fifth Avenue, Suite 200
4 Anchorage, Alaska 99501

5 Elizabeth Russo
6 Asst. Atty. Gen.
7 1031 West Fourth Avenue, Suite 200
8 Anchorage, Alaska 99501

9 
10 Steven J. Priddle

11 ABA # 9906024

12 LAW OFFICE OF STEVEN J. PRIDDLE
13 700 Hollywood Drive
14 Anchorage, Alaska 99501
15 Tel. (907) 339-9572 Fax (907) 339-9576
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

AT Anchorage

In the Matter of the Necessity
for the Hospitalization of:

William Begley
Respondent.

Case No. 3AN'06 1039 PR

NOTICE OF RELEASE

To: Superior Court at _____, Alaska.

Release After Evaluation. Respondent was admitted to _____
for evaluation on _____, 20____ and was discharged from the facility
on _____, 20____, at _____m. because the evaluation personnel
did not find that respondent met the standards for commitment specified in AS 47.30.700.

Release After Commitment Period. Respondent was committed for treatment on
10/10, 2006, for 90 days. Respondent was released on
01/03, 2007. AMA

Certificate of Early Discharge. Respondent was committed for treatment on
_____, 20____, for _____ days. I certify that on
_____, 20____, respondent was discharged early because:

respondent is no longer gravely disabled or likely to cause serious harm as a result
of mental illness.

I request the court to enter an order officially terminating the involuntary commitment.

1/4/07
Date

Mary Harte
Signature

Print Name and Title

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)
 William Bigley)
Respondent.)

Case No. 3AN 07 247PR

PETITION FOR 30-DAY
COMMITMENT

As mental health professionals who have examined the respondent, the petitioners allege that:

- The respondent is mentally ill and as a result is
 - likely to cause harm to himself/herself or others.
 - gravely disabled and there is reason to believe that the respondent's mental condition could be improved by the course of treatment sought.
- The evaluation staff has considered, but has not found, any less restrictive alternatives available that would adequately protect the respondent or others.
- APT is an appropriate treatment facility for the respondent's condition and has agreed to accept the respondent.
- The respondent has been advised of the need for, but has not accepted, voluntary treatment.

The petitioners respectfully request the court to commit the respondent to the above-named treatment facility for not more than 30 days.

The facts and specific behavior of the respondent supporting the above allegations are:

Psychotic, delusional, paranoid, agitated, won't cooperate with his guardian to arrange for groceries (to help him stay healthy) to be delivered, Lost 4 pounds in 3 months. Insists his guardian should give him money to do his own shopping, but he agitates people in public and creates disturbances. He has not been taking medication, but when on medication he was calm and had better judgement

Case No. 3AN 07 247PR

The following persons are prospective witnesses, some or all of whom will be asked to testify in favor of the commitment of the respondent at the hearing:

Steve Young OPA guardian 269-3541
W Werrall MD 269-7100
A. Nelson social worker 269-7100

2-23-07
Date

William Werrall MD
Signature

William Werrall MD
Printed Name

Psychiatrist
Title

2-23-07
Date

Ann Nelson
Signature

Ann Nelson
Printed Name

LMSW
Title

Note: This petition must be signed by two mental health professionals who have examined the respondent, one of whom is a physician. AS 47.30.730(a).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

RECEIVED
MAR 15 2007

PUBLIC DEFENDER AGENCY
ANCHORAGE

In the Matter of the Necessity)
For the Hospitalization of :)
)
WILLIAM BIGLEY,)
Respondent.)
_____)

Case No. 3AN-07-247 P/S

ORDER FOR 30-DAY COMMITMENT

FINDINGS

A petition for 30-day commitment was filed on February 23, 2007.

A hearing was held on February 27, 2007, to inquire into the mental condition of the respondent. Respondent was personally present at the hearing and was represented by Gibson, attorney. Representing the State was Russo.

Having considered the allegations of the petition, the evidence presented and the arguments of counsel, the court finds by clear and convincing evidence:

1. Respondent is mentally ill and, as a result, is
 - likely to cause harm to himself / herself or others.
 - gravely disabled.
2. Respondent has been advised of and refused voluntary treatment.
3. Respondent is a resident of the State of Alaska.
4. Respondent was given verbal notice that if commitment or other involuntary treatment beyond the 30 days is sought, respondent will have the right to a full hearing or jury trial.
5. Alaska Psychiatric Institute, or a designated treatment facility closer to the respondent's home, is an appropriate treatment facility.* No less restrictive facility would adequately protect the respondent and the public.

*If space is available, and upon acceptance by another treatment facility, the respondent shall be placed by the department at the designated treatment facility closest to the respondent's home pursuant to AS 47.30.760, unless the court orders otherwise.

Case No. 3AN-07-247 P/S

6. The facts which support the above conclusions are:

The evidence is clear and convincing that the Respondent has the mental illness of Affective Disorder, Bi-Polar Type. His thought processes involve paranoid ideas, delusions of wealth and grandeur, and irrational thinking. He cannot perceive and understand reality. While he has sufficient funds for housing and basic necessities, his inability to focus on what is necessary and be able to interact with others without disturbing or frightening them impairs his ability to actually provide for himself. He is unable to shop in an appropriate manner for his own food and does not have the ability to make correct nutritional choices. The impairment of his ability to reason and understand causes a substantial deterioration to function independently and he is unable to survive in freedom. He is gravely disabled and there is no less restrictive placement than API.

ORDER

Therefore, it is ordered that respondent, William Bigley, is committed to Alaska Psychiatric Institute, for a period of time not to exceed 30 days. If space is available, and upon acceptance by another treatment facility, the respondent shall be placed at the designated treatment facility closest to the respondent's home.

3-2-07
Date

Jack Smith
Superior Court Judge Jack Smith

I certify that on 3/15/07
A copy of this order was sent
To:
Respondent ✓
Respondent's attorney ✓
Attorney General ✓
Treatment facility ✓

Recommend for approval
Andrew M. Brown 3/1/07
Master Andrew M. Brown Date

Clerk: ✓

NOTICE OF RIGHTS

To: Respondent

YOU ARE HEREBY GIVEN NOTICE that if commitment or other involuntary treatment beyond the 30 days is sought, you shall have the right to a full hearing or jury trial.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of the Necessity)	
For the Hospitalization of :)	
)	
<u>WILLIAM BIGLEY,</u>)	Case No. <u>3AN-07-247 P/S</u>
Respondent.)	
_____)	

FINDINGS AND ORDER CONCERNING
COURT-ORDERED ADMINISTRATION OF MEDICATION

A petition for court approval of administration of psychotropic medication was filed on February 23, 2007.

Respondent was committed on February 27, 2007 for a period of time not to exceed 30 days.

A hearing was held on February 27, 2007, to inquire into respondent's capacity to give or withhold informed consent to the use of psychotropic medication.

Having considered the allegations of the petition, the evidence presented and the arguments of counsel, the court finds:

1. A. The respondent has the capacity to give informed consent concerning administration of psychotropic medication for purposes of AS 47.30.836 as respondent is not found by clear and convincing evidence to be incompetent to make mental health and/or medical decisions.
- B. By clear and convincing evidence that the respondent is not competent to provide informed consent concerning administration of psychotropic medication and the treating facility's proposed use of psychotropic medication is approved for the respondent's present commitment.

2. The facts which support the above conclusion are:

The evidence is clear and convincing that the Respondent has the mental illness of Affective Disorder, Bi-Polar Type. He does not understand the nature of his mental illness, its affect on him and the need for use of psychotropic medications. There is no evidence that he ever indicated, during a time when he was competent, any wishes as to the use of such medications. The Visitor Ms. Taylor attempted on February 23rd and 27th to talk with the Respondent about medications, but his agitated and delusional behavior made it so that he could not or would not respond to her questions. Dr. Worrall testified to the likely use of three medications for the Respondent's treatment. His testimony indicates that these medications will benefit the Respondent in the near future and will have long term benefits, if the Respondent continues on them. There is little risk of serious side effects, and the lesser effects can be treated with other medication. The likely medications are not experimental and are accepted for use in the community. The oral medications are intrusive only to the extent that they have to be ingested, but there would be no pain in that. If any shots have to be administered, there would be only very brief pain, if any, but that would be outweighed by the beneficial effect of that medication. This use of medications on the Respondent's treatment is in his best interests and there is no less intrusive alternative.

ORDER

Therefore, the court having determined that the patient is competent to provide informed consent, it is ordered that the treating facility shall honor respondent's decision about administration of psychotropic medication.

Therefore, it is ordered that the treating facility's proposed use of psychotropic medication to treat the respondent is approved for the period of the respondent's current commitment.

If the treating facility wishes to continue the use of psychotropic medication without

respondent's consent during a period of commitment that occurs after the present commitment period, it shall file a request to continue the medication when it files the petition to continue patient's commitment.

3-2-07
DATE
Nunc pro tunc 02/27/07

Jack Smith
SUPERIOR COURT JUDGE
Jack Smith

Recommended March for approval on 2007
Andrew M. Brown
SUPERIOR COURT MASTER
ANDREW M. BROWN

I certify that on 3/15/07
a copy of this order was sent to:

- respondent ✓
- respondent's attorney ✓
- attorney general ✓
- treatment facility ✓

Clerk:

FINDINGS AND ORDER
CONCERNING COURT-ORDERED ADMINISTRATION OF MEDICATION

Filed in the Trial Courts
State of Alaska, Third District
MAR 21 2007
Clerk of the Trial Courts

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of the Necessity)
for the Hospitalization of:)
William Byg)
Respondent.)

Case No. 3AN07247PR
PETITION FOR 90-DAY COMMITMENT

As a mental health professional who has examined the respondent, the petitioner alleges that:

1. The respondent is mentally ill and as a result is
 - likely to cause harm to himself/herself or others.
 - gravely disabled as previously alleged in the Petition for 30-Day Commitment.
2. The respondent:
 - continues to be gravely disabled and there is reason to believe that the respondent's mental condition could be improved by a continued course of treatment.
 - has attempted to inflict or has inflicted serious bodily harm upon himself/herself or another since his/her acceptance for evaluation.
 - was committed initially as a result of conduct in which he/she attempted or inflicted serious bodily harm upon himself/herself or another.
 - demonstrates a current intent to carry out plans of serious harm to himself/herself or another.
3. The evaluation staff has considered, but has not found, any less restrictive alternatives available that would adequately protect the respondent or others.
4. API is an appropriate treatment facility for the respondent's condition and has agreed to accept the respondent.
5. The respondent has received appropriate and adequate care and treatment during his/her 30-day commitment but stopped his medications on early release and his condition worsened.
6. The respondent has been advised of the need for, but has not accepted, voluntary treatment.

The petitioner respectfully requests the court to commit the respondent to the above-named treatment facility for not more than 90 days.

Dejeary

Case No. 3AN 07 247PR

The facts and specific behavior of the respondent supporting the above allegations are:

*refused medication as outpt with low dopamine blood level. Became much more labile and angry. Returned from early release. Very poor judgment, paranoid & delusional
Dx - Schizophrenia DD. Bipolar type*

The following persons are prospective witnesses, some or all of whom will be asked to testify in favor of the commitment of the respondent at the hearing:

*Ann Nelson MSW
Tim Harvey MD (covering Friday)
ASHS outpt mental health staff*

3-21-07
Date

William Wergall MD
Signature of Professional Person in Charge or that Person's Professional Designee

William Wergall MD
Print Name and Title

Verification

Petitioner says on oath or affirms that petitioner has read this petition and believes all statements made in the petition are true.

Subscribed and sworn to or affirmed before me at Anchorage Alaska on 3/21/07 (date)



Mary White
Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires: 10/5/07

Filed in the Trial Courts
State of Alaska, Third District
MAR 21 2007
Clerk of the Trial Courts

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity
for the Hospitalization of:)

William Bigley
Respondent.

) Case No. 3AN07 247 P/R

) PETITION FOR COURT APPROVAL OF
) ADMINISTRATION OF PSYCHOTROPIC
) MEDICATION [AS 47.30.839]

William Worrall MD petitioner, requests a hearing on the
respondent's capacity to give or withhold informed consent to the use
of psychotropic medication, and alleges that:

There have been, or it appears that there will be, repeated
crisis situations requiring the immediate use of medication to
preserve the life of, or prevent significant physical harm to, the
patient or another person. The facility wishes to use psychotropic
medication in future crisis situations.

Petitioner has reason to believe the patient is incapable of
giving or withholding informed consent. The facility wishes to use
psychotropic medication in a noncrisis situation.

Court approval has been granted during a previous commitment
period, and the facility wishes to continue medication during the
subsequent commitment period. A 90 day petition is being filed.
The patient continues to be incapable of giving or withholding
informed consent.

The patient has refused has not refused the medication.

3-21-07
Date

William Worrall MD
Signature
(Representative of evaluation or
designated treatment facility)

William Worrall MD
Printed Name
Psychiatrist
Title

Verification

Petitioner says on oath or affirms that petitioner has read this
petition and believes all statements made in the petition are true.

Subscribed and sworn or affirmed before me at Anchorage
Alaska on 3/21/07
(date)

Mary Harte
Clerk of Court, Notary Public, or other
person authorized to administer oaths.
My commission expires: 10/5/07



Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, AK 99501
907-274-7686 phone
907-274-9493 fax

Attorney for Respondent

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

In The Matter of the Necessity for the)
Hospitalization of William S. Bigley,)
)
Respondent)

Case No. 3AN 07-247 PR

Elections

In the event a 90-day Commitment Petition is or has been filed against Respondent in this matter, the following elections are being made:

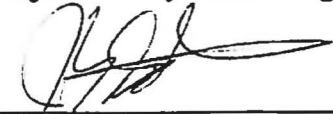
1. A jury trial pursuant to AS 47.30.770(b), which incorporates AS 47.30.745(c);
2. To have the hearing in a real court room pursuant to AS 47.30.735(b), and
3. To be free of the effects of medication pursuant to AS 47.30725(e), as

incorporated into this proceeding through AS 47.30.745(a).

DATED: March 22, 2007.

Law Project for Psychiatric Rights

By: _____


James B. Gottstein, Esq.
ABA # 7811100

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

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

IN THE MATTER OF: WB

)

)

)

Case No. 3AN-07-247 PR

TRANSCRIPT OF PROCEEDINGS
BEFORE
THE HONORABLE PETER A. MICHALSKI

Pages 1 - 31, inclusive

Wednesday, March 28, 2007

10:11 a.m.

APPEARANCES:

For the State of Alaska:

ELIZABETH RUSSO, ESQ.
Attorney General's Office, Human Services Section
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501

For Respondent:

JAMES B. GOTTSTEIN, ESQ.
Law Offices of James B. Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Page 2

1 PROCEEDINGS
 2 ---oOo---

3 THE COURT: Please be seated. Good morning.
 4 Thanks for appearing on relatively short notice. The
 5 Court has before it the matter of William Bigley.
 6 Now, in this matter the parties wish this
 7 hearing to be confidential?
 8 MR. GOTTSTEIN: My client hasn't elected to make
 9 it public, and so I think probably --
 10 THE COURT: Madam Clerk, if you would, then,
 11 make sure this is a confidential matter and with respect
 12 to the front door, then, do you wish to have it closed?
 13 MR. GOTTSTEIN: I think we probably should.
 14 THE COURT: Is the door closed at this time?
 15 THE CLERK: It's not.
 16 THE COURT: Would you go ahead and do that,
 17 then. The record should reflect at this moment, even
 18 though the door is not locked, but being locked, we have
 19 before us the representative from the project for
 20 psychiatric rights, and I think soon to be, if not
 21 previously, counsel for the respondent, and the state by
 22 its counsel.
 23 And I'm not sure who the person next to counsel
 24 is.
 25 MS. RUSSO: This is Ms. Chelick (ph) from my

Page 3

1 office.
 2 THE COURT: How do you do?
 3 All right. Thank you, Madam Clerk. Is it
 4 secure enough? Thanks a lot.
 5 Okay. We're here -- the reason I'm here and
 6 you're here is that last week, Friday, as I indicated in
 7 an order that I issued, that I was asked to be -- whether
 8 I was available to do a one-day trial. I said, okay, I
 9 can do a one-day trial, because I have one day to do it.
 10 And so I was assigned to the matter of William Bigley, and
 11 then the file arrived.
 12 Shortly before closing I finally got to looking
 13 at it, and there were some questions that were submitted
 14 to me with respect to some objections that had been
 15 earlier made but not ruled on with respect to the 30-day
 16 commitment, and I ruled on those.
 17 There is a dispute that's been kind of festering
 18 with respect to whether Mr. Gottstein's actually here for
 19 Mr. Bigley. Doesn't seem that that would be so hard to
 20 figure out. In something recently filed, that is, just
 21 this morning, I see that there is probably a basis --
 22 although it's not in my file -- to grant his entry since
 23 he's indicating that there is somewhere a notice of
 24 withdrawal -- I think he says that -- by the public
 25 defender agency. If that's the case, I don't see what the

Page 4

1 issue is. He's here.
 2 MR. GOTTSTEIN: Right.
 3 THE COURT: Do you have any reason to think the
 4 public defender has not withdrawn?
 5 MS. RUSSO: No, no, Your Honor. I have a copy
 6 of the withdrawal.
 7 THE COURT: Well, I don't have it, but based on
 8 that, Mr. -- I fully recognize Mr. Gottstein as counsel.
 9 MR. GOTTSTEIN: Your Honor, if I may.
 10 THE COURT: Go ahead.
 11 MR. GOTTSTEIN: I haven't been allowed access to
 12 the file --
 13 THE COURT: Well, you need to have access to the
 14 file if you're going to --
 15 MR. GOTTSTEIN: Right. I really need a copy of
 16 it, and I thought we had that worked out last --
 17 THE COURT: Do you have it?
 18 MR. GOTTSTEIN: No. Because I wasn't allowed
 19 until really just this instant. So -- and I'm not --
 20 can't be prepared to go forward tomorrow morning.
 21 THE COURT: Well, I can understand that. That's
 22 certainly not a shocking piece of news to me. We do, I
 23 think, under the statute, need to try to do this within
 24 ten days, however. I have a little bit of a problem with
 25 that, depending on -- because the way my calendar is

Page 5

1 structured and how much time you'll need to do your
 2 preparation.
 3 Do you have a -- I see you've got lots of people
 4 listed on your possible witnesses based on prior
 5 experience with the hospital or whatever.
 6 How long do you think a trial will be for this
 7 gentleman?
 8 MR. GOTTSTEIN: Your Honor, I think probably
 9 two, and I think starting Monday. I can't see being ready
 10 for it before Monday. I need to take --
 11 THE COURT: That's this coming Monday?
 12 MR. GOTTSTEIN: Yeah.
 13 THE COURT: And you, ma'am, how long do you
 14 think it would take?
 15 And you're talking about for -- you're using
 16 total time for the whole trial, two days? Jury selection,
 17 evidence, arguments?
 18 MR. GOTTSTEIN: Yeah, I think so. I mean, it
 19 might take three.
 20 THE COURT: Well, now --
 21 MR. GOTTSTEIN: Yeah, but...
 22 MS. RUSSO: Your Honor, if that's
 23 Mr. Gottstein's rec- -- I mean, his witness list -- my
 24 witnesses are listed on his witness list.
 25 THE COURT: They're the same people?

1 MS. RUSSO: Yeah. Well, half of his witness
2 list would be my witnesses. So I would think that two
3 should be more than enough time.

4 THE COURT: Okay. Why don't we do this. For
5 starters, we need to get it back on track. You need to
6 get a copy of the file. I can go check my calendar to
7 make sure that I'm available either Monday or Tuesday so
8 we can get a two-day thing in next week, if you can do it
9 that quickly, if that's fair to you and your client.

10 MR. GOTTSTEIN: Well, Your Honor, actually, I
11 filed -- a couple things, if I may.

12 THE COURT: You may.

13 MR. GOTTSTEIN: First off, I understood you to
14 say that you ruled on the objections this morning.

15 THE COURT: No. Actually, I ruled on the 30-day
16 last Friday, because that's when it was first assigned to
17 me. 27 March -- well, actually, I signed it the 27th
18 because that's when my people got in to prepare the
19 paperwork.

20 MR. GOTTSTEIN: Your Honor, under civil rule --
21 I assumed there was no transcript prepared for that.

22 THE COURT: For what?

23 MR. GOTTSTEIN: For -- that was submitted within
24 the master's recommendation, which is required under, I
25 believe, Civil Rule 53.d.1. And I really need a

1 hearing at which there was a transcript made of what I
2 did. I reviewed the file. That's what I looked at.

3 MR. GOTTSTEIN: Right. But the probate master
4 has no authority to issue a commitment order, and that's
5 why there's a recommendation that goes to the superior
6 court, and under 50 -- Civil Rule 53.d.1, I believe, a
7 transcript of the hearing before the probate master is
8 supposed to accompany the report in order for you to
9 decide the issue.

10 THE COURT: I'm not -- is that specifically part
11 of the statute for the accompanying of a transcript?

12 MR. GOTTSTEIN: No. It's Civil Rule 53.d.1, but
13 the statute says the court -- the superior court --

14 THE COURT: Let me take a look at it so I can
15 see what you're relying on, because for better -- for,
16 perhaps, worse, from your perspective, I don't think
17 that's generally been the practice.

18 MR. GOTTSTEIN: 53.d.1.

19 THE COURT: Okay. I got it.

20 Yeah, I don't -- yeah, certainly that's the
21 language of our rule. I don't know that I've ever seen a
22 transcript filed with a master's report on a regular
23 basis. Obviously the state is also -- has just received
24 this, I assume, from you, and they may have some comments
25 with respect to it, though may not be prepared to fully

1 transcript, and it's, frankly, hard for me to -- I assume
2 you granted the petitions and -- but it's hard for me to
3 see how -- I mean, I haven't seen the state's -- the
4 hospital's response to the objections.

5 I do have -- my client gave me a copy of the
6 objections. But I -- and my motion to dismiss, which was
7 very curt this morning, I just said the petitions weren't
8 grant -- the 30-day petitions weren't granted at the time
9 the 90 days were filed, and therefore there's no basis for
10 those 90-day petitions. So that's a motion to dismiss
11 that's pending. And I do think --

12 THE COURT: Just help me with the -- you know,
13 help me with the logic of the statute on that. You're
14 saying that -- I did briefly glance at it, and you're
15 saying that the government may not file its 90-day before
16 what?

17 MR. GOTTSTEIN: Before the 30-day order for
18 commitment has been issued. And I think -- I mean, this
19 was -- I mean, I don't know what Your Honor ruled, but
20 this was a very, I think --

21 THE COURT: You'll have the paperwork
22 momentarily.

23 MR. GOTTSTEIN: Well, I won't have a transcript,
24 I assume.

25 THE COURT: You may not have that. And I had no

1 address it. Go ahead.

2 MS. RUSSO: Yes, Your Honor. I just briefly --
3 I got here a little bit late. I was coming in from a
4 hearing in Palmer this morning. Just briefly, the -- I
5 believe that the original 30-day petition was actually
6 signed on March -- or the order granting the 30-day
7 petition, if I understand correctly, was signed on
8 March 2nd by Judge Smith, although --

9 THE COURT: It was.

10 MS. RUSSO: -- it wasn't distributed. It was in
11 the process -- he signed off on the order before, I guess,
12 the court received the objections to the master's
13 recommendation, and I -- so I -- and then you've also
14 signed off on denying the objections. So there is, I
15 believe, an actual 30-day order in effect, and it
16 doesn't -- the statute says that any time during the
17 respondent's 30-day commitment the person may file with
18 the court or petition for a 90-day commitment.

19 Given that I just got this and I'm just reading
20 the statutes again, I'm not seeing where it says that the
21 order for 30-day must be signed and in hand before the
22 90-day is filed for -- API went through the process of
23 going through the hearing and had Mr. Bigley -- he was
24 committed as a result of that hearing and waiting for the
25 paperwork from the court. I don't know how that could be

1 seen as going against the intent of the statute, which is
2 to have 90-day hearing following the 30-day commitment
3 period.

4 THE COURT: What about the requirement on the
5 submission of the recommendation to have, under the rule,
6 to have a transcript, and not just the log notes, which is
7 traditionally what we've --

8 MS. RUSSO: Right. And, Your Honor, I don't
9 have my civil rules in front of me. I don't deny that
10 that's in there, but it hasn't been the practice just
11 of -- it hasn't been my experience that it's been the
12 practice to submit the transcript along with the
13 objections, and I'm not sure whose responsibility it is to
14 submit the transcript with the objections. Is it the
15 party who's objecting to the master's decision?

16 MR. GOTTSTEIN: Your Honor --

17 THE COURT: Normally -- normally those are the
18 kinds of things that we put with the movement, but let's
19 just see what the rule actually says. Go ahead.

20 MR. GOTTSTEIN: I believe it says that it's
21 supposed to accompany the master's report, whether there's
22 an objection or not, in order for the superior court --

23 THE COURT: To evaluate the recommendation?

24 MR. GOTTSTEIN: Yes.

25 Your Honor, if I may while you're --

1 THE COURT: Please.

2 MR. GOTTSTEIN: It seems to me that the court is
3 really obliged to look at the testimony in all cases and
4 determine whether or not there's sufficient evidence to
5 grant the petition. I mean, I think that's the purpose of
6 that rule, and of course, with respect to Ms. Russo's
7 argument about the statute, doesn't say that there's an
8 order. It says during the commitment. Well, there was no
9 commitment because there was no order granting a
10 commitment, although --

11 THE COURT: Actually, there was. And this is an
12 oddball case, I have to say. Judge Smith signed the order
13 on -- I think I outlined -- did you get a copy of my --
14 you got a copy of my order with respect to the objections,
15 right? That was supposed to be faxed over yesterday.

16 MR. GOTTSTEIN: No, Your Honor.

17 MS. RUSSO: I can share my copy with
18 Mr. Gottstein.

19 THE COURT: Well, we were specifically asked by
20 your office and they were faxed to you.

21 MR. GOTTSTEIN: I got the order on the hearing,
22 but that's --

23 THE COURT: We also faxed over your preceding
24 order.

25 MR. GOTTSTEIN: I don't think I got it. It's

1 possible.

2 THE COURT: Well, I've got the -- I think I've
3 got what I understand to be the fax information. We can
4 look at that when we're done. But what I indicate there
5 is kind of the procedural history as it came to me, and so
6 what you don't know because you haven't had the benefit of
7 the file is that in fact it was issued on the -- what was
8 it -- the 2nd, but it wasn't distributed until the 15th.

9 In the meantime, there were objections that were
10 filed, and the state responded. And it was from -- it's
11 usually from the kind of the focus that's created by that
12 process of the two sides discussing what the issue is and
13 the court then makes its determination on objections, per
14 se. I can't speak to, you know, what Judge Smith relied
15 on, because theoretically he could listen to -- I'm not
16 saying he did. Theoretically he could have listened to
17 the disk, I suppose. That's a theoretical suggestion.

18 And maybe what we end up having to do, given the
19 length of time available and the capacity of the system to
20 produce transcripts, I don't know.

21 MR. GOTTSTEIN: Your Honor, I don't know if you
22 know, but I feel that generally respondents' rights are
23 not, you know, really taken as seriously as they should in
24 these matters, and --

25 THE COURT: Well, I think you're --

1 MR. GOTTSTEIN: -- and so I'm not --

2 THE COURT: I think your reputation and concern
3 for the appropriate procedure and the rights -- careful
4 consideration and treatment of the rights of respondents
5 is well -- kind of well recognized.

6 MR. GOTTSTEIN: And Your Honor, so I'm not
7 waiving any objection to all that. So, I mean --

8 THE COURT: I'm not asking you to waive
9 anything. I'm just saying that this is the procedure that
10 occurred in this case. I can't -- and as I say, I can't
11 speak to what happened before the judge who initially
12 granted the matter -- granted the order, but it kind of
13 undercuts your first argument that there wasn't such an
14 order. Whether it was well made or anything else, I can't
15 speak to that.

16 With respect to the objections, I can speak to
17 it, because I didn't -- I looked at what was available in
18 the file, not a transcript, but I don't see -- I don't
19 remember reading a transcript in it. I do remember
20 reading the discussions of the parties on the subject.

21 MR. GOTTSTEIN: Your Honor, if I may -- and I
22 don't really want to be argumentative, and I understand
23 you've made your ruling, but --

24 THE COURT: Your job is to tell me what you
25 think I should -- the Court should do in these -- in the

1 situation in which you find your client.
 2 MR. GOTTSTEIN: I haven't seen the hospital's
 3 response, and I haven't seen the transcript, so all I have
 4 is the public defender's objections, which I thought were
 5 pretty good, actually. And -- but it's hard for me to --
 6 from what I understand, there was no testimony that
 7 Mr. Bigley was unable to survive safely in freedom, which
 8 is a requirement under the recent Wetherhorn ruling. And
 9 so if that's true, you know, it's just really hard for me
 10 to understand why the petition should have been granted.

11 THE COURT: Well, you'll have the, presumably,
 12 the benefit of the state's reply, and you can either agree
 13 or disagree with my conclusion from -- resulting in the
 14 order that I issued after you look at them and think on
 15 them. I assume on behalf of your client, and given your
 16 advocacy, that you'll want to disagree, but that's fine.

17 The question is what we do next. I think the
 18 state should have a reasonable chance to respond to the
 19 motion to dismiss, and I think that we should look at the
 20 calendar to see if everybody can be ready and whether the
 21 court is available to take this matter next week at a time
 22 that you consider reasonable, assuming that it does go
 23 forward.

24 MR. GOTTSTEIN: Yes, Your Honor. And in fact, I
 25 was thinking maybe, you know, we have tomorrow set aside

1 excused, then we'll go forward on the medication.
 2 THE COURT: If the parties are prepared to
 3 address that, that's a -- the question of medication,
 4 unless it's an emergency -- and if it's an emergency, I
 5 think -- does the hospital have the power to give
 6 medication if it's considered an emergent circumstance.
 7 But in nonemergency orders parties have time to get ready
 8 to address the subject.

9 Now, there's one of the things that you may or
 10 may not have had a chance to see in the motion, and that
 11 is the respondent requests to be able to participate in a
 12 nonmedicated -- so that he is not medicated. Do I
 13 understand you in that?

14 MR. GOTTSTEIN: Yes, Your Honor.

15 THE COURT: Okay. Now, I don't know these
 16 medicines and how long it takes to -- if he's been on
 17 medications, how long it takes him to be not on
 18 medications. Maybe you have a better idea, given you
 19 suggested Monday or Tuesday. That that would be enough
 20 time to get it through his system.

21 MS. RUSSO: Well, if I can state the facts that
 22 I know, in my understanding from talking with Dr. Worrall
 23 was that Mr. Bigley was given an injection of Risperdal on
 24 Thursday of last week -- I think I brought this up at the
 25 hearing in front of Master Brown too -- which was the

1 for the trial, and I don't know if that would be a time to
 2 maybe come back and argue the motion to dismiss or not.

3 THE COURT: I don't know if Ms. Russo can be
 4 ready that quickly, but if she can, I would try to give
 5 you some time --

6 MS. RUSSO: Well, if I'm not preparing for the
 7 jury trial, I can certainly switch my attention to the
 8 motion to dismiss, and part of that time I'm...

9 THE COURT: Not surprisingly, at pretrial
 10 conferences the Court is sometimes -- and the purpose of
 11 it is to have received points of other peoples' agendas,
 12 and we've received some from the respondent, and that's
 13 fine. With respect to the Court's agenda and calling you
 14 here and wanting to talk to you, I want to certainly talk
 15 about a couple things.

16 Do you have some things that you wanted to
 17 raise, assuming it were to go tomorrow or goes next week?

18 MS. RUSSO: I just want to make sure that we're
 19 clear. The jury trial is solely on the issue of the
 20 commitment and not on the issue of the medication. There
 21 is no right to a jury trial on the medication issue. So I
 22 just want to make sure that we're all clear that what the
 23 jury is going to hear is the issue as to whether or not
 24 Mr. Bigley should be -- continue to be committed, and then
 25 I'm assuming that what we'll do is, after the jury is

1 regularly scheduled shot as part of the medical -- as part
 2 of the meds order that was granted along with the 30-day
 3 petition, and we hadn't received the request to be free
 4 from drugs before that shot was given.

5 THE COURT: So how long does that usually
 6 take --

7 MS. RUSSO: It's a 14-day shot. But then
 8 Mr. Bigley had, during his -- during this commitment
 9 period has also been given emergency injections because --
 10 to control the mood, because of safety concerns. So
 11 those, though, my understanding is, that since we've
 12 received the request to be free from medication -- my
 13 understanding is that the doctor's orders are really not
 14 to do any kind of injection.

15 THE COURT: Upon word of the request, okay.

16 MS. RUSSO: Yeah.

17 THE COURT: Well, why don't -- the two parties
 18 can maybe bring to me tomorrow -- and I'll be glad to have
 19 a hearing during that window of time to address the
 20 subjects that we can proceed with -- bring to me
 21 information about when we can try it. I will tentatively
 22 set a trial for next week. It sounds to me like, if you
 23 want med-free, you're looking at -- there's supposed to be
 24 a ten-day window here that we're getting it into under the
 25 statute, but if it's a 14-day shot, I don't know exactly

1 how that ties into the calendar.
 2 MR. GOTTSTEIN: I'll just try and -- I'll
 3 discuss it with my client, Your Honor. There are lots
 4 of issues about that. I had actually assumed that the
 5 medication would be heard at this -- before the jury
 6 trial. I think it's unclear whether or not he's entitled
 7 to it, but the statute says it will be decided by the same
 8 court, and --

9 THE COURT: I -- yeah, okay, go ahead.

10 MR. GOTTSTEIN: So, I don't know, I assumed it
 11 was going to be a jury trial. Before I forget, I guess I
 12 would like to make, if I may, an oral motion for
 13 reconsideration of your order granting the -- denying the
 14 objections on the basis that -- of what I've said and
 15 then --

16 THE COURT: Let's wait until you've seen -- why
 17 don't we give you the chance to see -- you've not seen my
 18 order, but let's see if you can see what the state's
 19 response is, and then you can focus the Court's attention
 20 to where you think it's fallen off the horse, if it has.
 21 And then you can -- on this question about jury trial on
 22 medications at this point, I don't understand that to be
 23 the case. The Court, I suppose, could always have an
 24 advisory jury, but I guess I'm not inclined to do that at
 25 the moment.

1 The question is, what tools, then, should be
 2 applied, I assume. And wasting any part of the 90 days is
 3 kind of a bad plan, isn't it? If it's good to have
 4 medicine, then get on the medicine. If it's bad to have
 5 medicine, then get on with whatever other kind of process
 6 is involved in dealing with the problem.

7 MR. GOTTSTEIN: Yes, Your Honor. I'm trying to
 8 get a sense of timing so I can prepare and also know the
 9 status --

10 THE COURT: It's a little vague, but it's also
 11 dependent upon the parties, and that's the kind of thing
 12 that has to be approached that date. We say, okay, I can.
 13 Now, if it turns out -- I haven't looked at my calendar
 14 intending to do this next week, so I will have to go look
 15 and see. It may be that you find yourself in front of
 16 someone else because I just can't do it. But I think next
 17 week's okay.

18 MR. GOTTSTEIN: Your Honor, if I may, my concern
 19 is what -- he's apparently on a forced medication order
 20 right now and so --

21 THE COURT: Well, I think he's off of it from --
 22 my understanding is that they've taken your notice as a no
 23 further medications directive. Is that -- am I
 24 understanding that correctly?

25 MS. RUSSO: Unless there is a dire emergency,

1 So I think what we'll do is, at least
 2 provisionally, we'll intend to go ahead with the jury
 3 trial on the subject of the commitment and then for the
 4 Court, same Court, to hear the medications issue.

5 MR. GOTTSTEIN: Okay. I understand that --

6 THE COURT: Presumably there's sufficient time
 7 for the visitor to act. I assume there's a visitor
 8 appointed?

9 MS. RUSSO: There is, Your Honor.

10 THE COURT: So that he or she can be going about
 11 their business and getting prepared to address the Court
 12 as well as the parties on the subject.

13 Anything else?

14 MR. GOTTSTEIN: Your Honor, I'm a little
 15 confused, then, about the status of -- so your intention
 16 would be to immediately go into the medication order?

17 THE COURT: Not necessarily. If the parties
 18 believe that they're ready and it's the appropriate time
 19 to do so, then I would. I would try to do it as quickly
 20 as I could so you could have an answer. Because, after
 21 all -- let's assume this for purposes of the discussion --
 22 assume that the jury comes back and says, yes, this person
 23 should be committed for the 90 days that needs this kind
 24 of assistance from the community to be able to be safely
 25 amongst us.

1 yeah, I mean, there is --

2 THE COURT: If he goes into some kind of seizure
 3 situation or something that requires medications, I'm
 4 assuming they're going to provide him medical care. I
 5 don't know.

6 MS. RUSSO: Yes, Your Honor. Basically we were
 7 working under the assumption that the medication order
 8 essentially expired as of March 25th that went along with
 9 the 30 days. So there's no -- the administration of
 10 psychotropic medication is not happening with Mr. Bigley
 11 right now.

12 MR. GOTTSTEIN: That answers my question, Your
 13 Honor.

14 THE COURT: So they treated that as concurrent
 15 with the 30-day commitment?

16 MS. RUSSO: Correct.

17 THE COURT: All right. Let me go look at the
 18 calendar and see if I can give you some kind of windows
 19 that might be able to occur.

20 (Pause in proceedings)

21 You may be seated. Thank you. Okay. I think
 22 there was a suggestion that maybe we could get started --
 23 if we need to be started on Monday. The problem with that
 24 is that it seems to me as -- to the extent that we're at
 25 tight notice, that it might be better to start on Tuesday

1 because just the way business weeks work and being able to
2 address the court if something has happened or things
3 develop over the weekend that we need to know about. If
4 you want to start Monday, I'm willing to calendar it for
5 that, but I think -- just thinking about this is a little
6 bit different kind of a case.

7 Do you have a preference, state or respondent?

8 MR. GOTTSTEIN: I think probably Tuesday,
9 Your Honor.

10 THE COURT: So we can put it on for Tuesday. I
11 have -- this morning I put something in for 11:30 on
12 Wednesday. Shouldn't run through to Wednesday, but I
13 think I can move that yet. Try to get that off of there.
14 Slide this to...

15 So let's plan for the 3rd, trial, 3 and 4 if
16 necessary. Okay. So I kind of have the things that are
17 concerning you. One is, should it go forward at all
18 because it should be dismissed because of a question about
19 the timing of the order. I think you lose on that because
20 of Judge Smith's precipitous action, from your viewpoint.

21 The second question is, does the lack of a
22 transcript make the recommendation invalid? I think my
23 preliminary -- I think it's a better practice, but my
24 preliminary ruling would be that it doesn't make it
25 invalid as an order. Therefore, it existed and therefore

1 information about the individual or the things that would
2 identify that person. It seems to me that's in the spirit
3 of it.

4 Maybe there's case law and maybe there's
5 something -- I don't know. This is kind of a first for
6 me. I don't remember ever doing one of these over the
7 22 years that I've been here.

8 MR. GOTTSTEIN: I believe there's only been, as
9 far as I know, one in the last ten years, and that was one
10 I did in the Meyers' case.

11 MS. RUSSO: There's one in Juneau, too, but
12 yeah.

13 THE COURT: So maybe you can -- I'll look, if I
14 can, on this side for what might have been used. But if
15 you would -- you probably have the more handy in terms of
16 making them available for the Court's consideration. So
17 maybe you can get at those things -- I don't know if there
18 was a general agreement that the nature of the
19 instructions and stuff at the last matters or not. I
20 mean, I don't know whether that was a big wrestling match
21 or not. You would be able to find that out quickly. So
22 let me know if you can.

23 MR. GOTTSTEIN: Your Honor, I think -- and
24 there's specific instructions for this proceeding, I
25 think, that need to be determined as well. Not just on

1 there was an order in place. With the 90 days' hearing --
2 trying to think about it -- there's a little bit of flex.
3 I think the statute intends a ten-day flex, to get it in
4 within that time, and I think we're going to make that if
5 we get going next week.

6 If you need more time for discovery, there's
7 some statutory questions about whether we can -- how much
8 time we can give you, but I think any time a party, you
9 know, waives time, they can. So it's kind of like under
10 Rule 45 in criminal if you end up saying, you know, I have
11 to depose somebody else and it's going to take until this
12 point, then -- but we'll do everything we can to get you
13 in in the time.

14 The reason I wanted to have you make sure you
15 were here is I'd like to see the instructions you suggest
16 that I give to the jury. They're kind of preliminary
17 instructions that are general to all trials. There may be
18 something we ought to say about this kind of a trial as to
19 communication about the matter with other people in the
20 community, those kinds of issues.

21 It seems to me it doesn't become less
22 confidential, so that they need to be instructed on
23 that -- being thoughtful in that respect, and while they
24 may eventually be able to discuss their experience as
25 jurors, but they ought not to be giving out any

1 confidentiality but with respect to what the state has to
2 prove.

3 THE COURT: No. That's what I'm agreeing. I'm
4 assuming -- and I don't know whether it was the same issue
5 in --

6 MR. GOTTSTEIN: Meyers.

7 THE COURT: Meyers was actually the -- was that
8 the -- there was a medication issue that really kind of
9 spins out of that. But the hearing itself was on
10 something -- was a jury hearing that issue in that case?

11 MR. GOTTSTEIN: The -- it was -- yes, but it
12 never got that far. In fact, the jury instructions had
13 never been decided upon, and then the state dismissed
14 before testimony started.

15 THE COURT: I'm interested in seeing that the
16 instructions -- unless there's some authority to the
17 contrary, provisionally -- basically I'm ruling that the
18 medication is a judicial trial. The word "Court"
19 referring to Court as opposed to jury. If the statute
20 says that, then legislature certainly knows how to use
21 those two words. With respect to -- so the instructions
22 would be with respect to the commitment itself that I'm
23 interested in, that is how do we articulate this standard
24 to the people.

25 Okay. Anything else you want to ask me about or

1 suggest to me that I think about in the meantime?
2 MR. GOTTSTEIN: Yes, Your Honor. I would really
3 like to get a transcript of the February, I think, 27th
4 hearing.

5 THE COURT: I can promise you that we'll get you
6 as quickly the tape. On the transcript there's a down
7 side there because our transcript -- the Court has direct
8 transcription function I think it's down to -- I don't
9 know if we even still have it, but as of about three years
10 ago there were two people working on criminal cases, for
11 the most part. So getting you the transcription is going
12 to be problematic. Getting you the tape or the disk
13 shouldn't be a problem, and we can probably -- do you know
14 whether you have ever, Ms. Russo, requested the disk of
15 those hearings?

16 MS. RUSSO: I requested the disk, I think,
17 yesterday. I haven't been in the office yet this morning
18 to know if we've gotten it yet.

19 THE COURT: Okay. I would -- this is a Court
20 record, so that if -- I will order that it be provided to
21 you, but it may be quicker to get the copy from you, do
22 you think, or not?

23 MS. RUSSO: Actually, we have to get -- the
24 copies that the court provides usually are copies that are
25 encrypted in such a way that we are not able to copy the

1 special program.

2 MR. GOTTSTEIN: Your Honor, maybe we should get
3 both ways because I would intend on having the court
4 reporter transcribe it, and I think they have it -- I
5 don't know the technical details, but it seems to me they
6 have it set up so each microphone is maybe a different
7 channel and they can figure out who is speaking and that
8 kind of thing.

9 THE COURT: Let me ask Madam Clerk. She's our
10 local expert here.

11 We're on FTR -- is that the program here? When
12 you guys make a disk for people off of this thing --
13 assuming you were -- if we're going to give Mr. Gottstein
14 a copy of today's hearing, you could run it right off of
15 this thing, right?

16 (Indiscernible)

17 Now, would he be able to play it on his machine
18 or does he need FTR to read it?

19 THE CLERK: No. He can just (indiscernible).

20 THE COURT: Have you served at the -- this
21 hearing would have been out at API? Have you ever served
22 out there? So it would have been through the new
23 equipment by then. I have to check to make sure that
24 they're using the new equipment because if that's the same
25 equipment, they should be able to just go boom off of the

1 CDs for the other parties. So -- but hopefully it
2 shouldn't take that long.

3 THE COURT: Is there a special -- are you using
4 the same program or are they downloading it into a common
5 language for machinery when you get it? Yours is coming
6 off of the specific in-court program we're using?

7 MS. RUSSO: I -- Your Honor, that's too
8 technical for me.

9 THE COURT: Well, I don't know either because
10 I'm not out there looking at their equipment. But I will
11 order that the Court provide to Mr. Gottstein as soon as
12 possible, and hopefully today, that disk. That's the
13 soonest I can get it to you.

14 MR. GOTTSTEIN: That's great, Your Honor. I
15 think there may be two different ways that it could come,
16 and I would like it to come in the way for it to be
17 transcribed.

18 THE COURT: You're able to transcribe it or it's
19 already transcribed?

20 MR. GOTTSTEIN: No, no. I can give it to a
21 court reporter to have it transcribed.

22 THE COURT: I agree. Something that they can
23 put into just any reader. Doesn't need a special program
24 to read. Okay. In other words, that you could put it
25 into your disk player and hear it and not have to have a

1 computer and give you a disk.

2 THE CLERK: (Indiscernible)

3 You don't know the answer, but we'll find out
4 momentarily.

5 If you want to stand by, I will try to see if I
6 can get an answer to this question. Do you have the --
7 I've got the file here. Let me make sure I have the right
8 hearing.

9 (Indiscernible)

10 THE COURT: No, no, no. I think I'm going to
11 need to talk to -- who heard the hearing? Was it Master
12 Brown?

13 MS. RUSSO: Master Brown heard it, Your Honor.
14 It was -- I've got a copy of the log notes.

15 THE COURT: Was it 2-27?

16 MS. RUSSO: Yeah, 2-27.

17 THE COURT: 2-27-07, starting at -- they're
18 listing it as Tape 2607-34, case -- and that's at 872 -- I
19 think they may be using the older equipment, which may or
20 may not be advantageous.

21 All right, if you'll stand by, I will see what I
22 can do as far as informing you on this. We're currently
23 set, then, for the 3rd and the 4th of next week for trial
24 if it can go forward. If you would work on your response
25 to the motion to dismiss, we'll try to address that

1 tomorrow.

2 How about, would it be sufficient, you think, to
3 our purpose, to put this on for 11:00 tomorrow so your
4 people can organize and talk and do what they need to do.
5 Continued pretrial.

6 I think that's it. If you will stand by,
7 though, both of you, because it may be faster for me to
8 copy it, get it to the format.

9 MR. GOTTSTEIN: Your Honor, just one other -- is
10 the Court going to make a copy of the file?

11 THE COURT: I'm going to find out --

12 MR. GOTTSTEIN: No. I mean of the paper file,
13 too, for me to get a copy of the paper file.

14 THE COURT: I don't normally do this, but we can
15 make sure that it gets done.

16 MR. GOTTSTEIN: I can pick it up downstairs or
17 something.

18 THE COURT: We'll talk to the people who do
19 this. I will have to have my people give you -- could you
20 leave a number for us to call you at. But if you'll just
21 stand by, I'll give you information that I can gather
22 about this tape duplication.

23 (Proceedings concluded)

24

25

1 TRANSCRIBER'S CERTIFICATE

2

3 I, Deirdre J.F. Radcliffe, hereby certify that the
4 foregoing pages numbered 1 through 31 are a true,
5 accurate, and complete transcript of proceedings in
6 Case No. 3AN-07-247 PR, In the Matter of WB, transcribed
7 by me from a copy of the sound recording to the best of my
8 knowledge and ability.

9

10

11 Date Deirdre J.F. Radcliffe, Transcriber

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 pages, we'll deal with those as they come up.
 2 Your next witness, please.
 3 Let me ask. Can the jury tolerate going some
 4 more here? If you need a recess, let me know.
 5 Go ahead. Next witness, please.
 6 MS. RUSSO: I'm going to call Dr. Worrall.
 7 THE COURT: If you'd come on up here. We have a
 8 witness stand here. There's a ramp as you come this way,
 9 so you'll want to watch your step.
 10 Do you swear or affirm that the testimony you
 11 will give in this matter will be the truth, the whole
 12 truth, and nothing but the truth?
 13 THE WITNESS: I do.
 14 THE COURT: Please have a seat.
 15 Please state your name.
 16 THE WITNESS: William A. Worrall.
 17 THE COURT: Would you spell your last name?
 18 THE WITNESS: W-o-r-r-a-l-l.
 19 THE COURT: Thank you. You may inquire.
 20 MS. RUSSO: Thank you.
 21 DIRECT EXAMINATION
 22 BY MS. RUSSO:
 23 Q. Dr. Worrall, what is your occupation?
 24 A. Psychiatrist physician.
 25 Q. And how long have you been a psychiatrist?

1 THE COURT: Do you wish to inquire?
 2 MR. GOTTSTEIN: Your Honor, I think when --
 3 it's -- there are lots of different things that that might
 4 entail, expert in psychiatry, so I'm not going to object
 5 to that, but it may come up with --
 6 THE COURT: Well, the Court recognizes that the
 7 doctor is specialized and an expert. First he's a doctor,
 8 and then he's a psychiatrist and then he's been a hospital
 9 psychiatrist. He can give his opinion in these areas.
 10 Go ahead.
 11 BY MS. RUSSO:
 12 Q. Dr. Worrall, do you know Mr. Bigley?
 13 A. I do.
 14 Q. And how do you know him?
 15 A. I've been his doctor off and on since 1984, and
 16 the last several admissions this year I've been his
 17 doctor.
 18 Q. And are you comfortable with testifying in a
 19 public hearing for Mr. Bigley?
 20 A. Well, I've -- I'm not used to disclosing
 21 confidential information about patients in a public
 22 hearing. No, I'm not comfortable with it. But I
 23 understand I'm ordered to testify.
 24 THE COURT: Yes.
 25 THE WITNESS: I don't think it's good for the

1 A. Well, I've been board certified since 1984,
 2 finished my residency in 1984.
 3 Q. Okay. And could you just briefly describe your
 4 educational background?
 5 A. University of Alaska Fairbanks graduate,
 6 undergraduate; University of Washington School of
 7 Medicine, medical degree; University of Hawaii psychiatry
 8 program, general psychiatrist training; and board
 9 certified.
 10 Q. And have you testified at other civil commitment
 11 proceedings?
 12 A. Yes.
 13 Q. How often have you done that?
 14 A. Many times over the last 20 years, probably
 15 200 times, maybe. Not in a courtroom, but in the
 16 courtroom at API.
 17 Q. And in your 23 years of -- since you were board
 18 certified, how many patients have you seen, approximately?
 19 A. Oh, geez. That would be hard to estimate. Most
 20 of my practice has been hospital psychiatry in all these
 21 years, and I usually have 10 to 15 patients at a time,
 22 probably average a week to two weeks stay. I don't know.
 23 I'd have to do the math. It's a lot.
 24 MS. RUSSO: Okay. I would move to qualify
 25 Dr. Worrall as an expert in psychiatry.

1 patient.
 2 THE COURT: For purposes of those concerns, your
 3 duty toward the patient, the Court's order is that you
 4 testify.
 5 THE WITNESS: Right.
 6 THE COURT: Now, you expressed an opinion about
 7 effect on the patients. You have an opinion on that that
 8 it's not good for the patient?
 9 THE WITNESS: That's my opinion, yes.
 10 THE COURT: You may continue.
 11 MS. RUSSO: Okay. Thank you.
 12 BY MS. RUSSO:
 13 Q. Have you testified at previous hearings
 14 regarding Mr. Bigley?
 15 A. Yes.
 16 Q. And when was that, I guess most recently?
 17 A. There was a 30-day commitment hearing in late
 18 February, I believe, of this year.
 19 Q. Okay. And what was the result of that hearing?
 20 A. He was admitted for 30 days and he was ordered
 21 to comply with medication treatment.
 22 Q. And the commitment, is that a separate issue
 23 than the medication issue?
 24 A. Yes.
 25 Q. And what is Mr. Bigley's current diagnosis?

1 A. Schizo-affective disorder.

2 Q. And what -- what does that mean? How does that
3 manifest itself?

4 A. That means that he has symptoms of both
5 schizophrenia with thought disorder, perceptual disorder,
6 in his case particularly paranoia and delusions, as well
7 as affective systems or mood systems, such as you might
8 see in bipolar disorder. And he gets grandiose and overly
9 energetic at times and seems to respond better when he's
10 on a medication that not only helps him with some
11 schizophrenia symptoms but also with the bipolar mood
12 symptoms.

13 Q. Okay. And with -- is the -- is this diagnosis
14 mental illness?

15 A. Yes.

16 Q. And --

17 MR. GOTTSTEIN: Objection. Foundation. May I
18 ask a question?

19 THE COURT: You may cross-examine when the time
20 comes. At this point, no. Do you wish to save your --

21 MR. GOTTSTEIN: He wasn't giving an opinion
22 about mental illness?

23 THE COURT: That was an opinion about mental
24 illness, yes.

25 Go ahead.

1 Q. And how does he feel about the delusional
2 thoughts; do they bother him?

3 A. He's tormented by them, yes. He strongly
4 believes in what he believes in and there's no way to talk
5 him out of it. He has -- he feels driven to convince
6 other people about his delusions. He -- for example, he's
7 been warning me that I'm being used by some conspiracy and
8 that he understands that -- he's been trying to reassure
9 me that I'm not trying to harm him, but I've been drawn
10 into this conspiracy and I'm being used.

11 I think the most frequent thing he talks about
12 is his billion dollar jet, and he's a millionaire and that
13 he's famous and that President Bush wants him to do
14 various things, and those are probably the top things that
15 he talks about. But it's just a hundred percent of the
16 conversation from him is delusional.

17 Q. And then how also -- you had then also stated
18 that he has these grandiose -- I guess grandiose ideas, or
19 how does -- what are -- is that related to those
20 delusions?

21 A. Well, when patients have delusional beliefs that
22 are kind of wishful thinking and really desirable grand
23 ideas, such as him being a millionaire or having a billion
24 dollar yet, we call those grandiose delusions, and they're
25 more typically seen in people who have some bipolar

1 You can cross-examine him about that.

2 Go ahead.

3 MS. RUSSO: Okay.

4 BY MS. RUSSO:

5 Q. And how does it -- you mentioned that this --
6 that this manifests itself with delusions.

7 Have you seen examples of delusions?

8 A. Yes.

9 Q. What were those?

10 A. Well, Mr. Bigley is constantly talking about
11 various delusional thoughts that he has, beliefs that he
12 has, such as that he has a billion dollar airplane, that
13 there are bone pickers who are taking peoples' eyes out
14 and doing various things, government conspiracies. He has
15 just an enormous amount of delusional thoughts that
16 completely interfere with him carrying on any kind of a
17 normal conversation because he's constantly expressing
18 those delusions.

19 For example, when I walk up and down the hallway
20 on the hospital unit where he is, every time I come out
21 into the hallway he comes right next to me and walks me to
22 wherever I'm going and follows me and tells me in either a
23 quiet tone or a loud tone, depending on how he's feeling,
24 about these various delusional thoughts, and it's just
25 nonstop.

1 symptoms who tend to get manic or hypomanic and get a
2 euphoric feeling at times and think that they have the
3 answers to everything and that they have a lot of great
4 assets and so forth. So the grandiose just refers to it's
5 kind of a grand idea.

6 Q. And how have you seen -- you stated that he can
7 be very manic at times.

8 How does that -- can you describe that further?

9 A. Extremely pressured speech, flight of ideas
10 where he just goes from idea to idea unconnected. But
11 primarily pressured, loud speech, and agitated behaviors
12 when he's trying to convince somebody of something. Very
13 quick to get extremely agitated and hostile verbally.

14 Q. And how does Mr. Bigley's -- how does the
15 severity of Mr. Bigley's illness relate to other patients
16 you've treated?

17 A. He is one of the most extreme cases, most severe
18 cases of psychotic disorder or a severe chronic mental
19 illness that I've ever seen, and in the case of API he
20 has -- we've had -- since API opened, I think in the early
21 '60s, we've had almost 2,000 patients that came to our
22 hospital, and of those only three have had as many
23 admissions as Bill has had. He's had 69 different
24 admissions since 1980. And that right there it shows just
25 an extreme case.

1 He's had over 30 different psychiatrists who
2 have admitted him to API and felt it necessary to do so.
3 In the last -- since 1980 he spent 21 percent of his life
4 inside API, five-and-a-half years.

5 Q. And what does that tell you about his ability to
6 live outside in the regular community?

7 A. It tells me a lot. It tells me that he's
8 severely impaired, that he can't function outside of API
9 for very long, and that he depends upon API for
10 functioning. In the 69 admissions we've had, we've
11 discharged him early from a commitment period, what we
12 call an early release, so he's committed for a period of
13 time and we discharge him earlier, and 11 of those 12
14 times he's been readmitted, generally in about a three to
15 four weeks time for stopping his medication and
16 deteriorating and that readmission is called a return from
17 early release. So 12 times when he tried to get him out
18 early, 11 times it failed.

19 He has a universal history all the time of
20 stopping his medications when he gets out of the hospital.
21 We used to use a long-acting shot called Prolixin D, which
22 would last three or four weeks, but it wasn't very
23 effective for him, but it tended to help him stay out a
24 little bit longer.

25 In 2004 Risperdal Consta came out, which is a

1 Q. And what does it -- you stated -- what does it
2 show to you?

3 A. Well, it shows a pattern since 2004 of declining
4 days inside API, and prior to that a pattern of increasing
5 number of days up until 2003 that it just shows an
6 enormous amount of time inside API.

7 And in answer to the severity question and the
8 difficulty -- how difficult is his case, the time that he
9 spends outside of API are with an enormous amount of
10 assistance, which he used to somewhat accept from his
11 guardian, Steve Young, who would help him get groceries
12 and so on and so forth and kind of keep him out there.

13 And then he would go intervene when he was
14 somewhere causing a problem, and kind of keep him from
15 getting arrested, which he frequently has calls from
16 incidents and the police are asked to come handle those
17 incidents. And with Steve Young's help, and at times case
18 managers from what's now Anchorage Community Mental Health
19 Services, when he was willing to accept that help, he's
20 been able to stay out of the hospital for some periods of
21 time, particularly with this Risperdal Consta.

22 But lately he is not accepting any help from
23 anybody. He's fighting with his guardian. It has become
24 much more difficult to help get him the support that he
25 needs outside of API because he believes he doesn't need

1 newer anti-psychotic. It's a better medication, has less
2 side effects, a little bit more effective. And he started
3 on that medication in 2004, and he began to have a decline
4 in his number of hospital days, a substantial decline, and
5 he was able to stay out of the hospital a lot longer.

6 He's had some years where he's spent three --
7 well, he had one year where he spent 306 days out of 365
8 days in the hospital prior to that.

9 Q. Did you actually work on making a little chart
10 of Mr. Bigley's hospitalizations?

11 A. Yes.

12 MS. RUSSO: And if I can show Mr. Gottstein.

13 MR. GOTTSTEIN: You have -- okay. You have a
14 copy of it.

15 MS. RUSSO: Yeah. I've got a copy of it.

16 MR. GOTTSTEIN: And that's 7?

17 MS. RUSSO: Yeah.

18 If I can approach, Your Honor.

19 THE COURT: You may.

20 MS. RUSSO: The original has been marked as
21 Exhibit 7. I don't believe that the copies got a chance
22 to be marked as Exhibit 7.

23 BY MS. RUSSO:

24 Q. But is this the chart that you drew up?

25 A. Yes, I did.

1 their help, and he believes that he doesn't need a
2 guardian and he's going to get rid of his guardian. And
3 his paranoid grandiosity has gotten worse in the last
4 three or four months.

5 And we can get him to the point during the
6 30-day commitment and the last hospitalization we got him
7 to the point where he's taking his medications. He was on
8 the Risperdal Consta. He was on -- I believe it was a
9 moderate dose of Seroquel, which is another
10 anti-psychotic. And he was on a mood stabilizer,
11 Depakote, I believe it was. And he got to the point where
12 he was very workable, you could sit down and have a
13 conversation with him and actually talk to him about
14 things without getting all this delusional talk back.

15 And he even met with a new case manager there at
16 the Mental Health Center and liked the guy, Scott. He
17 liked him. And he went out on passes with him and he was
18 happy with that. He went out to, I think, get pancakes
19 with him. Then he went and looked at an apartment and
20 took the apartment and was -- things were looking pretty
21 good. It looked like he was going to cooperate with
22 Scott. He still didn't want to cooperate with his
23 guardian.

24 So we discharged him, but he immediately stopped
25 all his medications and he was returned from early release

1 in less than a week, I believe, because his Depakote blood
2 level was very low, indicating that he wasn't taking his
3 Depakote. And so here we are.

4 Q. Okay. And what does the -- did he agree to take
5 his Depakote before he left? Is that part of the --

6 A. He never said, I'm going to take this when I
7 leave.

8 Q. But did he sign an agreement?

9 A. He said, I don't have to. He believes with
10 support from his attorney that he doesn't have to take his
11 medication, and I can't reason with him beyond that. So
12 he takes it when he's forced to in the hospital because
13 he'll get a shot if he doesn't take the pills. But
14 outside the hospital there's no way to make him take the
15 things that only come in pills. And he believes he
16 doesn't have to.

17 He used to believe he had to. He used to pay
18 attention to the fact that he would be returned from early
19 release if he didn't take his medications. And you could
20 at least get him out a month before he would stop. He had
21 some influence over that. But now there's almost no
22 influence over his decisions about medication as an
23 outpatient once he gets out of the hospital.

24 It also takes a lot longer to get him to
25 actually take the pills in the hospital. If we even have

1 court-ordered medications, it used to be that after two or
2 three days he would say, okay, I'll take the medication,
3 and then he would quickly improve. Now it can take 10 to
4 14 days before he'll improve enough on what we can give
5 him in shots, and then he'll start taking the better
6 medications and the pills.

7 Q. ***Okay. And when you talk about being forced
8 to take medications, that's -- it's -- you may feel that
9 he's forced, but is that under a court order?

10 A. Yes. The medications, for example, in the last
11 admission when he was committed for 30 days to stay in
12 API, he was also determined to be incompetent to make
13 decisions about medications and was ordered to take
14 medications.

15 Q. And when he -- when you -- what's the -- sorry.
16 I have four different questions in my head for you right
17 now.

18 When you do an early release with Mr. Bigley,
19 what's the -- you know, given his track record, you know,
20 he's probably not going to come back, so what's the -- I
21 guess what's the point of -- he'll probably come back. He
22 probably won't be able to stay out, given the track
23 record.

24 Why do you keep doing it?

25 A. Well, we don't have unlimited space in API.

1 Those days when he stayed a long time API had a lot more
2 beds than it has now. That's one factor. So we have a
3 pressure to discharge patients as soon as they're stable
4 because we have a lot of patients coming in and we only
5 have 75 beds or something like that.

6 Besides that reason, which is just census
7 pressure, we have the issue that he's improved. He's
8 workable. He's more cooperative. He's no longer
9 screaming at staff and getting all hostile, and when you
10 can actually have a conversation with him, it goes two
11 ways, that he can listen and receive a piece of
12 information and provide an appropriate response, then he's
13 ready for discharge.

14 And so, yeah, I mean, we knew he was going to
15 come back. I mean, we don't believe that we cured him.
16 We're not grandiose about our treatment of him. But it's
17 time -- when it gets to that time, it's time to try him
18 outside of the hospital.

19 Q. Okay. And you want him to succeed outside the
20 hospital?

21 A. Yes, we do.

22 Q. And do you think that he's currently able to
23 succeed outside the hospital?

24 A. No, I don't.

25 Q. Okay. And did you actually file a petition for

1 90-day commitment?

2 A. Yes, we did. And his last medication was on
3 March 8th, I believe, so it's been -- and that was the
4 Risperdal Consta shot when he was still under the 30-day
5 order to take medications, and that medication lasts for
6 14 days. So right now today he has about 25 percent of
7 that medication still in his system, still doing some
8 therapeutic effect. But that's going to be gone in
9 another six days.

10 Q. Okay. You stated March 8th, is that maybe not
11 the right date? Because it's April 2nd -- or April 3rd
12 now, actually. So did he actually get a shot maybe a
13 little bit --

14 A. Oh, it was 14 days. That was before the
15 discharge. That was a shot before the discharge. And
16 then he came back March 21st. That's right. So 14 days
17 after the 8th. So the 22nd he got his last Risperdal
18 shot. I'm sorry.

19 MS. RUSSO: And if I can approach, Your Honor.

20 THE COURT: You may. Just going back to that
21 last subject, when you corrected your date as to when he
22 had his last shot, how does that affect you -- you had
23 said he has, like, six days of medicine in him. How does
24 the corrected date affect that part of your testimony?

25 THE WITNESS: The medication has about a six-day

1 half life. So he got the shot on the 22nd, so on the 28th
2 he had half the dose in his system. And then on the --
3 would it be right about now it's almost 14 days. It's
4 going to be about 20 -- half of the half, so 25 percent of
5 the original dose is still in his system. And then six
6 days after that there will be 12 and a half percent of the
7 original medication.

8 THE COURT: So in terms of your testimony as to
9 the amount left in his system was approximately --

10 THE WITNESS: Apparently he has about 25 percent
11 of the medication effectiveness.

12 THE COURT: So that was correct. That
13 calculation was correct. It was the calendar that you --

14 THE WITNESS: Correct, yes.

15 THE COURT: Okay. Go ahead.

16 BY MS. RUSSO:

17 Q. Dr. Worrall, I handed you what's been marked as
18 Exhibit Number 4, and can you identify that?

19 A. Yes. That's the petition for the 90-day
20 commitment that I filed.

21 Q. And why did you file the petition?

22 A. Because Mr. Bigley had been returned to API from
23 an early release status because he did not take his
24 medications, and he was getting more upset and more angry.
25 And the outpatient doctor, Dr. Curtis, went through a

1 Q. What's the basis for that opinion?

2 A. Well, apparently, as I understand it, that's a
3 legal term. It's not a medical term. Currently as I
4 understand that, that means that he's mentally ill and
5 that he can't safely survive outside of API and that's the
6 recent definition, apparently, of that legal term. And I
7 don't believe he can safely survive outside of API,
8 although I don't really know what that means, safely
9 survive.

10 I don't know what it means, but as a common
11 sense approach, I believe that he's not going to be able
12 to get groceries because he's told me every day that I
13 talk to him that he will not cooperate with Scott, he will
14 not cooperate with his guardian, and he doesn't need
15 anybody to help him get him his groceries and he won't
16 cooperate with them. So he's going to end up out there
17 with no support because he won't accept any support.

18 And he's going to either get arrested, which I
19 don't see as being safely surviving. Being incarcerated
20 in the Department of Corrections is not safely surviving.
21 Or he's going to get himself in a serious fight, because
22 he is extremely hostile to people, and accusatory.

23 I don't think he's going to go out there and die
24 within a week. I don't think he's going to die in a
25 month. But I don't think he's going to safely survive.

1 process where he is returned via the court on early
2 release to API. When he got back to API he was extremely
3 angry, extremely agitated, insisted that I had gone out
4 and pulled him off the streets, was very paranoid and
5 delusional, and hostile at staff and very upset.

6 So at that point in time I had until -- I don't
7 remember. I think it was maybe March 26th or 27th,
8 something like that when the 30-day commitment ended, so
9 he had to -- he wasn't ready to leave the hospital. So I
10 had to either get him to sign voluntarily to stay in the
11 hospital or I had to file a commitment paperwork. And
12 when someone's completing a 30-day commitment you don't
13 have an option of seeking another 30-day commitment. You
14 have to file a 90-day commitment.

15 So I filed a 90-day. He would not sign a
16 voluntary -- he would not stay voluntarily.

17 MS. RUSSO: Okay. And I would move to admit
18 Exhibit 4.

19 MR. GOTTSTEIN: No objection.

20 THE COURT: 4 is admitted.

21 MS. RUSSO: Thank you.

22 BY MS. RUSSO:

23 Q. Now, does -- you alleged in the petition that
24 Mr. Bigley continues to be gravely disabled?

25 A. Yes.

1 But again, I don't really know what that means
2 legally. To me, common sense-wise, it -- it means that he
3 will not be able to function in any reasonable way to care
4 for himself, and in his case it's so bad that he won't be
5 able to function even with the assistance of others,
6 because he won't allow the assistance from others.

7 And that function is going to affect things as
8 basic as eating. He's going to be evicted. He won't be
9 able to keep housing. The time I've been treating him in
10 the past year -- I think just since June he's been my
11 patient on a consistent basis -- he's gone through, I
12 think, three or four different housings, because every
13 time he's out there he gets evicted. Because he causes so
14 much trouble, the landlords evict him.

15 And he comes back and Steve Young finds him
16 another housing, and then you try to make that work and we
17 try to bring him back into the hospital before he gets
18 evicted, when it's just starting to get bad enough to
19 where he's jeopardizing his housing, to get him stabilized
20 and try to get the landlord to give him another chance.
21 That's kind of what we try to do.

22 But that's more difficult when we're not able to
23 utilize something like this 90-day commitment. I mean,
24 basically what we would do -- actually, he could have been
25 out by now if we'd already had this petition approved.

1 But what we would do is stabilize him, which is going to
2 take about three weeks, and then release him on an early
3 release and hope that he keeps taking his medications.

4 And eventually, if we are able to consistently
5 utilize this process and we're -- where everybody is
6 consistent, outpatient and the hospital, he's going to
7 learn that he needs to take his medication. And he's
8 going to take it and he's going to stay out. But it
9 requires that consistent process, and that's what we're
10 trying to do.

11 Q. And has he -- the medication that he had
12 received in the -- and the treatment that he received at
13 API, is that -- was that appropriate?

14 A. It was appropriate and it was somewhat
15 effective. We have to recognize that Bill has a severe
16 psychotic illness and when I say somewhat effective, it
17 has no effect at all on the beliefs that he currently
18 holds. So we could give him the best medications in the
19 world and he is not going to stop believing that he owns a
20 billion dollar airplane. It's like that's in the software
21 now. Things that he came to believe when he was acutely
22 psychotic are fixed in his brain now as thoughts, and
23 that's different than having hallucinations or that kind
24 of thing.

25 So the delusions are not going to go away. What

1 counselor on all the time and a nurse on most of the time
2 and a doctor goes there most days. And same story with
3 them, they will not take a patient that is not voluntary,
4 that is not a hundred percent compliant with medications.
5 And they won't take a patient that's loud or obnoxious or
6 causes any disruption at all.

7 Q. And do you think that, if the petition were
8 granted, that Mr. Bigley would improve with the treatment?

9 A. I know he would. I've seen it many times.

10 MS. RUSSO: At this time I'd move to admit
11 Exhibit 7, Your Honor.

12 MR. GOTTSTEIN: No objection.

13 THE COURT: 7 is admitted.

14 MS. RUSSO: Okay. Thank you. And then -- those
15 are all the questions I have for Dr. Worrall.

16 THE COURT: Thank you. Can we continue?
17 Everybody comfortable enough?

18 Please, if you would, then, cross-examine.

19 MR. GOTTSTEIN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GOTTSTEIN:

22 Q. Dr. Worrall, so I think this is probably
23 obvious, but -- so you believe that Mr. Bigley is someone
24 who -- you would classify Mr. Bigley as chronically
25 mentally ill, wouldn't you?

1 changes with the medications, and they are effective in
2 these, is that he doesn't get so upset about his
3 delusions, and he doesn't get so preoccupied about his
4 delusions such that they completely dominate his mind and
5 completely get him so far away from reality that he can't
6 cope.

7 So the medications have a limited effect, but
8 it's just enough effect that he could cope outside of
9 API with the assistance of others if he stayed on his
10 medications.

11 Q. Is that the standard of care in the community?

12 A. It's -- yes, it is the standard of care.

13 Q. And what have you -- is there any
14 less-restrictive placement than API right now?

15 A. No, there isn't. There's only a couple of
16 options. One is Providence in-patient mental health unit,
17 and they've -- first of all, they will not take a patient
18 who is not voluntary. They won't take a patient who is
19 not medication-compliant. And they won't take a patient
20 who is disruptive or loud. So there's no way that they
21 would take him, even if he said, I want to go there,
22 because of how loud and obnoxious he gets.

23 The only other resource for adults is kind of a
24 transitional living place, the Providence Crisis Recovery
25 Center, which is a place that has eight or 12 adults and a

1 A. Yes.

2 Q. And it's your opinion that he needs to take
3 psychiatric drugs for the rest of his life, isn't it?

4 A. As the foreseeable future, yes.

5 Q. And -- but he's -- to your knowledge he's never
6 wanted to take them; is that right?

7 A. That's correct.

8 Q. And there's no benefit to hospitalization if he
9 can't be forced to take drugs; is that correct?

10 A. That is correct.

11 Q. And I think we've --

12 A. In terms of improving him, he can't be improved
13 without medication, if that's what you mean.

14 Q. And you would say that he's got a very poor
15 prognosis?

16 A. He -- he's already fulfilled that prognosis, and
17 it's not expected to change.

18 Q. Okay. I'm going to show -- I'm going to try and
19 do this. I'm going to show you Exhibit F.

20 MR. GOTTSTEIN: May I approach?

21 THE COURT: Please.

22 MR. GOTTSTEIN: Thank you. I guess I can go
23 through it. I think we have, again, a stipulation on
24 this, but I'll go through it with respect to this.

25 BY MR. GOTTSTEIN:

1 Q. Do you recognize this document?
 2 A. Yes.
 3 Q. Could you describe it?
 4 A. This is what is called a face sheet. This is --
 5 has business office information on it, essentially. It's
 6 produced by the business office for every admission.
 7 Called a face sheet.
 8 MR. GOTTSTEIN: Okay. Move to admit.
 9 MS. RUSSO: No objection.
 10 THE COURT: All right. Exhibit F is admitted.
 11 BY MR. GOTTSTEIN:
 12 Q. Now, the marital status is highlighted there.
 13 Could you read that?
 14 A. That says never married.
 15 Q. Do you know if that's correct or not?
 16 A. He's divorced.
 17 Q. Okay. So that's incorrect?
 18 A. I think so.
 19 MR. GOTTSTEIN: I'm going to try and do C, D,
 20 and E here. Let me do them one at a time to keep them
 21 straight.
 22 May I approach?
 23 THE COURT: Please feel free to move about the
 24 courtroom as you need to present the case. It's Exhibit
 25 D. What exhibit number was this?

1 MS. RUSSO: I mean, I could look through any
 2 records (indiscernible).
 3 MR. GOTTSTEIN: I could probably get a clean
 4 copy for the jury.
 5 THE COURT: Well, let's -- I think let's see if
 6 that's sensible or a feasible idea. It may not be that --
 7 when we get done we'll look at it. It may not be that big
 8 a deal in any particular case. I understand your concern,
 9 because you don't know what -- how it's isolating any
 10 particular factor. But just so you know, and for future
 11 purposes, that's how we do it.
 12 MR. GOTTSTEIN: Sorry.
 13 THE COURT: Anyway, we'll see how things go.
 14 Okay.
 15 (End bench conference)
 16 THE COURT: Go ahead.
 17 MR. GOTTSTEIN: D now.
 18 BY MR. GOTTSTEIN:
 19 Q. I think I have the original of C.
 20 Do you have a copy of C?
 21 A. C, yes.
 22 Q. Sorry for the delay. I got as ready as I could.
 23 These were given to me -- are these hospital
 24 records?
 25 A. They look like them. A social history and

1 MR. GOTTSTEIN: It's C.
 2 MS. RUSSO: Your Honor, can we just approach the
 3 bench? Just briefly.
 4 THE COURT: You may.
 5 (Begin bench conference)
 6 MS. RUSSO: (Indiscernible) the highlighted
 7 portions, and I'm not objecting to the exhibit itself. I
 8 would object to highlighting certain things that aren't
 9 necessarily testified to. I'm not -- you know.
 10 THE COURT: Well, normally I have to say that,
 11 you know, I think both of you indicated to the Court that
 12 this is kind of early court trial practice for you, and
 13 normally we don't allow the highlighted stuff in. You
 14 know, highlighting of an exhibit, it's in fact helpful
 15 when you're looking at stuff, and in daily life we do
 16 this. But in trial we don't normally do that.
 17 I guess my question is -- I don't know how far
 18 back this goes and what this is, whether it relates to
 19 this admission, any of those things. But I guess, you
 20 know, I'm trying to figure out what the year on this thing
 21 is. Do you know?
 22 MR. GOTTSTEIN: It was 1980.
 23 THE COURT: Okay. And all right. Have you got
 24 everything highlighted so far?
 25 MR. GOTTSTEIN: I do, Your Honor.

1 discharge summary and a discharge assessment note.
 2 MR. GOTTSTEIN: Move to admit.
 3 MS. RUSSO: Your Honor, with the things we
 4 talked about earlier.
 5 THE COURT: All right. Subject to -- well,
 6 let's see what the testimony is about them first. Let's
 7 hear some questions about them to see how it is they're
 8 relevant.
 9 BY MR. GOTTSTEIN:
 10 Q. Okay. Looking at these -- are these documents
 11 from Mr. Bigley's first API admission?
 12 A. Yes.
 13 Q. Looking at the social history one, could you
 14 read the first highlighted area?
 15 A. "When I asked the patient why he thought he was
 16 here, he said he had just gotten divorced and subsequently
 17 had a nervous breakdown."
 18 Q. And on the second page, what's the first
 19 highlighted area?
 20 A. "He has been employed with Alaska Lumber and
 21 Pulp since 1973 in Sitka."
 22 Q. And so if this -- and what date was this?
 23 A. This was -- I'm not quite sure why I'm reading
 24 somebody else's documents for you, but this was
 25 April 18th, 1980.

1 Q. And so, according to this, then, he would have
2 been employed by seven years at this time?

3 A. If that's accurate.

4 Q. And then the last highlighted area on page 2,
5 could you read that, please?

6 A. "Lack of social stressors unresolved and ongoing
7 reaction to divorce, ex-wife has custody of two daughters,
8 pays large child support."

9 Q. Could you go next to the discharge assessment
10 note, and read the highlighted area.

11 A. I'm trying to determine who authored this
12 document. I don't know what discipline or what sort of
13 training they had. NA3, I don't know what that is.
14 Nursing assistant, I think. It wasn't even a nurse.

15 It says, "Has been cooperative with the staff
16 throughout his admission."

17 Q. Okay. Thank you. And then Exhibit D, the
18 discharge summary.

19 A. Okay.

20 Q. Could you read the second highlighted area on
21 page 1.

22 A. "Patient responded well to the unit routine and
23 participated in the ward activities."

24 Q. And the second one.

25 A. Patient's depression, that one?

1 Q. Okay. Now, you spoke about this recent change
2 in the defendings of gravely disabled, didn't you?

3 A. Yes.

4 Q. Do you recall what the legal criteria was before
5 that decision?

6 A. Before it was -- it would include something
7 as -- on the order of that they were -- the person was
8 suffering, that they were likely to deteriorate. There
9 was a much more, kind of a subjective thing. You know, I
10 think the new interpretation is actually more appropriate
11 in a sense because it requires a higher threshold.

12 Because before one could argue that somebody was suffering
13 and they might have still been able to function
14 relatively -- you know, at a higher level than Bill is.

15 So now that's kind of eliminated. It doesn't matter if
16 somebody's suffering or they might deteriorate. What
17 matters is can they function, can they essentially survive
18 in a community, and so that's the difference, essentially,
19 as I understand it.

20 Q. And you testified that you don't think he's
21 going to -- even if he wasn't committed, that he would
22 starve to death; isn't that correct?

23 A. Not in the near future, no. And he knows how to
24 get to shelters. He could -- yeah, he's probably -- he
25 would probably end up in jail. But he's -- you know, he

1 Q. Yes.

2 A. "Patient's depression improved rather rapidly
3 and with no further indication of hallucinations and
4 delusions while he was in the hospital."

5 Q. And then on the second page, could you read what
6 is highlighted.

7 A. "Prognosis somewhat guarded, depending upon the
8 type of follow-up treatment patient will receive in
9 dealing with his recent divorce."

10 Q. So this paints a picture markedly different than
11 his current condition, doesn't it?

12 A. Well, you haven't had me read anything about his
13 actual condition from these documents. Do you want me to
14 comment on those?

15 Q. You can, sure.

16 A. Your question is, is it a different picture, and
17 these documents in this, his first admission, he is having
18 auditory hallucinations, which is hearing voices. He's
19 very depressed and unhappy about things, and he's much
20 more coherent and organized than he is now, and this is
21 what we -- you typically see in a schizophrenia or
22 schizo-affective disorder, that the first few episodes are
23 much milder, much different in character than when the
24 illness becomes chronic and debilitating. So yes, it is
25 different than his current condition.

1 was out before this last admission, February 22nd, he was
2 out for six weeks and was off medication at that time and
3 he only lost four pounds. So you can look at that as kind
4 of a -- you know, a scale. So in a year he might lose 25,
5 30 pounds. But he would not go without coming into the
6 hands of the police near that long, and then he'd get fed
7 in jail.

8 Q. So if survive means living, then you don't think
9 that's really at stake?

10 A. If it means not dying, then I don't think that's
11 going to happen in months, particularly with the weather
12 that we have. You know, currently we're out of the worst
13 weather in terms of frostbite and hypothermia.

14 Q. And you said that he knows how to get to
15 shelters, etcetera, right?

16 A. Yes.

17 Q. And to your knowledge does he go into warm
18 places, you know, in the winter if it's cold out if he
19 needs to?

20 A. Well, to my knowledge he's been in -- either
21 been in an apartment or been in API and hasn't been living
22 in shelters. I know in the past when he has lived in
23 shelters he's been kicked out of them for being
24 disruptive, and I know that he's -- he knows how to get in
25 jail. I used to work in the Department of Corrections for

1 six years as a psychiatrist there, and I treated him
 2 there, and he -- if it's real cold he knows how to get
 3 into jail and get into a warm place.
 4 Q. And in fact, that's not an unusual strategy for
 5 people, isn't it?
 6 A. It's unusual, but it's not rare.
 7 Q. Okay. And that way they get food and housing
 8 and medical care, I suppose; is that correct?
 9 A. Yes.
 10 Q. But -- okay. Now, because you weren't really
 11 sure of what the gravely disabled meant, you filed an
 12 initial 30-day petition because the guardian insisted,
 13 didn't you?
 14 A. No. I wouldn't say that. I had to have an
 15 opinion myself that I believe. But I consulted with the
 16 guardian and considered his input significant. And I also
 17 consulted with my medical director, Dr. Hobson, to see
 18 what his thoughts were on it, because this was all new to
 19 us in January, this new reinterpretation of gravely
 20 disabled, and the consensus was that he was gravely
 21 disabled, even under the new statute.
 22 But, again, this is a legal question. I don't
 23 have a diagnosis for safely to survive. It's not
 24 something I was trained in. This is a legal question, and
 25 apparently still being defined. But I felt in good faith

1 admitted.
 2 BY MR. GOTTSTEIN:
 3 Q. Could you read the first sentence highlighted on
 4 page 3.
 5 A. The last page?
 6 Q. Yes.
 7 A. "His guardian insists that the patient meets
 8 grave disability criteria and is unable to provide for his
 9 needs for his own safety. We will seek court
 10 clarification as to whether the patient is gravely
 11 disabled or not. We will seek a medication petition so
 12 that we can treat him, as otherwise there would be no
 13 benefit from him being hospitalized."
 14 Q. And that's completely consistent with what I
 15 understand you to have testified to all along?
 16 A. It is so.
 17 Q. Yes. Now I want to move to the medications just
 18 a little bit.
 19 Isn't it true that the deterioration you see in
 20 Bill when he quits taking his medication is actually
 21 likely to be caused by withdrawal from the medicine and --
 22 withdrawal from the medicine?
 23 A. No, I don't think so. He's not on any addictive
 24 medications. He's not on Benzodiazepines that would cause
 25 him to suddenly experience a bunch of anxiety. The

1 and I still feel in good faith that essentially he will
 2 not safely survive outside of API, but I have my own
 3 interpretation of what that means, lacking clear legal
 4 definition to work with.
 5 MR. GOTTSTEIN: Thank you. I'm going to show
 6 the witness the exhibit.
 7 BY MR. GOTTSTEIN:
 8 Q. Could you -- what was the primary presenting
 9 problem for -- or the reason why he was brought into the
 10 hospital?
 11 A. Which time?
 12 Q. This admission.
 13 A. This was the prior --
 14 Q. The one of 2-22.
 15 A. The 68th admission on February 22nd. He was
 16 brought in on an ex parte order, which is granted by a
 17 judge, and the ex parte, I believe, had been filed by the
 18 guardian, stated that he was at risk of going hungry
 19 because he wouldn't cooperate with efforts to get him food
 20 and that he was creating public disturbances, requiring
 21 the police to escort him away from public areas.
 22 Q. Okay. On page -- --
 23 MR. GOTTSTEIN: Move to admit.
 24 MS. RUSSO: A, yeah.
 25 THE COURT: Exhibit -- this is A, right -- is

1 Depakote, he doesn't have a seizure disorder. It's not
 2 like someone is going to have a seizure coming off
 3 Depakote. He -- I think that's very unlikely. Instead
 4 what you have is the loss of medication effect and the
 5 loss of controlling the emotional arousal that he has
 6 associated with his delusions, completely expected, and it
 7 fits the time course.
 8 Q. Now, don't Risperdal, Seroquel, and Depakote
 9 actually cause psychosis in some people?
 10 A. That's extremely rare. Any medication that gets
 11 approved by the FDA has to include a list of side effects
 12 for anything that was ever reported by anybody during the
 13 drug trials or any time since whether it actually had
 14 anything to do with the drug or not. And when you look at
 15 that information, you have to take into context how this
 16 information gets into the Physician Desk Reference or the
 17 medication handouts that the drug company provides.
 18 They're basically compiled by attorneys so that
 19 the drug companies can be protected by saying, we've told
 20 everybody about this. But in fact, many, many of the
 21 things that are listed have nothing to do with the drugs,
 22 and good evidence of that is, for example, the placebo
 23 effect. The placebo effect is part of the studies that
 24 they do when they do medications, and people get a fake
 25 medication and think they're taking the real medication,

1 and they report all these side effects.

2 So you have to consider how all this information
3 is collected. So -- in fact, to answer your question, in
4 theory, on paper, yes, it's possible. In practical
5 experiences with a person who has a psychotic illness
6 already, it's preposterous to think that the
7 anti-psychotic is causing the psychosis.

8 If you take a geriatric patient who has some
9 dementia and they're 80 years old and they have poor
10 oxygen profusion and so on and so forth, and you give them
11 something like Seroquel in a high dose, you might make
12 them psychotic. That would not be preposterous. But in
13 Bill's case it's ridiculous.

14 Q. Now, isn't it true that Risperdal, Seroquel
15 combination has never been subject to testing, clinical
16 testing?

17 A. That's probably true. Clinical usage, very
18 common, but as far as somebody doing a study, why would
19 they? They're made by two different drug companies. I
20 imagine if the same drug company made both those drugs,
21 they would have done a study.

22 Q. Okay. I'm going to mark -- or give you
23 Exhibits G, H, and I.

24 MS. RUSSO: Your Honor, I'm going to object
25 to -- I guess I'd like to know where Mr. Gottstein's going

1 with this line of questioning, because the medication is
2 not an issue in this case.

3 THE COURT: Well, if -- if the parties would
4 approach the bench, please.

5 (Begin bench conference)

6 THE COURT: Do you want to bring up H and I as
7 well? Okay. H and I are these things.

8 MR. GOTTSTEIN: They're the product labels.

9 THE COURT: These are the things that you either
10 get off the Internet or that are handed out in the little
11 packets that come with the meds?

12 MR. GOTTSTEIN: Yes.

13 THE COURT: Okay. And your objection -- or your
14 question?

15 MS. RUSSO: The medication issue is not an
16 issue. It's going to be an issue in front of
17 (indiscernible).

18 THE COURT: What is the basis for having this
19 witness testify from this? Go ahead. Ms. Russo just
20 really mentioned it, which is that he's testified that the
21 only benefit he's going to get is from the medication, and
22 he's testified to a couple of things that are covered in
23 this, and I think I'm entitled to inquire as to those
24 things with which he's already -- to which he's already.

25 THE COURT: Yes. What you're saying is there's

1 some down sides -- or side effects to these medicines that
2 are risks that you want the jury to be aware of, as well
3 as --

4 MR. GOTTSTEIN: He said that psychosis is one of
5 the (indiscernible).

6 THE COURT: Pardon?

7 MR. GOTTSTEIN: I think -- I can look, but I
8 think the labels say that, that psychosis is frequent.

9 THE COURT: Which one were we talking about at
10 the time? Risperdal?

11 MR. GOTTSTEIN: Seroquel. Let me...

12 THE COURT: What is this -- this is a
13 psychotropic medicine, right?

14 MS. RUSSO: Uh-huh.

15 THE COURT: And this is a side effect? What are
16 we looking at, at G-26?

17 MR. GOTTSTEIN: Yeah.

18 THE COURT: Were they giving it to people who
19 were well?

20 MR. GOTTSTEIN: No. It's just saying that --

21 THE COURT: If you see psychosis in people --
22 what is that telling us, then? Do you know?

23 MR. GOTTSTEIN: These drugs frequently cause
24 psychosis (indiscernible) reaction, delusion, emotional
25 ability, manic reaction. That's frequent.

1 THE COURT: There's something wrong with this
2 sentence structure here, and I'm trying to see how it
3 fits. You know, when you try to read the statutes you try
4 to figure out how these things fit together. What is that
5 showing me?

6 MR. GOTTSTEIN: If you look on page 25.

7 THE COURT: I'm working my way. Yep.

8 MR. GOTTSTEIN: So (indiscernible) psychiatric
9 facilities.

10 THE COURT: But are they giving it to people who
11 have psychosis to begin with? I guess you would see
12 psychosis in people.

13 MR. GOTTSTEIN: No, no.

14 THE COURT: They're giving it to people who are
15 well?

16 MR. GOTTSTEIN: Yes.

17 THE COURT: I would think that would be strange,
18 to give this kind of medicine to somebody who isn't
19 already suffering from something.

20 MR. GOTTSTEIN: I've got someone to testify to
21 this tomorrow.

22 THE COURT: I'll tell you what. I think it
23 gives us a chance to look at this and think about it.

24 It's time, I think, that I need to recess

25 because I've got a 1:30. We know it's going to run

1 over --

2 MR. GOTTSTEIN: Can I get these back?

3 THE COURT: I can keep them here since they're
4 my copy, I guess. You have time to think about the issue.
5 There's certain kinds of documents that can be referred to
6 but not admitted, and that treatises are often that way.
7 Whether this is treatise-like, I don't know. But
8 certainly I would want to hear more about your basis for
9 further discussion of this with this witness.

10 Let's hear that first thing in the morning at
11 8:30. I'll ask these folks to be here at -- let's say we
12 discuss things at 8:30. We'll have them here at 9:00.
13 Okay? And then we'll -- I'm going to advise them we
14 expect the case to go to them tomorrow.

15 How long are your witnesses? You've got lots of
16 possibilities, but how long do you think it's going to
17 take? And how long do you think it will take? Assuming
18 that not everything is found to be not appropriate, let's
19 assume that you get to put some of this stuff on, how long
20 do you think it's going to be.

21 MR. GOTTSTEIN: I think we may be able to get --
22 I think we'll get done tomorrow.

23 THE COURT: That's right. I mean, we don't have
24 these guys promised to be in till Thursday or Friday. We
25 haven't gone into the issues that are related to that.

1 MR. GOTTSTEIN: Well, this isn't going the way I
2 expected it to.

3 THE COURT: Well, sometimes when we first do
4 something for the first time we're less efficient. But
5 you should plan to be able to get your case in within a
6 couple hours.

7 How much more time do you have, if any?

8 MS. RUSSO: Your Honor, well (indiscernible)
9 because there's still another witness that Mr. Gottstein
10 (indiscernible).

11 THE COURT: Who is that?

12 MS. RUSSO: Let me see if I can find it.

13 THE COURT: So once this is done, you're done.

14 So you plan to start your case after you're done
15 with cross-examination, and in order to get the case to
16 the jury -- remember, if it's a five-hour trial day, and
17 we try to get it to them in the trial day, even though
18 they may keep after for deliberation, that usually we eat
19 up at least an hour in recesses and that kind of thing.

20 So there's only about four hours there to finish
21 your cross, to hear your witnesses, and to have closings,
22 which sound like they're going to be pretty short because
23 it's a short trial so they shouldn't take a long time.
24 But that gives you kind of a window.

25 MR. GOTTSTEIN: Well, I (indiscernible).

1 THE COURT: Well, most of the time it's done
2 here, isn't it? If you go back and look at the cross and
3 direct -- and I haven't done any -- I'm not doing the math
4 deal -- but it looks like it's been pretty even. What I
5 would say is plan to try to keep -- get it into three
6 hours, because otherwise we're going to have a very
7 difficult time getting it to the jury.

8 I'm going to advise them to be prepared to take
9 it and to anticipate having it go till tomorrow. It's
10 possible it runs over, but we'll hope not.

11 MS. RUSSO: (Indiscernible)

12 THE COURT: Well, I assume we'll take them up at
13 8:30, along with these issues. So in the first half hour
14 we need to be prepared to address issues of relevance,
15 whether they're the things that go to the questions that
16 are before this jury. I'll hear you then.

17 (End bench conference)

18 Thank you, Madam Clerk. We're just short of
19 1:30, and so I'll excuse you for the day with the
20 admonition given to juries. Do not form or express any
21 opinion about the case. Do not talk to anybody else about
22 it, including each other, until it's given to you for your
23 decision. We hope that will be tomorrow. It's possible
24 this could be pushed -- end up pushing over into Thursday.
25 We hope not. But in any case, those are the admonitions.

1 I'd ask that you be here at 9:00. We've got
2 some housework that we need to take care of, and we'll
3 start at 8:30 with each other here. But if you'll be here
4 at 9:00 so that we can use you from that hour, if we
5 complete our work tomorrow before 1:30 or 2:00, we'll have
6 the case to you then. If things end up pushing out, then
7 we'll release you at 1:30, with you back on Thursday.

8 Be well. See you tomorrow. Please stand for
9 the jury.

10 You may be excused.

11 Madam Clerk, I think I'll go off record now
12 because I've got the 1:30 matter to take.

13 (Proceedings recessed)

14
15
16
17
18
19
20
21
22
23
24
25

1 TRANSCRIBER'S CERTIFICATE

2
3
4
5
6
7
8
9
10

I, Deirdre J.F. Radcliffe, hereby certify that the foregoing pages numbered 146 through 299 are a true, accurate, and complete transcript of proceedings in Case No. 3AN-07-247 PR, In the Matter of WB, transcribed by me from a copy of the sound recording to the best of my knowledge and ability.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Date Deirdre J.F. Radcliffe, Transcriber

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.)
_____)

FILED IN OPEN COURT
Date: 7-4-07
PUBLISHED IN OPEN COURT

Case No. 3AN-07-247 PR

**SPECIAL VERDICT FORM
(Commitment)**

We, the jury in the above entitled case, find the following on the questions submitted to us with respect to the involuntary confinement of William Bigley to a mental hospital:

Q1. Has the Petitioner proven by clear and convincing evidence that William Bigley is mentally ill?

6 (Number of jurors answering yes)

0 (Number of jurors answering no)

If less than five jurors answered yes to Q1, Mr. Bigley does not meet the criteria for involuntary civil commitment and you should write "Verdict for the Respondent, William Bigley" on the verdict line, sign and return this form. In that case, do not answer any further questions on this form.

Q2. Has the Petitioner proven by clear and convincing evidence that as a result of mental illness Mr. Bigley is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken?

6 (Number of jurors answering yes)

0 (Number of jurors answering no)

Q3. Has the Petitioner proven by clear and convincing evidence that Mr. Bigley will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional or physical distress, and this distress is associated with significant impairment of judgment, reason or behavior causing a substantial deterioration of the person's previous ability to function independently, such that he is unable to survive safely in freedom?

6 (Number of jurors answering yes)

0 (Number of jurors answering no)

If less than five jurors answered yes to both Q2 and Q3, Mr. Bigley does not meet the criteria for involuntary civil commitment and you should write "Verdict for the Respondent, William Bigley" on the verdict line, sign and return this form. In that case, do not answer any further questions on this form.

Q4. Has the Petitioner proven by preponderance of the evidence that Mr. Bigley's mental condition would be improved by the course of treatment it seeks?

3 (Number of jurors answering yes)

3 (Number of jurors answering no)

If less than five jurors answered yes to Q4, Mr. Bigley does not meet the criteria for involuntary civil commitment and you should write "Verdict for the Respondent, William Bigley" on the verdict line, sign and return this form. In that case, do not answer any further questions on this form.

Q5. Has the Petitioner proven by preponderance of the evidence that there is no less restrictive alternative available to Mr. Bigley?

_____ (Number of jurors answering yes)

_____ (Number of jurors answering no)

If less than five jurors answered yes to this question, Mr. Bigley does not meet the criteria for involuntary civil commitment and you should write "Verdict for the Respondent, William Bigley" on the verdict line, sign and

return this form. In that case, do not answer any further questions on this form.

Q6. Has the Petitioner proven by preponderance of the evidence that Mr. Bigley has received appropriate and adequate care and treatment during his 30-Day Commitment?

_____ (Number of jurors answering yes)

_____ (Number of jurors answering no)

If less than five jurors answered yes to this question, Mr. Bigley does not meet the criteria for involuntary civil commitment and you should write "Verdict for the Respondent, William Bigley" on the verdict line, sign and return this form. In that case, do not answer any further questions on this form.

If at least five jurors answered yes to:

A. Q1, Q2, and/or Q3, Q4, Q5, Q6,

Mr. Bigley meets the criteria for involuntary confinement to a mental hospital and you should write "Verdict for the Petitioner, State of Alaska" on the verdict line, sign and return.

Verdict: "Verdict for the Respondent, William Bigley"

Now date and sign your verdict form and notify the bailiff.

Date: 4-4-07

Printed name of foreperson Mandy Clawson

Signature of foreperson Mandy Clawson

sufficient amount of food to maintain his body weight. In the preceding six week period, Mr. Bigley has lost approximately 24 pounds. His weight upon admission to API on May 7, 2007 was down to 103 pounds. Mr. Young described that he took Mr. Bigley grocery shopping on May 7, 2007, and spent about 90 minutes with Mr. Bigley during that time. Mr. Young described that Mr. Bigley complained he was "starving", yet after attempting to coax Mr. Bigley into eating over the course of some 90 minutes, Mr. Young was only able to get Mr. Bigley to eat a few bites of food.

Individuals who have a long history with Mr. Bigley also testified at the hearing, including, the court visitor, his treating psychiatrist Dr. Worrall, and his guardian. These witnesses testified that since Mr. Bigley stopped taking medication in approximately January of 2007, he has been struggling more with his mental illness than they have seen in his previous 68 admissions to API. He is delusional, talking about the Starship Enterprise and his billion dollar private jet. His guardian and treating physician both testified that he is completely incapable at this time of having a conversation regarding treatment options. He has been exhibiting increasingly hostile and assertive/aggressive behavior, in a manner that has not been observed before by people who have known him for many years. This includes shouting, and using his body to block the path of his guardian, and making allusions that harm may be done to the people who work in Mr. Young's office. The police had to be called to escort Mr. Bigley from OPA's office. He is also reacting aggressively toward his treating psychiatrist, Dr. Worrall. Dr. Worrall testified Mr. Bigley was "in his face" shouting, and the physician believed that Mr. Bigley was about to "jump him." Dr. Worrall withdrew, in order to avoid a physical confrontation, and Mr. Bigley pursued him. This behavior is uncharacteristically aggressive for Mr. Bigley.

The evidence also showed, by a clear and convincing standard, that there is no less restrictive treatment alternative available. The care providers offered uncontradicted testimony that Mr. Bigley's current state is such that he refuses to participate voluntarily in any alternative treatment program, including outpatient options, and that such programs are unwilling to accept him as a patient because he is actively delusional, unable to have any level of conversation about treatment options, is refusing medication and has become increasingly hostile in recent weeks.

The court received the report of the Visitor, who testified that she interviewed a social worker at API who has known Mr. Bigley for many years, and that she also interviewed Mr. Bigley's mother. Both reported that they have never seen Mr. Bigley's mental illness as pronounced as it is now, and that he does much better during the periods when he is on medication. Mr. Bigley has not made an advance statement, while competent, that reliably expressed a desire to refuse future treatment with psychotropic medication. The visitor attempted to interview Mr. Bigley, but she testified that he "launched" out of his bed when she went to speak to him, swore at her, said that he refused to talk to her, and that he wanted to go to court.

The court finds, by clear and convincing evidence, that Mr. Bigley is gravely disabled;

The court finds, by clear and convincing evidence, that Mr. Bigley is currently unable to give or withhold informed consent regarding an appropriate course of treatment; and

The court finds, by clear and convincing evidence that that Mr. Bigley never made a statement, while competent, that reliably expressed a desire to refuse future treatment with psychotropic medication.

The court also finds, by clear and convincing evidence, that Mr. Bigley lacks the capacity to understand his situation and assimilate the relevant facts, he is unable to participate in treatment decisions, though he has articulated objection to the proposed medication, since being admitted to API.

The testimony of Dr. Worrall, the court visitor, and the guardian are all in accord that Mr. Bigley has never acknowledged that he is mentally ill, that he is more delusional and hostile now, since he went off his medication in approximately January of 2007, than he has been in the past, and that his delusions are such that he cannot rationally discuss his condition or treatment options.

In the past, for periods as long as a year, Mr. Bigley has lived independently and reliably sought outpatient treatment at API. He has done this, in spite of saying that he would not show up for his medication, and this has allowed him to maintain a residence in a less restrictive treatment alternative and to frequent places where he enjoys being, such as the probate division of the courthouse and the offices of the guardian. When living

outside of API on his own, Mr. Bigley had the option of obtaining outpatient treatment services from other care providers, but has opted instead to go to API for injections.

Given his current state, in which he frequently shouts and has been increasingly hostile toward others, he has been evicted from his apartment and the police have had to be called to escort him from public buildings. Mr. Bigley has lacked insight into his condition even during those times when he is reported by others to be "doing well" and living on his own. The guardian reported that Mr. Bigley has never acknowledged that medication is of assistance to him. The visitor reported that his mother agrees that he has never acknowledged that medication assists him.

The court finds that the evidence shows, by a clear and convincing standard, that the treatment plan identified by API is in Mr. Bigley's best interests. In making this determination, the court has considered the factors found in AS 47.30.837(d)(2). See Myera v. Alaska Psychiatric Institute, 138 P.3d 238, 252 (Alaska 2006) (holding that courts must consult AS 47.30.837(d)(2) when resolving whether involuntary medication is in the best interest of the patient). Though all factors were considered, the court addresses only those in this decision which were found most compelling under the circumstances presented in this case.

The court considered the information about the proposed medication, its purpose, the possible side effects and benefits, and risks of other conditions. The court also considered Mr. Bigley's patient and medication history, his reports of side effects, alternative treatments, and the risks posed by nontreatment. The court finds that, under

the circumstances, Mr. Bigley's concerns regarding the proposed medication do not outweigh the anticipated benefits. Mr. Bigley has done well on this medication in the past, however, he has recently indicated that he has a fear that the medication will cause him to gain weight and to experience sexual dysfunction. Given Mr. Bigley's severe weight loss and his present physical condition, any weight gain that could potentially result from administration of the medication does not pose a significant risk to his health. These health risks must be weighed against the certainty that Mr. Bigley will not be able to live safely outside of API in his current condition. For these reasons, the court finds by clear and convincing evidence that involuntary medication is in the best interests of Mr. Bigley.

Accordingly, the State's Petition for Court Approval of Administration of Psychotropic Medication is granted. Mr. Bigley shall be treated with psychotropic medication for a period of time not to exceed 30 days.

Mr. Bigley is hereby advised that if the State seeks commitment or other involuntary treatment beyond 30 days, he has the right to a full hearing or jury trial.

DATED 5/23/07

Morgan Christen
Morgan Christen
Superior Court Judge

I certify that on this 5 day of May, 2007, a true and correct copy of the foregoing was served by () mail (x) fax () hand upon: Holt; Rundo; Bigley; Vassar
HW ADI
Hillary Williams
Administrative Assistant



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of the Necessity)
for the Hospitalization of:)
)
William Bigley,)
Respondent.)
_____)

Case No. 3AN-07-1064PR

EX PARTE ORDER
(TEMPORARY CUSTODY FOR
EMERGENCY EXAMINATION/
TREATMENT)

FINDING AND CONCLUSIONS

Having considered the allegations of the petition for initiation of involuntary commitment and the evidence presented, the court finds that there is probable cause to believe that the respondent is mentally ill and as a result of that condition is gravely disabled or presents a likelihood of causing serious harm to him/herself or others.

ORDER

Therefore, it is ordered that:

1. AST/APD take the respondent into custody and deliver him/her to Alaska Psychiatric Institute, in Anchorage, Alaska, the nearest appropriate evaluation facility for examination.
2. The respondent be examined at the evaluation facility and be evaluated as to mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.
3. The evaluation facility personnel promptly report to the court the date and time of the respondent's arrival.
4. The examination and evaluation be completed within 72 hours of the respondent's arrival at the evaluation facility.
5. A petition for commitment be filed or the respondent be released by the evaluation facility before the end of the 72 hour evaluation period (unless respondent requests voluntary admission for treatment).
6. Public Defender Agency is appointed counsel for respondent in this proceeding and is authorized access to medical, psychiatric or psychological records maintained on the respondent at the evaluation facility.

08-29-07

Date

Superior Court Judge

I certify that on _____
a copy of this order was sent
to: AG, PD, API, RESP

Recommended for Approval

Christina J. ...

Magistrate

Clerk:

MC-305 (12/87) (st.5)
EX PARTE ORDER
S-13116

AS 47.30.700, .710 & .715

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)
William Bigley)
Respondent.)

Case No. 3AN071064PR

PETITION FOR 30-DAY
COMMITMENT

As mental health professionals who have examined the respondent, the petitioners allege that:

1. The respondent is mentally ill and as a result is
 likely to cause harm to himself/herself or others.
 gravely disabled and there is reason to believe that the respondent's mental condition could be improved by the course of treatment sought.
2. The evaluation staff has considered, but has not found, any less restrictive alternatives available that would adequately protect the respondent or others.
3. APL is an appropriate treatment facility for the respondent's condition and has agreed to accept the respondent.
4. The respondent has been advised of the need for, but has not accepted, voluntary treatment.

The petitioners respectfully request the court to commit the respondent to the above-named treatment facility for not more than 30 days.

The facts and specific behavior of the respondent supporting the above allegations are:

Threats to kill guardian 8/15/07, to bomb or blow up building at 900 W 5th Ave, not eating or sleeping, has been scaring office staff in various offices causing the staff to cry, has been causing problems at Senator Murkowski's office. He is homeless.

Biglo!

Case No. 3AN 07 1064 PR

The following persons are prospective witnesses, some or all of whom will be asked to testify in favor of the commitment of the respondent at the hearing:

API Staff
Jonathan Hughes OPA
Tim Blecher Alaska Fed. Protective Service
Wendi Shackelford APO

8-30-07
Date

William Wornall
Signature

William Wornall
Printed Name

Psychiatrist
Title

8-30-07
Date

Ann Nelson
Signature

Ann Nelson
Printed Name

JMSN
Title

Note: This petition must be signed by two mental health professionals who have examined the respondent, one of whom is a physician. AS 47.30.730(a).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)

William Bigley
Respondent.

) Case No. 3AN07 1064 P/R
)
) PETITION FOR COURT APPROVAL OF
) ADMINISTRATION OF PSYCHOTROPIC
) MEDICATION [AS 47.30.839]

William Worrall MD petitioner, requests a hearing on the respondent's capacity to give or withhold informed consent to the use of psychotropic medication, and alleges that:

There have been, or it appears that there will be, repeated crisis situations requiring the immediate use of medication to preserve the life of, or prevent significant physical harm to, the patient or another person. The facility wishes to use psychotropic medication in future crisis situations.

Petitioner has reason to believe the patient is incapable of giving or withholding informed consent. The facility wishes to use psychotropic medication in a noncrisis situation.

Court approval has been granted during a previous commitment period, and the facility wishes to continue medication during the subsequent commitment period. A 90/180 day petition is being filed. The patient continues to be incapable of giving or withholding informed consent.

The patient has refused has not refused the medication.

8-30-07
Date

[Signature]
Signature
(Representative of evaluation or designated treatment facility)

William Worrall MD
Printed Name
Psychiatrist
Title

Verification

Petitioner says on oath or affirms that petitioner has read this petition and believes all statements made in the petition are true.

Subscribed and sworn or affirmed before me at Anchorage
Alaska on 8/30/07
(date)

[Signature]
Clerk of Court, Notary Public, or other person authorized to administer oaths.
My commission expires: 10/5/07



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

In The Matter of the Necessity for the)
Hospitalization of William S. Bigley,)
Respondent,)
William Worrall, MD,)
Petitioner)

Case No. 3AN 07-1064 P/S

LIMITED ENTRY OF APPEARANCE

The Law Project for Psychiatric Rights (PsychRights) hereby enters its appearance¹ on behalf of William S. Bigley, the Respondent in this matter, limited to defending against the Petition for Court Approval of Administration of Psychotropic Medication (AS 47.30.839).²

DATED August 31, 2007.

Law Project for Psychiatric Rights

By: 
James B. Gottstein, ABA # 7811100

¹ In a previous proceeding, 3AN 07-247 P/S, the Probate Master issued an order requiring a motion and/or consent to withdraw by the Public Defender Agency rather than an entry of appearance. PsychRights believes this is incorrect and a motion for reconsideration was filed and denied and a Petition for Review filed with the Supreme Court, which was denied. See, Exhibit A. PsychRights' arguments therein are hereby incorporated herein by reference. This is currently an undecided legal issue.

² Under *Wetherhorn v. Alaska Psychiatric Institute*, 156 P.3d 371, 381-2 (Alaska 2007), an involuntary commitment, which requires the opportunity for a quick resolution to protect respondents' constitutional rights, is a separate proceeding from a forced psychiatric drugging petition under AS 47.30.839, which must be considered more deliberately in order to protect respondents' constitutional rights. See, also, §4, Memorandum (Revised), to Probate Rules Subcommittee on Involuntary Commitments and the Involuntary Administration of Psychotropic Medication, dated August 16, 2007, attached to Petition for Initiation of Involuntary Commitment (Memo). Respondent clearly has the right to have counsel of his choice represent him in this separate proceeding if such counsel is available to him. See, §2 of Memo.

IN THE TRIAL COURTS FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

In the Matter of the Necessity
for the Hospitalization of
W.S.B.,

Respondent.

_____/

No. 3AN-07-1064 PR

PETITION FOR 30-DAY COMMITMENT

PAGES 1 THROUGH 81

BEFORE THE HONORABLE ANDREW BROWN
MASTER

Anchorage, Alaska
August 31, 2007
3:15 p.m.

APPEARANCES:

FOR STATE OF ALASKA: Vennie Nemecek
Attorney General's Office
Human Services Division
1031 West 4th Avenue, Suite 200
Anchorage AK 99501

FOR W.S.B.: Elizabeth Brennan
Alaska Public Defender Agency
900 West 5th Avenue, Suite 200
Anchorage AK 99501

James Gottstein
406 G Street, Suite 206
Anchorage AK 99501

Also Present: W.S.B.
Ms. Taylor

NOTE: DUE TO THE POOR QUALITY RECORDING TAKEN AND COPIED BY
ALASKA COURT SYSTEM PERSONNEL, "INDISCERNIBLE" AND
"UNIDENTIFIED SPEAKER" APPEAR THROUGHOUT THIS TRANSCRIPT.

Page 2

1 PROCEEDINGS
 2 TAPE 3AN2607-156 (SIDE A)
 3 THE COURT: This is the matter of the case
 4 involving the hospitalization for William Bigley --
 5 they're before the court -- the petition for
 6 hospitalization -- Petition For 30 Day Commitment and
 7 Petition For Court Approval...
 8 MR. BIGLEY: (Indiscernible).
 9 THE COURT: ...of Administration of
 10 Psychotropic Medication.
 11 MR. BIGLEY: (Indiscernible).
 12 MR. GOTTSTEIN: Shhh!
 13 THE COURT: And any preliminary...
 14 MR. BIGLEY: (Indiscernible).
 15 THE COURT: ...matters that the attorneys want
 16 to discuss first.
 17 MR. BIGLEY: (Indiscernible).
 18 THE COURT: Well, I think the first issue
 19 (indiscernible)issue. Apparently there's been a motion
 20 for a limited -- there's been a limited entry of
 21 appearance made. There's been a motion to withdraw
 22 that appears to be...
 23 MR. BIGLEY: (Indiscernible).
 24 UNIDENTIFIED MALE: (Indiscernible).
 25 THE COURT: ...before the court -- we may have
 26
 27

Page 3

1 gotten it. I don't have all the (indiscernible) my
 2 file. But apparently there was some discussion about
 3 waiting for part of the hearing, and then the
 4 possibility of signing off on that. I don't find that
 5 to be an appropriate procedure.
 6 MR. BIGLEY: (Indiscernible).
 7 THE COURT: If an attorney is going to...
 8 MR. BIGLEY: (Indiscernible).
 9 MR. GOTTSTEIN: ...enter an appearance, that's
 10 fine. The attorney enters an appearance for the case,
 11 or the attorney doesn't enter an appearance.
 12 MR. BIGLEY: Orders.
 13 THE COURT: In cases like this where we have
 14 the public defender apparently here, appointed, ready
 15 to represent the patient, they first need to qualify as
 16 for court appointed counsel or they don't.
 17 MR. BIGLEY: Right.
 18 THE COURT: If they qualify for court
 19 appointed counsel, the PD has been appointed, then the
 20 PD represents them, unless the public defender agency
 21 chooses to contract with another attorney to view part
 22 of that. I don't think it's appropriate for the court
 23 to entertain a limited entry of appearance...
 24 MR. BIGLEY: (Indiscernible).
 25 THE COURT: ...when a private attorney, who is
 26
 27

Page 4

1 somehow going to take over some of the case from the
 2 Public Defender Agency. I don't believe
 3 (indiscernible) authority for that in the Public
 4 Defender statute. I'm not aware of any ability --
 5 any...
 6 MR. BIGLEY: Lawyers.
 7 THE COURT: ...legal authority at all for that
 8 kind of procedure. So at this point I am going to
 9 object to a limited entry of appearance. If there's
 10 going to be a full entry of appearance, I see no...
 11 MR. BIGLEY: (Indiscernible).
 12 THE COURT: (Indiscernible) objectionable.
 13 All right. Ms. Brennan?
 14 MS. BRENNAN: Your Honor, the Public Defender
 15 policy is that when we're in for a case, then we're in
 16 for the case, and that if there is going to be a
 17 substitution of counsel, it should be for the entire
 18 case.
 19 MR. BIGLEY: (Indiscernible).
 20 MS. BRENNAN: It's Public Defender policy that
 21 we believe that (indiscernible) representation is best
 22 for their client, than having one attorney handle the
 23 case -- one case. It's best for the client, and that's
 24 the Public Defender policy.
 25 THE COURT: So, actually, then, with this
 26
 27

Page 5

1 motion to withdraw that was filed by Mr. Gottstein, on
 2 behalf of your client, how do you feel about that.
 3 MR. BIGLEY: Well, (indiscernible).
 4 THE COURT: (Indiscernible).
 5 MS. BRENNAN: I've seen it.
 6 THE COURT: Okay. Because it's for the
 7 purpose of dealing with the possible -- the petition
 8 for approval of administration of psychotropic
 9 medication...
 10 MR. BIGLEY: (Indiscernible).
 11 THE COURT: ...the court finds Mr. Bigley's to
 12 be committed...
 13 MR. BIGLEY: Had you on the phone. You didn't
 14 show up. (Indiscernible). Cop kicked me down.
 15 MS. BRENNAN: But it's still the same case. I
 16 mean, it's our position -- I mean, we the court has the
 17 discretion to make the decision. Our policy is that,
 18 if that's the case, the Public Defender's Office is --
 19 should be representing the person in the entire case.
 20 If Mr. Gottstein wants to be involved in the case,
 21 that's his total right. But that -- he could take over
 22 entire case, because that's best for the client. We
 23 don't want to be in a situation in which there is
 24 issues overlapping, and that we're advising the client
 25 one and he's advising the client another way, because
 26
 27

1 (indiscernible)...

2 MR. BIGLEY: (Indiscernible)...

3 MS. BRENNAN: It is best for the client to
4 have one counsel.

5 MR. BIGLEY: They took (indiscernible) in the
6 sky, around the clock.

7 THE COURT: Okay. Mr. Gottstein, do you want
8 to comment?

9 MR. GOTTSTEIN: Yes. First, I'm not -- maybe
10 we could enter our appearance -- or...

11 THE COURT: Mr. Nemecek, of the Department of
12 Law.

13 MR. GOTTSTEIN: I figured that. And -- that
14 you were with the Department of Law, but I don't think
15 we've met before.

16 MR. NEMECEK: No.

17 MR. GOTTSTEIN: First off, I want to -- this -
18 - there was an e-mail that was attached to that
19 ex parte application. You've got one. But -- but he
20 did the wrong -- he attached the wrong one, which --
21 and, so, what I would like to do is file this right
22 now. It's the correct one that kinda -- should'a -- it
23 was supposed to have been filed. I requested that it
24 be filed, and he didn't -- he didn't do the right one,
25 so I'm requesting that that be -- I'm submitting that

26

27

1 minute. But a couple things in terms of the

2 representation. One is that if you look at
3 47.30.839(c), it says a patient who is the subject of a
4 petition under (d) of this section...

5 THE COURT: Wait a minute. What was the
6 statute number, again?

7 MR. GOTTSTEIN: 839(c) -- the forced drugging
8 statute.

9 MR. BIGLEY: He doesn't even know. Look at
10 that. Crazy.

11 THE COURT: 839(c).

12 MR. BIGLEY: (Indiscernible).

13 MR. GOTTSTEIN: Okay?

14 THE COURT: All right.

15 MR. GOTTSTEIN: A patient who is the subject
16 of a petition under (d) of this section is entitled to
17 an attorney to represent the patient at the hearing.
18 If the patient cannot afford an attorney, the court
19 shall direct the public defender agency to provide an
20 attorney.

21 Okay. Now, one of the things in my e-mail --
22 well, for sure, in the memo that was attached to it, I
23 mentioned -- I -- I -- and that's why I wanted to get
24 it to the court, you know, in a timely manner. That's
25 why I took kind of extraordinary steps to get it early,

26

27

1 for the record right now.

2 THE COURT: Well, okay -- I mean, I'll take it
3 for now, but I had to decide...

4 MR. GOTTSTEIN: I'm getting to it. I mean,
5 it's related to this.

6 THE COURT: Okay.

7 MR. BIGLEY: He can't decide...

8 MR. GOTTSTEIN: And -- and, so...

9 MR. BIGLEY: Shit!

10 MR. GOTTSTEIN: ...I thought that it went to
11 that.

12 THE COURT: Okay. Why don't you be seated.
13 Here, I got it.

14 MR. GOTTSTEIN: And then could I get a copy.

15 UNIDENTIFIED FEMALE: (Indiscernible).

16 MR. GOTTSTEIN: Thank you.

17 MR. BIGLEY: What a (indiscernible).

18 MS. BRENNAN: Do you want me to write on the
19 side and initial it.

20 MR. GOTTSTEIN: And...

21 THE COURT: That's all right.

22 MR. GOTTSTEIN: And I -- well, Ms. Brennan and
23 Ms. Russo were given that, and so that they knew about
24 it and stuff. And so I don't know if you want to make
25 a minute to read that now or not, or you might in a

26

27

1 but it didn't quite work because the wrong e-mail got
2 filed, but the memo was there. And -- and, I don't
3 think that you can actually appoint the public defender
4 for this hearing if he's got another attorney. And I -
5 - and I think that they are separate proceedings and
6 that under Myers -- Myers and Weatherhorn, both, it's
7 very clear that...

8 MR. BIGLEY: (Indiscernible).

9 MR. GOTTSTEIN: ... -- that the involuntary
10 commitment -- there is an interest in -- if the -- if
11 the respondent wants to -- to have that go fast, and --
12 but that there's a different interest in the -- in the
13 forced drugging petition.

14 So, but the basic thing is that -- that the
15 respondent is entitled to counsel of his choice, if
16 counsel is available. Now, I am willing...

17 MR. BIGLEY: Secret Service.

18 MR. GOTTSTEIN: ...to represent him on the
19 forced drugging, and -- and not really anxious to
20 represent him in the involuntary commitment. And I
21 could go into the reasons for that, and I don't think -
22 - you know, some I can, and probably some I can't. But
23 the bottom line is, I think he's entitled to counsel of
24 his choice, and that this -- this should have been
25 brought to your attention with the initiation of a

26

27

Page 10

1 petition, and I certainly tried to do that with the
 2 e-mail that didn't -- that I requested be filed
 3 (indiscernible) with the ex parte, and then it wasn't
 4 (indiscernible)..
 5 MR. BIGLEY: (Indiscernible).
 6 MR. GOTTSTEIN: ...apparently got -- got
 7 filed. So I don't know if you want to read that now or
 8 not.
 9 THE COURT: Okay. That's not necessary,
 10 because I'm -- I'm going to rule. I'm going to find
 11 that, first of all, the court has before it two
 12 distinct petitions. One is the petition for --
 13 Petition For 30 Day Commitment. The second is the
 14 Petition For Court Approval Administration Of
 15 Psychotropic Medication.
 16 And that each petition has -- requires
 17 separate types of findings and conclusions, and
 18 different statutory prerequisites to be met. And, so,
 19 I -- I see there's a problem with the Public Defender
 20 Agency representing..
 21 MR. BIGLEY: (Indiscernible).
 22 THE COURT: ...the respondent, if he wants the
 23 Public Defender Agency to represent him on the petition
 24 for 30 day commitment..
 25 MR. BIGLEY: You did it a second time to me.
 26
 27

Page 11

1 THE COURT: ...-- then if the court ends up
 2 finding in that distinct phase of the case as to the 30
 3 day commitment, that he should be committed, ...
 4 MR. BIGLEY: (Indiscernible).
 5 MR. GOTTSTEIN: ...if he then wants to decide
 6 he d -- wants the Public Defender Agency to withdraw,
 7 and for him to have different counsel of his choice, I
 8 believe that he's entitled to that.
 9 MR. BIGLEY: That's right.
 10 THE COURT: So...
 11 MR. BIGLEY: Bush knows me -- (indiscernible)
 12 George Bush knows me, the president of the United
 13 States.
 14 THE COURT: ...I'm going to allow the matters
 15 proceed with the Public Defender Agency representing..
 16 MR. BIGLEY: Ted Stevens knows me, too.
 17 THE COURT: ...him in this..
 18 MR. BIGLEY: Tony Knowles knows me, too.
 19 THE COURT: ...initial phase of the case, and
 20 if I find that he should be committed, that...
 21 MR. BIGLEY: He been drinkin'?
 22 THE COURT: ...at that time, he can indicate
 23 if he wants his attorney -- Public Defender Agency to
 24 withdraw and substitute Mr. Gottstein. So that's the
 25 way I -- that's my ruling at this time.
 26
 27

Page 12

1 MR. NEMECEK: Well, can I be heard on that,
 2 please?
 3 THE COURT: Go ahead.
 4 MR. NEMECEK: A person is entitled to counsel
 5 of their choice, they're not entitled to public counsel
 6 of their choice. If they have public counsel...
 7 MR. BIGLEY: (Indiscernible).
 8 MR. NEMECEK: ...(indiscernible) who that
 9 person is.
 10 Mr. Bigley either qualifies for appointed
 11 counsel or he doesn't. If the court is finding that he
 12 qualifies for appointed counsel -- I mean, it seems
 13 like he's got an attorney here with him who is
 14 apparently ready to stand in and represent him. It
 15 looks to me like perhaps he isn't qualified for
 16 appointed counsel, because he has another attorney here
 17 ready to (indiscernible). So I have some concerns
 18 about..
 19 MR. BIGLEY: (Indiscernible).
 20 MR. NEMECEK: ...first he qualifies and then
 21 he doesn't qualify.
 22 THE COURT: Well, no, the thing is -- I mean,
 23 if I -- the -- the statute that Mr. Gottstein was
 24 referring to specifies, "if the patient cannot afford
 25 an attorney." So the court ends up doing a
 26
 27

Page 13

1 determination whether Mr. Bigley has the resources to
 2 have an attorney...
 3 MR. BIGLEY: Bill Bigley -- don't say "Bigbey"
 4 (indiscernible) -- Bill Stanley Bigley. That's me.
 5 THE COURT: The determines if he qualifies for
 6 a public defender, and then, if he wants the Public
 7 Defender Agency to withdraw, and Mr. Gottstein is not
 8 gonna represent him on a voluntary..
 9 MR. BIGLEY: (Indiscernible).
 10 THE COURT: ...(indiscernible) same basis,
 11 that will be Mr. Bigley's choice. The court cannot
 12 compel a person to have a Public Defender Agency
 13 represent him if he doesn't want them, and he has an
 14 alternative. But that doesn't automa -- it does not
 15 automatically mean, we're inferring, "Oh, he has the
 16 means for a private attorney."
 17 MR. NEMECEK: I understand the court's ruling,
 18 and I...
 19 THE COURT: Yeah. And I understand what
 20 you're getting at, too.
 21 MR. NEMECEK: And I appreciate that.
 22 THE COURT: We're making a record.
 23 MR. NEMECEK: And then another issue I want to
 24 bring up is that if we're gonna go forward on the 30
 25 day petition right now...
 26
 27

1 MR. BIGLEY: (Indiscernible).
 2 MR. NEMECEK ...-- what I don't want to see
 3 happen is that, if the court decides to grant that 30
 4 day petition...
 5 MR. BIGLEY: I've got records that are 25
 6 years old...
 7 MR. NEMECEK: that the change in
 8 counsel, we're ready to take up the issue of the med
 9 petition and for some reason that has to be delayed.
 10 The hospital feels pretty strongly that if there's
 11 going to be a commitment today, that we also need to go
 12 forward at that time on the med petition.
 13 So I'm not asking for the court to telegraph
 14 whether that petition is going to be granted, but I
 15 would like some assurance that if we're going to move
 16 on..
 17 MR. BIGLEY: (Indiscernible).
 18 MR. NEMECEK: ...if we're gonna be in a
 19 position to...
 20 MR. BIGLEY: Hospital, police department down
 21 the street.
 22 MR. NEMECEK: ...move on to the med petition,
 23 I want to be ready to do that.
 24 THE COURT: All right. Wait. Wait a minute.
 25 I first want to hear from Ms. Brennan as to -- if she
 26
 27

1 MR. BIGLEY: Keep the judge in the
 2 courthouse...
 3 THE COURT: ...Mr. Bigley, I find that he
 4 should be committed, and then at that point he wants me
 5 to withdraw, and Mr. Gottstein Substitutes, then a
 6 substitution from that point on, as to all matters.
 7 MS. BRENNAN: Okay.
 8 THE COURT: Yeah.
 9 MR. BIGLEY: (Indiscernible).
 10 THE COURT: Mr. Gottstein, any questions?
 11 MR. GOTTSTEIN: I...
 12 MR. BIGLEY: Military court.
 13 MR. GOTTSTEIN: ...really...
 14 MR. BIGLEY: (Indiscernible) they have that.
 15 MR. GOTTSTEIN: ...want to address -- and, I'm
 16 sorry, but I --...
 17 MR. NEMECEK: Nemecek.
 18 MR. GOTTSTEIN: Nemecek? Okay. I was
 19 actually informed earlier today that the hospital would
 20 not be moving forward on the medication petition, so
 21 this is news for me. And then, um...
 22 MR. BIGLEY: He stuck a needle in me.
 23 MR. GOTTSTEIN: ...and then it seems like Mr.
 24 Nemecek has not seen the pleadings that were filed this
 25 morning. So -- and I don't know if Your Honor has had
 26
 27

1 has any comments about my ruling as to the -- it can
 2 be, in my eyes, that a switch of attorneys -- if I
 3 don't find that Mr. Bigley...
 4 MR. BIGLEY: A military court.
 5 MS. BRENNAN: Well, my understanding, Your
 6 Honor, is that we're gonna go first on the 30 day
 7 petition. The Public Defender's Office has already...
 8 MR. BIGLEY: (Indiscernible) military C-30 jet
 9 is on the (indiscernible).
 10 MS. BRENNAN: ...been appointed, and that Mr.
 11 Gottstein was (indiscernible)...
 12 MR. BIGLEY: (Indiscernible) send the judge in
 13 the courthouse.
 14 MS. BRENNAN: It's my understanding that he
 15 will be the attorney form then on out in the case...
 16 MR. BIGLEY: (Indiscernible).
 17 MS. BRENNAN: ...and the public defender's
 18 representation will be over.
 19 MR. BIGLEY: Military court, I want.
 20 THE COURT: Yes. I mean -- yeah, it -- if
 21 that (indiscernible)...
 22 MR. BIGLEY: That crazy person should think
 23 about me.
 24 THE COURT: ...the first petition
 25 (indiscernible)...
 26
 27

1 a chance...
 2 THE COURT: No, no, no, I've seen them.
 3 MR. BIGLEY: (Indiscernible).
 4 MR. GOTTSTEIN: So I absolutely, you know, not
 5 only...
 6 MR. BIGLEY: (Indiscernible).
 7 MR. GOTTSTEIN: I think we absolutely have to
 8 have a delay, and I think that -- well, I mean, we can
 9 weight until -- we can wait until the end of that, but,
 10 obviously, I'm not -- I'd object, or disagree with Mr.
 11 Nemecek.
 12 MR. BIGLEY: Sure, I'd be locked up for...
 13 THE COURT: And, Ms. Taylor, I know you're
 14 raising your hand, but you're not saying anything.
 15 I think we have to take this step by step.
 16 First I have to deal with the commitment petition. See
 17 what the result of that is. Then I'll see what has to
 18 be done from that point forward, and when.
 19 UNIDENTIFIED FEMALE: Your Honor, I just
 20 wanted to say that I had not seen the initial
 21 paperwork.
 22 MR. BIGLEY: (Indiscernible).
 23 THE COURT: Let me -- let me deal with the
 24 initial petition at this point. The commitment
 25 petition,...
 26
 27

1 MR. BIGLEY: (Indiscernible).
 2 THE COURT: ...and then we'll see what happens
 3 and where we're going.
 4 UNIDENTIFIED MALE: And I'd like to call my
 5 (indiscernible) in for...
 6 MR. BIGLEY: Oh, (indiscernible) military
 7 courthouse.
 8 THE COURT: There's a possibility...
 9 MR. BIGLEY: See what judges...
 10 THE COURT: ...that when we do the commitment
 11 petition, we're gonna have some delay in a minute, but
 12 I -- I...
 13 UNIDENTIFIED MALE: But, anything is...
 14 MR. BIGLEY: (Indiscernible).
 15 UNIDENTIFIED MALE: ...possible, that's all I
 16 can say.
 17 THE COURT: I know that. I understand your
 18 position.
 19 UNIDENTIFIED MALE: Okay.
 20 THE COURT: So, ah, you want me to step out?
 21 Would it be easier for people to -- for you to...
 22 MR. BIGLEY: Should be barred -- disbarred.
 23 THE COURT: (Indiscernible).
 24 MS. BRENNAN: Yeah. If you could step out so
 25 I could talk to my client.
 26
 27

1 The Clerk could make a note that we can
 2 discuss that with the probate staff. I don't know how
 3 -- how they jumped the gun, basically. That's what it
 4 sounded like. But there is that order. So any other
 5 preliminary matters?
 6 (No audible response.)
 7 All right. Mr. Nemecek, do you want to call a
 8 witness.
 9 MR. NEMECEK: Well, I actually have a question
 10 (indiscernible).
 11 THE COURT: Oh, sure.
 12 MR. NEMECEK: Please excuse my...
 13 THE COURT: No, that's fine.
 14 MR. NEMECEK: But is this a public hearing?
 15 MS. BRENNAN: I think the respondent...
 16 MR. BIGLEY: (Indiscernible) go downtown to
 17 the courthouse.
 18 MS. BRENNAN: ...-- the respondent has a right
 19 to actually...
 20 MR. BIGLEY: Now...
 21 THE COURT: Well, also, let me -- the statute
 22 -- hold on -- I want to (indiscernible)...
 23 MR. BIGLEY: ...-- they know where I'm at.
 24 THE COURT: (Indiscernible).
 25 MR. BIGLEY: At the courthouse now.
 26
 27

1 MR. BIGLEY: Should be disbarred.
 2 (Off record - no time noted)
 3 (On record - no time noted)
 4 THE CLERK: On record.
 5 THE COURT: All right. So we're back on
 6 record. And any other preliminary matters before we
 7 deal with the 30 day commitment issue?
 8 MS. BRENNAN: I have one matter.
 9 THE COURT: Uh-huh (affirmative).
 10 MS. BRENNAN: But it's not related to
 11 representation, Your Honor.
 12 Mr. Bigley came here on an ex parte order that
 13 was signed by Your Honor. The copy that I have hasn't
 14 been signed by a superior court judge. I don't know if
 15 it's been signed.
 16 UNIDENTIFIED MALE: Yeah.
 17 THE COURT: You're talking my signature --
 18 looked like that?
 19 MS. BRENNAN: Uh-huh (affirmative).
 20 THE COURT: I don't know how you would get a
 21 copy with...
 22 MS. BRENNAN: I got a copy that -- I was
 23 recommended for approval, but I didn't have one signed
 24 by the superior court judge.
 25 THE COURT: I don't know about that.
 26
 27

1 THE COURT: Hold on.
 2 MR. BIGLEY: Right now. Everybody go. Down
 3 to that courthouse, right now. Get our damn cars and
 4 go down there.
 5 THE COURT: The -- there -- ah...
 6 MR. BIGLEY: Today.
 7 THE COURT: The respondent -- this is AS
 8 47.37.35, a 30 day commitment specifies that the
 9 respondent has the right to have the hearing open or
 10 closed to the public as he elects. And so if he wants
 11 the whole public, or just certain persons, such as Mr.
 12 Gottstein here, that's up to him.
 13 MR. NEMECEK: (Indiscernible).
 14 MS. BRENNAN: Yes, he wants Mr. Gottstein.
 15 But Mr. Bigley also wants to have his court in a real
 16 courthouse downtown at the courthouse, and he wants to
 17 have his court hearing today, so.
 18 MR. BIGLEY: Today. I could have that today.
 19 (indiscernible).
 20 THE COURT: This is the courthouse at this
 21 time.
 22 MR. BIGLEY: No. No it ain't.
 23 THE COURT: So we'll proceed here. This is
 24 designated by the...
 25 MR. BIGLEY: That's bull shit.
 26
 27

Page 22

1 THE COURT: ...Alaska Court System as the
 2 court site and we'll proceed here.
 3 MR. BIGLEY: No. No. I request it down
 4 there. They told me.
 5 THE COURT: So, Mr. Nemecek, do you want to
 6 call a witness?
 7 MR. NEMECEK: I do. I'll call Dr. Worrall.
 8 THE COURT: Okay. Dr. Worrall, please
 9 (indiscernible)...
 10 MR. BIGLEY: (Indiscernible).
 11 THE COURT: ...the clerk, and, also, at this
 12 point, Ms. Brennan, I have to indicate that, as best as
 13 possible, if Mr. Bigley can be quiet, or if he's going
 14 to say anything, in a quiet voice.
 15 MR. BIGLEY: (Indiscernible).
 16 THE COURT: It is interfering with our
 17 recording ability.
 18 MR. BIGLEY: That -- make sure that I get my
 19 words, too.
 20 THE COURT: If -- if it continues, then I
 21 would have to consider whether we would have to have
 22 him removed -- I have to make a good record. Okay.
 23 MR. BIGLEY: You're bad.
 24 MS. BRENNAN: Try to be quite, okay?
 25 THE COURT: Dr. Worrall, face the clerk.
 26
 27

Page 23

1 WILLIAM WORRALL
 2 called as a witness in behalf of the State, being first
 3 duly sworn upon oath, testified as follows:
 4 (Oath administered)
 5 WITNESS: I do.
 6 THE CLERK: Sir, would you please state your
 7 full name, spell your last and give your occupation?
 8 WITNESS: William A. Worrall. W-O-R-R-A-L-L.
 9 Psychiatry.
 10 THE CLERK: Thank you.
 11 THE COURT: You may inquire?
 12 MR. NEMECEK: Is there going to be any
 13 objection to qualifying Dr. Worrall as an expert in
 14 psychiatry?
 15 MS. BRENNAN: I'd like to hear his
 16 qualifications.
 17 DIRECT EXAMINATION
 18 BY MR. NEMECEK:
 19 Q Dr. Worrall, what's your occupation?
 20 A I'm a psychiatrist, board certified.
 21 Q Can you give us a brief rundown of your
 22 educational background, please?
 23 A University of Alaska Fairbanks, graduate from
 24 there. (Indiscernible) Washington School of
 25 Medicine. University of Hawaii, Department of
 26
 27

Page 24

1 Psychiatry Residency Program. Been practicing
 2 since 1984 in Alaska as a psychiatrist.
 3 Q Okay. (Indiscernible) work experience? Can
 4 you detail that for us, please?
 5 A Almost all (indiscernible) hospital
 6 psychiatry, private practice, API, off and on
 7 since 1984. Testified in at least a few hundred
 8 commitment (indiscernible). Testified in
 9 superior court.
 10 Q Have you been qualified as an expert in
 11 psychiatry in those proceedings?
 12 A Many times.
 13 MR. NEMECEK: Move to qualify as an expert in
 14 psychiatry.
 15 THE COURT: Ms. Brennan, do you want to voir
 16 dire.
 17 MS. BRENNAN: I just have a couple.
 18 VOIR DIRE EXAMINATION
 19 BY MS. BRENNAN:
 20 Q When were you board certified?
 21 A 1984 -- 1984 or 1985.
 22 Q And was that general psychiatry, or...
 23 A Child psychiatry.
 24 Q And how long did you work for the Department
 25 of Corrections?
 26
 27

Page 25

1 A Six years.
 2 Q And what were those years?
 3 A '96 to 2003, I think.
 4 Q I don't have any other question.
 5 THE COURT: All right. I'll find that Dr.
 6 Worrall is regarded as an expert in the area of
 7 psychiatry.
 8 DIRECT EXAMINATION CONTINUED
 9 BY MR. NEMECEK:
 10 Q Are you familiar with William Bigley?
 11 A Yes.
 12 Q How are you familiar with him?
 13 A I treated him off and on since 1984. I've
 14 been his psychiatrist when he comes to API for
 15 the past (indiscernible).
 16 MS. BRENNAN: Your Honor, object to any
 17 testimony that Mr. Bigley's been here on prior
 18 occasions. It's not relevant to this (indiscernible).
 19 THE COURT: Mr. Nemecek, any response?
 20 MR. NEMECEK: I don't have any problem with
 21 the court not considering prior relations for purposes
 22 of (indiscernible).
 23 THE COURT: All right. So...
 24 MR. NEMECEK: I asked the doctor, how did he
 25 know him? I think the doctor's answered that
 26
 27

1 appropriately, but I understand the limitation that
 2 counsel placed on it. I don't have any problem with
 3 that limitation.
 4 THE COURT: Well, then I just have to state
 5 for the record that Dr. Worrall's testimony as to how
 6 long he's known the respondent is fine, but the court'
 7 not going to make any inferences about any past
 8 judicial proceedings that -- by which Dr. Worrall knows
 9 Mr. Bigley.
 10 MR. NEMECEK: Okay. I have no objection to
 11 that.
 12 THE COURT: All right. Okay.
 13 Q All right. Are you the psychiatrist that
 14 filed the petition for 30 day commitment in this
 15 case?
 16 A I am.
 17 Q That was filed yesterday, is that correct?
 18 A Ah...
 19 Q It shows the date of 8/30, is that correct?
 20 A Correct.
 21 Q Why don't you tell us how Mr. Bigley came to
 22 API this time? When and how?
 23 A Well, he came to us on the 29th on an ex parte
 24 order -- direct admission.
 25 Q And how did he present when he
 26
 27

1 Q Do you believe that Mr. Bigley is gravely
 2 disabled?
 3 A Yes.
 4 Q Why do you believe that?
 5 A He's lost repeated housing locations -- been
 6 evicted. Then he ended up at Brother Francis
 7 Shelter and he was kicked out of there. He, ah,
 8 has been losing weight. Not eating.
 9 (Indiscernible). Has -- he's not able to
 10 maintain in a housing location with the
 11 assistance of others. (Indiscernible).
 12 Q Do you believe that he is able to survive
 13 safely out in the community at this time
 14 (indiscernible)?
 15 A No. He -- his been basically starving
 16 himself. Either voluntarily or involuntarily.
 17 He's losing weight. He's putting himself in
 18 dangerous situations. Threatening other peoples
 19 lives, and he's not safe with regard to others
 20 for the same reason, (indiscernible) carrying on
 21 and making receptionists break down crying,
 22 things like that. I don't think he
 23 (indiscernible).
 24 MS. BRENNAN: Objection. Hearsay.
 25 THE COURT: Mr. Nemecek (indiscernible).
 26
 27

1 (indiscernible)?
 2 A Agitated, uncooperative, delusional, pressured
 3 speech, grandiose, was paranoid, very
 4 hyperactive, (indiscernible) behaviors, angry.
 5 Q How many times have you seen Mr. Bigley since
 6 his admission?
 7 A Several times. Eight or 10. At no time for
 8 any length of time. He refused to carry on a
 9 conversation with me, in which I can get him to
 10 listen to me, or answer any questions. He does
 11 all the talking.
 12 Q During contacts that you've had with him, how
 13 has he presented?
 14 A As I described as angry, talking non-stop,
 15 loud, pressured speech, paranoid, suspicious,
 16 grandiose, out of touch with reality.
 17 Q In addition to your personal contacts with
 18 him, have you also had an opportunity to review
 19 his file?
 20 A Yeah.
 21 Q Based on your contacts with him -- or, your
 22 file -- have you come to a diagnosis for Mr.
 23 Bigley?
 24 A Yes. It's schizoid affective disorder is the
 25 main diagnosis.
 26
 27

1 MR. NEMECEK: Yeah. This is information
 2 (indiscernible).
 3 THE COURT: Well, wait a minute. Is it for
 4 his (indiscernible) or his diagnosis?
 5 MR. NEMECEK: (Indiscernible). I -- my
 6 question was, is Mr. Bigley gravely disabled? Why do
 7 you believe so?
 8 Hearsay is absolutely (indiscernible).
 9 THE COURT: All right. I'll -- excuse me,
 10 I'll overrule the objection (indiscernible).
 11 Q Do you believe that Mr. Bigley is likely to
 12 cause harm to himself or others?
 13 A Ah, yes -- yes and no. Ah, he is probably a
 14 harm to others, and -- and I have notarized
 15 documents, I have police reports, which I'm
 16 relying on that describe details, dates, police
 17 reports, and so on, which I'm relying upon. Mr.
 18 Bigley hasn't provided me this information.
 19 So, threatening to blow up a building,
 20 recently. Threatening to kill his guardian, and
 21 use a knife to do so. And the people that he's
 22 threatening are quite (indiscernible) and
 23 reasonably frightened. So to that extent he's
 24 harming people.
 25 Myself, I don't think he would do that
 26
 27

1 (indiscernible). I do know that that is probably
 2 (indiscernible). I know him pretty well, if he
 3 threatened to kill me, I wouldn't be afraid that
 4 he would kill...

5 Q Has he threatened to kill you?

6 A He threatened twice (indiscernible). But, um,
 7 other people don't know Mr. Bigley. Other people
 8 aren't trained psychiatrists, and it's quite
 9 reasonable for these people to be very frightened
 10 of him.

11 Q Do you believe that there is any less
 12 restrictive alternative for him at this time?

13 A There is no alternative for him
 14 (indiscernible) would be a prison. No one else
 15 could handle Mr. Bigley (indiscernible).

16 Q And do you believe that the treatment here at
 17 API would be the (indiscernible)?

18 A Ah, only if we can treat him with medication.
 19 He could continue to (indiscernible) in terms of
 20 (indiscernible) and scaring of people, and
 21 increasing psychosis, threatening
 22 (indiscernible).

23 Q Do you have a fine course of treatment for
 24 him?

25 A Yes.

26
 27

1 Q Assuming that you are able to implement that
 2 fine course of treatment (indiscernible) would
 3 benefit from that?

4 A Definitely. Yes. In fact, it is what we call
 5 (indiscernible), he would stop threatening people
 6 and stop scaring people, and be able to maintain
 7 housing, and he'd be able to cooperate with the
 8 people that would help provide for his resources
 9 and get a regular amount of food. He'd be much
 10 better off.

11 Q Thank you. That's all I have.

12 THE COURT: Cross examination?
 13 CROSS EXAMINATION
 14 BY MS. BRENNAN:

15 Q Doctor, when Mr. Bigley came to the hospital,
 16 he made it clear that he did not want to be here
 17 at the hospital, is that correct?

18 A Yes.

19 Q Okay. And you testified that he was agitated
 20 when he got here?

21 A Yes.

22 Q Okay. When people come to a place that they
 23 don't want to be, it's not unexpected that they
 24 be agitated, is that correct?

25 A That is understandable, yes.

26
 27

1 Q Okay. And Mr. Bigley was also very angry.
 2 Did the police bring him here to API?

3 A I believe that they did.

4 Q Okay. Do you know that -- if they used
 5 restraints? Handcuffs? Or, anything like that?

6 A I don't know. But that's routine procedure.

7 Q Okay. And if someone is forced to come to API
 8 restrained or in handcuffs, when they haven't
 9 committed a crime, a person would be very angry,
 10 is that correct?

11 A Often, yes.

12 Q Okay. And so it's not unusual for someone to
 13 be held here at API -- to remain angry for the
 14 time that -- that they're being forced to stay
 15 here, is that correct?

16 A It's not unusual.

17 Q Okay. And how long has Mr. Bigley been here
 18 at API now?

19 A Since the 29th; couple days.

20 Q And he is consistent in his belief that he
 21 does not want to be here, is that correct?

22 A Correct.

23 Q And you testified that -- that Mr. Bigley lost
 24 his housing. Is that something that you
 25 discussed with Mr. Bigley?

26
 27

1 A I can't get him to answer any questions.

2 Q So that's information that you received from
 3 collateral resources?

4 A Yes.

5 Q And when Mr. Bigley came to the hospital --
 6 you testified that you were concerned about his
 7 weight, is that correct?

8 A Yes.

9 Q Okay. Did he have anything else on his body?
 10 Like, bruises, or markings, or anything that
 11 would make you concerned about...

12 A Not that I've noticed.

13 Q Okay. And so it's really just his weight that
 14 you're concerned about?

15 A Yes. He's clearly lost weight -- all the
 16 staff commented, they've never seen him so thin.

17 Q Okay. But Mr. Bigley is a rather small
 18 person, is that correct?

19 A Generally, yes.

20 Q Okay. And he's just never been a large man,
 21 is that correct?

22 A I've never seen him (indiscernible).

23 Q Okay. And since he's been at the hospital,
 24 has the hospital given him food?

25 A Yes.

26
 27

1 Q Okay. And is he -- had he been taking the
 2 food?
 3 A Yes.
 4 Q And has he been claiming that the food is
 5 poisonous, or?
 6 A No.
 7 Q And he's brought his coffee today, and he's --
 8 so, that's -- that hasn't been an issue, is that
 9 correct?
 10 A I think the issue is getting access to food.
 11 I doubt that it was, he would eat if he had food.
 12 Q And did Mr. Bigley explain to you that he was
 13 having problems getting food in the community?
 14 A Again, he wouldn't provide any information to
 15 me. It's based on the documents I mentioned.
 16 Q Okay. And you testified that Mr. Bigley can't
 17 survive outside of the community?
 18 A No. I don't think he can safely survive.
 19 Q Safely survive. But you're aware that he --
 20 that he's been out of the hospital for the past
 21 couple months, is that correct?
 22 A Been out since May, I believe.
 23 Q And has he ever called the hospital asking for
 24 assistance?
 25 A He has called the hospital several times
 26
 27

1 hasn't happened, is that correct?
 2 A I'm not aware that he did anything to harm
 3 anyone.
 4 Q Okay. And, so, the concerns of the hospital
 5 is that some people in the community just don't
 6 understand Bill, but Bill is not gonna hurt those
 7 people who don't understand him, is that correct?
 8 A Not right now, I don't think so. I would
 9 agree with that, at the current time.
 10 Q And do -- you testified that you don't believe
 11 that there's any less restrictive alternative, is
 12 that correct?
 13 A Correct.
 14 Q And has the hospital investigated if there's
 15 any other type of housing available to him?
 16 A There's no (indiscernible). There's only a
 17 couple of options. Providence (Indiscernible),
 18 they would never take Bill (indiscernible)
 19 medication, or even go to groups. He just flat
 20 out refuses. There's no point in calling them.
 21 The only other option is Providence Crisis
 22 Recovery Center (indiscernible).
 23 Q But one of the concerns of the hospital is --
 24 is to have him here, so that he has a place to
 25 live, is that correct?
 26
 27

1 asking for assistance of various things. I don't
 2 remember the details today, of any of the calls,
 3 but, most of the calls are more, just kind of
 4 ranting and raving, rather than asking for help.
 5 Q Okay.
 6 A He calls the hospital once in a while.
 7 Q Okay. And when he came to the hospital, he
 8 had adequate clothing?
 9 A This time?
 10 Q Right?
 11 A As far as I know.
 12 Q And so that -- was it a concern for the
 13 hospital, that he's suffering from exposure or
 14 anything like that?
 15 A No. No. (Indiscernible).
 16 Q And it's your opinion that you don't believe
 17 Mr. Bigley is going to act out on any of the
 18 statements that he's been making?
 19 A As an expert who knows him, I know that he's
 20 not that dangerous. Like I said,
 21 (indiscernible). But I don't think that anybody
 22 else would have that understanding.
 23 Q Okay. But you're not aware of him acting like
 24 -- threatening to kill somebody in the community,
 25 and then actually acting it out? That actually
 26
 27

1 A Um...
 2 Q Is that one of the reasons why the hospital
 3 believes that...
 4 A That's one of the reasons he ended up here,
 5 because he found himself homeless and he wanted
 6 somebody to do something about it.
 7 Q But is that -- ir -- if Mr. Bigley agreed to
 8 stay at the hospital, and just would agree to
 9 sleep at the hospital, would the hospital have an
 10 objection that he slept -- left during the day,
 11 and...
 12 MR. BIGLEY: (Indiscernible).
 13 Q ... -- and had the hospital be available to
 14 him to sleep at night?
 15 A Absolutely. This isn't a (indiscernible).
 16 (Indiscernible). We're not a boarding home. You
 17 know, if somebody wants to build a hundred beds
 18 for that function, then (indiscernible).
 19 (Indiscernible) get him improved so he can
 20 sustain himself in housing and (indiscernible).
 21 Q And do you have any positive points about Mr.
 22 Bigley?
 23 A He's certainly a very spirited man. You have
 24 to admire his independent (indiscernible). He
 25 doesn't do anything he doesn't want to do. He's
 26
 27

1 -- the staff like him a lot. (Indiscernible).
 2 When he starts to get better, he gets along very
 3 well with staff. He's had a tough life.
 4 (Indiscernible).
 5 Q I don't have any other questions.
 6 THE COURT: Mr. Nemecek, redirect?
 7 MR. NEMECEK: Briefly.
 8 REDIRECT EXAMINATION
 9 BY MR. NEMECEK:
 10 Q In response to one of Ms. Brennan's questions
 11 you indicated that you weren't aware that Mr.
 12 Bigley actually (indiscernible), is that correct?
 13 A Yeah. (Indiscernible) recent past --
 14 recent...
 15 Q How were you defining (indiscernible) when you
 16 answered that question?
 17 A Physical -- I thought the question was about
 18 physical harm. Doing something (indiscernible).
 19 Q So you weren't referring to, for example,
 20 (indiscernible)?
 21 A No. No. Talking about the threat to bomb a
 22 building, or kill somebody. threatened to make
 23 somebody cry, or threaten to scare somebody.
 24 Yeah. He'd follow through with that
 25 (indiscernible).
 26
 27

1 Q That's all.
 2 THE COURT: Ms. Brennan, any recross?
 3 MS. BRENNAN: No, Your Honor.
 4 THE COURT: Mr. Nemecek, any other witnesses
 5 on the hospitalization issue?
 6 MR. NEMECEK: No, Your Honor.
 7 THE COURT: All right. Ms. Brennan, do you
 8 want to call any witnesses?
 9 MS. BRENNAN: Could we take a break so I could
 10 talk to my client?
 11 THE COURT: Sure. We'll go off record.
 12 THE CLERK: Off record.
 13 (Off record - no time noted)
 14 (On record - no time noted)
 15 THE COURT: So, Ms. Brennan, do you want to
 16 call a witness?
 17 MS. BRENNAN: No, Your Honor.
 18 THE COURT: All right. So, closing remarks on
 19 the hospitalization issue?
 20 MR. NEMECEK: Thank you, Your Honor.
 21 I think we have established each of the
 22 elements necessary for a 30 day commitment, Your Honor.
 23 Dr. Worrall has testified that Mr. Bigley is
 24 gravely disabled. He that he's concerned that Mr.
 25 Bigley is not able to safely survive out in the
 26
 27

1 community. And that some he (indiscernible). And, as a
 2 result of his mental illness, he does present a danger
 3 to himself or others. I don't think that Dr. Worrall
 4 testified that Mr. Bigley would harm himself. Dr.
 5 Worrall is rightfully concerned that because Mr. Bigley
 6 isn't able to meet his basic needs out in the community
 7 (indiscernible) his ability to live.
 8 With respect to h -- the risk to others.
 9 Again, I don't think the concern, at least at this
 10 time, is that he's going to go out and attack somebody
 11 physically. But what we have to keep in mind, that the
 12 harm isn't simply physical injury.
 13 For example, if you look at the assault --
 14 State assault -- the assault statute, one can be
 15 assaulted by being placed in reasonable fear of
 16 imminent physical injury. Mr. Bigley has done that,
 17 and is likely to continue to do that, by making threats
 18 that any reasonable person would take it seriously.
 19 So, under the circumstances, I think that we have
 20 established that on -- there is no reasonable
 21 alternative for him at this time that's less
 22 restrictive than the hospital, and certainly if the
 23 hospital (indiscernible) to treat Mr. Bigley, then he's
 24 likely to stabilize, that his (indiscernible) can
 25 improve. So we would ask the court to grant our
 26
 27

1 petition at this time.
 2 THE COURT: Thank you.
 3 Ms. Brennan?
 4 MS. BRENNAN: Your Honor, we'd ask the court
 5 to deny the petition in this case. We don't believe
 6 that the State has met its burden. The State has to
 7 prove by clear and convincing evidence that Mr. Bigley
 8 is likely to cause harm to himself, or others, or is
 9 gravely disabled.
 10 We don't believe that Mr. Bigley is likely to
 11 cause harm to himself or to others.
 12 Dr. Worrall's testimony was very clear that he
 13 knew Mr. Bigley. That Mr. Bigley would make these
 14 statements. That that -- that Mr. Worrall did not
 15 think that -- that Dr. Worrall didn't think that he
 16 would follow through with those statements, or act out
 17 on them, and that he did not consider him a danger that
 18 way.
 19 Mr. Nemecek has made the argument that he's a
 20 danger to himself or others because of statements he's
 21 made to other people that could cause other people to
 22 be afraid.
 23 One, we don't believe that the evidence has
 24 been strong enough, that he's actually made statements
 25 out of court that have caused people to be afraid.
 26
 27

1 Two, Mr. Worrall -- Dr. Worrall has testified
 2 that he doesn't believe that Mr. Bigley is going to act
 3 out in these -- on these statements, and we believe
 4 that people have a right to -- in this community, Mr.
 5 Bigley may be a little different than the average
 6 citizen, but just because people might think that he's
 7 strange or different, if their perception of him causes
 8 them to be afraid, that shouldn't, in turn, cause Mr.
 9 Bigley's liberty rights to be restrained.

10 The doctor was clear that he doesn't think
 11 that Mr. Bigley would follow through with the threat,
 12 and, therefore, we don't believe that he's a harm to
 13 himself or others in the community.

14 We also don't believe that Mr. Bigley is
 15 gravely disabled. There was testimony that Mr. Bigley
 16 has come to the hospital. That he's been agitated and
 17 he's been angry. However, the testimony is also clear
 18 that Mr. Bigley does not want to be here, and we are --
 19 it's our belief that Mr. Bigley is acting like someone
 20 -- how any reasonable person would act in such a
 21 situation. That he does not want to be here at the
 22 hospital. His liberty is being restrained, and
 23 therefore he's found the situation is very agitating,
 24 and he tends to be very angry. Those are very normal
 25 responses.

26
 27

1 that -- that he may not have the house that -- that
 2 someone else would rather live in, but it's his choice
 3 to make. And we don't believe that he's in a situation
 4 where he's able -- that he's in the community making
 5 choices, where that -- that -- where -- where he cannot
 6 survive safely.

7 In terms of less restrictive. We do believe
 8 that there are less restrictive alternatives. If the
 9 hospital is concerned about housing, then Mr. Bigley
 10 can stay at the hospital and -- and use it as a home
 11 base, and (indiscernible). But to be here full time,
 12 behind locked doors is -- we don't believe is very
 13 necessary. We don't believe it's necessary.

14 The statutes do state that people -- that
 15 voluntary placement is a preference, and that people
 16 can't come and li -- come and leave as they choose,
 17 that it's not -- it's not really voluntary. That Mr.
 18 Bigley should have that option, and he could choose it
 19 if he wants to. So, therefore, we don't believe that
 20 the State has met its burden in this case by clear and
 21 convincing evidence.

22 THE COURT: Thank you.

23 All right. I'll find that the court has
 24 before the Petition For 30 Day Commitment...
 25 3AN2607-156 (SIDE B)

26
 27

1 The hospital has also said he's gravely
 2 disabled because he can't meet his basic needs. We
 3 don't believe that the hospital has presented enough
 4 proof on this.

5 There has been testimony that the hospital is
 6 concerned that he's been losing weight. That Mr.
 7 Bigley has appeared today in court. He doesn't appear
 8 like he's deathly ill, or about to keel over, perhaps
 9 from hunger. There hasn't been any medical evidence
 10 that his body has somehow suffered injury because he's
 11 not eating. And, there's no evidence that Mr. Bigley
 12 is not eating because of some psychiatric condition.
 13 The evidence is that when he is served the food, that
 14 he'll eat the food. This is not a situation where we
 15 have a patient, or just afraid to eat, or can't eat,
 16 because of delusional psychosis.

17 There's been concern that Mr. Bigley lost
 18 housing, and therefore he needs to stay here in the
 19 hospital. But, again, there hasn't been any evidence
 20 or proof of why that is causing Mr. Bigley to not be
 21 able to be safe. He's been here at the hospital. They
 22 haven't noticed anything about him that shows, again,
 23 any injury to his body for some type of deprivation
 24 that is causing him not to live safely. He may be
 25 making choices that most people would not want to make,

26
 27

1 THE COURT: Dr. Worrall's testimony is clear
 2 and convincing that Mr. Bigley does have the mental
 3 illness of schizoid affective order. The doctor
 4 testified that Mr. Bigley, when admitted, was very
 5 agitated, delusional, paranoid, hyperactive, angry,
 6 that -- pressured speech, grandiose, out of touch.
 7 And, so, all those indicators show that Mr. Bigley, as
 8 a result of mental illness, to a great extent, is
 9 unable to reason -- perceive reality.

10 And that the doctor's testimony also was clear
 11 and convincing that Mr. Bigley had lost a substantial
 12 amount of weight from previous times that doctors have
 13 seen him. The doctor referred to Mr. Bigley as
 14 starving himself.

15 Now, whether it was by conscious decision not
 16 to take food, or to -- inability to procure food from
 17 others, doesn't matter. It's the matter of Mr. Bigley
 18 was losing a substantial amount of weight from what it
 19 was when the doctor refers to starving himself, the
 20 court cannot take that in a sense of there being a --
 21 some kind of loss of weight program that Mr. Bigley was
 22 following, rather than starving himself. The doctor
 23 (indiscernible) would mean -- one -- putting one's self
 24 in a dangerous situation, due to the lack of intake of
 25 sustenance.

26
 27

1 And, also, the doctor clearly testified that
 2 Mr. Bigley has lost numerous chances for housing, that
 3 he was homeless. That even though it may be relatively
 4 warm out now, that this is just an additional factor
 5 indicating that Mr. Bigley has put himself in a
 6 situation that -- I can't think of the term --
 7 jeopardizes his own well being, besides not having
 8 sufficient food -- sustenance.

9 I think the evidence is clear and convincing,
 10 based on what the doctor has said, that Mr. Bigley is
 11 gravely disabled, due to his mental illness. I do
 12 believe that he meets the statute criteria of
 13 (indiscernible) at 47.39.57, for gravely disabled, that
 14 if not treated, he will suffer abnormal mental,
 15 emotional and physical distress. The distress
 16 associated with significant impairment of judgment and
 17 reason or behavior, causing a substantial deterioration
 18 of his previous ability to function independently. I
 19 think that is clear.

20 The evidence is clear and convincing, there's no
 21 less restrictive placement alternative than API at this
 22 time. There's some matter of Mr. Bigley just coming
 23 and going as he may please, on a daytime type of
 24 (indiscernible). There's no indication that there's
 25 some other facility that's available for him.

26
27

1 abuse, or substantial property damage to another
 2 person. I tried to emphasize the word "and," because
 3 this is a conjunctive statute, where it's not only a
 4 matter of threatened harm, but also likely to cause the
 5 harm. It's not -- the testimony indicates there's
 6 really a question as to, although Mr. Bigley made
 7 numerous threats to others, as to whether he is likely
 8 to follow through with any of those threats. So I just
 9 don't find clear and convincing evidence on that legal
 10 standard. But (indiscernible) I do find
 11 (indiscernible).

12 That's all I have to say on this petition.
 13 So the next thing we have to deal with is the
 14 Petition for Approval of Psychotropic Medication that's
 15 been filed. And I suggest what I want to do right off
 16 the bat is deal with the withdrawal motion,
 17 (indiscernible)...

18 MR. GOTTSTEIN: Your Honor, if I may.

19 THE COURT: What?

20 MR. GOTTSTEIN: May I?

21 THE COURT: No, not yet. Because you're not
 22 yet the attorney. I have -- I really have to see, you
 23 know, if Ms. Brennan is going to withdraw or is going
 24 to be, really, just an independent motion but -- that
 25 you make on behalf of Mr. Bigley for -- for the

26
27

1 Dr. Worrall's testimony (indiscernible) that
 2 Providence Hospital would not take him because of Mr.
 3 Bigley's refusal to take medication or cooperate, more
 4 of a reasonable alternative facility placement for Mr.
 5 Bigley.

6 So I'm going to find that the petition for 30
 7 day commitment should be granted because Mr. Bigley is
 8 mentally ill, he is gravely disabled...

9 MR. BIGLEY: Retarded. You know that.

10 THE COURT: And there's no (indiscernible)...

11 MR. BIGLEY: (Indiscernible).

12 THE COURT: ...at API at this time. I'll also
13 make a finding that (indiscernible)...

14 MR. BIGLEY: (Indiscernible) got it on the
15 fuckin' record (indiscernible). (Indiscernible) go
16 home right now (indiscernible). (Indiscernible).

17 THE COURT: And I'll note that Mr. Bigley
18 decided to leave the courtroom at this time.

19 I'll also note for the record that there's not
 20 clear and convincing evidence that Mr. Bigley is a
 21 danger to others, because the statute on that, in AS
 22 47.39.1510 of (indiscernible) is a substantial risk of
 23 harm to others, as manifested by recent behavior
 24 causing, attempting or threatening harm, and is likely,
 25 in the near future, to cause physical injury, physical

26
27

1 withdrawal.

2 MR. GOTTSTEIN: My concern is that I don't
 3 think the commitment process is finished yet. It's
 4 gotta be -- it's gotta be -- there's got to be an
 5 opportunity to file objections and (indiscernible) rule
 6 on that before the order becomes final. And I don't --
 7 I don't wanna make too fine a point on that. Um, and
 8 there may be a way to get around it, but I'm very
 9 concerned that that then puts me in the position that I
 10 am now all of a sudden representing him in the
 11 commitment process before it's been completed.

12 UNIDENTIFIED MALE: Does that mean that
13 (indiscernible).

14 MR. GOTTSTEIN: Well, and -- and -- and, Your
 15 Honor -- and I don't know if you have -- if you read
 16 the memo that I wrote, that was attached. But, I -- I
 17 didn't express my belief that the time frames involved,
 18 you know, do not allow for proper consideration and
 19 protection of respondent's rights. And, by referring
 20 to the special master, and then proceed as if the
 21 superior court has -- has granted something that the
 22 statutes require the superior court's determination on
 23 it, and act as if they already happened, when it
 24 hasn't. And so it comes up here at this point.

25 So I'm prepared to say -- I entered a limited

26
27

1 entry of appearance as to the -- you know, 839
 2 petition. I'm certainly prepared to go forward with
 3 that. But, if -- you know, if -- if -- if I'm in now
 4 and she's out, then, you made me -- ah, you know, then
 5 I'll -- you know, then -- then where's the deal on the
 6 -- the -- it's not particularly articulate, but, then -
 7 - then I -- who is representing him with respect to the
 8 further proceedings on the commitment before the
 9 superior court?
 10 THE COURT: Well, I don't have an answer on
 11 that, frankly. I don't know.
 12 MR. GOTTSTEIN: So, I --...
 13 THE COURT: But, yeah, I see what you're
 14 getting at.
 15 MR. GOTTSTEIN: Okay. So -- make your way
 16 through that...
 17 THE COURT: Well...
 18 MR. NEMECEK: I have an idea.
 19 THE COURT: Well, (indiscernible). Well,
 20 first of all -- Ms. Brennan, you know, still,
 21 technically, represents Mr. Bigley. Do you want to say
 22 anything before I hear from Mr. Nemecek about this?
 23 MS. BRENNAN: No -- I mean, I --
 24 (indiscernible).
 25 THE COURT: Okay.
 26
 27

1 (indiscernible).
 2 So, to the extent that there's any argument
 3 being made about those pleadings, I object, and I would
 4 ask the court to disregard them at this time.
 5 THE COURT: Well, just for everyone -- just
 6 for the record, and everyone's benefit. I mean, I
 7 looked at all those pleadings this morning, so at least
 8 I can be prepared. But I recognize that -- I recognize
 9 (indiscernible). Mr. Gottstein is not yet Mr. Bigley's
 10 attorney, as of this moment. So...
 11 MS. BRENNAN: Your Honor, I do just to say
 12 that -- I mean, I agree with Mr. Gottstein. I think
 13 that the process that we've developed has a problem, in
 14 that, he's right, that Mr. Bigley is entitled to
 15 superior court review. At the same time, Mr. Bigley
 16 (indiscernible) represent him on the medication
 17 (indiscernible).
 18 MR. NEMECEK: But, Your Honor...
 19 THE COURT: Well, no, I don't want to go any
 20 further. I want to know if the motion to withdraw --
 21 now it's drafted, you know, on Mr. Got -- Gottstein's
 22 stationery, but it has for Ms. Brennan to sign. But I
 23 have to have a -- you know, some kind formal written
 24 document before I can go ahead with Mr. Gottstein and
 25 deal with the next petition.
 26
 27

1 Mr. Nemecek?
 2 MR. NEMECEK: Well, I guess, to the extent
 3 that we are treating the 30 day petition and the meds
 4 petition as several requests on the part of the
 5 hospital, I mean, it's certainly not true. But we're
 6 almost treating them like two different cases, and
 7 they're not two different cases. They're a single
 8 case. And so he either has one attorney representing
 9 Mr. Bigley in that case, or another attorney
 10 representing him in that case.
 11 I think the public defender has already made
 12 its -- its position clear that they don't generally
 13 share representation. So, if they feel that now is the
 14 time to withdraw, that's fine, they can do that. That
 15 -- if Mr. Gottstein enters an appearance, he's in, and
 16 he's in for all purposes. He's in for this case. But,
 17 I think that's the answer -- (indiscernible) answer
 18 your question.
 19 I'm a little bit concerned, Mr. Gottstein,
 20 before some things could be filed. I would object to
 21 the court considering anything that's been filed by Mr.
 22 Gottstein, unless and until he's counsel in this case.
 23 Otherwise, this is just a filing of something by some
 24 member of the public that I don't think it's
 25 appropriate for the court to consider. It is not filed
 26
 27

1 MR. GOTTSTEIN: If that's only with respect to
 2 the limited entry of appearance, and that the withdr --
 3 as I drafted it, and I know it may turn out
 4 differently. And I think that, as you know, Your
 5 Honor, that you are, ah, incorrect that I'm not his
 6 attorney. He's entitled to his attorney of choice. I
 7 filed an entry of appearance. I've filed documents.
 8 And I am his attorney. Now, there's a dispute over
 9 whether or not that's effective, and, you know, the
 10 supreme court hasn't ruled on it, but I think that I am
 11 his attorney. And -- and...
 12 THE COURT: Your the attorney as to the --the
 13 medication.
 14 MR. GOTTSTEIN: The medication, yes.
 15 THE COURT: Okay. But, look, I want to get --
 16 deal with this -- I mean, because the medication
 17 petition is the next step. I have (indiscernible) in
 18 20 minutes (indiscernible). So I don't if you were
 19 going to sign this, or I'm going to have to, basically,
 20 an oral motion by Mr. Gottstein on a client's behalf
 21 with -- with substitution.
 22 And if Ms. Brennan wants to just voluntarily
 23 sign this, then...
 24 MS. BRENNAN: Yeah.
 25 MR. GOTTSTEIN: Your Honor, if I may. I -- I
 26
 27

1 don't think that I need to do that at all. I think
2 that -- I don't think that she needs to withdraw, as to
3 -- well, I mean, she may -- she maybe needs to withdraw
4 as to the medication, but...

5 THE COURT: Now, wait a minute. I'm looking
6 at -- the order of appointment was signed August 29th -
7 - it's the formal order. Public Defender Agency is
8 appointed counsel for respondent in this proceeding.
9 So, a proceeding means to me, just filed, so, not just
10 a particular petition. So the public defender agency,
11 in my eyes, is Mr. Bigley's attorney for all matters,
12 right? (Indiscernible) rights, and if it wants to
13 withdraw, then Mr. Gottstein will take over for the
14 medication portion. Look this is going to have to be
15 dealt with right now.

16 Ms. Brennan, do you want to sign this, or are
17 we going to have this an oral motion by Mr. Gottstein -
18 - on the client's behalf, or informal involuntary
19 withdrawal, counsel. (Indiscernible)

20 MS. BRENNAN: I mean, he would have to make a
21 motion, Your Honor. I can't -- I mean, the higher-ups
22 in my office do not think that the public defender
23 office can voluntarily take one side of the case.
24 (Indiscernible). So I -- I -- I don't...

25 UNIDENTIFIED MALE: And I don't think there's
26
27

1 have to withdraw (indiscernible) -- it's under their
2 policy -- as to the medication issue. Because I'm --
3 I'm not objecting to them staying in.

4 THE COURT: Well, I'm gonna have to play by
5 the rules. (Indiscernible) sole attorney. I mean,
6 there could be withdrawal where -- where the party --
7 there's other counsel ready to be substituted for the
8 attorney who wishes to withdraw. Ms. Brennan is saying
9 she wishes to withdraw. Then the other would be
10 (indiscernible), where a party stresses in open court,
11 or in writing, withdrawal as the party's attorney, and
12 the it's provided in writing or on the record a current
13 physical address and a telephone number, and, let's see
14 --- (indiscernible).

15 MR. NEMECEK: Excuse me, Your Honor.

16 THE COURT: Let -- well, let's -- I'm just gon
17 -- I guess I'm just gonna go ahead and -- Mr. Gottstein
18 -- I guess I'm just gonna recognize you as substituting
19 for the Public Defen -- Defender Agency. You filed all
20 these pleadings. They've indicated they can't go
21 forward (indiscernible) to other counsel. So I'll just
22 recognize you as sole attorney for Mr. Bigley from this
23 point forward. Now, the issue was whether you would
24 have to be required, you know, within a possible
25 objection to appeal as to the commitment issue. I

26
27

1 any (indiscernible)

2 MS. BRENNAN: I don't have authority from my
3 office to do that.

4 THE COURT: Okay. All right. Let me...

5 MR. GOTTSTEIN: Your Honor...

6 THE COURT: Mr. Gottstein?

7 MR. GOTTSTEIN: ...we've gone through the --
8 the previous hearing, but -- but there is no
9 prohibition for a client to be represented by more than
10 one attorney. And I'm not asking that -- that the
11 public defenders withdraw. That -- that's what you do,
12 Your Honor. I'm just saying...

13 THE COURT: (Indiscernible).

14 MR. GOTTSTEIN: (Indiscernible).

15 THE COURT: (Indiscernible). I got it from
16 Ms. Brennan, the Public Defender Agency cannot be co-
17 counsel, correct, Ms. Brennan?

18 MS. BRENNAN: That's our (indiscernible).

19 THE COURT: That's their position. They won't
20 take that...

21 MR. GOTTSTEIN: Well, then, I think the only
22 way out is that I'm in. He has the right to have me in
23 as his counsel in medication petition, and if the public
24 defender agency -- and they need to do what they need
25 to do, but it seems to me, from what I understand, they

26
27

1 mean, that's not for me to deal with right now. I
2 mean, it's what Mr. Bigley wants to file objections to
3 my recommendations -- findings and recommendations as
4 to the commitment, and then, the court will just have
5 to deal with whoever is going to file those on his
6 behalf, and whether (indiscernible), filed on behalf,
7 and whether it's the Public Defender Agency, or whether
8 you do, requires -- whether the State would take
9 objection as to whether it's Mr. Gottstein's filing or
10 Ms. Brennan's, on behalf of Mr. -- but that's not
11 something I have to deal with right now. I'm just
12 trying to go forward step-by-step. I want to deal with
13 the medication petition now, and -- and recognize Mr.
14 Gottstein as Mr. Bigley's attorney of record for that.
15 (Indiscernible) Public Defender Agency as being
16 withdrawn (indiscernible).

17 MR. NEMECEK: I'm trying to clarify that. So
18 the Public Defender has now by court order...

19 THE COURT: From the case.

20 MR. NEMECEK: Dropped from the case. Mr.
21 Gottstein is in.

22 THE COURT: Uh-huh (affirmative).

23 MR. NEMECEK: By limited entry, and this is an
24 entry (indiscernible), he is now counsel of record in
25 this case. I just want to make sure that is clear. He

26
27

1 either is or he isn't, otherwise, we object. We're
2 gonna have briefing on this.

3 THE COURT: (Indiscernible).

4 MR. NEMECEK: I'm not gonna just let this go.

5 THE COURT: You're gonna have briefing --
6 Okay.

7 MR. NEMECEK: I -- I would -- would file an
8 opposition to the motion (indiscernible) -- is that --
9 it's some sort of partial motion to withdraw, I'm gonna
10 object to it. I'm gonna file an opposition. So, I
11 want to make this clear.

12 THE COURT: Well, I'll recognize Mr. Gottstein
13 as Mr. Bigley's attorney of record from this point
14 forward. But I'm not making any finding as to -- if
15 there's going to be objections to the petition -- my
16 findings are already made on the recommendations on the
17 commitment petition who deals with that -- I mean,
18 whether -- whether it has to be Mr. Gottstein or it has
19 to be the Public Defender Agency. I'm just not saying
20 anything. I'm just stressing that from this point
21 forward, Mr. Gottstein is the attorney of record, and
22 then if there's going to be any objections, and if the
23 State wants to file -- if the State wants to file some
24 kind of pleadings saying that person doesn't have the
25 right to file, then that issue will be joined at that

26
27

1 MR. GOTTSTEIN: Do you want -- I mean, I --
2 you read it. Do you want me to -- I can say that
3 (indiscernible).

4 THE COURT: Okay. Well, then, I don't see
5 anything different -- get Mr. Nemecek's reaction to the
6 motion to permit forced drugging petition.

7 MR. NEMECEK: Well, my reaction would be to
8 oppose the motion to the extent that it is a motion to
9 dismiss the motion for -- actually, this is the
10 document here -- court approval of administration of
11 psychotropic medications, I believe is the accurate
12 title of the (indiscernible).

13 I oppose on the grounds that the argument that
14 seems to be made in that motion is that we are somehow
15 required to lay out every factual assertion that we
16 intend to make during the hearing, or else the petition
17 is insufficient. And, I just say that that's
18 completely incorrect.

19 If this even does what it's supposed to do,
20 which is to place the petition on notice of what the
21 request is -- what the legal basis for the request is,
22 which is, (indiscernible) of getting a (indiscernible)
23 informed consent. That is the legal finding that the
24 court has to make in order to grant the petition.

25 Now, there may be any number of factors, as

26
27

1 time. Okay?

2 MR. NEMECEK: I think I'm -- I think I'm
3 (indiscernible).

4 MR. GOTTSTEIN I'm not all together clear. I
5 wonder if -- you know, just get a written order, but,
6 I'm not objecting (indiscernible) material that I filed
7 with regard to medication.

8 THE COURT: (Indiscernible) medication
9 petition at this time.

10 MR. GOTTSTEIN: And I filed a motion to
11 dismiss (indiscernible).

12 THE COURT: (Indiscernible).

13 MR. NEMECEK: I wish I could (indiscernible),
14 but I'm afraid I don't. And, so, I would ask the court
15 to (indiscernible).

16 THE COURT: (Indiscernible). I have to make
17 sure.

18 Ms. Brennan, if you wanna leave, that's up to
19 you. If you want to stay, that's up to you. Mr.
20 Gottstein (indiscernible).

21 We'll go off record. (Indiscernible).

22 (Off record - no time noted)

23 (On record - no time noted)

24 THE COURT: All right. So turning to the
25 medication petition. Any preliminary matters?

26
27

1 laid out in case law or as (indiscernible) statutes
2 that the court is supposed to consider in making that
3 finding, and, certainly the -- the hospital is going to
4 present its facts that support those factors that the
5 court is supposed to consider. But that hardly makes
6 the pleading itself sufficient in the sense of
7 providing adequate notice to the patient of what is
8 being requested and why it's being requested and why
9 it's being requested. I'm not aware of any law that
10 suggests that a pleading that requests something has to
11 contain every factual assertion that (indiscernible)
12 were made during the course of the hearing in support
13 the factors that the court has to consider.

14 So under the circumstances, I don't think
15 there is any legal basis for the (indiscernible)
16 petition, for the reasons stated in the motion.

17 MR. GOTTSTEIN: Your Honor, if I may respond?

18 THE COURT: Yes, go ahead.

19 MR. GOTTSTEIN: I think Mr. Nemecek is
20 confused. I'm not saying that they have to lay out
21 every fact, but -- but that they have to, under basic
22 due process provide as Hamde v. Rumsfeld (ph) said
23 (indiscernible) supreme court, the respondent is
24 entitled -- he must first be notified -- that he must
25 receive notice of the factual basis, and it's their

26
27

1 opportunity to rebut the government's factual
 2 assertion. And in...
 3 THE COURT: Hold on a second. Would you let
 4 Mr. (indiscernible).
 5 MR. BIGLEY: (Indiscernible).
 6 MR. GOTTSTEIN: Yeah. Get the cup and then
 7 come back.
 8 MR. BIGLEY: Excuse me.
 9 UNIDENTIFIED MALE: (Indiscernible).
 10 THE COURT: (Indiscernible).
 11 MR. BIGLEY: (Indiscernible) meeting --
 12 (indiscernible) -- police officer (indiscernible).
 13 Man!
 14 MR. GOTTSTEIN: Okay. So...
 15 MR. BIGLEY: (Indiscernible).
 16 MR. GOTTSTEIN: In -- in Weather -- in Myers,
 17 the court fundamentally increased the requirement from
 18 the statute, and it required that in order to prevail
 19 on forced drugging petitions, that the court has to
 20 find -- consider -- well, find -- well, that -- the
 21 court has to consider the explanation of the patient's
 22 diagnosis and prognosis, or their predominate systems
 23 with and without the medication, and all those other
 24 things -- information about the proposed medication,
 25 services of side effects. The side effects and
 26
 27

1 THE COURT: ...(indiscernible) the motion to
 2 permit forced drugging petition be denied.
 3 MR. GOTTSTEIN: Your Honor, if I may, just
 4 briefly. I did suggest the al -- an alternative
 5 dismissal, and I (indiscernible) impliedly denied that,
 6 too, that they should provide me with that fact, rather
 7 than dismiss it -- provide -- give them an opportunity
 8 -- and me an opportunity -- require then provide the
 9 factual basis and allow me an opportunity to prepare,
 10 as an alternative to dismissal. It sounds like you
 11 were denying that, as well, but I just wanted to
 12 (indiscernible). I mean, I really think I ought to be
 13 able to -- I ought to have the basic facts on the
 14 Meyers standards as to what my client is being charged
 15 with.
 16 THE COURT: Well, I'm just -- I made my
 17 recommendation. I don't feel that the statutes, the
 18 court rules or the Meyers case say that that has to be
 19 done, and, so, I feel that safe for counsel go forward
 20 on the petition for court approval for administration
 21 of psychotropic medication, based on what is stated in
 22 that one document.
 23 MR. GOTTSTEIN: Your Honor, if I may, I'd like
 24 to -- I can't go forward now and request a short
 25 continuance in order to prepare.
 26
 27

1 benefits, including the risks of non-treatment. The
 2 explanation of interaction with other drugs. And
 3 review the patient's history, and previous side effects
 4 from the medication, as well as -- I think -- and I --
 5 you know, the Minnesota -- the Minnesota court. And so
 6 it's impossible for me to adequately prepare to defend
 7 without knowing the basis -- factual basis of the case
 8 of relevance to the considerations that the court has
 9 to make -- if I don't know the factual basis.
 10 THE COURT: All right. Thank you.
 11 Well, I'm going to recommend that the motion
 12 to dismiss forced drugging petition be as the document
 13 is entitled, and it's really referring to the petition
 14 for court approval of administration of psychotropic
 15 medication that that is denied, because neither the
 16 case (indiscernible), 839(b), nor the Myers case
 17 specify that the "medication decision," as it's called,
 18 has to lay out a complete factual analysis of the case
 19 against the respondent or reason for the medication
 20 petition. The Myers case requires the court make
 21 findings in the end, but it does not require that there
 22 be a -- very explicit detailed petition as to
 23 everything the State's may be putting forward. So for
 24 those reasons
 25 MR. BIGLEY: (Indiscernible).
 26
 27

1 THE COURT: When you say "short continuance,"
 2 what do you mean by "short"?
 3 MR. GOTTSTEIN: Well, if -- you know, as the
 4 court (indiscernible), so I can prepare to go forward
 5 on Wednesday.
 6 THE COURT: So, let me hear from Mr. Nemecek
 7 about that oral motion for continuance.
 8 MR. NEMECEK: I'd like to hear the basis for
 9 the motion. I heard a motion. I haven't heard the
 10 basis for it.
 11 MR. GOTTSTEIN: Well, (indiscernible).
 12 THE COURT: Okay. That's fine.
 13 UNIDENTIFIED MALE: (Indiscernible)
 14 THE COURT: Mr. Nemecek, I'm just making a
 15 complete record here.
 16 UNIDENTIFIED MALE: Yeah, I understand. I
 17 apologize for...
 18 THE COURT: That's all right.
 19 MR. NEMECEK: I think -- well, initially, I
 20 would oppose the request. I think that "I need more
 21 time to prepare" it's a little bit vague. I'd like
 22 some more information on what it is that Mr. Gottstein
 23 feels he didn't know, walking into this room, that
 24 comes as a surprise to him at this point. He sat in on
 25 the 30 day meds petition. He knows what the doctor is
 26
 27

1 going to say about the basis for the meds petition,
2 because the testimony is going to be extremely similar,
3 if not identical...

4 MR. BIGLEY: (Indiscernible).

5 MR. NEMECEK: So, under the circumstances, I
6 don't think anything is going to come as a surprise. I
7 don't think that Mr. Gottstein, frankly, could be any
8 prepared -- more prepared than he is now for this. And
9 if he feels that way, I'd like some more detail on why
10 he feels that way. And if the court is going to
11 consider it, I'd like to make a further argument on why
12 this prejudices the hospital.

13 THE COURT: Okay. I guess -- so, Mr.
14 Gottstein, if you can inform Mr. Nemecek of additional
15 reasons why you feel (indiscernible), then he can
16 possibly defer objecting.

17 MR. GOTTSTEIN: Well, I can do that. But I'd
18 like to first go over it with the court. And
19 Weatherhorn said about -- precisely this, is that
20 there's a necessity because of the respondent's right -
21 -- constitutional right to be free from confinement.
22 That he has a right to go forward as fast as possible.
23 But he can...

24 MR. NEMECEK: And I would object to that
25 argument to the extent that we're talking about
26
27

1 simple. I was called yesterday on my cell phone at
2 4:00 p.m., that this has been filed. And a hearing set
3 for 1:30 the next day. I -- I -- I filed, and served
4 on, you know, the State, at 8:00 a.m. this morning --
5 some preliminary motions, and, it's frankly absurd to
6 think that I can be prepared in less than 24 hours for
7 this series of proceeding. I've got -- what about
8 witnesses? How can I possibly line up witnesses in
9 that period of time. Or, anything else, or have
10 something prepared to file. I think it's frankly
11 absurd. I need time to prepare. It's been less than
12 24 hours. And the -- and the -- and the Alaska Supreme
13 Court says there is no reason to rush this. You've got
14 to -- there's no reason to rush, because you've got to
15 protect my client's right to be free from medication.
16 And (indiscernible) -- and be sure that you do it
17 right.

18 THE COURT: Mr. Nemecek, with that, if you
19 want to comment?

20 MR. NEMECEK: Just a couple things. First of
21 all, I don't know when Mr. Gottstein would have any
22 witnesses in mind that he's going to call. So it's
23 irrelevant to this proceeding (indiscernible).

24 I will say that, from a hospital perspective,
25 this causes some pretty significant difficulties,
26
27

1 confinement. The 30 day med petition has already been
2 ruled on. This is not about confinement. This is
3 about the administration of medication. So I object to
4 any...

5 MR. BIGLEY: I wanna be free. It's my life.
6 Okay.

7 MR. GOTTSTEIN: I was just ar -- I was just
8 stating what the -- the -- my -- the way my...

9 MR. BIGLEY: (Indiscernible).

10 THE COURT: (Indiscernible).

11 MR. NEMECEK: (Indiscernible).

12 MR. BIGLEY: (Indiscernible).

13 MR. GOTTSTEIN: ...contrasting that with --
14 the -- the court was very clear that, in contrast, so
15 long as no drugs have been administered, the rights to
16 liberty and privacy implicated by the right to receive
17 psychotropic medication (indiscernible)...

18 THE COURT: Mr. Gottstein, I'm gonna cut you
19 off.

20 We're doing, right now, this second, is the
21 question of do you need more time to prepare for the --
22 deal with the medication petition. Not what's
23 (indiscernible) -- not, you know, the fundamental
24 rights, but, just appear for this case.

25 MR. GOTTSTEIN: Well, it's very -- it's very
26
27

1 because we now have a patient that commitment has been
2 (indiscernible) on, that, essentially our hands are
3 tied from treating, because the manifestation of Mr.
4 Bigley's...

5 MR. BIGLEY: (Indiscernible).

6 MR. NEMECEK: ...-- (indiscernible) is such
7 that he was disruptive to the other patients. He is
8 threatening towards the doctor and staff. And he is,
9 frankly, unrealistic to think that the hospital is
10 going to give me a treatment in a (indiscernible) way,
11 without the ability to administer medications that are
12 being suggested here, in order to stabilize Mr. Bigley.

13 MR. BIGLEY: (Indiscernible).

14 MR. NEMECEK: I think that it's difficult for
15 me to...

16 MR. BIGLEY: (Indiscernible).

17 MR. NEMECEK: ...sympathize with counsel's
18 position that he needs more time, when -- but, what I
19 can only refer to as Mr. Bigley's choice. He didn't
20 come -- become counsel until, frankly, just a few
21 minutes ago. He had counsel who was prepared to go,
22 and would have been prepared to go. The Public
23 Defender Agency is (indiscernible) prepared to go
24 forward on the medication petition with less than 24
25 hours.
26
27

1 MR. BIGLEY: (Indiscernible).
 2 MR. NEMECEK: So, I'm not sure what else to
 3 say, other than I don't think that Mr. Gottstein is
 4 going to be, in any -- in any practical sense -- in any
 5 different position on Wednesday than he is today. If he
 6 has specific witnesses that he thinks are relevant, I'd
 7 be curious to know who those witnesses are, because I
 8 highly doubt that they are going to be relevant to this
 9 petition with respect to Mr. Bigley. So for all of
 10 those reasons I would strongly recommend against
 11 continuing this. I would oppose the motion to
 12 continue, which, essentially, is an oral motion to
 13 continue at this time. I note that the documents --
 14 what he filed in numerous pleadings at 8:00 a.m.
 15 (indiscernible)...
 16 MR. BIGLEY: (Indiscernible).
 17 MR. GOTTSTEIN: (Indiscernible). But -- but,
 18 Your Honor...
 19 THE COURT: Wait a minute. Wait a minute. I
 20 just want to interject something. I can't fault Mr.
 21 Gottstein for not filing a motion to continue, because,
 22 at that time there had been ruling that Mr. Bigley was
 23 going to be committed (indiscernible) the medication
 24 petition. He filed a motion to dismiss, but it would
 25 have been a little theoretical for him to also file a
 26
 27

1 patients, to have a right to have treatment in the
 2 facility, as well.
 3 MR. GOTTSTEIN: Your Honor, (indiscernible).
 4 THE CLERK: Mr. Gottstein, would you speak up,
 5 please?
 6 MR. GOTTSTEIN: I'm sorry.
 7 THE COURT: Yeah. Okay. Well, let's deal
 8 with this oral motion (indiscernible). I'm going to
 9 grant the motion. I want to point out that -- that
 10 (indiscernible) psychotropic medication emergency
 11 specifies...
 12 3AN2607-157 (SIDE C)
 13 THE COURT: ...(indiscernible) treatment
 14 facility may administer psychotropic medication to a
 15 patient without the patient's informed consent,
 16 regardless of whether the patient is capable of giving
 17 informed consent, only if, one, there is a crisis
 18 situation or a pending crisis situation that requires
 19 immediate use of medication to preserve the life of, or
 20 prevent significant physical harm to the patient or
 21 another person that's determined by a licensed
 22 physician or a registered nurse. The behavior or
 23 condition of the patient giving rise to the crises
 24 under this paragraph, and the staff's response to the
 25 behavior or condition, must be documented in the
 26
 27

1 motion to continue. I mean, he could have done it in
 2 the alternative, but that's (indiscernible).
 3 MR. GOTTSTEIN: (Indiscernible).
 4 THE COURT: I'm making a record.
 5 UNIDENTIFIED MALE: (Indiscernible).
 6 MR. GOTTSTEIN: I mean, I think that the
 7 hospital fundamentally misunderstands (indiscernible),
 8 and that...
 9 MR. BIGLEY: (Indiscernible).
 10 MR. GOTTSTEIN: ...the commitment is based on
 11 safety. Safety in the community and safety to Mr.
 12 Bigley, and the supreme court has said, one, when he's
 13 in the hospital that it's no longer an issue, and
 14 therefore (indiscernible). And it's a important
 15 decision, with all these factors to be carefully
 16 considered. And I'm just (undiscernible) my client
 17 (indiscernible).
 18 MR. BIGLEY: (Indiscernible).
 19 THE COURT: All right. Hold on a second. Mr.
 20 Nemecek, do you want to add anything?
 21 MR. NEMECEK: Just to add that -- suggest that
 22 (indiscernible).
 23 MR. BIGLEY: (Indiscernible).
 24 MR. NEMECEK: The safety issues within
 25 (indiscernible), and with respect to the other
 26
 27

1 patient's medical records. The documentation must
 2 include an explanation of alternative responses to the
 3 crisis...
 4 MR. BIGLEY: (Indiscernible).
 5 THE COURT: ...that were considered or
 6 attempted by the staff, and why those responses were
 7 not (indiscernible), and the medication, as ordered by
 8 a licensed physician.
 9 This, I think, would reasonably cover any
 10 emergency crisis situation, whatever you want to term
 11 it, between now and dealing with the medication
 12 petition.
 13 MR. BIGLEY: (Indiscernible).
 14 THE COURT: I do believe that Mr. Gottstein
 15 should have the right to prepare a little more, because
 16 of the extent to which the -- the Myers and the
 17 Weatherhorn cases set out what the court is supposed to
 18 deal with, and, thus, any attorney representing the
 19 respondent. And I feel that, in the meantime, if the
 20 hospital feels that Mr. Bigley is causing problems that
 21 might rise to the nature of, where they have to
 22 administer medications...
 23 MR. BIGLEY: They don't have to.
 24 THE COURT: ...(indiscernible) which they have
 25 the inherent statutory authority.
 26
 27

1 MR. BIGLEY: (Indiscernible).
 2 THE COURT: And, so, as much as the hospital
 3 wants to go forward balancing Mr. Bigley's rights, I
 4 feel that we will continue the matter until Wednesday
 5 morning.
 6 And I have to ask the Clerk, is it correct
 7 that Wednesday morning I'm free?
 8 THE CLERK: (Indiscernible).
 9 THE COURT: So I can say 9 o'clock Wednesday
 10 morning?
 11 THE CLERK: That's correct.
 12 THE COURT: Downtown.
 13 MR. BIGLEY: (Indiscernible).
 14 UNIDENTIFIED MALE: Your Honor,
 15 (indiscernible).
 16 THE COURT: Yeah. It will be downtown.
 17 MR. NEMECEK: All right. I know what position
 18 Mr. Gottstein is going to take on this. I am told --
 19 and I apologize -- by...
 20 THE COURT: Sure.
 21 MR. NEMECEK: ...Ms. Russo, that Judge
 22 Michalski has some familiarity with these proceedings -
 23 - has actually conducted trials on Mr. Bigley
 24 previously. At this point, I guess I would request
 25 that it be taken up before Judge Michalski if he is
 26
 27

1 what Mr. Nemecek just asked about a judge, because then
 2 I'll have to recess this hearing and have everyone
 3 leave while I make a call downtown to...
 4 MR. BIGLEY: (Indiscernible).
 5 THE COURT: (Indiscernible). You know, what
 6 the court, administratively, wants -- how the court
 7 wants to deal with it.
 8 MR. GOTTSTEIN: First off, of course, I don't
 9 think it's a proper for the judge to make his decision
 10 based on previous testimony in other cases.
 11 THE COURT: No (indiscernible).
 12 MR. GOTTSTEIN: But I have no object...
 13 (Indiscernible).
 14 THE COURT: No. I'm not gonna -- no -- I will
 15 not be asking...
 16 MR. GOTTSTEIN: (Indiscernible).
 17 THE COURT: Well, wait. Let me finish. I
 18 will not be asking the assigned judge in this case, I
 19 will be asking the court administration.
 20 MR. GOTTSTEIN: I have no objection to the
 21 superior court. (Indiscernible) from the get-go
 22 (indiscernible).
 23 THE COURT: All right. I have to ask everyone
 24 to (indiscernible) leave while I place a call.
 25 MR. BIGLEY: I would like to hear it.
 26
 27

1 available...
 2 MR. BIGLEY: (Indiscernible).
 3 MR. NEMECEK: ...given that he is familiar
 4 with the history of the case.
 5 THE COURT: I need a quick response from Mr.
 6 Gottstein, because then I am going to have to go off
 7 record, have everyone leave -- hold on.
 8 Ms. Taylor?
 9 MS. TAYLOR: I'm not (indiscernible).
 10 MR. NEMECEK: Wednesday's our regular
 11 commitment.
 12 MR. BIGLEY: (Indiscernible).
 13 THE COURT: And (indiscernible) afternoon, I'm
 14 out here to do those, but I have to...
 15 MR. BIGLEY: (Indiscernible) the downtown
 16 courthouse. I come down here.
 17 MS. TAYLOR: API is set Wednesday
 18 THE COURT: I know. I know. And I'm doing it
 19 Wednesday afternoon.
 20 MR. BIGLEY: (Indiscernible).
 21 THE COURT: I'm going to have to proceed on
 22 this Wednesday morning, if it's going to be me.
 23 MR. BIGLEY: The judge (indiscernible).
 24 THE COURT: So, that's all I'd like to say.
 25 But, I just need Mr. Gottstein's quick response as to
 26
 27

1 (Off record - no time noted)
 2 (On record - no time noted)
 3 THE COURT: On record. For administrative
 4 purposes, I just spoke to the presiding judge, Judge
 5 Christian, just to inform her of -- the (indiscernible)
 6 send a request for continuance, and (indiscernible)
 7 granted it, and I tentatively set the matter before
 8 myself. 9 o'clock next Wednesday, but then it was the
 9 State's request to have the matter before Judge
 10 Michalski, the judge on this case And I authenticated
 11 that the respondent's attorney did not oppose that,
 12 however, the presiding judge has stated that I am to
 13 chair the matter. That I cannot put any matter up
 14 before -- on a Superior Court Judge's calendar.
 15 Basically, if either of the parties want it before
 16 someone other than me, then it would have to be a
 17 formal written motion.
 18 But, at this point, it is set before me at 9
 19 o'clock at my courtroom, (indiscernible) for Wednesday,
 20 and (indiscernible). So that's where things stand at
 21 this time.
 22 MR. BIGLEY: (Indiscernible).
 23 THE COURT: What was that?
 24 MS. TAYLOR: (Indiscernible).
 25 THE COURT: Ms. Taylor?
 26
 27

1 MS. TAYLOR: Would you have an objection, sir,
 2 if I participate by telephone?
 3 MR. BIGLEY: (Indiscernible).
 4 THE COURT: No. That -- that's -- any
 5 objection to Ms. Taylor participating telephonically?
 6 MR. BIGLEY: (Indiscernible).
 7 MR. GOTTSTEIN: I have -- I would like to
 8 know, you know, have a report in advance, to know what
 9 was done. I really didn't know who was appointed, I
 10 don't think. It didn't say Ms. Taylor. I don't...
 11 MR. BIGLEY: (Indiscernible)
 12 MR. GOTTSTEIN: And, so -- and, I...
 13 MR. BIGLEY: (Indiscernible).
 14 MR. GOTTSTEIN: ...wrote an e-mail to the
 15 State earlier today about some procedure that I think
 16 should be followed with respect to the visitor, which I
 17 don't think has really -- I don't think she knew about
 18 it. and I think, oh, it happens. But, again, I think
 19 that I should have a report in advance, so that I have
 20 an opportunity to respond.
 21 MR. BIGLEY: (Indiscernible).
 22 MS. TAYLOR: Well, I didn't (indiscernible).
 23 But I'm neither a state employee, nor am I an API
 24 employee.
 25 MR. GOTTSTEIN: No, no. I know. I'm just
 26
 27

1 MR. GOTTSTEIN: ...-- it doesn't...
 2 MS. TAYLOR The problem is that API is here
 3 Wednesday.
 4 MR. BIGLEY: (Indiscernible).
 5 MS. TAYLOR: I have to be out here no later
 6 than 10:30. So, from 9:00 to 10:30, I -- I -- I could
 7 be at court, as long as I'm able to (indiscernible)
 8 with what I need to do when I (indiscernible).
 9 MR. GOTTSTEIN: But, I'm not the one in the
 10 (indiscernible). So I said that I can do it -- you
 11 know, the earliest I can do is Wednesday.
 12 (Indiscernible).
 13 MR. BIGLEY: (Indiscernible).
 14 MR. NEMECEK: (Indiscernible). I
 15 (indiscernible) have no objection to (indiscernible).
 16 THE COURT: Well, I'm gonna let her
 17 participate telephonically Wednesday morning, and, if
 18 there's any issues as to the substance of the report by
 19 here, (indiscernible).
 20 That's it. We'll go off record. Thank you.
 21 ***END***
 22
 23
 24
 25
 26
 27

1 saying that I think that I should have an opportunity
 2 to know what you're gonna generally report on, so that
 3 I can have an opportunity -- you know...
 4 MS. TAYLOR: Well, an expedited petition, we
 5 don't do a written report. This would be considered an
 6 expedited hearing.
 7 MR. GOTTSTEIN: Oh. And I...
 8 MR. BIGLEY: (Indiscernible).
 9 MS. TAYLOR: If I was standing
 10 (indiscernible)...
 11 THE COURT: Okay. I'm going to permit -- I'm
 12 going to permit Ms. Taylor to participate
 13 telephonically, but the point -- the issues or
 14 questions brought up by Mr. Mr. Gottstein, those are
 15 (indiscernible) to questions that may also come up at
 16 the hearing on Wednesday as to the responsibility to
 17 deal with whatever evidence is presented.
 18 MR. GOTTSTEIN: And I'm gonna object to
 19 telephonic testimony. And not to be difficult, but,
 20 for example, the statute requires that an instrument be
 21 given, and I want to -- you know -- I need to have a
 22 copy of that, and see what it is that the responses
 23 were, and all that. And, so, I -- I mean, I try cases
 24 telephonic all the time, so I...
 25 MS. TAYLOR: The problem...
 26
 27

1 CERTIFICATE
 2 SUPERIOR COURT)
 3) SS.
 4 STATE OF ALASKA)
 5 I, Georgi Ann Haynes, Certified Professional
 6 Court Reporter for the Third Judicial District, State
 7 of Alaska and verbatim reporter for Pacific Rim
 8 Reporting, Inc., hereby certify:
 9 That the foregoing transcript is a
 10 transcription of testimony of said proceedings to the
 11 best of my ability, prepared from extreme poor quality
 12 tapes recorded and copied by the Alaska Court System,
 13 therefore numerous "indiscernible" and "Unidentified
 14 Speaker" comments appear in the transcript;
 15 I am not a relative, or employee, or
 16 attorney, or counsel of any of the parties, nor am I
 17 financially interested in this action.
 18
 19 IN WITNESS WHEREOF, I have hereunto set my
 20 hand and affixed my seal this 3rd day of October, 2007.
 21
 22
 23
 24
 25 Notary Public in and for Alaska
 26 My commission expires: 10/05/2007
 27

6. The facts which support the above conclusions are:

Dr. Worrall's testimony is clear and convincing that the Respondent has the mental illness of Schizo-affective Disorder. He is unable to perceive and understand reality. He is agitated, delusional, paranoid, hyperactive, and grandiose and has pressured speech. He has lost a lot of weight recently and has been unable to maintain housing. He is gravely disabled due to his mental illness impairs his judgment and has lead to his present situation whereby he cannot function independently.

ORDER

Therefore, it is ordered that respondent, William Bigley, is committed to Alaska Psychiatric Institute, for a period of time not to exceed 30 days. If space is available, and upon acceptance by another treatment facility, the respondent shall be placed at the designated treatment facility closest to the respondent's home.

Sept 4/07
Date

Peter Michalski
Superior Court Judge Peter Michalski

I certify that on 9/4/07
A copy of this order was sent
To:
 Respondent - fax
 Respondent's attorney
 Attorney General
 Treatment facility - fax

Recommend for approval
Andrew M. Brown 9/4/07
Master Andrew M. Brown Date

Clerk: K. Carlsburg

NOTICE OF RIGHTS

To: Respondent

YOU ARE HEREBY GIVEN NOTICE that if commitment or other involuntary treatment beyond the 30 days is sought, you shall have the right to a full hearing or jury trial.

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

In The Matter of the Necessity for the)
Hospitalization of William S. Bigley,)
Respondent,)
William Worrall, MD,)
Petitioner)

COPY
Original Received
Probate Division

SEP 04 2007

Clerk of the Trial Courts

Case No. 3AN 07-1064 P/S

PRE-HEARING BRIEF

I. TABLE OF CONTENTS

I. Table of Contents	1
II. Preliminary Matters	2
<i>A. The Ex Parte Order the Anchorage Police Department Acted Upon Was Void on Its Face.</i>	<i>3</i>
<i>B. Referral to the Probate Master</i>	<i>4</i>
<i>C. Respondent's Current Imprisonment at API is Illegal Because there is No Valid Commitment Order and Therefore the Court May Not Hold a Hearing on the Forced Drugging Petition.</i>	<i>4</i>
<i>D. The Hearing Must Presumably Be Continued</i>	<i>7</i>
III. API is Collaterally Estopped From Being Granted the Forced Drugging Petition	8
<i>A. Dr. Mosher's testimony</i>	<i>9</i>
<i>B. Dr. Jackson's Testimony</i>	<i>13</i>
IV. The Hospital May Only Administer Specific Drugs in Specific Doses In The Specific Manner of Administration Authorized by the Court.	13
V. Respondent Is Entitled to Require Johnson & Johnson, Abbot, Astra-Zeneca and Eli Lilly to Provide Suppressed Research Data Prior to Any Forced Drugging Order Being Issued.	15
<i>A. Johnson & Johnson (Risperdal)</i>	<i>17</i>
<i>B. Abbot (Depakote)</i>	<i>17</i>
<i>C. Astra Zeneca (Seroquel)</i>	<i>17</i>
<i>D. Eli Lilly (Zyprexa)</i>	<i>17</i>
VI. Factual BackGround	19
VII. Pre-Filed Testimony	30
VIII. The Assumed Drug Regime is Experimental	30
IX. Less Intrusive Alternatives	31
<i>A. Possible Less Intrusive Alternatives</i>	<i>31</i>
<i>B. Existing Less Intrusive Alternatives</i>	<i>31</i>
X. Witness List	33

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

II. PRELIMINARY MATTERS

In anticipation of an illegal (unconstitutional) *ex parte order* being granted against Respondent,¹ counsel for Respondent, the Law Project for Psychiatric Rights (PsychRights®) tried mightily to get to the Court notice of when and to what extent it would represent Respondent. On August 28, 2007, counsel responded at the end of a series of e-mails with James Parker, the head of the Office of Public Advocacy's (OPA) guardianship section, about the situation, in relevant part:

The first topic I discuss is how *Ex Parte Orders* are being illegally granted as a matter of course (In an e-mail to the subcommittee I suggested steps should be taken immediately to address the situation rather than wait for the rule promulgation process to run its course).

Section 2 of the memo discusses that AS 47.30 respondents have the right to counsel of their choice.

This is to formally advise you (and Ms. Russo) that should OPA file a petition for the initiation of involuntary commitment in the near future I will represent Mr. B. If CHOICES were to do so, I probably wouldn't, although I almost certainly would represent him with respect to a forced drugging petition. This is also to formally demand that if OPA files such a petition that it file a copy of this e-mail and the attached memo with the petition. I am also, by copy to Mr. Cornils, of CHOICES, requesting that this e-mail and memo accompany any petition it might file as well. In addition, by copy to Ms. Russo, I am requesting that should a petition be filed against Mr. B by anyone else, including one under AS 47.30.705, that this e-mail and the memo be immediately filed in the proceeding and served on any lawyer appointed by the court. These requests are not time limited. The bottom line with respect to *Ex Parte Orders*, is they are not legal unless the prospective harm is so imminent that it justifies dispensing with meaningful notice and meaningful opportunity to be heard.²

¹ Appendix, pages 6-8.

² Appendix, p.1.

Unfortunately, while Mr. Cornils attempted to comply, he apparently got confused and attached the prior e-mail so the above was not included with the *Ex Parte* Application filed by Mr. Cornils.

Thus, the Court can not be faulted for not having formal notice that PsychRights "almost certainly would" represent Respondent with respect to the Forced Drugging Petition. However, the Probate Master was very aware that PsychRights selectively represented Respondent and should have inquired before automatically appointing the Public Defender Agency.

A. The *Ex Parte* Order the Anchorage Police Department Acted Upon Was Void on Its Face.

While the correct e-mail was not filed, the memo was, and the very first thing discussed is the way that *Ex Parte* Orders are illegally granted as a matter of course. That this was ignored is troubling. Even more troubling is that Respondent was picked up, and presumably hauled off to the Alaska Psychiatric Institute (API) in handcuffs, before it had been signed by a Superior Court Judge,³ which meant that he was taken into custody illegally. The *Ex Parte* Order acted upon by the Anchorage Police Department was void on its face. This violation of Respondent's rights is irremediable with respect Respondent's loss of freedom, as are all illegally executed *Ex Parte* Orders, although it should at least be compensable as a deprivation of Respondent's civil rights under color of state law under 42 USC §1983 and subject to being enjoined if it continues.

³ Appendix, p. 8-9.

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

B. Referral to the Probate Master

The Probate Master, as well as the Superior Court Judge who signed the *Ex Parte* Order after the fact, also were advised via the Memo that it is PsychRights position there is insufficient time to properly handle the involuntary commitment petitions within the required time frame and that Probate Rule 2(b)3.C is an improper end-run around the time requirements.⁴

C. Respondent's Current Imprisonment⁵ at API is Illegal Because there is No Valid Commitment Order and Therefore the Court May Not Hold a Hearing on the Forced Drugging Petition.

The *Superior Court* must hold a hearing within 72 hours of a respondent's arrival at the hospital:

AS 47.30.715. Acceptance of Order.

When a facility receives a proper order for evaluation, it shall accept the order and the respondent for an evaluation period not to exceed 72 hours. The facility shall promptly notify the court of the date and time of the respondent's arrival. *The court shall set a date, time and place for a 30-day commitment hearing, to be held if needed within 72 hours after the respondent's arrival*, and the court shall notify the facility, the respondent, the respondent's attorney, and the prosecuting attorney of the hearing arrangements. Evaluation personnel, when used, shall similarly notify the court of the date and time when they first met with the respondent.

(emphasis added). Paragraph 5 of the form *Ex Parte* Order is not in compliance with AS 47.30.715.⁶

⁴ Appendix, p. 9.

⁵ The American Heritage Dictionary, Fourth Edition defines, imprison as "To put in or as if in prison; confine."

⁶ Counsel has to admit that he didn't realize this until writing this brief. This reinforces the point that *Ex Parte* Orders are to be rarely granted and only when there is some extreme exigency that justifies dispensation with meaningful notice and a meaningful opportunity

AS 47.30.735(c), provides " At the conclusion of the hearing the *court* may commit the respondent to a treatment facility for not more than 30 days if it finds, by clear and convincing evidence, that the respondent is mentally ill and as a result is likely to cause harm to the respondent or others or is gravely disabled." (emphasis added).

The hearing concluded on Friday, August 31, 2007, and *the court* has not committed Respondent.⁷ Therefore, a hearing on the Forced Drugging Petition is premature. The

to be heard. *Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S.Ct. 2633, 2648-9 (2004). *Waiste v. State*, 10 P.3d 1141, 1145-6 (Alaska 2000)

⁷ The resolution of the status of representation was very confused at the August 31, 2007, hearing, and counsel suggested a written order be issued to clarify it. In the absence of any order to the contrary, counsel understands the Limited Entry of Appearance is operative as filed. Since, the Public Defender Agency has not moved to withdraw from representing Respondent with respect to the Forced Drugging Petition, it is co-counsel. Thus, unless the Court *sua sponte* orders Respondent's immediate release upon its error being pointed out herein, the Public Defender Agency is obligated to do what it can to obtain Respondent's immediate release from his current illegal psychiatric imprisonment.

Because of the "massive curtailment of liberty" that involuntary commitment and involuntary medication involve, strict compliance with statutory mandates is required. Thus, in *In re Wahlquist*, 585 P.2d 437, 439 (Utah 1978), the court said:

However well intended, the confinement of a person in an institution for mental health treatment is just as effective a restraint on personal liberty as confinement in a prison and may, in some instances, be even more trying or burdensome. It is therefore essential that the rights of one so confined be treated with the same degree of respect as are the rights of persons deprived of their liberty upon accusation or conviction of criminal conduct. Consistent with that principle, it is important that there be full compliance with statutes setting forth the procedures for commencing and continuing such involuntary hospitalization.

Also, see, *Covington v. Harris*, 419 F.2d 617, 623 (U.S.App.D.C. 1969) (statutes "sanctioning such a drastic curtailment of the rights of citizens must be narrowly, even grudgingly, construed in order to avoid deprivations of liberty without due process of law."); *In re Elkow*, 521 N.E.2d 290 (Ill.App. 1988) (any noncompliance with a statutory procedure for involuntary admission renders the judgment in the case erroneous and of no effect."); *Mental Health of C.R.C.*, 104 P.3d 1065, 1068 (Mont. 2004) (involuntary commitment statutes "to be strictly followed"); *Matter of Shennum*, 684 P.2d 1073, 1079

Court may not grant a forced drugging petition under AS 47.30.839 until after a valid commitment order has been entered. *Myers v. Alaska Psychiatric Institute*, 138 P.2d 238, 243 (Alaska 2006). *Wetherhorn*, 156 P.3d at 382 (second step occurs for a "committed patient").⁸

(Mont. 1984) (where statutory protections not followed, commitment reversed); *Maricopa County Superior Court*, 84 P.3d 489, 492 (Ariz. 2004) (statutes for involuntary commitment must be strictly construed); *Detention of C.W.*, 53 P.3d 979, 985 (Wash. 2002) (civil commitment statutes should be strictly construed while avoiding absurd results); *In re Wojtasiak*, 134 N.W.2d 741, 743 (Mich. 1965) (statute under which person committed must be strictly complied with); and *In re Cross*, 662 P.2d 828, 833 (Wash. 1983) (when a required finding not made, no jurisdiction to commit). The court in *In re Remley*, 471 A.2d 514, 517 (PA. Super. 1984) described the reasons for requiring strict compliance in this way:

There are indications in the record before us that appellant and his wife were caught in the grasp of well-intentioned officials. But, when the awesome power of the government bureaucracy and the courts is brought to bear on the individual citizen, good intentions are not enough. Even though they may be motivated by a desire to help the individual, the actions of the government must be strictly circumscribed by the law. This is most particularly mandatory when the governmental action involves the deprivation of the citizen's liberty. The courts, in overseeing such liberty-depriving bureaucratic action, must be especially protective of the rights of the individual and vigilant in ensuring that the legal safeguards have been complied with.

The Alaska Supreme Court has acknowledged the "massive curtailment of liberty" represented by civil commitment. *Wetherhorn*, 156 P.3d at 378. There is no reason to think the Alaska Supreme Court will allow the Court to blatantly flout the statutes the way it would be here if the Court does not order Respondent's immediate release.

⁸ It has not been litigated yet, but it is actually a three-step process. AS 47.30.839(e) requires a hearing within 72 hours of the filing of a forced drugging petition "to determine the patient's capacity to give or withhold informed consent as described in AS 47.30.837 and the patient's capacity to give or withhold informed consent at the time of previously expressed wishes regarding medication." Thus, if the court finds the respondent competent or competent at the time of previously expressed wishes, there is no need for the best interests and less intrusive alternatives determination because the respondent's wishes must be honored. *Myers*, 138 P.3d at 244, 253.

D. The Hearing Must Presumably Be Continued

Prior to any hearing, counsel needs to be provided a copy and have had a chance to review Respondent's records (a) since he was brought to API this time, and (b) whatever API has about Respondent recently having been taken into custody and transported to the Providence Psychiatric Emergency Room pursuant to AS 47.30.705, normally called a "PoA," which stands "Police Officer Application" and then not admitted to API. Counsel e-mailed both counsel for API and James Parker of the Office of Public Advocacy (OPA) over the weekend that he needed them before noon on Tuesday to be able to proceed on Wednesday morning. Since this is being filed as soon as possible on Tuesday to give API as much notice as possible, Respondent doesn't know for sure whether there will be compliance with this request, but doubts it.

Acquisition of the records has been made immeasurable more difficult by OPA's position that since it is Respondent's guardian, Respondent is without authority to sign a release of information to let *his attorney* get them. This is especially outrageous because OPA is a party adverse to the interests of Respondent in this proceeding.

In any event, unless Respondent has received the records by noon on Tuesday, unless the Court should decide the Petition should be denied on the record before it already, the Hearing must be postponed until after Respondent's counsel has been given a copy of his API records and time to review them.

III. API IS COLLATERALLY ESTOPPED FROM BEING GRANTED THE FORCED DRUGGING PETITION

In *Maines v. Kenworth Alaska*, 155 P.3d 318, n38 (Alaska 2007) the Alaska

Supreme Court recently reiterated the standard for *collateral estoppel*:

Collateral estoppel, also known as issue preclusion, "is the doctrine that prevents the relitigation of an issue that was actually litigated and was a critical and necessary part of the earlier judgment. The judgment on the issues litigated in the first action, then, is binding upon the parties in all later litigation in which those issues arise."

In *Myers*, the Superior Court after hearing from experts on both sides, including cross-examination, argument, and briefing, made the following findings:

[T]here is a real and viable debate among qualified experts in the psychiatric community regarding whether the standard of care for treating schizophrenic patients should be the administration of anti-psychotic medication.⁹

and

[T]here is a viable debate in the psychiatric community regarding whether administration of this type of medication might actually cause damage to her or ultimately worsen her condition.¹⁰

Before the Court may grant a forced drugging order, it must find by *clear and convincing evidence* that the forced drugging is in Respondent's best interests. "Clear and convincing evidence" means that the asserted fact is "*highly probable*."¹¹

When there is a "viable debate" whether the proposed drugging should be the standard of care and a "viable debate" whether "administration of this type of medication

⁹ Appendix, page 32.

¹⁰ Appendix page 37.

¹¹ *Denupitiis v. Unocal Corp.*, 63 P.3d 272, n3 (Alaska 2003).

might actually cause damage to [Respondent] or ultimately worsen [his] condition," it is impossible to meet the clear and convincing standard as a matter of law.

In order to establish that the issue was actually litigated, just some of the evidence presented there shall be reviewed here. In addition, Respondent hereby incorporates herein the evidence in the Appendix from the *Myers* case, reproduced in the Appendix. Since this case has to be decided by a Superior Court Judge, which necessarily includes a transcript of the proceedings herein under Civil Rule 54(d), it is proper to present evidence in this manner. It was all sworn and subject to cross-examination by API.

A. Dr. Mosher's testimony

Dr. Mosher, board certified psychiatrist who received his undergraduate degree from Stanford, and medical degree from Harvard Medical School, and the former Chief of the of the National Institute of Mental Health's (NIMH) Center for Studies of Schizophrenia testified at the *Myers* trial.¹² While with the NIMH he founded and served as first Editor-in-Chief of the *Schizophrenia Bulletin*. He was Clinical Director of Mental Health Services for San Diego County from 7/96 to 11/98 and was a Clinical Professor of Psychiatry at the School of Medicine, University of California at San Diego at the time he testified. From 1988-96 he was Chief Medical Director of Montgomery County Maryland's Department of Addiction, Victim and Mental Health Services and a Clinical Professor of Psychiatry at the Uniformed Services University of the Health Sciences, F. Edward Herbert

¹² Dr. Mosher passed away a little over three years ago.

School of Medicine, Bethesda, Maryland.¹³ The Superior Court found Dr. Mosher's credentials and experience in the area of schizophrenia particularly impressive.¹⁴

Among other things, Dr. Mosher testified to the following:

"There is no evidence that schizophrenia is in fact a brain disease."¹⁵

Q Okay, thank you. Now, in your opinion, is medication the only viable treatment for schizophrenia paranoid type?

A Well, no, it's not the only viable treatment. It is one that will reduce the so-called positive symptoms, the symptoms that are expressed outwardly for those kinds of folks. And that way they may seem better, but in the long run, the drugs have so many problems, that in my view, if you have to use them, you should use them in as small a dose for as short a period of time as possible. And if you can supply some other form of social environmental treatment -- family therapy, psychotherapy, and a bunch of other things, then you can probably get along without using them at all, or, if at all, for a very brief period of time. But you have to be able to provide the other things. You know, it's like, if you don't have the other things, then your hand is forced.

MR. KILLIP: Excuse me, Your Honor. I just would renew our continuing objection about offering test[imony] on medical practice in the context of this hearing.

THE COURT: This hearing is going to last 20 more minutes, and I'm going to let Mr. Gottstein use the time.¹⁶

Q Okay, thank you. Now, in your affidavit, you say involuntary treatment should be difficult to implement and used only in the direst of circumstances. Could you explain why you have that opinion?¹⁷

¹³ Appendix, pp, 83,97.

¹⁴ Appendix, p. 32.

¹⁵ Appendix, p. 83.

¹⁶ Appendix, pp 83-4.

¹⁷ Appendix, p 84.

A Well, it's just, you know, the degree to which you have to force people to do anything.....

MR. KILLIP: Your Honor, I'm going to object.

Ais the degree to which it's going to be very difficult to forge a good therapeutic relationship. And in the field of psychiatry, it is the therapeutic relationship which is the single most important thing. And if you have been a cop, you know, that is, some kind of a social controller and using force, then it becomes nearly impossible to change roles into the role -- the traditional role of the physician as healer advocate for his or her patient. And so I think that that -- we should stay out of the job of being police. That's why we have police. So they can do that job, and it's not our job.

Now, if because of some altered state of consciousness, somebody is about to do themselves grievous harm or someone else grievous harm, well then, I would stop them in whatever way I needed to. I would probably prefer to do it with the police, but if it came to it, I guess I would do it. In my career I have never committed anyone. It just is -- I make it my business to form the kind of relationship that the person will -- that we can establish a ongoing treatment plan that is acceptable to both of us. And that may you avoid getting into the fight around whatever. And, you know, our job is to be healers, not fighters.

THE COURT: There's an objection to that question.

The objection was relevance?

MR. KILLIP: Yes.

THE COURT: Overruled.

Q Now, you say you've never committed anybody. But you've had a lot of experience with -- or, I should say, have you had a lot of experience with people with schizophrenia?

A Oh, dear. I probably am the person on the planet who has seen more acutely psychotic people off of medication, without any medications, than anyone else on the face of the planet today.

Q Thank you.

A Because of the Satiria Project that we did for 12 years where I would sit with people who were not on medications for hours on end. And I've seen them in my private practice, and I see them to this day in my now,

very small, private practice. But --

THE COURT: Sir, I think I understand the answer.

A I find that people who are psychotic and not medicated are among the most interesting of all the customers one finds.

Q Thank you, Dr. Mosher.

Q Dr you know Dr. Grace Jackson?

A I do.

Q Do you have an opinion on her knowledge of psychopharmacology?

A I think she knows more about the mechanisms of actions of the various psychotropic agents than anyone who is a clinician, that I'm aware of. Now, there may be, you know, basic psychopharmacologists, you know, who do lab work who know more, but as far as a clinician, a practitioner, I don't know anyone who is better-versed in the mechanisms, the actions, the effects and the adverse effects of the various psychotropic drugs.¹⁸

CROSS-EXAMINATION

BY MR. KILLIP:

Q Dr. Mosher, is it not your understanding that the use of anti-psychotic medications is the standard of care for treatment of psychosis in the United States, presently?

A Yes, that's true.

* * *

Q Would you say that your viewpoint presented today falls within the minority of the psychiatric community?

A Yes, but I would just like to say that my viewpoint is supported by research evidence. And so, that being the case, it's a matter of who judges the evidence as being stronger, or whatever. So, I'm not speaking just opinion, I'm speaking from a body of evidence.¹⁹

¹⁸ Appendix pp 84-5.

¹⁹ Appendix P. 85

B. Dr. Jackson's Testimony

One of the things Dr. Jackson did was analyze documents obtained by Robert Whitaker under the Freedom of Information Act (FOIA)²⁰ and prepared an analysis of it as pre-filed testimony.²¹ With respect to the safety of Zyprexa, Dr. Jackson testified as follows:

[W]e really do not have any proof that olanzapine is a safe drug. Just to answer, just very briefly, fewer than -- only 12% of 3,000 patients who were investigated to establish safety, ever stayed on the drug for more than a year. Fewer than 33% were on the drug for more than six months. We're talking about a medication whose safety has been very, very poorly investigated by the FDA.

Q. Do you consider it a dangerous drug?

A. I consider it a very dangerous drug.²²

Dr. Jackson also talked about how clinical doctors, such as Dr. Worrall have not been getting accurate information to make good prescribing recommendations, which will be discussed in §V, below.

IV. THE HOSPITAL MAY ONLY ADMINISTER SPECIFIC DRUGS IN SPECIFIC DOSES IN THE SPECIFIC MANNER OF ADMINISTRATION AUTHORIZED BY THE COURT.

In *Myers* 138 P.3d at 254, the Alaska Supreme Court held:

[A] court may not permit a treatment facility to administer psychotropic drugs unless the court makes findings that comply with all applicable statutory requirements and, in addition, expressly finds by clear and convincing evidence that the proposed treatment is in the *patient's best interests* and that no *less intrusive alternative is available*.

²⁰ These documents appear at Appendix, pp 100-126.

²¹ Appendix, pp 127-151.

²² Appendix, p. 87.

The Supreme Court further held:

At a minimum, we think that courts should consider the information that our statutes direct the treatment facility to give to its patients in order to ensure the patient's ability to make an informed treatment choice. As codified in AS 47.30.837(d)(2), these items include:

* * *

(B) information about *the proposed medication*, its purpose, the method of its administration, the recommended ranges of dosages, possible side effects and benefits, ways to treat side effects, and risks of other conditions, such as tardive dyskinesia;

(C) a review of the patient's history, including medication history and previous side effects from medication;

(D) *an explanation of interactions with other drugs*, including over-the-counter drugs, street drugs, and alcohol; . . . ²³

The Alaska Supreme Court also cited with approval the Supreme Court of Minnesota's requirement of consideration the following factors:

- (1) the extent and duration of changes in behavior patterns and mental activity effected by the treatment;
- (2) the risks of adverse side effects;
- . . . ; and
- (5) the extent of intrusion into the patient's body and the pain connected with the treatment.²⁴

All of these factors are drug and dose dependent and the last one relates to the manner of administration. With respect to "the extent of intrusion into the patient's body and the pain connected with the treatment," one of the drugs it is assumed Dr. Worrall intends to administer pursuant to the Forced Drugging

²³ 138 P.3d 252, emphasis added.

²⁴ *Id.*

Petition, Risperdal Consta, requires a shot with a hypodermic needle. This, of course, is highly intrusive and involves pain.

Thus, *Myers* specifically requires a drug by drug, dose by dose, and manner of administration determination by the Court.

Sell v. United States, 539 U.S. 166, 123 S.Ct. 2174 (2003), a forced drugging to make one competent to stand trial case,²⁵ based on the requirements of the United States Constitution, also requires a drug by drug analysis ("The specific kinds of drugs at issue may matter here as elsewhere. Different kinds of antipsychotic drugs may produce different side effects and enjoy different levels of success.").

V. RESPONDENT IS ENTITLED TO REQUIRE JOHNSON & JOHNSON, ABBOT, ASTRA-ZENECA AND ELI LILLY TO PROVIDE SUPPRESSED RESEARCH DATA PRIOR TO ANY FORCED DRUGGING ORDER BEING ISSUED.

Unless API voluntarily dismisses the Forced Drugging Petition, or the Court denies the Forced Drugging Petition based on the evidence Respondent is able to bring, it must allow Respondent the opportunity to obtain, evaluate and present to the Court information about the drugs API wants to force into Respondent that has been suppressed by their respective manufacturers.

²⁵ While *Sell* is a competence to stand trial case, the U.S. Supreme Court used the same sort of standard constitutional law compelling state interest, further state interest and least intrusive alternative analysis the Alaska Supreme Court employed in *Myers* and is fully applicable here with respect to this issue.

It is self-evident that before the Court may properly grant the Forced Drugging Petition it must have all the critical information required to adequately consider the factors required by *Myers*. However, it is well established that critical lack of efficacy and safety data has been suppressed by drug company manufacturers. Doctors, such as Dr. Worrall, do not have the information necessary for them to be able to accurately assess the effectiveness and harms caused by the drugs. Dr. Jackson testified as to how the published information, including from the most prestigious medical journals, has been corrupted by pharmaceutical industry influence and the only way to find out the truth is to go to the clinical trials.²⁶

Therefore respondent is pursuing subpoenas to the following drug manufacturers:

1. Johnson and Johnson, the manufacturer of Risperdal,
2. Astra-Zeneca, the manufacturer of Seroquel,
3. Eli Lilly, the manufacturer of Zyprexa, and
4. Abbot, the manufacturer of Depakote.²⁷

However, believing API will not be able to come close to meeting its burden under *Myers* even without this information, Respondent is willing to proceed without waiving his right to obtain, evaluate and present the suppressed information to the Court before entry of a Forced Drugging Order against him. In the event the Probate Master does not so hold, Respondent hereby prophylactically moves for a stay of any Forced Drugging Order

²⁶ Appendix 86-7.

²⁷ The form of subpoenas are at Appendix 165-184.

recommendation issued pending Superior Court and, if necessary, Alaska Supreme Court review. The relevance of the subpoenaed material is discussed next.

A. Johnson & Johnson (Risperdal)

It is expected that API will seek permission to forcibly drug Respondent with Risperdal.

B. Abbot (Depakote)

It is expected that API will seek permission to forcibly drug Respondent with Depakote.

C. Astra Zeneca (Seroquel)

It is expected that API will seek permission to forcibly drug Respondent with Seroquel.

D. Eli Lilly (Zyprexa)

The situation with Zyprexa is a bit different. API has forcibly drugged Respondent with Zyprexa in the past and very well may have even done so since Friday after the Court invited it to use the police power justification under AS 47.30.838 as a basis for forcibly drugging Respondent during the continuance.

During his October 29, 2006, to January 3, 2007, admission, Respondent was given Zyprexa pursuant to a forced drugging order.²⁸ While the hospital switched him to Seroquel at that time because Respondent complained it made him too hungry, it has subsequently used it on an "as needed basis" to subdue him when he vehemently complains

²⁸ Appendix 185.

and protests being locked up and forcibly drugged. Thus, on March 21, 2007, he was given Zyprexa as an "IM Backup" "Now".²⁹ With respect to this, Dr. Worrall testified:

Q. Do you know how they're administered? Is he restrained in any way?

A. He doesn't typically -- he doesn't usually fight once the nurse comes with three or four staff. He usually just submits.³⁰

Usually, of course, means not always, so sometimes he is physically held down by the three or four staff, the needle thrust into his flesh, and the hated drug, equated by the Alaska Supreme Court with the intrusiveness of electroshock and lobotomy injected into his body despite his protests.³¹

The subpoena issued to Sidney Taurel, Chairman and Chief Executive Officer, Eli Lilly and Company calls for the production of nothing that was not requested by Congressman Waxman on March 1st, so they should be immediately available.³²

The suppressed research is highly likely to confirm Dr. Jackson's analysis. In order for Lilly to garner approval from even the eviscerated Food and Drug Administration (FDA), it had to employ artifices exemplifying the quote attributed to Mark Twain: "There are liars, damn liars, and statisticians." Among these artifices are what is euphemistically called "Last Observation Carried Forward" (LOCF), which is pretending that when someone drops out of the study, one can

²⁹ Appendix 186.

³⁰ Appendix 188..

³¹ *Myers* 138 P3d at 242; *Wetherhorn*, 156 P.3d at 382.

³² Appendix 192-5..

safely assume nothing would have changed for the rest of the study if the person had stayed in it. It is ludicrous because that is what the study is for.³³

Another manipulation was that the "control" or "placebo" groups were individuals for whom psychosis had been deliberately induced by abruptly withdrawing them from another neuroleptic.³⁴ Even then, Zyprexa barely beat the placebo or control group for efficacy.³⁵ One can only imagine what the studies on Zyprexa that have been hidden will show.

The discovery of the suppressed data on all the drugs requested is obviously necessary before the Forced Drugging Petition can possibly be considered for approval.

VI. FACTUAL BACKGROUND

Prior to 1980, Respondent was successful in the community, he had long-term employment in a good job, was married and had two daughters.³⁶

In 1980, Respondent's wife divorced him, took his two daughters and saddled him with high child support and house payments, resulting in his first hospitalization at the Alaska Psychiatric Institute (API).³⁷

³³ Appendix 127-151.

³⁴ Whitaker Prefiled Testimony, Jackson Zyprexa Analysis, Appendix 127-151.

³⁵ Jackson Zyprexa Analysis, Appendix 127-151.

³⁶ Appendix 157-64..

³⁷ Appendix 157.

When asked at the time what the problem was Respondent said "he had just gotten divorced and consequently had a nervous breakdown."³⁸ He was cooperative with staff throughout that first admission.³⁹

At discharge, his treating psychiatrist indicated that his prognosis was "somewhat guarded depending upon the type of follow- up treatment patient will receive in dealing with his recent divorce."⁴⁰

Instead of giving him help in dealing with his recent divorce and other problems, the system's approach was to lock him up and force him to take drugs that, for him at least, do not work, are intolerable, and have harmful mental and physical effects.

This pattern was set by his third admission to API: The medication seemed not to have noticeable favorable effects throughout the first several hospital weeks, despite the fact that there were a variety of unpleasant Extra Pyramidal Symptoms (EPS).⁴¹

On 3/26/81 a judicial hearing determined that there would be granted a 30 day extension during which time treatment efforts would continue, following which there would be a further hearing concerning the possibility of judicial commitment. Mr. Bigley was furiously angry that he was deprived of his right to freedom outside the hospital, but despite his persistent anger and occasional verbal threats, he never became physically assaultive, nor did he abuse limited privileges away from the locked unit.⁴²

³⁸ Appendix 157.

³⁹ Appendix 161.

⁴⁰ Appendix 164.

⁴¹ Appendix 329.

⁴² Appendix 329.

Twenty-Three years and over Fifty admissions later, the Visitor's Report of May 25, 2004 in his guardianship case, reports, "when hospitalized and on medications, [Respondent's] behaviors don't appear to change much Hospitalization and psychotropic medication have not helped stabilize him."⁴³

On March 23, 2007, at discharge from his 68th admission to API, Dr. Worrall, summarized his condition after having "potentially reached the maximum benefits from hospital care," by which, he has consistently testified solely means forcing the Respondent to take psychiatric drugs against his will, that Respondent was "delusional" had "no insight and poor judgment, . . . paranoid and guarded."⁴⁴

In spite of 27 years of failure over 70 admissions, Dr. Worrall testified in the April, 2007 public jury trial, that the plan is by repeatedly obtaining forced drugging orders Respondent will be trained to stay on his medication when discharged.

Under Alaska statutes, an initial commitment is for 30 days and respondents do not have the right to a jury trial.⁴⁵⁴⁶ Prior to the end of such a commitment, the hospital can file for a 90 day commitment, for which respondents do have the statutory right to a jury trial.⁴⁷ Before the end of the 90 day commitment, the hospital may file for a 180 day

⁴³ Sealed Appendix.

⁴⁴ Appendix 335.

⁴⁵ AS 47.30.735.

⁴⁶ There may, however, be a constitutional right to a jury trial. This has not been litigated.

⁴⁷ AS 47.30.745(c).

commitment for which respondents have the right to a jury trial.⁴⁸ The hospital may then file for successive 180 day commitments.⁴⁹

Prior to the Alaska Supreme Court's ruling in *Wetherhorn*, Dr. Worrall's plan was to have Respondent continuously on an involuntary commitment under the unconstitutional "gravely disabled" standard definition contained in AS 47.30.915(7)(B), pump him full of long-acting Risperdal Consta, administer other psychotropic drugs, such as Seroquel and Depakote, give him an "Early Release" under AS 47.30.795(a), knowing he would quit them once discharged and then order him returned pursuant to AS 47.30.795(c) when he wasn't drugged to their liking.⁵⁰ This is an illegal use of AS 47.30.795(c) because it only allows an order to return if the outpatient provider "determines" the person is a harm to self or others or gravely disabled.

The Office of Public Advocacy (OPA) was appointed Respondent's conservator in 1999 or so in Case No. 3AN-99-1108.⁵¹

On April 14, 2004, API filed a petition for temporary and permanent guardianship.⁵² On June 30, 2004, OPA was appointed Respondent's temporary full guardian and on December 26, 2004, permanent full guardian.⁵³

⁴⁸ AS 47.30.770.

⁴⁹ *Id.*

⁵⁰ Dr. Worrall testified to this in April, although he would no doubt phrase it differently. If there is any real dispute over this, the hearing could be transcribed.

⁵¹ Sealed Appendix.

⁵² Sealed Appendix.

⁵³ Appendix 196-209. OPA will hereinafter be referred to as Guardian when acting in that capacity.

After being appointed, the Guardian unilaterally, without consultation with the Respondent, decided Respondent should become Medicaid eligible even though Respondent did not want Medicaid Services.⁵⁴

Because Respondent's income was above the Medicaid limit, the Guardian established an irrevocable trust, known as a "Miller Trust," with the Guardian as trustee without discussing this with Respondent or certainly obtaining his consent.⁵⁵

This removed a substantial percentage of Respondent's income as available for general financial support.⁵⁶ Respondent is eligible for free medical care as an Alaska Native and doesn't need Medicaid to be eligible for such services.⁵⁷

The Guardian has filed a number of *ex parte* petitions to have the Respondent committed in order to have him forcibly drugged against his will.⁵⁸

This includes "insisting" Respondent is gravely disabled under the "unable to survive safely in freedom" standard recently enunciated in *Wetherhorn v. API*, 156 P.3d

⁵⁴ Expected testimony of James Parker or otherwise established by Respondent at a continued hearing. To be fair, the difference is mostly used to purchase Respondent cigarettes, although there was \$5,700 in the Trust account as of July 20, 2007, which was unavailable to Respondent.

⁵⁵ Expected testimony of James Parker or otherwise established by Respondent at a continued hearing.

⁵⁶ Expected testimony of James Parker or otherwise established by Respondent at a continued hearing.

⁵⁷ Expected testimony of James Parker or otherwise established by Respondent at a continued hearing.

⁵⁸ The Court can take judicial notice of its own records with respect to this. Otherwise, it is expected James Parker will testify to this and if not, Respondent can otherwise establish it.

371, 379 (Alaska 2007), when his treating psychiatrist, Dr. Worrall, did not believe his survival was in jeopardy.⁵⁹

In furtherance of the Guardian's goal that Respondent be forcibly drugged against his will, and contrary to the assertions of OPA on December 8, 2006, that this was not being done and would not be done, on January 1, 2007, Steve Young signed a consent to the administration of psychotropic drugs in his capacity as the Guardian.⁶⁰

On either February 22, 2007, or March 2, 2007, in furtherance of the Guardian's goal to have Respondent forcibly drugged, Steve Young called API and said he "is hoping for an early release due to patient's proven inability to maintain his med regimen in the community w/o support services. Pt reportedly 'fired' [Anchorage Community Mental Health Services] but they have not closed the case. SW will contact."⁶¹ This was the official API plan for Respondent.⁶²

When questioned under oath at the April, 2007 public jury trial about whether he had a plan with API about utilizing early releases, Steve Young, Respondent's assigned guardian, apparently perjurally denied that he had ever had such a plan.⁶³

⁵⁹ Appendix 212.

⁶⁰ Appendix 218.

⁶¹ Appendix 213.

⁶² Appendix 331-2.

⁶³ April 3, 2007, hearing in 3AN 07-598 PR. Since Respondent won this jury trial over his commitment there was no appeal and it is not believed a transcript has been prepared. However, it could be if there is any dispute over this.

On March 16, 2007, while Respondent was out on the early release, Dr. Lucy Curtiss, the Medical Director of Anchorage Community Mental Health Services made the following note:

Assessment: Bill presents grossly disorganized. Medication adherence is suspected to be poor. Early Release expires 3/25, and if depakote level indicates nonadherence, we will proceed with application to have Early Release revoked.

Plan: Will check depakote level today. If level is now subtherapeutic, will proceed with application for revocation of Early Release.⁶⁴

On March 19, 2007, Scott Bassett, a case manager at Anchorage Community Mental Health Services, signed a notice that he was ordered back to API because it had been "determined" he was likely to cause harm to himself or gravely disabled and the police were instructed to pick him up.⁶⁵ He then called API informing it "blood test on pt. showed he is off his depakote. He has been served with notice to return to API."⁶⁶

This put Respondent back in API before the expiration of the 30-Day commitment order and on March 21, 2007, a 90-day continuation petition was filed.⁶⁷

On March 22, 2007, PsychRights, which had not represented Respondent at the 30-Day Petition hearing,⁶⁸ filed an entry of appearance on behalf of Respondent,⁶⁹ electing, among other things, a jury trial.⁷⁰

⁶⁴ Appendix 220.

⁶⁵ Appendix 221-3.

⁶⁶ Appendix 224

⁶⁷ Appendix 225-6.

⁶⁸ PsychRights considers it pointless because 30-day commitments are recommended by the Probate Masters no matter how far API is from meeting its burden and the Superior

Respondent won the jury trial, which he had elected to make public in open court, and was released from incarceration at API and therefore no Forced Drugging order could be granted.⁷¹ More specifically, the jury failed to find that API had met its burden of proving Respondent's mental condition would be improved by the course of treatment, and he was released on April 3rd or 4th.⁷²

Yet another 30-day commitment petition was filed on May 14, 2007, and a forced drugging petition on May 15th, both of which were granted. PsychRights did not represent Respondent. In due course, API filed 90-day petitions for commitment and forced drugging petition. PsychRights did not represent Respondent for that petition, but testified as a fact witness on his behalf in the public jury trial elected by Respondent and, on or around May 22, 2007, the jury found API had not met its burden of proving Respondent was gravely disabled and he was released..⁷³

The current 30-day petitions for involuntary commitment and forced drugging were filed August 30, 2007.

Court judges rubber stamp them without allowing Respondents any meaningful opportunity to assert their right to object to the Master's Recommendation and without even following the requirement under Civil Rule 54(d)(1) that a transcript accompany the Probate Master's recommendation, resulting in the Superior Court judges being unable to properly fulfill their duty even if they were so inclined. This is a stark example of how respondents' rights are being violated as a matter of course. It should also be noted that it is PsychRights experience that if Superior Court judges hear the cases in the first instance, Respondents' rights are taken much more seriously.

⁶⁹ Exhibit to Limited Entry of Appearance, filed herein on August 31, 2007.

⁷⁰ *Id.*

⁷¹ Judicial notice.

⁷² Judicial notice.

⁷³ Judicial Notice.

As noted above, the psychiatric drugs the Guardian and API insist Respondent be forced to take against his will do not eliminate his psychiatric symptoms, or even substantially reduce them. At least Risperdal, Seroquel, Zyprexa and Depakote are also known to cause psychosis in a not small percentage of those taking it.⁷⁴

These drugs are also very harmful, with a recent study concluding that each increment of neuroleptic increases the mortality rate by 2.5 times in a 17 year period and that people taking three of them are more likely to die than survive during such period.⁷⁵ They cause a myriad of serious harms, including Tardive Dyskenesia and other Extra-Pyramidal Symptoms, diabetes and other metabolic problems and even kill people outright, perhaps most often by Neuroleptic Malignant Syndrome.⁷⁶

The current forced psychiatric drugging regime Respondent assumes API is trying to impose on Respondent,⁷⁷ includes three psychiatric drugs, two of which are such neuroleptics.

⁷⁴ Appendix 227-326.

⁷⁵ Whitaker and Bassman Affidavits.

⁷⁶ Whitaker Affidavit.

⁷⁷ At the August 31, 2007 hearing, Respondent orally moved for an order requiring API to provide the factual basis supporting its Forced Drugging Petition, which the Probate Master denied based on API's argument that Respondent should already know what the basis is. Respondent believes this is an outrageous denial of due process, and has necessitated Respondent prepare for as many eventualities as he possibly could in the short time allotted. It also exemplifies just one of the many ways in which involuntary commitment and forced drugging respondents' rights are grossly violated as a matter of course. If forced drugging petitions are to be decided on any sort of expedited schedule, the Petitions should provide meaningful notice that allows a meaningful opportunity to respond.

The current standard of care, with the introduction of the "second generation" neuroleptics and increasing "polypharmacy," has resulted in the average shortening of life of people in the public mental health system going from 10-15 years to 25 years.⁷⁸

When Respondent complains the drugs are very harmful to him and damaging his brain and body, which is true, this complaint is labeled as delusional and proof of lack of insight as to his illness, his competency to decide whether or not to accept or reject the drugs, and of the need for forced drugging.⁷⁹ Similarly, a statement such as "they are drawing my blood to get me," would be labeled paranoid even though it is clearly true that Anchorage Community Mental Health did draw his blood as a precursor to ordering him returned to API. Respondent's expressed anger at the Masters during the hearing is also completely understandable in light of the Kangaroo Court nature of the proceedings where no meaningful defense is presented. It is well known that patients are regularly lied to by hospital staff, including the psychiatrists and even that psychiatrists regularly lie in court.⁸⁰

⁷⁸ Bassman Affidavit.

⁷⁹ Expected testimony of Dr. Worrall.

⁸⁰ See, eg. M. Perlin, *The ADA and Persons with Mental Disabilities: Can Sanist Attitudes Be Undone?*, Journal of Law and Health, 1993/1994, 8 JLHEALTH 15, 33-34; and Torrey, E. Fuller. 1997. *Out of the Shadows: Confronting America's Mental Illness Crisis*. New York: John Wiley and Sons. 151, 152. However, counsel wishes to expressly state that has no reason to think Dr. Worrall has done so, although he does believe Dr. Worrall does not accurately portray the benefits and harms of the medications. Counsel does not believe Dr. Worrall is lying about this; just that he has been misled as is described below.

The Guardian's treatment of Respondent has led to an irreconcilable conflict, with Respondent taking extreme measures to try to get out from underneath the Guardian's oppressive yoke.⁸¹

As a result, Respondent is mostly refusing to cooperate in virtually any way with the Guardian.⁸²

For example, the Respondent rips up checks from the Guardian made out to Vendors on his behalf, trying to force the Guardian to give him his money directly and as part of his effort to eliminate the guardianship.⁸³

The Respondent has also refused various offers of "help" from the Guardian, such as grocery shopping in a similar attempt to get out from under the guardianship. ⁸⁴

These actions have then been labeled as psychiatric symptoms and used by the Guardian to justify having the Respondent locked up and forcibly drugged against his will. ⁸⁵

The Guardian has decided it is better for Respondent to be locked up and forcibly drugged than to allow Respondent to decline the intolerable medication and eliminate the serious mental and physical harm caused by these drugs.⁸⁶

⁸¹ Expected testimony of James Parker and Paul Cornils.

⁸² Expected testimony of James Parker and Paul Cornils.

⁸³ Expected testimony of James Parker and Paul Cornils.

⁸⁴ Expected testimony of James Parker and Paul Cornils.

⁸⁵ If disputed, expected testimony of James Parker, or otherwise can be established at a continued hearing.

⁸⁶ If disputed, expected testimony of James Parker, or otherwise can be established at a continued hearing

As Dr. Bassman quoted in his affidavit" Albert Einstein once said that the definition of insanity is doing the same thing over and over again and expecting different results."

This definition of insanity applies to API's 27 years of forced drugging inflicted on Respondent in over 70 admissions, as well as to the Guardian's participation in inflicting this very harsh regime on Respondent for a lesser, but still significant period of time.

There are other ways.

VII. PRE-FILED TESTIMONY

The pre-filed testimony of Robert Whitaker⁸⁷ and Ronald Bassman⁸⁸ is being filed contemporaneously herewith.⁸⁹

VIII. THE ASSUMED DRUG REGIME IS EXPERIMENTAL

The various combinations of Risperdal, Seroquel, Zyprexa, and Depakote have never been studied and never approved in the combinations Dr. Worrall wants to inflict on Respondent.⁹⁰ Therefore, it is experimental. Dr. Worrall is not expected to dispute that the drug combinations he is expected to be proposing has never been studied.

⁸⁷ Mr. Whitaker's Resume is at Appendix 152.

⁸⁸ Dr. Bassman's *Vita Curriculum* is at Appendix 154.

⁸⁹ Due to logistics, the original notarized versions of their affidavits are not available, but will be upon receipt.

⁹⁰ The labels on these drugs explicitly so state. Appendix 227-326. It is expected that Dr. Worrall will confirm this if asked.

IX. LESS INTRUSIVE ALTERNATIVES

A. Possible Less Intrusive Alternatives

Myers held:

*[A] court may not permit a treatment facility to administer psychotropic drugs unless the court makes findings that comply with all applicable statutory requirements and, in addition, expressly finds by clear and convincing evidence that the proposed treatment is in the patient's best interests and that no less intrusive alternative is available.*⁹¹

The court may not allow forced drugging when a less intrusive alternative could be made available but the State chooses not to fund them. *Wyatt v. Stickney*, 344 F.Supp. 387, 392 (M.D.Ala.1972) ("no default can be justified by a want of operating funds."), affirmed, *Wyatt v. Anderholt*, 503 F.2d 1305, 1315 (5th Cir. 1974)(state legislature is not free to provide social service in a way that denies constitutional right). In other words, the State may not forcibly drug someone when it could, but chooses not to fund possible less intrusive alternatives. In *Wyatt* the federal courts required the State of Alabama to spend funds to provide constitutionally adequate services in specific detail.

Dr. Mosher's testimony, set forth above, and the Bassman affidavit establish that there are viable alternatives for even the most chronic patient.

B. Existing Less Intrusive Alternatives

Respondent believes that Mr. Paul Cornils, of CHOICES, Inc., who has spent a considerable amount of time with Respondent and was one of co-petitioners for the *ex parte* application filed in this case, will testify that if Respondent was provided adequate housing and "wrap-around" services, he would be much more successful in the community

⁹¹ 138 P.3d at 254, emphasis added.

without forcing him to take drugs he doesn't want.⁹² It is believed Kamaree Altaffer, API Consumer & Family Specialist,⁹³ who has spent time working with Respondent both inside and outside of API will testify to substantially the same effect and might offer additional insights into services and approaches that would substantially decrease Respondent's difficulties in the community.

There are less intrusive alternatives and the Court should order the State to provide them so long as the cost is not unreasonable as compared to the over \$1,000 per day it costs to have Respondent at API.

In addition, because of the way that being homeless exacerbates Respondent's problematic presentation in the community, the Court should also order the state to allow Respondent to come and go from API as he desires. In light of what API has done to him for so many years, Respondent is unlikely to accept, but it should be available to him. It is expected that Paul Cornils and/or Kamaree Altaffer will provide testimony as to why this makes sense in the unique situation for Respondent, whom Dr. Worrall has testified is the most, or about the most mentally ill person he has ever treated.

API should just dismiss the petition, but failing that the following is Respondent's witness list.

⁹² It is also believed that Mr. Cornils will testify that he opposed API filing the Forced Drugging Petition because he felt less intrusive alternatives were available from CHOICES, Inc., but API went ahead in spite of the availability of this less intrusive alternative. If he does so testify, it will directly contradict Dr. Worrall's testimony, although Petitioner doesn't know if Mr. Cornils spoke directly with Dr. Worrall or not.
⁹³ Ms. Altaffer is being subpoenaed to the hearing, but may not be called due to counsel's concern that she may be retaliated against for truthfully testifying under court compulsion.

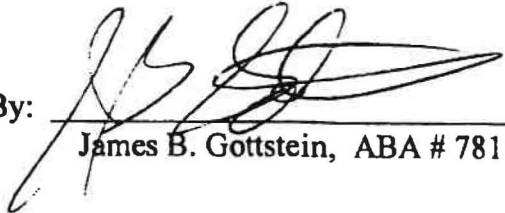
X. WITNESS LIST

1. Paul Cornils
2. Sarah Porter (May only be available Wednesday morning and will be gone by Saturday morning)
3. James Parker
4. William Worrall, MD
5. Eli Lilly Representative (if necessary)
6. Johnson & Johnson representative (if necessary; continuance will be necessary)
7. Abbott representative (if necessary; continuance will be necessary)
8. Astra-Zeneca Representative (if necessary; continuance will be necessary)
9. Kamaree Altaffer (maybe)
10. Faith Myers (maybe)
11. George Stone (maybe)
12. Scott Bassett (maybe)
13. Jerry Jenkins (maybe)
14. Rebuttal Witnesses
15. Witnesses identified through testimony at the hearing
16. Witnesses necessary to establish facts disputed by API and otherwise not established by above listed witnesses.

DATED September 4, 2007.

Law Project for Psychiatric Rights, Inc.

By:


James B. Gottstein, ABA # 7811100

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

IN THE TRIAL COURTS FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

In the Matter of the Necessity
for the Hospitalization of
W.S.B.,

Respondent.

_____/

No. 3AN-07-1064 PR

30-DAY COMMITMENT HEARING

PAGES 1 THROUGH 103

BEFORE THE HONORABLE ANDREW BROWN
MASTER

Anchorage, Alaska
September 5, 2007
9:14 a.m.

APPEARANCES:

FOR STATE OF ALASKA: Elizabeth Russo
Attorney General's Office
Human Services Division
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

FOR W.S.B.: James Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Also Present: W.S.B.

PROCEEDINGS

1 3AN2707-162
2 9:14:26

3 THE COURT: This is the matter of the case
4 involving the hospitalization for William Bigley, file
5 number 007-1064. This is the time set for the hearing
6 concerning State's petition -- petition for court
7 approval of administration of psychotropic medication.
8 And Ms. Russo is here representing the State, and Mr.
9 Gottstein is here representing Mr. Bigley.

10 So, any preliminary matters, Ms. Russo?

11 MS. RUSSO: Yes, Your Honor. Along -- I just
12 filed a pre-hearing brief this morning. Part of my
13 pre-hearing brief is a motion to strike all the
14 attachments that had been attached to the respondent's
15 pre-hearing brief, including the affidavits that were
16 filed along with it.

17 At this point, just -- many of them, I don't
18 believe, are relevant to the issues in this case. If
19 the respondent wishes to introduce them as evidence
20 later on, then we could take them up the, but I would
21 ask the court to take that up.

22 THE COURT: Okay.

23 MS. RUSSO: And then I understand that there
24 is a witness that Mr. Gottstein has subpoenaed and
25

1 wishes to testify this morning.

2 My only witness is Dr. Worrall, and there were
3 staffing issues at the hospital, so he's not here yet.
4 he will be here at 10 o'clock this morning.

5 I would object to Mr. Gottstein calling Ms.
6 Porter. I don't know how she can provide relevant
7 testimony in this case, and I think we should probably
8 try and figure that out. I understand she is only
9 available this morning, so we should probably figure
10 out the issue of her testimony as quickly as possible
11 so that she's not detained any longer than need by.

12 MR. GOTTSTEIN: But she's not under subpoena,
13 Your Honor.

14 MS. RUSSO: Oh, she isn't? Okay.

15 THE COURT: Okay.

16 MR. GOTTSTEIN: But (indiscernible).

17 MS. RUSSO: Let me -- Ms. Russo, anything else
18 before hear from Mr. Gottstein?

19 MS. RUSSO: Not at this time, Your Honor.

20 THE COURT: Okay.

21 Mr. Gottstein?

22 MR. GOTTSTEIN: Well, first off, of course, I
23 think the petition should be dismissed so that there is
24 no question that I've asked for it. I'm doing so now,
25 and I think there is -- it may be a little unclear in

1 terms of the proper procedure, but whether you call it
2 a motion or judgment on the pleadings -- for example,
3 they have failed to allege facts sufficient to support
4 their petition. And I brought this up on Friday, and
5 suggested that, on due process grounds, that they --
6 you know, that I be notified. And I'm gonna re-raise
7 that because there is something in their brief this
8 morning that shows that they really should have done
9 that, and I was entitled to it. But the basic thing is
10 that they haven't -- the basic motion.

11 There are two real motions, you know,
12 procedurally. A motion for judgment on the pleadings,
13 based on their allegations and their responses, which
14 is in the pre-trial hearing, which could be considered
15 an answer. Especially that background section should
16 be considered an answer.

17 And then, of course, there is evidence on all
18 those. And I don't know that there is any
19 authentication issue with respect to the court
20 documents. And I had a subpoena out for Dr. Worrall,
21 to bring the records, so that if there is any question
22 about authentication -- so I think that's proper
23 evidence. And, so, then, that would then be a summary
24 judgment motion, basically. And, so, I think,
25 technically, that needs to be addressed first.

1 And then, I really -- okay -- and then -- and
2 then in terms of the notice -- of course, my brief says
3 that they have to say -- they have to say, under
4 Meyers, what drugs and what combinations they are
5 proposing, in order for a proper analysis to be used.
6 And on Friday I said that they should provide, you
7 know, the information under Meyers. And, of course,
8 Your Honor denied that. But that was a due process
9 argument.

10 But now she comes in and complains that I've
11 got information about a drug that they're not
12 proposing. I don't even know what drugs they're
13 proposing, which is what I asked for last Friday.
14 Again, sorry for getting worked up about that.
15 But it really just seems, you know, like -- you know,
16 come on, let's have notice and reasonable opportunity
17 to respond and handle these things properly, as Meyers
18 directed us to do. That these forced drugging
19 petitions are not something -- that they're something
20 that need to be done -- I'm not trying to delay, but
21 they need to be done properly and well considered
22 because of the important interest at stake.

23 Okay. And then looking through it -- ah, you
24 know -- and we've got a huge amount of stuff that could
25 be done before we can get through -- you know, all the

1 way to the end. And so, it -- I don't think you know,
2 Your Honor. I don't actually do a lot of trial work.
3 I'm doing more, as you might imagine. But I had one
4 recently in front of Judge Michalski, and he seemed to
5 take this approach: "Well, let's figure out, you know,
6 what we really need to do." You know, "What we can do
7 right now that might resolve things."

8 And in my mind the thing that really might
9 resolve -- other than the preliminary motions, is this
10 issue of less intrusive alternative. Because it's one
11 of the requirements that they have to provide -- I
12 mean, they have to prove by clear and convincing
13 evidence. And so I think that's what we might focus on
14 first.

15 THE COURT: Okay.

16 MR. GOTTSTEIN: If -- I mean, but I do think
17 that preliminary motions on judgment on the pleadings,
18 and, you know, summary judgment. Although I
19 understand, you know the timing is an issue, and that's
20 not entirely my fault.

21 THE COURT: All right. Well, let me try to
22 take things one-by-one.

23 First of all, there is not a formal motion
24 under Civil Rule 56, summary judgment. And, so, I
25 cannot regard the documents I have in front of me as a

1 clear motion for summary judgment. I mean, the rule is
2 very clear as to how that would work. So, I do not
3 regard the respondent's filings as a clear motion for
4 summary judgment. I'm putting the state on notice as
5 to how it would be dealt with.

6 And a judgment on the pleadings? Well, that
7 just doesn't make sense, frankly, because we have the
8 State's -- their petition, but that's only because
9 that's the way it's always been done. A petition for
10 court approval of administration of psychotropic
11 medication. And those always result -- have always
12 resulted, since the law went into effect, in a
13 subsequent hearing. As far as I know, there's never
14 been a judgment on the pleadings concerning such a
15 petition. So there is no expectation that such a
16 petition would be dealt with just by pleadings. And I
17 think, when it comes to constitutional rights, that the
18 respondent has been proving up on the Meyers and
19 Weatherhorn. There is full expectation of a hearing on
20 the merits. So judgment on the pleadings, I don't
21 think it's called for -- envisioned, even.

22 MR. GOTTSTEIN: May I be heard just a little
23 bit more on that to make a record?

24 THE COURT: Uh-huh (affirmative). Right.

25 MR. GOTTSTEIN: I respectfully disagree that

1 there shouldn't be sufficient allegations in the
2 petition to support the relieve requested. And I think
3 -- what happened was that -- you know, you had
4 something that was going on for almost 25 years, a
5 procedure. And then Meyers said, no, that -- you know,
6 just having a person be incompetent is not sufficient.
7 You've got to also show, you know, best interest and
8 less interest of alternatives.

9 UNIDENTIFIED MALE: (Indiscernible).

10 MR. GOTTSTEIN: And I think that necessarily
11 implies that the petition has to include that. And
12 that it has to include it with enough particularity to
13 state the relief -- facts sufficient to grant the
14 relief. If all of the facts alleged in the petition
15 were true, would they be entitled to the relief they
16 requested. And as it stands now, they don't. And that
17 was fundamentally changed in Meyers. And that's what I
18 -- you know, I've been trying to -- maybe not as
19 clearly as now -- you know, get that across. So I'm
20 formally -- you know, I'm making a record on that. Not
21 just -- I'm not just making a record. I think that's
22 the way it should go. And I think, basically, that
23 they should adjourn and do that. Except, I think that
24 there's clearly a less intrusive alternative, and that
25 maybe that's the think that -- the thing that makes the

1 most sense is to proceed with that, and then maybe we
2 could resolve the case.

3 THE COURT: Well, I appreciate your comments,
4 but my ruling will stand as is.

5 I also -- I guess I'll just add -- just point
6 out that the petition for approval of administration of
7 psychotropic medication was filed August 30th, the same
8 day of the ex parte petition. And, I mean, the ex
9 parte petition -- the petition for three-day commitment
10 is based on facts -- alleged facts, as to incidents or
11 events that had recently occurred.

12 The petition for court approval of
13 administration of psychotropic medication aims to deal
14 with more of what eventually may -- the hospital is
15 envisioning for the respondent's care. And so, it --
16 frankly, I think it's more difficult for a petition for
17 approval of administration of psychotropic medication
18 to be as thoroughly drawn out as the possibility of the
19 30-day commitment petition. Because, one, the 30-day
20 commitment petition is based on recent events, whereas
21 the medication petition is based on, to some extent,
22 envisioning what may have to be done in the future. so
23 I'm just pointing that out.

24 MR. GOTTSTEIN: Well, Your Honor, but that's
25 what they have to do to get their order, is to say what

1 their program is. And I think that Mr. Bigley and his
2 attorney are entitled to know what it is that they're
3 going to do so that we -- there are two basis. Of
4 course there's the due process. We could also -- just
5 under basic procedural rules, that we're entitled to
6 know what it is that we're supposed to try and defend
7 against, and the pre-hearing brief this morning is
8 classic example.

9 I don't know now what their program is that
10 they're trying to force Mr. Bigley to endure. And, you
11 know, so, here, the doctor is just gonna come in and
12 say that -- and -- and -- and the petition -- they
13 should have such a plan and know that before they file
14 the petition.

15 THE COURT: All right. Thank you. We'll
16 proceed.

17 MR. GOTTSTEIN: Your Honor, if I may. I mean,
18 I really object to not having notice. She complained
19 this morning that...

20 THE COURT: Mr. Gottstein, I've ruled. That's
21 sufficient not -- the petition is sufficient notice.

22 Ms. Russo -- well, actually, now -- we don't
23 have Dr. Worrall. He's not going to be here until
24 10:00. So I don't know if we have to take a recess at
25 this point, because I don't have anyone here.

1 MS. RUSSO: Well, I don't know, Your Honor, if
2 the court visitor could give her recommendations at
3 this point, perhaps, so that we aren't taking up
4 more...

5 THE COURT: I'll take whatever I can, frankly.

6 MS. RUSSO: Right. Okay. Yeah. We'll do
7 that. So we'll get her on the phone now.

8 MR. GOTTSTEIN: I'll raise a couple issues...

9 THE COURT: We're off the record. We have
10 to...

11 MS. RUSSO: Oh, okay.

12 (Off record - 9:28 a.m.)

13 (On record - 9:28 a.m.)

14 THE COURT: I'll note for the record that we
15 now have the visitor, Ms. Taylor, on the telephone.

16 And so, Mr. Gottstein, you had one other thing
17 you wanted to mention before I...

18 MR. GOTTSTEIN: Well, there's a couple. One,
19 of course, again, I don't have any idea what it is that
20 I'm being presented with.

21 And then the other is that -- and I'd like to
22 submit this as an exhibit. This is an e-mail that
23 was...

24 THE COURT: Well, wait a minute. You don't
25 submit exhibits until you have -- you're questioning a

1 witness, and then we deal with the exhibit being marked
2 and whether there's gonna be an objection to it being
3 admitted in evidence. So I'm not taking exhibits at
4 this point.

5 MR. GOTTSTEIN: This is an exhibit to my oral
6 motion.

7 THE COURT: Well...

8 MR. GOTTSTEIN: Can I just -- you can do that,
9 but, I mean -- the point -- and I'm not sure when this
10 took place, but I feel that my client's rights are
11 being violated. And, um -- and so I wanna raise that
12 point. They're -- they're -- first of -- and, I
13 probably should have sent this to Mr. Parker, and I
14 will -- but the State was on notice that I'm entitled
15 to be with my client during any interviews. And -- and
16 I wanna do that. And so that's the basic -- that's the
17 basic thing with this. And this -- I think that maybe
18 Ms. Taylor didn't -- even conducted her interview
19 before that. So that's number one.

20 Number two is, I'm gonna renew my objection to
21 not having her present because -- and I mentioned this
22 Friday. I haven't seen the instrument that she
23 administered, or proposed to administer. I certainly
24 think there should have been a written report that I
25 was given. So those are my objections.

1 THE COURT: All right. So concerning the
2 report. I guess I have to deal with that issue. A
3 written report. Because I'm a little concerned in this
4 case -- because the Weatherhorn case specified that
5 "The visitor's report is an essential component of a
6 statutory scheme, failure to prepare and present the
7 report before the hearing in Weatherhorn's case is an
8 instance of plain error."

9 To me, that means a written report. So I need
10 to know, do the parties want the written report prior
11 to the hearing?

12 MS. RUSSO: Your Honor, I -- my understanding,
13 from having done these hearings for the past several
14 years, is that these hearings are expedited matters and
15 that there are no formal reports, especially for the 30
16 days, ever written or proposed. That's the same with
17 guardianship matters that are expedited,
18 conservatorship cases that are expedited -- expedited
19 matters, generally because of the press of business, do
20 not have written reports.

21 The reason -- the court visitor is usually
22 sworn and under oath. It's my understanding that the
23 respondent then has an opportunity to question the
24 visitor on exactly what she performed and how she came
25 to her conclusion.

1 I also have to object to this exhibit to the
2 motion that Mr. Gottstein just made. I'm not quite
3 sure how it -- my understanding of his motion -- maybe
4 I'm not fully understanding his motion, but his motion
5 is about the visitor's testimony right now, I think is
6 what it is. And an e-mail to myself and Ms. Brennan
7 has -- even though he talks about the fact, he doesn't
8 want the visitor meeting with his client. During that
9 time -- I don't employ the court visitor. The court
10 visitor is not employed by either the Attorney
11 General's Office or the Public Defender's Agency.

12 MS. TAYLOR: And I've never been served with
13 papers, Your Honor.

14 MS. RUSSO: And...

15 THE COURT: Okay.

16 MS. RUSSO: And so I don't really see how this
17 e-mail is relevant to his motion. I mean, I understand
18 he's concerned, but that -- his objection to the
19 visitor, he -- I don't think it's appropriate.

20 MS. TAYLOR: Your Honor, may I say something?

21 THE COURT: Go ahead, Ms. Taylor.

22 MS. TAYLOR: I believe under Meyers it talks
23 about a report by the visitor, either oral or written.

24 THE COURT: Wait a minute...

25 MR. GOTTSTEIN: I'm having difficulty

1 understanding her.

2 THE COURT: Yeah. Ms. Taylor, we're having
3 problems hearing you. It sounds like you're breaking
4 up. I'm not sure what the problem is, but...

5 MS. TAYLOR: Okay. Hang on a -- hang on.

6 (Pause) Um, is this better?

7 THE COURT: Yes.

8 MS. TAYLOR: Okay. I believe, under Meyers,
9 the supreme court talks about the visitor's report,
10 oral or written.

11 THE COURT: I'm sorry. What was the last part
12 you just said?

13 MS. TAYLOR: That, under Meyers -- when I read
14 Meyers...

15 THE COURT: Uh-huh (affirmative).

16 MS. TAYLOR: ...the supreme court talks about
17 the visitor's report being oral or written. And, Ms.
18 Russo is correct, that in expedited matters, which, the
19 ones at API are, we don't normally do a written report.
20 We don't have the time. And, again, I've never been
21 served by any -- I've never been served with copies of
22 anything Mr. Gottstein has filed, and I do believe I am
23 an interested party.

24 MR. GOTTSTEIN: Your Honor, there's a -- I
25 don't -- I think she's confused about what type of

1 proceeding we're in.

2 And, a couple things. One is -- and this is -
3 - probably my biggest complaint, Your Honor, is that
4 this is not an expedited proceeding. This is supposed
5 to be done deliberately and carefully before my client
6 is subjected to this type of intrusive inter -- you
7 know, treatment that's been equated with electroshock
8 and lobotomy. And I don't think that that's -- that's
9 being considered. And Meyers and Weatherhorn are very
10 clear that the could should not do so until it is
11 clearly convinced that it's in the person's best
12 interest. And -- and you can't do that if there's this
13 rush to judgment. And the supreme court specifically
14 said, as I pointed out in one of my pleadings on
15 Friday, that there is no rush on the forced drugging
16 petition.

17 THE COURT: Okay. Let me note that the
18 Weatherhorn case, which I just quoted, was a 30-day
19 commitment proceeding, just like what I was involved
20 with last Friday and today. You know, I -- and I think
21 the Weatherhorn is clear in saying that there has to be
22 a report prepared and presented before the hearing.
23 And to me that means a written report.

24 So that's going to mean that I'm going to have
25 to require Ms. Taylor to submit a written report before

1 we can have her testimony. So I'm not going to be able
2 to go ahead today with her testimony.

3 MS. TAYLOR: Well, Your Honor, then I'm gonna
4 need two weeks to prepare.

5 MS. RUSSO: Your Honor, this is -- there is a
6 -- there is an inherent tension in these cases, in
7 between -- the commitment period at this point in time
8 is 30 days.

9 THE COURT: Right.

10 MS. RUSSO: Treatment has to be a benefit to
11 the patient. If the treatment that the hospital wishes
12 to propose, that it believes is the best benefit to the
13 patient, in Mr. Bigley's case, and in many other cases,
14 is -- is the medication petition. While it is not --
15 while the medication hearing does not have to happen
16 necessarily within the same time frame as the
17 commitment hearing -- and these are two separate
18 proceedings -- it does need to be on the basis,
19 because, otherwise, Mr. Bigley is merely being housed
20 at API, and that's not appropriate for him. That's not
21 appropriate for -- I mean, that's just not -- that's
22 not an appropriate -- that's not in his best interest,
23 I don't think. However, I don't believe that that
24 would cause -- that would lead to any kind of reason
25 for Mr. Bigley to be released from API before the

1 commitment period is up, because I believe he still
 2 meets the commitment criteria. It's just -- this is
 3 inherent tension, and to have to continue these
 4 proceedings until we have a written visitor's report
 5 that's two weeks out, Mr. Bigley will be over halfway
 6 through his commitment by that point in time. There is
 7 no way that -- well, I highly doubt, given the history
 8 that -- Mr. Bigley's history -- we're talking about Mr.
 9 Bigley here, who is a completely different case, in
 10 large part, from a majority of people. There's been
 11 testimony in previous instances -- Mr. Bigley is one of
 12 the most severely mentally ill people in this state.
 13 So we're not talking about the general range of cases,
 14 we're talking about Mr. Bigley's case here.
 15 So I'm guessing that if we were to wait, and
 16 if there were no decision on the petition for
 17 medication until over halfway through the commitment
 18 period, we're setting Mr. Bigley up for a lengthier
 19 commitment, and we're keeping -- because he needs the
 20 medication. It's the hospital's position, he needs the
 21 medication in order to -- in order to no longer be
 22 gravely disabled.
 23 And so I'm just objecting to, if we're not
 24 going to have to -- if we're gonna have to continue
 25 these for two weeks, it's just not gonna work. I

1 I mean -- so, I mean, if the -- if the respondent --
 2 and this Mr. Bigley -- just refuses to cooperate with
 3 you, then, if that shortens the process, you know.
 4 Fine. I mean, you know, then it's a much shorter
 5 report you would do -- capacity assessment.
 6 So the thing is, I'm just wondering if there's
 7 a possibility you can, within the next couple days, get
 8 something done.
 9 MS. TAYLOR: I can't -- I'm sorry, Your Honor.
 10 I'm under deadlines for three other cases. I don't
 11 have the time to do it the next couple of days. The
 12 soonest I could possibly get it done -- I can try and
 13 finish it this weekend and file it on Monday.
 14 THE COURT: Mr. Gottstein, do you want to say
 15 something?
 16 MR. GOTTSTEIN: Your Honor, remember, also,
 17 that she needs to investigate, you know, whether he's
 18 made any prior statements regarding his desire to
 19 decline medications, and whether he was competent at
 20 the time that he made those statements.
 21 MS. TAYLOR: Your Honor, I'm fully aware of
 22 what my statutory duties are, I don't need Mr.
 23 Gottstein to remind me.
 24 THE COURT: Okay.
 25 MR. GOTTSTEIN: Excuse me. And the other

1 understand the tension, but...
 2 THE COURT: Uh-huh (affirmative). Well...
 3 MS. RUSSO: ...I don't think that's the way
 4 that the statu -- that this -- the scheme is laid out.
 5 THE COURT: Before -- before I hear from Mr.
 6 Gottstein, let me as -- I wanna ask Ms. Taylor: Is
 7 there any way that you can do it a lot sooner?
 8 MS. TAYLOR: Well, if M.r Gottstein wants me
 9 to complete -- do a completely thorough investigation,
 10 I will have to put every other case aside that I have
 11 pending and work on this.
 12 THE COURT: Okay. Well, Ms. Taylor, it's not
 13 what Mr. Gottstein wants you to do, it's just what's
 14 required by the statute as to the type of evaluation.
 15 At the tip of my tongue, I don't have the particular --
 16 I don't have the statute in front of me, or the
 17 particular words that the supreme court and the statute
 18 used. The...
 19 MS. TAYLOR: The problem, Your Honor, is, that
 20 I cannot get Mr. Bigley to answer the assessment
 21 questions.
 22 THE COURT: Okay. This -- yeah -- I'm sorry -
 23 - the capa -- yeah. The Capacity Assessment?
 24 MS. TAYLOR: Right.
 25 THE COURT: That's what you're supposed to do.

1 thing is that I would like to have a copy of the
 2 Capacity Assessment Instrument that is administered.
 3 THE COURT: Well, I -- I mean, as far as I
 4 could tell from Weatherhorn, I mean, the -- the supreme
 5 court is saying that, you know, a report has to be
 6 prepared and presented. So whatever is written by Ms.
 7 Taylor, that's up to her. Then if there are questions
 8 about the document, in the hearing in which we have Ms.
 9 Taylor's testimony, we deal with -- with that.
 10 I mean, Weatherhorn set -- specified one
 11 thing, but it didn't go into detail as to exactly what
 12 goes into the report. On the other hand, the statute
 13 refers to the capacity assessment. So I have to leave
 14 it up to Ms. Taylor, since this is something of the
 15 first instance, as to what she might draft and submit
 16 to the court, and whether that will be the model for
 17 further proceedings -- I don't -- in other cases, I
 18 don't know.
 19 MS. TAYLOR: But...
 20 MR. GOTTSTEIN: Your Honor, all I'm asking...
 21 MS. TAYLOR: ...Your Honor, we do have a
 22 Standard Capacity Assessment that was developed by Ms.
 23 Stanley in accordance with statutes.
 24 THE COURT: Okay. I -- yeah, I haven't seen
 25 it, so -- I mean, so I don't -- I don't know. If you

1 have it -- fine. I mean, well -- I mean, fine in the
2 sense of -- you know, I guess you use that and then it
3 gets submitted to the court, along with anything else
4 you might submit, and then deal with it step-by-step.

5 MR. GOTTSTEIN: So, if I may be clear. I've
6 asked for a copy of that now. I mean, so maybe she
7 could fax it over to me. So that's all I'm asking for.
8 It's unclear to me if that's been denied or not.

9 THE COURT: Well, wait a minute. Are you
10 asking for that, rather than her report?

11 MR. GOTTSTEIN: No. I'm just as -- I want to
12 see that form so -- to help me prepare, so that I will
13 know what -- you know, what it is that -- what
14 questions they ask. And, so, I don't know...

15 THE COURT: I'm only gonna require Ms. Taylor
16 to submit one thing at one time. That would be her
17 report. If she wants to attach things to it -- I mean,
18 the Capacity Assessment -- I'll leave it up to her.
19 And then at the time of the hearing, I deal with her
20 report; any objections to what's in it; for what was
21 not attached to it. But I don't think I can -- it will
22 be appropriate for the court to order Ms. Taylor to
23 start filing things piece meal.

24 MR. GOTTSTEIN: Well, Your Honor, all I'm --
25 she said there's a standard from that they use. And I

1 case are clear that the court does not have a choice as
2 to just going ahead without the written report, when
3 it's being sought.

4 So, ah -- what time do I have.
5 (Side conversation with Clerk)

6 THE COURT: We're just gonna go off record.
7 Hold on, Ms. Taylor.

8 MS. TAYLOR: Okay.
9 (Off record - 9:45 a.m.)
10 (On record - 9:47 a.m.)

11 THE COURT: We're now on record. I'll note --
12 the part of the hearing concerning Ms. Taylor's
13 testimony will be next Monday, September 10th, at 1:30
14 downtown in my courtroom here. And we're going to
15 proceed with other testimony this morning as best we
16 can. Dr. Worrall, and whatever other witnesses. We'll
17 perpetuate their testimony.

18 And, Ms. Taylor, would like for you to submit
19 your report. And I'll -- I mean, the court will accept
20 it by fax, and I'll allow you to fax it to Mr.
21 Gottstein and to Ms. Russo, because of the time
22 constraints.

23 Mr. Gottstein, do you have a fax?

24 MR. GOTTSTEIN: 274-9493.

25 MS. TAYLOR: I'm sorry. Was that 9493?

1 don't know why that shouldn't be made available to me
2 at this time.

3 THE COURT: Well, I mean, that's up to her.
4 If she wants t give it to you ahead of time to form --
5 I'll leave that up to her. But when she files with the
6 court, her visitor's report, that's -- that's the only
7 thing I'm going to be requiring before the hearing.

8 MR. GOTTSTEIN: So you're denying my motion.

9 MR. BIGLEY: Can't deny it.

10 THE COURT: As to getting the...

11 MR. BIGLEY: Yes.

12 MR. GOTTSTEIN: The form.

13 THE COURT: ... -- this form?

14 MR. GOTTSTEIN: Yes.

15 MR. BIGLEY: Yes.

16 THE COURT: Yes. I'm leaving it up to her.
17 If she wants to voluntarily send it to you. I'm not
18 going to require it at this point.

19 All right. So the next thing I have to do at
20 this moment is find time, as soon as possible, next
21 week, to get Ms. Taylor's testimony. And in doing so,
22 I want to point out, I understand what Ms. Russo said
23 as to the tension between the filing of the petition
24 and the commitment and having the medication hearing,
25 but I think the law, and -- especially the Weatherhorn

1 MR. GOTTSTEIN: Niner-four niner-three.

2 THE COURT: Yeah. 9493. Yeah.

3 MS. TAYLOR: Okay.

4 THE COURT: And Ms. Russo has a fax, so...

5 MS. TAYLOR: I have hers.

6 THE COURT: Okay. And let me give you the
7 court's, in case you don't have that. 264-0522.

8 MS. TAYLOR: Okay.

9 THE COURT: Okay. And if you can get that to
10 us -- how about 9 o'clock Monday morning?

11 MS. TAYLOR: I'll do my best.

12 THE COURT: Okay. And, you know, at this
13 point, I'm leaving it up to the visitor to draft the
14 report in the format she believes complies with the
15 statute in Weatherhorn might require. Then, you know,
16 at the hearing, you know, I deal with the contents and
17 the testimony. I think that meets Weatherhorn and the
18 statute requirements at this point.

19 So, anything else while we have Ms. Taylor on
20 the line right now, as to her...

21 MR. GOTTSTEIN: No, Your Honor.

22 THE COURT: Ms. Russo?

23 MS. RUSSO: Uh-uh (negative).

24 THE COURT: Okay. So, Ms. Taylor, I want to
25 thank you for being available on the line. And you'll

1 be here -- will you be downtown on -- when -- on
 2 Monday?
 3 MS. TAYLOR: Oh, yes, sir. I can be downtown
 4 on Monday. But I do have on request, Your Honor. As I
 5 said, I have not been served by anything by Mr.
 6 Gottstein.
 7 THE COURT: Okay.
 8 MS. TAYLOR: And I need copies of whatever
 9 he's filed, and...
 10 THE COURT: Right.
 11 MS. TAYLOR: ...what he will file.
 12 THE COURT: Okay. I...
 13 MS. TAYLOR: And I -- I can certainly give you
 14 my fax number.
 15 THE COURT: Okay. Yeah. I -- first of all,
 16 Ms. Taylor, I'm sorry, I forgot about what you had
 17 said earlier about not being served, and, so, I
 18 appreciate your reminding me.
 19 Mr. Gottstein you have to serve the visitor
 20 with copies of all pleadings. Okay?
 21 MR. GOTTSTEIN: I didn't know that.
 22 THE COURT: Well, okay. You don't -- I --
 23 she's -- she's a semi -- she's a party, in a sense. I
 24 mean, she's appointed. So, in the future. Okay?
 25 MR. GOTTSTEIN: Yes. No problem, Your Honor.

1 THE COURT: Yeah.
 2 MR. GOTTSTEIN: And I guess -- I -- of course,
 3 I didn't know that it was Ms. Taylor until Friday,
 4 either, so. I don't think.
 5 THE COURT: Well, all right. Okay.
 6 MR. GOTTSTEIN: So...
 7 THE COURT: But, I mean, like, what we -- what
 8 we received yesterday. So just in the future.
 9 MR. GOTTSTEIN: Yes. Yes.
 10 THE COURT: As soon as you're aware of who a
 11 visitor is, I would serve them with copies of all
 12 pleadings.
 13 MR. GOTTSTEIN: At what physical address?
 14 MS. TAYLOR: Well, because -- there are two of
 15 us visitors who do this. I would suggest Mr. Gottstein
 16 check with the legal tech. He can tell you which
 17 visitor is handling it.
 18 My address is 2914 Leighton, L-E-I-G-H-T-O-N,
 19 Street. Anchorage, 99517. And my fax is 248-7582.
 20 THE COURT: Now, I want to point out to Ms.
 21 Taylor, since she hasn't received these. Yesterday the
 22 court received, and also Ms. Russo was served with -- I
 23 don't know how many -- quite a few pages -- a couple
 24 hundred pages, at least, is this, do you think?
 25 MR. GOTTSTEIN: I think they're numbered.

1 THE COURT: So I don't think you wanna -- in
 2 fact, I don't think -- I don't think Ms. Taylor would
 3 want to get all of this by fax.
 4 MS. TAYLOR: Mail is fine.
 5 THE COURT: Yeah. Okay.
 6 MS. TAYLOR: For a couple of hundred pages.
 7 MR. GOTTSTEIN: That's why I requested a
 8 physical -- physical address.
 9 THE COURT: Yeah. Okay. So -- yeah, I don't
 10 want her fax to break down with all of this. Okay.
 11 So, Ms. Taylor, anything else? And I do
 12 really appreciate you being available on the phone,
 13 and...
 14 MS. TAYLOR: No, sir. I appreciate being
 15 available by phone. Thank you.
 16 THE COURT: Okay. Thank you. Oh, one further
 17 thing, Ms. Taylor.
 18 MS. TAYLOR: Yes, sir.
 19 THE COURT: I mean, it is possible -- well,
 20 I'm gonna try to get some testimony from Dr. Worrall
 21 and any other witness this morning, that you may want
 22 to review that before your testimony next week.
 23 Because you are often present during the testimony of
 24 the doctors before you give your visitor's report in
 25 other hearings. So if you want to be able to review

1 that, the court would make a disk available, I'm sure.
 2 You could arrange that through my office.
 3 MS. TAYLOR: Generally, sir, whenever I do
 4 these, I do speak with the doctor. I don't really need
 5 to review his testimony.
 6 THE COURT: Okay. No. I'm leaving it up to
 7 you. I just wanted to point that out.
 8 MS. TAYLOR: That's fine. I appreciate it
 9 very much.
 10 THE COURT: Okay. Thank you. Good bye.
 11 MS. TAYLOR: Thank you. Bye.
 12 THE COURT: Okay. I guess the next thing is,
 13 we wait for Dr. Worrall. You know, whenever he gets
 14 here. Maybe a few minutes. We'll take a recess until
 15 then.
 16 (Off record - 9:53 a.m.)
 17 (On record - 10:09 a.m.)
 18 THE COURT: This is the continuation of the
 19 case involving William Bigley.
 20 So then we have Dr. Worrall here. And, so,
 21 Doctor, since we're in a formal courtroom, if you'd
 22 stand, we'll get you sworn in. Just face the clerk.
 23 WILLIAM WORRALL.
 24 called as a witness in behalf of the State, being first
 25 duly sworn upon oath, testified as follows:

1 (Oath administered)
 2 WITNESS: I do.
 3 THE CLERK: You can have a seat. Sir, would
 4 you please state your full name, spell your last name,
 5 and give your occupation?
 6 WITNESS: William Allen Worrall, W-O-R-
 7 R-A-L-L. Psychiatrist.
 8 THE CLERK: Thank you.
 9 THE COURT: You may inquire, Ms. Russo.
 10 MS. RUSSO: Thank you, Your Honor.
 11 Dr. Worrall was qualified as an expert on
 12 Friday at the 30-day commitment. I would ask that he
 13 remain so qualified, as this is the same case. I don't
 14 know if Mr. Gottstein has additional questions of voir
 15 dire?
 16 THE COURT: Mr. Gottstein?
 17 MR. GOTTSTEIN: So long as it's understood he
 18 won't be giving any scientific testimony -- opinions as
 19 to any scientific evidence.
 20 THE COURT: Well, I mean, he's going to
 21 testify as an expert. And if, in his doing so, there
 22 is an objection to something he's testifying about,
 23 then I'll take it up at that particular point. But I'm
 24 not going to try to limit his qualification at this
 25 point, to just this or that. I mean...

1 DIRECT EXAMINATION
 2 BY MS. RUSSO:
 3 Q Dr. Worrall, how -- are you still Mr. Bigley's
 4 treating psychiatrist?
 5 A I am.
 6 Q And how do you intend to treat Mr. Bigley?
 7 A Ah, with an antipsychotic medication called
 8 Risperdal Consta, which is a long acting shot
 9 that lasts for two weeks. And it seems like,
 10 with social rehabilitation, it will become
 11 possible, once the medication takes effect.
 12 Q Is he on any medication at this time?
 13 A He is not. He had two emergency shots of
 14 short-acting antipsychotics. The last one was
 15 two days ago, and it shouldn't be affecting him
 16 now. And he had one the day of admission.
 17 Q Okay. And is it important to take -- for Mr.
 18 Bigley's treatment, that he take his medication
 19 as recommended?
 20 A It's vital to his treatment. Very important.
 21 Q Why do you say that?
 22 A Because it's the only affect of intervention
 23 for his extremely unusual rare very difficult
 24 case of paranoid schizophrenia, coupled with some
 25 mood factor, that we call "schizo affective

1 MR. GOTTSTEIN: Okay. Well, there's a
 2 distinction, Your Honor.
 3 And I don't know -- were you served with a
 4 subpoena?
 5 A No. I was out when they came over yesterday.
 6 MR. GOTTSTEIN: Okay. All right. I'd start
 7 with the standard expert witness -- I tried to. And I
 8 think under -- it became a lot more clear under the
 9 Marron decision -- 123 P.3d 992. There had been a
 10 question about -- under Coon, you know, what the rules
 11 were in terms of expert and the basis for the opinions,
 12 and if it's scientific testimony, then, of course, you
 13 have to follow all the Coon (indiscernible)
 14 requirements. And in that case I'm entitled to, you
 15 know, know all of the -- you know, the basis for the
 16 opinions and the -- you know, the treatises and all
 17 that. And so that's what I asked -- and the subpoena
 18 that wasn't served. But of course, he's -- and, so,
 19 that -- that's the distinction I'm making. I can
 20 certainly wait and make the objections -- if it comes
 21 up. It may not come up.
 22 THE COURT: Well, we'll wait, I guess, and
 23 see. Okay. So with that, I'll still regard Dr.
 24 Worrall in the area of psychiatry.
 25 Ms. Russo.

1 disorder." It's one of the worst cases of mental
 2 illness that's in the state, in terms of
 3 severity.
 4 Q And in your opinion, does Mr. Bigley have the
 5 capacity to give informed consent to the
 6 administration of the medication?
 7 A No, he doesn't. He has no insight into his
 8 illness, and believes there is nothing wrong with
 9 him, and therefore he can't even engage in the
 10 process of informed consent. It would be like
 11 trying to advise someone who had a severe leg
 12 fracture, who didn't believe there was anything
 13 wrong with their leg, that they needed a course
 14 of surgical treatment, or, you know, some
 15 surgical or medical intervention. There's no
 16 basis to make any decisions past that point, if
 17 they don't even agree they have an injury or an
 18 illness.
 19 Q And just to flush that out a little bit
 20 further. Is he able to assimilate facts with
 21 regards to his current situation? I mean,
 22 besides the...
 23 A Not really. Beyond lack of insight, he
 24 doesn't listen to what other people say, that he
 25 doesn't want to hear information from. He has

1 consistently, on this admission, refused to let
 2 me say anything to him. And I think that's not
 3 just a wilful disregard, I think there's no
 4 capacity to receive information in a one-on-one
 5 discussion of his medical psychiatric condition.
 6 He's just completely obsessed and preoccupied
 7 with his grandiose delusions and paranoia.
 8 Q Okay.
 9 A He's not capable of carrying on a rational
 10 conversation about his treatment.
 11 Q And has Mr. Bigley stated any particular
 12 objection to taking medication?
 13 A This time, no. Again, he's not engaging in
 14 conversations with me. Just that we don't have a
 15 right to -- he's won his case -- we can't treat
 16 him. But in the past he has. He's given some
 17 specific reasons.
 18 Q And what were those reasons?
 19 A He complained of sexual difficulties,
 20 impotence. He complained of hair loss. He
 21 complained of stomach problems, nausea. He
 22 complains that it's poison and it kills his body.
 23 And at these times he's been very psychotic and
 24 not, by any means, competent.
 25 Q Has he ever stated objections when he has been

1 the Risperdal Consta?
 2 A Well, it's numerous. A very long list of side
 3 effects. Pages and pages of potential side
 4 effects. Similar to what most antipsychotics can
 5 cause. Some are serious, and quite rare,
 6 generally. Some are time limited temporary side
 7 effects, such as dry mouth, constipation, that go
 8 away and that are not serious. And we look at
 9 the risks of all these side effects, versus the
 10 potential benefit when we make a decision about
 11 treatment.
 12 Q Okay. And are the side effects that Mr.
 13 Bigley -- he had been -- you stated, he had been
 14 psychotic when he made these complaints. But the
 15 impotence, hair loss, stomach problems, the
 16 poisoning -- is that -- are those known side
 17 effects to the Risperdal Consta?
 18 A Well, not poisoning, as in, ah -- you know,
 19 something that's gonna kill somebody. You know,
 20 like a high percentage. If everybody takes a
 21 poison, they're all gonna get poisoned.
 22 But -- for example, Depakote could cause hair
 23 loss. Antidepressants could cause sexual
 24 dysfunction. It's more rare with a drug like
 25 Risperdal, but it can happen. And all the

1 competent?
 2 A I don't know when he was ever competent
 3 before. It's not in -- not in at least a year
 4 that I've had interactions with him on a
 5 professional basis, have I seen him competent at
 6 any time.
 7 Q Okay. And do you know if he's taken any
 8 actions regarding the administration of the
 9 medications? Has he done anything, either
 10 positively for it or against taking medications
 11 at any time?
 12 A Well, he's taken medications under duress --
 13 under court order, to avoid getting injections.
 14 He's taken pills. Not of his free will. Not
 15 voluntarily in -- oh, I think at least a year.
 16 Two to three years ago he was -- without any
 17 court order or any duress, he was taking the same
 18 medication I'm recommending now, voluntarily,
 19 twice a month.
 20 Q Okay. So he was voluntary at that time.
 21 A As an outpatient, yes. Coming to see Dr.
 22 Thompson. When Dr. Thompson retired, we weren't
 23 able to offer that outpatient service for him,
 24 and I think that routine got interrupted.
 25 Q And what are the possible side effects from

1 antipsychotics can cause nausea. Often they
 2 reduce nausea, more likely.
 3 In his case -- he also has anorexia, so that
 4 gets -- it kinda complicates things. And he has
 5 a thing called gastrointest -- gastro-esophageal
 6 reflux, which is essentially heartburn. So he
 7 already has some issues with regards to his
 8 eating and his stomach. And then generally when
 9 he comes in the hospital he starts eating a lot
 10 of food because he hasn't been eating very much
 11 prior to a hospitalization.
 12 We do see problems with his stomach initially
 13 and then go away after a few weeks.
 14 Q How do you treat the problems to his stomach?
 15 Are you able to...
 16 A If he's willing to, he takes a medication that
 17 inhibits the production of acid in his stomach,
 18 which reduces his distress and his heartburn.
 19 This time we're not planning to use Depakote,
 20 which we have used in the past, because -- while
 21 it would help him in the long run, it's probably
 22 not going to do that much in, what, the 30 day
 23 period, and I know he's not going to be on
 24 medication 30 days from now, so there's not much
 25 point in putting him through the side effects of

1 that, because it's not going to produce nearly as
2 good a benefit as the Risperdal is gonna do. We
3 were using that to help him with his mood, but
4 it's gonna cause a little more nausea and a
5 little more side effects in the short run,
6 starting -- so the benefit versus the side
7 effects is kinda just really not worth it now.
8 Just nat as indicated anymore. If was to take it
9 for long term, then he would have more time
10 without side effects, and he would have more
11 benefits. Kind of a (indiscernible) thing. So,
12 that, we're not gonna try to use that. We might
13 use Klonazapan, which is a benzodiazepine -- like
14 Ativan -- to help him sleep, and calm -- be a
15 little more relaxed.

16 But Risperadone Consta doesn't take effect for
17 two to three weeks, so we would give him oral
18 Risperadone in the short term, which is what you
19 need to do until the blood level comes up from
20 the shot, and then we would stop the oral
21 medication.

22 Q Uh-huh (affirmative).

23 A If he won't take the oral Risperdal, then we
24 have no effective antipsychotic in his system, so
25 then we would have to give him an injection of

1 and on.

2 Q And do you -- do you read up on side effects
3 in the testing of these medications?

4 A Yes. We're required to have continuing
5 medical education and read literature. I get
6 literature all the time coming to me from various
7 journals.

8 Q Okay. And...

9 A Go to conferences for education, et cetera.

10 Q And do you read information prescribed by --
11 or, put out by the drug companies?

12 A Yeah. I read that, too. I don't think it's
13 all that helpful. Essentially a bunch of
14 information written by their attorneys and their
15 marketing department. But the more independent
16 information is more valuable.

17 Q Okay. So do you believe -- do you have a --
18 Do you have any kind of a bias in favor of the
19 drug companies?

20 A Well, I don't -- I don't trust what they --
21 what their marketing people say. I don't tend to
22 want to prescribe new drugs because of that. I
23 don't like that they come around marketing to the
24 hospitals, and I proposed several times to the
25 medical staff that we should put some serious

1 the short acting antipsychotic.

2 Q Uh-huh (affirmative).

3 A And we have options of using something like
4 Haliperadol, Ziprazadone or Geodon, or
5 Aripiprazole, or Abilify. And we probably
6 offered him one of the latter two, because they
7 have less side effects.

8 MR. GOTTSTEIN: Your Honor, could you -- I'm
9 sorry. I'm trying to get all these down, but I can't
10 write them all down that fast.

11 So, Haldol? Abilify?

12 A And Geodon, would be the options that we would
13 -- that I would prescribe, potentially, and my
14 preference would be to use Geodon or Abilify for
15 the short term IM. And then two or three weeks
16 from now, the Risperdal Consta injection would be
17 effective, and he wouldn't need any other
18 medication.

19 MR. BIGLEY: I repeat that. My life.

20 Q But these are just if he doesn't take the oral
21 Risperadone Consta? Is that a...

22 A Right.

23 Q That's sort of the back-up plan?

24 A It's very likely to be the case, and -- well,
25 the first week, very likely to be the case, off

1 restrictions on that. I requested that we have
2 Juneau do an ethical ruling on whether they
3 should be sponsoring educational lunches for us.
4 So I'm a fairly skeptical person. I'm not --
5 certainly not -- I don't have any investments or
6 stocks with drug companies, that I'm aware of. I
7 mean, maybe my PERS has some drugs in their stock
8 portfolio, but, I don't particularly like the
9 marketing techniques of drug companies, and don't
10 trust their sales people.

11 Q Okay.

12 A When they have lectures at API over lunch, I
13 tend to be the person that asks tough questions,
14 and questions and methodology. Whether something
15 is really -- is effective of what they say is
16 their claim.

17 Q So when you -- when you've come up with your
18 opinions, it's not just based on what -- on what
19 you've heard from the drug companies?

20 A Correct.

21 Q You've gone to outside sources?

22 A I look at independent sources, academic
23 training, and actual experience of using
24 medication in the patients.

25 Q And getting back to Mr. Bigley, with the side

1 effects. How do you -- does his medical history
2 indicate whether or not he's suffered any of the
3 -- any side effects from the medication -- from
4 Risperadone?

5 A Well, he has tardive dyskinesia, which is most
6 likely from the years and years of getting drugs
7 like Haldol, Prolixin -- because he's been
8 getting medications for over 25 years, and those
9 drugs have a 2% per year accumulative risk of
10 tardive dyskinesia.

11 MR. GOTTSTEIN: Objection, Your Honor.

12 THE COURT: Okay. What's the nature of the
13 objection?

14 MR. GOTTSTEIN: Well, the issue about
15 scientific information, that -- I think he should
16 produce the -- what he relies on for that. My
17 understanding is, it's higher than that, as the reason.
18 But -- so I object to that.

19 THE COURT: Okay. Ms. Russo?

20 MS. RUSSO: Your Honor, I think Dr. Worrall's
21 testified about the amount of research and the
22 continuing education and the lectures he does, and
23 that's his understanding, as Mr. Bigley's treating
24 physician, as to the amount of risk.

25 If Mr. Gottstein feel that Dr. Worrall's

1 testimony is inaccurate, he can counter that during his
2 claims. Dr. Worrall isn't testifying that there is no
3 risk. He's saying that there ins indeed a risk. If
4 Mr. Gottstein has other experts that can counter that,
5 he can present that evidence. I don't -- I think Dr.
6 Worrall -- there's been a sufficient basis for Dr.
7 Worrall's testimony.

8 MR. GOTTSTEIN: And...

9 THE COURT: Okay. Wait a minute. The doctor
10 was testifying as to -- what I understood was his --
11 let me rephrase it. The doctor was testifying
12 concerning, as I understood it -- his belief as to Mr.
13 Bigley's tardive dyskinesia. And it seems like the
14 doctor was relying on what he understood was Mr.
15 Bigley's previous medical history, or administration of
16 drugs to him. And, so, to me, it's just a matter of, t
17 his is the doctor's professional opinion in trying to
18 understand what Mr. Bigley's current situation is,
19 based on what the doctor knows of his past. So I'm
20 going to allow that to stand.

21 MR. GOTTSTEIN: Your Honor, if I may.

22 THE COURT: Yeah.

23 MR. GOTTSTEIN: This just illustrates -- I
24 think the distinction that our court made in Marron or
25 Mara -- I don't know how you say it, but I'll call it

1 "Marron." That clinical observations, you don't need
2 to go through the Coon standards, but once you get into
3 scientific evidence, that you do. And so I was
4 objecting to the 2% figure, because I think that I'm
5 entitled to have -- you know, to give me the basis for
6 that.

7 THE COURT: Okay. Ms. Russo, do you want to
8 add anything?

9 MS. RUSSO: I don't think that this is going
10 into the Marron and Coon. I don't agree with Mr.
11 Gottstein's analysis of this. And quite frankly, I
12 don't know -- I mean, Dr. Worrall's testifying about
13 the fact that Mr. Bigley has tardive dyskinesia from
14 previous medications that he had been on for years.
15 These are not the medications that Dr. Worrall wishes
16 to prescribe for Mr. Bigley at this time. So we're
17 talking about Mr. Bigley's past medical history here.

18 THE COURT: I'm going to let the testimony
19 stand as is, based on my ruling -- previous ruling.

20 Next question?

21 MS. RUSSO: Okay. Thank you.

22 Q And, Dr. Worrall, does the Risperadone have
23 the -- have a side effect of tardive dyskinesia,
24 as well? Can that...

25 A Yes, it does, but it's considerably less than

1 -- there is no antipsychotic that -- that has
2 proven to be free of any risk of tardive
3 dyskinesia. The training that psychiatrists
4 traditionally get from any setting, whether it be
5 an academic residency program or literature, is
6 that the risk of the older typical antipsychotics
7 is considerably higher than the newer atypicals.
8 Clozapine being the safest of all, with respect
9 to that risk.

10 And if I could clarify. I did say a 2%
11 cumulative risk per year. So in 20 years, that's
12 a 40% risk. It does add up to a high number over
13 the years on the typical antipsychotics.

14 MR. GOTTSTEIN: Yes, Your Honor, and I
15 understood that, and I think the rate is high.

16 Q Okay. And, Dr. Worrall, did you -- even
17 knowing that there is this risk of tardive
18 dyskinesia, is that something you weighed in your
19 analysis?

20 A Yes. The risk of the tardive dyskinesia
21 getting worse in a potential with psychotropic
22 drug treatment, antipsychotics in particular.
23 The risk is -- we don't have a number on that.
24 There isn't good research on that. It really
25 would be difficult to quantify. There is some

1 risk that it could worsen. There is no cure for
 2 the tardive dyskinesia. There is no possibility,
 3 within reason, that this condition would
 4 disappear. One in a thousand, and very unlikely
 5 that it would go away.
 6 And actually the symptoms of tardive
 7 dyskinesia are masked by the use of
 8 antipsychotics. That is, they temporarily quiet
 9 down when you take the medication. And when you
 10 stop the medication, they temporarily worsen, as
 11 the effect of the medicine goes away, and then
 12 get back to the base line. And at that point --
 13 let's say a month from now he stops taking
 14 medication. Temporarily, he would have had less
 15 symptoms, less movements. But then when he stops
 16 the medicine for about a month, he might have a
 17 little more frequency and a more amplitude of
 18 those movements. And then about a month or two
 19 later, they'd go back, either to their base line,
 20 where they're at now, or be slightly worse.
 21 So when we look at the rest of the benefits,
 22 what are we looking at? We're looking at a man
 23 who cannot keep an apartment; cannot function in
 24 the community; was right at the threshold of
 25 being arrested for bomb threats, and the federal

1 to have an allergic reaction to it, but it won't
 2 actually start being effective for two to three
 3 weeks, so then we have to give him short acting
 4 Risperdal, or a backup injection of another
 5 medication, as I mentioned, for two to three
 6 weeks.
 7 Q And what's the recommended dosage or range of
 8 dosage?
 9 A On the injection, the Risperdal Consta, it's
 10 about 50 milligrams every two weeks.
 11 MR. BIGLEY: I can take it if I have to.
 12 Q And...
 13 A That's the equivalent of about 5 milligrams a
 14 day, orally...
 15 MR. BIGLEY: (Indiscernible).
 16 A A mid-range dosage. It's not particularly
 17 high. Not -- not -- it's about the middle of the
 18 recommended range.
 19 Q Okay. And with the other drugs that you would
 20 be doing in the meantime, is he in the middle
 21 range as well, for -- like the Abilify or the...
 22 A Yeah. We would be offering him somewhere --
 23 well, I mean, we'd start it at, like, 2
 24 milligrams twice a day, and then up it to 4
 25 milligrams once a day, and then maybe up to 6

1 protective services were at their wits end trying
 2 to protect Murkowski's office from him. We're
 3 looking at a guy who is going to do time in jail
 4 if we don't intervene, which is not a good
 5 environment. And in that environment, he's going
 6 to be forced to take medications, too, and
 7 without the kind of due process that we have
 8 here.
 9 So, as I see it, the upside -- the benefit
 10 side is that we can get him to the point that he
 11 could get back into any kind of living
 12 environment and contain his behaviors to the
 13 appropriate level so that he could not be evicted
 14 in a very quick amount of time, and be able to
 15 sustain an independent life relatively safely
 16 without risk of arrest, if he keeps taking the
 17 medication. That's a pretty big benefit, and I
 18 think, in this case, it's pretty clear that the
 19 benefit outweighs the risk.
 20 Q And just to get back to my list of questions.
 21 You had previously testified that the method of
 22 administration is with the pill, but then you
 23 would switch him to the shot?
 24 A We give him the shot, because we already know
 25 he tolerates the Risperdal well. He's not going

1 milligrams a day, something like that, on the
 2 Risperdal. If he doesn't take that, we would be
 3 substituting something like Abilify 10 milligrams
 4 i.m...
 5 MR. BIGLEY: It's my life, you know.
 6 A ...once or twice a day...
 7 MR. BIGLEY: I can do what I want.
 8 Q ...depending on -- probably once a day.
 9 MR. BIGLEY: (Indiscernible).
 10 A We'd just give him his Risperdal once a day to
 11 minimize the...
 12 THE COURT: Hold on a second. Wait a minute.
 13 Doctor, you're gonna have to repeat what you just said,
 14 because Mr. Bigley...
 15 MR. BIGLEY: (Indiscernible).
 16 THE COURT: ...was saying something and it
 17 really interrupted the recording and my ability to hear
 18 you.
 19 MR. GOTTSTEIN: Your Honor.
 20 THE COURT: Yeah.
 21 MR. BIGLEY: I'm upset.
 22 MR. GOTTSTEIN: May we have a short break?
 23 MR. BIGLEY: I'm a little upset right now.
 24 Okay?
 25 THE COURT: You need a...

Page 50

1 MR. BIGLEY: Five minute break.
 2 MR. GOTTSTEIN: Just five minutes.
 3 THE COURT: Five minute recess. Okay.
 4 MR. BIGLEY: I'm upset.
 5 THE COURT: That's fine.
 6 MR. BIGLEY: I'm upset. Okay.
 7 THE COURT: So we'll take a five minute recess
 8 and go off record.
 9 (Off record - 10:38 a.m.)
 10 (On record - 10:52 a.m.)
 11 THE COURT: You can be seated.
 12 Ms. Russo, next question.
 13 MS. RUSSO: Thank you, Your Honor.
 14 Q (Dr. Worrall by Ms. Russo:) Dr. Worrall, do
 15 you know if Mr. Bigley takes any kind of street
 16 drugs or alcohol, or anything like that?
 17 A He doesn't.
 18 Q Do you know if he smokes?
 19 A He smokes. Yes.
 20 Q Okay. How would the prescribed medication --
 21 does it have an adverse affect with the nicotine,
 22 or is that a...
 23 A No. The smoking reduces the absorption of
 24 oral antipsychotics through an effect on his
 25 stomach, but that wouldn't be a factor with

Page 51

1 injected medication. There's not a drug
 2 interaction problem with his smoking habit.
 3 Q And is there a risk that Mr. Bigley will
 4 develop other conditions as a result of taking
 5 this medication?
 6 A Certainly. Again, there is a long list of
 7 medication side effects. Some are serious and
 8 quite rare; some are common. He could develop
 9 neuroleptic malignant syndrome. Very rare. He
 10 could develop -- and that's a condition that is
 11 very serious and it would require intensive care
 12 treatment. Very unlikely that he would develop
 13 that, even comparing that -- his risk to someone
 14 who has never had an antipsychotic. His risk is
 15 actually lower. But he could develop bone marrow
 16 problems, liver problems. Those risks are on the
 17 order of one in a thousand to one in 10,000.
 18 Very -- very unlikely. And the chance of
 19 improvement in his condition, in contrast, is
 20 probably 80%. That in three weeks time he would
 21 be improved to the point that he could again
 22 function in society safer.
 23 Q And with those side effects are you able to
 24 monitor him for those, or to sort of watch and...
 25 A Well, it's a little difficult. It may come to

Page 52

1 a point where we might have to force him to get a
 2 blood test. For example, if he starts looking
 3 sick, and he won't let us do a blood test, we
 4 might have to hold him down and obtain a blood
 5 sample. But if he's looking healthy, we won't
 6 have to do that. But, normally we would do some
 7 infrequent blood test to look for any early...
 8 MR. BIGLEY: You can't do that.
 9 A ...liver disease...
 10 MR. BIGLEY: It's my blood.
 11 A ...or any early sign of a bone marrow problem.
 12 But the risk is so low it isn't something we have
 13 to do, and we can honor his wish to not have a
 14 blood test, unless he starts looking like he's
 15 developing some illness.
 16 Q Okay.
 17 MR. BIGLEY: (Indiscernible).
 18 Q And I just wanted to be sure that I'm clear
 19 about what you testified to earlier, was that,
 20 because he's been on these medications, and he
 21 hasn't developed this, his risk is almost even
 22 lower than the general population. He would just
 23 be starting the medication at the first -- for
 24 the first time?
 25 A Yes. And the fact that he doesn't use drugs,

Page 53

1 like methamphetamine, or cocaine, or alcohol,
 2 also makes it less risky.
 3 Q Okay. And is the proposed treatment the
 4 standard of care in this community?
 5 A It's absolutely the standard of care in this
 6 community and the country.
 7 Q Okay. And what benefits would you expect to
 8 see when Mr. Bigley -- if Mr. Bigley receives
 9 his medication?
 10 A The benefits are going to be -- that he would
 11 be able to carry on a rational -- relatively
 12 rational conversation with people that he might
 13 otherwise prefer not to talk to, such as the case
 14 manager,...
 15 MR. BIGLEY: (Indiscernible).
 16 A ...a guardian, without...
 17 MR. BIGLEY: (Indiscernible).
 18 A ...constantly interrupting with paranoid and
 19 grandiose delusions. So their communication
 20 would improve. His self control of his emotional
 21 state would improve. He wouldn't be so hostile,
 22 intimidating and threatening.
 23 MR. BIGLEY: (Indiscernible).
 24 A If he didn't like something, he'd be able to
 25 handle it more appropriately.

1 Those would be the biggest benefits. It's not
2 going to make him sane. It's not going to make
3 him stop believing that he has, you know, a
4 million dollar jet plane, or other things are
5 going on, that he believes. It's not gonna...

6 MR. BIGLEY: (Indiscernible).

7 A ...remove his delusions or stop his delusions.
8 It's not gonna make him stop being distrustful or
9 paranoid of people, but it's gonna just make the
10 main difference, his ability to communicate and
11 have some more self control so that he could
12 function in the community. Unfortunately, that's
13 -- at this stage in his illness, that's about the
14 extent of the benefit. It's not curable.

15 Q And what would you expect to see without
16 treatment?

17 A Exactly what we saw prior to admission. It
18 didn't take -- I don't have his charge, but at
19 three months, in the community, off medications,
20 and he's making bomb threats, he's threatening to
21 kill people. He's got the police and the federal
22 protective service very concerned about his
23 safety in the community. And if he hadn't come
24 to API, he would almost certainly have been
25 arrested and charged with a crime. So exactly

1 what we had happen in the past month, is what is
2 going to happen. In addition to that, eviction
3 from any housing. Inability to work with his
4 guardian, to the extent that he couldn't even...

5 MR. BIGLEY: (Indiscernible).

6 A ...obtain food, because he wouldn't cooperate
7 with his guardian in cashing checks, or however
8 they have that worked out, so he would, again,
9 lose weight and get thinner and hungrier. I
10 mean, he's proven over and over again what will
11 happen if he doesn't take medication.

12 MR. BIGLEY: It's my life.

13 Q And are there any less intrusive treatments
14 available?

15 A Other than medication?

16 Q Yes.

17 A No, there are not. The -- there is nothing in
18 Alaska. There is no lower -- less restrictive
19 unlocked treatment place that would take him.
20 Not using antipsychotic medications, would result
21 in no change in the things that I described that
22 would change. So he would continue to get
23 himself into serious trouble and present himself
24 as a serious disruption and threat in the
25 community, as he has been doing.

1 Using, for example, just Ativan or
2 benzodiazepine, would not produce the kind of
3 change that an antipsychotic would produce in
4 terms of his ability to communicate better and
5 his ability to control his emotions better.

6 Counseling would do nothing. Talking to Mr.
7 Bigley is like talking to someone who is
8 intoxicated. There is no processing of
9 information going on. It's a one-way street,
10 communicating with Mr. Bigley.

11 MR. BIGLEY: It's my life.

12 A And you won't be able to change that unless
13 you use antipsychotics.

14 Social support, intensive case management.
15 None of those would do any good, because he would
16 not have the capacity to communicate and regulate
17 his emotional outbursts. So, unfortunately there
18 is no option. This isn't some minor case of
19 brief reactive psychosis, or depression with
20 psychosis, or early onset schizophreniform
21 disorder. This isn't some minor thing. This is
22 a severe chronic debilitating mental illness that
23 has left this man living in API for 20% of his
24 life since 1985.

25 Q Okay. If -- what about if he were to go out

1 on day passes with somebody in the community from
2 API?

3 A On medication?

4 Q No medication.

5 A Again, if he was not on medication, he would
6 not have any effective treatment. There would
7 not be any treatment if he was just housed at API
8 at night and locked in the building at night and
9 out during the day. There would be no change
10 whatsoever in his condition. He would be safer
11 at night...

12 MR. BIGLEY: Why don't you just leave me alone
13 (indiscernible).

14 A Because professional staff..

15 MR. BIGLEY: Let me go get drunk.

16 A ...will handle him in a contained environment
17 -- a structured environment, and during the day
18 he would be essentially a wild man in the
19 community. Just as he is now. There wouldn't be
20 any change in his condition. That's not
21 treatment, by any means. That's not a treatment
22 we're proposing because it is not treatment.
23 It's just containment at night and non-
24 containment during the day. If that's something
25 that he has the right to have, then he should be

1 in the community all the time, because that's not
 2 treatment. If he doesn't need treatment, then he
 3 shouldn't have treatment.
 4 Q And do you have an understanding about his --
 5 about how he was accepting case management
 6 services beforehand -- before this most recent
 7 admission? Was he accepting them?
 8 A No, he didn't see Dr. Curtis...
 9 MR. GOTTSTEIN: Objection.
 10 THE COURT: What's the objection?
 11 MR. GOTTSTEIN: It's hearsay. I forgot to
 12 bring the case, but -- anyway, I'm sorry. But, it's
 13 hearsay.
 14 THE COURT: Ms. Russo?
 15 MS. RUSSO: Your Honor, maybe if I -- I
 16 believe my question is based on his knowledge of the
 17 case, including the chart, but...
 18 THE COURT: Okay. As I understood, the doctor
 19 wasn't quoting what someone else was saying, it's just
 20 his understanding, so that's not hearsay.
 21 MS. RUSSO: Uh-huh (affirmative).
 22 THE COURT: So I'm going to allow the doctor
 23 to...
 24 MR. GOTTSTEIN: Your Honor?
 25 THE COURT: What?

1 MR. GOTTSTEIN: Objection. Foundation.
 2 THE COURT: Ms. Russo?
 3 MS. RUSSO: Your Honor, I have to apologize,
 4 because I was not at the hearing on Friday, but -- so
 5 if it wasn't previously testified to.
 6 Q Dr. Worrall, how do you -- when you know Mr.
 7 Bigley, how do you -- do you review the chart?
 8 A Yes, I review the chart. And API has a
 9 special memorandum of agreement with Anchorage
 10 Community Mental Health Services, and we have a
 11 staff member from their facility that works at
 12 our facility, and we get their records of their
 13 medical treatment on an outpatient basis, and one
 14 of their patients comes to us. And reviewing
 15 those records indicates that Mr. Bigley did not
 16 participate in any services, case management or
 17 medical at Anchorage Community Mental Health
 18 Services.
 19 MR. GOTTSTEIN: Objection. Hearsay. This is
 20 not just theoretical, because there was someone else
 21 providing case management services.
 22 THE COURT: Ms. Russo, any response?
 23 MR. BIGLEY: (Indiscernible).
 24 MS. RUSSO: Your Honor, I -- if I can...
 25 THE COURT: Well, okay.

1 MR. GOTTSTEIN: How could it not be hearsay?
 2 Someone else's statement, if that's his understanding.
 3 What -- what -- what...
 4 THE COURT: What did I -- I don't think he was
 5 saying what someone else...
 6 MR. GOTTSTEIN: What did his...
 7 THE COURT: ...has said.
 8 MR. GOTTSTEIN: Huh?
 9 THE COURT: I don't think he was saying what
 10 someone else had told him.
 11 MR. GOTTSTEIN: But where did his
 12 understanding come from?
 13 THE COURT: Well, we're ju -- all of our
 14 understanding, where anything comes from. But the
 15 thing is, if he has an understanding, but is not
 16 stating the source of the understanding, then that's
 17 fine with me. So I'm going to let -- I don't know if
 18 the doctor is done with that part of his testimony as
 19 to his understanding, but, I guess it was before Mr.
 20 Bigley's acceptance of services outside the hospital.
 21 Was that what the question was?
 22 MS. RUSSO: Right. Preceding this
 23 hospitalization, was Mr. Bigley accepting services?
 24 THE COURT: So if the doctor has knowledge of
 25 that.

1 MS. RUSSO: ...remember the definition of
 2 hearsay, it's an out of court statement...
 3 THE COURT: Made for the truth of the matter.
 4 MS. RUSSO: ...for -- right. I don't believe
 5 that these are statements that Dr. Worrall is
 6 testifying to. I can be moving -- I...
 7 THE COURT: Well, I'm going to overrule the
 8 objection. Just point out that on cross examination
 9 Mr. Gottstein can get into the basis for the doctor's
 10 testimony, then we deal with, you know, whether there
 11 was a basis for the statement. So I'll overrule the
 12 objection.
 13 MR. GOTTSTEIN: So, again, I'm not
 14 (indiscernible) on this either, but...
 15 THE COURT: Uh-huh (affirmative).
 16 MS. RUSSO: So I made the foundation
 17 objection, and then he said, basically, what he
 18 reviewed -- ACMH's records.
 19 THE COURT: Uh-huh (affirmative).
 20 MR. GOTTSTEIN: So I think that's where we
 21 stand.
 22 THE COURT: Right. That's my understanding.
 23 MR. GOTTSTEIN: And then I still have the
 24 hearsay objection.
 25 THE COURT: Well, I'm finding that it's not

1 hear -- there's not hearsay in his answer.
 2 MR. GOTTSTEIN: I think it is hearsay. He's
 3 asserting that he -- he -- he is not receiving
 4 outpatient services based on someone else's assertion.
 5 THE COURT: He was not quoting anyone. I mean
 6 -- I mean, it's just his general understanding. That's
 7 the way I'm taking it.
 8 Next question.
 9 Q Okay. And, Dr. Worrall, do you have
 10 knowledge of any other case management services
 11 provided to Mr. Bigley, besides Anchorage
 12 Community Mental Health?
 13 A I believe that a program Case Point or Case
 14 Center -- some kind of program in the community
 15 was attempting to assist him, not part of
 16 Anchorage Community Mental Health. I believe
 17 that that's the case. And, of course, his
 18 guardian.
 19 Q Okay. And the...
 20 MS. RUSSO: Those are all my questions for the
 21 doctor, Your Honor.
 22 THE COURT: All right. Mr. Gottstein?
 23 MR. GOTTSTEIN: May we take a short break, or
 24 is it too early yet?
 25 MR. BIGLEY: Yeah.

1 THE COURT: Okay. Well, then, you know, I
 2 think I'll just have to, you know, deal with this
 3 person as she begins testifying and deal with
 4 objections to any part of her testimony, just like any
 5 other witness. I'm not going to prevent her -- I'm not
 6 going to prevent Mr. Bigley from calling his own
 7 expert, because he certainly has that right, and then
 8 we'll just take it as it comes, as to whether the court
 9 can find the person has the credentials as being an
 10 expert.
 11 MS. RUSSO: Your Honor, I would still object.
 12 I've been given no notice that she was going to be
 13 called as an expert. She was just listed -- she was
 14 listed on the witness list, but she was just listed on
 15 the witness list. I don't know what her expertise is
 16 in. I've had no chance to prepare. I know that -- I'm
 17 not -- you know, I understand that she's here today and
 18 going to be out of the country, however. I mean, I --
 19 yesterday Mr. Gottstein knew he wanted to call her.
 20 I...
 21 THE COURT: Well, what's the person's name? I
 22 mean, I'm...
 23 MR. GOTTSTEIN: Sarah Porter.
 24 THE COURT: Oh. (Indiscernible). Okay.
 25 So...

1 THE COURT: Well, that's fine. But I have to
 2 point out that, my understanding, Ms. Russo has to
 3 leave by noon in order to prepare for this afternoon's
 4 API hearings.
 5 MR. GOTTSTEIN: Your Honor, I -- I've got one
 6 witness who, you know, is gonna be out of state and I
 7 would -- I would like to maybe get her on out of
 8 sequence, then, in order -- so that we could take her -
 9 - take her testimony.
 10 THE COURT: How...
 11 MS. RUSSO: Your Honor, I'm objecting to this
 12 witness. I know that she was on the witness list. My
 13 understanding is that she's not from Alaska, that she's
 14 from New Zealand, actually. And, so I don't know that
 15 she's able to testify as a fact witness, and I've been
 16 provided no kind of expert notification about her
 17 testimony. I don't know that she's met Mr. Bigley, has
 18 an opportunity -- I don't know what she's going to
 19 testify about. She's from New Zealand. She doesn't
 20 know the Alaska system, and what we're working with
 21 here in Anchorage. I would object to her testimony.
 22 THE COURT: Well, I think -- this witness --
 23 whether -- is this going to be an expert witness or a
 24 fact witness?
 25 MR. GOTTSTEIN: Expert witness.

1 MR. BIGLEY: All right.
 2 THE COURT: Will be gone by Saturday. So --
 3 and where is Ms. Porter going?
 4 MR. GOTTSTEIN: New Zealand.
 5 THE COURT: But, since we're going to be
 6 continuing on Monday, she could always testify
 7 telephonically on Monday.
 8 MR. BIGLEY: (Indiscernible).
 9 MR. GOTTSTEIN: Well, Your Honor -- I mean, I
 10 don't know what her schedule is. She's available now.
 11 It seems to me that telephonic testimony is -- you
 12 know, is not preferred. I mean, she's here.
 13 MS. RUSSO: Your Honor, I'm also objecting to
 14 her whole relevance...
 15 MR. BIGLEY: (Indiscernible).
 16 MS. RUSSO: I don't -- I've been given no
 17 opportunity to know how she is going to be able to
 18 testify and have bearing -- have relevant testimony
 19 regarding Mr. Big -- the proposed medication that the
 20 hospital is wishing to prescribe for Mr. Bigley, and
 21 how that is related to the standard of care in Alaska;
 22 the treatment options that are available in Alaska. I
 23 don't know how her testimony is even possibly relevant
 24 to this proceeding. I don't know if she works for a
 25 drug company. If she's -- I mean, there's no -- I

1 would submit that I don't -- from the very limited
 2 things I know about her, that she's from New Zealand,
 3 and that I don't think she's met Mr. Bigley. I don't -
 4 - I mean -- and she's an expert in what?
 5 THE COURT: But, Ms. Russo, I -- while I
 6 understand what you're saying, the thing is, those are
 7 things that can be brought out in direct or cross
 8 examination...
 9 MR. BIGLEY: (Indiscernible).
 10 THE COURT: ...of any witness, as to a
 11 person's knowledge of either an issue of fact or
 12 expertise. I think I'd be prejudging...
 13 MR. BIGLEY: (Indiscernible).
 14 THE COURT: ...the matter.
 15 MS. RUSSO: Well...
 16 THE COURT: So I'm not going to prevent her
 17 from being a witness. It's just how much of her
 18 testimony, you know, the court permits. Either as an
 19 expert or as a factual witness. You know, we'll just
 20 see what develops, but the thing is...
 21 MR. GOTTSTEIN: And what weight you give it,
 22 Your Honor.
 23 THE COURT: Yes. It's the bottom line.
 24 What...
 25 MS. RUSSO: My only objection is that -- I

1 MR. BIGLEY: She's here now.
 2 THE COURT: ...witness -- Mr. Parker, why are
 3 you standing?
 4 MR. PARKER: (Indiscernible).
 5 MR. GOTTSTEIN: No. Okay. Thank you.
 6 MR. PARKER: (Indiscernible).
 7 MR. GOTTSTEIN: We're on right now for 1:30.
 8 I'm sorry. I didn't know how much time had, and I --
 9 you may have...
 10 THE COURT: Monday afternoon?
 11 MR. GOTTSTEIN: Well, I didn't know today, and
 12 then...
 13 THE COURT: Well, I have 9:00 to noon. I
 14 mean, that's -- yeah.
 15 MR. GOTTSTEIN: Oh, yeah. I just didn't know.
 16 THE COURT: Yeah.
 17 MR. GOTTSTEIN: And Monday, 1:30 to 4:30?
 18 THE CLERK: (Indiscernible).
 19 THE COURT: Oh, we have a 3:30? Oh. Okay.
 20 MR. PARKER: (Indiscernible).
 21 MR. GOTTSTEIN: I'm willing to do any
 22 accommodation that I can.
 23 MR. PARKER: (Indiscernible).
 24 MR. GOTTSTEIN: So, it seems like...
 25 THE COURT: 1:30 to 4:30, I have for this on

1 mean, my -- not my only, but, my objection is that
 2 evidence has to be relevant. I have no clue how this
 3 particular person is remotely relevant to this case.
 4 THE COURT: Well, the thing -- okay. I mean,
 5 she's not -- she'll be asked particular questions, I
 6 assume, by Mr. Gottstein. And then you will be able to
 7 -- once you hear that question -- is that a relevant
 8 question or irrelevant? And you raise your objections.
 9 I have two professionals here and I've been dealing
 10 with plenty of objections.
 11 MR. GOTTSTEIN: Okay. Um...
 12 THE COURT: So now the next thing I have to
 13 deal with is whether I take her right now as an out of
 14 order witness. But, again, I have to -- I'll have to
 15 recess at noon. I have to allow Ms. Russo to get out
 16 to API for this afternoon's hearings, plus the court
 17 has to go out there -- the clerk and myself, for our
 18 hearings.
 19 MR. BIGLEY: We have (indiscernible).
 20 THE COURT: So it's a matter of taking her
 21 right now while she's -- doctor -- I can get the rest
 22 of Dr. Worrall's testimony Monday. He can be
 23 telephonic if he can't come down on Monday afternoon,
 24 because I wanted to take it telephonically on Monday --
 25 take this out of order...

1 Monday afternoon. So how -- you know...
 2 MR. GOTTSTEIN: (Indiscernible).
 3 MR. BIGLEY: What time of day?
 4 (Indiscernible).
 5 THE COURT: Hold on.
 6 MR. BIGLEY: What time?
 7 (Side conversations)
 8 THE COURT: Let me deal with Ms. Porter.
 9 MR. BIGLEY: Could I have a break. I'm
 10 gettin' upset.
 11 MR. GOTTSTEIN: Yeah. W...
 12 THE COURT: Let me ask -- Ms. -- because I'm
 13 going to allow her to be a witness...
 14 MS. RUSSO: I don't object to her being out of
 15 order, Your Honor.
 16 THE COURT: Okay. So, Dr. Worrall, we're
 17 gonna stop your testimony at this point. Thank you
 18 very much. I might see you this afternoon out there.
 19 I don't know.
 20 A May I be telephonic Monday?
 21 THE COURT: Yeah. I'm gonna permit you to be
 22 telephonic, because -- let me just make sure. Is there
 23 any objection to that?
 24 MR. GOTTSTEIN: I do -- I do object to it.
 25 Um...

1 MR. BIGLEY: See him in person.
 2 MR. GOTTSTEIN: I do -- I -- I'm trying to
 3 accommodate the -- I know the practicalities of
 4 everything, but it just seems like we're in the same
 5 town, that we ought to be able to do that. I notice
 6 that, you know, Dr. Worrall has a lot of papers, and I
 7 haven't had a chance to, you know, look and see what --
 8 you know, what he's referring to. It's those sorts of
 9 things. We might -- I have a -- I -- I'm -- I'm pretty
 10 sure I'll have some questions on the chart and stuff,
 11 and it just seems more, ah...
 12 THE COURT: Then he's here right now, we're
 13 going to have to proceed with him and Ms. Porter will
 14 have to wait, and she can...
 15 MR. BIGLEY: Now, (indiscernible).
 16 THE COURT: She could be telephonic Monday.
 17 MR. GOTTSTEIN: I -- I -- wo -- then, in light
 18 of that, then I will withdraw my objection to a
 19 telephonic testimony.
 20 MR. BIGLEY: (indiscernible) telephonic.
 21 THE COURT: So, Doctor, you're excused for now
 22 and we will contact you some time Monday. You -- and,
 23 ah, Ms. Russo...
 24 MR. BIGLEY: (Indiscernible).
 25 THE COURT: ...will work out how we'll contact

1 name, spell your last name, and give a mailing address.
 2 MR. GOTTSTEIN: Certainly. It's Sarah Frances
 3 Porter. The Porter is spelled P-O-R-T-E-R. And the
 4 mailing address would be 112 Manly Street. That's
 5 M-A-N-L-Y Street, Paraparaumu, which is, P-A-R-A-
 6 P-A-R-A-U-M-U, New Zealand. And the postal code is
 7 5032.
 8 THE CLERK: Thank you.
 9 THE COURT: Yes?
 10 MR. GOTTSTEIN: Your Honor, I have a quick
 11 administrative matter. I need to get a transcript of
 12 today's hearing prepared, and I was discussing with the
 13 clerk how to -- and there might be a delay to get a
 14 copy. I was wondering if we could make sure that we
 15 could expedite getting the CD over so that I can -- and
 16 then ask them to expedite getting a copy made for me.
 17 THE COURT: Okay. So, like, tomorrow morning
 18 some time we can...
 19 THE CLERK: (Indiscernible).
 20 THE COURT: I guess -- so we would have to
 21 call your office when it's available for pickup.
 22 MR. GOTTSTEIN: That's perfect, Your Honor.
 23 THE COURT: Okay. And, of course, for Ms.
 24 Russo, too.
 25

1 you now. Thank you.
 2 All right. So, now...
 3 MR. GOTTSTEIN: Short break?
 4 THE COURT: We don't really have time.
 5 MR. GOTTSTEIN: Well, I gotta get...
 6 THE COURT: Okay. Go -- yeah, we'll go off
 7 record.
 8 MR. GOTTSTEIN: Okay.
 9 (Off record - 11:18 a.m.)
 10 (On record - 11:30 a.m.)
 11 THE COURT: You can be seated. This is a
 12 continuation of the Bigley matter. So, I guess, first
 13 we have to have Ms. Porter sworn in. So if you'll just
 14 stand there, we'll get you sworn in, please.
 15 *
 16 called as a witness in behalf of the respondent, being
 17 first duly sworn upon oath, testified as follows:
 18 (Oath administered)
 19 WITNESS: I do.
 20 THE CLERK: And you can be seated.
 21 MR. GOTTSTEIN: Thank you, Your Honor.
 22 THE COURT: Wait a minute. The clerk has a
 23 couple questions she has to ask the witness.
 24 MR. GOTTSTEIN: Oh, I'm sorry.
 25 THE CLERK: Would you please state your full

1 MS. RUSSO: Uh-huh (affirmative).
 2 MR. GOTTSTEIN: Yeah.
 3 THE COURT: Okay. So we'll -- as soon as my
 4 office can call tomorrow morning and say it's ready for
 5 pickup, we'll do that. Okay?
 6 MR. GOTTSTEIN: Okay.
 7 THE COURT: Thanks.
 8 MR. GOTTSTEIN: Thank you.
 9 DIRECT EXAMINATION
 10 BY MR. GOTTSTEIN:
 11 Q Thank you very much for agreeing to testify,
 12 Ms. Porter. We only have 25 minutes, so I'm
 13 gonna try and do this expeditiously. But it's
 14 important for the court to know your background,
 15 education, experience and history as it relates
 16 to treating or taking care of, and involvement
 17 with people diagnoses with serious mental
 18 illness. So if you could just go through that.
 19 But, pretty -- you know, kinda quickly, but,
 20 also, give a pretty full idea of your experience,
 21 please.
 22 A Okay. I've worked in the mental health seat
 23 in New Zealand for the last 15 years in a variety
 24 of roles. I'm currently employed as a strategic
 25 advisor by the Capital and Coast District Health

Page 74

1 Board. I'm currently doing a course of study
 2 called the Advanced Leadership and Management in
 3 Mental Health Program in New Zealand. And, in
 4 fact, the reason I'm here is, I won a scholarship
 5 through that program to study innovative programs
 6 that are going on in other parts of the world so
 7 that I could bring some of that information back
 8 to New Zealand.

9 I also have personal experience of using
 10 mental health services which dates back to 1976
 11 when I was a relatively young child.

12 What else would you like to know?

13 Q Well, a little bit more. Did you run a
 14 program in New Zealand?

15 A Yes. I set up and run a program in New
 16 Zealand which operates as an alternative to acute
 17 mental health services. It's called the KEYWA
 18 Program. That's spelled K-E-Y-W-A. Because it
 19 was developed and designed to operate as an
 20 alternative to the hospital program that
 21 currently is provided in New Zealand. That's
 22 been operating since December last year, so it's
 23 a relatively new program, but our outcomes to
 24 date have been outstanding, and the funding body
 25 that provided with the resources to do the

Page 75

1 program is extremely excited about the results
 2 that we've been able to achieve, with people
 3 receiving the service and helping us to assist
 4 and seating out more similar programs in New
 5 Zealand.

6 Q You're a member of the organization called
 7 INTAR, is that correct?

8 A I am a member of INTAR, which is the
 9 International Network of Treatment Alternatives
 10 for Recovery. And I'm also a member of the New
 11 Zealand Mental Health Foundation, which is an
 12 organization in New Zealand that's charged with
 13 the responsibility for promotion of mental health
 14 and prevention of mental disability in New
 15 Zealand.

16 Q Okay. Are there -- can you describe a little
 17 bit what INTAR is about?

18 A INTAR is an international network of people
 19 who are interested in promoting the knowledge
 20 about, and availability of access to alternatives
 21 to traditional and mainstream approaches to
 22 treating mental distress. And INTAR is really
 23 interested in identifying successful methods of
 24 working with people experiencing distress to
 25 promote mental well being, and, in particular,

Page 76

1 alternatives to the use of mainstream medical
 2 model or medication type treatments.

3 Q And are there people in INTAR that are
 4 actually running those kind of programs?

5 A There are. There's a wide variety of people
 6 doing that. And some of them are, also,
 7 themselves, interestingly, have backgrounds in
 8 psychiatry and psychology.

9 Q I won't go into that. Are there members of
 10 INTAR who are psychiatrists?

11 A There are. Indeed. Yes, indeed.

12 Q Do you know -- do you remember any of their
 13 names?

14 A Dr. Peter Stastny is a psychiatrist, Dr. Pat
 15 Brechan (ph), who manages the mental health
 16 services in West Cork, Ireland, and also in parts
 17 of England, as a psychiatrist.

18 MR. BIGLEY: He's a scientist?

19 A Yep.

20 Q Okay. Is it fair to say that all these people
 21 believe that there should be other methods of
 22 treating people who are diagnosed with mental
 23 illness than insisting on medication?

24 A Absolutely, there are. And that's quite a
 25 strong theme, in fact, for -- for that group, and

Page 77

1 I believe that it's based on the fact that there
 2 is now growing recognition that medication is not
 3 a satisfactory answer for a significant
 4 proportion of the people who experience mental
 5 distress, and that for some people...

6 MR. BIGLEY: That's the scientist.

7 A ...it creates more problems than solutions.

8 Q Now, I believe that you testified that you
 9 have experience dealing with those sorts of
 10 people as well, is that correct?

11 A I do.

12 Q And would that include someone who has been in
 13 the system for a long time, who is on and off
 14 drugs, and who might refuse them?

15 A Yes. Absolutely. We've worked with people in
 16 our services across the spectrum. People who
 17 have had long term experience of using services
 18 and others for whom it's their first
 19 presentation.

20 Q And when you say "long term use of services,"
 21 does that include -- does that mean they need
 22 medication?

23 A Unfortunately, in New Zealand the primary form
 24 of treatment, until very recent times, has been
 25 medication, through the lack of alternatives.

1 MR. BIGLEY: (Indiscernible).
 2 A And we're just now beginning to develop
 3 alternatives. They'd offer people real choice
 4 and options in terms of what is available instead
 5 of medication that might enable people to further
 6 address the issues which are raised by the
 7 concerns related to their mental state.
 8 Q And I think I understood you to say that the
 9 program that you run along that line has had very
 10 good outcomes, is that correct?
 11 A It has. The outcomes to date have been
 12 outstanding. The feedback from services users
 13 and from other people working with the services -
 14 - both, peoples families and the clinical
 15 personnel working with those people has supported
 16 the approach that we have taken.
 17 Q And is -- and I think you said that, in fact,
 18 it's been so impressive that the government is
 19 looking at expanding that program with more
 20 funding?
 21 A Indeed. And, in fact, right across New
 22 Zealand they are now looking at what can be done
 23 to create -- make resources available to set
 24 up...
 25 MR. BIGLEY: (Indiscernible).

1 create what might be defined as a crisis, and to
 2 devise strategies and plans for how the person
 3 might be with the issues and challenges that they
 4 face in their life.
 5 MR. BIGLEY: (Indiscernible).
 6 Q Now, you mentioned -- I think you said that
 7 coercion creates problems. Could you describe
 8 those kind of problems?
 9 A Well, that's really about the fact that these
 10 growing recognition -- I think worldwide, but
 11 particularly in New Zealand, that coercion,
 12 itself, creates trauma and further distress for
 13 the person, and that that, in itself, actually
 14 undermines the benefits of the treatment that is
 15 being provided in a forced context. And so our
 16 aiming and teaching is to be able to support the
 17 person to resolve the issues without actually
 18 having to trample...
 19 MR. BIGLEY: (Indiscernible).
 20 A ...on the person's autonomy, or hound them
 21 physically or emotionally in doing so.
 22 Q And I think you testified that would be --
 23 include people who have been in the system for a
 24 long time, right?
 25 A It does, indeed. Yes.

1 A ...more such services in New Zealand.
 2 MR. BIGLEY: (Indiscernible).
 3 Q Is there a philosophy that you might describe
 4 in terms of how -- that would go along with this
 5 kind of alternative approach?
 6 A The way that I would describe that is that
 7 it's -- it's really about relationships. It's
 8 about building a good therapeutic relationship
 9 with the person in distress and supporting that
 10 person to recognize and come to terms with the
 11 issues that are going on in their life, in such a
 12 way that builds a therapeutic alliance and is
 13 based on negotiation, rather than the use of
 14 force or coercion, primarily...
 15 MR. BIGLEY: (Indiscernible).
 16 A ...because we recognize that the use of force
 17 and coercion actually undermines the therapeutic
 18 relationship and decreases the likelihood of
 19 compliance in the long term with whatever kinds
 20 of treatment or support has been implicated for
 21 the person. So we have created and set up our
 22 service along the lines of making relationship
 23 and negotiation the primary basis for working
 24 with the person and supporting the person to
 25 reflect on and reconsider what's going on to

1 Q And would that include people who have been
 2 coerced for a long time?
 3 A In many cases, yes.
 4 MR. BIGLEY: She didn't (indiscernible).
 5 Q And -- and have you seen success in that
 6 approach?
 7 A We have. It's been phenomenal, actually.
 8 Jim, I've been -- personally, I -- I had high
 9 hopes that it would work, but I've...
 10 MR. BIGLEY: (Indiscernible).
 11 Q ...been really impressed how well, in fact, it
 12 has worked, and how receptive people had been to
 13 that approach.
 14 MR. BIGLEY: (Indiscernible).
 15 A Now, are there some -- I want to talk a little
 16 bit about other consequences of coercion. For
 17 example, can you describe some of the things that
 18 happen to people when they -- when they're
 19 forced?
 20 MS. RUSSO: Your Honor, I'm objecting to this
 21 line of questioning. She hasn't -- she's being asked
 22 to offer an opinion, but she hasn't been offered as an
 23 expert yet. I don't know what Mr. Gottstein is hoping
 24 to offer Ms. Porter as an expert in, but, I -- I think
 25 we're getting ahead of ourselves in this.

1 MR. BIGLEY: (Indiscernible).
 2 THE COURT: Okay. So, Mr. Gottstein, your
 3 response to Ms. Russo's...
 4 MR. GOTTSTEIN: Well, I think we can do it
 5 now. I would offer Ms. Porter as an expert in the
 6 provision of alternative mental health...
 7 MR. BIGLEY: (Indiscernible).
 8 MR. GOTTSTEIN: ...treatment as an alternative
 9 to the mainstream standard of care.
 10 MR. BIGLEY: (Indiscernible).
 11 A If I could add something.
 12 THE COURT: Wait a minute. I have to deal
 13 with the attorneys first.
 14 Ms. Russo?
 15 MS. RUSSO: Can I voir dire Ms. Porter?
 16 THE COURT: Yes. Go ahead.
 17 MS. RUSSO: Thank you.
 18 VOIR DIRE EXAMINATION
 19 BY MS. RUSSO:
 20 Q Ms. Porter, you said you were in Alaska to
 21 study other systems. You won a scholarship?
 22 A Yes.
 23 Q And what specifically were you -- how long
 24 have you been in Alaska?
 25 A For a relatively short time. I arrived here

1 to visit our service four weeks ago and was very
 2 impressed with the work that we're doing here.
 3 And, in fact, there's talk...
 4 MR. BIGLEY: (Indiscernible).
 5 A ...about bringing us back to the United States
 6 to talk to people over here about the way that
 7 we're working and providing different kinds of
 8 services that are more supportive of peoples
 9 autonomy and requiring...
 10 MR. BIGLEY: (Indiscernible).
 11 A ...less use of force. And what they found in
 12 the research that they did about reducing
 13 restraint and seclusion was, not only did it
 14 increase the therapeutic outcomes for the
 15 clients, but it improved the work -- satisfaction
 16 for the staff working with people and reduced the
 17 cost of the services of...
 18 MR. BIGLEY: (Indiscernible).
 19 A ...time taken off because of injuries
 20 associated with people being hit while they're
 21 trying to seclude or manager people through the
 22 use of force, so.
 23 Q And who have you met with since -- or, what is
 24 your, sort of, I guess, agenda for meeting with
 25 people while you're here?

1 on Monday and I'm here until Saturday. So I've
 2 only got five days in this area.
 3 MR. BIGLEY: Take me with you.
 4 A But what I...
 5 MR. BIGLEY: Take me with you. Take me with
 6 you.
 7 A What I wanted to also mention is that the work
 8 that we had been doing in New Zealand, in terms
 9 of -- particularly with the...
 10 MR. BIGLEY: (Indiscernible).
 11 A ...specific (indiscernible) of reducing the
 12 use of force is based on some of the work that
 13 was done by SAMHSA, in terms of the reduction of
 14 seclusion and restraint, and the material that
 15 they produced about that.
 16 MR. GOTTSTEIN: Your Honor, maybe she should
 17 say who SAMHSA is?
 18 Q Yes. That was the next question.
 19 A It's the Substance Abuse and Mental Health
 20 organization in America that's also done things
 21 like the new Freedom Commission. The director is
 22 Terry Kline, who, I understand is appointed by
 23 President Bush.
 24 MR. BIGLEY: I know him, too (indiscernible).
 25 A And he -- he actually came out to New Zealand

1 A I've met with all kinds of different people. I
 2 actually attended a conference in Ottawa, which
 3 is called the International Initiative in Mental
 4 Health Leadership. And there was a number of
 5 different people there, including...
 6 Q If I'm gonna -- just stop, since we are on
 7 limited time, and...
 8 A Yeah.
 9 Q ...we want to get as much of your testimony as
 10 possible. In -- in Alaska...
 11 MR. GOTTSTEIN: Your Honor, can she be allowed
 12 to answer the question?
 13 THE COURT: I'm going to allow Ms. Russo to
 14 continue.
 15 Q I'm trying to direct you towards just
 16 specifically...
 17 MR. GOTTSTEIN: I'm sorry.
 18 Q ...in Alaska, in Anchorage.
 19 MR. BIGLEY: Saved my life.
 20 Q Who have you met with?
 21 A Different people. Andrea, Jim...
 22 Q Andrea who?
 23 A Schmook.
 24 Q Schmook. Okay.
 25 A Yeah. You might know her. I believe she's

1 part of the organization...

2 Q Uh-huh (affirmative).

3 A ...that you work with.

4 Q Yep.

5 MR. BIGLEY: (Indiscernible).

6 A Eliza Ella and Tead Ella, and -- oh, I'm

7 struggling to think of the names now. I feel on

8 the spot.

9 MR. GOTTSTEIN: You got to meet Cathy

10 Creighton (ph), right?

11 A Yep. That -- those people, as well. Also,

12 while I've been in the United States and Canada,

13 I have met with...

14 MR. BIGLEY: (Indiscernible).

15 A Some. Yep.

16 MR. BIGLEY: (Indiscernible).

17 A And met with Sherry Meade (ph), Kelly Slater,

18 John Allen, who is the director of the Office of

19 Recipient (indiscernible) in New York. Mat

20 Mathai (ph), Amy ColSENTA (ph), Isaac Brown, and

21 Dan Fisher.

22 Q And have you had -- besides Ms. Schmook, have

23 you talked with anybody from API, or...

24 A No, I haven't. But I'd be very interested to

25 know if you've got thoughts on that, who I should

1 response?

2 MR. GOTTSTEIN: Well, I can ask a couple other

3 questions, but I think -- I'm -- that might be an okay

4 limitation. But I'd also like to ask:

5 DIRECT EXAMINATION CONTINUED

6 BY MR. GOTTSTEIN:

7 Q Are you familiar with an organization called

8 CHOICES?

9 A Yes, I am.

10 Q Could you describe what you know about them?

11 A CHOICES does case management for people in the

12 area -- supporting people to -- actually, it's

13 different kinds of services. I know that Paul

14 works at CHOICES, and that -- other parts of

15 services that they -- and with API, and other

16 kinds of housing and mental health providers

17 here.

18 Q And would you say -- describe CHOICES

19 philosophy as consistent with the INTAR approach?

20 A I think it probably is, yes. Because CHOICES

21 stands for Consumers Having Ownership In the

22 service...

23 Q Creating Effective...

24 A Yes. Creating Effective Services. So, yes.

25 Absolutely.

1 talk to.

2 Q Okay. And in your conversations, I guess,

3 with Ms. Schmook, or with the other people in

4 Anchorage -- have you been made aware of what

5 treatment options are available for individuals

6 with mental illness in Anchorage?

7 A Some, yes. I would say I -- I wouldn't

8 proclaim that I've got a full and perfect

9 picture, but I've certainly been made aware of

10 some of the options that are available here in

11 Alaska, and some of the -- the history of the

12 state and the way mental health services have

13 evolved in this area, which is very interesting,

14 by the way.

15 Q Yeah. Probably. And, so...

16 MR. BIGLEY: (Indiscernible).

17 MS. RUSSO: Your Honor, I would object to Ms.

18 Porter's qualifications as an expert in alternative

19 mental health treatment, in regards as to how it

20 specifically relates to this case. I don't know -- if

21 she just stated she doesn't have the full picture.

22 She's heard some of what's available in Alaska, but she

23 doesn't have the full picture of what we're facing in

24 Anchorage, dealing with this particular situation.

25 THE COURT: Okay. Mr. Gottstein, your

1 Q Okay. Now, you said -- okay. Absolutely.

2 Okay.

3 MR. GOTTSTEIN: So I think she certainly, at

4 least, has knowledge of that option.

5 THE COURT: Ms. Russo, do you want to comment

6 further?

7 MS. RUSSO: I rely on what I said earlier,

8 Your Honor.

9 THE COURT: All right. I'm going to find that

10 -- I really do not find that Ms. Porter can qualify as

11 an expert witness in this case, at this time,

12 because...

13 MR. BIGLEY: I'm murdered.

14 THE COURT: ...I'm not -- to be honest,

15 certain exactly what she's being...

16 MR. BIGLEY: What...

17 THE COURT: ... -- other than her giving...

18 MR. BIGLEY: (Indiscernible)...

19 THE COURT: ...what I regard as a non-expert

20 opinion as to what might be offered here, but not

21 necessarily being very knowledgeable as to Mr. Bigley's

22 situation.

23 MR. BIGLEY: (Indiscernible).

24 THE COURT: Ms. Porter's been here just a

25 couple days, leaving in a couple days. I'm just not

1 convinced that I can regard her as an expert witness as
 2 to available alternative treatments in Anchorage, which
 3 I think...

4 MR. BIGLEY: (Indiscernible).

5 THE COURT: ...is the thrust of what she's
 6 being offered.

7 MR. GOTTSTEIN: No, Your Honor.

8 THE COURT: No?

9 MR. GOTTSTEIN: No. I think that she has
 10 testified some to that, but I believe that -- as I put
 11 it in my brief, that Mr. Bigley is entitled to
 12 alternatives that could be made available. And so
 13 she's really being offered as a witness as to that. As
 14 -- you know...

15 MR. BIGLEY: (Indiscernible).

16 MR. GOTTSTEIN: ...as well as what she knows
 17 about choices, but that's what she's being offered as.

18 MR. BIGLEY: You're killing me here.

19 THE COURT: Ms. Russo, any other comment?

20 MS. RUSSO: Your Honor, I -- with all due
 21 respect to Ms. Porter, and the work that she's done and
 22 is doing, I don't -- the -- the alternatives to which
 23 Mr. Bigley can present evidence as, have to be
 24 realistic in this state. And I don't know that, at
 25 this particular point in time, we're at a point --

1 I don't see any need to.

2 MR. BIGLEY: (Indiscernible).

3 THE COURT: Okay. Well, I guess -- I'm
 4 looking at the Rules of Evidence 702, Testimony by
 5 Experts. It says, "If scientific, technical, or other
 6 specialized knowledge will assist the trier of fact to
 7 understand the evidence, or to determine a fact in
 8 issue, a witness qualified as an expert by knowledge,
 9 skill, experience, training, or education, may testify
 10 thereto in the form of an opinion or otherwise."
 11 So, actually, I think that -- giving, maybe a
 12 broad reading of this rule,...

13 MR. BIGLEY: I can see if...

14 THE COURT: ...I'll allow Ms. Porter to
 15 testify as an expert in the area of alternative
 16 treatments, but, not necessarily...

17 MR. BIGLEY: (Indiscernible).

18 THE COURT: ...in Alaska, but, what may be --
 19 what her -- what may be available in other places, just
 20 -- just -- just that, and then, we'll see where we head
 21 with other witnesses.

22 So, I guess, Mr. Gottstein -- and I'm using
 23 the computer clock on the bench. It has 11:54. That's
 24 a little quick. So we have a little more time.

25 MR. GOTTSTEIN: Okay. Thank you. Thank you,

1 we've got -- I'm sure Mr. Gottstein will be calling
 2 people from CHOICES to testify as to exactly what, in
 3 particular, they do in their relationship with Mr.
 4 Bigley. I'm just not sure her testimony will be
 5 relevant to the...

6 MR. BIGLEY: The president will find out.

7 MS. RUSSO: ...issue before the court.

8 MR. BIGLEY: President of the United States.
 9 Is there a problem?

10 MR. GOTTSTEIN: Your Honor, basically, if
 11 she's given her testimony -- I mean, that's the
 12 testimony that I'm offering.

13 MR. BIGLEY: (Indiscernible). They get on
 14 board right now. Th -- (indiscernible) called me and
 15 Bush called me. (Indiscernible).

16 MR. GOTTSTEIN: Sh-sh.

17 THE COURT: So it's not gonna be -- so, Mr.
 18 Gottstein, there's not gonna be any further examination
 19 by you?

20 MR. GOTTSTEIN: I -- I think at this point --
 21 I mean, we're four minutes from when we have to leave.
 22 I do have a couple more questions, yes. But, ah -- but
 23 she's already described by the efficacy of other
 24 approaches with people that are in Mr. Bigley's type of
 25 situation. And I could re-ask her those questions, but

1 Your Honor. So, I think most of the testimony I was
 2 gonna elicit has already come in on voir dire.

3 Q But I did want to talk about some of the
 4 effects of coercion. Could you describe that.
 5 And I could prompt you some, but that may be --
 6 let's do it without that, first.

7 MR. BIGLEY: (Indiscernible).

8 A I think generally speaking, coercion is
 9 unhelpful and counterproductive in terms of
 10 fooling a therapeutic relationship with somebody
 11 in need of care. And that, actually, often the
 12 effects of coercion can, themselves, be
 13 detrimental and compound the problems faced by a
 14 person with experience of serious mental illness,
 15 which is why I think there is growing moves
 16 internationally to find other ways of working
 17 with people to address the kinds of issues and
 18 challenges that people face.

19 Q Does coercion, in your opinion, create
 20 reactions that are then regarded as symptoms?

21 A Oftentimes that's the case, Jim.
 22 Particularly, we are -- like, in the case of
 23 people being required to take medication that
 24 they might feel is not helpful or even worse,
 25 possibly a harmful to themselves, sometimes that

1 can be regarded as symptomatic. Like, I've
2 certainly witnessed a number of cases where
3 people have formed the view that they are being
4 poisoned by medication. But when they express t
5 his fear, that that, itself, has been regarded as
6 a symptom of illness, and (indiscernible) the
7 justification for treatment, which becomes a very
8 vicious circle and a bit of a Catch 22 from
9 service user's perspective.

10 Q Are there other symptoms, you think - or,
11 reactions that you think are caused by coercion?

12 A Ah...

13 Q Let me -- let me -- is it common for people
14 who are coerced to be labelled "paranoid"?

15 A Yes. Often. Because people can think that
16 things are being done to them, which, it would
17 appear from that person's perspective, to be the
18 case, but often that could be misinterpreted as
19 "paranoid" by service, and then, again, used as
20 further justification for requiring the person to
21 accept treatment.

22 Q Can you give an example?

23 A Well, for instance, if a person believed that
24 services wanted to take, say, a blood sample to
25 check whether or not the person had the

1 THE COURT: Ms. Russo.

2 MS. RUSSO: Thank you.

3 CROSS EXAMINATION

4 BY MS. RUSSO:

5 Q Just a couple questions. Mr. Porter, before
6 today, had you met Mr. Bigley?

7 A No, I had not met Mr. Bigley before today.

8 Q And have you had a chance to spend any time
9 with Mr. Bigley today?

10 A I haven't.

11 Q And you're whole approach -- does the -- does
12 the recipient of the -- does the service user --
13 do they have to be willing to accept the
14 services, in order for your approach to work?

15 A It's certainly helpful for that approach to
16 work. If the person is unwilling for the
17 approach to work, then it's least likely to
18 succeed.

19 Q Okay. and so what happens when the person is
20 not willing to work with the people who want to
21 work with him?

22 A We'd need to negotiate around options and
23 consequences and that's generally the approach
24 that we take.

25 Q And you had said at the very beginning or your

1 therapeutic levels of medication in their blood
2 stream, the person might think that the blood
3 test was being required as a way for the services
4 to get them, or trick them into taking more
5 medication. And that can happen and is
6 reasonably common. Certainly, in New Zealand, I
7 would imagine it would be the same in other
8 parts.

9 Q And would that -- then, would that reaction be
10 -- would that often be labelled "paranoia"?

11 A It would, because -- but I think that's, again
12 -- it's a product of different (indiscernible),
13 where services would say some things as -- you
14 know, potentially being a benefit to the service
15 user, where the service user might say that it's
16 to their detriment. So that's, again, different
17 perspectives of the same thing. But from the
18 service users perspective, it's a difficult issue
19 and it might well be perceived as paranoia on the
20 part of the person. Which, again, gets labelled
21 as a symptom and treated as such, so it becomes,
22 again, a self fulfilling situation.

23 MR. GOTTSTEIN: I could ask some more
24 questions, but I think I'll let Ms. Russo use the rest
25 of the time for cross examination.

1 testimony that, I think, your approach -- let me
2 see if I can refer to my notes. Is that -- that
3 -- your approach, you didn't believe that forced
4 medication -- and correct me if I'm giving your
5 testimony wrong, but that it was -- that it
6 wouldn't work for a significant portion of the
7 population. Did you mean all of the population,
8 or did you mean that...

9 A That forcing people to take medication would
10 not work for most people.

11 Q Most people. But there may be outliers?

12 A I would say in rare and exceptional cases,
13 there might well be. Because, again, these -- in
14 my view, there's no absolutes. It's like saying
15 -- and the same way as you can't say, medication
16 is a good answer for everybody. There are some
17 people for whom medication is helpful. But I
18 think that generally speaking, I'm not certain
19 what your legislation requires here, but in New
20 Zealand, the requirement is that even people
21 subjected to compulsory treatment, it is only
22 able to be and provided without the consent of
23 the person for the first 28 days. And the
24 rationale for that is that it's expected that
25 after 28 days of use of medication, that the

1 person themselves would be able to recognize the
 2 benefit of it and then voluntarily agree to
 3 continue taking it. And so that's certainly a
 4 safeguard that's built into the New Zealand
 5 legislation. I would imagine you would have
 6 something similar here, and that would actually -
 7 - might provision for the person to be able to
 8 make an informed choice, and presumably after 28
 9 days of using a medication, or be it by force,
 10 the person themselves would be able to recognize
 11 the benefit. But if there isn't a benefit that's
 12 able to be perceived by the person, then I would
 13 hope that service providers would be able to
 14 actually acknowledge that, and work with the
 15 person to find some other means of addressing the
 16 issues and concerns that are least distressing to
 17 the person. Because the unfortunate truth of the
 18 matter is that as medication really doesn't work
 19 for all people, there are a few people for whom
 20 it is a good answer, and it's helpful. But they
 21 are a large number for whom it's problematic and
 22 uncomfortable and distressing.

23 Q And are there -- is basically the whole thrust
 24 of your work sort of designed to -- to make sure
 25 that people are able to live to the best of their

1 "Oh, well, they're crazy, so they don't know that it's
 2 good for them." And that's basically what is -- if Ms.
 3 Porter might have a response to that.

4 THE COURT: I'm going to allow her to answer.

5 A Well, to be honest, I'm uncomfortable with
 6 what the use of force meant. It's probably been
 7 fairly evident from what I've said so far. And I
 8 think that the issue of persons capacity to
 9 consent, I think is, in fact, progressively
 10 moving towards allowing more people to be
 11 recognized as being able to consent, and, in
 12 fact, they (indiscernible) on the rights of
 13 people with disabilities has changed the wording
 14 around the peoples capacity to consent, which
 15 means that people always had the right to be able
 16 to consent or not to treatment, and that a person
 17 needs support to be able to make those decisions,
 18 that such support be made available through
 19 advocacy. But that there is an increasing move
 20 to respect the autonomy and the personal choice
 21 of the person at the center of treatment, more of
 22 the time.

23 Q So does that mean that even -- that even
 24 someone who is psychotic knows what's happening
 25 to themselves?

1 abilities in a community, and to have as full of
 2 a life as possible outside of institutionalized
 3 treatment?

4 A Absolutely. And, in fact, the definition of
 5 recovery that we use in New Zealand is, recovery
 6 means the person being able to live well with or
 7 without symptoms of mental illness.

8 Q Okay. Thank you. Those are all my questions.

9 THE COURT: Any redirect?

10 MR. GOTTSTEIN: Yes. Just very briefly.

11 REDIRECT EXAMINATION

12 BY MR. GOTTSTEIN:

13 Q What would be your response to the idea that
 14 someone who has been -- you know, coerced into
 15 taking -- forced to take medication, isn't
 16 competent to decide whether or not it should be
 17 continued.

18 MS. RUSSO: Objection, your Honor. I don't
 19 know that there is a basis for giving an opinion on
 20 somebody's competency. Maybe I didn't fully understand
 21 the question.

22 THE COURT: Yeah. Mr. Gottstein?

23 MR. GOTTSTEIN: Well, the idea is that often,
 24 when patients complain about medications not working
 25 and all these terrible side effects, they're saying,

1 A I believe that people do, Jim, to be honest.
 2 I believe that even people who are
 3 (indiscernible) have a degree of clarity about
 4 what's going on with themselves, particularly in
 5 terms of the physical well being, and that the
 6 peoples capacity to be able to recognize and make
 7 decisions about their own physical and mental
 8 self needs to be honored and respected as much as
 9 possible, and that in so doing, peoples capacity
 10 and competence increases.

11 MR. GOTTSTEIN: I have no further questions.

12 THE COURT: Ms. Russo?

13 MS. RUSSO: None.

14 THE COURT: All right. Ms. Porter, you're
 15 free to go. Have a good flight back.

16 A I will. Thank you very much.

17 THE COURT: Thank you.

18 Okay. So this case is going to be in recess
 19 until 1:30 Monday, September 10th, right here. And we
 20 can go off record.

21 ***END***

1 That the foregoing transcript is a
2 transcription of testimony of said proceedings to the
3 best of my ability, prepared from tapes recorded by
4 someone other than Pacific Rim Reporting, therefore
5 "indiscernible" portions may appear in the transcript;

6 I am not a relative, or employee, or
7 attorney, or counsel of any of the parties, nor am I
8 financially interested in this action.

9 IN WITNESS WHEREOF, I have hereunto set my
10 hand and affixed my seal this 7th day of September,
11 2007.

12
13
14

15 Notary Public in and for Alaska
16 My commission expires: 10/05/2007
17
18
19
20
21
22
23
24
25

IN THE TRIAL COURTS FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

In the Matter of the Necessity
for the Hospitalization of
W.S.B.,

Respondent.

_____/

No. 3AN-07-247 PR

PETITION FOR 30 DAY COMMITMENT

PAGES 1 THROUGH 17

BEFORE THE HONORABLE ANDREW BROWN
MASTER

Anchorage, Alaska
September 10, 2007
2:01 p.m.

APPEARANCES:

FOR STATE OF ALASKA: Elizabeth Russo
Attorney General's Office
Human Services Division
1031 West 4th Avenue, Suite 200
Anchorage AK 99501

FOR W.S.B.: James Gottstein
406 G Street, Suite 206
Anchorage AK 99501

Also Present: W.S.B.
D. Taylor

PROCEEDINGS

1 THE COURT: This is -- you can be seated.
 2 This is the case involving the hospitalization for
 3 William Bigley, file number 07-1064.
 4 Sit down, Mr. Gottstein.
 5 So, Ms. Russo, what's the cause of the delay?
 6 MS. RUSSO: Thank you, Your Honor. I guess
 7 there's a couple causes of the delay. The largest one,
 8 though, is that Mr. Bigley apparently is not in court.
 9 The hospital was planning on asking to hold the
 10 petition in abeyance and not necessarily go forward
 11 with more evidence today, because the doctor has been
 12 talking with Mr. Bigley's case manager. He's still
 13 present in the back of the courtroom, and between him
 14 and Dr. Douglas Smith in Juneau, who has agreed to
 15 supervise the medical treatment of Mr. Bigley while
 16 he's out, the plans are that Mr. Bigley will be...
 17 THE COURT: I don't want to get into the
 18 possible merits. I just was...
 19 MS. RUSSO: No, no, no.
 20 THE COURT: ...just asking, what's the cause
 21 of the delay?
 22 Sit down, Mr. Gottstein. Hold on.
 23 MS. RUSSO: So that the cause, basically, is
 24 that -- I guess I -- the doctor knew I would be asking

1 don't know where the miscommunication came from.
 2 THE COURT: It wasn't the court, and I doubt
 3 it was Mr. Gottstein, because he doesn't control Mr.
 4 Bigley's transportation.
 5 MS. RUSSO: Uh-huh (affirmative).
 6 THE COURT: All right. We're in recess.
 7 (Off record - 2:03 p.m.)
 8 (On record - 2:48 p.m.)
 9 THE COURT: Please be seated.
 10 Hello, Mr. Bigley.
 11 MR. BIGLEY: How you doin'. Good to see you.
 12 THE COURT: This is the resumption of the case
 13 of William Bigley, file number 07-1064. And we left
 14 off last time -- actually, we took you out of order --
 15 the witness order, and we have to resume with Dr.
 16 Worrall's direct examination, unless the direct
 17 examination was over, I don't know. But there are some
 18 preliminary things I have to deal with, because this
 19 morning there was a motion for expedited consideration
 20 filed by Mr. Bigley; a motion for injunctive relief.
 21 The State has already responded to the
 22 expedited consideration motion, filing its opposition.
 23 So I just marked "not used," the order granting
 24 expedited consideration because it's sort of moot. And
 25 I don't know if -- it would probably be best if the

1 to hold the petition in abeyance and not do evidence.
 2 I guess there was a misunderstanding that the hearing
 3 was still going to happen at all today.
 4 THE COURT: The court gave no -- no one any
 5 reason to believe otherwise.
 6 MS. RUSSO: No. I know. And I'm really
 7 sorry, I just don't know. I believe that we just found
 8 a number. Mr. Bigley is still at API right now. He
 9 can be on the telephone right now for this portion, and
 10 then I don't know if the court wishes to recess so that
 11 Mr. Bigley can come down.
 12 THE COURT: Well, it's up to Mr. Gottstein.
 13 Do you want your client here?
 14 MR. GOTTSTEIN: Yes, Your Honor, I do.
 15 THE COURT: Well, I can't proceed without Mr.
 16 Bigley being here. So you better tell your client to
 17 get him down here...
 18 MS. RUSSO: Yes, Your Honor.
 19 THE COURT: ...right now. We'll be in recess
 20 again until he gets here.
 21 MR. GOTTSTEIN: Half an hour, or?
 22 THE COURT: Well, whenever he gets here. I
 23 mean, I can't tell them to go through red lights, but,
 24 it's your client, Ms. Russo.
 25 MS. RUSSO: No. I'm sorry, Your Honor. I

1 attorneys want to comment at the end of the proceeding
 2 about that motion for conjunctive relief, rather than
 3 now, because we're right in the middle of the
 4 evidentiary hearing.
 5 Mr. Gottstein?
 6 MR. GOTTSTEIN: Your Honor, well, the -- I
 7 think the supreme court is expecting something in about
 8 three weeks. Maybe it's been filed already. But I
 9 looked at this and there's a sentence on the first page
 10 in the third paragraph of their opposition that says,
 11 "Until there is a final decision on the petition for
 12 the administration of psychotropic medication, Mr.
 13 Bigley will not receive any emergency medication."
 14 And if the court would just so order that, I
 15 think that we can just say that it's been resolved.
 16 THE COURT: Well, Ms. Russo, do you want to
 17 comment?
 18 MS. RUSSO: Your Honor, I don't understand why
 19 -- the matter is moot. I attached the page from Mr.
 20 Bigley's chart where there's clearly an order that
 21 says, "discontinue PRN", Haldol, Ativan and Benadryl
 22 IM." So the matter is moot. It's not gonna happen.
 23 And I don't know -- you know, I don't think there is
 24 any necessary -- the court doesn't need to act when the
 25 matter is moot.

1 THE COURT: Uh-huh (affirmative). Okay. Mr.
 2 Gottstein?
 3 MR. GOTTSTEIN: Well, Your Honor, the
 4 hospital, you know, blatantly violated AS 47.30.38, and
 5 it would be -- and there is really n -- basically, if
 6 this is ordered, then if they don't live up to it, then
 7 it's contempt of court. Whereas, now, there's really
 8 not much of a remedy. So -- they were supposed to
 9 follow 838, and they didn't, and now they say they're
 10 gonna do this, and they -- and it should just be so
 11 ordered. They say they're gonna do it, so I don't know
 12 why they would object to an order.
 13 MS. RUSSO: Your Honor, the entry of an order
 14 would indicate that Mr. Bigley's motion -- that the
 15 facts that he alleges in the motion have been proven.
 16 The hospital is admitting -- has admitted nothing,
 17 except for the fact that this has -- I mean, there have
 18 been crisis situations. Mr. Bigley has been given
 19 emergency medication, but it's been -- ah -- the three
 20 times that are gr -- that are allowed for in the
 21 statute, have happened, and it's not gonna happen
 22 anymore. So, I don't...
 23 MR. BIGLEY: (Indiscernible) -- the -- the
 24 hospital knows -- they've been notified.
 25 THE COURT: Okay. Mr. Gottstein, I'm just

1 THE COURT: Okay. Let -- let me ask you
 2 this...
 3 MS. RUSSO: Yes.
 4 THE COURT: ...because, I mean, often when we
 5 -- the State has maybe this kind of petition -- they
 6 would have discussed it with the other side, and, so, I
 7 -- then I would hear Mr. Gottstein's response, or maybe
 8 there would be a stipulation, I don't know. Have you
 9 discussed this with Mr. Gottstein?
 10 MS. RUSSO: I mentioned it to Mr. Gottstein.
 11 I had only just confirmed it with Dr. Worrall right
 12 before -- like, at around 1:15 this afternoon, that
 13 that, indeed, was definitely where we were headed. So
 14 I mentioned it to Mr. Gottstein at one point.
 15 THE COURT: Do the parties want some time to
 16 talk. I'll take another recess, if so. I mean, Mr.
 17 Gottstein, do you want time to think about? Discuss
 18 with your client? Discuss with Ms. Russo? Whatever.
 19 I mean, this is just brand new to me, so.
 20 MR. GOTTSTEIN: Your Honor, as I understand,
 21 the basic proposal to hold that in abeyance, I think,
 22 is fine for now. I've got -- and which I put in my
 23 pleadings -- I've got a real problem with where we're
 24 at on the involuntary commitment. My understanding is,
 25 no recommendation had been made to the superior court

1 going to proceed with this evidentiary hearing, then at
 2 the end I may make oral findings, or I may reserve them
 3 to written findings, but I feel that I can just
 4 proceed, and that this pending motion does not have to
 5 be commented on by me until we're done with the
 6 evidentiary phase. So, with that, we're going to
 7 resume.
 8 Ms. Russo, is Dr. Worrall on the phone?
 9 MS. RUSSO: Well, no, Your Honor. That was
 10 the other thing that, I think, had caused the delay
 11 earlier today, and I have to apologize again for any
 12 miscommunication.
 13 THE COURT: Uh-huh (affirmative).
 14 MS. RUSSO: The hospital is actually -- has
 15 been working with Mr. Bigley's case manager, and...
 16 MR. BIGLEY: (Indiscernible).
 17 MS. RUSSO: ...is planning on discharging him
 18 on Thursday. We would ask to hold the petition in
 19 abeyance until Mr. Bigley is discharged from the
 20 hospital with the intent to withdraw the petition then
 21 at that time. But I -- even if we had been able to
 22 start on time today, I don't know that we would have
 23 been able to finish the proceedings today, and then
 24 having to continue any other evidentiary -- I just
 25 don't quite know the point...

1 yet. So, having said that...
 2 THE COURT: Well, (indiscernible) corrected --
 3 there's already the order.
 4 MR. GOTTSTEIN: Huh?
 5 MR. BIGLEY: (Indiscernible).
 6 MR. GOTTSTEIN: A commitment order?
 7 MS. RUSSO: Yes.
 8 MR. GOTTSTEIN: I don't have it.
 9 MR. BIGLEY: (Indiscernible).
 10 THE COURT: Huh. The order for 30 day
 11 commitment was signed September 4th and it was faxed to
 12 respondent's attorney, mailed to respondent's attorney,
 13 to the Attorney General, treatment facility. Is that -
 14 - you did that to Mr. Gottstein?
 15 UNIDENTIFIED FEMALE: (Indiscernible).
 16 MR. GOTTSTEIN: I think...
 17 THE COURT: Anyway, it's already entered.
 18 MR. GOTTSTEIN: Okay. I haven't seen it.
 19 Okay.
 20 THE COURT: Anyway...
 21 MR. GOTTSTEIN: And the only other thing I
 22 think that we need to deal with right now is, I filed a
 23 motion for reconsideration on your order to close the
 24 public file. That's a very important constitutional
 25 right that my client has. And so I think that should

1 really be dealt with very quickly.
 2 THE COURT: I don't know about any
 3 reconsideration order, but that's not something I have
 4 to do right this second.
 5 MR. BIGLEY: It's on the radio too -- PB.
 6 MR. GOTTSTEIN: Okay. So I think we can put
 7 it off for a while, then, at this point.
 8 THE COURT: Putting off the medication...
 9 MR. GOTTSTEIN: Yeah.
 10 THE COURT: ...petition? Okay. But, I mean,
 11 this is all very unusual. So, when you say -- well,
 12 actually, Ms. Russo says, "Put it off," and Mr.
 13 Gottstein says, "Put it off." And what does it mean to
 14 me? Am I saying, I reached -- am I -- do I tentatively
 15 put this back on my calendar at some time, or is the
 16 petition being dismissed?
 17 MS. RUSSO: Your Honor, what I'm envisioning
 18 happening is that Mr. Bigley will indeed be discharged
 19 on Thursday, and at that time the hospital would
 20 withdraw the petition.
 21 THE COURT: Okay.
 22 MS. RUSSO: If, for some reason, Mr. Bigley
 23 wasn't being discharged, according to those plans, I
 24 would probably expect that I would be on the phone with
 25 Mr. Gottstein and we'd be calling over to court to find

1 I would like to see is some kind of settlement...
 2 MR. BIGLEY: (Indiscernible).
 3 MR. GOTTSTEIN: ...-- some kind of settlement
 4 that would, you know, maximize his chances for not
 5 having to go through th -- this again.
 6 MR. BIGLEY: Since I've been (indiscernible)
 7 Bush gave me, ah, the jet...
 8 THE COURT: Well, that would be between the
 9 parties. The court...
 10 MR. BIGLEY: ...in my name.
 11 THE COURT: ...can't take a position about
 12 what the parties should settle on...
 13 MR. BIGLEY: Hilary called me, too.
 14 THE COURT: ...at this point, as far as I
 15 know. Because the statute doesn't -- only speaks as to
 16 the types of hearing the court has. The 30 day, 90
 17 day, 180, medication petition. And if the parties are
 18 going to reach some kind of stipulation outside of the
 19 strict confines of the statutes, well, that would be up
 20 to the parties.
 21 MR. BIGLEY: (Indiscernible).
 22 SMITH: But I guess -- I've just stopped this
 23 hearing now, and just see what develops. Right?
 24 MR. GOTTSTEIN: Yes, Your Honor. I think
 25 there is one other thing...

1 out when it could be scheduled for.
 2 THE COURT: Hold on, Mr. Gottstein. Let me --
 3 don't try -- again, this is all so unusual. So what it
 4 would be, according t -- from what I hear from Ms.
 5 Russo is, during the remainder of Mr. Bigley's
 6 commitment, that the hospital wouldn't be planning to
 7 go forward with this medication petition anymore,
 8 unless they feel he's gonna be -- because they believe
 9 he is going to be discharged on Thursday. But then if
 10 he's not going to be discharged Thursday, they could
 11 end up coming back and say, "We want to finish the
 12 medication petition for the remaining, about 10 days of
 13 the commitment period, because, that's, I think, what
 14 it would be, about up to that point.
 15 MS. RUSSO: Uh-huh (affirmative).
 16 (Background conversation)
 17 THE COURT: Right, Ms. Russo?
 18 MS. RUSSO: Yes, Your Honor.
 19 THE COURT: Okay. So, Mr. Gottstein?
 20 MR. GOTTSTEIN: I think that's right. And I
 21 maybe have kind of a slightly different, either
 22 expectation or desire, in terms of the resolution.
 23 THE COURT: All right.
 24 MR. GOTTSTEIN: I think that the State has
 25 some obligations to Mr. Bigley upon discharge, and what

1 THE COURT: Uh-huh (affirmative).
 2 MR. GOTTSTEIN: ...to consider, Section 2 of
 3 what I -- Roman Number II of what I filed this morning,
 4 talks about the status of representation. And, so I
 5 think that really needs to be resolved.
 6 MR. BIGLEY: (Indiscernible).
 7 MR. GOTTSTEIN: So it may become moot. I
 8 think it almost -- it's -- I'd give it a pretty high
 9 probability that that would become moot, but if it --
 10 there's a 90 day petition, that's gonna be a big
 11 problem.
 12 MR. BIGLEY: (Indiscernible).
 13 MR. GOTTSTEIN: I don't expect that to happen.
 14 THE COURT: Okay. All right. So, I guess --
 15 I just recess this proceeding, without any further
 16 specific hearing, and then if Mr. Bigley is released
 17 from API on Thursday or before, the State is going to
 18 file a notice to the court, and then we dismiss the
 19 pending medication petition. I mean, we do that sua
 20 sponte once we have a notice of his dismissal --
 21 dismissed from API, it moots the medication petition.
 22 Right?
 23 MR. GOTTSTEIN: Yes, sir, that's true.
 24 THE COURT: Okay. Otherwise, if we get -- we
 25 have to get notice one way or the other. That's what

1 I'll require.
 2 MS. RUSSO: Right.
 3 THE COURT: Mr. Russo, and you file something
 4 by the end of Thursday.
 5 MS. RUSSO: Yes.
 6 THE COURT: If he's being dismissed, or -- I'm
 7 sure we'll hear, for finishing up this hearing.
 8 Okay. Now, Mr. Gottstein, you mentioned about
 9 a reconsideration motion. I don't...
 10 MR. BIGLEY: (Indiscernible).
 11 THE COURT: I don't -- my order from last week
 12 -- I don't think I've seen...
 13 MR. GOTTSTEIN: But it was in -- in the --
 14 kind of a -- Section 4 of what I filed this morning.
 15 THE COURT: Section 4. Oh, hold on. Oh, I
 16 see. Oh. Okay. Well, I'll review that. Since it is
 17 a reconsideration motion, if Ms. Russo wants to
 18 respond, I'm going to grant her the right -- or, the
 19 State the right, I should say.
 20 MR. BIGLEY: (Indiscernible) million dollars
 21 in the jet.
 22 THE COURT: Ms. Russo, would it be possible,
 23 you know, by some time Wednesday, you could respond to
 24 just that part?
 25 MS. RUSSO: Okay.

1 for getting Mr. Bigley down here.
 2 MR. BIGLEY: (Indiscernible).
 3 THE COURT: Appreciate that. Thank you.
 4 ***END***
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 THE COURT: You're not required, but I have to
 2 allow you the opportunity under Civil Rule 77.
 3 MR. BIGLEY: (Indiscernible).
 4 THE COURT: Ms. Taylor, I guess, for you, it's
 5 just a matter of waiting to see what develops, and then
 6 there's gonna be a further hearing. You will certainly
 7 be notified, like everyone else, and if the case is
 8 being dismiss, you'll be notified, like everyone else.
 9 Okay?
 10 MS. TAYLOR: Sure. Thank you.
 11 THE COURT: We got your report this morning.
 12 I appreciate that.
 13 MS. TAYLOR: Thank you.
 14 THE COURT: So, I guess, with all that, we'll
 15 be recessing this matter.
 16 Anything else, Ms. Russo?
 17 MS. RUSSO: No, Your Honor. I just want to
 18 confirm. It's the response to the open or closure by
 19 close of business on Wednesday?
 20 THE COURT: Yeah, that will be fine with me.
 21 MS. RUSSO: Okay.
 22 THE COURT: Yeah. Mr. Gottstein, anything
 23 else?
 24 MR. GOTTSTEIN: I think that's it, Your Honor.
 25 THE COURT: All right. Ms. Russo, thank you

1 CERTIFICATE
 2
 3 SUPERIOR COURT)
 4) SS.
 5 STATE OF ALASKA)
 6
 7 I, Georgi Ann Haynes, Certified Professional
 8 Court Reporter for the Third Judicial District, State
 9 of Alaska and verbatim reporter for Pacific Rim
 10 Reporting, Inc., hereby certify:
 11 That the foregoing transcript is a
 12 transcription of testimony of said proceedings to the
 13 best of my ability, prepared from tapes recorded by
 14 someone other than Pacific Rim Reporting, therefore
 15 "indiscernible" portions may appear in the transcript;
 16 I am not a relative, or employee, or
 17 attorney, or counsel of any of the parties, nor am I
 18 financially interested in this action.
 19 IN WITNESS WHEREOF, I have hereunto set my
 20 hand and affixed my seal this 1st day of October, 2007.
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100

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

In The Matter of the Necessity for the)
Hospitalization of William S. Bigley,)
Respondent,)
William Worrall, MD,)
Petitioner)

Case No. 3AN 05-110475
COPY
Submitted Received
Probate Division

SEP 12 2007

Clerk of the Trial Courts

MOTION FOR PERMANENT MANDATORY INJUNCTION

COMES NOW, Respondent William S. Bigley (Mr. Bigley) and moves for a permanent mandatory injunction granting the following relief:

1. Mr. Bigley be allowed to come and go from API as he wishes, including being given, food, good sleeping conditions, laundry and toiletry items.
2. If involuntarily in a treatment facility in the future, Mr. Bigley be allowed out on passes at least once each day for four hours with escort by staff members who like him, or some other party willing and able to do so.
3. Only the Medical Director of API may authorize the administration of psychotropic medication pursuant to AS 47.30.838 (or any other justification for involuntary administration of medication, other than under AS 47.30.839), after consultation with James B. Gottstein, Esq., or his successor.
4. API shall procure and pay for a reasonably nice two bedroom apartment that is available to Mr. Bigley should he choose it.¹ API shall first attempt to negotiate an acceptable abode, and failing that procure it and make it available to Mr. Bigley.
5. At API's expense, make sufficient staff available to be with Mr. Bigley to enable him to be successful in the community.

¹ API may seek to obtain a housing subsidy from another source, but such source may not be his Social Security Disability income.


LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

6. The foregoing may be contracted for from an outpatient provider.

This motion is accompanied by a memorandum in support.

DATED September 12, 2007.

Law Project for Psychiatric Rights, Inc.

By: 
James B. Gottstein, ABA # 7811100

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

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

In The Matter of the Necessity for the)
Hospitalization of William S. Bigley,)
Respondent,)
William Worrall, MD,)
Petitioner)

COPY
Original Received
Probate Division

SEP 12 2007

Case No. 3AN 07-1064 P/S

Clerk of the Trial Courts

MEMORANDUM IN SUPPORT OF
MOTION FOR PERMANENT MANDATORY INJUNCTION

Respondent William S. Bigley (Mr. Bigley) has moved for a permanent mandatory injunction granting the following relief:

1. Mr. Bigley be allowed to come and go from API as he wishes, including being given, food, good sleeping conditions, laundry and toiletry items.
2. If committed in the future, Mr. Bigley be allowed out on passes at least once each day for four hours with escort by staff members who like him, or some other party willing and able to do so.
3. Only the Medical Director of API may authorize the administration of psychotropic medication pursuant to AS 47.30.838 (or any other justification for involuntary administration of medication, other than under AS 47.30.839), after consultation with James B. Gottstein, Esq., or his successor.
4. API shall procure and pay for a reasonably nice two bedroom apartment that is available to Mr. Bigley should he choose it.¹ API shall first attempt to negotiate an acceptable abode, and failing that procure it and make it available to Mr. Bigley.
5. At API's expense, make sufficient staff available to be with Mr. Bigley to enable him to be successful in the community.
6. The foregoing may be contracted for from an outpatient provider.²

¹ API may seek to obtain a housing subsidy from another source, but such source may not be Mr. Bigley's Social Security Disability income.

² Substantially similar relief was originally requested in Mr. Bigley's Opposition To Motion To Strike All Attachments To Pre-Hearing Brief Of Respondent and Presentation

With respect to commitment, Mr. Bigley is entitled to the least restrictive alternative³ and with respect to forced drugging, the least intrusive alternative.⁴

In support of this motion factually, are:

- (1) the written testimony of Paul A Cornils of CHOICES, Inc., filed contemporaneously herewith⁵;
- (2) the written testimony of Ron Bassman, previously filed,⁶
- (3) the September 5, 2007, oral testimony of Sarah Porter, who was qualified as an expert in the area of alternative treatments, and
- (4) §VI. & IX. of Mr. Bigley's Pre-Hearing Brief, filed September 4, 2007

The expert testimony of Ronald Bassman, PhD, and Sarah Porter described a less intrusive alternative approach to coercion and drugs that has enjoyed much more favorable outcomes for people, including those who have been subjected to force and coercion, including forced drugging for a very long time, such as has been experienced by Mr. Bigley. The Affidavit of Paul A Cornils states that CHOICES, Inc., could provide such types of services if it could increase its staffing levels.

In light of Mr. Bigley's current situation, largely created by the actions of API over 27 years,⁷ API should be ordered to provide the requested mandatory injunction as a less restrictive/intrusive alternative, applicable in the community as well as any time he might be involuntarily at API, or similar facility, in the future.

Of Other Matters, filed September 10, 2007 (incorrectly dated August 31, 2007). Mr. Bigley has now files it as a separate motion and includes additional analysis.

³ *Wetherhorn v. Alaska Psychiatric Institute*, 156 P.3d 371, 378 (Alaska 2007).

⁴ *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006).

⁵ See, Affidavit of Paul A. Cornils.

⁶ See, Affidavit of Ronald Bassman, PhD.

⁷ See, § VI., of Pre-Hearing Brief.

Because it has determined not to continuing seeking court approval to forcibly drug Mr. Bigley, API currently plans to discharge Mr. Bigley into exactly the same situation which he has been, and which Dr. Worrall testified is very likely to land Mr. Bigley in jail. API should not be allowed to do so. API should be ordered to provide the type of reasonably available community supports that can be provided him at reasonable cost, which he voluntarily accepts, to give him a real chance at success in the community.

Dr. Worrall testified that API considers forced drugging the only treatment option for Mr. Bigley. That has been shown to be untrue. What is true is that the State is not offering or paying for an alternative to the involuntary commitment and forced drugging it sought. However, the State may not evade its constitutional obligation to provide less restrictive/intrusive alternatives by choosing not to provide them. *Wyatt v. Stickney*, 344 F.Supp. 387, 392 (M.D.Ala.1972) ("no default can be justified by a want of operating funds."), affirmed, *Wyatt v. Anderholt*, 503 F.2d 1305, 1315 (5th Cir. 1974)(state legislature is not free to provide social service in a way that denies constitutional right).

The rationale for each of numbered item of requested relief will now be discussed.

1. Mr. Bigley be allowed to come and go from API as he wishes, including being given, food, good sleeping conditions, laundry and toiletry items.

Mr. Bigley periodically loses his housing; there is currently no housing in the community that will tolerate his episodic non-violent, but extreme, verbal expressions. API certainly can, however. The loss of housing typically precipitates an escalation of type of behavior that brings Mr. Bigley to API. As set forth in AS 47.30.655(1), Mr. Bigley should be given the opportunity for voluntary involvement with the system.

However, when asked if API would accept Mr. Bigley voluntarily coming to API when he might want or need to, Dr. Worrall testified that API is not a dormitory or boarding house and that if it can not force Mr. Bigley to take the drugs he insists should be forced on him, API won't accept him. This is contrary to the very first "principle of modern mental health care that guided the development" of Alaska's current statutory approach "that persons be given every reasonable opportunity to accept voluntary treatment before involvement with the judicial system."⁸ The Court should order API to do so.

- 2. If committed in the future, Mr. Bigley be allowed out on passes at least once each day for four hours with escort by staff members who like him, or some other party willing and able to do so.**

Mr. Bigley is fine when out on pass with an escort. He should be allowed at least four hours each day of such less restrictive alternative to being locked up all day if he is ever, or whenever he might be involuntary at API or another such facility. He suggests this is his constitutional right. Dr. Worrall testified there were members of API staff who like Mr. Bigley. Mr. Bigley should have the opportunity to go out on pass with such individuals or other parties willing and able to escort him on pass.

- 3. Only the Medical Director of API may authorize the administration of psychotropic medication pursuant to AS 47.30.838 (or any other justification for involuntary administration of medication, other than under AS 47.30.839), after consultation with James B. Gottstein, Esq., or his successor.**

There are many troubling aspects of Alaska's mental health system revealed in the record here. It is clear the Alaska Legislature's mandate that the system be as voluntary as possible has been turned on its head. It is also clear, at least in this case, that API will not

⁸ AS 47.30.655.

consider any treatment other than drugs, even though the Alaska Supreme Court held over a year ago in *Myers* that people have a constitutional right to a less intrusive alternative.

However the most egregious demonstration of willful and deliberate violation of Mr. Bigley's rights was the continued forced drugging without authorization to do so.⁹ When Mr. Bigley won a slight continuance of consideration of the forced drugging petition,¹⁰ API, through Dr. Worrall, continued to forcibly inject him with Haldol and other drugs, purportedly under the emergency police power provision of AS 47.30.838, in spite of there being no justification for doing so.¹¹

It is apparent that as to forced drugging, at least, API's psychiatrists have (1) not been trained with respect to patient rights, or (2) allowed to violate patient rights at their discretion, or (3) both. Mr. Bigley's statutory and constitutional rights were grossly violated because of this with a procedure the Alaska Supreme Court has acknowledged to be equated with the intrusiveness of Electroshock and Lobotomy. Mr. Bigley merely requests the injunction provide that any such forcible drugging be reviewed and approved

⁹ This is probably criminal assault.

¹⁰ *Myers* and *Wetherhorn* make clear that the forced drugging petition should be considered separately from the involuntary commitment and the Probate Master's insistence on completing it rapidly was in error.

¹¹ At the September 10, 2007, hearing, API's counsel asserted there had been no violation of AS 47.30.838. However AS 47.30.838(a)(1) requires that:

"the behavior or condition of the patient giving rise to a crisis under this paragraph and the staff's response to the behavior or condition must be documented in the patient's medical record; the documentation must include an explanation of alternative responses to the crisis that were considered or attempted by the staff and why those responses were not sufficient.

Counsel has looked at a copy of Mr. Bigley's medical records, which API provided saying they were complete, and failed to find any such documentation.

by the Medical Director, and Mr. Bigley's counsel be consulted, prior to its administration. This is more than reasonable, especially since API has assured this Court that no forced drugging will occur at all absent a final court order approving forced drugging under AS 47.30.839.¹² However, it is not clear API intended to honor that beyond its unilateral dismissal of its petition and thereby discharge itself from responsibility for Mr. Bigley.

4. **API shall procure and pay for a reasonably nice two bedroom apartment that is available to Mr. Bigley should he choose it.¹³ API shall first attempt to negotiate an acceptable abode, and failing that procure it and make it available to Mr. Bigley.**

API's "plan" for Mr. Bigley is, or at least was, repeated hospitalizations, currently costing over \$1,000 per day. API would clearly be money ahead by paying a little bit of money for housing, in comparison, if it keeps Mr. Bigley in the community. Mr. Bigley's being put in jail would also be very costly in comparison. However, saved cost is not the basis for this request. The government of the State of Alaska, through API, having invoked its awesome power to imprison someone for the safety of the individual or the community, has also caused Mr. Bigley's statutory and constitutional right to the least restrictive alternative to arise. In light of the 27 year history of over 70 hospitalizations, and the likelihood of additional traumatic hospitalizations if Mr. Bigley is not kept safely in the community, this constitutional right must extend beyond the dismissal of this particular case.

¹² There is a pretty good argument that no "emergency" drugging should occur for anyone at API without the Medical Director's review for compliance with statutory requirements, but Mr. Bigley is not seeking such an order here.

¹³ API may seek to obtain a housing subsidy from another source, but such source may not be his Social Security Disability income.

5. At API's expense, make sufficient staff available to be with Mr. Bigley to enable him to be successful in the community.

For the same reason, Mr. Bigley is entitled to sufficient services in the community.

As it turns out, in his guardianship proceeding, Case No., 3AN 04-545 P/G, a Settlement Agreement¹⁴ pertaining to a then pending petition by Mr. Bigley, was recently entered into in which API is a party in which it agreed Mr. Bigley should receive extended services.¹⁵

This Settlement Agreement provides in pertinent part:

6. Mental Health Services. Respondent has largely been unwilling to accept mental health services. Some services that Respondent may hereafter, from time to time, desire are identified in the subsections that follow. Others may be identified later. To the extent Respondent, from time to time, desires such services, the Guardian and API will support the provision of such services, including taking such steps as may be required of them to facilitate the acquisition thereof to the best of their ability.²

6.1. Extended Services. Extended services, such as Case Management, Rehabilitation, Socialization, Chores, etc., beyond the standard limits for such services.

6.2. Other Services. Additional "wrap-around" or other types of services Respondent, from time to time, desires.

² By agreeing to this stipulation API is not making any judgment regarding eligibility standards under Medicaid regulations.

Mr. Bigley is not saying that API has agreed to pay for the services, but he is saying API has formally agreed they are very desirable and necessary to keep him safely in the community.

¹⁴ The Settlement Agreement is designated confidential and only that portion necessary here is being set forth. The Court can take judicial notice of the Settlement Agreement or, if it desires, Mr. Bigley could file a copy under seal herein.

¹⁵ As set forth in Mr. Bigley's Pre-Hearing Brief, API was the original petitioner in his guardianship case. It insisted it be allowed to participate formally in that proceeding as an "Interested Party," was allowed to file pleadings, and as indicated, is a party to this settlement agreement.

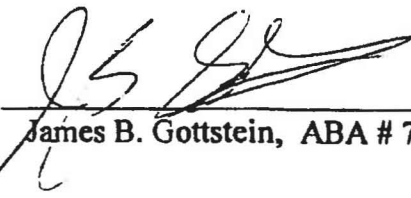
6. The foregoing may be contracted for from an outpatient provider.

Once having invoked the State's awesome power to lock someone up for the safety of the person or community, or both, API is required to provide the least restrictive/intrusive alternative. However, this can be done, all or in part, through contract or other arrangement with an outpatient provider and to the extent there are other potential payors, such as Medicaid and the Indian Health Service, they may be utilized.

For the foregoing reasons, Mr. Bigley respectfully requests his Motion for Permanent Mandatory Injunction be granted.¹⁶

DATED September 12, 2007.

Law Project for Psychiatric Rights, Inc.

By: 
James B. Gottstein, ABA # 7811100

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

¹⁶ Some other form of order besides an injunction may also be appropriate.

IN THE UNITED STATES OF AMERICA
FOR THE DISTRICT OF ALASKA

RECEIVED

SEP 20 2007

UNITED STATES OF AMERICA) Case No. **CLERK, U.S. DISTRICT COURT**
) **ANCHORAGE, A.K.**
PLAINTIFF,)
) Affidavit of
VS.) Bert C. Heitstuman
) in Support
) of Criminal Complaint
WILLIAM S. BIGLEY)
) **3:07-mj-00192-JDR**
DEFENDANT.)

I, Inspector Bert C. Heitstuman of the United States Department of Homeland Security Immigrations and Customs Enforcement-Federal Protective Service, being duly sworn, do hereby swear and affirm the following facts as being true to the best of my knowledge, information, and belief.

I am an Inspector with the Federal Protective Service (FPS), United States Department of Homeland Security, and have been working with the FPS for 1 year, 11 months. In that capacity, I investigate violations of the Federal Criminal Codes, Code of Federal Regulations and related offenses.

1. The information in this affidavit is based on personal knowledge of the investigation and those of other officers of the Federal Protective Service against William S. Bigley.
2. This affidavit is made in support of a request for a Criminal Complaint against BIGLEY, in relation to failure to comply with the lawful order of a federal police officer and disorderly conduct inside a federal facility, (Peterson Towers - Suite of Senator Lisa Murkowski) at 510 L. St. Anchorage, AK on September 19, 2007.
3. On or about 09/19/07 Bigley did knowingly and willing fail to obey the direction of a

Federal Police officer by entering the Suite of Senator Lisa Murkowski even though he had been directed not to do so in writing on 08/07/07 by Federal Protection Service Officer Chris Heitstuman; (the written trespass order was written by the staff of Senator Lisa Murkowski and issued by Federal Protective Service Officer Chris Heitstuman and witnessed by Federal Protective Service Officer Adam Griffie).

4. On or about 09/19/07 Bigley did knowingly and willingly conduct himself in a disorderly manner inside the Suite of Senator Lisa Murkowski by yelling and disturbing employees inside that suite. The content of Bigley's conversations while in Senator Lisa Murkowski's office were unintelligible to the staff of Senator Lisa Murkowski.
5. Bigley did also create a disturbance by making persistent phone calls to Senator Lisa Murkowski's office, calling at all hours of the day and night, and sometimes filling up the answering machine of Senator Lisa Murkowski; (55 total calls over a 29 day period to include:

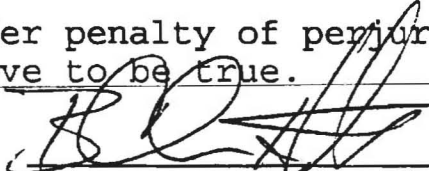
- 5 calls on 07/17/07,
- 10 calls on 07/19/07,
- 1 call on 07/21/07,
- 1 call on 07/22/07,
- 2 calls on 07/23/07,
- 7 calls on 07/25/07,
- 1 call on 07/26/07,
- 1 call on 07/27/07,
- 1 call on 07/28/07,
- 2 calls on 07/31/07,
- 6 calls on 08/03/07,
- 3 calls on 08/04/07,
- 7 calls on 08/06/07,
- 3 calls on 08/08/07,

-1 call on 08/11/07,
-3 calls on 08/14/07, and
-1 call on 08/16/07).)

The content of each of these phone calls was unintelligible and difficult to understand and follow. The reason for Bigley's calls could not be deciphered by Senator Murkowski's staff.

6. Bigley did also impede and disrupt the duties of government employees by continually calling (no less than 55 calls as noted above) and by entering the suite of Senator Lisa Murkowski (no less than 8 to 10 times according to staff member of Senator Lisa Murkowski) both before and after being advised not to do so in writing. The written trespass warning was issued on 08/07/07 and Bigley again came by on 09/19/07 when he was arrested.
7. Bigley had to be detained and restrained by Federal Protective Service Officer Chris Heitstuman.
8. Bigley was then remanded to the Anchorage Correctional Center East pending an Initial Appearance in US District Court.

Under penalty of perjury, I swear the above to be true.


Bert C. Heitstuman
Inspector, Federal Protective Service

SUBSCRIBED AND SWORN to before me this
20th day of September 2007.

REDACTED SIGNATURE

United States Magistrate Judge

3

**MINUTES OF THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

UNITED STATES OF AMERICA v. WILLIAM S. BIGLEY

3:07-MJ-00192-JDR

THE HONORABLE DEBORAH M. SMITH, United States Magistrate Judge

MINUTE ORDER FROM CHAMBERS

The defendant William S. Bigley appeared Sept. 20, 2007 for arraignment on a criminal complaint alleging creation of a nuisance; unreasonable obstruction of entrances and offices and disruption of the performance of official duties by government employees. He appeared incoherent and disruptive at the time of arraignment. He was nonresponsive to inquiries from the Court and appeared unable to consult with counsel. It was necessary to have Mr. Bigley removed from the courtroom. It was not possible to complete arraignment. Based upon the defendant's criminal history, conduct at the time of the offense as described in the complaint and conduct at the time of the arraignment, it appears no condition of release will insure Mr. Bigley's appearance at subsequent court proceedings and insure there is no risk to the public pending trial. I order his detention and placement into the custody of the U.S. Marshals Service.

Mr. Hugh Fleischer accepted the appointment as counsel to represent Mr. Bigley pursuant to the Criminal Justice Act. The CJA Administrator is directed to formalize the appointment.

A joint motion to determine the mental competency of Mr. Bigley pursuant to 18 U.S.C. §4241 was made by government counsel and defense counsel. Based upon the defendant's history and observation of his conduct and affect during the court hearing, there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. The motion for psychiatric examination to determine the mental competency is granted pursuant to 18 U.S.C. §4241 and §4247(b) and (c). Mr. Bigley is remanded to the Alaska Psychiatric Institute or other suitable facility closest to the Court for a period not to exceed 30 days for the purpose of examination. Upon receipt of the examination report, a hearing to determine mental competency will be scheduled.

Defense counsel is directed to notify the Court as soon as the defendant's condition sufficiently improves to enable the completion of the arraignment, even if the psychiatric examination has not yet been completed.

Entered at the direction of the Honorable Deborah M. Smith, United States Magistrate Judge

September 20, 2007

Any request for other information or for clarification, modification, or reconsideration of this Order, or for extension of time must be made as a motion. See FED.R.CIV.P. 7(b)(1); D.Ak.LR. 7.1(1). No one should telephone, fax or write to chambers regarding pending cases. The magistrate judge's judicial assistant and/or law clerk are not permitted to discuss any aspect of this case, provide any information or communicate with any person including litigants, lawyers, witnesses and the public regarding cases.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	
)	Case No. 3:07-mj-00192-JDR
Plaintiff,)	
)	
v.)	ORDER TO DISMISS
)	
WILLIAM BIGLEY,)	(Docket No. 16)
)	
Defendant.)	

Having considered the Motion to Dismiss Without Prejudice filed by the United States, it is hereby ordered that pursuant to Rule 48(a) of the Fed. R. Crim. P., this case is DISMISSED without prejudice.

IT IS SO ORDERED. Defendant to be released from custody forthwith.

DATED this 12th day of October, 2007, at Anchorage, Alaska.

/s/John D. Roberts, USMJ
Signature Redacted



JOHN D. ROBERTS
UNITED STATES MAGISTRATE JUDGE

webmaster@courts.state.ak.us

Alaska Trial Court Cases

Home | CourtView Search | Name Index (Old System) | Pay Ticket Online CourtView Help

Dockets include limited information about filings and hearings that occurred before CourtView was installed in the court.

A maximum of 100 dockets will display at one time. Select the "descending" sort option to view the last 100 dockets entered. Select the "ascending" sort option to view the first 100 dockets entered. To see more dockets, adjust the date range of your search.



[New Search...](#)

- Summary
- Parties
- Events
- Dockets
- Disposition
- Costs

Docket Search

3AN-07-11795CR Municipality of Anchorage vs. Bigley, William Stanley

Search Criteria

Docket Desc.	ALL	
Begin Date		Sort
End Date		<input type="radio"/> Ascending
		<input checked="" type="radio"/> Descending

Search

Search Results 20 Docket(s) found matching search criteria.

Docket Date	Docket Text	Amount	Amount Due	Images
10/24/2007	Hearing Result: Case Disposed. The following event: CRP Hearings: In Custody scheduled for 10/23/2007 at 2:30 pm has been resulted as follows: Result: Case Disposed Judge: Rhoades, Stephanie L Location: Courtroom 204, Anchorage Courthouse	0.00	0.00	
10/24/2007	Hearing Summary The following event: CRP Hearings: In Custody scheduled for 10/23/2007 at 2:30 pm has been resulted as follows: Result: Case Disposed Check In: Judge: Rhoades, Stephanie L Location: Courtroom 204, Anchorage Courthouse Staff: Prosecutors: Municipal Prosecutors Office: Present Parties:	0.00	0.00	
10/23/2007	Charge Dismissed by Prosecutor Charge(s) 3 disposed with a disposition of Charge Dismissed by Prosecutor Charge #3: AMC8.45.010(A)(2): Trespass - Business/Commercial Property	0.00	0.00	

10/23/2007	Charge Dismissed by Prosecutor Charge(s) 1 disposed with a disposition of Charge Dismissed by Prosecutor Charge #1: AMC8.10.010(B)(1): Assault - Use Reckless Force Or Violence	0.00	0.00
10/23/2007	Charge Dismissed by Prosecutor Charge(s) 2 disposed with a disposition of Charge Dismissed by Prosecutor Charge #2: AMC8.45.010(A)(2): Trespass - Business/Commercial Property	0.00	0.00
10/23/2007	Case Dismissed by Prosecuting Attorney (Cr43(a)) Case disposed with disposition of Dismissed by Prosecution (CrR43(a)) on 10/23/2007.	0.00	0.00
10/23/2007	Bail Info: Unsecured \$500.00 Arrest Bond Added to Case with: Action Code: AMC8.10.010(B)(1): Assault - Use Reckless Force Or Violence Arrest Date: Bond Status: Posted Status Date: 10/22/2007 Blanket Bond: No Okay to Apply: No Bond Type: Appear Bnd: Unsecured Bond/Pwr No.: Unsecured	0.00	0.00
10/22/2007	Hearing Summary The following event: Arraignment: Muni/City (In Custody) scheduled for 10/22/2007 at 1:00 pm has been resulted as follows: Result: Attorney Appointed Parties: Bigley, William Stanley - Defendant Municipality of Anchorage - Prosecution Check In: Judge: Anchorage Jail Court, Block Judge: Location: Anchorage Jail Courtroom Staff: Prosecutors: Municipal Prosecutors Office: Present Parties:	0.00	0.00
10/22/2007	Hearing Result: Attorney Appointed The following event: Arraignment: Muni/City (In Custody) scheduled for 10/22/2007 at 1:00 pm has been resulted as follows: Result: Attorney Appointed Judge: Anchorage Jail Court, Block Judge: Location: Anchorage Jail Courtroom	0.00	0.00
10/22/2007	Attorney Information Attorney Gorton & Logue representing Defendant Bigley, William Stanley as of 10/22/2007	0.00	0.00
10/22/2007	Hearing Set Event: CRP Hearings: In Custody Date: 10/23/2007 Time: 2:30 pm Judge: Rhoades, Stephanie L Location: Courtroom 204, Anchorage Courthouse Result: Case Disposed	0.00	0.00
10/22/2007	Hearing Set Event: Arraignment: Muni/City (In Custody) Date: 10/22/2007 Time: 1:00 pm Judge: Anchorage Jail Court, Block Judge: Location: Anchorage	0.00	0.00

Jail Courtroom Result: Attorney Appointed

10/22/2007	Charge Dismissed by Prosecutor Charge #3: AMC8.45.010(A)(2): Trespass - Business/Commercial Property	0.00	0.00
10/22/2007	Charge Dismissed by Prosecutor Charge #1: AMC8.10.010(B)(1): Assault - Use Reckless Force Or Violence	0.00	0.00
10/22/2007	Hearing Result: Hearing Continued The following event: Arraignment: Weekend/Holiday (Muni) scheduled for 10/21/2007 at 1:30 pm has been resulted as follows: Result: Hearing Continued Judge: Arr Weekend/Holiday, Block Judge: Location: Anchorage Jail Courtroom	0.00	0.00
10/22/2007	Hearing Summary The following event: Arraignment: Weekend/Holiday (Muni) scheduled for 10/21/2007 at 1:30 pm has been resulted as follows: Result: Hearing Continued Check In: Judge: Arr Weekend/Holiday, Block Judge: Location: Anchorage Jail Courtroom Staff: Prosecutors: Parties:	0.00	0.00
10/21/2007	Charge Filed Charge #3: AMC8.45.010(A)(2): Trespass - Business/Commercial Property	0.00	0.00
10/21/2007	Charge Filed Charge #2: AMC8.45.010(A)(2): Trespass - Business/Commercial Property	0.00	0.00
10/21/2007	Charge Filed Charge #1: AMC8.10.010(B)(1): Assault - Use Reckless Force Or Violence	0.00	0.00
10/21/2007	Hearing Set Event: Arraignment: Weekend/Holiday (Muni) Date: 10/21/2007 Time: 1:30 pm Judge: Arr Weekend/Holiday, Block Judge: Location: Anchorage Jail Courtroom Result: Hearing Continued	0.00	0.00

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of the Necessity)
for the Hospitalization of:)
)
WILLIAM BIGLEY,)
Respondent.)
_____)

Case No. 3AN-07-1311 PR

EX PARTE ORDER
(TEMPORARY CUSTODY FOR
EMERGENCY EXAMINATION/
TREATMENT)

FINDING AND CONCLUSIONS

Having considered the allegations of the petition for initiation of involuntary commitment and the evidence presented, the court finds that there is probable cause to believe that the respondent is mentally ill and as a result of that condition is gravely disabled or presents a likelihood of causing serious harm to him/herself or others.

ORDER

Therefore, it is ordered that:

1. AST/APD take the respondent into custody and deliver him/her to Alaska Psychiatric Institute, in Anchorage, Alaska, the nearest appropriate evaluation facility for examination.
2. The respondent be examined at the evaluation facility and be evaluated as to mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.
3. The evaluation facility personnel promptly report to the court the date and time of the respondent's arrival.
4. The examination and evaluation be completed within 72 hours of the respondent's arrival at the evaluation facility.
5. A petition for commitment be filed or the respondent be released by the evaluation facility before the end of the 72 hour evaluation period (unless respondent requests voluntary admission for treatment).
6. Public Defender Agency is appointed counsel for respondent in this proceeding and is authorized access to medical, psychiatric or psychological records maintained on the respondent at the evaluation facility.

Date

Superior Court Judge

I certify that on _____
a copy of this order was sent
to: AG, PD, API, RESP

Recommended for approval on
October 23, 2007

Clerk:

Trinda M. Bunnay
Master

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)
)

William Bigley
Respondent.)

Case No. 3AN 07 1311 PR

)
)
) NOTICE OF RESPONDENT'S
ARRIVAL AT EVALUATION FACILITY

To: CLERK OF COURT

Anchorage, ALASKA

Please take notice that respondent arrived at _____

API

on 10-23-07 at 1526

10/24/07
Date

Mary Martinez
Signature

Mary Martinez, Legal Office
Printed Name

Title

Superior Court at _____
notified by telephone on _____
at _____

This notice sent to Anchorage court on
10-24-07

M Martinez, Legal Office
Name and Title

Distribution:
Original to court
Copy to evaluation facility

MC-400 (12/87) (st.2)

AS 47.30.715

NOTICE OF RESPONDENT'S ARRIVAL AT EVALUATION FACILITY

Case No. _____

3. Persons having personal knowledge of these facts are:
(include addresses)

10/23/07
Date

Cardice Siciliano
Petitioner's Signature

Cardice Siciliano
Type or Print Name

4000 Adke St Anch AK 99508
Petitioner's Address

241-2800
Petitioner's Phone

Verification

Petitioner says on oath or affirms that petitioner has read this petition and believes all statements made in the petition are true.

Subscribed and sworn to or affirmed before me at Anchorage,
Alaska on 10/23/2007 (date)



[Signature]
Clerk of Court, Notary Public or other
person authorized to administer oaths.
My commission expires: W/O

A person who makes application in good faith upon either actual knowledge or reliable information who makes application for evaluation or treatment of another person under AS 47.30.700-47.30.915 is not subject to civil or criminal liability. [AS 47.30.815(a)]

A person who willfully initiates an involuntary commitment procedure under AS 47.30.700 without having good cause to believe that the other person is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to self or others, is guilty of a felony. [AS 47.30.815(c)]

I certify that on _____
a copy of this petition was sent to:

Clerk: _____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity
for the Hospitalization of:
William S Bigley
Respondent.

Case No. 3AN07 1311 PR

PETITION FOR 30-DAY
COMMITMENT

Amended

As mental health professionals who have examined the respondent, the petitioners allege that:

1. The respondent is mentally ill and as a result is
 likely to cause harm to himself/herself or others.
 gravely disabled and there is reason to believe that the respondent's mental condition could be improved by the course of treatment sought.
2. The evaluation staff has considered, but has not found, any less restrictive alternatives available that would adequately protect the respondent or others.
3. API is an appropriate treatment facility for the respondent's condition and has agreed to accept the respondent.
4. The respondent has been advised of the need for, but has not accepted, voluntary treatment.

The petitioners respectfully request the court to commit the respondent to the above-named treatment facility for not more than 30 days.

The facts and specific behavior of the respondent supporting the above allegations are:

The respondent with long standing mental illness with diagnosis of Schizoaffective disorder. This is his 72th admission to API. He has history of medication non-compliance and refuses to receive antipsychotic medication currently. He exhibits persecutory delusion as indicated "you are butchering me and I am going to report you to white house". His behavior is escalating as using obscenity language along with finger posturing. As psychotropic medication that was given against his wish wearing off, more deterioration will be noted. Per guardian, increase in aggressive behavior, less predictable, and less easily managed. Has no solid placement which means to be discharged to shelter such as Rescue mission. Has limited insight and judgement.

Bigley

Case No. BAN 07 1311 PR

The following persons are prospective witnesses, some or all of whom will be asked to testify in favor of the commitment of the respondent at the hearing:

Kahnaz Khari, MD; Lawrence Maile, PHD; Stollman, MD; Jonathan Hughes, OPA; Paul Carnils, choices; Adult Protective Department.

Malinda Nataneck, LISW

10/25/07
10/24/2007

Date

Khari

Signature

Kahnaz Khari, MD

Printed Name

Staff Psychiatrist

Title

10/25/07

Date

Malinda Nataneck

Signature

Malinda Nataneck

Printed Name

Licensed Clinical Social Worker

Title

Note: This petition must be signed by two mental health professionals who have examined the respondent, one of whom is a physician. AS 47.30.730(a):

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)

William S. Bloy

Respondent.

) Case No. 3AN071311 P/R
)
) PETITION FOR COURT APPROVAL OF
) ADMINISTRATION OF PSYCHOTROPIC
) MEDICATION [AS 47.30.839]

Kadrez Khari MD

petitioner, requests a hearing on the respondent's capacity to give or withhold informed consent to the use of psychotropic medication, and alleges that:

There have been, or it appears that there will be, repeated crisis situations requiring the immediate use of medication to preserve the life of, or prevent significant physical harm to, the patient or another person. The facility wishes to use psychotropic medication in future crisis situations.

Petitioner has reason to believe the patient is incapable of giving or withholding informed consent. The facility wishes to use psychotropic medication in a noncrisis situation.

Court approval has been granted during a previous commitment period, and the facility wishes to continue medication during the subsequent commitment period. A 90/180 day petition is being filed. The patient continues to be incapable of giving or withholding informed consent.

The patient has refused has not refused the medication.

10/25/07

Date

[Signature]

Signature

(Representative of evaluation or designated treatment facility)

KADRIZ KHARI

Printed Name

STAFF PSYCHIATRIST

Title

Verification

Petitioner says on oath or affirms that petitioner has read this petition and believes all statements made in the petition are true.

Subscribed and sworn or affirmed before me at Anchorage

Alaska on 10/25/07
(date)

[Signature]

Clerk of Court, Notary Public, or other person authorized to administer oaths.

My commission expires: with office



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

In the Matter of the Necessity)
for the Hospitalization of:)
WILLIAM S. BIGLEY,)
Respondent.)

FILED
IN THE CHAMBERS OF
PETER A. MICHALSKI
Superior Court
State of Alaska, Third District
Time 1:35 PM
Date 11/2/2007
Initials CBB
Case No. 3AN-07-1311 PR

FINDINGS AND ORDER FOR 30-DAY COMMITMENT FINDINGS

A petition for 30-day commitment was filed on October 25, 2007. A hearing was held on November 2, 2007 to inquire into the mental condition of the respondent. Respondent was personally present at the hearing and was represented by George Davenport. Representing the State of Alaska was Elizabeth Russo, assistant attorney general. Having considered the allegations of the petition and the evidence presented including the testimony of Paul Cornils and the expert testimony of Drs. Maile and Khari, the court finds by clear and convincing evidence:

1. Respondent is mentally ill and, as a result, is likely to cause harm to himself or others and is gravely disabled.
2. Respondent has been advised of and refused voluntary treatment.
3. Respondent is a resident of the State of Alaska.
4. Respondent was given verbal notice that if commitment or other involuntary treatment beyond the 30 days is sought, respondent will have the right to a full hearing or jury trial.
5. Alaska Psychiatric Institute is an appropriate treatment facility. No less restrictive facility would adequately protect the respondent and the public.
6. Facts which support the above conclusions are: Clear and convincing evidence that the respondent is mentally ill, including Dr. Maile's expert diagnosis of schizoaffective disorder. Dr. Maile testified this illness manifested itself by delusions and auditory and visual hallucinations and also through sleeplessness, agitation, and suspiciousness of people.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Clear and convincing evidence that the respondent is likely to cause harm to himself or others, including the testimony of Dr. Maile of his recent behaviors on the unit which include spitting on staff members and threatening an Alaska State Trooper.

Clear and convincing evidence that the respondent is gravely disabled, including Dr. Maile's testimony about his refusal to eat and drink for days while at the hospital, and his sleeplessness. Paul Cornils testified to Mr. Bigley's behaviors that have lead him being arrested twice in the space of one month and which have also lead to his eviction from his most recent apartment. Mr. Cornils also testified to the fact that Mr. Bigley's behaviors have lead to him not having any housing options currently available.

Clear and convincing evidence that there is no less restrictive treatment option at this time. The request for API to be a "night" hospital for Mr. Bigley is not supported by the evidence.

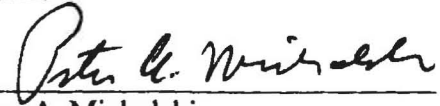
Clear and convincing evidence that Mr. Bigley's mental condition will be improved by the course of treatment the hospital seeks to provide.

Hospitalization and treatment for Mr. Bigley is clearly in his best interest at this time.

ORDER

Therefore, IT IS ORDERED that respondent, William S. Bigley, is committed to Alaska Psychiatric Institute for a period of time not to exceed 30 days.

DATED: 11/2/07



Peter A. Michalski
Superior Court Judge

I certify that on Nov 2, 2007 a copy of the above was mailed to each of the following fair addresses of record:
Catherine Boyd
Edmonton
Mental Administrative Assis
AP

NOTICE OF RIGHTS

To: William S. Bigley

YOU ARE HEREBY GIVEN NOTICE that if commitment or other involuntary treatment beyond the 30 days is sought, you shall have the right to a full hearing or jury trial.

FINDINGS AND ORDER CONCERNING 30 DAY COMMITMENT FINDINGS CASE NO. 3AN 07-1131 PR
ITMO: I.E. PAGE 2 OF 2
BR/TB/API/BIGLEY/API COMMITMENT 07-1131/F&O 30DAYMEDS.DOC

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 In the Matter of the Necessity)
5 for the Hospitalization of:)
6 WILLIAM S. BIGLEY,)
7 Respondent.)

FILED
IN THE CHAMBERS OF
PETER A. MICHALSKI
Superior Court
State of Alaska, Third District
Time 1:35 PM
Date 11/2/2007
Initials CAF
Case No. JAN-07-1311 PR

8 **FINDINGS AND ORDER CONCERNING COURT-ORDERED**
9 **ADMINISTRATION OF MEDICATION**

10 **FINDINGS**

11 A petition for court approval of administration of psychotropic medication
12 was filed on October 24, 2007. Respondent was committed on November 2, 2007 for a
13 period of time not to exceed 30 days. A hearing was held on November 2, 2007 to
14 inquire into the respondent's capacity to give or withhold informed consent to the use of
15 psychotropic medication. Having considered the allegations of the petition, the evidence
16 presented and the arguments of counsel, the court finds:

17 1. By clear and convincing evidence that the respondent is not
18 competent to provide informed consent concerning administration of psychotropic
19 medication and the treating facility's proposed use of psychotropic medication is
20 approved for the respondent's present commitment.

21 2. The facts which support the above conclusion are: Clear and
22 convincing evidence that the respondent is unable to give or withhold informed consent
23 concerning antipsychotic medication including Drs. Maile's and Khari's expert
24 testimony that neither of them believed Mr. Bigley is capable of assimilating facts of his
25 current situation, that he is unable to participate in treatment decisions, and that he lacks
26 insight into his mental illness. The visitor reported that based on her review of the chart,
her discussions with Mr. Bigley's guardian and former case manager, and her own
attempts at meeting with Mr. Bigley that she did not believe that he had the capacity to

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

1
2 participate in treatment decisions, that he does not have insight into his condition, and
3 that he lacks the capacity to give informed consent.

4 The court visitor reported that Mr. Bigley did not make any clear objections
5 to the medication, this was also supported by Dr. Khari's testimony. Dr. Khari testified
6 that the proposed medication plan meets the medical standards of care for Mr. Bigley and
7 Mr. Bigley would likely benefit from medication including an improvement in mood,
8 judgment and insight into his current situation.

9 The court visitor reported she found no evidence of an advanced directive,
10 nor did the guardian or former case manager have such evidence. She did note that there
11 was a period of time when Mr. Bigley would return to API on a bi-monthly basis for
12 long-acting shots and that this was his period of greatest stability.

13 The testimony is clear that Mr. Bigley improves with medication, that it
14 helps him become capable of living a normal life. It is the medication that helps him
15 become closer to reality. There is no other treatment that has the same effect with Mr.
16 Bigley. While there is no existing directive, his behavior during the time he was
17 compliant with outpatient treatment does show some understanding of the medications
18 benefits. It is understood that there are serious side effects, but when those side effects
19 are weighed against the risk he poses to himself by not being treated and the benefits of
20 treatment, they are outweighed.

ORDER

21 Therefore, it is ordered that the treating facility's proposed use of
22 psychotropic medication to treat the respondent is approved for the period of the
23 respondent's current commitment.

24 DATED: 11/2/07

25 I certify that on 11/2/2007 a copy of the
26 above was mailed to each of the following at
their addresses of record: Davenport
Carmel Bond B. Russo
Judicial Administration Assistant API

Peter A. Michalski
Peter A. Michalski
Superior Court Judge

FINDINGS AND ORDER CONCERNING ADMIN OF MEDICATION
ITMO: W.S.B.
BR/TB/API/BIGLEY/API COMMITMENT 07-1131/F&O 30DAYMEDS.DOC

CASE NO. 3AN 07-1131 PR
PAGE 2 OF 2

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 In the Matter of the Necessity)
5 for the Hospitalization of:)
6 WILLIAM S. BIGLEY,)
7 Respondent.)

Case No. 3AN-07-1311 PR

8 **FINDINGS AND ORDER FOR 90-DAY COMMITMENT FINDINGS**

9 A petition for 90-day commitment was filed on November 29, 2007. A
10 hearing was held on December 20, 2007, to inquire into the mental condition of the
11 respondent. Respondent was personally present at the hearing and was represented by
12 Kelly Gillilan-Gibson. Representing the State of Alaska was Elizabeth Russo, assistant
13 attorney general. Having considered the allegations of the petition, the evidence
14 presented, including the testimony of Jonathan Hughes, public guardian, and the expert
15 testimony of Dr. Howard Detwiler, and the arguments of counsel, the court finds by clear
16 and convincing evidence:

- 17 1. Respondent is mentally ill and, as a result, is likely to cause harm to
18 himself or others and is gravely disabled.
- 19 2. Respondent has been advised of and refused voluntary treatment.
- 20 3. Respondent is a resident of the State of Alaska.
- 21 4. Respondent was given verbal notice that if commitment or other
22 involuntary treatment beyond the 90 days is sought, respondent will have the right to a
23 full hearing or jury trial.
- 24 5. Alaska Psychiatric Institute is an appropriate treatment facility. No
25 less restrictive facility would adequately protect the respondent and the public.
- 26 6. Facts which support the above conclusions are: Clear and
convincing evidence that the respondent is mentally ill, including Dr. Detwiler's expert
diagnosis of schizoaffective disorder. Dr. Detwiler testified this illness manifests itself

DEC 23 2007

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

1
2 by delusions such as Mr. Bigley believing that he and the president are friends and that he
3 has lots of money. Mr. Bigley also exhibits psychotic behaviors.

4 Clear and convincing evidence that the respondent is likely to cause harm
5 to himself or others, including Dr. Detwiler's testimony of Mr. Bigley's inability to care
6 for himself outside of a structured setting, especially given the recent frigid weather.

7 Clear and convincing evidence that the respondent is gravely disabled,
8 including Dr. Detwiler's testimony that Mr. Bigley is inability to care for himself without
9 a structured environment. Mr. Bigley requires cueing to remind him to complete his
10 activities of daily living. Jonathan Hughes testified that Mr. Bigley's recent behaviors
11 (prior to this admission) have lead to him being evicted from his apartment and being
12 asked to leave several area hotels and shelters. Mr. Hughes also noted that based on his
13 experiences with Mr. Bigley, it was likely Mr. Bigley would be arrested for some
14 infraction if released at this time, although he was not likely to be convicted.
15 Mr. Bigley's own testimony indicates he suffers from severe distress which impairs his
16 judgment and impacts his ability to function outside of a structured setting.

17 7. There is no less restrictive treatment option at this time. The
18 testimony of Jonathan Hughes was clear that Mr. Bigley does not have an apartment, and
19 has worn out his welcome at area shelters and hotels as well as with any outpatient care
20 providers. API has identified Big Lake Country Club as a placement option for Mr.
21 Bigley, however there is no bed available for Mr. Bigley at the present time.

22 8. Mr. Bigley's mental condition will be improved by the course of
23 treatment the hospital seeks to provide.

24 9. Hospitalization and treatment for Mr. Bigley is clearly in his best
25 interest at this time.

26 ORDER

Therefore, IT IS ORDERED that respondent, William S. Bigley, is
committed to Alaska Psychiatric Institute for a period of time not to exceed 90 days.

1
2 A status hearing shall be held on January 14, 2008 at 11:00 a.m.

3 DATED: Jan 7/08

4 *Peter A. Michalski*
5 for Peter A. Michalski
6 Superior Court Judge

7 **NOTICE OF RIGHTS**

8 To: William S. Bigley

9 **YOU ARE HEREBY GIVEN NOTICE** that if commitment or other
10 involuntary treatment beyond the 90 days is sought, you shall have the right to a full
11 hearing or jury trial.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
DEC 26 2007

14
15 *copy made on 1/7/08*
16 *of the above was mailed to each of the following*
17 *mail addresses of record: ADA - H. Nelson*
18 *API*
19 *ASO*

17 *[Signature]*
18 Administrative Assistant

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W FOURTH AVENUE, SUITE 200
ANCHORAGE ALASKA 99501
PHONE: 1907-269-5100

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 In the Matter of the Necessity)
5 for the Hospitalization of:)
6 WILLIAM S. BIGLEY,)
7 Respondent.)

*filed in Court
1/14/08*

Case No. 3AN-07-1311 PR

8 STATUS REPORT

9 The Department of Health and Social Services, Division of Behavioral
10 Health, Alaska Psychiatric Institute provides the court with this report regarding the
11 status of Mr. Bigley's discharge.

12 Mr. Bigley has been able to visit the Big Lake Country Club several times
13 since the last court hearing. The estimated date for discharge is January 21, 2008, due
14 to construction delays. The administrator of the home, Lynda Plettner, asked for
15 additional funding to help the home support Mr. Bigley. Mr. Bigley's public guardian
16 was able to tap into a special General Relief fund through the Division of Behavioral
17 Health and obtain the additional funding. Matsu Mental Health has also obtained a
18 grant to have services in place to help Mr. Bigley at the Big Lake Country Club. Thus,
19 it appears that all the necessary services are in place to help support Mr. Bigley's
20 transition. Mr. Bigley remains still psychotic and delusional, but is otherwise doing
21 okay at API at this time. He is still taking his medication. Dr. Detwiler believes that he
22 continues to meet the commitment criteria.

23 DATED: 1/14/08

24 TALIS J. COLBERG
25 ATTORNEY GENERAL

26 By: *Elizabeth Russo*
Elizabeth Russo
Assistant Attorney General
Alaska Bar No. 0311064

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)
)
)
William Bigley)
Respondent.)
_____)

Case No. 3AN-07 1311 P/R

NOTICE OF RELEASE

To: Superior Court at Anchorage, Alaska.

Release after Evaluation. Respondent was admitted to _____ for evaluation on _____ at _____ and was discharged from the facility on _____ at _____ because the evaluation personnel did not find that respondent met the standards for commitment specified in 47.30.700.

Release After Commitment Period. Respondent was committed for treatment on _____ for _____ days. Respondent was released on _____.

Certificate of Early Discharge. Respondent was committed for treatment on 01-07-08, for 90 days. I certify that on 01-21-08, respondent was discharged early because:

Respondent is no longer gravely disabled or likely to cause serious harm as a result of mental illness.

Discharged to a less restrictive alternative

I request the court to enter an order officially terminating the involuntary commitment.

11/24/08
Date

[Signature]
Signature

M. Martinez, Legal Office
Print Name and Title

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)
William Bisley)
Respondent.)

Case No. _____

PETITION FOR 30-DAY
COMMITMENT

As mental health professionals who have examined the respondent, the petitioners allege that:

1. The respondent is mentally ill and as a result is
 likely to cause harm to himself/herself or others.
 gravely disabled and there is reason to believe that the respondent's mental condition could be improved by the course of treatment sought.
2. The evaluation staff has considered, but has not found, any less restrictive alternatives available that would adequately protect the respondent or others.
3. API is an appropriate treatment facility for the respondent's condition and has agreed to accept the respondent.
4. The respondent has been advised of the need for, but has not accepted, voluntary treatment.

The petitioners respectfully request the court to commit the respondent to the above-named treatment facility for not more than 30 days.

The facts and specific behavior of the respondent supporting the above allegations are:

The assisted living facility reports that Mr. Bisley has not taken his medications for 1 week. He was brought to API by police after leaving ALF and "causing a ruckus at a bar". On exam Mr. Bisley is loud, pacing, agitated and disorganized in speech. He is unable to answer questions coherently. He demonstrates paranoid and grandiose delusions. He has poor insight and judgement.

Bigley

Case No. _____

The following persons are prospective witnesses, some or all of whom will be asked to testify in favor of the commitment of the respondent at the hearing:

2/26/08
Date
1253

D. Kushon MD
Signature
DONALD KUSHON
Printed Name
MD
Title

02/27/08
Date

Ann Nelson
Signature
Ann Nelson
Printed Name
LMSW
Title

Note: This petition must be signed by two mental health professionals who have examined the respondent, one of whom is a physician. AS 47.30.730(a).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

AT Anchorage

In the Matter of the Necessity)
for the Hospitalization of:)

William Bigley
Respondent.

) Case No. _____ P/R

) PETITION FOR COURT APPROVAL OF
) ADMINISTRATION OF PSYCHOTROPIC
) MEDICATION [AS 47.30.839]

Donald Kustan MD petitioner, requests a hearing on the
respondent's capacity to give or withhold informed consent to the use
of psychotropic medication, and alleges that:

[] There have been, or it appears that there will be, repeated
crisis situations requiring the immediate use of medication to
preserve the life of, or prevent significant physical harm to, the
patient or another person. The facility wishes to use psychotropic
medication in future crisis situations.

[] Petitioner has reason to believe the patient is incapable of
giving or withholding informed consent. The facility wishes to use
psychotropic medication in a noncrisis situation.

[X] Court approval has been granted during a previous commitment
period, and the facility wishes to continue medication during the
subsequent commitment period. A 90/180 day petition is being filed.
The patient continues to be incapable of giving or withholding
informed consent.

The patient [X] has refused [] has not refused the medication.

2/27/08
Date

Donald Kustan MD
Signature

(Representative of evaluation or
designated treatment facility)

DONALD KUSTAN MD
Printed Name

MD
Title

Verification

Petitioner says on oath or affirms that petitioner has read this
petition and believes all statements made in the petition are true.

Subscribed and sworn or affirmed before me at Anchorage
Alaska on 2/28/08
(date)

Mary Harte



Notary Public, or other
person authorized to administer oaths.
My commission expires: with office

01/1.

BIC
WI
02) S-13116

Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, AK 99501
907-274-7686 phone
907-274-9493 fax

COPY
Original Received
Probate Division

MAR 07 2008

Attorney for Respondent

Clerk of the Trial Courts

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

In The Matter of the Necessity for the)
Hospitalization of William S. Bigley,)
)
)
Respondent)

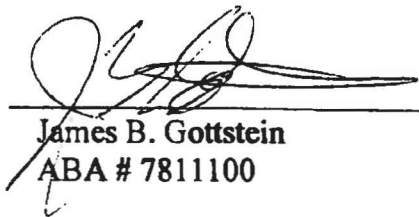
Case No. 3AN 08-00247PR

ENTRY OF APPEARANCE

The Law Project for Psychiatric Rights (PsychRights) hereby enters its appearance on behalf of, William S. Bigley, the Respondent in this matter with respect to the AS 47.30.839 forced drugging petition only.

DATED: March 6, 2008.

Law Project for Psychiatric Rights

By: 
James B. Gottstein
ABA # 7811100

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

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

IN THE MATTER OF)
)
 WILLIAM BIGLEY,)
)

Case No. 3AN-08-247 PR

30-DAY COMMITMENT HEARING
BEFORE THE HONORABLE JACK SMITH

Friday, March 14, 2008

APPEARANCES:

FOR THE STATE: Timothy Twomey
 Assistant Attorney General
 Human Services Section
 1031 West 4th Avenue, Suite 200
 Anchorage, Alaska 99501
 (907) 269-5140

FOR MR. BIGLEY: Elizabeth D. Brennan
 Assistant Public Defender
 900 West 5th Avenue, Suite 200
 Anchorage, Alaska 99501
 (907) 334-4400

PROCEEDINGS

1 THE COURT: We're on record in the time for
 2 a 30-day commitment hearing in 3AN-08-247 PR in the
 3 matter of Mr. Bigley. And counsel -- let me ask, does
 4 Mr. Bigley still want it to be a public hearing?
 5 MS. BRENNAN: I believe so, Your Honor.
 6 THE COURT: Mr. Bigley, you still want a
 7 public proceeding today as opposed to not have
 8 spectators is basically the question?
 9 MR. BIGLEY: Open court.
 10 THE COURT: Open court. All right. Are the
 11 parties ready to proceed?
 12 UNIDENTIFIED SPEAKER: Yes, Your Honor.
 13 THE COURT: Do we have the visitor here
 14 today? All right. Good.
 15 MS. BRENNAN: Your Honor?
 16 THE COURT: Yes.
 17 UNIDENTIFIED SPEAKER: Before we start, I
 18 represent the Office of Public Advocacy and we're
 19 Mr. Bigley's public guardian. We're not really a party
 20 to this case.
 21 I know from your conversation with
 22 Mr. Hughes, you sort of expected us to be here, but I
 23 don't think we have anything to add or present. We're
 24 not a party to the commitment proceeding.
 25

1 THE COURT: Okay. But if the court has any
 2 questions about -- one of the things that I think that
 3 the court has to determine is whether Mr. Bigley needs
 4 to be hospitalized, and some of the history that led up
 5 to the hospitalization, the current hospitalization may
 6 become relevant, so I may have questions for you.
 7 So I would like you to -- you may not be a
 8 party, but I may have questions for you. I would rather
 9 have you here.
 10 UNIDENTIFIED SPEAKER: Okay.
 11 THE COURT: The state?
 12 MS. BRENNAN: Your Honor?
 13 THE COURT: Yes.
 14 MS. BRENNAN: At this point, I would like to
 15 bring a motion, Your Honor. I would ask the court to
 16 dismiss this petition.
 17 Under the statute, these hearings are
 18 supposed to be made within 72 hours, and that simply has
 19 not happened in this case.
 20 The hospital, the doctor signed the petition
 21 on February 22nd.
 22 THE COURT: Right.
 23 MS. BRENNAN: We were supposed to have a
 24 hearing on February 29th. On that date, Master Duggan
 25 recused himself. At the hearing on the 29th, there was

1 a proposal that Master Lack would do the hearing over
 2 the telephone. Mr. Bigley wanted to come downtown and
 3 it was not acceptable to him to have the court be over
 4 the telephone.
 5 That hearing was then continued to
 6 Wednesday. Then we had the representation issues to
 7 work out. Judge Rindner was assigned to the case. He
 8 had us all come in on Thursday, the next day.
 9 Then he recused himself. Then Judge
 10 Christian participated in the case trying to find us a
 11 judge, and we were in front of her, I believe, on
 12 Friday. Then we were in front of Your Honor on Monday
 13 beginning to work out the representation.
 14 And then here we are again on Friday, which
 15 is two weeks since the time that we were supposed to
 16 have a hearing.
 17 I understand that this case is atypical and
 18 that there was issues to be sorted out, but the problem
 19 is, and I believe that it's systemic in the court
 20 system, is that Mr. Bigley was entitled to have a
 21 hearing within 72 hours, and based on issues that were
 22 beyond his control, and a lot of it having to do with
 23 court scheduling, we're now in a situation where we're
 24 two weeks past the time in which he should have had a
 25 hearing.

1 And so for those reasons, we would be asking
 2 for a dismissal.
 3 THE COURT: Okay. Thank you. Any response?
 4 MR. TWOMEY: No response, Your Honor.
 5 THE COURT: Okay. From an administrative
 6 standpoint, I understand this is an unusual case. First
 7 of all, the original master recused himself.
 8 If I understand --
 9 MR. BIGLEY: (Indiscernible).
 10 THE COURT: -- correctly, it was reassigned
 11 to Master Lack at that point in time. Master Lack
 12 attempted to conduct a hearing, but Mr. Bigley would
 13 have had to be telephonic, so there was a request --
 14 Mr. Bigley wanted to participate in person, so that
 15 delay was to ensure Mr. Bigley's right to be present was
 16 complied with.
 17 If I understand correctly, at some point,
 18 Judge Michalski was actually assigned to hear this case,
 19 and he was preempted. And then Judge Rindner became
 20 involved and Judge Rindner recused himself because of
 21 his involvement in another case that he thought might
 22 tangentially touch on this case, so he recused himself,
 23 and it was assigned to me.
 24 If parties recall, I think on that Friday I
 25 was in the middle of a trial and so, although I actually

1 tried to take it up, Mr. Bigley was still here at 4:30
2 when the trial finished. The attorneys involved had
3 obviously returned, because the trial had been going for
4 a period of time, to their offices. We were unable to
5 reach them, so the reason it didn't or there wasn't
6 something conducted that day was not Mr. Bigley's fault
7 or this court's fault, but it was just logistically
8 impossible to get a hold of the attorneys at Friday
9 night at 4:30 or a quarter until 5:00 when we were
10 making the calls.

11 Subsequently, we had the representation
12 hearing in front of this court, and, at that time,
13 nobody raised an issue about timing, so as a practical
14 matter, I think defense has waived its -- although not
15 perhaps intentionally -- has waived the right to the
16 72-hour hearing.

17 The court will conduct the hearing. All
18 right. The state may continue. You may call your
19 witnesses.

20 MR. TWOMEY: Thank you, Your Honor. Our
21 witness, Dr. Raasoch, is available by telephone and I
22 believe that we have made arrangements to call him.

23 MS. BRENNAN: Your Honor, this is another
24 issue. I was just given notice this morning that
25 Dr. Raasoch was going to be the state's witness.

1 at the appropriate sanction for such a late notice, and
2 as a practical matter, normally a continuance is what's
3 allowed, so the question for the public defender is how
4 long do you need?

5 I mean, can we take a short time now for you
6 to talk to him?

7 MS. BRENNAN: Yeah. We're interested in
8 getting this commitment hearing done.

9 THE COURT: Right. I appreciate that. In a
10 sense, you just made the motion about trying to be
11 quicker, so what we'll do is go off record.

12 Hopefully, you can get a hold of him right
13 now, and what we'll do, I'll give you until 11:30 and
14 then we'll go back on record.

15 You think that will be enough time to talk
16 to him if I give you until 11:30?

17 MS. BRENNAN: Yeah.

18 THE COURT: All right. We'll be off record.

19 (Off record.)

20 (On record.)

21 THE COURT: Okay. We're back on record in
22 the matter of Mr. Bigley, and do I have a witness on the
23 phone?

24 THE WITNESS: Yes. This is Dr. Raasoch.

25 JOHN WILLIAM RAASOCH, M.D.,

1 On the 29th, I was told it was going to be
2 Dr. Kushawn, and I did speak with Dr. Kushawn. I have
3 tried to speak with Dr. Raasoch this morning. I spoke
4 to him briefly, and he was in the middle of a meeting
5 and did not want to talk to me.

6 He told me to call him back in a half an
7 hour and I did, but he didn't return my page. So,
8 again, I would move for dismissal because of lack of
9 notice of this witness.

10 In the alternative, I would just ask for a
11 brief continuance so that I can speak to Dr. Raasoch to
12 see if anything has changed since the 29th.

13 MR. BIGLEY: (Indiscernible).

14 THE COURT: All right, Mr. Bigley, I
15 understand. Counsel, why the late notice?

16 MR. TWOMEY: Well, Your Honor, Dr. Kushawn,
17 who was the doctor who signed the petition, left his
18 employment at API and Dr. Raasoch is now the treating
19 psychiatrist.

20 I was advised of that this morning as well.

21 THE COURT: Okay. All right. So something
22 you just found out? All right. Under the
23 circumstances, although late notice certainly would
24 normally be -- well, is always a problem.

25 What the court is required to do is to look

1 being first duly sworn, testified as follows:

2 THE COURT: Please state your full name for
3 the record, spelling both your first and last name.

4 THE WITNESS: It's John, J-o-h-n, William,
5 W-i-l-l-i-a-m, Raasoch, R-a-a-s-o-c-h..

6 THE COURT: Thank you, Doctor. I'm turning
7 you over to the representative for the state counsel.

8 EXAMINATION

9 BY MR. TWOMEY:

10 Q. Good morning, Doctor. This is Tim Twomey from
11 the AG's office. I'm going to be asking some questions
12 first of you this morning.

13 A. Sure.

14 Q. Where are you employed currently?

15 A. At Alaska Psychiatric Institute.

16 Q. And are you a licensed physician?

17 A. Yes, I am.

18 Q. When were you licensed?

19 A. Actually, my license for Alaska was just Monday,
20 March 10, '08, but I have been licensed for years in
21 Wisconsin, New Hampshire, and most recently Texas for
22 the last eight years.

23 Q. And what area of medicine do you practice?

24 A. Psychiatry.

25 Q. And how long have you been in that field?

1 A. I did my residency in psychiatry back in '73 to
 2 '76, so '76, I have been practicing psychiatry.
 3 Q. Are you board certified?
 4 A. Yes, I am.
 5 Q. What boards?
 6 A. American Board of Psychiatry and Neurology.
 7 Actually, I was board certified in 1980, and when I
 8 moved to Texas, they needed a new exam, so I ended up
 9 getting re-certified in, I think, 2003.
 10 Even though I was lifetime by the APA, I had to
 11 do it for a Texas license.
 12 Q. During the time that you have been practicing as
 13 a psychiatrist, have you ever testified in court on
 14 issues of mental illness?
 15 A. Yes, I have.
 16 Q. How many times approximately?
 17 A. Oh, probably less than half a dozen.
 18 MR. TWOMEY: Your Honor, the state moves the
 19 court to accept this witness as an expert in the
 20 diagnosis and treatment of mental illness.
 21 MS. BRENNAN: Can I inquire, Your Honor?
 22 THE COURT: Yes.
 23 MS. BRENNAN: Good morning, Doctor.
 24 THE WITNESS: Good morning.
 25 MS. BRENNAN: Where did you go to college?

1 THE WITNESS: I worked for the criminal --
 2 actually, I worked for UTMB, University of Texas Medical
 3 Branch, subcontracted with the Texas Department of
 4 Criminal Justice.
 5 So I was clinical director at Skyview
 6 Psychiatric Hospital for the prison for seven and a half
 7 years. And did that until March of last year when I
 8 tried to retire, and then the stock market didn't
 9 cooperate.
 10 MS. BRENNAN: Was that -- were you doing
 11 forensic psychiatry there or treating?
 12 THE WITNESS: Well, a combination both of
 13 treating. Pretty much prison psychiatry, I would be a
 14 consultant on the most difficult cases and a lot of
 15 administrative work as the clinical director.
 16 We had about eight psychiatrists and a
 17 couple of nurse practitioners, PAs, working for us. And
 18 we had a 528-bed unit.
 19 MS. BRENNAN: And are you a locum tenens at
 20 API or did you just join the staff -- (indiscernible).
 21 THE WITNESS: No. I'm locum tenens. I
 22 retired in March of '07 and then when the stock market
 23 didn't cooperate, I started doing some locum tenens work
 24 in late December, early January, and worked in Beaumont
 25 at a community mental health center, and then spent

1 THE WITNESS: I went to college at Luther
 2 College in Decorah, Iowa.
 3 MS. BRENNAN: And what was your degree
 4 there?
 5 THE WITNESS: BA.
 6 MS. BRENNAN: I'm sorry?
 7 THE WITNESS: Bachelor of Arts in Biology
 8 major.
 9 MS. BRENNAN: And what medical school did
 10 you go to?
 11 THE WITNESS: Actually, I grew up in
 12 Madison, Wisconsin, went over to Iowa, came back to
 13 Madison for medical school, University of Wisconsin
 14 Medical School.
 15 MS. BRENNAN: And what year did you
 16 graduate?
 17 THE WITNESS: Seventy -- let's see.
 18 Graduated from high school in '65, college in '69, '73.
 19 '69 to '73 medical school, graduated in 1973.
 20 MS. BRENNAN: And where did you do your
 21 residency?
 22 THE WITNESS: I did a residency at
 23 University of Vermont, and that was '73 to '76.
 24 MS. BRENNAN: Where were you working in
 25 Texas?

1 three weeks at Brownsville Community Mental Health, and
 2 then came up to Alaska for a five-week stint here.
 3 MS. BRENNAN: And when did you begin your
 4 five-week stint?
 5 THE WITNESS: March 10th.
 6 MS. BRENNAN: Okay. Thank you. That's the
 7 questions I have.
 8 THE WITNESS: Okay.
 9 THE COURT: There has been a motion to
 10 accept him as an expert. Do you have an objection to
 11 that?
 12 MS. BRENNAN: No, Your Honor.
 13 THE COURT: Okay. Dr. Raasoch will be
 14 recognized as an expert.
 15 BY MR. TWOMEY:
 16 Q. Dr. Raasoch, are you familiar with Mr. Bigley?
 17 A. Yes, I am.
 18 Q. Is he currently your patient?
 19 A. Yes, he is.
 20 Q. And have you reviewed Mr. Bigley's medical chart
 21 at API?
 22 A. Yes, I have.
 23 Q. And have you had a face-to-face interview with
 24 Mr. Bigley?
 25 A. Yes, I have had a couple, as much as you can have

1 face-to-face interview.
 2 Q. Have you completed your evaluation of
 3 Mr. Bigley's mental condition?
 4 A. Yes, I have.
 5 Q. And have you formed a diagnosis of Mr. Bigley?
 6 A. Yes. I concur with the ongoing diagnosis that he
 7 has had in the record, and that's schizo affective
 8 disorder, manic type.
 9 Q. Can you tell the court how Mr. Bigley's diagnosis
 10 manifests itself?
 11 A. Well, both through his delusional material and
 12 his behavior. His delusional material, just reviewing
 13 the record, that he has been fixated on tapes and
 14 electronic records of terrible things.
 15 He talks about Scar Face. He talks about knowing
 16 President Bush, President Bush has called him. He
 17 talked about how he knows the Clintons, Bill Clinton has
 18 been to Anchorage, Hillary called him the other day and
 19 then he asked us -- or tells us to kill whoever we want
 20 to.
 21 He told me, "You think I'm F-blanking crazy." He
 22 has had delusional talk about bone pickers and space
 23 ships. He threatens the staff and tells them that he is
 24 going to call political celebrities and have their jobs.
 25 He tells us that he wants to move to California, he has

1 got one hundred women waiting for him there.
 2 He tells us that he owns a jet, speaks about
 3 being in a snake pit and says we're charging him with
 4 manslaughter, we're going to carve him up.
 5 Basically, he just has nonsensical tirade about
 6 multiple topics, none of which are connected in any way,
 7 and this is clearly a thought disorder and hopefully you
 8 would agree with me that this is all delusional material
 9 that he is presenting.
 10 In terms of his behavior, he is certainly
 11 uncooperative with taking any medication. I have talked
 12 to him at length trying to convince him to take
 13 voluntary medication. He has refused blood draws to
 14 have any diagnostic tests medically.
 15 He is yelling, swearing on the unit.
 16 He hit the door, slams the door. On 3/10, he
 17 needed some emergency medication. To me, it's very
 18 frustrating. I understand he has been here at the
 19 hospital since the 23rd of February and he is still not
 20 medicated, and there is no point to have a psychotic
 21 individual in the hospital and not being able to treat
 22 them.
 23 Q. Doctor, in a minute, I'm going to ask you about
 24 your treatment plan for Mr. Bigley should he be
 25 committed, but first we want to finish in terms of

1 questioning you about your diagnosis and the basis for
 2 your diagnosis.
 3 A. Okay.
 4 Q. Is there anything else that you base your
 5 diagnosis of mental illness upon, other than what you
 6 have already explained for the court?
 7 A. Well, I guess just the impressions of the staff
 8 that have, you know, known him for years. I mean, he
 9 has been coming back to API numerous times.
 10 MS. BRENNAN: Objection, Your Honor;
 11 hearsay.
 12 THE COURT: There has been an objection
 13 raised that that's hearsay, Counsel.
 14 MR. TWOMEY: Your Honor, may I inquire of
 15 the doctor whether it's reasonable for psychiatrists to
 16 rely upon the information that he is describing?
 17 THE COURT: Okay. Go ahead.
 18 Q. Doctor, is it reasonable practice for a
 19 psychiatrist to rely upon information that you gather
 20 from the staff when they deal with the patient?
 21 A. Of course. I mean, we work as a treatment team
 22 and I rely heavily on staff opinions and reviewing the
 23 old records and just looking at, you know, multiple
 24 admissions that he has had in the past.
 25 I mean, that's all documented in his medical

1 record.
 2 THE COURT: I'll overrule the objection.
 3 You can continue.
 4 Q. We had an objection, Doctor, and that's been
 5 overruled, so you can continue to explain to the court
 6 the basis for your diagnosis.
 7 A. Well, just that he has presented similarly many
 8 times in the past and comes back with the same present.
 9 And staff tell me that he becomes much more reasonable
 10 and cooperative and is actually quite pleasant when he
 11 is on medications.
 12 Q. Approximately how many times has Mr. Bigley been
 13 admitted to API?
 14 MS. BRENNAN: Your Honor, I would object.
 15 This is more prejudicial than probative. He is being
 16 held on a petition on the specific facts of why he needs
 17 to be here today, not on his past history.
 18 MR. TWOMEY: Your Honor, the doctor just
 19 testified that he relied upon reports from the staff
 20 concerning Mr. Bigley's prior behavior, including
 21 behavior during prior admissions.
 22 THE COURT: Okay. But isn't the petition
 23 for a 30-day commitment supposed to have some statement
 24 so that Mr. Bigley and his counsel can prepare? It's
 25 supposed to state exactly what the grounds are for

1 hospitalization.

2 And this particular petition references very
3 specific facts. Now, after that, when we're talking
4 treatment, certainly the doctor can rely upon what else
5 has happened in Mr. Bigley's past, I think, to address
6 treatment concerns, but for the initial commitment,
7 there is a real question about notice.

8 If you haven't told defense counsel --

9 MR. TWOMEY: I'll move on, Your Honor.

10 Q. Doctor, can you explain for the court what your
11 treatment plan is for Mr. Bigley should he be committed
12 to the facility?

13 A. Well, the treatment plan is mainly instituting an
14 antipsychotic, finding an antipsychotic medication that,
15 you know, would have the least amount of side effects,
16 be least detrimental using the minimum dose it would
17 take to, you know, get an alleviation of some of the
18 delusional and threatening behavior and get Mr. Bigley
19 back to a baseline where he could function in the
20 community, leave the hospital and, you know, get back to
21 a much more functional lifestyle and be able to live and
22 reside outside of an institution.

23 Q. Doctor, assuming that Mr. Bigley is not committed
24 to the facility and he does not receive the treatment
25 that you have described, in your opinion, is it likely

1 think for himself, I mean, if he gets up in anybody's
2 face out in the community, he is intrusive or he starts
3 swearing at a policeman, I don't think people are just
4 going to walk away and ignore him.

5 And it's very frustrating just having him here on
6 the unit with trained staff, and, you know, calling
7 another patient on the unit a fat pig yesterday. I
8 mean, you know, he is detrimental to our staff and other
9 patients in this very confined setting.

10 And it's kind of ludicrous that he has been here
11 since February 23rd without being treated.

12 Q. You mentioned an incident yesterday, Doctor. Can
13 you elaborate upon any recent behavior that you
14 observed?

15 A. Yeah. It was in the middle of a treatment room.
16 Actually, I had four patients together trying to talk
17 about medication, and, you know, Bill would come in and
18 out of the room, but basically he was an example to a
19 couple of the other people that didn't want medication
20 of someone that was very disorganized and obvious I
21 think even to a lay person that, you know, he needs
22 treatment and needs some medication.

23 I guess I was also trying to convince another
24 patient there that, you know, we didn't have
25 standardized treatment for everyone.

1 that Mr. Bigley will suffer severe emotional distress or
2 physical distress?

3 A. I think he is suffering severe distress right
4 now. I mean, you know, living in a psychotic state,
5 being constantly tormented, you know, being angry at
6 everybody he encounters, being intrusive, I mean, it's
7 got to be a very painful existence.

8 Q. Is Mr. Bigley's emotional or physical distress
9 that you have described related or caused by his mental
10 illness?

11 A. Yeah. It's definitely related to schizophrenic
12 thought disorder. Delusional systems are classic
13 symptoms of schizophrenia or schizo affective illness.

14 Q. Do you believe that Mr. Bigley's judgment is
15 impaired at this point in time?

16 A. Yeah, it's gravely impaired.

17 Q. And does that impairment cause a deterioration in
18 Mr. Bigley's ability to function outside of an
19 instructed setting?

20 A. Yes. It severely inhibits his ability to
21 function.

22 Q. Can you explain what your concerns are should
23 Mr. Bigley not be at API in a structured environment?

24 A. My concerns are mainly for his own safety. I
25 mean, in general, he hasn't hurt anybody yet, but I

1 There was one woman I was actually trying to
2 lower the medication and other people I was trying to
3 convince to be on antipsychotic medication.

4 MR. BIGLEY: It's my life.

5 Q. Do you have concerns about retaliation by others
6 should Mr. Bigley not be in a structured environment?

7 A. Yeah. I think not in the structured environment,
8 out in the community, I mean, if he gets -- he is very
9 inappropriate. He gets up in people's faces. He starts
10 yelling, screaming, swearing at them.

11 And I think the majority of the population would
12 probably haul off and punch him.

13 MS. BRENNAN: Your Honor, I would object.
14 This is --

15 THE COURT: I'll sustain the objection.
16 That was relatively speculative. Continue.

17 Q. Have you talked with Mr. Bigley about him
18 voluntarily consenting to treatment?

19 A. Yeah. And he just consistently refuses to be
20 part of treatment.

21 Q. Do you think that Mr. Bigley has capacity to make
22 a decision regarding voluntary treatment?

23 A. Not really, no.

24 THE COURT: Let me ask a follow-up question.
25 I apologize. I'm kind of jumping in here. When you

1 make that -- you said, "Not really, no."
2 I need to know exactly why you don't think
3 he has the capacity. He has the capacity. I mean, it's
4 pretty clear to the court that he has consistently
5 maintained that he doesn't want to be treated, and so
6 there is a big concern to the court.

7 If he has capacity to make that decision, he
8 has a right to make that decision, so I need you to
9 expound upon why you say that.

10 THE WITNESS: Well, I mean, just the fact
11 that he doesn't cooperate with any treatment. I mean,
12 whether it's simply a blood test to see what his blood
13 count is or, you know, just getting the very basic
14 information that's routine and I think most rational
15 people would cooperate and at least agree to have their
16 blood drawn to just see where their blood count is.

17 But I think even the most, you know,
18 marginal thing like that he is not able to make a
19 decision which would be in his best interest.

20 THE COURT: Okay. Let me put it to you a
21 different way. If Mr. Bigley has previously been
22 hospitalized for 30 days against his will and
23 subsequently had a civil jury trial where citizens have
24 said you shouldn't keep him in, even though he is
25 mentally ill, he is not gravely disabled, and that's

1 So even if I decide to commit today, I think
2 that he may well try to convince the court to use
3 alternative treatments other than medication.

4 Now, are you aware of whether there are
5 alternatives other than medication that might assist him
6 if the court commits him today?

7 THE WITNESS: I'm really not familiar with a
8 whole lot of alternatives for treatment for someone
9 that's psychotic. I mean, I think over the years people
10 have tried doing therapy or other things, but, you know,
11 in my opinion, you cannot talk someone out of a
12 psychosis, and I think I learned that very early in my
13 residency.

14 I would see someone down in the emergency
15 room and, "Oh, gee, if I just spent a little more time
16 talking to this person, you know, maybe they will
17 cooperate or maybe I can do something."

18 THE COURT: All right. But actually, the
19 crux of today's hearing is whether he is gravely
20 disabled. Are you familiar -- actually, counsel has
21 kind of walked you through that, but if I understand
22 your testimony, it's that you think he is not a danger
23 to others now, although he does get confrontational and
24 in people's faces and yells at them, but he is more
25 unable to care for himself.

1 happened, say, twice in the last couple of years, would
2 that impact your decision as to whether he needs
3 treatment now?

4 THE WITNESS: I would say -- I mean, I could
5 certainly see that happening, and if that's what the
6 court decides, to put him back out on the street, I
7 mean, I would rather see him on the street than keep him
8 in the hospital and not medicate him.

9 THE COURT: No. I understand if -- well,
10 that's kind of what I have to decide today is whether he
11 should be continued in API, but --

12 THE WITNESS: I guess to me the two
13 decisions aren't mutually exclusive. I mean, if we're
14 not going to be able to medicate him, what's the point
15 of keeping him in API and just subjecting our staff to
16 this person that's actively psychotic.

17 THE COURT: Sure. I understand. It's
18 actually a two-step process here in Alaska. First,
19 there has to be a decision to commit.

20 Then if there is going to be forced
21 medication after that, it's a separate consideration for
22 the court. Sometimes they happen at the same time, but
23 in this case, it's pretty clear that Mr. Bigley wants to
24 contest that, and, under those circumstances, he is
25 entitled to a separate proceeding as to that.

1 Is that an accurate statement of what you
2 have just said?

3 THE WITNESS: Yeah. He can't really care
4 for himself, and I think he is at great risk for
5 somebody retaliating out there in the community.

6 I mean, if we lived in an ideal world and if
7 we could train everybody in the community to be a
8 psychiatric staff member and not take personal when
9 someone is in your face swearing at you, people could
10 walk away and maybe he would be safe on the street.

11 But, I mean, unless society makes that major
12 change, I think he is at grave risk for being hurt and
13 being retaliated against.

14 THE COURT: Okay. All right. I apologize
15 for jumping in, state.

16 BY MR. TWOMEY:

17 Q. Doctor, in your opinion, is there a less
18 restrictive alternative that would ensure Mr. Bigley's
19 safety and provide him with the treatment that he needs
20 in his present condition, other than being committed at
21 API?

22 A. I'm not aware of any alternative place. I mean,
23 I think API would be the least restrictive alternative.
24 But, again, you know, he needs to be medicated.

25 Q. Is API able to accept Mr. Bigley as a patient

1 should he be committed today?
 2 A. Yes.
 3 MR. TWOMEY: I don't have anything further,
 4 Your Honor.
 5 THE COURT: Okay. Let me ask, does the
 6 visitor have a report for me?
 7 UNIDENTIFIED SPEAKER: I'm really -- I'm not
 8 really a party to the commitment proceedings. I'm only
 9 a party to the medication proceedings where I provide an
 10 opinion on whether the respondent has the capacity to
 11 give or withhold informed consent.
 12 So I usually don't participate in the
 13 commitment proceedings.
 14 THE COURT: Right, but if you have some
 15 information on whether he is capable of providing
 16 informed consent, that would go to whether he is capable
 17 of saying or deciding his own medical treatment, which
 18 is that he doesn't want to be treated.
 19 So as to that aspect of your report, do you
 20 have an opinion?
 21 MS. BRENNAN: Your Honor, I don't think it's
 22 appropriate for the court visitor to -- I mean, her job
 23 is in terms of the medication petition, not in terms of
 24 the commitment petition.
 25 THE COURT: But if she tells me that he has

1 got sufficient capacity to make a determination as to
 2 informed consent, then clearly he has sufficient
 3 capacity to make a determination as to whether he should
 4 be hospitalized.
 5 I mean, am I wrong? It seems to me if he
 6 can make one, he can make the other.
 7 So all I'm asking -- I'm not asking for her
 8 whole report. I'm asking if she thinks he has
 9 sufficient capacity to make informed consent. Any
 10 patient who has the capacity to make informed consent
 11 can choose to deny medical treatment, so it's important
 12 for me to know that.
 13 So for that question alone, I don't want
 14 your whole report, do you think he has the capacity to
 15 make --
 16 UNIDENTIFIED SPEAKER: I don't believe he
 17 has the capacity to give or withhold informed consent.
 18 THE COURT: Okay. All right. Public
 19 defender, questions for the doctor.
 20 EXAMINATION
 21 BY MS. BRENNAN:
 22 Q. Good morning, Doctor.
 23 A. Good morning.
 24 Q. When did you begin working with Mr. Bigley?
 25 A. When did I begin? Well, actually, I started work

1 March 10th, but I actually started on the unit here
 2 March 11th.
 3 Q. And how many times --
 4 A. The first day was orientation.
 5 Q. And how many times have you met with Mr. Bigley?
 6 A. I think three different times.
 7 Q. And how long were those meetings?
 8 A. They probably varied from, oh, 15 to 40 minutes.
 9 Q. And did they take place in a conference room at
 10 API or in the hallway or how did they take --
 11 A. Well, one was in his private room talking to him,
 12 one -- I think the other two were in the conference
 13 room. And actually, I have had multiple interactions
 14 with him in the hallway.
 15 I mean, he greets me in the morning when I come
 16 in the door. He is my shadow. He follows me down to my
 17 office. When I come out of my office, he follows me to
 18 the nursing station.
 19 Even when we're in treatment team, he'll be
 20 banging on the window and, you know, waving papers. So,
 21 yeah, if I count all my hall encounters, it's probably
 22 50 encounters I have had with him.
 23 Q. So he is able to identify you as the doctor?
 24 A. Yes, definitely.
 25 Q. And Mr. Bigley, he first came to the hospital at

1 the end of February; is that correct?
 2 A. Yeah. I believe February 23rd was the admission
 3 date.
 4 Q. Okay. And when he first came to the hospital --
 5 have you reviewed the chart of this admission?
 6 A. Yes, I have reviewed the chart.
 7 Q. And when he first came for this admission, he
 8 initially signed in voluntary; is that correct?
 9 A. No. He has never signed in voluntary.
 10 Q. Do you have his chart in front of you?
 11 A. No, I don't.
 12 Q. Is it possible for you to get that chart?
 13 A. I can. I can run down the hall. You want me to
 14 go get it?
 15 Q. Yes.
 16 A. Okay. Hang on. I'm back.
 17 THE COURT: Thank you, Doctor.
 18 A. That was actually the first time in a week I was
 19 able to walk down to the nurse's station and back to my
 20 office without Mr. Bigley following me.
 21 Q. Doctor, can you look at the admission from
 22 2/23/08 with Mr. Bigley?
 23 A. You are talking about the admission record?
 24 Q. Is there any documentation in the chart around
 25 that date that shows that Mr. Bigley signed in

1 voluntary?
 2 A. I'm looking at the admission, psychiatric
 3 evaluation. It says he was admitted on a POA. I
 4 believe that's a --
 5 Q. Right. That's a police officer's application.
 6 A. Right, police officer, so that certainly wasn't
 7 voluntary.
 8 Q. But is there any documentation, if you can go
 9 through the chart from that time period, that states
 10 that he signed in voluntarily?
 11 A. Well, I can look at the orders would -- there
 12 should be an order if he signed in voluntarily.
 13 MR. BIGLEY: I didn't.
 14 MR. TWOMEY: Objection, Your Honor, as to
 15 relevance at the time of admission.
 16 THE COURT: Go ahead.
 17 MR. TWOMEY: We have had testimony from the
 18 doctor concerning recent events and the doctor's
 19 impression of Mr. Bigley's mental status, so how he
 20 signed himself into the facility isn't relevant to his
 21 mental condition at this point in time.
 22 THE COURT: Hang on. But if he signed
 23 himself in voluntarily, isn't he then authorized to
 24 leave if he chooses to, unless someone makes a
 25 subsequent application for involuntary?

1 THE WITNESS: I do see here on 2/24 the POA
 2 was changed to a voluntary admission. It says, "This
 3 patient did not want an ex parte filed."
 4 BY MS. BRENNAN:
 5 Q. So did API accept his voluntary admission at that
 6 point in time?
 7 A. I'm assuming they did. And then it was on -- I
 8 guess on 2/26 it looks like the 30-day commitment
 9 involuntary was performed or started.
 10 THE COURT: And why? Tell the court why. I
 11 don't understand. If he is in there voluntarily, did he
 12 want to leave on 2/26?
 13 THE WITNESS: I'm expecting, yeah, that's
 14 what probably happened. And he had had -- I mean,
 15 between -- on 2/24, he had a couple of emergency orders
 16 for Lorazepam and Haldol. I guess he needed emergency
 17 medication then.
 18 Between the 24th and the 26th, I guess it
 19 looks like it changed from voluntary to involuntary.
 20 Q. And is there anything in the charts that states
 21 that he was going to leave the hospital or --
 22 A. Well, I have to look at another section here and
 23 try to find the progress notes. I'm not real familiar
 24 with these charts, as I'm brand new here.
 25 I do see on the 26th, he refused blood draw

1 MR. TWOMEY: Well, we did make the
 2 application, Your Honor, for involuntary commitment.
 3 THE COURT: You mean the 30-day commitment?
 4 MR. TWOMEY: Yes, Your Honor.
 5 THE COURT: That's based upon why he showed
 6 up initially, right, that caused -- I mean, the
 7 allegations are that he left his living facility and he
 8 was brought to API by police.
 9 So what you are saying is that the facts
 10 that you are using are what's happened after he got
 11 there, so the application is not correct.
 12 MR. TWOMEY: That's not what I'm saying.
 13 THE COURT: All right. I misunderstood you
 14 then. I thought you said that -- I mean, if he signed
 15 in voluntarily, then the handwritten entry under
 16 paragraph four of the petition for 30-day commitment
 17 isn't -- if I understand correctly what you are saying
 18 is the doctor should be able to use what happened since
 19 he got in there, even if he was voluntarily assigned, to
 20 keep him beyond the voluntary admission, but the
 21 application for the 30-day commitment speaks only of
 22 activity that would have occurred prior to that.
 23 Well, it does say he is pacing and agitated
 24 and disorganized, but I'm not sure how that establishes
 25 he is gravely disabled.

1 again. "Patient continues unpredictable behavior,
 2 pacing the halls, going in and out of his room, couldn't
 3 sleep."
 4 Q. Doctor, I just asked you if there is anything in
 5 the chart about him wanting to leave, so you don't have
 6 to read the chart out loud, just if you could look for
 7 that information.
 8 A. Okay. Well, there is certainly notes here about
 9 being poisoned, and the meds, and not being happy with
 10 the staff, so --
 11 Q. Is it fair to say that the commitment petition
 12 was filed after Mr. Bigley stated that he didn't want to
 13 take medication?
 14 A. Sure, that could be part of it, and that would
 15 certainly make sense. I mean, that's, I think,
 16 consistent with what I have said from the beginning.
 17 You know, there is not a whole lot of point having him
 18 in the hospital here if he is not taking any medication.
 19 Why would we hospitalize somebody with diabetes
 20 and not give them insulin.
 21 Q. And, Doctor, what's the point of hospitalizing
 22 someone if they have a repeated history of not taking
 23 medication? I mean, what's the point of having them be
 24 in the hospital and then you give them medication and
 25 then they leave the hospital just to refuse medication

1 or not take their medication on the outside?

2 A. It's not like we go out and bring people into the
3 hospital. I mean, the community brings people in
4 because they are not functioning in the community.

5 And I don't think the police go pick up people
6 randomly off the street and say, you know, "We're going
7 to put you in a psychiatric hospital."

8 MR. BIGLEY: (Indiscernible).

9 Q. And Mr. Bigley recently went on a pass; is that
10 correct?

11 A. Correct.

12 Q. And what was the date of that pass?

13 A. It was within the last couple of days, probably
14 two days ago, went out like for an hour.

15 Q. And when he left the hospital, he left so without
16 staff; is that correct?

17 A. Correct.

18 Q. And he left the hospital for an hour or two?

19 A. Yeah. I think for an hour.

20 Q. How long was the pass for?

21 A. It was for one to two hours.

22 Q. Okay. And Mr. Bigley returned to the hospital
23 after his pass?

24 A. Yes, he did.

25 Q. And was there any reports or concern that

1 A. Not to this point. I mean, he has certainly
2 threatened and he has, you know, slammed doors and he
3 comes across as very threatening. And I think if
4 somebody didn't know him -- and I know the first day I
5 walked on the unit, I was a little taken back by
6 somebody, you know, screaming and swearing and calling,
7 you know, my boss here a murderer.

8 And I would say after spending eight years in
9 prison, you know, I didn't see inmates behaving that
10 way.

11 Q. But he doesn't have delusions or psychosis so
12 that he is --

13 A. He does have delusions and psychosis.

14 Q. You didn't let me finish my question.

15 A. Okay.

16 Q. He doesn't have delusions that are causing him to
17 hit people or be violent with people?

18 A. I think his threats are more legally, you know,
19 saying he is going to take people's jobs away or he is
20 going to sue staff, and, you know, he will show us a
21 thing that he'll claim that the judge has ordered that
22 he can leave on pass whenever he wants to.

23 MR. BIGLEY: (Indiscernible).

24 Q. And has he been eating appropriately at the
25 hospital?

1 Mr. Bigley became -- caused any trouble in the community
2 when he was out on his pass?

3 A. I don't believe he caused any trouble. I don't
4 think he encountered anyone. I think he pretty much
5 stayed on the hospital grounds or right off of the
6 hospital grounds.

7 And, you know, he protests to being in the
8 hospital, but, to me, that raises the question of why
9 would he come back to the hospital if he didn't want to
10 be here.

11 Q. Well, the rule of the pass is that he was
12 supposed to come back; is that correct?

13 A. Right.

14 Q. So he was able --

15 A. What would happen to him if he would have just
16 wandered off?

17 Q. But he was capable of following the rules that
18 the hospital required him to do in that instance; is
19 that correct?

20 A. Right, because he has been here multiple times
21 and I think after 20 times or almost 30 times in the
22 hospital, he knows what's expected and he complies with
23 the rules.

24 Q. And Mr. Bigley, he has not been physically
25 assaultive to anyone in the unit; is that correct?

1 A. I think for the most part. I know when he
2 initially came in, he talked -- there were notes in here
3 that said that he was refusing to eat initially, but I
4 think he has been eating more recently.

5 Q. So his weight hasn't been a concern for you since
6 you have been working with him?

7 A. Well, I think he is pretty slender, but I don't
8 think we're overly concerned about his weight.

9 Q. And are you aware that Mr. Bigley has a guardian?

10 A. Yes, I am.

11 Q. And has that guardian been in touch with you?

12 A. I haven't talked to the guardian.

13 Q. Okay.

14 A. But I have only been here four days, so --

15 Q. And are you familiar with any of the outpatient
16 resources that we have here in Anchorage?

17 A. Not really, no.

18 Q. So have you heard of a Kiana Clubhouse that is
19 operated by Southcentral Foundation?

20 A. No. I haven't heard of it.

21 Q. Okay. So you don't have any idea whether that
22 would be an alternative that would meet Mr. Bigley's
23 needs?

24 A. I'm certainly familiar with, you know, very
25 extensive resources where I worked in New Hampshire for

1 20 years and I think we had an excellent mental health
2 program there.

3 And I would guess at least comparable facilities
4 to what Alaska would have here, and I can't think of
5 anything back there that would really, you know,
6 tolerate or put up with his present behavior.

7 Q. And you don't know anything of Anchorage
8 Community Mental Health Service here in Alaska?

9 A. No, I don't. I have only been here since Monday.

10 Q. Okay. And reviewing the file, have you seen
11 anything that Mr. Bigley worked with the group called
12 Choices here in Anchorage?

13 A. I haven't seen anything about that.

14 Q. And if Mr. Bigley had intensive case management
15 and people working with him, spending time with him,
16 would that be helpful to him?

17 A. That would be helpful to him. I don't know how
18 intensive case management though is going to address the
19 psychosis and the delusional material without
20 medication.

21 I'm familiar with, you know, programs over in
22 Italy that kept visually everybody out of the hospital
23 and had seen people, you know, worked with people that
24 were bipolar and manic and follow a manic episode in the
25 community, but I think still they wouldn't be as

1 middle of an active psychosis and striking out at people
2 verbally and being angry and being that labile and
3 inappropriate all the time.

4 UNIDENTIFIED SPEAKER: Your Honor, I have to
5 leave for an appointment. If you do require Mr. Young's
6 testimony, I think he can testify.

7 THE COURT: All right. Thank you.

8 MS. BRENNAN: I don't have any other
9 questions.

10 THE COURT: All right. Any redirect?

11 MR. TWOMEY: Yes, Your Honor, just a quick
12 follow-up question.

13 RE-EXAMINATION

14 BY MR. TWOMEY:

15 Q. Doctor, you testified that Mr. Bigley went on a
16 one- to two-hour pass recently. What day was that?

17 A. Well, it was within the last two days. And I
18 thought, you know, that might build some rapport with
19 Mr. Bigley.

20 The pass was 3/12 was, what, Wednesday.

21 Q. Prior to the time that Mr. Bigley went on the
22 pass, was he given any medications?

23 A. No, he wasn't given any medication, because he
24 refused medications.

25 Q. When were the emergency medications administered?

1 aggressive as Bill is right now.

2 Q. But were those programs helpful to the patients
3 in those programs?

4 A. Yeah, they were helpful to the programs, and I
5 would certainly recommend those programs. And I think
6 if he got on medication, he could certainly be managed
7 in the community, and I think that would be, you know,
8 excellent resources for him, but I think, you know, one
9 of the prime issues there is someone needs to, you know,
10 help him, keep him on medication and have court ordered
11 medication.

12 As I understand from staff here too, I mean, he
13 is very agreeable and very easy to work with, you know,
14 once he is on medication. Actually, he probably
15 wouldn't even need extensive services when he is on
16 medication. He would function a whole lot better.

17 Q. So you believe that the medication would be
18 helpful in just making him cooperative; is that correct?

19 MR. TWOMEY: Objection; misstates the
20 doctor's testimony.

21 A. Not only making him cooperative, but getting rid
22 of some of the delusions --

23 THE COURT: I'll sustain that.

24 A. -- dealing with all the internal torment that he
25 goes through. I mean, it can't be fun being in the

1 A. Well, there were medications administered on
2 2/26.

3 MR. BIGLEY: Two shots -- (indiscernible).

4 A. No, that's just orders of PRN medications if he
5 would take them.

6 Q. Does the chart reflect that on March 10th --

7 A. Yeah, 3/10 there was an emergency medication.

8 Q. So that was before the pass, correct?

9 A. Right.

10 Q. Okay. So does that affect your evaluation or
11 your opinion concerning Mr. Bigley's grave disability
12 now knowing that he had received medications prior to
13 going on this pass?

14 A. Where is -- I'm not sure exactly what that
15 medication was, but it was probably a short acting
16 medication.

17 Q. Let's assume it was Haldol and Ativan.

18 A. Okay. If it was Haldol and Ativan, I mean, that
19 is probably going to last for a day or two. That could
20 have some impact, and actually he might have been doing
21 a little better on the 12th after that medication.

22 Q. Can you confirm by looking at the chart what
23 those drugs were that he was given?

24 A. Yeah. I need to find that. I have got the first
25 page of that emergency assessment here, but I didn't --

1 the back page has the medication. Let me see if I can
2 find that.

3 Here it is. I have got the other page, but --
4 okay. Yeah, it was Haldol, five milligrams IM, and
5 Lorazepam or Ativan, two milligrams IM. So, yeah, it
6 was Haldol and Ativan.

7 Q. And is it your testimony that those drugs would
8 have improved Mr. Bigley's behavior at the time he was
9 on this pass in terms of decreasing his delusions and
10 his response to his mental condition?

11 A. Yeah, it could, depending on the half life of
12 Haldol. The maximum effect would probably have been on
13 Monday or Tuesday, but by Wednesday, he would still have
14 some effect from the medication.

15 MR. BIGLEY: I'm fine right now.

16 MR. TWOMEY: Thank you, Doctor.

17 THE COURT: Any recross?

18 RE-EXAMINATION

19 BY MS. BRENNAN:

20 Q. Doctor, is that why you let Mr. Bigley out,
21 because the medications were working?

22 A. No, that's not why we let him out. I let him out
23 hoping that I could build a little rapport with
24 Mr. Bigley because he had been asking and he was
25 entitled to have a pass to go outside just in the

1 want to take them, he ends up back in the hospital, he
2 is forced to take drugs, he is released because he is
3 better and then he stops taking his medication and gets
4 back in.

5 So what is -- I mean, I'm not sure what the
6 benefit is to Mr. Bigley to keep sticking him back in
7 the hospital.

8 You know, from what I can tell, and I don't
9 have his --

10 THE WITNESS: I think the medications are
11 effective and I would guess that he functions for
12 several months in between hospitalizations or, you know,
13 maybe he goes for six months or a year before he returns
14 to the hospital, so I think he does comply with
15 medications, you know, once he is on them, but for
16 whatever reason, after several months or six months, he
17 may stop taking them.

18 But I think a lot of places have gone to
19 outpatient commitment or court ordered ongoing
20 medications, you know, once he leaves the hospital. I
21 think people can be -- and I don't know if there is a
22 statute that way in Alaska where you can have ongoing
23 medications that are court ordered.

24 THE COURT: You can, but if they are on an
25 outpatient basis and they are not taking them, then, I

1 courtyard, but, of course, his main concern was to be
2 able to smoke and he couldn't smoke in the courtyard, so
3 I really don't condone smoking, but I thought maybe
4 because he had been so agitated if we gave him little
5 break -- and the staff told me, you know, they assured
6 me that he would come back and, you know, they have done
7 this on previous admissions.

8 And, you know, he would just comply with coming
9 back, and he is so persistent about it, I thought it
10 might help. But it really didn't help build any rapport
11 or any therapeutic alliance because, you know, the next
12 minute he was just demanding another pass and again
13 waving his sheet and telling us that the judge has
14 ordered him passes every two hours and how dare we not
15 follow these orders from the judge, and he'll have all
16 of our jobs and sue all of us and on and on and on.

17 Q. I don't have anything else.

18 THE COURT: Doctor, this is Judge Smith. I
19 have got a question for you. Mr. Bigley has a long
20 history of mental illness and unwillingness to take
21 medications when he is out of the hospital, so it seems
22 to me we're sort of in a circuitous or a loop here where
23 he goes in the hospital, he is forced to take drugs, it
24 improves his mental condition, he is released to the
25 community, he stops taking his drugs because he doesn't

1 mean, I think he has been ordered to have mandatory
2 outpatient treatment and he stops and so he ends up back
3 in the hospital.

4 And actually, if I -- I don't claim to be an
5 expert on Mr. Bigley's history, but I think he has been
6 actually hospitalized in the last 30 years probably 75
7 times, so it's not lasting a year or six months.

8 I mean, he is going in and out of the
9 hospital pretty regularly. And so the concern the court
10 has is looking at the Alaska statutes, one of the
11 reasons the mental health statutes are written the way
12 they are is that if you have a mentally ill individual
13 who is not dangerous to others, you can only commit them
14 or you're only supposed to consider committing them if
15 there is a reasonable expectation of improving their
16 mental condition.

17 So what we're getting is a short-term fix,
18 but it really doesn't change Mr. Bigley's issues.

19 THE WITNESS: Has he been on IM medications
20 where at least you give a medication --

21 THE COURT: My understanding is he has, yes.

22 THE WITNESS: But a long-acting shot that
23 lasts for a month at a time?

24 THE COURT: Well, I don't claim to be an
25 expert on it. I know he has had shots, but --

1 THE WITNESS: Well, there is a big
2 difference in the short-term shot that's only good for a
3 couple of days versus the long-acting shot that's good
4 for a month at a time.

5 And then if you have got an aggressive
6 mental health center, they can go out and pick him up
7 and make sure he gets that shot every month. And
8 usually, they are more compliant once they are on
9 medication and doing well. It's a lot easier to keep
10 them on medication.

11 But, yeah, I have no doubt if we just gave
12 him some pills, the pills aren't going to last very
13 long. And the medications have a lot of side effects.
14 I can certainly understand why Mr. Bigley doesn't want
15 to take medicine.

16 I mean, they have severe side effects and
17 it's trying to find something that has minimal side
18 effects in a minimal dose that he could agree with and
19 he would recognize that it would do him some good.

20 THE COURT: All right. Did my questions
21 lead to any additional questions from the state?

22 MR. TWOMEY: No, Your Honor.

23 THE COURT: Public defender?

24 MS. BRENNAN: No, Your Honor.

25 THE COURT: All right. Thank you, Doctor.

1 The testimony is that there is no presently
2 known less alternative -- less restrictive alternative
3 than commitment at API, and as a result, the state moves
4 for granting of the petition for commitment. We believe
5 that treatment at API is in the best interest of
6 Mr. Bigley.

7 MR. BIGLEY: (Indiscernible).

8 THE COURT: Okay. Thank you. Public
9 defender?

10 MS. BRENNAN: Your Honor, we would ask the
11 court to deny the hospital's petition in this case.
12 There has been testimony that Mr. Bigley suffers from a
13 mental illness, but the statute doesn't stop there.

14 This hospital has to show that he is gravely
15 disabled and that there is reason to believe that the
16 respondent's condition could be improved with hospital
17 treatment.

18 First of all, we don't believe that
19 Mr. Bigley has been shown to be gravely disabled. The
20 testimony has been that he can be intrusive, he talks to
21 people, he follows people around, that he insults
22 people, but there wasn't any testimony that he has been
23 assaultive.

24 The concern the doctor had was that
25 Mr. Bigley behaves in such a way that someone who was

1 You can hang up.

2 THE COURT: The state may call its next
3 witness.

4 MR. TWOMEY: No further witnesses, Your
5 Honor.

6 THE COURT: Okay. Public defender, any
7 witnesses?

8 MS. BRENNAN: We don't have any witnesses,
9 Your Honor.

10 THE COURT: All right. Closing arguments?

11 MR. TWOMEY: Your Honor, the state moves the
12 court to grant the petition at this time. We believe we
13 have shown by clear and advancing evidence that
14 Mr. Bigley suffers from mental illness, as testified to
15 by Dr. Raasoch, and that as a result of his mental
16 illness, Mr. Bigley suffers from a grave disability.

17 Dr. Raasoch's testimony was that he believed
18 that Mr. Bigley could not live safely outside of a
19 structured, controlled environment in the absence of
20 receiving the treatment that is being proposed at API,
21 and that at the present time, due to Mr. Bigley's mental
22 illness, he is suffering from delusions and those are
23 causing a serious and significant impairment of his
24 ability to function and care for himself outside of a
25 structured environment.

1 not trained with any type of mental health background
2 would retaliate against Mr. Bigley, but, again, that was
3 speculative.

4 And there hasn't been any correlation
5 between his illness and how he can't survive safely in
6 the community. The testimony showed that he was eating
7 in the hospital, that he -- that there wasn't any
8 testimony showing that he wasn't able to take care of
9 his basic needs, and that there wasn't any testimony to
10 show that if he was out in the community that he
11 couldn't survive safely.

12 In fact, the hospital gave him a pass. I
13 mean, he was allowed to leave the hospital, and once he
14 left the hospital, he didn't get into trouble, there
15 wasn't any reports. There wasn't any concern that he
16 bothered anyone or got into a situation in which he
17 could harm himself or other people.

18 And so we don't believe that it's been shown
19 that he is -- that he can't survive safely in the --
20 under the Weatherhorn case, the hospital has the burden
21 to show that and they simply have not done that in the
22 case.

23 In terms of the gravely disabled, the
24 hospital has to show that his mental condition could be
25 improved by the course of treatment.

1 As Your Honor has stated throughout this
2 hearing, Mr. Bigley has been hospitalized many times at
3 API. He has had jury trials in which both times the
4 jury found for the respondent. He was allowed to come
5 to the hospital and sign in voluntarily.

6 Then it appears that when Mr. Bigley wasn't
7 taking the hospital's advice to take medication is when
8 they filed the petition, but, again, I think through the
9 history, it just shows that if you continue to medicate
10 Mr. Bigley, Mr. Bigley is going to continue to not take
11 the medication on the outside so that we're just going
12 to basically be in this cycle for the rest of his life.

13 There hasn't been any demonstration that he
14 is going to hurt anyone in the community, that he is not
15 going to be able to take care of himself in the
16 community and we don't believe that the hospital has
17 proven that he is gravely disabled by clear and
18 convincing evidence.

19 In terms of less restrictive alternatives,
20 the hospital has the burden of showing that there is
21 less restrictive alternatives available to Mr. Bigley.
22 The testimony that we had from Dr. Raasoch was that he
23 is unfamiliar with this community, he doesn't know about
24 Southcentral Foundation, he doesn't know about programs
25 like the Kiana House, about Anchorage Community Mental

1 something close to that, but my alternate at OPA is his
2 primary guardian, so I serve as a back up to that.

3 But I worked directly with Mr. Bigley for
4 more than two years.

5 THE COURT: Okay. In that capacity, did you
6 -- I see that people go shopping with him and those
7 sorts of things. Was that kind of your role?

8 UNIDENTIFIED SPEAKER: Yes.

9 THE COURT: Where was he living, in the
10 assisted living facility?

11 UNIDENTIFIED SPEAKER: No. He lived
12 independently in the community.

13 THE COURT: Okay.

14 UNIDENTIFIED SPEAKER: And because he was
15 not receiving any services and we were having
16 difficulty connecting him to services, he and I did
17 that together.

18 THE COURT: Okay.

19 UNIDENTIFIED SPEAKER: That was our way of
20 trying to help him maintain in the community or figure
21 out what minimally would be required in order to
22 maintain him in the community.

23 THE COURT: All right. Any last words from
24 the state?

25 MR. TWOMEY: No, Your Honor.

1 Health, and whether there could be programs that would
2 offer Mr. Bigley assistance that he might need.

3 He does have a guardian and his guardian
4 should be able to provide for him and make decisions for
5 him so that he is not going to be in a situation where
6 he is going to need assistance, but at this point in
7 time, we don't believe that the state has met its
8 burden, and that Mr. Bigley should be released from this
9 petition.

10 MR. BIGLEY: (Indiscernible).

11 THE COURT: Do I have the guardian?

12 UNIDENTIFIED SPEAKER: I'm the guardian,
13 yes, Your Honor.

14 THE COURT: Okay. Are you familiar with
15 Mr. Bigley's case?

16 UNIDENTIFIED SPEAKER: I am, Your Honor.

17 THE COURT: And how long have you worked
18 with Mr. Bigley or been familiar with him?

19 UNIDENTIFIED SPEAKER: I have worked for the
20 office of public advocacy since 1997, and he has been --
21 initially, he was a protective person under OPA and then
22 later on he became a ward.

23 I have known him throughout the time that
24 OPA has been guardian, Your Honor. I haven't worked
25 with him directly in the last approximately year,

1 THE COURT: All right. As was pointed out
2 by I think both counsel, the burden of proof here is by
3 clear and convincing evidence, and certainly it's clear,
4 and I don't think anyone is contesting, that Mr. Bigley
5 has a mental illness.

6 The issue for this court is whether he is
7 gravely disabled, because I don't think there is
8 anything in the record or any evidence that was provided
9 that he is an actual harm to -- or a threat to harm
10 himself or others.

11 And so the court is then required to look at
12 is in fact Mr. Bigley gravely disabled, and the
13 definition of gravely disabled means a condition in
14 which a person, as a result of mental illness, is in
15 danger of physical harm arising from such complete
16 neglect of basic needs for food, clothing, shelter,
17 personal safety as to render serious accidents or death
18 highly probable if care by another is not taken.

19 It sounds like, other than being in and out
20 of the hospital, he gets by. I mean, I'm not saying he
21 is as healthy as perhaps one would hope he would be or
22 that he acts -- I mean, he acts differently from other
23 people.

24 Certainly, he is different from the norm,
25 and I think that's why he keeps getting picked up by the

1 police and put back in API.
 2 But if we keep sticking him back in API and
 3 as soon as he gets out, he stops taking medications
 4 because he doesn't want to take the medications either
 5 because of the way he feels -- they make him feel or
 6 whatever the reason is, I mean, that's a choice that if
 7 he is not endangering society, he should be allowed to
 8 make.

9 I understand that -- and I believe the
 10 visitor testified that -- or stated that it's her
 11 opinion he can't -- he is not competent to make the
 12 decision whether to medicate or not, but he has been
 13 making that same decision for years.

14 I mean, and so at some point, I mean,
 15 whether -- I mean, even when he is in the hospital and
 16 being medicated, the indication is that at some point,
 17 even though he is being medicated, he doesn't like it,
 18 he doesn't want it, he keeps telling them no.

19 So even when medicated, he is telling them
 20 no. Is he competent at those times? I don't know. I'm
 21 not going to go back and try to evaluate that, but I'm
 22 going to say that I don't find by clear and convincing
 23 evidence that he is gravely disabled.

24 Now, that doesn't mean next time he might
 25 be. I don't know. I would anticipate that Mr. Bigley

1 TRANSCRIBER'S CERTIFICATE

2
 3 I, SONJA L. REEVES, hereby certify that the foregoing
 4 pages numbered 1 through 56 are a true, accurate and
 5 complete transcript of proceedings in Case No.
 6 3AN-08-247 PR transcribed by me from a copy of the
 7 electronic sound recording to the best of my knowledge
 8 and ability.

9
 10
 11 _____
 12 DATE SONJA L. REEVES, TRANSCRIBER
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 may well find himself back at API. If he goes into some
 2 establishment and confronts some other citizen, he may
 3 be back there, and under those circumstances, maybe he
 4 would then be considered either gravely disabled or
 5 likely to harm himself or somebody else.

6 But I don't find that under the current
 7 facts. I need look at the petition, which talks about
 8 the fact that he walked away from a living facility and
 9 he wasn't taking his medications and he was pacing and
 10 being out loud and agitated and disorganized while at
 11 API.

12 But I think that's just Mr. Bigley. I mean,
 13 he is never going to not be -- you know, so unless we're
 14 at the point where we're going to say, "Lock him up all
 15 the time, leave him locked up, continue to force
 16 medications on him," we're not there.

17 I mean, that's not something that society is
 18 willing to recognize. So Mr. Bigley, I'm going to find
 19 that you're, at the current time, not gravely disabled,
 20 and I'm going to deny the petition for commitment.

21 MR. BIGLEY: (Indiscernible).

22 THE COURT: I'm not going to enter any other
 23 orders, Mr. Bigley.

24 MR. BIGLEY: (Indiscernible).

25 THE COURT: All right. We'll be off record.



Alaska Trial Court Cases

Home | CourtView Search | Name Index (Old System) | Pay Ticket Online

webmaster@courts.state.ak.us

CourtView Help

Dockets include limited information about filings and hearings that occurred before CourtView was installed in the court.

A maximum of 100 dockets will display at one time. Select the "descending" sort option to view the last 100 dockets entered. Select the "ascending" sort option to view the first 100 dockets entered. To see more dockets, adjust the date range of your search.



[New Search...](#)

Summary

Parties

Events

Dockets

Disposition

Costs

Docket Search

3AN-08-03805CR Municipality of Anchorage vs. Bigley, William Stanley

Search Criteria

Docket Desc.

ALL

Begin Date

Sort

End Date

Ascending

Descending

Search Results 24 Docket(s) found matching search criteria.

Docket Date	Docket Text	Amount	Amount Due	Images
04/16/2008	Hearing Summary The following event: CRP Hearings: In Custody scheduled for 04/15/2008 at 2:30 pm has been resulted as follows: Result: Case Disposed The following event: Trial Call: District Court Criminal Muni scheduled for 06/09/2008 at 8:30 am has been resulted as follows: Result: Hearing Vacated Check In: Judge: Rhoades, Stephanie L Location: Courtroom 204, Nesbett Courthouse Staff: Prosecutors: Municipal Prosecutors Office: Present Parties:	0.00	0.00	
04/16/2008	Hearing Result: Hearing Vacated The following event: Trial Call: District Court Criminal Muni scheduled for 06/09/2008 at 8:30 am has been resulted as follows: Result: Hearing Vacated Judge: Trial Call, Block Judge: Location: Courtroom 302, Nesbett Courthouse	0.00	0.00	

04/16/2008	Hearing Result: Case Disposed. The following event: CRP Hearings: In Custody scheduled for 04/15/2008 at 2:30 pm has been resulted as follows: Result: Case Disposed Judge: Rhoades, Stephanie L Location: Courtroom 204, Nesbett Courthouse	0.00	0.00
04/15/2008	Charge Dismissed by Prosecutor Charge(s) 3 disposed with a disposition of Charge Dismissed by Prosecutor Charge #3: AMC8.10.010: Assault	0.00	0.00
04/15/2008	Charge Dismissed by Prosecutor Charge(s) 2 disposed with a disposition of Charge Dismissed by Prosecutor Charge #2: AMC8.30.110: Violation Of Condition Of Release	0.00	0.00
04/15/2008	Charge Dismissed by Prosecutor Charge(s) 1 disposed with a disposition of Charge Dismissed by Prosecutor Charge #1: AMC8.45.010(A)(2): Trespass - Business/Commercial Property	0.00	0.00
04/15/2008	Case Dismissed by Prosecuting Attorney (Cr43(a)) Case disposed with disposition of Dismissed by Prosecution (CrR43(a)) on 04/15/2008.	0.00	0.00
04/15/2008	Bond Exonerated \$ 250 Type of Bond: UNSECURED	0.00	0.00
04/14/2008	Hearing Summary The following event: Arraignment: Weekend/Holiday (Muni) scheduled for 04/13/2008 at 1:30 pm has been resulted as follows: Result: Attorney Appointed Events Added: Trial Call: District Court Criminal Muni has been scheduled with Trial Call, Block Judge: on 06/09/2008 from 8:30 am to 11:25 am Event Notes: CRP Hearings: In Custody has been scheduled with Rhoades, Stephanie L on 04/15/2008 from 2:30 pm to 3:10 pm Event Notes: Parties: Bigley, William - Defendant Municipality of Anchorage - Prosecution Check In: Judge: Arr Weekend/Holiday, Block Judge: Location: Anchorage Jail Courtroom Staff: Prosecutors: Municipal Prosecutors Office: Present Parties:	0.00	0.00
04/14/2008	Attorney Information Attorney Gorton & Logue representing Defendant Bigley, William as of 04/14/2008	0.00	0.00
04/14/2008	Hearing Set Event: CRP Hearings: In Custody Date: 04/15/2008 Time: 2:30 pm Judge: Rhoades, Stephanie L Location: Courtroom 204, Nesbett Courthouse	0.00	0.00

04/14/2008	Hearing Result: Attorney Appointed The following event: Arraignment: Weekend/Holiday (Muni) scheduled for 04/13/2008 at 1:30 pm has been resulted as follows: Result: Attorney Appointed Judge: Arr Weekend/Holiday, Block Judge: Location: Anchorage Jail Courtroom	0.00	0.00
04/14/2008	Hearing Set Event: Trial Call: District Court Criminal Muni Date: 06/09/2008 Time: 8:30 am Judge: Trial Call, Block Judge: Location: Courtroom 302, Nesbett Courthouse	0.00	0.00
04/14/2008	Hearing Summary The following event: Arraignment: Weekend/Holiday (Muni) scheduled for 04/12/2008 at 1:30 pm has been resulted as follows: Result: Hearing Continued Check In: Judge: Arr Weekend/Holiday, Block Judge: Location: Anchorage Jail Courtroom Staff: Prosecutors: Municipal Prosecutors Office: Present Parties:	0.00	0.00
04/14/2008	Hearing Result: Hearing Continued The following event: Arraignment: Weekend/Holiday (Muni) scheduled for 04/12/2008 at 1:30 pm has been resulted as follows: Result: Hearing Continued Judge: Arr Weekend/Holiday, Block Judge: Location: Anchorage Jail Courtroom	0.00	0.00
04/13/2008	Hearing Set Event: Arraignment: Weekend/Holiday (Muni) Date: 04/13/2008 Time: 1:30 pm Judge: Arr Weekend/Holiday, Block Judge: Location: Anchorage Jail Courtroom Result: Attorney Appointed	0.00	0.00
04/12/2008	Hearing Set Event: Arraignment: Weekend/Holiday (Muni) Date: 04/12/2008 Time: 1:30 pm Judge: Arr Weekend/Holiday, Block Judge: Location: Anchorage Jail Courtroom Result: Hearing Continued	0.00	0.00
04/11/2008	Charge Filed Charge #3: AMC8.10.010: Assault	0.00	0.00
04/11/2008	Charge Filed Charge #2: AMC8.30.110: Violation Of Condition Of Release	0.00	0.00
04/11/2008	Charge Filed Charge #1: AMC8.45.010(A)(2): Trespass - Business/Commercial Property	0.00	0.00
04/11/2008	Hearing Result: Hearing Continued The following event: Arraignment: Muni/City (In Custody) scheduled for 04/11/2008 at 1:00 pm has been resulted as follows: Result: Hearing Continued Judge:	0.00	0.00

Anchorage Jail Court, Block Judge:
Location: Anchorage Jail Courtroom

04/11/2008	Hearing Set Event: Arraignment: Muni/City (In Custody) Date: 04/11/2008 Time: 1:00 pm Judge: Anchorage Jail Court, Block Judge: Location: Anchorage Jail Courtroom Result: Hearing Continued	0.00	0.00
04/11/2008	Bail Info: Unsecured \$250.00 Arrest Bond Added to Case with: Action Code: Charging Document Pending Arrest Date: Bond Status: Posted Status Date: 04/11/2008 Blanket Bond: No Okay to Apply: No Bond Type: Appear Bnd: Unsecured Bond/Pwr No.: Unsecured	0.00	0.00
04/10/2008	Charging Document Pending	0.00	0.00

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

In The Matter of the Necessity for the)
Hospitalization of William S. Bigley,)
)
Respondent)

COPY
Original Received
Probate Division

APR 21 2008

Case No. 3AN 08-00416PR

Clerk of the Trial Courts

CONDITIONAL LIMITED ENTRY OF APPEARANCE

Pursuant to Civil Rule 81(d), and subject to the respondent desiring such representation, the Law Project for Psychiatric Rights (PsychRights) hereby conditionally enters its appearance on behalf of William S. Bigley, the Respondent in this matter, with respect to any forced drugging under AS 47.30.838 or AS 47.30.839 only. In such event, all papers filed in this proceeding should be served on the undersigned at 406 G Street, Suite 206, Anchorage, Alaska 99501. Attached hereto are the Submission for Representation Hearing and the affidavits of Robert Whitaker, Ronald Bassman and Paul Cornils, filed in Respondents 3AN 08-247PR, of which this Court may take Judicial Notice, as well as a copy of an April 17, 2007, e-mail to counsel advising them of PsychRights' expectation it would be representing Respondent with respect to forced drugging herein and requesting a copy of Respondent's chart for the most recent admission.

DATED: April 21, 2008.

Law Project for Psychiatric Rights

By: 

James B. Gottstein
ABA # 7811100

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686 Phone ~ (907) 274-9493 Fax

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

RECEIVED

APR 28 2008

In the Matter of the Necessity)
For the Hospitalization of:)
)
WILLIAM S. BIGLEY,)
Respondent.)
_____)

Case No. 3AN-08-416 P/S

ORDER OF DISMISSAL OF
PETITION FOR COMMITMENT

IT IS ORDERED that the petition for commitment of the above-named respondent, filed on April 17, 2008, is dismissed and the proceedings in this matter terminated for the following reason:

- The respondent has signed an application for voluntary admission for treatment.
- The respondent has been released early by _____, the treatment facility, under AS 47.30.780.
- A hearing was held on April 21, 2008, on a petition for involuntary commitment for 30 days. The court finds that the respondent does not meet the criteria for involuntary commitment and the respondent is discharged.
- Petitioner has filed a motion to dismiss the petition for involuntary commitment for the following reasons: _____
- The evaluation personnel did not find that the respondent met the criteria for commitment under AS 47.30.700. Therefore, the respondent is discharged.
- The screening investigation did not reveal sufficient information to require that respondent be taken into custody for evaluation or treatment.
- Other: The Petition for Court Approval of Administration of Psychotropic Medication is dismissed.

4/22/08
Date

Sharon Gleason
Superior Court Judge
Sharon Gleason

I certify that on 4/24/2008
A copy of this order was sent to:
Respondent AG
Respondent's attorney PD
Attorney general OPA
Treatment/evaluation facility API
J. Gotstein
Clerk: AK

Recommended for approval on
April 22, 2008
Jonathon H. Lack
Master Jonathon H. Lack

Report of the Visitor

This is the report of Betty L. Wells, court appointed visitor in the matter of the petition for guardianship as well as the review of the conservatorship for Mr. William Bigley, respondent.

This visitor was appointed in 3AN-99-1108 on April 16, 2004 to complete a review of the conservatorship. Mr. Bigley had complaints about how the Office of Public Advocacy was managing his money. A hearing in that case was scheduled for June 3, 2004. The visitor was also appointed on May 3, 2004 following the filing of a guardianship petition by the Alaska Psychiatric Institute, case 3AN-04-0545.

The visitor attempted to meet with Mr. Bigley regarding his concerns about the conservatorship and to notice him of his rights in the guardianship case on May 20, 2004 at the Alaska Psychiatric Institute. Several attempts were made to engage William, however he refused to listen or discuss the paperwork with the visitor. A copy of the petition for guardianship was left with him and he was given the visitor's name and the court appointed attorney's name. Mr. Bigley has been in the system for a long time and is familiar with probate court proceedings.

The Office of Public Advocacy was appointed as expert, however a letter from Daniel D. Thomson, MD was filed with the original petition.

Persons contacted for this report include:

William Bigley	Respondent	Last known address 905 Richardson Vista Building 7, #134 Anchorage, Alaska 99501 Present address Alaska Psychiatric Institute 2900 Providence Drive Anchorage, Alaska 99508 (907) 269-7100
Pat Garrett	Social Worker	Alaska Psychiatric Institute 2900 Providence Drive Anchorage, Alaska 9908 (907) 269-7100
Daniel Thomson	Expert	Same as above

Kelly Bartholomew

Conservator

Office of Public Advocacy
Anchorage, Alaska 99501
(907) 269-3500

PRIOR HISTORY:

William Bigley is a 51-year-old Alaska native male born on January 15, 1953 in Kodiak, Alaska. According to records, Bill moved to Sitka, Alaska as a child. It is not known how far Bill went in school. He does have one brother who reportedly still lives in Sitka.

At one time, Bill was married. He has two grown daughters who live in Sitka. Bill worked at the pulp mill there for many years. In 1996 a conservatorship petition was filed in Juneau and the Office of Public Advocacy was appointed as Bill's conservator. Prior to that appointment, Island Counseling was assisting Bill with financial management. He accused them of theft which when reviewed appeared to be unfounded. Since Bill was living in Southeast, the Juneau OPA office was in charge of his funds.

In 2000, a three-year review was completed on Bill's conservatorship and venue was changed to Anchorage as Bill had been in and out of API and had not returned to Sitka. Bill accused OPA of theft and mismanagement of his funds. At the time, he was on probation for telephone threats to his conservator. He was involved with Quyana House and the IDP program of Southcentral Counseling through the Department of Corrections. As Bill was quite agitated about the restrictions placed on his funds, a hearing was scheduled. The visitor recommended that the conservatorship continue. A hearing was held and the conservatorship continued with no changes.

More recently, Bill has been living in his Richardson Vista apartment. According to Kelly Bartholomew, his OPA conservator, this placement has been stable for almost four years. Unfortunately, Bill's behavior has escalated over the last few months and he was recently evicted. He has had more frequent API admissions in the last six months and appears to have decompensated both physically as well as mentally. During his previous API admission, the petition for guardianship was filed. Bill was discharged but readmitted within a week. When visited on May 20, he appeared to be out of control and quite angry.

CLIENT PROFILE:

MENTAL CONDITION: It appears that Mr. Bigley's present level of judgment is inadequate for managing his personal affairs as well as his finances. By record, he has a long history of API admissions. In the past, Bill has been more accepting of out patient

assistance, however in the recent past, he refuses all referrals. He is alert and aware, but his impulsive behaviors and active delusions have made it difficult for him to receive appropriate attention for his needs.

EMOTIONAL CONDITION: Mr. Bigley was angry and belligerent at the time of the interview. Records indicate some anger management problems. He has threatened OPA staff numerous times in the past. Mr. Bigley does have an ongoing mental illness. When not hospitalized he does not take medication. Unfortunately even when hospitalized and on medications, his behaviors don't appear to change much.

Formal diagnoses on his API records include Schizophrenia, paranoid type.

PHYSICAL CONDITION: William's physical condition is fair. He is ambulatory and has few problems with his ADL's other than refusing to tend to them at times. He is diagnosed with gastrointestinal problems that by report are not looked after appropriately when Bill is out of the hospital. At the time of the visit, he was disheveled and unkempt. Although Bill has always had a small build, he is clearly underweight at this time.

ADAPTIVE BEHAVIOR: Mr. Bigley's ability to manage his finances has been in question for eight years and OPA has served as his conservator. The new problems of ongoing medical care and eviction may indicate problems in managing those affairs as well. His adaptive behavior is limited. API admissions have increased in frequency and intensity.

ASSISTANCE NEEDED: Parties involved with William feel that he will benefit from having a guardian as well as a conservator appointed. This visitor tends to agree that he may need assistance with medical and mental health issues as well as assistance with financial management at least on a temporary basis.

The petitioner is asking that the Office of Public Advocacy be appointed. Since they have been Bill's conservator for eight years this appears appropriate. A private agency may be considered, however Bill's funds are limited.

VOCATIONAL/EDUCATIONAL NEEDS: William Bigley is not involved in any vocational services or in any vocational program at this time.

PROGNOSIS: Guarded. It does appear that Bill has decompensated both medically as well as physically. Hospitalization and psychotropic medication have not helped stabilize him.

PLACEMENT: William is currently an inpatient at API. He has been evicted from his apartment so placement when discharged will be an issue.

ALTERNATIVES TO GUARDIANSHIP: Mr. Bigley already has a conservator and although he has complained about the mismanagement of his money, he is unable to handle it himself. A petition for guardianship has been filed. While the visitor is uncertain if a protective order will help stabilize Mr. Bigley, the visitor believes it is worth a try, especially for medical and mental health treatment.

Because of a tenuous outcome to an appointment, the visitor is recommending that the court enter a temporary order and have the parties come back to court in six months for further review.

FINANCIAL: Mr. William Bigley (SSN 574-24-6052) receives a monthly social security check in the amount of \$1396.00. He is a native corporation shareholder and currently the Office of Public Advocacy is acting as his conservator. Bill resents the restrictions they impose on his money and has accused them of theft and mismanagement in the past.

A review of funds currently held for Bill at OPA did not reveal any wrongdoing on their part. A transaction journal listing income and expenses from January 1, 2004 through May 19, 2004 is attached. Bill uses every bit of his monthly income on rent, allowance, cigarettes, utilities, cable and personal items, often depleting his account to zero at the end of the month. He does have a small native account at OPA listed under Office 2 and this money often supplements his monthly income.

The \$1396.00 a month puts Bill over the limit for Medicaid and services that the program might cover.

There are no other known assets or debts.

FINDINGS: It is this visitor's opinion that William Bigley is "spinning out of control". His physical and mental health are deteriorating. He seems to be in a revolving door program at the Alaska Psychiatric Hospital. Whether a guardian for medical and mental health issues can help him remains to be seen since he is known to be belligerent and noncompliant. However, the visitor believes it is in Mr. Bigley's best interest to have a limited guardian appointed to address the medical and mental health issues. Perhaps the guardian can advocate for long-term treatment and medications for Mr. Bigley, which might lead to a more stable existence.

Since the effect of such an order is unknown, the visitor believes that the order should be temporary and limited to the medical and mental health issues. Parties should be prepared to come back to court in six months to assess any results of having a limited guardian. The visitor recognizes the difficulty in dealing with Mr. Bigley and that having such a protective order may not result in any change in Bill's circumstances.

RECOMMENDATIONS OF THE VISITOR:

1. For the court to appoint the Office of Public Advocacy as limited temporary guardian for Mr. William S. Bigley. The order should include authority over medical and mental health treatment and care. The conservatorship should remain in place.
2. For the Court to schedule a hearing in six months to address the results of the protective proceeding and any further recommendations of the visitor and/or limited guardian.

Betty L. Wells

Betty L. Wells, Court Visitor
4754 Mills Drive
Anchorage Alaska 99504
(907) 333-9480

5-25-07

Date