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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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IN THE MATTER OF:

The Necessity for the Hospitalization of William S. Bigley

Case No. 3AN-08-01252 PR

TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE WILLIAM MORSE

Pages 1 - 23, inclusive

November 3, 2008

8:47 a.m.

APPEARANCES:

For WB: James Gottstein, Esq. For the State of Alaska: Laura Derry, Esq. (by telephone)

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1	ANCHORAGE, ALASKA; MONDAY, NOVEMBER 3, 2008; 8:47 a.m	. 1	MS. DERRY: Yes, Your Honor. I ran it over
2		2	before the close of business on Friday.
3	(8:47:35)	3	THE COURT: All right. Did you file it in
4	THE COURT: We're on record in 3AN-08-01252.	4	chambers?
5	Mr. Gottstein is in the courtroom.	5	MS. DERRY: Your Honor, I filed it in the
6	Ms. Derry, you're on the phone?	6	probate and supplied a chambers copy.
7	MS. DERRY: Yes, Your Honor.	7	THE COURT: All right. I haven't seen that, so
8	THE COURT: I set this on earlier this morning	8	I won't rule on it until I get the opposition, but it
9	simply to issue rulings on various pending motions. There	9	seems to me that it is highly unlikely that I'm going to
10	have been a flurry of filings, so I also want to use this	10	grant a motion for summary judgment, because it seems to
11	opportunity to see if there are if I'm missing	11	me that there's almost certainly a dispute over facts.
12	something. So and I just received a packet of	12	But I haven't read the opposition yet, so I won't rule,
13	documents filed five minutes ago from Mr. Gottstein.	13	but I will certainly rule here in the next shortly so
14	There was an original petition filed on the 21st	14	that the parties know whether the hearing on the 5th is
15	of October for commitment and medication, a second	15	going forward.
16	petition for medication on October 27th. There is a	16	I am denying the motion to hold the hearing at
17	motion to dismiss the 838 petition, the commitment	17	the courthouse. It will take place, at least the initial
18	petition, which was filed on October 30th.	18	hearing on the assumption that it might be longer than
19	MR. GOTTSTEIN: Your Honor, may I clarify? Do	19	one day, the first day is going to take place at API. I
20	you mind if I interrupt?	20	will review the request to have any subsequent hearings at
21	THE COURT: Go ahead.	21	the courthouse based on my observation of several
22	MR. GOTTSTEIN: The motion to dismiss 838	22	things: Mr. Bigley's then current mental state and
23	count Your Honor, I think it's count the forced	23	apparent ability to control himself and to and to
24	drugging petition really has two bases. One is the basis	24	minimize any risk to the public; and secondly, since I
25	that was under reviewing Myers, and then the second one is	25	have not personally seen the API's new not so much the
	Page 3		Page 5
1	the police power emergency medication under AS 47.30.838,	1	room itself, but I haven't been into API in quite some
2	and so that's what that motion to dismiss 838 motion is	2	time. I will review that request after I experience the
3	about. It's still about the forced drugging petition.	3	entry process and the publicness, if you will, of the
4	THE COURT: The eight the motion to dismiss	4	entire setting.
5	838 is denied because I have issued an order committing	5	The motion for expedited consideration of the
6	him already, and the State's second motion to commit is,	б	various motions concerning the depositions and discovery,
7	as far as I can tell, duplicative for an effort to perhaps	7	the motion for expedited consideration is granted.
8	extend the timing, and so he's committed.	8	The motion for a protective order, to the extent
9	MR. GOTTSTEIN: Your Honor	9	that it asserts that there is no discovery permissible, is
10	THE COURT: The second petition is dismissed.	10	denied. Discovery is not only permissible implicitly by
11	The second petition by the State for commitment is moot,	11	825(b) and 839(d), but also the respondent has access to
12	as far as I can tell.	12	information by court order which, by virtue of
13	MR. GOTTSTEIN: Your Honor, we're not none of	13	AS 47.30.852 and 3 and probate rule 1(e) says that if a
14	this is about commitment. It's about forced drugging.	14	probate rule is not specific to a particular procedural
15	THE COURT: I appreciate that. But you filed a	15	issue, then the civil rules apply.
16	motion to dismiss the 838 petition.	16	I think that the civil discovery rules are
17	MR. GOTTSTEIN: The 838 count, which is part one	17	applicable, at least the concept of discovery is
18	of two counts of the forced drugging petition, but has	18	applicable. They may need to be modified to reflect the
19	nothing to do with the commitment. It has to do with	19	timing requirements that are unique to these proceedings.
20	emergency	20	But nonetheless, there is a due process right to discovery
21	THE COURT: The motion to dismiss is denied.	21	of information that is going to be used against you in any
22	The motion for summary judgment, I have just	22	hearing and particularly in one in which the requested
23	received from Mr. Gottstein a reply to an opposition that	23	remedy, the medication, the involuntary psychotropic
	received from Mr. Gottstein a reply to an opposition that I haven't seen yet. So I assume that the State filed an opposition to the motion for summary judgment?	24	medication, clearly requires that sort of disclosure of information.

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1	And the motion to quash the deposition notices	1	this depends on what the State presents, but do you know	
2	is denied with one caveat. And I think that this has	2	now whether you will have a direct testimony	
3	actually been corrected or there is a reference in the Ron	3	case-in-chief? I appreciate you will have	
4	Adler notice of a 9:00 p.m. time, and then I saw in some	4	cross-examination, but do you think you will have your own	
5	of the filings this morning that that was conceded to be a	5	affirmative, direct testimony?	
6	typographic error. The State has not requested me to	6	MR. GOTTSTEIN: Yes, Your Honor. And I did file	
7	change the specific timing of any deposition. I will	7	a witness list, a preliminary witness list on Friday	
8	require the parties to coordinate the, I believe, three	8	THE COURT: Maybe you have.	
9	depositions to accommodate, to the extent that is	9	MR. GOTTSTEIN: and I assume you've got it	
10	reasonable, the three deponents.	10	somewhere.	
11	And I don't know what the 9:00 p.m. Adler	11	THE COURT: It's somewhere.	
12	deposition actually was intended to be. 9:00 p.m. might	12	MR. GOTTSTEIN: I've got it somewhere too.	
13	not be reasonable, although the reason I'm hedging is that	13	Yeah, you know, I think we might assume a day too. I	
14	I don't know what the shift schedules are of those three	14	filed a lot of testimony, actually, in writing, written	
15	individuals. I assume that the State's attorney normally	15	testimony, and using that, I think can shorten things, but	
16	doesn't work at 9:00 p.m.	16	I think still it will be a day.	
17	Have the two of you been able to rearrange	17	THE COURT: Some of that testimony I mean, I	
18	deposition times? Mr. Gottstein.	18	know that there's a packet that just showed up today that	
19	MR. GOTTSTEIN: Your Honor, I think we have an	19	includes affidavits and some articles and a variety of	
20	understanding that if the Court denies the motion to	20	other things, and some prior testimony in prior cases. So	
21	quash, that we would hold Mr. Adler's deposition tomorrow,	21	the State's going to have to sort of go through that and	
22	and it was meant to be 9:00 a.m., not 9:00 p.m., but	22	raise whatever objections it wants. But at this point, if	
23	THE COURT: That's fine. And that's supposed to	23	we do go Wednesday and we need at least an additional day	,
24	be on the 4th of November?		it's my understanding that Thursday is the normal day	
25	MR. GOTTSTEIN: Correct.	25	for or Tuesdays and Thursdays are normal days for	
	Page 7		Page 9	
1	THE COURT: And Ms. Derry, are there any does	1	API hearings?	
2	that resolve the scheduling problems of the three	2	MS. DERRY: No. Your Honor, it's Tuesday	
3	depositions?	3	afternoon and Friday afternoon.	
4	MS. DERRY: I'll it definitely resolves	4	THE COURT: All right. So would the parties be	
5	Mr. Adler's problem as long as he's down on the Kenai	5	ready to go Thursday in the day?	
6	Peninsula today, Your Honor, and so I won't be able to	6	MS. DERRY: Yes, Your Honor.	
7	speak to him, but I think that that will work for Ron, for	7	MR. GOTTSTEIN: Yes, Your Honor.	
8	Mr. Adler, and I think that Mr. Gottstein and I can if	8	THE COURT: I'll have to look and see what	
9	there are any other scheduling problems, can meet to	9	exactly I don't remember whether I have this trial	
10	discuss that.	10	that's about to start scheduled for Thursday or whether I	
11	THE COURT: All right. Purely for scheduling	11	have something else. But obviously this case has time	
12	purposes, if I'm recalling, we're to begin at is it	12	requirements that will likely trump anything else. We'll	
13	9:00 a.m. Wednesday morning?	13	assume at that point that we're going both Wednesday and	Ĺ
14	MS. DERRY: Yes, Your Honor.	14	Thursday. I will give you information to the contrary as	
15	THE COURT: And the State has filed a lengthy	15	soon as I receive it, if I do receive it.	
16	witness list. As a practical matter, how long do you	16	MS. DERRY: And Your Honor, my I would like	2
17	think the State's case-in-chief, setting aside	17	to ask that the Court keep the hearing on Wednesday and	
18	cross-examination, will last?	18	Thursday, if we go into that, to the four issues at hand	
19	MS. DERRY: If I feel like I need to call most	19	that Mr. Gottstein has brought up and that are clear in	
20	of those witnesses, Your Honor, it would definitely take a	20	both the statute and under Myers and Weatherhorn, that	
21	day.	21	the issues are whether or not the patient refused	
22	THE COURT: And that's direct only, without	22	whether or not the patient is capable of informed consent	
23	cross?	23	and whether or not the medicating is within the best	
24	MS. DERRY: Yes.	24	interest and the less restrictive alternative to protect	
25	THE COURT: Mr. Gottstein, I appreciate that	25	the patient.	

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1	And if we could agree that those are the issues	1	torture, something from a horror movie from the 1950s, and
2	and not the extraneous issue of whether of the	2	that's the position that we're in right now, Your Honor,
3	controversial issue of whether or not medications are	3	and we're asking that this can move forward and that we
4	appropriate or the other things been adjudicated that are	4	can look to just simply sticking to what the statute says,
5	going to appeal now. If we can stick to the four issues	5	rather than bringing up the extraneous constitutional
6	that are actually at hand of whether or not we can care	6	issues that are really controversial and up in the air.
7	for Mr. Bigley, then this hearing my witness list would	7	And Mr. Gottstein
8	become markedly shorter, Your Honor.	8	THE COURT: Ms. Derry, the question was, are you
9	THE COURT: I assume that we will be delineating	9	proceeding under 838 and seeking emergency powers, which
10	those four issues. Are there other issues?	10	would seem to be unnecessary if I granted your 839
11	MS. DERRY: It's the way that I'm reading the	11	petition?
12	multiple	12	MS. DERRY: Oh, no, Your Honor, I'm not
13	THE COURT: Let me let Mr. Gottstein speak,	13	seeking the 838 motion, that's strictly Mr. Gottstein.
14	because he'll tell us what the issues are beyond those	14	I have I have to seek an 839 petition because the
15	four.	15	hospital is having to emergency medicate.
16	MS. DERRY: Yes, Your Honor.	16	THE COURT: Are you asking me to do anything
17	THE COURT: If any.	17	under 838 or to somehow ratify whatever emergency
18	MR. GOTTSTEIN: Your Honor, as an initial	18	medication API is administering?
19	matter, I note that the harm of the drugs and the relative	19	MS. DERRY: Your Honor, what's no. I'm
20	lack or lack of benefit or effectiveness, of course, is	20	asking whether or not I'm asking to move forward on the
21	an extremely important part of the best interests finding.	21	medications petition under 839, which is required by
22	Okay. So but that's with respect to what I'm calling	22	838
23	the parens patriae account. With respect to the police	23	THE COURT: That's fine.
24	power account that they've also asserted under 47.30.838,	24	MS. DERRY: because
25	there's a lot of issues about that, whether or not they're	25	THE COURT: So now let's assume I either I
	Page 11		Page 13
1	entitled to entitled to an order, and there's been no	1	have two options. I deny the 839 petition, in which case
2	reported decision on that statute, and so I think we'll	2	Mr. Gottstein, are you then seeking some additional
3	have to sort out exactly what the requirements of that	3	request under that would restrict API's 838 authority?
4	that statute are.	4	MR. GOTTSTEIN: Your Honor, I think there's some
5	THE COURT: I'm not sure I understand what	5	confusion. There's certainly some confusion in my mind.
6	you're saying.	6	If you look at the petition, forced drugging petition,
7	MR. GOTTSTEIN: Excuse me?		
8		7	there's two checked boxes, checked, one under the 838
0	THE COURT: I'm not sure I understand what you	8	there's two checked boxes, checked, one under the 838 ground but they're both made under AS 47.30.839. And
9	are		there's two checked boxes, checked, one under the 838 ground but they're both made under AS 47.30.839. And one is if the patient is incapable of giving or
	are Okay. Maybe I misunderstood something when I	8	there's two checked boxes, checked, one under the 838 ground but they're both made under AS 47.30.839. And one is if the patient is incapable of giving or withholding informed consent, and it seems that's what
9 10 11	are Okay. Maybe I misunderstood something when I was referring to the 838. The 838 is the provision	8 9 10 11	there's two checked boxes, checked, one under the 838 ground but they're both made under AS 47.30.839. And one is if the patient is incapable of giving or withholding informed consent, and it seems that's what Ms. Derry is speaking about.
9 10 11 12	are Okay. Maybe I misunderstood something when I was referring to the 838. The 838 is the provision regarding emergency psychotropic the administration of	8 9 10 11 12	there's two checked boxes, checked, one under the 838 ground but they're both made under AS 47.30.839. And one is if the patient is incapable of giving or withholding informed consent, and it seems that's what Ms. Derry is speaking about. There's another one that says if the hospital
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9 10 11 12 13 14 15 16 17	are Okay. Maybe I misunderstood something when I was referring to the 838. The 838 is the provision regarding emergency psychotropic the administration of emergency medication. Can I assume that at least going that the State simply wants to proceed on its 839? MS. DERRY: Yes, Your Honor. What's happening is that because Mr. Bigley has been committed, the hospital is doing everything they can to help him, and	8 9 10 11 12 13 14 15 16 17	there's two checked boxes, checked, one under the 838 ground but they're both made under AS 47.30.839. And one is if the patient is incapable of giving or withholding informed consent, and it seems that's what Ms. Derry is speaking about. There's another one that says if the hospital seeks authority to administer emergency medications for longer than a certain period of time, it has to get court approval to do so. And so that's also under that application is made under 47.30.839, but the standards applicable to that are under AS 47.30.838, and that's why
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9 10 11 12 13 14 15 16 17 18 19 20	are Okay. Maybe I misunderstood something when I was referring to the 838. The 838 is the provision regarding emergency psychotropic the administration of emergency medication. Can I assume that at least going that the State simply wants to proceed on its 839? MS. DERRY: Yes, Your Honor. What's happening is that because Mr. Bigley has been committed, the hospital is doing everything they can to help him, and because of his condition, he is so severely psychotic that he requires a tremendous amount of care and another option would be to actually strap him down and restrain him on a	8 9 10 11 12 13 14 15 16 17 18 19 20	there's two checked boxes, checked, one under the 838 ground but they're both made under AS 47.30.839. And one is if the patient is incapable of giving or withholding informed consent, and it seems that's what Ms. Derry is speaking about. There's another one that says if the hospital seeks authority to administer emergency medications for longer than a certain period of time, it has to get court approval to do so. And so that's also under that application is made under 47.30.839, but the standards applicable to that are under AS 47.30.838, and that's why I called it the 838 count. THE COURT: Let me look at 839 again. 839(a) allows API to seek court approval of the
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9 10 11 12 13 14 15 16 17 18 19 20 21 22	are Okay. Maybe I misunderstood something when I was referring to the 838. The 838 is the provision regarding emergency psychotropic the administration of emergency medication. Can I assume that at least going that the State simply wants to proceed on its 839? MS. DERRY: Yes, Your Honor. What's happening is that because Mr. Bigley has been committed, the hospital is doing everything they can to help him, and because of his condition, he is so severely psychotic that he requires a tremendous amount of care and another option would be to actually strap him down and restrain him on a bed, and that is absolutely something that the hospital is unwilling to do because Mr. Bigley isn't capable of	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	there's two checked boxes, checked, one under the 838 ground but they're both made under AS 47.30.839. And one is if the patient is incapable of giving or withholding informed consent, and it seems that's what Ms. Derry is speaking about. There's another one that says if the hospital seeks authority to administer emergency medications for longer than a certain period of time, it has to get court approval to do so. And so that's also under that application is made under 47.30.839, but the standards applicable to that are under AS 47.30.838, and that's why I called it the 838 count. THE COURT: Let me look at 839 again. 839(a) allows API to seek court approval of the administration of psychotropic medication in one of two circumstances: Either that there will be repeated crisis

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1	incapable of giving informed consent, the State correct	1	MS. DERRY: It is. It also Your Honor,
2	me if I'm wrong the State clearly is seeking that	2	between the two, of 839 (1) or (2), that's basically what
3	second authority, that there is a noncrisis situation and	3	the hospital is having to do right now, that whether
4	he's not capable of giving informed consent. That at	4	they're
5	least in the first instance that's true, right?	5	THE COURT: But I'm talking about your comment
6	MS. DERRY: Yes, Your Honor. But also we're	б	that you want to somehow restrict the evidence.
7	referring what we're required to do under 838(c) is	7	MS. DERRY: Yes, Your Honor. I want to simply
8	that because they aren't continually medicating Mr. Bigley	8	stick to the statute which is saying that we are asking
9	in a noncrisis situation, they're having to wait for him	9	the Court to grant us the ability to treat Mr. Bigley
10	to go into a crisis, and then if they can't use any other	10	within the appropriate standard of care as seen all across
11	form of treatment in order to help him get calmed down and	11	the United States and
12	to ensure the safety of the other people, the other	12	THE COURT: That's fine rhetoric, but you don't
13	patients at API, they've had to now, since this has gone	13	get to say all I'm trying to figure out is how we focus
14	longer than 72 hours without making a decision, they are	14	your presentation so that we deal with one set of evidence
15	required under Section C of 838 to seek this court order,	15	rather than all sets of evidence, because that's what
16	because it says that they can't administer psychotropic	16	you're asking for.
17	medications during no more than three crisis periods	17	MS. DERRY: Yes.
18	without the patient's informed consent, only with Court	18	THE COURT: So if you proceed under the
19	approval.	19	839(a)(2) criteria, that's a smaller set of evidence,
20	THE COURT: So let's assume, just for purposes	20	according to you, right?
21	of walking it through, that I grant the 839 petition	21	MS. DERRY: Yes.
22	because he's incapable of giving informed consent and I	22	THE COURT: Okay. And then if I grant that
23	meet all the other Meyer/Weatherhorn criteria. Doesn't	23	petition, it moots out the necessity for the broader set
24	that moot out the 838 the 839(a)(1) petition?	24	of testimony?
25	MS. DERRY: Yes, Your Honor. It's my	25	MS. DERRY: Yes, Your Honor.
	Page 15		Page 17
	understanding is that the hospital has done what's	1	THE COURT: Okay. Now, Mr. Gottstein gets to
2	necessary. They were adhering to the statute and	2	make whatever constitutional arguments he wants under
3	requesting a medications petition within the appropriate	3	whatever theory the State chooses to pursue first. So do
4	amount of time under 838, which says that they couldn't	4	you see any problem, Mr. Gottstein, if we if the State
5	medicate without appropriate court order after the three	5	goes under 839(a)(2) first, under whatever it thinks is a
6	crisis periods, but they also were required to do anything	6	smaller subset of evidence, you respond to that, I'm going
_	it takes in order to protect Mr. Bigley as well as the		to make a ruling, if I grant it, doesn't that moot out the
8	other patients at the hospital, and because of that, they have continued to emergency medicate if that is the last	8 9	(a)(1) request? MR. GOTTSTEIN: I think that, Your Honor, this
9 10	resort without causing any harm to Mr. Bigley who has done	10	is where the Supreme Court stay really comes into effect,
11	several things that are definitely disconcerting and have	11	because the Alaska Supreme Court issued a stay on
12	caused his primary treating psychiatrist to be very, very	12	essentially the same evidence that I presented to you,
13	concerned about his well-being. And so the hospital	13	Your Honor, and then you indicated
	concerned about his wen being. This so the hospital	14	THE COURT: Forget the stay. Just forget that
14	has		
	has THE COURT: Doesn't it make sense for the State		
14 15 16	THE COURT: Doesn't it make sense for the State	15 16	there's a stay for purposes of this discussion, and then
15		15	
15 16	THE COURT: Doesn't it make sense for the State to proceed under 839(a)(2) in the first instance and	15 16	there's a stay for purposes of this discussion, and then we'll go back to what the stay brings. If there was no
15 16 <mark>17</mark>	THE COURT: Doesn't it make sense for the State to proceed under 839(a)(2) in the first instance and present only the information it thinks is necessary there?	15 16 17	there's a stay for purposes of this discussion, and then we'll go back to what the stay brings. If there was no stay in place, doesn't the granting of the 839(a)(2)
15 16 17 18	THE COURT: Doesn't it make sense for the State to proceed under 839(a)(2) in the first instance and present only the information it thinks is necessary there? If I grant that petition, then any need for 839(a)(1)	15 16 17 18	there's a stay for purposes of this discussion, and then we'll go back to what the stay brings. If there was no stay in place, doesn't the granting of the 839(a)(2) petition, if that's what I do, moot out the (a)(1)?
15 16 17 18 19 20 21	THE COURT: Doesn't it make sense for the State to proceed under 839(a)(2) in the first instance and present only the information it thinks is necessary there? If I grant that petition, then any need for 839(a)(1) authorization is moot? MS. DERRY: Yes. I believe that, Your Honor. THE COURT: And then if, on the other hand, I	15 16 17 18 19	there's a stay for purposes of this discussion, and then we'll go back to what the stay brings. If there was no stay in place, doesn't the granting of the 839(a)(2) petition, if that's what I do, moot out the (a)(1)? MR. GOTTSTEIN: Yes, Your Honor. May I THE COURT: Okay. MR. GOTTSTEIN: May I just say one other thing
15 16 17 18 19 20 21 22	THE COURT: Doesn't it make sense for the State to proceed under 839(a)(2) in the first instance and present only the information it thinks is necessary there? If I grant that petition, then any need for 839(a)(1) authorization is moot? MS. DERRY: Yes. I believe that, Your Honor. THE COURT: And then if, on the other hand, I deny your 839(a)(2) request, then the State can, if it	15 16 17 18 19 20	there's a stay for purposes of this discussion, and then we'll go back to what the stay brings. If there was no stay in place, doesn't the granting of the 839(a)(2) petition, if that's what I do, moot out the (a)(1)? MR. GOTTSTEIN: Yes, Your Honor. May I THE COURT: Okay. MR. GOTTSTEIN: May I just say one other thing about that. And, you know, in a lot of ways what you're
15 16 17 18 19 20 21 22 23	THE COURT: Doesn't it make sense for the State to proceed under 839(a)(2) in the first instance and present only the information it thinks is necessary there? If I grant that petition, then any need for 839(a)(1) authorization is moot? MS. DERRY: Yes. I believe that, Your Honor. THE COURT: And then if, on the other hand, I deny your 839(a)(2) request, then the State can, if it wants, present whatever additional information is	15 16 17 18 19 20 21	there's a stay for purposes of this discussion, and then we'll go back to what the stay brings. If there was no stay in place, doesn't the granting of the 839(a)(2) petition, if that's what I do, moot out the (a)(1)? MR. GOTTSTEIN: Yes, Your Honor. May I THE COURT: Okay. MR. GOTTSTEIN: May I just say one other thing about that. And, you know, in a lot of ways what you're suggesting, you know, I could say that that really
15 16 17 18 19 20 21 22	THE COURT: Doesn't it make sense for the State to proceed under 839(a)(2) in the first instance and present only the information it thinks is necessary there? If I grant that petition, then any need for 839(a)(1) authorization is moot? MS. DERRY: Yes. I believe that, Your Honor. THE COURT: And then if, on the other hand, I deny your 839(a)(2) request, then the State can, if it	15 16 17 18 19 20 21 22	there's a stay for purposes of this discussion, and then we'll go back to what the stay brings. If there was no stay in place, doesn't the granting of the 839(a)(2) petition, if that's what I do, moot out the (a)(1)? MR. GOTTSTEIN: Yes, Your Honor. May I THE COURT: Okay. MR. GOTTSTEIN: May I just say one other thing about that. And, you know, in a lot of ways what you're

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	Page 18		Page 20
1	to emergency drug him during you know, during that	1	if I grant that, then everything else is moot. If I don't
2	pendency because the statute gives them three basically	2	grant it, then I'm going to grant the State an opportunity
3	three 72-hour periods, and if they don't have a court	3	right then to supplement its evidentiary basis for the
4	order at the end of three 72-hour crisis periods, they can	4	second type of authorization. And then, Mr. Gottstein,
5	no longer do it. So I think that actually their petition	5	you can tell me when the time comes why you think you
6	makes sense in that regard, and I'm perfectly fine to	6	might not have been prepared. If you're not, you're not.
7	limit it to the 839 you know, just the 839 what is	7	I'll deal with that assertion when it's given to me and
8	(it?)	8	when I've had a chance to see the evidence that both sides
9	THE COURT: (A)(2)	9	present.
10	MR. GOTTSTEIN: (A)(2). You know, if that's the	10	MR. GOTTSTEIN: Your Honor, I think I'll
11	ruling and we're going to limit it to that, I'm very	11	probably just continue preparation.
12	I'm very happy with that.	12	MS. DERRY: I'm sorry. I didn't hear you,
13	THE COURT: Okay. We're both in agreement.	13	Mr. Gottstein.
14	We're going we'll go with the State will present	14	THE COURT: He's going to continue preparation.
15	what it thinks is necessary under 839(a)(2). If I grant	15	That doesn't surprise me, given the several hundred pages
16	the petition, then I have to deal with the subsequent	16	of documents that have shown up already. But I'm not
17	question of what do I do with the Supreme Court stay in	17	being I'm not being I expected that. I'm not being
18	effect in May in a different case with a different set of	18	sarcastic.
19	facts. Not a different set of facts, but a set of facts	19	At any rate, is there anything else out there
20	that ended in May.	20	that any motion that someone thinks has been filed that
21	And one of the things that I am going to want	21	I haven't now dealt with, other than the motion for
22	the State to tell me is where Mr. Bigley has been or when	22	summary judgment?
23	he has been at API, if at all, since May '08. And the	23	MS. DERRY: I also had a motion for the
24	reason I want that is I want the Supreme Court, if I grant	24	protective orders to protect the people that Mr. Gottstein
25	any of the State's requests and authorize medication, I'm	25	is going to depose from him issuing anything on his Web
	Page 19		Page 21
1	going to have to deal with the issue of the prior stay.	1	site or making them look bad.
2	And if I rule that the prior stay is, in essence, obsolete	2	THE COURT: Is there any I'm not if you
3	and overridden by subsequent events, I'm going to give	3	filed a response to that, I just haven't had a chance to
4	Mr. Bigley, Mr. Gottstein an opportunity to go to the	4	read it.
5	Supreme Court and petition for a stay of that	5	So is there an objection to me issuing an order
6	authorization order.	6	that says that the depositions and the paperwork generated
7	And I want the Supreme Court to have in this	7	in this case cannot be disseminated to the to the
8	record a history of when he's been at a minimum, when	8	public outside of the courtroom setting?
9	he's been at API, if at all, since the first authorization	9	MR. GOTTSTEIN: Yes, Your Honor. I do object to
10	order and the first stay.	10	that. And I have filed a response to that. And what I
11	MS. DERRY: Yes, Your Honor.	11	what I proposed to Ms. Derry was that first off, her
12	THE COURT: Is there anything else?	12	request is with respect to depositions. And what I said,
13	MD COTTETEIN. Vour Honor mou I have on idea	13	that I'll hold those confidential for a week, and that she
10	MR. GOTTSTEIN: Your Honor, may I have an idea		
14	of how much time I might have to prepare for an 838	14	can then make an application under Civil Rule 26 I
		14 15	can then make an application under Civil Rule 26 I think it's C for a protective order. At that point
14	of how much time I might have to prepare for an 838 hearing if we end up going to that? MS. DERRY: Your Honor, Mr. Gottstein is arguing		think it's C for a protective order. At that point we'll know actually what the testimony is and the judge
14 15 16 17	of how much time I might have to prepare for an 838 hearing if we end up going to that? MS. DERRY: Your Honor, Mr. Gottstein is arguing that we're running out of time, and what's happening is	15	think it's C for a protective order. At that point we'll know actually what the testimony is and the judge and Your Honor will have a factual basis to make a
14 15 16 17 18	of how much time I might have to prepare for an 838 hearing if we end up going to that? MS. DERRY: Your Honor, Mr. Gottstein is arguing that we're running out of time, and what's happening is that we're actually being forced to deviate from the	15 16 17 18	think it's C for a protective order. At that point we'll know actually what the testimony is and the judge and Your Honor will have a factual basis to make a determination whether or not a protective order is
14 15 16 17 18 19	of how much time I might have to prepare for an 838 hearing if we end up going to that? MS. DERRY: Your Honor, Mr. Gottstein is arguing that we're running out of time, and what's happening is that we're actually being forced to deviate from the statute as well as deviate from protecting Mr. Bigley's	15 16 17 18 19	think it's C for a protective order. At that point we'll know actually what the testimony is and the judge and Your Honor will have a factual basis to make a determination whether or not a protective order is warranted.
14 15 16 17 18 19 20	of how much time I might have to prepare for an 838 hearing if we end up going to that? MS. DERRY: Your Honor, Mr. Gottstein is arguing that we're running out of time, and what's happening is that we're actually being forced to deviate from the statute as well as deviate from protecting Mr. Bigley's due process because this case continues to be delayed	15 16 17 18 19 20	think it's C for a protective order. At that point we'll know actually what the testimony is and the judge and Your Honor will have a factual basis to make a determination whether or not a protective order is warranted. THE COURT: Is there any objection to me issuing
14 15 16 17 18 19 20 21	of how much time I might have to prepare for an 838 hearing if we end up going to that? MS. DERRY: Your Honor, Mr. Gottstein is arguing that we're running out of time, and what's happening is that we're actually being forced to deviate from the statute as well as deviate from protecting Mr. Bigley's due process because this case continues to be delayed because of Mr. Gottstein	15 16 17 18 19 20 21	think it's C for a protective order. At that point we'll know actually what the testimony is and the judge and Your Honor will have a factual basis to make a determination whether or not a protective order is warranted. THE COURT: Is there any objection to me issuing a protective order that says, no deposition, no materials
14 15 16 17 18 20 21 22	of how much time I might have to prepare for an 838 hearing if we end up going to that? MS. DERRY: Your Honor, Mr. Gottstein is arguing that we're running out of time, and what's happening is that we're actually being forced to deviate from the statute as well as deviate from protecting Mr. Bigley's due process because this case continues to be delayed because of Mr. Gottstein THE COURT: This case is going to be done, if	15 16 17 18 19 20 21 22	think it's C for a protective order. At that point we'll know actually what the testimony is and the judge and Your Honor will have a factual basis to make a determination whether or not a protective order is warranted. THE COURT: Is there any objection to me issuing a protective order that says, no deposition, no materials can be disseminated to any member of the public except in
14 15 16 17 18 19 20 21 22 23	of how much time I might have to prepare for an 838 hearing if we end up going to that? MS. DERRY: Your Honor, Mr. Gottstein is arguing that we're running out of time, and what's happening is that we're actually being forced to deviate from the statute as well as deviate from protecting Mr. Bigley's due process because this case continues to be delayed because of Mr. Gottstein THE COURT: This case is going to be done, if not Thursday, then shortly after Thursday, at least from	15 16 17 18 19 20 21 22 23	think it's C for a protective order. At that point we'll know actually what the testimony is and the judge and Your Honor will have a factual basis to make a determination whether or not a protective order is warranted. THE COURT: Is there any objection to me issuing a protective order that says, no deposition, no materials can be disseminated to any member of the public except in open court at least until November 12th, and then once we
14 15 16 17 18 19 20 21 22	of how much time I might have to prepare for an 838 hearing if we end up going to that? MS. DERRY: Your Honor, Mr. Gottstein is arguing that we're running out of time, and what's happening is that we're actually being forced to deviate from the statute as well as deviate from protecting Mr. Bigley's due process because this case continues to be delayed because of Mr. Gottstein THE COURT: This case is going to be done, if	15 16 17 18 19 20 21 22	think it's C for a protective order. At that point we'll know actually what the testimony is and the judge and Your Honor will have a factual basis to make a determination whether or not a protective order is warranted. THE COURT: Is there any objection to me issuing a protective order that says, no deposition, no materials can be disseminated to any member of the public except in

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	Page 22	
1	MS. DERRY: No, Your Honor.	
2	THE COURT: All right. That's the order.	
3	Anything else?	
4	MS. DERRY: Not from the State, Your Honor.	
5	THE COURT: Thank you.	
6	(End of recording)	
7	(9:19:26)	
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	Page 23	
1	TRANSCRIBER'S CERTIFICATE	
2		
3	I, Deirdre J.F. Radcliffe, hereby certify that the	
4	foregoing pages numbered through are a true and	
5	accurate transcript of proceedings in Case No.	
6	3AN-08-01252 PR, In the Matter of WB, transcribed by me	
	from a copy of the electronic sound recording, to the best	
8	of my knowledge and ability.	
9 10		
11		
	Date Deirdre J.F. Radcliffe, Transcriber	
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