

IN THE SUPERIOR COURT AT ANCHORAGE ALASKA

IN THE MATTER OF)
)
 WILLIAM BIGLEY,)
)
 Respondent.)
_____)

Case No. 3AN-08-00493PR

VOLUME I

TRANSCRIPT OF PROCEEDINGS

April 30, 2008 - Pages 1-111

30-DAY COMMITMENT HEARING

BEFORE THE HONORABLE LUCINDA McBURNEY

Anchorage, Alaska
April 30, 2008
8:47 o'clock a.m.

APPEARANCES:

FOR THE PETITIONER: JAMES TWOMEY
ATTORNEY GENERAL'S OFFICE
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Anchorage, Alaska 99501

FOR THE RESPONDENT: ELIZABETH D. BRENNAN
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Anchorage, Alaska 99501

GUARDIAN AD LITEM: ELIZABETH RUSSO

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1 THE COURT: All right.

2 MS. BEECHER: Your Honor, we would like to

3 be heard on the representation part.

4 THE COURT: All right.

5 MS. BEECHER: Your Honor, I'm here to

6 address representation issue. We're -- we're having

7 some ongoing issues with Mr. Gottstein filing

8 paperwork in the case before he's actually appointed

9 and representing the client. And we've addressed this

10 with the Superior Court. And our position is that we

11 will not co-counsel with Mr. Gottstein.

12 If Mr. Gottstein wants to substitute in at

13 the time that the medication petition is ripe and is

14 to be heard, we can have sequential representation.

15 But this is -- this remains very difficult for us.

16 Because Mr. Gottstein takes it upon himself to start

17 communicating with the state, filing pleadings, doing

18 things as though he is representing Mr. Bigley.

19 At this point, we're still representing

20 Mr. Bigley. I mean, unless the court relieves us of

21 that obligation and substitutes in Mr. Gottstein, we

22 have sort of an ongoing difficulty with trying to

23 coordinate our representation of Mr. Bigley in the

24 best way we feel possible. And we'd like the Court

25 to, I guess, address that issue for us.

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1 PROCEEDINGS

2 THE COURT: This is in the matter of the

3 necessity for the hospitalization of William Bigley,

4 Case number 3AN-08-493. Let's see. We have

5 Miss Russo. And are you -- you're Mr. --

6 MR. TWOMEY: Twomey, Your Honor.

7 THE COURT: -- Twomey? Is it T-o-o?

8 MR. TWOMEY: T-w-o.

9 THE COURT: And Miss Brennan is here on

10 behalf of Mr. Bigley. And I take it, Mr. Gottstein,

11 you're here because if there's a -- pardon me -- that

12 you're here in the event that he -- that there's a

13 recommendation for commitment because of the

14 medication petition.

15 MR. GOTTSTEIN: Your Honor, this morning

16 Mr. Bigley gave me a copy of the petition for the

17 forced medication. And it has -- part of it is an

18 emergency -- for continued emergency forced drugging.

19 And so I -- I --

20 THE COURT: But you're not representing him

21 in the commitment part.

22 MR. GOTTSTEIN: Not in the commitment.

23 THE COURT: Okay. But that's why you're

24 here.

25 MR. GOTTSTEIN: Yes, Your Honor.

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1 In the past, the Superior Court has found

2 that those pleadings are not appropriately filed and

3 that they should be held until such time as there's an

4 issue with the medication petition in this matter.

5 MR. GOTTSTEIN: Your Honor, may I? I think

6 Ms. Beecher is mistaken on a couple of areas. One, is

7 I am representing Mr. Bigley with respect to the

8 forced drugging aspects. And I notified them of that

9 on Saturday. And actually, I think it's pretty

10 outrageous that the Court wasn't notified of that by

11 the hospital when it filed the petition, because I was

12 already representing him at the -- at the time even

13 before the petition was filed. And I informed the

14 hospital's attorney of that.

15 And with respect to the -- there are two

16 separate petitions, Your Honor, the involuntary

17 commitment and the forced drugging. And I'm -- I'm

18 entitled and Mr. Bigley is entitled to have

19 representation of his choice. I'm willing to

20 represent him with respect to the forced drugging. I

21 filed a limited entry of appearance with respect to

22 that. That's permitted. I'm his attorney for the

23 forced drugging. They're the -- they're the attorney

24 for the involuntary commitment. And, you know, I'd be

25 happy -- you know, happy to work with them.

1 These things come up so quickly. And -- and
2 they are of necessity with -- with respect to the
3 involuntary commitment, because of the massive
4 curtailment of liberty represented by the commitment,
5 that those have to be held quickly.

6 Normally, the forced drugging petitions are
7 supposed to be held, you know, more normally. In this
8 case, we've got this petition for -- for emergency --
9 authorization for continued emergency petition. So
10 we've actually got both of -- I mean, I don't know,
11 Your Honor, how you plan to proceed with that. But
12 that's potentially live right now even before the
13 commitment. I don't know what the hospital's
14 intention is on that.

15 MS. RUSSO: Your Honor -- sorry -- if I may,
16 my -- my office is not actually a party to the
17 commitment petition. I'm here on behalf of the Office
18 of Public Advocacy. But we do have an opinion as to
19 the representation issue that the P.D.'s office has
20 brought up. Basically, it's not -- this continued
21 fighting is just not, in -- in our opinion, in
22 Mr. Bigley's best interest about who's going to
23 represent Mr. Bigley when he deserves to have a
24 commitment hearing as soon as possible.

25 I think the continued questions surrounding

1 the representation make it confusing for the parties
2 to the case for the Court to be able to hold the
3 hearings in a timely fashion. And it is an issue that
4 the Court's going to have to decide.

5 Because you can't -- although Mr. Gottstein
6 tries to clearly bifurcate the two proceedings,
7 they're inextricably linked. The Court needs to be
8 looking at the treatment Mr. Bigley's going to be
9 receiving in the course of the commitment. And then
10 they will -- the treatment that Mr. Bigley is going to
11 be receiving is presumably medication.

12 And so even though Mr. Gottstein would like
13 to suggest that the proceedings can be clearly
14 bifurcated, it's -- I don't believe it can be. And
15 the continued warring is just not necessarily doing
16 Mr. Bigley any good in the long run.

17 THE COURT: Mr. -- is it Twom- --

18 MR. TWOMEY: Twomey, Your Honor.

19 We need clarification on this issue so that
20 we know who to communicate with in this case. There
21 has been uncertainty over Mr. Gottstein's role both
22 previously and with this current commitment
23 proceeding. So we just want it straightened out one
24 way or another so we know who to communicate with.

25 THE COURT: I'm a little unclear about what

1 the Public -- what you're actually asking for.

2 MS. BEECHER: Well, Your Honor, this same
3 issue was addressed in front of Judge Smith. And
4 essentially, we're asking that Mr. Gottstein not be
5 allowed to do a, quote, unquote, "limited entry of
6 appearance" in the case until he wishes to take over
7 representation of the client.

8 We will not co-counsel with Mr. Gottstein.
9 We do not think he has the ability or the authority to
10 sort of inject himself into this procedure and file a
11 limited appearance and ask for the Court to allow him
12 to act on the --

13 THE COURT: Right.

14 MS. BEECHER: -- act on the client's behalf.

15 THE COURT: I understand what the argument
16 is. What I'm trying to figure out is do you want
17 me -- are you asking that he not -- that the Court not
18 accept the limited appearance that --

19 MS. BEECHER: Yes, Your Honor. We're asking
20 that that paper -- that paperwork be rejected and that
21 his filings be rejected until and such time as he's
22 actually substituted in as counsel. Although, I
23 wanted to echo, I think, Miss Russo's comments and
24 argue it would normally be best for a client to have
25 unified representation in these cases. It is

1 difficult, I think, to bifurcate them, although
2 certainly if the Court finds that we can do the
3 commitment hearing and then Mr. Gottstein can
4 sequentially pick up the case, that's fine.

5 But we also believe that there -- in some
6 regard, Mr. Gottstein's involvement with Mr. Bigley
7 makes our representation of him more complicated and
8 more difficult. Because frankly, we just don't
9 necessarily approach the cases exactly the same way.
10 We're concerned about the communications with the
11 client vis-a-vis our representation.

12 I don't really want to go into a whole lot
13 of detail. But I think that in many respects, it does
14 not enhance our ability to be effective for Mr. Bigley
15 with this sort of attempt at joint representation. It
16 just simply isn't workable, from our viewpoint.

17 THE COURT: And so what did Judge Smith do?

18 MS. BEECHER: Basically, I think he told
19 Mr. Gottstein that he was not representing Mr. Bigley
20 until such time as there was -- excuse me -- a
21 medication issue if he was going to substitute in as
22 counsel. In that particular case, Judge Smith denied
23 the state's petition for commitment so the issue
24 really went away. And Mr. Gottstein wasn't -- you
25 know, there wasn't an issue for -- for representation

1 on the medication petition because there was no
2 commitment.

3 THE COURT: Well, did you have anything else
4 you wanted to say?

5 MR. GOTTSTEIN: Well, Your Honor, I was
6 willing to accept that arrangement previously. And
7 I'm not willing to accept that now as -- particularly
8 with the existing emergency application.

9 THE COURT: What do you mean you're not
10 willing to accept it?

11 MR. GOTTSTEIN: You're going to -- when
12 Judge Smith and previously -- I agree -- I agreed to
13 that. I mean --

14 THE COURT: You agreed to what?

15 MR. GOTTSTEIN: To this sequential
16 representation, that I wouldn't come in until after
17 the involuntary commitment. And then API actually in
18 that case, from my perspective, manufactured an
19 emergency drugging, and then I came in.

20 THE COURT: I just want to know what your
21 response is. I want to know -- don't go back to the
22 other case and about what was going on there. I just
23 want to know how it -- if you're saying you're not
24 accepting sequential representation, then what are you
25 planning on doing?

1 MR. GOTTSTEIN: I'm -- I'm representing him
2 with respect to the forced drugging petition. I had
3 entered a limited entry of appearance. I'm his
4 attorney. They were notified of that on Saturday.
5 And I wasn't even served with any papers.

6 THE COURT: Well, you're not addressing what
7 they're talking about. You're talking about whether
8 people know about it. I'm sure -- I mean, I'm the
9 only one who probably doesn't know all of the stuff
10 that's going on in this relationship.

11 But it doesn't matter whether they knew or
12 not that you were in it. The issue is whether or not
13 you have a right to enter a limited appearance and
14 whether you can file paperwork and expect people to
15 respond or reply to it when you're not -- we're not
16 even to the stage of the case that you're intending to
17 represent him on.

18 MR. GOTTSTEIN: Well, Your Honor, a petition
19 has been filed against my client. And I filed a
20 limited entry of appearance with respect to that.
21 They're representing him with respect to the
22 involuntary commitment. I really don't see the
23 problem.

24 THE COURT: Well, you just said you accepted
25 sequential representation. But now you don't accept

1 it. So I want to know what it is you're saying --

2 MR. GOTTSTEIN: They represent -- excuse me,
3 Your Honor. They represent -- the Public
4 Defender Agency --

5 THE COURT: No. You speak when I say I'm
6 done. I'm not interrupting you, I hope.

7 All right. Go ahead.

8 MR. GOTTSTEIN: I apologize, Your Honor.
9 The Public Defender Agency is representing

10 Mr. Bigley with respect to the -- this is my
11 position -- with respect to the involuntary commitment
12 petition. They can proceed with that. I'm
13 representing Mr. Bigley with respect to the forced
14 drugging petition when -- if that comes in -- that's
15 currently been filed.

16 THE COURT: Isn't that sequential
17 representation?

18 MR. GOTTSTEIN: They're -- well, they're two
19 separate proceedings. I've -- I've entered a limited
20 entry appearance with respect to that petition. So I
21 don't know if it's sequential because of the emergency
22 drugging aspect of it, which I've never seen them do
23 before, but I haven't, you know, had that --

24 THE COURT: All right.

25 MR. GOTTSTEIN: -- that much experience

1 with.

2 Your Honor, if we could look at the --

3 THE COURT: No.

4 MR. GOTTSTEIN: -- the forced drugging
5 petition.

6 THE COURT: No, no. We're not even
7 addressing the issue of medication unless there is an
8 actual commitment. We haven't even gotten to that.
9 And I don't know if we're going to get there today.

10 But based on what the other parties have
11 argued, I think that their position is correct, that I
12 don't think you have the right to enter a limited
13 appearance. And there's two inches of paperwork -- I
14 guess it's here -- which hasn't -- I guess they
15 stamped it in. But as far as I'm concerned, it's not
16 going to be reviewed or accepted. It's rejected until
17 we get to that issue.

18 And in that case, you're not co-counsel and
19 you're not to be sitting at the table with them or
20 interfering with their conduct of the case.

21 MR. GOTTSTEIN: Your Honor, may I -- could
22 you issue a written order for that today?

23 THE COURT: Sure. I'm sorry? We're not
24 doing that right now.

25 MR. GOTTSTEIN: So I take it you want me to

1 sit back?

2 THE COURT: Well, I'm assuming that that's
3 what they wanted. Yes. You're not in the case.
4 They're not consenting to have you at the table as
5 co-counsel. So I'd like you to sit in the back, yes.

6 MR. GOTTSTEIN: Then I believe Mr. Bigley
7 has a right to -- he indicated that the hearing is
8 open to the public. That's a requirement.

9 THE COURT: Well, it looks pretty open to
10 me. Well, Miss Brennan, I know you just arrived. Are
11 you -- where are you in terms of being prepared to go
12 forward?

13 MS. BRENNAN: I'm pretty familiar with
14 Mr. Bigley. But if we could take a short recess, then
15 I could -- I would appreciate that.

16 THE COURT: Okay. Off record.

17 THE CLERK: Off record. Please rise.
18 (Court recessed)

19 THE CLERK: On record.

20 THE COURT: We're back on record in
21 08-493PR.

22 Was somebody saying something right -- oh,
23 Ms. Russo's not here?

24 MS. BRENNAN: I don't think she's
25 participating, Your Honor.

1 MS. BEECHER: She excused herself.

2 THE COURT: Oh, she wasn't planning -- okay.

3 MS. BEECHER: She was just participating in
4 the representation part of the hearing.

5 THE COURT: Was somebody saying something
6 when I walked in? I mean, was somebody --

7 At any rate, I thought we should address the
8 issue of whether the hearing is open or not. Is there
9 somebody who's objecting to people who are in the
10 courtroom?

11 MS. BRENNAN: Your Honor, Mr. Bigley does
12 wish to have an open court. So we would not ask that
13 this be a closed hearing. I would, however, invoke
14 the witness exclusion law. I anticipate the
15 hospital's going to be calling a number of witnesses
16 and would ask that anyone that the hospital's planning
17 to call be excused from the courtroom.

18 THE COURT: Mr. Twomey?

19 MR. TWOMEY: Want to know who those folks
20 are?

21 THE COURT: Well, I just want your response
22 to what she's asking.

23 MR. TWOMEY: No objection to that rule.

24 THE COURT: Okay. I don't know who it is
25 that's going to be a witness. So if you could -- if

1 you --

2 MR. TWOMEY: Want me to go talk to those
3 folks?

4 THE COURT: Well, just we'll ask you to
5 leave the courtroom. And if you're confused about
6 whether you're going to be a witness, then he can
7 explain it to you right now.

8 MR. GOTTSTEIN: Your Honor?

9 THE COURT: Yes.

10 MR. GOTTSTEIN: I was served with a
11 subpoena, which I object to. So I don't -- I wasn't
12 listed as a witness. And I don't believe I should be
13 called. So it seems like that should be decided if I
14 need to be excluded from the courtroom.

15 MR. TWOMEY: I intend to call Mr. Gottstein.

16 THE COURT: You do?

17 MR. TWOMEY: Yes.

18 MR. GOTTSTEIN: Your Honor, I object to
19 that.

20 THE CLERK: I can't pick him up. He has to
21 sit near a mike.

22 THE COURT: We can't hear -- you have to
23 come up, because the mike is not picking you up.

24 MR. GOTTSTEIN: Your Honor, I object to
25 being called. I think it's just -- and there's many,

1 many problems with calling me. It does not appear
2 that it's necessary. He's got other witnesses, many
3 other witnesses. There's a potential question about
4 disqualification. And this, you know, appears
5 potentially a means to try and disqualify me. But in
6 any event, it just doesn't seem proper or necessary
7 for me to be called as a witness.

8 MR. TWOMEY: Your Honor, I called
9 Mr. Gottstein as a witness during the last proceedings
10 due to the fact that Mr. Gottstein found it necessary
11 to call the police department to have Mr. Bigley
12 removed from his office.

13 THE COURT: Well --

14 MR. TWOMEY: My understanding is that
15 there's been another incident.

16 THE COURT: Well, first of all, the grounds
17 that have been suggested by Mr. Gottstein are not
18 sufficient for me to excuse him as a witness. And if
19 it gets to the point where there's an issue of
20 disqualification or he's being asked to reveal some
21 sort of client confidences, well, we won't let that
22 information in. So if you've been subpoenaed, then
23 you need to -- well, do you care if he's in the
24 courtroom? I mean --

25 MR. TWOMEY: Mr. Gottstein, no. I don't

1 think --

2 THE COURT: All right. You're still subject
3 to being a witness, but you don't have to be excused
4 with the rest of the people.

5 MR. GOTTSTEIN: So I get to stay in the
6 courtroom?

7 THE COURT: Yes.

8 So looks like the same number of people that
9 we started with.

10 Maybe we should have a discussion about how
11 many people are going to be called and what time frame
12 we're talking about here.

13 MR. TWOMEY: Well, as you can see, we've got
14 probably four or five witnesses.

15 THE COURT: Well, a lot more than four or
16 five just left.

17 MR. TWOMEY: Well, there are about four or
18 five that we intend to call.

19 THE COURT: Okay. So how much -- how
20 much -- the trouble is I have a morning calendar plus
21 an afternoon calendar. So I'm going to have to -- at
22 least for the morning part, I'm going to have to leave
23 and go do those hearings and come back. But I'm
24 trying to figure out how many hours you think this is
25 going to take.

1 MR. TWOMEY: I wouldn't think more than two
2 hours, Your Honor.

3 THE COURT: All right. And Miss Brennan,
4 would you be calling any witnesses other than your
5 client, if you choose to?

6 MS. BRENNAN: I'm not sure, but -- at this
7 point. I don't expect to be taking extra time.

8 THE COURT: All right. Okay. Mr. Twomey,
9 you can proceed. Call your first witness.

10 MR. TWOMEY: All right. Kimberly Frensley,
11 Your Honor.

12 THE COURT: This is -- that's the witness
13 stand there.

14 THE WITNESS: Okay.

15 THE COURT: And once you get there, if
16 you'll remain standing, the in-court will swear you
17 in.

18 (Oath administered)

19 KIMBERLY FRENSLEY
20 called as a witness on behalf of the Petitioner,
21 testified as follows on:

22 DIRECT EXAMINATION

23 THE CLERK: Thank you. Go ahead and be
24 seated. Would you please state and spell your first
25 and last name for the record?

1 THE WITNESS: Yes. Kimberly K. Frensley,
2 K-i-m-b-e-r-l-e-y, K for my middle initial, and then
3 Frensley, F-r-e-n-s-l-e-y.

4 THE CLERK: Thank you.

5 THE COURT: You may inquire.

6 BY MR. TWOMEY:

7 Q Good morning, Miss Frensley. Where are you
8 employed?

9 A First National Bank at the main branch on
10 4th and G.

11 Q And what is your position there?

12 A I manage the branch.

13 Q Are you familiar with Mr. Bigley?

14 A Yes, I am.

15 Q Is he a customer there at the bank?

16 A He's a -- he comes in to cash checks, yes.

17 Q How long have you been employed at the bank?

18 A It will be 26 years in August.

19 Q And you've been branch manager for how long?

20 A Ten years.

21 Q How long have you known Mr. Bigley?

22 A I'd say between seven to ten. It's been a
23 long time. Maybe even 15.

24 THE COURT: Year -- are you saying years?

25 THE WITNESS: Years, uh-huh.

1 BY MR. TWOMEY:

2 Q And do you personally deal with him when he
3 comes into the bank?

4 A Yes, I do.

5 Q And why is --

6 A It's just myself.

7 Q Why is it that you deal with him personally?

8 A He at times gets abusive, aggressive.

9 MS. BRENNAN: Objection, Your Honor. I
10 don't know the time frame that this witness is talking
11 about. This petition was dated on April 28th. And I
12 know that this witness was called at the last hearing.
13 And I believe that in terms of relevance that this --
14 if there's going to be testimony about my client's
15 conduct, it should be within the time frame of this
16 particular petition and not past conduct.

17 THE COURT: Well, was the question why she
18 alone deals with him?

19 MR. TWOMEY: Yes.

20 THE COURT: Objection's overruled. Because
21 I think it's pertinent to the question she was asked.
22 You can answer the question.

23 THE WITNESS: Okay. I'm sorry. I was --

24 BY MR. TWOMEY:

25 Q I had asked you why you personally deal with

1 Mr. Bigley as opposed to someone else at the bank.
 2 A My staff is afraid of him. We've had
 3 encounters, and not pleasant ones.
 4 Q Okay. I'm going to direct your attention to
 5 some of the more recent encounters with Mr. Bigley, in
 6 particular during the month of April this year. Have
 7 you had occasion to deal with Mr. Bigley during the
 8 month of April?
 9 A Yes, I have.
 10 MS. BRENNAN: Your Honor, again, I'd object.
 11 There was a hearing regarding this conduct. I believe
 12 it was on April 21st or April 22nd in front of Master
 13 Lack. And so I believe that this -- that conduct is
 14 not relevant for this hearing.
 15 MR. TWOMEY: Well, Your Honor, it is
 16 relevant for this hearing. It establishes -- it gives
 17 the Court the facts in terms of Mr. Bigley's behavior
 18 at the bank --
 19 THE COURT: I'm overruling --
 20 MR. TWOMEY: -- people who are responding to
 21 his behavior.
 22 THE COURT: The objection's overruled. You
 23 can answer the question, if you remember it.
 24 THE WITNESS: Can you say that again?
 25 I'm --

1 BY MR. TWOMEY:
 2 Q I'm directing your attention to the April
 3 time period --
 4 A Okay.
 5 Q -- April of this year and asking you to tell
 6 the Court, I guess, what was the first incident in
 7 April that you recall involving Mr. Bigley at the
 8 bank?
 9 A Well, it was on April -- I think the 8th or
 10 9th. It was the day that it was snowing. And we
 11 called the cops. They didn't show up. He was very
 12 aggressive. Instead of just talking off to the side,
 13 he was directly looking at me and talking to me.
 14 And he had brought in an article about the
 15 New York Times. And I think he got confused because
 16 he thought I had his money, which I didn't have his
 17 money. He does come in and cash checks. So we had
 18 some words. And we called the police department, but
 19 they didn't show up.
 20 And what happened was I called then Public
 21 Advocacy and told them that he is -- I did a no
 22 trespassing and I don't want him in the branch because
 23 he's getting aggressive and abusive towards the staff.
 24 And so it was our agreement that the -- his actual
 25 guardian would come in and cash the checks.

1 THE COURT: If I could just interrupt here,
 2 are you saying that this is something that had already
 3 occurred before April 8th or 9th, that this
 4 arrangement that you're talking about right now was
 5 already in effect?
 6 THE WITNESS: No. Well, it -- it was due
 7 from the incident of the actual 9th. There -- he came
 8 in on the 8th. And he was being disruptive with my
 9 employees as well as some of the customers.
 10 THE COURT: So then the arrangement that
 11 you're talking about right now --
 12 THE WITNESS: Was over --
 13 THE COURT: -- was a result of that.
 14 THE WITNESS: Right. Was a result directly
 15 of his conduct at the branch. So I called Public
 16 Advocacy and told them not -- not to have him come in,
 17 for them to come in and cash his checks. And then
 18 they'd give him the money from the office.
 19 So then when the Public Advocacy individual
 20 came in to cash the check on the 9th, then here comes
 21 Mr. Bigley right behind him. And we had an incident
 22 with all three of us in the branch. And then the
 23 police department was called.
 24 BY MR. TWOMEY:
 25 Q So you called the police on two occasions,

1 on April 8th and April 9th?
 2 A Uh-huh.
 3 Q Yes?
 4 A And then the 10th as well, three days in a
 5 row.
 6 THE COURT: Is the 10th when OPA came
 7 with -- is the 10th when OPA came to cash the check?
 8 THE WITNESS: I believe so. I got my --
 9 yeah.
 10 THE COURT: But when you're saying the third
 11 time, that's --
 12 THE WITNESS: The third time was actually
 13 when after -- they got -- he got out of the -- out of
 14 jail quite fast.
 15 THE COURT: Was the third time -- the third
 16 time that we're talking about is when OPA came --
 17 THE WITNESS: Yes.
 18 THE COURT: -- and he came either with
 19 them or --
 20 THE WITNESS: Uh-huh.
 21 THE COURT: -- behind them.
 22 THE WITNESS: Uh-huh.
 23 BY MR. TWOMEY:
 24 Q Okay. Can you tell us what happened when
 25 Mr. Bigley's guardian came in and attempted to cash a

1 check?

2 A Well, we were cashing the check. And then
3 Mr. Bigley came into the branch behind him.

4 Q Did Mr. Bigley make any threats to you?

5 A Yes. He was -- he was saying that he was --
6 where's my money? And he was looking directly at me.
7 And he was cursing and -- and so when he directed his
8 anger towards me directly, that was pretty scary. And
9 my -- my actual employees called the cops, because it
10 was a three-way conversation that was getting ugly.

11 And then he was stating to his actual
12 guardian at Public Advocacy that he didn't want him
13 around. He didn't want him having the money. And
14 it's all about the money right now. But to us at the
15 branch, we don't take his money. We just cash the
16 money -- the check and give him the money and ask him
17 to leave.

18 Q Did Mr. Bigley raise his voice?

19 A Yes, he did. He raised his voice. He was
20 looking straight at me, telling me no matter what
21 that, you know, I had his money, which I didn't have
22 his money.

23 Q Did he use any profanity?

24 A He used profanity, yes.

25 Q Did he make any threatening movements

1 towards you?

2 A He was coming directly at me, but I was
3 behind the teller line, so I backed up.

4 Q Did the police arrive and take him away?

5 A Yes, they did. They took him away.

6 Q Did he return to the bank?

7 A He returned right back a couple hours later,
8 coming straight back towards Customer Service. And he
9 didn't go on the teller line. He was coming back
10 towards Customer Service, because he saw me. And he
11 was aggressive. And he was going like -- he was at an
12 angle going towards me, coming at -- see, they can't
13 do anything. I'm back. And I'm going to -- you got
14 my money and I'm going to get you.

15 And I had one of my employees get in the
16 middle. And she's Samoan. She's quite large. And
17 was -- and there was pushing and shoving going on.
18 But she was the one that was -- she was tired of his
19 screaming and yelling. He was screaming and yelling.
20 And she started screaming and yelling. So it got a
21 little scary.

22 Q Did you hear Mr. Bigley say, I'm going to
23 get you?

24 A Directly at me.

25 Q And did you take that to be a threat?

1 A Yes, I did.

2 Q Your employee, the Samoan employee, is her
3 name Minchee (ph)?

4 A Mingee (ph), uh-huh.

5 Q Mingee? Did she restrain Mr. Bigley?

6 A Well, she was pushing and, you know, she --
7 you got to leave. You got to leave. She couldn't
8 take it anymore.

9 THE COURT: That's what she was saying?

10 THE WITNESS: She couldn't take it anymore.

11 Yes. That's what she was saying.

12 MR. TWOMEY: Was --

13 THE COURT: And she --

14 BY MR. TWOMEY:

15 Q Was Mr. Bigley moved out into the --

16 A Yes, he was moved out into the foyer. And
17 then the police came and got him. Yeah.

18 Q I questioned you about that series of events
19 the last hearing.

20 A Uh-huh.

21 Q Since that incident at the bank, has
22 Mr. Bigley returned to the bank?

23 A Friday. Friday, he returned and he was
24 wearing his Carharts. And he was -- he came at -- in
25 the branch. But before he came into the branch, I saw

1 him. I was sitting at my desk. He looked through the
2 window and he saw me. And he was coming into the
3 branch.

4 I have a guard on Friday. And the guard and
5 the other officer of the branch, John Smith, met him
6 two steps into the branch and stopped him. And we
7 called the cops. I was on the phone with the cops.
8 They came. I don't -- they didn't get him right when
9 he left, because the two gentlemen came side by side,
10 went to the foyer, and then went out and was talking
11 to him, saying, Bill, you're not -- you're
12 trespassing. You're not allowed in the branch, any
13 First National. And so they had words. And then I
14 didn't see Bill or anything, so --

15 Q Now, the guard that you have -- the guard
16 that you had at the branch --

17 A Uh-huh.

18 Q -- that was the -- that person was placed
19 there because of the your concerns --

20 A Uh-huh.

21 Q -- about Mr. Bigley?

22 A Yes.

23 Q Is that correct?

24 A Yes.

25 Q You were concerned about the physical safety

1 of your employees?
 2 A Yes. And myself.
 3 Q And yourself?
 4 A He -- yeah. It's just -- you don't know
 5 what he's going to do.
 6 Q Did Mr. Bigley make any threats this last
 7 Friday when he was at the bank?
 8 A Not to me, no.
 9 Q Did you hear any -- any threats that he
 10 made?
 11 A He just was wanting to come in. No.
 12 Q Was he uncooperative with your employees in
 13 terms of meeting with them?
 14 A Yeah. It took them a couple minutes and
 15 then he left, uh-huh. And then the cops came.
 16 Q Now, you've known or dealt with Mr. Bigley
 17 for several years.
 18 A Uh-huh.
 19 Q Have you noticed a change in his demeanor?
 20 A In April, yes.
 21 MS. BRENNAN: I'd object, Your Honor. I
 22 mean, this is a witness who knows Mr. Bigley from
 23 coming to the bank. And for her to be giving an
 24 opinion about his state of mind or his physical
 25 well-being, I think is outside the scope of what she

1 should be testifying to.
 2 MR. TWOMEY: Well, it's her mental
 3 impression of this witness, of his demeanor.
 4 THE COURT: The objection is overruled.
 5 BY MR. TWOMEY:
 6 Q Have you noticed a change in Mr. Bigley's
 7 demeanor?
 8 A I think that, you know, yeah, he's changed.
 9 Before, you know -- I guess I kind of got more used to
 10 him just talking and rambling. We'd have a
 11 conversation. He'd come in. We'd cash the checks.
 12 And I would talk to him and walk him out.
 13 But now, it's different. The fact of the
 14 matter is he's aggressive. He starts yelling when he
 15 comes in. If he's not -- if I don't take care of him
 16 right away -- in April he was getting very upset. And
 17 he was getting abusive to other employees as well as
 18 customers. And I can't have that.
 19 And it's a scary situation when you got
 20 somebody that is just going off in the branch and
 21 going up to people, cursing and talking about the
 22 president and whatever, and then adds derogatory
 23 statements and yelling and screaming.
 24 It's a scary situation, especially for me
 25 when he is aggressive coming at me. I can't have

1 that. It's very disruptive for my employees as well
 2 as myself. The state of mind for us now is it's a lot
 3 more scarier out there.
 4 Q Do you believe that he's acting in a more
 5 aggressive fashion now than previous?
 6 A Yes, uh-huh.
 7 Q Have you taken any other actions besides
 8 hiring a security guard in response to your concerns
 9 about safety at the branch?
 10 A We're having my bosses -- we have a security
 11 officer. He's coming out -- he's out of town -- to
 12 talk to us about how to handle the situations. And
 13 I'm taking a defensive course for my personal self.
 14 Q You decided to take a self-defense course?
 15 A Yes, uh-huh.
 16 Q Because of your concerns about Mr. Bigley?
 17 A Well, yes. And to just be more prepared.
 18 I need to be prepared. Because I do see other
 19 clients. I leave the branch. I can't -- this is
 20 ridiculous. It's getting to the point where right
 21 now, I -- I have to defend myself, no matter what
 22 comes about.
 23 MR. TWOMEY: I don't have any further
 24 questions. Thank you.
 25 THE COURT: Miss Brennan?

1 KIMBERLY FRENSELY
 2 testified as follows on:
 3 CROSS EXAMINATION
 4 BY MS. BRENNAN:
 5 Q Good morning.
 6 A Good morning.
 7 Q The persons that you talked about, you
 8 testified in Court about before; is that correct?
 9 A Uh-huh.
 10 Q And the second incident, that took place
 11 last Friday?
 12 A Uh-huh.
 13 Q Okay. And you only saw Mr. Bigley for a
 14 couple minutes?
 15 A Right, uh-huh.
 16 Q And between that time from April -- was the
 17 first incident on April 8th?
 18 A Uh-huh.
 19 Q Is that a ye- -- I'm sorry.
 20 A Yes, yes.
 21 Q Because it's recorded and so --
 22 A Okay.
 23 Q So when you in order, the microphone didn't
 24 pick it up.
 25 A Okay.

1 Q And then the second incident was on April
2 25th.
3 A Well, on April 25th he came into the branch.
4 Q Okay. And had Mr. Bigley come to the bank
5 in between those -- those two dates?
6 A Which? The two dates --
7 Q Between April 8th and April 25th.
8 A Well, he came in the 8th and the 9th and the
9 10th.
10 Q Right.
11 A And then he came in --
12 Q And you testified about those instances
13 previously.
14 A Right. And then he came in on Friday.
15 Q Okay. And that was the first time you had
16 seen him?
17 A Uh-huh.
18 Q Okay.
19 A Uh-huh.
20 Q And -- and you testified that there was a
21 security guard there?
22 A Uh-huh, uh-huh.
23 Q And is that the first time that there's been
24 a security guard at your branch?
25 A Yeah. Well, I got it right after the

1 incidents on the 10th. And I've had him all the way
2 up until Monday. Monday was his last day until I feel
3 that -- so I've had him all the way until Monday. So
4 he wasn't there yesterday. Uh-huh.
5 Q And -- and when Mr. Bigley came in, the
6 security guards approached him; is that correct?
7 A Yes. And I have an officer, John Smith,
8 he's the second in command. They both were there at
9 the door.
10 Q And have those officer ever been at your
11 branch before?
12 A My -- the security officers?
13 Q Right.
14 A No. We had them a long, long time ago. But
15 we haven't had them since the central vault left, our
16 main vault. We used to have them then. But I haven't
17 had any officers until this incident, yeah.
18 Q And Mr. Bigley left after they spoke with
19 him?
20 A Yes, uh-huh.
21 Q And -- and -- and you didn't hear him make
22 any threats to you?
23 A No.
24 Q And he wanted to come into the bank at that
25 point in time; is that correct?

1 A Yeah. He got two steps in.
2 Q Okay. And do you know that if he had a
3 check or not?
4 A No. Didn't ask. He has a no trespassing.
5 He's not supposed to come into the bank. That's why I
6 called the cops.
7 Q And he left before the cops came; is that
8 correct?
9 A Uh-huh.
10 Q And he didn't hit anyone in the bank?
11 A No. He didn't hit anybody there.
12 Q And he didn't hit any of the security
13 guards?
14 A No. No, he did not.
15 Q Okay. And he raised his voice?
16 A Uh-huh.
17 Q And he was acting disruptive; is that
18 correct?
19 A Uh-huh.
20 Q And he did not return; is that correct?
21 A No, he didn't return. No, no. I did see
22 him when I went out to a client, when I told Tina when
23 she called so -- and told me that they were going to
24 subpoena me.
25 Q You saw Mr. Bigley then?

1 A Little bit later, uh-huh, across the street
2 by Side Street.
3 Q Okay. But didn't he --
4 A I just didn't look at him. He just pointed
5 his hand at -- you know, his hand at me. And I walked
6 by and went right back into the branch.
7 Q And he didn't approach you --
8 A No.
9 Q -- or follow you?
10 A No.
11 Q Okay. And has Mr. Bigley ever hit you in
12 the past?
13 A No, no.
14 MS. BRENNAN: I don't have any other
15 questions.
16 THE COURT: Any redirect?
17 MR. TWOMEY: No, Your Honor.
18 THE COURT: Thank you. You may be excused.
19 THE WITNESS: Okay.
20 MR. TWOMEY: May as well call Mr. Gottstein
21 while he's --
22 THE COURT: Mr. Gottstein?
23 (Oath administered)
24 JAMES B. GOTTSTEIN
25 called as a witness on behalf of the Petitioner,

1 testified as follows on:

2 DIRECT EXAMINATION

3 THE CLERK: Thank you. Go ahead and be
4 seated. Would you please state and spell your first
5 and last name for the record?

6 THE WITNESS: Jim or James B. Gottstein,
7 J-a-m-e-s, B., Gottstein, G-o-t-t-s-t-e-i-n.

8 THE COURT: You may inquire.

9 BY MR. TWOMEY:

10 Q Morning, Mr. Gottstein.

11 A Good morning.

12 Q Have you had occasion since April 10th to
13 call the police in connection with Mr. Bigley?

14 A I don't believe so, no.

15 Q Have you called the police on more than one
16 occasion during the month of April in connection with
17 Mr. Bigley?

18 A Yes.

19 MS. BRENNAN: And, Your Honor, again, I'm
20 objecting for the record that I believe that this
21 is -- he's asking for conduct that's already been
22 litigated and that is outside the scope of the
23 petition.

24 MR. TWOMEY: Your Honor, I don't know what
25 she means by conduct that's already been litigated.

1 THE COURT: Well, I'm assuming -- we might
2 as well just discuss this right now. The -- I've got
3 the -- the case file for the last petition that was
4 heard by Jon- -- by Master Lack. And as I understand
5 it, when the petition for the 30-day commitment was
6 filed, it was -- the only box that was checked was
7 "gravely disabled." And the petition was dismissed
8 because it didn't meet the criteria for involuntary
9 commitment.

10 And the current petition actually checks
11 both boxes, the "danger to self or others" and
12 "gravely disabled." And I gather that this may have
13 been litigated already, some of the incidents -- some
14 of the things that have been talked about have been
15 testified to before. But the state is proceeding on a
16 different ground.

17 And I'm assuming the one thing that's
18 happened since the dismissal of the other petition was
19 Mr. Bigley's -- Mr. Bigley going to the bank on
20 Friday.

21 MR. TWOMEY: Correct.

22 THE COURT: Okay. At any rate, I'm going to
23 overrule your objection, but I'll -- and if you don't
24 want to continue to make it, I'll consider it to be a
25 continuing objection.

1 MS. BRENNAN: Thank you, Your Honor.

2 THE COURT: That your position is that they
3 are relitigating -- trying to do the same thing with
4 the same facts.

5 MS. BRENNAN: Thank you.

6 THE COURT: Go ahead.

7 BY MR. TWOMEY:

8 Q Do you have my question in mind?

9 A I think I actually answered it before the
10 objection.

11 Q Okay. So you'll agree that you've called
12 the police on several occasions during the month of
13 April in connection with Mr. Bigley?

14 A I think it may -- it was two, for sure, and
15 maybe three.

16 Q Okay. All right. I have records from the
17 police department showing phone calls on April 9th,
18 three phone calls on that day. Is that inconsistent
19 with your memory?

20 A Well, some of the phone calls -- what
21 happens is that if I call them, then usually
22 Mr. Bigley leaves. And then I call them back and tell
23 them they don't need to come. And so some of those
24 phone calls may reflect that.

25 Q I have two phone calls from your office to

1 the police department on April 7th. Is that
2 consistent with your memory?

3 A It's certainly not inconsistent. What day
4 of the week is that?

5 Q And I have --

6 THE COURT: He wants to know what day it
7 was.

8 THE WITNESS: What day of the week?

9 BY MR. TWOMEY:

10 Q What day it was?

11 THE COURT: I can -- April 7th was Monday.
12 April 7th was -- it's a Monday. The kind of day is a
13 Monday.

14 THE WITNESS: Yeah. I believe that I called
15 them that Monday and that Tuesday. I don't remember
16 if I called them that Wednesday.

17 BY MR. TWOMEY:

18 Q Well, I have a record of a phone call from
19 your office, Lisa Smith, on April 10th. Is that
20 consistent with your understanding?

21 A Well, I mean, this is kind of hearsay, isn't
22 it? I didn't call on April 10th. I wasn't in the
23 office at April 10th, at least during -- during that
24 time.

25 Q Why were the police called?

1 A Why were the police called?
 2 Q Yes.
 3 A Well, Mr. -- Mr. Bigley likes to hang out at
 4 the -- at the office, at my office. He -- he will get
 5 loud and yell and kind of prevent me and my assistant
 6 from getting our work done and, occasionally, get
 7 other tenants in the building upset. And so I just
 8 can't -- I can't have him preventing me from doing my
 9 work, preventing my assistant from doing her work
 10 or -- or having -- upsetting other tenants in the
 11 building.
 12 And so I -- when it gets to that point, if
 13 he won't leave when I ask him to, then I feel I have
 14 no choice but to call the police. And then he -- he
 15 has uniformly left when I call the police.
 16 Q Since April 10th, have you had any contact
 17 with the police department concerning Mr. Bigley?
 18 A I -- I don't think so. Since April 10th?
 19 Cert- -- I mean, if you have something that would
 20 refresh my recollection, I could certainly look at it.
 21 Q When you called the police in April, were
 22 you concerned about your personal safety?
 23 A No.
 24 Q Were you concerned about the safety of any
 25 of the employees or folks at the office?

1 A No.
 2 MR. TWOMEY: I have no further questions,
 3 Your Honor.
 4 THE COURT: Miss Brennan, anything?
 5 JAMES B. GOTTSTEIN
 6 testified as follows on:
 7 CROSS EXAMINATION
 8 BY MS. BRENNAN:
 9 Q So Bill has not assaulted you at all.
 10 A No. I've never seen him assaultive to
 11 anybody.
 12 Q Was he threatening to you at all?
 13 A Well, no. I mean, he -- he kind of makes
 14 all kinds of threats to all kinds of people. And
 15 people who know him know not to pay any attention to
 16 that. And so, you know, he's my -- from my
 17 understanding, he's never assaulted anybody. And so
 18 if he might have said something that the words, you
 19 know, might have been like a threat, I don't recall
 20 any of those. But if he had, I -- I just wouldn't
 21 have really paid any attention to them.
 22 Q So you called the cops, basically, because
 23 Mr. Bigley was being nuisance.
 24 A Well, yeah. I mean, he was -- yes. I
 25 couldn't have him in my office. Right. He would have

1 prevented me from working.
 2 Q Okay. And you've been working in the field
 3 of mental health for some years; is that correct?
 4 A Yes.
 5 Q And you know of different -- the different
 6 types of -- of services that they offer in Anchorage?
 7 MR. TWOMEY: Objection. Calls for opinion
 8 testimony. Lack of foundation.
 9 MS. BRENNAN: Well, I'll try to build --
 10 I'll make a better foundation.
 11 THE COURT: Okay.
 12 BY MS. BRENNAN:
 13 Q Mr. Gottstein, you've been working in the
 14 field of mental health law for how many years?
 15 A Well, in different capacities and knowledge
 16 for 25 years or more.
 17 Q Okay. And how have you gained your
 18 knowledge?
 19 A Well, I was actually a patient at API
 20 briefly in 1982 for about 30 days. I was a co-founder
 21 of Mental Health Consumers of Alaska and served on its
 22 board for ten years and from about 86 to '96, I think,
 23 which was a 501(c)(3) nonprofit that -- of people
 24 who -- they're called mental health consumers, people
 25 who had received or were receiving services. And it

1 provided services for a period of -- period of time
 2 after that.
 3 I, of course, was one of the main
 4 Plaintiff's attorneys in the Mental Health Trust
 5 litigation, which established the Mental Health Trust.
 6 And I served on the Mental -- the Alaska Mental Health
 7 Board, which is a statewide mental health planning
 8 agency for -- I forget the exact dates -- but about
 9 five years. And, of course, its job was to formulate
 10 the state mental health plan, basically. And I was
 11 involved in that. I was at various time chair of its
 12 Program Committee and also chair of the Budget
 13 Committee where we made recommendations for that.
 14 I co-founded a -- another nonprofit -- well,
 15 actually the Alaska Mental Health Consumer Web. And I
 16 served on its board for about ten years, I think, from
 17 about -- maybe not ten years. I got off, I think, in
 18 2002. And it is a consumer-run clubhouse, basically.
 19 Then I -- and it's still -- I -- it's still in
 20 existence and provides services.
 21 I -- I've -- I've co-founded Choices, Inc.,
 22 which stands for Consumers Having Ownership in
 23 Creating Effective Services, which is a
 24 consumer-run -- another nonprofit corporation, which
 25 provides independent case management services and

1 other services. It's peer-run.

2 Q And who did you co-found that with?

3 A Oh. Boy, I'd have to look that up. Because
4 there were -- there was another organization, Soteria
5 Alaska, which is a alternative to -- alternative to
6 hospitalization.

7 And so it was Eliza Eller, I think. And I
8 don't remember if I co- -- when she wasn't there.
9 Eliza Eller. Boy, I'd have to go look. Well, so I --
10 I don't remember.

11 I was -- so -- and then I co-founded the
12 Soteria Alaska, which is an alternative to in-pait- --
13 you know, psychiatric hospitalization, which the Trust
14 has -- I'm no longer on either the Choices or the
15 Soteria board as of last October. And the Mental
16 Health Trust Authority has funded it to, hopefully,
17 open this year.

18 I have been involved nationally in various
19 organizations. One is the International Center for
20 the Study of Psychiatry and Psychology, which
21 historically has been an academic organization that
22 studies psychiatric treatments and publishes
23 peer-reviewed articles on that. And I was actually
24 elected to the board of that some years ago.

25 I'm also involved nationally with consumer

1 organizations. So that's kind of a thumbnail of my
2 experience.

3 Q And throughout your work in this field, have
4 you become aware of different alternatives a
5 patient -- a patient with psychiatric issues may
6 participate in in Anchorage?

7 A Yes.

8 Q And can you explain what they are?

9 MR. TWOMEY: Overbroad, Your Honor.

10 MS. BRENNAN: I'm just asking him for
11 alternatives, Your Honor. Part of what the state has
12 to prove in this case is that there's no less
13 restrictive alternatives for Mr. Bigley.

14 Mr. Gottstein has vast experience in this area. And
15 he knows what these alternatives are.

16 THE COURT: I'll overrule the objection.

17 THE WITNESS: Well, in -- I mean, that
18 really is a lot. I mean, if we -- if we want to limit
19 it to Mr. Bigley, I think --

20 THE COURT: That's what we're limiting it
21 to.

22 THE WITNESS: Yeah. Okay. I -- I think
23 that there's an organization called Choices which
24 would be willing -- or Choices would be willing to
25 work with -- with him if -- it would need to get staff

1 and funding to do that. That's my understanding. And
2 the main thing is there's kind of a different
3 philosophy from force and coercion and based around
4 basically establish trying -- establishing a
5 relationship based on trust rather than coercion.

6 And so with respect to Mr. Bigley, I think
7 what he would really benefit -- what -- the thing -- I
8 think it's important to recognize that one has to look
9 at each individual situation and what's going on. And
10 what happens with Mr. Bigley is he has trouble
11 maintaining housing. And when he -- when he loses his
12 housing, then -- then it becomes trouble. And that's
13 irrespective of the medication, in my experience.

14 And so -- and his behavior is such that he
15 has a hard time maintaining housing. So, for example,
16 right now, he's banned from Brother -- Brother
17 Francis. Some -- some people I know -- I know
18 consumers who have lived in the woods for years to
19 avoid being picked up by the mental health system.
20 And they do quite well with that, winter, summer. And
21 they prefer that to the coercive mental health system.

22 But Mr. Bigley doesn't really -- in spite of
23 what he might say, doesn't -- doesn't really do that.
24 And so my experience is that when he gets in that
25 situation, you know, he will behave in a way that gets

1 him picked up and taken to the jail or to API.

2 And so, you know, I've thought long and hard
3 about what to do in this situation. And I -- and I
4 think that -- first off, that API should be available
5 to Mr. Bigley when he doesn't have, you know, housing.

6 Now, I think especially initially, that that
7 wouldn't -- that he would not avail himself of that.
8 But one of the things that happened I think two
9 hearings ago is the doctor said he was convinced by
10 staff to -- to let Mr. Bigley out on pass. And he was
11 kind of skeptical about that. But he let Mr. Bigley
12 out on pass and he came back.

13 And so I think that's another thing.
14 Because Mr. Bigley just really doesn't like to be
15 locked up. I don't think anybody would. And so if
16 he finds himself at API involuntarily, especially
17 under police officer application, under 705 or ex --
18 ex parte, that he -- you know, he really ought to be
19 allowed out on -- well, even under commitment, he
20 ought to be allowed out on passes every day, either
21 with or without escort.

22 And he -- and that's the other piece of it
23 is if -- Mr. Bigley has a lot to say. And -- and it
24 would be really, I think, beneficial to him -- well,
25 beneficial to have someone that is with him a certain

1 amount of the day that will listen to him, kind of
2 maybe help him manage some of the daily things that,
3 you know, people need to do and -- and divert him from
4 the things that he's doing that causes him to be such
5 a nuisance that he gets picked up. And so that would
6 be the program that I think would have a reasonable
7 chance of success with -- with Mr. Bigley.

8 And I think Choices is willing to do that
9 if -- you know, it would have to find some staff to do
10 that and it would have to have funding to do that.

11 And there are staff members at API who like
12 Mr. Bigley. And I think, you know, if they -- you
13 know, if the hospital would provide that, you know,
14 they say people to be with him, that would be helpful,
15 too, in the interim.

16 BY MS. BRENNAN:

17 Q Are there any other alternatives that you
18 think would benefit Mr. Bigley rather than being
19 committed?

20 A You know, he's not really accepting
21 generally services from people. So, I mean, I think
22 that you could say that Anchorage Community Mental
23 Health Services might be able to provide case
24 management services, but I -- I suspect that, you
25 know, wouldn't -- wouldn't necessarily work out so

1 well.

2 There is another independent case management
3 program called -- well, I -- it used to be called
4 Daybreak in Palmer. And they used to have some
5 services in Anchorage, but I'm not sure if they're
6 still available.

7 MS. BRENNAN: I don't have any other
8 questions.

9 THE COURT: Will there be any further
10 direct?

11 JAMES B. GOTTSTEIN

12 testified as follows on:

13 REDIRECT EXAMINATION

14 MR. TWOMEY: Yes, Your Honor.

15 Q Have you contacted anyone at Choices with
16 respect to Mr. Bigley recently?

17 A Yes.

18 Q And who did you speak with?

19 A Susan Musante.

20 Q And when did you talk to her?

21 A Some time probably since Saturday. I think
22 I probably talked to her on Monday. Maybe even
23 yesterday. I -- I -- I think I probably talked to her
24 both days.

25 Q And is it your understanding after speaking

1 with her that there is, as of today, no facility at
2 Choices?

3 A No. What you mean by no --

4 Q Well, your testimony was that Choices would
5 be willing to work with Mr. Bigley if they get staff
6 and if they get funding.

7 A They'll do that. Yeah.

8 Q So I'm questioning you about they say ifs.

9 A Yeah. I don't think they have the staff to
10 do it today or the funding to do it today. I mean --
11 however, I would say I think that even -- even though
12 everybody -- a lot of people think that he may be --
13 it would be very beneficial to go over the Medicaid
14 limit, when I talked to her, she indicated that, and I
15 agreed that, that even allowing them up to the
16 Medicaid limit would probably be a pretty big benefit
17 to him.

18 So there's -- you know, there's that funding
19 available. But they don't -- they don't have a staff
20 person at this point, I think, that could take it on.

21 Q All right. Your testimony was that
22 Mr. Bigley has trouble maintaining his housing. Are
23 you aware that he lost his housing recently?

24 A Yes.

25 Q You indicated that on a prior admission at

1 API he was let out on a pass. Will you acknowledge to
2 the Court today that prior to being let out on that
3 pass, Mr. Bigley had received an injection of
4 medicine?

5 MS. BRENNAN: Objection. Relevance.

6 THE COURT: Overruled.

7 THE WITNESS: I believe that he had been
8 given -- actually, I think it was an illegal injection
9 of Haldol.

10 BY MR. TWOMEY:

11 Q That's your take on the situation, correct?

12 A Yes.

13 Q Will you acknowledge that Mr. Bigley needs a
14 structured environment in order to survive?

15 A No.

16 MR. TWOMEY: I don't have any further
17 questions.

18 THE COURT: Anything further, Miss Brennan?

19 MS. BRENNAN: No, Your Honor. Thank you.

20 THE COURT: Thank you, Mr. Gottstein.

21 MR. TWOMEY: Your Honor, may I go out and --

22 THE COURT: Yes.

23 MR. TWOMEY: Thank you.

24 THE COURT: This is the witness stand up

25 here. When you get there, if you'll remain standing,

1 she's going to swear you in.

2 (Oath administered)

3 STEVEN YOUNG

4 called as a witness on behalf of the Petitioner,

5 testified as follows on:

6 DIRECT EXAMINATION

7 THE CLERK: Thank you. Go ahead and be
8 seated. Would you please state and spell your first
9 and last name for the record?

10 THE WITNESS: Steven Young, S-t-e-v-e-n,
11 Y-o-u-n-g.

12 THE COURT: Thank you. You may inquire.

13 BY MR. TWOMEY:

14 Q Mr. Young, where are you employed?

15 A I'm a public guardian with the Office of
16 Public Advocacy.

17 Q And are you familiar with Mr. Bigley?

18 A Yes, I am.

19 Q How are you familiar with him?

20 A The Office of Public Advocacy was appointed
21 as Mr. Bigley's conservator for a number of years.
22 I'm familiar with him from that period of time. And
23 then in 2004, it was appointed as his guardian. And
24 his case was assigned to me. And I worked with him as
25 his guardian until 2007.

1 Q What happened in 2007?

2 A There was a settlement in the guardianship
3 case. And part of that settlement called for his case
4 to be reassigned to a different public guardian.

5 Q And is that Jonathan Hughes?

6 A Yes.

7 Q Are you presently with filling in for
8 Mr. Hughes when he's not available?

9 A Yes. Mr. Hughes and I are alternates to
10 cover for one another when each other is out of the
11 office. In this most recent incident, Mr. Hughes was
12 in Kodiak covering his caseload there. And so I was
13 working with Mr. Bigley last Friday.

14 Q Okay. Well, I'm going to direct your
15 attention to last Friday and ask for you to tell the
16 Court what your interaction with Mr. Bigley was on
17 that day.

18 A Initially, I -- I received a call from the
19 attorney at -- at First National Bank, who was
20 reporting that Mr. Bigley --

21 MS. BRENNAN: Objection. Hearsay, Your
22 Honor.

23 MR. TWOMEY: Well, Your Honor, he's just
24 indicating what was reported to him.

25 THE COURT: Well, is he saying it for the

1 truth of the matter asserted or is he saying it to
2 explain what it was that he did?

3 MR. TWOMEY: To explain what it is that he
4 did, Your Honor. I asked him to explain to the Court
5 what his interaction with Mr. Bigley was on that day.
6 And he's giving background for how he was contacted.

7 THE COURT: All right. Then I'll overrule
8 the objection on that basis.

9 THE WITNESS: The bank called because we had
10 been having difficulty providing Mr. Bigley with
11 access to funds. And we had to explain to them that
12 we had provided funds to Mr. Bigley through the use of
13 a pre-paid card and that there was no need for him to
14 be in the bank.

15 I later received a call from --

16 THE COURT: Can I just ask you a question
17 before you go ahead? When you said the bank -- the
18 bank called you because -- I thought you said that you
19 had trouble getting the funds for Mr. Bigley? I
20 didn't quite understand why the bank called you.

21 THE WITNESS: The bank called to say that
22 Mr. Bigley was trying to come into the bank. The bank
23 had disallowed him from coming into the bank. In
24 response, in order to provide -- our checks --

25 THE COURT: Okay. So it wasn't --

1 THE WITNESS: -- are written on the bank.

2 THE COURT: -- an issue with the account or
3 anything. You're just talking about the physical act
4 of getting the money for him -- to him.

5 THE WITNESS: Exactly.

6 THE COURT: Okay. Thank you.

7 THE WITNESS: Being able to provide --

8 THE COURT: That's all I needed to know.

9 THE WITNESS: -- Mr. Bigley with cash.
10 The bank had -- had -- had disallowed

11 Mr. Bigley from coming there and asked our office, as
12 his guardian, to respond by providing him access to
13 funds in another way. We did that by purchasing a
14 pre-paid card that Mr. Bigley could use much like a
15 debit card. And -- and we instructed Mr. Bigley not
16 to go to the bank and to use the card to make
17 purchases.

18 But he -- and the bank, in response,
19 informed us that they were hiring a -- a guard. And
20 on this day, they said that the guard and another
21 staff person at the bank were interacting with
22 Mr. Bigley. And they were calling us to inform us of
23 that, and that he would be trespassed.

24 And that was my first interaction regarding
25 Mr. Bigley on Friday. And I soon after that learned

1 that Mr. Bigley had lost his housing. He was visiting
2 his attorney, Mr. Gottstein. And we learned that he
3 lost his housing. So because Mr. Hughes was out, I
4 contacted the Anchorage Midtown Motel where Mr. Bigley
5 was staying. And I spoke with the man- -- the desk
6 manager who had been the night manager when Mr. Bigley
7 was asked to leave. And what was reported to me was
8 that Mr. Bigley --

9 MS. BRENNAN: Your Honor, I'd object to this
10 as hearsay.

11 THE COURT: Sustained.

12 BY MR. TWOMEY:

13 Q How did you find out that Mr. Bigley had
14 lost his housing?

15 A Beth Russo, the supervisor, from my section
16 came in and informed me that she had received a call
17 from Mr. Gottstein.

18 MS. BRENNAN: Okay. Objection. Hearsay,
19 Your Honor.

20 THE COURT: Overruled since he's just
21 telling him how he learned it.

22 THE WITNESS: So I contacted --

23 BY MR. TWOMEY:

24 Q Did you make any effort -- make any effort
25 to find housing for Mr. Bigley?

1 A Yes. I --

2 Q What did you do?

3 A I -- I called motels and managed to get a
4 room that would enable him to smoke. That was the
5 problem with the Midtown. He was kicked out because
6 he couldn't follow the rules about smoking. So I
7 found a room at the Tudor Motel that would allow
8 smoking.

9 And -- and then when Mr. Bigley came down to
10 the Office of Public Advocacy late in the day on
11 Friday, I informed him that we had a reservation for
12 him, and he declined to go.

13 Q Did you invite Mr. Bigley to come down to
14 your office on Friday?

15 A No. He'd showed up about 4:00 -- 4:00
16 o'clock or so.

17 Q And you spoke with him at your office?

18 A Yes.

19 Q And did you have any altercation with
20 Mr. Bigley at your office on Friday?

21 A Mr. Bigley was very difficult to work with
22 on Friday. He was carrying a newspaper. And he threw
23 the newspaper down. And he was trying to explain that
24 he wanted to -- he would only go to the airport to get
25 on a plane. This is what he wanted to do. He

1 wouldn't accept the room because it wasn't a plane
2 ticket. That was all I could really understand from
3 what he was saying.

4 He talked about a number of different
5 things, but he was having difficulty expressing words
6 on Friday, something that's fairly unusual. It was
7 like he was saying the first half of every word,
8 almost like he was having some sort of expressive
9 aphasia.

10 And he was very agitated. So it was very
11 difficult to make any points with him. We attempted
12 to give him money to -- to go and get food. We
13 attempted to give him checks to get a bus pass so he
14 could get around. He refused all -- all of our help
15 on Friday.

16 Q How did he refuse your help? How did he
17 refuse that offer of assistance?

18 A He spit on the checks and threw them on the
19 floor. And so I asked him how he would -- he would
20 eat or obtain food. And he said he didn't need to
21 eat.

22 Q Based upon your observations of Mr. Bigley
23 over several years, have you observed changes in his
24 demeanor?

25 A I worked with Mr. Bigley as his guardian

1 since approximately 2004. And in 2005, he was
2 discharged from the hospital without services. And I
3 worked with him -- because he had no services, I -- I
4 assisted him in finding housing. And I went grocery
5 shopping with him every seven to ten days to help him,
6 you know, live more independently. And at that time,
7 he actually voluntarily went to get medications every
8 two weeks and did quite well by comparison in the
9 community.

10 I've not seen him in as bad a shape as he
11 has been in recent months and certainly never as bad
12 as on Friday. He was very threatening. He -- he's --
13 he -- he's been threatening in recent months more than
14 ever before.

15 Q Do you know how long it's been since
16 Mr. Bigley has received any medication?

17 A I don't really, because I -- I actually
18 haven't been so connected to his case since Mr. Hughes
19 has had it. It's my understanding he's had some
20 medication, but --

21 MS. BRENNAN: Your Honor, I'd just object on
22 relevance --

23 THE WITNESS: -- I'm not familiar with
24 his --

25 MS. BRENNAN: -- on this commitment.

1 Medications.

2 THE COURT: Overruled.

3 BY MR. TWOMEY:

4 Q You've indicated that --

5 THE COURT: Except I didn't actually even
6 hear most of the answer.

7 THE WITNESS: I was saying that I think that
8 I -- I'm not so familiar with his medication history
9 in recent months.

10 THE COURT: Thank you.

11 BY MR. TWOMEY:

12 Q This last Friday, is it your testimony that
13 his behavior was the worst that you've ever observed?

14 A Yes, absolutely. And he didn't appear to
15 know me. He was -- he -- he kept saying that he had
16 put me in jail or that he knew me from jail or that --
17 and I -- you know, it wasn't -- it wasn't possible to
18 actually converse with him. If I asked a specific
19 question, his answer wasn't related to the question
20 more often than not.

21 Q What sort of threatening behavior did
22 Mr. Bigley display on Friday?

23 A Well, he has been talking about blowing
24 things up. That's his most frequently-used threat is
25 that he's going to blow up the buildings.

1 Q Did you feel threatened on Friday in
2 response to Mr. Bigley's behavior?

3 A No. I've worked with Mr. Bigley too long to
4 feel that he could follow through on that type of a
5 threat. But what I -- what I don't feel confident
6 about is what he would do, what he might do in the way
7 of acting out if he becomes too agitated.

8 I mean, I sat in the same room with him, but
9 I kept the door behind me open. And I was careful
10 when it was time for him to leave not to -- not to be
11 on the wrong side of him.

12 He has stood in a doorway before attempting
13 to prevent me from exiting a room. It's been several
14 months. But that was something that I recalled when I
15 met with him on Friday. He was at that level of
16 agitation where I don't feel it's possible to predict
17 what he -- he might do.

18 Q Do you believe, based on your dealings with
19 Mr. Bigley, that at the present time he has the
20 ability to function independently in society?

21 A I see Mr. Bigley as -- as being very unable
22 to function in society in -- in virtually every way.
23 Either the -- I don't believe that he has the ability
24 to purchase food, let alone prepare food. I think he
25 goes days without eating. He does not have his

1 belongings. He claims not to need them, not to want
2 them. He's walking around in the same clothing day
3 after day. So I think his self-care is extremely
4 absent.

5 And his comment about not needing to eat,
6 not -- not accepting a check for food when he had no
7 other means to obtain food that I knew of. And -- and
8 the other thing that I'm familiar with him about is
9 when he gets to this level of agitation is he -- he
10 doesn't sleep. And he -- he reports that to me. He
11 reported that to me on Friday. And he said that he
12 doesn't sleep. And that's just the way that he is.

13 Q Were the police called on Friday to the OPA
14 offices?

15 A Yes. I called the police and requested a
16 POA, because Mr. Bigley was not willing to accept
17 anything to meet his basic needs.

18 Q And was Mr. Bigley cooperative with the
19 police when they came to your offices?

20 A Well, I don't know what you would call
21 cooperative. He was highly agitated and he was
22 escalated. But they -- they managed to get him into
23 the police car. And then there was an issue of -- of
24 what would happen after that. But I -- I didn't see
25 him after that.

1 MR. TWOMEY: I don't have any further
2 questions.

3 THE COURT: Ms. Brennan?

4 STEVEN YOUNG

5 testified as follows on:

6 CROSS EXAMINATION

7 BY MS. BRENNAN:

8 Q Good morning. You've been working with
9 Mr. Bigley since 2004?

10 A Yes.

11 Q Okay. And you testified that when you saw
12 him on Friday, he talked about things blowing up?

13 A Yes.

14 Q And houses blowing up?

15 A Yes.

16 Q And since you've been working with him since
17 2004, have you noticed that Mr. Bigley gets very
18 influenced by current events, things that are going on
19 in the news?

20 A Mr. Bigley can be influenced by current
21 events.

22 Q And would it be unusual for him if he heard
23 or read a story about things that are going on in the
24 Middle East, in Iraq, that he would begin talking
25 about that in the course of conversations that he has

1 with people?

2 A It wouldn't be unusual, but it would be in a
3 very different context. Mr. Bigley often refers to
4 news events that are catastrophic as though he's not
5 the one responsible for it. Mr. Bigley signs his
6 checks -- when he picks them up, sometimes he signs
7 them as god. And we don't think anything of it
8 necessarily.

9 But he -- if something bad happens, he's --
10 it's usually, I didn't do it. I'm not responsible.
11 It's not, you wait and see, something bad's going to
12 happen, I'll blow this place up, I've done it before,
13 I can do it again, things like that. That was what he
14 was like on Friday.

15 Q But you did not feel threatened when you
16 were with him on Friday?

17 A I don't. I mean, it could be my own
18 stupidity, but I -- I -- I see him as a very
19 incapacitated person.

20 Q And he did have access to the pre-paid card
21 so that he could purchase food?

22 A He kept losing them. We gave him one on
23 Wednesday. It was lost by Thursday. We gave him one
24 on Thursday. It was lost by Friday. And it's -- it
25 seems as though every attempt we've made to provide

1 him access to his funds seems to fail.

2 I mean, when he -- sometime in the past,
3 we -- he had trouble at the bank, but the bank allowed
4 us to go to the bank with him. So we would walk him
5 into the bank. We would stand beside him in the line.
6 That was his big problem. He couldn't stand in lines.
7 He would be agitated and people would feel threatened.
8 And so if we stood beside him, he could get through
9 the line.

10 Then later on, we couldn't give him a check
11 because he -- the bank didn't want him in there. So
12 we tried to give him a pre-paid card. And he couldn't
13 hang on to it. So that was the -- that's the
14 progression.

15 Q And -- but you were able to obtain a room
16 for him at the Tudor Motel?

17 A One was available. And I was prepared to
18 fax them an authorization that we would -- that our
19 agency would send them a payment. It was too late in
20 the day for our agency to actually produce the check,
21 but -- so generally, we negotiate a fax on letterhead
22 as an authorization, then a check would follow. And
23 that was what I was prepared to do.

24 Q And Mr. Bigley had been staying at another
25 motel before that time?

1 A Yes, uh-huh.

2 Q And at one point in time, he was having
3 problems using the phone at that motel; do you recall
4 that?

5 A I -- I don't. I wasn't working with him
6 around that issue.

7 Q Okay. So you don't have any information
8 about him returning the phone when asked by the motel
9 staff to do so?

10 A I don't.

11 Q Okay. And part of the settlement was that
12 Mr. Bigley -- that you not work with Mr. Bigley as his
13 guardian?

14 A That I not be his assigned guardian.

15 Q And so currently, Mr. Hughes is his
16 guardian?

17 A Correct.

18 Q Okay. And so Mr. Bigley expects to be
19 working with Mr. Hughes; is that correct?

20 A I -- I -- I don't think I would say that.

21 I -- I think that Mr. Bigley often refuses to work
22 with anybody, especially recently. You know, he comes
23 in and he expects to be treated like -- well, he
24 claims that he's the king. And so he wants to be
25 treated like the king. And he wants everybody to more

1 or less do what he wants when he wants. And it
2 doesn't matter who it is.

3 Q But if he -- if Mr. Hughes is his
4 guardian and he comes to the office to see
5 Mr. Guardian (sic) and he sees you, who's not assigned
6 to his case, he -- he could be upset over -- over that
7 situation.

8 A I don't -- I don't see that. I mean, when I
9 came to the courthouse today, he, you know, flagged me
10 over. He does that at OPA, too.

11 Q But -- but he did request at one time that
12 you not be his guardian; is that correct?

13 A Not Mr. Bigley, Mr. Gottstein.

14 MS. BRENNAN: I -- I don't have any other
15 questions.

16 MR. TWOMEY: Nothing further, Your Honor.

17 THE COURT: Thank you. You may be seated.

18 This is the witness stand. When you get
19 there, you'll remain standing. The in-court will
20 swear you in.

21 THE WITNESS: Yes, Your Honor.
22 (Oath administered)

23 LAWRENCE J. MAILE

24 called as a witness on behalf of the Petitioner,
25 testified as follows on:

DIRECT EXAMINATION

1 THE CLERK: Thank you. Go ahead and be
 2 seated. Would you please state and spell your first
 3 and last name for the record?
 4 THE WITNESS: Lawrence J. Maile.
 5 THE COURT: I'm sorry. Could you --
 6 THE WITNESS: Lawrence J. Maile.
 7 THE COURT: Mr. Bigley, could you -- could
 8 you just speak a little more softly? Because I can't
 9 always hear what the witness is saying. Thank you.
 10 THE WITNESS: L-a-w-r-e-n-c-e. Last name is
 11 Maile, M-a-i-l-e.
 12 THE COURT: What was your first name? I'm
 13 sorry.
 14 THE WITNESS: Lawrence.
 15 THE COURT: Lawrence. You may inquire.
 16 BY MR. TWOMEY:
 17 Q Mr. Maile, where are you employed?
 18 A I am currently employed at API.
 19 Q And what is your position there?
 20 A I'm the Clinical Director and Director of
 21 the Forensic Evaluation Unit.
 22 Q Are you a psychologist?
 23 A Yes, I am.
 24 Q Where did you receive your training?

1 A I received my doctorate from the University
 2 of Wyoming in 1992, my Master's degree in psychology
 3 from University of Alaska in 1985 and my undergraduate
 4 degree also was in psychology from Arizona State in
 5 1983.
 6 Q How long have you been employed at API?
 7 A Since December of 1994.
 8 Q Have you held the same position at API since
 9 that time?
 10 A No. I've held various positions. I -- I
 11 originally came to API as the child psychologist. I
 12 have been adult psychologist, Chief of the Psychology
 13 Service. And -- and since October of 1997, I've been
 14 a Director of the Forensic Evaluation Unit and the
 15 Clinical Director since 2003.
 16 Q What does the Forensic Evaluation Unit do at
 17 API?
 18 A The Forensic Evaluation Unit has several
 19 missions. Primarily and statutorily defined, we
 20 evaluate defendants in the Court System for the issues
 21 of competency, sanity and other things as requested by
 22 the Court. We provide treatment to they say who have
 23 been found not competent to proceed. And we house in
 24 API the most severely disturbed and unstable civil
 25 patients.

1 Q Is that unit at API known as the Taku --
 2 A Yes, it is.
 3 Q -- Group. So if I refer to "Taku," we're
 4 talking about the Forensic Evaluation Unit?
 5 A Yes, we are.
 6 Q And that's the unit that houses the most
 7 difficult patients at API?
 8 A Yes, it does.
 9 Q Do you know Mr. Bigley as a patient at API?
 10 A I do. Mr. Bigley is currently my patient
 11 and has been my patient various times over the years,
 12 both through the criminal justice system and as a
 13 civil patient.
 14 Q Have you an estimate for the Court as to the
 15 number of days that Mr. Bigley has been admitted to
 16 API since -- or over the last year at your request?
 17 A Well, he hasn't been primarily my patient
 18 over that period of time, but he's been admitted a
 19 number of times for varying lengths of stays. I
 20 couldn't be any more specific than that.
 21 Q Have you had occasion to interview
 22 Mr. Bigley on his most recent admission?
 23 A I have attempted.
 24 Q When you say you've "attempted," what do you
 25 mean by that?

1 A My attempts to speak to Mr. Bigley have been
 2 met by profanity and refusals to speak to me.
 3 Q Have you formed a diagnosis of Mr. Bigley's
 4 mental condition?
 5 A Mr. Bigley's diagnosis in this admission and
 6 in previous admissions -- well, in each of the
 7 admissions in which I have taken care of him has been
 8 paranoid schizophrenia.
 9 Q Does Mr. Bigley suffer from delusions?
 10 A He does.
 11 Q Do they say -- does his condition affect or
 12 does he lack insight into his own mental illness?
 13 A Yes, he does.
 14 Q Do you believe that Mr. Bigley presents a
 15 danger of harm to himself?
 16 A I do. And -- and that's through -- through
 17 several mechanisms. Perhaps the most disturbing, I
 18 think, is that Mr. Bigley incites individuals who are
 19 dangerous individuals in their own right, often, to --
 20 to aggressive responses to him, the latest being
 21 within the last two days, I want to say day before
 22 yesterday on the Forensic Unit, necessitating staff to
 23 intervene and keep him from being harmed.
 24 THE COURT: To keep him from being harmed?
 25 THE WITNESS: Yes, Your Honor.

1 Additionally, Mr. Bigley tends to make
2 decisions around things like food and drink and what
3 have you consistent with his delusions that he's been
4 poisoned such that he doesn't eat for long periods of
5 time, doesn't drink for long periods of time, is -- is
6 selective about the things he eats. So in -- in the
7 longer term, that's a risk for Mr. Bigley as well,
8 deteriorating health and disability from that.
9 BY MR. TWOMEY:
10 Q Tell the Court what happened the day before
11 yesterday when there was an incident at the hospital
12 involving Mr. Bigley and some other person or persons.
13 A The -- the short summary, Your Honor, would
14 be that Mr. Bigley was intruding on the space and
15 threatening --
16 MS. BRENNAN: Your Honor, I'd object as
17 hearsay. I don't know if the doctor has personally
18 seen this episode or not.
19 THE WITNESS: I -- I have, Your Honor.
20 THE COURT: I'm sorry?
21 THE WITNESS: I said I have, Your Honor.
22 THE COURT: Well, then overruled.
23 THE WITNESS: Pardon?
24 THE COURT: The objection's overruled, so
25 you can answer the question.

1 THE WITNESS: Thank you.
2 Mr. Bigley was intimidating and invading the
3 personal space of another individual, unfortunately,
4 similarly situated in terms of -- of illness and
5 acting out. That individual threatened Mr. Bigley.
6 And attempts to separate Mr. Bigley were met with --
7 excuse me -- threats to the staff persons involved.
8 THE COURT: I'm sorry. Who was making
9 threats to the staff person?
10 THE WITNESS: Mr. Bigley was.
11 THE COURT: Okay. Wait.
12 THE WITNESS: Mr. Bigley was --
13 THE COURT: But the person that you're --
14 Mr. Bigley, this is one of they say times when I need
15 you to lower the volume. What?
16 MS. BRENNAN: He wants to go take a smoke
17 break.
18 THE COURT: Oh, I don't know. Is there
19 anyone to --
20 MS. BRENNAN: That's fine with me. I think
21 there's staff with him.
22 THE COURT: Well, actually, I was just -- I
23 was just notified that my 10:30 is ready to -- for
24 hearing. So you can discuss this amongst yourselves
25 while we take a break. This will be long enough for

1 everyone to use the restroom or whatever you need to
2 do.
3 MS. BRENNAN: Thank you.
4 (Court recessed)
5 THE COURT: Sorry we were gone so long,
6 because they said they were ready and they weren't.
7 All right. You may inquire.
8 LAWRENCE MAILE
9 testified as follows on:
10 DIRECT EXAMINATION CONTINUED
11 MS. BRENNAN: Thank you. Your Honor.
12 Q Dr. Maile, in your opinion, is Mr. Bigley
13 likely to be a danger to himself?
14 A He is.
15 Q And why do you have that opinion?
16 A In the -- in the most imminent sense,
17 Mr. Bigley is at risk for -- for injury by others. He
18 provokes people. And fortunately, of late, he's --
19 he's met with more kind and gentle people, if you
20 will. But he's certainly at risk for injury from
21 others by his continual threats and verbal abuse of
22 other people.
23 Q Have you formed an opinion as to the
24 probability that that harm will take place?
25 A I -- I would have to say, Mr. Twomey, that

1 it's approaching a hundred percent. It's really only
2 a matter of time.
3 Q You indicated that during this most recent
4 admission that there were some incidents between
5 Mr. Bigley and other patients at the -- at API.
6 A Yes. He was actually transferred to Taku
7 for antagonizing a peer who was -- was attempting, in
8 fact, to assault him. So that -- that was the first
9 of the incidents.
10 MS. BRENNAN: Objection. I can't tell
11 whether this is personal knowledge or hearsay
12 information.
13 THE COURT: Can you answer that? Do you
14 know?
15 MR. TWOMEY: Looks like cross examination to
16 me, Your Honor.
17 MS. BRENNAN: Well, no. Because if it's
18 hearsay, I want to do a motion to strike.
19 THE COURT: Well, could you just lay the --
20 MR. TWOMEY: Sure. I'll lay a foundation.
21 Q How were you made aware of this incident?
22 Did you observe it?
23 A No, I didn't. Through Mr. Bigley's medical
24 chart.
25 Q Okay.

1 THE COURT: Overruled. Go ahead.
 2 THE WITNESS: That -- that was the incident
 3 that -- that prompted Mr. Bigley's transfer to Taku.
 4 I think before the break, I was discussing the
 5 incident between Mr. Bigley and -- and the patient on
 6 Taku in which he essentially --

7 THE COURT: This is a different incident,
 8 though.

9 THE WITNESS: Yes, Your Honor.

10 The first incident was -- was on the Susitna
 11 Civil Unit prior to his transfer. The second was the
 12 one we were discussing a moment ago, two days ago,
 13 between Mr. Bigley and another of the patients on
 14 Taku. And that resulted in his being placed in locked
 15 seclusion for -- for his protection to, in essence,
 16 avoid what I was suggesting, injury by others. So
 17 there are two of them say notable incidents in this
 18 admission.

19 BY MR. TWOMEY:

20 Q Do you believe that Mr. Bigley's physical
 21 condition is likely to deteriorate if he were to be
 22 set free?

23 A I do believe so. I mentioned, I believe,
 24 earlier that -- that Mr. Bigley has suspicions about
 25 the content of his food and refuses to eat at times.

1 While he's in API, we have the opportunity to continue
 2 to offer him food that he will accept sporadically, at
 3 best. So he's likely to physically deteriorate
 4 because of lack of nutrition.

5 Unfortunately, Mr. Bigley also has had some
 6 difficulty with housing. And that places him at risk
 7 for exposure to the elements.

8 So each of them say issues will result in
 9 Mr. Bigley's deterioration.

10 Q Dr. Maile, you signed the petition for
 11 commitment in this matter on April 28th?

12 A I did.

13 Q The petition indicates that Mr. Bigley is
 14 likely to continue to deteriorate physically through
 15 further refusal of sustenance, abuse of sleep,
 16 injuring himself by striking walls or windows.

17 Has Mr. Bigley exhibited to you behavior
 18 that causes you concern in that regard, striking
 19 walls, windows?

20 A Yes, he has. He's done so since his
 21 transfer to the Taku Unit, both when he was in
 22 seclusion, but outside of seclusion and in his room as
 23 well, yes.

24 Q What is your proposed course of treatment
 25 for Mr. Bigley should the Court grant --

1 A Mr. Bigley --

2 Q -- this commitment?

3 A Pardon?

4 Q Should the Court grant this commitment, what
 5 would you anticipate would be the course of treatment?

6 A Examining Mr. Bigley's history and his
 7 records over time, Mr. Bigley has responded well to
 8 treatment with antipsychotic medication. I -- I would
 9 refer Mr. Bigley to the Unit psychiatrist or nurse

10 practitioner for evaluation of the -- the most
 11 appropriate course of treatment. But it would -- it
 12 would be my expectation that it would be in the range
 13 of antipsychotic medication and, of course, milieu
 14 treatment in API.

15 Q Have you considered whether there are less
 16 restrictive alternatives available?

17 A At this time there don't appear to be any.
 18 Mr. Bigley is without housing and without
 19 opportunities for housing. There's -- there's no
 20 facility that I know of that would -- that would keep
 21 him safe out there from himself and from others,
 22 assure that his -- his physical needs were met. So
 23 I -- I believe API is the appropriate placement at
 24 this time.

25 MR. TWOMEY: I have no further questions at

1 this time, Your Honor.

2 THE COURT: Miss Brennan?

3 LAWRENCE MAILE

4 testified as follows:

5 CROSS EXAMINATION

6 BY MS. BRENNAN:

7 Q Good morning, Dr. Maile.

8 A Morning.

9 Q You're the head of the Taku Unit; is that
 10 correct?

11 A I am.

12 Q And the people who are on the Taku Unit,
 13 they're -- they usually come from jail; is that
 14 correct?

15 A The clientele?

16 Q Right.

17 A The majority of them are.

18 Q And so they're being held on criminal
 19 charges. And they are sent from the Court for
 20 evaluation at API?

21 A Some of them are, yes.

22 Q Okay. And so the Taku Unit is very
 23 restrictive; is that correct?

24 A It is restrictive in terms of capacity to
 25 leave.

1 Q But it's also much more -- there's much more
2 rules in the Taku Unit; is that correct?
3 A Yes, there are.
4 Q And you have much less freedom than in the
5 regular -- than either of the other two treating
6 units?
7 A The -- the lack of freedom, if you will, has
8 more to do with being able to leave and come and go.
9 Patients on Taku are not eligible for passes until
10 such time as they may be transferred to another unit.
11 And again, I'm speaking of the civil patients.
12 Because the patients under Title 12 are not
13 transfers-ed to other units.
14 Q Okay.
15 A So it primarily has to do with their
16 capacity to leave.
17 Q But most of the patients at API, they would
18 prefer to be in the Katmai Unit or the Susitna Unit;
19 is that correct?
20 A I think that that probably is correct.
21 Q And that if the patient is being transferred
22 to the Taku Unit, it's usually because of their being
23 punished for their behavior; is that correct?
24 A No, ma'am. That's not correct. Because
25 their behavior is such a concern to themselves or to

1 others that that's the only place to house them.
2 Q And usually, the patients are not pleased
3 with that turn of events; is that correct?
4 A Some are and some aren't. I would say the
5 majority are not pleased.
6 Q And Mr. Bigley has -- he's normally when
7 he's at API on the Katmai Unit; is that correct?
8 A Pardon?
9 Q Mr. Bigley is usually if he comes to API has
10 recently been on the Katmai Unit; is that correct?
11 A He's had a number of admissions to Katmai.
12 His most recent one was to Susitna. And it's been
13 some time since he was admitted to Taku. I don't know
14 the frequency of one or the other, but it's been
15 generally the civil units.
16 Q Okay. But Mr. Bigley has expressed his
17 displeasure about being transferred to the Taku Unit;
18 is that correct?
19 A Yes, he has.
20 Q Okay. And he complains that it's like being
21 in jail; is that correct?
22 A Yes, he does.
23 Q Okay. And -- and your concern with
24 Mr. Bigley was -- was how other people reacted to him;
25 is that correct?

1 A That's my most immediate concern.
2 Q And the incident that you saw, did
3 Mr. Bigley actually threaten another patient?
4 A Yes, he did.
5 Q And what -- what did he actually -- what did
6 he actually say?
7 A I don't recall exactly what he said.
8 Q Okay. And did he actually assault the other
9 patient?
10 A No, he didn't.
11 THE COURT: Are we talking about before Taku
12 or once on Taku?
13 BY MS. BRENNAN:
14 Q I was talking about the one that you
15 witnessed on the Taku Unit.
16 A Yes.
17 THE COURT: Is that the one you were --
18 that's the one you were just saying?
19 THE WITNESS: That was -- that was the one I
20 was talking about, Your Honor.
21 BY MS. BRENNAN:
22 Q So your answers would have not changed.
23 A Right.
24 Q And do you know if that patient was someone
25 on Title 12 from the jail or was he a --

1 A It was.
2 Q -- civil patient? Pardon?
3 A It was.
4 Q Okay. And was that person being held on
5 charges that were violent in nature?
6 A No, he wasn't.
7 Q And has Mr. Bigley assaulted anybody at API?
8 A He's not assaulted anybody in terms of
9 physical. He's threatened people.
10 Q Okay. And when Mr. Bigley was admitted on
11 this last admission, did he have any symptoms of being
12 dehydrated?
13 A As far as I know, he did. Yes.
14 Q What were they say symptoms?
15 A Decreased weight, reported thirst.
16 Q Was there any physical issues or problems
17 because of dehydration -- dehydration?
18 A No. There were not severe ones.
19 Q And was there a significant weight loss
20 since his prior admission to API?
21 A I don't remember his weight exactly.
22 Q Do you recall that being a concern of the
23 hospital that with his weight so low at this admission
24 that were people concerned?
25 A I can say that it's been a concern through

1 several admissions in terms of Bill's weight and
2 nutrition.
3 Q But was there anything about this recent
4 admission, the past -- the one that we're here for
5 today that was -- was there any special concern or
6 special symptom that Mr. Bigley was having due to --
7 due to not eating?
8 A You mean physical symptoms.
9 Q Right.
10 A No, not that I recall.
11 Q Okay.
12 A I think we were concerned about his refusal
13 to eat and drink.
14 Q But he has been eating some?
15 A Some. Over primarily the last 24 hours.
16 Q And he hasn't had to have any type of
17 medical intervention to get nutrition into him?
18 A No, he hasn't.
19 Q I think that's all the questions I have.
20 Oh, wait. No, it's not.
21 You -- you testified that you anticipate
22 that if Mr. Bigley stays at the hospital that he'll be
23 given a course of antipsychotic medication?
24 A I've petitioned for that. I would hope that
25 that would be true.

1 Q And are you aware that Mr. Bigley does not
2 want to take medication?
3 A I am aware.
4 Q And are you aware that -- that if he takes
5 antipsychotic medication and then if he's released
6 that the chances are that he is not going to continue
7 on his antipsychotic medication?
8 A I understand, Miss Brennan, that that --
9 that's a probability. I would also say that we have
10 in the past worked for early releases where Mr. Bigley
11 returned to the hospital to receive his medication.
12 And so I would hope that we can find some kind of
13 arrangement like that. But I know that it's not
14 Mr. Bigley's preference to take medication.
15 MS. BRENNAN: I don't have any other
16 questions.
17 THE COURT: Any further redirect?
18 LAWRENCE MAILE
19 testified as follows on:
20 REDIRECT EXAMINATION
21 MR. TWOMEY: Yes, Your Honor.
22 Q You were asked whether Mr. Bigley assaulted
23 anyone yet. And I believe your response was that he
24 hasn't done that yet and just made threats. In your
25 opinion, is it wise to take they say threats seriously

1 at this point?
2 A I think we always have to take the threats
3 seriously. Of particular concern were Mr. Bigley's
4 threats to -- to kill the staff members should he see
5 them outside of the hospital or their children. So I
6 think we have to take them seriously.
7 At the same time, I have to say that having
8 seen Mr. Bigley year in and year out over the years,
9 when Mr. Bigley has received medication and is
10 medicated, this really is not Bill.
11 THE COURT: This is really not --
12 THE WITNESS: Not Bill.
13 THE COURT: What isn't, the way --
14 THE WITNESS: The threats and --
15 THE COURT: Oh.
16 THE WITNESS: -- what have you.
17 So I guess I would say that if -- if
18 Mr. Bigley were receiving treatment, I would say that
19 I would -- I would be much less concerned. Without, I
20 would have to say that -- that I wouldn't be able to
21 discount those kind of threats because of their
22 severity and their targets.
23 BY MR. TWOMEY:
24 Q Is Mr. Bigley decompensated at this point in
25 time?

1 A He is.
2 Q What is a -- what's a lay definition of that
3 term?
4 A A lay definition of "decompensation" would
5 be when an individual for whatever reason has an
6 increase in their symptoms such that they have a
7 significant impact on their lives. In this case,
8 Mr. Bigley is suffering from persistent delusions,
9 irritable mood and behavior, as I -- I suggested
10 earlier, really is just not Bill.
11 Q Do you have an opinion as to why he is in a
12 state of decompensation at this point?
13 A Well, the simplest answer is that Mr. Bigley
14 has not been consistent in terms of taking his
15 antipsychotic medication. That -- that would be
16 the -- the immediate answer.
17 I also -- I guess I'm sorry to say
18 that having known Bill, I guess, for almost ten
19 years now, Bill has generally done a good deal
20 better than he's doing over the last year and --
21 and has had stable housing in the community. And I've
22 had the occasion to visit Bill's home when he had an
23 apartment on Government Hill. And in -- in summary,
24 he's been a good deal stable -- more stable than he is
25 now.

1 If I were to say that there's a
 2 single negative contributor to his unwillingness
 3 to accept treatment, I would say it's been
 4 Mr. Gottstein's advocacy; that at the time when
 5 that occurred and since, Mr. -- Mr. Bigley has
 6 been much more reluctant to accept treatment and
 7 much less willing to do so when released to the
 8 community. That, I would have to say in my
 9 professional opinion, has been a contributor and a
 10 significant factor.

11 Q On a scale of one to ten, considering your
 12 years of involvement with Mr. Bigley, ten being at the
 13 highest level that you have seen him function, where
 14 would you place him on that scale of one to ten at the
 15 present time?

16 A Two, at best. Maybe not even a two. Very
 17 likely a one at the time I got him on Taku. He's a
 18 little better. He's eating a little. He's drank a
 19 little. He's slept a little bit. So he may have
 20 increased to a two.

21 MR. TWOMEY: I don't have anything further.

22 THE COURT: Miss -- excuse me --
 23 Miss Brennan?

24 LAWRENCE MAILE
 25 testified as follows on:

1 RE CROSS EXAMINATION

2 BY MS. BRENNAN:

3 Q What are Mr. Bigley's positive points?

4 A At -- at the times that Mr. Bigley is doing
 5 well, he's -- he's pleasant. He's funny. He gets
 6 along well with people. He's -- he's really a pretty
 7 nice guy to be around.

8 MS. BRENNAN: I don't have any other
 9 questions.

10 THE COURT: Anything further?

11 MR. TWOMEY: Nothing further.

12 THE COURT: Thank you, sir. You may be
 13 excused.

14 THE WITNESS: Thank you, Your Honor.
 15 (Court recessed)

16 THE COURT: All right. We were off the
 17 record. We're back on record in 3AN-08-493PR.
 18 If you'll remain standing, she's going to
 19 swear you in.
 20 (Oath administered)

21 CAROLYN SEEGANNA
 22 called as a witness on behalf of the Petitioner,
 23 testified as follows on:

24 DIRECT EXAMINATION

25 THE CLERK: Thank you. Go ahead and be

1 seated. Would you please state and spell your first
 2 and last name for the record?

3 THE WITNESS: My name is Carolyn,
 4 C-a-r-o-l-y-n. My last name is Seeganna,
 5 S-e-e-g-a-n-n-a.

6 THE CLERK: Thank you.

7 THE COURT: You may inquire.

8 BY MR. TWOMEY:

9 Q Good morning, Ms. Seeganna. Where are you
 10 employed?

11 A At the Alaska Psychiatric Institute.

12 Q And what is your job title?

13 A I'm an Advanced Nurse Practitioner.

14 Q Have you had occasion recently to examine
 15 Mr. Bigley?

16 A I had a -- yes.

17 Q What was your most recent interaction with
 18 Mr. Bigley?

19 A I attempted a psychiatric interview, I
 20 believe on Monday of this week.

21 Q Okay. And were you able to complete your
 22 interview?

23 A No, I was not.

24 Q Why not?

25 A The patient refused the evaluation.

1 Q Do you have a -- a proposed course of
 2 treatment for Mr. Bigley should the Court grant the
 3 hospital's petition to commit him?

4 A I would -- I would hope that his -- his
 5 acute psychotic symptoms could be stabilized during
 6 this hospitalization.

7 Q And how -- how would the hospital go about
 8 attempting to stabilize his psychotic symptoms?

9 A Typically, it's with a combination of
 10 medications and different psychotherapies.

11 Q Have you formulated a -- a plan with respect
 12 to medications for Mr. Bigley?

13 A I have.

14 Q What medications would you anticipate?

15 THE COURT: We're not --

16 MS. BRENNAN: Your Honor --

17 THE COURT: -- going into it.

18 THE WITNESS: I'm sorry?

19 THE COURT: Go ahead. You can answer the
 20 question.

21 THE WITNESS: Okay. And I'm sorry. What
 22 was the question one more time?

23 BY MR. TWOMEY:

24 Q What medications do you propose?

25 MS. BRENNAN: Your Honor, just for the

1 record, I've objected. It's not relevant to this
2 petition.

3 THE COURT: Well, I don't want to go very
4 far down this road, so -- I'll allow a few questions
5 in this area.

6 THE WITNESS: His treatment team and I have
7 discussed a medication called Respidal.

8 BY MR. TWOMEY:

9 Q Do you have an opinion as to whether or not
10 Mr. Bigley's condition can be improved should he be
11 committed for 30 days and receive --

12 A My understanding is that in past when he has
13 received this medication that he has shown improvement
14 to where he could be felt to be safely discharged back
15 to the community, yes.

16 Q Have you considered whether there are less
17 restrictive alternatives available for Mr. Bigley
18 given his present status?

19 A Less restrictive than?

20 Q Than commitment at API.

21 A Am I -- am I -- I'm sorry. Am I familiar --

22 Q Have you considered whether there are any
23 less restrictive alternatives that are available to
24 Mr. Bigley --

25 A Yes.

1 Q -- that would be appropriate at this --

2 A It has been considered. And I think we feel
3 that he would benefit from the acute hospitalization
4 at this time given his level of symptoms.

5 MR. TWOMEY: I have no further questions,
6 Your Honor.

7 THE COURT: Miss Brennan?

8 CAROLYN SEEGANNA

9 testified as follows on:

10 CROSS EXAMINATION

11 BY MS. BRENNAN:

12 Q Good afternoon. You talked about different
13 psychotherapies?

14 A Uh-huh.

15 Q What psychotherapies would be available to
16 Mr. Bigley?

17 A There's group and individual counseling.
18 There's different skill building. There's different
19 basically talk interventions.

20 Q And has Mr. Bigley been participating in
21 they say?

22 A To my understanding, no.

23 Q And you're aware of other services in the
24 community; is that correct?

25 A Yes.

1 Q Okay. And are you aware of the Kiana Club
2 House?

3 A Yes, I am.

4 Q Okay. And they offer case management
5 services; is that correct?

6 A To my understanding, yes.

7 Q And throughout this hearing, part of the
8 concern that we've heard that Mr. Bigley needs is that
9 he needs a friend in the community; is that correct?

10 A I haven't heard that particular phrase, but
11 that would -- that would make sense.

12 Q Okay. And are you aware that at Kiana Club
13 House that they do offer a place for people to go
14 during the day?

15 A Uh-huh, yes.

16 Q Okay. And that he can hang out and have
17 friends there?

18 A I think as long -- I mean, typically, that's
19 the arrangement. The milieu has to be a safe -- a
20 person has to be able to participate in their milieu
21 safely.

22 Q And has the hospital contacted Kiana to see
23 if Mr. Bigley would be appropriate for their services?

24 A I'm -- I'm not aware.

25 Q And there is also testimony from a prior

1 witness that there's a service called Choices in town.

2 A Uh-huh.

3 Q And are you aware of that alternative?

4 A I am.

5 Q And has anyone from the hospital discussed
6 using Choices to assist Mr. Bigley in the community?

7 A I am -- I'm not aware, no.

8 Q And do you know if there's any -- if any
9 assisted living home has been contacted about
10 Mr. Bigley?

11 A I'm not aware of, no.

12 Q Okay. And you're aware that Mr. Bigley is
13 not interested in taking medications?

14 A I am aware of it, yes.

15 Q And that is it your experience as being a
16 nurse practitioner if someone is not interested in
17 taking medication even if they're given medication at
18 the hospital, they're likely to go off it once they
19 leave the hospital?

20 A That's often my experience.

21 MS. BRENNAN: Thank you. I don't have any
22 other questions.

23 THE COURT: Any further direct?

24 MR. TWOMEY: No further questions, Your
25 Honor.

1 THE COURT: Thank you. You can be excused.

2 THE WITNESS: Thank you.

3 THE COURT: That's your last witness?

4 MR. TWOMEY: We're not calling any further
5 witnesses on the petition for commitment.

6 THE COURT: Ms. Brennan, are you going to --

7 MS. BRENNAN: We're not calling any
8 witnesses, Your Honor.

9 THE COURT: All right. Argument?

10 CLOSING ARGUMENT BY PETITIONER

11 MR. TWOMEY: Your Honor, unfortunately, we
12 are dealing with an individual who because of his
13 mental illness finds himself in danger. And what we
14 have here is an emerging pattern where Mr. Bigley,
15 having been released without being provided treatment,
16 is out in the community and is facing situations that
17 are becoming more and more dangerous to Mr. Bigley and
18 to others.

19 We've had testimony today concerning an
20 incident at First National Bank that occurred last
21 Friday. There have been earlier incidents during this
22 month of April at First National Bank.

23 Mr. Bigley has lost his housing. He's
24 unable to maintain himself in a free society. He
25 needs protection. And he needs protection that Alaska

1 has deteriorated.

2 At the last hearing, Mr. Bigley was
3 maintaining a residence at the Midtown Motel. He's
4 now lost that. He's having increased difficulty
5 dealing with his public guardian in terms of obtaining
6 funds to purchase food and other essential items.

7 It's time that the Court take action and
8 protect this individual. So we request that the Court
9 grant our petition.

10 THE COURT: Ms. Brennan?

11 CLOSING ARGUMENT BY RESPONDENT

12 MS. BRENNAN: Your Honor, we'd ask the Court
13 to deny the Petitioner's case. In terms of Mr. Bigley
14 causing -- likely to cause harm to himself or to
15 others, we don't believe that the state has proved its
16 case. The state has the burden of proving by clear
17 and convincing evidence that he's likely to cause harm
18 to himself or others. It's a high standard. And we
19 don't believe that the state has met that burden.

20 Under the statute, causing -- likely to
21 cause harm to himself or others, the danger has to be
22 imminent. And the state hasn't shown any evidence
23 that Mr. Bigley is an imminent danger to anyone.

24 What the state has shown is that Mr. Bigley
25 can be a nuisance, that he can come into situations

1 Psychiatric Institute can provide for him, not just a
2 place to stay and not just food, but he needs medical
3 attention and treatment. And they can provide that
4 treatment for him at API if the Court grants the
5 petition for commitment.

6 We heard testimony from several people who
7 acknowledged that Mr. Bigley makes threats and
8 gestures in a menacing manner, but that he has not
9 assaulted them. But our concern is that Mr. Bigley is
10 going to place himself in a situation where he will be
11 injured or harmed by another person that he provokes.
12 The doctor's testimony was that it's virtually certain
13 that that is going to happen if Mr. Bigley remains in
14 his current state of decompensation.

15 So we're really urging the Court to take
16 action here and protect this individual, grant the
17 commitment for 30 days and allow the hospital to
18 provide treatment for this mentally ill individual.
19 It's the right thing to do. It's the right thing for
20 Mr. Bigley. And it's appropriate under the law.

21 We've established that Mr. Bigley suffers
22 from a mental illness, that he presents a danger to
23 himself or to others. He's been refusing food. He's
24 now not able to take care of himself. And he's also
25 gravely disabled. His ability to function in society

1 and say things, things that might not make sense or
2 grandiose statements. But in terms of actually
3 causing harm to himself or others, the evidence
4 doesn't exist. He states these things, but the people
5 who have been working with him and who know him have
6 all said that they don't feel any threat to him.

7 The information from the woman from the
8 bank, first incident that she talked about was already
9 heard in front of Master Lack. And that incident took
10 place about three weeks ago. The most recent incident
11 that took place on Friday, which would be imminent
12 under the statute, basically, Mr. Bigley just walked
13 into the bank. They caused the guards to come and
14 tell him to leave. And he did leave the bank. And he
15 left the bank. And he didn't come back to the bank.
16 And so again, even though he was a nuisance and was
17 probably not attractive in terms of -- of soliciting
18 customers to the bank, Mr. Bigley wasn't a harm to
19 himself or others.

20 Again, the state is trying to rely on the
21 fact that somehow Mr. Bigley is going to incite
22 violence upon himself by saying things. But it's not
23 fair to lock someone up and put them in an institution
24 for up to 30 days because of the actions of others.

25 We don't -- we also believe that Mr. Bigley

1 is not gravely disabled. He has means in the
2 community to get by. And he has means to eat. He has
3 a means to live, to have housing. At this point in
4 time, he's chose not to utilize these resources, but
5 he still has those resources available to him. And I
6 mean, the evidence is is that Mr. Bigley still gets
7 by. If he chooses to decline these resources, he's
8 still able to make it through in the community. And
9 so we don't believe that he's gravely disabled.

10 His symptoms, they were concerned that
11 Mr. Bigley was not drinking, that he was not -- that
12 he was not eating food. But the medical evidence from
13 API certainly didn't support that concern, that he --
14 if he came to the hospital, he said that he was
15 thirsty, but he wasn't suffering any physical issues
16 to show that he was in a dangerous condition for lack
17 of fluids. His weight wasn't at a level that was
18 causing any undue concern.

19 And again, he has these resources in the
20 community. And if he declines to use them, he still
21 gets by. So that we don't believe that Mr. Bigley's
22 gravely disabled.

23 In terms of less restrictive alternatives,
24 we do believe that there's less restrictive
25 alternatives available. There was testimony that

1 Mr. Bigley was given a pass in the past and that he
2 returned to the hospital after being given the pass.
3 So we don't believe that Mr. Bigley needs to be locked
4 up. He can stay at the hospital. He can leave the
5 hospital. But if he needs -- if he believes that
6 he -- that services are warranted or that he needs the
7 help, that he -- that he'll go back to the hospital.
8 And so if the hospital wants to offer him treatment,
9 we believe that they can keep an open door to him, but
10 they don't need to have him locked up. In fact,
11 locking him up seems to have counter-effects. Seems
12 to cause Mr. Bigley to be very agitated.

13 There's also other services in the community
14 that can serve his needs. There's Choices. Even
15 though they don't appear to have resources at this
16 very second, it appears that they could likely contact
17 Choices and be able to get funding and assistance set
18 up.

19 Also, there's the Kiana Club House in the
20 community that offers case management and people
21 around and able to assist Mr. Bigley and offer him
22 companionship and friendship, which is what Mr. Bigley
23 seems to want the most. He seems to enjoy
24 socialization. He enjoys visiting people and enjoys
25 wanting to have people to talk to.

1 And so we believe that having him
2 institution- -- having him be in an institution that's
3 for acute-type psychiatric medical care is not needed
4 and is not necessary for him and that he should be
5 able to utilize less restrictive alternatives in the
6 community.

7 So we don't believe that the state has met
8 its burden in the case, that they should have at least
9 checked out these alternatives more before they can
10 just come to Court and ask that someone be committed.
11 So we'd ask the Court to deny the petition in this
12 case.

13 THE COURT: I have one question that I need
14 to ask. And I probably should have asked it of a
15 witness, and I didn't. But I think the two of you
16 probably would agree on what the answer is. Does he
17 have -- he has funds from what, like Social --
18 Disability?

19 MS. BRENNAN: I think he has SSI.

20 THE COURT: So there's -- there's money that
21 if it -- there's money that could be used to -- for a
22 place.

23 MS. BRENNAN: Right. I think the money goes
24 to his guardian every month.

25 THE COURT: Right. So it's not that there's

1 not funds to provide for him. He's accessing and
2 using them; is that right?

3 MR. TWOMEY: That's right.

4 THE COURT: Okay. All right. I know that
5 at the last time before Jon -- before Master Lack,
6 that he didn't find that Mr. Bigley met the
7 requirements for being determined as gravely disabled.

8 And I should back up. I'm finding that
9 Mr. Bigley does -- has been diagnosed with a mental
10 illness, paranoid schizophrenia; that as a consequence
11 of -- probably as a consequence of refusing medication
12 and also if he's affected by the events in the
13 world -- he's probably morbidly affected by the events
14 in the world right now -- but at any rate, I'm finding
15 that he's -- even though Master Lack didn't think that
16 he met the criteria, based on what I've heard today
17 about what was going on at the OPA office about his
18 refusing to not only accept services and help, but
19 demanding something that wasn't -- wasn't really -- he
20 was demanding a plane, which was not really the issue
21 at all for him. I don't think he recognized that
22 the -- that the people were trying to provide him with
23 food and housing and the means to get that.

24 And I think that he does present a danger to
25 others. I realize people that know him well don't

1 think he's an actual physical threat. But it's clear
2 to me that people who are not involved in the
3 therapeutic environment with him think that he's a
4 danger to others. It's clear to me that the bank
5 employee was -- was not viewing him as -- as a
6 benign -- basically, a benign loud talker.

7 And I think that it's true that the most
8 agitated incidences were the ones that occurred
9 earlier on in the month. And that when he arrived at
10 the bank last Friday, that he didn't -- he didn't make
11 it into the bank, but that's because he was met by two
12 security guards. And everybody seems to -- including
13 Mr. Gottstein, seems to think that if the police are
14 actually there, that he will go away. So I'm not
15 surprised. But I don't think he has the ability to
16 recognize that a no trespass order exists and that he
17 needs to follow that.

18 And the issue of whether he presents a
19 danger to himself, I'm going to continue to mull over,
20 because it's not as easy as saying someone presents a
21 danger to themselves because of something that they do
22 that causes something else to harm them, like throwing
23 yourself in front of a bus. But I think that it's --
24 I guess I'm just not sure it's entirely reasonable to
25 commit somebody on the basis of what others might do

1 to him as a result of the way he acts, but I'm going
2 to think about that part of it.

3 I think that if, in fact, he refuses
4 medication and if, in fact, the Court finds that
5 either he's competent now to refuse it or he was
6 competent at some point to say he would refuse it, I
7 think the hospitalization is -- is kind of futile in
8 the sense that all it does is warehouse him. Because
9 I don't see him getting better with talk therapy or
10 anything like that.

11 But at a minimum -- and I have to say that
12 one final thing is that -- and one of the reasons why
13 Mr. Bigley does seem gravely disabled to me is that
14 the entire time the hearing has been going on, he has
15 been talking pretty much nonstop. And some of it --
16 and I can hear a lot of it or most of it, actually.
17 And some of it is in response to what witnesses are
18 saying. He's reacting to what people are saying. So
19 I think he's understanding what people are saying.
20 But his responses basically have nothing to do with
21 what the person is saying.

22 And I don't -- I'm not saying that he's
23 doing this to be obstreperous, because I don't think
24 he can help himself. And so I'm not saying he's
25 agitated here, but he has definitely been a running

1 monologue through the whole -- so his demeanor today
2 doesn't convince me that he's got -- in a position
3 to fend for himself on the outside.

4 I'm offering these remarks on the record
5 simply to give you an idea of where I'm going to go.
6 But I am going to provide written findings. So there
7 will be more than what I've said today.

8 As I said, I'm recommending right now
9 commitment based on danger to others and gravely
10 disabled. And I'm not sure what I'm going to do about
11 the danger to self. But I will provide written
12 findings so that for objection purposes, you'll have
13 something written, not just what I said today on the
14 record.

15 I don't think there's a less restrictive
16 alternative for him. The two that have been suggested
17 are -- one of them doesn't have funding, and I just
18 don't see Mr. Bigley being able to sit down and
19 socialize with people, and that that's the problem,
20 that he doesn't have that. I think he's not capable
21 of accepting what's available to him because I think
22 he -- it's not even a question of whether he's
23 refusing it and saying he doesn't want a place to stay
24 or he doesn't want to eat. He's not even recognizing
25 that that's the issue at hand.

1 All right. As far as scheduling the
2 medication hearing, I've been advised by Probate they
3 will set it separately. And I am going to certainly
4 suggest that it be done by a Superior Court Judge.
5 Because I just think that this is such an inefficient
6 use of everybody's time, because you have to come here
7 and then I'm sure there will be objections to this
8 recommendation, plus you're going to have a big fight
9 about the medication. And then that would have to go
10 to a Judge. It just takes up everybody's time when a
11 Superior Court Judge could just do it.

12 So that -- I'm newcomer to this whole
13 process, but my plan is to suggest that they find a
14 Superior Court Judge to do it. But Probate, I guess,
15 will be contacting you about the date.

16 MS. BRENNAN: Just in terms of the
17 representation, Your Honor, I know in the past if
18 Mr. Gottstein substitutes in for the medication
19 petition, at least Judge Smith said that he
20 substituted in for the entire case. And --

21 THE COURT: You mean from that point on?

22 MS. BRENNAN: Right. Is that what this
23 Court --

24 THE COURT: So that he would be -- oh, well,
25 see, I guess I assumed that you would be in for the

1 purposes only of responding -- that's not what Judge
2 Smith did?

3 MS. BRENNAN: Right. That we -- that once
4 Mr. Gottstein comes in --

5 THE COURT: Substituted in?

6 MS. BRENNAN: -- that the P.D.s are out.

7 And that's what we would request, because we don't
8 believe that the issues can be -- really be

9 bifurcated. I could understand how the P.D.s will
10 come in and do the commitment hearing. But once he's
11 committed, there's going to be a medication petition.

12 THE COURT: Okay. I'm not going to do that
13 now. I'm going to think about that.

14 MS. BRENNAN: Okay.

15 THE COURT: All right. Off record.

16 THE CLERK: Off record.

17 (Off record, 11:53 p.m.)

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1 TRANSCRIBER'S CERTIFICATE

2 I, Susan Campbell, hereby certify that the
3 foregoing pages number 1 through 111 are a true,
4 accurate, and complete transcript of proceedings in
5 Case No. 3AN-08-00493PR, In the Matter of William
6 Bigley, transcribed by me from a copy of the
7 electronic sound recording to the best of my knowledge
8 and ability.

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SUSAN CAMPBELL

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