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Mark of the Trial Court

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

IN THE MATTER OF F.M.

3AN-02-00277 CI

_____ /

VOLUME I

TRANSCRIPT OF PROCEEDINGS

March 5, 2003 -- Pages 1 through 198

March 10, 2003 -- Pages 198 through 223

HEARING REGARDING BURDEN OF PROOF THAT
DEFENDANT IS MENTALLY ILL AND REGARDING
ADMINISTRATION OF MEDICATION

BEFORE THE HONORABLE MORGAN CHRISTEN

Anchorage, Alaska
March 5, 2003

APPEARANCES:

FOR THE PLAINTIFF: Jeff Killip
 Assistant Attorney General
 State of Alaska
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FOR THE DEFENDANT: James B. Gottstein
 406 G Street, Suite 206
 Anchorage, Alaska 99501

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P R O C E E D I N G S

1 4403-41
2
3 8:52:51 AM
4 THE COURT: We're on record in Case No. 3AN-03-277.
5 It's a case regarding Faith Myers. Mr. Gottstein, before
6 I go any further, I'll just state your appearance. Mr.
7 Gottstein is present, for the record, as is Mr. Killip for
8 the State. Your client requested this be an open hearing,
9 is that correct?
10 MR. GOTTSTEIN: That's correct. She's not here yet,
11 though, and she's supposed to be here. So, I don't know
12 what the hang-up is. Dr. Kletti, wasn't she --?
13 THE COURT: Right. She has the right to be present.
14 DR. KLETTI: Right. She was scheduled for
15 transportation to court this morning.
16 THE COURT: I was told that you all were ready. I
17 didn't realize that you weren't. We need to wait for her.
18 So we'll go ahead and go back off record and do that.
19 Well, actually, maybe I'll take up some housekeeping,
20 first, but we're not going to proceed in substance with
21 her, certainly.
22 I just have the one exhibit list. Counselor, do you
23 have --
24 MR. GOTTSTEIN: The respondent's?
25 THE COURT: Yes. Do you have an exhibit list, Mr.

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1 Killip?
2 MR. KILLIP: Your Honor, given the accelerated pace,
3 the witnesses just showed up. I had a chance to speak
4 with one for almost an hour yesterday, but there are two
5 more I haven't had a chance to talk with and one of them
6 presented me with some photographs. I don't have an
7 exhibit list that I've generated yet, but I can do it
8 right now.
9 THE COURT: Okay, that's fine. We can do it when we
10 go off record for a minute. As long as Mr. Gottstein has
11 it and has a chance to take a look, that's fine.
12 MR. GOTTSTEIN: Your Honor, I would note under AS
13 47.37.30(a)(6) that the petition must list the prospective
14 witnesses who will testify in support of commitment or
15 involuntary treatment, and only Dr. Hanowell was listed.
16 And I would object to any witness other than the one
17 specifically listed testifying.
18 THE COURT: All right. The objection is noted, but
19 again, I'm not going to make any substantive ruling until
20 your client gets here. My intention is to stay on record
21 just to get some housekeeping taken care of.
22 MR. GOTTSTEIN: Can I respond to that, Your Honor?
23 THE COURT: No, not yet.
24 MR. GOTTSTEIN: Okay.
25 THE COURT: Because we're not going to get into

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1 THE COURT: Mr. Gottstein?
2 DIRECT EXAMINATION (continued)
3 BY MR. GOTTSTEIN:
4 Q Yeah. Dr. Jackson, can you explain why you failed
5 the exam? Or, you were failed, I guess I should say.
6 A Well, the Board of Examiners does not send you any
7 kind of feedback, but I was subjected to quite intense
8 cross-examination as to why I would not give a patient
9 with psychotic symptoms medication for life. And I had
10 done extensive research up to that point to prepare myself
11 for -- for my philosophy of treatment. And I was not
12 willing to purger myself in the cross-examination process
13 of board certification exam, so I did not pass that exam.
14 Q What do you mean by that? You were not prepared to
15 purger yourself?
16 A I could have lied. I could have told the examiners
17 that the woman in the videotaped interview, who had
18 previously had a case of schizophrenia, needed to be on
19 medication for life, which is what they were attempting to
20 get out of me. Because they kept saying, well, she told
21 you that she had previously been on these medicines. Why
22 won't you give them to her now? And I had done a great
23 deal of research and had very good reasons why I would not
24 continue a person, necessarily on life-long medication.
25 But that, apparently, was not the answer that they were

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1 looking for.
2 I should say that my passed portion of the exam,
3 which was based on a live patient interview in the
4 morning, was based -- I passed that exam, and the reason
5 for that or the tone of that was actually quite different.
6 My examiners were more psycho-dynamically oriented
7 individuals, and they accepted the fact that a life-long
8 medication strategy was not necessarily in the best
9 interest of all patients.
10 So, the board certification process, itself, is
11 extremely relative. I would expect to encounter the exact
12 difficulties when I sit for the examination again and I
13 will give the same answers, based on the same
14 scientifically-based knowledge.
15 THE COURT: I'll accept this witness as an expert
16 and weigh her testimony accordingly.
17 Q Dr. Jackson, did you prepare a report and sign an
18 affidavit -- well -- excuse me, Your Honor.
19 THE COURT: That's okay. But could you get closer
20 to the microphone?
21 Q Yes. Did you notarize a statement -- have notarized
22 a statement in preparation for this hearing?
23 A Yes, I did.
24 THE COURT: Mr. Gottstein, I'm sorry to do this to
25 you, but I just got the email that Dr. Mosher is on the

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1 phone. Do you want me to have him call back in 10
2 minutes, or what do you want to do?
3 MR. GOTTSTEIN: Grace, can you? Let's take Dr.
4 Mosher.
5 THE COURT: That's your preference?
6 MR. GOTTSTEIN: Yes.
7 THE COURT: Ma'am, I'm very sorry to do this. We've
8 been trying to get Dr. Mosher on the line, and the
9 witnesses we typically go in order. And he was not
10 available by phone. I've just received an email that he's
11 called back in.
12 DR. JACKSON: That's absolutely fine.
13 THE COURT: All right. I appreciate it very much.
14 DR. JACKSON: Would you like me -- you'll call me
15 back?
16 THE COURT: Yes.
17 DR. JACKSON: Okay. Thank you.
18 THE COURT: You bet. Dr. Mosher, can you hear me?
19 DR. MOSHER: Yes. Long distant, but I can hear you.
20 THE COURT: All right. I'll try to speak into the
21 microphone more clearly. My name is Morgan Christen. I'm
22 a superior court judge and I'm assigned to this case. I
23 have you on a speaker phone on an overhead in the
24 courtroom, sir. And Mr. Gottstein has asked that you
25 testify. Are you able to do that at this time?

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1 DR. MOSHER: Well, I guess. I didn't prepare must,
2 but anyway, I'll do my best.
3 THE COURT: All right. That's fine. I need to have
4 the oath administered to you. Could you please raise your
5 right hand?
6 DR. MOSHER: Okay.
7 THE CLERK: Do you swear or affirm that the
8 information you are about to give in this matter before
9 the court is the truth, the whole truth, and nothing but
10 the truth?
11 DR. MOSHER: I do.
12 THE COURT: Sir, could you please state your full
13 name and spell your last name?
14 DR. MOSHER: It's Loren Mosher, M-O-S-H-E-R-.
15 THE COURT: All right. Thank you. Mr. Gottstein,
16 you may inquire.
17 DR. LOREN MOSHER
18 testified as follows on:
19 DIRECT EXAMINATION
20 BY MR. GOTTSTEIN:
21 Q Dr. Mosher, I can't express my appreciation enough
22 for your willingness to testify after just getting back
23 from Germany yesterday, and I just felt like I wanted to
24 express that.
25 Your affidavit has just been admitted. And I

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1 represented that you would have it notarized and send it.
 2 Is that true?
 3 A I just did that. It should be there tomorrow
 4 afternoon.
 5 Q Thank you. Could you briefly -- because we've got a
 6 total of, I think 28 minutes left in this whole hearing,
 7 including to hear from Dr. Jackson -- discuss your
 8 credentials, please?
 9 A I graduated from Stanford as an undergraduate,
 10 Harvard Medical School, Harvard psychiatric training, more
 11 training at the National Institute of Mental Health, post-
 12 doctoral fellowship in England, professor -- assistant
 13 professor of psychiatry at Yale -- I'm sort of going
 14 chronologically -- from '68 to '80 I was the chief for the
 15 Center for Studies of Schizophrenia, at the National
 16 Institute of Mental Health from 1980 to '88 I was
 17 professor of psychiatry at the Uniform Services University
 18 of the Health Sciences in Bethesda, Maryland. That's a
 19 full-time, tenured, academic position. '88 to '96 I was
 20 the chief medical director of the Montgomery County
 21 Maryland Public Mental Health System. That's a bedroom
 22 community to Washington, D.C. From '96 to '98 I was
 23 clinical director of the San Diego County Public Mental
 24 Health System. Since November of '98 I have been the
 25 director and principle in Satiria (ph) Associates, a

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1 longer represented my interested and the \$1,000 a year
 2 that I was paying for them was just basically a waste of
 3 money, while they pursued their own interests to the
 4 detriment of what I consider to be the people they should
 5 be pursuing an interest for, and that's their patients.
 6 So anyway, I'm not a member. I resigned in December of
 7 1998.
 8 Q So, is it fair to say that you have a philosophical
 9 disagreement with their approach, presently?
 10 A Well, yeah. I don't like how they do business.
 11 Q When you say do business, you mean practice
 12 psychiatry in the United States?
 13 A Well, we could take up the next half hour on that
 14 subject, but basically I feel that they have taken the
 15 person out of psychiatry and psychiatry has -- is now a
 16 dehumanizing, impersonal, non-individualized specialty
 17 that is interested purely in pharmaceutical therapy now.
 18 That's big, broad brush strokes, but that's -- obviously
 19 that's not true of every single one, but that's my
 20 complaint about the organization.
 21 Q Okay.
 22 A There's a -- if you want to read my letter of
 23 resignation, you can look on my web site.
 24 Q Okay, thank you.
 25 THE COURT: Any objection?

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1 private consulting firm that I formed, and I also hold
 2 clinical professorships at the University of California
 3 San Diego School of Medicine, and at the Uniform Services
 4 University of the Health Sciences in Bethesda, Maryland.
 5 So that's briefly my credentials.
 6 Q Dr. Mosher, did you mention being head of
 7 schizophrenia research at the National Institute of Mental
 8 Health?
 9 A Yeah, I said I was the head of the Center for
 10 Studies of Schizophrenia from 1968 until 1980.
 11 Q Okay. I move to qualify Dr. Mosher as an expert
 12 psychiatrist, especially in schizophrenia.
 13 MR. KILLIP: Your Honor, just a couple questions.
 14 VOIR DIRE EXAMINATION
 15 BY MR. KILLIP:
 16 Q Dr. Mosher, Jeff Killip with the Alaska Attorney
 17 General's Office. I just want to ask you if you are
 18 currently board certified in psychiatry?
 19 A I've been board certified since 1969.
 20 Q Okay. And are you currently a member in good
 21 standing with the American Psychiatric Association?
 22 A No, I am not. I resigned from the American
 23 Psychiatric Association.
 24 Q And do you have a reason for that?
 25 A Yes, I have a reason for it. I felt like they no

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1 MR. KILLIP: No.
 2 THE COURT: All right. This witness will be
 3 qualified
 4 Q Thank you, Dr. Mosher. In the first sentence of the
 5 introduce of your affidavit on page two, you talk about
 6 the biomedical model. I was going to ask you what you
 7 mean by that. Have you already answered that, or would
 8 you like to expand on that?
 9 A Well, you know, what I mean by that is the phrase is
 10 currently being used that, let's take, for example,
 11 schizophrenia is a brain disease. Well, that's a perfect
 12 example of the medical model -- of the biomedical model.
 13 When -- whereas, there is no evidence that schizophrenia
 14 is, in fact, a brain disease. And so a hypothesis that
 15 schizophrenia is a brain disease, has been converted into
 16 a biomedical fact. And I disagree with converting
 17 hypotheses into beliefs in the absence of supporting
 18 evidence.
 19 Q Okay, thank you. Now, in your opinion, is
 20 medication the only viable treatment for schizophrenia
 21 paranoid type?
 22 A Well, no, it's not the only viable treatment. It is
 23 one that will reduce the so-called positive symptoms, the
 24 symptoms that are expressed outwardly for those kinds of
 25 folks. And that way they may seem better, but in the long

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1 run, the drugs have so many problems, that in my view, if
2 you have to use them, you should use them in as small a
3 dose for as short a period of time as possible. And if
4 you can supply some other form of social environmental
5 treatment -- family therapy, psychotherapy, and a bunch of
6 other things, then you can probably get along without
7 using them at all, or, if at all, for a very brief period
8 of time. But you have to be able to provide the other
9 things. You know, it's like, if you don't have the other
10 things, then your hand is forced.

11 MR. KILLIP: Excuse me, Your Honor. I just would
12 renew our continuing objection about offering test on
13 medical practice in the context of this hearing.

14 THE COURT: This hearing is going to last 20 more
15 minutes, and I'm going to let Mr. Gottstein use the time.

16 Q Now, as a hypothetical question, if a woman who had
17 managed -- who has over a 25 year experience with
18 medications and has -- including navaine, paxil, risperdal
19 and zyprexa -- and then has managed to not -- to wean
20 herself from those for a year, would your recommendation
21 be that she be placed back on them, particularly against
22 her will?

23 A Well, I think she is an absolute saint if she was
24 able to get off of those drugs. Those drugs are
25 extraordinarily difficult to get off of, especially

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1 zyprexa, which is a thienobenzodiazepine derivative and
2 the thienobenzodiazepine valium-type drugs are very
3 addictive. And so, zyprexa, in particular, is difficult
4 to get off. And if she got off herself -- got herself off
5 of zyprexa, that's quite a remarkable feat in my clinical
6 experience. So I would be loath to put her back onto,
7 especially zyprexa. But, you know, the other -- risperdal
8 is also problematic for getting off. Actually, they all
9 are, it's just a matter of degree. And if she got off for
10 a year, then I would certainly try to do whatever I can to
11 avoid putting her back on. And if she doesn't want them,
12 then that's even -- you know, if you can't negotiate some
13 drug that she may calm down on, like, for example, if she
14 if kind of agitated and anxious -- I don't know this
15 woman. I've never seen her face-to-face, so I can't
16 really speak to her particular problem without having seen
17 her, but if she is, let's say, unhappy, agitated, and so
18 forth, then sometimes short-term use of drugs like valium
19 is quite helpful and it get's people through a crisis
20 without getting them back onto the neuroleptics drugs, the
21 anti-psychotic drugs.

22 Q Okay, thank you. Now, in your affidavit, you say
23 involuntary treatment should be difficult to implement and
24 used only in the direst of circumstances. Could you
25 explain why you have that opinion?

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1 A Well, it's just, you know, the degree to which you
2 have to force people to do anything.....

3 MR. KILLIP: Your Honor, I'm going to object.

4 Ais the degree to which it's going to be very
5 difficult to forge a good therapeutic relationship. And
6 in the field of psychiatry, it is the therapeutic
7 relationship which is the single most important thing.
8 And if you have been a cop, you know, that is, some kind
9 of a social controller and using force, then it becomes
10 nearly impossible to change roles into the role -- the
11 traditional role of the physician as healer advocate for
12 his or her patient. And so I think that that -- we should
13 stay out of the job of being police. That's why we have
14 police. So they can do that job, and it's not our job.

15 Now, if because of some altered state of
16 consciousness, somebody is about to do themselves grievous
17 harm or someone else grievous harm, well then, I would
18 stop them in whatever way I needed to. I would probably
19 prefer to do it with the police, but if it came to it, I
20 guess I would do it. In my career I have never committed
21 anyone. It just is -- I make it my business to form the
22 kind of relationship that the person will -- that we can
23 establish a ongoing treatment plan that is acceptable to
24 both of us. And that may you avoid getting into the fight
25 around whatever. And, you know, our job is to be healers,

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1 not fighters.

2 THE COURT: There's an objection to that question.
3 The objection was relevance?

4 MR. KILLIP: Yes.

5 THE COURT: Overruled.

6 Q Now, you say you've never committed anybody. But
7 you've had a lot of experience with -- or, I should say,
8 have you had a lot of experience with people with
9 schizophrenia?

10 A Oh, dear. I probably am the person on the planet
11 who has seen more acutely psychotic people off of
12 medication, without any medications, than anyone else on
13 the face of the planet today.

14 Q Thank you.

15 A Because of the Satiria Project that we did for 12
16 years where I would sit with people who were not on
17 medications for hours on end. And I've seen them in my
18 private practice, and I see them to this day in my now,
19 very small, private practice. But --

20 THE COURT: Sir, I think I understand the answer.
21 A I find that people who are psychotic and not
22 medicated are among the most interesting of all the
23 customers one finds.

24 Q Thank you, Dr. Mosher.

25 THE COURT: That's a yes.

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1 Q Dr you know Dr. Grace Jackson?
 2 A I do.
 3 Q Do you have an opinion on her knowledge of
 4 psychopharmacology?
 5 A I think she knows more about the mechanisms of
 6 actions of the various psychotropic agents than anyone who
 7 is a clinician, that I'm aware of. Now, there may be, you
 8 know, basic psychopharmacologists, you know, who do lab
 9 work who know more, but as far as a clinician, a
 10 practitioner, I don't know anyone who is better-versed in
 11 the mechanisms, the actions, the effects and the adverse
 12 effects of the various psychotropic drugs.
 13 Q Thank you, Dr. Mosher. I have no questions, but
 14 perhaps the State will have some.
 15 MR. KILLIP: Yes, thank you.
 16 DR. LOREN MOSHER
 17 testified as follows on:
 18 CROSS-EXAMINATION
 19 BY MR. KILLIP:
 20 Q Dr. Mosher, is it not your understanding that the
 21 use of anti-psychotic medications is the standard of care
 22 for treatment of psychosis in the United States,
 23 presently?
 24 A Yes, that's true.
 25 Q Okay, so is it fair to say that your viewpoint --

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1 MR. GOTTSTEIN: Objection, relevance.
 2 THE COURT: Overruled.
 3 Q Would you say that your viewpoint presented today
 4 falls within the minority of the psychiatric community?
 5 A Yes, but I would just like to say that my viewpoint
 6 is supported by research evidence. And so, that being the
 7 case, it's a matter of who judges the evidence as being
 8 stronger, or whatever. So, I'm not speaking just opinion,
 9 I'm speaking from a body of evidence.
 10 Q Thank you, Dr. Mosher.
 11 THE COURT: Nothing further?
 12 MR. KILLIP: Nothing.
 13 MR. GOTTSTEIN: No, Your Honor.
 14 THE COURT: All right. Sir, I appreciate your
 15 testimony very much and want to thank you. It sounds like
 16 the lawyers are done with you, so you can hang up.
 17 DR. MOSHER: Okay. Well, good luck and I hope --
 18 what's her name, Ms. Myers?
 19 THE COURT: Faith Myers.
 20 DR. MOSHER: Gets out and without drugs. Thank you.
 21 THE COURT: Thank you, sir. All right. Do you want
 22 to try to call Dr. Jackson back?
 23 MR. GOTTSTEIN: Yes, Your Honor.
 24 THE COURT: All right. Dr. Jackson?
 25 DR. JACKSON: Yes?

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1 THE COURT: Great. We're back on record. This is
 2 Morgan Christen again. I have you back on the same
 3 overhead speaker.
 4 DR. JACKSON: Yes, ma'am.
 5 THE COURT: What I'm going to do, I think, to save
 6 time, is to just remind you that you remain under oath and
 7 allow Mr. Gottstein to ask his questions.
 8 DR. JACKSON: Um-hmm. Yes, ma'am.
 9 DR. GRACE JACKSON
 10 testified as follows on:
 11 DIRECT EXAMINATION (continued)
 12 BY MR. GOTTSTEIN:
 13 Q Thank you, Dr. Jackson. Obviously we're down to 10
 14 minutes now, and I appreciate you waiting all day. And
 15 I'm going to have to be, obviously, a little bit -- or
 16 more than a little bit brief.
 17 Did you -- we were just talking about an affidavit,
 18 I think, that you signed, or a report that you swore. Did
 19 you do so?
 20 A Yes, that is correct. Yup.
 21 Q And is it -- can I --?
 22 THE COURT: Do I have this? Oh, you're just handing
 23 it to me now, okay.
 24 MR. GOTTSTEIN: I was in the middle of that.
 25 THE COURT: I see. I beg your pardon.

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1 MR. GOTTSTEIN: Exhibit D.
 2 THE COURT: Thank you, sir.
 3 Q What's the title of that?
 4 A This is an analysis of the olanzapine that is
 5 zyprexa, the clinical trials, and I've called this A
 6 Dangerous Drug with Dubious Efficacy.
 7 Q Okay.
 8 MR. KILLIP: Excuse me, Your Honor. I just wanted
 9 to note for the record that we've got about 20+ pages,
 10 half of them are stapled upside down. We're probably not
 11 going to have a meaningful opportunity to look at this
 12 before cross-examination. I just want to make that
 13 record.
 14 THE COURT: Yes, I have the same exhibit.
 15 MR. KILLIP: Thank you.
 16 MR. GOTTSTEIN: And I would note that I received
 17 nothing from them before anything.
 18 Q I think what I -- does this accurately -- well,
 19 obviously it accurately describes the results of your
 20 research into the drug olanzapine. Is that correct?
 21 A Yes, that's right.
 22 Q Okay. Have you -- I'm going to try -- I'm trying to
 23 get some stuff into the record here, Your Honor. And so -
 24 - and then we'll get to more substantive.
 25 Did you send me some information regarding the

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1 MR. GOTTSTEIN:if that's what our decision is.
 2 THE COURT: If you could let me know, I'd sure
 3 appreciate it, because I'm --
 4 MR. GOTTSTEIN: Absolutely, Your Honor. I included
 5 you in that.
 6 THE COURT: Yeah, I appreciate it. Because, as I
 7 said, I'm -- I have a personal appointment out of the
 8 office that's actually a medical appointment I scheduled
 9 for some months and moved several times, myself, so I'd
 10 like to know as soon as I can, so that I can know how to
 11 handle that.
 12 And I appreciate what you're both doing, which
 13 strikes me as you're both being very, very cooperative and
 14 trying your level best to get this done in a timely manner
 15 that jumps through all the hoops required by the statute
 16 and make sure that I have the information that I need to
 17 make the decision.
 18 Is there anything further I can take up today,
 19 productively? No?
 20 MR. KILLIP: I don't think so, Your Honor.
 21 THE COURT: All right. Well then, I'll let you both
 22 ring off. It's after 5:00 and I've kept you. Thanks very
 23 much for your help. I'll have Hilary confirm tomorrow
 24 morning about that time, but that should be at least in
 25 pencil on your calendars. And I'll let you know if I need

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1 to speak to you sooner, after I get the report from the
 2 court-appointed visitor.
 3 MR. KILLIP: Okay.
 4 THE COURT: Thank you both very much.
 5 MR. KILLIP: Thank you.
 6 MR. GOTTSTEIN: Thank you.
 7 THE COURT: Off record.
 8 (Off record.)
 9 5:03:47
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1 TRANSCRIBER'S CERTIFICATE
 2 I, Joanne Kearse, hereby certify that the foregoing
 3 pages numbered 1 through 222 are a true, accurate, and
 4 complete transcript of the hearings that took place on
 5 March 5, 2003 and March 10, 2003, In the Matter of F.M.,
 6 Superior Ct. No. 3AN-03-277 PR, transcribed by me from a
 7 copy of the electronic sound recording to the best of my
 8 knowledge and ability.
 9 Dated this 7th day of April, 2003.
 10
 11 JOANNE KEARSE
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