

Law Project for Psychiatric Rights
James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686



Attorney for Appellant

IN THE SUPREME COURT FOR THE STATE OF ALASKA

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

RESPONSE Re: EXPEDITED APPEAL

In response to this Court's June 25, 2008, Order, Appellant believes this appeal should be expedited. Appellant believes the appeal should be expedited not because of the stay, however, but because this Court should order he be provided as soon as possible with the less intrusive alternative to which he believes he is entitled under *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238, 239, 248, 252, 254 (Alaska 2006).

In *Myers*, this Court held the state may not administer psychiatric drugs against a person's will under AS 47.30.839 if there is a less intrusive alternative available. *Id.* Appellant believes API may not avoid its obligation to provide such a less intrusive alternative merely by choosing that it shall not be provided. *Wyatt v. Stickney*, 344 F.Supp. 387, 392 (M.D.Ala.1972) ("no default can be justified by a want of operating

funds"), affirmed, *Wyatt v. Anderholt*, 503 F.2d 1305, 1315 (5th Cir. 1974)(state legislature is not free to provide social service in a way that denies constitutional right).

The *Wyatt* case was decided under the U. S. Constitution, and Appellant believes this Court should hold the same under the Alaska Constitution. In *Hootch v. Alaska State-Operated School System*, 536 P.2d 793, 808-09 (Alaska 1975), while this Court held that resolution of the complex problems pertaining to the location and quality of secondary education are best determined by the legislative process, it stated: "We shall not, however, hesitate to intervene if a violation . . . under either the Alaska or [United States] Constitutions is established." *Hootch* was an equal protection case, while here due process is involved, which does not involve such deference to the legislature.

Appellant has been locked up in the Alaska Psychiatric Institute (API) 75 times.¹ In addition, mostly as a result of expressing his extreme anger at the way he has been treated, he has been arrested multiple times for minor offenses not involving violence, including since his discharge from his most recent commitment.² The unanimous testimony in this case is that if Appellant were to have someone with him in the community and provided dependable housing, he could probably avoid being readmitted to API or landing back in jail.³ Unfortunately, API refuses to provide such a less

¹ Stay Order, p.2.

² *State v. Bigley*, 3AN 08-06820CR, dismissed after finding Appellant incompetent to stand trial.

³ Affidavits and oral testimony of Paul Cornils and Grace Jackson, MD, and the oral testimony of Dr. Hopson, the medical director of API. *See*, also, affidavits of Ronald Bassman, PhD, and Robert Whitaker, as well as the live testimony of Sarah Porter from the September 5, 2007, hearing in 3AN 07-1064, which was submitted under Evidence Rule 804(b)(1).

intrusive alternative. Instead, when it has been prevented from drugging Appellant against his will, including in this case, it has discharged him even though it has just come into court and obtained involuntary commitment orders upon the sworn testimony of its employees that he is gravely disabled and/or a danger to himself.⁴

Appellant believes he is entitled to the less intrusive alternative requested from the Superior Court.⁵ Unless API is ordered by this Court to provide a less intrusive alternative during the pendency of this appeal, Appellant will be without the constitutionally required less intrusive alternative to which he is entitled during the time it takes to decide this appeal. This will cause Appellant unnecessary, and inherently irreparable suffering.

For these reasons, Appellant believes this appeal should be expedited or this Court should order API to provide the requested less intrusive alternative during the pendency of this appeal.⁶

Dated this 7th day of July, 2008, at Anchorage, Alaska.

LAW PROJECT FOR PSYCHIATRIC RIGHTS

By: 

James B. Gottstein, Esq.,
Alaska Bar No. 7811100

⁴ See, e.g., September 18, 2007, Notice to the Court in 3AN 08-1064 PR, which appears at Exc. 27 in Appeal No. S-13015 before this Court.

⁵ See, Motion for Less Intrusive Alternative attached to Limited Entry of Appearance and Tr. 281-285 (May 15, 2008).

⁶ If this appeal is not expedited, it is anticipated Appellant will file a motion for such interim relief.