IN THE TRIAL COURTS FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

AT ANCHORAGE

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

Respondent.
_____/

No. 3AN-07-1064 PR

30-DAY COMMITMENT HEARING

PAGES 1 THROUGH 103

BEFORE THE HONORABLE ANDREW BROWN
MASTER

Anchorage, Alaska
September 5, 2007
9:14 a.m.

APPEARANCES:

FOR STATE OF ALASKA: Elizabeth Russo
Attorney General's Office
Human Services Division
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

FOR W.S.B.: James Gottstein
406 G Street, Suite 206
Anchorage, Alaska 99501

Also Present: W.S.B.

PROCEEDINGS
3AN2707-162
9:14:26

THE COURT: This is the matter of the case involving the hospitalization for William Bigley, file number 007-1064. This is the time set for the hearing concerning State's petition -- petition for court approval of administration of psychotropic medication. And Ms. Russo is here representing the State, and Mr. Gottstein is here representing Mr. Bigley.

So, any preliminary matters, Ms. Russo?

MS. RUSSO: Yes, Your Honor. Along -- I just filed a pre-hearing brief this morning. Part of my pre-hearing brief is a motion to strike all the attachments that had been attached to the respondent's pre-hearing brief, including the affidavits that were filed along with it.

At this point, just -- many of them, I don't believe, are relevant to the issues in this case. If the respondent wishes to introduce them as evidence later on, then we could take them up the, but I would ask the court to take that up.

THE COURT: Okay.

MS. RUSSO: And then I understand that there is a witness that Mr. Gottstein has subpoenaed and

wishes to testify this morning.

My only witness is Dr. Worrall, and there were staffing issues at the hospital, so he's not here yet. he will be here at 10 o'clock this morning.

I would object to Mr. Gottstein calling Ms. Porter. I don't know how she can provide relevant testimony in this case, and I think we should probably try and figure that out. I understand she is only available this morning, so we should probably figure out the issue of her testimony as quickly as possible so that she's not detained any longer than need by.

MR. GOTTSTEIN: But she's not under subpoena, Your Honor.

MS. RUSSO: Oh, she isn't? Okay.

THE COURT: Okay.

MR. GOTTSTEIN: But (indiscernible).

MS. RUSSO: Let me -- Ms. Russo, anything else before hear from Mr. Gottstein?

MS. RUSSO: Not at this time, Your Honor.

THE COURT: Okay.

Mr. Gottstein?

MR. GOTTSTEIN: Well, first off, of course, I think the petition should be dismissed so that there is no question that I've asked for it. I'm doing so now, and I think there is -- it may be a little unclear in

terms of the proper procedure, but whether you call it a motion or judgment on the pleadings -- for example, they have failed to allege facts sufficient to support their petition. And I brought this up on Friday, and suggested that, on due process grounds, that they -- you know, that I be notified. And I'm gonna re-raise that because there is something in their brief this morning that shows that they really should have done that, and I was entitled to it. But the basic thing is that they haven't -- the basic motion.

There are two real motions, you know, procedurally. A motion for judgment on the pleadings, based on their allegations and their responses, which is in the pre-trial hearing, which could be considered an answer. Especially that background section should be considered an answer.

And then, of course, there is evidence on all those. And I don't know that there is any authentication issue with respect to the court documents. And I had a subpoena out for Dr. Worrall, to bring the records, so that if there is any question about authentication -- so I think that's proper evidence. And, so, then, that would then be a summary judgment motion, basically. And, so, I think, technically, that needs to be addressed first.

And then, I really -- okay -- and then -- and then in terms of the notice -- of course, my brief says that they have to say -- they have to say, under Meyers, what drugs and what combinations they are proposing, in order for a proper analysis to be used. And on Friday I said that they should provide, you know, the information under Meyers. And, of course, Your Honor denied that. But that was a due process argument.

But now she comes in and complains that I've got information about a drug that they're not proposing. I don't even know what drugs they're proposing, which is what I asked for last Friday.

Again, sorry for getting worked up about that. But it really just seems, you know, like -- you know, come on, let's have notice and reasonable opportunity to respond and handle these things properly, as Meyers directed us to do. That these forced drugging petitions are not something -- that they're something that need to be done -- I'm not trying to delay, but they need to be done properly and well considered because of the important interest at stake.

Okay. And then looking through it -- ah, you know -- and we've got a huge amount of stuff that could be done before we can get through -- you know, all the

effects. How do you -- does his medical history indicate whether or not he's suffered any of the -- any side effects from the medication -- from Risperadone?

A Well, he has tardive dyskinesia, which is most likely from the years and years of getting drugs like Haldol, Prolixin -- because he's been getting medications for over 25 years, and those drugs have a 2% per year accumulative risk of tardive dyskinesia.

MR. GOTTSTEIN: Objection, Your Honor.

THE COURT: Okay. What's the nature of the objection?

MR. GOTTSTEIN: Well, the issue about scientific information, that -- I think he should produce the -- what he relies on for that. My understanding is, it's higher than that, as the reason. But -- so I object to that.

THE COURT: Okay. Ms. Russo?

MS. RUSSO: Your Honor, I think Dr. Worrall's testified about the amount of research and the continuing education and the lectures he does, and that's his understanding, as Mr. Bigley's treating physician, as to the amount of risk.

If Mr. Gottstein feel that Dr. Worrall's

testimony is inaccurate, he can counter that during his claims. Dr. Worrall isn't testifying that there is no risk. He's saying that there ins indeed a risk. If Mr. Gottstein has other experts that can counter that, he can present that evidence. I don't -- I think Dr. Worrall -- there's been a sufficient basis for Dr. Worrall's testimony.

MR. GOTTSTEIN: And...

THE COURT: Okay. Wait a minute. The doctor was testifying as to -- what I understood was his -- let me rephrase it. The doctor was testifying concerning, as I understood it -- his belief as to Mr. Bigley's tardive dyskinesia. And it seems like the doctor was relying on what he understood was Mr. Bigley's previous medical history, or administration of drugs to him. And, so, to me, it's just a matter of, t his is the doctor's professional opinion in trying to understand what Mr. Bigley's current situation is, based on what the doctor knows of his past. So I'm going to allow that to stand.

MR. GOTTSTEIN: Your Honor, if I may.

THE COURT: Yeah.

MR. GOTTSTEIN: This just illustrates -- I think the distinction that our court made in Marron or Mara -- I don't know how you say it, but I'll call it

"Marron." That clinical observations, you don't need to go through the Coon standards, but once you get into scientific evidence, that you do. And so I was objecting to the 2% figure, because I think that I'm entitled to have -- you know, to give me the basis for that.

THE COURT: Okay. Ms. Russo, do you want to add anything?

MS. RUSSO: I don't think that this is going into the Marron and Coon. I don't agree with Mr. Gottstein's analysis of this. And quite frankly, I don't know -- I mean, Dr. Worrall's testifying about the fact that Mr. Bigley has tardive dyskinesia from previous medications that he had been on for years. These are not the medications that Dr. Worrall wishes to prescribe for Mr. Bigley at this time. So we're talking about Mr. Bigley's past medical history here.

THE COURT: I'm going to let the testimony stand as is, based on my ruling -- previous ruling.

Next question?

MS. RUSSO: Okay. Thank you.

Q And, Dr. Worrall, does the Risperadone have the -- have a side effect of tardive dyskinesia, as well? Can that...

A Yes, it does, but it's considerably less than

-- there is no antipsychotic that -- that has proven to be free of any risk of tardive dyskinesia. The training that psychiatrists traditionally get from any setting, whether it be an academic residency program or literature, is that the risk of the older typical antipsychotics is considerably higher than the newer atypicals. Clozapine being the safest of all, with respect to that risk.

And if I could clarify. I did say a 2% cumulative risk per year. So in 20 years, that's a 40% risk. It does add up to a high number over the years on the typical antipsychotics.

MR. GOTTSTEIN: Yes, Your Honor, and I understood that, and I think the rate is high.

Q Okay. And, Dr. Worrall, did you -- even knowing that there is this risk of tardive dyskinesia, is that something you weighed in your analysis?

A Yes. The risk of the tardive dyskinesia getting worse in a potential with psychotropic drug treatment, antipsychotics in particular. The risk is -- we don't have a number on that. There isn't good research on that. It really would be difficult to quantify. There is some

MR. BIGLEY: See him in person.
MR. GOTTSTEIN: I do -- I -- I'm trying to accommodate the -- I know the practicalities of everything, but it just seems like we're in the same town, that we ought to be able to do that. I notice that, you know, Dr. Worrall has a lot of papers, and I haven't had a chance to, you know, look and see what -- you know, what he's referring to. It's those sorts of things. We might -- I have a -- I -- I'm -- I'm pretty sure I'll have some questions on the chart and stuff, and it just seems more, ah...
THE COURT: Then he's here right now, we're going to have to proceed with him and Ms. Porter will have to wait, and she can...
MR. BIGLEY: Now, (indiscernible).
THE COURT: She could be telephonic Monday.
MR. GOTTSTEIN: I -- I -- wo -- then, in light of that, then I will withdraw my objection to a telephonic testimony.
MR. BIGLEY: (indiscernible) telephonic.
THE COURT: So, Doctor, you're excused for now and we will contact you some time Monday. You -- and, ah, Ms. Russo...
MR. BIGLEY: (Indiscernible).
THE COURT: ...will work out how we'll contact

you now. Thank you.
All right. So, now...
MR. GOTTSTEIN: Short break?
THE COURT: We don't really have time.
MR. GOTTSTEIN: Well, I gotta get...
THE COURT: Okay. Go -- yeah, we'll go off record.
MR. GOTTSTEIN: Okay.
(Off record - 11:18 a.m.
(On record - 11:30 a.m.)
THE COURT: You can be seated. This is a continuation of the Bigley matter. So, I guess, first we have to have Ms. Porter sworn in. So if you'll just stand there, we'll get you sworn in, please.

*

called as a witness in behalf of the respondent, being first duly sworn upon oath, testified as follows:
(Oath administered)
WITNESS: I do.
THE CLERK: And you can be seated.
MR. GOTTSTEIN: Thank you, Your Honor.
THE COURT: Wait a minute. The clerk has a couple questions she has to ask the witness.
MR. GOTTSTEIN: Oh, I'm sorry.
THE CLERK: Would you please state your full

name, spell your last name, and give a mailing address.
MR. GOTTSTEIN: Certainly. It's Sarah Frances Porter. The Porter is spelled P-O-R-T-E-R. And the mailing address would be 112 Manly Street. That's M-A-N-L-Y Street, Paraparaumu, which is, P-A-R-A-P-A-R-A-U-M-U, New Zealand. And the postal code is 5032.
THE CLERK: Thank you.
THE COURT: Yes?
MR. GOTTSTEIN: Your Honor, I have a quick administrative matter. I need to get a transcript of today's hearing prepared, and I was discussing with the clerk how to -- and there might be a delay to get a copy. I was wondering if we could make sure that we could expedite getting the CD over so that I can -- and then ask them to expedite getting a copy made for me.
THE COURT: Okay. So, like, tomorrow morning some time we can...
THE CLERK: (Indiscernible).
THE COURT: I guess -- so we would have to call your office when it's available for pickup.
MR. GOTTSTEIN: That's perfect, Your Honor.
THE COURT: Okay. And, of course, for Ms. Russo, too.

MS. RUSSO: Uh-huh (affirmative).
MR. GOTTSTEIN: Yeah.
THE COURT: Okay. So we'll -- as soon as my office can call tomorrow morning and say it's ready for pickup, we'll do that. Okay?
MR. GOTTSTEIN: Okay.
THE COURT: Thanks.
MR. GOTTSTEIN: Thank you.

DIRECT EXAMINATION

BY MR. GOTTSTEIN:
Q Thank you very much for agreeing to testify, Ms. Porter. We only have 25 minutes, so I'm gonna try and do this expeditiously. But it's important for the court to know your background, education, experience and history as it relates to treating or taking care of, and involvement with people diagnoses with serious mental illness. So if you could just go through that. But, pretty -- you know, kinda quickly, but, also, give a pretty full idea of your experience, please.
A Okay. I've worked in the mental health seat in New Zealand for the last 15 years in a variety of roles. I'm currently employed as a strategic advisor by the Capital and Coast District Health

Board. I'm currently doing a course of study called the Advanced Leadership and Management in Mental Health Program in New Zealand. And, in fact, the reason I'm here is, I won a scholarship through that program to study innovative programs that are going on in other parts of the world so that I could bring some of that information back to New Zealand.

I also have personal experience of using mental health services which dates back to 1976 when I was a relatively young child.

What else would you like to know?

Q. Well, a little bit more. Did you run a program in New Zealand?

A. Yes. I set up and run a program in New Zealand which operates as an alternative to acute mental health services. It's called the KEYWA Program. That's spelled K-E-Y-W-A. Because it was developed and designed to operate as an alternative to the hospital program that currently is provided in New Zealand. That's been operating since December last year, so it's a relatively new program, but our outcomes to date have been outstanding, and the funding body that provided with the resources to do the

program is extremely excited about the results that we've been able to achieve, with people receiving the service and helping us to assist and seating out more similar programs in New Zealand.

Q. You're a member of the organization called INTAR, is that correct?

A. I am a member of INTAR, which is the International Network of Treatment Alternatives for Recovery. And I'm also a member of the New Zealand Mental Health Foundation, which is an organization in New Zealand that's charged with the responsibility for promotion of mental health and prevention of mental disability in New Zealand.

Q. Okay. Are there -- can you describe a little bit what INTAR is about?

A. INTAR is an international network of people who are interested in promoting the knowledge about, and availability of access to alternatives to traditional and mainstream approaches to treating mental distress. And INTAR is really interested in identifying successful methods of working with people experiencing distress to promote mental well being, and, in particular,

alternatives to the use of mainstream medical model or medication type treatments.

Q. And are there people in INTAR that are actually running those kind of programs?

A. There are. There's a wide variety of people doing that. And some of them are, also, themselves, interestingly, have backgrounds in psychiatry and psychology.

Q. I won't go into that. Are there members of INTAR who are psychiatrists?

A. There are. Indeed. Yes, indeed.

Q. Do you know -- do you remember any of their names?

A. Dr. Peter Stastny is a psychiatrist, Dr. Pat Brechan (ph), who manages the mental health services in West Cork, Ireland, and also in parts of England, as a psychiatrist.

MR. BIGLEY: He's a scientist?

A. Yep.

Q. Okay. Is it fair to say that all these people believe that there should be other methods of treating people who are diagnosed with mental illness than insisting on medication?

A. Absolutely, there are. And that's quite a strong theme, in fact, for -- for that group, and

I believe that it's based on the fact that there is now growing recognition that medication is not a satisfactory answer for a significant proportion of the people who experience mental distress, and that for some people...

MR. BIGLEY: That's the scientist.

A. ...it creates more problems than solutions.

Q. Now, I believe that you testified that you have experience dealing with those sorts of people as well, is that correct?

A. I do.

Q. And would that include someone who has been in the system for a long time, who is on and off drugs, and who might refuse them?

A. Yes. Absolutely. We've worked with people in our services across the spectrum. People who have had long term experience of using services and others for whom it's their first presentation.

Q. And when you say "long term use of services," does that include -- does that mean they need medication?

A. Unfortunately, in New Zealand the primary form of treatment, until very recent times, has been medication, through the lack of alternatives.

MR. BIGLEY: (Indiscernible).
A And we're just now beginning to develop alternatives. They'd offer people real choice and options in terms of what is available instead of medication that might enable people to further address the issues which are raised by the concerns related to their mental state.
Q And I think I understood you to say that the program that you run along that line has had very good outcomes, is that correct?
A It has. The outcomes to date have been outstanding. The feedback from services users and from other people working with the services -- both, peoples families and the clinical personnel working with those people has supported the approach that we have taken.
Q And is -- and I think you said that, in fact, it's been so impressive that the government is looking at expanding that program with more funding?
A Indeed. And, in fact, right across New Zealand they are now looking at what can be done to create -- make resources available to set up...
MR. BIGLEY: (Indiscernible).

A ...more such services in New Zealand.
MR. BIGLEY: (Indiscernible).
Q Is there a philosophy that you might describe in terms of how -- that would go along with this kind of alternative approach?
A The way that I would describe that is that it's -- it's really about relationships. It's about building a good therapeutic relationship with the person in distress and supporting that person to recognize and come to terms with the issues that are going on in their life, in such a way that builds a therapeutic alliance and is based on negotiation, rather than the use of force or coercion, primarily...
MR. BIGLEY: (Indiscernible).
A ...because we recognize that the use of force and coercion actually undermines the therapeutic relationship and decreases the likelihood of compliance in the long term with whatever kinds of treatment or support has been implicated for the person. So we have created and set up our service along the lines of making relationship and negotiation the primary basis for working with the person and supporting the person to reflect on and reconsider what's going on to

create what might be defined as a crisis, and to devise strategies and plans for how the person might be with the issues and challenges that they face in their life.
MR. BIGLEY: (Indiscernible).
Q Now, you mentioned -- I think you said that coercion creates problems. Could you describe those kind of problems?
A Well, that's really about the fact that these growing recognition -- I think worldwide, but particularly in New Zealand, that coercion, itself, creates trauma and further distress for the person, and that that, in itself, actually undermines the benefits of the treatment that is being provided in a forced context. And so our aiming and teaching is to be able to support the person to resolve the issues without actually having to trample...
MR. BIGLEY: (Indiscernible).
A ...on the person's autonomy, or hound them physically or emotionally in doing so.
Q And I think you testified that would be -- include people who have been in the system for a long time, right?
A It does, indeed. Yes.

Q And would that include people who have been coerced for a long time?
A In many cases, yes.
MR. BIGLEY: She didn't (indiscernible).
Q And -- and have you seen success in that approach?
A We have. It's been phenomenal, actually. Jim, I've been -- personally, I -- I had high hopes that it would work, but I've...
MR. BIGLEY: (Indiscernible).
Q ...been really impressed how well, in fact, it has worked, and how receptive people had been to that approach.
MR. BIGLEY: (Indiscernible).
A Now, are there some -- I want to talk a little bit about other consequences of coercion. For example, can you describe some of the things that happen to people when they -- when they're forced?
MS. RUSSO: Your Honor, I'm objecting to this line of questioning. She hasn't -- she's being asked to offer an opinion, but she hasn't been offered as an expert yet. I don't know what Mr. Gottstein is hoping to offer Ms. Porter as an expert in, but, I -- I think we're getting ahead of ourselves in this.

MR. BIGLEY: (Indiscernible).
THE COURT: Okay. So, Mr. Gottstein, your response to Ms. Russo's...
MR. GOTTSTEIN: Well, I think we can do it now. I would offer Ms. Porter as an expert in the provision of alternative mental health...
MR. BIGLEY: (Indiscernible).
MR. GOTTSTEIN: ...treatment as an alternative to the mainstream standard of care.
MR. BIGLEY: (Indiscernible).
A If I could add something.
THE COURT: Wait a minute. I have to deal with the attorneys first.
Ms. Russo?
MS. RUSSO: Can I voir dire Ms. Porter?
THE COURT: Yes. Go ahead.
MS. RUSSO: Thank you.
VOIR DIRE EXAMINATION
BY MS. RUSSO:
Q Ms. Porter, you said you were in Alaska to study other systems. You won a scholarship?
A Yes.
Q And what specifically were you -- how long have you been in Alaska?
A For a relatively short time. I arrived here

on Monday and I'm here until Saturday. So I've only got five days in this area.
MR. BIGLEY: Take me with you.
A But what I...
MR. BIGLEY: Take me with you. Take me with you.
A What I wanted to also mention is that the work that we had been doing in New Zealand, in terms of -- particularly with the...
MR. BIGLEY: (Indiscernible).
A ...specific (indiscernible) of reducing the use of force is based on some of the work that was done by SAMHSA, in terms of the reduction of seclusion and restraint, and the material that they produced about that.
MR. GOTTSTEIN: Your Honor, maybe she should say who SAMHSA is?
Q Yes. That was the next question.
A It's the Substance Abuse and Mental Health organization in America that's also done things like the new Freedom Commission. The director is Terry Kline, who, I understand is appointed by President Bush.
MR. BIGLEY: I know him, too (indiscernible).
A And he -- he actually came out to New Zealand

to visit our service four weeks ago and was very impressed with the work that we're doing here. And, in fact, there's talk...
MR. BIGLEY: (Indiscernible).
A ...about bringing us back to the United States to talk to people over here about the way that we're working and providing different kinds of services that are more supportive of peoples autonomy and requiring...
MR. BIGLEY: (Indiscernible).
A ...less use of force. And what they found in the research that they did about reducing restraint and seclusion was, not only did it increase the therapeutic outcomes for the clients, but it improved the work -- satisfaction for the staff working with people and reduced the cost of the services of...
MR. BIGLEY: (Indiscernible).
A ...time taken off because of injuries associated with people being hit while they're trying to seclude or manager people through the use of force, so.
Q And who have you met with since -- or, what is your, sort of, I guess, agenda for meeting with people while you're here?

A I've met with all kinds of different people. I actually attended a conference in Ottawa, which is called the International Initiative in Mental Health Leadership. And there was a number of different people there, including...
Q If I'm gonna -- just stop, since we are on limited time, and...
A Yeah.
Q ...we want to get as much of your testimony as possible. In -- in Alaska...
MR. GOTTSTEIN: Your Honor, can she be allowed to answer the question?
THE COURT: I'm going to allow Ms. Russo to continue.
Q I'm trying to direct you towards just specifically...
MR. GOTTSTEIN: I'm sorry.
Q ...in Alaska, in Anchorage.
MR. BIGLEY: Saved my life.
Q Who have you met with?
A Different people. Andrea, Jim...
Q Andrea who?
A Schmook.
Q Schmook. Okay.
A Yeah. You might know her. I believe she's

part of the organization...
Q Uh-huh (affirmative).
A ...that you work with.
Q Yep.
MR. BIGLEY: (Indiscernible).
A Eliza Ella and Tead Ella, and -- oh, I'm struggling to think of the names now. I feel on the spot.
MR. GOTTSTEIN: You got to meet Cathy Creighton (ph), right?
A Yep. That -- those people, as well. Also, while I've been in the United States and Canada, I have met with...
MR. BIGLEY: (Indiscernible).
A Some. Yep.
MR. BIGLEY: (Indiscernible).
A And met with Sherry Meade (ph), Kelly Slater, John Allen, who is the director of the Office of Recipient (indiscernible) in New York. Mat Mathai (ph), Amy Colsenta (ph), Isaac Brown, and Dan Fisher.
Q And have you had -- besides Ms. Schmook, have you talked with anybody from API, or...
A No, I haven't. But I'd be very interested to know if you've got thoughts on that, who I should

talk to.
Q Okay. And in your conversations, I guess, with Ms. Schmook, or with the other people in Anchorage -- have you been made aware of what treatment options are available for individuals with mental illness in Anchorage?
A Some, yes. I would say I -- I wouldn't proclaim that I've got a full and perfect picture, but I've certainly been made aware of some of the options that are available here in Alaska, and some of the -- the history of the state and the way mental health services have evolved in this area, which is very interesting, by the way.
Q Yeah. Probably. And, so...
MR. BIGLEY: (Indiscernible).
MS. RUSSO: Your Honor, I would object to Ms. Porter's qualifications as an expert in alternative mental health treatment, in regards as to how it specifically relates to this case. I don't know -- if she just stated she doesn't have the full picture. She's heard some of what's available in Alaska, but she doesn't have the full picture of what we're facing in Anchorage, dealing with this particular situation.
THE COURT: Okay. Mr. Gottstein, your

response?
MR. GOTTSTEIN: Well, I can ask a couple other questions, but I think -- I'm -- that might be an okay limitation. But I'd also like to ask:
DIRECT EXAMINATION CONTINUED
BY MR. GOTTSTEIN:
Q Are you familiar with an organization called CHOICES?
A Yes, I am.
Q Could you describe what you know about them?
A CHOICES does case management for people in the area -- supporting people to -- actually, it's different kinds of services. I know that Paul works at CHOICES, and that -- other parts of services that they -- and with API, and other kinds of housing and mental health providers here.
Q And would you say -- describe CHOICES philosophy as consistent with the INTAR approach?
A I think it probably is, yes. Because CHOICES stands for Consumers Having Ownership In the service...
Q Creating Effective...
A Yes. Creating Effective Services. So, yes. Absolutely.

Q Okay. Now, you said -- okay. Absolutely. Okay.
MR. GOTTSTEIN: So I think she certainly, at least, has knowledge of that option.
THE COURT: Ms. Russo, do you want to comment further?
MS. RUSSO: I rely on what I said earlier, Your Honor.
THE COURT: All right. I'm going to find that -- I really do not find that Ms. Porter can qualify as an expert witness in this case, at this time, because...
MR. BIGLEY: I'm murdered.
THE COURT: ...I'm not -- to be honest, certain exactly what she's being...
MR. BIGLEY: What...
THE COURT: ... -- other than her giving...
MR. BIGLEY: (Indiscernible)...
THE COURT: ...what I regard as a non-expert opinion as to what might be offered here, but not necessarily being very knowledgeable as to Mr. Bigley's situation.
MR. BIGLEY: (Indiscernible).
THE COURT: Ms. Porter's been here just a couple days, leaving in a couple days. I'm just not

convinced that I can regard her as an expert witness as to available alternative treatments in Anchorage, which I think...
MR. BIGLEY: (Indiscernible).
THE COURT: ...is the thrust of what she's being offered.
MR. GOTTSTEIN: No, Your Honor.
THE COURT: No?
MR. GOTTSTEIN: No. I think that she has testified some to that, but I believe that -- as I put it in my brief, that Mr. Bigley is entitled to alternatives that could be made available. And so she's really being offered as a witness as to that. As -- you know...
MR. BIGLEY: (Indiscernible).
MR. GOTTSTEIN: ...as well as what she knows about choices, but that's what she's being offered as.
MR. BIGLEY: You're killing me here.
THE COURT: Ms. Russo, any other comment?
MS. RUSSO: Your Honor, I -- with all due respect to Ms. Porter, and the work that she's done and is doing, I don't -- the -- the alternatives to which Mr. Bigley can present evidence as, have to be realistic in this state. And I don't know that, at this particular point in time, we're at a point --

we've got -- I'm sure Mr. Gottstein will be calling people from CHOICES to testify as to exactly what, in particular, they do in their relationship with Mr. Bigley. I'm just not sure her testimony will be relevant to the...
MR. BIGLEY: The president will find out.
MS. RUSSO: ...issue before the court.
MR. BIGLEY: President of the United States. Is there a problem?
MR. GOTTSTEIN: Your Honor, basically, if she's given her testimony -- I mean, that's the testimony that I'm offering.
MR. BIGLEY: (Indiscernible). They get on board right now. Th -- (indiscernible) called me and Bush called me. (Indiscernible).
MR. GOTTSTEIN: Sh-sh.
THE COURT: So it's not gonna be -- so, Mr. Gottstein, there's not gonna be any further examination by you?
MR. GOTTSTEIN: I -- I think at this point -- I mean, we're four minutes from when we have to leave. I do have a couple more questions, yes. But, ah -- but she's already described by the efficacy of other approaches with people that are in Mr. Bigley's type of situation. And I could re-ask her those questions, but

I don't see any need to.
MR. BIGLEY: (Indiscernible).
THE COURT: Okay. Well, I guess -- I'm looking at the Rules of Evidence 702, Testimony by Experts. It says, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence, or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."
So, actually, I think that -- giving, maybe a broad reading of this rule,...
MR. BIGLEY: I can see if...
THE COURT: ...I'll allow Ms. Porter to testify as an expert in the area of alternative treatments, but, not necessarily...
MR. BIGLEY: (Indiscernible).
THE COURT: ...in Alaska, but, what may be -- what her -- what may be available in other places, just -- just -- just that, and then, we'll see where we head with other witnesses.
So, I guess, Mr. Gottstein -- and I'm using the computer clock on the bench. It has 11:54. That's a little quick. So we have a little more time.
MR. GOTTSTEIN: Okay. Thank you. Thank you,

Your Honor. So, I think most of the testimony I was gonna elicit has already come in on voir dire.
Q But I did want to talk about some of the effects of coercion. Could you describe that. And I could prompt you some, but that may be -- let's do it without that, first.
MR. BIGLEY: (Indiscernible).
A I think generally speaking, coercion is unhelpful and counterproductive in terms of fooling a therapeutic relationship with somebody in need of care. And that, actually, often the effects of coercion can, themselves, be detrimental and compound the problems faced by a person with experience of serious mental illness, which is why I think there is growing moves internationally to find other ways of working with people to address the kinds of issues and challenges that people face.
Q Does coercion, in your opinion, create reactions that are then regarded as symptoms?
A Oftentimes that's the case, Jim. Particularly, we are -- like, in the case of people being required to take medication that they might feel is not helpful or even worse, possibly a harmful to themselves, sometimes that

can be regarded as symptomatic. Like, I've certainly witnessed a number of cases where people have formed the view that they are being poisoned by medication. But when they express t his fear, that that, itself, has been regarded as a symptom of illness, and (indiscernible) the justification for treatment, which becomes a very vicious circle and a bit of a Catch 22 from service user's perspective.

Q Are there other symptoms, you think - or, reactions that you think are caused by coercion?

A Ah...

Q Let me -- let me -- is it common for people who are coerced to be labelled "paranoid"?

A Yes. Often. Because people can think that things are being done to them, which, it would appear from that person's perspective, to be the case, but often that could be misinterpreted as "paranoid" by service, and then, again, used as further justification for requiring the person to accept treatment.

Q Can you give an example?

A Well, for instance, if a person believed that services wanted to take, say, a blood sample to check whether or not the person had the

therapeutic levels of medication in their blood stream, the person might think that the blood test was being required as a way for the services to get them, or trick them into taking more medication. And that can happen and is reasonably common. Certainly, in New Zealand, I would imagine it would be the same in other parts.

Q And would that -- then, would that reaction be -- would that often be labelled "paranoia"?

A It would, because -- but I think that's, again -- it's a product of different (indiscernible), where services would say some things as -- you know, potentially being a benefit to the service user, where the service user might say that it's to their detriment. So that's, again, different perspectives of the same thing. But from the service users perspective, it's a difficult issue and it might well be perceived as paranoia on the part of the person. Which, again, gets labelled as a symptom and treated as such, so it becomes, again, a self fulfilling situation.

MR. GOTTSTEIN: I could ask some more questions, but I think I'll let Ms. Russo use the rest of the time for cross examination.

THE COURT: Ms. Russo.

MS. RUSSO: Thank you.

CROSS EXAMINATION

BY MS. RUSSO:

Q Just a couple questions. Mr. Porter, before today, had you met Mr. Bigley?

A No, I had not met Mr. Bigley before today.

Q And have you had a chance to spend any time with Mr. Bigley today?

A I haven't.

Q And you're whole approach -- does the -- does the recipient of the -- does the service user -- do they have to be willing to accept the services, in order for your approach to work?

A It's certainly helpful for that approach to work. If the person is unwilling for the approach to work, then it's least likely to succeed.

Q Okay. and so what happens when the person is not willing to work with the people who want to work with him?

A We'd need to negotiate around options and consequences and that's generally the approach that we take.

Q And you had said at the very beginning or your

testimony that, I think, your approach -- let me see if I can refer to my notes. Is that -- that -- your approach, you didn't believe that forced medication -- and correct me if I'm giving your testimony wrong, but that it was -- that it wouldn't work for a significant portion of the population. Did you mean all of the population, or did you mean that...

A That forcing people to take medication would not work for most people.

Q Most people. But there may be outliers?

A I would say in rare and exceptional cases, there might well be. Because, again, these -- in my view, there's no absolutes. It's like saying -- and the same way as you can't say, medication is a good answer for everybody. There are some people for whom medication is helpful. But I think that generally speaking, I'm not certain what your legislation requires here, but in New Zealand, the requirement is that even people subjected to compulsory treatment, it is only able to be and provided without the consent of the person for the first 28 days. And the rational for that is that it's expected that after 28 days of use of medication, that the

person themselves would be able to recognize the benefit of it and then voluntarily agree to continue taking it. And so that's certainly a safeguard that's built into the New Zealand legislation. I would imagine you would have something similar here, and that would actually -- might provision for the person to be able to make an informed choice, and presumably after 28 days of using a medication, or be it by force, the person themselves would be able to recognize the benefit. But if there isn't a benefit that's able to be perceived by the person, then I would hope that service providers would be able to actually acknowledge that, and work with the person to find some other means of addressing the issues and concerns that are least distressing to the person. Because the unfortunate truth of the matter is that as medication really doesn't work for all people, there are a few people for whom it is a good answer, and it's helpful. But they are a large number for whom it's problematic and uncomfortable and distressing.

Q And are there -- is basically the whole thrust of your work sort of designed to -- to make sure that people are able to live to the best of their

abilities in a community, and to have as full of a life as possible outside of institutionalized treatment?

A Absolutely. And, in fact, the definition of recovery that we use in New Zealand is, recovery means the person being able to live well with or without symptoms of mental illness.

Q Okay. Thank you. Those are all my questions.

THE COURT: Any redirect?

MR. GOTTSTEIN: Yes. Just very briefly.

REDIRECT EXAMINATION

BY MR. GOTTSTEIN:

Q What would be your response to the idea that someone who has been -- you know, coerced into taking -- forced to take medication, isn't competent to decide whether or not it should be continued.

MS. RUSSO: Objection, your Honor. I don't know that there is a basis for giving an opinion on somebody's competency. Maybe I didn't fully understand the question.

THE COURT: Yeah. Mr. Gottstein?

MR. GOTTSTEIN: Well, the idea is that often, when patients complain about medications not working and all these terrible side effects, they're saying,

"Oh, well, they're crazy, so they don't know that it's good for them." And that's basically what is -- if Ms. Porter might have a response to that.

THE COURT: I'm going to allow her to answer.

A Well, to be honest, I'm uncomfortable with what the use of force meant. It's probably been fairly evident from what I've said so far. And I think that the issue of persons capacity to consent, I think is, in fact, progressively moving towards allowing more people to be recognized as being able to consent, and, in fact, they (indiscernible) on the rights of people with disabilities has changed the wording around the peoples capacity to consent, which means that people always had the right to be able to consent or not to treatment, and that a person needs support to be able to make those decisions, that such support be made available through advocacy. But that there is an increasing move to respect the autonomy and the personal choice of the person at the center of treatment, more of the time.

Q So does that mean that even -- that even someone who is psychotic knows what's happening to themselves?

A I believe that people do, Jim, to be honest. I believe that even people who are (indiscernible) have a degree of clarity about what's going on with themselves, particularly in terms of the physical well being, and that the peoples capacity to be able to recognize and make decisions about their own physical and mental self needs to be honored and respected as much as possible, and that in so doing, peoples capacity and competence increases.

MR. GOTTSTEIN: I have no further questions.

THE COURT: Ms. Russo?

MS. RUSSO: None.

THE COURT: All right. Ms. Porter, you're free to go. Have a good flight back.

A I will. Thank you very much.

THE COURT: Thank you.

Okay. So this case is going to be in recess until 1:30 Monday, September 10th, right here. And we can go off record.

END

That the foregoing transcript is a transcription of testimony of said proceedings to the best of my ability, prepared from tapes recorded by someone other than Pacific Rim Reporting, therefore "indiscernible" portions may appear in the transcript;

I am not a relative, or employee, or attorney, or counsel of any of the parties, nor am I financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 7th day of September, 2007.

Notary Public in and for Alaska
My commission expires: 10/05/2007