

IN THE TRIAL COURTS FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

AT ANCHORAGE

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Mark of the Trial Courts

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.

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

1 name, spell your last name, and give a mailing address.
 2 MR. GOTTSTEIN: Certainly. It's Sarah Frances
 3 Porter. The Porter is spelled P-O-R-T-E-R. And the
 4 mailing address would be 112 Manly Street. That's
 5 M-A-N-L-Y Street, Paraparamu, which is, P-A-R-A-
 6 P-A-R-A-U-M-U, New Zealand. And the postal code is
 7 5032.
 8 THE CLERK: Thank you.
 9 THE COURT: Yes?
 10 MR. GOTTSTEIN: Your Honor, I have a quick
 11 administrative matter. I need to get a transcript of
 12 today's hearing prepared, and I was discussing with the
 13 clerk how to -- and there might be a delay to get a
 14 copy. I was wondering if we could make sure that we
 15 could expedite getting the CD over so that I can -- and
 16 then ask them to expedite getting a copy made for me.
 17 THE COURT: Okay. So, like, tomorrow morning
 18 some time we can...
 19 THE CLERK: (Indiscernible).
 20 THE COURT: I guess -- so we would have to
 21 call your office when it's available for pickup.
 22 MR. GOTTSTEIN: That's perfect, Your Honor.
 23 THE COURT: Okay. And, of course, for Ms.
 24 Russo, too.
 25

1 you now. Thank you.
 2 All right. So, now...
 3 MR. GOTTSTEIN: Short break?
 4 THE COURT: We don't really have time.
 5 MR. GOTTSTEIN: Well, I gotta get...
 6 THE COURT: Okay. Go -- yeah, we'll go off
 7 record.
 8 MR. GOTTSTEIN: Okay.
 9 (Off record - 11:18 a.m.)
 10 (On record - 11:30 a.m.)
 11 THE COURT: You can be seated. This is a
 12 continuation of the Bigley matter. So, I guess, first
 13 we have to have Ms. Porter sworn in. So if you'll just
 14 stand there, we'll get you sworn in, please.
 15 *
 16 called as a witness in behalf of the respondent, being
 17 first duly sworn upon oath, testified as follows:
 18 (Oath administered)
 19 WITNESS: I do.
 20 THE CLERK: And you can be seated.
 21 MR. GOTTSTEIN: Thank you, Your Honor.
 22 THE COURT: Wait a minute. The clerk has a
 23 couple questions she has to ask the witness.
 24 MR. GOTTSTEIN: Oh, I'm sorry.
 25 THE CLERK: Would you please state your full

1 MS. RUSSO: Uh-huh (affirmative).
 2 MR. GOTTSTEIN: Yeah.
 3 THE COURT: Okay. So we'll -- as soon as my
 4 office can call tomorrow morning and say it's ready for
 5 pickup, we'll do that. Okay?
 6 MR. GOTTSTEIN: Okay.
 7 THE COURT: Thanks.
 8 MR. GOTTSTEIN: Thank you.
 9 DIRECT EXAMINATION
 10 BY MR. GOTTSTEIN:
 11 Q Thank you very much for agreeing to testify,
 12 Ms. Porter. We only have 25 minutes, so I'm
 13 gonna try and do this expeditiously. But it's
 14 important for the court to know your background,
 15 education, experience and history as it relates
 16 to treating or taking care of, and involvement
 17 with people diagnoses with serious mental
 18 illness. So if you could just go through that.
 19 But, pretty -- you know, kinda quickly, but,
 20 also, give a pretty full idea of your experience,
 21 please.
 22 A Okay. I've worked in the mental health seat
 23 in New Zealand for the last 15 years in a variety
 24 of roles. I'm currently employed as a strategic
 25 advisor by the Capital and Coast District Health

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

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

12 What else would you like to know?

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

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

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

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

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

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

11 A There are. Indeed. Yes, indeed.

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

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

18 MR. BIGLEY: He's a scientist?

19 A Yep.

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

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

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

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

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

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

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

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

6 MR. BIGLEY: That's the scientist.

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

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

11 A I do.

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

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

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

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

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

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

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

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

1 MR. BIGLEY: (Indiscernible).
 2 THE COURT: Okay. So, Mr. Gottstein, your
 3 response to Ms. Russo's...
 4 MR. GOTTSTEIN: Well, I think we can do it
 5 now. I would offer Ms. Porter as an expert in the
 6 provision of alternative mental health...
 7 MR. BIGLEY: (Indiscernible).
 8 MR. GOTTSTEIN: ...treatment as an alternative
 9 to the mainstream standard of care.
 10 MR. BIGLEY: (Indiscernible).
 11 A If I could add something.
 12 THE COURT: Wait a minute. I have to deal
 13 with the attorneys first.
 14 Ms. Russo?
 15 MS. RUSSO: Can I voir dire Ms. Porter?
 16 THE COURT: Yes. Go ahead.
 17 MS. RUSSO: Thank you.
 18 VOIR DIRE EXAMINATION
 19 BY MS. RUSSO:
 20 Q Ms. Porter, you said you were in Alaska to
 21 study other systems. You won a scholarship?
 22 A Yes.
 23 Q And what specifically were you -- how long
 24 have you been in Alaska?
 25 A For a relatively short time. I arrived here

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

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

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

1 part of the organization...

2 Q Uh-huh (affirmative).

3 A ...that you work with.

4 Q Yep.

5 MR. BIGLEY: (Indiscernible).

6 A Eliza Ella and Tead Ella, and -- oh, I'm

7 struggling to think of the names now. I feel on

8 the spot.

9 MR. GOTTSTEIN: You got to meet Cathy

10 Creighton (ph), right?

11 A Yep. That -- those people, as well. Also,

12 while I've been in the United States and Canada,

13 I have met with...

14 MR. BIGLEY: (Indiscernible).

15 A Some. Yep.

16 MR. BIGLEY: (Indiscernible).

17 A And met with Sherry Meade (ph), Kelly Slater,

18 John Allen, who is the director of the Office of

19 Recipient (indiscernible) in New York. Mat

20 Mathai (ph), Amy Colsenta (ph), Isaac Brown, and

21 Dan Fisher.

22 Q And have you had -- besides Ms. Schmook, have

23 you talked with anybody from API, or...

24 A No, I haven't. But I'd be very interested to

25 know if you've got thoughts on that, who I should

1 response?

2 MR. GOTTSTEIN: Well, I can ask a couple other

3 questions, but I think -- I'm -- that might be an okay

4 limitation. But I'd also like to ask:

5 DIRECT EXAMINATION CONTINUED

6 BY MR. GOTTSTEIN:

7 Q Are you familiar with an organization called

8 CHOICES?

9 A Yes, I am.

10 Q Could you describe what you know about them?

11 A CHOICES does case management for people in the

12 area -- supporting people to -- actually, it's

13 different kinds of services. I know that Paul

14 works at CHOICES, and that -- other parts of

15 services that they -- and with API, and other

16 kinds of housing and mental health providers

17 here.

18 Q And would you say -- describe CHOICES

19 philosophy as consistent with the INTAR approach?

20 A I think it probably is, yes. Because CHOICES

21 stands for Consumers Having Ownership In the

22 service...

23 Q Creating Effective...

24 A Yes. Creating Effective Services. So, yes.

25 Absolutely.

1 talk to.

2 Q Okay. And in your conversations, I guess,

3 with Ms. Schmook, or with the other people in

4 Anchorage -- have you been made aware of what

5 treatment options are available for individuals

6 with mental illness in Anchorage?

7 A Some, yes. I would say I -- I wouldn't

8 proclaim that I've got a full and perfect

9 picture, but I've certainly been made aware of

10 some of the options that are available here in

11 Alaska, and some of the -- the history of the

12 state and the way mental health services have

13 evolved in this area, which is very interesting,

14 by the way.

15 Q Yeah. Probably. And, so...

16 MR. BIGLEY: (Indiscernible).

17 MS. RUSSO: Your Honor, I would object to Ms.

18 Porter's qualifications as an expert in alternative

19 mental health treatment, in regards as to how it

20 specifically relates to this case. I don't know -- if

21 she just stated she doesn't have the full picture.

22 She's heard some of what's available in Alaska, but she

23 doesn't have the full picture of what we're facing in

24 Anchorage, dealing with this particular situation.

25 THE COURT: Okay. Mr. Gottstein, your

1 Q Okay. Now, you said -- okay. Absolutely.

2 Okay.

3 MR. GOTTSTEIN: So I think she certainly, at

4 least, has knowledge of that option.

5 THE COURT: Ms. Russo, do you want to comment

6 further?

7 MS. RUSSO: I rely on what I said earlier,

8 Your Honor.

9 THE COURT: All right. I'm going to find that

10 -- I really do not find that Ms. Porter can qualify as

11 an expert witness in this case, at this time,

12 because...

13 MR. BIGLEY: I'm murdered.

14 THE COURT: ...I'm not -- to be honest,

15 certain exactly what she's being...

16 MR. BIGLEY: What...

17 THE COURT: ... -- other than her giving...

18 MR. BIGLEY: (Indiscernible)...

19 THE COURT: ...what I regard as a non-expert

20 opinion as to what might be offered here, but not

21 necessarily being very knowledgeable as to Mr. Bigley's

22 situation.

23 MR. BIGLEY: (Indiscernible).

24 THE COURT: Ms. Porter's been here just a

25 couple days, leaving in a couple days. I'm just not

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

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

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

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

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

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

12 A Ah...

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

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

22 Q Can you give an example?

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

1 THE COURT: Ms. Russo.

2 MS. RUSSO: Thank you.

3 CROSS EXAMINATION

4 BY MS. RUSSO:

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

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

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

10 A I haven't.

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

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

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

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

25 Q And you had said at the very beginning or your

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

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

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

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

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

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

11 Q Most people. But there may be outliers?

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

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

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

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

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

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

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

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

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

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

9 THE COURT: Any redirect?

10 MR. GOTTSTEIN: Yes. Just very briefly.

11 REDIRECT EXAMINATION

12 BY MR. GOTTSTEIN:

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

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

22 THE COURT: Yeah. Mr. Gottstein?

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

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

11 MR. GOTTSTEIN: I have no further questions.

12 THE COURT: Ms. Russo?

13 MS. RUSSO: None.

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

16 A I will. Thank you very much.

17 THE COURT: Thank you.

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

21 ***END***

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

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

9 IN WITNESS WHEREOF, I have hereunto set my
10 hand and affixed my seal this 7th day of September,
11 2007.

12
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14 Notary Public in and for Alaska
15 My commission expires: 10/05/2007
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