

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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IN THE MATTER OF:                    )  
  )  
The Necessity for the                )  
Hospitalization of                    )  
William S. Bigley                     )  
  )  
  )  
Case No. 3AN-08-01252 PR

TRANSCRIPT OF PROCEEDINGS  
BEFORE  
THE HONORABLE WILLIAM MORSE

Pages 1 - 26, inclusive  
October 28, 2008  
9:39 a.m.

APPEARANCES:  
  
For William Bigley: James Gottstein, Esq.  
For the State of Alaska: Laura Derry, Esq. (by telephone)

1 ANCHORAGE, ALASKA; TUESDAY, OCTOBER 28, 2008; 9:39 a.m.  
 2 ---oOo---  
 3 (9:39:39)  
 4 THE COURT: We're on the record in  
 5 3AN-08-01252 PR. Mr. Gottstein is in the courtroom, and  
 6 on the telephone I have whom?  
 7 MS. DERRY: This is Laura Derry from the  
 8 attorney general's office. I represent the psychiatric  
 9 institute.  
 10 THE COURT: All right. Let me articulate my  
 11 understanding of where we are and see if I'm procedurally  
 12 accurate. Okay?  
 13 MR. GOTTSTEIN: Your Honor, there's a  
 14 preliminary matter first, which is, I notice that the --  
 15 it was noted that it's a closed proceeding, and actually  
 16 this is a public proceeding.  
 17 THE COURT: What is the -- is there a statute or  
 18 a court rule that says one way or the other whether it's a  
 19 public proceeding?  
 20 MR. GOTTSTEIN: There is -- with respect to  
 21 AS 47.30.839 petition, there's no rule one way or the  
 22 other. AS 47.30.735(b)(3) --  
 23 THE COURT: Wait. Slow down, slow down.  
 24 MR. GOTTSTEIN: 839.  
 25 THE COURT: On a -- there's nothing in 47.30.839

1 MR. GOTTSTEIN: Your Honor, if I may, could the  
 2 sign be removed from the --  
 3 THE COURT: Is it up there? Yes. Why don't you  
 4 do me the favor of taking it down.  
 5 MS. DERRY: Your Honor, is Mr. Bigley in the  
 6 courtroom?  
 7 THE COURT: No, he's not.  
 8 As I understand where we are, is several days  
 9 ago, I think the 20th perhaps, there was a hearing before  
 10 Master Lack on the State's petition for a 30-day  
 11 commitment. And that was -- he recommended that that take  
 12 place, that that petition be granted, and there was at the  
 13 time a petition for court approval of the administration  
 14 of psychotropic medication pursuant to 47.30.839, and he  
 15 did not issue any ruling on that.  
 16 I then listened to the procedure -- listened to  
 17 the CD of the hearing and granted the petition, and  
 18 knowing there was a -- the commitment petition, and then  
 19 knowing that there was a petition regarding medication,  
 20 set out a hearing for tomorrow. I'm not sure exactly when  
 21 it happened, but sometime over the weekend, or perhaps  
 22 first thing yesterday, the State, as I understand it,  
 23 withdrew that original petition for medication.  
 24 And I have been given a faxed copy of a petition  
 25 that was filed yesterday, which I assume is a brand new

1 regarding --  
 2 MR. GOTTSTEIN: Having it open or closed.  
 3 THE COURT: -- open or not?  
 4 MR. GOTTSTEIN: Correct.  
 5 THE COURT: Is there a fallback one that applies  
 6 generally to --  
 7 MR. GOTTSTEIN: Well, we're going to go through  
 8 the whole thing. I've actually briefed this to the  
 9 Supreme Court recently --  
 10 THE COURT: I know. But just talk more slowly  
 11 because I don't -- I can't hear the numbers that come  
 12 rattling out.  
 13 MR. GOTTSTEIN: Okay. So AS 47.30.735(b)(3) --  
 14 THE COURT: Okay. (B)(3). Okay.  
 15 MR. GOTTSTEIN: Okay. At the -- and that's  
 16 pertaining to involuntary commitments. At the hearing  
 17 before Master Lack, it was determined that the hearing  
 18 would be open to the public pursuant to that.  
 19 THE COURT: Does the State have any -- any  
 20 disagreement with this being an open procedure -- an open  
 21 hearing today?  
 22 MS. DERRY: No, Your Honor.  
 23 THE COURT: All right. It will be open. I will  
 24 ask the parties at future hearings their position on  
 25 whether it should be open or closed.

1 petition, and Master Duggan ordered that there would be a  
 2 hearing on the petition using tomorrow's date that was  
 3 already in place, then appointed the public defender  
 4 agency as counsel for the respondent and appointed OPA as  
 5 the visitor, which -- and then this morning I was handed a  
 6 packet from Mr. Gottstein asking for a variety of things,  
 7 but most imminently, an order requesting that tomorrow's  
 8 hearing be canceled on this new petition.  
 9 So I guess I need to back up a little bit here.  
 10 I probably need to get the public defender agency on the  
 11 phone.  
 12 Mr. Gottstein, go ahead.  
 13 MR. GOTTSTEIN: A couple things. I noticed as I  
 14 was looking in the courtroom that Ms. Derry mentioned  
 15 that -- or asked about Mr. Bigley, and I think he's  
 16 actually entitled to be here. I'm, with some reluctance,  
 17 willing to proceed without that, but anyway, note that.  
 18 THE COURT: I won't go forward on anything  
 19 substantively without Mr. Bigley being present, but given  
 20 the fact that we just had to figure out what are the  
 21 operative petitions and documents and what is the State's  
 22 intent and what do we do with tomorrow's hearing, I  
 23 thought it made sense just to at least have this status  
 24 hearing.  
 25 MR. GOTTSTEIN: Yes. And I understand that, and

1 that's why I'm willing to go forward with some reluctance.  
2 I have not, as far as -- I have not received a  
3 copy of the new petition, at least as of when I headed  
4 over here.

5 THE COURT: Let's wait three seconds and I will  
6 give you a copy.

7 And has the State received Mr. Gottstein's  
8 packet of motions?

9 MR. GOTTSTEIN: Your Honor, yes. I  
10 hand-delivered it about -- I don't know -- 8:45, I  
11 believe.

12 MS. DERRY: I haven't received it to my office,  
13 Your Honor. I'm sorry.

14 THE COURT: Well, I'll tell you what it  
15 contains. Obviously we're not -- there's a motion to  
16 vacate tomorrow's hearing.

17 MS. DERRY: Uh-huh.

18 THE COURT: Based on -- well, it sort of lays  
19 out the sequence of events in more detail than I've just  
20 described. In essence it says it's happening too quickly.

21 MS. DERRY: Uh-huh.

22 THE COURT: And there is also a motion for  
23 summary judgment and a variety of affidavits and materials  
24 in support of the motion for summary judgment. That's  
25 obviously something that we're not quite going to deal

1 with.

2 What does the State -- does the State have a  
3 position regarding the timing of the hearing for the most  
4 recent petition? And let me just throw one other thing  
5 in. My -- I'm looking at 47.30.839 itself, which seems to  
6 require this hearing to take place within 72 hours after  
7 the petition has been filed.

8 MS. DERRY: Yes, yes --

9 THE COURT: What's the State's position of  
10 when -- when this hearing should take place?

11 MS. DERRY: Your Honor, I would first just like  
12 to back up so that you understand what happened on Friday,  
13 was that on Friday I did ask that the petition for the  
14 medications be withdrawn. It was our intention to help --  
15 well, the API's position was to help Mr. Bigley hopefully  
16 restabilize and then to be released and to continue on  
17 with the life that he has been leading as of late, but --

18 THE COURT: Actually, yesterday I signed the  
19 order dismissing the first petition.

20 MS. DERRY: Right. Okay.

21 THE COURT: I have not distributed that yet.

22 MS. DERRY: Okay. And then yesterday I called  
23 to check to see what had happened over the weekend, and  
24 the hospital, Dr. Khari, was actually very worried about  
25 him and concerned and he had decompensated and was doing

1 things that actually required that she followed the  
2 statutory guidelines and emergency medicated Mr. Bigley  
3 early in the morning on Monday.

4 THE COURT: That was yesterday?

5 MS. DERRY: Yes, Your Honor. I'm sorry. Was  
6 that Your Honor? I'm not sure who was speaking to me.

7 THE COURT: Yes.

8 MS. DERRY: And so -- and that was yesterday.  
9 And so we actually have to move forward because the doctor  
10 and API's position is that Mr. Bigley will continue to be  
11 in crisis and will continue to need treatment. And based  
12 on the statute, we do need to proceed with the medications  
13 petition in order to protect the due process interests of  
14 Mr. Bigley because emergency medications have been  
15 given --

16 THE COURT: Just let me read 838. I've skimmed  
17 it before, but I'm not sure what happened.

18 Am I reading this correctly? This says that the  
19 facility can, in an emergency, give him an initial dosage  
20 and may authorize additional, as-needed doses, and then --  
21 the physician can act in the emergency first for 24 hours  
22 and then renew it for 72.

23 MS. DERRY: Yes, Your Honor.

24 THE COURT: And so --

25 MS. DERRY: And the way that I interpret that

1 statute is that the doctor could authorize several dosages  
2 within that first 24-hour period and make that be, you  
3 know, a scheduled dosage in order to maintain that crisis  
4 period within that 24 hours, and then so essentially there  
5 could be three 24-hour crisis periods, but in honor of  
6 protecting Mr. Bigley's interests and the fact that we are  
7 having legal issues with this matter, the doctor hasn't  
8 been doing that.

9 What she has been doing is trying to get him to  
10 the point where he could sleep and eat and not because  
11 he's been doing things that are actually harmful to  
12 himself. And so she hasn't been requesting that multiple  
13 medications be given to him. She just gave him one dosage  
14 yesterday in order to try to help stabilize him and get  
15 him sleep.

16 THE COURT: So we're about to pass the 24-hour  
17 period, and we're about to move into the second period,  
18 which is the second two-thirds of the 72 hours?

19 MS. DERRY: Yes, Your Honor.

20 THE COURT: Okay. I see nothing in 838 that has  
21 anything to do with when the Court has to hold an 839  
22 petition. So when does the State think there has to be a  
23 hearing on the 839 petition?

24 MS. DERRY: Well, we -- the State's position is  
25 that we would try to move within that 72 hours because if

Page 10

1 you are -- if we continue to hold Mr. Bigley and try to  
2 offer him other modalities for treatment, yet he continues  
3 to be in crisis, that we would be worried that we're  
4 looking outside of protecting his due process and we would  
5 have to continue to issue emergency medications until  
6 there were a hearing and --  
7 THE COURT: So when was the -- when was the  
8 second petition filed? I mean, I've got it the 27th. But  
9 what time?  
10 MS. DERRY: Yesterday morning, probably by  
11 10:00.  
12 THE COURT: If we just use that as a tentative  
13 time, 10:00 a.m. yesterday, so the 72 hours passes at  
14 10:00 a.m. on the 30th.  
15 MS. DERRY: Yes. And our concern, Your Honor,  
16 is that in trying to protect the best interests and the  
17 staff at API of what they feel they need to do, is  
18 medically necessary for them, and they are obligated to  
19 protect life and to try to treat him, that just relying on  
20 emergency medications is actually -- that that becomes a  
21 legal question of are we actually violating his due  
22 process by not having a hearing, but then in order to try  
23 to help him, the emergency medications are being given.  
24 THE COURT: So you want the hearing to take  
25 place tomorrow?

Page 11

1 MS. DERRY: I would like the hearing to take  
2 place tomorrow, Your Honor, yes.  
3 THE COURT: And what happens, Mr. Gottstein, in  
4 your view if I'm stuck with a statute that says the  
5 hearing has to take place within 72 hours and you're  
6 telling me that that's too soon for you to be able to  
7 prepare?  
8 MR. GOTTSTEIN: Your Honor, I think that that  
9 statute needs to be read in light of Myers and  
10 Weatherhorn, and Weatherhorn I cited in my motion,  
11 basically says that Mr. Bigley's liberty interests with  
12 respect to the forced medication is in not having it, and  
13 therefore, the protections should not be sacrificed in the  
14 interests of speed. Okay.  
15 THE COURT: When do you think is the soonest  
16 that we can have the petition hearing?  
17 MR. GOTTSTEIN: I -- I believe I -- I think  
18 next -- a week from today, Your Honor, because I need to  
19 conduct discovery.  
20 THE COURT: What do you need to do?  
21 MR. GOTTSTEIN: I need to -- I need to review  
22 the chart and I need to take some depositions of --  
23 THE COURT: What -- have you -- I know you've  
24 been involved with Mr. Bigley at some point in the past,  
25 and I don't know the details of that, so -- and I

Page 12

1 appreciate that his condition apparently is changing  
2 weekly and possibly daily. So have you had access to  
3 charts up to some point?  
4 MR. GOTTSTEIN: I've got some of 2007 charts and  
5 I don't believe I've had any 2008 charts in spite of --  
6 THE COURT: Has he been -- has he been at API,  
7 let's say, in October, other than just the last couple of  
8 days, that you know of?  
9 MR. GOTTSTEIN: I don't know. Well, it's been  
10 about a week, I think, that he's been there, so a little  
11 over a week.  
12 THE COURT: So are you going to be requesting  
13 essentially the charts that have been generated in, what,  
14 the past month?  
15 MR. GOTTSTEIN: 2007 and 2008.  
16 THE COURT: And you already have it up to where,  
17 roughly? I realize you're going from memory.  
18 MR. GOTTSTEIN: I don't -- I don't know, Your  
19 Honor. I have a fair amount through -- till the first of  
20 September 2007, but there may be gaps in it.  
21 THE COURT: Let's assume that you need  
22 everything from the past year. Do you have any sense as  
23 you stand here now of how many admissions that might be?  
24 Is it one or two or is it 50? I'm trying to get a rough  
25 sense of how large these charts might be.

Page 13

1 MR. GOTTSTEIN: Your Honor, first off, I would  
2 really like to have two thousand -- all of 2007 and  
3 2008 so I get a good picture.  
4 THE COURT: Well, let me ask you --  
5 MR. GOTTSTEIN: I don't know -- I don't know how  
6 many admissions that he's had. It may be -- and Ms. Derry  
7 might know.  
8 THE COURT: I'm going to ask her.  
9 MR. GOTTSTEIN: I think it's probably -- in the  
10 past how long did you ask?  
11 THE COURT: Let's say in the last year. Or tell  
12 me if you only know in the last six months. I don't care.  
13 MR. GOTTSTEIN: I think it's probably half a  
14 dozen in 2008, but I'm not sure.  
15 THE COURT: All right. That gives me --  
16 MR. GOTTSTEIN: A lot of them were very short,  
17 though.  
18 THE COURT: Do you think that that's roughly  
19 right? Half dozen admissions, some a matter of a day or  
20 two and others perhaps longer?  
21 MS. DERRY: I'm sorry. Was that addressed to  
22 me, Your Honor?  
23 THE COURT: Yes.  
24 MS. DERRY: Your Honor, it's actually -- my  
25 concern here, the date that I would like to really worry

1 about is the date from April 2008 to the present, which is  
2 what the --

3 THE COURT: The question I posed to you is, do  
4 you know how often he has been admitted in the past year?

5 MS. DERRY: Well, I can tell you with certainty  
6 that since April of this year that he has been there at  
7 least ten times, at API.

8 THE COURT: And are those -- to your current  
9 knowledge, do you think that those are mostly 24, 48-hour  
10 admissions or are they longer?

11 MS. DERRY: Of those ten that I mentioned, Your  
12 Honor, they -- I'm not sure. I couldn't tell you the  
13 exact amount of time that he was there. Some of them were  
14 two or three days for sure, and others were simply  
15 screenings, because all ten of those were initiated by the  
16 police department because those were after Mr. Bigley had  
17 been arrested.

18 THE COURT: Okay. Let's assume that I order at  
19 least that API turn over the last year of charts.

20 MS. DERRY: Uh-huh.

21 THE COURT: Is that something that you think  
22 API could comply with in the next day?

23 MS. DERRY: Would it be possible to give  
24 Mr. Gottstein access to them and not have the staff  
25 necessarily make the copies? Because we -- as far as the

1 State's position, Mr. Gottstein is entitled to those  
2 records as Mr. Bigley's attorney for the medications  
3 position, and we have nothing to hide. It's a matter  
4 of -- I can't tell you what the staffing situation is for  
5 making copies, but having access to the files would be  
6 appropriate.

7 THE COURT: What do you want?

8 MR. GOTTSTEIN: Your Honor, I need copies to  
9 work with.

10 THE COURT: I'm going to give him immediate  
11 access, but I'm also going to require API to start  
12 generating copies.

13 MS. DERRY: Yes, Your Honor.

14 THE COURT: And just let me ask: It's not clear  
15 to me -- Mr. Gottstein, what's your position in terms of  
16 the role of the public defender agency? I know Master  
17 Duggan appointed them, probably as a matter of routine.  
18 Is your relationship with Mr. Bigley such that you are his  
19 exclusive and sole attorney going forward or are you here  
20 on a more limited basis?

21 MR. GOTTSTEIN: I'm his attorney, his exclusive  
22 and sole attorney with respect to any forced medication  
23 petitions or even efforts.

24 THE COURT: So I'm going to have the public  
25 defender appear as well because whatever happens at these

1 various hearings will likely impact his commitment status  
2 and thus -- if I'm understanding you, the PDs are his  
3 commitment lawyers and you're his medication lawyer?

4 MR. GOTTSTEIN: That's correct, Your Honor.

5 THE COURT: So I'm going to have the PDs  
6 participate -- require them to participate unless they  
7 balk, because I think that there's an overlap. So

8 let's -- let's say that Mr. Gottstein says, due process  
9 trumps the 72-hour statutory provision and we should have  
10 a hearing next Tuesday, the 4th of November, is the State  
11 prepared to respond to that assertion now?

12 MS. DERRY: Your Honor, I would ask for it not  
13 to be on a Tuesday because then I have all of the other  
14 API cases in the afternoon and it's very difficult for me  
15 to find coverage.

16 However, the State's position on this is that if  
17 that's what the Court should find that it indeed -- that  
18 the due process does trump the 72 hours, that the  
19 hospital's position will be to continue to treat  
20 Mr. Bigley as they see medically appropriate following the  
21 typical standard of care which may include --

22 THE COURT: You're putting it in the wrong  
23 sequence.

24 MS. DERRY: I'm sorry?

25 THE COURT: Your position can't be whatever the

1 Court rules. Your position has to be, here's your  
2 position, and then I'm going to hear your position, I'm  
3 going to hear Mr. Bigley's position, and then I'm going to  
4 make a decision.

5 MS. DERRY: Okay. My position, Your Honor, is  
6 that the hospital would like to move forward as quickly as  
7 possible because our concern that Mr. Bigley's due process  
8 rights actually may be at risk because emergency  
9 medications may have to be continued after the 72 hours  
10 runs out on Wednesday morning, and so we would ask that we  
11 could move forward tomorrow.

12 THE COURT: Let's assume, just for purposes of  
13 my sort of thinking through these conflicting due process  
14 assertions, that I say the hearing takes place next Monday  
15 or next Wednesday.

16 MS. DERRY: Uh-huh.

17 THE COURT: I -- am I correct in assuming that  
18 the State will basically medicate Mr. Bigley to the extent  
19 that they think is medically appropriate and legally  
20 authorized under 838 between now and then?

21 MS. DERRY: If that is the -- what's absolutely  
22 necessary, Your Honor, because that has -- that is what  
23 occurred, is that in honor of this question about the stay  
24 and trying to work through the legal side of this but also  
25 to protect Mr. Bigley's health and mental illness, the

1 hospital has made it so that the emergency medication is  
2 absolutely the last resort when they feel they can't do  
3 anything else to protect him.

4 MR. GOTTSTEIN: Your Honor, in the past, API has  
5 administered medication pursuant to that 838 without the  
6 legal predicate being -- existing. And I'd be very  
7 surprised if the actual legal requirement for that  
8 medication exists. And so that's one of the things that I  
9 really need to be able to discover, is what actually --  
10 what actually happened. So, I mean, it really puts me in  
11 a difficult position because, you know, they come in and  
12 say all these things and then many times it turns out not  
13 to be true, and so I really have to have an opportunity to  
14 be able to explore that.

15 THE COURT: I'm going to give you an opportunity  
16 to certainly gather the charts, to immediately inspect the  
17 charts, and to get physical copies of them in a short but  
18 reasonable period of time. Obviously there's a little bit  
19 of copying turnaround time, but you can certainly have  
20 access to what I assume will be the most relevant ones.  
21 The ones that are generated here in the last 24 hours,  
22 72 hours, three weeks, are clearly more -- are likely to  
23 be more significant than the ones that were generated in  
24 January of '08, but you can have access to all of them.

25 And what the State does under 838 authority

1 is -- I'm not going to make any rulings in advance,  
2 because by definition there's at least the possibility  
3 that his medical state changes, and what might be  
4 appropriate yesterday may or may not be appropriate  
5 tomorrow, and I'm not going to do anything on the 838  
6 thing yet. But is there a preference from the State's  
7 perspective over Monday or Wednesday?

8 MS. DERRY: One moment, Your Honor.

9 THE COURT: I'm going to -- Mr. Gottstein, the  
10 same to you. Is there a preference?

11 MR. GOTTSTEIN: Yes. I think I need to have it  
12 Wednesday because --

13 THE COURT: Okay. All right.

14 MS. DERRY: Wednesday is fine, Your Honor, if  
15 that's what Mr. Gottstein would prefer.

16 THE COURT: I'm going to grant Mr. Bigley's  
17 motion to cancel tomorrow's hearing. I'm going to set  
18 that up at API for Wednesday the 5th of November on the  
19 existing petition filed October 27th. Mr. Gottstein  
20 has -- shall be granted access to the charts immediately,  
21 and that's -- he will have access to them as they continue  
22 to be generated. I realize he can't stand there and watch  
23 them while they write things down, but as they are  
24 written, he needs to be -- as they are created, he gets  
25 pretty rapid access to them, as long as he's not

1 interfering with the physicians on the floor.

2 MS. DERRY: Uh-huh.

3 THE COURT: But he can get them within a matter  
4 of hours as they're generated. And I'll leave it to you,  
5 Mr. Gottstein, unless you want me to play some role. You  
6 are going to conduct some discovery, and I will leave it  
7 to you and the State to arrange that.

8 MR. GOTTSTEIN: Thank you, Your Honor. It does  
9 seem like I should say one other thing, which it concerns  
10 me to proceed in the face of the Supreme Court stay, and  
11 my --

12 THE COURT: Let me tell you my thoughts on that.  
13 I'm going to hold this hearing on Wednesday. I'm going to  
14 make a decision based on the now current medical world  
15 that Mr. Bigley finds himself in. If I deny the petition,  
16 I don't have to deal with the stay. If I grant the  
17 petition, I'm going to then hear from each side about what  
18 is the impact of the earlier stay, which I think is five  
19 months old, based on -- based on whatever happens five  
20 months ago, whether that stay has any legal impact on the  
21 current -- or on my granting of the petition, if that's in  
22 fact what I do. So we'll address the relationship of the  
23 old stay and any current medication or -- only after I  
24 grant the order.

25 And I've been thinking, let's -- I'm not making

1 any ruling, but obviously if I were to say, petition  
2 granted, I have two basic options. I either say the old  
3 stay trumps, or this order and the new facts situation  
4 trumps. If I do that, if I say the latter, that the new  
5 order supercedes the stay of an old order, because the old  
6 order is obsolete, if you will, then I'm likely to grant a  
7 very brief stay to allow Mr. Bigley, if he chooses, to go  
8 to the Supreme Court and say stay the new medication  
9 order. And that way the Supreme Court will have the  
10 benefit of a more current record and can decide what it  
11 wants to do with a new medication order, if that's in fact  
12 what I do. Okay?

13 So I'm saying that just so both sides can sort  
14 of know that's my thinking. I'm not ruling that way, but  
15 since this is all going to be happening relatively  
16 quickly, I think it's better for me to reveal my tentative  
17 thoughts so that you folks can inform me of any applicable  
18 facts, statutes, court rules, you know, constitutional  
19 provision that I should know about.

20 MS. DERRY: Yes, Your Honor.

21 MR. GOTTSTEIN: Thank you, Your Honor. That all  
22 seems very reasonable.

23 I -- one other thing that's actually written  
24 down, and it occurred to me, it seems to me that in light  
25 of this being a public proceeding, that really any hearing

1 should be held here, because it's not really possible for  
2 a public hearing to be held behind the locked doors at  
3 API.

4 THE COURT: As of now the hearing is going to  
5 take place at API. I'm not familiar with the -- his  
6 particular needs or the logistical ability of API. But as  
7 of now it's taking place at API. I will explore at least  
8 that possibility of having it done here. Obviously that  
9 would require him being transported over here. I'm not  
10 sure that's appropriate and/or necessary, but I'll let --  
11 as of now, it's at API, and if you want to present to me  
12 additional facts between now and then as to why it should  
13 be here, I'll consider them.

14 THE CLERK: What time?

15 THE COURT: Oh, the hearing that was set for  
16 tomorrow was starting at 9:00 a.m. I'm going to, at least  
17 at this point, say the hearing on the 5th starts at  
18 9:00 a.m. as well. I'm going to simply contact API, see  
19 if that works. I realize that there's a hearing room over  
20 there that is used occasionally for other purposes, so I  
21 need to see if that room is available. If it is not, then  
22 I'll do something else and I will also hold in abeyance  
23 and request that the hearing take place in the  
24 Nesbit courtroom building.

25 Is there anything else from the State?

1 MS. DERRY: No, Your Honor.

2 THE COURT: And Mr. Gottstein, from you?

3 MR. GOTTSTEIN: Your Honor, it does seem to me  
4 that the State should respond to the motion for a summary  
5 judgment. It seems to me I'm entitled to file one and  
6 entitled to have them respond.

7 THE COURT: The State --

8 MS. DERRY: Your Honor --

9 THE COURT: -- I mean, since you haven't seen  
10 the document, I'm not going to require you to make a  
11 motion as to the timing of your response, but let's do  
12 this. The State presumably will receive it in your -- I  
13 mean, in the attorney's hands here later on today.

14 MS. DERRY: Uh-huh.

15 THE COURT: So I would like a response from the  
16 State tomorrow at noon -- by noon as to when your response  
17 ought to be due.

18 MS. DERRY: When it's due -- yes, Your Honor.

19 THE COURT: Okay. And then I will let  
20 Mr. Gottstein reply briefly as to the due date, and I'll  
21 rule on the due date for the motion.

22 MS. DERRY: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. GOTTSTEIN: Your Honor, it -- the attorney  
25 general's office tends to mail things to me even when

1 they're --

2 THE COURT: Both parties will hand-deliver  
3 pleadings to each other and file pleadings in chambers,  
4 and that means in the Superior Court, not at API, not in  
5 probate court. Superior Court. Upstairs in my chambers.

6 MS. DERRY: And I'm sorry. I missed that last  
7 part. You said to hand-deliver also to your chambers,  
8 Your Honor?

9 THE COURT: You need to -- both sides need to  
10 file any documents in chambers, and both sides need to  
11 hand-deliver documents -- or hand-deliver documents to the  
12 other parties.

13 MS. DERRY: Yes, Your Honor.

14 MR. GOTTSTEIN: Your Honor, is it permissible  
15 for us to file it probate and then --

16 THE COURT: You can file it probate --

17 MR. GOTTSTEIN: -- and provide a chambers copy?

18 THE COURT: That's fine. That's fine. But I  
19 want them in my hands, at least a copy, by any deadlines.  
20 Okay?

21 MR. GOTTSTEIN: And, Your Honor, one other  
22 thing. I was a little confused about the ruling on the  
23 motion to dismiss. Was that denied?

24 THE COURT: The motion to dismiss, the earlier  
25 petition is moot because the State pulled it.

1 MR. GOTTSTEIN: May I just resubmit it?

2 THE COURT: You can file whatever you want to  
3 file.

4 MR. GOTTSTEIN: Do you want me to file a new  
5 one? I mean it's -- the only -- I can file a new one, but  
6 it's -- the petition seems --

7 THE COURT: They're going to be exactly the  
8 same, right?

9 MR. GOTTSTEIN: There's one other point that I  
10 could probably add to it, which I --

11 THE COURT: You can -- I don't need to have you  
12 generate paper for the sake of me having paper. So if you  
13 want to file a piece of paper that's saying you're  
14 refiling the old motion and adding another paragraph, you  
15 know, that one-page document will suffice.

16 MR. GOTTSTEIN: Thank you, Your Honor.

17 THE COURT: Okay. Is there any questions at  
18 all?

19 MS. DERRY: No, Your Honor.

20 THE COURT: All right. Thank you. We'll be in  
21 recess.

22 MS. DERRY: Thank you.

23 (End of recording)

24 (10:15:03)

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TRANSCRIBER'S CERTIFICATE

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I, Deirdre J.F. Radcliffe, hereby certify that the foregoing pages numbered \_\_\_\_ through \_\_\_\_ are a true and accurate transcript of proceedings in Case No. 3AN-08-01252 PR, In the Matter of WB, transcribed by me from a copy of the electronic sound recording, to the best of my knowledge and ability.

Date Deirdre J.F. Radcliffe, Transcriber