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.

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1 PROCEEDINGS
2 3AN2707-162
3 9:14:26
4 THE COURT: This is the matter of the case
5 involving the hospitalization for William [redacted] file
6 number 007-1064. This is the time set for the hearing
7 concerning State's petition -- petition for court
8 approval of administration of psychotropic medication.
9 And Ms. Russo is here representing the State, and Mr.
10 Gottstein is here representing Mr. [redacted]
11 So, any preliminary matters, Ms. Russo?
12 MS. RUSSO: Yes, Your Honor. Along -- I just
13 filed a pre-hearing brief this morning. Part of my
14 pre-hearing brief is a motion to strike all the
15 attachments that had been attached to the respondent's
16 pre-hearing brief, including the affidavits that were
17 filed along with it.
18 At this point, just -- many of them, I don't
19 believe, are relevant to the issues in this case. If
20 the respondent wishes to introduce them as evidence
21 later on, then we could take them up the, but I would
22 ask the court to take that up.
23 THE COURT: Okay.
24 MS. RUSSO: And then I understand that there
25 is a witness that Mr. Gottstein has subpoenaed and

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1 wishes to testify this morning.
2 My only witness is Dr. Worrall, and there were
3 staffing issues at the hospital, so he's not here yet.
4 he will be here at 10 o'clock this morning.
5 I would object to Mr. Gottstein calling Ms.
6 Porter. I don't know how she can provide relevant
7 testimony in this case, and I think we should probably
8 try and figure that out. I understand she is only
9 available this morning, so we should probably figure
10 out the issue of her testimony as quickly as possible
11 so that she's not detained any longer than need by.
12 MR. GOTTSTEIN: But she's not under subpoena,
13 Your Honor.
14 MS. RUSSO: Oh, she isn't? Okay.
15 THE COURT: Okay.
16 MR. GOTTSTEIN: But (indiscernible).
17 MS. RUSSO: Let me -- Ms. Russo, anything else
18 before hear from Mr. Gottstein?
19 MS. RUSSO: Not at this time, Your Honor.
20 THE COURT: Okay.
21 Mr. Gottstein?
22 MR. GOTTSTEIN: Well, first off, of course, I
23 think the petition should be dismissed so that there is
24 no question that I've asked for it. I'm doing so now,
25 and I think there is -- it may be a little unclear in

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1 terms of the proper procedure, but whether you call it
2 a motion or judgment on the pleadings -- for example,
3 they have failed to allege facts sufficient to support
4 their petition. And I brought this up on Friday, and
5 suggested that, on due process grounds, that they --
6 you know, that I be notified. And I'm gonna re-raise
7 that because there is something in their brief this
8 morning that shows that they really should have done
9 that, and I was entitled to it. But the basic thing is
10 that they haven't -- the basic motion.
11 There are two real motions, you know,
12 procedurally. A motion for judgment on the pleadings,
13 based on their allegations and their responses, which
14 is in the pre-trial hearing, which could be considered
15 an answer. Especially that background section should
16 be considered an answer.
17 And then, of course, there is evidence on all
18 those. And I don't know that there is any
19 authentication issue with respect to the court
20 documents. And I had a subpoena out for Dr. Worrall,
21 to bring the records, so that if there is any question
22 about authentication -- so I think that's proper
23 evidence. And, so, then, that would then be a summary
24 judgment motion, basically. And, so, I think,
25 technically, that needs to be addressed first.

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1 And then, I really -- okay -- and then -- and
2 then in terms of the notice -- of course, my brief says
3 that they have to say -- they have to say, under
4 Meyers, what drugs and what combinations they are
5 proposing, in order for a proper analysis to be used.
6 And on Friday I said that they should provide, you
7 know, the information under Meyers. And, of course,
8 Your Honor denied that. But that was a due process
9 argument.
10 But now she comes in and complains that I've
11 got information about a drug that they're not
12 proposing. I don't even know what drugs they're
13 proposing, which is what I asked for last Friday.
14 Again, sorry for getting worked up about that.
15 But it really just seems, you know, like -- you know,
16 come on, let's have notice and reasonable opportunity
17 to respond and handle these things properly, as Meyers
18 directed us to do. That these forced drugging
19 petitions are not something -- that they're something
20 that need to be done -- I'm not trying to delay, but
21 they need to be done properly and well considered
22 because of the important interest at stake.
23 Okay. And then looking through it -- ah, you
24 know -- and we've got a huge amount of stuff that could
25 be done before we can get through -- you know, all the

1 way to the end. And so, it -- I don't think you know,
2 Your Honor. I don't actually do a lot of trial work.
3 I'm doing more, as you might imagine. But I had one
4 recently in front of Judge Michalski, and he seemed to
5 take this approach: "Well, let's figure out, you know,
6 what we really need to do." You know, "What we can do
7 right now that might resolve things."
8 And in my mind the thing that really might
9 resolve -- other than the preliminary motions, is this
10 issue of less intrusive alternative. Because it's one
11 of the requirements that they have to provide -- I
12 mean, they have to prove by clear and convincing
13 evidence. And so I think that's what we might focus on
14 first.
15 THE COURT: Okay.
16 MR. GOTTSTEIN: If -- I mean, but I do think
17 that preliminary motions on judgment on the pleadings,
18 and, you know, summary judgment. Although I
19 understand, you know the timing is an issue, and that's
20 not entirely my fault.
21 THE COURT: All right. Well, let me try to
22 take things one-by-one.
23 First of all, there is not a formal motion
24 under Civil Rule 56, summary judgment. And, so, I
25 cannot regard the documents I have in front of me as a

1 clear motion for summary judgment. I mean, the rule is
2 very clear as to how that would work. So, I do not
3 regard the respondent's filings as a clear motion for
4 summary judgment. I'm putting the state on notice as
5 to how it would be dealt with.
6 And a judgment on the pleadings? Well, that
7 just doesn't make sense, frankly, because we have the
8 State's -- their petition, but that's only because
9 that's the way it's always been done. A petition for
10 court approval of administration of psychotropic
11 medication. And those always result -- have always
12 resulted, since the law went into effect, in a
13 subsequent hearing. As far as I know, there's never
14 been a judgment on the pleadings concerning such a
15 petition. So there is no expectation that such a
16 petition would be dealt with just by pleadings. And I
17 think, when it comes to constitutional rights, that the
18 respondent has been proving up on the Meyers and
19 Weatherhorn. There is full expectation of a hearing on
20 the merits. So judgment on the pleadings, I don't
21 think it's called for -- envisioned, even.
22 MR. GOTTSTEIN: May I be heard just a little
23 bit more on that to make a record?
24 THE COURT: Uh-huh (affirmative). Right.
25 MR. GOTTSTEIN: I respectfully disagree that

1 there shouldn't be sufficient allegations in the
2 petition to support the relieve requested. And I think
3 -- what happened was that -- you know, you had
4 something that was going on for almost 25 years, a
5 procedure. And then Meyers said, no, that -- you know,
6 just having a person be incompetent is not sufficient.
7 You've got to also show, you know, best interest and
8 less interest of alternatives.
9 UNIDENTIFIED MALE: (Indiscernible).
10 MR. GOTTSTEIN: And I think that necessarily
11 implies that the petition has to include that. And
12 that it has to include it with enough particularity to
13 state the relief -- facts sufficient to grant the
14 relief. If all of the facts alleged in the petition
15 were true, would they be entitled to the relief they
16 requested. And as it stands now, they don't. And that
17 was fundamentally changed in Meyers. And that's what I
18 -- you know, I've been trying to -- maybe not as
19 clearly as now -- you know, get that across. So I'm
20 formally -- you know, I'm making a record on that. Not
21 just -- I'm not just making a record. I think that's
22 the way it should go. And I think, basically, that
23 they should adjourn and do that. Except, I think that
24 there's clearly a less intrusive alternative, and that
25 maybe that's the think that -- the thing that makes the

1 most sense is to proceed with that, and then maybe we
2 could resolve the case.
3 THE COURT: Well, I appreciate your comments,
4 but my ruling will stand as is.
5 I also -- I guess I'll just add -- just point
6 out that the petition for approval of administration of
7 psychotropic medication was filed August 30th, the same
8 day of the ex parte petition. And, I mean, the ex
9 parte petition -- the petition for three-day commitment
10 is based on facts -- alleged facts, as to incidents or
11 events that had recently occurred.
12 The petition for court approval of
13 administration of psychotropic medication aims to deal
14 with more of what eventually may -- the hospital is
15 envisioning for the respondent's care. And so, it --
16 frankly, I think it's more difficult for a petition for
17 approval of administration of psychotropic medication
18 to be as thoroughly drawn out as the possibility of the
19 30-day commitment petition. Because, one, the 30-day
20 commitment petition is based on recent events, whereas
21 the medication petition is based on, to some extent,
22 envisioning what may have to be done in the future. so
23 I'm just pointing that out.
24 MR. GOTTSTEIN: Well, Your Honor, but that's
25 what they have to do to get their order, is to say what

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1 their program is. And I think that Mr. [redacted] and his
2 attorney are entitled to know what it is that they're
3 going to do so that we -- there are two basis. Of
4 course there's the due process. We could also -- just
5 under basic procedural rules, that we're entitled to
6 know what it is that we're supposed to try and defend
7 against, and the pre-hearing brief this morning is
8 classic example.
9 I don't know now what their program is that
10 they're trying to force Mr. [redacted] to endure. And, you
11 know, so, here, the doctor is just gonna come in and
12 say that -- and -- and -- and the petition -- they
13 should have such a plan and know that before they file
14 the petition.
15 THE COURT: All right. Thank you. We'll
16 proceed.
17 MR. GOTTSTEIN: Your Honor, if I may. I mean,
18 I really object to not having notice. She complained
19 this morning that...
20 THE COURT: Mr. Gottstein, I've ruled. That's
21 sufficient not -- the petition is sufficient notice.
22 Ms. Russo -- well, actually, now -- we don't
23 have Dr. Worrall. He's not going to be here until
24 10:00. So I don't know if we have to take a recess at
25 this point, because I don't have anyone here.

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1 MS. RUSSO: Well, I don't know, Your Honor, if
2 the court visitor could give her recommendations at
3 this point, perhaps, so that we aren't taking up
4 more...
5 THE COURT: I'll take whatever I can, frankly.
6 MS. RUSSO: Right. Okay. Yeah. We'll do
7 that. So we'll get her on the phone now.
8 MR. GOTTSTEIN: I'll raise a couple issues...
9 THE COURT: We're off the record. We have
10 to...
11 MS. RUSSO: Oh, okay.
12 (Off record - 9:28 a.m.)
13 (On record - 9:28 a.m.)
14 THE COURT: I'll note for the record that we
15 now have the visitor, Ms. Taylor, on the telephone.
16 And so, Mr. Gottstein, you had one other thing
17 you wanted to mention before I...
18 MR. GOTTSTEIN: Well, there's a couple. One,
19 of course, again, I don't have any idea what it is that
20 I'm being presented with.
21 And then the other is that -- and I'd like to
22 submit this as an exhibit. This is an e-mail that
23 was...
24 THE COURT: Well, wait a minute. You don't
25 submit exhibits until you have -- you're questioning a

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1 witness, and then we deal with the exhibit being marked
2 and whether there's gonna be an objection to it being
3 admitted in evidence. So I'm not taking exhibits at
4 this point.
5 MR. GOTTSTEIN: This is an exhibit to my oral
6 motion.
7 THE COURT: Well...
8 MR. GOTTSTEIN: Can I just -- you can do that,
9 but, I mean -- the point -- and I'm not sure when this
10 took place, but I feel that my client's rights are
11 being violated. And, um -- and so I wanna raise that
12 point. They're -- they're -- first of -- and, I
13 probably should have sent this to Mr. Parker, and I
14 will -- but the State was on notice that I'm entitled
15 to be with my client during any interviews. And -- and
16 I wanna do that. And so that's the basic -- that's the
17 basic thing with this. And this -- I think that maybe
18 Ms. Taylor didn't -- even conducted her interview
19 before that. So that's number one.
20 Number two is, I'm gonna renew my objection to
21 not having her present because -- and I mentioned this
22 Friday. I haven't seen the instrument that she
23 administered, or proposed to administer. I certainly
24 think there should have been a written report that I
25 was given. So those are my objections.

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1 THE COURT: All right. So concerning the
2 report. I guess I have to deal with that issue. A
3 written report. Because I'm a little concerned in this
4 case -- because the Weatherhorn case specified that
5 "The visitor's report is an essential component of a
6 statutory scheme, failure to prepare and present the
7 report before the hearing in Weatherhorn's case is an
8 instance of plain error."
9 To me, that means a written report. So I need
10 to know, do the parties want the written report prior
11 to the hearing?
12 MS. RUSSO: Your Honor, I -- my understanding,
13 from having done these hearings for the past several
14 years, is that these hearings are expedited matters and
15 that there are no formal reports, especially for the 30
16 days, ever written or proposed. That's the same with
17 guardianship matters that are expedited,
18 conservatorship cases that are expedited -- expedited
19 matters, generally because of the press of business, do
20 not have written reports.
21 The reason -- the court visitor is usually
22 sworn and under oath. It's my understanding that the
23 respondent then has an opportunity to question the
24 visitor on exactly what she performed and how she came
25 to her conclusion.

1 I also have to object to this exhibit to the
2 motion that Mr. Gottstein just made. I'm not quite
3 sure how it -- my understanding of his motion -- maybe
4 I'm not fully understanding his motion, but his motion
5 is about the visitor's testimony right now, I think is
6 what it is. And an e-mail to myself and Ms. Brennan
7 has -- even though he talks about the fact, he doesn't
8 want the visitor meeting with his client. During that
9 time -- I don't employ the court visitor. The court
10 visitor is not employed by either the Attorney
11 General's Office or the Public Defender's Agency.
12 MS. TAYLOR: And I've never been served with
13 papers, Your Honor.
14 MS. RUSSO: And...
15 THE COURT: Okay.
16 MS. RUSSO: And so I don't really see how this
17 e-mail is relevant to his motion. I mean, I understand
18 he's concerned, but that -- his objection to the
19 visitor, he -- I don't think it's appropriate.
20 MS. TAYLOR: Your Honor, may I say something?
21 THE COURT: Go ahead, Ms. Taylor.
22 MS. TAYLOR: I believe under Meyers it talks
23 about a report by the visitor, either oral or written.
24 THE COURT: Wait a minute...
25 MR. GOTTSTEIN: I'm having difficulty

1 understanding her.
2 THE COURT: Yeah. Ms. Taylor, we're having
3 problems hearing you. It sounds like you're breaking
4 up. I'm not sure what the problem is, but...
5 MS. TAYLOR: Okay. Hang on a -- hang on.
6 (Pause) Um, is this better?
7 THE COURT: Yes.
8 MS. TAYLOR: Okay. I believe, under Meyers,
9 the supreme court talks about the visitor's report,
10 oral or written.
11 THE COURT: I'm sorry. What was the last part
12 you just said?
13 MS. TAYLOR: That, under Meyers -- when I read
14 Meyers...
15 THE COURT: Uh-huh (affirmative).
16 MS. TAYLOR: ...the supreme court talks about
17 the visitor's report being oral or written. And, Ms.
18 Russo is correct, that in expedited matters, which, the
19 ones at API are, we don't normally do a written report.
20 We don't have the time. And, again, I've never been
21 served by any -- I've never been served with copies of
22 anything Mr. Gottstein has filed, and I do believe I am
23 an interested party.
24 MR. GOTTSTEIN: Your Honor, there's a -- I
25 don't -- I think she's confused about what type of

1 proceeding we're in.
2 And, a couple things. One is -- and this is -
3 - probably my biggest complaint, Your Honor, is that
4 this is not an expedited proceeding. This is supposed
5 to be done deliberately and carefully before my client
6 is subjected to this type of intrusive inter -- you
7 know, treatment that's been equated with electroshock
8 and lobotomy. And I don't think that that's -- that's
9 being considered. And Meyers and Weatherhorn are very
10 clear that the could should not do so until it is
11 clearly convinced that it's in the person's best
12 interest. And -- and you can't do that if there's this
13 rush to judgment. And the supreme court specifically
14 said, as I pointed out in one of my pleadings on
15 Friday, that there is no rush on the forced drugging
16 petition.
17 THE COURT: Okay. Let me note that the
18 Weatherhorn case, which I just quoted, was a 30-day
19 commitment proceeding, just like what I was involved
20 with last Friday and today. You know, I -- and I think
21 the Weatherhorn is clear in saying that there has to be
22 a report prepared and presented before the hearing.
23 And to me that means a written report.
24 So that's going to mean that I'm going to have
25 to require Ms. Taylor to submit a written report before

1 we can have her testimony. So I'm not going to be able
2 to go ahead today with her testimony.
3 MS. TAYLOR: Well, Your Honor, then I'm gonna
4 need two weeks to prepare.
5 MS. RUSSO: Your Honor, this is -- there is a
6 -- there is an inherent tension in these cases, in
7 between -- the commitment period at this point in time
8 is 30 days.
9 THE COURT: Right.
10 MS. RUSSO: Treatment has to be a benefit to
11 the patient. If the treatment that the hospital wishes
12 to propose, that it believes is the best benefit to the
13 patient, in Mr. [redacted] case, and in many other cases,
14 is -- is the medication petition. While it is not --
15 while the medication hearing does not have to happen
16 necessarily within the same time frame as the
17 commitment hearing -- and these are two separate
18 proceedings -- it does need to be on the basis,
19 because, otherwise, Mr. [redacted] is merely being housed
20 at API, and that's not appropriate for him. That's not
21 appropriate for -- I mean, that's just not -- that's
22 not an appropriate -- that's not in his best interest,
23 I don't think. However, I don't believe that that
24 would cause -- that would lead to any kind of reason
25 for Mr. [redacted] to be released from API before the

1 commitment period is up, because I believe he still
2 meets the commitment criteria. It's just -- this is
3 inherent tension, and to have to continue these
4 proceedings until we have a written visitor's report
5 that's two weeks out, Mr. [redacted] will be over halfway
6 through his commitment by that point in time. There is
7 no way that -- well, I highly doubt, given the history
8 that -- Mr. [redacted] history -- we're talking about Mr.
9 [redacted] here, who is a completely different case, in
10 large part, from a majority of people. There's been
11 testimony in previous instances -- Mr. [redacted] is one of
12 the most severely mentally ill people in this state.
13 So we're not talking about the general range of cases,
14 we're talking about Mr. [redacted] case here.
15 So I'm guessing that if we were to wait, and
16 if there were no decision on the petition for
17 medication until over halfway through the commitment
18 period, we're setting Mr. [redacted] up for a lengthier
19 commitment, and we're keeping -- because he needs the
20 medication. It's the hospital's position, he needs the
21 medication in order to -- in order to no longer be
22 gravely disabled.
23 And so I'm just objecting to, if we're not
24 going to have to -- if we're gonna have to continue
25 these for two weeks, it's just not gonna work. I

1 understand the tension, but...
2 THE COURT: Uh-huh (affirmative). Well...
3 MS. RUSSO: ...I don't think that's the way
4 that the statu -- that this -- the scheme is laid out.
5 THE COURT: Before -- before I hear from Mr.
6 Gottstein, let me as -- I wanna ask Ms. Taylor: Is
7 there any way that you can do it a lot sooner?
8 MS. TAYLOR: Well, if M.r Gottstein wants me
9 to complete -- do a completely thorough investigation,
10 I will have to put every other case aside that I have
11 pending and work on this.
12 THE COURT: Okay. Well, Ms. Taylor, it's not
13 what Mr. Gottstein wants you to do, it's just what's
14 required by the statute as to the type of evaluation.
15 At the tip of my tongue, I don't have the particular --
16 I don't have the statute in front of me, or the
17 particular words that the supreme court and the statute
18 used. The...
19 MS. TAYLOR: The problem, Your Honor, is, that
20 I cannot get Mr. [redacted] to answer the assessment
21 questions.
22 THE COURT: Okay. This -- yeah -- I'm sorry -
23 - the capa -- yeah. The Capacity Assessment?
24 MS. TAYLOR: Right.
25 THE COURT: That's what you're supposed to do.

1 I mean -- so, I mean, if the -- if the respondent --
2 and this Mr. [redacted] -- just refuses to cooperate with
3 you, then, if that shortens the process, you know.
4 Fine. I mean, you know, then it's a much shorter
5 report you would do -- capacity assessment.
6 So the thing is, I'm just wondering if there's
7 a possibility you can, within the next couple days, get
8 something done.
9 MS. TAYLOR: I can't -- I'm sorry, Your Honor.
10 I'm under deadlines for three other cases. I don't
11 have the time to do it the next couple of days. The
12 soonest I could possibly get it done -- I can try and
13 finish it this weekend and file it on Monday.
14 THE COURT: Mr. Gottstein, do you want to say
15 something?
16 MR. GOTTSTEIN: Your Honor, remember, also,
17 that she needs to investigate, you know, whether he's
18 made any prior statements regarding his desire to
19 decline medications, and whether he was competent at
20 the time that he made those statements.
21 MS. TAYLOR: Your Honor, I'm fully aware of
22 what my statutory duties are, I don't need Mr.
23 Gottstein to remind me.
24 THE COURT: Okay.
25 MR. GOTTSTEIN: Excuse me. And the other

1 thing is that I would like to have a copy of the
2 Capacity Assessment Instrument that is administered.
3 THE COURT: Well, I -- I mean, as far as I
4 could tell from Weatherhorn, I mean, the -- the supreme
5 court is saying that, you know, a report has to be
6 prepared and presented. So whatever is written by Ms.
7 Taylor, that's up to her. Then if there are questions
8 about the document, in the hearing in which we have Ms.
9 Taylor's testimony, we deal with -- with that.
10 I mean, Weatherhorn set -- specified one
11 thing, but it didn't go into detail as to exactly what
12 goes into the report. On the other hand, the statute
13 refers to the capacity assessment. So I have to leave
14 it up to Ms. Taylor, since this is something of the
15 first instance, as to what she might draft and submit
16 to the court, and whether that will be the model for
17 further proceedings -- I don't -- in other cases, I
18 don't know.
19 MS. TAYLOR: But...
20 MR. GOTTSTEIN: Your Honor, all I'm asking...
21 MS. TAYLOR: ...Your Honor, we do have a
22 Standard Capacity Assessment that was developed by Ms.
23 Stanley in accordance with statutes.
24 THE COURT: Okay. I -- yeah, I haven't seen
25 it, so -- I mean, so I don't -- I don't know. If you

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1 have it -- fine. I mean, well -- I mean, fine in the
2 sense of -- you know, I guess you use that and then it
3 gets submitted to the court, along with anything else
4 you might submit, and then deal with it step-by-step.
5 MR. GOTTSTEIN: So, if I may be clear. I've
6 asked for a copy of that now. I mean, so maybe she
7 could fax it over to me. So that's all I'm asking for.
8 It's unclear to me if that's been denied or not.
9 THE COURT: Well, wait a minute. Are you
10 asking for that, rather than her report?
11 MR. GOTTSTEIN: No. I'm just as -- I want to
12 see that form so -- to help me prepare, so that I will
13 know what -- you know, what it is that -- what
14 questions they ask. And, so, I don't know...
15 THE COURT: I'm only gonna require Ms. Taylor
16 to submit one thing at one time. That would be her
17 report. If she wants to attach things to it -- I mean,
18 the Capacity Assessment -- I'll leave it up to her.
19 And then at the time of the hearing, I deal with her
20 report; any objections to what's in it; for what was
21 not attached to it. But I don't think I can -- it will
22 be appropriate for the court to order Ms. Taylor to
23 start filing things piece meal.
24 MR. GOTTSTEIN: Well, Your Honor, all I'm --
25 she said there's a standard from that they use. And I

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1 don't know why that shouldn't be made available to me
2 at this time.
3 THE COURT: Well, I mean, that's up to her.
4 If she wants t give it to you ahead of time to form --
5 I'll leave that up to her. But when she files with the
6 court, her visitor's report, that's -- that's the only
7 thing I'm going to be requiring before the hearing.
8 MR. GOTTSTEIN: So you're denying my motion.
9 MR. [redacted] Can't deny it.
10 THE COURT: As to getting the...
11 MR. [redacted] Yes.
12 MR. GOTTSTEIN: The form.
13 THE COURT: ... -- this form?
14 MR. GOTTSTEIN: Yes.
15 MR. [redacted] Yes.
16 THE COURT: Yes. I'm leaving it up to her.
17 If she wants to voluntarily send it to you. I'm not
18 going to require it at this point.
19 All right. So the next thing I have to do at
20 this moment is find time, as soon as possible, next
21 week, to get Ms. Taylor's testimony. And in doing so,
22 I want to point out, I understand what Ms. Russo said
23 as to the tension between the filing of the petition
24 and the commitment and having the medication hearing,
25 but I think the law, and -- especially the Weatherhorn

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1 case are clear that the court does not have a choice as
2 to just going ahead without the written report, when
3 it's being sought.
4 So, ah -- what time do I have.
5 (Side conversation with Clerk)
6 THE COURT: We're just gonna go off record.
7 Hold on, Ms. Taylor.
8 MS. TAYLOR: Okay.
9 (Off record - 9:45 a.m.)
10 (On record - 9:47 a.m.)
11 THE COURT: We're now on record. I'll note --
12 the part of the hearing concerning Ms. Taylor's
13 testimony will be next Monday, September 10th, at 1:30
14 downtown in my courtroom here. And we're going to
15 proceed with other testimony this morning as best we
16 can. Dr. Worrall, and whatever other witnesses. We'll
17 perpetuate their testimony.
18 And, Ms. Taylor, would like for you to submit
19 your report. And I'll -- I mean, the court will accept
20 it by fax, and I'll allow you to fax it to Mr.
21 Gottstein and to Ms. Russo, because of the time
22 constraints.
23 Mr. Gottstein, do you have a fax?
24 MR. GOTTSTEIN: 274-9493.
25 MS. TAYLOR: I'm sorry. Was that 9493?

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1 MR. GOTTSTEIN: Niner-four niner-three.
2 THE COURT: Yeah. 9493. Yeah.
3 MS. TAYLOR: Okay.
4 THE COURT: And Ms. Russo has a fax, so...
5 MS. TAYLOR: I have hers.
6 THE COURT: Okay. And let me give you the
7 court's, in case you don't have that. 264-0522.
8 MS. TAYLOR: Okay.
9 THE COURT: Okay. And if you can get that to
10 us -- how about 9 o'clock Monday morning?
11 MS. TAYLOR: I'll do my best.
12 THE COURT: Okay. And, you know, at this
13 point, I'm leaving it up to the visitor to draft the
14 report in the format she believes complies with the
15 statute in Weatherhorn might require. Then, you know,
16 at the hearing, you know, I deal with the contents and
17 the testimony. I think that meets Weatherhorn and the
18 statute requirements at this point.
19 So, anything else while we have Ms. Taylor on
20 the line right now, as to her...
21 MR. GOTTSTEIN: No, Your Honor.
22 THE COURT: Ms. Russo?
23 MS. RUSSO: Uh-uh (negative).
24 THE COURT: Okay. So, Ms. Taylor, I want to
25 thank you for being available on the line. And you'll

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1 be here -- will you be downtown on -- when -- on
2 Monday?
3 MS. TAYLOR: Oh, yes, sir. I can be downtown
4 on Monday. But I do have on request, Your Honor. As I
5 said, I have not been served by anything by Mr.
6 Gottstein.
7 THE COURT: Okay.
8 MS. TAYLOR: And I need copies of whatever
9 he's filed, and...
10 THE COURT: Right.
11 MS. TAYLOR: ...what he will file.
12 THE COURT: Okay. I...
13 MS. TAYLOR: And I -- I can certainly give you
14 my fax number.
15 THE COURT: Okay. Yeah. I -- first of all,
16 Ms. Taylor, I'm sorry, I forgot about what you had
17 said earlier about not being served, and, so, I
18 appreciate your reminding me.
19 Mr. Gottstein you have to serve the visitor
20 with copies of all pleadings. Okay?
21 MR. GOTTSTEIN: I didn't know that.
22 THE COURT: Well, okay. You don't -- I --
23 she's -- she's a semi -- she's a party, in a sense. I
24 mean, she's appointed. So, in the future. Okay?
25 MR. GOTTSTEIN: Yes. No problem, Your Honor.

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1 THE COURT: Yeah.
2 MR. GOTTSTEIN: And I guess -- I -- of course,
3 I didn't know that it was Ms. Taylor until Friday,
4 either, so. I don't think.
5 THE COURT: Well, all right. Okay.
6 MR. GOTTSTEIN: So...
7 THE COURT: But, I mean, like, what we -- what
8 we received yesterday. So just in the future.
9 MR. GOTTSTEIN: Yes. Yes.
10 THE COURT: As soon as you're aware of who a
11 visitor is, I would serve them with copies of all
12 pleadings.
13 MR. GOTTSTEIN: At what physical address?
14 MS. TAYLOR: Well, because -- there are two of
15 us visitors who do this. I would suggest Mr. Gottstein
16 check with the legal tech. He can tell you which
17 visitor is handling it.
18 My address is 2914 Leighton, L-E-I-G-H-T-O-N,
19 Street. Anchorage, 99517. And my fax is 248-7582.
20 THE COURT: Now, I want to point out to Ms.
21 Taylor, since she hasn't received these. Yesterday the
22 court received, and also Ms. Russo was served with -- I
23 don't know how many -- quite a few pages -- a couple
24 hundred pages, at least, is this, do you think?
25 MR. GOTTSTEIN: I think they're numbered.

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1 THE COURT: So I don't think you wanna -- in
2 fact, I don't think -- I don't think Ms. Taylor would
3 want to get all of this by fax.
4 MS. TAYLOR: Mail is fine.
5 THE COURT: Yeah. Okay.
6 MS. TAYLOR: For a couple of hundred pages.
7 MR. GOTTSTEIN: That's why I requested a
8 physical -- physical address.
9 THE COURT: Yeah. Okay. So -- yeah, I don't
10 want her fax to break down with all of this. Okay.
11 So, Ms. Taylor, anything else? And I do
12 really appreciate you being available on the phone,
13 and...
14 MS. TAYLOR: No, sir. I appreciate being
15 available by phone. Thank you.
16 THE COURT: Okay. Thank you. Oh, one further
17 thing, Ms. Taylor.
18 MS. TAYLOR: Yes, sir.
19 THE COURT: I mean, it is possible -- well,
20 I'm gonna try to get some testimony from Dr. Worrall
21 and any other witness this morning, that you may want
22 to review that before your testimony next week.
23 Because you are often present during the testimony of
24 the doctors before you give your visitor's report in
25 other hearings. So if you want to be able to review

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1 that, the court would make a disk available, I'm sure.
2 You could arrange that through my office.
3 MS. TAYLOR: Generally, sir, whenever I do
4 these, I do speak with the doctor. I don't really need
5 to review his testimony.
6 THE COURT: Okay. No. I'm leaving it up to
7 you. I just wanted to point that out.
8 MS. TAYLOR: That's fine. I appreciate it
9 very much.
10 THE COURT: Okay. Thank you. Good bye.
11 MS. TAYLOR: Thank you. Bye.
12 THE COURT: Okay. I guess the next thing is,
13 we wait for Dr. Worrall. You know, whenever he gets
14 here. Maybe a few minutes. We'll take a recess until
15 then.
16 (Off record - 9:53 a.m.)
17 (On record - 10:09 a.m.)
18 THE COURT: This is the continuation of the
19 case involving William [redacted]
20 So then we have Dr. Worrall here. And, so,
21 Doctor, since we're in a formal courtroom, if you'd
22 stand, we'll get you sworn in. Just face the clerk.
23 WILLIAM WORRALL.
24 called as a witness in behalf of the State, being first
25 duly sworn upon oath, testified as follows:

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1 (Oath administered)
2 WITNESS: I do.
3 THE CLERK: You can have a seat. Sir, would
4 you please state your full name, spell your last name,
5 and give your occupation?
6 WITNESS: William Allen Worrall, W-O-R-
7 R-A-L-L. Psychiatrist.
8 THE CLERK: Thank you.
9 THE COURT: You may inquire, Ms. Russo.
10 MS. RUSSO: Thank you, Your Honor.
11 Dr. Worrall was qualified as an expert on
12 Friday at the 30-day commitment. I would ask that he
13 remain so qualified, as this is the same case. I don't
14 know if Mr. Gottstein has additional questions of voir
15 dire?
16 THE COURT: Mr. Gottstein?
17 MR. GOTTSTEIN: So long as it's understood he
18 won't be giving any scientific testimony -- opinions as
19 to any scientific evidence.
20 THE COURT: Well, I mean, he's going to
21 testify as an expert. And if, in his doing so, there
22 is an objection to something he's testifying about,
23 then I'll take it up at that particular point. But I'm
24 not going to try to limit his qualification at this
25 point, to just this or that. I mean...

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1 MR. GOTTSTEIN: Okay. Well, there's a
2 distinction, Your Honor.
3 And I don't know -- were you served with a
4 subpoena?
5 A No. I was out when they came over yesterday.
6 MR. GOTTSTEIN: Okay. All right. I'd start
7 with the standard expert witness -- I tried to. And I
8 think under -- it became a lot more clear under the
9 Marron decision -- 123 P.3d 992. There had been a
10 question about -- under Coon, you know, what the rules
11 were in terms of expert and the basis for the opinions,
12 and if it's scientific testimony, then, of course, you
13 have to follow all the Coon (indiscernible)
14 requirements. And in that case I'm entitled to, you
15 know, know all of the -- you know, the basis for the
16 opinions and the -- you know, the treatises and all
17 that. And so that's what I asked -- and the subpoena
18 that wasn't served. But of course, he's -- and, so,
19 that -- that's the distinction I'm making. I can
20 certainly wait and make the objections -- if it comes
21 up. It may not come up.
22 THE COURT: Well, we'll wait, I guess, and
23 see. Okay. So with that, I'll still regard Dr.
24 Worrall in the area of psychiatry.
25 Ms. Russo.

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1 DIRECT EXAMINATION
2 BY MS. RUSSO:
3 Q Dr. Worrall, how -- are you still Mr. [redacted]
4 treating psychiatrist?
5 A I am.
6 Q And how do you intend to treat Mr. [redacted]
7 A Ah, with an antipsychotic medication called
8 Risperdal Consta, which is a long acting shot
9 that lasts for two weeks. And it seems like,
10 with social rehabilitation, it will become
11 possible, once the medication takes effect.
12 Q Is he on any medication at this time?
13 A He is not. He had two emergency shots of
14 short-acting antipsychotics. The last one was
15 two days ago, and it shouldn't be affecting him
16 now. And he had one the day of admission.
17 Q Okay. And is it important to take -- for Mr.
18 [redacted] treatment, that he take his medication
19 as recommended?
20 A It's vital to his treatment. Very important.
21 Q Why do you say that?
22 A Because it's the only affect of intervention
23 for his extremely unusual rare very difficult
24 case of paranoid schizophrenia, coupled with some
25 mood factor, that we call "schizo affective

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1 disorder." It's one of the worst cases of mental
2 illness that's in the state, in terms of
3 severity.
4 Q And in your opinion, does Mr. [redacted] have the
5 capacity to give informed consent to the
6 administration of the medication?
7 A No, he doesn't. He has no insight into his
8 illness, and believes there is nothing wrong with
9 him, and therefore he can't even engage in the
10 process of informed consent. It would be like
11 trying to advise someone who had a severe leg
12 fracture, who didn't believe there was anything
13 wrong with their leg, that they needed a course
14 of surgical treatment, or, you know, some
15 surgical or medical intervention. There's no
16 basis to make any decisions past that point, if
17 they don't even agree they have an injury or an
18 illness.
19 Q And just to flush that out a little bit
20 further. Is he able to assimilate facts with
21 regards to his current situation? I mean,
22 besides the...
23 A Not really. Beyond lack of insight, he
24 doesn't listen to what other people say, that he
25 doesn't want to hear information from. He has

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1 consistently, on this admission, refused to let
2 me say anything to him. And I think that's not
3 just a wilful disregard, I think there's no
4 capacity to receive information in a one-on-one
5 discussion of his medical psychiatric condition.
6 He's just completely obsessed and preoccupied
7 with his grandiose delusions and paranoia.
8 Q Okay.
9 A He's not capable of carrying on a rational
10 conversation about his treatment.
11 Q And has Mr. [redacted] stated any particular
12 objection to taking medication?
13 A This time, no. Again, he's not engaging in
14 conversations with me. Just that we don't have a
15 right to -- he's won his case -- we can't treat
16 him. But in the past he has. He's given some
17 specific reasons.
18 Q And what were those reasons?
19 A He complained of sexual difficulties,
20 impotence. He complained of hair loss. He
21 complained of stomach problems, nausea. He
22 complains that it's poison and it kills his body.
23 And at these times he's been very psychotic and
24 not, by any means, competent.
25 Q Has he ever stated objections when he has been

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1 competent?
2 A I don't know when he was ever competent
3 before. It's not in -- not in at least a year
4 that I've had interactions with him on a
5 professional basis, have I seen him competent at
6 any time.
7 Q Okay. And do you know if he's taken any
8 actions regarding the administration of the
9 medications? Has he done anything, either
10 positively for it or against taking medications
11 at any time?
12 A Well, he's taken medications under duress --
13 under court order, to avoid getting injections.
14 He's taken pills. Not of his free will. Not
15 voluntarily in -- oh, I think at least a year.
16 Two to three years ago he was -- without any
17 court order or any duress, he was taking the same
18 medication I'm recommending now, voluntarily,
19 twice a month.
20 Q Okay. So he was voluntary at that time.
21 A As an outpatient, yes. Coming to see Dr.
22 Thompson. When Dr. Thompson retired, we weren't
23 able to offer that outpatient service for him,
24 and I think that routine got interrupted.
25 Q And what are the possible side effects from

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1 the Risperdal Consta?
2 A Well, it's numerous. A very long list of side
3 effects. Pages and pages of potential side
4 effects. Similar to what most antipsychotics can
5 cause. Some are serious, and quite rare,
6 generally. Some are time limited temporary side
7 effects, such as dry mouth, constipation, that go
8 away and that are not serious. And we look at
9 the risks of all these side effects, versus the
10 potential benefit when we make a decision about
11 treatment.
12 Q Okay. And are the side effects that Mr.
13 [redacted] -- he had been -- you stated, he had been
14 psychotic when he made these complaints. But the
15 impotence, hair loss, stomach problems, the
16 poisoning -- is that -- are those known side
17 effects to the Risperdal Consta?
18 A Well, not poisoning, as in, ah -- you know,
19 something that's gonna kill somebody. You know,
20 like a high percentage. If everybody takes a
21 poison, they're all gonna get poisoned.
22 But -- for example, Depakote could cause hair
23 loss. Antidepressants could cause sexual
24 dysfunction. It's more rare with a drug like
25 Risperdal, but it can happen. And all the

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1 antipsychotics can cause nausea. Often they
2 reduce nausea, more likely.
3 In his case -- he also has anorexia, so that
4 gets -- it kinda complicates things. And he has
5 a thing called gastrointest -- gastro-esophageal
6 reflux, which is essentially heartburn. So he
7 already has some issues with regards to his
8 eating and his stomach. And then generally when
9 he comes in the hospital he starts eating a lot
10 of food because he hasn't been eating very much
11 prior to a hospitalization.
12 We do see problems with his stomach initially
13 and then go away after a few weeks.
14 Q How do you treat the problems to his stomach?
15 Are you able to...
16 A If he's willing to, he takes a medication that
17 inhibits the production of acid in his stomach,
18 which reduces his distress and his heartburn.
19 This time we're not planning to use Depakote,
20 which we have used in the past, because -- while
21 it would help him in the long run, it's probably
22 not going to do that much in, what, the 30 day
23 period, and I know he's not going to be on
24 medication 30 days from now, so there's not much
25 point in putting him through the side effects of

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1 that, because it's not going to produce nearly as
2 good a benefit as the Risperdal is gonna do. We
3 were using that to help him with his mood, but
4 it's gonna cause a little more nausea and a
5 little more side effects in the short run,
6 starting -- so the benefit versus the side
7 effects is kinda just really not worth it now.
8 Just nat as indicated anymore. If was to take it
9 for long term, then he would have more time
10 without side effects, and he would have more
11 benefits. Kind of a (indiscernible) thing. So,
12 that, we're not gonna try to use that. We might
13 use Klonazapan, which is a benzodiazepine -- like
14 Ativan -- to help him sleep, and calm -- be a
15 little more relaxed.
16 But Risperadone Consta doesn't take effect for
17 two to three weeks, so we would give him oral
18 Risperadone in the short term, which is what you
19 need to do until the blood level comes up from
20 the shot, and then we would stop the oral
21 medication.
22 Q Uh-huh (affirmative).
23 A If he won't take the oral Risperdal, then we
24 have no effective antipsychotic in his system, so
25 then we would have to give him an injection of

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1 the short acting antipsychotic.
2 Q Uh-huh (affirmative).
3 A And we have options of using something like
4 Haliperadol, Ziprazadone or Geodon, or
5 Aripiprazole, or Abilify. And we probably
6 offered him one of the latter two, because they
7 have less side effects.
8 MR. GOTTSTEIN: Your Honor, could you -- I'm
9 sorry. I'm trying to get all these down, but I can't
10 write them all down that fast.
11 So, Haldol? Abilify?
12 A And Geodon, would be the options that we would
13 -- that I would prescribe, potentially, and my
14 preference would be to use Geodon or Abilify for
15 the short term IM. And then two or three weeks
16 from now, the Risperdal Consta injection would be
17 effective, and he wouldn't need any other
18 medication.
19 MR. [redacted] I repeat that. My life.
20 Q But these are just if he doesn't take the oral
21 Risperadone Consta? Is that a...
22 A Right.
23 Q That's sort of the back-up plan?
24 A It's very likely to be the case, and -- well,
25 the first week, very likely to be the case, off

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1 and on.
2 Q And do you -- do you read up on side effects
3 in the testing of these medications?
4 A Yes. We're required to have continuing
5 medical education and read literature. I get
6 literature all the time coming to me from various
7 journals.
8 Q Okay. And...
9 A Go to conferences for education, et cetera.
10 Q And do you read information prescribed by --
11 or, put out by the drug companies?
12 A Yeah. I read that, too. I don't think it's
13 all that helpful. Essentially a bunch of
14 information written by their attorneys and their
15 marketing department. But the more independent
16 information is more valuable.
17 Q Okay. So do you believe -- do you have a --
18 Do you have any kind of a bias in favor of the
19 drug companies?
20 A Well, I don't -- I don't trust what they --
21 what their marketing people say. I don't tend to
22 want to prescribe new drugs because of that. I
23 don't like that they come around marketing to the
24 hospitals, and I proposed several times to the
25 medical staff that we should put some serious

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1 restrictions on that. I requested that we have
2 Juneau do an ethical ruling on whether they
3 should be sponsoring educational lunches for us.
4 So I'm a fairly skeptical person. I'm not --
5 certainly not -- I don't have any investments or
6 stocks with drug companies, that I'm aware of. I
7 mean, maybe my PERS has some drugs in their stock
8 portfolio, but, I don't particularly like the
9 marketing techniques of drug companies, and don't
10 trust their sales people.
11 Q Okay.
12 A When they have lectures at API over lunch, I
13 tend to be the person that asks tough questions,
14 and questions and methodology. Whether something
15 is really -- is effective of what they say is
16 their claim.
17 Q So when you -- when you've come up with your
18 opinions, it's not just based on what -- on what
19 you've heard from the drug companies?
20 A Correct.
21 Q You've gone to outside sources?
22 A I look at independent sources, academic
23 training, and actual experience of using
24 medication in the patients.
25 Q And getting back to Mr. [redacted] with the side

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1 effects. How do you -- does his medical history
2 indicate whether or not he's suffered any of the
3 -- any side effects from the medication -- from
4 Risperadone?
5 A Well, he has tardive dyskinesia, which is most
6 likely from the years and years of getting drugs
7 like Haldol, Prolixin -- because he's been
8 getting medications for over 25 years, and those
9 drugs have a 2% per year accumulative risk of
10 tardive dyskinesia.
11 MR. GOTTSTEIN: Objection, Your Honor.
12 THE COURT: Okay. What's the nature of the
13 objection?
14 MR. GOTTSTEIN: Well, the issue about
15 scientific information, that -- I think he should
16 produce the -- what he relies on for that. My
17 understanding is, it's higher than that, as the reason.
18 But -- so I object to that.
19 THE COURT: Okay. Ms. Russo?
20 MS. RUSSO: Your Honor, I think Dr. Worrall's
21 testified about the amount of research and the
22 continuing education and the lectures he does, and
23 that's his understanding, as Mr. [REDACTED] treating
24 physician, as to the amount of risk.
25 If Mr. Gottstein feel that Dr. Worrall's

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1 testimony is inaccurate, he can counter that during his
2 claims. Dr. Worrall isn't testifying that there is no
3 risk. He's saying that there ins indeed a risk. If
4 Mr. Gottstein has other experts that can counter that,
5 he can present that evidence. I don't -- I think Dr.
6 Worrall -- there's been a sufficient basis for Dr.
7 Worrall's testimony.
8 MR. GOTTSTEIN: And...
9 THE COURT: Okay. Wait a minute. The doctor
10 was testifying as to -- what I understood was his --
11 let me rephrase it. The doctor was testifying
12 concerning, as I understood it -- his belief as to Mr.
13 [REDACTED] tardive dyskinesia. And it seems like the
14 doctor was relying on what he understood was Mr.
15 [REDACTED] previous medical history, or administration of
16 drugs to him. And, so, to me, it's just a matter of, t
17 his is the doctor's professional opinion in trying to
18 understand what Mr. [REDACTED] current situation is,
19 based on what the doctor knows of his past. So I'm
20 going to allow that to stand.
21 MR. GOTTSTEIN: Your Honor, if I may.
22 THE COURT: Yeah.
23 MR. GOTTSTEIN: This just illustrates -- I
24 think the distinction that our court made in Marron or
25 Mara -- I don't know how you say it, but I'll call it

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1 "Marron." That clinical observations, you don't need
2 to go through the Coon standards, but once you get into
3 scientific evidence, that you do. And so I was
4 objecting to the 2% figure, because I think that I'm
5 entitled to have -- you know, to give me the basis for
6 that.
7 THE COURT: Okay. Ms. Russo, do you want to
8 add anything?
9 MS. RUSSO: I don't think that this is going
10 into the Marron and Coon. I don't agree with Mr.
11 Gottstein's analysis of this. And quite frankly, I
12 don't know -- I mean, Dr. Worrall's testifying about
13 the fact that Mr. [REDACTED] has tardive dyskinesia from
14 previous medications that he had been on for years.
15 These are not the medications that Dr. Worrall wishes
16 to prescribe for Mr. [REDACTED] at this time. So we're
17 talking about Mr. [REDACTED] past medical history here.
18 THE COURT: I'm going to let the testimony
19 stand as is, based on my ruling -- previous ruling.
20 Next question?
21 MS. RUSSO: Okay. Thank you.
22 Q And, Dr. Worrall, does the Risperadone have
23 the -- have a side effect of tardive dyskinesia,
24 as well? Can that...
25 A Yes, it does, but it's considerably less than

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1 -- there is no antipsychotic that -- that has
2 proven to be free of any risk of tardive
3 dyskinesia. The training that psychiatrists
4 traditionally get from any setting, whether it be
5 an academic residency program or literature, is
6 that the risk of the older typical antipsychotics
7 is considerably higher than the newer atypicals.
8 Clozapine being the safest of all, with respect
9 to that risk.
10 And if I could clarify. I did say a 2%
11 cumulative risk per year. So in 20 years, that's
12 a 40% risk. It does add up to a high number over
13 the years on the typical antipsychotics.
14 MR. GOTTSTEIN: Yes, Your Honor, and I
15 understood that, and I think the rate is high.
16 Q Okay. And, Dr. Worrall, did you -- even
17 knowing that there is this risk of tardive
18 dyskinesia, is that something you weighed in your
19 analysis?
20 A Yes. The risk of the tardive dyskinesia
21 getting worse in a potential with psychotropic
22 drug treatment, antipsychotics in particular.
23 The risk is -- we don't have a number on that.
24 There isn't good research on that. It really
25 would be difficult to quantify. There is some

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1 risk that it could worsen. There is no cure for
2 the tardive dyskinesia. There is no possibility,
3 within reason, that this condition would
4 disappear. One in a thousand, and very unlikely
5 that it would go away.
6 And actually the symptoms of tardive
7 dyskinesia are masked by the use of
8 antipsychotics. That is, they temporarily quiet
9 down when you take the medication. And when you
10 stop the medication, they temporarily worsen, as
11 the effect of the medicine goes away, and then
12 get back to the base line. And at that point --
13 let's say a month from now he stops taking
14 medication. Temporarily, he would have had less
15 symptoms, less movements. But then when he stops
16 the medicine for about a month, he might have a
17 little more frequency and a more amplitude of
18 those movements. And then about a month or two
19 later, they'd go back, either to their base line,
20 where they're at now, or be slightly worse.
21 So when we look at the rest of the benefits,
22 what are we looking at? We're looking at a man
23 who cannot keep an apartment; cannot function in
24 the community; was right at the threshold of
25 being arrested for bomb threats, and the federal

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1 protective services were at their wits end trying
2 to protect Murkowski's office from him. We're
3 looking at a guy who is going to do time in jail
4 if we don't intervene, which is not a good
5 environment. And in that environment, he's going
6 to be forced to take medications, too, and
7 without the kind of due process that we have
8 here.
9 So, as I see it, the upside -- the benefit
10 side is that we can get him to the point that he
11 could get back into any kind of living
12 environment and contain his behaviors to the
13 appropriate level so that he could not be evicted
14 in a very quick amount of time, and be able to
15 sustain an independent life relatively safely
16 without risk of arrest, if he keeps taking the
17 medication. That's a pretty big benefit, and I
18 think, in this case, it's pretty clear that the
19 benefit outweighs the risk.
20 Q And just to get back to my list of questions.
21 You had previously testified that the method of
22 administration is with the pill, but then you
23 would switch him to the shot?
24 A We give him the shot, because we already know
25 he tolerates the Risperdal well. He's not going

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1 to have an allergic reaction to it, but it won't
2 actually start being effective for two to three
3 weeks, so then we have to give him short acting
4 Risperadal, or a backup injection of another
5 medication, as I mentioned, for two to three
6 weeks.
7 Q And what's the recommended dosage or range of
8 dosage?
9 A On the injection, the Risperdal Consta, it's
10 about 50 milligrams every two weeks.
11 MR. [redacted] I can take it if I have to.
12 Q And...
13 A That's the equivalent of about 5 milligrams a
14 day, orally...
15 MR. [redacted] (Indiscernible).
16 A A mid-range dosage. It's not particularly
17 high. Not -- not -- it's about the middle of the
18 recommended range.
19 Q Okay. And with the other drugs that you would
20 be doing in the meantime, is he in the middle
21 range as well, for -- like the Abilify or the...
22 A Yeah. We would be offering him somewhere --
23 well, I mean, we'd start it at, like, 2
24 milligrams twice a day, and then up it to 4
25 milligrams once a day, and then maybe up to 6

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1 milligrams a day, something like that, on the
2 Risperdal. If he doesn't take that, we would be
3 substituting something like Abilify 10 milligrams
4 i.m...
5 MR. [redacted] It's my life, you know.
6 A ...once or twice a day...
7 MR. [redacted] I can do what I want.
8 Q ...depending on -- probably once a day.
9 MR. [redacted] (Indiscernible).
10 A We'd just give him his Risperdal once a day to
11 minimize the...
12 THE COURT: Hold on a second. Wait a minute.
13 Doctor, you're gonna have to repeat what you just said,
14 because Mr. [redacted]
15 MR. [redacted] (Indiscernible).
16 THE COURT: ...was saying something and it
17 really interrupted the recording and my ability to hear
18 you.
19 MR. GOTTSTEIN: Your Honor.
20 THE COURT: Yeah.
21 MR. [redacted] I'm upset.
22 MR. GOTTSTEIN: May we have a short break?
23 MR. [redacted] I'm a little upset right now.
24 Okay?
25 THE COURT: You need a...

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1 MR. [redacted] Five minute break.
2 MR. GOTTSTEIN: Just five minutes.
3 THE COURT: Five minute recess. Okay.
4 MR. [redacted] I'm upset.
5 THE COURT: That's fine.
6 MR. [redacted] I'm upset. Okay.
7 THE COURT: So we'll take a five minute recess
8 and go off record.
9 (Off record - 10:38 a.m.)
10 (On record - 10:52 a.m.)
11 THE COURT: You can be seated.
12 Ms. Russo, next question.
13 MS. RUSSO: Thank you, Your Honor.
14 Q (Dr. Worrall by Ms. Russo:) Dr. Worrall, do
15 you know if Mr. [redacted] takes any kind of street
16 drugs or alcohol, or anything like that?
17 A He doesn't.
18 Q Do you know if he smokes?
19 A He smokes. Yes.
20 Q Okay. How would the prescribed medication --
21 does it have an adverse affect with the nicotine,
22 or is that a...
23 A No. The smoking reduces the absorption of
24 oral antipsychotics through an effect on his
25 stomach, but that wouldn't be a factor with

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1 injected medication. There's not a drug
2 interaction problem with his smoking habit.
3 Q And is there a risk that Mr. [redacted] will
4 develop other conditions as a result of taking
5 this medication?
6 A Certainly. Again, there is a long list of
7 medication side effects. Some are serious and
8 quite rate; some are common. He could develop
9 neuroleptic malignant syndrome. Very rare. He
10 could develop -- and that's a condition that is
11 very serious and it would require intensive care
12 treatment. Very unlikely that he would develop
13 that, even comparing that -- his risk to someone
14 who has never had an antipsychotic. His risk is
15 actually lower. But he could develop bone marrow
16 problems, liver problems. Those risks are on the
17 order of one in a thousand to one in 10,000.
18 Very -- very unlikely. And the chance of
19 improvement in his condition, in contrast, is
20 probably 80%. That in three weeks time he would
21 be improved to the point that he could again
22 function in society safer.
23 Q And with those side effects are you able to
24 monitor him for those, or to sort of watch and...
25 A Well, it's a little difficult. It may come to

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1 a point where we might have to force him to get a
2 blood test. For example, if he starts looking
3 sick, and he won't let us do a blood test, we
4 might have to hold him down and obtain a blood
5 sample. But if he's looking healthy, we won't
6 have to do that. But, normally we would do some
7 infrequent blood test to look for any early...
8 MR. [redacted] You can't do that.
9 A ...liver disease...
10 MR. [redacted] It's my blood.
11 A ...or any early sign of a bone marrow problem.
12 But the risk is so low it isn't something we have
13 to do, and we can honor his wish to not have a
14 blood test, unless he starts looking like he's
15 developing some illness.
16 Q Okay.
17 MR. [redacted] (Indiscernible).
18 Q And I just wanted to be sure that I'm clear
19 about what you testified to earlier, was that,
20 because he's been on these medications, and he
21 hasn't developed this, his risk is almost even
22 lower than the general population. He would just
23 be starting the medication at the first -- for
24 the first time?
25 A Yes. And the fact that he doesn't use drugs,

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1 like methamphetamine, or cocaine, or alcohol,
2 also makes it less risky.
3 Q Okay. And is the proposed treatment the
4 standard of care in this community?
5 A It's absolutely the standard of care in this
6 community and the country.
7 Q Okay. And what benefits would you expect to
8 see when Mr. [redacted] -- if Mr. [redacted] receives
9 his medication?
10 A The benefits are going to be -- that he would
11 be able to carry on a rational -- relatively
12 rational conversation with people that he might
13 otherwise prefer not to talk to, such as the case
14 manager,...
15 MR. [redacted] (Indiscernible).
16 A ...a guardian, without...
17 MR. [redacted] (Indiscernible).
18 A ...constantly interrupting with paranoid and
19 grandiose delusions. So their communication
20 would improve. His self control of his emotional
21 state would improve. He wouldn't be so hostile,
22 intimidating and threatening.
23 MR. [redacted] (Indiscernible).
24 A If he didn't like something, he'd be able to
25 handle it more appropriately.

1 Those would be the biggest benefits. It's not
2 going to make him sane. It's not going to make
3 him stop believing that he has, you know, a
4 million dollar jet plane, or other things are
5 going on, that he believes. It's not gonna...
6 MR. [redacted] (Indiscernible).
7 A ...remove his delusions or stop his delusions.
8 It's not gonna make him stop being distrustful or
9 paranoid of people, but it's gonna just make the
10 main difference, his ability to communicate and
11 have some more self control so that he could
12 function in the community. Unfortunately, that's
13 -- at this stage in his illness, that's about the
14 extent of the benefit. It's not curable.
15 Q And what would you expect to see without
16 treatment?
17 A Exactly what we saw prior to admission. It
18 didn't take -- I don't have his charge, but at
19 three months, in the community, off medications,
20 and he's making bomb threats, he's threatening to
21 kill people. He's got the police and the federal
22 protective service very concerned about his
23 safety in the community. And if he hadn't come
24 to API, he would almost certainly have been
25 arrested and charged with a crime. So exactly

1 what we had happen in the past month, is what is
2 going to happen. In addition to that, eviction
3 from any housing. Inability to work with his
4 guardian, to the extent that he couldn't even...
5 MR. [redacted] (Indiscernible).
6 A ...obtain food, because he wouldn't cooperate
7 with his guardian in cashing checks, or however
8 they have that worked out, so he would, again,
9 lose weight and get thinner and hungrier. I
10 mean, he's proven over and over again what will
11 happen if he doesn't take medication.
12 MR. [redacted] It's my life.
13 Q And are there any less intrusive treatments
14 available?
15 A Other than medication?
16 Q Yes.
17 A No, there are not. The -- there is nothing in
18 Alaska. There is no lower -- less restrictive
19 unlocked treatment place that would take him.
20 Not using antipsychotic medications, would result
21 in no change in the things that I described that
22 would change. So he would continue to get
23 himself into serious trouble and present himself
24 as a serious disruption and threat in the
25 community, as he has been doing.

1 Using, for example, just Ativan or
2 benzodiazepine, would not produce the kind of
3 change that an antipsychotic would produce in
4 terms of his ability to communicate better and
5 his ability to control his emotions better.
6 Counseling would do nothing. Talking to Mr.
7 [redacted] is like talking to someone who is
8 intoxicated. There is no processing of
9 information going on. It's a one-way street,
10 communicating with Mr. [redacted]
11 MR. [redacted] It's my life.
12 A And you won't be able to change that unless
13 you use antipsychotics.
14 Social support, intensive case management.
15 None of those would do any good, because he would
16 not have the capacity to communicate and regulate
17 his emotional outbursts. So, unfortunately there
18 is no option. This isn't some minor case of
19 brief reactive psychosis, or depression with
20 psychosis, or early onset schizophreniform
21 disorder. This isn't some minor thing. This is
22 a severe chronic debilitating mental illness that
23 has left this man living in API for 20% of his
24 life since 1985.
25 Q Okay. If -- what about if he were to go out

1 on day passes with somebody in the community from
2 API?
3 A On medication?
4 Q No medication.
5 A Again, if he was not on medication, he would
6 not have any effective treatment. There would
7 not be any treatment if he was just housed at API
8 at night and locked in the building at night and
9 out during the day. There would be no change
10 whatsoever in his condition. He would be safer
11 at night...
12 MR. [redacted] Why don't you just leave me alone
13 (indiscernible).
14 A Because professional staff...
15 MR. [redacted] Let me go get drunk.
16 A ...will handle him in a contained environment
17 -- a structured environment, and during the day
18 he would be essentially a wild man in the
19 community. Just as he is now. There wouldn't be
20 any change in his condition. That's not
21 treatment, by any means. That's not a treatment
22 we're proposing because it is not treatment.
23 It's just containment at night and non-
24 containment during the day. If that's something
25 that he has the right to have, then he should be

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1 in the community all the time, because that's not
2 treatment. If he doesn't need treatment, then he
3 shouldn't have treatment.
4 Q And do you have an understanding about his --
5 about how he was accepting case management
6 services beforehand -- before this most recent
7 admission? Was he accepting them?
8 A No, he didn't see Dr. Curtis...
9 MR. GOTTSTEIN: Objection.
10 THE COURT: What's the objection?
11 MR. GOTTSTEIN: It's hearsay. I forgot to
12 bring the case, but -- anyway, I'm sorry. But, it's
13 hearsay.
14 THE COURT: Ms. Russo?
15 MS. RUSSO: Your Honor, maybe if I -- I
16 believe my question is based on his knowledge of the
17 case, including the chart, but...
18 THE COURT: Okay. As I understood, the doctor
19 wasn't quoting what someone else was saying, it's just
20 his understanding, so that's not hearsay.
21 MS. RUSSO: Uh-huh (affirmative).
22 THE COURT: So I'm going to allow the doctor
23 to...
24 MR. GOTTSTEIN: Your Honor?
25 THE COURT: What?

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1 MR. GOTTSTEIN: How could it not be hearsay?
2 Someone else's statement, if that's his understanding.
3 What -- what -- what...
4 THE COURT: What did I -- I don't think he was
5 saying what someone else...
6 MR. GOTTSTEIN: What did his...
7 THE COURT: ...has said.
8 MR. GOTTSTEIN: Huh?
9 THE COURT: I don't think he was saying what
10 someone else had told him.
11 MR. GOTTSTEIN: But where did his
12 understanding come from?
13 THE COURT: Well, we're ju -- all of our
14 understanding, where anything comes from. But the
15 thing is, if he has an understanding, but is not
16 stating the source of the understanding, then that's
17 fine with me. So I'm going to let -- I don't know if
18 the doctor is done with that part of his testimony as
19 to his understanding, but, I guess it was before Mr.
20 [redacted] acceptance of services outside the hospital.
21 Was that what the question was?
22 MS. RUSSO: Right. Preceding this
23 hospitalization, was Mr. [redacted] accepting services?
24 THE COURT: So if the doctor has knowledge of
25 that.

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1 MR. GOTTSTEIN: Objection. Foundation.
2 THE COURT: Ms. Russo?
3 MS. RUSSO: Your Honor, I have to apologize,
4 because I was not at the hearing on Friday, but -- so
5 if it wasn't previously testified to.
6 Q Dr. Worrall, how do you -- when you know Mr.
7 [redacted] how do you -- do you review the chart?
8 A Yes, I review the chart. And API has a
9 special memorandum of agreement with Anchorage
10 Community Mental Health Services, and we have a
11 staff member from their facility that works at
12 our facility, and we get their records of their
13 medical treatment on an outpatient basis, and one
14 of their patients comes to us. And reviewing
15 those records indicates that Mr. [redacted] did not
16 participate in any services, case management or
17 medical at Anchorage Community Mental Health
18 Services.
19 MR. GOTTSTEIN: Objection. Hearsay. This is
20 not just theoretical, because there was someone else
21 providing case management services.
22 THE COURT: Ms. Russo, any response?
23 MR. [redacted] (Indiscernible).
24 MS. RUSSO: Your Honor, I -- if I can...
25 THE COURT: Well, okay.

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1 MS. RUSSO: ...remember the definition of
2 hearsay, it's an out of court statement...
3 THE COURT: Made for the truth of the matter.
4 MS. RUSSO: ...for -- right. I don't believe
5 that these are statements that Dr. Worrall is
6 testifying to. I can be moving -- I...
7 THE COURT: Well, I'm going to overrule the
8 objection. Just point out that on cross examination
9 Mr. Gottstein can get into the basis for the doctor's
10 testimony, then we deal with, you know, whether there
11 was a basis for the statement. So I'll overrule the
12 objection.
13 MR. GOTTSTEIN: So, again, I'm not
14 (indiscernible) on this either, but...
15 THE COURT: Uh-huh (affirmative).
16 MS. RUSSO: So I made the foundation
17 objection, and then he said, basically, what he
18 reviewed -- ACMH's records.
19 THE COURT: Uh-huh (affirmative).
20 MR. GOTTSTEIN: So I think that's where we
21 stand.
22 THE COURT: Right. That's my understanding.
23 MR. GOTTSTEIN: And then I still have the
24 hearsay objection.
25 THE COURT: Well, I'm finding that it's not

1 hear -- there's not hearsay in his answer.
2 MR. GOTTSTEIN: I think it is hearsay. He's
3 asserting that he -- he -- he is not receiving
4 outpatient services based on someone else's assertion.
5 THE COURT: He was not quoting anyone. I mean
6 -- I mean, it's just his general understanding. That's
7 the way I'm taking it.
8 Next question.
9 Q Okay. And, Dr. Worrall, do you have
10 knowledge of any other case management services
11 provided to Mr. [redacted] besides Anchorage
12 Community Mental Health?
13 A I believe that a program Case Point or Case
14 Center -- some kind of program in the community
15 was attempting to assist him, not part of
16 Anchorage Community Mental Health. I believe
17 that that's the case. And, of course, his
18 guardian.
19 Q Okay. And the...
20 MS. RUSSO: Those are all my questions for the
21 doctor, Your Honor.
22 THE COURT: All right. Mr. Gottstein?
23 MR. GOTTSTEIN: May we take a short break, or
24 is it too early yet?
25 MR. [redacted] Yeah.

1 THE COURT: Well, that's fine. But I have to
2 point out that, my understanding, Ms. Russo has to
3 leave by noon in order to prepare for this afternoon's
4 API hearings.
5 MR. GOTTSTEIN: Your Honor, I -- I've got one
6 witness who, you know, is gonna be out of state and I
7 would -- I would like to maybe get her on out of
8 sequence, then, in order -- so that we could take her -
9 - take her testimony.
10 THE COURT: How...
11 MS. RUSSO: Your Honor, I'm objecting to this
12 witness. I know that she was on the witness list. My
13 understanding is that she's not from Alaska, that she's
14 from New Zealand, actually. And, so I don't know that
15 she's able to testify as a fact witness, and I've been
16 provided no kind of expert notification about her
17 testimony. I don't know that she's met Mr. [redacted] has
18 an opportunity -- I don't know what she's going to
19 testify about. She's from New Zealand. She doesn't
20 know the Alaska system, and what we're working with
21 here in Anchorage. I would object to her testimony.
22 THE COURT: Well, I think -- this witness --
23 whether -- is this going to be an expert witness or a
24 fact witness?
25 MR. GOTTSTEIN: Expert witness.

1 THE COURT: Okay. Well, then, you know, I
2 think I'll just have to, you know, deal with this
3 person as she begins testifying and deal with
4 objections to any part of her testimony, just like any
5 other witness. I'm not going to prevent her -- I'm not
6 going to prevent Mr. [redacted] from calling his own
7 expert, because he certainly has that right, and then
8 we'll just take it as it comes, as to whether the court
9 can find the person has the credentials as being an
10 expert.
11 MS. RUSSO: Your Honor, I would still object.
12 I've been given no notice that she was going to be
13 called as an expert. She was just listed -- she was
14 listed on the witness list, but she was just listed on
15 the witness list. I don't know what her expertise is
16 in. I've had no chance to prepare. I know that -- I'm
17 not -- you know, I understand that she's here today and
18 going to be out of the country, however. I mean, I --
19 yesterday Mr. Gottstein knew he wanted to call her.
20 I...
21 THE COURT: Well, what's the person's name? I
22 mean, I'm...
23 MR. GOTTSTEIN: Sarah Porter.
24 THE COURT: Oh. (Indiscernible). Okay.
25 So...

1 MR. [redacted] All right.
2 THE COURT: Will be gone by Saturday. So --
3 and where is Ms. Porter going?
4 MR. GOTTSTEIN: New Zealand.
5 THE COURT: But, since we're going to be
6 continuing on Monday, she could always testify
7 telephonically on Monday.
8 MR. [redacted] (Indiscernible).
9 MR. GOTTSTEIN: Well, Your Honor -- I mean, I
10 don't know what her schedule is. She's available now.
11 It seems to me that telephonic testimony is -- you
12 know, is not preferred. I mean, she's here.
13 MS. RUSSO: Your Honor, I'm also objecting to
14 her whole relevance...
15 MR. [redacted] (Indiscernible).
16 MS. RUSSO: I don't -- I've been given no
17 opportunity to know how she is going to be able to
18 testify and have bearing -- have relevant testimony
19 regarding Mr. Big -- the proposed medication that the
20 hospital is wishing to prescribe for Mr. [redacted] and
21 how that is related to the standard of care in Alaska;
22 the treatment options that are available in Alaska. I
23 don't know how her testimony is even possibly relevant
24 to this proceeding. I don't know if she works for a
25 drug company. If she's -- I mean, there's no -- I

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1 would submit that I don't -- from the very limited
2 things I know about her, that she's from New Zealand,
3 and that I don't think she's met Mr. [REDACTED] I don't -
4 - I mean -- and she's an expert in what?
5 THE COURT: But, Ms. Russo, I -- while I
6 understand what you're saying, the thing is, those are
7 things that can be brought out in direct or cross
8 examination...
9 MR. [REDACTED] (Indiscernible).
10 THE COURT: ...of any witness, as to a
11 person's knowledge of either an issue of fact or
12 expertise. I think I'd be prejudging...
13 MR. [REDACTED] (Indiscernible).
14 THE COURT: ...the matter.
15 MS. RUSSO: Well...
16 THE COURT: So I'm not going to prevent her
17 from being a witness. It's just how much of her
18 testimony, you know, the court permits. Either as an
19 expert or as a factual witness. You know, we'll just
20 see what develops, but the thing is...
21 MR. GOTTSTEIN: And what weight you give it,
22 Your Honor.
23 THE COURT: Yes. It's the bottom line.
24 What...
25 MS. RUSSO: My only objection is that -- I

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1 mean, my -- not my only, but, my objection is that
2 evidence has to be relevant. I have no clue how this
3 particular person is remotely relevant to this case.
4 THE COURT: Well, the thing -- okay. I mean,
5 she's not -- she'll be asked particular questions, I
6 assume, by Mr. Gottstein. And then you will be able to
7 -- once you hear that question -- is that a relevant
8 question or irrelevant? And you raise your objections.
9 I have two professionals here and I've been dealing
10 with plenty of objections.
11 MR. GOTTSTEIN: Okay. Um...
12 THE COURT: So now the next thing I have to
13 deal with is whether I take her right now as an out of
14 order witness. But, again, I have to -- I'll have to
15 recess at noon. I have to allow Ms. Russo to get out
16 to API for this afternoon's hearings, plus the court
17 has to go out there -- the clerk and myself, for our
18 hearings.
19 MR. [REDACTED] We have (indiscernible).
20 THE COURT: So it's a matter of taking her
21 right now while she's -- doctor -- I can get the rest
22 of Dr. Worrall's testimony Monday. He can be
23 telephonic if he can't come down on Monday afternoon,
24 because I wanted to take it telephonically on Monday --
25 take this out of order...

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1 MR. [REDACTED] She's here now.
2 THE COURT: ...witness -- Mr. Parker, why are
3 you standing?
4 MR. PARKER: (Indiscernible).
5 MR. GOTTSTEIN: No. Okay. Thank you.
6 MR. PARKER: (Indiscernible).
7 MR. GOTTSTEIN: We're on right now for 1:30.
8 I'm sorry. I didn't know how much time had, and I --
9 you may have...
10 THE COURT: Monday afternoon?
11 MR. GOTTSTEIN: Well, I didn't know today, and
12 then...
13 THE COURT: Well, I have 9:00 to noon. I
14 mean, that's -- yeah.
15 MR. GOTTSTEIN: Oh, yeah. I just didn't know.
16 THE COURT: Yeah.
17 MR. GOTTSTEIN: And Monday, 1:30 to 4:30?
18 THE CLERK: (Indiscernible).
19 THE COURT: Oh, we have a 3:30? Oh. Okay.
20 MR. PARKER: (Indiscernible).
21 MR. GOTTSTEIN: I'm willing to do any
22 accommodation that I can.
23 MR. PARKER: (Indiscernible).
24 MR. GOTTSTEIN: So, it seems like...
25 THE COURT: 1:30 to 4:30, I have for this on

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1 Monday afternoon. So how -- you know...
2 MR. GOTTSTEIN: (Indiscernible).
3 MR. [REDACTED] What time of day?
4 (Indiscernible).
5 THE COURT: Hold on.
6 MR. [REDACTED] What time?
7 (Side conversations)
8 THE COURT: Let me deal with Ms. Porter.
9 MR. [REDACTED] Could I have a break. I'm
10 gettin' upset.
11 MR. GOTTSTEIN: Yeah. W...
12 THE COURT: Let me ask -- Ms. -- because I'm
13 going to allow her to be a witness...
14 MS. RUSSO: I don't object to her being out of
15 order, Your Honor.
16 THE COURT: Okay. So, Dr. Worrall, we're
17 gonna stop your testimony at this point. Thank you
18 very much. I might see you this afternoon out there.
19 I don't know.
20 A May I be telephonic Monday?
21 THE COURT: Yeah. I'm gonna permit you to be
22 telephonic, because -- let me just make sure. Is there
23 any objection to that?
24 MR. GOTTSTEIN: I do -- I do object to it.
25 Um...

1 MR. [redacted] 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. [redacted] 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. [redacted] (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. [redacted] (Indiscernible).
25 THE COURT: ...will work out how we'll contact

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 [redacted] 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 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, Paraparaumu, 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 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

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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

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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,

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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. [redacted] 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

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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. [redacted] 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.

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1 MR. ██████ (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. ██████ (Indiscernible).

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1 A ...more such services in New Zealand.
2 MR. ██████ (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. ██████ (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

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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. ██████ (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. ██████ (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.

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1 Q And would that include people who have been
2 coerced for a long time?
3 A In many cases, yes.
4 MR. ██████ 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. ██████ (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. ██████ (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. [redacted] (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. [redacted] (Indiscernible).
8 MR. GOTTSTEIN: ...treatment as an alternative
9 to the mainstream standard of care.
10 MR. [redacted] (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 on Monday and I'm here until Saturday. So I've
2 only got five days in this area.
3 MR. [redacted] Take me with you.
4 A But what I...
5 MR. [redacted] 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. [redacted] (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. [redacted] I know him, too (indiscernible).
25 A And he -- he actually came out to New Zealand

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. [redacted] (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. [redacted] (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. [redacted] (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 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. [redacted] 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. [REDACTED] (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. [REDACTED] (Indiscernible).
15 A Some. Yep.
16 MR. [REDACTED] (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 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. [REDACTED] (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 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 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. [REDACTED] I'm murdered.
14 THE COURT: ...I'm not -- to be honest,
15 certain exactly what she's being...
16 MR. [REDACTED] What...
17 THE COURT: ... -- other than her giving...
18 MR. [REDACTED] (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. [REDACTED]
22 situation.
23 MR. [REDACTED] (Indiscernible).
24 THE COURT: Ms. Porter's been here just a
25 couple days, leaving in a couple days. I'm just not

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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. [redacted] (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. [redacted] 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. [redacted] (Indiscernible).
16 MR. GOTTSTEIN: ...as well as what she knows
17 about choices, but that's what she's being offered as.
18 MR. [redacted] 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. [redacted] 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 --

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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 [redacted] I'm just not sure her testimony will be
5 relevant to the...
6 MR. [redacted] The president will find out.
7 MS. RUSSO: ...issue before the court.
8 MR. [redacted] 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. [redacted] (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. [redacted] type of
25 situation. And I could re-ask her those questions, but

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1 I don't see any need to.
2 MR. [redacted] (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. [redacted] 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. [redacted] (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,

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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. [redacted] (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

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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

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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.

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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. [redacted]
7 A No, I had not met Mr. [redacted] before today.
8 Q And have you had a chance to spend any time
9 with Mr. [redacted] 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

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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

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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

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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,

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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?

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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
transcription of testimony of said proceedings to the
2 best of my ability, prepared from tapes recorded by
someone other than Pacific Rim Reporting, therefore
3 "indiscernible" portions may appear in the transcript;
4 I am not a relative, or employee, or
attorney, or counsel of any of the parties, nor am I
5 financially interested in this action.
6 IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal this 7th day of September,
7 2007.
8
9
Notary Public in and for Alaska
10 My commission expires: 10/05/2007
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