

In the Superior Court at Anchorage, Alaska

Media No.: 3AN6108-199

Judge: W. Morse

Date: Monday, November 10, 2008

Clerk: T. Smallwood

Case Title: IN THE MATTER OF:

Name Respondent:

Case Number:

3AN-08-01252PR

I.T.M.O. W.B.

Type of Proceedings: Hearing to address medication / Status of Hospitalization

Parties Present: Assistant Attorney General: Laura Derry / Erin Pohland
Psychiatrist:
Petitioner: Linda David [NP]
Attorney for Mr. Bigley: James Gottstein
Respondent: Mr. Bigley

Others Present: Jonathan Hughes, Guardian [NP]

Court Orders/Master Recommends:

Summary of Proceedings:

Court will have judicial assistant / court staff conduct tele-conference w/ parties to confirm if Monday Nov. 17 is the set day for last continuation of matter / This will not be conducted on record
Court admonishes Mr. Gottstein to have any / all of his witnesses ready and available on said date
Exhibit E and G admitted
8:37:29 AM **On record**

8:37:39 AM Court
-on record
-parties present

Pohland
-Mr. Bigley had been following me around ... I have not spoken to him / just want to advise parties
8:38:30 AM Gottstein
-just a couple of things to address...not sure what the court wants to do...what was filed / handled on Friday
-so, if they want to cross exam...
-also, have been trying to reach party [inaudible – name]
-also, providing a chronological history of respondent that I believe may be helpful to the court...
8:40:08 AM -Mr. Bigley's medications in Oct. 2006 – tried to subpoena witness who preferred to be telephonic at 11:00 rather than coming into proceedings and another witness only available between 11:00-1:00 of this week

Derry
-addresses Court regarding Mr. Gottstein's witness...remarks, limited relevance

Court inquires of Mr. Gottstein
Gottstein
-Exhibit G here...

Court
-Exhibit G admitted
-witness may be called
8:42:33 AM -State's filing ...proposed witnesses as listed...has been signed
-inquires of State regarding intentions on cross exam

Derry
-would like to have them all available for cross

Court
-witnesses to be addressed then during week's proceedings
-objections as raised by the State...basis?

Derry
-relevance and further ... none of the affidavits are notarized ...explains w/ one exception to one document

Court
-inquires further...remarks ...will read these

Gottstein
-will be prepared to address those w/ the Court

Court
-will read them

Derry
-calls witness

8:44:57 AM **Witness Sworn/Affirmed:**

Williams, Steve

Court directs parties to trade seats to get a better record

8:45:32 AM **Direct Examination by Derry**

(I know Mr. Bigley from a couple different periods of my life
(I used to work w/ ... for Court System in Mental Health Court
(Side Street Espresso, I used to see him there / also, Fourth Avenue location: First National Bank
(I have no personal relationship w/ him now...Sept. ...AK Mental Health Trust Authority...where I
work ... was contacted about concerns about his contacts and involvement w/ the justice system /
on behalf of the Trust...our role

8:47:21 AM (biggest concern: probably was his health and safety: placement in community, API, and / or

Department of Corrections
(my understanding is that he has been trespassed from a few places downtown and a few times,
he came back to locations and was not agreeable to what was happening / APD was called to
intervene
8:48:33 AM (physical health

Gottstein
-objection, foundation

Court
-inaudible comments

8:48:52 AM **Direct Examination by Derry, continues**

(correct, I / We convened meetings on his health...representatives of API were present;
Providence representatives were also present; Office of Public Advocacy representative and a
couple of other folks...what was addressed then
8:49:54 AM Gottstein
-objection, hearsay

Court
-inaudible remarks

Derry
-was asking what his understanding was...not what had occurred

Gottstein
-would be helpful for services for Mr. Bigley...would certainly be willing to stipulate to that

Court
-will let Ms. Derry inquire on his understanding ...are you willing to stipulate to Mr. Gottstein's
comments on services?

Derry
-yes ...stipulate to services' role in Mr. Bigley's life

Court
-inquires further of Ms. Derry / Mr. Gottstein...summation of respondent's well being / physical
health and acceleration of number and frequency of interactions with complainants...others in
community....giving rise to concerns

Gottstein
-yes
-also ask for one additional consideration

PAUSE

-continues remarks

8:53:14 AM Court
-is that a factor?

Derry
-I was not specifically invited...clarifies

8:53:37 AM

Direct Examination by Derry, continues

(my concerns for providing services for him: my understanding...one of the biggest challenges is his ability to be engaged in provisions of services and / or supports
(at the time of the meeting, service alternatives had been exhausted
(one of the outcomes of that meeting, Division of Behavioral Health and Social Services was going to specifically look at this case and altering treatment and see if there were other services that could be implemented for him

8:55:34 AM

(my understanding is that they have worked w/ at least one individual care provider to try to engage Mr. Bigley in / with services...extent, I am not aware of
(late Aug. or early Sept. – myself – recalled when...previous testimony addressed
(not that I am aware of

8:56:31 AM

Cross Examination by Gottstein

(there has only been one meeting ...no, you weren't there; you were not invited at that time...at my knowledge, you were not representing Mr. Bigley

Derry
-objection, relevance

(I can't see why not – why his lawyer should not be invited to such meetings
(one of the reasons why he does not engage in activities / services – addressed

Derry
-objection, speculation

Court
-you may answer...if you know

(I don't know
(I don't know – if psychotropic drugs ... a requirement

PAUSE

(Division of Behavioral Health and Social Services addressed...I do not know ...if that program would require psychotropic drugs
(no, I wouldn't know [that]
(to my knowledge, that is the agency

8:59:32 AM

Redirect Examination by Derry

(public defenders – if invited to the Anchorage Mental Health Authority meeting...I believe they were, yes
(I don't recall off the top of my head if they attended

PAUSE

(there was a representation from the A.G.'s office
(when the meeting was set up: purpose of meeting : no, it was not set up to establish medication
for Mr. Bigley; no one was there to do that, that I am aware of
(I am not sure...don't understand the relationship between Mr. Gottstein and Mr. Bigley

9:01:33 AM

Court
-excuses Mr. Williams to step down

Derry
-calls next witness

9:01:57 AM

Witness Sworn/Affirmed:

Young, Steven

9:02:19 AM

Direct Examination by Derry

(I am a public guardian for Office of Public Advocacy / beginning in 2005 – I was Mr. Bigley's
guardian
(what I did for him: 16-18 months...summarized; my relationship as his guardian...it had its ups
and downs
(he was a fairly honest person w/ his priorities; he was discharged in approximately May...around
May...an arrangement that I worked w/ ...a social worker named Ann O' Brian, I believe
(we were conservators for a number of years
(arrangement / relationship: was being discharged from the hospital w/ an early release for
discharge order to see if he would be treatment compliant w/ services being put into place...

Court
-directs witness to keep voice up for the record

9:05:35 AM

(on the early discharge order...API would provide the medications and he would come in every
two weeks for his injection; the first time he was to come in, he did not make it and he had to be
violated on the early discharge order; some one would need to file the violation ...how procedures
would be implemented
(this happened in the very early beginning of his discharge
(and then he started to come in on his own
(local pharmacy was providing the medications due to Medi-care matters...he would go to API to
get his medications and they were no longer there and he had to come and see me / he was
upset about that change
(May 2005- Sept 2006: he stayed in his own apartment
(most of the time, he was able to go grocery shopping on his own / I would go with him at
times...recalls how those experiences were...

9:08:23 AM

(then, in September of '06...he had more mood issues and difficulties...he would come into the
Office of Public Advocacy office
(he would be sad and then go to being angry and then back to being sad all in one minute
(we asked if that could be considered in his medications
(that was modified...

9:09:53 AM

(prior to that, what one medication he was only taking
(describes his visits / medication pick up appointments...

9:10:45 AM

(he would take the bus...on rare occasions, if the weather was really bad, he would take cab

(he would say he would not take medications and we would remind him that he was in his own apartment and that he was doing a good job keeping his apartment...he could focus on what needs he needed and we would come in and take care of those
(in summer time, he would come by when bored and we would take him out a drive...examples of activities
(he was able to focus on those recreation related things
(when he did not want to take medications: if he ever said why...one time, he said his feet hurt and he could not walk...I mean, he was walking...so, I took him in to see a podiatrist and he merely had really long toe nails...
9:15:08 AM (we agreed to assign his case to someone else for a while and try some / these changes
(how he reacted when we stopped being his guardian: addressed
9:15:36 AM (I used to go out w/ him and do grocery shopping / when Mr. Gottstein began representing him / when the settlement was in effect, he had been off medications for quite some time and ...so, when the transition was occurring, he was declining the level of assistance that was being offered
(at times, he would be angry when he would come to the Office of Public Advocacy office and I would have to ask him to leave
(we'd go shopping and sometimes, he would be asked to wait outside / if he came in on error, he'd be reminded to leave and wait outside and that might escalate his mood
(if someone would get too close to him at the grocery store, he would make a comment directed to the other person...
9:18:05 AM (usually, he would be fine w/ waiting outside in order to smoke
(on occasion, when he was not doing well, I would just go do it for him...RE: shopping, errands
9:18:38 AM (we see him...all of the public guardians are familiar w/ him; he comes sometimes daily / several times a day to the Office of Public Advocacy office and that makes it difficult / impossible for us to get him to leave
(what he comes for: when he arrives at Office of Public Advocacy office – sometimes, Department of Corrections taxis' him to our office for housing or he'd come over for cigarettes or money
(putting money on coffee cards / food for restaurants: what we'd do to prevent his need for coming to Office of Public Advocacy office...but sometimes, he'd come anyway
9:20:49 AM (we finally asked him not to come to the office because he'd be too disruptive
(the issue was how do we provide him w/ access to funds
(so it came down to providing money to / for hotels, restaurants, hospital services...that worked for a brief period of time and then he'd damage something at the / a hotel ...trespass at banks was not an option...so, we were not able to give him a check to cash
(he doesn't have a case manager
9:22:25 AM (if he has been incarcerated or hospitalized for a period of time...when off of his medications: addressed / his behavior escalates to the point when you can't talk to him ...explains / recalls incidents – episodes of anger / behavior
9:24:42 AM (he stood in the elevator and would not let me get in w/ him...I had never seen this kind / level of behavior until now
(usually, if something bad happened in the news, he would come into the office and say to us: I did not do it...I did not cause it
(he felt he was somehow connected to what happened...
(comments he would make: examples – he'd blow up the place / building; he'd tell me that I better leave because the place was going to be blown up...
9:26:21 AM (his needs are at this time: addressed...since all of this time that I have been working w/ him ...to be free to move around the community, be able to use services, listen to music at Chilkoots...he really doesn't drink alcohol
(in the 16 months time that I have been at his place, I only saw one wine bottle there and it was still somewhat full / and not completely empty
(in order for him to enjoy all of those activities and engage in community, he needs to be able to

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live in his own place; he never does well in ALF
(he needs to be less agitated when around people / be able to use the bus ...the premise for all of this to happen is for him to be on his medications
(I think that is a real fundamental...
9:29:06 AM (if given a place to live, a 24 hour care taker, extra funds, cigarettes and coffee everyday: no, I don't think those alone would be acceptable for him...medications, why also needed
(that is the problem – he is not able to develop any kind of trust relationship w/ anyone; his ability to handle day to day matters would be pretty low; tolerance level...agitated to outright hostile: ranges of moods - recalled
9:31:07 AM (middle of intersection, I recall seeing him there...cursing / gesticulating hands above his head...about a month ago...that was / is pretty unusual...from what I have normally seen of him
(if he is happy in these last few months, no, I don't think so
(I don't think he has ever been perfectly happy, no...since he has a tendency to complain...but I do know he has a sense of humor
(I know that he has allowed people to stay w/ him in his apartment...explains
(he had been talking to me about a car...recalled
9:33:36 AM (he has a good recollection of this car ...his ability to focus, process information, being around people and tolerate them / situations is a lot better ...when medications taken
9:34:18 AM **Cross Examination by Gottstein**

(I have not read affidavits as addressedno
(no, not aware of brain deterioration ...as addressed

Derry
-objection, foundation...calls for speculation

Court
-ask your question
9:35:28 AM (I am not an expert at those things...
(quality of life when on / off medication – potential problems versus benefits addressed, what I do know / am familiar with
(I would like to / need to ask the provider for further information...as it relates to side effects
(I am not in the position to make a determination as to the value or integrity of the medication

Derry
-objection, mischaracterization of testimony

Court
-can answer it if you can...
9:38:02 AM (the first goal for him is to stay out of the hospital ...May 2007
(can he stay out of the hospital for three months...and what could be done for that to be achieved?
(we went forward w/ the early release plan and I think that went well, I think
(medications' role in his life...
9:39:13 AM (yes, I was a proponent of his early release plan
(there are some institutions that would take people w/o medications but ...in absence of ...[inaudible]

Clerk requests witness to raise voice for the record

Derry

-objection, calls for speculation

Court

-answer it if you have any knowledge

(shortened life span...no, I don't know about medications' effect on
(but I would certainly be able to evaluate his quality of life / certainly, there are benefits
(his likelihood at doing something careless – when not on medications – example : jumping out in
front of a moving vehicle...

(I personally observed him step out into traffic and he just waved his hands for the world to just
stop

(I would like to think someone / I would assist him but not really willing to risk own life to do that...

(Dr. Jackson's recommendation addressed

Derry

-objection, he has already testified that he has not read his affidavit

Gottstein

-will rephrase

Court

-agree

9:43:39 AM

(yes, if that information is accurate and has been evaluated...then that information is serious –
yes, it would / should be considered.

(I would also be looking for other opinions

(I would consider her qualifications but I would also want to know if she had seen Mr. Bigley and
her scope of familiarity ...

9:47:41 AM

(the physicians and psychiatrists that he has seen / my sense of the care that he has received

9:48:38 AM

(he is happier when living in his own place and being in the community / his life span...

(dementia is like any other symptom...I guess I would be looking at the studies / what I am
familiar with: types of dementia...ability to be stable in environment would be w/ consistent
patterns would be a benefit – ability to think clearly, example

(I would want to know how reliable those studies are...be in favor of having Mr. Bigley being fully
evaluated

(I am not the one who is making the decision here...why I have not read affidavit as addressed by
Mr. Gottstein

(his range of moods : examples of - recalled

9:51:48 AM

(my experience of / with dementia: people can get confused...and sometimes frustrated but they
don't have the extent / range of moods as described...that is more related to depression

9:52:30 AM

(Exhibit G addressed: identified – involuntary commitment document, yes ; signature seen

(page two [read aloud, in part directly – as addressed by Mr. Gottstein]

9:53:52 AM

(if / what it says: non responsive / refuses medications

(I recall his moods...the causes of range of moods – when irritable, he would go to apartment
staff and accost them / we felt that maybe if this was addressed then that would enable him to
remain in the community

9:55:00 AM

(page three addressed: forced medication content of document ...

(Oct 4, 2006 – date / signature on page identified / as addressed at Court's direction for confirmation

(Depakote...was one of them...the other medications, if any...

Derry

-objection, speculation ... witnesses not present

Gottstein

-will ask another question ... refresh witness's memory

9:56:56 AM

(it was not that simple of a transition; he was living in his own housing and approximately a month before this petition, he lost his housing / he had yelled at the manager and would not back down...so the manager evicted him

(if the medication was not working then

Derry

-objection, lacks foundation

(he had lost his apartment...and then we asked the hospital to consider the mood issue / stabilization matters...

(he refused medications at hospital and in the ALF...he then came back into the hospital and that may have been the time when...[inaudible]

(right, doctor said he was not responding to Rispadol alone...I think it was doing its job; what I was trying to say...instead of being ...coming in and being very...often times, he would come into he office – frequency decreased but was still having moods: talking and then being angry and then crying...

(if he is getting kicked out...that was my question: if Rispadol was the only reason for his evictions, trespasses...if there was anything more, as his guardian, that could be done for him...

Derry

-objection, asked and answered

Court

-remarks

Gottstein

-responds...he said it was working

Court

-you can ask him to clarify his answer but as I understood his answer [summarized]

Gottstein

-okay

-continues cross exam

Derry

-objection, foundation

-addresses Court...issue of permission...media representative is out in hallway

Court

-photographers to follow procedures as established

-your understanding of what the photographer has...intentions / if he has a request form

Derry

-if he has a form...confirms that photographer has left...

Gottstein continues cross exam

(when the early release would have expired

(history of hospitalization addressed / if he was at risk and at danger /our obligation was to protect his welfare...purpose of filing for Title 47 – just for an evaluation ...I think that did occur a couple of times...there were very short periods of hospitalization and they worked for him very well...

(recalls – he did not cut his toe nails for nine months / saw a podiatrist for that

(recalls – he said his butt hurt from injections

(recalls – when side effects were reported...

(he was sometimes focused on sexual disfunction but he did not relate to that as medication – caused / he would come into the office and said he would need to get laid

(he kind of gets jacked up on caffeine at night and then his complaint would be that he did not sleep and that he did not need to sleep because he was God and that he was different from everybody...

(sometimes he could have mood ...when he was told budget would not allow purchase of an item...how situations would arise / what course of action would be taken...recalled

Derry

-objection, relevance

Court

-where are you going w/ this?

Gottstein

-responds ...

(budget / he has approximately one...

PAUSE

(can't recall exact amount...he has certain amount of money for Medicaid / some in trust for that ...what is transferred to cover rent, groceries, electric bill and then what is used for his cigarettes; we try to maximize his availability of funds to cover purchases and then he would still have some left over...usually, spend it on trinkets and stuff that he just would not need: he'd decorate his walls, refrigerator...little ceramic animals, buttons, hats, and stuff that he would literally tack on the walls; he'd spend exorbitant amounts of money on useless trinkets...he'd be enamored by this but it was really money lost and frankly, I think people took advantage of him...

10:15:32 AM

(after rent and budgetary needs: his spending left over : if it was 10.00 – funds would go up or down depending on his rent which took the biggest chunk

Derry

-objection...apologizes...withdraws

(I think it is a reasonable goal: to get him into subsidized housing / he needs to get into a place that is stable ...combination of services from a mental health agency...

Derry

-objection, foundation

Court

-overruled

(what I am familiar with: variety of mental health housing...if [not] available for him

(yes, if the Mental Health Trust can help pay / provide housing...if helpful to him

(to have housing where he would not bother any neighbors: I suppose that may be helpful

10:18:35 AM

Derry

-State would stipulate if he had housing as described / that was subsidized...if such housing existed...would be helpful

Court / Gottstein

-okay

Derry

-objection, asked and answered

Gottstein

-argues

10:19:42 AM

(those are the things that we really didn't limit...explains...we could not really see the practical benefits of having access to excess funds

(mostly, his mom gets his clothes / Value Village; she drops them off at his place

(then, I think you have helped him

(and I have taken him shopping...i.e. Wal-Marts

10:21:04 AM

PAUSE

10:21:27 AM

(correct, he is an AK Native; he does have AK Native benefits

(reality is that it is really difficult to get free services but he is eligible...he does need medications and Medicaid / Medicaid is needed for services, also

Derry

-objection, relevance

(he can go to ANMC and get medications / prescriptions filled ...

(we tried that : recall taking him there and got to the second floor and then he ran out

(he does not consider himself as AK Native; he often refers to his own skin color as white and he is derogatory towards other AK Natives...

(Feb. 2007 – on early release, he was ordered to return – why...no, I have no recollection [why]

10:24:25 AM

Court

-excuses witness to step down

-will take a break

-next witness and how long?

Derry

-witness to be called / about a half hour

Court

-inquires of Ms. Derry regarding this photographer issue

10:25:24 AM Derry
-responds
Court
-did the photographer ask to come in and was denied access?

Derry
-I do not know
-he conveyed that he was going to back to his boss

Court
-who I would like to hear from [inaudible – name]...confirm what happened

10:26:22 AM **Off record**

10:38:05 AM **On record**

10:38:28 AM **Witness Sworn/Affirmed:**

Adler, Ronald

Court
-why I am calling you as witness
-someone reported a photographer being present / requesting access to hearing
-can you tell me what happened w/ this photographer

Adler
(as a general procedure, longstanding policy at API – not to allow media in proceedings
(what I have requested to be done
(I declined that photographer's request

10:40:24 AM Derry inquires

Gottstein
-objection, leading

Court
-overruled

(yes

Gottstein
-may I inquire of him now...as I have him listed as one of my witnesses?
-no inquiry on this issue alone

[Court does not permit inquiry as witness at this time]

10:41:16 AM Derry
-would like to rest my case today, if possible

Court

-excuses Mr. Adler to step down

-in the future, media representative to be allowed access / to be viewed as member of public
-this has happened twice / Dept. of Law denied access last week, also

Derry
-calls witness

10:43:28 AM

Witness Sworn/Affirmed:

Rutherford, Adam

10:43:59 AM

Direct Examination by Derry

(what I do
(what my role is and where I work – MICMOD – what it is : military term used / facility of ...for
mental health treatment
(when Mr. Bigley is admitted into unit – booked in / placed in for observation to asses his mental
health status and do a general medical review
(generally, comes in agitated...irate at times / delusional; threatening people; very poor condition
as to his mental status
(he takes his medication when incarcerated ...his condition when not incarcerated compared to
when incarcerated

10:48:56 AM

(emergency medications: three day window compared to involuntary medications – explained /
Department of Corrections policy
(he cannot be placed into general population ... why: threatening people, spitting at people,
throwing things at people...delusional

10:50:49 AM

(need to make sure he is safe as well as others...
(he is very, very irate / agitated when he comes in
(he believes he is a secret agent and should be permitted release
(he is difficult to engage with, yes

10:52:22 AM

(least constrictive means, method used but sometimes, he does have to be restrained: how
restrained depends on situation – i.e. ankle restraints
(when restrained – it is a pitiful situation to see a skeletal person who truly does not believe he
deserves to be there / not able to control himself at all...truly, a sad thing to see
(range of delusions: i.e. knowing President Bush / Murkowski / Palin and will have us fired...or
having our heads cut off...can be gruesome threats made
(just hearsay from what I have heard / my limited familiarity with him explained
(he is decompensating when admitted and then stabilized and released

10:55:06 AM

(last time, recall him pulling his shirt up and rubbing his belly, seeing his skeletal / frail
condition...and saying he was hungry but he would throw food / refuse food ...claiming it is
poisoned
(different conspiracies, he says he's Al Pacino, says he is a movie star, says he has killed people
/ will kill people; talks about gruesome acts of violence: killing people, splitting their heads open
and seeing their brains...things that I have not heard from him before

10:57:13 AM

(what I would like to see: he take his medications...when on medications, he is very
calm...explains difference
(would love to see him in his own apartment w/ intensive case management coming in and
checking in on him and making sure he is taking his medications

10:58:36 AM

(I really worry about Mr. Bigley and his available services and options / housing, etc...
(life without medications: effect on his quality of life addressed
(when on medications, he can be at rest, can eat his meals...

(why I worry about him...
(it really varies...because of his mental status: he is in and out depending on ...longest time he was in: 22 days
(recalls change in his demeanor / status in facility...amazing at how his mood is at an even keel...
easier to engage with [examples of conversation / activities]
(even when on medication, he is delusional but not as apparent as when he is off
(how he would take his medications – he'd put 'em in his hand and just take them
(in the last calendar year, yes

11:02:47 AM

Cross Examination by Gottstein

(if I have observed him today as compared to what I have seen in the past experiences w/ him
(does not appear to be as generally agitated as when he comes into jail, correct
(do not see any ranting and raving but I do notice that he has been mumbling to himself under
breath...would need to inquire / evaluate further

Derry
-objection, mischaracterization of testimony

Court
-answer it if you can

Witness responds

Derry
-objection, relevance

Gottstein continues cross exam

(spitting behavior is considered dangerous / why
(his unwillingness to re-direct...inability to re-direct
(amount of harm that is potentially posed : harm to self ...could be life threatening, yes but also
looking at what is effecting his quality of life...

Derry
-objection, asked and answered

(procedures / emergency medications if given ...serious injury – if inflicted on self – if a factor
(recalls there were two times: medications given / released

11:08:29 AM

Redirect Examination by Derry

(mental status after having being locked for a while...difficult to answer : explains
(his thought processes / ability to have a logical thought process and carry on conversation:
improvement – factors of
(I don't that it's fair to Mr. Bigley: explains to have him kept locked up because he is not taking his
medications...recalls periods of incarceration: one time up to 2007 and then seeing 12 periods
(when he comes in, he is not aware [mental status]...what he truly believes he was doing and
why: number of incidents and underlying reasons
(he feels the governor is holding his funds / jet...
(unfortunate Department of Corrections is incarcerating him for mental health care / not an

environment as friendly / not as caring as one would see in a state hospital...a lot more stress and agitation

Gottstein
-inaudible remarks

Derry
-I am done w/ re-direct

11:13:13 AM **Re-cross Examination by Gottstein**

(if he should be allowed to stay out of the hospital with or without being required to take medications...addressed: one needs to consider the quality of life of the individual / the ethical duty must be considered
(I truly believe his quality of life is better off when he is on his medications: this court process [the purpose of...]
(I am not saying it should / is my decision to make...

11:16:25 AM **Court**
-excuses witness to step down

Gottstein
-asks for a quick break

PAUSE

Court directs where parties to be seated as instructed

11:18:16 AM **Witness Sworn/Affirmed:**

Jenkins, Jerry

11:18:32 AM **Direct Examination by Gottstein**

11:18:57 AM (Director of Anchorage Community Mental Health Services / title and role
11:19:36 AM (my education / employment history summarized
(only indirectly familiar w/ Mr. Bigley; attended meetings addressing him and his case / issues
(just met with / saw him last Thursday
(when and why he would come to ACMHS office ... when they don't ...we collectively determine what can be done in order to see how the patient can continue

Derry
-objection, leading

Court
-rephrase

11:21:06 AM (I have never dealt w/ him in that way
(there are services / medications that I have heard that he has not engaged in...
(within that last couple of years...yes but would need to look at the discharge summary

(daily rate at API – what it is

Derry

-objection, relevance

Court

-can answer it, if he knows

(no, I don't know

Derry

-objection, asked and answered

Court

-remarks

11:22:32 AM

(yes; I have been contacted a couple of times through staff / Anchorage Division of Behavioral Health / what we could provide for him :services

(235,000.00 for one year; a person who could respond to his needs 15 hours a day

(rates based on a formula / adjusted on number of hours needed

(cost rates at Department of Corrections MIC MOD vs. API

Derry

-objection, he said he would not know API rates as asked...

11:24:13 AM

(order if recalled, regarding February early release...I do not...I would have to look at / review documentation

(I recall an encounter w/ you and Dr. Curtis about that return and the basis of that

Derry

-objection, asked and answered

Court

-overruled

(why he was discharged : explained / basis of

(Civil Rights implications addressed with that return

(what I am recollecting from that conversation in March 2007: that we had concerns about Civil Rights implications being involved ...we do not want to be or have ...an enforcer

(what we want to do: confirm if compliance in plan; are being a danger to self or others

(if people are diagnosed w/ mental health issues, if one has the right to choose to take

medications; I have seen people who do not have rationality / ability to make that choice

11:29:07 AM

Redirect Examination by Derry

(the formula that we use to calculate costs of care addressed

(what would be estimated for Mr. Bigley / no one is available for that kind of service

(what is available for him: explained

(on-call basis : the issue would be to be able to pay someone to fulfill that kind of position

11:31:00 AM

(If State of AK would provide that kind of service w/ Anchorage Division of Behavioral Health:

what would need to be done

11:31:42 AM

(at this time, if able to make a clinical opinion if Mr. Bigley would be able to succeed w/ this kind of

16 hour plan...yes
(who would be qualified to make that decision: examples given
(as a Director, what I would be able to do
(who Dr. Curtis is / what his role was...
11:32:47 AM **Recross Examination by Gottstein**

Derry
-objection, leading

11:33:02 AM (believe he should be provided w/ the least restricted environment as possible
(yes, I believe we should provide the best care possible...yes, he would deserve that ...

11:33:32 AM **Court**
-thanks and excuses witness to step down

Gottstein
-calls witness

PAUSE

11:35:21 AM **Witness Sworn/Affirmed:**

Wolf, Aron

11:35:42 AM **Direct Examination by Gottstein**

(my background: B.A. w/ Dartmouth College and medical school / Univ. of Maryland
(three years in Air Force here and psychiatry field – summarized
(Masters Degree – management / consulting / board certified in neurology / psychology
(have been found / declared as [qualified] expert witness ...lots of times
11:37:18 AM (I was asked by Mr. Adler to evaluate Mr. Bigley for second opinion, yes
(if appointed by Court...has happened less and less over the years
(no, it would not change my testimony

11:38:01 AM (yes, I did an evaluation of Mr. Bigley: he did not wish to interact w/ me but I reviewed his chart
and reviewed his data that your office had sent to me

11:38:32 AM (I did prepare a written report / have my own copy here today
(just my own copy brought today
(and at that time I was just asked to do a second opinion / my understanding of this report –
purpose

Gottstein
-would mark this as Exhibit H

Court
-asks witness if we should be writing on the witness's only copy

Wolf
(I have a copy on my computer...fine

Gottstein
-asks for five copies made

Derry

-asks for witness to have a copy in front of him before Mr. Gottstein continues direct exam

Court

-inquires of date when requested to prepare report / evaluation

(asked in Oct
(met w/ him on...

Derry

-Nov. 3rd

(November 5th ...

11:41:09 AM

PAUSE

Gottstein

-I could maybe inquire on another area...

(I have read Whittaker's affidavit and Jackson's affidavit
(if I agree to the contents ...of affidavits

Derry

-objection as to form of question...how question can be asked [suggested]

11:42:33 AM

(no dispute as to what medications can do ...RE: Whittaker affidavit
(I have not seen underlying data used / no major difficulties in overall report / findings ...RE:
Jackson's affidavit
(yes, I have read the portion that addresses Bigley's situation

PAUSE

Court

-take five minutes for parties to review document

-will take a break...

11:44:01 AM

Off record

11:50:05 AM

On record

Gottstein

-move to admit Exhibit G

Derry

-no objection

11:50:31 AM

Direct Examination by Gottstein, continues

(PCA- Primary Care Attendant
(what that person does / is: described
(If I have read proposals...

Derry
-objection, relevance

(I can answer that ...have knowledge of

11:52:38 AM

Cross Examination by Derry

(if medications are unequivocally bad

Gottstein
-objection

11:53:21 AM

(agree, number of medications have side effects / impacts...what can happen need to be ...w/
findings

(my training and experience in psycho-pharmacology

(how long in practice : my self since 1997

(how much changes have occurred / training and education : kept current

(what trends have changed since 1997 to present: addressed

(I do prescribe anti-psychotics / I do weigh benefits and side effects

11:56:00 AM

(how I conduct evaluation / weigh the benefits and effects: evaluations conducted...

(physical weight, lab work, blood work: examples of factors considered

(I don' t...Mr. Bigley is going downhill; he is getting more difficult to deal with / seems to be getting
more into trouble / course of medications – if not taken

(letter that I wrote : addressed...he did not allow me to conduct evaluation

(I had the opportunity

11:57:49 AM

(my ability to confirm if he was able to make an informed decision: no, I was not ...explains
answer...he was clear enough on why I was there [to evaluate him]

11:58:33 AM

Gottstein
-objection, is that a question?

Derry
-tone of question w/o proper wording...

11:59:20 AM

(precautions advised when I prescribed medications...

(I would agree w/ that opinion, yes [as summarized by Ms. Derry]

11:59:45 AM

(basis of opinion: his inability to function outside of structured setting

(yes, they can ...

12:00:24 PM

(people's ability to respond to medications ...addressed

12:00:42 PM

(what I think happens to Mr. Bigley / persons similar to him...when they go to jail: treatment
received / condition of...compared to hospitalization

(stay longer...usually there more than a week or two...for intervention

(basis of opinion: required to stay there versus medical setting...addressed further

12:03:04 PM

(effect on one who stays in correctional facility ...one w/ mental health conditions...addressed

12:03:26 PM

(physical restraints should be avoided as much as one possibly can...

Gottstein
-objection, lack of foundation

(I really don't know

Court inquires of witness

12:04:22 PM (use of MRIs in evaluation ...addressed / medications prescribed...
(to my knowledge, there is not but there was an article in New York Times : protocol recalled in
article and I sent her an email to see if she could send me that protocol...I have not seen that
today

12:06:50 PM **Redirect Examination by Gottstein**

(I have met Mr. Whittaker, yes...if he is categorically against use of ...his suggestion that they
should be used selectively...yes, that is my understanding
12:08:08 PM (since 1997: changes in ...addressed / yes, it speaks for itself
(my definition of "gravely disabled" – addressed / summarized
(when one is unable to take care of one's basic needs outside of a structured setting
(if that is a legal definition
(how I use that definition...
12:09:03 PM (no

Derry
-objection, relevance

Gottstein
-provides context...it

Court
-inaudible comments

Gottstein
-it goes to the ability to work w/ people who don't want to take medications

Court
-can answer it if he knows...

12:10:34 PM **Redirect Examination by Gottstein, continues**

Court
-remarks [inaudible]

Gottstein
-responds

12:10:59 PM **PAUSE**

Derry
-objection, relevance

Court
-remarks

Gottstein
-will withdraw...

12:11:42 PM

PAUSE

(if one could be asked which method they would prefer: example: medications versus restraints
(depends on protocol...explained / what kind of setting
(that is usually not asked...but if asked, yes, they might be able to make choice...

12:13:11 PM

Recross Examination by Derry

(yes, I have read Ms. Jackson's affidavit
(as a clinician, if I would make recommendations if I did not actually conduct an evaluation: if
there is enough data that is relevant that can be significantly reviewed...explains
(I think API is doing a very nice job trying to structure...noted that there were a number of
staff...after medication taken / had experienced better days
(Mr. Adler / Mr. Bigley's chart...how did API get his case...degree / extent of care
(medications – what it could do: addressed

12:16:34 PM

Court

-excuses witness to step down

Gottstein

-calls witness: Mr. Adler

Derry

-asks to be excused momentarily...

PAUSE

12:19:42 PM

Court reminds Mr. Adler that he remains under oath

12:19:55 PM

Direct Examination by Gottstein

Derry

-objection, costs not relevant

(daily rate versus costs?

(1018.00 a day...that is the Medicaid rate that we charge Medicaid for billable services

Derry

-objection, leading

Court

-you may answer ...

(about half of that

(per patient: 516.00 per day / costs

(Medicaid versus our actual costs...what I had tried to testify to earlier – clarification

(yes

12:21:53 PM

Cross Examination by Derry

(it's an exclusion for state psychiatric hospitals / purpose of...

(age parameters for benefit explained for eligibility for ...why: indigent population / reimbursement factor
(sometimes we do send out collection notices; no, not sent out to those who are indigent

12:23:26 PM **Redirect Examination by Gottstein**

(I have heard a lot of MICMOD but no answers on costs as related to prior testimony

12:24:14 PM **Witness excused**

Court
-addresses Gottstein / witnesses to be called

Gottstein
-remarks

Derry
-witnesses that I would like to call...[responds to Court's inquiry]

Court
-admonishes Mr. Gottstein
-I directed you to have witnesses here...and be available
-not going through a shopping list merely to find out who is available...
-we need to get these witnesses here...if not available, what I am inclined to do : exclude their testimony
-inquires of Mr. Gottstein...options at proceeding...or continuing...

Gottstein
-Ms. Jackson ...we could call her

Derry
-conference call suggested as previously done?

PAUSE

[Mr. Gottstein calling witness]

12:27:36 PM Gottstein
-addresses Ms. Jackson
-confirms phone number for Ms. Jackson

12:28:17 PM **PAUSE**

Parties at API...calling Dr. Grace Jackson

12:29:10 PM **Court**
-confirms clerk is still on phone

Clerk
-confirms...still on record

Court

-addresses Ms. Jackson
-who is present
-will have State conduct direct exam

12:29:45 PM

Witness Sworn/Affirmed:

Jackson, Grace Elizabeth

12:30:18 PM

Pohland

-remarks / two objections raised before proceeding w/ her testimony
-Dr. Jackson's affidavit not proper

Court

-both objections overruled

12:30:48 PM

Direct Examination by Derry

(my understanding for Mr. Bigley's evaluation: purpose – to determine the appropriateness of forced medications...so, it could be a matter of semantics – forensic determination

(why medical records not completely provided / I believe I was provided sufficient amount of information to perform report / evaluation

(if additional family information would have changed my findings : no

(It may have provided assistance in developing a treatment plan thought

12:34:23 PM

(my current focus is on research and completing a second book; for the past six months, focus is primarily working on my book

(last time I was working on full time basis w/ patients : two summers ago

(patients were not in same context as seen in Mr. Bigley's situation

(I would not prescribe medications until further guardian or other party notified further...explained

(what kind of action that I would recommend – explained further

12:36:49 PM

(patients that I usually work with – two summers ago: described...in prison setting...my first hand knowledge of their medications / situation

12:37:33 PM

(I have not practiced psychiatry in AK

(none other than what I have read in literature involving this case, specifically...can't imagine the details to be too different from my experiences here in North Carolina and Oregon

(standards of care : addressed / I would say that there are many standards or ideas of care but not comfortable using terms as to what is "appropriate" in standards' context

(it's something that is always evolving : why "appropriate" not used in standards ...as addressed

12:39:52 PM

(last time I reviewed Mr. Bigley's chart: when we last had hearing ...telephonic ...a little fuzzy on time...may have been May or August

Gottstein

-believe we had stipulated to May

(that sounds correct

(nothing ever since that time

(if has been incarcerated ten times since...what I think about that – I would have to withhold any judgment w/o any other information for my review but it sounds like things have not been going well for him

12:41:39 PM

(doses of medication...if it could kill him: acute way versus long term way ...yes; provides further explanation

(to answer your question, yes...it's just a matter of time

12:42:32 PM

(if he is capable of informed consent: not fully able to answer that question – why – explained

12:43:07 PM

Cross Examination by Gottstein

(people that I worked with : who were chronically mentally ill ...in both settings [clarified]
(successfully reduced ...length of time...every single case needs to be looked at as an individual case...if removed from medications; recall one patient asking to be taken off and then asked to be put back on a reduced level
(tried to reduce risks and side effects as caused by medications: what we really tried to...
(the V.A. system: not sure they are aware of the costs...it is always hoped for lower pharmaceutical costs and medical [care] costs
(if Mr. Bigley should not be forced to take medications in order to reduce medications – no, I would not change that opinion

12:46:26 PM

(again, it would depend on situation - explains differences of how [quickly] one would withdraw from medication...what the effects of that would be...
(time period depends on the unique brain profile for how long a particular drug would completely wash out of the system...explained
(the first 2-6 weeks: acute withdrawal phase

Derry

-can we limit this portion of testimony as it pertains to Mr. Bigley?

Gottstein

-remarks

Derry

-limitations of what is relevant: scope of medications as only limited to Mr. Bigley

Court

-can inquire on Rispodal

12:49:22 PM

(just about any kind of neurological or behavioral phenomenon...
(Rebound effect explained / return symptom – rebound differentiated from withdrawal...
(Withdrawal symptom- new symptom
(returning problem or a completely new problem...

Derry

-objection, leading

(when any person is taken off of a neuro-epileptic...effects of ...depression or anxiety
(agitation, certainly, a symptom ...most commonly seen

Derry

-objection, calls for speculation

12:54:09 PM

(in terms of clinical practice...where persons are able to observe chemical treatments
(acute phase versus longer phase [re-setting brain]: example of LSD effects
(a person could experience LSD effects for weeks or months after stopping its use
(one must be aware that some effects may still take effect after taking medications...in context of previous exposure...should be considered as a part of treatment plan

12:55:38 PM

Court

-excuses witness

Clerk

-reminds parties ...need to change courtroom if proceeding after 1:30 today

Court

- not planning on going past 1:30
- will let the clerk know when we will recess
- inquires of parties ...where are we going ...scheduling
- a week from today could be the next possible time
- I have jury trial for the rest of the week after Tues., 11-11-08

Derry

-can finish on that next week as suggested as long as it is understood that Mr. Gottstein understands that his witnesses are to be available and ready

Pohland

-witness / Cornelius

Gottstein

-I need to subpoena him

Court

-remarks

Gottstein

-my apologies

Derry

-move to have his testimony stricken

Court

-remarks addressed to Mr. Gottstein

Gottstein

-he might...could take a brief recess...confirm availability

12:59:58 PM

Pohland [?]

-Ms. Derry not available next week

Derry

-Mr. Gottstein was told when he was to have his witnesses ...

Court

-have folks available for 2:30 teleconference hearing merely to confirm when we can continue this: Monday 11-17-08 at 8:30 a.m. / we will not go past that date. It will be finished
-we won't even go on record...will have my staff call parties to confirm finalization and completion of matter

1:03:26 PM

-other matters addressed w/ parties...re: documents / exhibits...

Derry

-confirms what Court is admitting at this time...

Court

-am not admitting anything that has not been cross examined to...prior testimony versus affidavits
-admonishes Mr. Gottstein to have any and all witnesses available on Monday..

Gottstein

-Yes, Your Honor

Court

Madam Clerk, we'll be off record

Clerk

-thank you...off record

Off record

1:05:51 PM