

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

IN THE MATTER OF)
)
 WILLIAM BIGLEY,)
_____)
Case No. 3AN-08-247 PR

30-DAY COMMITMENT HEARING
BEFORE THE HONORABLE JACK SMITH

Friday, March 14, 2008

APPEARANCES:

FOR THE STATE: Timothy Twomey
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Page 2

1 PROCEEDINGS

2 THE COURT: We're on record in the time for

3 a 30-day commitment hearing in 3AN-08-247 PR in the

4 matter of Mr. Bigley. And counsel -- let me ask, does

5 Mr. Bigley still want it to be a public hearing?

6 MS. BRENNAN: I believe so, Your Honor.

7 THE COURT: Mr. Bigley, you still want a

8 public proceeding today as opposed to not have

9 spectators is basically the question?

10 MR. BIGLEY: Open court.

11 THE COURT: Open court. All right. Are the

12 parties ready to proceed?

13 UNIDENTIFIED SPEAKER: Yes, Your Honor.

14 THE COURT: Do we have the visitor here

15 today? All right. Good.

16 MS. BRENNAN: Your Honor?

17 THE COURT: Yes.

18 UNIDENTIFIED SPEAKER: Before we start, I

19 represent the Office of Public Advocacy and we're

20 Mr. Bigley's public guardian. We're not really a party

21 to this case.

22 I know from your conversation with

23 Mr. Hughes, you sort of expected us to be here, but I

24 don't think we have anything to add or present. We're

25 not a party to the commitment proceeding.

Page 3

1 THE COURT: Okay. But if the court has any

2 questions about -- one of the things that I think that

3 the court has to determine is whether Mr. Bigley needs

4 to be hospitalized, and some of the history that led up

5 to the hospitalization, the current hospitalization may

6 become relevant, so I may have questions for you.

7 So I would like you to -- you may not be a

8 party, but I may have questions for you. I would rather

9 have you here.

10 UNIDENTIFIED SPEAKER: Okay.

11 THE COURT: The state?

12 MS. BRENNAN: Your Honor?

13 THE COURT: Yes.

14 MS. BRENNAN: At this point, I would like to

15 bring a motion, Your Honor. I would ask the court to

16 dismiss this petition.

17 Under the statute, these hearings are

18 supposed to be made within 72 hours, and that simply has

19 not happened in this case.

20 The hospital, the doctor signed the petition

21 on February 22nd.

22 THE COURT: Right.

23 MS. BRENNAN: We were supposed to have a

24 hearing on February 29th. On that date, Master Duggan

25 recused himself. At the hearing on the 29th, there was

Page 4

1 a proposal that Master Lack would do the hearing over

2 the telephone. Mr. Bigley wanted to come downtown and

3 it was not acceptable to him to have the court be over

4 the telephone.

5 That hearing was then continued to

6 Wednesday. Then we had the representation issues to

7 work out. Judge Rindner was assigned to the case. He

8 had us all come in on Thursday, the next day.

9 Then he recused himself. Then Judge

10 Christian participated in the case trying to find us a

11 judge, and we were in front of her, I believe, on

12 Friday. Then we were in front of Your Honor on Monday

13 beginning to work out the representation.

14 And then here we are again on Friday, which

15 is two weeks since the time that we were supposed to

16 have a hearing.

17 I understand that this case is atypical and

18 that there was issues to be sorted out, but the problem

19 is, and I believe that it's systemic in the court

20 system, is that Mr. Bigley was entitled to have a

21 hearing within 72 hours, and based on issues that were

22 beyond his control, and a lot of it having to do with

23 court scheduling, we're now in a situation where we're

24 two weeks past the time in which he should have had a

25 hearing.

Page 5

1 And so for those reasons, we would be asking

2 for a dismissal.

3 THE COURT: Okay. Thank you. Any response?

4 MR. TWOMEY: No response, Your Honor.

5 THE COURT: Okay. From an administrative

6 standpoint, I understand this is an unusual case. First

7 of all, the original master recused himself.

8 If I understand --

9 MR. BIGLEY: (Indiscernible).

10 THE COURT: -- correctly, it was reassigned

11 to Master Lack at that point in time. Master Lack

12 attempted to conduct a hearing, but Mr. Bigley would

13 have had to be telephonic, so there was a request --

14 Mr. Bigley wanted to participate in person, so that

15 delay was to ensure Mr. Bigley's right to be present was

16 complied with.

17 If I understand correctly, at some point,

18 Judge Michalski was actually assigned to hear this case,

19 and he was preempted. And then Judge Rindner became

20 involved and Judge Rindner recused himself because of

21 his involvement in another case that he thought might

22 tangentially touch on this case, so he recused himself,

23 and it was assigned to me.

24 If parties recall, I think on that Friday I

25 was in the middle of a trial and so, although I actually

1 tried to take it up, Mr. Bigley was still here at 4:30
2 when the trial finished. The attorneys involved had
3 obviously returned, because the trial had been going for
4 a period of time, to their offices. We were unable to
5 reach them, so the reason it didn't or there wasn't
6 something conducted that day was not Mr. Bigley's fault
7 or this court's fault, but it was just logistically
8 impossible to get a hold of the attorneys at Friday
9 night at 4:30 or a quarter until 5:00 when we were
10 making the calls.

11 Subsequently, we had the representation
12 hearing in front of this court, and, at that time,
13 nobody raised an issue about timing, so as a practical
14 matter, I think defense has waived its -- although not
15 perhaps intentionally -- has waived the right to the
16 72-hour hearing.

17 The court will conduct the hearing. All
18 right. The state may continue. You may call your
19 witnesses.

20 MR. TWOMEY: Thank you, Your Honor. Our
21 witness, Dr. Raasoch, is available by telephone and I
22 believe that we have made arrangements to call him.

23 MS. BRENNAN: Your Honor, this is another
24 issue. I was just given notice this morning that
25 Dr. Raasoch was going to be the state's witness.

1 On the 29th, I was told it was going to be
2 Dr. Kushawn, and I did speak with Dr. Kushawn. I have
3 tried to speak with Dr. Raasoch this morning. I spoke
4 to him briefly, and he was in the middle of a meeting
5 and did not want to talk to me.

6 He told me to call him back in a half an
7 hour and I did, but he didn't return my page. So,
8 again, I would move for dismissal because of lack of
9 notice of this witness.

10 In the alternative, I would just ask for a
11 brief continuance so that I can speak to Dr. Raasoch to
12 see if anything has changed since the 29th.

13 MR. BIGLEY: (Indiscernible).

14 THE COURT: All right, Mr. Bigley, I
15 understand. Counsel, why the late notice?

16 MR. TWOMEY: Well, Your Honor, Dr. Kushawn,
17 who was the doctor who signed the petition, left his
18 employment at API and Dr. Raasoch is now the treating
19 psychiatrist.

20 I was advised of that this morning as well.

21 THE COURT: Okay. All right. So something
22 you just found out? All right. Under the
23 circumstances, although late notice certainly would
24 normally be -- well, is always a problem.

25 What the court is required to do is to look

1 at the appropriate sanction for such a late notice, and
2 as a practical matter, normally a continuance is what's
3 allowed, so the question for the public defender is how
4 long do you need?

5 I mean, can we take a short time now for you
6 to talk to him?

7 MS. BRENNAN: Yeah. We're interested in
8 getting this commitment hearing done.

9 THE COURT: Right. I appreciate that. In a
10 sense, you just made the motion about trying to be
11 quicker, so what we'll do is go off record.

12 Hopefully, you can get a hold of him right
13 now, and what we'll do, I'll give you until 11:30 and
14 then we'll go back on record.

15 You think that will be enough time to talk
16 to him if I give you until 11:30?

17 MS. BRENNAN: Yeah.

18 THE COURT: All right. We'll be off record.

19 (Off record.)

20 (On record.)

21 THE COURT: Okay. We're back on record in
22 the matter of Mr. Bigley, and do I have a witness on the
23 phone?

24 THE WITNESS: Yes. This is Dr. Raasoch.

25 JOHN WILLIAM RAASOCH, M.D.,

1 being first duly sworn, testified as follows:

2 THE COURT: Please state your full name for
3 the record, spelling both your first and last name.

4 THE WITNESS: It's John, J-o-h-n, William,
5 W-i-l-l-i-a-m, Raasoch, R-a-a-s-o-c-h..

6 THE COURT: Thank you, Doctor. I'm turning
7 you over to the representative for the state counsel.

8 EXAMINATION

9 BY MR. TWOMEY:

10 Q. Good morning, Doctor. This is Tim Twomey from
11 the AG's office. I'm going to be asking some questions
12 first of you this morning.

13 A. Sure.

14 Q. Where are you employed currently?

15 A. At Alaska Psychiatric Institute.

16 Q. And are you a licensed physician?

17 A. Yes, I am.

18 Q. When were you licensed?

19 A. Actually, my license for Alaska was just Monday,
20 March 10, '08, but I have been licensed for years in
21 Wisconsin, New Hampshire, and most recently Texas for
22 the last eight years.

23 Q. And what area of medicine do you practice?

24 A. Psychiatry.

25 Q. And how long have you been in that field?

Page 10

1 A. I did my residency in psychiatry back in '73 to
 2 '76, so '76, I have been practicing psychiatry.
 3 Q. Are you board certified?
 4 A. Yes, I am.
 5 Q. What boards?
 6 A. American Board of Psychiatry and Neurology.
 7 Actually, I was board certified in 1980, and when I
 8 moved to Texas, they needed a new exam, so I ended up
 9 getting re-certified in, I think, 2003.
 10 Even though I was lifetime by the APA, I had to
 11 do it for a Texas license.
 12 Q. During the time that you have been practicing as
 13 a psychiatrist, have you ever testified in court on
 14 issues of mental illness?
 15 A. Yes, I have.
 16 Q. How many times approximately?
 17 A. Oh, probably less than half a dozen.
 18 MR. TWOMEY: Your Honor, the state moves the
 19 court to accept this witness as an expert in the
 20 diagnosis and treatment of mental illness.
 21 MS. BRENNAN: Can I inquire, Your Honor?
 22 THE COURT: Yes.
 23 MS. BRENNAN: Good morning, Doctor.
 24 THE WITNESS: Good morning.
 25 MS. BRENNAN: Where did you go to college?

Page 11

1 THE WITNESS: I went to college at Luther
 2 College in Decorah, Iowa.
 3 MS. BRENNAN: And what was your degree
 4 there?
 5 THE WITNESS: BA.
 6 MS. BRENNAN: I'm sorry?
 7 THE WITNESS: Bachelor of Arts in Biology
 8 major.
 9 MS. BRENNAN: And what medical school did
 10 you go to?
 11 THE WITNESS: Actually, I grew up in
 12 Madison, Wisconsin, went over to Iowa, came back to
 13 Madison for medical school, University of Wisconsin
 14 Medical School.
 15 MS. BRENNAN: And what year did you
 16 graduate?
 17 THE WITNESS: Seventy -- let's see.
 18 Graduated from high school in '65, college in '69, '73.
 19 '69 to '73 medical school, graduated in 1973.
 20 MS. BRENNAN: And where did you do your
 21 residency?
 22 THE WITNESS: I did a residency at
 23 University of Vermont, and that was '73 to '76.
 24 MS. BRENNAN: Where were you working in
 25 Texas?

Page 12

1 THE WITNESS: I worked for the criminal --
 2 actually, I worked for UTMB, University of Texas Medical
 3 Branch, subcontracted with the Texas Department of
 4 Criminal Justice.
 5 So I was clinical director at Skyview
 6 Psychiatric Hospital for the prison for seven and a half
 7 years. And did that until March of last year when I
 8 tried to retire, and then the stock market didn't
 9 cooperate.
 10 MS. BRENNAN: Was that -- were you doing
 11 forensic psychiatry there or treating?
 12 THE WITNESS: Well, a combination both of
 13 treating. Pretty much prison psychiatry, I would be a
 14 consultant on the most difficult cases and a lot of
 15 administrative work as the clinical director.
 16 We had about eight psychiatrists and a
 17 couple of nurse practitioners, PAs, working for us. And
 18 we had a 528-bed unit.
 19 MS. BRENNAN: And are you a locum tenens at
 20 API or did you just join the staff -- (indiscernible).
 21 THE WITNESS: No. I'm locum tenens. I
 22 retired in March of '07 and then when the stock market
 23 didn't cooperate, I started doing some locum tenens work
 24 in late December, early January, and worked in Beaumont
 25 at a community mental health center, and then spent

Page 13

1 three weeks at Brownsville Community Mental Health, and
 2 then came up to Alaska for a five-week stint here.
 3 MS. BRENNAN: And when did you begin your
 4 five-week stint?
 5 THE WITNESS: March 10th.
 6 MS. BRENNAN: Okay. Thank you. That's the
 7 questions I have.
 8 THE WITNESS: Okay.
 9 THE COURT: There has been a motion to
 10 accept him as an expert. Do you have an objection to
 11 that?
 12 MS. BRENNAN: No, Your Honor.
 13 THE COURT: Okay. Dr. Raasoch will be
 14 recognized as an expert.
 15 BY MR. TWOMEY:
 16 Q. Dr. Raasoch, are you familiar with Mr. Bigley?
 17 A. Yes, I am.
 18 Q. Is he currently your patient?
 19 A. Yes, he is.
 20 Q. And have you reviewed Mr. Bigley's medical chart
 21 at API?
 22 A. Yes, I have.
 23 Q. And have you had a face-to-face interview with
 24 Mr. Bigley?
 25 A. Yes, I have had a couple, as much as you can have

1 face-to-face interview.
 2 Q. Have you completed your evaluation of
 3 Mr. Bigley's mental condition?
 4 A. Yes, I have.
 5 Q. And have you formed a diagnosis of Mr. Bigley?
 6 A. Yes. I concur with the ongoing diagnosis that he
 7 has had in the record, and that's schizo affective
 8 disorder, manic type.
 9 Q. Can you tell the court how Mr. Bigley's diagnosis
 10 manifests itself?
 11 A. Well, both through his delusional material and
 12 his behavior. His delusional material, just reviewing
 13 the record, that he has been fixated on tapes and
 14 electronic records of terrible things.
 15 He talks about Scar Face. He talks about knowing
 16 President Bush, President Bush has called him. He
 17 talked about how he knows the Clintons, Bill Clinton has
 18 been to Anchorage, Hillary called him the other day and
 19 then he asked us -- or tells us to kill whoever we want
 20 to.
 21 He told me, "You think I'm F-blanking crazy." He
 22 has had delusional talk about bone pickers and space
 23 ships. He threatens the staff and tells them that he is
 24 going to call political celebrities and have their jobs.
 25 He tells us that he wants to move to California, he has

1 got one hundred women waiting for him there.
 2 He tells us that he owns a jet, speaks about
 3 being in a snake pit and says we're charging him with
 4 manslaughter, we're going to carve him up.
 5 Basically, he just has nonsensical tirade about
 6 multiple topics, none of which are connected in any way,
 7 and this is clearly a thought disorder and hopefully you
 8 would agree with me that this is all delusional material
 9 that he is presenting.
 10 In terms of his behavior, he is certainly
 11 uncooperative with taking any medication. I have talked
 12 to him at length trying to convince him to take
 13 voluntary medication. He has refused blood draws to
 14 have any diagnostic tests medically.
 15 He is yelling, swearing on the unit.
 16 He hit the door, slams the door. On 3/10, he
 17 needed some emergency medication. To me, it's very
 18 frustrating. I understand he has been here at the
 19 hospital since the 23rd of February and he is still not
 20 medicated, and there is no point to have a psychotic
 21 individual in the hospital and not being able to treat
 22 them.
 23 Q. Doctor, in a minute, I'm going to ask you about
 24 your treatment plan for Mr. Bigley should he be
 25 committed, but first we want to finish in terms of

1 questioning you about your diagnosis and the basis for
 2 your diagnosis.
 3 A. Okay.
 4 Q. Is there anything else that you base your
 5 diagnosis of mental illness upon, other than what you
 6 have already explained for the court?
 7 A. Well, I guess just the impressions of the staff
 8 that have, you know, known him for years. I mean, he
 9 has been coming back to API numerous times.
 10 MS. BRENNAN: Objection, Your Honor;
 11 hearsay.
 12 THE COURT: There has been an objection
 13 raised that that's hearsay, Counsel.
 14 MR. TWOMEY: Your Honor, may I inquire of
 15 the doctor whether it's reasonable for psychiatrists to
 16 rely upon the information that he is describing?
 17 THE COURT: Okay. Go ahead.
 18 Q. Doctor, is it reasonable practice for a
 19 psychiatrist to rely upon information that you gather
 20 from the staff when they deal with the patient?
 21 A. Of course. I mean, we work as a treatment team
 22 and I rely heavily on staff opinions and reviewing the
 23 old records and just looking at, you know, multiple
 24 admissions that he has had in the past.
 25 I mean, that's all documented in his medical

1 record.
 2 THE COURT: I'll overrule the objection.
 3 You can continue.
 4 Q. We had an objection, Doctor, and that's been
 5 overruled, so you can continue to explain to the court
 6 the basis for your diagnosis.
 7 A. Well, just that he has presented similarly many
 8 times in the past and comes back with the same present.
 9 And staff tell me that he becomes much more reasonable
 10 and cooperative and is actually quite pleasant when he
 11 is on medications.
 12 Q. Approximately how many times has Mr. Bigley been
 13 admitted to API?
 14 MS. BRENNAN: Your Honor, I would object.
 15 This is more prejudicial than probative. He is being
 16 held on a petition on the specific facts of why he needs
 17 to be here today, not on his past history.
 18 MR. TWOMEY: Your Honor, the doctor just
 19 testified that he relied upon reports from the staff
 20 concerning Mr. Bigley's prior behavior, including
 21 behavior during prior admissions.
 22 THE COURT: Okay. But isn't the petition
 23 for a 30-day commitment supposed to have some statement
 24 so that Mr. Bigley and his counsel can prepare? It's
 25 supposed to state exactly what the grounds are for

1 hospitalization.

2 And this particular petition references very
3 specific facts. Now, after that, when we're talking
4 treatment, certainly the doctor can rely upon what else
5 has happened in Mr. Bigley's past, I think, to address
6 treatment concerns, but for the initial commitment,
7 there is a real question about notice.

8 If you haven't told defense counsel --

9 MR. TWOMEY: I'll move on, Your Honor.

10 Q. Doctor, can you explain for the court what your
11 treatment plan is for Mr. Bigley should he be committed
12 to the facility?

13 A. Well, the treatment plan is mainly instituting an
14 antipsychotic, finding an antipsychotic medication that,
15 you know, would have the least amount of side effects,
16 be least detrimental using the minimum dose it would
17 take to, you know, get an alleviation of some of the
18 delusional and threatening behavior and get Mr. Bigley
19 back to a baseline where he could function in the
20 community, leave the hospital and, you know, get back to
21 a much more functional lifestyle and be able to live and
22 reside outside of an institution.

23 Q. Doctor, assuming that Mr. Bigley is not committed
24 to the facility and he does not receive the treatment
25 that you have described, in your opinion, is it likely

1 think for himself, I mean, if he gets up in anybody's
2 face out in the community, he is intrusive or he starts
3 swearing at a policeman, I don't think people are just
4 going to walk away and ignore him.

5 And it's very frustrating just having him here on
6 the unit with trained staff, and, you know, calling
7 another patient on the unit a fat pig yesterday. I
8 mean, you know, he is detrimental to our staff and other
9 patients in this very confined setting.

10 And it's kind of ludicrous that he has been here
11 since February 23rd without being treated.

12 Q. You mentioned an incident yesterday, Doctor. Can
13 you elaborate upon any recent behavior that you
14 observed?

15 A. Yeah. It was in the middle of a treatment room.
16 Actually, I had four patients together trying to talk
17 about medication, and, you know, Bill would come in and
18 out of the room, but basically he was an example to a
19 couple of the other people that didn't want medication
20 of someone that was very disorganized and obvious I
21 think even to a lay person that, you know, he needs
22 treatment and needs some medication.

23 I guess I was also trying to convince another
24 patient there that, you know, we didn't have
25 standardized treatment for everyone.

1 that Mr. Bigley will suffer severe emotional distress or
2 physical distress?

3 A. I think he is suffering severe distress right
4 now. I mean, you know, living in a psychotic state,
5 being constantly tormented, you know, being angry at
6 everybody he encounters, being intrusive, I mean, it's
7 got to be a very painful existence.

8 Q. Is Mr. Bigley's emotional or physical distress
9 that you have described related or caused by his mental
10 illness?

11 A. Yeah. It's definitely related to schizophrenic
12 thought disorder. Delusional systems are classic
13 symptoms of schizophrenia or schizo affective illness.

14 Q. Do you believe that Mr. Bigley's judgment is
15 impaired at this point in time?

16 A. Yeah, it's gravely impaired.

17 Q. And does that impairment cause a deterioration in
18 Mr. Bigley's ability to function outside of an
19 instructed setting?

20 A. Yes. It severely inhibits his ability to
21 function.

22 Q. Can you explain what your concerns are should
23 Mr. Bigley not be at API in a structured environment?

24 A. My concerns are mainly for his own safety. I
25 mean, in general, he hasn't hurt anybody yet, but I

1 There was one woman I was actually trying to
2 lower the medication and other people I was trying to
3 convince to be on antipsychotic medication.

4 MR. BIGLEY: It's my life.

5 Q. Do you have concerns about retaliation by others
6 should Mr. Bigley not be in a structured environment?

7 A. Yeah. I think not in the structured environment,
8 out in the community, I mean, if he gets -- he is very
9 inappropriate. He gets up in people's faces. He starts
10 yelling, screaming, swearing at them.

11 And I think the majority of the population would
12 probably haul off and punch him.

13 MS. BRENNAN: Your Honor, I would object.
14 This is --

15 THE COURT: I'll sustain the objection.
16 That was relatively speculative. Continue.

17 Q. Have you talked with Mr. Bigley about him
18 voluntarily consenting to treatment?

19 A. Yeah. And he just consistently refuses to be
20 part of treatment.

21 Q. Do you think that Mr. Bigley has capacity to make
22 a decision regarding voluntary treatment?

23 A. Not really, no.

24 THE COURT: Let me ask a follow-up question.
25 I apologize. I'm kind of jumping in here. When you

1 make that -- you said, "Not really, no."
 2 I need to know exactly why you don't think
 3 he has the capacity. He has the capacity. I mean, it's
 4 pretty clear to the court that he has consistently
 5 maintained that he doesn't want to be treated, and so
 6 there is a big concern to the court.

7 If he has capacity to make that decision, he
 8 has a right to make that decision, so I need you to
 9 expound upon why you say that.

10 THE WITNESS: Well, I mean, just the fact
 11 that he doesn't cooperate with any treatment. I mean,
 12 whether it's simply a blood test to see what his blood
 13 count is or, you know, just getting the very basic
 14 information that's routine and I think most rational
 15 people would cooperate and at least agree to have their
 16 blood drawn to just see where their blood count is.

17 But I think even the most, you know,
 18 marginal thing like that he is not able to make a
 19 decision which would be in his best interest.

20 THE COURT: Okay. Let me put it to you a
 21 different way. If Mr. Bigley has previously been
 22 hospitalized for 30 days against his will and
 23 subsequently had a civil jury trial where citizens have
 24 said you shouldn't keep him in, even though he is
 25 mentally ill, he is not gravely disabled, and that's

1 So even if I decide to commit today, I think
 2 that he may well try to convince the court to use
 3 alternative treatments other than medication.
 4 Now, are you aware of whether there are
 5 alternatives other than medication that might assist him
 6 if the court commits him today?

7 THE WITNESS: I'm really not familiar with a
 8 whole lot of alternatives for treatment for someone
 9 that's psychotic. I mean, I think over the years people
 10 have tried doing therapy or other things, but, you know,
 11 in my opinion, you cannot talk someone out of a
 12 psychosis, and I think I learned that very early in my
 13 residency.

14 I would see someone down in the emergency
 15 room and, "Oh, gee, if I just spent a little more time
 16 talking to this person, you know, maybe they will
 17 cooperate or maybe I can do something."

18 THE COURT: All right. But actually, the
 19 crux of today's hearing is whether he is gravely
 20 disabled. Are you familiar -- actually, counsel has
 21 kind of walked you through that, but if I understand
 22 your testimony, it's that you think he is not a danger
 23 to others now, although he does get confrontational and
 24 in people's faces and yells at them, but he is more
 25 unable to care for himself.

1 happened, say, twice in the last couple of years, would
 2 that impact your decision as to whether he needs
 3 treatment now?

4 THE WITNESS: I would say -- I mean, I could
 5 certainly see that happening, and if that's what the
 6 court decides, to put him back out on the street, I
 7 mean, I would rather see him on the street than keep him
 8 in the hospital and not medicate him.

9 THE COURT: No. I understand if -- well,
 10 that's kind of what I have to decide today is whether he
 11 should be continued in API, but --

12 THE WITNESS: I guess to me the two
 13 decisions aren't mutually exclusive. I mean, if we're
 14 not going to be able to medicate him, what's the point
 15 of keeping him in API and just subjecting our staff to
 16 this person that's actively psychotic.

17 THE COURT: Sure. I understand. It's
 18 actually a two-step process here in Alaska. First,
 19 there has to be a decision to commit.

20 Then if there is going to be forced
 21 medication after that, it's a separate consideration for
 22 the court. Sometimes they happen at the same time, but
 23 in this case, it's pretty clear that Mr. Bigley wants to
 24 contest that, and, under those circumstances, he is
 25 entitled to a separate proceeding as to that.

1 Is that an accurate statement of what you
 2 have just said?

3 THE WITNESS: Yeah. He can't really care
 4 for himself, and I think he is at great risk for
 5 somebody retaliating out there in the community.

6 I mean, if we lived in an ideal world and if
 7 we could train everybody in the community to be a
 8 psychiatric staff member and not take personal when
 9 someone is in your face swearing at you, people could
 10 walk away and maybe he would be safe on the street.

11 But, I mean, unless society makes that major
 12 change, I think he is at grave risk for being hurt and
 13 being retaliated against.

14 THE COURT: Okay. All right. I apologize
 15 for jumping in, state.

16 BY MR. TWOMEY:

17 Q. Doctor, in your opinion, is there a less
 18 restrictive alternative that would ensure Mr. Bigley's
 19 safety and provide him with the treatment that he needs
 20 in his present condition, other than being committed at
 21 API?

22 A. I'm not aware of any alternative place. I mean,
 23 I think API would be the least restrictive alternative.
 24 But, again, you know, he needs to be medicated.

25 Q. Is API able to accept Mr. Bigley as a patient

1 should he be committed today?

2 A. Yes.

3 MR. TWOMEY: I don't have anything further,
4 Your Honor.

5 THE COURT: Okay. Let me ask, does the
6 visitor have a report for me?

7 UNIDENTIFIED SPEAKER: I'm really -- I'm not
8 really a party to the commitment proceedings. I'm only
9 a party to the medication proceedings where I provide an
10 opinion on whether the respondent has the capacity to
11 give or withhold informed consent.

12 So I usually don't participate in the
13 commitment proceedings.

14 THE COURT: Right, but if you have some
15 information on whether he is capable of providing
16 informed consent, that would go to whether he is capable
17 of saying or deciding his own medical treatment, which
18 is that he doesn't want to be treated.

19 So as to that aspect of your report, do you
20 have an opinion?

21 MS. BRENNAN: Your Honor, I don't think it's
22 appropriate for the court visitor to -- I mean, her job
23 is in terms of the medication petition, not in terms of
24 the commitment petition.

25 THE COURT: But if she tells me that he has

1 got sufficient capacity to make a determination as to
2 informed consent, then clearly he has sufficient
3 capacity to make a determination as to whether he should
4 be hospitalized.

5 I mean, am I wrong? It seems to me if he
6 can make one, he can make the other.

7 So all I'm asking -- I'm not asking for her
8 whole report. I'm asking if she thinks he has
9 sufficient capacity to make informed consent. Any
10 patient who has the capacity to make informed consent
11 can choose to deny medical treatment, so it's important
12 for me to know that.

13 So for that question alone, I don't want
14 your whole report, do you think he has the capacity to
15 make --

16 UNIDENTIFIED SPEAKER: I don't believe he
17 has the capacity to give or withhold informed consent.

18 THE COURT: Okay. All right. Public
19 defender, questions for the doctor.

20 EXAMINATION

21 BY MS. BRENNAN:

22 Q. Good morning, Doctor.

23 A. Good morning.

24 Q. When did you begin working with Mr. Bigley?

25 A. When did I begin? Well, actually, I started work

1 March 10th, but I actually started on the unit here

2 March 11th.

3 Q. And how many times --

4 A. The first day was orientation.

5 Q. And how many times have you met with Mr. Bigley?

6 A. I think three different times.

7 Q. And how long were those meetings?

8 A. They probably varied from, oh, 15 to 40 minutes.

9 Q. And did they take place in a conference room at
10 API or in the hallway or how did they take --

11 A. Well, one was in his private room talking to him,
12 one -- I think the other two were in the conference
13 room. And actually, I have had multiple interactions
14 with him in the hallway.

15 I mean, he greets me in the morning when I come
16 in the door. He is my shadow. He follows me down to my
17 office. When I come out of my office, he follows me to
18 the nursing station.

19 Even when we're in treatment team, he'll be
20 banging on the window and, you know, waving papers. So,
21 yeah, if I count all my hall encounters, it's probably
22 50 encounters I have had with him.

23 Q. So he is able to identify you as the doctor?

24 A. Yes, definitely.

25 Q. And Mr. Bigley, he first came to the hospital at

1 the end of February; is that correct?

2 A. Yeah. I believe February 23rd was the admission
3 date.

4 Q. Okay. And when he first came to the hospital --
5 have you reviewed the chart of this admission?

6 A. Yes, I have reviewed the chart.

7 Q. And when he first came for this admission, he
8 initially signed in voluntary; is that correct?

9 A. No. He has never signed in voluntary.

10 Q. Do you have his chart in front of you?

11 A. No, I don't.

12 Q. Is it possible for you to get that chart?

13 A. I can. I can run down the hall. You want me to
14 go get it?

15 Q. Yes.

16 A. Okay. Hang on. I'm back.

17 THE COURT: Thank you, Doctor.

18 A. That was actually the first time in a week I was
19 able to walk down to the nurse's station and back to my
20 office without Mr. Bigley following me.

21 Q. Doctor, can you look at the admission from
22 2/23/08 with Mr. Bigley?

23 A. You are talking about the admission record?

24 Q. Is there any documentation in the chart around
25 that date that shows that Mr. Bigley signed in

1 voluntary?
 2 A. I'm looking at the admission, psychiatric
 3 evaluation. It says he was admitted on a POA. I
 4 believe that's a --
 5 Q. Right. That's a police officer's application.
 6 A. Right, police officer, so that certainly wasn't
 7 voluntary.
 8 Q. But is there any documentation, if you can go
 9 through the chart from that time period, that states
 10 that he signed in voluntarily?
 11 A. Well, I can look at the orders would -- there
 12 should be an order if he signed in voluntarily.
 13 MR. BIGLEY: I didn't.
 14 MR. TWOMEY: Objection, Your Honor, as to
 15 relevance at the time of admission.
 16 THE COURT: Go ahead.
 17 MR. TWOMEY: We have had testimony from the
 18 doctor concerning recent events and the doctor's
 19 impression of Mr. Bigley's mental status, so how he
 20 signed himself into the facility isn't relevant to his
 21 mental condition at this point in time.
 22 THE COURT: Hang on. But if he signed
 23 himself in voluntarily, isn't he then authorized to
 24 leave if he chooses to, unless someone makes a
 25 subsequent application for involuntary?

1 MR. TWOMEY: Well, we did make the
 2 application, Your Honor, for involuntary commitment.
 3 THE COURT: You mean the 30-day commitment?
 4 MR. TWOMEY: Yes, Your Honor.
 5 THE COURT: That's based upon why he showed
 6 up initially, right, that caused -- I mean, the
 7 allegations are that he left his living facility and he
 8 was brought to API by police.
 9 So what you are saying is that the facts
 10 that you are using are what's happened after he got
 11 there, so the application is not correct.
 12 MR. TWOMEY: That's not what I'm saying.
 13 THE COURT: All right. I misunderstood you
 14 then. I thought you said that -- I mean, if he signed
 15 in voluntarily, then the handwritten entry under
 16 paragraph four of the petition for 30-day commitment
 17 isn't -- if I understand correctly what you are saying
 18 is the doctor should be able to use what happened since
 19 he got in there, even if he was voluntarily assigned, to
 20 keep him beyond the voluntary admission, but the
 21 application for the 30-day commitment speaks only of
 22 activity that would have occurred prior to that.
 23 Well, it does say he is pacing and agitated
 24 and disorganized, but I'm not sure how that establishes
 25 he is gravely disabled.

1 THE WITNESS: I do see here on 2/24 the POA
 2 was changed to a voluntary admission. It says, "This
 3 patient did not want an ex parte filed."
 4 BY MS. BRENNAN:
 5 Q. So did API accept his voluntary admission at that
 6 point in time?
 7 A. I'm assuming they did. And then it was on -- I
 8 guess on 2/26 it looks like the 30-day commitment
 9 involuntary was performed or started.
 10 THE COURT: And why? Tell the court why. I
 11 don't understand. If he is in there voluntarily, did he
 12 want to leave on 2/26?
 13 THE WITNESS: I'm expecting, yeah, that's
 14 what probably happened. And he had had -- I mean,
 15 between -- on 2/24, he had a couple of emergency orders
 16 for Lorazepam and Haldol. I guess he needed emergency
 17 medication then.
 18 Between the 24th and the 26th, I guess it
 19 looks like it changed from voluntary to involuntary.
 20 Q. And is there anything in the charts that states
 21 that he was going to leave the hospital or --
 22 A. Well, I have to look at another section here and
 23 try to find the progress notes. I'm not real familiar
 24 with these charts, as I'm brand new here.
 25 I do see on the 26th, he refused blood draw

1 again. "Patient continues unpredictable behavior,
 2 pacing the halls, going in and out of his room, couldn't
 3 sleep."
 4 Q. Doctor, I just asked you if there is anything in
 5 the chart about him wanting to leave, so you don't have
 6 to read the chart out loud, just if you could look for
 7 that information.
 8 A. Okay. Well, there is certainly notes here about
 9 being poisoned, and the meds, and not being happy with
 10 the staff, so --
 11 Q. Is it fair to say that the commitment petition
 12 was filed after Mr. Bigley stated that he didn't want to
 13 take medication?
 14 A. Sure, that could be part of it, and that would
 15 certainly make sense. I mean, that's, I think,
 16 consistent with what I have said from the beginning.
 17 You know, there is not a whole lot of point having him
 18 in the hospital here if he is not taking any medication.
 19 Why would we hospitalize somebody with diabetes
 20 and not give them insulin.
 21 Q. And, Doctor, what's the point of hospitalizing
 22 someone if they have a repeated history of not taking
 23 medication? I mean, what's the point of having them be
 24 in the hospital and then you give them medication and
 25 then they leave the hospital just to refuse medication

1 or not take their medication on the outside?

2 A. It's not like we go out and bring people into the
3 hospital. I mean, the community brings people in
4 because they are not functioning in the community.

5 And I don't think the police go pick up people
6 randomly off the street and say, you know, "We're going
7 to put you in a psychiatric hospital."

8 MR. BIGLEY: (Indiscernible).

9 Q. And Mr. Bigley recently went on a pass; is that
10 correct?

11 A. Correct.

12 Q. And what was the date of that pass?

13 A. It was within the last couple of days, probably
14 two days ago, went out like for an hour.

15 Q. And when he left the hospital, he left so without
16 staff; is that correct?

17 A. Correct.

18 Q. And he left the hospital for an hour or two?

19 A. Yeah. I think for an hour.

20 Q. How long was the pass for?

21 A. It was for one to two hours.

22 Q. Okay. And Mr. Bigley returned to the hospital
23 after his pass?

24 A. Yes, he did.

25 Q. And was there any reports or concern that

1 Mr. Bigley became -- caused any trouble in the community
2 when he was out on his pass?

3 A. I don't believe he caused any trouble. I don't
4 think he encountered anyone. I think he pretty much
5 stayed on the hospital grounds or right off of the
6 hospital grounds.

7 And, you know, he protests to being in the
8 hospital, but, to me, that raises the question of why
9 would he come back to the hospital if he didn't want to
10 be here.

11 Q. Well, the rule of the pass is that he was
12 supposed to come back; is that correct?

13 A. Right.

14 Q. So he was able --

15 A. What would happen to him if he would have just
16 wandered off?

17 Q. But he was capable of following the rules that
18 the hospital required him to do in that instance; is
19 that correct?

20 A. Right, because he has been here multiple times
21 and I think after 20 times or almost 30 times in the
22 hospital, he knows what's expected and he complies with
23 the rules.

24 Q. And Mr. Bigley, he has not been physically
25 assaultive to anyone in the unit; is that correct?

1 A. Not to this point. I mean, he has certainly
2 threatened and he has, you know, slammed doors and he
3 comes across as very threatening. And I think if
4 somebody didn't know him -- and I know the first day I
5 walked on the unit, I was a little taken back by
6 somebody, you know, screaming and swearing and calling,
7 you know, my boss here a murderer.

8 And I would say after spending eight years in
9 prison, you know, I didn't see inmates behaving that
10 way.

11 Q. But he doesn't have delusions or psychosis so
12 that he is --

13 A. He does have delusions and psychosis.

14 Q. You didn't let me finish my question.

15 A. Okay.

16 Q. He doesn't have delusions that are causing him to
17 hit people or be violent with people?

18 A. I think his threats are more legally, you know,
19 saying he is going to take people's jobs away or he is
20 going to sue staff, and, you know, he will show us a
21 thing that he'll claim that the judge has ordered that
22 he can leave on pass whenever he wants to.

23 MR. BIGLEY: (Indiscernible).

24 Q. And has he been eating appropriately at the
25 hospital?

1 A. I think for the most part. I know when he
2 initially came in, he talked -- there were notes in here
3 that said that he was refusing to eat initially, but I
4 think he has been eating more recently.

5 Q. So his weight hasn't been a concern for you since
6 you have been working with him?

7 A. Well, I think he is pretty slender, but I don't
8 think we're overly concerned about his weight.

9 Q. And are you aware that Mr. Bigley has a guardian?

10 A. Yes, I am.

11 Q. And has that guardian been in touch with you?

12 A. I haven't talked to the guardian.

13 Q. Okay.

14 A. But I have only been here four days, so --

15 Q. And are you familiar with any of the outpatient
16 resources that we have here in Anchorage?

17 A. Not really, no.

18 Q. So have you heard of a Kiana Clubhouse that is
19 operated by Southcentral Foundation?

20 A. No. I haven't heard of it.

21 Q. Okay. So you don't have any idea whether that
22 would be an alternative that would meet Mr. Bigley's
23 needs?

24 A. I'm certainly familiar with, you know, very
25 extensive resources where I worked in New Hampshire for

1 20 years and I think we had an excellent mental health
2 program there.

3 And I would guess at least comparable facilities
4 to what Alaska would have here, and I can't think of
5 anything back there that would really, you know,
6 tolerate or put up with his present behavior.

7 Q. And you don't know anything of Anchorage
8 Community Mental Health Service here in Alaska?

9 A. No, I don't. I have only been here since Monday.

10 Q. Okay. And reviewing the file, have you seen
11 anything that Mr. Bigley worked with the group called
12 Choices here in Anchorage?

13 A. I haven't seen anything about that.

14 Q. And if Mr. Bigley had intensive case management
15 and people working with him, spending time with him,
16 would that be helpful to him?

17 A. That would be helpful to him. I don't know how
18 intensive case management though is going to address the
19 psychosis and the delusional material without
20 medication.

21 I'm familiar with, you know, programs over in
22 Italy that kept visually everybody out of the hospital
23 and had seen people, you know, worked with people that
24 were bipolar and manic and follow a manic episode in the
25 community, but I think still they wouldn't be as

1 middle of an active psychosis and striking out at people
2 verbally and being angry and being that labile and
3 inappropriate all the time.

4 UNIDENTIFIED SPEAKER: Your Honor, I have to
5 leave for an appointment. If you do require Mr. Young's
6 testimony, I think he can testify.

7 THE COURT: All right. Thank you.

8 MS. BRENNAN: I don't have any other
9 questions.

10 THE COURT: All right. Any redirect?

11 MR. TWOMEY: Yes, Your Honor, just a quick
12 follow-up question.

13 RE-EXAMINATION

14 BY MR. TWOMEY:

15 Q. Doctor, you testified that Mr. Bigley went on a
16 one- to two-hour pass recently. What day was that?

17 A. Well, it was within the last two days. And I
18 thought, you know, that might build some rapport with
19 Mr. Bigley.

20 The pass was 3/12 was, what, Wednesday.

21 Q. Prior to the time that Mr. Bigley went on the
22 pass, was he given any medications?

23 A. No, he wasn't given any medication, because he
24 refused medications.

25 Q. When were the emergency medications administered?

1 aggressive as Bill is right now.

2 Q. But were those programs helpful to the patients
3 in those programs?

4 A. Yeah, they were helpful to the programs, and I
5 would certainly recommend those programs. And I think
6 if he got on medication, he could certainly be managed
7 in the community, and I think that would be, you know,
8 excellent resources for him, but I think, you know, one
9 of the prime issues there is someone needs to, you know,
10 help him, keep him on medication and have court ordered
11 medication.

12 As I understand from staff here too, I mean, he
13 is very agreeable and very easy to work with, you know,
14 once he is on medication. Actually, he probably
15 wouldn't even need extensive services when he is on
16 medication. He would function a whole lot better.

17 Q. So you believe that the medication would be
18 helpful in just making him cooperative; is that correct?

19 MR. TWOMEY: Objection; misstates the
20 doctor's testimony.

21 A. Not only making him cooperative, but getting rid
22 of some of the delusions --

23 THE COURT: I'll sustain that.

24 A. -- dealing with all the internal torment that he
25 goes through. I mean, it can't be fun being in the

1 A. Well, there were medications administered on
2 2/26.

3 MR. BIGLEY: Two shots -- (indiscernible).

4 A. No, that's just orders of PRN medications if he
5 would take them.

6 Q. Does the chart reflect that on March 10th --

7 A. Yeah, 3/10 there was an emergency medication.

8 Q. So that was before the pass, correct?

9 A. Right.

10 Q. Okay. So does that affect your evaluation or
11 your opinion concerning Mr. Bigley's grave disability
12 now knowing that he had received medications prior to
13 going on this pass?

14 A. Where is -- I'm not sure exactly what that
15 medication was, but it was probably a short acting
16 medication.

17 Q. Let's assume it was Haldol and Ativan.

18 A. Okay. If it was Haldol and Ativan, I mean, that
19 is probably going to last for a day or two. That could
20 have some impact, and actually he might have been doing
21 a little better on the 12th after that medication.

22 Q. Can you confirm by looking at the chart what
23 those drugs were that he was given?

24 A. Yeah. I need to find that. I have got the first
25 page of that emergency assessment here, but I didn't --

1 the back page has the medication. Let me see if I can
2 find that.

3 Here it is. I have got the other page, but --
4 okay. Yeah, it was Haldol, five milligrams IM, and
5 Lorazepam or Ativan, two milligrams IM. So, yeah, it
6 was Haldol and Ativan.

7 Q. And is it your testimony that those drugs would
8 have improved Mr. Bigley's behavior at the time he was
9 on this pass in terms of decreasing his delusions and
10 his response to his mental condition?

11 A. Yeah, it could, depending on the half life of
12 Haldol. The maximum effect would probably have been on
13 Monday or Tuesday, but by Wednesday, he would still have
14 some effect from the medication.

15 MR. BIGLEY: I'm fine right now.

16 MR. TWOMEY: Thank you, Doctor.

17 THE COURT: Any recross?

18 RE-EXAMINATION

19 BY MS. BRENNAN:

20 Q. Doctor, is that why you let Mr. Bigley out,
21 because the medications were working?

22 A. No, that's not why we let him out. I let him out
23 hoping that I could build a little rapport with
24 Mr. Bigley because he had been asking and he was
25 entitled to have a pass to go outside just in the

1 courtyard, but, of course, his main concern was to be
2 able to smoke and he couldn't smoke in the courtyard, so
3 I really don't condone smoking, but I thought maybe
4 because he had been so agitated if we gave him little
5 break -- and the staff told me, you know, they assured
6 me that he would come back and, you know, they have done
7 this on previous admissions.

8 And, you know, he would just comply with coming
9 back, and he is so persistent about it, I thought it
10 might help. But it really didn't help build any rapport
11 or any therapeutic alliance because, you know, the next
12 minute he was just demanding another pass and again
13 waving his sheet and telling us that the judge has
14 ordered him passes every two hours and how dare we not
15 follow these orders from the judge, and he'll have all
16 of our jobs and sue all of us and on and on and on.

17 Q. I don't have anything else.

18 THE COURT: Doctor, this is Judge Smith. I
19 have got a question for you. Mr. Bigley has a long
20 history of mental illness and unwillingness to take
21 medications when he is out of the hospital, so it seems
22 to me we're sort of in a circuitous or a loop here where
23 he goes in the hospital, he is forced to take drugs, it
24 improves his mental condition, he is released to the
25 community, he stops taking his drugs because he doesn't

1 want to take them, he ends up back in the hospital, he
2 is forced to take drugs, he is released because he is
3 better and then he stops taking his medication and gets
4 back in.

5 So what is -- I mean, I'm not sure what the
6 benefit is to Mr. Bigley to keep sticking him back in
7 the hospital.

8 You know, from what I can tell, and I don't
9 have his --

10 THE WITNESS: I think the medications are
11 effective and I would guess that he functions for
12 several months in between hospitalizations or, you know,
13 maybe he goes for six months or a year before he returns
14 to the hospital, so I think he does comply with
15 medications, you know, once he is on them, but for
16 whatever reason, after several months or six months, he
17 may stop taking them.

18 But I think a lot of places have gone to
19 outpatient commitment or court ordered ongoing
20 medications, you know, once he leaves the hospital. I
21 think people can be -- and I don't know if there is a
22 statute that way in Alaska where you can have ongoing
23 medications that are court ordered.

24 THE COURT: You can, but if they are on an
25 outpatient basis and they are not taking them, then, I

1 mean, I think he has been ordered to have mandatory
2 outpatient treatment and he stops and so he ends up back
3 in the hospital.

4 And actually, if I -- I don't claim to be an
5 expert on Mr. Bigley's history, but I think he has been
6 actually hospitalized in the last 30 years probably 75
7 times, so it's not lasting a year or six months.

8 I mean, he is going in and out of the
9 hospital pretty regularly. And so the concern the court
10 has is looking at the Alaska statutes, one of the
11 reasons the mental health statutes are written the way
12 they are is that if you have a mentally ill individual
13 who is not dangerous to others, you can only commit them
14 or you're only supposed to consider committing them if
15 there is a reasonable expectation of improving their
16 mental condition.

17 So what we're getting is a short-term fix,
18 but it really doesn't change Mr. Bigley's issues.

19 THE WITNESS: Has he been on IM medications
20 where at least you give a medication --

21 THE COURT: My understanding is he has, yes.

22 THE WITNESS: But a long-acting shot that
23 lasts for a month at a time?

24 THE COURT: Well, I don't claim to be an
25 expert on it. I know he has had shots, but --

1 THE WITNESS: Well, there is a big
2 difference in the short-term shot that's only good for a
3 couple of days versus the long-acting shot that's good
4 for a month at a time.

5 And then if you have got an aggressive
6 mental health center, they can go out and pick him up
7 and make sure he gets that shot every month. And
8 usually, they are more compliant once they are on
9 medication and doing well. It's a lot easier to keep
10 them on medication.

11 But, yeah, I have no doubt if we just gave
12 him some pills, the pills aren't going to last very
13 long. And the medications have a lot of side effects.
14 I can certainly understand why Mr. Bigley doesn't want
15 to take medicine.

16 I mean, they have severe side effects and
17 it's trying to find something that has minimal side
18 effects in a minimal dose that he could agree with and
19 he would recognize that it would do him some good.

20 THE COURT: All right. Did my questions
21 lead to any additional questions from the state?

22 MR. TWOMEY: No, Your Honor.

23 THE COURT: Public defender?

24 MS. BRENNAN: No, Your Honor.

25 THE COURT: All right. Thank you, Doctor.

1 The testimony is that there is no presently
2 known less alternative -- less restrictive alternative
3 than commitment at API, and as a result, the state moves
4 for granting of the petition for commitment. We believe
5 that treatment at API is in the best interest of
6 Mr. Bigley.

7 MR. BIGLEY: (Indiscernible).

8 THE COURT: Okay. Thank you. Public
9 defender?

10 MS. BRENNAN: Your Honor, we would ask the
11 court to deny the hospital's petition in this case.
12 There has been testimony that Mr. Bigley suffers from a
13 mental illness, but the statute doesn't stop there.

14 This hospital has to show that he is gravely
15 disabled and that there is reason to believe that the
16 respondent's condition could be improved with hospital
17 treatment.

18 First of all, we don't believe that
19 Mr. Bigley has been shown to be gravely disabled. The
20 testimony has been that he can be intrusive, he talks to
21 people, he follows people around, that he insults
22 people, but there wasn't any testimony that he has been
23 assaultive.

24 The concern the doctor had was that
25 Mr. Bigley behaves in such a way that someone who was

1 You can hang up.

2 THE COURT: The state may call its next
3 witness.

4 MR. TWOMEY: No further witnesses, Your
5 Honor.

6 THE COURT: Okay. Public defender, any
7 witnesses?

8 MS. BRENNAN: We don't have any witnesses,
9 Your Honor.

10 THE COURT: All right. Closing arguments?

11 MR. TWOMEY: Your Honor, the state moves the
12 court to grant the petition at this time. We believe we
13 have shown by clear and advancing evidence that
14 Mr. Bigley suffers from mental illness, as testified to
15 by Dr. Raasoch, and that as a result of his mental
16 illness, Mr. Bigley suffers from a grave disability.

17 Dr. Raasoch's testimony was that he believed
18 that Mr. Bigley could not live safely outside of a
19 structured, controlled environment in the absence of
20 receiving the treatment that is being proposed at API,
21 and that at the present time, due to Mr. Bigley's mental
22 illness, he is suffering from delusions and those are
23 causing a serious and significant impairment of his
24 ability to function and care for himself outside of a
25 structured environment.

1 not trained with any type of mental health background
2 would retaliate against Mr. Bigley, but, again, that was
3 speculative.

4 And there hasn't been any correlation
5 between his illness and how he can't survive safely in
6 the community. The testimony showed that he was eating
7 in the hospital, that he -- that there wasn't any
8 testimony showing that he wasn't able to take care of
9 his basic needs, and that there wasn't any testimony to
10 show that if he was out in the community that he
11 couldn't survive safely.

12 In fact, the hospital gave him a pass. I
13 mean, he was allowed to leave the hospital, and once he
14 left the hospital, he didn't get into trouble, there
15 wasn't any reports. There wasn't any concern that he
16 bothered anyone or got into a situation in which he
17 could harm himself or other people.

18 And so we don't believe that it's been shown
19 that he is -- that he can't survive safely in the --
20 under the Weatherhorn case, the hospital has the burden
21 to show that and they simply have not done that in the
22 case.

23 In terms of the gravely disabled, the
24 hospital has to show that his mental condition could be
25 improved by the course of treatment.

1 As Your Honor has stated throughout this
2 hearing, Mr. Bigley has been hospitalized many times at
3 API. He has had jury trials in which both times the
4 jury found for the respondent. He was allowed to come
5 to the hospital and sign in voluntarily.

6 Then it appears that when Mr. Bigley wasn't
7 taking the hospital's advice to take medication is when
8 they filed the petition, but, again, I think through the
9 history, it just shows that if you continue to medicate
10 Mr. Bigley, Mr. Bigley is going to continue to not take
11 the medication on the outside so that we're just going
12 to basically be in this cycle for the rest of his life.

13 There hasn't been any demonstration that he
14 is going to hurt anyone in the community, that he is not
15 going to be able to take care of himself in the
16 community and we don't believe that the hospital has
17 proven that he is gravely disabled by clear and
18 convincing evidence.

19 In terms of less restrictive alternatives,
20 the hospital has the burden of showing that there is
21 less restrictive alternatives available to Mr. Bigley.
22 The testimony that we had from Dr. Raasoch was that he
23 is unfamiliar with this community, he doesn't know about
24 Southcentral Foundation, he doesn't know about programs
25 like the Kiana House, about Anchorage Community Mental

1 something close to that, but my alternate at OPA is his
2 primary guardian, so I serve as a back up to that.

3 But I worked directly with Mr. Bigley for
4 more than two years.

5 THE COURT: Okay. In that capacity, did you
6 -- I see that people go shopping with him and those
7 sorts of things. Was that kind of your role?

8 UNIDENTIFIED SPEAKER: Yes.

9 THE COURT: Where was he living, in the
10 assisted living facility?

11 UNIDENTIFIED SPEAKER: No. He lived
12 independently in the community.

13 THE COURT: Okay.

14 UNIDENTIFIED SPEAKER: And because he was
15 not receiving any services and we were having
16 difficulty connecting him to services, he and I did
17 that together.

18 THE COURT: Okay.

19 UNIDENTIFIED SPEAKER: That was our way of
20 trying to help him maintain in the community or figure
21 out what minimally would be required in order to
22 maintain him in the community.

23 THE COURT: All right. Any last words from
24 the state?

25 MR. TWOMEY: No, Your Honor.

1 Health, and whether there could be programs that would
2 offer Mr. Bigley assistance that he might need.

3 He does have a guardian and his guardian
4 should be able to provide for him and make decisions for
5 him so that he is not going to be in a situation where
6 he is going to need assistance, but at this point in
7 time, we don't believe that the state has met its
8 burden, and that Mr. Bigley should be released from this
9 petition.

10 MR. BIGLEY: (Indiscernible).

11 THE COURT: Do I have the guardian?

12 UNIDENTIFIED SPEAKER: I'm the guardian,
13 yes, Your Honor.

14 THE COURT: Okay. Are you familiar with
15 Mr. Bigley's case?

16 UNIDENTIFIED SPEAKER: I am, Your Honor.

17 THE COURT: And how long have you worked
18 with Mr. Bigley or been familiar with him?

19 UNIDENTIFIED SPEAKER: I have worked for the
20 office of public advocacy since 1997, and he has been --
21 initially, he was a protective person under OPA and then
22 later on he became a ward.

23 I have known him throughout the time that
24 OPA has been guardian, Your Honor. I haven't worked
25 with him directly in the last approximately year,

1 THE COURT: All right. As was pointed out
2 by I think both counsel, the burden of proof here is by
3 clear and convincing evidence, and certainly it's clear,
4 and I don't think anyone is contesting, that Mr. Bigley
5 has a mental illness.

6 The issue for this court is whether he is
7 gravely disabled, because I don't think there is
8 anything in the record or any evidence that was provided
9 that he is an actual harm to -- or a threat to harm
10 himself or others.

11 And so the court is then required to look at
12 is in fact Mr. Bigley gravely disabled, and the
13 definition of gravely disabled means a condition in
14 which a person, as a result of mental illness, is in
15 danger of physical harm arising from such complete
16 neglect of basic needs for food, clothing, shelter,
17 personal safety as to render serious accidents or death
18 highly probable if care by another is not taken.

19 It sounds like, other than being in and out
20 of the hospital, he gets by. I mean, I'm not saying he
21 is as healthy as perhaps one would hope he would be or
22 that he acts -- I mean, he acts differently from other
23 people.

24 Certainly, he is different from the norm,
25 and I think that's why he keeps getting picked up by the

1 police and put back in API.
 2 But if we keep sticking him back in API and
 3 as soon as he gets out, he stops taking medications
 4 because he doesn't want to take the medications either
 5 because of the way he feels -- they make him feel or
 6 whatever the reason is, I mean, that's a choice that if
 7 he is not endangering society, he should be allowed to
 8 make.
 9 I understand that -- and I believe the
 10 visitor testified that -- or stated that it's her
 11 opinion he can't -- he is not competent to make the
 12 decision whether to medicate or not, but he has been
 13 making that same decision for years.
 14 I mean, and so at some point, I mean,
 15 whether -- I mean, even when he is in the hospital and
 16 being medicated, the indication is that at some point,
 17 even though he is being medicated, he doesn't like it,
 18 he doesn't want it, he keeps telling them no.
 19 So even when medicated, he is telling them
 20 no. Is he competent at those times? I don't know. I'm
 21 not going to go back and try to evaluate that, but I'm
 22 going to say that I don't find by clear and convincing
 23 evidence that he is gravely disabled.
 24 Now, that doesn't mean next time he might
 25 be. I don't know. I would anticipate that Mr. Bigley

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 2
 3 I, SONJA L. REEVES, hereby certify that the foregoing
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 5 complete transcript of proceedings in Case No.
 6 3AN-08-247 PR transcribed by me from a copy of the
 7 electronic sound recording to the best of my knowledge
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1 may well find himself back at API. If he goes into some
 2 establishment and confronts some other citizen, he may
 3 be back there, and under those circumstances, maybe he
 4 would then be considered either gravely disabled or
 5 likely to harm himself or somebody else.
 6 But I don't find that under the current
 7 facts. I need look at the petition, which talks about
 8 the fact that he walked away from a living facility and
 9 he wasn't taking his medications and he was pacing and
 10 being out loud and agitated and disorganized while at
 11 API.
 12 But I think that's just Mr. Bigley. I mean,
 13 he is never going to not be -- you know, so unless we're
 14 at the point where we're going to say, "Lock him up all
 15 the time, leave him locked up, continue to force
 16 medications on him," we're not there.
 17 I mean, that's not something that society is
 18 willing to recognize. So Mr. Bigley, I'm going to find
 19 that you're, at the current time, not gravely disabled,
 20 and I'm going to deny the petition for commitment.
 21 MR. BIGLEY: (Indiscernible).
 22 THE COURT: I'm not going to enter any other
 23 orders, Mr. Bigley.
 24 MR. BIGLEY: (Indiscernible).
 25 THE COURT: All right. We'll be off record.