

IN THE TRIAL COURTS FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT  
AT ANCHORAGE

In the Matter of the Necessity  
for the Hospitalization of  
W.S.B.,

Respondent.

\_\_\_\_\_ /

No. 3AN-07-1064 PR

PETITION FOR 30-DAY COMMITMENT

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BEFORE THE HONORABLE ANDREW BROWN  
MASTER

Anchorage, Alaska  
August 31, 2007  
3:15 p.m.

APPEARANCES:

FOR STATE OF ALASKA: Vennie Nemecek  
Attorney General's Office  
Human Services Division  
1031 West 4th Avenue, Suite 200  
Anchorage AK 99501

FOR W.S.B.: Elizabeth Brennan  
Alaska Public Defender Agency  
900 West 5th Avenue, Suite 200  
Anchorage AK 99501

James Gottstein  
406 G Street, Suite 206  
Anchorage AK 99501

Also Present: W.S.B.  
Ms. Taylor

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ALASKA COURT SYSTEM PERSONNEL, "INDISCERNIBLE" AND  
"UNIDENTIFIED SPEAKER" APPEAR THROUGHOUT THIS TRANSCRIPT.

## PROCEEDINGS

1 TAPE 3AN2607-156 (SIDE A)

2 THE COURT: This is the matter of the case  
3 involving the hospitalization for William Bigley --  
4 they're before the court -- the petition for  
5 hospitalization -- Petition For 30 Day Commitment and  
6 Petition For Court Approval...

7 MR. BIGLEY: (Indiscernible).

8 THE COURT: ...of Administration of  
9 Psychotropic Medication.

10 MR. BIGLEY: (Indiscernible).

11 MR. GOTTSTEIN: Shhh!

12 THE COURT: And any preliminary...

13 MR. BIGLEY: (Indiscernible).

14 THE COURT: ...matters that the attorneys want  
15 to discuss first.

16 MR. BIGLEY: (Indiscernible).

17 THE COURT: Well, I think the first issue  
18 (indiscernible)issue. Apparently there's been a motion  
19 for a limited -- there's been a limited entry of  
20 appearance made. There's been a motion to withdraw  
21 that appears to be...

22 MR. BIGLEY: (Indiscernible).

23 UNIDENTIFIED MALE: (Indiscernible).

24 THE COURT: ...before the court -- we may have  
25  
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1 gotten it. I don't have all the (indiscernible) my  
2 file. But apparently there was some discussion about  
3 waiting for part of the hearing, and then the  
4 possibility of signing off on that. I don't find that  
5 to be an appropriate procedure.

6 MR. BIGLEY: (Indiscernible).

7 THE COURT: If an attorney is going to...

8 MR. BIGLEY: (Indiscernible).

9 MR. GOTTSTEIN: ...enter an appearance, that's  
10 fine. The attorney enters an appearance for the case,  
11 or the attorney doesn't enter an appearance.

12 MR. BIGLEY: Orders.

13 THE COURT: In cases like this where we have  
14 the public defender apparently here, appointed, ready  
15 to represent the patient, they first need to qualify as  
16 for court appointed counsel or they don't.

17 MR. BIGLEY: Right.

18 THE COURT: If they qualify for court  
19 appointed counsel, the PD has been appointed, then the  
20 PD represents them, unless the public defender agency  
21 chooses to contract with another attorney to view part  
22 of that. I don't think it's appropriate for the court  
23 to entertain a limited entry of appearance...

24 MR. BIGLEY: (Indiscernible).

25 THE COURT: ...when a private attorney, who is  
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1 somehow going to take over some of the case from the  
2 Public Defender Agency. I don't believe  
3 (indiscernible) authority for that in the Public  
4 Defender statute. I'm not aware of any ability --  
5 any...

6 MR. BIGLEY: Lawyers.

7 THE COURT: ...legal authority at all for that  
8 kind of procedure. So at this point I am going to  
9 object to a limited entry of appearance. If there's  
10 going to be a full entry of appearance, I see no...

11 MR. BIGLEY: (Indiscernible).

12 THE COURT: (Indiscernible) objectionable.

13 All right. Ms. Brennan?

14 MS. BRENNAN: Your Honor, the Public Defender  
15 policy is that when we're in for a case, then we're in  
16 for the case, and that if there is going to be a  
17 substitution of counsel, it should be for the entire  
18 case.

19 MR. BIGLEY: (Indiscernible).

20 MS. BRENNAN: It's Public Defender policy that  
21 we believe that (indiscernible) representation is best  
22 for their client, than having one attorney handle the  
23 case -- one case. It's best for the client, and that's  
24 the Public Defender policy.

25 THE COURT: So, actually, then, with this  
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1 motion to withdraw that was filed by Mr. Gottstein, on  
2 behalf of your client, how do you feel about that.

3 MR. BIGLEY: Well, (indiscernible).

4 THE COURT: (Indiscernible).

5 MS. BRENNAN: I've seen it.

6 THE COURT: Okay. Because it's for the  
7 purpose of dealing with the possible -- the petition  
8 for approval of administration of psychotropic  
9 medication...

10 MR. BIGLEY: (Indiscernible).

11 THE COURT: ...the court finds Mr. Bigley's to  
12 be committed...

13 MR. BIGLEY: Had you on the phone. You didn't  
14 show up. (Indiscernible). Cop kicked me down.

15 MS. BRENNAN: But it's still the same case. I  
16 mean, it's our position -- I mean, we the court has the  
17 discretion to make the decision. Our policy is that,  
18 if that's the case, the Public Defender's Office is --  
19 should be representing the person in the entire case.  
20 If Mr. Gottstein wants to be involved in the case,  
21 that's his total right. But that -- he could take over  
22 entire case, because that's best for the client. We  
23 don't want to be in a situation in which there is  
24 issues overlapping, and that we're advising the client  
25 one and he's advising the client another way, because  
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1 (indiscernible)...

2 MR. BIGLEY: (Indiscernible)...

3 MS. BRENNAN: It is best for the client to

4 have one counsel.

5 MR. BIGLEY: They took (indiscernible) in the

6 sky, around the clock.

7 THE COURT: Okay. Mr. Gottstein, do you want

8 to comment?

9 MR. GOTTSTEIN: Yes. First, I'm not -- maybe

10 we could enter our appearance -- or...

11 THE COURT: Mr. Nemecek, of the Department of

12 Law.

13 MR. GOTTSTEIN: I figured that. And -- that

14 you were with the Department of Law, but I don't think

15 we've met before.

16 MR. NEMECEK: No.

17 MR. GOTTSTEIN: First off, I want to -- this -

18 - there was an e-mail that was attached to that

19 ex parte application. You've got one. But -- but he

20 did the wrong -- he attached the wrong one, which --

21 and, so, what I would like to do is file this right

22 now. It's the correct one that kinda -- should'a -- it

23 was supposed to have been filed. I requested that it

24 be filed, and he didn't -- he didn't do the right one,

25 so I'm requesting that that be -- I'm submitting that

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1 for the record right now.

2 THE COURT: Well, okay -- I mean, I'll take it

3 for now, but I had to decide...

4 MR. GOTTSTEIN: I'm getting to it. I mean,

5 it's related to this.

6 THE COURT: Okay.

7 MR. BIGLEY: He can't decide...

8 MR. GOTTSTEIN: And -- and, so...

9 MR. BIGLEY: Shit!

10 MR. GOTTSTEIN: ...I thought that it went to

11 that.

12 THE COURT: Okay. Why don't you be seated.

13 Here, I got it.

14 MR. GOTTSTEIN: And then could I get a copy.

15 UNIDENTIFIED FEMALE: (Indiscernible).

16 MR. GOTTSTEIN: Thank you.

17 MR. BIGLEY: What a (indiscernible).

18 MS. BRENNAN: Do you want me to write on the

19 side and initial it.

20 MR. GOTTSTEIN: And...

21 THE COURT: That's all right.

22 MR. GOTTSTEIN: And I -- well, Ms. Brennan and

23 Ms. Russo were given that, and so that they knew about

24 it and stuff. And so I don't know if you want to make

25 a minute to read that now or not, or you might in a

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1 minute. But a couple things in terms of the

2 representation. One is that if you look at

3 47.30.839(c), it says a patient who is the subject of a

4 petition under (d) of this section...

5 THE COURT: Wait a minute. What was the

6 statute number, again?

7 MR. GOTTSTEIN: 839(c) -- the forced drugging

8 statute.

9 MR. BIGLEY: He doesn't even know. Look at

10 that. Crazy.

11 THE COURT: 839(c).

12 MR. BIGLEY: (Indiscernible).

13 MR. GOTTSTEIN: Okay?

14 THE COURT: All right.

15 MR. GOTTSTEIN: A patient who is the subject

16 of a petition under (d) of this section is entitled to

17 an attorney to represent the patient at the hearing.

18 If the patient cannot afford an attorney, the court

19 shall direct the public defender agency to provide an

20 attorney.

21 Okay. Now, one of the things in my e-mail --

22 well, for sure, in the memo that was attached to it, I

23 mentioned -- I -- I -- and that's why I wanted to get

24 it to the court, you know, in a timely manner. That's

25 why I took kind of extraordinary steps to get it early,

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1 but it didn't quite work because the wrong e-mail got

2 filed, but the memo was there. And -- and, I don't

3 think that you can actually appoint the public defender

4 for this hearing if he's got another attorney. And I -

5 - and I think that they are separate proceedings and

6 that under Myers -- Myers and Weatherhorn, both, it's

7 very clear that...

8 MR. BIGLEY: (Indiscernible).

9 MR. GOTTSTEIN: ... -- that the involuntary

10 commitment -- there is an interest in -- if the -- if

11 the respondent wants to -- to have that go fast, and --

12 but that there's a different interest in the -- in the

13 forced drugging petition.

14 So, but the basic thing is that -- that the

15 respondent is entitled to counsel of his choice, if

16 counsel is available. Now, I am willing...

17 MR. BIGLEY: Secret Service.

18 MR. GOTTSTEIN: ...to represent him on the

19 forced drugging, and -- and not really anxious to

20 represent him in the involuntary commitment. And I

21 could go into the reasons for that, and I don't think -

22 - you know, some I can, and probably some I can't. But

23 the bottom line is, I think he's entitled to counsel of

24 his choice, and that this -- this should have been

25 brought to your attention with the initiation of a

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1 petition, and I certainly tried to do that with the  
2 e-mail that didn't -- that I requested be filed  
3 (indiscernible) with the ex parte, and then it wasn't  
4 (indiscernible)...

5 MR. BIGLEY: (Indiscernible).

6 MR. GOTTSTEIN: ...apparently got -- got  
7 filed. So I don't know if you want to read that now or  
8 not.

9 THE COURT: Okay. That's not necessary,  
10 because I'm -- I'm going to rule. I'm going to find  
11 that, first of all, the court has before it two  
12 distinct petitions. One is the petition for --  
13 Petition For 30 Day Commitment. The second is the  
14 Petition For Court Approval Administration Of  
15 Psychotropic Medication.

16 And that each petition has -- requires  
17 separate types of findings and conclusions, and  
18 different statutory prerequisites to be met. And, so,  
19 I -- I see there's a problem with the Public Defender  
20 Agency representing...

21 MR. BIGLEY: (Indiscernible).

22 THE COURT: ...the respondent, if he wants the  
23 Public Defender Agency to represent him on the petition  
24 for 30 day commitment...

25 MR. BIGLEY: You did it a second time to me.  
26  
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1 THE COURT: ...-- then if the court ends up  
2 finding in that distinct phase of the case as to the 30  
3 day commitment, that he should be committed,...

4 MR. BIGLEY: (Indiscernible).

5 MR. GOTTSTEIN: ...if he then wants to decide  
6 he d -- wants the Public Defender Agency to withdraw,  
7 and for him to have different counsel of his choice, I  
8 believe that he's entitled to that.

9 MR. BIGLEY: That's right.

10 THE COURT: So...

11 MR. BIGLEY: Bush knows me -- (indiscernible)  
12 George Bush knows me, the president of the United  
13 States.

14 THE COURT: ...I'm going to allow the matters  
15 proceed with the Public Defender Agency representing...

16 MR. BIGLEY: Ted Stevens knows me, too.

17 THE COURT: ...him in this...

18 MR. BIGLEY: Tony Knowles knows me, too.

19 THE COURT: ...initial phase of the case, and  
20 if I find that he should be committed, that...

21 MR. BIGLEY: He been drinkin'?

22 THE COURT: ...at that time, he can indicate  
23 if he wants his attorney -- Public Defender Agency to  
24 withdraw and substitute Mr. Gottstein. So that's the  
25 way I -- that's my ruling at this time.  
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1 MR. NEMECEK: Well, can I be heard on that,  
2 please?

3 THE COURT: Go ahead.

4 MR. NEMECEK: A person is entitled to counsel  
5 of their choice, they're not entitled to public counsel  
6 of their choice. If they have public counsel...

7 MR. BIGLEY: (Indiscernible).

8 MR. NEMECEK: ...(indiscernible) who that  
9 person is.

10 Mr. Bigley either qualifies for appointed  
11 counsel or he doesn't. If the court is finding that he  
12 qualifies for appointed counsel -- I mean, it seems  
13 like he's got an attorney here with him who is  
14 apparently ready to stand in and represent him. It  
15 looks to me like perhaps he isn't qualified for  
16 appointed counsel, because he has another attorney here  
17 ready to (indiscernible). So I have some concerns  
18 about...

19 MR. BIGLEY: (Indiscernible).

20 MR. NEMECEK: ...first he qualifies and then  
21 he doesn't qualify.

22 THE COURT: Well, no, the thing is -- I mean,  
23 if I -- the -- the statute that Mr. Gottstein was  
24 referring to specifies, "if the patient cannot afford  
25 an attorney." So the court ends up doing a  
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1 determination whether Mr. Bigley has the resources to  
2 have an attorney...

3 MR. BIGLEY: Bill Bigley -- don't say "Bigbey"  
4 (indiscernible) -- Bill Stanley Bigley. That's me.

5 THE COURT: The determines if he qualifies for  
6 a public defender, and then, if he wants the Public  
7 Defender Agency to withdraw, and Mr. Gottstein is not  
8 gonna represent him on a voluntary...

9 MR. BIGLEY: (Indiscernible).

10 THE COURT: ...(indiscernible) same basis,  
11 that will be Mr. Bigley's choice. The court cannot  
12 compel a person to have a Public Defender Agency  
13 represent him if he doesn't want them, and he has an  
14 alternative. But that doesn't automa -- it does not  
15 automatically mean, we're inferring, "Oh, he has the  
16 means for a private attorney."

17 MR. NEMECEK: I understand the court's ruling,  
18 and I...

19 THE COURT: Yeah. And I understand what  
20 you're getting at, too.

21 MR. NEMECEK: And I appreciate that.

22 THE COURT: We're making a record.

23 MR. NEMECEK: And then another issue I want to  
24 bring up is that if we're gonna go forward on the 30  
25 day petition right now...  
26  
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1 MR. BIGLEY: (Indiscernible).  
 2 MR. NEMECEK ...-- what I don't want to see  
 3 happen is that, if the court decides to grant that 30  
 4 day petition...  
 5 MR. BIGLEY: I've got records that are 25  
 6 years old...  
 7 MR. NEMECEK: ...-- that the change in  
 8 counsel, we're ready to take up the issue of the med  
 9 petition and for some reason that has to be delayed.  
 10 The hospital feels pretty strongly that if there's  
 11 going to be a commitment today, that we also need to go  
 12 forward at that time on the med petition.  
 13 So I'm not asking for the court to telegraph  
 14 whether that petition is going to be granted, but I  
 15 would like some assurance that if we're going to move  
 16 on..  
 17 MR. BIGLEY: (Indiscernible).  
 18 MR. NEMECEK: ...if we're gonna be in a  
 19 position to...  
 20 MR. BIGLEY: Hospital, police department down  
 21 the street.  
 22 MR. NEMECEK: ...move on to the med petition,  
 23 I want to be ready to do that.  
 24 THE COURT: All right. Wait. Wait a minute.  
 25 I first want to hear from Ms. Brennan as to -- if she  
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1 has any comments about my ruling as to the -- it can  
 2 be, in my eyes, that a switch of attorneys -- if I  
 3 don't find that Mr. Bigley...  
 4 MR. BIGLEY: A military court.  
 5 MS. BRENNAN: Well, my understanding, Your  
 6 Honor, is that we're gonna go first on the 30 day  
 7 petition. The Public Defender's Office has already...  
 8 MR. BIGLEY: (Indiscernible) military C-30 jet  
 9 is on the (indiscernible).  
 10 MS. BRENNAN: ...been appointed, and that Mr.  
 11 Gottstein was (indiscernible)...  
 12 MR. BIGLEY: (Indiscernible) send the judge in  
 13 the courthouse.  
 14 MS. BRENNAN: It's my understanding that he  
 15 will be the attorney form then on out in the case...  
 16 MR. BIGLEY: (Indiscernible).  
 17 MS. BRENNAN: ...and the public defender's  
 18 representation will be over.  
 19 MR. BIGLEY: Military court, I want.  
 20 THE COURT: Yes. I mean -- yeah, it -- if  
 21 that (indiscernible)...  
 22 MR. BIGLEY: That crazy person should think  
 23 about me.  
 24 THE COURT: ...the first petition  
 25 (indiscernible)...  
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1 MR. BIGLEY: Keep the judge in the  
 2 courthouse...  
 3 THE COURT: ...Mr. Bigley, I find that he  
 4 should be committed, and then at that point he wants me  
 5 to withdraw, and Mr. Gottstein Substitutes, then a  
 6 substitution from that point on, as to all matters.  
 7 MS. BRENNAN: Okay.  
 8 THE COURT: Yeah.  
 9 MR. BIGLEY: (Indiscernible).  
 10 THE COURT: Mr. Gottstein, any questions?  
 11 MR. GOTTSTEIN: I...  
 12 MR. BIGLEY: Military court.  
 13 MR. GOTTSTEIN: ...really...  
 14 MR. BIGLEY: (Indiscernible) they have that.  
 15 MR. GOTTSTEIN: ...want to address -- and, I'm  
 16 sorry, but I --...  
 17 MR. NEMECEK: Nemecek.  
 18 MR. GOTTSTEIN: Nemecek? Okay. I was  
 19 actually informed earlier today that the hospital would  
 20 not be moving forward on the medication petition, so  
 21 this is news for me. And then, um...  
 22 MR. BIGLEY: He stuck a needle in me.  
 23 MR. GOTTSTEIN: ...and then it seems like Mr.  
 24 Nemecek has not seen the pleadings that were filed this  
 25 morning. So -- and I don't know if Your Honor has had  
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1 a chance...  
 2 THE COURT: No, no, no, I've seen them.  
 3 MR. BIGLEY: (Indiscernible).  
 4 MR. GOTTSTEIN: So I absolutely, you know, not  
 5 only...  
 6 MR. BIGLEY: (Indiscernible).  
 7 MR. GOTTSTEIN: I think we absolutely have to  
 8 have a delay, and I think that -- well, I mean, we can  
 9 weight until -- we can wait until the end of that, but,  
 10 obviously, I'm not -- I'd object, or disagree with Mr.  
 11 Nemecek.  
 12 MR. BIGLEY: Sure, I'd be locked up for...  
 13 THE COURT: And, Ms. Taylor, I know you're  
 14 raising your hand, but you're not saying anything.  
 15 I think we have to take this step by step.  
 16 First I have to deal with the commitment petition. See  
 17 what the result of that is. Then I'll see what has to  
 18 be done from that point forward, and when.  
 19 UNIDENTIFIED FEMALE: Your Honor, I just  
 20 wanted to say that I had not seen the initial  
 21 paperwork.  
 22 MR. BIGLEY: (Indiscernible).  
 23 THE COURT: Let me -- let me deal with the  
 24 initial petition at this point. The commitment  
 25 petition,...  
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1 MR. BIGLEY: (Indiscernible).  
 2 THE COURT: ...and then we'll see what happens  
 3 and where we're going.  
 4 UNIDENTIFIED MALE: And I'd like to call my  
 5 (indiscernible) in for...  
 6 MR. BIGLEY: Oh, (indiscernible) military  
 7 courthouse.  
 8 THE COURT: There's a possibility...  
 9 MR. BIGLEY: See what judges...  
 10 THE COURT: ...that when we do the commitment  
 11 petition, we're gonna have some delay in a minute, but  
 12 I -- I...  
 13 UNIDENTIFIED MALE: But, anything is...  
 14 MR. BIGLEY: (Indiscernible).  
 15 UNIDENTIFIED MALE: ...possible, that's all I  
 16 can say.  
 17 THE COURT: I know that. I understand your  
 18 position.  
 19 UNIDENTIFIED MALE: Okay.  
 20 THE COURT: So, ah, you want me to step out?  
 21 Would it be easier for people to -- for you to...  
 22 MR. BIGLEY: Should be barred -- disbarred.  
 23 THE COURT: (Indiscernible).  
 24 MS. BRENNAN: Yeah. If you could step out so  
 25 I could talk to my client.  
 26  
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1 MR. BIGLEY: Should be disbarred.  
 2 (Off record - no time noted)  
 3 (On record - no time noted)  
 4 THE CLERK: On record.  
 5 THE COURT: All right. So we're back on  
 6 record. And any other preliminary matters before we  
 7 deal with the 30 day commitment issue?  
 8 MS. BRENNAN: I have one matter.  
 9 THE COURT: Uh-huh (affirmative).  
 10 MS. BRENNAN: But it's not related to  
 11 representation, Your Honor.  
 12 Mr. Bigley came here on an ex parte order that  
 13 was signed by Your Honor. The copy that I have hasn't  
 14 been signed by a superior court judge. I don't know if  
 15 it's been signed.  
 16 UNIDENTIFIED MALE: Yeah.  
 17 THE COURT: You're talking my signature --  
 18 looked like that?  
 19 MS. BRENNAN: Uh-huh (affirmative).  
 20 THE COURT: I don't know how you would get a  
 21 copy with...  
 22 MS. BRENNAN: I got a copy that -- I was  
 23 recommended for approval, but I didn't have one signed  
 24 by the superior court judge.  
 25 THE COURT: I don't know about that.  
 26  
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1 The Clerk could make a note that we can  
 2 discuss that with the probate staff. I don't know how  
 3 -- how they jumped the gun, basically. That's what it  
 4 sounded like. But there is that order. So any other  
 5 preliminary matters?  
 6 (No audible response.)  
 7 All right. Mr. Nemecek, do you want to call a  
 8 witness.  
 9 MR. NEMECEK: Well, I actually have a question  
 10 (indiscernible).  
 11 THE COURT: Oh, sure.  
 12 MR. NEMECEK: Please excuse my...  
 13 THE COURT: No, that's fine.  
 14 MR. NEMECEK: But is this a public hearing?  
 15 MS. BRENNAN: I think the respondent...  
 16 MR. BIGLEY: (Indiscernible) go downtown to  
 17 the courthouse.  
 18 MS. BRENNAN: ...-- the respondent has a right  
 19 to actually...  
 20 MR. BIGLEY: Now...  
 21 THE COURT: Well, also, let me -- the statute  
 22 -- hold on -- I want to (indiscernible)...  
 23 MR. BIGLEY: ...-- they know where I'm at.  
 24 THE COURT: (Indiscernible).  
 25 MR. BIGLEY: At the courthouse now.  
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1 THE COURT: Hold on.  
 2 MR. BIGLEY: Right now. Everybody go. Down  
 3 to that courthouse, right now. Get our damn cars and  
 4 go down there.  
 5 THE COURT: The -- there -- ah...  
 6 MR. BIGLEY: Today.  
 7 THE COURT: The respondent -- this is AS  
 8 47.37.35, a 30 day commitment specifies that the  
 9 respondent has the right to have the hearing open or  
 10 closed to the public as he elects. And so if he wants  
 11 the whole public, or just certain persons, such as Mr.  
 12 Gottstein here, that's up to him.  
 13 MR. NEMECEK: (Indiscernible).  
 14 MS. BRENNAN: Yes, he wants Mr. Gottstein.  
 15 But Mr. Bigley also wants to have his court in a real  
 16 courthouse downtown at the courthouse, and he wants to  
 17 have his court hearing today, so.  
 18 MR. BIGLEY: Today. I could have that today.  
 19 (indiscernible).  
 20 THE COURT: This is the courthouse at this  
 21 time.  
 22 MR. BIGLEY: No. No it ain't.  
 23 THE COURT: So we'll proceed here. This is  
 24 designated by the...  
 25 MR. BIGLEY: That's bull shit.  
 26  
 27

1 THE COURT: ...Alaska Court System as the  
 2 court site and we'll proceed here.  
 3 MR. BIGLEY: No. No. I request it down  
 4 there. They told me.  
 5 THE COURT: So, Mr. Nemecek, do you want to  
 6 call a witness?  
 7 MR. NEMECEK: I do. I'll call Dr. Worrall.  
 8 THE COURT: Okay. Dr. Worrall, please  
 9 (indiscernible)...  
 10 MR. BIGLEY: (Indiscernible).  
 11 THE COURT: ...the clerk, and, also, at this  
 12 point, Ms. Brennan, I have to indicate that, as best as  
 13 possible, if Mr. Bigley can be quiet, or if he's going  
 14 to say anything, in a quiet voice.  
 15 MR. BIGLEY: (Indiscernible).  
 16 THE COURT: It is interfering with our  
 17 recording ability.  
 18 MR. BIGLEY: That -- make sure that I get my  
 19 words, too.  
 20 THE COURT: If -- if it continues, then I  
 21 would have to consider whether we would have to have  
 22 him removed -- I have to make a good record. Okay.  
 23 MR. BIGLEY: You're bad.  
 24 MS. BRENNAN: Try to be quite, okay?  
 25 THE COURT: Dr. Worrall, face the clerk.  
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1 WILLIAM WORRALL  
 2 called as a witness in behalf of the State, being first  
 3 duly sworn upon oath, testified as follows:  
 4 (Oath administered)  
 5 WITNESS: I do.  
 6 THE CLERK: Sir, would you please state your  
 7 full name, spell your last and give your occupation?  
 8 WITNESS: William A. Worrall. W-O-R-R-A-L-L.  
 9 Psychiatry.  
 10 THE CLERK: Thank you.  
 11 THE COURT: You may inquire?  
 12 MR. NEMECEK: Is there going to be any  
 13 objection to qualifying Dr. Worrall as an expert in  
 14 psychiatry?  
 15 MS. BRENNAN: I'd like to hear his  
 16 qualifications.  
 17 DIRECT EXAMINATION  
 18 BY MR. NEMECEK:  
 19 Q Dr. Worrall, what's your occupation?  
 20 A I'm a psychiatrist, board certified.  
 21 Q Can you give us a brief rundown of your  
 22 educational background, please?  
 23 A University of Alaska Fairbanks, graduate from  
 24 there. (Indiscernible) Washington School of  
 25 Medicine. University of Hawaii, Department of  
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1 Psychiatry Residency Program. Been practicing  
 2 since 1984 in Alaska as a psychiatrist.  
 3 Q Okay. (Indiscernible) work experience? Can  
 4 you detail that for us, please?  
 5 A Almost all (indiscernible) hospital  
 6 psychiatry, private practice, API, off and on  
 7 since 1984. Testified in at least a few hundred  
 8 commitment (indiscernible). Testified in  
 9 superior court.  
 10 Q Have you been qualified as an expert in  
 11 psychiatry in those proceedings?  
 12 A Many times.  
 13 MR. NEMECEK: Move to qualify as an expert in  
 14 psychiatry.  
 15 THE COURT: Ms. Brennan, do you want to voir  
 16 dire.  
 17 MS. BRENNAN: I just have a couple.  
 18 VOIR DIRE EXAMINATION  
 19 BY MS. BRENNAN:  
 20 Q When were you board certified?  
 21 A 1984 -- 1984 or 1985.  
 22 Q And was that general psychiatry, or...  
 23 A Child psychiatry.  
 24 Q And how long did you work for the Department  
 25 of Corrections?  
 26  
 27

1 A Six years.  
 2 Q And what were those years?  
 3 A '96 to 2003, I think.  
 4 Q I don't have any other question.  
 5 THE COURT: All right. I'll find that Dr.  
 6 Worrall is regarded as an expert in the area of  
 7 psychiatry.  
 8 DIRECT EXAMINATION CONTINUED  
 9 BY MR. NEMECEK:  
 10 Q Are you familiar with William Bigley?  
 11 A Yes.  
 12 Q How are you familiar with him?  
 13 A I treated him off and on since 1984. I've  
 14 been his psychiatrist when he comes to API for  
 15 the past (indiscernible).  
 16 MS. BRENNAN: Your Honor, object to any  
 17 testimony that Mr. Bigley's been here on prior  
 18 occasions. It's not relevant to this (indiscernible).  
 19 THE COURT: Mr. Nemecek, any response?  
 20 MR. NEMECEK: I don't have any problem with  
 21 the court not considering prior relations for purposes  
 22 of (indiscernible).  
 23 THE COURT: All right. So...  
 24 MR. NEMECEK: I asked the doctor, how did he  
 25 know him? I think the doctor's answered that  
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1 appropriately, but I understand the limitation that  
2 counsel placed on it. I don't have any problem with  
3 that limitation.

4 THE COURT: Well, then I just have to state  
5 for the record that Dr. Worrall's testimony as to how  
6 long he's known the respondent is fine, but the court'  
7 not going to make any inferences about any past  
8 judicial proceedings that -- by which Dr. Worrall knows  
9 Mr. Bigley.

10 MR. NEMECEK: Okay. I have no objection to  
11 that.

12 THE COURT: All right. Okay.

13 Q All right. Are you the psychiatrist that  
14 filed the petition for 30 day commitment in this  
15 case?

16 A I am.

17 Q That was filed yesterday, is that correct?

18 A Ah...

19 Q It shows the date of 8/30, is that correct?

20 A Correct.

21 Q Why don't you tell us how Mr. Bigley came to  
22 API this time? When and how?

23 A Well, he came to us on the 29th on an ex parte  
24 order -- direct admission.

25 Q And how did he present when he  
26  
27

1 (indiscernible)?

2 A Agitated, uncooperative, delusional, pressured  
3 speech, grandiose, was paranoid, very  
4 hyperactive, (indiscernible) behaviors, angry.

5 Q How many times have you seen Mr. Bigley since  
6 his admission?

7 A Several times. Eight or 10. At no time for  
8 any length of time. He refused to carry on a  
9 conversation with me, in which I can get him to  
10 listen to me, or answer any questions. He does  
11 all the talking.

12 Q During contacts that you've had with him, how  
13 has he presented?

14 A As I described as angry, talking non-stop,  
15 loud, pressured speech, paranoid, suspicious,  
16 grandiose, out of touch with reality.

17 Q In addition to your personal contacts with  
18 him, have you also had an opportunity to review  
19 his file?

20 A Yeah.

21 Q Based on your contacts with him -- or, your  
22 file -- have you come to a diagnosis for Mr.  
23 Bigley?

24 A Yes. It's schizoid affective disorder is the  
25 main diagnosis.  
26  
27

1 Q Do you believe that Mr. Bigley is gravely  
2 disabled?

3 A Yes.

4 Q Why do you believe that?

5 A He's lost repeated housing locations -- been  
6 evicted. Then he ended up at Brother Francis  
7 Shelter and he was kicked out of there. He, ah,  
8 has been losing weight. Not eating.  
9 (Indiscernible). Has -- he's not able to  
10 maintain in a housing location with the  
11 assistance of others. (Indiscernible).

12 Q Do you believe that he is able to survive  
13 safely out in the community at this time  
14 (indiscernible)?

15 A No. He -- his been basically starving  
16 himself. Either voluntarily or involuntarily.  
17 He's losing weight. He's putting himself in  
18 dangerous situations. Threatening other peoples  
19 lives, and he's not safe with regard to others  
20 for the same reason, (indiscernible) carrying on  
21 and making receptionists break down crying,  
22 things like that. I don't think he  
23 (indiscernible).

24 MS. BRENNAN: Objection. Hearsay.

25 THE COURT: Mr. Nemecek (indiscernible).  
26  
27

1 MR. NEMECEK: Yeah. This is information  
2 (indiscernible).

3 THE COURT: Well, wait a minute. Is it for  
4 his (indiscernible) or his diagnosis?

5 MR. NEMECEK: (Indiscernible). I -- my  
6 question was, is Mr. Bigley gravely disabled? Why do  
7 you believe so?

8 Hearsay is absolutely (indiscernible).

9 THE COURT: All right. I'll -- excuse me,  
10 I'll overrule the objection (indiscernible).

11 Q Do you believe that Mr. Bigley is likely to  
12 cause harm to himself or others?

13 A Ah, yes -- yes and no. Ah, he is probably a  
14 harm to others, and -- and I have notarized  
15 documents, I have police reports, which I'm  
16 relying on that describe details, dates, police  
17 reports, and so on, which I'm relying upon. Mr.  
18 Bigley hasn't provided me this information.

19 So, threatening to blow up a building,  
20 recently. Threatening to kill his guardian, and  
21 use a knife to do so. And the people that he's  
22 threatening are quite (indiscernible) and  
23 reasonably frightened. So to that extent he's  
24 harming people.

25 Myself, I don't think he would do that  
26  
27

1 (indiscernible). I do know that that is probably  
 2 (indiscernible). I know him pretty well, if he  
 3 threatened to kill me, I wouldn't be afraid that  
 4 he would kill...  
 5 Q Has he threatened to kill you?  
 6 A He threatened twice (indiscernible). But, um,  
 7 other people don't know Mr. Bigley. Other people  
 8 aren't trained psychiatrists, and it's quite  
 9 reasonable for these people to be very frightened  
 10 of him.  
 11 Q Do you believe that there is any less  
 12 restrictive alternative for him at this time?  
 13 A There is no alternative for him  
 14 (indiscernible) would be a prison. No one else  
 15 could handle Mr. Bigley (indiscernible).  
 16 Q And do you believe that the treatment here at  
 17 API would be the (indiscernible)?  
 18 A Ah, only if we can treat him with medication.  
 19 He could continue to (indiscernible) in terms of  
 20 (indiscernible) and scaring of people, and  
 21 increasing psychosis, threatening  
 22 (indiscernible).  
 23 Q Do you have a fine course of treatment for  
 24 him?  
 25 A Yes.  
 26  
 27

1 Q Assuming that you are able to implement that  
 2 fine course of treatment (indiscernible) would  
 3 benefit from that?  
 4 A Definitely. Yes. In fact, it is what we call  
 5 (indiscernible), he would stop threatening people  
 6 and stop scaring people, and be able to maintain  
 7 housing, and he'd be able to cooperate with the  
 8 people that would help provide for his resources  
 9 and get a regular amount of food. He'd be much  
 10 better off.  
 11 Q Thank you. That's all I have.  
 12 THE COURT: Cross examination?  
 13 CROSS EXAMINATION  
 14 BY MS. BRENNAN:  
 15 Q Doctor, when Mr. Bigley came to the hospital,  
 16 he made it clear that he did not want to be here  
 17 at the hospital, is that correct?  
 18 A Yes.  
 19 Q Okay. And you testified that he was agitated  
 20 when he got here?  
 21 A Yes.  
 22 Q Okay. When people come to a place that they  
 23 don't want to be, it's not unexpected that they  
 24 be agitated, is that correct?  
 25 A That is understandable, yes.  
 26  
 27

1 Q Okay. And Mr. Bigley was also very angry.  
 2 Did the police bring him here to API?  
 3 A I believe that they did.  
 4 Q Okay. Do you know that -- if they used  
 5 restraints? Handcuffs? Or, anything like that?  
 6 A I don't know. But that's routine procedure.  
 7 Q Okay. And if someone is forced to come to API  
 8 restrained or in handcuffs, when they haven't  
 9 committed a crime, a person would be very angry,  
 10 is that correct?  
 11 A Often, yes.  
 12 Q Okay. And so it's not unusual for someone to  
 13 be held here at API -- to remain angry for the  
 14 time that -- that they're being forced to stay  
 15 here, is that correct?  
 16 A It's not unusual.  
 17 Q Okay. And how long has Mr. Bigley been here  
 18 at API now?  
 19 A Since the 29th; couple days.  
 20 Q And he is consistent in his belief that he  
 21 does not want to be here, is that correct?  
 22 A Correct.  
 23 Q And you testified that -- that Mr. Bigley lost  
 24 his housing. Is that something that you  
 25 discussed with Mr. Bigley?  
 26  
 27

1 A I can't get him to answer any questions.  
 2 Q So that's information that you received from  
 3 collateral resources?  
 4 A Yes.  
 5 Q And when Mr. Bigley came to the hospital --  
 6 you testified that you were concerned about his  
 7 weight, is that correct?  
 8 A Yes.  
 9 Q Okay. Did he have anything else on his body?  
 10 Like, bruises, or markings, or anything that  
 11 would make you concerned about...  
 12 A Not that I've noticed.  
 13 Q Okay. And so it's really just his weight that  
 14 you're concerned about?  
 15 A Yes. He's clearly lost weight -- all the  
 16 staff commented, they've never seen him so thin.  
 17 Q Okay. But Mr. Bigley is a rather small  
 18 person, is that correct?  
 19 A Generally, yes.  
 20 Q Okay. And he's just never been a large man,  
 21 is that correct?  
 22 A I've never seen him (indiscernible).  
 23 Q Okay. And since he's been at the hospital,  
 24 has the hospital given him food?  
 25 A Yes.  
 26  
 27

1 Q Okay. And is he -- had he been taking the  
2 food?  
3 A Yes.  
4 Q And has he been claiming that the food is  
5 poisonous, or?  
6 A No.  
7 Q And he's brought his coffee today, and he's --  
8 so, that's -- that hasn't been an issue, is that  
9 correct?  
10 A I think the issue is getting access to food.  
11 I doubt that it was, he would eat if he had food.  
12 Q And did Mr. Bigley explain to you that he was  
13 having problems getting food in the community?  
14 A Again, he wouldn't provide any information to  
15 me. It's based on the documents I mentioned.  
16 Q Okay. And you testified that Mr. Bigley can't  
17 survive outside of the community?  
18 A No. I don't think he can safely survive.  
19 Q Safely survive. But you're aware that he --  
20 that he's been out of the hospital for the past  
21 couple months, is that correct?  
22 A Been out since May, I believe.  
23 Q And has he ever called the hospital asking for  
24 assistance?  
25 A He has called the hospital several times  
26  
27

1 asking for assistance of various things. I don't  
2 remember the details today, of any of the calls,  
3 but, most of the calls are more, just kind of  
4 ranting and raving, rather than asking for help.  
5 Q Okay.  
6 A He calls the hospital once in a while.  
7 Q Okay. And when he came to the hospital, he  
8 had adequate clothing?  
9 A This time?  
10 Q Right?  
11 A As far as I know.  
12 Q And so that -- was it a concern for the  
13 hospital, that he's suffering from exposure or  
14 anything like that?  
15 A No. No. (Indiscernible).  
16 Q And it's your opinion that you don't believe  
17 Mr. Bigley is going to act out on any of the  
18 statements that he's been making?  
19 A As an expert who knows him, I know that he's  
20 not that dangerous. Like I said,  
21 (indiscernible). But I don't think that anybody  
22 else would have that understanding.  
23 Q Okay. But you're not aware of him acting like  
24 -- threatening to kill somebody in the community,  
25 and then actually acting it out? That actually  
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1 hasn't happened, is that correct?  
2 A I'm not aware that he did anything to harm  
3 anyone.  
4 Q Okay. And, so, the concerns of the hospital  
5 is that some people in the community just don't  
6 understand Bill, but Bill is not gonna hurt those  
7 people who don't understand him, is that correct?  
8 A Not right now, I don't think so. I would  
9 agree with that, at the current time.  
10 Q And do -- you testified that you don't believe  
11 that there's any less restrictive alternative, is  
12 that correct?  
13 A Correct.  
14 Q And has the hospital investigated if there's  
15 any other type of housing available to him?  
16 A There's no (indiscernible). There's only a  
17 couple of options. Providence (Indiscernible),  
18 they would never take Bill (indiscernible)  
19 medication, or even go to groups. He just flat  
20 out refuses. There's no point in calling them.  
21 The only other option is Providence Crisis  
22 Recovery Center (indiscernible).  
23 Q But one of the concerns of the hospital is --  
24 is to have him here, so that he has a place to  
25 live, is that correct?  
26  
27

1 A Um...  
2 Q Is that one of the reasons why the hospital  
3 believes that...  
4 A That's one of the reasons he ended up here,  
5 because he found himself homeless and he wanted  
6 somebody to do something about it.  
7 Q But is that -- ir -- if Mr. Bigley agreed to  
8 stay at the hospital, and just would agree to  
9 sleep at the hospital, would the hospital have an  
10 objection that he slept -- left during the day,  
11 and...  
12 MR. BIGLEY: (Indiscernible).  
13 Q ... -- and had the hospital be available to  
14 him to sleep at night?  
15 A Absolutely. This isn't a (indiscernible).  
16 (Indiscernible). We're not a boarding home. You  
17 know, if somebody wants to build a hundred beds  
18 for that function, then (indiscernible).  
19 (Indiscernible) get him improved so he can  
20 sustain himself in housing and (indiscernible).  
21 Q And do you have any positive points about Mr.  
22 Bigley?  
23 A He's certainly a very spirited man. You have  
24 to admire his independent (indiscernible). He  
25 doesn't do anything he doesn't want to do. He's  
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1 -- the staff like him a lot. (Indiscernible).  
 2 When he starts to get better, he gets along very  
 3 well with staff. He's had a tough life.  
 4 (Indiscernible).  
 5 Q I don't have any other questions.  
 6 THE COURT: Mr. Nemecek, redirect?  
 7 MR. NEMECEK: Briefly.  
 8 REDIRECT EXAMINATION  
 9 BY MR. NEMECEK:  
 10 Q In response to one of Ms. Brennan's questions  
 11 you indicated that you weren't aware that Mr.  
 12 Bigley actually (indiscernible), is that correct?  
 13 A Yeah. (Indiscernible) recent past --  
 14 recent...  
 15 Q How were you defining (indiscernible) when you  
 16 answered that question?  
 17 A Physical -- I thought the question was about  
 18 physical harm. Doing something (indiscernible).  
 19 Q So you weren't referring to, for example,  
 20 (indiscernible)?  
 21 A No. No. Talking about the threat to bomb a  
 22 building, or kill somebody. threatened to make  
 23 somebody cry, or threaten to scare somebody.  
 24 Yeah. He'd follow through with that  
 25 (indiscernible).  
 26  
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1 Q That's all.  
 2 THE COURT: Ms. Brennan, any recross?  
 3 MS. BRENNAN: No, Your Honor.  
 4 THE COURT: Mr. Nemecek, any other witnesses  
 5 on the hospitalization issue?  
 6 MR. NEMECEK: No, Your Honor.  
 7 THE COURT: All right. Ms. Brennan, do you  
 8 want to call any witnesses?  
 9 MS. BRENNAN: Could we take a break so I could  
 10 talk to my client?  
 11 THE COURT: Sure. We'll go off record.  
 12 THE CLERK: Off record.  
 13 (Off record - no time noted)  
 14 (On record - no time noted)  
 15 THE COURT: So, Ms. Brennan, do you want to  
 16 call a witness?  
 17 MS. BRENNAN: No, Your Honor.  
 18 THE COURT: All right. So, closing remarks on  
 19 the hospitalization issue?  
 20 MR. NEMECEK: Thank you, Your Honor.  
 21 I think we have established each of the  
 22 elements necessary for a 30 day commitment, Your Honor.  
 23 Dr. Worrall has testified that Mr. Bigley is  
 24 gravely disabled. He that he's concerned that Mr.  
 25 Bigley is not able to safely survive out in the  
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1 community. And that some he (indiscernible). And, as a  
 2 result of his mental illness, he does present a danger  
 3 to himself or others. I don't think that Dr. Worrall  
 4 testified that Mr. Bigley would harm himself. Dr.  
 5 Worrall is rightfully concerned that because Mr. Bigley  
 6 isn't able to meet his basic needs out in the community  
 7 (indiscernible) his ability to live.  
 8 With respect to h -- the risk to others.  
 9 Again, I don't think the concern, at least at this  
 10 time, is that he's going to go out and attack somebody  
 11 physically. But what we have to keep in mind, that the  
 12 harm isn't simply physical injury.  
 13 For example, if you look at the assault --  
 14 State assault -- the assault statute, one can be  
 15 assaulted by being placed in reasonable fear of  
 16 imminent physical injury. Mr. Bigley has done that,  
 17 and is likely to continue to do that, by making threats  
 18 that any reasonable person would take it seriously.  
 19 So, under the circumstances, I think that we have  
 20 established that on -- there is no reasonable  
 21 alternative for him at this time that's less  
 22 restrictive than the hospital, and certainly if the  
 23 hospital (indiscernible) to treat Mr. Bigley, then he's  
 24 likely to stabilize, that his (indiscernible) can  
 25 improve. So we would ask the court to grant our  
 26  
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1 petition at this time.  
 2 THE COURT: Thank you.  
 3 Ms. Brennan?  
 4 MS. BRENNAN: Your Honor, we'd ask the court  
 5 to deny the petition in this case. We don't believe  
 6 that the State has met its burden. The State has to  
 7 prove by clear and convincing evidence that Mr. Bigley  
 8 is likely to cause harm to himself, or others, or is  
 9 gravely disabled.  
 10 We don't believe that Mr. Bigley is likely to  
 11 cause harm to himself or to others.  
 12 Dr. Worrall's testimony was very clear that he  
 13 knew Mr. Bigley. That Mr. Bigley would make these  
 14 statements. That that -- that Mr. Worrall did not  
 15 think that -- that Dr. Worrall didn't think that he  
 16 would follow through with those statements, or act out  
 17 on them, and that he did not consider him a danger that  
 18 way.  
 19 Mr. Nemecek has made the argument that he's a  
 20 danger to himself or others because of statements he's  
 21 made to other people that could cause other people to  
 22 be afraid.  
 23 One, we don't believe that the evidence has  
 24 been strong enough, that he's actually made statements  
 25 out of court that have caused people to be afraid.  
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1 Two, Mr. Worrall -- Dr. Worrall has testified  
 2 that he doesn't believe that Mr. Bigley is going to act  
 3 out in these -- on these statements, and we believe  
 4 that people have a right to -- in this community, Mr.  
 5 Bigley may be a little different than the average  
 6 citizen, but just because people might think that he's  
 7 strange or different, if their perception of him causes  
 8 them to be afraid, that shouldn't, in turn, cause Mr.  
 9 Bigley's liberty rights to be restrained.

10 The doctor was clear that he doesn't think  
 11 that Mr. Bigley would follow through with the threat,  
 12 and, therefore, we don't believe that he's a harm to  
 13 himself or others in the community.

14 We also don't believe that Mr. Bigley is  
 15 gravely disabled. There was testimony that Mr. Bigley  
 16 has come to the hospital. That he's been agitated and  
 17 he's been angry. However, the testimony is also clear  
 18 that Mr. Bigley does not want to be here, and we are --  
 19 it's our belief that Mr. Bigley is acting like someone  
 20 -- how any reasonable person would act in such a  
 21 situation. That he does not want to be here at the  
 22 hospital. His liberty is being restrained, and  
 23 therefore he's found the situation is very agitating,  
 24 and he tends to be very angry. Those are very normal  
 25 responses.

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1 that -- that he may not have the house that -- that  
 2 someone else would rather live in, but it's his choice  
 3 to make. And we don't believe that he's in a situation  
 4 where he's able -- that he's in the community making  
 5 choices, where that -- that -- where -- where he cannot  
 6 survive safely.

7 In terms of less restrictive. We do believe  
 8 that there are less restrictive alternatives. If the  
 9 hospital is concerned about housing, then Mr. Bigley  
 10 can stay at the hospital and -- and use it as a home  
 11 base, and (indiscernible). But to be here full time,  
 12 behind locked doors is -- we don't believe is very  
 13 necessary. We don't believe it's necessary.

14 The statutes do state that people -- that  
 15 voluntary placement is a preference, and that people  
 16 can't come and li -- come and leave as they choose,  
 17 that it's not -- it's not really voluntary. That Mr.  
 18 Bigley should have that option, and he could choose it  
 19 if he wants to. So, therefore, we don't believe that  
 20 the State has met its burden in this case by clear and  
 21 convincing evidence.

22 THE COURT: Thank you.

23 All right. I'll find that the court has  
 24 before the Petition For 30 Day Commitment...  
 25 3AN2607-156 (SIDE B)

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1 The hospital has also said he's gravely  
 2 disabled because he can't meet his basic needs. We  
 3 don't believe that the hospital has presented enough  
 4 proof on this.

5 There has been testimony that the hospital is  
 6 concerned that he's been losing weight. That Mr.  
 7 Bigley has appeared today in court. He doesn't appear  
 8 like he's deathly ill, or about to keel over, perhaps  
 9 from hunger. There hasn't been any medical evidence  
 10 that his body has somehow suffered injury because he's  
 11 not eating. And, there's no evidence that Mr. Bigley  
 12 is not eating because of some psychiatric condition.  
 13 The evidence is that when he is served the food, that  
 14 he'll eat the food. This is not a situation where we  
 15 have a patient, or just afraid to eat, or can't eat,  
 16 because of delusional psychosis.

17 There's been concern that Mr. Bigley lost  
 18 housing, and therefore he needs to stay here in the  
 19 hospital. But, again, there hasn't been any evidence  
 20 or proof of why that is causing Mr. Bigley to not be  
 21 able to be safe. He's been here at the hospital. They  
 22 haven't noticed anything about him that shows, again,  
 23 any injury to his body for some type of deprivation  
 24 that is causing him not to live safely. He may be  
 25 making choices that most people would not want to make,

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1 THE COURT: Dr. Worrall's testimony is clear  
 2 and convincing that Mr. Bigley does have the mental  
 3 illness of schizoid affective order. The doctor  
 4 testified that Mr. Bigley, when admitted, was very  
 5 agitated, delusional, paranoid, hyperactive, angry,  
 6 that -- pressured speech, grandiose, out of touch.  
 7 And, so, all those indicators show that Mr. Bigley, as  
 8 a result of mental illness, to a great extent, is  
 9 unable to reason -- perceive reality.

10 And that the doctor's testimony also was clear  
 11 and convincing that Mr. Bigley had lost a substantial  
 12 amount of weight from previous times that doctors have  
 13 seen him. The doctor referred to Mr. Bigley as  
 14 starving himself.

15 Now, whether it was by conscious decision not  
 16 to take food, or to -- inability to procure food from  
 17 others, doesn't matter. It's the matter of Mr. Bigley  
 18 was losing a substantial amount of weight from what it  
 19 was when the doctor refers to starving himself, the  
 20 court cannot take that in a sense of there being a --  
 21 some kind of loss of weight program that Mr. Bigley was  
 22 following, rather than starving himself. The doctor  
 23 (indiscernible) would mean -- one -- putting one's self  
 24 in a dangerous situation, due to the lack of intake of  
 25 sustenance.

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1 And, also, the doctor clearly testified that  
 2 Mr. Bigley has lost numerous chances for housing, that  
 3 he was homeless. That even though it may be relatively  
 4 warm out now, that this is just an additional factor  
 5 indicating that Mr. Bigley has put himself in a  
 6 situation that -- I can't think of the term --  
 7 jeopardizes his own well being, besides not having  
 8 sufficient food -- sustenance.

9 I think the evidence is clear and convincing,  
 10 based on what the doctor has said, that Mr. Bigley is  
 11 gravely disabled, due to his mental illness. I do  
 12 believe that he meets the statute criteria of  
 13 (indiscernible) at 47.39.57, for gravely disabled, that  
 14 if not treated, he will suffer abnormal mental,  
 15 emotional and physical distress. The distress  
 16 associated with significant impairment of judgment and  
 17 reason or behavior, causing a substantial deterioration  
 18 of his previous ability to function independently. I  
 19 think that is clear.

20 The evidence is clear and convincing, there's no  
 21 less restrictive placement alternative than API at this  
 22 time. There's some matter of Mr. Bigley just coming  
 23 and going as he may please, on a daytime type of  
 24 (indiscernible). There's no indication that there's  
 25 some other facility that's available for him.

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1 abuse, or substantial property damage to another  
 2 person. I tried to emphasize the word "and," because  
 3 this is a conjunctive statute, where it's not only a  
 4 matter of threatened harm, but also likely to cause the  
 5 harm. It's not -- the testimony indicates there's  
 6 really a question as to, although Mr. Bigley made  
 7 numerous threats to others, as to whether he is likely  
 8 to follow through with any of those threats. So I just  
 9 don't find clear and convincing evidence on that legal  
 10 standard. But (indiscernible) I do find  
 11 (indiscernible).

12 That's all I have to say on this petition.

13 So the next thing we have to deal with is the  
 14 Petition for Approval of Psychotropic Medication that's  
 15 been filed. And I suggest what I want to do right off  
 16 the bat is deal with the withdrawal motion,  
 17 (indiscernible)...

18 MR. GOTTSTEIN: Your Honor, if I may.

19 THE COURT: What?

20 MR. GOTTSTEIN: May I?

21 THE COURT: No, not yet. Because you're not  
 22 yet the attorney. I have -- I really have to see, you  
 23 know, if Ms. Brennan is going to withdraw or is going  
 24 to be, really, just an independent motion but -- that  
 25 you make on behalf of Mr. Bigley for -- for the

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1 Dr. Worrall's testimony (indiscernible) that  
 2 Providence Hospital would not take him because of Mr.  
 3 Bigley's refusal to take medication or cooperate, more  
 4 of a reasonable alternative facility placement for Mr.  
 5 Bigley.

6 So I'm going to find that the petition for 30  
 7 day commitment should be granted because Mr. Bigley is  
 8 mentally ill, he is gravely disabled...

9 MR. BIGLEY: Retarded. You know that.

10 THE COURT: And there's no (indiscernible)...

11 MR. BIGLEY: (Indiscernible).

12 THE COURT: ...at API at this time. I'll also  
 13 make a finding that (indiscernible)...

14 MR. BIGLEY: (Indiscernible) got it on the  
 15 fuckin' record (indiscernible). (Indiscernible) go  
 16 home right now (indiscernible). (Indiscernible).

17 THE COURT: And I'll note that Mr. Bigley  
 18 decided to leave the courtroom at this time.

19 I'll also note for the record that there's not  
 20 clear and convincing evidence that Mr. Bigley is a  
 21 danger to others, because the statute on that, in AS  
 22 47.39.1510 of (indiscernible) is a substantial risk of  
 23 harm to others, as manifested by recent behavior  
 24 causing, attempting or threatening harm, and is likely,  
 25 in the near future, to cause physical injury, physical

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1 withdrawal.

2 MR. GOTTSTEIN: My concern is that I don't  
 3 think the commitment process is finished yet. It's  
 4 gotta be -- it's gotta be -- there's got to be an  
 5 opportunity to file objections and (indiscernible) rule  
 6 on that before the order becomes final. And I don't --  
 7 I don't wanna make too fine a point on that. Um, and  
 8 there may be a way to get around it, but I'm very  
 9 concerned that that then puts me in the position that I  
 10 am now all of a sudden representing him in the  
 11 commitment process before it's been completed.

12 UNIDENTIFIED MALE: Does that mean that  
 13 (indiscernible).

14 MR. GOTTSTEIN: Well, and -- and -- and, Your  
 15 Honor -- and I don't know if you have -- if you read  
 16 the memo that I wrote, that was attached. But, I -- I  
 17 didn't express my belief that the time frames involved,  
 18 you know, do not allow for proper consideration and  
 19 protection of respondent's rights. And, by referring  
 20 to the special master, and then proceed as if the  
 21 superior court has -- has granted something that the  
 22 statutes require the superior court's determination on  
 23 it, and act as if they already happened, when it  
 24 hasn't. And so it comes up here at this point.

25 So I'm prepared to say -- I entered a limited

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1 entry of appearance as to the -- you know, 839  
 2 petition. I'm certainly prepared to go forward with  
 3 that. But, if -- you know, if -- if -- if I'm in now  
 4 and she's out, then, you made me -- ah, you know, then  
 5 I'll -- you know, then -- then where's the deal on the  
 6 -- the -- it's not particularly articulate, but, then -  
 7 - then I -- who is representing him with respect to the  
 8 further proceedings on the commitment before the  
 9 superior court?

10 THE COURT: Well, I don't have an answer on  
 11 that, frankly. I don't know.

12 MR. GOTTSTEIN: So, I --...

13 THE COURT: But, yeah, I see what you're  
 14 getting at.

15 MR. GOTTSTEIN: Okay. So -- make your way  
 16 through that...

17 THE COURT: Well...

18 MR. NEMECEK: I have an idea.

19 THE COURT: Well, (indiscernible). Well,  
 20 first of all -- Ms. Brennan, you know, still,  
 21 technically, represents Mr. Bigley. Do you want to say  
 22 anything before I hear from Mr. Nemecek about this?

23 MS. BRENNAN: No -- I mean, I --  
 24 (indiscernible).

25 THE COURT: Okay.  
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1 Mr. Nemecek?

2 MR. NEMECEK: Well, I guess, to the extent  
 3 that we are treating the 30 day petition and the meds  
 4 petition as several requests on the part of the  
 5 hospital, I mean, it's certainly not true. But we're  
 6 almost treating them like two different cases, and  
 7 they're not two different cases. They're a single  
 8 case. And so he either has one attorney representing  
 9 Mr. Bigley in that case, or another attorney  
 10 representing him in that case.

11 I think the public defender has already made  
 12 its -- its position clear that they don't generally  
 13 share representation. So, if they feel that now is the  
 14 time to withdraw, that's fine, they can do that. That  
 15 -- if Mr. Gottstein enters an appearance, he's in, and  
 16 he's in for all purposes. He's in for this case. But,  
 17 I think that's the answer -- (indiscernible) answer  
 18 your question.

19 I'm a little bit concerned, Mr. Gottstein,  
 20 before some things could be filed. I would object to  
 21 the court considering anything that's been filed by Mr.  
 22 Gottstein, unless and until he's counsel in this case.  
 23 Otherwise, this is just a filing of something by some  
 24 member of the public that I don't think it's  
 25 appropriate for the court to consider. It is not filed  
 26  
 27

1 (indiscernible).

2 So, to the extent that there's any argument  
 3 being made about those pleadings, I object, and I would  
 4 ask the court to disregard them at this time.

5 THE COURT: Well, just for everyone -- just  
 6 for the record, and everyone's benefit. I mean, I  
 7 looked at all those pleadings this morning, so at least  
 8 I can be prepared. But I recognize that -- I recognize  
 9 (indiscernible). Mr. Gottstein is not yet Mr. Bigley's  
 10 attorney, as of this moment. So...

11 MS. BRENNAN: Your Honor, I do just to say  
 12 that -- I mean, I agree with Mr. Gottstein. I think  
 13 that the process that we've developed has a problem, in  
 14 that, he's right, that Mr. Bigley is entitled to  
 15 superior court review. At the same time, Mr. Bigley  
 16 (indiscernible) represent him on the medication  
 17 (indiscernible).

18 MR. NEMECEK: But, Your Honor...

19 THE COURT: Well, no, I don't want to go any  
 20 further. I want to know if the motion to withdraw --  
 21 now it's drafted, you know, on Mr. Got -- Gottstein's  
 22 stationery, but it has for Ms. Brennan to sign. But I  
 23 have to have a -- you know, some kind formal written  
 24 document before I can go ahead with Mr. Gottstein and  
 25 deal with the next petition.  
 26  
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1 MR. GOTTSTEIN: If that's only with respect to  
 2 the limited entry of appearance, and that the withdr --  
 3 as I drafted it, and I know it may turn out  
 4 differently. And I think that, as you know, Your  
 5 Honor, that you are, ah, incorrect that I'm not his  
 6 attorney. He's entitled to his attorney of choice. I  
 7 filed an entry of appearance. I've filed documents.  
 8 And I am his attorney. Now, there's a dispute over  
 9 whether or not that's effective, and, you know, the  
 10 supreme court hasn't ruled on it, but I think that I am  
 11 his attorney. And -- and...

12 THE COURT: Your the attorney as to the --the  
 13 medication.

14 MR. GOTTSTEIN: The medication, yes.

15 THE COURT: Okay. But, look, I want to get --  
 16 deal with this -- I mean, because the medication  
 17 petition is the next step. I have (indiscernible) in  
 18 20 minutes (indiscernible). So I don't if you were  
 19 going to sign this, or I'm going to have to, basically,  
 20 an oral motion by Mr. Gottstein on a client's behalf  
 21 with -- with substitution.

22 And if Ms. Brennan wants to just voluntarily  
 23 sign this, then...

24 MS. BRENNAN: Yeah.

25 MR. GOTTSTEIN: Your Honor, if I may. I -- I  
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1 don't think that I need to do that at all. I think  
2 that -- I don't think that she needs to withdraw, as to  
3 -- well, I mean, she may -- she maybe needs to withdraw  
4 as to the medication, but...

5 THE COURT: Now, wait a minute. I'm looking  
6 at -- the order of appointment was signed August 29th -  
7 - it's the formal order. Public Defender Agency is  
8 appointed counsel for respondent in this proceeding.  
9 So, a proceeding means to me, just filed, so, not just  
10 a particular petition. So the public defender agency,  
11 in my eyes, is Mr. Bigley's attorney for all matters,  
12 right? (Indiscernible) rights, and if it wants to  
13 withdraw, then Mr. Gottstein will take over for the  
14 medication portion. Look this is going to have to be  
15 dealt with right now.

16 Ms. Brennan, do you want to sign this, or are  
17 we going to have this an oral motion by Mr. Gottstein -  
18 - on the client's behalf, or informal involuntary  
19 withdrawal, counsel. (Indiscernible)

20 MS. BRENNAN: I mean, he would have to make a  
21 motion, Your Honor. I can't -- I mean, the higher-ups  
22 in my office do not think that the public defender  
23 office can voluntarily take one side of the case.  
24 (Indiscernible). So I -- I -- I don't...

25 UNIDENTIFIED MALE: And I don't think there's  
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1 any (indiscernible)

2 MS. BRENNAN: I don't have authority from my  
3 office to do that.

4 THE COURT: Okay. All right. Let me...

5 MR. GOTTSTEIN: Your Honor...

6 THE COURT: Mr. Gottstein?

7 MR. GOTTSTEIN: ...we've gone through the --  
8 the previous hearing, but -- but there is no  
9 prohibition for a client to be represented by more than  
10 one attorney. And I'm not asking that -- that the  
11 public defenders withdraw. That -- that's what you do,  
12 Your Honor. I'm just saying...

13 THE COURT: (Indiscernible).

14 MR. GOTTSTEIN: (Indiscernible).

15 THE COURT: (Indiscernible). I got it from  
16 Ms. Brennan, the Public Defender Agency cannot be co-  
17 counsel, correct, Ms. Brennan?

18 MS. BRENNAN: That's our (indiscernible).

19 THE COURT: That's their position. They won't  
20 take that...

21 MR. GOTTSTEIN: Well, then, I think the only  
22 way out is that I'm in. He has the right to have me in  
23 as his counsel in medication petition, and if the pubic  
24 defender agency -- and they need to do what they need  
25 to do, but it seems to me, from what I understand, they  
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1 have to withdraw (indiscernible) -- it's under their  
2 policy -- as to the medication issue. Because I'm --  
3 I'm not objecting to them staying in.

4 THE COURT: Well, I'm gonna have to play by  
5 the rules. (Indiscernible) sole attorney. I mean,  
6 there could be withdrawal where -- where the party --  
7 there's other counsel ready to be substituted for the  
8 attorney who wishes to withdraw. Ms. Brennan is saying  
9 she wishes to withdraw. Then the other would be  
10 (indiscernible), where a party stresses in open court,  
11 or in writing, withdrawal as the party's attorney, and  
12 the it's provided in writing or on the record a current  
13 physical address and a telephone number, and, let's see  
14 --- (indiscernible).

15 MR. NEMECEK: Excuse me, Your Honor.

16 THE COURT: Let -- well, let's -- I'm just gon  
17 -- I guess I'm just gonna go ahead and -- Mr. Gottstein  
18 -- I guess I'm just gonna recognize you as substituting  
19 for the Public Defen -- Defender Agency. You filed all  
20 these pleadings. They've indicated they can't go  
21 forward (indiscernible) to other counsel. So I'll just  
22 recognize you as sole attorney for Mr. Bigley from this  
23 point forward. Now, the issue was whether you would  
24 have to be required, you know, within a possible  
25 objection to appeal as to the commitment issue. I  
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1 mean, that's not for me to deal with right now. I  
2 mean, it's what Mr. Bigley wants to file objections to  
3 my recommendations -- findings and recommendations as  
4 to the commitment, and then, the court will just have  
5 to deal with whoever is going to file those on his  
6 behalf, and whether (indiscernible), filed on behalf,  
7 and whether it's the Public Defender Agency, or whether  
8 you do, requires -- whether the State would take  
9 objection as to whether it's Mr. Gottstein's filing or  
10 Ms. Brennan's, on behalf of Mr. -- but that's not  
11 something I have to deal with right now. I'm just  
12 trying to go forward step-by-step. I want to deal with  
13 the medication petition now, and -- and recognize Mr.  
14 Gottstein as Mr. Bigley's attorney of record for that.  
15 (Indiscernible) Public Defender Agency as being  
16 withdrawn (indiscernible).

17 MR. NEMECEK: I'm trying to clarify that. So  
18 the Public Defender has now by court order...

19 THE COURT: From the case.

20 MR. NEMECEK: Dropped from the case. Mr.  
21 Gottstein is in.

22 THE COURT: Uh-huh (affirmative).

23 MR. NEMECEK: By limited entry, and this is an  
24 entry (indiscernible), he is now counsel of record in  
25 this case. I just want to make sure that is clear. He  
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1 either is or he isn't, otherwise, we object. We're  
2 gonna have briefing on this.

3 THE COURT: (Indiscernible).

4 MR. NEMECEK: I'm not gonna just let this go.

5 THE COURT: You're gonna have briefing --  
6 Okay.

7 MR. NEMECEK: I -- I would -- would file an  
8 opposition to the motion (indiscernible) -- is that --  
9 it's some sort of partial motion to withdraw, I'm gonna  
10 object to it. I'm gonna file an opposition. So, I  
11 want to make this clear.

12 THE COURT: Well, I'll recognize Mr. Gottstein  
13 as Mr. Bigley's attorney of record from this point  
14 forward. But I'm not making any finding as to -- if  
15 there's going to be objections to the petition -- my  
16 findings are already made on the recommendations on the  
17 commitment petition who deals with that -- I mean,  
18 whether -- whether it has to be Mr. Gottstein or it has  
19 to be the Public Defender Agency. I'm just not saying  
20 anything. I'm just stressing that from this point  
21 forward, Mr. Gottstein is the attorney of record, and  
22 then if there's going to be any objections, and if the  
23 State wants to file -- if the State wants to file some  
24 kind of pleadings saying that person doesn't have the  
25 right to file, then that issue will be joined at that

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1 MR. GOTTSTEIN: Do you want -- I mean, I --  
2 you read it. Do you want me to -- I can say that  
3 (indiscernible).

4 THE COURT: Okay. Well, then, I don't see  
5 anything different -- get Mr. Nemecek's reaction to the  
6 motion to permit forced drugging petition.

7 MR. NEMECEK: Well, my reaction would be to  
8 oppose the motion to the extent that it is a motion to  
9 dismiss the motion for -- actually, this is the  
10 document here -- court approval of administration of  
11 psychotropic medications, I believe is the accurate  
12 title of the (indiscernible).

13 I oppose on the grounds that the argument that  
14 seems to be made in that motion is that we are somehow  
15 required to lay out every factual assertion that we  
16 intend to make during the hearing, or else the petition  
17 is insufficient. And, I just say that that's  
18 completely incorrect.

19 If this even does what it's supposed to do,  
20 which is to place the petition on notice of what the  
21 request is -- what the legal basis for the request is,  
22 which is, (indiscernible) of getting a (indiscernible)  
23 informed consent. That is the legal finding that the  
24 court has to make in order to grant the petition.

25 Now, there may be any number of factors, as

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1 time. Okay?

2 MR. NEMECEK: I think I'm -- I think I'm  
3 (indiscernible).

4 MR. GOTTSTEIN I'm not all together clear. I  
5 wonder if -- you know, just get a written order, but,  
6 I'm not objecting (indiscernible) material that I filed  
7 with regard to medication.

8 THE COURT: (Indiscernible) medication  
9 petition at this time.

10 MR. GOTTSTEIN: And I filed a motion to  
11 dismiss (indiscernible).

12 THE COURT: (Indiscernible).

13 MR. NEMECEK: I wish I could (indiscernible),  
14 but I'm afraid I don't. And, so, I would ask the court  
15 to (indiscernible).

16 THE COURT: (Indiscernible). I have to make  
17 sure.

18 Ms. Brennan, if you wanna leave, that's up to  
19 you. If you want to stay, that's up to you. Mr.  
20 Gottstein (indiscernible).

21 We'll go off record. (Indiscernible).

22 (Off record - no time noted)

23 (On record - no time noted)

24 THE COURT: All right. So turning to the  
25 medication petition. Any preliminary matters?

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1 laid out in case law or as (indiscernible) statutes  
2 that the court is supposed to consider in making that  
3 finding, and, certainly the -- the hospital is going to  
4 present its facts that support those factors that the  
5 court is supposed to consider. But that hardly makes  
6 the pleading itself sufficient in the sense of  
7 providing adequate notice to the patient of what is  
8 being requested and why it's being requested and why  
9 it's being requested. I'm not aware of any law that  
10 suggests that a pleading that requests something has to  
11 contain every factual assertion that (indiscernible)  
12 were made during the course of the hearing in support  
13 the factors that the court has to consider.

14 So under the circumstances, I don't think  
15 there is any legal basis for the (indiscernible)  
16 petition, for the reasons stated in the motion.

17 MR. GOTTSTEIN: Your Honor, if I may respond?

18 THE COURT: Yes, go ahead.

19 MR. GOTTSTEIN: I think Mr. Nemecek is  
20 confused. I'm not saying that they have to lay out  
21 every fact, but -- but that they have to, under basic  
22 due process provide as Hamde v. Rumsfelt (ph) said  
23 (indiscernible) supreme court, the respondent is  
24 entitled -- he must first be notified -- that he must  
25 receive notice of the factual basis, and it's their

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1 opportunity to rebut the government's factual  
 2 assertion. And in...  
 3 THE COURT: Hold on a second. Would you let  
 4 Mr. (indiscernible).  
 5 MR. BIGLEY: (Indiscernible).  
 6 MR. GOTTSTEIN: Yeah. Get the cup and then  
 7 come back.  
 8 MR. BIGLEY: Excuse me.  
 9 UNIDENTIFIED MALE: (Indiscernible).  
 10 THE COURT: (Indiscernible).  
 11 MR. BIGLEY: (Indiscernible) meeting --  
 12 (indiscernible) -- police officer (indiscernible).  
 13 Man!  
 14 MR. GOTTSTEIN: Okay. So...  
 15 MR. BIGLEY: (Indiscernible).  
 16 MR. GOTTSTEIN: In -- in Weather -- in Myers,  
 17 the court fundamentally increased the requirement from  
 18 the statute, and it required that in order to prevail  
 19 on forced drugging petitions, that the court has to  
 20 find -- consider -- well, find -- well, that -- the  
 21 court has to consider the explanation of the patient's  
 22 diagnosis and prognosis, or their predominate systems  
 23 with and without the medication, and all those other  
 24 things -- information about the proposed medication,  
 25 services of side effects. The side effects and  
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1 benefits, including the risks of non-treatment. The  
 2 explanation of interaction with other drugs. And  
 3 review the patient's history, and previous side effects  
 4 from the medication, as well as -- I think -- and I --  
 5 you know, the Minnesota -- the Minnesota court. And so  
 6 it's impossible for me to adequately prepare to defend  
 7 without knowing the basis -- factual basis of the case  
 8 of relevance to the considerations that the court has  
 9 to make -- if I don't know the factual basis.  
 10 THE COURT: All right. Thank you.  
 11 Well, I'm going to recommend that the motion  
 12 to dismiss forced drugging petition be as the document  
 13 is entitled, and it's really referring to the petition  
 14 for court approval of administration of psychotropic  
 15 medication that that is denied, because neither the  
 16 case (indiscernible), 839(b), nor the Myers case  
 17 specify that the "medication decision," as it's called,  
 18 has to lay out a complete factual analysis of the case  
 19 against the respondent or reason for the medication  
 20 petition. The Myers case requires the court make  
 21 findings in the end, but it does not require that there  
 22 be a -- very explicit detailed petition as to  
 23 everything the State's may be putting forward. So for  
 24 those reasons ....  
 25 MR. BIGLEY: (Indiscernible).  
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1 THE COURT: ...(indiscernible) the motion to  
 2 permit forced drugging petition be denied.  
 3 MR. GOTTSTEIN: Your Honor, if I may, just  
 4 briefly. I did suggest the al -- an alternative  
 5 dismissal, and I (indiscernible) impliedly denied that,  
 6 too, that they should provide me with that fact, rather  
 7 than dismiss it -- provide -- give them an opportunity  
 8 -- and me an opportunity -- require then provide the  
 9 factual basis and allow me an opportunity to prepare,  
 10 as an alternative to dismissal. It sounds like you  
 11 were denying that, as well, but I just wanted to  
 12 (indiscernible). I mean, I really think I ought to be  
 13 able to -- I ought to have the basic facts on the  
 14 Meyers standards as to what my client is being charged  
 15 with.  
 16 THE COURT: Well, I'm just -- I made my  
 17 recommendation. I don't feel that the statutes, the  
 18 court rules or the Meyers case say that that has to be  
 19 done, and, so, I feel that safe for counsel go forward  
 20 on the petition for court approval for administration  
 21 of psychotropic medication, based on what is stated in  
 22 that one document.  
 23 MR. GOTTSTEIN: Your Honor, if I may, I'd like  
 24 to -- I can't go forward now and request a short  
 25 continuance in order to prepare.  
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1 THE COURT: When you say "short continuance,"  
 2 what do you mean by "short"?  
 3 MR. GOTTSTEIN: Well, if -- you know, as the  
 4 court (indiscernible), so I can prepare to go forward  
 5 on Wednesday.  
 6 THE COURT: So, let me hear from Mr. Nemecek  
 7 about that oral motion for continuance.  
 8 MR. NEMECEK: I'd like to hear the basis for  
 9 the motion. I heard a motion. I haven't heard the  
 10 basis for it.  
 11 MR. GOTTSTEIN: Well, (indiscernible).  
 12 THE COURT: Okay. That's fine.  
 13 UNIDENTIFIED MALE: (Indiscernible)  
 14 THE COURT: Mr. Nemecek, I'm just making a  
 15 complete record here.  
 16 UNIDENTIFIED MALE: Yeah, I understand. I  
 17 apologize for...  
 18 THE COURT: That's all right.  
 19 MR. NEMECEK: I think -- well, initially, I  
 20 would oppose the request. I think that "I need more  
 21 time to prepare" it's a little bit vague. I'd like  
 22 some more information on what it is that Mr. Gottstein  
 23 feels he didn't know, walking into this room, that  
 24 comes as a surprise to him at this point. He sat in on  
 25 the 30 day meds petition. He knows what the doctor is  
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1 going to say about the basis for the meds petition,  
2 because the testimony is going to be extremely similar,  
3 if not identical...

4 MR. BIGLEY: (Indiscernible).

5 MR. NEMECEK: So, under the circumstances, I  
6 don't think anything is going to come as a surprise. I  
7 don't think that Mr. Gottstein, frankly, could be any  
8 prepared -- more prepared than he is now for this. And  
9 if he feels that way, I'd like some more detail on why  
10 he feels that way. And if the court is going to  
11 consider it, I'd like to make a further argument on why  
12 this prejudices the hospital.

13 THE COURT: Okay. I guess -- so, Mr.  
14 Gottstein, if you can inform Mr. Nemecek of additional  
15 reasons why you feel (indiscernible), then he can  
16 possibly defer objecting.

17 MR. GOTTSTEIN: Well, I can do that. But I'd  
18 like to first go over it with the court. And  
19 Weatherhorn said about -- precisely this, is that  
20 there's a necessity because of the respondent's right -  
21 -- constitutional right to be free from confinement.  
22 That he has a right to go forward as fast as possible.  
23 But he can...

24 MR. NEMECEK: And I would object to that  
25 argument to the extent that we're talking about  
26  
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1 confinement. The 30 day med petition has already been  
2 ruled on. This is not about confinement. This is  
3 about the administration of medication. So I object to  
4 any...

5 MR. BIGLEY: I wanna be free. It's my life.  
6 Okay.

7 MR. GOTTSTEIN: I was just ar -- I was just  
8 stating what the -- the -- my -- the way my...

9 MR. BIGLEY: (Indiscernible).

10 THE COURT: (Indiscernible).

11 MR. NEMECEK: (Indiscernible).

12 MR. BIGLEY: (Indiscernible).

13 MR. GOTTSTEIN: ...contrasting that with --  
14 the -- the court was very clear that, in contrast, so  
15 long as no drugs have been administered, the rights to  
16 liberty and privacy implicated by the right to receive  
17 psychotropic medication (indiscernible)...

18 THE COURT: Mr. Gottstein, I'm gonna cut you  
19 off.

20 We're doing, right now, this second, is the  
21 question of do you need more time to prepare for the --  
22 deal with the medication petition. Not what's  
23 (indiscernible) -- not, you know, the fundamental  
24 rights, but, just appear for this case.

25 MR. GOTTSTEIN: Well, it's very -- it's very  
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27

1 simple. I was called yesterday on my cell phone at  
2 4:00 p.m., that this has been filed. And a hearing set  
3 for 1:30 the next day. I -- I -- I filed, and served  
4 on, you know, the State, at 8:00 a.m. this morning --  
5 some preliminary motions, and, it's frankly absurd to  
6 think that I can be prepared in less than 24 hours for  
7 this series of proceeding. I've got -- what about  
8 witnesses? How can I possibly line up witnesses in  
9 that period of time. Or, anything else, or have  
10 something prepared to file. I think it's frankly  
11 absurd. I need time to prepare. It's been less than  
12 24 hours. And the -- and the -- and the Alaska Supreme  
13 Court says there is no reason to rush this. You've got  
14 to -- there's no reason to rush, because you've got to  
15 protect my client's right to be free from medication.  
16 And (indiscernible) -- and be sure that you do it  
17 right.

18 THE COURT: Mr. Nemecek, with that, if you  
19 want to comment?

20 MR. NEMECEK: Just a couple things. First of  
21 all, I don't know when Mr. Gottstein would have any  
22 witnesses in mind that he's going to call. So it's  
23 irrelevant to this proceeding (indiscernible).

24 I will say that, from a hospital perspective,  
25 this causes some pretty significant difficulties,  
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1 because we now have a patient that commitment has been  
2 (indiscernible) on, that, essentially our hands are  
3 tied from treating, because the manifestation of Mr.  
4 Bigley's...

5 MR. BIGLEY: (Indiscernible).

6 MR. NEMECEK: ...-- (indiscernible) is such  
7 that he was disruptive to the other patients. He is  
8 threatening towards the doctor and staff. And he is,  
9 frankly, unrealistic to think that the hospital is  
10 going to give me a treatment in a (indiscernible) way,  
11 without the ability to administer medications that are  
12 being suggested here, in order to stabilize Mr. Bigley.

13 MR. BIGLEY: (Indiscernible).

14 MR. NEMECEK: I think that it's difficult for  
15 me to...

16 MR. BIGLEY: (Indiscernible).

17 MR. NEMECEK: ...sympathize with counsel's  
18 position that he needs more time, when -- but, what I  
19 can only refer to as Mr. Bigley's choice. He didn't  
20 come -- become counsel until, frankly, just a few  
21 minutes ago. He had counsel who was prepared to go,  
22 and would have been prepared to go. The Public  
23 Defender Agency is (indiscernible) prepared to go  
24 forward on the medication petition with less than 24  
25 hours.  
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1 MR. BIGLEY: (Indiscernible).  
 2 MR. NEMECEK: So, I'm not sure what else to  
 3 say, other than I don't think that Mr. Gottstein is  
 4 going to be, in any -- in any practical sense -- in any  
 5 different position on Wednesday than he is today. If he  
 6 has specific witnesses that he thinks are relevant, I'd  
 7 be curious to know who those witnesses are, because I  
 8 highly doubt that they are going to be relevant to this  
 9 petition with respect to Mr. Bigley. So for all of  
 10 those reasons I would strongly recommend against  
 11 continuing this. I would oppose the motion to  
 12 continue, which, essentially, is an oral motion to  
 13 continue at this time. I note that the documents --  
 14 what he filed in numerous pleadings at 8:00 a.m.  
 15 (indiscernible)...  
 16 MR. BIGLEY: (Indiscernible).  
 17 MR. GOTTSTEIN: (Indiscernible). But -- but,  
 18 Your Honor...  
 19 THE COURT: Wait a minute. Wait a minute. I  
 20 just want to interject something. I can't fault Mr.  
 21 Gottstein for not filing a motion to continue, because,  
 22 at that time there had been ruling that Mr. Bigley was  
 23 going to be committed (indiscernible) the medication  
 24 petition. He filed a motion to dismiss, but it would  
 25 have been a little theoretical for him to also file a  
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1 motion to continue. I mean, he could have done it in  
 2 the alternative, but that's (indiscernible).  
 3 MR. GOTTSTEIN: (Indiscernible).  
 4 THE COURT: I'm making a record.  
 5 UNIDENTIFIED MALE: (Indiscernible).  
 6 MR. GOTTSTEIN: I mean, I think that the  
 7 hospital fundamentally misunderstands (indiscernible),  
 8 and that...  
 9 MR. BIGLEY: (Indiscernible).  
 10 MR. GOTTSTEIN: ...the commitment is based on  
 11 safety. Safety in the community and safety to Mr.  
 12 Bigley, and the supreme court has said, one, when he's  
 13 in the hospital that it's no longer an issue, and  
 14 therefore (indiscernible). And it's a important  
 15 decision, with all these factors to be carefully  
 16 considered. And I'm just (undiscernible) my client  
 17 (indiscernible).  
 18 MR. BIGLEY: (Indiscernible).  
 19 THE COURT: All right. Hold on a second. Mr.  
 20 Nemecek, do you want to add anything?  
 21 MR. NEMECEK: Just to add that -- suggest that  
 22 (indiscernible).  
 23 MR. BIGLEY: (Indiscernible).  
 24 MR. NEMECEK: The safety issues within  
 25 (indiscernible), and with respect to the other  
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1 patients, to have a right to have treatment in the  
 2 facility, as well.  
 3 MR. GOTTSTEIN: Your Honor, (indiscernible).  
 4 THE CLERK: Mr. Gottstein, would you speak up,  
 5 please?  
 6 MR. GOTTSTEIN: I'm sorry.  
 7 THE COURT: Yeah. Okay. Well, let's deal  
 8 with this oral motion (indiscernible). I'm going to  
 9 grant the motion. I want to point out that -- that  
 10 (indiscernible) psychotropic medication emergency  
 11 specifies...  
 12 3AN2607-157 (SIDE C)  
 13 THE COURT: ...(indiscernible) treatment  
 14 facility may administer psychotropic medication to a  
 15 patient without the patient's informed consent,  
 16 regardless of whether the patient is capable of giving  
 17 informed consent, only if, one, there is a crisis  
 18 situation or a pending crisis situation that requires  
 19 immediate use of medication to preserve the life of, or  
 20 prevent significant physical harm to the patient or  
 21 another person that's determined by a licensed  
 22 physician or a registered nurse. The behavior or  
 23 condition of the patient giving rise to the crises  
 24 under this paragraph, and the staff's response to the  
 25 behavior or condition, must be documented in the  
 26  
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1 patient's medical records. The documentation must  
 2 include an explanation of alternative responses to the  
 3 crisis...  
 4 MR. BIGLEY: (Indiscernible).  
 5 THE COURT: ...that were considered or  
 6 attempted by the staff, and why those responses were  
 7 not (indiscernible), and the medication, as ordered by  
 8 a licensed physician.  
 9 This, I think, would reasonably cover any  
 10 emergency crisis situation, whatever you want to term  
 11 it, between now and dealing with the medication  
 12 petition.  
 13 MR. BIGLEY: (Indiscernible).  
 14 THE COURT: I do believe that Mr. Gottstein  
 15 should have the right to prepare a little more, because  
 16 of the extent to which the -- the Myers and the  
 17 Weatherhorn cases set out what the court is supposed to  
 18 deal with, and, thus, any attorney representing the  
 19 respondent. And I feel that, in the meantime, if the  
 20 hospital feels that Mr. Bigley is causing problems that  
 21 might rise to the nature of, where they have to  
 22 administer medications...  
 23 MR. BIGLEY: They don't have to.  
 24 THE COURT: ...(indiscernible) which they have  
 25 the inherent statutory authority.  
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1 MR. BIGLEY: (Indiscernible).  
 2 THE COURT: And, so, as much as the hospital  
 3 wants to go forward balancing Mr. Bigley's rights, I  
 4 feel that we will continue the matter until Wednesday  
 5 morning.  
 6 And I have to ask the Clerk, is it correct  
 7 that Wednesday morning I'm free?  
 8 THE CLERK: (Indiscernible).  
 9 THE COURT: So I can say 9 o'clock Wednesday  
 10 morning?  
 11 THE CLERK: That's correct.  
 12 THE COURT: Downtown.  
 13 MR. BIGLEY: (Indiscernible).  
 14 UNIDENTIFIED MALE: Your Honor,  
 15 (indiscernible).  
 16 THE COURT: Yeah. It will be downtown.  
 17 MR. NEMECEK: All right. I know what position  
 18 Mr. Gottstein is going to take on this. I am told --  
 19 and I apologize -- by...  
 20 THE COURT: Sure.  
 21 MR. NEMECEK: ...Ms. Russo, that Judge  
 22 Michalski has some familiarity with these proceedings -  
 23 - has actually conducted trials on Mr. Bigley  
 24 previously. At this point, I guess I would request  
 25 that it be taken up before Judge Michalski if he is  
 26  
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1 available...  
 2 MR. BIGLEY: (Indiscernible).  
 3 MR. NEMECEK: ...given that he is familiar  
 4 with the history of the case.  
 5 THE COURT: I need a quick response from Mr.  
 6 Gottstein, because then I am going to have to go off  
 7 record, have everyone leave -- hold on.  
 8 Ms. Taylor?  
 9 MS. TAYLOR: I'm not (indiscernible).  
 10 MR. NEMECEK: Wednesday's our regular  
 11 commitment.  
 12 MR. BIGLEY: (Indiscernible).  
 13 THE COURT: And (indiscernible) afternoon, I'm  
 14 out here to do those, but I have to...  
 15 MR. BIGLEY: (Indiscernible) the downtown  
 16 courthouse. I come down here.  
 17 MS. TAYLOR: API is set Wednesday  
 18 THE COURT: I know. I know. And I'm doing it  
 19 Wednesday afternoon.  
 20 MR. BIGLEY: (Indiscernible).  
 21 THE COURT: I'm going to have to proceed on  
 22 this Wednesday morning, if it's going to be me.  
 23 MR. BIGLEY: The judge (indiscernible).  
 24 THE COURT: So, that's all I'd like to say.  
 25 But, I just need Mr. Gottstein's quick response as to  
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1 what Mr. Nemecek just asked about a judge, because then  
 2 I'll have to recess this hearing and have everyone  
 3 leave while I make a call downtown to...  
 4 MR. BIGLEY: (Indiscernible).  
 5 THE COURT: (Indiscernible). You know, what  
 6 the court, administratively, wants -- how the court  
 7 wants to deal with it.  
 8 MR. GOTTSTEIN: First off, of course, I don't  
 9 think it's a proper for the judge to make his decision  
 10 based on previous testimony in other cases.  
 11 THE COURT: No (indiscernible).  
 12 MR. GOTTSTEIN: But I have no object...  
 13 (Indiscernible).  
 14 THE COURT: No. I'm not gonna -- no -- I will  
 15 not be asking...  
 16 MR. GOTTSTEIN: (Indiscernible).  
 17 THE COURT: Well, wait. Let me finish. I  
 18 will not be asking the assigned judge in this case, I  
 19 will be asking the court administration.  
 20 MR. GOTTSTEIN: I have no objection to the  
 21 superior court. (Indiscernible) from the get-go  
 22 (indiscernible).  
 23 THE COURT: All right. I have to ask everyone  
 24 to (indiscernible) leave while I place a call.  
 25 MR. BIGLEY: I would like to hear it.  
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1 (Off record - no time noted)  
 2 (On record - no time noted)  
 3 THE COURT: On record. For administrative  
 4 purposes, I just spoke to the presiding judge, Judge  
 5 Christian, just to inform her of -- the (indiscernible)  
 6 send a request for continuance, and (indiscernible)  
 7 granted it, and I tentatively set the matter before  
 8 myself. 9 o'clock next Wednesday, but then it was the  
 9 State's request to have the matter before Judge  
 10 Michalski, the judge on this case And I authenticated  
 11 that the respondent's attorney did not oppose that,  
 12 however, the presiding judge has stated that I am to  
 13 chair the matter. That I cannot put any matter up  
 14 before -- on a Superior Court Judge's calendar.  
 15 Basically, if either of the parties want it before  
 16 someone other than me, then it would have to be a  
 17 formal written motion.  
 18 But, at this point, it is set before me at 9  
 19 o'clock at my courtroom, (indiscernible) for Wednesday,  
 20 and (indiscernible). So that's where things stand at  
 21 this time.  
 22 MR. BIGLEY: (Indiscernible).  
 23 THE COURT: What was that?  
 24 MS. TAYLOR: (Indiscernible).  
 25 THE COURT: Ms. Taylor?  
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1 MS. TAYLOR: Would you have an objection, sir,  
 2 if I participate by telephone?  
 3 MR. BIGLEY: (Indiscernible).  
 4 THE COURT: No. That -- that's -- any  
 5 objection to Ms. Taylor participating telephonically?  
 6 MR. BIGLEY: (Indiscernible).  
 7 MR. GOTTSTEIN: I have -- I would like to  
 8 know, you know, have a report in advance, to know what  
 9 was done. I really didn't know who was appointed, I  
 10 don't think. It didn't say Ms. Taylor. I don't...  
 11 MR. BIGLEY: (Indiscernible)  
 12 MR. GOTTSTEIN: And, so -- and, I...  
 13 MR. BIGLEY: (Indiscernible).  
 14 MR. GOTTSTEIN: ...wrote an e-mail to the  
 15 State earlier today about some procedure that I think  
 16 should be followed with respect to the visitor, which I  
 17 don't think has really -- I don't think she knew about  
 18 it. and I think, oh, it happens. But, again, I think  
 19 that I should have a report in advance, so that I have  
 20 an opportunity to respond.  
 21 MR. BIGLEY: (Indiscernible).  
 22 MS. TAYLOR: Well, I didn't (indiscernible).  
 23 But I'm neither a state employee, nor am I an API  
 24 employee.  
 25 MR. GOTTSTEIN: No, no. I know. I'm just  
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1 MR. GOTTSTEIN: ...-- it doesn't...  
 2 MS. TAYLOR The problem is that API is here  
 3 Wednesday.  
 4 MR. BIGLEY: (Indiscernible).  
 5 MS. TAYLOR: I have to be out here no later  
 6 than 10:30. So, from 9:00 to 10:30, I -- I -- I could  
 7 be at court, as long as I'm able to (indiscernible)  
 8 with what I need to do when I (indiscernible).  
 9 MR. GOTTSTEIN: But, I'm not the one in the  
 10 (indiscernible). So I said that I can do it -- you  
 11 know, the earliest I can do is Wednesday.  
 12 (Indiscernible).  
 13 MR. BIGLEY: (Indiscernible).  
 14 MR. NEMECEK: (Indiscernible). I  
 15 (indiscernible) have no objection to (indiscernible).  
 16 THE COURT: Well, I'm gonna let her  
 17 participate telephonically Wednesday morning, and, if  
 18 there's any issues as to the substance of the report by  
 19 here, (indiscernible).  
 20 That's it. We'll go off record. Thank you.  
 21 \*\*\*END\*\*\*  
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1 saying that I think that I should have an opportunity  
 2 to know what you're gonna generally report on, so that  
 3 I can have an opportunity -- you know...  
 4 MS. TAYLOR: Well, an expedited petition, we  
 5 don't do a written report. This would be considered an  
 6 expedited hearing.  
 7 MR. GOTTSTEIN: Oh. And I...  
 8 MR. BIGLEY: (Indiscernible).  
 9 MS. TAYLOR: If I was standing  
 10 (indiscernible)...  
 11 THE COURT: Okay. I'm going to permit -- I'm  
 12 going to permit Ms. Taylor to participate  
 13 telephonically, but the point -- the issues or  
 14 questions brought up by Mr. Mr. Gottstein, those are  
 15 (indiscernible) to questions that may also come up at  
 16 the hearing on Wednesday as to the responsibility to  
 17 deal with whatever evidence is presented.  
 18 MR. GOTTSTEIN: And I'm gonna object to  
 19 telephonic testimony. And not to be difficult, but,  
 20 for example, the statute requires that an instrument be  
 21 given, and I want to -- you know -- I need to have a  
 22 copy of that, and see what it is that the responses  
 23 were, and all that. And, so, I -- I mean, I try cases  
 24 telephonic all the time, so I...  
 25 MS. TAYLOR: The problem...  
 26  
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1 CERTIFICATE  
 2  
 3 SUPERIOR COURT )  
 4 ) SS.  
 5 STATE OF ALASKA )  
 6  
 7 I, Georgi Ann Haynes, Certified Professional  
 8 Court Reporter for the Third Judicial District, State  
 9 of Alaska and verbatim reporter for Pacific Rim  
 10 Reporting, Inc., hereby certify:  
 11 That the foregoing transcript is a  
 12 transcription of testimony of said proceedings to the  
 13 best of my ability, prepared from extreme poor quality  
 14 tapes recorded and copied by the Alaska Court System,  
 15 therefore numerous "indiscernible" and "Unidentified  
 16 Speaker" comments appear in the transcript;  
 17  
 18 I am not a relative, or employee, or  
 19 attorney, or counsel of any of the parties, nor am I  
 20 financially interested in this action.  
 21  
 22 IN WITNESS WHEREOF, I have hereunto set my  
 23 hand and affixed my seal this 3rd day of October, 2007.  
 24  
 25 Notary Public in and for Alaska  
 26 My commission expires: 10/05/2007  
 27