IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATTER OF:)
)
Plaintiff,)
)
vs.)
)
WB: WILLIAM BIGLEY)
)
Defendant.)
)

Case No. 3AN-08-00493 PR CI

*** CONFIDENTIAL ***

This was an open hearing. J. Gottstein.

VOLUME I

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE SHARON GLEASON
Superior Court Judge

Anchorage, Alaska
May 12, 2008
10:17 A.M.

APPEARANCES:

FOR THE STATE: Timothy M. Twomey, Esq.
Assistant Attorney General
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

FOR THE DEFENDANT: James B. Gottstein, Esq.
Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, Alaska 99501

Page 2

1 3AN6308-77
2 10:17:07
3 THE COURT: We are on record. It's in the
4 matter of Mr. William Bigley.
5 I have here in the court Mr. Twomey from the
6 State, correct?
7 MR. TWOMEY: Yes, Your Honor. Good morning.
8 THE COURT: Good morning. How are you?
9 MR. TWOMEY: Good, thanks.
10 THE COURT: And, Mr. Gottstein, you are going
11 to be representing Mr. Bigley on this issue only; is
12 that correct?
13 MR. GOTTSTEIN: Yes, Your Honor.
14 THE COURT: All right. And then I have the
15 court visitor, as well.
16 And where is Mr. Bigley?
17 MR. GOTTSTEIN: He's downstairs. He should
18 be up momentarily, Your Honor. We might be able to
19 take up some preliminary matters, if you'd like. Or I
20 would --
21 THE COURT: That's fine. We can go ahead and
22 do that. What are the preliminary matters?
23 Let me tell you my preliminary matter. I
24 have a 10:30 that we were unaware of that is about a
25 20-minute children's proceeding. So we are going to

Page 3

1 have to take a short break, and then resume as soon as
2 they are concluded. So --
3 MR. GOTTSTEIN: Well, maybe, Your Honor, this
4 will take care of that.
5 First, I don't think we've met before. Nice
6 to have met you.
7 THE COURT: I certainly recognize the name.
8 MR. GOTTSTEIN: First, I owe the court an
9 apology. I was out of town from 1:00 a.m.
10 Wednesday -- last Wednesday morning until 1:00 a.m.
11 last night.
12 And when the fax came in on the expedited
13 motion -- I know they were e-mailed to me, but I
14 couldn't open that one up. So I didn't know about the
15 motion for expedited consideration until I got the
16 order.
17 THE COURT: All right.
18 MR. GOTTSTEIN: So I object to holding this
19 hearing. And I think first I'll make a procedural
20 objection, and then really get into the substance of
21 that.
22 The procedural is that the -- the expedited
23 motion was not properly made. And I was never given a
24 chance -- you know, normally you have a motion for
25 expedited consideration, and then an order granting --

Page 4

1 you know, an order requiring a person to respond to
2 expedited consideration, and then time to respond to
3 the main motion, and that wasn't done. So I object on
4 that basis.
5 But more importantly, Your Honor, if I could
6 direct your attention to -- there's my limited entry
7 of appearance. There is about 93 pages of
8 attachments, which you know, I would be surprised if
9 you've had the chance to read.
10 But I think it's fair to say that this has
11 been before -- these points have been before the
12 court. And also, Your Honor, they have been presented
13 to -- in previous proceedings, at least the last three
14 times.
15 And so the first one is that as far as I
16 know, Mr. Bigley has not been committed. And
17 therefore, this petition is premature. And that's
18 clear under Myers and Wetherhorn and at page 31 of
19 what's called the submission for -- and I've got
20 copies of those two cases.
21 THE COURT: But I intended actually to pull
22 them up and -- in any event, let's back up here.
23 Because what I have is the master's proposed findings
24 for a 30-day commitment order that Judge Rindner
25 approved on May 5th.

Page 5

1 MR. GOTTSTEIN: Okay. Well, I was not aware
2 of that. I was not served with that.
3 THE COURT: And that looks like it was
4 distributed on May 7 to all of the parties, so --
5 MR. GOTTSTEIN: I haven't received it.
6 THE COURT: Mr. Twomey, did you get a copy of
7 that order?
8 MR. TWOMEY: I believe I did, Your Honor.
9 THE COURT: And that -- Judge Rindner adopted
10 the master's recommended order of May 2nd. So the
11 commitment order was entered, as I read the file, on
12 May 5th, effective May 7.
13 Did the visitor get a copy of that order?
14 MS. VASSAR: I don't believe I did. But I am
15 often not in that loop.
16 THE COURT: All right. Well, the service
17 list -- and here again, this is from Judge Rindner's
18 staff. But the service list shows that that was
19 distributed AG, PD, and API.
20 So, Mr. Gottstein, you might not have
21 received that, but -- because it was distributed to
22 the PD's. But that's who it was served on last week,
23 so --
24 MR. GOTTSTEIN: Okay. So --
25 THE COURT: Maybe that changes, then, your

Page 6

1 perspective on -- on the procedural posture of the
2 case.
3 MR. GOTTSTEIN: On that particular one.
4 Although, do you mind telling me if the public -- I
5 understood the public defenders were going to file
6 objections to the master's --
7 THE COURT: There are no objections that have
8 been filed. There were no objections filed that are
9 in the file.
10 I always hesitate when I say no objections
11 filed, which is to say that there are none in the
12 file. I suppose it's possible some were filed across
13 the street and didn't make it into the file, but there
14 are none in the file.
15 MR. GOTTSTEIN: And if I could draw your
16 attention, then, the next issue is that the
17 (indiscernible) petition is defective. If I could
18 draw your attention to page 32 of the submissions for
19 representation hearing.
20 THE COURT: All right.
21 MR. GOTTSTEIN: All right. I am right there.
22 Okay. So as you know, Your Honor, Myers
23 invalidated the statutory regime as being
24 unconstitutional and required the additional
25 requirements that the court find the force

Page 7

1 (indiscernible) to be in the patient's best interests,
2 and there is no less intrusive alternative, and then
3 went ahead and defined what sorts of things that --
4 you know, that entailed, what sort of considerations.
5 And API has never changed the petition to
6 reflect the Myers requirement, and therefore that
7 petition is defective. I have no notice of what their
8 grounds are for best interests. I -- there is no --
9 and none of this information is in there. So that's
10 one aspect of it.
11 THE COURT: Well, as I read it, the case law
12 says the state has to file the petition, and then the
13 state has to meet its burden by clear and convincing
14 evidence.
15 So I mean, there is nothing that I read in
16 those cases, excuse me, that would indicate that
17 certain -- certain allegations must be made in a
18 petition in order for a case to go forward, but I
19 could be missing something.
20 MR. GOTTSTEIN: Well, I think you are, Your
21 Honor.
22 THE COURT: All right.
23 MR. GOTTSTEIN: Which is -- which is if you
24 look at the court's file on the Meyer decision, the
25 court required that there needs to be information

Page 8

1 about the proposed medication, its purpose, the method
2 of its administration, the recommended range of
3 dosages, possible side effects and benefits, ways to
4 treat side effects, and risks of other conditions,
5 such as tardive dyskinesia.
6 THE COURT: And this is your client?
7 Good morning, Mr. Bigley.
8 MR. BIGLEY: Yes (indiscernible) at two years
9 old (indiscernible).
10 THE COURT: Good morning.
11 MR. GOTTSTEIN: And, Your Honor, and I -- in
12 order for me to adequately prepare, I need to know
13 that information.
14 THE COURT: All right.
15 MR. GOTTSTEIN: And then finally, with
16 respect to that, if you would look at -- I think it's
17 the fifth page, at the --
18 THE COURT: Of your submission?
19 MR. GOTTSTEIN: Yeah.
20 THE COURT: All right.
21 MR. GOTTSTEIN: There is an e-mail exchange
22 between Mr. Twomey and myself and API.
23 But the thrust of it is, Your Honor, is that
24 I've asked since April 26th for a copy of his chart in
25 order to be able to prepare for this, and I have not

Page 9

1 been given it. And, Your Honor, I need some time to
2 conduct discovery.
3 And frankly, Your Honor, API is really in
4 defiance of the Alaska Supreme Court's mandate that a
5 less -- that less-intrusive alternatives be made
6 available. And so they're just trying to push this
7 through.
8 But in any event, and I've tried many, many
9 times to sit down with them to work out a
10 less-intrusive alternative that doesn't involve the
11 forced drugging of Mr. Bigley, to which he is
12 entitled, and they refuse to sit down and talk.
13 And so I would like to have at a minimum --
14 well, a -- I think a pre-trial conference is really in
15 order because there are really lots of issues. I
16 intend to file some motions.
17 But one of them, and I think the most
18 important one, is that -- that the court order a
19 settlement conference. Because Mr. Bigley has been
20 hauled in to API for 28 years and forcibly -- I think
21 over 80 times, or about 80 times, forcibly drugged.
22 He immediately quits or usually quits, not
23 always, when he gets out. Then he gets hauled in
24 again. And it's kind of this fruitless thing that
25 goes on.

Page 10

1 And there is alternatives that can and should
2 be put together for him, and I think we should have a
3 settlement conference on that.
4 THE COURT: Okay. Thank you.
5 Mr. Twomey, what's the --
6 MR. TWOMEY: Well, Your Honor, we are here to
7 proceed on our petition for administration of medicine
8 pursuant to the statute, 47.38.39. We are here today
9 to put on our evidence before the court so that the
10 court can make the best-interest determination. I
11 think that's the court's role in this proceeding
12 today.
13 We would like to proceed and examine the
14 issue of Mr. Bigley's capacity to give informed
15 consent and whether the proposed medicine is in his
16 best interest.
17 THE COURT: What is the status of the chart
18 that Mr. Gottstein referred to? Do you have any
19 information on that?
20 MR. TWOMEY: Well, Your Honor, I am a little
21 uncertain. Because there was an order indicating that
22 Mr. Gottstein was not to be representing Mr. Bigley
23 until the conclusion of the commitment proceeding.
24 That apparently has now been concluded, and
25 Mr. Gottstein is assuming representation.

Page 11

1 But up until this point, we were in a
2 position of communicating with the public defender's
3 office, not Mr. Gottstein.
4 THE COURT: All right. And so do you have
5 the paper -- the chart, or what is the status there?
6 Because I have an order that was signed by Master
7 McBurney (phonetic) regarding representation, which is
8 consistent with what you've indicated.
9 MR. TWOMEY: Yes, I have seen that, Your
10 Honor.
11 MR. GOTTSTEIN: Your Honor, I was not served
12 with that order, and I requested -- I specifically
13 requested it.
14 THE COURT: Well, I am happy to give you a
15 copy of it here, Mr. Gottstein. And to some extent --
16 all right.
17 How long for the state to put on your
18 evidence? What is your estimation?
19 MR. TWOMEY: An hour, Your Honor.
20 THE COURT: And Ms. Vassar, how long?
21 MS. VASSAR: Twenty minutes.
22 THE COURT: All right. All right. I am
23 going to do the following. I am going to take up the
24 10:30 matter.
25 I am going to have Mr. Twomey, if you would,

Page 12

1 give Mr. Gottstein a copy of whatever you have in the
2 way of the chart records. We will give you a copy of
3 this order regarding representation.
4 I am going to allow the state to go forward,
5 Ms. Vassar to go forward. If you seek time to respond
6 and we can't conclude it, then I'll give him another
7 day later this week.
8 But I do intend to go forward on the
9 petition. I read the statute as either according or
10 requiring this type of hearing to be held on an
11 expeditious basis, so we are going to go forward.
12 But at the conclusion of the state's case and
13 the visitor's, we'll see where we are as to scheduling
14 time that might give you additional time to respond.
15 But my intent is to go forward.
16 But Mr. Twomey can give you the records and
17 we'll give you a copy of this order regarding
18 representation.
19 MR. GOTTSTEIN: Your Honor, may I have -- I
20 don't have any of the papers and their other --
21 THE COURT: What -- you are welcome to copy
22 the entire file if you'd like.
23 MR. GOTTSTEIN: I know I don't have the
24 recommendations.
25 THE COURT: The findings on the --

Page 13

1 MR. GOTTSTEIN: Yeah.
2 THE COURT: And we can make a copy of that,
3 as well.
4 MR. GOTTSTEIN: Your Honor, I am really not
5 prepared to go forward at this time.
6 THE COURT: Well, and I am going to allow the
7 state and Ms. Vassar to go forward with their case.
8 And if you need additional time to prepare a
9 response, then we can do that on a later day. But my
10 intent is to go forward on the hearing as requested.
11 MR. GOTTSTEIN: I haven't received a copy of
12 Ms. Vassar's report.
13 THE COURT: Ms. Vassar, what is the status?
14 MS. VASSAR: My report is oral --
15 THE COURT: Okay.
16 MS. VASSAR: -- per statute. I can provide
17 an earlier written report. That is what I planned to
18 do this morning.
19 THE COURT: All right. We will go forward,
20 but we will take a short break. Let's plan at 11:00,
21 we will go back on record.
22 I think part of the confusion is the partial
23 entry of -- or limited entry of appearance and making
24 sure that all information gets to the various parties.
25 But that's what we'll do.

Page 14

1 And like I said, Mr. Gottstein, if you need
2 additional time to present Mr. Bigley's response, we
3 will make sure that we find that, probably on
4 Wednesday of this week if you need additional time.
5 MR. GOTTSTEIN: Your Honor, I would just --
6 if you look at the Myers decision.
7 THE COURT: Right.
8 MR. GOTTSTEIN: And they -- the court is very
9 clear that there is no reason to rush these
10 proceedings because it's a very serious matter. As
11 long as the drugs are not being administered, his
12 liberty interests are preserved.
13 And to rush forward with this at this point
14 when I have not had any of this, no opportunity --
15 THE COURT: Well, let me be clear. We are
16 going to go forward with the state's case and the
17 visitor's. And then you'll have an opportunity, if
18 you need additional time, to respond later in the
19 week.
20 But there is an entitlement, a requirement
21 for a hearing. It should have been within May 8, and
22 here we are at the 12th. So in any event --
23 MR. GOTTSTEIN: Your Honor, may I make one
24 other point?
25 THE COURT: Absolutely, Mr. Gottstein.

Page 15

1 MR. GOTTSTEIN: I'm sorry. Which is if you
2 look at the Meyers' decision regarding best interests
3 and less-intrusive alternative, they are very clear.
4 There is no need to rush that. Okay.
5 The statute says with respect to the
6 competency issue, that that is supposed to be held
7 within 72 hours. So I guess if you look at it that
8 way, it would be a three-step process, where -- and it
9 seems to me the only thing that really should -- that
10 the statute provides for 72 hours is the competency
11 determination.
12 THE COURT: Well --
13 MR. GOTTSTEIN: And if -- if the court finds
14 that he was either -- he is either competent or was
15 competent at some previous time, then we don't need to
16 get into the best interests and less intrusive
17 alternative phase of it at all.
18 THE COURT: Hold on just a moment.
19 Mr. Twomey, do you have a response on that?
20 I'm pulling up the statute.
21 MR. TWOMEY: Well, I really don't, Your
22 Honor. We're here prepared to go forward.
23 THE COURT: Okay. Just a moment.
24 MR. TWOMEY: I don't think there is a
25 three-step process. I think we're here with one

Page 16

1 proceeding to examine whether or not Mr. Bigley has
2 capacity to give informed consent.
3 THE COURT: And I disagree with your reading
4 of the statute. As I read it, the 72 hours applies to
5 this request -- this petition by the state with
6 respect to medication.
7 But in any event, I -- I am fully cognizant
8 of the additional requirements or the clarification of
9 the requirements that our Alaska Supreme Court has set
10 out. And I do take these types of proceedings and the
11 type of requests that the state is asking quite
12 seriously and intend to do so in this case.
13 So let's take a short break. We will get
14 this paperwork to you, Mr. Gottstein, and then we will
15 proceed. And then you get the chart, as well,
16 whatever you --
17 MR. GOTTSTEIN: I will endeavor to do that,
18 Your Honor.
19 THE COURT: All right. We'll go off record.
20 10:34:33
21 (Off record.)
22 11:04:00
23 THE COURT: All right. We are back on record
24 here. And did you get a copy of those documents,
25 Mr. Gottstein?

Page 17

1 MR. GOTTSTEIN: Yes. Thank you, Your Honor.
2 And if I could do just something for the record.
3 THE COURT: Absolutely.
4 MR. GOTTSTEIN: I think it's clear. But
5 anyway, is that -- and I understand the steps that you
6 have taken to kind of correct the problem. But the
7 objection on notice of course includes that it's in
8 violation of due process, which of course the
9 hallmarks of due process are meaningful notice and a
10 meaningful opportunity to respond.
11 THE COURT: Right. Absolutely. The
12 objection is noted. Absolutely.
13 All right. Ready to call your first witness.
14 Who all are you going to be calling as witnesses?
15 MR. TWOMEY: Dr. Larry Maile will be our
16 first witness, and then Dr. Khari will be our second
17 witness, Your Honor.
18 THE COURT: All right. So, Dr. Maile, if you
19 could come all the way forward, please, sir.
20 (Oath administered.)
21 THE CLERK: Thank you. You may be seated.
22 Sir, for the record, can you state and spell
23 your first and last name.
24 THE WITNESS: Lawrence J. Maile,
25 L-A-W-R-E-N-C-E, M-A-I-L-E.

Page 18

1 THE COURT: Thank you. Go ahead, please.
2 LAWRENCE MAILE, Ph.D.
3 called as a witness on behalf of the state, testified
4 as follows on:
5 DIRECT EXAMINATION
6 BY MR. TWOMEY
7 Q Dr. Maile, where are you employed presently?
8 A At Alaska Psychiatric Institute.
9 Q And what is your position there?
10 A I am the director of the forensic evaluation
11 unit and the clinical director.
12 Q And in connection with your duties at API,
13 have you been familiar with patient William Bigley?
14 A I have. And currently, Mr. Bigley is
15 (indiscernible) director of the unit that he is housed
16 on. And I am familiar with Mr. Bigley, having treated
17 him a number of times over his 77 admissions.
18 Q What is Mr. Bigley's current diagnosis?
19 A His diagnosis is schizophrenia, paranoid
20 type.
21 Q Do you have an opinion as to whether or not
22 Mr. Bigley has any insight into his own mental
23 diagnosis, mental condition?
24 A Mr. Bigley has stated repeatedly that there
25 is nothing wrong with him and that he's not mentally

Page 19

1 ill. So I guess given that, I would say that he
2 doesn't. At the very least, we have a difference of
3 opinion.
4 THE COURT: So when you say repeatedly, is
5 this in the near term or over the -- over the course
6 of your involvement with him?
7 THE WITNESS: Both, Your Honor.
8 THE COURT: Thank you.
9 THE WITNESS: Most recently, in the last
10 several days.
11 THE COURT: All right. Go ahead, please.
12 BY MR. TWOMEY
13 Q At the current time, does Mr. Bigley
14 appreciate that he has a mental disorder or
15 impairment?
16 A I have not asked him this specifically, but I
17 guess given his comments, I would say no.
18 Q Has he denied the existence of his mental
19 condition to you in the past?
20 A Yes, he has.
21 Q And how does he go about denying that?
22 A Well, he -- as I was getting to earlier, he's
23 said several things: I don't have a mental illness.
24 There is nothing wrong with me. He has stated various
25 times that he thinks that we're crazy.

Page 20

1 So it has taken a number of forms over the
2 time that I have known Mr. Bigley.
3 Q Have you formed an opinion as to whether or
4 not Mr. Bigley can understand what the predominant
5 symptoms of his mental illness are?
6 A The predominant symptoms for Mr. Bigley,
7 given his disorder, are probably -- the most prominent
8 ones are delusions. He holds a number of beliefs that
9 appear not to be true.
10 And as examples, that he's close personal
11 friends with George Bush, who knows he is at API at
12 this time and will take him out -- actually tomorrow I
13 believe he stated.
14 Over the period of my having known
15 Mr. Bigley, he's talked about Department of
16 Corrections staff killing children and storing them in
17 barrels. So many of the things that Mr. Bigley says
18 on a day-to-day basis don't appear to be connected
19 with my reality, if you will. So that would be his
20 most prominent.
21 Given then your question, does he appreciate
22 the most prominent symptoms, I would say no. He
23 believes them to be true and to be real.
24 Q Do you believe that Mr. Bigley has the
25 capacity to participate in his own treatment decisions

Page 21

1 by means of rational thought process?
2 A I'd have to think about that a minute. Given
3 that he doesn't believe that he's ill and that he is
4 afflicted unfortunately with prominent delusions, I
5 would say no, most of his decisions, his
6 characterizations of people seem to be related to
7 those.
8 As an example, one of our concerns for
9 Mr. Bigley is that he doesn't eat and drink
10 sufficiently and regularly, and that stems from his
11 belief that we are poisoning his food. That's an
12 example I guess of misjudgments on his part based on
13 his symptoms. Those are the concerns that they would
14 affect any impact on his rational decision-making
15 regarding his treatment, as well.
16 Q Has Mr. Bigley been able to articulate to you
17 any reasonable objections to the use of medications?
18 A Mr. Bigley has been very clear that he
19 doesn't want any medication, and that he believes them
20 to be poison, that we are poisoning him and that it
21 will kill him.
22 Q Do those objections appear reasonable to you?
23 A They don't appear to be consistent with his
24 prior treatment with medication. Obviously he has not
25 died, and he seems to have improved. So I would say

Page 22

1 they are inconsistent with my understanding of his
2 experience of them.
3 THE COURT: When you say he seems to have
4 improved, improved when he's had meds or just improved
5 over the course of time?
6 THE WITNESS: Yes. He has improved as a
7 result of treatment with medications in the past. If
8 I were to characterize Mr. Bigley's course over the
9 period of time I have known him, it has been a
10 declining course overall.
11 THE COURT: Go ahead, please.
12 BY MR. TWOMEY
13 Q Do you believe that Mr. Bigley is capable at
14 this point in time of understanding and discussing
15 with you the method of administration of the medicines
16 you are proposing?
17 A Mr. Twomey, it's not clear that Mr. Bigley
18 can hold any kind of a rational conversation with me.
19 Q Same question --
20 A At least not in this admission.
21 Q Same question with regard to possible side
22 effects and benefits of these drugs.
23 A No, sir.
24 Q Is Mr. Bigley able to review with you his
25 medical history, including his history of having taken

Page 23

1 medicine in the past?
2 A No. And I've actually asked my staff to kind
3 of remind Bill of the times when he's been treated in
4 the past. And uniformly, those are met with streams
5 of profanity. So I would say that he is not able to
6 participate in that.
7 Q Have you been able to provide Mr. Bigley with
8 any explanation of how the proposed medication may
9 interact with other drugs?
10 A No.
11 Q And why not?
12 A Well, primarily in the case of interactions
13 with other medications, I would defer to the medical
14 staff to do that. So for my part, I have not
15 attempted that.
16 Q Okay. Have you been able to discuss with
17 Mr. Bigley alternatives to treatment by medicine and
18 what the risks of those alternatives would be?
19 A I have not discussed that specifically,
20 although I have, and my staff has, suggested that
21 Mr. Bigley would benefit from taking medications, and
22 that he is at great risk out on the street without
23 them.
24 Q What risks do you believe Mr. Bigley faces in
25 the absence of receiving the medicines that API wishes

Page 24

1 to prescribe?
2 A As I think this goes to the issue that I
3 originally raised in my petition and in my prior
4 testimony on his commitment, having known Mr. Bigley
5 for I guess what would be about ten years, I'm not
6 exactly sure. My experience with Mr. Bigley is that
7 he's very different when he's been compliant with
8 medications from when he's not.
9 And at such times when he's taking
10 medications, as I said on the record previously,
11 Mr. Bigley is a pleasant man. He is funny. He is an
12 animated sort of individual. And he is one who is not
13 threatening and not at risk to generate the harm from
14 others by his perpetual threats to them.
15 The risk that Mr. Bigley faces without
16 medication is that in terms of the longer term, he
17 tends not to take care of himself. He doesn't eat, he
18 doesn't drink, he doesn't seek appropriate medical
19 care.
20 The issues in the shorter term are that
21 Mr. Bigley --
22 THE COURT: Just a moment. Mr. Twomey, we
23 have Mr. McKay (phonetic) here. This is supposed to
24 be a closed proceeding, correct?
25 MR. GOTTSTEIN: Your Honor, I think it's

Page 25

1 open.
2 THE COURT: It is an open proceeding? There
3 is no objection there from any party? All right
4 that's fine. Go ahead.
5 THE WITNESS: I'm sorry, Your Honor.
6 THE COURT: That's all right. You were in
7 the middle of the talking about the impact of the
8 medication. When he doesn't take the medication, he
9 doesn't eat, is where my notes left off, Doctor.
10 THE WITNESS: I was probably not very
11 effectively trying to draw a distinction between
12 (indiscernible) or immediate in a little bit longer
13 term.
14 THE COURT: No, you were.
15 A The not taking care of himself issues are the
16 things that go to his -- what I characterized in my
17 earlier testimony as his grave disability.
18 The issues of the danger to himself come in
19 the more immediate sense and to others. He is
20 threatening to people. And in fact, since the last
21 proceedings, he's threatened to slit my throat if he
22 gets out. Prior to the last proceedings, he
23 threatened to find my staff and to kill them and their
24 children.
25 Those kinds of responses, it's my concern

1 that I and my staff are going to handle those
2 differently than someone might -- Mr. Bigley might
3 encounter on the street. Those are the things that
4 generate the immediate risk to him as a result of his
5 condition, his irritability, his paranoia about
6 people, and in all honesty, the way he treats people.
7 THE COURT: Go ahead, please.
8 BY MR. TWOMEY
9 Q Dr. Maile, have you formed an opinion as to
10 whether or not Mr. Bigley is in fact competent to give
11 informed consent?
12 A It is my professional opinion that he is not.
13 MR. GOTTSTEIN: Objection, Your Honor. And I
14 think he hasn't really been qualified. And I don't
15 know if that's -- I assume it's not a scientific
16 opinion, based on science.
17 THE COURT: I think it was based on his work
18 at API and knowledge of Mr. Bigley. That's what I
19 took it as.
20 So to that extent, if you -- I mean,
21 technically, yes, the witness has not been qualified.
22 So if you wanted to --
23 MR. TWOMEY: We can qualify the witness, Your
24 Honor, if that's necessary.
25 THE COURT: Just qualify the witness.

1 And if you had voir dire. But I hear he's a
2 psychiatrist at API, correct?
3 THE WITNESS: Your Honor, I am a
4 psychologist.
5 MR. TWOMEY: Is that correct?
6 THE COURT: Psychologist?
7 MR. GOTTSTEIN: Your Honor, if -- if we can
8 agree that he's not testifying as to -- as to a
9 scientific opinion, I think I can agree with that.
10 But if it's scientific, then of course it comes under
11 Coon.
12 THE COURT: I'm going to find that this
13 witness can testify as to his opinion based on his
14 work as a psychologist as to competency.
15 And I would -- the case that comes to my mind
16 on this issue is the Samaniego decision which talked
17 about psychological testimony and the applicability of
18 the Coon Daubert standard.
19 So in any event, I will allow the witness to
20 testify as to competency from his knowledge of the --
21 of Mr. Bigley and background as a psychologist. And
22 then certainly in cross, you can explore the issue
23 further.
24 MR. GOTTSTEIN: Your Honor, I think there's
25 a -- and I'm sorry I didn't bring it with me, and I

1 should have. I think there's a case called Marron,
2 M-A-R-R-O-N, where the Alaska Supreme Court discussed
3 the difference between scientific evidence, which
4 requires the Coon analysis, and opinion evidence based
5 on experience, which doesn't, but still has to have
6 the (indiscernible) of reliability.
7 THE COURT: In any event, I'm allowing the
8 witness to testify as a psychologist. And if you
9 wanted to explore it on cross, that's absolutely fine.
10 But I am not excluding the evidence under Coon
11 Daubert.
12 MR. TWOMEY: Your Honor, we will call another
13 witness. So at this point, I have no further
14 questions for Dr. Maile.
15 THE COURT: All right.
16 MR. TWOMEY: (Indiscernible) opposing counsel
17 to cross.
18 THE COURT: Okay. Thank you.
19 Go ahead, please, Mr. Gottstein.
20 LAWRENCE MAILE, Ph.D.
21 testified as follows on:
22 CROSS EXAMINATION
23 BY MR. GOTTSTEIN
24 Q Dr. Maile, thank you. I believe that during
25 your testimony during the commitment phase, you

1 testified that you were unaware of anybody having
2 assaulted Mr. Bigley except while under your care; is
3 that correct?
4 MR. TWOMEY: Objection, relevance, Your
5 Honor.
6 THE COURT: I will allow that. Go ahead.
7 A I am not aware of him being assaulted outside
8 of here -- outside of API, that is.
9 I am also not aware of him being assaulted in
10 API, Mr. Gottstein, although we have intervened
11 because of Mr. Bigley's threats to other patients.
12 But he has not been assaulted.
13 BY MR. GOTTSTEIN
14 Q Didn't you testify that another patient
15 attacked him in API?
16 A Mr. Gottstein, I testified that another
17 patient very likely would have.
18 Q Didn't you testify that's how he got that
19 bruise on there?
20 A What bruise?
21 Q On his cheek.
22 A Mr. Bigley had a cyst.
23 MR. BIGLEY: (Indiscernible.)
24 THE COURT: Oh, no, Mr. Bigley. That's all
25 right. You don't need to do that, sir. But thank

1 you.
2 Go ahead.
3 A Mr. Bigley had a cyst on his cheek. That is
4 not a bruise, as far as I know, unless it's associated
5 with the removal of that cyst.
6 BY MR. GOTTSTEIN
7 Q So then in forming your opinion, you didn't
8 use any of the validated competency to accept or
9 decline medication instruments that have been
10 developed, have you?
11 A No.
12 Q And you testified that when he was compliant
13 with meds, you know, he was kind of easier to deal
14 with. So he's voluntarily taken medications in the
15 past, right?
16 A He has in the past, at various times.
17 Q Do you remember what -- what times? I mean,
18 I remember a couple, but --
19 A I don't.
20 Q Do you -- and now, you mentioned that he had
21 made threats to you. And I think in your testimony
22 during the commitment phase, you testified that he --
23 he often makes those kind of threats, and people that
24 know him know not to take them seriously, correct?
25 A No, Mr. Gottstein, that is not what I said.

1 I said that we must take them seriously, given the
2 nature of the threats. Whether he will in fact follow
3 through on them is an open question. But we must take
4 them very seriously, especially given that he's
5 threatened to kill the children of my staff people.
6 Q I'm sorry. But I think you testified that he
7 never has acted on any of them, didn't you, to your
8 knowledge?
9 A Not to those threats, not to my knowledge.
10 Q Now, are you aware of the study from the
11 National Association of State Mental Health Directors
12 that came out about a year ago that showed that since
13 the advent of these new so-called atypical
14 neuroleptics, that the average lifespan of people in
15 the mental health system is now 25 years less than the
16 general population?
17 A No, I am not.
18 Q But if -- if it's true, that these drugs
19 dramatically shorten or substantially shorten people's
20 lives, then wouldn't it be fair to characterize them
21 as a poison?
22 A I think --
23 MR. TWOMEY: Argumentative, Your Honor.
24 THE COURT: Oh, I will overrule that. I will
25 allow it. Go ahead.

1 A I would first want to see the study,
2 Mr. Gottstein.
3 But it strikes me that there are a number of
4 things that could well explain that, including the
5 progression of the disease, difficulties in lifestyle,
6 a number of things that could result in a
7 foreshortened lifespan of individuals with
8 schizophrenia, medication or not. That's --
9 BY MR. GOTTSTEIN
10 Q So you are unfamiliar with that study?
11 A I am unfamiliar with that one.
12 Q And unfamiliar with that the lowered lifespan
13 has dramatically increased since the introduction of
14 the new atypical drugs?
15 A I'm sorry; I didn't understand.
16 Q And so you are unaware that the lifespan of
17 people being given these drugs has dramatically
18 lowered since the introduction of these drugs?
19 A Interestingly, I have reviewed several
20 studies that are on the Web site actually. And --
21 THE COURT: On what Web site?
22 THE WITNESS: On Mr. Gottstein's Web site.
23 A And as I look at them, there are some better
24 and worse studies. There are those that discuss the
25 side effects of different medications, their positive

1 potential impacts.
2 But I didn't see any that had a direct
3 conclusion atypical antipsychotic medications lead to
4 increased mortality or shortness of life.
5 They do discuss side effects, and there are
6 some. They appear to be somewhat different than the
7 typical antipsychotics, as near as I can tell.
8 BY MR. GOTTSTEIN
9 Q So I think it was -- so then you didn't
10 review the Waddington study that is on the Web site
11 from Ireland? I think that shows that the mortality
12 rate doubled since the introduction of the atypicals.
13 A There are several interesting studies, I
14 thought, looking at -- there is the study from
15 Ireland, there was the one from Finland and one from
16 Switzerland, I believe; is that correct? Those are
17 the ones you have posted on your Web site?
18 Q Well, I have lots of studies on the Web site.
19 I think the Switzerland and Finnish ones really are
20 about alternatives, aren't they?
21 A They are about different sorts of medication
22 and non-medication treatments.
23 THE COURT: Can you back up and tell me what
24 atypicals are?
25 THE WITNESS: Yes, Your Honor. There are, if

1 you will, two sort of generations of anti-psychotic
2 medications. I guess the easiest way to characterize
3 them are the old ones and the new ones.
4 The old ones are those that were initially
5 developed and started to be employed in the '50s and
6 are still used.
7 The atypicals are the newer medications,
8 different formulas that purport to be more specific in
9 their action.
10 THE COURT: Thank you.
11 Go ahead, please, Mr. Gottstein.
12 BY MR. GOTTSTEIN
13 Q Okay. Just to kind of confirm, if -- if
14 these drugs do in fact reduce life spans substantially
15 then, wouldn't it be a fair characterization to call
16 them poison?
17 A If, Mr. Gottstein, that were the only factor,
18 and I could say clearly looking at the evidence, these
19 medications and nothing else shortened people's
20 lifespan, I would say that they would have to be
21 employed very carefully.
22 I would also say, though, Mr. Gottstein, that
23 if an individual has schizophrenia and one were, as an
24 example, to kill oneself, that I would have to weigh
25 the probability that an individual would take his own

1 life versus the need to treat them with something that
2 might be invasive and of concern in terms of side
3 effects.
4 One of those things -- those are medical
5 decisions that must be weighed.
6 Q Well, first off, Mr. Bigley has never been
7 a -- at least recently, a suicide (indiscernible), has
8 he?
9 A He hasn't over the last several admissions,
10 no.
11 Q And then I guess the point is, is that you
12 feel it's your decision whether -- whether his -- you
13 know, whether he should -- whether life-shortening
14 drugs should be given rather than his --
15 A Mr. Gottstein, I think the decision rests
16 with the court. I am in a position, having petitioned
17 for this, to bring these concerns to the court. But
18 the court must ultimately decide.
19 Q Okay. Now, if -- if Mr. Bigley knows by
20 talking to you that what he says to you will be used
21 against him in court, wouldn't it be a fair
22 characterization for him to think that you were out to
23 get him?
24 A I guess I'd have to think about that.
25 My practice, as you likely know,

1 Mr. Gottstein, is in the forensic arena primarily.
2 And that characterization can be made of all of my
3 clientele.
4 Ironically also, they all tend to speak to
5 me. And those who were motivated to seek treatment in
6 their own best interests tend to do so even though
7 there may be potential legal consequences for them.
8 So it's not my experience that the majority of my
9 patients see me as out to get them.
10 Q So I'm not sure that you -- do you disagree
11 with that statement? I mean, I don't mind that
12 answer, but with -- if -- if he believes -- you know,
13 Mr. Bigley has a lot of experience with coming into
14 court and having people like yourself testify against
15 him, right?
16 A Unfortunately, yes.
17 Q And so he's got a lot of experience with
18 people like yourself taking what he says and using
19 that against him, right?
20 A I'm certain he interprets it that way.
21 Unfortunately, you know, I think if Mr. Bigley were
22 exercising the good judgment that he shows when he has
23 in fact been treated, he wouldn't be making the
24 threats, which I am also going to come and report to
25 the court and can't be in his best interests.

1 Q And in fact not only in this arena when --
2 that what he says to you can be used against him,
3 actually when he doesn't talk to you, as you just
4 testified, it can be used against him. And when --
5 you testified that he didn't talk to you as grounds
6 for lack of competency, correct?
7 A I don't honestly remember that being my
8 testimony, Mr. Gottstein.
9 Q You testified that he wouldn't talk to you,
10 right?
11 A Mr. Bigley talks to me a great deal.
12 Unfortunately, it's --
13 Q Well, I meant about the medications.
14 A He has not spoken extensively about them,
15 other than to say he doesn't want them.
16 Q So now you testified that in the past, he's
17 voluntarily taken them, correct?
18 A Yes, he has.
19 Q And then at some point after that, he's
20 decided not to take them; is that correct?
21 A It appears to have been several points.
22 MR. GOTTSTEIN: Okay. I have no further
23 questions.
24 THE COURT: Follow-up, Mr. Twomey?
25 MR. TWOMEY: Thank you, Your Honor.

Page 38

1 LAWRENCE MAILE, Ph.D.
2 testified as follows on:
3 REDIRECT EXAMINATION
4 BY MR. TWOMEY
5 Q Dr. Maile, are you out to get Mr. Bigley?
6 A No, I am not. I guess if -- if I were to get
7 my professional wish, if you will, for Mr. Bigley, it
8 would be that he would receive medication and return
9 as much as he is able to the Bill Bigley that I know
10 from times when he is treated.
11 As I said, Your Honor, a friendly, pleasant
12 guy. He is funny. He's easy to be around. That
13 would be what I would wish to happen for
14 Mr. Bigley.
15 Q You want him to get better?
16 A I do.
17 MR. TWOMEY: No further questions, Your
18 Honor.
19 THE COURT: Did he have any side effects when
20 these drugs were administered to him in the past?
21 THE WITNESS: Mr. Bigley has complained of
22 several side effects over time.
23 One of the ones that he complained about most
24 frequently was weight gain, which is a fairly common
25 side effect of atypical anti-psychotic medication.

Page 39

1 He's talked about being sleepy.
2 I can't honestly remember right offhand his
3 other complaints. He has been very clear he doesn't
4 like the side effects, though.
5 THE COURT: Okay. Follow-up at all,
6 Mr. Gottstein? And you can follow up on that topic,
7 as well, if you'd like, and I will accord counsel, as
8 well. Go ahead.
9 MR. GOTTSTEIN: Yes. Thank you. So he's --
10 oh, I know what it was. I'm sorry, Your Honor. I'm a
11 little sleep deprived at the moment.
12 THE COURT: That's all right.
13 LAWRENCE MAILE, Ph.D.
14 testified as follows on:
15 RECROSS EXAMINATION
16 BY MR. GOTTSTEIN
17 Q So doesn't he also have tardive
18 dyskinesia?
19 A Does he carry that as a diagnosis? No. He
20 has not been diagnosed with tardive dyskinesia.
21 Q So you are unaware of testimony in a previous
22 case that he does have tardive dyskinesia?
23 A I am not aware of it, no.
24 Q And it -- and he's also complained of sexual
25 dysfunction, hasn't he?

Page 40

1 A I honestly don't remember.
2 Q So you are not aware of testimony in a
3 previous case where -- I think it was Dr. Worrell
4 testified to that effect?
5 A I am unaware of that.
6 Q Yeah. But isn't it true that sexual
7 dysfunction is a side effect of these drugs?
8 A Yes, potentially, it is.
9 Q And as is tardive dyskinesia?
10 A Yes, sir.
11 MR. GOTTSTEIN: I have no further questions.
12 THE COURT: Follow-up at all on those?
13 MR. TWOMEY: No, Your Honor.
14 THE COURT: Okay. Thank you, sir. You are
15 excused.
16 (Witness excused.)
17 THE COURT: Your next witness.
18 MR. TWOMEY: Dr. Khari, Your Honor.
19 THE COURT: Good morning.
20 (Oath administered.)
21 THE CLERK: Ma'am, for the record, could you
22 state and spell your first and last name.
23 THE WITNESS: Kahnaz Khari, K-A-H-N-A-Z, the
24 last name K-H-A-R-I.
25 THE COURT: Thank you. Go ahead, please.

Page 41

1 DR. KAHNAZ KHARI
2 called as a witness on behalf of the State, testified
3 as follows on:
4 DIRECT EXAMINATION
5 BY MR. TWOMEY
6 Q Good morning, Dr. Khari. Where are you
7 employed presently?
8 A Alaska Psychiatric Institute.
9 Q And you are a medical doctor?
10 A Yes. I am a staff psychiatrist in two units,
11 in the chronic unit and the forensic unit.
12 Q And you are board certified?
13 A Yes.
14 Q By what boards?
15 A By the American Psychiatry and Neurology
16 department. I forgot.
17 Q Are you familiar with Mr. Bigley as a patient
18 at API?
19 A Yes. But I just want to clarify that I was
20 two weeks away. In this hospitalization, I actually
21 had the first physical interaction this morning.
22 Q Okay. So you met with Mr. Bigley this
23 morning prior to coming to court?
24 A I attempted it, but I was not successful.
25 Q Have you had an opportunity to review

Page 42

1 Mr. Bigley's chart for this most recent admission?
2 A Yes. I was able to scan through and look at
3 some of the pages that was of interest.
4 Q Is Mr. Bigley taking medication at this point
5 in time?
6 A No, he is not.
7 Q What medication are you proposing for
8 Mr. Bigley?
9 A I did look through some of the medication
10 that Mr. Bigley has been taking during his
11 hospitalization on 75th admission that he had in API.
12 On the various medication that he has been,
13 the longest he has been on was Risperidone. And I am
14 intending to use that medication because it is in the
15 (indiscernible) form, like Risperidone Consta, which
16 since Mr. Bigley has a history of non-compliance and
17 he has taken that medication, he has responded,
18 (indiscernible) to it and did not show any side
19 effect.
20 So unless at some point when he takes the
21 medication he is able to engage and I am able to sit
22 with him to speak rationally, then discuss other
23 medication, other options, to see if there is any
24 other medication he would like me to look into.
25 Q Okay. So at this point, your plan is

Page 43

1 Risperidone?
2 A Yes.
3 Q And how is that drug administered?
4 A That medication comes in actually three
5 different format. In a tablet format, and in
6 dissolvable form, and also in the injection form.
7 Q And how do you propose to administer the drug
8 to Mr. Bigley should the court grant permission?
9 A Usually when we give the medication in the
10 injection form. First we like to give them in the
11 oral form to make sure the patient doesn't have any
12 adverse reaction, mostly (indiscernible), but
13 anaphylactic reaction.
14 But in his case, he is not -- he is not
15 agreeing to take any medication. And he has taken
16 that medication, did not show any severe adverse
17 effect to the medication, so I am considering to go in
18 the injection form.
19 Until that medication take that effect, I am
20 also going to offer a medication from benzodiazepine
21 family, like lorazepam or Clonopin, which is more of
22 anti-anxiety medication to be able to -- he has
23 responded well to that medication in past while he was
24 under my care.
25 It decreases -- it decreases agitation,

Page 44

1 labile mode, and his irritability, and also provided
2 him some good sleep.
3 THE COURT: And I am going to point out here,
4 Mr. Gottstein, maybe you could discuss with
5 Mr. Bigley.
6 I know. When you talk, the problem is,
7 Mr. Bigley, is that we are trying to record all of
8 this.
9 And if you are unhappy with the decision or
10 if the State is unhappy, then everybody has a right to
11 appeal. And the problem is that we don't make a good
12 recording when there is more than one person talking
13 at once. It's just -- so it's an important thing that
14 we only have one person talk at a time.
15 MR. BIGLEY: Sorry.
16 THE COURT: I understand that. I understand
17 that. All right. That's all right.
18 Go ahead, please.
19 BY MR. TWOMEY
20 Q Dr. Khari, what dosages of medicine do you
21 propose?
22 A Well, he's been taking that medication for --
23 on his last administration has been on 50-milligram
24 IM. So I kind of like to look at it again more in
25 detail, and then I could go on to the 37.5. The

Page 45

1 option is only 25-milligram to the 37.5 on
2 50-milligram. And every two weeks.
3 So probably actually on my first dose, I
4 might give him 25-milligram, and then on the next two
5 weeks, increase it to 37.5, and then go to the higher
6 dose.
7 Of course, I have to observe him as I give
8 the medication to see how he is responding, because
9 each time the patient does get the (indiscernible),
10 the response would be different just based on his
11 response gradually, decide what dosage should I move
12 to.
13 Q Okay. So you are going to follow a plan then
14 in terms of raising his dosage?
15 A Well, I am going to start with 25-milligram
16 IM every -- the first one. But I don't -- knowing
17 Mr. Bigley from past and also looking at the -- in
18 reviewing his medication, I do not believe that would
19 be a sufficient dose.
20 The maximum dose is 50-milligram IM every two
21 weeks. So my ultimate goal would be a 50-milligram IM
22 dose.
23 Q Okay. Why not just give him the 50-milligram
24 injection at the outset?
25 A Well, actually, I could really go to

1 50-milligram. I personally lie more on the
2 conservative side. I -- even though, as I say, he has
3 a severe level of schizophrenia, he would respond well
4 to it. But still I would like to -- I understand that
5 he is totally against the medication.
6 So I would like to give him that benefit
7 of -- start with 25-milligram, and hoping that he gets
8 enough -- some level of improvement that his agitation
9 and irritability goes down that perhaps I could have a
10 reasonable, rational talk with him.
11 And by that, take the next step to -- part
12 also to improve the (indiscernible) alliance that I
13 create with my patient, to show him that I do want to
14 hear with him -- I do want to hear him. I want to
15 work with him and try to come off together, moving
16 towards the direction to improve the quality of his
17 life.
18 Q At this point in time, are you capable or are
19 you able to have that sort of conversation with
20 Mr. Bigley?
21 A Unfortunately, this morning, my intention was
22 to go talk with him and try to evaluate and discuss
23 the medication. He was very agitated. He was labile.
24 He start immediately. Without me even having
25 the first chance to say any word, he became making

1 inappropriate comment. He was -- as I said, his
2 behavior was escalating, so I decided it would be best
3 for me at that time to separate myself for -- for
4 safety of both.
5 Q What changes would you expect to observe in
6 Mr. Bigley's symptomology after initiation of the
7 treatment by medicine?
8 A From looking at -- knowing Mr. Bigley from
9 past, as my colleague just on the last (indiscernible)
10 express, that when Mr. Bigley is on medication,
11 usually he is very likeable. It is very easy to
12 engage with him. Even though on his baseline he may
13 maintain his delusional thought content, but the
14 intensity of it is a lot in lower level.
15 He is able to -- he is able to maintain his
16 better -- better level of the engagement with other
17 people. So I would expect him to be able to have some
18 improvement his rational thought and have a better
19 control, even though his delusional thought content
20 may be present. But he is able to be in touch with
21 reality more and be able to have some level of
22 sensible discussion.
23 Q Are these medicines that you are proposing to
24 administer to Mr. Bigley, are they painful?
25 A The injection is of course -- you know, I

1 think you do not find many individual that appreciate
2 to get any form of injection, even when -- so from
3 that aspect. So it is going to be intrusive and is
4 going to have some impact on the muscles.
5 But however, I have observed that medication
6 injection form given to many. It hasn't -- you know,
7 it is not a pain that would -- it depends to the
8 individual level of degree of how they perceive the
9 injection.
10 Q What are the possible side effects of the
11 medications that you are proposing?
12 A This medication is of a newer level of
13 medication (indiscernible) anti-psychotic.
14 What I mean with the atypical anti-psychotic
15 medication in comparison with the older anti-psychotic
16 medication, their side effect is more favorable. Of
17 course, it depends on how we look at the side effect.
18 When you look at the older anti-psychotic
19 medication, you have a higher level of tardive
20 dyskinesia, extreme (indiscernible) side effect.
21 With the newer medication, usually you do
22 have them, but at a lower level. However, this
23 medication in the higher dose does have some
24 similarities with older anti-psychotic medication.
25 MR. GOTTSTEIN: Your Honor, objection.

1 THE COURT: Just a moment.
2 MR. GOTTSTEIN: I'm sorry. I was a little
3 bit -- but I think she's testifying as to scientific
4 evidence, and that she be required under Coon and
5 Marron to provide that kind of -- that foundation and
6 background in there.
7 THE COURT: I will sustain your objection as
8 to foundation for the expertise on the side effects.
9 So go ahead.
10 BY MR. TWOMEY
11 Q Okay. Dr. Khari, are you trained in the side
12 effects of the medications that you are talking about
13 here today?
14 A That is part of my training. And that is
15 part of the side effect that has been shared is all
16 based on evidence study that is done and on -- based
17 on what has been observed on the patient.
18 Q Okay. How have you educated yourself about
19 the side effects of these medications?
20 A Well, part of the education, then we go
21 through the medical training. There is
22 (indiscernible) training.
23 But most part of it, as you go continue on
24 every medication from pharmaceutical company and from
25 other study that is available when they do on each

Page 50

1 individual medication, and as well also observing the
2 patient while they take the medication in the
3 hospital.
4 Q So you personally have observed patients
5 having side effects from medication?
6 A Yes.
7 Q Okay. And how do you treat those side
8 effects?
9 A Well, it depends what side effect we are
10 talking about. To actually complete the first part of
11 the question for this medication side effect, the
12 major side effect of this medication --
13 MR. GOTTSTEIN: Objection, Your Honor.
14 THE COURT: No. I think it's -- an adequate
15 foundation has been laid. But you can certainly
16 explore it in cross, Mr. Gottstein.
17 Go ahead.
18 A The major side effect of this medication is
19 (indiscernible) is not as significant to some other
20 medication.
21 But it does have moderate weight gain. It
22 does have some sedation side effect. It does have
23 (indiscernible) hypertension. And in higher dose
24 could have EPS and some level of tardive dyskinesia
25 and hyperprolactinemia.

Page 51

1 So those are the major side effect that
2 become a concern. And I am so sorry. I forgot the
3 second part of question.
4 Q I asked you how do you treat those side
5 effects.
6 But first, before we get there, which of
7 those side effects would be of concern to you in the
8 case of Mr. Bigley? You have mentioned several
9 possible side effects, including weight gain. Is
10 weight gain a concern?
11 A As I said, every side effect that I mentioned
12 is a concern for me for every individual patient that
13 I treat.
14 But again, Mr. Bigley has taken this
15 medication for a long period and the side effect has
16 not been observed, even though he has expressed the
17 side effect of weight gain and sedation.
18 So really, I have not observed any side
19 effect at the present time to see that become a major
20 concern for me. But part of the hospital setting, not
21 just for Mr. Bigley, for every patient in every unit
22 with every clinician that they continuously monitor.
23 They do regular (indiscernible) test, which is
24 especially for tardive dyskinesia, to make sure the
25 patient is not experiencing those side effect.

Page 52

1 So this is part of the training of all the
2 staff in the hospital, from nursing staff to the rest
3 of the team, to observe for those side effect.
4 Q Okay. So your plan in connection with
5 Mr. Bigley's treatment would be to monitor him for the
6 development of side effects?
7 A Yes.
8 Q How would you expect the proposed medicines
9 to interact with any other medicines or street drugs
10 or alcohol that Mr. Bigley might consume?
11 A Well, we never recommend our -- our patient
12 to take mix medication with alcohol or the occasional
13 substances. Of course, that is not recommended.
14 But however, mixing the medication with the
15 illicit drugs of course is not -- he is not going to
16 have the maximum full benefit of the medication.
17 It still in our population is not uncommon
18 that unfortunately, the risk of -- or the level of use
19 of the alcohol and substances is high, even though we
20 recommend to our population -- to the patient it is
21 still the (indiscernible). They may continue to use
22 the drug. But (indiscernible) medication to be
23 continued, because it allows them to be able to --
24 Of course, it depends what medication you are
25 talking. With some medication could be very fatal,

Page 53

1 when you mix for example benzodiazepine with alcohol.
2 But however, the interaction of those medication, even
3 though is not recommended, it doesn't have the
4 fatality that benzodiazepine family of the medication
5 have, or class of medication has.
6 Q Is the medication that you are seeking
7 permission from the court to administer to Mr. Bigley,
8 is it experimental in nature?
9 A No, it's not. This medication has been used
10 for -- since -- I may be off on the date, but since
11 '90s. It is not a new medication. It is not
12 experimental medication, and is very common medication
13 be used with a patient with the diagnosis of
14 schizophrenia.
15 Q Does the standard of care of psychiatrists in
16 this community require the administration of the
17 medicine that you are advocating?
18 A Yes.
19 Q So the use of that medicine in Mr. Bigley's
20 case would be within the standard of care in this
21 community?
22 A Yes, it is.
23 Q What benefits would you expect to see in
24 terms of the extent and duration of changes in
25 Mr. Bigley's behavior should the court grant

Page 54

1 permission?
2 A But every individual is respond to the
3 medication differently.
4 I know you are asking about Mr. Bigley. And
5 every time when the patient doesn't take their
6 medication, unfortunately, the (indiscernible) -- the
7 individual continue deteriorating. So the response
8 may be different or may be longer this time than in a
9 previous time.
10 So I cannot really give the exact date or
11 time how he would respond, mainly because he has not
12 been on medication for some time. But what I do know
13 is that he has responded well on the medication. He
14 did make some improvement with the medication, and I
15 would expect that happen again.
16 Q Is it true that the longer that Mr. Bigley
17 fails to receive this medication, the more harm he is
18 experiencing?
19 MR. GOTTSTEIN: Objection, Your Honor. I
20 don't think there's a -- I think she's got to lay a
21 foundation for scientific evidence to respond to that.
22 THE COURT: The question was, is there a harm
23 in not taking the medication?
24 MR. TWOMEY: That's right, Your Honor.
25 THE COURT: Okay. I will sustain as to

Page 55

1 foundation. Go ahead. If you wanted to lay more on
2 that topic.
3 MR. TWOMEY: Okay.
4 BY MR. TWOMEY
5 Q Do you have an opinion, Doctor, as to whether
6 or not Mr. Bigley's mental condition is deteriorating
7 at the present point in time in the absence of
8 receiving medication?
9 A Yes. As -- as I have seen Mr. Bigley when he
10 was on medication, he actually was functioning in the
11 community in an assisted living facility. And he was
12 able to have more rational interaction, and he wasn't
13 labile. He was -- as I say, he was less tangential,
14 less loose.
15 So I have seen him in a higher quality of
16 living standard that he can have with the medication
17 versus when he's not on medication.
18 Q Okay. Apart from your observation of his
19 standard of living, are there other measurable changes
20 that you could observe in connection with Mr. Bigley's
21 mental condition?
22 A But his cognitive -- his thought process, you
23 know, as I mentioned earlier, that his -- even though
24 he may continue to have delusional thought content,
25 but the delusion -- the intensity of it in the lower

Page 56

1 intensity, he is not as labile, he is more
2 redirectable, and he is -- he does not make the --
3 some of the threatening statement that he continues to
4 make at the present time. And he is not as intrusive
5 or inappropriate that he has shown while he was in the
6 hospital last two weeks per report of the staff and
7 the chart.
8 Q Is there a risk of -- to Mr. Bigley presented
9 by not receiving the medication?
10 A Well, he will continue to deteriorate
11 further. He could -- he could put himself and others
12 in danger.
13 As again was earlier mentioned by Dr. Maile,
14 my colleague, that when he is showing this behavior in
15 hospital setting, all the staff are trained. They
16 know how to interact and how to perceive the
17 interaction.
18 But when he is in the community, he -- the
19 community might not have the understanding where
20 Mr. Bigley is coming from. So from that aspect, he
21 really could put himself or others in unsafe
22 position --
23 MR. GOTTSTEIN: Objection, Your Honor,
24 speculation.
25 THE COURT: Well, I think we've been over

Page 57

1 this, quite frankly, the issues that you've raised.
2 So in any event, I'll sustain. I think she's covered
3 this issue, in any event.
4 MR. TWOMEY: I just want to make sure, Your
5 Honor, that we have explored all of the risks of
6 non-treatment.
7 BY MR. TWOMEY
8 Q Are there any other risks of non-treatment
9 that we haven't yet discussed?
10 A He might not be able to provide the care for
11 himself, like not eating, not sleeping. And then --
12 and his psychotic thought content is going to get
13 increased, so --
14 Q Doctor, do you believe it's in Mr. Bigley's
15 best interest to receive the medicine that you are
16 proposing?
17 A Yes.
18 Q Why is that?
19 A I would expect that his mental state would
20 improve with the improvement of delusional thought
21 content, his rational thought, his thought
22 organization, and then his -- his affective mood.
23 MR. TWOMEY: I have nothing further.
24 THE COURT: Thank you.
25 MR. TWOMEY: Thank you, Your Honor.

1 THE COURT: Mr. Gottstein, go ahead, please.
2 MR. GOTTSTEIN: Thank you, Your Honor.
3 DR. KAHNAZ KHARI
4 testified as follows on:
5 CROSS EXAMINATION
6 BY MR. GOTTSTEIN
7 Q So one of the things that you testified to is
8 that after -- you hope that -- I believe -- correct me
9 if I mischaracterize your testimony. I certainly
10 don't intend to.
11 But I think you said that if you are allowed
12 to medicate him, that you would hope then to be able
13 to discuss other medications with him later?
14 A Well, I -- yes. I do that with all of my
15 patient. When they become more stable, I like to
16 discuss about the medication they are taking, the
17 benefit, the side effect and other options of the
18 medication.
19 But again, looking at long standing of the
20 period that he has been coming to the API, he has been
21 the longest on that medication, and it seemed it did
22 keep him to a level of stability that we would
23 anticipate to see in him.
24 Q So then he was -- as I understand it, he was
25 voluntarily taking medication in the past?

1 A Well, I would not say voluntarily. When he
2 was -- as far as (indiscernible), he was not taking
3 any medication voluntarily. But when he did have some
4 court commitment, the medication was given to him.
5 Q So how far past in his chart have you
6 reviewed his history?
7 A Well, as I said, I just came back to work
8 today. So I just scanned with it. So the list of the
9 medication, actually it was for several years back.
10 And then the last medication that he was on
11 mostly was actually on an antipsychotic medication and
12 mood stabilizer is (indiscernible). And I did not
13 mention the (indiscernible) because I know Mr. Bigley
14 is against medication, does not want to take the
15 medication, doesn't have any insight to his mental
16 illness, doesn't think in his medication.
17 And I thought having the medication
18 simplified, and then having one medication probably
19 would be -- would be the first best approach to go
20 first.
21 Q So I don't know if you can tell, but isn't it
22 true that from some relatively extended period of
23 time, maybe even a year or so up until October of
24 2006, that he was voluntarily taking -- coming to API
25 and getting his Risperidone shot every two weeks?

1 A But I am -- at that time when he was doing
2 that, actually I wasn't working for Alaska Psychiatric
3 Institute or was maybe the beginning of my work with
4 this institution.
5 And I am -- yes, I understand that he was
6 coming regularly and was taking that medication.
7 Q And then he wasn't under any court order to
8 take medication at that time?
9 A As far as I know, he was not.
10 Q And then is it -- I don't know if you can
11 review from the chart, but isn't it true then that
12 once the hospital wanted to add and insisted on adding
13 Depakote and Seroquel, that's when he -- that's when
14 he then said he didn't want to take it anymore?
15 A I'm not sure. I don't know. But I do see
16 that he was on the Seroquel and he was on Depakote. I
17 do not know what faced in (indiscernible) aspect of --
18 as I said, I wasn't providing care for him at that
19 time, so I don't know in what level he was agreeing to
20 come to the hospital to take that injection, and in
21 what situation he -- or in what point he changed his
22 mind that he doesn't want any medication.
23 Q Okay. Are you familiar with what's known as
24 the CATIE study?
25 A Yes.

1 Q And isn't it true that it found -- isn't it
2 true that that study was designed to compare the first
3 generation of neuroleptics versus the second
4 generation of neuroleptics, called -- excuse me --
5 called the atypicals?
6 A Yes.
7 Q Okay. And then isn't it true that that study
8 basically found there was no difference either with
9 respect to efficacy or side effect profile?
10 A It is. But also I want to add that there is
11 many studies available. And every study, we have to
12 look at the whole picture of it.
13 But answer to your question, yes, that study
14 at the end --
15 Q Can you --
16 A And they are still continuing that study, as
17 far as I know.
18 Q Do you -- can you cite to me any of those
19 other studies that you mention?
20 A Well, I don't have the list with me. But in
21 part of our practice, of course, you know, on a daily
22 basis, we try to read the studies or see the
23 publication or what's available. Unfortunately, I
24 don't have any of the names fresh in my mind right
25 now.

1 Q And then isn't it true that the -- isn't it
2 true that the CATIE study was funded by the National
3 Institute of Mental Health?
4 A I believe so.
5 Q And isn't it true that was the largest study
6 of its kind to compare the first -- called the
7 first-generation neuroleptics versus the so-called
8 atypical neuroleptics?
9 A It may have been.
10 Q And then isn't it true that that study found
11 that 75 percent of the people taking -- actually both
12 of those drugs -- quit taking them because they found
13 them either ineffective or the side effects
14 intolerable or both?
15 A I don't know what the percentage -- or
16 exactly what the percentage, what you may have -- you
17 know, if you are saying that is a statistic, then I
18 would say I have to look at the evidence and then to
19 say what the percentage.
20 But they did come from -- the conclusion of
21 the study was that they did not find major differences
22 between the two class.
23 Q Now, based on past experience, wouldn't you
24 expect that after you started giving Mr. Bigley -- if
25 you were allowed to forcibly drug him, that when he

1 got discharged, that he would quit?
2 A Well, this is what -- since I have known him
3 or since I have been in (indiscernible), it appears
4 that when he leaves the hospital, yes, he does not
5 want to stay compliant with medication.
6 And that is why we recommend to go with the
7 injection form. That is every two weeks. And it is
8 that -- if he stops taking the medication, at least
9 that medication is in his system for a period of time.
10 At least that keeps him stable for some short period.
11 But even every day is better than no day to
12 stay stable.
13 Q So you know, wouldn't it make sense to try
14 and come up with a program that -- where he would --
15 if he -- since he refuses to take the medications when
16 he leaves, to come up with a program to help him in
17 the community that doesn't involve drugs?
18 A Well, when he's in hospital at this point, I
19 think that the best thing we could do to keep him
20 stable is to offer the medication.
21 However, I am aware that there is some
22 program out that they are trying to work to have a
23 patient with the mental illnesses with no medication.
24 I think he already extensively involved with that
25 program, as well, which it is very good and

1 encouraging.
2 However in this case, at this point,
3 Mr. Bigley have a severe mental illness. He does not
4 have any rational thought process. And I think he
5 would benefit from the medication.
6 But I agree. Yes, in the community, we do
7 need work to the community when the patient do not
8 want to take the medication to see how we can work
9 together in the combination of medication and other
10 alternative to see if we can bring to work with this
11 population.
12 But I think at this point in the
13 (indiscernible), it is my understanding is what we
14 could do now to stable him, probably he would benefit
15 from the medication.
16 Q Now, you mentioned that the standard of care
17 requires the use of medication. Is that a fair
18 characterization of your testimony?
19 A Yes.
20 Q Okay. Now, does that mean that the standard
21 of care requires you to force him to take the
22 medication?
23 A Well, we are talking about Mr. Bill Bigley, I
24 wanted to make that also clear. It depends. Every
25 patient, to them, state of mind and how they are, how

1 severe is their pathology.
2 In the case of Mr. Bigley, he would -- you
3 know, as we could -- he is continually showing the
4 psychotic state. He is not organized. He is not
5 rational. And it is a standard of care to be able to
6 give the medication to bring some level of stability.
7 And hopefully from that point, we could have more
8 rational engagement and to see what other alternative
9 or avenues could be looked into.
10 Q So it seems to me that when I think of
11 standard of care, usually it would be that -- it would
12 be the standard of care to recommend the use of the
13 medication?
14 A Yes. I am sorry. I forgot the part that is
15 forced medication. Yes, the standard of care is to
16 recommend the medication, and let the individual
17 decide.
18 But the level of the psychopathology that
19 right now Mr. Bigley is experiencing, and we are in
20 the court, and that if the medication is going to be
21 forced is not the hospital's or the clinician's
22 decision. It is the court decision.
23 Q So if -- if you recommend a medication to a
24 patient -- well, first off, how many times have you
25 testified in forced medication proceedings?

1 A I do not know the number. I have been
2 working for API almost three years, so it is not
3 uncommon that -- we actually -- the hospital has
4 always the approach not to go to the court and try to
5 do that and try to work with the patient.
6 But it is not uncommon when the patient that
7 becomes so psychotic they don't have any insight into
8 their mental illness and they do not want to take the
9 medication, that put us in a position to come to the
10 court and try to have the court to make that decision.
11 Q So can you give an estimate of how many
12 forced drugging proceedings you have testified in?
13 A I am not good with numbers. I don't know.
14 But I have been in court many times.
15 Q Would it be more than 50?
16 A I am not really sure. Perhaps the number --
17 I have been in court at least 50 times, so --
18 Q Would it be -- so it would be more than 25?
19 A Probably. Probably so.
20 Q Could it be as high as 100?
21 A I don't think so. But again, as I said, I
22 don't keep the count of the numbers.
23 No, definitely not above 100, but probably
24 near 20s or around these figures I feel more
25 comfortable.

1 But then again, I really don't know.
2 Q So have you ever come to court and asked for
3 authorization to administer psychotropic medication to
4 a patient who has agreed to take them?
5 A No. Because if the patient agrees to take
6 medication, why would I want to come to court?
7 Q Okay. So if -- how many times, when a
8 patient doesn't want to take the medication, have you
9 said okay?
10 A Again, I cannot give you the number. But as
11 I said, every individual patient is different.
12 If the patient -- it is not uncommon that
13 I've had patient that they did not want to take the
14 medication. And I thought they would benefit from the
15 medication, but however, I did not see them gravely
16 disabled or danger to self or others. And I didn't
17 think -- you know, I thought that they could -- they
18 have enough support in the community and they could
19 manage to maintain themself in the community.
20 And I just -- I totally agreed. I
21 (indiscernible) them. I asked them when they get
22 discharged to follow up with outpatient provider. And
23 it is not uncommon that I have done that.
24 Q Okay. So in other words, if you think that
25 someone would benefit from -- well, from medication

1 and they don't want to, but you don't think that
2 they're a danger to self or gravely disabled, you
3 would recommend discharge?
4 A Well, do I recommend -- I don't recommend.
5 Do I recommend discharge?
6 Q Yes.
7 A Yes. I have had cases that the patient came
8 to the hospital, still did not want to take the
9 medication. We discussed, did not show the criteria
10 for hospitalization, didn't show the level of the
11 dangerousness or significant concern, and was
12 discharged with recommendation to take medication.
13 But they did not want to take it, and they were
14 discharged.
15 Q Okay. So now how many people who then you
16 have had that have been committed but didn't want to
17 take the medications did you accept that?
18 A As I say, I am not good with numbers. I
19 don't remember the numbers. But I have had cases that
20 I went to the court that the patient did not want to
21 take the medication. And I think I thought they would
22 benefit from the medication, and I went to the court
23 and court granted it, and I administered the
24 medication.
25 Q So I don't want to put words in your mouth.

1 And there is a little bit of a language thing here.
2 So what I understand your testimony to be is
3 that if the person is committed and they don't want to
4 take medication, that you'll go to court and ask for
5 court authorization?
6 A If I believe that they definitely need
7 medication, they must take medication and the patient
8 does not agree or doesn't think they should take
9 medication.
10 Q Okay. So basically what happens is if they
11 agree to take the medication, you -- you will accept
12 that. If they are committed and don't agree to take
13 it, that you will come to court and ask for
14 medication?
15 A But that is part of the statute, that if the
16 patient doesn't want to take the medication, and then
17 I feel like that they would benefit from it, and if
18 they don't take it they may put themself -- as I say,
19 they may put themself in danger, or others, or not
20 able to provide care for themself, then I have to come
21 to the court and then try to express my concern to the
22 court.
23 Q So would it be a fair characterization that
24 there just aren't patients at API that really are
25 allowed not to take medication?

Page 70

1 A No. We do have patient that are in the
2 hospital, and they don't take medication.
3 Q For long periods of time or just prior to the
4 discharge?
5 A No. Actually, they may not take medication
6 throughout their whole hospitalization.
7 Q How many would you say that is?
8 A Again, Mr. Gottstein, unfortunately, I am not
9 good with numbers. I cannot give you numbers.
10 But I am just saying that there are what I --
11 I guess what I am trying to understand, you are
12 mentioning -- trying to categorize the patient that
13 are in API, as far as yes, there are patient -- you
14 are put in three categories from the outset.
15 Are they patient in a hospital that -- or has
16 it been cases in the hospital that the patient came,
17 did not want to take the medication, hospital thought
18 they would benefit from the medication, and they say
19 they didn't take the medication during the
20 hospitalization, they got discharged, which I said
21 yes.
22 And the other category was you mentioned that
23 do the patient come there, they do not want to take
24 the medication, and the hospital feels -- the
25 clinician feels like they should take their

Page 71

1 medication, they take them to the court and court
2 grant the medication. I say yes.
3 And some is in between. They come to the
4 hospital. They want -- they think they are sick.
5 They want medication. Hospital gives them medication,
6 and they do not go to the court. This is the three
7 category I understand you are asking. And I am saying
8 that all those three categories does exist, and we do
9 treat our patient with those categories. And every
10 individual is different.
11 Q Okay. And what I'm trying to get at is --
12 and I am not trying to put words in your mouth or
13 anything. I just want to understand.
14 But -- so my -- what my sense of it is, if
15 they are in the hospital and they agree to take the
16 medication, they get it.
17 If they are committed in the hospital, at
18 least -- at least your patients, and don't want to
19 take the medication, you come to court and ask for
20 court authorization?
21 A Yes.
22 Q Okay.
23 THE COURT: Mr. Gottstein, is this a good
24 place to take a break here?
25 MR. GOTTSTEIN: You know, I think that --

Page 72

1 yeah, I think it probably is. I'm not sure if I'm
2 done or not, but --
3 THE COURT: All right. And then you can
4 review your notes. And then we'll have any redirect
5 and Ms. Vassar's report shortly. We're going to take
6 a short break.
7 And, Mr. Gottstein, if you can impress again
8 on your client the importance of making a good record
9 here as best you could, I appreciate it.
10 We'll take a short break.
11 THE CLERK: The court will be in recess.
12 12:14:10
13 (Off record.)
14 12:32:50
15 THE COURT: We are back on record here. And,
16 Mr. Gottstein, I see your client is gone. But are you
17 ready to proceed?
18 MR. GOTTSTEIN: I think we can, Your Honor.
19 THE COURT: All right. Then go ahead,
20 please.
21 MR. GOTTSTEIN: Although I much prefer to
22 have him here. But I understand we need to keep
23 moving.
24 BY MR. GOTTSTEIN
25 Q Dr. Khari, who would know at the hospital how

Page 73

1 many unmedicated patients there are?
2 A Well, I am sure the -- that I -- I am not
3 sure the exact person. But probably by contacting
4 Mr. Atter (phonetic) or Dr. Hopson, they may direct
5 you better to which person would have that answer.
6 Q So you think Dr. Hopson would probably know?
7 A He -- if he doesn't know, we know which
8 person would have -- would know. Or if we don't have
9 that, I'm sure it shouldn't be difficult somehow to
10 come up with some number, I suppose.
11 So in answer to your question, no, I don't
12 know. Perhaps Mr. Atter or Dr. Hopson could have a
13 better answer for you on that.
14 MR. GOTTSTEIN: Okay. Thank you. I have no
15 further questions.
16 THE COURT: Redirect?
17 MR. TWOMEY: No, Your Honor.
18 THE COURT: All right. Thank you. You can
19 be excused.
20 (Witness excused.)
21 THE COURT: And then we have a report from
22 the visitor, correct?
23 MS. VASSAR: Yes.
24 THE COURT: Or did you have other witnesses?
25 MR. TWOMEY: I don't, Your Honor.

Page 74

1 THE COURT: Go ahead, then.
2 MS. VASSAR: Thank you, Your Honor.
3 I did have the opportunity to meet with
4 Mr. Bigley this morning. And he was extremely
5 agitated. And we didn't get very far in the
6 interviewing process.
7 I do have a capacity assessment, a list of
8 questions that I -- that I ask the respondent. And we
9 didn't get very far in that at all.
10 It starts out really simple, like what's your
11 name, to which he responded: You know who I am. I am
12 the president of the United States.
13 And what's the date? And he said: Does it
14 matter?
15 Do you know the name of this place? Who
16 cares, was his response.
17 And that's about as far as we got into the
18 actual formal assessment tool.
19 But my observations were he was very
20 agitated. He was banging on the table. He got up at
21 one point and was standing over me, and then shoved a
22 chair across the room. Not very far across the room,
23 but shoved the chair.
24 He told me that the room was bugged. And I
25 really didn't -- it just -- and then he just starts on

Page 75

1 about a lot of his delusional content. The president
2 knows he's there, the president is going to get him
3 out, but he's the president. But he knows Bush.
4 And it just was escalating to a point where
5 I -- despite trying to ask him questions, I didn't --
6 I didn't get -- that's about as far as I got in the
7 process. And then he -- I -- they took him out.
8 He did want to know -- I told him that he had
9 the hearing today. And he is always very interested
10 in coming to court. And he wanted to know who it was
11 going to be before, and what the room number was, and
12 that sort of thing.
13 But other than that, I couldn't keep him on
14 track long enough to really get into the questions
15 that would be pertinent to this hearing.
16 I did speak with a psychiatric nursing
17 assistant who was with him on the unit and brought him
18 in and out of the room. And he said that his behavior
19 was consistent with what he had seen recently. He has
20 been very agitated, escalating.
21 I also spoke with Dr. Khari --
22 MR. GOTTSTEIN: Objection, hearsay.
23 THE COURT: It's coming in. I would think
24 that as a visitor, that hearsay statements would come
25 in. And I'm equating it to a custody investigator,

Page 76

1 like the court's appointed expert in that capacity.
2 So I will allow it in.
3 Go ahead.
4 MS. VASSAR: I also spoke with Dr. Khari, who
5 told me that he's had to spend a great deal of time in
6 the quiet room. He's been so agitated, he is also
7 agitating to the other patients.
8 When he came to the hospital on April 25th --
9 MR. GOTTSTEIN: Objection, Your Honor.
10 That's a continuing objection.
11 THE COURT: The hearsay objection is
12 continuing, and so noted.
13 And did you want to weigh in on the hearsay
14 objection?
15 MR. TWOMEY: Well, Your Honor, I am looking
16 at the statute 47.38.39 --
17 THE COURT: I have it right here.
18 MR. TWOMEY: -- (d)(2). And it seems plain
19 that the visitor is to talk about oral statements of
20 the patient and conversations with relatives and
21 friends. So it appears that the statute contemplates
22 such hearsay statements be considered by the court.
23 THE COURT: Go ahead, Mr. Gottstein.
24 MR. GOTTSTEIN: Your Honor, I think that is
25 actually directed to prior statements regarding his

Page 77

1 desire to take or decline the medication.
2 THE COURT: I would agree with you,
3 Mr. Gottstein, that that subsection is looking at
4 whether there have been expressed wishes regarding
5 medication stated in the past.
6 MR. GOTTSTEIN: He didn't say anything.
7 THE COURT: Nonetheless, I will allow in the
8 hearsay. Because what I see is that the visitor is --
9 her responsibility is to assist the court in
10 investigating the issue of whether -- on these issues.
11 And it's in that regard, akin to the other types of
12 experts we have where hearsay comes in for that
13 purpose. So --
14 MR. GOTTSTEIN: Your Honor, I really don't
15 understand how that's relevant to his capacity or
16 prior expressions of --
17 THE COURT: Well, on the relevance, I will
18 overrule you, as well.
19 So go ahead.
20 MS. VASSAR: He was admitted to the facility
21 on April 25th. And he was originally in the Susitna
22 unit, which is a lower level of supervision, I guess
23 you could say.
24 But he had to be removed from there to the
25 Taku unit because he was so disruptive. And --

Page 78

1 THE COURT: And when did that change occur?
2 THE WITNESS: On the 26th. He was only there
3 a day before they moved him to Taku.
4 MR. GOTTSTEIN: Your Honor, I really object
5 to that. Because it's going to the -- I think it's
6 highly prejudicial and it's not -- no real probative
7 value on the issue of competence.
8 There's been no -- my experience, Your Honor,
9 is that reasons are stated for these sorts of things
10 and end up upon exploration that they're really not
11 true. And I -- I really object to her description of
12 that as certainly not relevant. And the hearsay --
13 THE COURT: The reason for the change in the
14 unit? Is that what you're objecting to?
15 MR. GOTTSTEIN: Yeah. Well, the testimony
16 about -- yes.
17 THE COURT: Well, I will allow the testimony
18 that Mr. Bigley was moved to a unit that was more
19 restrictive, and let's move on.
20 MS. VASSAR: I found no evidence of an
21 advanced directive. I was not able to talk with other
22 family members. I received notice of this hearing
23 late on Friday, and I wasn't able to talk with other
24 family members. He hasn't really had any outpatient
25 providers to speak of, of late. He has been in and

Page 79

1 out of the hospital.
2 THE COURT: When did that -- that guardian --
3 MS. VASSAR: I did not speak to the guardian
4 on this admission. I have spoken with the guardian on
5 very recent admissions. I know the guardian is not
6 aware of any advanced directives, but the guardian
7 does support the use of medication.
8 I have spoken in the past with the guardian
9 that he had prior to the guardian that he now has at
10 OPA, Mr. Steve Young. And he was the -- he was his
11 guardian when Mr. Bigley was compliant with taking
12 medication on an outpatient basis from API. He would
13 go every two weeks and receive the Risperdal Consta.
14 And during that time, he lived in the
15 community in an apartment of his own. And he was able
16 to shop. He -- Mr. Young would accompany him on
17 shopping trips. And that went on for a couple of
18 years, where he voluntarily would get himself to API
19 either with a taxi or he knew the bus schedule to get
20 there and get his medication.
21 THE COURT: What timeframe was that
22 approximately?
23 MS. VASSAR: I'm thinking it was about 2003,
24 2004. It's been a while. But in that time. Possibly
25 up to 2005, in 2005.

Page 80

1 But somewhere in there, there was a
2 couple-year period of compliance where he did pretty
3 well. I'm trying to think of -- and he has --
4 Mr. Bigley, not this time because he was so agitated,
5 but he has mentioned side effects to me.
6 He has mentioned erectile dysfunction which
7 has come up. And my understanding is when he was
8 compliant with coming to API -- and I just learned
9 this recently -- that he also had a prescription for
10 Viagra during that time and did pretty well with that.
11 So although he had that complaint, it was addressed.
12 And he has also -- he's also complained to me
13 about the somnolence, you know, sleepy.
14 He's complained to me about the injections,
15 that he feels like they've altered the appearance of
16 his buttocks, and that's of concern to him.
17 And that's mainly what I've gotten from him
18 over the years that I've known him is the chief
19 complaint -- and he doesn't mention it so much now --
20 is erectile dysfunction, the feeling sleepy, not
21 feeling as on top of his game.
22 THE COURT: All right. Anything else to add
23 here?
24 MS. VASSAR: I don't know of any other -- any
25 other side effects that he's mentioned --

Page 81

1 THE COURT: Okay.
2 MS. VASSAR: -- or that have been verified by
3 the hospital. As far as I know, I have never seen a
4 diagnosis of tardive dyskinesia.
5 And the other thing, to Bill's credit, is
6 I've never seen a diagnosis of alcohol or street
7 drugs. So he doesn't have that complication when he's
8 out in the community.
9 THE COURT: All right. Anything else that
10 the state sought to add today?
11 MR. TWOMEY: No, Your Honor. I believe we're
12 satisfied with the evidence we've presented.
13 MR. GOTTSTEIN: Your Honor, may I cross
14 examine?
15 THE COURT: Well, I was going to ask, is the
16 practice generally to allow questions of the visitor?
17 MR. TWOMEY: Well, I believe the statute
18 permits that.
19 THE COURT: Permits that? And then I didn't
20 swear in Ms. --
21 MS. VASSAR: I'm sort of always sworn in.
22 But I'm certainly happy to be sworn in.
23 THE COURT: All right. And why don't I do
24 that and reaffirm all the testimony. It doesn't need
25 to be restated. And then Mr. Gottstein can ask some

Page 82

1 questions.
2 Go ahead, please, and stand. And you can
3 remain where you are.
4 (Oath administered.)
5 THE CLERK: For the record, can you please
6 state and spell your first and last name.
7 MS. VASSAR: Marie Ann, M-A-R-I-E, A-N-N. My
8 last name is Vassar, V-A-S-S-A-R.
9 THE COURT: All right. I guess it's an
10 indication that I am not doing these hearings on a
11 regular basis. They are usually across the street or
12 at API.
13 In any event, Mr. Gottstein, go right ahead.
14 MARIE ANN VASSAR
15 testified as follows on:
16 CROSS EXAMINATION
17 BY MR. GOTTSTEIN
18 Q Are you aware that Dr. Doug Smith treated
19 Mr. Bigley for many years in -- I think it was either
20 Sitka or Ketchikan?
21 A I am not aware of it.
22 Q So then you didn't inquire as to him about
23 any expressions regarding the drugs while he was under
24 his care?
25 A No, I didn't. I understand Mr. Bigley's

Page 83

1 lived in Anchorage for many, many years now. He was
2 last in Sitka many years ago.
3 MR. GOTTSTEIN: I have no further questions,
4 Your Honor.
5 THE COURT: All right. Follow-up at all on
6 that?
7 MR. TWOMEY: No, thank you, Your Honor.
8 THE COURT: Thank you, Ms. Vassar.
9 (Witness excused.)
10 THE COURT: So the State's concluded its
11 evidence.
12 Mr. Gottstein, as I indicated, if you sought
13 to come back another day and present evidence, you can
14 do so. And I will find time either tomorrow or
15 Wednesday on the calendar.
16 MR. GOTTSTEIN: Your Honor, I'd like to make
17 a motion at this point to dismiss the petition.
18 THE COURT: All right.
19 MR. GOTTSTEIN: I think --
20 THE COURT: On the break, I printed out Myers
21 once again here and Wetherhorn. So I have them right
22 here. Go ahead.
23 MR. GOTTSTEIN: I think that there are two
24 bases for that.
25 One is that they basically admitted -- two

Page 84

1 admissions. Admitted that he's voluntarily taken the
2 medication, and then quit.
3 And under the statute, if -- he can only be
4 administered medication if he gives informed consent
5 or by court order. So by definition, he either gave
6 informed consent, in other words was competent to
7 accept the medication at the time that he accepted it,
8 or it was an assault.
9 THE COURT: But aren't I looking at today as
10 opposed to in the past?
11 MR. GOTTSTEIN: No. Because if there is --
12 so there is a complete logical inconsistency with what
13 the hospital is doing, is that he is required -- in
14 order for them to administer drugs to him voluntarily,
15 he's got to be competent.
16 So if they give -- he's competent, competent
17 while he's taking it. And so then as soon as he
18 decides he doesn't want to take it, all of a sudden,
19 he is incompetent?
20 And in the case of the -- and that's
21 basically the testimony that was given, is -- and so
22 he has to have been competent at the time that he
23 declined. So that's one.
24 The other ground --
25 THE COURT: So are you saying that today he's

Page 85

1 competent or --
2 MR. GOTTSTEIN: No. If at any time in the
3 past -- the statute says if at any time in the past
4 he's -- you know, while competent, he's declined to
5 take the medication and expressed his view about it,
6 that the court has to honor that.
7 THE COURT: All right.
8 MR. GOTTSTEIN: And then the other ground,
9 Your Honor, is that Dr. Khari essentially admitted
10 that there is a less-intrusive alternative that wasn't
11 pursued.
12 THE COURT: And that would be, in your mind,
13 what?
14 MR. GOTTSTEIN: Well, she testified that it
15 would be -- it would be good to work with him to
16 develop a program in the community that honored his
17 choice not to take medications. And I've been trying
18 for quite some time to really get that.
19 And that's why, Your Honor, actually, my
20 preference would be to hold this proceeding in
21 abeyance pending a settlement conference to work
22 something out on that. Because I think that they
23 really admitted that there is a less-intrusive
24 alternative.
25 And what they have done in the past is they

Page 86

1 simply discharged him into the street without any kind
2 of support, which they know inevitably will lead to
3 problems.
4 THE COURT: So where -- and I understood that
5 testimony in the prospective, that it would be a
6 positive thing in our community to have such an
7 alternative. But is there one existing now?
8 MR. GOTTSTEIN: Well, yes, I believe one
9 could very easily be put together.
10 THE COURT: But currently there is no
11 facility that -- I mean, I don't know.
12 MR. GOTTSTEIN: Yeah. API could -- I'd move
13 for one, and it'd be in the paper -- you know, the --
14 I think in the attachments to my limited entry of
15 appearance.
16 But yes, what Mr. Bigley needs. And there is
17 actually testimony, although it was mine, about what
18 really he needs in the community. And in fact, there
19 is the affidavit of Paul Cornils, too. But really,
20 the -- a couple of things.
21 One is that Mr. Bigley has a lot to say. And
22 you know, it would be really helpful for him to have
23 someone to say it to.
24 And then to have someone in the community
25 with him while -- for substantial periods of time to

Page 87

1 just, you know, help him with -- to keep from getting
2 into trouble in all kinds of areas.
3 And I think that as I put in my -- that
4 submission, that the -- you know, having invoked the
5 awesome state power to lock him up and then move to
6 forcibly drug him, that that really -- his right to a
7 less-intrusive alternative springs into being and the
8 state is obligated to provide that. Because the state
9 may not provide their service in an unconstitutional
10 way.
11 THE COURT: Thank you, Mr. Gottstein.
12 What are the state's responses on those two
13 points?
14 MR. TWOMEY: Yes, Your Honor. We are here
15 today dealing with Mr. Bigley's mental condition as it
16 exists today. Mr. Bigley may or may not have been
17 experiencing a greater level of competency in the
18 past.
19 In the past when he was competent, he was
20 compliant with his medicines. He was taking those
21 voluntarily. He is not now. And the court is faced
22 with this issue now in determining as of today, is he
23 competent to make a decision concerning his medicines.
24 We believe our evidence --
25 THE COURT: Can I ask you a very fundamental

Page 88

1 question?
2 MR. TWOMEY: Yes.
3 THE COURT: If you look at the Myers case, it
4 lists at the second stage -- and this is after a
5 person's been -- after a commitment order has been
6 entered. And now it's talking about the type of
7 petition the state has here, the medication one.
8 It says: At the second stage, the state must
9 prove two propositions. And these then are two
10 separate requirements, as I understand it. There is
11 no "and" there, but should there be between 1 and 2?
12 That the committed patient is currently unable to give
13 or withhold informed consent, and that the patient
14 never previously made a statement? Is that your
15 reading of it?
16 MR. TWOMEY: Yes, that is my reading of it,
17 Your Honor.
18 THE COURT: All right. And so just so I
19 understand how the law would work here, is -- what if
20 somebody is mentally healthy, and at age 21 says I
21 never, ever, ever in my life want psychotropic meds,
22 no matter what?
23 MR. TWOMEY: I think the court needs to give
24 that deference. And we've he had the court advisor in
25 this case indicate that she has not found any such

Page 89

1 evidence. And the facts are contrary, Your Honor.
2 THE COURT: You know, and I understand that
3 from the facts here. But if a person made that
4 statement, then is your reading of Alaska law that if
5 at age 35 they developed a mental illness, that the
6 state would be precluded from administering --
7 administering meds -- psychotropic medication? Is
8 that your reading of the Myers case?
9 MR. TWOMEY: It is, Your Honor.
10 THE COURT: Okay. Thank you. Go ahead.
11 MR. TWOMEY: So --
12 THE COURT: Just to follow up, what if they
13 made that statement at age 21, and then at 30, they
14 said, you know, maybe that would be an okay way to
15 address this type of situation? So you had
16 conflicting statements made over the course of the
17 person's adult life, but at one point they had made a
18 statement --
19 MR. TWOMEY: I think you'd have to look at
20 the most recent statement made while competent, Your
21 Honor.
22 THE COURT: Okay. Thank you. Go ahead. I
23 kind of got you on a side track.
24 MR. TWOMEY: Well, just two points. One is
25 we're dealing with Mr. Bigley's condition today and

Page 90

1 the issue of whether he's competent today, not whether
2 he was competent in the past to accept medicines that
3 were being provided to him.
4 And we are also dealing with the situation as
5 it exists today with respect to alternatives to
6 treatment.
7 Dr. Khari's testimony as I understood it was
8 that there is no presently available alternative to
9 treatment by medicine, and that treatment by medicine
10 is within the standard of care and is required in this
11 case. It would be nice to develop a program and to
12 work with Mr. Bigley.
13 But Dr. Khari's testimony was that she is
14 hopeful that that will occur once she is able to
15 engage with this patient and after he receives his
16 medicine and his condition likely will improve.
17 So we are not faced with a situation where
18 there is an alternative presently available to treat
19 Mr. Bigley's condition.
20 THE COURT: But as I understood
21 Mr. Gottstein's argument, he was saying that the --
22 that the fact that Mr. Bigley stopped going to API and
23 voluntarily receiving medication was in effect a
24 statement made while competent, or that the action was
25 in effect the statement that expressed a desire to

Page 91

1 refuse future treatment. Do you understand? That's
2 how I understood his argument.
3 MR. TWOMEY: I guess I hear the argument. I
4 don't necessarily agree with it. I don't know why
5 Mr. Bigley stopped taking his medicine, what motivated
6 him at that point in time. I don't think that that's
7 an unequivocal statement that he doesn't want to take
8 medicine.
9 THE COURT: All right. Thank you.
10 MR. TWOMEY: Thank you, Your Honor.
11 THE COURT: Mr. Gottstein, any further
12 response on the motions?
13 MR. GOTTSTEIN: I think -- yeah. I don't
14 really need to belabor the point about the previous
15 statement.
16 THE COURT: Did I interpret your argument
17 correctly --
18 MR. GOTTSTEIN: Yeah.
19 THE COURT: -- that the conduct was in effect
20 a statement?
21 MR. GOTTSTEIN: Yes, Your Honor. And really,
22 when you look at the big picture of it, as I think
23 Dr. Khari really clearly testified, is that it's not
24 truly a legitimate competency process that goes on.
25 If people accept the medication, they say fine, and if

Page 92

1 they decline it, they automatically say that they
2 are -- well, you know, except in one case. Now, I
3 don't think that latter thing is so important here
4 with -- with respect to Mr. Bigley.
5 But I do think that -- and the other -- and
6 the other point here, really the big picture point, is
7 that Mr. Bigley has a right to a less-intrusive
8 alternative. And as long as the hospital is always
9 allowed to force someone to take medication, there
10 is -- there is no -- then they -- then his right to a
11 less-intrusive alternative is not being honored.
12 And I should have mentioned that there -- it
13 is possible for them to provide a less-intrusive
14 alternative. And it's in the paperwork that I filed.
15 Mr. Cornils' affidavit talks about some of it.
16 And I can file kind of, you know, proper, you
17 know, evidentiary forms of that. And I would intend
18 to if we go beyond that.
19 And also, the -- there are a number of staff
20 members at the hospital who like Mr. Bigley and could
21 really help him out in the community. And they
22 could -- and there are other people that could pretty
23 easily be found to do that.
24 And really, I think that's why I'd ask for
25 the settlement conference. Because I think we --

Page 93

1 rather than have this all-or-nothing situation where
2 he's not getting really what he needs and he's not
3 really -- and he's -- you know, and his rights, and
4 he's being forced to be drugged, and back and forth
5 and all this, that we ought to collectively get
6 together and try and work something out that has a
7 reasonable prospect for success.
8 And that's why I would really like to hold
9 this in abeyance pending a settlement conference on
10 that.
11 THE COURT: And who in your mind would be the
12 participants in that type of a settlement conference?
13 MR. GOTTSTEIN: Well, I think -- I think
14 Dr. Hopson is the medical director.
15 THE COURT: All right. Thank you.
16 MR. GOTTSTEIN: And you know, I think maybe
17 the -- the guardian probably.
18 THE COURT: So, Mr. Gottstein, I am not going
19 to be ruling on these motions today because I do want
20 to look again at the paperwork that you submitted and
21 the case law. But do you need -- do you plan to
22 present additional evidence, assuming I decline the
23 motions?
24 MR. GOTTSTEIN: Yes, Your Honor.
25 THE COURT: All right. And can you give me a

1 time estimation of how much, and who you would intend
2 to call and how long we should set aside on the
3 calendar?
4 MR. GOTTSTEIN: There is I think some written
5 testimony which I think will, you know, speed the
6 process that I can --
7 THE COURT: That's in the submission?
8 MR. GOTTSTEIN: Yeah. And I don't know. Do
9 you want me to file formal certified copies or -- I
10 mean, I probably should.
11 THE COURT: All right. So you've got the
12 written submission. And I'll ask the state's counsel
13 just a moment on that. But the written submission.
14 MR. GOTTSTEIN: Then I would probably -- I
15 think I would have some additional written testimony.
16 And then I think then make those people available for
17 cross examination.
18 Many -- a couple of them are telephonic, so I
19 would move the opportunity to do that telephonically.
20 And then I would probably -- I think probably an hour
21 and a half would be enough. I hate to -- not counting
22 cross, it's so hard to say. But I would say an hour
23 and a half for any, you know, supplemental oral
24 testimony.
25 THE COURT: All right. And so it's your

1 proposal to submit affidavits and then make those
2 people available to Mr. Twomey to cross? Or I'm not
3 sure I understand.
4 MR. GOTTSTEIN: Yes.
5 THE COURT: Okay. And who all in the way of
6 affidavits?
7 MR. GOTTSTEIN: Well, and it may not be an
8 affidavit. You know, I got this order on Friday.
9 THE COURT: No. I understand.
10 MR. GOTTSTEIN: So part of it depends on
11 availability. One --
12 THE COURT: Not if we did this.
13 MR. GOTTSTEIN: Okay. I -- and then I guess
14 I would want to -- did you say -- you didn't say you
15 denied the motions?
16 THE COURT: No, no, no. I'm going to take
17 them under advisement, that -- but assuming the
18 following, that I do deny the motions at least
19 without -- prior to hearing your case, then we'd be
20 looking at 10:00 a.m. on this Wednesday.
21 And you could get in your affidavits at some
22 point that both sides could agree on tomorrow.
23 And then would that be acceptable to the
24 state? Do you understand what I'm proposing?
25 MR. TWOMEY: Well, I am. But I am a little

1 unclear as to what affidavits and how many witnesses,
2 and so forth.
3 THE COURT: Well, if you had --
4 (indiscernible). But first, are you available 10 to
5 12 on Wednesday to conclude this hearing?
6 MR. TWOMEY: Yes, Your Honor.
7 THE COURT: All right. And what I'd do is
8 give you a decision on record on the motions at the
9 outset of the hearing. But assuming -- and I don't
10 know at this point. But assuming those are denied,
11 then we'd go forward with the hearing. So that would
12 be our plan of action.
13 MS. VASSAR: Your Honor, would my presence be
14 necessary?
15 THE COURT: You could waive your presence.
16 That's fine. That's fine.
17 MR. GOTTSTEIN: So, Your Honor, I understood
18 you to ask who my witnesses might be?
19 THE COURT: Well, just some type of ballpark.
20 I realize if you haven't had time to prepare all of
21 your witnesses. If you had a timeframe tomorrow when
22 you could let Mr. Twomey know who you plan to call,
23 that would be helpful.
24 MR. GOTTSTEIN: Okay. I've actually got some
25 pretty (indiscernible) oral argument tomorrow morning,

1 so this is going to -- but yeah, I could certainly do
2 that.
3 THE COURT: So afternoon sounds like a better
4 timeframe for you on getting the information to
5 Mr. Twomey on who you plan to call?
6 MR. GOTTSTEIN: Right. And --
7 You can tomorrow maybe. It's not our turn
8 yet.
9 THE COURT: Well, you can sort that out
10 tomorrow. And actually, the key is not even
11 letting -- the witnesses are less important. It's if
12 you plan on submitting affidavits, you need to get
13 those in tomorrow so that --
14 MR. GOTTSTEIN: Yeah, yeah.
15 THE COURT: -- they can be cross examined on
16 Wednesday.
17 MR. GOTTSTEIN: Is it possible to do it later
18 in the week?
19 THE COURT: The week gets worse for me is the
20 problem.
21 MR. GOTTSTEIN: Your Honor, there is some
22 prior testimony in some cases that -- would it be
23 acceptable for me to present that or --
24 THE COURT: Is it already transcribed?
25 MR. GOTTSTEIN: Yeah. I mean, some of it. I

1 mean, there is the one --
2 THE COURT: Which issue? Does it go to the
3 less-restrictive alternative issue, or which issue
4 does it go toward?
5 MR. GOTTSTEIN: Well, I'd have to think about
6 some of it. I'd love to get a transcript of
7 (indiscernible). In fact, if we could facilitate me
8 getting a CD of that, it would be good.
9 One is the side effects.
10 The other is Mr. Bigley's prior psychiatrist
11 who has treated him, treated him for a long time, and
12 his testimony about his -- that kind of -- basically
13 that what happened, you know, where he's at, at the
14 end of treatment.
15 THE COURT: All right. So 10 to 12 on
16 Wednesday. And if you had transcripts, basically, I
17 need the submissions. If you can't get them in
18 tomorrow because of your other commitments, then we
19 need them Wednesday. But I need to give the state the
20 opportunity to respond to them, so you need to get
21 them in.
22 MR. GOTTSTEIN: Right. And, Your Honor, I
23 think as you know, that this compressed schedule
24 really is improper and so --
25 THE COURT: And you've gone on and made that

1 record.
2 MR. GOTTSTEIN: And I've made that point. I
3 know. So I certainly -- I will do the best that I can
4 in trying to figure out how to, you know, do that to
5 the best of my ability.
6 And I really -- I really need a copy of his
7 chart.
8 THE COURT: And I read it as within 72 hours
9 after the filing of the petition for the medication,
10 the court is to hold the hearing. And we are many
11 days past that. But that's okay.
12 MR. GOTTSTEIN: Yes, Your Honor. But I
13 think, if I may, that you really -- it's important to
14 look at what Myers says about the -- the
15 constitutional right of the respondent to have the
16 court take, you know, a proper amount of time to
17 determine that.
18 THE COURT: Right. And I --
19 MR. GOTTSTEIN: And I think that has to apply
20 to -- that has to at least supersede that 72-hour
21 thing. And I think -- and that's why I suggested that
22 it's -- that in the way to read those two things in
23 accord is to find that that 72 hours only applies to
24 the competency determination. And so --
25 THE COURT: Right. Well, I read it

1 differently. But that's all right.
2 What we're going to do is conclude this.
3 10:00 a.m. on Wednesday. And the evidence that you
4 seek to present, you can do so. And if there are
5 people that you are planning to have testify only by
6 affidavit as your direct, then you need to get those
7 to the state tomorrow.
8 But otherwise, have them here in person, and
9 then there will be an opportunity to cross examine.
10 MR. GOTTSTEIN: But one, Your Honor, would be
11 Dr. -- I'm talking to Peter Breggin. He's in New
12 York. So I would like (indiscernible) for telephonic.
13 THE COURT: So -- oh, that's -- telephonic,
14 is there any objection to telephonic?
15 MR. TWOMEY: No, Your Honor.
16 THE COURT: All right.
17 MR. GOTTSTEIN: And I really need a copy of
18 his chart.
19 THE COURT: Oh, you didn't get the chart?
20 MR. TWOMEY: Your Honor, we showed him the
21 chart during break, and I indicated we would make an
22 effort to produce a copy for him today.
23 THE COURT: Could you get that over this
24 afternoon?
25 MR. TWOMEY: Yes.

1 MR. GOTTSTEIN: Sorry. I missed that.
2 THE COURT: It's okay. So the chart will go
3 over this afternoon. And we'll take up with the
4 respondent's case Wednesday morning at 10:00 a.m.
5 MR. GOTTSTEIN: Thank you, Your Honor.
6 THE COURT: All right. Anything further?
7 MR. GOTTSTEIN: No, Your Honor.
8 THE COURT: Thank you for coming. All right.
9 We will go off record at this time.
10 (Off record.)
11 1:08:52
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 TRANSCRIBER'S CERTIFICATE
2 I, Jeanette Blalock, hereby certify that the
3 foregoing pages numbered 1 through 101 are a true,
4 accurate, and complete transcript of proceedings in
5 Case No. 3AN-08-00493 PR, In the Matter of WB: William
6 Bigley, Motion Hearing held May 12, 2008, transcribed
7 by me from a copy of the electronic sound recording,
8 to the best of my knowledge and ability.
9
10
11 ___________________ ____________________________________
Date Jeanette Blalock, Transcriber
12
13
14
15
16
17
18
19
20
21
22
23
24
25