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

This was an open hearing. J. Gottstein.

*** CONFIDENTIAL ***

VOLUME III

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE SHARON GLEASON
Superior Court Judge

Anchorage, Alaska
May 15, 2008
10:07 A.M.

APPEARANCES:

FOR THE STATE: Timothy M. Twomey, Esq.
Assistant Attorney General
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Anchorage, Alaska 99501

FOR THE DEFENDANT: James B. Gottstein, Esq.
Law Project for Psychiatric Rights
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3AN-6308-80
10:07:02
THE COURT: Good morning, everyone. Please be seated.
MR. TWOMEY: Good morning, Your Honor.
THE COURT: We are back on record with respect to Mr. Bigley. Counsel are here, Mr. Bigley is present, and Mr. Gottstein is standing.
MR. GOTTSTEIN: Thank you, Your Honor. Just a couple of things.
I gave Mr. Twomey a copy of some rebuttal exhibits, and if I could give them to you --
THE COURT: All right.
MR. GOTTSTEIN: -- I'd appreciate it.
THE COURT: I guess -- all right. Aren't we still on your witnesses?
MR. GOTTSTEIN: Well, I think that's going to come up. I think that actually most of Dr. Hopson's testimony yesterday was really rebuttal testimony. It was beyond the scope.
And in light of the time, I think that really we ought to stick to that. I plan on making that objection.
THE COURT: Well, why don't we hear the rest of Dr. Hopson's testimony.

You can make objections as warranted, and then we'll take up your rebuttal issues.
MR. GOTTSTEIN: And one other thing, is there's been some confusion.
He was behind me yesterday, but I understand Mr. Bigley got upset at various times at the testimony yesterday.
And I just would like to make it clear to his escorts that he can, if he wants --
THE COURT: He can certainly come and go.
MR. GOTTSTEIN: -- to, that he can leave and take a break.
THE COURT: You can certainly come and go, Mr. Bigley. If you feel you don't want to stay in the courtroom, that is absolutely your right.
All right. Are we ready to proceed with Dr. Hopson?
MR. GOTTSTEIN: Yes, Your Honor.
THE COURT: All right. And, Doctor, I will remind you, you are still under oath from yesterday's proceedings. Go ahead and have a seat, if you would, please.
And whenever you're ready, Mr. Twomey.
MR. TWOMEY: All right. Thank you, Your Honor.

DR. RAYMOND HOPSON
previously sworn, testified as follows on:
RECROSS EXAMINATION
BY MR. TWOMEY
Q Dr. Hopson, directing your attention to some of the conclusions set forth by Robert Whitaker, specifically that antipsychotics increase the likelihood that the person will become chronically ill --
MR. GOTTSTEIN: Objection, Your Honor, beyond the scope.
THE COURT: Please let Mr. Twomey finish his question --
MR. GOTTSTEIN: Oh, I'm sorry.
THE COURT: -- before you object.
Go ahead, Mr. Twomey.
BY MR. TWOMEY
Q Specifically the statement that antipsychotics increase the likelihood that a person will become chronically ill, do you have a response to that?
THE COURT: And hold on just a moment, Dr. Hopson.
MR. GOTTSTEIN: Objection, Your Honor.
THE COURT: Now, and your objection is.

MR. GOTTSTEIN: It's beyond the scope.
And I didn't object yesterday. I thought we could just do it. But I know there's a real time constraint.
It seems to me what we ought to do is just finish up the cross. Then if he wants to call in for rebuttal, he can.
But then he wanted to cross at least one other of my witnesses that submitted written testimony. It seems that should be done. I understand, Your Honor wants to finish today, and I very much would like to, as well.
THE COURT: All right. So the objection to this particular question is that it's beyond the scope of your direct.
Mr. Twomey.
MR. TWOMEY: Well, Your Honor, Dr. Hopson is here, and I'd like the opportunity to address this issue now rather than to call him back.
THE COURT: Any objection to rebuttal evidence on this, then?
MR. GOTTSTEIN: Your Honor --
THE COURT: No, no. I am asking Mr. Twomey, and then I'll hear from you, Mr. Gottstein.
MR. GOTTSTEIN: I'm sorry. I thought you

were asking me.
THE COURT: Go ahead.
MR. TWOMEY: What was your question, Your Honor?
THE COURT: My question is, it's beyond the scope. But if you go down this road, then any objection to Mr. Gottstein presenting some rebuttal on this?
MR. TWOMEY: No, Your Honor.
THE COURT: All right. Mr. Gottstein, would that address your concern?
MR. GOTTSTEIN: Well, one of the problems that I have is that I don't have any expert report from Dr. Hopson or anything. And he kind of sprung a study on me yesterday. And so I would be concerned about that.
I would really prefer just to finish up my case, and then -- which really it's going to be mainly redirect on what Mr. Twomey did. And then I think he should cross Mr. Cornils and see where we are. And I may or may not end up calling Mrs. Altaffer (phonetic). And then he can put on his rebuttal case.
THE COURT: All right. So why is the approach -- just from an efficiency standpoint with the doctor here, why is the approach that Mr. Twomey's

proposing unacceptable, other than it's technically not in compliance with the format for the presentation of evidence?
MR. GOTTSTEIN: The main one is the issue of time, I guess, Your Honor.
THE COURT: All right.
MR. GOTTSTEIN: Other than -- but I do object to the -- you know, the order and form, as well.
THE COURT: Well, and that objection is noted.
But in the interest of time, I will allow the questioning now, and then allow the rebuttal. We are a bit out of order, but I think it is the most efficient use of everybody's time here of the various professionals involved.
So go ahead, Mr. Twomey.
BY MR. TWOMEY
Q All right. Dr. Hopson, do you have a comment that you'd like to make in response to the conclusion that antipsychotics increase the likelihood that a person will become chronically ill?
MR. GOTTSTEIN: Objection, Your Honor.
THE COURT: Please let him make the whole question or I can't rule on it.
MR. GOTTSTEIN: I'm sorry.

THE COURT: Would you restate the question?
A comment on antipsychotics --
BY MR. TWOMEY
Q Directing your attention, Dr. Hopson, to the first of Robert Whitaker's conclusions that antipsychotics increase the likelihood that a person will become chronically ill, do you agree with that statement?
THE COURT: All right.
MR. GOTTSTEIN: Objection, Your Honor. Yesterday I think we concluded with Dr. Hopson being allowed to testify as to the standard of care in Anchorage.
And this is getting into scientific evidence. And I think that I am entitled to have -- you know, having an expert report on that and going through the Coon Daubert analysis.
And Dr. Hopson testified yesterday that, you know, he's had that affidavit for two weeks. And there's no reason why I couldn't have had that.
And that's the objection, Your Honor.
THE COURT: Well, it's overruled.
And the reason why is that there's case law from our supreme court that recognizes that people in the position of Dr. Hopson, that are responsible for

providing care to individuals, are kind of hybrid experts, if you will, as opposed to hired experts, that they are more in the nature of treating providers.
And so from that perspective, as a treating provider, I will allow Dr. Hopson to testify, and not from the perspective of a pure expert, if you will.
MR. TWOMEY: And Your, Honor, I intend to narrow the focus of these questions.
THE COURT: That might be helpful.
Anyway, Mr. Gottstein --
MR. GOTTSTEIN: If I understand your ruling, Your Honor, and I am not sure what case you are referring to, but in terms of Coon, Daubert and Marron, which I have the cite for that if you haven't seen it, is the distinction between scientific evidence and experiential-based evidence. And I understand your ruling to be on -- that this is based on his experience. And I --
THE COURT: No, that's incorrect. I was responding to your concern about the lack of an expert report. It's a separate issue from the Daubert standard.
On the issue of the expert report, the case law in the supreme court of our state is clear that

the provisions under the civil -- under the civil rules for provision of expert reports do not apply to individuals that are so-called hybrid experts, meaning that they are responsible for providing care as opposed to hired to provide testimony.

And it is from that perspective that the lack of an expert report is not a basis for exclusion of this testimony.

Secondly, on the Daubert issue, I am going to stand by the supreme court's decision in the Samaniego case that discussed some of the flexibility to be accorded in this area with regard to testimony.

So that is my ruling. That is my clarification. And I think we can go forward.

MR. GOTTSTEIN: May I, for the record, just address the Samaniego case?

THE COURT: Later on you can. But my ruling stands, and we are going to hear Mr. Twomey's question.

Go ahead.

BY MR. TWOMEY

Q Do you have my question in mind, Doctor?

A Yes. Well, one thing, I think it's important. There is a lot of data that indicates that individuals with schizophrenia have two times the

mortality rate of the general population, in general, just by virtue of them having schizophrenia specifically.

And that is due to a number of things. They have difficulty getting themselves to appointments. They have a higher risk of cardiovascular disease due to their smoking. They have very poor diet, poor exercise regimens, so they have an increased likelihood of obesity and diabetes. That is well-documented.

So I think it's difficult to say that it's -- all of this increase in mortality is due to antipsychotics. The illness itself bears that out.

Q As a treating physician involved with Mr. Bigley's care, do you believe that the use of antipsychotics in his case would increase the likelihood that he would become chronically ill?

A No, I don't have any evidence to support that.

Q Okay.

THE COURT: What testing has there been, do you know, with regard to some of the health conditions that were testified to yesterday with regard to diabetes or any of those potential risks with respect to Mr. Bigley?

THE WITNESS: Yes. Whenever Mr. Bigley is admitted, as with all patients, they get a complete metabolic profile, complete blood count that includes blood sugars.

We monitor their weight. Certainly obesity is not an issue with him, but we would be monitoring his blood lipids and his blood sugars, which to date he does not carry a diagnosis, I do not believe, of diabetes or hyperlipidemia.

THE COURT: Thank you. Go ahead, please, Mr. Twomey.

BY MR. TWOMEY

Q Do you have -- well, do you agree with the second conclusion set forth in Robert Whitaker's article that long-term recovery rates are much higher for unmedicated patients than for those who are maintained on antipsychotic drugs?

A Well, as I mentioned yesterday, I think that -- I did note the study that reports that psychosocial treatment without medication is as ineffective as placebo.

Other individuals have reported that 75 percent of patients on placebo relapsed, as compared to 33 percent on active meds.

THE COURT: Now we are getting into -- more

in the nature of expert testimony as opposed to testimony related to Dr. Hopson's opinions with respect to Mr. Bigley and prognosis there.

MR. TWOMEY: Well, I'll ask another question, then.

THE COURT: All right. Thank you. Go ahead, Mr. Twomey.

BY MR. TWOMEY

Q Dr. Hopson, do you believe that with respect to Mr. Bigley, that he would have a higher probability of recovery without medication?

A No, I do not.

Q And why? Why do you have that belief?

A Well, again, I mentioned yesterday that I've seen Mr. Bigley, when he was taking medications, was able to live in stable housing where meals were prepared. His whole quality of life I think was higher at that time.

And without that, I think he is intermittently homeless. His dietary intake is questionable. And I think all of that ultimately affects his overall health.

Q Okay. Do you believe that if Mr. Bigley receives the antipsychotic medication that API is requesting permission to prescribe in this case, that

it will hasten Mr. Bigley's health --
A No, I do not.
Q Why do you hold that belief, that opinion?
A Well, again, you know, our concern all along, in addition to his medical well-being, is his personal safety.
And you know, I think being as agitated as he intermittently is, and gets in the face of people, we have significant concerns that he could be assaulted. Homeless individuals I know are assaulted more frequently, particularly when they're psychotic, from personal experience.
I worked with the homeless mentally ill in Dallas, Texas for 14 years, and am well-acquainted with the risk of being psychotic on the streets.
Q Now, do you hold the belief that all psychotic patients should receive medicine as their form of treatment?
A No.
Q And -- but with regard to Mr. Bigley, you believe that medicine is appropriate?
A Right. I -- particularly because of the chronicity of his illness and his course of illness, his response to previous medication is very -- you would approach his care very differently than you

would a first -- new onset psychosis. You might not even consider medication in that case.
Q Okay. So how is Mr. Bigley different from someone who is a new onset patient?
A Well, he's been hospitalized. He is currently in his 75th admission at API. That in and of itself speaks to the fact that this is a chronic mentally ill individual.
His record indicates he has had multiple trials of medications. And I think we do have some evidence in his history to indicate when he was on medication, he was in a stable living environment and doing better.
Q Okay. Now, with Mr. Bigley, there is a history of him not adhering to the medication that is recommended for him once he's discharged from the hospital; is that correct?
A That is correct.
Q Does that history of non-adherence affect your treatment recommendations in any way?
A It does. It's well known and accepted that non-adherence to a treatment regimen increases your chance of readmission, relapse. That speaks for itself.
In the --

MR. GOTTSTEIN: Objection, Your Honor. I think that's getting into scientific --
THE COURT: Well, it was said in the context of why -- the impact of Mr. Bigley's history of non-adherence. So I'll take it from that perspective, as to the opinion with respect to Mr. Bigley only.
So from that limited perspective, go ahead, Mr. -- I think, Dr. Hopson, you were in the middle of your answer. Go ahead.
A I think in his particular case, you know, the approach, and Dr. Khari I believe testified to this the other day, the recommendation would be to use a depo medication with him. And that is a medication that lasts for, you know, two weeks in the body. And that way, it reduces the need for his direct interaction with caregivers for that.
It also improves adherence because they don't have to remember to take an oral medication every day. And that is very in line with recommendations for someone who has a chronic mental illness.
BY MR. TWOMEY
Q Okay. What recommendations are you referring to?
A Well, for instance, I mentioned yesterday the Texas Medication Algorithm Project. It's a

well-accepted standard of care throughout half of the United States currently.
And for an individual with chronic mental illness, it does place them at stage 5 of that algorithm, which is for depo medication.
Q Okay. And the Risperdal Consta that Dr. Khari has recommend administered to Mr. Bigley, that's a depo medication?
A Yes.
Q Okay. So it is a long-acting medication that stays in the fat cells?
A Two weeks, yes.
THE COURT: What is the standard of care in the other half of the country?
And you can object here if I'm going outside the scope of -- if I'm --
MR. GOTTSTEIN: I wouldn't object to your question, Your Honor.
THE COURT: You have every right to, Mr. Gottstein.
But as I understood your answer, it's half of the United States. What is the approach in the other half?
THE WITNESS: Well, they may be following the TMAP. Because it really is widely accepted as a

standard.
However, they may have not adopted or require strict adherence to its stages in its state mental health facilities.
THE COURT: Go ahead.
BY MR. TWOMEY
Q Now, Dr. Hopson, you are the medical director of API?
A Yes.
Q Okay. Can you describe for the court the -- the -- the mission of API from your perspective as medical director?
A Sure. We are the state's only state mental health facility. We are an acute care facility due to the lack of beds throughout the state. We have 80 total beds. 50 of them are acute adult inpatient beds.
We take referrals from all over the state. Our average length of stay is 12 days. That is held in distinction and different from many state facilities in the Lower 48 that have long lengths of stay and perhaps can accommodate I guess less acute treatment regimens.
But our mission, our funding and all is focused clearly at acute care.

THE COURT: What about the other 30 beds?
THE WITNESS: Ten of them are adolescent, ages 13 to 17. Ten are forensic, and ten are long-term difficult to reach -- or difficult to treat patients, TBI patients.
THE COURT: What does it mean, forensic?
THE WITNESS: They are in department -- custody of Department of Corrections, and they are sent to us for competency.
THE COURT: All right. Thank you.
BY MR. TWOMEY
Q What is your definition of acute care?
A Acute care means an individual is of imminent -- imminent risk of harm to self or others or gravely disabled, basically. And so those are the criteria for which patients are admitted to us.
All of our patients are admitted to us involuntarily. They are brought to us on peace officer application warrants or on ex partes. So they are involuntarily.
THE COURT: Are all 80 beds generally full all the time?
THE WITNESS: They are certain times of the year. This week we have been. We've had a waiting list several days this week.

BY MR. TWOMEY
Q Do you have a response to the proposal that has been suggested on behalf of Mr. Bigley that API provide housing facilities for him and that he be allowed to come and go basically on his own schedule?
A I think it would be impossible. First of all, it doesn't fit our mission. It doesn't -- it ties up a bed that is not in line with our mission.
And it sets a precedence for us to be providing a different level of care than we're accustomed to doing.
Q Do you think that providing such an arrangement would be in Mr. Bigley's best interest?
A No, I do not.
Q Why not?
A I think the best thing for an individual is to be in the least restrictive, which would be in an outpatient setting, in a more normalized housing environment rather than living in a hospital.
Q And do you have an opinion as to how that can be accomplished in Mr. Bigley's case at the present time?
A With very intensive case management. If he were functioning at a level where he could participate in the assisted-living home or apartment or boarding

hotel, or wherever his guardian might work with him on placement.
Q Based on your experience with Mr. Bigley, do you have any opinion as to the probability of success of that arrangement without the administration of medication to Mr. Bigley?
A We have tried it multiple times. And he does not last but just sometimes a couple of days, sometimes a couple of weeks.
THE COURT: You have tried without medication?
THE WITNESS: Yes. In multiple care facilities, boarding houses, boarding hotels. And he has been essentially evicted from all of them.
And I have been told personally by his guardian that when they try to place him --
MR. GOTTSTEIN: Objection, hearsay.
THE COURT: I'll allow that, as an expert can testify as to hearsay. So I will allow that.
Go ahead.
THE WITNESS: That they -- as soon as --
THE COURT: Although let me clarify. He is a treating physician, and it's a hybrid expert. I do want to be clear on that, Mr. Gottstein.
But I do allow the hearsay would be

admissible in this circumstance. So go ahead.
THE WITNESS: His guardian has said that he can't place him anywhere because they know Mr. Bigley, and they know, you know, the difficulties they are going to encounter.
MR. TWOMEY: All right. Thank you, Doctor, I have no further questions for you.
THE COURT: Go ahead, please, Mr. Gottstein. Recross? Is that where we're at here?
MR. GOTTSTEIN: I think it's redirect technically.
THE COURT: Redirect. Thank you, Madame Clerk.
MR. GOTTSTEIN: If I may, I think you have a set of these new --
THE COURT: I do.
MR. GOTTSTEIN: -- exhibits.
THE COURT: And Mr. Twomey does I assume as well?
MR. GOTTSTEIN: If I may approach the witness.
THE COURT: Go ahead.
MR. GOTTSTEIN: I'm going to give him the whole set for efficiency purposes.
And I asked Mr. Twomey if we could stipulate

to admitting them, and I don't know if he's -- we didn't have a chance to talk about it. But --
THE COURT: I wonder if Mr. Twomey's had the chance to read through all of these articles.
MR. TWOMEY: Well, I have not, Your Honor. I was just handed this stack of articles this morning when I arrived here at court. And I would question the relevance of this material at this point.
THE COURT: Mr. Gottstein, what is the use that you seek to make of the material?
MR. GOTTSTEIN: They are rebuttal to his testimony yesterday regarding the Hogarty and Ulrich study. Doctor --
MR. TWOMEY: I don't recall that testimony, Your Honor.
MR. GOTTSTEIN: It was a study he also mentioned this morning about --
THE COURT: The algorithms?
MR. GOTTSTEIN: No, no. About the placebo response rate and the response rate of psychotherapy. He explicitly mentioned -- I asked him what study. He said it was 1998 Hogarty and Hobart (as spoken), I guess in the Journal of Psychiatric Research, and that he downloaded it from my Web site.
THE COURT: Do you recall that testimony?

THE WITNESS: That the -- yes, ma'am. The individuals Hogarty and Ulrich are mentioned on your Web site.
And I believe we found this article by them cross referenced to other articles that they had published. So these are both researchers that I think you had mentioned on your Web site.
DR. RAYMOND HOPSON,
testified as follows on:
REDIRECT EXAMINATION
BY MR. GOTTSTEIN
Q So then you misspoke yesterday when you said you downloaded it from my Web site -- from Psych Rights Web site?
A I don't recall saying that I downloaded them, but that we had found these individuals listed on your Web site.
Q Okay. And had you read that -- do you have that study with you? May I see it?
THE COURT: So yes, you have a study with you?
THE WITNESS: Yes.
THE COURT: All right.
THE WITNESS: This is the -- I'm sure it's not the entire. It's the abstract possibly.

MR. GOTTSTEIN: And can we mark this as an exhibit?
THE COURT: That's fine. Have you gotten a copy of that study that your witness has?
MR. TWOMEY: No, Your Honor. I'd like to take a look.
THE COURT: Well, I guess it's not your witness technically. But we can go ahead and get a copy of that. That's fine.
Let me just say -- let me back up here, in an interest of trying to focus things here.
Dr. Hopson, have you relied on that study in coming up with the treatment plan and prognosis, diagnosis for Mr. Bigley?
THE WITNESS: No.
THE COURT: All right. So would one approach here be to strike that testimony and move forward?
MR. TWOMEY: That's acceptable to API, Your Honor.
THE COURT: And then -- I mean, if -- if Dr. Hopson hasn't even looked at other articles, I don't see how those would be admissible through him.
And if we don't have the study that he indicates he hasn't relied on, then which -- then that might allow us to move forward on Mr. Bigley's

condition and not studies that may or may not have real convenience to his particular situation. Would that be acceptable?

MR. GOTTSTEIN: If Your Honor will strike that, yes.

THE COURT: All right. So we'll strike all of the testimony from yesterday, or basically. It'll be part of the record for review, but it would not be considered by this court in rendering any decision on the medication petition.

So it remains part of the record, simply for appellate review, but would not be a basis -- the testimony would not be considered.

MR. GOTTSTEIN: Well, then it seems like, Your Honor, that I should go through this process if just his -- you know, if his part of it's going to be in the record. I guess it can't come out of the record.

But let -- maybe I'll move back to that and see.

THE COURT: Okay. Go back to that and see where we are.

MR. GOTTSTEIN: Let's go back.

THE COURT: But Mr. Twomey is agreeable to simply striking that?

MR. TWOMEY: Yes, Your Honor.

THE COURT: So let's hear where we are on that.

BY MR. GOTTSTEIN

Q So you mentioned the TMAP, and that that was widely accepted; is that correct?

A Yes.

Q And then yesterday, you said that you were not aware of the whistle blower report about the corruption involved in adopting that; is that correct?

A That's correct.

Q And --

THE COURT: And now I'm getting confused, Mr. Gottstein. And I'm sorry to interrupt here.

But as I understood it, you objected to having this witness testify outside of the issues associated directly with Mr. Bigley's care. Now I hear you asking him questions that are unrelated to that particular topic.

And you are seeking to have expert testimony from him; am I correct?

MR. GOTTSTEIN: No, Your Honor. I am conducting redirect with regard to testimony he made yesterday, and in fact this morning, about TMAP being accepted.

THE COURT: Right. And I am indicating that the state is willing to have all of that stricken from the record.

And if you seek to have him come in as -- provide expert testimony on this and open the door, it would seem that would be contrary to the position that you are seeking not to have him testify as an expert.

So the remedy with regard to your prior objections would be to strike anything that this witness has testified to with regard to these various articles, have his testimony stand which relates solely to Mr. Bigley's treatment and diagnosis.

So I guess you can't have it both ways.

MR. GOTTSTEIN: Yeah. And I didn't -- I didn't think I was trying to do that. And I am trying to understand, because I don't think I am. And there may be I think a misunderstanding on my part, or your part frankly --

THE COURT: That's fine.

MR. GOTTSTEIN: -- as to what was stricken. So I understood before that it was the testimony related to the Hogarty and Ulrich study.

THE COURT: Right.

MR. GOTTSTEIN: And this is about his testimony about TMAP and being the standard of care

and adopted by 50 states.

THE COURT: So you're agreeable to simply having the Hogarty placebo testimony stricken, and now we are at a different type of study. Maybe I am confused that we are on a different study.

MR. GOTTSTEIN: Yeah, different topic.

THE COURT: All right. This goes to Mr. Bigley directly?

MR. GOTTSTEIN: Well, it goes to Dr. Hopson's testimony about TMAP being the accepted standard of care, which he -- he said in half the states, and you inquired about that.

THE COURT: All right. So why don't we focus on that, and then --

MR. GOTTSTEIN: That's --

THE COURT: All right.

MR. GOTTSTEIN: That's where I'm at.

THE COURT: My confusion has been clarified, Mr. Gottstein, go ahead, please.

MR. GOTTSTEIN: Okay. So --

THE COURT: Realizing that you all know far more about mental health issues than I do. Let's put it that way. Go ahead, Mr. Gottstein.

MR. GOTTSTEIN: Well, hopefully some of that is being remedied here.

BY MR. GOTTSTEIN
Q I -- could you look at exhibit -- well, first, before you do that, the -- one of the fundamental premises of TMAP, or the conclusions or the algorithm as you will, is that the newer drugs such as Risperdal are superior to the older generation of drugs, such as Haldol -- how do you say it? Haloperidol?
A Haloperidol.
Q Haloperidol, which is Haldol, correct? And that it's -- that it's more effective and less harmful; is that right?
A The focus of TMAP is to allow a physician to have a systematic approach to illness. And the TMAP does include the first generation antipsychotics, as well.
So it doesn't really say one is better than the other. It's just a systematic approach, a logical approach to treatment.
Q And isn't it true that in that -- and the algorithm is kind of a hierarchy decision tree, correct?
A Of sorts. It's a -- step-wise.
Q Okay. And that you don't go to the first generations, for example, until you have used, say,

Risperdal; isn't that correct?
A Right. You start with the second generation.
Q Okay. And Haldol, I can say that better than -- I can't even say it now after you helped me.
And so what TMAP says is that Haldol should be used -- I mean, Risperdal should be used before Haldol, correct?
A Or one of the other second generations would be step one, yes.
Q Okay. So drawing your attention to Exhibit M, this is -- can I just say? I mean, this is the approval -- does this look like the approval letter for Risperdal? The date is hard to read, but December 29th, and then 1993?
A I haven't ever seen this before, so I'd have to look at it.
Q And in fact, you -- one has to make a Freedom of Information Act request to actually get this, so --
A That's what it looks like.
MR. GOTTSTEIN: Okay. I move to admit.
THE COURT: Any objection to M?
MR. TWOMEY: Well, objection on relevance, Your Honor. I'm at a loss to understand how this document relates to Mr. Bigley's care or the issues presented by this petition we are addressing here

today.
THE COURT: The objection is relevance. It relates to the medication that is being proposed, so I will overrule that.
And I will admit M. Go ahead.
(Exhibit M admitted.)
BY MR. GOTTSTEIN
Q Could you turn to the last page, Dr. Hopson, and read the highlighted portion.
A It says: At the present time we would -- you want me to read it out loud?
Q Please.
A At the present time, we would consider any advertisement or promotional labeling of Risperdal false, misleading, or lacking fair balance under Section 502(a) and 502(n) of the Act if there is presentation of data that confers the impression that Risperidone is superior to haloperidol or any other marketed antipsychotic drug product with regard to safety or effectiveness.
Q And that's exactly what the TMAP does, right?
A I don't think TMAP is trying to advertise that it is superior. They are providing an approach to treatment. I don't think they're saying -- they're not advertising that, or promotionally labeling it as

such.
Q But at least TMAP's conclusion is contrary to what this letter says, correct?
A I don't think they're saying the same thing.
Q And then I -- you're not aware, are you, of the various state lawsuits against -- is it Johnson & Johnson, the manufacturer of Risperdal?
A No.
Q Ortho -- is it Janssen?
A Risperdal is Janssen.
Q And Janssen is a subsidiary of Johnson & Johnson, isn't it?
A I don't know that.
Q Okay. But you are unaware of the various state attorney generals that have sued Janssen over their false, misleading practices over the promotion of --
A I am unaware of that.
Q Okay. Thank you. Now, you testified that there's not a higher probability of recovery with -- let me see exactly what you said, if you can figure out. Maybe you can, you know, restate it to me.
But I think you said something like that you don't think that him -- that Mr. Bigley being allowed some time off the drugs will improve his chances of

recovery?
A This morning, you are talking about the testimony?
Q Yeah.
A I said that I don't think he will recover as spontaneously without medication, in that regard, something to that inference.
Q Yeah.
A Yeah. That's based on our observation of him, repeated hospitalizations, and also seeing how he has responded in the past to medication favorably.
Q But it's -- isn't it true that the hospital's official position is that he's not ever going to recover under your treatment either, the hospital's treatment?
A I think that's -- that's not necessarily a fair statement. I think the hospital's statement would be that if treated appropriately and given the ability to live in stable housing, Mr. Bigley could achieve maximum recovery that's possible for him.
Q And that means, in the words of Dr. Worrell in his testimony, that he would be delusional, paranoid, lacking insight?
A I don't know what Dr. Worrell's testimony is.
Q But you wouldn't disagree with that, would

you? I mean, the testimony has been -- hasn't the testimony really been consistent that the drugs don't really eliminate what you, you know, call delusions, paranoia, and lack of insight? Isn't that correct?
A I think the medications do help to a degree. I mean, I have seen patients get better. And I think -- I have seen Mr. Bigley on medication, and he is able to carry on a much more appropriate conversation and is much calmer and affable.
And I think that would enable him to function at a higher level in the community.
Q Well, I -- I understand you believe he could function at a higher level in the community, and that Mr. Bigley doesn't want to do what you want to do. And I think we could agree on that, right?
But what I'm asking about is recovery. And so the hospital's plan is -- I think it's fair to say assumes that he will always be psychotic, he will always be delusional, he will always be paranoid, he will always lack insight, but that the medications really will make it so that essentially he doesn't get in -- get in as much trouble, I would say?
A I don't think that's the hospital's stand at all. You know, I think that we would hope that with appropriate treatment, that Mr. Bigley will continue

to improve.
I don't think he's had the opportunity to do that. Because he's not been on medication for a long enough period of time consistently to remain in housing long enough to really begin to make some of the gains that we would hope an individual would make in their recovery.
Q Wasn't he voluntarily taking Risperdal Consta for almost two years at one point?
A No. It didn't last that long unfortunately.
Q How long did it last?
A Oh, I would -- I don't have that paperwork with me today. But I know for about six months he came, or his case manager brought him. It may have been longer than that. I don't really know how long.
But that was the period of time I know he was in some stable housing and was doing well. I think it's the whole picture for him.
Q Right. And he was voluntarily taking it, correct?
A Yes.
Q And then when -- then the hospital decided that he needed additional medications, isn't that correct, Depakote and Seroquel?
A I don't recall that. I'd have to look at the

record.
Q But you don't -- can you --
A I know that he was on Depakote and Seroquel at one point. But I don't know that those were prescribed, you know, at that point in time when he was in the outpatient setting.
I think it's also important to note that, you know, immediately before that period of time, when he was in the little outpatient program and coming in every two weeks, he had been in the hospital for a while and had been given medication in the hospital, and had gotten to the point where he was then accepting of it.
And that frequently happens with patients. You know, they are ill. You get them on medication, and then they begin -- their insight improves, their willingness to cooperate in their treatment, and then they could voluntarily agree to a structured outpatient program. But they are just not willing to until they get to that point in their treatment.
Q And he was at one point with the Risperdal, correct?
A Yes.
Q And then you have no reason to doubt it was when the hospital insisted on adding Depakote and

Seroquel that that fell apart, that he then started refusing?
A I don't know that that's necessarily the time. You know, I think it's worthwhile because of his history -- and I did discuss this with Dr. Khari, that I think because his of unwillingness to be on medication, that we should go with just a single agent, and we shouldn't consider other medications. We should make it as simple as possible, where he could accept, you know, the regimen more easily hopefully.
Q Now, API doesn't normally provide -- you said it was an acute care facility, correct?
A Yes.
Q So it doesn't normally provide outpatient --
A That's correct.
Q And so Mr. Bigley was granted an exception for that, wasn't he?
A Under that instance for medication, yes. And that was also part of the plan to transition him then into an outpatient provider in the community.
There again, you have to present -- we present patients all the time for acceptance into an outpatient program. And if they are, you know, well

known, they will frequently say to us, we are not going to accept them. They have the ability to do that.
And so we were hoping that if we could show and demonstrate to them some longitudinal stability, that then they would accept him into their outpatient program.
Q All right. I am going to move on to another area. I think that that's really been pretty well covered.
You mentioned yesterday that what you're doing is the standard of care; is that correct?
A In regards to Medicaid?
Q Yeah. Your proposed --
A Yes.
Q Yes. Okay. Now, wasn't thalidomide prescribed -- wasn't prescribing thalidomide for morning sickness a standard of care in, say, Britain for a period of time?
A I couldn't speak to that as a standard of care. I am not an obstetrician.
Q But you would agree that it was widely prescribed for morning sickness, wouldn't you?
A I have read that, yes.
Q Yeah. And then found out that it was

creating massive amounts of birth defects and was discontinued?
A That's my understanding.
Q Yes. And then isn't it true that in this country, x-rays to diagnose pregnancy was a standard of care, wasn't it?
A I don't know that.
Q So then you don't know that that was discontinued when that was found to cause birth defects and cancer?
A I don't know that. I was not trained as a radiologist.
Q So are you -- you are aware that now recently, hormone replacement therapy was the standard of care with respect to I think -- wasn't it menopause?
A It's my understanding it still is used for that.
Q Well, hasn't there been a huge controversy over that?
A It's probably controversial, but I believe it's still used for that. Again, I am not a gynecologist, but --
Q So then you are unaware that that caused increased breast cancer, endometrial cancer, and

dementia?
A I have heard those sorts of reports. I haven't read that or dealt directly with those patients.
Q So -- but you are aware that DES -- what does that stand -- diethyl -- DES we prescribed for -- to prevent miscarriages and nausea and pregnancy?
MR. TWOMEY: Objection, Your Honor, relevance.
THE COURT: I think we're going far afield. I understand your point, Mr. Gottstein.
MR. GOTTSTEIN: Okay. That the standard of care in the past has often been --
THE COURT: Correct.
MR. GOTTSTEIN: -- found to be harmful?
BY MR. GOTTSTEIN
Q Can I -- I would like to ask one about psychiatric standard of care, if I may, which is that frontal lobotomies were the standard of care for certain conditions, what, about 50 years ago, or for quite some time?
A Probably before 50 years ago. It was a pretty early-on procedure that was performed, a rather radical procedure, yes.
Q And in fact, the person who invented it got

the Nobel Prize, didn't he?
A I am not sure of that.
Q And then that procedure was just stopped, wasn't it?
A It is no longer carried out; that's correct.
MR. GOTTSTEIN: Okay. Thank you.
THE COURT: Any other questions, Mr. Gottstein?
MR. GOTTSTEIN: I don't think so. Thank you, Your Honor.
THE COURT: Thank you.
Recross?
MR. TWOMEY: Nothing further, Your Honor.
THE COURT: Thank you, Doctor. You can be excused at this time.
(Witness excused.)
THE COURT: That brings us to Camry Altaffer; is that correct?
MR. GOTTSTEIN: Yes, Your Honor. But I think that I shall not call her.
THE COURT: All right. And then Paul Cornils. Do you seek to have -- you had questions for him, correct, Mr. Twomey? He's standing in the back. He's anxious.
MR. TWOMEY: All right. I'll be brief, Your

Honor.
THE COURT: Sir, if you would come forward, please. You have been very patient. I appreciate that. All the way around the back, if you would, please. Remain standing, if you would.
(Oath administered.)
THE CLERK: Thank you. You may be seated.
Sir, for the record, could you please state and spell your first and last name.
THE WITNESS: Paul Cornils. P-A-U-L, Cornils is C-O-R-N-I-L-S.
THE COURT: Thank you, Mr. Cornils.
Go ahead, please, Mr. Twomey.

PAUL CORNILS

called as a witness on behalf of the state, testified as follows on:

DIRECT EXAMINATION

BY MR. TWOMEY
Q First of all, I have to ask you, what did you do to your hand?
A I -- yeah.
THE COURT: Well, there is certain similarities there.
A Yeah. I was trying to fix a dryer, severed a tendon in my ring finger and my middle finger.

BY MR. TWOMEY
Q I'm sorry.
A What did you do to yours?
Q I broke my hand in a karate tournament.
A Oh, man. I feel kind of --
THE COURT: All right. Now that we've gotten that on the record, we can continue.
BY MR. TWOMEY
Q All right. Mr. Cornils, do you have any medical training?
A I do not.
Q Are you offering any opinions in this case with regard to the appropriateness of medication for Mr. Bigley's condition?
A It would depend on what you ask me. I do not have any medical training. I have opinions about medication and specific instances.
I have taken medication. The medication that is being considered today, I have taken it. I took it for a long time.
But that's not what I do. What I do is provide case management and rehab services in the community for people experiencing issues like Mr. Bigley's experiencing.
So my opinion about the course of treatment

being proposed I don't know is relevant unless you can --
Q Okay. I just want to make sure that you are not offering an opinion on that subject?
A I am not, no.
Q Okay. Is your -- are your services intended to replace treatment by medicine in Mr. Bigley's case?
A I think that the treatment -- the service that we provide can be provided whether or not Mr. Bigley takes medication.
Q What's the current status of your relationship with Mr. Bigley?
A We have none. Our organization has none at this point. We discontinued our relationship in October of last year due to the lack of resources that were required to provide adequate service to Mr. Bigley.
Q What resources were lacking at that time that caused you to discontinue your relationship with Mr. Bigley?
A Basic needs, housing. Housing is very difficult to acquire for Mr. Bigley. We were successful quite a few times over the course of our time with him, but he -- he's very challenging to his housing providers, and is frequently asked to leave,

or finds housing unsatisfactory and decides to not continue in the placement on his own.

Also his behavior is, quote, often seen in the community as -- it's disturbing to individuals, which necessitates the need for frequent intervention on our part. And quite often when he is not doing well, that can be a 24-hour-a-day thing.

Q So what was the time period that you were involved? Was it a ten-month period of time?

A Off and on from January through October, yes.

THE COURT: Of '07?

THE WITNESS: Of '07.

BY MR. TWOMEY

Q Was Mr. Bigley receiving medication during any of that period of time?

A He would receive medication when he was hospitalized and immediately discontinue it as soon as he was released. He does not like the medication.

Q Did you observe any differences in Mr. Bigley's behavior?

A Beyond the sedative effects, no. His -- his delusions are as strong. His anger and aggression is still present, he just does not express them as strongly.

He is less disturbing most of the time. I don't know if that makes sense to you or not. But if you spend a lot of time with him, like I have, he -- I have not noticed much difference except to say that his behavior is more socially acceptable when he's on medication.

Is that what you're asking?

Q Yes. Thank you.

At the present time, what do you believe is required in order to support Mr. Bigley in the community without medication?

A With or without medication?

Q Without.

A Without? Without medication, I believe Mr. Bigley would benefit from 24-hour-a-day PCA type services, services that are available for folks currently under our Medicaid system who experience developmental disabilities or medical issues. They are not currently available to folks who exclusively have mental health diagnoses.

He needs 24-hour-a-day support. Mr. Bigley, a lot of his behavior in my opinion is driven by fear and anxiety. He does not like being alone.

When he is alone, his behaviors increase. His negative and socially unacceptable behaviors

increase.

Q Are the services you provide intended to cure Mr. Bigley's condition?

A Cure, maybe not. Assist him in his recovery, yes.

Q Do you have any basis to disagree with the approach being suggested by the hospital that Mr. Bigley be given Risperdal Consta?

A My personal opinion or that of my organization? My personal --

Q In this case, do you have an opinion on that?

A In this case? I absolutely understand both sides of the argument. But I think without -- I think without an ongoing plan -- Mr. Bigley, one, very clearly does not want to take the medication. And in my experience with Mr. Bigley, just my experience with Mr. Bigley, as soon as he is released from the hospital, he will discontinue taking that medication.

That in no way in my personal opinion or experience is beneficial to Mr. Bigley, so my opinion is that unless Mr. Bigley agrees with the course of treatment and would voluntarily continue with it, it's futile.

Q Is there anything preventing your organization from assisting Mr. Bigley should the hospital be granted permission to administer Risperdal?

A We lack the financial resources to provide the service -- the support that Mr. Bigley needs at this point. These issues have been addressed over the last -- since my involvement over the last ten months by many individuals who have access to -- greater access to resources than I have. And they've -- we have not reached a solution.

Housing is the -- besides the 24-hour support, the housing is the biggest issue. What Dr. Hopson testified to, the difficulty in acquiring housing for Mr. Bigley, is very real.

I cannot think of an assisted-living home that would accept him. I have contacted most of the assisted living homes in our area, lots of programs outside of our area, just as Dr. Hopson testified, hotels, other housing situations. He has a reputation, and that reputation precedes him.

MR. TWOMEY: I have nothing further, Your Honor.

THE COURT: Go ahead, please, Mr. Gottstein. Any questions?

PAUL CORNILS
testified as follows on:
CROSS EXAMINATION
BY MR. GOTTSTEIN
Q Now, you testified here this morning that you believe he needs 24-hour PCA. That stands for personal care attendant; is that correct?
A Yes, sir.
Q Now, in your written testimony, you say that you think there is a reasonable chance that if that was provided now, that over time, that could be reduced; is that correct?
A Yes. And I think we demonstrated that early on with Mr. Bigley. His behaviors did diminish and his need for assistance did diminish, but it was very slow. And I was providing all that care, and it is emotionally exhausting and very expensive.
But with the proper -- the appropriate resources, I do believe that he could improve and maintain in the community. And I don't -- I don't think that medication necessarily has to be a part of that plan. I don't know that it doesn't, but I don't think that -- I think his -- maybe I'm going beyond what I should answer.
But I think that Mr. Bigley's desire to not

have medication would not impede his ability to function in the community given the appropriate support to be maintained outside the hospital.
THE COURT: I'm not sure I understand that. His desire not to have medication would not impede his ability to function outside the --
THE WITNESS: Right. Given the appropriate support, Your Honor.
And I believe with my experience with Mr. Bigley, quite frequently, the issues that I would intercede on or be asked to provide support were Mr. Bigley having conflicts with his public guardian or other individuals who he perceived as wanting him to take those medications and limit his rights.
It makes him quite angry. And you can see when he gets agitated just here in the courtroom how he expresses that anger. It's disturbing to the public in general, which -- very understandably so.
Which then generally, law enforcement is called, he is ex parted or he is escorted and readmitted to the hospital.
I think that if you at least gave him the ability to choose, you would mitigate that. And that, in my experience with him, was a big factor in the behaviors that I saw.

THE COURT: Okay. Thank you.
Go ahead, please.
BY MR. GOTTSTEIN
Q So just to be clear, to eliminate the double negative, is it your testimony that you feel that he could be successful in the community with the support without the medication?
A Given the appropriate support, yes.
MR. GOTTSTEIN: Okay. I have no further questions.
THE COURT: Any follow-up, Mr. Twomey? Go ahead.
MR. TWOMEY: Yes, Your Honor.
PAUL CORNILS
testified as follows on:
REDIRECT EXAMINATION
BY MR. TWOMEY
Q Mr. Cornils, you indicated that you believe that Mr. Bigley should be given the opportunity or ability to choose his course of treatment?
A Yes.
Q Do you think he has the capacity to make such a decision?
A Yes.
Q And why do you have that opinion?

A I think that given that Mr. Bigley has taken that medication or medications for 25 years or so, he very clearly -- I've seen him on the medication and off the medication. He very clearly expresses: I do not want to take this medication.
And the hospital's assertion is that when he's on the medication, he is competent, that he does not present a danger to himself or the community, and he is released, and he is able to join our community. That implies a level of competence.
And when he is at that place, he still asserts that: I do not want to take this medication. I don't know if that makes sense to you, but whether or not he's competent, the fact remains, Mr. Twomey, he is going to stop taking that medication once he's released from the hospital, and this cycle is going to continue.
So I do not believe that it is in anybody's best interests to continue to do this.
Q What is your relapse plan for Mr. Bigley?
A With Mr. Bigley, you really need to -- what do you consider to be a relapse?
Q Well, your affidavit indicates -- one of your tenets of the Choices approach is what is known as a relapse plan. I am asking in this --

A Right. So in Mr. Bigley's case, it's kind of been ongoing -- let's see how I would describe it. A relapse plan is generally in place for individuals who experience intermittent crisis. Mr. Bigley's case, his behavior is almost on a daily basis described by somebody he comes into contact with as a crisis.

What we do in that case is I or one of my colleagues go to wherever Mr. Bigley is and intervene, which generally involved negotiation and discussion. And it works. So we discuss with him how to better approach his particular issue that they -- without being aggressive and angry, which is quite -- most often, 90 percent of the time, the behavior that's getting him in trouble is his anger and his aggression are disturbing to the community.

Q Does Choices work with clients who are on medication?

A Yes. Choices, with or without medication. If the individual chooses not to take medication, and that is something they have worked out with their medical provider and they have a plan to manage their issues without medication, that's something that we support. And we assist them in developing plans to manage their behavior without medication.

But medication or not does not preclude

somebody from service.

Q Does Choices work with any clients who are refusing to take medication against their physician's recommendations?

A No. And our medical director at this time would not support that.

Q Am I correct in understanding that your medical director would not support Choices working with a patient or a client --

A Who is --

Q -- who was refusing to take medication against physician's recommendations?

A Against their -- yes, sir, that's correct.

Q And it's your understanding in this case that Mr. Bigley's treating psychiatrists are recommending that he take medication, correct?

A It is.

MR. TWOMEY: No further questions, Your Honor.

THE COURT: So would you be available to provide services to Mr. Bigley if he chose not to take medication at this time?

THE WITNESS: That is kind of a -- maybe. I would have to have a discussion with our medical director, and we would have to identify the

appropriate resources.

I would not be willing to begin to provide services to Mr. Bigley at this time without the appropriate financial resources, so that --

THE COURT: Well, setting aside the finances, I am trying to follow up on Mr. Twomey's questions, which was --

THE WITNESS: Which is I currently do not believe our medical director would agree.

THE COURT: To provide services without medication?

THE WITNESS: Yes, ma'am.

THE COURT: Follow-up on that question, Mr. Twomey?

MR. TWOMEY: No, Your Honor.

THE COURT: Mr. Gottstein?

PAUL CORNILS

testified as follows on:

RECROSS EXAMINATION

BY MR. GOTTSTEIN

Q I guess I want to -- would like to start with the last one. But if -- if Mr. Bigley had a psychiatrist who was willing to work with him without medications, then Choices would?

A Yes, sir.

Q That's correct. Okay. And in fact, when he -- when he's discharged from API, then he really doesn't have a treating physician; is that correct?

A That's correct.

Q Okay. Now, Mr. Twomey asked you about the -- I think the WRAC plan, the Wellness Recovery Action Plan, and I think --

A I don't recall.

Q -- or relapse plan, correct?

A Yeah. A relapse plan, right.

Q And you said that that wasn't really appropriate for --

A Well, I'm not saying it's -- it's -- it is appropriate.

But how relapse is generally viewed from a case management standpoint is that you have an individual who has, quote, stable behavior who reaches a point where his -- his or her behavior is no longer stable in his approaching crisis. At that time, a relapse plan is implemented.

In Mr. Bigley's case, his behavior is viewed by the community as almost constantly being in crisis. So our plan is to -- and my personal approach with Mr. Bigley was to intervene at the earliest possible point that a crisis was identified, and we'd negotiate

and discuss and find a different way to approach whatever issue he was trying to handle.

Q So is it fair to say that when you were with him, you could avoid those problems?

A Yes, sir.

Q Okay. And you -- and it's your testimony that if people were with him, you know, through -- you are saying 24 hours, but throughout the day, that that would probably avoid crises?

A Yes.

Q Okay. And in your written testimony, getting more directly to that, Mr. Twomey's question, I think you testified that you used other specific approaches that you've been trained in; is that correct?

A I do. I have kind of an eclectic approach. But I have been trained in Moral Reconation Therapy, anger management, PEER support, a lot of different psychosocial approaches. I have been doing this for ten years, and quite successfully.

Q So in terms of anger management, could you tell the court, you know, what sorts of things that you would be doing, and then how you feel it might play out with Mr. Bigley?

A Well, in -- with Mr. Bigley, relationship is key. So he has to feel that you're trustworthy,

that -- you have to earn his trust before he'll actually negotiate and respond to anything you have to say, with anything other than derision.

But my approach is negotiation and discussion. You can actually engage Mr. Bigley in discussion and --

Q May I interrupt you for a second? And that includes when he's not taking his medication?

A Yes, sir. My experience with him -- my personal experience with him is that he never took medication or he was in the process of discontinuing medication. So I have never worked with him while he was consistently taking medication.

Q I'm sorry for interrupting. But please continue.

A If you treat Mr. Bigley with respect and recognize that most of his behavior it driven by fear and anxiety, you can negotiate with him fairly easily.

Q So when you talk about negotiation, are you -- does that mean not coercing him?

A Yes.

Q And so do you think that the coercion is currently in the system is -- it would be a big factor in the problems that he -- the behavior that he exhibits?

A I -- I really can't speak to the system. But I can speak to my personal relationship with Mr. Bigley. He recognizes coercion and he resents it, and you pay for it.

He gets -- he gets angry and agitated and you pay for it. So I can't speak to any other situation. But to my relationship with him, yes, coercion does not work.

Q Could you explain Moral Reconation Therapy a little bit?

A Moral Reconation Therapy, I use parts of it with Mr. Bigley. It is an approach used primarily with antisocial personalities. It is very popular in corrections settings.

It stresses personal responsibility, and owning one's behavior, taking responsibility for one's behavior regardless of circumstances or perception.

Q And do you think that Mr. -- is it your opinion that Mr. Bigley would benefit from that?

A He has. I -- he has benefited from the approach. He has never -- I haven't worked with him long enough to -- to have -- to do anything specific with him.

My experience with Mr. Bigley has -- you know, besides my relationship, I did enjoy my time

with him, even though it was draining -- is generally helping him meet his basic needs, and in building trust that way, housing, food, those types of things.

And you know, I regret that we weren't able to provide that to the level that I think was necessary a lot of times.

Q Did you have trouble getting -- you know, did you have trouble with Mr. Bigley eating when you were working with him?

A Yes.

Q Yes?

A Yes.

Q And then how did you deal with that?

A I would take him and we'd go eat, or I would --

Q So if you went to -- say to lunch with him, he would have lunch with you, no problem?

A Nine out of ten times. Sometimes he would believe that the food was improperly handled or he would express that maybe it was poisoned or -- but quite frequently, I would eat -- I would eat off of his plate, and he would see that I was okay, and he would eat.

Given his own devices, though, he does not choose a healthy diet. He would live off of Coke and

Ding Dongs.
Q Do you think that if Choices had resources and opportunity, including housing and time to spend with him, that Mr. Bigley would have a reasonable prospect of being able to handle his nutritional needs better on himself -- by himself?
A I would think there is a reasonable chance. I believe his quality of life, regardless, would improve.
Q Right. And that, just to be clear, is without medications, correct?
A Correct. I think with or without.
Q With or without?
A Right.
Q Okay. Now, could you describe -- you said the elements of peer support. What do you mean by that?
A Peer support, one of the reasons that I have been able to connect with -- I was able to connect with Bill early on was that even though I don't have the depth of his experience, I do have personal experience with the mental health system.
I have been hospitalized. I have taken many of the same medications that he's taken. I have experienced the feeling of helplessness and a lack of

control you feel when you are in a situation. And I am able to empathize, and he recognizes that.
Q And is that a well-recognized phenomenon within the mental health field?
A Oh, it is. We are just gaining a foothold here. But across the country, states like Georgia, Tennessee, Connecticut, New Hampshire, they have -- their state departments of behavioral health or health and human services primarily take a peer-support approach. And they encourage -- they encourage choice, and consumer-directed services, which are services provided to mental health consumers by other mental health consumers. And very much like Choices.
Q And is it fair to say that it's really this peer-support method that has proven to be most successful in helping people recover?
A Yes.
MR. GOTTSTEIN: I have no further questions.
THE COURT: Have you -- last year, did you make any efforts at all to find a healthcare -- mental healthcare provider for Mr. Bigley outside of API?
THE WITNESS: There are none in our community that I am aware of that are willing to take the risk.
THE COURT: And why is that?
THE WITNESS: They see -- there is a legal

medical risk that I'm just beginning to understand. But I am not -- I am not a physician, and I am not a psychiatrist.
THE COURT: I understand. It's from that perspective.
THE WITNESS: So there -- there is a risk to -- before a psychiatrist or doctor -- my understanding, to providing -- to be providing treatment to an individual that is not compliant with the treatment.
So I assume, at least with our medical director, his concern is that an individual that we are serving go out and, God forbid, do something harmful in the community, that the psychiatrist would ultimately be held responsible for the behavior because he is ultimately overseeing the treatment, or she.
THE COURT: So based on the time you spent with Mr. Bigley, there is no medical care provider here in Anchorage currently available to him?
THE WITNESS: None that I am aware of, no. I haven't addressed that since October, but --
THE COURT: Right.
Follow-up on that topic, Mr. Twomey?
MR. TWOMEY: No thank you, Your Honor.

THE COURT: Mr. Gottstein, follow-up on that topic? That one topic. Let's not stray. But go ahead.
MR. GOTTSTEIN: Well, he testified about -- yes, I think this is within that.

PAUL CORNILS

testified as follows on:

RECROSS EXAMINATION

BY MR. GOTTSTEIN

Q Now, is it your understanding that in spite of all the things that happened -- has happened, you know, and been done to Mr. Bigley over the years, that he's never harmed anybody?
A Is my understanding. My opinion is that he's -- his personal well-being when he's in the community is my concern.
I believe that he is in danger, just as Dr. Hopson testified, of being assaulted, injured. I witness those types of incidents. I have intervened in those types of incidents on Mr. Bigley's behalf.
But I have never seen him assault anybody. I have never even seen an indication that he would.
Q And actually this surprises me, because I have heard -- I mean, you know, I kind of know of situations where people have gotten mad at him. But I

have never heard anybody else ever testify that he's actually been assaulted by anybody.
A No, he has never been assaulted. I have intervened -- the incidents -- there is an incident that stands out in my mind.
I want to say it was August of this past year, we were in Carrs, in a Carrs grocery store purchasing Mr. Bigley's groceries. And he didn't like the way a gentleman in the bread aisle was staring at him, and he let him know.
And the gentleman took exception with that. And had I not intervened, I believe Mr. Bigley would have been -- he would have been assaulted.
Q But it -- to your knowledge, it's never happened?
A It's never happened, and he's never reported that it has.
Q And so is it your experience that he -- he is actually pretty good at disengaging, you know, before that happens?
A Yes, most of the time he is. And I think he is very good at selecting his targets.
Q And so you know, it could very well be that he would have disengaged sufficiently not to have been assaulted in Carrs?

MR. TWOMEY: Objection, Your Honor. Lack of foundation. Calls for speculation.
THE COURT: That's sustained. My topic was --
MR. GOTTSTEIN: The doctor.
THE COURT: -- the effects as to mental healthcare outside of API.
BY MR. GOTTSTEIN
Q Okay. And so whether or not he has a doctor that's willing to work with him without medications, he -- once he's out in the community, he won't be on medications; is that correct?
A That's my understanding.
MR. TWOMEY: And, Your Honor, calls for speculation.
THE COURT: Well, I think the witness has testified his opinion on that already, so --
MR. GOTTSTEIN: Okay. Thank you, Your Honor.
THE COURT: All right. Follow-up at all?
MR. TWOMEY: No, Your Honor. Thank you.
THE COURT: Thank you, sir. I hope your hand gets better.
(Witness excused.)
THE COURT: I hope yours does, too, Mr. Twomey.

MR. TWOMEY: Thank you.
THE COURT: All right. Why don't we take a short break here, and then I will hear each side on some closing argument on these issues, unless I am overlooking any other witnesses.
Mr. Twomey, anybody else on behalf of the State?
MR. TWOMEY: No, Your Honor.
THE COURT: Mr. Gottstein?
MR. GOTTSTEIN: No, Your Honor.
THE COURT: All right. And how long would you -- would you request to have -- for closing, Mr. Gottstein?
MR. GOTTSTEIN: Twenty minutes.
THE COURT: All right. Mr. Twomey?
MR. TWOMEY: Five minutes, Your Honor.
THE COURT: All right. Why don't we take about five to ten minutes, and then I'll hear from both sides. We will go off record.
11:30:23
(Off record.)
11:44:45
THE COURT: All right. We are back on record here.
Mr. Twomey, are you ready to proceed?

MR. TWOMEY: Yes, Your Honor.
THE COURT: All right. Go right ahead, please.
MR. TWOMEY: Thank you. Your Honor, API is here asking the court to do what is right for Mr. Bigley. I think that there is a number of people in this courtroom who want to see Mr. Bigley's condition improved.
However, there is disagreement as to the most appropriate method for achieving success in Mr. Bigley's case.
What we have is a chronically ill mental patient who has experienced a history of admissions to API, cycled in and out of the system, and at this point, we have got -- the only medical care providers willing to treat him are those doctors at API who are now working with Mr. Bigley and who are asking this court for permission to administer medication that they believe will be beneficial for his condition.
There has been testimony presented by the doctors at API that administration of Risperidone Consta for Mr. Bigley's condition at this point in time is within the standard of care, not only in this community, but would also fall within the standard of care in 26 other states, that follow the Texas

Medication Algorithm Protocol.

There has been no testimony from any witness to indicate that what API is proposing is not within the standard of care currently here in Alaska, or elsewhere in the United States.

The testimony presented on behalf of Mr. Bigley from the doctor back east and by way of various journal articles and publications is that there may be a change in the standard of care at some point in the future, that there may be some undisclosed risks to these medicines that the doctors have not been fully informed about.

But we are not here in this proceeding today to debate the appropriateness of these medicines, their approval or the approval process through the FDA or the disclosure of information to physicians. We are here to address Mr. Bigley's condition.

And we have heard testimony from Dr. Khari, Dr. Hopson indicating that they believe that Mr. Bigley should receive Risperidone. They believe that based upon their medical training, their experience with not only Mr. Bigley, but with other patients, and significantly with Mr. Bigley, the experience has been that when he is on medication, he does much better. When he is off his medication is

when he has difficulty in the community.

We've heard testimony this morning from Mr. Cornils at Choices indicating that even Choices is not a viable option to deal with Mr. Bigley's condition in the absence of him taking medication. The medical director of Choices would not accept Mr. Bigley as a client knowing that Mr. Bigley would refuse medication against physician's orders.

So we really need to get Mr. Bigley stabilized and to a point where he is willing to accept treatment outside of the acute care facility, which is API.

Now, API is an acute care hospital. It is the only mental psychiatric hospital in the state. We have a very important role to fulfill. Dr. Hopson has explained that there is a waiting list to be admitted to API. Very important that we treat patients effectively, efficiently, and move them out of the system.

We do not want to see Mr. Bigley as a long-term resident of API. And we can't change the mission of API from an acute care facility to a residential housing option for Mr. Bigley so that he can come and go as he chooses in order to facilitate his functioning in society.

What we need is medical care for Mr. Bigley. And there is a process set forth in our statute that allows API to seek permission to administer this medication over the objection of Mr. Bigley when the court finds that Mr. Bigley is not competent to consent to the administer -- administration of the medication.

I think that API has established that Mr. Bigley is not, in fact, competent. We have heard from the visitor, who has indicated that over her years of experience in interviewing and working with Mr. Bigley, she has observed a decline in his capacity.

The most recent attempt by the visitor to interview Mr. Bigley was unsuccessful. He wasn't even able to speak with her and complete her assessment of his capacity. She believes he is not capable of giving informed consent.

He doesn't appreciate and understand his condition. Although he has made statements in the past that he does not want to take drugs, I think that's clear that he has made those statements.

However, the fact remains that he has taken the drugs in the past, and when on the drugs, he functions at a much higher level in society. He stays

out of trouble, does not present a danger to others or to himself.

And we really need to stop the cycle of in and out, and we need to do what's right for Mr. Bigley. The physicians taking care of him are urging this court to do what's right and to grant permission so that they can give him the treatment that they believe is within the standard of care and that they believe will assist him in achieving a higher level of function in our society.

This proceeding here is not about the appropriateness of our statutory scheme for granting permission. It seems to me that some of the arguments that we have heard, some of the testimony that's been offered goes to the issue of whether or not there should be a procedure for coercion in terms of administration of medicine. And that's not what this case is about.

This case is about compliance by API with the statutory requirements, not a debate over whether that statute should exist in the first place.

The court has heard testimony about the specific medicine that we were requesting permission to administer here, Risperidone Consta. The testimony is that that medicine may carry some side effects.

And there has been testimony from the physicians as to how they will monitor for those side effects.

In fact, some of the side effects that are of concern in Mr. Bigley's case are not at this point in time a significant concern. He does not have diabetes. He is being monitored, his blood glucose levels. Weight gain is not a concern for Mr. Bigley. In fact, he could use a little additional weight.

THE COURT: Mr. Twomey, do you have a position as to whether an order that was restricted to one type of medication is appropriate or consistent with the statute?

MR. TWOMEY: I'm not sure I understand.

THE COURT: So that rather than an order being entered that simply authorized the involuntary administration of medication, the court order would indicate that API was authorized to administer Risperidone Consta? Do you understand my question?

MR. TWOMEY: As opposed to a more general order?

THE COURT: Correct, correct. Whether that's appropriate or statutorily consistent with -- or consistent with the statute or warranted.

MR. TWOMEY: I think that the statute contemplates psychotropic medication. Risperdal

Consta would be such a medicine. Medicines that are not psychotropic, I think, would fall outside of the scope of the statute.

THE COURT: So to specify -- I guess my question is to specify the type of medication based on the evidence, is that appropriate or outside the -- the statutory scheme?

MR. TWOMEY: Well, I believe it would be appropriate to specify, Your Honor. I believe a statute addresses psychotropic medicines or medications.

So for instance, if Mr. Bigley's physicians felt that it was in Mr. Bigley's best interests to receive a psychotropic medication in addition to some other medication, they would make that recommendation.

If Mr. Bigley refused to take the other non-psychotropic medication, then they could seek approval from Mr. Bigley's guardian to administer that medicine for Mr. Bigley.

But I believe that the statute addresses only the psychotropic medicine.

THE COURT: And to specify a specific psychotropic medicine based on the evidence presented is within your reading of the statutory scheme?

MR. TWOMEY: It is, Your Honor.

THE COURT: Thank you, Mr. Twomey. Go ahead, please.

MR. TWOMEY: And we have heard testimony, Your Honor, as to what the doctors wish to prescribe.

THE COURT: Correct, correct.

MR. TWOMEY: The dosages and method of administration, and so forth.

THE COURT: Right.

MR. TWOMEY: I think it's important for the court to hear that and to consider that evidence --

THE COURT: All right. Thank you.

MR. TWOMEY: -- as part of the court substituting its judgment here in terms of consenting to the medication, on behalf of Mr. Bigley, due to the fact that Mr. Bigley lacks the capacity for making that decision on his own.

API wishes to make clear that we don't come to court with every patient or every schizophrenic patient that we provide treatment to.

Mr. Bigley is, however, a chronic patient. His history is such that the only viable treatment available for him at this point in time is the receipt of medication.

Keeping him at API without treating him does no good for Mr. Bigley's condition. So we really have

our hands tied if the court refuses to grant permission to treat Mr. Bigley by medication. The evidence is that the psychosocial support will not be successful without medication.

It's like going to the doctor with chest pain and before having the personnel at the emergency room hook up the EKG to see what's going on with your heart, to have a social worker come in and talk about your diet and social factors that may affect your heart health.

So we really need to treat Mr. Bigley appropriately. And that treatment is medicine in this case. Despite the fact that there may be some debate in the medical profession over the effectiveness of these current medications, there is no viable alternative.

Non-treatment is not going to be appropriate for Mr. Bigley. What we have seen is a decline in Mr. Bigley's functioning. In the past, Mr. Bigley has been able to provide for his basic needs. That ability to function in society has declined to the point where he is no longer able to provide for his basic needs.

There's been testimony, both here in this proceeding and in the commitment proceeding, that

those basic needs are not able to be met at this point in time, even with the extraordinary efforts of people like Mr. Cornils and the guardian who is assigned to Mr. Bigley's case.

There is no place for Mr. Bigley to live. He is unable to maintain for his own safety. He is threatening other people in the community. They feel threatened.

In fact, Mr. Gottstein has called the police to have Mr. Bigley removed from his office on multiple occasions. There have been incidents at First National Bank where they have now hired a security guard in response to Mr. Bigley and his behavior.

So it's time that something be done to stop this cycle and the decline that we are observing with Mr. Bigley's condition. And we are really urging this court to grant the permission to treat him and to treat him appropriately within the standard of care, with the hopes that he can improve his level of functioning, and with appropriate supports, regain some level of functioning in society that is acceptable and that will keep him from cycling in and out of the jail system and API.

Because we don't want to see Mr. Bigley come to any harm. We want to do what's best for him and

care for him. And that's what we're asking the court to do.

THE COURT: Thank you, Mr. Twomey.

MR. TWOMEY: Thank you, Your Honor.

THE COURT: Mr. Gottstein, go ahead, please.

MR. GOTTSTEIN: Thank you, Your Honor. As a preliminary matter, I think I've already done it, but I want -- in the submission -- or the limited entry of appearance in the documents is that -- and I think that the state is a long way from even proving its case by a preponderance of the evidence, let alone clear and convincing, as it needs to do.

But while normally there is a delay in time for the effectiveness of an order, I feel like I have -- and I have prophylactically moved for a stay pending -- you know, to allow time to appeal if the decision were to go against Mr. Bigley.

And so I just want to -- if it's not clear that that motion has been made, I am making it now. Irreparable harm is, as based on the testimony presented here, and that's Dr. Moser's testimony, Dr. Jackson's testimony, Mr. Whitaker's testimony.

I'd also note that the Alaska Supreme Court in both Myers and Wetherhorn acknowledged that what the hospital -- what the state is proposing here has

been equated with the intrusiveness of lobotomy and electroshock. And so we're talking about very severe irreparable harm. And Dr. Jackson, you know, talked quite a bit about the brain damage caused by these drugs.

So -- and I would also note that there was a stay pending appeal during the pendency of the Myers appeal while she was there. So anyway, just to be clear on that, because -- okay.

With respect to the competency, I think we went over that quite a bit on Monday, the arguments and stuff. God, my language. Stuff. On that.

But I want to emphasize that there are instruments that have been validated for the assessment of competency, in addition to -- you know, in addition to the Meyer arguments that they are really inconsistent -- logically inconsistent to say that he is competent to accept the medication. As soon as he decides not to, then he is incompetent -- are inherently an admission that he is competent, in that the most it proves is that the treatment has turned him incompetent.

But in addition to that argument is that there are these capacity instrument -- assessment instruments that have been subjected to critical

review as to their validity, strength, and weaknesses. And I'd refer the court to Grisso, G-R-I-S-S-O, et al., evaluating competencies, forensic assessments and instruments, pages 404 and 50, second edition, 2003.

THE COURT: Well, given what's in the record here, what evidence would you point to with respect to demonstrating Mr. Bigley's competency?

MR. GOTTSTEIN: I think that it's basically been admitted that he was competent to accept the medication, and that that logically requires that he's competent to decline it. And that's admitted, and by the state.

And I think it's also been admitted that no valid competency assessment has been conducted.

THE COURT: So you are -- let me make sure I understand your argument. With respect to his current competency, I understand your position that there has been no formal competency assessment. Is there other evidence that you would point to with regard to Mr. Bigley's current competence?

MR. GOTTSTEIN: Yes, Your Honor. And Mr. Cornils this morning testified he thought he was competent.

And I think that -- and he was, I think, very astute in the way he went about it, which is that for

28 years, Mr. Bigley has experienced this. And he knows how it feels and all that. And it's just, I think, a glib response to say that he's incompetent over all that time, and with all that experience that he has with it, so I thank Mr. Cornils, and all that.

The state has focused on the statutory issue of competency. But really, Myers, you know, essentially declared that unconstitutional. And I would point that the court is required to find, in addition to by clear and convincing evidence that he has never been competent and is incompetent now, that it's in his best interests, and there is no less-intrusive alternative.

And Mr. Twomey just totally ignored that in his -- in his argument. So -- and I would draw the court's attention to footnote 25 of Myers, where the court says that at a minimum, I believe it says, that the information set forth in AS 47.38.37(d)(2)(d) should be looked at. And the ones that I really want to -- do you want to --

THE COURT: Go ahead. I know I had Myers here earlier this week, and I am looking for my copy. But that's fine. I know where to find it.

MR. GOTTSTEIN: I can get you a copy if you like.

THE COURT: Go ahead, Mr. Gottstein. That's fine.

MR. GOTTSTEIN: But --

THE COURT: Oh, I found it. Go ahead, please.

MR. GOTTSTEIN: Okay. So look at -- I think I want to highlight a couple of them or a few of them, is the prognosis or the predominant symptoms with and without the medication.

THE COURT: So are you referring to footnote 25 now?

MR. GOTTSTEIN: Yes.

THE COURT: All right. I see it right here.

MR. GOTTSTEIN: Okay. And so what -- what we really have heard from the hospital is we are just going to have this continued psychosis, continued revolving door. They are going to continue to, you know, pump him full of drugs, literally pump him full of drugs while he's there, and then he'll go out and quit, and that he won't -- he won't recover. And that is his prognosis.

Whereas we have got a lot of testimony in the record here by Mr. Cornils, also by Mr. Whitaker, and Dr. Jackson, and Lawrence Moser, and Sarah Porter about -- including very chronic patients have a

reasonable prospect of recovering if they're given a chance to get off these drugs.

And Dr. Jackson really explained how these drugs are causing this chronicity and causing this decline -- that causes declines in people, and that's entirely consistent with what -- with what the hospital has testified to.

THE COURT: So what alternative would you propose for Mr. Bigley?

MR. GOTTSTEIN: Well, I've got -- you know, I have proposed it. And --

THE COURT: That he can come and go from API, basically?

MR. GOTTSTEIN: Well, it's kind of housing of last -- I mean, I really would think that as I repeatedly said, you know, that the -- you know, we should try and get together and work this out.

And the hospital has been very clear, just will refuse to consider anything that doesn't require medication. And that's very clear in the testimony.

And Dr. Hopson, you know, stated his reasons for it. And the only problem with that is it's unconstitutional. And so there is a less -- motion for less-intrusive alternative that was, you know, filed in the previous case. But it's basically the

same thing.

But the API thing -- or the API is really housing of last resort. Because what we heard consistently from people, and especially from Mr. Cornils, who no doubt has had more time with Mr. Bigley than any other person that testified, that this housing is critical. And when he loses it, that's when things deteriorate.

So I don't think anybody expects that Mr. Bigley really at this point would even voluntarily go to API. But I think it should be an option for him. I think it's constitutionally really required.

THE COURT: So how would he receive mental health treatment under your proposal?

MR. GOTTSTEIN: Well, I -- you know, Dr. Hopson has equated treatment with drugging. And so then you know, Mr. Cornils and these other people, Dr. Moser, Sarah Porter, (indiscernible), Mr. Whitaker, and Dr. Bassman explained that there are other approaches that work.

THE COURT: And I haven't heard with regard to Mr. Bigley in Anchorage, Alaska who would provide him care, or who's willing to.

MR. GOTTSTEIN: Well, I mean, I think that the hospital is required to provide a constitutional

level of care. And that's what Wyatt versus Stickney out of Alabama in the federal court, under the federal constitution requires that.

And then in Alaska, there's -- it's a little different place on my outline here. In the Molly Hooch case, 536 Pacific Second 793, 809, indicated that the court won't hesitate to intervene if a violation of the constitutional rights to equal treatment under either the Alaska or United States constitution is established.

In that case, it was a question of whether or not the court was going to mandate that -- the state --

THE COURT: I am very familiar with the Molly Hooch case.

MR. GOTTSTEIN: Okay.

THE COURT: So you can move on.

MR. GOTTSTEIN: So -- well --

THE COURT: I understand. It is an education clause case.

MR. GOTTSTEIN: But there is an analogy here. There is no due process.

THE COURT: Go right ahead.

MR. GOTTSTEIN: But the point is that the state may not provide -- provide social services in an

unconstitutional manner.

And it's required to provide the service if it's available -- if reasonably available. And they could make it available. They can't just decide not to make it available. API could provide that treatment, and I think the court should order it.

THE COURT: Well, I guess what you are seeking to have is an order that API provide mental health treatment that does not include drugs?

MR. GOTTSTEIN: Excuse me, I'm getting excited here.

THE COURT: That's all right, Mr. Gottstein.

MR. GOTTSTEIN: It's really very carefully laid out. And a lot of thought has gone into it, which is basically that he -- that there be someone with him. And API can provide that. They can pay someone to be with him. And if funds are found another way to do that, then that would be fine, too.

And in fact, in the January placement, what was called, at country club, the state went and got a special source of funds to provide extra money for an assisted-living facility that required him to take the drugs. And of course, that didn't work out. And they should be required to do that and provide services in a constitutional manner.

So we've had testimony -- in fact, Dr. Hopson testified that this intensive case management would work for Mr. Bigley. And I think the hospital should be required.

And the other thing is this housing is -- everybody should work together to get housing that will work for him. And that also requires the ability to have someone kind of help him keep it.

And the other part of it is right now, he is getting $10 a day to -- you know, to live on with food and everything. And that's unreasonable. And the rest of his money is being budgeted for housing. And it's just unreasonable.

And so I think the state is required to do that. And there are various programs that can provide subsidized housing. And I think that those can be looked at. And in the absence of that, that the hospital should provide that. And it's acknowledged that Mr. Bigley is a unique case.

And again, I think having invoked its awesome power to come to this court and try and get this court to forcibly drug him, that these rights to a less-intrusive alternative spring into action.

Now, I think it's ambiguous what available means in Myers. Does it mean that the state can just

choose not to provide it? And I think that's kind of the -- the -- that's the attitude that the state is taking.

But that's -- I don't believe -- that is not constitutional. This service could be -- the services that Mr. Cornils described can be provided and the court should order it.

Okay. So there's -- I think the first thing after the limited entry of appearance is the motion for less-intrusive alternative.

THE COURT: I don't think one was filed in this particular case.

MR. GOTTSTEIN: Well, maybe --

THE COURT: I have copies of your pleadings in other cases.

MR. GOTTSTEIN: Right. And so I am making the same motion now. And I think really under Myers I don't really have to make the motion, because the court has to find that there is no less intrusive alternative. But I am making that motion.

THE COURT: But you're seeking to create an order that would create a less restrictive alternative, as opposed to a demonstration by the state that there is no other option available, as I understand it.

MR. GOTTSTEIN: It's clearly available. All they have to do is pay for it. I mean, API can do it.

Okay. I am a little bit off track here. But I think this was good, because I think this is one of the core issues in the case.

And in footnote 25(c), a review of the patient's history, including medication history and previous side effects from medication. And it is very clear that for 28 years, the hospital's approach hasn't worked. You know, end of story.

Mr. Cornils described it as futile. You know, that is very clear. Okay. And information and alternative treatments, their risks, side effects, benefits, including the risks of non-treatment.

And I think there is a tremendous amount of testimony about that, same people, in terms of alternatives, Sarah Porter, which I really -- I assume Your Honor will read it. It's very informative about how you work with people to, you know, move to the place -- really what the hospital is saying, where they become -- so it becomes a cooperative effort.

And as Mr. Cornils says, that can include medication or not. And this isn't about medication or not medication. It's about the state's right to force, and there are very strict limitations on that

as opposed to a cooperative approach.

And when you -- when you read Ms. Porter's testimony, you will see that it really confirms what Mr. Cornils was saying about how when you get into this coercion situation, that, you know, then you are in a fight. And that's very counter therapeutic.

And Dr. Moser, who the Alaska Supreme Court acknowledged in Myers was -- had especially impressive credentials. His testimony goes directly to this issue of how counter therapeutic coercion is. And one of the interesting things is that he said that he had been with more unmedicated people who were with psychosis than anybody alive today he thought.

And he has passed away now, may he rest in peace. A beautiful man.

And he had never had -- he had never had to file a commitment on anybody because he spent the time and effort to work with someone. And that's with everyone.

The other thing I thought was very interesting, and he said, and I find them among my most interesting customers, and that's, I think, really an important point.

And then number -- where is it. Oh, the court also referred to -- cited with approval, the

supreme court of Minnesota. And the one I want to really focus on is No. 5, the extent of intrusion into the patient's body and the pain connected with the treatment.

And Dr. Hopson testified that if you refuse it, that he will be physically restrained and injected, and that -- and that's I think something to be considered. He said usually people submit, you know, but also that, you know, they don't, as well.

And I'd also point out with respect to this that these -- the forced medication is experienced as torture. And I'll cite to Tina Minklewitz (phonetic), the United Nations convention on the rights of persons with disabilities and the right to be free from non-consensual psychiatric interventions, 34 Syracuse Journal of International Law and Commerce 405, where -- where, four, psychiatric drugging is classified as torture. And that's really what people experience it as.

That's why Mr. Bigley has resisted it for 28 years, is it is -- is that. And in fact, you know, we know that someone who was tortured for 28 years, you know, was likely to exhibit psychiatric symptoms.

Most -- I mean, on this best interest thing, I think most importantly is this issue that the state

has really focused on the standard of care. And that is clearly not the issue here. The standard of care is a liability issue of the physicians who practice defensive medicine, and as Mr. Cornils says, think they need to drug someone in order to avoid liability.

And there is a couple of things to be said about that, is that the standard of care does not allow -- that is not a license to force people. That is a different standard.

And a quote -- Myers, quoting the Minnesota supreme court, that when medical judgments collide with a patient's fundamental rights, it is the courts, not the doctors, who possess the necessary expertise. The final decision to accept or reject a proposed medical procedure and its attendant risk is ultimately not a medical decision, but a personal choice.

And the court says, we agree with these decisions, and joined them in concluding that the right to refuse psychotropic medication is a fundamental right, though not an absolute one, that the ultimate responsibility for providing adequate protection of that right rests with the courts, and that the -- and that adequate protection of that right can only be insured by an independent judicial determination of the patient's best interests

considered in light of -- in light of any available less-intrusive treatments.

And so that inherently rejects -- and really explicitly rejects the standard of care argument. And when Mr. Twomey says that because the standard of -- it doesn't matter if these -- what they are proposing is harmful. Because that's the standard of care, we get to harm him. That's what he's arguing. And that is not the case law, and that is not what Myers said.

Okay. So I get excited about that. Because that is something that I find that psychiatrists really have a difficult time with is not understanding that even though they may recommend the medication as a standard of care, that's the standard of care, the recommendation. It's not an entitlement to force.

Okay. Now, moving to some of the -- the testimony, there is unrebutted scientific evidence regarding the harm and lack of efficacy of Risperdal.

And, Your Honor, you, I think, expressed some concern about Dr. Jackson's testimony not pertaining to Risperdal. But if you carefully review it, she was very clear that her testimony applied to Risperdal.

And as an aside, I think you'll recall that I really protested the petition as being inadequate because the petition -- you know, as I said, I think

requires the state to say what they're going to -- what they are trying to get the court to approve. Because otherwise, how -- you know, how is the respondent able to rebut and respond to what you came -- you know, about Risperdal without knowing when the petition was filed what it is that they are proposing.

And then also all of the other factors. But we're past that. But I just kind of wanted to emphasize that -- that we -- I got thrown off here. And I was really in a -- going here.

Anyway, I think there is unrebutted testimony regarding the harm and lack of efficacy of Risperdal. There is -- well, I have down here unrebutted testimony that best outcome is by far a non-coercive, non-drug one.

And I think that's -- that's really right in terms of the science. Because that's where we were getting into, excuse me, you know, what Dr. Hopson was testifying.

But in terms of the science, it's very clear. There is unrebutted testimony that the best outcome by far is non-coercive, non-drug use.

And I'll point out that Mr. Twomey referred to evidence that was stricken when he talked about

evidence of psychosocial support not working. That was exactly what was stricken. And I had all kinds of exhibits that rebutted that. And that was stricken, so there is unrebutted testimony on that.

So kind of -- well, I already said that. Okay. Okay. I'm here. My outline of a less-intrusive alternative, and we've already talked about it some, so I'll try not to repeat.

THE COURT: Okay.

MR. GOTTSTEIN: But one thing, you know, in terms of having someone with Mr. Bigley. I think the court has observed even while this proceeding that on Monday when Mr. Bigley was here with me, he was talking to me and it was kind of difficult.

And then the last two days, my assistant, Ms. Smith back there. And he's been able to talk to her. He's been -- you know, all that. And it's really gone much better.

And even when he didn't have that, you certainly didn't see the type of behavior described, you know, that was so disturbing in the community. And he's been off medication now for quite some time.

And so I think just by his demeanor in the courtroom, that you can see that if he's got people around him and has those supports, that things can go

okay.

Okay. So in support of less-intrusive alternatives, there is Mr. Cornils' testimony, Ms. Porter's testimony, Dr. Bassman's testimony, Dr. Jackson's testimony, Dr. Moser's testimony, Mr. Whitaker's testimony, and in fact Dr. Hopson's testimony. He -- he has -- he testified that, yeah, if he had -- if Mr. Bigley had intensive case management, that would work okay, and just that the hospital is unwilling to do it. And -- but it certainly can, and the court should order it.

He also admitted that -- that being locked up makes Mr. Bigley angry. And they're not letting him out on passes, which really helps a lot.

And I would request an order right today that Mr. Bigley be allowed out on passes for four hours a day, with or without escort as the hospital might determine.

And in the -- I don't know if it was the most recent commitment case or the one before it, there was testimony that the doctor was convinced by staff that he could be let out, and he kind of -- he was skeptical, but he was let out without an escort, and he came back. And I think the court should order that.

And one of the things that's happened here is this Taku -- placement in Taku, I mean, just kind of that's the rule, no passes. But there -- as Dr. Hopson testified to, and was implicit in Mr. Cornils's testimony, is this locking him up and not letting him out really gets him upset and angry and exacerbates his symptoms. And this court can ameliorate that immediately by ordering four-hour passes.

Okay.

THE COURT: So I think you've been about half an hour. So we need you to finish up, Mr. Gottstein. Go ahead.

MR. GOTTSTEIN: Well, his ten minutes was about 20 -- or five minutes was 20. But anyway, I am just going to go through what Mr. Twomey said.

Mr. Twomey said what -- they are here to do what is right for Mr. Bigley, but there are disagreements about that obviously.

But really, that is not the legal standard. The legal standard is do they have -- have they made the case to force him to take drugs against his will, and they haven't.

He said that, you know, the testimony was that on meds, he does better. You have direct

contradictory testimony from Mr. Cornils about that.

You know, he said that the hospital needs to get Mr. Bigley to accept the drugs. You know, give me a break. It's been 28 years. I actually think it's 80 admissions, not 75. But 28 years and 75 or 80 admissions. They've not gotten him to do that except for that one period of time. And there is no reason to expect that they should again unless they adopt this cooperative method.

Mr. Twomey mentioned the decline in capacity, and I think that's completely consistent with Dr. Jackson's dramatic testimony yesterday about CBI, chemical brain injury, that that's the most likely thing that's really happened is that the damage to his brain by these drugs is causing this cognitive decline. And that at this point, it's very dangerous to continue to do it.

There was a lot of talk about what the statute requires. And he said -- Mr. Twomey says it's not about appropriateness. It's about the statutory scheme for granting permission. Well, I beg to differ. He has essentially ignored Myers.

Okay. We talked about that.

He said that the basic needs not able to be met without extraordinary efforts. I think that's not

true. Mr. Cornils testified that they could be met if the resources were there, and Dr. Hopson testified to that.

There's -- this is a little bit difficult. Mr. Twomey mentioned my calling the police, and I -- there was --

THE COURT: It's not in the record, so --

MR. GOTTSTEIN: Okay. So I think that's pretty inappropriate. Okay.

That's what I have.

THE COURT: Thank you. Did you want to respond at all, Mr. Twomey?

MR. TWOMEY: Well, Your Honor, I was here Monday, I was here yesterday, and I was here today. And I guess I didn't hear Dr. Hopson testify that treatment in the absence of medication would be beneficial for Mr. Bigley, that it would provide any sort of therapeutic effect or that it was in fact an alternative appropriate for Mr. Bigley's condition.

What I heard in the way of testimony was that the administration of the antipsychotic medicine was the treatment that was being recommended and is the only available alternative.

I also sat here and heard Mr. Cornils testify to -- I understood his testimony to be different from

that described by Mr. Gottstein.

My understanding of his testimony is that Choices is not a viable alternative today for Mr. Bigley's condition. Choices in fact would not accept him as a client knowing that he would refuse medicine against physician's orders.

And I want to make clear that the state or API is not arguing that the court need not consider the constitutional requirements set forth in the Myers case.

In fact, that's what we've been talking about with our witnesses the last couple of days, what is in the best interest of Mr. Bigley? Is it in his best interest to receive these medicines?

And we have unrebutted testimony from the only people willing to care for Mr. Bigley that it is in his best interests and it is appropriate. It's within the standard of care in the medical community to treat Mr. Bigley with these medicines. We have no one willing to step forward and accept Mr. Bigley as a patient.

The doctor from South Carolina is not willing to take him as a patient. She is a researcher. She is a critic of the medical profession.

We have got journalists writing articles

about the dangers of these drugs, but they are not willing to step forward and accept Mr. Bigley and provide him with treatment.

The only medical care providers available in this community are indicating that they are recommending and they believe it's in the best interests of Mr. Bigley to receive the medicines.

And I think the court has heard both sides of the debate, in terms of the dangers of these medicines, acknowledgment that there may be some side effects. We've heard testimony as to how those side effects are monitored.

And despite the fears about these medicines, they are still being used. They are prevalent in this country.

And despite Mr. Gottstein's goal of advancing his objectives through Mr. Bigley in this case, of changing the way mental healthcare is delivered in this country, the fact is we have to deal with Mr. Bigley today in this courtroom now, and make an assessment today of his capacity, not what may have happened to him over the course of 28 years.

We need to decide now whether he has the capacity to consent to the administration of this regimen of treatment or not. And if he does not have

that capacity, whether it's in his best interests to receive this medicine.

And clearly, the only testimony from anyone capable of providing that treatment to him is that it is in his best interests. So we urge the court to grant permission, allow us to treat Mr. Bigley, and to do what's right in this case.

The alternative really is to leave things as they are. And what we're seeing is a decline in Mr. Bigley's functioning.

Testimony from Mr. Cornils is that he is no longer able to work with Mr. Bigley due to the decline in his function. So there is no currently available alternative to address the situation.

Mr. Gottstein would suggest that the court can create an alternative out of thin air, and to convert the mission of API from an acute care mental health hospital to some sort of residential facility, so that Mr. Bigley can come and go as he pleases, that he be allowed on passes.

And there is no testimony that that will in fact improve his mental condition or address the underlying problem, which is his psychosis. And that's what we need to address.

So we are, again, requesting permission from

this court pursuant to the statutory requirements and pursuant to the additional Myers constitutional requirement that there be a finding that it's in his best interest and that there's no less restrictive alternative available. I believe we have shown that by clear and convincing evidence, and we ask for it to grant the petition for administration of medicine.

THE COURT: All right. Thank you, Mr. Twomey.

What I'm going to do is the following. I am not going to issue any orders today. I am going to take the matter under advisement. My hope is to issue a decision tomorrow on the issue.

I am cognizant of the request for a stay in the event that I were to grant the state's petition, and I will address that, as well.

But my hope is tomorrow. And if not tomorrow, then certainly no later than Monday, I will issue a decision. At this point, I am not certain whether it will be in writing or I'll call counsel and tell you when I'll put it on record. But it will be one or the other.

Anything further today, Mr. Twomey, on behalf of the State?

MR. TWOMEY: No, Your Honor. Other than to

just note for the court that we are scheduled to have hearings at API tomorrow afternoon.

THE COURT: All right. I'll tell you my schedule. I have a trial 8:30 to 1:30. And if they resolved, that is when I plan to address this case. If not, then it is Monday. So that is my timeframe.

But thank you for that reminder, Mr. Twomey.

Anything further, Mr. Gottstein?

MR. GOTTSTEIN: No, Your Honor.

THE COURT: All right. Well, I will certainly give this careful attention, further thought, and I will give you a decision in the near term.

We will go off record.

MR. TWOMEY: Thank you, Your Honor.

(Off record.)

12:39:39

TRANSCRIBER'S CERTIFICATE

I, Jeanette Blalock, hereby certify that the foregoing pages numbered 196 through 300 are a true, accurate, and complete transcript of proceedings in Case No. 3AN-08-00493 PR, In the Matter of WB: William Bigley, Motion Hearing held May 15, 2008, transcribed by me from a copy of the electronic sound recording, to the best of my knowledge and ability.

_____ _____

Date Jeanette Blalock, Transcriber