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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF STATE OF NEW YORK,

Respondent,

-against-

No. 207

JOHN P.,

Appellant.

20 Eagle Street
Albany, New York 12207
November 13, 2012

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE CARMEN BEAUCHAMP CIPARICK
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.

Appearances:

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Penina Wolicki
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 207, Matter of State
2 of New York v. John P.

3 Counselor, would you like any rebuttal
4 time?

5 MR. WELLS: Yes, Your Honor. Two minutes,
6 please.

7 CHIEF JUDGE LIPPMAN: Two minutes, sure.
8 Go ahead.

9 MR. WELLS: Good afternoon, Your Honors.
10 And I'd just like to give my condolences to the
11 court.

12 My name is Scott Wells, with the Mental
13 Hygiene Legal Service, counsel for the appellant,
14 John P.

15 Your Honors, contrary to the State's claim
16 raised in the Appellate Division and now again raised
17 before this court - - -

18 CHIEF JUDGE LIPPMAN: Counselor, does it
19 matter this is an article 10 versus an article 9
20 proceeding, in terms of the when the right to counsel
21 attaches and the policy framework of the two
22 articles?

23 MR. WELLS: No, Your Honor. And this - - -

24 CHIEF JUDGE LIPPMAN: Why not? Why isn't
25 article 10 different?

1 MR. WELLS: Well, Your Honor, this goes
2 straight - - -

3 CHIEF JUDGE LIPPMAN: Different scheme - -
4 - different statutory scheme.

5 MR. WELLS: Agreed, it's a different
6 statutory scheme. But this goes straight to the
7 Constitutional issues raised in Ughetto v. Acrish by
8 the Second Department, where that court held,
9 specifically based on Constitutional due process,
10 that - - - where a pre-trial psychiatric evaluation
11 is directly related to subsequent litigation, as a
12 matter of Constitutional due process, in order to
13 enhance the truth-finding functions of the
14 proceeding, and to allow for effective cross-
15 examination.

16 CHIEF JUDGE LIPPMAN: Is this case
17 different from Hawkins, or the same?

18 MR. WELLS: This case is different from
19 Hawkins. This case is much more aligned with
20 custodial interrogations.

21 JUDGE READ: What are the practical - - -
22 practical ramifications, if we agree with you?

23 MR. WELLS: The practical ramifications?

24 JUDGE READ: Practical ramifications, yes.
25 How many of these kinds of reviews are there, and how

1 many of them result in going forward in an article
2 10?

3 MR. WELLS: Well, Your Honor, I think - - -
4 you know, the number is around ten percent, is what
5 the State puts it at. The practical ramifications, I
6 think, if the court agrees with appellant, is that
7 the State will be required to prove its case in a
8 manner that the legislature envisioned.

9 JUDGE SMITH: You said - - -

10 JUDGE CIPARICK: So you're not advo - - -
11 sorry. You're not advocating that counsel be present
12 at these pre-trial psychiatric examinations. You're
13 only advocating that they can't use - - - they can't
14 have that psychiatrist testify because there's been
15 no opportunity for defense to cross-examine, et
16 cetera?

17 MR. WELLS: Yes, Your Honor. And John P.
18 has never sought to establish a right to counsel
19 during the preliminary - - -

20 JUDGE SMITH: But how can you - - -

21 MR. WELLS: - - - stages.

22 JUDGE SMITH: - - - what's the basis for
23 keeping the evidence out if there was - - - if it
24 wasn't improperly obtained?

25 MR. WELLS: The basis for keeping the

1 evidence out?

2 JUDGE SMITH: Yes. I mean, he had an
3 interview without counsel, in which you say you're
4 not trying to establish that they have to have
5 counsel at all those interviews. You're just trying
6 to say that the contents are inadmissible. Have I
7 summarized that fairly?

8 MR. WELLS: Yes, Your Honor. And - - -

9 JUDGE SMITH: And I guess I'd say, what
10 makes it inadmissible if the State didn't do anything
11 wrong?

12 MR. WELLS: Well, Your Honor, I think the
13 State did do something wrong. And essentially - - -
14 and they continue to do this as an ongoing practice
15 and use - - -

16 JUDGE GRAFFEO: But your psychiatr - - -
17 your client did retain a psychiatric expert, correct?
18 You didn't use that person at the hearing, but you
19 did retain someone.

20 MR. WELLS: Pursuant to - - -

21 JUDGE GRAFFEO: And they had - - - did they
22 have access to the State's report?

23 MR. WELLS: Did they have access to
24 respondent's psychiatrist's report?

25 JUDGE GRAFFEO: Yes.

1 MR. WELLS: Yes. The State had access to
2 that report.

3 CHIEF JUDGE LIPPMAN: Didn't the doctor
4 explain to him what this could be used for and what
5 it couldn't be used for?

6 MR. WELLS: Well, Your Honor, that's the
7 doctor's testimony that he - - - and he provided
8 general testimony that he explained that this is a
9 nonconfidential evaluation - - -

10 CHIEF JUDGE LIPPMAN: Assuming - - -
11 assuming his testimony is credible, why isn't that
12 good enough?

13 MR. WELLS: Well, Your Honor, a licensed
14 psychologist is certainly no substitute for a member
15 of the bar, and certainly not at an administrative,
16 purely ministerial evaluation, that this court held
17 in State v. Rashid, simply denotes milestones in an
18 internal administrative review.

19 JUDGE PIGOTT: Shouldn't your try - - -
20 your challenge then be to the competency of this
21 particular witness to testify, I mean, either through
22 a Frye hearing or some challenge to his credentials
23 or something like that, prior to the - - -

24 MR. WELLS: No, Your Honor. I think our
25 challenge is to the State's use of the CRT procedure

1 in a manner that the legislature has never
2 anticipated.

3 JUDGE CIPARICK: But could it be used in
4 rebuttal? I mean, you're claiming it can't be used
5 as part of the prima facie case. But what about in
6 rebuttal, if the defense raises an issue that could
7 only be impeached by using the results of the CRT
8 exams?

9 MR. WELLS: I think that presents a
10 different case. Here, if the respondent possibly
11 opened up the door to that, that may be a different
12 case that we don't have here. But our argument here
13 is that the State cannot rely on these administrative
14 reviews in order to bolster and establish their prima
15 facie case.

16 CHIEF JUDGE LIPPMAN: Yes, but how does all
17 of this fit in with the purpose of article 10, which
18 is to protect the public, is it not?

19 MR. WELLS: That's one of the purposes,
20 Your Honor.

21 JUDGE GRAFFEO: And the Attorney General's
22 Office doesn't have to proceed with an article 10.

23 MR. WELLS: No, it - - -

24 JUDGE GRAFFEO: Just because there's a
25 referral from OMH does not mean that there is, in

1 fact, going to be an article 10 proceeding commenced.

2 MR. WELLS: No, Your Honor. And more than
3 likely, one may not. And that is the entire purpose
4 of the case-review proceeding. It is on - - -

5 JUDGE GRAFFEO: Isn't that why the
6 legislature provided that, at the State's expense,
7 your client could retain a psychiatric expert?

8 MR. WELLS: Well, the - - -

9 JUDGE GRAFFEO: And you could also get the
10 files that the State - - - the OMH files?

11 MR. WELLS: Yes, Your Honor. The
12 legislature provided both parties to retain court-
13 appointed psychiatric examiners after the petition
14 has been filed. And we submit that that's how the
15 legislature envisioned - - -

16 JUDGE GRAFFEO: And you can also attend
17 that psychiatric examination, as well?

18 MR. WELLS: Yes, yes, Your Honor. And that
19 is when the right to counsel - - -

20 JUDGE GRAFFEO: So where's the - - -

21 MR. WELLS: - - - would attach.

22 JUDGE GRAFFEO: - - - fundamental
23 unfairness?

24 MR. WELLS: Where the fundamental
25 unfairness arises is that, this is a preliminary

1 administrative review that has substantial impact on
2 the outcome of a proceeding that may entirely vitiate
3 an individual's liberty. And absent counsel's
4 presence, the ability for the State to retroactively
5 - - -

6 CHIEF JUDGE LIPPMAN: But even though - - -
7 even though the - - - it's premised on the fact that
8 you have an opportunity to have your own doctor
9 rebut, why isn't that sufficient?

10 MR. WELLS: Well, Your Honor, because the
11 respondent would be able to offer any number of
12 doctors. And this case is really illustrative of the
13 facts here, that - - -

14 CHIEF JUDGE LIPPMAN: Unless the right to
15 counsel attaches at that point, why isn't the
16 statutory scheme perfectly rational?

17 MR. WELLS: Perfectly - - -

18 CHIEF JUDGE LIPPMAN: Why isn't the
19 statutory scheme perfectly rational?

20 MR. WELLS: Well, the statutory scheme, I
21 think, is perfectly rational in allowing both parties
22 to have a court-appointed expert, wherein counsel is
23 provided at that point to - - - for specifically for
24 the purposes of rendering testimony.

25 JUDGE PIGOTT: Could you call him? Let's

1 assume that we find in your favor, and we say they
2 can't use them in their case-in-chief; can you call
3 him?

4 MR. WELLS: No, Your Honor. And - - -

5 JUDGE PIGOTT: Even though, I mean, he may
6 have the statement that you think is critical; you
7 know, he totally misdiagnoses your client, but
8 nevertheless, makes his report to OMH, and then they
9 can't use it because of our ruling, but you want to.
10 You'd say, even though it may affect fundamental due
11 process, you just can't get to that point?

12 MR. WELLS: Your Honor, I think that's not
13 how the statute operates, and that's not what the
14 legislature intended. It's our position that the
15 legislature intended that these cases be prosecuted
16 or defended, and psychiatric experts be appointed by
17 the court, only after the filing of the petition. At
18 that point the parties then - - -

19 CHIEF JUDGE LIPPMAN: Okay, counselor - - -

20 MR. WELLS: - - - begin to make out their
21 case.

22 CHIEF JUDGE LIPPMAN: - - - you'll have
23 your rebuttal time.

24 MR. WELLS: Thank you.

25 CHIEF JUDGE LIPPMAN: Thank you.

1 Counselor?

2 MR. GRIECO: May it please the court,
3 Matthew Grieco on behalf of the Attorney General.

4 Your Honors, I want to begin with what - -
5 - the most important point in this case, which Judge
6 Smith raised during Mr. Wells' presentation, and that
7 is that the most familiar rule of evidence is that
8 all properly obtained relevant evidence is
9 admissible. And evidence is only - - -

10 CHIEF JUDGE LIPPMAN: Why isn't this unfair
11 from a policy perspective?

12 MR. GRIECO: Because as every - - - almost
13 every court to previously look at this issue has
14 concluded, in the context of a civil management
15 proceeding, the best way to test an expert's expert
16 testimony against the possibility of either error or
17 bias is, as the court has suggested, to provide the
18 respondent with his own expert who can conduct his
19 own examination of the respondent and rebut the
20 conclusions of the Attorney General's witnesses.

21 JUDGE CIPARICK: Does this make a
22 difference, that it was a nonjury case - - - that
23 respondent here had waived a jury. Does that make a
24 difference?

25 MR. GRIECO: No, I - - -

1 JUDGE CIPARICK: Would it have been
2 admissible under - - - if it had been a jury case?

3 MR. GRIECO: I'm sorry, could you repeat
4 the question?

5 JUDGE CIPARICK: Would it have been
6 admissible if it was a jury case?

7 MR. GRIECO: Yes, it would have been. The
8 legislature logically would have wanted CRT examiners
9 to testify at trial. And that is why they did not
10 put a provision into the statute saying they could
11 not.

12 The appellant in this case has conceded
13 that there is no possible interpretation of the
14 article 10 statute that would allow for the presence
15 of counsel at that examination. Therefore, this case
16 is not about an attempt - - - is not about the right
17 to counsel - - -

18 CHIEF JUDGE LIPPMAN: But what - - - but
19 what's happening at that early stage, doesn't it go
20 directly to the liberty interest at stake here? I
21 mean, is it - - - again, from a policy perspective,
22 it would seem, a great, great, great disadvantage to
23 - - -

24 MR. GRIECO: Well, the due process clause
25 protects an individual against an erroneous

1 deprivation of liberty. And he doesn't - - - he does
2 not have a due process right to inhibit the OMH's
3 effort to make an accurate recommendation to the
4 Attorney General. He has the opportunity to ensure
5 that it is not an erroneous - - - that the result of
6 the proceeding is not an erroneous one. And the best
7 - - -

8 CHIEF JUDGE LIPPMAN: What percentage of
9 these cases winds up in the petition being filed?

10 MR. GRIECO: About three percent of all
11 eligible sex offenders are ultimately placed into - -
12 -

13 JUDGE SMITH: What percentage of those who
14 were subjected to these screening interviews?

15 MR. GRIECO: The screening interviews, it's
16 about two-thirds. It's about - - - about a little
17 less than one half of everyone who goes before the
18 case-review team gets placed in proceedings, and
19 about two-thirds of those who have a CRT interview.

20 JUDGE PIGOTT: Can you - - - wait. I'm not
21 sure I understood your numbers there. How many sex
22 offenders are we going to address in a year? I mean,
23 let's assume 1,000 get out, or are due to get out,
24 okay?

25 MR. GRIECO: Right.

1 JUDGE PIGOTT: How many of those does
2 somebody decide goes to one of these physicians for
3 review?

4 MR. GRIECO: Well, the number over the last
5 five years have been - - - there've been about 7,500
6 eligible sex offenders who have been about to get out
7 of prison. And of those, a little less than 1,000
8 have reached the case-review team stage.

9 JUDGE PIGOTT: So somebody makes a
10 determination that out of 7,500, roughly one-seventh
11 are going to get this second-tier scrutiny?

12 MR. GRIECO: That's right.

13 JUDGE PIGOTT: Okay. And then of those,
14 how many, then, go back to OMH with a recommendation
15 that proceedings be continued?

16 MR. GRIECO: It's a little - - - it's a
17 little less than - - - I think over the first five
18 years, it was a little less than 500 that actually
19 got put to - - -

20 JUDGE PIGOTT: So about half of them.

21 MR. GRIECO: About half of them, yes.

22 JUDGE PIGOTT: Okay. And the other half,
23 there's a physician that says, this person does not
24 suffer from - - -

25 JUDGE CIPARICK: An abnormality.

1 MR. GRIECO: Right - - -

2 JUDGE PIGOTT: - - - a dangerous - - -

3 MR. GRIECO: - - - in some cases - - - in
4 some cases, they never reach the stage of a CRT
5 examiner.

6 JUDGE PIGOTT: No, we were at that stage.
7 I asked you that - - -

8 MR. GRIECO: Right.

9 JUDGE PIGOTT: - - - and you said 1,000 out
10 of 7,500.

11 MR. GRIECO: Well, let me explain. There
12 are some people who reach the case-review team, but
13 don't get a case-review team psychiatric interview.
14 Not everyone who reaches that stage gets an
15 interview.

16 JUDGE SMITH: In other words, some of them,
17 the case-review team takes a look at the file and
18 says, forget about it - - -

19 MR. GRIECO: Right.

20 JUDGE SMITH: - - - don't bother
21 interviewing this guy?

22 MR. GRIECO: That's right. And then some
23 then go on - - -

24 JUDGE SMITH: Are the interviews voluntary?

25 MR. GRIECO: I'm sorry?

1 JUDGE SMITH: Are the interviews voluntary?
2 Can the offender say, no thanks?

3 MR. GRIECO: The respondent - - - we
4 obviously can't force them to participate. But the
5 examiner does explain to them the purpose of the
6 interview, as the record in this case shows.

7 JUDGE SMITH: Is there any case you know of
8 where any of them has ever said, thanks for telling
9 me; I'd rather not talk to you?

10 MR. GRIECO: I've been told that that has
11 happened, yes.

12 JUDGE SMITH: It does happen.

13 MR. GRIECO: And then the CRT team will
14 make a determination based on - - -

15 JUDGE SMITH: And if he says - - - and if
16 he says no, they go away and don't bother him?

17 MR. GRIECO: I think - - - I don't know,
18 actually, what they do.

19 JUDGE SMITH: I mean, they might bring a
20 proceeding against him. But they don't - - - they
21 don't say sorry, you've got to talk to us?

22 MR. GRIECO: I don't believe so. I - - -

23 JUDGE PIGOTT: I want to go back because I
24 lost your numbers. You're down to 1,000 that goes to
25 the CRT team, you called them, right?

1 MR. GRIECO: That's right.

2 JUDGE PIGOTT: All right. And how many of
3 those get to see a doctor?

4 MR. GRIECO: I think it's - - - I believe
5 that it is about half.

6 JUDGE PIGOTT: About half - - - so 500.
7 Now, of those 500, how many then get referred back to
8 OMH for a proceeding to be commenced?

9 MR. GRIECO: About two-thirds of that 500.

10 JUDGE PIGOTT: Two-thirds of the 500?

11 MR. GRIECO: Yes.

12 JUDGE PIGOTT: Okay.

13 MR. GRIECO: I want to take a moment to
14 address the Ughetto case that Mr. Wells - - -

15 JUDGE GRAFFEO: And then those go to the
16 Attorney General's Office?

17 MR. GRIECO: Right. And the Attorney
18 General, then, based on the entire package put
19 together by OMH, makes a determination of what will
20 proceed - - -

21 JUDGE GRAFFEO: So what percentage - - -
22 following Judge Pigott's question - - - what
23 percentage of those cases that are referred to the
24 Attorney General, eventually are the subject of an
25 article 10?

1 MR. GRIECO: Most. Not all, but almost
2 all.

3 I want to take a moment to discuss the
4 Ughetto case.

5 CHIEF JUDGE LIPPMAN: Go ahead, counselor.

6 MR. GRIECO: The Ughetto case, in the
7 article 9 context - - - the interviews at issue in
8 that case are post-petition interviews. At the time
9 that the doctor interviews someone for involuntary
10 treatment under article 9, a determination has
11 already been made to proceed with the article 9
12 proceeding. And the Ughetto court itself, and every
13 court ever to cite Ughetto, has emphasized that the
14 central point of Ughetto's holding is that it is not
15 done for screening purposes or for treatment
16 purposes. It is done for trial preparation purposes.
17 And that is the fundamental distinction between
18 Ughetto and article 9 and this case.

19 JUDGE CIPARICK: But if this is used at
20 trial, isn't it the same thing? I mean - - -

21 MR. GRIECO: I'm sorry?

22 JUDGE CIPARICK: If your plan is to use
23 these psychiatric evaluations at trial, in a sense
24 you're producing evidence that could be used at
25 trial.

1 times, to arrive at a medical diagnosis.

2 JUDGE PIGOTT: Do you tell them that it's
3 voluntary? I wanted to follow up on what Judge Smith
4 asked, you know, where - - - I mean, do you say
5 you're here, and the reason - - - obviously, I assume
6 you tell them why they're there, for this type of
7 exam.

8 MR. GRIECO: Yes. I mean - - - and the
9 record in this case indicates that Dr. Etu told the
10 respondent, I'm here to interview you for purposes of
11 an article 10 civil management proceeding. This is
12 not confidential. Anything you say to me may be
13 forwarded on to the Attorney General for the filing
14 of a civil management petition. All that is told to
15 the respondent.

16 JUDGE PIGOTT: And did he say, and you do
17 not have to participate in this if you don't wish to?

18 MR. GRIECO: He didn't say those words.
19 What he did say was, are you willing to speak with me
20 under these circumstances. And the respondent (sic)
21 said yes, that he was. And actually, the - - - Dr.
22 Etu, the CRT examiner, actually had the respondent
23 (sic) repeat all of that back to him in his own
24 words, to be absolutely certain that he did
25 understand what the purpose of the proceeding was.

1 And so, Your Honors, contrary to the
2 respondent's (sic) suggestion that the nonadversarial
3 screening nature of the CRT exam is a reason to
4 exclude the testimony of a CRT examiner, it's a
5 reason to include it. It's the - - -

6 CHIEF JUDGE LIPPMAN: Why do you include it
7 if its effect is - - - goes in the other direction,
8 that it seems to play into what, ultimately, is an
9 adversarial proceeding? Why is it that it doesn't
10 cut the other way?

11 MR. GRIECO: Because we don't exclude
12 evidence that was not improperly obtained, as Judge
13 Smith said during Mr. Wells' presentation. Yes, in
14 the small minority of cases that result in petitions,
15 it's absolutely going to be true that the CRT
16 examiner's testimony is going to be highly relevant,
17 probative evidence. But because it was obtained
18 during a proceeding that was not done for
19 investigatory purposes, did not occur in the context
20 of an adversarial proceeding, but happened during a
21 neutral, objective screening procedure, conducted not
22 by doctors - - - not by lawyers or judges or police
23 officers, but by a doctor, it's the best, fairest
24 evidence there is.

25 CHIEF JUDGE LIPPMAN: Apropos what Judge

1 Smith said before, does the person understand when
2 he's told what this is going to be used for? Can he
3 make an intelligent decision as to whether or not he
4 wants to speak to the doctor?

5 MR. GRIECO: Yes. And in this case clearly
6 so, because - - -

7 CHIEF JUDGE LIPPMAN: Yes, why?

8 MR. GRIECO: As I was saying before, he was
9 actually able to repeat back to Dr. Etu, in his own
10 words, you've explained to me what the purpose of
11 this proceeding is, and I know that the reason you
12 are conducting this interview with me is to make a
13 recommendation to the Attorney General as to whether
14 I should be placed into a civil management
15 proceeding.

16 And really, I guess, the final point that I
17 want to make is that they don't dispute that Dr.
18 Kirschner (ph.), who was the AG's appointed examiner
19 in this case, they don't dispute that he could have -
20 - - and in fact in this case did - - - testify about
21 the contents of Dr. Etu's report. So really, all
22 this case is a dispute about is the vehicle by which
23 the CRT examiner's testimony will be before the fact-
24 finder.

25 CHIEF JUDGE LIPPMAN: Well, it's stronger

1 if he says it himself - - -

2 JUDGE CIPARICK: Yes.

3 CHIEF JUDGE LIPPMAN: - - - right?

4 MR. GRIECO: Sure. But that is exactly - -
5 - the statute itself expresses a preference for live
6 testimony.

7 JUDGE CIPARICK: Well, it was part of the
8 basis for his expert opinion - - - Dr. Etu's exam.

9 MR. GRIECO: Dr. Etu's opinion was a part
10 of the basis for the opinion of Kirschner.

11 JUDGE CIPARICK: - - - with Dr. Kirschner's
12 opinion - - -

13 MR. GRIECO: And they did not object to the
14 inclusion of that. In fact, they - - -

15 JUDGE SMITH: But would it come in for the
16 truth of the matter stated through Kirschner?

17 MR. GRIECO: It would certainly come in as
18 - - - because he's testifying to the same diagnosis
19 that Dr. Etu testified to, he is clearly relying upon
20 it as an appropriate basis for his own opinion.

21 CHIEF JUDGE LIPPMAN: Okay, counselor.
22 Thanks.

23 MR. GRIECO: Thank you.

24 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

25 MR. WELLS: Yes, Your Honor. Just briefly,

1 to address the testimony of Dr. Kirschner, the State
2 itself, in the Appellate Division, argued that its
3 case was overwhelming, based on Dr. Kirschner's
4 testimony alone, and that Dr. Etu's testimony was
5 merely cumulative.

6 So in that regard, it's clear that the
7 State does not need to facilitate this practice in
8 order to make out its case. And again, Dr. Kirschner
9 had the CRT report available to him. He did not
10 provide testimony as to the noncumulative - - -

11 JUDGE PIGOTT: But isn't it true that you
12 do have a right to a - - - to at least move for a
13 Frye hearing, and you do have the right to subpoena
14 him, if you want to bring him into the case?

15 MR. WELLS: That may be true - - - that may
16 be true, Your Honor. But that goes to the - - -

17 JUDGE PIGOTT: Weight?

18 MR. WELLS: Well, I would say the weight of
19 his medical expertise.

20 JUDGE PIGOTT: Admissibility?

21 MR. WELLS: As to his medical expertise.
22 What we are talking about, and specifically with Dr.
23 Etu's noncumulative testimony about using culpatory
24 statements allegedly made for the first time ever,
25 not contained in any record, clearly, no matter how

1 many experts the respondent may put on, there's no
2 way to impeach that testimony, because it just sets
3 up the clear credibility contest that this court
4 cautioned against in Hawkins, in the context - - -

5 JUDGE PIGOTT: When's the first - - -
6 when's the first time MHLS gets notice that you have
7 a case, you know, like this one?

8 MR. WELLS: The first time we get notice is
9 when, I believe, when the Attorney General receives
10 notice - - - or I'm sorry, when the case-review team
11 reaches a determination.

12 JUDGE READ: So it's before this interview?

13 MR. WELLS: After the interview.

14 JUDGE READ: After the interview.

15 JUDGE PIGOTT: After the interview, before
16 the petition.

17 JUDGE READ: Yes.

18 MR. WELLS: After the interview, before the
19 petition, yes.

20 CHIEF JUDGE LIPPMAN: Okay, counsel.

21 Thanks.

22 (Court is adjourned)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of State of New York v. John P., No. 207 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Penina Wolicki

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