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COURT OF APPEALS

STATE OF NEW YORK

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MATTER OF ALLEN B. ,

Respondent ,

-against-

SPROAT ,

No. 73  
(papers sealed)

Appellant .

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MATTER OF ROBERT T. ,

Respondent ,

-against-

SPROAT ,

No. 74  
(papers sealed)

Appellant .

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20 Eagle Street  
Albany, New York 12207  
March 24, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

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Appearances:

ANDREW W. AMEND, ASG  
OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
Attorneys for Appellants  
120 Broadway  
New York, New York 10271

LISA VOLPE, ESQ.  
MENTAL HYGIENE LEGAL SERVICE  
SECOND JUDICIAL DEPARTMENT  
Attorneys for Respondents  
170 Old Country Road  
Suite 500  
Mineola, New York 11501

1 CHIEF JUDGE LIPPMAN: Number 73 and 74.

2 Counselor?

3 MR. AMEND: Good afternoon. Andrew Amend,  
4 for the appellants. With the court's permission, I'd  
5 like to reserve three minutes for rebuttal, please?

6 CHIEF JUDGE LIPPMAN: Sure, go ahead,  
7 counselor. You're on.

8 MR. AMEND: These appeals involve a limited  
9 measure, whose sole purpose and effect is to allow a  
10 psychiatric evaluation of an insanity acquittee, who  
11 refuses to be examined, after violating court-ordered  
12 conditions of release. All that is permitted is an  
13 evaluation. And the reason for that evaluation is  
14 the compelling need to address the danger that  
15 noncompliant acquittees with a history of a dangerous  
16 mental disorder - - -

17 JUDGE PIGOTT: Just offhand. Why do you  
18 need it at all? I - - - I mean, you - - - this  
19 person is being treated - - - and I think, in one of  
20 them, you know, you're seeing a psychiatrist almost  
21 every week, and there's - - - there's monthly  
22 reports. I - - - I just don't know why you would  
23 need somebody else to come in and evaluate him, when  
24 someone's evaluating him almost constantly.

25 MR. AMEND: Well, I mean, there's the rub,

1 actually. He's evaluated cons - - - these  
2 individuals are evaluated constantly in the community  
3 as long as they voluntarily comply with the  
4 evaluation process. We found - - - or OMH, I should  
5 say, has found that - - - and this is what this  
6 provision is really designed to address - - -  
7 sometimes an individual will not comply and will, you  
8 know, in some cases, abscond from treatment  
9 altogether.

10 CHIEF JUDGE LIPPMAN: Counsel, what about  
11 the liberty and due process protections of the  
12 statute? Why - - - why would we have a - - - allow  
13 an ex parte application to do this, as opposed to the  
14 protections that are built into the statute?

15 MR. AMEND: Well, there's nothing about  
16 this order that says ex parte. And what - - - all  
17 this order says, actually, is that the Commissioner  
18 of OMH shall apply to the court. Ordinarily an  
19 application - - -

20 CHIEF JUDGE LIPPMAN: Yeah, but the statute  
21 has very specific protocols when you're going to - -  
22 - to commit someone to a secure facility, right?

23 MR. AMEND: Well, it has very specific  
24 protocols. I believe what Your Honor is referring to  
25 is for a full six-month secure recommitment under

1 subsection 14. To get back - - -

2 CHIEF JUDGE LIPPMAN: Why is this anything  
3 other than a recommitment?

4 MR. AMEND: Well, you're talking, not about  
5 - - - first of all, six months of recommitment, which  
6 is the mandatory period for - - -

7 CHIEF JUDGE LIPPMAN: No, no, but you're  
8 putting the person back in a secure facility, right?

9 MR. AMEND: Only if that individual refuses  
10 to be evaluated in the community, and we're only  
11 doing this for the purpose, and for as long as it  
12 takes for them to be evaluated.

13 JUDGE PIGOTT: Well, let me go back.

14 JUDGE READ: Which is what? Twenty-four or  
15 forty-eight hours or something you suggested?

16 MR. AMEND: The period that is prescribed  
17 in Kendra's Law and that this court upheld and that  
18 also is found in other statutes, is seventy-two  
19 hours.

20 CHIEF JUDGE LIPPMAN: What about notice and  
21 opportunity to be heard? Why - - -

22 MR. AMEND: Well - - -

23 CHIEF JUDGE LIPPMAN: Why isn't - - - why  
24 aren't they entitled to that?

25 MR. AMEND: We - - - no one - - - we - - -

1 we have not maintained that they aren't entitled to  
2 that. They - - -

3 JUDGE GRAFFEO: But why - - - why wasn't  
4 that part of the order? Why wasn't that recommended?  
5 Then you'd avoid that issue.

6 MR. AMEND: Well, a couple of points on  
7 that. One, what we have is an order that says - - -  
8 the conditions says shall make that the - - - the  
9 Commissioner of OMH shall apply to the court.  
10 There's nothing to suggest that that application  
11 wouldn't be handled - - - there's no - - -

12 JUDGE GRAFFEO: Well, I'm saying. Rather  
13 than put the burden on the judge to determine if  
14 should there - - - there should be notice and a  
15 hearing, why not put it in your proposed order?

16 MR. AMEND: Okay, a couple of reasons for  
17 that. One, because these - - - we're - - - we're  
18 dealing with a situation where potentially this could  
19 be a volatile situation. The - - - what - - - what  
20 the language of the order allows is flexibility for  
21 the court to be able to address - - -

22 JUDGE SMITH: So you might - - - some of -  
23 - - some of the applications might be ex parte, then?

24 MR. AMEND: It's conceivable that some  
25 could be ex parte in emergent circumstances, but we -

1 - -

2 JUDGE SMITH: You'd have to - - - you'd  
3 have to - - - your position is you'd have to show  
4 some special need to make them ex parte and the  
5 normal course should be on notice?

6 MR. AMEND: Yes, which is the standard way  
7 that courts address applications all the time - - -

8 JUDGE PIGOTT: This doesn't say that,  
9 though.

10 MR. AMEND: - - - in the state. Well - - -

11 JUDGE PIGOTT: And I think that's part of  
12 what your opponents are - - - are concerned about.

13 MR. AMEND: I suppose - - - well, there are  
14 a couple of things. One, they never objected to us,  
15 hey, you didn't say that this was going to be on  
16 notice and a hearing, and in fact, their position is,  
17 that even if the order said that, it would still be  
18 barred by the statute, and we're here, you know, on a  
19 writ of mandamus - - - or pardon me, a writ of  
20 prohibition, so the Second Department's holding, you  
21 know, I think, effectively, you know, assumes that  
22 courts will not put those in.

23 We think the presumption is actually the  
24 other way; that's what happens when someone calls for  
25 an application.

1                   JUDGE PIGOTT: Well, one - - - one of the  
2 things that concerned me - - - Judge Read mentioned  
3 part it - - - but the examination order duration  
4 that's spelled out in 330.20(4), says that they shall  
5 be no longer than thirty days. And it struck me that  
6 if - - - if this order is the way it is, why wouldn't  
7 that be the assumption? That if you're applying for  
8 an order for an examination that it would be for no  
9 more than thirty days, which would mean that it could  
10 be up to thirty days, which is a substantial liberty  
11 interest, I would think.

12                   MR. AMEND: We're not seeking - - - I  
13 should say - - - well, absent extraordinary  
14 circumstances, what this is meant to deal with is a  
15 situation where someone has absconded from treatment.  
16 We don't know how they are. We want to reestablish  
17 that contact.

18                   JUDGE PIGOTT: Wouldn't the treating  
19 physician be in the best position to do that? That -  
20 - - I'm still wondering why you need an independent  
21 person, a fringe - - -

22                   MR. AMEND: It's not an independent person.  
23 In fact, part of the problem is that sometimes  
24 individuals abscond from treatment, and then there is  
25 no contact with their treating team or any other

1 authority until there's a, you know, a violent  
2 relapse or some sort of other attack, and then their  
3 first contact with any mental health authority is  
4 when - - -

5 JUDGE ABDUS-SALAAM: So how does that work,  
6 counsel?

7 MR. AMEND: - - - the police arrest them.

8 JUDGE ABDUS-SALAAM: How does that work?  
9 Does that mean the treating team would contact OMH to  
10 say, this acquittee hasn't been around, and they're  
11 not following the orders of condition, and then the  
12 Commissioner would go in and apply for this effective  
13 eval. Is that - - - is that how it would work?

14 MR. AMEND: Yes.

15 JUDGE ABDUS-SALAAM: The treating team  
16 would give you some basis for making the application?

17 MR. AMEND: Yes, and the treatment team is  
18 - - - the treatment teams for these individuals are  
19 at OMH facilities. These - - - this is, you know,  
20 all within the auspices of - - - of OMH.

21 JUDGE RIVERA: So you - - -

22 JUDGE GRAFFEO: Before you started using  
23 these orders, how did you deal with acquittees that  
24 failed to comply with their orders of condition?

25 MR. AMEND: There were a few options that

1 were available. None of them that - - -

2 JUDGE GRAFFEO: Other than this - - - other  
3 than the recommitment process that results in six  
4 months?

5 MR. AMEND: Well, I will say on that point,  
6 actually, there are occasions when OMH tried  
7 recommitment. Reccommitment applications were denied,  
8 because that's a very high substantive bar. The  
9 individual - - -

10 JUDGE GRAFFEO: You need to have the  
11 dangerous mental condition for the recommitment?

12 MR. AMEND: Yes.

13 JUDGE SMITH: No, you have to - - - you're  
14 saying, in effect, you had to have the answer to the  
15 question before you could ask the question?

16 MR. AMEND: Precisely. This is designed to  
17 allow us to evaluate the patient - - -

18 JUDGE RIVERA: You look at his - - -

19 CHIEF JUDGE LIPPMAN: But how do you get  
20 around - - - how do you get around the statute?  
21 Isn't the statute unequivocal really, in the - - -  
22 the protocols that it lays out?

23 MR. AMEND: The statute, well - - -

24 CHIEF JUDGE LIPPMAN: Does this comply - -  
25 - your - - - is your argument that this complies with

1 the - - - your - - - your procedure here complies  
2 with the terms of the statute, or you don't have to  
3 comply with the terms of the statute?

4 MR. AMEND: Our argument is that the  
5 recommitment procedures that are spelled out in  
6 paragraph 14 are an extreme remedy designed to deal  
7 with an extreme situation, in which someone has  
8 essentially totally decompensated - - -

9 JUDGE SMITH: But - - - but the - - - the  
10 question is - - - the question is whether the statute  
11 permits it or not.

12 MR. AMEND: Yes, well, the statute permits  
13 recommitment to deal with that extreme circumstance,  
14 but it also permits, twice, any reasonably necessary  
15 or appropriate provision the court includes in an  
16 order of conditions.

17 JUDGE PIGOTT: Well, this isn't a  
18 condition. Would you concede that?

19 MR. AMEND: No, no, we do not concede that.

20 JUDGE PIGOTT: Okay, so why - - - why when  
21 I look at the order, it says, "order the above-named  
22 defendant shall comply with the following  
23 conditions", and it goes through ten conditions. And  
24 then it says, "order that should the defendant fail  
25 to comply with any of the above, or in the event the

1 treatment team becomes aware" and it goes on and on.  
2 Then you have this remedy. It's not a condition.  
3 It's a remedy for violation of the conditions, right?

4 MR. AMEND: I think that's a false  
5 distinction, honestly, for - - -

6 JUDGE PIGOTT: That's what the order reads.  
7 I'm just telling you.

8 MR. AMEND: Well, they - - - there are  
9 certain - - -

10 JUDGE PIGOTT: Was the judge - - - was the  
11 judge in error when he said - - - when - - - he or  
12 she said, that - - - that condition eleven is that  
13 should he fail to comply with the above conditions?

14 MR. AMEND: Just because their section 11  
15 references the above conditions, doesn't stop number  
16 11 from being a condition.

17 JUDGE PIGOTT: Well, you're making - - -

18 MR. AMEND: A condition is something that  
19 is a predicate for his safe release into the  
20 community.

21 JUDGE PIGOTT: No, a condition is what's  
22 spelled out in O, and there's nothing in O that  
23 comports with what you're saying this is.

24 MR. AMEND: I'm sorry? Sorry, I - - -

25 JUDGE PIGOTT: The conditions are under - -

1 - under subdivision 0, or that you're trying to fit  
2 it under, and it's not there.

3 MR. AMEND: Well, what subdivision 0 says  
4 is, and subdivision 12, a written service plan and  
5 any other condition the court deems reasonably  
6 necessary or appropriate. These are conditions in a  
7 couple of senses.

8 First of all, because they are predicates -  
9 - - necessary predicates in the view of the court and  
10 OMH for the safe release of the individual into  
11 society. His safe release is conditioned on this  
12 being a restriction that he's subject to.

13 Beyond that, brief periods of  
14 rehospitalization, even involuntary  
15 rehospitalization, as various courts have recognized,  
16 are often simply part of a course of rehabilitative  
17 therapy so it's a condition in that sense as well.  
18 But even if this isn't - - -

19 JUDGE PIGOTT: I don't mean to keep beating  
20 this drum, but if you've got somebody who's treating  
21 him for three years, five years, however long it's  
22 gone on, and he absconds, or does something that  
23 offends the order, why wouldn't they just petition to  
24 do whatever they want to do? I mean, I'm missing why  
25 you - - - you say you need another exam. I would

1 think that if he violated the order, you go and say,  
2 he violated the order.

3 MR. AMEND: This - - - the entire goal of  
4 what we're trying - - - of what OMH is trying to do  
5 in this condition is to reestablish a therapeutic  
6 regimen. To preserve the treatment gains that have  
7 allowed an individual to go from living in secure  
8 confinement to nonsecure confinement to being  
9 released.

10 JUDGE PIGOTT: And you think that you need  
11 that commitment - - - this temporary commitment - - -  
12 in order to establish, what?

13 MR. AMEND: Well, if the individual doesn't  
14 comply or - - - and has disappeared, and we have no  
15 other way of getting in contact with them, this  
16 allows the treatment team to understand the causes  
17 and effects of his - - - of his condition.

18 JUDGE RIVERA: So just to clarify then. So  
19 you're - - - what you're saying is, that if they  
20 violate one of the conditions and they refuse the  
21 psychiatric evaluation, that every single time that  
22 would happen, the Commissioner would always seek to  
23 impose the psychiatric evaluation? Is there any  
24 discretion by you or the team? Is that - - -

25 MR. AMEND: There - - - there - - -

1 JUDGE RIVERA: I just want to understand  
2 what leads you to this particular remedy that you say  
3 you need every single time?

4 MR. AMEND: This condition would be subject  
5 to discretion. And it's also subject to - - -

6 JUDGE RIVERA: But whose discretion?

7 MR. AMEND: Sorry. Well, it would be first  
8 to OMH. OMH would have to - - -

9 JUDGE SMITH: But doesn't - - -

10 JUDGE RIVERA: Well, it says "shall". It  
11 says the Commissioner shall. I'm just trying to  
12 understand if there's now no opportunity for the  
13 exercise of discretion.

14 MR. AMEND: The OMH does not view this as a  
15 directive to apply necessarily every single time.  
16 There are all sorts of - - -

17 JUDGE RIVERA: But that's what it says.

18 JUDGE SMITH: Well, of course - - -

19 JUDGE RIVERA: I'm sorry.

20 MR. AMEND: I - - - I - - -

21 JUDGE RIVERA: But I - - -

22 MR. AMEND: I suppose - - -

23 JUDGE RIVERA: Just reading it on its face,  
24 that is what it says.

25 It doesn't say "may".

1 MR. AMEND: That's true, but if this is - -  
2 - you know, we're talking - - -

3 JUDGE SMITH: But it's triggered - - - it's  
4 triggered by - - - by the person's refusal to be  
5 examined. I guess someone has to have asked him  
6 before he's refused, right?

7 MR. AMEND: He has - - - someone has to  
8 have asked him. He has to have refused.

9 JUDGE SMITH: And who would normally ask  
10 him?

11 MR. AMEND: His treatment team and his  
12 intensive case manager.

13 JUDGE RIVERA: Well - - -

14 JUDGE SMITH: But is it - - - go ahead,  
15 sorry.

16 JUDGE RIVERA: Or in your example, you said  
17 he may have just have disappeared. So there may not  
18 have been the - - - sort of the request, as you're  
19 saying. He may have missed a regularly scheduled - -  
20 -

21 MR. AMEND: He missed a regularly scheduled  
22 appointment, in which case, you know - - - OMH  
23 intensive case managers go out. They'll knock on the  
24 guy's door. They - - - we'll send a written notice  
25 to his residence.

1 CHIEF JUDGE LIPPMAN: Yeah, but - - - but  
2 in the circumstance you're describing, doesn't  
3 recommitment become sort of a fait accompli? And I  
4 guess, you know, what's bothering me is, it - - -  
5 recommitment's a fait accompli and it - - - and it  
6 totally shortcuts the statute, and I'm - - - from my  
7 perspective, I'm not saying that it's not - - - that  
8 you're not trying to protect the public or, you know,  
9 what you think might be a dangerous situation.

10 But it - - - it seems to me you're - - -  
11 you're taking a shortcut that's - - - that's not  
12 allowed by the statute. And as Judge Pigott  
13 indicated before, I'm not sure this is a condition.

14 MR. AMEND: That's - - - it is - - - it  
15 would be purely speculative to think that  
16 recommitment is a fait accompli. Recommitment under  
17 330.20(14) cannot happen under this order, unless the  
18 results of the evaluation would support an evaluation  
19 - - - or pardon me, an application - - -

20 CHIEF JUDGE LIPPMAN: Yeah, but you're  
21 pulling the person in. You're pulling the person - -  
22 -

23 MR. AMEND: For - - -

24 CHIEF JUDGE LIPPMAN: - - - into a secure  
25 facility.

1                   MR. AMEND: For a brief period to evaluate  
2 them.

3                   CHIEF JUDGE LIPPMAN: Pursuant to what, I  
4 guess, is my question?

5                   MR. AMEND: Pursuant to the authority of  
6 the courts to issue any reasonably necessary or  
7 appropriate measure. And under - - - look, the - - -  
8 and this also to answer Judge Pigott's question,  
9 whether or not this is technically styled a  
10 condition, the ability to impose conditions of  
11 release in the first place implies necessary  
12 authority to take reasonable steps to affect - - -

13                   CHIEF JUDGE LIPPMAN: So you have kind of  
14 the inherent authority to do this? Is that your  
15 argument? That once you - - - that the statute says  
16 something, you have the ability to do conditions, you  
17 can go to this point and say if you're resisting the  
18 - - - the examination, we pull you back in?

19                   MR. AMEND: That's - - -

20                   CHIEF JUDGE LIPPMAN: That's not a  
21 rhetorical question. I'm - - -

22                   MR. AMEND: No, no, well, that's - - - I  
23 mean, that is not the primary grounds that we're  
24 arguing, but it's not so much a question of inherent  
25 authority in that case, as reading the statute to

1 make sense of - - -

2 CHIEF JUDGE LIPPMAN: Reading the statute  
3 broadly?

4 MR. AMEND: Well, reading the statute - - -  
5 yes, as this court has done in numerous cases to give  
6 effect to its purpose to protect the public.

7 CHIEF JUDGE LIPPMAN: Okay, counsel, let's  
8 - - - you'll have time on your rebuttal. Let's hear  
9 from your adversary.

10 MS. VOLPE: Good afternoon, Your Honors,  
11 may it please the court, my name is Lisa Volpe of the  
12 Mental Hygiene Legal Service, and I'm here on behalf  
13 of the respondents Robert T. and Allen B.

14 JUDGE PIGOTT: Why didn't you appeal? It  
15 seemed - - - I'm - - - I know it's not raised, but  
16 I'm curious to what - - - how we ended up in a  
17 prohibition here. It - - - it's a clear order with a  
18 provision, an ordered provision, that it seems to me  
19 would have been easy to appeal to the Appellate  
20 Division. It - - - is it just because your time ran  
21 out?

22 MS. VOLPE: No, Your Honors, we have no  
23 right of appeal from an order of conditions by  
24 statute. And so this was our only way to get into  
25 court to address the Constitutional due process

1 issues. So - - -

2 JUDGE GRAFFEO: But why is this not a  
3 better alternative than OMH starting a recommitment  
4 proceed - - - proceeding, where your - - - your  
5 client ends up with a six-months commitment. Isn't  
6 this an attempt to try to im - - - get them to  
7 recognize needed services at an earlier point of  
8 their decomposition than waiting until they enter  
9 that range of dangerous mental illness?

10 MS. VOLPE: Well, there are a couple of  
11 things. The order of conditions is quite specific  
12 and detailed as to the kinds of treatment and  
13 supervision that are afforded to the clinicians - - -

14 JUDGE GRAFFEO: Right, but we're talking  
15 about someone here that has been noncompliant with  
16 those orders.

17 MS. VOLPE: Well, if they're noncompliant,  
18 and we have a violation of the order of conditions,  
19 this court has said, and it's certainly true, that  
20 you - - - you cannot just simply pull somebody off  
21 the street and put them into secured confinement  
22 without a finding of dangerousness.

23 JUDGE SMITH: What can you do?

24 JUDGE READ: But what are they sup - - -  
25 what are they supposed to do? What should happen

1           then? How does the Commissioner enforce his order?

2                   MS. VOLPE: They for - - - enforce it  
3 through the recommitment provision.

4                   JUDGE READ: So that's the only option,  
5 they have to go - - - and how do they have the  
6 material for the recommitment if they can't do the  
7 evaluation?

8                   MS. VOLPE: Well, they have been following  
9 this individual and certainly in this case, they've  
10 been following these individuals who have been out in  
11 the community for years. And - - -

12                   JUDGE SMITH: So you're - - - but you're  
13 saying then, that if somebody violates the  
14 conditions, and you can't prove a recommitment, then  
15 the Commissioner's without a remedy?

16                   MS. VOLPE: Well, I would suggest that if  
17 somebody is not complying with their treatment  
18 program, that that is a sufficient basis for  
19 commencing a recommitment application.

20                   JUDGE SMITH: I mean, any - - - anybody who  
21 misses a condition can be recommitted?

22                   MS. VOLPE: Well, again, there has to be  
23 some showing that there is a decompensation, but  
24 there are other remedies.

25                   JUDGE SMITH: But - - - no, there has to be

1 a showing that he has a dangerous mental illness,  
2 doesn't there?

3 MS. VOLPE: Dangerous mental disorder,  
4 that's where - - -

5 JUDGE SMITH: The dangerous mental  
6 disorder. Suppose there is somebody who is not  
7 compliant and you don't know whether he has a  
8 dangerous mental disorder; isn't it almost necessary  
9 in the system, you've got - - - got to have a way of  
10 finding out?

11 MS. VOLPE: Well, I would suggest that the  
12 legislature has considered that in balancing the - -  
13 -

14 JUDGE SMITH: So you say there's just a gap  
15 in the statute, that there's no - - - no way to fix?

16 MS. VOLPE: There is a way for OMH to  
17 address issues. If they feel that somebody is in the  
18 community and may be dangerous, they can resort to  
19 the Mental Hygiene Law, which has - - -

20 CHIEF JUDGE LIPPMAN: But on - - - but on -  
21 - - on - - - but they have to do notice, hearings, et  
22 cetera, to - - -

23 MS. VOLPE: No, Your Honor, there is a  
24 medical model of admission in New York. Anybody  
25 could - - -

1 JUDGE GRAFFEO: Do you mean Article 9?

2 MS. VOLPE: Through Article 9.

3 CHIEF JUDGE LIPPMAN: Oh, I see. Under  
4 Article 9?

5 JUDGE GRAFFEO: You mean, we should refer  
6 to Article 9?

7 MS. VOLPE: Yes, that's correct.

8 JUDGE GRAFFEO: But that also is longer  
9 period of commitment.

10 MS. VOLPE: Well, no - - -

11 JUDGE GRAFFEO: If someone fails to take  
12 their medication and is not showing up at their  
13 outpatient appointments, then the system has to wait  
14 until they decompose to a level that they're going to  
15 meet the dangerous mental illness?

16 MS. VOLPE: Under - - -

17 JUDGE GRAFFEO: There's nothing in between  
18 that can be done under the statute?

19 MS. VOLPE: Under the emergency admission  
20 provisions of Article 9, an individual can be brought  
21 in if they appear to have - - - be at a substantial  
22 risk of harming themselves or others.

23 CHIEF JUDGE LIPPMAN: So that's the two  
24 options, basically: this statute, you move to  
25 recommit with notice, hearing, et cetera, or you move

1 under Article 9. Does that happen?

2 MS. VOLPE: And under - - -

3 CHIEF JUDGE LIPPMAN: Does that happen that

4 - - -

5 MS. VOLPE: Oh, yes, it absolutely does.

6 CHIEF JUDGE LIPPMAN: That they move under

7 9?

8 MS. VOLPE: As a matter of fact we have a  
9 track 3 individual back in the - - - early 2000 - - -  
10 who was in the community by - - - with an order of  
11 conditions. He began to decompensate, and he was  
12 bought into the hospital on a Mental Hygiene Law 9.39  
13 admission, which means that he can be held for forty-  
14 eight hours, while the hospital staff evaluates him.  
15 So that is the ability to evaluate.

16 JUDGE ABDUS-SALAAM: Maybe I have it wrong,  
17 but aren't you making the argument that 330.14 is the  
18 exclusive remedy for recommitment. And you're - - -  
19 then you're saying - - - and I thought that this  
20 statute 330, under Article 10 was the exclusive way  
21 to deal with acquittees who've committed - - - who  
22 obviously have pled guilty or committed or have been  
23 convicted of committing crimes, which is not the case  
24 with Article 9.

25 MS. VOLPE: No - - -

1 JUDGE ABDUS-SALAAM: So aren't you  
2 undermining your own argument by saying Article 9 is  
3 a remedy?

4 MS. VOLPE: I'm saying that that is a way  
5 of filling the gap. But in order to recommit, which  
6 means confining somebody in a secure facility for  
7 treatment, you must not only have the violation of  
8 the order of conditions; this court has said you  
9 can't have that alone. You must also have a  
10 dangerous - - -

11 JUDGE SMITH: But why - - - why can't you  
12 fill the gap with a - - - with - - - under this - - -  
13 under the part of the statute that says the court can  
14 impose any - - - can impose any conditions it thinks  
15 is appropriate? What's inappropriate about this one?

16 MS. VOLPE: Well, first of all, this is not  
17 a condition; this is the consequence.

18 JUDGE SMITH: Suppose - - - suppose it was  
19 listed as a condition in the order. That - - -  
20 suppose they didn't - - - they moved it over a few  
21 inches and put it on - - - put it as condition 13,  
22 instead of a separate paragraph.

23 MS. VOLPE: Your Honor, even if we were to  
24 consider that this somehow that - - - that there is a  
25 gap, I would suggest that it's for the legislature to

1 fill that gap and not the courts.

2 JUDGE SMITH: Well, but, no - - - but my  
3 question is why can't it be a condition?

4 MS. VOLPE: Because it is a - - - an  
5 enforcement provision. It doesn't speak to keeping  
6 somebody safely in the community which is what the  
7 purpose of the conditions are. I would suggest that  
8 under subsection 12 and under subsection 1(o), which  
9 are the definitions - - -

10 JUDGE SMITH: But why - - - why doesn't it  
11 speak to keeping someone safely in the community?  
12 You say if they're - - - among the things you have to  
13 do, if you're going to keep someone safely in the  
14 community, is have a way of monitoring whether he can  
15 continue to be kept safely in the community. Why  
16 isn't that a perfectly reasonable condition?

17 MS. VOLPE: Because what this does is  
18 remove him summarily, yanks him off the street,  
19 without notice, without an opportunity to be heard.

20 JUDGE SMITH: Well, where - - - where does  
21 it say without notice, without an opportunity to be  
22 heard? But why do you - - -

23 MS. VOLPE: It's not provided for in that -  
24 - - in that - - -

25 JUDGE SMITH: But why do you assume that

1           that - - - when it doesn't say whether there's notice  
2           or not, why do you assume they'll do it the  
3           unconstitutional way instead of the constitutional  
4           way?

5                         MS. VOLPE: Well, I would certainly hope,  
6           Your Honors, that the courts would do it in a  
7           Constitutional way, but there is no guarantee that  
8           that will occur. And the - - -

9                         JUDGE SMITH: No guarantee except the  
10          Constitution.

11                        MS. VOLPE: But - - - but the purpose of  
12          330.20 is that the legislature has balanced the  
13          protections of the public with the needs for  
14          treatment of the individuals and their due process  
15          rights. They have already - - -

16                        JUDGE SMITH: But - - - but in doing that,  
17          they said, you put any condition you think is  
18          appropriate in the order.

19                        MS. VOLPE: Well, again, I think that they  
20          have made the dis - - - the distinction between  
21          conditions which they describe as a written service  
22          plan, and they describe it as a detailed statement in  
23          subsection 12.

24                        JUDGE SMITH: But I thought it said, shall  
25          have a written service plan and any other conditions

1           you think are appropriate.

2                       MS. VOLPE: I believe that that - - - that  
3 they have made the distinction between the conditions  
4 in subsections 12 and 1(o) and the enforcement  
5 provisions of 14.

6                       JUDGE ABDUS-SALAAM: But even if they - - -  
7 counsel, even if they've made the distinction, are we  
8 stuck with that? We can - - - can't this court look  
9 at it as a condition? And your scenario of just  
10 snatching someone off the street doesn't seem to  
11 comport with that particular condition. The  
12 Commissioner has to apply to the court, who is  
13 supervising this individual and who issued the order  
14 in the first instance.

15                      So it would be the court who would be  
16 determining whether the acquittee needs to be taken  
17 off the street, not the Commissioner just scooping  
18 them up and putting them in an ambulance or something  
19 and taking them to a secure facility. So if the  
20 court decides that, you know, it would be appropriate  
21 to bring the person in, to hear from the person about  
22 why they haven't been complying with the order,  
23 wouldn't that make some sense?

24                      MS. VOLPE: Well, it certainly does make  
25 sense, but in the context of what the legislature has

1 provided for, and that is subsection 14. It is a  
2 detailed step-by-step procedure that insures the due  
3 process rights of this individual who is in the  
4 community. They are not somebody who has been  
5 already deprived of their - - -

6 JUDGE ABDUS-SALAAM: But if they're - - -  
7 if they're not compliant, the premise of this  
8 effective evaluation is that this individual is in  
9 the community, and not complying with the orders of  
10 condition. And rather than just, as you said,  
11 scooping them up, even under Article 9, and putting  
12 them in some secure facility to be evaluated, there's  
13 a court order. There's an application to the court  
14 to find out what's going on with this person. What's  
15 wrong with that?

16 MS. VOLPE: Well, it doesn't comply with  
17 the statute. I think that's the simplest answer,  
18 that the legislature balanced and thought, I would -  
19 - - I am sure that they thought about all the  
20 different ways that they could insure the safety of  
21 the - - -

22 CHIEF JUDGE LIPPMAN: Your argument is even  
23 with notice, it - - - it still does not comply with  
24 the statute?

25 MS. VOLPE: I think that it is duplicative

1 at best of what the statute already provides for.

2 JUDGE GRAFFEO: But the - - -

3 MS. VOLPE: And it is - - - in - - - it's  
4 vague as to whether it's necessary.

5 JUDGE SMITH: Can you - - - can you get - -  
6 - can you get a writ of prohibition if it's  
7 duplicative at best?

8 MS. VOLPE: I think in this circumstances -  
9 - - stance - - - because there is no other remedy,  
10 the writ is certainly the right way to go, but also  
11 because we're talking about Constitutional due  
12 process rights that are being deprived.

13 JUDGE GRAFFEO: Well, assuming you had  
14 notice or - - - and a hearing in front of the judge  
15 before this, one of these individuals had several  
16 times attempted to commit suicide. If you have that  
17 kind of person who the treatment folks are dealing  
18 with, and they abscond, they're not reporting, they  
19 can't necessarily, easily locate the person, how does  
20 the - - - how is the recommitment process going to  
21 deal with that person? I mean, the threat there is  
22 to that individual's very own life.

23 MS. VOLPE: Well, it's a very specific  
24 process.

25 JUDGE GRAFFEO: Is it - - - isn't it a

1 better policy to try to get this person evaluated and  
2 convince them to get back into treatment, then to  
3 wait until they attempt suicide again?

4 MS. VOLPE: Well, if they are able to be in  
5 touch, they can certainly, as the clinical staff, be  
6 working towards bringing them back into treatment.  
7 But in the meantime, an application for recommitment  
8 can be filed. He can give - - - be given notice that  
9 he has to appear in court.

10 And if he's not showing up for anything and  
11 he doesn't appear in court, the court can issue a  
12 warrant, and it can issue a temporary confinement  
13 order, which is the very temporary confinement order  
14 that the Office of Mental Health is attempting to put  
15 into this enforcement provision, when it is already  
16 provided for.

17 JUDGE ABDUS-SALAAM: It's very different -  
18 - -

19 JUDGE GRAFFEO: But then he's exposed to  
20 six months - - -

21 JUDGE ABDUS-SALAAM: Yeah.

22 JUDGE GRAFFEO: - - - in a secure facility  
23 as opposed to a couple of days.

24 MS. VOLPE: Your Honor, this is - - -

25 JUDGE GRAFFEO: I'm trying to see why

1           that's the better - - - why that's the better course  
2           for some of these people.

3                       MS. VOLPE:  If there's - - -

4                       JUDGE GRAFFEO:  And then they're removed  
5           from the community.

6                       MS. VOLPE:  If there is a determination  
7           that this individual suffers from a dangerous mental  
8           disorder after that hearing, then that is the remedy  
9           that it will insure proper treatment.

10                      JUDGE RIVERA:  But they're also making the  
11           argument that - - - that they're concerned about the  
12           person who, perhaps, has not yet gotten to the point  
13           where - - - right, they now, are indeed showing signs  
14           of the mental - - - mental disease - - - illness.  
15           That they want to get to people before they get to  
16           that stage.  They want to insure that they stay on  
17           track with - - - with the plan.

18                      MS. VOLPE:  Well - - -

19                      JUDGE RIVERA:  What - - - what right now  
20           exists to make it possible insure that - - - that the  
21           acquittee stays on track with the plan, and does not  
22           begin to fail?

23                      MS. VOLPE:  It is the conditions in the  
24           order of conditions.  They are very detailed and  
25           comprehensive.

1                   JUDGE RIVERA: Okay, and so - - - and so -  
2                   - - and so, they say, all right. So, we went to the  
3                   judge, and we said, please, put something in that  
4                   insures, or the judge says I'm going to put something  
5                   in that insures that this person stays on track,  
6                   because I'm going to create a consequence to that,  
7                   which is that they can come back to me and tell me  
8                   that they haven't stayed on track.

9                   MS. VOLPE: But again, as Your Honor said,  
10                  it is the consequence of not having - - - of  
11                  violating the orders of conditions that this  
12                  provision speaks to.

13                  CHIEF JUDGE LIPPMAN: Counsel, is - - - is  
14                  your answer, essentially, that you're not disputing  
15                  the fact that it might make sense as a policy, as  
16                  some of the questions that you've received, that  
17                  bring him in for a day or two, might make sense?  
18                  You're not really disputing that? You're just saying  
19                  they can't do it under the statute?

20                  That is, I think Judge Smith said earlier,  
21                  that there's a gap, and you just can't do it this  
22                  way, and right now, at least, based on the statute,  
23                  based on Constitutional protections, if there was no  
24                  notice, that the only real thing - - - the only real  
25                  option is - - - is 9.

1 MS. VOLPE: Is - - - is - - -

2 CHIEF JUDGE LIPPMAN: In your - - - in your  
3 experience, that's what happens because - - - because  
4 whether you call it a gap, whether you call it good  
5 from a policy perspective, your - - - your bottom  
6 line is, you can't go there; you can't do it that  
7 way.

8 MS. VOLPE: That's right, and there - - -

9 CHIEF JUDGE LIPPMAN: Because - - - because  
10 it's a consequence, not a condition.

11 MS. VOLPE: It is, absolutely.

12 CHIEF JUDGE LIPPMAN: And it would be  
13 stretching the statute? I mean, that's the nub of  
14 your - - - your argument?

15 MS. VOLPE: And - - - and it's - - - it's  
16 removing somebody even - - - even on an order of the  
17 court, it's removing somebody and placing them in  
18 secure confinement, a massive curtailment of liberty.

19 CHIEF JUDGE LIPPMAN: Once you go into a  
20 secure facility, you're in a whole different  
21 ballgame, right?

22 MS. VOLPE: Yes, absolutely. I think then  
23 it's the opportunity for the state to evaluate with  
24 the purpose of creating the recommitment application.  
25 Whereas if the person is in the community and is

1 indeed - - - is decom - - - in - - - excuse me - - -  
2 decompensating, and is at the point that recommitment  
3 is necessary, there is a procedure for that.

4 And if for some reason, there is something  
5 so emergent that they must deal with it immediately,  
6 Article 9 is available to the state. It's available  
7 to any person who - - - a family member, to bring  
8 that individual in for a very short period of time.

9 JUDGE PIGOTT: Before you go, I - - -

10 MS. VOLPE: Yes.

11 JUDGE PIGOTT: - - - I know it's not an  
12 issue, but I got to go back to this, why there wasn't  
13 an appeal here. You're saying - - - I look at the  
14 order and it says - - - you know, and it's got the  
15 part - - - the phrase we're talking about, but it  
16 also says, "The defendant shall comply with this  
17 order for five years from the date of issuance of  
18 this order." He can't appear - - - appeal - - -

19 MS. VOLPE: No.

20 JUDGE PIGOTT: - - - the fact that it says  
21 five years? He - - - he's stuck in a place without  
22 any remedy for five years?

23 MS. VOLPE: Yes, that's right, Your Honor.  
24 Under the statute, the appellate statute - - - I see  
25 my time is up - - -

1 CHIEF JUDGE LIPPMAN: Go ahead; to answer  
2 the question, sure.

3 MS. VOLPE: Under the appellate provision,  
4 an order of conditions is not one of the orders from  
5 which an acquittee can - - -

6 JUDGE PIGOTT: No, this is - - - no, this  
7 is an order saying - - - saying you've got - - -  
8 you've got five years of - - - of supervision.  
9 You're - - - it's like a pin - - - it can't be  
10 appealed.

11 MS. VOLPE: This is what the legislature  
12 deemed to be the appropriate appeal.

13 JUDGE SMITH: So this is - - - this is - -  
14 - because you're in a criminal case, not a civil - -  
15 - in a civil case, you can appeal from interlocutory  
16 orders, but this is criminal in form.

17 MS. VOLPE: Well, this is civil commitment  
18 of an individual who's deemed not responsible, so I -  
19 - - I guess it has a - - - kind of a - - -

20 JUDGE SMITH: The statute is in the  
21 criminal procedure law.

22 MS. VOLPE: It is in the criminal procedure  
23 law, but at the point that you're dealing with  
24 commitment, it is civil commitment. But  
25 nevertheless, Your Honors, the legislature said that

1 this is not an order which is appealable. Other  
2 orders are, but this is not.

3 CHIEF JUDGE LIPPMAN: Okay, counsel,  
4 thanks. Appreciate it.

5 MS. VOLPE: Thank you very much, Your  
6 Honors.

7 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?  
8 Counselor, what about the use of Article 9?  
9 Is that - - - would that be a better way for you to  
10 go in this kind of circumstance rather than try and  
11 cut through these - - - these statutory problems - -  
12 -

13 MR. AMEND: Well - - -

14 CHIEF JUDGE LIPPMAN: -- and maybe  
15 Constitutional problem.

16 MR. AMEND: Well, I'm glad Your Honor asked  
17 that question, because MHL Article 9 is problematic  
18 for several reasons. One - - -

19 CHIEF JUDGE LIPPMAN: Why? Go ahead.

20 MR. AMEND: It doesn't take account of  
21 anyone's previous contact with the - - - the criminal  
22 justice system. Two, it's not - - - it is something  
23 that requires ultimately observation of the patient,  
24 and the problem that OMH is trying to solve is where  
25 the patient's noncompliance and refusal to be

1 examined have prevented observation. And three, the  
2 standard of dangerousness under Article 9, because  
3 again, it's designed to apply to anyone, a civil  
4 acquittee as well as a criminal acquittee, is quite  
5 high. It requires - - -

6 CHIEF JUDGE LIPPMAN: Have you used Article  
7 9 in this kind of circumstance?

8 MR. AMEND: In circum - - - in certain  
9 circumstances, where we've been fortunate enough to -  
10 - - to observe the patient. There are examples for -  
11 - - for instance, where a patient has been arrested,  
12 and then, you know, we've been able to - - - or OMH  
13 has been able to examine them and do a 2 PC.

14 But Article 9, just to take someone, you  
15 know, off the street and commit them, requires  
16 homicidal or other violent behavior by which others  
17 are placed in reasonable fear of serious physical  
18 harm. That's the standard. That's the type of  
19 deterioration that - - - frankly, is what, you know,  
20 conditions of release are designed to prevent.

21 JUDGE PIGOTT: One of the conditions that's  
22 in this one is that they'll - - - the person will  
23 refrain from the use of drugs and alcohol. If they -  
24 - - if they violate that, what do you do?

25 MR. AMEND: If there's someone who - - -

1           who's still compliant, they also, you know, have the  
2           - - - that they'll submit to drug testing as their  
3           treatment team directs. The preferred method - - -  
4           all of this, by the way, is - - - is a last resort.  
5           The preferred method is for the treatment team to,  
6           you know, deal with that in the ordinary course,  
7           increase their drug test, increase, you know, their  
8           participation in the programs.

9                         JUDGE PIGOTT: But you all have to - - - at  
10           some point, don't you just apply for recommitment,  
11           because obviously, if he's out on the street, and  
12           he's doing this stuff, you want him to stop?

13                        MR. AMEND: That wouldn't necessarily meet  
14           the condition under - - - for - - - for recommitment  
15           - - -

16                        JUDGE SMITH: As I think about it, these -  
17           - - none of these conditions is a true condition of  
18           his release, is it? Because you can't lock him up  
19           just for violating the condition.

20                        MR. AMEND: We can't lock him up - - - we  
21           wouldn't try to lock him up just for violating the  
22           condition. The query whether - - - well - - -

23                        JUDGE SMITH: But whether - - - whether you  
24           would try to not, the statute wouldn't let you unless  
25           you can show he's got a dangerous mental disorder.



1           - - yeah; you're worried more about absconding,  
2           right? Where they - - -

3                         MR. AMEND: That is - - - absconding  
4           followed by a violent attack, which has happened - -  
5           -

6                         JUDGE PIGOTT: Okay.

7                         MR. AMEND: - - - in cases that - - -

8                         JUDGE PIGOTT: So what do you need an  
9           evaluation for if you've had one every month for six  
10          years? Why do they have to appear for an evaluation?  
11          I - - - I'm just wondering why a - - - you know, just  
12          like in a - - - in an Article 9 where you have the 2  
13          PCs, you've got - - - you've got a whole record of  
14          what this person was supposed to do. I would think  
15          you'd go into court and say, we want him recommitted;  
16          he's not, you know, he took off and he's not  
17          complying.

18                         MR. AMEND: Courts have not agreed with us  
19          under those circumstances. People - - -

20                         CHIEF JUDGE LIPPMAN: Yeah, but isn't that  
21          the statutory scheme? What Judge Pigott just laid  
22          out, isn't that the normal way this is supposed to  
23          work?

24                         MR. AMEND: The statute is clearly, broadly  
25          and flexibly worded. It allows - - - yes, it has

1 this recommitment remedy, but it also has remedy  
2 allowing anything else that's reasonably necessary or  
3 appropriate.

4 And reading a statute that provides for  
5 continued supervision, subject to conditions after  
6 release that are designed to preserve sta - - - to  
7 preserve sanity and protect the public safety,  
8 reading the full six-month recommitment that follows  
9 a severe mental decompensation as the only means of  
10 giving effect to the conditions that are meant to  
11 prevent that outcome, doesn't - - -

12 JUDGE RIVERA: Can I - - - can I ask if the  
13 following is an outrageous hypothetical or would be  
14 possible? An acquittee whose relative passes away,  
15 and they leave the jurisdiction to go to the funeral  
16 and the wake, as a result, they - - - and they're - -  
17 - and they're grieving, so they don't remember to  
18 call anybody to tell them they're going to be out of  
19 town. They don't call to say I'm going to miss the  
20 appointment.

21 They miss the appointment. You say they go  
22 to their home. They send them some correspondence.  
23 Of course, they're out of town; they don't respond.  
24 You go to a judge. The judge decides, because it  
25 doesn't say it's required here, no notice, no

1 hearing, because you can't find them. As far as you  
2 know, you believe they've absconded.

3 And they come back; you pick them up, and  
4 you commit them?

5 MR. AMEND: No, the evaluation - - - first  
6 of all - - -

7 JUDGE RIVERA: Yes.

8 MR. AMEND: - - - I would hope, and this is  
9 something that when we would go to pick them up - - -

10 JUDGE RIVERA: Yeah.

11 MR. AMEND: - - - OMH would certainly, at  
12 least, try to have a treatment member go along with  
13 the police officers.

14 JUDGE RIVERA: Right.

15 MR. AMEND: We would imagine that would be  
16 - - - I would hope that would be the end of it from  
17 that point.

18 JUDGE RIVERA: So if they said my sister  
19 died, and I've been out of town. That would be  
20 enough to stop it, although you have an order?

21 MR. AMEND: The question would be whether  
22 that person at that point meets the conditions of  
23 having refused a psychiatric examination. If that  
24 person says, I'm sorry; I was out of town; I'll go,  
25 please examine me, that ends the need for anything.

1                   And also, as far as secure recommitment,  
2                   this order could - - - from OMH's perspective - - -  
3                   just as well be worded to say evaluation in a place  
4                   to be designated by the Commissioner of Mental  
5                   Health. The - - - OMH would prefer actually not to  
6                   do this - - -

7                   JUDGE RIVERA: The - - - the order doesn't  
8                   require the - - - the team member to go, though.

9                   MR. AMEND: The order doesn't require, but  
10                  it is possible - - -

11                  JUDGE RIVERA: It is possible, you would  
12                  pick them up, correct?

13                  MR. AMEND: No, and O - - - that would be  
14                  OMH's preferred, you know - - -

15                  JUDGE SMITH: Well - - - well, because you  
16                  have to - - - in theory, he has to have refused - - -  
17                  refused to be examined.

18                  MR. AMEND: Correct.

19                  JUDGE SMITH: I mean, I suppose in the  
20                  hypothetical case where he hasn't - - - where he  
21                  can't be found, maybe he sort of implicitly refused.  
22                  Would that be your theory?

23                  MR. AMEND: Implicitly refused, absent some  
24                  valid excuse, like I - - - a relative died; I was out  
25                  of town; I - - -

1 JUDGE GRAFFEO: But why - - -

2 JUDGE RIVERA: My point is he might be put  
3 away before you know it. He might be confined before  
4 you have the opportunity to under - - - figure that  
5 out - - - for him to tell you.

6 MR. AMEND: The - - -

7 JUDGE RIVERA: And that might - - - he  
8 might be confined for quite some period of time.

9 MR. AMEND: That would be a - - - it would  
10 be difficult to imagine under the circumstances of  
11 this order. If however, what is at stake is  
12 preventing that kind of eventuality, the order can be  
13 modified to specify, in detail, procedures that, you  
14 know, if at any time, the individual agrees to be - -  
15 -

16 JUDGE RIVERA: And - - - and - - - and if  
17 it's done ex parte, who's going to argue for these  
18 modifications?

19 MR. AMEND: We would be - - - what - - -  
20 sorry, my - - - my point was that could be - - - all  
21 of these points could be specified in the order of  
22 conditions when it is implemented. When we're here -  
23 - -

24 JUDGE SMITH: So - - - so - - -

25 JUDGE GRAFFEO: It's - - - it's so unclear

1           what the statute provides for based on our discussion  
2           here this afternoon. Why doesn't OMH seek to clarify  
3           this in Article 10? Have they attempted to pursue a  
4           legis - - - a legislative amendment?

5                   MR. AMEND: The legislature has shown  
6           little interest, but it's also not necessary,  
7           certainly for the legislature - - - the legislature  
8           created a broadly worded statute. And the question  
9           here is whether - - -

10                   JUDGE GRAFFEO: But you want to do  
11           something less than recommitment.

12                   MR. AMEND: We want to do something less  
13           than recommitment - - -

14                   JUDGE GRAFFEO: So doesn't that - - -  
15           doesn't that need a legislative amendment to do that?

16                   MR. AMEND: Not in - - - not in a statute  
17           that says any reasonably necessary or appropriate  
18           condition can be applied. Other courts have  
19           recognized that that meant - - -

20                   CHIEF JUDGE LIPPMAN: Okay, counsel.

21                   JUDGE RIVERA: I'm sorry, may I - - - I'm  
22           sorry.

23                   CHIEF JUDGE LIPPMAN: I'm sorry, Judge  
24           Rivera. Go ahead.

25                   JUDGE RIVERA: I just want to follow up on

1           what you said.

2                       MR. AMEND:   Sorry.

3                       JUDGE RIVERA:   Can you clarify what you  
4           mean by the legislature has not seemed to have shown  
5           an interest.  Has there been some bills that have not  
6           been successful or - - -

7                       MR. AMEND:   This is based on my  
8           understanding from talking with OMH.  They've  
9           attempted to speak with legislature.

10                      CHIEF JUDGE LIPPMAN:  Okay, counsel.

11                      JUDGE RIVERA:   Thank you.

12                      CHIEF JUDGE LIPPMAN:  Thank - - -

13                      MR. AMEND:   I'm sorry; may I briefly  
14           respond?

15                      CHIEF JUDGE LIPPMAN:  No, thank - - -  
16           that's it.  Thank you all.  Appreciate it, both of  
17           you.

18                      (Court is adjourned)

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

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Allen B. v. Sproat, No. 73, and Matter of Robert T. v. Sproat, No. 74, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

Agency Name: eScribers

Address of Agency: 700 West 192nd Street  
Suite # 607  
New York, NY 10040

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