

ORIGINAL

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: DAVID RIGGINS, Petitioner V.

NEVADA

CASE NO: 90-8466

PLACE: Washington, D.C.

DATE: January 15, 1992

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IN THE SUPREME COURT OF THE UNITED STATES

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DAVID RIGGINS, :
Petitioner :
v. : Case No. 90-8466
NEVADA :
- - - - -X

Washington, D.C.
Wednesday, January 15, 1992

The above-mentioned matter came on for oral
argument before the Supreme Court of the United States at
10:06 a.m.

APPEARANCES:
MACE J. YAMPOLSKY, ESQ., Las Vegas, Nevada; on behalf of
the Petitioner.
JAMES TUFTELAND, ESQ., Chief Deputy District Attorney,
Las Vegas, Nevada; on behalf of the Respondent.

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1 PROCEEDINGS

2 (10:06 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 first this morning in No. 80 -- pardon me, in No. 90-
5 8466, David Riggins v. Nevada.

6 Mr. Yampolsky.

7 ORAL ARGUMENT OF MACE J. YAMPOLSKY

8 ON BEHALF OF THE PETITIONER

9 MR. YAMPOLSKY: Mr. Chief Justice, and may it
10 please the Court:

11 The main issue in this case is is it
12 constitutional for a State to forcibly medicate a
13 defendant on the claim that he would become incompetent,
14 when there is scarcely any evidence to show that he would
15 become incompetent without the medication, and when his
16 best defense is, in fact his only defense, was that he was
17 insane at the time of the crime.

18 This case also raises the related issue whether
19 it is constitutional for a State to forcibly medicate a
20 capital defendant in the sentencing phase when the two
21 mitigating factors that he was going to present were the
22 fact that (1) he suffers from a mental disease or defect,
23 and (2) whether he shows any remorse. And if it is
24 constitutional to forcibly medicate this defendant, did
25 the State use the least restrictive alternative available?

1 David Riggins, 10 months prior to the offense,
2 was found wandering the street of Glendora, California, in
3 his underwear at 2:00 a.m. When he was hospitalized, he
4 stated that he was the son of John F. Kennedy and Marilyn
5 Monroe, and that the mafia was seeking him because he had
6 stock in IBM. At that time, he was diagnosed as paranoid
7 schizophrenic. He left the hospital against medical
8 advice. Ten months later, he committed the crime in the
9 case before us.

10 Mr. Riggins was examined for competency by three
11 psychiatrists. The court found that he was competent. At
12 that time, he was ingesting 450 milligrams per day of
13 Mellaril. Approximately 16 weeks prior to the trial, Mr.
14 Riggins moved to terminate the administration of
15 medication. At the hearing there was testimony by three
16 psychiatrists, and the court, without any findings, denied
17 the motion.

18 QUESTION: Is there any explanation for why he
19 initiated the proceeding for an order to terminate the
20 medication? There had never been an order to begin it, to
21 give the medication at the outset. Why was it necessary
22 for him to move to terminate the medication? Is there
23 something in the record that shows that they threatened
24 that they were going to force it on him?

25 MR. YAMPOLSKY: Justice Kennedy, Dr. Quass, who

1 was the State's psychiatrist, the prison psychiatrist,
2 initially prescribed 100 milligrams of Mellaril for Mr.
3 Riggins because he was having trouble sleeping and he was
4 hearing voices. Dr. Quass gradually increased the dosage
5 until it got to be 800 milligrams, which some
6 psychiatrists say is an almost toxic dose.

7 QUESTION: Did he increase it or did Riggins
8 himself increase it? I thought that there was something
9 in the statement here that suggested that Riggins himself
10 decided he wanted to take more.

11 MR. YAMPOLSKY: Mr. Riggins initially asked for
12 Mellaril, and then the dosage was gradually increased by
13 Dr. Quass until it reached the 800-milligram level.

14 QUESTION: At Riggins' request or not at
15 Riggins' request?

16 MR. YAMPOLSKY: Mr. Riggins had requested that
17 the dosage be increased.

18 QUESTION: He had.

19 MR. YAMPOLSKY: He went back to Dr. Quass,
20 increasing -- still complaining of hearing of voices and
21 the fact he could not sleep.

22 QUESTION: You can't really say that it
23 was -- that the increased was forced upon Riggins by the
24 physicians here?

25 MR. YAMPOLSKY: No, the increase was not forced

1 upon Mr. Riggins. However, when Mr. Riggins wanted to
2 stop the medication, he was judicially prevented from
3 stopping the medication. Does that answer your question?

4 QUESTION: Now, do we assume on this record that
5 the use of the Mellaril was medically appropriate?

6 MR. YAMPOLSKY: I don't believe there was ever
7 any finding that the use was medically appropriate. In
8 fact, in the testimony --

9 QUESTION: Well, did Riggins ever challenge that
10 below or make an issue of that?

11 MR. YAMPOLSKY: The only time it was challenged
12 was at the hearing of the motion to terminate medication.
13 At that time, according to Dr. Quass' testimony, Mr.
14 Riggins asked for the Mellaril, and he had the same
15 problems, so Dr. Quass continued the dosage without ever
16 having a finding of what was medically appropriate.

17 QUESTION: Well, I thought that the petitioner
18 wanted it stopped in order that he could appear before the
19 jury in his natural state, whatever that was.

20 MR. YAMPOLSKY: That's correct.

21 QUESTION: Not on the basis that the giving of
22 the medication was medically inappropriate for his
23 symptoms.

24 MR. YAMPOLSKY: Well, at the hearing for the
25 termination of administration of medication, there was

1 testimony from Dr. Quass, who initially prescribed the
2 medication, Drs. O'Gorman, Dr. Masters for the State; and
3 Dr. Jurasky's report was taken into account. There was
4 never any finding by any judge or any doctor that it was
5 medically appropriate. In fact, Dr. Master testified that
6 it seems like Mr. Riggin is groggy -- I believe I'm
7 paraphrasing, but he was closing his eyes, which could
8 suggest that perhaps the dosage he was receiving was not
9 medically appropriate.

10 QUESTION: Well, we have to decide this case on
11 the basis of the record below us -- below. And I assumed
12 that we would have to consider that whatever was given was
13 at least medically appropriate. That doesn't answer the
14 ultimate legal question here of whether, nevertheless, the
15 petitioner could have a right to have it stopped.

16 MR. YAMPOLSKY: Well, according to this Court's
17 decision in Washington v. Harper, there must be a finding
18 for forcible medication that, one, it was medically
19 appropriate, and two, that there was a finding of
20 dangerousness. In addition, in Washington v. Harper,
21 there was a procedural set of circumstances that was set
22 up where one psychiatrist would prescribe the medication,
23 and then there would be a peer review. There were no such
24 procedural safeguards in this case.

25 QUESTION: Mr. Yampolsky, I don't think you've

1 answered Justice O'Connor's question, which is did the
2 petitioner in the Nevada District Court challenge the
3 giving of this dosage as being medically inappropriate?
4 Yes or no?

5 MR. YAMPOLSKY: The answer would be no.

6 QUESTION: Mr. Yampolsky -- I'm sorry, I didn't
7 mean to interrupt you.

8 MR. YAMPOLSKY: That's okay, Justice Souter.

9 QUESTION: I was going to say maybe I missed the
10 point, but I'm not sure of your answer to Justice
11 Kennedy's question. Prior to seeking the court order to
12 terminate, did the defendant ever say to his doctors, I
13 don't want anymore medicine, or I won't take it?

14 MR. YAMPOLSKY: I don't believe that ever
15 happened.

16 QUESTION: So prior to his going into court,
17 there was no act of the State forcing it upon him.

18 MR. YAMPOLSKY: That's correct. However, after
19 the court's decision, there was a judicial decision that
20 forced the medication upon him at the dosage of 800
21 milligrams, which in the brief of the American Psychiatric
22 Association, says is an extremely high dose, and
23 according --

24 QUESTION: Well, did the court order say to the
25 doctors you are hereby directed and instructed to forcibly

1 medicate him?

2 MR. YAMPOLSKY: No, the court order said the
3 motion to terminate administration of medication is
4 denied. There were no findings of facts, no --

5 QUESTION: Well, why do you need a motion to
6 terminate? Why can't you just tell your doctor, I don't
7 want this medicine?

8 MR. YAMPOLSKY: I'm unclear, Your Honor.

9 QUESTION: Does every prisoner in the State of
10 Nevada have to go to the court before he can tell his
11 doctor not to give him medicine?

12 MR. YAMPOLSKY: I don't believe --

13 QUESTION: Is the inference here that he was not
14 competent to tell the doctor?

15 MR. YAMPOLSKY: No, Your Honor, as a matter of
16 fact, he was found competent. However, in this case, Mr.
17 Riggins' only defense was insanity, and it appeared that
18 the high level of the Mellaril would be counterproductive,
19 in view of the fact -- as a trial lawyer I was trying to
20 show him in the natural demeanor as he was at the time of
21 the crime -- the fact that he was suffering from a mental
22 disease or defect, in our opinion, which was enough that
23 he didn't understand the difference between good and evil
24 and he didn't understand the nature and quality of his
25 act. However, he was precluded from presenting this

1 defense by virtue of the forced medication.

2 QUESTION: But did the court ever go further
3 than saying I will not order the State to stop
4 administering the medication? Did, to put it another way,
5 did the court order go further and say you must take so
6 much Mellaril a day? Wasn't the court order of the former
7 variety? It simply said I -- in effect, I won't intervene
8 and enjoin the administration of this medication?

9 MR. YAMPOLSKY: Yes, the court order said the
10 motion to terminate administration of medication is
11 denied.

12 QUESTION: So if he had then said, well, I'm not
13 going to take it, he wouldn't be in violation of the court
14 order? Would not have been in violation of the court
15 order.

16 MR. YAMPOLSKY: Apparently not.

17 QUESTION: Well, certainly the State knew and
18 the doctors knew that he wanted the -- when he made the
19 motion, they knew perfectly well that he wanted the
20 medication stopped.

21 MR. YAMPOLSKY: Correct.

22 QUESTION: And they nevertheless continued to
23 give it to him.

24 MR. YAMPOLSKY: That's correct also.

25 QUESTION: And it may be that they were

1 justified in doing it if he was a danger to himself or
2 others, and it was medically appropriate.

3 MR. YAMPOLSKY: Well, that's correct, however,
4 that is the precise issue. There was never ever any
5 finding that he was a danger to himself and others in the
6 prison system.

7 QUESTION: Mr. Yampolsky, as I understand it,
8 just as you did not argue below, and certainly did not
9 argue in your petition, that the administration was
10 medically inappropriate, so also Nevada did not argue
11 below that -- or in its response to the petition that he
12 could have simply declined to take it on his own. They
13 never made that argument, did they?

14 MR. YAMPOLSKY: That's correct.

15 QUESTION: I certainly don't recall. I assume
16 that the case is here on the assumption that the drugs
17 were medically -- appropriately medically prescribed -- on
18 the assumption, whether it's true or not, that they were
19 medically prescribed and that the prescription was
20 appropriate, and that he had no choice but to take them.
21 I assumed that that was what we were going to talk about
22 this morning.

23 MR. YAMPOLSKY: Well, they were prescribed by a
24 doctor, psychiatrist, Dr. Quass. It's unclear from the
25 hearing what medical decision making went into the process

1 of elevating the dosage, but it certainly was elevated.

2 And --

3 QUESTION: But you never made that argument
4 before. I mean, the question presented says whether the
5 forcible -- forcible, and they never denied
6 forcible -- whether the forcible administration of
7 anti-psychotic drugs to an insanity defendant during trial
8 violates the defendant's rights under the due process
9 clause. You never say anything about the forcible
10 administration of unnecessary or inappropriate
11 anti-psychotic drugs. You just -- that's not the point
12 you made in your petition.

13 MR. YAMPOLSKY: That's not the point. However,
14 according to this --

15 QUESTION: Well, what do you want to introduce
16 it now for?

17 MR. YAMPOLSKY: Well, according --

18 QUESTION: It's not a very interesting question.
19 Of course you can't force somebody to take inappropriate
20 drugs, whether he's a prisoner or not. I mean, that's not
21 a hard legal question at all.

22 MR. YAMPOLSKY: Well, Your Honor, or Justice
23 Scalia, that's the very question that needs to be
24 addressed. Was it medically appropriate for Mr. Riggins
25 to be given 800 milligrams of Mellaril for him to be

1 competent as the State says.

2 QUESTION: I read your question presented again.
3 Was the forcible administration of antipsychotic drugs to
4 an insanity defendant during -- whether the forcible
5 administration violates the defendant's rights. There's
6 not a suggestion in the question presented that this was
7 inappropriate medication.

8 I thought your whole point was it was
9 appropriate to calm him down, but he didn't want to be
10 calmed down. He wanted to appear insane. I thought that
11 was the question we were going to talk about.

12 MR. YAMPOLSKY: That is the question --

13 QUESTION: Well, let's talk about it.

14 MR. YAMPOLSKY: Well, to talk about that,
15 Justice Scalia, it appears that we need to decide, one, is
16 the medication forcible because the judge ordered it and
17 we were attempting to stop it. It is forcible. And then,
18 was it medically appropriate. It does -- there's no
19 finding, absolutely any finding by a court, there is not
20 testimony by any psychiatrist saying that 800 milligrams
21 of Mellaril were medically appropriate in this case.

22 QUESTION: But Mr. Yampolsky, the forcible issue
23 is raised in your petition for certiorari. The medically
24 appropriate issue isn't.

25 MR. YAMPOLSKY: Your Honor, the medically

1 appropriate issue is consumed by the forcible medication.
2 If it was medically inappropriate that would be a separate
3 issue. And that's what we're attempting to show that
4 maybe it is medically appropriate, maybe it's not.
5 However, we don't know from the record below us.

6 QUESTION: You have half an hour to argue your
7 case, and surely the main thrust of it is the point that
8 the medication was forcibly administered against his
9 wishes, so why don't you get on with that.

10 MR. YAMPOLSKY: Your Honor, Mr. Riggins had been
11 suffering from paranoid schizophrenia. He moved the court
12 to terminate the medication. The court denied his motion.
13 On that basis he was medicated against his will, and
14 that's why we're here.

15 Mr. Riggins' demeanor was an important part of
16 his testimony. As the trial counsel, an insanity defense
17 is typically difficult to win. However, that was the only
18 defense that was viable in this case. And my decision,
19 after discussing it with Mr. Riggins, was that it would be
20 in his best legal interest to appear in his natural
21 demeanor. However, he was deprived of this opportunity by
22 virtue of this ruling, without any findings that it would
23 be medically appropriate to medicate him because if we
24 take him off he will be incompetent. That is a
25 possibility, but we never reached that possibility.

1 QUESTION: Well, let me put it this way, if it
2 were medically appropriate, would you be here at all?
3 It's still ordered, the motion was denied, but it's
4 medically appropriate. Would you be here nevertheless
5 arguing a constitutional violation?

6 MR. YAMPOLSKY: If it was medically appropriate
7 --

8 QUESTION: Yes.

9 MR. YAMPOLSKY: -- and Mr. Riggins had the right
10 to deny the medically appropriate medication, and by
11 virtue of his --

12 QUESTION: Well, that's the issue.

13 MR. YAMPOLSKY: Correct.

14 QUESTION: Would you still be here arguing that
15 he had the right to deny, even if it were medically
16 appropriate that he be given it?

17 MR. YAMPOLSKY: Yes, I would be arguing that.
18 Many defendants can waive many constitutional rights: to
19 go to trial, the right against self incrimination. And
20 what's analogous here, the Faretta decision, where it may
21 not be the wisest choice to act as one's own lawyer, but
22 if a defendant is shown the pitfalls of possibilities, and
23 he chooses --

24 QUESTION: Do you say that the right not to be
25 tried while incompetent is a waivable right under the

1 Constitution?

2 MR. YAMPOLSKY: I have two responses to that.
3 One, if this Court recognizes the right to waive one's
4 competence, then yes. If this Court --

5 QUESTION: Well, I'm asking you what your
6 position is as to the law. Is it a waivable right?

7 MR. YAMPOLSKY: I believe it is a waivable right
8 in the following Faretta line of cases, that as long as
9 the competent defendant is given a full and fair hearing
10 in which the pitfalls, the problems which could occur are
11 set forth. And at that time, if he is competent and chose
12 to waive his right to be tried while competent, I believe
13 he can.

14 However, if the court decides that the defendant
15 does not have the ability to waive his right to be tried
16 while competent, then the inquiry must shift gears to show
17 well, what is the level -- the lowest level which is
18 appropriate -- the lowest level of Mellaril that Mr.
19 Riggins had to ingest to be tried while competent.
20 Because it's not 800 milligrams because the competency
21 hearing -- I say the hearing, but the competency decision
22 by the court was made when he had 450 milligrams. And
23 perhaps there would be a lesser amount, let's say 200
24 milligrams, where he would be competent. But because of
25 the way the proceeding below has taken place, we'll never

1 know.

2 QUESTION: Where is this in your question
3 presented, again? I don't see it. I thought we were
4 going to talk about not whether they gave him too much or
5 too little, but whether, if he doesn't want to take any,
6 he can simply -- even if he needs it, even if it's
7 medically appropriate, he can simply say I don't want to
8 accept any forcible administration. That's the only thing
9 that's in your question presented.

10 MR. YAMPOLSKY: Justice Scalia, I don't believe
11 we ever had a finding on whether or not it was medically
12 appropriate.

13 QUESTION: I'm not talking about what the
14 finding was, I'm talking about what you came to this Court
15 presenting us to decide, and on the basis of which we
16 accepted this case. Now the case gets here, and you want
17 to talk about something different.

18 QUESTION: Are the questions presented in your
19 brief the same questions you presented in your petition
20 for cert.?

21 MR. YAMPOLSKY: The petition for cert. was based
22 on the constitutional infirmity, or our position was, on
23 the fact that --

24 QUESTION: Well, just yes or no. Are these
25 questions you stated in your brief the same questions you

1 raised on -- in your petition for cert.? Yes or no?

2 MR. YAMPOLSKY: Yes. They're expanded upon, but
3 they are basically the same questions talking about the
4 constitutional rights which were violated below.

5 QUESTION: Okay.

6 MR. YAMPOLSKY: And they were broken up in the
7 questions presented to the trial phase and then
8 resentencing phase, which is why we had the two questions.
9 However, they encompass the same due process right.

10 QUESTION: Well, it sounds to me like, as I read
11 the court of appeals' opinion, or the State, the Supreme
12 Court in Nevada opinion, the only question they decided
13 was that you didn't have a constitutional -- a special
14 constitutional right to discontinue these drugs so that
15 you could appear in your natural state at trial. And they
16 said no.

17 MR. YAMPOLSKY: And that's why --

18 QUESTION: That was the only thing they decided.

19 MR. YAMPOLSKY: And that's why we filed the
20 petition to this Court.

21 QUESTION: Right. And is -- the constitutional
22 issue you want us to decide is whether you have a special
23 constitutional right to have the drugs terminated so that
24 you can appear in your natural state at trial. Is that
25 the question? Is that it or not?

1 MR. YAMPOLSKY: I don't believe that's exactly
2 accurate. It's not a special --

3 QUESTION: It's the only issue the court of
4 appeals decided.

5 MR. YAMPOLSKY: Well, it's not a special
6 constitutional right.

7 QUESTION: I mean the supreme court decided.

8 MR. YAMPOLSKY: We believe that it is a
9 constitutional right, but not a special constitutional
10 right. And the constitutional right to have a fair
11 trial --

12 QUESTION: Well, I know, but you would argue, I
13 suppose, that even if in normal circumstances, you might
14 be dangerous to yourself or others, and this is medically
15 appropriate, you nevertheless should be able to refuse the
16 drugs because you're going to go to trial and you want to
17 appear in your natural state at trial.

18 MR. YAMPOLSKY: There's the fundamental right of
19 a defendant, which is being infringed upon here. Of
20 course the State has interest to have -- to try competent
21 defendants. However, there's another State interest to
22 have fair and accurate verdicts. And it appears that the
23 jury, having only seen Mr. Riggins in his calm,
24 remorseless, apathetic, disinterested state, was given the
25 wrong impression of who Mr. Riggins was. It would have

1 been better from a defense standpoint, it would have been
2 a fairer trial if Mr. Riggins was able to display his
3 natural demeanor, but he was precluded from doing so by
4 the State. And that is why we're here.

5 QUESTION: Well, Mr. Yampolsky, are you saying
6 now, in effect, that the answer to the questions that you
7 have raised is something like this: yes, with appropriate
8 findings of necessity, the State can administer these
9 drugs forcibly, even though it will compromise what he
10 would regard as compromising his demeanor. But that the
11 constitutional defect here is that the State has not
12 predicated, or the court did not predicate its order on
13 adequate findings of necessity.

14 Is that a fair statement of the position that
15 you take now?

16 MR. YAMPOLSKY: That is a fair statement.

17 QUESTION: All right. Was that the position
18 that you took in the State court, or did you say in the
19 State court, regardless of the findings, you may not
20 forcibly administer this medication under -- given the
21 charges against him and his insanity defense?

22 MR. YAMPOLSKY: No, we have never taken the
23 position that forcible medication is always inappropriate
24 and always constitutionally infirm. Our position has
25 been, in these circumstances, in view of this situation,

1 when an insanity defendant with the fact that demeanor is
2 our most powerful form of evidence, the fact that he was
3 mediated at such a high dose without a finding of medical
4 necessity and dangerousness, because of that, that there
5 is a constitutional defect.

6 QUESTION: Excuse me. Your question is perhaps
7 broader than you need it to be, but you're really saying
8 that your position is comprehended with -- or the issue
9 that you raise is comprehended within that broad statement
10 of the issue in the cert. petition.

11 MR. YAMPOLSKY: That's correct.

12 QUESTION: Okay.

13 MR. YAMPOLSKY: If the Court wants to narrow the
14 issue, it could be what would be constitutional for an
15 insanity defendant. However, it appears that the same
16 constitutional protections that will protect Mr. Riggins
17 will also protect other criminal defendants. And when is
18 the finding of dangerousness? If there is any violent
19 crime, could the court just say he was dangerous, he
20 committed a violent crime, why don't we medicate him? And
21 that's not what we're here on. It's -- on this specific
22 set of facts.

23 QUESTION: Well, don't you want to rest on the
24 need to medicate for competence rather than the need to
25 medicate for safety?

1 MR. YAMPOLSKY: Well, this case wasn't
2 predicated from the petitioner's standpoint on competence.
3 He was already adjudicated competent by the trial court.

4 QUESTION: I see. Yes, yes. Okay.

5 MR. YAMPOLSKY: The issue is insanity and how is
6 he present -- prevented from --

7 QUESTION: I've got the point.

8 QUESTION: Mr. Yampolsky, you stated a moment
9 ago that the defendant was in this listless, disinterested
10 -- and I think in your brief you say zombie-like state.
11 Is that a factual finding below, or is that just your
12 assertion? Is there any finding in the lower courts that
13 that was indeed the situation?

14 MR. YAMPOLSKY: There was no actual finding.
15 However, in the termination hearing, Dr. Master said that
16 he, Mr. Riggins, is groggy and he's closing his eyes, and
17 there was some colloquy between myself and the court
18 pointing to the fact that look at the condition he's in,
19 how can I present this to a jury.

20 QUESTION: There was no finding below. Did you
21 ask for a finding? I mean, as far as I'm concerned, I
22 don't know whether these drugs did anything except make a
23 defendant who would otherwise appear insane appear sane,
24 which is perhaps bad enough. I thought that was the point
25 you wanted to argue. If you give somebody medication so

1 that whereas he would appear insane to the jury, he
2 appears sane. He doesn't appear zombie-like, necessarily,
3 or indifferent, necessarily -- or remorseless,
4 necessarily -- but he just appears sane. I thought that
5 that was your objection. He should be able to appear
6 insane if indeed he is. Isn't that your point?

7 MR. YAMPOLSKY: Yes, Your Honor -- and to --
8 Justice Scalia. And to answer your question, there were
9 absolutely no findings, which is part of the problem. The
10 amicus brief by the American Psychiatric Association
11 states that the effects of this drug are to make one
12 feel -- I mean, make one appear cold, unfeeling,
13 apathetic.

14 I'd like to reserve the rest of my time.

15 QUESTION: Very well, Mr. Yampolsky.

16 Mr. TufteLand, we'll from you.

17 ORAL ARGUMENT OF JAMES TUFTELAND

18 ON BEHALF OF THE RESPONDENT

19 MR. TUFTELAND: Mr. Chief Justice, and may it
20 please the Court:

21 The way this issue was initially presented to
22 the trial court was really a question of trial strategy.
23 There was never an indication in this case that Mr.
24 Riggins was a Harper-type defendant who did not want to be
25 medicated.

1 The testimony at the evidentiary hearing reveals
2 that Mr. Riggins was admitted into the county jail right
3 after his arrest. Shortly after being incarcerated, he
4 complained of hearing voices and having trouble sleeping.
5 And on the basis of that interview with the jail
6 psychiatrist and -- at which time he took a short medical
7 history from the defendant -- at which time he learned
8 that Mr. Riggins had previously been medicated with
9 Mellaril some 6 years earlier by Dr. O'Gorman and that the
10 drug had worked effectively for him. The psychiatrist
11 then prescribed a moderate dose of Mellaril, which was
12 primarily designed to control anxiety.

13 Over the course of the next several months, the
14 dosage was increased four or five times. Dr. Quass saw
15 him two or three times after that. Riggins himself did
16 request an increase in the dose because he continued to
17 hear these voices. The whole purpose of the medication
18 was medical treatment. At no time did the trial court --

19 QUESTION: Well, was there ever a motion by the
20 defendant in court to stop the medication for purposes of
21 letting him go to trial without being medicated?

22 MR. TUFTELAND: That was --

23 QUESTION: I thought there was such a motion.

24 MR. TUFTELAND: Mr. Yampolsky filed that motion
25 in July or June of '88.

1 QUESTION: All right. And at that point he was
2 still being medicated.

3 MR. TUFTELAND: That's true.

4 QUESTION: And the motion made clear that he
5 didn't want to be medicated anymore. Is that right?

6 MR. TUFTELAND: The -- well, the --

7 QUESTION: For purposes of the trial?

8 MR. TUFTELAND: The motion itself did not, for
9 instance, have an affidavit from the defendant indicating
10 he had some sort of a liberty interest in not being
11 medicated.

12 QUESTION: Well, I thought we had the case on
13 the assumption that there had been a motion to terminate
14 the medication.

15 MR. TUFTELAND: That's correct. A motion like
16 that was filed.

17 QUESTION: And the State's position is that, or
18 was that it could continue to medicate.

19 MR. TUFTELAND: The State's position -- the
20 State's concern at that point was maintaining defendant's
21 competency to stand trial. I don't believe the trial
22 attorney at the time cared one way or the other whether
23 the defendant's unmedicated demeanor came before the jury.
24 Our concern was will we have a competent defendant to take
25 to trial, because in Nevada that's a jurisdictional

1 requirement.

2 QUESTION: The court made no findings on that
3 question of whether he would remain competent. Is that
4 right?

5 MR. TUFTELAND: The court had entered a -- order
6 of competency some months earlier. Prior to the
7 preliminary hearing in this case, Mr. Yampolsky filed a
8 motion to have a competency determination made by the
9 district courts. In Nevada, then the case is transferred
10 up to the district court for the appointment of
11 psychiatrists. And that's the time when the additional
12 psychiatrists came in to interview the defendant.

13 Based on the reports, and there were two
14 reports -- actually three reports that went to the court.
15 Two of them said he was competent to assist counsel at
16 trial, and Dr. Jurasky's report indicated that he was a
17 paranoid schizophrenic, that he was incompetent, and that
18 he was -- well, he was incompetent for that purpose.

19 Based on the reports, the court issued an order
20 declaring him to be competent and then remanded for
21 preliminary hearing. So there had been a judicial finding
22 of competency about 4 months before the motion to
23 terminate.

24 QUESTION: Yeah, but there was no finding, I
25 take it, after he filed his motion to terminate the

1 medication. There was no finding as to what that would do
2 --

3 MR. TUFTELAND: That's correct.

4 QUESTION: -- to his competency. Do you think
5 that's required?

6 MR. TUFTELAND: I don't believe so. The court
7 had already determined that he would be competent, and it
8 was just a matter of eventually going to trial. All that
9 was before the court was the defense motion to terminate
10 the medication, not because of liberty interests like in
11 Harper, but simply to present this trial defense of an
12 unmedicated demeanor evidence.

13 QUESTION: Yes, but counsel, regardless of the
14 reason for the motion, you don't challenge the authority
15 of the attorney to speak on behalf of his client at that
16 point, do you?

17 MR. TUFTELAND: No. No, I don't.

18 QUESTION: So isn't it true that you had the
19 equivalent of a statement by the defendant, I don't want
20 any more medication at this time?

21 MR. TUFTELAND: Well, I think you've got a more
22 detailed statement than that, though. It's not -- he's
23 not making a statement like Harper did.

24 QUESTION: Maybe the reasons are different, but
25 is it not fair to say that he did at least request that

1 the medication be terminated?

2 MR. TUFTELAND: That's true.

3 QUESTION: And then the question arises is who
4 has the burden of determining what facts will justify
5 continuation of the medication. You say it's his burden
6 to give reasons for discontinue other than simply saying I
7 don't want any more. You say he has an additional burden.

8 MR. TUFTELAND: If we assume that the Washington
9 v. Harper liberty interest applies to this defendant in
10 this circumstance --

11 QUESTION: Whether you assume that or not,
12 whether you assume that or not.

13 MR. TUFTELAND: Yeah --

14 QUESTION: Whatever his reason. Whether he
15 wants it because he just does -- he wants to take a chance
16 on seeing how he'll feel without it, he wants to disagree
17 with doctors, he wants to look different to the client, is
18 it his burden to convince the judge that he has an
19 adequate reason, or is it the State's burden to convince
20 the judge they have an adequate reason to continue. Which
21 is your view?

22 MR. TUFTELAND: I frankly think it would be his
23 burden to show that it shouldn't be continued.

24 QUESTION: And just simply saying I don't want
25 it should not weigh in the scale at all?

1 MR. TUFTELAND: Yeah, based on the motion,
2 then -- based on the motion, the court conducted an
3 evidentiary hearing, and primarily the decision -- the
4 concern of the court was what should my decision be. Do
5 we continue to medicate this person? He wanted to find
6 out if we terminate the medication, what's the possibility
7 of the defendant becoming incompetent, because if that
8 happens, the trial goes off calendar and we don't know
9 when it would ever be re-calendared.

10 They had the hearing and based on the evidence
11 adduced, the court concluded that the safest course, and
12 the most prudent course, was to continue the medication
13 because the evidence presented by the psychiatrists
14 indicated that he actually handled that dose quite well,
15 even though it was a large dose. And he did that because
16 he had used Mellaril --

17 QUESTION: And the fact that he doesn't want to
18 take the medication anymore just doesn't carry weight in
19 the argument?

20 MR. TUFTELAND: Well, he's the moving party.

21 QUESTION: I understand.

22 MR. TUFTELAND: I think he's got the burden to
23 convince the court to grant what he's requesting.

24 QUESTION: Why -- is that reason he has the
25 burden, simply because he's the moving party on the

1 motion?

2 MR. TUFTELAND: Well, that sounds like a good
3 reason to me.

4 QUESTION: Well, if we assume for the sake of
5 argument it's not a good reason, do you have another
6 reason? I mean, do you take the position, for example,
7 that the State is -- he's in custody, the State has a
8 parens patriae right to do whatever it thinks is
9 appropriate for the -- for his physical or mental welfare?
10 Are you resting on some theory like that?

11 MR. TUFTELAND: No such theory was advanced at
12 the time because it wasn't really raised. Obviously, I
13 think the State does have that kind of an interest. The
14 man is --

15 QUESTION: Well, the way you put it awhile ago,
16 it sounds to me like -- you say the court decided that it
17 was necessary to maintain his competence to treat him. Is
18 that what the court decided?

19 MR. TUFTELAND: The court -- the court's
20 concern, I think was that if the medication was
21 terminated, there was at least a --

22 QUESTION: So whose ever burden it was -- if it
23 was the State's burden, you suggest that the court found
24 it was satisfied.

25 MR. TUFTELAND: Yes.

1 QUESTION: Except there was no --

2 QUESTION: He didn't say that, did he?

3 MR. TUFTELAND: Well, it was a rather short form
4 of the order.

5 QUESTION: He said the most prudent course: I
6 don't want to take the risk.

7 MR. TUFTELAND: That was about the nature of
8 his rationale.

9 QUESTION: Don't want to take the risk of having
10 to postpone the trial.

11 QUESTION: Should the court make findings as to
12 whether or not the medication will affect the demeanor of
13 the defendant, or is that irrelevant?

14 MR. TUFTELAND: Well, the question of the
15 demeanor evidence, I don't think was ever really addressed
16 by the courts.

17 QUESTION: Well, I think it was raised by
18 counsel, wasn't it?

19 MR. TUFTELAND: It was raised. That was the
20 thrust of his --

21 QUESTION: So that's an irrelevant consideration
22 of the court?

23 MR. TUFTELAND: No, it's a constitutional claim.
24 The court -- what I'm saying is the court never vocalized
25 an opinion as to whether demeanor evidence was relevant

1 evidence.

2 QUESTION: Well, he didn't vocalize the opinion?
3 He made no findings at all on the point, did he?

4 MR. TUFTELAND: Well, no, he didn't. It was
5 just a --

6 QUESTION: And you've admitted that they're
7 relevant to the consideration?

8 MR. TUFTELAND: Am I admitting that?

9 QUESTION: Are they relevant to the
10 consideration of the trial court?

11 MR. TUFTELAND: No.

12 QUESTION: Why?

13 MR. TUFTELAND: The trial court's decision was
14 simply whether or not termination of medication would
15 render the defendant incompetent. The question of whether
16 the demeanor evidence is relevant or not, I think, goes to
17 the weight it would have on the jury, not so much to its
18 admissibility.

19 QUESTION: Well, assuming that a particular drug
20 is being administered, and assume for a moment that the
21 drug would create a zombie-like appearance in the person
22 taking the drug so that the person would appear
23 disinterested in the proceedings going on and as though
24 they had no effect on him one way or another. Now do you
25 think that a defendant has a right to avoid that kind of

1 appearance if he's going to appear before the jury and
2 indeed testify in the trial?

3 MR. TUFTELAND: Not if terminating the
4 medication is going to make him incompetent to go to
5 trial. I think that the medication can be terminated, but
6 he can maintain competency, I see no problem with that
7 kind of evidence coming before the jury.

8 QUESTION: But there was no finding below as to
9 whether he would maintain his competence, was there?

10 MR. TUFTELAND: Well, there was no explicit
11 finding by the court.

12 QUESTION: No.

13 MR. TUFTELAND: The court merely entered an
14 order saying the motion to terminate is denied.

15 QUESTION: Mr. Tufteland, there was no finding,
16 but perhaps there was no finding because his motion wasn't
17 based on that. He didn't say, I don't want to take any
18 more medication because I don't need it to remain
19 competent. He didn't say I could take much less or I
20 could take none at all and still remain competent. As I
21 understood his motion, it was whether or not I will be
22 incompetent, I want you to order the medication stopped.

23 MR. TUFTELAND: That's correct.

24 QUESTION: Had he come in and said, I will -- I
25 can be perfectly competent even without it, then the judge

1 might have felt the need to make such a finding, but that
2 wasn't his argument, was it?

3 MR. TUFTELAND: No.

4 QUESTION: It was competence or noncompetence
5 doesn't matter, I have an absolute right --

6 MR. TUFTELAND: That's right.

7 QUESTION: -- not to take the medication.

8 MR. TUFTELAND: That's correct.

9 QUESTION: I understood what went on.

10 QUESTION: I understood Mr. Yampolsky to say in
11 answer to my question that in the court, in the State
12 court, at least in arguing to the State court, he never
13 went so far as to adopt the position that even if it did
14 render him incompetent, he would have a right to refuse
15 the medication in order to, in effect, project his genuine
16 demeanor. I take you're simply contradicting him on that
17 point.

18 MR. TUFTELAND: At the evidentiary hearing, he
19 stipulated that competency was a jurisdictional
20 requirement and it could not be waived.

21 QUESTION: Well, was that the equivalent of
22 saying therefore, I do not claim that even at the risk of
23 incompetency the medication should be stopped? I mean,
24 was that a way of saying yes, I don't go the whole hog
25 here, all I'm really asking for is an order to stop the

1 medication or reduce the medication consistent with
2 competency?

3 MR. TUFTELAND: I'm not sure what he intended by
4 that statement. I just noted that it was in the record.
5 The thrust of his motion was that he had a constitutional
6 right under the due process clause to appear before the
7 jury in an unmedicated condition.

8 QUESTION: He at least -- I'm sorry.

9 QUESTION: Mr. Tufteland, given the existing
10 state of the record at the time this motion was filed,
11 supposing that Mr. Riggins had simply stopped taking the
12 drug on his own and walked into trial on the trial date
13 without having taken it. Would he have been in violation
14 of any court order?

15 MR. TUFTELAND: No. There was no court order
16 ever requiring him to be medicated. And the only court
17 order entered in this regard was the motion to terminate
18 medication, which was simply denying a defense counsel's
19 motion. Had he done that, presumably, unless the jail
20 authorities brought it to the court's attention or
21 somebody's attention that he was refusing medication, then
22 something might have occurred. But had he been able --

23 QUESTION: Yeah, but the case went to the court
24 of appeals -- to the Supreme Court of Nevada on the basis
25 that he was being involuntarily treated. Do you deny

1 that? These -- that was the way the issue was being
2 framed, that he was being forcibly treated.

3 MR. TUFTELAND: Well, there's nothing in the
4 record that actually supports the idea that he didn't
5 continue to voluntarily consume the medication.

6 QUESTION: Well, the court of appeals talked as
7 though, or the supreme court of the State talked as though
8 he -- they decided it on the basis that he was being
9 involuntarily treated.

10 MR. TUFTELAND: I think they addressed the
11 question pretty much as it was presented in the briefs as
12 to whether or not there was this constitutional right to
13 appear unmedicated. I'm assuming that they just assumed
14 for the sake of their decision that the medication was
15 forcibly administered.

16 QUESTION: Was he ever -- why was he -- after he
17 was arrested, wasn't he sent to a mental treatment place?
18 Was he?

19 MR. TUFTELAND: He was -- as far as I know, he
20 was in the Clark County jail. They do have a medical
21 section within the jail.

22 QUESTION: Yes.

23 MR. TUFTELAND: And he may have been there. I'm
24 not real sure.

25 QUESTION: Was there some question about his

1 competence at that time?

2 MR. TUFTELAND: Well, Mr. Yampolsky raised that
3 issue within a couple of weeks of the arrest.

4 QUESTION: Yes. And what happened?

5 MR. TUFTELAND: He filed the motion to have
6 psychiatrists appointed for interviews, and the lower
7 court --

8 QUESTION: Granted it.

9 MR. TUFTELAND: Well, they transferred the case
10 up to the district court, the district court appointed the
11 psychiatrists who interviewed him. They submitted their
12 reports, and then based on those reports, the court
13 entered an order declaring him to be competent to stand
14 trial.

15 QUESTION: When did he do -- when was that
16 entered?

17 MR. TUFTELAND: The psychiatric interviews
18 occurred -- two of them are in February of '88, and the
19 other, I believe, was in early March of '88.

20 QUESTION: And did it appear that the reason
21 he -- did it appear that he had been incompetent but that
22 the drugs made him competent? Was that --

23 MR. TUFTELAND: Well --

24 QUESTION: Was that it or not?

25 MR. TUFTELAND: The motion of Mr. Yampolsky

1 simply asserted that in dealing with his client he felt
2 that he -- there were concerns about his competency based
3 on conferring with him. And he wanted the question
4 resolved. So obviously there were some behavioral signs
5 to defense counsel that spurred him to file the motion.

6 QUESTION: But your position was that after the
7 court's ruling you could forcibly medicate him if you
8 chose?

9 MR. TUFTELAND: Our position would have been if
10 the -- it was necessary to maintain competency for trial,
11 we could have forcibly medicated him.

12 QUESTION: How would you know that?

13 MR. TUFTELAND: Well, that's why they had the
14 evidentiary hearing.

15 QUESTION: Well, I know, but it's a -- there
16 didn't sound like as much of a finding. You say, I just
17 don't want to take the risk, that's sort of a 50/50 toss
18 up. It depends on who has to prove it.

19 MR. TUFTELAND: Well, I think that the court
20 entertained the opinions of the three psychiatrists who
21 testified plus the reports of the other two psychiatrists
22 whose reports were before the court. Dr. Patel, who had
23 examined the defendant in January of '87, had diagnosed
24 him as being paranoid schizophrenic. And based on the
25 testimony that came before the court, that type of

1 diagnosis indicated that if the medicated was terminated,
2 he'd become incompetent.

3 Dr. Jurasky also found him to be paranoid
4 schizophrenic --

5 QUESTION: Yes, but this is testimony before the
6 hearing in response to his motion, isn't it? There was a
7 hearing in response to his motion, wasn't there?

8 MR. TUFTELAND: To terminate? Yes.

9 QUESTION: Yeah. And what was the testimony at
10 that hearing on the issue of competence to stand trial if
11 the medication were discontinued? Didn't they basically
12 say we're really not sure?

13 MR. TUFTELAND: Dr. O'Gorman was not sure. He
14 basically would not volunteer an opinion one way or the
15 other because he had never interviewed the person when not
16 medicated.

17 Drs. Quass and Master felt -- their diagnosis
18 was that he was a paranoid personality, but they didn't
19 believe he suffered from schizophrenia. They felt that --
20 based on --

21 QUESTION: What did they say on the question of
22 whether they thought he would be competent if the
23 medication were discontinued?

24 MR. TUFTELAND: Most likely they thought he
25 would remain competent.

1 QUESTION: So -- then you're saying that we have
2 to assume that the judge accepted their testimony. In
3 other words, the judge's finding would be that he would
4 have still been competent without the medication. Because
5 he didn't say it in so many words, we presume he believed
6 the experts. I think that's what you said is the way to
7 interpret his ruling.

8 MR. TUFTELAND: Well, I think the way to
9 interpret it is that if you look at defense counsel's
10 statement at the end of the hearing, he said the evidence
11 before the court is conflicting and basically no one knows
12 what will happen if the medication is terminated. The
13 nature of the --

14 QUESTION: So you assume he believed or
15 disbelieved the experts?

16 MR. TUFTELAND: Well, I think he pretty much
17 believed them, but there were conflicting opinions.

18 QUESTION: If he believed them, then you had to
19 come down on the side of competence, didn't he?

20 MR. TUFTELAND: There were conflicting opinions.

21 QUESTION: Well, two said he would -- they
22 thought he'd be competent and one said he wasn't sure.

23 MR. TUFTELAND: And then there --

24 QUESTION: Which is the weight of the evidence,
25 then?

1 MR. TUFTELAND: Well, there were two reports
2 submitted in addition to those, Jurasky and Patel. There
3 were five psychiatrists who had input with the court on
4 this motion.

5 QUESTION: That isn't quite enough
6 psychiatrists, is it?

7 (Laughter.)

8 QUESTION: Nobody said he would be competent.
9 Some of them said he most likely would be competent.

10 MR. TUFTELAND: Right.

11 QUESTION: They were asking the judge to take a
12 chance and the judge said --

13 MR. TUFTELAND: Right.

14 QUESTION: -- it's, you know, this thing has
15 come along too far at this stage, we're close to trial,
16 I'm not going to take this -- the chance at this point.

17 MR. TUFTELAND: I think that was the rationale
18 basically. The test -- even though they said they thought
19 in their medical judgment he would remain competent, they
20 said there was -- existed the possibility that he
21 wouldn't.

22 QUESTION: Mr. Tufteland, let me ask you another
23 question. Suppose we had a defendant who had been
24 determined to be competent at the time because of the
25 medication. Does the defendant have a right to refuse

1 further medication, even though he would become
2 incompetent at trial?

3 MR. TUFTELAND: Our position would be --

4 QUESTION: Is it waivable?

5 MR. TUFTELAND: We don't believe it is.

6 QUESTION: Aren't most constitutional rights
7 waivable?

8 MR. TUFTELAND: Yes.

9 QUESTION: And why isn't that one?

10 MR. TUFTELAND: I think because in this kind of
11 a case, this situation where in Nevada where competency is
12 jurisdictional and this Court in a number of cases has
13 indicated that due process requires a person to be
14 competent when they go to trial.

15 QUESTION: I don't think we've ever decided,
16 have we, whether it's waivable?

17 MR. TUFTELAND: No, you have not. But I think
18 that the State's interest in trying people who are
19 competent is so compelling that it should be deemed a
20 right that is not waivable.

21 Basically, when a person goes to trial, we are
22 trying to adjudicate people in a fair proceeding so that
23 we get verdicts that are reliable and verdicts in which
24 the public has confidence. And we want verdicts in which
25 the guilty are found guilty, and innocent people are

1 acquitted. And if you're trying people who --

2 QUESTION: Well, does your case rest on the
3 position that it's not waivable? What if we were to
4 decide or assume that it is waivable? Then what's the
5 State's interest here?

6 MR. TUFTELAND: Well, I mean our interest is the
7 same regardless, and if you hold that it's waivable, then
8 that's your opinion. The issue itself never came before
9 any court in this case. So in a sense it's an academic
10 inquiry.

11 Mr. Yampolsky had stipulated that it was not
12 waivable, and so it never became a decision for the Nevada
13 judge to make.

14 QUESTION: Mr. Tufteland, did the defendant
15 appear in the trial at any stage of the trial?

16 MR. TUFTELAND: He testified at the guilt phase.

17 QUESTION: What did he say at the guilt phase?

18 MR. TUFTELAND: He testified about his
19 background, explaining when he began hearing voices at the
20 age of 4, and about an abused childhood, about his
21 delusional episodes over the course of his life. He
22 testified as to his account of the crime, which contained
23 elements of self-defense and elements of basically insane
24 testimony, if you will.

25 QUESTION: Insane testimony? Such as what?

1 MR. TUFTELAND: Well, he -- claiming that the
2 victim was trying to put AIDS-infected blood on his
3 cocaine to kill him, and that he tried to put fiberglass
4 in his water to kill him. Very delusional thinking
5 indicated at the time of trial in his testimony.

6 QUESTION: And he said that during the trial?

7 MR. TUFTELAND: He testified to the jury in that
8 fashion. He did not testify at the penalty phase.

9 QUESTION: He didn't say anything about the
10 abused childhood story about Marilyn Monroe and --

11 MR. TUFTELAND: That was brought out by defense
12 counsel, and he acknowledged that he had told a prior
13 therapist about that.

14 QUESTION: But he didn't repeat that at trial?

15 MR. TUFTELAND: He did in a sense. I mean, it
16 was brought -- he was asked that question by defense
17 counsel and he acknowledged that he had indeed told a
18 prior therapist about that incident.

19 So the jury was actually well informed, I think,
20 regarding his mental state, through his own testimony and
21 through the testimony of Dr. Jurasky. And in the State's
22 case in chief, there were about four witnesses who
23 provided testimony relative to Mr. Riggins' demeanor at or
24 about the time of the crime. In fact, there was an
25 individual that actually drove him to the crime scene and

1 back. I mean, that's about as close to having an
2 independent witness of demeanor as you can get.

3 QUESTION: What do you think the record shows
4 about his zombie-like state or anything of that sort?

5 MR. TUFTELAND: Well, there's nothing that I can
6 find in the record that supports that kind of a
7 characterization. It would seem to me that --

8 QUESTION: Well, the dissenting judged in the
9 Nevada Supreme Court used -- was the one that first used
10 the term. Where did he get the idea?

11 MR. TUFTELAND: I don't know. There was nothing
12 that I've seen in that record that comes close to
13 supporting a characterization --

14 QUESTION: The jury was informed that he was on
15 medication.

16 MR. TUFTELAND: Yes, they were.

17 QUESTION: And how much.

18 MR. TUFTELAND: Oh, yes.

19 QUESTION: And why he was.

20 QUESTION: That's right. There was a lot of
21 testimony in that regard and the effects of Mellaril and
22 the side effects. And they explained why he was able to
23 accommodate such a large dosage. And I think essentially
24 nothing was held back except this claimed unmedicated
25 demeanor evidence, which in our view, as we've expressed

1 in our brief, and as the American Psychiatric Association
2 brief agrees, is not particularly relevant evidence.

3 QUESTION: Of course there are State courts that
4 take another view on that issue, aren't there?

5 MR. TUFTELAND: That's correct. I mean, the
6 case law comes down both ways. I think the APA brief does
7 an excellent job, though, of debunking that kind of
8 evidence as being reliable. And I had planned even to
9 discuss that, but I don't think I really need to.

10 Unless the Court has other questions, I will
11 submit it.

12 QUESTION: Thank you, Mr. Tufteland.

13 Mr. Yampolsky, you have 3 minutes remaining.

14 REBUTTAL ARGUMENT OF MACE J. YAMPOLSKY

15 ON BEHALF OF THE PETITIONER

16 MR. YAMPOLSKY: Thank you, Your Honor.

17 I'd like to address the State's burden at the
18 termination hearing. This was Mr. Riggins' desire to stop
19 unwanted medication. And he has a liberty interest in
20 stopping unwanted substances, plus it's his desire to
21 present his unmedicated demeanor as a fundamental right.

22 This hearing was not about competency.
23 Competency was determined, however, while discussing with
24 the judge I submitted what I believe is a less restrictive
25 alternative. Well, if that's the way the court feels,

1 they're worried about his competence, we have time before
2 trial, why don't we take him off the medication and see.
3 And the court denied it. There were 10 weeks at the time
4 of the hearing. As it turns out, there were 16 weeks
5 prior to trial because of a conflict I had in another
6 case.

7 QUESTION: Resulted in a continuance?

8 MR. YAMPOLSKY: Correct. This trial was
9 continued for 6 weeks.

10 At the hearing, I don't believe I actually
11 stipulated that -- regarding the competence, however, I
12 did say well, in that situation, Your Honor, why don't we
13 try this. I was trying to work out alternatives to see if
14 in fact Mr. Riggins could be presented to the jury in his
15 unmedicated demeanor. And it was a reasonable request and
16 it was denied.

17 QUESTION: I don't see how that -- I mean as far
18 as the demeanor goes, I don't see how that gets you
19 anywhere unless his demeanor would show that he's
20 incompetent. I mean, isn't your demeanor argument tied to
21 the fact that you wanted this man to be able to
22 demonstrate himself to the jury as a madman? That was
23 your whole point in your brief, I thought. But now you're
24 saying, well, no, of course we didn't want him to be
25 incompetent. But if he didn't appear incompetent, it

1 wouldn't have had any effect on the jury.

2 MR. YAMPOLSKY: Justice Scalia, I did want him
3 to appear insane, not incompetent. Competent had already
4 been decided. I wanted him to testify about hearing the
5 voices. Maybe on the stand if he was unmedicated he could
6 have heard the voices, he could have had a colloquy with
7 Satan and Satan's assistant so the jury could have seen
8 him so they could make that determination that yes, he was
9 insane. But he was prevented from doing this due to the
10 high dose of the Mellaril. And that is the problem.

11 QUESTION: Would he have a right if his insanity
12 pushes him in that direction, to come in with a clown hat
13 on and his face painted yellow in order to demonstrate by
14 his demeanor that he is indeed insane? Does the court
15 have to permit that?

16 MR. YAMPOLSKY: I don't believe the court has to
17 permit that. The court has -- the State has an interest,
18 and does the court, in orderly proceedings --

19 QUESTION: There's nothing disorderly about his
20 coming in dressed as a clown. It's just his natural
21 demeanor. He wants to demonstrate it to the jury. He
22 wants to show the jury he's crazy. Does the court have to
23 permit that?

24 MR. YAMPOLSKY: I don't believe the court has to
25 permit that, Justice Scalia.

1 QUESTION: Well, I don't see any difference
2 between that and what you're arguing.

3 MR. YAMPOLSKY: It's qualitatively different.
4 Here we're using extraneous outside influences to show the
5 manifestations of one's personality. What we want to show
6 are the actual person, the manifestations of his insanity,
7 of his delusions, brought forth from his own testimony.

8 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
9 Yampolsky.

10 The case is submitted.

11 (Whereupon, at 11:00 a.m., the case in the
12 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents and accurate transcription of electronic sound recording of the oral argument before the Supreme Court of

The United States in the Matter of:

NO. 90-8466 - DAVID RIGGINS, Petitioner V. NEVADA

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Michelle Sanders

(REPORTER)