



August 5, 2024

Judge Carmaine Sturino
Winona County Courthouse
171 West Third Street
Winona, MN 55987

Re: *In the Matter of the Civil Commitment of David
Austin Russell*, Respondent, Case No 85-PR-24-46

Dear Judge Carmaine:

This is to follow-up on the invitation in your July 3, 2024, Notice of Judicial Determination (Order) to provide authority to the contrary with respect to your denial of my request for certain transcripts in the above captioned matter.

Before getting to the contrary authority, however, the Order indicates the transcripts should be provided me if Mr. Russell's attorney consents to their release. Mr. Russell telephoned his appointed attorney, David Jones, and left a voice mail on July 4th directing Mr. Jones to release the transcripts to me. This was relayed to me in a phone call with Mr. Russell:

This call is being recorded. Hi Jim, this is David Russell. I just left a voicemail with the court-appointed attorney, David Jones, informing him that I'd like to release the transcripts and any other information to you with your name Jim Gottstein and phone number, area code 301-987-4466.¹

Thus, Mr. Jones should have consented to the release of the transcripts to me. Perhaps he will do so now.

Absent that, it is respectfully suggested the transcripts should still be provided to me. Commitment Act Rule 21(a), Access to Records² provides:

(a) Except as provided in these Special Rules, the Rules of Public Access to Records of the Judicial Branch, or as limited by court order, all court files relating to civil commitment shall be available to the public for inspection, copying, printing, or downloading

and at §(d),

¹ A recording of this can be provided.

² In Chapter 253B Appendix B. Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act.

(d) The court may, *sua sponte*, or upon motion and hearing, issue an order prohibiting public access to civil commitment case records that are otherwise accessible to the public only if the court finds that exceptional circumstances exist.

(emphasis added) Thus §(d) limits the court's authority to prohibit access to when exceptional circumstances exist. No exceptional circumstances exist here.

There is also a constitutional dimension to my request, and Commitment Act Rule 21's requirement of exceptional circumstances to prohibit access reflects the public's constitutional right to access court records absent such exceptional circumstances. In *Nixon v. Warner Communications*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978), the United States Supreme Court stated.

It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.

One of the cases cited with approval by the court in *Nixon* is *State ex rel. Williston Herald, Inc. v. O'Connell*, 151 N.W.2d 758 (N.D.1967), in which the court made clear the right to have the hearing open to the public necessarily includes access to the court file, subject to reasonable regulation. In rejecting the contention that any information the seeker of the information wanted could be obtained by going to the public hearing, the court held:

We have carefully considered this entire question. We believe that it is the right of the public to inspect the records of judicial proceedings after such proceedings are completed and entered in the docket of the court.³

In *Baby Doe v. Methacton School District*, 878 F.Supp.40 (E.D.Pa. 1995), the question was whether documents filed in connection with a child sexual molestation case should be open for public inspection. The court there discussed the general principles involved, including recognizing there is a constitutional right of public access:

In the United States, there is a strong tradition of public access to both criminal and civil trials and the resulting judicial records. This tradition is based on both the common law right to access doctrine as well as the First Amendment. *Pansy*, 23 F.3d at 780-81; *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1066, 1070 (3d Cir.1984).

Courts should take the least restrictive course when ruling on these matters.

In ordering the file open to the public, the court weighed Baby Doe and her family's interest in keeping the records secret, against the public's right of access and found that even the substantial interest of Baby Doe in keeping her name secret was outweighed by the public's interest in learning how their school districts address the issue of sexual molestation by teachers, and whether the threat of abuse is taken seriously enough.⁴

Similar to *Baby Doe*, here the public has an interest in learning what evidence and arguments were advanced for and against confining Mr. Russell in a psychiatric institution, and

³ 151 N.W. 2d at 763.

⁴ 878 F.Supp at 42-3.

psychiatrically drugging and electroshocking him against his will. Unlike *Baby Doe* no one has a cognizable interest in keeping the transcripts secret since Mr. Russell wants the transcripts released.

More recently, in *Delaware Coalition for Open Government, Inc. v. Strine*, 733 F.3d 510, 513-514, (3rd Cir. 2013), the United States Court of Appeals for the Third Circuit noted,

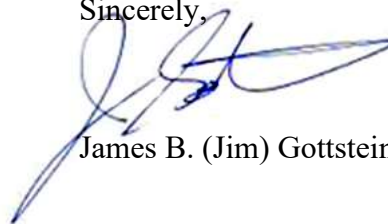
“The First Amendment, in conjunction with the Fourteenth, prohibits governments from ‘abridging the freedom of speech, or of the press....’ ”
Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) (quoting U.S. CONST. amend. I). This protection of speech includes a right of public access to trials . . .

We have found a right of public access to civil trials, as has every other federal court of appeals to consider the issue.

I have not found any Minnesota cases interpreting Commitment Act Rule 21.

To summarize, (1) Commitment Act Rule 21(d) only allows denial of access to Mr. Russell's court records where exceptional circumstances exist, (2) no such circumstances exist, (3) no one has a cognizable interest in keeping the transcripts confidential, and (4) I have a constitutional right of access. It is therefore respectfully suggested I should be provided the requested transcripts.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. B. Gottstein", with a long, sweeping underline that extends to the left and then curves back under the name.

James B. (Jim) Gottstein, Esq.

Cc: David Russell
David Jones
Paul Ellison