

Involuntary Commitment in Alaska and Beyond
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Thank you very much for inviting me. [Names] For most things, even serious ones, I would start out with a joke, but for this topic I just can't bring myself to do it. My topic today is listed as "Involuntary Commitment in Alaska and Beyond," but really I thought I would try and paint a picture that gives more of the whole story of our coercive mental illness system and how it is ruining people's lives, while at the same time focusing on what I think you all are most interested in: the gross misuse and abuse of government power.

The story thus involves not just involuntary commitment, but forced drugging; not just API, but also our jails and prisons and our community mental health system; not just the mental health system, but also the improper influence of pharmaceutical companies over not just the Food and Drug Administration, but also the very legitimacy of medical publishing. It is a story that validates certain Libertarian principles. It validates the idea that individuals have the right to live in whatever manner they choose, so long as they do not forcibly interfere with the equal rights of others. Instead we have a mental illness system that locks people up and drugs them with mind numbing, toxic chemicals on legal fictions.

The United States and presumably Alaska's constitutions do not permit what is being done, but that hasn't mattered. The public lawyers paid to protect people from these government abuses fail miserably at their jobs -- they fail partly

because there are too few of them; partly because they have no funds to hire expert witnesses, take depositions, etc.; and worse of all because sometimes they are actually on the other side. Often, in violation of their ethical standards, they believe their clients would be better off if they lose and they do.

Corruption in the Courts

Professor Michael Perlin, acknowledged as perhaps the foremost expert on mental health law describes the sham nature of legal proceedings involving people labeled mentally ill this way:

[C]ourts accept . . . testimonial dishonesty, . . . specifically where witnesses, especially expert witnesses, show a "high propensity to purposely distort their testimony in order to achieve desired ends." . . .

Experts frequently . . . and openly subvert statutory and case law criteria that impose rigorous behavioral standards as predicates for commitment . . .

This combination . . . helps define a system in which (1) dishonest testimony is often regularly (and unthinkingly) accepted; (2) statutory and case law standards are frequently subverted; and (3) insurmountable barriers are raised to insure that the allegedly "therapeutically correct" social end is met . . . In short, the mental disability law system often deprives individuals of liberty disingenuously and upon bases that have no relationship to case law or to statutes.¹

In other words, psychiatrists regularly commit perjury because they won't allow such things as the pesky constitution get in the way of what they think is right.

The psychiatric profession does not even really deny it lies to force people to be subjected to "treatment" they consider in the person's best interests. Thus, E.

¹ The ADA and Persons with Mental Disabilities: Can Sanist Attitudes Be Undone? by Michael L. Perlin, Journal of Law and Health, 1993/1994, 8 JLHEALTH 15, 33-34.

Fuller Torrey, one of the most prominent advocates of forced treatment has written:

It would probably be difficult to find any American Psychiatrist working with the mentally ill who has not, at a minimum, exaggerated the dangerousness of a mentally ill person's behavior to obtain a judicial order for commitment.²

So what are these standards for commitment?

Involuntary Commitment

The United States Supreme Court has authorized civil commitment when a person is mentally ill and as a result of that mental illness is a danger serious harm to self or others. Alaska, as have many other states, also provides in statute that a person can be committed if they are gravely disabled. In my view this is unconstitutional unless it means the same thing as a danger to self.³

There are a number of things to be noted about this regime. First, predictions of future dangerousness are particularly unreliable and psychiatrists tend to be worse at predicting it than most. There has recently been some work done on predicting violence, perhaps most notably the MacArthur Violence Study, that has attempted to produce a scientifically legitimate process. Basically, as I understand it the only valid predictors of violence are past history of violence, the existence of drugs and then in combination with the drugs, particularly alcohol abuse, active psychosis, which includes such symptoms as voices, delusions,

² Torrey, E. Fuller. 1997. *Out of the Shadows: Confronting America's Mental Illness Crisis*. New York: John Wiley and Sons. 152.

³ AS 47.30.915(7)(B)

hallucinations. I don't really know anywhere that any attempt is made to use scientifically valid methods for determining dangerousness during the commitment process and it certainly isn't done in Alaska. The trial courts at least don't seem to care.

Second, people diagnosed with mental illness are not particularly dangerous, particularly if no drugs, including prescribed psychiatric drugs, are involved. Until recently, research showed absolutely no increased level of dangerousness among people diagnosed with serious mental illness. More recent research shows a very slight elevated level, but it is unclear to me whether this research takes into account the impact of drugs. Other research does show that prescribed psychiatric drugs is very much a contributor to dangerousness. Thus, people aren't really being committed for dangerousness.

Since it isn't really dangerousness that is getting people committed, what is it? Without diminishing or denying that people do get psychotic, in many, many cases, people are just doing things that other people don't like. And God help anyone after they have already been labeled mentally ill because from that time forward, if they do anything that people don't like it is off to the insane asylum (or jail) for them.

What ends up happening in court is the psychiatrist gets up and solemnly testifies that in his or her expert opinion the person is a danger to self or others or gravely disabled and the court just accepts it. Most often the patient has no credentialed witness testifying on his or her behalf. Anything the defendant says

is deemed to be a symptom of their "illness." In fact, denying one has mental illness is deemed a symptom of mental illness. In the criminal law we all know that "anything you say can be used against you," but here anything you don't say can be used against. I had a client who refused to talk to the psychiatrist because she quite legitimately felt he was just talking to her to make a case against. That became a justification for a diagnosis of paranoid schizophrenia.

Oh, did I tell you about the court hearings? They are held twice a week at API from 1:30 to 4:30, Tuesdays and Fridays I think; they last from 10 to 15 minutes each; and in virtually all cases the person is involuntarily committed and force drugged. The Probate Master (who acts as the judge), the lawyers and the psychiatrist get to go home by 4:30 and have a nice dinner.

What is most astounding to me, but I suppose it shouldn't be is that until the Law Project for Psychiatric Rights entered the scene last year, it appears no appeal over any civil commitment or forced medication order has ever been taken in Alaska. So much for zealous representation.

It is a stacked deck; it is a sham and it is hurting people.

Forced Drugging (Civil)

What is hurting people the most is the forced drugging. Under Alaska Statutes if a person has been committed and is not competent to decline taking the medication, the psychiatrists get to forcibly drug the person. This was the statute challenged in the Myers case that you might have read about. Our position is the State can't constitutionally force someone to ingest drugs they don't want unless

the State can at least show it is in the person's best interest. And that it is the decision the person would make if the person were competent. The State argues whether the drugs are in a person's best interest is a judgment for the psychiatrist to make and the courts should not get involved. The case has been submitted to the Alaska Supreme Court and we are awaiting a decision. Presumably it will come before the end of the year.

There are a couple of points to be made about this forced medication production line in terms of the legal issues. Medical issues will be addressed in a bit. First, as with civil commitment the institutional psychiatrists lie to get forced drugging orders. We actually have the psychiatrist in the Myers case admitting in a deposition that if someone agrees to take the drugs, they are deemed competent and if they decline the drugs they are automatically deemed incompetent to do so. For those of you that are interested, I would commend you to read the Faith Myers' testimony during her trial about why she didn't want to take the drugs and ask yourself if you, or anyone else for that matter, would ever be found competent to decline the drugs under the current system. This testimony is available at PsychRights.Org website.

API files forced drugging petitions on about 20 people per week and there are another group of people who agree to sign themselves in and take the drugs after being threatened with being taken to court. However, this is not where the largest number of people are locked up and drugged against their will.

Jails and Prisons

Our jails and prisons have become our new mental institutions. The Alaska Mental Health Trust has recently noted:

Alaskans with mental disabilities who have committed no crime are incarcerated nearly three thousand times each year because no appropriate alternative is available to provide their safety. Thousand more are arrested, prosecuted and incarcerated for minor "nuisance" or "status" offenses that result from their mental disability rather than criminal intent.⁴

I would say they are arrested and convicted of crimes no one else would be.

"Illegal use of telephone." Using a public restroom. This in itself is probably illegal/unconstitutional, but my point here is that once in prison, people have much fewer rights to contest forced drugging than in the civil commitment situation.

Thus, the criminal system is in effect being used to bypass the limited protections afforded people in the civil process.

However, the procedures used by the Department of Corrections appear to not even satisfy the minimal due process rights of prisoners. We have a case going right now, *Bavilla v. Alaska Department of Corrections*, that challenges this. Information about this and in fact everything I talk about today is available on the psychrights.org website. There are a couple of other situations where there is court ordered drugging, such as forcing them take them to render them competent to stand trial. The recent United Supreme Court case of *Sell* put some pretty severe restrictions on this, such as having to prove to the court it is in the

⁴ Focus Area Issue Summary, Disability Justice Initiative, part of packet for April 12, 2004, Alaska Mental Health Trust Authority meeting.

defendant's medical best interests as well as necessary to make the person competent to stand trial. Maybe the most startling forced drugging decision is a relatively recent federal appeals court decision forcing a condemned man to take the drugs so he would be competent to execute. Yes, force drug someone so he knows he is being executed because otherwise it is cruel and unusual punishment. I kid you not.⁵

Community Mental Health System

There is also the pervasive coercion to take these psychiatric medications that don't involve court orders. In fact, our entire mental illness system virtually requires that people take these medications. Community mental health centers will say things like, "we won't arrange housing for you if you don't take your meds" or "we will kick you out of your apartment if you don't take your meds," or "if you don't take your meds, we will have you committed." Or even, "we won't even talk to you unless you are on meds." The way Medicaid and really all the payers are set up now, they will really only pay for anything if medications are part of the picture.

Safety and Efficacy of Psychiatric Medications.

I'm going to switch gears now and talk a bit about the non-validity of the story we have been told about these drugs. There is an astoundingly good book, called *Mad in America: Bad Medicine, Bad Science and the Enduring Mistreatment of the Mentally Ill* by Robert Whitaker who was a science/medical

⁵ Singleton v. Norris, 319 F.3d 1018 (8th Cir. 2003);

writer for the Boston Globe when he wrote it a couple of years ago. If you are interested in this topic it is a must read.

First, there is no valid evidence that mental illness is the result of any kind of chemical imbalance in the brain or some other brain defect. None. Of course, all of our thought is in some way chemical because that is the way the brain works and people who are highly agitated are going to have different electro-chemical processes going on in their brain than when -- say -- they are asleep. That is true of everyone. But as to some sort of brain abnormality that these drugs somehow treat there just isn't any evidence for it.

In fact, it turns out the drugs are preventing people from recovering from what for many would otherwise be a temporary problem. More specifically, the evidence shows that if other treatment modalities were used, about 2/3rds of people diagnosed with schizophrenia, the worst diagnosis, would recover, while under our current system, virtually exclusively relying on medication, only 1/3rd recover. I haven't seen any studies on this, but my guess is that a rather large percentage of this 1/3rd who do recover under the current regime are the people who have managed to get off the drugs. This is certainly true of the many people I know who have recovered after being told they were incurably mentally ill.

They are also extremely unpleasant and people have every reason to quit them. In fact to say they are extremely unpleasant is a gross understatement.

[[[QUOTE FROM JANET GOTKIN OR ASK ROS OR JAMIE TO SAY
A FEW WORDS HERE]]

I became alienated from my self, my thoughts, my life, a stranger in the normal world, a prisoner of drugs and psychiatric mystification, unable to survive anywhere but in a psychiatric hospital. The anxieties and fears I had lay encased in a Thorazine cocoon and my body, heavy as a bear's, lumbered and lurched as I tried to maneuver the curves of my outside world. My tongue was so fuzzy, so thick, I could barely speak. Always I needed water and even with it my loose tongue often could not shape the words: It was so hard to think, the effort was so great; more often than not I would fall into a stupor of not caring or I would go to sleep. In eight years I did not read an entire book, a newspaper, or see a whole movie. I could not focus my blurred eyes to read and I always fell asleep at a film. People's voices came through filtered, strange. They could not penetrate my Thorazine fog; and I could not escape my drug prison. The drugs made me constipated as well as ravenously hungry. As a final misery, they caused me to gain weight. For eight years, I took laxatives and suffered as I watched my body grow heavy and distorted. My hands shook so I could barely hold a pencil and I was afflicted with what Dr. Sternfield lightly called "dancing legs," a Parkinsonian "side effect" of these chemicals. For this I took a drug called Kemadrin, and if I missed a day or a dosage, my shoulder muscles would tighten into excruciatingly painful knots and my legs would go on wildly out of control. . . . These drugs are used, not to heal or help, but to torture and control. It is that simple.²⁴

24. Janet Gotkin, *Too Much Anger, Too Many Tears* (Quadrangle/The New York Times Book Co., 1975), 385; the longer quote is from Gotkin's testimony before the Senate. U.S. Senate, Committee on the Judiciary, Subcommittee to Investi-

gate Juvenile Delinquency, *Drugs in Institutions*, 94th Cong., 1st sess., 1975 (Readex depository 77-9118).

These drugs increase the likelihood of psychotic relapses, both when they are given and when they are stopped. What they do is introduce a chemical imbalance in the brain. They block what are called neurotransmitters. This can cause psychosis just in itself. What is worse is the brain compensates for this blockage and will actually grow more receptors for the neurotransmitters so that when a person goes off their drugs, especially abruptly, there is all of a sudden too much neurotransmitter getting through. So when you read about someone doing something after going off their meds, remember that it is most likely the withdrawal or what is called the "Rebound Effect" of the prescribed medication rather than any "underlying mental illness." These drugs are also very highly toxic. For example, I recently heard of a study that found people on these drugs die 13 years earlier on average than people who don't take them.

These drugs permanently damage the brain. They cause a type of Parkinsons Disease called Tardive Diskenesia. What most people think of as being mentally ill is really the medications. The lip smacking, tongue rolling, the "Thorazine Shuffle." The newer ones are causing diabetes, which is a life shortening disease. This is apart from the massive weight gains many people experience -- people have gained 100 pounds in a very short period of time for example, on Zyprexa. The newer so-called "atypicals" of which Zyprexa is an example are touted as being much safer and effective than the "bad old drugs," but the more recent unbiased research is not bearing this out. In fact, as one prominent psychiatrist has written:

"After 50 year of neuroleptic drugs, are we able to answer the following simple questions: Are neuroleptics effective in treating schizophrenia? Is there a difference between atypical and conventional neuroleptics? . . .At this point in time, responsibility and honesty suggest we accept that a large number of our therapeutic tools have yet to be proven effective in treating patients with schizophrenia. . . . One thing is certain: if we wish to base psychiatry on Evidence Based Medicine, we run the genuine risk of taking a closer look at what has long been considered fact."⁶

Improper Influence Of Pharmaceutical Companies Over Not Just The Food And Drug Administration

This raises the question of how this has come to be and the answer is money. There are literally billions of dollars made every year by the pharmaceutical companies on these drugs. Half of the top ten grossing drugs are psychiatric drugs. Zyprexa, alone, for example, is a \$6 Billion per year drug.

There have been recent revelations making the mainstream media about the pharmaceutical companies hiding the fact that the SSRI anti-depressants such as Paxil, Zoloft, Effexor and Celexa are both ineffective for kids under the age of 18 and greatly increase suicide. Dr. David Healy the psychiatrist in the UK who uncovered this information, which has led to its ban in the UK for people under 18, estimates there have been 21,900 - 70,000+ suicides that would otherwise NOT have occurred, since these drugs were introduced in 1988 and the early 1990s.

The studies that showed this were not given to the regulators in what is called the desk-drawer process. In other words, they just stuck these studies in the desk drawer. The Food and Drug Administration has been allowing this.

⁶ [Happy birthday neuroleptics! 50 year later: la folie du doute](#), by Emmanuel Stip, European Psychiatry 2002 ; 17 : 1-5.

The Very Legitimacy Of Medical Publishing.

These huge amounts of money have infected the very legitimacy of medical publishing. It has been estimated, for example, that almost half of all articles written in the medical journals are actually ghost written by the pharmaceutical companies.⁷ So, what we have now is a situation where doctors are being deceived by the very journals they rely upon to give unbiased information. Frankly, this whole situation is a mess.

PsychRights

The Law Project for Psychiatric Rights, or PsychRights as it is known, was formed specifically to address the travesty which is forced psychiatric drugging. We currently have a case submitted to the Alaska Supreme Court regarding when such forced drugging can occur in the civil commitment process and a case that started just this month about what we think is the unconstitutional way the Alaska Department of Corrections is force drugging people.

PsychRights, however, is not just oriented to Alaska. It has a national focus as well and we are working with people around the country to challenge what is being done. Thus, we post relevant studies on our website at psychrights.org for other attorneys to download and use as exhibits. We help connect people up with potential expert witnesses and even try to provide some expert witness fees if we can. We are working with people on what we hope will be major challenges to the forced drugging regimes in Massachusetts and New York. We also try to help

⁷ See, e.g., The Observer, December 7, 2003.

people as much as we can in any ways we can to combat the scourge of forced psychiatric drugging.

For myself, I am working virtually full time on this on a pro bono or volunteer basis. I don't intend to change that, even when, hopefully, we manage to achieve substantial financial resources. We need these substantial financial resources to pay for the hard, out of pocket costs that these efforts cost and we also really need to be able to hire an attorney and an assistant to move PsychRights' mission forward. So any assistance any of you can give us on that will be greatly appreciated. I have some brochures with me for anybody who wants one.

Thank you again for inviting me. I will be happy to answer any questions here and will stick around for so long as people might want to talk after this formal session ends.