

**[International Recovery Perspectives:
Action on Alternatives]**
University of Toronto, June 6, 2008

**Advocacy and the
Transformation Triangle**

James B. (Jim) Gottstein, Esq.
Law Project for Psychiatric Rights
Jim.Gottstein@PsychRights.org
<http://PsychRights.org/>

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**[Law Project for Psychiatric
Rights (PsychRights®)]**

- Public Interest, Tax Deductible, Law Firm
- Mission: To Mount a Strategic Litigation Campaign Against Forced Psychiatric Drugging and Electroshock.
- National in Scope (Some International Involvement)
- Adopted Kid Drugging as Priority

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**[While Some People find
Neuroleptics Helpful . . .]**

- Psychiatric Drugs Causing Massive Amount of Harm
- Minimizing Neuroleptic Use Could at Least Double the Recovery Rate of People Diagnosed with Serious Mental Illness
 - 5% vs. 40% recovery Rate in recent study
 - One Third vs. Two Thirds in Other Studies
- 6-fold Increase in Mental Illness Disability Rate
- Current System Does Not Allow Non Drug Choices
- Hugely and Unnecessarily Expensive
- Huge Unnecessary Human Toll
- Life Spans Now 25 Years Shorter

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[Science Informed Approach:]

- Selective Use of Neuroleptics
- Only Short- Term and Only After Other Approaches Fail
- Even Many Long-Timers Can Get Off and Most Can Reduce Dosages

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[Why? . . .]

- . . . are we taking such a harmful, counterproductive approach?
- . . . are other choices unavailable
- . . . are established legal rights dishonored as a matter of course?

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[Fear and Absolution]

- Fear
 - People Diagnosed with Serious Mental Illness Prone to Violence
- Absolution
 - By Accepting "Medical Model," No one is Responsible
 - 2003 MindFreedom Fast for Human Rights in Mental Health

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[Other Factors]

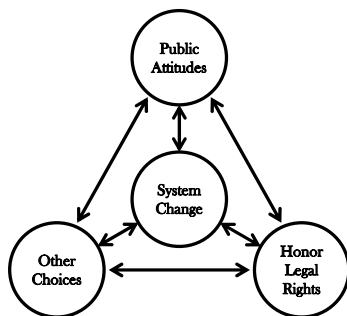
- Social Control
 - It is Not the Psychosis, but Objectionable Behavior
- Big Pharma Corruption of Research
- Psychiatry's Drive for Legitimacy
- FDA Abdication/Capture by Industry
- Magic Pill/Drug Culture (Better Living Through Chemistry)

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[How Can This Be Changed?]

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[The Transformation Triangle]



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[Public Education]

- Media
 - Seize/Create Opportunities
 - Good Spokespersons
 - Letters to Editor/OpEd Pieces
- Speaking Opportunities

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[Other CHOICES]

- Great Need
- Many Efforts Under Way
- INTAR/MindFreedom
- Some Success in Alaska
 - Soteria-Alaska
 - CHOICES, Inc.
 - Peer Properties

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[Strategic Litigation]

- Force System to Honor People's Rights
- Change Path of Least Resistance
- Help Create Environment Supportive of Other Choices
- Public Education Potential

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Honor Legal Rights (Strategic Litigation)

- United States
 - Due Process
 - Statutes
- Other Countries
 - New UN Convention on the Rights of Persons with Disabilities (CRPD)
 - "NOW" Efforts in Canada to Ratify

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Due Process

No person shall be . . . be deprived of life, liberty, or property, without due process of law.

Fifth Amendment, U.S. Constitution

- Procedural Due Process
- Substantive Due Process

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Hallmarks of Procedural Due Process

Meaningful Notice and Meaningful Opportunity to Respond.

Hamdi v. Rumsfeld, 542 U.S. 507, 124 S.Ct. 2633, 2648-9 (2004)

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Substantive Due Process

- To Justify Deprivation of Fundamental Rights
 - Must Further Compelling State Interest
 - Least Restrictive Alternative

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Involuntary Commitment and Medication Are Deprivations of Fundamental Rights

- Involuntary Commitment: *Addington v. Texas*, 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979)
- Involuntary Medication? *Washington v. Harper*, 494 U.S. 210, 110 S.Ct. 1028 (1990)? *Sell v. United States*, 539 U.S. 166, 123 S.Ct. 2174 (2003)?

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When Involuntary Commitment Constitutionally Permissible

1. Confinement takes place pursuant to proper procedures and evidentiary standards,
 2. Finding of "dangerousness either to one's self or to others," and
 3. Proof of dangerousness is "coupled ... with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'"
- Kansas v. Crane*, 534 U.S. 407, 409-10, 122 S.Ct. 867, 869 (2002).
- Incapable of surviving safely in freedom. *Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373, 1383 (1996).

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When Forced Drugging Constitutionally Permissible?

Court Must Conclude:

1. Important governmental interests are at stake,
2. Will significantly further those state interests - substantially unlikely to have side effects that will interfere significantly (with achieving state interest),
3. Necessary to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results, and
4. Medically appropriate, i.e., in the patient's best medical interest in light of his medical condition. The specific kinds of drugs at issue may matter here as elsewhere. Different kinds of antipsychotic drugs may produce different side effects and enjoy different levels of success.

Sell v. United States, 539 U.S. 166, 177-8, 123 S.Ct. 2174, 2183 (2003) ²⁰
(Competence to Stand Trial Case).

Meretricious Testimony

Courts 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.

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.

Attorney Abdication

"Traditionally, lawyers assigned to represent state hospital patients have failed miserably in their mission"

Houston Law Review January, 1991 Health Law Issue COMPETENCY, DEINSTITUTIONALIZATION, AND HOMELESSNESS: A STORY OF MARGINALIZATION Michael L. Perlin

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United Nations Convention on the Rights of People with Disabilities (CRPD)

- Articles 14 and 19 – Equal Right to Liberty & Live in Community
 - 14.1(a) - equal right to liberty
 - 14.1(b) - disability cannot justify a deprivation of liberty
 - 19 - right to live in the community with choices equal to those of others, to choose where and with whom to live, and not be compelled to live in a particular living arrangement.
- Articles 12.2 and 25(d) - legal capacity
 - 12.2- "persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life"
 - 25(d) – medical care based on free and informed consent.

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Alaska

- Public Education
- Other Choices
 - Soteria-Alaska
 - CHOICES, Inc.
 - Peer Properties
- Strategic Litigation
 - *Myers*
 - *Wetherhorn*
 - *Bigley*

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Public Education in Alaska

- Whitaker in 2002, 2003 & 2007
- Perlin in 2003
- Menn in 2007
- Numerous Newspaper & Some Broadcast Coverage
 - *Myers* Case
 - Feature Front Page Story in November 2005
 - Zyprexa Papers local coverage
- Accept All Speaking Invitations

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Opinion Shift—Soteria-Alaska

- 2002: Not Endorse -- Just Educational
- 2003: Implies Need Non-Drug Alternative
- 2004: Needs More Development
- 2005: Not If, But How
- 2006: Trust Formally Supports
 - Wanted State Participation in Funding
- 2007: Funded by Trust for 2008 Opening when didn't get in State Budget.

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General Alaska Attitude

- Widespread Support for Idea that Non-Drug Choices Should Be Available.
- But, Limited or No State Funding (Yet).
 - Not on Governor's Radar Screen
 - Not Legislature Priority
 - Some State Employee Opposition

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Other Choices

- Soteria-Alaska
- CHOICES, Inc.
- Peer Properties

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Soteria-Alaska

- Non-coercive, Non-Drug option for Newly Diagnosed with Psychotic Disorder.
 - Be With, Not Do To
 - Expect Recovery
 - Let People Be "Delusional"
 - But Insist on Safety/Responsibility
- Replicate Original Soteria-House
 - 6-8 People
 - Two staff at all times.
- Opening in 2008

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“Consumer” Run Non-coercive, Non-drug (& drug) Choices In Community Available for people in the system a long time Started Providing Services in July, 2007

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Peer Properties

- Peer Run Housing
- Allows Non-drug Choice
- No “services,” but peer support principle
- One 4 bedroom House Owned & Operated
- Proven Concept, but
- Needs infra-structure support
- CHOICES may be able to fill breach

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[Alaska Supreme Court:]

- **Myers—Forced Drugging (2006)**
 - Best Interests
 - No Less Intrusive Alternative
- **Wetherhorn—Commitment (2007)**
 - Unable to Survive Safely in Freedom
 - Not consider Effective Representation Issue
- **Bigley (pending)**
 - Forced Drugging Stay Pending Appeal Issued May 23, 2008
 - Define Unable to Survive Safely in Freedom (waiting for decision)
 - State Must Provide Less Intrusive Alternative (new appeal) Even if Not Yet Existing ³³

[Suggested Reading]

- *Mad in America: Bad Science, Bad Medicine and the Enduring Mistreatment of the Mentally Ill* (2001) by Robert Whitaker
- *Alternatives Beyond Psychiatry*, Peter Lehman & Peter Stastny, MD, Editors (2007).
- *A Fight to Be: A Psychologist's Experience from Both Sides of the Locked Door*, Ronald Bassman, Ph.D. (2007)
- *The Hidden Prejudice: Mental Disability on Trial*, (2000) by Michael L. Perlin
- *Rethinking Psychiatric Drugs: A Guide to Informed Consent*, by Grace E. Jackson, MD, (2005)
- *Brain Disabling Treatments in Psychiatry: Drugs, Electroshock, and the Role of the FDA*, Ed. 2 (2008) by Peter Breggin, MD.
- *Community Mental Health: A Practical Guide* (1994) by Loren Mosher and Lorenzo Burti
- *Soteria: Through Madness to Deliverance*, by Loren Mosher and Voyce Hendrix with Deborah Fort (2004)
- *Psychotherapy of Schizophrenia: The Treatment of Choice* (Jason Aronson, 1996), by Bertram P. Karon and Gary R. Vandenbos ³⁴

[Suggested Reading (cont.)]

- *Schizophrenia: A Scientific Delusion*, by Mary Boyle, Ph.D. (2002)
- *Let Them Eat Prozac*, by David Healy, MD. (2006).
- *Creating Mental Illness*, by Allan V. Horwitz (2002).
- *Toxic Psychiatry: Why Therapy, Empathy, and Love Must Replace the Drugs, Electroshock, and Biochemical Theories of the New Psychiatry*, by Peter Breggin, MD (1994)
- *Commonsense Rebellion*, by Bruce E. Levine (2001)
- *Blaming the Brain : The Truth About Drugs and Mental Health*, (1998) by Elliot Valenstein.
- *Escape From Psychiatry*, by Clover (1999)
- *How to Become a Schizophrenic: The Case Against Biological Psychiatry*, 3d Ed., by John Modrow (2003)
- Other books at <http://psychrights.org/Market/storefront.htm>