



Role of Litigation in a Strategic Approach to Mental Health System Change

NARPA 2013 - ANNUAL RIGHTS CONFERENCE
Hartford, Connecticut, September 27, 2013

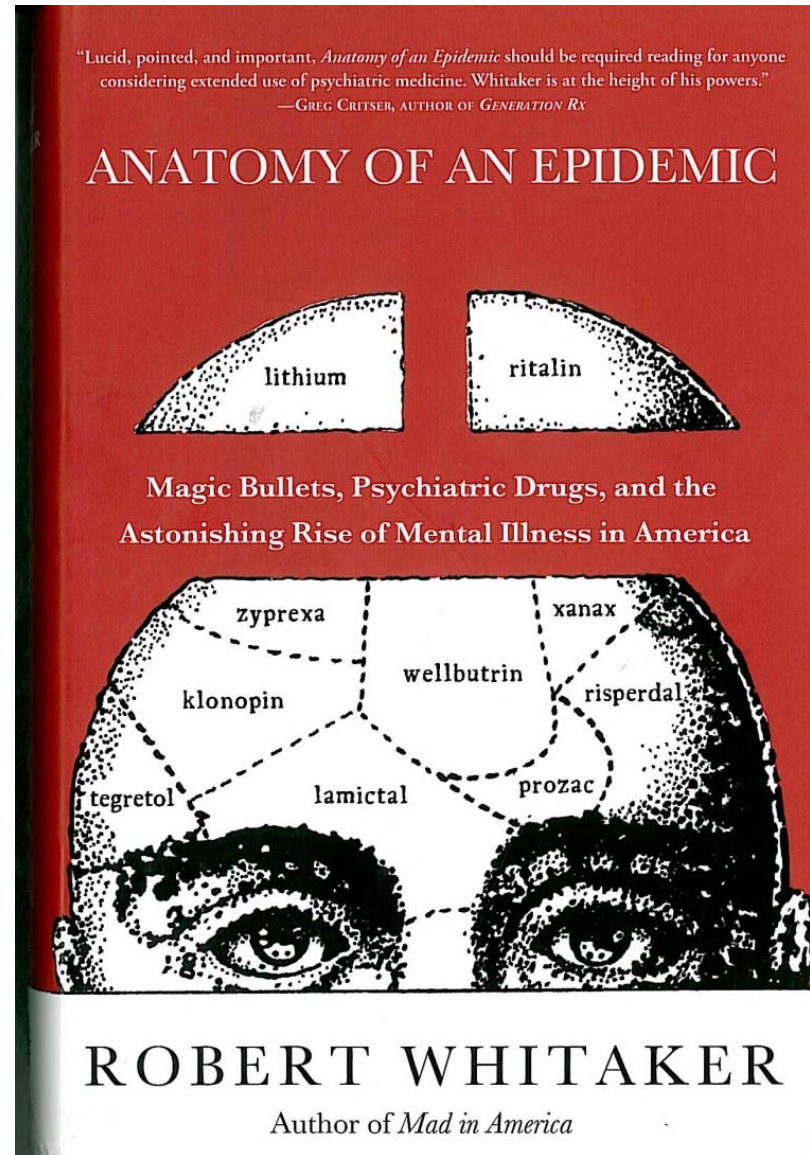
James B. (Jim) Gottstein, Esq.





Law Project for Psychiatric Rights (PsychRights®)

- Public Interest Law Firm
- Mission: Mount Strategic Litigation Campaign Against Forced Psychiatric Drugging and Electroshock.
- Drugging of Children & Youth a Priority



**Named 2010 best investigative journalism
in book category by the Investigative
Reporters and Editors Association**



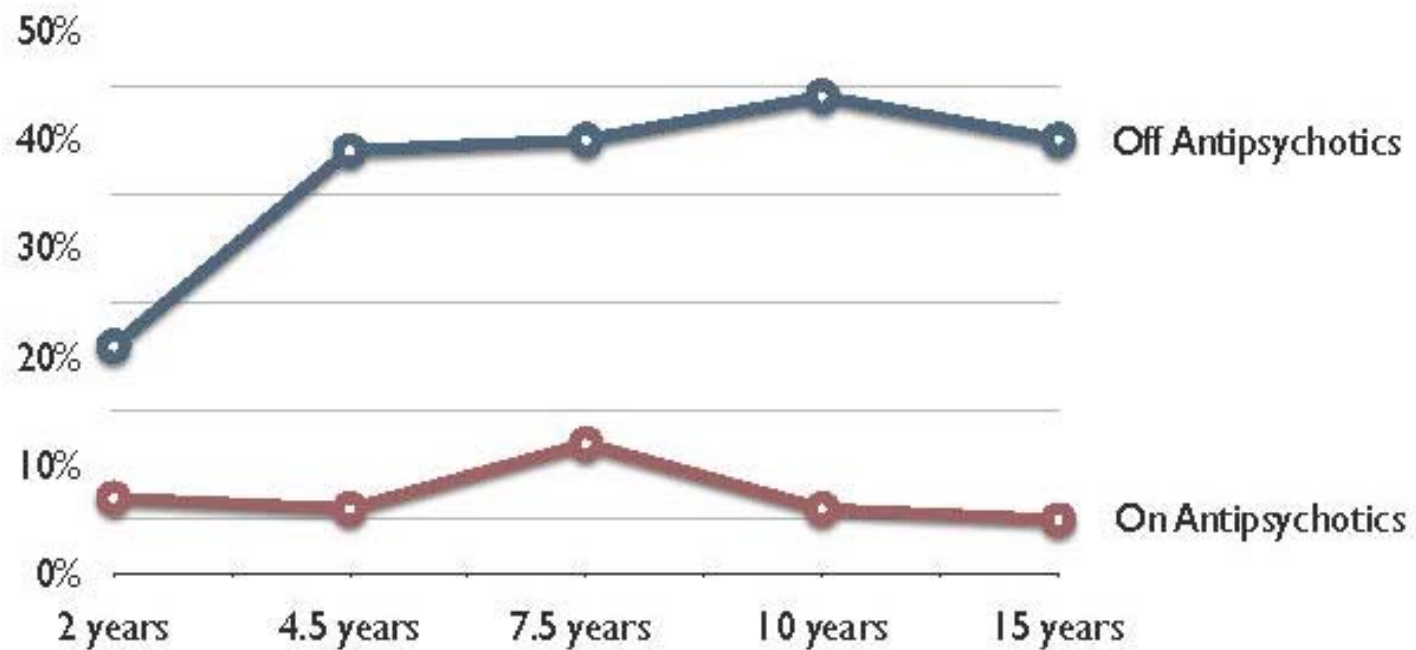
While Some People find the Drugs Helpful . . .

- **6-fold Increase in Mental Illness Disability Rate**
- **Cut the Recovery Rate At Least in Half**
- **Psychiatric Drugs Causing Massive Amount of Harm**
- **Life Spans Now 25 Years Shorter**
- **Hugely and Unnecessarily Expensive**
- **Huge Unnecessary Human Toll**

Sources: Whitaker (2002 & 2010), NASMHPD (2006), Studies Posted on PsychRights.Org Scientific Research By Topic



Long-term Recovery Rates for Schizophrenia Patients

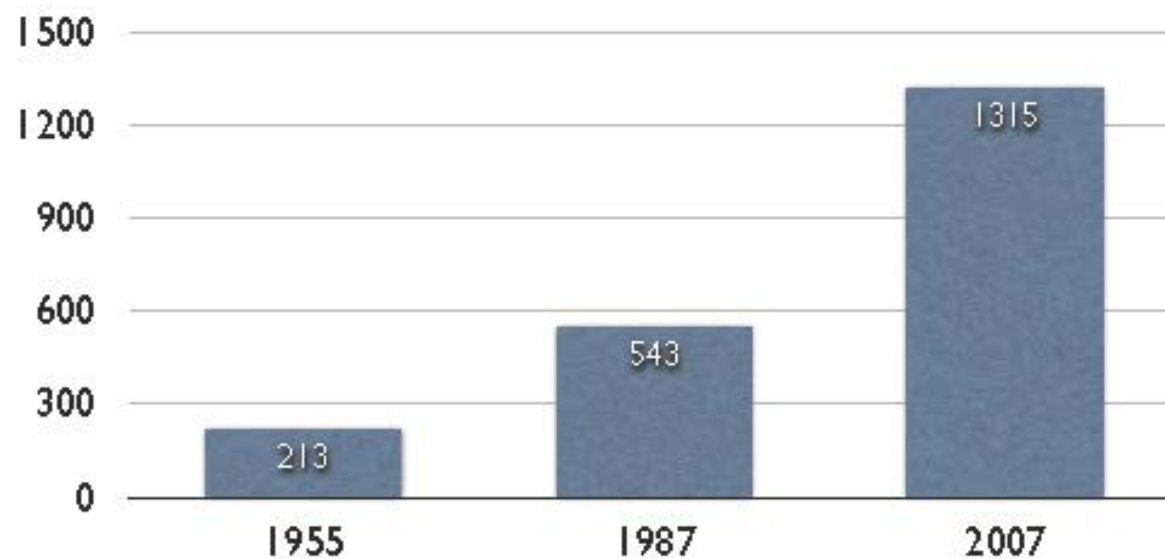


Source: Harrow M. "Factors involved in outcome and recovery in schizophrenia patients not on antipsychotic medications." *Journal of Nervous and Mental Disease* 195 (2007):406-14.

The Disabled Mentally Ill in the United States, 1955-2007

(under government care)

■ Per 100,000 population



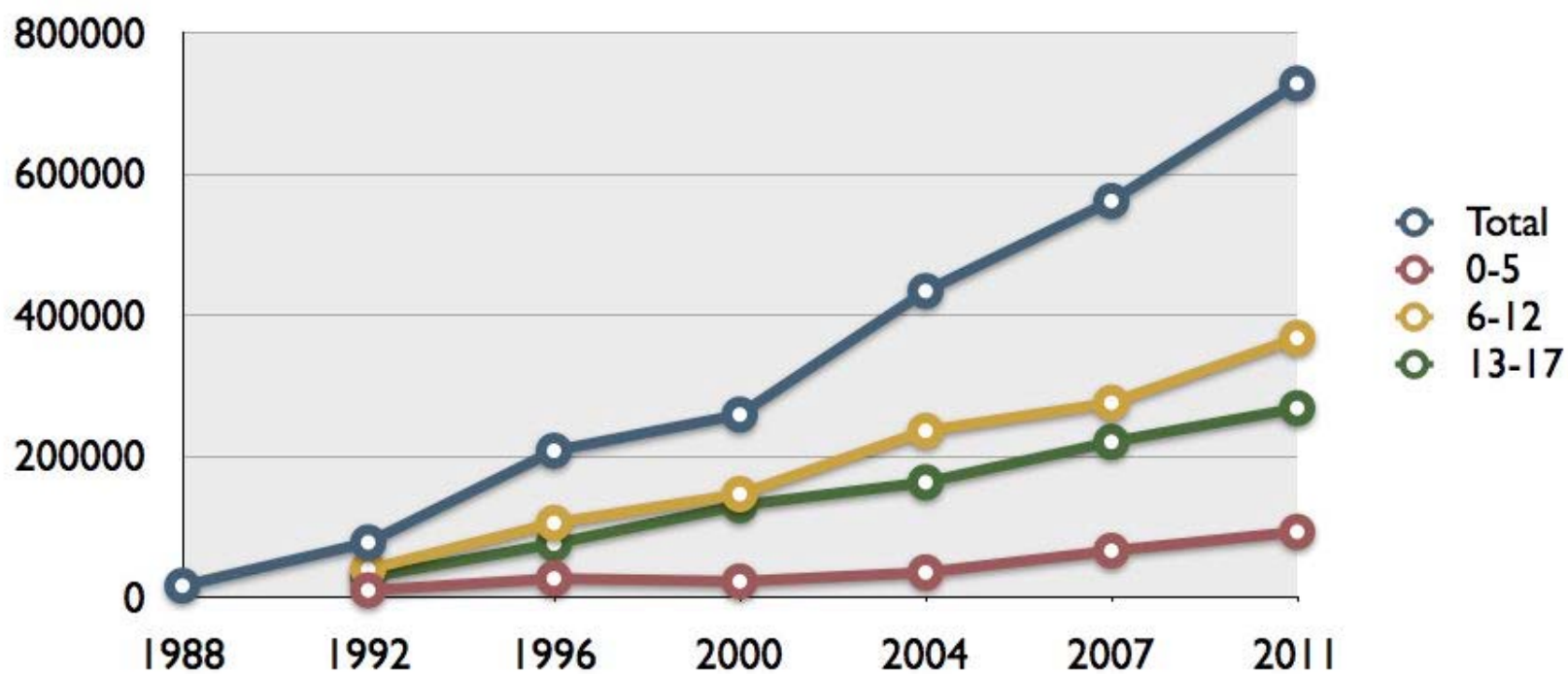
Source: Silverman, C. *The Epidemiology of Depression* (1968): 139. U.S. Social Security Administration Reports, 1987-2007.



Psychiatric Drugging of Children

- 1 in 10 boys on stimulants
- More than 1% of youth under 18 Given Neuroleptics
- No long term benefit; short term benefit mainly for adults
- 1 in 40 on antidepressants
 - Prozac Boys Study: 23% developed manic like symptoms; 19% more drug induced hostility
 - Pediatric Bipolar Rate soars
 - From close to none in 1995 to 800,000 by 2003
 - Then come the neuroleptics & anticonvulsants misbranded as mood stabilizers.
- Many Now on Neuroleptics, even six month olds.
- Child MH Disability Rate Soars from Essentially Zero in 1987 to 800,000 by 2011.

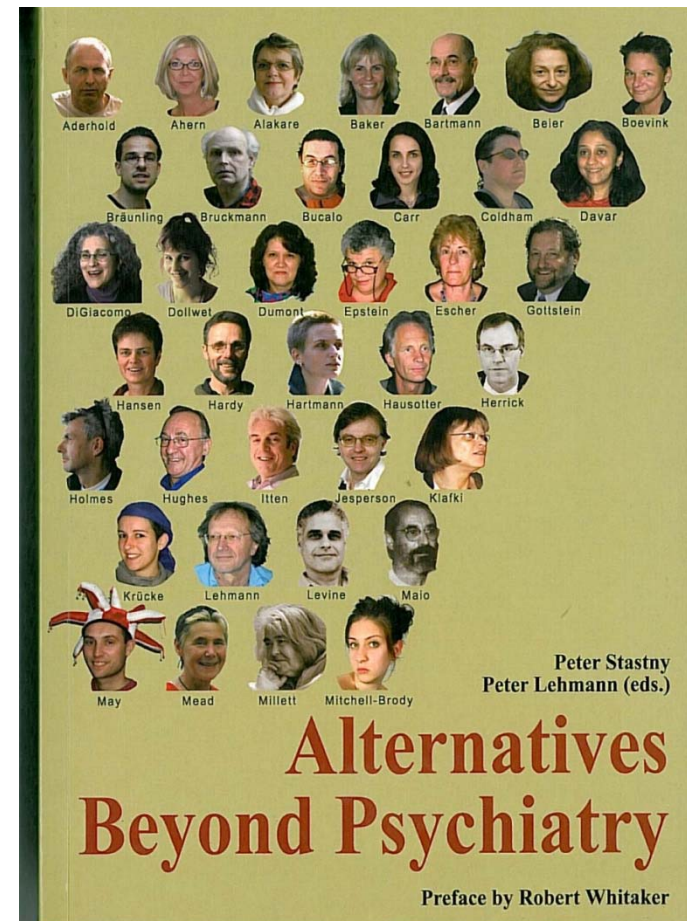
Children on SSI Disability Due to Mental Illness in the Prozac Era



Prior to 1992, the government's SSI reports did not break down recipients into subgroups by age. Source: Social Security Administration reports, 1988-2007.

Solutions Are Many (Adults)

- Hearing Voices Network Approach
 - Strange or Unusual Beliefs (“delusions”)
- Other Psychosocial Approaches
 - Soteria
 - Open Dialogue
 - Peer Directed

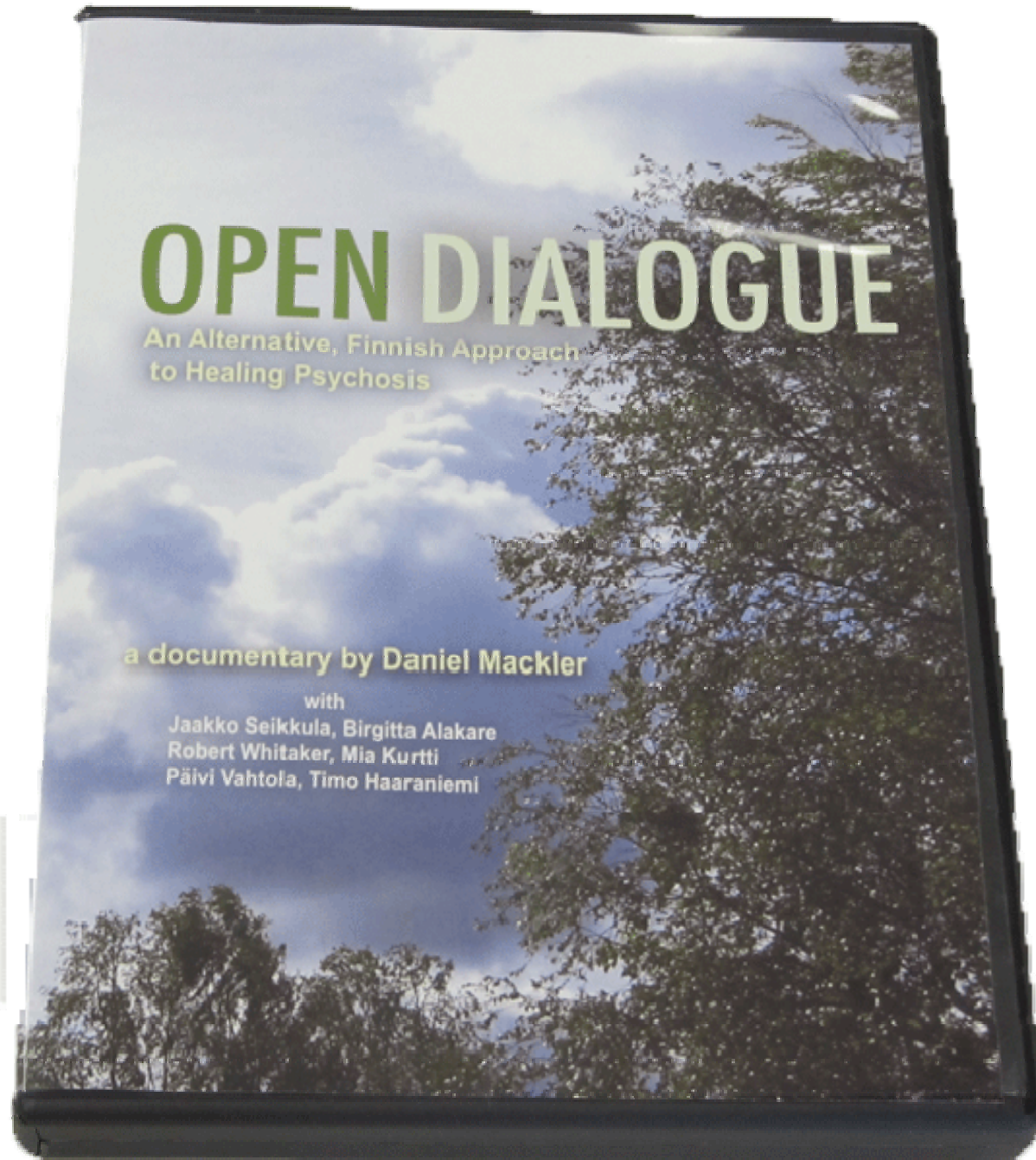


Outcomes with Selective Use Of Antipsychotics

Five-Year Outcomes for First-Episode Psychotic Patients in Finnish Western Lapland Treated with Open-Dialogue Therapy

Patients (N=75)	
Schizophrenia (N=30)	
Other psychotic disorders (N=45)	
Antipsychotic use	
Never exposed to antipsychotics	67%
Occasional use during five years	33%
Ongoing use at end of five years	20%
Psychotic symptoms	
Never relapsed during five years	67%
Asymptomatic at five-year followup	79%
Functional outcomes at five years	
Working or in school	73%
Unemployed	7%
On disability	20%

Source: Seikkula, J. "Five-year experience of first-episode nonaffective psychosis in open-dialogue approach." *Psychotherapy Research* 16 (2006):214-28.





The Soteria Project

Study

First-episode schizophrenia patients treated conventionally in a hospital setting with drugs versus treatment in the Soteria House, which was staffed by non-professionals and involved no immediate use of antipsychotic medications. Results are from 1971-1983 cohorts, with 97 patients treated conventionally and 82 patients treated in Soteria House .

Results

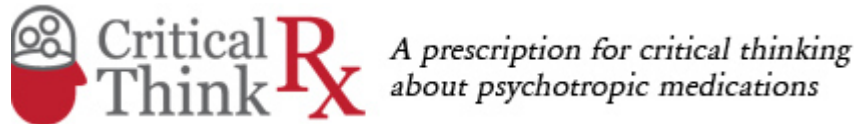
- At end of six weeks, psychopathology reduced comparably in both groups.
- At end of two years:
 - Soteria patients had better psychopathology scores
 - Soteria patients had fewer hospital readmissions
 - Soteria patients had higher occupational levels
 - Soteria patients were more often living independently or with peers

Antipsychotic Use in Soteria Patients

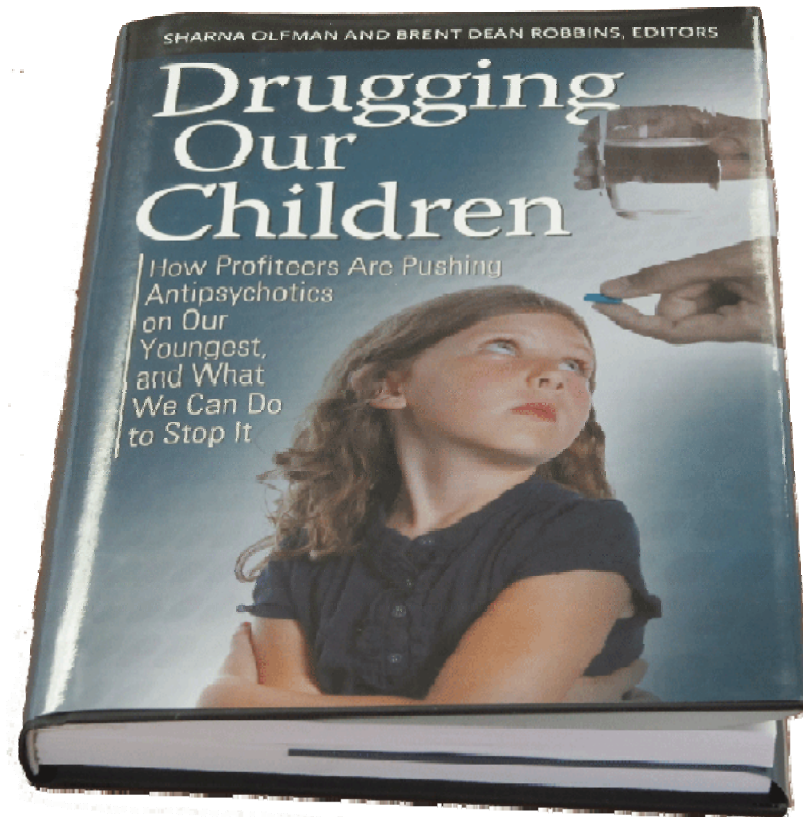
76% did not use antipsychotic drugs during first six weeks
42% did not use any antipsychotic during two-year study
Only 19 % regularly maintained on drugs during follow-up period



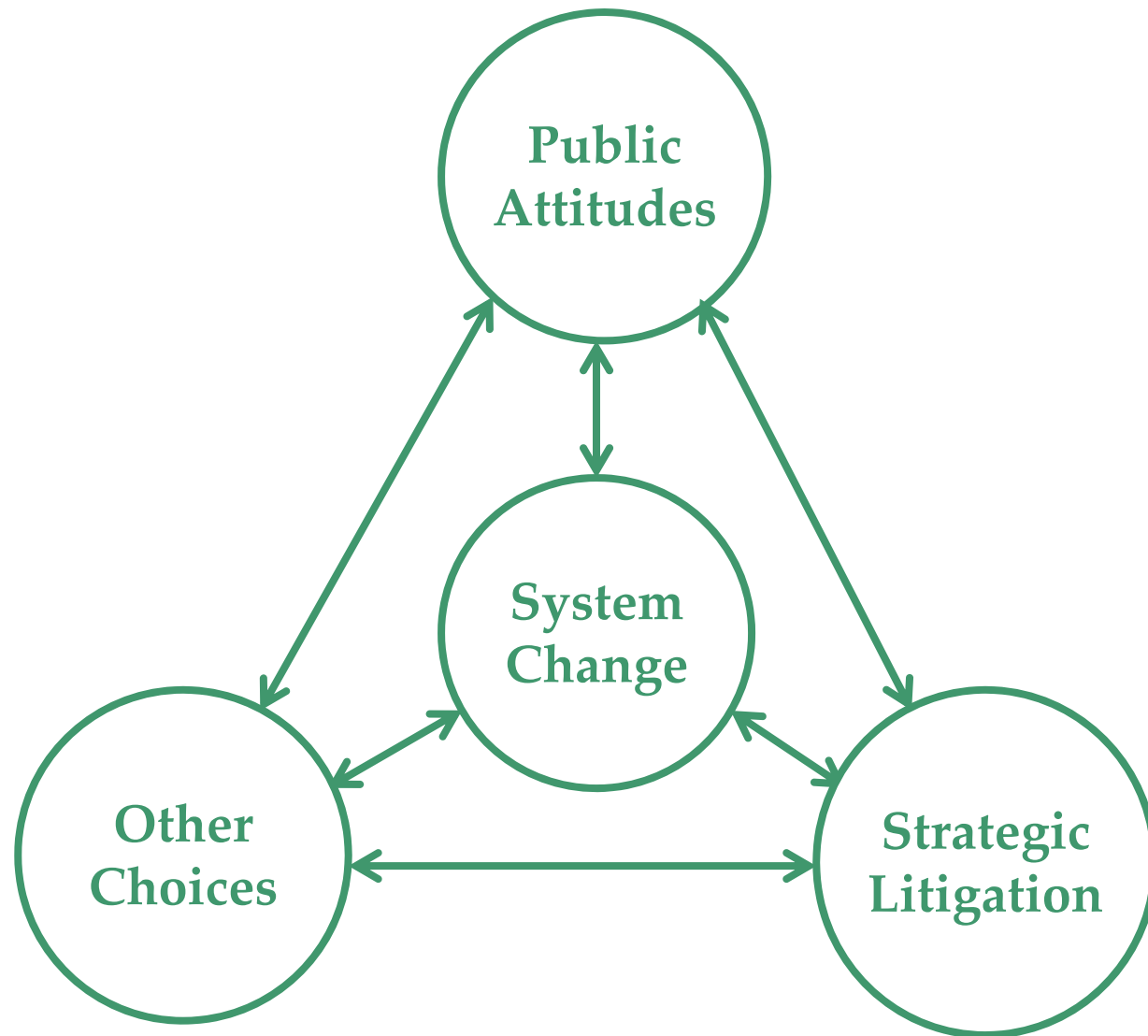
Solutions Are Many (Children & Youth)



- **Module 8: Evidence-Based Psychosocial Interventions for Childhood Problems**
 - **Help Parents**
 - **Help Children & Youth**
 - **Be Successful**
 - **Deal with Their Problems**



Transformation Triangle





Hallmarks of Procedural Due Process

Meaningful Notice, and
Meaningful Opportunity to Be
Heard,
by a Neutral Decision Maker

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



Constitutional Principles – Substantive Due Process

- To Justify Deprivation of Fundamental Rights Substantive Due Process Requires:
 - Compelling State Interest
 - Least Restrictive/Intrusive Alternative
- Involuntary Commitment is a deprivation of a fundamental right under both the US and Alaska Constitutions
- Forced Drugging is probably a deprivation of a fundamental right under US Constitution and is under the Alaska Constitution.



Involuntary Commitment Permissible Under US Constitution When:

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).

- o Being unable to take care of oneself can constitute danger to self if "incapable of surviving safely in freedom." *Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373, 1383 (1996).



Forced Drugging under US Constitution: *Sell*

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, considered on drug-by-drug basis.

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



Forced Drugging Defense Package

- Robert Whitaker & Grace Jackson, MD
 - Certified Copies Available from MindFreedom
- Motion and Memorandum for Summary Judgment (Opposition to Forced Drugging)
- Motion for Stay Pending Appeal
- Certificate of Service



Strategic Litigation Goals

- Force System to Honor People's Rights
 - Change Path of Least Resistance
 - Substantially Reduce, If Not Eliminate Force
 - Compel Other Choices
- Public Education Potential

The Approach in Alaska





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PsychRights.Org

Involuntary Commitment and Forced
Psychiatric Drugging In the Trial Courts:
Rights Violations as a Matter of Course

James B. Gottstein



Strategic Litigation Results in Alaska

- *Myers (2006)*
 - Best Interests
 - No Less Intrusive Alternative Available
- *Wetherhorn (2007)*
 - Unable to Survive Safely in Freedom
- *Wayne B. (2008)*
 - Procedural Protections Strictly Enforced
- *Bigley (2009)*
 - If Alternative to Drugging Feasible, Must Be Provided or Person Let Go
 - Failure to Provide Evidence Sufficiently In Advance Due Process Violation
 - Petition Must Include Detailed Allegations on Best Interests



D.G.

Alaska Supreme Court Case No. S-15100

- Pending
- Challenging *Ex Parté* (No Notice) Proceedings Once Police Have Taken Person into Custody for Psychiatric Evaluation
- Oral Argument October 16, 2013



Public Education in Alaska

- Robert Whitaker in 2002, 2007 & 2009
 - Michael Perlin & Robert Whitaker in 2003
 - Daniel Mackler Film Series in 2012
 - Accept All Possible Speaking Invitations
- Media Coverage
 - Myers Case
 - Feature Front Page Story in November 2005
 - Zyprexa Papers local coverage
 - Medicaid Fraud Case
 - Local NBC Affiliate Series: Mind Over Meds



Alternatives Development in Alaska

- CHOICES, Inc.
Opened in 2007
- Soteria-Alaska
Opened in 2009



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: Alaska Mental Health Trust Formally Supports**
 - Wants State Funding Participation**
- .2007: Funded by Trust for 2008 Opening when didn't get in State Budget.**
- .2009: Opened**
- .2010: In State Budget**



Current Alaska Status

- **Widespread Support for Non-Drug Choices (In Theory at Least)**
- **CHOICES' & Soteria-Alaska's Non-coercive Approach Reluctantly Accepted**
 - Recognized as Providing Valuable Service
 - Soteria-Alaska Receiving Referrals from Hospital
- **Least Restrictive/Intrusive Alternative Enshrined in Recent Alaska Supreme Court Decisions.**
 - Still a Long Way to Go/Needs Enforcement Litigation
 - PsychRights' Focus Shifted to Children & Youth



Most Drugging of Children & Youth in State Custody Unconstitutional

- State obligated to protect children & youth in custody from harm.

Deshaney v. Winnebago County, 489 U.S. 189, 109 S.Ct. 998 (1989):

“[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs-e.g., food, clothing, shelter, medical care, and reasonable safety-it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.”



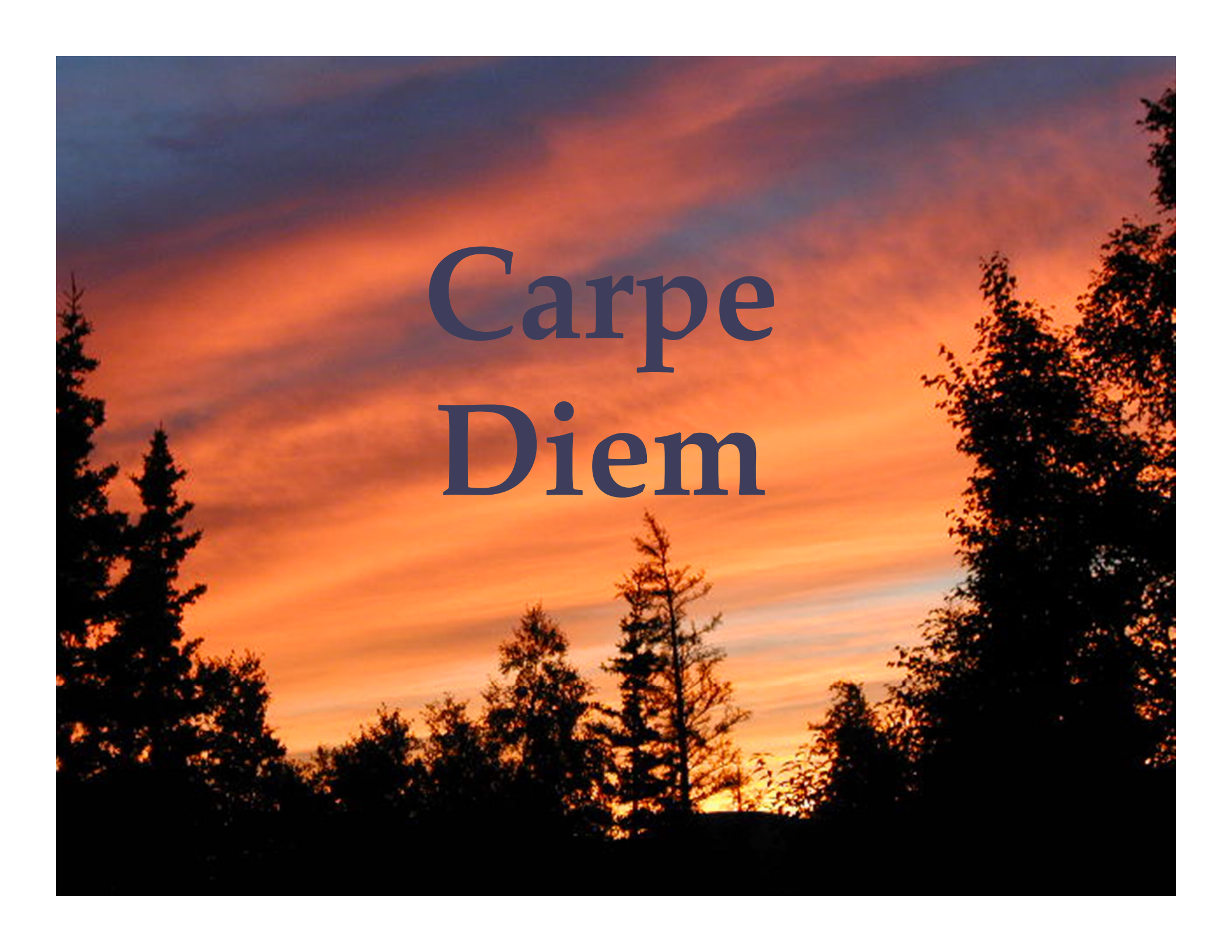
Most Psychiatric Drugging of Children & Youth Is Medicaid Fraud

- Medicaid coverage for outpatient drugs limited to “medically accepted indications”
 - Off –label covered only if “supported” by one of 3 specified compendia
 - See, “Medically Accepted Indications Chart for Children & Youth”
<http://bit.ly/b50HrH>



Medicaid Fraud Initiative

- 7th Circuit: Drs. “knowingly” cause false claims by writing Rxes not for medically accepted indication. *Ex rel Watson v. King-Vassel* (7th Cir.)
- 9th Circuit essentially ruled, if the government doesn't care, why should we?
 - Non-precedential Ruling
- Talk at More Length Tonight @ 7:30.

A photograph of a sunset or sunrise sky with silhouettes of trees. The sky is filled with soft, glowing clouds in shades of orange, red, and purple. The sun is low on the horizon, creating a bright glow. The silhouettes of various trees, including evergreens and deciduous trees, are visible against the colorful sky.

Carpe
Diem



Suggested Reading

- *Anatomy of an Epidemic*, by Robert Whitaker (2010).
- *Mad in America: Bad Science, Bad Medicine and the Enduring Mistreatment of the Mentally Ill*, by Robert Whitaker (2001).
- *Drugging Our Children: How Profiteers Are Pushing Antipsychotics on Our Youngest, and What We Can Do to Stop It*, Sharna Olfman and Brent Dean Robbins, Editors (2012)
- *Bipolar Children: Cutting-Edge controversy, Insights, and Research*, Sharna Olfman, Editor (2007).
- *Alternatives Beyond Psychiatry*, Peter Lehman & Peter Stastny, MD, Editors (2007).
- *Agnes's Jacket: A Psychologist's Search for the Meaning of Madness*, by Gail Hornstein, PhD, Rodale Books, 2009.
- *Drug Induced Dementia*, Grace E. Jackson, MD, Author House, 2009.
- *A Fight to Be: A Psychologist's Experience from Both Sides of the Locked Door*, Ronald Bassman, Ph.D. (2007)
- *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.



Suggested Reading (cont.)

- *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
- *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).
- *Commonsense Rebellion*, by Bruce E. Levine (2001)
- *Blaming the Brain: The Truth About Drugs and Mental Health*, by Elliot Valenstein (1998)
- *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>