

# Patient Rights and Protections

12th annual

## Voices Rising

Alaska Peer Support Conference

May 6, 2021



**James B. (Jim) Gottstein, Esq.**



LAW PROJECT FOR PSYCHIATRIC RIGHTS

[PsychRights.org](https://PsychRights.org)

[jim.gottstein@psychrights.org](mailto:jim.gottstein@psychrights.org)



# Law Project for Psychiatric Rights (PsychRights)

- Public Interest Law Firm
- Mission:
  - Mount Strategic Litigation Campaign Against Forced Psychiatric Drugging and Electroshock
  - Public Education

# ALASKA LAW REVIEW

---

---

Volume XXV

June 2008

Number 1

---

---

Available at:  
[PsychRights.Org](http://PsychRights.Org)

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

*James B. Gottstein*



# Rights

- Informed Consent
  - Not Told Truth
  - Deemed Incompetent if Don't Agree
- Right to Medical Records - HIPAA-- Health Insurance Portability and Accountability Act
  - access may be denied when the access requested is reasonably likely to *endanger the life and safety* of the individual or another person
  - PsychRights
- Alaska Statutes
- Constitutional Rights Around Involuntary Commitment & Forced Drugging



# Alaska Statutes

- **AS 47.30.840**
  - Reasonable indoor & outdoor exercise & recreation
  - Visitors at reasonable times
  - Individual storage space
  - Reasonable access to telephone including confidential calls
  - Visit and call with attorney
  - Unless professional person in charge of the patient determines that granting the patient those rights will pose a threat to the safety or well-being of the patient or others
- **AS 47.30.847. Patients' grievance procedures.**
  - Faith Myers Advocacy



# AS 47.30.847. Patients' grievance procedures

- (a) A patient has the right to bring grievances about the patient's treatment, care, or rights to an impartial body within an evaluation facility or designated treatment facility.
- (b) An evaluation facility and a designated treatment facility shall have a formal grievance procedure for patient grievances brought under (a) of this section. The facility shall inform each patient of the existence and contents of the grievance procedure.
- (c) An evaluation facility and a designated treatment facility shall have a designated staff member who is trained in mental health consumer advocacy who will serve as an advocate, upon a patient's request, to assist the patient in bringing grievances or pursuing other redress for complaints concerning care, treatment, and rights.





# Hallmarks of Procedural Due Process

- o Meaningful Notice, and
- o Meaningful Opportunity to Be Heard,
- o 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 the US Constitution
- Forced Drugging is probably a deprivation of a fundamental right under US Constitution and is under the Ohio 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*

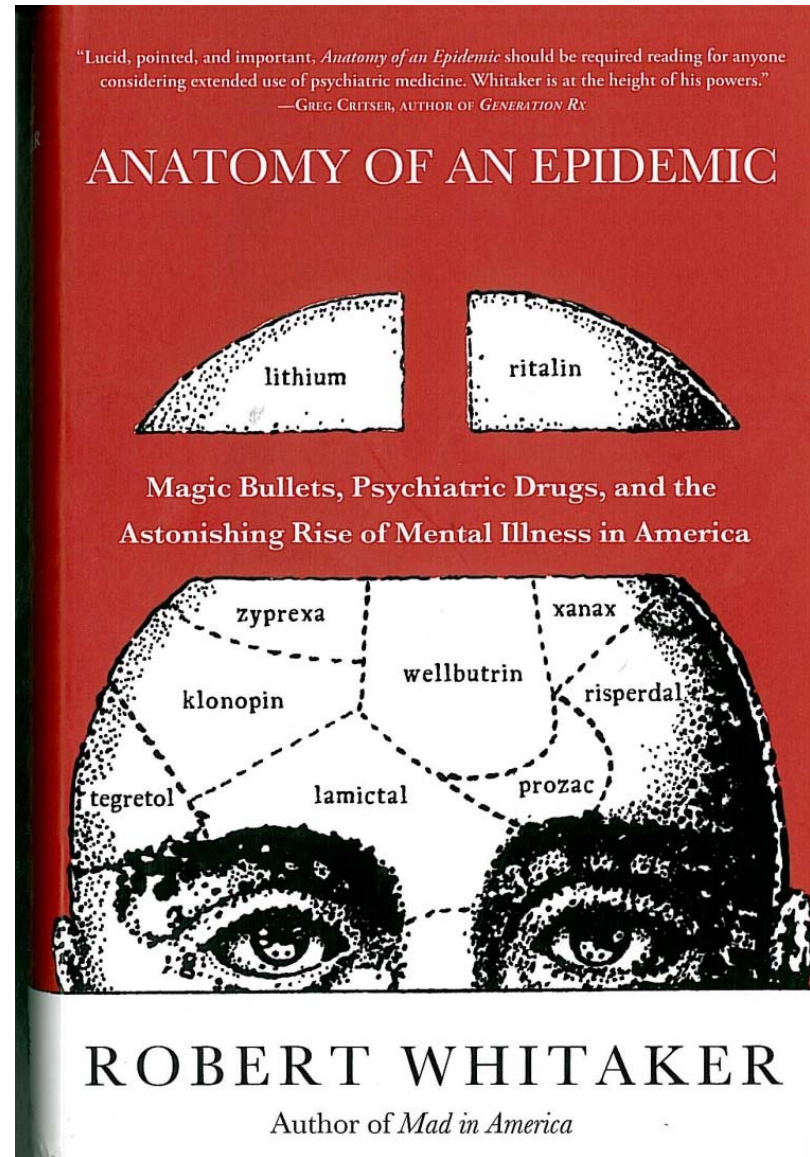
## Court Must Conclude:

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).



# Why the Less Intrusive/Restrictive Alternative Rights Are So Important



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



# While Some People find the Drugs Helpful . . .

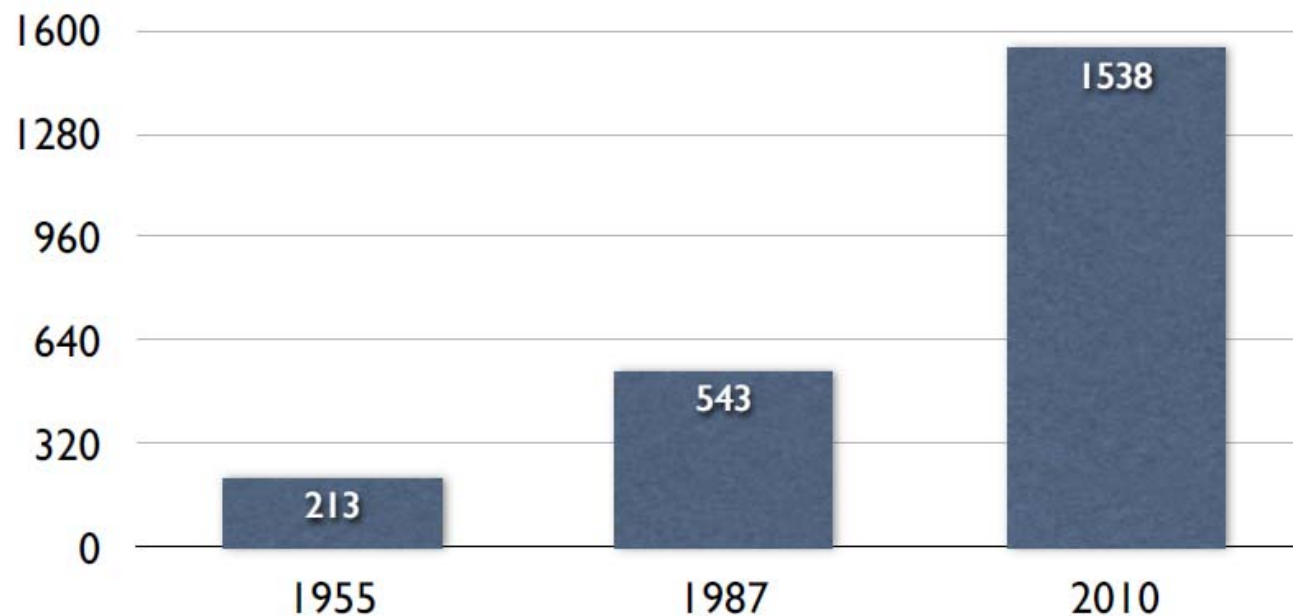
- **7-fold Increase in Mental Illness Disability Rate**
- **Cut the Recovery Rate At Least in Half**
- **Causing Massive Amount of Harm**
- **Life Spans Now 25 Years Shorter**
- **Hugely and Unnecessarily Expensive**
- **Huge Unnecessary Human Toll**

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

# The Disabled Mentally Ill in the United States, 1955-2010

(under government care)

■ Per 100,000 population

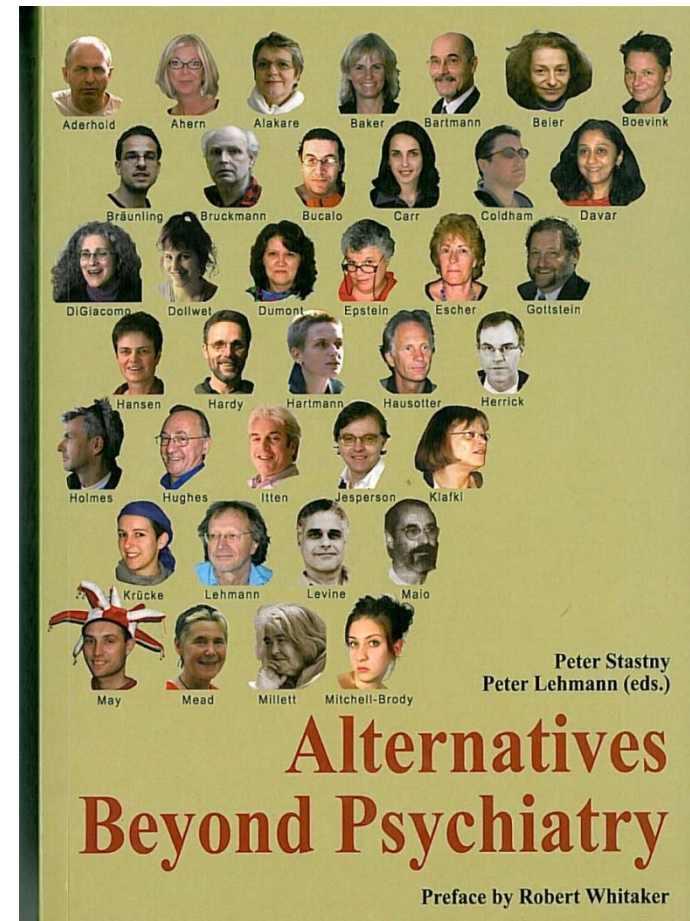


Source: Silverman, C. *The Epidemiology of Depression* (1968): 139. U.S. Social Security Administration Reports, 1987-2010.



# Solutions Are Many

- 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 .

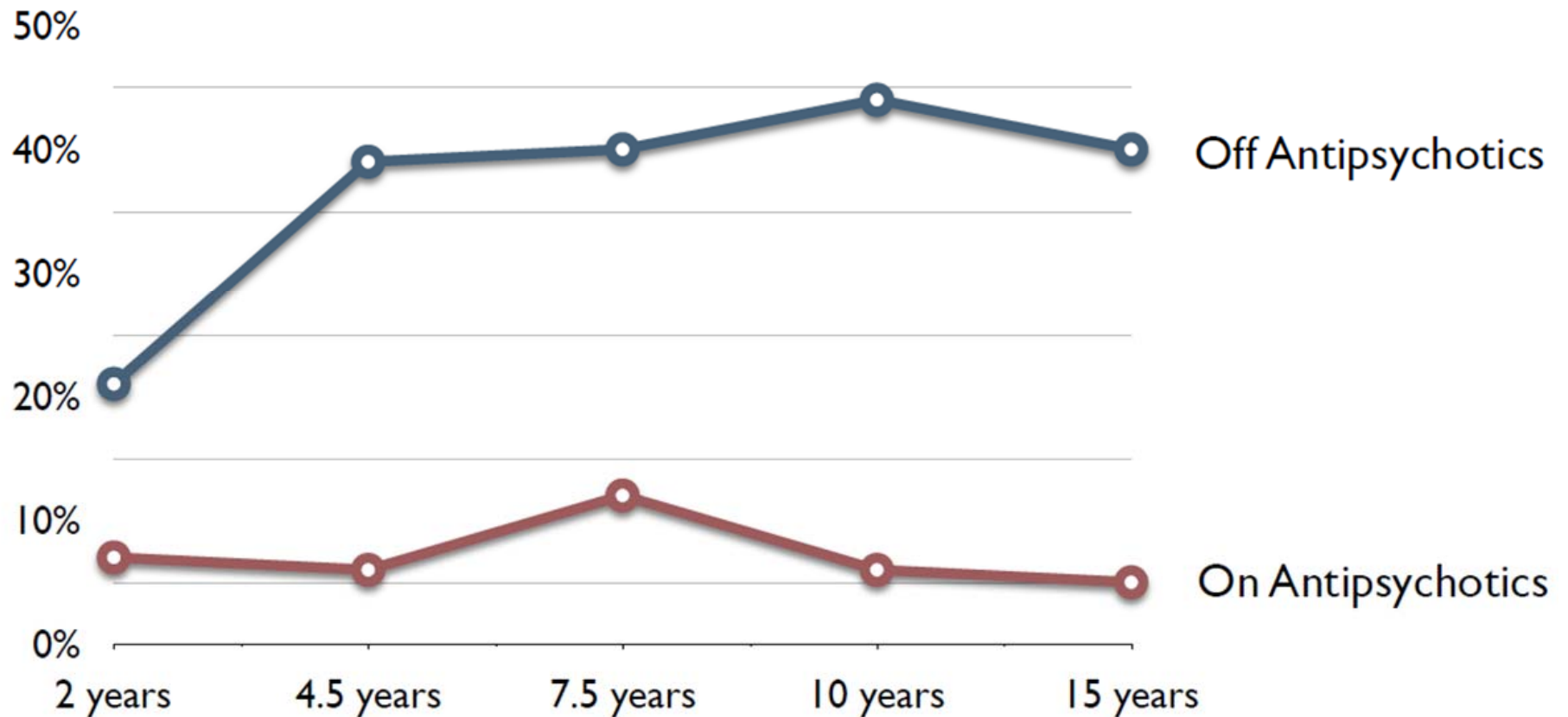
## Results

- 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

# 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.



# Take Away

- 80% Recovery Rate if Neuroleptics Avoided In Beginning
- 40% Recovery rate if get off
- 5% Recovery Rate If Stay On



# Forced Drugging Defense Package

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

On December 17, 2006, The New York Times began a series of front-page stories about documents obtained from Alaska lawyer Jim Gottstein, showing Eli Lilly had concealed that its top-selling drug caused diabetes and other life-shortening metabolic problems. The "Zyprexa Papers," as they came to be known, also showed Eli Lilly was illegally promoting the use of Zyprexa on children and the elderly, with particularly lethal effects. Although Mr. Gottstein believes he obtained the Zyprexa Papers legally, the United States District Court for the Eastern District of New York in Brooklyn decided he had conspired to steal the documents, and Eli Lilly threatened Mr. Gottstein with criminal contempt charges. In *The Zyprexa Papers*, Mr. Gottstein gives a riveting first-hand account of what really happened, including new details about how a small group of psychiatric survivors spread the Zyprexa Papers on the Internet untraceably. All of this within a gripping, plain-language explanation of complex legal maneuvering and his battles on behalf of Bill Bigley, the psychiatric patient whose ordeal made possible the exposure of the Zyprexa Papers.

# THE ZYPREXA PAPERS



**JIM GOTTSTEIN**

Samizdat Health



# 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).
- *The Zyprexa Papers*, by Jim Gottstein (2020)
- *Alternatives Beyond Psychiatry*, Peter Lehman & Peter Stastny, MD, Editors (2007).
- *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>