

A Strategic Approach to Change in the Mental Health System Change

Advocates, Inc.
Framingham, Massachusetts, September 25, 2013

James B. (Jim) Gottstein, Esq.

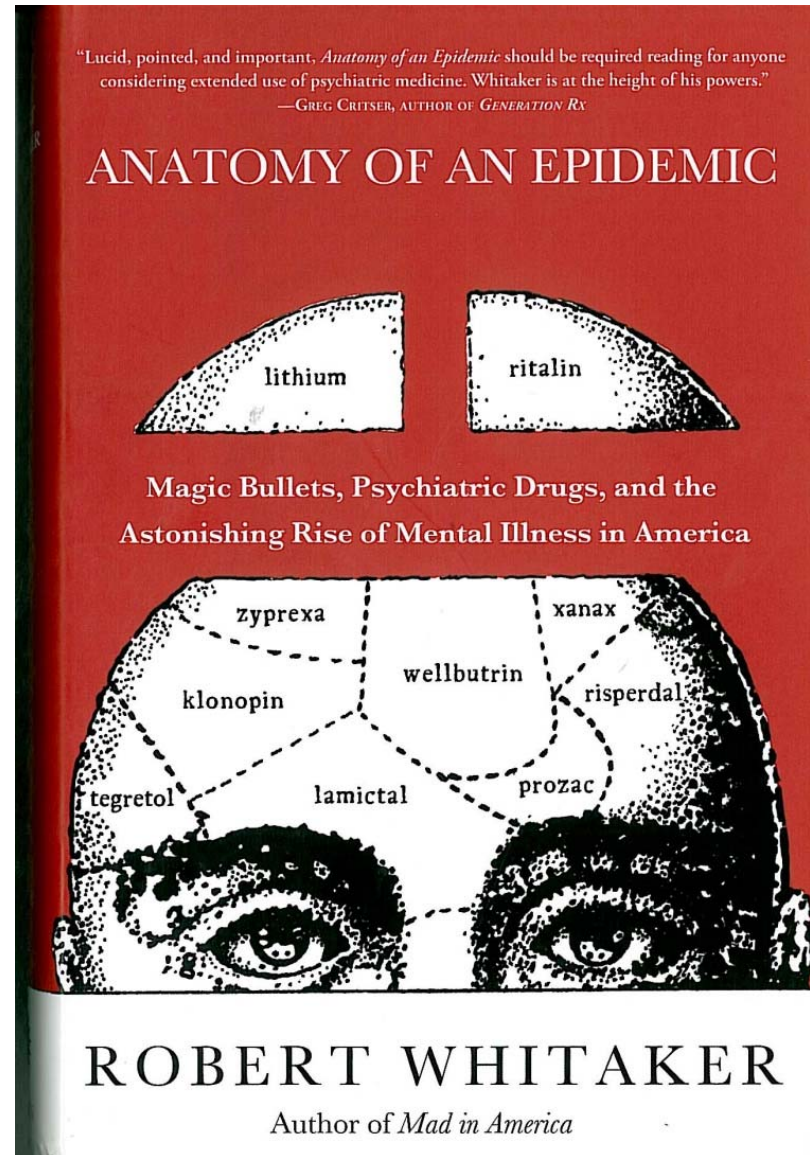


LAW PROJECT FOR PSYCHIATRIC RIGHTS



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**

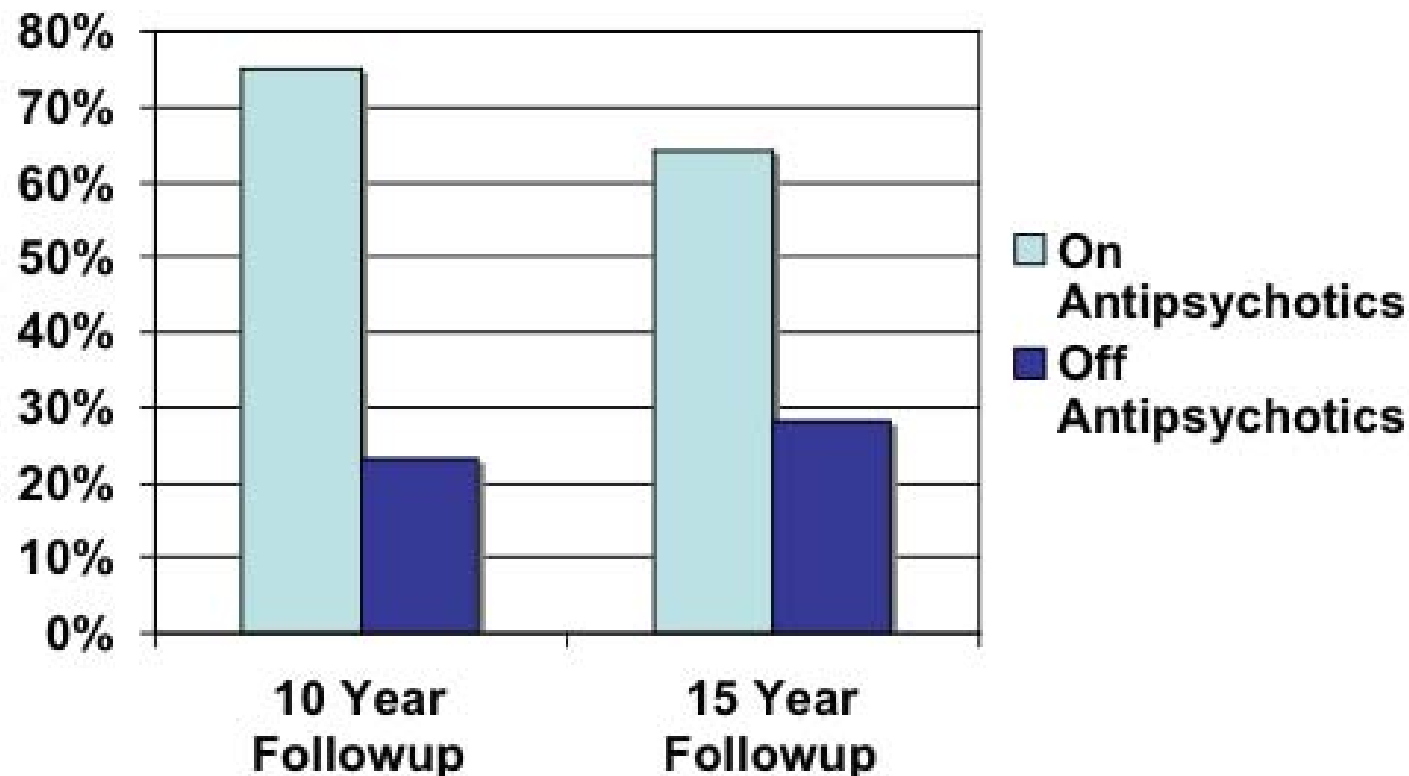


While Some People find the Drugs Helpful . . .

- **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**

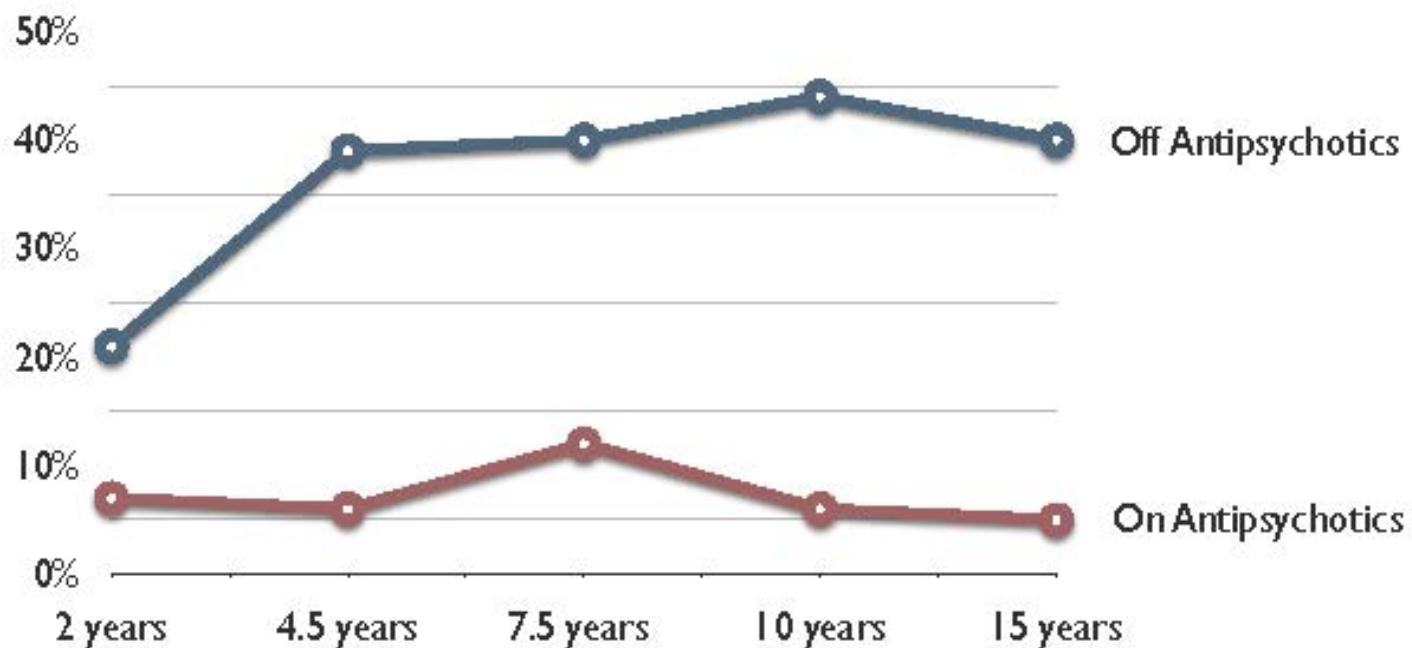
Sources: Whitaker (2002 & 2010), NASMHPD (2006), Studies Posted on
PsychRights.Org Scientific Research By Topic

Psychotic Symptoms



The schizophrenia patients who stayed on antipsychotics long-term were much more likely to continue to suffer from psychotic symptoms. Source: Martin Harrow and Thomas Jobe. "Factors involved in Outcome and Recovery in Schizophrenia Patients Not on Antipsychotic Medications: A 15-year Multifollow-up Study. *The Journal of Nervous and Mental Disease*, 195 (2007):406-414.

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.

Courtesy of Robert Whitaker

The Transformation of Bipolar Disorder in the Modern Era

	Pre-Lithium Bipolar	Medicated Bipolar Today
Prevalence	1 in 5,000 to 20,000	1 in 20 to 50
Good long-term functional outcomes	75% to 90%	33%
Symptom course	Time-limited acute episodes of mania and major depression with recovery to euthymia and a favorable functional adaptation between episodes	Slow or incomplete recovery from acute episodes, continued risk of recurrences, and sustained morbidity over time
Cognitive function	No impairment between episodes or long-term impairment	Impairment even between episodes; long-term impairment in many cognitive domains; impairment is similar to what is observed in medicated schizophrenia

This information is drawn from multiple sources. See in particular Huxley, N. "Disability and its treatment in bipolar disorder patients." *Bipolar Disorders* 9 (2007): 183-96.



Antidepressants

- Not More Effective than Placebo
Except for Most Depressed
- Increase Suicidality & Violence
- Addictive
- Lose “effectiveness” over time
- Cause Mania → Bipolar Diagnoses
- Dramatically Worsen Outcomes

Sources: Pigott (2010), Fournier (2010), Whitaker (2010), Breggin (2008)



Anticonvulsants Misbranded as Mood Stabilizers

- Can Cause:
 - Hostility, Aggression, Depression & Confusion
 - Liver Failure
 - Fatal pancreatitis
 - Severe & lethal skin disorders
- May Cause
 - Mild cognitive impairment with chronic use

Source: Brain Disabling Treatments in Psychiatry, Breggin, Springer, 2008



Benzodiazepines

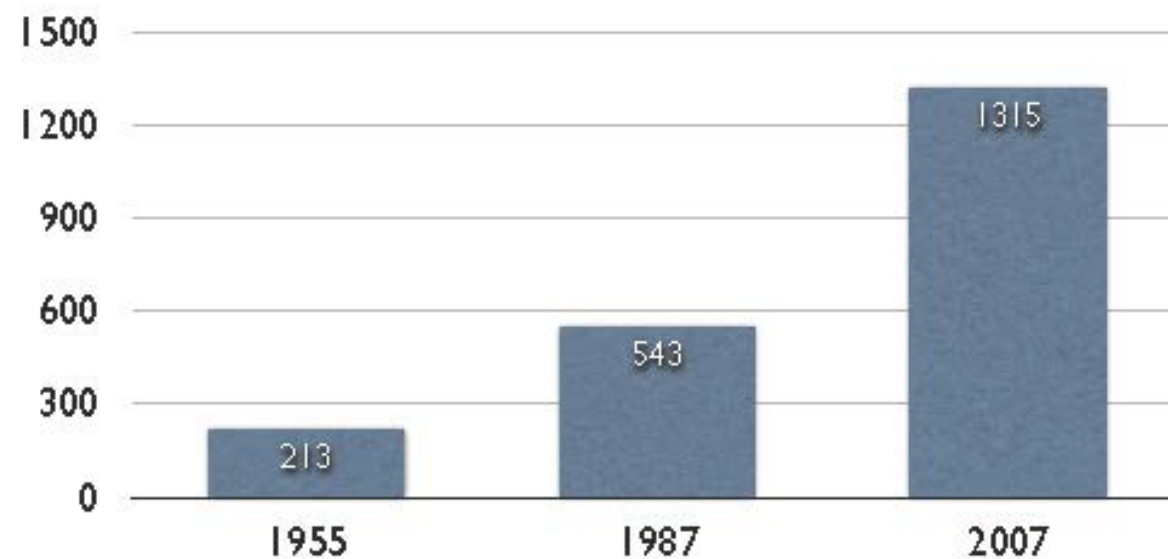
- Effective for only a few weeks
- Highly Addictive
 - Some People Simply Can Not Get Off Them
- Can cause mania
- Can cause violence

Source: Brain Disabling Treatments in Psychiatry, Breggin, Springer, 2008

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 over 700,000 by 2011.



Stimulants

- No convincing evidence of short or long term improvement in cognitive ability or academic performance
- Brain Damage
- Cardiovascular Harm, including cardiac arrest
- Stunts Growth
- Mania, psychosis, hallucinations
- Agitation
- Aggression
- Insomnia
- Depression, suicide
- Headaches
- Stomach aches
- Obsessive Compulsive Behaviors
- Quadruples Cocaine Abuse Rate
- Many more

Source: Brain Disabling Treatments in Psychiatry, Breggin, Springer, 2008



Iatrogenic Pathways to Bipolar Diagnosis

Stimulants → Bipolar Diagnosis

- In Canadian study, six percent of ADHD children treated with stimulants for average of 21 months developed psychotic symptoms.
- In a study of 195 bipolar children, Demetri Papolos found that 65% had “hypomanic, manic and aggressive reactions to stimulant medications.”
- University of Cincinnati reported that 21 of 34 adolescent patients hospitalized for mania had been on stimulants “prior to the onset of an affective episode.”

Source: Cherland, “Psychotic side effects of psychostimulants,” *Canadian Journal of Psychiatry* 44 (1999):811-13. Papolos, “Bipolar disorder, co-occurring conditions, and the need for extreme caution before initiating drug treatment.” *Bipolar Child Newsletter* 1 (Nov. 1999). DelBello, “Prior stimulant treatment in adolescents with bipolar disorder,” *Bipolar Disorders* 3 (2001):53-57.

Antidepressants → Bipolar Diagnosis

- In first pediatric trial of Prozac, 6% of treated children suffered a manic episode; none in placebo group.
- Harvard University researchers find that 25% of children treated for depression convert to bipolar within four years.
- Washington University researchers report that within 10 years, 50% of prepubertal children treated for depression convert to bipolar illness.

Source: Emslie, “A double-blind, randomized, placebo-controlled trial of fluoxetine in children and adolescents with depression,” *Arch of General Psychiatry* 54 (1997):1031-37. Martin, “Age effects on antidepressant-induced manic conversion,” *Arch of Pediatrics & Adolescent Medicine* 158 (2004):773-80. Faedda, “Pediatric onset bipolar disorder,” *Harvard Review of Psychiatry* 3 (1995): 171-95. Geller, “Bipolar disorder at prospective follow-up of adults who had prepubertal major depressive disorder,” *Amer J of Psychiatry* 158 (2001):125-7.

Reviews of Medications for Juvenile Bipolar Disorder

- Washington University: At end of two years, mood stabilizers, lithium, stimulants, and antidepressants all failed to help bipolar youth fare better. Those treated with an antipsychotic “were significantly less likely to recover than those who did not receive a neuroleptic.”
- Hayes, a medical consulting firm, in 2008: “Our findings indicate that at this time, anticonvulsants [mood stabilizers] and atypical antipsychotics cannot be recommended for children diagnosed with bipolar disorders.”

Source: Geller, “Two-year prospective follow-up of children with a prepubertal and early adolescent bipolar disorder phenotype,” *American Journal of Psychiatry* 159 (2002):927-33. Press release, “Hayes says new treatments for pediatric bipolar disorder not ready for prime time,” December 3, 2008, hayesinc.com.

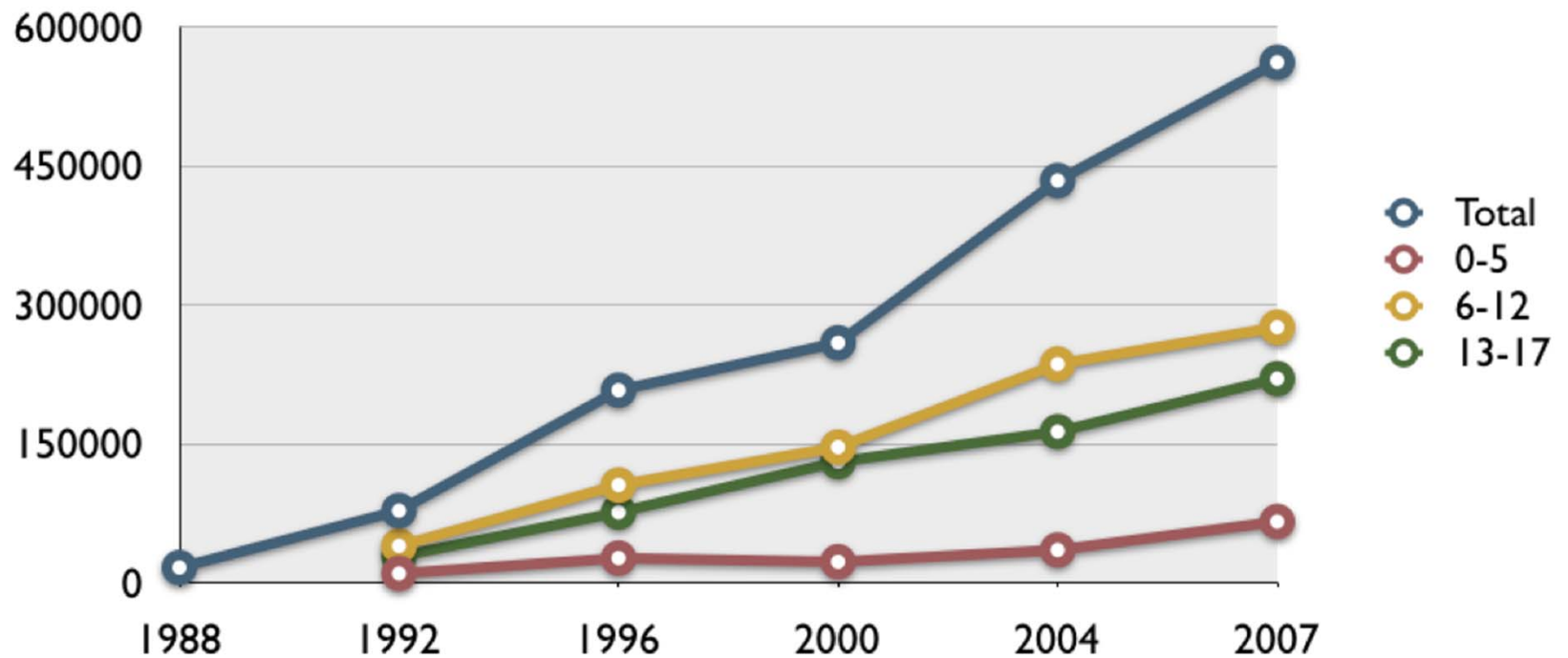


Summary of Long-term Worries With Psychotropics in Children and Youth

- Increased risk of disability (bipolar pathway)
- Physical ailments
- Emotional lethargy
- Cognitive decline
- Early death

Psychiatric Drugs & Children: A Monumental Disaster

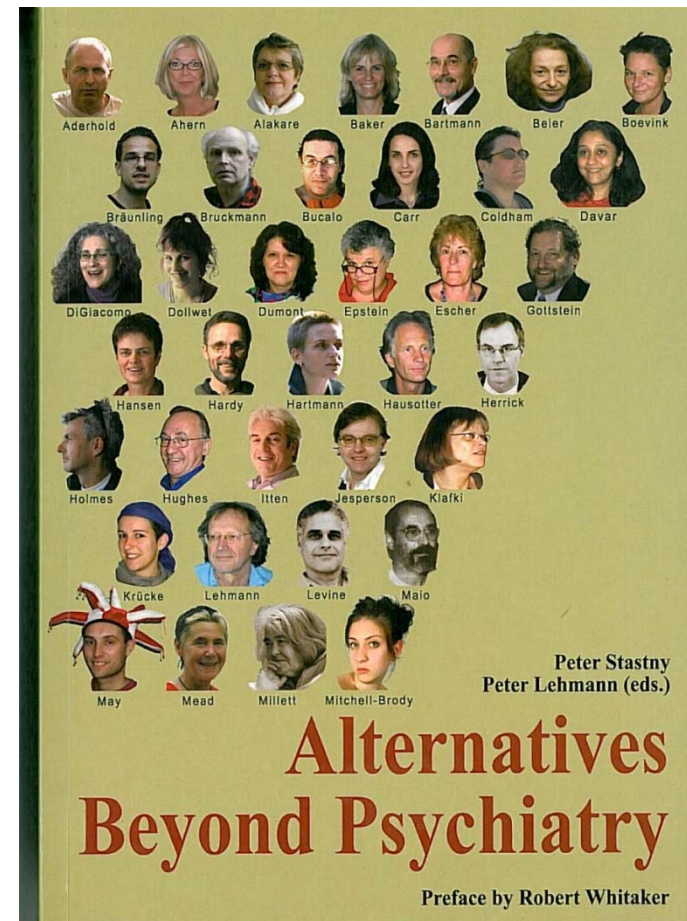
Children on SSI Disability Due to Mental Illness



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”)
- Psychosocial Approaches
 - Soteria
 - Open Dialogue
 - Peer Directed





People Diagnosed With Serious Mental Illness Can Recover

- Myth: Once a Schizophrenic always a schizophrenic.
 - Reality: **Half to two thirds of patients, including very chronic cases can recover.**
- Myth: Patients must be on Medication all their lives.
 - Reality: **A small percentage at most may need medication indefinitely.**

Empirical Correction of Seven Myths About Schizophrenia with Implications for Treatment (Harding 1994)



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

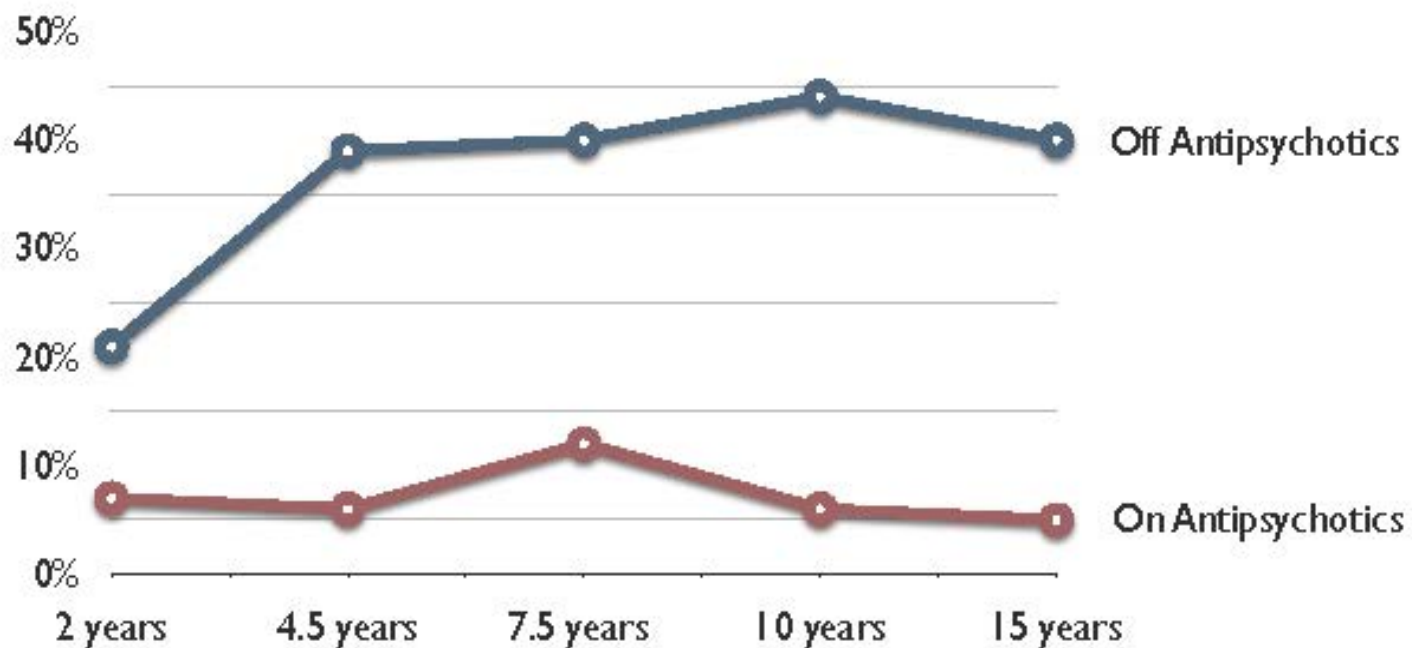
Outcomes with Selective Use Of Antipsychotics

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

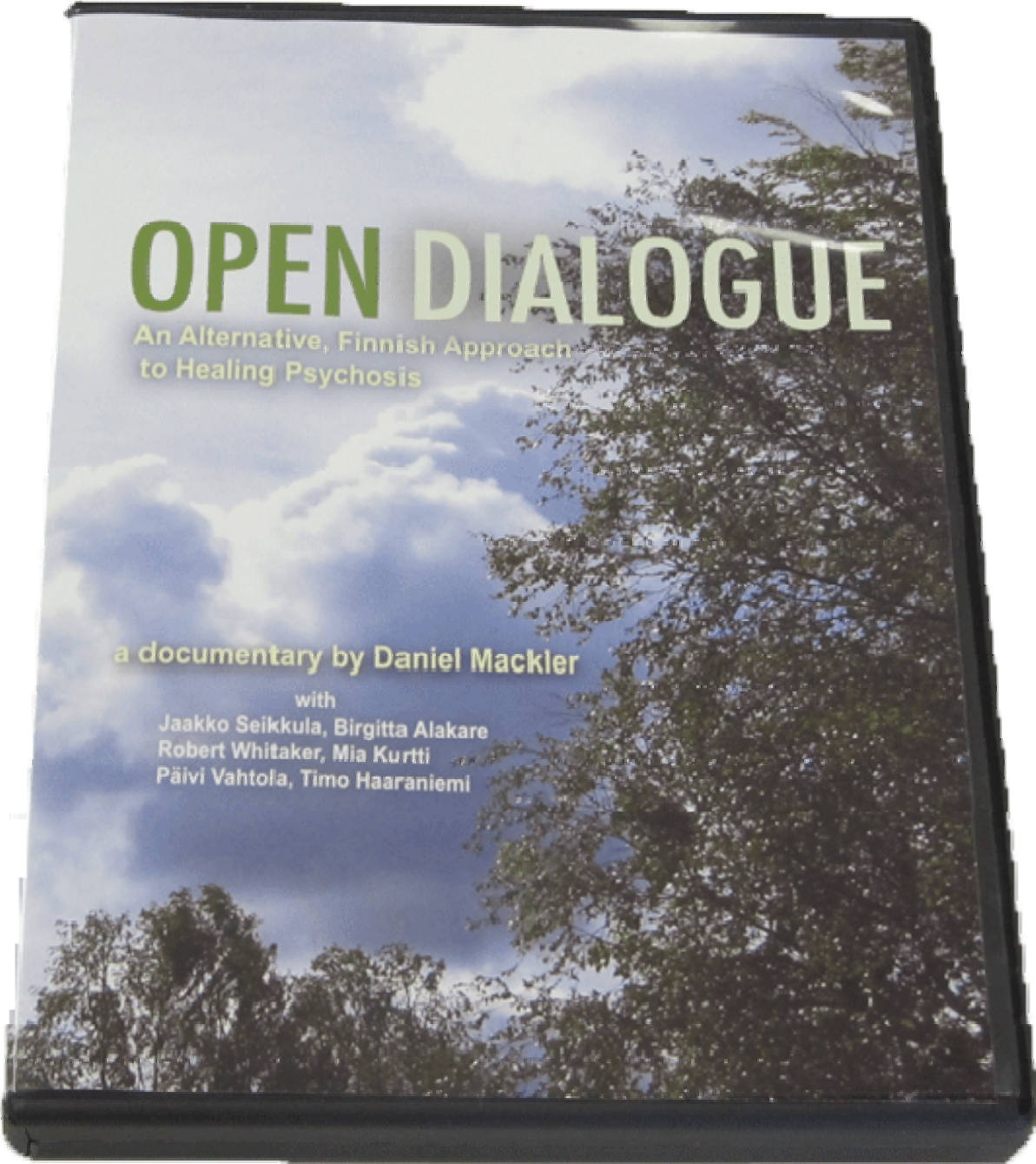
Patients (N=75)	
Schizophrenia (N=30)	
Other psychotic disorders (N=45)	
Antipsychotic use	
Never exposed to antipsychotics	67%
Occasional use during five years	33%
Ongoing use at end of five years	20%
Psychotic symptoms	
Never relapsed during five years	67%
Asymptomatic at five-year followup	79%
Functional 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.

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.



OPEN DIALOGUE

An Alternative, Finnish Approach
to Healing Psychosis

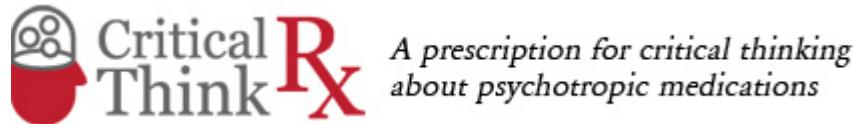
a documentary by Daniel Mackler

with

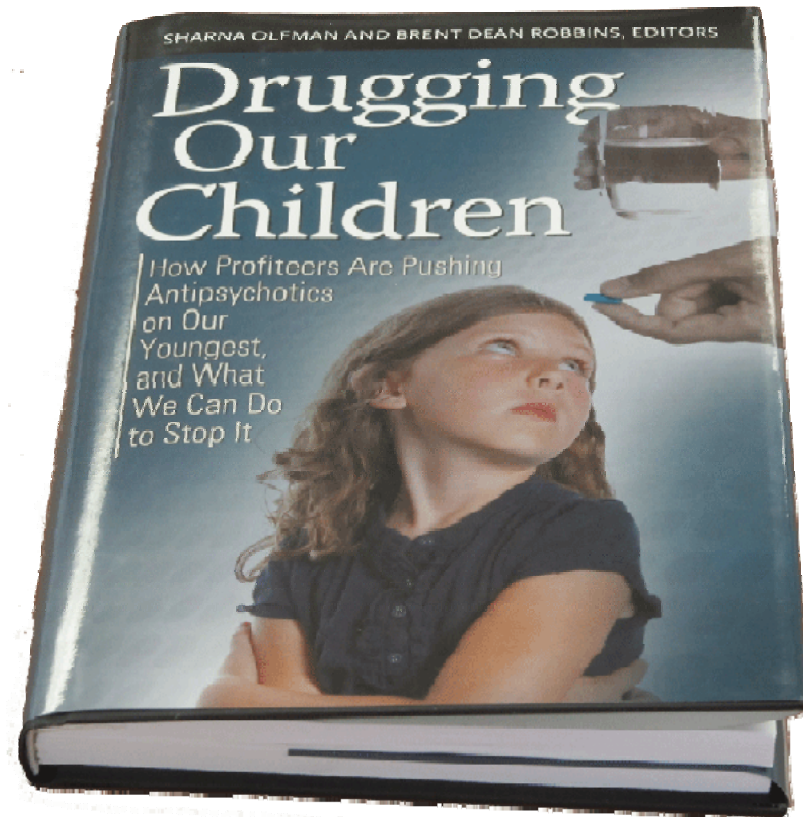
Jaakko Seikkula, Birgitta Alakare
Robert Whitaker, Mia Kurtti
Päivi Vahtola, Timo Haaranieni



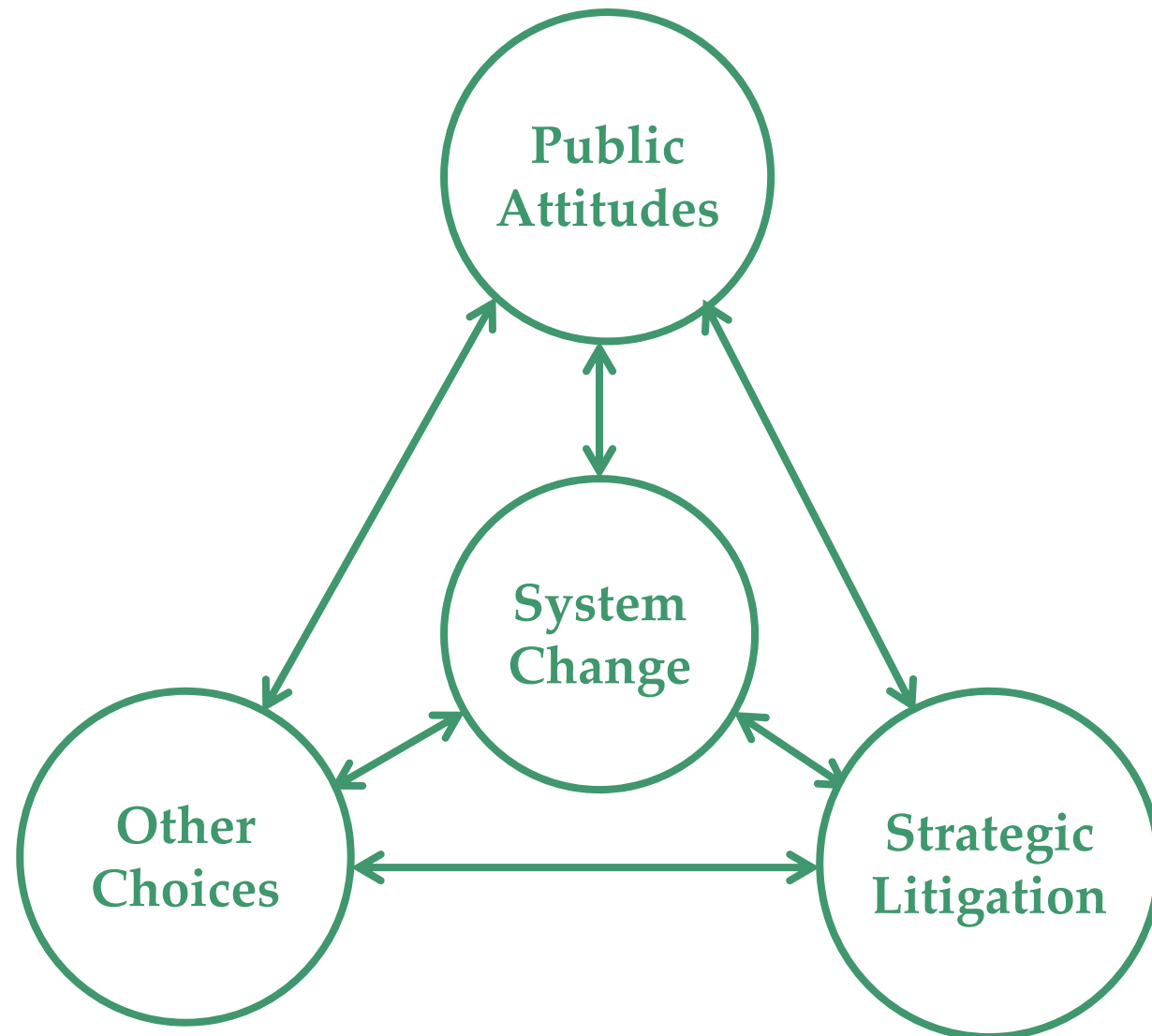
Solutions Are Many (Children & Youth)



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



Transformation Triangle





How the Legal System Can Help Create a Recovery Culture in Mental Health Systems

by
James B. (Jim) Gottstein, Esq.

of

PsychRights[®]

**Law Project for
Psychiatric Rights
<http://PsychRights.Org>**

Presented at

**Alternatives 2005
Leading the Transformation to Recovery
Phoenix, Arizona, October 28, 2005**

<http://psychrights.org/Education/Alternatives05/RoleofLitigation.pdf>



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).



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



PsychRights in Massachusetts

- Opposing Forced Drugging ("Rogers Orders") in Massachusetts memo, February 1, 2004.
- Potential Strategies memo, October 6, 2007.
- Lawyer seminar with Will Hall, Robert Goldberg, Dan Kriegman & Grace Jackson, MD, 2007

Alaska Experience





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

ALASKA LAW REVIEW

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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
- *PsychRights v. AK*
 - To protect children
 - Held no Standing

- *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, Prognosis & Side Effects



D.G.

Alaska Supreme Court Case No. S-15100

- Pending
- Challenging *Ex Parté* (No Notice) Proceedings Once Police Have Taken Person Into Custody and Held for Psychiatric Evaluation
- Oral Argument To Be held October 16, 2013.



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



Alternatives Development in Alaska

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



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
- **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



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



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>



False Claims Act

PsychRights Medicaid Fraud Initiative

- Can Sue on Behalf of Government & Share in Recovery, if any
- Each Offending Rx carries \$5,500 min penalty
- Model (form) Complaint
 - Psychiatrists
 - Agencies
 - Pharmacies



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? *PsychRights v. Matsutani et al.*
 - Non-precedential Ruling



Organizing Strategic Litigation

- Organizing Group
- Lawyer(s)
- Expert Witnesses
- Cases
- PsychRights Will Assist As Can

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>