

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

NARPA 2014 - ANNUAL RIGHTS CONFERENCE  
SeaTac DoubleTree, September 4, 2014

James B. (Jim) Gottstein, Esq.



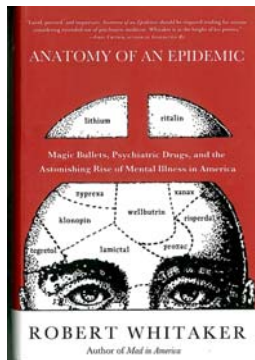
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## Law Project for Psychiatric Rights (PsychRights®)

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

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

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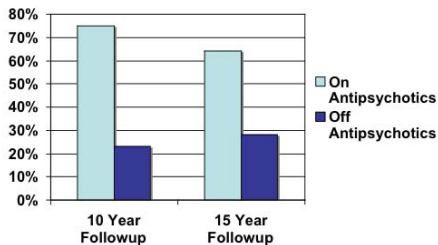
## While Some People find the Drugs Helpful . . .

- 6-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

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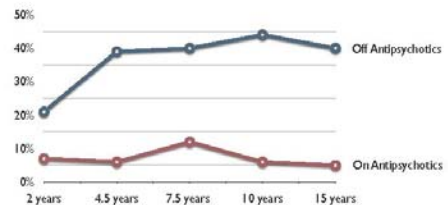
## Psychotic Symptoms



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.

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## Long-term Recovery Rates for Schizophrenia Patients



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

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## The Modern Course of Bipolar Illness

- More recurrent episodes and more rapid cycling
- Low-level depression between episodes
- Only 33% enjoy good functional outcomes (compared to 70% to 85% in pre-drug era)
- Long-term cognitive impairment (which wasn't seen in pre-drug era)
- Physical problems related to long-term medication use
- Risk of early death

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## Antidepressants

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

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

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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.

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## 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

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## Benzodiazepines

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

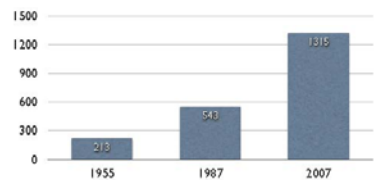
Source: Brain Disabling Treatments in Psychiatry, Breggin, Springer, 2008

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

(under government care)

■ Per 100,000 population



Year	Per 100,000 population
1955	213
1987	548
2007	1316

Source: Silverman, C. *The Epidemiology of Depression* (1968); 139. U.S. Social Security Administration Reports, 1967-2007.

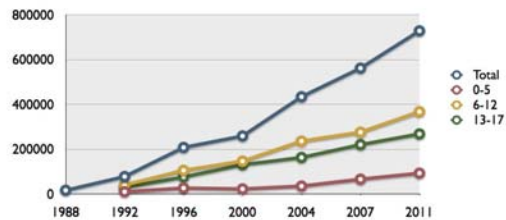


## Psychiatric Drugging of Children

- o 1 in 10 boys on stimulants
- o More than 1% of youth under 18 Given Neuroleptics
- o No long term benefit; short term benefit mainly for adults
- o 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.
- o Many Now on Neuroleptics, even six month olds.
- o Child MH Disability Rate Soars from Essentially Zero in 1987 to 800,000 by 2011.

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## 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.



## Stimulants

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

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

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## 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). DiBello, "Prior stimulant treatment in adolescents with bipolar disorder," Bipolar Disorders 3 (2001):53-57.

### Antidepressants → Bipolar Diagnosis

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

## Stimulants Can Induce Mood Swings That Are Basis for Bipolar Diagnosis

Stimulant-induced symptoms		Bipolar Symptoms	
Arousal	Dysphoric	Arousal	Dysphoric
Increased energy Intensified focus Hyperalertness Euphoria Agitation, anxiety Insomnia Irritability Hostility Hypomania Mania Psychosis	Somnolence Fatigue, lethargy Social withdrawal Decreased spontaneity Reduced curiosity Constriction of affect Depression Emotional lability	Increased energy Intensified goal-directed activity Agitation Severe mood change Decreased need for sleep Irritability Destructive outbursts Increased talking Distractibility Hypomania Mania	Sad mood Loss of energy Loss of interest in activities Social isolation Poor communication Feelings of worthlessness Unexplained crying

Monday, May 13, 13

## Harm-Benefit Ratio of Stimulants

Benefits	Harms
Short-term improvement of ADHD symptoms	No long-term benefit on any domain of functioning
Possible short-term improvement in reading	Physical, emotional and psychiatric adverse effects
	Risk of drug-induced conversion to juvenile bipolar disorder
	Risk of aberrant behavior in adulthood

Monday, May 13, 13

## 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.

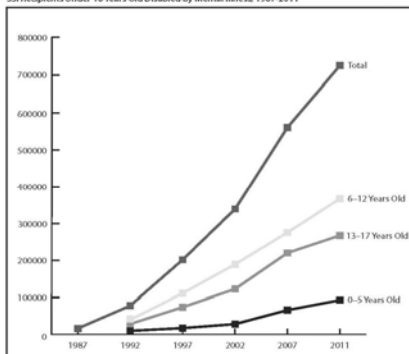
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## Summary of Long-term Worries With Psychotropics in Children and Youth

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

The Epidemic Hits America's Children  
SSI Recipients Under 18 Years Old Disabled by Mental Illness, 1987-2011



Prior to 1992, the government's SSI reports did not break down children recipients into subgroups by age. Source: Social Security Administration reports, 1987-2011.

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## Snatching Children Under Guise of "Child Medical Abuse"

- The American Academy of Pediatrics:
  - Definition: "Child receiving unnecessary and harmful or potentially harmful medical care at the instigation of a caregiver"
  - Stated Benefits:
    - Easier diagnosis to make
    - § More inclusive of less severe cases that still warrant some type of intervention
  - Justina Pelletier
  - Isaiah Rider

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## Stop the Abuse

- Not a confrontation but a notification of a new treatment plan.
- Focus on the positive—"Your child is not sick."
- "Now that we have a clear understanding of your child's health, any further health care-seeking behavior would be harmful and would constitute abuse."
- May need psychiatric care on standby.

© American Academy of Pediatrics, *Visual Diagnosis of Child Abuse* on CD-ROM, 3rd Edition

## Questions for Mother

- Have you ever worried that your child might not be normal or that you might lose him?
- Are you considered a worrywart by your family or friends?
- If yes, ask mother how much of the child's symptoms result from her anxiety vs a medical problem.

© American Academy of Pediatrics, *Visual Diagnosis of Child Abuse* on CD-ROM, 3rd Edition

## Treatment

3. State possible consequences.
  - Not making a threat but outlining a course of action.
  - Must be willing and ready to follow through.
4. Initiate action that leads to the consequences.
  - Child welfare referral.
  - Multidisciplinary team is essential at this point.

© American Academy of Pediatrics, Visual Diagnosis of Child Abuse on CD-ROM, 3rd Edition



## Solutions Are Many (Adults)

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



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## 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)*

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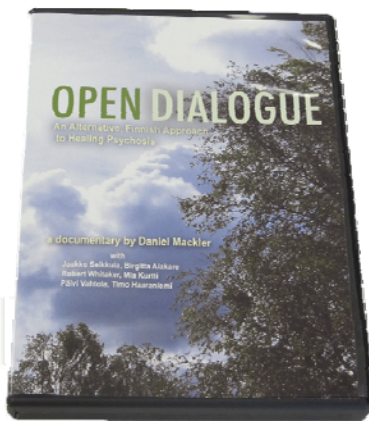
## Outcomes with Selective Use Of Antipsychotics

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.

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## 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

*J Nerv Ment Dis* 1999; 187:142-149  
*J Nerv Ment Dis* 2003; 191: 219-229

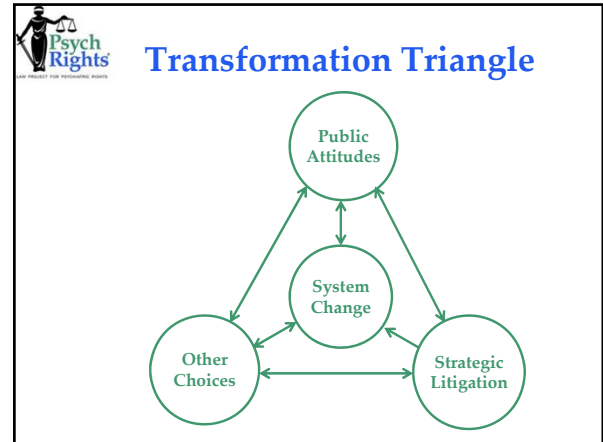
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## Solutions Are Many (Children & Youth)

**Critical Think Rx** A prescription for critical thinking about psychotropic medications

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

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## 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>

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## Children Are Sympathetic Victims

- Justina Pelletier
- Isaiah Rider
- Ariana Godboldo
- Gabriel Myers
- Rebecca Riley

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## 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

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## 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.

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## 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).

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## 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).

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## Forced Drugging Defense Package

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

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## 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



## Most Drugging of Children & Youth in State Custody Unconstitutional

- o 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."

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## Most Psychiatric Drugging of Children & Youth Is Medicaid Fraud

- o 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>

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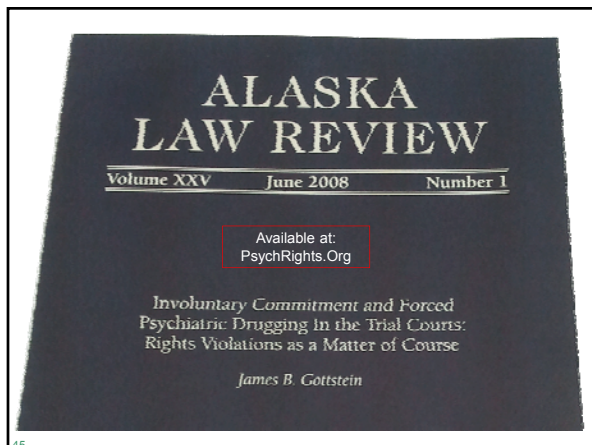


## Medicaid Fraud Initiative

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



## The Approach in Alaska



## 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



## *Myers v. API*

138 P.3d 238 (2006)

- To Be Constitutional Forced Drugging In Non-Emergency, State Must Prove by Clear & Convincing Evidence:
  - Drugging in Best Interests
  - No Less Intrusive Alternative Available
- Cannot Honestly Establish These Criteria



## *Bigley v. API*

208 P. 3d 168 (2009)

- Available means Feasible
  - If Less Intrusive Alternative Feasible Have to Provide or Let Person Go
- Petition Must Provide:
  - facts underlying the petition, including the nature of and reasons for the proposed treatment
  - symptoms and diagnosis; the medication to be used; the method of administration; the likely dosage; possible side effects, risks and expected benefits; and the risks and benefits of alternative treatments and nontreatment.





## PsychRights v. Alaska (2010)

- Sought Injunction Against Drugging of Children & Youth by State Unless & Until
  - Evidence-based psychosocial interventions have been exhausted,
  - Rationally anticipated benefits of psychotropic drug treatment outweigh the risks,
  - The person or entity authorizing administration of the drug(s) is fully informed, and
  - Close monitoring of, and appropriate means of responding to, treatment emergent effects are in place.
- Dismissed for Lack of Standing (right to sue)
- Contemplating Federal Civil Rights Suit



## 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
  - Bret Bohn
  - Others--Go to Person



## Alternatives Development in Alaska

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



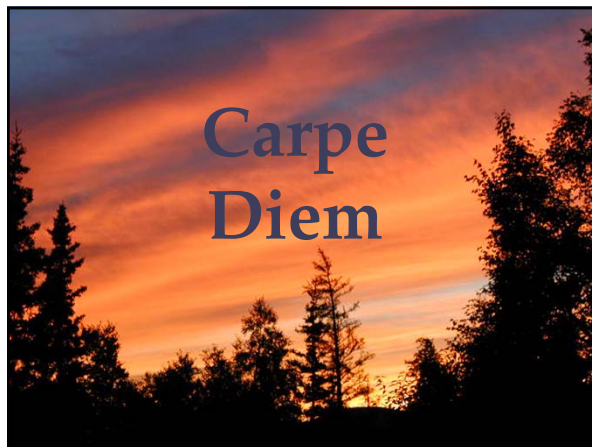
## Opinion Shift—Soteria- Alaska

- 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
  - But, Moving Away from Guiding Principles Because of Funding?
- 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





## Suggested Reading

- o *Anatomy of an Epidemic*, by Robert Whitaker (2010).
- o *Mad in America: Bad Science, Bad Medicine and the Enduring Mistreatment of the Mentally Ill*, by Robert Whitaker (2001).
- o *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)
- o *Bipolar Children: Cutting-Edge controversy, Insights, and Research*, Sharna Olfman, Editor (2007).
- o *Alternatives Beyond Psychiatry*, Peter Lehman & Peter Stastny, MD, Editors (2007).
- o *Agnes's Jacket: A Psychologist's Search for the Meaning of Madness*, by Gail Hornstein, PhD, Rodale Books, 2009.
- o *Drug Induced Dementia*, Grace E. Jackson, MD, Author House, 2009.
- o *A Fight to Be: A Psychologist's Experience from Both Sides of the Locked Door*, Ronald Bassman, Ph.D. (2007)
- o *Rethinking Psychiatric Drugs: A Guide to Informed Consent*, by Grace E. Jackson, MD, (2005)
- o *Brain Disabling Treatments in Psychiatry: Drugs, Electroshock, and the Role of the FDA*, Ed. 2 (2008) by Peter Breggin, MD.

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## Suggested Reading (cont.)

- o *Community Mental Health: A Practical Guide* (1994) by Loren Mosher and Lorenzo Burti
- o *Soteria: Through Madness to Deliverance*, by Loren Mosher and Joyce Hendrix with Deborah Fort (2004)
- o *Psychotherapy of Schizophrenia: The Treatment of Choice* (Jason Aronson, 1996), by Bertram P. Karon and Gary R. Vandenbos
- o *Schizophrenia: A Scientific Delusion*, by Mary Boyle, Ph.D. (2002)
- o *Let Them Eat Prozac*, by David Healy, MD. (2006).
- o *Creating Mental Illness*, by Allan V. Horwitz (2002).
- o *Commonsense Rebellion*, by Bruce E. Levine (2001)
- o *Blaming the Brain: The Truth About Drugs and Mental Health*, by Elliot Valenstein (1998)
- o *Escape From Psychiatry*, by Clover (1999)
- o *How to Become a Schizophrenic: The Case Against Biological Psychiatry*, 3d Ed., by John Modrow (2003)
- o Other books at <http://psychrights.org/Market/storefront.htm>

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