

**Psychiatric Drugs in America:
Who's Crazy?**
 or
Through the DSM Looking Glass

ANTH A655 Advanced Medical Anthropology
 (Sergei Bogojavlensky)
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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
- Adopted Kid Drugging as Priority

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

- Psychiatric Drugs Causing Massive Amount of Harm
- Could at Least Double the People Diagnosed with Serious Mental Illness Who Recover
 - 5% v. 40% recovery Rate in recent study
- 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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What We Say v. What We Do

- Science
 - Medical Model
 - Effectiveness & Safety of Neuroleptics
- Legal
 - Due Process
 - Dangerousness
 - Best Interests

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Medical Model

- National Institute of Mental Health:
 - "Schizophrenia is a chronic, severe, and disabling brain disorder"
 - "Bipolar disorder, also known as manic-depressive illness, is a brain disorder that causes unusual shifts in a person's mood, energy, and ability to function."
 - "Research indicates that depressive illnesses are disorders of the brain."

Source: NIMH website accessed March 23, 2008

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**The Medical Model, The
Hunger Strike and the APA**

- 2003 Hunger Strike Challenged American Psychiatric Ass'n to provide reliable scientific evidence of Medical Model and APA essentially admitted it could not.
- Query: Does a headache demonstrate an aspirin deficiency?

Sources: August 22, 2003 letter from Scientific Panel (attached) and Duncan Double article on Hunger Strike.

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Neuroleptics . . .

- increase the likelihood that a person will become chronically ill.
- greatly reduce recovery rates as compared to unmedicated patients.
- cause a host of debilitating physical, emotional and cognitive side effects, and lead to early death.
- The new “atypical” neuroleptics are not better than the old ones in terms of their safety and tolerability, and quality of life may even be worse on the new drugs than on the old ones.

Authority: Whitaker Affidavit & sources cited therein.

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[Key Studies]

- CATIE Study: Effectiveness of neuroleptic Drugs in Patients with Chronic Schizophrenia, *New England Journal of Medicine*, N Engl J Med 2005;353:1209-23
- Outcome Factors: Factors Involved in Outcome and Recovery in Schizophrenia Patients Not on neuroleptic Medications, *Journal of Nervous and Mental Disease*, Vol 195, May, 2007, No. 5: 407-414.
- WHO Studies: “The International Pilot Study of Schizophrenia: five-year follow-up findings,” *Psychological Medicine*, 22 (1992), 131-145; “Schizophrenia: manifestations, incidence and course in different cultures, a World Health Organization ten-country study,” *Psychological Medicine* 20, monograph supplement, (1992):1-95.
- Morbidity and Mortality in People with Serious Mental Illness, *National Association of State Mental Health Program Directors*, (2006).
- Anatomy of an Epidemic: Psychiatric Drugs and the Astonishing Rise of Mental Illness in America, *Ethical Human Psychology and Psychiatry*, Volume 7, Number 1: 23-35 Spring 2005.

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[What Does the Science Suggest?]

- Selective use only after other approaches have failed.
- Other Approaches:
 - Therapeutic Alliance/Feeling Safe/No Coercion, Etc. (Practical Problem Solving)
 - Soteria
 - Open Dialogue
 - Alternatives Beyond Psychiatry (book)

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[Legal Rights]

- Due Process
- Involuntary Commitment
 - Dangerousness
 - No Less Restrictive Alternative
- Forced Drugging
 - Police Power
 - *Parens Patriae*
 - Best Interests
 - No Less Intrusive Alternative

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[Hallmarks of 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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[Constitutional Principles]

- To Justify Deprivation of Fundamental Rights:
 - State Action Must Further Compelling State Interest
 - Must Be No Less Restrictive/Intrusive Alternative

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[Compelling State Interests]

- Involuntary Commitment
 - Safety
- Forced Drugging
 - *Parens Patriae*
 - Safety Emergency
 - Make Competent to Stand Trial

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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
 - Incapable of surviving safely in freedom. *Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373, 1383 (1996).
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).
 - Must be by Clear & Convincing Proof. *Addington v. Texas*, 441 US 418 (1979).

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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. The specific kinds of drugs at issue may matter here as elsewhere. Different kinds of neuroleptic 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) (Competence to Stand Trial Case).

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[Forced Drugging under Alaska Constitution: Myers*]

- Right to be Free of Unwanted Psychiatric Drugging is a Fundamental Constitutional Right.
- Right May be Overridden Under *Parens Patriae* Justification Only When
 - In the Person's Best Interest, and
 - No Less Intrusive Alternative Available.
 - 2nd *Bigley* appeal on right to less intrusive alternative.

*138 P.3d 238 (2006)

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[Sanism & Pretextuality]

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 J.LHEALTH 15, 33-34.

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[Importance of Effective Attorney]

"Empirical surveys consistently demonstrate that the quality of counsel 'remains the single most important factor in the disposition of involuntary civil commitment cases.' . . . Without such [adequate] counsel, it is likely that there will be no meaningful counterbalance to the hospital's "script," and the patient's articulated constitutional rights will evaporate.

Perlin, "And My Best Friend, My Doctor/Won't Even Say What It Is I've Got": The Role And Significance Of Counsel In Right To Refuse Treatment Cases, 42 San Diego Law Review 735 (2005)

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[Why? . . .]

- . . . are we taking such a harmful, counterproductive approach?
- . . . are stated legal rights dishonored as a matter of course?

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[Discussion]

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[Fear and Absolution]

- Fear
 - People Diagnosed with Serious Mental Illness no More Prone to Violence
- Absolution
 - By Accepting "Medical Model," No one is Responsible

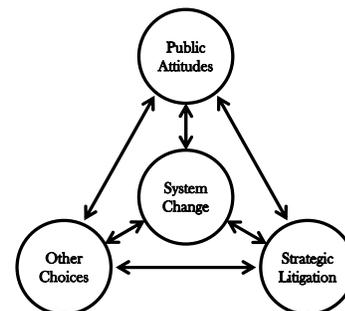
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[Other Factors]

- Social Control
 - It is Not the Thinking, 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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[The Transformation Triangle]



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[Goals]

- Substantially Increase Recovery Rate after diagnosis of Serious Mental Illness
- Substantially Reduce If Not Eliminate Force
- System Support of People's Non-Medication Choices

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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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[Other Choices: Work Better for Many]

- Soteria
- Open Dialogue (Finland)
- Longitudinal Studies (Harding)
- Research cited at <http://psychrights.org/Research/Digest/Effective/effective.htm>

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[Finland Open Dialogue Approach: Five Year Study of Psychotic Patients]

- 82% did not have any residual psychotic symptoms;
- 86% had returned to their studies or full-time jobs;
- only 14% were on disability; and
- 71% never took any neuroleptic medication.

Psychotherapy Research, 2006; 16(2):214-28.

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[PsychRights in Alaska]

- *Myers* (2006)
 - Best Interests
 - No Less Intrusive Alternative
- *Wetherhorn* (2007)
 - Unable to Survive Safely in Freedom
 - Not consider Effective Representation Issue
- *Bigley* (On Appeal so far)
 - Define Unable to Survive Safely in Freedom
 - Necessity for Transcript by Masters
 - State Must Pay for Less Intrusive Alternative
 - File Open to Public if Wanted

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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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[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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[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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["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 Statutes]

- Every reasonable opportunity to accept voluntary treatment before involvement with the judicial system. [?????]
- "POA" – Police Officer Application
- *Ex Parte*
- 30 Day Commitment
- 90 Day Commitment
- 180 Day Commitments
- Involuntary Medication

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[AS 47.30.655 Purpose of major revision.]

Balance Rights & State's Interests; Principles

1. Every reasonable opportunity to accept voluntary treatment before involvement with the judicial system;
2. Least restrictive alternative environment consistent with their treatment needs;
3. Treatment occur as promptly as possible as close to the individual's home as possible;
4. System of mental health community facilities and supports be available;
5. Patients be informed of their rights and be informed of and allowed to participate in their treatment program as much as possible;
6. Persons who are mentally ill but not dangerous to others be committed only if there is a reasonable expectation of improving their mental condition.

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[AS 47.30.700 (*Ex Parté*)]

- Upon Petition of Any Adult Judge Conduct or Direct Screening Investigation --mentally ill and, as a result gravely disabled or present likelihood of serious harm to self or others.
- If so, without notice (*ex parté*), direct peace officer take into custody and deliver to nearest appropriate facility for emergency examination or treatment.
- No Exigency Requirement.

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[Definition of Gravely Disabled
(AS 47.30.915(7))]

(7) "gravely disabled" means a condition in which a person as a result of mental illness

(A) is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken; or

(B) will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of the person's previous ability to function independently;

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[AS 47.30.705 Emergency detention for evaluation
("POA" or "Police Officer Application")]

- Police Officer, Physician, or Clinical Psychologist having probable cause to believe person is mentally ill and likely to cause serious harm to self or others of such immediate nature that no time for *ex parte* may cause person taken into custody and transported to nearest evaluation facility.

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[AS 47.30.710 Examination.]

- a) Examine Person Brought in under POA or *Ex Parté* within 24 hours.
- b) If (1) mentally ill & gravely disabled or likelihood of serious harm to self or others and (2) in need of treatment, file for *Ex Parté*.

Query: What is exigency at this point justifying no notice?

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[30-Day Commitment
[AS 47.30.725 – .735]]

- Right to Be Free of Medication (but exceptions)
- Right to counsel
- Mentally ill and as a result is likely to cause harm to self or others or is gravely disabled
 - Note: "serious" not required; nor any explicit immediacy
- No Less Restrictive Alternative Has Accepted Patient.

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30-Day Commitment (Continued)

Petition Must Include (AS 47.30.730):

- Gravely Disabled Person's Condition Could be Improved
- Not Accepted Voluntary Treatment
- List Prospective Witnesses
- List the facts and specific behavior of the respondent supporting the allegation

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30-Day Commitment (Continued)

- No Right to Jury Trial
- Setting Least Likely to be Harmful
- Elect Open or Closed Hearing
- Rules of Evidence and Civil Procedure Applied so as to Provide for the Informal but Efficient Presentation of Evidence.
- To Have an Interpreter.
- To Remain Silent (but may be used against)

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90-Day Commitment (AS 47.30.740 -- .755)

Same as 30-Day except:

- Can Demand Jury Trial
- Must Allege Serious Bodily Harm (but not find) or continue Gravely Disabled
- 30 Day Findings of Fact May Not Be Rebutted, except for Newly Discovered Evidence
- Going Voluntary Same as Commitment
- Right to Independent Expert
- Civil Rules & Evidence?

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180-Day Commitments (AS 47.30.770)

- Follows 90-Day
- Successive 180 Days
- 30, 90 & 180 Day Facts May Not be Rebutted Except for Newly Discovered Evidence

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Psychotropic Medication (AS 47.30.836 -- .839)

- Must Be Competent to Give or Withhold Informed Consent (AS. 47.30.836)
- Informed Consent Defined in AS 47.30.837
- May Force In Emergency (AS 47.30.838)

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Involuntary Medication – Non Emergency (AS 47.30.839)

- Court Visitor Appointed to Administer Capacity Assessment Instrument and Assist Court in Investigating Competence.
- Hospital Must Follow Advance Directive Unless can Prove Incompetent When Made (AS 47.30.839).
 - API Not Equipped to Deal With This.
- May Force if Not Competent to Withhold Consent
 - Hospital Can Drug any Way it Wants
 - Ruled Unconstitutional in *Myers v. API* Unless also Best Interest & No Less Intrusive Alternative.

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[Voluntary Aspiration Unfulfilled]

- No Notice Before Picked Up & Dragged In.
- Involuntary Is Easiest for Hospital
 - Know no legal defense
 - Know they don't have to be comforting enough for patient to want to be there.
- You Can Sign In But Not Out
- Truly Voluntary Truly Rare

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[Coercion: Psychiatry Has Lost Its Way]

- “Therapeutic Alliance” Most Important Thing.
- Involuntary Commitment and Forced Drugging Should be Exception and Hard to Obtain.

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[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

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[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>

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