



LAW PROJECT FOR PSYCHIATRIC RIGHTS

Getting to the Next Level

April, 2017

Executive Summary

Since the introduction of the supposed miracle drug Thorazine in 1954, the mental illness disability rate in the United States has gone from .2% to 1.6% of the population.

The average life span of people in the public mental health system in the United States diagnosed with serious mental illness is now 25 years shorter than the general population; In 1900, their average life spans were the same as the general population.

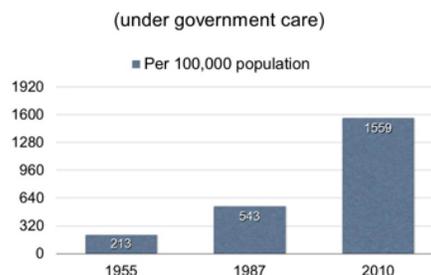
The Mental Health System in the U.S. is seeing recovery rates of people diagnosed with psychotic mental illness, such as schizophrenia and bipolar disorder in the 5% range, while the "Open Dialogue" selective use of medication program in Western Lapland is achieving 80% recovery rates. This is largely because of the over use of psychiatric drugs, often forced on unwilling patients through court proceedings in which patients' rights are routinely violated.

Founded in 2002, the mission of the Law Project for Psychiatric Rights (PsychRights) is to mount a strategic litigation campaign against forced psychiatric drugging and electroshock throughout the United States akin to the successful effort of the N.A.A.C.P. in the 1950's and 1960's to end legal segregation. This includes addressing the horrendous psychiatric drugging of children in the United States, especially poor children on Medicaid and in foster care.

PsychRights does not view strategic litigation as the sole means to reform the U.S. mental health system into one that is helpful rather than harmful, but that it is likely a necessary component,

Budget	Annual	5 Years
Litigation Director (J. Gottstein)		
Salary	\$ 100,000	
Fringe	\$ 30,000	
Total Litigation Director	\$ 130,000	\$ 650,000
Executive Director		
Salary	\$ 90,000	
Fringe	\$ 27,000	
Total Executive Director	\$ 117,000	\$ 585,000
Three Attorneys		
Salaries	\$ 240,000	
Fringe	\$ 72,000	
Total Attorneys	\$ 312,000	\$ 1,560,000
Administrative Support (3 people)		
Salaries	\$ 108,000	
Fringe	\$ 32,400	
Total Administrative Support	\$ 140,400	\$ 702,000
Travel	\$ 100,000	\$ 500,000
Litigation Costs, including Experts	\$ 200,000	\$ 1,000,000
Equipment		\$ 78,000
Other Costs (Occupancy, Telecomm, supplies)	\$ 85,000	\$ 425,000
Grand Total	\$ 1,084,400	\$ 5,500,000

The Disabled Mentally Ill in the United States



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

just as desegregation litigation was in the 1950's and 1960's.

PsychRights has had tremendous success without paid staff, but in order to get to the next level it must have the funds to be able to hire at least three attorneys, as well as to further support PsychRights' mission. In addition, its long-time President has recently had to substantially curtail his efforts on behalf of PsychRights for financial reasons. Due to the nature of litigation, assured funding for at least five years is necessary and such a budget is \$5.5 million.



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Problem Statement

Psychiatric drugs not only don't work, they are counterproductive, greatly increasing the disability rate of people diagnosed with mental illness and are very physically harmful, including causing early death. Since the introduction of the supposed miracle drug Thorazine in 1954, the mental illness disability rate in the United States has gone from .2% to 1.6% of the population.¹ The average life span of people in the public mental health system in the United States diagnosed with serious mental illness is now 25 years shorter than the general population as described in the foreword of [Morbidity and Mortality in People with Serious Mental Illness](#), shown to the right.² This is in contrast to 1900, when the average life spans were the same as the general population.

I. Foreword

It has been known for several years that persons with serious mental illness die younger than the general population. However, recent evidence reveals that the rate of serious morbidity (illness) and mortality (death) in this population has accelerated.

In fact, persons with serious mental illness (SMI) are now dying 25 years earlier than the general population.

The Mental Health System in the United States is seeing recovery rates of people diagnosed with serious mental illness, such as schizophrenia and bipolar disorder in the 5% range,³ while the "Open Dialogue" selective use of medication program in Western Lapland is achieving 80% recovery rates.⁴ Stimulant "treatment" for children (& now Adults) diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), and the Selective Serotonin Reuptake Inhibitor (SSRI) "antidepressants" for depression both cause manic reactions in 5% to 10% of those treated. This results in many then being diagnosed with Bipolar Disorder, put on the neuroleptics⁵ and anti-seizure drugs misbranded as "mood stabilizers" and down the road to the disability and diminished life that being on such drugs causes for so many. All of this is impeccably documented in Robert Whitaker's 2010 book, [Anatomy of an Epidemic: Magic Bullets, Psychiatric Drugs, and the Astonishing Rise of Mental Illness in America](#). Dr. Peter Gøtzsche's book, [Deadly Psychiatry and Organised Denial](#) also details the tremendous harm, as do, frankly,

¹ US Social Security Administration Reports 1987-2010.

² National Association of State Mental Health Program Directors, October 2006.

³ Harrow and 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.

⁴ Seikkula, J. "Five-year experience of first-episode nonaffective psychosis in open-dialogue approach," *Psychotherapy research* 16 (2006): 214-28.

⁵ This class of drugs was originally called "neuroleptics," which means "seize the brain," but are now commonly called "antipsychotics" due to drug company marketing. However, they have antipsychotic effects for very few; their main effect being to sedate and suppress the person so much that they are less troubled and/or troubling. For that reason the word "neuroleptic" is used here.

a number of other books, such as [The Myth of the Chemical Cure](#) by British psychiatrist Joanna Moncrief and [Mad Science](#) by Stuart Kirk, Tomi Gomory, and David Cohen.

In fact psychiatric drugs are so harmful that the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated forced psychiatric drugging can constitute torture:

[F]orced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition . . . may constitute a form of torture or ill-treatment.⁶

More recently the Special Rapporteur has concluded:

States should impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs, for both long- and short- term application. . . .

Forced treatment and commitment should be replaced by services in the community that meet needs expressed by persons with disabilities and respect the autonomy, choices, dignity and privacy of the person concerned. States must revise the legal provisions that allow . . . any coercive interventions or treatments in the mental health setting without the free and informed consent by the person concerned.⁷

In the United States, the constitutional and statutory restrictions against forced psychiatric drugging are almost universally ignored. In PsychRights' experience this is because the government paid lawyers assigned to represent people facing forced psychiatric drugging (a) are not encouraged, nor given the opportunity to vigorously defend their clients, and (b) believe that if their clients were not crazy, they would know it was good for them and therefore don't put up much of a fight.

As renowned mental disability law scholar Professor Michael Perlin has written:

Traditionally, lawyers assigned to represent state hospital patients have failed miserably in their mission.⁸

⁶ [Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), to United Nations General Assembly, July 28, 2008, ¶63.

⁷ [Statement by Mr. Juan E Méndez, Special Rapporteur On Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment](#), 22nd session of the Human Rights Council of the United Nations, March 4, 2013, Geneva, p. 5.

⁸ *Competency, Deinstitutionalization, and Homelessness: A Story of Marginalization*, Michael L. Perlin, *Houston Law Review*, 28 *Hous. L. Rev.* 63 (1991).

and

[C]ourts 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.⁹

The pervasive violation of rights in forcing people to endure psychiatric drugs and electroshock against their will permeates and pollutes the entire United States mental health system and is one of the reasons why current psychiatric practices survive in the face of the great harm it causes.

Strategic litigation can play a critical role in creating a mental health system that is helpful, minimizes harm, and eschews force and coercion.

The Role of Strategic Litigation

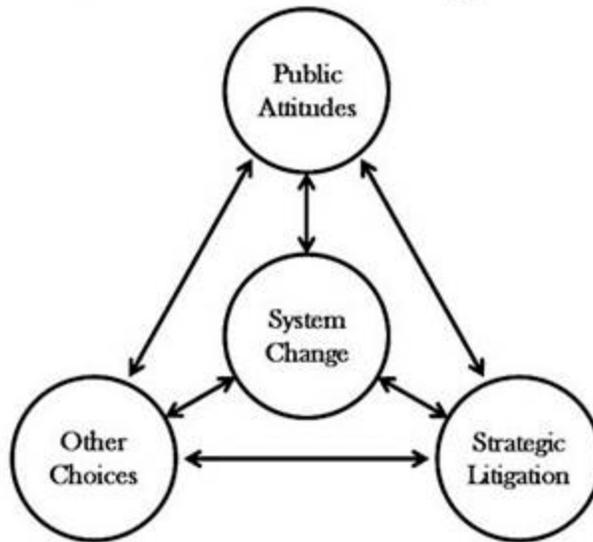
There are two key constitutional principles that restrict the government's right to force psychiatric drugs on unwilling patients in non-emergency situations. The first is that it has to be in the patient's best interest, and the second is it must be the least intrusive means to achieve the government's legitimate objective. In PsychRights' view, forced psychiatric drugging can never or virtually never actually meet these criteria.

These two principles—best interests/least intrusive means—and related legal rights, can be utilized in a strategic fashion with two other elements to create a mental health system that is helpful, minimizes harm, and eschews force and coercion.

These three elements (1) Public Attitudes (or Public Education), (2), Other Choices (or Alternatives) and (3) Strategic Litigation (or Honoring Legal Rights), each reinforce the others in ways that can lead to meaningful system change that might be depicted as follows:

⁹ *The ADA and Persons with Mental Disabilities: Can Sanist Attitudes Be Undone?* by Michael L. Perlin, *Journal of Law and Health*, 1993/1994, 8 JLHEALTH 15, 33-34

Transformation Triangle



To illustrate, debunking the myth among the general public that people do not recover after a diagnosis of serious mental health illness can encourage the willingness to invest in recovery oriented alternatives, i.e., other choices. Equally important, and the other side of the same coin, having successful, recovery-oriented alternatives will help in debunking the myth that people don't recover from serious mental illness and can thus change public attitudes. Similarly, because judges and even counsel appointed to represent psychiatric defendants to at least some degree reflect societal views, if society's views change, their views can be expected to change as well. As a result, attitudes, like "if this person wasn't crazy, she would know these drugs are good for her" need not drive decision-making. Consequently people's rights will be taken more seriously.

The converse is true as well: legal cases can have a big impact on public views. *Brown v. Board of Education*,¹⁰ which resulted in outlawing segregation, is a classic example of this. Before *Brown v. Board of Education* it was common to find people who supported segregation. After all, the Supreme Court had said it was alright. Since *Brown v. Board of Education* hardly anyone says they support segregation and there is no doubt the court decision played a big part in this change in attitudes. Finally, down at the bottom of the Transformation Triangle, since people have the legal right to the least intrusive alternative, i.e., other choices, litigation can force the creation of alternatives. At the same time, judges are reluctant to hold that people can't be drugged because of an alternative that could be provided, but isn't available. Should such alternatives actually become available it is far more likely that courts will not order people to be drugged against their will.

¹⁰ U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955).

Strategic Litigation

PsychRights' strategic litigation is divided into three sections; (1) adults. (2) children and youth, and (3) FDA Petitions, which can apply to both adults, and children and youth.

A. Challenges to Court Ordered Psychiatric Drugging (Adults)

There are different contexts in which court ordered psychiatric drugging of adults arise. The three primary ones are (1) civil cases where the asserted grounds are the person is incompetent to decline the drugs, which is known as the *parens patriae* justification, (2) where the drugs are administered on safety grounds, known as the police power justification, and (3) to make the person competent to stand trial.

Thirty years ago the high court of New York held in the civil context:

If . . . the court concludes that the patient lacks the capacity to determine the course of his own treatment, the court must determine whether the proposed treatment is narrowly tailored to give substantive effect to the patient's liberty interest, taking into consideration all relevant circumstances, including the patient's best interests, the benefits to be gained from the treatment, the adverse side effects associated with the treatment and any less intrusive alternative treatments.¹¹

This succinctly describes what the state has to prove to override adults' rights not to be drugged against their will in the civil context.

In the 2003 *Sell v. United States*¹² competence to stand trial decision, the United States Supreme Court held as a constitutional matter that a defendant cannot be drugged against his will to be made competent to stand trial (a dubious proposition in any event) unless (1) there is an important government interest at stake, (2) the forced drugging will further that interest, (3) it is in the person's best interest, and (4) there are no less intrusive alternatives.

In the 2006 *Myers*¹³ decision in appeal brought by PsychRights, the Alaska Supreme Court held that in order for Alaska's forced drugging procedures to be constitutional the state had to prove by clear and convincing evidence that it is in the person's best interest and there is no less intrusive alternative available.¹⁴ In the 2009 *Bigley*¹⁵ decision, another appeal brought by PsychRights, the Alaska Supreme Court held that an alternative is "available" if it is feasible.

¹¹ *Rivers v. Katz*, 495 N.E.2d 337, 497-498 (New York 1986).

¹² 539 U.S. 166, 123 S.Ct. 2174 (2003).

¹³ *Myers v. Alaska Psychiatric Institute*, 138 P3d 238 (Alaska 2006).

¹⁴ *Myers* has been called "[the most important State Supreme Court decision](#)" on forced drugging in 20 years, referring to the *Rivers v. Katz* decision.

These cases establish the constitutional requirements before a person can be psychiatrically drugged against their will in the civil context. First, people have the right to decline the medication unless they are found to be incompetent to do so. Second, it has to be in the person's best interest and third there must be no less intrusive alternative. It is especially the best interest and least intrusive alternative requirements on which PsychRights' strategic litigation is focused. As set forth above, it is simply not true that forcing people to take the drugs is in their best interest and there are no less intrusive alternatives.

Strategic litigation for adults would primarily be based on these twin pillars in three main types of litigation: (1) Inpatient, (2) Community Drugging Orders, and (3) Civil Rights.

(1) **Inpatient**

It is apparent that the criteria for forcing a person to take psychiatric drugs against their will can never or almost never be met because it is not in their best interest and there are virtually always feasible less intrusive alternatives. The primary reason people people facing forced drugging orders lose in court is the abysmal legal representation they receive.

A 2007-2008 study of the performance of attorneys representing people facing commitment in San Diego County, California,¹⁶ found the average duration in contested cases was 22.3 minutes, the longest lasting 44 minutes and the shortest 7 minutes.¹⁷ Professor Michael Perlin, the foremost expert on United States Mental Disability Law has noted, "If there has been any constant in modern mental disability law in its thirty-five-year history, it is the near-universal reality that counsel assigned to represent individuals at involuntary civil commitment cases is likely to be ineffective."¹⁸ As San Diego law professor Grant Morris has noted, there is very little written about the adequacy of council in forced drugging cases, but it is his as well as PsychRights' sense that it is even worse than for commitment. For a description of how this contributes to endemic denial of people's rights, *see*, [Involuntary Commitment and Forced Psychiatric Drugging in the Trial Courts: Rights Violations as a Matter of Course](#) by PsychRights' President and CEO.¹⁹

¹⁵ *Bigley v. Alaska Psychiatric Institute*, 208 P3d 168 (Alaska 2009).

¹⁶ In California this is often accomplished through the subterfuge of establishing a conservatorship after which the conservator consents to both involuntary hospitalization and forced drugging, which is then classified as being voluntary.

¹⁷ G. Morris, Let's Do The Time Warp Again": Assessing The Competence Of Counsel In Mental Health Conservatorship Proceedings, *San Diego Law Review*, 46 SANDLR 283, 330 (2009).

¹⁸ M. Perlin, I Might Need a Good Lawyer, Could Be Your Funeral, My Trial": Global Clinical Legal Education and the Right to Counsel in Civil Commitment Cases, *Washington University Journal of Law and Policy*, 28 Wash. U. J.L. & Pol'y 241, 242 (2008).

¹⁹ 25 *Alaska L. Rev.* 51 (2008).

Providing proper representation to people facing forced drugging is the right thing to do. It can also have a profound impact beyond the beneficial effect of stopping the forced drugging of the individuals involved as described in the Transformation Triangle above. In a small jurisdiction, such as Alaska, having just one full-time attorney raising serious legal challenges to the day in and day out inpatient forced-drugging can put sufficient pressure on "the system" in Alaska to provide non-drugging alternatives. This may include taking appeals and seeking stays of forced drugging orders where appropriate.

(2) Community Drugging Orders (Outpatient Commitment)

To a large extent, court ordered psychiatric drugging has moved into the community through what PsychRights calls Community Drugging Orders. There are various euphemisms used for these court orders, such as Outpatient Commitment or Community Treatment Orders and, in New York, Assisted Outpatient Treatment. There haven't been many legal challenges to the practice, but there was one in which the New York Court of Appeals upheld the Community Drugging statute there, known as "Kendra's Law," on the grounds that such a court order "does not authorize forcible medical treatment;" but instead "simply triggers heightened scrutiny on the part of the physician, who must then determine whether the patient may be in need of involuntary hospitalization."²⁰ This opinion by New York's highest court is divorced from reality and in 2008, PsychRights issued a [Memorandum](#) about possible legal challenges to New York's community forced drugging regime. These legal challenges include evidence/arguments that even under the statutory provisions, the state should almost never be able to get Community Drugging Orders because the legal criteria are not met.

(3) Civil Rights Litigation Under 42 United States Code §1983

Civil rights litigation under 42 U.S.C. §1983 could also be pursued for violating people's rights. The main federal civil rights statute, 42 USC § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

In regular language, this means that where people are deprived through state action of rights they have under the United States Constitution or federal statutes, one can sue in federal court to vindicate those rights. Remedies can include both injunctions and monetary damages.

²⁰ *In the Matter of K.L.*, 806 N.E.2d 480 (NY 2004).

B. Challenges to Government Psychiatric Drugging of Children

A universally-recognized explosion in the psychiatric drugging of children has occurred in the U.S. over the last 30 years. During the mid-1980s, for example, it was quite uncommon to give children drugs to change their behavior or moods except to prescribe stimulants for the then-emerging psychiatric category of Attention-Deficit Hyperactivity Disorder (ADHD). Perhaps 1 or 2 in 100 children at that time received stimulants, and a smaller number received benzodiazepine tranquilizers. Neuroleptics used principally with adults diagnosed with psychotic disorders, were used even less frequently among children. For children covered by private insurance, only 1 in every 2,500 was prescribed a neuroleptic. Among children covered by Medicaid, prescribing was much higher yet still rare (1 in 300). Prescribing of neuroleptics to children under 6 years of age was virtually unknown. All told, fewer than 50,000 U.S. youth under 18 years received a neuroleptic in 1987.²¹

Today, about 1 in 10 youths take stimulants, 4 in 100 take antidepressants, and 1 or 2 per 100 take neuroleptics or anticonvulsants. The absolute number of children on neuroleptics in the U.S. lies between 500,000 and 1 million, and these prescriptions have increased at the highest rate.²² As Birnbaum and colleagues illustrate: "between 2002 and 2007, antipsychotic use increased by 62% in Medicaid enrolled children."²³ Between 1993 and 2007, the number of office-visits with antipsychotic prescriptions increased from 0.24 to 1.84 per 100 children and from 0.78 to 3.76 per 100 adolescents."²⁴ These numbers of medical visits resulting in neuroleptic prescriptions translate as increases of 766% among children and 482% among adolescents over the last 25 years.

Children and youth from poor families are particularly vulnerable to neuroleptic prescriptions because their parents do not typically have the social power to stand up to authorities who insist that their children take these drugs. Some parents are threatened with removal of their children if they do not agree to give them psychiatric drugs. Many children have in fact been removed from their parents on the grounds that they were neglecting their children's medical needs by failing to give them psychiatric drugs. So far, Medicaid has paid for neuroleptic prescriptions without any question, though some states are double-checking prescriptions for children under six and/or more than five psychiatric drugs at the same time. Once children and youth enter foster care, they are several times more likely to be given neuroleptics than non-foster children and youth on Medicaid.

²¹ Whitaker, R. (2010). *Anatomy of an epidemic*. New York: Broadway Paperbacks.

²² Olfson M, Blanco C, Liu SM, Wang S, Correll CU. (2012). National trends in the office-based treatment of children, adolescents, and adults with antipsychotics. *Archives of General Psychiatry*, 69(12), 1247–1256.

²³ Birnbaum, M. L., Saito, E., Gerhard, T., Winterstein, A., Olfson, M., Kane, J. M., & Correll, C. U. (2013). Pharmacoepidemiology of antipsychotic use in youth with ADHD: Trends and clinical implications. *Current Psychiatry Reports*, 15, 382-395,

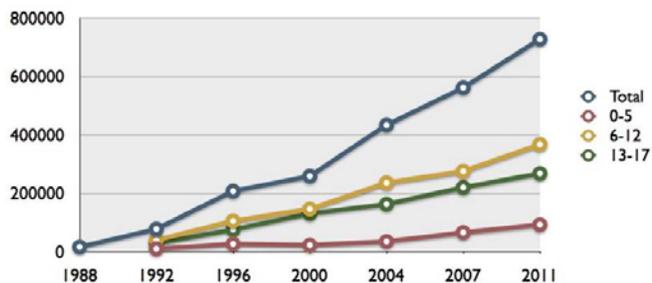
²⁴ *Id.*, page 383, citations omitted.

To keep this proposal to a reasonable length we do not describe the effects of the other classes of psychiatric drugs prescribed to children, including stimulants, antidepressants, and anticonvulsants (marketed as "mood stabilizers"), all of which cause or are implicated in the occurrence of many physical ailments, emotional, cognitive and behavioral complications (such as suicidal ideation), and

occasionally death. Moreover, the massive increase in the psychiatric drugging of children has not led to a decline in the problems of children, but rather, has paralleled a rise in the disability rate of children in the U.S. from virtually zero in 1988 to approaching one million today (as shown in the figure to the right from Robert Whitaker, author of *Anatomy of an Epidemic*, 2010). While one cannot decisively conclude that psychiatric drugs have *caused* the increase in the disability rate, they have almost certainly been a primary contributor

to it (in concert with various mutually reinforcing socio-cultural changes around rearing, labelling, teaching and disciplining children in families, schools, and society).

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.

The problem is that, while in individual cases psychotropic drugs may provide clear short-term benefits (such as improving children's sleep, appetite, and mood and providing respite to some parents or assuaging guilt that they are "to blame" for their child's misbehavior), it behooves all stakeholders to consider negative consequences of the increased use of these drugs, especially the neuroleptics. In 2013, Cohen and colleagues outlined four concerns: (1) observed prescription patterns outpace any and all evidence of safety and efficacy in children, (2) painful though normal family conflicts, childhood misbehaviors, traumatic reactions, and variations in temperament are medicalized, leading to a loss of vitality in the larger culture, (3) financial conflicts of interests in the research enterprise systematically mislead providers and consumers about drug effects by exaggerating positive effects and downplaying negative effects, and (4) the study of potential harm to children's developing brains and emotions is neglected by responsible authorities.²⁵

Despite calls for cautious prescribing from all quarters, hand-wringing by legislators and child advocates, and huge fines imposed on pharmaceutical companies for illegal marketing of psychotropic drugs such as the neuroleptics (see below), there has been no significant decrease in the numbers of children receiving these drugs, only steady increase or recent signs of levelling

²⁵ Cohen, D., Dillon, F., Gladwin, H., & De La Rosa, M. (2013). American parents' willingness to prescribe psychiatric drugs to children: A test of cultural mediators. *Social Psychiatry and Psychiatric Epidemiology*, 48(12).

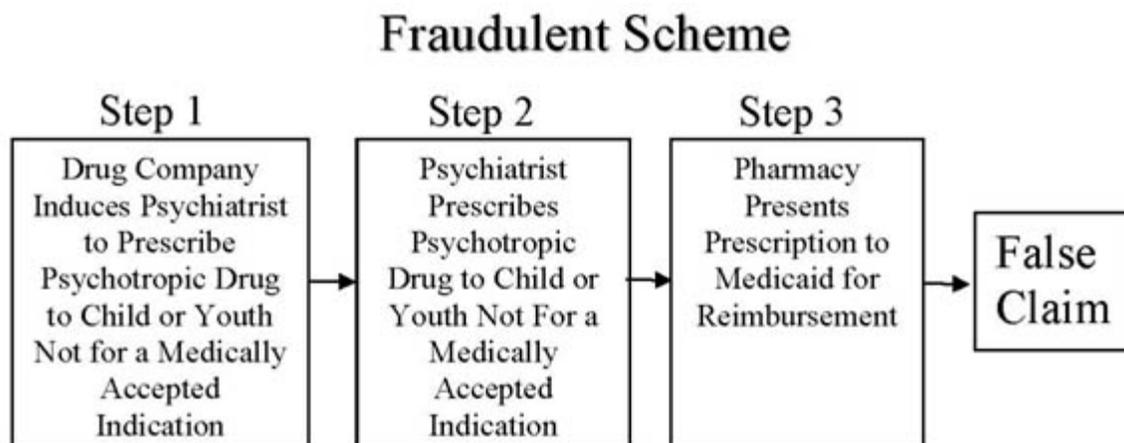
off (e.g., among the population of toddlers). A campaign of strategic litigation targeting prescriptions to children funded by Medicaid and children in foster care may hold the best promise to stem the increase. Additionally, litigation to roll back pediatric approvals for the use of psychotropic drugs, especially neuroleptics in children and youth by the Food and Drug Administration (FDA) could have a large, beneficial impact.

(1) False Claims Act (Whistleblower) Cases Over the Psychiatric Drugging of Children and Youth

The massive psychiatric drugging of America's children, particularly poor, disadvantaged children and youth through Medicaid as well as those in foster care is an unfolding public health catastrophe of massive proportions. This catastrophe is being caused by the fraudulent promotion of these harmful practices by pharmaceutical companies sacrificing children and youth's health, futures and lives on the altar of corporate profits.

Under Medicaid, outpatient prescriptions are legally covered only if they are for a "medically accepted indication," which means uses approved by the FDA or "supported" by any of three drug references known as "compendia."²⁶ In other words, "off-label" prescriptions are covered only if there is support for the use in at least one of the compendia. Thus, a prescription for such an off-label prescription is a false claim. Anyone who submits or causes the submission of a false claim can be prosecuted under the False Claims Act. Drug companies have been illegally promoting the off-label use of psychiatric drugs in children and youth, thus causing false claims.

The Fraudulent Scheme, as it pertains to Medicaid recipients, can be depicted as follows:



As examples, in 2009, Eli Lilly agreed to pay \$1.4 Billion in criminal and civil penalties for such off-label promotion of Zyprexa and Pfizer agreed to pay \$2.3 Billion for the illegal off-label

²⁶ 42 USC 1396R-8(k)(3), 42 USC 1396R-8(k)(6), and 42 USC 1396R-8(g)(1)(B)(i).

promotion of Geodon and other drugs. In 2010, Astra-Zeneca agreed to pay \$520 million for the illegal off-label promotion of Seroquel for use in children, and Forest Laboratories agreed to pay \$309 million for the illegal off-label promotion of the use of Lexapro and Celexa in children. However, despite these large penalties by drug companies, the practice has not stopped. It is merely a cost of doing business to these pharmaceutical Goliaths and, in fact, caps their liability. Most importantly, these settlements have not stopped the practice of child psychiatrists and other prescribers giving these drugs to children and youth and Medicaid continuing to pay for these fraudulent claims.

[PsychRights' Medicaid Fraud Initiative Against Psychiatric Drugging of Children & Youth](#) is designed to address this problem by having lawsuits brought against the doctors prescribing these harmful, ineffective drugs, their employers, and the pharmacies filling these prescriptions and submitting them to Medicaid for reimbursement. Once one sues over specific offending prescriptions, all such prescriptions can be brought in, which means that any psychiatrist on the losing end of such a lawsuit will almost certainly be bankrupted, because each offending prescription carries a penalty of between \$5,500 and \$11,000. This is why it is anticipated that once this financial exposure becomes known to prescribers they will quit the practice. Anyone with knowledge of specific offending prescriptions can sue on behalf of the government to recover for such Medicaid Fraud and receive a percentage of the recovery, if any.

On August 28, 2013, in [United States and the State of Wisconsin ex rel. Dr. Toby Watson v. Jennifer King-Vassel](#), the United States Court of Appeals for the Seventh Circuit issued an [Opinion](#) agreeing with PsychRights that a drug prescription to a Medicaid beneficiary that is not for a medically accepted indication is a false claim and the prescriber causes the false claim by writing the prescription.

Of course, it can be expected that the defendants will vigorously contest everything, and there are no guarantees of success. PsychRights has posted a [video](#) where PsychRights's president, Jim Gottstein, goes through the requirements and identifies the major issues. The [Model Qui Tam Complaint](#) PsychRights has put together is set up for former foster youth to sue the doctors who prescribed the drugs to them, their employers, and the pharmacy(ies) submitting the false claims, but it can be easily modified for anyone else to file such a complaint, such as parents, teachers, therapists, etc.

(2) Civil Rights Litigation under 42 USC § 1983

Federal civil rights cases can also be brought on behalf of foster children and youth. Overall, children in foster care are medicated with psychotropic drugs two to five times more frequently than other children. Many children receive drugs from more than two drug classes. The basic argument has been outlined by Stenslie (2008), once a child in foster care herself and now a clinical social worker, who observed that many foster children might manifest disturbing or distressing or acting out behavior, but they are reacting *normally* to abuse and to abandonment, and to sudden placement in new and sometimes insensitive surroundings. Thus, diagnosing and medicating these children can be questioned and challenged. Rather than trying to help the children to be successful, or their parent(s) to be better parents, the public child welfare system labels the children and youth as mentally disordered because of these normal reactions,

communicates to them that the diagnosis means that they have a brain disease, and that they should expect to be sick — and to take psychiatric drugs — for the rest of their lives. Moreover, few children or their caretakers are properly informed about the risks of psychiatric drug use over months or years. Child welfare workers also receive woefully little training in recognizing and identifying adverse behavioral reactions to drugs, such that these are often misrecognized or perceived as additional psychiatric problems stemming from the child or youth and requiring additional medications.

What the system needs to do instead is help children and youth overcome what has happened to them and become successful adolescents and young adults. And, in fact, they have the constitutional right not to be harmed by the state through unnecessary psychiatric drugging while in foster care. In *Deshaney v. Winnebago County*, the United States Supreme Court ruled:

"[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."²⁷

In December of 2015, the United States District Court for the Southern District of Texas issued a decision regarding children's rights to be free from the unreasonable risk of harm caused by the state while in foster care.²⁸

Unlike the False Claims Act cases, the civil rights litigation approach will involve a direct, informed challenge to the effectiveness and safety of giving psychiatric drugs to children and youth and will involve extensive expert testimony. PsychRights has access to a number of top-tier experts for this purpose. David Cohen, Ph.D., and Martin Irwin, M.D., are expected to be the mainstays. Their bios are below and CVs attached. A number of others who are almost certainly willing to serve as expert witnesses in specific cases include David Healy, M.D., who literally wrote the history of psychopharmacology and is currently doing landmark work documenting the harms of psychiatric drugs, and Peter Gøtzsche, M.D., who co-founded the Cochrane Collaboration, the highly regarded independent group that evaluates the safety and effectiveness of drugs and medical devices, and authored the recent book, *Deadly Psychiatry and Organised Denial*. Both are internationally recognized experts.

PsychRights' current thinking is that such cases should seek a declaratory judgment that, based largely on the evidence outlined above and more comprehensively contained in the [CriticalThinkRx](#) curriculum (Cohen and Sengelmann, 2008), children and youth have the

²⁷ 489 U.S. 189, 109 S.Ct. 998 (1989).

²⁸ *M.D. v. Abbott*, 152 F.Supp.3d 684, (SD Tex. 2015).

constitutional (and perhaps the state statutory) right²⁹ not to be administered psychotropic drugs unless and until,

- (i) evidence-based psychosocial interventions have been exhausted,
- (ii) rationally anticipated benefits of psychotropic drug treatment outweigh the risks,
- (iii) the person or entity authorizing administration of the drug(s) is fully informed, and
- (iv) close monitoring of, and appropriate means of responding to, treatment emergent effects are in place.

Such a case could be filed by a single person or a small group of people to set precedent for all foster children in the state, or could be filed as a class action, asking the court to take control of this aspect of a state's foster care system.

Successfully challenging the unnecessary psychiatric drugging of foster children and youth as a violation of their federal civil right not to be harmed would be a game changer in every jurisdiction subject to such rulings and potentially influential throughout the country.

C. FDA Petitions

Another legal avenue is to challenge FDA approvals of specific psychiatric drugs, both generally and for pediatric use. Under 21 U.S.C. § 355(b)(1) drugs are supposed to be safe & effective for a particular use(s) before being approved. Under 21 U.S.C. § 355(e) approvals should be withdrawn, if, among other things:

1. Post-approval data show that the drug is unsafe for approved uses,
2. New evidence shows lack of substantial evidence drug will have the effect it purports to have under the approved application, or
3. The application contains any untrue statement of a material fact.

The information on drugs and clinical trials submitted to the FDA for drug approvals, especially psychiatric drugs, is often fraudulent.³⁰

²⁹ Children also have rights under state laws that can be enforced. For example, in Alaska, when a child or youth is in state custody as a foster child or a delinquent minor, the State and its delegates have a duty to care for the child, including meeting their emotional, mental, and social needs, and to protect, nurture, train, and discipline the child and provide the child with education and medical care.²⁹ These decisions must be made in the best interests of the child or youth.

³⁰ This is a strong statement, but true. See, for example, [An Analysis of the Olanzapine Clinical Trials--Dangerous Drug, Dubious Efficacy](#), by Grace Jackson, MD, as well as [Anatomy of an Epidemic: Magic Bullets, Psychiatric Drugs, and the Astonishing Rise of Mental Illness in America](#), by Robert Whitaker, and [Deadly Psychiatry and Organised Denial](#), by Dr. Peter Gøtzsche.

However, the FDA is very hard to challenge, and one must assume that such cases will need to be appealed into federal court.

Organization and Tax-Exempt Status

The Law Project for Psychiatric Rights was [incorporated](#) as an Alaska non-profit corporation on November 6, 2002, received its [advance determination letter](#) from the Internal Revenue Service that it was a public charity in 2003, and was ruled a [public charity](#) in 2007.

A. Personnel

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



Founding board member, President and CEO James B. (Jim) Gottstein, is a Harvard trained lawyer, who after escaping being made permanently mentally ill by the system in 1982, has made advocating for and representing people diagnosed with mental illness a major focus of his activities. He represented people diagnosed with mental illness in the [Alaska Mental Health Trust Lands Litigation](#), which resulted in a settlement valued at over \$1 Billion and served on the Alaska Mental Health Board from 1998 to 2004. Since co-founding PsychRights in 2002, Jim has won five Alaska Supreme Court cases holding that Alaska's involuntary commitment and forced drugging regime was unconstitutional or otherwise operated improperly, as well as the United States Court of Appeals for the Seventh Circuit decision confirming PsychRights' position that psychiatrists who write psychotropic drug prescriptions to children for reimbursement by Medicaid that are not for a "medically accepted indication" cause false claims (commit Medicaid Fraud). Mr. Gottstein's *Curriculum Vitae* is available at <http://psychrights.org/about/JGVita.pdf>.

(4) Don Roberts



Board member, Vice President, Secretary and Treasurer, Don Roberts is a well-known, long-time mental health consumer advocate and activist in Alaska. He was the president of Mental Health Advocates of Alaska (MHA AK), an Alaska non-profit corporation and tax exempt organization as well as a board member of Mental Health Consumers of Alaska, serving as president of that organization for a time as well. He has appeared many times before the Alaska Mental Health Board, which is the state agency charged with planning and coordinating mental health services funded by the State of Alaska. Mr. Roberts also served a term as a member of the Alaska State Independent Living Council (The SILC).

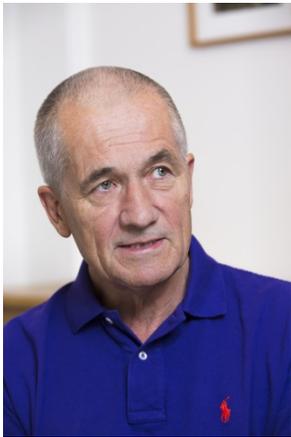
(5) Dorothy Dundas



Board member Dorothy Dundas was labeled a "schizophrenic" and forced to undergo 40 combined insulin coma-electroshock "treatments" while a teenager before being discharged in 1963. Dorothy says, "I experienced and witnessed many atrocities. I believe that luck, determination, and my own anger and one compassionate advocate were my best friends on the road to my ultimate survival and freedom." Ms. Dundas became an activist in 1978 after learning about the movement of psychiatric survivors against psychiatric abuse and is a national figure in this movement. Through a number of op-ed pieces, she has voiced her opposition to abusive psychiatric practices. Her poster, "[Behind Locked Doors](#)," which she created from her hospital records, is used in training

programs.

(6) Peter Gøtzsche, MD



Professor Peter C Gøtzsche graduated as a Master of Science in biology and chemistry in 1974 and as a physician 1984. He is a specialist in internal medicine; worked with clinical trials and regulatory affairs in the drug industry 1975-1983, and at hospitals in Copenhagen 1984-95. With about 80 others, he helped start The Cochrane Collaboration in 1993 with the founder, Sir Iain Chalmers, and established The Nordic Cochrane Centre the same year. He became professor of Clinical Research Design and Analysis in 2010 at the University of Copenhagen.

Peter has published more than 70 papers in "the big five" (BMJ, Lancet, JAMA, Ann Intern Med and N Engl J Med) and his scientific works have been cited over 15,000 times. Peter is author of the following

books:

- Deadly psychiatry and organised denial (2015)
- Deadly medicines and organised crime: How big pharma has corrupted health care (2013)
- Mammography screening: truth, lies and controversy (2012)
- Rational diagnosis and treatment: evidence-based clinical decision-making (2007)

Peter has an interest in statistics and research methodology. He is a member of several groups publishing guidelines for good reporting of research and has co-authored CONSORT for randomised trials (www.consort-statement.org), STROBE for observational studies (www.strobe-statement.org), PRISMA for systematic reviews and meta-analyses (www.prisma-statement.org), and SPIRIT for trial protocols (www.spirit-statement.org). Peter was one of the editors of the Cochrane Methodology Review Group 1997-2014. Dr. Gøtzsche's *Curriculum Vitae* is available at

<http://psychrights.org/about/2016JanuaryCurriculumVitaePeterG%C3%B8tzsche.pdf>.

(7) David Cohen, PhD



David Cohen, PhD, LCSW, is the Marjorie Crump Endowed Chair in Social Welfare at the Luskin School of Public Affairs of University of California, Los Angeles. Educated at McGill University, Carleton University, and the University of California, Berkeley, he has also been Professor of clinical social work at the University of Montreal and Florida International University. He has been funded by public and private research bodies in Canada, France, and the US to carry out studies of psychotropic drug uses and misuses. In his clinical work with clients for over two decades, he developed person-centered methods to withdraw from psychiatric drugs and given workshops to professionals on this topic around the world. To educate child welfare professionals about psychiatric drugs, he was funded by the U.S. Attorneys General

Consumer and Prescriber Grant Program to design and launch in 2009 *CriticalThinkRx*, an online Critical Curriculum on Psychotropic Medication. This course has been taken by thousands of social workers, psychologists, and lawyers. Tested in a 16-month controlled longitudinal study in two Florida counties, *CriticalThinkRx* was shown to reduce psychiatric prescribing to children in foster care. He has authored or co-authored over 100 articles and 12 books, including *Your Drug May Be Your Problem*, *Critical New Perspectives on ADHD*, and *Mad Science: Psychiatric Coercion, Diagnosis and Drugs*. Florida International University named him a "Top Scholar" in 2012 for outstanding accomplishments in research and scholarship. That year, as recipient of the Distinguished Fulbright-Tocqueville Chair to France, he lectured widely on psychoactive medications and sociocultural change, especially as it affects children. He has received several other awards for his scholarship, teaching, and advocacy. Dr. Cohen's *Curriculum Vitae* is available at http://psychrights.org/about/Cohen_CV_2015.pdf.

(8) **Martin Irwin, MD**



Martin Irwin, M.D., is a clinical professor of child and adolescent psychiatry at the New York University School of Medicine. He had previously been on the faculty of Louisiana State University Medical School New Orleans, SUNY Upstate, Brown University, Tulane Medical Center, and Northwestern and a visiting professor at Ben Gurion University of the Negev, Beersheva, Israel. He co-authored two books, *Psychiatric Hospitalization of Children* and *ADD/ADHD: A No-Nonsense Guide for Primary Care Physicians*, and has contributed numerous articles to the scientific literature. He lectures widely. In

addition to his academic achievements, he has designed and set up community-based programs at the interface between the child welfare, child mental health and educational systems including award-winning programs for mental health services for foster children and for improving the consent process for treatment with psychiatric medications and reducing the over-usage of medication for children. He received the Liberty Bell Award of the Onondaga County Bar Association for these efforts. He also designed and directed "The Get Kids off Medication Program" at the LSU Behavioral Science Clinic, the first program in the nation dedicated to tapering and discontinuing psychiatric medication for children being treated with multiple drugs and consulted to state governments on the use of psychiatric medication for foster children. Dr.

Martin's *Curriculum Vitae* is available at <http://psychrights.org/about/MartinIrwinCVNov2015.pdf>.

Year By Year Highlights

2002

	2002
Donations	4,175
Total Revenues	4,427
Expenses	4,163
Net	264

PsychRights was founded by James B. (Jim) Gottstein, Esq., with Don Roberts and Christopher Cyphers in November of 2002. The impetus was Mr. Gottstein reading [Mad in America: Bad Science, Bad Medicine and the Enduring Mistreatment of the Mentally Ill](#), by award-winning author Robert Whitaker, which Mr. Gottstein viewed as a "litigation roadmap" for challenging forced psychiatric drugging based on the science showing it to be harmful and counterproductive.

To launch PsychRights, Mr. Gottstein wrote [Psychiatry: Force of Law](#) and held an off-agenda [presentation](#) at the [National Association for Rights Protection and Advocacy \(NARPA\)](#) annual conference in Portland, Oregon, bringing free copies of [Mad in America](#) to inspire attendance. Robert Whitaker, the author of [Mad in America](#), was a Kenote speaker as were Loren Mosher, the former Chief of Schizophrenia Research at the National Institute of Mental Health (NIMH), and law professor Michael Perlin, who is recognized as perhaps the leading scholar on mental health disability law in the United States. Mr. Gottstein met and established working relationships with each of them, starting with Mr. Whitaker coming to Anchorage that December and speaking with great impact at the Alaska Psychiatric Institute, the Alaska Mental Health Board and to the Alaska Community Mental Health Program Directors Association.³¹

Funding for this two month start-up fiscal year came from donations to PsychRights from Mr. Gottstein, his family and friends.

2003

	2003
Donations	28,090
Total Revenues	50,650
Expenses	34,369
Net	16,281

The first half of 2003 was dominated by the four month all-out legal battle over the court ordered [psychiatric drugging of Faith Myers](#). The 30-day order for to drug her against her will, issued on March 14th, 2003, was appealed and resulted in the 2006 Alaska Supreme Court decision, [Myers v. Alaska Psychiatric Institute](#), that mental health disability law icon, Professor Michael Perlin described as [the most important State Supreme Court decision on forced drugging in 20 years](#). In the subsequent 180 day trial, which Ms. Myers elected to be tried by a jury, the hospital dismissed the case, rather than face the jury.³² Because of the stay pending appeal of the 30-day Forced Drugging Order, Ms. Myers

³¹ See, [Anchorage Daily News story on Mr. Whitaker's presentation to the Alaska Mental Health Board](#).

³² There was an intervening 90 day judge trial and forced drugging order, which caused PsychRights to recommend a jury trial for the 180-day commitment proceeding.

was not drugged against her will except for a couple of times when the hospital pretended there was an emergency.

PsychRights was also a strong supporter of MindFreedom International's [Fast for Freedom in Mental Health](#), which resulted in the American Psychiatric Association essentially admitting that it had no proof that what gets diagnosed as mental illness results from any sort of brain abnormality or defect.

In September of 2003, PsychRights brought up Robert Whitaker and Professor Perlin to put on a Mental Health Disability Law Seminar with a focus on psychiatric drugs. Psychiatrists and other clinicians, lawyers and judges, mental health consumers and psychiatric survivors, and bureaucrats attended the seminar, which led Professor Perlin to remark that it was unique and valuable to have such diverse points of view represented.

2004

	2004
Donations	18,095
Total Revenues	18,131
Expenses	18,837
Net	-706

In the first part of 2004, PsychRights [represented Etta Bavilla in resisting being forced to take psychiatric drugs in prison](#). The Alaska Department of Corrections (DoC) took the position that Ms. Bavilla had no



right to legal representation, resulting in a motion for a temporary restraining order at the trial court and then emergency proceedings in the Alaska Supreme Court. At that point, DoC decided it wasn't worth it and dropped its efforts to Drug Ms. Bavilla against her will. However, during the course of the proceeding the DoC essentially admitted its procedures violates prisoners' constitutional rights.

Jim Gottstein gave a presentation, titled "[PsychRights' Legal Campaign Against Forced Drugging and How You Can Participate](#)" at the International Center for the Study of Psychiatry and Psychology's Annual Conference in New York City on October 10, 2004.

2005

	2005
Donations	30,265
Total Revenues	32,114
Expenses	21,357
Net	10,757

In May of 2005, PsychRights filed an appeal to the Alaska Supreme Court over Roslyn Wetherhorn's involuntary commitment and forced drugging orders, granted after an approximately 15 minute hearing. PsychRights then entered her trial court case and demanded a jury trial when it came time for the State to file for a 90 day commitment. Instead, they dropped the case. The issues on appeal revolved around the shoddy proceedings, including the performance of the

public defender appointed to represent her, and also included a constitutional challenge to committing her based on the idea that her previous ability to survive independently in the community will deteriorate if not involuntarily committed.

In October of 2005, Jim Gottstein presented the paper, [How the Legal System Can Help Create a Recovery Culture in Mental Health Systems](#), at Alternatives 2005: Leading the Transformation to Recovery, in Phoenix, Arizona, October 28, 2005. This paper laid out the basic principles behind PsychRights' efforts, presenting the "Transformation Triangle," for the first time. Just prior to that, in August, PsychRights began publishing the [Report on Multi-Faceted Grass-Roots Efforts To Bring About Meaningful Change To Alaska's Mental Health Program](#), documenting how the efforts to reform Alaska's mental health system were progressing, essentially using the principles in the Alternatives paper.

Jim Gottstein also presented "[Grass Roots, Multi-Organization Efforts in Support of Human Rights in Mental Illness](#)," On October at ICSP's annual Conference in Flushing, New York, and [Multi-faceted Grassroots Efforts to Bring About Meaningful Change to Alaska's Mental Health Program](#) November 19, 2005, at NARPA's Annual Conference in Hartford, Connecticut.

On Sunday, November 5, Alaska's largest newspaper published a front page feature of Mr. Gottstein's reform efforts, [Alaskan Tackles Mental Health Care Reform](#), and a sidebar piece [Lawyer says patients don't get fair hearings](#), about the [Wetherhorn](#) case.



On November 12, 2005, PsychRights [participated](#) on a panel for the annual conference of the United States Chapter of the International Society for Psychological and Social Approaches to Psychosis.

December 1-4, 2005, Mr. Gottstein attended the invitation only meeting of the [International Network Toward Alternatives and Recovery \(INTAR\) in Killarney, Ireland](#).

2006

	2006
Donations	29,203
Total Revenues	31,223
Expenses	35,334
Net	-4,111

On June 30, 2006, the Alaska Supreme Court issued its [Opinion](#) in *Myers v. Alaska Psychiatric Institute*, which held unconstitutional Alaska's [non-emergency forced drugging statute](#), which allowed the hospital to drug the person any way it wanted if the person was found to be incompetent, unless the statute was interpreted to mean that the State had to prove by clear and convincing evidence that the drugging was in the person's best interest and there is no less intrusive alternative available. This decision was described by Professor Michael Perlin as [the most important State Supreme Court decision on forced drugging in 20 years](#). The [Myers Decision](#) substantially restricted the legal criteria for drugging someone against their will in a non-emergency situation in Alaska. It left the lingering question, however, what "available" meant when the Alaska Supreme Court held a person could not be drugged against their will if a less intrusive alternative was available.

PsychRights was [awarded \\$82,000 in attorney's fees](#) for winning the appeal,³³ and decided to use it to hire an Executive Director, whose responsibility would include raising money. A nationwide search was conducted and the Executive Director began work on December 15th.

Two days later, on December 17, 2006, *The New York Times* published the first of a [series of front page articles](#), based on documents subpoenaed on behalf of William Bigley by PsychRights who was being subjected to a forced drugging proceeding. These documents showed Eli Lilly (Lilly) suppressing information about its blockbuster psychiatric drug, Zyprexa, causing massive amounts of diabetes and other metabolic problems and illegal marketing. After receiving the subpoenaed documents Mr. Gottstein released them to the *New York Times* and others, resulting in *The New York Times* coverage.

Lilly agreed to [pay \\$1.4 Billion in criminal and civil penalties](#) on January 15, 2009; the *New York Times* having [previously reported](#) that PsychRights' subpoenaing and releasing the Zyprexa Papers caused the government's investigation to "gain momentum." In other words, it seems fair to say that PsychRights' release of the Zyprexa papers resulted in this settlement.

More important than the penalties, which frankly, large as they were, are merely a cost of doing business, the released documents alerted the public to the suppressed extreme adverse health effects caused by Zyprexa. Since then, similar documents obtained in other cases have been unsealed, where previously such documents were uniformly required to be kept secret as a condition of settlement.

Monetarily, PsychRights' paid the initial \$10,000 in attorney's fees to defend against Lilly's legal onslaught, but it was quickly recognized that the legal fees would exhaust PsychRights' financial reserves, so Mr. Gottstein paid them as best as he could going forward³⁴ and ICSPP set up a legal defense fund which raised significant funds as well.³⁵ Even so, the initial \$10,000 payment to the lawyers resulted in PsychRights going in the red for 2006. In the final analysis, however, subpoenaing and releasing the Zyprexa Papers has had a huge beneficial impact.

Mr. Gottstein also spoke October 6, 2006, at the David A. Clarke School of Law in Washington on Free Your Mind: A discussion about psychiatric rights and how we value people in our communities, D.C. and gave presentations on [A Coordinated Campaign To Successfully Change the Mental Illness System](#) at ICSPP's annual conference on October 9, 2006, in Washington, D.C, and [Strategic Litigation to Achieve Meaningful Change: The Myers Case, Alaska, and a](#)

³³ The money was paid in 2007.

³⁴ Mr. Gottstein paid about \$125,000 from his personal funds, leaving over \$117,000 that he has been unable to pay.

³⁵ In 2012, the Internal Revenue Service charged that almost \$17,000 donated to the Legal Defense Fund to pay the lawyers constituted "excess benefits" to Mr. Gottstein that he had to pay ICSPP, along with a fine of over \$5,500. Mr. Gottstein appealed and the IRS ultimately dropped the case. See, [Jim Gottstein Legal Defense Fund IRS Excess Benefit Dispute](#).

[National Initiative](#), at NARPA's annual conference on November 16, 2006, in Baltimore, Maryland.

2007

	2007
Donations	19,228
Total Revenues	107,152
Expenses	84,854
Net	22,298

Much of 2007 was dominated by the legal proceedings arising out of the release of the Zyprexa Papers. PsychRights also continued to represent William Bigley, the person for whom the Zyprexa Papers were subpoenaed, in various proceedings.

In April of 2007, the Alaska Supreme Court issued its [Decision](#) on rehearing in *Wetherhorn v. Alaska Psychiatric Institute*, holding that it could only be constitutional to involuntarily commit someone because there would be a substantial deterioration of the person's previous ability to function independently if that was construed to require a level of incapacity so substantial that the person cannot survive safely in freedom. In the Preface to the [2007 Supplement to Mental Health Disability Law](#), Professor Perlin noted with respect to the [Wetherhorn Decision](#):

Last year, we characterized [the Alaska Supreme Court's] [decision in Myers v. Alaska Psychiatric Institute](#), "the most important State Supreme Court decision" on the question of the right to refuse treatment in, perhaps two decades. This year, again, the same court continues along the same path.

PsychRights also started representing *Wayne B.* at the 90-day involuntary commitment and forced drugging stage and demanded a jury trial, which he won. PsychRights also [appealed](#) the 30 day commitment order granted when he was represented by the Public Defender Agency on, among other grounds, that the required transcript of the proceedings before the Probate Master had not been prepared and provided to the Superior Court judge who had the responsibility of deciding whether Wayne B. should be committed.

Mr. Gottstein attended the invitation only [May 5-9, 2007 INTAR conference](#) on Gabriola Island, BC, Canada.

Jim Gottstein spoke with the Law & Psychiatry group at Beth Israel Deaconess Medical Center, a Harvard Medical School Teaching Hospital, in Boston Massachusetts on October 24, 2007, and presented [The Psychiatric Drugging of America's Children: Legal Rights of Children and Parents](#) at the ICSP annual conference on October 14, 2007 in Arlington, Virginia, [PsychRights' Strategic Litigation Campaign Against Forced Psychiatric Drugging & Electroshock](#) and [The Transformation Triangle](#), at the Region Ten Consumer Advisory Council Annual Conference in Charlottesville, Virginia on October 17, 2007, and [Forced Psychiatric Drugging: A Misguided Atrocity](#), at Hampshire College in Massachusetts on October 22, 2007. On November 16, 2007, Mr. Gottstein was a member of the Panel on "Zyprexa Papers: Speaking Truth to Power," at the annual NARPA Rights Conference.

Mr. Gottstein's article [Psychiatrists' Failure to Inform: Is There Substantial Financial Exposure?](#) Was published in *Ethical Human Psychology and Psychiatry*, Volume 9, Number 2, 2007, his



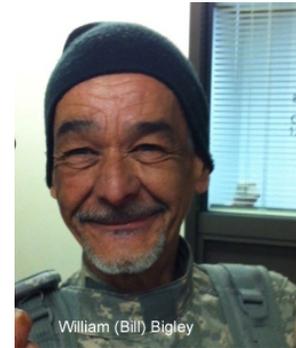
contributed chapter on Rights and Alternatives: Enforcing legal rights as a mechanism for creating non-medical model alternatives, in [Alternatives Beyond Psychiatry](#) (2007), P. Lehmann & P. Stastny, Eds., 308-17.

In 2007 PsychRights received the \$82,000 in attorney's fees awarded in the 2006 *Myers*, but at the end of the year, because sufficient funds to continue the Executive Director position had not been raised, the position was discontinued.

2008

	2008
Donations	21,470
Total Revenues	30,118
Expenses	43,911
Net	-13,793

In 2008, PsychRights [continued representing William Bigley](#) in various involuntary commitment and forced drugging proceedings, including appeals. In [one of those proceedings](#), Dr. Grace Jackson [testified](#) that the drug the



In

hospital was proposing to force Mr. Bigley to endure, risperidone (Risperdal), reduced life spans by 15 years and, "There is also a high likelihood he is simply just going to die in the next five years if he is placed on Risperidone." While PsychRights was able to obtain a [stay of the forced drugging order](#) that the trial court issued in that case pending determination of the [appeal](#), he was court ordered to be drugged in later proceedings and did in fact die less than five years later on November 21, 2012. The [appeal](#) of this particular [forced drugging order](#), included (a) whether Mr. Bigley was entitled to a less intrusive alternative, (b) that his constitutional Due Process Rights were violated for failing to give PsychRights his records until the day of the trial, and (c) the forced drugging petition must include sufficient information to allow the person to prepare a response.

On May 9, 2008, Mr. Gottstein presented, "[The Potential Role of Strategic Litigation in System Change](#)," to the Psychosocial Rehabilitation Association of New Mexico Conference, in Albuquerque, New Mexico.

In June of 2008, Mr. Gottstein's law review article, [Involuntary Commitment and Forced Psychiatric Drugging in the Trial Courts: Rights Violations as a Matter of Course](#) was published.

On June 6, 2008, Mr. Gottstein presented "[Advocacy and the Transformation Triangle](#)," to the International Network Towards Alternatives in Recovery (INTAR) conference at the University of Toronto, Canada. Mr. Gottstein was also a member of a panel on Soteria--The Proven Model for Recovery Communities, [The Development of Soteria-Alaska](#), on June 5, 2008.

In August of 2008, the Alaska Supreme Court [decided Wayne B.](#) holding:

We take a strict view of the transcript filing requirement because, as we noted in *Wetherhorn v. Alaska Psychiatric Institute*, involuntary commitment for a mental disorder is a "massive curtailment of liberty." Given the nature of the liberty interest at stake, it was critical that the superior court have full knowledge of the evidence that was said to justify committing Wayne B. to a mental institution.

In a private communication, Professor Perlin told Mr. Gottstein he felt the [Wayne B. Decision](#) was even more important than *Myers* or *Wetherhorn*.

In August of 2008, PsychRights [brought suit](#) against the State of Alaska for drugging Alaska's children, seeking declaratory and injunctive relief that Alaskan children and youth have the right not to be administered psychotropic drugs unless and until:

- (i) evidence-based psychosocial interventions have been exhausted,
- (ii) rationally anticipated benefits of psychotropic drug treatment outweigh the risks,
- (iii) the person or entity authorizing administration of the drug(s) is fully informed, and
- (iv) close monitoring of, and appropriate means of responding to, treatment emergent effects are in place,

and that all children and youth currently receiving such drugs be evaluated and brought into compliance with the above. This suit was [dismissed](#) in 2009 on the grounds that PsychRights did not have standing to bring this suit, which the [Alaska Supreme Court affirmed in 2010](#). It is felt that the Alaska Supreme Court, whose members had almost completely turned over since the *Myers* Decision, substantially restricted what was known as citizen-taxpayer standing during the course of this litigation, virtually eliminating it.

In recognition that people around the country facing forced drugging proceedings are not receiving proper representation, in November of 2008, PsychRights published its [Forced Drugging Defense Package](#) designed to allow people to mount their own defense, including acquiring certified copies of Affidavits from Robert Whitaker and Grace Jackson, M.D., from [MindFreedom International](#) that can be filed in court.

Mr. Gottstein presented [PsychRights' Do-It-Yourself Forced Drugging Defense Package](#), at the NARPA Annual Rights Conference on October 2, 2008, in Austin, Texas, and [CriticalThinkRx and PsychRights' Lawsuit Against Alaska's Drugging of Children](#) at the October 10-12, 2008, ICSP Annual Conference in Tampa, Florida.

2009

	2009
Donations	24,000
Total Revenues	26,626
Expenses	20,405
Net	6,221

On April 27, 2009, PsychRights [filed](#) under seal as required, *ex rel* [PsychRights v. Matsutani](#), a *Qui Tam* (whistleblower) lawsuit under the federal False Claims Act against a number psychiatrists, agencies, state officials and pharmacies for causing or presenting claims to Medicaid.

On May 22, 2009, the Alaska Supreme Court issued its [Decision in Bigley v. Alaska Psychiatric Institute](#), holding (a) if there is a less intrusive alternative that is "feasible" for the state to provide, it must provide it or let the person go, (b) a petition for forced drugging must include information about the patient's 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, and (c) the hospital must give the person's lawyer their medical chart sufficiently in advance to allow for adequate preparation.

Professor Perlin described this decision in the [2009 Preface](#) of the 2009 Supplement to Mental Health Disability Law as follows:

Once again, the most significant state court institutional rights decision came from Alaska, that state Supreme Court ruling, in [Bigley v. Alaska Psychiatric Institute](#), further defining the meaning of "least restrictive alternative" in a forced medication context, and mandating that notice of the imposition of such medication must comport with procedural due process standards.

On July 27, 2009, [PsychRights Launched its Campaign Against Medicaid Fraud](#), publishing a "[model](#)" or [form complaint](#) for people to use around the country. Two such cases have been filed to PsychRights' knowledge:³⁶

- [United States ex rel Linda Nicholson v. Lilian Spigelman, M.D., Hephzibah Children's Association, and Sears Pharmacy](#)
- [United States and the State of Wisconsin ex rel. Dr. Toby Watson v. Jennifer King-Vassel](#)

PsychRights provided some assistance in both cases, and in the *Watson* case successfully represented Dr. Watson on appeal.

Mr. Gottstein presented [Litigation to Stop the Insane Drugging of Children & Youth](#), at NARPA's Annual Rights Conference, September 10, 2009, in Phoenix, Arizona; the keynote talk, [The Transformation Triangle](#), and the workshop [Recovery: Rights, Responsibilities & Roadblocks](#), at the New Mexico Consumer Wellness Conference September 23, 2009, in Albuquerque, New Mexico; and [Litigating Against the Psychiatric Drugging of Children & Youth](#), at ICSPP's 2009 Annual Conference on October 10, 2009, in Syracuse, New York.

2010

	2010
Donations	15,194
Total Revenues	15,290
Expenses	27,506
Net	-12,216

The complaint in the [PsychRights v. Matsutani, et. al.](#), Medicaid Fraud litigation was unsealed in January of 2010, garnering television coverage, [Lawyer takes on psychiatric industry for over-prescribing foster children](#). This litigation dominated PsychRights' activities in the first half of 2010, culminating in a [dismissal](#), on September 24, 2010. In dismissing the case under what is called the "Public Disclosure Bar," the District Court wrote:

[T]he Government already "has pursued False Claims Act cases and achieved extremely large recoveries against drug companies for causing the presentation of claims to Medicaid for prescriptions of psychotropic drugs that are not for medically accepted indications, including Geodon and Seroquel for use in

³⁶ Since these cases are required to be filed under seal to allow the government to investigate and decide whether to intervene and take over the case or not, it is possible there are one or more cases PsychRights doesn't know about. However, this doesn't seem likely.

children and youth." Thus, . . . the Government already knows about the conduct .

...

In other words, the District Court held that because the government knows about widespread Medicaid fraud through the practice of prescribing psychotropic drugs to children, the whistleblower lawsuit could not proceed. Because PsychRights believes this was an incorrect interpretation of the "Public Disclosure Bar," it appealed this decision to the United States Court of Appeal for the 9th Circuit.

Mr. Gottstein presented [PsychRights' Medicaid Fraud Initiative Against Psychiatric Drugging of Children & Youth](#), at Community Access, in New York City, February 2, 2010; and was brought to Oslo, Norway in August to make three presentations at the Amalie Days celebration: [Visioning a Recovery Oriented Mental Health System](#), on August 20, 2010, [The Potential Role of Strategic Litigation in Achieving a Recovery Oriented Mental Health System](#), on August 23, 2010, and [Makng User/Survivor Rights Reality](#), to the International Commission of Jurists on August 24, 2010.

In addition, Mr. Gottstein's article, [Ethical and Moral Obligations Arising from Revelations of Pharmaceutical Company Dissembling](#), was published in *Ethical and Human Psychology and Psychiatry*, Vol. 12, No. 1: 22-29 (2010).

2011

	2011
Donations	10,175
Total Revenues	10,268
Expenses	15,642
Net	-5,374

Briefing and oral argument on the [appeal of *ex rel PsychRights v. Matsutani*](#) went from January until October 12, 2011, with the 9th Circuit issuing a three paragraph [memorandum affirmance](#) that by its own terms specifically does not create precedent, on October 25, 2011. PsychRights believed this decision was so flawed that if filed a [Petition for Rehearing](#), but this was [unsuccessful](#).

Mr. Gottstein presented [PsychRights' Strategic Approach to End Psychiatric Oppression](#), and [The Illegality of Psychiatric Imprisonment, Forced Drugging and Forced Electroshock in the United States \(video\)](#) at the psychiatric survivor conference, PsychOUT 2011, in New York City, June 21, 2011; and [Psychiatric Drugging of Children and Youth](#), at NARPA's Annual Rights Conference in Philadelphia, Pennsylvania, September 8, 2011.

2012

	2012
Donations	32,189
Total Revenues	32,419
Expenses	17,377
Net	15,042

In 2012, PsychRights decided to concentrate on the Public Education aspect of the Transformation Triangle, including focusing on Social Media. PsychRights was donated a video camera in January and received technical assistance on how to create videos with reasonable sound, which was considered essential for PsychRights videos and made a series of videos which have been uploaded to the [PsychRights Channel on YouTube](#). In addition, PsychRights was very involved in creating and supporting [Occupy Psychiatry](#), primarily using Facebook. [Occupy Psychiatry](#) achieved a total



reach of almost 20,000 for a one week period. The precursor to this was the [Occupy the American Psychiatric Association Protest](#) May 5, 2012, in Philadelphia, Pennsylvania. Note: Occupy Psychiatry's name was changed to Network Against Psychiatric Assault at the end of 2013.



On March 29, 2012, Mr. Gottstein presented [Drugging Our Children, Legal and Moral Issues](#), at the Annual Conference of the Society for Humanistic Psychology, Point Park University, Pittsburgh, PA. [[Video](#)]; On May 6, 2012, [A Strategic Approach to Mental Health System Change](#) (video) at the Imagining a Different Future in Mental conference in Philadelphia, Pennsylvania; [Addressing Psychotropic Drugs, Forced Medication and Children](#), at the Rethinking Psychiatry Symposium, May 11, 2012, in Portland, Oregon; and on October 28, 2012, accepted the United States Chapter of the International Society for Psychological and Social Approaches to Psychosis (ISPS-US) "honoree" award at their annual meeting with the talk, [A Human Rights Lawyer's Perspective Perspective on the Mental Health System \(video\)](#) in Chicago, Illinois.

Also, Mr. Gottstein's contributed chapter in [Drugging Our Children: How Profiteers Are Pushing Antipsychotics on Our Youngest, and What We Can Do to Stop It](#) (Childhood in America series), Sharna Olfman and Brent Dean Robbins, editors, Praeger, was published in February, 2012.

One special grant in the amount of \$25,000 was received by a donor who supports PsychRights' mission and appreciates its efforts.

2013

	2013
Donations	11,738
Total Revenues	11,846
Expenses	20,188
Net	8,342

In late 2012, in [ex rel. Dr. Toby Watson v. Jennifer King-Vassel](#), the United States District Court for the Eastern District of Wisconsin, consistent with precedent in the United States Court of Appeals for the Seventh Circuit (7th Circuit), which is contrary to the holding in the *Matsutani* case, ruled that the Public Disclosure Bar did not prohibit Dr. Watson from

bringing the suit because he identified the particular person who committed the fraud. However, the District Court dismissed the case on the grounds that since Dr. Watson had not named an expert witness in discovery he could not present expert testimony at trial, that an expert witness would be required at trial and he could therefore not prevail at trial. PsychRights, through Mr. Gottstein, appealed this decision to the 7th Circuit, writing the [briefs](#) and presenting at [oral argument](#) on April 25, 2013.

On August 28, 2013, [the Court of Appeals handed PsychRights a tremendous victory](#), reversing the trial court on the expert witness issue and more importantly validating the legal basis for the approach, holding (a) off-label prescriptions presented to Medicaid for payment not otherwise supported by one of the drug references known as "compendia" are (generally) false claims, and (b) doctors knowingly cause the claims by writing such prescriptions if they know the patient is a



Medicaid recipient (unless they come forward with evidence to the contrary). Unfortunately, on remand, at the final pretrial conference held on December 3, 2013, the trial court judge indicated that notwithstanding the Court of Appeals decision, he was going to make things very difficult, if not impossible, for Dr. Watson to prevail and threatened Dr. Watson with the imposition of large attorney's fees against him if the case was not dismissed. [Dr. Watson decided to dismiss the case.](#)

Mr. Gottstein gave a keynote address on the [Role of Litigation in a Strategic Approach to Mental Health System Change](#) and an added on plenary presentation on [PsychRights' Medicaid Fraud Initiative](#), at the annual rights conference of NARPA on September 27, 2013 in Hartford, Connecticut.

In 2013, PsychRights also took an [appeal for D.G.](#) to the Alaska Supreme Court from the February 26, 2013, *ex parte* order, who while already under confinement in the psychiatric emergency room, was subjected to a court proceeding to further confine him without any notice or opportunity to present his side. PsychRights asserted this is a violation of D.G.'s right to Due Process because there was no emergency to justify failing to give him notice and an opportunity to respond. The Alaska Supreme Court disagreed in its February 7, 2014, [Opinion](#).

Mr. Gottstein also helped organize and attend the [protest](#) of the American Psychiatric Association's annual conference in San Francisco on May 19, 2013.

At the end of the year, Occupy Psychiatry's name was changed to the [Network Against Psychiatric Assault](#). It was felt the Occupy name had outlived its usefulness and the venerable Network Against Psychiatry Assault name is more inclusive.

2014

	2014
Donations	6,510
Total Revenues	6,831
Expenses	18,978
Net	12,147

In March, PsychRights [requested](#) the trial court open the court file to the public in a [guardianship case involving Bret Bohn](#), that had generated public protests and media attention. From what could be gleaned from the media and Mr. Bohn's parents, Mr. Bohn's serious medical condition was the result of taking medication as prescribed and then made worse by the use of psychiatric drugs forced upon him by Providence Hospital after getting the court to bypass the power of attorney Mr. Bohn had given to his parents. The trial court [denied](#) the request on April 17th and PsychRights [appealed](#) on May 20th. Mr. Bohn was able to get transferred to another hospital where he was allowed to get off the drugs and recover, resulting in the [termination of the guardianship](#) on June 17th.. Mr. Bohn, who had always wanted the public to know what was being done to him was then able to enter into a [settlement agreement](#) asking the Alaska Supreme Court to direct the trial court to open the file to the public. On August 18th the Alaska Supreme Court [ordered](#) the trial court to conduct a hearing as to whether the file should be opened to the public in light of the termination

of the guardianship and the settlement agreement. After the resulting hearing, the file was opened to the public.³⁷

On May 4th, Mr. Gottstein participated in the [protest](#) of the American Psychiatric Association in New York City.

PsychRights participated in the effort to [free Justina Pelletier](#) from psychiatry at Boston Children's hospital. Justina had been referred to Boston Children's hospital by her physician for treatment of complications from mitochondrial disease, but once there two doctors decided she had a psychiatric condition instead and took custody from her parents. As a result of the public pressure, on June 17th Justina was finally released after 16 months of confinement. PsychRights was also very involved in the effort to [free Isaiah Rider](#).

On June 22nd, Mr. Gottstein went on hiatus from PsychRights to become interim president of [Variance Dynamical](#). Even though he was on hiatus, on September 4th, Mr. Gottstein gave talks on the [Role of Litigation in a Strategic Approach to MH System Change](#), and [Medicaid Fraud Claims Challenging Practice of Prescribing Off-Label Drugs to Children](#) in Seattle at the annual NARPA rights conference, Washington, and on November 13th, gave a talk on [A Strategic Approach to Mental Health System Change](#) to the International Society for Ethical Psychology and Psychiatry in Los Angeles, California.

2015

	2015
Donations	10,275
Total Revenues	18,340
Expenses	16,631
Net	1,709

In 2015, PsychRights appealed the *ex parte* (without notice) order to have Heather R involuntarily hospitalized for evaluation to the Alaska Supreme Court. PsychRights challenged the order on the grounds that it violated due process and that the court did not follow the statutory requirement that Heather R. be interviewed if possible. The Alaska Supreme Court [ruled](#) in Heather R's favor in January of 2016.

PsychRights was called by the parents of K.K., an 18 year old woman, who was being locked up and facing forced drugging in the Alaska Psychiatric Institute. After getting into the case, PsychRights was able to negotiate her release to a less restrictive alternative. K.K. was facing being made permanently mentally ill through the psychiatric drugging and at last report is doing very well after getting off the drugs.

PsychRights also received a small projects grant from the Alaska Mental Health Trust Authority to bring Laura Delano and Dr. Peter Gøtzsche to Anchorage to give talks. Ms. Delano gave her talk in November. The [video](#) of Ms. Delano's talk has been viewed over 4,000 times.

2016

³⁷ Mr. Bohn later asked the court file to be made confidential again.

	2016
Donations	12,884
Total Revenues	14,964
Expenses	17,680
Net	2,716

behalf of a patient.

Dr. Peter Gøtzsche gave his talk on June 2nd, and the video of his [talk](#) has also been viewed over 4,000 times. While he was here, PsychRights arranged for Dr. Gøtzsche to testify on behalf of a patient facing forced drugging as well as meetings with Alaska Public Defender Agency attorneys representing such patients and Alaska Mental Health Trust Authority staff. While in Anchorage, Dr. Gøtzsche also signed an [affidavit](#) that has already been used on

That patient was L.M., who PsychRights began representing in mid-July in what was a six week legal battle on three fronts; the Superior Court, the Alaska Supreme Court and the Alaska District Court. It has resulted in an appeal to the Alaska Supreme Court asserting L.M. cannot constitutionally be locked up when there is a feasible less restrictive alternative. It is anticipated this appeal will be decided in late 2017 or 2018.

Budget

PsychRights has been able to accomplish much through the *pro bono* work of its founder, president, and CEO, Jim Gottstein, and some other volunteers, but in order to get to the next level and have a broader impact, PsychRights needs to be able to hire Mr. Gottstein³⁸ and additional attorneys, pay expert witnesses and otherwise staff its operation. Litigation usually takes a number of years so at least five years of funding is needed. A five year budget to fund this proposal is \$5.5 million:

Budget	Annual		5 Years
Litigation Director (J. Gottstein)			
Salary	\$ 100,000		
Fringe	\$ 30,000		
Total Litigation Director		\$ 130,000	\$ 650,000
Executive Director			
Salary	\$ 90,000		
Fringe	\$ 27,000		
Total Executive Director		\$ 117,000	\$ 585,000
Three Attorneys			
Salaries	\$ 240,000		
Fringe	\$ 72,000		
Total Attorneys		\$ 312,000	\$ 1,560,000
Administrative Support (3 people)			
Salaries	\$ 108,000		
Fringe	\$ 32,400		
Total Administrative Support		\$ 140,400	\$ 702,000
Travel		\$ 100,000	\$ 500,000
Litigation Costs, including Experts		\$ 200,000	\$ 1,000,000
Equipment			\$ 78,000
Other Costs (Occupancy, Telecomm, supplies)		\$ 85,000	\$ 425,000
Grand Total		\$ 1,084,400	\$ 5,500,000

³⁸ In late 2016, Mr. Gottstein had to substantially curtail his activities on behalf of PsychRights because his financial circumstances had deteriorated to the point where he needs to earn money.