The Potential Role of Strategic Litigation in Achieving a Recovery Oriented Mental Health System

Amalie Days
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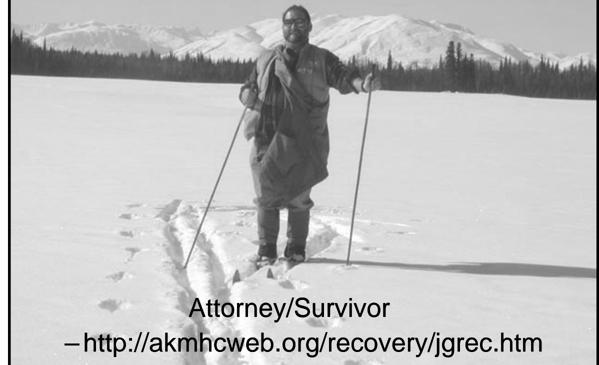

Attorney/Survivor
– http://akmhcweb.org/recovery/jgrec.htm

Law Project for Psychiatric Rights (PsychRights®)

- Public Interest Law Firm
- Mission: To Mount Strategic Litigation Campaign Against Forced Psychiatric Drugging and Electroshock
- Adopted Drugging of Children & Youth as Priority Few Years Ago

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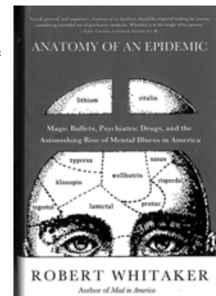
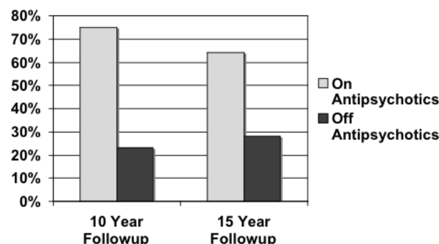
While Some People find Neuroleptics Helpful . . .

- Quality of Life Tremendously Diminished
- Cause Massive Amount of Physical Harm
  - Life Spans Now 25 Years Shorter
- Greatly Reduce Recovery Rates
- 6-fold Increase in Mental Illness Disability Rate
- Hugely and Unnecessarily Expensive
- Huge Unnecessary Human Toll



Psychotic Symptoms



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

Rappaport's Study: Three-Year Schizophrenia Outcomes

Medication Use (In hospital/ after discharge)	Number of Patients	Severity Illness Scale (1=best outcome; 7=worst outcome)	Rehospitalization
Placebo/off	24	1.70	8%
Antipsychotic/off	17	2.79	47%
Placebo/on	17	3.54	53%
Antipsychotic/on	22	3.51	73%

In this study, patients were grouped according to both their in-hospital care (placebo or drug) and whether they used antipsychotics after they were discharged. Thus, 24 of the 41 patients treated with placebo in the hospital remained off the drugs during the follow-up period. This never-exposed group had the best outcomes by far. Rappaport, M. "Are there schizophrenics for whom drugs may be unnecessary or contraindicated." *International Pharmacopsychiatry* 13 (1978):100-11.

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NIMH Withdrawal Studies

Chlorpromazine dosage (before withdrawal)	Number of patients	Relapsed	Percentage
Placebo	30	2	7%
Under 300 mg.	99	23	23%
300 to 500 mg.	91	47	52%
Over 500 mg.	81	63	65%

In these two studies, there was a group of schizophrenia patients who weren't on antipsychotic medication at the start (the placebo group). The patients on chlorpromazine at the start were then withdrawn from the drug. The results indicated that exposure to drug heightened a patient's biological vulnerability to relapse. Source: Prien, R. "Discontinuation of chemotherapy for chronic schizophrenics." *Hosp Community Psychiatry* 22 (1971):20-3.

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Second Generation ("atypical") Neuroleptics

(Abilify, Risperdal, Seroquel, Zyprexa, etc.)

- Probably Worse Than First Generation (Thorazine, Haldol, Etc.)
  - Tardive Dyskinesia and Neuroleptic Malignant Syndrome probably as bad
  - Metabolic Problems Horrendous (diabetes, etc.)
- Certainly No Better
  - Clinical Antipsychotic Trials of Intervention Effectiveness (CATIE) Study
  - 75% of subjects quit because they didn't work or the negative effects intolerable, or both

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Long-term Recovery Rates for Schizophrenia Patients

Source: Harrow, M. "Factors involved in outcome and recovery in schizophrenia patients not on antipsychotic medications." *The Journal of Nervous and Mental Disease*, 195 (2007):406-414.

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15-Year Outcomes for Schizophrenia and Manic-Depressive Patients

In this graphic, the group labeled "manic depressive" consisted of psychotic patients with bipolar illness, unipolar depression, and milder psychotic disorders. Source: Harrow, M. "Factors involved in outcome and recovery in schizophrenia patients not on antipsychotic medications." *The Journal of Nervous and Mental Disease*, 195 (2007):406-414.

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NIMH's Study of Untreated Depression

In this study, the NIMH investigated the naturalistic outcomes of people diagnosed with major depression who got treatment and those who did not. At the end of six years, the treated patients were much more likely to have stopped functioning in their usual societal roles and to have become incapacitated. Source: Coryell, W. "Characteristics and significance of untreated major depressive disorder." *American Journal of Psychiatry* 152 (1995):1124-9.

The Transformation of Bipolar Disorder in the Modern Era

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

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

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Proven Alternatives to Coercion & Drugs

- Open Dialogue (Finland)
- Soteria (US & Switzerland)
- Runaway House (Berlin)
- Ionia (Alaska)
- Peer-Run (everywhere)
- Personal Ombudsman (Sweden)
- Second Opinion Society (Canada)
- Others- Alternatives Beyond Psychiatry

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

Patients (N=75)	
Schizophrenia (N=30)	
Other psychotic disorders (N=45)	
Antipsychotic use	
Never exposed to antipsychotics	67%
Occasional use during five years	33%
Ongoing use at end of five years	20%
Psychotic symptoms	
Never relapsed during five years	67%
Asymptomatic at five-year followup	79%
Functional outcomes at five years	
Working or in school	73%
Unemployed	7%
On disability	20%

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

The Soteria Project

Study

First-episode schizophrenia patients treated conventionally in a hospital setting with drugs versus treatment in the Soteria House, which was staffed by non-professionals and involved no immediate use of antipsychotic medications. Results are from 1971-1983 cohorts, with 97 patients treated conventionally and 82 patients treated in Soteria House .

Results

- At end of six weeks, psychopathology reduced comparably in both groups.
- At end of two years:
  - Soteria patients had better psychopathology scores
  - Soteria patients had fewer hospital readmissions
  - Soteria patients had higher occupational levels
  - Soteria patients were more often living independently or with peers

Antipsychotic Use in Soteria Patients

76% did not use antipsychotic drugs during first six weeks

42% did not use any antipsychotic during two-year study

Only 19 % regularly maintained on drugs during follow-up period

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

The Long-Term Benefit of Exercise for Depression

Treatment During First Four Months	Percentage of Patients in Remission at End of Four Months	Percentage of Remitted Patients Who Relapsed in Six-Month Followup	Percentage of Patients Depressed at End of Ten Months
Zoloft alone	69%	38%	52%
Zoloft plus exercise therapy	66%	31%	55%
Exercise therapy alone	60%	8%	30%

In this study by Duke researchers, older patients with depression were treated for 16 weeks in one of three ways, and then followed for another six months. Patients treated with exercise alone had the lowest rates of relapse during the following six months, and as a group, they were much less likely to be suffering from depressive symptoms at the end of 10 months. Source: Babyak, M. "Exercise treatment for major depression." *Psychosomatic Medicine* 62 (2000):633-8, 100-11.

Why Has Irrational Medication Model Become Standard?

- Fear Myth
  - Reality: People Diagnosed with Serious Mental Illness no More Prone to Violence
- Absolution
  - By Accepting "Medical Model," No one is Responsible
- Also Social Control?

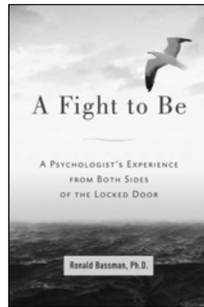
And . . .

Pharma/Psychiatry Alliance

- Drug Company Lies
- Uncritical, Unthinking Acceptance by Mainstream Psychiatry
  - Pretending to be real doctors?

Successful Ex-Users (Peers) Are Experts at Recovery

- Many examples of recovery from "incurable" mental illness.
- Unique ability to relate to people going through the same thing.
- Also some Mental Health Professionals Get It – They Listen to and Learn from (ex)Users.



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Great Books by Psychiatric Survivors

- *On Our Own*, by Judi Chamberlin
- *A Fight to Be*, by Ron Bassman, PhD
- *How to Become a Schizophrenic*, by John Modrow
- *5150: One Who Flew Into the Cuckoo's Nest*, by Kathi Stringer
- *Escape From Psychiatry*, by Clover (1999)
- Many Others

Freud's Taboo, by Francesca Spiegel

Recovery Principles

- Hope
- Someone believes in you
- You have to take responsibility for your own mental health and behavior
- You have to learn to recognize your symptoms.
- You have to learn what works for you.
- If it isn't voluntary it isn't treatment
  - Force is Counterproductive
- Different things work for different people
- Unsuccessful Attempts Part of Recovery Process
- Diagnoses of Limited Benefit/Mostly Harmful

Results to be Expected

- At Least Double the Number of People Who Recover fully. Should be at least 2/3rds to 3/4ths.
- Eliminate Much Suffering from Psychiatric Imprisonment and Compulsory Drugging
- Dramatically Improve the Lives of Many
- Dramatically Reduce Amount of Government Expenditures

Recovery – JG Definition

Getting past a diagnosis of mental illness to a point where a person enjoys meaningful activity, has relationships, and where psychiatric symptoms, if any, do not dominate or even play a major role in their life.

Recovery: Responsibilities and Roadblocks, by Jim Gottstein, http://akmhcweb.org/recovery/RecoveryResponsibilitesRoadblocks.pdf

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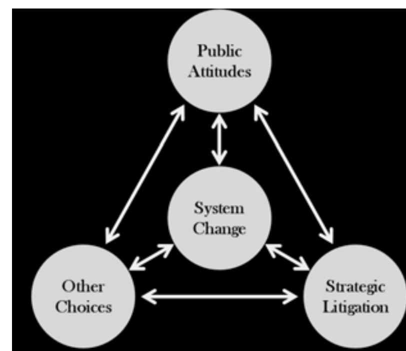
Transformation Triangle



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Public Education in Alaska

- Robert Whitaker in 2002, 2003 & 2007
- Michael Perlin in 2003
- Numerous Newspaper & Some Broadcast Coverage
  - *Myers* Case
  - Feature Front Page Story in November 2005
  - Zyprexa Papers local coverage
  - Medicaid Fraud Case
- Accept All Possible Speaking Invitations

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WEATHER

GIRDWOOD GROWS UP

Developments to change face of ski resort town

MONEY

More than $350 worth of coupons in today's paper

$1.50

Final Edition

Anchorage Daily News

ALASKA'S NEWSPAPER

INSIDE

Alaskan tackles mental health care reform

NEW CASE

■ GOTTSTEIN: Member of prominent family confronts psychiatric establishment.

"We ought to at least have a system where the people that are helped by the drugs get the drugs and the ones that are not ... have another choice."

HOT SKIS, BOOTS THIS YEAR

RIVERS AT RISK: THE YUKON

Toxins fouling flooded region

■ NEW ORLEANS: Removal will be a huge, complex undertaking.

SHIP ELUDES PIRATES

October 17,

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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: Alaska Mental Health Trust Formally Supports
  - Wants State Participation
- 2007: Funded by Trust for 2008 Opening when didn't get in State Budget.
- 2009: Opened

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Alternatives Development in Alaska

- CHOICES, Inc.
- Soteria-Alaska

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Consumers
Having
Ownership
In
Creating
Effective
Services

- "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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Soteria-Alaska

- Opened in June of 2009
  - 7 Year Effort
- Goal: Replicate Original Soteria-House
- So Far: Drug Withdrawal Program, not First Episode
- Non-coercive

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Strategic Litigation: U.S. Constitutional Principles

- To Justify Deprivation of Fundamental Rights Subsntative Due Process Requires:
  - Action Must Further Compelling State Interest
  - Action Must Be Least Restrictive/Intrusive Alternative

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Hallmarks of Procedural Due Process

Meaningful Notice and Meaningful Opportunity to Respond.

Hamdi v. Rumsfeld (2004)
542 U.S. 507, 124 S.Ct. 2633

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Psychiatric Imprisonment Constitutionally Permissible in US When:

1. Confinement takes place pursuant to proper procedures and evidentiary standards,
2. Finding of "dangerousness either to one's self or to others," and
3. Proof of dangerousness is "coupled ... with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'

Kansas v. Crane, 534 U.S. 407, 409-10, 122 S.Ct. 867, 869 (2002).

- Being unable to take care of oneself can constitute danger to self if "incapable of surviving safely in freedom." *Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373, 1383 (1996).

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Forced Drugging under US Constitution: *Sell*

Court Must Conclude:

1.Important governmental interests are at stake,

2.Will significantly further those state interests - substantially unlikely to have side effects that will interfere significantly (with achieving state interest),

3.Necessary to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results, and

4.Medically appropriate, i.e., in the patient's best medical interest in light of his medical condition. The specific kinds of drugs at issue may matter here as elsewhere. Different kinds of antipsychotic 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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Strategic Litigation Goals

- Substantially Increase Recovery Rate After Diagnosis of Serious Mental Illness
- Substantially Reduce If Not Eliminate Force
- System Support of Non-Medication Choices

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Role of Litigation

- Force System to Honor People's Rights
- Change Path of Least Resistance
- Help Create Environment Supportive of Other Choices
- Some Public Education Potential

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Strategic Litigation Results in Alaska

- *Myers* (2006)
  - Best Interests
  - No Less Intrusive Alternative Available
- *Wetherhorn* (2007)
  - Unable to Survive Safely in Freedom
- *Wayne B*. (2008)
  - Procedural Protections Strictly Enforced
- *Bigley* (2009)
  - If Alternative to Drugging Feasible, Must Be Provided or Person Let Go
  - Failure to Provide Evidence Sufficiently In Advance Due Process Violation
  - Petition Must Include Detailed Allegations on Best Interests

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Current Alaska Status

- Widespread Support for Non-Drug Choices (In Theory at Least)
- CHOICES, Inc., Started Providing Services in 2007
- Soteria-Alaska Opened in 2009
- Least Restrictive/Intrusive Alternative Enshrined in Recent Alaska Supreme Court Decisions.
- Still a Long Way to Go
- PsychRights' Focus Shifted to Children & Youth

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Medicaid Fraud Initiative: Drugging of Children & Youth

- Most Psychiatric Drugs Given to Children and Youth Through Medicaid (Government Program for Poor) is Not Allowed By Law.
- False Claims Act Allows Private Persons to Sue on Behalf of the Government and Share in the Recovery, If Any.

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Norwegian Strategic Litigation Opportunities?

- International Law
- Norway Constitution
- Existing Law

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International Law

- Convention on the Righst of Persons with Disabilities (CRPD)
  - Deprivation of liberty based on disability unlawful.
  - Also extends to situations where additional grounds—such as the need for care, treatment and the safety of the person or the community—are used to justify deprivation of liberty.
- Special Rapporteur on torture
  - Compulsory Medication Can Constitute Torture in Violation of Universal Prohibition Against Torture, both inside and outside of hospital

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Norway Constitution

- Article 96: No one may be . . . punished except after a court judgment.
- Article 99: No one may be taken into custody except in the cases determined by law and in the manner prescribed by law. For unwarranted arrest, or illegal detention, the officer concerned is accountable to the person imprisoned.
- Article 110: It is the responsibility of the authorities of the State to create conditions enabling every person capable of work to earn a living by his work.
- Article 110 b: Every person has a right to an environment that is conducive to health.
- Article 110 c: It is the responsibility of the authorities of the State to respect and ensure human rights.

Norwegian Law: Psychiatric Confinement

Compulsory mental health care can by Norwegian law be carried out when:

3-3.3. "The patient is suffering from a serious mental disorder and application of compulsory mental health care is necessary to prevent the person concerned from either

a. having the prospects of his or her health being restored or significantly improved considerably reduced, or it is highly probable that the condition of the person concerned will significantly deteriorate in the very near future, or

b. b. constituting an obvious and serious risk to his or her own life or health or those of others on account of his or her mental disorder."

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Norwegian Law Psychiatric Confinement (Continued)

§3-3.6 Even though the conditions of the Act are otherwise satisfied, compulsory mental health care may only be applied when, after an overall assessment, this clearly appears to be the best solution for the person concerned, unless he or she constitutes an obvious and serious risk to the life or health of others. When making the assessment, special emphasis shall be placed on how great a strain the compulsory intervention will entail for the person concerned.

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§4-4 Treatment without the consent of the patient

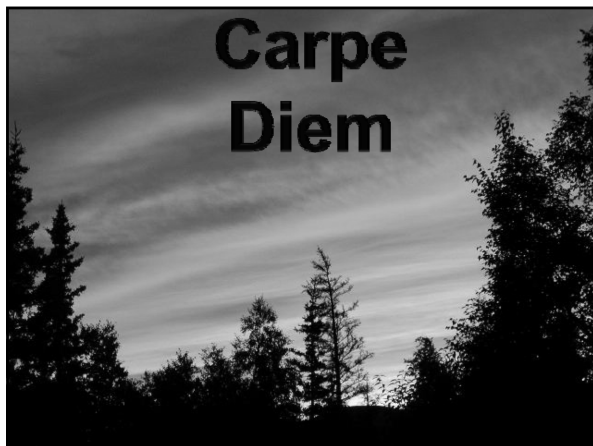
. . . Unless the patient has consented, no examination or treatment entailing a serious intervention may be carried out, but with the following exceptions:

a. . . . Medication may only be carried out using medicines which have a favourable effect that clearly outweighs the disadvantages of any side effects. . . .

If it is not obviously impossible, consideration shall also be given to whether other voluntary measures may be offered as an alternative to examination and treatment without the consent of the patient.

Such treatment measures may only be initiated and implemented when there is a great likelihood of their leading to the cure or significant improvement of the patient's condition, or of the patient avoiding a significant deterioration of the illness.

Translation by the Faculty of Law Library, University of Oslo



Other Suggested Reading

- *Mad in America: Bad Science, Bad Medicine and the Enduring Mistreatment of the Mentally Ill* (2001) by Robert Whitaker
- *Agnes's Jacket: A Psychologists' Search for the Meaning of Madness*, Gail Hornstein, PhD (2009)
- *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)
- Drug Induced Dementia, by Grace E. Jackson (2009)
- *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

Other 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*, by Elliot Valenstein (1998).
- Other books at http://psychrights.org/Market/storefront.htm