

# PsychRights' Strategic Litigation Campaign Against Forced Psychiatric Drugging & Electroshock

Charlottesville, Virginia  
October 17, 2007

James B. (Jim) Gottstein, Esq.  
Law Project for Psychiatric Rights  
Jim.Gottstein@PsychRights.org  
<http://PsychRights.org>

1

# While Some People find Psych Drugs Helpful . . .

- Psychiatric Drugs Causing Massive Amount of Harm
- At Least Two-Thirds of People Diagnosed with Serious Mental Illness Can Fully Recover Without Psychiatric Drugs
- Current System Does Not Allow Non Drug Choices
- Legal Right to Other Choices is Ignored
- Hugely and Unnecessarily Expensive
- Huge Unnecessary Human Toll

October 17, 2007

2

# Harm Caused By Psychiatric Drugging

- Life spans now decreased by 25 years.
- Greatly diminished quality of life
- Prevents Recovery/Increases Chronicity
- Six Fold Increase in Disability Rate Attributed to Mental Illness

October 17, 2007

3

# Neuroleptics Increase Relapse Rates NIMH Withdrawal Studies

Study: Two drug-withdrawal studies over 24 weeks, 301 patients

Daily drug dosage at start of trial	Relapse Rate
Placebo	7%
Less than 300 mg. of chlorpromazine	23%
300-500 mg.	54%
More than 500 mg.	65%

**Conclusion:** Relapse was found to be significantly related to the dose of the tranquilizing medication the patient was receiving before he was put on placebo—the higher the dose, the greater the probability of relapse.

*Hosp. Community Psychiatry 1971; 22:20-3*

October 17, 2007

4

# Take Home Points on Neuroleptics

- People Should be Told the Truth About them
- People Should have Non-Drug Options
- Selective Use of Neuroleptics to Allow Those Who Can Recover Do So
- People Should Be Allowed Chance to Get Off Them

October 17, 2007

5

# Why: Fear and Absolution

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

October 17, 2007

6

## Law Project for Psychiatric Rights (PsychRights®)

- Public Interest, Tax Deductible, Law Firm
- Mission: To Mount a Strategic Litigation Campaign Against Forced Psychiatric Drugging and Electroshock.
- National in Scope
  - Nascent State Coordinator System
- Adopted Kid Drugging as Priority

October 17, 2007

7

## Goals

- Substantially Increase Recovery Rate after diagnosis of Serious Mental Illness
- Substantially Reduce If Not Eliminate Force
- System Support of People's Non-Medication Choices
  - (In favor of non-system alternatives, but need to change system)

October 17, 2007

8

## Recovery: Jim Gottstein Definition

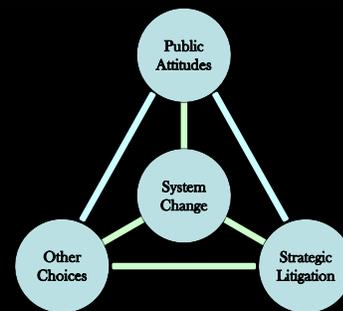
Getting past a diagnosis of mental illness to a point where a person enjoys meaningful activity, has relationships, and where psychiatric symptoms, if any, do not dominate or even play a major role in their life.

*Recovery: Responsibilities and Roadblocks*, by Jim Gottstein,  
<http://akmhweb.org/recovery/RecoveryResponsibilitiesRoadblocks.pdf>

October 17, 2007

9

## Three-Pronged Strategy



October 17, 2007

10

## Other Choices: Work Better for Many

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

October 17, 2007

11

## Finland Open Dialogue Approach: Five Year Study of Psychotic Patients

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

October 17, 2007

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

12

## Strategic Litigation

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

October 17, 2007

13

## Hallmarks of Due Process

### Meaningful Notice and Meaningful Opportunity to Respond.

*Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S.Ct. 2633, 2648-9 (2004)

October 17, 2007

14

## Constitutional Principles

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

October 17, 2007

15

## When Involuntary Commitment Constitutionally Permissible

1. Confinement takes place pursuant to proper procedures and evidentiary standards,
  2. Finding of "dangerousness either to one's self or to others," and
    - Incapable of surviving safely in freedom. *Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373, 1383 (1996).
  3. Proof of dangerousness is "coupled ... with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'"  
*Kansas v. Crane*, 534 U.S. 407, 409-10, 122 S.Ct. 867, 869 (2002).
- Must be by Clear & Convincing Proof. *Addington v. Texas*, 441 US 418 (1979).

October 17, 2007

16

## 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).

October 17, 2007

17

## Importance of Effective Attorney

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

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

October 17, 2007

## Sanism & Pretextuality

Courts accept . . . testimonial dishonesty, . . . specifically where witnesses, especially expert witnesses, show a "high propensity to purposely distort their testimony in order to achieve desired ends." . . .

Experts frequently . . . and openly subvert statutory and case law criteria that impose rigorous behavioral standards as predicates for commitment . . .

This combination . . . helps define a system in which (1) dishonest testimony is often regularly (and unthinkingly) accepted; (2) statutory and case law standards are frequently subverted; and (3) insurmountable barriers are raised to insure that the allegedly "therapeutically correct" social end is met . . . In short, the mental disability law system often deprives individuals of liberty disingenuously and upon bases that have no relationship to case law or to statutes.

The ADA and Persons with Mental Disabilities: Can Sanist Attitudes Be Undone?  
by Michael L. Perlin, *Journal of Law and Health*, 1993/1994, 8 JLHEALTH 15, 39-34  
October 17, 2007

## In Other Words . . .

**"If patient wasn't crazy, She'd know this is good for her."**

**So we won't let her pesky rights get in the way. ("dying with rights on")**

October 17, 2007

20

## Alaska

- Small Population = Easier Access to Policy Makers
- Alaska Mental Health Trust Authority (Trust) Unique
  - Committed to Innovation
  - Has Some Money
- Consumers Consortium
- Ionia

October 17, 2007

21

## PsychRights in Alaska

- *Myers* (2006)
  - Best Interests
  - No Less Intrusive Alternative
- *Wetherhorn* (2007)
  - Unable to Survive Safely in Freedom (2005 enactment of VA § 37.2-815, "substantially unable to care for himself" unconstitutional)
- *Bigley* (In Litigation)
  - State Must Pay for Less Intrusive Alternative (Trial Court)
  - Define Unable to Survive Safely in Freedom (Alaska Supreme Ct)

October 17, 2007

22

## Constitutionality of Forced Drugging under Alaska Constitution: the *Myers* Case

- Right to be Free of Unwanted Psychiatric Drugging is a "Fundamental" Constitutional Right.
- When No Emergency Exists, Right May be Overriden Only When
  - Necessary to Advance a Compelling State Interest, and
  - Only if No Less Intrusive Alternative Available. *Bigley* case could test.
- Compelling State Interest in **non-emergency** is "Best Interest" of a person found incompetent to make own decision.

October 17, 2007

23

## Public Education in Alaska

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

October 17, 2007

24



## Soteria-Alaska

- Non-coercive, Non-Drug option for Newly Diagnosed with Psychotic Disorder.
  - Be With, Not Do To
  - Expect Recovery
  - Let People Be “Delusional”
  - But Insist on Safety/Responsibility
- Replicate Original Soteria-House
  - 6-8 People
  - Two staff at all times.
- Opening in 2008

October 17, 2007

25



## Opinion Shift—Soteria-Alaska

- 2002: Not Endorse -- Just Educational
- 2003: Implies Need Non-Drug Alternative
- 2004: Needs More Development
- 2005: Not If, But How
- 2006: Trust Formally Supports
  - Wanted State Participation in Funding
- 2007: Funded by Trust for 2008 Opening when didn't get in State Budget.

October 17, 2007

26

**C**onsumers  
**H**aving  
**O**wnership  
**I**n  
**C**reating  
**E**ffective  
**S**ervices

- “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

October 17, 2007

27



## Peer Properties

- Peer Run Housing
- Allows Non-drug Choice
- No “services,” but peer support principle
- One 4 bedroom House Owned & Operated
- Proven Concept, but
- Needs infra-structure support
- CHOICES may be able to fill breach

October 17, 2007



## Alaska Status

- Widespread Support for Non-Drug Choices
  - But Backlash May Be Developing as implications becoming clearer
- Soteria-Alaska Scheduled to Open in 2008
- CHOICES, Inc., just started up
- Least Restrictive/Intrusive Alternative Enshrined in Recent Supreme Court Decisions. *Bigley* case may test what that means.

October 17, 2007

30



## National Effort

- Person or Group to Serve as Coordinator for Each Locale
- Legal Resources
- Expert Witness Resources (but see written testimony tactic)
- Identify and Pursue Legal Attack Points
  - Local Knowledge Essential
- Should be combined with Public Education and Promotion of Other Choices

October 17, 2007 31



## Two Potential Tactics

- Written Testimony (Affidavits)
  - Probably Has to Be Non-Jury
  - Whitaker (Available)
  - Bassman (Available)
- Subpoena Suppressed Drug Info
  - Hidden Studies
  - Marketing Docs to Docs
- Must Pursue Appeals!!! Etc.

October 17, 2007 32



## Sister Organizations

- National Association for Rights Protection and Advocacy (NARPA)
- MindFreedom
- ICSP

October 17, 2007 33



## NARPA National Association for Rights Protection & Advocacy

- Psychiatric Survivors & Mental Health Lawyers
- 25 Years
- Terrific Conferences
- Truly National in Scope
- Adopted Kid Drugging as Priority

October 17, 2007 34



## MindFreedom

- Activists, especially current and former victims of forced psychiatry.
- “Unites 100 sponsor and affiliate grassroots groups with thousands of individual members to win human rights and alternatives for people labeled with psychiatric disabilities.”
- Adopted Kid Drugging as Priority

October 17, 2007 35



## ICSP International Center for the Study of Psychology & Psychiatry

- Mainly Practitioners Who Know Current Practices are Harmful and Counterproductive
- Founded by Dr. Breggin to Advance Science
- Journal: *Ethical Human Psychology & Psychiatry*
- Becoming More Activist
- Adopted Kid Drugging as Priority; Focus of just held 2007 Conference.

October 17, 2007 36



## AHRP Alliance for Human Research Protection



- Independent, but Shared Values
- Influential Info-emails
- Also focuses on rights abuses in medical research

October 17, 2007

37



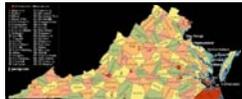
## Public Education Nationally



- Zyprexa Papers
  - Front Page New York Times Articles
  - New York Times Editorial Calling for Congressional Investigation
  - Not focused on Forced Psychiatry, but created relationships with reporters and visibility
  - PharmaLive Article
  - Blogs
- Secret Study Subpoenas
  - Mainly Internet Exposure So Far, but Some Print Interest

October 17, 2007

38



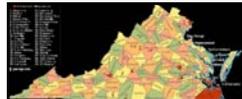
## Virginia Tech



- Caused Classic Treatment Advocacy Center (TAC) Opportunity
- Setback or Opportunity for Public Education (or both)?

October 17, 2007

39



## Virginia



- VA § 37.2-815 (2005), “substantially unable to care for himself” unconstitutional if not mean “unable to survive?”
- MH Commission proposal of “substantial likelihood” unconstitutional under *Addington* (requires “clear and convincing” proof)?
- MH Commission proposal “substantial deterioration in his or her previous ability to function in the community” exactly what ruled unconstitutional in *Wetherhorn*.

October 17, 2007

40



## Forced Drugging & Electroshock in Virginia



- LAR Process Unconstitutional?
  - No Due Process
  - LARs Giving Consent to Harm

October 17, 2007

41



## Local Virginia Effort?

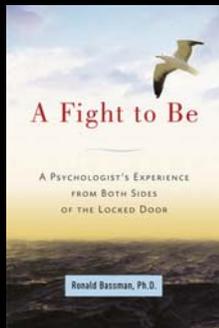


- Local Person/Group to Coordinate
- Legal Resources
  - PsychRights Has Ideas
- Expert Witnesses
  - PsychRights Has Ideas
  - Whitaker/Bassman Affidavits
- Be Good to Also Work on Alternatives
- Mainly need Person/Group to Coordinate<sub>2</sub>

October 17, 2007

42

## A Couple of Great New Books



October 17, 2007

43

(Co-)authors and survivors of psychiatry, therapists, psychiatrists, social scientists, lawyers and relatives report about their alternative work, their objectives and successes, their individual and collective experiences. The book highlights alternatives beyond psychiatry, current possibilities of self-help for individuals experiencing madness, and strategies toward implementing humane treatment.

These are the main questions addressed by the 61 authors from all continents:

- What helps me if I go mad?
- How can I find trustworthy help for a relative or a friend in need?
- How can I protect myself from coercive treatment?
- As a family member or friend, how can I help?
- What should I do if I can no longer bear to work in the mental health field?
- What are the alternatives to psychiatry?
- How can I get involved in creating alternatives?
- Assuming psychiatry would be abolished, what do you propose instead?

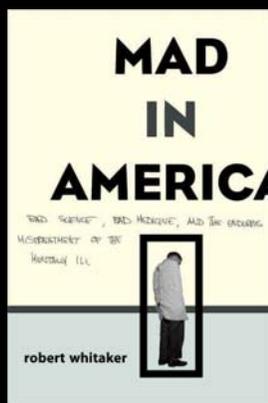
Peter Stastny  
Peter Lehmann (eds.)

**Alternatives  
Beyond Psychiatry**

Preface by Robert Whitaker

www.peter-lehmann-publishing.com

October 17, 2007



October 17, 2007

45

## Suggested Reading

- *Mad in America: Bad Science, Bad Medicine and the Enduring Mistreatment of the Mentally Ill* (2001) by Robert Whitaker
- *Alternatives Beyond Psychiatry*, Peter Lehman & Peter Stastny, MD, Editors (2007).
- *A Fight to Be: A Psychologist's Experience from Both Sides of the Locked Door*, Ronald Bassman, Ph.D. (2007)
- *The Hidden Prejudice: Mental Disability on Trial*, (2000) by Michael L. Perlin
- *Rethinking Psychiatric Drugs: A Guide to Informed Consent*, by Grace E. Jackson, MD, (2005)
- *Brain Disabling Treatments in Psychiatry: Drugs, Electroshock, and the Role of the FDA* (1997) 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 Joyce Hendrix with Deborah Fort (2004)
- *Psychotherapy of Schizophrenia: The Treatment of Choice* (Jason Aronson, 1996), by Bertram P. Karon and Gary R. Vandenbos

October 17, 2007

46