

The Transformation Triangle: Public Education, Alternatives & Strategic Litigation

MindFreedom International Continuing the Creative Revolution: Alternatives to the Medical Model

Portland Oregon--October 7, 2016,--Embassy Suites by Hilton
James B. (Jim) Gottstein, Esq.



Law Project for Psychiatric Rights (PsychRights®)

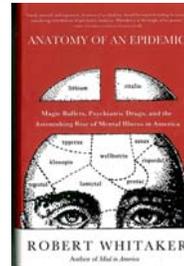
- Public Interest Law Firm
- Mission: Mount Strategic Litigation Campaign Against Forced Psychiatric Drugging and Electroshock.
- Drugging of Children & Youth a Priority



While Some People find the Drugs Helpful . . .

- 6-fold Increase in Mental Illness Disability Rate
- Cut the Recovery Rate from 80% to 5%
- Psychiatric Drugs Causing Massive Amount of Harm
- Life Spans Now 25 Years Shorter
- Hugely and Unnecessarily Expensive
- Huge Unnecessary Human Toll

Sources: Whitaker (2002 & 2010), NASMHPD (2006), Studies Posted on PsychRights.Org Scientific Research By Topic



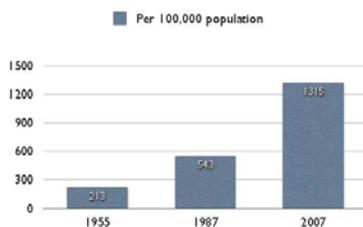
Named 2010 best investigative journalism in book category by the Investigative Reporters and Editors Association



Dr. Goetzke co-founded Cochrane, runs the Nordic Cochrane Centre, has published over 70 papers in "the big five," and been cited over 15,000 times

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

(under government care)



Source: Silverman, C. *The Epidemiology of Depression* (1968):139. U.S. Social Security Administration Reports, 1987-2007.

Outcomes with Selective Use Of Antipsychotics

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

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

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

Psych Rights
THE PROJECT FOR PSYCHOSOCIAL RIGHTS

The Soteria Project

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

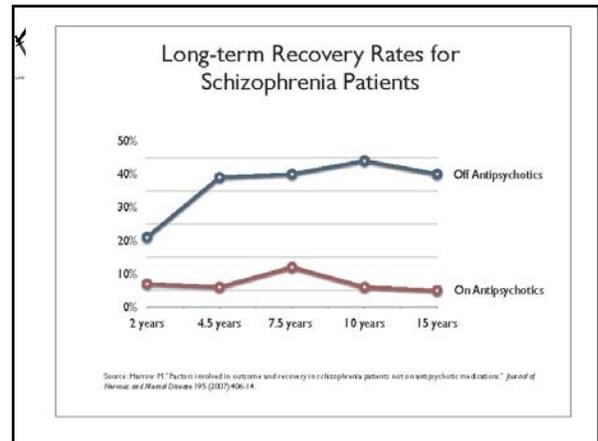
Results

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

Antipsychotic Use in Soteria Patients

- 76% did not use antipsychotic drugs during first six weeks
- 42% did not use any antipsychotic during two-year study
- Only 19 % regularly maintained on drugs during follow-up period

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



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Solutions Are Many (Adults)

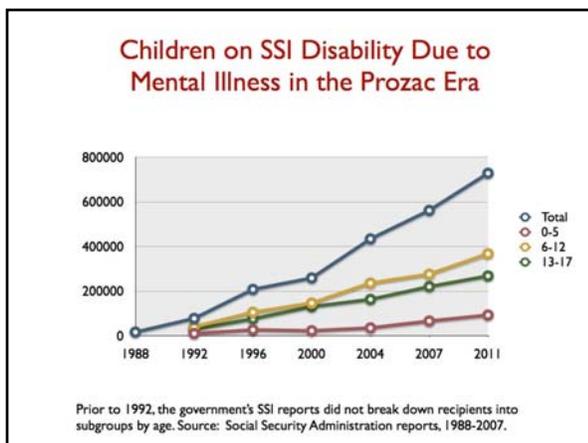
- Hearing Voices Network Approach
 - Strange or Unusual Beliefs ("delusions")
- Other Psychosocial Approaches
 - Soteria
 - Open Dialogue
 - Peer Directed

Alternatives Beyond Psychiatry
Written by Robert Whitaker

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Psychiatric Drugging of Children

- 1 in 10 boys on stimulants
- More than 1% of youth under 18 Given Neuroleptics
- No long term benefit; short term benefit mainly for adults
- 1 in 40 on antidepressants
 - Prozac Boys Study: 23% developed manic like symptoms; 19% more drug induced hostility
 - Pediatric Bipolar Rate soars
 - From close to none in 1995 to 800,000 by 2003
 - Then come the neuroleptics & anticonvulsants misbranded as mood stabilizers.
- Many Now on Neuroleptics, even six month olds.
- Child MH Disability Rate Soars from Essentially Zero in 1987 to 800,000 by 2011.



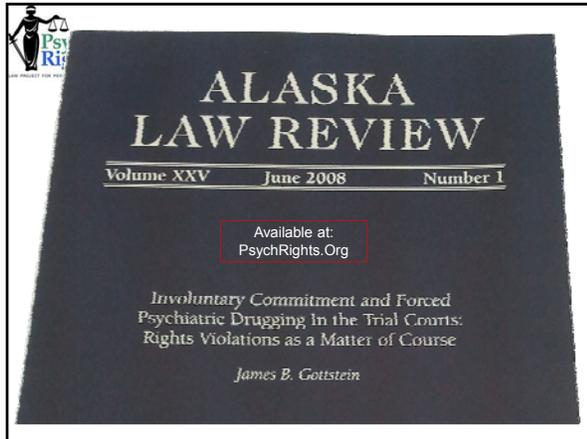
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Critical Think Rx A prescription for critical thinking about psychotropic medications

Solutions Are Many (Children & Youth)

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

Drugging Our Children
Written by Robert Whitaker




Hallmarks of Procedural Due Process

Meaningful Notice, and
Meaningful Opportunity to Be
Heard,
by a Neutral Decision Maker

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



Constitutional Principles – Substantive Due Process

- o To Justify Deprivation of Fundamental Rights Substantive Due Process Requires:
 - Compelling State Interest
 - Least Restrictive/Intrusive Alternative
- o Involuntary Commitment is a deprivation of a fundamental right under both the US and Alaska Constitutions
- o Forced Drugging is probably a deprivation of a fundamental right under US Constitution and is under the Alaska Constitution.



Involuntary Commitment Permissible Under US Constitution When:

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

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

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

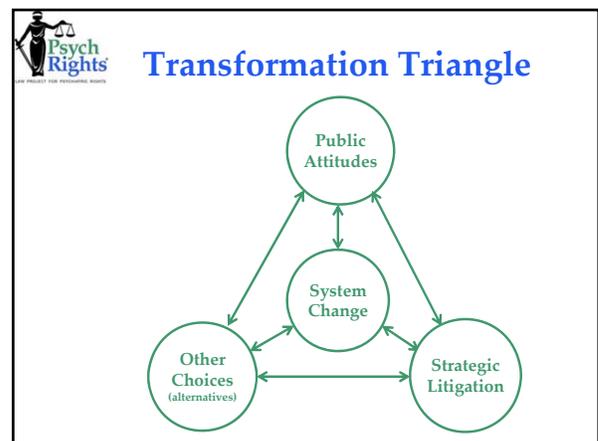


Forced Drugging under US Constitution: Sell

Court Must Conclude:

1. Important governmental interests are at stake,
2. Will significantly further those state interests - substantially unlikely to have side effects that will interfere significantly (with achieving state interest),
3. Necessary to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results, and
4. Medically appropriate, i.e., in the patient's best medical interest in light of his medical condition, considered on drug-by-drug basis.

Sell v. United States, 539 U.S. 166, 177-8, 123 S.Ct. 2174, 2183 (2003) (Competence to Stand Trial Case).





Forced Drugging Defense Package

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



Strategic Litigation Goals

- Force System to Honor People's Rights
 - Change Path of Least Resistance
 - Substantially Reduce, If Not Eliminate Force
 - Compel Other Choices
- Public Education Potential



Most Drugging of Children & Youth in State Custody Unconstitutional

Deshaney v. Winnebago County, 489 U.S. 189, 109 S.Ct. 998 (1989):

"[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs-e.g., food, clothing, shelter, medical care, and reasonable safety-it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause."

- State obligated to protect children & youth in custody from unreasonable risk of harm.
 - *M.D. v. Abbott*, 152 F.Supp.3d 684 (SD Tex. 2015)



Most Psychiatric Drugging of Children & Youth Is Medicaid Fraud

- Medicaid coverage for outpatient drugs limited to "medically accepted indications"
 - Off-label covered only if "supported" by one of 3 specified compendia
 - See, "Medically Accepted Indications Chart for Children & Youth"
<http://bit.ly/b50HrH>



Medicaid Fraud Initiative

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





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

Heather R. (2016)

- Interview of patient required if possible before order for evaluation



L.M.

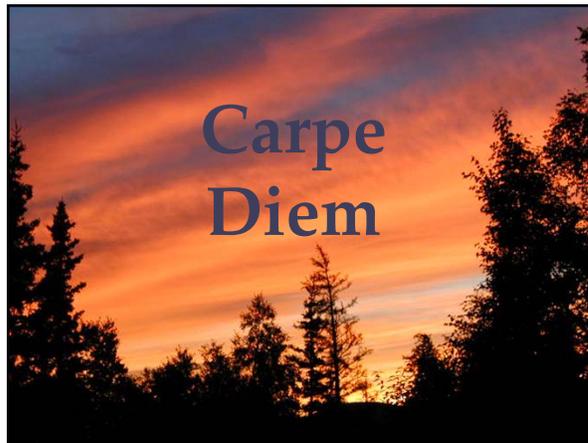
Alaska Supreme Court Case No. S-16467

- Just Filed
- Basis: State can't insufficiently fund Soteria-Alaska and then say there is no feasible less restrictive alternative
- Appeal might get thrown out because of settlement on forced drugging



Alternatives Development in Alaska

- CHOICES, Inc. Opened in 2007
 - Back on Track
- Soteria-Alaska Opened in 2009
 - Closed in 2015 for insufficient funding
 - L.M. an effort to force less restrictive/less intrusive alternative



Suggested Reading

- *Anatomy of an Epidemic*, by Robert Whitaker (2010).
- *Deadly Psychiatry and Organised Denial*, by Peter Götzsche, MD (2015)
- *Mad in America: Bad Science, Bad Medicine and the Enduring Mistreatment of the Mentally Ill*, by Robert Whitaker (2001).
- *Drugging Our Children: How Profiteers Are Pushing Antipsychotics on Our Youngest, and What We Can Do to Stop It*, Sharna Olfman and Brent Dean Robbins, Editors (2012)
- *Bipolar Children: Cutting-Edge controversy, Insights, and Research*, Sharna Olfman, Editor (2007).
- *Agnes's Jacket: A Psychologist's Search for the Meaning of Madness*, by Gail Hornstein, PhD, Rodale Books, 2009.
- *Drug Induced Dementia*, Grace E. Jackson, MD, Author House, 2009.
- *A Fight to Be: A Psychologist's Experience from Both Sides of the Locked Door*, Ronald Bassman, Ph.D. (2007)
- *Rethinking Psychiatric Drugs: A Guide to Informed Consent*, by Grace E. Jackson, MD, (2005)
- *Brain Disabling Treatments in Psychiatry: Drugs, Electroshock, and the Role of the FDA*, Ed. 2 (2008) by Peter Breggin, MD.



Suggested Reading (cont.)

- *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
- *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).
- *Commonsense Rebellion*, by Bruce E. Levine (2001)
- *Blaming the Brain: The Truth About Drugs and Mental Health*, by Elliot Valenstein (1998)
- *Alternatives Beyond Psychiatry*, Peter Lehman & Peter Stastny, MD, Editors (2007).
- *Escape From Psychiatry*, by Clover (1999)
- *How to Become a Schizophrenic: The Case Against Biological Psychiatry*, 3d Ed., by John Modrow (2003)
- Other books at <http://psychrights.org/Market/storefront.htm>