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When Is "Tough Love" Torture?

A new talk or behavioral therapy, even for children, can be introduced and sold by anyone without being vetted by any government agency. " />

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May 04" /> , 2008" /> "Last time this country witnessed somebody with a bag over his head and a noose around his neck, the world was horrified and the nation was embarrassed," thundered Rep. George Miller, on hearing testimony this April regarding abusive treatment of troubled teens in unregulated residential programs. "To be told [by these witnesses] that this is considered a valid therapy by someone in the care of someone else's child...It's hard to believe."

Miller—who chairs the House Education and Labor Committee—had called for the congressional hearings to introduce legislation to regulate the programs, which use such "tough love" methods in an attempt to discipline difficult adolescents. He'd also requested a Government Accountability Office (GAO) investigation. At the first round of hearings last October, the GAO had released its initial report, finding "thousands" of allegations of child abuse, medical neglect and "reckless and negligent operating practices," in "boot camps," "wilderness programs" and "academies," which currently hold tens of thousands of American youth. Two additional GAO reports were introduced at the April hearings—with investigators describing the treatment of some of the youth as "torture." One youth was beaten for weeks and denied medical attention after a suicide attempt left him with an exposed bone from a broken arm; others were taunted, then ignored as they lay dying; some were even hooded and had nooses placed around their necks.

Sitting in the audience—and well aware of how difficult it can be to get people to comprehend the extent and severity of the abuse taking place in these programs—was Phil Elberg, a New Jersey medical malpractice attorney. His cases against the industry helped bring the issue to congressional attention and his work, mentioned in two of the three GAO reports, helped guide investigators in understanding the issues and key players. Elberg has probably done more than anyone else to hold the billion-dollar teen treatment business accountable. If the legislation passes, he may soon have many more cases—and perhaps, finally, some competition from other lawyers for them.

So far, however, he's the only attorney to repeatedly take on the industry successfully, racking up \$16 million in judgments for five clients who had been subjected to "treatment," including beatings, food and sleep deprivation, sexual humiliation, and stress positions. Though even-tempered, the 61-year-old—who resembles a weathered Richard Gere— is a man obsessed. When he told his wife he might not attend the hearings, she replied, "What train will you be taking back?" knowing full well that he couldn't stay away.

Elberg, who was born and raised in Brooklyn, had wanted to be an attorney since childhood. After law school, however, he became less sure—nearly detouring into psychology before he realized that practicing law, going to graduate school, and having time for his wife and young child was too much to take on at one time. He's raised three sons—two of whom are graduates of Ivy League law schools, one still in his teens. So he knows both personally and professionally how difficult it can be to parent adolescents.

In the mid-1990's, he took over the case of a teen with bipolar disorder who had been wrongly diagnosed with a drug problem and held by the New Jersey branch of a now defunct national program called KIDS for seven years. Elberg had expected a typical malpractice case; instead, he found himself challenging a bizarre, cult-like organization run not by mental health experts but by amateurs. KIDS was operated by Miller Newton, a charismatic man who entered the addictions field when his own child had a drug problem. He'd previously served as clinical director for a national program called Straight Inc, which claims to have treated some 50,000 teens in the 80's and 90's—but despite the endorsement of Nancy Reagan, it turned out that his psychology credentials were bogus.

Newton told parents that his way was the only way to save their children—and that if they didn't do exactly as advised, the teens would die. "I came to understand how con artists have stolen the language of the mental health system and redefined child abuse as therapy," Elberg says. "And I understood the extraordinary vulnerability of families and adolescents to charlatans offering simple solutions to the hard work of raising kids."

That first case resulted in a \$4.5 million dollar judgment against Newton and KIDS. In 2003, Elberg's second case yielded \$6.5 million for a young woman named Lulu Corter who had also been held in a KIDS program for 13 years, since she was 13. Even though she didn't take drugs or drink, she was accused of exhibiting "druggie behavior" and was diagnosed as a sex addict because she had been sexually abused. But this left her in a bind: In order to graduate the program, she had to admit to addictive behavior. As a virgin, she had none to confess. She spent hours in "restraint," with fellow teen participants pinning her to the floor, sometimes restricting her breathing. Corter eventually escaped, but by then, she'd developed post-traumatic stress disorder and major depression. She found Elberg after reading a newspaper article about his earlier victory.

"He's a fantastic and caring lawyer," says Corter. "He understood that we went through a living hell—he just understood it. He's not like a lawyer who just leeches money off of you." Elberg's most recent case against kids was cited in the latest GAO report. A 14-year-old boy, who had been in trouble at school, was brought to KIDS in 1994 for an evaluation. After a six-hour investigation, he falsely confessed to marijuana and cocaine use just to stop the questioning. But the program then held him for four years to "treat" his "addictions." His parents were never told that all of his drug tests were negative. His records show that he was restrained over 250 times, and prevented from leaving even after he turned 18. When his father refused to participate in program meetings because they interfered with his work, his mother was told to divorce him—and she did so, believing, as Newton told her, that it was the only way to save her son.

Elberg discovered that, although its practices were on the extreme end, KIDS was part of a massive industry including hundreds of poorly-regulated programs still operating nationwide. A young man who testified at the hearings described one such program in upstate New York

called the Family Foundation School, with teens restraining fellow teens, forced confessions, and denial of bathroom access—just like at KIDS. Unlike KIDS, however, the Family Foundation is still open, though it told ABC News that it no longer uses such restraint practices. The exact number of "tough love" residential programs remains unknown; the GAO is still trying to determine how many exist and how many teens are in their custody. With no professional or legal oversight—and guided by a fervent belief that their ends justify even the harshest means—they present enormous risks. "If a program is isolated and not accountable and has a model of making people suffer in order to get better—it's a recipe for abuse," says William Miller, emeritus professor of psychology and psychiatry at the University of New Mexico and an expert on evaluating addiction treatment.

Elberg was the first to recognize that malpractice law was a potentially powerful weapon against the industry. According to Miller, tough love programs don't meet the accepted standards for treating addiction, depression, and the other serious conditions they claim to cure, in part because confrontation and humiliation are contraindicated for mental illness. Elberg explains, "if they say they're treating a particular medical condition, there's got to be a standard of care. If there's a standard of care, did they meet it?"

Unfortunately, parents don't realize that these programs don't meet standards— in part because they don't know that psychological treatments aren't regulated like other types of medicine. In order to introduce a new medication, a drug company has to meet FDA standards for safety and efficacy—but a new talk or behavioral therapy, even for children, can be introduced and sold by anyone without being vetted by any government agency. And until very recently, legitimate psychologists and psychiatrists have largely been unaware of the private industry's practices.

Christopher Bellonci, MD, a child psychiatrist who is medical director of a children's residential center that does not practice "tough love," testified, "I'm frankly horrified to learn about these kinds of things going on in the name of therapy. Nothing I learned in medical school could ever justify them. There is no place for these techniques in mental health and substance abuse treatment."

Another reason parents remain ignorant of problems with the programs is that they are often deliberately deceptive. In one phone call surreptitiously recorded by the GAO, a program recruiter told an investigator posing as a father to "tell [his wife] that it's a college prep boarding school... if she thinks you want to send her daughter to a place where there are drug addicts and people that are all screwed up, she will look at you and say no way."

In another call, a supposedly independent referral service called Parent Help told investigators that the program it recommended, "feed[s] the child a whole-grain diet" and that as a result, in combination with the exercise and rest provided by the program, "the bipolar, the depression, those kinds of things, they just go away after a while." In addition to this blatantly false medical claim, Parent Help did not disclose that its owner is married to the owner of the school to which it referred the child, the Thayer Learning Center— and other phone calls using different stories of children were all referred to the same place, despite claims of individualized referrals.

Thayer has recently tangled with Elberg as well. He represented the International Survivors' Action Committee (ISAC), a watchdog group that runs a website that investigates teen programs and posts damaging documents about them. ISAC had been sued by Thayer, which is

a boot-camp program located in Missouri. Thayer claimed ISAC was helping whistle-blowing former Thayer employees steer parents away from Thayer and demanded to search the group's computer for evidence that Isac was collaborating with them. Those employees had signed non-disclosure agreements, which Thayer claimed prevented them from speaking publicly about anything they'd seen while employed there.

Following the first hearings and GAO report, the FBI had been asked to investigate Thayer, in connection with the 2004 death of 15-year-old Roberto Reyes in its boot camp. Reyes' death had been attributed to complications from a spider bite, but the GAO report said that, "staff did not recognize the victim's medical distress or provide adequate treatment." The FBI turned over its findings to the Justice Department at the end of March, pending further action.

Before Reyes died, according to a letter to Thayer from the Missouri Department of Social Services (DSS), Thayer "supervisors denied requests for medical attention." Reyes was suspected of "faking," even though he had been "so sick that he had feces and urine all over him" and had to be "hosed down" in the shower. A 20-pound weight was tied around his waist "because he was too sick to exercise." (The GAO calls the weight a "sandbag.")

Thayer's attorney, Rhonda Smiley, says that the shower incidents never happened, and that the statements cited in the letter were from "ex-employees who had been fired and were not under oath." She says "there are no 20-lb weights at Thayer and there never have been," and that these are "old unsubstantiated and false allegations." Thayer is appealing a DSS report that blamed it for negligence in the boy's death, but has settled a lawsuit brought by Reyes' parents for \$1 million. Smiley says Thayer settled because "they wanted the parents to have the insurance money."

Elberg was ultimately able to limit the scope of the search and kept ISAC's computer out of Thayer's hands, keeping its website online. He describes Thayer this way: "What we have here in the center of the U.S. is a private jail for adolescents without oversight by judges, mental health professionals or schools. Children are treated with methods which run afoul of compulsory education laws and accepted treatments for psychiatric conditions and wouldn't be permitted in juvenile prison."

But despite the widespread evidence of abuse, there are only two ongoing major lawsuits against the industry: both class action suits against the World Wide Association of Specialty Programs and Schools (WWASP). WWASP is linked to 12 currently operating programs in eight states and three countries, including the notorious Tranquility Bay in Jamaica.

Few attorneys are willing to take these cases. "The victims don't make attractive plaintiffs," says Elberg, "They are considered damaged goods going in. If they are still in terrible trouble afterwards, they are not the kind of people jurors want to give money. If they are better, the facility takes credit." Victims are also often unable to recognize the nature of their injury until the statute of limitations has passed.

And because the programs are often located in states or even countries with high unemployment that look favorably upon the programs as economic engines, getting favorable judgments is difficult. Suits brought in the state or country where the program operates are often defeated by jurors and judges who support the program because it employs their neighbors and they see the victims as liars with no local ties. Jurisdictional problems also

abound. In some cases, it's difficult to determine where to sue—because the victim lives in one state, the program is located in another, and the people who actually profit from it somewhere else entirely.

The new legislation, however, could level the playing field. It contains a private "right of action" which allows attorneys to recover their fees if they sue these programs on behalf of teens and their families. This would make these cases far more attractive than they are now: Attorneys wouldn't need a large judgment to recoup their losses, only one that favors their side. "If this legislation passes, I would have no hesitation in devoting my entire practice to these cases," says Elberg.

Other provisions in the legislation include a federal ban on "disciplinary techniques or other practices that involve the withholding of essential food, water, clothing, shelter, or medical care," and on "acts of physical or mental abuse designed to humiliate, degrade, or undermine a child's self-respect." The new law would also require that teens have access to a new 24-hour national abuse reporting hotline and provides \$50 million to fund and enforce the new standards. Miller's spokesman, Tom Kiley, says, "We are confident that the legislation will receive strong support in the House." The picture in the Senate is as of yet unpredictable, in an election year. Whatever happens, Elberg's not about to give up.

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