Children's Healthcare Is a Legal Duty, Inc.

Box 2604, Sioux City IA 51106
Phone 712-948-3500, FAX 712-948-3704
Web page: www.childrenshealthcare.org

Number 1, 2005, © by CHILD, Inc.
E-mail: childinc@netins.net
Written by Rita Swan

Equal rights for children under the law

Brent Bloom, Rita Swan, and Dr. H.E. Wiltse

Nebraska Supreme Court rejects challenge to metabolic screening; CHILD filed amicus brief in case

On March 25, the Nebraska Supreme Court unanimously upheld a state law requiring metabolic screening without an exception for religious beliefs. It is the nation's first reported court ruling on whether a state has the right to require a health screening over religious objections.

Nebraska requires all babies to be tested for nine metabolic disorders within 48 hours after birth. Birth certificates are not issued until the tests have been done.

In July, 2003, Rosa Anaya was born at home in Omaha. As with the other seven children of Josue and Mary Anaya, no physician attended her birth. The parents reported her birth to the state and about six weeks later received a letter advising them that they must have Rosa tested for metabolic disorders.

Life of flesh is in blood

The parents wrote back that their religious beliefs opposed all withdrawing of blood and therefore they refused to have the test done. Though never citing membership in a particular church, the Anayas believe that "the life of the flesh is in the blood" (Leviticus 17:11). Taking blood from the body takes life from the body and might shorten a person's life span, they claim.

Brent Bloom, Chief Deputy County Attorney for Douglas County, brought a civil action to compel the Anayas to comply with the newborn screening law.

Amy Mattern of the Nebraska Civil Liberties Union represented the parents. Their argument was that the state did not have the right to interfere with a religious practice until the child was in imminent danger. The metabolic disorders are rare and therefore, they said, the state's interest is merely speculative. Also, they argued that the case was moot because the law required the test to be done within 48 hours and the baby was already several months old.

Both parties agreed that the court's standard of review was strict scrutiny, which requires the state to demonstrate a compelling interest that outweighs a First Amendment right and to use a narrowly tailored and the least restrictive means for achieving

INSIDE

that interest.

Hybrid rights claimed

The defendants raised a "hybrid rights claim," coupling the parents' First Amendment right to religious freedom with their Fourteenth Amendment right to custody and control of their children. They cited the U.S. Supreme Court ruling in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), for the idea that when two constitutional rights may be claimed, then the law restricting those rights is subject to strict scrutiny.

Court: minimal intrusion for prevention

In December, 2004, Douglas County District Court Judge Patricia Lamberty ruled in favor of the state. She held that strict scrutiny was the standard of review and that Nebraska's metabolic screening law was constitutional under that standard because the test detected very serious disorders and, as a mere needle prick to the heel, was an extremely minimal intrusion on the family.

The Anayas appealed. Bloom asked for the case to move directly to the state supreme court, which agreed to rule on it.

CHILD's amicus brief

CHILD filed an amicus brief in support of the metabolic screening law. The National Association of Counsel for Children and the Nebraska Chapter of the American Academy of Pediatrics co-signed the brief.

CHILD's brief was written by James Dwyer, Professor of Law at the College of William and Mary School of Law. Dwyer argued that the law needs to meet only a "rational basis" review under which a state has to show that the law is neutral, generally applicable, and serves a state interest reasonably well. He disputed the parents' argument that case law required the strict scrutiny standard for hybrid rights claims.

CHILD's brief explained why the screening is essential to prevent the damage caused by metabolic disorders and the case law restricting parents from allowing harm to their children.

CHILD also argued that baby "Rosa Anaya has a constitutional right to equal protection of her interest in avoiding preventable metabolic disorders."

Professor James Dwyer

Baby has equal protection right to screening

CHILD continued,

> What neither of the parties to this litigation has considered is that Rosa Anaya might herself have a right at stake in this matter. It is her health, after all, and the health of other children in a similar position in Nebraska, that is in question. The state's metabolic screening law is designed for their protection, and the ultimate issue in this case is whether they will receive the protection that the legislature has decided to give them.
>
> For this Court to empower Appellants to countermand the legislature and prevent Rosa from receiving the protection of the metabolic screening law would be effectively to treat her as less deserving than other children of the protections afforded by state child welfare laws. Such judicial action would constitute a *prima facie* violation of the Equal Protection Clause of the United States Constitution, which prohibits state actors from denying the protections of the law to particular citizens without strong justification. And there is no support in constitutional precedent for the proposition that someone else's wishes can supply such justification.

Oral arguments were held February 3. CHILD founders Douglas and Rita Swan and CHILD

member Peg McLaughlin attended. Peg's sister Susie has suffered a lifetime of catastrophic damage because her Christian Science parents did not get her medical treatment for hypothyroidism.

Defense: baby does not have right

A judge asked the parents' attorney Amy Mattern if the baby had "any interest in this case."

Mattern replied, "There was an amicus brief that said so, but they have no statutory authority for that." She also said that courts have always held that parents have a right to make decisions for their children.

Further, Mattern argued that the state had not shown a compelling interest in intervening.

Public welfare not at stake

Mattern argued that the state had a right to require immunizations because the public welfare was at stake, but didn't have a right to require metabolic screening because public welfare was not at stake and because the diseases were so rare. She said the state's interest in intervening was not compelling.

A judge replied, "Without the test, you don't know that until after the damage is done."

Test necessary to prevent severe harm

The judges' first three questions for the prosecutor were

Does the record reflect what harm is done by metabolic disorders?

Is the damage fully preventable through this test?

Is there any other method of testing that would do as well?

Bloom recapitulated the catastrophic harms described in the record, said the damage was fully preventable with early detection, and said the blood test was the only reliable way to detect the disorders in time to prevent harm. He relied on testimony given by Dr. H. E. Wiltse, an Omaha pediatrician and a specialist in metabolic disorders.

The Chief Justice asked why the state's interest was compelling when the metabolic disorders are so rare. Bloom said because of the severe disabilities and death they cause.

Peg McLaughlin

One judge asked, "Is there any constitutional significance to the fact that Nebraska is one of a very few states that do it this way?" The judges' last question was: "How can the state's interest be compelling if 46 other states allow exemptions?"

Bloom said the Nebraska legislature has enacted the law, the county has explained its compelling interest in the law, and no case law indicates that a state's compelling interest is determined by what other states do.

Only rational basis standard necessary

The Nebraska Supreme Court ruled in *Anaya* that a law must meet only a rational basis standard to be constitutional. It pointed out that the U.S. Supreme Court "has never held that parental rights to childrearing as guaranteed under the Due Process Clause of the 14th Amendment must be subjected to a strict scrutiny analysis."

Nebraska's metabolic screening law is "a neutral law. . . generally applicable to all babies born in the state and does not discriminate as to which babies must be tested," said the Court. Its purpose is not directed at religious practices or beliefs. Pursuant to *Employment Div., Dept. of Human Res. v. Smith*, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990), and its progeny, a neutral law of general applicability need not be supported by a compelling governmental interest even though it may have an incidental effect of burdening religion.

Nebraska's metabolic screening law "cannot be construed as directly regulating religious-based

conduct" nor is there "evidence that the State had an anti-religious purpose in enforcing the law," the Court held.

State has right to promote child health and prevent social burdens

The Court ruled that the state had a right to make policy promoting "the health and safety of the child" and avoiding "the potential social burdens created by children who are not identified and treated."

The Court was silent on CHILD's contention that the child herself had a Fourteenth Amendment right to the equal protection of the law. While the U.S. Supreme Court has held that the Fourteenth Amendment gives parents a right to care, custody, and control of their children, there are only state court rulings that the Fourteenth Amendment confers equal protection on children.

Hybrid rights and strict scrutiny dismissed

Nevertheless, CHILD is very pleased with the Nebraska Supreme Court's unanimous ruling that a state has the right to require health screenings for all babies and that neither "hybrid rights" nor First Amendment rights trigger a strict scrutiny standard of review. We are deeply grateful to Jim Dwyer for writing the amicus brief *pro bono*.

The other states requiring metabolic screening without exception for religious belief are South Dakota, Montana, and West Virginia.

Nebraska is also one of only five states with no religious exemptions to child neglect either in the civil or criminal codes. The others are Hawaii, Massachusetts, Maryland, and North Carolina.

In 2004, screening identified 28 babies with metabolic disorders in Nebraska.

CHILD's amicus brief and the Nebraska Supreme Court ruling are posted on our web page at www.childrenshealthcare.org. Some U.S. Supreme Court rulings upholding Fourteenth Amendment rights of parents are Meyer v. Nebraska, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Troxel v. Granville*, 530 U.S. 57 (2000).

Scientologists file federal suit against Nebraska's screening law

In December, Ray and Louise Spiering of Wahoo, Nebraska, filed suit in federal court challenging Nebraska's metabolic screening law. Members of the Church of Scientology, the Spierings believe in "silent birth" and therefore objected to having the test done before the baby was a week old.

Their complaint for declaratory and injunctive relief names the governor, attorney-general, and Department of Health and Human Services officials as defendants. They asked for monetary damages "as a remedy for mental and emotional distress, humiliation, embarrassment, discomfort, and anxiety" that they have incurred because of the screening law.

Because the birth of the Spiering's fourth child was overdue, U.S. District Judge Richard Kopf convened a court hearing on two hours' notice. He issued a restraining order against the state, which allowed the parents to delay the screening for a week.

Permanent damage claimed from needle stick or hearing words

The Spierings have tried and failed to get the legislature to enact a religious exemption to the metabolic screening law. The Church of Scientology believes that a newborn should not experience any pain or stress or hear any words or loud noises until she is several days old.

The basis for this belief, Mr. Spiering testified, is that the brain has a primitive part called the reactive mind that cannot reason. Pain activates the reactive mind to record smells and sounds "and especially words themselves," he said.

Later when an individual encounters the same sensory data or words, his primitive mind turns on its old recording, telling him to fight or flee and making him relive the pain of an earlier experience, Spiering claimed.

Although the Spierings got the delay they asked for in federal court, they still want the court to rule on their constitutional claims. Their complaint states that the screening law "violates their sincerely held religious beliefs, the specimen is taken without their parental consent, and the process violates the First Amendment's Free Exercise Clause, the

Fourth Amendment's prohibition against unreasonable searches and seizures, and the Fourteenth Amendment's Due Process Clause and Equal Protection Clause."

The state has filed a motion to dismiss the case as moot.

When should testing be required?

The mapping of the sequence of human DNA through the Human Genome Project makes it possible to test persons for innumerable genes. "Conceivably, we could do 50,000 genetic tests using DNA chips right at the bedside," University of Utah pediatrics professor Jeffrey Botkin said. Furthermore, scientists are coming to realize that nearly all diseases have a genetic component.

These developments coupled with the rapid advance of testing technology raise ethical questions about how many tests to require.

CHILD's position is that screening of newborns should be required only when it meets the following conditions:

1. The disease detected by the screening has significant mortality and morbidity among children when not diagnosed pre-symptomatically
2. The disease is not consistently identified by symptoms in the neonatal period
3. The prevalence of the disease in the child population is significant
4. The baby can benefit from pre-symptomatic treatment
5. A simple, minimally invasive screening method that carries no reasonable risk of physical harm is available
6. The screening method is sensitive and specific
7. A reliable means for reporting results exists
8. The purpose of the screening is explained to the parents, and resources for treatment and counseling are available
9. The family's right to confidentiality is protected.

These conditions, included in CHILD's amicus brief in *Anaya* (see first article) are similar to those set forth by the Joint Report of the Association of Public Health Laboratories and Council of Regional Genetic Networks.

Standard: potential benefit to child

No test should be required for purposes of research. No test should be required if medical science does not have an effective treatment for the disease or disorder. The standard should be the potential personal benefit to a child.

The metabolic disorders are not common. But they cause devastating injury and death if not detected by a test and treated. The test is very simple, and so is treatment. These factors weigh heavily in favor of requiring screening for some metabolic disorders.

Sources include Association of Public Health Laboratories, "Recommendations and Standardization of Neonatal Screening" (Washington, D.C.: March, 1999):15 and Jeff Wheelwright, "Testing your future," *Discover* 24 (July, 2003):35-41.

Childbirth death in Meade Ministries

On January 9, Kathryn Marie Kennedy, 23, of Lake City, Florida, bled to death in her bed after delivering a son at home without medical attention. She was a member of Meade Ministries, formerly known as End Time Ministries, which has lost several babies because of its belief in faith healing. Kennedy was a granddaughter of the second wife of the sect's founder, Rev. Charles Meade.

The Columbia County sheriff's office said she lay in bed, hemorrhaging, for six hours, then lost consciousness and died.

Another three hours passed before family members summoned help. When the paramedics arrived, they found Kennedy's body cold to the touch. Her son survived.

Investigators cited religion as the reason for the delay. They concluded it was not a criminal matter and closed the case.

Sects withheld lifesaving medical care

Meade began as a disciple of Rev. Hobart Freeman, whose Faith Assembly let scores of children die without medical care. Meade broke away and launched his own End Time Ministries. Some babies of followers died in the Chicago area, including one toddler who choked on a banana.

Five End Time babies died without medical attention in and near Sioux Falls, South Dakota. The best known of those was Libby Cooke, the infant daughter of Joni and Gary Cooke, an associate pastor. She died in 1978 at four days old.

Bereaved mom becomes a legislator

Joni left the church, got a divorce, and went to college. Today she is Joni Cutler, a South Dakota state representative, attorney, chair of the Criminal Justice Department of Colorado Tech University in Sioux Falls, and an honorary member of CHILD.

In 1984 Meade got a vision that the end of the world would soon come and his followers should gather as the army of the Lord in Lake City, Florida, and establish God's kingdom on earth there. Hundreds sold their homes and relocated to Lake City.

In 1989, the group lost its first baby to medical neglect in Florida. Michael Boehmer was born at home. The next day his nose began to bleed as his lungs filled with blood. His parents tried to staunch the bleeding with cotton, but it did not stop. He lost a quarter of his blood and died at 4 days old of spontaneous hemorrhage with no medical attention.

Routine vitamin K shot would have saved life

Physicians testified at a medical examiner's inquest that an injection of vitamin K, standard in hospital births, would have clotted Michael's blood and saved his life.

The parents told a judge that they simply didn't know their baby was seriously ill and called 911 when they became aware of life-threatening symptoms. The judge ruled that willful neglect could not be proved; no charges were filed.

In September, 1990, End Time toddler Sonia Hernandez, age 4, died in Lake City. She had many serious handicaps, but her health had been stable with medical care until 1988 when her mother joined End Time Ministries. She had no medical attention after that and weighed only 14 ½ pounds at her death.

Another death and near death

A month after Sonia died, 16-year-old Will Meyers was rushed to a Gainesville hospital by his End Time parents. He was diagnosed with a heart tumor, kidney failure, and swollen liver. His condition had gone untreated for seven months. He could not hold down food and had lost one third of his body weight. His brother told investigators that he could not walk and buckets were placed under his feet to catch the pus draining from them.

A heart operation saved the boy's life, and he eventually recovered. His parents—the grandparents of Michael Boehmer—pled guilty to felony child abuse in March 1991, and were placed on five years' probation with orders to get medical care for surviving children and perform community service.

Christian Science parents convicted

Intertwined with the End Time cases is the saga of a Christian Science child's death. In 1986 Amy Hermanson, age 7, died of untreated diabetes in Sarasota, Florida. Her Christian Science parents, William and Christine Hermanson, were convicted of felony child abuse and third-degree murder by a jury on April 18, 1989, despite a religious exemption to child abuse in Florida statute.

A few days earlier a judge had ruled in the death of the Boehmer baby that there was not enough evidence of willful neglect to bring charges against the parents. State's Attorney Jerry Blair, whose jurisdiction includes Lake City, later said the Hermanson conviction might clarify the neglect law and make it easier to prosecute the End Timers in the future.

In 1990, with the Hermanson conviction unanimously upheld by a Florida appeals court, criminal charges were filed in the Hernandez and Myers cases.

Throughout the jury trial of Sonia's parents, Guillermo and Luz Hernandez, the defense argued that the Hernandezes' religion did not influence their care of their daughter, while the prosecution presented evidence that it did.

High court: religious believers can't be charged

On the last day of testimony, however, the Florida Supreme Court unanimously overturned the Hermansons' conviction, holding that the religious exemption law created confusion as to whether and when a parent with religious objections to medical care had a legal obligation to get medical treatment for a sick child. "The statutes have created a trap that the legislature should address," the Court said. *Hermanson v. State*, 604 So.2d 775 (Fla. 1992)

Suddenly, religious beliefs had become a defense to felony child abuse in Florida. The prosecutor, Scott Cupp, removed all references to religion in his closing argument while the defense was allowed to tell the jury about the Supreme Court ruling. "Isn't that something, we say that religious beliefs played no role in their decision, yet that could be a defense for their action," public defender Jimmy Hunt told the jury.

The jury convicted the Hernandezes of felony abuse, but the following year an appeals court overturned the conviction. *Hernandez v. State*, 645 So.2d 1112 (Fla. 1994) The court gave no explanation; presumably, the Supreme Court ruling in *Hermanson* influenced its decision.

Florida legislators crumble

The Hermansons' prosecutors made several attempts to have the religious exemption law repealed, but legislators dropped their support for repeal soon after the Christian Science lobbyist talked to them.

Will sick children get medical care?

The death of Kathryn Kennedy is chilling. For several years Meade Ministries has been building respectability in Lake City. Its members own dozens of local businesses. It built the second largest church in the county. Many thought its early radical isolation and rejection of medical care had been discarded.

Florida children have little protection from neglect. The *Hermanson* ruling indicates that parents with religious objections to medical care have no legal duty to provide it.

Intent to harm must be proved in neglect cases

In 1989 a Florida court overturned a manslaughter conviction of Delores Blok, who left her toddler locked in a car while she went to a motel with her boyfriend. *Blok v. State*, 541 So.2d 713 (Fla. 1989) The court ruled there was insufficient evidence to support the jury verdict of culpable negligence. The case was cited by both the Hernandez and Hermanson defense attorneys.

In a 2000 trial Hillsborough County Circuit Court Judge Rogers Padgett instructed a jury that the state had to prove that parents who let a child die of 432 wasp stings intended the harm to befall the child. To get a conviction for aggravated child abuse, the state had to prove beyond a reasonable doubt, Padgett said, that the parents "willfully or by culpable negligence" neglected their son and in so doing caused him "great bodily harm." He defined "willfully" as "knowingly, intentionally and purposely" and told the jury that "negligent omissions" are not "culpable negligence" because "they are committed without the requisite specific intent to cause great bodily harm, permanent disability, or permanent disfigurement."

The jury acquitted. As prosecutor Christopher Moody said later, there was no way he could prove that the parents had pushed their son into the wasp nest and wanted him to suffer and die.

Amending Florida's neglect laws so that the state does not have to prove intent to harm the child nor cope with an exemption for religious objectors should be a high priority for state government, but it is not even on the radar screen of the executive or legislative branches.

Taken in part from the AP's four-part series on Meade Ministries by Todd Lewan, in mid-April.

Rubella outbreak linked to religious objections

Again this year a vaccine-preventable disease has spread from a conservative Dutch Reformed fellowship in the Netherlands to fellow believers in Canada. A rubella outbreak was first identified in September, 2004, among the *Gereformeerde Gemeente in Nederland* (GGN), which has religious beliefs against immunizations. As of May 17, 2005, 309 laboratory-confirmed cases had been reported in the Netherlands.

In April, 2005, Canadian public health officials reported an outbreak of rubella, also called German measles, among a Dutch Reformed community in southwest Ontario with close ties to the GGN. It started at Rehoboth Christian School where 60% of the students are unimmunized because of religious beliefs. Other religious groups in that part of Ontario also shun immunization. By May 17, Canada had 214 laboratory-confirmed rubella cases.

Severe defects in fetus

Rubella generally causes mild illness in young children. Symptoms include a mild rash, low-grade fever and swollen glands. But when unimmunized pregnant women contract the virus—especially in the early months of pregnancy—up to 90% of their infants will have congenital rubella syndrome. The syndrome has devastating birth defects, such as blindness, deafness, and mental retardation, and is often fatal in early childhood or before birth.

Pregnant women have contracted rubella in the current outbreaks: 23 in the Netherlands (including 9 in their first trimester) and 5 in Canada.

Outbreaks difficult to stop

Rubella is a highly contagious virus that is spread by airborne droplets from the nose and mouth. Health officials are having great difficulty containing these outbreaks because many in the fundamentalist Dutch Reformed communities continue to decline vaccination. Also, rubella is most infectious days before the rash appears and a high percentage of cases, perhaps 50%, are never diagnosed because they are asymptomatic.

Furthermore, Dutch law does not allow schools to exclude unvaccinated students during epidemics.

Half of the unvaccinated people in the Netherlands belong to the GGN. In the other half are users of homeopathy, anthroposophists, immigrants, Christian Scientists, and other religious objectors.

Travel between religious objector groups spreads polio, measles, and rubella

Dutch Reformed Churches in Canada have historical and social links with the *Gereformeerde Gemeente*, and members often travel between the two communities. In 1978 a polio outbreak of more than 100 cases began among the GGN in the Netherlands, spread to the Dutch Reformed community in Ontario, and then to the Amish in the United States. In 1992-1993 there were 68 cases of polio among the Netherlands Reformed members opposed to vaccination. In 1993, Canadian health officials found 21 persons (mostly children) infected with wild poliovirus among Old Netherlands church members in southern Alberta.

In 1996 the GGN had a rubella outbreak.

From April 1999 to early February 2000, an outbreak of measles in the Netherlands spread to 2961 persons starting with children at a Reformed school. Sixty-eight required hospitalization, and three children died. More than 2760 unvaccinated people contracted measles, and the majority cited religious reasons for their lack of vaccination. This Netherlands outbreak spread to 17 people among the same religious community in Canada.

A highly effective vaccine that prevents measles and rubella has been widely available since 1970.

Taken in part from www.canada.com, *Eurosurveillance Weekly* 10 (May 19, 2005), *Middlesex-London Health Unit Report* #69-05 (May 19, 2005).

State report criticizes boot camp where teen died; parents sue

In April the Missouri Department of Social Services issued a 275-page report on the death of a teenager in a northwest Missouri boot camp. Investigators concluded that the camp apparently "failed … to provide access to appropriate medical evaluation and/or treatment" to Roberto Reyes, a California teen who died at Thayer Learning Center in Kidder, Missouri.

Drill sergeants put parents in command

Thayer is a boot camp and boarding school which advertises its military discipline. Its web page has photos of grim men in uniform and states, "Our efficient drill sergeants are waiting to help put you, the parent, back in command."

The Department report also said that "interviews and evidence . . . suggest significant

contradictions and possible deliberate falsification of written records."

Laws to allow inspection recommended

The Department recommended that Missouri enact legislation allowing the state to inspect all boarding schools and boot camps. Missouri is a national magnet for them because of its complete lack of state oversight. It does not even require fire or safety code compliance.

Reyes' parents filed a wrongful-death lawsuit against Thayer in February in Buchanan County Circuit Court alleging that Roberto was subjected to physical exertion and abuse that caused or contributed to his death.

They alleged that Roberto would have lived had he gotten timely medical care, that he was dragged and hit, placed in solitary confinement, forced to lie in his own excrement for long periods, and that the symptoms of his failing health "would have been present for a significant period of time prior to his death."

In court records, Thayer officials denied those and other allegations.

Child must wear 20-pound bag of sand

Fifteen-year-old Reyes died Nov. 3, less than two weeks after his parents enrolled him at Thayer. A school official found Reyes unresponsive in a sick bay area. The autopsy report identifies "complications of rhabdomyolysis" as the cause of death. It says the rhabdomyolysis, which is a breakdown of muscle fibers, was probably due to a spider or insect bite.

In the investigative report, one Thayer employee said Roberto appeared lazy, while another said he had a bad attitude. Roberto was ordered to wear a 20-pound bag of sand around his neck as punishment for not exercising in the manner ordered.

Some employees said Roberto struggled to keep up with the rigorous exercise regimen and complained of sore muscles. Some said he needed assistance walking and at times used other people as "a crutch." Some said Roberto defecated on himself and that other Thayer students had done that to get out of exercising.

Boy dragged around exercise track

One Thayer employee said he sat in a sick bay area with the boy about two days before his death and tried to get him to eat. At least four days prior to his death, Roberto was so sick that he was left in bed.

A fellow student stated that, as early as Oct. 27, Roberto "appeared to be completely out of it." This witness said he had to call Roberto's name and wave his hand in the boy's face to get his attention. He also told investigators that Roberto would walk about five feet and fall down, then one of the drill sergeants or two or three students would pick the boy up by all fours or drag him on the ground to get him around the exercise track.

One drill sergeant told an investigator she came to think Roberto might be sick and relayed that opinion to Dorothy Steele.

The report identifies Steele as Thayer's medical officer, and one witness said she decided whether any student would be taken to a doctor. The report says that Steele, who was also the general manager of Thayer's kitchen facilities, is not a licensed health care provider.

Were records falsified?

Interviews with former Thayer employee Sarah Mackey suggest that records may have been deliberately falsified. After Roberto died, state investigators said, Mackey read about ten pages of shift notes written in the days leading up to Roberto's death. "Sarah stated that every day," the report says, "the log sheets indicated that Roberto was getting worse and worse and worse."

According to the report, she read in those shift notes that:

> As many as three days before Roberto's death, he was urinating and defecating on himself. He had to have urine and feces cleaned off him for several days. One employee wrote in the notes that on the Saturday and Sunday before Roberto's Wednesday death, Roberto was very sick and needed to be taken to a doctor. The employee also said Steele refused, saying Roberto's vital signs were fine and that he was faking.

After Roberto's death, that employee told the state investigator he didn't remember telling Steele that Roberto was sick.

Less than two weeks after Roberto died, Mackey said, Thayer owner Willa Bundy took files of the shift notes, asked for 10 copies of blank shift note forms, and went into her office.

A Thayer attorney provided the state investigator with faxed copies of shift notes. Those notes state that Reyes had to be "restrained against the wall. . . for aggression" on October 25 and fell going to the bathroom on October 31, but give no indication that he was seriously ill.

Notes inconsistent

Mackey reviewed the notes provided by the boot camp's attorney and told the state investigator they were completely inconsistent with the shift notes she had seen and read right after the boy's death.

According to the state's report, Roberto had been suspended in middle school for using vulgar language and stealing a CD player. He was earning poor grades in high school when he transferred to Thayer. He also had run away from home at least twice.

Missouri lets everyone have an exemption

The death of Roberto is a powerful indictment of Missouri's tacit abandonment of the children in its boarding schools and boot camps. Missouri law allows them to operate with no state oversight if they have an education program that gives diplomas recognized by the state department of elementary and secondary education or are "established and operated by any well-known religious order or church." Mo. Rev. Stat. 210.516(1)

Thayer Learning Center did not qualify for the exemption on either ground. Its webpages at www.tlcprogram.com and www.tlcbootcamp.com do not mention a church affiliation, religious training, Christianity, or God.

Missouri, however, is so shockingly indifferent to the welfare of children that it allows everyone to have an exemption who thinks they should have one. Missouri law says that the state "shall not require any foster home, residential care facility, or child placing agency which **believes itself exempt from licensure**. . . to submit any documentation in support of the claimed exemption." Mo. Rev. Stat. 210.516(2) (emphasis added)

School described as Christian in 2005

On January 7, 2005—two months after Roberto's death—owner John Bundy posted a new web page, www.kiddermissouri.com , which is written as a history that stops in 2002. It tells about Thayer College's founding in 1860 by Congregationalists as "a Christian institution of higher learning."

After the property went through different uses over the years, the webpage says that in 2002 a Utah businessman

> sold the building and 20 acres to John and Willa Bundy and history will repeat itself. The Bundy's are going to open the school again as the "Thayer Learning Center." They selected the name because of the history and the acronym TLC which means "Tender Loving Care." The new school will house youth from ages 13-17 from all over the country. The private school will be a non-denominational Christian-based school that will create over 50 jobs initially. The emphasis of the training will be "Love of Country and of God."

Despite the use of future tense as if the webpage of this "Christian-based school" was written in 2002, webhosting records show that the webpage was created on January 7, 2005.

Taken in part from Steve Rock's articles in *The Kansas City Star* of April 14 and 15.

Missouri town rejects boot camp offer; whistleblowers sued

On April 18 the Boonville City Council in Missouri voted unanimously to reject a Utah businessman's offer to buy the property of the former Kemper Military School. Robert Lichfield, who founded the controversial World Wide Association of Specialty Programs (WWASP), wanted to develop a boot camp for troubled teenagers on the grounds.

As soon as Shelby Earnshaw, director of the Virginia-based International Survivors Action Committee (ISAC), heard of Lichfield's interest, she began providing information in Missouri about the abuses at WWASP schools in other states and countries.

On February 22, Lichfield filed a federal suit against Earnshaw and her husband William alleging defamation, invasion of privacy, and interference with prospective economic advantage through their contacts with public officials in Boonville and Salt Lake City, Utah.

Conspiracy and defamation alleged

Lichfield has filed at least three other lawsuits against his critics. Two were dismissed by federal judges early in 2004. A third suit charged Sue Scheff with defamation, civil conspiracy, and false advertising. Scheff founded Parents Universal Resource Experts (PURE) after her son's experience at WWASP's Carolina Springs Academy in South Carolina.

In August, 2004, a federal jury in Utah unanimously found in favor of Scheff on all counts.

Children in dog cages

Some of the jurors cried as they watched video clips of the "Box" where children were reportedly hog-tied, hand-cuffed, duct-taped, starved, and slugged by staff. Other clips showed children covered with skin infections and with flies in their sparse food at WWASP's Paradise Cove in Western Samoa before it was closed due to the abuse and neglect.

One boy, now 19, testified at the trial that he was placed in a WWASP school at age 12 and trafficked through five WWASP programs over 4 ½ years. He was the victim of an alleged murder plot at Paradise Cove. He was knocked unconscious when older boys banged his head against a coral reef, trying to drown him as a way to get the school closed. He was finally rescued from a dog cage at WWASP's High Impact school in Mexico.

Schools abusive, but very profitable

At least seven WWASP schools, most in foreign countries, have been closed since 1996 because of allegations of child abuse and neglect. Nevertheless, WWASP grosses $90,000,000 a year and said in 2003 that it had never paid money to plaintiffs claiming injuries in the programs.

WWASP describes its programs as "behavior modification" rather than religious. Earnshaw, however, says that all directors of the facilities WWASP acknowledges running are Mormons. Graduates have told her that youths who advance to the top levels of the program are allowed to go to church, but only the Mormon church.

Taken in part from "Mom Defeats Corporate Giant" posted on www.helpyourteens.com and *Columbia Daily Tribune*, April 13 and 19, 2004.

Experts find poor outcomes from boot camps

In October, 2004, experts on a panel convened and supported by the National Institutes of Health released a State-of-the-Science Conference Statement, which concluded that boarding schools and boot camps promising behavior modification through militaristic discipline have a poor track record overall.

Removing child from family usually harmful

"Many of these programs take the child out of the family," explained panelist Dr. Leon Eisenberg, a professor of social medicine and psychiatry at Harvard Medical School. "And whatever they may do or not do for the child while he's in the institutional setting, [they] leave him completely adrift when the treatment is over. Some of these programs are, frankly, quite dreadful." Many gather troubled kids together in large groups, use poorly trained and under-supervised staff, and emphasize scare tactics and bullying by adults.

Often, he said, parents see boot-camp type programs as a quick fix for problems that have much more complex roots. "It [temporarily] gets rid of the problem. You don't see it every day, and you assuage your guilt by paying money for it," he said.

The panel recommended long term therapy involving the parents and preferably with the youth continuing to live with parents.

After the death of Roberto Reyes in a Missouri boot camp (see p. 8), Henry Lawton, a retired family service specialist for the state of New Jersey, wrote about "the false allure of the boot camp."

Parents need therapy too

Lawton said these camps appear to be largely based on the idea that bad behavior stems from moral failure that can be corrected by iron discipline. "Troubled teenagers distrust all adults," he said, and generally will not change for the better unless adults close to them treat them with honesty and respect.

Like the experts impaneled by NIH, Lawton recommended a combination of individual and family therapy. It is "hard patient work" requiring parents to be in dependable, daily communication with a teenager and modeling appropriate behavior. Many parents are "very resistant to the notion they play a role in why their children have problems. . . , [but] no child grows up in a vacuum," he said.

Brainwashed, Stepford children result

Dr. Roderick Hall, a clinical child psychologist in the San Diego area, said of one facility, "Their treatment program is to isolate the children and berate them until their will is broken and they become Stepford children. Residents earn privileges by berating new arrivals." He compared the methodology to the brainwashing practiced on prisoners of war.

Taken from articles posted at www.nospank.net.

Congressman introduces bill on institutional abuse

In April Congressman George Miller (D-California) introduced HR1738, the End Institutionalized Abuse Against Children Act, to combat child abuse at residential treatment programs in the U.S. and abroad.

"There is no excuse for placing children in unlicensed programs with badly trained and abusive staff members," said Miller, the senior Democrat on the House Education and the Workforce Committee. "It is truly frightening when the very people entrusted to care for and protect children are actually the ones who endanger them. Residential programs for children should be licensed and meet reasonable safety and staff training standards. . . . The way kids have been treated at some of these facilities would make any parent shudder."

Since 2003 Miller has asked the Attorney General to investigate allegations of child abuse and human rights violations at the World Wide Associations of Specialty Programs (WWASP) campuses that provide "behavior modification" of troubled youth.

Attorney General John Ashcroft declined, saying his office had authority to investigate abuses of American citizens in other countries only when alleged abusers were acting on behalf of a government.

Miller's bill does the following:

a. provides $50 million in funding to states to support the licensing of child residential treatment programs. States would have to monitor the programs regularly to ensure their compliance with licensing requirements;

b. establishes federal civil and criminal penalties for the abuse of children in residential treatment programs;

c. expands federal authority to regulate programs located overseas but run by U.S. companies and provide civil penalties for program operators that violate federal regulations; and

d. requires the State Department to report any abuse of American children overseas.

Miller needs many letters of support for this bill to persuade the committee chair to hold a hearing on it. CHILD urges its members to write The Honorable George Miller, House of Representatives, Washington DC 20515.

About CHILD Inc.

CHILD is a national membership organization dedicated to preventing child abuse and neglect related to religious or cultural practices. CHILD is a member of the National Child Abuse Coalition.

For more information on CHILD and a membership application form, visit our web page at www.childrenshealthcare.org. To reach CHILD by mail, phone, fax, or e-mail, see the contact information on page 1.