

Tom Coleman

From: Thomas F. Coleman [tomcoleman@earthlink.net]
Sent: Friday, February 18, 2005 11:37 AM
To: 'daniel.weiss@mail.house.gov'
Cc: 'thomas.kiley@mail.house.gov'
Subject: follow up on Attorney General's promise to Congressman Miller

Daniel Weiss
Chief of Staff
Congressman George Miller

Dear Mr. Weiss,

I am the executive director of the Emancipation Project, a nonprofit organization working to liberate minors from abuse, especially minors who are in the custody of private unlicensed residential facilities such as those affiliated with the World Wide Association of Specialty Programs and Schools (WWASPS).

As you know, Congressman George Miller has been a national leader who has tried to convince the United States Department of Justice to investigate the widespread and ongoing allegations of abuse perpetrated against scores of children in WWASPS facilities.

Our website – www.emancipationproject.org – carried a recent news story from the Salt Lake Tribune which reported that our new Attorney General, Alberto Gonzales, made promises to Congressman Miller to involve the Justice Department into this situation if state and local agencies were not doing a proper job of investigating and prosecuting allegations of abuse. (See Feb. 11 story listed on the "News Stories" section of our website).

Majestic Ranch is a facility in Utah which houses some 60 or more children between ages 7 and 12. The Emancipation Project is working with an investigative reporter who has gathered credible information from a variety of reliable sources (mostly former and current employees of Majestic Ranch) which demonstrates an ongoing pattern of child abuse at that facility. Much of this information was turned over to the Child Projective Services in Utah and to the Utah Attorney General's office about three weeks ago. We have e-mails sent from a CPS worker acknowledging that they received statements from former employees of the ranch and a truckload of materials to support the allegations of abuse.

However, rather than acting swiftly to go to the ranch and to interview children, the Attorney General's office ordered all agencies to hold off so that the local sheriff could take charge. Then, days later the local sheriff paid a visit (after the ranch manager apparently was tipped off about the impending visit and had time to clean up the place and cover up various health and safety violations). None of the children were interviewed by the sheriff's department.

The investigation was botched by state and local officials and the newspaper ran a story indicating that probably no charges would be filed.

Within a matter of a few days, the investigative reporter will complete her investigation and should have signed and sworn statements from past and current employees of the ranch detailing numerous instances of health and safety violations as well as cruelty and abuse to the children. The Emancipation Project should gain possession of that report by the end of next week.

We would like to send the report and signed statements of witnesses to Congressman Miller with a request that he forward the material to the Attorney General. We hope that Congressman Miller would be willing to receive this material and our covering letter and to request the Attorney General to follow through with his promise to take action if state and local officials are not protecting children from ongoing abuse.

Please pass this message on to Congressman Miller and let us know if he is willing to participate in this attempt to rescue the children at Majestic Ranch.

2/18/2005

Because the investigative reporter has not finished her work yet, it is important that this message be kept confidential until the report is available for your review. We should be able to get you access to an advance copy by Thursday or Friday of next week (Feb. 24 or 25)

I will be calling you today to see if you can discuss this with me on the phone so that I can explain more and share information which I am not comfortable putting into an e-mail.

Thank you for considering this request.

Very truly yours,

Thomas F. Coleman
Executive Director
Emancipation Project
emancipationproject@earthlinki.net
(818) 482-4485 (cell phone)

Tom Coleman

TD. HOWARD DAVIDSON
FROM: TOM COLEMAN

From: Thomas F. Coleman [tomcoleman@earthlink.net]
Sent: Monday, March 21, 2005 7:29 AM
To: 'Johnson, Cheryl'
Subject: comments on draft of bill

11 pages FYI

Cheryl,

I am writing to you about the "Human Rights for Institutionalized Minors Act of 2005."

I think you said you are on vacation for another week. Here are some comments on the draft of the bill for you to consider when you return.

1. What about the possibility of an option for private actions for damages to enforce the abuse provisions after giving notice to the Secretary and if the Secretary does not take action to impose fines within 6 months from the date of notice?
2. What about the Secretary being directed to require registration of all such facilities with the Department, and annual reporting requirements in which the facility must give the Secretary a list of all students or residents during the past year, what state their domicile was prior to entry into the program, their age, gender, and whether they have any disability? Identifying information should remain confidential with the Secretary, but statistics (like what states the kids are from) would be a public record. This would give us some leverage to get elected officials concerned in the states of origin. What if California does not have any such facilities but has 1,000 kids in such programs out of state?
3. What about directing the Secretary to require proof for each student placed from out of state that the Interstate Compact for the Placement of Children was complied with?
4. What about a preliminary section of the bill which includes Congressional findings to support the rationale for the bill?
5. What about including a provision to protect a child's 1st Amendment right to petition the government for redress of grievances? Perhaps the Secretary should be directed to include rules which require some form of administrative appeal process for children to challenge their confinement or the conditions of their confinement?
6. Since many of these kids have serious disabilities, could not something be said about a role for Protection and Advocacy (the group that has authority to protect the rights of people with mental illness, etc.) What about a cross-reference to the Americans with Disabilities Act and that the Secretary should specifically require that such facilities have reasonable accommodations for the disabilities of students.

I like the role of the Secretary in formulating rules, but the bill might be declared unconstitutional unless it gives some specific guidance to the Secretary. The Secretary cannot make law. That would be an unconstitutional delegation of Congressional authority. So guidance can be given through the section of findings, as well as a section stating that the rules promulgated by the Secretary shall or may regulate the following areas of concern (and then list the areas).

Also, the findings section might specify several sources of congressional authority for enacting this bill: (1) Interstate Commerce Clause; (2) Enabling Clause of the 14th Amendment (to protect the due process and other constitutional rights of students); and (3) 13th amendment's prohibition on involuntary servitude (which is self-executing but which Congress also has authority to pass implementing legislation). The 13th Amendment part is especially pertinent to the fact that these kids are forced to go to these schools, are confined there against their will, are forced to return if they try to leave, are prohibited from exercising first amendment rights to free speech and press, and are forced to do labor without compensation.

Anyway, I think the draft is a good start. But I would like to see it strengthened considerably.

Thanks for sharing it with me and for giving me an opportunity to participate in its development.

Tom Coleman
Emancipation Project

p.s. Let me know if I may share the draft with some other attorneys. I am specifically thinking about Howard Davidson, Director of the ABA Center on Children and the Law. I met with him last week and he seems to be very interested in this issue.

(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To assure the safety of American children in foreign-based and domestic institutions, and for other purposes.

Mr. GEORGE MILLER of California introduced the following bill; which was referred to the Committee on _____

A BILL

To assure the safety of American children in foreign-based and domestic institutions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Human Rights for In-
5 stitutionalized Minors Act of 2005".

6 **SEC. 2. JUSTICE DEPARTMENT INVESTIGATIONS.**

7 (a) **IN GENERAL.**—In order to assure the safety and
8 welfare of American children residing in foreign-based in-
9 stitutions, the Attorney General shall seek the cooperation



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1 of appropriate foreign authorities in order to investigate
2 such facilities or institutions periodically. Such an inves-
3 tigation shall include a determination of the institution's
4 compliance with any local safety, health, sanitation and
5 educational laws and regulations, including all licensing
6 requirements applicable to the staff of the institution and
7 compliance with this section. The Attorney General shall
8 seek the cooperation of appropriate foreign authorities to
9 remedy any threat to the safety or welfare of those chil-
10 dren, discovered through such an investigation.

11 (b) RULES AND ENFORCEMENT.—(1) The Attorney
12 General shall make rules to protect the safety and
13 wellbeing of American children who are kept in a foreign
14 based institution for purposes of behavior modification.

15 (2) Whoever, being a United States citizen or na-
16 tional, or other private entity organized under the laws
17 of the United States or of any State or political subdivi-
18 sion of the United States, violates a rule made under this
19 subsection shall be subject to a civil penalty not to exceed
20 \$50,000.

21 (c) DEFINITIONS.—As used in this section—

22 (1) the term "foreign-based institution" means
23 any facility or institution—

24 (A) owned, operated, or managed by a
25 United States citizen or other private entity or-



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1 organized under the laws of the United States;
2 and

3 (B) for persons, including persons who are
4 residing in such facility or institution, for pur-
5 poses of receiving care or treatment or behavior
6 modification; and

7 (2) the term "American children" means Amer-
8 ican citizens or nationals 18 years of age or younger.

9 **SEC. 3. AMENDMENTS TO DEPARTMENT OF STATE'S COUN-**
10 **TRY REPORTS ON HUMAN RIGHTS PRAC-**
11 **TICES.**

12 (a) PART I OF FOREIGN ASSISTANCE ACT OF
13 1961.—Section 116 of the Foreign Assistance Act of 1961
14 (22 U.S.C. 2151n) is amended by adding at the end the
15 following new subsection:

16 “(g)(1) The report required by subsection (d) shall
17 include, wherever applicable, a description of the nature
18 and extent of child abuse or human rights violations
19 against persons who are 18 years of age or younger at
20 institutions described in paragraph (2) that are located
21 in each foreign country.

22 “(2) An institution referred to in paragraph (1) is
23 a facility or institution—



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1 “(A) owned, operated, or managed by a United
2 States citizen or other private entity organized under
3 the laws of the United States; and

4 “(B) for persons, including persons who are re-
5 siding in such facility or institution, for purposes of
6 receiving care or treatment or behavior modifica-
7 tion.”.

8 (b) PART II OF FOREIGN ASSISTANCE ACT OF
9 1961.—Section 502B of the Foreign Assistance Act of
10 1961 (22 U.S.C. 2304) is amended by adding at the end
11 the following new subsection:

12 “(i)(1) The report required by subsection (b) shall in-
13 clude, wherever applicable, a description of the nature and
14 extent of child abuse or human rights violations against
15 persons who are 18 years of age or younger at institutions
16 described in paragraph (2) that are located in each foreign
17 country.

18 “(2) An institution referred to in paragraph (1) is
19 a facility or institution—

20 “(A) owned, operated, or managed by a United
21 States citizen or other private entity organized under
22 the laws of the United States; and

23 “(B) for persons, including persons who are re-
24 siding in such facility or institution, for purposes of



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1 receiving care or treatment or behavior modifica-
2 tion.”

3 **SEC. 4. GRANTS TO SUPPORT THE LICENSING OF CHILD**
4 **RESIDENTIAL TREATMENT FACILITIES.**

5 (a) IN GENERAL.—The Child Abuse Prevention and
6 Treatment Act (42 U.S.C. 5101 et seq.) is amended by
7 adding at the end the following new title:

8 **“TITLE III—GRANTS TO STATES**
9 **TO SUPPORT THE LICENSING**
10 **OF CHILD RESIDENTIAL**
11 **TREATMENT FACILITIES**

12 **“SEC. 301. GRANTS TO STATES.**

13 “The Secretary is authorized to make grants to
14 States for the purpose of assisting States to develop, es-
15 tablish, and maintain State laws to require the licensing
16 of child residential treatment facilities and to enforce such
17 State laws.

18 **“SEC. 302. APPLICATION.**

19 “The Secretary may not make a grant to a State
20 under section 301 unless the State submits to the Sec-
21 retary an application for the grant at such time, in such
22 form and manner, and containing such information as the
23 Secretary may reasonably require.



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1 **"SEC. 303. USE OF FUNDS.**

2 “(a) IN GENERAL.—A State that receives a grant
3 under section 301 shall use amounts under the grant to
4 develop, establish, and maintain State laws to require the
5 licensing of child residential treatment facilities in accord-
6 ance with the requirements of subsection (b) and to en-
7 force such State laws in accordance with the requirements
8 of subsection (c).

9 “(b) LICENSING REQUIREMENTS.—The licensing re-
10 quirements referred to in subsection (a) are the following:

11 “(1) The State requires any person who oper-
12 ates a child residential treatment facility to be
13 issued a license for the operation of the facility, and
14 the license is in effect.

15 “(2) The facility meets applicable standards of
16 the State for the provision of treatment services for
17 children with emotional, psychological, develop-
18 mental, or behavioral dysfunctions, impairments, or
19 chemical dependencies.

20 “(3) In the case of each child who is a resident
21 of the facility and whose domicile is another State,
22 the facility meets the standards of such other State
23 for the operation of such a facility, including any li-
24 censing standards.

25 “(4) With respect to State law that prohibits
26 the physical or mental abuse of children and the ne-



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1 glect of children, the law of the State in which the
2 facility is located applies to the facility standards for
3 the care of children who are residents of the facility,
4 including enforcement standards, that are equivalent
5 to the standards applied by the State to parents or
6 legal guardians.

7 “(5) The State requires periodic, unannounced
8 inspections of the facility to determine compliance
9 with applicable law, including law regarding the li-
10 censing of health professionals and law regarding
11 the standards referred to in paragraph (4).

12 “(e) ENFORCEMENT REQUIREMENTS.—The enforce-
13 ment requirements referred to in subsection (a) are the
14 following:

15 “(1) IN GENERAL.—

16 “(A) CIVIL PENALTY.—A person who oper-
17 ates a child residential treatment facility in vio-
18 lation of the requirements under subsection (b)
19 is subject to a civil penalty of \$250 per day
20 until the violation is corrected, except that the
21 number of days for which the penalty is as-
22 sessed may not exceed 60 days.

23 “(B) ORDER TO TERMINATE OPER-
24 ATIONS.—With respect to a violation of the re-
25 quirements under subsection (b), if a civil pen-



1 alty under subparagraph (A) for the violation is
 2 assessed for 60 days, the State orders that the
 3 child residential treatment facility involved ter-
 4 minate all operations.

5 “(2) ABUSE OR NEGLECT.—

6 “(A) CIVIL PENALTY.—If a child residen-
 7 tial treatment facility engages in the abuse or
 8 neglect of a child who is a resident of the facil-
 9 ity, each person who owns or operates the facil-
 10 ity, and each of the officers, employees, or con-
 11 tractors thereof who engaged in the abuse or
 12 neglect, is subject to a civil penalty for each
 13 such violation in an amount determined by the
 14 State, but not less than \$20,000 for all viola-
 15 tions adjudicated in a single proceeding.

16 “(B) CRIMINAL PENALTY.—If a child resi-
 17 dential treatment facility engages in the abuse
 18 or neglect of a child who is a resident of the fa-
 19 cility, each person who owns or operates the fa-
 20 cility, and each of the officers, employees, or
 21 contractors thereof who engaged in the abuse or
 22 neglect, shall be fined in accordance with title
 23 18, United States Code, or imprisoned not more
 24 than five years, or both.



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1 “(C) ABUSE OR NEGLECT.—For purposes
2 of subparagraphs (A) and (B), the term ‘abuse
3 or neglect’, with respect to a child, means a
4 knowing act or omission that the officer, em-
5 ployee, or contractor involved knows or should
6 know will result in death, serious physical or
7 emotional harm, sexual abuse or exploitation, or
8 will present an imminent risk of serious harm.

9 **“SEC. 304. REPORT.**

10 “The Secretary may not make a grant to a State
11 under section 301 unless the State agrees that it will sub-
12 mit to the Secretary for each fiscal year for which it re-
13 ceives a grant under such section a report that contains
14 such information as the Secretary may reasonably require,
15 including a detailed description of the number of child res-
16 idential treatment facilities located in the State, the num-
17 ber of children residing at such facilities, the State domi-
18 cile of each child prior to entry at such a facility, and the
19 age, gender, and disability (if any) of each child at such
20 a facility.

21 **“SEC. 305. DEFINITIONS.**

22 “In this title:

23 “(1) CHILD.—The term ‘child’ means an indi-
24 vidual 18 years of age or younger.



1 “(2) CHILD RESIDENTIAL TREATMENT FACIL-
2 ITY; FACILITY.—The term ‘child residential treat-
3 ment facility’ or ‘facility’ means a facility that—

4 “(A) provides a 24-hour group living envi-
5 ronment for one or more children who are unre-
6 lated to the owner or operator of the facility;
7 and

8 “(B) offers for the children room or board
9 and specialized treatment, behavior modifica-
10 tion, rehabilitation, discipline, emotional growth
11 or rehabilitation services for youths with emo-
12 tional, psychological, developmental, or behav-
13 ioral dysfunctions, impairments, or chemical de-
14 pendencies.

15 “(3) SECRETARY.—The term ‘Secretary’ means
16 the Secretary of Health and Human Services.

17 “(4) STATE.—The term ‘State’ means each of
18 the several States, the District of Columbia, and the
19 Commonwealth of Puerto Rico.

20 **“SEC. 306. AUTHORIZATION OF APPROPRIATIONS.**

21 “There are authorized to be appropriated to carry out
22 this title \$50,000,000 for each of the fiscal years 2006
23 and 2007.”.

24 (b) CLERICAL AMENDMENT.—The table of contents
25 of the Child Abuse Prevention and Treatment Act (42



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1 U.S.C. 5101 note) is amended by adding at the end the
2 following:

"TITLE III—GRANTS TO STATES TO SUPPORT THE LICENSING OF
CHILD RESIDENTIAL TREATMENT FACILITIES

"Sec. 301. Grants to States.

"Sec. 302. Application.

"Sec. 303. Use of funds.

"Sec. 304. Report.

"Sec. 305. Definitions.

"Sec. 306. Authorization of appropriations."

