

Jan Nisbet (with contributions from Nancy Weiss), *Pain and Shock in America: Politics, Advocacy, and the Controversial Treatment of People with Disabilities*

Daniel Breen¹

One night in August of 2007, a man placed a call to the Judge Rotenberg Center, a facility dedicated to the treatment of “emotionally disturbed students” in Canton, MA, and instructed staff members to wake up two of the residents and subject them to a series of electric shocks. The man, who purported to be calling on behalf of one of the clinicians at the Center, explained that the shocks were to be punishment for infractions committed by the students earlier in the day. The staff members dutifully woke up the two students, 16 and 18 years old, tied them down, and proceeded to administer 29 shocks to one of them and 74 to the other.

The call turned out to be a hoax; but what most readers will find surprising is the fact that electric shocks could be considered, under *any* circumstances, to be valid forms of clinical treatment for children. In fact, the Judge Rotenberg Center happens to be the only facility in the United States authorized to deploy electric shock therapy—a kind of “aversive method,” as it is known at the Center—to treat children with psychiatric problems. In this book, Jan Nisbet tells the strange tale of how this came to be, and how in the progressive bastion of Massachusetts, and only in Massachusetts, such things are permitted to happen.

The tale begins all the way back in 1971, when Dr. Matthew Israel founded the Behavior Research Institute (BRI) in Providence, RI. It was Israel’s theory that persons whose autism or mental disabilities caused them to hurt themselves, or behave disruptively, could learn to control that behavior if clinicians consistently responded to it by “aversive methods,” such as pinching or spanking them, or by administering electric shocks (one BRI patient, for example, was given 174 spansks one day in 1980). While Dr. Israel and his successors have clung to their faith in these practices, it did not take long before the vast majority of mental health professionals had condemned them, not to mention the United Nations’ Special Rapporteur on Torture, which in

¹ JD, PhD, Brandeis University Associate Professor of the Practice in Legal Studies.



2013 found them to be potential violations of international conventions against the use of torture. Yet when the Massachusetts Office for Children attempted to close a series of BRI-related group homes in the state, the Institute used all the legal means at its disposal to fight back. The result was a truly labyrinthine series of hearings, appeals, charges and counter-charges, beginning in 1985 and continuing to the present day.

Nisbet is a sure guide through these proceedings, which can be so complex that readers trying to follow along may find themselves crying for mercy. Yet in the midst of the procedural details, and to her immense credit, she never loses sight of the main theme. Through all the years of claims and counter-claims, no one was ever able to make a winning *legal* argument out of the simple moral proposition that it is wrong to inflict pain upon people as a tool for modifying their behavior. Thus, when in 1986, well-meaning administrators like Mary Kay Leonard at the Office for Children sought to curtail aversive methods in Massachusetts, BRI attorneys were able to deploy anecdotal evidence of the efficacy of these methods to persuade Judge Ernest Rotenberg, of the Bristol County Probate Court, that they should continue. Particularly persuasive to the judge was a “before and after” video depicting a patient named Janine, who went from banging her head on the floor to exhibiting “normal” behavior after several years at BRI. “Why is there a controversy,” wondered Judge Rotenberg, “I have viewed the school. I have seen Janine. I can’t understand any reason in the world why this is a controversial procedure.” On the basis of evidence akin to this, and in view of the pleas of parents who, badly served by other medical providers and feeling bereft of other options, saw aversive methods as the only hope for their loved ones, Rotenberg presided over a “consent decree” by which BRI was, and still is, 36 years later, able to continue using these methods in Massachusetts.

In honor of this ruling, the BRI, having relocated from Providence to Canton, would change its name to the Judge Rotenberg Center. Lost in the shuffle was any serious judicial attention to the growing consensus among doctors that positive reinforcement, not pain, was the key to any *lasting*, successful treatment of disruptive and harmful behaviors (Janine, as a matter of fact, reverted to self-harm as soon as the aversive methods stopped). Instead, relying on selectively-chosen case studies and the testimony of parents rather than ethics, the judgments of administrators, and the scientific method, BRI lawyers consistently won by depicting the controversy in the simplest of storybook terms, as one somehow pitting a



heartless and power-mad state bureaucracy (Goliath) against clinicians who -they claimed- were only out to treat patients in the best way they knew (a set of gallant Davids).

It is easy to feel moral outrage as the story unfolds, especially after 2000, as the patient population at the Judge Rotenberg Center were drawn less from persons with autism, and similar disabilities, and more from the population of persons -largely from New York City, and largely members of racial minorities- whose behavioral issues might stem from learning disabilities or PTSD (the Center would actually advertise over New York's "Hot 97" radio station, urging families to send "emotionally disturbed" children to Canton). In the larger picture, Nisbet's meticulously detailed work reminds us that in our world, this kind of moral outrage too often lacks an effective form of legal expression. The reader comes away from the book with a sense of profound discouragement regarding the standards that govern our courts, joined with a feeling of admiration for the author's painstaking, indefatigable dedication to telling this story.

