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*Ginger and David Twitchell*

## CHRISTIAN SCIENCE PARENTS CONVICTED OF MANSLAUGHTER IN BOSTON

*by Rita Swan*

On July 4, 1990, a Boston jury convicted Ginger and David Twitchell of involuntary manslaughter in the death of their two-year-old son Robyn. I was able to attend the first three and the last two weeks of the trial. Quotations are taken from my notes and may not be absolutely verbatim.

The Twitchells are third-generation Christian Scientists who met at their church's college, Principia. David has worked at Christian Science nursing homes for eleven years, and Ginger has

training as a church nurse. They withheld medical care from their son when he was sick for five days with a bowel obstruction and peritonitis.

Three other Christian Science couples and a divorcee have also been convicted since April, 1989, for depriving their children of lifesaving medical care.

### Prosecution weighed

Robyn died Tuesday night, April 8, 1986. The next week Marcy Cass, a Deputy District Attorney for Suffolk County, began researching the case law. Later, she and Homicide Division Chief John Kiernan spent weeks pondering the medical evidence. One doctor told them that after many hours of excruciating pain from the bowel obstruction, the nerves around the bowel would deaden and the pain would dissipate. Perhaps the Twitchells' belief that Christian Science was healing their son had a basis in the

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observable symptoms. Could they be charged with recklessness?

An American Academy of Pediatrics official found a Boston surgeon who volunteered to testify for the prosecution. He was convinced that the child would have exhibited many alarming symptoms throughout the course of his illness.

District Attorney Newman Flanagan was cautious about committing the office to a high media case. Finally, his office called for a judicial inquest into the death of Robyn Twitchell, which was held for six days in December, 1986, plus one day the following May.

## THE JUDICIAL INQUEST

On December 18, 1987, Judge Lawrence Shubow issued his opinion, which, along with all briefs, was sealed. He concluded that not only the Twitchells, but also the church officials, could be prosecuted.

### "otherwise. . . beyond any conceivable defense"

The judge acknowledged receiving from the church "thousands of pages of material" about Christian Science "presented as the explanation and justification for conduct that otherwise would be beyond any conceivable defense at all" and presented "as affecting the court's investigatory responsibilities."

But "this court," Shubow commented, "is bound by a jurisprudence which accepts and relies on the teachings of physical science including medicine. . . . There is no wall of separation between law and, for example, physiology. [This court] does not and cannot accept as its own the view of healing offered by Christian Science (or the view of nature subscribed to by certain fundamentalists who denominate their viewpoint as Creation Science). . . . To do so would utterly demolish the wall of separation between church and state. The law can find a way to accommodate and respect the religious faith of Christian Scientists, without accepting their subjective expectations about the consequences of their conduct, especially when these are in conflict with important public policies and with the accumulated learning of society in general."

## History of religious exemption laws

The court discussed at length a religious exemption that the church got the Massachusetts legislature to pass in 1971, four years after Christian Scientist Dorothy Sheridan was convicted of manslaughter for letting her five-year-old daughter Lisa die of untreated pneumonia in Harwich, Massachusetts. The exemption stated: "A child shall not be deemed to be neglected or lack proper physical care for the sole reason that he is being provided remedial treatment by spiritual means alone in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof."

The exemption was attached to the misdemeanor of nonsupport. At the time the legislature debated it, church lobbyists presented it as a very little request and, of course, did not mention the death of Lisa. Once they got it, they trumpeted it to their own members as a vindication of Dorothy Sheridan and a declaration from the legislature that Christian Scientists could deprive their children of medical care in all situations.

### Liability not for care by "spiritual means alone"

The judge saw it otherwise. "This court," he said, "has never for a moment deemed Robyn as lacking proper physical care for the *sole* reason that his parents relied on 'spiritual means alone.' They had apparently done so since his birth but because of the events of the five days in April new reasons arose: primarily the constellation of alarming and painful symptoms and their 'unyielding' course. The meaning of the word 'sole' is emptied of content by a reading that says Christian Science healing is always sufficient no matter what is transpiring. One can hypothesize any number of scenes where, in a rational world, something more than Christian Science prayer would be demanded of a parent in attendance: a child with a limb severed after an accident, a child unconscious after an overdose of drugs, a child bleeding from a suicide attempt. Robyn's condition was equally serious. . . ."

The judge also pointed out that Robyn's older brother, Jeremy, had received only Christian Science treatment all his life. His parents were not being prosecuted for their care



of Jeremy, but "Robyn's case is qualitatively different." In any case, there was no religious exemption to a manslaughter charge.

### **Church executive's role criticized**

Judge Shubow examined the role of three people, in addition to the parents, who were associated with Robyn's death. One was Nathan Talbot, manager of public relations and lobbying for the Christian Science church. His official title is Committee on Publications or COP. Shubow reported that Talbot was a lawyer, though not a member of the Massachusetts bar, and a church-accredited healer. Ginger Twitchell began calling Talbot for advice as early as the second day of her son's illness. The Christian Science practitioner Nancy Calkins called him for advice about Robyn on two or more occasions. At the last contact, Talbot told Calkins to call a funeral home instead of Emergency Medical Services.

At the inquest Talbot could not recall his conversations either with Ginger or Calkins, but he told the press at the time of Robyn's death that he had determined that Robyn was receiving appropriate Christian Science treatment. Talbot believes, Shubow reported, that such treatment "is the same for compound fracture, a case of unidentified hemorrhaging, cardiac arrest, [or] prolonged vomiting by a child."

### **Advocated illegal action**

Shubow found that Talbot "supported and encouraged all concerned to rely exclusively on spiritual healing and declined to suggest any other options. . . . On being told that in the opinion of Mrs. Calkins the child had 'passed,' he advocated a course of action contrary to the law and thus prevented earlier attempts to resuscitate Robyn Twitchell than occurred. While naturally concerned, indeed anguished, as a human being, his official responsibility was to serve the interests of the Church rather than to focus on what was objectively the best interest of the child."

### **Church practitioner as collaborator**

Nancy Calkins, the judge reported, "recognized Robyn's situation as being very serious and, therefore, went to the household to provide spiritual comfort. Often her work is done

on the telephone alone. . . . She was in a fiduciary relationship with the child and with the parents. She aided and reinforced the parents in exclusive reliance on spiritual healing. She failed to report promptly to the medical examiner her belief that the child had died. That failure delayed help. . . . She collaborated in withholding from Robyn the opportunity and right to receive other modalities of treatment in a situation where her own treatment was not working." She refused to testify at the inquest, claiming a Fifth Amendment privilege against self-incrimination.

### **Nurse's "reckless behavior"**

Linda Blaisdell, a Christian Science nurse who attended Robyn, also invoked the Fifth Amendment at the inquest. Despite Robyn's persistent vomiting, Blaisdell taught Ginger to feed Robyn every half hour.

Her "rendering of advice about what and how to feed him, under the circumstances, was reckless behavior," said the judge, and "all the more so because Mrs. Blaisdell was acting in a fiduciary role as a retained nurse. While done with benign intentions it was done in ignorance of what was making Robyn sick and added to his burdens. Everything he ingested meant more vomiting. Based on inference and upon all the surrounding circumstances it is found that Mrs. Blaisdell was an active part of the network which denied Robyn medical care and the prompt reporting of his critical state, albeit in the name of healing."

### **Church booklet advises breaking the law**

Judge Shubow sharply criticized the church booklet, *Legal Rights and Obligations of Christian Scientists in Massachusetts*. Its "dominant theme," he said, "is to recite the exemptions from statutes and set forth ways of avoiding notice to health authorities, medical examinations and, of course, treatment. It 'misstates the law by positive errors and omissions,' he charged. Among the examples he cited were its claims that Christian Science practitioners do not have to report suspected cases of child neglect and that Christian Science parents can not be prosecuted for neglect when they withhold medical care from their children.



Judge Shubow also quoted the following statement from *Legal Rights*: "When a Christian Scientist *appears* to have passed on, and no physician was in attendance--as indeed none need be--the most harmonious procedure is for the family to select and call a funeral home" (emphasis added). Again the church is telling its members to violate Massachusetts law and following its advice sealed the death of Robyn Twitchell, he pointed out.

### **Parents also reckless**

In conclusory findings of fact, the judge returned to the Twitchells: "It was contrary to their responsibility as parents to continue to keep the crisis within the narrow boundaries of their religious associations and thus fail recklessly to even seek access for his care to the vast reservoir of therapeutic competence near at hand. They recklessly ran the risk of aggravating his condition by feeding him without any consideration of just what he was suffering from. They ignored common sense in continuing to do so even as his vomiting persisted and he could not keep food down. By Tuesday evening, April 8 at 9:00 P.M. it was clear that the treatment which they preferred had failed and yet they made no attempt to investigate additional options such as phoning a hospital for diagnostic help. Such a phone call probably would have triggered an immediate response. When they believed, in all likelihood mistakenly, that Robyn had "passed on" they recklessly called an undertaker rather than the police or the office of the medical examiner. Either agency would have in normal course initiated a life-saving response. The delays in reporting Robyn's plight erased his remaining chance to survive."

### **Church officials accessories**

Talbot, Calkins, and Blaisdell "encouraged and reinforced the Twitchells in their course of conduct. This was an interference with the natural parental instinct to seek other help from any available source. In focusing only on the presumed benefits of their sense of religious healing they unlawfully ignored the best interests of the child. Although in somewhat different degrees, each was an accessory to and influenced

the decisions of the Twitchells. In general, by the force of their concern and assistance and offers of reassurance they held the Twitchells to continuous and exclusive reliance on spiritual healing and thus closed the door upon other choices."

Judge Shubow cited a Massachusetts court ruling that "parental rights do not clothe parents with life and death authority over children" and added that "certainly no system of belief, religious or otherwise, can in our law enlarge parental rights to confer such authority."

### **All five contributed to death**

In concluding, Shubow found that David and Ginger Twitchell, along with Talbot, Calkins, and Blaisdell "contributed to [Robyn's] death, without malice, but recklessly and without legal excuse."

### **Parents indicted**

The District Attorney's office presented the facts developed at the inquest to a grand jury. On April 26, 1988, more than two years after Robyn died, a Suffolk County grand jury indicted Ginger and David Twitchell on one count of involuntary manslaughter.

On May 25, 1988, the Christian Science church canceled its 51-page *Legal Rights* booklet for Massachusetts, which could well have gotten Nathan Talbot indicted, and replaced it with an 8-page document entitled "Freedom of Religion." The new document was more cautious. It did not claim that Christian Scientists had a religious exemption from criminal liability as the old *Legal Rights* had. But it also did not tell members about laws requiring medical care for children. Furthermore, Talbot still encouraged parents to rely on his advice in oral consultation.

### **The defense attorneys**

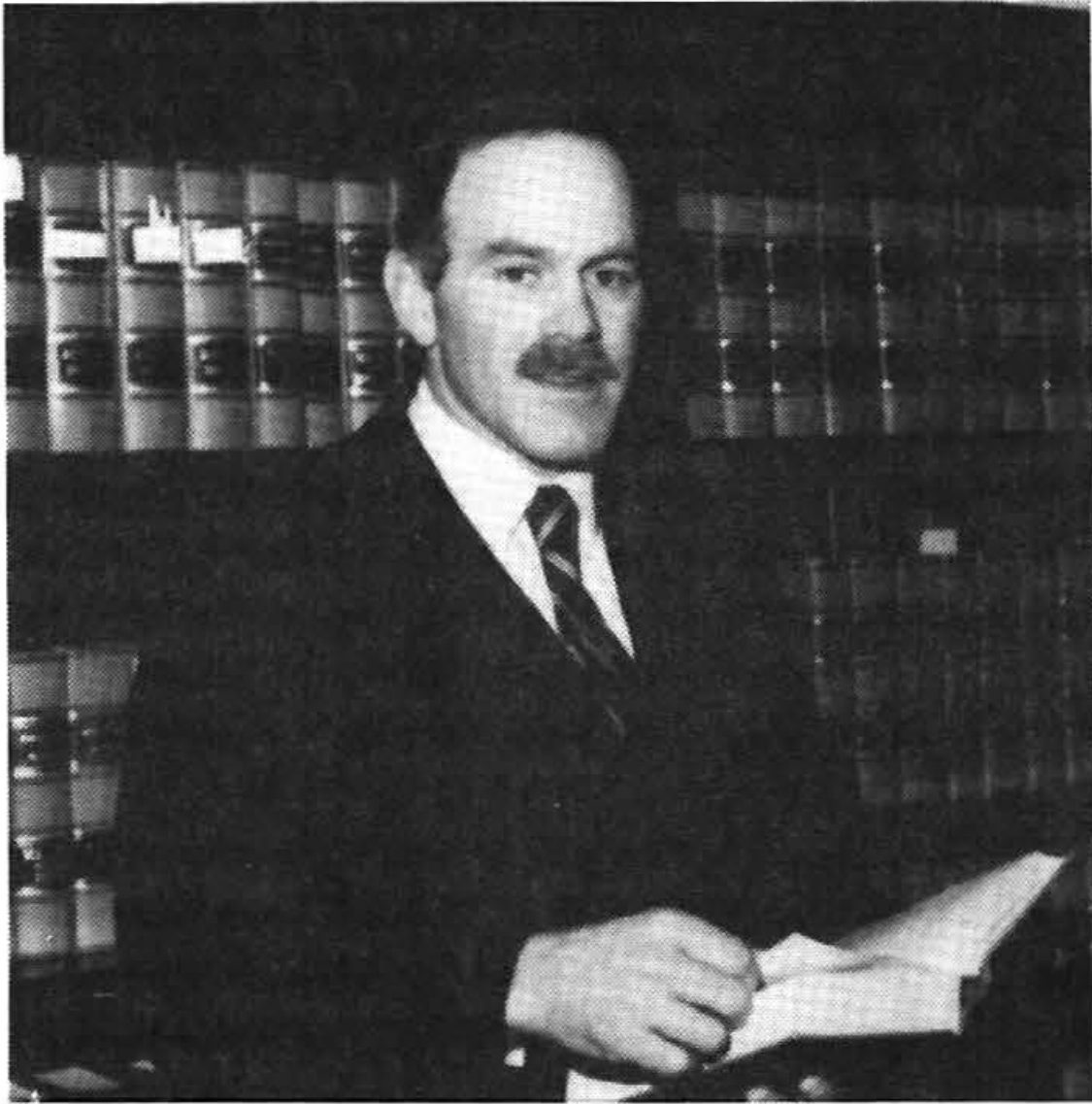
The Twitchells retained two prestigious attorneys, Rikki Kliemen and Steve Lyons, to represent them. Lyons had extensive experience with medical malpractice claims. He had the credentials to provide the Twitchells a sophisticated medical defense.

Kliemen was profiled in a *Boston Business* article entitled "The Perils of Being Perfect." It said she had had over 100 jury verdicts since 1977



and lost only three of them. In 1983 *Time* featured her among five of the nation's top women trial lawyers. She had been an undergraduate theater major and was a consummate actress in the courtroom. Walter Skinner, the attorney who defended Dorothy Sheridan and now a judge, launched her legal practice with a federal court clerkship.

The Christian Science church also retained a prominent old law firm, Gaston and Snow, to represent itself; several law firms were retained to represent church nurses and the practitioner.



*John Kiernan*

### **The Special Assistant**

Kliemen and Lyons travelled the country attending other trials of Christian Science parents and meeting with defense counsel. The prosecutors had slender resources for trial preparation by comparison.

John Kiernan left the District Attorney's office in 1988 for reasons of salary. The Twitchell case was the only one he wanted to take with him. Flanagan appointed him to be a special assistant in charge of prosecuting the Twitchells. A graduate of Harvard and Boston University, Kiernan had become head of the homicide division at age 32. He had a reputation for 70-hour work weeks, brilliant command of

questioning, total recall, and absolute integrity.

Investigators at the prosecutor's office were full of stories about Kiernan getting up in the middle of the night to go look at crime scenes with them, weaving strands of evidence in from all corners, etc. They remembered his work with a warm, emotional loyalty and were eager to work with him again on the Twitchell case.

Kiernan's commitment to prosecution of the Twitchell case was inseparable from his feelings about his own children. His younger son was a lively two-year-old during the Twitchell trial and a constant reminder of Robyn. His wife Susan had given up her law practice to raise their children. They shared and lived an assumption that parents protect and provide for children at whatever cost to themselves.

### **Motions to dismiss rejected**

Defense motions to dismiss the charges cited Massachusetts' religious exemption to the misdemeanor of non-support. Superior Court Judge Sandra Hamlin denied the motion. The Supreme Judicial Court refused to hear the appeal before trial.

### **Church's public relations campaign**

The church maintained a national 800 number that gave its daily report on the trial.

The church also hired a New York political consulting firm and a Boston advertising firm to direct a public relations campaign about the Twitchell case. The week before the trial opened the church ran two full-page ads in *The Boston Globe* and several other local papers entitled "Why is Prayer Being Prosecuted in Boston?" The ad in *The Globe* alone cost \$53,000. Kiernan sought a court order prohibiting the tainting of the jury pool. The church ran more ads in its defense during the trial.

### **Jury selection**

Jury selection began April 17, 1990, more than four years after Robyn had died. Potential jurors were asked about their knowledge of Christian Science, their opinions about it, their opinions on healing through prayer, their opinions about medical science, etc. The bias



against the Twitchells was quite striking. For all the prestige of the church on its home turf, the great majority of the 650 people interviewed in the jury pools had to be excused because they had already formed an opinion against the Twitchells.

The defense seemed to have a strategy of choosing childless, young career women for the jury. Marcy and John tried to get parents on the jury, but it was hard to find jurors neutral enough to suit both parties. The jury finally selected on May 1 consisted of six men and ten women.

Two of the men were black. After they were selected, there were always two blacks in the audience, who frequently identified themselves as Christian Scientists by reading church literature.

## THE TRIAL OPENS

On May 4, the trial began at last. Suddenly the courtroom was jerked back to the seventeenth century. Court officer Pat Ross mounted a platform with a tall staff on it. "Hear ye, hear ye, hear ye," he read sonorously, and "God save the Commonwealth of Massachusetts."

Judge Hamlin granted the Commonwealth's request to take the jurors on a "view" of the Twitchell's old home. John and Marcy wanted to show the jury the floor plan to support their evidence about where Robyn's body had been left and where the Twitchells were when the EMTs reached it.

### Onset of illness described

Opening arguments were given in the afternoon. John Kiernan spoke for an hour. This is the case of a desperately ill baby, he said. At twenty-eight months old, he developed a bowel obstruction. As liquid and gas distend the bowel, they cause excruciating pain. In early stages of the obstruction the bowel may sometimes untwist, but at other times it becomes twisted so long that the blood supply is cut off and the bowel dies.

On Thursday, April 3rd, the Twitchells were awakened by Robyn screaming and vomiting. On April 4th they contacted Christian Science practitioner Nancy Calkins for spiritual treatment of their son's problem. He continued to vomit. He was pale, listless, and refusing to eat.

## Concern for parent's rights

On Friday, April 4th, Ginger Twitchell called Nathan Talbot, the Christian Science church's worldwide manager of public relations and lobbying, to determine what *her* legal rights and obligations were.

On Saturday Ginger called Calkins to the home. Robyn was vomiting. That night he was able to hold down a little food.

On Sunday, the Twitchells and Calkins called Talbot, which the church says they're supposed to do when "a child's condition is not improved." John emphasized again that they were calling Talbot to determine what *their* legal rights and obligations were, not calling out of concern for Robyn's welfare.

They were, however, concerned enough that they called two other practitioners and a Christian Science nurse.

### Child vomiting feces

On Monday, April 7, Ginger called for her inlaws to come from Long Island, New York. Robyn was doubled over in pain and clutching his gut. Even the pressure of a diaper caused him pain.

David stayed home from work on Tuesday, April 8. Robyn vomited "a brown, foul-smelling substance" that day. In the evening David and Jeremy went to the train station to pick up Mrs. Suzanne Twitchell, the grandmother.

While they were gone, Robyn became worse. He looked up at Ginger with a pleading look as if he was asking her to make the pain go away. Ginger tried to reach Calkins repeatedly, but her line was busy. She called Talbot for advice; he told her to keep trying.

### Robyn's death

Finally she did reach Calkins, and Calkins came over. David, Jeremy, and Suzanne Twitchell arrived. Robyn had the dry heaves. He tried to vomit, but there was nothing to vomit. He started to shake, then had seizures, and then was still.

David called a funeral home and was told to dial 911. He waited 39 minutes before he called 911. When Emergency Medical Technicians (EMTs) arrived, 5 minutes later, David met them



outside and told them to go upstairs.

They raced up the darkened staircase. At the top of the stairs, they found Robyn's body lying unattended. Rigor mortis had already set in. They neither saw nor heard anyone in the dark apartment.

When they took the body to the hospital, they invited David to go with them, but he refused. Later David did go to the hospital in his own car.

### **Wanton and reckless conduct**

John closed by accusing the Twitchells of wanton and reckless conduct. He had given a ghastly account of Robyn's illness and death, with the description of symptoms taken from what the Twitchells themselves had told investigators after their son's death.

The press said Ginger collapsed at the end of the argument and had to be led from the courtroom.

### **Defense opens: caring parents**

Rikki Kliemen began her argument by reading Matthew 10: 26, "There is nothing concealed that will not be disclosed, or hidden that will not be made known."

"Oh, if the truth were only so simple and straightforward," she said.

"On April 8, 1986, a boy died cradled in his father's arms. Ginger and David lost what meant more to them than anything else in the world--except of course their other son, Jeremy."

"This case is not about parents neglecting their child by withholding medical care. It is about an invisible and deadly birth defect."

After her babies were born, Ginger stayed home to be a fulltime homemaker and mother. David devoted his life to care of the elderly and sick in Christian Science nursing homes. "That's what kind of people these are, ladies and gentlemen."

### **Just the flu?**

In March, 1986, Jeremy had symptoms of the flu. He vomited and ran a fever. He was healed by Christian Science. When Robyn came down with the same symptoms in April, the Twitchells assumed that he would also get healed by Christian Science. They thought he was just like

any two-year-old child who spits up his food.

On Saturday, Nancy Calkins came. Robyn went to the window and talked about her car. He liked its color.

The Twitchells were encouraged by Robyn's improvement, but because he was not completely all better yet and because they wanted to be such law-abiding people, they and Calkins called Talbot (the COP) on Sunday. The COP communicates with the government. He told them they were fully protected within the context of the child abuse and neglect laws and cited his own *Legal Rights* handbook.

### **Nurse teaches force feeding**

At Monday noon Christian Science nurse Linda Blaisdell came to see Robyn. He appeared to her to be a normal, bouncy little boy. Blaisdell showed Ginger how to stroke his jaw and get him to eat. She set up a feeding schedule requiring that Ginger feed him every half hour. Blaisdell was so impressed by Robyn's appearance that she told Calkins she would not need to come back.

On Tuesday he watched t.v. with his dad. He was very animated. At dinnertime he wanted a drink. Then he suddenly started to shake and died.

### **Parents react to death**

When Robyn died, Ginger was hysterical; she was stunned. David had to keep Ginger in one piece for her sake and for God's sake. Rikki implied that was the reason the EMTs found Robyn's body in the hallway.

Rikki also said that the 911 service told David how to do cardio-pulmonary resuscitation (CPR) on his baby and so David stretched the phone as far as it would reach and was doing CPR on his baby in the hallway.

But Robyn was dead. "And so it begins," Rikki said. She told about the Twitchells wanting to be such cooperative, law-abiding people that they talk to everybody--Department of Social Services (DSS), the District Attorney, the police, etc. One could tell that Rikki regretted having so many statements from the Twitchells on record.

Christian Science is famous for its ability to deal with the public at large, she said. It is not a



fringe group or a cult. It has been accommodated in every state. A Christian Science practitioner is like an MD. They can sign sick leave and disability certificates. The IRS allows you to deduct their charges from income tax as a medical care expense. It is a very legitimate religion as you will learn, Rikki promised.

### **No forewarning; no guarantees with medicine**

The deadly and invisible birth defect caused Robyn's death, and there was no way they could have known about it before his death. Doctors cannot diagnose it. Heather O'Rourke, the star of *Poltergeist*, died of a bowel obstruction despite prompt medical help. The Commonwealth cannot guarantee that medical care could have saved this child's life.

Not until Robyn's sudden and dramatic turn for the worse on Tuesday night did the Twitchells know he was seriously ill. Ginger and David had seen Christian Science work in their family for three generations.

At the end, I will come back and speak to you again, and I trust you will enter a just verdict of not guilty and reunite this family and tell them that these four years of their life are over, ladies and gentlemen.

It was Rikki at her dramatic best. She paced back and forth before the jury with energy and variety in her voice and body language.

### **Instructions ignored**

Hamlin was not pleased. "No one else's opinion about the law will be the law for this case," she told the jury. "You heard about a booklet called *Legal Rights and Obligations of Christian Scientists in Massachusetts*. That is not the law of the Commonwealth. This case will be governed by the laws of the Commonwealth."

Hamlin also told them to disregard the Heather O'Rourke story. After all, the prosecutors had wanted to tell about a child who went into cardiac arrest because of a bowel operation and was then resuscitated on the operating table. Hamlin had prohibited them from mentioning that case and had told the defense not to mention Heather O'Rourke or *Legal Rights*.

### **The Commonwealth's case**

The Commonwealth began the presentation of its case on May 7th. It called twenty witnesses and rested its case on May 25. The witnesses included the EMTs, police officers, a DSS supervisor, a prosecutor's investigator, the Twitchells' neighbors, three surgeons, the medical examiner, and the practitioner. Most of the witnesses had already testified at the judicial inquest and before the grand jury.

Kept in front of the jury were a map of the Twitchells' apartment and a poster listing the times of events on Tuesday night, April 8th. The map showed that the parents' bedroom, where the phone was, did not open into the hall. David would have had to drag the phone through the bedroom, then the kitchen, and then down the hallway in order to do CPR on Robyn. Another mystery was where Calkins, Ginger, and Suzanne were hiding when the EMTs reached the stiff little body lying on the floor of the dark hall.

### **Delay in notifying authorities**

The Commonwealth's witnesses established that David had called the funeral home at 10:10 p.m., April 8th. The funeral home told him to call 911, but David did not call until 10:49. The EMTs got to the Twitchell home at 10:54.

One EMT testified that the child had been dead for 45 minutes to two hours before they arrived. A paramedic estimated that he had been dead for two to three hours. His jaws, chest, arms, and fingers were cold and stiff. There was "profound pooling of blood" and cyanosis shown by the bluish color at the fingers and around the mouth.

### **Autopsy evidence**

Autopsy photos were introduced over defense objections. Robyn's eyes were deeply sunken. His lips and chin were red, probably because the acid in the vomit had eaten off the skin. One leg had ugly infected wounds, which, one doctor said, would alone have been enough to send reasonable parents to the hospital. His skin was "tenting;" it was so dehydrated that it stayed up in a tent shape when pinched.

About 15 inches of Robyn's bowel was jet black from necrosis. There were dilated, infarc-



ted loops of bowel. Microscopic examination disclosed fibrosis, which takes approximately ten to fourteen days to form and indicated previous episodes of inflammation. The bowel had been perforated by the pressure of fluid buildup and inflammation. The pathologist found 200 cubic centimeters of brown fluid in the abdominal cavity because of the perforation. She found iron in the bowel, which indicated hemorrhaging had gone on for two to three days. The EMT found dark green emesis in the mouth, which was likely bile from the stomach

### **Surgeons describe types of pain**

Surgeons gave graphic step-by-step descriptions of the pain. First there is a sharp pain at the moment of the twist. The veins are shut off as soon as the twist occurs. The arteries continue to pump blood in, but the blood cannot get out and the bowel becomes swollen. The distention of the bowel is very painful. The muscle of the intestine pushes material through the bowel automatically. Every five to ten minutes peristaltic waves of pain, the intensity of labor pains, occur as the muscle attempts to move material through the twisted bowel.

Most children respond with high-pitched screams. They cry out suddenly and draw their legs up against the chest.

In the early stages, the twist can relax and bring brief periods of relief from pain. But inflammation and distention steadily tighten the twist. Another form of relief comes when the bowel ruptures. But within a few hours comes the steady pain of peritonitis. While the dead bowel loses sensitivity to pain, the damaged part continues to feel pain.

In the final stages come the signs of dehydration—paleness, sunken eyes and cheeks, dry skin, and lack of urine output. The lack of electrolytes because of the dehydration causes confusion, stupor, delirium, and altered states of consciousness. On Robyn's last day of life, one surgeon said he would expect him to be "limp, unable to support his own weight, and unable to roll over." He would be delirious and periodically unconscious. But even with altered states of consciousness he would still be able to feel pain, the surgeon said.

### **Nearly 100% success rate**

The surgeons testified that they could have easily saved Robyn's life by removing the section of dead bowel. Dr. Hardy Hendron said, "The success rate for this operation is virtually 100%. It would be a catastrophe to lose such a child. Our treatment for a bowel obstruction has been standard medical procedure for at least a century. X-rays have been standard at Massachusetts General Hospital since 1905." He has performed about 20,000 bowel surgeries.

Two of the surgeons testified that they had performed bowel surgery on Christian Science children with the consent of their parents.

### **"Deadly, invisible birth defect"**

The defense hammered away at the "deadly and invisible birth defect" as the cause of death, at how rare it is, and at the fact that doctors cannot always diagnose it. In fact, the birth defect, Meckel's diverticulum, was the site, not the cause of the twisted bowel, and the bowel obstruction was a common problem, readily diagnosed and readily treated.

The defense introduced a photo taken on the Twitchells' wedding anniversary, April 5th, of David with his two sons. A side profile showed Robyn sitting on David's lap and normal looking.

Defense attorney Steve Lyons got Commonwealth witness Dr. Burton Harris to concede that Robyn's condition is sometimes misdiagnosed by physicians, that the operation for it has no absolute guarantees of success, that some parents are better than others at recognizing symptoms, that the symptoms of a bowel obstruction can, in the early stages, mimic flu; and that adults are better than children at verbalizing pain.

### **Is reliance on prayer appropriate?**

Cross-examination closed with the following exchange.

Lyons: "Didn't you say at the inquest, 'It's true that a great many cures occur that cannot be explained by medicine.'"

Harris: "I guess so."

Lyons: "And did you say at the inquest, 'Some stubborn conditions have responded to prayer, psychotherapy, and other modalities.'"



Harris: "It's such a general statement that it would be hard to disagree with it."

Lyons: "And is it appropriate for a parent to rely on prayer?"

Harris: "Yes."

Kiernan was already on his feet for re-direct: "Is it appropriate for a parent to rely exclusively on prayer for treating this condition?"

Harris: "No."

Kiernan: "What should parents do when presented with these symptoms?"

Harris: "It's beyond my comprehension that a parent whose child was vomiting stool would not seek medical help."

Kiernan: "Was a child with these symptoms in pain?"

Harris: "The child's crying would probably have been ear-splitting. There would have been no relief from this point. These are post-mortem photos so everything that hurt was there all along."

And Lyons was ready with the wedding anniversary photo: "Can you tell from this photo whether or not this child was experiencing an ongoing abdominal catastrophe?"

Harris: "No."

Kiernan closed the questioning with, "Doctor, you wouldn't make a diagnosis on the basis of this photo, would you?"

Harris: "No."

### **Use of doctors for births**

The Commonwealth expended extraordinary efforts to introduce testimony about the Twitchells' use of medical services for the births of their children. According to Christian Scientists, they seek medical attention for childbirth because of state law. But there are to our knowledge no laws requiring that a medical doctor attend childbirth.

Mary Baker Eddy first advertised herself as a "Professor of Obstetrics" and taught classes in "metaphysical obstetrics." But after sensational press coverage of Christian Science deaths, she changed the rules and ordered her followers to have their babies delivered by doctors.

We believe the church's representation that state law requires the childbirth policy is intended to obscure the inconsistencies of the religion. It

surely strains credulity to hold that the state requires medical attendance at childbirth, but once the Christian Scientists get their babies home from the hospital, the state allows them to withhold lifesaving medical care from their children.

Ginger and David were stuck with trying to explain it to a jury. The Commonwealth compelled their obstetricians and midwives to travel from California and New York to appear in court and produce Ginger's medical records. Ginger had refused many standard medical procedures, but she had nevertheless put herself under the care of doctors.

Robyn was born November 15, 1983, in a home delivery. The Twitchells had signed a notarized statement for the obstetrician acknowledging that a home delivery was not the best or safest method of delivery. She had sutures to repair a laceration. A local anesthetic was given.

On November 29, Ginger called the obstetrician's office complaining of excessive postpartum bleeding. The next day she called again and complained that she was still bleeding. She was offered a prescription, but refused it because of her religious beliefs.

The Twitchells were in a no-win situation. To many, they looked like monsters who got medical care for themselves and not their baby. But they also looked reckless for choosing a method of delivery that they acknowledged was not the best or safest and for rejecting many tests, procedures, and medications.

Furthermore, Ginger wore glasses.

### **THE PRACTITIONER TESTIFIES**

A historic feature was the testimony of Nancy Calkins, which began May 10th. We believe she is the only Christian Science practitioner in the past sixty years to testify about the death of a child before a jury. Kiernan called her as a hostile witness for the prosecution. He never offered her or the Christian Science nurse immunity from prosecution because he feared it would make the jury feel sorry for the parents.

Hamlin had ruled that Calkins and Blaisdell had Fifth Amendment rights to be silent about their care and treatment of Robyn, but must



testify about their training.

At the last moment, though, Calkins waived her Fifth Amendment rights voluntarily, saying she wanted to help the Twitchells. What follows is both summary and paraphrase of her testimony.

She tried to present the practitioners as highly knowledgeable and trained. The main test of a practitioner is, "Can you heal?," she said. The Mother Church carefully screens applicants, and they have to submit three of their healings. She interjected statements about the third-party payments practitioners get for their treatments.

But John made her concede that there was no medical verification of the healings and that the application form had only two blank lines for answering the main questions. Calkins replied that she "was able to condense" all her knowledge "to two blank lines."

Her post-secondary education consisted of a year of history courses and later some accounting courses. John asked if her accounting courses helped prepare her to be a Christian Science practitioner. She smiled and said the courses helped her balance her checkbook.

### **Treatment explained**

Kiernan: "Do you have to be present with a sick patient to give your treatments?"

Calkins: "No."

Kiernan: "Do you give the same treatment for a broken leg as for cancer?"

She tried to finesse the question, but in essence said yes.

Kiernan: "Do you vary the treatment if the person has a sunburn or is in the last stages of cancer?"

Calkins: "We treat every case very carefully until the patient is free."

Kiernan: "Is disease an illusion?"

She tried to finesse and finagle. The judge ordered her to answer the question yes or no. She finally conceded that disease is an illusion.

Kiernan: "Is pain an illusion?"

Calkins: "It's real to the patient, but I would have to see the unreality of pain."

Kiernan: "Is sickness an error of the mind?"

Calkins: "Yes."

Calkins treats about fifteen patients a day

and works seven days a week. She gives each patient as much time as they need, spending the same quality of time with each patient. "You pray until you feel they are healed." She starts each day by getting "all prayed up," praying for herself. That takes about three and a half hours each day.

### **Leader's rules not followed**

Kiernan asked her about the "Duty to Patients" clause in the *Church Manual*: "If a member of this Church has a patient whom he does not heal, and whose case he cannot fully diagnose, he may consult with an M.D. on the anatomy involved." The modern church does not know what to do with this statement by founder Mary Baker Eddy. Today medical practice is state regulated, and the church does not want its healers making medical diagnoses or consulting with M.D.s because they would jeopardize their religious exemption from medical licensing. Calkins could not explain, but she was sure that she had no such duty to Robyn Twitchell.

Kiernan asked her about Eddy's statement in the sacred textbook, *Science and Health*: "it is better for Christian Scientists to leave surgery and the adjustment of broken bones and dislocations to the fingers of a surgeon, while the mental healer confines himself chiefly to mental reconstruction and to the prevention of inflammation" (401).

Robyn would be alive if the church had followed the rule of its own "beloved Leader." Did the Twitchells or any church officials ever think that maybe Robyn should be taken to a doctor to see if he needed surgery? No, the church insists, and Calkins parroted it on the stand, that Eddy is giving permission only for the setting of broken bones, though the grammar plainly indicates that Eddy permitted both surgery *and* setting of broken bones.

Kiernan also asked her about Eddy's advice that "Christian Scientists decline to doctor infectious or contagious diseases" (*Miscellany*, 226). That rule too would have saved Robyn's life. Calkins should have declined to doctor the peritonitis that was killing him. But, of course, the modern church has no way of following their Leader's rule because their healers don't know



what disease they are treating.

Calkins accused Kiernan of taking the statement out of context. He let her read it. Then she claimed Mary Baker Eddy did not write it. Visibly exasperated with her dishonesty, Kiernan introduced the pages into evidence.

### Cause and treatment

Kiernan: "Do you believe that bacteria causes infection?"

Calkins: "No."

Kiernan: "What causes infection?"

Calkins: "Fear."

Kiernan: "How do you get rid of a baby's fear?"

Calkins: "The parent and baby must be treated together (from my memory)."

Kiernan: "Do you treat the child without even seeing the child's condition?"

Calkins: "Yes."

Kiernan: "The severity of the child's condition does not cause variations in your treatment, does it?"

Calkins: "If they're in pain, I just take up the work. If they want Christian Science help for a stubbed toe or a severed hand, they will have it from me. Truth will heal a stubbed toe or a severed arm."

Kiernan: "Can you have more than one practitioner give treatment at a time?"

Calkins: "No."

Kiernan: "Why not?"

Calkins: "Because it would confuse the patient."

Kiernan: "Even when the patient is a child?"

Calkins: "Yes."

Kiernan: "Is medical science inconsistent with Christian Science?"

Calkins: "Yes."

Kiernan: "If your patients decided to get a medical diagnosis, would you continue to pray for them?"

Calkins: "Yes."

Kiernan: "Is anything wrong with getting a medical diagnosis?"

Calkins: "Well, what if the M.D. says you'll be dead in three months? Medical doctors cause fear."

Kiernan: "What about a two-year-old child? Would he be afraid because of the diagnosis?"

Calkins: "The mother would be."

### "views of parents"

Kiernan quoted from *Science and Health*, p. 413: "Mind regulates the condition of the stomach, bowels, and food, the temperature of children and of men, and matter does not. The wise or unwise views of parents and other persons on these subjects produce good or bad effects on the health of children."

Kiernan: "Is it true that matter does not regulate a child's bowels or temperature?"

Calkins: "Yes."

Kiernan: "Do the wise or unwise views of parents cause good or bad effects on the health of children?"

Calkins: "Yes."

Kiernan: "Do you believe that the views of Robyn Twitchell's parents caused his condition?"

Calkins: "No."

Kiernan: "Is sickness caused by hatred, envy, and dishonesty?"

Calkins: "Yes."

Kiernan: "Were hatred, envy, and dishonesty the cause of Robyn Twitchell's condition?"

Calkins: "They were part of the cause."

Kiernan: "Was Robyn Twitchell's condition caused by his hatred, envy, and dishonesty?"

Calkins: "No."

Kiernan: "Was Robyn Twitchell's condition caused by his parents' hatred, envy, and dishonesty?"

Calkins: "No."

Kiernan: "Then whose hatred, envy, and dishonesty caused it?"

Calkins: "The world's, perhaps."

### Age requirement

Kiernan: "Do children have to be twelve years old before they can join the Mother Church?"

Calkins: "Yes."

Kiernan: "Do you know the purpose of that rule?"

Calkins: "Little children can't sign their names."

### Healer's income

Calkins charges \$20 a day for each prayer treatment. At 15 patients a day, seven days a week, that was over \$100,000 a year. The jurors were seen multiplying that out for themselves.



The only written records she keeps are for billing purposes. They have only the names and addresses of her patients and how many days she gives them treatments. She keeps no records as to what condition the patient is in, what the symptoms are, or what results she gets. At the end of the year, she throws away her billing records.

### **Contradictory testimony**

John asked about her call to Nathan Talbot on Sunday, April 6th. Apparently, there was a church policy that a Christian Science practitioner in Massachusetts call Talbot if a child's condition was not improved after three days. Judging by what has come out in other prosecutions, the church does not have a three-day time limit in other states. And judging by Calkins' testimony, I felt that a church official above her had directed her to deny the existence of the Massachusetts policy.

She went to extravagant lengths to say that she had thought there was such a policy and that she had a letter in her files from Talbot to that effect. But she must have been wrong; she can't find the letter now.

John exploded: "Mrs. Calkins, do you know how many times you have testified that the church had a three-day policy?"

Her reply was sarcastic: "About 25,000 times."

### **Talbot's duties**

John went on to another area: the duties of Nathan Talbot. Calkins and other church officials professed total ignorance of what Talbot did.

Kiernan: "Is Talbot a spokesman for the church?"

Calkins: "I don't know."

Kiernan: "Then why did you call him, Mrs. Calkins?"

Calkins: "He's there if you need him."

Kiernan: "What does Nathan Talbot do?"

Calkins: "Well, like maybe if a church wanted to have a bean supper or a parade, they would ask Nathan Talbot about it." (But Christian Science churches are not allowed to have social events. Even weddings and funerals are prohibited.)

Kiernan: "Is it a fair statement that you don't know what Talbot does?"

Calkins: "Yes."

Kiernan: "Do you have duties to care for children?"

Calkins: "Oh, yes, we take very good care of children. The church wants us to call the COP if a child is not healed in three days."

Kiernan: "Why does the church want you to call the COP?"

Calkins: "They just love children. They just want to know how we are doing. It's helpful to know that someone cares and someone's there to offer comfort."

Kiernan: "And you called Nathan Talbot on the third day of Robyn Twitchell's illness?"

Calkins: "Yes."

### **Length of illness documented**

There Kiernan stopped the questioning for the day. Calkins had given him what he wanted. It did not matter whether the three-day policy really existed. What mattered was that Calkins believed it did in April of 1986 and that Sunday, April 6th, was the third day of Robyn's fatal illness.

### **Was theology put on trial?**

It was an outstanding day for the Commonwealth. Reporters were in stitches watching Calkins on the pressroom camera. "And she was coming to the Twitchells' rescue?" said one. "With friends like that, the Twitchells don't need enemies."

The jurors' body language was interesting to watch. They had been repeatedly instructed to withhold judgment until all the evidence was in. They dutifully took notes and tried to convey neutrality. But after a while of listening to Calkins, they leaned back in their chairs and relaxed.

The dramatic Rikki Kliemen bent her head at the defense table, let her pageboy hairdo fall over her face and pulled sections of her hair with her hands.

Later she told the press that Kiernan had put the religion on trial just as she always said he would and she was "outraged" that he had "made a mockery of the Christian Science religion."



### Healer recounts symptoms

On May 11, John moved into testimony about Robyn's illness. Calkins said she visited Robyn on Saturday because it's her policy "to visit children on the second day of an illness if they are not well yet." Robyn "wasn't too bouncy," and his mother told her he had vomited the night before. But Calkins also remembered that Robyn talked, ate rice, and went downstairs to see her car. "He was doing quite well on Saturday," she told Social Service workers after his death.

She repeated Rikki's narrative in opening argument that the older brother Jeremy had had the same symptoms as Robyn the month before and was healed by Christian Science. "Jeremy had such a beautiful healing," Calkins said.

### Reports to public relations manager

John took her through the conditions that church officials require practitioners to report to the COP. These include "if you have reason to believe that [anyone] has reported the child to a local child protective agency," "if public health or school authorities demand medical attention for a child," "if a child's condition is given publicity of any kind," and "if a child's condition is not improved."

Kiernan: "What does publicity have to do with a child's condition, Mrs. Calkins?"

There was no good answer for that question.

Rikki had claimed in opening argument that Calkins reported to Talbot only because Robyn "wasn't completely all better yet." But John forced Calkins to admit that the triggering language was "not improved."

Kiernan: "You called Nathan Talbot on Sunday because Robyn's condition was not improved, didn't you?"

Calkins: "It was up and down."

Calkins didn't see Robyn on Monday.

### Robyn's "super good day"

Kiernan: "How was Robyn on Tuesday?"

Calkins: "He had a super good day on Tuesday."

Kiernan: "Mrs. Calkins, he died on Tuesday."

Calkins: "I know he did, but he had a super good day."

Around 8:30 p.m., Ginger called and sounded "excited."

Kiernan: "Was she also desperate, Mrs. Calkins?"

Calkins: "Yes. She was crying. She said that she had tried to reach me several times and wanted me to come right over."

When Calkins got there, she found all the adults in the children's bedroom.

Calkins: "Robyn wasn't vomiting and he had no pain. But he was pale. He was thinner than I had seen him on Sunday. He had dark circles under his eyes."

Kiernan: "Were you alarmed at his condition?"

Calkins: "I wasn't alarmed, but I determined that I wasn't going to leave there until he was healed."

The grandmother, Suzanne Twitchell, was pleased to see that Robyn was "quiet and peaceful." David was ecstatic. Calkins asked everybody to leave and was left alone with the baby.

Kiernan: "Did you mentally argue with Robyn?"

Calkins: "Yes."

Kiernan: "How long?"

Calkins: "I don't know. Sometimes you just get mentally wrapped up in prayer. . . . I don't know time, Mr. Kiernan."

Kiernan: "Do you have any way of judging how long the parents left the baby?"

Calkins: "At least half an hour."

Kiernan: "What did you do for Robyn?"

Calkins: "I told him how precious he was. I said God loved him, and he smiled. He hugged his teddy bear. He liked what I was doing."

Kiernan: "He liked what you were doing? He lay there and died, Mrs. Calkins."

Calkins: "No, he didn't die then. He died later."

### Robyn "had a good healing"

At about 9:30 p.m., Robyn "had a good healing."

Calkins: "I thought this was great. Ginger, David, and Suzanne came in. Robyn ran to Ginger's lap. He said, 'Oh, look at the kitty.' Then he got down on his little tummy and crawled under the desk chasing his kitty. That's what treatment does. That's what you expect from treatment."

According to Calkins, Robyn said at least three different things about the kitty after his miraculous healing. According to the paramedic,



he had been dead for at least half an hour at that time.

After Robyn chased his kitty all around, he sat quietly for about 15 minutes on his dad's lap. He had what Calkins called the "dry heaves" when he tried to vomit and there was nothing to vomit. At two or three points during her testimony Calkins gave a little cough sound to demonstrate how insignificant these "dry heaves" were.

### **Calmed mother before Robyn died**

Ginger was very alarmed, but Calkins calmed her down by trivializing the heaves and reminding her of what a great healing he had had alone in the bedroom with Calkins.

The people in the room noticed that Robyn's lips were dry, so David went out to get him water. David brought back a bowl of water and a spoon. When David gave him the water, he started to shake and then rested his head against David's chest. Calkins said, "Why, I think the child has passed."

Kiernan: "How did you determine that he had died?"

Calkins: "His little hand just went up like this [she jerks her hand to demonstrate]. I just got a funny feeling in my stomach. I just felt, hey, something has happened here."

Kiernan: "Did you check to see if he was breathing?"

Calkins: "No."

Kiernan: "Did you check his pulse?"

Calkins: "No."

Kiernan: "Did you press on his chest?"

Calkins: "No."

Kiernan: "Did you breathe into his mouth?"

Calkins: "No, I didn't do anything humanly to the child."

Kiernan: "Can you bring people back from the dead?"

Calkins: "Yes."

Kiernan: "After Robyn Twitchell died, did you attempt to bring him back from death?"

Calkins: "Yes."

Kiernan: "For how long?"

Calkins: "Not more than five minutes. David and Ginger also attempted this. Then I said I think I'll have to call Nathan Talbot."

### **How to deal with a child's death**

Kiernan: "Did you think of calling 911?"

Calkins: "No."

Kiernan: "Do you know the purpose of 911?"

Calkins: "Yes."

Kiernan: "Why did you call Nathan Talbot?"

Calkins: "I just didn't know what to do."

Kiernan: "Have you ever had patients die before?"

Calkins: "Hundreds. . . . But I felt because this was a baby, the situation had a connotation all its own and I didn't want any of us to appear not to be attentive to all of this."

Talbot told her to have David call a funeral home. She suggested that David call Waterman's Funeral Home because it had handled deaths of other Christian Scientists. After David called Waterman's, he said he had to call 911.

Kiernan: "How long did David wait before calling 911?"

Calkins: "He did that right away. I said to Ginger and David that because it is a little child, we just can't sit around. We've got to get right on this."

David was told by 911 personnel to do CPR. Calkins sat in the kitchen reading *Science and Health* though she also claimed to be busy hugging a hysterical Ginger in the living room at that time. She saw David kneel over his baby and do CPR in the hall. She said the baby's body was at one end of a 20-foot hall while the EMTs found it at the other end.

Calkins heard the ambulance drive up and told David. After the ambulance left with the body, David said he had to go to Carney Hospital to sign some papers. Calkins led the way in her car. She waved him to the final turn for the hospital and then drove on. She did not go to the hospital herself nor return to the Twitchells to comfort the hysterical Ginger.

### **Never discussed medical care**

Kiernan: "Did you have any conversations with the Twitchells about providing medical care?"

Calkins: "Never."

Kiernan: "With Nathan Talbot or Linda Blaisdell?"

Calkins: "No. We don't turn to medical care, Mr. Kiernan."



Kiernan: "Are there situations where Christian Scientists customarily go to MDs?"

Calkins: "No."

### **Exceptions made for medical care**

Kiernan: "You said you would not treat a patient who was getting medical treatment, but aren't there some exceptions to that rule?"

Calkins: "No."

Kiernan: "Are eyeglasses a form of medical treatment?"

Calkins: "Yes."

Kiernan: "Would you treat a person who wore eyeglasses?"

Calkins: "Yes."

Kiernan: "Would you continue to treat a person who had a bone set by an MD?"

Calkins: "Yes."

Kiernan: "Would you continue to treat a person who had a root canal?"

Calkins: "Yes, if the patient is not taking antibiotics."

Kiernan: "If a patient uses a cane, a hearing aid, or a wheelchair, do you continue to treat?"

Calkins: "Yes."

Kiernan: "Whose choice was it to get medical help, the practitioner or the parents?"

Calkins: "The parents."

The jurors wrote that point down. It closed the Commonwealth's examination of Calkins.

### **Cross-examination on illness**

Rikki's cross-examination worked Calkins over Robyn's five-day illness again. Repetition is supposed to add credibility, but Calkins' story seemed so preposterous to us that we hoped the jury would be annoyed by a waste of their time.

The following is new or amplified information that came out in cross-examination.

Ginger asked Calkins to come on Sunday because Robyn could not hold food down. Calkins found him in bed and pale. She gave him treatment until "he just got happy and he responded to that treatment. He sat up and played with his teddy bear and smiled."

When Calkins called Talbot on Sunday, he told her they were using the best curative method available and suggested bringing in a church nurse.

Early on Monday, April 7th, Ginger called and told her that Robyn still wasn't holding down food. At 12:30 p.m. Ginger called to report about the nurse's visit. The nurse had showed her how to feed Robyn, and he had walked into the room with the nurse.

Ginger was very low and discouraged because she was way behind with the housework, but she was not alarmed or frightened. She wanted to call another practitioner to treat herself, but Calkins said it could not be done that way.

At 7 a.m., Tuesday, April 8, Ginger reported that Robyn was doing so much better that day. And in the afternoon "Ginger was one happy lady." But about 8:30 p.m., Ginger called for Calkins to come right over.

Robyn died fifteen minutes after getting healed by Christian Science. David started to cry. Ginger was hysterical. She screamed, "Oh, no, no, no." "She was just out of the picture entirely."

After David called 911, he said he had to do CPR on Robyn. Ginger would not let Robyn go. He had to force the baby out of her arms. Ginger was so distraught that Calkins was highly concerned for her welfare.

### **Healer sees autopsy photos**

Kliemen showed Calkins the autopsy photos. Kliemen: "Do you recognize that as a photograph of Robyn Twitchell?"

Calkins cried loudly and choked out: "Barely."

Kliemen: "Is that how Robyn Twitchell appeared to you on the night of April 8?"

Calkins: "No."

Kliemen: "Is the coloring the same?"

Calkins: "No."

She was crying, but said, "I'm fine."

Kliemen: "Did his lips and chin look like that?"

Sobbing, Calkins screamed at John and Marcy: "How can you do this to these people? You're gross; you're gross." Hamlin ordered a recess and exited as fast as she could.

A CHILD member, Peg McLaughlin, had come from Kansas City to observe. She and I disagreed on Calkins' performance. I thought it was cheap, calculated drama. She had to say that she could "barely" recognize the photographs so she was qualified to testify that Robyn looked nothing like that on the night of April 8. The



defense wanted to prove that those ghastly photos showed only post-mortem changes.

But Peg thought Calkins had psyched herself up to believe that she really had healed Robyn and that he really did run around chasing his kitty just before the world's envy, hatred, and dishonesty caused him to "pass on." Peg thought Calkins had worked so hard to convince herself of her story that the autopsy photos genuinely shocked her.

### **Former neighbors testify**

Shortly after opening arguments, former neighbors of the Twitchells, Judi and Bob Delaney, called the prosecutors and offered their observations. They believed that Ginger physically abused her sons and did not give them enough attention and affection. They had heard Robyn screaming during his last illness.

John and Marcy debated a long time before deciding to put them on the stand. No-one else had accused the Twitchells of physical abuse or emotional neglect. If the jurors disbelieved those charges, they might well doubt the Commonwealth's case against the Twitchells for medical neglect.

Finally, John and Marcy put them on. The Delaneys testified that Robyn and Jeremy "cried all the time" and were isolated from the community. The Delaneys had invited the boys over to play in their pool; the Twitchells wouldn't let them come. The Delaneys saw the boys with their faces pressed against the upstairs window for hours on hot summer days. When David came home from work, he would take them for outings, but Ginger never let them go outside, the Delaneys said.

The Delaneys said that Ginger often yelled at the boys and hit them. Once Mrs. Delaney reported the boys' crying to the DSS, but DSS declined to investigate.

The Delaneys always slept with their bedroom window cracked open. For "three or four days" in April, 1986, "the crying, groaning and moaning" coming from the Twitchell home was "unbearable," Mr. Delaney said. The Delaneys did not try to report to DSS again, but finally closed the window.

Rikki was outraged that their testimony was admitted. She tried to discredit them as cheap publicity seekers. Later she brought witnesses with evidence that the Delaneys frequently worked day shifts and therefore would not have been able to observe Ginger's parenting as much as they claimed.

### **DEFENSE CASE OPENS**

The opening defense witnesses were Barry and Susan Wills, close Christian Science friends of the Twitchells. I did not attend the presentation of the defense's case; my account is drawn from news clippings, conversations with the prosecutors, and the church's 800-number.

The Wills's babysat Robyn for two hours on April 5. Their "eyewitness accounts," said the church, "took issue with previous medical testimony that the child should have been in serious pain" on that day. They also testified that the photo of David and his sons was taken on April 5.

Susan Wills operated a state-licensed daycare. She had a hard time explaining how she coordinated her religious beliefs with her duties to provide for the health and safety of the children. The state had received three complaints about her care of children, but they were not delivered to the prosecutors in time to use in cross-examination.

### **Father testifies**

Next David Twitchell took the stand. Both he and Ginger slept on a camping mat on the floor in Robyn's bedroom to be with him during his illness. They also, David said, used "extreme Christian Science measures" to get him healed; they did everything that their church recommended for healing children.

Robyn's illness seemed sporadic and flu-like, David said. They saw several aspects that encouraged them to believe Christian Science was healing Robyn. Even on his last day, Robyn seemed to get better for several hours. At supper, "He came traipsing in behind us. . . . He climbed up on his chair and wanted to eat." But after David fed him, Robyn vomited. David "had



never seen him vomiting that suddenly or that strongly before."

He carried Robyn to his room. "The thing that bothers me the most is that he couldn't seem to get comfortable," David testified. "It was quite disturbing." Robyn died three to five hours later that evening.

David broke down in tears as he told of his son shaking and then dying on his lap.

Kiernan asked if he had seen his son chasing the kitty during his last hour of life. David denied seeing that.

### **Father sought medical care for himself**

He had to testify at length about a root canal he had seven years earlier and removal of impacted wisdom teeth. His tooth "started to hurt constantly," he said. "It got to a point where it was painful enough to prevent me from being able to interact lovingly with my family and properly conduct myself at work." After months of prayer did not correct the problem, "I decided I could not continue to impose it on those around me, the way it was affecting me," he said.

He received Novocain, a local anesthetic, during the root canal procedure, but rejected a medication prescribed afterward.

The Christian Science church has considered it all right for members to go to dentists ever since Mary Baker Eddy was exposed by the press for having her teeth extracted under anesthetic.

### **Second thoughts?**

On the crucial question of whether he would "do it again," Twitchell said he would have gone to a doctor if his son's condition had been obviously serious and prayer was not helping. "I had no problem in turning to medicine if spiritual healing wasn't working," he said. "If I thought [an illness] was life-threatening I wouldn't wait a day." But "if I'm going to use any kind of care and I think it's working, I'll stick with it."

Kiernan asked about his failure to seek medical help after Robyn's severe vomiting late on Tuesday. If Robyn "had not quieted down. . . , I think I would have called a doctor," Twitchell said.

Asked if he considered medical help as Robyn died, Twitchell said, "I don't know what I was considering. I just remember how much it hurt."

But Twitchell also insisted that he did not make a mistake in relying solely on prayer because he still did not "think it's for sure [doctors] could have saved him."

He said he had learned from the surgeons who testified for the Commonwealth that "there is a question that medicine might have been able to save my son. . . and if medicine could have saved my son, I wish I had turned to it."

Newspapers ran large bold headlines about David's apostasy. "Twitchell admits he'd break with faith," said one.

### **Church insists Twitchell upheld its teachings**

Whatever David had to say to get an acquittal, the Christian Science church wanted to make sure the rest of their members did not start running to doctors. "The prosecution began its cross-examination of the Christian Science father today," said the 800 message for June 4th. "Numerous questions were asked about the defendant's religious beliefs. Some were based on out of context quotes from Mary Baker Eddy's writings. Others concerned whether the defendant would now turn to medical care and whether spiritual healing had failed. In responding the defendant often spoke of the Bible, Christ Jesus' example, and the power of God."

Even after the defense moved on to other witnesses, the church was still busy correcting any temptation to go to doctors. The 800 message for June 6 was three times as long as usual. "Questions have been raised in the media about some of the father's testimony regarding the possibility of medical care for his children," said the sonorous voice. His testimony was "taken out of context" by the press. "His responses indicated not only how he loved his boy but how much Christian Science is a part of his life." In fact, he even "told of a healing he had. . . after the events in April, 1986."

Kliemen asked the court to admit testimony about spiritual healings David had experienced. She described it as evidence that the Twitchells'



reliance on Christian Science to heal their son was reasonable. After Hamlin allowed it, David said he did not want to tell about the healings because they were personal. After the trial, he told the press they were not "great" healings, "but most people who have open heart surgery don't have much experience beforehand [either]."

### Religious exemption law

Another important issue was the religious exemption statute. At the time of Robyn's death, the *Legal Rights* booklet said of it, "This is a criminal statute and it expressly precludes imposition of criminal liability as a negligent parent for failure to provide medical care because of religious beliefs." Talbot referred the Twitchells to the statement when they called him for advice.

In *voir dire*, outside the presence of the jury, Kliemen asked David what paragraphs of *Legal Rights* he was familiar with during Robyn's illness. He began fumbling through its pages trying to recall. Kliemen suggested they dismiss court and let David mark the passages at home to save time. Kiernan insisted on David doing it before them. Sure enough, he went past the commentary on the religious exemption from neglect.

A flustered Kliemen opened the booklet to the correct double spread and asked him if he didn't miss something there. David looked the two pages over carefully but still did not mention the exemption section as something he was familiar with then.

### Witness tampered with

Court was dismissed. The next day David testified that he had relied on the exemption during Robyn's illness. When asked what had refreshed his memory, David said a member of the audience had reminded him of it. Judge Hamlin warned the audience against coaching the witnesses.

David Twitchell was on the stand for five grueling days.

The judge refused to allow the testimony of several defense witnesses. Some intended to speak about third-party payments for Christian Science treatment and the IRS allowing it as a "medical care" expense. "The jury has to decide

if the conduct was reasonable, not the IRS," said Hamlin.

The defense recalled Nancy Calkins to tell the jury that she actually made only \$25,000 a year from her spiritual treatments, not \$100,000 as it would seem from multiplying \$20 times 15 patients per day. Church founder Eddy directs that a practitioner "shall reasonably reduce his price in chronic cases of recovery, and in cases where he has not effected a cure." Maybe Calkins has to do a lot of discounting.

### Medical testimony for defense

The defense's two medical witnesses were a radiologist and a pathologist. In addition, they said they would call an eminent pediatric surgeon, Dr. John Raffensperger, from Children's Hospital in Chicago. The prosecutors heard he was eager to testify for the defense and would testify that he had lost two children with Robyn's combination of symptoms.

Kiernan gathered Raffensperger's books and articles and spent hours studying their discussion of twisted and obstructed bowels. He grilled defense witnesses on Raffensperger's statements.

The defense did not call Raffensperger after all.

### Church nurse testifies

They did, however, call the church's nurse Linda Blaisdell. As Rikki had promised, she testified that Robyn looked so fine on April 7th that she determined he did not need a nurse again.

Blaisdell resigned from Christian Science nursing two months after Robyn died, but disclaimed any connection between the two events.

Also, she let drop the revelation that she had made a written report of his condition. And she said she went on Monday because the regular visiting nurse was not able to go.

That gave Marcy and John the idea that another nurse had seen Robyn before Blaisdell arrived on Monday and perhaps Tuesday as well. They sent their investigator, Richie Dimaio, out with a handful of subpoenas for every Boston-area visiting nurse listed in *The Christian Science Journal* in 1986 and for a plethora of records.





*Marcy Cass*

One nurse called Marcy. She said it was "common knowledge" that there was another nurse and she couldn't imagine why the church was withholding that information from the prosecutors. Though resenting the prosecution of the Twitchells, she said that at least the trial might make some things "come out" that needed to come out. John sent Richie out to talk with her, and she again said there was another nurse, but refused to say who.

#### **Attempts to block other nurses' testimony**

The church resorted to the pettiest and most pointless delay tactics to keep the Commonwealth from the nurses. On June 13, John Hanify, attorney for two of the nurses, brought a motion to quash the subpoenas. Hamlin denied it. The subpoena form has one line for grand jury appearance and another for court appearance. The wrong one is supposed to be crossed out, but usually is not. Hanify argued that the subpoenas were invalid because the grand jury line was not crossed out. On June 15, Hanify appealed to the Supreme Judicial Court. The presiding justice first agreed the subpoena was invalid and asked Kiernan if he would be willing to issue a new subpoena. Kiernan said he would and asked if he

could serve Hanify with them. Hanify said no, they had to be served directly on the nurses. Kiernan asked if Hanify would produce the nurses in court when they were served with subpoenas that had the grand jury line crossed out. Hanify said no.

The justice then got suspicious and warned of contempt of court citations if the witnesses were not produced.

The parties returned to the floor of Hamlin's courtroom. John attempted to serve the nurses with subpoenas that had the grand jury line crossed out. Blaisdell got into the courtroom within a crowd of Christian Scientists. John asked Hanify to have Blaisdell step outside the courtroom so she could be served with a proper subpoena. Hanify refused.

John called three police officers. He stationed them and Richie outside the doors. He then asked Hamlin to order the courtroom cleared of spectators. Blaisdell was served as soon as she went through the door.

## **REBUTTAL OPENS**

In late afternoon the Commonwealth finally opened its rebuttal with nursing administrator Patricia Hughes on the stand. He asked two questions before Hanify raised an objection, Hamlin took it under advisement, and that was court for the day.

#### **Nurse's record on Robyn**

On June 19, Blaisdell's attorney marched into court and handed over her record on Robyn without a murmur. It was a bombshell. Under "nature of difficulty," Blaisdell had written: "Child listless at times, rejecting all food, moaning in pain, three wounds on thigh." The report also indicated that the COP had been contacted.

The defense argued that they should not have to produce any nurses now that they had turned over Blaisdell's records. Hamlin, nevertheless, ordered them to take the stand. Then began tedious days of *voir dire* of five nurses and two male officers of the Christian Science Visiting Nurses Association (VNA) as the Commonwealth searched for a missing nurse and missing records.



John was taunted by the defense team on and off the record for abandoning the case against the Twitchells and going off on a fishing expedition. The press was bored.

It was frustrating. Every day he collected more lies from the witnesses, but he never found another nurse who had cared for Robyn. As the nurses contradicted each other, they had to get more attorneys to represent them.

Patricia Hughes, who worked with Blaisdell in caring for patients, was so wooden and slow that some observers thought she was on drugs. What follows is culled from her various, contradictory statements under oath. On April 6th she was called by the Twitchells for nursing services. She could not remember *any* symptoms the Twitchells told her, but she *clearly* remembered Ginger telling her that their other child had had "the same thing" the week before.

She learned of the death of Robyn from the board president at a board meeting the day after his death. There was a great deal of sorrow, but no discussion of the death.

She did not discuss Robyn's condition with Linda Blaisdell; she did not discuss his death with Blaisdell. She did not read Blaisdell's report on Robyn until after Blaisdell resigned. Indeed, the condition of the patients is of no concern to her as a Christian Science nurse.

Neither the Mother Church nor the VNA board supervises nursing care or maintains standards of quality. The care cannot be discussed at board meetings because it is confidential.

### **"Unusual things" reported**

But in Hughes's reports to her board she included healings that she and Blaisdell had witnessed and "unusual things" that the board would want to know about.

Kiernan: "Was a sick child unusual?"

Hughes: "Somewhat unusual."

Kiernan: "Why is a sick child somewhat unusual?"

Hughes: "Because children are usually very quickly healed by Christian Science."

On Thursday, June 21st, Hughes took the stand before the jury. She had checked her appointment book after her testimony on Tuesday and found that her board met April 7, so

obviously there was no board meeting the day after Robyn died and she could not remember how she learned of his death.

The Commonwealth obtained her appointment book under subpoena. It showed lies in her testimony on the stand. The Commonwealth reached an agreement not to prosecute her for perjury on two of those points.

When testimony resumed, Hughes looked at the jury and blandly told them, "I lied on Tuesday."

Friday, June 22nd, was a wasted day as Hughes's new attorney, Tony Traini, found more reasons for her to claim the Fifth Amendment. Hamlin gave long breaks so that Traini could advise his client of her rights. At 3:45 Traini still professed his confusion about Hamlin's rulings. Hamlin ordered her to testify and dismissed court for the day.

### **Would nurse go to jail?**

Over the weekend John and Marcy worried about the possibility that the church would decide to let Hughes go to jail for 90 days on contempt of court charges rather than testify. If that happened, they would have no way of getting her *voir dire* testimony or her appointment book admitted into evidence.

On Monday, June 25th, after many hours of Traini's stratagems, the defense was left with a choice of jail or testimony. Hughes took the stand before the jury at 4:00.

CHILD members Peg McLaughlin and Bill Simpson had driven all night from Kansas City to see the final days of the trial. Bill said he would have had more respect for Hughes if she had been willing to go to jail. The defense's decision seemed to us thoroughly typical of the church's fastidious concern for social respectability.

### **Lies apparent**

The lies were endless and should have been obvious to the jurors who still had energy left to care about the testimony. Hughes claimed that Blaisdell's chart was the only written record on Robyn, yet it did not even have his parents' names or a billing address on it. She claimed that her board had no discussion of the Twitchell case until they needed to discuss the cost of



representing Blaisdell at the inquest. One witness said the board met every three weeks; another said every six weeks to two months. But they claimed there were no board meetings between April 7 and June 30, 1986.

For April 21 her appointment book had John Marshall's phone number written in. Marshall had worked in the Mother Church Legal Department.

John Kiernan asked Hughes why there were only three notations for supplies in her appointment book for the whole year of 1986.

Hughes replied, "I do not remember that supplies were often used."

John pulled out her report to the IRS showing \$1,932 in supplies for 1986.

Like the other Christian Scientists, she professed not to know what Nathan Talbot did. But later John asked her what it meant when a child's case was reported to Talbot, and she replied, "The individual directly involved with the case would have made a judgment that the child was seriously ill."

### **Concern for mother, not child**

From the Twitchells Sunday night phone call, Hughes could tell that Ginger was worn out with housework, and, like Calkins and Blaisdell, she professed to be more concerned about Ginger than Robyn.

Then it was Rikki Kliemen's turn.

Kliemen: "Did you intentionally lie?"

Hughes: "No."

Kliemen: "Did you just make a mistake?"

Hughes: "Yes."

Kliemen: "And did you attempt to correct your mistake?"

Hughes: "Yes."

Kliemen: "Do you know of your own personal knowledge whether Linda Blaisdell saw everything that is written on her nursing chart?"

Hughes: "No."

Kliemen: "Or if she heard everything that she wrote on the chart?"

Hughes: "No."

Kliemen went through every part of Blaisdell's description of Robyn and got Hughes to say "no" to all of it.

And then redirect examination.

Kiernan: "If Linda Blaisdell did not hear or see the child moaning in pain, then it must have been Ginger Twitchell, correct?"

Hughes: "I don't know."

Kiernan: "If Linda Blaisdell did not hear or see the child moaning in pain, then the source of that information must have been Ginger, correct?"

Hughes: "I suppose so."

Kiernan: "And you don't remember Ginger giving you any symptoms on Sunday night, do you?"

Hughes: "That's true. In fact, I'm having a hard time remembering yesterday."

### **Did not know meaning of "lie"**

Kiernan: "You did not clear up the lie or misinformation until after you had reached an agreement with the Commonwealth that you would not be prosecuted for perjury, did you?"

Hughes: "I do not remember that that was the sequence of events."

Kiernan approached the question from another angle, and Hughes said, "That was the sequence of events."

Kiernan: "Why did you tell the jury on Thursday that you had lied on Tuesday?"

Hughes: "I did not know the meaning of the word 'lie' on Thursday."

Hughes first took the stand on June 13; she finished her testimony on June 26.

### **Nurse questioned on report**

Linda Blaisdell took the stand June 27th. Through her testimony she cocked her head brightly to one side, affecting innocence, benevolence, and patronizing superiority.

"Did you leave anything out of your testimony before?" Kiernan asked.

"Yes," she said, as if nothing could bother her less.

John made her read her report. "Child listless at times, rejecting all food, moaning in pain, three wounds on thigh," she had written the morning of April 7. Other lines noted that Robyn had been vomiting and walked only "with nurse's assist." Her care instructions were "give child liquids; soft, mild foods one tablespoon at a time until child is taking more." She had reported all that to the practitioner, and Talbot



had been contacted.

Blaisdell claimed that Robyn moaned only once and that was when she first got there. Several times through her testimony she cleared her throat to demonstrate what a trivial little moan it was.

### **Meaning of "moaning" and "vomiting"**

She gave John a lecture on the difference between "moaning" and "moaned" and between "vomiting" and "vomited." She claimed that the progressive forms of the verb (with "ing") meant that they were *not* continuing actions.

Kiernan: "Were you concerned about the child's condition?"

Blaisdell: "I was more concerned about Ginger. I wanted her to get some help."

Kiernan: "How did she look?"

Blaisdell: "Maybe tired. She didn't look so spunky."

Blaisdell insisted that Robyn did not look like a seriously ill child to her.

Kiernan: "What would you have to add to this list to have a child seriously ill?"

Blaisdell: "I suppose 'moaning in extreme pain' or 'listless all the time.'"

Kiernan: "Do you know how to recognize when a child is seriously ill?"

Blaisdell: "Oh, yes, I know all about that. I know from when my husband almost dropped dead before my eyes."

But Robyn was the first child she had ever cared for as a patient.

### **Contents of nursing chart**

Kiernan kept pressing her about her nursing chart on Robyn.

Blaisdell: "I wrote this record just for myself. I didn't know others would look at it."

Kiernan: "If you had known others would see the chart, would you have written it differently?"

Blaisdell: "I might have said 'moaned' instead of 'moaning' because it was just one moan."

Kiernan: "When Miss Kliemen asked you if Robyn indicated in any way whether he was hurt, you said no. That was a lie, wasn't it?"

Blaisdell: "No, I was just concentrating on what I saw."

Kiernan: "So, Miss Kliemen should have asked

you, did Robyn make any noises that showed he was hurting?"

Blaisdell: "Yes."

She again insisted that he moaned only once and it lasted only two seconds.

Kiernan: "Why did you write moaning in pain?"

Blaisdell: "Because I thought he wasn't feeling great."

She was asked about how she held him to walk a few steps forward. She admitted he took fifteen minutes to sit up.

She "told Nancy Calkins about how Robyn had improved during the 45 minutes [she] was there."

Kiernan: "Was Nancy pleased with your report?"

Blaisdell: "She was pleased that he had taken a spoon of applesauce."

What she called in her report "wounds" she referred to in testimony as "three little pink blisters."

Kiernan: "Would you have known if they were infected?"

Blaisdell: "No."

### **Record lost after meeting in Talbot's office**

Kiernan asked her about a meeting she went to in Nathan Talbot's office the day before the judicial inquest. The church's general counsel and public relations staff were there. Blaisdell brought her nursing chart on Robyn Twitchell to the meeting, but then lost it for four years.

Blaisdell: "It's my practice, just in terms of my lifestyle, not to hang on to things I don't need."

Kiernan: "But you needed the record for the meeting in Talbot's office, didn't you?"

Blaisdell: "Yes, to refresh my memory."

Kiernan: "Was it your decision to unload the record?" The word "unload" was ordered stricken from the court's record.

Blaisdell: "I really, really can't remember."

All she remembered is that she took it to the meeting in Talbot's office and lost it after that.

Blaisdell: "I wasn't particularly concerned about its being lost because I knew I could probably get it again eventually if I needed it."

Kiernan did more sparring on her lies. She lectured him sweetly about how "it's very simple."

Rikki Kliemen put a silly grin on her face and rolled her eyes to the ceiling. Linda



Blaisdell had won the battle, but lost the war. She had saved herself from a perjury charge by being unable to remember, but had sabotaged her credibility and the Twitchells.

### **Evidence of chronic illness**

The last witness was Dr. Atkins, associate medical examiner for Suffolk County. He showed slides of Robyn's bowel that he had made with higher magnification on a high intensity microscope. He pointed out macrophages, fibroblasts, and lymphocytes that were evidence of chronic inflammation persisting for several days. Using a split screen, he compared both the chronic and acute inflammation to a normal section of intestine.

Rikki still had on her silly grin, but Steve Lyons looked worried. About all Steve could do on cross-examination was to establish that Atkins had testified several hundred times for the Commonwealth and never for the defense.

Steve quit abruptly and sat down. Both he and Rikki looked beaten.

Judge Hamlin sequestered the jury in a hotel on Saturday, June 30.

## **CLOSING ARGUMENTS**

Rikki wore a red, white, and blue dress for her closing argument on July 2nd. She had a tough assignment. She got no chance to respond to whatever John would say, but had to anticipate it.

Perhaps unavoidably, she spent considerable time telling the jury what they could not do, what the Commonwealth might want them to think, and why it was wrong. She became progressively more high-pitched, indignant, and emphatic about trivialities and hypotheticals. It seemed like bad psychology to me.

But she had strong points too. "Innocent" is not one of your choices, she told the jury. The choices are "guilty" or "not proven guilty."

"Can you think beyond a reasonable doubt," she asked, "that they didn't love their child, that they could martyr their child, that they were so unfeeling that they just threw him out like a piece of garbage? If you think that, then I have failed you, and I have failed them [the Twitchells]."

### **Weakness in medical testimony charged**

She claimed that the combination of features in Robyn's bowel obstruction were rare and that the Commonwealth's doctors did not agree on all points. "If it can fool the doctors, it certainly can fool parents who rely on spiritual healing. The coming and going of the symptoms led them to believe that the healing was coming," she said.

She pointed out that the Commonwealth's doctors had not taken a medical history from the parents whereas her doctors had.

"Linda Blaisdell," she said, "is not the most intelligent witness. I would call her a little flaky, but she does not impress you as a liar."

### **"Last people who should be on trial"**

She talked about the church officials who had advised the Twitchells. "Ginger and David listened to everybody else, and they're the last people who should be on trial," she said quietly.

We were astonished. Rikki had figured out that the people who were paying her bills ought to be held responsible for Robyn's death.

Rikki told a story of a little boy tugging at Ben Franklin's sleeve and asking what form of government they had chosen for the new country. "It's a republic, if we can keep it," said Franklin. Rikki told the jury it was their duty to preserve the republic.

She closed with the anniversary photo taken of Robyn on April 5, a photo which, she said, did not "exaggerate, speculate, or lie" as the Commonwealth's arguments had. Her last words were, like her opening words months earlier, a quote from the Bible.

### **Commonwealth's closing argument**

John spoke for just over 65 minutes without notes. He spoke of what little boys are usually like: a whirlwind of activity, into all kinds of mischief. You cannot hold them down. But Robyn was a very sick little boy. The Twitchells knew he was seriously ill. Their actions showed that.

He accused the Twitchells of wanton and reckless conduct. He specifically accused Ginger of arrogance. The stolid Ginger looked more arrogant than broken-hearted David. Arrogance is in the statutory definition of wanton and



reckless conduct. John said it was arrogant to take such extreme risks with your child's life.

### **Robyn a martyr**

The Twitchells, John said, had martyred their child for the sake of maintaining their own intellectual purity. They had sought medical treatment for themselves, but had deprived their dying baby of it.

We heard an excellent, artful presentation by Ms. Kliemen for 75 minutes, but never, John charged, was anything said about Robyn Twitchell.

The trial was not, he said, an attack on religion. Every doctor who testified for the Commonwealth said there was a value to prayer.

Several times during his argument he asked the jurors to send a message to the nation and set a precedent.

### **"Part of the very social contract"**

"You're going to hear about the law from the judge," he said. "But this law that parents must do everything in their power to protect their children is older than written law. It was the law when we were living in caves. This law is so fundamental that it is part of the very social contract. And if it weren't the law, none of us would be here."

"Now you all know that in this country there's a law that we drive on the right hand side of the road. You don't have to look up that law; you just know it is the law. Suppose you called a media man, a public relations guy, and he said, 'Sure you can drive on the left hand side of the road.' You would not believe him."

"Yet the law that we drive on the right hand side of the road is far less fundamental than the law that parents take care of their children."

Out in the hall after the arguments Rikki was as chummy with the church officials as ever. Her statement about their being the real guilty parties was just a strategy to get an acquittal.

### **Jury instructions**

In the afternoon, Judge Hamlin, with a white lace collar above her black robe, instructed the jury as to the law governing the case. She said that religion was not a defense to the crime of

manslaughter. Massachusetts law requires parents to provide medical care to children who are in danger of serious injury or death, she said.

For the jury to find the Twitchells guilty of manslaughter, Hamlin said, the prosecution had to prove that the Twitchells breached their legal duty to provide medical care for their children, that the failure to provide medical care, given Robyn's symptoms, constituted wanton and reckless behavior; and that the failure to provide medical care caused Robyn Twitchell's death. She told the jury it was up to them to determine whether Robyn was at risk of death and whether the Twitchells cognized this risk from observing their son.

The case was given to the jury at 4:30, July 2. It was an awesome moment. After months of the jury being the lowest people on the ladder, suddenly they were the most powerful. The rights of a dead baby lay entirely in the hands of twelve ordinary people.

### **Guilty verdict**

After fourteen hours of deliberation and three requests for Hamlin's advice, the jury returned a guilty verdict late on Wednesday, July 4. Two of the jurors began sobbing as the verdict was read.

Rikki asked the judge to poll the jurors individually on their verdict. She also asked for an immediate sentencing. The judge refused both requests.

On Friday, July 6, Hamlin sentenced the Twitchells to ten years probation and ordered them to take their three sons for periodic checkups "by a licensed pediatrician" and to "seek medical attention immediately" if they develop a serious illness.

The defense was highly upset about Hamlin's jury instructions, which in their view gave the jury no choice. "If the Twitchells were jurors, they would have had to return a verdict against themselves," Rikki said bitterly.

The defense counsel and the Christian Science church say the verdict will be appealed.

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## TWO JURORS COMPLAIN

Extraordinary demands were made on the jurors of the Twitchell case. They were pulled in and out of the courtroom innumerable times. Every day there were endless sidebar conferences in which the attorneys and judge carried on whispered arguments while the jury looked on. The only explanation Judge Hamlin ever gave them was that she had to make sure testimony came to them according to the rules of evidence. They were told not to speculate about the reasons for the delays. They could tell that the trial was being highly publicized, yet much of it was being kept from them.

They had to wait for hours every day in a small room without air conditioning. Some days they came to the courthouse and heard no testimony at all. They were ordered not to read, listen to, or watch anything about the case. And, after the *Boston Herald* published a photo admitted into evidence, Hamlin ordered the jury not to read any newspapers or magazines, watch any television programs, or listen to any radio programs. Every day Hamlin asked them if they were still obeying all of her instructions.

Perhaps it was too much to ask of the jury. On the other hand, they were paid \$50 a day. Jurors in Santa Rosa, California, were paid \$5 a day for their service in a month-long trial of Christian Science parents.

On July 27, Jolene D'Ambrosio, forewoman of the Twitchell jury and a legal secretary from East Boston, wrote Robert Steadman, Chief Justice of the Suffolk County Superior Court. She charged Hamlin with bias against the defense. She complained that Hamlin allowed "the prosecutor's humiliation of Christian Scientist witnesses and their beliefs." Hamlin forced such witnesses to give yes or no answers to the prosecutor, while allowing the "prosecution doctors to ramble on and on."

D'Ambrosio complained about the "vacuum" of ignorance jurors were kept in and about Hamlin not telling them about the religious exemption.

She resented being told by the prosecutor to "set a precedent" and then being told by the judge that Massachusetts law already requires all

parents to seek medical care for seriously ill children. Had Hamlin "told us about the religious exemption (along with her interpretation, if she so desired) and had we still come back with a guilty verdict, then that verdict could have been viewed as a precedent," wrote D'Ambrosio. "District Attorney Flanagan state[d] that 'these jurors stood tall.' One doesn't have to 'stand tall' to rubber stamp, through ignorance, a decision which has already been made by the judge."

"Based on the Judge's very narrow instructions, the case should have been a very simple one, since there was no defense to the charge," said D'Ambrosio.

"Whether or not Judge Hamlin (or you or I) believes that parents should be required to provide medical care for their children," she concluded, "there is a law on the books which permits spiritual care, and spiritual care alone—a law about which the jury was not informed. I believe the Twitchells are humble, loving and law abiding parents who tried to do the right things according to their beliefs and the law."

On September 7, another juror published her reflections in *The Boston Phoenix*. Chris Dickinson's "A View from the Box" was an evocative article. She complained about Hamlin withholding the religious exemption from them and about Kiernan badgering the Christian Scientists on their religious beliefs. She was given no "clear understanding of the tenets of the religion," she said.

The main thrust of her article, though, was her emotional identification with the Twitchells. She often felt "embarrassed and voyeuristic listening to the intimate details about their lives and their son's death." It was "harsh" for the press to besiege them.

Imagery brought the Twitchell family alive to her. David testified that, during the illness, "he tried to coax Robyn to eat by withholding a ride in their new red Vega until he had finished his breakfast, because in the child's eyes it looked like a sports car." She could picture the hopes and dreams that the Twitchells had for their son.

"Listening to David testify, and watching him and his wife weep as he spoke, made it hard to believe that the Twitchells, an apparently loving, uncalculating, law-abiding couple, would brazenly



step outside the law in caring for their children, even if following the law violated their own beliefs. They seemed sincere and reasonable to me in every other aspect," Dickinson said.

Dickinson wrote that she had spent ten years playing in a rock-and-roll band, occasionally supplementing her income with work as a waitress and data processor. She told the court in *voir dire*, however, that she was a fundraiser for the Harvard Business School.

Neither Dickinson nor D'Ambrosio spoke of Robyn's suffering or the injustice done to him. Robyn's admiration of the Vega was part and parcel of his innocence—his helpless dependence on the parents he trusted. David's bribery to get him to eat showed a parent's tenderness, but was also a horror, considering that Robyn was dying of a bowel obstruction. The jurors did not discuss whether sincerity and good intentions justified preventable deaths of children.

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## JUDGE HAMLIN AND HER COURTROOM

Judge Sandra Hamlin, 45, was a Suffolk County prosecutor for six years before becoming a judge in 1980. John Kiernan, who prosecuted the Twitchells, says that he and defense counsel selected Hamlin as the judge for the case years before it came to trial. After the verdict, defense attorney Rikki Kliemen stoutly denied ever agreeing to have Hamlin preside over the case.

As described in the previous article, two jurors complained about Hamlin's withholding the religious exemption from them. Christian Science spokesman Nathan Talbot wrote a column in the November 27 *Washington Post* alleging that Hamlin should have dismissed the charges against the Twitchells because a judge in Minnesota dismissed charges against a Christian Science couple.

### Judge's mandate

The two jurors do not appear to understand that a judge has a mandate to apply the law governing the case. She gave the jury what in her professional judgment was relevant and the jury

was charged to follow the law that she gave them. I felt the two jurors' attitude showed resentment of a woman's authority. As for lawyer Talbot, well, he very likely knows that a judge in Massachusetts is not supposed to make rulings based on the state laws of Minnesota.

The defense challenges to Hamlin's authority annoyed her. They would arrange appeals to the Supreme Judicial Court without informing her, for example. Then Hamlin could not proceed with the trial for that day. Had she known that, she would have sent the jury home hours earlier, she pointed out.

The audience also increased the tensions. The courtroom was usually jam-packed with Christian Scientists who acted as if they owned Boston. The court officers repeatedly told them not to talk or read, and they just as often broke the rules. They were determined to read Christian Science literature in the courtroom. Hamlin lectured the audience and threatened to make them leave. Her rules, she said, were "the law of this court and every other court in the Commonwealth." But the Christian Scientists still defied them.

On June 25th, for example, the bailiffs reprimanded two Christian Science women for talking. (I assume their religion because of the literature one had.) Then a court officer went to the high windows and tried to open it with a long pole for the comfort of the audience and other parties. She made a clatter, so the two Christian Scientists laughed at her. She reprimanded the two of them twice more. They smarted off to her. Then a male court officer came over, and one of them said belligerently, "Don't you talk to me that way." He told Hamlin the women would not obey instructions. Hamlin told them to leave. One of them shouted at Hamlin, "Your honor, he's a liar."

"He never lies," Hamlin fired back, but did not make the women leave. After finishing another conference with the attorneys, Hamlin again lectured the audience to obey court instructions. And so it went.

Her direct supervisor, Chief Justice Robert Steadman, publicly defended her as conscientious and talented. We feel that she surely has to be credited with hard work on the Twitchell case.



She was painstaking, slow, and deliberate with her rulings.

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## THE UNSOLVED MYSTERIES

In 1979 when we spoke out publicly about the death of our son because of Christian Science, the church gave a list of things we had done wrong. One was we had not called the church public relations officer, the Committee on Publications (COP). They said it had long been church policy for both parents and practitioner to call the COP in serious children's cases though the legal advice booklet said only for the practitioner to call.

Ginger and David Twitchell made sure they were smarter than the Swans. Ginger began calling her COP, Nathan Talbot, the second day of Robyn's illness.

But what is the purpose of the church rule? Can the COP heal the child? Can he diagnose the disease? Will he truthfully advise them of state laws? Nathan Talbot did not.

The Twitchells' repeated calls to the worldwide head of church lobbying and public relations while their baby was screaming in agony did not make them look good in the courtroom.

Ginger was a mystery I often puzzled over. She has never said a word to the press. I wondered if she had something to say about the death of her son that the church did not want her to say. She had tried to call two other practitioners, but was talked out of it.

Why were the Christian Scientists always patronizing Ginger? They presented her as the fragile one. They were more concerned about Ginger needing help with her housework than they were about the dying child.

Practitioner Nancy Calkins's elaborate testimony about Ginger's hysteria when Robyn died sounded very self-serving to me. It was the defense's convenient explanation for why Robyn's body was left abandoned in a dark hallway.

What did happen the night of April 8? One paramedic thought Robyn had died by 8 or 9 p.m. David did not call a funeral home until 10:10

when he got directions from Calkins who got them from Talbot. Then he waited another 39 minutes before carrying out the funeral home's direction to call 911.

My speculation is that Calkins and Talbot did a lot of talking before each of those phone calls. I think Talbot hoped the funeral home would take the body without contacting authorities. When that prospect failed, I think his next plan was to protect Calkins from being interviewed by the 911 staff. Either Calkins, Ginger, and Suzanne were very quiet in a dark room while the EMTs worked on Robyn's body or the three women left the house altogether. In either case, David was left alone to answer for the death of his son.

The crassness of Christian Science "health care providers" is obvious to many observers, but not David Twitchell, and whatever Ginger knows she will not tell. Ginger and David begged Talbot for advice, and he lied to them by implication and omission. The church nurse force fed their baby and told them to feed him every half hour. Calkins repeatedly claimed to be healing him and rebuked Ginger for her alarm. After Robyn died, Calkins told David what to do and made him face the outside world by himself. She directed events, but did not have to answer to anybody. She even had David drive to the hospital by himself.

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## THE IMPACT OF THE TWITCHELL CASE; WHO HAS LEARNED WHAT?

In 1989 three sets of Christian Science parents were convicted for the deaths of their children. After these convictions, church spokesman Nathan Talbot several times pointed out that they were not for manslaughter. Trivializing convictions for third-degree murder and reckless endangerment, Talbot acted as if manslaughter was the only charge members should take seriously.

But in 1990 Laurie Walker and the Twitchells were convicted of manslaughter in two more deaths of Christian Science children, and Talbot still suggests that the church will not make any



changes in its treatment of children. The Twitchell verdict "certainly isn't going to change spiritual healing," he said. Rather, he predicted, it "will stir Christian Scientists" to stronger efforts "to educate people about spiritual healing."

CBS News specifically asked him if the convictions were causing the church to do any reassessment of its policies and practices. Talbot said the church was busy thinking about its many outstanding healings.

Indeed, Talbot talked as if the conviction of the Twitchells was good publicity for Christian Science. "We are having dozens and dozens and dozens of examples of people coming to our churches and reading rooms who have heard about the Twitchell case and are asking if Christian Science can heal them," he told *The New York Times*. "Something is happening here, and it's not what the prosecutors intended."

Not every Christian Scientist agreed with Talbot. Noted Christian Science scholar Stephen Gottschalk responded that, while more people may be thinking about Christian Science now, "what they are thinking may be more hostile than helpful."

What did Ginger and David learn? They had to sit in the courtroom and face their accusers from April 17 until July 4. The death of their baby hung over their heads for four years leading up to the trial. As a convicted felon, David is not allowed to manage Open Gate, the church nursing home in New York where they live, so he has taken a cut in pay to work as a maintenance man at the facility.

### **Medical care worse than jail?**

No-one should presume to judge their hearts or souls, but David's public comments are not encouraging. David still plays the role of church mouthpiece even when it contradicts his previous statements. The church acts as if requiring the Twitchells to get medical care for their surviving children is a cruel, unjust punishment. "It's the state's effort to re-educate Christian Scientists into its own view of what health care should be," complained Talbot. On August 8 David was quoted in *The Boston Globe* as saying, "If I had the choice of going to jail, over having the state reach into our home and mandating that we deny

our children the best system of healing that we know of, then I would seriously consider that option." David would rather go to jail than take his children to doctors, yet the month before he had testified in court that he had no reluctance to go to doctors and would have taken Robyn to them immediately if he had known his son's illness were serious.

David presents himself and Ginger as standard-bearers for the religion who "have been dragged into court because of [their] religious beliefs." When asked if he resented the prosecution's presentations, David replied, "We've been described as standing at the front, the head of the line, in the forefront of the battle, concepts like that." And because of their obligations as pioneers and front-line soldiers, David said, he did not want to express "evil thoughts" against the prosecution.

The Twitchells have reportedly tried to sell movie rights to their story. Writing has begun on a television movie for NBC about the Twitchell trial, but a producer said it will not be told from the Twitchells' perspective. "The perspective of grieving parents has been done over and over," he said.

The Twitchells have had two children since they lost Robyn: Brian and Elias. In *Science and Health*, Mary Baker Eddy says that the Biblical character Elias represents "Christian Science, with which can be discerned the spiritual fact of whatever the material senses behold." Eddy also quotes Jesus as promising that "Elias truly shall first come and restore all things."

Ginger and David have suffered losses beyond measure, but they are still, from our observation, trusting Christian Science to restore them.

Was the Twitchell case historic? Did it set a legal precedent? From the amount of work, money, and media coverage expended, one would likely assume so. Yet as juror D'Ambrosio said, it should have been a very simple case since, according to the judge, the law already required parents to provide medical care for seriously ill children.

Indeed, since 1903, American courts have ruled that parents must provide children with medical care, regardless of their religious beliefs.



(See *People v. Pierson*, 176 N.Y. 201, 68 N.E. 243 (1903).)

What was historic about the Twitchell case was that the Christian Science church was challenged in Boston. John Kiernan and Marcy Cass poured an enormous amount of work into the case. They met with witnesses at all hours to prepare them for testimony. They spent innumerable hours learning about Christian Science, twisted bowels, Meckel's diverticuli, etc.

Overworked and underpaid, many prosecutors have let deaths of Christian Science children slide by through the years. We owe a debt of gratitude to the Suffolk County prosecutors who determined to prove that the common welfare of the Commonwealth's residents includes rights for children.

The short-run impact of the Twitchell trial and conviction has not been what we hoped for. We learned of four Christian Science children who died in 1990, either with no medical care at all or with only last-minute medical care. Some church members are being as stubborn as Talbot promised they would be.

Nevertheless, the prosecution and verdict stand in our mind as significant victories for children. They set forth an age-old truth already embedded in the good common sense of the public—that parents must do everything in their power to protect the life of a child. "The law of nature, as well as the common law, devolves upon parents the duty of caring for their young in sickness and in health, and of doing whatever may be necessary for their care, maintenance, and preservation, including medical attendance," wrote the court way back in 1903.

Taken in part from *The Boston Globe*, July 22 and August 8, 1990 and January 10, 1991; and *The Boston Sunday Herald*, August 12, 1990.

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## THE MEDIA

The Twitchell case received an enormous amount of media attention. Some was excellent, but much was mediocre.

In general, the press did not see the Catch 22 that the Christian Science church places its parents in. It did not see the connection between church theology, policy, and the dead child.

The coverage often lacked perspective, focus, and investigative effort. It did not scrutinize deaths of Christian Science children elsewhere, the history of American jurisprudence on this issue, or public policy developments. Reporters did not try to pin down the slippery Nathan Talbot nor did they ask legislators whether the state should have laws letting Christian Science parents deprive children of lifesaving medical care.

The Associated Press and other media wrote as if no conclusions could be drawn from case law. "The U. S. Supreme Court typically has refused to hear such cases, and there has been little consensus in similar cases heard in state courts around the country," said the AP.

But the few acquittals, based on facts of individual cases, have had nothing to do with the meaning of the First Amendment. The Supreme Court may well have refused to hear these cases in recent years because it regards the law as already settled on this issue.

The distinguished *Washington Post* started the inane comment that the Twitchell case was a battle between Catholicism and Christian Science. Diane Sawyer echoed this allegation on *60 Minutes*.

As they have for the past several years, all Christian Science church officials refused to face me in the media. I was invited to appear on *Larry King Live* three times in 1990. Each time the invitation was canceled because the church would not show up. After the first invitation I arranged important meetings with public officials in Washington D. C. Twice we sent out postcards to all the CHILD members about the programs. The media did not seem embarrassed about letting the Christian Science church determine their programming or about the inconvenience to us.