

# Children's Healthcare Is a Legal Duty, Inc.

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*Equal Rights for Children under the Law*



*Ian Douglass Lundman*

## Suit filed against Christian Science church and agents in diabetes death

On April 30, Douglass Lundman filed a civil suit in Minneapolis charging a number of parties with negligence and wrongful acts that allegedly caused the death of his son, Ian. Named as defendants were the boy's mother, Kathleen McKown; his stepfather, William McKown; Christian Science practitioner Mario Tosto, Christian Science nurse Quinna Lamb, Christian Science Committee on Publication for Minnesota James Van Horn, a Christian Science nursing home called Clifton House, the First Church of Christ, Scientist, in Boston, Massachusetts; and Minneapolis Open School, a private, but secular school where Ian was enrolled.

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## Six Philadelphia children die in churches shunning medical care

This year six children whose parents reject medical care on religious grounds died in the Philadelphia area:

Karyn Still, age 9, died February 7  
Monica Johnson, 9, died February 10  
Nancy Evans, 5, died February 14  
Linnette Milnes, 14, died February 14  
Tina Louise Johnson, 13, died February 15  
James Jones, 19 months, died March 8

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Nancy Evans' parents belonged to First Century Gospel Church; the other five children were affiliated with Faith Tabernacle. Both churches reject medical care and immunizations.

All six children died of complications from measles. James Jones died of a brain infection brought on by the measles. The others died of untreated pneumonia and dehydration. Nancy Evans had a chronic urological problem as well as measles complications. With the possible exception of James, the children could have easily been saved with medical care, a health official said.

### **Parents saw symptoms**

Karyn Still's parents told police she had been vomiting for four days before her death.

Monica's father acknowledged that she had had a rash and then a fever. Only when Monica collapsed after gasping for air did he call the police for help. She was unconscious without a pulse when the police arrived.

Her sister, Tina Louise, died at home a few hours before Monica's funeral.

Lynette Milnes had been kept at home since birth because, according to her father Franklin Milnes, she was "mentally ill." Actually, she had Downs' syndrome. She contracted measles from her sister who attended a Faith Tabernacle school. After breaking out in a rash, she "just sort of moped around and rocked back and forth in her rocking chair," Milnes said. On February 13, she had difficulty breathing. Milnes said he and his wife stayed up with her until she fell asleep. A few hours later, they noticed she had died.

### **Weeks of warning**

Nancy Evans died in her father's arms on the living room couch weeks after a rash appeared on her body. Her father acknowledged that she was "extremely overheated" the day she died, health officials said.

The sixth and littlest victim, baby James Jones, suffered through measles and its complications for two weeks. He had severe brain damage, likely because of a seizure, before his father, who was not a member of Faith Tabernacle, called 911. He died the next day in

a hospital.

The week before, health officials had placed three phone calls to the boy's mother. "She just gave a bland remark that everything was fine," said an administrator. After James was hospitalized, the mother would not permit officials to examine his sister until they threatened to get a court order.

### **Extent of epidemic**

From November to April, Philadelphia had 900 reported and confirmed cases of measles with 492 of them among the Faith Tabernacle or First Century Gospel congregations. The actual number of measles cases during those periods is believed to be far higher than 900.

Managing the epidemic has been a nightmare for Deputy City Health Commissioner Dr. Robert Ross. Members of Faith Tabernacle and First Century Gospel did not report measles cases to the Health Department, he said. He did not know they had schools with hundreds of unvaccinated children.

After deaths of children, the Faith Tabernacle pastor did give Ross a list of families at their school. In telephone interviews, Ross found the parents polite, but firm in refusing medical care and vaccinations for their children.

### **Visiting physicians entered a "time warp"**

Then the city resorted to home visits by 18 volunteer physicians. Dr. Mark Joffe said it was like "entering a time warp" to visit families who completely reject twentieth-century medicine.

Joffe also reported that the parents were "extremely courteous, caring, and honest" and "with the exception of the fact that they would stay at home and watch their child die of measles, they seemed like wonderful people."

The vast majority did not allow physical exams of the children. As one newspaper headline read, "Doctors' quick glance is measles house call."

### **Court ordered medical treatment**

The city went to court to obtain orders for medical treatment of children who looked seriously ill to the visiting doctors. The city also sought orders for vaccinations of preschool



children who had not been exposed to measles from siblings attending the church schools.

On March 4 Judge Edward Summers not only granted those orders, but also directed the city to identify all Philadelphia churches that reject medicine. He required the recently reopened Faith Tabernacle school to report any student's absence of more than three days to the Department of Human Services. And he ordered that all preschool children in the Faith Tabernacle congregation receive monthly medical examinations.

### **Judge modifies challenged orders**

The American Civil Liberties Union (ACLU) had previously declined to represent the parents, saying that the children's right to protection against disease was more important than the parents' free exercise rights. But the ACLU spoke out against Summers' order because it subjected Faith Tabernacle children to more medical attention than the general population is required to obtain. Also, said ACLU lawyer Stefan Presser, "you're entitled to go to church and not have to tell the government what you believe."

The Christian Science church complained about Judge Summers' order as well.

On March 18, Summers vacated the portions of his order that went beyond the specific children's cases presented to him by the City Solicitor's office.

### **Beliefs defended**

Faith Tabernacle parents defended their belief system. Wayne Johnson, a teacher at the church school, spoke with the press after his daughter Monica died and before Tina Louise died. He said God chose to make Monica sick "for the strengthening of [their] character" and their faith. He objected to immunizations as "interference with God's will."

"If I go to God and ask him to heal my body, I can't go to a doctor for medicine. You either trust God or you trust man. If you go to a doctor, you're unfaithful," said one member.

Like the Christian Science church, Faith Tabernacle split hairs over the meaning of words. "We are not, as some persons have said, faith

healers," church elders protested. "Only God can perform healings."

Rev. Charles Reinert said, "We're only following what God directed in His word." There is "no fear when you can see God on your side," he told his congregation.

Reinert also claimed that the recovery from measles by hundreds of the church children showed God's "faithfulness."

### **Origins of belief**

Faith Tabernacle was founded in Philadelphia in 1897 at the height of a nationwide Pentecostal revival. It has about 18,000 members with nine congregations in the United States and other branches in Africa, Sri Lanka, India, and Jamaica. Philadelphia officials said there were 119 families with 539 children in the city's Faith Tabernacle congregation.

The church's theology is summarized in nineteen articles of belief, one of which states that Christ "having cleansed us from sin. . . will also heal our bodies from sickness and disease" and that the Bible opposes "all medical and surgical practice whatever."

The belief that the crucifixion of Christ redeems man from sickness as well as sin is common to Pentecostal faith healing. It is seen in the positive confession theology developed by Kenneth Copeland and Kenneth Hagin and used by Revs. Hobart Freeman, Charles Meade, and many others.

### **Denial of symptoms**

Faith Tabernacle also claims that all disease is a sinful temptation and urges denial of disease symptoms. Such notions are common not only to Pentecostal faith healing, but Christian Science as well. A Faith Tabernacle pamphlet, "How to Receive Perfect Healing," instructs people to "believe that we receive it when we ask and, without waiting to see or feel that we are healed, to count it done on the authority of God's word."

"It is here where the real battleground is," the pamphlet goes on. "When we start out in naked faith, [the devil] usually makes our symptoms worse and tries to persuade us to turn back from the Lord. But if we are steadfast. . . , victory is sure."



In justification of their beliefs, members cite such Bible passages as Jeremiah, Chapter 46, verse 11: "In vain shalt thou use many medicines, for thou shalt not be cured."

### Origin of epidemic

The measles epidemic in Philadelphia began long before the Faith Tabernacle children contracted the disease. Some doctors say it actually began among teenagers at a rock concert April 20, 1989. By December, 1990, the Health Department had declared a measles emergency. Two local toddlers not connected with ritual healing groups died of measles complications in December and January, the city's first measles deaths in twenty years.

Health officials have predicted more measles deaths in Philadelphia and cases continuing to appear for years to come. More than a third of Philadelphia children are not immunized at appropriate ages.

### Measles resurging threat

Rubeola measles is a highly contagious disease with a 90% attack rate. In other words, if a non-immune person is exposed to measles, there is a 90% probability s/he will contract the disease. It is not a trivial childhood illness. Before the measles vaccine became widely available in 1963, there were hundreds of thousands of cases and several hundred deaths due to measles every year. In 1961, for example, there were 434 measles deaths. The disease had almost disappeared by the mid-1980s when federal cutbacks in immunization programs and parental apathy allowed a resurgence. In 1990 there were 26,000 cases of measles and 64 deaths in the nation.

Like most states, Pennsylvania has a religious exemption from immunizations. There are 429 schoolchildren with religious exemptions from immunizations in Philadelphia: 189 in public schools and 240 in private schools. Ross requested a list of children in public schools with religious exemptions from immunizations. A month later education administrators had still not provided it--even with a life-threatening emergency at their doorstep.

### Misconceptions on religious freedom

*The Philadelphia Daily News* ran an editorial expressing an assumption that such religious exemptions were mandated by the Constitution. However, courts have consistently upheld the state's right to require vaccinations without exception for religious belief. Religious exemptions have come into state codes only because of pressures from special interest groups on state legislatures.

Taken in part from articles in *The Philadelphia Inquirer* and *The Philadelphia Daily News*.

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## Charges filed in Faith Tabernacle boy's death

In February Dennis and Lorie Nixon of Altoona, Pennsylvania, were charged with involuntary manslaughter and child endangerment for depriving their son of medical care.

Eight-year-old Clayton Nixon died January 6 due to dehydration and malnutrition after contracting ear and sinus infections. He was 4 feet 1 inch tall, but weighed only 32 pounds at his death. The infections caused continuous vomiting of food and water.

The Nixons are members of a Faith Tabernacle Congregation directed by Nixon's father. In 1981 other members of Nixon's church, William and Linda Barnhart, let their son die of a highly treatable cancer. A Wilm's tumor grew larger than a volleyball in the abdomen of their two-year-old son Justin and starved him to death.

The Barnharts were convicted of manslaughter. The conviction was upheld on appeal, and the U. S. Supreme Court declined to review it.

Blair County Child Protection Services (CPS) sought a court order for medical examinations of Clayton Nixon's nine surviving siblings. Judge Hiram Carpenter declined to issue an order, in part because of Pennsylvania's religious exemption in the juvenile code.

Similar CPS efforts were rebuffed in 1980



when another Faith Tabernacle family, Roger and Dawn Winterborne, lost five children to untreated pneumonia in suburban Pennsylvania. CPS attempted to obtain a court order for medical exams of the surviving siblings, but were turned down because of Pennsylvania's religious exemption to child abuse and neglect.



*Melinda Sue Friedenberger*

## **Another Faith Tabernacle child dies in Pennsylvania**

On April 25, Melinda Sue Friedenberger, age 4 and 1/2 months, died at her home in Altoona, Pennsylvania, of severe malnutrition and dehydration. Her mother, Kathy Friedenberger, belongs to Faith Tabernacle, which rejects medical care and encourages exclusive reliance on prayer to heal disease. We were told by a television reporter that her father, John, was a Roman Catholic who had promised his parents he would make sure his children got medical care.

Blair County Coroner Charles Burkey ruled the death a homicide. He said an autopsy

revealed that the malnutrition and dehydration were brought on by a fever Melinda had for several days. "It is my opinion that the baby, if treated, would not have died," Burkey said.

Blair County District Attorney William Haberstroh is already prosecuting Faith Tabernacle parents for the death of 8-year-old Clayton Nixon to malnutrition and dehydration. Haberstroh has called such deaths "atrocities [perpetrated against children] in the guise of religious beliefs."

Melinda is the eighth Pennsylvania child to die this year after medical care was withheld on religious grounds. Seven children were in Faith Tabernacle, and one was in the First Century Gospel Church.

## **Four deaths of Christian Science children in 1990**

Four deaths of Christian Science children in 1990 came to our attention. Two are still being investigated by authorities. The other two are reported below.

### **Five-year-old dies of appendicitis**

Five-year-old Jon Murray of Ballwin, Missouri, died at his home on June 13, 1990, following frequent episodes of vomiting throughout the previous day. His parents, Dan and Elizabeth Murray, are Christian Scientists, and Jon attended the Principia preschool for Christian Scientists.

Within eight hours before his death, Mrs. Murray sought advice by phone from a local health maintenance organization (HMO) that she was enrolled in through her employer. The HMO apparently did not realize the severity of the illness from the symptoms described to them.

### **Medical Examiner's opinion**

The cause of death was peritonitis due to a ruptured appendix. Dr. Mary Case, Medical Examiner of St. Louis County, said that, in her view, reasonable parents would have observed that their child was seriously ill.



Jon is survived by a twin brother and an older brother. The children had received immunizations in the fall of 1990 when a measles outbreak at Principia prompted St. Louis County Health Department officials to insist upon proof of immunizations in order for children to return to the school.

Dan Murray is a chemistry teacher at the Principia. Elizabeth Murray is an orchestra teacher in the Parkway School District.

## **Christian Science child dies after court refuses to order care**

On September 28, 1990, a 3-year-old Christian Science child died of cancer after the Delaware Supreme Court refused to order medical care for him. By the time of the ruling, the New Castle County boy, identified as Colby, was given only a 40% chance of survival with medical care.

In early September Colby's parents brought him to the du Pont Institute's "urgent care center." They were aware that he had been sick for weeks. An examining physician wanted x-rays taken.

### **Father's delay doubled the risk**

The father refused and took Colby home against medical advice. A week later he returned with the boy. He admitted that Colby had been seriously ill and agreed to exploratory surgery. The father mentioned the trial of Ginger and David Twitchell, a Christian Science couple who had let their son die of a bowel obstruction, as a reason for his concern. According to a physician observer, he also indicated that surgery was for correcting a mechanical problem rather than an illness and therefore might be compatible with Christian Science teachings.

During the operation, Dr. Charles Miner discovered a tumor, later determined to be caused by non-Hodgkin's lymphoma. In children, this type of cancer spreads very rapidly, said Dr. Rita Meek, a pediatric oncologist who then entered the case. If it is caught early and given

very aggressive chemotherapy over a period of six to eight months, the survival rate can be as high as 80 to 90 percent, she said.

### **Would refuse to pray**

The father refused to allow chemotherapy. Meek, who said faith can be a tremendous help in treating children with cancer and their families, tried to persuade the father to allow Colby to have both Christian Science treatment and medical care. But he told her that an accredited Christian Science practitioner would not pray for the child if he were being treated by physicians.

**"A 3-year-old should not be sentenced to death."**

Meek and Miner then contacted Child Protective Services (CPS) because they felt the parents were denying Colby any chance to live. "A child of 18 could tell me, 'I've thought about it and decided not to be treated.' I could live with that," Meek said, "but a 3-year-old should not be sentenced to death."

The Attorney-General's office argued that the parents had waived the protection of Delaware's religious exemption laws because they had consented to surgery. The Family Court gave CPS custody of the child, but the parents appealed to the Delaware Supreme Court.

### **High Court reversed Family Court**

On September 14, the High Court reversed the Family Court ruling. It is, to our knowledge, the first case in which a court has refused to order medical care for a Christian Science child. Of particular concern is the fact that the Delaware Supreme Court cited religious exemption laws as part of the basis for their ruling.

The Court's ruling began as follows:

*In Cruzan v. Director, Missouri Department of Health* the Supreme Court of the United States recognized that the choice between life and death is a deeply personal decision of obvious and overwhelming finality. That Court also recognizes that a state may legitimately seek to safeguard the personal element of this choice. Finally, the Supreme Court also recognizes that a state may properly decline to make judgments about the quality of life that a particular individual may enjoy and may assert an



unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual. The policy of this state with respect to the quality of life is enunciated in part by [Delaware's religious exemption laws].

The Court went on to describe the proposed course of chemotherapy as "highly invasive, painful," and dangerous, involving months of hospitalization that would separate Colby from his parents.

#### **Treatment "entitled to respect"; child dies**

The Court said it would not refuse to order medical care in all cases involving religious objections of parents. But, balancing the child's prognosis with the "recognized state policy" that the Christian Science "course of spiritual means" for treating cancer was "entitled to respect," the Court ruled in favor of the parents.

Colby's parents "have undertaken an awesome responsibility," concluded the Court. "They must face their religion and God, in whom the future of [Colby] now reposes."

Two weeks later Colby died at home.

#### **Pediatricians' reaction**

Miner commented afterwards that the court's description of chemotherapy was too grim. He said many children are being cured of cancer today, that pain and side effects of chemotherapy can be managed, and that hospital staff provide outstanding emotional support for sick children. He also pointed out that Colby could have stayed at home for much of the chemotherapy if his parents had not been so adamant in their Christian Science beliefs.

The Delaware Chapter of the American Academy of Pediatrics wants the religious exemption laws repealed, but no legislation has been introduced yet.

CHILD Inc. believes that the state should not force medical treatment on children when there is not a reasonable chance of success. Judgment in some cases does belong to the parents--after consultation with a licensed physician. But the Delaware Supreme Court's ruling is disturbing in seeming to create a special standard on the basis of religion and especially in citing the *Cruzan*

case as a precedent. Nancy Cruzan was an adult in a vegetative state and the U. S. Supreme Court did not grant the right to discontinue her life-support systems unless there was clear evidence of her wishes.

Taken in part from the *Wilmington News Journal*, September 25.

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## **Indiana teen permitted bogus cancer remedy**

In February 15-year-old Tim Wolf of Scottsburg, Indiana, was granted permission by Judge James Kloefer to discontinue effective chemotherapy and substitute vitamins, herbs, and nutritional supplements to treat his acute lymphocytic leukemia.

This was done over the objections of the Scott County Department of Public Welfare's "child in need of services" petition.

The testimony of Tim's parents was reported to be crucial in the judge's decision. Tim's father is president of the Scottsburg Chamber of Commerce and owns Scottsburg Plastics, one of the city's largest employers. Nearly 150 friends and community leaders, including the mayor, wrote letters of support for the Wolfs.

Tim's disease is in remission due to conventional therapy, but he has experienced severe side-effects. After visiting "several holistic doctors," Tim decided he wanted to try their nutritional therapy and to discontinue chemotherapy.

Tim's mother reported to the local newspaper that Tim was in good health as of early May.

Because juvenile court proceedings are closed to the public, we know only what the Wolfs will let us know about this case.

Taken from the *Louisville Courier-Journal*, February 18, and the *NCAHF Newsletter*, March/April 1991.

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## Cancer treatment ordered for Jehovah's Witness child

In Honolulu, Hawaii, a state family court has ordered medical treatment for a child over the religious objections of his parents, Harold and Rebel Gouveia. Sixteen-month-old Stephen Gouveia suffers from cancer of the nerves. His Jehovah's Witness parents object to the blood transfusions that are proposed as part of the cancer treatment.

A federal judge has refused to intervene in the case.

Taken from the *Tucson Citizen*, April 18.

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## Youth forced to have blood transfusion

A Denver teen was given blood during surgery over objections from him and his family.

Joshua Gallaher, 17, was shot in the abdomen April 10 while he and another youth were playing with a gun at Gallaher's west Denver home. But when he arrived at Denver General Hospital, he told the emergency room doctor he did not want a blood transfusion.

Gallaher and his family are Jehovah's Witnesses. Their religion forbids blood transfusions.

The hospital petitioned the court to allow the transfusion. A juvenile court judge granted the petition, and Gallaher underwent a second surgery with the transfusion.

Gallaher received 10 units of plasma and 2 units of packed red blood cells before and during the surgery.

A hospital spokeswoman said the hospital would not have sought the court order if Gallaher had been 18 years old.

Gallaher recovered and has been discharged. Taken from the *Rocky Mountain News*, April 13.

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## Colorado Supreme Court orders third trial in faith death

*A news-opinion article*

The state of Colorado received another lesson in the costs of lawmakers' subservience to the Christian Science church when the state Supreme Court ordered a third trial for Jon Lybarger on March 18.

The case is beginning to sound like a Monty Python script as it consumes more and more articles in our newsletter. Lybarger and his wife Judy ran a fellowship group in Estes Park, Colorado, titled Jesus through Jon and Judy, which held that Jesus should be their only doctor. On March 5, 1982, their five-week-old daughter Jessica died in their home, across the street from a hospital, after days of struggle against pneumonia.

### The first trial

Lybarger was charged with felony child abuse. Judge William Dressel ruled Colorado's religious immunity law unconstitutional as a violation of children's rights. "The legislature has no right to make that exemption to criminal conduct," he said.

Lybarger was convicted, but the Colorado Supreme Court overturned the ruling because the judge acted *sua sponte*; that is, he had not been asked by the parties to make it.

### The second trial

At his second trial in 1986, Dressel construed the shield law to be merely a statement of free exercise rights. The law then read:

"No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to have been neglected."

The judge held that the defendant could not be charged for praying, but could be charged for endangering his child's life by medical neglect. The prosecution adopted that line of argument during Lybarger's second trial.



In 1989 the Court of Appeals upheld Lybarger's second conviction. It said the religious defense was not available to him because there was evidence "that a reason other than spiritual treatment existed to consider the child endangered."

### **Supreme Court upheld defense**

The Supreme Court saw it differently. "Such a construction," said the High Court, "virtually eliminates the affirmative defense in any prosecution for child abuse, which by definition requires at the minimum that there be an unreasonable placement of the child in a situation which poses a threat of injury to the child's life or health."

The legislature, said the Supreme Court, is vested with constitutional authority to define criminal conduct and had clearly decided "to make the affirmative defense of 'treatment by spiritual means' available under limited circumstances in a prosecution for child abuse even when the alleged abuse results in death."

The Supreme Court ruled that the religious defense is available to parents with "an honest and reasonable belief" that medical care is not necessary to prevent serious harm. The Court added that this belief must be based on "a reasonable assessment of the facts and circumstances which were known or should have been known to the parent."

The Supreme Court also objected to Judge Dressel telling the jury to determine whether the religious defense was available or not. The judge, rather than the jury, must determine that, the Court ruled.

Larimer County District Attorney Stuart Van Meveren will try this nine-year-old case for a third time July 8.

### **Court tries to make sense of the law**

This saga is another example of the tension between legislatures who recklessly and/or apathetically rubberstamp bills drafted by the Christian Science church and courts who try to make sense of them. The courts do not want to give parents license to let children die on religious grounds, and many courts have indeed

stripped the religious exemptions of meaning in order to uphold a child's right to live.

The Colorado Supreme Court says that the legislature must have meant something with the religious exemption, but we cannot understand how its interpretation differs from that of the Court of Appeals. Both set a reasonable person standard on providing medical care to a sick child.

### **New law-- charge for prayers**

As a final irony, in 1989, a movement to repeal Colorado's religious exemption was torpedoed by the Christian Science church and a far worse law was passed. The new law allows parents to deprive children of medical care, regardless of the harm to the child, if the parents use a method of religious healing that has fees which the IRS will allow to be deducted from income tax as medical care or are reimbursed by insurance companies or that "provides a rate of success in maintaining health and treating disease or injury that is equivalent to that of medical treatment."

Of course, Christian Science will be the only method to qualify under the first two conditions; the third was likely added to deflect charges of religious favoritism. As one observer commented, "To get your prayers qualified as health care for sick children in Colorado, they either have to heal disease or you have to send bills for them."

The Colorado legislature has given insurance companies and the IRS the right to determine what a crime is.

### **Another trial to come**

The new law may be scrutinized by Colorado courts also. Felony child abuse charges have been filed in the death of Angela Sweet, a seven-year-old Montrose County girl. She was sick for five weeks with an inflamed appendix and peritonitis, but her parents were members of Church of the First Born and therefore would not get medical care for her. Their elders do not charge for their prayers.

Is anyone keeping track of the cost to the taxpayers or to children?



## Faith Assembly couple lose custody of 7 children

Seven children have been removed from the home of a Faith Assembly couple whose infant son died without medical treatment, authorities said.

Michael and Diane Ricks of Kimmel, Indiana, let their 5-month-old son, John David Ricks, die of untreated bacterial meningitis because of their religious beliefs against medical care. The Rickses told the coroner their son developed a fever April 3, 1990. According to the coroner's affidavit, they "rebuked the fever, and he wasn't hot anymore." On April 7 he stopped breathing three times. Each time the father "rebuked the spirit of death in Jesus' name" and the baby "perked right back up and started breathing." On April 8, however, the baby died.

Ricks earned a medical degree and practiced medicine during a one-year residency at Mercy Hospital in Toledo, Ohio, before joining the Faith Assembly, which opposes all medical care.

### Grandparents given custody

The Rickses were charged with reckless homicide and child neglect in the baby's death. Early this year they pled guilty to the neglect charge. By agreement, they were given three-year suspended sentences and ordered to turn over custody of their children to Michael Ricks' parents in Ohio.

The Rickses may visit the children as often as they like, but the grandparents are responsible for the medical care of the children.

After three years, the couple may apply to the court to regain custody of the children, Noble County Prosecutor David Laur said.

According to reports in the *Fort Wayne News Sentinel* at least 103 documented deaths in the Faith Assembly since 1973 could have been prevented by medical care. The majority are children and mothers in childbirth.

Taken in part from the *Toledo Blade*, April 28.

## End Time parents sentenced on abuse charges

On April 2, Charles and Merilee Myers of Lake City, Florida, were sentenced to five years' probation for felony child abuse as part of a plea agreement. Third Circuit Judge Royce Agner also ordered them to perform 100 hours of community service, pay for medical records and ensure that any children in their care get timely medical treatment. They belong to End Time Ministries, a sect that shuns medical care.

Their son, Will Myers, 16, had a heart lesion that went untreated for seven months and made it impossible for him to hold down food. He developed liver and kidney ailments and lost one-third of his body weight. His brother told investigators that Will's feet were so infected that buckets had to be placed on the floor to catch fluid draining from them and he could not walk.

His parents finally took him to a Gainesville hospital. Doctors at first doubted that he would live. He was in critical condition and under intensive care for several weeks.

### Grandson's death recalled

The Myerses claimed they did not realize their son was near death. But as Assistant State Attorney Scott Cupp said, "This is not the first experience these defendants have had with the dire consequences that result from not obtaining medical care for family members." They lost their grandson, Michael Boehmer, in 1989. The baby bled to death four days after birth. Doctors said a simple vitamin K injection would have saved his life. Also, Mrs. Myers had suffered from an illness similar to that of her son Will.

### Doctor on child protection team criticized

Dr. Thomas Webber, a Gainesville pediatrician and medical director of the district Child Protection Team, testified on behalf of the parents at sentencing. Webber came under sharp cross-examination from Cupp, who asked Webber about his attempts to discourage prosecutors and the state Department of Health and Rehabilitative Services from becoming involved in the case.



Charles Myers had discussed arranging a talk by Webber to End Time members about the need for medical treatment in return for Webber's help in discouraging prosecution.

Webber said the talk would have been an attempt "to help the large number of children in this community who are not receiving medical care." He testified that Myers wanted "to cut deals," but denied that he had agreed to them.

Cupp called Webber's attempts to intervene between the family and authorities inappropriate. "He's a medical doctor, not a sociologist," Cupp said. "And I thought the CPT--the Child Protection Team--stood for child protection, not parents' advocates."

#### **Prosecutor objects to withholding of verdict**

The Myerses' attorney Karin Moore requested that adjudication of guilt be withheld so that they would not have a criminal record if they abide by the conditions of their probation. She stated that Webber's testimony was introduced to support her request.

"A felony conviction could prevent [Myers] from working as an engineer," she said. Myers, 51, has an engineering degree from the Massachusetts Institute of Technology. Myers recently has been earning \$5 to \$6 an hour doing construction work. Merilee Myers, 48, has a teaching degree.

Judge Agner agreed not to declare them guilty. Cupp protested: "I think the court is missing a very good opportunity to send a message, not only to the Myers, but to the rest of the community who practice this similar type behavior for whatever reason. I am not making this a religious issue, but this is too important an issue when children die due to the choices of adults. Those children have no choices."

In five states, from Montana to Florida, at least 12 End Time babies have died without medical attention since 1978. The charges against the Myerses are believed to be the first charges against members of End Time Ministries and the first criminal charges filed in any case of religiously-based medical neglect in which the child did not die.

Taken in part from the *Gainesville Sun* and the *Lakeland Ledger*, April 3.

## **Abused children and their fathers awarded judgment against Alamo**

In February law officers seized property of the Tony and Susan Alamo Foundation in Arkansas so that it can be sold to satisfy a judgment on behalf of former foundation members and children. The plaintiffs' attorney, Peter Georgiades of Pittsburgh, is pursuing Alamo-owned property in a number of states to satisfy the judgment of nearly \$2 million, but so is the IRS, which says Alamo owes it \$7.9 million.

Evangelist Tony Alamo remains a fugitive from justice and did not appear in court to answer the civil charges, which included violation of labor laws, alienation of affection, and intentional infliction of emotional distress.

#### **Alienated affections to further "scheme"**

Under alienation of affection, the plaintiffs claimed that Alamo purported to divorce Robert Miller and Carey Miller from their wives and purported thereafter to join their wives in matrimony with other men and that Alamo told the children that their fathers were thieves, embezzlers, and spiritually dead.

Arkansas law does not recognize as tortious the alienation of a child's affection, so the court dismissed that claim. It no longer recognizes claims for alienation of a spouse's affection, but did when the suit was filed.

The court weighed whether Alamo could "constitutionally be deprived of the right to persuade a woman, for religious reasons, to leave her husband and take up with another man." The court decided that he could because the complaint alleged that Alamo committed those acts "to further his scheme. . . and to cause further injury to the plaintiffs." Such allegations, the court concluded, "exclude a genuine religious purpose" for Alamo's possible motives and the facts were therefore actionable.

#### **Boy beaten for 1½ hours; mother watches**

The most horrifying aspect of the suit was the claim that Alamo put on "public exhibitions of corporal punishment" attended by group



members, including mothers of the children receiving the beatings.

Justin Miller, 12, testified that his mother turned him over to Alamo, who directed the beating. Four men held him down while a fifth beat him with a big wooden paddle. Excerpts from the trial testimony are given below.

Justin: [Tony Alamo would] call up and he'd like say what I was getting in trouble for and how many swats to give me. . . . And he said if I like moved or if I tried to get away or if I screamed real loud, that they would start all over again.

Q by Georgiades: So you weren't allowed to scream or move?

A No.

Q And so he would call up and talk about being disrespectful and he'd give you so many swats?

A Yes.

Q And he'd call back and talk about giggling in the chapel, and he'd give you so many swats.

A Yes. . . .

Q Do you know how many swats all together they gave you?

A Well, I didn't count, but people were like talking around. And Becky LaRoche like, I guess, she counted. But she said that was a hundred and forty. . . .

Q How long were you in there?

A About an hour and a half. . . .

### **Blood on paddle during beating**

Q And did you ask to go to the bathroom at one point?

A Yes. It was like in the middle, like in between, like in the middle of when I was getting my swats. And I got three minutes.

And I was just sitting there. And like on my last minute I asked to go to the bathroom. And--and he said, "Yeah, but if you're not back by like when your time's up, you'll get ten swats."

And so I went to the bathroom, and I pulled my pants down to use the restroom, and like it felt weird. And so I noticed that there was blood on my pants. And so I--I didn't use the restroom and--because I didn't want to sit down.

And so I just went out there, and I noticed there was blood on the paddle. And then I went for the other half of my punishment.

Q You said you had three minutes. What do

you mean by having three minutes?

A Like a three-minute break.

Q You mean from the punishment?

A Yes.

Q You had a break?

A Yeah.

Q Who said you had three minutes?

A Tony. . . .

Q So they asked Tony's permission to let you go to the bathroom?

A Yes.

### **20 to 30 kids forced to watch**

Q You said there was some other little kids there. How many?

A There was about twenty to thirty. . . . And Tony was doing it so that they would know that if they did anything bad, this--this or worse could happen to them.

Q So all the kids had been told to be there?

A Yeah. Like even little--like little toddlers. And they were all crying and everything.

Q While they were paddling you, did they say anything to you. . . ?

A Yeah. Like Tony was saying that "We have to beat the devil out of you," and that--that, well, he was like explaining that, like, you know how he calls--well, you don't know, but he calls like the people in the Foundation the sheep, like God's sheep.

Q Yes.

**". . . he had to like beat that bad part out of me."**

A And he said that I was a goat, you know, like I was corrupt and like I was a goat with the sheep, and he had--and he had to like beat that bad part out of me. And he kept saying like that I had to forget my dad and stuff.

Q Did Tony Alamo talk to you about your father?

A Yes. And he said that--he just like said that my dad was a devil and like that he wasn't my dad and that Marc Landgarten was my dad now.

And like when I was getting swats, I looked up and I said, "Stop." I told Carol [his mother], I said, "Stop them." And then I said, "It's not fair." And then she said--she said, "Shut up, it's your fault and you're"--like she said I was a liar and I deserved it.



Q So your mother kind of took their side?

A Yes. She didn't make any attempt to stop them.

## **Lundman suit**

*continued from page 1*

### **Many obvious symptoms**

The wrongful death complaint, filed in Hennepin County District Court, states that 11-year-old Ian was "in the custody and care of defendants Kathleen McKown and William McKown when he began to exhibit signs of illness, weight loss, lethargy and fruity breath odor, all classic symptoms of diabetes mellitus" in mid-April, 1989.

Ian's illness, says the complaint, "progressed through stages of vomiting, labored breathing, incoherence, unresponsiveness, excessive urination, inability to swallow, facial spasms, and clenched teeth until he died at 2:36 a.m. on May 9, 1989."

### **Death easily preventable**

Ian's death, "could have been prevented by providing traditional medical treatment as late as two hours before his death."

The complaint charges that the defendants "failed to provide reasonable necessary medical treatment for the child, and as a result thereof, caused his death."

The McKowns "intentionally, or negligently failed to exercise the standard of care which would be exercised by a reasonably prudent person under the same or similar circumstances" and that agents of the Christian Science church, hired as "counselors and advisors to the McKowns, assumed the duty of reasonable care to the deceased," the complaint alleges.

### **Rapidly deteriorating condition concealed**

From Manhattan, Kansas, Doug Lundman called his exwife and inquired about his son's health a few hours before Ian died. Kathleen McKown "intentionally or negligently concealed the decedent's rapidly deteriorating condition

from the plaintiff, and refused to allow plaintiff to speak to the decedent, thereby depriving plaintiff of the opportunity to intervene and prevent decedent's death," the complaint states.

### **Charge: church reckless and negligent**

"The First Church of Christ, Scientist, educates, trains, and certifies its 'practitioners' and 'nurses' including defendants Mario Victor Tosto, and Quinna Lamb, and urges their use by Christian Science believers and the public, including defendants Kathleen and William McKown.

"Defendant The First Church of Christ, Scientist, negligently and recklessly failed to include in its education and training the recognition of serious or life threatening illnesses and conditions of minor children.

"As a result of the negligent education and training of defendants Mario Victor Tosto and Quinna Lamb, the seriousness of decedent's condition went unrecognized and untreated, thereby causing his death," the complaint charges.

Minneapolis Open School is named along with the other defendants because they "had knowledge and reasonable cause to believe [Ian] was in need of medical care, and they failed to report the condition of the decedent to a local welfare agency, police department or county sheriff in violation of Minn. Stat. Sec. 626.556, Subd. 2(c) and Subd. 3, and their common law duty to prevent harm to the decedent."

### **Second wrongful death of child suit**

To our knowledge, Lundman's suit is the second wrongful death suit against the Christian Science church and its agents involving a child and the seventh civil suit complaining of injuries suffered under Christian Science treatment.

Lundman was not a Christian Scientist when his son got sick and died. He did not retain Christian Science officials to treat his son nor give his permission for such treatment. In our view, church agents and the McKowns were arrogant and callous to withhold knowledge of Ian's illness from his own father.

On the other hand, Minnesota has among the worst religious exemption laws in the country. The trial court dismissed manslaughter charges



against the McKowns because of a state statute designating Christian Science treatment as health care, and the ruling was affirmed on appeal. The defendants will likely argue that the statute obviated any duty to provide medical care to Ian or inform anyone of his illness.

## Civil suits against Christian Science providers; no standards established

Civil suits against Christian Science healers and care providers have not fared well. The ones we know of are synopsized below.

\* \* \*

*Spead v. Tomlinson*, (1904) 73 N.H. 46, 59 Atl. 376, 68 L.R.A. 432.

Miss Spead sued CS practitioner Irving Tomlinson because he told her he could heal her of appendicitis and she did not need to go to a doctor. Her life was saved by her last minute resort to medical help; the courts found for the practitioner's right to say those things because they were "religious" representations, but said in *dicta* they would rule differently in a child's case.

\* \* \*

*Previn v. Tenacre*, (1933) 70 F.2d 389 New Jersey Circuit Court of Appeals.

Tenacre is a Christian Science nursing home in New Jersey that accepts mental patients. Mr. Previn went there to be cured of melancholia. He alleged that instead of treating him according to the doctrines of Christian Science, the nurses "tied him by his hands and feet to his bed and chair, terrorized him by threats to apply (and did apply) clamps or surgical forceps to his tongue and by various other threats to stop him from shouting, used physical force to make him take rides [in cars], etc., assaulted him, failed to give him competent and experienced nursing. . . , and did not provide a resident graduate physician as required by the laws of New Jersey."

The defendants said the force they used was "only such force as was reasonably necessary to

restrain him for his own good and to feed him when he refused to eat."

A jury found no cause of action.

\* \* \*

*Gregory v. Grover, Administrator of the Estate of Isaac M. Lawrence v. Christian Science Benevolent Association and Mable Else*, (1967) filed in Boston

In *The "Crime" of Dorothy Sheridan* (pp.331-332), Leo Damore reports the following of this suit:

A sixty-five-year-old accountant in good health, and a Christian Scientist for many years, Lawrence had suffered severe pains in the calf of his left leg. A dressing and bandage was applied by a Christian Science nurse and metaphysical treatment initiated by a practitioner before Lawrence was admitted to the nursing home on crutches in May 1965. Examination by a superintendent of nurses, Mable Else, revealed three toes of Lawrence's foot to be "in a gangrenous condition." Treatment consisted of washing the foot with a tincture of green soap and applications of Bactine to combat odor, and the ministrations of a Christian Science practitioner. Nurses told Lawrence that his foot was "getting better." (In a later statement, Lawrence said, "Nobody ever said I could have a doctor if I wanted one.")

After five months at the home, Lawrence's condition so deteriorated that a temporary conservator was appointed. In January of 1966 the conservator was informed that Lawrence had overstayed the six months nursing home care to which he was entitled and would have to leave. Mummified and wizened, with profuse drainage of pus, all tissues and arteries, nerves and muscles had disappeared from Lawrence's ankle to an area approximately one-third distant from the knee. The tibia was bare of flesh. Following his transfer to Norwood Hospital, the leg was amputated. Lawrence's death, a year later, was viewed by his heirs as having been hastened by the amputation necessitated by the neglect complained of in the suit.

Counsel for the Christian Science Church defended the nursing home as not having practiced *materia medica*, but "spiritual healing," an exercise of religious practice that barred recovery of damages on grounds of "testator's assumption of risk, or contributory negligence" based on the doctrine of immunity from prosecution granted charitable institutions in Massachusetts. . . .

In December 1967 the case was tried and the



court directed a verdict of not guilty for the defendant, the Christian Science Benevolent Association. [On appeal the Supreme Judicial Court ordered the case reargued and limited to whether the Court should] renounce the charitable immunity doctrine upon the *next* occasion a case of that kind came before the Court. Reading the handwriting on the wall and not wishing to attach its name to the ignoble end of the immunity doctrine, the Christian Science Association settled the Lawrence case out of court one week before the case was to be heard by the Court.

\* \* \*

*Zafrani v. First Church of Christ, Scientist*, case #822639 filed in Superior Court of San Francisco County (1984)

This was a wrongful death suit filed by Isaac Zafrani because of his wife's death under Christian Science treatment. A judge dismissed the case.

\* \* \*

*Baumgartner v. First Church of Christ, Scientist in Boston*, 490 N.E.2d 1319 (Ill. App. 1 Dist. 1986)

Christian Scientist John Baumgartner died of uremic poisoning under Christian Science treatment and willed half of his estate to the Mother Church. His widow brought a wrongful death suit against the church, the practitioner, and the nurse. Illinois has a law forbidding a party to inherit money if they were to any degree responsible for the death. Mrs. Baumgartner charged that the practitioner had coerced her not to call a doctor when she wanted to and that the practitioner had done physical things in treating her husband, which took him outside of First Amendment protection. The courts, however, granted summary judgment for the defendants in a certified opinion, which the U. S. Supreme Court declined to review. Summary judgment means that the judge would not allow the case to be tried before a jury.

\* \* \*

*Brown v. Laitner, Ahearn, and First Church of Christ, Scientist*, 432 Mich 861 (1989)

Two Christian Science practitioners and the church were charged with negligence and misrepresentation in treating Matthew Swan, who

died at age 16 months of bacterial meningitis.



*Matthew Swan*

Parents Rita and Doug Swan, both Christian Scientists at the time of their son's illness, complained that the practitioners had repeatedly told them that they were healing Matthew, that medicine could not help him, and that the Swans must get rid of "false parental fears" and participate in other penitence rituals in order for Christian Science treatment to work. The Swans also said that one practitioner told them not to report the disease to Public Health and that both practitioners had made diagnoses, claiming that Matthew had roseola, was "cutting a big double tooth," etc.

In depositions, top Christian Science church officials swore under oath that the church has no "supervisory control" over its practitioners, that it does not "ever evaluate a practitioner's judgment about the condition of sick children," that it has no training, workshops, or meetings for practitioners that "include any discussion on how to evaluate the seriousness of a child's condition," that it has never "named the death of a child as a grounds for revoking a practitioner's listing," and that it keeps no records on children who die



while receiving Christian Science prayer treatments.

The church presents itself to legislators as having a structured, high quality, responsible health care system, but disclaimed any responsibility to its patients in this civil suit.

The trial court granted summary judgment to the defendants on grounds that everything the practitioners said and did was an expression of their sincere religious belief.

The Michigan Supreme Court granted leave to appeal the ruling, limited to the question of whether the practitioners had made diagnoses of Matthew's condition and whether such diagnoses carried them outside of First Amendment protection. The defendants argued that, if they did make diagnoses, they had to make them in order to have the name of a disease to pray about, that their intuitive diagnoses were a religious activity, and that whether such diagnoses were medically correct or not was irrelevant to their methods. After oral arguments, the Court vacated its decision granting leave to appeal in a 5-1 ruling. In other words, it refused to make a ruling. The U. S. Supreme Court declined to review the case.

\* \* \*

The reluctance of courts to allow disaffected church members to sue their former churches and clergy is understandable. We note, however, that many civil suits have been successfully concluded against churches and clergy over issues that seem far less compelling to us than the death of a child. The California Supreme Court, for example, allowed a jury trial on allegations that plaintiffs were "brainwashed" into joining the Unification Church. Other courts have allowed trials over disclosure of embarrassing information, even when churches claim that such disclosure is ordained by their doctrines. See Lynn Buzzard and Thomas Brandon, *Church Discipline and the Courts* (Wheaton IL: Tyndale House Publishers, 1986).

In civil litigation, as in several other areas, it appears to us that the prestige of the Christian Science church has created a double standard.

The failure of civil litigation to hold the Christian Science church and its healers

accountable for deaths stands in sharp contrast to criminal cases, which have over many decades held parents liable for withholding medical care regardless of their religious beliefs.

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## **Rubella resurgence; religious exemptions a factor**

The February 15 issue of *Mortality and Morbidity Weekly Report (MMWR)* issued by the Center for Disease Control notes a strong increase in rubella cases during the past three years and mentions that several outbreaks of the disease have occurred in groups with religious exemptions from immunizations.

The *MMWR* states that Amish communities in Minnesota, Wisconsin, and other states had cases of rubella in 1990 and that a religious group in Oregon had 69 cases last year. Oregon Public Health refused to disclose the name of the group, but described it as a "one of a kind church" near Portland.

If a woman contracts rubella, also called German measles, during a pregnancy, her baby may be born with congenital rubella syndrome. This terrible disease struck thousands of babies every year before the development of an effective vaccine in the 1960s.

Children born with congenital rubella syndrome have many central nervous system abnormalities. Mental and motor retardation are common. More than 80% are deaf; 50 to 75% have underdeveloped pulmonary arteries. Many are blind. Some are born with very small eyes or no eyes at all.

In 1990, eleven babies were born with congenital rubella syndrome because their mothers had not been immunized against the disease. One of these babies was born in Sioux City, Iowa. She is blind and deaf and has other congenital anomalies.

These babies may cost the state hundreds of thousands of dollars to maintain.

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## "Getting Away with Murder" wins Pulitzer

Gannett News Service won a 1991 Pulitzer prize for "Getting Away with Murder," a series on how deaths of children are investigated nationwide.

To determine autopsy rates for children under age 9, Gannett examined all 49,569 of their death certificates for 1987. Age 9 was chosen as a cutoff because younger children are more likely to be fatally abused than older children. The death certificates (without identifying the children) were supplied by the National Center for Health Statistics.

### The Gannett series opened with these charges:

It is easy to kill a child and bury the secret.

Throughout America, poorly trained coroners and shoddy death investigations are helping mothers and fathers get away with murder. Children are frequently buried without anyone knowing why they died, according to a three-month investigation by Gannett News Service.

"I believe all kinds of homicides are being missed," said Dr. Mary Case, medical examiner in St. Louis, Mo. "Children are being killed and just buried."

Dr. Ronald Reeves of Tallahassee, Fla., said he believes child abuse deaths are "grossly underestimated."

"Children are expendable items that can be killed and disposed of," said Reeves, a former medical examiner now specializing in children's deaths.

Three children are known to die of child abuse every day, but at least three more child abuse deaths each day are believed to go undetected, according to pathologists, prosecutors, and child welfare advocates interviewed in 32 states.

These are the children whose deaths are incorrectly labeled accidental, undetermined or due to natural causes--sometimes as Sudden Infant Death Syndrome [SIDS]. These are the children no one bothered to autopsy.

However disturbing an autopsy may be--especially to grieving families--experts agree the procedure is a key to detecting child abuse. . . .

Nobody suggests that every child be autopsied, since many die of birth defects or well-documented illnesses. But since children are the least likely to die unexpectedly, their deaths should be the most thoroughly examined,

experts say.

### Dead children often not autopsied

Gannett's computer study of the death certificates showed, however, that "autopsies on children are conducted almost by whim." Rates of autopsies in deaths of children ranged from 67% in Rhode Island to 29% in Mississippi.

Nearly half the death certificates in Tennessee were not completely filled out; 8.5% of the certificates for the nation did not say whether an autopsy had been done or not.

Rural areas were so lax that they often ruled a child died of "undetermined causes" without performing an autopsy.

### Many coroners unqualified

In many states, bus drivers, janitors, gas station attendants, and funeral directors are elected as coroners because nobody else wants the job. Yet they are charged with determining whether to call for an autopsy.

Said Dr. Kris Sperry, an associate medical examiner in Atlanta: "There are coroners in Georgia who are functionally illiterate. They can't even spell the things they have to put on the death certificates."

Missouri pays rural coroners an average of \$1,200 a year to be on call 24 hours a day, seven days a week. Often only the local funeral director is willing to moonlight as coroner--an arrangement that's good for business, but potentially bad for autopsies, said the Gannett reporters.

### NIH recommendations unfulfilled

Though the National Institute of Health recommends autopsy in every case for which SIDS is suspected, only 11 states require it. Five states autopsied fewer than 80% of their suspected SIDS cases. Arkansas autopsied only 54% of such cases.

Twelve states had no data on the number of child abuse fatalities in 1987.

Taken from the Gannett series published in November and December, 1990.

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## **Twitchell prosecutor gives workshop**

A workshop on religious exemptions from child abuse was given at the Second National Conference on Child Fatalities and Physical Abuse held in San Diego January 26-29 and sponsored by the National Center for the Prosecution of Child Abuse, a program of the American Prosecutors Research Institute.

The workshop was conducted by John Kiernan, who successfully prosecuted Ginger and David Twitchell, a Christian Science couple who withheld lifesaving medical care from their son Robyn, and Braun Hamstead, who won convictions of Stuart and Leslie Green in the fatal beating of their son Joey. Hamstead, a CHILD member, also won a conviction of Dorothy McClellan, the leader of Stonegate Christian Commune who advised beating the toddler. Kiernan and Hamstead are now in private practice in Boston, Massachusetts, and Charles Town, West Virginia, respectively.

This is the second workshop on religious exemptions that the Center has held for prosecutors. A previous one featured Kiernan and Deno Economou, who successfully prosecuted a Florida Christian Science couple who had let their daughter die of untreated diabetes.

Christian Science officials have met with Center Director Patricia Toth, and a Christian Science defendant petitioned the court to order a prosecutor to turn over documents received from the Center. The judge denied the motion.

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### **Photo credit**

For the photo of Ginger and David Twitchell used in our 1990 newsletter, issue #3, credit is due to the *Boston Herald*.

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## **Ethicist calls for repeal of religious exemptions**

Dr. Arthur Caplan, Director of the Center for Biomedical Ethics at the University of Minnesota, has called for repeal of religious exemptions to child abuse in two columns distributed by Knight News Service and *Newsday*.

The children who died in Philadelphia, Caplan writes, "were the latest in a scandalous series of deaths caused by bad public policy. All died because of state laws that allow parents the right to deny their children vaccinations and medical care for religious reasons."

### **Exemptions unconstitutional and immoral**

"When religion and science conflict," he continues, "competent adults ought to be allowed to decide which path they want to follow. And--as I have argued in this space many times--government ought to give parents maximum discretion to raise their children. But government should not tolerate religious practices that endanger, maim or kill children."

"There are a whole slew of cult-like creeds and sects that make the rejection of medical treatment and doctors key tenets of their faith," he says. A few especially pernicious religious cults use starvation, beatings and even torture as part of their religious practices involving children. Children continue to die unnecessary deaths because the law gives complete leeway to their parents. Why do we continue to allow children to be sacrificed on the altar of religious faith?"

"These exemptions are both unconstitutional and immoral," Caplan concludes.

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## **Prominent attorney calls for repeal of religious exemptions**

Paula Monopoli, a Boston attorney, has published an excellent article calling for the repeal of religious exemptions. It is entitled "Allocating the costs of parental free exercise: striking a new balance between sincere religious



belief and a child's right to medical treatment" and appears in *Pepperdine Law Review*, v. 18, no. 2 (1991), pp. 319-52.

### Children lack advocates

Monopoli calls upon the courts to strike down religious exemption laws because legislatures have been indifferent to the lives of children:

Some commentators have noted that judicial invalidation of statutes under the equal protection clause of the fourteenth amendment is more acceptable when the class which is being discriminated against is not likely to be effectively represented in the political process. The argument that courts should not usurp the will of the people as represented by the legislature is weakened where the judiciary is affording its special protection to persons inadequately represented in the legislature. This is certainly the case where the interests of children are at issue. The Christian Science Church has a powerful lobby at both the federal and state levels. For children whose parents practice spiritual healing, there is no concomitant method to lobby state legislatures in opposition to such statutory exemptions. (cites omitted)

### Constitutional analysis

She suggests that the "United States Supreme Court could most swiftly and effectively eliminate these exemptions by adopting the analysis presented in both the *Miskimens* decision and the concurring opinion of Justice Mosk in *Walker*. The Court should adopt the approach in *Miskimens* and clearly state that child abuse and neglect statutes serve a legitimate state interest, that exemptions thereto for spiritual healing are not mandated by the free exercise clause of the first amendment and may moreover violate the establishment clause of the first amendment and the equal protection clause of the fourteenth amendment." In *Ohio v. Miskimens*, 22 Ohio Misc. 2d 43, 490 N.E.2d 931 (C.P. Coshocton 1984), a Circuit Court judge ruled Ohio's penal code religious exemption unconstitutional in his jurisdiction. In *California v. Walker*, 47 Cal. 3d 112, 763 P.2d 852, 253 Cal. Rptr. 1 (1988), Justice Mosk issued a concurring opinion that a religious exemption offended the establishment clause of the state and federal constitutions.

### HHS urged to act

Monopoli also calls for regulatory reform:

Finally, because it bears some responsibility for the states' enactment of statutory exemptions, the Department of Health and Human Services should regulate them out of existence. Since the Department required states to adopt these exemptions in order to be eligible for federal funding, it should now prohibit them as being injurious to some children's very survival. Ideally, the Department should condition the receipt of funds under the Federal Child Abuse Prevention and Treatment Act on abolition of these exemptions.

Monopoli is the Vice Chairperson of the American Bar Association Committee on Children and the Law and the Vice Chairperson of the Legislative Subcommittee of the Massachusetts Bar Association Committee on the Unmet Legal Needs of Children.

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## Legal issues in epidemic discussed

Attorneys Jennifer Trahan and Susan Wolf discuss the state's right to order immunizations and hospitalization of the Faith Tabernacle children in Philadelphia. Entitled "Rights of state and family clash in forced-immunization cases," it appears in *The National Law Journal*, May 13, 1991, p. 28. Wolf is affiliated with the Hastings Center, a research institute specializing in medical ethics. Trahan is in private practice.

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## Book chronicles Christian Science childhood

Thomas Simmons, a creative writing professor at Massachusetts Institute of Technology, writes about growing up in a Christian Science household in his new book, *The Unseen Shore*.



Recently published by Beacon Press, the book describes both the physical and emotional impact of the theology.

We hope to have a review of the book in our next newsletter issue.

## Swan wins human rights award

On May 2, Rita Swan, President of CHILD Inc., was honored by the Sioux City Human Rights Commission for her work to obtain equal rights for children.



*CHILD President Rita Swan  
Photo by Fritz Burow*

The award cites "her outstanding efforts in human rights" and was given "in recognition of distinguished service to the city of Sioux City, Iowa."

John Stokes, the Director of the Human Rights Commission, said, "Her concern for all children's welfare and their protection is foremost on her mind." In her acceptance speech, Swan spoke of her unsuccessful efforts to remove religious exemptions from Iowa law. She pointed out that Iowa is one of three states with a religious defense to manslaughter and that such laws strip certain children of the right to live.

Three others who have worked against discrimination and prejudice also received awards. Many thanks, Sioux City!

## Media deals with religiously-based medical neglect

On April 4, NBC's top-rated program *L. A. Law* aired a fictional account of a Christian Science couple charged with manslaughter. A researcher for the program had several discussions with CHILD Inc. officers and members about deaths of children under Christian Science treatment.

On April 10, *Oprah Winfrey* aired a program about deaths and injuries of children due to religious beliefs against medical care. Dr. Norman Foster, Vice-Chairman of Pediatrics at the University of Wisconsin and a CHILD member, was invited to represent the rights of children to medical care. Arrayed against Foster were three parents who believed in charismatic healing, their two lawyers, and a minister.

Another CHILD member, Duane Siebenmann, was in the audience and told about losing the use of an eye and suffering frequent headaches in childhood after his Christian Science parents neglected to get care for an injury.

## About CHILD Inc.

CHILD Inc. affirms that children have a Fourteenth Amendment right to equal protection of the laws. CHILD Inc. promotes equal rights for children to health care of proven value. CHILD Inc. opposes religious exemptions from parental duties of care and religious rationalizations for child abuse and neglect.

Membership in CHILD Inc. is by application. Dues are \$25 a year and include a subscription to the newsletter, which appears four times a year.