

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

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*John Kiernan*

## Prosecutors call for repeal of religious exemptions

On July 14, 1991, the National District Attorneys Association adopted an official policy position calling for the repeal of religious exemptions from child health care requirements. The statement reads as follows:

WHEREAS, all children are entitled to equal access to all available health care, and

WHEREAS, all parents shall be held to the same standard of care in providing for their children, and that all parents shall enjoy both equal protection and equal responsibilities under law, regardless of their religious beliefs,

BE IT THEREFORE RESOLVED that the National District Attorneys Association shall join with other child advocacy organizations to support legislation to repeal exemptions from prosecution for child abuse and neglect.

This position was vigorously advocated in a presentation by John Kiernan and Stuart VanMeveren. In 1990 Kiernan prosecuted and won a conviction in Boston of Ginger and David

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Twitchell, Christian Scientists who allowed their son Robyn to die of an untreated bowel obstruction. VanMeveren has won two convictions in Fort Collins, Colorado, of Jon Lybarger, who led a fellowship called Jesus through Jon and Judy and let his daughter Jessica die of pneumonia without medical care in 1982. The Colorado Supreme Court overturned both convictions because it disapproved of trial court rulings on the religious exemption. VanMeveren brought this nine-year-old case to a third trial October 8, but a mistrial was ordered because of media activities. A fourth trial is scheduled for next year.

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## **Iowa Methodist Church calls for repeal of religious exemptions**

On June 8, the Iowa Conference of the United Methodist Church adopted the following resolution:

**WHEREAS:** We acknowledge that spirit and flesh are not enemies but are both blessed by God. Thus, medical care is a gift of God, a miracle of research and love brought through God's grace and love and man's compassion and dedication to doing good, and

**WHEREAS:** Our courts have consistently ruled that freedom of religion does not extend to allowing harm to come to others;

**THEREFORE, BE IT RESOLVED:** That the Iowa Annual Conference affirms prayer should not serve as a legal substitute for medical care when the life of a minor is at stake;

**FURTHER, BE IT RESOLVED:** That the Iowa Annual Conference supports changes in Iowa law to maintain that children are entitled to life-saving medical care along with food, clothing and shelter regardless of their parents' religious beliefs.

The resolution was drafted and submitted by Grace United Methodist Church of Sioux City to which Rita and Doug Swan belong. Grace member Cathy Jones was a conference delegate who spoke for the resolution on the floor. Other

Sioux Cityans who advocated the resolution were Irene Fulton and Reverend Don Callen, District Superintendent. CHILD member Rev. Charles Curl of Manning also spoke for the resolution.

We wish to thank these good friends for their eloquent and impassioned statements on behalf of children. The vote by the approximately 2,000 delegates was nearly unanimous, we heard.

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## **Iowa inches closer to repeal**

Our sixth year of working for repeal of Iowa's religious exemptions from child health care requirements brought only modest progress.

We first need to backtrack to 1989 when our trusty old friend Rep. Don Shoning, R-Sioux City, achieved a remarkable victory.

A fellow member of Grace United Methodist Church, Shoning has worked to repeal religious exemptions from medical care since he came to the legislature in 1985.



*Rep. Don Shoning  
R-Sioux City*



## **Victory in Iowa House**

The House Judiciary Committee had considered a repeal bill between 1985 and 1989. In 1989, Shoning introduced it again. The Majority Floor Leader, Bob Arnauld, D-Davenport, and House Speaker, Don Avenson, D-Oelwein, both support exemptions for Christian Scientists. They promptly assigned it to the Human Resources Committee chaired by Tom Fey, D-Davenport. Sure enough, it died in the committee with no discussion.

Shoning then adopted another strategy. He found a child protection bill to which he could attach ours as an amendment and quietly mustered support for it. Tony Bisignano, D-Des Moines, and Tom Jochum, D-Dubuque, cosponsored the amendment.

The amendment passed by nine votes. Avenson and Arnauld then pulled the bill off the calendar for several days. That gave the Christian Science church time to move over to the Senate and get their ducks in order. The amendments were defeated in the Senate.

## **Passage by Senate Judiciary Committee**

We were advised to start over in the Senate. A fortunate development was the appointment of Al Sturgeon, D-Sioux City, as chair of the Senate Judiciary Committee. We met with him before the session began. He promised to do everything in his power to get a repeal bill through his committee and said we could "name the subcommittee."

With the support of the Iowa Medical Society, we decided to ask for repeal of religious exemptions from preventive and diagnostic measures as well as from providing medical care to sick children. Iowa is one of a handful of states that do not require metabolic testing of newborns, so we added such a requirement for all babies.

The Iowa Chapter of the National Committee for the Prevention of Child Abuse also endorsed the bill.

The bill passed the Senate Judiciary Committee by 13-2 on February 12.

## **Loses on 23-23 tie votes**

But then the Christian Scientists arrived in force. Senators were deluged with letters, phone calls, and personal visits at the Statehouse.

Two votes were taken on the Senate floor. Both resulted in a 23-23 tie; 26 votes are needed for final passage. Six Senators who had promised me or allies they would vote for the bill voted against it. In particular, first-term Republicans crumbled under Christian Science pressure. A notable exception was first-term Senator Sheldon Rittmer, R-Clinton, who voted for repeal. He has a Christian Science church in his district and also had a measles outbreak spread by Christian Science youth there.

Senators Linn Fuhrman, R-Aurelia, and Al Sturgeon led the floor fight for repeal. Linn was an eloquent and scholarly orator with a talent for seeing through to the heart of an issue. He could take many pages of raw material and reduce them to the most important points in a few elegant statements. Al was also an effective speaker with a scrappy style from debate team and law school.

Equally passionate, but a quieter ally, was Senator Mike Connolly, D-Dubuque. He and other members of the Dubuque delegation have supported our repeal efforts since 1985.

## **Opposition from two camps**

Opponents generally fell into two camps: conservatives who thought government had no right to interfere with the family or religion and liberals following the lead of Senator Ralph Rosenberg, D-Ames, who represents himself as a civil libertarian.

Formerly a representative, Rosenberg also opposed our work in the House. I have requested the opportunity to discuss the issue with him dozens of times, and he has always refused.

## **Faulty analogy to beating cases**

Rosenberg repeatedly tells of one experience he had as a prosecutor. A family beat their children regularly and justified their discipline on Biblical grounds. Rosenberg got their parental rights terminated.

He claims this case illustrates that current law is adequate to protect children from



religiously-based abuse and neglect. He told the Senators that he had more experience than any of them in prosecuting child abuse and neglect.

His beating case is hardly a logical analogy. Iowa does not have religious exemption laws allowing parents to beat their children. During the 1980s Iowa had several abuse deaths tied to religious belief or perhaps more accurately stated, religious delusion. A mother strangled her three-year-old son in response to command hallucinations. A father slashed his baby with a knife because he believed the child was possessed by demons. Another mother drowned her 20-month-old son because she believed that God ordered her to do so. See Leslie Margolin, "Fatal Child Neglect," *Child Welfare*, 69 (July-August 1990): 309-19.

Iowa law does not legalize any of those abuses, regardless of how sincere the parents' religious belief is. We ask why the state should legalize religiously-based medical neglect.

Rosenberg also opposes requiring metabolic testing of babies, calling it "an invasion of their privacy."

### **Supreme Court cases cited**

He also cited *Wisconsin v. Yoder* in which the U. S. Supreme Court allowed the Amish to withdraw children from school two years early and provide sectarian vocational training instead. The ruling has been the rationale for many religious exemptions in Iowa's education laws.

According to Rosenberg, *Yoder* means that the legislature must give religious exemptions from child health care requirements. But the *Yoder* case does not provide an analogy for religious exemptions from medical care. The U. S. Supreme Court said in *Yoder*, "This case, of course, is not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred." The same can hardly be said of laws that allow parents to withhold medical care from seriously ill children.

The high court established the precedent for a child's right to medical care in 1944 with its famous words in *Prince v. Massachusetts*: "The right to practice religion freely does not include

liberty to expose the community or child to communicable disease, or the latter to ill health or death. . . . Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."

### **Allies lobbied in Des Moines**

During 1991 I made nine trips to Des Moines (200 miles each way) to lobby for the repeal bill, staying between two and four days each time. By riding with area legislators and occasionally taking all-night busses, I managed to keep total costs down to about \$1,000.

Dean West and Keith Luchtel, representing the Iowa Medical Society, worked very hard to build legislative support for the bill. They deserve our deep appreciation.

Dr. Jack Swanson, President of the Iowa Chapter of the American Academy of Pediatrics, expended tremendous energy in support of the bill. He wrote many letters and spent a day lobbying at the Statehouse.

Ginger Davis, Cheryll Jones, and other officers of the Iowa Chapter of the National Committee for the Prevention of Child Abuse wrote letters and made calls to build support for the bill.

It was a severe disappointment not to get the bill through the Senate this year. But we still have considerable hope that Iowa legislators will see the justice and wisdom of repealing the exemptions. Every legislator except Rosenberg has been willing to meet with me. Most have evaluated the issue conscientiously, we feel.

### **A bystander's view**

In the minds and hearts of the general public, people simply should not have the right to withhold medical care from children on religious grounds. The doorkeepers at the Senate tried hard to be neutral. They carried notes for the groups of Christian Scientists as courteously as they carried them for me.

But finally one took me aside and said, "What in the world is that bill about? Don't Christian Scientists get medical care for their



children?"

I told him they sought the legal right to deprive their kids of medical care.

"But why are the Catholics supporting them?" he asked.

I told him that many Catholic legislators were on our side, for example, those from Dubuque.

"But why is Deluhery supporting the Christian Scientists?" he persisted.

I could not answer that one for the Senator from Davenport.

## **Christian Science initiatives defeated in Maryland and New Mexico**

The Christian Science church attempted to put religious exemptions in the criminal codes of Maryland and New Mexico this year and was defeated in both legislatures.

The American Academy of Pediatrics, the National Center for the Prosecution of Child Abuse, state medical associations, and CHILD Inc. networked to ensure that legislators were contacted. We especially want to thank CHILD member Ann Lindgren of Silver Spring, Maryland, who made several very helpful contacts.

Church spokesmen told the press that the outcome in Maryland did not affect their practices. They claimed that the state already recognized Christian Science methods as a legal substitute for medical care of children.

Their response is typical. We have never yet seen the church admit defeat; for example, the church still denies that religious exemptions were repealed in South Dakota in 1990.

Taken in part from *The Montgomery Journal*, March 13, 1991.

## **North Carolina bill requires insurance payments to religious counsellors**

A bill was introduced in the North Carolina legislature this year that would require insurance companies to reimburse for the services of a "duly certified fee-based pastoral counselor or associate." House Bill 876 adds such counselors to a list of "duly licensed" health care providers that insurance companies are already required to reimburse. We suspect that the language of HB876 is intended to include Christian Science practitioners. Ironically, however, the Christian Science church frequently claims that its practitioners do not advise or counsel patients.

CHILD Inc. holds that insurance companies should not reimburse for pastoral counselling or Christian Science practitioners and that the state has no right to compel payment for religious services. The health care providers that North Carolina presently requires reimbursement for are all "duly licensed" by the state. Pastoral counselors may be "certified" by a church organization, but they are not licensed by the state.

Christian Science lobbyists frequently use insurance company reimbursements to their unlicensed practitioners and nurses as evidence that Christian Science heals disease as effectively as medicine.

The American Academy of Pediatrics and CHILD Inc. made their opposition to this bill known in North Carolina. The bill did not come out of committee during the 1991 session.

## **Repeal bill promoted in Minnesota legislature**

On March 11 the Minnesota Senate Judiciary Committee held hearings on a bill to remove religious exemptions from the statutory definitions of child abuse and criminal neglect. The bill was sponsored by Senator Jane Ranum, DFL-Minneapolis.



Bill Roath of the Minnesota Civil Liberties Union, Rita Swan of CHILD Inc., and Doug Lundman testified for the bill.

James Van Horn, the Christian Science Committee on Publication for Minnesota, and attorneys presented Christian Science opposition to the bill. Van Horn testified that Christian Scientists did and should have the right to withhold medical care under current law. He further claimed that Christian Science practitioners had no obligation to report sick children to child welfare services.

Minnesota passed a law in 1989 specifying that sick children without medical care should be reported to child welfare services even if medical care is being withheld on religious grounds. It also lists Christian Science practitioners as mandatory reporters of such cases. Nevertheless, Van Horn insisted that they had no reporting obligations—to the surprise of several senators.

When a senator asked whether he would rather the state require the healers to report or subject the parents to prosecution, Van Horn complained that he was being asked to choose between the frying pan and the fire.

A companion bill was sponsored in the House by Rep. Phil Carrothers. The bills in both chambers were tabled without committee votes.

Two Twin Cities CHILD members, Marie Castle and Steve Petersen, put in hundreds of hours over the past year to obtain support for the bill. Steve gave up his entire 1991 vacation time from the U. S. Postal Service to lobby. CHILD Inc. wishes to express our deep appreciation for their arduous work.

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## **Minnesota Supreme Court upholds dismissal in Lundman case**

On September 20, the Minnesota Supreme Court ruled 4-2 to uphold the dismissal of manslaughter charges in the death of a Christian Science child.

Ian Douglass Lundman, age 11, died May 9, 1989, of juvenile-onset diabetes in suburban

Minneapolis. His mother and stepfather, Kathleen and William McKown, retained a Christian Science practitioner, Mario Tosto, and a church nurse, Quinna Lamb, for his care and treatment, but provided no medical attention. According to testimony, Ian began exhibiting classic symptoms of diabetes, such as weight loss, lethargy, and fruity breath odor, in mid-April. In his final days, he allegedly was vomiting, clenching his teeth, and urinating excessively. Eventually he became incoherent, unresponsive, and unable to swallow.

The boy's natural father, Doug Lundman, who had left Christian Science several years earlier, called his exwife to inquire about his son's health the evening of May 8. Mrs. McKown assured him that Ian was fine. Six hours later Ian died in a diabetic coma.

The McKowns and Tosto were indicted by a Hennepin County grand jury October 9, 1989. The county attorney subsequently agreed to drop the charge against Tosto.

### **Dismissal based on lack of "fair notice"**

On April 2, 1990, Hennepin County District Court Judge Eugene Farrell dismissed the charges against the McKowns on due process grounds. The dismissal was upheld by an appellate court October 9, 1990.

All three courts have based their rulings on the due process fair notice requirement of the fourteenth amendment to the U. S. Constitution. They have not honored any claim to the exercise of religious freedom, but instead have determined that the religious exemption law passed by the Minnesota legislature gave the parents the right to assume that they could withhold medical care and therefore the parents were not given "fair notice" that such behavior was criminal.

### **Text of child neglect law**

Minnesota's criminal child neglect law reads as follows: "(a) A parent, legal guardian, or caretaker who wilfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the . . . deprivation substantially harms the child's physical or emotional health. . . , is guilty of neglect of a child.



If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment shall constitute 'health care' as used in clause (a)."

### **Laws "inexplicably contradictory"**

The state argued that this exemption should not carry over into the definition of manslaughter, but the courts nevertheless ordered the dismissal of the manslaughter charges. As the appellate court ruled, "The criminal child neglect statute authorizes parents to choose 'spiritual means or prayer' in response to illness without respect to the medical condition of the child. The manslaughter statute gives no notice of when its broad proscription might override the seemingly contradictory permission given by the child neglect statute to treat the child by such spiritual means.

"Further, the child neglect statute is expressed in powerful terms, allowing the parents not only to 'select' but also to 'depend upon' spiritual means or prayer, with no warning or caveat that such dependence may be deemed criminal solely due to the outcome of the treatment. . . .

"By enacting 'inexplicably contradictory commands,' the legislature failed to give adequate notice to Christian Scientists as to its expectations with regard to treatment of their children. . . . The interaction of the two statutes is such that no amount of care gives safety, and the parents are left to 'divine prophetically' the outcome of their actions, a 'gift that mankind does not possess,' according to Justice Holmes in an early application of the void-for-vagueness doctrine."

The majority of the Supreme Court concluded: ". . . where the state has clearly expressed its intention to permit good faith reliance on spiritual treatment and prayer as an alternative to conventional medical treatment, it cannot prosecute respondents for doing so without violating their rights to due process."

### **Minority holds for parental reasonableness**

Two justices, Coyne and Simonett, vigorously disagreed. Justice Coyne argued that the child

neglect statute requires parents to provide what is "necessary" for the child's welfare. The clothing that is necessary when the temperature is 90 degrees Fahrenheit is different than the clothing required when it is below freezing. If a parent engages a physician to treat a child, the parent has in general met his legal obligation to provide necessary health care. "If, however," Justice Coyne wrote, the parent "knowingly engages a physician whose license has been suspended or revoked because of habitual neglect of patients caused by drug addiction and if the child should die because of the physician's neglect," the parent would not be "insulated from a charge of manslaughter." Parents must comport with community standards of reasonable behavior in determining and providing the necessities of life, she argued.

### **"Good faith," a jury judgement**

Coyne also complained that the majority of the court simply assumed "the defendants acted in good faith." Considering the fact that a grand jury had indicted them, Coyne said that the culpable negligence and good faith of the defendants were "a jury question, not a question appropriately decided by this court at the pretrial stage on the basis of a mistaken interpretation of a statute."

### **Violation of establishment charge not reached**

The Minnesota Civil Liberties Union (MCLU) submitted an amicus brief charging that the religious exemption law "violates the first amendment's prohibition against state-established religion." The Minnesota Supreme Court made this remarkable comment: "Although we find the MCLU's arguments persuasive, our disposition based on due process grounds makes it unnecessary for us to consider the establishment clause issue at this time."

### **Overview**

During the past decade 38 cases have been prosecuted involving religiously-based medical neglect of children. Most courts have limited the application of religious exemption statutes so that parents still had a duty to provide medical care to a seriously ill child.



## **Establishment of religion unconstitutional**

CHILD Inc. agrees with the Minnesota Civil Liberties Union that the religious exemption violates the establishment clause of the Constitution. In our view the state has no right to establish some people's prayers as health care for children. We would further insist that exemptions violate the fourteenth amendment's guarantee of equal protection to the child.

If there were a way to get the U. S. Supreme Court to rule on these issues, maybe we could get rid of religious exemptions from child health care requirements in one fell swoop. The scenario is unlikely. As always, the problem is finding someone with standing to represent the children who have been stripped of rights. With other types of discrimination, parents have represented the interests of their children to the courts. The religious exemption laws, however, were created to benefit parents. There is probably no way to avoid the enormously hard work of developing new public policy in state legislatures.

### **Impact on Father**

Several members of CHILD Inc. have met or talked to Doug Lundman. We share his sense of horror, injustice, and grief at the totally unnecessary death of his son. After Ian died, Doug moved back from Kansas to Minneapolis so he could see his daughter Whitney every week. He has unsuccessfully fought for custody of her.

Now the McKowns and Whitney have moved to Hawaii, while practitioner Mario Tosto has been promoted by the church to tour the country as a lecturer. The charges against the McKowns and Tosto would have been an important statement of the value of Ian's life.

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## **Court upholds Colorado's religious exemption and child's right to care**

On July 30 Montrose County District Court Judge Jerry Lincoln rejected a constitutional challenge to Colorado's current religious

exemption from abuse.

Defendants Barbara and David Sweet of Olathe are charged with felony child abuse in the death of their seven-year-old daughter Angela. She was ill for more than seven weeks before dying of peritonitis that followed a ruptured appendix. The Sweets did not provide any medical care for her. They belong to the Church of the First Born, which rejects medical care and has cost the lives of many children in the West and the Great Plains.

### **Statute challenged as establishing preference**

The defendants petitioned the court to dismiss the charges against them on grounds that the privilege in the religious exemption (rather obviously tailored just for Christian Scientists) violated "the Due Process, Equal Protection, Establishment and Free Exercise Clauses of the United States and Colorado Constitutions." They moved that the court should sever the restrictions from the exemption. That would have given them, as they interpreted the statute, an absolute right to withhold medical care from their daughter.

The defendants complained that the "substantial preference" which Colorado law grants to "a recognized method of religious healing" is unconstitutionally vague and discriminatory. They cited a U. S. Supreme Court holding in *Everson v. Board of Education*, 330 US 1, that laws which aid one religion, aid all religions, or prefer one religion over another, violate the Constitution's Establishment Clause.

### **The statutes at issue read as follows:**

19-3-103 Colorado Revised Statutes (C.R.S.)(1) No child who in lieu of medical treatment is under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing shall, for that reason alone, be considered to have been neglected or dependent within the purview of this article. . . .

(2) A method of religious healing shall be presumed to be a recognized method of religious healing if:

(a)(I) Fees and expenses incurred in connection with such treatment are permitted to



be deducted from taxable income as "medical expenses" pursuant to regulations or rules promulgated by the United States Internal Revenue Service; and

(II) Fees and expenses incurred in connection with such treatment are generally recognized as reimbursable health care expenses under medical policies of insurance issued by insurers licensed by this state; or

(b) Such treatment provides a rate of success in maintaining health and treating disease or injury that is equivalent to that of medical treatment.

#### **18-6-401 Definition of criminal child abuse.**

(6) A parent, guardian, or legal custodian who chooses and legitimately practices treatment by spiritual means through prayer in accordance with section 19-3-103, C.R.S., shall not be considered to have injured or endangered the child and to be criminally liable under the laws of this state solely because he fails to provide medical treatment for the child, unless such person inhibits or interferes with the provision of medical treatment for the child in accordance with a court order, or unless there is an additional reason, other than health care, to consider the said child to be injured or endangered.

#### **Law not applicable if life threatened**

Judge Lincoln rejected the Sweets' arguments. Lincoln wrote that "if a challenged statute lends itself to alternative constructions, at least one of which comports with constitutional standards, the constitutional construction must be adopted."

He proceeded then to set forth an interpretation of the religious exemption which renders it virtually meaningless and therefore not much of a privilege for anybody, even the Christian Scientists.

Drawing upon the Colorado Supreme Court's ruling in *People v. Lybarger*, 807 P.2d, 571, which dealt with a law in effect before 1989, Judge Lincoln held that "the intent of the general statutory scheme was to prohibit various forms of child abuse and, at the same time, to allow treatment by spiritual means to serve as an affirmative defense so long as the child is not in life-endangering condition or in a situation that

poses a substantial risk of serious bodily harm to the child."

#### **Not intended to risk serious harm**

"It is clear," Lincoln wrote, "that the statute is not designed to promote or advance religion, but rather to permit to the extent possible an individual's right to their free exercise of their religious beliefs so long as it does not create a life-endangering condition or pose a substantial risk of serious bodily injury to the child. The statute is as neutral as it can be in view of the constitutional requirements."

Lincoln said there was no "suggestion" in Colorado statutes that "the affirmative defense [for spiritual treatment] was intended to permit a parent to withhold medical care when to do so would pose a risk of serious bodily harm to the child."

#### **No constitutional right to withhold medical care**

With regard to the defendants' complaint that the statute was "vague" and "overbroad," Lincoln wrote that "overbreadth scrutiny is necessarily controlled by the rule that a law should not be voided on its face unless its 'chilling effect' on constitutionally protected activity is substantial." Lincoln pointed out that the parents have no constitutionally protected right to withhold medical care from their child.

Lincoln also dismissed the Sweet's complaints that the exemption established religious privilege. He said the statutes "do not deal with any particular recognized religions, but deal with the issue of an effective method of treatment. 19-3-103(2)(b) C.R.S. provides that if such treatment provides a rate of success in maintaining health and treating disease or injury that is equivalent to that of medical treatment, it would be a defense to the criminal charge."

#### **Comment**

CHILD Inc. regards Colorado's religious exemption as among the worst in the nation. It was passed in 1989 after we and other child advocates initiated an effort to remove the previous religious exemption. By the time we caught up with what had happened to our bill, it had already passed the legislature. We



communicated our dismay to Governor Romer and the Attorney-General, who then reviewed the bill, but Romer signed it into law.

The Christian Science church evidently regards the Colorado law as quite a plum for it has tried to export it to several state legislatures. Fortunately, it has not yet succeeded.

We said in the newsletter #1, 1990, that "there is no way for a prosecutor to work around" the new Colorado exemption. C.R.S. 18-6-401 surely sounds like permission to withhold medical care from a sick child. It flatly says that a parent who uses spiritual means for treating a child's illness and does not provide medical treatment "shall not be considered to have injured or endangered the child and to be criminally liable under the laws of this state."

**"for that reason alone"**

Or does it? The criminal code exemption in 18-6-401 is tied to the juvenile code exemption in 19-3-103, which still contains the magic words "for that reason alone." Colorado courts which have previously dealt with other injuries to children because of religiously-based medical neglect have used that phrase to overcome the betrayal of children potentially posed by a religious exemption. In 1982, the Colorado Supreme Court said that "the meaning of the statutory language, 'for that reason alone' [was] quite clear." It meant that use of prayer itself could not be a reason for state action, but if there were other reasons, such as preventable harm or danger to the child, then the state could act to represent the child's rights. In 1989, the high court ruled that these rights could be represented either in the criminal or civil courts. See *People in Interest of D.L.E.*, 645 P.2d, 271 (1982) and *Lybarger v. People*, 807 P.2d, 571 (1989).

By Judge Lincoln's ruling, the phrase "for that reason alone" still controls the criminal code exemption and therefore parents do not have a religious right to withhold necessary medical care.

### **Legislative intent**

That will be a surprise to Senator Bill Owens, who sponsored the original reform bill and then capitulated to Christian Science forces. At the time he revamped his bill, Owens was widely

quoted in the press as saying he intended to exempt parents from criminal liability when they deprived children of medical care on religious grounds. CHILD Inc. acknowledges, however, that the courts can not determine legislative intent purely by reliance on the stated intent of a bill sponsor.

What does the exemption mean now? To paraphrase 18-6-401, a parent who uses prayer when the child is not injured or endangered "shall not be considered to have injured or endangered the child." Does that make sense to any of our readers? And then there is the anarchic grammar of "solely because he fails to provide medical treatment. . . unless there is an additional reason, other than health care, to consider the said child to be injured or endangered."

### **Asserting the right to live**

Lincoln says that the statutory recognition to "a recognized method of religious healing" does not violate the Establishment Clause because the state is merely attempting to ensure that the methods are effective. He cites the requirement that the religious treatment heal disease as effectively as medicine, but glosses over the fact that the Christian Scientists' methods get state recognition purely because insurance companies will pay for them and the Internal Revenue Service recognizes them as deductible medical expenses. The Christian Scientists do not have to submit any evidence that their methods heal disease, while Church of the First Born members, such as the Sweets, do.

And why is the state recognizing a certain few methods of "religious healing" as appropriate? According to Lincoln's ruling, Colorado law requires all parents to obtain medical care if the child needs it. If the exemption does not allow parents to substitute certain kinds of prayer for necessary medical care, why does the state want to scrutinize the track record of prayer for children? Why is it any of the state's business what kinds of prayers are uttered for children?

Judge Lincoln has tried to do children a favor. He wanted in some way to assert their right to live. Maybe he feared that the Colorado



legislature would come up with something even worse if he ruled the statute unconstitutional. In our view, however, the ruling has serious rhetorical flaws.

Under Colorado law, the Sweets cannot request further pretrial review of the statute. Their trial is set for June of 1992.

Taken in part from *The Rocky Mountain News*, January 24, 1989.

## **Virginia parents appeal faith-death conviction**

A ruling is expected soon in the appeal of a Virginia faith-death conviction. Oral arguments before the state Court of Appeals on the convictions of Joann and Frank F. Martin, Jr. were held April 3rd and June 25th.

The Martins, then residents of Doswell, withheld medical care from their baby Stephen because of their belief in religious healing.

Early in 1988 the Martins had prayed for Stephen to be healed of vomiting. He recovered the next day.

But September 2, 1988, he began vomiting again. The Martins prayed for his recovery. Thirty-six hours later Joann took him to the kitchen and gave him a drink. He threw up—again.

Stephen then gave out a gasp. Moments later, he lay on the family's kitchen table dead at age 17 months, his parents standing over him praying for his soul.

### **Cause of death**

Martin said his son's death was the work of the devil. Mrs. Martin said he died from throwing up.

The medical examiner said Stephen, who weighed only 16 pounds at autopsy, died from acute dehydration caused by vomiting from gastrointestinal illness and from nutritional wasting.

The Martins were charged with involuntary manslaughter. Deputy Commonwealth's Attorney Douglas Barry brought in four professors of

pediatrics from the Medical College of Virginia who testified that the child had a chronic enzyme disorder that caused him to deteriorate rapidly during his final illness. They also testified that symptoms of a serious illness would have been apparent.

Even Martin, who graduated from Virginia Military Institute with a degree in biology in 1975, admitted to investigators that Stephen's condition had gotten serious. Hours before Stephen died, Martin said his son's "bones were sticking out of his face."

### **Jail or fine only choices**

In May, 1990, Hanover Circuit Court jury found the parents guilty of involuntary manslaughter. In Virginia, juries decide the sentence as well as guilt or innocence. If the defendants had requested a bench trial, the judge could have imposed various probation terms. But a jury can impose only a jail term or a fine. One juror refused to vote for a conviction unless the jury agreed that the Martins not serve a jail term. Their only penalty, therefore, was fines of \$250 each. The court could not require them to obtain medical care for their surviving children as a condition of probation.

The Martins have three living children, none of whom has ever been seen by a physician.

The Martins belong to the Living Word Assembly of God, a non-denominational church in Hanover. According to their court-appointed attorney, Ramon Chalkley, the church does not forbid its members to go to doctors, but "the doctrine is if you believe, if you have faith, then you have the power to heal."

### **Martins claimed a religious exemption**

The Martins argued that a Virginia religious exemption protected their right to substitute prayer for medical care. The criminal child neglect law of Virginia provides that a parent who provides a child with spiritual treatment in accordance with the tenets of a recognized church "shall not for that reason alone be considered in violation of this section."

The prosecutor, Douglas Barry, argued successfully that the exemption gave parents only the right to pray and not the right to allow



preventable injury to the child and, in any case, it did not apply to manslaughter.

### **Claim the death is legally defensible**

The defense contends that the religious exemption to neglect makes the result of such neglect—in this case, death—legally defensible.

Baby Stephen, nicknamed PeeWee by his family, was a helpless victim in Barry's view. "This kid looked up to his parents for protection, but they didn't protect him," he said.

His parents, though, said they looked up to God for protection. "We just cried out to the Lord. . . that life would come back into his body and that God would be merciful," Martin said during the 1990 trial.

The case is the first conviction in Virginia of parents who withheld medical care from a child on religious grounds.

Taken in part from the *Richmond Times-Dispatch*, September 2.

## **Indiana parents plead guilty in son's death**

In June Roberta and Robin Woodrum of Noblesville, Indiana, agreed to plead guilty for withholding medical care from their baby. Sean Woodrum, age 6 months, died of untreated pneumonia April 15, 1990. The parents were members of Faith Assembly, a church opposed to medical care. At the time of Sean's death, the Woodrums had four other children.

"They loved their children, [but] they just never followed through" on medical care, said Hamilton County Coroner John Randall. They regarded the baby's death as "God's will," he said.

On August 8, Roberta Woodrum was sentenced for criminal recklessness. Robin was sentenced for reckless homicide August 19. They were given three and four year suspended sentences respectively. They were also ordered to engage the services of a state-licensed medical doctor for the care and treatment of their children, including immunizations, medications, physical examinations, and medical, surgical or

dental-surgical care. They were ordered to report any illnesses of their children within 12 hours of the onset to the child's doctor and the defendant's probation officer and to seek the earliest medical intervention practicable whenever life-endangering symptoms appeared. They were ordered to enroll in and satisfactorily complete a bona fide first aid course, to purchase and use a fever thermometer, to obtain and use a baby scale if they had additional children, and to authorize monitoring of the children's health by probation officers and emergency medical care for school-aged children.

The terms of probation were prepared by Sonia Leerkamp, Hamilton County Deputy Prosecuting Attorney.

After the death of their baby, the Woodrums have left Faith Assembly and altered their views.

## **Parents sentenced in starvation death**

On July 19, Larry and Leona Cottam of Nuangola, Pennsylvania, were sentenced to five to twelve years in prison for letting their 14-year-old son Eric starve to death. They were also ordered to pay the costs of prosecution.

They were convicted in September, 1989, of third-degree murder, recklessly endangering another person, and endangering the welfare of children.

Eric, whose dream was to become a meteorologist, weighed 69 pounds at his death, about 80 pounds less than normal for his height of 5 feet 10.

### **Savings untouched**

The Cottams had nearly \$4,000 in savings, but would not use the money to buy food because they considered it a tithe belonging to God. A former Seventh-day Adventist preacher, Cottam was unemployed and too proud to accept handouts. He also refused to send his children to public school where they would have qualified for school breakfast and lunch programs.

The family ran out of food after spending all



the money they considered theirs. They had not eaten for the 42 days before Eric's death on January 3, 1989. Their daughter, Laura, 12, grew so weak from malnutrition that she could not walk. She was placed in a foster home.

Trial testimony indicated that the Cottams believed their children had been sexually abused by their grandparents and a teacher at a parochial school. The Cottams said the reluctance of the police to investigate the allegations made them fear society.

### **Home schooling**

Seven months before their son's death they had won a two-year-legal battle with the school district to educate their children at home. A school district official said the Cottam children were not allowed to talk to adults without their parents being present and were not allowed to take part in activities with other children.

Al Flora, one of the Cottam's lawyers, said at trial that the family went without food because they distrusted authorities. They also believed their children would be taken away from them if they sought help.

Larry Cottam said the family was waiting for God to intervene. "We were wondering, 'Is our faith being tested?' like when God asked Abraham to go up and sacrifice his son on the altar," he said.

At the sentencing, Cottam said, "We are confident that Eric made the right decision for the salvation of his Lord and we are happy for that, though we miss him very much."

### **Appeal planned on religious rights**

Flora intends to appeal. He says he will raise the children's first amendment rights to religious practice as an appellate issue. The family knew they were dying and accepted death, he said.

Assistant District Attorney Ann Cianflone disputed this claim. She told the jury that Eric had tried to stay alive by eating roots from the yard and hiding a frying pan and oil in his bedroom.

Judge Gifford Cappelini of the Luzerne County Circuit Court would not allow the children's first amendment rights to be used as a defense because they still lived in their parents'

care.

Taken in part from the *Standard-Speaker*, July 20, 1991.

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## **Faith-healing parents charged in baby's death**

On September 19, parents in Redding, California, were charged with involuntary manslaughter and child endangerment in the death of their 4 1/2 month old baby.

Jordan Cory Northrup died of meningitis January 31st. He also had pneumonia. His parents, Earl Joe and Catherine Northrup, attempted to get Jordan healed through their prayers during his six-day illness. They are members of the Church of the First Born, which opposes medical attention for childbirth and the prevention and treatment of disease.

### **Many called in to pray**

Jordan was born at home attended by an unlicensed midwife. He died while being rocked in the lap of a church member as about 15 other church members prayed and laid hands on him. Members came from as far away as Sacramento and Washington state to the Northrup home to pray for the baby's healing.

The four surviving Northrup children were taken to a hospital and examined. They were then returned to their parents and are healthy, a longtime family friend said.

### **Church members support parents decision**

Church members voiced support for the Northrups after their indictments. "I think, certainly, they should be left alone," said Cleome Cagle, wife of one of the local church ministers.

"My husband thought for sure the baby was going to recover," said Cagle, who with her husband, Jack, was present when the baby died. The Northrups "loved their child" and "babies die in the hospital of meningitis," she added.

But Dr. Chrystie Halstead, a pediatrician in Sacramento, said a standard medical treatment for meningitis has long been available and is



usually effective.

Church members also claimed the district attorney was pressured by publicity. But the district attorney's office said the delay in filing charges was due to difficulties in obtaining medical reports and publicity had nothing to do with their decision. The case is being handled by Donna Daly, an Assistant District Attorney in Shasta County.

Earl Northrup, an unemployed logger, said, "I made the mistake of talking to people to begin with. I was advised if I hadn't said anything, I could probably have gotten away scot-free." At the time of the baby's death, he predicted, "We're going to be persecuted."

Taken from *The Sacramento Bee*, September 20.

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## Charges filed in another Faith Tabernacle death

On June 17, John and Kathy Friedenbeger of Altoona, Pennsylvania, were charged with involuntary manslaughter and endangering the welfare of a child. Their daughter Melinda Sue, age 18 weeks, died April 25th at her home of starvation and dehydration. She had a fever, vomiting, and diarrhea for the last several days of her life.

Her mother belongs to Faith Tabernacle, which rejects medical care and encourages exclusive reliance on prayer to heal disease. The father, who is not a church member, called for emergency medical help after the baby died.

Blair County Coroner Charles Burkey ruled the death a homicide. "It is my opinion that the baby, if treated, would not have died," he said. The police said the parents knew their baby was very sick.

Blair County District Attorney William Haberstroh steered away from the religious implications of the case, stating that the case focused on "the actions or inactions of the parents" and that "the church has no responsibility to take care of a sick child."

Haberstroh is also prosecuting Faith

Tabernacle members Dennis and Lorie Nixon of Altoona for involuntary manslaughter and child endangerment in the death of their son, Clayton, age 8.

Clayton died January 6 of dehydration and malnutrition after contracting ear and sinus infections, which caused continuous vomiting. He was 4 feet 1 inch tall, but weighed only 32 pounds at his death.

### Earlier deaths in church

The Nixons are members of a Faith Tabernacle congregation directed by Nixon's father. In 1981 other members of this congregation, 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.

Earlier this year six children whose parents had religious objections to vaccinations died in the Philadelphia area of measles. Five were associated with Faith Tabernacle and the sixth with First Century Gospel Church.

Taken in part from the *Altoona Mirror*, June 17.

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## Missionary withholds care from baby

On July 1, a baby died of meningitis in Spanaway, Washington, after his parents withheld medical care on religious grounds.

Fifteen-month-old Micaiah Edwards was the son of Tracy and Daelene Edwards. Mr. Edwards was a lay minister and missionary with the Traveling Ministries Everyday Church.

Both parents told investigators, "It's not that we don't believe in doctors. It's just that Jesus takes care of all our needs."

The baby had been sick for four to five days before his death, but did not appear seriously ill



to the parents, a Pierce County detective said.

The morning of July 1, the parents gave the baby Tylenol and some gel on his gums. That afternoon he became quite ill. The Edwardses went to visit a fellow minister in Burien to have him pray for the baby. The minister was not home, so the couple said a prayer and returned to Spanaway.

During the trip baby Micaiah started fussing. Then his breathing grew faint and he stopped breathing. Both parents attempted CPR.

Daelene washed the baby and changed his clothes. She and her husband prayed over the baby for two hours, but never called for emergency aid for him.

Local law enforcement continues to investigate the death.

Taken from *The Tacoma News Tribune*, July 3 and 4.

## Witnesses take new militant stand on transfusions

Since the Jehovah's Witnesses leadership first announced their opposition to blood transfusions in 1945, court-ordered transfusions for children who need them have become almost routine. Church members who submitted to the procedure under court order were not ostracized by fellow members.

But in the June 15, 1991, *Watchtower* magazine published by the church Witnesses are instructed to actively resist court orders. The *Watchtower* asks, "How strenuously should a Christian resist a blood transfusion that has been ordered or authorized by a court?" It advises "very strenuous resistance." It calls upon Christians to be "firmly resolved not to violate divine law, even if that puts them in some jeopardy as to secular governments." It asks if any Christian woman would passively submit to rape, even if rape was legal. It cites approvingly the sentiments of a 12-year-old girl receiving a court-ordered transfusion. She would "scream and struggle," pull the needle out of her arm, and "attempt to destroy the blood in the bag over her

head," it reports.

Fleeing court-ordered transfusions is also recommended or at least held out as a possibility. If a court order seems likely, "a Christian might choose to avoid being accessible to such a violation of God's law," says the *Watchtower*. It acknowledges that such action might result in criminal charges. But if punishment results, says the magazine, "the Christian could view it as suffering for the sake of righteousness."

The Jehovah's Witness faith has millions of members and is rapidly growing. According to a watchdog organization called Comments from the Friends in Stoughton, Massachusetts, the Witnesses gained 300,000 converts last year alone. While blood transfusions are not a common need, there will be a substantial number of Witnesses, both children and adults, who need them. The new militancy of the Watchtower Society may make an already difficult situation worse.

Between 1931 and 1952 the Watchtower Society prohibited vaccinations for both adults and children. The June 15, 1991, *Watchtower* states that vaccinations have minute amounts of blood in them, but allows each Witness to decide for himself whether or not to accept vaccinations. Reportedly, the Society also allows Witness hemophiliacs to use Factor VIII, which contains the clotting proteins of 2,500 units of blood in each dose. Hemophiliacs generally need 30 to 50 infusions of Factor VIII a year.

Nevertheless, the Society absolutely prohibits transfusions to save the lives of accident victims and other patients, young and old.

Taken from *Comments from the Friends*, Fall 1991.

## Guide to children's testimony published

Children, even preschoolers, can testify accurately about physical and sexual abuse if questioned properly, according to a book recently published by the American Psychological Association (APA).

Titled *The Suggestibility of Children's*



*Recollections: Implications for Eyewitness Testimony*, the book provides guidelines for questioning alleged abuse victims. APA director Lewis Lipsitt said the research can help police and the courts cope with the 800,000 official reports each year of physical and sexual abuse of children in the United States.

The researchers spoke out against "vigilante interviewers," who in their zeal to catch sex offenders, prompt youngsters to make up stories of abuse. They said that young children are more vulnerable to some types of suggestions than older children and adults. Repeated strong suggestions, coaching, rehearsal, bribes or threats can cause distortions in children's recollection.

But even preschoolers, said the researchers, are capable of resisting suggestions and of giving highly detailed, accurate reports.

Taken from *The Sacramento Bee*, July 26.

## Asser elected to term on board

Dr. Seth Asser, Assistant Professor of Pediatrics and Chief of the Critical Care Division at the University of California, San Diego, School of Medicine, has been elected to a three-year term on the CHILD board. Dr. Asser has lectured and published widely on child abuse. This year he addressed the Second National Conference on Child Fatalities and Physical Abuse sponsored by the National Center for the Prosecution of Child Abuse and the Annual Meeting of the Center for Child Protection in San Diego. He is active in the National Council against Health Fraud, the American Association for Protecting Children, and other organizations.

Retiring from the board after three terms of service is Shirley Landa of Bothell, Washington. Her experiences in exposing cult activity were highly valuable to CHILD Inc. We particularly want to express our appreciation for her successful work to stop the Christian Science church from adding a religious exemption to the child endangerment law in the state of Washington in 1986.

We also want to thank CHILD members for

a high degree of participation in the election and, as always, many supportive comments.

## CHILD members to speak at medicine and religion conference

Three CHILD members will speak at the 27th annual postgraduate symposium on Medicine and Religion sponsored by the Kansas University Medical Center. This year's conference is entitled, "Rites of Passage and Rights in Passage: Caring for America's Children" on October 15 and 16.

Dr. Bill Bartholome, a pediatric clinical ethicist, who also holds a master's degree in theology, is on the K. U. faculty. He will chair panel discussions and provide a summary and evaluation of the conference.

Dr. Norman Fost, Vice-Chairman of Pediatrics at the University of Wisconsin School of Medicine, will speak on "Children, Health Care and Religious Liberty in America." He is this year's Williamson lecturer.

Rita Swan, Ph.D., will speak on "Christian Science and Health Care for Children." She will focus on how the Christian Science parents interpret symptoms of disease and why they rely on Christian Science to treat a sick child.

The Christian Science church is sending Thomas Johnsen, who holds a doctorate in history, to represent its views.

## Coverage for immunizations urged

The May 15 issue of the *Journal of the American Medical Association (JAMA)* is dedicated to the problem of caring for the uninsured and underinsured. It includes an article, "Should Insurance Cover Routine Immunizations?" by Andrew Skolnick, on the refusal of many insurance carriers to cover routine childhood immunizations.

A 1989 Health Insurance Association of



America survey showed that only 45% of employment-based health insurance plans and 62% of preferred provider organizations offer coverage for basic childhood vaccinations, Skolnick reports.

As the financial condition of lower and middle-income families continues to slip downward, more have to go to public clinics for vaccines. Between 1979 and 1988, for example, Dallas experienced a 693% increase in the number of children referred to public clinics for immunizations, Skolnick says.

Such practices create a discontinuity of care, increase the number of visits parents have to make for immunizations, often cost hours in extra waiting time, and strain limited resources in the public sector, Skolnick says.

Dr. Donald Henderson, who chairs the National Vaccine Advisory Committee, complained that insurance companies "will pay for treatment for acne and ingrown toenails," but not for "one of the most cost-effective procedures in the entire medical armamentarium."

Henderson said that, because of the past success of the immunization program, public policy has given a very low priority to vaccinations. "We're now beginning to pay for this lackadaisical attitude toward the immunization of our nation's children," he said.

The 1991 measles outbreaks, including the widespread one in Philadelphia fueled by religious exemptions from immunizations, were the worst in decades. Doctors fear they will be followed by outbreaks of several other contagious diseases.

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## A journey of self-discovery

by Josy Fox

Review of Thomas Simmons' *The Unseen Shore: Memories of a Christian Science Childhood* (Boston: Beacon Press, 1991)

After I read the courageous account of Thomas Simmons's break with his past in *The Unseen Shore: Memories of a Christian Science Childhood*, I experienced something akin to the

feeling of immense gratitude that Christian Scientists express when they claim they have attained a healing. As a defector from the religion, though, my elation did not have the beatific overtones that normally accompany that fervor. Rather I felt that I had stumbled onto a familiar path—a cairn here, a signpost there—reminders of past treacherous pitfalls. In this frank and poignantly written memoir, Simmons articulates his personal disillusionment with Christian Science in a conclusive way that corroborates my own past misgivings about the denomination and may do the same for others who are in a similar quandary. Moreover, this is a solid, insightful, and levelheaded commentary that should be read by every official who must pass judgment on issues dealing with the fine line between religious freedom and the abuse of an individual's inalienable rights.

A Christian Scientist from birth, Simmons officially withdrew from the sect in 1983 when he was in his late twenties. The religion is seen here through his eyes, first as a child, and later as a young adult expending intense efforts to understand the ambiguous mixed message of kindness and cruelty that underlies the theology. As a youngster attending Sunday school, he obediently followed the precepts that instructed him to deny the existence of his body and of the material world around him. What Simmons exposes in this book is the contradictory—loving yet tyrannical—nature of the Father-Mother God who is the guiding principle in Christian Science. Total reliance on this parental God—who functions as a universal family figurehead—offered safety, so it seemed, a security that promised warmth and caring. But adhering to the fold, Simmons discovered, meant something else as well. The mantra-like "scientific statement of being" formulated by Christian Science founder Mary Baker Eddy that begins with the declaration, "There is no life, truth, intelligence, nor substance in matter. . ." and concludes ". . . man is not material; he is spiritual" was a stark and literal command to ignore the risks and responsibilities inherent in embracing human life. The cruelty that lay behind the demands it imposed as the price of achieving spiritual solace at times of sickness or stress was not easily



discernible, especially when the message was couched in loving words that issued from the lips of faithful, well-meaning co-religionists.

Simmons recounts repeated childhood illnesses that caused him long stretches of unrelenting, searing pain as he dutifully obeyed the doctrine's injunction to seek healing through prayer; but for him relief was never forthcoming. When a healing was not achieved, the blame, of course, would fall onto the individual for not having abandoned the fallacy of "mortal mind." There could be no indictment of Christian Science.

While describing the evolution of his own personal statement of being, Simmons charts a zigzag course, eloquently reliving in his book the struggles he encountered while trying to reconcile his religious heritage with normal, healthy instincts. He grew increasingly tormented during student days in high school and later in college, having to lie to himself and to deny that his body existed and contained blood, bones, marrow, and flesh that doctors could tend to when necessary. That materialistic view constituted "error" according to the religion. "Praying against error in Christian Science," Simmons recalls, "became a form of shadow boxing, in which the shadow grew more ominous the more I was unable to hit it."

By way of an interior monologue and a debate with himself, interwoven with the story he relates, Simmons gradually dismantles the rhetoric of Christian Science. A poet as well as a teacher in the writing program at the Massachusetts Institute of Technology, he draws upon his sensitivity to language to probe beneath the euphemistic—often mesmerizing—lexicon of Christian Science to expose a dangerous distortion of reality that is at cross-purposes with life in the here and now. Ultimately, he develops his own credo that allows him to take his proper place in the corporeal world.

Without bitterness, but not without great inner turmoil, Simmons finally succeeded in wresting himself from a religious community that exacts virtually complete self-denial from its members. On one level this compelling book is about the making of a lapsed Christian Scientist. On quite another, it is about the age-old

separation dilemma, the individual's search for and discovery of autonomy, that inborn heritage that exacts nothing but a recognition of its right to existence.

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## Faith healer sues for damages

by Richard J. Brenneman

Twice a year, faithful Christian Scientists study a lesson sermon titled "Adam and Fallen Man." Its basic notion is that there is no mortal man who could have fallen from divine grace.

But a seventy-five-year-old Christian Science healer did take a tumble, and when her broken hip didn't mend, she sued the owners of the California restaurant where she took her fall.

Ruth Robertson Butler had been a church-accredited practitioner for thirty-two years at the time of her January 4, 1989, fall outside a coffee shop in her hometown of Monrovia, California.

She claimed to have stumbled on a wheel stop, a concrete car-stopping barrier. Passersby took her to a hospital, where she was x-rayed and found to have a broken hip. She refused further medical treatment that physicians pleaded with her to obtain.

By the time of the trial in June, 1991, the injury was still unhealed and she was shuffling along painfully with the help of a walker.

In legal parlance, Mrs. Butler's case was a "trip-and-fall," the sort usually settled in pretrial negotiation. But there were several factors which made her case different, not the least of which was her refusal to have the broken bone set.

Another factor was the place where she had parked—in a handicapped space. It seems that a year and a half or so earlier, she had sprained an ankle and gone to the California Department of Motor Vehicles for a handicapped parking placard. As a Christian Science practitioner, she was able to get one without a doctor's signature—a requirement for anyone else.

Mrs. Butler had kept the placard, long after the ankle had healed and the document expired. She freely admitted that she was illegally parked. Her use of the placard was not something likely



to win a lot of admiration from a jury.

Butler sued the restaurant and the owners of the shopping center where the eatery was located. Leading the defense was the center's insurance carrier, Wausau, represented by the Pasadena law firm Bandy and Koester.

Because Christian Science was an implicit issue in the case, the defense lawyers contacted CHILD looking for an expert witness to testify about the faith. CHILD referred them to me, a Napa, California, member.

I am a former Christian Scientist and had taken the training required to become an accredited healer. I had also been first reader and later president of my local church in Los Angeles, and am the author of *Deadly Blessings: Faith Healing on Trial*, a book published last year by Prometheus Books.

I was surprised that a practitioner would sue for damages from an injury since the faith tells members to believe that accidents are unreal. When I arrived at the court, I was even more surprised not to encounter a representative of the Committee on Publication, the church's lobbying and media relations arm—which is specifically charged in California with monitoring all court cases in which testimony about Christian Science is likely.

Butler turned out to be a typical practitioner: retired, widowed, and earning a small income from her work. In 1989, her earnings were under \$1,200; they never exceeded \$4,000. Her current rate for treating cases is \$5 a day. She attributed her earning decline to the fact that would-be patients aren't inspired by the sight of a handicapped healer.

She was also the only practitioner in her church, a factor which may I suspect have led her to reject medical care. The Mother Church in Boston requires that each branch church have a practitioner among its members. If Butler's name was withdrawn from the Mother Church's list of accredited practitioners, her branch church would presumably be downgraded to a "society."

In addition to the broken hip, Butler suffers from severe cataracts. Interestingly, she called Boston to see if obtaining surgery for her eyes would require her to withdraw her accreditation as a practitioner. She was told that it would. But

she never asked about surgery to heal the hip—even though church founder Mary Baker Eddy specifically authorized Christian Scientists to have broken bones set by physicians.

Butler also quit having Christian Science treatment for her hip after three months, despite an injunction from the same Mrs. Eddy to keep up such fee-for-service treatments indefinitely.

When it came her time to testify, Butler said she "might well consider surgery," but added, "I simply can't afford it." And, she said, "I have no way of knowing if surgery is forbidden" for listed practitioners.

In fact, however, she could have received a church opinion on hip surgery from the same department which told her cataract operations were *verboden*. And as for her inability to pay for treatment, various programs, including Medi-Cal and the Hill-Burton Act, provide funds for indigent care.

My own testimony was brief. I described how Mary Baker Eddy had resorted to medications on several occasions (including during dental surgery) and how Eddy's *Science and Health*, the basic textbook for her adherents, provided for medical aid for broken bones. I also described how I was contacted by my Christian Science teacher (the late David Rennie, a former member of the Mother Church board of directors) after I submitted my resignation from the church because of my decision to have medical care for rheumatoid arthritis. Mr. Rennie assured me I didn't need to withdraw my membership, and said he had been called by the clerk of the Mother Church to urge me to stay.

Most of the remainder of the trial involved expert witnesses testifying about lighting outside the restaurant at the time of the evening fall, and the size, nature, and legal requirements of the handicapped parking spaces.

The Los Angeles County Superior Court jury didn't take long to reach a verdict. Mrs. Butler lost. The most damaging evidence came from an admission she made under cross-examination by defense counsel—she had not been looking when she fell in the place where she was illegally parked. Her accident, the jury held, was solely the result of her own negligence.



## CDC publishes on Christian Science mortality rates

Dramatically elevated death rates among Christian Scientists are indicated in an article that appears in the August 23rd issue of *Mortality and Morbidity Weekly Report (MMWR)* published by the Center for Disease Control (CDC) in Atlanta.



*Prof. Simpson*

Author William Simpson, a mathematics professor at Emporia State University, compares mortality rates of Principia College and Loma Linda University graduates from 1945 to 1983. Principia is a college for Christian Scientists in Elmhurst, Illinois. Loma Linda

University is affiliated with the Seventh Day Adventist Church and has a predominantly Seventh Day Adventist student population. Simpson gathered mortality data by studying alumni records for the two institutions.

Both religious groups require abstinence from alcohol consumption and smoking. In addition, the Seventh Day Adventist Church "recommends that its members use primarily a lacto-ovo-vegetarian diet that limits the consumption of meat, poultry, or fish to less than once per week." But the significant difference between the two groups is that Christian Science opposes both medical treatment and diagnosis.

### Death rate twice as high

When the Christian Science graduates were compared to a group of people who also abstain from alcohol consumption and smoking, the Christian Science death rates were twice as high. The mortality for the Christian Science male graduates was 40 per 1000, while it was 22 per 1000 for the Loma Linda University male graduates. The mortality for the Christian Science female graduates was 27 per 1000, while it was 12 per 1000 among the Loma Linda female graduates.

Simpson has also published a ground breaking study in the *Journal of the American Medical Association (JAMA)* comparing mortality of the Principia College graduates to that of Kansas University graduates from 1945 to 1983. The mortality of the Christian Science group was higher, and the differences, both for men and women, were statistically significant. Entitled "Comparative Longevity in a College Cohort of Christian Scientists," Simpson's first article appeared in *JAMA* 262 (1989): 1657-58.

### CDC comment on vaccinations

Remarkably, the CDC added an editorial note to Simpson's *MMWR* article. The note mentioned prolonged outbreaks of polio and measles at Christian Science schools and camps.

It also mentioned that in 1984, of all reported cases of measles classified as "nonpreventable," 89.2% occurred among persons exempt from vaccination laws for religious or philosophic reasons. Departments of Public Health generally categorize as nonpreventable, cases of contagious disease that occur among children with medical or religious/philosophic exemptions from immunizations.

The appearance of Simpson's research in a federal government publication shows, we believe, that the Christian Science church's control over public policy is diminishing. The church has argued that the separation between church and state required by the Constitution means that a governmental body cannot oppose religious exemptions from child health care requirements. In years past it has, in our view, intimidated Public Health Departments and the federal government against discussing the harm caused by these exemptions. But times are changing.

CHILD Inc. wishes to point out that babies and children could well have more need of medical care than college graduates. If the death rates of Christian Science college graduates are twice as high as those of graduates from the Seventh-Day Adventist university, what would death rates be for babies and children who receive no medical care?

Unfortunately, we have no way of gathering statistics on Christian Science children.