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*Equal rights for children under the law*



*James Dwyer*

## **Nixons' conviction upheld; CHILD filed amicus brief in case**

On November 27, the Pennsylvania Supreme Court unanimously upheld the conviction of Dennis and Lorie Nixon of Altoona for manslaughter and felony child endangerment. Members of the Faith Tabernacle, the Nixons let their daughter Shannon die without medical care in a diabetic coma June 27, 1996, three days before her seventeenth birthday.

The parents argued at trial and on appeal that Shannon made a mature personal choice to practice the Faith Tabernacle religion and did not want medical care. They offered examples of 16-year-olds being treated as adults under the law.

The Pennsylvania Supreme Court accepted two issues for review: "whether to adopt a 'mature minor doctrine' which would be an affirmative defense to the parental duty to provide care to a minor," and "whether Shannon had a right to refuse medical care pursuant to her privacy rights under the [federal and commonwealth] constitutions."

The Court ruled that state law requires parents to provide unemancipated minors with the necessities of life until their eighteenth birthday and that the maturity of such minors does not relieve parents of this duty. The justices cited their ruling in *Commonwealth v. Cottam*, 616 A.2d 988 (Pa. Super. 1992), upholding the conviction of parents who let their 14-year-old son starve to death even though they had thousands of dollars in the bank. The parents argued that the money was pledged as a tithe to God and that the children made an informed decision to starve rather than use it.

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### **Minors cannot refuse lifesaving medical care**

The Court pointed out that some of the rulings in other states cited by the Nixons as evidence of a "mature minor doctrine" actually enhanced young people's access to medical care rather than deprived them of it. Furthermore, none of the cases showed that a mature minor doctrine is a viable defense in a criminal case.

The Court held that Pennsylvania law was very specific about situations in which a minor may give lawful consent for medical treatment and did not indicate that a minor may "consent to or refuse medical treatment in a life and death situation."

In ruling upon the second question, the Court held that, while Shannon Nixon had constitutional privacy rights, the state's compelling interest in protecting the welfare of minors overrode them.

One judge wrote a concurring opinion. He argued that common law allowed a minor to consent to or refuse medical treatment when evidence indicated "that a minor has the capacity to understand the nature of his or her condition, appreciate the consequences of the choices he or she makes, and reach a [responsible] decision regarding medical intervention . . . ." But he concluded that the record did not show Shannon as meeting that standard and therefore concurred with the other six justices in upholding the conviction.

### **Parents also let son die without medical care**

The Nixons were sentenced to 2 ½ to 5 years in prison for Shannon's death, but have not begun serving the sentence yet. They were previously convicted of manslaughter for the death of their eight-year-old son Clayton who died of untreated ear and sinus infections in 1991. After repeated vomiting, the little boy became so dehydrated that he weighed only 32 pounds at his death. (He was 49 inches tall.) For Clayton's death, the parents were sentenced only to two years probation, a fine of \$150, and 125 hours each of community service in the pediatrics ward of a local hospital. They never had to perform the community service because hospitals would not allow them to work there.

### **"No matter what"**

The Nixons' attorney, Robert Stewart, complained that the ruling was too "rigid." It sets up "a condition in which all parents have to take care of their children until the age of 18, no matter what. Parents and families might have special circumstances," he said.

### **CHILD's amicus brief**

CHILD filed an amicus curiae brief in the Pennsylvania Supreme Court in support of affirming the Nixons' second conviction. The brief was written by CHILD honorary member James Dwyer, now a professor at Marshall-Wythe School of Law, College of William and Mary. The National Association of Counsel for Children, National Exchange Club Foundation, and American Humane Association, Children's Division, co-signed the brief. It is posted on CHILD's webpage at <http://www.childrenshealthcare.org>.

CHILD argued, on both statutory and constitutional grounds, that the Nixons had an obligation to secure medical care for their seriously ill daughter regardless of her religious beliefs.

### **Teens allowed to refuse medical care in two cases**

CHILD addressed the two cases cited by the Nixons of a state ostensibly allowing a mature minor to refuse medical treatment on religious grounds: *In re E.G., a Minor*, 549 N.E. 2d 322 (Ill. 1990) and *In re Green*, 448 Pa. 292 A.2d 387 (1972). In the first, an Illinois judge allowed a Jehovah's Witness girl, very close to her eighteenth birthday, to refuse some medical treatment for leukemia. She had a poor prognosis even with optimal medical treatment.

The ruling is not relevant to the Nixons' situation because it was based on Illinois common law rather than the constitution and because the judge himself interviewed the girl to determine her maturity. CHILD was also, however, critical of the Illinois court's lack of legal analysis.

In *Green*, the Pennsylvania Supreme Court allowed a Jehovah's Witness teenager to refuse surgery two months before his eighteenth birthday, but as CHILD pointed out, the boy's condition—



paralytic scoliosis—was not life-threatening. Furthermore, the proposed surgery could only relieve the condition somewhat and was considered “dangerous” by the treating physicians.

### Children’s rights different than adults’

With regard to Shannon’s privacy rights, Dwyer wrote, “Appellants correctly point out that children are persons, and that children have constitutional rights. But it is also true that children’s constitutional rights are not identical to adults’ constitutional rights. And they should not be. In some respects children’s rights should be greater, or simply different. For example, children have rights to education and to assistance from others in securing medical care, even though adults do not have comparable rights.” (citation omitted)

“In other respects, such as the right to self-determination,” Dwyer added, “children’s rights must be lesser. It would be absurd, for example, to say that children’s rights relating to sex or gun possession should be identical to those of adults.”

“It would be offensive to deny children certain rights simply because they are politically powerless or because they have historically been treated with less than the respect they are due as persons,” he continued. “But it is entirely appropriate to deny children certain rights when that is necessary to ensure their healthy development into autonomous adults.”

There is much more in Dwyer’s elegant argument that is worth reading. Former Blair County District Attorney William Haberstroh, who has successfully prosecuted three cases of Faith Tabernacle parents letting children die of treatable illnesses, wrote Dwyer to express his gratitude for “the excellence of your legal research, argument, and legal reasoning.”

CHILD echoes those sentiments exactly.

*Commonwealth v. Nixon*, J-44-2000 Sup. Ct. of Penn.

## CHILD petitions U.S. Supreme Court for review

On November 27, CHILD filed a petition for *certiorari* to the U.S. Supreme Court asking for review of lower court rulings in *Children’s Healthcare Is a Legal Duty, Inc., Bostrom, and Petersen v. DeParle*, 212 F.3d 1084 (8<sup>th</sup> Cir. 2000).



The petition was prepared by **Marci Hamilton**, a visiting professor at New York University Law School. Hamilton argued before the U.S. Supreme Court in *City of Boerne v. Flores*, 117 S.Ct. 2157 (1997), and won a ruling that the Religious Freedom Restoration Act was unconstitutional.

Robert Bruno of Burnsville, Minnesota, who has been CHILD’s attorney in three federal lawsuits, is co-counsel on the petition.

### First suit won by CHILD

CHILD and two Minnesota members, Dr. Bruce Bostrom and Steve Petersen, first filed a taxpayers’ suit against the federal government over Medicare and Medicaid payments for Christian Science nursing in 1996 and won a federal district court ruling that the statutes mandating such payments are unconstitutional. *Children’s Healthcare Is a Legal Duty, Inc. v. Vladeck*, 938 F. Supp. 1466 (D. Minn. 1996).

### Second suit won by government and church

In 1997 Congress changed the statutes from requiring payments for Christian Science nursing to requiring payments for “religious non-medical health care,” and CHILD filed a suit challenging the constitutionality of the new statutes.

The U.S. District Court of Minnesota granted summary judgment to the government and the Christian Science church, which asked to intervene in the case. On May 1, 2000, the Eighth Circuit, U.S.



Court of Appeals, upheld the statutes as constitutional in a 2-1 ruling. *Children's Healthcare Is a Legal Duty v. DeParle*, 212 F.3d 1084 (8<sup>th</sup> Cir. '00).

### **Normal benefits or religious privilege?**

The question presented for review in CHILD's petition to the U.S. Supreme Court is "whether payment directly into the coffers of religious institutions that are classified according to their religious beliefs, for unique benefits under the Medicare and Medicaid statutes, 42 U.S.C. § § 1395 *et seq.*, 42 U.S.C. § § 1396 *et seq.*, violates the Establishment Clause."

Whether the benefits for Christian Science nursing are "unique," special benefits—a privilege for a few based on their religious beliefs—or "normal" benefits and therefore constitutional is a key issue in the case.

The defendants argue that Christian Science nursing is a subset of medical care. The Christian Science services reimbursed by Medicare/caid are, they say, the same secular services that are reimbursed by the federal programs for patients in medical hospitals. Christian Scientists pay taxes for support of Medicare and Medicaid and therefore should get back a small portion of the medical care to which they are entitled, they say.

### **Federal programs burden Christian Scientists?**

The Eighth Circuit ruled that the statutes are a constitutionally permissible "accommodation" to relieve a "burden" upon Christian Scientists.

CHILD believes that the burdens relieved in prior court rulings were hardships upon religion imposed by government action. When a person simply declines a government benefit for religious reasons, there is no burden upon the person in a legal sense.

"The Medicare and Medicaid schemes place no constitutionally significant burden on Christian Scientists or others who do not believe in medical care simply because they pay into the system or because the mere existence of such benefit programs somehow pressures those who do not believe in medical care to obtain it. Those who do not own cars or ever travel on highways still must pay income taxes

that are then used to maintain roads," Hamilton wrote.

Before CHILD filed its second suit against the federal government, the U.S. Attorney General's office voiced the same position.

CHILD's petition also challenges the statutes on grounds that public money goes directly to religious institutions and is used for their total costs.

### **No diagnosis in church sanatoria**

Finally, CHILD points out that Medicare does not pay for custodial care except as incident to medically necessary hospitalization. The statutes require that payments to religious non-medical health care institutions (RNHCIs) must be used for patients having a "condition" that would entitle them to covered care in a medical hospital or skilled nursing facility. They also, however, prohibit the government from requiring a medical diagnosis or testing of the patients. Instead, they mandate that a committee of RNHCI staffers (i.e. Christian Scientists) make admission decisions.

"The greatest irony of the entire scheme," Hamilton wrote, "is that the Christian Scientists themselves, whose religious beliefs deny the existence of medical problems and have no medical training, have the power to determine whether the patient has an illness or injury that qualifies him for admission to a medical hospital."

### **"Beyond foolhardy"**

She closed with a quote from Judge Donald Lay's vigorous dissent in the Eighth Circuit's ruling: "This case. . . presents an . . . outrageous hypothesis. The Christian Science faith not only opposes medical care; it altogether denies the reality of pain and disease. Thus the statutes here delegate the initial 'diagnosis' of medical status to untrained laypersons who deny the reality of medical need. This is beyond foolhardy."

Responses by the government and Christian Science church, as well as amicus briefs in support of both sides, are due March 2. CHILD will send a xerox copy of the *cert* petition text to dues-paying members on request.



## Another court challenge to taxpayer money for Christian Science nursing

On November 17, California resident David Kong filed a taxpayer suit in the United States District Court for the Northern District of California asking that Section 4454 of the 1997 federal Balanced Budget Act be ruled unconstitutional. Section 4454 mandates Medicare and Medicaid reimbursements to "religious non-medical health care institutions." In practice, the reimbursements go only to Christian Science sanatoria. Kong's arguments are similar to those in CHILD's suit (see above).

Kong has filed other suits in the interest of separation of church and state, most recently one dealing with a cross on public property in San Francisco.

Kong is represented by San Francisco attorney Andrea Asaro, and the case has been assigned to Judge Charles Breyer, brother of U.S. Supreme Court Justice Stephen Breyer.

See *Kong v. Min DeParle* (N.D. Cal.), No. C-00-4285-CRB.

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## Anti-medical sect members indicted in baby's death

Three members of a Massachusetts religious group that rejects medicine have been charged in the starvation death of a baby. On November 13, a Bristol County grand jury indicted sect leader Jacques Robidoux with first-degree murder for allegedly "directing the systematic withholding of nourishment" from his son, Samuel, who died in April, 1999, three days before his first birthday. His wife Karen was charged with second-degree murder, and his sister Michelle Robidoux Mingo was charged as an accessory before the fact to assault and battery on the child.

The group consists of a handful of families who lived together in North Attleboro and Seekonk. The founder, Roland Robidoux, was raised a Catholic, joined Herbert Armstrong's Worldwide Church of

God in the 1970s, and finally created his own religion, which became more and more controlling and isolating.

Robidoux had a plethora of revelations about how the families should run their lives. He ordered several different diets over the years. He ordered all books burned except the Bible. Cookbooks, phone books, and even the textbooks used for home schooling were burned. He prohibited photo albums, haircuts, shorts, celebration of birthdays, and cosmetics. Group Bible study went on for 24 hours at a stretch. Discipline of children often included spanking, and women were repeatedly enjoined to submit to their husbands as priests of the household, second only to God.

### Zion Births

In 1997 he came under the influence of Carol Balizet, a former medical nurse, in Tampa, Florida. Her ministry advocates rejection of seven "impure" systems of modern society: education, schools, medicine, government, banking, entertainment, and commerce.

Balizet promotes "Zion Births"—home births with no input, assistance, or backup from the medical profession. "The medical system is the route of death most often employed by Satan to kill God's sons," she says on her web page, <http://users.southeast.net/~homeinzn>. She claims that home births are much safer than hospital births, but takes no responsibility for deaths and injuries in her ministry. "No matter what the result," she says, "we must do what God says. We mustn't fall into the trap of trying to figure out which choice will work best for us: God or the medical system. Our response to God must be based on obedience, not on outcome."

### Shunning and excommunication

Under Robidoux's leadership the families did not go to doctors, dentists, or optometrists. Babies were born at home without attention by physicians or licensed midwives. One of Robidoux's adult daughters was excommunicated because she bought eyeglasses. Robidoux cut off contact with his 84-



year-old mother who lived next door, apparently because she dropped out of the group to get medical treatment for cataracts.

The group began calling itself The Body. Several members claimed to receive divine visions. Demons became the standard explanation for all unpleasantries.

### **Trip to New Jerusalem**

In 1998, The Body followed what it called an order from God to travel without preparations in the middle of the night to Maine, which they considered the site of New Jerusalem. Convinced that God would provide, they took no money, food, water, clean clothes, or diapers. As each car in the convoy ran out of gas, the members would cram into another car, until all their tanks were empty.

Robidoux had promised them a feast in New Jerusalem, but instead they spent nearly three days without food while praying for gas by the roadside. Finally the police found them and loaned them money provided by a follower's mother for getting home.

The criminal charges and the discovery of two deaths of babies came because a disaffected member, Dennis Mingo, happened upon an anonymous journal. Mingo joined the group and married Roland Robidoux's daughter, Michelle, around 1987.

### **New member has divine healing**

Shortly after his wedding he had a healing that convinced him he had found the truth. Lumps swelled on his arms and legs, and his joints stiffened. The Body urged him to trust God, but he went to a doctor instead. A test showed a blood disorder.

His father begged him to accept medical treatment, but Mingo decided to rely only on God. In about a month the lumps went away.

He and Michelle had five children over the next ten years. The disastrous trip to Maine, book burning, and others of Robidoux's authoritarian demands alarmed Mingo. He finally left.

Still caring deeply about his wife and children, he came back occasionally to see how they were doing.

### **Journal describes starvation of baby**

In September, 1999, ten months after he moved out, he returned again. All the members were in the yard praying. Everyone ignored him—even Michelle—because he was an outsider now, and so he wandered into the home-schooling classroom. He saw some handwritten papers stuck between two Bibles. He grabbed them and left.

The journal he found covers a two-week period in March 1999. The first entry describes Michelle as having a vision that her sister-in-law, Karen Robidoux, needed to overcome her vanity.

Already thin, Karen was ordered to forsake the flesh by consuming nothing but almond milk—broth from boiled almonds—and to allow only breast milk as nourishment for her ten-month-old baby Samuel.

And so the baby, who had been eating solid food, was allowed only breast milk. But when the group persuaded Karen to eat only almond broth, Karen's milk supply dwindled to virtually nothing.

### **Baby's dying a test of faith**

As Samuel slowly starved, The Body told Karen that God was testing her faith. Another entry states that the anguished mother reported receiving her own visions from God to feed her baby, but her husband and father-in-law told her she had to withhold food to prove her faith.

The last entry dated March 17 lists four spiritual lessons learned. Karen is reprimanded for self-pity. God tells Karen, "Just as it pleased Me for you to grow your hair long, to stop drinking coffee and to pray for another child, it would please Me if you took Samuel and left him in the palm of My hand." The group is reminded that "Abraham, David, Ezekiel, and even God himself" sacrificed their loved ones. Finally, the journal counsels, "God counts it as a gain to get the results needed for his purposes."

### **Journal given to police**

Reading the journal, Mingo was in torment. He did not want the state to take his children away. But it seemed that The Body had ordered the death of a baby. Mingo turned the journal over to the police.



### Police learn about second baby's death

A policeman and state child abuse investigator came to the group's house to ask about the welfare of Samuel. David Corneau came to the door and told them that he and his wife Rebecca had had a stillborn baby named Jeremiah. He refused to say where the baby was buried.

A few days later the officials interviewed Karen Robidoux, who said her son Samuel had died and she did not know where he was buried.

The children told police that Samuel's and Jeremiah's bodies were kept in the cellar and late in September [shortly after Mingo took the journal] the group took the bodies to Maine and camped there for weeks. They also remembered seeing four of the men leave for two days with rope, a pickaxe, and shovels.

None of the group members would tell the state where the babies were buried. Officials determined that the group had gone to Baxter State Park, and they conducted several unsuccessful searches in the huge park.

### Baby may have been born alive

Diaries seized from the group's homes were given to child abuse specialist Dr. Eli Newberger of Children's Hospital for analysis. According to Newberger, diary descriptions suggest that Jeremiah was actually born alive, but died when his lungs were not aspirated, a routine procedure in hospital births. They also suggest that baby Samuel suffered terribly as he slowly starved to death.

Several members were jailed for contempt of court, and all lost custody of their children.

In August, 2000, with Rebecca Corneau pregnant again, Bristol County District Attorney Paul Walsh petitioned the court to confine her until her delivery. "In no way at all will I accept any kind of medical assistance," Corneau was quoted as saying. "It is against God, and I will not touch it." She refused to answer a single question about her pregnancy or even concede that she was pregnant.

Her husband, brought in shackles from jail to the courtroom, was equally defiant. "Only one holds



*Rebecca Corneau and Beth Collins*

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from the Aug. 31, 2000 issue of *The Boston Globe*

the key to life and death and that is God Almighty himself," he testified.

Judge Kenneth Nasif denied the state's petition, but did order public health nurse Beth Collins to serve as guardian for the fetus, to visit Corneau's home, and do a physical examination of Mrs. Corneau.

Collins went to Corneau's home twice and was turned away.

Nasif then ordered Corneau confined to a prison hospital where she stayed until she gave birth to a healthy baby girl on October 16. The state immediately took custody of the baby, and Corneau went home.

A few weeks earlier, however, David Corneau broke his silence and asked for legal counsel after spending three months in jail. He reached an agreement with the state that included immunity from



prosecution for himself and his wife. In return, he agreed to help investigators locate baby Samuel's body and to testify truthfully to the grand jury.

After traveling by float plane to a remote region of Baxter State Park, Corneau led investigators to the burial plot on October 25. The bodies of both babies were recovered and sent to the Maine State Medical Examiner for autopsy.



*Rebecca and David Corneau*

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from the Oct. 27, 2000 issue of *The Boston Globe*

By agreement, no charges will be filed in the death of Jeremiah Corneau.

Mr. and Mrs. Corneau are now fighting to regain custody of their four surviving children. They returned to live in The Body's home in North Attleboro, and Corneau's attorney, Robert George, says Corneau does not plan to leave the group.

### Questions

Some civil libertarians, defense attorneys, and women's groups have raised questions about the state's conduct. Massachusetts has never before used child protection laws to take custody of a pregnant woman for protection of a fetus.

Sarah Wunsch, a lawyer for the Massachusetts Civil Liberties Union (MCLU), said the judge did not have authority to appoint a legal guardian for the fetus because a fetus is not a separate legal entity from its mother.

### Court rejects challenge to protection for unborn

Walsh countered with a precedent of a drunken driver who killed a pregnant woman and was charged with two counts of motor-vehicle homicide.

Wendy Murphy, a professor at New England School of Law, argued that the state had no legal authority to protect an unborn child and that jailing a pregnant woman to obtain such protection violated the constitutional rights of all women.

It created a slippery slope leading, she contended, to incarceration of pregnant women for smoking or drinking alcohol during pregnancy.

She filed an emergency appeal to the state Supreme Judicial Court (SJC) on behalf of a pregnant woman called Barbara F. and all pregnant women in the state. The MCLU and the state affiliate of National Organization for Women supported the appeal.

The SJC rejected her petition, pointing out that Mrs. Corneau herself was not raising such claims and denying that the other women had standing to enter the case.

Jetta Bernier, director of the Massachusetts Committee for Children and Youth, supported the state's action, calling a few weeks' restriction of the woman's liberty appropriate given the importance of protecting the child's life.

The special circumstance of the case, including the suspicious death of Corneau's last baby, the fact that she had been ruled an unfit mother, and that the state had already petitioned to take custody of her baby at birth, may prevent the case from being a precedent for state action against other pregnant women.

A 1993 SJC ruling clearly stated that Massachusetts law requires parents to provide needed medical care for children regardless of their religious beliefs. *Commonwealth v. Twitchell*, 617 N.E.2d 609 (Mass. 1993) A few months later the state legislature re-



pealed an ambiguous religious defense to a misdemeanor that the Christian Science church claimed was a defense to manslaughter.

Legal experts questioned by the press agreed, therefore, that the Robidouxes will not be successful if they try to claim a religious right to withhold food from their baby. But they questioned the murder charges, which they said required evidence that the parents acted with malice and, usually, with violence toward the baby. They said involuntary manslaughter would be a more appropriate charge.

Bristol County District Attorney Paul Walsh defended his decision on charging, saying that Jacques Robidoux acted with "extreme atrocity and cruelty" in letting his son die of starvation over two months. The prosecutors' court papers also argue that Robidoux was clearly aware that his actions were causing Samuel's eventual death.

### **Is the prophet an accessory?**

Michael Mone, a past president of the Massachusetts Bar Association, also questioned whether Michelle Mingo could be convicted as an accessory to Samuel's death for her "divine revelation."

"I am not sure that words alone can kill," said Mone. Because Mingo did not have physical custody of the baby, she does not have the same responsibility for him as his parents did, he said.

Walsh, however, likened Mingo's actions to one bank robber exhorting another to kill. "If you have a gun in your hand, and I keep saying, 'Shoot him, shoot him,' then I am liable," Walsh said. The prosecutor also thinks that Mingo may have concocted her revelation out of jealousy of Karen Robidoux.

### **Christian Science not like The Body**

The Christian Science church took pains to discourage comparisons between itself and The Body. The church-owned newspaper, *The Christian Science Monitor*, quoted Walsh as saying, "This [Attleboro sect] isn't an organized religion like Christian Science or the Amish, with an institutional set of beliefs. They are making it up as they go along."

Boston attorney Rikki Kliemen, who defended Christian Science parents Ginger and David Twit-

chell for letting their toddler Robyn suffer and die of a bowel obstruction, said there was no comparison between the two cases. "It is inconceivable to me that a parent could starve their child to death and watch the child die," she said. "Law enforcement has to step in."

Robyn Twitchell's death, however, was just as ghastly as Samuel Robidoux's, and his parents' behavior was likewise against the law. Unfortunately, the Christian Science church's veneer of respectability may deter its members from understanding that.

Taken in part from *Boston Globe*, Aug. 30, 31; Sept. 2, 6, 14; Oct. 17, Oct. 25, Nov. 15, 19 & 26, 2000; *Boston Herald*, Oct. 26, 2000; *Portland Press Herald*, Sept. 17, 2000, and *The Christian Science Monitor*, Sept. 8, 2000.

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## **No charges in Colorado faith death**

In August, officials in Mesa County, Colorado, closed their investigation into the death of another Western Slope baby deprived of medical care on religious grounds. After weeks of reviewing evidence, District Attorney Frank Daniels decided not to file charges against Church of the Firstborn members, Billy and Barbara Reed of Clifton, who let their baby die of a common and treatable heart defect without obtaining medical care.

Mesa County Coroner Dr. Rob Kurtzman said his death would have most likely been preventable with medical care, but did not rule the death a homicide because he did not have firm evidence that the parents recognized the seriousness of the illness in time to save the baby's life.

"I strongly favor the right of individuals to pray for the sick and infirm," Daniels said in announcing his decision. "But the use of prayer to the absolute exclusion of medical care is a remnant of the Dark Ages. This practice endangers children."

Daniels' decision was based on the evidentiary problems with the case. He nevertheless strongly criticized Colorado's religious defense to negligent



homicide, manslaughter, and felony child abuse. "The current statutory scheme is seriously flawed and should be changed," he said.

Taken from the *Rocky Mountain News* and the *Denver Post*, August 18, 2000.

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## Was the baby stillborn?

*A couple of days before Ruth Berger Belebbas went into labor, friends remembered seeing her on her front porch [in Olathe, Colorado], waving and then patting her stomach happily, as if to say, "Any day now." On a hot steaming morning in mid-July, that day arrived. But something went terribly wrong during the delivery, and the baby got stuck by the shoulders in the birth canal.*

*By the time Montrose County sheriff's deputies arrived on July 17, the baby was dead, and Ruth herself was in grave danger of dying. Tad Rowan, an emergency medical technician supervisor, begged Ruth to get medical help. Still competent and alert, she refused. "Ruth acknowledged her condition, she said that she understood, and then said it's all in God's hands," investigator Scott Wagner later wrote.*

*Wagner then tried to impress upon Ruth the gravity of the situation, warning her that she was likely to die without medical help. But Ruth could not be dissuaded. "Ruth told me that she understood, and that if she died it was God's will, and that she was prepared for whatever God had planned for her," Wagner noted.*

### No legal basis for protecting the unborn

*The deputies contacted the district attorney's office and were told that as long as the baby was undelivered, and the mother was still competent and refusing medical treatment, nothing could be done legally. So Wagner informed Ruth that if she changed her mind, the sheriff's department would return and provide her with whatever assistance she needed. "I then spoke with Ruth's father and mother and they assured me that if Ruth decided*

*that she wanted medical care, they would assist her in contacting us," he wrote in his report.*

*The following day, someone called the sheriff's department and said that the baby had been removed from Ruth's birth canal. Mike Benziger, a deputy coroner, ruled the death a "still birth" and decided not to do an autopsy. The infant was placed in a small, white casket and taken to the sheriff's department where he was officially declared dead on July 18. "You know, turning that child would have been a piece of cake," says Rayleene Lang, a department spokesman.*

Ruth Belebbas refused medical help for herself and her infant Ishmael because she belongs to the Church of the Firstborn. Her mother, Helen Berger, was fatalistic about the outcome, saying to the press, "When someone's time is up, it's up."

Ishmael's father is from Algeria and not a church member; he speaks little English and did not tell the press whether he tried to get medical care for his baby and wife.

### No autopsy

Some officials in other counties were critical of the coroner's decision not to do an autopsy. Even a simple chest x-ray would have shown whether or not there was air in the lungs. If Ishmael had taken a breath, then his death would have, theoretically, become a legal matter.

*Note:* The first five paragraphs of this article are taken verbatim from Eileen Welsome's excellent article, "Born to believe," *Westword* (October 12-18, 2000):24, 26, with Welsome's permission. Another source is *The Denver Post*, August 18, 2000.

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## Mormon clergy challenged for not reporting child abuse

Three Mormon bishops in Utah were indicted for not reporting child sex abuse in 2000. Utah's child abuse reporting law requires clergy to report cases of suspected child abuse and neglect to law



enforcement unless their sole knowledge of the abuse or neglect comes from a perpetrator's confession. The law was enacted in 1994, but apparently no clergy have been charged under it until 2000.

Washington County Bishop Brent Atkinson and Sandy Bishop David Maxwell resolved the charges against them with diversion agreements. Atkinson has to perform community service, pay court costs, and promise to obey the law in the future. Maxwell was required only to "take advantage of the standard educational opportunities provided to all ecclesiastical leaders in [Utah's reporting law]."

Charges were dismissed against Salt Lake City Bishop Bruce Christensen after the mother who had told him her daughter was being molested by her husband later told prosecutors she had been speaking only of "a hypothetical situation."

### **Bishops oppose reporting law**

The indicted bishops challenged the constitutionality of the reporting law in court briefings, but the courts did not rule on it because of the plea agreements and dismissal of charges. Maxwell said he was wrongly prosecuted for "maintaining the sacred confidentiality of the confessional" and would have put his "own soul in jeopardy" if he had reported the rape of a teenager.

The statute presents clergy with the intolerable choice of going to jail or facing "the judgments of God," his attorney said. "Clearly, such a choice is no choice at all."

The Church of Jesus Christ of Latter-Day Saints (LDS), the proper name of the Mormon church, established a 24-hour help line in 1994 for its clergy to get advice about handling child abuse and domestic violence cases. Maxwell told the police he consulted the help line about the case and was informed "that his obligation was to not report."

Christensen complained that the law forced him to assume the role of a police officer in violation of his sacred duties to his parishioners.

In a fourth case a Cache County man, Jay Toombs, who pleaded guilty to molesting two boys, testified that entries in his journal show that he con-

fessed his crimes in 1994 to his LDS bishop. The journal further indicates that the bishop reported them to an LDS stake president who was also a deputy county attorney.

The present Cache County Attorney Scott Wyatt said he could not bring charges against the clerics because the statute of limitations had expired and also because clergy are not required to report confessions of perpetrators.

### **Confessional is sacred**

In August clergy reporting requirements were discussed at a child abuse conference held in Ogden, Utah. Catholic and Protestant clergy said they would urge perpetrators to turn themselves in as a way to repent in the eyes of man and God, but would not violate the confidentiality of the confessional.

David McConkie, an attorney for the LDS church, complained that the reporting law was a threat to the church and its leadership. He said the law should be changed to grant complete confidentiality to everything said to clergy in private, giving clerics the ability to reach their own resolutions of members' problems.

### **Protecting children more important than protecting confessions**

Conference speaker Mike Johnson, a Texas police detective who has spent his career investigating child abuse, said it made his "soul hurt" to hear panelists talk about protecting the confidences of child abusers. "I don't believe God condones anyone standing by," he said. "Kids lack the ability to protect themselves. They will continue to be abused under this veil of protection."

### **All male volunteer lay clergy**

Critics charge that the Mormon Church has an above average problem of failing to report child abuse because of its all-male and all-volunteer lay clergy, optimism about human nature, and trusting environment. The church's 26,000 congregations, called wards and branches, are administered by bishops and branch presidents who hold secular jobs



and perform ministerial duties on their own time as volunteers.

All males in the Mormon church become priests at age 16 if they faithfully pay their full tithes. Stake presidents select bishops from among the priests; no training is required of the bishops, according to an ex-Mormon.

Personal interviews are conducted with candidates for the volunteer lay clergy, but the Mormon church does not have independent criminal background checks done.

### **Civil suits**

In addition to the recent criminal charges against the Utah bishops, the Mormon church and its clergy have had about thirty civil suits brought against them in the past decade over their failure to protect abused children or to report. Most cases have settled out of court, but in 1998 a Texas jury awarded \$4 million to a boy molested at age 8 by a trusted babysitter in an LDS congregation. The child's attorney argued that church leaders had received complaints about the babysitter and failed to act.

Brigham Young University researchers Karen Gerdes and Martha Beck report that 49 of 61 Mormon women who were sexually abused as children and talked to clergy about it complained that the bishops were "judgmental," "unbelieving," or "protective of the perpetrators."

Other families who have reported sexual abuse of their children say that the church pressured them to forgive both privately and in sermons.

### **Forgiveness cannot be forced**

Many of the women in the Gerdes-Beck study angrily rejected the claim that forgiveness leads to healing and that they had a moral obligation to forgive on someone else's timetable. Instead, they described forgiveness as "a gift from God" at the end of the healing process.

They also complain that LDS church therapy for offenders is geared more toward spiritual progress than behavioral or psychological change.

Attorney Timothy Kosnoff representing a boy molested in Oregon says that the Mormon church has a "long historical tradition of separation from secular society and they want to do it their own way. . . . They don't want to believe their fellow priesthood holder is a [child molester]."

LDS spokesmen counter that most churches have had civil suits brought against them for their handling of child abuse cases and the percentage against the LDS church is not above average.

They also say that they put out printed and video materials for their clergy about child abuse as well as maintaining their help line. In 1996 they held a one-day training session for their clergy on abuse.

### **Criticism and praise for church**

Critics charge that the training should be mandatory and annual since there is a lot of turnover among the volunteer bishops. LDS attorney David McConkie replied, "The training sessions are as mandatory as you can make them in a voluntary organization."

Prevent Child Abuse Utah named the LDS Church Child Advocate of the Year in 1999.

Taken in part from *The Salt Lake Tribune*, Oct. 17, 1999, and these dates in 2000: July 8, July 29, August 3, August 15, October 5, October 15, and November 10.

### **Canadian court: Bible does not justify beating kids**

A British Columbia Provincial Court ruled against a former evangelical pastor who claims a biblical right to hit his children and common-law wife.

Darryl McDowell of South Kootenay, British Columbia, was arrested in July and charged with assault of his wife and her two children, unlawful confinement (for allegedly locking his wife in their converted school bus), and careless storage of firearms.



His ten-year-old stepdaughter testified that McDowell punished her and her four-year-old brother with a meter-long dowel rod. She said he gave five different types of beatings depending on the severity of the infraction. Named for the color of her buttocks after the punishment, they were pink butt, red butt, blue butt, purple butt, and black butt.

### **Biblical imperative**

McDowell stated that "there was no higher law than God and His writing in the Bible." He entered the courtroom with a placard saying "Trust Christ or go to Hell." He quoted Proverbs 22:15: "Folly is bound in the heart of a child, but the rod of correction will drive it far from him."

"There is no enjoyment about rodding," McDowell testified. "It's a biblical imperative."

He was led from the courtroom shouting, "Vengeance is mine; I shall repay."

### **Religious beliefs don't justify daily hitting**

Judge Don Carlgren wrote in his ruling, "Religious beliefs do not excuse a system of physical discipline which is unforgiving of any breach of any rule for such young children as here, and which results in such frequent administration of the discipline." He noted that during a six-month period, one of the children was beaten every day except ten.

McDowell was sentenced to six months in prison, but was released in December after 123 days in jail. At his homecoming, he defiantly refused to change his beliefs about discipline. "We would have to give up our faith, rip sections out of the Bible," he said.

He refused to have a psychiatric evaluation requested by provincial child protection services. He labelled the mental health profession "anti-Christ" and the arresting constable "a Satanist."

McDowell said he knows his defiance may sabotage his chances of having the children returned by the "ministry of child kidnapping and family breakup services." "We're up against a juggernaut," he said. "There is a movement, an anti-spanking, anti-corporal-punishment movement, of which these people are part."

From his own childhood experiences, McDowell said he can discern discipline from abuse. He said his father hit him with a belt whenever he was angry, but did not explain why.

### **Family members defend him**

His wife, whose name is protected by a publication ban, defends her husband. She said her husband always explained to her children why they were being "rodded" and never struck them in anger. When she saw McDowell hitting her children, she was persuaded it was "what God meant."

She is convinced she was the victim of ritual satanic abuse before she met him, resulting in multiple personality disorder, and that only he can save her.

Despite the corporal punishment, her daughter testified that McDowell had been good to her and her brother. Before McDowell joined them, the family lived with the son's biological father. Compared to him, maybe McDowell was good to the kids: the girl needed 31 stitches to close wounds caused by the prior stepfather hitting her in the face.

The children are in foster care.

Taken in part from *The Vancouver Province*, Dec. 4, 2000; *DIVORCE* magazine, Nov. 12, 2000; "Today's Family News," Oct. 10, 2000; Reuters wires Nov. 3, 2000.

## **Score on the 106<sup>th</sup> Congress: 1 win, 1 loss**

CHILD is happy to note that HR221 died in the U. S. Senate Health, Education, Labor and Pensions Committee. The bill provided a religious exemption for the Amish from child labor laws and would have allowed Amish children to work in their community's sawmills and factories full-time at age 14.

The U.S. Labor Department classifies jobs in factories and sawmills as hazardous occupations and has authority to prohibit employment of youths under 18 in sawmill and logging operations because they have an accident rate five times higher than the national average.



Bills exempting the Amish from child labor laws passed the House by voice vote with no discussion or debate both in 1998 and 1999 and have twice died in the Senate Labor Committee.

Several CHILD members wrote letters to their Senators opposing HR221, and we thank you.

Unfortunately, the Christian Science church got another religious exemption in elsewhere. As reported in the CHILD newsletter 1999 #1&2, the church had a provision in a draft bill on hearing screening of newborns saying that the bill did not "preempt or prohibit state laws that do not require hearing screening of children whose parents object based on religious beliefs."

The American Academy of Pediatrics (AAP) registered strong opposition to the provision. A few hours before he introduced the bill, early in 1999, the lead sponsor, Rep. James Walsh, R-NY, agreed to drop the religious exemption.

The next year, the bill was folded into the Children's Health Act of 2000. In October, the Academy was startled to see that the religious exemption to hearing screening had been put in again.

The Academy was asked to endorse the bill and refused to do so because of the religious exemption. It was too late to stop the bill, however, and it is now PL106-310.

## Caught by the spirit of multiculturalism

With the burgeoning diversity of the United States population, instruction in "multiculturalism" has become a standard feature of conferences and teacher training. "Cultural competency" is required of social workers, child abuse investigators, and educators. This is appropriate.

Some people, however, take multiculturalism to mean that all cultural practices should be equally tolerated and protected in law. Some have said that severe corporal punishment by African-Americans should not be reported to protective services be-

cause it supposedly has roots in African-American culture. Some feel that the state should not intervene to stop an Asian practice of rubbing hot coins on a child's back that is intended to heal physical and emotional ills. A physician reports that Haitian children with AIDS are given less medical treatment at an East Coast hospital than white children because of Haitian folk beliefs about illness.

## Cultural defenses rejected

As could be predicted, children are more likely to be harmed in the name of multiculturalism than adults. Women's groups, for example, protest vigorously if a perpetrator of domestic violence claims that beating women is part of his culture. Doriane Lambelet Coleman, "Individualizing justice through multiculturalism: the liberals' dilemma," 96 *Columbia Law Review* (1996):1093, discusses several bad features of cultural defenses in domestic violence cases: they overlook the fact that the main purpose of the criminal law is to protect victims and the public from harm; they send a message that violent behavior is acceptable; basing culpability on culture violates equal protection guarantees and sends a message to subordinate members of cultural minorities that they are not worthy of the protection of our laws and cannot hope to escape the oppressive practices in their country of origin; and condoning practices motivated by values and attitudes that mainstream American society has rejected erodes the progress we have made toward eliminating injustice. (See Jim Dwyer's synopsis of Coleman in his *Notre Dame Law Review* article mentioned on p. 21.)

## Hmongs believe illness caused by spirits

A beautiful statement on behalf of multiculturalism is Anne Fadiman's *The Spirit Catches You and You Fall Down: A Hmong Child, her American Doctors, and the Collision of Two Cultures* (NY: Farrar, Straus and Giroux, 1997), winner of the National Book Critics Circle Award.

She tells the story of Hmong baby Lia Lee, a member of a large Hmong-immigrant community in Merced, California. In her early months of life, she had twenty or more epileptic seizures. Her Laotian



family, newly arrived from a Thai refugee camp, believed that a *dab* had stolen her soul from her body. She was experiencing *qaug dab peg*, which means "the spirit catches you and you fall down."

Though frightened for their daughter, the Lees also were proud because the seizures might indicate that she had been chosen to be the host of a healing spirit and could then be trained to be a shaman.

Six of their children had died before the Lees reached the United States. And they had seen Western doctors successfully treat illnesses of three of their children in the refugee camp. So, despite their folk beliefs and their suspicion of modern medicine, the Lees eventually took Lia to Merced County Hospital.

#### **Lack of communication and compliance**

In their first two visits, the problem was misdiagnosed as respiratory because no hospital employee could speak Hmong and Lia was not having seizures then. During her third visit at eight months old, she had a grand mal seizure that was correctly diagnosed. On discharge, the Lees were instructed to give her an anticonvulsant twice a day.

Over the next four years Lia was taken to the hospital hundreds of times, but her parents could not or would not follow instructions for her medications. A treating physician requested intervention of Child Protective Services, and Lia was put in foster care for eight months.

After Lia returned home, a dedicated social worker helped the parents give the medication correctly. The Lees also spent a fortune, beyond their means, for Hmong folk remedies. They bought a cow and sacrificed it for her. They spent \$1,000 on amulets filled with sacred healing herbs from Thailand for Lia to wear around her neck. Her mother inserted an Indochinese coin into a boiled egg yolk, wrapped the egg in cloth, and rubbed Lia with it. When the egg turned black, she thought the sickness had been absorbed. She sucked out "pressure" by pressing a small cup heated with ashes against Lia's skin. She pinched Lia to draw out noxious winds and dosed her with herbal concoctions. Most extra

vagantly, they took her to Minnesota to visit a Hmong shaman who belonged to their clan.

They also overfed Lia because she was their favorite of their many children and they believed her marked by spirits for a special destiny. Her obesity made it difficult for doctors to start IVs when she was seizing.

Lia had four good months at home, but then had three episodes of severe seizures, suffered irreparable brain damage, and remains today at home in a persistent vegetative state.



*Child celebrates Hmong New Year*

Photo by Henry Koshollek of Madison Capital Times

Fadiman does a masterful job presenting the tragic history of the Hmong people from their persecution by the Chinese, to their fighting a proxy war for the United States in Laos, the U.S. promises made to them and broken, the destruction of their way of life, the horrific ordeal of their forced exodus from Laos, and the hardships they have suffered as refugees in Thailand and the United States. Fiercely independent mountain farmers, they are demoralized by having to live in welfare dependency here. Historically, they have much preferred to flee, fight, or die than to be subjects or assimilated.



Fadiman had excellent access to her subject matter. Through an interpreter, the Lees spoke to her at length and gave her permission to talk to Lia's physicians and look at medical records. She vividly portrays the doctors' lack of awareness of the Lees' attitudes toward their daughter's illness and concludes that Lia's life was ruined "by cross-cultural misunderstanding." (262)

Fadiman describes the doctors' grueling hours of work in treating Lia, their dedicated efforts to prevent the final catastrophe, the substandard compensation they received for it, and the Lees' apparent lack of respect and appreciation for them.

### **Cartesian medicine**

She is less impressive, however, when she judges Western medicine as inadequate because it is "Cartesian"—that is, based on "the mind-body dichotomy." She speaks of "the cartoon-version M.D., the all-head-no-heart formalist who, when presented with a problem, would rather medicate it, scan it, suture it, splint it, excise it, anesthetize it, or autopsy it than communicate with it," but quickly admits that most doctors are not like that. (273)

She tells of a doctor who worked to stabilize Lia for twelve hours straight, but used male pronouns in his records about her. Fadiman leaps to the astonishing judgment, "Here was American medicine at its worst and its best: the patient was reduced from a girl to an analyzable collection of symptoms, and the physician, thereby able to husband his energies, succeeded in keeping her alive" (147). Instead of being an icon for the entire American medical profession, maybe the doctor just let his pen slip.

Fadiman speaks of Western medical students cutting nonchalantly into cadavers, which are called "ideal" patients because they don't complain or sue. "Dissociation is part of the job," she says, and that is why doctors do not treat their own relatives and heads of open-heart patients are screened from the surgeon's view. (275) Her claim that feelings and empathy are deliberately removed from biomedical practice is an overgeneralization.

Fadiman wants "conjoint treatment": Western allopathic medicine "integrated" with traditional

healing arts. She wants both not just to be practiced, but to be intertwined. She presents a set of questions by Harvard psychiatrist and medical anthropologist Arthur Kleinman, designed to elicit a patient's "explanatory model":

What do you call the problem?

What do you think has caused the problem?

Why do you think it started when it did?

What do you think the sickness does? How does it work?

How severe is the sickness? Will it have a short or long course?

What kind of treatment do you think the patient should receive? What are the most important results you hope she receives from this treatment?

What are the chief problems the sickness has caused?

What do you fear most about the sickness? (260-1)

### **Mediating between cultures**

Commenting on Lia's care, Kleinman said physicians should stop requiring "compliance," which implies "moral hegemony." They should aim for mediation instead of coercion. "Decide what's critical and be willing to compromise on everything else," he said. (261)

Lastly, he said, providers need to understand that as powerful an influence as Hmong culture is on Lia's case, "the culture of biomedicine is equally powerful. If you can't see that your own culture has its own set of interests, emotions, and biases, how can you expect to deal successfully with someone else's culture?" (261)

Kleinman says that the doctor cures the disease but the indigenous healer heals the illness. He believes that conjoint treatment not only promotes trust in the doctor, but improves the physical outcome for the patient.

### **Comment**

Some of this is good and important advice. Some of it, though, sounds to me like postmodernist claptrap: there are no absolute facts or truth; everything is biased by the observer; perspectives must be mediated and combined. Thus, sociology professor



Meredith McGuire demands that we “set aside . . . the assumption that the medical reality, as promulgated by the dominant health specialists in this culture, is necessarily the ‘true’ reality. From a sociological perspective, this medical definition of reality must be seen as one among many competing conceptions of illness, its causes, and treatment. Medical reality, too, is socially constructed.” *Ritual Healing in Suburban America* (New Brunswick: Rutgers, 1988):5

How much of this will improve health care for ethnic minorities and how much will just create employment for anthropologists and sociologists? How much should the general public pay for? Fadiman tells of a short-term federal grant of \$100,965 to pay eight Hmong shamans for treating 250 patients with rituals such as Ceremony to Appease the Spirit Above the Big Stove and Ceremony to Dispel Ogre Spirits. The final report on the grant states that sometimes the ceremony itself cured the patient and sometimes it helped the patient become “more amenable to recommended medical procedures.” (269-70)

A Minnesota court ruled that the state had to reimburse a Hmong crime victim \$985.05 for the cost of a Hu Plig healing ceremony to restore his soul. *State v. Tenerelli*, 598 N.W.2d 668 (Minn. 1999)

Fadiman closes with an evocative account of a Hu Plig for Lia. The parents’ elaborate preparations, their tender love for her, the poetic chanting of the shaman are heart-rending, but the fact remains that Lia is still in a vegetative state. (278-88)

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## Christian Science church promotes its methods as “alternative medicine”

The Christian Science church sees media interest in “cross-cultural,” “alternative,” and “complementary” medicine as an opportunity to win more legal recognition for its methods. A recent special issue of *The Christian Science Sentinel* is entitled “The future of medicine—and the medicine of the future.”

The lead article, “Natural and good medicine,” is by Nathan Talbot, who was the church’s worldwide manager of lobbying and public relations when Christian Science parents were on trial a decade ago for letting their children die without medical care.

“On the surface,” he says, Western medicine still seems “largely an industry of drugs and surgery.” But contemporary interest in the mind/body connection and herbal remedies shows that a revolution is about to occur.

### Herbs a stepping-stone to Christian Science

Talbot claims that seventy million Americans “pursue” “drug-free” or “natural medicine” because they intuitively dislike “traditional medicines that poison the system in an effort to help it.”

Of course, however, that is not where the church wants the seventy million Americans to stop. “As society increasingly looks to *thought* as the key to health, the question has to be asked whether herbs have the capacity to change the way one thinks,” Talbot states.

He applauds the desire to move from the “artificial” to “things *more* natural and real,” (emphasis added) but tells the seventy million to keep moving on “a spiritual journey” to find the really real and natural: Christian Science treatment.

Another article in the special issue, “Going beyond placebos,” by Richard Bergenheim adopts the same rhetorical structure.

### Placebos prove disease is mental

“There have been a number of reports recently on the surprising effect that placebos have in treating sickness,” the article begins. “Tests prove that in certain instances unmedicated pills can have as much effect on patients as medicated ones do.”

“The point is,” Bergenheim writes, as if placebos were a new phenomenon, “today there is growing agreement that the thoughts or beliefs of the patient can have a notable impact on his or her recovery.”

Bergenheim relates placebos to church founder Mary Baker Eddy’s 19<sup>th</sup> century “research” on homeopathy. Eddy found that diluting a drug can



increase its effect, a discovery similar in impact to Newton's falling apple. Today's researchers into the mind/body connection are actually "exploring ground that was investigated by this woman in the 1850s and early 1860s."

### **Eddy ahead of all scientists**

Eddy, however, is even further ahead of medical research in that she moved beyond homeopathy and placebos to discover that disease is unreal to the divine Mind. Placebos show that disease is mentally caused and temporarily distract the "mortal mind" from the disease. The Christian Scientist, however, understands that s/he does not really have a mortal mind or brain, but instead gets all thoughts from the divine Mind that knows nothing about sin, disease, or death. This understanding "heals all sickness and disease."

In a startling image, the church's lobbying and public relations manager told the membership in 1999 that he and his subordinates throughout the world are "attending the birth in public thought of a new definition of science." The Christian Science public relations managers must "care for the mental atmosphere surrounding *their* patient—which is public thought. . . ." (emphasis in original: *Christian Science Journal*, July 1999)

Although Eddy prohibited church members from giving "treatments" to people without their consent, the church public relations manager sees everybody in the country as their patients. They must care for other people's minds and deliver the new science baby that will do away with drugs and surgery. Ironically, however, Eddy herself told Christian Scientists to have their babies delivered by medical doctors.

### **Comment**

The logical fallacies above are, we hope, glaringly obvious to our readers. We will point out only that the vast majority of the 70 million Americans who try an herbal remedy have no intention of forgoing medical treatment for organic disease and that, if tests show a drug is not much more effective

than a placebo, the Food and Drug Administration does not approve the drug.

Ironically, the church that insists its prayers cannot be combined with medicine or any other "material" means of healing is trying to use public interest in complementary models to win acceptance for what it wants to do.

From the standpoint of public policy, it is important to rebut the church's argument that society's interest in "alternative" medicine means that prayer should be a legal substitute for medical care of sick and injured children. Our laws do not allow parents to substitute herbs for insulin when a child has diabetes and should not allow them to substitute prayer either.

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## **Oregon victory goes to international conference**

Oregon's experience with scores of child deaths in a faith-healing sect and the legislative struggle to win protection for them was the subject of a lecture at the 2000 International Congress on Child Abuse and Neglect.

Clackamas County Sheriff's Detective Jeff Green, who investigated recent deaths of Followers of Christ children in Oregon City, Oregon, spoke at the Congress held in Durban, South Africa, September 3-6, 2000 on "Withholding medical care from children on religious grounds as an impetus for legislative change in Oregon."

Green testified in the Oregon legislature for the bill to repeal Oregon's religious exemptions to murder, manslaughter, criminal mistreatment, criminal nonsupport, and neglect. An amended repeal bill was signed into law in 1999.

### **Law changes parents' behavior**

Green and others report that the new laws have dramatically changed the behavior of the Followers of Christ. Three of their children died with no medical care of readily treatable conditions between July 1997 and February 1998, but no Oregon Followers



children have died of medical neglect after the press exposed the deaths.

Since Oregon repealed religious exemption laws, Green told the conference, two Followers children have been protected through state intervention. One was reported by the school system; another anonymously. One child suffered from an intestinal disease, which if left untreated, could have resulted in death. The other child had a broken arm.

In both cases, law enforcement and child protective services worked together to have the families comply with the law. The families agreed to medical diagnoses and treatment plans by physicians. No charges were filed nor were the children taken into protective custody.

One Followers of Christ child recently died when a large television set fell over on him, but his parents promptly called 911 and told emergency personnel that they knew the law required them to get medical help.

The conference in South Africa was sponsored by the International Society for the Prevention of Child Abuse and Neglect. The theme for the conference was "Implementing the U.N. Convention on the Rights of the Child: Myth or Reality?"

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## Vaccine exemptions raise disease rates

A second study in the *Journal of the American Medical Association (JAMA)* within the past eighteen months indicates that religious and philosophical exemptions to immunizations increase cases of disease.

Daniel Feikin et al. in "Individual and community risks of measles and pertussis associated with personal exemptions to immunization," *JAMA* 284 (Dec. 27, 2000):3145-50, studied all reported confirmed measles cases among Colorado children aged 3 to 18 years during 1987-1998 and all reported confirmed and probable pertussis cases among the same population for 1996-98.

Colorado law allows both religious and philosophical exemptions to immunizations for children in

schools and daycare facilities. Parents may claim the exemption simply by signing a statement that they are "an adherent to a religious or personal belief opposed to immunization."

### Philosophical exemptions surge

During the study period the number of Colorado children claiming philosophical exemptions rose from 1.02% to 1.87% of the population while the percentage of children claiming a religious exemption declined from .23% to .19%.

### 62 times higher risk of measles

The *JAMA* authors found that exemptors were 22 times more likely to acquire measles than vaccinated children and 6 times more likely to acquire pertussis than were vaccinated children. "In children of day care and primary school age, in whom contact rates and susceptibility are higher, these risks were approximately 62-fold and 16-fold greater among exemptors for measles and pertussis, respectively," they continue.

Their "calculated risk of pertussis among exemptors was most likely an underestimate," they say, for 43% of the children who were not immunized against pertussis showed no reason for lack of vaccination. Many of them were likely exemptors who had not yet had to file their objection with a K-12 school.

It is also likely that many cases of pertussis and measles in families with religious or philosophical objections to immunizations were not seen by licensed health care providers, confirmed by laboratory testing, and reported to the Health Department.

### Some vaccinated children infected by exemptors

Schools and counties with higher percentages of exemptors had higher percentages of measles and pertussis cases.

Perhaps the most sobering finding of the study is that at least 11% of vaccinated children who contracted measles acquired the infection through contact with an exemptor. This figure is "probably an underestimate of the true percentage," the authors say, because 67% of the vaccinated children



who contracted measles had an unknown exposure source and some were probably exposed to exemptors.

A previous *JAMA* article found that children claiming religious or philosophical exemptions from immunizations were 35 times more likely to contract measles than vaccinated children. Daniel Salmon, et al. "Health consequences of religious and philosophical exemptions from immunization laws: individual and societal risk of measles." *JAMA* 282 (1999):47-53.

### **Religious exemptions better than philosophical ones?**

Unfortunately, in CHILD's view, Feikin and his colleagues, like Salmon et al., are very timid about policy recommendations. Feikin says, "Policy-makers might consider requiring some evidence of parental strength of conviction when claiming personal exemptions for their children."

Why must religious convictions against immunizations be treated as sacrosanct? These researchers have shown that children exempted from immunizations are at greatly elevated risk of contracting diseases that can be fatal or cause permanent disability. Shall we as a society just abandon these children as unworthy of our concern?

### **Constitution does not require exemptions**

Many courts have ruled that the state has the right to require immunizations without exception for religious belief. The Mississippi Supreme Court even ruled the religious exemption unconstitutional as discrimination against both the children of religious objectors and the children whose parents have no such religious beliefs. *Brown v. Stone, Miss.*, 378 So.2d 218 (1979).

Some public officials have become highly concerned about the increasing number of parents raising "philosophical" or "personal" objections to vaccines. The solution, however, is not in CHILD's view to disallow those objections and allow religious ones. Such a policy, in our view, will intensify resentment and hostility to immunization programs. It sets up the Christian Scientists and some other

religious groups as privileged elites, while parents who would like to claim a "philosophical" exemption because of their fears of adverse reactions to vaccination are not allowed the exemption.

A far better policy would be to repeal religious and philosophical exemptions from immunizations and give all children the benefit of their protection. Furthermore, state legislatures should carefully consider the need for a vaccine before mandating it for all children. A mandated vaccine should prevent a disease that can be severe and either contagious or reasonably common in the unvaccinated population, such as tetanus.

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## **Pediatrician's recommendations on vaccine laws**

Kathryn Edwards, a professor of pediatrics at Vanderbilt University, has an article accompanying Feikin's (see above) about the attitudes of the public and policymakers toward vaccines.

She speculates on reasons that immunizations, one of the most outstanding accomplishments in public health, are under attack. They have made some diseases so rare that parents may think immunizations are no longer important. Also, accusations on the internet and in other media that vaccines cause disability and death have frightened parents. Finally, some parents resent the state forcing them to do anything with regard to their children.

### **Every vaccine should not be mandated**

With several new vaccines being recently developed and more on the horizon, Edwards recommends that legislatures mandate only vaccines that "protect against highly contagious diseases that cause significant morbidity and mortality and can be prevented."

"In general," she concludes, "the public has been very accepting of immunization laws because it believes that these laws have contributed to disease control in our country. . . . To maintain this confidence, it is necessary that states carefully consider



each licensed vaccine and use the criteria of severity, contagion, and effectiveness prior to mandating that vaccine for all children. Vaccines remain the most important strategy to prevent infectious diseases in children. We must use our mandates wisely."

Taken from Kathryn Edwards, "State mandates and childhood immunization," JAMA 284 (Dec. 27, 2000):3171-3.

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## Dwyer publishes law review article

Religious exemptions from child health laws are morally and legally wrong, CHILD honorary member James Dwyer argues in "Spiritual treatment exemptions to child medical neglect laws: what we outsiders should think," *Notre Dame Law Review* 76 (November 2000):147-177.

The state should make policy based on its own judgment as to the best interests of the children in faith-healing groups, Dwyer contends. While many feel that parents have "rights" to determine the interests of children, Dwyer views parents as "fiduciaries occupying a caretaking role as a matter of legal privilege."

Dwyer compares the legal status of children to that of never-competent adults. The latter are entitled to have decisions about their care based on their interests and not on the interests of their caretakers, and children should be also, he says.

Dwyer is an assistant professor at the Marshall-Wythe School of Law, College of William and Mary.

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## South Dakotans win Imogene Johnson awards

On September 30 CHILD presented child advocacy awards to two South Dakotans, John Timmer and Joni Cutler, who got a bill passed repealing five of South Dakota's religious exemption laws in 1990.

The Imogene T. Johnson Friend of Children awards are given to those who have succeeded in legislative work that gives children equal rights to

medical care. They were established in 1998 by CHILD board member Dr. Imogene Johnson of Jackson, Mississippi. Previous awards have honored those who helped win repeal of exemption laws in Massachusetts, Maryland, and Oregon.



*John Timmer*

## 5 End Time babies died in South Dakota

In the 1970s a group known as End Time Ministries moved to Sioux Falls, South Dakota. Led by the Reverend Charles Meade, who got his theology from the notorious Hobart Freeman of Faith Assembly, members refused medical care for illnesses and accidents. Babies were born at home attended only by unlicensed midwives, and five died.

One was the first child of Joni and Gary Cooke, an associate pastor. Libby was born premature and died in 1978 after four days of struggling to breathe. During most of that time Joni was too ill with toxemia to get out of bed.

At one point a relative suggested that Libby be taken to a hospital not for medicine but just for mechanical assistance in breathing. Joni timidly relayed that suggestion to her husband, who angrily said it was a threat to Libby's well-being. After





*Joni Clark Cutler*

Libby died, he did not tell Joni where her daughter was buried.

Joni and Gary had four more daughters who lived. But Joni saw other End Time children die, including two babies who died in her arms, and she finally left the church and her marriage.

In 1989 she began speaking publicly about her experience and the South Dakota laws that allowed parents to withhold medical care from children.

#### **Legislator offers to sponsor repeal bill**

State Representative John Timmer of Sioux Falls heard her speak at a service club and immediately promised to sponsor a bill to repeal the religious shield laws.

South Dakota legislators were then paid only \$4,000 a year, but Timmer spent scores of hours before the session even started lining up supporters

for the bill and meeting with relatives of the End Time members.

He also did a masterful job of shepherding the bill through the legislature. He knew when to push and when to stand back and listen. He could boil the issue down to simple terms—"Religion should be to help people," he testified.

Joni's testimony before the legislature and individual lobbying of legislators were a powerful impetus for the bill's passage, making South Dakota the first state in the nation to repeal religious exemptions from child health care laws.

She has also testified before the Minnesota House and Senate, which later improved their neglect laws substantially, though they did not repeal the religious exemptions outright.

As a single mother with four young daughters, Joni got a bachelor's degree in social work and a law degree. She is now a law professor in Sioux Falls and recently married Steve Cutler, the outgoing House majority leader.

At CHILD's award banquet in South Sioux City, Nebraska, Joni gave a moving talk about her life.

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"In their little worlds in which children have their existence, there is nothing so finely perceived and so finely felt, as injustice . . ."

Charles Dickens, *Great Expectations*

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#### **About CHILD Inc.**

CHILD is a national membership organization dedicated to preventing child abuse and neglect related to religion or cultural traditions.

For more information on CHILD and a membership application form, visit our web page at <http://www.childrenshealthcare.org>. To reach CHILD by mail, phone, fax, or e-mail, see the contact information on page 1.