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Maleta and Dewayne Schmidt
Credit: *Indiana Daily Journal*

Indiana faith healers sentenced in baby's death

Franklin, Indiana, parents who let their new-born die without medical care were sentenced for reckless homicide in August.

In 2003, baby Rhianna Rose Schmidt was born breech with the umbilical cord wrapped around her neck. She turned blue and stopped breathing three times before dying of puerperal sepsis, a common infection at birth. Parents Maleta and Dewayne Schmidt did not seek medical help for her because they belong to the Church of the Firstborn, which advocates relying only on faith and ritual for healing. Maleta had no prenatal care or medical attention for delivery.

Lance Hamner, the Johnson County Prosecuting Attorney, charged the Schmidts with reckless

homicide. At their trial in May, 2005, Maleta testified that Rhianna looked gray and lifeless at birth. Church elders were called to pray, and a relative gave mouth-to-mouth resuscitation. The baby started breathing 38 minutes after birth and was put in her mother's arms.

"I saw a dead baby given life," Maleta testified, "and that's when I rejoiced because I saw a miracle."

The next afternoon, however, Rhianna stopped breathing again and turned blue. The parents saw improvement minutes after the elders arrived and began to pray.

A few hours later, the baby turned color and stopped breathing a third time and, according to the Schmidts, was revived by prayer and became "the picture of health."

Later, she turned blue and gray, stopped breathing again, and died at thirty hours old of sepsis.

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Medical help never considered

Both parents testified they believe that God requires them to put complete trust in him. Maleta said, “We did what we thought was best for our child. That’s our responsibility as parents to make that decision.”

“I went to where I would get the result, and that was to God,” Dewayne said. “I put my faith in him for all decisions—all the ones that would affect my soul and afterlife.”

He told the grand jury they would not have gotten medical help for Rhianna no matter how sick she was. “Absolutely not,” he said. “At no point in time ever did it cross my mind, no matter how serious or minor it became, that was going to be our course of action. It was never an option for us.”

Not mom’s time to go

A few days after the baby died, a deputy coroner called the Schmidts and said the sepsis indicated that Maleta herself could die within days if she did not get medical treatment. She refused.

“I continued to trust in my God and that he would take care of me,” she said on the witness stand. “I’m here, so it wasn’t my time to go.”

Glasses and dental work like clothes

The consistency of the parents’ religious beliefs was an issue at trial. The father wears glasses, and Maleta used a home test to confirm her pregnancy. Prosecutors asked her if the test was a tool of science or faith; she finally admitted it was probably science.

On the stand, Dewayne claimed that his glasses were a mere aid for the body, not a cure or treatment. He compared wearing glasses, having dental work, and using crutches to wearing clothes in public.

He was asked if he believed God could heal poor eyesight, broken legs, and sick babies in a hospital. He answered repeatedly, “If it’s his will.”

Serious symptoms visible; illness treatable

At the trial, doctors testified that Rhianna had symptoms that would have alerted ordinary parents to a serious illness. They also testified that her

blood infection was routinely treated with antibiotics. One said she had treated 300 to 400 babies with puerperal sepsis and had never seen a full-term baby die of the illness.

Defense Attorney Carrie Miles argued that “both sides of this case are about faith whether we make a choice in the government’s faith in medicine or Dewayne and Maleta’s faith in God.” A guilty verdict would mean that freedom of religion exists only “as long as you agree with the state.”

Deputy Prosecutor Matt Solomon said, “Religious beliefs are not a free pass.”

The jury convicted the Schmidts of reckless homicide.

Each parent received a six-year sentence with four of those years suspended. They will serve the remaining time as staggered sentences in a work-release program during which they will live in a detention facility, but Dewayne will be allowed out to go to his job as a warranty and quality engineer.

As a condition of probation, the Schmidts were ordered to take first aid and CPR classes and to provide medical care for their surviving children if they were in a “life-threatening medical emergency.”

Medical emergency with previous birth

In 1999, Maleta lost consciousness during labor at home. An anonymous caller told the sheriff’s office that she might be dying. The police came to her home and found her unable to talk. They took her to a hospital where her first child was born a few hours later, three months premature and critically ill. Both survived after medical care.

Hamner told the press then that no criminal charges would be filed because Indiana criminal law does not protect an infant before birth, but the parents might be liable if they withheld medical care after birth.

The court appointed a volunteer guardian for the Schmidts’ two surviving children: the daughter born in a hospital where her unconscious mother had been taken by police and an infant son born after Rhianna’s death.

Persecution proves God’s favor

After the sentencing, Firstborn church elder Thomas Nation said the penalty fulfills Scripture,

which says God's people will be persecuted for their faith.

"It proves more that we are the people of God," he said. "It's happened through the years, and it still happens. It's not going to stop this faith."

Birth announcement

The Schmidts' love for their baby was undeniable. The mother prepared a birth announcement with the photo below of herself and her baby, tiny ink footprints, and this statement to Rhianna:

*You are more perfect than I could've hoped for,
More beautiful than I could've dreamed,
More precious than I could've imagined.
I love you more than I could've known.*



Rhianna and Maleta

Firstborn relatives let three children die

Maleta's sister is LaRonda Hamm, who has let three of her children die of treatable illnesses without medical care. Members of Church of the Firstborn, LaRonda and her husband are now in prison for violating their terms of probation. The Hamms' surviving children are in state-supervised foster care with their aunt, who is also a member of Church of the Firstborn, but has agreed to get them medical care.

Taken in part from the *Indianapolis Star*, May 11, 12, 13, 15, and Aug. 15, 2005, and *Indiana Daily Journal*, May 11, 12, and 13, 2005.

Midwife indicted in Firstborn death

In November, a grand jury in Morgan County, Indiana, indicted an unlicensed midwife in the death of an Indiana baby whose parents refuse medical care on religious grounds.

Sarah Leeman was born two months premature near Martinsville, Indiana, on May 28. She weighed less than three pounds. As members of the Morgantown Church of the Firstborn, her parents, Louis and Patricia, got no medical attention either before or after Sarah was born.

On June 4, Louis called 911 for help because Sarah was having trouble breathing. She was taken by ambulance to a hospital, but doctors could not resuscitate her. Medical records show that she had bacterial meningitis.

Church members called to home

The parents said they thought Sarah was healthy until they called 911. They had, however, called in church members to pray for Sarah the night before.

Church elder Tom Nation told the press that members came to the home "when it started having a little bit of problems. [sic] We prayed for it. The little thing had a bowel movement and everything settled down. [The parents] thought it was perfectly all right."

A detective, however, has said there were three or four adults in the home when the ambulance arrived, and Nation has admitted that one church member stayed in the home through the night.

The Leemans have three older children. They also had another baby die in July, 2002. A death certificate shows the baby was stillborn at their home. No autopsy was done.

Law protects parents in nearly all cases

The grand jury decided against indicting the parents. Morgan County Prosecutor Steve Sonnega said the grand jury did not find sufficient evidence to prove the Leemans were aware of the danger Sarah was in.

Sonnega also said that Indiana law allows a parent to rely on prayer instead of medical care and,

in nearly all cases, the parents cannot be charged with a crime.

Midwife indicted for unlicensed practice

The church midwife, Doris White, was, however, charged with practicing midwifery without a license. “She was responsible for delivering the baby,” said Sonnega. “She cut and tied the umbilical cord. She sterilized the baby and took away the afterbirth. She weighed the baby. [The parents] looked to her for wisdom and guidance.”

Indiana law requires that a person practicing midwifery meet educational requirements and be a nurse registered with the state Board of Nursing.

White, 72, expressed bewilderment at the charges. She said she had helped deliver more than a hundred babies for church members over thirty years. She agreed not to assist any more home births until the charges are resolved.

Five child deaths in one congregation

Besides the two Leeman babies, three other children in the Morgantown church are known to have died without medical care in recent years. Aspen Daniel died at 6 days old of dehydration and prematurity in November, 1998. Bradley Hamm, age 12, died of pneumonia in 1999. Rhianna Schmidt died of puerperal sepsis at thirty hours old in 2003.

Rhianna’s parents were convicted for her death in Johnson County. The other deaths have occurred in Morgan County.

Morgan County Prosecutor Steve Sonnega wants them to stop. “We try not to interfere with parents’ decisions about education, discipline, values—those are a parent’s rights,” he said. “But, when it comes to something as fundamental as human life, there’s got to be some boundaries.”

Do midwives have religious exemptions from medical practice regulation?

Every state has religious exemptions from the medical practice acts. Christian Science practitioners have the legal right to claim that they can heal all diseases, to give spiritual “treatments” for disease, and to send bills for their treatments without being licensed to practice medicine.

California has held that the exemption extends to midwives. Church of the Firstborn midwives who attended deliveries of two stillborn infants were charged with unlicensed practice of medicine, but the courts held that the exemption applied to “practices pursuant to a bona fide tenet of a religious faith” and that they therefore could not be charged with unlicensed medical practice. *Northrup v. Superior Court* (1987), 237 Cal. Rptr. 255.

Religious objectors liable only in death cases

Johnson County Prosecutor Lance Hamner says that Indiana law allows religious objectors to withhold medical care unless it will save the child’s life. If Rhianna Schmidt had been put in a coma or persistent vegetative state by her parents’ medical neglect, he could not have filed charges, he said.

The Morgan County Prosecutor Steve Sonnega seems to have the same understanding of the law. Under that framework, he would have had to prove that medical care would have saved the life of a baby born two months premature and with bacterial meningitis and furthermore that the parents recognized that baby Sarah’s life was at risk at a point in time when medical care would have saved her life.

CHILD: Repeal Indiana’s religious defenses

It is simply not right for the Leemans’ behavior to be legal. Their baby lived for a week after birth suffering the pain of fever and a swollen brain from meningitis and struggling to breathe through her tiny underdeveloped lungs. Her parents should have had a legal duty to take her to a doctor.

It is long past time for Indiana to repeal its defenses to criminal neglect and nonsupport for those who provide “treatment by spiritual means through prayer, in lieu of medical care” in “the legitimate practice” of their “religious belief.” Indiana Code 35-46-1-4(c)(2) and 35-46-1-5(c).

If those laws were repealed, then Christian Scientists, Church of the First Born members, and other devotees of faith healing would have the same obligation as everyone else not to “knowingly or intentionally” place a dependent “in a situation that endangers the dependent’s life or health” or “deprives the dependent of necessary support.” That is

not an unreasonable burden. Indeed, it is a necessary burden to insure the welfare of children.

Scores of children die, but Christian Scientists block efforts to protect at-risk children

In the early 1980s, Representative Robert Alderman, R-Fort Wayne, sponsored a bill repealing religious exemptions. Four times, Alderman got the bill passed in the House, but each time it died in a Senate committee after Christian Scientists flooded senators with mail and jammed hearings.

During that period, scores of Indiana children were dying because of the Faith Assembly's beliefs against medical care. In a tepid attempt to stop the carnage, lawmakers passed a law requiring everyone in the state to make a report to child protection services when s/he "has reason to believe that a child is a victim of child abuse or neglect." Ind. Code 31-33-5-1 Failure to report is a Class B misdemeanor.

The deaths of Sarah Leeman and Rhianna Schmidt show that the reporting law is not working.

Taken in part from *The Indianapolis Star*, June 8, 9, 12 and Nov. 16; *Indiana Daily Journal*, June 7; *Hoosier Times*, June 7; Indianapolis TV Channel 6, October 6; and *The Oregonian*, Nov. 30, 1998.

Large measles outbreak in Indiana church

In May and June, Indiana had 34 cases of measles linked to church members and their children who had religious exemptions from immunizations. They were the state's first measles cases since 2002.

The index patient (the one who started the epidemic) was an unimmunized youth who contracted measles during a mission trip to a Romanian orphanage. When she returned to the Upper Room Christian Fellowship, a non-denominational church in West Lafayette, Indiana, she unknowingly infected others.

Of the 34 cases, 33 were church members. The 34th case was a person who worked in the hospital where one member was admitted.

Three infected church members were hospitalized, two with dehydration and one with pneumonia, who required six days of ventilator support. Many of the non-hospitalized patients had complications such as diarrhea and ear infections. All patients recovered.

Estimated cost \$500,000

Containing the outbreak was a challenge for the Indiana, Ohio, and Illinois Health Departments. An Indiana public health official estimated the cost at \$500,000.

Measles is a highly infectious acute viral illness that can cause severe pneumonia, diarrhea, encephalitis, brain damage, mental retardation, and death. An estimated 30-40 million measles cases and 750,000 deaths from measles occur annually worldwide. A vaccine that became available in 1963 has greatly reduced the number of measles cases in the United States, but 48 states allow personal belief exemptions from vaccination.

2200% increase in measles risk

The *Mortality and Morbidity Weekly Report* for October 27, 2005, stated that persons with a religious or philosophical exemption from immunizations are about 22 times more likely to acquire measles than persons who are vaccinated. "Parents and persons who opt out of vaccination should be aware of the risk that this practice places upon their children and their community," the report continued.

The Upper Room Christian Fellowship closed its Sunday School, nursery, and other child care for two weeks, and its members voluntarily complied with quarantines to control the outbreak.

A church librarian, reached by telephone, denied that the outbreak had anything to do with church teaching against immunizations. She said the cases were among a few families with religious exemptions from immunizations, but "had nothing to do with the church."

Taken in part from an AP report on June 5.

Measles outbreak linked to religious exemptions costs Iowa taxpayers more than \$142,000

In the July issue of *Pediatrics*, Iowa public health officials and the Centers for Disease Control and Prevention (CDC) estimate the costs to Iowa public health infrastructure of containing a 2004 measles outbreak at \$142,452.

In “The Cost of Containing One Case of Measles: The Economic Impact on the Public Health Infrastructure—Iowa, 2004,” 116 *Pediatrics* (July 2005):e1-e4, Gustavo Dayan et al. report that “a total of 2525 hours of personnel time were expended to review flight manifests, contact exposed passengers, set up vaccination clinics, trace [more than] 1000 potentially exposed contacts, and institute and enforce quarantine orders for vaccination refusers. Two thousand twenty-five phone calls were received from the public, and 2243 miles were driven by staff.”

Students with religious exemptions cause outbreak

In 2004, 28 students from Maharishi University in Fairfield, Iowa, traveled together to India, where measles is endemic. A large percentage of the Maharishi students have religious exemptions from immunizations. Six students who had not received even one dose of measles vaccine all contracted measles in India. The Iowa Department of Public Health (IDPH) recommended that the students with measles stay in India during their infectious period and their non-immune contacts stay until their potential incubation period ended.

Nevertheless, one exposed unvaccinated student returned to Iowa earlier than requested. During his travel, involving connections in two busy airports, he developed a cough and conjunctivitis. Shortly after arrival in Iowa, he developed a rash and saw a physician who reported the case to the

IDPH, and measles was subsequently laboratory-confirmed.

The student spread measles to another Maharishi student and an Iowa City high school student who sat next to the infected college student on an airplane and contracted measles even though he had been vaccinated.

Dr. Patricia Quinlisk, IDPH medical director and state epidemiologist, had seen a widespread measles outbreak among religious objectors in Oklahoma. She knew massive effort would be needed to stop another one. IDPH managed to contain the outbreak in Iowa to those three cases.

41% of students not fully vaccinated

In the Maharishi community, only 59% of the students attending one primary/secondary school were fully vaccinated; 41% had either religious or medical exemptions from immunization or provisional certificates. In their county as a whole, 8% of the K-12 students have religious exemptions.

One of the measles patients had traveled during the infectious period with 60 other children from the Maharishis' school to a neighboring town where more than 1,000 children were present for a competition.

Some refused vaccination during the outbreak and law enforcement was called in to enforce a quarantine.

Many other costs not figured

The authors of the *Pediatrics* article did not calculate the costs to schools, which were asked to review students' immunization records, nor to law enforcement. They also did not evaluate private-sector costs (e.g., physicians and hospitals increasing disease surveillance and vaccination activity), indirect costs (e.g., impact on other public health programs in Iowa by diversion of resources into measles containment), or any costs outside Iowa (e.g., other states contacting exposed passengers and setting up vaccination clinics, quarantine stations, airlines providing manifests and interacting with health authorities, and CDC staff time).

North Carolina sees high costs of religious exemptions

Like Iowa, North Carolina had a costly measles outbreak linked to religious exemptions from immunizations in 2004. After returning from the United Kingdom to North Carolina, an 11-year-old girl developed a cough, congestion, fever, and then a rash three days later. She had not received any doses of measles vaccine because she had a religious exemption from immunizations.

Infectious baby had contact with hundreds in 5 countries and 5 states

One day before her rash onset, she had contact with a baby who was too young to be vaccinated. The baby subsequently developed measles, but two days before his rash onset, he was taken to a summer camp where he potentially had contact with up to 234 persons, including campers, parents, and staff. Several campers returned home at the end of the camp session, the day after the exposure.

Public health officials conducted investigation and control efforts in several states and countries. Potentially infected persons traveled to Arizona, Arkansas, Florida, New York, Australia, Costa Rica, New Zealand, South Africa, and Wales.

No more cases of measles were found.

Infectious at least 4 days before rash

Measles can be infectious from at least four days before and four days after rash onset. This disease can be spread to hundreds of people before a person or his parent knows that he has measles. Because measles is so highly contagious and can cause death and disability, public health departments usually do “contact tracing,” which involves tracking everyone who had contact with an infected person and asking for blood tests to determine whether each person became infected.

Taken from “Preventable measles among U.S. residents 2001-2004,” *Mortality and Morbidity Weekly Report* Aug. 26, 2005.

High rates of tetanus among children with religious or philosophical exemptions from immunizations were reported in *Pediatrics* in 2002.

In “Philosophic objection to vaccination as a risk for tetanus among children younger than 15 years,” Elizabeth Fair and others reviewed all cases of tetanus in children under 15 years old that were reported to the National Notifiable Diseases Surveillance System from 1992 to 2000.

Belief exemptions tied to 12 of 15 cases

Of the fifteen cases, eleven were children who were not vaccinated for religious or philosophical reasons, and a 12th was an infant born to a woman who had refused vaccination on grounds of her personal belief. The baby contracted tetanus after she put “healing clay” on his umbilical stump.

In the three remaining cases, the children’s immunity from vaccination may have waned. Two had been vaccinated against tetanus eight and twelve years earlier respectively. The third child had tetanus at seven days old and was too young to be vaccinated. His mother had received the tetanus vaccine eighteen years earlier. Booster shots against tetanus every ten years are recommended.

All three children had milder forms of tetanus than the twelve children conferred by tetanus vaccination.

Six of the twelve were Amish children. One was associated with the Assembly of Yahweh. Another was unvaccinated because of parental belief in “holistic medicine.” The other four were unvaccinated because of philosophical objections or religious beliefs not tied to a denomination.

Long, expensive hospitalizations

The twelve without vaccine-conferred immunity spent an average of 25 days in the hospital. Eight required mechanical ventilation. One spent 60 days in the hospital with complications of a perforated colon.

Fair misses another case reported elsewhere, that of a 12-year-old Amish boy in Pennsylvania who contracted tetanus in 1997. His medical bills

Tetanus among religious objectors

were \$600,000. The Amish community refused to apply for Medicaid because of their religious opposition to accepting government assistance and were able to pay only \$60,000 of the bill. See <http://PedsCCM.wustl.edu/RARE/Tetanus.html>, “Tetanus: complications and management in a pediatric intensive care unit.”

No natural or herd immunity

Some religious and philosophical objectors think that letting children acquire “natural” immunity to diseases is better than vaccination. There is, however, no way to acquire either natural immunity or “herd immunity” from tetanus. The disease is not contagious, but tetanus bacteria are everywhere in the natural environment. The Amish children, who spend a lot of their time outside doing farmwork, are at special risk.

Taken in part from Elizabeth Fair, Trudy Murphy, et al., “Philosophic objection to vaccination as a risk for tetanus among children younger than 15 years,” 109 *Pediatrics* (Jan. 2002):e1-3.

Five Amish children found with polio

This fall five cases of polio have been found among unvaccinated Amish children near Clarissa, Minnesota.

The index patient was a baby who had been hospitalized. She has an immune deficiency that makes her body unable to get rid of the polio virus. *The New York Times* called her “a wellspring for polio, a modern-day Typhoid Mary,” who can pass the virus to any unvaccinated person.

The children do not have symptoms of paralytic polio, but the immune-deficient baby may nurse her mutating virus for years and it could change to a paralytic form.

Long-term risks posed by “Typhoid Mary” baby

Polio experts have long feared that an immune-deficient person could become a “chronic excreter” of polio virus and cause an outbreak of paralytic polio especially in poor countries.

The Amish baby’s “message in a bottle [has] just washed up on shore,” said a World Health Organization official.

It is a “random unlucky event” for an immune-deficient baby to be born among a largely unvaccinated population like the Amish, said Dr. Henry Hull, the Minnesota state epidemiologist. “It’s a model of what might happen if we stop vaccinating too soon.”

Amish also had polio outbreak in 1979

Once crippling and killing thousands, polio had been wiped out of the Western Hemisphere by vaccination. The United States’s last naturally occurring cases of polio were also among the Amish and happened in 1979. Ten Amish in four states were paralyzed, three suffered temporary paralysis, and two had polio without paralytic symptoms, according to the Centers for Disease Control and Prevention. The outbreak lasted about six months, and many cases probably went undetected, a CDC official said.

Health officials certified the Western Hemisphere as polio-free in 1994.

Monitoring outbreak difficult

After talking to local Amish leaders, Hull decided that calling a community meeting would put too much social pressure on this tight-knit group. Instead, Hull and his staff have gone from house to house to ask the Amish for stool specimens and to recommend vaccinations. Since the Amish have no phones, health officials cannot call for appointments. They were warned not to speak to Amish women without their husbands present, and the Amish men were generally busy with farm work and construction.

Health officials had to come back many times to some homes. After weeks of effort, just five of 24 families in the Amish community agreed to give specimens. Three of the five families were found to have infected children.

Another challenge for public health officials is that the virus may have spread far beyond one farming community. Families from the baby girl’s Amish community recently attended a wedding in Ontario, Canada, with more than 1,000 guests. The

Amish do not have cars, but they do ride on public transportation.

Why Amish vaccination rates are low

One Amish farmer told the press that nothing in Amish law forbids vaccinations, but that many Amish believe that vaccines weaken the immune system. Others believe health and disease should be left up to God's will.

"We'll get vaccinated if we feel it's necessary," said the farmer, "but our definition of necessary may be very different from yours."

Taken in part from the *St. Paul Pioneer Press*, Oct. 14, and *New York Times*, Nov. 8.

Polio can be eradicated

The first disease to be completely eliminated from the world was the ancient scourge of smallpox. Polio could be the second. The World Health Organization had a goal to eradicate polio by 2005, and the goal seemed very achievable two years ago.

Tragically, its vaccination program had to be halted for ten months in Nigeria's northern provinces. Muslim clerics of the Sharia Supreme Council charged that Western powers had put agents causing infertility and AIDS into the vaccine in order to depopulate the Islamic world.

Muslim clerics halt vaccination; hundreds of children paralyzed

Outbreaks of polio spread to ten African nations that had previously been declared polio-free. Nigeria had the most polio cases in the world; 257 Nigerian children became paralyzed by polio in the first six months of 2004.

After tests of the vaccine, the clerics allowed vaccination to resume. By then, however, the virus had spread from West Africa to Saudi Arabia, Yemen, and even Indonesia.

Yemen and Indonesia had been free of polio for ten years, but since March, 2004, 300 Indonesian children have been crippled by polio and 60,000 infected with it.

Suspicion of American motives, fomented by Muslim clerics, was the catalyst for the disastrous

outbreaks of the past two years, but other factors operated as well. Many citizens in dictatorships don't trust what their governments say. The disappearance of polio for years seemed to give people the luxury of complacency. Several doses of polio vaccines, given months apart, are needed to confer protection. Measles, malaria, river blindness, roads, food, and clean drinking water were more real, urgent problems.

How to maximize program effectiveness

Rotary International deserves enormous credit for its work in the developing world and the hundreds of millions of dollars it has raised to combat polio. But vaccination rates go higher when governments and charities make primary health care available and have immunizations as a part of that rather than having Western organizations come in just for a campaign against polio and then leave.

Taken in part from an NPR report Nov. 1, 2005, and BBC reports Dec. 12, 2003, and June 30, 2004.

Big increase of vaccine exemptions in Arkansas

In two years, the number of Arkansas school-children with personal belief exemptions from immunizations has nearly doubled from 651 in 2002-2003 to 1,197 in the 2004-2005 school year.

Fifty percent of the children with belief exemptions are clustered in six northwest Arkansas counties, further increasing the chance of an outbreak.

Religious exemption ruled unconstitutional

The increase is related to a chain of events begun by Dan McCarthy and other plaintiffs, who filed suit in federal court charging that Arkansas' religious exemption law was unconstitutional because it granted the exemption only to members of recognized churches and therefore discriminated against his personal religious beliefs. In 2002, a federal court did strike down the state's religious exemption law as a violation of the Establishment

Clause. See *McCarthy v. Boozman*, U.S. Dist. Ct., W.D. Ark., 212 F. Supp. 2d 945 (Ark. 2002).

New law allows philosophical exemptions

The Arkansas Health Department advised the legislators that a new exemption would have to include all personal beliefs against immunization to be constitutional, and in 2003, the state enacted a law giving all children an exemption from immunizations if their parents' "religious or philosophical beliefs" conflicted with immunization. Arkansas is one of seventeen states allowing philosophical exemptions.

CHILD argued for leaving the state with only medical exemptions from immunization as it became, briefly, after the federal court ruling. Arkansas policymakers, however, felt that the best solution was to put the vaccine objectors to some trouble by requiring them to reapply each year for the exemption in a written notarized statement.

Some Arkansas health officials said they were "not too concerned about the initial rise" in belief exemptions. Dr. Sandra Snow, medical director of the state immunization program, said, however, "We will see an outbreak. Can you imagine if somebody flies in from another country and brings a case of measles?"

Taken from the Ark. News Bureau, Aug. 7, 2005.

Religion professor argues for repeal of religious exemptions from child health care laws

In "The death of children by faith-based medical neglect," 20 *Journal of Law and Religion* 2004-2005:247-65, Richard Hughes explores aspects of the issue bearing upon theology, law, medicine, and culture. Hughes is a Professor of Religion at Lycoming College in Williamsport, Pennsylvania, and an ordained Methodist minister.

Hughes explains the theology of Rev. Hobart Freeman, who founded Faith Assembly. More than sixty Faith Assembly children died without medical care between 1975 and 1990.

He describes challenges faced by prosecutors in faith-deaths of children and proposes restorative justice be considered in sentencing their parents.

Why religious exemptions are wrong

In his conclusion, he calls for removal of religious exemptions from a duty to care for children. He complains that the laws "are neither uniform nor consistently located in the same statutes," have contributed to the deaths of many children, and frequently are worded as a privilege for Christian Scientists, thus violating the Establishment Clause of the Constitution.

Parents' fundamental imperative: do everything possible to save children's lives

He criticizes faith-healing sects for their "literalism, atomistic presentation of facts, de-emphasis of personal responsibility, and lack of a social dimension." He promotes "a relational model of law:"

[This model] emphasizes a common ground of morality, with some deference to human nature, including an understanding of conscience, and focuses on achieving the purpose, rather than the letter, of the law. Fundamental purposes for the law include the care of children, the sanctity of life, and conferral upon parents of a critical human duty, namely, "to accept responsibility for the basic well-being of the Other." [Michael Perry, *Love and Power*, Oxford Univ. Press 1991] This responsibility imposes upon parents an equally fundamental imperative, namely, that they must do everything possible to save the lives of their children, exhausting all methods and excluding none. This duty to care is more compelling than a subjective right of religious liberty.

Dr. Hughes also discusses legal duties of religious objector parents in his book *The Judge and the Faith Healer* published by University Press of America in Lanham, Maryland, in 1987.

We are proud to acknowledge that Dr. Hughes is a CHILD member.

CHILD consultant publishes encyclopedia article

Dr. Seth Asser, a pediatrician in Providence, Rhode Island, and CHILD's medical consultant, has published an article entitled "Religious exception defense" in the *Encyclopedia of Forensic and Legal Medicine* published in London by Elsevier Academic Press.

Law prof: religious exemptions must not violate public good

A recent book by Cardozo law school professor Marci Hamilton makes a passionate case for equal protection of the law from harms related to religious practice.

In *God vs. the Gavel: Religion and the Rule of Law* (NY: Cambridge University Press, 2005), she traces the history of church-state relationships from 12th century England to modern America. She sees the evolution of a "no harm rule" and decline of special privilege for religious institutions and actors.

She argues that, between 1963 and 1990, the U.S. Supreme Court departed from those concepts and ruled in five cases that the Constitution mandated exemptions from neutral and generally applicable laws if they interfered with religious practice.

High school not required for Amish children

The only one of those cases that related to children was *Wisconsin v. Yoder*, 406 U.S. 205 (1972), in which the Supreme Court gave the Amish a First Amendment right to remove their children from school after eighth grade. The Court held that the Amish had a training program for their teenagers that prepared them for the Amish way of life better than public high school would and that the very survival of the Amish religion and culture was threatened by forcing their children to attend high school and get exposure to an academic curriculum.

The High Court said removing the Amish children from school after eighth grade would cause no harm to the "physical or mental health of the

child or to public safety, peace, order, or welfare." It also pointed out that the Amish do not accept public assistance so their members do not become a burden upon the state.

Decrying the Court's "romantic, rose-colored depiction of Amish life," Hamilton calls *Yoder* the worst First Amendment ruling in U.S. history for its "assumption that parental rights automatically trump any question about the children's needs" and that all Amish young people will want to live in the Amish community forever.



Marci Hamilton

No constitutional right to religious exemption from neutral laws

Hamilton hangs her hat on the U.S. Supreme Court's ruling in *Employment Division v. Smith*, 494 U.S. 872 (1990), which she sees as returning to traditional church-state jurisprudence. In *Smith*, the Court held that there was no constitutional right to a religious exemption from a neutral and generally

applicable law and suggested that religious groups seek exemptions from legislatures instead of the courts.

The *Smith* ruling set off alarm bells for many religious leaders, who believed that they should have a First Amendment right to an exemption from all laws unless the state could demonstrate a compelling state interest for the law and that it was using the means least burdensome upon religious practice to achieve its interest.

The religious leaders believed that *Smith* struck down a right they had long had. Hamilton claims that it returned church-state jurisprudence to what it had been a century or more before 1963. She does admit, though, that the Court should have acknowledged real differences in its rulings over the years and offered more explanation.

Instead, one justice in *Smith* said in a dictum that the difference from *Yoder* was that *Yoder* involved “hybrid rights,” but the U.S. Supreme Court has never given status to hybrid rights in its rulings.

Hamilton cuts a broad swath through harms to children from religion-based medical neglect and physical abuse. She complains that the Catholic church still expects to be exempt from the rules of civil discovery and child abuse reporting laws even after the huge proportions of its child sex abuse scandal. She also has an interesting discussion on whether states should have the right to outlaw polygamy and same-sex marriage.

Exemptions must be consistent with public good

Again following the *Smith* decision, Hamilton believes legislatures, rather than courts, should make decisions to require religious exemptions from neutral laws. This idea will strike terror in the hearts of many CHILD members, who have to wonder how much time Hamilton has spent watching the legislative process. Hamilton does say, however, that all religious exemptions must be debated under the “harsh glare” of public scrutiny, not railroaded through with minimal debate, and that all exemptions must be consistent with the “public good,” which does, of course, include the welfare of children.

The Christian Science Monitor refused to accept a paid advertisement for the book.

Hamilton holds a master’s degree in creative writing as well as a law degree. Her book will engage the general reader both in its style and rhetoric.

Massachusetts Supreme Court honors CHILD board member



Mark Berson

In June, CHILD board member Mark Berson, an attorney in Greenfield, Massachusetts, was awarded the 2005 John Adams Pro Bono Publico Award by the Massachusetts Supreme Judicial Court.

Mark is a founder of Tapestry Health, which provides affordable contraceptive and reproductive health care to 50,000 people a year, 98% of whom have incomes below 200% of

poverty. Other programs of Tapestry include HIV/AIDS prevention and treatment services, a woman and infant feeding program, and a school for teen mothers enabling them to get their GED. Mark provided pro bono services of between 20-50 hours a month for 30 years to Tapestry Health.

He has also been the director of the Franklin County Bar Advocates for Children.

About CHILD Inc.

CHILD is a national membership organization dedicated to the welfare of children, particularly when religious beliefs or cultural traditions lead to

child abuse or neglect. CHILD provides research, public education, amicus briefs, and a support group for ex-Christian Scientists. CHILD lobbies for equal protection of children within its tax-exempt limits. CHILD is a member of the National Child Abuse Coalition.

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