

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

Box 2604 Sioux City, Iowa 51106 Phone 712-948-3295

## LETTER FROM THE EDITOR

Our summer issue is late and after you read it, you will know why--our news is pretty gloomy. The Christian Science church has defeated all legislative efforts to improve the legal status of children in faith-healing sects and has also gotten some new tightrope dancing from the U. S. Department of Health and Human Services.

This issue chronicles two defeats in state legislatures this year. We will save HHS and the other states for the fall issue. This issue also has our big piece of good news, an AMA resolution to oppose religious immunity laws.

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## DEFEAT IN INDIANA

As reported in our spring issue, Representative Bob Alderman, R-Ft. Wayne, made a second try to establish a duty of parents to provide medical care for sick children. He attempted to amend Indiana's child endangerment statute to include such a duty. His bill was killed in committee by the chairman, Rep. Richard Bray, R-Martinsville, who refused to give it a hearing.

Then Alderman added his bill as an amendment to Senate Bill 303. The House approved it by voice vote, but the Senate conferees who subsequently considered the amendment defeated it. Senator Leslie Duvall, R-Indianapolis, was again an extremely powerful force against the bill.

Christian Science church lobbyist John Dickson Martin attended the meetings on the bill and communicated the church's opposition to legislators.

## Recent Faith Assembly Convictions

The prospects for legislative reform have been somewhat complicated by recent prosecutions of Faith Assembly parents in Indiana. Four sets of these parents have now been convicted for the deaths of their children, and charges are pending in two other cases.

These convictions have blunted some of the public outrage and the incentive for legislative reform. But over a dozen Faith Assembly children died in Kosciusko County while Prosecutor Michael Miner repeatedly said that Indiana's religious immunity laws and the Constitution protected the parents' behavior. Not until prosecutors in Noble and Whitley Counties filed charges and won convictions did Miner take action.

## The Current Indiana Law

Indiana law states: "It is a defense that the accused person in the legitimate practice of his religious belief provided treatment by spiritual means through prayer in lieu of medical care to his dependent." The prosecutors argued that denying a child lifesaving medical care was not legitimate religious practice and therefore the law did not protect the defendants' behavior. But even after winning convictions, Noble and Whitley County prosecutors have called the law "troublesome" and continued to call for the legislature to change it.

CHILD, Inc. agrees that denying a child lifesaving medical care is indeed not legitimate religious practice. We also believe that the best solution is for the Indiana law to be repealed or stricken as unconstitutional. At present, the Indiana convictions leave us with a sophisticated interpretation that denying your child medical care is legitimate religious practice as long as nothing bad happens to your child because of it. Should parents be expected to know that was the meaning of such a law?

## Church Lobbying Tactics Shift

At any rate, the convictions and the death of Faith Assembly founder Hobart Freeman have somewhat dampened public outrage over Faith Assembly, and the Christian Science forces have changed their strategy accordingly. Last year the church told the press something had to be done to protect the children and declared its neutrality on Alderman's bill while its old friend Senator Duvall blocked the bill. This year the church openly opposed Alderman's bill. Last year Senator Duvall fought reform because it infringed on religious rights of parents. This year he claimed that the convictions showed reform was unnecessary.

## Representative Alderman Continues Effort

Alderman is not giving up. He is determined that Indiana's laws should uphold a child's right to live and intends to try again next year. In fact, he says he "likes" legislative projects that take several years to accomplish. He is a highly respected veteran of political controversies. He got 33,000 letters about ERA, and mostly from those opposed to it. He nevertheless voted for ERA in Indiana and has continued to be reelected by huge majorities. He also pointed out that the Christian Science church asked him to put a religious exemption into an adult protective services bill he introduced this year; he declined; the church fought for an exemption every step of the way and lost.

## LATEST FAITH ASSEMBLY PROSECUTIONS IN INDIANA

James and Ione Menne of rural Warsaw were convicted June 12th for letting their 15-year-old daughter Pamela die without medical care. Mr. Menne was convicted of criminal recklessness and reckless homicide. His wife was convicted only of the former. Both were acquitted of child neglect, perhaps because Indiana's religious immunity law provides an ambiguous defense to neglect charges.

### Minor's Age a Factor

Pamela's age was a critical issue, for testimony indicated that faith healing was her personal choice, even after suffering seizures and being urged by her older brother to get medical care.

Pamela had not seen a doctor in nine years and had been schooled at home for four years. Her father said she had been sick for about two months with fainting spells (seizures), swollen face and stomach, and coughing. The coroner ruled that she died of preventable kidney failure, though at trial the defense contended that the state's witnesses could not say what type of disease caused her kidney failure, whether the disease was treatable, or what treatment should have been prescribed. (This has been a problem in autopsies on some Christian Science children also.)

Like previous Indiana prosecutors, Prosecutor Michael Miner argued that denying a child lifesaving medical care was not legitimate religious practice. He called her rejection of medicine a mere "regurgitation" of her parents' beliefs and said a parent cannot allow a child to make a decision to die.

### Medical Care for Surviving Children Ordered

At their July 25th sentencing, the Mennes were ordered to pay court costs and a fine of \$250., given suspended sentences and probation, and ordered to get biannual medical examinations for their surviving children, have them immunized, and let health officials examine their children at any reasonable hour. The Mennes have not announced an intention to appeal.

Mrs. Menne has seen a doctor several times for herself since Pamela's death and also used her lawyer, in contrast to her husband and other Faith Assembly defendants.

## Winkelman Trial for Infant's Death

Three-week-old Joel Winkelman died of pneumonia near Huntington, Indiana, on April 21st after a five-day illness. His parents, David Winkelman, 49, and Joy, 46, have belonged to Faith Assembly for more than ten years.

At their trial on July 25, they acted like the most obdurate and mechanical of Faith Assembly believers. They dismissed even their court-appointed "standby counsel" as he sat in the audience. The wife said virtually nothing. They presented no evidence and called no witnesses.

"We do believe in physicians. We believe the best physician is Jesus. We allow the Lord to have control over our lives," said the father.

### Daughter Leaves Faith Assembly

But their 17-year-old daughter Jody has broken with a lifetime of indoctrination in Faith Assembly. She called authorities to the home when her brother died and testified against her parents at trial. She is eight months pregnant and unmarried. When Prosecutor John Branham asked if she is going to get medical care for her own child, she replied quietly, "I sure am."

### Convicted of Felony Child Neglect

The grand jury had declined to charge the parents with reckless homicide, so the trial court jury convicted them only of felony child neglect. Thus, theirs is the first Indiana conviction to rest exclusively on the section of the criminal code containing the religious immunity law.

To protect the appellate record, Prosecutor John Branham pointed out that the Winkelmans offered no evidence of prayer for their son (since they presented no evidence at all). Thus, even if the higher court rules that "spiritual means through prayer" is legal health care for children with life-threatening illnesses, the Winkelmans should be deprived of this defense. It is unlikely, though, that people with such strong religious beliefs against lawyers will appeal their convictions.

### Yet Two More Cases

In other Faith Assembly cases, Elkhart County decided not to file charges in the death of Josiah Milligan on February 18. He weighed over 9 pounds and was born to his 46-year-old mother without medical attention or prenatal care. The parents called a funeral home three hours after the birth, but said he was born dead. The prosecutor said the baby was not a person under Indiana criminal law.

A trial date has still not been set for Barbara Irwin of Warsaw. She is charged with child neglect, reckless homicide, and criminal recklessness in the November 21st death of her 5 week old son, Joseph, to pneumonia.



AMA VOTES TO OPPOSE RELIGIOUS EXEMPTIONS  
FROM HEALTH CARE

At their annual convention in June, 1985, the American Medical Association's House of Delegates passed the following resolution:

Whereas, Child abuse or neglect includes failure to provide medical care, regardless of the religious beliefs of the parent(s) or others responsible for the child; and

Whereas, The responsibility to report or prosecute cases of failure to provide medical care to a child should not vary with the religious beliefs of parents; and

Whereas, Some religions and cults rely exclusively on prayer and/or faith healing for treatment of disease; and

Whereas, Many states have passed "religious immunity" laws, which exempt from the requirement that failure to provide medical care to sick children be reported or prosecuted those cases where the parents' religious beliefs preclude medical treatment; and

Whereas, A religious exemption provision was nearly included in the recently passed National Child Abuse Prevention and Treatment Act, but was withdrawn after vigorous lobbying in Congress by the American Academy of Pediatrics and the American Medical Association; therefore be it

RESOLVED, That the American Medical Association examine all state statutes pertaining to child abuse and neglect for "religious immunity" clauses and encourage state medical associations to seek to expunge such clauses where present; and be it further

RESOLVED, That the AMA encourage physicians to continue to advocate that no exception be made to child abuse and neglect laws and regulations, at any level of government, which would permit failure to provide medical care to a child not to be reported or prosecuted on the basis that the parents' religious beliefs preclude medical treatment.

The resolution was prepared by CHILD, Inc.'s old and wonderful friend, the American Academy of Pediatrics.

UPDATE ON UPDATE

The June, 1985, issue of Update carries a response by Stig Christiansen, Christian Science Committee on Publication for Denmark, to my New England Journal of Medicine article, published in an earlier issue of Update, and my response to his response.

The same issue also has articles on Rajneesh, a Hindi nationalist group, "Life in the Children of God" by Deborah Davis, and "The Evaluation of Spiritual and Utopian Groups" by Dr. Arthur Deikman.

A copy will be sent airmail for \$4.00. It can be ordered from The Dialog Center, Katrinebjergvej 46, DK-8200 Aarhus N, Denmark.

"Thank You AMA"

I hope that some of our readers will take a moment or two to thank the AMA for its decision. I believe that not since the turn of the century has the AMA opposed the Christian Science church's lobbying. That battle was over the church practitioners' right to practice their "system of medicine." The church won with rhetoric about the value of free competition and unhampered experimentation, the right of patients to their choice of physicians as well as religious freedom. In a pivotal court victory, a judge declared, "I deny the power of the Legislature to make it a crime to treat disease by prayer." (People v. Cole 219 N.Y. 98, 113 N.E. 790, 1916) A few years later the church had religious exemptions from medical practice regulations in every state.

Since then medical organizations have been reluctant to get involved (from my observation). Physicians have given me several reasons for their reluctance. Religions become more fanatical if opposed. Christian Science will die out faster if it is ignored, some have said. We're all working more than forty hours a week for patients who want us; why should we compel "weird" people to come to us? We don't want to look like the big guy against the little guy, others have said.

These arguments have some merit, but I am naturally far happier, indeed elated, with the AMA's resolution. And I believe the AMA will win some victories for its efforts.

Prayer Alone is Not Legal Healthcare

We need to emphasize that nobody is trying to make prayer treatment a crime. But when parents and their counsellors deny a child lifesaving medical care, that is or should be a crime. The First Amendment may guarantee faith healers free exercise rights to practice their belief system, but it does not make spiritual "treatment" legal health care for children.

The Christian Science church does not look like a romantic little David out against Goliath today. It reports more than \$170 million in liquid assets and almost never reports spending any money on secular charity. It has a salaried lobbyist in every state, and all the branch churches must appoint assistants for the lobbyists. It probably has the largest legal staff of any church in this country.

Like the AMA's opposition to boxing and smoking, its resolution to oppose religious immunity laws shows a social conscience that I think the public respects and appreciates.

## DEFEAT IN OHIO

I have been writing letters to build support for reform of Ohio's laws since June, 1982. Several Ohio residents have also worked for years. Because of Judge Evans' ruling in Coshocton, Ohio, last summer, the Ohio ACLU's challenge to the laws, and other factors, a broad variety of distinguished organizations and individuals mounted the strongest effort for reform of religious immunity laws that has ever taken place.

As reported in our winter issue, Ohio Representative Paul Jones, D-Ravenna, became committed to reform after reading about several faith-deaths of children in the Akron Beacon-Journal. After a massive letter-writing campaign from Christian Scientists derailed his first effort in December, Jones introduced his own bill this year.

### The Proposed New Ohio Law

Numbered HB67 and drafted after many meetings with Christian Science lobbyists, it attempted to counter the church's ostensible concern that we want the police to arrest every Christian Science parent whose child gets a nose-bleed. Basically, the bill restated the freedom to practice rights in current Ohio religious immunity laws, but added disclaimers that religious immunity did not apply in cases where the child suffered "serious physical harm" because of religiously-based medical neglect.

But the church opposed the bill. Francine Panehal, D-Cleveland and Chair of the Children and Youth Committee, appointed a subcommittee to study the bill and instructed them to reach a compromise with the Christian Science church. Jane Campbell, a freshman Democrat from Cleveland, was appointed chair of the subcommittee. Other members were Jones and Marc Guthrie, D-Newark and Republican members Jeffrey Jacobs and Marie Tansey, both from the Cleveland area.

The subcommittee scheduled ten hours each for proponent and opponent testimony on HB67 over three weeks' time and still another week for mop-up testimony on either side of the fence. Jones's staff worked tremendously hard to gather the most credible and varied proponent testimony.

### Christian Scientists Pack Hearings

I came by train to testify on March 14th for the bill. I got to the hearing room twenty minutes early and found every seat taken. I managed to squeeze in among the many people standing at the back. I was amazed to see over 150 people at the hearing. Many wore red, white, and blue ribbons and had "Cleveland" or names of Cleveland suburbs written on them. I scanned the room for a friend to no avail. Leaving my briefcase in the crowd to save space for my feet, I went up the aisle a few rows. Elderly women were placidly reading packets about the Christian Science Monitor. That was the wrong section for "our side," so I hastily returned to my briefcase. Then a

man in a wheelchair tried to get in among the crowd. I felt the resentment of the people around me. They didn't want to give up an inch of their space and they were threatened by a physical handicap. Then I realized that the entire hearing room was filled with Christian Scientists.

### Proponents' Testify

First to testify was a sheriff's deputy from Mercer County who told of the reports they had received about sick Faith Assembly children, their frustrated attempts to help, and the deaths of the children.

Next to testify was CHILD member Naomi Twining of Toledo. Naomi is also on the Ohio ACLU Board and chairs its Church-State Committee. For months Naomi had gathered signatures on petitions to repeal Ohio's religious immunity laws. She told of her shock at the callous disregard of children in Ohio's laws and presented 176 signatures on petitions calling for their repeal.

Representative Jones had invited me to give expert testimony on behalf of the need for change in the existing law. [Thus my response, as president of CHILD, is not considered lobbying.] My testimony was structured as a response to a February 11th memo from the Christian Science church to the Children and Youth Committee. Excerpts from it follow this article.

Coshocton Judge Richard Evans testified. Those laws "seem to leap out at you" as glaringly unconstitutional, he said. Dr. Ann Rogers testified on behalf of the Ohio Chapter of the American Academy of Pediatrics about the necessity of antibiotics for treatment of infectious disease. Both Evans and Rogers pointed out that they weren't able to get in the room to hear my testimony. I remember seeing well-dressed WTVN reporter Carol Rapp crawl in on her hands and knees while I spoke.

Also testifying for the Academy was Rosalyn Bandman, Director of the Social Service Department of Children's Hospital in Columbus. She cited several endangerments of children because of religious belief that she had seen, including one Christian Science case that was new to me.

A CHILD member Paul Michener of Waynesville (who along with his wife Jane had gathered scores of signatures for Naomi Twining's petition) testified next. At age nine, his left leg was burned in a gasoline fire. He was bedridden for about two years and walked on crutches for another two and a half years. School truancy officials came to inquire, but his Christian Science mother always discouraged them from pursuing the case. His knee grew stiff and the pain was excruciating. He was fifteen years old before the injury had closed with scar tissue. Today he walks with a four-inch limp, a curved spine and recurring pain. He has had surgery several times "trying to patch up the damage done by this insidious philosophy."



## Ohio ACLU Director

Benson Wolman, Executive Director of Ohio ACLU, testified next. He discussed the Constitutional issues and also commented on the Christian Science church's latest proposal: that the legislature enact into law a definition of a "well-recognized religion" as one with accredited practitioners or clergy, "who provide spiritual treatment through prayer alone and whose charges for such treatment qualify as deductible medical expenses on individual federal income tax returns, and are reimbursable pursuant to the terms of sickness and accident insurance policies issued by several large insurance companies authorized to do business in this state."

Wolman pointed out that such a law would be "an unconstitutional delegation of authority," for the legislature would be having insurance companies define what a crime was! How is the average citizen supposed to find out who these insurance companies are or whose prayers they will pay for?

Wolman also proposed that the parents be given an incentive to report by making a timely report a defense to prosecution.

The last testifier of the day was C. J. Saalman, an ex-member of the Faith Assembly group in Mercer County. He related horrifying details about illnesses of his own children and of the two who died. He is now divorced, but does not have custody of his children, who remain in Faith Assembly.

## Christian Scientists Blind to Failures

The Christian Scientists thought of everything. In the afternoon, they even brought in a half-dozen children with red, white, and blue badges. The children had to sit in empty legislators' chairs on the platform. They looked bewildered, but were certainly conspicuous. Smuckers Jam executives came from Orrville, Ohio, to sit and display badges. Looking at that sea of masklike faces, I thought of the church's booklet of "facts" about me that they send to the press. In response to my charges of dictatorial control, the booklet offers as fact: "There is probably no church that does less to try to influence the actions, politics, etc., of its members." I doubt any Ohio legislator agrees with that "fact." Marge Wessner, a lawyer from church headquarters in Boston, was there and seemed to be in charge of the crowd. I wondered how many deaths of Christian Science children she had dealt with through the years; she was busy at the same job when Dorothy Sheridan was charged with manslaughter eighteen years ago.

But the Christian Scientists were too busy loving everybody for disease or death to bother them. After I spoke, one said to another, "Poor Rita. She has so much to overcome with her attitude about our church." They lectured Paul Michener about the superiority of their healings over medicine and came up to the legislators' table at every possible moment with obsequious comments.

Press coverage repeated the church's claim that they had a better record than medicine and its warning that HB67 would likely cause a "higher mortality rate" by "forcing... sincerely dedicated people... of all faiths, [to pull] God out of the picture."

"If Christ were here today, in Ohio, he would be in neglect if there was any failure," said their lobbyist.

## Hearings Continued

I couldn't afford to come back to Columbus for the remaining hearings, but of course Wessner returned from Boston week after week, along with the crowds of Ohio Christian Scientists.

On March 21st Kay Keller testified for the Ohio Council of Churches. Affirming the power of prayer, she also stated that medical science is a God-given knowledge. The OCC recommended that parents denying children medical care on religious grounds not be charged with child neglect, which implies a willful act, but that they should be charged with violating a duty of care under the child endangerment laws. "And parents must know that that is the risk they are undertaking," she concluded.

Frank Zindler testified for the Central Ohio Chapter of American Atheists. He expressed his shock that child sacrifice is legal under Ohio law and that the law extends this "privilege" to "well-recognized" religions. "It is not for the government to decide that a given child was allowed to die for 'legitimate' religious reasons, and another child's death resulted from application of 'illegitimate' religious doctrines. It is the duty of government, completely without regard to the particular religions involved, to save the children," he argued.

Others who testified for HB67 on March 21st were Coshocton County Prosecutor, Bill Owens; Mercer County Prosecutor, Dan Myers; Bob McCallum representing the Ohio League Against Child Abuse, a Catholic priest, and a Presbyterian minister. Unfortunately, I don't have transcripts from most of the speakers, so I can't synopsise.

## Church Chooses Personal Attacks

Then the opponents had their turn. The lawyer from Christian Science headquarters, Mrs. Wessner, got up and told the worst horror story the church knows about me--that I had emergency surgery for a rupturing ovarian cyst while still a member of their church. As usual, she neglected to tell that her church put me on probation for doing it. And I wonder what it was supposed to prove to the Ohio legislature. If it shows that Christian Scientists are "free" to go to a doctor, then why has the church organized such massive opposition to HB67? What are they complaining about?

Wessner also attacked Paul Michener's credibility. Citing a letter sent her by Paul's devout Christian Science brother, Wessner claimed that a medical doctor had diagnosed his case as hopeless and that Christian Science treatment had healed him. (Needless to say, neither the church nor Paul's brother offered any medical records to support their claims.)

Wessner also cited Wisconsin v. Yoder exempting the Amish from compulsory education after eighth grade and special provisions for kosher foods as evidence for the proposition that Christian Scientists should be allowed to treat all diseases of children with prayer.

#### Healing Claims Without Documentation

Bill Evans, salaried Ohio CS lobbyist, testified. He said Christian Science treatment must be effective or the church would not have lasted 100 years. Following church rules, he also refused to disclose how many members the church has in Ohio, so we do not know how "successfully" it has lasted.

My testimony had challenged his written claim to the committee that he had records to show that Christian Science heals Ohio children under four better than medicine, so Evans said not a word about such records in his testimony. Instead, he threw out a different statistic: that a letter from the "Connecticut Life Insurance Company" showed that death rates among Christian Science policy holders are only 70% as compared to those of the general public.

None of us were quite sure what those statistics meant, but Naomi promptly fired off letters to Connecticut Mutual Life Insurance Company and Connecticut General Life Insurance Company, both in Hartford, and asked if they had mortality rates for Christian Scientists. Both denied any knowledge of such data.

#### Absolute Religious Freedom Demanded

A minister of a tiny sect came to the hearings carrying a large sign and spoke briefly for absolute freedom of religion. But with that one exception, all the other testimony in the ten hours scheduled for opponents came from Christian Scientists representing only their own church.

Since I couldn't be there, I'd like to excerpt from Frank Zindler's humorous account in his atheist newsletter.

#### Zindler's Synopsis

"Although Zindler arrived 45 minutes early at the large hearing room..., he found that of the 140 chairs... set up for visitors, 139 were already filled with Christian Scientists.... They were out in force--as they had been the week before--to pressure the legislators into maintaining the "right" of religionists to kill sick children with prayer.

"Among the witnesses testifying... were two county prosecutors [where faith deaths have occurred]. All the while these men were laying out the dreadful facts in the various cases--even showing autopsy pictures--the Christian Scientists... just sat there tranquilly practicing the art of looking wealthy, cultured, and up-standing....

Later "the Christian Scientists took the stand to tell that they really loved children and that faith healing was just as effective as medical care. Then we were treated to an

exciting series of testimonials on how god had healed nervous breakdowns (whatever those are), bee-stings--several cases of bee-stings--a couple of smashed fingers, and one broken arm. Upon questioning of the witness reporting on the allegedly broken arm, it became apparent the witness was so ignorant of anatomy and medical science that there was no good reason to suppose the arm was really broken in the first place!

"Another witness was [Rayburn Hanslik], who had been a Nixon aide in the White House, along with those other well-known Christian Scientists Haldeman and Ehrlichman. He testified how as a boy he one day helped out a welder but didn't protect his eyes with a protective face-shield. That night he went blind. The Christian Science practitioners went to work on him, and three days later his vision returned. Years later, he apparently was able to read the Watergate reports without visual difficulty.

"It is a pity that the 'scientists' did not have the foresight to use this case as a real demonstration of the power of Christian Science. They could have prayed, say, only for the right eye. Then, if the right eye took three days even to heal, but the left eye required three days, three hours, and thirty seconds to heal, the world would have been able to accept the truth of 'divine science' with less resistance. But the practitioners blew it. They cured both eyes at once, and now all sane people in the world doubt prayer had any effect at all."

#### Difficult Committee Job Well Done

Jane Campbell did a beautiful job of conducting the hearings. She was gracious to everyone, explained carefully, and asked her share of astute questions.

All through April and May the subcommittee held meetings open to the public on the bill. Difficulties with language were enormous. How do you require someone to report diseases who has no medical training and believes that disease is an illusion? How do you word a reporting requirement so as to include both Christian Science practitioners, who call themselves professionals, and lay members of unstructured groups like Faith Assembly? Can you require parents to report on their own denial of medical care, when the Fifth Amendment protects them from self-incrimination?

#### Compromises Sought

Staffers held innumerable meetings with Christian Science lobbyist Bill Evans. Evans would always hedge on their legislative proposals. Then two weeks later he would bring in his own counterproposal (probably direct from Boston). He was determined to retain statutory privileges for "a well-recognized religion" and kept offering definitions of it.

Finally Campbell offered the church its choice of three bills. I was pretty dismayed--nobody offers me a choice of bills. But the church turned down all three.



### The Proposed Subcommittee Recommendation

Then the subcommittee drafted the finest bill on this issue since HEW promulgated its tragically misguided religious immunity regulation. It removed religious immunity from the criminal code and also dropped 2151.421 from the juvenile code. It retained religious immunity from neglect charges in 2151.03(e), but added a reporting requirement with some teeth in it.

On June 13th, they met for the last time. Rep. Marie Tansey, who had early announced herself for the Christian Science church, offered several amendments on its behalf. They all died for lack of a second. The subcommittee voted for the bill 3-1 and sent it to the full Children and Youth Committee. We were elated.

### Bill Killed by Chairman

Only a few days later our hopes were crushed when the committee chair, Francine Panehal, D-Cleveland, tabled the bill indefinitely, thus killing it for this legislative session, which runs through 1986.

### Panehal Defends Position

On July 22, I talked to Panehal, a Catholic, by phone about her decision. She was either one of the most uninformed or dishonest politicians I've ever met. In histrionic tones, she said the bill would have meant "the absolute mutilation of the Christian Science faith," the church would have had to "disband its entire organization in Ohio," "all their readers would have become illegal," etc.

I asked her how requiring parents to provide medical care for seriously ill children made readers illegal. "The church says so," she replied.

She said Christian Science is an "old, established, respected religion" and should not be punished for what "cults" do. She said Ohio's only problem is with some cults on the Indiana border. (Children have died or been endangered by religious beliefs against medical care in Akron, Cleveland, Coshocton, and Columbus within the last few years as well as Mercer County on the Indiana border.)

She claimed she didn't have one vote on her committee for the bill, but she will not let the bill be voted on.

I asked her if she had consulted with any other groups besides the Christian Science church. She said, "There was no other group to consult with. Nobody was for the bill." But even if Panehal never read or heard a word about all the organizations who testified at her own subcommittee's hearings for HB67, she has to know that Kay Keller of the Ohio Council of Churches met with her just a few weeks earlier to plead the case for the bill.

### Christian Science OK Essential?

I believe Panehal will not allow her committee to vote on any bill unless the Christian Science church recommends it, and judging by their past several legislative proposals, they and Panehal think that cults and normal people should be required to provide their children with medical care, but that Christian Scientists should not be.

It is shocking that Panehal would kill a bill her own subcommittee had worked for six months on and especially that she would abandon her own Democratic colleague from Cleveland, Jane Campbell, who had managed to stand up to hundreds of letters from Christian Scientists.

### Numerous Endorsements Thwarted

And beyond the subcommittee's work, some of us have worked for three years. The Ohio ACLU was probably the first ACLU in the nation to speak out against religious immunity laws. It could not have been an easy decision for the Ohio Council of Churches to take a stand on this issue. Others who testified had concerns about retaliation against their budgets. But they came and spoke for the rights of children along with judges, attorneys, medical organizations, and child advocacy groups.

How can the Christian Science church ask for the right to cause serious physical harm to children and have more credibility with some legislators than all the organizations and individuals who testified for our side?

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### OLESON LAWSUIT POSTPONED

Dave and Nigel Oleson's lawsuit against Faith Assembly has been postponed pending a pretrial hearing on August 28. Faith Assembly has been returning plaintiffs' interrogatories unanswered, saying that they have no leader now. The Olesons have therefore filed motions to compel Faith Assembly to answer their interrogatories.

Their lawsuit accuses Faith Assembly of involuntary servitude, invasion of privacy, fraud, deceit and infliction of emotional distress connected with Nigel's membership in the church and the pressures to avoid doctors.

The Olesons would be grateful for any donations to help with their considerable legal expenses. Tax deductible donations may be made to the LEAD program; donations that are not tax deductible, but will be returned with interest if the suit is won, may also be made. Both types of donations should be mailed to David Oleson, R#1, Box 103, Genoa IL 60135. Their phone number is 815-784-5591.

## CHILD'S OHIO TESTIMONY

The first thing that should arouse the committee's suspicion is why the church is opposed to HB67. It is already a compromise. Rep. Jones has bent over backwards to ensure that religious freedom is protected except when it causes serious physical harm to a child. How can anybody ask for a religious right to cause serious physical harm to a child?

The church's two arguments are 1) that they have a religious right to deny children medical care and 2) that Christian Science deserves equal legal status with medicine as a health care system.

### Courts Never Ruled CS Appropriate Health Care

No court has ever ruled that Christian Science is appropriate health care for seriously ill children. And many courts have ruled on many types of issues that religious belief is not a defense for breaking the law. The duty of a parent to provide medical care necessary for a child's health and wellbeing is not new. Historically, courts have convicted Christian Scientists and parents of many other faiths for causing the deaths of children with their religious practices.

### CS Lobbying Promoted Religious Exemption Laws

In 1974 the federal government began pressuring states to pass laws that apparently exempt parents from child abuse and neglect charges who deny children medical care on religious grounds. After many unnecessary deaths of children, over fifty letters from the Swans, and our several trips to Washington, the federal government removed religious immunity from the Code of Federal Regulations.

So yes, as the church says, over 40 states have these religious immunity laws--because of Christian Science lobbying at federal and state levels. But they are laws that have contributed to deaths of children all over this country, that contradict long, established traditions of American jurisprudence, and that the federal government is now trying to disassociate itself from.

### Exemption Laws Ruled Unconstitutional

Furthermore, religious exemption laws themselves have been declared unconstitutional by the courts. In 1979, in *Brown v. Stone*, the state of Mississippi overturned religious exemptions from immunizations. The court ruled that children had a Fourteenth Amendment right to equal protection under the laws and that it should include equal protection from deadly diseases.

In 1982, a Colorado court ruled Colorado's religious immunity law unconstitutional and last year Ohio's religious immunity law in the criminal code was declared unconstitutional by Coshocton County Judge Richard Evans. Surely these laws ought to be repealed, or modified as HB67 does. Surely a child does not have to die in every county of Ohio before they are completely invalidated by court decree.

## Medical Health Care Subject to State Control

The church says parents who provide prayer instead of medicine for a child's illness should not be charged with neglect for the harm caused because the state does not charge doctors with criminal negligence. But the state licenses doctors. It requires many years of formal, supervised study and continues to set restrictions and standards for their practice after they are licensed. The state can take away a doctor's license. Also, doctors are charged with civil liability every day.

If the state wants to recognize "spiritual treatment" as legal health care for children, then the state ought to license Christian Science practitioners and other faith healers. The state should certify their qualifications to take life and death responsibility for helpless children.

### Spurious Claims of Recognized Efficacy

The church says that the IRS, Medicaid, and most major insurance companies, all acknowledge the effectiveness of Christian Science treatment. In my view it is outrageous that the IRS allows deductions as medical care expenses for the bills that Christian Science practitioners send for their prayers and that Medicaid, Blue Cross, and other health insurers reimburse for the charges of Christian Science practitioners and their church-trained nurses.

But I defy the church to show that these policies by IRS and health insurers are based on the effectiveness of Christian Science treatment especially for children. Does Blue Cross have evidence that spiritual treatment heals children of appendicitis, meningitis, and pneumonia as effectively as medicine does? On February 27, 1979, The Wall Street Journal carried an article about this, and the only rationale Blue Cross offered for their reimbursements was that Christian Science treatment goes under a category similar to psychiatric care "where treatment and the success of failure are nebulous." It was a specious analogy because Christian Science practitioners represent themselves as qualified to heal all diseases, not just the mental problems treated by psychiatrists, and there is nothing nebulous about the children who die because of Christian Science practices. But, at any rate, Blue Cross certainly did not acknowledge the effectiveness of Christian Science treatment.

A Health Care Financing Administration program analyst told me that they have to bend every rule in the book to provide reimbursements for Christian Science nursing. Their Medicare manual limits reimbursements to "skilled nursing care," but he said it was impossible for the government to set standards for nursing care in Christian Science nursing homes. So HCFA releases Christian Science sanatoria from the obligation to provide a Medicare beneficiary with at least one hour of "skilled nursing care in a 24-hour period" and to employ a minimum number of nurses. Furthermore, the reimbursements are likely unconstitutional because they tie the federal government to a church. (Medicare law



requires that the sanatoria "be operated or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts... in order to participate in the hospital insurance program both as a 'hospital' and 'skilled nursing facility.'")

#### Ohio Laws Claimed to Recognize Church Healing

Just as the church comes to you and claims that insurers recognize the effectiveness of Christian Science treatment, so they go to the courts and claim that the Ohio legislature does. Last summer in Coshocton they filed an amicus brief defending their religious immunity law in the criminal code. According to them, it shows that spiritual healing has an established reputation for effectiveness as determined by the Ohio legislature. By limiting the religious exemption to well-recognized religions, said the church, the legislature protects children "against novel or individual healing methods" and "requires parents to provide their children with responsible health care." Does the Ohio legislature really want to represent that children are protected with responsible health care when spiritual treatment is substituted for medical treatment of life-threatening illnesses? And how can the church claim they provide responsible health care when they do not accept any responsibility for the death of Matthew Swan or any other child?

#### CS Claims It is More Effective than Medicine

The church also claims that it has a better record than medicine for Ohio children under four years old. I am surprised to hear of such records because they have many times told me that they keep no records on deaths caused by Christian Science treatment. They have repeatedly claimed to have 50,000 "carefully verified healings." But they do not let outsiders or even general church members see such verifications and last summer they admitted to The Los Angeles Times that they have no medical records to substantiate such claims. Furthermore, in December, 1984, the American Medical Association and the American Academy of Pediatrics asked the church what records they kept on their failures and were told they had none.

I hope this committee will have any records from the church evaluated by a medical statistician. I feel you would have to have solid proof that Christian Science can heal infectious diseases of children as effectively as medicine before you would have the moral right to declare it appropriate health care for children, and even then, you would not have the legal right to do so because you put the government in the position of establishing religion.

#### Claim of Cooperation In Reporting Disease

The church memo claims that they cooperate closely "with public health officials in reporting suspected communicable diseases." The key word, though, is "suspect." Members of the Christian Science church almost never have the knowledge to suspect such diseases. During the measles epidemic at Principia College this spring, the Christian Scientists reported the "rash illness," which they could see, but not the pneumonia, which they could not see. The religion teaches that disease is an illusion and that ignorance of disease is a spiritual advantage in healing it. It tells members to get exemptions, won by church lobbyists in many states, from studying about disease in school. I believe that most church members have never even heard of many diseases on the list of those that must be reported to the Public Health Department and that they know the symptoms of hardly any of these diseases. Certainly their health care providers, the church's practitioners and nurses, are not qualified to report communicable diseases and are even told by the church not to report.

#### Conclusion

In conclusion, the only health care the state should recognize for seriously ill or injured children is state-licensed, secular health care. The laws should charge parents with a duty to provide medical care when necessary to protect the child's health and welfare.

A Christian Science parent sees legislators repeatedly giving his church whatever it asks for. Absurd as it may seem to you, he assumes that objective public officials agree with his church that Christian Science treatment will work just as well as medical care for healing all diseases known to man. He does not comprehend the risks to his children.

Ohio got its religious immunity laws in 1977; Matthew Swan died in 1977. I ask you to pass HB67 so that future parents will understand that medical treatment is the standard of care under the law.

#### MEASLES ON CAMPUS

The Center for Disease Control recently reported a total of 1,802 measles cases this year with 334 or 18.5 percent on college campuses. Principia College, an exclusively Christian Science community of about 900 people, had 136 of these cases and all three of the measles deaths reported by the CDC.

The American College Health Association has recommended that by September colleges require all students to present proof of measles immunity and other vaccine-preventable diseases as a condition for admission.

Unfortunately, legislators will likely continue to allow religious exemptions from such a requirement.

# WASHINGTON PROSECUTION FOR RELIGIOUSLY-BASED MEDICAL NEGLIGENCE PROBABLY A FIRST

On December 10, 1984, 9-month-old Jason Trejo died of pneumonia in Wenatchee, Washington. A policeman cruising the area saw a crowd on a lawn. Stopping to inquire, he was told that a baby had died in the house about two and a half hours earlier.

His mother had not sought medical care for him because of her membership in a transient group called the True Followers of Christ. The group is affiliated with the Church of the First Born, which has been responsible for many deaths of children throughout the West.

Chief Deputy Prosecutor Susan Lomax filed first-degree manslaughter charges against both the mother and stepfather. Later charges were dropped against the stepfather because evidence indicated that he wanted to take the child to a doctor, but was overruled by his wife.

## Potential Jurors Oppose Medical Neglect

During questioning, the prospective jurors all expressed strong personal beliefs that sick children should be provided medical care, so the defense asked for a non-jury trial.

## Testimony of Death From Neglect

Testimony at trial indicated that baby Jason had come down with a fever and bowel disturbance on December 4. He had refused food and cried excessively. His mother, Vicky Trejo, 18, and her grandmother said they had thought his fever was due to teething.

Trejo said she had used a fever thermometer and that his temperature was 103 degrees for days. Lomax asked her what she would have done if his temperature had gone higher; Trejo said she would have prayed harder. Trejo claimed that the fever broke before the baby's death, but also admitted her thermometer had broken by then.

Trejo attempted mouth to mouth resuscitation and then called more church members to the home to pray for the baby.

## Church Claims It Doesn't Forbid Medical Care

The local minister of the True Followers said the religion does not forbid medical treatment but does discourage it.

Trejo was convicted of second-degree manslaughter on April 16th. Both at her trial and the day after her baby's death, when she gave a seven-page statement to investigators, she reportedly showed not the slightest remorse or grief.

## Intervention at Birth of Next Child

In June her husband called paramedics because she was ready to deliver another baby and was having seizures, apparently due to eclampsia. She refused treatment and the paramedics left.

Shortly thereafter, they were summoned again by her husband. She was taken to the hospital against her will. Doctors were afraid the seizures would reduce oxygen to the fetus and kill it.

Prosecutor Lomax filed petition to gain state custody of the unborn child, who was then delivered Caesarean.

Mrs. Trejo is now serving a three-month jail sentence and the family will be under community supervision for two years. Lomax believes many of the True Followers of Christ have moved to Michigan.

## First Washington Conviction for Faith Death?

I believe the Trejo case is the first prosecution for religiously-based medical neglect in the state of Washington. Prosecutor Lomax did not find another such case in her own research.

I know of fifteen deaths of Christian Science children in King County (Seattle), Washington to highly treatable ailments. No charges were filed, even though at least fourteen of the cases were referred to the prosecutor's office.

## Schram Death Not Prosecuted

Most of these cases are old, but the facts of the 1979 death of 12-year-old Michael Schram were widely publicized and I am sure the state could have done something about it.

The boy died of a ruptured appendix. His mother and Christian Science practitioner would not even notify the funeral home until several days after his death. The Seattle area was outraged; both the mother's home and a Christian Science church were firebombed. But Prosecutor Philip Killien quickly decided not to file charges because the boy's Christian Science beliefs might have discouraged him from expressing pain and therefore his mother might not have known he was seriously ill. When told of the case, Lomax commented that the issue was not when a Christian Scientist would take a child to a doctor, but when an ordinary, prudent person would.

The King County Prosecutor's office has only one page of records on the case, and it shows only one doctor contacted to justify Killien's conclusion.

## Church of First Born Deaths Not Prosecuted

Other recent unprosecuted faith deaths in Washington include two associated with a Church of the First Born congregation in Tacoma. In May, 1983, infant Eve Andrews died of diarrhea without medical care. Prosecutors declined to press charges because the parents might not have comprehend the danger to their child, even though they had also refused to obtain medical care for their first child and had buried his body in their yard.

Let's hope the prosecution of Mrs. Trejo will change the minds of some officials and parents in Washington about children's rights.



## COLORADO CONVICTION FOR FAITH DEATH OVERTURNED

On March 5, 1982, in Estes Park, Colorado, five-week-old Jessica Ann Lybarger died of pneumonia after several days of alarming symptoms that included blue fingernails and breathing difficulties. Too weak to nurse, she was given tea and honey from an eye-dropper. Her father refused to obtain medical care for her because he and his wife had founded a group called Jesus through Jon and Judy which held that Jesus should be their only doctor.

Jon Lybarger was charged with felony child abuse. Because he was the decision maker, as is common in fundamentalist families, his wife Judy was not charged.

Colorado's religious immunity law, which speaks of treating children with the prayers prescribed in the "tenets" of "a recognized church" by "a duly accredited practitioner thereof," was obviously written as a privilege just for the Christian Science church. Lybarger's attorneys filed pretrial motions contending his right to raise a religious defense even though his ministry did not accredit practitioners nor have tenets nor "recognition" (by whom or what, legislatures never say).

### Immunity Law Was Declared Unconstitutional

In response Larimer County District Judge William Dressel on August 23rd declared the law facially unconstitutional. He agreed with the defendant that the legislature's desire to protect society from certain practitioners of faith healing, but not others was illogical. But he ruled it unconstitutional to substitute prayer for lifesaving medical care, regardless of the prestige of your church.

Dressel stated that "a parent does not have the right to limit treatment available to a five-week-old child. This is a matter... of common sense. It is the duty of a parent or guardian to seek all reasonable means of treatment, and one cannot... exclude medical care or treatment when that need or choice is warranted by the circumstances. Likewise, neither the state nor anyone else has the right to deny the offering of prayer to heal; but when one [does] so to the exclusion of all other methods of treatment, then the state has the right to declare that a parent's failure is a crime."

"The legislature has no right to grant that exemption to criminal conduct," Dressel said.

### Appeals filed

Lybarger filed an emergency appeal of Dressel's ruling to the Colorado Supreme Court. The court refused to hear it, so the trial went forward. Lybarger was convicted, sentenced to six years' probation, and ordered to work eight hours a week at a local hospital. He said he would use his work as an opportunity to proselytize, which of course didn't please hospital administrators.

## CS Brief Defends Constitutionality

Lybarger appealed his conviction. The Christian Science church filed an amicus (or "friend of the court") brief. Much of it was added verbatim to their amicus brief filed in Coshocton, Ohio, and reported in our summer, 1984, issue.

One unique aspect of their Colorado brief was their attempt to pass the famous test for constitutionality of a law about religion, as laid down in *Lemon v. Kurtzman*, 403 U.S. 602 (1971):

1. the statute must have a secular legislative purpose
2. its principal or primary effect must be one that neither advances nor inhibits religion
3. it must not foster an excessive government entanglement with religion.

How do you suppose a religious immunity law could be construed to have a secular purpose? It makes perfect sense to the church--they say the legislature was wisely providing for the welfare of children by allowing them to be treated by the type of spiritual healing with an "established reputation for effectiveness in the secular world," but of course not by "novel or individual" types of prayer.

The law also requires government to examine church tenets and the content of prayers, determine if prayers were in accordance with those tenets, determine if a church labels certain members "practitioners" and accredits them and if such practitioners actually rendered the prayer treatment for a sick child. But none of that sounds like "excessive government entanglement" to the Christian Science church.

Of course the church did not support Lybarger's claim for exemption under the terms of the religious immunity law. It was written for them, and their only interest is in defending it.

### Technical Reversal Sidesteps Constitutionality

On May 20, 1985, Lybarger's conviction was reversed by the Colorado Supreme Court and the case remanded for another trial. The court's ruling is that Judge Dressel had no right to declare the statute facially unconstitutional because neither the defendant nor the prosecution had asked for such a ruling. They specifically did not rule on the merits of the religious immunity law.

It is peculiar that they didn't honor Lybarger's request to appeal the Dressel ruling before the trial in 1982. At any rate, District Attorney Stuart Van Meveren will probably challenge the constitutionality of the law this time, the judge will probably rule it unconstitutional a second time, and then the district attorney is required by law to appeal the judge's ruling whenever a statute is declared unconstitutional.

### Costs of Special Interest Law Mounting

Perhaps if Larimer County would send the Colorado legislature a bill for all the expenses, both of the prosecution and Lybarger's public defenders, the Colorado legislature would recognize some unpleasant consequences to letting the Christian Science church walk all over them.

Here is a copy of the spread-sheet records for CHILD, Inc. for the first half of the year. With the Summer Newsletter expenses not yet included we have an accumulated debt of \$243.96. The Swans continue to loan CHILD several hundred dollars without interest to keep the checking account balance positive. The 1985 expenses through June 30 are \$2228.66, and the receipts for the same period are \$2059.39.

Please consider helping us meet the expenses we'll have through the end of the year.

# WATCH FOR FAMILY CIRCLE FEATURE ON CHILD

A September issue of Family Circle, found in nearly all supermarkets, will carry an article about the Swans and CHILD, Inc.

The article was written by Bonnie Remsburg. She co-authored a book on The Stress-Proof Child, which is excerpted in the July issue of Readers Digest.

CHILD '85 EXPENSES	Jan.	Feb.	March	April	May	June	TOTAL
Phone	138.39	94.28	139.37	183.88	176.86	64.67	797.45
Postage	30.30	91.04	46.22	90.57	21.66	12.73	292.52
Copying	8.90	95.76	22.70	57.80	23.52		208.68
Travel			286.36			31.00	317.36
Special reason		80.00	mail permit	218.56	47.70	25.00	
		85.00	disk repair	1984 copy bill flyer CFF dues			456.26
TOTAL EXPENSES	187.59	470.08	516.39	571.51	309.69	173.40	2228.66
REVENUE							
Dues	120.00	150.00	180.00	195.00	75.00	60.00	780.00
Donations	235.00	40.00	595.00	265.00	35.00	85.00	1255.00
Interest	1.17	1.67	.93	2.01	1.85	1.76	9.39
Reimbursements	0.00	0.00	5.00	0.00	0.00	10.00	15.00
TOTAL REVENUE	356.17	191.67	780.93	462.01	111.85	156.76	2059.39
MONTHLY BALANCE	168.58	-278.41	264.54	-109.50	-197.84	-16.64	-169.27
							year to date
Debt to Swans	338.81	409.72	373.02	505.84	551.40	565.13	
As of June 30, CHILD had \$321.17 in its checking account, but owes the Swans \$565.13;							
\$299.61 of this debt is carried over from 1984.							

**CHILD, Inc.**  
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