

Children's Healthcare Is a Legal Duty, Inc.

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Equal rights for children under the law



Lundman Attorney James Kaster

Liability of Christian Scientists upheld

The first civil jury verdict against Christian Science spiritual healers became final on January 22 when the U.S. Supreme Court refused to review an award to Douglass Lundman.

In 1989 his 11-year-old son Ian died in suburban Minneapolis of untreated diabetes. Ian's mother and stepfather, Kathleen and William McKown, retained Christian Science practitioner Mario Tosto and church nurse Quinna Lamb to heal him by church-approved methods.

Lundman filed a civil suit charging them, the church, and church agents with negligence and wrongful acts causing Ian's death. A jury awarded \$5.2 million in compensatory damages and \$9 million in punitive damages against the Christian Science church.

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CHILD and members sue HHS

On January 19 CHILD and two of its Minnesota members, St. Paul pediatrician Dr. Bruce Bostrom and Little Canada postal employee Steve Petersen, filed a suit asking the U.S. District Court in Minneapolis to stop the federal government from paying for services of Christian Science nurses.

Robert Bruno of Burnsville, Minnesota, represents CHILD, Bostrom, and Petersen in the taxpayers' suit against the U.S. Department of Health and Human Services (HHS), which distributes Medicare and Medicaid money to Christian Science sanatoria.

Congress mandated payments to care facilities operated, or listed and certified, by the First Church of Christ, Scientist in Boston, when it established the Medicare and Medicaid programs.

A large body of laws and regulations have been enacted to give public money to these facilities (see next article). The government allows them to be

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classified as hospitals and skilled nursing facilities and to be reimbursed both for extended and intensive care.

Religious privilege established

The suit charges that Medicare/Medicaid payments for Christian Science nursing care are unconstitutional because they support and promote religious activity. The suit further charges that it is unconstitutional for the government to delegate to the Christian Science church the power to qualify institutions for receipt of public money.

The complaint points out that all patients in the church's care facilities must "radically rely on Christian Science spiritual treatment, excluding medical care." They must retain a Christian Science practitioner to pray for them and they cannot have medical care except for the few specific exceptions allowed by church founder Mary Baker Eddy.

No state licensure

The complaint also points out that Christian Science nurses are not state-licensed and do not work under the supervision of state-licensed providers. The church certifies them through listing in *The Christian Science Journal*, but does not require training for them or provide any.

CHILD, Bostrom, and Petersen have moved for summary judgment on the issue of whether the government can allow a church to certify institutions for eligibility for Medicare/Medicaid funds. A hearing on the motion is scheduled for June 4.

HHS defends payments

HHS will likely expand the scope of the hearing by filing a cross-motion for summary judgment. An HHS memorandum states:

Defendants generally deny that Medicare and Medicaid funds are used to finance "Christian Science religious activity." Instead, defendants will seek to establish that Medicare and Medicaid benefits are paid to Christian Science sanatoria solely for secular services provided by these sanatoria to beneficiaries [of Medicare and Medicaid]. In addition, defendants will seek to establish that the limited services for which Christian Science sana-

toria are eligible for reimbursement are comparable to (albeit substantially less comprehensive than) certain services typically provided by hospitals. Commensurate with the more limited services provided, Medicare and Medicaid benefits paid to Christian Science sanatoria are far more limited than benefits paid to conventional medical hospitals.

CHILD denies that the services in Christian Science sanatoria are comparable to some services provided in hospitals because the Christian Scientists do not work under the supervision of state-licensed physicians or any state-licensed providers. As CHILD comments in response, if a hospital fired all the physicians and hired car mechanics instead, Medicare would not pay for their services.

HHS claims reasonable accommodation

HHS also claims that Christian Scientists deserve Medicare and Medicaid payments for the type of health care services they use because they pay taxes to support the Medicare and Medicaid programs. HHS says it

will seek to establish that the challenged statutes and regulations are reasonable efforts to accommodate the unique beliefs and practices of adherents to Christian Science theology which accord with the objectives of the Free Exercise Clause of the First Amendment. In essence, the challenged statutes and regulations recognize that Christian Scientists do not, because of their religious beliefs, obtain conventional forms of medical care and treatment. Given those beliefs, exclusion of Christian Science sanatoria from participation in the Medicare and Medicaid programs would effectively deprive Christian Scientists of all benefits of the two programs, notwithstanding the fact that Christian Scientists, like other taxpayers, pay taxes to support both programs.

CHILD rejects the concept that people should pay taxes only for programs they believe in.

The Christian Science church has petitioned to enter the suit as a defendant-intervenor on behalf of itself and its members.

The lawyers for the church are Michael McConnell, the University of Chicago professor who petitioned the U. S. Supreme Court for review of

Lundman (see article on page 1), and Terry Fleming, a Minneapolis lawyer who represented both Kathleen McKown and the Christian Science church in *Lundman*.

According to the legislative history, as cited in the church's motion, Congress "intend[ed] that payments to Christian Science sanatoriums would cover costs of services ordinarily furnished by these sanatoriums to patients which are comparable to those for which payment could be made to hospitals."

The church cites "cleansing and bandaging wounds" as an example of a service performed both in hospitals and church sanatoria.

CHILD believes, however, that cleaning and bandaging wounds are a very small percentage of the charges of church sanatoria that Medicare and Medicaid pay for.

We believe that the average stay in these sanatoria is several months and is expensive. A CHILD newsletter reader reported that her dying mother's care in a Christian Science sanatorium was \$225 per day for the first 60 days and consisted of feeding, bathing, and help in getting to the bathroom. After the Medicare reimbursements expired, the mother was moved to another wing and charged \$80 a day for the same services.

Statutes and regs exempt Christian Science care from standards

The Christian Science church has won a rich array of exemptions from the standards of the Medicare and Medicaid programs. Some examples follow.

42 United States Code (USC) 1320a-1 excludes sanatoria listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts (hereafter cited as Church), from limitations on use of federal funds for capital expenditures. The purpose of the limitations is to assure that federal funds appropriated under Titles XVIII and XIX are

not used to support unnecessary capital expenditures by health care facilities.

42 USC 1320c-11 excludes Church-certified sanatoria from peer review of utilization and quality of health care services to which medical hospitals must submit.

42 USC 1395x(e) automatically includes Church-certified sanatoria in the definition of "hospital" so that they do not have to meet the extensive requirements the definition imposes on all other hospitals.

42 USC 1395 x(y) automatically includes Church-certified sanatoria in the definition of "skilled nursing facilities" so that they do not have to meet the extensive requirements the definition imposes on all other skilled nursing facilities.

42 USC 1396a exempts Church-certified sanatoria from the requirements imposed by state plans for medical assistance. For example in care of the mentally retarded the state plan must provide for (A) a written plan of care and a regular program of independent professional review, (B) periodic on site inspections by an independent professional review team consisting of a physician or registered nurse, to determine for each person the (i) adequacy of services available to meet the patient's needs, (ii) the necessity and desirability of his continued placement, and (iii) the feasibility of meeting his needs through alternative institutional or noninstitutional services; and (C) for full reports to the State agency of the professional review team.

42 USC 1396g(e) exempts Church-certified sanatoria from the definition of "nursing home" so that their administrators do not have to be licensed.

42 Code of Federal Regulations (CFR) 431.610 states, "The requirement for establishing and maintaining standards does not apply with respect to Christian Science sanatoria operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts."

42 CFR 456.251 excludes Church-certified sanatoria from the definition of "skilled nursing facilities" so that such sanatoria are exempt from utilization control requirements.

24 CFR 456.351 excludes Church-certified sanatoria from the definition of "intermediate care facilities."

42 CFR 466.1 excludes Church-certified sanatoria from the definition of "hospital" and "skilled nursing facility" for purposes of exempting the sanatoria from scrutiny by Medicare peer review organizations

45 CFR 234.130(3)(ii) allows a Christian Science practitioner, instead of a physician, to certify that a patient meets the requirements for medical assistance.

45 CFR 234.130(3)(iv) includes Church-certified sanatoria in the definition of "intermediate care facility."

This partial listing may be adequate to demonstrate the thrust of these statutes and regulations: the Christian Science sanatoria are defined as hospitals, skilled nursing facilities, and intermediate care facilities for the purpose of obtaining Medicare/Medicaid funds, but exempted from the quality-control standards in those definitions.

Budget-cutting Congress expands payments for Christian Science methods

Although Congress talked much about cutting health-care expenditures, it passed a budget reconciliation bill in 1995 that expanded coverage for Christian Science nurses and perhaps intended to pay for the prayers of Christian Science practitioners as well.

The bill, HR2491, required reimbursements for Christian Science nurses in Medicare Plus/Choice plans.

The House Commerce Committee Report on Medicaid reimbursements in the bill stated: "It is the Committee's intention that the definition of 'medical assistance' shall include services provided by a Christian Science sanatorium (nursing facility) and a Christian Science visiting nurse organization, listed and certified by the First Church of Christ, Scientist, in Boston, Massachusetts, or the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc. and services provided in a home setting by a Christian Science nurse listed in the *Christian Science Journal*."

Finally, the conference report on the bill required that Medicare payments "be made for home health services furnished by Christian Science providers. Providers must meet applicable requirements of the First Church of Christ, Scientist, and be certified under criteria established by the Secretary [of the Department of Health and Human Services]." Whether "providers" included Christian Science practitioners as well as nurses, we do not know.

Congress provided for payments to Christian Science nursing homes when it established the Medicare and Medicaid programs. Medicaid also covers home health care by Christian Science nurses. The proposed expansion of Medicare to cover "home health services" by "Christian Science providers" would have greatly expanded the cost of reimbursements for Christian Science services.

Write your Congressmen and women

President Clinton vetoed the bill. We are told that the new bill in its current draft form does not contain these provisions. We encourage CHILD newsletter readers to write their legislators and urge them to see that such provisions are kept out of the new bill dealing with Medicare and Medicaid. The bill is being developed by the leadership: Rep. Newt Gingrich, R-Georgia; Rep. Richard Gephardt, D-Missouri; Senator Robert Dole, R-Kansas; and Senator Tom Daschle, D-South Dakota. Letters to

these legislators or your own legislators would be helpful.

When Congress debated national health care reform in 1994, some legislators developed bills providing for payment to both Christian Science nurses and practitioners. Rep. Richard Gephardt, for example, introduced a bill providing as follows:

For purposes of a certified health plan or medicare part C, the guaranteed national benefit package shall include—

- (1) coverage of services provided at an individual's home by a Christian Science practitioner or Christian Science nurse; and
- (2) coverage of services provided in a Christian Science Sanatorium (as defined in section 1861(y) by a Christian Science practitioner. . . .

QUALIFICATIONS OF PROVIDERS.—A Christian Science practitioner or Christian Science nurse is qualified for purposes of paragraph (1) if the practitioner or nurse is listed as such a practitioner or nurse by the First Church of Christ, Scientist, in Boston, Massachusetts.

Congressional Record 10 August 1994: H7831

What 45,000 letters will buy

Christian Science spokesman Phil Davis reported at a U.S. Senate staff briefing that Christian Scientists sent 45,000 letters to Congress to win such provisions in the health care bills. None of the bills were passed by Congress, however.

Appeals court hears arguments in CHILD/Brown case

On March 4 the U.S. Sixth Circuit Court of Appeals in Cincinnati heard oral arguments in *CHILD and Brown v. Montgomery*. Defendant Betty Montgomery, the Ohio Attorney-General, appealed a federal district court ruling last summer giving CHILD and Steven Brown the right to sue her for declaratory and injunctive relief from Ohio's religious exemption laws.

Brown is the father of two minor children who are being raised in the Cincinnati area by their Chris-

tian Science mother. CHILD and Brown argue that Ohio's religious exemption laws deprive his children and all Ohio children associated with faith-healing sects of their fourteenth amendment right to equal protection of the laws.

Montgomery claims that she is not a proper defendant. The judges asked her counsel, "If you're not a proper defendant, who is?" She had no answer.

Claim: legalized murder can't be challenged

Montgomery also argues that Ohio's religious defense to manslaughter and felony child endangerment can only be challenged when she is in the process of enforcing the statute in an actual criminal case.

Judge Boyce Martin, Jr., formerly chief justice of the court, said, "You mean if the state of Ohio passes a law that allows me to murder my colleagues, there's no way to challenge the law until I set out to commit the murder?"

Yes, said the Attorney-General's counsel, that is just what her office means.

How many more deaths are needed? Law found unconstitutional in two earlier cases

Martin also commented that Ohio's penal code religious exemption has already been ruled unconstitutional by two Ohio counties and surely we should not have to have a child die in each of the remaining 86 counties before the law is overturned statewide.

Robert Bruno of Burnsville, Minnesota, and Scott Greenwood of Cincinnati represent CHILD and Brown in this action.

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The Minnesota Court of Appeals upheld an award of \$1.5 million in compensatory damages against the McKowns, Tosto, and Lamb. The court said they had a duty to get the boy medical care, regardless of their religious beliefs.

U.S. Supreme Court denies review

The defendants petitioned the U.S. Supreme Court for review, and Lundman cross-petitioned for review of the Minnesota Court of Appeals' overturning of the punitive damage award and dismissal of the church and a church agent as defendants.

The High Court refused to review both petitions without comment.

Spokesmen for Catholic, Mormon, and some Protestant churches said the ruling threatens the freedom of all religions because it permits "clergy malpractice" suits.

"You can think of all kinds of applications," said Brent Walker, general counsel for the Baptist Joint Committee. "There could be suits against the clergy for giving improper advice on abortions, or delivering a crummy sermon that told somebody to do something that shouldn't have been done."

Lundman attorney Robert Bruno denied that the case dealt with clergy malpractice. He said the case was founded on common law negligence theory of a caretaker's duty when harm is reasonably foreseeable.

The decision "sends the message that exclusive reliance on prayer treatment instead of medical care for a seriously ill child can give rise to . . . liability," said James Kaster, another of Lundman's attorneys.

Lundman will attempt to collect the judgment, now above \$2 million with interest, from a supersedeas bond posted by the church when the appeal was filed. John Simonett, a former Justice of the Minnesota Supreme Court, is representing Lundman in a motion to collect on the bond.

Child's welfare paramount

The importance of this victory can hardly be overstated. Christian Science practitioners and nurses should be aware that they can be sued for injuries to children under their care. They have no training in recognizing symptoms of a serious illness or injury. They believe that disease is healed by denying its reality. The only way to protect themselves from tort liability is to do what the Minnesota

Court of Appeals said they should do: get the child medical care.

Douglass Lundman had left the Christian Science church several years before his son died and did not consent to the Christian Science "treatment" for his son. However, the Court of Appeals' award was not predicated on those facts. In fact, the Court said that the church's practitioners and nurses cannot excuse their actions as just doing what a custodial parent asks them to do:

We . . . reject Lamb's argument that she is exempt from civil liability because the mother controlled what type of care Ian would receive. . . . Lamb was obligated during her engagement to make Ian's welfare her paramount interest; she could not yield to a parent's directions; protecting a child's life transcends any interest a parent may have in exercising religious beliefs. . . .

Appellant Mario Tosto. . . argues that he did not owe a duty to Ian beyond Christian Science prayer for Ian's recovery (something he did from his own home).

Again, we disagree, and affirm the trial court's conclusion that Tosto owed a broader duty to Ian. Tosto, though he had no initial duty to Ian, accepted a responsibility to serve Ian and thereafter, through conversations with mother and nurse, held considerable power over Ian's welfare. Tosto was hired and paid \$446 by the McKowns to play a professional and pivotal role in caring for Ian. . . .

Tosto argues that his control of Ian's care was subject to Kathleen McKown's ultimate authority. He argues that he was engaged by her only for Christian Science care, and that it runs counter to Christian Science teachings to acknowledge the need for medical care or to call for such care. But like Lamb, he could not hide behind mother. He had a responsibility on these facts to acknowledge that Christian Science care was not succeeding and to persuade mother to call in providers of conventional medicine or, persuasion failing, to override her and personally call for either a doctor or the authorities.

Duty is to the child

"Our holding today serves as notice to all professional Christian Science caregivers," said the Court, "that they cannot successfully disavow their

professional duty to a child by deferring to the parent as the ultimate decision-making authority."

Parents who are devout Christian Scientists at the time of their child's death could bring claims against Christian Science practitioners and nurses for not getting medical care for the child. The practitioners and nurses could in turn sue the parents for contributory negligence. The Lundman ruling has created a radically different world for these parties.

Church says it will not change

The Mother Church professes to be unaffected. "We'll still continue to practice our religion as we have done for over 100 years," said Victor Westberg, church public relations manager.

New advice given in 1993

Nevertheless, the jury's award of monetary damages to Lundman brought the church closer than ever before to advising members to get medical care for sick children. Only four weeks after the 1993 trial the church board of directors issued a statement that the "right to rely exclusively on Christian Science for healing may not always be legally respected."

In children's cases, members should "consider well their individual spiritual readiness, their own past experience and record, and the mental climate in which they live," said the board.

"If experience has shown in one's own life the sure results of Christian Science treatment, or if medical care has been unavailing, parents and practitioner should work earnestly to fulfill Mrs. Eddy's counsel [recommending exclusive reliance on Christian Science for healing]," the board continued.

In other words, use Christian Science on a child only if a doctor cannot heal the child or if you have a good record of Christian Science healings. Whether the parents or the practitioner needed to have this record and what healings would qualify as good enough was a bit unclear. Practitioners submit accounts of three healings when they apply for church accreditation, but church officials have sworn under oath that they pay no attention to their medical significance.

Are church caregivers required to call a doctor?

In 1995, the church told the members that the Court of Appeals ruling required practitioners and nurses to call either a doctor or state authorities when a child is sick. The ruling creates "a dangerous precedent for citizens of Minnesota of all faiths who provide care for children," the church said and predicted review by the Minnesota Supreme Court.

Both the state and federal Supreme Courts declined to review the case, however. Now that the ruling is final, the church acknowledges that the ruling "affect[s] the practice of Christian Science in Minnesota," but does not say how. It tells members to pray while the ruling's "implications are being better understood and further steps considered."

The church claims that the four remaining defendants are being made to pay \$1.5 million in damages just for practicing their religion sincerely. But it has not publicly reminded members of the real bombshell: that the ruling requires Christian Science practitioners, nurses, and parents to obtain medical care for sick children. What the church described with such alarm in 1995 is case law in 1996. The ruling sets a precedent binding upon all Minnesota members and could influence courts in other states. We wonder how long it will take the church to figure out these "implications" and report them to the members.

We also wonder whether the church's 1993 advice, given when a \$9 million punitive damage award hung over its head, still stands today now that only parents, a practitioner, and a nurse must pay for a child's death and now that the Court of Appeals has said the practitioner and nurse are not church agents.

Taken in part from *The Christian Science Sentinel*, 27 Sept. 1993, 15 May 1995, and 19 Feb. 1996; *Detroit Free Press* 23 Jan. 1996, *The New York Times* 23 Jan. 1996, and deposition of DeWitt John in case #80 004 605 NI, Wayne Cty. Circuit Ct., Detroit.

Nurse reflects on Lundman case

Quinna Lamb, the Christian Science nurse who sat by Ian Lundman's bedside for nearly six hours and watched him die in a diabetic coma, was interviewed in a feature article of *The New York Post* on January 29, 1996. Excerpts, summary, and comment follow.

Lamb has degrees in anthropology and history from St. Cloud State. She is a third generation Christian Scientist.

She now teaches Christian Science nursing in Boston.

She has been married five years to a devout Lutheran. "His friends don't understand how someone as nice and normal as I could have such a kooky religion," Lamb said. "But it supplies my deep spiritual answers—why I'm here, what I'm supposed to do, where do I go. It comes along with me as a package deal. My spiritual life has nothing to do with *our* life. We continue to delight in one another.

"However, to care for the sick, is a calling. A ministry. I am underpaid. It is not the yuppie-style income he'd prefer for me and with which we'd be cozier off. So, at this point he sure has suggested I do something else. But this is my paradigm. We've compromised for our marriage, but changing my cosmology is not on the table."

She has no children, but if she does, she will provide only Christian Science treatment of their illnesses unless her husband wants medical intervention.

"highly trained"

Lamb told the *Post* that Christian Science nurses are "highly trained" although she had never cared for a seriously ill child before she went to Ian's home. Furthermore, she testified in court that the only training the church gave her specific to care of sick children was how to cut sandwiches in interesting shapes.

She continues to insist that depriving diabetic children of insulin is reasonable:

The jury had eight weeks to understand all this and couldn't. I felt like Joseph in the first chapter of the Bible. He was thrown in the pit and covered with dirt. But I knew it wasn't me personally. I'm only a cog. My church was on trial. Parents want the best care obtainable. Based on healings we experienced, knowing that millions choose this method because it works, the treatment selected was a reasonable choice.

California parents convicted in daughter's death

On January 25 Harold and Carol Stevens of Madera, California, were sentenced for child endangerment in the death of their daughter Carrie, 16. The family belong to the Church of the First Born, which opposes medical care and treatment.

At age 11 in 1990, Carrie began losing weight and energy. Her parents suspected diabetes because Harold's mother had it and violated church doctrine to have medical treatment for it. They tested Carrie's urine with strips from the drug store and knew her blood sugar count was high.

When Carrie lapsed into a coma, fellow church members came to pray. But one member told Harold she would call authorities if he didn't get Carrie to a doctor. The parents then sought medical treatment. After days of intensive care, Carrie's condition was stabilized and her parents were told that she must have daily insulin to survive. Child Protective Services met with the family several times and told them they would lose custody of Carrie if they did not make sure she got her insulin regularly. Mr. Stevens promised to do that.

In August, 1993, however, the family went to a church camp meeting in Colorado. Carrie, 16, was baptized into the church and became a member. A few days later Carrie decided to quit taking insulin. She told her parents not to make her take it, and they agreed.

Her own decision

"She made a conviction with the Lord, and I didn't want to stand in her way. That was her choice," her mother testified.

As she lay bedridden, church members again gathered around to pray for her. Her father gave her a washcloth to clench between her teeth, Carrie's method of coping with severe pain. Knowing she was too weak to make it to the bathroom, he put a bucket beside her bed.

Stevens also asked Carrie if she wanted her insulin or to be taken to the hospital.

"Positively not," she replied according to Stevens' testimony.

He asked her if she understood the implications of her choice, and she said that she did.

She died a few hours later on August 11.

Should teenagers be allowed to choose death?

The parents were charged with child endangerment, and the trial opened in December, 1995. Stevens testified that if another one of his children refused medical treatment, he would again support the child's decision.

Deputy Public Defender David Liebowitz said the case was about "a young lady, who with the help of God, community and her family, made a decision that she felt she had the right to do under the Constitution."

Liebowitz pointed out that juveniles as young as 14 can be tried as adults for violent crimes. As a 16-year-old, Carrie made a personal choice to practice her own religious beliefs and the state should allow her to have the same right an adult would have to control of her body.

Tulare County Deputy District Attorney Carol Turner said, however, that California law requires parents to provide children with the necessities of life until they are 18.

In cross-examination, Turner asked church elder George Wright if children who become "official" church members through baptism are then considered in charge of their spiritual well-being.

"No," said Wright, "parents are still responsible for them when they are in the home."

What about exceptions?

Trial testimony also revealed that Harold had gotten medical services for himself: eyeglasses and dentistry. He explained them as a "lack of faith."

"Carol and Harold Stevens believe in miracles, and so did Carrie. You shouldn't condemn them for that," the defense told the jury.

But Turner called their actions criminal negligence. "Our children look to us for guidance and approval," she said. "They could have explained to her that this was an exception, that she needed insulin for her body to function—that this was like her father wearing glasses."

On December 7, 1995, Tulare Superior Court Judge Patrick O'Hara declared a mistrial after the jury declared itself hopelessly deadlocked.

Hung jury

Turner thought the deadlock was due primarily to the jury's confusion about whether good intentions were a defense to the crime and only secondarily due to the mature minor issue. The California Supreme Court has ruled that involuntary manslaughter and child endangerment are determined not by parents' subjective intentions but by the objective reasonableness of their conduct. Turner said, however, that some members of the jury felt they could not convict parents who sincerely believed they were doing the best for their child.

Parents accept guilt and terms of probation

The following week the parents pleaded no contest to a misdemeanor charge of child endangerment.

On January 25 they were sentenced to three years probation, during which time they must seek needed medical care for their three surviving minor children. "There is God's law and man's law," Stevens told the court. "And because of my beliefs I respect the law and I will obey that law."

Carol and Harold Stevens were also required to perform 200 hours of community service. The probation officers recommended that the community service not be at their own church, but the parents asked that they be allowed to perform it at a nearby Apostolic Church which needed repairs. The court agreed.

The prosecutor sought to impose additional probation conditions, such as requiring the parents to take a health course, but Judge O'Hara declined to do so. O'Hara reportedly said that if there were more parents like the Stevenses, we would not have child abuse.

According to the probation report, the Stevenses owe \$57,000 to the Internal Revenue Service. The court has to determine if they can afford to pay \$11,250 for the fees of their public defender.

Taken in part from the *Tulare Advance Register* 5, 6, 8, 12 December 1995; 15 and 26 January 1996; and the *Visalia Times-Delta* 13 and 26 January 1996.

From sea to shining sea: church wins exemptions to homicide

In 1995 the Christian Science church won religious exemptions from homicide charges in both Oregon and Delaware. Oregon's enactment of a religious defense to homicide by abuse was reported in the CHILD newsletter 1995 #1.

In Delaware SB225 was introduced creating the crimes of first and second degree murder by abuse or neglect. When the bill got to the House floor, the sponsor, Representative Roger Roy, proposed an amendment "clarify[ing] that the definition of 'neglected child' does not include a child who receives spiritual treatment in keeping with the religious tenets of the child's custodian rather than medical treatment."

Roy showed it to a lobbyist from the Attorney-General's office. He pointed out that the amendment

used identical language as religious exemptions Delaware already has to child endangerment and neglect. The lobbyist said it was fine.

The bill with the amendment passed both the House and Senate in the last days of the session and was signed into law by the Governor.

In 1990 the Delaware Supreme Court declined to order medical care for a Christian Science child with cancer in part because of Delaware's religious exemption laws.

A-G previously held exemption unconstitutional

In 1993, the Delaware Attorney-General's office wrote an opinion that Delaware's religious exemptions to neglect and to reporting requirements were unconstitutional. (See letter of Deputy Attorneys-General John Polk and Emily Fulton to Thomas Eichler 10 August 1993.) Nevertheless, the A-G lobbyist casually approved of a religious defense to first and second degree murder two years later.

Oregon prosecutors also approved of their state's religious defense to homicide by abuse.

It is, in CHILD's view, a travesty for officials of the criminal justice system to support religious exemptions to criminal charges.

Church lobbies for exemption from health instruction

The Christian Science church attempted to get a religious exemption from instruction about disease in Maryland this year. Church spokesmen argued that an exemption statute was now necessary because the state has a required half-credit course in health for high school students.

Their bill stated that a board of education "may not require a student to enroll in a course of instruction that contains subject matter concerning theories of disease or medical practices that are in conflict with the religious beliefs of the student or the parent or guardian of the student."

At the hearing a legislator asked the Christian Science lobbyist why letting their children have some information about diseases was offensive to the church. The lobbyist replied by letter that the information would interfere with the practice of Christian Science because it makes it difficult for members to heal through prayer.

CHILD member opposed bill

CHILD member Ellen Mugmon of Columbia, Maryland, testified against the bill. Some points from the fact sheet she circulated include the following:

- While certain parents object on religious grounds to subject matter concerning disease and medicine, others similarly object to subject matter containing Darwin's theory of evolution, the use of computers and other technology, witchcraft, secular humanism, and the roles of males and females, etc. In fact, parents have inundated school systems throughout the country with letters demanding that their children be involved in NO school activities or materials, including curriculum, textbooks, audiovisual materials, or supplementary assignments involving between 94 to 111 taboo topics. (Michael Simpson, National Education Association)
- The U.S. First Circuit Court of Appeals observed in a Massachusetts case: "If all parents had a fundamental right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's subject matter. We cannot see that the Constitution imposes such a burden on state educational systems." (68 F.3d 525 (1995))
- In *Epperson v. Arkansas*, the U.S. Supreme Court asserted. . . that "the state may neither prefer any religion nor prohibit any theory just because it be deemed antagonistic to the principles or prohibitions of any religious sect or dogma." The Court further held that: "The State has no legitimate interest in protecting any and all religions from views distasteful to them."
- In *Mozert v. Hawkins County Board of Education*, the U.S. Sixth Circuit Court of Appeals asserted that "a governmental requirement that a person be exposed to ideas he or she finds objectionable on religious grounds does not constitute a burden of the free exercise of that person's religion as forbidden by the First Amendment."
- Lastly, government has a compelling interest in providing all students with certain necessary educational information. . . . Public education prepares pupils for productive citizenship. It cannot do that if students are exempted from essential course work that educates them and protects their health and safety.

Request limited to Christian Scientists

Faced with the specter of religious groups popping up with objections to the curriculum from all sides, the Maryland State Teachers Association and the Christian Science church agreed upon an amendment limiting the exemption to Christian Scientists. Only if the law allowed your spiritual healers to bill for their prayers without meeting medical licensing requirements could you have an exemption from studying about disease in school, said the amendment.

Ellen promptly began pointing out that the Constitution prohibits giving preferences to one religion.

When the Senate passed the bill, it was more wide open than ever. It said a board of education could not require a student to take any course that was based on subject matter that conflicts with the "bona fide" religious beliefs and practices of the student or his parent or guardian.

Burden on public schools

Many groups could then see that the bill would impose an enormous burden on the public schools and opposed the bill. The Christian Science lobbyist reportedly testified before the House Ways and Means Committee that "bona fide" still meant basically just Christian Scientists and that they were a small group who would not be much trouble to accommodate.

The committee killed the bill, but the legislature did pass a resolution asking the Board of Education to "review its rules and regulations to provide flexibility, for religious reasons, in meeting course requirements for graduation and report the results of its review to the Legislative Policy Committee by October 1, 1996."

CHILD wishes to thank Ellen for her laborious, thorough work to keep a religious exemption from getting into statutes. In 1991 Ellen and the Maryland Chapter of the American Academy of Pediatrics prevented the Christian Science church from adding a religious exemption to Maryland's criminal code. In 1994 Ellen, with the help of the AAP chapter and others, got Maryland's religious exemptions from child abuse and neglect charges repealed. Ellen is legislative chair of the Governor's Council on Child Abuse and Neglect. She also serves on the legislative committee of the American Professional Society on the Abuse of Children.

Psych professors analyze religion-related abuse

A recent article offers a scholarly report on abuse related to religion. "In the Name of God: A Profile of Religion-Related Child Abuse" appears in 51 *Journal of Social Issues* 1995: 85-111. Author Bette Bottoms, a psychology professor at the University of Illinois, Chicago, and co-authors Phillip Shaver, Gail Goodman, and Jianjian Qin, say that religious beliefs can foster, encourage, and justify child abuse, yet religious motivations for child abuse and neglect have been virtually ignored in social science research.

Bottoms focuses on three main types of abuse: physical abuse, medical neglect, and sexual or physical abuse by religious authorities. She surveyed over 19,000 mental health professionals, first by a mass mailing to identify clinicians who had encountered relevant cases and then a detailed survey to obtain more complete information about the cases. 2,136 reported encountering at least one ritualistic or religion-related abuse case in his or her practice; 37% of the 2,136 returned the survey form and provided detailed information about the cases they encountered.

Physical abuse

Within physical abuse, Bottoms includes both corporal punishment as discipline and abuse intended to exorcise demons from the child. To some religious mindsets, Bottoms reports, "it is better that children experience a temporary hell inflicted by loving parents than that they burn in an eternal hell."

Historian Philip Greven's book, *Spare the Child: The Religious Roots of Punishment and the Psychological Impact of Physical Abuse*, New York: Knopf, 1991, is indispensable on this topic.

Sexual abuse

The majority of the cases reported by mental health professionals were clergy sexual abuse.

Bottoms notes that religion-related abuse may be especially damaging to children in that children are expected to place great trust in religious leaders and institutions and therefore victims internalize guilt and remain isolated from sources of help.

Bottoms and her co-authors have written several studies currently in press about ritual abuse. They have concluded that reports of satanic abuse are usually not credible.

Ritual abuse vs. medical neglect

"In the Name of God" closes with a pointed irony:

Our study leads us to believe there are more children actually being abused in the name of God than in the name of Satan. Ironically, while the public concerns itself with passing laws to punish satanic child abuse, laws remain established that protect parents whose particular variants of belief in God deny their children life-saving medical care. The freedom to choose religion and to practice them will, and should, always be protected by our constitution. The freedom to abuse children in the course of those practices ought to be curtailed. In the long run, society should find ways to protect children from religion-related abuse and to help religions evolve in the direction of better treatment of children.
