

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

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*Equal rights for children under the law*



*Lorie and Denis Nixon*

Photo used by permission of *The Altoona Mirror*.

## Faith Tabernacle parents convicted for second child's death

On June 10, Dennis and Lorie Nixon of Altoona, Pennsylvania, were sentenced to 5 years in prison for manslaughter and endangerment of their 16-year-old daughter Shannon. In 1991 they were convicted of the same charges for letting their eight-year-old son Clayton die without medical treatment. The Nixons belong to Faith Tabernacle Congregation, which opposes medical care.

Shannon's grandfather, Charles Nixon, is the pastor of Altoona's 140-member Faith Tabernacle church. His entire congregation prayed for Shannon as her health deteriorated.

Her parents prayed and fasted, but by June 18, 1996, Shannon was weak, dizzy, nauseated, and unable to work at her father's storm door company. She was constantly thirsty. She was 5 ft. 4 inches tall, but her weight dropped below 100 pounds.

Her grandfather anointed her with oil. Shannon herself asked for the healing ritual. The next day she felt better, but by evening she was too sick to go to evening church services. She promised to listen to a tape recording of the sermon instead.

When her family returned from church, Shannon hugged her father and said, "I feel I have my victory."

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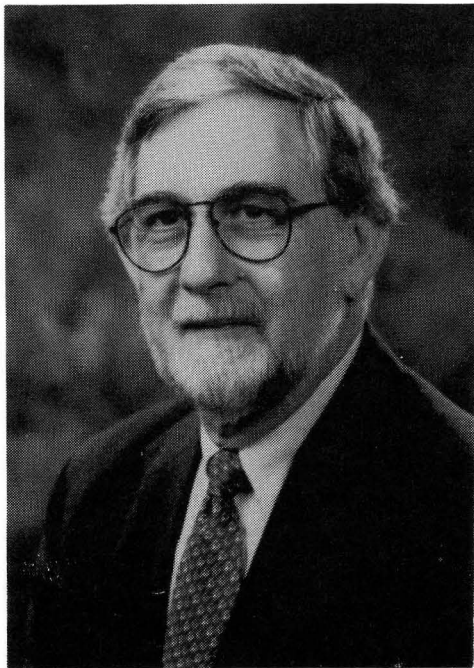
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By the next day, however, she was vomiting repeatedly. She told her brother, "The devil is fighting me hard." As she lost consciousness, family members increased the intensity of their prayers.

On the evening of June 21, 1996, she died in a diabetic coma.

### **Clayton's death**

In 1991 the Nixons let their eight-year-old son Clayton die of untreated ear and sinus infections. The boy vomited repeatedly and became extremely dehydrated and malnourished. He was 49 inches tall, but weighed only 32 pounds at his death.



*William Haberstroh*

Blair County District Attorney William Haberstroh filed charges of child endangerment and manslaughter. The Nixons pled no contest. Haberstroh argued for a substantial fine on the ground that the church would have to help them pay it and Pastor Charles Nixon might therefore give his congregation more responsible advice.

Judge Hiram Carpenter, however, imposed only a \$150 fine, two years probation, and 120 hours of community service in a hospital. Because no hos-

pital would accept them, the Nixons performed their community service elsewhere. Furthermore, the judge did not require them to seek medical care of their surviving children during their probation.

The county Children and Youth Services (CYS) petitioned the court for medical exams of Clayton's nine siblings. The judge, however, declined to issue an order for exams. He had the children brought to court, said they all looked healthy to him, and ruled that the state could not intervene until there was evidence the children were sick or injured. He cited Pennsylvania's religious exemption to child abuse and neglect as one factor in his decision.

CHILD felt CYS should try again after Shannon's death to obtain an order for medical exams of the siblings. The hereditary nature of diabetes might have been a basis for ruling that the children were at risk. CHILD wrote CYS, but CYS did not act.

### **Brother's children died of diabetes**

Dennis and Lorie had reason to know diabetes ran in their family long before Shannon died. Dennis's brother Charles and his wife Eileen, also members of Faith Tabernacle, have let two of their children die of diabetes without medical attention. Their son Charles Jr. died in 1988 at ten years old. Their daughter Karyn died in 1993 shortly before her third birthday. One of the deaths occurred when Dennis and Lorie were at Charles and Eileen's home in Mays Landing, New Jersey and they were interviewed by police about the death.

New Jersey filed no charges in either death.

At the two-day trial in April, the Nixons' attorney, Steve Passarello, argued that Shannon was old enough to make her own decisions about medical care and religious practice. He presented evidence that Shannon, nearly 17 years old when she became sick, had made a free personal choice to rely on her faith rather than medicine.

He cited a Pennsylvania case in which a 12-year-old was considered a mature minor for the purpose of determining custody.

Haberstroh countered that state law requires parents to provide their children with the necessities

of life until the age of 18. He cited the Cottam case in which Pennsylvania parents were convicted for letting their son Eric starve to death. They had more than \$3,700 in the bank but believed they could not use it to buy food because the money was pledged to the Seventh-Day Adventist church. The Cottams argued that 14-year-old Eric was old enough to make a personal choice to wait for God to provide food. They were convicted of third-degree murder. *Commonwealth v. Cottam*, 616 A.2d 988 (Pa., 1992).

### **Prospects for healing**

Haberstroh's medical experts testified that Shannon's life could have easily been saved by medical treatment even after she lapsed into a coma.

The defense proposed introducing testimony about healings accomplished through prayer in the Faith Tabernacle religion. Haberstroh said he would cross-examine about cases of failure, and the defense knew he had records on the deaths of the Nixon children in New Jersey.

The defense avoided questioning witnesses about claims of healing.

### **Belief unshaken**

Now pregnant with their eleventh child, Mrs. Nixon did testify that she was totally dedicated to her faith. "I firmly believe the tenets of the Faith Tabernacle Church because every tenet is backed by a firm scripture," she said.

"I have never had medical treatment, not even a cough drop," she continued. "I was born at home, I never saw my parents use medical treatments, and I believe in the power of God."

Faith Tabernacle's profession of faith declares: "We believe that the Bible is opposed to all means of healing apart from God's way . . . and all medical and surgical practice whatever." In justification of their position, members often cite a verse from Jeremiah, chapter 46, "In vain shall you use many medicines, for you shall not be cured."

### **Guilt and sentencing**

The jury deliberated less than two hours before finding Dennis and Lorie Nixon guilty.

At their sentencing for Clayton's death in 1991, their attorney argued for leniency, saying, "They have to live with themselves, with their God, with their family knowing what happened. . . ."

Their attorney also argued that jail would do no good at the sentencing for Shannon's death. Judge Norm Callen retorted, "Obviously, probation didn't work either."

All of Shannon's surviving siblings attended the sentencing hearing. Witnesses testified as to how "well behaved" the children were and what a close-knit family they were.

Callen responded that if the parents had just gotten medical care, two more of their children would be with them.

He ordered Children and Youth Services to visit the family's home once a month to check on the health of the children.

### **Religious exemption law an issue**

Pennsylvania has a religious exemption in its civil code, but not the criminal code. In 1982, Faith Tabernacle parents William and Linda Barnhart of Cambria County, Pennsylvania, were convicted of manslaughter for letting their toddler Justin die without medical treatment. The conviction was upheld on appeal. The Barnharts petitioned the Pennsylvania and U. S. Supreme Courts for review, but the courts refused to review the conviction.

In 1992, Haberstroh won the convictions of Kathy and John Friedenberger, whose baby Melinda died without medical care. Mrs. Friedenberger is a member of Faith Tabernacle.

In these criminal prosecutions plus the trials of the Nixons, the defense attorneys argued that Pennsylvania's religious exemption statute gave them the right to withhold medical care.

The courts, however, ruled that the exemption did not apply to the criminal code.

## Changes in abuse law

In 1994, the Pennsylvania legislature revised the religious exemption, but rejected the pleas of advocates to remove it. Haberstroh spoke to his own representative, but the legislator did not support repeal, even with the deaths of Melinda Friedenberger and Clayton Nixon in his district.

Instead, the state enacted the following: "If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health." 23 Pa. Con. Stat. Ann. Sec. 6303(b)(3).

As Haberstroh told the press recently, "Unfortunately in the cases I've been exposed to in Blair County, by the time the state finds out about it, the child is dead."

The Nixons will be eligible for parole after 2 ½ years. They intend to appeal their conviction.

Taken in part from *Time* 5 May 1997, *Altoona Mirror* 6 and 23 April, and AP articles of 22 April.

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## Philadelphia parents charged for medical neglect

A Northeast Philadelphia couple who refused medical treatment for their seriously ill 2-year-old son because of religious convictions has been charged with endangering the welfare of a child and conspiracy.

Faith Tabernacle members Daniel and Anne Foster, both 26, were arraigned May 23.

Their son, Patrick Foster, was hospitalized on May 9 at the request of the city Department of Human Services (DHS), which obtained a court

order for his treatment. The boy has a Wilms' tumor, and the cancer has spread.

By early April Patrick was too weak to play with his toys or swing in his yard. He was in bed nearly all the time. Neighbors saw the pale, listless toddler sitting outside on his father's lap under a blanket.

The Fosters told the neighbors Patrick had been sick, but was recovering.

## Neglect report led to medical care

On May 7 an anonymous caller on a child-abuse hotline reported that the boy appeared lethargic, seemed to be losing weight, and his abdomen was distended, according to a DHS official.

Within an hour, a social worker went to the Foster home. The parents let the social worker in but would not allow her to examine Patrick because of their religious beliefs. From a distance, Patrick seemed to be wincing in pain, the official said.

Two days later DHS obtained a court order authorizing a physical exam for Patrick. Doctors found the cancer and went to court for a second order to admit him to intensive care at St. Christopher's Hospital for Children.

## The physical symptoms

Patrick was so severely dehydrated that he fell into shock and had to be resuscitated. He had a rash on his face and shoulder because he had not been able to lift his head and drooling made his skin raw.

A tumor protruded from the boy's abdomen and had spread to his liver and heart. Chemotherapy is now shrinking the tumor, which will be removed when it becomes operable in about six weeks.

The chances of survival can be as high as 90 percent when a Wilms' tumor is treated early. An oncologist testified that Patrick has a 50 to 60 percent chance of survival.

## Religious freedom or child abuse

Prosecutor Mimi Rose said, "This is not a case of religious freedom. This is by all standards in the community a case of child abuse."



But defense attorney David Glanzberg argued that the Fosters' actions were "a First Amendment right."

"This is a belief system," he said. "It's not a crime to believe God will heal children."

The Fosters have two other children, a 3-year-old boy and a 2-month-old girl.

The Fosters have spent many hours in the hospital with Patrick and have cooperated with the treating physicians.

Anne Foster, however, told a neighbor that authorities "got what they wanted" and added: "When we get Patrick home, he'll be better."

A spokesperson for St. Christopher's said the hospital handles about ten cases a year of court orders for medical treatment over the religious objections of parents.

#### **No charges in more than a dozen deaths**

More than a dozen Philadelphia children have died because of faith-healing beliefs in the past quarter century. Criminal charges were not filed in any of the deaths.

One Philadelphia Faith Tabernacle family, Roger and Dawn Winterborne, let five of their children die of untreated pneumonia between 1971 and 1980.

In 1956 Christian Scientists Edward and Anna Cornelius of Swarthmore, Pennsylvania, withheld insulin from their 7-year-old son David, even though he had been medically diagnosed as diabetic. He died in a Christian Science nursing home.

They were charged with manslaughter, but the district attorney dropped the charge after a visit from a Christian Science public relations manager.

The charges against the Fosters for medical neglect tied to religion are, we believe, the first in Philadelphia since the aborted indictment against Mr. and Mrs. Cornelius in 1956.

Taken in part from the *Philadelphia Daily News* 10, 14, and 20 May 1997; *Philadelphia Inquirer* 13 May; and *The Crime of Dorothy Sheridan* by Leo Damore.

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## **Care ordered for second Faith Tabernacle child**

One week after Patrick Foster was hospitalized (see above), a second Philadelphia-area child affiliated with Faith Tabernacle was rushed to a hospital under court order.

Sharon Lucas, 12, of Willow Grove, had been unable to attend school for perhaps six to eight weeks, according to the Montgomery County Office of Children and Youth (OCY). She was so weak that police had to carry her out of her home. She was also jaundiced.

The OCY would not release her parents' names, but said they belong to Faith Tabernacle and oppose medical care because they believe in relying exclusively on God to heal illness.

At the hospital Sharon was diagnosed with glioblastoma, a malignant brain tumor that cannot be cured. She was returned home to her family. She is receiving pain medication and hospice care through Children's Hospital of Philadelphia, which says its main priority "is to keep her comfortable."

#### **No charges will be filed**

Montgomery County Assistant District Attorney Risa Ferman said no charges would be filed against her parents.

"It's unlikely the outcome would be any different even if [Sharon] was brought to doctors when she complained of symptoms," Ferman said.

"How can I argue that they violated the duty to care for their child when nothing could have been done differently?" she added.

The Office of Children and Youth maintains legal custody of Sharon to ensure that home-care services continue.

"The family is cooperating. They're still grieving, but they're very supportive," an OCY spokesman said.

Sharon has four siblings, who also remain at home with their parents.

Taken from the *Philadelphia Daily News*, 17 and 29 May.

## CHILD's view

Did Sharon's parents and others who knew she was seriously ill do anything wrong? She has a form of cancer that is nearly always fatal within a year even with early medical intervention.

The Montgomery County District Attorney's Office says no charges against her parents will be filed because the cancer cannot be successfully treated.

CHILD Inc. fully supports the right of parents to refuse medical treatment when chances of success are very low or non-existent.

### Need for reporting

We do not, however, believe the state should allow Russian roulette with children. Sharon's parents did not know whether she had diabetes, pneumonia, or cancer. They saw her deteriorating over many weeks and chose not to obtain a medical diagnosis.

This behavior would have been a crime if the disease were treatable. Does it become all right because we find out later that the disease is untreatable?

And what about her school? Perhaps it was a private school run by the Faith Tabernacle church. Even so, all public and private schoolteachers in Pennsylvania are mandatory reporters of suspected child abuse and neglect. When a child is too sick to go to school for more than six weeks, shouldn't school officials have a legal obligation to report to state child protection services?

CHILD believes that such a case should be reported to the state as suspected child abuse or neglect and that parents should have a legal duty to at least secure a medical diagnosis when symptoms of a serious illness are apparent.

After the child has a medical diagnosis and information about treatment options is available, the parents should have the right to refuse medical treatment when probability of success is very low.

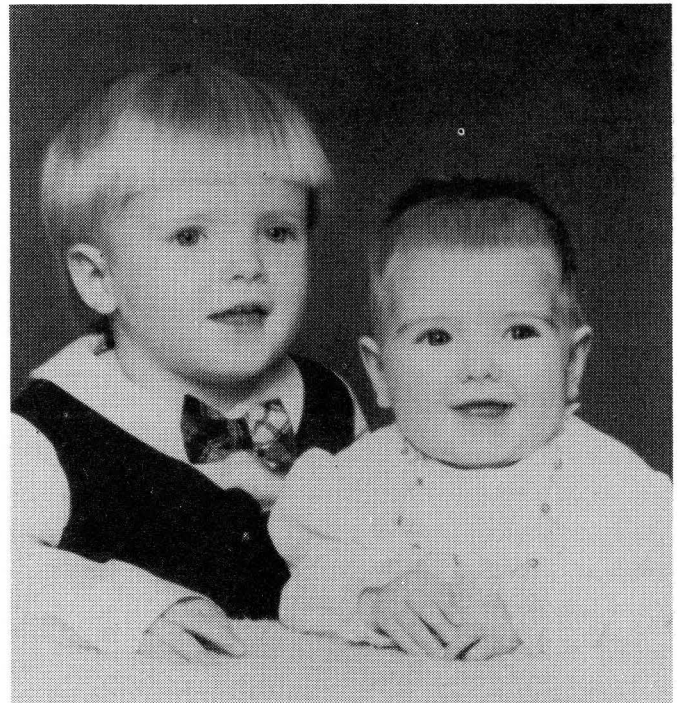
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## In Memoriam, Jamie Jones

*"A simple child,  
That lightly draws its breath,  
And feels its life in every limb,  
What should it know of death?"*

by William Wordsworth

Jamie, pictured below with his sister Jackie, was one of six Philadelphia children who died in 1991 of complications from measles because of his parents' religious beliefs against immunizations and other medical care.



*Jamie and Jackie Jones*

Jamie was only 20 months old when he got measles. He had no desire to be a martyr for Faith Tabernacle's belief system. His highest dream was to live with his family. He was totally dependent on his parents for the simple necessities of life.

They failed him miserably and still believe that going to doctors is wrong.

Jamie's love and light have not been forgotten, however. His grandparents, Sam and Pat McGhie,

have become outspoken opponents of Faith Tabernacle practices. They circulate petitions to repeal Pennsylvania's religious exemption from immunizations and have given several interviews to the press this year.

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## Children die in millennialist sect

Two children have died in the past year in a sect called Tabitha's Place that French police say rejects medical care.

Raphael Ginhoux died April 3, 1997, of malnutrition and an untreated heart defect. He was 19 months old, but weighed only ten pounds.

Tabitha's Place members came from the northeastern United States in 1982. They own two farms and live in a chateau near the town of Pau in France's southwestern corner.

French officials described the sect as "fundamentalist, millennialist and apocalyptic." Investigators said some 100 adults and 75 children lived at the farms in total isolation from the outside world, refusing outside medical care and teaching their children at home.

Raphael's parents, Michel, 36, and Dagmar, 34, were detained and placed under formal investigation for allegedly depriving a minor of food and care, leading to death, and neglecting to aid a person in danger. Other sect members are also being investigated for neglecting to aid a person in danger.

During the investigation into Raphael's death, officials found sect literature advocating corporal punishment.

On April 7, police raided the Tabitha's Place farms and examined all the children with the help of a dozen doctors. Officials found the children healthy and without signs of physical abuse.

### Horus sect disbands

On April 10, French officials launched a probe of the Horus Sect, which was founded in 1989 in La Coucourde, near Valence.

Horus is being investigated for suspected failure to assist persons in danger after two women connected to the group died in 1994 and 1995, apparently without medical attention.

The group has denied the women were members.

Police also raided Horus offices in 1996 to check the health of the members' children and to investigate a doctor who falsified a vaccination certificate on a sick child.

On April 12, 1997, the Horus Sect announced it was disbanding. "In view of the accusations being made against us and of the lynching we are subjected to in the media, I have decided to stop it all," the sect's founder, Marie-Therese Castano, told a news conference.

French authorities have stepped up surveillance of sects following the grisly deaths of 16 members of the Order of the Solar Temple in southeastern France in December 1995.

Taken from AP wire articles in April.

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## First Born death in Colorado

On February 14, baby Kyra Wright died in Cortez, Colorado, of viral pneumonia without medical care. Her parents, Colby and Laura Wright, belong to the Church of the First Born, which opposes medical care as a violation of God's will.

The parents and other relatives, also members of First Born, told authorities the 10-month-old baby had been sick for one to two weeks with what they thought were teething symptoms. She became listless and did not nurse well. She had a cough and intermittent fever.

At death she weighed about 15 pounds. Her body was dehydrated and showed some decrease in muscle mass.

According to a pediatrician, her chances of survival with medical treatment would have been above 90% if she had no other organic problems. The coroner's examination indicated that respiratory

syncytial viral (RSV) pneumonia was the only cause of death.

### **Second child was endangered**

The Wrights have six surviving children, ages 10 and under. When the coroner came to their home, he found Kyra's twin brother Carl listless, congested, and "tachypneic with acrocyanosis."

He called Social Services and county health nurses and recommended intervention by court order if necessary.

After discussion with officials, the Wrights agreed to bring Carl to the emergency room of a nearby hospital. There he was found to have a fever, a white count of 33,000, and bilateral RSV pneumonia. He was transferred by helicopter to the pediatric unit of a larger hospital in Grand Junction.

The baby made a complete recovery and was returned home with follow-up monitoring by Social Services.

Montezuma County District Attorney Michael Green has decided not to file charges either for the death of Kyra or the endangerment of Carl.

CHILD has documentation of 29 First Born children who have died without medical care over the past quarter century. A church elder has estimated church membership at 15,000 to 20,000.

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### **Jury deadlocks in fatal medical neglect case**

In March an Indiana jury deadlocked on charges of reckless homicide, manslaughter, and neglect against William and Sarah Planck of Alexandria, in the death of their 6-year-old son Lance from pneumococcal meningitis and refusing to get vision care for other children.

Throughout November, 1995, Lance had been on a soft food diet and eventually they began feeding him with an eyedropper because normal postures were causing him neck pain. They testified, however, that they thought the problem was the appearance of his six-year molars.

On November 26, they said they first observed alarming weight loss and a high fever and called 911.

### **Conflicting views**

The EMT, doctors, and nurses disputed the parents' timeline. They said Lance looked like a "bag of bones." His eyes were fixed in a dead glare and he could not respond to them. He was airlifted to Riley Children's Hospital in Indianapolis and died November 30.

At death, Lance was 51 inches tall and weighed 48 pounds. One treating physician testified that his malnourishment had probably gone on for months. The medical examiner said "general starvation" and a blow to his head, likely sustained two weeks before his death, kept his body from being able to fight the virus. He could not determine whether the blow was accidental or inflicted.

The defense brought in medical experts who testified the meningitis could have developed suddenly and itself caused the appearance of malnourishment.

### **None of 11 children got medical care**

The Plancks have ten surviving children. After the parents became Christians in 1978, they did not take their children to doctors nor get them immunizations. The first three children born after 1978 were delivered by physicians, but the last five were delivered at home by their father. The Plancks home schooled all their children after 1978.

In 1993 an estranged adult daughter reported to the state her suspicions that her siblings were being abused and medically neglected. A court ordered vision tests for three of them.

At the court hearing, Mr. Planck refused to let the children be examined. The judge pleaded with him for "a middle ground."

### **Judge or Satan rebuked**

"Satan," Planck responded. "I come against you in the name of Jesus Christ. Spirit of antichrist. Caduceus. Powers of darkness, I come against you. The blood of Jesus breaks your powers. . . ." Then he began "speaking in tongues," observers believe.



### **Belief that doctors are agents of the devil**

Welfare officials and the police finally took the children for eye exams. Caseworker Nellie Elsten testified, based on her conversations with the children, that the Plancks taught their children that doctors were agents of the devil and that medicine would kill them.

Two children were diagnosed with cataracts and are legally blind in terms of distance vision. A third child is blind in one eye.

The Plancks refused to get glasses and other medical treatment, but added vitamins to the children's diet. A recent exam ordered by the state showed significant improvement in one daughter's vision, Mr. Planck said.

Child welfare officials have been visiting the family periodically since 1993.

### **Hostility to government**

After Lance's death, the Plancks' beliefs about medicine were soon overshadowed by their strident hostility to the government. They claimed that the criminal charges against them for Lance's death were an act of revenge for their testimony against welfare officials at a public hearing.

They said they were constantly afraid of losing custody of their children. Planck testified that Lance was "terrified" of "the welfare police," that the boy's fears caused his illness, and that he "grieved himself to death" because of their "lies."

He claimed the blow to Lance's head was caused by hospital personnel.

The Plancks published other sensational allegations in the local newspaper and on the Internet.

### **Political influences**

The coroner first ruled the death a homicide, but changed the record to natural causes in April during his heated primary race and announced his reversal to Indianapolis television stations in violation of a gag order.

A witness said the coroner admitted making the change because he believed the Plancks had a religious right to withhold medical care.

### **Antipathy to medical care did not delay call for help**

The Plancks denied that their religious beliefs motivated them to delay calling for medical help for Lance.

In closing arguments, Madison County Deputy Prosecutor Cynthia Sauer described the Plancks' allegations against the state as "delusional" and "paranoid" and said they were trying to shift blame for their son's death.

### **Opposing government lauded**

Defense attorney Katharine Liell asked the jury to embrace the Plancks' view of government and regard them as heroes:

"What Bill and Sarah Planck did do is stand up against the bureaucratic welfare system without a lawyer and won time and time again. . . . This is not a case about criminal neglect and homicide. It's about standing up against Gestapo-like child welfare workers, who take people's children away," she said.

The jury deadlocked on all counts. Later nine jurors signed a petition urging the county not to retry the case.

### **Community unites against bureaucrats**

The Anderson newspaper supported the Plancks in editorials. The "Planck children are obviously not abused or neglected," *The Herald Bulletin* said. "The Plancks may have erred in judgment in getting medical treatment for their children, but certainly they love and care for them."

As for their religious beliefs, the paper continued, "Faith is a personal thing."

The county has dismissed all charges, including those relating to neglect of surviving children.

The Plancks say they received massive support from the community and also found "Christian physicians," who are now treating the children.

Taken from articles and editorials in *The Herald Bulletin* from November, 1995, through March, 1996.

## Indian boy caught between two worlds

After 15 months of court battles and being on the run from authorities, Katherine Quartz says that Indian ritual methods have healed her 12-year-old son Thomas Molina of Hodgkins disease.

Quartz eluded authorities in three states from February, 1996, until October, as she tried to cure him with traditional Indian remedies.

In August she turned to her tribe, the Walker River Paiutes of Schurz, Nevada, for help. The tribe, however, insisted that the boy be taken to a medical doctor. He was examined at University of California Davis Medical Center where doctors said his chances of survival would be 90% or higher with chemotherapy and radiation.

### Paiutes' order defied

Thomas and Katherine, however, refused treatment and fled the state. They began a 120-day regimen of traditional Indian medicine, which combines herbal tea and compresses, diet, and rituals. They believe it will not work if it is combined with chemotherapy.

The Sacramento County District Attorney's office issued a warrant for Mrs. Quartz's arrest charging her with child endangerment. After her arrest in October, her tribe made the boy a ward of their court.

Sacramento County then dropped its charges because the federal Indian Child Welfare Act gives tribal courts exclusive jurisdiction over Indian children.

### Orders on care reversed again and again

Ron Johnny, a tribal judge for the Walker River Paiutes, first ordered Thomas to have both medical and traditional Indian methods together. In

November, Judge Johnny ordered the chemotherapy halted until a traditional medicine man from another Paiute reservation could examine Thomas.

"There has been no showing that traditional Northern Paiute treatment by a recognized Indian doctor is any less effective than conventional white treatment," he said. "Traditional Northern Paiute Indian doctors have had a centuries long and successful history. . . . when their medical advice and treatment is sought soon enough, and they. . . are essential to this tribe's continued existence as a sovereign [nation]."

In December, however, Judge Johnny ordered Thomas to resume chemotherapy along with Indian methods. The findings of the medicine man were not reported.

Quartz then appealed to the Inter-Tribal Court of Appeals. In January, the appellate court ordered his chemotherapy halted. It ruled that the boy could have traditional Indian methods exclusively for 120 days with CAT scans every 30 days to check on his progress.

### No evidence that Indian medicine won't work

The appellate court said it received no evidence that Indian medicine won't work and therefore it is a legitimate alternative to Western medicine.

Quartz's lawyer, Thomas Lynch, called the chemotherapy treatments "wholly unnecessary" and painful.

The boy's treating physician at UC Davis said chemotherapy was the only cure for the disease and that discontinuing it after three treatments posed considerable risk that the cancer would spread and become untreatable.

### Indian cure claimed

Quartz recently reported that the CAT scans showed no evidence of cancer and credits Indian methods with a cure.

Quartz's rejection of medical care is not typical of Native Americans. Many on reservations in the Southwest believe disease is caused by spiritual factors and seek a shaman's advice first, but then

turn to conventional Western medicine for treatment.

### Need to claim heritage

Quartz, who is half Paiute, said her white birth mother rejected her. She was placed in an orphanage, adopted by a white family, and alienated from both white and Indian worlds. She was heckled by schoolmates and adoptive siblings and not taught her Indian heritage.

"Every traditional healer I know works in conjunction with Western medicine," said Dr. Patricia Samuelson, medical director of the Indian Health Project. "The people who are rejecting all white culture for the most part have not been raised in their tribe, so it's a political statement more than any Indian belief. . . . Virtually every Indian who has been raised Indian is very pragmatic. You never have trouble immunizing the children of Indians because they have seen what the white man's disease has done to them and what the white man's medicine can do to protect them."

Taken in part from the *Sacramento Bee*, 25 and 27 October, 9 November, 8 December, and 15 January.

## In the spirit of ICWA

by Dewey P. Sloan

The Indian Child Welfare Act (ICWA) of 1978 is an elaborate example of a guilty social conscience given voice through Congress. The House of Representatives report on the bill stated as much. Former U.S. Senator James P. Abourezk from South Dakota said: "For the past two hundred years the children of American Indians have been innocent victims of a cultural war waged against them by American society." He decried the destruction of the "customs, values and traditions" of the children's native culture by "relentless indoctrination" of "Christian missionaries, Indian agents, school teachers and politicians."

While his statements ring of truth, the larger truth is that all children are innocent victims of neglect and abuse in all cultures.

It is my observation that, as a distinctly identifiable group within our species, children are the most oppressed. ICWA allows Native American children to be more so.

### High rates of removal

Still, there were sound reasons for ICWA's passage. At the time of enactment, studies showed Indian children were being removed from their parents in numbers disproportionate to their percentage of the overall population. In Minnesota, Indian children were placed in foster care or adoptive homes at a per capita rate five times greater than that of non-Indian children. In Montana, the rate was 13 times greater; in Washington, 10 times; and in South Dakota, 19 times. Such cultural bias indicated something needed to be done.

The ICWA purports to correct the bias. The "national" purpose of ICWA is "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." Emphasis added.

It's mostly lofty noise. And, unfortunately, the sound and fury have done little more than to put the welfare of children on the same plane as their tribal elders and adult family members when considering whose best interests should be served. When adults have choices, children's interests get pushed aside. ICWA facilitates the push.

### Spirituality at what cost

ICWA's defenders speak of enhancing the spirituality of Native American culture. But should a child's physical and mental health be compromised to achieve it? Can any person, any child, enjoy the depths of a spiritual experience while being beaten,

sexually used, left alone, or subjected to a disease-infested environment or any number of other horrors adult members of our species routinely inflict upon their weaker progeny?

If there was a culture in this country that encouraged a child to commit suicide in order to rendezvous in spirit behind Hale Bopp, most of us would want the parents prosecuted.

All too often ICWA has allowed adult concepts of spirituality to be put ahead of the child's physical well-being. Children are taken away from abusive parents—abusive under any cultural definition. Tribal institutions tend to align with parents and return these children before treatment is complete.

Though tribal assertions can be statutorily rebutted, if the child is not living on a reservation, State systems are too overwhelmed to adequately fight both parental and tribal presumptive standings through ICWA.

The losers are the children. I see no children whose spirits are enhanced.

Actually, no one's spirit benefits.

*Sloan is an Assistant County Attorney in Sioux City, Iowa.*

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## High Court denies cert in CHILD suit

In February the U.S. Supreme Court denied *certiorari* in *CHILD and Brown v. Deters*. The Court refused to review a ruling by the Sixth Circuit, U.S. Court of Appeals, that the Attorney-General of Ohio has eleventh amendment immunity from a federal suit until she enforces or threatens to enforce a statute to the detriment of the plaintiffs.

The eleventh amendment to the U.S. Constitution prevents suits against states in federal court. In *Ex Parte Young*, 209 U.S. 123 (1908), however, the Supreme Court allowed some federal suits against state officials.

CHILD's co-plaintiff Steve Brown is a father in New England whose children are being raised by their Christian Science mother in Cincinnati. In 1994 CHILD and Brown filed suit against Ohio officials charging that Ohio's religious defense to

manslaughter and felony endangerment at ORC2919.22A discriminates against the Brown children and asking the federal court to rule the defense unconstitutional.

The district court granted plaintiffs standing to bring the action for declaratory and injunctive relief. The Sixth Circuit, however, granted eleventh amendment immunity to the Attorney-General.

CHILD and Brown petitioned the U.S. Supreme Court for review of the Sixth Circuit's ruling with distinguished amicus support. The National Task Force on Children's Constitutional Rights wrote the amicus brief. The American Academy of Pediatrics, National Association of Counsel for Children, National Committee for the Rights of the Child, Hear My Voice, Council on Child Abuse of Southern Ohio, Inc., People Against Child Abuse, Dr. David Chadwick, and Dr. Donald Duquette signed the amicus brief.

After the Supreme Court declined review, CHILD and Brown asked the district court to reinstate the local prosecutors as defendants. They are still waiting for a ruling.

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## Hatch adds payments for CS nursing to budget bill.

On June 18 Senator Orrin Hatch, R-Utah, amended the budget reconciliation bill in the Senate Finance Committee to provide Medicare and Medicaid payments for Christian Science nursing. There was no debate, no roll call vote, and no amendment text. The committee agreed to support the concept; Hatch will provide the text later.

Hatch did not post the amendments until June 16; CHILD learned of the Christian Science amendment on June 17. In the few hours available, many CHILD members called offices of Senators on the Finance Committee urging them to vote against the amendment, but none of those Senators expressed opposition or even reservations in committee.

CHILD and two of its Minnesota residents, Dr. Bruce Bostrom and Steve Petersen, filed a tax-



payers' suit challenging Medicare and Medicaid payments for Christian Science nursing. *CHILD, Bostrom, and Petersen v. Vladeck et al.*, 96-3936 MNST and 96-3938 MNST. In August, 1996, a federal district court ruled that the statutes mandating the payments are unconstitutional; the U. S. Attorney-General has also determined the statutes to be unconstitutional.

### **Comparable to inpatient hospital services?**

The Christian Science church has been lobbying Congress for new statutes. The church claims that payments will be constitutional if the statutes have no reference to Christian Science. In April, a bill was floated to provide Medicare and Medicaid payments to "religious non-medical health care institutions" serving patients who rely "solely upon a religious method of healing."

The bill said their "covered items and services" would be "comparable to, or the equivalent of, inpatient hospital services. . . ."

CHILD and several of its members vigorously opposed the bill with letters and calls. We argued that nothing done by Christian Science nurses is comparable to a medical hospital's services because they are not working under a doctor's supervision on the basis of a diagnosis and are not state licensed.

The bill was withdrawn, but Hatch's amendment will presumably achieve the same objective.

Hatch has written both the church and Attorney-General Reno expressing his determination to preserve Medicare and Medicaid payments for Christian Science nursing. Hatch called the Christian Science amendment one of his top four priorities for the budget reconciliation bill.

### **Letters to Congress needed**

CHILD encourages its supporters to write their Congressmen against restoring these payments. We do not understand why the Senate Finance Committee is so determined that taxpayers should pay for unlicensed Christian Science nurses who sit around watching children die in agony and do very little that resembles sensible health care.

These nurses cannot take a pulse, use a fever thermometer, or report contagious diseases. They will not perform even simple non-medical procedures to relieve discomfort, such as application of heat or ice, enemas, or backrubs.

Congress has cut Medicare and Medicaid payments for medical care of the poor, the elderly, legal immigrants, and disabled children. Yet the Senate Finance Committee wants us to pay for Christian Science nursing.

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## **Religious exemption bill defeated in Maryland**

The Christian Science church promoted a religious exemption bill in Maryland this year, but it was defeated in the first committee that heard it.

Maryland repealed its religious exemptions to child abuse and neglect charges in 1994. It has never had a religious defense to criminal charges.

This year, Delegate Kenneth Montague, Jr., D-Baltimore, sponsored HB1104, which offered a carte blanche religious exemption to criminal charges as well as abuse and neglect charges. It stated that no Maryland law may be construed:

1. *To establish a requirement that a parent or legal guardian provide a child with any medical service or treatment against the religious belief of the parent or legal guardian;*
2. *To require or authorize a finding of abuse, neglect, or violation of a criminal law by a parent, guardian, or other person who has care, custody, or responsibility for supervision of a child for relying, in accordance with the religious belief of the parent or guardian, solely on spiritual means rather than medical treatment for the health care treatment of the child.*

The bill echoed language in PL 104-235, passed by Congress in 1996, which allowed states in the federal grant program to exempt parents from neglect charges. But the Maryland bill actually went much further in dismantling protection for children.

It expanded the exemption to all crimes and did not mention a reporting requirement.

Forty state and local organizations opposed HB1104, including

- 1997 Maryland Children's Agenda Coalition
- Women Legislators of Maryland
- Advocates for Children and Youth
- Maryland Congress of Parents and Teachers
- Maryland Department of Human Resources
- Maryland Department of Health and Mental Hygiene
- Governor's Office for Children, Youth, and Families
- Maryland State's Attorneys' Association
- Jewish Family Services
- Friends of the Family
- American Association of University Women Maryland Chapter
- People Against Child Abuse
- Maryland School Psychologists' Association
- Women's Commission of Maryland
- Maryland Network Against Domestic Violence
- Business and Professional Women of Maryland
- Maryland Congress of Parents and Teachers.

Ellen Mugmon and her husband of Columbia, Maryland, worked tirelessly to mobilize opposition to the bill.

It was introduced in the House Judiciary Committee and defeated there by two votes.

## Comment

This outcome in Maryland shows that Christian Science initiatives can be defeated where child advocates are alert and well-organized. It also shows that after religious exemptions are repealed, people do not want them back. The idea of letting people commit crimes against children because God told them to do so sounds barbaric—if it is not your status quo. If it is, then many think the legislature must have had a good reason for enacting it.

The Christian Science church may well promote this type of legislation in other states. Church claims that it is based on federal law may be influential with other state legislators.

Certainly, vigilance in monitoring legislation will be necessary.

## Christian Science bill defeated in Delaware

This spring, Rep. Nancy Wagner, chair of the Delaware House Judiciary Committee, introduced two bills providing a religious defense to criminal child neglect and endangerment.

Delaware's laws are already nearly the worst in the nation on religion-based medical neglect. In 1995 the state enacted a religious defense to first and second degree murder charges at Del. Code Ann. Title 11, Sec. 1103(b) and 1104.

In 1997, however, advocates learned of Wagner's bills at an early stage. The American Academy of Pediatrics found them on the Internet and alerted its Delaware Chapter and CHILD. The Delaware Attorney-General's office also became involved in opposition.

Rep. Wagner said she had introduced the bills only as a favor to a constituent; the Christian Science public relations and lobbying manager for Delaware lives in her district. Wagner quickly withdrew the bills when concerns reached her.

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## Michigan Senate passes religious defense to criminal child abuse

Over the objections of sponsor Michael Bouchard, Michigan Senate Majority Leader Richard Posthumus added a religious defense to a bill on felony child abuse and other crimes against children. Both legislators are Republicans.

The bill was first introduced in 1992. It has been delayed for years because of Christian Science lobbying for a religious defense and concerns of women's groups about whether women should be held responsible for protecting their children when there is domestic violence in the home.

Michigan has never had a religious defense in its criminal code. However, it defines criminal neglect as failure to provide only food, clothing, and shelter. Medical care is not on the list of necessities a parent must provide. Nevertheless, if the child dies, manslaughter charges can be brought.

CHILD has worked to have medical care added to the neglect statute's list. Two years ago when the religious defense to abuse was put in Bouchard's bill, Bouchard agreed to remove it on condition that medical care not be added to the neglect statute.

### **Faith healers allowed to commit child sexual abuse**

This year, however, Posthumus added the religious defense to the bill.

Substitute SB113 includes the provision, "A person responsible for the child's welfare who is legitimately practicing his religious beliefs and who for that reason alone does not provide specified medical treatment for the child is not in violation of this section."

Thus, people who withhold medical care from children on religious grounds can not be charged with **any** crime described in the surrounding code section.

That section defines the crime of child sexual abuse as well as a "reckless act" that "causes or threatens to cause physical harm to a child" and intentional injury.

### **CHILD's view:**

What a convenient loophole for a variety of child abusers! The Christian Science church's membership may start increasing in Michigan.

Substitute SB113 is now before the House Judiciary Committee chaired by Rep. Ted Wallace. We urge you to contact him at Room 526, Roosevelt Building, State Capitol, P. O. Box 30014, Lansing MI 48909-7514.

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## **Christian Scientist's conviction overturned**

Laurie Walker, a Christian Scientist convicted of manslaughter for letting her daughter die of untreated meningitis in Sacramento, recently won a federal ruling that vacated the conviction on due process grounds. Prosecutors say, however, that it

does not affect the 1988 California Supreme Court ruling in her case with regard to future defendants.

Walker's daughter Shauntay was home sick from nursery school for 17 days. Walker relied on prayer by a Christian Science practitioner and would not take Shauntay to a doctor. Her sister, who was not a Christian Scientist, grew increasingly alarmed. She threatened to call the police when Shauntay became comatose. Laurie then moved her to a Christian Scientist's home where she died. Shauntay was nearly five years old, but weighed only 29 pounds at her death.

Walker was charged with manslaughter and child endangerment. She argued that a religious exemption to a misdemeanor of nonsupport in Penal Code Section 270 led her to believe she had the legal right to withhold medical care from her sick daughter.

The California Supreme Court disagreed. In a 49-page ruling, the Court held that the legislature did not intend to offer a religious defense to the felony charges of manslaughter and endangerment and that Walker must stand trial on the charges. *Walker v. Superior Court*, 763 P.2d 852 (1988).

Section 270 states that caretakers must provide "necessary food, clothing, shelter, medical care, or other remedial care" and then defines "other remedial care" so as to include prayer.

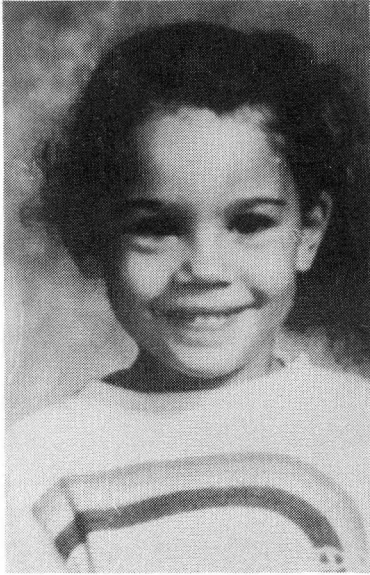
Prosecutors argued that the word "necessary" was key: parents must provide what is necessary for the condition of the child. The grammar did not indicate that the parents could meet the standard by supplying just one of the five if another was also necessary.

### **Law's meaning established by Supreme Court**

The California Supreme Court held that Section 270 did indeed exempt devotees of faith healing from nonsupport charges. The Court nevertheless found that no religious exemption applied to manslaughter or endangerment charges. The nonsupport chapter dealt with financial provision for the child while the manslaughter and endangerment statutes dealt with protecting the child from physical harm.

The statutes have fundamentally different purposes, the Court concluded.

In 1990 Walker was convicted of manslaughter by plea agreement. The conviction was upheld on appeal; the California Supreme Court declined to review it.



*Shauntay Walker*

In 1993 she filed application for a writ of habeas corpus in federal court claiming that her conviction violated her constitutional rights to due process and free exercise of religion, violated the Religious Freedom Restoration Act, and was based on insufficient evidence.

Such a writ is available only when a state court decision is contrary to, or involves an unreasonable application of, established Federal law as determined by the U.S. Supreme Court.

The federal court held that California's statutory scheme "at the time" of Shauntay's death did not give Walker fair notice of criminal liability. It pointed out that Section 270 "equated spiritual healing with 'necessary' medical care" and that no statute indicated the equation was inapplicable to some conditions.

In October, 1996, the federal court overturned her conviction on due process grounds and declined to rule on her other claims. *Walker v. Keldgord*,

U.S. Dist. Ct., Eastern Dist. of Calif. #CIV S-93-0616 LKK JFM P.

The state did not respond to the federal judge's findings by the deadline nor did it appeal the subsequent ruling. Walker had already completed her probation by the time of the federal ruling.

The federal ruling, according to California prosecutors, applies only to Walker and not to future defendants. Today the laws of California mean what the California Supreme Court held in 1988. Any parent who withholds necessary medical care on religious grounds in California after 1988 has been given fair notice of criminal liability.

For example, the conviction of First Born parent Earl Northrup of Redding, California, was recently upheld. In 1991 he and his wife Catherine let their baby Jordan die of meningitis without medical treatment because of their religious beliefs. *People v. Northrup*, Calif. 3<sup>rd</sup> Dist. Ct. of Appeals CO21576 (1997).

## Comment

The federal ruling, more than 12 years after Shauntay's death, ought to be a clarion call for the legislature to repeal the religious exemption in Section 270. The federal court has said the statute misled Laurie Walker. The California Supreme Court's ruling that parents have no religious right to withhold necessary medical care from children is the law as of 1988.

Why should the state retain a misleading, irrelevant law?

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## About CHILD Inc.

CHILD is a tax-exempt educational organization working to protect children from religion-based abuse and neglect.

Membership in CHILD is by application. Dues are \$25 a year or \$15 for students. Dues-paying members receive the newsletter.