

Jehovah's Witnesses, Blood Transfusions, and the Tort of Misrepresentation

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INTRODUCTION¹

Ask an American judge or doctor what he (or she) knows about the medical beliefs of Jehovah's Witnesses. The response will probably be that Witnesses devoutly refuse to accept blood transfusions for either themselves or their children, even to save a life. Since 1945, the Governing Body of Jehovah's Witnesses ("Society" or "Watchtower") has strongly contended that accepting whole blood or whole blood cell transfusions violates the Bible's commandments in Genesis 9:3-6, Leviticus 17: 13, 14, and Acts 15:22-29 to "abstain from blood."² For a Jehovah's Witness, conscious

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1. Many of Ms. Louderback-Wood's immediate family members are Jehovah's Witnesses, and she attended the religion's meetings until reaching adulthood. Her mother faced the blood issue twice. In the first instance, a doctor administered platelets to stop post-partum hemorrhaging. Years later, doctors warned her mother that she was at great risk for heart failure because of her severe anemia and low blood pressure, and recommended a blood transfusion. Her mother refused, and she suffered a fatal heart attack within 48 hours of that warning. The doctors, hospital, relatives, and visiting members from the local congregation were not aware that the Society allowed followers to accept blood-derived hemoglobin, and, thus, did not offer it. Instead, a relative ordered the hospital to administer an erythropoietin injection, relying on the Society's literature which stated it worked "very quickly" to produce red blood cells. The doctors explained that this injection would not work as quickly as the relative thought. These events were the impetus for this article.

2. *The Watchtower* (1 July 1945): 198-201, available online at: www.ajwrb.org/watch-tower/data1.shtml; *The Watchtower* (22 October 1948): 12, available online at: www.ajwrb.org/watchtower/data1.shtml; *How Can Blood Save Your Life?* (Watchtower Bible and Tract Society of New York,

and unrepentant acceptance of blood means loss of Jehovah's favor and the chance at everlasting life in His Kingdom.³ In response to this religious belief, U.S. courts have upheld a competent adult's choice to refuse blood under "freedom of religion," but will order blood transfusions to save the life or well-being of a child.⁴

The Society's main resource regarding its blood policy, "*How Can Blood Save Your Life?*" ("pamphlet"), teaches both Witnesses and interested persons about the religion's blood prohibition. In addition to giving the Society's religious interpretation, the pamphlet relies on quotes from historians, scientists, and medical professionals to bolster its no-blood position. This essay will first discuss the pamphlet's misrepresentations of these secular writers and the availability of private action suits for persons harmed when a religious organization misrepresents secular facts. Furthermore, the Society's blood policy is both complex and ever-changing with respect to acceptable blood techniques and permitted blood products. Thus, this essay will also

Inc. 1990), 3-5.

3. "Be Guided by the Living God," *The Watchtower* (15 June 2004): 24; ("[Accepting blood fractions is serious] because your relationship with "the living God" is involved. That relationship is the only one that can lead to everlasting life...").

4. *Wons v. Public Health Trust of Dade County*, 541 So. 2d 96 (1989) (Holding an adult Jehovah's Witness patient's "no blood" medical choice, even though coupled with the existence of two minor children, outweighed the state's compelling interests because the child still had a remaining parent.); *Fosmire v. Nicoleau*, 75 NY2d 218 (1989) (Holding adult female Jehovah's Witness patient's "no blood" religious and medical choice was not outweighed by state's interests as there was a husband to care for the newborn child.); see also *Jehovah's Witnesses of Washington v. King County Hospital*, 278 F. Supp. 488 (W.D. Wash. 1967) affirmed 390 U.S. 598 (1968) (Class action suit holding that State could order blood transfusions to minor children over the objections of the minors' parents); *Novak v. Cobb County Kennestone Hosp. Auth.*, 74 F.3d 1173, (11th Cir. 1996) (Holding hospital, treating physician, and guardian ad litem were correct in ordering a blood transfusion for a sixteen year old car accident victim after mother refused to sign permission for blood transfusion and stated minor would also refuse blood transfusion, if able, as he was a Jehovah's Witness); *In the Matter of Baby Girl Newton*, 1990 De. Ch. Lexis 48 (Del. Ch. Apr. 24, 1990) (Case not released for publication) (Court held that it was within the state's domain to order a blood transfusion for premature, anemic 2 day old infant.); *In re McCauley*, 409 Mass. 134 (1991) (Court held it was within state's power to order blood transfusion for 8 year old girl suffering from leukemia.); *Muhlenberg Hospital v. Patterson*, 128 N.J. Super 498 (N.J. Super. Ct. 1974) (Court permitted blood transfusion for ill, six-day-old infant because blood transfusion would likely prevent severe health damage.); *O.G. v. Baum*, 490 S.W. 2d 839 (Tex. App. Houston 1st Dist. 1990).

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examine misrepresentations within the dissemination of the blood policy that could leave both Witnesses and medical staff ill-advised. This essay does not address the veracity of other Jehovah's Witness writings and is not meant to be an attack on the religion's beliefs, including its belief that mankind should abstain from blood. It is meant, however, to further legal theory regarding the use of tort law as a narrowly tailored means for affording harmed persons legal redress.

THE PRIVATE RIGHT TO SUE WHEN A RELIGION
MISREPRESENTS SECULAR FACTS

The Society's primary legal argument used to defend its blood policy is "freedom of religion" under the First Amendment Clause: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁵ Today, various courts have interpreted religious freedom to mean that courts should not inquire about the truthfulness of a belief, independently interpret religious texts, or review religious organization decision making.⁶ The unwillingness of courts to decide these matters can be traced to three concerns: (1) the courts want to avoid thwarting the organization's and members' free exercise rights; (2) the courts fear excessive government entanglement if they scrutinize religious interpretations; and (3) the courts are unable to define a reasonable standard for deciding disputes without interjecting individual preference for or against religions.⁷

A state can intrude, however, either directly or through allowing tort action, in the right to exercise religious beliefs provided the state's action can meet a four-part test:

1. Government must have an important or compelling state interest.
2. The "burden of expression must be essential to further" this interest.
3. The "burden must be the minimum required to achieve"

5. Applicable to state governments via the U.S. Constitution's Fourteenth Amendment.

6. Scott C. Idleman, "Tort Liability, Religious Entities, and the Decline of Constitutional Protection," *Indiana Law Journal* 75 (Winter 2000): 219-23.

7. *Ibid.*; see also: *Lemon v. Kurtzman*, 403 U.S. 602, (1970) at 612-613; *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973) at 773; *Abington School Dist. v. Schempp*, 374 U.S. 203 (1963) at 222.

this interest.

4. The measure must apply to everyone, not just the questioned religion.⁸

Government intervention into religious exercise through meeting this test is rooted in legal precedent. In *Reynolds v. U.S.*, one of the first decisions limiting religious freedom, the Supreme Court upheld a law criminalizing polygamy because of the state's compelling interest in protection of the family unit.⁹ Additionally, courts are now willing to allow aggrieved citizens to sue their church if it misrepresented a secular fact.¹⁰ For example, one court has held a religious organization liable for misrepresenting its use of donated funds.¹¹

Similarly, the Catholic Church became engulfed in a flood of tort law suits following revelations that some of its priests sexually abused minors and that the church allowed known sex-offender priests to continue their posts.¹² The expansion of tort law to permit suits against religious organizations in this particular context is linked to an erosion of charitable and religious organization immunity, tort law's expansion to allow suits against the church as employer, and the nation's intolerance of sexual predators.¹³ The parallel between the state's compelling interest (preventing sexual predatory acts), and the Catholic Church's religious beliefs against such acts paved the way for tort lawsuits, as the decision to retain the offending priests was no longer a question of religious entanglement but of employment law.¹⁴ Today, most courts are still unwilling to settle intra-church disputes, but some are willing to allow tort suits for seriously injured victims of negligence

8. *Wollersheim v. Church of Scientology*, 212 Cal. App. 3d 872, 884 (2d Dist. Div 7 1989).

9. *Reynolds v. United States*, 98 U.S. 145 (1878).

10. Stephen Senn, "The Prosecution of Religious Fraud," *Florida State University Law Review* 17 (Winter 1990): 328.

11. *Ibid.*, 342, referring to *In re Heritage Village Church and Missionary Fellowship, Inc.*, 92 Bankr. 1000, 1006-07 (Bankr. D.S.C. 1988) (PTL used "separate, confidential bank account" to pay top executive officers without disclosing huge amounts paid to employees or church contributors and made "calculated attempts to conceal ministry finances.").

12. Ira C. Lupu and Robert W. Tuttle, "Church Autonomy Conference, February 6-7, 2004, J. Rueben Clark Law School, Brigham Young University: Church Autonomy and Religious Group Liability: Article: Sexual Misconduct and Ecclesiastical Immunity," *Brigham Young Law Review* (2004): 1789.

13. *Ibid.* at 1797-1800.

14. *Ibid.* at 1818.

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by church officials or where the church's "fraud, breach of contract, and statutory violation" is purely secular.¹⁵ These courts invoke a neutrality principle that opens the church to litigation [e.g. employment law] despite the fact that the court will need to examine "religious documents or practices."¹⁶ Likewise, in the context of the Witnesses' blood policy, the state's compelling interest, preventing needless deaths, would pave the way when the religion misrepresents secular facts on blood abstinence in its recruiting and teaching material.

One of the primary cases dealing with a religious organization's misrepresentations is *Molko v. Holy Spirit Association for the Unification of World Christianity* ("*Unification*").¹⁷ The California Supreme Court held that ex-followers could sue the church for fraud in its deceptive recruitment practices. The Unification church purposefully concealed the group's identity from new recruits by initially denying they were "the Moonies."¹⁸ The Unification church argued that, despite the revelation of the church's fraud, the recruits condoned the misrepresentation by becoming members.¹⁹ The California Supreme Court disagreed as it considered the indoctrination process of coercive persuasion to have rendered the recruits incapable of making a contrary decision.²⁰ In this case, because the Unification church told a recruit that "his parents were agents of Satan trying to tempt him away from the Church," family members were unable to persuade him away from the church.²¹ In like manner, as late as 1989, *The Watchtower* still considered anyone who opposed its blood stance or tried to convince a follower to accept blood as doing work orchestrated by Satan.²² This particular, constitutionally protected Witness belief further cements each follower's strong resistance to

15. *Ibid.* at 1850.

16. *Ibid.* at 1851. See also *Jones v. Wolf*, 443 U.S. 595 (1979).

17. *Molko v. Holy Spirit Association for the Unification of World Christianity*, 46 Cal. 3d 1092 (Cal. 1988).

18. *Ibid.* at 1102.

19. *Ibid.* at 1109.

20. *Ibid.* at 1104 and 1109.

21. *Ibid.* at 1104.

22. *The Watchtower* (1 December 1989): 12, ("The faith of Jehovah's Witnesses is under attack from all sides . . . by medical authorities who want to impose blood transfusions on us and our children . . . All this opposition is orchestrated by Satan, the ruler of darkness and ignorance, the enemy of accurate knowledge."), available online at: <http://www.ajw-rb.org/watchtower/data1.shtml>.

accepting prescribed blood transfusions. However, if the Society's indoctrination literature contains misrepresentations of secular facts, the foundation of each Witnesses' belief based upon such misrepresentation is flawed, similar to that of the followers of the Unification Church, who incidentally also argued that they sincerely believed their identity misrepresentation was a constitutionally protected belief.²³ The California Supreme Court, however, held that the church's deceitful recruitment practices were unprotected, religiously-motivated conduct and therefore subject to court scrutiny.²⁴ The court stated that holding a religious organization liable for misrepresentations is the best solution, as it does not implicate either the church or its members' right to associate or worship, or force them to perform acts contrary to their religious belief.²⁵ The court concluded that allowing tort relief for misrepresentations only closes "one questionable avenue" for recruiting members.²⁶ The court reasoned that opening religious organizations to traditional tort liability protects persons from being harmed and is nondiscriminatory since it applies equally to religious and non-religious groups.²⁷

TORT OF MISREPRESENTATION AS APPLIED
TO THE SOCIETY'S NO BLOOD POLICY

As the legal treatise "Prosser and Keeton on Torts" explains, the majority of courts hold that "misrepresentation" occurs when there are: (1) ambiguous statements made with the intent that the listener reach a false conclusion; (2) literally true statements that create a false impression; (3) words or acts which create a false impression covering up the truth; or (4) nondisclosure when "the parties stand in some confidential or fiduciary relation to each other, such as . . . old friends, . . . where special trust and confidence is reposed."²⁸ In dealing with nondisclosure, courts look at

23. *Molko v. Holy Spirit Association for the Unification of World Christianity*, 46 Cal. 3d 1092, 1115 (Cal. 1988).

24. *Ibid.* at 1117-118.

25. *Ibid.* at 1117.

26. *Ibid.*

27. *Ibid.* at 1119.

28. Robert F. Keeton et. al., *Prosser and Keeton on Torts*, § 106 (5th ed. 1984).

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the intelligence differential between the parties, the relationship of the parties to each other, how formally the information was acquired, the nature of the fact not disclosed, the importance of the fact not disclosed, and whether the speaker hindered factual discovery.²⁹

This essay suggests possible avenues to apply the tort of misrepresentation to the Watchtower Society by explaining: (1) the devoted relationship between The Watchtower and its followers; (2) the pamphlet's misrepresentations of secular facts; and (3) the Society's misrepresentations in its dissemination of its blood policy.

Witnesses Strongly Rely on Watchtower Literature

The Society nicknames its religion "the Truth" and its followers refer to each other as "Friends" who "study the Truth."³⁰ The Watchtower Society's books are read and discussed in church meetings in a "classroom" manner where the written material, presented by a speaker, is directly followed with written questions, orally answered by individual audience members upon raising their hands. Individual Witnesses interviewed by this author stated that they rely on the Society's literature because they "trust" the Society to give them good information, as the Society "stays on top of things" and "is so well read."

Individual Witnesses often demonstrate a lack of ability to critically analyze, which may correspond to the average follower's lack of advanced education. One study found that "[o]f thirty groups surveyed, Witnesses ranked last in education—only 4.7 percent have college degrees as compared to 49.5 percent of Unitarians and 46.7 percent of Jews."³¹ The Society does not ban its members from reading outside, general literature or news articles, but it strongly steers its followers away from material that questions the religion.³² The Society warns its followers to

29. Ibid.

30. The author has personally attended many Jehovah's Witness church services and has family members who are actively involved in the religion.

31. Jerry Bergman, "Dealing with Jehovah's Witness Custody Cases," *Creighton Law Review* 29 (June 1996): 1500, referring to Barry A. Kosmin and Seymour P. Lachman, "One Nation Under God," 258 (1993) [hereinafter Kosmin]; Jerry Bergman, "Understanding Educational Measurement and Evaluation" (1991).

32. "Use of the Internet, be Alert to the Dangers," *Kingdom Ministry* (November 1999): 3-6; see also "Firmly Uphold God's Teaching," *The Watchtower* (1 May 2000): 8-10, ("Still a few individuals have left our ranks, and some among them are bent on defaming Jehovah's Witnesses by spreading lies and misinformation . . . In doing so, they side with the very first

“avoid independent thinking . . . [including] questioning the counsel that is provided by God’s visible organization [the Society].”³³ The Society deeply believes that they are the only religion on earth today that God is directing.³⁴ The average follower’s lack of higher education, combined with the classroom atmosphere and loyal adherence to the Society’s literature seem to be compelling reasons why the Society has a duty to not misrepresent or omit facts, especially when the religious belief to be followed concerns potentially life-threatening decisions. Other areas of the law, such as contracts, property, and securities regulation, are rich with both statutory and common law remedies aimed at preventing misrepresentations and nondisclosure which affect one’s economic possessions. Likewise, a religion that relies partly on secular facts to bolster its beliefs should not be allowed to misrepresent with impunity those same secular facts to make informed, critical medical decisions.

Society’s Main Blood Indoctrination Literature Misrepresents Secular Facts

In converting new recruits, the Society’s general teaching style is to save the blood doctrine for last, after the recruit has “developed an appreciation for the Truth.”³⁵ Prior to becoming baptized, each Witness must indicate agreement with the Society’s beliefs, including the blood policy. In making the transformation to not accepting blood, many

apostate, Satan. . . Avoiding all contact with these opponents will protect us from their corrupt thinking. Exposing ourselves to apostate teachings through various means of modern communication is just as harmful as receiving the apostate himself into our homes. Never should we allow curiosity to lure us into such a calamitous course! – Proverbs 22:3”), available online at: <http://www.jwfiles.com/internet.htm>. See also Diane Wilson, *Awakening of a Jehovah’s Witness* (Amherst, N.Y.: Prometheus Books 2002), 153 (Witnesses view such literature as “spiritual pornography”).

33. Osama Muramoto, “Bioethics of the refusal of blood by Jehovah’s Witnesses; part 1. Should bioethical deliberation consider dissidents’ views?,” *Journal of Medical Ethics* 24 (August 1998): 225, quoting “Exposing the devil’s subtle designs,” *The Watchtower* (15 January 1983): 2.

34. Wilson, *Awakening of a Jehovah’s Witness*, 54-55, quoting *Watchtower*, 4-1-88, 33, “When our heavenly Father, Jehovah God, speaks, whether through his Word, the Bible, or through his earthly organization, it is all the more important for us to listen and obey” and *Watchtower*, 7-1-73, 402 “Consider, too, the fact that Jehovah’s organization alone, in all the Earth, is directed by God’s holy spirit or active force . . . To it alone God’s Sacred Word, the Bible, is not a sealed book.”

35. Wilson, *Awakening of a Jehovah’s Witness*, 187.

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followers rely on the Society's pamphlet, "*How Can Blood Save Your Life?*" ("pamphlet"),³⁶ which states, "Medical evidence is offered to support blood therapy. Thus, you owe it to yourself to get the facts in order to make an informed choice about blood."³⁷ This claim to veracity immediately precedes the Society's particular version of the medical risks surrounding blood and medical alternatives, thereby suggesting that the medical information that follows is factual.

This section discusses the pamphlet's veracity through analyzing the Society's multiple misquotes of individual secular writers including: (1) scientists and biblical historians; (2) the medical community's assessment of blood-borne disease risks; and (3) doctors' assessments of quality alternatives to blood, including the magnitude of risks from foregoing a blood transfusion. This section will then document the pamphlet's near-omission of the Society's acceptance of blood fractions, an exception clouded in obscurity as will be shown.

Society Misrepresents Historians' Writings

The pamphlet quotes scientists and historians to bolster its position that early Christians absolutely never ate blood. The pamphlet's most powerful argument is its quotation of Joseph Priestley's "conclusion." The pamphlet states (without any reference):

Scientist Joseph Priestley concluded: 'The prohibition to eat blood, given to Noah, seems to be obligatory on all his posterity . . . If we interpret [the] blood prohibition of the apostles by the practice of the primitive Christians, who can hardly be supposed not to have rightly understood the nature and extent of it, we cannot but conclude, that it was intended to be absolute and perpetual; for blood was not eaten by any Christians for many centuries.'³⁸

The Society has grossly misrepresented Joseph Priestley's writings. Priestley, who lived in the eighteenth century, was both a scientist and a religious writer. The Society's above quote comes from his religious writings, "The Theological and Miscellaneous Works of Joseph Priestley." Priestley began his writing entitled "Of Abstinence from Blood" by stating:

36. Available online at www.watchtower.org.

37. *How Can Blood Save Your Life?* (Watchtower Bible and Tract Society of New York, Inc. 1990), 7.

38. *Ibid.*, 5.

The question concerning the lawfulness of eating blood, ought to have been considered under the head of precepts that are not of a moral nature; but, as it is a subject of much less importance than the rest, and of a more doubtful nature, I have thought proper to reserve the discussion of it to this Appendix, in which I shall endeavor to do justice to the arguments on both sides.³⁹

Priestly actually concluded his discussion by stating:

Though in discussing this subject, I have generally mentioned the arguments for the prohibition of blood before those against it, and have replied to the latter more than to the former, I would not have my reader conclude, that I am fully determined in my judgment with respect to it. Let him weigh what has been advanced on both sides, and decide for himself; not forgetting, that this question relates to the least of all positive precepts, and that all positive or ceremonial precepts are of little importance compared to the smallest moral duty.⁴⁰

Priestley argued elsewhere that Christians could indeed eat blood because the New Testament says that nothing which goes into the mouth defiles a man, that those who believe they can eat all things are stronger, and that God's Kingdom is not predicated on food or drink.⁴¹ It is a misrepresentation for the Society to quote Priestley as an adherent to an absolute prohibition, when in fact he was not committed to either eating or not eating blood and didn't think the argument was important enough to include in his main text. While the Society quoted Priestley's words verbatim, the words were taken out of context leaving the reader with a false impression that Priestley advocated total abstinence from blood.

To further the Society's argument that early, true Christians did not eat blood, the pamphlet also quotes the historian Eusebius, a Christian scholar who lived between 263-339 A.D., who:

tells of a young woman near the end of the second century who, before dying under torture, made the point that Christians 'are not allowed to eat the blood even of irrational animals.' She was not exercising a right to die. She wanted to live, but she would not compromise her principles.⁴²

The Society does not tell its readers that Eusebius was referring to the woman Biblis and that in Book 5, Chapter 1 of Eusebius he wrote,

39. Joseph Priestley, *The Theological and Miscellaneous Works of Joseph Priestley*, vol. 2, J.T. Rutt & Kraus Reprint Company eds., 1972, 376, "Appendix, Section II-Of Abstinence from Blood / The Doctrines of Revealed Religion."

40. *Ibid.*, 380.

41. *Ibid.*

42. *How Can Blood Save Your Life?*, 5.

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"[Biblis] flatly contradicted the slanderers; 'How could children be eaten by people who are not even allowed to eat the blood of brute beasts?'"⁴³

What Biblis in fact said was that children were not to be eaten, thus making the point that Christians who would not eat animal blood would also not eat children.⁴⁴ Biblis was not claiming that Christians would never eat blood or unclean meat in a starvation situation.

Further seeking to support its argument, the pamphlet also cites Tertullian (155-225 A.D.), an authority the Society also relies upon on its 15 June 2004 *Watchtower* magazine⁴⁵:

Tertullian wrote: 'Consider those who with greedy thirst, at a show in the arena, take the fresh blood of wicked criminals . . . and carry it off to heal their epilepsy.' Whereas pagans consumed blood, Tertullian said that Christians 'do not even have the blood of animals at [their] meals . . . At the trials of Christians you offer them sausages filled with blood. You are convinced, of course, that [it] is unlawful for them.' Yes, despite threats of death, Christians would not consume blood. God's guidance was that important to them.⁴⁶

While it was possible that Tertullian was referring to the pagan superstition that blood cured epilepsy, some have argued instead that one of Tertullian's points was that as murder was wrong, therefore eating the blood of murdered people was also wrong.⁴⁷ The full quote from Tertullian supports this reading:

What about those, too, who for the cure of epilepsy at the gladiatorial show in the arena drink with greedy thirst the fresh blood flowing from the throats of the criminals?

What about those, likewise, who sup off the flesh of wild beasts from the arena, and eat a meal off boar or stag? That boar in the struggle wiped the blood off the victim whom he first made bloody; that stag wallowed in the blood of a gladiator. The paunches of the very bears are eagerly

43. Eusebius of Ceasarea, *The Ecclesiastical History*, Book V, Chapter (In 177 C.E., in Lyons (France), when Christians were falsely accused of eating children, a woman named Biblis said: "How would such men eat children, when they are not allowed to eat the blood even of irrational animals?"), available online at: <http://www.newadvent.org/fa-there/250105.html>. See also Andrew W. Lusk, "How the Watchtower Distorts the Writings of Eusebius to Justify a Blood Transfusion Ban," available online at: <http://www.geocities.com/Athens/Academy/6040/eusebius.htm>.

44. See Lusk, "How the Watchtower Distorts the Writings of Eusebius to Justify a Blood Transfusion Ban."

45. *How Can Blood Save Your Life?*, 6.

46. "Rightly Value Your Gift of Life," *The Watchtower* (June 15, 2004): 14-24.

47. Lusk, "How the Watchtower Distorts the Writings of Eusebius to Justify a Blood Transfusion Ban."

desired, loaded with as yet undigested human entrails. Flesh which has fed on man is immediately rejected by man's stomach. You that eat these things, how far are you removed in your repasts from the feasts of the Christians? But do they do less who with beastly lust open their mouths to human bodies, because they devour what is alive? Are they the less consecrated to filth by human blood because they lick up only what is about to become blood? They eat not infants indeed, but rather adults. Your crime may well blush in the presence of Christians, who do not reckon the blood even of animals amongst articles of food, and who accordingly abstain also from things strangled, and those that have died of themselves, lest we should be defiled by any blood secreted in the entrails.

Lastly, among the tests applied to the Christians you present to them sausage-skins filled with blood, simply because you are quite certain that it is unlawful for them, and you wish through it to inveigle them into error.
.. .⁴⁸

Tertullian argued that Christians abhorred the genocide of fellow Christians occurring within the coliseums, and would not eat either these people's blood or the flesh of animals used to murder the gladiators. Clearly, Tertullian was not claiming that it was against God's commandments to eat blood in an emergency situation. At a normal meal, early Christians (many were Jewish) did not usually eat unbled meat or blood. It does not follow from this, however, that they would refuse such food if faced with starvation.

As the above analysis shows, the Society twists writers' actual words out of context. While Mr. Priestley argued both sides of the blood issue and instructed that he was not committed to either, the Society transforms Mr. Priestley into an advocate of the Society's cause. Moreover, both Eusebius and Tertullian argued that both murder and eating the blood of murdered people were both wrong, but neither stated that early Christians would or would not break an eating law if faced with starvation.

Society Amplifies Medical Risks of Accepting a Blood Transfusion

Next, the pamphlet assesses the modern-day disease risks of accepting a blood transfusion, attempting to convince the reader that the medical risks militate against

48. T. Herbert Bindley, M.A. translation of Tertullian's *The Apology of Tertullian—Chapter IX* (Merton College, Oxford for Parker & Co 1890); reprinted at http://www.tertullian.org/articles/bindley_apol/bindley_apol.htm.

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accepting blood. As evidence that blood transfusions are hazardous, the Society cites a 1960 study showing that there is 1 death for every 13,000 bottles.⁴⁹

1. Blood Transfusions Hinder Immune Systems

The pamphlet next builds the argument that blood transfusions hinder the immune system by quoting the *Journal Cancer*:

In patients with colon cancer, a significant adverse effect of transfusion on long-term survival was seen. In this group there was a cumulative 5-year overall survival of 48% for the transfused and 74% for the nontransfused patients.⁵⁰

The Society omits that the same study also looked at blood transfusion's effects on breast cancer patients and that these patients showed no correlation between blood transfusion and death due to recurring cancer.⁵¹ The study's doctors tried to explain the difference by pondering whether the immune system played different roles in the development of different cancers.⁵²

The pamphlet next quotes an article on the recurrence of head and neck cancers in people who received blood transfusions:

The recurrence rate for all cancers of the larynx was 14% for those who did not receive blood and 65% for those who did. For cancer of the oral cavity pharynx, and nose or sinus, the recurrence rate was 31% without transfusions and 71% with transfusions.⁵³

The pamphlet fails to note that the study's authors concluded that more research needed to be done as the

49. *How Can Blood Save Your Life?*, 7-8.

50. *Ibid.*, 7-8, quoting study by Paul J. Voogt et. al., "Perioperative Blood Transfusion and Cancer Prognosis," *Cancer* 59 (15 February 1987): 836.

51. Voogt et. al., "Perioperative Blood Transfusion and Cancer Prognosis," 836.

52. *Ibid.*, 842. ("Another explanation might be that the transfusion effect seen in the patients with colon carcinoma is due to the immunomodulating effect of blood transfusion and that the absence of such an effect in the patients with breast carcinoma reflects a difference in the role the immune system plays in the natural history of both diseases. Currently, no data are available to explain why the immunomodulating effects of blood transfusion would influence the growth of colon cancers but not of breast cancers.")

53. *How Can Blood Save Your Life?*, 8-9, (quoting study by Robert J. Jackson, MD and Dale H. Rice, MD, "Blood Transfusions and Recurrence in Head and Neck Cancer," *Annals of Otology, Rhinology, & Laryngology* 98 (March 1989): 171; see also "Saving Life With Blood, How?," *The Watchtower* (15 June 1991): 9.

doctors were uncertain if the correlation was due to direct causation or another variable.⁵⁴ In the Society's defense, however, it should be noted that many studies do state that certain cancer patients who receive blood transfusions undergo an immune system depression which can give rise to an inability to kill remaining cancer cells.⁵⁵

The pamphlet summarizes the immune system argument with the words of Dr. John S. Spratt who stated, "The cancer surgeon may need to become a bloodless surgeon."⁵⁶ The pamphlet does not, however, explain a critical distinction between Dr. Spratt's and the Society's definitions of "bloodless surgeon." Dr. Spratt recommends that "cancer surgeons should consider administering only packed washed or washed frozen red cells for urgent correction of blood loss."⁵⁷ In other words, Dr. Spratt is not recommending withholding blood in urgent situations, but transfusing Society-banned red blood cells. The Society's quotation of Dr. Spratt's comment about "surgeons becoming bloodless surgeons" is a classic example of how a literally accurate quotation can create a false impression because of an equivocation, in this case what constitutes "bloodless surgery."

2. Blood Transfusions Associated with a High Risk of Infectious Complications

One of the pamphlet's general assertions is that people who receive a blood transfusion are more likely to suffer infections, and it quotes a study where a doctor reported, "Blood transfusions were associated with infectious complications when given pre-, intra-, or postoperatively . . . The risk of postoperative infection increased progressively with the number of units of blood given."⁵⁸ However, the Society does not tell its readers why blood transfusions were given to some patients and not others, or the actual outcome of infectious complications. The quoted article states:

54. *Ibid.*, 171, 173.

55. John S. Spratt, MD, "Blood Transfusions and Surgery for Cancer," *The American Journal of Surgery* 152 (September 1986): 337.

56. *How Can Blood Save Your Life?*, 8-9, quoting article by Spratt, MD, "Blood Transfusions and Surgery for Cancer."

57. Spratt, MD, "Blood Transfusions and Surgery for Cancer."

58. *How Can Blood Save Your Life?*, 8-9, quoting article by Tarter, "Blood transfusion and infectious complication following colorectal cancer surgery," 789.

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The administration of blood was significantly ($P < 0.05$) associated with low admission haematocrit, high operative blood loss, bowel penetration by tumour (classification B2 or greater), poor tumour differentiation, and lengthy specimens.”⁵⁹

Thus, doctors were more likely to prescribe blood transfusions for sicker, rather than healthier, patients. Members of the control group were not patients who refused blood transfusions because of their beliefs.

If it had been the case that the study's patients had refused blood and died, their death would obviously have precluded them from participating in a study on post-operative immune systems. The study's actual infection rates were 33 of 134 (24.6 percent) in those who received transfusion versus 9 of 209 (4.3 percent) who did not need a transfusion.⁶⁰ For the 42 people who developed infections, there were 13 with wound infections, 12 with urinary tract infections, 6 with abdominopelvic infections, 6 with pneumonia, 4 with sepsis without source, and 1 with phlebitis.⁶¹ Of these 42 people infected, 38 survived by being administered antibiotics.⁶² The Society fails to inform the reader of the good prognosis even for those patients who were infected through blood transfusions.

3. Blood Transfusions are Fraught with Diseases

The Society next exploits the very real risk and commonly held fear of contracting a known or unknown disease through a blood transfusion. The pamphlet bolsters its argument by quoting a *New York Times* article (*clarity added*):

“Lyme Disease From a Transfusion? It's Unlikely, but Experts are Wary” where a panel of health officials responded negatively to the question whether “they would accept such blood [from person who tested positive for Lyme disease]” but “no one recommended discarding blood from such donors.”⁶³

The Society omits the article's discussion of the remote possibility of contracting this disease through a blood transfusion. The *New York Times* article quotes two scientists who present opposing views of how long a

59. Tarter, “Blood transfusion and infectious complication following colorectal cancer surgery,” 790.

60. Ibid.

61. Ibid.

62. Ibid.

63. *How Can Blood Save Your Life?*, 11.

person's blood is infectious, one stating that the risk is unknown and the other stating that the risk lasts only for a short time.⁶⁴ The article explains that the available tests detected the disease's antibodies, which can take three or more months to present themselves.⁶⁵ As an extra precaution, the Red Cross visually inspected donors for fever and evidence of the tick rash.⁶⁶ Dr. S. Gerald Sandler, Medical Director of Blood Services for the Red Cross, stated:

It is thought that if the microbe can be spread in the transfusion, it can occur only in the initial stages of the disease. In cases where the spirochete has been isolated from the blood of patients, the individual has felt ill, making it unlikely that such a person would feel well enough to donate blood.⁶⁷

Although there is a theoretical possibility that recipients of blood transfusions could contract Lyme disease, the fact is that at the time the article was written, no one had been known to contract Lyme disease from a blood transfusion.⁶⁸

The pamphlet also points out the potential to develop Chagas' disease (an infectious, sometimes fatal disease caused by parasites that most likely inhabit substandard housing made from mud, adobe, and thatch⁶⁹) by stating:

Chagas' disease illustrates how blood carries disease to distant people. The Medical Post (January 16, 1990) reports that "10-12 million people in Latin America are chronically infected." It has been called "one of the most important transfusion hazards in South America." An "assassin bug" bites a sleeping victim in the face, sucks blood, and defecates in the wound. The victim may carry Chagas' disease for years (meanwhile possibly donating blood) before developing fatal heart complications. Why should that concern people on distant continents? In The New York

64. Lawrence K. Altman, MD, "Lyme Disease from a Transfusion? It's Unlikely, but Experts are Wary," *New York Times*, 18 July 1989, C3.

65. *Ibid.*

66. *Ibid.*

67. *Ibid.*

68. *Ibid.* This essay's author did preliminary research which confirmed that no one, to-date, has contracted Lyme disease through a blood transfusion. See http://www.aab-b.org/All_About_Blood/FAQs/aabb_faqs.htm (American Association of Blood Banks -Lyme Disease: "Although transfusion-related cases have not been reported, public health agencies and the AABB are monitoring this disease because of the remote chance that it could affect transfusion safety. Lyme disease is associated with the bite of certain species of the deer tick, and can cause an illness that affects many systems within the body. Donors with a history of Lyme disease can donate, provided they have undergone a full course of antibiotic treatment and no longer have any symptoms").

69.

http://www.cdc.gov/ncidod/dpd/parasites/chagasdisease/factsht_chagas_disease-.htm.

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Times (May 23, 1989), Dr. L. Altman reported on patients with post transfusion Chagas' disease, one of whom died. Altman wrote: "Additional cases may have gone undetected because (doctors here) are not familiar with Chagas' disease, nor do they realize that it could be spread by transfusions."⁷⁰

Again, the Society omits any reference to how remote the possibility is of getting Chagas' disease from a blood transfusion or that the blood supply can be easily sanitized through use of gentian violet.⁷¹ The article states that the responsible insects are also present in a "wide-area of the United States [but] have led to only five reported cases of Chagas' disease in the United States" with two cases linked to blood transfusion.⁷² The threat comes from about 100,000 infected immigrants from high risk countries.⁷³

The pamphlet also addresses hepatitis, the most common disease contracted through blood by stating (without a footnote or reference): "For a decade [Hepatitis C] plagued transfusions—between 8 and 17 percent of those transfused in Israel, Italy, Japan, Spain, Sweden, and the United States contracted it." As there is no citation to this quote, this article's author was unable to check its authenticity. However, the Pamphlet next quotes a *New York Times* article:

"Some authorities," the Harvard Medical School Health Letter (November 1989) observed, "worry that A, B, C, and D are not the whole alphabet of hepatitis viruses; yet others may emerge." The *New York Times* (February 13, 1990) stated: "Experts strongly suspect that other viruses can cause hepatitis; if discovered, they will be designated hepatitis E and so on."⁷⁴

The referenced article, "Quandary for Patients: Have Surgery or Await Test for Hepatitis C?," stated prior to the hepatitis C test that, "About one in 200 blood donors is infected with the hepatitis C virus, and the risk of contracting it increases with each transfusion. Someone who has four transfusions from different donors has a 2 percent chance of developing hepatitis C."⁷⁵ Because the hepatitis C test was to be approved by the FDA in a few

70. *How Can Blood Save Your Life?*, 11, quoting "The Medical Post, 16 January 1990 article" and Lawrence Altman, M.D., "Scientists Fear that a Parasite Will Spread in Transfusion," *New York Times*, 23 May 1989, C3.

71. Altman, M.D., "Scientists Fear that a Parasite Will Spread in Transfusion."

72. *Ibid.*

73. *Ibid.*

74. *How Can Blood Save Your Life?*, 10.

75. Lawrence Altman, MD., "Quandary for Patients: Have Surgery, or Await Test for Hepatitis C?" *New York Times*, 13 February 1990.

months, the article's main point was to encourage those who were contemplating risky, elective surgeries to postpone their operation a few months.⁷⁶ The article states further that the best choice to prevent communicable diseases is to store one's own blood, a process called autologous blood transfusion.⁷⁷ The Society has never condoned blood pre-operative storage as it believes that blood, once it has left the body, should not be reused.⁷⁸

Of course, no discussion of infectious diseases would be complete without a discussion of AIDS. The pamphlet reiterates a report that the current blood tests do not detect AIDS or HIV accurately, and that one can never be sure the donations are safe.⁷⁹ The pamphlet also points to a newer AIDS strain:

The AIDS virus was designated HIV, but some experts now call it HIV-1. Why? Because they found another virus of the AIDS type (HIV-2). It can cause AIDS symptoms and is widespread in some areas. Moreover, it 'is not consistently detected by the AIDS tests now in use here,' reports *The New York Times*, 27 June 1989.⁸⁰

The *New York Times* article to which the Society refers is entitled "4 Cases Found of Rare Strain of AIDS Virus—Standard Test Fail to Detect the HIV-2."⁸¹ The article goes on to state that the virus is widespread in Western Africa

76. Ibid.

77. Ibid.

78. *The Watchtower* (15 October 1959): 640, "Consequently, the removal of one's blood, storing it and later putting it back into the same person would be a violation of the Scriptural principles that govern the handling of blood . . . if the blood were stored, even for a brief period of time, this would be a violation of the Scriptures." Available online at: www.ajwrb.org/watchtower/data1.shtml; see also *Blood, Medicine, and the Law of God* (Watchtower and Bible Tract Society of Pennsylvania 1961), 14-15 ("Mature Christians . . . are not going to feel that if they have some of their own blood stored for transfusion, it is going to be more acceptable than the blood of another person."); *The Watchtower* (15 June 1978): 30 ("So, if medical personnel suggest that a Christian permit some of his blood to be withdrawn and deposited in a blood bank for later transfusion purposes, the Christian is not without guidance from the Bible . . . removed blood was to be 'poured out on the ground as water,' to show that it was for God and not to sustain the life of some earthly creature. (Duet. 12:24)"); "Questions from Readers," *The Watchtower* (30 March 1989): 30 ("We read that when a hunter killed an animal for food, 'he must in that case pour its blood out and cover it with dust (Leviticus 17:13,14; Deuteronomy 12: 22-24). So the blood was not to be used for nutrition or otherwise.")

79. *How Can Blood Save Your Life?*, 10.

80. Ibid.

81. Bruce Lambert, "4 Cases Found of Rare Strain of AIDS Virus—Standard Test Fail to Detect the HIV-2," *New York Times*, 27 June 1989, B1.

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and that of the six people infected in the New York City area, two lived in Western Africa (the other four had incomplete information).⁸² The article also states, "Several European companies have developed new AIDS tests that cover both strains of the virus" and that these tests will be implemented soon after FDA approval.⁸³ The HIV test then employed in the U.S. gave "inconclusive" results somewhere between 45 to 90 percent of the time when HIV-2 was present.⁸⁴ Blood banks discarded blood with inconclusive results, and people from Western Africa are asked to refrain from donating blood.⁸⁵

4. The Actual Risks of Blood Transfusions in the United States According to the Red Cross

Risk Estimates of Infection from Transfusion

| Year | Estimated Risk of Hepatitis B (HBV) per Transfusion | Estimated Risk of Hepatitis C (HCV) per Transfusion | Estimated Risk of HIV per Transfusion |
|-----------|---|---|---------------------------------------|
| 1971-1983 | HBsAG screening done | 10.3 in 100 ¹ | Virus not yet discovered |
| 1984 | | 1 in 2,632 ² | |
| 1985 | | | First test for HIV developed |
| 1986 | Anti-HBc screening added | nbsp; | |

82. Ibid.

83. Ibid.

84. Ibid.

85. Ibid.

| | | | |
|------|----------------------------|---------------------------------|--|
| 1987 | | | 1 in 250,000 ³ |
| 1988 | | | |
| 1989 | | | |
| 1990 | | First test for HCV developed | |
| 1991 | 1 in 200,000 ⁴ | 1 in 3,300 ⁵ | |
| 1992 | 1 in 63,000 ⁶ | 1 in 103,000 ⁷ | 1 in 493,000 ⁸ 1 in 225,000 ⁹ |
| 1993 | | Improved test for HCV available | |
| 1994 | | | |
| 1995 | 1 in 205,000 ¹⁰ | 1 in 276,000 ¹¹ | |
| 1996 | | Test for HCV further improved | |
| 1998 | | | 1 in 1,468,000 ¹² |
| 1999 | | HCV NAT test added | HIV NAT test added |
| 2000 | | 1 in 1,935,000 ¹³ | 1 in 2,135,000 ¹⁴ |

As of the pamphlet's 1990 publication date, the risk of diseases (not death), except for Hepatitis C, was far more remote than the Society's earlier quoted death rate of 1 per 13,000 bottles. As previously discussed, the Hepatitis C test was soon to be released, mitigating this risk to one in 100,000 inside the U.S.⁸⁶

86. Available online at: <http://www.bloodsafety.org/safesupply.asp>, *footnoting* studies ¹ Aach RD, et al. NEJM 1981; 304: 989-94, ² Schorr et al, NEJM 1985; 313: 384-5, ³ Bove J. NEJM 1987; 317: 242-5, ⁴ Bove J. NEJM 1987; 317: 242-5, ⁵ Donahue et al, NEJM, 1992; 327: 369-73, ⁶ Schreiber et al. NEJM 1996; 334: 1685-90, ⁷ Schreiber et al. NEJM 1996; 334: 1685-90, ⁸ Schreiber et al. NEJM 1996; 334: 1685-90, ⁹ Dodd, NEJM 1992; 327: 419-21, ¹⁰ Dodd et al. Transfusion 2002; 42: 975-9, ¹¹ Dodd et al. Transfusion 2002; 42: 975-9. ¹² Dodd et al. Transfusion 2002; 42: 975-9. ¹³ Dodd et al. Transfusion 2002; 42: 975-9. ¹⁴ Dodd et al. Transfusion 2002; 42: 975-9.

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5. Conclusion of Medical Risks

The pamphlet began by stating that the 1960 death rates were 1 per 13,000 blood bottles and then further magnified the dangers of blood transfusions by including studies of Chagas, Lyme disease, and various strains of Hepatitis and AIDS.⁸⁷ A reader may thus conclude after reading the medical risk section that today's blood, given the addition of new diseases, is far deadlier than 1 per 13,000 bottles. If the Society's argument is sound, today's diseases would effectively turn blood into medical poison. The Society distorts the actual risks of contracting Hepatitis or HIV. Informing its readers is important because omitting relevant facts can also amount to a misrepresentation where it leads the reader to a false conclusion.

The pamphlet presents an extremist view of the risk of blood transfusions and presents its followers with a misleading, myopic interpretation of the quoted medical literature. While the Society's literature addresses some of the medical risks, it stops short of fully informing the reader, likely leaving a misguided fear of dying from receiving a blood transfusion. The risk of blood diseases is indeed real, but such risk needs to be balanced by a truthful account of the survival rates of accepting a blood transfusion and the death rates of foregoing a life-saving transfusion. The next section will detail the pamphlet's "Alternatives to Blood Transfusions" and determine if it gives the reader false hopes of surviving without a blood transfusion.

The Society Misrepresents Blood's Necessity and Medical Alternatives to Blood Transfusions

1. People Survive Ultra Low Blood Counts

The pamphlet contains a section dedicated to blood's necessity and medical alternatives to blood transfusions. Admittedly, Jehovah's Witnesses' refusal of whole blood coupled with the real risk of disease have helped yield great advances in "bloodless" medical programs which will benefit all humankind, though this area of medicine is only in its beginning stages. Nevertheless, the Society tries to convince its followers that bloodless medical techniques will work for them, a viewpoint summed up in the pamphlet: "We hope that you never lose a great amount of blood. But

87. *How Can Blood Save Your Life?*

if you did, it is very likely that skilled doctors could manage your case without using blood transfusions, which have so many risks.”⁸⁸

The pamphlet explains the concept of hemoglobin and blood count by stating that it is a measure of the blood’s oxygen carrying capability and that a normal person has a hemoglobin count of 14 or 15.⁸⁹ This statement is augmented by an oral statement by Professor Howard L. Zauder stating that anesthesia’s traditional requirement that people have pre-operative hemoglobin counts above 10 was “shrouded in obscurity, and unsubstantiated by clinical or experimental evidence.”⁹⁰ A reader, therefore, might feel relatively comfortable that 10 is, indeed, perfectly acceptable. The pamphlet also cites another study of work capacity and function of anemic patients with hemoglobin counts of 7, concluding it was “difficult to detect a deficit in work capacity” and other patients had “moderately impaired function.”⁹¹ The Society acquired this information from “Contemporary Transfusion Practice,” published by the American Association of Blood Banks, but unfortunately does not tell its readers that the book goes on to correlate the risk of heart attack with low hemoglobin levels:

If symptoms and findings of congestive heart failure occur with levels of hemoglobin of 7 g/dl or higher, there is almost always intrinsic heart disease, most frequently coronary artery disease or hypertensive heart disease. In the normal heart, coronary circulation is increased as left ventricular workload rises. In severe anemia, however, with hemoglobin levels less than 5 g/dl, coronary blood flow may become inadequate and ventricular function is decreased. This may lead to congestive heart failure with decreased renal (kidney) blood flow and sodium retention. . . Anemic subjects incur a higher oxygen debt at a given workload than nonanemic persons.⁹²

The book clearly explains that 7 is not a good number for those with pre-existing heart or circulatory problems, and those with healthy hearts are at a significant risk of heart attack, kidney failure, or pulmonary edema when values drop below 5 g/dl.⁹³

The pamphlet accurately states that, “when a person loses a lot of blood in an accident or during surgery, if the

88. *How Can Blood Save Your Life?*, 15-16.

89. *Ibid.*, 13.

90. *Ibid.*

91. *Ibid.*, 14.

92. Jerry Kolins, MD and Leo J. McCarthy, MD, *Contemporary Transfusion Practice* (American Association of Blood Banks 1987), 12-13.

93. *Ibid.*

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loss is rapid and great, a person's blood pressure drops, and he may go into shock."⁹⁴ The pamphlet then gives the Society's remedy for rapid blood loss, "what is primarily needed is that the bleeding be stopped and the volume in his [the patient's] system be restored. That will serve to prevent shock and keep the remaining red cells and other components in circulation."⁹⁵ The pamphlet recommends various aqueous solutions; including saline, Ringer's solution, and Hetastarch.⁹⁶ The Society realizes that its readers probably know that losing blood results in oxygen deprivation and thereby placates this concern with "You have oxygen carrying reserves."⁹⁷ The pamphlet explains that the body compensates by directing the heart to beat faster, and if the blood is diluted, it will race through one's veins delivering oxygen more quickly.⁹⁸ The pamphlet states:

These adaptations are so effective that if only half of your red cells remain, oxygen delivery may be about 75 percent of normal. A patient at rest uses only 25 percent of the oxygen available in his blood. And most general anesthetics reduce the body's need for oxygen.⁹⁹

The Society fails to mention, however, that there is a point at which the heart can not beat faster or blood be diluted further. As "Contemporary Transfusion Practice" states, "Together, all compensations available for anemia are unable to transport sufficient oxygen for workloads above a certain level, and the compensations themselves impose a significant workload."¹⁰⁰ Thus, even for a resting patient, oxygen-deprived blood can mean organ failure and death.

The pamphlet illustrates its position through the case of a woman who survived a hemoglobin count of 1.8 g/liter after "she was successfully treated . . . [with] high inspired oxygen concentrations and transfusions of large volumes of gelatin solution [Haemaccel]."¹⁰¹ The pamphlet employs this example to build its argument that "skilled physicians can

94. *How Can Blood Save Your Life?*, 14.

95. *Ibid.*

96. *Ibid.*

97. *Ibid.*

98. *Ibid.*

99. *Ibid.*

100. Kolins, MD and McCarthy, MD, *Contemporary Transfusion Practice*, 12-13.

101. *How Can Blood Save Your Life?*, 15, quoting P.J. Howell and P.A. Bamber, "Severe acute anaemia in a Jehovah Witness," *Anaesthesia* 42 (January 1987): 44-48.

help one who has lost blood and so has fewer red cells. Once volume is restored, doctors can administer oxygen at high concentrations.”¹⁰² However, the Society makes no mention of the woman’s precarious journey, having just undergone induced labor due to jaundice.¹⁰³ Nor do they note the attending physician’s explanations. The woman’s condition resulted in a thirty-four day stay in the hospital, ten of which were spent in intensive care.¹⁰⁴ The Society does not reveal to its reader that the doctors “found no other case of a patient with such a low haemoglobin who has survived without a transfusion of blood or artificial oxygen-carrying substances.”¹⁰⁵ Nor does the Society make note that the doctors credited her survival not to just their own savvy, but also the fact that “women can withstand haemorrhage better in the early postpartum period.”¹⁰⁶ Moreover, the Society omits that her blood pressure became unrecordable several times, the medicine to increase her blood pressure caused severe hypernatraemia (too much sodium in one’s blood), bile leaked into the woman’s abdomen, she developed oedema of the hands and forearms requiring diuretic therapy, or that she developed a chest infection.¹⁰⁷ Incredibly, her only permanent disability was that she developed palsy in her right vocal cord.¹⁰⁸ It clearly is a mistake for the reader either to minimize the woman’s harrowing experience or to expect these results to be typical, as this case is quite unique.

The pamphlet further reports that this woman’s doctors spoke positively of using hyperbaric chambers by stating that those “with acute blood loss have been successfully treated with hyperbaric chambers.”¹⁰⁹ However, the article cited does not contain any such proposition, but actually speaks negatively of hyperbaric chambers:

Oxygen transport to the tissues could be increased by the use of an hyperbaric chamber, but the period of exposure to very high oxygen partial pressures is limited because of toxicity problems and this form of therapy is better suited to the case where further treatment (such as blood transfusion) is envisaged in the near future. By contrast, our

102. *How Can Blood Save Your Life?*, 14.

103. Howell and Bamber, “Severe acute anaemia in a Jehovah Witness,” 44.

104. *Ibid.*

105. *Ibid.*

106. *Ibid.*

107. *Ibid.*

108. *Ibid.*

109. *How Can Blood Save Your Life?*, 15, quoting. Howell and Bamber, “Severe acute anaemia in a Jehovah Witness,” 44.

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patient's problem of severe anaemia was likely to continue for several weeks.¹¹⁰

Additionally, hyperbaric chambers are not universally available, being more concentrated in beach areas with scuba diving enthusiasts or in larger cities to assist wound healing, a consideration which the Society fails to warn its readers.

Neither does the pamphlet address the actual prognosis for patients with low blood counts. A study of pre-operative Jehovah's Witnesses found that there was a 1.3 percent mortality rate for patients with hemoglobin concentrations of 12 g/dL, compared to a 33 percent rate with those less than 6 g/dL.¹¹¹ Poor cardiovascular health of the patient increases the mortality rate 4.3-fold, making it highly unlikely that a low hemoglobin count of 6 in a cardio-disadvantaged patient would result in a favorable outcome.¹¹² Because of this high risk of organ failure or death, the usual "lowest" acceptable level appears to be 7, as "red cell transfusion . . . is almost always needed when the level is less than 6 g/dl."¹¹³ However, doctors would probably order transfusions at an earlier time if they suspected or knew the patient had a compromised heart or circulatory system.

2. Premature Infants Survive Low Blood Levels

The pamphlet next quotes a study on premature infants by Dr. James Stockman III:

With few exceptions, infants born prematurely will experience a decline in hemoglobin in the first one to three months . . . The indications for transfusion in the nursery setting are not well defined. Indeed, many infants seem to tolerate remarkably low levels of hemoglobin

110. Howell and Bamber, "Severe acute anaemia in a Jehovah Witness," 47.

111. J.L. Carson et al., "Effect of anaemia and cardiovascular disease on surgical mortality and morbidity," *Lancet* 348 (1996): 1055-60, available online at: <http://www.americasblood.org/index.cfm?fuseaction=display.showPage&pageID=129>.

112. Ibid.

113. Available online at: <http://www.americasblood.org/index.cfm?fuseaction=display.showPage&pageID=129>, quoting *The Transfusion Trigger - Indications for Red Cell Therapy* 2, no. 3 (November 1999), (Provided by Your Independent, Nonprofit Community Blood Center in conjunction with America's Blood Centers; quoting "American Society of Anesthesiologists Task Force on Blood Component Therapy. Practice guidelines for blood component therapy," *Anesthesiology* 84 (1996): 732-47.

concentration with no apparent clinical difficulties.¹¹⁴

It appears by this that the Society is subtly informing Jehovah's Witness parents with premature infants that low blood count is common, thereby suggesting that doctors unnecessarily push blood transfusions.

Jehovah's Witness parents may be led to believe that their infants do not need a transfusion, as Dr. Stockman said that many infants can survive low hemoglobin levels. However, Dr. Stockman outlined two situations in which transfusion would be necessary: (1) "certainly before ten percent of blood volume" had been withdrawn for blood sampling; and (2) when stabilized premature infants continue to render hemoglobin levels less than 10, show low available oxygen, and have another sign such as "poor feeding, dyspnea, tachycardia, tachypnea, diminished activity, and pallor."¹¹⁵ Dr. Stockman recognizes that once a preterm infant has stabilized, transfusions are not needed if hemoglobin is "greater than 10 to 11 g/dl."¹¹⁶ The Society could have more accurately summarized Dr. Stockman's recommendation by claiming that most preterm infants do not need transfusions once they have stabilized, but those who need frequent blood sampling or continue to have hemoglobin counts less than 10, along with other problems, may need a transfusion. The pamphlet highlights other medical doctors' discussions of hemoglobin counts and the decision to transfuse, but fails to mention enough detail about Dr. Stockman's study to inform the reader of his recommendation about premature infants coping with either loss of blood volume or consistently low hemoglobin levels.

Furthermore, the Society's quote that the decision to transfuse is "not well defined" may serve to incite fear that the medical community is unnecessarily pushing blood transfusions. The pamphlet's preceding two paragraphs described the doctor's decision based on hemoglobin level of "10" as "cloaked in tradition" and "shrouded in obscurity," and included the fact that patients with hemoglobin levels of "7" showed no work deficit.¹¹⁷ A reader could easily conclude from this that "not well

114. *How Can Blood Save Your Life?*, 14, quoting study by Dr. James A. Stockman III in February 1986 *Pediatric Clinics of North America*.

115. James A. Stockman III, MD., "Anemia of Prematurity Current Concepts in the Issue of When to Transfuse," *Pediatric Clinics of North America* 33, no. 1 (February 1986): 111, 125-26; bBut, article notes that "Apnea has not unequivocally been shown to improve following transfusion."

116. *Ibid.*

117. *How Can Blood Save Your Life?*, 12.

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defined” meant that doctors were also guessing at whether to transfuse a newborn. In reality, Dr. Stockman was contrasting the doctor’s “not well defined” decision about newborns relative to the situation in older adults and children. . . .”¹¹⁸ In so doing, Dr. Stockman emphasized the doctor’s complex analysis of the many tests that show the physiological nadir most infants undergo during their three-month, post partum transition from the fetal environment.¹¹⁹ Dr. Stockman noted that the complexity of the doctor’s decision needed to include variables such as hemoglobin and erythropoietin levels, reticulocyte count, oxygen affinity/release levels, and PO₂ readings.¹²⁰ Dr. Stockman’s article was not a conclusion that pediatricians’ recommendations for premature infants were ill-informed, but rather that they inherently involved more variables and were less clear-cut than a decision involving a transfusion for a healthy infant, older child, or adult.

3. Jehovah’s Witness Parents have Legal Right to Dictate Child’s No-Blood Treatment

Courts are frequently called upon to order transfusions for children of Jehovah’s Witness parents.¹²¹ In its legal information section entitled “*You Have The Right to Choose*,” the pamphlet informs parents that courts recognize parents’ rights to make medical decisions for their children:

In 1979 the U.S. Supreme Court stated clearly: “The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions . . . Simply because the decision of a parent [on a medical matter] involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the

118. Stockman III, MD., “*Anemia of Prematurity Current Concepts in the Issue of When to Transfuse*,” 111.

119. *Ibid.*, 125-26.

120. *Ibid.*

121. *Jehovah’s Witnesses of Washington v. King County Hospital*, 278 F. Supp. 488 (W.D. Wash. 1967) *affirmed* 390 U.S. 598 (1968) (Class action suit holding that State could order blood transfusions to minor children over the objections of the minors’ parents); *In the Matter of Baby Girl Newton*, 1990 De. Ch. Lexis 48 (Del. Ch. Apr. 24, 1990) (Case not released for publication) (Court held that it was within the State’s domain to order a blood transfusion for premature, anemic 2 day old infant.); *Muhlenberg Hospital v. Patterson*, 128 N.J. Super 498 (N.J. Super. Ct. 1974) (Court permitted blood transfusion to ill six-day-old infant because blood transfusion would likely prevent severe health damage.).

states.”—*Parham v. J.R.*¹²²

The same year the New York Court of Appeals rules: The most significant factor in determining whether a child is being deprived of adequate medical care . . . is whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances. This inquiry cannot be posed in terms of whether the parent has made a ‘right’ or a ‘wrong’ decision, for the present state of the practice of medicine, despite its vast advances, very seldom permits such definitive conclusions. Nor can a court assume the role of a surrogate parent.—*In re Hofbauer*¹²³

While these quotes are not in themselves inaccurate, the Society does not inform its readers that these particular cases do not involve minors of Jehovah’s Witnesses who need immediate, life-saving blood transfusions. Rather, *Parham v. J.R.* deals with the parents’ wish to obtain psychiatric help by civilly committing an uncontrollable minor contrary to the minor’s objections.¹²⁴ Moreover, the relevant facts in *Parham* did not involve the parents’ refusal to accept medical treatment on religious grounds. Indeed, concurring Justice Stewart wrote that a state would have constitutional grounds to preempt the parent’s decision, and defended this position by referring to a seminal case against a Jehovah’s Witness parent who mandated that her minor niece engage in selling Society magazines in violation of the state’s child labor laws.¹²⁵ *In re Hofbauer* deals with the parents’ choice of using nutrition instead of chemotherapy to treat Hodgkin’s disease.¹²⁶ The *Hofbauer* court also differentiated its facts from cases involving parents’ religious refusal of medical treatment, including a reference to a specific Jehovah’s Witness blood case, a fact which the pamphlet omitted.¹²⁷ From these examples, a clear precedent can be seen that many courts will order blood transfusions for minors over and against the parents’ wishes.¹²⁸ Thus, Jehovah’s Witness parents may be

122. *How Can Blood Save Your Life?*, 21-22.

123. *Ibid.*

124. *Parham v. J.R.*, 442 U.S. 584 (1979).

125. *Parham v. J.R.*, 442 U.S. 584 (1979) at 624, referring to *Prince v. Massachusetts*, 321 U.S. 158 (1943).

126. *In re Hofbauer*, 47 N.Y. 2d 648 at 655 (NY Ct. of Appeal 1979).

127. *Ibid.*; referring to *In re Sampson*, 37 A.D. 2d 558 (Supreme Court of New York, Appellate Division, Third Department June 28, 1971) (Court found Jehovah’s Witness parent neglected son when she refused to permit him a blood transfusion.).

128. *Jehovah’s Witnesses of Washington v. King County Hospital*, 278 F. Supp. 488 (W.D. Wash. 1967) affirmed 390 U.S. 598 (1968); *Novak v. Cobb County Kennestone Hosp. Auth.*, 74 F.3d 1173, (11th Cir. 1996); *In the*

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surprised to learn that precedent denies their supposed "right" to make martyrs of their children.¹²⁹

4. Erythropoietin Works "Very Quickly"

The pamphlet informs its readers that doctors can administer erythropoietin, which helps a person "very quickly" develop red blood cells "three to four times faster than normal."¹³⁰ The pamphlet's reader may conclude that "very quickly" as applied to a medical emergency means a few minutes or hours, but no longer than a day or two. However, erythropoietin actually takes four or more weeks before enough red blood cells are produced to make a difference.¹³¹ The Society could have easily put the words "four weeks" in place of "very quickly." Instead, the Society leads its followers to think their red blood cells can be manufactured "today or tomorrow" when, in reality, it takes a month.

5. Complicated Surgery is Safe Without a Transfusion

Most surgeries do not require blood transfusions. Some surgeries, such as coronary bypass, hip or knee replacement, hepatic resections [liver surgery], and radical prostatectomy [prostate removal], are a higher risk.¹³² The pamphlet states that bloodless surgeries are safe and quotes as support a study by Dixon B. Kaufman concerning renal (kidney) transplants: "The overall results suggest that renal transplantation can be safely and efficaciously applied to most Jehovah's Witness patients."¹³³ More telling, however, is the self-incriminating information that the Society omitted (*emphasis on Society's actual quote*):

Jehovah Witnesses had an increased susceptibility to rejection episodes. The cumulative percentage of incidence of primary rejection episodes was 77 percent at three months in Jehovah's Witnesses versus 44 percent at

Matter of Baby Girl Newton, 1990 De. Ch. Lexis 48 (Del. Ch. Apr. 24, 1990) (Case not released for publication); *In re McCauley*, 409 Mass. 134 (1991); *Muhlenberg Hospital v. Patterson*, 128 N.J. Super 498 (N.J. Super. Ct. 1974); *O.G. v. Baum*, 490 S.W. 2d 839 (Tex. App. Houston 1st Dist. 1990).

129. *Prince v. Massachusetts*, 321 U.S. 158 (1943).

130. *How Can Blood Save Your Life?*, 15.

131. Available online at: <http://www.myeloma.org.uk/pdf/Erythro.PDF>.

132. Available online at: <http://www.bloodbook.com/autolog-3.html>

133. *How Can Blood Save Your Life?*, 14 (quoting Dixon B. Kaufman, "A Single-Center Experience of Renal Transplantation in Thirteen Jehovah Witnesses," *Transplantation* 45 (6 June 1988): 1046.

21 months in the matched control group. The consequence of early allograft dysfunction from rejection was particularly detrimental to Jehovah's Witness who developed severe anemia (hemoglobin (Hgb)* 4.5 per cent) – two early deaths occurred in the subgroup with this combination. *The overall results suggest that renal transplantation can be safely and efficaciously applied to most Jehovah Witness patients* but those with anemia who undergo early rejection episodes are a high-risk group relative to other transplant patients.¹³⁴

Since the pamphlet dedicates pages to anemia, why did the Society omit that the almost double rates for organ rejection as well as the study's clarification that "those with anemia" are a high risk group?

Finally, the pamphlet encourages its readers to keep a positive attitude,¹³⁵ which admittedly is good advice for any person facing a life-threatening situation, but advice that should be coupled with more responsible medical counsel. Those who have read the pamphlet probably feel "informed" and ready to sign their advanced medical directives. After all, their decisions to refuse blood transfusions would appear to be in total agreement with prominent historians, scientists, and learned doctors.

6. Summary of Survival Rates and Medical Alternatives Misrepresentations

At this point, a salient question emerges: Should the tort of misrepresentation be allowed to the victims of blood policy and their families who have come to the conclusion that the Society misrepresented the historical and medical science in its indoctrination literature? A court could conclude that each misrepresented statement is relatively insignificant. However, when taken together, the misrepresentations serve to warp the follower's mind regarding the actual medical and historical perspective. The Society deceives its followers into thinking that blood transfusions render one's immune system incapable of fighting cancers, when the actual link depends on the type of cancer. It builds a case that other doctors wish all surgeons would become bloodless surgeons, when in fact those doctors recognize the benefits of blood transfusions for those who are in desperate need. The Society "scares" followers into believing that accepting blood transfusions is equivalent to contracting contagious diseases, when the

134. Kaufman, "A Single-Center Experience of Renal Transplantation in Thirteen Jehovah Witnesses," 1046.

135. *How Can Blood Save Your Life?*, 27.

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actual risks are one in several hundred thousand to a few million. The Society "placates" by suggesting adults and infants can tolerate low hemoglobin levels, despite medical knowledge that a healthy person has at least a one in three chance of not surviving a blood count lower than 7, with survival rates for people in high-risk groups being much lower. The Society falsely assures parents that they can legally refuse a blood transfusion for their child by citing cases that in no way substantiate such a position. The Society never reveals to its readers the actual risks of death when blood levels drop either slowly from anemia or quickly from hemorrhage. Instead, the Society gives its readers the impression that ultra low hemoglobin counts, such as 1.8, are easily survivable under the supervision of the right doctor. Only by looking at the overall effect of the Society's literature can one determine whether there are misrepresentations that induce a follower to accept the Society's life-threatening arguments without question.

7. Blood Pamphlet's Near Omission of Acceptance of Blood Products and Fractions

The pamphlet's most puzzling aspect is its scant discussion of the Society's allowing individual Witnesses a personal decision to accept blood components, a policy in place for many years prior to its printing. The pamphlet's "*Quality Alternatives to Transfusions*" section, which is located near the beginning and details medical alternatives, including non-blood expanders and heart-lung machines, is the seemingly logical place to discuss blood components.¹³⁶ Because the pamphlet includes such a section, a court could reason that the Society thereby has a duty to disclose *all* or, at least, the *key* quality alternatives to treat blood loss. However, this section *omits any* discussion of blood components. Furthermore, page 18 of the pamphlet, in reference to a German consent form, reconfirms that blood components are not acceptable: "As a . . . Jehovah's Witness, I categorically refuse the use of foreign blood or blood components during my surgery."¹³⁷ However, in one sentence on page 27 of the 31-page pamphlet, the Society contradicts itself by stating that individual Jehovah's Witnesses may accept blood components.¹³⁸ Thus, the

136. *How Can Blood Save Your Life?*, 14.

137. *Ibid.*, 18.

138. *Ibid.*, 27. *quoting* "Jehovah's Witnesses: The Surgical/Ethical Challenge," JAMA 246, no. 21 (27 November 1981): 2471, 2472, "However

pamphlet appears intentionally ambiguous, if not contradictory, as blood components are never mentioned in its medical alternatives section, banned altogether in its legal section, yet unexplicably allowed in one statement near the end.

Most legal and medical professionals are unaware that the Watchtower Society actually allows blood components, including hemoglobin. This essay will therefore examine at this point whether the Society failed to adequately represent to its followers and third parties its allowance of blood components and also examine the Society's current policy regarding blood components.

HISTORY OF SOCIETY'S DISSEMINATION OF ITS BLOOD POLICY REVEALS POCKETS OF MISREPRESENTATIONS

From 1954 through early 1974, the Society banned most blood fractions.¹³⁹ In 1958, the Society carved out the first exception, which provided that antibodies (such as tetanus, rabies, and snakebites) derived from blood could be accepted by individual judgment.¹⁴⁰ In 1961 and 1964, the

Witnesses' religious understanding does not absolutely prohibit the use of components such as albumin, immune globulins, and hemophiliac preparations; each Witness must decide individually if he can accept these."

139. *Awake!*, (8 January 1954): 24, ("We are told that it takes one and a third pints of whole blood to get enough of the blood protein or "fraction" known as gamma globulin for one injection. . . . the Scriptural aspect will note that its being made of whole blood places it in the same category as blood transfusions as far as Jehovah's prohibition of taking blood into the system is concerned.") Available online at: www.ajwrb.com/watchtower/data1.shtml; see also, *Blood, Medicine, and the Law of God* (Watchtower and Bible Tract Society of Pennsylvania 1961), 14, ("In view of the constant developments in the field of medical research, new treatments involving the use of blood and its component parts are constantly coming to the fore. But regardless of the method used to infuse it into the body and regardless of whether it is whole blood or a blood substance that is involved, God's law remains the same. If it is blood and it is being used to nourish or to sustain life the divine law clearly applies."); *The Watchtower* (1 June 1974): 351-52, ("It can thus be seen that serums (unlike vaccines) contain a blood fraction, though minute....What, then, of the use of a serum containing only a minute fraction of blood and employed to supply an auxiliary defense against some infection and not employed to perform the life - sustaining function that blood normally carries out? We believe that here the conscience of each Christian must decide.")

140. *The Watchtower* (15 September 1958): 575 (Excerpt reprinted in Wilson, *Awakening of a Jehovah's Witness*, 194), ("The use of blood fractions to create . . . antibodies is not the same as taking blood either by mouth or by transfusion . . . While God did not intend for man to contaminate his blood stream by . . . blood fractions, doing so does not seem to be included in God's expressed will forbidding blood as food. It would therefore be a matter of

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Society carved out another exception, permitting vaccinations and inoculations derived from blood to be accepted by personal judgment.¹⁴¹ This change allowed Witnesses to better assimilate into every day life as their children could now attend public schools and Witness missionaries could obtain required vaccinations for foreign service. In 1980, the Society began allowing any fractions of plasma (like immune globulin and albumin), and in 2000 purportedly began allowing any components of whole blood cells and plasma.¹⁴² The changing, though not widely publicized blood policy, creates difficulty for followers and outsiders in knowing the Society's actual stance on the blood issue at a given point. In the Society's defense, it has published articles in medical journals, filmed videos for distribution to the medical community, and set up a hospital liaison team knowledgeable in the current blood policy in order to promulgate information.¹⁴³ Yet, these efforts may not be enough if the average judge, doctor, nurse, or Witness does not in fact understand the policy. Suppose a court found that the Society, by creating a no-blood policy then later changing it, owed a duty to its followers to keep them apprised of subsequent changes.

individual judgment whether one accepted such types of medication or not.”).
 141. *The Watchtower* (1 November 1961: 670) (Excerpt reprinted in Wilson, *Awakening of a Jehovah's Witness*, 190) (“As to the use of vaccines and other substances that may in some way involve the use of blood in their preparation . . . matter of individual judgment.”) *The Watchtower* (15 November 1964: 682) (Excerpt reprinted in Wilson, *Awakening of a Jehovah's Witness*, 190) (“Inoculation is, however, a virtually unavoidable circumstance in some segments of society . . . we leave it up to conscience of individual whether to submit to inoculation with a serum.”)

142. *Awake!* (22 June 1982): 25 (Excerpt reprinted in Wilson, *Awakening of a Jehovah's Witness*, 196) (“However, Witnesses’ religious understanding does not absolutely prohibit the use of components such as albumin, immune globulins, and hemophiliac preparations [fibrinogens]; each Witness must decide individually if he can accept these.”); see also *Watchtower* (1 June 1990): 30-31 (Excerpt reprinted in Wilson, *Awakening of a Jehovah's Witness*, 194) (“A common issue involves the plasma proteins . . . globulins, albumin, and fibrinogen . . . A pregnant woman has an active mechanism . . . That some protein fractions from the plasma do move naturally into the blood system of another individual (the fetus) may be another consideration when a Christian is deciding whether he will accept . . . plasma fractions . . . Each must resolve the matter personally before God.”); *The Watchtower* (15 June 2000): 30 (Excerpt reprinted in Wilson, *Awakening of a Jehovah's Witness*, 194) (“Just as blood plasma can be a source of various fractions, the other primary components [red cells, white cells, platelets] can be processed into smaller parts . . . Should a Christian accept such fractions in medical treatment? . . . a Christian must make his own conscientious decision before God.”)

143. See http://www.watchtower.org/medical_care_and_blood.htm.

Indeed, prior to 1975, followers with hemophilia were permitted to receive one infusion of Factor VIII, as it was considered medicine and not a feeding on blood.¹⁴⁴ On 27 February 1975, however, hemo-philiac followers were directed they could no longer receive any clotting factors, including Factor VIII.¹⁴⁵ Raymond Franz, at that time a member of the Society's governing body, explains in his book *Crisis of Conscience* the internal chaos that followed the change in policy.¹⁴⁶ Franz reveals that, on 11 June 1975, four months after the pronounced ban, the Society decided to re-allow hemophiliacs multiple infusions of clotting factors.¹⁴⁷ The Society, not wanting to publicize a reversal that took effect just four months after the ban, directed headquarter staff workers to contact individual hemophiliac members.¹⁴⁸ According to Franz, however, because the headquarters did not keep adequate records, the staff workers could not locate every hemophiliac follower without the local church elders becoming disturbed.¹⁴⁹ Instead, the Society waited three years to officially publish its reversal of position permitting clotting factors.¹⁵⁰ In the meantime, the Society allowed Witnesses to mistakenly believe Factor VIII was still banned. This knowing omission demonstrates the Society's self-preserving efforts to conceal its quick doctrinal shift to the general Witness population, even at the expense of its hemophiliac followers. By not publishing this vital doctrinal shift in a timely fashion, the Society knowingly left its

144. Raymond Franz, *Crisis of Conscience*, 4th ed. (Atlanta, Ga.: Commentary Press, 2002), 120-21.

145. *Awake!* (22 February 1975): 30, ("Certain clotting 'factors' derived from blood are now in wide use for the treatment of hemophilia, a disorder causing uncontrollable bleeding. However, those given this treatment face another deadly hazard: the Swiss medical weekly *Schweizer Med Wochenschrift* reports that almost 40 percent of 113 hemophiliacs studied had cases of hepatitis. 'All these patients had received whole blood, plasma, or blood derivatives containing [the factors],' notes the report. Of course, true Christians do not use this potentially dangerous treatment, heeding the Bible's command to 'abstain from blood.'"), available online at: www.ajwrb.org/watchtower/data1.shtml.

146. Franz, *Crisis of Conscience*, 120-21.

147. *Ibid.*

148. *Ibid.*

149. *Ibid.*

150. *The Watchtower* (15 June 1978): 29-31, ("What, however, about accepting serum injections to fight against disease, such as . . . hemophilia? . . . This seems to fall into a 'gray area.'...Hence, we have taken the position that this question must be resolved by each individual on a personal basis."), available online at: www.ajwrb.org/watch-tower/data1.shtml.

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hemophiliac followers in ignorance. As previously stated, in dealing with nondisclosure, courts look at the nature of the fact not disclosed, the importance of the fact not disclosed, and how formally the information was acquired. The Society's re-allowance of hemophiliac solutions was of critical importance to the affected Witnesses. As the original ban had been officially declared in the printed *Watchtower*, the subsequent reversal should have followed the same dissemination routes as quickly as it was decided.

The Society's policy during the 1950s through 1970s flatly rejected whole blood, red blood cells, white blood cells and plasma, but identified specific, allowable blood products, like Factor VIII and serum injections. In 1981, the Society announced in the 27 November 1981 edition of the *Journal of the American Medical Association* ("JAMA") the policy clarification that any component could be allowed if the Witness individually agreed.¹⁵¹ The 2004 *Watchtower* admits that this policy clarification was supplied to JAMA.¹⁵² *The Watchtower* republished the exact language within the JAMA article in its 22 June 1982 issue to inform its followers about this policy clarification regarding components.¹⁵³ One could theorize that the average Witness does not read JAMA. Perhaps the Society made an announcement about the JAMA article in 1981 at the local congregations, periodic assemblies, or other writing not available to the author. In any event, the Society should have made a resounding, simultaneous statement, and not waited seven months to print the change in *The Watchtower*.

Former Jehovah's Witness Diane Wilson, wife of a local

151. "Be Guided by the Living God," *The Watchtower* (15 June 2004): 19, 21, ("[Jehovah's Witnesses] supplied an article to *The Journal of the American Medical Association* . . . 'While these verses are not stated in medical terms, Witnesses view them as ruling out transfusion of whole blood, packed RBCs [red blood cells], and plasma, as well as WBC [white blood cell] and platelet administration. However, Witnesses' religious understanding does not absolutely prohibit the use of components such as albumin, immune globulins, and hemophiliac preparations; each Witness must decide individually if he can accept these.'")

152. *Ibid.*

153. *Awake!* (22 June 1982): 25, ("While these verses are not stated in medical terms, Witnesses view them as ruling out transfusion of whole blood, packed RBCs, and plasma, as well as WBC and platelet administration. However, Witnesses' religious understanding does not absolutely prohibit the use of components such as albumin, immune globulins, and hemophiliac preparations; each Witness must decide individually if he can accept these.") Available online at: <http://www.jwfiles.com/blood.htm>.

church elder, explains that the 1982 announced policy shift and the later 1990 Watchtower explanation led the average Witness, including herself, to consent only to plasma fractions, inasmuch as the June 1982 *Watchtower* listed only specific plasma components. The 1990 *Watchtower* explained this new reasoning by claiming that since plasma components were exchanged between a mother and her fetus, there was an indication that Jehovah God allowed human exchanging of plasma components.¹⁵⁴ Interestingly, the Society does not appear to recognize that humans naturally exchange whole red blood cells, as well between twins while in the uterine environment and between a fetus and its mother at birth.¹⁵⁵

Scientists can now isolate the red blood cell's most important fraction, hemoglobin. In lay terms, hemoglobin is what makes blood, blood; hemoglobin is responsible for transporting oxygen, transfused from bags, which can be used for treating anemic or bleeding patients. Hemoglobin for human transfusion has been studied and used for about 40 to 50 years, albeit with many complications making it medically impractical.¹⁵⁶ In 1985, the U.S. Army Blood Research Division began research to develop a more viable hemoglobin-based product to use in the battlefields as its shelf life is about one to two years and required no refrigeration.¹⁵⁷

In 1992, the Society specifically banned hemoglobin, an isolatable component of red blood cells, and placed it

154. *Awake!* (22 June 1982): 25 (Excerpt reprinted in Wilson, *Awakening of a Jehovah's Witness*, 196) ("However, witnesses' religious understanding does not absolutely prohibit the use of components such as albumin, immune globulins, and hemophilic preparations [fibrinogens]; each Witness must decide individually if he can accept these."); see also *Watchtower* (1 June 1990: 30-31 (Excerpt reprinted in Wilson, *Awakening of a Jehovah's Witness*, 194) ("A common issue involves the plasma proteins . . . globulins, albumin, and fibrinogen . . . A pregnant woman has an active mechanism . . . That some protein fractions from the plasma do move naturally into the blood system of another individual (the fetus) may be another consideration when a Christian is deciding whether he will accept . . . plasma fractions . . . Each must resolve the matter personally before God.").

155. Andrew W. Lusk, "Jehovah God Does Allow Natural Whole Blood Transfusions and He Provides Pictures," available online at <http://www.geocities.com/osarsif/twins.htm>; and <http://users.rcn.com/jkimball.ma.ultranet/BiologyPages/B/BloodGroups.html> ("During birth, there is often a leakage of the baby's red blood cells into the mother's circulation.")

156. See www.sangart.com/background.

157. See www.sangart.com/company/history; see also www.ajwrb.org.

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alongside banned whole plasma, red blood cells, and white blood cells.¹⁵⁸ In 2000, *The Watchtower* declared that Witnesses could accept any fractions derived from whole blood cells, noting that medical science was advancing in its ability to break down primary components into secondary ones.¹⁵⁹ The 2000 *Watchtower* article, however, failed to specifically mention whether hemoglobin was now allowed, thereby leaving ambiguous the question of whether Witnesses could now accept hemoglobin without reproach from Jehovah. On 24 September 2000, the *Sacramento Bee* reported that a member of a Jehovah's Witness Hospital Liaison Committee approved the use of hemoglobin for Witnesses.¹⁶⁰ The 15 June 2004 *Watchtower* article, citing a policy dating back to 1981, also reiterated that Witnesses could individually accept fractions from whole blood cells, but failed to specifically list hemoglobin.¹⁶¹ To date, *The Watchtower* still has not specifically publicized that it

158. "Questions from Readers," *The Watchtower* (15 October 1992):31, ("It would be right, of course, to avoid products that listed things such as blood, blood plasma, plasma, globin [or globulin] protein, or hemoglobin [or globin] iron."); see <http://www.ajwrb.org/basics/hemo-pure.shtml>.

159. "Questions from Readers," *The Watchtower* (15 June 2000): 29-30, ("Other Christians decide differently. They too refuse transfusions of whole blood, red cells, white cells, platelets, or plasma. Yet, they might allow a physician to treat them with a faction derived from the primary components.") See <http://www.jwfiles.com/blood-WT6-15-00.htm>.

160. See <http://www.ajwrb.org/basics/hemopure.shtml> ("According to a 24 September 2000 article in the *Sacramento Bee*, a patient was recently transfused with Hemopure®, a highly purified oxygen-carrying hemoglobin solution made from fractionated bovine (cow) blood and manufactured by Biopure Corporation. Dorsey Griffith, a medical writer for the *Bee*, states that Gregory Brown, a representative from the Jehovah's Witnesses Hospital Liaison Committee, approved the use of the oxygen-carrying solution that was transfused into the patient, Jose Orduño. The article notes: 'When Orduño woke up from his drug-induced slumber, about a month after the ordeal began, Angelica was there ...His sister told him about the accident and how he almost died, and about the drug made from cow blood that had saved his life.'")

161. "Be Guided by the Living God," *The Watchtower* (15 June 2004): 19, 21 ("Decades ago Jehovah's Witnesses made their stand clear. For example . . . supplied an article to *The Journal of the American Medical Association* . . . 'While these verses are not stated in medical terms, Witnesses view them as ruling out transfusion of whole blood, packed RBCs [red blood cells], and plasma, as well as WBC [white blood cell] and platelet administration. . . . Witnesses' religious understanding does not absolutely prohibit the use of [fractions] such as albumin, immune globulins, and hemophiliac. . . . Since 1981, many fractions have been isolated. . . . For the benefit of current readers, the [June 15, 2000 *Watchtower*] is reprinted on pp. 29-31 of this magazine. It provides details and reasoning, yet you will see that what it says agrees with the basics presented in 1981.")

condones Jehovah's Witnesses accepting hemoglobin, leaving doubt as to the status of a previous directive singling it out as unacceptable.

Suppose that a Witness patient suffered major organ failure or even death caused by a lack of oxygen-rich hemoglobin. In such a case, the patient, doctors, and visiting elders apparently either did not accept or were not aware that the Society approved the needed hemoglobin transfusions. Perhaps the patient's decision to refuse hemoglobin was based on confusion resulting from the 1981 through 1995 Watchtower articles that blessed fractions of whole blood cells, contradicted by the 1992 Watchtower that specifically stated Jehovah's Witnesses could not accept hemoglobin. Further, the patient's decision was probably not based on the 24 September 2000 *Sacramento Bee*. If hemoglobin is, in fact, Society approved, then by virtue of the Society's failure to properly disseminate this approval, the patient was denied the freedom to make a health decision choice within the confines of his or her chosen belief set.

The preceding examples deal with omissions that result in a misrepresentation. As stated previously, courts look to the importance of the fact not disclosed, the relationship between the parties to which the fact is relevant, and the probability the receiver could or would locate this information otherwise. It is unlikely that most Witnesses are privy to unannounced headquarter decisions, read JAMA, or read the *Sacramento Bee* to determine what is currently accepted.

Current Blood Policy Misrepresents the Scope of Allowed Fractions

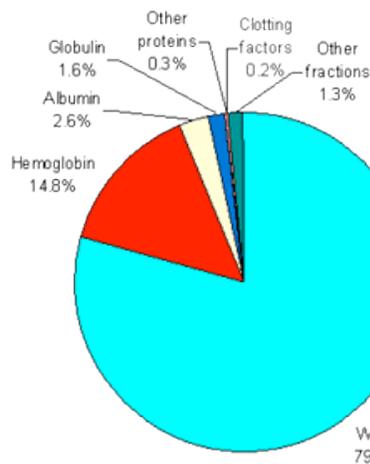
Surprisingly, the Society today allows its followers to accept ALL blood fractions (aka "fractions" or "components") without church sanction, provided a follower's decision is well considered.¹⁶²

162. "Be Guided by the Living God," 22 ("As to taking of blood factions, some have thought, 'This is a matter of conscience, so it doesn't make any difference.' That is faulty reasoning. The fact something is a matter of conscience does not mean that it is inconsequential. It can be very serious. One reason is that it can affect individuals whose conscience differs from ours . . . A Christian ought to be concerned about not 'wounding consciences that are weak.' If he stumbles others, he could 'ruin his brother for whose sake Christ died' and be sinning against Christ. Hence, while issues about blood factions are for personal decision, those decisions should be taken very

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Currently, the Society depicts the allowed fractions as “minute” and omits pointing out the fact that the allowed fractions would, if added together, total the entire volume of blood they came from.¹⁶³ In 1990, a time when fractions were allowed, the Society declared that Witnesses abstain from blood in *any* form.¹⁶⁴ Because the Society depicts the fractions as minute and prescribes that Witnesses abstain from blood in any form, one might anticipate that today’s Witnesses would be confused if they were aware of an actual equivalence between whole blood and allowed blood fractions.

If one adds the fractions together, they total a unit of whole blood, graphed as follows:



Percentage of total weight of blood.¹⁶⁵

The Society’s early literature described the connection using rather discrete numbers:

Awake! 01/08/1954 page 24

We are told that it takes one and a third pints of whole blood to get enough of the blood protein or "fraction" known as gamma globulin for one injection. . . .those interested in the Scriptural aspect will note that its being made of whole blood places it in the same category as blood transfusions as far as Jehovah's prohibition of taking blood into the

seriously.”)

163. “Be Guided by the Living God,” 23 (“Some have concluded that such minute fractions are in effect, no longer blood and hence are not covered by the command ‘to abstain from blood.’”)

164. “Most Dangerous Substance,” *The Watchtower* (15 July 1990): 30.

165. See <http://www.ajwrb.org/index.shtml>.

system is concerned.

Watchtower 6/15/1985 page 30

Each batch of Factor VIII is made from plasma that is pooled from as many as 2,500 blood donors. It seems that by importing this blood product the AIDS virus was transferred to the British supply.¹⁶⁶

Today, the 15 June 2004 *Watchtower* admits that fractions are derived from blood, but no longer reveals the thousands of units of blood which are needed to make fractions:

By using component transfusions, physicians could spread donated blood to more patients, perhaps plasma to one injured man and red cells to another. Continued research showed that a component, such as blood plasma, could be processed to extract numerous fractions, which could be given to still more patients.¹⁶⁷

The Society's choice to not inform its readers about the large quantity of blood units needed to produce the accepted fractions or that the fractions, if added together, would total whole blood, may be an attempt to defend itself against critics who question the sincerity of the Society's belief that it abstains from blood or only partakes in minute amounts.¹⁶⁸ The Red Cross urges people to donate blood to meet the Jehovah's Witness demand,¹⁶⁹ and one particular *Watchtower* critic describes the Society's policy as similar to that of allowing a Jehovah's Witness to purchase an entire truck, but only part by part.¹⁷⁰

This author supposes that the implicit language is the Society's signal to today's Witnesses that they may accept blood fractions while not alienating older Witnesses. One might anticipate that if the Society retracted its notorious blood ban, Witnesses would be alienated upon realizing that

166. See <http://www.jwfiles.com/blood.htm>.

167. "Be Guided by the Living God," 21.

168. See <http://www.ajwrb.org/links/index.shtml>.

169. American Red Cross Campaign Slogan ("Vast quantities of blood must be donated by non Jehovah's Witnesses to provide all of the blood fractions and medicines used by Jehovah's Witnesses and their children. Please help replenish the supply - give blood."), available online at: <http://www.ajwrb.org/links/index.shtml>.

170. *Unknown Author*, <http://www.ajwrb.org/forbidden.shtml> ("Here is an analogy: It's like saying, "see that truck over there, it's stolen and you can't buy it but if someone dismantles it, it's not a truck anymore, it's truck parts and you can buy what you want. However, the engine, the transmission, the radio and the disc brakes are special. They are the 'primary' components of the truck (i.e. the red cells, white cells, platelets and plasma). You can't have these 'primary' components unless you first completely dismantle them. If you do that you can buy them too.")

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their very existence was falsely dictated. Moreover, non-Witnesses would likely scoff at the religion whose teachers were complicit in many needless, premature deaths. By making fractions appear minute, the Society may be appeasing followers with long-term illnesses who need blood fractions without directly admitting its traditional dogma has been retracted. It might also signal the Society's attempt to meet medical science in the middle as both advance towards using fractions. In any event, it is a misrepresentation for *The Watchtower* to label the current blood fraction policy "minute" in relation to whole blood, a deception that may lead followers to misunderstand the extent and scope of the allowed fractions. If followers actually understood the correlation, they might seriously question both the Society's purported belief that it abstains from blood and their own choice to forego needed blood transfusions.

At issue here is the very question, "What is blood?" The Society defines blood by "primary" components: "The 2001 textbook *Emergency Care*, under 'Composition of the Blood,' stated 'The blood is made up of several components; plasma, red and white blood cells, and platelets.'"¹⁷¹ Dr. Muramoto, a physician who has written various medical articles questioning the Jehovah's Witness blood policy, wrote that while *Emergency Care* is a "textbook," it is not an authoritative medical textbook, but used in EMT courses.¹⁷² Dr. Muramoto explains that blood has many definitions. Medical textbooks typically define blood as "red blood cells (45 percent) and plasma (55 percent)" while anatomy and physiology textbooks base the definition on chemical makeup; "water (80 percent), hemoglobin (15 percent), albumin (2-3 percent) and globulin (1-2 percent)."¹⁷³ Dr. Muramoto draws an analogy between the different blood definitions and different food definitions: some use the traditional food pyramid while others "use protein, carbohydrate, fat, minerals, etc."¹⁷⁴ Dr. Muramoto questions whether the Society would bless fractions differently if it accepted different definitions.¹⁷⁵ If the Society were to

171. "Be Guided by the Living God," 21.

172. Osamu Muramoto, MD, "The Watchtower Society redefines the guidelines for use of blood products," (in response to the 15 June 2004 Watchtower articles "Rightfully value your gift of life" and "Be guided by the living God), available online at: <http://www.jwic.com/wt-blood-6-15-04.htm>.

173. Ibid.

174. Ibid..

175. Ibid.

publish the different definitions, an informed follower might consider hemoglobin to be blood, but Society-banned platelets acceptable as they comprise a “minute” portion of blood’s weight.¹⁷⁶ In any event, the Society’s use of a “2001 textbook” is specious if it leads average Witnesses to erroneously think the Society’s definition is congruent with current, authoritative medical textbooks.

Prior to accepting blood fractions, the Society asks followers to heavily weigh their decision to avoid bringing reproach upon themselves and ambiguously discourages fractions that carry a “life-sustaining role” or function similarly to the whole blood component.¹⁷⁷ Interestingly, the Society did not name a specific fraction which it considered life-sustaining or similar to the whole blood component. Thus, Witnesses may erroneously think the listed fractions are not life sustaining. The medical truth is that any blood fraction is life-sustaining to the person who needs it and many fractions function similar to the whole blood component. For instance, hemoglobin carries oxygen, similar to the red blood cell, and albumin, derived from plasma, helps maintain critical osmotic pressure in the circulatory system.¹⁷⁸ Even immunoglobulins, whose primary function is to boost the immune system, are life-sustaining to immune-deficient persons who may die from their own or foreign bacterial attack. One could suppose that the Society’s “life-sustaining” order leaves ill Witnesses in a precarious situation: All blood fractions are allowed, but

176. Muramoto, MD, “The Watchtower Society redefines the guidelines for use of blood products.” See also Osama Muramoto, “Bioethics of the refusal of blood by Jehovah’s Witnesses; part 1. Should bioethical deliberation consider dissidents’ views?,” *Journal of Medical Ethics* 24 (August 1998): 228 (“One subtle irony that most JW’s are not aware that albumin (one of the permitted components) constitutes 2.2 percent of blood volume, whereas white blood cells, and platelets (forbidden components) constitute 1 percent, and 0.17 percent respectively.”)

177. “Be Guided by the Living God,” *The Watchtower* 19 (15 June 2004): 22-24 (“The fact that something is a matter of conscience does not mean that is inconsequential. It can be very serious. One reason is that it can affect individuals whose conscience differs from ours . . . A Christian ought to be concerned about not ‘wounding consciences that are weak.’ If he stumbles others, he could ‘ruin his brother for whose sake Christ died’ and be sinning against Christ. Hence, while issues about tiny blood fractions are for personal decision, those decisions should be taken very seriously.”)

178. See <http://www.austin.cc.tx.us/~emeyerth/hemoglob.htm> (“The primary function of hemoglobin (Hb) is to transport oxygen.”); available online at: http://www.albumin-therapy.com/us/en/pdf/slidekit/AlbuminSlides_pharm.pdf (“Albumin is responsible for 70%– 80% of plasma’s osmotic pressure.”)

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only if they are not life-sustaining.

To conclude, *The Watchtower* has a history of failing to inform Witnesses about changes within the blood doctrines. Today, the Society misrepresents accepted fractions by down-playing their: (1) deep-seated connection with whole blood or blood cells; (2) role in sustaining life; and (3) acceptance by the medical community as within the definition of blood. Undoubtedly, the Society has changed its infamous understanding of the Bible's no-blood verses, but, perhaps, does not want to completely reverse a core belief, possibly sacrificing both its reputation and follower loyalty.

Current Blood Policy Contains Contradictions about Autologous Blood Transfusions

The Society has never allowed its followers to pre-store their own blood in anticipation of planned surgeries (pre-operative autologous blood) because it believes blood, once outside the body, becomes impure.¹⁷⁹ The Society bases this belief on Leviticus 17:13, 14 and Deuteronomy 12:24 and holds that once blood has left the body, it should no longer be used, but should be spilled onto the ground and covered in dust.¹⁸⁰ In 1972, the Society applied this belief to hemodilution (a newly emerged technology whereby an external machine recirculates the patient's own blood outside his body) and banned the procedure.¹⁸¹ But

179. *The Watchtower* 640 (15 October 1959) ("Consequently, the removal of one's blood, storing it and later putting it back into the same person would beg a violation of the Scriptural principles that govern the handling of blood...if the blood were stored, even for a brief period of time, this would be a violation of the Scriptures."), available online at: www.ajwrb.org/watchtower/data1.shtml; see also Blood, Medicine, and the Law of God (Watchtower and Bible Tract Society of Pennsylvania 1961), 14-15 ("Mature Christians . . . are not going to feel that if they have some of their own blood stored for transfusion, it is going to be more acceptable than the blood of another person."); *The Watchtower* 30 (15 June 1978); *Questions from Readers*; *The Watchtower* 30 (30 March 1989).

180. *The Watchtower*, 30 (15 June 1978) ("So, if medical personnel suggest that a Christian is not without guidance from the Bible . . . removed blood was to be 'poured out on the ground as water' to show that is was for God and not to sustain the life of some earthly creature. (Deut. 12:24)"); *The Watchtower*, 30 (1 March 1989) ("We read that when a hunter killed an animal for food, 'he must in that case pour its blood out and cover it with dust.' (Leviticus 17: 13, 14; Deuteronomy 12:22-24) So the blood was not to be used for nutrition or otherwise.")

181. "Watching the World," *Awake!* 30 (8 April 1972) ("Men of science are

beginning in 1983, the Society reversed itself and approved hemodilution therapy, as it now considered the machines an extension of one's circulatory system.¹⁸²

Of note is the 15 October 2000 *Watchtower* which expanded the permitted external blood medical procedures by directing followers to personally decide on techniques "in which a quantity of blood is withdrawn in order to tag it or to mix it with medicine, whereupon it is put back into the patient. . . . A Christian must decide for himself how his own blood will be handled *in the course of a surgical procedure, medical test, or current therapy.*"¹⁸³ Unfortunately, the Society did not define "quantity" or "current therapy." The same article, however, reiterates the long standing ban on pre-operative autologous blood storing, transfusing one's own blood collected weeks before surgery, and declares that

constantly developing new methods for performing surgical operations. *The Journal of the American Medical Association*, November 15, 1971, described a procedure for open-heart surgery that employs sever hemodilution. Early in the operation a large quantity of blood is drawn off into a plastic blood bag. Though the bag is left connected to the patient by a tube, the removed and stored blood is no longer circulating in the patient's system. It is replaced with a plasma volume expander, which dilutes the blood remaining in the veins and which gradually dissipates during the operative procedure. Near the conclusion of the operation the blood storage bag is elevated, and the stored blood is reinfused into the patient... These techniques are noteworthy to Christians, since they run counter to God's Word. The Bible shows that blood is not to be taken out of a body, stored and then later reused."); available online at: <http://www.ajwrb.org/watchtower/data1.shtml>.

182. *Awake!* 16 (22 March 1983) (Quoted from Italian Medical Journal, *Tempo Medico* (Dec. 1980); "It is with this in mind, and not just to honor the requests of Jehovah's Witnesses, that Denton Cooley [of Houston, Texas] has performed open-heart operations now for over seven years, limiting transfusions wherever possible by substituting hemodilution, diluting the patient's blood with a glucose and heparin solution. If this method has given excellent results since then . . . one wonders why it has not been extended to present-day surgery.") available online at: <http://www.ajwrb.org/watchtower/data1.shtm>; *Questions from Readers* 30, 31 (15 October 2000) ("For example, during certain surgical procedures, some blood may be diverted from the body in a process called hemodilution. The blood remaining in the patient is diluted. Later, his blood in the external circuit is directed back into him, thus bringing his blood count closer to normal . . . blood may be directed to a machine that temporarily carries on a function normally handled by body organs. . . . The blood from the machine is then returned to the patient. . . . The details may vary, and the new procedures, treatments, and tests will certainly be developed. It is not our place to analyze each variation and render a decision. A Christian must decide for himself how his own blood will be handled *in the course of a medical procedure, medical test, or current therapy.*")

183. "Questions from Readers," *The Watchtower* (15 October 2000): 31.

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Jehovah's Witnesses "abstain from blood."¹⁸⁴ The patient is left in a quandary. Jehovah God allows a lab to withdraw an unknown quantity of blood, walk it down the hall to be mixed with other substances or to run tests on it, and later transfuse this blood back into the patient, provided it is "current." But, "current" apparently can not be "weeks," as in the case of pre-operative blood saving.

Courts look at the sincerity of the religion's belief.¹⁸⁵ The Society purportedly believes that blood once it has left the body is not to be used again. Contrast this belief against the Society's allowance of blood fractions, hemodilution machines, and "current" therapy transfusions of blood. It is a misrepresentation for the Society to state that it and its followers "abstain from blood."

CONCLUSION

Law changes over time. A century ago it was well established that persons could not sue their government, charities, spouses, or parents. Today, government, spouses, and parents enjoy only limited protection and charities have much less protection for their wrongdoings. Likewise, courts historically have been unwilling to meddle in religious affairs, and rightly so because the State should not dictate religious matters. But, that tide is turning with the recent church sex scandals.

Should a court allow victims (children and adults whose lives are at stake) to sue their religion when it has misrepresented either (1) its own policies or (2) secular writers to bolster its doctrinal position? The state's compelling interests of their citizens' lives and free religious expression, coupled with tort law's narrow tailoring, could be the basis for allowing a harmed Witness to sue the Society for its misrepresentations. The relief would be narrow, as

184. *Questions from Readers*, "The Watchtower (15 October 2000): 30, ("Occasionally, a doctor will urge a patient to deposit his own blood weeks before surgery (preoperative autologous blood donation, or PAD) so that if the need arises, he could transfuse the patient with his own stored blood. However, such collecting, storing, and transfusing of blood directly contradicts what is said in Leviticus and Deuteronomy. Blood is not to be stored; it is to be poured out – returned to God, as it were. . . . Jehovah's Witnesses respect the principles God included in [the Mosaic Law], and they are determined to 'abstain from blood.' Hence, we do not donate blood, nor do we store for transfusion our blood that should be 'poured out.' That practice conflicts with God's law.")

185. *Frazee v. Illinois Dept. of Unemployment Security*, 489 U.S. 829 (1989); *United States v. Seeger*, 380 U.S. 163 (1965).

only the harmed parties who relied on the misrepresentations or omissions could sue. Because the judgment would be in monetary damages, the religion could still practice and no one would be incarcerated. The monetary damages would need to be comparable with the damage inflicted, and the myriad of medical tort law settlements would provide guidance on damages for the value of a human life. Such a suit would only reach the Watchtower Society's non-religious behavior of: (1) misrepresenting statements made by secular writers and (2) not fully disclosing its life-saving policy shift of allowing blood components.

While the Society's failure to adequately disclose its blood policy to its followers is probably more egregious as it approaches the level of fraud, it is a more complicated basis for a tort suit because the Watchtower Society's choice on how it disseminates policy could be argued to entangle the courts in judging ecclesiastical decision-making. In order to maximize chances of prevailing, a plaintiff's attorney should clearly articulate such a suit against the Society for inadequate disclosure of its blood policy by emphasizing three points: (1) the suit is about the Society's failure to properly disseminate; (2) the suit does not attack the Society's or the individual's religious belief; but rather, (3) the suit protects the follower's right to free religious exercise by assessing damages against the Society for failing to disseminate its religious beliefs to its followers.

A suit based on the veracity of indoctrination literature is more straight forward. First, the Watchtower Society did not need to rely on secular writers to bolster its religious belief. But, by the Society's presenting facts in their indoctrination pamphlet that purportedly could be used to make important medical choices and quoting third-party writers, it created an inherent duty to provide accurate and not misleading synopsis of the outside writers' conclusions. Thus, victims who relied on the Society's inaccurate and possibly dishonest arguments should be able to sue the Society for misrepresenting the contents of secular writings and, if applicable, for failing to properly disseminate its no-blood policy.