

man 99-1383, the U.S. Supreme Court denied *certiorari* and affirmed the U.S. Third Circuit Court of Appeals ruling which shot down the HMO's contention that it is completely "pre-empted" from state laws governing medical negligence and malpractice. In this case, Steven and Michelle Bauman brought suit against U.S. Healthcare after the death of their newborn daughter, Michelina. Both she and her mother were discharged from the hospital, 24 hours after her birth. The next day, Michelina became ill, from a Group B streptococcus infection, which had been undiagnosed and untreated, developing into meningitis. But, after numerous calls, the HMO doctor did not advise the Baumans to go back to the hospital. The next day, the couple called U.S. Healthcare for a home-care pediatric nurse, which their contract covered. No nurse came. The infant died—after a brief 48 hours of life. The case now goes back to New Jersey Superior Court for trial.

The Crisis

While the U.S. Supreme Court appears to endorse state court medical malpractice suits as the remedy against medically negligent ERISA HMOs, this offers little protection for most people. Without Federal legislation to eliminate the 1973 HMO law, or to rein in abuses of the ERISA law, decent malpractice decisions in state courts depend on the vagaries of state law, the interpretation of ERISA by judges, and the skills of the attorneys involved. For decades, state and Federal courts have erroneously dismissed such suits. In fact, a June 20 ruling by the U.S. Fifth Circuit Court of Appeals in *Corporate Health Insurance (Aetna) v. The Texas Department of Insurance* upholds the state's law to protect the health of its citizenry and the patient's right to sue medically negligent HMOs, yet, it leaves open several areas for grievous denial of justice under HMO rule. In some states, suits are allowed only *after* a so-called independent review (usually controlled by HMO industry flacks) of the HMO's medical decision takes place. In other states, a patient's life may hang on how the term "medically necessary care" is defined—and, by whom. And, all states are overwhelmed with complaints about HMO denials. The Supreme Court, in *Pegram v. Herdrich*, called on Congress to deal with the managed-care debacle, but, the Conservative Revolution contingent in Congress intends to block—at all costs—even the limited Federal protections provided in the Bipartisan Patients' Bill of Rights, which they again recently shot down in the Senate. Now, with fewer than 30 legislative days left in this Congress, a growing number of Congressional members will attempt, on a bipartisan basis, to again bring this bill up for a vote in both Houses. But, it's time that the citizenry take up where the courts and Congress fail; it's time to reverse the HMOs' ravaging of our most vulnerable citizens, and to demand that legislators take up the LaRouche movement's "The Right to High-Quality Health Care" bill (see the LaRouche campaign's Committee for a New Bretton Woods's pamphlet "Ban the HMOs NOW!").

Interview: Lawrence C. Marshall

Stop the Conviction of Innocent People

Lawrence C. Marshall is a professor of law, and legal director of the Center on Wrongful Convictions at Northwestern University School of Law in Chicago. He teaches civil procedure, constitutional criminal procedure, legal ethics, and appellate practice, and, through the Center on Wrongful Convictions and the Northwestern Legal Clinic, he represents criminal defendants.

Professor Marshall held a press conference in Houston, Texas on June 12, at which a group of innocent persons, wrongfully convicted of serious crimes because of erroneous eyewitness identifications, called on Gov. George W. Bush and the Texas Board of Pardons and Paroles to block the June 22 execution of Gary Graham (also known as Shaka Sankofa). Graham, who was executed, was convicted solely on the basis of a single eyewitness account. At the press conference, the former prisoners, most of whom were exonerated by DNA evidence or confessions of others, each stepped up to a podium at Texas Southern University's Thurgood Marshall School and declared, "I am living proof that eyewitnesses can and do make mistakes."

In an unprecedented move, the government of France, speaking on behalf of the European Union, issued an official declaration of protest against the execution of Graham, which read, "We are dismayed by the news of the execution of Gary Graham in Texas. We especially regret that the authorities knowingly took the risk of putting an innocent man to death. . . . France is firmly opposed to capital punishment, and is committed, as are its European partners, to its abolition."

Among Professor Marshall's more well-known clients are wrongfully convicted former death-row prisoners Rolando Cruz and Ronald Jones, Ford Heights Four defendant Willie Raigne, and Gary Gauger, an innocent man sentenced to death in 1994 for the murder of his parents—a crime for which others are now under indictment.

It was the Center's cases, among others, which led Illinois Gov. George Ryan to announce, on Jan. 31, 2000, that he would impose an indefinite moratorium on executions, which has subsequently led to a growing movement for a nationwide moratorium in the United States.

Professor Marshall was interviewed by Marianna Wertz on June 29.

EIR: Prior to Gary Graham's execution on June 22 in Hous-

ton, you said, “It is difficult to imagine more compelling evidence of actual innocence than the evidence in Gary Graham’s case.” What do you have to say now that he has been executed?

Marshall: I’d say the same thing. I’d say that it shocked me profoundly that any folks of good conscience were willing to execute him, without ever taking the *few hours* that it would have taken to listen to the eyewitnesses who said that he was not the murderer. I can’t get my head around that. I can understand how some people support the death penalty, and I disagree with them, but I can understand that. I can respect people who do that. But, I can’t understand, and I can’t respect people who believe that it’s more important to kill someone at an appointed hour than it is to take a short time to finally, once and for all, hear six eyewitnesses who were in a position to give conclusive testimony that the person that’s been convicted is absolutely innocent.

EIR: In part because of this execution, and because of George W. Bush’s record on executions, the death-penalty issue is now impacting the Presidential race. Lyndon LaRouche, who founded the *EIR*, is in the race and is opposed to capital punishment. Al Gore and Bush have both taken strong pro-death penalty stances. Do you think this should be an issue in the election?

Marshall: I don’t think that the death penalty itself is likely to be an issue, because it still remains the case that a majority of Americans support the death penalty. What the Graham case was about, was not about the death penalty. The Graham case was about whether we want a leader who has a core sense of fairness, who has a moral compass, and who has a sense of conscience; and more than that, who has the leadership skills and decision-making skills that are what a President would need to have.

Again, the decision here last week, to me, was not a question of whether Gary Graham should die. It certainly wasn’t a decision whether there ought to be a death penalty. The decision was, should he die at 6:00 o’clock last Thursday, or should, finally, a hearing be held in which witnesses are heard, and then informed decisions can be made about the evidence?

The fact that Mr. Bush believed that he wanted to proceed without ever hearing the witnesses, to me called into grave question his temperament and ability to make decisions of epic proportions on behalf of this country, based on less than full information. So, I think that’s going to be the issue, and I think so far, at least, Mr. Gore has at least reached out a bit, and said that he recognizes that there are problems with the current death penalty, and that, although he supports capital punishment, he also supports serious reform measures that would make it far less error-prone, and [would] restore some semblance of morality to a questionable practice.

Capital punishment, per se, I don’t know if that’s the issue in the campaign. On the other hand, the question of accuracy in capital punishment is, and ought to be, an issue.

EIR: The Center on Wrongful Convictions was responsible for freeing many of the innocent men on Illinois’s death row, which then resulted in the decision by Governor Ryan to impose a moratorium. Could you tell us about the kind of work you do at the Center?

Marshall: We do a bunch of different kinds of work. Part of our work is representing clients who we believe to have been unjustly convicted and, in many cases, to be factually innocent. We’ve been involved here in Illinois in seven cases, where people who, at one time, have been on death row, [and] were later cleared.

Part of the rest of our mission is to extrapolate from that experience and to try to educate the public about some of the flaws in the system, so that if we are going to have a death penalty in this country, that it be a death penalty that inspires some degree of confidence that people who are executed, are executed only after unmistakably clear evidence comes forth, and after unmistakably fair trials have happened.

Unfortunately, that’s not the case with a tremendous number of people in this country. There are, in my view and estimate, but it’s an educated estimate—I think there are hundreds of people on death row today in the United States who are completely innocent of the crimes for which they’ve been convicted, and there are hundreds and hundreds, if not more than that, of people who have had trials that simply cannot begin to inspire the degree of trust that we ought to demand of any system that wants to take life.

EIR: I saw the statement by [former FBI Director] William Sessions a few weeks ago, to the National Committee to Prevent Wrongful Executions, that one-third of the people in Federal prisons who were given DNA tests when he was director, were found to have been innocent. If you extrapolate that to the whole prison system—

Marshall: That’s exactly right. It’s a problem of a magnitude that we’ve not paid attention to, mostly because the people who are victimized most directly by it tend to be people who we are able to dismiss as “others,” as “low-life,” as “minorities,” as people we ought not to be caring so much about.

Of course, there’s another side to this whole issue, which is, whenever we have convicted someone wrongly for a crime they did not commit, we haven’t convicted the person who did it. The issue is not whether a crime happened. The crime happened, certainly. The issue is, have we gotten the right guy? So, for people who are all law-and-order, it strikes me they need to begin to focus on the fact that, whenever the wrong person is in, the right person is out on the street. There have been many cases where, while the wrong person has been on death row or in prison, the actual criminal has been out there committing more murders, more rapes, and, but for the mistake that happened initially, in closing the case based on a flawed investigation, it is very possible that the original culprit would have been found earlier, and we would have prevented even more blood loss.