

# Cryonics

Volume 14(3) • March, 1993    ISSN 1054-4305 • \$3.50

Marie Phelps-Sweet, Jun. 1940

FREEZE-WAIT-REANIMATE 9/67



*This is AS I wish  
to BE "RESTORED"!*

## Marie Phelps-Sweet

*First Woman Cryonically Suspended*

In This Month's  
*For The Record*  
by Michael Perry

— Also —

The Complete Text of Alcor's

## Motion for Award of Attorney's Fees

in *Roe v. Mitchell*

— And —

## Getting Serious About Moving Alcor

by Alcor President, Stephen Bridge

## Cryonics is. . .

Cryonic suspension is the application of low-temperature preservation technology to today's terminal patients. The goal of cryonic suspension and the technology of cryonics is the transport of today's terminal patients to a time in the future when cell/tissue repair technology is available, and restoration to full function and health is possible--a time when freezing damage is a fully reversible injury and cures exist for virtually all of today's diseases, including aging. As human knowledge and medical technology continue to expand in scope, people who would incorrectly be considered dead by today's medicine will commonly be restored to life and health. This coming control over living systems should allow us to fabricate new organisms and sub-cell-sized devices for repair and resuscitation of patients waiting in cryonic suspension.

## Alcor is. . .

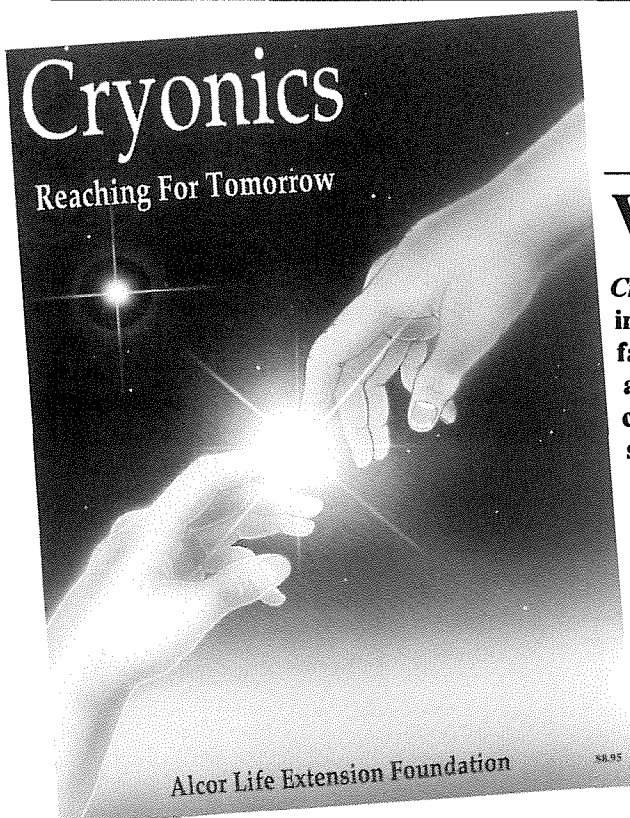
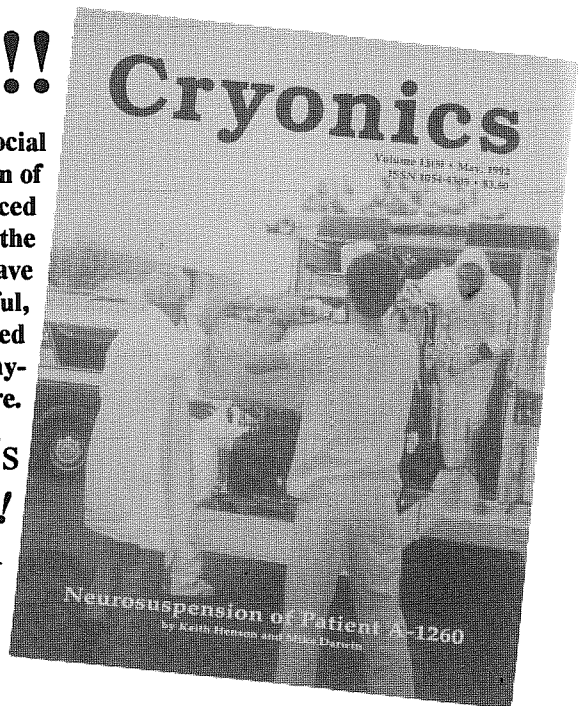
The Alcor Life Extension Foundation is a non-profit tax-exempt scientific and educational organization. Alcor currently has 26 members in cryonic suspension, hundreds of Suspension Members--people who have arrangements to be suspended--and hundreds more in the process of becoming Suspension Members. Our Emergency Response capability includes equipment and trained technicians in New York, Canada, Indiana, North California, and England, and a cool-down and perfusion facility in Florida.

The Alcor facility, located in Southern California, includes a full-time staff with employees present 24 hours a day. The facility also has a fully equipped and operational research laboratory, an ambulance for local response, an operating room, and a patient storage facility consisting of several stainless steel, state-of-the-art storage vessels.

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*Cryonics* magazine explores and promotes the practical, scientific, and social aspects of ultra-low temperature preservation of humans. As the publication of the Alcor Life Extension Foundation--the world's largest and most advanced cryonics organization--*Cryonics* takes a realistic, real-world approach to the challenge of maintaining in a biologically unchanging state patients who have reached the limitations of modern medicine. *Cryonics* contains thoughtful, provocative discussions of cryonic suspensions performed by Alcor, related research, nanotechnology and molecular engineering, book reviews, the physical format of memory and personality, the nature of identity, and more.

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Volume 14(3)

March, 1993

Issue 152, ISSN 1054-4305



*Cryonics* is the magazine of the Alcor Life Extension Foundation, Inc.

Editor: Ralph Whelan  
Production Editors: Eric Geislinger  
and Jane Talisman

Published monthly. Individual subscriptions: \$35 per year in the U.S.; \$40 per year in Canada and Mexico; \$45 per year all others. Back issues are \$3.50 each in the U.S., Canada, and Mexico; \$4.50 each all others.

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Issue to press: February 21, 1993.

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*Cover: Michael Perry recounts the first woman to be suspended.*

This month's issue is largely devoted to Alcor's motion for recovery of fees in *Roe v. Mitchell*, the litigation with the California State Health Department which successfully compelled the State to recognize cryonics as a legitimate disposition of human remains, and thereby established the legality of cryonics in California. (The Health Department's refusal to issue Disposition of Human Remains forms for persons in cryonic suspension with Alcor had been specifically intended to make such storage — and cryonics in general — illegal in this state.)

The entire fee motion appears — despite its length — because it is a *fascinating* and thoroughly accessible overview of many of Alcor's legal problems of the past few years. In order to justify the award of said fees, totalling just over \$93,000, David Epstein (our attorney in this matter) has gone into excruciating (but highly entertaining) detail in describing the monolithic incompetence of the Health Department employees and their legal counsel throughout the years-long proceedings. To augment his descriptions, I have included several boxes containing material from past issues of *Cryonics* that I believe capture Alcor's perspective during those trying times.

Because of the length of the fee motion, a few regular items have been delayed or omitted. There is no *Cryonics: One Decade Ago* or book reviews in this issue. And a front-line report by Tanya Jones of Alcor's 26th suspension, a tragic straight-freeze of an Alcor member from Texas who committed suicide, will not appear until next month. You *will* find, though, the first installment in a new column by our president, Stephen Bridge, "Understanding Alcor: Notes From the President." We also managed to squeeze in Keith Henson's "Future Tech" column — a gripping account (most of which is reprinted from the *Houston Chronicle*) of Alcor Member Steve Jackson's trials and tribulations in fending off the Secret Service's illegal and immoral attack on his business, Steve Jackson Games.

Thanks to still *more* bureaucratic intervention (for our own good, of course...), the Alcor facility has been under construction for the past week or so. One of the modifications — a window in the crew

room where employees Hugh Hixon and Mike Perry sleep — actually makes sense as a fire safety precaution. The other, a "car port" deemed necessary for providing *shade* for the pristine automobile of our Patient Caretaker, tends to remind us of why this nation's debt figure is sufficiently large that one's eyes glaze over at the incomprehensibility of it. Alcor is now spending \$5,000 on modifications that *nobody* at Alcor wants, and that nobody outside of Alcor will benefit from. No winner. Just losers. And still more impressive government dynamics: under California law, if you have a resident employee, you must provide shade for his car. However, under California law, you cannot construct anything (for instance, a car port) within ten feet of your property line. Even if your parking spaces are three feet from your property line. This sort of thing can lead to, say, completely functionless car ports that nobody wanted in the first place, as well as businesses (for instance, Alcor) beating wide, frantic paths *away from California*.

Which leads me to the other focus of this issue: Steve Bridge's article on "Getting Serious About Moving Alcor." I'll leave the details to the article itself, but I want to emphasize here the importance of this article. *Please read it*. Government statutes like the ones described above, as well as the oft-cited earthquake risk and the complete lack of space in our current facility, make finding a new facility for Alcor a high priority. Steve's article will help you understand the various constraints involved in such a move, as well as more reasons why this can't be delayed much longer.

On the lighter side, *Cryonics* has been invading bookstores and newsstands all around the country for the past few months. An exciting landmark occurs with this issue: For the first-time ever, more copies of *Cryonics* have been sent out for newsstand sales (860) than have been direct mailed by Alcor to members and subscribers (820). So far, the "sell-through rate" (percentage of the copies that are sold rather than destroyed) is about 55%. This is an acceptable sell-through, but, encouragingly, it appears to be on the upswing. Ideally, *Cryonics* will eventually achieve a stable sell-through of roughly

70%, which would provide revenue for Alcor of at least \$2,000 per year, would "spread the word" tremendously, and would provide subsidiary revenue in the form of subscriptions and sign-ups (and subsequent members' dues). And, increased revenue from *Cryonics* magazine would allow for substantial upgrades to the quality of the magazine itself, which would contribute to improved newsstand sales, which would provide more revenue, and so on.

Also in the news: the "official" audit of Alcor's books began this week (the week of February 15). We're still encouraging and accepting donations to help cover the *considerable* cost of this audit (\$16,000+); mark your tax-deductible donation as destined for the "Alcor Audit Fund," and help us take this important step in further legitimizing Alcor and cryonics.

As mentioned above, Alcor straight-froze a member from Texas in February, and the report of that suspension will appear next month. Also appearing next month will be an article by me describing the *incredibly* difficult situation we faced when this member contacted us and made clear his intention to kill himself. Though we handled the situation as well as we were able, we are far from being experts in this type of problem, and (obviously) we did not succeed in convincing this member to persevere. Though the full report on this situation will not appear until next month, readers with specific expertise in dealing with suicidal and/or depressive persons are encouraged to contact us *right now*. Your input could help in the preparation of this article and the formulation of new techniques and policies for dealing with members in similar situations in the future. Please contact Ralph Whelan or Steve Bridge at Alcor if you think you can help.

Finally, if you've ordered *Cryonics* on disk, or have just been thinking about it, be aware that we are now offering quarterly updates for \$5 apiece, semi-annual updates for \$8 apiece, and yearly updates for \$12 apiece. As always, the entire set of back issues (10+ years worth) can be purchased for \$119. Keep in mind that this is in ASCII format, without pictures or graphics of any sort, though important visuals are described.

## Letters to the Editor

Dear Mr. Whelan:

Recently I have noticed a feeling among some cryonicists that my recent review of Eric Drexler's book, *Nanosystems*, was somehow motivated by dislike. While I don't wish to retract anything I said in that review, I feel that I should explain my motives.

As many readers know, I have felt skeptical about Drexler's ideas for some time. When I read *Nanosystems* I hoped that some of my problems would at least be answered explicitly. I felt disappointed that (despite all the calculations presented) my questions were *not* dealt with. It seems to me, from reading *Nanosystems*, that answers to some of these questions, if done not experimentally but by computa-

tion and simulation, require more powerful computers than Drexler had access to. That is a pity and not a cause for anyone to feel joy.

Ultimately the possibility or nonpossibility (or perhaps practicality or nonpracticality) of *mechanical* nanodevices as described by Drexler is a matter of empirical test. A good simulation, though, would help to increase their possibility (or perhaps to show their impossibility, too). My own computing skills lie in the field of highly parallel computers, and I would be happy to help put these questions to the test.

If Drexler had recognized this issue, rather than simply giving the reader a wave of the hand or two, I would have said so. I could not find anywhere in his book

where that was done; I would listen with interest to anyone who can point me there. But fundamentally, working machines need more than the designs of single parts, no matter how involved those single parts may be. And equally fundamental, we will not understand how to read ourselves off into machines (if indeed that ever becomes possible in the way that computer programs can be copied) without great attention to the workings of the machines we *now* are: which means understanding of memory, chemically, biologically, and physiologically, and understanding of our drives also.

Best, and long life to all,  
Thomas Donaldson

## For the Record

### Marie Phelps-Sweet

Michael Perry

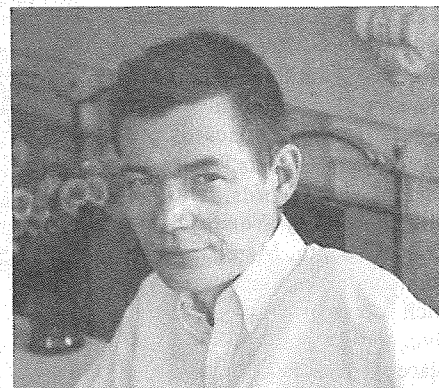
Married and happily so, to all appearances, the septuagenarian Mrs. Russ Le Croix van Norden nevertheless preferred to be known as "Miss Sweet." Her preference does not appear to have been a protest against domestic life or growing up, but perhaps against growing old. "Marie once said she always wanted to be on the crest of the wave of the future."<sup>1</sup> A book should be written on her accomplishments. In the 1920s she struggled on the side of Margaret Sanger for the rights of women and birth control. In the 1930s she threw herself into an idealistic but hopeless fight against the powerful, racist senator Bilbo from Mississippi. In the '40s she ran for office in Westchester, New York on a democratic ticket offering greater rights for minority groups. Finally, in the '60s she heard about the beginning efforts of Bob Ettinger and Ev Cooper

with human freezing and joined Cooper's Washington, D.C. based Life Extension Society. Her other activities continued apace also: she was a bitter opponent of the war in Vietnam and (with her husband) spent a year teaching modern handicrafts to Oregon Indians through VISTA. She was a member of NAACP, helped organize Women Outlawing War, and developed plans for a World Cultural Center.<sup>1</sup>

The following quotes from Cooper's newsletter *Freeze-Wait-Reanimate* (known as *Life Extension Society Newsletter* prior to Jan. 1965) give some idea of her level of involvement in the early days of cryonics (before that term had been invented).

Sep. 1964

"It appears as if we are in complete favor of the gods, for Marie Phelps Sweet,



of Santa Barbara, California has joined LES bringing with her a whirlwind of energy, a fund of common sense, loads of experience in public service and progressive causes, and some excellent suggestions.

"One of these is ... that each person, wishing to be frozen in the event of death, should send in a duplicate of the card that he or she has filled out, for our LES central file. The advantages are that in case of any dispute, a person's intention would be recorded separately and on file.

Dec. 1964

"We are fortunate in having the marvelous support and inestimable services of Marie Phelps-Sweet our Western Coordinator in Santa Barbara. She is the spark-plug of LES. We are indebted to

Marie Sweet and [LES treasurer] Bill Albaugh for funds which have been used for such things as stationery and cryogenic research equipment for hamster experiments."

Mar. 1965

"Our sparkplug Western Coordinator, Marie Phelps-Sweet, has given her usual extra effort by getting on Salt Lake City and Los Angeles radio programs and telling people about LES and the freeze-wait-reanimate idea. Without doubt Marie did it in gentler terms than our outspoken plainness. Congratulations, Marie."

May 1965

"Marie Sweet, our Western Region Coordinator in Santa Barbara, and our gadfly to action, has pioneered an arrangement for the transfer of benefit payments to LES in the event of "auto-accident, or other fatal event." Marie and her husband both wish the "President of the Life Extension Society to have the use of benefit payments for agreed upon purposes of the Society he represents." The purpose, in plain words, is to get Marie properly frozen in the event of death. Marie is to be commended beyond words for such foresight, courage, initiative, and for her willingness to place her trust in LES. ...

After joining VISTA around 1965 her LES activity tapered off for a year or so, then resumed. But at this point fate intervened. During the night of August 26-27, 1967, the 74-year-old Miss Sweet died in her sleep in a Santa Monica hotel room. She was found approximately 2 p.m. on the 27th. Among personal effects was an LES card with instructions to freeze her body. In an effort to honor her wish a local mortician stored her in a refrigerator at 30F (barely below the freezing point of water). She was finally and completely frozen the night of Aug. 30, some three days after her death. Unfortunately, despite her well-known wishes to be frozen and stored for possible reanimation, preparations were not complete.

"With all of her marching, organizing, speaking, teaching, learning, protesting,

advising, letter-writing, petitioning, telegraphing, visiting, ad infinitum, she apparently had little thought, except in a minor way, of providing funds or insurance for freezing and storage. Being fearless and an eternal optimist she tended to neglect her own future. ..."<sup>1</sup>

By the time of her death Marie had joined the newly-created Cryonics Society of California, headed by Robert Nelson, though remaining also a member of LES. In January 1967 Nelson had performed the first cryonic suspension or freezing under

## Marie Phelps-Sweet, Jun. 1940

FREEZE-WAIT-REANIMATE 9/67



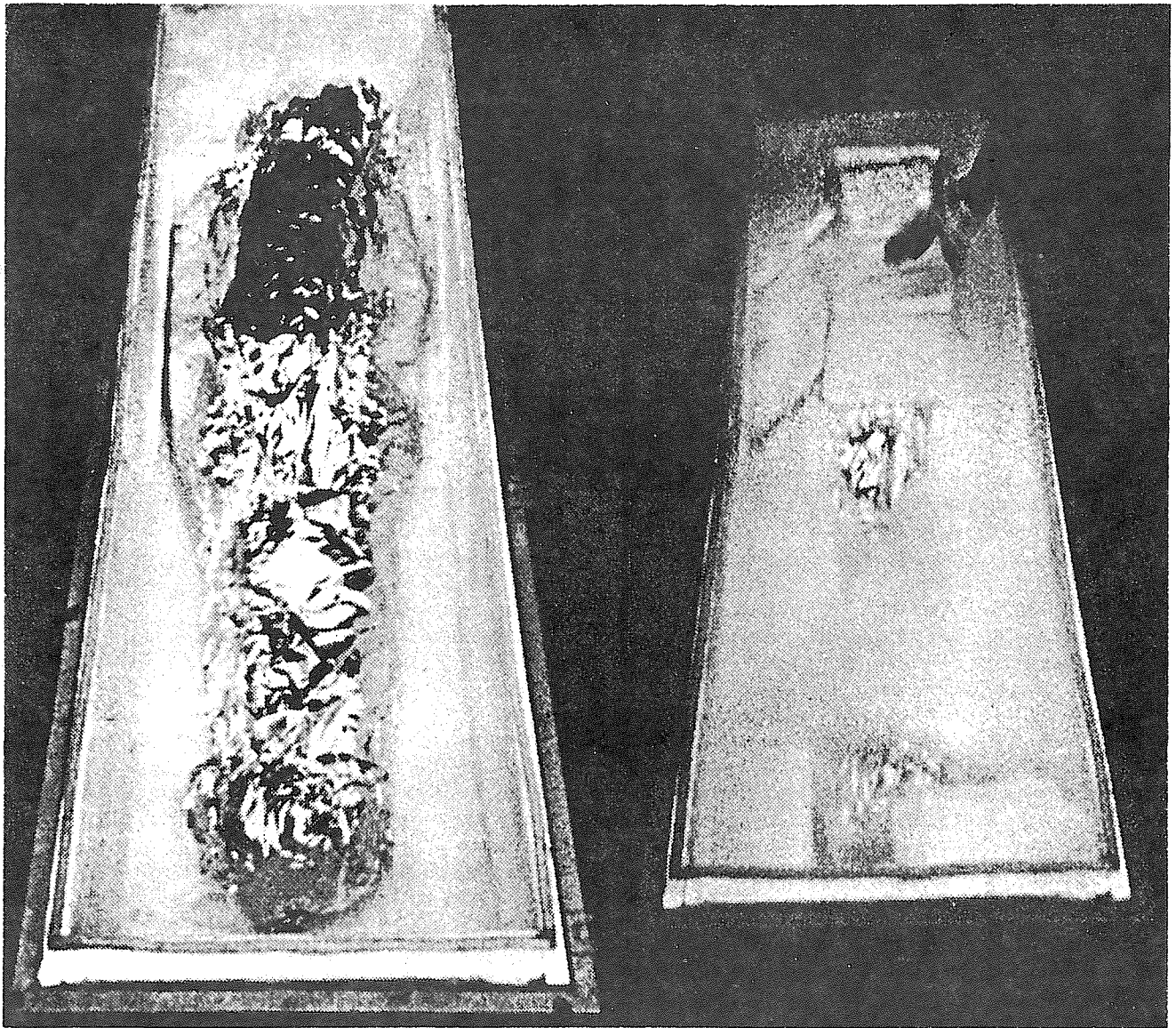
controlled conditions — that of James Bedford. Now Marie became the second cryonics patient, though because of the long delay after death her suspension could not have been the best. Ed Hope of Cryocare Corporation, who was then storing Dr. Bedford, came out from Phoenix, Arizona to take part in the freezing and apparently Miss Sweet was briefly stored in a Cryocare capsule with liquid nitrogen.<sup>2</sup> But due to lack of funds (an insurance policy naming LES as beneficiary

and which might have been used to cover costs of liquid nitrogen storage proved worthless) she was soon warmed to dry ice temperature and removed to a mortician's garage. There she would remain until March 1969.<sup>3</sup> By then there were two other patients also on dry ice storage in the garage, the mortician (generously accommodating but not a cryonicist) was becoming impatient, and funds as usual were short. A liquid nitrogen capsule was acquired by Nelson, containing a patient, Louis Nisco, who had been frozen by

Cryocare only a few days after Marie in 1967. The capsule was to be maintained through funds supplied by Nisco's daughter. As a desperate measure to continue the other suspensions the capsule was cut open, Nisco and an interior support were removed, and the four frozen patients including Marie were unceremoniously crammed back in, without any support. (This could be defended on grounds of a shortage of funds for all the patients except Nisco, though the transfer could have been handled better to minimize warming. What is especially, verifiably outrageous is the way this incident was distorted, in Nelson's newsletter *Cryonics Review*, into the alleged completion of a fine new cryonics facility or "cryatorium."<sup>3</sup>) The capsule in turn was supplied with liquid nitrogen by the mortician until in May 1970 it was transferred to a newly completed, underground vault at a cemetery in Chatsworth. There it was maintained for a time by Nelson himself. Appeals for funds for Marie had been made, during the initial stage of dry ice storage, and a small amount had been collected. Nelson, however, was not in the habit of

advertising problems such as a shortage of funds for patient maintenance, or even the manner in which patients were maintained. (He had been so secretive in fact that Cooper had suspected he had not frozen Miss Sweet at all, though this suspicion is refuted by records.<sup>4</sup>) In the end the Reaper prevailed. Nisco's daughter stopped paying the nitrogen bill sometime around June 1970, and a year or so later Nelson quietly let Marie and the other three in the capsule thaw.

It is painful to confront the destruc-



CRYONICS REPORTS 9/67

Marie Sweet wrapped in aluminum foil (left) and covered with dry ice (right)

tion of an individual, especially one of outstanding personality and achievements, who wanted to see the future, and who came as close to doing it, relatively speaking, as Marie Phelps-Sweet. One is led to wonder if those who are not preserved are absolutely gone forever, or if there is some mechanism, however remote and beyond present comprehension, that could someday restore them to life. This was the problem confronted by the Russian philosopher Fyodorov in the 19th century. (Being so long before cryonics, *everyone* suffered obliteration then.) Fyodorov's solution, to resurrect the dead using Newtonian physics on an ultrafine scale, is not

taken seriously by physicists today who must confront the weirdly uncertain world of quantum mechanics. However a few, such as cosmologist Frank Tipler, do hold out hope for an eventual recovery of information about the hidden past leading to a resurrection of those who have died. Others (myself included) doubt the recovery of the hidden past, but think instead that a resurrection could be carried out by guesswork alone, without knowledge of the lost original, if one had long enough. In any case it seems abundantly clear that cryonic suspension is a better alternative than physical destruction. We should study the failed suspensions both

for the lessons they teach about how to make existing and future suspensions more secure, and for what we can learn about the often fine human beings who sought extended life and were denied it.

Toward the latter end, I'll conclude with some quotations from Marie Phelps-Sweet herself. These are from letters to Robert Ettinger ("RCWE"), and originally appeared in *Cryonics Reports*, Oct. 1967, shortly after Marie was suspended.

6-26-64

Zestful living has been a long-time hobby of mine, so zestful departure from

this vale, via freezation, is a welcome release from the degrading and wasteful concepts of the past ... What bothers me now is how any thoughtful people can fail to realize the scope of the program ... more immediate and necessary, it seems, than the new vistas of interstellar space investigation ... I think sometimes, if one more high-ideal gets bogged down in the mire of thoughtlessness and downright greed ... just one more such program goes haywire ... I won't be able to scare up one tiny droplet of zest, in sheer down-hearted despair.

7-19-64

I wanted to take exception or make objection to two personal-prejudice edicts on the part of the Marquardt representative, who was present on your invitation, I gather. The first: his objection to the ultimate democratic inclusion of social security supported freezing programs. He ... opined that it would be 'just the elite' for a long time to come. If I thought we could run into a dictated sans-Golden Rule-setup, I'd start yelling my head off right this minute ... I suppose he meant the wealthy get first choice, but this shouldn't be allowed either. Maybe we will have to arrange some sort of quota system — I'm kidding — I hope. Secondly I took offense (saying nothing, so as not to offend you, who seemed to be agreeing with him) when he 'ruled out' contact with Linus Pauling, simply on the ground that "he's too controversial." Ye gods! How smug can one get?

7-25-64

Dear RCWE: I hope it doesn't offend your sensibilities to have me feel I can address you in a bit more informal fashion than is the custom midwesterly and easternly, and in academic circles too perhaps. It's not lack of respect for your dignity but just 'hail to a kindred soul' so to speak book<sup>5</sup> to Dr. Ferry yesterday who had told Russ a few days before that he wished to be further informed ... I have been asked just this morning to serve on a committee who will arrange a Welcome to the Hill (that's what townspeople call Hutchins' Think Shop) for Dr. Pauling in about a week or two for same and registration, later today and evening. This way I can meet all sorts of people and spread the word about the book ... that will change the globe's people. Hopefully, for the better, for all time to come ... My husband and I are infants about insurance deals and

such. Hardly any sense at all about such matters ... not smart at least. Hate reading small print, like poison. Looking for fraud just isn't our dish. When the Supreme Court has 5 to 4 decisions, what can WE know of the whys and wherefores? Really? ... These 'reports' may bore you stiff and your poor wife. But they make us feel we are DOING some small bit to move things along ... we will have a bit more income in Sept. or Oct. and then Russ must get some f.p. insurance also. Hate to drive on the freeways here these days ... before prepared to 'do the right thing.' Makes me a bit uneasy. Our car rear axle went kaput yesterday on State St.! Lucky people, we must manage, you know t.s.a. (to stay alive). Cheerio.

8-23-64

Even I, way out here on the outer rim, feel that *all* my energies should be devoted to this life extension advance. But *how* to do it escapes me at the moment. For the first time in my entire career, I yearn to be wealthy and free to endow an essential work. Formerly the idea of the responsibility of physical wealth made me shudder — in a world mad for the quick buck. Honesty, via which there are few if any millionaires, seemed to me the more precious value. Now — it seems we have the power and method to change for the better. "Remove the fear of limited life — and remove the greed and ruthlessness." ... I want to *see it happen* — with all possible speed! Yet here I sit. More or less helpless, to speed things up.

10-14-64

Russ and I are taking the Red Cross 10 Wk. Life Saving First Aid Course — so we can let 25 to 30 people hear about some *real* life extension and salvage. We should get to Red Cross Washington head man and alert them to their *future* goals.

10-22-64

Where would Mr. \_\_\_\_\_<sup>6</sup> be (or HIS L.E.S.!) had there not been a Wash., D.C. L.E.S. for him to inquire of — as to what part he could play in this chore we have undertaken? Exactly NOWHERE. Yet when invited to cooperate, and go ahead with a liberal amount of leeway, he fails to exhibit the common courtesy quite rightly expected of him, i.e., regrettably. It is my distinct impression that this type of thing is a disservice to our cause. And that you as an educator should not, my dear

RCWE, encourage him to continue on this tack

5-19-65

"Manage to keep alive' it says in Ettinger's book. So we shall try to do so ... I hope the Russian scientists are not being as "reluctant" as ours to become involved ... as they put it. Dr. Pauling was given a chance to 'stand up and be counted' but declined "at present." What is he waiting for? Xmas? ... The fact is that people are afraid it's another hoax. Like pie-skysville. Can't let themselves even consider it, lest they be again 'had.' What a sad, sad world with "trustworthiness" a bad word too! ... As to your disdain for "pen-palism," I think your bark is worse than your bite. Look at the patience you had with me, which I'd have been LOST without! Penpals sometimes survive to become man's helpers, yes, no?"

6-25-67

Russ and I have, early this year, taken two of the \$25 memberships (in the Cryonics Society of California) and one \$10 to help out in attempts to keep the office going ... So much misspent effort has already gone down the drain, or so it seems ... for all our sakes ... am anxious to get any thoughts or suggestions you have as to how the train can be gotten back on the track and given a good shove "straight ahead" toward a full schedule of travel onward and upward, toward our survival goal for humankind.

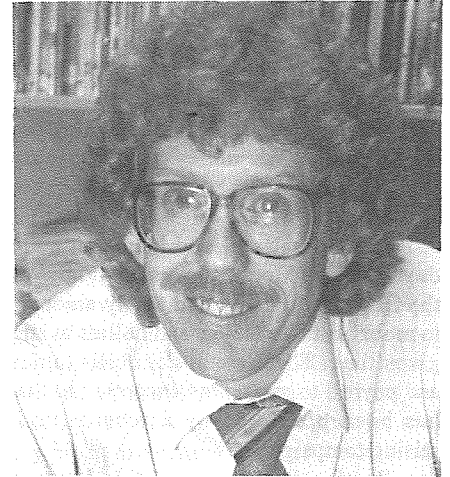
## References and Notes:

1. *Freeze-Wait-Reanimate (FWR)* 38 (Sep. 1967) 1.
2. *Chicago Daily News* Jan. 29, 1968 p. 4., reprinted in *FWR* 43 (Feb. 1968) 3.
3. *Cryonics* 13(3) (Mar. 1992) 4.
4. *Cryonics* 13(8) (Aug. 1992) 4.
5. Evidently Ettinger's *The Prospect of Immortality* which had been published shortly before, on June 5 (see *Life Extension Society Newsletter* Aug. 1964).
6. Apparently Tom Tierney (of Panorama City, California), who formed a breakaway "LES" organization at about this time, and seems to have been the first to do so (see *Life Extension Society Newsletter* Oct. 1964). Initially highly respected, Tierney would prove a shady character, being arrested for counterfeiting and gun fraud in 1966 (see *Cryonics* Mar. 1983 p. 10).



### Where's Alcor's Money? (And How Can We Get More?)

Stephen Bridge, President



Cryonics has been a marginal financial enterprise since its beginning twenty-six years ago. The earliest cryonics organizations assumed that the notion of freezing dying people would take off like wildfire (wild ice?) but foundered on the basic problems of all new businesses: How much does it cost to manufacture your product (or provide your service)? How much are customers willing or able to pay? How do you persuade people that they have a *need* for your product? How do you develop a product or service with high quality? How do you find better answers to these questions than your competition?

These questions are the same ones that Alcor management struggles with today. We have more experience and knowledge and money than those earlier groups did and we understand more about the process. But we are still not "experts."

This is the first of what will be many articles which explore these questions and our attempts to answer them. This month we will examine the basics of Alcor's financial structure and express some of the ways that structure might be changed in the near future. Some of the following may be elementary for old hands, but the basics are important for newer members.

The Alcor Life Extension Foundation is a California nonprofit corporation and federally tax-exempt — 501(c)(3). Our funding comes from several primary sources: Emergency Responsibility Fees (ERF) (similar to membership fees in other organizations), donations by members, the suspension funding of cryonic suspension patients, magazine subscriptions and literature sales, and investment income.

Money that comes to Alcor is divided

into four different funds (like four different companies in our double-entry fund accounting system, for you lovers of details). Donations for scientific research are placed into the Research Fund. Money designated for the long-term care of our suspension patients is placed into the Patient Care Trust Fund (PCTF). Money which is to be spent for the normal expenses of business (salaries, supplies, publicity, *Cryonics* magazine, utilities, etc.) goes through the General Operating Fund (OF). Finally, there is a sizable chunk of money which was donated to us in 1989 by suspension patient Richard Clair Jones and which was used to create the Jones Endowment Fund (EF). In 1991 the Board of Directors restricted \$400,000 of that money to the Endowment Fund, for the purpose of creating investment income for operating expenses. The *intent* at that time was that the principal would not be touched.

Of course, nothing is that simple. I am still learning the details myself, after three weeks as president, so I won't try to explain everything about how each fund works. But there are several situations you need to understand to see how the money is handled.

When money is received from a suspension patient's insurance or other funding after his suspension, it is divided somewhat differently than you might expect. Based on years of experience, we have worked out how much money is required to keep a patient in cryonic suspension, given the assumptions that our predictions of costs are correct (primarily that of liquid nitrogen, the storage units, pro-rated portion of rent and utilities, the

salary of the primary caretaker, and a portion of the salaries of other staff who spend part of their time on patient care). For several years, we have said this cost was \$854.38/year for whole body patients and \$150.76 for neurosuspension patients. (These figures are currently undergoing re-evaluation.)

So we need to make sure that the amount of money placed into the Patient Care Trust Fund for each patient will earn at least those amounts of interest each year, plus a safeguard against inflation. Based on the history of investment, we assume that we can earn at least 2% above inflation on our money. To simplify, what amount would be required to earn these amounts at 2% interest and zero inflation? \$42,719 for whole body patients and \$7,538 for neuropatients. To be even more conservative, these amounts are doubled to cover unforeseen economic disaster, legal challenges to the fund, and possibly the future costs of reanimation. As one final buffer against inflation (and remember that inflation in the costs of health care and medical technology is much higher than general inflation), at the end of the year we add to the PCTF 10% of all unrestricted income.

When the funds for a cryonic suspension come to Alcor, the first action taken is to place \$85,438 (for a whole body patient) or \$15,076 (for a neuropatient) into the PCTF. Our *minimum* funding requirements (we recommend you prepare to go above the minimums if at all possible) are \$120,000 for whole body and \$41,000 for neurosuspension. This leaves \$34,562 (whole body) or \$25,924 (neuro) for paying the costs of transport, surgery, per-

fusion, and cool-down. If we are efficient and the patient is in Southern California, we can come out ahead. Money left over after costs are paid goes into the Operating Fund to pay the normal bills of Alcor. If we are inefficient or the transport costs are high (this was the case with two long-distance neurosuspensions last year), we may actually lose money on the suspension. Losses have to be made up from the OF.

The Operating Fund handles day to day business. Money moves in and out of the OF fairly quickly and rarely amounts to more than a few thousand dollars at any given time. There are always bills to pay and payroll to meet. One exception to that has been prompted by a recent fund-raising campaign.

By the time you read this issue, a major accounting firm will be doing a professional audit of Alcor books. Money to pay for this audit (at a cost of \$16,500) has been raised through a series of donations from our generous members. Normally when small donations are received for ongoing expenses, those donations immediately flow into the Operating Fund. I think the expectation from Alcor management at the time the audit donations were being collected was that they should similarly be funneled into the OF to pay current bills and that later normal income would cover the audit instead of covering regular bills. (Two accountants have told us that this is perfectly acceptable accounting practice — but accountants don't run a company and don't have to respond to members' questions.) My personal philosophy is that a special request, single purpose fund drive like that should result in an account that sits there until the bill is paid, especially as we start getting our cash flow problems worked out. That is what will happen on the Audit fund, at least, and I am periodically routing ongoing income into that account to replace the audit donations before the bill comes due.

Cash flow — the biggest problem of a cryonics company. Right now, the amount of Emergency Responsibility Fees we collect from you members pays less than half of our basic operating expenses. We have been fortunate in the past to receive large donations from many members. Out of 350 suspension members in 1992, about 75 gave donations of one kind or another, totaling just over \$48,000. \$12,000 was from one member, a person who would not be considered wealthy, but who sends us \$1,000 per month. The most money from membership (E.R.F.) comes in every quarter (since that is the option most mem-

bers have chosen). So we are in good shape in January, fading in February, and desperate in March. An efficient suspension can sometimes help; but that cannot be counted on. The suspension we performed last July cost at least \$10,000 more than the member's suspension funding (counting the amount we were obligated to place into the Patient Care Trust Fund.)

Then there is the Endowment Fund. In 1992, this fund produced \$21,165 in interest. Not bad, but it also created ten times that much conflict and confusion. The most common purpose of an endowment fund is to function as principal to earn money for a university or a hospital. Over the decades, people die and leave estates to the institution which then invests the funds. This is great for a well-established company which has its property and programs in place. It is not going anywhere and it needs to build a hedge against inflation for the future. This may have been premature for Alcor to consider (although I was certainly one of the people pushing for an Endowment Fund several years ago). In many ways, we are still in our "entrepreneurial" phase, even after twenty years. Money invested in growth or even in a new building might be better used than money earning interest. If, for instance, money from the Endowment Fund had been used to help acquire a new building a year ago, we *might* (the answer is debatable) be in a better overall position today. We should also note that Dick Jones himself did not specify that this money was to be used in any particular way, including as an Endowment Fund.

The past year saw several large bills which created cash flow problems for us. We chartered an air ambulance to lift someone out to a hospital. We had important attorney bills to pay in connection with our defense of cryonics against the California Department of Health (which we won, validating cryonics in California). We had a huge and sudden Workman's Compensation bill to pay. The decision was made to borrow money from the Endowment Fund to pay these bills.

The money was eventually paid back, and the Board of Directors made more stringent rules concerning this sort of borrowing (no more than 10% can be borrowed, it must be paid back with interest and the interest goes into the principal, and the entire loan must be paid down to zero at the end of the first quarter each year).

Those are great plans and they might work when we have more members or if we were doing more suspensions each year. But again we are stuck in a cash-flow

crunch. By the time you read this, the president's ability to borrow from the Endowment Fund will cease (10% will be borrowed) and the possibility for paying it back by the end of March appears doubtful.

So we need to re-think our finances. It may take several years of membership growth before ERF payments equal our basic costs. Do we change our rules about the Endowment Fund? Should we raise our Emergency Responsibility fees to a more realistic rate? Since neurosuspensions seem to operate in the red more often than whole body suspensions, maybe we should raise the minimum for neurosuspensions and encourage more people in both categories to provide funding *above* the minimum. Some directors have suggested that we are placing too great a safety factor into the PCTF and we need to allocate more to the operating fund. After all, breaking even isn't really good enough. We need to come out *ahead* each year, so we can upgrade our equipment, do research, hire more technical people, and begin paying a living wage to the employees we already have (our *average* annual salary per staff member is only \$14,000 per year — *before* taxes.)

We'd like to hear from you on this subject. Some part of our income will have to increase very soon. Assuming you are not willing to go into cryonic suspension yourself right away to help our cash flow, what would you be willing to do? Can we get more donations from some of the 75 members who contributed last year? Can the other 275 members help out some? Is it more fair to raise the annual fees? Should we allocate our funds differently, raise our suspension minimums, re-think the Endowment Fund? Or should we just cut staff down to two, run suspensions on a shoestring, make *Cryonics* a quarterly, stop sending out information to the public, and cancel the 800 number? The directors are under a lot of pressure to do *something* positive at the March 7 meeting. What is it worth to you to see Alcor grow and prosper so that we have the strongest organization and the best suspension team that you can imagine waiting to rescue you?

For me it was worth taking a payout of \$13,000 per year and moving two thousand miles away from my family so I can work twelve-hour days. It's your serve.

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# Getting Serious About Moving Alcor

Stephen Bridge, President

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In March, 1992, a number of our members were surprised by news that Alcor was seriously contemplating a move to a new building in Scottsdale, Arizona (a suburb of Phoenix). In previous years there had been discussion of a potential move to other property near Riverside; but the possibility that Alcor would consider moving out of Southern California was a shock to some members. Others were surprised and worried by what seemed to be the suddenness of the announcement. In fact, the Board of Directors had been looking at alternate sites, even in other states, for several months, although that had not been communicated to most members.

Several people worked extremely hard to raise funds for a building in Scottsdale, and many members responded with enthusiastic pledges. However, by the deadline in early July (the member who had placed personal funds down on the building could not hold it beyond that date), only about one-half of the necessary funds had been raised, and this opportunity had to be abandoned. Many accusations were made over the rest of the year concerning who or what was most responsible for the failure. No formal building search was conducted through the remainder of 1992.

I don't want to use much space on this but, personally, I believe there were several processes occurring which combined to doom the project. Any project of that scale (approximately \$600,000) that is presented to a group of people with an "It's-urgent-we-decide-this-quickly" label will automatically cause resistance. This is especially true of a project like this, that called for the main business of the group to be moved far away from its traditional base and which might change other aspects of the organization in unpredictable ways. The Board of Directors and the membership at large (including some of the prospective contributors) had not been prepared in advance to deal with the complexities of making this decision, and the directors, especially, were not prepared for the wide range of reactions generated by

this plan. Some people pointed out at the time that it appeared we had placed the cart before the horse. Sure, it might be a great building. But had we really decided that we needed to leave California? If this wonderful building were in Minnesota, would we be pushing as hard? Have we guaranteed that this new community wants us and won't cause the same or worse legal problems as Riverside and California? Have we spent enough time determining that we are using the right financing scheme? And so on.

That period of time also included the beginnings of the political debate over the leadership of Alcor, and the arguments over this resulted in a lack of trust on other projects, especially on the new building. This meant that the directors were not acting as a unit to make this project work. Finally, the lack of early involvement of the membership meant that certain good ideas never had the time to develop. The only alternatives for financing that were presented were 1) a limited partnership owning the building, much like Symbex, which owns Alcor's current residence, or 2) donations going directly to Alcor so Alcor could own the building outright. Other ideas have been suggested since then.

So here we are in 1993. After one year the problems that require Alcor to move from its current building are still there, although some of the other circumstances have changed. In the May, 1992 issue of *Cryonics*, Ralph Whelan wrote a brief article, "To Move or Not to Move?" in which he outlined the arguments on both sides. I'll go over some of these reasons and others now.

**Space.** When Alcor and Cryovita moved into this building in 1986, Alcor had two full-time people (Mike Darwin and Hugh Hixon) and Cryovita had one person (Jerry Leaf) who was here part-time. Alcor now has seven employees and, while Cryovita has moved out into its own offices, we are still crowded for personal

and storage space. (We still have two mini-warehouses full of equipment and supplies!)

Also we are now up to 26 patients. This is beginning to present a serious problem. The Patient Care Bay has four of the Bigfoot four-patient dewars (we have 10 whole-body patients), one two-patient dewar (empty, but used for cool-downs and temporary storage), and two of the concrete-enclosed neuro vaults (with 16 head only patients and several pets.) Since the neurovaults hold nine patients safely, both of those units are now filled. We are looking for ways to move pets, perhaps, into one of the Bigfoot units to free up more space in the neurovaults; but we are very close to needing another vault. And I'm not sure where we will fit it.

**Appearance.** The previous Alcor/Cryovita building in Fullerton was so small and junky that the Riverside building seemed like the Taj Mahal when we moved. However, to people visiting us for the first time, it looks nondescript at best. Several of our members have said that a more medical or university style building in a nicer location would be more impressive than our industrial bay surrounded by body shops (*auto* body, that is) and junk metal dealers. Others have protested that it's what's inside that counts, and I would partly agree with that. But we have to *get* them inside first and, besides, the inside is not that wonderful either.

**The Big One.** When you hear the word "earthquake," what state immediately comes to mind? (Although some would say that when you ask that question of Californians, the state that comes to mind is "denial.") When we moved to Riverside, it appeared that we were in a less seismically dangerous area than most in Southern California and the land we were on had little chance of dissolving in a quake (as happened in the San Francisco "World Series" quake several years ago). But the Landers earthquake in our area last year gave evidence of new fault patterns. On December 1st, the *Los Angeles Times* reported that seismologists were now estimating the odds of a major Southern California earthquake in the next *five* years as being 47%. They went on to state that, "If the quake does occur, it will probably be centered on the San Andreas Fault close to San Bernardino, Riverside, or Palm Springs, and cause more damage and casualties than the Landers earthquake."

Oops. We now have twenty-six patients and ourselves in the one place in the country most likely to have a "big one" in the next five years. Frankly, we don't know what kind of damage this building or our patients might sustain in a huge quake. I'm not looking forward to finding out. And even if we had very little damage, civil unrest and liquid nitrogen supplies might make patient storage — not to mention our employees' continued existence — very chancy for several weeks.

**Cost of Living and Business.** There is no question that California is one of the most expensive states in which to do business and in which to live. National magazines frequently comment on the amount of state and local bureaucracy that has caused thousands of businesses to leave California in the last two years.

**Legal Situation.** This is a good news, bad news area. The good news is that after several hundred thousand dollars in legal fees over the past five years, the right to choose and perform cryonic suspension is well established in this state. The bad news is that as a condition of our Conditional Use Permit, the Riverside City Council forced us to abandon animal research at this location. Animal research is important for training our suspension teams and learning how to improve our perfusion and cryopreservation methods.

Moving to another location in California might solve this problem or it might not. We would want to make sure before we moved; but even then, changes in local politics can create further problems unless we have guaranteed or "hard" zoning.

\* \* \*

So we have plenty of reasons to move *somewhere*. What are we looking for in a new location?

- Weather patterns and highways that allow for unrestricted access year-round.
- Reasonably close access to a major airport, one or more liquid nitrogen suppliers with reasonable prices, medical and technical suppliers of various types, a large university library.
- Several Alcor members in the community to provide backup volunteer support of various kinds.
- Much lower risk of strong seismic activity.

- A tolerant regulatory climate, both for business in general and (more importantly) for cryonics in particular. This means that we need compatible zoning with no strings attached, including the ability to do licensed animal research, and a guarantee (as much as a bureaucracy can) that cryonics does not present a problem for the state, community, or regulatory agencies like the Department of Health.

- Close enough to Southern and Northern California so that our Transport Team can quickly get to the many members we have in these two areas; so that Suspension Team members from California can get to the new location in a timely fashion; and so the transport of our 26 (at least!) patients to the new location can be done as rapidly and smoothly as possible.

This has pretty much confined our search to major metropolitan areas of California, Nevada, and Arizona. While members and friends in other states have made enthusiastic recommendations of cities in Colorado, Washington, Texas, and Iowa, they are just too far away or have other problems that make them inappropriate for this move.

\* \* \*

Now, what kind of building do we need?

- A *minimum* of 10,000 square feet, although 15,000+ is more realistic if we don't want to move again in five years.
- A large section of the building must have at least 14' ceilings, and part of *that* must have either 20' ceilings or some way to create a roof that high (or removable skylight like we have now) to install the hoist required to move patients in and out of our storage dewars.
- Very solid concrete floors, several inches thick, are required to support the several thousand pounds that each of the Bigfoots and neuro vaults weighs.
- We use a lot of electricity and we need adequate drains for suspensions, so above-average plumbing and wiring are required.
- We need space for at least six small offices and one large one (for the president, of course, with really big, intimidating desk and chairs like all the lawyers have. *Yeah.*), a conference room, an attractive lobby, sleeping quarters for at least one

full-time employee (the Patient Caretaker) and for Suspension Team members after suspensions, a kitchen, a machine shop, indoor ambulance bay, at least one operating room (two would be better), lab space, and a great deal of storage. Of course, many of these areas could be provided through remodeling (more expense), but the structure and size of the building must allow for this.

\* \* \*

Finally, how do we pay for this glorious edifice? This was the wave that swamped the last attempt at moving. There are probably four or five basic ways this could be done, which break down into subsets of one problem: Should Alcor own the building or should someone else own the building?

Alcor ownership has some advantages. We wouldn't have to pay rent or be at risk of losing our home if the owners got angry. It might be better for our "corporate image." We have been told that the tax advantages have been severely reduced for most limited partnerships, so Alcor may find that this is the only way it *can* get a building.

If someone else owns the building, different advantages may apply. If Alcor is sued for some act it performed, there is a layer of protection for the building. Some people gain an emotional advantage, if not necessarily a tax advantage, by owning part of the building that may house them in their frozen future. I certainly feel that way about Symbex, the limited partnership which owns the current Alcor building and of which I am a 1% participant.

The building could be owned by one individual who rents to Alcor, although it could be argued that that gives one person too much control and requires only one poor relationship (or one inheritance to an unfriendly family) to develop before problems start. A limited partnership, of which Alcor could be a member (as it is in Symbex), would avoid that problem. A requirement for participation in the limited partnership would certainly be Alcor suspension membership as it is in Symbex, so that the partners' interest would coincide with Alcor's. This is currently working very well.

One problem with the 1992 attempt to purchase a building in Scottsdale may have been that it was presented as: (1) either Alcor raises the entire sum through donations so Alcor can own the building, or (2) a limited partnership is formed which does not accept donations. For

various tax reasons or emotional reasons, some Alcor members might want one method and some the other. Steve Harris has proposed a simple compromise that we should have figured out before. Form a limited partnership with Alcor as a major partner. Let those invest in the partnership who want to. Those who prefer to give a large donation to Alcor can do so and Alcor will use those donations to provide its investment.

\* \* \*

It has been proposed that Alcor name its next home "The Jerry D. Leaf Center." Considering the unequalled contributions that Jerry made to Alcor and to cryonics in general, this sounds like an excellent idea to me. We could have a bronze plaque of Jerry's likeness in the entry way, along with plaques listing major contributors (you, we hope). We could even name some of the rooms for contributors or for other important Alcor members.

So it is time to get this process moving along. We need your help to get started. We already have a building search committee headed by Judy Norman Sharp,

a realtor, and several other members are also looking for suitable buildings. If you have legal or practical experience in the areas of purchasing commercial property, forming limited partnerships, or the tax consequences for donors, please let us know very soon. We need to make sure we are on the right track. Call Judy at (310) 574-1936 (FAX: (310) 839-0647), or Steve Bridge at Alcor (FAX: (909) 736-1703).

The combination of contributions and partnership required to purchase and renovate (or to purchase property and build) a suitable suspension facility could run as high as \$900,000 (just a guess at this time). It is possible that some lesser portion of that could be in the form of a loan by Alcor or by the partnership, as was done with Symbex.

By the time you read this, I will be planning for Alcor to have started a building fund to receive contributions from those people who want to donate money instead of investing as limited partners. Any donated funds will be placed into a special account until the building is purchased. If you are concerned that we might take your money and then back off from our plans, we can hold your check without

cashing it until we are sure what will happen.

Alcor was created to get ourselves, our families, and our friends to the future. We are not yet large enough for that to be more than a dream. But what a dream! A new building in another location will show the world that cryonics is here to stay, that we are serious about research, that Alcor itself is an organization committed not just to continuing but to *succeeding*. The next few years will be critical in terms of growth, knowledge, and solidity. I hear the wonder and excitement in the voices of the young people who call here for information; I see the awe in their faces when they visit us. Twenty-one years of thinking and talking about the future and about our method of getting there is finally showing results.

If you want cryonic suspension to work for you, it is time to become more involved. If you can help with this, call me or one of the other directors soon. The wind is changing; the tide is going out. Let's not miss the boat.

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*A Science Newsletter for Cryonicists*

By now a great deal of scientific research closely bears on cryonics, far more than CRYONICS itself can print. I refer particularly to the increasing volume of work on memory, consciousness, and their biological foundations within our brain, a crucial issue for success of cryonics itself.

Although nanotechnology will give us great abilities to manipulate matter at a molecular scale, if our selves, memories, and all clues to them have been destroyed, no amount of nanotechnology will return us to life. The status of our brains, remains open, even though I and other cryonicists believe that ultimately our memories and selves *WILL* turn out to be recoverable. We can describe our reasons for such a belief, but no one yet claims to have a proof.

PERIASTRON also reports on engineering achievements in nanotechnology; and on new experiments

in cryobiology bearing especially upon our brains, and noteworthy discoveries about aging, too. And finally, PERIASTRON contains articles speculating about possible means of repair or better means of storage.

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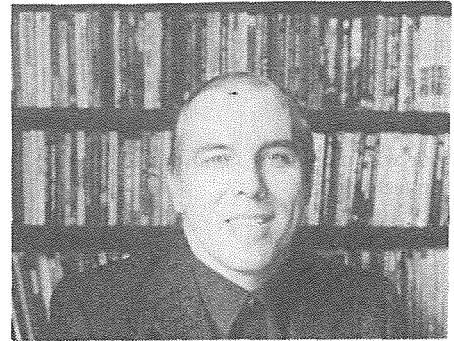
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## The Secret Dis-Service

Keith Henson



Remember the Dora Kent case? One sideshow to that circus was a suit 15 Alcor members filed against the county of Riverside over the seizure of a computer Alcor was using for a BBS (Bulletin Board System). We were able to take them to court because I did considerable legal research into the Electronic Communications Privacy Act. It was our contention that the county violated the ECPA in taking the computer without proper warrants when they went after Alcor.

The county eventually paid the 15 of us who filed the suit \$30,000 in an out-of-court settlement.

But that is not the end of the story. My presence on the computer nets made me aware of other cases where law enforcement agents violated the same statutes. The research I did, and the papers filed by our attorneys, have been sent out in a dozen cases where others got the same treatment. One of those cases was the Secret Service raid against Steve Jackson Games. The treatment of Steve Jackson was such a flagrant violation of civil rights that it caused an entire new organization, the Electronic Freedom Foundation, to come into existence. (The main EFF founders were Mitch Kapor (founder of Lotus), Steve Wozniak (co-founder of Apple), and John Gilmore (an early Sun employee and former business partner of mine).)

I contacted Steve Jackson and sent him my legal research as soon as I heard about his problems over the net. Later that year, Steve was invited to the Hacker's conference (an annual event started by and still affiliated with the *Whole Earth Review*). I met him there, where I was also handing out Alcor literature. Steve read the literature, joined Alcor, and is now the center of an "interested in cryonics" group in Austin, Texas. He is also a frequent poster on Kevin Brown's CryoNet. With these connections established, it seems appropriate to reprint the following newspaper article.

Congratulations to Steve Jackson on a legal win against the government may be a *little* premature, but this reporter seemed to think Steve's legal team had done an excellent job.

*(Reprinted with permission)*

### Steve Jackson Games/ Secret Service wrapup

By Joe Abernathy, Copyright 1993, Houston Chronicle, reprinted with permission.

AUSTIN — An electronic civil rights case against the Secret Service closed Thursday with a clear statement by federal District Judge Sam Sparks that the Service failed to conduct a proper investigation in a notorious computer crime crackdown, and went too far in retaining custody of seized equipment.

The judge's formal findings in the complex case, which will likely set new legal precedents, won't be returned until later.

A packed courtroom sat on the edge of the seat Thursday morning as Sparks subjected the Secret Service agent in charge of the investigation to a grueling dressing-down.

The judge's rebuke apparently convinced the Department of Justice to close its defense after calling only one of the several government witnesses on hand. Attorney Mark Battan entered subdued testimony seeking to limit the award of monetary damages.

Secret Service Special Agent Timothy Foley of Chicago, who was in charge of three Austin computer search-and-seizures on March 1, 1990, that led to the lawsuit, stoically endured Spark's rebuke over the Service's poor investigation and abusive computer seizure policies. While the Service has seized dozens of computers since the crackdown began in 1990, this is the first case to challenge the practice.

"The Secret Service didn't do a good

job in this case. We know no investigation took place. Nobody ever gave any concern as to whether (legal) statutes were involved. We know there was damage," Sparks said in weighing damages.

The lawsuit, brought by Steve Jackson Games of Austin, said that the seizure of three computers violated the Privacy Protection Act, which provides First Amendment protections against seizing a publisher's works in progress. The lawsuit further said that since one of the computers was being used to run a bulletin board system containing private electronic mail, the seizure violated the Electronic Communications Privacy Act in regards to the 388 callers of the Illuminati BBS.

Sparks grew visibly angry when it was established that the Austin science fiction magazine and game book publisher was never suspected of a crime, and that agents did not do even marginal research to establish a criminal connection between the firm and the suspected illegal activities of an employee, or to determine that the company was a publisher. Indeed, agents testified that they were not even trained in the Privacy Protection Act at the special Secret Service school on computer crime.

"How long would it have taken you, Mr. Foley, to find out what Steve Jackson Games did, what it was?" asked Sparks. "An hour?"

"Was there any reason why, on March 2, you could not return to Steve Jackson Games a copy, in floppy disk form, of everything taken?"

"Did you read the article in *Business Week* magazine where it had a picture of Steve Jackson — a law-abiding, tax-paying citizen — saying he was a computer crime suspect?"

"Did it ever occur to you, Mr. Foley, that seizing this material could harm Steve Jackson economically?"

Foley replied, "No, sir," but the judge offered his own answer.

"You actually did, you just had no idea anybody would actually go out and hire a lawyer and sue you."

More than \$200,000 has been spent by the Electronic Frontier Foundation in bringing the case to trial. The EFF was founded by Mitchell Kapor amid a civil liberties movement sparked in large part by the Secret Service computer crime crackdown.

"The dressing-down of the Secret Service for their behavior is a major vindication of what we've been saying all along, which is that there were outrageous actions taken against Steve Jackson that hurt his business and sent a chilling effect to everyone using bulletin boards, and that there were larger principles at stake," said Kapor, contacted at his Cambridge, Mass., office.

"We're very happy with the way the case came out," said Shari Steele, who attended the case as counsel for the EFF. "That session with the judge and Tim Foley is what a lawyer dreams about."

That session seemed triggered by a riveting cross-examination of Foley by Pete Kennedy, Jackson's attorney.

Kennedy forced Foley to admit that the search warrant did not meet even the Service's own standards for a search-and-seizure, and did not establish that Jackson Games was suspected of being involved in any illegal activity.

"Agent Foley, it's been almost three years. Has Chris Goggans been indicted? Has Loyd Blankenship been indicted? Has Loyd Blankenship's computer been returned to him?"

The purported membership of Jackson Games employee Blankenship in the Legion of Doom hacker's group triggered the raids that day on Jackson Games, Blankenship's home, and that of Goggans, a Houstonian who at the time was a University of Texas student. No charges have been filed, although the computer seized from Blankenship's home — containing his wife's dissertation — never has been returned.

After the cross-examination, Sparks questioned Foley on a number of key details before and after the raid, focusing on the holes in the search warrant, why Jackson was not allowed to copy his work in progress after it was seized, and why his computers were not returned after the Secret Service analyzed them, a process completed before the end of March.

"The examination took seven days, but you didn't give Steve Jackson's computers back for three months. Why?" asked an incredulous Sparks. "So here you are, with three computers, 300 floppy disks, an owner who was asking for it back, his attorney calling you, and what I want to know is why copies of everything couldn't be given back in days. Not months. Days.

"That's what makes you mad about this case."

The Justice Department contended that Jackson Games is a manufacturer, and that only journalistic organizations can call upon the Privacy Protection Act. It contended that the ECPA was not violated because elec-

tronic mail is not "intercepted" when a BBS is seized. This argument rests on a narrow definition of interception.

*[Those who are interested in further background can read The Hacker Crackdown by Bruce Sterling. — Ed.]*

## How Many Are We?

Alcor has 353 Suspension Members, 480 Associate Members (includes 127 people in the process of becoming Suspension Members), and 26 members in suspension. These numbers are broken down by country below.



Country	Members	Applicants	Subscribers
Argentina	0	1	1
Australia	13	1	4
Austria	1	0	1
Canada	10	4	27
Costa Rica	0	0	1
Denmark	0	0	1
Estonia	0	0	1
Finland	0	0	1
France	0	0	4
Germany	1	1	1
Holland	0	1	0
Italy	0	2	2
Japan	2	1	0
Lichtenstein	0	0	1
Lithuania	0	0	2
Russia	0	0	1
Spain	6	2	0
Sri Lanka	0	0	1
Sweden	0	0	2
U.K.	13	5	8
U.S.A.	307	105	296

# Motion for Award of Attorneys' Fees

David E. Epstein

*Here is the main text of Alcor's Motion for Award of Attorney's Fees in the Roe v. Mitchell (Alcor versus the California State Health Department) litigation. See Up Front for an overview of its points and purpose. Anyone interested in receiving a copy of the full text of the fee motion for \$10 should contact Alcor directly.*

## MEMORANDUM OF POINTS AND AUTHORITIES

This motion is made seeking reimbursement to plaintiff Alcor's attorneys' fees for two separate reasons, one of which focusses on the conduct of plaintiffs, the other on the conduct of defendants and their counsel. First, plaintiffs have vindicated the important right for members of the public as a whole to provide for the testamentary disposition of their remains in a manner which does not affect public safety, a right implicating both a statutory policy and a liberty interest abiding in conceivably the entire population.<sup>1</sup> Under both the statutory provisions of C.C.P. § 1021.5 and common law *qui tam* doctrine Alcor should be compensated for its attorneys' fees by the defendants.

Second, defendants' conduct was found to be "arbitrary and capricious" and, as provided in Government Code § 800, Alcor is entitled to its attorneys' fees up to \$7,500.00. Closely related to this was their behavior and that of their attorneys in this litigation, which was in bad faith. As to that behavior monetary sanctions should be imposed under C.C.P. § 128.5 in the amount of plaintiffs' attorneys' fees. Each ground will be taken up in turn.

### I.

#### Introduction

##### A. The Plaintiffs

Alcor is a voluntary cryonics organization involved in the development and practice of cryonic suspension. Alcor supports research and the gathering and dissemination of scientific and other educational materials on the subject of cryonics and other subjects relating to the field of life extension.<sup>2</sup>

Individual plaintiffs Ralph Merkle and Keith Henson are members of Alcor and, along with 170 other members, each

has designated Alcor as a donee of his body pursuant to the Uniform Anatomical Gift Act ("U.A.G.A."), embodied in Health & Safety Code §§ 7150, et seq., with directions that, upon pronouncement of death, his body is to be placed in cryonic suspension. In September 1989, Alcor and the other plaintiffs filed their second amended complaint, adding Merkle and Henson. The purpose of the amended pleading was to bring before the court the combined interests of Alcor and its individual members.

##### B. The Defendants

Defendant Kenneth W. Kizer, M.D. is Director of the Department of Health Services and, by statute, also the State Registrar of Vital Statistics.<sup>3</sup> Defendant David W. Mitchell is the Chief of the Office of the State Registrar.<sup>4</sup>

Division 9 of the Health & Safety Code commencing with § 10000 contains the statutory provisions for the maintenance of vital statistics in California. The State Registrar is charged with the execution of that Division and has supervisory power over the local registrars. (H. & S. Code § 10026.) He has the statutory duty to prepare and issue detailed instructions for the maintenance of a satisfactory registration system. (Health & Safety Code § 10031.) The local registrars enforce the provisions of the Division under the supervision and direction of the State Registrar. (H. & S. Code § 10054.) Any local registrar who fails to comply with the instructions issued by the State Registrar is guilty of a misdemeanor. (H. & S. Code § 10678.)

##### C. Death Certificates and Disposition Permits

Although the position of the Registrar is a statistical one, including the "registration" of deaths, the Registrar here sought to use his statistical functions to enforce a policy established within his office to

regulate (and put out of business) cryonics, and to prohibit members of the public from seeking cryonic suspension, which was otherwise a valid testamentary disposition of the body of a deceased. In 1988 the Registrar amended the instructions concerning the registering of death certificates and the issuance of permits for the disposition of bodies by providing that cryonic suspension was not an acceptable entry under the category "Scientific Use."<sup>5</sup>

The effect of the instruction was that local registrars were directed (1) not to record deaths and issue death certificates for those who were unarguably deceased, and (2) not to issue permits for disposition where the decedent had directed, pursuant to the U.A.G.A., that his or her body be placed in cryonic suspension. (Since California law prohibits the disposition of a body unless the County Recorder first has registered a death certificate and issued a disposition permit,<sup>6</sup> the effect of the registrar's instructions was that cryonic suspension became unlawful per se, and those who sought to dispose of their remains in an otherwise lawful manner were deterred from doing so.)

In addition to the Handbook amendments, defendant Mitchell sent specific instructions by letter to the local registrar in Riverside County where Alcor maintains its facility and urged criminal prosecution of the plaintiffs.

"Existing California statutes provide no basis to authorize cryonic facilities to store human remains. Therefore, if the ALCOR Foundation has any bodies or body parts stored in the facility, the Foundation is guilty of a misdemeanor (Health & Safety Code § 7054) and should be reported to the local district attorney for investigation and prosecution as appropriate."<sup>7</sup>

### II.

#### Procedural History<sup>8</sup>

##### A. The Complaint

This lawsuit was filed in August 1988 on behalf of Alcor and John Roe, a member of Alcor who was then terminally ill. The gist of the action as filed was that the Registrar's Instructions to refuse to register a death certificate and to issue a disposition permit (VS-9 Permit) for a body to be placed in cryogenic suspension was an arbitrary and unreasonable exercise of the police power which violated the constitutional rights of both John Roe and Alcor.



## From the October, 1988 Cryonics

On September 25th, Alcor member "John Roe" (a legal pseudonym being used to comply with "Mr. Roe's" desire for privacy) entered a Los Angeles-area hospital for treatment of a very serious and imminently life-threatening AIDS-related infection. Mr. Roe was alert on admission, and he is an intelligent, articulate, pleasant, and impressive man. ... Mr. Roe, his physician, and Alcor informed the hospital of his long-standing arrangements for cryonic suspension and asked for noninterference in execution of these arrangements; principally that Mr. Roe be promptly pronounced legally dead (after cessation of heartbeat and breathing) and that Alcor be given immediate access to him in order to stabilize and transport him to the Alcor facility.

The hospital not only refused to cooperate in prompt pronouncement of legal death but also refused to release Mr. Roe to us *even after clinical and legal death had been pronounced!* ...

The reason the hospital cited in their refusal to release Mr. Roe to Alcor was that in their opinion "Alcor does not have the legal right to have or hold human remains." This statement apparently comes courtesy of the State of California Department of Health Services in Sacramento. We understand that this position will also be taken by Coroner's offices throughout California as well.

What this means is that the California Department of Health Services is choosing to regard cryonics as an *illegal* act. As a consequence, it is rapidly becoming (if it has not become so already) virtually impossible for Alcor to get access to its members after legal death and place them into suspension.

*Without any doubt this is the most formidable and terrifying crisis cryonics has ever faced — in or out of California.* Make no mistake about it, we are in a battle for not only our freedom, but for our very lives.

It is very, very important that each and every cryonicist understand the magnitude of the problem and the high stakes that confront us as we enter this battle. For us here at Alcor Southern California it has been very hard to *emotionally* understand that we risk being *put out of operation* by these small-minded creatures. Indeed, the only thing that has prevented them from coming in here and seizing our patients is Judge Miceli's order and their fear of the enormous bad press and civil litigation that would result. Otherwise, we would have been "history" long ago. I can make this statement with such a high degree of assurance because, thanks to Keith Henson's diligent efforts under the California *Freedom of Information Act* we have copies of some of their internal correspondence. Make no mistake about it, the DHS bureaucrats want cryonics destroyed.

This situation is an intolerable one and leaves us with no choice but to go into court as soon as possible to try and obtain a preliminary restraining order to give us access to Mr. Roe and to any other Alcor member who may experience ischemic coma before the DHS lawsuit is resolved.

In December 1988, John Roe was pronounced dead and his body was placed in cryonic suspension.<sup>9</sup> Pursuant to the defendants' instructions, no death certificate was registered and no disposition permit was issued. Thus, by reason of his own instructions, the State's keeper of vital statistics had no record of the death of John Roe and the disposition of John Roe's body, insofar as the Registrar is concerned, never occurred. The same was also true of many of the remains of the 15

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY  
DEPARTMENT OF HEALTH SERVICES  
OFFICE OF THE STATE REGISTRAR OF VITAL STATISTICS  
410 N STREET  
SACRAMENTO, CA 95814  
(916) 445-2684

GEORGE DEUKMEJIAN, Governor



June 28, 1988

Edward J. Gallagher, M.D.  
Riverside County Health Department and  
Local Registrar of Births and Deaths  
Post Office Box 1370  
Riverside, CA 92502


Dear Doctor Gallagher:

This is in response to your letter dated May 18, 1988 regarding the storage of the remains of a Florida decedent at the ALCOR Foundation.

As you are aware, instructions from the Office of State Registrar are very specific regarding allowable conditions under which Permits for Disposition of Human Remains may be issued. Existing California statutes provide no basis to authorize cryonic facilities to store human remains. Therefore, if the ALCOR Foundation has any bodies or body parts stored in the facility, the Foundation is guilty of a misdemeanor (Health and Safety Code Section 7054) and should be reported to the local District Attorney for investigation and prosecution as appropriate.

If you have further questions, I can be reached at (916) 445-1719.

Sincerely,

  
David Mitchell, Chief  
Office of State Registrar

other individuals whom Alcor maintains in cryonic suspension. (Among other things the effect of this litigation will achieve the salutary result that the defendants' statistics — which they are statutorily charged to keep — will finally be accurate.)

### B. The Defendants' Various Positions During the Litigation

The initial instruction which gave rise to this action provided simply that cryonic suspension did not qualify as a disposition

for "scientific use" under the U.A.G.A.<sup>10</sup> From this simple instruction flowed much harm, including not only inaccurate record keeping but also state sanctioned discrimination against those who wished to be cryonically suspended, as well as discrimination against their heirs.

Mitchell was deposed in November 1988 and was questioned extensively regarding the basis for his department's policy. He testified that the language excluding cryonic suspension as a "scientific

use" was new and had been added that spring in response to an inquiry from Riverside County.<sup>11</sup> Mitchell's understanding of cryonic suspension was based on a newspaper article he had read "plus, probably to a degree, some imagination."<sup>12</sup> Mitchell's department had made no determination that cryonic suspension, when carried out properly, presents any threat or danger to public health, nor was it inconsistent with the protection of human dignity.<sup>13</sup> As to the department's position that cryonic suspension was unlawful, Mitchell conceded that there was no statute addressing cryonic suspension.<sup>14</sup> He testified that it was the policy of his department that, if a statute does not expressly permit a type of disposition, it is prohibited.<sup>15</sup>

Mitchell's testimony initially reiterated his instruction that cryonic suspension is not a scientific use.<sup>16</sup> However, he conceded that he had made no inquiry as to whether any fields of scientific research benefitted directly from the development of cryonic suspension procedures,<sup>17</sup> he did not know whether cryonic suspension benefits medical science or not,<sup>18</sup> and he had made no attempt to find out if there were areas of research which benefitted directly from cryogenic suspension procedures,<sup>19</sup> as in fact there are.<sup>20</sup>

Ultimately, Mitchell changed his position and conceded that cryonic suspension might be a valid scientific use, but that Alcor still could not qualify as a donee under the U.A.G.A. because it was not a facility with its main purpose being medical research.<sup>21</sup> (The U.A.G.A. says nothing about a "main purpose.")

Mitchell identified Earl Renken as the person in his department most knowledgeable on the subjects of scientific use and cryonic suspension. Renken was deposed on January 12, 1990. By that time, the January 1990 version of the Registrar's Handbook had been prepared with certain organizational changes but containing the same provision that "scientific use does not include Cryogenic Suspension." Renken testified that whether a body was placed in cryonic suspension or not really was of no concern to the department provided the body was placed in a licensed

facility.<sup>22</sup> At the same time, Renken acknowledged that "at this time, it is the policy of the department that cryogenic suspension would never be an appropriate entry for disposition permit."<sup>23</sup> (If not an "appropriate entry," the death could not be registered, nor a death certificate nor disposition permit issued.) Finally, Renken conceded that the instruction in the Handbook that "scientific use does not include cryonic suspension" was overbroad.<sup>24</sup>

Defendants' interrogatory responses following Renken's deposition formalized abandonment of Mitchell's position that

licensed either as a cemetery or as a donee pursuant to the U.A.G.A.,<sup>26</sup> as defendants conceded that they no longer contended that cryonic suspension was injurious to the public health or welfare.<sup>27</sup>

At the conclusion of formal discovery defendants had conceded every objection to acknowledging the legal death and disposition of Alcor members whose bodies had been placed in cryonic suspension save one: That Alcor was not licensed as a "donee" (or "procurement organization") under the U.A.G.A.<sup>28</sup>

Plaintiffs sought to apply for a license

Riverside Press-Enterprise, September 1, 1988

## AIDS victim sues state to allow freezing of body

By DON BABWIN  
The Press-Enterprise

Fearing the state might try to prevent his body from being frozen when he dies, an AIDS victim and longtime member of the Riverside-based Alcor Life Extension Foundation has sued state health officials over regulations that prohibit cryonic suspension.

The suit, filed in Los Angeles County Superior Court this week on behalf of Alcor and a man using the pseudonym "John Roe," seeks a court order to allow the man's body to be frozen in liquid nitrogen in the hopes it can be revived at a later date.

The suit names as defendants David W. Mitchell, chief of the Office of Registrar, and Dr. Kenneth Kizer, director of state health services.

"We want the court to make it clear that this guy can be frozen," said Saul Kent, a spokesman

for Alcor. "We don't want him in a position where some hospital administrator can come in and stop it."

The registrar's office, which is responsible for birth and death certificates, and the state health department require permits to dispose of remains. State law authorizes three methods of disposal — cremation, burial and donation for scientific purposes — according to Peter Weisser, a spokesman for the state department of health services. Cryonic suspension is not recognized as legal by the state.

Weisser said the department would not comment on the suit.

Roe and Alcor say that Roe, who cites prominence in his profession as the reason for remaining anonymous, has been diagnosed as having AIDS. He has made financial arrangements to have his body cryonically suspended in the hopes that "at some

future date an effective treatment and cure will be discovered."

The suit contends Roe has the legal right to control the disposition of his body.

The suit comes three months after the Riverside County Health Department refused to issue Alcor a permit to store the body of a Florida man that was brought to Alcor's Riverside facility. Alcor went ahead and froze the body. And in northern California in June, Trans Time Inc. moved the body of an 87-year-old woman to its facility after being told by the coroner's office in Alameda County not to do so.

When the Florida man's body was frozen, Mitchell, whose office advised the county not to issue the permit, said of Alcor's actions: "It looks pretty convincing that they broke the law."

And in a letter written in (See FREEZING, Page B-2)

cryonic suspension was unlawful:

### "RESPONSE TO INTERROGATORY NO. 1:

It is not plaintiffs' [sic: defendants'] contention that the process of cryonic suspension is unlawful. It is plaintiff's [sic] contention, however, that the storage of dead bodies at facilities unlicensed for such storage is not authorized under current law."<sup>25</sup>

Having lost the underpinnings for the position it took which engendered this litigation (and for which defendants had tried to have plaintiffs criminally prosecuted), the focus of defendants' objection to registering and issuing death certificates and issuing disposition permits had shifted to the question of whether the facility was

as a "procurement organization" but defendants had no procedure for issuing such a license and they further contended that they were without the power to establish such procedures or issue such licenses.

At the same time defendants declined to retract their contention that, unless Alcor was licensed as a "procurement organization" defendants would not register a death certificate nor allow to be issued a permit for disposition in the case of any body entrusted to Alcor for cryonic suspension.

On July 13, 1990, defendants' counsel advised plaintiffs' counsel that defendants had withdrawn the official instruction that cryonic suspension was not a scientific use. A new instruction was to be provided

reciting, in substance, that "scientific use" might include any form of disposition (including cryonic suspension) provided that the disposition was to a licensed donee (e.g., a procurement organization) under the U.A.G.A. Defendants' counsel advised that she would provide, by facsimile, a copy of the revised portion of the Handbook.

Based upon these representations, the parties incorporated in their Stipulation Re Statements of Fact, the recitation that:

"Scientific use as prescribed in defendants' Handbook is intended to include disposition to any eligible donee under the U.A.G.A. as specified in Health & Safety Code § 7153(a) whether the disposition is by cryonic suspension or otherwise."<sup>29</sup>

The parties also stipulated to the fact that:

"The State Department of Health Services has no procedure or mechanism for the licensing, accreditation or approval of that class of donee specified as a 'procurement organization'..."<sup>30</sup>

On July 17, 1990, plaintiffs' counsel received from defendants' counsel, by facsimile, the "revised" Section 10.D. of the Handbook ("July 1990 version") (a copy of which was attached to plaintiffs' summary judgment motion as Exhibit "BB"). Contrary to the Stipulation agreed to by defendants, the July 1990 version did not withdraw the original instruction that cryonic suspension is not a scientific use. While the wording has been changed, the substance was precisely the same:

"The holding of human bodies in cryonic suspension does not constitute the operation of a cemetery, nor does arranging to have one's body so placed meet the scientific use requirements of the Uniform Anatomical Gift Act."

While the Registrar conceded that cryonic suspension was lawful and that it may in fact be a "scientific use," as had been clearly demonstrated in the defendants' depositions, Mitchell refused to act accordingly and, instead, imposed the new requirement that Alcor first had to obtain a license, although licenses were not issued by the Registrar and he claimed to be without the power to issue them.

### C. Entry of Summary Judgment

Plaintiffs' motion for summary judgment and defendants' cross motion were argued at hearings on September 27, 1990 and October 2, 1990. At the conclusion of the second hearing plaintiffs' motion was granted and defendants' motion was

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9	Attorneys for Defendants	
10	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
11	FOR THE COUNTY OF LOS ANGELES	
12	JOHN ROE, and ALCOR LIFE	) CASE NO. C697147
13	EXTENSION FOUNDATION, INC., a	
14	California Non-profit	) DATE: October 14, 1988
15	Corporation,	
16	Plaintiffs,	) TIME: 1:30 P.M.
17	vs.	
18	DAVID W. MITCHELL, KENNETH W.	) MEMORANDUM OF POINTS AND
19	KIZER, M.D., M.P.H., OFFICE	
20	OF THE STATE REGISTRAR,	) IN OPPOSITION TO EX PARTE
21	DEPARTMENT OF HEALTH	
22	SERVICES, and DOES 1 to 100,	) MOTION FOR TEMPORARY
23	inclusive,	
24	Defendants.	) RESTRAINING ORDER
25		
26	1. INTRODUCTION.	
27	JOHN ROE, an AIDS patient at Shdemen@Cahu Community	
28	Hospital (the "Hospital") and ALCOR LIFE EXTENSION FOUNDATION,	
29	INC. ("ALCOR") ask this Court to order the Hospital to violate	
30	its established practices, Health and Safety Code and Title 22	
31	Regulations and the standards of the Joint Commission on Accredi-	
32	tation of Health Care Organizations Standards by permitting	

## From the November, 1988 Cryonics

On Friday, October 14th, Superior Court Judge Aurelio Muñoz granted Alcor a temporary restraining order preventing the hospital from:

*"...preventing, restricting or in any manner whatsoever interfering with the application of a portable resuscitator, after the pronouncement of his "legal death" by a licensed physician, to the body of John Roe at the hospital facility located at 4929 Van Nuys Boulevard, Van Nuys, California for such period of time, not to exceed two hours, as shall be necessary thereafter to accomplish the release of the body of John Roe to a licensed funeral director and the transport of*

*his body, after the application of the portable resuscitator, from the hospital."*

The hospital fought Alcor every step of the way. In a six page brief filed by the hospital in opposition to Alcor's request for a TRO, the hospital and its legal staff trotted out just about every argument against cryonics imaginable. We summarize [two] of the more interesting ones below:

*They were also concerned "about unresolved bioethical issues concerning the procedure."*

In other words, what will we do about overpopulation, world hunger, and allocation of resources if this cryonics thing catches on...!

*Finally, "Alcor is requesting that after a pronouncement of death, that Alcor personnel be permitted to inject Mr. Roe's remains with a barbiturate. The purpose of the injection is to prevent Mr. Roe from 'coming back to life' once he is placed on the heart-lung resuscitator machine... This proposed action raises the issue of euthanasia which is currently illegal."*

This last objection caused the judge considerable amusement. As he was at pains to point out, if the hospital pronounced the patient legally dead by current criteria and Alcor was able to revive the patient, then that would be a major medical advance and a marvel for the world! In other words, you can't kill a dead person. This is something the Riverside County Coroner has yet to figure out...

The arguments the hospital used in the Roe case against Alcor point out two fundamental problems that both the medical establishment and cryonics are going to have to confront, and indeed are even now in the process of confronting. When is dead really *dead*, and where does medicine end and post-mortem procedures begin? The medical establishment cannot have it both ways. They cannot continue to pronounce people dead upon the basis of arbitrary, and above all *convenient*, functional criteria and then accuse cryonicists of euthanasia or murder for proceeding to resuscitate and crankily suspend the same patients...

denied. Plaintiffs then lodged a proposed Judgment and a separate order on the summary judgment motions which tracked this Court's oral pronouncements articulated at the hearings. Defendants objected, contending that the Court had not ruled as in fact it had, and they filed a frivolous document to this effect.

On October 25, 1990 this Court filed

its Order in which it specified in written form its prior rulings announced from the bench. Among the issues without substantial controversy was Issue No. 1 which found

"[D]efendants' instructions and policies . . . are invalid as an impermissible interference with the rights of the individual plaintiffs to determine the dis-

position of their own bodies.”

The Court also found in Issue No. 2 that

“Defendants’ refusal to permit the registration of deaths and the issuance of disposition permits for persons who have directed that Alcor [be] donee under the [U.A.G.A.], on the grounds that cryonic suspension is not a scientific use, is arbitrary and capricious and therefore invalid.”

The Court further found that the defendants had violated Alcor’s rights of due process (Finding No. 4), had adopted regulations contrary to the requirements of the Administrative Procedure Act (Finding No. 5), and had exceeded their statutory authority and violated their statutory duties (Findings Nos. 6 & 7). On the same date the Court entered its Judgment to the same effect and enjoined defendants from interfering with the registration of deaths and issuance of disposition permits of deceased persons who had designated Alcor as the U.A.G.A. donee.

#### D. The Defendants’ New Position on Appeal

The defendants appealed. On appeal, in addition to recycling the arguments made in the trial court (“that which is not permitted is prohibited,” “the defendants lack authority to proceed,” “gaps have to be filled by the legislature,” “Alcor must first be licensed,” etc.), defendants included the following in their Reply Brief (at page 15):

“Thus, the Department has encouraged Alcor to obtain a license as a cemetery or mausoleum or appoint another entity, such as a research institute, hospital, or physician, as the donee under the [U.A.G.A.] so that Alcor’s members can have their bodies or body parts cryonically suspended legitimately. However Alcor has refused to do so.”

The Court of Appeal requested additional “letter briefing” on specified issues apparently as a result of this passage in the Reply Brief, including the affect of 63 Ops.Cal.Atty.Gen. 879 (1980) (holding bodies in cryonic suspension does not constitute the operation of a cemetery within the meaning of H. & S. Code §§ 7003 or 8100) and whether defendants’ suggestion was a subterfuge of the law.

#### E. The Decision of Appeal

On June 10, 1992 the Court of Appeal issued its decision, which it subsequently ordered be published on July 7, 1992. It referred to the “determined efforts [of the

defendants] to render Alcor’s operations illegal” and the suggested subterfuge of licensing Alcor as a cemetery or mausoleum, *Roe v. Mitchell*, supra, 7 Cal. App.4th at \_\_\_, 9 Cal.Rptr.2d 572, 573-574. The Court also commented that the defendants’ claimed authority for their position in refusing to register death certificates or issue disposition permits, 63 Ops.Cal.Atty.Gen. 879 (1980), was “totally inconsistent” with the position they asserted in their Reply Brief, *id.* at p. 574.

After disposing of the inconsistent arguments being advanced and relied upon by the defendants, including a purported lack of “authority to determine whether or not cryogenic suspension . . . constitutes valid science research . . .,” *id.* at p. 575, and “serious questions” which would be presented if the cryonically suspended were to return to life, *id.* at pp. 574-5, the Court of Appeal found that Defendants’

“shift in position [did] not aid Alcor since [defendants] refuse[] to recognize Alcor as a ‘procurement organization’ for purposes of the [U.A.G.A.], the donee category in which Alcor might fit, [and that u]nderstandably the trial court declined to accept this ‘catch-22’ approach which exposes Alcor to potential criminal liability.”

*Id.* at 575. The Court also expressed bemused confidence in the ability of the Legislature to deal with the cryonically reanimated “at some future time,” *id.* at p. 576, and affirmed this Court’s judgment.

The decision of the Court of Appeal is now final, and neither party has sought a rehearing in the Court of Appeal or review in the Supreme Court.

#### F. Other Post Judgment Conduct of Defendants

While the appeal in this case was pending, defendants intentionally failed to comply with this Court’s Judgment, and refused to obey the terms of the injunction which was entered.

As this Court will recall, in April of this year plaintiffs were required to apply to this Court *ex parte* for relief so that the widow of Jerry Leaf could obtain a death certificate to establish her title to the family residence which she had held in joint tenancy with her husband until his death. The position of the defendants, until this Court intervened, was that by virtue of the appeal the enforcement of the injunction was stayed. This conduct of the defendants was, sadly, merely typical of their disingenuous and misleading positions and strategies throughout this case, which they

have litigated as if the ethical standards which govern counsel’s conduct do not apply to the Attorney General’s deputies and as if national security depended on the outcome they sought and pursued through phony stratagems and arguments.

### III.

#### Plaintiffs Are Entitled to their Attorneys’ Fees Under Either C.C.P. § 1021.5 or Non Statutory Qui Tam Doctrine<sup>31</sup>

#### A. C.C.P. § 1021.5 Allows an Award of Attorneys’ Fees

Under C.C.P. 1021.5 attorneys’ fees may be awarded in “public interest” litigation to the successful party

“against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or non pecuniary, has been conferred on the general public or a large class of persons, [and] (b) the necessity and financial burden of private enforcement are such as to make the award appropriate . . .”

Case law has established that the three criteria under C.C.P. § 1021.5 are the following: (1) The public policy vindicated by the litigation; (2) the number of people standing to benefit from the decision; and (3) the necessity for private enforcement and the result achieved.

The motion for such an award may be made (and is probably best made) after judgment is final, *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 226 Cal.Rptr. 265; *United Firefighters of Los Angeles v. City of Los Angeles* (1991) 231 Cal.App.3d 1576, 283 Cal.Rptr. 8. (The remittitur has not yet been issued by the Court of Appeal, but plaintiffs believe this motion is not pre-mature and that this Court can take judicial notice of the Court of Appeal’s decision.)

As the California Supreme Court observed in 1982

“The private attorney general theory rests on the policy of encouraging private actions to vindicate important rights affecting the public interest, without regard to material gain. [] A central function is to call public officials to account and to insist that they enforce the law.[] Implicit is the recognition that without some mechanism authorizing the award of attorneys fees, private actions to enforce [] important

public policies will as a practical matter frequently be infeasible."

**Serrano v. Unruh** (1982) 32 Cal.3d 621, 633, 186 Cal.Rptr. 754, 761 (citations and internal quotations deleted).

In this case an award is appropriate since the litigation was engendered by the conduct of public officials who refused to enforce the law and who acted in violation of their statutory duties. Thus, private enforcement was necessitated by official action which this Court concluded was lawless.<sup>32</sup> In addition, as both this Court and the Court of Appeal observed, adherence to the defendants' position would have "expose[d] Alcor to potential criminal liability," **Roe v. Mitchell**, 9 Cal.Rptr.2d at 575, and any criminal prosecution (which could have been successfully defended as the result here demonstrates) would have been a waste of public funds, yielding an "internalized" public interest benefit which itself supports an award of attorneys' fees. See, e.g., **Arrieta v. Mahon** (1982) 31 Cal.3d 381, 182 Cal. Rptr. 770.<sup>33</sup>

#### B. The Public Interest Which Was Advanced

In addition to avoiding needless criminal prosecutions and making the Registrar's statistical records relating to deaths more accurate, plaintiffs have also advanced an important right which is potentially available to every member of the mortal public. That right is the power to determine the disposition of one's own body which attaches to the most fundamental values of a civilized society and carries with it religious, moral, ethical and social considerations which are instinctually basic to human existence.<sup>34</sup>

While there are no reported appellate opinions focusing specifically on this issue, statutory law speaks to the public policy inherent in the issue and there is a substantial legal foundation for the concept of freedom of choice in directing the disposition of one's own body. The defendants interfered with this right by taking a position whose deterrent effect was clear: Anyone who sought testamentary disposition of his body in a nontraditional way will know that his heirs would not have a death certificate issued (even through he is unarguably dead), and they would thus have difficulty in clearing title to joint tenancy property, obtaining the proceeds of insurance policies, and doing the other things which normally require a death certificate (which itself also serves a societal and psychological act of "closure" with the

## From the May, 1992 *Cryonics*

by *Carlos Mondragón*

On Friday morning, April 10th, I had to wake up at 0530 in order to be at the downtown Los Angeles Courthouse by 0830. ...

I had recently made an attempt to get Jerry Leaf's death certificate certified. This had not been done earlier because of the Health Department was insisting on calling Alcor a cemetery on the concurrent VS-9 form and we wanted to avoid that. But an important need arose in this case when Kathy Leaf discovered that she could not get a new title to the house that she and Jerry owned in joint tenancy without a *certified* death certificate. Because she needed to refinance and interest rates are inching up, every day of delay was a major hardship for her. The surprise came when I went to get the certification and discovered that sometime since the new year, the Department had changed its policy and decided that it would not give us certification under any circumstances. ...

There was only one way to proceed: our attorney gave notice that we would be in court on Friday morning asking Judge Muñoz to order the Health Department to Show Cause why they should not be held in contempt of court and also asking him for an *ex-parte* (immediate) order forcing them to certify Jerry's death certificate.

When the doors to the courtroom were unlocked at 0820, [Judge Muñoz] stood at his clerk's side and swiftly dealt with business. Until there were only three people left waiting to see him: Alcor's Attorney David Epstein, Deputy Attorney General Tammy Chung representing the Health Department, and me.

Still standing by his clerk, Muñoz leaned over a bit, turned his head to look at Ms. Chung with eyes that could cut through steel and asked, "Are you instructing your clients to violate my order?"

As usual, she stuttered, she hemmed, she hawed. Muñoz interrupted: "I want this on the record, call in a reporter." He went up to his bench and sat down. It seemed that the court reporter was there and ready in about two minutes.

Ms. Chung was so flustered that she couldn't quite complete a sentence until Muñoz told her, "Don't worry counselor, I won't put *you* in jail." She tried vainly to justify her client's position. Muñoz interrupted with "But he's dead, isn't he?" (No, you're not having an episode of *deja vu* — this has happened before.) This time she responded with "They don't think he's dead!"

"Who doesn't think so?"

"Alcor."

"Who do you represent, Alcor or the State? Does the State think he's dead?"

After this, Epstein stated our position for the record. Then Muñoz ordered that the Health Department pay a fine of \$1000 per day until such time as they comply with his order. He also ordered that Dr. Ken Kizer, the *head* of the State of California Health Department in Sacramento, come to court on April 22nd in Los Angeles to show cause re contempt. In fact, *everyone* in the chain of command between Dr. Kizer and the clerk at the Watts office of the health department who turned me down when I went to get Jerry's death certificate certified will have to show up on the 22nd.

Muñoz agreed to sign an order on April 13th, specifically ordering immediate certification of Jerry's death certificate. ...

event of death, since it is society's imprimatur on the fact of the deceased's passing).<sup>35</sup>

The statutory basis for the public policy interest involved in having the right to testamentary disposition of one's own body is Health & Safety Code § 7100 which provides, in pertinent part:

"Right to control disposition of remains; duty and liability for interment; devolution; prior directions of decedent. Order of Devolution. The right to control the disposition of the

remains of a deceased person, **unless other directions have been given by the decedent**, vests in . . . the following in the order named: [surviving spouse, children, etc.] [Emphasis added.]

\*\*\*\*

"**Directions of Decedent.** A decedent, prior to his death, may direct the preparation for type or place of interment of his remains, either by oral or written instructions, . . . The person or persons otherwise entitled to control

the disposition of the remains under the provisions of this section shall faithfully carry out the directions of the decedent subject only to the provisions of this chapter with respect to the duties of the coroner."<sup>36</sup>

On at least three occasions, trial courts have addressed the issue of cryonic suspension and, in various contexts, have acknowledged, both implicitly and explicitly, the right of the individual to direct the cryonic suspension of his or her body.

In *Kent, et al. v. Carrillo, et al.*, Riverside Superior Court Case No. R 191277, the Riverside Coroner threatened to thaw the remains of decedents in cryonic suspension at Alcor's facility. The focus of the coroner's threat was the remains of Dora Kent who had recently died and had been placed in cryonic suspension. The plaintiff, who was the decedent's son, sought to enjoin the actions threatened by the coroner. In granting Kent's application, on February 1, 1988, Judge Miceli specifically found that the action threatened by the coroner "would be in violation of the rights of the decedents" and that thawing the remains of the decedents at the Alcor Foundation "would produce an irreparable injury." (A copy of Judge Miceli's minute order Judge Miceli's minute order is submitted with plaintiffs' summary judgment motion as Exhibit "CC.")

The second instance in which these issues were presented to a trial court occurred in this action nine months later in October 1988. The context was the advice by Sherman Oaks Community Hospital, which was caring for John Roe, that it would not honor his request to release his body to Alcor at the time of his anticipated death. On October 14, 1988, this Court issued a TRO and OSC re preliminary injunction restraining the Hospital from interfering with the application of the initial cryonic procedures (the use of a portable resuscitator) at the Hospital after pronouncement of Roe's "legal death." While the order did not mention cryonic suspension, both the moving and opposing papers, as well as the proceedings in open court, addressed the matter in the context of John Roe's right to direct the disposition of his body by cryonic suspension.

The most recent and farthest reaching Superior Court action occurred in December 1989, again in Riverside County, in the matter of *Kent, et al. v. Trask*, Riverside Superior Court Case No. 201022. That action involved a threatened criminal pro-

secution of certain Alcor members who had participated in the cryonic suspension of Dora Kent for violation of the Business & Professions Code's prohibitions against the unlicensed practice of medicine. The Alcor defendants sought injunctive relief in a separate civil lawsuit they filed on the claim that the threatened prosecution created an impermissible "chilling" of the constitutional right of each Alcor member to direct the disposition of his body by cryonic suspension. In a lengthy opinion, Judge, now Justice, Timlin concluded:

"This court concludes that the Adherents, including Dora Kent, under Article I, Section 1 of the California Constitution and the Fifth Ninth Amendments to the United States Constitution have a right to privacy, which includes the right to exercise control over his/her own body and to determine whether to submit his/her body, or any portion thereof, including the brain, to premortem cryonic suspension. (In ruling on the application, this court in no way comments directly or indirectly on the wisdom of such a choice.)"

(A copy of Judge Timlin's opinion was submitted with plaintiffs' summary judgment motion as Exhibit "EE." The quoted matter is found at p. 11.)

The right to determine the disposition of one's remains, after death, is a logical outgrowth of the right to control one's own body, the right to accept or reject medical treatment, and the concomitant "right to die." The two most frequently cited cases in this area are *Bartling v. Superior Court* (1984) 163 Cal.App.3d 186, 209 Cal.Rptr. 220 and *Bouvia v. Superior Court* (1986) 179 Cal.App.3d 1127, 225 Cal.Rptr. 297. Both cases involved patients suffering from serious illnesses which were probably incurable but which had not been diagnosed as terminal. In each case the Court of Appeal held that the patient had the right, over the objection of physicians, hospitals and the State, to direct the discontinuance of life-support or measures or feeding despite the fact that that would hasten the patient's death.

In *Bartling* the patient had given directions, both orally and in writing while competent, that life-support measures were not to be administered to him. *Bartling's* application to the Superior Court to enjoin the hospital from interfering with the withdrawal of the life-support machinery had been denied. *Bartling* applied for extraordinary relief to the Court of Appeal but, unfortunately, died the afternoon before the hearing. Nonetheless, the court

went on to decide the case on its merits and reversed the trial court. As in *Kent v. Trask* the court based its ruling on the constitutional right to privacy:

"The right of a competent adult patient to refuse medical treatment has its origins in the constitutional right of privacy. This right is specifically guaranteed by the California constitution (Article I, Section 1) and has been found to exist in the 'penumbra' of rights guaranteed by the Fifth and Ninth Amendments to the United States Constitution. (*Griswold v. Connecticut*, 381 U.S. 479, 484, 85 S.Ct. 1678, 1681.)

'In short, the law recognized the individual interest in preserving the 'inviolability of the person' [citations]. The constitutional right of privacy guarantees to the individual the freedom to choose or reject, or refuse to consent to, intrusions of his bodily integrity.'"

163 Cal.App.3d at 196, 209 Cal.Rptr. at 225.

In *Bouvia* the Court had an opportunity to review the *Bartling* decision and to face the same issue in the context of a young patient who, while not terminally ill, was dependent upon extraordinary measures to sustain her life. The Court reiterated the principles articulated in *Bartling*.

"But if additional persuasion be needed, there is ample. As indicated by the discussion of *Bartling* and *Barber*, substantial and respectable authority throughout the country recognizes the right which petitioner seeks to exercise. Indeed, it is neither radical nor startlingly new. It is a basic and constitutionally predicated right. More than 70 years ago, Judge Benjamin Cardozo observed: 'Every human being of adult years and sound mind has a right to determine what shall be done with his own body . . . .' [Citation omitted.]"

179 Cal.App.3d at 1139, 225 Cal. Rptr. at 302.

In a concurring opinion, Justice Compton poignantly observed that:

"The right to die is an integral part of our right to control our own destinies so long as the rights of others are not affected. That right should, in my opinion, include the ability to enlist assistance from others, including medical [professionals], in making death as painless and quick as possible.

\*\*\*\*\*

If there is ever a time when we ought to

## From the January, 1988 *Cryonics*

*Michael G. Darwin, President, Alcor Foundation*

Ladies and Gentlemen of the Press,

We have called this press conference today to express our outrage at the public conduct of the Riverside County Coroner's office in the recent matter of the death of Mrs. Dora Kent — and to set the record straight. During the past three weeks the Alcor Life Extension Foundation and many fine people associated with it have been the victims of an absolutely vicious smear campaign directed by the Riverside County coroner's office — a campaign largely conducted in lieu of the coroner's office doing its rightful job of investigation. ...

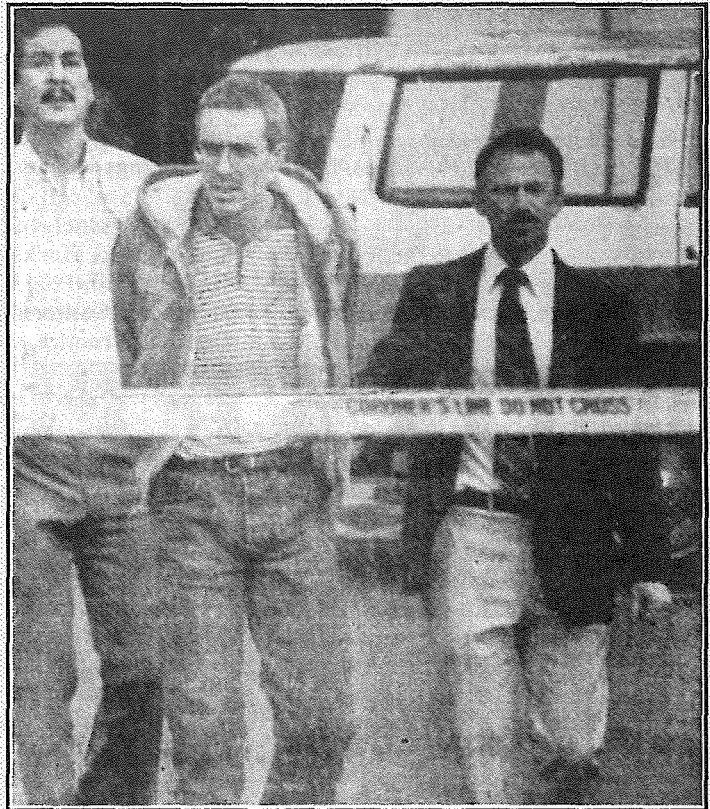
The coroner's office has inappropriately instigated inspections of Alcor by public officials such as the fire inspector and the building inspector, and released long lists of small violations of code to the media. The coroner's office has accused Alcor of violating public health codes and zoning ordinances. They have stopped at nothing to destroy Alcor's credibility and engender feelings of hostility and alarm about Alcor in the public.

Witness their recent statement to the media that Alcor endangered public health by dumping untreated AIDS contaminated body fluids into the public sewage system. Not only were such charges false, (such waste was first treated with appropriate disinfectant to protect personnel handling it) they are irresponsible red herrings calculated to produce public hysteria and emotional reaction. The fact is, hospitals and mortuaries routinely dispose of AIDS contaminated fluids down the drain without taking any special precautions and this in no way jeopardizes public health or safety. ...

The coroner's office has even gone so far as to arrest Alcor members and drag them handcuffed to jail with full media coverage, only to realize later that it had noailable crime to charge them with. ...

Alcor, an organization of decent and law-abiding people whose only "crime" is attempting to save the lives of their loved ones has been made out by the coroner's office to be satanic and possibly murderous. This has been done quite deliberately by a county agency which has previously shown a taste for the media limelight. It has, without doubt, been done at remarkable expense to the taxpayers of the County of Riverside.

This is where you of the press enter the picture. Bluntly, you are being used as an instrument of a witch-hunt, the objective of which is the gratuitous destruction of Alcor and of the people in Alcor's care. The success of such a campaign will mean a further erosion of the basic freedoms all of us cherish, regardless of our optimism about the future of medical technology, or lack thereof. ...



be able to get the 'government off our backs' it is when we face death —either by choice or otherwise."

179 Cal.App.3d at 1147, 1148, 225 Cal.Rptr. at 307, 308.

When one combines the legislative intent evident in Health & Safety Code § 7100 with the constitutional framework provided in **Bartling and Bouvia**, it becomes apparent that there is ample constitutional as well as statutory support for the right to determine the disposition of one's own body, so long as the same does not implicate some valid health and safety concern.

While there may not be many people who wish to be cryonically suspended, the right to testamentary disposition of one's own body overarches the limited circumstances of such a situation. It may similarly be argued that few people wish to

vindicate their "right to die" or refuse unwanted medical treatment or assistance, but just as Ms. Bouvia was entitled to be compensated for her attorneys' fees in litigation vindicating her "right to die," so do plaintiffs herein have the prerogative to their fees in litigation vindicating the right of all members of the public to have the testamentary disposition of their remains respected and enforced. See **Bouvia v. Glenchur** (1987) 195 Cal.App.3d 1025, 241 Cal.Rptr. 239 (award of attorneys' fees to Bouvia's counsel in subsequent litigation therefor).

### C. Counsel Are Entitled to their Fees for Preparing this Motion

If this Court finds that plaintiffs are entitled to reimbursement for their counsel fees under C.C.P. § 1021.5, then the work performed by plaintiffs' counsel in prepar-

ing and pursuing this motion is also compensable. See, e.g., **Californians for Responsible Toxics Management v. Kizer**<sup>37</sup> (1989) 211 Cal.App.3d 961, 259 Cal.Rptr. 599; **Serrano v. Unruh** (1982) 32 Cal.3d 621, 186 Cal.Rptr. 754.

The policy rationale behind "fees for fees applications" was simply stated in the **Serrano** case, where the issue was whether fees for defending in the appellate court the prior fees award should be also be granted. There our Supreme Court granted additional fees for the appellate work necessary to defend the prior fee award and noted:

"it is established that fees, if recoverable at all — pursuant to either statute or parties' agreement — are available for all services at trial and on appeal."

**Serrano v. Unruh, supra**, 32 Cal.3d

at 637, 186 Cal.Rptr. at 764. That being the case,

"We hold therefore that, absent circumstances rendering the award unjust, fees recoverable under section 1021.5 ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim."

*Id.*, 32 Cal.3d at 639, 186 Cal.Rptr. at 766.

Thus, under C.C.P. § 1021.5, plaintiffs are entitled to include as a portion of their attorneys' fees award the fees attributable to the making and prosecution of this motion.

#### IV.

#### Plaintiffs Are Entitled to \$7,500.00 of their Attorneys' Fees Pursuant to Government Code § 800

Under Government Code § 800, regardless of the "public interest" nature of the litigation, attorneys' fees up to \$7,500.00 (measured at a maximum \$100.00 per hour), will be awarded to the prevailing party litigating against the Government when its actions requiring the litigation are found to have been "arbitrary and capricious," so long as the party-litigant is actually responsible for its fees. The award is essentially mandatory if the requisites are met, notwithstanding that § 800 is phrased as permissive rather than mandatory, see *Plumbing, Heating & Piping Employers Council v. Quillin* (1976) 64 Cal.App.3d 215, 134 Cal.Rptr. 332.

It has been noted that in this case this Court has specifically found that the conduct of the defendants which necessitated this litigation was "arbitrary and capricious." In the determination of Issue No. 2, this Court found:

"Defendants' refusal to permit the registration of deaths and the issuance of disposition permits for persons who have directed that Alcor [be] donee under the [U.A.G.A.] . . . is arbitrary and capricious and therefore invalid."

As set forth in the attached declaration of David B. Epstein, Alcor has paid the attorneys' fees for which reimbursement is sought in this motion<sup>38</sup> (and partial reimbursement in this portion of the motion as to \$7,500.00) and substantially more than 75 hours of work has been expended on this case, making the "maximum" awardable under § 800 the amount available in this matter. As a result, this

Court should undertake a hearing and either make new findings and conclusions and amend the prior findings and amend the judgment (*Mabee v. Nurseryland Garden Centers, Inc.* (1979) 88 Cal. App.3d 420, 429, 152 Cal.Rptr. 31, 37) or make findings and conclusions by considering this a "collateral matter" after judgment, *Associated Convalescent Enters. v. Carl Marks & Co.* (1973) 33 Cal.App.3d 116, 120, 108 Cal.Rptr. 782, 785. See also *California Attorney's Fee Award and Practice*, supra, § 7.4, p. 83 (CEB).

#### V.

#### Plaintiffs Are Entitled to Their Attorneys' Fees Pursuant to C.C.P. § 128.5

As this Court has been able to observe, the conduct of the defendants was, at best, arbitrary and capricious. But a more even handed characterization of defendants' position and their litigation conduct is that each was in bad faith. Under such circumstances, a bad faith defense, when coupled with bad faith conduct by counsel in asserting the defense, is sanctionable under C.C.P. § 128.5, and monetary sanctions in the amount of plaintiffs' actually-incurred attorneys' fees should be awarded against defendants and their counsel. (The fees should not include — and plaintiffs have not sought — the fees attributable to the claims against Sherman Oaks Community Hospital.)

A little over a year ago Division Three of the Second District of the Court of Appeal held that

"[C.C.P. §] 128.5 applies to the opposing of an entire action without proper justification, or to the interposing of a frivolous defense to an action."

*Southern Christian Leadership Council v. Al Malaikah Auditorium Co.* (1991) 230 Cal.App.3d 207, 226, 281 Cal.Rptr. 216, 228. In that case the SCLC sued for breach of contract, and included a bad faith denial of contract claim. The defendant's defense was found to be sham and plaintiffs prevailed on both the breach and bad faith denial claims. The trial court awarded plaintiffs their costs of prosecuting the suit under C.C.P. § 128.5 after finding "the defense in bad faith, frivolous, and intended solely to cause unnecessary delay." 230 Cal.App.3d at 226, 281 Cal.Rptr. at 228. The appellate court quoted a portion of the trial court's findings that at some point in the proceedings

"it should have become clear to any

reasonable attorney or other reasonable person that the defense of this action by the defendant was totally and completely without merit."

230 Cal.App.3d at 227, 281 Cal.Rptr. at 229. From that point forward the court awarded all of the plaintiffs' attorneys' fees.

In *Southern Christian Leadership Council v. Al Malaikah Auditorium Co.*, supra, there was an issue of fact on which defendant's counsel relied in defending the action, after learning that that fact was untrue and could not be proven. In this case the only contested matters were issues of law, which remained the same from the commencement of the action through the decision of the Court of Appeal. (Defendants' counsel herein has contended, in a letter to the Court of Appeal opposing publication, that this case does not "establish a new rule of law or criticize an existing rule . . ." <sup>39</sup> As such, the law not having changed, and having been clearly violated, the defendants' defense was admittedly frivolous.)

Beyond frivolity, however, was the fact that defendants' position kept changing as the factual bases for the initial decision they had made were being eviscerated. Thus defendants' position kept shifting, and cryonics went from being illegal and contrary to the public health, to nothing of the kind. Defendants' contentions that cryonics was not a "scientific use" of anatomical parts shifted to Alcor's lack of a license as a "procurement organization" when the "scientific use" claim was shown — indeed, admitted — to be false and pretextual. And all the while defendants were trying to justify a decision that was not based upon reason, experience or the interpretation of statutes or the faithful execution of the laws with which they were charged.

The bad faith conduct was not confined to the parties-defendant, however. It was compounded by their counsel before this Court in many ways, from misstating the facts, claiming that rulings which had occurred had not taken place, pursuing defenses that any reasonable attorney would see were nonsense as well as misstating the law.

As one example of this latter point the following is illustrative. Defendants asserted a "Catch-22" argument that Alcor was not a licensed "procurement organization," and thus cryonic disposition was not possible. When it was ascertained that the lack of license argument was the defendants' fault and actually just another pre-



## From the February, 1988 Cryonics

On January 13, 1988, Alcor won an unprecedented temporary restraining order against the Riverside County Coroner, barring him from autopsying Dora Kent or any of the other Alcor patients. On February 1st we returned to Riverside Superior Court asking for a

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE									
TITLE: SAUL KENT, ET AL VS RAYMOND L. CARRILLO, ET AL		DATE & DEPT. 2/1/88 10	NUMBER R 191277						
COUNSEL: Ashworth		Hinman Refkus	REPORTER: Masih						
PROCEEDING: RULING ON ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER									
THE COURT FINDS:									
<ol style="list-style-type: none"> <li>1. That the Coroner threatens to thaw the remains of decedents in cryonic suspension at the Alcor Foundation even though the Coroner has stated that he has no intention "at this time to thaw out or otherwise remove them from cryonic suspension" which act would be in violation of the rights of the decedents.</li> <li>2. That the Coroner threatens to thaw the remains of Dora Kent if and when such remains are found which act would be in violation of the rights of said decedent.</li> <li>3. That the thawing of the remains of the decedents at the Alcor Foundation and of Dora Kent, if and when found, would produce irreparable injury.</li> <li>4. No evidence that Dora Kent was alive when she was decapitated.</li> <li>5. That the Coroner has not nor does he threaten to destroy or alter any form of death certificate pertaining to Dora Kent, whether issued or not.</li> </ol>									
IT IS HEREBY ORDERED that Raymond L. Carrillo, the Coroner of Riverside County, his agents, employees, attorneys and all other persons under his direction or control or acting in concert with him, are restrained and enjoined from engaging in or committing any of the following acts:									
<ol style="list-style-type: none"> <li>1. Removing or causing any of the remains of human bodies presently located in or at the premises of Alcor Life Extension Foundation, 12327 Doherty Street, Riverside, California, to be removed from cryonic suspension until further order of this Court.</li> <li>2. In the event any further remains of Dora Kent are discovered and are in cryonic suspension, from removing or causing such remains to be removed from cryonic suspension until further order of this Court.</li> </ol>									
Let a Preliminary Injunction issue upon posting of a bond in the amount of \$2,500.00.									
Counsel for moving party shall serve and present to the Court a form of written preliminary injunction in accordance with this order and file the undertaking on or before 4:30 pm, on 2/5/88.									
<table border="1"> <tr> <td>1</td> <td>R/A</td> <td>CAL.</td> <td>/3</td> <td>ATTY(S).</td> <td></td> </tr> </table>		1	R/A	CAL.	/3	ATTY(S).		MICELI <i>gma</i> , Judge BOOTH(ss), Clerk	
1	R/A	CAL.	/3	ATTY(S).					
FORM NO. 171, 2/84									
MINUTES OF SUPERIOR COURT									

"Dora Kent didn't go through all this crap to have her brain end up in a blender" is an example of one of the blunt but effective Ashworth statements that ended up as bold print in one of the local papers. We owe Linda Abrams a debt of gratitude for recommending Mr. Ashworth early on in the emergency.

preliminary restraining order (PRO). To the amazement of almost everyone involved (especially the Coroner) we got the PRO! The order effectively bars the Coroner from autopsying any Alcor patients without the Coroner having to return to court and show cause as to why this would be necessary and in the interest of the state and the people of California. This ruling is a first and is a groundbreaking precedent upholding the rights of patients in cryonic suspension.

Alcor presented an extensive set of scientific and forensic declarations to support its pleading for restraint of the Coroner. These declarations upheld the scientific and technical validity of cryonics as a reasonable undertaking and were made by leading experts in a number of disciplines including cryo-biology, nanotechnology, molecular biology, robotics, and information theory. A declaration was also obtained from a top-flight forensic pathologist which supported Alcor's position that autopsy of Dora Kent's brain would yield no useful information that could not have been obtained from examination of the body.

Alcor was represented in Superior Court by Christopher Ashworth, a noted constitutional attorney. Ashworth's pleadings and his excellent preparation of our case were instrumental in our winning the PRO. But beyond technical excellence there is the matter of Mr. Ashworth's STYLE. Ashworth is witty, saucy, and in total command of the courtroom when he has the floor. And when he doesn't have the floor his presence looms even larger — he is the proverbial tough act to follow — with a vengeance. His grasp of complex technical issues is immediate and superb, and he speaks in phrases which demand quotation.

text, defendants tried to shift the focus to their "lack of authority" to establish a licensing mechanism for "procurement organizations." In this connection defendants' counsel tried to substantiate the defendants' parsimonious reading of their "authority" (which they otherwise had exercised in a plenary fashion when seeking to outlaw cryonics and criminally prosecute plaintiffs) by falsely claiming in her papers that "the only place where procurement organizations are mentioned is Section 7150.1, entitled Definitions," and a definition is not a clear enough expression or manifestation of authority. (See Defendants' Reply, filed on August 30, 1990, p. 4, lines 4-6.) However, six

other statutes mentioned "procurement organizations,"<sup>40</sup> thus giving defendants the "authority" they claimed they lacked to establish a licensing mechanism, and putting the lie to yet another of defendants' disingenuous arguments.

When the defendants got to the Court of Appeal they were undeterred. There they again decided to try to win by using yet another bad faith tactic. In their Reply Brief (where, presumably, they would have the last word before oral argument) they mentioned that Alcor could have avoided all of this if it had just agreed to pretend it was a cemetery or mausoleum. Fortunately someone was reading the briefs and the appellate court requested

additional briefing on the issue and then pointed out in its opinion that this position was a subterfuge and was inconsistent with the heart of defendants' position and their prior reliance on 63 Ops.Cal.Atty.Gen. 879 (1980).

The defendants' position was meritless from the start, and any reasonable attorney or other person should have known so. When the lack of merit was demonstrated to defendants they decided to make other pretextual arguments, some of which were even contrary to their own legal reasoning in first refusing to recognize cryonics. All for the sake of winning. But it did not work.

The Court of Appeal in **Southern**

**Christian Leadership Counsel v. Al Malaikah Auditorium Co., supra, observed**

"It is perhaps time that the courts, both trial and appellate, begin to speak and react more forcefully with respect to cases such as this one. Such an abuse of the legal system for not other purpose than to avoid [losing] simply can no longer be tolerated. It is not fair to the opposing litigant who is victimized by such tactics and it is not fair to the greatly overworked judicial system itself and those citizens with legitimate disputes waiting patiently to use it. In those cases where such an abuse is present, an award of substantial sanctions is proper."

230 Cal.App.3d at 228, 281 Cal.Rptr. at 230 (quoting other cases; citations and internal quotations omitted).

The Court of Appeal could have been writing about this case. Even the Attorney General and his deputies should be required to litigate in good faith and sanctions here will send them the message. This is especially true since of all counsel in our overcrowded state courts, the Attorney General and his deputies should be working to minimize and resolve disputes rather than trying to win at any cost.

**VI.**

**Conclusion**

Plaintiffs' should be awarded their attorneys' fees in the sum of \$93,721.25. The Court should find entitlement to the full amount sought under C.C.P. § 1021.5 or the common law *qui tam* doctrine, or both, and should further find the conduct of the defendants in the litigation as of sufficient bad faith as to warrant monetary sanctions in the amount of plaintiffs' attorneys' fees attributable to litigating this action with the defendants under C.C.P. § 128.5.<sup>41</sup> The Court should also find, as an alternative ground, that \$7,500.00 of the fees are separately justified under Government Code § 800.

Dated:  
Garfield, Tepper, Ashworth & Epstein  
A Professional Corporation

By: \_\_\_\_\_  
David B. Epstein  
Attorneys for Plaintiffs

**Footnotes:**

- 1 Less than all members of the public may seek to dispose of their remains in unconventional but otherwise lawful ways, but this decision protects the right of all to choose, just as litigation vindicating the "right to die" —which was found to be "public interest" litigation — may be selected by only a few. See Part III, B, below.
- 2 Mondragon declaration at paragraph 4a.-k. Carlos Mondragon, President of Alcor, submitted a declaration in support of plaintiffs' summary judgment motion.
- 3 Health & Safety Code § 10025.
- 4 These combined positions are responsible for the enforcement and execution of the provisions of Division 9, Vital Statistics, of Health & Safety Code § 10000 et seq. and have supervisory power over local registrars who work under the direction and supervision of the State Registrar. Health & Safety Code §§ 10026 & 10054.
- 5 Mitchell depo., p. 33, l. 21 through p. 34, l. 11.
- 6 Health & Safety Code § 10375.
- 7 Mitchell letter, June 28, 1988, Exhibit "E" to plaintiffs' summary judgment motion.
- 8 Because plaintiffs are seeking an award of attorneys' fees as monetary sanctions under C.C.P. § 128.5, the recitation of the litigation conduct of the defendants and their counsel is quite detailed and is highly pertinent to the decision which plaintiffs request this Court make.
- 9 As this Court will recall, during the pendency of this action John Roe had been hospitalized at Sherman Oaks Community Hospital, and was dying from the symptoms of AIDS. When it appeared that Hospital personnel would refuse to allow Alcor personnel to take possession of Roe's body after the pronouncement of his death so that he could be cryonically suspended consistent with the practice of current medical science, plaintiffs herein, including Roe, amended the complaint, added the Hospital as a defendant, and obtained a temporary restraining order against the Hospital prohibiting it from its threatened action. The terms of the TRO were eventually stipulated to by the parties as the basis for a preliminary injunction, and a preliminary injunction was issued by this Court which remained in effect until Roe expired and was pronounced dead. The private defendants complied with the terms of the preliminary injunction and they were then dismissed from this litigation, the claims against them having been rendered moot.

- The attorneys' fees sought in this motion are only for the legal work provided to the plaintiffs in connection with their claims against the State defendants, and no legal fees for work attributable to the conduct of the Hospital are included in this motion.
- 10 The term "scientific use" does not appear either in the U.A.G.A. or in the statute prescribing the permissible entries on the permit for disposition. Health & Safety Code § 10376. It derived from the Registrar's interpretation of the U.A.G.A. as necessarily engrafting an exception to the limitation on the types of dispositions permitted by statute to be entered on the permit form. Stipulation Re Agreed Statement of Facts, Fact. No. 2. The Registrar intended "scientific use" to refer to "advancement of medical or dental science," which is the actual language of the statute. Mitchell depo., p. 83, ll. 21-24.
  - 11 Mitchell depo., p. 33, l. 21 to p. 34, l. 4.
  - 12 Mitchell depo., p. 27, l. 25 to p. 28, l. 9.
  - 13 Mitchell depo., p. 41, ll. 20-23 and p. 42, ll. 16-26.
  - 14 Mitchell depo., p. 22, ll. 23-25.
  - 15 Mitchell depo., p. 37, l. 26 to p. 38, l. 3.
  - 16 Mitchell depo., p. 46, ll. 19-22.
  - 17 Mitchell depo., p. 56, ll. 18-23.
  - 18 Mitchell depo., p. 70, l. 22 to p. 71, l. 1.
  - 19 Mitchell depo., p. 71, ll. 16-24.
  - 20 Contrary to Mr. Mitchell's assumptions, based in part on his imagination, the fact is that cryonic suspension research and procedures conducted by Alcor contribute substantially to the advancement of medical science. Six of the declarations submitted in support of plaintiffs' motion for summary judgment attested to various aspects in which cryonic suspension procedures have contributed to the advancement of medical science.
  - 21 Mitchell depo., p. 80, ll. 8-18.
  - 22 Renken depo., p. 51, ll. 7-11.
  - 23 Renken depo., p. 46, ll. 6-10.
  - 24 Renken depo., p. 53, ll. 4-22.
  - 25 Defendants' responses to Plaintiffs First Set of Interrogatories, Interrogatory No. 1, filed as Exhibit "Z" to the motion for summary judgment.
  - 26 Defendants' responses to plaintiffs' First Set of Interrogatories, Nos. 5 and 7, Exhibit

- "Z" to the motion for summary judgment. As mentioned below, the defendants took a different position on appeal and suggested that Alcor could have avoided all of this litigation had it sought licensure as a mausoleum. See Part II, D, below.
- 27 Responses to plaintiffs' Second Set of Interrogatories, Interrogatory No. 18, Exhibit "AA" to plaintiffs' motion for summary judgment.
- 28 The focus then turned to that licensing requirement. Health & Safety Code § 7153(a) specifies the permissible donees under the U.A.G.A. Of the various categories specified, the only one which could apply to Alcor is a "procurement organization . . . for advancement of medical . . . science." The specification is contained in § 7153(a)(1) which specifies "a hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science." The definition of a procurement organization is contained in Section 7150.1(j) which provides:
- "'Procurement organization' means a person licensed, accredited, or approved under the laws of any state or by the State Department of Health Services for procurement, distribution or storage of human bodies or parts."
- The Director of the State Department of Health Services and the State Registrar are, by statute, the same person under Health & Safety Code § 10025, here, Dr. Kizer. Therefore, the only office that could license Alcor as a "procurement organization" under the U.A.G.A. was the same office which, acting through Mr. Mitchell, had directed the Riverside County Registrar to refer Alcor for criminal prosecution.
- 29 Stipulation Re Agreed Statements of Fact, Fact No. 3.
- 30 Stipulation Re Agreed Statements of Fact, Fact No. 4.
- 31 C.C.P. § 1021.5 is a "loosely based codification" of the private attorney-general concept, *Bruno v. Bell* (1979) 91 Cal.App.3d 776, 154 Cal.Rptr. 435, which was established in California in *Serrano v. Priest* (1977) 20 Cal.3d 25, 141 Cal.Rptr. 315. The standards under the two are slightly different, *Committee for Sewer Reform v. Humboldt Wastewater Authority* (1978) 77 Cal.App.3d 117, 125, 143 Cal.Rptr. 463, 468, and the equitable, non statutory ground survived the enactment of 1021.5. *Coalition for Economic Survival* (1981) 71 Cal.App.3d 954, 217 Cal.Rptr. 621. Under the test in *Serrano v. Priest* benefits from litigation which are "conceptual or doctrinal [in] character which are shared by [the people of] the state as a whole" are not compensable without more, 20 Cal.3d at 41, 141 Cal.Rptr. at 323, but vindication of public policy having constitutional dimension is, as may also be vindication rights having a statutory basis, 20 Cal.3d at 47, 141 Cal.Rptr. at 327. *But compare Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103, 240 Cal.Rptr. 569, 584 (significant benefit to general public "in clarifying the extent of the Governor's veto power and emphasizing the inviolability by the legislature of the one-subject rule.") See also *Christensen v. Superior Court of Orange County* (1987) 193 Cal.App.3d 139, 239 Cal.Rptr. 143 and *Folsom v. Butte County Ass'n of Governments* (1982) 32 Cal.3d 668, 684, 186 Cal.Rptr. 598, 601, in which vindication of public policy enunciated by statute was deemed sufficient to support award of attorneys' fees. To the extent this Court may find that plaintiffs' entitlement does not meet all of the statutory requirements of § 1021.5 —although plaintiffs believe all such requirements are met — it may rely on the equitable doctrine of *quid tam* to "fill the gaps."
- 32 "[I]n *Woodland Hills Residents Ass'n v. City Council* (1979) 23 C3d 917, 154 CR 503, the court reasoned that when an action is brought against governmental agencies, the necessity of private enforcement is clear. 23 C3d at 941, 154 CR at 516." CEB, *California Attorney's Fee Award and Practice* (1982), § 3.10, p. 34.
- 33 Threat of criminal prosecutions was not fanciful or theoretical. As noted elsewhere in this Memorandum, defendants sought to have Alcor's conduct subject to criminal prosecution and actually convinced local authorities to prosecute (unsuccessfully) in Riverside County.
- 34 "The earliest evidence of a funeral tradition has been traced to Western Asia's Neanderthal man, a member of our own classification, *Homo sapiens*. . . . Neanderthals began the practice of burying their dead with ritual funerals. They interred the deceased's body, along with food, hunting weapons, and fire charcoals, and strewed the corpse with an assortment of flowers. A Neanderthal grave discovered in Shanidar, Iraq, contained the pollen of eight different flowers. Even fifty thousand years ago, man associated fire with funerals. . . . [T]he Romans gave us the modern practice of candles at death services. Lighted candles around the body supposedly frightened away spirits eager to reanimate the corpse and take possession of it. . . . In Northern Europe, drastic measures served to prevent the dead from haunting the living . . . . While burial six feet underground was viewed as a good precaution, entombment first in a wooden coffin was even safer. Nailing down the lid afforded additional protection. . . . A large[] stone topped off the closed grave, giving birth to the practice of the *tombstone*. Later in history, of course, relatives affectionately inscribed a family member's tombstone and respectfully visited the gravesite." Panati, *Extraordinary Origins of Everyday Things* (Harper & Row 1987), pp. 35-37, "Death Traditions: 50,000 Years Ago, Western Asia."
- 35 As Mrs. Leaf testified in her declaration filed in April of this year seeking *ex parte* relief enforcing this Court's Judgment, her financial affairs remained unsettled for as long as the death certificate was not issued and she was unable to obtain clear title to the home she had held in joint tenancy with Mr. Leaf.
- 36 While the last section of the statute uses the word "interment", it is evident that that term was not intended as one of limitation on the types of dispositions. The term "interment" is defined at H. & S. Code § 7009 as "inurnment, entombment, or burial in a cemetery, or cremation or burial at sea. The first sentence of the section provides for the order of devolution of the right to control the "disposition" of remains, predicated upon the condition "unless other directions have been given by the decedent." From this, it would appear that the legislature utilized the terms "disposition" and "interment" interchangeably. It would make no sense to confer upon family members the right to control the "disposition" of the remains subject to other directions by the decedent and, at the same time, confer a more limited right upon the decedent himself. The only logical interpretation of § 7100 which would reconcile all of the provisions of that section is that the legislature intended to vest in each of us the right to determine the disposition of our bodies.
- 37 The same defendant, Kenneth W. Kizer, sued in the same capacity, in a different action involving toxic waste facilities.
- 38 The statute dictates that the attorneys' fees being awarded be a "reimbursement," by requiring that the party seeking it actually have paid for it. Since Alcor is a private organization and since plaintiffs' attorneys are in private practice this Court can take judicial notice of the inevitable fact that someone has to pay the attorneys' fees and, of course, Alcor has.
- 39 A copy of Y. Tammy Chung's letter dated July 6, 1992 is attached hereto as Exhibit "1." The letter notes that a copy was sent to this Court.
- 40 Health & Safety Code §§ 7151.5(a)(1), 7152.5(d), 7153(a)(1), 7153.5(b), 7154.4 and 7184(a).
- 41 This will require a "recit[ation] in detail [of] the conduct or circumstances justifying the [award]." C.C.P. § 128.5(c). Plaintiffs' counsel will be able to prepare a draft order if the Court so directs.

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## Business Meeting Report *by Ralph Whelan*

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The February, 1993 meeting of the Alcor Board of Directors began at 1:16 pm.

*Resolved: The January, 1993 meeting minutes are approved with the following change: a spelling correction to Gary Meade's name, which appeared with two "r's." (Unanimous)*

Accepted without resolution during the private portion of the meeting: the March meeting will be at the home of Bill Seidel. The June meeting will be in Wrightwood, CA.

*Resolved: Henceforth, Steve Bridge will be chairing all meetings. (7 in favor, 2 abstentions (Keith Henson and Steve Bridge))*

Derek Ryan reported that Alcor has 354 suspension members as of the meeting. This despite many special projects that have taken up almost all of his time. He added that an unusually high percentage of the callers during the past few weeks (primarily *Omni* callers) have been very interested in signing up, and that over the next several months (and specifically after a contest winner is announced) we'll likely see many of these people signing up.

Gary Meade offered the unsolicited comment that the staff — and especially Derek Ryan — have been extremely efficient and professional in helping him with his own sign-up.

Tanya Jones summarized her written (to Board Members) report that we are prepared to perform suspensions. She indicated that a true, in-depth report will probably have to wait until after our next suspension.

Ralph reported on general media, *Omni* updates, and magazine sales on newsstands. The *Omni* contest has generated less media attention and call-ins than was expected, but the quality of the callers has been extraordinarily high. About ten percent of the callers that received the new brochure have subscribed to *Cryonics*. Preliminary newsstand sales figures for *Cryonics* are encouraging, with a sell-through rate of about 55%.

Hugh reported that the new neuro-

patient Phase II cooling system (Mark II) is "working somewhat," and that improvements will be made soon, with Scott Herman's assistance.

Tanya reported on the February 3 suspension of an Alcor Suspension Member who committed suicide on February 1. This case was very unusual because the cause of death was suicide, and hence the contestability period of his insurance policies nullify the policies. Only a ten thousand dollar trust fund enabled the suspension (a straight-freeze) to occur at all (and the P.C.T.F. will not receive the usual safety factor, though its costs will be covered).

The staff is now dealing with knowledge gained during this suspension, specifically that next-of-kin approval is often required for cremation, despite all of our paperwork. We may implement a one-page document addressing this for all neuro-members, a document which (we hope) will satisfy authorities in this regard in the future.

This case also illustrated that we have no formal policies for dealing with suicidal members. Do we incur liability in discussing a situation such as this with a suicidal member at all? One suggestion was that a Suicide Prevention Center be contacted in such situations, and put in touch with the member. Michael Riskin indicated that such a Suicide Center would be likely to intervene in the personal freedom of the member (i.e., sequester the individual through force). This delicate issue will be taken up by the directors via email, and may be included on the March meeting agenda.

An artist in New York used one of Alcor's A-9000 "two person" dewars in an art exhibit, and made a down payment on the dewar at the time. Hugh reported that our remaining A-9000 is a little bit smaller than the one in New York, and causes him technical difficulties during cooldown. Since we may be able to recover the larger dewar by returning the down payment (less shipping), Hugh wants to pursue this. A New York member will be asked to examine the dewar for damage prior to any such arrangements.

The modifications to the facility required for compliance with our C.U.P.

should be completed by the Wednesday following the meeting.

Steve has a call in to Trip Hord (our representative for city business) about the possibility of reversing the "No Animal Research" condition that is now part of our C.U.P.

There has been no real progress on the *One Million A.D.* issue since the last report. Steve will contact Barret McInerney to move this along.

Dave Pizer reported that Mike Midlam, who gave a presentation on Charitable Remainder Trusts at the January meeting, recommended an attorney (Evan Stone) for helping with a formal trust document for the Patient Care Trust Fund. Dave and Steve Bridge will pursue a meeting with Mr. Stone.

Steve reported that David Epstein has submitted our fee filing in the "Health Department Case," which argues that Alcor's attorney fees of \$93,721 in "Roe v. Mitchell" should be paid by the State. [*See "Motion for Award of Attorneys' Fees," elsewhere in this issue. — Ed.*]

Allen Lopp reported that the formal audit of Alcor's books will begin on February 15.

Steve reported that the Facility Search Committee met last Sunday, and Judy Sharp has agreed to head the committee. Judy has a lot of background in commercial real estate, though she now deals primarily with residential real estate. Judy is working on a letter that she will be mailing to commercial real estate "vendors." She will report to Steve and the Board with a range of prices once that information becomes available. She is willing to travel to potential sites.

Steve reiterated comments that Carlos Mondragón has made in the past, to the effect that there is no formalized means for evaluating the president. Steve suggested that some other directors examine Carlos' and Courtney Smith's memos discussing this, and formalize their thoughts in such a way that a policy can be proposed. Keith offered to do this.

The plan adopted several meetings

ago had Carlos in charge of preparing an Alcor Business Plan by the end of January, 1993. Brenda contended that since Steve has only had this office for two weeks, it makes sense to set a new deadline for Steve. Steve suggested the May meeting would be an appropriate deadline. The following was agreed upon, without resolution: Steve will aim to present an outline at the March meeting, a first (rough) iteration at the April meeting, and a final version at the May meeting.

Hugh reported that our liquid nitrogen use is about twice the theoretical expectation. He believes that for \$1,000 or less in troubleshooting expenses, he may be able to improve this situation significantly.

*Resolved: The Board authorizes a P.C.T.F. expense of up to \$1,000 for evaluation of our liquid nitrogen losses problem. (8 in favor, 1 opposed)*

Steve reported that Alcor is now storing the tissue of a non-member's daughter's ovaries. This non-member made a donation to Alcor that is more than sufficient to cover the costs of storage, and he provided a contract with the most complete waiver of liability (for Alcor) that any of the persons involved had ever seen.

This particular situation illustrated the possibility that Alcor can generate revenue in tissue storage with comparatively minor overhead. Tanya Jones and Hugh Hixon are looking into the costs, expenses, and potential liabilities involved in such an undertaking.

On the advice of David Pizer, Michael Riskin, and Gary Meade, Steve has tentatively decided to put no money into the P.C.T.F. in connection with the donation provided by this tissue supplier. Despite strong opinions on the part of some directors that money should be put into the P.C.T.F. any time it incurs an expense (like it does in this case), this will not be done in this case unless such a consensus develops.

Saul Kent is organizing a Memorial Day Weekend cryonics conference, which he would like Alcor (as well as others) to co-sponsor. Since our financial situation is tight, Ralph made the suggestion that advertising space in *Cryonics* and literature and brochures for the convention itself could constitute Alcor's support. Dave Pizer agreed that this was reasonable and prudent, so long as no formal statement was made that Alcor is a sponsor of this conference. He feels this way because he

worries that Saul's private legal situation could take a turn for the worse and negatively impact Alcor later. Other directors argued, however, that our involvement with Saul is so overt and long-standing, we should not let fear of increased liability prevent us from co-sponsoring a cryonics conference.

*Resolved: Alcor will offer to be an official sponsor of this conference, contingent on financial support being in the form of advertising space in *Cryonics* and literature supplies for the conference.*

Steve raised the issue of research proposals coming from outside of Alcor, and how Alcor will react to such proposals. Will we support them, ignore them, advertise them in *Cryonics*, etc.? Courtney Smith made clear that Alcor cannot assist anyone in soliciting stock sales or the like, but a pure research proposal is always open for consideration. The consensus was that any research proposal will receive Alcor's endorsement (and money) — or not — on the basis of its own merits. Any research proposal can easily be approved by the Board prior to support in *Cryonics* or announcement at an Alcor meeting.

*Resolved: Alcor will not allow its resources to be used by any third party for soliciting investment funds. (6 in favor, 3 abstentions)*

Perry Willis, a direct-mail marketing expert, is interested in taking on a direct-mail fund-raising campaign to increase Alcor's revenue and membership. Perry's organization, The Renaissance Group, is accomplished in a form of fund-raising that he believes will work well for Alcor. There was a clear consensus that Ralph and Perry should proceed in drawing up a more concrete proposal, and attempt to engender financial support from members who have already offered to make donations for this sort of program.

Steve reported that we have a moderately serious cash flow problem. Essentially, we have approximately \$9,000 in bills due or near due, we have an impending \$16,000 audit expense, and Steve's Board-authorized use of approximately \$32,000 of Endowment Fund principal must be repaid to the Endowment by the end of March (by prior Board resolution). He requested input from the Board on ways of handling the problem.

Ralph proposed that the Endowment Fund, which has attracted practically zero in the way of donations and hence is a

dwindling resource because of inflation, be restructured to a baseline of \$300,000 instead of \$400,000, with notice given to the membership that even the \$300,000 will not be sacrosanct, and may later be applied to "hard investments" such as a membership recruitment drive or a new facility. The \$100,000 thus-"liberated" could serve as both an Operating Buffer for Steve and a short-term fix for the problems outlined above. Obviously, the underlying revenue-expenses mismatch would have to be addressed as well to fix the long-term problem.

There was almost no agreement on this issue at all. Ralph's proposal was voted on and defeated with 3 in favor, 6 opposed. The final consensus was that more timely accounting figures are necessary for the Board to better understand the present problem. Since Steve has enough "slack" to manage things until the March meeting, the problem was deferred with the expectation that better accounting figures will be available within two or three weeks.

Dave Pizer presented the opinion that our pricing structure on suspensions is totally inappropriate, with not enough money being charged for neurosuspensions, with too much of a safety factor for whole body patients, and with nothing allotted for recovery of operational overhead. Ralph echoed Dave in emphasizing the need for a logically determined safety factor, rather than the present arbitrary "times two" method (\$43,000 covers the long-term Patient Care expenses, so we put \$86,000 into the P.C.T.F. for each whole body suspension).

After much discussion, it was agreed that we need more information about inventory and re-stocking costs during suspensions (which currently are not well-quantified, though Tanya expects her inventory system to change this within two months), and other costing specifics. There was a motion to table until the March meeting which passed 7 in favor, 2 opposed.

The meeting was adjourned at 6:07 p.m.

# CRYONICS FORUM

This section of Cryonics magazine continues to be open to anyone who has opinions, suggestions, criticisms, or questions about cryonics. Alcor has a tradition of openness, and many of us feel that the magazine's honesty is an important factor encouraging people to sign up. Cryonics Forum affirms Alcor's continuing belief that an organization which encourages free speech is stronger than one which attempts to suppress it.

These pages will also serve as an outlet for cryonicists who are strongly opinionated and tend to feel frustrated if the organization seems unresponsive to their points of view.

## **Sources**

In this second issue of the Forum, all the material continues to come from Cryonet, a computer network that links many cryonics activists. However, Cryonics Forum is open to everyone, not just computer users. Please send in

your opinions using any medium—disk, typescript, or handwritten pages.

**Compiled by Charles Platt**

## **Omitted Text**

January 1993 showed mixed activity on Cryonet. There were many short postings, plus some extremely long ones which I did not feel able to include here. (The ratio of text on the net to text here is about 20:1, so that some sort of triage has to be exercised, in addition to the editing that I do—with permission of the authors—to shorten most of the items.) Anyone who feels that his or her text should not have been omitted is welcome to send it to me c/o Alcor, specifically for inclusion here. Because of space limitations, we ask that each statement should be no longer than 500 words. If your views simply cannot be expressed within that limit, please check first to see if there is room for extra wordage.

—Charles Platt

## **Talking About Neuropreservation . . .**

### **From Charles Platt:**

In my experience doing radio interviews, talk-show hosts and telephone callers are less willing to accept "going neuro" than any other cryonics concept. Severing a human head is a primal image, echoing back to primitive tribal practices and medieval punishments. I'm all in favor of neurosuspension myself (I signed up for it), and I don't believe in having secrets about cryonics. But shouldn't we avoid mentioning the subject of neurosuspension whenever possible? I deliberately did not mention it in my recent article in *Omni*, though I mentioned just about everything else. Nor did I mention it in a pamphlet which I wrote for Alcor, with help from Ralph Whelan, Steve Bridge, and Brian Wowk. It seems to me, the time to talk about neurosuspension is after a person has already accepted the basic premise of cryonics. Going neuro is merely an additional option, after all. No one has to do it.

### **From Garret Smyth:**

We can't hide the fact that neurosuspensions are done, so we must make a virtue from necessity. People are going to have to get used to the idea sooner or lat-

er, so let's get it over with sooner. We may have frightened new members in the U.K. because of neuros, but the relative cost advantages may have also gained some (me?).

A few months ago I was at a party, and inevitably the subject of cryonics came up. The girl I was talking to was unphased by the fact I had arranged to be frozen and just said "Oh really, whole body, or just your head?" so the message must be getting through somewhere.

### **From Micheal B. O'Neal:**

My first reaction to the neuro idea was quite negative. Even after I understood the technical arguments and became convinced that a technology capable of reviving anyone suspended with today's techniques would probably also be able to revive a neuro patient, I still did not feel comfortable with the idea. Over the years, however, I have warmed to the neuro idea. For example, while I plan to remain a "whole-body" member of Alcor, I think Alcor's "conversion to neuro" policy provides me with a good fallback position in case of crisis.

Acceptance of the neurosuspension argument is not a prerequisite for signing up. So, I believe it should be presented strictly as an option that some members elect, and as a reasonable fallback position

for others. Perhaps official spokespersons for Alcor should even be encouraged to sign up as "whole-body". That way they may appear more "acceptable" and "reasonable" to the general public.

### **From Steve Bridge:**

In the past ten years I have given at least 50 talks, plus many interviews on cryonics. Sometimes neurosuspension is discussed, sometimes not. I rarely bring it up myself because the sensationalism of the idea frequently overwhelms the basic concept of cryonics and leads to articles with headlines about "head-freezers" instead of about "people who love life."

When you do lectures, however, and the question comes up, it still must be answered. The most economical answer I have come up with over the years is this:

- Most people will accept that our memory and personality is in our brain.
- Point out that cryonic suspension is a difficult business with difficult surgery. Under the circumstances, most people feel that the most attention should be placed on procedures which mean the most protection for the brain. Some people feel that neurosuspension provides that protection.
- The real reason people wonder about neurosuspension is that they think we plan to revive people as brains on a table or as heads on a stick ("Please take

Uncle Herman's Head for a walk now, dear.") Point out that we think it will be possible to "simply" (what a word) grow the person a new body from his own cells.

● I also point out that children under the age of about nine can regrow the tip of a finger if it is cut off (I've even seen one example). It does not take too much imagination to think that within twenty years we might be able to regrow an entire missing finger. If we can regrow a finger, we can regrow an arm. If we can regrow an arm, it is only slightly more complicated to grow a body.

### **From Brian Wowk:**

I believe disembodied brains are less disturbing than disembodied heads. I always describe neurosuspension as "suspension of the brain," and only mention that the brain is kept within the head as a "protective container" if asked about details. I do not believe this is at all deceptive. On the contrary, it is very accurate since the brain, after all, is what we are *really* after in a neurosuspension. Retention of the surrounding tissues is more of a surgical detail than anything else.

Manipulating brains within and between bodies is perceived as a much more benign activity than doing the same with heads. As evidence, I cite the fact that a few years ago a TV movie was made that depicted the successful brain transplant of an accident victim in a very favorable light. By contrast, head transplants are the stuff of B grade horror flicks.

## **... and Immortality**

### **From Thomas Donaldson:**

I think we should be frank about neurosuspension and also frank and open about immortality—including with the Dreaded Media. Why? Because fundamentally we *do* engage in neuropreservation and we *are* seeking immortality.

The issue of neuropreservation involves an attempt to paper over a real difference. If many people are alienated from cryonics because of the fact that we cut off people's heads, then we can hardly deal with that problem by trying to ignore it. And if someone asks us about it, we can hardly refuse to answer: how are they going to react to such a refusal? Decide that we're believable and trustworthy? Nope. We've simply got to state it, even before they ask, and then come straight out and explain why and how we do neuropreservation. After all, in rational terms, it's a *lot* cheaper (the good side of it). It's also actu-



ally *safer* (given the expense of storing a whole body).

### **From Michael Clive Price:**

I am writing to second Thomas Donaldson on the need for honesty and up-frontness about the use of the I- and N- words in public discussions. Yes we are in the business of immortality. And yes we freeze peoples' heads.

People come in two types: stupid and sensible.

Stupid people gag at crazies like us thinking we can live for ever. As for chopping off heads...!!! They are never go to sign up, so let's ignore them when thinking about marketing. They're history.

Sensible people may or may not find the ideas of immortality and neurosuspension repulsive etc for the partially instinctive reasons that Steve Harris so cogently explained. If they are happy and comfortable with the concepts then it won't do any harm for us to tackle these subjects in public.

The problem area remains with sensible people (potential cryonauts!) who are unhappy with immortality/neurosuspension. Are they going to be reassured by the sight of cryonauts squirming about on public platforms trying to deny that we chop of heads and we want to live forever? No they are not. Think how we feel when we see on TV or hear on radio a politician squirming about denying some obvious truth. Does it inspire us with confidence? No it does not! Joe Sixpack might swallow all their crap, but then he's never going to sign for suspension anyway.

### **From Ralph Merkle:**

The rather curious concept that "rational" people will, of course, see the "truth" and "irrational" people are either impossible to deal with or simply not worth it is one of the more pernicious misconceptions floating around in the cryonics community (and in the world at large).

I think we should all take to heart the idea that the way an idea is presented strongly influences its acceptance. The words that are used, the order in which the ideas are presented, the context; all are crucial.

### **From Charles Platt:**

The difference between "I want to live as long as possible" and "I want to be immortal" should be extremely obvious, at least in terms of human psychology. The first statement can already be made by most people in the world today, and therefore sounds

reassuringly normal. The second statement is tantamount to saying, "I want to be god-like." This sounds abnormal, and very few people can identify with it. (I am assuming, of course, we are talking about immortality here in the known universe rather than in "heaven.")

Cryonics is a challenging concept to the 499,999 people out of 500,000 who are not already signed up. Why make it even more challenging by insisting on using a loaded word, instead of a phrase that people can easily accept?

### **From Derek Ryan:**

It is true that, when presenting cryonics, lies which are easily disproven ("Neurosuspension? No! We don't do that!" "Immortality? No! We don't want that!") are a very bad idea. Telling the truth is the best course if for no other reason than that we'll look like criminals if we're caught lying.

*But* there are many ways to say anything.

It seems obvious that to be most persuasive we must consider the preconceptions and biases of our audience. With this in mind, we would give a slightly different presentation to a libertarian convention than we would to a science fiction convention. In cases where useful generalizations cannot be made about our audience, such as when being interviewed for a news show, we should probably tailor our comments not to Joe Sixpack (who has no interest in such matters anyway), neither to Joe Scientist (who has probably already formed strong opinions on matters such as this, and who probably doesn't look for new ideas about science on television news shows), but rather to Joe Slightly-Above-Average (who probably finds cryonics to be interesting, and who might be convinced that this is a good idea if we are careful not to overwhelm him with the more complex issues first.)

## **Hassle-Free Insurance**

### **From Thomas Donaldson:**

As many cryonicists know, I have a history of a brain tumor. Among the effects of this history is that life insurance becomes almost impossible to get.

However, I have come across a company which does NOT require a physical and sets few health conditions for acceptance. Instead, its policies will only pay off in full after they have been in force for 3 years (fractional benefits apply beforehand). The company is MIDLAND NATIONAL LIFE, of Sioux Falls, SD 57193-0001. The policies are not particularly economical unless, of course, you cannot get life insurance by any other legal means. And no, I have not carried out a full personal investigation of their books, you will have to do that if you decide to buy.

## Laws to Defeat Autopsy

*From David Lubkin:*

It seems to me that the best way to block autopsies is through the religious freedom angle. Some states (including New Jersey?) in fact already have a (partial) religious block on autopsy available. Unfortunately, this right is neither absolute nor universal.

I don't think enough people care about the issue for us to move for legislation head-on, but with one of the general religious freedom acts, now pending, we may get what we want as a consequence of the act when it gets interpreted in the courts.

It also might fall out that any interference with a suspension by legal or medical authorities will become an actionable violation of civil rights.

So we should lend our support to the effort, and maybe make some friends in the religious world. Instead of allying ourselves with the suicide rights people (who, like us, want to control their own bodies, but are deathist), perhaps we should look to their opponents. Convince people who think suicide is a sin that anything but cryonics IS suicide. (Anyone want to buy Pope John Paul a gift subscription to *Cryonics?*)

## The "Religion" of Nanotech

*From Thomas Donaldson:*

I make a distinction between nanotechnology and Nanotechnology because I've come to notice some people, consciously or not, talking of nanotechnology in a way that strongly resembles the way a devout Christian might talk about the Mil-



lenium. One of the key phrases to watch for is "When Nanotechnology comes . . ." but there are others. The arrival of Nanotechnology, as seen by these people, will be sudden (like the Christian millenium) and instantly transform us all, presumably into much better versions of ourselves.

One of the more pernicious effects of this *religious* attitude is that it seems to go with a belief that all the problems involved in suspending and reviving people will be trivially solved "when Nanotechnology comes." It is a magic wand which will make all our problems disappear. Even the notion of providing us with new and more perfect bodies, when they come with Nanotechnology, resembles the Christian notion. And along with it, just as with the Millenium and the fate of Believers who will become angels in Heaven, is a lack of analysis of just exactly what these Angels will *do* once they have ascended from this vale of tears. Will we all sit around with our music synthesizers and sing the praises of Nanotechnology?

The road to immortality goes not by faith but by our own study, actions, and donations. And like all human achievements, it cannot be guaranteed.

## Cryopreservation of the Cat

*Preamble:*

The previous Cryonics Forum included a very brief summary of a paper by Mike Darwin describing damage that was observed to the brains of cats that had been frozen and thawed. Ralph Merkle's response, below, has been edited to fit available space.

*From Ralph Merkle:*

We are faced with a fundamental dilemma in trying to determine with today's technology whether future technologies will decide that information theoretic death has (or has not) taken place. In the future, we will have complete information about every molecule in the frozen structure. In the present study, we have information provided by light and transmission electron microscopy. Further, the information is about the structure after it has been

thawed, fixed, and sectioned.

## Image Resolution

Even under the best of conditions, the information available using transmission electron microscopy is grossly poorer than the information that will be available in the future. We learn only the

electron density of the imaged section. If the section is 1 micron thick (plausible, although the actual section thickness used in the study was not specified) then resolution of detail much smaller than 0.1 microns (0.1 of the section thickness) is difficult. We will assume, however, that a resolution of one hundredth of the section thickness, 0.01 microns or 10 nanometers, was in fact achieved. Under these conditions a single pixel of our EM photograph will be available for every rectangular block that is one micron (or 1,000 nanometers) long by 10 nanometers by 10 nanometers. Assuming we are getting 10 bit grey scale data (again optimistic), this means we have 10 bits of information for a volume of 100,000 cubic nanometers. There are (very roughly) 100 atoms per cubic nanometer, so we have 10 bits for 10,000,000 atoms, or 1 bit for 1,000,000 atoms. While we might reasonably debate the number of bits of information that future systems will generate, it is reasonable to suppose that they will give us at least 1 bit per atom of raw information (again conservative), in the same way that EM photography gives us 10 bits per pixel of raw data. We thus have at least a factor of 1,000,000 less information about the frozen structure when we are looking at an EM photograph than will be available in the future. To put this a bit more graphically, if you are looking at a computer screen with 1,000 x 1,000 resolution (perhaps a 21" monitor) then our factor of 1,000,000 less information is the same as taking a complex scene portrayed on this 21" screen and crushing it into a single dot with an equivalent "screen size" of a 50th of an inch. The ability to discern biologically significant structure despite such rudimentary imaging methods is quite remarkable and speaks volumes about the great redundancy in such structures.

## Glycerol Concentration

It should also be remembered that the 3 molar glycerol used is less than the "Smith's Criterion," and is substantially less than the 5 to 6 molar glycerol used in today's suspensions.

## Fracturing

It is clear that freezing to liquid nitrogen temperatures introduces macroscopic



fractures as the temperature is reduced below the glass transition temperature (at about 130 Kelvins) to the 77 Kelvins of liquid nitrogen. The paper also suggests that smaller fractures exist. Fractures created at or below the glass transition temperature result in little or no loss of significant structural information. From an information theoretic point of view, provided that the tissue remains frozen both prior to and during analysis, the presence of fractures is not a major concern and is unlikely to cause information theoretic death. Upon rewarming, however, such fractures will clearly contribute to artifacts and result in loss of cellular contents and structure.

### Compression

In the non-ischemic group, dehydration increased the difficulty of identifying structures. As discussed previously, future methods should have no difficulty in identifying structures that are obscure today. Irregularly shaped cavities were present, presumably formed during freezing by the growth of blocks of ice. The slow growth of ice during freezing is likely to cause compression of tissue. Compression is of little concern from an information theoretic point of view. More significant damage (e.g., tears, rips, or microfractures) were also present. Given the evidence in other systems that substantial ice formation is compatible with functional recovery, it is likely that either (a) the observed damage is compatible with functional recovery, or (b) it occurred after most of the water had frozen (and presumably after most of the damage caused by freezing had occurred). In either case, information theoretic loss should not be great.

### Turbulence

The increasingly dehydrated and confined regions between the blocks of ice formed during freezing should make movement of any structure of significant size quite difficult. While there might be some concern that the currents created during freezing will result in turbulent flow, this appears quite unlikely. The approximate criterion for the onset of turbulence in a liquid volume with characteristic size  $r$  is that the Reynolds number  $2rdv/n$  exceed about 2000, where  $d$  is the density of the liquid,  $v$  the velocity of the flow, and  $n$  the viscosity. The characteristic dimensions in a cell are about a micron, the density is roughly a gram per cubic centimeter, the velocity is probably much less than a meter per second (and probably much less than a micron per second), and the viscosity of water at room temperature



is about 0.01 poise (viscosity increases both with decreasing temperature and with an increasing concentration of glycerol, so 0.01 is conservative). This produces a Reynolds number of roughly  $10^{-6} \times 1 \times 1 / .01$  or  $10^{-4}$ . This is much smaller than 2000, and indeed offers a "safety margin" of roughly seven orders of magnitude before turbulent flow could occur.

We can safely conclude that any flows that occur will be laminar.

### Debris

The presence of unidentified "organized debris" in the spaces presumably created by ice during the freezing process might have occurred either during freezing or thawing. The hypothesis that the debris was moved to the space during freezing is complicated by the observation that the space was, at that time, occupied by ice. After thawing, the volume occupied by ice would become a small pool of water. Anything which broke free from the wall or lining of such a pool would then drift freely in the pool, thus creating debris. An attractive and simple hypothesis for the formation of the debris during thawing is available, while hypotheses for the formation of debris during freezing face significant difficulties.

### Nerve Damage

The damage to the axons of myelinated nerve cells, secondary to a failure of the cryoprotectant to penetrate the myelination (many layers of cell membranes wrapped tightly around the axon) is very plausible. The function of a myelinated axon, however, is to carry information (much like a wire). Complete obliteration of the axon, analogous to damage to a wire, will result in little or no information loss if the myelin sheath (somewhat like the insulation around a wire) is still present. Myelinated axons are relatively large, so even substantial damage to the axon would not obscure or obliterate the pathway.

### Summary

The available evidence, though clearly incomplete, tends to support the idea that information theoretic survival is likely even when today's rather primitive suspension methods are used. This should not be tak-

en as a reason for discontinuing or ignoring research in this area. Even a moderate risk of dying is unacceptable and should be reduced.

A more pressing motivation for research has little if anything to do with information theoretic survival per se. The most serious

risks to survival stem from the more or less complete failure of the medical community to either understand or support cryonics. This failure leads directly to preventable delays in initiating suspensions, inadequate support for suspensions if they are tolerated, etc. The single most effective method of decreasing the risk of death would be to gain even a moderate level of acceptance from the mainstream medical community. To gain such acceptance will require a body of research which supports the idea that suspension protocols do in fact provide a good chance of survival. For various reasons it seems likely that such research will have to provide almost conclusive evidence that cryonics is likely to work, despite the obvious disadvantages of requiring "proof" that cryonics works before using it. The idea that freezing a person is a "risky" course of action while cremation and burial alive are "conservative" is quite absurd, but also deeply entrenched.

Thus, along with information theoretic survival, the second main objective of research is the fuzzier one of gaining general acceptance by the medical community. Therefore, besides understanding current suspension protocols and improving future protocols measured against the criterion of information theoretic survival, we must also understand and improve suspension protocols measured against the (somewhat fuzzy) criterion used by the mainstream medical community.

While it is more difficult to specify exactly what will be needed to satisfy this second criterion, the two obvious objectives are (1) demonstrate reversible cryopreservation of a mammalian brain, e.g., freeze and thaw the brain of an animal and show functional recovery for at least a short period of time following thawing; or (2) demonstrate that suspension techniques, while they do not preserve function, provide good preservation of the structures that are crucial to the correct functioning of the human brain and memory, e.g., get pictures (either from light or electron microscopy) that show good preservation of structure and ultrastructure.

There is much work to be done to develop this body of research, and all efforts in this direction should be encouraged.

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## Meeting Schedules

Alcor business meetings are usually held on the first Sunday of the month (July, Aug., & Sept.: 2nd Sunday). Guests are welcome. Unless otherwise noted, meetings start at 1 PM. For meeting directions, or if you get lost, call Alcor at (714) 736-1703 and page the technician on call.

The **SUN, MARCH 7** meeting will be at the home of:  
Bill and Maggie Seidel  
10627 Youngworth Rd., Culver City, CA

**Directions:** Take the San Diego (405) Freeway to Culver City. Get off at the Jefferson Blvd. offramp, heading east (toward Culver City). Go straight across the intersection of Jefferson Blvd. and Sepulveda Blvd. onto Playa St. Go up Playa to Overland. Go left on Overland up to Flaxton St. Go right on Flaxton, which will cross Drakewood and turn into Youngworth Rd. 10627 is on the right (downhill) side of the street.

**ALCOR NORTHERN CALIFORNIA MEETINGS:** Potluck suppers to meet and socialize are held the second Sunday of the month beginning at 6:00 PM. All members and guests are welcome to attend.

For those interested, there is a business meeting before the potluck at 4:00.

Once every three months there will be a party or gathering at a local eatery and no business meeting. The next dinner out will be in March. See details below. If you would like to organize a party, or have a suggestion about a place to eat contact the chapter secretary, Lola McCrary, 408-238-1318.

We are also hoping to have speakers on various topics in the near future.

**MARCH 14, 1993:** We will meet at Fresh Choice restaurant, on El Camino near Bernardo in Sunnyvale at 4:30 for dinner. Fresh Choice is a reasonable priced all-you-can-eat salad bar that includes soup, bread, dessert and pasta as well, all for the same price. They welcome children. **THERE WILL BE NO BUSINESS MEETING.**

**APRIL, 1993:** Tentatively, at the home of Carol Shaw and Ralph Merkle, with Introduction to Cryonics following the meeting, and potluck at 7:00pm. There may be a conflict with Easter activities, which has not been resolved.

Alcor's Southern California chapter meets every other month. If you are not on our mailing list, please call Chapter president Billy Seidel at 310-836-1231.

The *Alcor New York Group* meets on the third Sunday of each month at 2:00 PM. Ordinarily, the meeting is at 72nd Street Studios. The address is 131 West 72nd Street (New York), between Columbus and Broadway. Ask for the Alcor group. Subway stop: 72nd Street, on the 1, 2, or 3 trains. If you're in CT, NJ, or NY, call Gerard Arthus for details at (516) 689-6160, or Curtis Henderson, at (516) 589-4256.

Meeting dates: **Mar. 21, April 18, May 16, June 20.**

New York's members are working aggressively to build a solid emergency response capability. We have full state-of-the-art rescue equipment, and four Alcor Certified Techs and four State Certified EMTs.

The Alcor New York Stabilization Training Sessions are on the second and fourth Sundays of every month, at 2:30 PM, at the home of Gerry Arthus. The address is: 335 Horse Block Rd., Farmingville, L.I. For details call Curtis or Gerry at the above number.

Alcor Indiana has a newsletter and a full local rescue kit, and two of the members have taken the Alcor Transport course. If you are interested and in Indiana, Illinois, Kentucky, Ohio, or Michigan, the Indiana group meets in Indianapolis on the second Sunday of each month, at 2:00 PM. Call Richard Shock at (317) 872-3066 (days) or (317) 769-4252 (eves) for further information.

There is a cryonics discussion group in the **Boston area** meeting on the second Sunday each month at 3:00 PM. Further information may be obtained by contacting Walter Vannini at (603) 595-8418 (home) or (617) 647-2291 (work). E-mail at 71043.3514@Compuserve.com.

Alcor Nevada is in the Las Vegas area. Their meetings are on the second Sunday of each month at 1:00 PM in the Riverside Casino in Laughlin, Nevada. Free rooms are available at the Riverside Casino on Sunday night to people who call at least one week in advance. **Directions:** Take 95 south from Las Vegas, through Henderson, where it forks between 95 and 93. Bear right at the fork and stay on 95 past Searchlight until you reach the intersection with 163, a little before the border with California. Go left on 163 and stay on it until you see signs for Laughlin. You can't miss the Riverside Casino. For more information, call Eric Klien at (702) 255-1355.

There is an Alcor chapter in **England**, with a full suspension and laboratory facility south of London. Its members are working aggressively to build a solid emergency response, transport, and suspension capability. Meetings are held on the first Sunday of the month at the Alcor UK facility, and may include classes and tours. The meeting commences at 11:00 A.M., and ends late afternoon.

Meeting dates: **Mar. 7, April 4, May 2, June 6, July 4.**

The address of the facility is:  
Alcor UK, 18 Potts Marsh Estate, Westham, East Sussex  
Telephone: 0323-460257

**Directions:** From Victoria Station, catch a train for Pevensey West Ham railway station. When you arrive at Pevensey West Ham turn left as you leave the station and the road crosses the railway track. Carry on down the road for a couple of hundred yards and Alcor UK is on the trading estate on your right. Victoria Station has a regular train shuttle connection with Gatwick airport and can be reached from Heathrow airport via the amazing London Underground tube or subway system.

People coming for AUK meetings must phone ahead — or else you're on your own, the meeting may have been cancelled, moved, etc etc. For this information, call Alan Sinclair at 0323 488150. For those living in or around metropolitan London, you can contact Garret Smyth at 081- 789-1045, or Russell Whitaker at 071- 702-0234.

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