

Lifeline

*A Legal Network
in Support of Life*

A P U B L I C A T I O N O F T H E L I F E L E G A L D E F E N S E F O U N D A T I O N

I N T H I S I S S U E

Colette Wilson



NOW v. Scheidler

When *NOW v. Scheidler* was originally filed back in 1986, most people now reading this article were probably uninvolved in or even oblivious to the great struggle to outlaw abortion and restore to children in the womb the right merely to go on living. The National Organization for Women hoped, through this lawsuit, to keep it that way, for at the heart of *NOW v. Scheidler* was a plan to crush the pro-life movement at the organizational level, preventing it from ever gathering momentum. This past February 26, the Supreme Court handed our side a significant victory. Gone now is one of the more pernicious weapons in the pro-abortion side's arsenal: the availability of RICO to penalize pro-life leaders for any and all criminal acts of their real or imagined "followers."

Initially filing this as an antitrust case in Delaware, Morris Dees, of the Southern Poverty Law Center in Montgomery, Alabama, represented plaintiffs based on prior success against the KKK's attempts in Texas to drive Vietnamese fishermen out of business. The complaint was styled as a dual-class action (1) by Delaware Women's Health Organization and the Ladies Center of Pensacola, on behalf of all similarly situated clinics, and (2) by NOW, on behalf of its members and all other women who use or may use abortion clinics. Sued were Joseph Scheidler and his Pro-Life Action League, John Ryan, the Pro-Life Direct Action League, and Joan Andrews. Scheidler had authored *Closed: 99 Ways to Stop Abortion*, which promotes nonviolent, direct action tactics. Andrews had been arrested for going inside both the Delaware and the Pensacola clinics, opening sterile supplies and, in Pensacola, disabling the suction machine. Later that year, the parties agreed to move the case to Chicago, dropping Andrews as a defendant in

In a novel twist, the revised complaint made a claim under the federal Racketeer-Influenced and Corrupt Organizations Act (RICO), charging "theft and interstate transportation of fetuses" and Hobbs Act "extortion" of women, physicians, clinics and others by threats or actual acts of physical violence.

the process. Chicago attorney Thomas Brejcha was brought in to assist Americans United for Life with the defense, due to his antitrust background.

In 1988, soon after taking Joe Scheidler's deposition, the Southern Poverty Law Center pulled out of the case. Already representing plaintiffs as their local counsel, Fay Clayton was joined

(NOW CONT. ON PAGE 10)

- 2 Terri Palmquist:
Still Sidewalk Counseling
- 3 Injunction Junction:
What's Your Function?
- 4 From the Editor:
More than the courtroom
- 8 Getting Past
Hatch-Feinstein

GENERAL RECAP & UPDATE

Schiavo v. Schindler (Florida)—Michael Schiavo seeks court permission to kill 37-year-old wife, Terri, by withdrawing food. Terri's parents oppose the motion; several doctors have expressed the opinion that her condition could improve with appropriate treatment, which Michael has refused to allow. Trial court ordered withdrawal of food and fluids without any independent examination of Terri's condition. Court of appeal reversed the decision and remanded with instructions that Terri be examined by other physicians. Trial court issued decision to remove food and water for the second time, but stayed enforcement of the order pending appellate review. After a seven-day trial in October, the court once again issued a decision to remove Terri's food and water, but stayed enforcement of the order pending appellate review. The court of appeal heard oral argument on April 4. Decision pending. For updates, see www.terrisfight.org.

(RECAP CONT. ON PAGE 2)

(RECAP CONT. FROM PAGE 1)

Foti v. Planned Parenthood/Planned Parenthood v. Foti (San Mateo)—This action and cross-action between sidewalk counselors and PP and its escorts is now stayed, pending the outcome of a new lawsuit filed by PP in which it seeks a declaration from the court that a speech-free zone injunction it obtained eight years ago against Operation Rescue of California actually applies against these sidewalk counselors *and* anyone else PP serves it on. On March 4, the court granted PP's motion for summary judgment, holding that Foti and two co-defendants "act in concert" with ORC, although they have no contact with ORC. However, Planned Parenthood's motion for more than \$360,000 in attorney fees was denied. The Court of Appeal heard oral argument on January 16, at which time PP argued explicitly for a new and different application of the law in the case of abortion clinic protests, restricting the speech of all pro-lifers, whether they have been sued or not. **Victory!** The Court reversed the summary judgment and ruled that injunctions may not bind "all persons with notice." See page 3.

NOW v. Scheidler—On December 4, the U.S. Supreme Court heard oral arguments in the pro-life activists' appeal from a decision granting substantial damages and a purported nationwide injunction. LLDF filed amicus briefs in both the Seventh Circuit and the U.S. Supreme Court, as well as assisting the defendants with post-trial motions in the trial court. **Victory!** The Supreme Court ruled 8-1 that the pro-lifers' protest activities did not constitute extortion and thus could not be the basis for liability under RICO. See page 1.

Reeves v. Rocklin United School District—Pro-lifers leafleting and holding signs were detained after high school administrators involved the local police; during a second visit to the same school, pro-lifers were forced to move off the campus after being refused visitor registration. They were also told that the public street adjacent to the school was off-limits. Despite clear California case and statutory authority allowing free speech on and near public school campuses, the trial court ruled that the administrators could permissibly exclude the pro-lifers in order to prevent "disruption" of school activities. The plaintiffs appealed, and oral argument is set for May 27.

(RECAP CONT. ON PAGE 3)

TERRI PALMQUIST:

Anne Starr

Still Sidewalk Counseling

In spite of legal threats and an FBI investigation, a California mother who spends two days a week as a pro-life sidewalk counselor continues to work with relative peace of mind, thanks to support from Life Legal Defense Foundation.

Terri Palmquist and her husband Tim provide encouragement and practical support to women in crisis pregnancies in the Bakersfield area. Terri, who does the public work of sidewalk counseling, has faced several layers of legal trouble—from arrest to injunction to FBI investigation—during the couple's nearly 17 years in pro-life work. They have received help from Life Legal Defense Foundation in recent years, thanks to the efforts of volunteer attorney Brian Chavez-Ochoa and the support of LLDF donors.

Throughout their ministry, Tim and Terri have focused on maintaining a constant presence of sidewalk counselors outside Bakersfield's abortion chamber on abortion days, hoping to encourage mothers to choose life for their unborn children.

Their Christian faith inspired them to start a pro-life organization, LifeSavers, and a shelter for expectant mothers, LifeHouse.

They offer a woman in crisis a place to stay, maternity clothes, baby clothes and supplies, and emotional support at a difficult time. The couple's work is done "in Christ's service for those who cannot speak for themselves."

The Palmquists are leaders in their pro-life Christian community. In 1991, Tim and Terri organized Bakersfield's "Turn the Hearts" crusade, with about 20 churches encouraging members to pray outside the abortion chamber. They also have been instrumental in bringing several national pro-life leaders to Bakersfield, including Norma McCorvey, the "Jane Roe" of *Roe v. Wade*. (McCorvey's book, *Won By Love* about her change to a pro-life stance, mentions Tim.)

Every Monday and Tuesday, Terri drives an hour from her home and stands across the street from the abortion chamber in Bakersfield. She calls out to women on their way in to appointments, offering free help and

Throughout their ministry, Tim and Terri have focused on maintaining a constant presence of sidewalk counselors outside Bakersfield's abortion chamber on abortion days, hoping to encourage mothers to choose life for their unborn children.

another choice. She figures that about 75 abortions are done each week at the Bakersfield abortuary. Each week, one or two women who intended to procure an abortion change their minds when they hear the LifeSavers message. One saved child is enough to keep Terri on the sidewalk while Tim cares for the couple's children. Tim says that Terri's gift for sidewalk counseling and his love of fatherhood make for good pro-life teamwork.

Terri can speak to expectant women from her heart because she is a mother, too. Counseling while pregnant makes her more sensitive to other expectant women. She can say, "I know what you're going through," and mean it. The mother of nine with a tenth child on the way, she figures "maybe part of the reason the Lord has given us so many children is that it makes me relate to the mothers more." She knows what it is to be pregnant when money is tight. She knows what it is to be pregnant at an inconvenient time, such as when she was under arrest during her Operation Rescue days. She has had enough experience to "keep me humble. I never want to be so over-confident as to say that I wouldn't ever want an abortion." She feels that "Satan would love" to prey upon such proud thinking.

(PALMQUIST CONT. ON PAGE 6)

INJUNCTION JUNCTION:

Katie Short



WHAT'S YOUR FUNCTION?

It's true what they say: victory IS sweet.

On March 3, almost a year to the day after a lower court had ruled that pro-life sidewalk counselors Ross Foti and Jeannette and Louie Garibaldi were bound by an injunction entered against Operation Rescue of California several years earlier, the California court of appeals reversed the judgment against them. Although the case returns to the trial court for further proceedings, the court's decision marks the end of the line for one of Planned Parenthood's and their attorneys' most cherished ambitions: to establish as a matter of law that an injunction entered against any pro-lifer could be used against all pro-lifers. In no uncertain terms, the court rejected all of Planned Parenthood's arguments that an injunction barring some pro-life protesters from the public sidewalk in front of its San Mateo clinic could apply to "all [pro-life] persons with actual notice."

You may be asking yourself, "Wasn't this point made several years ago, in *People v. Conrad* (1997) 55 Cal.App.4th 896? Didn't that decision hold that injunctions only bind the enjoined parties and those acting with or for them?" (Admit it; that's what you were thinking.) We certainly thought so, which is why we were surprised when Planned Parenthood Golden Gate trotted this issue out again. PPGG claimed that because a decade-old injunction against ORC at its San Mateo clinic actually said it applies to "all persons with actual notice," then in fact it did apply, no matter what *Conrad* said. In other words, because their injunction had the magic words (which Planned Parenthood itself had inserted in the injunction when drafting it for the court to sign), these words carried more weight than what any higher court said about the limits of injunctions.

In retrospect, we (i.e., Terry Thompson representing the Garibaldis, and Mike Millen and I representing Mr. Foti) probably shouldn't have been surprised, given Planned Parenthood's record. In briefs and arguments before the state supreme court in *Planned Parenthood Shasta-Diablo v. Williams*, Planned

Parenthood assured the court that an injunction keeping pro-life protesters across a sixty-foot-wide street from its Vallejo clinic was not content- or viewpoint-based, because, of course, it only applied to the defendants, as they were the only ones who had been found to have engaged in wrongful conduct. After the Court affirmed the injunction, Planned Parenthood, in consultation with its attorneys, immediately instituted a policy of enforcing the injunction against *all* protesters. When a group of protesters unaffiliated with the defendants picketed in front of the clinic, they were arrested, tried, and convicted. These were the individuals whose convictions were reversed in the *Conrad* case, which held that a nonparty can be punished for violating an injunction only if "the nonparty violates its terms *with or for* those who are restrained."¹

After the *Conrad* case was decided, there were indications that Planned Parenthood was not going to accept it, or that at least it was hoping to keep people ignorant of it. Planned Parenthood employees instigated the arrest of Mr. Foti in Daly City, for supposedly violating an injunction against other parties there. When he began picketing at the San Mateo clinic, they tried unsuccessfully to have the injunction enforced against him by the police. When the police balked (unlike the Daly City police, the San Mateo police listened to Mr. Foti when he explained that the injunction didn't apply to him), Planned Parenthood administrators and attorneys then met with the District Attorney, who pointed out the obvious, i.e., that under *Conrad*, their "all persons with notice" injunction had no effect.

Incredibly, these Planned Parenthood employees later testified in depositions that the District Attorney hadn't told them why he wouldn't enforce the injunction against Mr. Foti. It also came out in depositions that lower level employees were ignorant of the decision and its implications for their "all persons with notice" policy. Rather, Planned Parenthood instructed its employees not to make citizens arrests, but to call the police and report

(RECAP CONT. FROM PAGE 2)

Planned Parenthood v. ACLA et al.

(Portland, Ore.)—On rehearing in the Ninth Circuit, an eleven-member en banc panel voted 6-5 to reverse the prior panel's unanimous decision and reinstate a \$107 million verdict against pro-lifers who exposed the identities of abortionists. LLDF filed an amicus brief in support of rehearing before the full Ninth Circuit (denied) and an amicus brief in support of the defendants' petition for certiorari in the U.S. Supreme Court. The Supreme Court, in considering the petition, has invited the Solicitor General's office of the U.S. Dept. of Justice to submit its opinion about the meaning of the statutes at issue. The Solicitor General's brief will be filed shortly and the Supreme Court is expected to decide before its summer recess whether to take the case.

Rader v. Citrus College (Glendora)—Pro-life activists arrested for carrying signs on campus of public college. Charges not filed. Claim filed against city and college district.

Women's Resource Network v. California—Constitutional challenge to state system for authorizing specialty license plates. Legislature has refused to authorize "Choose Life" specialty plates promoting adoption, while authorizing plates promoting and benefiting other causes. Complaint filed 4/21.

McCullough v. Long Beach—Pro-life activist arrested for handing out literature on public sidewalk in front of a public high school. Police also conducted a warrantless seizure of a videotape of the incident, threatening the videographer with arrest if he didn't hand over the tape. No charges were filed on the arrest. A claim for damages against the city and school district has been filed.

People v. Mohammed (Los Angeles)—Incarcerated minor sought LLDF's assistance in obtaining prenatal care, fearing that jail conditions might cause her to miscarry. LLDF filed briefs in support of her right to see her doctor and receive adequate care. Minor is now under her doctor's care and her pregnancy is progressing normally.

Meyers v. Mathews (Athens, Ohio)—Pro-lifers arrested for pro-life speech on college green. First Amendment claims were dismissed and injunctive relief denied. Court found that popular student gathering place was not a public forum. Case on appeal.

(RECAP CONT. ON PAGE 4)

(INJUNCTION CONT. ON PAGE 7)

(RECAP CONT. FROM PAGE 3)

Estavilla v. Romo and West (Yolo County)—Fetal homicide suit for injury and constitutional violations includes two issues: 1) wrongful death statute is unconstitutional because it denies equal protection to babies killed in utero; and 2) interference with the right to privacy and reproductive rights includes interference with the right to carry a pregnancy to term, not just to have an abortion.

O'Toole v. Los Angeles—Pro-life activists arrested on public college campus for displaying signs without permit. Pro-lifers were informed that to obtain a permit, they would need to provide proof of liability insurance. No charges filed. Claim against county and the college district has been presented.

Mason et al. v. University of Denver—Picketers and leafletters arrested at University of Denver. Civil suit filed.

Locatel v. City of Monrovia—Civil rights suit for violation of pro-lifer's rights while leafletting at a high school.

Spingola v. Village of Granville, Ohio—City passed vague ordinance to apply as needed against pro-lifers at public events. Trial court denied preliminary injunction, holding the ordinance is facially constitutional, and the Sixth Circuit affirmed. Petition for rehearing denied, and case remanded to the trial court for further proceedings on the as-applied challenge. Discovery is under way.

People v. Owen (Redmond, Wash.)—Pro-life activist arrested for trespass while picketing a Seventh Day Adventist church. Trial set.

Vo v. Los Angeles—Pro-life activist arrested for failing to leave campus after not complying with speech restrictions requiring that she stay in area with little student foot traffic. No charges filed. Claim filed against county and college district.

People v. Corrigan (Davis)—Pro-life counter demonstrator arrested for disturbing the peace at *Roe v. Wade* celebration at UC Davis.

Victory! Charges dismissed. Civil suit against U.C. Davis campus police for violation of Matthew Corrigan's civil rights under consideration.

Pedigo v. Hershey (Calif.)—Amniocentesis detrimentally used on pre-born child with improper consent. Civil suit filed. **L**

Dana Cody



From the Editor

For the most part LLDF's mission is to support the advocates of innocent human beings under threat of death in the courtroom. However, LLDF is sometimes a voice for those under threat of death outside the courtroom. It is this aspect of LLDF's mission that I want to share with you so you can see another instance of how your support of LLDF is helping to restore the sanctity of human life in our culture. In April of this year, LLDF's "voice" brought us to the Journalism Association of Community Colleges (JACC) event in Sacramento, California.

JACC's event was a writing contest for journalism students, organized in a press conference format, simulated though it was, with about 100 participating students. The writing to be judged were the editorials resulting from information participants gathered at the press conference. The event coordinator estimated that there were about 150 journalists there to observe. It was structured in such a way so that it was actually two separate press conferences—the pro-death conference, followed by fifteen minutes of questions and answers from the participants, then the pro-life conference followed by questions and answers. This was very realistic in that I cannot imagine the two sides ever holding a joint press conference.

The two issues covered at the press conference were the efficacy of the so-called "morning after pill" and the validity of *Roe v. Wade*. I represented the pro-life viewpoint on behalf of LLDF and two representatives of the Feminist Majority Foundation (FMF) represented the pro-death viewpoint.

While it isn't surprising that I was double-teamed and that FMF was given forty-five minutes to hold its press conference, LLDF being given twenty minutes for its, what is surprising is that LLDF got the proverbial last word. FMF had no opportunity to publicly respond to anything I had to say because LLDF went last.

FMF spent the forty of their forty-five minutes trumpeting the morning after pill. They spent balance of their time encouraging those in attendance to contact their congressional

My hope is that the students and journalists who attended this event will no longer take abortion advocates at their word when they comment on abortion.

representatives to persuade them to do everything in their power to see that *Roe* is not overturned by supporting nominees to the United States Supreme Court that President Bush may have the opportunity to appoint.

It was absolutely delightful to spend LLDF's time refuting much of what the FMF representatives had to say about abortion citing an LLDF publication. Included in LLDF's press packet was an issue of *Lifeline* [Vol. VIII, No. 7 (1997)], wherein Dr. Bernard Nathanson's comments about his involvement with *Roe* were quoted. You will remember that Dr. Nathanson was the founder of the National Abortion Rights Action League and formerly the largest abortion provider in New York City. In this particular issue of *Lifeline*, Dr. Nathanson admitted that the numbers of

LIFE ON THE BALLOT

illegal abortions he testified to pursuant to *Roe* were absolutely false. Also included was Dr. Nathanson's account of turning from abortion advocate to abortion foe after viewing an abortion through fetal monitoring equipment that had been unavailable when *Roe* was decided. JACC participants were given the same opportunity to view a first trimester abortion when *Harder Truth*, a videotape depicting one, was shown. I showed the video, using seven of my twenty minutes, to set the tone of the question and answer period. There was no abstract discussion of the abortion decision, to be sure.

Even in the face of the horror of abortion there were the typical questions from the participants attempting to deflect any discussion about it. You know them—"How do you stand on capital punishment?" "Is your group religious?" "What about when a woman is raped?" The good news is that for the most part the response of the participants was positive, and in my opinion, due in large part to the realization that their peers in the media have been deceived about abortion by FMF and their ilk.

When the press conference was over a few participants stayed around to ask questions. The last person I spoke with was a journalist who asked how I responded to the two representatives from FMF, who allegedly stated that my presentation was "emotional." My response was that my arguments were factually and scientifically based in the context of the law as it exists. Imagine my pleasure when the journalist agreed.

My hope is that the students and journalists who attended this event will no longer take abortion advocates at their word when they comment on abortion. I also hope and pray that if one of the JACC participants is involved in a decision over an unplanned pregnancy they will remember LLDF's presentation and the child whose life may be at risk will be spared.

We will never know the results of LLDF's presence at the JACC event, but we were there to be a voice for the defenseless. For that, we gratefully acknowledge your support.

L

Starting May 1, California voters will have a chance to help put parental notification on November, 2004 statewide ballot. This ballot proposition would require abortionists to notify parents before performing abortions on minors. From May through September, volunteer coordinators for Life on the Ballot, part of the broad coalition behind the parental rights effort, will be recruiting churches, nonprofit charities, and other groups to collect signatures.

"Nearly all propositions are qualified for the ballot with paid signature-gatherers. Our idea is to recruit petition-circulators from churches and other groups and let at least some of them earn the money for themselves or for their groups," said one of the organizers of this part of the coalition.

The crucial date—sometime in September or October—is when the attorney general approves the language of the ballot initiative. That's when the 150 days starts ticking—the time needed to gather the 598,000 signatures.

"If each of our 10 regional coordinators can contact 100 groups this summer, and each of those groups can collect 1,000 signatures in the fall, this initiative will qualify very fast," said the source.

The last attempt to put parental notification for minor abortions took place in the fall of 1999. "Our biggest problem in 1999 was that we got started too late," according to the organizer. "The money-raising was going on at the last minute, volunteers were slow to get off the ground, and the paid signature-gatherers were busy getting signatures for Indian-gaming initiatives at nearly the same time. This time we plan to have the necessary money raised by early summer and the volunteer groups ready to go by September."

Another difference this time around is that petition circulators can recruit and get signatures on church grounds. "Last time many churches were afraid to collect signatures in the pews," says the Life on the Ballot source. This time we will have letters from the Thomas More Law Center in Michigan and the Becket Fund in Washington, D.C. explaining to pastors they can collect initiative signatures in the churches." This may not yield more than a few hundred signatures for each church. "The most efficient place for volunteers to gather signatures is still the supermarket and shopping mall."

To sign up as a regional coordinator or church coordinator of paid volunteers, call 213/896-9554 or email emma.trujillo@attbi.com

END OF LIFE CARE: RULES TO KNOW

[Lifeline readers have asked about practical guidelines for making moral decisions regarding the provision or withdrawal of food and fluids. The following list was originally published as a sidebar in an article by Julie A. Grimstad in LIFESCENES (Spring 2003). LIFESCENES is published by CA Nurses for Ethical Standards, 4521 N. Sultana Ave., Rosemead, CA, 91770. Julie A. Grimstad has been Director of the Center for the Rights of the Terminally Ill since 1987.—Ed.]

These directives apply whether the patient is fed orally or through a tube.

- While inserting a feeding tube may require surgery or other medical expertise, food and fluids themselves are not medical treatment because they do not cure, they sustain life.
- Removing food and fluids from those able to eat and drink on their own or with the assistance of another person is never appropriate.
- Tube-feeding persistently non-responsive patients is obligatory in most cases since it is beneficial and usually does not add a serious burden.
- For terminally ill patients, the provision of food and fluids is generally obligatory care.
- When death is so close that further nutrition and hydration will no longer sustain life, they may be discontinued if the patient is more comfortable without them.
- It is most important to examine intent. If the intention is to hasten or cause death, the omission of food and fluids is wrong.

(PALMQUIST CONT. FROM PAGE 2)

Confidence, however, is different from pride. “The Lord gives me the confidence to know that with God and Life Legal, I can face just about anything,” she said in a cell phone interview conducted while she walked back and forth on the sidewalk. Occasionally she interrupted the interview to call out to a woman, and when one young mother came to speak with her, the interview was suspended. Five days later, Tim reported that the woman had skipped her abortion appointment and was still weighing her choices.

When a woman does choose life, Terri has often befriended her through pregnancy and beyond, making hospital visits—sometimes as a labor coach—and even testifying in court to help a woman in legal trouble.

Terri and Tim turned to Life Legal Defense Foundation for help with their own legal troubles after being accused of threatening the local abortionist. Terri had quoted an Old Testament verse to the doctor, who has been in the abortion business for decades. The verse from the Book of Ezekiel is one that “tells the wicked man to turn from his wicked ways or he will surely die,” she said. The “surely die” phrase was interpreted as a threat and used to seek an injunction to limit Terri’s work.

Since the LifeSavers ministry and the abortion clinic have co-existed for years, the Palmquists and the abortionist are familiar with each other, Terri said. In her opinion, the doctor did not truly fear that she would kill him, but realized the biblical wording offered a chance to stop or at least discourage the Palmquists. Terri said that she and the abortionist have spoken briefly on occasion. She remembers saying, “God loves you,” one day to the doctor and hearing him quip, “Well, God must be a woman because this world is in such a mess.” She found it an interesting comment from a man whose industry claims to exist for the benefit of women.

Before LLDF attorney Chavez-Ochoa got involved, the abortionist did succeed in obtaining a temporary restraining order against Terri on an *ex parte* basis, meaning without notice to her. The restraining order was in effect two or three weeks. According to LLDF attorneys, it was illegal, since it interfered with free speech rights. When the formal hearing was set, Terri was notified, and she sought help from Life Legal.

Tim Palmquist remembered how their LLDF attorney focused on details to defend Terri’s constitutional right to free speech, and recounted the following series of events:

On cross-examination of the abortionist, attorney Chavez-Ochoa pointed out that the alleged July 9, 2002, threat attributed to Terri did not state that she would do anything to him, but that God would hold him responsible for his actions. “Are you afraid that fire will come out of heaven?” Chavez-Ochoa asked. The doctor replied that he was not afraid of God.

While the abortionist was on the witness stand, attorney Chavez-Ochoa observed that he was reading from notes. Chavez-Ochoa asked to see the notes and discovered that some alleged additional threats that the doctor testified had occurred on July 10 were dated July 30 in his notes. Under repeated questioning, the abortionist insisted that July 10 was in fact correct and that

*When a woman does choose life,
Terri has often befriended her
through pregnancy and beyond,
making hospital visits—sometimes
as a labor coach—and even
testifying in court to help a
woman in legal trouble.*

his notes were incorrect. The attorney then launched into a long series of seemingly trivial questions about dates. In response, the doctor testified that he traveled to Bakersfield only on Mondays and Tuesdays and had not been in Bakersfield on a Wednesday for many months. Chavez-Ochoa asked if he were confident that his testimony was correct, and the abortionist said yes. At that, Chavez-Ochoa asked the judge to note that July 10 was a Wednesday, and because it was a Wednesday, the testimony about threats happening on July 10 was false. Chavez-Ochoa said the abortionist must have remembered the date wrongly, and asked him “Could you also be wrong about other parts of your testimony?”

To help the judge gauge how seriously the abortionist took the alleged threat from Terri, Chavez-Ochoa asked about security measures. The court learned that several years ago the doctor had been provided escorts from the federal Department of Alcohol, Tobacco and

Firearms when he felt threatened—allegedly by Terri Palmquist—but had dismissed the escorts after several months and had never called them back, as he is allowed to if he feels endangered. He had let his permit to carry a concealed weapon expire two years previously and had not renewed it. And when asked why he had never sought a restraining order against Terri Palmquist if he had felt threatened previously, he said the idea had not occurred to him.

In conclusion, Chavez-Ochoa asked for dismissal, pointing out that reading the Bible on a public sidewalk is protected by the Constitution. And he explained that Ezekiel 33 is about a watchman appointed by God to warn people to turn away from sin. “Terri Palmquist sees herself as a watchman, and the sin she is warning people to turn from is shedding the blood of innocent children,” he said.

The judge explained that the legal burden of proof in a case such as this is “clear and convincing evidence”—more than the “preponderance of evidence” required in civil cases but less than the evidence beyond a reasonable doubt required in criminal cases. After the abortionist said he understood the proof needed, the judge dismissed the case because of insufficient evidence.

But interest in stopping Terri apparently did not end when the case did. From friends, she has learned that the FBI, the grand jury (Fresno) and a prosecuting attorney from Washington, D.C. have been asking questions about her. “They may be trying to get me on FACE (the Freedom of Access to Clinic Entrances act),” she guessed. No formal action had been taken as of press time, and Terri said that her trust that “Life Legal is there to help us” lets her face an uncertain future. She can stand across the street from the clinic knowing that she is not alone. That knowledge allows her to focus on mothers willing to listen to her voice, look at a LifeSavers brochure, and perhaps take time to view a video on abortion. The video is a powerful tool, she said, because 95 percent of mothers who watch it choose life.

Meanwhile, she and LifeSaver sidewalk volunteers will continue to stand for life in the face of the abortion business and “on an individual basis, do what we can.” With the help of God and LLDF, said Terri, “no matter what they throw at us, there’s somebody on our side.”

L

(INJUNCTION CONT. FROM PAGE 3)

“violations” of injunctions, thus ensuring that the police, not Planned Parenthood, would be liable for any false arrests.

With that background, we should not have been as surprised as we were when PPGG began asserting that the injunction applied to all persons with notice, including Mr. Foti and the Garibaldis, even when this assertion came after more than two years of litigating to impose a separate injunction on them. But we were *stunned* when, on two separate occasions, trial court judges sided with Planned Parenthood, in spite of *Conrad* and other applicable law.

It was interesting to watch the evolution of Planned Parenthood’s argument. Initially, Planned Parenthood argued that “all persons with notice” provisions had been frequently upheld by courts in a variety of situations, and that this provision served certain neutral policy purposes, such as “preventing a multiplicity of actions.” In making these arguments, Planned Parenthood misconstrued both case law and statutory law. As the case progressed, and we showed how flawed and misleading their legal analysis was, Planned Parenthood focused more on the supposedly “special circumstances” presented in the context of abortion protests.

By the time of the oral argument before the court of appeal, Planned Parenthood’s entire thrust was that, because of the “compelling” interests at stake in the abortion context, the court ought to make an exception to all other case law and due process principles, and create a different rule for injunctions restricting the speech of pro-life picketers. Where abortion protests are at issue, rather than proving that any pro-lifers had engaged in wrongful conduct, a clinic should be able to ask a judge for an order to restrict the speech of all pro-lifers—in effect a viewpoint-based law against pro-lifers. This totally unconstitutional procedure seemed perfectly logical to Planned Parenthood, because, in its worldview, all pro-life speech activity outside clinics is harmful, and thus there is no need for individualized proof of wrongdoing. Requiring individual trials of protesters is simply a waste of Planned Parenthood’s and the court’s time and resources.

Planned Parenthood also made the illogical argument that, without the “all persons with notice” provision, enjoined parties could evade the injunction by substituting in other protesters. However, the injunction also binds those “acting

in concert” with enjoined parties. If other protesters are in fact being substituted in, then they are bound under the “acting in concert” provision; there is no need to expand the injunction to include “all persons with notice.” What Planned Parenthood really meant was that undoubtedly all these pro-lifers are acting in concert with one another, but they will lie about it; since we can’t catch them at it, the court should acknowledge that problem by making the injunction cover all pro-lifers.

In no uncertain terms, the court rejected all of Planned Parenthood’s arguments that an injunction barring some pro-life protesters from the public sidewalk in front of its San Mateo clinic could apply to “all [pro-life] persons with actual notice.”

The Court of Appeal decidedly rejected all of Planned Parenthood’s contentions. After re-iterating the general principles concerning the application of injunctions *only* to named parties and their agents, the court addressed Planned Parenthood’s arguments one by one. Concerning their argument that the actual notice provision should be approved as a time-saving device, the Court held, “Virtually every prong of this argument is erroneous.” It was “very puzzled” about Planned Parenthood’s reliance on one case involving an injunction against gang members. As to several other cases cited by Planned Parenthood, the court said, “We will not discuss these cases individually, since PPGG chose not to. Suffice to say, that none of them affirmed a provision which extended the scope of a permanent injunction to any person with notice of it.” Piece by piece, prong by prong, the court dissected Planned Parenthood’s case and exposed its errors of law and logic.

Thus was the “all persons with actual notice” provision relegated to the ash heap of history, not just in this individual case, but as binding precedent in other such situations. Mr. Foti and the Garibaldis will now return to the trial court where Planned Parenthood will try to prove that they are currently acting in concert with ORC in their protest activities at the San Mateo clinic. Planned Parenthood’s case relies on a handful of decade-old, brief contacts Mr. Foti had with ORC or with individuals Planned Parenthood claims are “members” of ORC. (Planned Parenthood refers to anyone whoever attended any Operation Rescue event as a “known Operation Rescue member.”)

The case against the Garibaldis rests on the fact that they picket with Mr. Foti, and the three “even socialize together.” For that reason, Planned Parenthood argues, they are all acting in concert with ORC, because Mr. Foti went to a couple of rallies and a rescue over ten years ago. Planned Parenthood argues this absurd position as if only an utter fool could fail to see “CONSPIRACY” written all over these relationships.

In the meantime, Mr. Foti and the Garibaldis are once again free to stand on the sidewalk in front of Planned Parenthood with their life-affirming message for women contemplating abortion. That’s the sweetest victory of all.

L

¹ *Conrad* itself was built on well-established principles concerning injunctions. It simply affirmed that the same due process principles that protected the rights of nonparties in other situations also protected pro-lifers from having their free speech rights taken away.

DUPLICATES

Please help us conserve! If you are receiving duplicate newsletters, let us know.

ON THE WEB

www.ildf.org
(707) 224-6675

EDUCATION

LLDF, on an ongoing basis, provides referrals to attorneys for assistance in ensuring care for medically dependent relatives and for adoption and guardianship matters; obtains legal assistance for women injured by abortion; advises employees in regards to free speech rights in the workplace; instructs pro-lifers in how to defend themselves in court; advises attorneys and citizens on working with legislative bodies re proposed legislation; advises numerous sidewalk counselors, picketers, and prayer supporters of their free speech rights and rights to peaceful assembly when speaking out for the unborn in their communities; provides spokespersons for television, radio, and print media, and speakers for training workshops and debates.

WANTED

LLDF is receiving calls from people whose loved ones are being denied necessary medical treatment. We need local attorneys to assist us in these matters. LLDF is currently compiling model briefs, petitions and other forms for use in these cases.

Please consider making a tax-deductible contribution today. Your generosity allows LLDF to fulfill its mission to provide a trained and committed voice in the courtroom so that pro-lifers can continue their life-saving work.

If you have stock that gives you more tax trouble than earnings, please consider donating it to LLDF. You can deduct the full value of the stock at the time of donation (no need to determine the basis). Thus, what may be a burden to you can be turned directly into support for the defenders of the defenders of life.

Any article, except those which are reprinted from other sources, may be reproduced without permission, provided LLDF is credited as the source and provided with a copy of the item.

BANNING IT

Wesley J. Smith



Getting past Hatch-Feinstein

Senators Orrin Hatch (R., Utah) and Dianne Feinstein (D., Calif.) are two of the great legislative con artists of our time. Their bill—S. 303, the “Human Cloning Ban and Stem Cell Research Protection Act”—purports to outlaw human reproductive cloning, while explicitly authorizing “SCNT” (somatic-cell nuclear transfer) for the purpose of finding medical treatments using embryonic stem cells. Never mind that SCNT is simply the term for the most common method of cloning mammalian life. And never mind that the same technique is used, whether the cloned embryo is to be exploited and destroyed in medical research, or implanted, gestated, and brought to birth. The true purpose of the legislation is to cynically give weak-kneed legislators a “twofer”—that is, allowing them to tell their constituents that they voted against human cloning, while actually they are voting for it.

Far from preventing reproductive cloning, Hatch/Feinstein would actually make the birth of a cloned baby more likely.

First, the legislation would authorize the manufacture of cloned human blastocysts—a necessary step toward creating a cloned human baby. (A blastocyst is a one-week-old embryo from which embryonic stem cells can be harvested—the purported goal of Hatch/Feinstein. Not coincidentally, it is also the stage when an embryo becomes implantable in a womb, because it then has the capacity to begin forming a placenta.)

Second, the bill would actually permit the clone embryo to be developed past the blastocyst stage. As currently written, under Hatch/Feinstein, the human clone could be maintained up to the 14th day, when the foundation for the developing brain and spinal cord, known as the primitive streak, has appeared.

Third, Hatch/Feinstein would also open the door to various other cloning experiments

designed to maximize the chances for human reproductive cloning to become a reality. Such experiments would include the creation of part-human/part-animal embryos (chimeras) for study.

Fourth, Hatch/Feinstein would give research into human cloning the invaluable imprimatur of the United States. The law doesn't merely reflect our values—it tells many people right from wrong. Passing Hatch/Feinstein would send the message that creating human clone

Far from preventing reproductive cloning, Hatch/Feinstein would actually make the birth of a cloned baby more likely.

embryos is a proper act. As a consequence, the pace of cloning research would be likely to increase substantially, heightening the chances that a clone baby would eventually be born.

The government's stamp of approval would also increase financing for research into human cloning. Today, venture capitalists are generally sitting on their wallets when it comes to funding cloning research. As a consequence, biotech companies closely associated with human cloning, such as Advanced Cell Technology, are experiencing significant financial difficulties. But if investors are freed from the worry of losing their investments to a threatened total legal ban on human SCNT (as in S. 245, the

Brownback/Landrieu Human Cloning Prohibition Act)—and/or come to believe that the cloning enterprise is right and moral because it has been legally authorized—many might open their checkbooks to fund the growth of a human-cloning biotech industry.

As more and more opponents write and testify about these matters before congressional committees in opposition to Hatch/Feinstein, we often are left feeling like modern-day Cassandras: We know the future, but nobody believes us when we describe it. But empirical evidence supporting our stance continues to mount. The most recent case is an online journal article written by Panayiotis M. Zavos, who, with the possible exception of flying-saucer-cut leader Rael, is probably the world's foremost proponent of human reproductive cloning.

Zavos has been very busy in the last year, conducting the very kind of research that Hatch/Feinstein seeks to encourage. First, he reports in the June 2003 *Reproductive BioMedicine Online* that he has successfully created human/cow chimera embryos. He did this by removing the nucleus from an unfertilized cow egg and replacing that material with the nucleus from a human body cell. (This is SCNT.) He then stimulated the genetically modified cow eggs and, in 45 percent of them, developed the approximately 97 percent human/three-percent cow-chimera embryo for three days. The purpose of this experiment is to help Zavos determine which of the various types of cell in our bodies would be best for use "as nuclear donor cells for reproductive and therapeutic cloning."

Nothing in the Hatch/Feinstein bill would outlaw such cross-species experiments. And if the experiments succeed, they will hasten the day of reproductive cloning. Indeed, by explicitly authorizing research into human cloning, Hatch/Feinstein would make things more convenient for bio-anarchists such as Zavos, who would now feel perfectly free to work within the U.S., learning how to create cloned human blastocysts—with both human and animal eggs—without fear of any future legal prohibition. (To date, the mere threat that a

law might be passed outlawing human SCNT has induced Zavos to perform most of his controversial research overseas.)

Zavos's article also announces that his "team of scientific and medical experts has created the first cloned embryo for reproductive purposes." He claims that this embryo, which was manufactured with a human egg, was able to be developed for four days "post SCNT," reached "the 8-10 cell stage," and "showed a rate of development equivalent to that of normal IVF embryos." The embryo has been frozen for future molecular analysis, toward the end of eventually implanting a cloned embryo in a woman's body.

Again, this is precisely the kind of research—efforts to make it possible to create a cloned human baby—which Hatch/Feinstein would sanction. Thus, despite its stated intent of preventing reproductive cloning, S. 303 would actually make it more likely. Indeed, the Hatch/Feinstein bill might just as well be called the Dr. Zavos Enablement Act. If passed, its result would be a thousand Dr. Zavoses, willing and eager to move human cloning to the point where implantation of a cloned embryo could occur.

If we really want to prevent human reproductive cloning, there is only one way: We must pass S. 245 and outlaw all human SCNT. The House of Representatives, in a broad, bipartisan vote, has already passed such a bill. President Bush has promised to sign it if it reaches his desk. The only holdup is Hatch/Feinstein. The time has come for the U.S. Senate to reject twofold expediency and pass Brownback/Landrieu, a true ban on human cloning.

L

[Wesley J. Smith is a senior fellow at the *Discovery Institute* (www.discovery.org/). He is currently working on a book about the morality, science, and business of human cloning. This article originally appeared on *National Review Online* (April 17, 2003 www.nationalreview.com) and is here reprinted by kind permission of the author.]

SYMPOSIUM

On June 17, 2003, Ave Maria School of Law, in collaboration with Priests for Life, will host a symposium for attorneys and clergy entitled *The Church and Politics: Are We as Restricted as We Think?* in Ann Arbor, Michigan.

Keynote speaker: James Bopp, Jr., of Bopp, Coleson & Bostrom. Mr. Bopp is a leading legal expert in enabling Churches and other tax-exempt organizations to fulfill their mission in the arena of political responsibility.

Professor Gerard Bradley of Notre Dame Law School will also speak, as well as **Charles Watkins** of Webster, Chamberlain & Bean.

There is much that pastors can do to call their congregations to active and informed participation in the political process. In documents like *Living the Gospel of Life* (1998), the U.S. bishops have articulated such a call with clarity and passion. At the same time, many pastors remain unaware of the extent to which they can speak and act in this arena, and often believe they are far more restricted than the law actually requires. Our hope is that this symposium will give pastors a broader understanding of the law in this area, and assist them to fulfill their mission with greater confidence.

The day will begin with Mass at 8:00 a.m. and will conclude at 4:00 p.m.

Schedule:

8:00 AM	Mass
8:45 AM	Breakfast
9:30 AM	<i>The Church's Role in Politics</i>
10:30 AM	<i>Church and State: What does the Constitution Say?</i>
11:30 AM	Q & A period
12-12:45 PM	Lunch break
1:00 PM	<i>The IRS Guidelines: A Critique</i>
2:00 PM	<i>What are the "Do's and Don'ts?"</i>
3-3:45 PM	Q & A period and discussion
3:45-4 PM	Conclusion

A \$25.00 registration fee includes breakfast & box lunch.

Please register by 6/10/03 (www.priestsforlife.org) or by mail: Legal Symposium, c/o Priests for Life, P.O. Box 141172, Staten Island, New York 10314

For additional information please call Janet Morana at Priests for Life, (718) 980-4400 ext. 246, jmorana@priestsforlife.org

(TERRI CONT. FROM PAGE 1)

by NOW lawyer Patricia Ireland as the two of them took charge of the prosecution.

In February 1989, NOW expanded the case significantly when it added Randall Terry and Operation Rescue as defendants. In a novel twist, the revised complaint made a claim under the federal Racketeer-Influenced and Corrupt Organizations Act (RICO), charging “theft and interstate transportation of fetuses” and Hobbs Act “extortion” of women, physicians, clinics and others by threats or actual acts of physical violence. Plaintiffs also added Andrew Scholberg, Timothy Murphy, Monica Migliorino Miller, Conrad Wojnar, and Vital-Med pathology lab as defendants. The lab was named because information from one of its employees had enabled pro-lifers to recover nearly 5,000 aborted babies from the lab and then hold burial services in numerous cities in 1988. The Ladies Center of Pensacola was later dismissed as a lead plaintiff, for failure to cooperate in discovery, and the Summit Women’s Health Organization in Milwaukee was allowed to take its place.

In what later turned out to be only a temporary victory, in 1991 the federal district court in Chicago dismissed the case in its entirety. It held, first, that the Sherman Act was inapplicable because defendants’ actions were socio-political in nature and not between competitors. Second, since donations received did not constitute “income derived from a pattern of racketeering activity,” §1962(a) of RICO did not apply. Finally, without a “profit-generating purpose,” plaintiffs’ claims under §1962(c) and (d) were unsupported. Lacking a basis for federal jurisdiction, the pendent state claims were also dismissed. The Seventh Circuit upheld dismissal of the case.

The Supreme Court granted review solely to decide whether Congress had included an “economic motive requirement” when it passed the RICO Act in 1970. On January 24, 1994, just six weeks after oral argument, the Court held 9-0 that RICO does *not* require proof that either the racketeering enterprise or the predicate acts of racketeering be motivated by an economic purpose. The Court specifically declined to rule on defendants’ contention that plaintiffs couldn’t show violation of the Hobbs Act, which makes it a crime to obtain property from another with threats or acts of force. Not long afterwards, defendants petitioned the Supreme Court, seeking review specifically on the Hobbs Act

issue, but their petition was denied.

Back down in the district court, plaintiffs proceeded with their RICO extortion theory. NOW lawyers amended the complaint a third time, now asserting that defendants were part of a nationwide conspiracy to commit murder, arson, bombings and kidnappings. By the time the case went to trial, however, defendants had won a motion determining that there was no evidence whatsoever connecting them to any bombings, arson, murders or kidnappings. Also prior to trial, defendants Monica Migliorino Miller, Conrad Wojnar and Vital-Med Laboratory managed to win motions dismissing them from the case. Randall Terry settled out of court with plaintiffs in January 1998, but Operation Rescue itself remained a defendant, as did Scheidler, Murphy, Scholberg, and the Pro-Life Action League.

The trial began on March 2, 1998, lasted 7 weeks, and resulted in a unanimous verdict holding all defendants liable for violating RICO. Partly to blame for this defeat was the prejudicial effect of seemingly innumerable claims of protesters’ violence recounted by plaintiffs’ witnesses. Although barred from attributing bombings, arson, murders and kidnappings to the defendants, plaintiffs’ witnesses were allowed to mention such incidents so the jury could decide whether defendants’ remarks might be perceived as “threats.” Alongside relatively truthful testimony of defendants’ nonviolent sit-ins in clinic waiting rooms and entrances, plaintiffs’ witnesses also told shocking tales of patients and staff being pushed, punched, grabbed, knocked to the ground, struck with protest signs, and threatened with violence. After the trial, defendants uncovered substantial evidence that the worst such claims were false, but the damage was already done. (For an in-depth article on this subject, see *WORLD Magazine*, 10/5/02, cover story [www.worldmag.com/world/issue/10-05-02/cover_1.asp].)

However, even more destructive to the defense than the claims of pro-lifers’ violence was the district court’s granting of permission to use an exceedingly “low threshold” interpretation of what constituted Hobbs Act extortion. The Hobbs Act defines extortion as: “the obtaining of property from another, with his consent, induced by the wrongful use of actual or threatened force, violence, or fear. . . .” The jury in *Scheidler* was instructed that merely

“depriving” the victim of property could be equated to the defendants’ having “obtained” it. Moreover, the jury was instructed that the right to seek or provide medical services counted as “property.” This view of what constitutes Hobbs Act extortion set up a “no-lose” framework for plaintiffs’ case, as highlighted by this trial exchange between NOW attorney Fay Clayton and pro-life activist John Cavanaugh-O’Keefe:

CLAYTON: You’re aware, aren’t you, that “property” includes the right to go to your doctor? You’re aware of that?

O’KEEFE: Sure, all right.

CLAYTON: Okay. You are also aware that “property” under the law includes the right of clinics to provide medical services, aren’t you?

O’KEEFE: To provide medical services, yes.

CLAYTON: And you saw those interfered with, didn’t you, sir?

O’KEEFE: We did certainly interfere with abortions.

Unsurprisingly, the jury found all defendants liable for extortion. They awarded some \$86,000 (tripled to \$258,000 under RICO) to clinics in Milwaukee and Wilmington, Del., for increased security costs. Following the verdict, Judge Coar issued a nationwide injunction barring defendants (and persons acting in concert with them) from “interfering” with abortion clinics or their staff or patients for ten years. Defendants would also have to pay their opponents’ attorneys’ fees, estimated at over a million dollars.

In order to appeal, defendants were required to post actual assets that would immediately satisfy the treble-damage award in the event the appeal was unsuccessful. Determined to fight this judgment, Joe Scheidler took out a \$70,000 loan and put his house in escrow.

In its October 2001 decision, the Seventh Circuit rejected all of the defendants’ reasons for overturning the judgment. In January 2002, Joe Scheidler, Andy Scholberg, Tim Murphy and the Pro-Life Action League petitioned the Supreme Court for review, as did Operation Rescue by way of its own, separate petition. Review was requested on three bases: (1) whether or not private RICO plaintiffs may seek injunctive relief, (2) whether the Hobbs

Act criminalizes the activities of political protesters whose conduct interferes with the public's access to a business's premises and (3) whether trial procedures for awarding damages avoided penalizing defendants for exercising their First Amendment rights. Numerous organizations and individuals supported defendants' petitions by filing *amicus curiae* (friend-of-the-court) briefs, including the Southern Christian Leadership Conference, People for the Ethical Treatment of Animals, the Seamless Garment Network, actor-activist Martin Sheen, and others on both sides of the abortion issue.

On April 22, 2002, the Supreme Court granted *certiorari*. Review was limited to the injunction and Hobbs Act issues. Numerous and varied *amicus curiae* again supported defendants. Life Legal Defense Foundation's brief addressed the injunction question. The Seamless Garment Network discussed the history of social protest in this country. PETA said its members had been sued under RICO for actions in an animal-testing laboratory. While, strictly speaking, the case did not involve the First Amendment, *amicus* expressed their concerns that the Seventh Circuit's decision meant they, too, could face harsher penalties for demonstrating.

The Court heard oral arguments on December 4, 2002. The case for defendants/petitioners was presented by Roy Englert, Jr., a Washington attorney who had previously argued twelve Supreme Court cases with success. Englert pointed out that, even if the Court were to *accept* the arguments in NOW's brief, the case would have to be retried because NOW's attorneys had scrapped their original definition of "property" and invented a new one for this appeal. But even their new definition—"control" over business decisions—was an "awfully broad" and "very odd" use of language. "My clients don't have the clinics' property today as they would if they had obtained it." More importantly, "classic protest activities, venerated in American history," would risk violating the Hobbs Act under the Seventh Circuit's decision. "That ought to give the court pause," he said. Justice Sandra Day O'Connor noted, "We're not talking about conduct that's lawful here. To paint the picture we're talking about pure speech is not the case." Englert readily agreed, saying that was why he had used Carry Nation, the ax-wielding prohibitionist, as one of his examples.

Solicitor General Ted Olson represented the federal government, and argued that extortion

charges could apply to abortion clinic blockades, but only as to the clinic owners whose business was disrupted by the abortion protests. As for the injunction issue, the government agreed that private RICO parties were not entitled to injunctive relief. When Olson stated that the First Amendment is not an issue in this case, however, Justice Kennedy interrupted, "There is always a First Amendment implication in a

Finally, without a "profit-generating purpose," plaintiffs' claims under §1962(c) and (d) were unsupportable. Lacking a basis for federal jurisdiction, the pendent state claims were also dismissed. The Seventh Circuit upheld dismissal of the case.

protest case. There is a First Amendment issue in the case because of the broad definition [of "obtaining property"] you're proposing.

Justices questioned Clayton whether black civil rights leaders could have been punished for boycotting white businesses. She responded, "Martin Luther King didn't tell the people to go into Woolworth and bash people." Justice Scalia broke in: "You've used the term 'violence' several times. That's not what the instruction required. As your argument to the jury indicated, it was enough if they obstructed the entrance and 'failed to part like the Red Sea' if somebody wanted to go in." "That is not correct," Clayton insisted. Scalia then read aloud from the transcript of plaintiffs' counsel's closing argument to the jury: "There is one way, I guess, in which you don't have the element of force in a blockade, and that would be if the blockaders did something that they were specifically instructed that they should never do, that is, politely move aside, part like the Red Sea and let a woman through. But you know that never happened. No witness ever testified to that. No witness, not defense, not plaintiff, ever said that any of the blockaders were instructed to let women

through.' In other words," said Scalia, "you told the jury that you could find an offense here under the Hobbs Act by the mere blockade. It wasn't smacking people around. It was just not letting people in."

The Court's February 26, 2003, 8-1 decision dismissing the case seemed to take everyone by surprise. NOW's press release called it "shocking," while Scheidler lead counsel Tom Brejcha told reporters the most he had dared hope for was a new trial. Chief Justice Rehnquist, writing for the majority, said there was no dispute that abortion protesters interfered with clinic operations and in some cases committed crimes. "But even when their acts of interference and disruption achieved their ultimate goal of 'shutting down' a clinic that performed abortions, their acts did not constitute extortion." He noted that there is a distinction under the Hobbs Act between "depriving" someone's right to property and actually "acquiring" the property, which the protesters did not do. With no other basis for a RICO claim, plaintiffs had no case. The Court never reached the issue of whether private RICO plaintiffs may obtain injunctions.

In Justice Ginsberg's separate concurrence, joined by Justice Breyer, she noted there were other legal avenues, including the Freedom of Access to Clinic Entrances Act of 1994, available to punish disruptive clinic protesters, suggesting that was one of the reasons she was able to concur with the majority.

Justice John Paul Stevens filed the only dissent, in which he criticized the majority for limiting the scope of the Hobbs Act and argued that this narrow interpretation would benefit only "professional criminals."

By definition, protesters who engage in civil disobedience are "criminals." Yet, underlying the Court's decision is an acknowledgement that, oftentimes, such conduct makes the statement that one is protesting an unjust law by breaking it. Civil disobedience is not to be equated with extortion. The reason is that society potentially benefits when citizens engage in what may be symbolic acts of misconduct aimed at arousing public sympathy—such as Carry Nation smashing kegs of whiskey or Joan Andrews disabling a suction machine.

RICO allowed mostly minor offenses—such as blocking clinic doorways, putting glue in door locks, and "creating an atmosphere" that

(NOW CONT. ON PAGE 12)

LIFELINE MISSION STATEMENT

The mission of Life Legal Defense Foundation is to give innocent and helpless human beings of any age, and particularly unborn children, a trained and committed defense against the threat of death, and to support their advocates in the courtrooms of our nation.

LIFELINE EDITORIAL POLICY

The purpose of LLDF is set forth in our mission statement above. To that end, *Lifeline* welcomes all ideas, opinions, research and comments, and all religious and political points of view, so long as not seen to be clearly divisive, and so long as fundamentally based upon the twin pillars of truth and charity.

BOARD OF DIRECTORS

- John Streett**, Chairman — *Novato*
- Dana Cody**, Executive Director — *Sacramento*
- Catherine Short**, Legal Director
- Steve Lopez**, Founder — *Lafayette*
- Robert M. Taylor** — *Irvine*
- Terry Thompson** — *Alamo*
- Anthony Wynne** — *Palo Alto*
- Mary Riley**, Administrative Director

BOARD OF ADVISORS

- The Hon. Steve Baldwin**
California Assembly
- The Rev. Michael R. Carey, OP, JD**
Colorado / California
- Daniel Cathcart, Esq.**
Los Angeles, California
- The Hon. William P. Clark**
Paso Robles, California
- Raymond Dennehy, PhD**
San Francisco, California
- The Rev. Joseph D. Fessio, SJ**
San Francisco, California
- The Hon. Ray Haynes**
California Senate
- The Hon. Henry J. Hyde**
*U.S. Congress**
- The Hon. Howard Kaloogian**
California Assembly
- Anne Kindt, Esq.**
California/New Jersey
- Gary Kreep, Esq.**
U.S.J.F. — San Diego, California
- David Llewellyn, Esq.**
Sacramento, California
- Charles E. Rice, Esq.**
South Bend, Indiana
- The Hon. Christopher H. Smith**
*U.S. Congress**
- Ben Stein, Esq.**
Hollywood, California
- Andrew Zepeda, Esq.**
Beverly Hills, California

*Honorary Members

Editor Dana Cody
Production John O'Rourke
Design Kelly Connelly Design+Print
Printing Lakes Area Printing, MN

**LIFE LEGAL
DEFENSE FOUNDATION**
P.O. Box 2105
Napa, California 94558
(707) 224-6675

Address Services Requested

Nonprofit Org.
U.S. Postage
PAID
Brainerd, MN
Permit N°265

(NOW CONT. FROM PAGE 11)

supposedly made arson and bombing possible—to be lumped together and seen as a broad conspiracy. Joe Scheidler would have lost his home, his organization, and even risked spending years in federal prison—just for the “crime” of being a leader.

The FACE Act is still around to prevent a mass return of the kind of pro-life civil disobedience common in the 80s and early 90s, but RICO has been eliminated as a club in the hands of abortion enthusiasts to try and knock down effective pro-life leaders and organizations. That is a big win for the defenders of the unborn.

L

[Colette Wilson is a 1985 graduate of Loyola of Los Angeles Law School and has worked on LLDF cases representing pro-life activists since 1989. She and her husband Tim (*Planned Parenthood v. Wilson*, 234 Cal. App. 3d 1662 [1991]) are the parents of two adopted children ages 2 and 4. Working from their home in Inglewood, Calif., Colette has assisted lead counsel Tom Brejcha on the Scheidler case since 2000, helping with various post-trial motions as well as the Supreme Court appeal.]