

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

CASES

Katie Short

“Are You Now or Have You Ever Been a Member...?”

The New McCarthyism: Alive and Well in California

In the last issue of *Lifeline*, we reported on SB 1945, a bill in the California legislature the sole purpose of which was to demonize pro-lifers by making “antiabortion crimes” the legal equivalent of “hate crimes.” That strategy backfired when LLDF Executive Director Dana Cody and other concerned pro-lifers presented reams of evidence showing violence *against* pro-life activists, none of which was addressed by the bill.

In the face of a public relations disaster, the pro-abortion forces in the Legislature retreated for the time being. Their fallen banner, however, was snatched up by the state court of appeal, which took advantage of a pending case to make the point crystal-clear: pro-lifers, including pro-life lawyers, are presumed to be dangerous, untrustworthy people.

The case arose out of a discovery dispute between Planned Parenthood Golden Gate (PPGG) and pro-lifers Ross Foti and Jeannette Garibaldi. In July 1998, Foti sued Planned Parenthood because of the unlawful conduct of its escorts and staff, in blocking and pushing him, as well as having him falsely arrested. PPGG responded with a cross-complaint against Foti and other pro-lifers, including 67-year-old Jeannette Garibaldi, alleging that they blocked patients and assaulted and threatened escorts.

Mrs. Garibaldi, represented by volunteer lawyer Terry Thompson, sent routine interrogatories asking for the names of witnesses to her alleged bad conduct. Similarly, Mr. Foti, represented by LLDF’s Katie Short, sent interrogatories asking for the names of witnesses to various specific incidents. Planned Parenthood objected, claiming that giving the names and addresses of

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clinic staff and volunteers to pro-lifers exposed the volunteers to evils ranging from harassment to murder. Nonetheless, the court ruled that Planned Parenthood was required to provide the names of witnesses, but under a protective order which limited their use to “Litigation Only.” The addresses of witnesses were to be provided under an “Attorneys Only” provision of the protective order. Any improper use of the information was punishable with sanctions.

Needless to say, this resolution, not being 100% of what they asked for, did not satisfy Planned Parenthood and its lawyers. They took a writ (a type of short-term appeal) to the state court of appeal, asking the court to overturn the lower court and order that they be allowed to provide only pseudonyms for their witnesses. PPGG argued that not only was it too dangerous to give the names of witnesses to Mr. Foti and Mrs. Garibaldi, but that their attorneys, Katie Short and Terry Thompson, could also not be trusted, as they were “known antiabortion activists” who had participated at protests at clinics and outside doctors’ houses in the early 1990s.

(NEW MCCARTHYISM CONT. ON PAGE 10)

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GENERAL RECAP & UPDATE

Conservatorship of Wendland— After arguments before the Third District Court of Appeal, the Court’s decision was to remand the case for trial. They upheld the standard of proof used during the first trial, (clear and convincing evidence), but held that Rose Wendland, (Robert Wendland’s wife and conservator), must only prove she acted in good faith based on medical advice. The court characterized her decision to end Robert’s life as one of privacy and choice, stating that, of course, Rose has every right to discontinue Robert’s life-sustaining treatment. On June 21, the California Supreme Court voted unanimously to grant Robert’s mother’s request that it review the appellate court’s decision. Briefs have been filed; the date for oral argument has not yet been announced. *Conservatorship of the Person of Robert Wendland* (2000) 78 Cal.App.4th 517; 93 Cal.Rptr.2d 550. Supr. Ct. No. S087265.

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Foti v. Planned Parenthood/Planned

Parenthood v. Foti— This action and cross-action between sidewalk counselors and PP and its escorts is now in the final pre-trial stage. Trial is set for January 8, 2001. A discovery dispute led to PP taking a writ to the court of appeal (see story p. 1).

Reeves v. Rocklin United School District—

Pro-lifers leafletting 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. Case on appeal.

Kelly v. County of Orange— Nurse Karen Kelly, who was fired for not violating her pro-life convictions, sued the County of Orange for wrongful termination and religious discrimination. Trial set for April 17, 2001.

North Dakota v. Family Life Services—

State Attorney General took over pro-life ministry, with trial court placing Family Life Services, a pro-life ministry, in permanent receivership. The North Dakota Supreme Court reversed and sent the case back to the trial court. In an unusual move, the Court also ordered that the case *not* be returned to the same trial court judge. The case is now before a new trial court judge.

U.S. v. Alaw (Wash., D.C.)— Department of Justice suing rescuers civilly for “blocking” a clinic where no abortions were taking place and doors were locked. Judge issued injunction in spite of lack of evidence. Decision on appeal.

Spingola v. U.C. Regents (Berkeley)— Street preacher of pro-life message harassed. Summary judgment motion pending.

Wilkerson [PP] v. Scott et al. (San Diego)—

Injunction and \$2,500,000 damages suit against multiple sidewalk counselors. Trial

CASES

Piercing the Darkness in Massachusetts

[Following the U.S. Supreme Court’s decision last June in *Hill v. Colorado*, 120 S.Ct. 2480 (2000) upholding a Colorado statute forbidding speakers from approaching people without their consent, the Massachusetts Legislature passed a law which was similar in many respects, but with two crucial differences.

First, the Massachusetts law applied only in the vicinity of “reproductive health care facilities” rather than all health care facilities as in the Colorado law. Second, the Massachusetts law provided an exemption for employees and agents of the “reproductive health care facilities.”

The law was challenged in federal court by pro-lifers represented by Dwight Duncan of the Southern New England School of Law. On November 20, 2000, the district court issued its ruling, declaring the law to be unconstitutionally content- and viewpoint-based. The following are excerpts from the court’s noteworthy decision.—Ed.]

... Thus, the ultimate issue for determination by this Court is whether the restrictions contained in the Massachusetts statute apply equally to all speakers at the entrances of abortion clinics, regardless of their viewpoints on abortion, and do not favor one viewpoint over another. *Hill*, 120 S.Ct. at 2486, 2491. There can be no discrimination between the viewpoints advocated, between those who advocate that the life of the unborn child should be preserved and those who advocate that the viability of the unborn child can by legal right be terminated.

The Massachusetts statute, by its very terms, exempts from its restrictions the employees and agents of the abortion clinics within the restricted public areas.¹ These individuals, because of their personal relationship with the abortion clinic, have a strong financial interest or philosophic incentive to counsel the listener

to undergo an abortion and they constitute very zealous advocates for this controversial procedure. *In contrast, the Colorado statute in Hill allowed no exemptions from its restrictions on speech.*

For the Massachusetts statute to pass constitutional muster, this exemption, at the very least, must be stricken from the statute’s provisions. With this exemption as a constituent provision of the statute, the statute’s restrictions are directed against speakers who advocate the pro-life position and exempt from its restrictions employees and agents of the abortion clinics who retain the unfettered right to educate and counsel potential abortion clients within the restricted public areas. The restricted areas are where the contending advocates have the most immediate and forceful and persuasive impact on the listener; where the opposing viewpoints are most vigorously contested. This constitutes patent discrimination, and this statute, therefore, cannot be considered a content-neutral regulation of speech. The Massachusetts statute clearly accords preferential treatment to expression concerning one particular viewpoint on the abortion issue, that of pro-choice.

This preference constitutes unequal protection of the law in the precious area of free expression in a matter of serious public debate where the government must be absolutely neutral. “[U]nder the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.” *Police Department of the City of Chicago, et al. v. Mosley*, 408 U.S. 92, 96 (1972). By the discriminatory terms of the statute, it is clearly manifest that the government disfavors the discussion of a particular viewpoint, the

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viewpoint that counsels a respect for the life of the unborn child in the robust abortion debate. The government must never take sides in the battle of ideas and ideals in the traditional public forum.

Because of the exemption of the abortion clinics' employees and agents from the statute's restrictions of speech on the subject of abortion within the restricted public areas, this Court holds that it is obvious that, in discriminating against the viewpoint of the pro-life advocates, the government has adopted a regulation of speech because of disagreement with the message that speech conveys, while at the very same public forum permitting interested abortion advocates to be absolutely free to counsel their listeners to have an abortion. For a statute to permit one viewpoint in a serious debate over public policy to speak freely in the public square, while the other side is statutorily required to remain silent strikes at the core of the First Amendment. The government must remain scrupulously neutral in the area of free speech or that great bulwark of human freedom is eroded.

The issue of abortion is one of the most profound moral, religious and legal issues of our time. Not since the issue of slavery tore asunder the social fabric of the Union and led to the tragedy of the Civil War, in which the blood of brothers drenched the soil of this nation in expiation of slavery's grievous crime against nature, has an issue so galvanized the intellectual and spiritual conscience of the nation.

The intense national debate on abortion is based on a profound and serious philosophical and biological dispute between so-called pro-life advocates who are morally convinced that an unborn child is a living human person whose right to life should be secured by the protections of the United States Constitution and so-called pro-choice advocates who are as convinced that the unborn child is not such a living human person and that the unborn child's mother has the choice to terminate the life of her unborn child, even, in some instances, of a child partially born.²

It was less than thirty years ago that abortion

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was branded an abominable crime by most states, and considered a moral evil by most people.³ Pro-life advocates who firmly believe that abortion remains a grave moral evil must be given as equal an opportunity as their opponents to express to those seeking an abortion their sincere message of respect for the sanctity of human life.⁴ The First Amendment requires no less. *Police Department of the City of Chicago, et al.* 408 U.S. at 96. The right to speak as freely as one's opponents in the traditional public forum is the most valuable of our rights in a constitutional democracy, for otherwise public policy would not be shaped by a fully informed and fair citizenry.

This Court declares Mass.Gen.L. ch. 266, Section 120E1/2(b) to be unconstitutional as violative of the First Amendment to the United States Constitution and issues a preliminary injunction enjoining its enforcement pending a hearing on the merits of the case.⁵ This section disfavors the discussion of the subject of abortion and the pro-life viewpoint within that subject matter.

SO ORDERED.

*/s/ Edward F. Harrington,
United States District Judge*

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JUDICIAL WATCH

The following is a list of recent nominees to the federal district courts in California or the Ninth Circuit.

James Duffy— 9th Circuit

Barry P. Goode— 9th Circuit

Fredric D. Woocher—
Central Dist. of Calif.

Dolly M. Gee—
Central Dist. of Calif.

Marian M Johnston—
Eastern Dist. of Calif.

If you have any information about these nominees, or would like a complete list of all pending nominations, please contact:

Judicial Selection Monitoring Project

717 Second St., N.E.

Washington, DC 2000

(202) 546-3000 / (fax) 543-5605

- 1 Employees and agents of abortion clinics escort potential abortion clinic clients and counsel and exhort them to undergo an abortion within the restricted areas.
- 2 In addition to the unborn child, others who have been accorded non-person status under the law were Blacks in the ante-bellum south suffering under the inhuman, but constitutional yoke of slavery and Jews in Hitler's Nazi Germany who were herded under deportation orders to the gassy fumes of the death camps. It is one of the glories of our nation's history that William Lloyd Garrison and the other Abolitionists were free to vigorously express their conviction that slavery was a grave moral wrong.
- 3 See Ernest Hemingway's short story, "Hills Like White Elephants," in which the couple only hint at a contemplated abortion in hushed tones because of deep and bitter shame.
- 4 Before one is quick to criticize the zeal of the pro-life advocates, he should recall Henry David Thoreau's "Civil Disobedience," one of the most influential political documents in the world and a manual for groups who, believing their government to be acting immorally, wish to awaken the conscience of its people. Thoreau believed that it was the essence of heroism to be willing to suffer the indignity of imprisonment for the higher principle of confronting what is believed to be a moral evil.
- 5 This specific section of the statute is ruled severable from the complete statute itself.

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and discovery stayed as an appeal of the preliminary injunction is pending. In the meantime, two defendants have been dismissed and \$15,500 awarded against PP.

Family Planning Associates v. Wilson (Los Angeles)— FPA's improper and illegal disposal of personal client information led to this lawsuit against pro-life activists who exposed the clinic's negligent practices. Unfortunately, the case was assigned to a judge whose initial rulings made very clear that the Wilsons would not prevail. Though they were willing to keep fighting, when the judge himself ruled on (and denied) the Wilsons' motion to disqualify him, and the court of appeals denied their writ on the matter, they realized that they were likely to do more harm than good by appealing any final order from the trial court. At the same time, FPA offered a settlement which allowed the Wilsons to continue their protest activity, if they in turn would abandon any claim to FPA's garbage and any information including information identifying FPA's employees— derived from it. The Wilsons agreed to the settlement. In the meantime, a class action against FPA, brought by patients whose records were improperly disposed of, continues with the Wilsons named by FPA as cross-defendants.

Amy Jo Mattson v. MKB Management Corporation dba Red River Women's Clinic (North Dakota)— False Advertising suit. Abortion mill claimed in writing that there was no link between breast cancer and abortion. In response to the suit, the clinic stopped distributing one brochure, but is now distributing a different misleading brochure. Trial court denied preliminary injunction against distributing the second brochure, and the case is now set for trial.

DeParrie v. Hanzo et al. (Oregon)— Civil rights suit against abortion clinic director for defamation and civil rights violations.

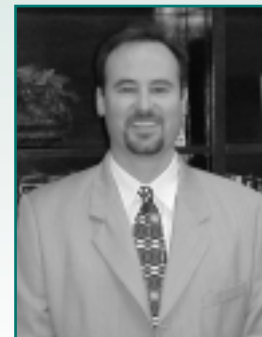
Planned Parenthood v. ACLA et al.— Pro-lifers found liable for "threats" in posters exposing abortionists. LLDf assisted pro per defendant in filing appellate brief. On appeal in Ninth Circuit. Oral argument was heard on September 12. Decision pending.

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ASK THE ATTORNEY

Rose Grimm

An Interview with Paul Eldridge and Bob Tyler of *Tyler, Dorsa & Eldridge, LLP, Temecula, Calif.*



Paul Eldridge

Mr. Eldridge, please tell me about your educational background and that of your partners.

Eldridge: I am a graduate of Trinity Law School in Santa Ana. I also received a masters degree from Simon Greenleaf University in International Human Rights. I was able to study at the International Institute of Human Rights in Strasbourg, France and I wrote a mini-thesis on the right to die in the context of international human rights... whether or not a "right to die" should be recognized. I have been very interested and impassioned about pro-life issues through school. I am on the board of a non-profit group called Alliance for Life International, which is a non-governmental, educational organization addressing right-to-life issues in the context of international human rights. Bob Tyler and Larry Dorsa both graduated from the University of San Diego School of Law, where Larry wrote an extensive study on abortion and the pro-life movement.

Did you see your education as ordered to work in the pro-life field?

Eldridge: Yes, I did. Our firm practices predominantly in business, real estate, probate and estate planning; both transactional and litigation. Personally I'm involved, for the most part, in business and real estate. So that's the bread and butter of the firm. We're also involved with the Life Legal Defense Foundation and other non-profit organizations like the Alliance Defense Fund and The American Center for Law Justice (ACLJ), Jay Sekulow's group. We have recently filed a case with the ACLJ in Federal Court in Glendale. The ACLJ is involved in pro-life work, as well as equal access and religious freedom cases. So, we're pretty active—our constitutional work spans the whole gamut.

How did you get involved with Life Legal Defense Foundation?

Eldridge: I had a case just over a year ago with a fifteen-year-old girl who was pregnant and her parents were trying to force her to get an abortion. She went to one of the crisis pregnancy centers here in Temecula—and through some connection got my name and asked if I'd be willing to help. I said, "I'll certainly do whatever I can." I then called David Llewellyn in Sacramento—he was one of my professors at Trinity—and he gave me Dana Cody's name. I called Dana—that was my first contact with Life Legal—and we spent some time on the phone strategizing. The pregnant minor's boyfriend was sixteen—they were just kids. His aunt took them in and obtained a temporary restraining order against the parents of the girl, and then we came in and were ready to represent her in the hearing on the preliminary injunction against the parents.

Why did she need a TRO against the parents?

Eldridge: The father was threatening two things. First, he was threatening to literally drag her to an abortion clinic and force her to have an abortion. He also threatened her physically—that he would beat her and cause a miscarriage. My partner, Bob Tyler, and I didn't agree entirely about this case. There were some difficult issues.

Tyler: The case pitted the pro-life position against parental rights. We obviously supported and applauded the young girl's decision not to have an abortion. However, we generally want to support a parent's right to act as a parent and we don't want to undermine those God-given parental rights in the courts.

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UPDATE

Anne Starr

Wendland Background and Update

A 49-year-old California man is in danger of dying by starvation because he is not a useful member of society.

Robert Wendland, who lives in Lodi, is brain-damaged as the result of a vehicle accident in 1993. He cannot speak, feed himself or control his bowels. His doctors say he will never resume a normal life.

Robert spent 16 months in coma, from which he has made measurable progress. He can operate an electric wheelchair, write the first letter of his first name, kiss his mother's hand and hold his own hand up to be kissed by her. He participates in bowling, an activity offered at the acute care facility where he lives. Last year, he was named Bowler of the Year.

The solo drunken driving crash that damaged Robert also altered the lives of everyone around him. It divided his family and set off an ethics controversy that has been discussed on national television. Depending on the outcome, his case may have consequences for all disabled Americans.

After Robert awoke from the coma and it became clear that he was permanently damaged, his wife, Rose Wendland, decided to withhold food and water from him. One of Robert's brothers agreed with Rose. They said he would never want to live a dependent life. But his mother and a sister pleaded for his life. They said death by starvation was wrong. Today, Robert is alive only because of the intervention of his mother and sister, who rely on Life Legal Defense Foundation for legal advice and financial assistance for the litigation which saved Robert's life.

LLDF directors say that if Robert dies, other disabled people will die, too. His starvation would dramatically expand the description of who can be refused food or water, according to LLDF attorneys. Currently, a patient must be dying or in a "persistent vegetative state" before anybody can withhold food and water.

If Robert dies with the permission of the courts and the support of major health care systems, others who are "cognitively disabled" will also be at risk, Siess says.

Those who support the right to withhold food from Robert admit he is not vegetative or dying, but argue that he is so "cognitively disabled" that he should not live because he would not want to be completely dependent.

Robert's 78-year-old mother visits him three or four times a week to let him know that she cares about him. And as long as LLDF helps her, she will stand between him and the powerful group that says he would be better off dead. Among the forces aligned against her in the upcoming hearing before the state supreme court are the Alliance of Catholic Health Care, the California Healthcare Association, the California Medical Association, Catholic Healthcare West, Mercy Healthcare Sacramento, and the San Francisco Medical Society. The Alliance of Catholic Health Care alone represents more than 65 Catholic and community-based affiliated hospitals and more than 40 home health, nursing, assisted living, hospice and low-income housing facilities in California. In addition, 43 individual bioethicists oppose Robert's mother. Among

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Crone v. Resurrection Health Care Corp. (Illinois)— Psychiatric Nurse suing for wrongful termination, violation of religion, etc. for refusing to dispense "day-after" pill. Case in discovery phase.

Dym v. White— First Amendment/Due Process case, involving a judgment against ORC (Operation Rescue of Calif.) after a kangaroo court judge/trial, without the right to cross examine witnesses. Case is on appeal.

Magnolia Corp. et al. v. Unterburger, et al.— Sidewalk counselors in Florida sued by abortion mill. Victory: case dismissed.

Villarroel v. Ohio Hospital— Family sues because mother euthanized against expressed wishes. Trial set for January 9, 2001.

Spingola v. Village of Granville Ohio— City passed vague ordinance to apply as needed against pro-lifers at public events. On appeal in Sixth Circuit.

Reed, et al. v. Moneghan (Menlo Park)— Pro-abortion drives recklessly onto sidewalk at pro-lifers. Victory: case settled for monetary damages of \$18,000.

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.

INTERNATIONAL ANTI-EUTHANASIA TASK FORCE

Protective Medical Decisions Document

1. What is the Protective Medical Decisions Document?

The Protective Medical Decisions Document (PMDD) is a document by which you name someone you trust (a family member or a close friend) to make health care decisions for you if you're unable to make them for yourself—and only for the length of time that you are unable to make such decisions.

The PMDD is simple and straightforward.

It gives decision-making authority to the person you name to authorize the provision, withholding or withdrawal of medical treatment for you if you're unable to make these decisions for yourself.

The PMDD defines and prohibits euthanasia. It directs that food and water be provided "unless death is inevitable AND truly imminent so that the effort to sustain my life is futile or unless I am unable to assimilate food and fluid." It also directs that, "even in the face of death," ordinary nursing and medical care and pain relief appropriate to your condition be provided.

2. Is the PMDD the same as a "living will"?

No. While "living wills," most durable power for health care documents (DPAHC), and PMDD are advance directives, they are not the same.

Unlike a living will, the PMDD does not outline specific directions for health care or depend upon a "declaration" that has vague terms which are open to broad interpretation. A living will gives rights and control to a physician who may not even know the patient. The PMDD gives decision-making authority to someone you know and trust.

Also, unlike most living wills and DPAHCs, the PMDD confers immunity on the agent(s) who act in accord with the signer's instructions, but it does not confer immunity on a health

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Mimi Streett

Fall Banquet

It was a five-star evening with great friends, profound speech, wine, music, laughter and fine food at the Bellevue Club for our seventh LLDF Banquet on Saturday, November 11.

Before getting started with the dinner itself, our excellent pianist, Anika Zimmer, played, while guests were greeted and hors d'oeuvres passed. Meanwhile, our illustrious speaker, Wesley Smith, just back from speaking at a Canadian medical conference, personalized copies of his book, *Forced Exit: The Slippery Slope from Assisted Suicide to Legalized Murder* (available from LLDF for a \$25 donation). His next book, *Culture of Death: The Assault on Medical Ethics in America* (contact LLDF for advance copy info), will be out shortly.

Colonel Ron Maxson, who inspired the founding of LLDF, was asked to represent our valiant veterans and lead the pledge of allegiance on this Veterans' Day evening.

Gracing the head table was our elegant hostess, Bellevue Club member Virginia Sanseau. We are so grateful to her for sharing this marvelous location, overlooking Lake Merritt. Joining her were the speaker, Wesley Smith, John and Kathi Hamlon of the International Anti-Euthanasia Task Force, Advisory Board Member Dr. Raymond Dennehy, renowned pro-life speaker, professor and writer, with his lovely wife, Maryann, and LLDF President John R. Streett, Esq., and his loyal and obedient wife, Mimi.

This glittering evening was brightened with LLDF Board Directors Steve Lopez, Terry Thompson, Tony Wynne, and Executive Director Dana Cody and Doug, her husband and on-site photographer.

Also in attendance were Kelly Connelly, Anne Starr, and John and Darlene O'Rourke, without whose efforts and talents *Lifeline* would not be possible.

Dana's presentation of the LLDF Year in



Mimi and John Streett

"If the decision to separate the twins in order to save the stronger were being made against the backdrop of a culture still committed to the equal dignity of human beings, it would be far less worrisome."

[See Smith's *Twin Killing*, p. 11. —Ed.]

Review was notable for its listing of several "wins for life." Dana also reluctantly surrendered the beautiful Thomas Kinkade painting "Chapel of Light," which had been in her keeping for several weeks. The painting, donated to LLDF by Lightpost Publishing, was won by John Leahy of Virginia, the top bidder in our silent auction.

Terry Thompson won the millenium year Attorney of the Year award, presented by LLDF Legal Director Katie Short. A surprised



LLDF Attorney of the Year Terry Thompson

Terry was cheered by his glowing wife Dee, and former Attorney of the Year winners Janie Siess and Richard Katerndahl.

A belated toast is offered to Jim and Judy Barrett of Chateau Montelena Winery, David O'Reilly of Sineann Winery and Caymus Winery, who donated wine for the dinner.

John Street introduced the main speaker of the evening, author Wesley Smith, everyone was awed by Mr. Smith's thought-provoking and incisive discourse on euthanasia and moved by the compassion he shows towards suffering and defenseless people in our utilitarian society. In a genuinely poignant moment, he turned to Robert Wendland's attorney, Janie Siess, and said: "Janie, you saved a life in a 'case which couldn't be won.'"

Mr. Smith gave numerous examples of worldwide acceleration of acceptance of the culture of death and articulated how it is being defended and propounded by self-styled "bioethicists." Despite their adherence to ideologies antithetic to the sanctity of human life and defiantly at variance with what most people think to be moral, these "experts" direct and shape the policies being



LLDF Executive Director Dana Cody with speaker Wesley Smith

used to deny life-saving medical care. Notable bioethicists are arguing a "higher moral good" of harvesting organs from "them," (i.e., those persons with special needs) so that they can be used by "us" (i.e., people who don't). Some have gone so far as to assert a "moral" right for parents to destroy a child within the first 28 days *after the child is born*. These utilitarian policies are being used by hospital ethics committees to define a standard of care that will be very difficult, if not impossible, to litigate.

Likening our current situation to the intellectual and moral climate presaging the rise of National Socialism in the 1930s, he called upon us as pro-lifers to embrace the cause against euthanasia because it is the same fight as that against abortion—we can only stop abortion and euthanasia by restoring the respect for human life that has been destroyed by selfishly motivated philosophy of separating "them" from "us."

Rev. Larry Goode closed the dinner with a prayer, indicating how inspired he was by the evening's message. All of us were moved and strengthened and challenged to continue the fight for life in the coming year. **L**

[Mr. Smith's no-punches-pulled presentation was videotaped. Copies are available from LLDf office for a donation of \$20.00 postpaid. Mr. Smith also very clearly delineated the need for every adult to make an advance health care directive. The International Anti-Euthanasia Task Force has prepared a document complying with California law, a description of it and information on how to obtain copies is on p. 6—Ed.]

[Lifeline readers have asked LLDf about instrumentation to ensure appropriate end-of-life care for clients and themselves. Many hospitals and medical care facilities offer forms for Durable Power of Attorney, but these documents are often not specifically pro-life and may preclude necessary and warranted treatment. The International Anti-Euthanasia Task Force has prepared a document complying with California law, a description of it and information on how to obtain copies follows—Ed.]

(PMDD CONTD FROM PAGE 6)

care provider or institution that acts negligently or in bad faith.

3. Who should have a PMDD?

It's a good idea for every adult to have a PMDD. Many people assume that such a document is only necessary for the elderly or the seriously ill, but people of any age or health condition could be in an accident after which they could be temporarily or permanently unable to make their own health care decisions.

4. Since family members usually make decisions for each other, why is a PMDD necessary?

It's true that it has been traditional for family members to make decisions if a patient can't do so. But this is changing. Legally, a family member is not automatically an adult patient's guardian.

In fact, recent cases make it clear that some medical providers are now willing to go to court to have strangers appointed to make decisions to withdraw care against the wishes of the patient and a capable, loving family.

A problem can also arise if there is disagreement between family members. Also, some people would feel more secure having a trusted friend as their agent, instead of a family member with whom they disagree about health decisions.

By taking the time now to name an agent you are assured that you have carefully chosen the family member or friend who will protect your best interests if you can't speak for yourself.

5. Are there any limits on my agent's authority?

The person you name in your PMDD (your agent) has the authority to make the same medical treatment decisions that you could have made if you were able to do so.

For example, after consulting with your physician, your agent may determine that continued attempts to cure a condition

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(WENDLAND CONT. FROM PAGE 5)

them are professionals employed by the Kaiser Permanente and University of California systems.

Health care systems have a keen financial interest in the case, said LLDF Executive Director Dana Cody. If caregivers can legally refuse food to disabled people like Robert, they will be able to slash costs associated with long-term care. Concern for Robert's quality of life may be cited, but "the bottom line is money," she indicated.

Cody, an attorney, said the movement to starve Robert demands a legal response. "The law should be a restraint," she said. "You don't starve somebody to death because they are disabled. You don't abandon vulnerable people. Robert's body is functioning, and if he is fed he is going to live."

If those who seek Robert's death prevail, future conservators would only have to show "good faith based on medical advice" when making a life-and-death decision. [See *In re Conservatorship of Robert Wendland* (2000) 78 Cal.App.4th 517.] "They would not even have to show that it was good medical advice," Cody said.

The right thing to do, Cody said, is to care for the person who is vulnerable. Even a person seeking to end his own life should be helped, not encouraged to commit suicide. She cited two cases, *Washington v. Glucksberg* (117 S.Ct. 2258 (1997)) and *Vacco v. Quill* (117 S.Ct. 2293 (1997)), which said there is no constitutional right to die because in America, "it is traditional that we care for the weak and vulnerable." [To read more about the cases, visit LLDF online at www.lldf.org and look for the section on U.S. Supreme Court rulings.—Ed.]

In contrast, the amicus brief filed in support of Rose declared that personal autonomy is more important than any other legal right. Personal autonomy includes the right to refuse medical treatment. In California, food and water are considered medical treatment. Those who agree with Rose argue that the right to refuse treatment, including food and water, is a constitutional right under the 14th Amendment of the U.S. Constitution and Art. I of the California Constitution.

Janie Siess, the attorney for Robert's mother, points out that the state and federal constitutions

also guarantee citizens the right to life, "though you don't hear much about that any more."

The amicus brief also argues that Robert should die because he "is unable to think in the manner we conceive humans do, and his responses are simply a matter of rote responses to an outside stimulus, or rote execution of exceedingly simple tasks." In reply, Siess points out that toddlers also engage in "rote responses" as they learn, that retarded people may only perform simple tasks, and that Alzheimer's patients or mentally ill people may not think normally.

After Robert's accident, Rose and the couple's three children hoped that he would wake up and resume life. His wife was named conservator, which gave her the power to make medical decisions for Robert. She decided to have a feeding tube inserted so that Robert could be nourished while he was comatose.

Since emerging from the long coma Robert has progressed. However, doctors said he will remain dependent because he was so disabled by the brain injury. With hope for a full recovery gone, his wife said that Robert would not want to live a dependent life. If Robert could eat normally, the choice to eat or not would be his. Because he cannot make the decision independently, the responsibility falls to his conservator, Rose. It is unknown whether Robert could re-learn swallowing, according to Siess. That is because Robert's wife stopped rehabilitation therapies when it became obvious he would not fully recover, Siess said. Robert is being cared for, and the feeding tube remains in his body, but there is no therapy to encourage further progress. The amicus brief supporting Robert's right to die by starvation describes his lack of progress since rehabilitation ended, but it is silent in regard to why therapy was halted.

Rose Wendland based her decision to withhold food on comments Robert had made before the accident. When a relative was in declining health and had to be cared for, Robert told Rose that he would never want to be in such a dependent position. However, like most people his age, Robert did not have a written directive for health care or a living will. Lacking such a

document, Rose appealed to the hospital's ethics board. They agreed with her that food and water should be stopped.

Robert would have died by starvation shortly thereafter, except that an anonymous caller—presumably a hospital worker—alerted Robert's mother and sister. With LLDF's help, they secured a court injunction to temporarily halt the starvation plan. Because of the controversy, a separate attorney was appointed to represent Robert. His attorney agreed with Rose and the hospital that food and water

*"The law should be
a restraint," she said.*

*"You don't starve
somebody to death because
they are disabled..."*

could ethically be withdrawn. That leaves Robert's mother positioned against her daughter-in-law, the court-appointed attorney for her son, huge corporate health care systems and 43 sophisticated bioethicists.

While the case winds its way through California's courts (the next stop is the California supreme court), Robert continues to live his dependent life. He uses a wheelchair, steering it with a joystick. He can write the letter "R" and responds to his mother when she visits three or four times a week, traveling from Stockton on a bus. He kisses her hand, and, when asked, holds his own hand up to be kissed, his mother told her attorney. Robert bowls in a recreation area of the care facility, and has his 1999 Bowler of the Year trophy on display in his room. He is a Medi-Cal patient, and his mother tells Siess that the staff gives him good care.

His life is not rosy, but it is a life, Siess said. Papers filed by those who say Robert should die mention no progress, but point out his many deficits.

If Robert dies with the permission of the courts and the support of major health care systems, others who are “cognitively disabled” will also be at risk, Siess says. People will die not because they directed the move themselves, but because grief-stricken, frustrated, disappointed or even greedy relatives want them to die sooner rather than later. More ominous, even disabled people with unified, protective families could be denied care by hospital officials who weigh cost against benefit and decide to save money.

In a move related to, but outside, the legal case, Life Legal attorney Katie Short wrote in November to several Roman Catholic bishops and archbishops in California. She sought clarification of the church’s stand on the issue of withdrawing food and water from a disabled person. Within the church, bishops have some influence over Catholic institutions, such as the hospitals that support Rose’s position, Short said. At press time, Short had not yet received a response from the religious leaders.

At the LLDF office in Napa, staff member Mary Riley said that fund-raising continues in the case, but at a slow pace. While grateful to those who have supported Robert’s case, Riley said that many potential donors seem to find end-of-life cases upsetting. People naturally fear the thought of disability, she said. Simple denial makes fund-raising difficult, yet anyone who might someday be less than perfectly healthy should have a strong personal interest in the case, she said.

Siess said that Florence Wendland is extremely grateful for LLDF’s help. LLDF has paid filing fees, printing costs and other expenses associated with the case, which may eventually make its way to the Supreme Court of the State of California, and perhaps even to the U.S. Supreme Court. Robert’s mother knows that without the generosity of donors, her son would be dead. Siess said Mrs. Wendland is thankful to those who have helped save her son, imperfect though he may be. She asked also that LLDF supporters pray for Robert.

L

(INTERVIEW CONT. FROM PAGE 4)

Eldridge: As it turned out, the court granted a limited injunction against the parents but wouldn’t grant the girl’s tear-filled plea to remove her from her parents’ custody. Immediately after the hearing, she ran away. The kids went to Mexico and were married, but shortly thereafter she suffered a miscarriage.

That was our first involvement with Life Legal. We used the California Supreme Court case *American Academy of Pediatrics v. Lungren*, (1997) 16 Cal.4th 307, 336-337, which allows a minor to get an abortion without parental consent. Even though that was a bad ruling, it helped us here because the Supreme Court held “that a minor who is pregnant has a protected privacy interest under the California Constitution in making the decision whether to continue or to terminate her own pregnancy. . . .” And the trial court in our case at least agreed in part with that holding.

The most recent pro-life case we have been involved with was the Dr. Anderson case. He was a retired university professor from U.C. Riverside, 90-plus years old. He was admitted to a hospital in Riverside by his daughter and a “nothing by mouth” order was issued by the hospital. Some of his friends visited him and he was very coherent, indicated that he wanted to eat and wanted to drink and the hospital was not giving him anything. His friends were concerned that he was being starved to death. He’d been placed in the hospital by his daughter, who we later learned had power of attorney for health care. She and her brother were his sole heirs and apparently he had accumulated some wealth. There were a number of issues that were fishy.

Dana Cody put out a call, and we responded because we’re right in the neighborhood. That afternoon, just before 5:00, we put in a call to the Probate Court in Riverside and requested an ex parte hearing the next morning, based on the new California Probate Code section 4770 (operative July 1, 2000) which allows virtually anyone to go in and request the court grant a temporary order prescribing patient care. In this case, that Dr. Anderson would at least temporarily be given food and water so that his wishes and his best interests could be determined at a later hearing.

I spent three or four hours on the phone that night with professors who were friends of his, professional people, not at all fanatical, but legitimately concerned about their friend. We prepared all the documentation, the declarations of these professors and the ex parte application requesting the court grant a temporary order prescribing care for Dr. Anderson. The next morning, having obtained their signatures on the declarations at the University, I was literally on my way out the door when I received a phone call that Dr. Anderson had passed away at seven that morning. It was very, very discouraging.

Did you know how long he had been without food and water?

He passed away on a Friday. His friends had visited him the Saturday before, so he had been many days without food and water.

Once he died, we had no standing to go in and object to how he had been treated. We talked to the District Attorney’s office and other places to voice our concerns, but ran into dead ends everywhere. We gave all the facts to the Riverside County Elder Abuse Center. They said, “We’ve taken all the facts and it will be in the file, but there’s nothing else we can do.” The problem was, nobody knew, or would give us, all of the facts surrounding the situation. The hospital would give us no information. Dr. Anderson was checked in under a “Doe” name—not under his real name—which was strange. I tried to get the press involved. They were not interested because there was such a void of information. And we ran into the attitude that “he was ninety-two and had a good life and wasn’t in a lot of pain so just let it go. . . .”

One might think dying of thirst was pretty painful?

Right, but the attitude was he wasn’t going to live that much longer anyway so what’s the big deal. Unfortunately, the same general lack of respect we see for the pre-born is increasing with respect to the elderly. **L**

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.

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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.

L

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.

L

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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.

(NEW MCCARTHYISM CONT. FROM PAGE 1)

On August 28, in a decision larded with pro-abortion bias, the Court of Appeal for the First Appellate District issued its decision in *PPGG v. Superior Court*, 83 Cal.App.4th 347, 99 Cal. Rptr.2d 627 (2000). The decision adopted foursquare PPGG's position, not only in the discovery matter before it, but implicitly on the merits of the underlying case which was not before it.

For example, the court stated that the pro-lifers and their counsel were "committed to an effort to curtail access to abortion providers." In so stating, the court effectively adopted PPGG's theory of the case, namely, that Mr. Foti and Mrs. Garibaldi are trying to block access to the clinic, rather than that they are simply exercising their free speech rights on a public sidewalk in order to educate women about abortion and alternatives to abortion.

The court went on to state that this alleged commitment to curtailing access "illustrates why the non-party staff and volunteers of an institution such as Planned Parenthood have such a strong interest in keeping personal information about themselves private." In other words, the court held that, because the parties and their counsel protest abortion, this in and of itself establishes that they are likely to break their word and violate the court order in order to harm PPGG's witnesses.

In presenting its case, PPGG had failed to provide any evidence that its witnesses were actually in danger, or even that they thought they were in danger. Instead, PPGG relied entirely on evidence such as the Nuremberg Files website (which PPGG portrayed as a "hit list") although it admitted that it had not a shred of evidence linking anyone involved with this case to the site. Faced with this dearth of evidence pertaining to the parties actually before it, the court of appeal instead cited "human experience" as the basis for its holding:

Human experience compels us to conclude that disclosure carries with it serious risks which include, but are not limited to: the nationwide dissemination of the individual's private information, the offensive and obtrusive invasion of the individual's neighborhood for the purpose of coercing the individuals to stop constitutionally-protected associational activities and the infliction of threats, force, and violence.

Thus, the court substituted "human experience", i.e., pro-abortion propaganda, in place of admissible evidence in order to make PPGG's case for it. Over and over, the court declared that "human experience" established the danger that Planned Parenthood's witnesses faced from pro-lifers and that, even with a protective order, the consequences of a

violation "pose too serious a risk for us to ignore."

In fact, as Foti and Garibaldi pointed out, they already know the names of dozens of Planned Parenthood volunteers and employees, names learned in perfectly legal, even haphazard ways; none of these individuals has suffered any consequences, dire or otherwise. This argument, however, simply prompted the court to note that the very fact that the pro-lifers (or more accurately, their attorneys) had a list of Planned Parenthood names was itself evidence of the danger that other witnesses faced.

In other words, the pro-lifers and their attorneys should have known that they are dangerous people and therefore should have averted their eyes whenever they came across the name of a Planned Parenthood person in the newspaper or a legal document. Their failure to do so shows just how bad they are.

The court of appeal also noted that, at a deposition, PPGG's lawyer asked Mr. Foti, "Have you ever been a member of any antiabortion or pro-life organization?" Mrs. Short objected that the question was irrelevant and violated Mr. Foti's right to associational privacy, and she instructed him not to answer. PPGG's lawyer made no attempt to narrow the question or show its relevance; she simply moved on. Months later, PPGG argued, and the court of appeals agreed, that Mr. Foti's failure to answer this question supported its ruling, because "partially due to this instruction, the record before us does not disclose the extent of nature of the involvement of [Mr. Foti and Mrs. Garibaldi] in the anti-abortion movement." Thus, for the court of appeal, unless a pro-life plaintiff or defendant reveals all of his or her associations with the pro-life movement (which would necessarily include the activities of these associations as well), he or she must be presumed to have undesirable associations which justify denying routine discovery.

Worse still, the logical corollary of the court's holding is that pro-life attorneys must also reveal all of their associations to Planned Parenthood. Failure to do so would lead to record which "does not disclose the extent or nature" of their association in the anti-abortion movement, and thus justify denying discovery to these presumptively dangerous people.

Mr. Foti and Mrs. Garibaldi have filed a petition for review in the California Supreme Court, along with a request that the court of appeal's decision be depublished. Because of the threat the decision poses to the due process rights of pro-life litigants and their attorneys, several other pro-life organizations also submitted depublishation requests. A decision on the petition and depublishation request is expected by the end of the year. **L**

Wesley J. Smith

Twin Killing

The culture of death advances in England.

Alas, poor Mary. She's the conjoined twin in England, united at the chest with her stronger sister Jodie, and she's been called a parasite, a tumor, a blood-sucker: someone whose "primitive" brain makes her life unworthy of protecting. And all that by two British courts, which wave wrenched away from her parents the right to decide whether or not to have her surgically separated from Jodie—though the operation will take Mary's life.

The courts have done what the twin girls' parents refused to do: make a real-life Sophie's Choice. They have chosen to kill one daughter to save the other. The couple, from the small Mediterranean island of Gozo, view their daughters as equally precious and entitled to life. They rejected the dehumanization of Mary, asserting their right to refuse medical treatment and allow nature to take its course. But last week, rebuffed by the court of appeals, they gave up the fight and announced that they would not take the case to the House of Lords.

Hard cases make bad law, or so the saying goes, and the facts of this tragic case are the worst possible. They are so unusual that most commentators have assured the public the ruling hasn't set a precedent. But we have no assurance that this is true. Indeed, we have considerable evidence, in the history of euthanasia laws, that the opposite is true: Decisions reached in tragic cases quickly open the gates to a flood of new cases—each moving us one step further from a reverence for life. The decision to require the death of Mary has been imposed on a reluctant family, and that ought to frighten the average citizen of England—and of America, too, for that matter: An international precedent is now in place to deny parents the right to resist the "culture of death."

That phrase describes a mindset that accepts intentional killing as an answer to difficulties

stemming from illness, disability, age, and the social inequities caused by limited medical resources. It is a mindset that leads to what seems at first to be contradictory attitudes toward death and dying. Thus, some of the same commentators who now argue that the court was right to overrule the parents in order to save Jodie's life also looked with approval on another recent court decision from England that expressly permitted doctors to refuse to save the life of a profoundly disabled child—even though his parents wanted him to continue receiving care.

This second case involved a 19-month-old boy born prematurely with an irreversible lung condition and brain abnormality. Even though he responds to his parents, smiles in recognition, and shows signs of acquiring a vocabulary, the court ruled that his doctor's weak prognosis permits them to overrule his parents' wishes and let the boy die the next time he has a medical emergency.

At first glance, these two British court decisions appear opposites: One imposes treatment, the other denies it. But looked at through the lens of the culture of death, they prove perfectly consistent. One imposes unwanted treatment on a family knowing that a helpless child will die. The other denies wanted treatment to a family knowing that a helpless child will die. In both cases, the child dies, and in both cases, the courts have held that the doctors' values rule.

The same apparent paradox is seen in this country. On the one hand, supporters of assisted suicide argue that the terminally ill and severely disabled have a right to doctors' help in committing suicide. On the other hand, supporters of "futile care theory," now all the rage in bioethics, are ready to disregard the wishes of the ill or disabled if the

(PMDD CONTD FROM PAGE 7)

should be stopped and that you should receive comfort care and pain relief only.

Your agent may also approve a DNR (Do Not Resuscitate) order or a 'no aggressive treatment' order. He or she may determine that surgery, ventilator support or other interventions should be provided, withheld or withdrawn.

There are efforts underway by some to add "aid-in-dying" (euthanasia by drug overdose or lethal injection) to the options that are approved by means of an advance directive. The PMDD specifically prohibits this.

Your agent does NOT have the authority to approve any direct and intentional ending of your life.

For example, your agent may not direct that you be given lethal drugs or a fatal injection, and your agent may not direct that you be denied food or fluids for the purpose of causing your death by starvation or dehydration. Copies of IAETF's Protective Medical Decisions Document (PMDD), a durable power of attorney regarding health care (advance directive) which expressly defines and prohibits euthanasia are available in sets—each PMDD set includes three documents and one set of instructions. Each set (multi-state, California, Indiana, Minnesota, or Ohio) is \$8.00 postpaid. IAETF also makes available Protective Identification Cards: a wallet-sized card stating that the signer opposes euthanasia and assisted suicide and wants no intervention or drugs intended to end life. Single card: send SASE and a request for the card. 100 cards may be ordered for \$7.00—Please order PMDDs and ID cards directly from

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(TWIN KILLING CONTD ON PAGE 12)

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.

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(TWIN KILLING CONT. FROM PAGE 11)

patients seek expensive treatment their doctors deem unjustified by their quality of life. To apologists for futile care theory, autonomy has its limits.

The real point of both policies, however, is the elimination of people judged to have a low quality of life. If “choice” gets the job done, fine. If not, death is imposed under another rationale (typically “distributive justice”: Timmy doesn’t have health insurance, so we can’t afford to give Granny Jones a respirator).

The case of Mary and Jodie presents a terrible dilemma. If the decision to separate the twins in order to save the stronger were being made against the backdrop of a culture still committed to the equal dignity of human beings, it would be far less worrisome. But we live in a time when the commitment to life is steadily losing ground to the culture of death. It is a time when a scholar like Peter Singer can assert that parents should have the right to kill their newborns to benefit the family—and be rewarded with a chair at Princeton University. It is a time when the *Lancet* can report (in 1996) that pediatric euthanasia

based on quality-of-life judgments takes some 80 infant lives a year in the Netherlands—and not cause a ripple.

Those who say the conjoined-twins ruling will set no precedent simply do not understand how relentlessly the culture of death is advancing. With this decision we may have crossed a cultural Rubicon: It can reasonably be argued that the judges have ordered doctors to perform involuntary euthanasia. At the very least, the case of Mary and Jodie makes it easier to justify medical killing the next time some “worthy” case comes along.

[This article was originally published in *The Weekly Standard* (Oct. 9, 2000) and has been reprinted with the kind permission of the author, Wesley J. Smith, an attorney for the International Anti-Euthanasia Task Force and the author of *Forced Exit: The Slippery Slope from Assisted Suicide to Legalized Murder*. His next book, *Culture of Death: The Destruction of Medical Ethics in America*, will be published this year by Encounter Books.] **L**