

Life *line*

*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

Anne Starr

Menlo Park Sign Victory

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

— The First Amendment, U.S. Constitution

In a victory for free speech, Life Legal Defense Foundation attorneys have knocked down a city law deliberately designed to dilute an abortion protester’s message. LLDF lawyers also won more than \$65,000 in court costs and fees from the City of Menlo Park, whose leaders had passed a sign ordinance aimed at pro-life posters.

The fees and costs have been paid by the Northern California city, with about \$50,000 of it going directly to LLDF, the largest “contribution” in LLDF’s history. Executive Director Dana Cody said the money would be used for “more case work ... the more cases we can support, the more lives are saved because our clients and others who see our results don’t feel a chill to their speech rights.”

The win was a welcome change for LLDF attorneys. In the 27 years since the *Roe v. Wade* decision, the presumption of a woman’s right to choose abortion has so colored the culture that a pro-life win in court is difficult. When media disapproval, cultural assumptions about women’s rights, and pro-abortion government officials join forces, LLDF attorneys have lost even with the First Amendment on their side.

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To bolster their spirits, LLDF volunteer lawyers sometimes tell each other to stay the course because “we can’t lose them all.”

The Menlo Park case proved that point.

The case started in 1996, when the City Council passed an ordinance at the end of August in response to citizens’ complaints about the content of the signs. During public

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GENERAL RECAP & UPDATE

Conservatorship of Wendland— After the trial court spared Robert Wendland’s life, Rose Wendland (his wife and conservator) and his court-appointed counsel filed briefs asking California’s Third District Court of Appeal to give the conservator authority to dehydrate and starve Robert to death despite the fact that he is not in a persistent unconscious state. Janie Siess has filed opposing brief. Oral argument were heard February 16, 2000. Decision handed down February 24. See story page 11.

Foti v. Menlo Park— Successfully challenged a municipal ordinance restricting picketing activity. The indisputable purpose of the ordinance was to curtail the speech activities of two pro-lifers who picketed outside a Planned Parenthood abortion clinic. The ordinance restricted signs on parked cars,

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banned hand-held signs larger than three square feet, and required picketers to keep moving. Although plaintiffs were initially denied a temporary restraining order and preliminary injunction by the federal district court, on appeal the Ninth Circuit ruled that a preliminary injunction should issue. The district court then awarded plaintiffs \$53,000 in attorney fees and costs. The City amended the ordinance, and the plaintiffs challenged it again. This time, the district court issued a preliminary injunction against the enforcement of the ordinance on the first try. The City has agreed to pay plaintiffs an additional \$12,000 in fees. Meanwhile, the Planned Parenthood clinic closed.

Foti v. Planned Parenthood—This action by a sidewalk counselor against PP and its escorts is now in the discovery stage.

Planned Parenthood v. Foti— *Foti v. PP* sparked this countersuit by Planned Parenthood against Ross Foti and others, trying to move them across the street from three clinics. In the meantime, one of the clinics has closed for good!

Charles Spingola, et al. v. City of Fremont—Prolifers arrested at street fair for pro-life sign/speech. Case pending.

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. Trial set for March 21, 2000.

Sherman v. Ryan— An abortion clinic sought an injunction against longtime picketer and sidewalk counselor. Victory: case dismissed with prejudice; sanctions awarded.

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. Suit is in discovery phase.

Ohio v. Spingola and Spingola v. Ohio State— Pro-lifer convicted for free speech activities on campus; appeal pending.

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LLDF Fall Banquet

With spirit and enthusiasm, the keynote speaker at Life Legal's Fall banquet (Nov. 11, 1999, Oakland, Calif.) used common sense, philosophy and theology to encourage his audience to keep fighting for the right to life.

The Rev. Frank Pavone, national director of Priests for Life, exhorted the attentive audience of more than 200 people to respond to the "urgent need" to defend life at every stage of development, from conception to natural death. A Catholic priest, Pavone stressed the ecumenical nature of his mission and the common ground between clerical efforts and the work of Life Legal Defense Foundation. "There is a kinship between our work," he said.

"Where are people able to hear the truth" about abortion, euthanasia and related subjects? Not in public schools or the mainstream media, he said, "although our efforts in those areas must never slacken. The two great areas still open to the truth are the pulpits and the streets."

Priests for Life trains and encourages leaders of all faiths to take public stands with their congregations on life issues. Meanwhile, pro-life individuals, including those defended by LLDF, speak from the streets.

"This is the hope of turning America around on these critical life issues," he said.

"Together we will turn this nation around," Pavone said. He firmly believes that with God's help, eventual victory is guaranteed. "What's in question is not the final outcome of the battle, but the final outcome of us. You and I are in the middle of this battle whether we like it or not."

Knowing that many attorneys were in the audience, Pavone spoke about the contradictory nature of laws governing life issues. He remembered a woman in Idaho who had



Guest speaker, Father Frank Pavone, Priests for Life.

Priests for Life trains and encourages leaders of all faiths to take public stands with their congregations on life issues. Meanwhile, pro-life individuals, including those defended by LLDF, speak from the streets.

changed her mind after hearing him tell how the law protected animals, but not unborn children. The church-going woman approached Pavone after the service at which he had preached. She said she had entered church that day "100 percent pro-abortion," but changed her mind after hearing him tell about how sea turtles are protected. Pavone had once walked up to a sign on a Florida beach while visiting that state during one of his many trips for Priests for Life. The sign warned people away from an area where sea turtle eggs were incubating. "Do not touch the sea turtles or their eggs. They are protected by local, state and federal law," the sign proclaimed. Meanwhile, in nearby cities,



Mimi Streett with Katie Short and Mary Riley.

unborn human children were being aborted. “It made (her) think,” Pavone said. “What in the world is going on? We don’t have the right to smash a turtle egg, but we can kill an unborn child.”

At the Supreme Court level, Pavone found contradictions between the *Roe v. Wade* ruling that made abortion legal in the United States in January of 1972, and the case of *Sierra Club v. Morton* handed down just eight months earlier. In the *Sierra Club* case, the court wrote a life-affirming, almost poetic opinion saying just as the ordinary corporation is a person as it approaches the court, so should land, nature and air be considered persons in the eyes of the law. Those inanimate objects “form the core of American beauty,” and those “inanimate objects should have standing” before the court, the majority agreed. Eight months later, the same court ruled that “the word person as used in the Fourteenth Amendment does not include the unborn,” Pavone said.

The justices in the *Roe* majority said they were unsure whether the unborn child was a human covered under the Constitution. Lacking proof, they leaned toward the right of adults to decide the unborn child’s fate. “You don’t know if it’s a human being, but it’s OK to destroy it,” Pavone said, immediately pointing out how other laws forbid the use of lethal force when there is doubt. For example, if unsure whether a figure behind a tree is a bear or a man, a hunter may not shoot. The hunter must be sure before he fires.

The issue raises the “question of the authority



LLDF Director, Dana Cody and John Thurau and Wes Smith.

of the government itself—Do we have the authority to declare what might be human?”

“When people see clear violations of the eternal law by the (civil) law, we’re in an arena which is a prelude to martyrdom. What is a martyr?” Pavone asked. “One who does not have the right to hold on to life if holding on betrays the One who has absolute dominion over life.” It is the opposite of suicide, he said, pointing out that the martyr does not seek death. “You, brothers and sisters, are working in the antechambers of martyrdom,” Pavone said to the LLDF audience. When the law restricts people from using public sidewalks and steadily shrinks the size of signs they may carry, “how far will it go before someone comes along and says you are breaking the law if you speak against abortion? If you think against abortion? If you preach against abortion?”

Part of his job is to give people “the courage to be martyrs,” Pavone said, while LLDF’s job “is to make sure that doesn’t happen.” Even with support from organizations such as LLDF, there will be pain for those who support life, Pavone said. “The good news is that life will win. The bad news is that in the process, we suffer.”

Using theology, Pavone pointed out that abortion is “exactly the opposite of love. Love is sacrifice of the self for the good of the other person. Abortion is sacrifice of the other person for the good of the self.” In addition, abortion supporters have twisted Jesus’s words at the Last Supper.

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ATTORNEY OF THE YEAR



BEN KOLLER was named at the banquet on November 11 for his terrific work and ultimate victory in defending Gary Pomeroy of San Jose who was charged with obstructing the sidewalk with his signs while offering alternatives to abortion and information about abortion outside a clinic. Pomeroy was up against a definitely-pro-abortion City Attorney. A police officer even offered that the sidewalk was there so “that women could have a choice” in her testimony. *[So much for unbiased law enforcement. San Jose is not particularly well known for its peaceful and fair acceptance of pro-life demonstrators.—Ed.]*

Ben has been very active with Life Legal from the beginning—one of his earlier cases involved a suit for abuse by a sheriff’s department (resulting in broken bones etc.) He was truly the big winner in that case—he later married one of his clients. LLDF administrator Mary Riley spoke of Ben very warmly at the banquet, allowing that Ben has never refused to help when asked.

[Lifeline knows of no familial relation between Ben Koller and Chuck Koller (interviewed this issue), but would graciously accept correction in this regard.—Ed.]

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North Dakota v. Family Life Services— State Attorney General took over pro-life ministry, placing Family Life Services in permanent receivership. North Dakota Supreme Court ordered trial court to release funds for FLS appeal.

U.S. v. Alaw— (Wash., D.C.; Newman and White) Department of Justice suing rescuers civilly for “blocking” a clinic where no abortions were taking place and doors were locked. Government bungles case at trial. Decision pending.

Spingola v. U.C. Regents (Berkeley)— Street preacher of prolife message harassed. Case at discovery stage.

Wilkerson (PP) v. Scott et al. (San Diego)— Injunction and \$2,500,000 damages suit against multiple sidewalk counselors. An appeal of the preliminary injunction is pending while proceedings continue in trial court. In the meantime, two defendants have been dismissed and \$11,000 awarded against PP.

Family Planning Associates v. Wilson (Los Angeles)— FPA’s improper and illegal disposal of personal client and employee information has led to this suit. Anti-SLAPP motion pending.

U.S. v. Operation Rescue et al.— Federal FACE case (Ohio). Judge declared mistrial due to government attorney misuse of witness testimony. Retrial is set for February 15, 2000.

Wilkerson v. Redding School District— Elderly school leafletters harassed and falsely charged with interfering with school. Civil suit filed.

Amy Jo Mattson v. MKB Management Corporation dba Red River Women’s Clinic (North Dakota)— False advertising suit. Abortion mill claims no link between breast cancer and abortion.

Hill v. Colorado— LLDF amicus brief filed at US Supreme Court. See page 9.

NOW et al. v. Scheidler et al.— RICO suit. LLDF amicus brief filed in Seventh Circuit.

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comment time at a regular council meeting, some citizens complained about graphic signs carried by demonstrator Ross Foti. His signs of large color photographs showed aborted babies. The biggest was about three by five feet in size. He carried one sign and put others on his car parked near a Planned Parenthood abortion clinic within the city limits of Menlo Park. Foti credits these signs with saving the lives of several children whose mothers have stopped to thank him—and undoubtedly many others he never saw again.

After hearing people complain about the signs, the council passed an emergency ordinance changing the city’s sign laws so that Foti’s signs were outlawed. LLDF attorney Katie Short said the introduction to the ordinance included sections saying that Foti had disturbed the peace of the public by displaying large graphic signs, and then went on to outline a sign ordinance that was strictly aimed against those signs.

“The City Attorney did realize that the city could not pass an ordinance against this type of picture, so he went for size and said people could carry signs no larger than three square feet in the public right of way,” Short said. A three-square-foot sign measures about 21 inches on each side, Short pointed out. People often mistakenly envision three square feet as three feet on each side. However, a three-square-foot sign is roughly equal to just five sheets of binder paper taped together, she said.

The city made several exceptions to the sign size rule, including real estate signs, public information signs, and any signs put up by the government. “We got the ordinance struck down as content-based because of the exemptions which were carved out for less upsetting signs,” Short said. “City Council members made exceptions so that they would not bother people they didn’t want to bother, such as real estate agents.”

The ordinance also said that anyone carrying a sign should keep moving to avoid blocking the public right of way, and should not keep

signs on cars. Those rules forced Foti to keep walking even when nobody else was using the sidewalk, and prevented him from using his car to supplement his hand-held sign.

LLDF challenged the new city law at the end of September, 1996. Short and fellow attorney Mike Millen, who practices law in San Jose, took the case to federal court in San Francisco for LLDF.

The City of Menlo Park was represented by its city attorney, who had served on local and national boards for Planned Parenthood. Later, when his association with Planned Parenthood was mentioned during deliberations, officials for the city “got all huffy” at the suggestion of a conflict of interest, Short said.

Although originally the case lost before an unsympathetic federal district court judge, it won on appeal. The Ninth Circuit Court of Appeals in San Francisco left no question about the issue, saying the Menlo Park ordinance “turned the First Amendment on its head.”

The City of Menlo Park then rewrote its sign ordinance, ostensibly according to the parameters outlined by the Court of Appeals. Short and Millen again challenged it, and this time, the district court enjoined the ordinance in the first instance. Shortly thereafter, the City agreed to abandon the ordinance and pay the pro-lifer’s attorneys fees.

Short remains concerned about size restrictions on signs, noting that in one case against abortion protesters in San Diego, a court reduced the size of allowable pictures to only eight and a half by 10 inches, the size of one sheet of binder paper. [That case, *Wilkerson v. Scott*, is presently on appeal. —Ed.] No matter what the topic—abortion, political comment, labor disputes—passersby will learn nothing from a sign that small, she indicated.

The Menlo Park case was not only a legal and financial win; it was also a win that generated respect for the pro-life voice. Short, who is the legal director of LLDF as well as a volunteer

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ASK THE ATTORNEY

Rose Grimm

An Interview with Chuck Koller

Could you tell me about your legal education and background?

I went to law school at the University of Denver. I went to law as a second career, after being a city planner and re-development director for eight years. My wife and I both felt that God was calling me to go into law. I graduated in June 1990 as a member of the Order of St. Ives, which meant I was in the top five percent of my class, and was offered a job with a large firm here in the desert. I was admitted to the California bar in 1991.

Did you feel that God was calling you to any specific area of the law?

Yes—to this one, to pro-life.

Aside from your pro-life work what do you do?

I have a very general practice. Because I do a lot of pro-bono work I was involved in confrontations with the firm I worked for: they wanted to use the firm facilities to hold a meeting for the National Organization of Women. I said that was fine but that I wanted to hold my Birthright of the Desert meetings there too. They canceled the National Organization of Women meeting but working for a large firm made it very hard for me to do pro-bono work. I opened my own practice which caters to the small business person here.

How did you become involved with Life Legal Defense?

My former partner and I had started Birthright in the Desert; we received a circular and as a result we both volunteered to do pro-life work.

What kind of cases have you done for Life Legal?

I successfully defeated an attempt to impose a temporary restraining order sought to stop protestors from protesting at a clinic here. The judge vacated the order at the preliminary injunction hearing. With that same group of protestors I've had a variety of cases. One protestor was charged with three counts of disturbing the peace, when in each case he had been assaulted. We got those charges dismissed. We instituted some actions against the people who had assaulted the protestors, without success because, as the judge said, "If you're going to protest you have to learn to have a thick skin, and put up with things that normal people wouldn't put up with."

Did you consider that judge unusually pro-abortion?

No, he was just like other judges. They are very pro-choice especially when it comes to protestors. What they want them to do, and they have said this both in chambers and in the open court, is to just quietly pray that things will change. Don't bother anybody, don't make a ruckus.

What successes—or failures—have you felt the best about in your pro-life work?

I think my most important success was in prevailing in the matter of the restraining order. We made a first amendment argument, and we had some good facts on our side. The protestors had been coming for nine years, and the opposite side couldn't produce any declarations that showed anything but protected speech. The place where the clinic is located is so small that if there had been even a twenty-five foot bubble zone the protestors would have been ineffective. The victory allowed the protestors to keep interacting with the doctors and patients. That place is now about to be closed down. One of the doctors has had his license

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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 proper defendant in filing appellate brief. On appeal at Ninth Circuit.

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

Dym v. White. On appeal—First Amendment/ Due Process case, involving a judgment against ORC (Operation Rescue of Calif.) after a Kangaroo court judge/trial. ORC was denied the right to a jury, and denied the right to cross examine Plaintiffs on issues of liability and damages. At trial, the judge allowed the hearsay statements of a witness from another proceeding to be read. ORC was denied the right to cross examine that witness. After finding ORC liable under "respondeat superior" theory, the judge took the jury damages award from another trial, at which ORC was not present, and simply "rubber-stamped" it as the damages in ORC's trial. That very same judgment had been reversed in a previous appeal. Again, ORC was denied the ability to cross examine witnesses on damages awarded at the other trial. The appellate record is being prepared, and the opening brief is due in about a month.

MEDICAL PROFESSIONALS

Dr. Katherine Schlaerth (the physician who testified so effectively at the hearing on partial birth infanticide at the state assembly), has been dismissed from two jobs because she is pro-life and won't do abortions or dispense birth control pills. She intends to write articles for newspaper publication on her experiences and wants to interview others in the medical profession who have undergone similar types of discrimination.

If you have had similar experiences and would like to contribute to this effort with your story, please call LLDF office for a referral to Dr. Schlaerth for an interview—(707) 224-6675.

ANNOUNCEMENTS

CONTINUING LEGAL EDUCATION COURSE

On March 11, 2000, from 8 a.m. to 5 p.m., LLDF will be hosting a continuing legal education course for attorneys, "Active Killing: What the Law Allows." It will be held at the Doubletree Hotel, Old Town Pasadena.

The course will include an analysis of the history of euthanasia and active killing, its impact on decisions made by HMOs and by the ethics advisory boards of hospitals throughout California, an overview of state and federal law as it relates to active killing, including how the law is affecting medical care for the disabled, elderly and chronically ill.

The need for this course has been increasing in the last few years. Individuals are being denied life-saving medical treatment, and need recourse to an attorney to get it.

Attorneys will receive registration information in the mail soon, but please mark your calendars. Check-in will begin at 8:00 a.m. with continuing legal education commencing at 8:30 a.m. Continental breakfast and lunch will be served, with beverages throughout the day.

7.0 MCLE credits (1.0 Civil Rights Violation). Please join us in this opportunity to increase your knowledge and meet your pro-life colleagues. (Lunch is included.) The Doubletree Hotel is in "Old Town" Pasadena, on Los Robles between Walnut and Union.

Registration is \$200.00 (\$250.00 after 2/25). Registrations may be made by mail (LLDF, POB 2105, Napa, CA, 94558, check or credit card). Fax (707) 224-6676 w/credit card. Please include name, address and telephone number, and signature for credit card orders.

Room reservations are not included in the registration fee. If you would like to reserve a room, please call (626) 792-2727/(800) 222-8733. We look forward to seeing you March 11.

ON THE WEB

www.lldf.org

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EDUCATION

Wesley J. Smith

Suicide Pays

It is the unfortunate nature of man that financial imperatives often supersede important moral and ethical principles. We often tolerate or even celebrate inherently unethical and immoral actions as long as they make a buck.

Simply put, mammon has the power to distort moral intuitions. Take the issue of assisted suicide. Opponents of legalization warn that if killing is ever deemed a legitimate medical practice, the ultimate driving force toward hastened death will not be "choice" but money. Yes, legalized assisted suicide would begin primarily as a phenomenon of white, upper-middle-class people—the types who are typically the most supportive of legalization. But when a doctor killing his patient becomes an ordinary affair, assisted suicide could be seen as an easy way to cut medical costs, thereby increasing profits for HMOs while reducing financial burdens on taxpayers who pay for government health care programs and families who care for ill and disabled members.

This paradigm has already formed in Oregon, the only state to legalize assisted suicide, where it is made available by virtually all of the state's non-Catholic HMOs, one of which limits hospice coverage to a miserly \$1,000. Similarly, assisted suicide is covered as "comfort care" under Oregon's Medicaid health care rationing scheme, while at the same time, the plan excludes from coverage treatment for life-threatening conditions such as some late stage cancers and care for low birth-weight babies. That is why many advocates for the poor nationwide, such as the Coalition of Concerned Medical Professionals and organizations that stand up for farm laborers and service workers, now label assisted suicide "death squad medicine" and have begun grassroots organizing against it.

The once strong popular tide favoring assisted suicide may be turning, as witnessed by Michigan's overwhelming rejection of a

Derek Humphry, cofounder of the Hemlock Society, has written recently that avoiding family burdens would be a splendid reason to commit assisted suicide. When the wolf howls, the wise lock their doors.

legalization initiative last November by 71–29 percent. The American people are slowly awakening to the powerful financial gravitational force that would be created if assisted suicide were legalized, which is why it was so disheartening to see the media (including Richard John Neuhaus in the February Public Square) readily accept a study in the July 16, 1998 *New England Journal of Medicine* that substantially underestimates the financial impact of legalizing assisted suicide.

The *Journal* study was conducted by a noted assisted suicide opponent, Ezekiel J. Emanuel, M.D., and a noted proponent, Margaret P. Battin, Ph.D. Yet the study is deeply flawed from the beginning. The authors use statistics published by a pro-euthanasia Dutch physician to predict the number of physician-assisted suicides in the United States under universal legalization. The Dutch study claimed that approximately 2.7 percent of the annual

130,000 Dutch deaths are caused by euthanasia or assisted suicide, including about 1,000 people killed by doctors without request or consent. Applying this 2.7 percent figure to United States demographics, the authors estimate that 62,000 Americans would die each year by assisted suicide were it legal throughout the country.

As bad as that is, the 2.7 percent statistic undercounts significantly the number of people in the Netherlands who actually die at their doctors' hands. The Dutch, having been intensely criticized internationally over their euthanasia policies, deliberately underplay the extent to which killing permeates their health care system. One technique they use to undercount euthanasia deaths is to apply an overly restrictive definition of "euthanasia." If a doctor kills a patient with a lethal injection of curare upon request of the patient, it is considered euthanasia. However, if a doctor kills the same patient through a massive overdose of morphine administered with the primary intent that the drug kill the patient rather than control pain, that death is not considered euthanasia. This results in a dramatic undercount of the number of people doctors actually kill in the Netherlands, since far more people die through the intentional overdose method than through lethal injections.

In 1991, the Dutch government published "The Rummelink Report," which disclosed that approximately 8,100 people were killed by physicians in 1990 through massive overdoses of morphine. The Rummelink Report did not include those deaths in its widely reported conclusion that about 3 percent of Dutch deaths were caused by euthanasia or assisted suicide. Include the morphine overdose deaths listed in the Rummelink Report's statistical tables and the percentage jumps to 8.5 percent of 1990 Dutch deaths, nearly triple the figure adopted in the Emanuel/Battin study. Even that horrifying figure is probably too conservative. A *British Medical Journal* study published in February found that 50

percent of Dutch assisted suicides and euthanasia killings go unreported. Thus, when Emanuel and Battin predicated their estimate of the number of Americans who would die by assisted suicide on the Dutch statistic of 2.7 percent, they utterly destroyed their study's predictive reliability.

Secondly, the authors predicate their findings on the unrealistic assumption that the people who would "choose" assisted suicide would be those with four weeks or less left to live. Using this time frame, the authors claim that the annual savings from assisted suicide would be approximately \$627 million (based on the statistical undercount as related above) using average Medicare costs for end-of-life care. But this assumption is highly questionable. In the Netherlands, there are many documented cases of assisted suicides and euthanasia for nonterminal conditions, including depression over the death of children, fear of giving in to anorexia, haunted memories of the Holocaust, infants born with birth defects, anguish over skin cancer scars, and asymptomatic HIV infection.

Even a cursory review of the assisted suicides that have been made public in this country reveals that most assisted suicide victims were not within a few weeks of the end of their natural lives. Indeed, 80 percent of Jack Kevorkian's kills weren't even terminally ill, and at least four had no underlying organic disease that could be determined upon autopsy. It is also important to note that coauthor Battin has said elsewhere she believes that legalized assisted suicide could eventually have a wide rather than narrow application, even to nonterminally ill elderly people who want to die so as to avoid burdening their families with the cost of their care. Moreover, she has recently written that "rational suicide" should be permitted, even if as a "self-sacrifice based on altruistic reasons" rather than on avoiding suffering in terminal illness. Thus, to assert that assisted suicide would be narrowly applied is unrealistic. Indeed, the authors

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suspended for three months and is also facing criminal charges, and that combined with the protesting has pretty much shut the place down.

Is there anything you would like to say in this forum?

Every time I go into court I go against high-powered, high dollar, lawyers from Los Angeles who are well financed, with expert witnesses and fancy charts. I would like to put the challenge to the pro-life community that we have to start thinking about being as armed as the opposition. I have seen pro-abortion attorney's fees requests for ten and twelve million dollars that they have spent to fight for the right to kill babies, and we have a hard time raising enough funds to pay a lawyer anything. I would like to find a way for those of us who want to do pro-life work to do it on more than just a part-time, pro bono basis. Down here in the valley we have a hundred churches; if each church would chip in a thousand dollars we could send off a lawyer and a secretary who could travel the whole of southern California. I don't think *Roe v. Wade* will be overturned in my lifetime; therefore these little legal battles are going to make the difference. We are not getting very much sympathy with the courts. I had one case where a clinic employee said, "I am going to have you're a-- killed." The judge dismissed the case saying that wasn't strong enough language to rise to the level of assault or intentional infliction of emotional distress because anti-abortion protestors needed to have thicker skin. If you put the shoe on the other foot my client would be in jail for twenty years for attempted murder. That's worth fighting against. We have to take whatever victories we can get. **L**

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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.

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attorney in this case, said that for the first time municipal authorities are taking Life Legal's letters seriously. They know LLDF has won a case. They know LLDF has been awarded attorney's fees and court costs. They know LLDF is watching what local governments do. The realize that a poorly crafted law will be challenged, and will cost them money.

Meanwhile, the best news is that the Menlo Park abortion clinic has closed, Short reported. For demonstrator Foti, that just means a change of location.

He continues to follow his conscience and hold his signs outside other south Bay Area clinics where abortions are committed, hoping to change the minds and hearts of mothers, fathers, and perhaps even abortion clinic workers. **L**

STATISTICS

Nationwide, one-third of abortions are done on non-white women while comparatively non-whites constitute only about thirteen percent of the total American population (Dr. David Reardon).

Nearly eighty percent of Planned Parenthood's abortion centers are located in predominantly African-American neighborhoods (Delores Bernadette Grier).

Since 1973 African-American women have had almost ten million abortions. The current population of black Americans is thirty-one million; therefore the missing ten million is an enormous loss (Morbidity and Mortality Weekly Report, 12/8/92).

(BANQUET CONT'D FROM PAGE 3)

Anticipating his sacrificial death, Christ said, "This is my body, which will be given up for you." The abortion movement says, "This is my body, don't tell me what to do with it."

In our society, which "has absolutely gone crazy with death," false gods encourage people to turn suffering into violence. "The true God transforms violence into suffering," he said.

The suffering of one once-anonymous woman has been transformed for good in recent years, he said. "You know what is the biggest failure of *Roe v. Wade*?" he asked the audience. "It is that Roe is now pro-life." Norma McCorvey, who Pavone said has suffered greatly, used to be the symbol for abortion. Recently she converted to Catholicism, crediting Pavone for introducing her to the Catholic faith. However, Pavone said the first step in her conversion came when she received an apology from the director of Operation Rescue for critical remarks he had made about her. "She began to realize that 'evil is not me. He can respect me while hating what I do.'"

In that spirit, Pavone urged respect for the dignity of every single human life. He reminded listeners that "the only way some of the pro-abortion people are going to come over is if we respect them. They themselves betray that dignity, but they don't lose it," he said.

He also encouraged those who defend life at every stage to "let no one ever tell you that you belong to a movement that is narrow, that is exclusive."

The supporters of unborn children, of retarded, brain-damaged or disabled people, of old people close to death—"We are the ones with open arms." **L**

What a Coincidence!

In a nationally published news story for American Lawyer Media, journalist Tony Mauro reported January 19 that the U.S. Supreme Court appeared ready to strike down a Colorado state law—a “bubble zone” law designed to restrict demonstrations or protests (read sidewalk counseling) at “health care facilities.” In the article Mauro ventured “if the law goes down, credit a creative hypothetical from Justice Anthony Kennedy for its demise, more than any lawyer’s oral advocacy.”

The case being argued before the Court was *Hill v. Colorado*, 98 – 1856. LLDF submitted a brief amicus curiae (“friend of the court”) arguing that the law, C.R.S. §18-9-22(3), should be struck down as an unconstitutional restriction on speech. The statute makes it unlawful for any person within 100 feet of the entrance to a “health care facility” to approach within eight feet of another person, “for the purpose of passing a leaflet or handbill to, displaying a sign, or engaging in oral protest, education or counseling” unless the approached person “consents.”

Colorado is backed by some eighteen states which, along with United States Justice Department, filed amicus briefs in support of the law. The demonstrators are backed by the ACLU and the AFL-CIO, whose brief states that unions have a “vital interest” in preserving citizens’ free speech rights.

The 1993 law was immediately challenged by Leila Hill, Audrey Himmelman, and Everett Simpson, sidewalk counselors whose efforts to provide women with information about alternatives to abortion has been severely hampered by the statute. They have been represented by the *American Center for Law and Justice* throughout their seven-year effort to have the law struck down, culminating in their appearance before the Supreme Court.

At the hearing before the Court, Justice Antonin Scalia challenged Colorado Solicitor General McLachlan’s argument that the law was neutrally written. “I think we all know what it’s aimed at, which is abortion protest-

“You’re curtailing a lot of other activity,” Rehnquist remarked. “If you’re restricting speech, you can’t be vague.”

ers,” Scalia said, adding that counseling someone to consider the consequences of abortion is “a totally different entity when you do it from eight feet away.”

The “creative hypothetical” posed by Justice Kennedy concerned the problem of how the law would be enforced if a doctor’s office were on the sixth floor of a seven-floor building, and none of the other offices were medical facilities. A protester protesting one of these other businesses would run afoul of the law. Several other justices joined in peppering the Solicitor General with questions about enforcement of the law in that situation, and were evidently not satisfied with the Solicitor General’s response that a single doctor’s office would create a “bubble zone” around the entire building.

“You’re curtailing a lot of other activity,” Rehnquist remarked. “If you’re restricting speech, you can’t be vague.”

(CONT’D ON PAGE 12)

TRAFFIC IN BABY PARTS

Last year information came to the attention of Congress that a business exists in trafficking in body parts from babies killed by abortion. Current federal law prohibits the transfer of aborted babies or their organs, limbs, skin, etc., for “valuable consideration,” but allows “reasonable payments” for expenses incurred for in acquiring, storing, and transporting the tissue to researchers. 42 U.S.C. §289g-2(a),

Life Dynamics, Inc. of Texas uncovered information indicating that at least two companies are taking advantage of the exception for expenses to create a full-fledged market for body parts. The most chilling evidence of this practice comes in the form of price lists for specific parts, at specific gestational ages. For example, the price list of Anatomic Gift Foundation lists parts such as:

- Intact trunk (with/without limbs) . . . \$500**
- Eyes (> 8weeks) \$50**
- Brain (> 8 weeks) \$150**

These price lists are provided to universities, pharmaceutical companies and others seeking body parts from babies who are either killed by abortion or (according to one report) born alive during an abortion and then killed or left to die.

[The provider companies make arrangements with abortion clinics whereby their representatives are provided an area to work and presented with dead children whom they can scavenge for the requested parts. The companies pay a site fee and possibly other forms of compensation to the abortion facility in return.]

In addition to the question of whether these companies have violated federal law, and whether the law needs to be modified to close what has obviously become a significant loophole, concerns have been voiced that some of the experiments and testing involved using these baby body parts may be taxpayer funded. If so, other questions that are related to the buying and selling of the body parts need to be asked by Congress.

- Have the timing or methods of abortions

(CONT’D ON PAGE 10)

(BODY PARTS CONT'D FROM PAGE 9)

been altered to maximize the retrieval of usable tissue and organs at greater risk to women?

- Have women been informed about what happens to their babies when they consent to donate their bodies for research?
- Do abortion clinic personnel tell women who are considering abortion that a “benefit” of choosing abortion is the possibility of donating their babies’ bodies (or “tissue”) for research?

Last fall, Rep. Tom Tancredo (R-Colo.), joined by Reps. Joe Pitts and Chris Smith, introduced a resolution (H.Res. 350) calling for congressional hearings to look at this practice. The resolution was brought up for a vote under suspension of the rules on November 9, 1999, and passed by voice vote.

The Senate also considered this issue, but in a different context. During debate on the Partial-Birth Abortion Ban Act, Senator Bob Smith (R-N.H.) offered an amendment that would have required certain disclosures and imposed some limitations on trafficking in baby body parts. The Smith amendment was defeated 46-51 (roll call # 338).

Oversight on this issue will continue this year, and a hearing may occur in the House Commerce Committee as early as March, 2000.

[Life Legal is a 501(c)(3) organization, so we do not support or oppose a bill, but we encourage you to contact your congressional representatives in this regard.—Ed.]

SOURCE Concerned Women for America
AB 1592 Timely information on this bill permitting physician-assisted suicide, which is currently back in the (Calif.) Assembly, is available at www.stopab1592.org **L**

(SUICIDE PAYS CONT'D FROM PAGE 10)

admit that if 7 percent of U.S. deaths were caused by assisted suicide—using a still unduly conservative two months to live assumption—the annual estimated cost savings enters the billions.

The authors make another fundamental error by assuming that the level of physician killing in the United States would be roughly equivalent, or perhaps even lower, than that in the Netherlands. That is extremely unlikely considering the crucial differences between the medical systems of the Netherlands and the United States. While there is an indirect financial incentive in favor of euthanasia in the Netherlands as a method of health care cost control, Dutch doctors are essentially employees of the government and so have little direct financial incentive to kill.

The same would not be true in the United States where managed care compensation contracts may base up to 25 or 30 percent of a physician’s income directly upon his or her ability to contain costs. Such compensation plans place physicians in a direct financial conflict of interest with their most ill and disabled patients, whose cost of care in some cases comes directly out of the physician’s own pocketbook. Then there is the problem of forty-three million uninsured Americans who often delay medical treatment until they are very sick and then generally receive care from understaffed and overcrowded hospital emergency rooms, where they are often seen not so much as patients but as annoyances. It is thus very likely that assisted suicide deaths would actually constitute a higher percentage of total deaths here than they do in the Netherlands.

A final crucial omission from the Emanuel/Battin study further limits its value: the potential role that personal and family financial issues would play in assisted suicide decision making. The authors do not discuss the issue, they claim, because there are insufficient published studies with which to “quantify these savings.” Yet it is here at the level of the individual that money could play the most crucial role of all in the “choice” for assisted suicide.

Extended illness or disability can devastate family finances. In a society that increasingly discounts the inherent moral worth of the lives of sick and disabled people, failure to “choose” assisted suicide could be perceived as selfish and insensitive to other family financial obligations. (“Gee Grandma, because we have to care for you, Timmy can’t go to college.”) This, in turn, could lead to overwhelming social pressures favoring hastened death—the so-called duty to die already under active discussion in bioethics literature—not to mention the risk of coercion by relatives hungry for inheritance.

Indeed, the Ninth Circuit Court of Appeals, in its 1994 ruling declaring a constitutional right to assisted suicide (which the Supreme Court later overturned), stated that it would be proper for dying and disabled people to take “the economic welfare of their families and loved ones” into consideration when deciding to be killed. Derek Humphry, cofounder of the Hemlock Society, has written recently that avoiding family burdens would be a splendid reason to commit assisted suicide. When the wolf howls, the wise lock their doors.

By adopting faulty statistics, using unduly conservative time-left-to-live estimates, ignoring the pertinent differences between Dutch and American medical practices, and refusing to grapple with financial incentives in assisted suicide decision making at the individual and family level, the Emanuel/Battin study is, in the end, of little empirical value. However, because it carries the imprimatur of the *New England Journal of Medicine*, it has the potential to do great mischief as a basis for complacency about money as one of the driving forces behind the assisted suicide bandwagon.

[This article originally published in *First Things* (Nº 94, June/July 1999, 14ff.) is reprinted with kind permission of the author, Wesley J. Smith, an attorney for the International Anti-Euthanasia Task Force is author of *Forced Exit: The Slippery Slope from Assisted Suicide to Legalized Murder and Culture of Death: The Destruction of Medical Ethics in America.* **L**

CASES

Dana Cody

Wendland Update

[Following is a summary of the 71-page decision of the California Third District Court of Appeals written by Justice Sims, concurred by Justices Morrison and Scotland, Presiding Justice, in the matter of *The Conservatorship of Robert Wendland*. The trial court (San Joaquin County Superior Court) prevented Rose Wendland (Robert's wife and conservator) from removing Robert Wendland's feeding tube. Robert is conscious and cognitively disabled. Rose and Robert's appointed defender (!) each moved to appeal the trial court's decision.]

The crux of the appeal is the power Rose Wendland possesses in making 'medical decisions' for Robert. The court starts by discussing the power a conservator has in making medical decisions for the conservatee, declaring that Probate Code section 2355 gives the conservator (here, Rose Wendland), the exclusive right to remove a feeding tube, even though the conservatee is not in a permanent unconscious state. "A choice to withdraw medical treatment does not amount to assisting a suicide, because the cause of death is considered to be the underlying disease or medical condition, not the withdrawal of life-sustaining treatment."

At page 32 of the decision, the court states that they agree with Rose Wendland's position that section 2355 is not limited to patients who are 'PVS' (permanent vegetative state). To bolster their position, the court cites *Conservatorship of Drabick* (1988) 200 Cal.App.3d, 185, a case which allowed removing the feeding tube of a permanently unconscious man. Calling *Drabick* "thoughtful", the court points out that a conservator need not obtain judicial approval, absent disagreement among the interested parties, to stop 'medical treatment.' The court distinguishes the case by pointing out that Robert is conscious and that there is a disagreement among the family. However, it must be pointed out that nutrition and hydration via feeding tube is considered 'medical

treatment' in California.

It is here that the court launches into its discussion of the good faith standard by which such a decision should be made. Again citing *Drabick*, the court points out that the patient's prior informal statements, made while competent, as to preference with respect to medical treatment are only given "limited relevance." Then the court opines that there is no clear and convincing standard as it relates to showing what the now incompetent patient/conservatee (here Robert) would want. The message here is you better have an advanced directive that is perfectly clear. Absent such, the conservator can make decisions about medical treatment in the name of the right to refuse it, pretty much as they please, since the right survives the patient's competency and someone has to exercise that right.

After a tortured discussion about Robert's chances of returning to a cognitive and sapient life, the appeal court reverses the trial court decision, and remands the case to finish trial, using the clear and convincing evidence standard to determine whether or not Rose Wendland acted in good faith based upon medical advice. Whether or not Robert would want to be dehydrated and starved to death is of limited relevance; it just need be in his best interest. Therefore, it is now a question of intent, a guessing game if you will. All this in light of the court's discussion that the right to life is not given preference over the patient's right to refuse medical treatment, which is grounded in the right to privacy.

The court acknowledges that allowing the surrogate the "right to choose" to stop life-sustaining medical treatment is legal fiction, at best, but still, someone has to exercise the patient's right. "Thus, . . . we agree . . . that a guardian's withdrawal of life-sustaining treatment from a ward does not constitute a deprivation of life; rather it allows the disease to take its natural

(WENDLAND CONT'D)

course." One question comes to mind in Robert's case. What disease? Is it now a disease to be disabled and in need of special care?

Those who accused the pro-life movement of being "alarmist" when concerns were expressed in the wake of *Roe v. Wade* that we were headed down a slippery slope were plainly wrong. Similar concerns were also expressed when our State Legislature defined medical treatment to include nutrition and hydration. Sounding an alarm to a clear and present danger cannot simply be dismissed as reactionary and uninformed "alarmism." The decision to petition the California Supreme Court, or to go to trial to present Florence Wendland's case has not yet been made. As *Lifeline* goes to print, the appeal court's decision in this case can be accessed at www.courtinfo.ca.gov in the 'opinion' section at *Conservatorship of Robert Wendland*.

CLE COURSE ON VIDEO

Videotapes of LLDf's continuing legal education course, *Active Killing: What the Law Allows*, (June 5, 1999), in Sacramento are available. Please call our office (707-224-6675) if you would like to place an order, or use the order form below. Each of the six tapes is available at cost, \$25.00 each, which includes shipping and handling. You can order the entire CLE on videotape, or select one of the six separate segments listed below. The text is available for \$30.00, which includes shipping and handling.

- ___ **Active Killing—What the Law Allows. Introduction** (Dana Cody)
 - ___ **History of Euthanasia, Assisted Suicide, and Active Killing** (Wesley J. Smith)
 - ___ **Case Law on Assisted Suicide and Active Killing** (Catherine Short)
 - ___ **California Law on Assisted Suicide and Active Killing** (Janie Hickok Siess)
 - ___ **Bias Against the Disabled** (D. Cody on ADA law; W. Smith on managed health-care's impact on the law.)
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- Each tape is available for \$25.00, which covers production, shipping and handling.

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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.

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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(COINCIDENCE CONT'D FROM PAGE 9)

It was precisely the vagueness of various portions of the statute which LLDf targeted in its brief. In discussing one particular section, LLDf wrote:

d) "within a radius of one hundred feet from any entrance door to a health care facility"

First, this provision contains no requirement that the approaching person knows that he or she is within one hundred feet of the entrance door to a health care facility. Thus, before leafletting for any purpose on any public sidewalk, an individual must ascertain the nature of all of the surrounding businesses, vertically as well as horizontally, to determine whether the area is subject to the restrictions of §18-9-122. The presence of a single chiropractic office or optometric outlet creates a no-approach zone applicable to all potential speakers . . .

Third, "health care facility" is defined as "any entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment in this state." By this definition, doctors, nurses,

optometrists, dentists, etc. are themselves "health care facilities." Thus, an individual must ascertain what is the "entrance door" to one of these professionals.

At first glance, the easiest answer would be that the doors to a doctor's office are his entrance doors. However, in the case of multi-tenant office buildings, vagueness returns. Is the "entrance door" the door to the building or the door to a particular office within the building? How is the speaker to know the extent of the doctor's leasehold within the building, e.g., that, while the doctor's main office is on the fifth floor at the back, he also rents space for a lab on the first floor in the front?*

Section 18-9-22 creates literally thousands of zones in the state of Colorado where expressive activity is restricted.

Coincidence? Perhaps. But we at LLDf would like to think that, if the Colorado law goes down, we can "credit a creative hypothetical" from Life Legal Defense Foundation.

* Emphasis added.

