

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

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A Tale of Two Cases

It has come to our attention that there may be one or two readers out there who think that all this whining about “the abortion distortion” is just the paranoid ravings of lawyers who can’t get their act together enough to win some straightforward First Amendment cases. This article is for you.

To establish the abortion distortion, one has to see how judges, and preferably the same judge, look at the same issues when presented within and without the abortion context. An opportunity to do so presented itself when the Ninth Circuit recently handed down a decision in *Edwards v. Coeur d’Alene*, 262 F. 3d 856 (9th Cir. 2001). In that case, an anti-Aryan Nation protester challenged a city ordinance which prohibited the use of wooden, plastic, or other supports for signs carried during parades and public assemblies. The restriction was part of the city’s “zero tolerance for weapons” policy, and its stated purpose was to prevent rigid support materials from being used as weapons in the event a disturbance occurred.

Although conceding the City’s interest in public safety was legitimate and substantial, the court struck down the restriction because it was not narrowly tailored to serve that interest and it did not leave open ample alternative means of communication. In so ruling, the court had to distinguish one of its own recent cases, *Foti v. Menlo Park*, 146 F.3d 629 (9th Cir. 1998), which held that an ordinance restricting picketers (who happened to be anti-abortion) to a single sign not larger than three square feet in area was narrowly tailored to serve the

Katie Short

A more realistic assessment is that the Ninth Circuit now effectively has two completely different standards for evaluating restrictions on picketing, and a court can choose which to apply at its whim.

interest in public safety and did leave open ample alternative channels of communication. What made this balancing act particularly interesting was that the very same judge, Judge Harry Pregerson, who wrote the opinion striking down the Coeur d’Alene ordinance was one of the three judges who held Menlo Park’s picketing restriction to be basically sound.

A preliminary note on the Menlo Park case: The Ninth Circuit actually found that the ordinance as a whole was unconstitutional, because of its content-based exemptions. That should have been the end of the decision right

(TWO CASES CONT. ON PAGE 11)

GENERAL RECAP & UPDATE

Planned Parenthood v. ACLA et al. (Portland)—

On March 29, the Ninth Circuit reversed the trial court decision imposing \$107 million in damages against pro-life activists and directed the court to enter judgment in favor of the defendants on all accounts.

The court ruled that the defendants’ posters and web site publicizing the names and addresses of abortionists were not threats but constitutionally protected political speech. Unfortunately, on October 3, the plaintiffs’ petition for rehearing en banc was granted, meaning the case will be argued and decided again before an eleven-judge panel.

Conservatorship of Wendland (Stockton)—

Victory! Robert Wendland died July 17, 2001, but on August 10, 2001, the California Supreme Court voted unanimously to grant Robert’s mother’s request and denied wife’s “right to kill.” Rose Wendland’s petition for rehearing was denied.

(RECAP CONT. ON PAGE 3)

FROM THE DIRECTOR

On October 15, 2001, it was business as usual at our State Capitol. In the face of overwhelming evidence presented by LLDF to every legislator and the governor that Senate Bill 780 was based on misrepresentations of pro-life opposition to abortion, Governor Davis signed the bill into law, pandering to the pro-abortion extremists who lobbied for the bill, among them the bill author, Senator Deborah Ortiz. SB 780 is nothing more than a vehicle for the state to intimidate and harass those who oppose abortion. Most noticeable among the bill's provisions is the section allowing the State Attorney General to compile dossiers on pro-life individuals.

LLDF is in the process of drafting a complaint to challenge certain of the bill's provisions.

To read the signed version of the bill see the California legislature's web site, (www.leginfo.ca.gov). Click on "bill information" and follow the prompts. The web page for SB 780 will have a copy of the "chapters" bill, which means it was signed into law. The law will be effective January 1, 2002.

Based on the legalization of state-sanctioned intimidation and harassment by California authorities of opponents of abortion, and after the events of September 11, all of us have been reflecting on what is really important in our lives. We have to go on with business as usual, with a constant awareness of the threats we face as a nation and as pro-life individuals. Consequently, we find ourselves a bit melancholy, if you will. I've found that the cure for any slump is a thankful heart. To that end, I will share the following.

We have a slogan at LLDF—"you can't lose them all"—and we use it in the face of the infamous "abortion distortion" we see repeatedly in case law, and our own state officials' love affair with killing unborn children. We often laugh when we say "You can't lose them all," but it is one way of reminding ourselves to stay focused on our mission—to save innocent and vulnerable human beings from threat of death, and to stay in the courtroom defending advocates for the innocent and vulnerable. No matter how hard the forces of death try, whether

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UPDATE

Katie Short

Update on NOW v. Scheidler

On October 2, the Seventh Circuit Court of Appeals finally handed down its decision in *NOW v. Scheidler*. The oral argument had been held over a year earlier. The decision affirmed both the damages award and the injunction against Joe Scheidler, Timothy Murphy and Andrew Scholberg, under the theory that their pro-life activity, including involvement with rescues, violated the Racketeering Influenced Corrupt Organizations Act (RICO). Leaving aside the issue of how much liability can attach to individuals for mere association and advocacy, even advocacy of unlawful activity, the decision is noteworthy for its twisting of some very common English words.

To be liable under RICO, an individual or organization must be guilty of at least two "predicate acts," i.e., two acts which themselves are violations of certain criminal laws, based on which a court can find that the individuals are running a criminal enterprise. To hold Joe and his organization liable, the plaintiff abortion clinics and NOW had to somehow make his activities be considered as one of the specified types of crimes, such as murder, kidnapping, etc. So they alleged that Joe was guilty of extortion, i.e., the obtaining of property from another, with his consent, induced by a wrongful use of force or fear or under color of official right. Their theory was that, through sponsoring rescue blockades, Joe "obtained" from the clinics their right to conduct their business and from abortion-bound women their right to seek medical care.

Sure enough, the Seventh Circuit bought the argument and held that "extortion" in fact requires neither obtaining nor property, as those words are commonly understood. "Obtaining" just means one deprive someone else of property, not that one gets it for oneself or a friend. So if someone breaks a window, according to the Seventh Circuit, he has "obtained" that window. And "property" not only doesn't mean tangible property; it doesn't mean anything of any monetary value at all.

"Property" can be any right, as loosely as one wants to define it, e.g., a right to go to the movies.

The ramifications of this decision are far-reaching, and hopefully unacceptable to a higher court. Among other things, what this decision means is that FACE never had to be enacted at all. Congress enacted FACE ostensibly because it wanted to make crimes against abortion providers and patients, and particularly blockades, subject to federal jurisdiction. However, according to the Seventh Circuit, everything prohibited by FACE was already prohibited under the Hobbs Act, the federal law governing robbery and extortion. Congress apparently wasn't aware of this when it passed FACE. In fact, virtually any protest involving blockades or trespass can now be classified as felony extortion under the Hobbs Act, and two of such acts gets one branded a racketeer subject to the RICO statute.

The defendants filed a petition for rehearing en banc (hearing by the entire 7th Circuit, rather than the original three-judge panel), supported by an amicus brief from LLDF. That petition was denied, so the defendants plan to file a petition for certiorari in the U.S. Supreme Court in January. LLDF will once again file a supporting amicus brief. **L**

A CHALLENGE TO FACE

Jane Roe II v. Aware Woman Health Center

MELBOURNE, FLA.— The federal law that governs entrance to abortion clinics in the United States can also be used to assure exit from those same clinics, according to an attorney whose client was forced to continue an abortion against her will.

The Freedom of Access to Clinic Entrances (FACE) Act forbids blocking customers from clinic entrances. Passed by Congress and signed into law by former President Bill Clinton in 1994, it was promoted as a defense against violence outside clinics, but it had the intended effect of chilling peaceful free speech demonstrations that can reduce clinic business. The law is the “darling of the pro-abort crowd,” said Michael Hirsh, Esq. Hirsh is the lead attorney in the case of a Florida woman who was physically pinned down after she changed her mind about choosing a surgical abortion. In a legal twist not anticipated by those who pushed the law, FACE is now being used to defend against violence inside abortion clinics.

According to a news release from the pro-life Population Research Institute (PRI) in Virginia, on March 29, 1997, a young, pregnant woman—known only as Jane Roe II—entered the Aware Woman Center for Choice in Florida for an abortion. Soon after the procedure began, she felt a piercing pain. Racked by “extreme, excessive pain in her abdomen,” she begged the abortionist to stop. “Call an ambulance!” she cried, trying to get up. The abortionist, a Dr. William P. Egherman, allegedly refused and ordered his assistants to hold her down. PRI reported that four pairs of hands gripped her arms and legs, rendering her immobile, and the abortion continued.

The patient was eventually taken by ambulance to an emergency room where it was discovered that she had a perforated uterus and lacerated colon. Further surgery was required to remove her now-dead baby and repair her internal organs.

*Hirsh is the lead attorney
in the case of a Florida
woman who was physically
pinned down after she
changed her mind about
choosing a surgical abortion.*

Hirsh made it clear that the case involved force, not mere coercion. “Coercion is someone saying, ‘Have an abortion or I’m going to leave you.’ Force or the threat of force is, ‘Have an abortion or I’m going to kill you.’ A woman who is in a clinic screaming to be let up and you have four people holding her down—that’s force.”

He has no liking for FACE, yet he said the law has its uses. “I hate it,” he said. “I think it is horrible, unconstitutional and ought to be struck down totally. That withstanding . . . since it is part of the system now, it opens up an entire vista of legal remedies. The punitive provisions of the law provide some opportunities for those who win a case, and the criminal component of the law provides for punishment ranging up to life in prison for those who violate the law.”

A key victory within the larger Florida case was securing court protection of Jane Roe II’s

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Foti v. Planned Parenthood/Planned Parenthood v. Foti (Menlo Park)— This action and cross-action between sidewalk counselors and PP and its escorts is now stayed, pending the outcome of a new lawsuit filed by PP in which it seeks a declaration from the court that a speech-free zone injunction it obtained six years ago against completely different parties actually applies against these sidewalk counselors and anyone else PP serves it on. The defendants’ motions to strike the complaint (CCP 425.16) were denied. Two defendants are appealing, while the other is set for trial in March, 2002.

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 March 2002.

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 Attorney General, having failed in its attempt to appoint state-selected religious leaders to the FLS board, then moved for dissolution of the corporation. The judge instead returned the agency to the ministry. Parties are now negotiating transition arrangements which, so far, appear to be progressing by the grace of God.

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through legal enactment or legal opinion, or by their own acts of intimidation and terrorism, we will never give up. Just look at the “**Victory!**”s in our recap.

In that regard, we usually keep you apprised of our casework and the needs that each case entails. What you don’t normally hear about are the dedicated individuals who devote their lives, day in and day out, and who never give up on LLDF’s mission and purpose. Names are omitted to protect the humble, but they know who they are.

A law student drove across the country to serve as an intern with us so she would have legal experience with life issues. Her goal is to establish an LLDF office in Minnesota once she graduates from law school and is licensed to practice law.

Two staff attorneys who work gratis, both of whom make a mockery of the maxim “you get what you pay for.”

Volunteer attorneys who donate hundreds of hours to LLDF, translating yearly into hundreds of thousands of dollars in donated attorney fees.

Volunteers in various capacities who are critical support staff for LLDF’s legal work and various projects.

The *Lifeline* staff, from reporters to writers to designers to editors, who have tirelessly managed to publish an excellent newsletter for years.

Administrative staff who appear to most overworked and underpaid yet still consider themselves blessed and who love their work with LLDF.

Board members who make decisions based on saving lives, not notoriety or political pandering.

To the faithful supporters reading this, I haven’t forgotten you. You give to LLDF time and again based on the interest you have in our cases, but your giving would be in vain if it weren’t for those who diligently and proficiently partner with LLDF.

This is why I can give thanks with a grateful heart.

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SAYING NO TO ASSISTED SUICIDE

by Wesley J. Smith

The attorney general takes on Oregon

When Oregon Voters legalized assisted suicide in 1994, state regulators had a problem. They wanted to authorize doctors to prescribe barbiturates as killing agents. But the federal government regulates the use of these drugs under the Controlled Substances Act, and federal law did not permit their use to intentionally kill.

Ordinarily, that would have been that. The feds, not the states, have the final say about what would and would not be a proper use of drugs governed by the Controlled Substances Act. Unfortunately, Oregon’s assisted suicide law went into effect during the Clinton years, when principle and the rule of law were rarely allowed to impede political expedience. Thus, it was hardly surprising when former Attorney General Janet Reno declared that she would not enforce federal law against Oregon’s doctors who assisted patient suicides, thereby permitting a state to nullify the federal proscription against using controlled substances to kill.

Proponents of assisted suicide were thrilled. Their Oregon beachhead secure, they expected to spread their dark agenda nationwide.

Oregon regulations will no longer override the Controlled Substances Act. “Assisting suicide is not a ‘legitimate medical purpose’ under the meaning of that act,” Ashcroft stated, and doctors who assist suicides act “inconsistently with the public interest.”

Instead, they have been turned back by a potent alliance of liberal disability rights activists, conservative pro-lifers, members of the hospice movement, medical professionals, and advocates for the poor and minorities. Only seven years after the Oregon law passed, the landscape has dramatically changed: Jack Kevorkian is in prison for murder; initiatives attempting to legalize assisted suicide failed in Michigan in 1998 by 71-29 percent and in Maine last year by 51-49 percent; and the U.S. Supreme Court, followed by Florida and Alaska high courts, all ruled that there is no constitutional right to assisted suicide.

And now, assisted suicide in Oregon has taken a body blow. Last Wednesday, Attorney General John Ashcroft issued a memorandum to Asa Hutchinson, the new head of the DEA, reversing Reno’s decision. Oregon regulations will no longer override the Controlled Substances Act. “Assisting suicide is not a ‘legitimate medical purpose’ under the meaning of that act,” Ashcroft stated, and doctors who assist suicides act “inconsistently with the public interest.” Accordingly, even though assisted suicide remains legal in Oregon, the DEA will now be authorized to revoke the federal prescribing license of any doctor who uses controlled substances lethally rather than medically.

Predictably, Oregon has sued, its politicians bellowing that their “state’s rights” have been violated. But this is nonsense. Ashcroft based his decision on the recent 8-0 Supreme Court decision in *United States v. Oakland Cannabis Buyers’ Cooperative*, which ruled that while

California was free to legalize medical marijuana all it wanted, the state's decision did not prevent the federal government from enforcing federal law proscribing the use of marijuana for any purpose.

Not surprisingly, a federal judge has temporarily restrained implementation of Ashcroft's decision, questioning why the attorney general waited months before changing Justice Department policy. But it is hard to see how any court can prevent Ashcroft from enforcing federal law unless it openly flouts the Supreme Court ruling in *Cannabis Buyer's Club*.

Of course, this is the Ninth Circuit, the most reversed court in the country, so the road is likely to be bumpy. But the Supreme Court sits at the end of that road, and thus, it is probably only a matter of time before the Controlled Substances Act is enforced uniformly in all 50 states.

Oregon euthanasia activists warn that Ashcroft's memo will create a "chilling effect" for doctors who wish to aggressively treat pain. But this is baseless fear-mongering. Ashcroft has already written to the president of the Oregon Medical Association assuring him that Oregon doctors "have no reason to fear" that prescribing "controlled substances to control pain will lead to increased scrutiny by the DEA, even when high doses of painkilling drugs are necessary." Moreover, states that have outlawed assisted suicide, while at the same time making it clear that aggressive treatment of pain is a proper medical act, have seen tremendous per capita increases in the prescription of morphine to treat pain. For example, in 1996 Rhode Island outlawed assisted suicide. Since then, per capita morphine use has increased 164 percent. Michigan's similar ban resulted in increased morphine use of 20 percent since 1998. Similarly, Louisiana banned assisted suicide in 1995 and has seen a 26 percent increase in per capita morphine use.

Any lingering worries about chilling effects could be easily thawed by passing the Pain

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Relief Promotion Act, legislation that would explicitly make aggressive pain control a legitimate medical purpose under the Controlled Substances Act. Unfortunately, passage of this important bill was thwarted last year by Senator Ron Wyden, an Oregon Democrat who feared the pain relief legislation would do what Ashcroft has just done—reassert a federal penalty for doctors who use controlled substances to engage in assisted suicide. Wyden saw to it that the legislative clock ran out on the pain relief act.

Now that Ashcroft has properly restored federal standards in the use of controlled substances, there is no further excuse to thwart passage of the Pain Relief Promotion Act. If Wyden and the other backers of Oregon's assisted suicide regime really care about suffering patients, this time they won't stand in the way.

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[Wesley J. Smith is an attorney for the International Task Force on Euthanasia and Assisted Suicide and the author of *Culture of Death: The Assault on Medical Ethics in America*. This article was originally published in *The Weekly Standard* (November 19, 2001—Volume 7, Number 10), and is here reprinted with the kind permission of the author. *The Weekly Standard* may be found online at www.weeklystandard.com]

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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. Trial court issued injunction in spite of failure of evidence. **Victory!** Case reversed on appeal and sent back to trial court. Trial court judge has ordered another round of briefing on re-issuance of injunction.

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

Wilkerson [PP] v. Scott et al. (San Diego)— Injunction and \$2,500,000 damages suit against multiple sidewalk counselors. Counselors appealed preliminary injunction; court of appeal very grudgingly reversed the most outrageous provisions, while indulging every conceivable presumption to affirm the remainder, including a 25-foot speech-free zone and a requirement that pro-lifers stand single-file on the sidewalk. Discovery in process. Two defendants were dismissed and the clinic ordered to pay their attorney fees; two defendants have entered into a settlement agreement; two defendants are set for trial in November.

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 set for early 2002.

Crone v. Resurrection Health Care Corp. (Illinois)— Psychiatric nurse suing for wrongful termination; rights as a conscientious objector were violated for refusing to dispense "day-after" pill. Case in discovery phase.

Dym v. White (San Diego)— 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. **Victory!** Appellate court reversed judgement.

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.

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Planned Parenthood of Central Penn. v. Snell et al.— Five sidewalk counselors sued by abortion clinic seeking injunction. Counselors have filed cross-complaint against clinic escorts' unlawful interference. Discovery in process.

Veneklase v. Fargo North Dakota— Pro-lifers, arrested for praying on sidewalk in abortionist's neighborhood, sued for damages and ultimately won, and won again, then lost on appeal—but lost (and by one vote) on en banc rehearing. The deciding vote en banc was cast by a judge who had been a lawyer partner in the firm representing the abortionist; he refused to recuse himself. Plaintiffs' petition for certiorari to the U.S. Supreme Court was denied.

Catholic Charities v. Sacramento Superior Court— LLDF has joined in an amicus curiae ("friend of the court") brief on behalf of Catholic Charities in its suit challenging the 1999 Women's Contraceptive Equity Act. The Act requires health care insurance packages to provide coverage of Food and Drug Administration-approved prescription contraceptive methods. The list of FDA-approved drugs includes both contraceptive and abortifacient drugs such as Preven. On July 3, the court of appeal denied Catholic Charities' petition for writ, ruling that the WCEA did not interfere with Catholic Charities' religious freedom. Catholic Charities filed a petition for review with the state supreme court, which was granted, briefing is now underway.

San Bernardino, Calif. v. Martina and Newman— Pro-lifers arrested for displaying signs on sidewalk and cars in violation of constitutionally flawed sign ordinance. **Victory!** Case dismissed.

Padilla et al. v. Tamboura (San Jose)— Van attacks sidewalk counselors. Suit filed and defendant served.

Monrovia, Calif. v. Locatel— Leaflet charged. **Victory!** Case dismissed. Civil rights suit under consideration.

Ellis v. Memorial Hospital (Colorado)— Boy claimed brain dead by hospital but disputed by parent. Sought alternative care or second opinion. Court ordered second option.

(RECAP CONT. ON PAGE 7)

ASK THE ATTORNEY

Rose Grimm

An Interview with Brian Chavez-Ochoa

Brian, could you tell me about your background and your education?

I went to Lincoln Law School in Sacramento for four years at night. During the day I was working as a safety manager overseeing sixteen fire departments in northern California. I had quit high school because I was bored, and never received a B.A. although I had over 180 credits from the University of Washington. The California Bar allows people to enter law school if they have sixty credits of undergraduate work. My wife and I were married when we were seventeen, and by the time we were nineteen we had two children, so I thought it was more important to work. Now we have six children and six grandchildren.

What kind of law do you do in addition to your pro-life work?

Primarily family law and criminal defense in Valley Springs, California—of course we also do a lot of religious freedom work pro bono. I am general counsel for Operation Rescue West, and also associated with the Alliance Defense Fund.

I have heard about you that you are someone who doesn't say no when asked for pro-life help.

This isn't my practice—it's the Lord's practice—it's by His grace that I am even practicing and He has orchestrated my work. The first pro-life case I did was in Washington D.C. against the Justice Department. My two clients were from southern California and from there it has blossomed into numerous other cases. I have taken on the Supreme Court three or four times in both civil and criminal cases, specifically challenging Regulation Six, which regulates the size of signs that people can carry outside of the United States Supreme Court.

I argued a case in August in Wichita, in which the city had refused a parade permit to pro-life people protesting partial birth abortion. Over a thousand people from various parts of the country had come to Wichita, and the city was afraid that their demonstrating would injure business in the area. The federal court judge agreed that their city had violated their first amendment rights and granted the parade permit.

I also represented a client in San Diego against Planned Parenthood. I had not been involved in the early stages of the case, and the appellate court had already affirmed many issues in a manner unfavorable to the pro-life side, it was largely a matter of damage control. I was able to protect my client from damages.

So a lot of your work has to do with people exercising their constitutional rights.

Yes—not only their right to picket but a lot of first amendment speech issues and right to assemble issues. We take on cases at the prodding of the Lord—He tells us which ones to take on and which ones not to—quite frankly there haven't been many that we haven't taken on! It's been a tremendous thing for a boy from a town of 500 to go to Washington D.C. to argue on behalf of life!

You mentioned that you are general counsel for Operation Rescue West. What has happened to them? We don't hear as much about them these days.

They are still active. They were active in Wichita and in Washington D.C., making their views known and exercising their constitutional rights. They are active also on stem cell research.

Stem cell research is still in the developmental stage; it has been going on out here for awhile. President Bush has stopped federal funding on all but existing lines, but it is pretty well recognized

that these will be insufficient. Also, stem cell research which is privately funded by private investors and corporations is not affected by the new law. Embryos harvested from abortions are sold to these groups.

You mentioned the Alliance Defense Fund. What is that?

It's a group of attorneys started by people from *Focus on the Family*. They are based in Scottsdale, Arizona, and do pro bono work in defense of Christian values, especially defending people's first amendment rights.

How about your connection with Life Legal Defense Foundation?

That began with my first pro-life case in Washington D.C., *United States vs. Alaw*. Life Legal Defense Foundation paid my travel and other expenses. We travel a lot, both to the east coast and to southern California.

Do you have any good words for people who becoming discouraged about pro-life activity?

Pro-life has always been the step-child of the legal system, the movement that got kicked around by the courts. We've seen, with several victories that the Lord has blessed us with, that the Holy Spirit of our Lord Jesus Christ is moving across the country, giving the judges eyes to see and ears to hear. It has been OK to violate the constitutional rights of people who were pro-life, but I think we are beginning to see a change in that. Abortion is not seen as favorably as it once was. I think people are starting to realize that whether it's at conception or ten weeks old or nine months old you're talking about a child. So I think for people who are coming into the pro-life movement that this will be one of the most exciting times. A lot of restrictions have been placed on the pro-life movement but that has just forced people to think of other ways to get the message out. Those ways may be more productive: the signs, the counselling efforts, the leafletting, the truth trucks. Blocking the doors of the clinics was symbolic of pro-life people laying down their lives for the life of the unborn; it was important, but I don't think it won much favor with the public at large because they thought it was fanatical. Rescuers were portrayed as violent. Satan is a counterfeiter. He takes what is good and tries to portray it as what is bad.

Now instead of blockading a clinic or chaining themselves to a door, people have had to find other ways to convey the Lord's message. Of course this has to be done in a peaceful way. In my mind there is no justification for any violence whatsoever. We are examples of the life of Jesus Christ. When the apostles asked Jesus whether he wanted them to call down fire from heaven, Jesus rebuked them and said, "You don't know what spirit you are of." The Lord's way is that of love and reconciliation. **L**

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Schiavo v. Schindler (Florida)— Michael Schiavo seeks court permission to kill 37-year-old wife, Terri, by withdrawing food. Terri's parents oppose the motion; several doctors have expressed the opinion that her condition could improve with appropriate treatment, which Michael has refused to allow. Trial court ordered withdrawal of food and fluids without any independent examination of the Terri's condition. **Victory!** Court of appeal reversed the decision and remanded with instructions that Terri be examined by other physicians. Remanded to trial court for an evidentiary hearing, which we hope will permanently stay Terri's execution.

Pacillas et al. v. City of Monrovia and Pasadena PP— Residents sue to prevent the opening of a Planned Parenthood abortion facility in their area.

SAMPLING OF PRE-LITIGATION AND OUT OF COURT RESOLUTIONS:

Santa Ana— Employee fired: refused to schedule abortion appointments.

New Hampshire— Possible defamation action. Widely distributed video portrays pro-lifer as dangerous terrorist.

Modesto— Employee fired for wearing Precious Feet pin.

Arizona— Seeking redress for hospital's early termination of life.

Modesto— advice to pro-life organization regarding loose language in lease agreement concerning "nuisance".

California— Challenge to SB780, California's new state version of FACE.

DUPLICATES

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

Due to a large number of inquiries from sidewalk counselors asking about the effects of SB 780, LLDF is preparing a Lifeline Memorandum devoted to this issue, it should be mailing early 2002.

www.lldf.org

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.

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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.

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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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Erica Lindsley

Teens for Life!

Teens for Life is a youth organization in Sacramento affiliated with SOHNET (Sanctity of Human Life Network). The mission of *Teens for Life* is to turn around this death-saturated culture and reach out to our generation with the gospel and the truth about abortion.

Teens for Life works at several different levels to take back this culture and bring youth to Christ. With Project Truth, *Teens for Life* reaches out to the public high schools and junior highs, informing our peers about abortion and its consequences and presenting those who are experiencing these consequences with the message of Christ's forgiving power. At local church youth groups, *Teens for Life* does presentations, encouraging Christian youth who have the basis for understanding the sanctity of life to act upon this understanding, making a stand for Christ and joining us in "rescuing those being led away to slaughter". For those who take on this challenge, *Teens for Life* holds weekly training meetings on everything from sidewalk counseling and public debate to what it means to have a personal relationship with Christ and spiritual warfare.

Teens for Life also brings the message of truth to abortion clinic doors and to legislative hallways. At abortion clinics *Teens for Life* fights one of its hardest battles—reaching out to women at the last minute. We stand, unashamed, on the truth of the gospel and offer hope. We have had many women turn around and choose to keep their babies in this "last-minute" outreach. In the state Capitol we lobby and testify on pro-life bills, fighting for the unborn by taking a stand on truth in the legislature. Our most prevalent and ongoing political battle is over SB 780. We were in the Capitol on a consistent basis lobbying and testifying on this bill. At one point, we had sixteen teens attend a committee hearing and many of them testified on the bill. This bill is a double whammy—it makes it yet more difficult to protect the unborn essentially by challenging and limiting our civil liberty of free speech. Governor Davis just signed this bill into law. This bill was introduced, debated, and won with faulty, outdated, and sometimes even unreferenced evidence. This bill will be law in January of next year if it is not repealed and *Teens for Life* intends to do all it can with other pro-life leaders to do just that. *Teens for*

Life, however, is not just working in the Legislature in California. In early September, ten members of *Teens for Life* went to Washington D.C. with the President of SOHNET, Bud Reeves, to join other pro-life leaders in standing against the recent embryonic stem cell research decision. While there, we talked with the aides of local representatives Matsui, Pombo, and Doolittle, and with the aides of Senators Barbara Boxer and Diane Feinstein. We also stood with other pro life leaders and pastors in setting up a meeting with Senator Orrin Hatch for early November to encourage him to stay strong and not compromise in his pro-life position, especially in regards to the current embryonic stem cell research debate. It is absolutely necessary for pro life leaders to take a stand in these confrontational areas if we are going to teach our society to once again value life.

These are battles *Teens for Life* is fighting right now and we intend to fight many more. The battle is not of this world, but as Ephesians 6 says, "against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places. Wherefore take unto you the whole armor of God, that ye may be able to withstand in the evil day, and having done all, to stand." *Teens for Life* is taking a stand and realizes that without the "full armor of God" and without trusting in Him, all is in vain. 1 Timothy 4:12 encourages youth to be an example in word, in conversation, in charity, in spirit, in faith, and in purity. This is the standard that *Teens for Life* strives to live up to and hopes, with this example, to be able to change the "culture of death" that has so consumed not only our generation, but our nation as a whole. Instead of just swatting at the mosquitoes, we want to join in with other pro-life organizations such as Life Legal Defense Foundation, Capital Resource Institute, Women's Resource Network, American Life League, etc. to take out the swamp instead. **L**

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anonymity. Lawyers for the clinic wanted to identify the woman in public. It was ironic, said Hirsh, that abortion supporters, who base “their entire existence” on the right to privacy, wanted to expose the woman’s name. “The first time the shoe is on the other foot, they can’t scream loud enough against privacy,” he said. In the broader case, which was upheld by a three-judge panel of the Eleventh Circuit Court of Appeals in June, the abortion side argued unsuccessfully that the woman was restrained for her own safety. The case is now scheduled for appeal to the full bench, and there is a pending motion on attorney’s fees, which can be awarded under FACE.

Most Americans have heard of forced abortion in places such as China, where the government’s one-child policy has led to documented abuses, but the United States also has a problem, Hirsh said. The Florida case received little media attention, yet “since winning, I have had calls from all over the country from women and their friends. I have heard from Maryland, Pennsylvania, Arizona, California, Kansas, Florida. This is a national problem.”

Hirsh said the legal strategy in the Jane Roe II case has provoked a range of responses within the pro-life movement, and he challenged pro-life people to “expand their understanding” of the issue. He listed “four broad divisions: those who have no clue; those who understand the legal concept but do not hate FACE; those who think it’s a non-issue; and those who see it for what it is.”

Hirsh has been involved in pro-life activity for more than twenty years. His beliefs led him to law school and his current profession. He describes himself as “a defender of the unpopular,” adding that his work is “to fight abortion, and my goal is to be out of business. I would like to go on to fight something else.” Hirsh said the problem of forced abortion demands awareness and action. “I wish I could jolt awake the pro-life community,” he said. “Not to demean anybody, but a Life Chain once a year is not going to cut it. Don’t get me wrong—Life Chain is good—but people can do more.”

One avenue of action is to encourage women who have been forced into an abortion to seek legal redress. In situations like the Florida case, where “abortion providers have admitted doing these things that would be a violation of FACE,” pro-life people have legal options, he said. “Tons of women have had abortions,” he said, and some of those involved force. “Encourage women you know who have been so impacted to come forward.” Anyone with legal questions in this area may contact Life Legal Defense Foundation (www.lldf.org—707-224-6675). [Please see article on *Operation Outcry* (p. 10), for information on a program and organization set up precisely for this purpose.—Ed.]

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There are no perfect cases, but there are defensible cases, Hirsh said. Women who have been forced to enter or stay in a clinic “have remedies at law and they are not limited to medical malpractice claims, though I am not opposed to those. Under FACE, you can recover damages and you can not only secure remedies for yourself but you can make things better for others in the future, and you can run the cost of butchering women higher. . . . This is a problem of nationwide significance.”

The Population Research Institute agrees that the issue needs action. It has launched an “About FACE” campaign to protect American women against violations committed in private and state-funded abortion clinics and at family planning centers. The institute gives these examples as guidelines: A man who threatens to beat his pregnant girlfriend unless she gets an abortion is violating the FACE act. Abortion clinic workers who make it impossible for a woman to change her mind after entry are violating the FACE act.

The new legal precedent can also be used to guard against a range of abortion-related abuses, including lack of informed consent and lack of information about the side effects of abortion. Ultimately, it can help protect women in the United States from abortions performed under physical and psychological duress, according to PRI. Meanwhile, the non-profit institute also continues to investigate and lobby against forced abortions abroad, and against U.S. support for programs that allow such abuses. Further information is available at the Population Research Institute web site: www.pop.org.

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AMONG THE KEY TERMS USED IN THE FACE ACT ARE THESE:

Interfere with—The term “interfere with” means to restrict a person’s freedom of movement.

Intimidate—The term “intimidate” means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

Physical obstruction—The term “physical obstruction” means rendering impassable ingress to or egress from a facility that provides reproductive health services or to or from a place of religious worship, or rendering passage to or from such a facility or place of religious worship unreasonably difficult or hazardous.

POST-ABORTIVE WOMEN ATTACK ROE v. WADE

The National Foundation for Life and the Texas Justice Foundation are leading a women's national mobilization effort against the coercion of women through abortion. This energetic, massive project focuses on the reality of abortion: abortion hurts women. Countless women have been deceived into believing that abortion is their only solution. But these same women are now coming forward to tell the courts of this nation the real truth regarding their personal experience with abortion. Abortion survivors are telling the courts how abortion has ravaged their lives. The testimony of each woman's personal experience details the devastating mental, physical, and spiritual impact that the abortion "right" continues to have on their lives.

The multi-pronged effort includes litigation on three fronts. First is the lawsuit of Donna Santa Marie, a young woman who, at the age of sixteen was forced by her parents and clinic personnel to undergo an abortion against her will. Donna Santa Marie's suit against the abortionist is supported by Norma McCorvey and Sandra Cano, the Jane Roe and Jane Doe of *Roe v. Wade* and *Doe v. Bolton*. These two women, represented by the Texas Justice Foundation, will act as amicus for Donna, as well as filing their own suit seeking to reverse the Supreme Court decisions in which they were used as pawns by the pro-abortion lawyers.

The next step in the litigation process will be to file suit in Texas with similar legal theories on behalf of Texas women who have been victims of abortionists and denied equal protection. These women's constitutional rights have been violated by a lack of informed consent and by being treated differently under the law than women in other contexts. *The Texas Justice Foundation needs post-abortive women everywhere in the United States to come forward to tell the courts how they have been injured by abortion.*

Then suits may follow in other states. These women are needed to tell how their lives have been damaged by abortion. Not just physically injured, but especially the emotional trauma, pain, and suffering. The Texas Justice Foundation is asking each woman who has suffered in any way from abortion to fill out an affidavit ("Questions for Women Who Have Undergone Abortion") with the personal facts

The Texas Justice Foundation needs post-abortive women everywhere in the United States to come forward to tell the courts how they have been injured by abortion.

surrounding her abortion. [A copy of this form is enclosed with this issue of *Lifeline*. This form and "friends of the court" forms are available from www.operationoutcry.org—Ed.] It is through these women's testimony that the litigation will be successful in ending the tragedy.

Any woman who has undergone an abortion is encouraged to take this step to help the healing process. Many women have felt that the actual process of writing down their story has helped them tremendously in dealing with their feelings of shame, grief, and blame. Women say that writing down their story sets them free from the fear of the shame. It is through these courageous

women's stories that other women will not have to go through the same suffering. You can help prevent other's pain. Regardless of when the abortion occurred—two weeks ago—or twenty years ago—each woman's story is needed. Donna Santa Marie pleads with women who have suffered this tragedy of abortion to join with her on her journey through the courts of the United States to act now so that other women will not lose their precious children to what society calls "choice."

The personal testimony of women will help the courts to understand the widespread damage abortion has caused throughout the United States.

Once the affidavit form is completed, it should be taken to a Notary Public to be signed and notarized. The Notary Public will not have to read the form, only the title. While every woman's full name is needed for the form to be legal, her identity may remain confidential if she checks the box asking that only initials be used. The forms should then be mailed to the National Foundation for Life at P.O. Box 516, New Brunswick, NJ 08903-0516. You may make unlimited copies to provide to anyone you know who has had an abortion. The Texas Justice Foundation is available to answer any questions, and the women on staff, some whom are post-abortive will help women fill out the forms at (210) 614-7157, 8122 Datapoint, Suite 812, San Antonio, TX 78229.

The National Foundation for Life and the Texas Justice Foundation urge you to become part of this history-making effort to overturn *Roe v. Wade*.

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there. However, the court went on to render what was essentially an advisory opinion about each of the speech-restrictive provisions challenged by the pro-lifers. In other words, the court went out of its way to get on the record its holding that the sign size and number restrictions appeared to pass constitutional muster.

Let's compare and contrast the treatment of these two restrictions:

Narrowly tailored to serve the city's interest in public safety:

Coeur d'Alene: The city must provide "tangible evidence" that the restriction is necessary to advance the proffered interest in public safety. However, the city failed to cite "any parade or public assembly prior to the passage of the ordinance in which Coeur d'Alene citizens used sign handles as instruments of violence."

Menlo Park: Despite the fact that the pro-lifers had brought a facial as well as an as-applied challenge to the ordinance, the court focussed on the particular circumstances of the pro-lifers' demonstration site, "within several yards of a bus stop." In this site, "[e]xtremely large or numerous picket signs nearby *could well* interfere with a bus's operation or . . . pedestrian circulation on the sidewalk." A large sign "*may* block drivers' views of road signs and traffic conditions . . ." and numerous signs "*may* impede pedestrian flow or create a safety hazard." (emphasis added). Amazingly, in distinguishing *Foti* in the Coeur d'Alene case, Judge Pregerson referred to these purely speculative harms as "empirical evidence" supporting the restrictions.

Necessary v. nexus:

Coeur d'Alene: The court said that the city had the burden of demonstrating that the restriction was *necessary* to advance the city's goals.

Menlo Park: The court said the city had only to show that the restrictions served the city's interest in a manner "which would be achieved less effectively absent the regulation." The speculative "evidence" cited above showed that a "*sufficient nexus*" existed between the proffered interest and the restriction.

Less burdensome alternatives:

Coeur d'Alene: The court looked at a sampling (two) of ordinances from other cities regulating picketing at parades. The looser restrictions on sign supports in these other ordinances indicated that the Coeur d'Alene ordinance "burdens substantially more speech than is necessary."

Menlo Park: We argued that, since the advent of picketing as a protected form of speech over half a century ago, *not a single city in the country* had ever thought it necessary to impose *any* restriction on the size of signs in order to protect public safety. The court ignored this point.

The Ninth Circuit actually found that the ordinance as a whole was unconstitutional, because of its content-based exemptions. That should have been the end of the decision right there.

Impact on communication:

Coeur d'Alene: The ban on sign supports "has an undeniable impact on the *manner* in which a signholder communicates with the public." (emphasis added). The court elaborated at length on the deleterious effects of these restrictions on the *manner* of picketing (see below).

Menlo Park: The court acknowledged that, while the pro-lifers had the right to choose a particular avenue of speech, i.e., picketing, "this is not the same as saying that Foti and Larsen have a First Amendment right to dictate the *manner* in which they convey their message within their chosen avenue. Government may regulate the *manner* of speech in a content-neutral way. . . ." (original emphasis).

Coeur d'Alene: In parades and public assemblies, "it is often difficult to see more than a few feet in any direction, or to hear anyone who isn't standing nearby. These circumstances make it difficult for *individual* protesters or participants to convey their messages to the broad audience they seek to attract. . . (emphasis added).

Menlo Park: "While each restriction may diminish the amount of speech that Foti and Larsen *individually* may make on the abortion issue, they do not reduce the total quantum of speech on a public issue. . . . The City's ordinance does not seek to limit the number of protesters or the times or frequency of their picketing." (emphasis added). In other words, unlike Mr. Edwards, whose right to communicate is viewed individually, the burden is on Foti and Larsen to make up for the diminution of their speech by recruiting more people to picket.

Coeur d'Alene: "[W]ithout access to sign handles, signholders in parades and assemblies cannot hoist their signs in the air so that the messages *are visible* above a crowd. The ordinance also makes it much more difficult to display *larger, heavier signs and banners*. . . . A sign that can be hoisted high in the air projects a message above the heads of the crowd to reach *spectators, passers-by, and television cameras stationed a good distance away*." (emphasis added).

Menlo Park: "The district court had before it substantial evidence that pedestrians, a substantial portion of Foti and Larsen's intended audience, could see and read their three square foot signs." (In fact, the undisputed evidence was that there were very few pedestrians on the sidewalk, and that Foti and Larsen wished to be seen by people in passing cars.) "Drivers can also see their protest in front of a Planned Parenthood clinic and understand their message. Drivers may be unable to read the words of the smaller signs, but this result is permissible in light of the City's substantial interest in requiring drivers to devote greater attention to driving conditions and road signs."

In sum, in the Coeur d'Alene case, Judge Pregerson and his fellow judges on the panel were extremely solicitous of the *individual's*

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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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right and ability to communicate his message to as broad an audience as possible, including by the use of large, heavy signs and banners, and the City had failed to present tangible evidence that a restriction on this manner of picketing, i.e., using handles on signs, was necessary to serve public interests.

In Menlo Park, Judge Pregerson concurred in a decision that, because signs larger than three square feet, or more than one such sign per picketer, might cause problems, although there was no history of their ever having done so, the city had shown a sufficient nexus to justify its first-of-its-kind restriction. The burden on the pro-lifers' free speech rights was acceptable because it was only a burden on the manner of their speech, and they could get more picketers to help them, and it didn't really matter that people passing by in cars

couldn't read the signs because they would know more or less what the pro-lifers were there for and besides, there were still a few pedestrians who could read the signs.

Abortion distortion, anyone?

Looking at the bright side, one might say that, in order to get around its earlier ruling, the Ninth Circuit in Edwards v. Coeur d'Alene retroactively narrowed Foti to the point that it only applies where picketers are demonstrating within several yards of a bus stop and their main audience is pedestrians. A more realistic assessment is that the Ninth Circuit now effectively has two completely different standards for evaluating restrictions on picketing, and a court can choose which to apply at its whim.

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