

# 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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*Katie Short*

## KELLY CASE ENDS IN NONSUIT

**Nurse Karen Kelly's lawsuit against Orange County ended abruptly when federal judge Terrence Hatter granted the County's motion for directed verdict just after Karen's attorneys, Tom and Liz Nigro, finished presenting her case at trial. Granting the motion prevented the case from going to the jury, which appeared to view Karen's case more favorably than the judge did.**

In 1995, Karen sued Orange County for retaliation and wrongfully firing her from her job as a nurse at juvenile facilities because she refused to schedule abortions and provide offensive Planned Parenthood-style "safe-sex" instruction to children. The case was made more difficult by the fact that, when fired, Karen was still within the probationary period of a new employee; essentially, the County could fire her for no reason, although not for a discriminatory reason.

The trial began on April 2, when Judge Hatter informed the attorneys that each side would have only ten hours to present its case to the jury, including, but not limited to opening statements, direct examination of witnesses, cross-examination of opposing witnesses, and closing arguments. The parties had estimated that the trial would take at least three weeks, so the court's order slashed this time by about 75%. While each side had the same allotment of time, this superficially equitable handicapping failed to take into account that only one party, Karen, had the burden of proof. And the result of that imbalance was made clear when

*... after she informed her supervisor that she could not perform duties which violated her religious beliefs, the supervisor, rather than making a reasonable accommodation as required by law, embarked on a course of harassment designed to break Karen down.*

the judge granted the County's motion for nonsuit on the grounds that Karen had failed to present enough evidence to support her case.

Karen testified that after she informed her supervisor that she could not perform duties which violated her religious beliefs, the supervisor, rather than making a reasonable accommodation as required by law, embarked

(KELLY CASE CONT. ON PAGE 15)

## GENERAL RECAP & UPDATE

**SOHL Network et al v. Lockyer et al.**—Constitutional challenge to California FACE law. Plaintiffs' preliminary injunction hearing and hearing on State's motion to dismiss set for June.

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

(RECAP CONT. ON PAGE 3)

## Reversal by Ninth Circuit in *PP v. ACLA*

On May 16, an en banc panel of the Ninth Circuit reversed a decision last year by a three-judge panel throwing out a \$107 million verdict against pro-life activists in Oregon who distributed information about abortionists.

In a 6–5 decision, the majority re-instated the jury’s verdict that posters proclaiming the abortionists “guilty of crimes against humanity” were “true threats” to inflict serious bodily harm or death. The decision called for sharp dissents from both liberal and conservative justices, who warned of the chilling effect on free speech. A more detailed analysis will follow in the next issue of *Lifeline*.

### ON THE WEB

[www.lldf.org](http://www.lldf.org)

(707) 224-6675

## FROM THE DIRECTOR

Dana Cody

### Methinks Thou Dost Protest Too Much!

**On January 31, LLDF filed suit in federal court against Gray Davis and Bill Lockyer, challenging SB 780, the recently enacted “anti-reproductive rights crimes” law. The law, known as CalFACE<sup>1</sup>, after the federal Freedom of Access to Clinic and Church Entrances Act, duplicates existing provisions of both state and federal law that already prohibit the blocking of entrances to clinics. However, SB 780 contains additional provisions that allow dossiers to be compiled on individuals suspected of “anti-reproductive rights crime,” as well as provisions designating “subject matter experts” to consult with law enforcement on how to properly enforce the bill.**

On behalf of LLDF, I applied to be a “subject matter expert” but was told that I could only participate as an individual, and not as a representative of LLDF. As soon as LLDF’s complaint challenging SB 780 was filed in the Eastern District of the United States District Court, with my name as lead counsel, I received a phone call explaining that I was “uninvited.” Apparently, “subject matter experts” who know something about the First Amendment need not apply.

Instead, those charged with enforcing CalFACE apparently wish to hear only from the likes of Katherine Spillar, Executive Director of the Feminist Majority Foundation, a designated “subject matter expert.” In a recent interview, Ms. Spillar praised police who interfered with picketing in front of abortion clinics because “then the next thing is the blockades, and then it escalates to following people to their homes.” The “worst of the violence” occurred in jurisdictions where police “tolerated” picketing, Ms. Spillar declaimed.<sup>2</sup> Ms. Spillar is clearly on the same page as Governor Davis, who recently stated that, if he is re-elected, getting the “anti-abortion movement” off the streets would be a priority. Signing SB 780 into law was just the downpayment on that pledge.

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Although politically disfavored and targeted by those with whom we are disfavored, pro-lifers should be encouraged. Why? Because abortion advocates protest too much! Public support for legal abortion is at its lowest level since 1995 and with abortion support on the wane its advocates are alarmed.<sup>3</sup>

What else would motivate their drastic tactics like Cal FACE, that advance their agenda of death by demonizing pro-life advocates as dangerous fanatics? They have no response to the message that abortion kills children, so

they attack the messengers. Why are they clamoring for legislation in New York and California forcing abortion training on medical students participating in medical residency programs?<sup>4</sup> Because most medical students are declining such training and the ranks of abortionists are thinning. Why would the National Abortion and Reproduction Rights Action League (NARRAL) and its California counterpart, CARAL, launch massive campaigns to unmask the so-called “fake” clinics who provide much needed support to women who choose life? [See “The Deceivers,” p. 12]. Because these centers are reaching hearts and saving lives by the thousands, and abortion clinics are closing.

Even though Ms. Spillar labels individuals who engage in lawful, peaceful opposition to abortion as bullies, we see by the truly anti-choice tactics and political pandering who the real bullies are. Fortunately there are those who still have the courage to stand in the face of these bullies and proclaim to women that the best choice in an unexpected pregnancy is life. LLDF is proud to represent a few of those courageous individuals by challenging SB 780 in a court of law.

LLDF represents plaintiffs Sanctity of Human Life Network and two of its members, one of whom stands to lose his livelihood if a record is created with reports of “anti-reproductive rights crimes.” This and other provisions of SB 780 are at issue because its vague and overbroad terms impinge on the civil rights of pro-lifers.

On June 20, 2002, the court will hear the plaintiffs’ Motion for Preliminary Injunction, as well as the State Attorney General’s Motion to Dismiss the case. The AG’s motion is based on claims of immunity pursuant to the Eleventh Amendment, which bars claims against the state and its officials in federal court. The AG is also claiming Cal FACE “expressly” reflects the federal model, the constitutionality of which has been upheld.<sup>5</sup> A careful reading of SB 780 shows that it does no such thing. [As for the AG’s claims of immunity, the Amendment applies only if

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monetary damages are sought. However, the plaintiffs are only seeking an injunction preventing further enforcement of Cal FACE, not monetary damages.]

In the meantime LLDF is defending the rights of sidewalk counselors in several cities, including Sacramento, Los Angeles, Vallejo, San Diego, and San Mateo, who have been threatened with civil and/or criminal penalties for such “anti-reproductive rights crimes” as leaning a sign against a post and standing on the wrong side of the street while praying the rosary. We ask for your continued prayer support and thank you for the financial support that has provided the resources to challenge the Goliath abortion industry and their political accomplices.

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<sup>1</sup> Cal FACE is part of the Penal Code, sections 423-423.6. SB 780 also includes The Reproductive Rights Enforcement Act, Penal Code sections 13775-13779.

<sup>2</sup> <http://www.laweekly.com/ink/02/20/cover-ehrenreich.shtml>.

<sup>3</sup> ABC News Poll, July 2, 2001.

<sup>4</sup> Introduced in the current session of the California legislature as Assembly Bill 2194 (Jackson).

<sup>5</sup> 18 U.S.C. §248, commonly known as FACE.

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**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. The trial ended on April 10, when the judge granted the county’s motion to dismiss. See story on page 1.

**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. Court of appeal reversed the decision and remanded with instructions that Terri be examined by other physicians. **Victory:** Schiavo’s appeal to Florida Supreme Court was denied; doctors will examine Terri.

**Planned Parenthood v. ACLA et al.** (Portland, Ore.)—On March 29, 2001, 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. Hearing before the 11-judge en banc panel was held on December 11, 2001, but no decision has issued.

**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 Operation Rescue of California actually applies against these sidewalk counselors and anyone else PP serves it on. On March 4, the court granted PP’s motion for summary judgment and declared Foti bound by the injunction because he is

(RECAP CONT. ON PAGE 5)

## ABORTION AND BREAST CANCER: SOME FACTS YOU SHOULD HAVE KNOWN YEARS AGO

### The Biological Hypothesis

"Pregnancy initiates a surge of sex hormones (estrogen, progesterone, and prolactin), which leads to differentiation of the cells in the breast glands in preparation for lactation. . . . Interruption during the first trimester of a first pregnancy causes a cessation of cell differentiation, which may result in a subsequent increase in the risk of cancerous growth in these tissues." Planned Parenthood Federation of America (1994).

"Breast cells have been hypothesized to be the most susceptible to transformation into malignant cells when breast tissue contains primarily rapidly growing and undifferentiated epithelial cells—i.e., during adolescence and pregnancy. . . . Some investigators have hypothesized that the termination of pregnancy in the first two trimesters may alter the carcinogenic potential of breast tissue by interrupting the complete differentiation of breast cells that occurs during full-term pregnancy and confers protection." Phyllis A. Wingo (American Cancer Society) (1997).

A 1980 landmark experiment by Jose and Irma Russo, published in the American Journal of Pathology, found that 77% of laboratory rats whose first pregnancy was aborted developed breast cancer after exposure to a carcinogen, compared to 0% of similarly exposed rats in the control group whose pregnancy was carried to term. The authors noted that "epidemiologic observations indicate that there are factors that exert either a protective or a stimulating influence on the development of breast cancer in women. Among the protective factors are a first full-term pregnancy before 24 years of age. . . . Among the risk factors are . . . abortion."

### Epidemiological Evidence Supporting the Hypothesis

Twenty-eight out of the thirty-seven studies in the world-wide literature indicate an increased risk of breast cancer associated with induced abortion. Seventeen of the twenty-eight are "statistically significant," a technical term which means the data provided at least 95% certainty that the association measured was not due to chance.

One of these statistically significant studies was published in the Journal of the National Cancer Institute in 1994. Lead author Dr. Janet Daling and colleagues reported that "among women who had been pregnant at least once, the risk of breast cancer in those who had experienced an induced abortion

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## CASES

by John Kindley

# Judge's Ruling in Fargo Abortion-Breast Cancer Case: A MISCARRIAGE OF JUSTICE

**Following a three-day bench trial, Fargo District Court Judge Michael McGuire on March 28th ruled that the Red River Women's Clinic is not violating North Dakota's false advertising statute by asserting in its commercial brochures that there is no evidence that abortion increases breast cancer risk.**

The evidence at trial showed that the clinic used a brochure from around the time of its opening in 1998 a brochure which stated, in part, "Anti-abortion activists claim that having an abortion increases the risk of breast cancer and endangers future childbearing. *None* of these claims are supported by medical research or established medical organizations." The clinic immediately stopped using this brochure upon the filing of the lawsuit on December 15, 1999. The Clinic then for a month or two used a brochure from which all of the wording about breast cancer had been taken out. Instead, this second brochure included the following additional statement: "It is 10-12 times more life threatening to give birth than it is to have an abortion in the first 16 weeks of pregnancy." In the clinic's current commercial brochure, which the clinic began distributing to the public in early 2000, and continues to distribute to the present day, the statement about "10-12 times more life threatening" has been removed, but the following three sentences concerning abortion and breast cancer now appear:

"Some anti-abortion activists claim that having an abortion increases the risk of developing breast cancer. A substantial body of medical research indicates that there is no established link between abortion and breast cancer. In fact, the National Cancer Institute has stated, "[t]here is no evidence of a direct relationship between breast cancer and either induced or spontaneous abortion."

*The lawsuit seeks an injunction preventing the clinic from continuing to state or imply that there is no evidence that abortion increases breast cancer risk, and also affirmatively requiring it to give its prospective customers accurate, objective information about the evidence linking abortion and breast cancer.*

The quotation attributed to the National Cancer Institute (NCI, an agency of the National Institutes of Health) was taken from a 1996 NCI "fact sheet" on "Abortion and Breast Cancer." At the time the clinic's current brochure was produced, in January of 2000, the NCI had revised its "fact sheet" on "Abortion and Breast Cancer" at least twice since the 1996 version, once in 1997 and again in 1999. The former revision states that "[t]here is no convincing evidence of a direct relationship between breast cancer and either induced or spontaneous abortion," and the latter that the "evidence of a direct relationship . . . is inconsistent." These revisions, as well as the NCI's most recent report (3/7/2002), while judging the overall

(CASES CONT'D ON PAGE 8)

## STRANGE CLONEFELLOWS

by Wesley J. Smith

## The left-right anti-cloning coalition.

**A great deficiency in the media's reporting of debates about public policy is their tendency to reduce messy democratic discourse to a sterile, never-ending face-off between "The Left" and "The Right." One year, The Right launches an offensive and advances a half-mile. The next year, The Left counterattacks and regains the lost ground.**

This caricature has certainly dominated the reporting of the debate over human cloning, which is usually portrayed as a contest between religious opponents of abortion and medical researchers striving to benefit humankind. The stereotype was epitomized in a January 17, 2002, *Washington Post* story by science reporter Rick Weiss. Implying that opponents of human cloning are the moral equivalent of the Taliban, Weiss wrote:

"In November, researchers announced that they had made the first human embryo clones, giving immediacy to warnings by religious conservatives and others that science is no longer serving the nation's moral will. At the same time, the United States was fighting a war to free a faraway nation from the grip of religious conservatives who were denounced for imposing their moral code on others."

The *Post* ombudsman gently rebuked Weiss for his "real or perceived bias," but the fact that he made the comparison, and that no editor removed it, is revealing.

In reality, the opponents of human cloning are not so easily categorized. For one thing, they include many secular activists associated with the pro-choice left. Last year, in a lopsided bipartisan vote, the House of Representatives passed the Weldon bill (H.2505), which would outlaw both research and reproductive human cloning. Among those supporting the ban were 21 House members whose voting records on abortion were at least 75 percent pro-choice as scored by the National Abortion Rights Action League (NARAL).

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Now, 68 leftist activists have signed a "Statement in Support of Legislation to Prohibit Cloning." Among them are such notables as activist Jeremy Rifkin, New York University professor Todd Gitlin, novelist Norman Mailer, *Commonweal* editor Margaret O'Brien, Abortion Access Project director Susan Yanow, New Age spiritual leader Matthew Fox, and Judy Norsigian, author of the feminist manifesto *Our Bodies, Ourselves*.

Among arguments against the cloning of human life, these leftists stress the "commercial eugenics" that the new technologies threaten to unleash. They write:

"We are also concerned about the increasing bio-industrialization of life by the scientific community and life science companies and shocked and dismayed that clonal human embryos have been patented and declared to be human "inventions." We oppose efforts to reduce human life and its various parts and processes to the status of mere research tools, manufactured products, commodities, and utilities."

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allegedly acting in concert with ORC, even though it was undisputed that Foti had not had any contact with ORC for years, and absolutely no contact with them regarding his picketing at the clinic. The court further ordered two other defendants bound by the injunction as acting in concert with ORC "through" Foti, even though it was undisputed they never had any contact with ORC at all. Planned Parenthood has notified the defendants that it will seek attorney fees against them. The judgment has been appealed.

**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. Case reversed on appeal and sent back to trial court, which issued a new, somewhat narrower injunction.

**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. Two defendants won dismissals with attorneys' fees against PP of more than \$15,000. Two other defendants settled out, and two went to trial. After trial, the court issued awarded damages of \$11,000, and issued virtually the same injunction upheld by the court of appeal.

**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. After a three-day trial, the court ruled in favor of the clinic. See story on Page 4.

**NOW v. Scheidler**—On April 22, the U.S. Supreme Court agreed to hear the pro-life activists' appeal from a decision granting

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substantial damages and a purported nationwide injunction. LLDf filed amicus briefs in both the Seventh Circuit and the U.S. Supreme Court, as well as assisting the defendants with post-trial motions in the trial court.

**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. **Victory:** Case settled with monetary settlement.

**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. Appellate court reversed judgment and case remanded for a third trial.

**Kelly v. Universal Care** (Santa Ana)—Employee fired: refused to schedule abortion appointments. Confidential settlement entered on April 24.

**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. Argued January 30, 2002; waiting decision

**Padilla et al v. Tamboura** (San Jose)—Civil action against driver of van who tried to run over sidewalk counselors and their signs. Discovery underway.

**Pasillas et al v. City of Monrovia and Pasadena PP**—Residents sue to prevent the opening of a Planned Parenthood abortion facility in their area. City and PP unsuccessful in their attempt to get the complaint dismissed.

**People v. Conrad** (Rancho Cucamonga)—Christmas caroler charged with trespass.

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

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## ASK THE ATTORNEY

### An Interview with Laurence D. Behr of Buffalo, New York

**[Mr. Behr is the founder of the Western New York Lawyers for Life and the originator and driving force behind a project to build a major international shrine honoring Mary the Mother of God, and the Holy Innocents, in Buffalo, New York.]**

#### Larry, could you give me some background on yourself?

I attended Catholic grammar and high schools in Rochester N.Y., and received a B.A. in English in 1973 from SUNY at Buffalo. In the spring of that year I had a powerful conversion experience. I then stayed out of school for five years while I studied independently religion, philosophy, art and poetry. In 1978 I entered the SUNYAB Law School, graduated magna cum laude in 1981, then clerked for two years in the federal court here in Buffalo. In 1983 I entered a large local firm’s insurance defense department, becoming a partner and also leaving in 1990. For most of the 1990’s I was a sole practitioner, and I am now a partner in Barth, Sullivan and Behr in Buffalo.

#### When did you start doing pro-life legal work, and what sort of work have you handled?

In 1991 attorney James Duane was defending rescuers in federal court here, and I offered assistance. I helped Jim and when he left to teach at Regent University I became attorney of record. The injunction in our case went to the Supreme Court, *Schenck vs. Pro-Choice Network*, and aspects of it were held unconstitutional. In the “Spring of Life” demonstrations here in 1992 I managed the defense in both state and federal court of the hundreds who were arrested, and personally handled a number of their cases. I now represent a new set of defendants in a “successor” federal action brought by N.Y. Attorney General Eliot Spitzer in 2000.

#### What was the Spring of Life?

After the 1991 “Summer of Love” rescue demonstrations by Operation Rescue and the Lambs of Christ in Wichita, for various reasons I felt that Buffalo would be the next city to receive massive demonstrations. I shared that concern with other local pro-life lawyers, and so we founded Western New York Lawyers for Life, for that and other purposes. When hundreds of pro-lifers were in fact arrested here in demonstrations the next spring, we had lawyers ready to defend them all. Our group today defends pro-lifers as needed, pro bono of course. We also hold educational luncheons, and sponsor annual ecumenical fundraising banquets for crisis pregnancy centers.

#### Now you are engaged in a different kind of major project. Could you describe it, and how did you become involved in this?

It truly is a major undertaking, to build the world’s tallest monument, 700 feet tall (because Mary represents humanity perfected, seven being the number of perfection); an ascendable, golden triumphal arch to commemorate the Triumph of the Immaculate Heart of Mary which she prophesied at Fatima in 1917, and below the arch, an International Shrine of the Holy Innocents, dedicated to the victims of worldwide abortion and affirming the sacredness of unborn human life. This project began with an uncanny and compelling dream that was described in a

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front-page story in the *National Catholic Register* that can be read on our Web site, at [www.archoftriumph.org/news5.html](http://www.archoftriumph.org/news5.html). As a Christian, I believe that God communicates to us through our dreams, and there are many examples of this in the Bible and in the lives of believers. And so I accepted this great inspiration, which has won the support of the Catholic leaders of the pro-life movement—Fr. Frank A. Pavone, Fr. Matthew Habiger OSB, Fr. Thomas Euteneuer, and many others—and of very many other Catholics and Christians in the U.S., Canada, and the world.

#### **What purpose do you see it serving?**

People of all faiths—and of no faith—will be drawn to it, as people are drawn to great monuments everywhere, and even more so because ascending the Arch will be a unique experience that families can enjoy together. Over a million people ascend the Gateway Arch annually—we will put that level of attraction to work for God’s Kingdom. The Arch and Innocents Shrine will proclaim a sublime spiritual message by exalting Mary’s purity as a model and an ideal so greatly needed, by a world enmeshed in sexual license and perversion—really a primary root of the abortion plague. There is a great hunger for God today, many do not realize their hunger, but it is there, and also for Mary, as evidenced by many cover stories about her in leading secular magazines. This shrine will both encourage and feed that hunger, and will promote reverence for human life. Great shrines are invaluable teaching instruments, and often prompt conversions; in fact, I had my dream just after reading an article entitled, “The Pastoral Importance of Shrines,” whose author, Brother John Samaha, S.M. has become a staunch supporter.

#### **Suppose someone were to object that the huge amount of money that this will cost would be better spent on practical things such as crisis pregnancy centers and legal defense?**

First, few of us give as much as we can, and perhaps should. I would say, do not give less to such important causes, but make an extra sacrifice in honor of Our Lady, the Mother of all Christians, and Patroness of the Unborn—and allow God to work this miracle in our world. This great

shrine will astound the whole world, and will proclaim purity of heart and respect for life unceasingly and persuasively. Great hopes have been expressed for this shrine by our leadership supporters; Fr. Habiger of Human Life International, for example, said that this project is “truly in keeping with the great hopes of the new millennium,” and “would inspire others to become part of the pro-life movement.” Millions of people who love Mary and who love the unborn could give \$50 or \$100 or more for this shrine, and still contribute to these other causes. Further, we believe this great shrine will help bring about a general increase of faith and devotion, and thus an increase of charitable giving.

#### **What is your progress to date?**

We have received about \$30,000 from individuals across the U.S. and Canada, although we are not yet well known. The City of Buffalo has passed a Resolution supporting us, as have a number of Knights of Columbus councils. Local chapters are started in twenty cities across the continent, and we hope to start chapters in every city and town, to promote support for at the grassroots level. I would urge pro-life lawyers and activists to step forward in faith to start chapters, or serve as Regional Directors and on our Board of Directors. Our website is [www.ArchofTriumph.org](http://www.ArchofTriumph.org) and our toll free number is 1-866-205-6512; my email address is [LDBehr@ArchofTriumph.org](mailto:LDBehr@ArchofTriumph.org). **L**

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**Estavilla v. Romo and West** (Yolo County)—Fetal homicide suit for injury and constitutional violations includes two issues 1) wrongful death statutes are unconstitutional because it denies equal protection to stillborn babies and 2) intentional interference with the right to privacy and reproductive rights.

**People v. Stillson** (Sacramento)—Pickers charged with resting sign on sidewalk. Trial set for May.

**Ayala v. Gymboree** (Modesto)—Suit filed on behalf of employee fired for wearing Precious Feet pin.

**McCullough v. Fogarty** (Los Angeles)—Civil suit against city for false arrest and constitutional rights violations against pro-lifers who were engaging in picketing and leafletting on Venice Beach Boardwalk. Case is in discovery phase.

**People v. Mason** (Denver)—Picketer at University of Denver arrested, charges not filed.

#### SAMPLING OF PRE-LITIGATION AND OUT OF COURT RESOLUTIONS:

**White v. UCLA**—Pro-lifers arrested for displaying signs in free speech area of public university.

**Locatel v. City of Monrovia**—Civil rights suit for rights violated while leafletting at a high school.

**Modesto**—advice to pro-life organization in re definition of “nuisance” in lease agreement.

Environmental suit against PP.

Environmental suit against pharmaceutical companies.

**Florida**—Clinic uses water to harass pro-lifers.

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**(BREAST CANCER CONT. FROM PAGE 4)**

weight of the evidence in a way that does not do justice to the facts, at least corrects the 1996 sentence quoted in the clinic’s brochure by recognizing the obvious fact that evidence of increased risk does exist.

Judge McGuire based his stunning decision on the mistaken notion that epidemiological studies only provide evidence of statistical associations and not of cause-and-effect relationships, despite explicit testimony by the abortion clinic’s own expert epidemiologist that the whole purpose of such studies is to provide evidence for or against a causal link. Indeed, properly-conducted epidemiological studies are typically considered the strongest evidence of causation, it being ordinarily impossible to ever directly observe a given exposure (e.g. smoking) actually causing a disease (e.g. lung cancer) that may not occur until decades later.

To date 28 out of the 37 published epidemiological studies on the relationship between abortion and breast cancer have found an association between abortion and increased breast cancer risk. In addition, it is well established that, at least for childless women under age 30 (which describes the majority of abortion patients in America), having an abortion increases breast cancer risk relative to what it would be if the pregnancy is not terminated, by nullifying the protective effect that is known to naturally result from childbirth. This undisputed fact alone demonstrates the falsity of the clinic’s assertion that “it is 10-12 times more life-threatening to give birth than it is to have an abortion in the first 16 weeks of pregnancy” and its practice—typical of the entire abortion industry—of telling potential customers that “abortion is safer than childbirth.”

Further evidence of a cause-and-effect relationship between abortion and increased breast cancer risk is provided by experimental data on laboratory animals. The link is explained biologically by the hormonal disruption that is known to occur when a woman’s pregnancy is artificially interrupted. During the first two trimesters of a normal,

healthy pregnancy, estrogen levels rise sharply, causing the cells of the breast to rapidly divide and become more numerous. These cells are in a transitional, “immature” state which is especially susceptible to carcinogenic mutation. In approximately the last eight weeks of a full-term pregnancy, other hormones cause the cells to “differentiate” into structured, milk-producing cells that are highly resistant to cancerous mutation. If a woman has an induced abortion, however, she

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nullifies this protective effect, and does so at a time when the estrogen overexposure throughout the first two trimesters has left her breasts with an abnormally high number of vulnerable cells.

Paradoxically, the judge did expressly acknowledge that he did not consider the lawsuit “frivolous,” noting that the attorneys for the plaintiff, Amy Mattson Kjolsrud, had presented during the course of the trial substantial “documentation” to support her claim. Indeed, the plaintiff’s attorneys had produced study after study reporting increased risk, each one of which should have demonstrated to the court the absurdity of the clinic’s claim that “there is no evidence.”

The lawsuit seeks an injunction preventing the clinic from continuing to state or imply that there is no evidence that abortion increases breast cancer risk, and also affirmatively requiring it to give its prospective customers accurate, objective information about the evidence linking abortion and breast cancer. The case would thereby finally establish in a court of law that abortion clinics have a legal duty to warn women considering abortion about this

*Because of the strength of the plaintiff's case, critical and obvious mistakes in the trial court's decision, and the importance of this precedent-setting lawsuit to the public on whose behalf it has been brought, the plaintiff intends to appeal Judge McGuire's ruling to the North Dakota Supreme Court.*

evidence, which could in turn open the floodgates nationwide to medical malpractice lawsuits against clinics which have been breaching this duty for decades. In fact, the University of Wisconsin's law journal has already set the stage for such litigation by publishing an article I wrote demonstrating the legal viability of such lawsuits. (This article is available in its entirety at [www.proinformation.net](http://www.proinformation.net).)

Another very important aspect of this false advertising case is that it places in the national spotlight a patently false statement (i.e. "There is no evidence of a direct relationship between breast cancer and either induced or spontaneous abortion") disseminated before the public by the National Cancer Institute. People

unacquainted with "the abortion distortion" often question why a public agency dedicated to the prevention of cancer would be biased against disclosure of this life-saving information, and are unduly impressed by the NCI's "spin" on the evidence. Whatever the ultimate explanation for the NCI's bias with regard to this issue, the 1996 NCI statement quoted in the Red River Women's Clinic's commercial brochure constitutes palpable proof that such bias exists, and that the NCI cannot be blindly trusted when it comes to this politically-charged issue.

Because of the strength of the plaintiff's case, critical and obvious mistakes in the trial court's decision, and the importance of this precedent-setting lawsuit to the public on whose behalf it has been brought, the plaintiff intends to appeal Judge McGuire's ruling to the North Dakota Supreme Court. There is good reason to be optimistic and hopeful about the fairness and independence of North Dakota's Supreme Court, which in the context of medical malpractice litigation has firmly held that a patient's right to be informed about risks "demands a standard set by law for physicians rather than one which physicians may or may not impose upon themselves."

The plaintiff's ability to bring this appeal is contingent, however, upon her ability to pay necessary expert witness fees and other costs (her attorneys are handling the case free of charge). Tax-deductible donations to support this effort may be sent to the Life Legal Defense Foundation, P.O. Box 2105, Napa, CA 94558, (707) 224-6675, [www.LLDF.org](http://www.LLDF.org).

#### L

[John Kindley is an attorney and resides in South Bend, Indiana. He is the author of a 1999 *Wisconsin Law Review* article on the abortion-breast cancer link, which is available on his website at [www.proinformation.net](http://www.proinformation.net)]

#### (CANCER FACTS CONT. FROM PAGE 4)

was 50% higher than among other women." When the abortion was done before the age of 18 or at age 30 or older the risk was more than doubled.

#### Potential Public Health Impact

In 1986, four prominent epidemiologists criticized in the *Lancet* a study's suggestion that the increasing incidence of breast cancer among Swedish women was due to oral contraceptive use: "This reasoning overlooks the more likely role of other factors, especially induced abortion. Induced abortion before first term pregnancy increases the risk of breast cancer."

Bernadine Healy, M.D., former director of the National Institutes of Health, warns: "Some 1.5 million women undergo abortion in this country each year; if the breast cancer connection is valid, we will be seeing a continuous rise in breast cancer in this country for many years into the future."

#### Implications of the Present Findings for Informed Choice

Dr. Stuart Donnan, editor-in-chief of the *British Medical Association's Journal of Epidemiology and Community Health*, wrote in a 1996 editorial on the evidence linking abortion and breast cancer: "[I]t will surely be agreed that open discussion of risks is vital and must include the people—in this case the women—concerned. I believe that if you take a view (as I do), which is often called 'pro-choice,' you need at the same time to have a view which might be called 'pro-information,' without excessive paternalistic censorship (or interpretation) of the data."

#### Why Aren't these Facts Being Disclosed to Women?

The most common objections to inferring a likely causal link between induced abortion and breast cancer are based either on the "recall bias" hypothesis, or on a Danish study published in January 1997 in the *New England Journal of Medicine*. However, neither of these claims can explain away the above facts, and both are highly refutable.

Dr. Janet Daling, who is strongly pro-choice, told the *L.A. Daily News* in September 1997: "If politics gets involved in science it will really hold back the progress that we make. I have three sisters with breast cancer and I resent people messing with the scientific data to further their own agenda, be they pro-choice or pro-life. I would have loved to have found no association between breast cancer and abortion, but our research is rock solid, and our data is accurate. It's not a matter of believing, it's a matter of what is."

**[This article is one of several on John Kindley's web site: [www.proinformation.net/abcfacts.htm](http://www.proinformation.net/abcfacts.htm)]**

## Banquet Shots



Anne Starr

## BANQUET, FALL 2001

**In spite of the [then-current] statewide warning about a terrorist threat to bridges and competition from a World Series game, the Life Legal Defense Foundation's annual dinner drew more than 100 people to the beautiful Bellevue Club near Lake Merritt in Oakland.**

Two speakers talked about the ups and downs of participating in pro-life activities. Attorney Janie Siess discussed end-of-life issues related to the case of Robert Wendland, a brain-damaged but conscious man whose wife wanted to withdraw food and water while his mother fought to preserve his life. Mr. Wendland died this fall just as the five-year-old court battle in his name was concluded. In a separate talk, the Rev. Terry Tomkins, a Catholic priest, spoke about his experiences in standing up for the cause of the unborn.

During the Nov. 3 dinner, the crowd also gave an appreciative ovation to Attorney of the Year Brian Chavez-Ochoa, and applauded the annual update from LLDL Executive Director Dana Cody. Chavez-Ochoa talked about the "tremendous adventure and blessing" of working in the pro-life cause, and credited his successes to God. He thanked his wife, staff and LLDL supporters for backing his efforts. LLDL administrator Mary Riley, who introduced him, said he is among the few attorneys she can call upon for any job knowing that the answer will always be, "Yes, I'll help."

Life Legal board member and co-founder John Streett was the master of ceremonies. While introducing Ms. Siess, he noted that the Wendland case that she won at the California Supreme Court "will have a lasting effect. It produced a Supreme Court decision that is going to reverberate across the United States." The ruling was especially important to people who are disabled but not comatose, and it already is being cited in a case involving a disabled woman in Florida.

Siess talked about the national and international attention that the case drew, and some of the surprises along the way. One surprise to her, a self-described "good little Lutheran girl," was that three Catholic health care organizations joined the case on Robert's wife's side, in favor of withdrawing food and water. She urged listeners to "ask some questions about why Catholic organizations support pulling the (feeding) tube from a conscious man." She also warned against arguments from bioethicists who favor the right to withdraw support from people who are "minimally conscious." "Be careful of that term," she said. "A person who is 'minimally conscious' is not in a coma." She predicted that area would be "the next frontier for us in terms of drawing a line."

She talked about the frustration of knowing that Robert was sick and being unable to get a court order to have a doctor examine him at his mother's request. He apparently had contracted pneumonia and, on orders from his wife, had his antibiotics discontinued because they allegedly were not helping.

Remembering the day that Robert died, Siess reported what his mother, who was with him, had witnessed: "Robert died a very painful death because at the end he was gasping for air and his entire body was rocking.' So when you hear people talking about Robert and palliative care and painless death, you can say, 'Baloney.'" Siess complimented the justices who ruled in the case. Because Robert had just died, the case could have been set aside. "They didn't have to rule. It was very courageous on their part." She also talked about the big picture. Robert Wendland was "just a guy in

Stockton who sold auto parts who got in his pickup one night” after having some beer, veered off the road and crashed into a new existence as a disabled man. But now, “Robert Wendland has his name on a Supreme Court case. You never know who God is going to pick, and in picking Robert, God also picked a great mom. She still saw the little guy she rocked. She still saw her son.” While Robert’s wife could not see her husband in the permanently brain-damaged Robert, his mother “always had something positive to say.” The credit for winning the case goes to God, she said. Siess cannot recall a word of her argument before the Supreme Court, but she knew that supporters were praying for her. “When you have folks like that and they’re immersed in prayer and you’re arguing, you can’t lose because the Holy Spirit takes over,” she said.

God and prayer also came in for comment from the evening’s other speaker, Catholic priest Terry Tompkins, who was introduced by long-time pro-life supporter Terry Thompson.

The Rev. Tompkins, a parish priest in Fremont, gave a candid overview of his pro-life involvement as a priest. Questioned sometimes from the pews, and other times by his superiors, he has not wavered in his commitment to life. One “defining moment,” he said, came during an interview following a critical sermon about a former parishioner turned abortionist. Though he did not name the man, he used his initials, and relatives who happened to be attending that Mass were furious. He was called downtown, told that he had misused the pulpit, and warned that if he did not “back off just a bit on this abortion thing, you are going to be hard to place in coming years.” Crediting the Holy Spirit, “because I don’t think that fast,” he replied, “If I thought of the priesthood as a career rather than a vocation, that would rattle me—but it doesn’t.” His vocation took him into controversy when he clashed with a Catholic

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school principal who invited a pro-abortion politician to speak to students. It led him to preach on abortion in the face of active discouragement, including one pastor who ordered him to limit sermons on the subject to exactly once a year. It even led to disagreements within his own family, including a gentle talk with a niece who had joined her college chapter of the National Organization for Women. He told her, “But they’re pro-abortion, pro-death,” to which she replied hastily, “I just remembered—my mother told me I was never to discuss this with you.” He said it would have been easier to overlook his niece’s remark about her membership, but “my vocation—and yours—doesn’t allow me to do that.” Responsibility to the truth exists “whether you are a Christian or more generally call yourself a child of God, or citizen of the world. In matters of etiquette, go with the flow,” he advised, “but in matters of principle, stand like a rock.”

A couple of weeks after the Sept. 11 attacks in New York and Washington, D.C., Tompkins was preaching about changes in America. In his sermon, he noted that in addition to the innocent people killed by terrorists, another 4,500 innocent lives were stopped by abortion if the average number of abortions occurred that day. Later, some weary members of the congregation asked whether, regarding abortion, he could not just “give it a rest for a while.” The answer, he said, is no. Quoting Bishop Fulton J. Sheen, he said there are “no planes, no plateaus in the spiritual life; you are either going up or you’re going down. I believe you cannot rest in the matter of defending the most vulnerable either.”

Prayer, he said, is an essential part of spiritual life. Referring to the Gospel of John, he talked about the home that Jesus was going to prepare for his followers. “Prayer is that new language that belongs to the new home,” Tompkins said. “Prayer is communing with God, which leads to peace, the peace that surpasses all understanding, peace even perhaps as the world falls apart around us.”

He encouraged the audience to persevere in pro-life prayer and action, and praised Life Legal Defense Foundation as a “wonderful, wonderful organization which is impacting society in a very important way.”

**L**

[This article was postponed from the November, 2001 issue of *Lifeline* for space considerations.—Ed.]



## THE DECEIVERS

**These people not only revile what they have no knowledge of.**

**They are corrupted through the very things they know.**

**Woe to them. They have followed the way of Cain. (Jude 10-11)**

The National Abortion and Reproduction Rights Action League (NARAL—now changed to NARRAL) has launched an ongoing war on reproduction that is becoming comically hysterical. Recently NARRAL reported their alarm (anguish might be a better word) that “The number of CPCs [Crisis Pregnancy Centers] continues to grow. . . . Nationwide, CPCs far outnumber abortion providers. While there are over 3,000 CPCs across the country, there are only approximately 2,000 abortion providers.” Bitterly but justifiably, NARRAL accuses CPCs of saving unborn babies.

NARRAL has even more chilling news: Young people are substituting abstinence for promiscuous sex! “Congress and state legislatures,” they lament, “have expanded their support for abstinence-only [education].” Also troubling is that babies who should be aborted are being saved! In fact, “Louisiana recently enacted an infant abandonment law that allows a woman to place an infant younger than 30 days of age in the custody of an emergency care facility.” These are serious developments for our society!

Obviously, something must be done—and NARRAL is doing it. For its crusade against crisis pregnancy centers, NARRAL has published its “Choice Action Kit #3” entitled *A Step-by-step Guide to UNMASKING Fake Clinics*. This book instructs their pro-death faithful on ways to attack CPCs.

*UNMASKING Fake Clinics* is a curious book. As one who helped found a CPC and was the board chairman for many years, this writer found the book especially interesting—and amusing. Feigning respectability, NARRAL adorns the front cover with a picture of the

Statue of Liberty, repeated in small insets on every page. On page one is a “DISCLAIMER” in which NARRAL tacitly admits that their book is filled with distortions and lies. It states that “The NARRAL Foundation hereby specifically disclaims any liability for loss incurred as a consequence of the use of any materials in this book.” Well they might!

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The book is full of the very lies, misinformation and distortions of which they accuse crisis pregnancy centers. CPCs are always referred to as “fake clinics,” and references to them are always accompanied by such words as *false, misleading, lies, deception, evasion, propaganda, misinformation*, etc. (These are not nice people writing the book.) Women are said to come to CPCs only because they are “lured” and “enticed.” Women choose to give birth to their babies only because they are “coerced” or “intimidated.” Of course, one would assume that as feminists, those at NARRAL can’t imagine a woman wanting to give birth to her baby.

A repeated accusation is that CPCs are “anti-abortion and anti-choice.” They “lure women to their facilities under false pretenses, deprive them of accurate information needed to make a fully informed choice, and use fear tactics to dissuade them from choosing legal abortion.” Worse yet, “Once inside the CPC, women are subjected to anti-abortion propaganda, [and] anti-choice volunteers refuse to refer for abortion or birth control!”

Though there is little in this book that is honest, accusations of CPCs being “anti abortion” are in fact true. CPCs do indeed refuse to “refer for abortion or birth control.” But are CPCs “anti-choice?” Of course not. Their principle statement, the logo on their advertising, is “Choose Life.” But of course, no word is more deceptive than “choice”—as it is used by the abortion industry. After all, being “pro-” or “anti-” choice depends entirely on what is being chosen. Everyone makes choices every day. But people in civilized societies do not “choose” to kill their children.

The first eleven pages of *Unmasking Fake Clinics* are devoted to “proving” that “fake clinics” (CPCs) are “guilty of deception.” The following forty-eight pages are devoted to teaching “pro-choice investigators” how to use deception by conducting “secret investigations” of CPCs.

In order to prove that CPCs are deceptive, “undercover investigators” are to make phone calls and personal visits to CPCs using fake names and fake stories. They are to ask leading questions with hidden tape recorders (illegal in some states). In the first chapter, titled “In an undercover investigation,” the *Guide* instructs “volunteers” to “assume the identity of women

who suspect they may be pregnant and seek counseling on all of their reproductive options, including abortion. By posing as potential CPC clients over the phone or as CPC clients in person, investigators are exposed first hand to the deception, misinformation, and scare tactics employed by CPC staff.”

Instructions are surprisingly thorough. Apparently having a low opinion of the intelligence of their own investigators, NARRAL devotes the first section to “Finding CPCs” by looking in the Yellow Pages and asking abortionists. Investigators are then to conduct “Telephone Investigations” by following a “Phone Investigation Script” on page 43 and asking incriminating questions. Answers to nos. 4-9 can “prove” that CPCs are anti-abortion!

The guide meticulously describes the investigator’s “Role.” They are to use “Real first name, fictitious but easily remembered last name. . . . We will give the following information: Address, Phone, School, Major in college, Age, Name of father, Race of father, Date of your last period, Any additional medical concerns or complicating factors. . . . It’s acceptable to act confused if they ask for more information than what we’ve provided.”

“You are a young woman in your senior year of high school or college. You are over 18 years old. You missed your last two periods and are really scared. Your boyfriend dumped you. Your parents are really strict and you are afraid of their reaction. You have not been taught much about birth control. . . . You don’t know much about abortion,” etc., etc., etc.

“Undercover investigators” are advised to “locate pregnant women who are willing to provide urine samples to aid your investigation.” They are to “Keep an eye on the clock and time your tape recorder. If possible, don’t let the recorder turn off while CPC staff are in the room. It makes a distinctive noise. . . . DO NOT CARRY IDENTIFICATION INTO THE CPC.”

As honesty is the very strength of the pro-life movement, so duplicity is the very strength of the pro-abortion movement. Only the most habitually duplicitous persons would think of

using duplicity to “prove” that Crisis Pregnancy Centers are indeed using duplicity. *UNMASKING Fake Clinics* is itself enough to convict NARRAL of falsehood and deception.

Lying, in fact, is an integral part of the abortion industry. Recently Diane Booth, executive director of Planned Parenthood of Kansas & Mid-Missouri stated to the news media that

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before *Roe v. Wade*, millions of women were injured and killed in American abortion mills. “Before the legalization of abortion under *Roe v. Wade*,” she averred, “one-third of gynecological ward hospital beds in the United States were filled with women who were there because of botched, illegal, back-alley abortions.” One third—more women than actually gave birth! Not even Maggie Sanger, the queen of prevarication, made such asinine claims.

Several years ago a reporter for the *Los Angeles Times* revealed that as many as twenty percent of Medi-Cal-funded abortions are performed on

women who are not pregnant (also true in other states). A popular TV talk show host thereupon sent his 13-year-old daughter into a Planned Parenthood abortion mill in Nevada with a specimen of his male dog’s urine. The specimen was “tested” and she (or the dog?) was found to be pregnant. TV’s Geraldo Rivera then sent a girl into an abortion mill with a specimen of his own urine. She (or he?) too was “pregnant”!

As a result of the publicity, California State Senator Richard Mountjoy introduced legislation requiring pregnancy tests before abortions are performed. Calling Senator Mountjoy’s bill an “insult to women,” feminists in the California Senate killed the bill. Later, *The San Francisco Examiner* ran an article on the number of California doctors facing murder and wrongful death charges for the deaths of aborted women that were being misreported and covered up. The article was titled “*Abortion Doctors Who Run ‘Chop Shops’: Legal but Sometimes Lethal Doctors Prey on Poor.*”

Ironically, literature that Planned Parenthood itself gives clients contains explicitly false statements such as “Abortion is 10 times healthier than childbirth” and “There is no evidence of a link between abortion and breast cancer.” Statistical studies prove both statements to be patently false.

A recent lawsuit charged Planned Parenthood’s Red River Clinic in North Dakota with deceptive advertising for claiming that “there is no evidence” that abortion causes breast cancer. Judge Michael McGuire dismissed the case, claiming that statistics did not demonstrate a “cause and effect relationship.” (Epidemiologist Dr. Joel Brind of New York University did, in fact, demonstrate the relationship). But he acknowledged that plaintiffs had presented “substantial documentation” to support their charge.

Perhaps NARRAL is unaware of these practices. Or perhaps they are not.

**L**

[Joseph Collison is Director of the Pro-Life Office in the Diocese of Norwich, Conn.]

(CLONE CONT. FROM PAGE 5)

These are points that conservative opponents of cloning have been making for a long time, with limited effect thanks to the media's obsession with the politics of abortion. That may change, now that some leaders of the American left are becoming fully engaged in the drive to ban human cloning. If it does, the chances of outlawing human cloning will improve dramatically.

Still, the question lingers: Can these strange bedfellows of right and left work closely together for as long as it takes to prevail against a Brave New World? Or, to put it another way, can deep differences over fundamental issues such as abortion be set aside long enough to prevent the threatened flood of human cloning?

Jeremy Rifkin, who led what may have been the first anti-cloning demonstration more than twenty years ago at the First National Conference on Biotechnology, hopes so. While acknowledging that he is "very uncomfortable" working alongside people and groups with whose stances on other issues he profoundly disagrees, Rifkin believes that the struggle to defeat human cloning cuts a broad diagonal across the standard left/right divide. "Cloning pits believers in the 'intrinsic' value of human life against those who measure human life based on its 'utility,'" with conservatives, moderates, and liberals found in both camps, Rifkin says. Moreover, he believes that the cloning debate "will be as pivotal to the morality of the next hundred years as the struggle over slavery was to the Nineteenth Century."

Opponents of human cloning are not far from victory. With the House having passed a strong cloning ban, and President Bush endorsing efforts to outlaw human cloning, the advocates of cloning will make their last stand in the Senate. There, the Brownback bill (S. 1899) to outlaw human cloning, almost identical to the Weldon bill, is being countered by two pseudo-bans. Both the Harkin/Specter bill (S. 1893) and the Feinstein bill (S. 1758) claim to outlaw human "reproductive cloning," but both would explicitly permit cloning for research. In actuality, such proposals would open the floodgates to the cloning of human life, so long as the human

embryos created thereby were never implanted in a uterus. Indeed, Feinstein's bill, which senators Clinton, Kennedy, and Boxer are supporting, is radically pro-human cloning. Not only would it permit Big Biotech researchers to clone human life without restriction, it would also preempt states from outlawing human cloning in their jurisdictions.

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*A ban on "reproductive cloning" thus would actually open the door to the very act it purported to prohibit.*

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Where is all of this leading? If Brownback is passed, the human cloning agenda will be stopped in its tracks in the United States. That would permit researchers here to focus on uncontroversial and promising research into the development of medical therapies using adult and alternative sources of stem cells. If Brownback fails, or if either Feinstein or Harkin passes, hundreds and even thousands of human clones will soon be manufactured—inevitably leading to reproductive cloning, since there would be no realistic way to prevent some scientist somewhere from implanting a cloned embryo into a woman desiring to give birth to the first human clone. A ban on "reproductive cloning" thus would actually open the door to the very act it purported to prohibit.

But that would not be the end of it. The human cloning agenda is not limited to medical research or the development of new reproductive technologies. The ultimate goal for many proponents of human cloning is to use clones to model and perfect genetic engineering techniques that would permit scientists to seize control of human evolution.

Clone embryos are deemed superior for this purpose to embryos created through fertilization because the former can be made in large supply, giving scientists many genetically identical embryos on which to experiment. This would make it easier for researchers to learn how to manipulate embryos so as to carry the genetic traits they want to foster. Once this was accomplished, many cell lines could easily be extracted for further research by repeatedly remaking the same clone embryo. Eventually, this technology would be applied to embryos—both natural and cloned—destined for implantation, gestation, and birth. In the end, such practices would permit the new eugenics celebrated by Princeton biologist Lee M. Silver in *Remaking Eden: Cloning and Beyond in a Brave New World*. Embryos could be screened for genotype, leading to genetically modified human beings.

Nothing in the Feinstein or Harkin bill would prohibit such research. This is precisely why Rifkin and many others on the left fervently seek to outlaw all human cloning. "Cloning would permit us to apply engineering standards to procreation. Our children would be selected based on quality controls, production outcomes, efficiency, and utility"—in other words, the values of the assembly line. "Once we start engineering human life, we will lose our empathy," Rifkin warns. "Should that happen, we will have lost the human equation."

This is a compelling argument that people of all political stripes and religious sensibilities may be able to rally around regardless of their differences. If they do, the political struggle against human cloning and eugenics in coming years will be a battle not of left versus right but of right versus wrong, in which those who seem at first sight strange bedfellows strive together to thwart scientific hubris and foster a deeper respect for the intrinsic worth of human life.

**L**

[Wesley J. Smith is the author of *Culture of Death: The Assault on Medical Ethics in America*. This article was originally published February 11, 2002 in *The Weekly Standard* ([www.weeklystandard.com](http://www.weeklystandard.com)) and is here reprinted with the kind permission of the author.]

(KELLY CASE CONT'D FROM PAGE 1)

on a course of harassment designed to break Karen down. This included subjecting Karen to the taunts of co-workers, repeatedly threatening to fire her if she continued to refuse, and finally transferring her to another shift at a different facility, thus imposing a severe strain on Karen that led to medical problems. At the second facility, Karen was not properly oriented for her different and increased job responsibilities, nor did she have the specialized training required for the position, thus reinforcing the point that the transfer was intended to cause Karen to fail and give in to her employers' demands or be terminated.

The jury also heard from a highly-qualified expert witness who testified that Karen's work was within the standard of care expected of nurses, and that, in the areas the County specifically criticized after Karen's forced transfer, her work performance was at a level to be expected based on her limited training for the new position.

Because of the severe time limits imposed by the judge, Karen's testimony was shortened, as was that of her witnesses. In spite of the time limits, the court refused to allow the use of deposition testimony of one of Karen's supervisors who recently became unavailable to testify at trial, but who had testified: "I don't care what her beliefs are, she was expected to do her job." Thus, the most significant direct evidence of discriminatory animus was excluded at trial. Nonetheless, the six-man, one-woman jury appeared sympathetic to her plight, to the point that some were crying during her testimony. The judge, however, appeared to have the opposite reaction.

Finally, on April 10, when Tom Nigro rested his case with less than an hour remaining for both cross-examining the last defense witnesses and his closing argument, the County moved that the case be dismissed on the grounds that Karen had failed to meet her burden of showing that the County had fired her because of her religious beliefs.

*The court held there was no question regarding the sincerity of Karen's religious beliefs, nor that Karen was a probationary employee who could be fired for no reason, but not for a discriminatory reason.*

The court held there was no question regarding the sincerity of Karen's religious beliefs, nor that Karen was a probationary employee who could be fired for no reason, but not for a discriminatory reason. However, the court found she had produced insufficient evidence that she was fired for a discriminatory reason.<sup>1</sup>

"I believe we put on a strong case in spite of the time limitation," said Liz Nigro. "We were disappointed with several of the court's evidentiary rulings, and shocked when he granted the County's motion for directed verdict, taking the case away from the jury. After litigating this case for five years, it would have been easier for us, and Karen, to accept a defeat from the jury."

Karen, the Nigros, and LLDF attorneys are evaluating the prospects of an appeal.

## L

<sup>1</sup> Ironically, in a similar case in Santa Ana, *Karen Kelly v. Universal Care*, the federal district court judge denied the defendant's motion for summary judgment, holding that Karen had provided sufficient evidence of discriminatory intent. This matter was recently settled under confidential terms.

## 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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**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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