

Lifeline

*A Legal Network
in Support of Life*

A PUBLICATION OF THE LIFE LEGAL DEFENSE FOUNDATION

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GENERAL RECAP & UPDATE

Roe v. Planned Parenthood (Ohio)—Civil action for damages and injunctive relief filed against PP for performing abortion on fourteen-year-old girl in violation of Ohio law. Claims on behalf of girl and parents include violation of parental notice and consent statutes, informed consent statute, and law requiring reports in cases of suspected child abuse. PP's motion to dismiss four of the claims was overruled, and PP unsuccessfully appealed that decision. Plaintiffs proceeded with discovery, seeking redacted records of abortion on other minors. PP objected, but court ruled that records must be produced. PP appealed that decision to court of appeal, which reversed trial court. Supreme Court granted petition for review. Oral arguments were heard in October, and a decision is expected soon.

Hoye v. Oakland—Federal constitutional challenge to Oakland "Mother May I" ordinance restricting speech outside abortion clinics. Following initial successful challenge, city passed amended ordinance, prompting a second challenge. City's motion to dismiss denied. Motions for summary judgment scheduled for June. (See related story "Pastor Convicted," this page.)

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Colette Wilson

Pastor Convicted of Violating "Mother May I" Ordinance

Walter Hoye is a pro-life Baptist pastor from Berkeley who feels a special calling to reach out to his fellow African-Americans to end the genocide-by-abortion taking place in their communities. As part of his efforts, in 2007 he began going out about once a week to stand in front of Family Planning Specialists, an Oakland abortion clinic where he would offer leaflets about abortion alternatives and hold a sign reading, "Jesus loves you and your baby. Let us help." By all accounts, his demeanor was unfailingly friendly and low-key.

Yet, there was something about his peaceful, prayerful presence that enraged local abortion enthusiasts, including the cadre of clinic escorts who began showing up to engage in a concerted effort to impede his movement, block his sign, and drown out his quiet offers of assistance. When that did not deter Rev. Hoye, clinic management enlisted the help of



LLDF Attorneys, Allison Aranda, Mike Millen, and Terry Thompson with Walter and Lori Hoye at Oakland courthouse

members to enact, on December 18, 2007, a "Mother-may-I" bubble-zone ordinance applicable within a 100-foot radius of any Oakland abortion clinic. The law makes it a crime to "approach within eight feet of any person seeking to enter" a

"reproductive health care facility" in order to offer literature, display a sign, or engage in "oral protest, education, or counseling," without that person's consent. Violators are subject to a penalty of up to one year in jail

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People v. Hoyer (Oakland)—Criminal prosecution arising from municipal “Mother May I” ordinance. See “Pastor Convicted,” page 1.)

Alabama v. Shaver et al. (Ala.)—Pro-lifers arrested for trespassing on a public sidewalk outside Parker High School in Birmingham, Alabama. Nine activists were jailed overnight without food or water and some were shackled. When one pro-lifer asked the police “Isn’t this public property,” the officer replied “Not today it’s not.” In addition, the police unlawfully seized and damaged the group’s van and confiscated their video equipment. Upon their release from custody the group called on the police to return their property, including video of their activities, so they could prove their innocence. The police returned the van and the video equipment and apologized for their misconduct. As of this writing, no formal charges have been filed against the activists.

Logsdon v. Hains (Ohio)—Federal civil rights lawsuit for damages filed against two Cincinnati police officers for arresting sidewalk counselor at abortion clinic without probable cause. Lower court dismissed based on qualified immunity, but Sixth Circuit reversed, holding that a prudent officer would listen to witnesses on both sides, rather than only listening to clinic employee and telling pro-lifers to tell it to the jury. Defendants’ petition for certiorari to the U.S. Supreme Court denied. Case remanded for further proceedings in trial court. Discovery is proceeding.

Moreno v. Los Gatos (Calif.)—Pro-lifers arrested for picketing and distributing literature on public sidewalk outside high school. Police told them they had to stay 1,000 feet from the school. No charges filed. Complaint for civil rights violation filed. Town agreed to permanent injunction and payment of attorney fees. Appeal filed re dismissal of state law causes of action. *Victory!* Ninth Circuit ruled that Plaintiffs are also entitled to statutory damages under state law. Case settled for monetary damages and attorney fees.

Fairbanks v. Planned Parenthood (Ohio)—

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FROM THE EDITOR

Dana Cody

This year LLDF is celebrating its twentieth year of operations on behalf of the right to life. It is bittersweet to reminisce about events that led to two decades of the pursuit of the sanctity of human life. On the one hand, it saddens LLDF Founders and other LLDF Principals that the need for LLDF still exists; on the other hand we are honored to have had the privilege to serve so many who have needed our services over the past twenty years.



I’ve worked with LLDF since 1997 and relatively speaking, I am still the “new kid on the block.” For those of you newer to LLDF than myself, let me name names among long-time LLDF staff and board members—Mary Riley, our administrative director, and Katie Short, our legal director, both of whom were part of founding LLDF, as were their families. John Streett, the Chairman of LLDF’s Board of Directors, and his wife Mimi, also were key to founding LLDF. It is the sacrifice of these individuals’ time and talents that have kept LLDF flourishing over the years. Each of these individuals still holds the position originally accepted, with the exception of Mimi Streett. She was LLDF’s first Executive Director and even though she no longer serves in that capacity she continues to be a key part of LLDF.

Although LLDF wasn’t established until 1989, the need for such an organization became apparent about 1987, which was the point in time when Operation Rescue, then an activist organization whose members engaged in acts of civil disobedience on quite a large scale, needed legal assistance. The sheer numbers of arrests obviated the need for competent and dedicated attorneys who could represent members of Operation Rescue. It was in that context that the mission of LLDF was conceived—to give innocent and helpless human beings of any age, and particularly to the unborn, a trained and committed defense against threat of death, and to support their advocates in the courtrooms of our nation.¹

Former board member Steve Lopez anticipated the need for an organization like LLDF because initially he was responsible for enlisting the services of a number of attorneys, either directly or through others, in order to handle the resulting caseload. These attorneys merit an honorable mention: Daniel Grimm, Michael Imfeld, Richard Murphy, John Streett, Joseph Tomsic, Judith Tomsic, Mary Wynne, Cyrus Zal, Andy Zepeda, and Rich Katerndahl, all of whom were experienced with pro-life activism of their own. When the demand for attorney recruitment became a full-time job, Mary Riley, then Mary Maxson, was recruited to coordinate attorney networking full-time. It was Mary’s father, Ron Maxson, along with Steve Lopez, who had the vision that led to the formal establishment of the organization now known as Life Legal Defense Foundation. LLDF was officially incorporated in 1989.

It was in 1997, after 8 years of the IRS refusing LLDF tax-exempt status, that I was hired as Executive Director. My first task was to complete the process to obtain LLDF’s 501(c)(3) status. What immediately was impressive about LLDF was that despite what many of us considered to be harassment by the most powerful governmental organization in existence, the LLDF Board of Directors, staff and volunteers were unwavering in their mission. Even though LLDF faced a giant in the IRS, they were unwavering in their service to those in need of legal assistance. Everyone at LLDF understood that their work translated into lives saved because advocates for the

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20 Years Defending Life —Mimi and John Streett

A tiny group banded together around a dining table in 1989, worried about friends who needed lawyers to represent them after arrests outside abortion clinics. As they put together a plan, they could not foresee that over the next 20 years they would be joined by scores of volunteer attorneys and thousands of donors who also believed in the defense of life from conception through natural death.



That group became Life Legal Defense Foundation, the one-of-a-kind non-profit known for taking individual cases that others will not touch, especially cases that combine free-speech rights with pro-life witness in public places.

At the heart of LLDF are John and Mimi Streett, still active 20 years after they were asked by pro-life leaders to find legal help for the many “rescuers” needing legal guidance or courtroom representation.

Mimi has guided organization and helped find supporters, while John has served as president of the board of directors since the organization’s founding at their table.

In the beginning, Mrs. Streett remembers, San Francisco Bay Area attorney Dan Grimm was almost single-handedly preparing pro-life arrestees to go into court and represent themselves before judges who could release

The “rescue” movement demonstrators blocked sidewalks and entryways to clinics in an effort to change the decisions of at least some pregnant women seeking abortion. For every woman who turned back, the life of one child was rescued.

or jail them for trespassing. The “rescue” movement demonstrators blocked sidewalks and entryways to clinics in an effort to change the decisions of at least some pregnant women seeking abortion. For every woman who turned back, the life of one child was rescued.

Many people—most still active today in some facet of pro-life work—served jail time as they brought attention to the cause and tried to influence mothers to allow their unborn children to live.

Operation Rescue West Coast was organizing demonstrations, but there was no plan for defending people after arrest. Thus Life Legal was created.

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Lawsuit filed alleging that PP violated Ohio law by their failure to report the sexual abuse of minors. The suit alleges that Fairbanks was brought to PP by her father, who had been sexually assaulting her since she was thirteen. He sought an abortion for his daughter at PP to cover up the sexual abuse and resulting pregnancy. Although minor attempted to tell PP personnel of abuse, they ignored her and failed to report, allowing abuse to continue.

People v. Weimer (Jackson, Miss.)—Pro-life picketer convicted of local sign ordinance violation. Appeal pending.

People v. Lord, et al. (Calif.)—Pro-lifers arrested for trespassing because they failed to comply with Columbia College’s unconstitutional permit requirement requiring 15-day advance registration. Once the prosecution realized that the pro-lifers had a right to be on campus and exercise their free speech rights, they quickly changed the allegations against the group, instead accusing them of causing a disturbance on a college campus. *Victory!* All defendants acquitted in jury trial. (See ‘Survivors on Trial’, p. 7).

St. John Church in the Wilderness v. Scott (Colo.)—Pro-lifers who picket church with abortion ties enjoined from demonstrating on all sidewalks in the vicinity of the church, because signs upset churchgoers. LLDF filed amicus brief in support of pro per defendants appeal and, at the request of the appellate court, presented oral arguments. Appellate court remanded case for further findings.

Aurora, Illinois—Multi-pronged attack on Planned Parenthood for lying its way to open an abortion “Mega-Mill” in Aurora, the fastest-growing city in Illinois. Cecile Richards, CEO of Planned Parenthood Federation of America, recently wrote her supporters that Aurora now represents “‘Ground Zero’ in the national fight to protect reproductive freedom.” Three different lawsuits attack Planned Parenthood and compliant city officials for defamation, fraud, violation of municipal zoning regulations, and civil rights violations. Court allowed two counts of defamation claim to proceed, while

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dismissing four other counts. These counts are now the subject of an interlocutory appeal. City and PP have filed motion to dismiss zoning challenge for failure to exhaust administrative remedies. Hearing scheduled for April 24.

People v. Hunt (Asheville, North Carolina)—Pro-lifers arrested at A-B Tech College for not complying with unconstitutional permit requirement. Appeal filed following trial court conviction.

Roethisberger v. Gwinnet County Georgia—Driver of Truth Truck arrested and jailed. Charges dismissed. Civil suit pending. *Victory!* Monetary settlement for violation of First Amendment rights.

Vivian Skovgard v. Pedro (Ohio)—Civil action arising from unlawful arrests for trespass of two sidewalk counselors standing in the public right-of-way. Discovery proceeding. Trial set for January 2010.

People v. Joanne Cox (Colorado)—Sidewalk counselor charged with two incidents of violating Bubble Zone ordinance. Discovery reveals that, in at least one incident, the “victims” were Planned Parenthood employees posing as patients. Trial court judge recused himself because he had represented abortionist Warren Hern, and his wife worked for Planned Parenthood. Charges in one incident dismissed, but jury convicted on second charge.

Blythe v. Cypress College (Calif.)—Pro-lifers arrested for trespassing on a public college campus for allegedly refusing to leave property not open to the general public. The prosecution dismissed all charges and the judge found the pro-lifers “factually innocent” and ordered that all record of the arrests be removed from their criminal records. Lawsuit filed against college and police department for false arrest and civil rights violations. All parties are engaged in discovery. Trial date has been set for May 11, 2009.

Loebker v. John Doe (Ohio)—Long-time picketer’s signs were intentionally run over by angry motorist. Suit for damages. *Victory!* Case settled for damages.

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Ron Maxson, a pro-life leader, and Steve Lopez, an attorney acting on behalf of pro-lifers, appealed to Mimi and John for help. Mimi was a natural organizer, and John was an attorney in private practice—the perfect combination. With a core group of pro-life colleagues, the Streetts nurtured LLDF from a small, all-volunteer start to its current status as a respected force in the nation’s pro-life community.

Life Legal now has a small professional staff and an office in Napa. It raises funds year-round to support costs of representing clients whose cases cover all life issues—defenders of the unborn, the disabled, and the frail elderly who oppose efforts to hasten death, among others. Following the original model, attorneys volunteer to defend cases and court fees and case expenses are paid by LLDF. Costs have steadily risen, and fundraising has steadily continued.

Mimi grew up Catholic in a pro-life family and graduated from South San Francisco High School the year that *Roe* became law. “I included the Supreme Court decision in my valedictory speech and talked about what a horrific decision it was and how we needed to do something about it,” she recalls. Subsequent experiences with close friends whose health suffered after legal abortions—including one who almost bled to death and others who later struggled with infertility—reinforced her position, as did meeting a woman who had had four abortions and later was able to have children. That mother’s living children made real the finality of her previous decisions, “and she so regretted that. She became active in rescues and was really able to help other women.”

Meanwhile, John was making his way through college and law school, guided by the pro-life principles learned from his Catholic parents and convinced that “the unborn child was a child and that intentionally killing a child was wrong. The church’s position on abortion, which goes back to the first century, was a logical conclusion of an objective reality.”

When *Roe* was passed, he wondered how the court could have “created a right out of nothing.” Given the variety of political responses among states, he observes that “if not for the courts, the abortion movement would never, ever, have gotten close to this point.”

Mimi and John were introduced, both involved in pro-life work, by a mutual friend involved in both of the pro-life organizations in which Mimi and John were involved with at the time.

Although originally active in rescues outside clinics, Mimi channeled her efforts into organizational work with LLDF while expecting her second child. Outside clinics, “there was some physical violence—one of my friends had her back injured when a pro-abortion protester purposely shoved and then sat on her. And many other rescuers and counselors in California were screamed at, followed, assaulted, and victimized by petty acts of vandalism. Does Mimi fear for safety today? “There is a real possibility for persecution, especially if the Freedom of Choice Act (FOCA) passes,” she says. “The government will know who we are.” But “we know we will win in the end, though I wonder if the kids growing up now will be tough enough to carry on. I hope so.”

As an attorney, John originally represented demonstrators arrested for trespass. As clinic tactics changed, so did the legal response. “I did a bit of criminal defense and got the best deals I could for clients.”

“That evolved into the need to defend people who were subject to preliminary injunctions. That gave way to a strategy employed by Planned Parenthood, primarily, to sue everybody they could. That discouraged people from being around clinics and from sidewalk counseling.”

The work of Life Legal has been “first and foremost to provide defense, but in the last 10 years there has also been an offense involved,” John says. “We can find lawyers to represent

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people who want to bring plaintiff suits against cities or school districts that have enacted restrictive bubble zones or have falsely arrested those who are legally present on public property.” Such efforts by plaintiffs across the nation are “important because communities do not live in a vacuum. If they see they can’t steamroll people, they will think twice.”

In a victory for the “culture of life,” Life Legal

“I also see us trying to do more education to let the legal community know more about end-of-life situations, which will become a bigger issue going forward.”

represented the mother of Robert Wendland. Robert was brain-damaged, but functional, yet his wife agreed with a hospital committee that he should not be fed. The case was won just as Robert died naturally, setting precedent for the care of disabled patients in California. This case was also important because in similar situations, “it is often hard to get a grip on the case because the patient can die so quickly that there is not time to mount a defense.”

In future, John predicts that LLDF will “keep doing what we are doing—responding to cases, including small cases, from abortion to end-of-life cases, in which somebody cares enough to ask for a lawyer.

“I also see us trying to do more education to let the legal community know more about end-of-life situations, which will become a bigger issue going forward.”

A huge potential challenge, John says, is that the new “pro-abortion administration” will allow

abortion providers “to get more governmental funding allowing them to be more aggressive. That would make the struggle more difficult.” Also problematic is the possibility of new laws that may forbid doctors, nurses, pharmacists and others in health care from following their consciences and opting out of legal procedures such as abortion. “We anticipate this is going to happen, and the potential for litigation could be tremendous. Surely people are cognizant that professionals are not just going to roll over.”

For 20 years, John says, the Life Legal team has been “consistently available so that people have some reliable place to turn.” The credit goes to “God; to a tremendous administrator, Mary Riley; and to really qualified people,” among them Executive Director Dana Cody, legal strategist Katie Short, and the many volunteer attorneys who “are not getting rich but who have a heart for pro-life work.”

The work is far from done. One of the two men often given credit for persuading American leaders to legalize abortion is Bernard Nathanson, who now freely admits that he made up statistics to support his pro-abortion argument. He was a keynote speaker at the annual LLDF dinner in 1997. He performed thousands of legal abortions but later had a complete conversion and is now a pro-life activist. His early position, however, illustrates what John calls “one of the scary things about abortion, euthanasia and other life issues. Most of the bad things are the result of very bright people being able to make bad things palatable. Say a big lie long enough, and people begin to believe it.

“Life Legal’s job is to keep fighting, to tell the truth, and to let God do the rest.” **L**

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Condit v. John Doe (Ohio)—Pro-abortion driver attempt to run over picketer. Lawsuit filed. “Doe” has been identified and named as defendant. Discovery is proceeding.

In Re Rivera (Fresno)—County assumes conservatorship and immediately begins dehydration and starvation. After 8 days, LLDF intervened on behalf of family member and court ordered restoration of food and water. Family member appointed as temporary and then permanent guardian.

People v. Blythe et al. (Calif.)—Pro-lifers arrested for the third time on the campus of Cypress College for refusing to stand in the “free speech zone” located sufficiently far away from the most traversed areas of campus to make contact with any students virtually impossible. The prosecution dismissed all charges just moments before the trial was set to begin. A third lawsuit has been filed against the college and the police department for false arrest and civil rights violations.

White v. Laguna Beach (Calif.)—Pro-lifer arrested for blocking a public sidewalk in Laguna Beach. *Victory!* When the criminal case went to trial, the police officer brought photos that proved Mr. White was not blocking any sidewalk and that other members of the public were free to traverse the walkway undeterred. The court found Mr. White not guilty. A civil lawsuit for false arrest and civil rights violations has been filed against the City and the officer who made the unlawful arrest. Discovery is proceeding.

Morr-Fitz v. Blagojevich et al. (Ill.)—Pro-life pharmacists challenge Illinois code which requires pharmacies and pharmacy owners to dispense Plan B and other forms of emergency contraceptives regardless of conscience or religious beliefs. Case dismissed for lack of ripeness. Appealed to Illinois Supreme Court, where LLDF assisted with amicus brief. *Victory!* Supreme Court reversed, holding that pharmacists’ claims were ripe for adjudication. Case remanded for further proceedings.

Peopla v. Wright (La Plata County, Colo.)—Pro-lifer convicted for alleged assault and trespass during first amendment activity at

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Planned Parenthood Durango. Sentencing pending.

Conrad v. City of San Bernardino, et al.

(Calif.)—Pro-lifers arrested by abortion clinic security guard for trespassing in the public parking lot behind the clinic. All criminal charges were dismissed because the pro-lifers had a right to be on public property and were not interfering with the business. *Victory!* case settled with monetary damages and attorneys' fees, and city is seeking input from attorney re appropriate preventative measures against further police misconduct.

People v. Cox, et al. (Calif.)—Pro-lifer forcibly

removed from Chaffey College campus and property unlawfully confiscated for simply walking into the campus police station and asking who made an order telling the Survivors they could only stand in one specific location on campus. When other pro-lifers tried to find out what had happened to their friend, they too were arrested and quickly ushered into a private room where the police covered the windows so no one could see what was happening inside. The police threw one pro-lifer on a table and vigorously frisked him removing everything from his pockets. The police handcuffed the other pro-lifer in a dark bathroom with his hands locked to a metal bar above his head. Two of the boys were held in jail for more than three days before being released on bail. All three now face charges of causing a disturbance on campus, resisting arrest, and eavesdropping. *Victory!* The appellate court threw out the unlawfully seized property, resulting in the dismissal of six charges. Trial pending.

People v. Guengerich, et al. (Calif.)—

Pro-lifers arrested for causing a campus disturbance at Los Angeles City College. The alleged disturbance consisted of five individuals peacefully holding signs and handing out literature on a public college campus. The event was captured on video and will be used to defend the group against these frivolous charges. A hearing at the L.A. City Attorney's office is scheduled for March 11, 2009 to determine whether or not formal charges will be filed against the group of activists.

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unborn were still able to speak on behalf of the unborn with assurance that if they needed legal help it was there for the asking.

Now, after twenty years, the assurance that abortion opponents are able to speak their beliefs without being intimidated by the legal process continues to be a considerable source of motivation for LLDF staff. Many of these cases are considered legally insignificant because legal precedent will not be set by litigating them. Even so, LLDF staff and volunteers keep their focus on the mission. Although virtually no one else is willing to litigate these types of cases, LLDF does because a person whose liberty and/or civil rights are threatened does not have in mind the precedent-setting nature of their case. What they do have in mind is the lives lost to abortion because they cannot advocate for the unborn. It is that precise reason that LLDF continues to work to see that every pro-life individual who needs a legal defense will get one.

LLDF has evolved to include in its mission the legal defense of all innocent life, from conception to natural death. It would be remiss not to remember individuals like Robert Wendland and Terri Schindler Schiavo, casualties of our death culture. It was Robert's case that initially prompted LLDF to include in its mission cases where individuals' deaths were being hastened by removal of life-sustaining treatment. While LLDF was privileged to help fund the Wendland and Schiavo cases rather than to litigate them, since Wendland, LLDF has been involved in both litigating and funding many other similar cases with life-saving results.

At any one time, the organization's average caseload of twenty or more cases includes life-related cases that challenge unconstitutional laws, protect the sick and disabled from euthanasia and ill-treatment, protect sidewalk counselors from harassment, preserve free-speech access at government schools and college campuses, protect pregnancy care centers, fight oppressive lawsuits, and prevent unlawful arrests. LLDF has also been involved with

trying to stop state-funded human embryonic stem cell and cloning research.²

Over the years, 4,097 attorneys, from all 50 states, Australia, Canada, Spain, Puerto Rico, and Colombia have joined LLDF efforts, which represent millions of dollars in donated attorney hours. While attorney-donated hours continue to be key to LLDF's mission, LLDF reached a milestone this year when they were able to hire staff attorney Allison Aranda to handle criminal cases. No matter who is working on behalf of LLDF, these cases are taken from the trial court all the way through the appeal process, if necessary.

LLDF attorneys are unrelenting in their defense of the right to life. It is those who continue to support us who have made this all possible. On behalf of our Board of Directors, staff and volunteers, we thank you for your trust and confidence in LLDF. It is LLDF's partnership with you that is reason to celebrate. We look forward to the day when LLDF can celebrate because our organization is no longer needed.

¹ Operation Rescue members were convinced that their duty as Christians was to peacefully, prayerfully, and non-violently intervene between those who would abort their unborn children and the abortionist's knife. Despite unjust and harsh treatment, in direct contradiction to established law, and despite media assertions to the contrary, there was not a single documented instance of a Rescuer committing a violent act of any kind toward a police officer or a pro-abortion protestor.

² Somatic Cell Nuclear Transfer was the method used to clone Dolly the Sheep and this methodology is funded pursuant to Proposition 71, which created California's Institute for Regenerative Medicine.

[The editor wishes to acknowledge Steve Lopez for his contribution in documenting the chronology of events described herein.—Ed.]

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Survivors On Trial: Literally & Figuratively

In the last issue of *Lifeline*, we introduced you to Allison Aranda, LLDF's new staff attorney. This is just one example of what your support is doing to save lives on college campuses, thanks to Ms. Aranda's fine work. Read what her clients have to say as well as her account of the trial in *People v. Lord*.



It's a new semester for Campus Life Tours and next Tuesday, September 9th [2008] will be the first day of visiting schools for a new team of young people. No one knows what this semester holds, but most likely there will be schools with unconstitutional policies who will try to silence the message of life. One such incident took place in February of 2007 in the quiet community of Sonora, California where three Campus Life team members were arrested at Columbia College. Allison Aranda, the Life Legal attorney representing those of us arrested, did a tremendous job in our defense and the case was finally resolved last month, eighteen months after the arrest.

The following is a report from Allison on the trial:

When I was first asked to take on this case, I was more than eager to defend the good work of the Survivors. The campus life team is made up of passionate activists who sacrifice their time and set personal ambitions aside to speak the truth about the horror of abortion. The group is so professional and courteous that I wondered what on earth they could be accused of doing wrong. When I learned that the group was charged with causing a physical disruption on the campus of Columbia College, I was shocked. When I watched the video of the event, I was even more shocked! During the nearly two hour event, not more than a dozen students even interacted with the group at all.

The video showed the Survivors quietly standing along a 15-foot sidewalk, peacefully handing out literature to the few students who actually passed by. Nobody was yelling and nobody was blocking the sidewalk; in fact, the group looked a little bored at times. I thought there must have been a mistake.

After speaking with the Tuolumne County District Attorney and reviewing the police reports, I soon learned exactly why this case was going forward. Columbia College had a free speech policy that required groups to apply for a permit at least 15 business days before their desired event. Since the Survivors know that a 15-day waiting period to exercise your free speech rights is unconstitutional, they refused to comply with the policy. The school decided to have the group arrested for trespassing and removed from the campus.

Well, when the D.A. got the police report he immediately recognized that failure to comply with the school policy just simply wasn't a crime. The college needed something more to make the charges stick. So, in February 2008, nearly a year after the arrest, the school came up with a new strategy. They claimed that the group was "disrupting the campus." Unfortunately, they did not know that the word "disrupt" has a special legal meaning and nothing that the Survivors were doing on campus

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People v. Colantuono, et al. (Calif.)—

Pro-lifers arrested for trespassing on a public college campus. College of Alameda administrators told the police that they did not approve of the Survivors signs and literature and therefore they wanted the group removed from the campus. Three activists spent twelve hours in jail before being released. *Victory!* When the case arrived at the desk of the Alameda County District Attorney's office, the case was rejected and no formal charges were filed.

People v. Wiechec (Denver)—Pro-lifer

arrested for disrupting an lawful assembly by protesting at a rally opposing the Colorado Personhood Amendment held on steps of state capitol. *Victory!* Charges dismissed after pro-abortion governor subpoenaed to testify about unconstitutional application of the law against pro-lifers but not against pro-abortionists. **L**

"For twenty years, Life Legal Defense Foundation has excelled at empowering those who speak for our society's most vulnerable: unborn human life. Their extensive expertise and impressive history of success have increased legal protection for the unborn and kept the public square open to the pro-life message. We are proud to partner with such a tremendous group of committed professionals."

—Denise M. Burke, Esq. Vice President of Legal Affairs, Americans United for Life

IN MEMORIAM

FRANCIS J. HUGHES (1949–2008)



LLDF mourns the passing of Frank Hughes, one of LLDF's earliest "defenders of the defenders of life." Frank's irrepressible wit and unflappable demeanor made him a

joy to work with and a source of frustration to the opposition. Below are one client's memories of Frank:

I wish I could adequately explain the great privilege it was to meet and be defended by Frank Hughes.

I was part of a group of sidewalk counselors who gathered weekly at Planned Parenthood in Sunnyvale to pray and offer alternatives to women. We had been served papers to appear in court. The primary charge (as I recall) was that we had caused PP tens of thousands of dollars in lost business.

While that was music to my ears it would take a very sharp mind to defend us. This is where Frank Hughes enters the picture.

The first time we met as a group we at once realized that we were in very good hands. Frank sat down, put his laptop on the table, then asked us to join hands in prayer. I quickly realized that Frank prayed before he did anything. A week later we went to a preliminary meeting before the judge.

Our opposition was asking for an injunction to be put in place even before the case was heard. It was not necessary for us to be there but Frank believed it would help if the judge had a chance to see us. We met at Frank's office and ran to the courthouse soon after. We had been so preoccupied with the incidentals that we nearly forgot to pray. But not Frank! On the elevator on the way up Frank said, "let us pray". We joined hands once again and asked the Good Lord for guidance.

The judge asked if Frank wanted to speak (this was unusual for this type of hearing). Frank took advantage of the opportunity and

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and/or a \$2,000 fine for each offense. Life Legal Defense Foundation immediately filed a federal lawsuit challenging the ordinance as unconstitutional on its face. That case is still pending at the trial level.

The ordinance¹ was modeled after a law passed in the 1990s by the Colorado state legislature, which the U.S. Supreme Court upheld as constitutional in *Hill v. Colorado*, 530 U.S. 703 (2000). (See *Lifeline* Fall 2000 article by Mike Millen, discussing the case.)

Guided by LLDF attorneys and based on what the Supreme Court in *Hill* had held was permissible under such an ordinance, Rev. Hoye continued his weekly vigils in front of the Oakland abortion clinic. Often, a team of as many as four clinic escorts would encircle Rev. Hoye, holding large sheets of blank cardboard in front of his sign and always interposing themselves between the pastor and any woman who might be headed towards the clinic. On May 13, 2008, still infuriated by his weekly prayerful presence, clinic personnel summoned the police and insisted that Rev. Hoye be arrested for supposedly having violated the ordinance. One of the witnesses against him was an Oakland City Attorney, who had been clandestinely watching for hours from her car parked across the street. The District Attorney later filed a four-count complaint based on purported incidents of April 29 and May 13, 2008, listing two charges of allegedly "unlawful" approaches and two charges of allegedly using "force, threat of force, or physical obstruction" against clinic escorts. Despite the fact that these escorts later admitted at a pre-trial hearing that Rev. Hoye had never used force, threatened, or blocked them, the District Attorney refused to drop the charges.

At a readiness hearing on December 12, 2008, the D.A. demanded that Rev. Hoye plead guilty to one misdemeanor count and agree to stay away from the abortion clinic for an unspecified period of time in exchange for dismissing the other three charges. Rev. Hoye refused this "generous" offer, and the

matter was set for trial. A jury was impaneled during the week after Christmas, and the prosecution began putting on its case January 5. Unbeknownst to the prosecution, defense attorneys had in their possession a complete video record of Rev. Hoye's time outside the clinic on both days he was accused of having violated the law. Until the videotapes were offered as impeachment evidence, prosecution witnesses were remarkably creative in conjuring up phantom patients whom Rev. Hoye had supposedly harassed, as well as in claiming he had threatened two escorts and the clinic director.

The most egregious of such false testimony came from the first witness, clinic director Jackie Barbic, who claimed that she had watched from a window as Rev. Hoye approached within a few feet of six to eight patients, including one who had put up her hands to fend him off. She described how she then went outside with a tape measure to demonstrate to him what eight feet looked like. According to Barbic, Rev. Hoye then began approaching her, with a "smirk" on his face, all the while she was backing away, saying, "Stay away from me! Back away!" with her hands held up to protect herself. During her testimony, her voice choked with emotion as she described how fearful and intimidated she was. On cross-examination, Ms. Barbic and the jury were shown the video of this incident. The video showed Ms. Barbic approaching Rev. Hoye and pointing a tape measure at him—and Rev. Hoye standing still. She could be seen lecturing him and then talking to others standing outside, while Rev. Hoye walked away. A few minutes later, the same scene played out again, with Ms. Barbic again pointing the tape measure at Rev. Hoye and him moving down the sidewalk in a different direction. When Ms. Barbic was asked if either of these was the incident she was talking about, she immediately responded that they were not—that there was a third incident with a tape measure that occurred later. There was, of course, no third incident, as the remaining video of the morning showed. Ms. Barbic's

(HOYE CONT'D ON PAGE NEXT PAGE)

other testimony was also contradicted in virtually every particular by the video or, surprisingly, by other prosecution witnesses.

After the existence of the videotape was

They freely acknowledged that the message on the sign was, “Jesus loves you and your baby. Let us help,” and that what Rev. Hoye would say to women was, “Can I talk to you for a minute about alternatives?”

revealed to the prosecution, there were no more claims that Rev. Hoye had made any threatening gestures towards anyone, although escorts did claim there were more approaches to phantom patients. One escort claimed she felt intimidated when she saw Ms. Barbic approach Rev. Hoye with the tape measure and tell him to back off, and, “Walter didn’t move. He just stood there.” In this escort’s mind, the law required Rev. Hoye to back away from the clinic director, and the fact that he didn’t do so was perceived by her as very intimidating. Or so she testified. Upon cross-examination, it was revealed that she had never mentioned this to the police or the District Attorney until after charges had been filed. In other words, the D.A. first filed the charges naming her as a victim, then went desperately searching for evidence to back it up. (The court dismissed this particular charge at the close of the prosecution’s case.) According to another clinic escort who testified, she felt “creepy” when Rev. Hoye spoke to her, warning her not to trip on the curb after she had stepped in front of him to cover up his sign. Both her testimony and the video confirmed that she repeatedly

approached Rev. Hoye to take up a position directly in front of him, or to one side, in order to hold a blank sign in front of his. When asked why she did not stay away from Rev. Hoye if she felt intimidated, she replied that it was more important, “to prevent women from seeing what is on his sign.” Indeed, the escort witnesses were unanimous on this point: that the job of an escort is to prevent women from reading Rev. Hoye’s sign or hearing his message. They freely acknowledged that the message on the sign was, “Jesus loves you and your baby. Let us help,” and that what Rev. Hoye would say to women was, “Can I talk to you for a minute about alternatives?” In their view, such messages were “harassing” and “intimidating” and required their efforts to make sure women did not see or hear them.

Despite initial vehement objections from the D.A. demanding that the videotape be kept out, the judge ultimately allowed the jury to see the entirety of the videotape from the two dates in question. The lengthy footage was so uneventful, even the judge was seen dozing off at one point, along with at least one of the jurors.

So, naturally, Rev. Hoye was acquitted of all charges, right? Wrong! The jury acquitted Rev. Hoye on only one charge—the remaining count of harassing a clinic escort—and found him guilty of “harassing” two individuals seeking access to the abortion clinic. How was that even possible?

First, it must be borne in mind that the Oakland ordinance takes a very expansive view of what counts as “harassment,” defining essentially any effort to communicate—whether by offering a pamphlet, holding a sign, or speaking aloud—as “harassment,” if it is done within eight feet of anyone entering or exiting an abortion clinic.

Second, notwithstanding the ordinance’s own caveat that nothing in it “shall be construed to prohibit any expressive conduct” protected by the First Amendment, and notwithstanding the Supreme Court’s extensive discussion on

(HOYE CONT'D ON PAGE 10)

CALENDAR: MAY 2

Banking on Life: Bringing together leaders and experts in the field of cord blood stem cell research and regenerative medicine

Cutting edge leaders from around the world, in the field of umbilical cord blood stem cell research and regenerative medicine, will join us to promote, inform and educate attendees on up to the minute successes and advances in cord blood research. These key voices will convene to share information that will shape the future direction of progress in cord blood banking and advances in ethical stem cell patient treatments using cord blood.

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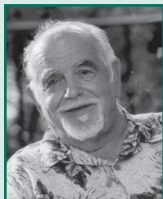
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L



IN MEMORIAM

LOUIE JOHN GARIBALDI (1925–2008)



A wonderful friend of LLDF and a champion for the unborn, Louie John Garibaldi, recently went to be with the Lord. He died on December 16, 2008 at the age of 83. Louie is survived by his pro-life

activist wife Jeannette, seven children, eight grandchildren and three great grandchildren.

Louie was a man of action. A retired San Francisco firefighter and a World War II veteran, he put the same dedication into fighting for the unborn as he did in fighting fires. For many years he was on the public streets and sidewalks with his wife, Jeannette, in front of the abortion mills in Redwood City, Daly City, Menlo Park, and San Mateo, trying to save babies from death and to save their mothers from a lifetime of regret. He was not afraid to confront the enemy and was willing to take the consequences. (LLDF board member Terry Thompson represented Louie when he was sued by Planned Parenthood.)

Louie was also a very good letter writer. He regularly wrote letters to the editors of the local papers and they were published. The subject of ninety percent of his letters was abortion. He was determined to educate the public to the terrible reality of abortion. His letters were pithy, to the point and from the heart. They were readable and convicting. No one will know how many babies Louie saved just from these letters.

Louie loved his family, his Italian heritage and he loved a good story. He had a great sense of humor and he always had a new story for his friends. LLDF and the pro-life community will miss Louie. He was a wonderful man. The good news is that when we see him again in heaven there is no doubt that Louie will have a new story for us! **L**

(HOYE CONT'D FROM PAGE 9)

how such an ordinance must be interpreted in order to pass constitutional muster, the trial judge refused to instruct the jury in any way as to how this ordinance must be interpreted. Judge Stuart Hing denied all such requests for jury instructions made by LLDF attorneys. On such basic questions as, "What constitutes an 'approach'?" or "Does 'consent' mean the person seeking to communicate has to *first*

"This is a miscarriage of justice, and we will appeal this verdict," she said. "After speaking with several jurors after the verdict was read, it is clear that the court's failure and outright refusal to instruct the jury regarding the key elements of the crime led to the erroneous conviction of Rev. Hoya."

obtain permission or does it mean he is free to communicate *until* the person tells him to 'go away,'" the jury received no guidance. Nor was it explained whether, if one simply stands in place and holds out one's hand to offer literature as a person walks by, that counts as an "approach." The Supreme Court in *Hill* held that it could *not*—this jury decided that it *did*.

Thus, the jury was left without any navigational device while sailing in dangerously unconstitutional waters. When they pored over the videotape during deliberations, jury members (most of whom were highly educated, by the way) took a hyper-technical approach, reaching absurd results. For example, some noticed on the video that Rev. Hoya, while holding his sign, turned slightly towards the UPS man as he entered the clinic and counted

that as a violation! Jurors did not agree among themselves as to what Rev. Hoya had done to violate the ordinance, nor did the judge require them to. No one cared that these perceived victims never complained to anyone about Rev. Hoya's conduct; the jury was allowed to use its own judgment as to what constituted a criminal violation by Rev. Hoya from merely watching the video.

For this, Rev. Hoya is facing possibly two years in prison and a \$4,000 fine!

Allison Aranda, LLDF staff counsel who defended Rev. Hoya throughout the trial along with volunteer LLDF attorney Mike Millen and LLDF Legal Director Katie Short, was flabbergasted by the results. "This is a miscarriage of justice, and we will appeal this verdict," she said. "After speaking with several jurors after the verdict was read, it is clear that the court's failure and outright refusal to instruct the jury regarding the key elements of the crime led to the erroneous conviction of Rev. Hoya." LLDF attorneys plan to challenge the constitutionality of the ordinance, as well as the prosecution's failure to meet its burden of proof.

Although stunned and dismayed by the jury's verdict on January 15, 2009, Rev. Hoya said, "It's Martin Luther King, Jr.'s birthday again, and I can still hear his words in my heart: "The Negro cannot win as long as he is willing to sacrifice the lives of his children for comfort and safety."

Following the verdict, Judge Hing contemplated immediately taking Rev. Hoya into custody and sentencing him the following day. Defense counsel objected and dissuaded the judge from remanding Rev. Hoya to custody that day, based on his promise to stay at least 100 yards away from the abortion clinic while awaiting sentencing so that Rev. Hoya's attorneys could draft several post-trial motions and prepare for the hearing.

At the February 19, 2009 sentencing hearing the District Attorney recommended two possible sentences for Rev. Hoya. The first being 3 years

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(ON TRIAL CONT'D FROM PAGE 7)

remotely comes close to constituting a “legal disruption.”

The D.A. admitted that his case was weak, but because of the highly political nature of the case, it was better for his office to take the case to trial and let twelve members of the community “judge” the Survivors. After a year and a half, the Survivors got their day in court. After listening to two solid days of lies, speculation, hearsay by the prosecution’s witnesses—all of whom were coached from the audience by the Columbia College civil attorney, the Survivors took the stand and they told the truth. Their testimony was corroborated by three members of the local community who endeared themselves to the jury.

The nail in the coffin so to speak was the video itself. Without physical proof of what transpired that day, the jury would be left to decide a case of he said/she said. Under those circumstances, it is rare that a jury believes the person(s) accused of committing the crime. Situations like this underscore the need and the vital importance of videotaping and tape recording events while the campus life team is on tour.

So, seven days after we began selecting the twelve-member jury, they returned a unanimously just verdict—NOT GUILTY!

I am constantly amazed how God uses these trials, literal and spiritual, not only to shape our character but to bring honor and glory to Him. It hit me, right smack in the middle of closing argument—the Survivors is no ordinary group of young people. These are courageous men and women who are threatened by school administrators, falsely arrested by police officers, and sometimes even physically attacked simply because passersby disagree with the message they share. And yet, they refuse to be bullied, coerced, or silenced from speaking the truth. They

recognize the inherent risk, but are not dissuaded or discouraged and they never give up. They are willing to lay down their reputations, their freedom, their lives for the sake of speaking the truth and standing up for the voiceless in our society.

I am honored to stand up for them and defend them in a court of law anytime and anywhere. God was honored by their courage and protected them throughout this entire ordeal. In fact, He placed a special person on the jury who championed the truth in the deliberation room and hopes to work with the Survivors in the future. Although we are never certain how these matters will turn out in the end, we are guaranteed one thing—God will see us through and work all things to His glory. That, my friends, is exactly what He did here!

A juror commented after the trial: “I truly believe in what you and your group are doing. While serving as a juror on this trial, I have learned more about freedoms than I ever knew. Your cause is something that I would really like to become a part of. Up in the Sonora area we don’t really have anything to put the word out there on abortion and we need it. If you ever feel like coming back this way, I would like to help in any way I can. I am a pretty good sign holder. In my heart I knew what was right. God Bless You and your team and all the Survivors.”

L

(HUGHES CONT'D FROM PAGE 8)

the Holy Spirit provided the inspiration. I have never seen anything so eloquent, even on TV courtroom dramas. The following day was a Saturday, Frank called to tell me he had heard from the judge who decided he would have to look at the property that was in dispute.

Frank was as excited as I was when the judge said there was no need for an injunction or a buffer zone.

It is a very rare occurrence when PP does not prevail but Frank Hughes did it with such grace. We returned to prayer at the same location with a real appreciation for those who make it possible for us to exercise our constitutional rights.

Thank God for this faithful servant and for LLDF who made it possible.

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.

ON THE WEB

Life Legal November 2008 Banquet

Please see article and pictures with the rest of Lifeline at:

<http://lldf.org/newsletter.htm>

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(HOYE CONT'D FROM PAGE 10)

probation, a \$130 restitution fine, and an order prohibiting Rev. Hoyer from coming within 100 yards of the abortion clinic at 200 Webster Street. Alternatively, if Rev. Hoyer refused to agree to the stay-away order, the District Attorney requested that the court put Rev. Hoyer in jail for the maximum sentence of 2 years. Initially, the Judge was inclined to go along with the prosecutor's first option, but when the court learned that Rev. Hoyer would not agree to the stay-away order, the Judge sentenced Rev. Hoyer to 1) 30 days jail time, which could be served in an alternative program, 2) a \$130 restitution fine, and, 3) half of the statutorily-authorized fine of \$2,000, for a total fine of \$1,130. Additionally, the Judge put Rev. Hoyer on probation for 3 years and as a condition of probation, he required Rev. Hoyer to continue to abide by the 100 foot stay-away order.

Rev. Hoyer told the Court that he would follow the law as it is being applied by Oakland officials while on probation, however, he would not accept probation if it included an order to stay away from the clinic all together. Rev. Hoyer expressed his desire to simply pay his debt to society and be free to return to the clinic rather than being placed on probation. Despite Rev. Hoyer's refusal to accept the Judge's probation offer, and even after the pleas of Rev. Hoyer's attorneys, who explained that probation is a contract, and in order to have an enforceable contract there must be an acceptance of the offer made, the Judge insisted that the D.A. draw up Rev. Hoyer's probation agreement as pronounced. The Judge then set another hearing on March 20, 2009 in this matter, so that Rev. Hoyer's attorneys can prepare their notice of appeal and file a request for stay pending appeal.

The Judge then set another hearing on March 20, 2009 in this matter, so that Rev. Hoyer's attorneys can prepare their notice of appeal and file a request for stay pending appeal.

LLDF attorneys are now researching and briefing the issues to be discussed at the hearing, including the right of a defendant to decline probation, which right appears well-established in California law. Also, California law guarantees the right of Rev. Hoyer to be free on bail pending appeal, with only those conditions related to "public safety." So for now, Rev. Hoyer continues to enjoy at least limited liberty.

1 http://bpc.iserver.net/codes/oakland/_DATA/TITLE08/, then scroll down to Chapter 8.52, "Access to Reproductive Health Care Facilities"