

# 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

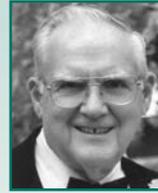
## I N T H I S I S S U E

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stems cells are not all that.*

Bob Taylor

## The Status of the Partial Birth Abortion Act of 2003

The Partial Birth Abortion Act was signed into law by President Bush in November 2003. It was immediately challenged in United States District Courts in California, Nebraska, and New York by various pro-abortion individuals and organizations. All of the District Courts issued preliminary injunctions banning the enforcement of the law on the grounds that the law was similar in language to a Nebraska statute struck down by the United States Supreme Court in *Stenberg v. Carhart*, 530 U.S. 914 (2000).



A little background. In *Stenberg*, the Nebraska law provided that: "No partial birth abortion shall be performed in this state, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused or arising from the pregnancy itself." Partial birth abortion was defined as: "an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery." "Partially delivers vaginally, etc." was defined as: "deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child."

The Supreme Court, in a 6-3 decision, found the Nebraska law to be unconstitutional. The majority opinion began by saying that the

*[The judge] did not comment on the obvious—the experts on which she relied not only favored abortion on demand, but made their living at it. The judge also noted that the Congressional finding that the fetus suffers pain during the course of a D&X was irrelevant.*

evidence before the trial court showed that approximately 10% of all abortions are performed during the second trimester of pregnancy, and that the most commonly used

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## GENERAL RECAP & UPDATE

**Schiavo v. Schindler** (Florida)—Michael Schiavo seeks court permission to kill his 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. After trial court judge ordered her feeding tube removed, Governor Bush and Florida legislature passed "Terri's Law"—which has resulted in a temporary delay of Terri's starvation. Michael Schiavo continues to push hard for the right to starve Terri. Now represented by the ACLU, he is challenging "Terri's Law." Florida Supreme Court agrees to hear case August 31, 2004. For updates, see [www.terrisfight.org](http://www.terrisfight.org).

**Foti v. Planned Parenthood/Planned Parenthood v. Foti** (San Mateo)—This legal stand-off between Planned Parenthood and three sidewalk counselors ended in July, after six years of litigation, two separate lawsuits, and three trips to the court of appeal.

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The parties agreed to a stipulated injunction, binding both sides to refrain from certain conduct. While Mr. Foti agreed to stay a certain number of feet from the clinic, he is allowed to place signs on the sidewalk in front of the clinic. Planned Parenthood agreed that its escorts will not interfere with Mr. Foti's attempt to communicate his message by speech or signs.

**Women's Resource Network v. Gourley**

(Sacramento)—Constitutional challenge to state system for authorizing specialty license plates. Legislature has refused to authorize "Choose Life" specialty plates promoting adoption, while authorizing plates promoting and benefiting other causes. **Victory!** Preliminary injunction issued; plaintiffs' summary judgment entered. Briefs available at [www.freespeechdefense.com](http://www.freespeechdefense.com).

**Estavilla v. Romo and West** (Yolo County)—

Fetal homicide suit for injury and constitutional violations includes two issues: 1) wrongful death statute is unconstitutional because it denies equal protection to babies killed in utero; and 2) interference with the right to privacy and reproductive rights includes interference with the right to carry a pregnancy to term, not just to have an abortion. Case settled with West and default entered against Romo.

**Mason et al. v. Wolf** (Denver)—Picketers and

leafletters arrested at University of Denver. Civil suit filed. Summary judgement motion fully briefed and decision pending. Trial set for February 7, 2005.

**Pedigo v. Hershey** (California)—

Amniocentesis detrimentally used on pre-born child with improper consent. Civil suit filed; on appeal from sustaining of demurrer on a technicality. Briefs filed.

**People v. Mooriskey** (New York)—Pro-lifer

enters clinic to warn client has eaten recently and risks aspiration complications, charged with criminal trespass, misbehavior, and harassment. Mooriskey pled to a non-criminal infraction of trespass which resulted in no sentence.

**O'Toole v. Foothill/De Anza Community College District** (Cupertino)—Pro-lifers

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**From the Executive Director**

Dana Cody

**NO LOANS FOR CLONES!**

**The passing of President Reagan has driven the debate over stem cell research to the forefront of national attention. Scarcely had America heard the news of President Reagan's passing when proponents of embryonic stem cell research launched an all-out media blitz capitalizing on the President's struggle with Alzheimer's as reason to support fetal farming.**



But consider the myth, for that is what it is. "To start with, people need a fairy tale," said Ronald D.G. McKay, a stem cell researcher at the National Institute of Neurological Disorders and Stroke. "Maybe that's unfair, but they need a story line that's relatively simple."<sup>1</sup> Mr. McKay was referring to the "story line" that embryonic stem cell therapies might be used to treat Alzheimer's. In fact, it has now come to light that researchers have known for some time that such therapies show little promise for Alzheimer's.

Nothing demonstrates the insight of Mr. McKay's statement like the California Stem Cell Research and Cures Act (the initiative). The cumbersome 26-page initiative has now qualified for the ballot based on the fairy tale that embryonic stem cell research is a panacea for every disease imaginable. Ask the average citizen what is in the initiative and he/she will not be able to answer the question, yet over 670,000 of these average citizens qualified the initiative with their signatures. Come November, California voters will make the final decision as to whether or not embryonic stem cell research will be a constitutional right in California.<sup>2</sup>

The text of the initiative pays only lip-service to adult stem cell research, which has proven to be more promising and less controversial than using stem cells from human embryos. Under the terms of the initiative, priority will be given to stem cell research and studies not likely to receive federal funding.<sup>3</sup> Since the initiative language authorizes "human somatic cell nuclear transfer" (SCNT), (not funded by

*Those who would trade on Ronald Reagan's legacy should first consider his own words.*

the federal government), funding of adult stem cell research (permitted by the federal government) will take a back seat.<sup>4</sup> This not only explains the reason proponents need this initiative to pass—funding for their cure-all elixir; it also explains why the initiative contains a bond measure,<sup>5</sup> which over a 10-year period will result in 3 billion dollars in bonds.

Moreover, the tax-payer funded fetal farming created by the initiative will lead to human cloning. That is because SCNT is one method of human cloning.<sup>6</sup>

Consider what William P. Clark, a member of Life Legal's Advisory Board and formerly National Security Adviser and Secretary of the Interior under President Ronald Reagan wrote in a recent op-ed piece in the *New York Times*:

Mr. Reagan's suffering under Alzheimer's disease was tragic, and we should do everything we can that is ethically proper to help others afflicted with it. But I have no doubt that he [President

(CLONES CONT'D ON PAGE 11)

## ASK THE ATTORNEY

Interview with Jim Rouse,  
Attorney, Denver, Colorado**What's your current project for Life Legal Defense Foundation?**

It is the Mason case. I am representing the pro-life position in a lawsuit against the Auraria campus, a three-college system in the Denver metro area. The campus is on the west side of downtown Denver, an urban campus that gets all kinds of public use. People use the school parking lots for Bronco games, walk through campus to catch the light rail, walk across campus on their way to buy a deli sandwich. It's open to everybody—except pro-life protesters. Our client, a member of the Survivors of the Abortion Holocaust, applied to the college for permission to hand out flyers in a high foot traffic area. The college normally permits free speech activity in the flagpole area, a common area with broad sidewalks and broad grassy areas on all sides. Students can use this flagpole area for any free speech purposes. Off-campus groups, like my client's group, can also use the area. Some groups do not ask for permission and simply use the space but my client's group did ask. They were granted permission, but instead of being allowed near the flagpole, where foot traffic is heavy, the Survivors were assigned to a stairway area at least 150 feet away from the flagpole. This stairway area had previously been designated by the college as a place for problematic free speech; they had had some problems with another unrelated group of pro-life demonstrators, tarred Mr. Mason's group with the same brush because of his pro-life viewpoint, and permitted them to be active only in this low foot traffic area. They were told they could not go on the sidewalks. The result was that the only people they could approach were those who had to use the steps. The effect was that they were ignored because so few people did use the steps. Meanwhile, a group seeking to free Tibet was at the flagpole.

**Are there frustrations involved in working on a case like this?**

It is frustrating because a double standard is being applied to the speakers. The pro-life group gets stuck over on the steps and groups for reproductive rights, or whatever else, get the flagpole area.

**How did you get involved in this case?**

Life Legal Defense Foundation was asked by Mr. Mason to represent him. The Life Legal office called me.

**How many hours have you given to the case?**

Lots. Roughly 350 hours.

**Did you realize you had given so much time?**

Well, we plan on winning and having the government pay us.

**The case is not decided—but has it had any effects yet?**

After my client's experience, another non-student group came to campus to put on a pro-life demonstration. An anti-abortion group from Kansas stayed three days, used 20-foot signs and did generate disruption, including yelling, and darned if the attorney for the school didn't advise the college that those people had a First Amendment right. It was an outside group with the same message (as the Mason case). Maybe the Attorney General's office will realize that they ought to just settle the Mason case. Frankly, the Mason lawsuit has had an effect.

**How do you see this case proceeding?**

We have a long, tough fight ahead of us but my opinion is that eventually our side will prevail. I have this optimistic attitude that right eventually prevails.

*People use the school parking lots for Bronco games, walk through campus to catch the light rail, walk across campus on their way to buy a deli sandwich. It's open to everybody—except pro-life protesters.*

**Why do you do take a certain number of cases without compensation?**

I have a real love for defending the constitutional rights of Christian groups and individuals.

**What inspires you to do this kind of work?**

Faith got me started in the first place. As cases involving Christians came up, I was continually looking at the courts and seeing that in some cases, nobody was showing up to represent the Christian point of view. I have done some work for the Rutherford Institute, the Alliance Defense Fund and other Christian organizations. In addition to the Mason case for Life Legal, we also currently are representing a single adoptive mother who has left the lesbian lifestyle and is trying to raise her young daughter as a Christian without the involvement of her former partner, who did not adopt and is not related to the child.

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arrested and signs confiscated on public college campuses after they displayed signs disapproved of by the administration. Charges not filed. Civil action filed against college district.

**Kelly v. Orange** (Calif.)—Nurse Karen Kelly, who was fired for not violating her pro-life convictions, sued the County of Orange for wrongful termination and religious discrimination. Ninth circuit court of appeal decision pending.

**Cano v. Bolton** (Georgia)—Sandra Cano and Norma McCorvey have filed to reopen their *Roe v. Wade* cases. LLDF filed amicus brief in support of effort.

**O'Toole v. San Diego Community College District**—Pro-lifer arrested and held for carrying sign on public college campus; he was released two days later, without having been cited. Claim filed and rejected. Civil suit filed. Demurrer overruled and discovery is underway.

**Milton et al. v. Serrata** (San Francisco)—Pro-lifers arrested or threatened with arrest for holding signs on public university campus. No criminal charges filed. Civil action filed. Discovery underway; depositions taken.

**People v. Arvela** (Stockton)—sidewalk counselor charged with erecting a sign in the city. **Victory!:** charges found unconstitutional and case was dismissed.

**People v. Cain** (New York)—Pro-lifer arrested under N.Y. FACE law for tossing caustic substance [blessed holy water] at building. Trial pending.

**People v. Rusnick** (Wisconsin)—Pro-lifer handing out literature at high school arrested for disorderly conduct. Case pending.

**People v. White** (Washington, D.C.)—Pro-lifer arrested for display of human remains. Charges filed.

**Mahoney v. New York City and Boston**—Cities delay/denies issuance of demonstration permits for Democratic and Republican National Conventions; civil suit filed. Cities contact pro-lifers to meet

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Amy Schirmer

## CAREFULLY PURIFIED

**Until recently my firm ethical belief in the sanctity of life has been, for the most part, theoretical. I am not daily confronted by young unwed mothers wrestling with the possibilities of rejection or destitution. I do not work in a clinic where abortions are performed. I don't even work in a company where the subject is debated around the water cooler. Being pro-life has demanded little of me in the practical. This spring that has changed.**

My work outside the home is in order fulfillment and warehousing. I seek out clients that need a place to store product until someone orders it. When orders are placed, my company mails the product. All very straightforward and not an environment in which I expected to deal with the issue of abortion.

One aspect of my job involves finding new clients. Last November I contacted a company called Sun Trading that sells beautiful Ukrainian crafts on line. The wooden plates and boxes were colorful and relatively inexpensive. I was also impressed by how the Ukrainian craftsmen seemed to be the recipients of a goodly portion of the income made on their handiwork. My initial contact resulted in a personal reply, which is nigh on unheard of, and I was ecstatic. The possibility of working with this company would generate income for our warehouse as well as further the goals of Ukrainian artisans. I will unashamedly admit to being very happy when social ills can be positively addressed in the retail world!

Sun Trading is located in Switzerland, and my contact person there was wonderful to work with. Courteous and regular at keeping in touch, I looked forward to working with them. They were not ready to start warehousing in the States, but were interested in pursuing the details for future reference. In the meantime, another of their divisions started looking at the possibility of fulfilling orders in the States.

This company's name was Plazan. They produce

a high-end cosmetic that is sold online, two containers for around \$180.00. Again, I was very excited. We could charge a bit more for this product, and it would involve less storage as well as easier shipping procedures. My contact at Sun Trading sent me the website for Plazan, and I went with dollar signs in my eyes.

What I found left me feeling as though I had been socked in the stomach. [www.cosmetics-makeup-tips.com](http://www.cosmetics-makeup-tips.com) is very proud of the fact that their products include carefully purified human placenta. It took only a moment for me to realize the implications of this. What else would so perfectly revitalize skin? It seems only logical that modern cosmetologists would look to the physical source of youth—that which nourishes a growing baby—in order to find the so-called fountain of youth.

Concerned that I may be jumping to incorrect conclusions, I first decided to ascertain whether the placentas were harvested from live births or aborted babies. I assumed the company would be cagey in their response, and so I started trying to research European Union laws about abortion and the use of aborted babies in cosmetic products. Frustrated by my inexperience as a researcher, I decided to contact some pro-life organizations for help. Life Legal Defense was one of these organizations. There were others as well, but none were really able to help me; either because they were not international in scope, or they were simply too busy to drop everything for my question! (Each organization I

*[Plazan] replied very quickly. The placental tissue was, indeed, from abortions, but I was not to worry. The lab procedures involved with purifying and extricating the necessary elements ensured that I could not be contaminated by the human placenta.*

e-mailed eventually did contact me. It was very reassuring to see how vigilant the Pro-life movement is at the organizational level—and I wish there were a fuller volunteer base to help with the day to day work involved with each of these organizations.)

My last resort was to ask the company, Plazan, directly. Again, I assumed I would receive a response that involved a lot of beating about the bush and avoiding the issue at hand. This was not the case! They replied very quickly. The placental tissue was, indeed, from abortions, but I was not to worry. The lab procedures involved with purifying and extricating the necessary elements ensured that I could not be contaminated by the human placenta. The use of animal placentas in cosmetics does not have the same guarantee, apparently.

Thus ended my comfortable pro-life stance! There never really was a dilemma of course—supporting such products only encourages abortion. Moreover I could not plea that, after all, I wasn't the one buying the product, and, well, you know, it's just business after all. The

fact is that even handling the product in a strictly business venue implied my tacit support of the product, and my support of the product implied my support of the ingredients, and my support of the ingredients meant my support of abortion. Whatever my location in the great causal link I faced two choices: Either my actions supported pro-life or they supported pro-death. There was no middle ground. It was as clear as blue sky on a crisp fall day.

I was up front with my manager about not being able to work with a company that did business with Plazan or any of its related companies, even those that benefit artisans in the Ukraine. I am fortunate to work at my present place of employ. My supervisor allowed me to sever the connection with this account, and so the entire thing was dropped and Plazan will be looking elsewhere for warehousing and fulfillment. The sad thing is that they will find it. A lot of money is made in cosmetics, and the quest for perfect skin comes at the highest price imaginable. I would like to urge the readers of this newsletter to consider carefully the ingredients that go into their lotions and make-up. Placentas are not babies. I know this. But placentas from aborted babies would not be available without the scourge of abortion.

I had my yearly physical yesterday, and in the process of making a necessary appointment with the imaging department, I had to sign a piece of paper which assured all concerned that I was not expecting a child now, nor would I be at the time of the x-ray. The possible baby could be affected. What a world of contradictions we live in!

**L**

[Amy Schirmer works and lives with her family in Wisconsin.]

## CHARITABLE GIFT ANNUITIES

**Life Legal Defense Foundation has partnered with Christian Community Foundation to offer Charitable Gift Annuities (CGAs). These Annuities can be used as a tax-friendly investment that provides lifetime income to you (or a grandchild's education, etc.) while providing Life Legal funding at the same time.**

A CGA is a contractual arrangement between a donor and a charity used for long-term financial planning. An irrevocable gift of cash or securities in the amount of \$25,000 or more is made in exchange for fixed payments for life, with the remaining value benefiting the donor's favorite charity at death.

**CGA Benefits:** The fixed payments will not change regardless of whether interest rates rise or fall.

Annuity payments are considerably higher than other fixed payments due to higher interest rates.

Part of the annual payment may be tax free.

There are other benefits to CGAs, which are available in brochure format, available from the LLDF office (707-224-6675). Please contact us and we will send you the brochure and put you in touch with our CGA administrator.

CGA gifts to LLDF will be administered through Christian Community Foundation, our planned giving service provider. CCF is a non-profit public foundation qualified under the Internal Revenue Code section 501 (c)(3) and section 170(b)(1)(a)(vi), and issues and administers these gift annuity agreements for individuals across the country. They may be reached at (719) 447-4620, or [www.thefoundations.org](http://www.thefoundations.org), for more information about their services.

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and resolve problems. Pro-lifers drafted approved D.N.C. permit scheme for convention. N.Y.C. resolution pending.

**People v. Mason** (Golden, Colo.)—Picketing in front of a college, pro-lifers falsely charged with obstructing a police officer. Charges filed.

**McCullough v. Kelly** (Santa Monica)—pro-lifer arrested and held in jail overnight for holding signs on public sidewalk outside public high school. Civil suit filed. City agreed to monetary settlement and expungement of arrest record. School principal filed motion to dismiss.

**Ford v. North Orange County Community College District** (Calif.)—Pro-lifers subjected to unconstitutional restrictions on speech on public community college campuses, including being told that the “free speech area” was a flooded, partially fenced off area with virtually no student traffic. Failure to leave the campus led to arrests. No charges filed, civil action filed against the District. Demurrer overruled.

**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 yards from the school. No charges filed. Civil action filed. City has filed a motion to dismiss.

**People v. Enyart** (Redlands)—Pro-lifers arrested on sidewalk outside high school for distributing literature and talking to students, after police officer deems this “causing a disturbance.” D.A. is reviewing charges.

**People v. Mason** (Las Vegas, Nev.)—After a day of sidewalk counseling at an abortion mill and being told by police they were not violating the law pro-lifers were charged with trespass as they were leaving.

L

Wesley J. Smith



## The Wrong Tree: Embryonic stem cells are not all that.

**Once again the media are trumpeting the call among many in Congress, pushed by millions in Big Biotech lobbying money, for President Bush to reverse his decision to limit federal funding of embryonic-stem-cell research (ESCR) to those lines already in existence on August 9, 2001. Fronted this time by the grief-stricken Nancy Reagan, and boosted by Hollywood celebrities such as Christopher Reeve, Michael J. Fox, and Mary Tyler Moore, we are warned darkly, as a recent *New York Times* editorial put it, that the existing federal-funding restrictions “are so potentially damaging to medicine” that the administration is encountering opposition to its policy even among its “own conservative supporters.”**

We have heard this mantra many times before but repetition does not make it true. A great deal has been learned about the potential of regenerative medicine since President Bush reached his “compromise” decision ending the stem-cell debate of 2001. And indeed, perhaps the time has come for us to revisit this issue, albeit from a different angle than suggested by ESCR boosters. Perhaps the problem with the Bush plan isn’t that it provides too little federal money for ESCR, but too much—at least if our national goal is to find cures to diseases such as Alzheimer’s, diabetes, and Parkinson’s in the shortest period of time.

The media is so excited about the supposed potential of embryonic stem cells that it gives far too little attention to the many and serious problems associated with this potential source of regenerative medicine. Listening to the hype, one might think that ESCR is on the verge of tremendous success. But the hard truth is that it does not appear likely that embryonic stem cells will soon become the panacea that fervid supporters of the research often claim. For example:

- In animal studies, embryonic-stem-cell treatments have been found to cause tumors. In one mouse study involving an attempt to treat Parkinson’s-type symptoms, more than 20 percent of the mice died from brain

tumors—this despite researchers reducing the number of cells administered from the usual 100,000 to 1,000.

- Tissue rejection is another major hurdle to the use of embryonic stem cells in medical treatments. This is why ESCR is known as the gateway to human cloning, since one proposed way out of this potential dilemma is to create cloned embryos of patients being treated as a source of stem cells, a process known as “therapeutic cloning.” Not coincidentally, many of the same proponents who are now urging increased funding for ESCR also advocate that we legalize and publicly fund therapeutic-cloning research, which many find immoral because it creates cloned human life for the sole purpose of experimentation and destruction.

Besides being immoral, therapeutic cloning also looks to be wildly impractical. For example, a recent report published by the National Academy of Sciences warned that it could cost in the neighborhood of \$200,000 just to pay for the human eggs to derive one cloned human embryonic-stem-cell line.

- The hope that embryonic-stem-cell lines are immortal, thereby allowing them to supply unlimited cells for use in regenerative medical treatments, appears to be fading fast. Several

studies, including one published in the March 25, 2004, *New England Journal of Medicine*,<sup>1</sup> have now shown that over time embryonic-stem-cell lines develop severe chromosomal anomalies, including a form of cell change found in some types of cancer.

These and other significant scientific obstacles facing embryonic-stem-cell researchers mean that treatments from this source of stem cells are unlikely to become a part of medicine's armamentarium at the clinical level for more than a decade—if ever. Indeed, as reported

*Perhaps the problem with the Bush plan isn't that it provides too little federal money for ESCR, but too much—at least if our national goal is to find cures to diseases such as Alzheimer's, diabetes, and Parkinson's in the shortest period of time.*

in *Washington Fax* in 2002, the noted stem-cell-research pioneer John Gearhart has suggested that embryonic stem cells, in the end, will probably not be “used in therapies.” Rather, he said, “patients’ own cells,” e.g. adult stem cells, are “where I see the future now.” (Gearhart does support ESCR, believing that it will provide useful information permitting patient’s own cells to be used in regenerative medicine.)

Fortunately, embryonic stem cells are not the only potential source for regenerative medical treatments. There are also adult stem cells, umbilical-cord-blood stem cells, and other cellular-based treatments that do not use embryos at all. Here we see a completely

different picture emerging. Under-reported by the ESCR-besotted mainstream media, many of the diseases that embryonic cells are supposed to treat may be ameliorated with adult-stem-cell and related therapies far more quickly. These include:

**Heart Disease:** The FDA has allowed a human trial to proceed that will use bone-marrow stem cells to treat severe heart disease. The experiment will be conducted at Texas Heart Institute in Houston. This approach has already safely improved heart function in 14 patients in Brazil, as reported in the medical journal *Circulation*. Indeed, the researchers found “significant improvements in exercise capacity,” improving oxygen capacity “from 17 percent to 24 percent in treated patients.” A similar result has already been reported in the U.S. using a patient’s own blood stem cells, as have other human experiments in France and Hong Kong. (On a sour note, while not disproving the benefit of adult cells in treating heart disease, researchers in two mouse experiments failed to replicate earlier studies that seemed to show adult stem cells could be transformed directly into new heart muscle. Meanwhile, further studies still need to determine whether the treatment could cause dangerous arrhythmias.)

**Diabetes:** As reported in the November 14, 2003, issue of the distinguished journal *Science*,<sup>2</sup> Type 1 (juvenile-onset) diabetes has been cured in mice using human spleen cells. The cells migrated to the mice pancreases, “prompting the damaged organs to regenerate into healthy, insulin-making organs” and thus curing their diabetes. The authors noted that “because the cell donors and hosts are adults, this system would preclude ethical issues associated with the use of embryonic stem cells, as well as concerns that [cell] transdifferentiation of embryonic stem cells may be incomplete.”

**Neurological Conditions:** *HealthDay*<sup>3</sup> recently reported that “Cells found in a patient’s own bone marrow might someday be a safe, ethical

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## ON THE WEB

A lot of the world wide web addresses in *Lifeline* are fairly lengthy and are clumsy, at best, to type in to your browser. In order to make them more easily accessed, all of the links in this issue are available at [www.lldf.org/links.htm](http://www.lldf.org/links.htm), under *Lifeline* XIII, No. 2 (Summer 2004). You can simply click on a link to go directly to it.

—Ed.

## DUPLICATES

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

## 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.

## LIFELINE ONLINE

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

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procedure is called “dilation and evacuation” (D&E). According to the testimony of the plaintiff, Dr. Carhart, this procedure often results in “disarticulation”, i.e., the dismemberment of the fetus that occurs when a part of the fetus is grabbed by an instrument and pulled through the cervix and into the birth canal. “Disarticulated” pieces of the fetus are removed one by one until the entire body of the fetus is removed. A second procedure called “dilation and extraction” (D&X) or “intact D&E”, is described by the Court thusly: “If the fetus presents head first (a vertex presentation), the doctor collapses the skull; and the doctor then extracts the entire fetus through the cervix. If the fetus presents feet first (a breech presentation) the doctor pulls the fetal body through the cervix, collapses the skull, and extracts the fetus through the cervix.” The fetal skull is collapsed by driving a pair of scissors into the base of the skull, separating the blades to enlarge the opening, and then evacuating the brain using a vacuum device. It is the second procedure that is known as “partial birth abortion” and against which the law was directed.

The Supreme Court concluded that the Nebraska law violated the Federal Constitution, as interpreted in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), for two independent reasons: first, it lacked any exception for the preservation of the health of the mother, and second, it imposed an undue burden on a woman’s ability to choose a D&E abortion, thereby unduly burdening the right to choose abortion itself.

The Partial Birth Abortion Act of 2003 is somewhat different from the Nebraska law. It provides in pertinent part that:

(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-

endangering physical condition caused by or arising from the pregnancy itself. This subsection takes effect 1 day after the enactment.

(b) As used in this section—

(1) the term “partial-birth abortion” means an abortion in which the person performing the abortion—

(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus...

As support for the Act, Congress made a number of factual findings. Among them were findings that a partial-birth abortion is never necessary to preserve the health of a woman, poses significant health risks to a woman, and is outside the standard of medical care. As a consequence, the Congress also found that a ban on partial-birth abortion is not required to contain a “health” exception.

Each case challenging the Federal Act has gone to trial. The only decision has thus far been rendered was in the case pending in the District Court for the Northern District of California, *Planned Parenthood Federation of America v. Ashcroft*, No. C 03-4872 PJH. In that case, Judge Phyllis J. Hamilton, a Clinton appointee, found the Partial Birth Abortion Act to be unconstitutional on various grounds.

First, the judge found that the Act imposed an undue burden on a woman’s ability to choose a D&E (dilation and evacuation) abortion as compared with a D&X (dilation and extraction) or intact D&E procedure—the partial birth abortion against which the law was directed—because it might be possible that during a D&E procedure that the acts prohibited by the Act might occur.

Second, the judge found that the Act was unconstitutionally vague because of trial testimony of numerous physicians that they did not understand various terms of the Act, including “partial-birth abortion,” “overt act,” “deliberately and intentionally,” and “living fetus.” All of these physicians were active practitioners of abortion—they appear to make their living performing them—that the Court allowed to testify as expert witnesses. (In contrast, the government’s witnesses were not experts because they had never performed an intact D&E abortion.)

Third, the judge found that the Act was unconstitutional because it did not contain a health exception in that it excepted only a “partial-birth abortion that is necessary to save

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*[T] the judge found that the Act imposed an undue burden on a woman’s ability to choose a D&E abortion as compared with a D&X or intact D&E procedure . . . because it might be possible that during a D&E procedure that the acts prohibited by the Act might occur.*

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the life of a mother.” The judge found on the basis of the testimony of her favored experts that there were instances that the D&X procedure was as safe as, or safer, than the D&E procedure.

Finally, the judge trashed the findings of fact made by Congress to support the Act, saying that: “this court finds that Congress’ conclusion that the procedure is never medically necessary is not reasonable and is not based on substantial evidence” was “based in part on the testimony of witnesses that tend to disfavor elective abortion generally.” She did not comment on the obvious—the experts on which she relied not only favored abortion on demand, but made their living at it. The judge also noted that the

Congressional finding that the fetus suffers pain during the course of a D&X was irrelevant.

Although the judge said that a nationwide injunction against the Act may be appropriate, she said that in deference to the New York and Nebraska courts that were also considering the issue, she would only issue a permanent injunction against enforcement of the Act against the plaintiffs.

According to notes taken by Jay Sekulow of the ACLJ (accessible at <http://www.aclj.org/resources/prolife/pba/040329-trial-notebook.asp>) the trial in the New York case, *National Abortion Federation v. Ashcroft*, is over, briefs have been filed, and closing arguments were scheduled for June 22, 2004. The trial judge appeared to take a deep interest in the issues involved, did not seem to be so cavalier about fetal pain, and put a number of penetrating questions to the plaintiffs' witnesses. Mr. Sekulow calls attention to one interesting statistic relied on by Congress (but did not get a mention in the San Francisco case) that seems to bear on the health exception issue. Kansas is the only state that requires separate reporting for partial-birth abortions. In 1999, 182 partial birth abortions were reported, all of which were performed on viable fetuses. All of the 182 abortions were reported to have been performed for mental health reasons—not one was performed for physical health reasons of the mother.

It is expected that decisions will be rendered in the New York and Nebraska cases within the next month or two. The government has announced that it intends to appeal the decision of the San Francisco District Court. No matter how the other two cases turn out, it can be expected that one side or the other will appeal the results. Thus, three different Courts of Appeal will most likely have to address the issue. If there is a difference of opinion, the matter will probably end up in the Supreme Court. **L**

[Bob Taylor, an attorney in Newport Beach, joined the Board of Directors of Life Legal Defense Foundation in 2003. The text of the PBA act is available at numerous places on the web, one of which is <http://www.theorator.com/bills108/s3.html>.]

## Christian Medical Association Doctors Decry “Heartlessness” of Abortionists’ Testimony

**Testimony reveals “incomprehensible depth of inhumanity and barbarity.”**

Washington, D.C., April 2, 2004 (LifeSiteNews.com)—As abortion rights groups battle the government in three courts nationwide over the constitutionality of partial-birth abortion, the nation’s largest faith-based organization of physicians highlighted what it calls the inhumane testimony of abortion doctors and attorneys in the cases.

Christian Medical Association Executive Director Dr. David Stevens declared, “The arguments of abortion doctors and activists in these cases are astonishingly revealing about the heartlessness behind the abortion-on-demand forces. The testimony reveals an incomprehensible depth of inhumanity and barbarity.”

Stevens cited testimony taken from the March 31 transcript of opening arguments by plaintiffs in *National Abortion Federation v. Ashcroft* in the U.S. District Court for the Southern District of New York: “Abortion doctors say they crush an unborn baby’s skull ‘as if you were picking up salad.’ ”

The transcripts of the case revealed that the abortionist described the skull-crushing tools as follows: “It would be like the end of tongs that are combined that you use to pick up salad. So they would be articulated in the center and you could move one end, and there would be a branch at the center, and the instruments are thick enough and heavy enough that you can actually grasp and crush with those instruments as if you were picking up salad or picking up anything with...”

At that point, the judge interrupted to say, “Except here you are crushing the head of a baby.”

CMA’s Stevens noted, “When the judge also asks if the doctor ever considered the fact that

an abortion causes the baby pain, the doctor incredibly says it never crossed his mind. Then he claims ignorance of the well-documented medical evidence that aspects of pain perception are present in an unborn child from as early as six to seven weeks gestation, and that they feel pain at a much stronger level than adults. What kind of doctor is this?”

Stevens also quoted the March 29 transcript, in which the plaintiffs’ attorney argued, “In the case of unwanted pregnancies especially, some women want the fetus to better grieve. The intact (partial-birth abortion) procedure can typically allow this while a dismemberment (abortion) typically will not.” One abortionist told the judge that he even puts a cap on the aborted baby’s head just as he would on a newborn.

Stevens noted, “What kind of people are these who debate whether it’s better to tear a baby into pieces or to present the baby with a brainless head—whom they have just killed—to her mother?”

Gene Rudd, Associate Executive Director further commented, “A society founded on ‘life, liberty and the pursuit of happiness’ cannot long prosper with such disdain for life within its citizenry.”

**L**  
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*“We have to use our limited resources efficiently. Money spent on embryonic-stem-cell research and human cloning is money that cannot be spent on [investigating] adult stem cells.”*

(WRONG TREE CONT'D FROM PAGE 7)

source for replacing brain cells lost to Alzheimer's, Parkinson's and other neurological conditions.” German researchers cultured human bone-marrow stem cells and were able, within a few weeks, to morph them into mature neural or glial cells. We learned just this month that cells derived from dental pulp can be transformed into neural cells and may someday be a readily available source of treatment for conditions such as Parkinson's.

Along these lines, human patients have already benefited substantially from the alleviating of symptoms of Parkinson's with adult stem cells and related therapies. For example, Dennis Turner of southern California was the first human patient known to have been treated by his own brain stem cells for Parkinson's. It is now a few years post treatment and his Parkinson's—which by now was expected to have substantially disabled him—has instead gone into substantial remission. Turner has been able to reduce his medications and rarely experiences significant symptoms of his disease. Meanwhile, the May 2003 edition of *Nature Medicine*<sup>4</sup> reported that five Parkinson's disease patients, who received injections of a natural body chemical known as glial-cell-line-derived neurotrophic factor (GDNF), experienced significant improvement in their conditions. Three of the patients even regained their sense of taste and smell.

I could write pages about such successes. Adult-stem-cell and related therapeutic approaches are in current clinical trials or use for the treatment of cancers, autoimmune diseases, anemias, bone and cartilage deformities, corneal scarring, stroke, and skin grafts. Researchers have successfully restored some eye functions by extracting stem cells from human eyes, growing them in culture, and transplanting them into mice. Human trials are showing similar successes. Optimistic researchers hope that the technique could provide a cure for blindness within five years. Cells from human fat have proven to be true adult stem cells that look to be useful in regenerative medicine. Indeed, it appears that 62 percent of human fat cells “could be reprogrammed into turning into at least two other different cell

types,” according to Duke University researchers.

The thrust of the research now seems indisputable: While certainly not yet a sure thing, and noting that much work remains to be done in animal and controlled human studies, barring unforeseen problems adult-stem-cell and related therapies may be potent sources of new and efficacious medical treatments in the years to come. Just as significantly, these therapies are likely to be available far sooner than embryonic-stem-cell treatments, since adult and related therapies do not appear to cause tumors, would not be rejected, and do not have to be maintained indefinitely in vitro, because they would come from patients' own bodies.

As Colorado stem-cell activist Jim Kelly—a paraplegic who believes his best hope of walking again after an auto accident lies in adult-stem-cell treatments—told me, “We have to use our limited resources efficiently. Money spent on embryonic-stem-cell research and human cloning is money that cannot be spent on [investigating] adult stem cells.” If Kelly is right, increasing funding for embryonic-stem-cell research, especially if it comes at the expense of adult experiments, could actually delay the cures that so many suffering patients hope desperately to receive from developing cellular therapies.

**L**

<sup>1</sup> <http://content.nejm.org/content/vol350/issue13/index.shtml>.

<sup>2</sup> <http://www.sciencemag.org/content/vol302/issue5648/index.shtml>.

<sup>3</sup> <http://www.healthday.com>.

<sup>4</sup> <http://www.nature.com/cgi-taf/DynaPage.taf?file=nm/journal/v9/n5/index.html>.

[This article originally appeared on *National Review Online* (May 13, 2004 [www.nationalreview.com](http://www.nationalreview.com)) and here appears by kind permission of the author. Wesley J. Smith is a senior fellow at the Discovery Institute ([www.discovery.org](http://www.discovery.org)) and a special consultant to the Center for Bioethics and Culture ([www.thecbc.org](http://www.thecbc.org)). His next book, to be published in the fall, is *Consumer's Guide to a Brave New World* (<http://www.encounterbooks.com/books/cogu/cogu.html>). His web site (<http://www.wesleyjsmith.com/>) contains many links of interest and utility to *Lifeline* readers.]

(ASK, CONT'D FROM PAGE 3)

### **Do you encourage other attorneys to do pro bono work in the pro-life area of the law?**

Yes, with one caveat. It takes more than a desire to do it. It takes commitment and sacrifice. The cases have to be done right. You have to be willing to get the education and training that will allow you to defend or prosecute the case. You must treat it like any other case—like any paying case—and that can be a sacrifice.

**L**

[Mr. Rouse has been practicing law since 1978. His law firm focuses on commercial law, real estate and domestic relations plus some work on corporate law, wills and trusts for clients. He is experienced at general trial law as well as appeals at the state and federal court levels. Mr. Rouse has a law degree from the University of Oklahoma and a degree in geologic engineering from the Colorado School of Mines. He and his wife are the parents of three grown children and the owners of four dogs “who are still at home and show no sign of leaving.” He is an avid hiker and mountain climber.]

(CLONES CONT'D FROM PAGE 2)

Reagan] would have urged our nation to look to adult stem cell research—which has yielded many clinical successes—and away from the destruction of developing human lives, which has yielded none. Those who would trade on Ronald Reagan's legacy should first consider his own words.<sup>7</sup>

What were those words? “We cannot diminish the value of one category of human life—the unborn—without diminishing the value of all human life.” President Reagan wrote these words in the *Human Life Review* in 1983, in an essay titled “Abortion and the Conscience of a Nation.”<sup>8</sup>

Proponents of the stem cell initiative are dangling another carrot in front of the voters. To take some of the sting from the three billion dollar cost, they are claiming that the measure will benefit California's economy and the debt-ridden budget by creating jobs and finding cures that will result in tax revenues to the state. However, if cloning and embryonic stem cell research in fact showed any promise, private investors' money would be flowing into it freely. A May 28 article in the *Wall Street Journal* reported that, in the past 25 years, investors have poured about \$100 billion into biotechnology companies, despite the fact that not one has yet paid a regular dividend. While the occasional investment has paid off in a big way, the overall record of biotech companies is year after year of multibillion dollar losses. If, in spite of the eternal optimism of biotech investors, cloning and embryonic stem cell research remains underfunded, it can only be because investors recognize it as the “fairy tale” it is.

Defeating the initiative seems like an insurmountable task, especially in light of the “bumper sticker mentality” with which stem cell researchers like Mr. McKay have used to confuse the voters. The challenge is for all of us to work to defeat the initiative by educating others about its misleading, panacean content, rather than leaving the task of defeating it to others. Remember still more wisdom from President Reagan as he wrote about the problems he faced each day as Governor of California:

I had an uncontrollable urge to turn and look over my shoulder for someone I could pass the problem to.

Suddenly one day it came to me that I was looking in the wrong direction. I looked up instead of back. I'm still looking up. I couldn't face one day in this office if I didn't know I could ask God's help and it would be given.<sup>9</sup>

Let's look up and take the initiative down!

**L**

This article is available in its entirety (<http://www.lldf.org/cloning-initiative.htm>). Many people do not understand what is included (and at stake) in this initiative, on the ballot in November, 2004. Please circulate this link. The contents of the article may be reproduced.

[President Reagan's essay, “Abortion and the Conscience of the Nation” (*Human Life Review* [Spring 1983]) is very well worth reading or re-reading. It has been reproduced in its entirety on National Review Online (6/10/2004 [<http://www.nationalreview.com/document/reagan200406101030.asp>]).]

<sup>1</sup> *Washington Post*, June 10, 2004, Stem Cells An Unlikely Therapy for Alzheimer's, Rick Weiss, Staff Writer.

<sup>2</sup> California Stem Cell Research and Cures Act, hereafter *Initiative*, ([http://www.curesforcalifornia.com/site/PageServer?pagenam e=facts\\_initiative](http://www.curesforcalifornia.com/site/PageServer?pagenam e=facts_initiative)), Section 4. The full text of the initiative is available at [www.curesforcalifornia.com](http://www.curesforcalifornia.com).

<sup>3</sup> *Initiative*, Section 3.

<sup>4</sup> *Initiative*, Section 4, subsection 5.

<sup>5</sup> *Initiative*, Section 5.

<sup>6</sup> California Stem Cell Research and Cures Act Fact Sheet ([http://www.theCBC.org/pdfs/CBC\\_Fact\\_Sheet.pdf](http://www.theCBC.org/pdfs/CBC_Fact_Sheet.pdf) [Center for Bioethics and Culture]).

<sup>7</sup> *New York Times*, June 11, 2004, William P. Clark, Contributing writer, op-ed article.

<sup>8</sup> Quoting William P. Clark, id. For the full text of the op-ed article see <http://www.nytimes.com/2004/06/11/opinion/11CLAR.html?ex=1087961457&ei=1&en=4f878ca520e42e09>

<sup>9</sup> *Dear Americans: Letters from the Desk of Ronald Reagan*, (New York: Doubleday, 2003), p. 119.

**Shortcut to links: [www.lldf.org/links.htm](http://www.lldf.org/links.htm)**

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— Ronald Reagan

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**L**

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**MARK YOUR CALENDARS**

**Please mark your calendars for LLDF's 2004 Fall Banquet. Our guest speaker this year will be Kate Adamson, the survivor of a severe stroke in 1995 when she was just 33 years old. Ms. Adamson will be sharing her story with us, including her struggle to receive appropriate medical care.**

Ms. Adamson is the volunteer spokesperson for the American Stroke Association and the United Way. She is also the author of *Kate's Journey, Triumph Over Adversity*. To learn more about Kate Adamson you can visit her web site, [www.katesjourney.com](http://www.katesjourney.com).

**The date of the banquet is Saturday, November 6, 2004, the Plaza Waterfront Hotel at Jack London Square in Oakland, California. The reception will begin at 5:00 p.m. Dinner will be served at 6:30 p.m.**