Help me Stop the Violence!

(Distributed in Dave Leach's campaign for State Representative in Des Moines, Iowa in 2002)

I would like to celebrate the 30th anniversary of Roe v. Wade, next year, with your help, by ending the violence. All of it.

The destruction of property, the shootings of abortionists (half a dozen so far), the anthrax threats - and the American babies tortured to death before they were born (50 million so far). Let's stop it. All of it.

There is something we can do. There is a bill which the Iowa Legislature has the authority to pass, which would end not only the violence, but the desire for it - not a match being struck, or a shot fired - beginning in Iowa and spreading across America.

The bill is based on traditional legal principles which are neither novel, revolutionary, nor controversial, but well established in law. It would only compel obedience to laws already on the books, by clarifying what law and case law already provide. It would not challenge Roe v. Wade. In fact, it is based on a statement in Roe. *(Nor would it challenge Stenberg v. Carhart,*(99-830) 192 F.3d 1142) *the June 28, 2000 AD case which overturned the "partial birth abortion"bans of 30 states. That case only strengthens the approach here. See footnote 2.)*

The indirect effect of the bill would be that abortionists would not be able to call state and local police when nonviolent "rescuers"block their doors, but would only be able to call federal marshals. The probable result would be a little more door-blocking (probably less than the little bit Iowa saw 10 years ago), followed by one of the nuttiest jury trials in history, followed by legal appeals which would begin a chain reaction of judicial thinking, in fear of which abortionists would flee Iowa for more legally hospitable states, possibly even before the first door could be blocked. At a minimum, investment in the abortion industry would be put on hold across America the day the bill passed.

The legal principles involved have never been well explained by news reporters, so they have been understood only by a few lawyers, the 100,000 or so Christians who have been arrested for blocking doors and have raised the principles in court, and a few others. Juries have been prevented from learning about these principles, since judges discovered that when so informed, they rule against abortionists. These principles will have to be understood by the general public before the bill can pass. This will require a little of the public's time and understanding.

The 50 million tortured to death already deserve

TV Ad: One Minute version

(Note: Some will ask "why do you have a big long article, if you are able to put it all in one minute?"The difference is that in one minute, you can allege things, but you can't explain anything. When you allege things, then you alert interested people where they can go for more information, and maybe one or two actually will. The rest will just wait to see if there is a commercial from the other side, blasting this one, and without checking out those allegations either, will vote for the one whose unfounded allegations seem the most convincing, or the most noble, or the anchor is the best looking, or something. This plan will not succeed if the only exposure it gets is the TV ads, and no one reads the detailed plan. Nevertheless, the power of this particular TV commercial is that it will put virtually no pressure on my opponent to respond, since he already bills himself as prolife, but it will put enormous pressure on Banned Parenthood and on judges to respond! But how can they respond? What will they be able to say? Everything alleged here is true, and the more they try to say it isn't, the more people will be driven by curiosity to my website and TV show, and believe me,

your time and understanding. They are human beings, according to every single American legal authority which has taken a position on it. Every single one has said human life begins at conception. Many have added that therefore, killing unborn babies is murder. I didn't say religious authorites: I said American *legal* authorities. (See footnote 1)

Meet George Gardner, champlain for notorious Wichita late term abortionist George Tiller. The Rev. Gardner will baptize your baby after you arrange with Tiller for your baby to be born dead, acknowledging not only that Tiller's victims are human beings, but that they have souls. He will administer "blessings" to your baby if you choose to murder your baby in such a way as to leave the corpse too dismembered to find. The Rev. Gardner assures his flock that "Spiritually, abortion is acceptable in ten of the world's religions and in Christianity many denominations affirm and uphold the right of a woman to make the choice of abortion." Read about this compassionate service at www.drtiller.com/chap.html.

Not even Roe denied that the unborn are human, or that killing them is murder. They literally said they weren't competent to decide "when life begins". (See footnote 2. Did they really not know? Or does Matthew 21:23-27 explain their strange statement?) Not even Stenberg v. Carhart dared deny that the unborn are human, or that killing them is murder! Even the majority opinion acknowledges many people believe that, and that in fact, the "D&X"("partial birth", brain-sucking, skull-crushing method) is "gruesome"! And just as Roe v Wade said the justices were "unable"to determine "when life begins", likewise Stenberg v. Carhart described the determination of whether or not "life begins at conception and consequently that an abortion is akin to causing the death of an innocent child"as "extraordinarily difficult questions that...involve 'virtually irreconcilable points of view.'"

Unfortunately, the majority's admission of incompetence did not slow the judicial rush to intervene, with a flood of injunctions against nonviolent actions from praying to talking. When FACE (Freedom of

the details are on my side, not theirs!)

(Me in front of camera.)

DL: Help me pass an Iowa law that would stop abortion.

(News footage of the "Truth Truck" with its giant posters of aborted babies; video of a man standing with such a poster, from the HBO special "Soldiers in the Army of God")

DL: It's a CRIME to torture a baby to death, or to vote to allow it! Not...

(video of bombed out clinic)

DL:... to stop the torturer!

(Me, holding a law book; camera pans down to zoom in on the circled law, with the heading "704.10".)

RD: Iowa law says *any* action necessary to prevent serious injury *isn't a crime at all*.

(Video of breaking a car window of an unconscious accident victim, with flames erupting under the crumpled hood. Or some similar life-saving scene.)

RD: That's why if you have to break something to save someone, you're not a criminal, but a hero.

(Clinic door blocking footage.)

RD: And that's why clinic door blockers were found innocent when juries were told of this Defense.

(Fade to Stenberg v. Carhart gruesome description of D&E dismemberment.)

DL: Juries understood that torturing a baby to death is a serious injury; so if blocking a door can prevent it, and the law says any action that prevents it isn't a crime, blocking the door isn't a crime.

(Zoom from the heading of a state appellete decision, to the quote "how can abortion be a harm if it is legally cognizable?")

RD: When judges figured out what was happening, they stopped allowing juries to learn of this defense.

(Pan from page heading of Roe to the quote that if the doctors and preachers can't tell when life begins, how can judges? OR show the Klocker quote

Access to Clinic Entrances) was added to the judicial arsenal, the penalties for nonviolent door-blocking, with the potential to close an abortion center for an hour, were increased to nearly the penalty for violent building-burning with the potential to close an abortion center for several months. For a few willing to put babies' lives above every other consideration, the result was predictable: the violence (against abortionists) increased - the first abortionists were shot.

about "ordinary standards of reasonableness".)

RD: But case law says the weighing of serious injury should be treated as a fact, and juries are the judges of the facts.

(Me, holding my campaign newspaper; camera pans from my face to zoom on the abortion headline OR go to the Klocker quote again)

DL: Iowa law should agree with case law: *Juries* should decide the fact issue of whether abortion is a serious injury.

(Me, with contact information for my campaign)

DL: When this passes, I expect Planned Parenthood to flee Iowa before anyone will have a CHANCE to block their doors.

(Personal note: as I was completing this draft, at 2:53pm, July 3, 2002AD, I got a call from "Iowa Professional Firefighters" who were selling tickets to some game. I abruptly told him "I'm not interested in participating". He said "Oh, you don't want to help save a life, huh?")

I don't want the violence either. But I find it hard to condemn people for trying to save lives. After Shelley Shannon burned just one abortion center in Oregon, statewide abortions procured by people who resided in Southern Oregon dropped from over 1,000 the year before to about 10 the year after, according to Oregon's Statistical Reporting data. I don't want any more buildings burned. But how can I tell Shelley that building was worth more than those 1,000 lives?

If you don't like violence any better than I do, let's change our laws so that nonviolence is once again treated better by our laws than violence. Let's change our laws so decent people have a more effective way to save hundreds of lives, than by violence.

The very Rule of Law in America is at stake. Violence against abortionists "breaks the law". But when law protects a crime as great as any in human history, the very existence of the law is a crime. When the law itself is a violent crime, so that "obeying the law"and "doing what's right"are not clearly the same thing, Rule of Law is at risk. When law glorifies murder,

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life becomes cheap. Love of neighbor drowns in crime and drugs. Roe is such a crime.

But one sentence in it is the seed of its own end.

(Actually it is only in popular perception that violence against abortionists "breaks the law". The Necessity Defense, Iowa 704.10, says any action which prevents "serious injury"is not a crime. An Iowa City jury, 12 years ago, once informed of the Necessity Defense, had no trouble determining that abortion is a "serious injury". Actually Iowa's version of the Necessity Defense does not apply to an action which intentionally injures another, but Florida's version, the state in which two abortionists and one bodyguard were shot, does.)

What would make Abortionists Flee Iowa?

What would make abortionists flee Iowa, perhaps before the first door is blocked?

Needless to say, if individuals could block abortionists' doors without fear of arrest, volunteers could be found to keep it permanently closed, without violence, until they are locked from inside for want of business. But why might they flee Iowa before the first door is blocked? Because even one arrest would very likely result in a federal precedent that would legalize door-blocking across America. Whereas if they can avoid a federal precedent that would apply to all states, surely there will be a few states which would choose to remain safe for abortion for many years.

The indirect effect of this bill would be to take local and state law enforcement out of the picture when abortionists call for help. FACE (Freedom of Access to Clinic Entrances) would remain, authorizing U.S. Marshals to make arrests. However, the new law would be accompanied by a Joint Resolution. Joint Resolutions have no legal force, so normally they are mere statements about how lawmakers *feel*. But *this* Joint Resolution would, among other things, serve notice to the U.S. Attorney General that should he order U.S. Marshals to make arrests, (when prosecutors want to get involved, they tell the public they have no choice but to enforce the law; but they actually exercise great "discretion", sometimes to the point of discrimination), the Iowa Attorney General would be likely to assist the defendants in raising, in their federal FACE trials, the same legal principles that the Iowa legislature clarified in its laws.

"Why do you think THIS will work, when nothing ELSE has?" "If courts ignore laws and constitutions, why do you think they will let THIS stop them?"**(A detailed scenario of how this plan would succeed)**

The Media War

The Nuttiest Trial of American History?

Why Appeals would finally Succeed

Will Supreme Court Require Local Police Protection of Abortion?

Never Give Up on the Power of Truth

Footnote 1: Every American Legal Authority which has taken a position on When Life Begins, has said it begins at conception.

Footnote 2: Not even Roe v. Wade denies that life begins at conception. *The Hole in Roe through which Violence can Drain*

Footnote 3: Judges Stopped Giving "Compulsion"to Juries to stop losing.

Footnote 4: The "comparison of harms" between the rescue action and the threatened "serious injury" are a FACT issue, for JURIES.

"COMPARISON OF HARMS"NOT FOR JUDGE ALONE TO DETERMINE.

Footnote 5: God's Warning about Old Sayings

Footnote 6: How Courts Weasel Out of Giving Necessity Defense to Juries

Footnote 7: U.S. Attorney General John Ashcroft

The only thing this bill would do directly would be to authorize juries to weigh the "comparison of harms"involved in applying the "Compulsion Defense". (Called "The Necessity Defense"in other states.) This may sound like technical legal nonsense, but abortionists understand the issue perfectly. It simply means juries should compare the "serious injury"of abortion with the miniscule "harm"of blocking a door. Iowa's Compulsion Defense, Iowa 704.10, already says *no act is a public offense, when it is necessary to prevent serious injury.*

The only Iowa jury allowed to learn of this defense, in Iowa City in about 1990, found the door-blockers innocent. (I was one of the defendants found innocent.) Juries *across America* likewise acquit, when told of this defense. That's why there is no legal issue which abortionists are more determined to win. They are so afraid of a loss on this technical issue turning into a precedent, that if they cannot persuade a judge to keep this issue from the ears of the jury, they will drop the charges, according to a Law Review article. (See footnote 3.) If they thought they would lose regularly on this "technical"issue, they would have no choice but to leave the state.

The Bill & the Resolution

Here is the bill that would do it. The underlined paragraph would be added to Iowa law; the preceding paragraph is already the law. The first sentence of the added language, which is in **boldface,** is the heart of what would stop abortion. (The remainder may not even be necessary, but is provided to prevent objections which some courts may raise. The reason for the remainder is explained later.)

"Iowa 704.10 No act, other than an act by which one intentionally or recklessly causes physical injury to another, is a public offense if the person so acting is compelled to do so by another's threat or menace of serious injury, provided that the person reasonably believes that such injury is imminent and can be averted only by the person doing such act.

"**For purposes of this section, "serious injury" means that which is, *in fact,* a serious injury, which it is the jury's duty to determine. "Imminence" is not necessarily measured from the time of the rescue to the time of the expected serious injury, but from the time of the rescue to the closing of the window of opportunity to rescue. "Imminent" means less than an hour from the time of the rescue to the time there will be no further opportunity to rescue, but less than a day from the time of the rescue to the time of the expected serious injury. When abortion is the "serious injury" alleged, its "threat or menace" will not justify destruction of physical property."**

Accompanying this law would be a Joint Resolution stating:

"Whereas the Iowa Legislature has enacted a clarification of its Compulsion Defense, Iowa 704.10, ("No act...is a public offense if the person so acting is compelled to do so by another's threat or menace of serious injury....") which other states more commonly call "the Necessity Defense"; and

"Whereas Iowa's clarification defines the "menace of serious injury"(whose prevention justifies breaking a law if necessary) as a fact issue to be weighed by juries, thus preventing, in Iowa, the removal of this issue from the hands of juries in abortion cases; and

"Whereas the Iowa Legislature anticipates juries will follow the tendency of past juries to acquit defendants accused of nonviolently blocking the doors of abortion centers; and

"Whereas the Iowa legislature has framed the clarification so that no violence will be protected on either side, neither from the door blockers nor against the door blockers; and

"Whereas the anticipated indirect effect of this law will be the removal of state and local police from efforts to remove nonviolent abortion center door blockers; and

"Whereas only Federal law, specifically FACE, or Freedom of Access to Clinic Entrances, 18 U.S.C. ß 248, would remain concerned with unblocking abortion center doors; and

"Whereas, although the stated scope of FACE is access to clinic entrances, the legislative motivation behind it was to stop the violence, which Iowa's clarification promises to do more successfully than FACE; and

"Whereas the violence exists today only because of the Federal legislative intrusion of the U.S. Supreme Court, which ruled, in Roe v. Wade 410 U.S. 113, that Iowa law enforcement could no longer protect its innocent unborn children, even though the Court specifically refused to deny they are "human life"(410 U.S. 113, 159), which was Iowa's reason for protecting them;

"Therefore, be it resolved: that

"The Iowa Legislature calls upon Congress to quickly amend FACE so that it no longer punishes nonviolence with almost the same vigor it punishes violence, or better yet, so that it no

longer punishes nonviolence at all; and

"The Iowa Legislature calls upon Congress to approve an act defining all human beings as 'persons' with 14th Amendment Rights; and

"The Iowa Legislature calls upon the United States Attorney General to allow Iowa's experiment in stopping the violence to work, and serves notice that should Federal Marshals be ordered to arrest nonviolent abortion center trespassers, they may not count on help from Iowa law enforcement, and Iowa will offer legal assistance to defendants to help them raise, in ensuing Federal trials, the points about the Compulsion, or Necessity Defense, which the Iowa Legislature has made in clarifying Iowa 704.10; and

"The Iowa Legislature will call upon Congress to consider impeaching any Federal Judge who, despite these clear concerns, continues to deny defendants a bona fide Right to Trial by Jury, by removing from the jury's knowledge the only contested issue of the case, which is a fact issue, being the determination of whether killing an unborn baby is in fact a 'serious injury'."

What the phrases of the bill do:

"Serious injury...IN FACT...the jury's duty"

Understanding the Compulsion Defense

Does the End, of preventing the Serious Injury of abortion, justify the Means of blocking the abortionist's door?

Depending on your prejudices, you can quote the old saying "The ends doesn't justify the means."Or if you don't like how that applies, you can quote the other old saying, almost as popular, which says the exact opposite: "The ends justifies the means."(See Footnote 5, about Proverbs 26:7, 9, for God's warning about Old Sayings.)

Or you can turn to a precise formula for determining *when* the ends justifies the means, and when it doesn't: Iowa's Compulsion Defense, 704.10.

Although the Compulsion Defense isn't something you hear discussed every day, it's relied upon every day. Law would be absurd without it. Every time you speed to take your bleeding child to the hospital, or your 9 months' pregnant wife who has lost her water; every time you trespass on your neighbor's property to get a mean dog away from a toddler; every time you break into a car to rescue the injured driver as flames lick the underside of the hood; it is Iowa's Compulsion Defense that declares your violation of a relatively unimportant law, in order to prevent serious injury, "not a public offense".

Without the defense, there is no restraint upon ultra-legalism. There would be "no excuse"for breaking into a car just because it's owner would otherwise die, for example. You would still go to jail for burglary, if you were mindlessly judged by "the letter of the law".

The entry of the defense upon world legal history's stage may well have been Jesus' answer to the Pharisees when they accused him of violating the Sabbath, by healing. Violating the Sabbath was a capital crime, by the way. People were stoned to death for it, and the Pharisees who were accusing Jesus were entering formal charges against Him. But Jesus pointed out that if any of their own oxen fell into a well on the Sabbath, they would pull it out, and "it is lawful to do good on the Sabbath". (Mark 3:1-6, Luke 14:5-6, Luke 13:14-17. In other words, to generalize Jesus' legal argument, the legitimate purpose of any law is to protect good and restrain evil. See also Romans 13:1-7)

Almost always, the Compulsion Defense protects heroes before they are even arrested. Heroes normally don't have to argue the defense in court because police intuitively understand the absurdity of arresting a hero - even police who have never heard of Iowa 704.10. But some heroes aren't so lucky: for example, those who save the lives of the unborn.

To illustrate how abortionists have censored the defense in court, let's use a fictitious example that doesn't involve abortion.

You see a child wander into a dangerous construction area. The little girl is headed towards an area where the footing, at the edge of a deep hole, is much less sure than would appear to a child. The construction noise is deafening, so you don't bother to shout. You race. In your way are a

group of construction workers leisurely walking, not seeing the girl. You urgently push them aside on your way to save the girl. You reach her just in time to catch her as she begins to slide towards her death.

You are in court, being tried for assault. One of the workers you pushed fell and got bruised. Your attorney raises the Compulsion Defense. He argues that the little girl was threatened with serious injury, it could be averted only by you doing what you did, and you certainly did not intentionally hurt anyone else, nor were your actions reckless under the circumstances.

But the bruised construction worker is a real jerk. He thinks the girl wasn't in that much danger. His witness is an OSHA inspection that had ruled the area safe just a week earlier. Of course, OSHA inspections determine how safe an area is for construction workers, not for wandering little girls.

Nevertheless, your attorney is before the judge, arguing about what standard should judge how much danger the girl was in. The other attorney wants the judge to consider the danger which the OSHA inspector AS A MATTER OF LAW had certified, which was no danger at all. If the judge buys that line, he will not even allow the jury to hear your witnesses to the girl's slide towards certain death. He will rule, *as a matter of law,* that your co-worker's bruises are worse than the imaginary threat to the girl, and you will go to jail for assault.

Your attorney wants the judge to consider the danger which the girl IN FACT was in (of imminent death), compared with the harm to your co-worker (bruises). Your attorney wants ACTUAL danger, not some legal ruling distantly related to the immediate situation, to govern whether emergency measures may be taken to rescue a human being. How would YOU decide?

I hope this choice seems absurd to you. It is *actual* threatened harm that ought to justify emergency rescue actions, not some legal ruling made by someone who wasn't even there, and who didn't even have this situation in mind when he made the ruling.

You say "This whole illustration is absurd! No one would be that dense!"

Then explain how our nation has become that dense when the victim is an unborn child? What if we added, to the above illustration, that the little girl was black, or Mexican, or a Jew. Then can you see how just the right mix of bigots in court could actually raise such legal excuses without being ashamed of themselves? Have you sensed that same sort of bigotry towards unborn babies, and also towards the elderly?

All courts agree that the threatened harm that justifies emergency rescue actions ought to be *actual* harm rather than *legally recognized* harm. Case law (rulings of supreme courts) already says the threatened "serious injury" means *actual* harm, or that harm which IN FACT is a real harm (See footnote 4) and juries, not judges, are supposed to judge the facts.

So then why, when "rescuers"sit in front of abortion doors, do judges routinely take it upon themselves, rather than allow the jury, to compare the harm caused (trespassing) with the harm prevented (the killing of unborn babies), as if the harm prevented may be decided "as a matter of law"? The "law"which decides the harm of abortion, they say, is Roe v. Wade, even though Roe clearly did not contemplate the situation facing "rescuers", since it specifically and literally declared itself incompetent to determine "when life begins", or whether killing life before birth should count as a harm! (See footnote 2 for Roe's admitted incompetence. See Footnote 6 for how state supreme courts justify keeping the necessity defense from the knowledge of juries.)

Judges rule on the "comparison of harms"without the jury's knowledge, even though every ruling *defining* the "comparison of harms"treats it as a fact issue for juries. Thus the clarification of Iowa 704.10 proposed here would not ask courts to do anything they do not already agree they should do. But it would pressure them to actually do it.

"No law against saving lives is enforceable"

The necessity defense is another way of saying no law against rescuing people from serious injury is enforceable.

Ordinarily the necessity defense shields "Good Samaritans"from prosecution under laws which were *never meant* to protect the causing of serious injury. However, the *language* of the necessity defense applies even to laws which *were* meant to protect the causing of serious injury.

The bottom line is a fundamental contradiction in law. Roe v. Wade WAS meant to protect (from states) the causing of serious injury, and the necessity defense WAS meant to shield *individuals* from prosecution under laws like that.

Roe used 14th Amendment authority to prevent *states* from outlawing the "serious injury"of abortion, but the 14th Amendment is not binding upon *individual.* The Necessity Defense, as written down in state laws, only applies to *individuals,* and never to *states*. Roe violates the *spirit* of the Necessity Defense by preventing an entire state from saving lives. A ruling that *individuals* may not save lives violates the *letter* of the law.

Our system of justice provides for the *repeal* of unjust laws. But to rule contrary to a law, finding individuals guilty whom the law declares innocent, while leaving the law in place, is to "break the law".

This contradiction cannot be resolved by some future court simply overturning the Necessity Defense. That would quickly put all police and emergency workers in jail -- anyone who barges on to private property to respond to a scream -- leaving no one to arrest prolifers.

When before, in American history, has any law had, for its *purpose,* the infliction of "serious injury", not to mention death, upon the innocent? There has never before been any legal *need* to clarify, in law or case law, whether the Necessity Defense should shield heroes from prosecution not only under unintentionally injurious laws, but also under intentionally injurious laws.

Well, actually, slavery laws had, for their *purpose*, the infliction of serious injury upon the innocent. But there was less need to clarify to what the necessity defense might apply, in those days when judges didn't censor *any* defense.

(From the Magna Charta to about 1900, the accused could defend themselves freely, without censorship. The role of juries to judge law as well as fact was established by the Magna Charta and dramatically reaffirmed by the William Penn trial in 1670, and by our Founding fathers who regarded juries as the fourth branch of government, to serve as a check on the potential abuses of the other three. Just before 1900, the Supreme Court decided that although of course juries have the *power* to judge by any criteria they please, they need not be *told they have the right.* The practice now is to tell juries they *don't* have the right to judge the applicability of the law to the situation. Juries are not even informed of the text of the law!)

Consequently we have the defense of John Brown, made by Henry David Thoreau, which eloquently describes the necessity defense.

(True, the jury convicted John Brown. But before you give up on the defense, consider that (1) John Brown used *lethal* force to save others; (2) the jurors faced the political reality -- and personal threat -- that if they saved John Brown, the South would likely begin attacking them that month; and (3) who knows what role Thoreau's defense played in the fact that 4 years later, "John Brown's Body (lies a mouldering in the grave)" was the marching song of the Union armies, and two years after that when "Battle Hymn of the Republic"was written, it was written to the "John Brown's Body"melody!)

From Thoreau's defense of John Brown, where he raised the Necessity Defense:

"Any man knows when he is justified, and all the wits in the world cannot enlighten him on that point. The murderer always knows that he is justly punished; but when a government takes the life of a man without the consent of his conscience, it is an audacious government, and is taking a step towards its own dissolution. Is it not possible that an individual may be right and a government wrong? **Are laws to be enforced simply because they were made?** or declared by any number of men to be good, if they are not good? **Is there any necessity for a man's being a tool to perform a deed of which his better nature disapproves?** Is it the intention of law-makers that good men shall be hung ever? **Are judges to interpret the law according to the letter, and not the spirit?** What right have you to enter into a compact with yourself that you will do thus or so, against the light within you? Is it for you to make up your mind -- to form any resolution whatever -- and not accept the convictions that are forced upon you, and which ever pass your understanding? ....**in cases of the highest importance,** [ie, where lives are at stake] **it is of no consequence whether a man breaks a human law or not.** ... If they [in today's situation, the Supreme Court]

were the interpreters of the everlasting laws [God's laws] which rightfully bind man, that would be another thing. [But the Court is] A counterfeiting law-factory, standing half in a slave land and half in a free! What kind of laws for free men can you expect from that?"

(Copies of the complete defense may be found on http://www.toptags.com/aama/books/book2.htm, or on www.saltshaker.us/prolife.html)

So the question for our generation is: shall we suddenly tolerate, for the first time since the great Civil War, a limitation of the Necessity Defense to only those cases where the serious injury prevented was *not* the intention of the lawmakers?

Is America in the mood to tolerate a future Supreme Court ruling that says **"individuals may not act to prevent serious injury, when serious injury is the *purpose* of one of our rulings**"? No less than such a ruling could kill this initiative, so far as I can determine. So if we can trust Americans that far, that they would not tolerate such a ruling, then perhaps a dictator is still not possible in America, and perhaps this initiative will work.

What a blow such a ruling would be to the very purpose of the Supreme Court, and indeed of our entire federal government, as their purpose is described in the document which legitimized our federal government: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure the rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security."

Wouldn't it be convenient if the Supreme Court could simply outlaw the necessity defense? Wouldn't it be nice if they could say openly **"when we order someone murdered, it is a crime to save him**"? Unfortunately for tyrants, the necessity defense is more basic to sound law than the Constitution itself. Hardly anyone in the general public has even heard of the name "the necessity defense", but after a simple explanation ordinary people recognize it as obviously the everyday operation of legitimate law. Repeal it, and obedience to the law can be a crime. Everyone understands that it cannot be a crime to break down your neighbor's door, when it is to save your neighbor from a fire. I conclude that the general public is able to understand that any attempt by the Supreme Court to attack the necessity defense would be an attack on the rule of law itself.

Several State Supreme Courts have asked "if it's legal, how can it be a harm?"As if the necessity defense may only apply when the harm itself is against the law. But such an amendment to the Necessity Defense amends it out of existence. If the "serious injury"must be identified, not by whether it is an *actual* injury but *by whether it violates some law,* then what does the defense *defend* beyond mindless obedience to the letter of the law?

This is what Wharton, a legal pioneer, was talking about when he said "The distinction between necessity and self-defense consists principally in the fact that while self-defense excuses the repulse of a wrong, necessity justifies the invasion of a right. It is therefore essential to self-defense that it should be a defense against a present unlawful attack, while necessity may be maintained through destroying conditions that are lawful."("Criminal Law", Section 126, 128.)

The only legitimate purpose of law is to defend good and restrain evil. A law whose express purpose is to do evil is not in the tradition of free men, but of slaves under tyrants. To enforce laws even in situations where they cause unnecessary serious injury and death, is the ultimate violation of law.

As I said before, the everyday application of the Necessity Defense is to shield heroes from laws which were never meant to cause the serious injury which the heroes prevented. But its language applies equally to tyrannical laws whose intent WAS serious injury. Its moral power is equally strong in either situation. This does not mean we should accuse Roe v. Wade of having, for its express purpose, the murder of innocent human beings. We can take the Roe and Stenberg rulings at face value when the majority writes that it *doesn't know* whether it is institutionalizing murder. Therefore the FACT that innocents are slain is unintentional. So when "rescuers"save babies from the butchers created by Roe and Stenberg, their protection under the necessity defense is in the everyday tradition of protection from laws which were never intended to hurt anybody.

Blackstone was a legal pioneer whose legal theory was the foundation of our Constitution. He was admired by our Founding Fathers for explaining that "a law which violates the laws of God is no law at all."They understood this is not a formula for anarchy, but the essence of the Rule of Law itself. (This principle was alluded to in the following quote by George Mason who said this principle is "in our laws".) They had rebelled against the unrestrained rule of King George. They knew that scrupulous obedience to unaccountable authority does not lead to order, but to absolute, arbitrary despotism. They understood that the only secure basis of freedom is the commitment in the hearts of citizens to live by every good law, to discern situations where obedience to a law is contrary to its good purpose, and to take a firm, unapologetic stand against any law which is injurious either in its application or in its original intention.

For example, George Mason, in 1771, argued against slavery before the General Court of Virginia, saying, "All acts of legislature apparently contrary to natural right and justice are, in our laws, and must in the nature of things, be considered void. The laws of nature are the laws of God, whose authority can be superseded by no power on earth. A legislature must not obstruct our obedience to Him from Whose punishments they cannot protect us. All human constitutions which contradict His laws, we are, in conscience, bound to DISobey."

Samuel Adams, our second president, likewise said "[W]e have no government armed with power capable of contending with human passions unbridled by morality and religion. . . Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."(Source: John Adams, The Works of John Adams, Second President of the United States, Charles Francis Adams, editor. (Boston: Little, Brown, and Co. 1854), Vol. IX, p. 229, October 11, 1798.)

In other words, Americans who still have a conscience must not think it is more righteous to obey a wicked law, than their own conscience, when the two conflict!

It is unfortunate enough when the restraint upon obeying conscience is want of courage because of the penalties that will be suffered until the wicked (or ignorant) are restrained, without rationalizing that it is more *righteous* to join the wicked!

Following conscience is hardly a practical loophole for those *without* conscience to violate good laws and claim immunity for following conscience! They know better than to try, because they can foresee prosecution continuing, even for doing good.

The conscience of the public cannot become so depraved that following conscience will lead America farther down than obedience to laws no matter how wicked. Even if lawmakers and courts could be trusted to be more righteous than the people as a whole, righteous leaders have limited power to restrain a depraved people. Mindless legalism cannot therefore be trusted to keep a nation righteous, but rather it is an open invitation to despotism.

The *only* safeguard for freedom from both tyranny, and anarchy, is faith in God in the people. The less faith in the people, the more crime. The more crime, the more power the people are willing to give their government. The more power government has to restrain crime, the more capability it has to control the remaining righteous. The more capability it has to control citizens, the more it will. The only way to keep government too small to dominate all the citizens, is to keep crime rare enough to require only a small government to restrain it. The only way to keep crime rare, is to increase Christian faith among the people.

Why "imminent"should be clarified in our law

I have heard the theory that "immanent" means "within a matter of seconds". Which would be appropriate in the case of, say, stopping a sniper, but not in the case of, say, clearing a building where there is a bomb threat. I haven't seen this theory spelled out in abortion cases, but its existence lurking in the back alleys of judicial brains might explain why prolifers in court explain the "imminence" of abortion, in terms of it being scheduled for that very hour, only to see rulings that "imminence" was not proved, as if the judges somehow weren't present during testimony.

For example, the Iowa Supreme Court, in Planned Parenthood v. Maki, 478 NW 2d 637, 699 (Iowa 1991), said "Maki contends that her acts do not constitute a trespass but instead are justified based on the defense of necessity. We apply the necessity defense only in emergency situations where the threatened harm is immediate and the threatened disaster imminent; the individual must be stripped of all options available to avoid both evils."Notice the Court doesn't challenge Maki's assertion that abortion is a "disaster", a "harm", or "evil", but talks as if a murder scheduled an hour away isn't "imminent"enough to justify stopping it!

There is a word that describes someone who demands to-the-letter enforcement of a law even knowing it will cause great harm: "jerk".

That's why this word should be clarified to mean what common sense already requires: that it is the closing of the window of opportunity to rescue which must be "imminent". And yet just to assure any judge that the time between the closing of the window of opportunity, and the expected "serious injury", won't stretch out in some minds, and in some cases, into a matter of weeks or months, this clarification limits it to a day.

This limitation, to a day, is a compromise. In real life much more time might pass between the closing of the window of opportunity to rescue, and the expected serious injury. For example, one might physically restrain children from playing in a cave for fear they might get lost and die, even though serious injury should not occur for several days provided they have a little food and there is water in the cave.

So far as I can determine, this distinction, between the time of the threatened Serious Injury and the time of the closing of the window of opportunity for preventing it, would not challenge any existing law or case law. I do not think there exists any definition of "imminent" which speaks to the distinction one way or the other.

Destruction of Physical Property Limited

"...When abortion is the "serious injury" alleged, its "threat or menace" will not justify destruction of physical property."

This, too, is a compromise, since existing law permits destruction of physical property, if required to avert serious injury, in every case, not excluding abortion. For example, you can break down a door to save someone from a fire. You can grab your neighbor's quilt from their clothesline to put out a grass fire by their house.

This compromise is offered because (1) news reporters have made it pretty clear they are not about to tolerate burning down abortion buildings, no matter how many lives that saves; (2) with the passage of this law, thousands of lives may be saved without destroying so much as a single door; and (3) another legal principle governing emergency situations, though not spelled out in this law, is "the least amount of force necessary". Burning buildings may have been the least amount of force necessary to stop the abortions scheduled for the next day, until now. But with this law, people will be able to merely sit in front of the doors and accomplish even more.

There is something pro-abortionists must give up for this compromise, too: making it clear that Iowa 704.10 will now apply to "operation rescue"type cases. Without this sentence, the strict language of 704.10 would still definitely apply to abortion cases, but the more inescapable you can make an important law, the better. But pro-abortionists could never be given the prohibition against destruction of property, WITHOUT making clear the prohibition applies only to abortion cases, because then it would be illegal to break down a man's door to save him from fire!

No Conflict with Roe

This clarification does not challenge the authority of Roe v. Wade. It circumvents it, but does not challenge a single statement made in the case.

Roe said *states* could no longer protect babies from abortion. (It focused on the 14th

amendment, which applies only to states.) Roe never said a word about whether *individuals* might still protect babies from abortion.

It had plenty of opportunity. The issue came before the court whether an unborn baby is a human being. This is central to determining whether killing it constitutes "serious injury". But Roe specifically said *it did not know.* Significantly, it said it had no COMPETENCE to know! If the doctors and preachers can't even agree, said Roe, how are WE supposed to figure it out? They wouldn't have said this had they regarded it a law issue, where they are the supreme experts of the universe, way higher than mere lowly doctors and preachers! Their statement shows they regarded the humanity of the unborn as an issue for *fact finders* to wrestle.

Just as significantly, Roe said it was irrelevant whether they *knew* whether the unborn being targeted for extinction were "human beings". Their focus was on whether they were "persons" within the meaning of the 14th amendment, and the 14th amendment governs ONLY states. Obviously Roe did NOT expect its ruling to apply to actions on the part of individuals. Obviously Roe did NOT foresee a national movement to raise the Necessity Defense to protect individuals trying to save the babies consigned to destruction by Roe. Roe was clearly not crafted to address whether individuals might protect the unborn under the legal wings of the Compulsion Defense.

Roe created a Great Contradiction in law, where states were prohibited from protecting unborn babies, without refuting the national consensus of state lawmakers (who had outlawed abortion for over a century) that abortions are, in fact, mass murder.

In early abortion cases, prolifers raised the Necessity Defense, and won. According to a Cincinnati Law Review article, that is the ONLY reason judges then began deciding the elements of the necessity defense themselves, rather than allowing juries to decide the facts. Not because of some legal justification they discovered, but because they didn't want to lose. (See footnote 3)

Keeping Compulsion issues from the jury is still not legal. But more significantly, burying the defense makes law irrational. Laws require the defense to keep from sinking into mindless legalism. Laws can't foresee every future situation requiring an exception, and include it in the text of the law. Laws can't say "Breaking the window of a parked police car is a serious misdemeanor, unless you need the flashlight on the seat to save a child who has just fallen down a manhole in the dark." Lawmakers rely on human beings to interpret their laws with reason.

Jesus pioneered the Necessity Defense. When accused for the "crime" of healing on the Sabbath, he said "which of you, having an ox falling into a ditch on the Sabbath, will not immediately pull it out?" To hold to the letter of the law, even during an emergency which no human lawmaker could anticipate, in which the lawmaker himself if present would agree the law should be set aside, makes law absurd. Ultralegalism creates a battle between the letter of the law and the spirit of the law (or, "original intent"). It turns laws into instruments of destruction which the lawmakers never intended.

That is the Great Contradiction we face today: between the letter of the law, and the spirit of the law. Between Legalism, and the Purpose of Law. The Purpose of Roe v. Wade was not to slay the innocent, but to preserve Constitutional rights. The fact that its effect is to slay the innocent was unintentional; it only happened because the justices, they told us, lacked the competence to determine whether unborn babies are human beings. They even said if it should be established that, in fact, babies are humans, then they would expect their ruling to be overturned. The ball is now in our court. Shall we give the job of determining whether human babies are humans, to the experts in evaluating facts: the juries?

I explain these principles to assure you that not only would this clarification of Iowa 704.10 pass legal muster and survive court challenges, and not only would it allow individuals to save lives which God says ought to be saved, but even what it does to Compulsion, Iowa's version of the Necessity Defense, is morally right, and re-establishes the original purpose of the law.

I want to assure you that this proposal is not some "loophole" that allows us to get what we want by trampling the normal operations of law. It is the discovery of a clear passage still remaining to where sound legal principles ought to take us, which miraculously has escaped the destructive debris blocking most of our road left over from Roe v. Wade. (For more along these lines, see Footnote 6.)

"But would this proposed clarification cause violence at the clinic doors, between prolifers and abortionists?"

This was the fear expressed by the Missouri Supreme Court, when the court was using its paranoia to justify breaking (or, uh, when a judge breaks the law, should we call it "redefining"?) the case law on the Compulsion Defense.

Here is the court's paranoid scenario:

State v. O'Brien, 784 S.W.2d 187 (Mo.App 1989) "A resort to the defense of necessity in this context would lead to incongruous results: *[more accurately,, it would expose Roe's incongruous logic]*

"If abortion trespassers are given license to disrupt the activities of abortion clinics and refuse to desist upon being requested to vacate the premises...the continuing battle between those who abhor abortion and those who believe it is a private moral decision could well be joined in physical confrontations into which the police and the courts would be rendered unable to intervene... *[No it wouldn't, for reasons I will explain shortly]* [T]he enduring clashes of beliefs in this fractious dispute must be resolved not by physical confrontations at the front line, but rather through the legislative and judicial framework created for the very purpose of undertaking the sometimes formidable tasks of choosing between extreme positions and competing values*. [This is an empty promise. The problem is that the judiciary WON'T resolve the contradictions in the case law arising out of Roe.]*

"In short, if necessity *[Missouri's name for "Compulsion"]* were a valid defense at a time when abortion is a constitutionally protected right, the result would be an endless physical and, perhaps, violent impasse."

There are only two errors in this last sentence. First, necessity *is* a valid and appropriate defense as long as the humanity of the unborn is an uncontested legal fact! Second, the proposed clarification of Iowa's Compulsion law would create no violence. The existing law already prohibits injury to others in the course of rescuing, and our proposed addition adds that property may not be destroyed. What would cause violence? Those blocking doors would have no reason to be violent; they would achieve their goals by just sitting down and reading a book, or perhaps bringing their laptops and conducting their everyday business. If the abortionists became violent, police would arrest them. The abortion staff would have no Compulsion Defense to help them if they attack the door blockers, because first, the existing law prohibits injuring others, and second, the comparison of harms would go the wrong way for them. They would be stuck with trying to allege they caused the lesser harm of injuring people, in order to prevent the greater harm of trespassing? Wouldn't work. Not that they wouldn't try, but police would be free to stop it.

"Why do you think THIS will work, when nothing ELSE has?"

"If courts ignore laws and constitutions, why do you think they will let THIS stop them?"

Or, "what you are trying to do is commendable, and it's nice YOU'RE trying to do something, but I'm not going to rearrange my busy schedule to promote it or even study it, because those Supreme Clowns are just going to kick sand in your face like they do everybody else."

Legitimate question. If I'm going to ask your help, it isn't enough to merely present an approach which is legally irrefutable. The Supreme Court has overturned plenty of other legally unimpeachable laws. My explanation of why I expect this initiative to work, when other plans have failed, must take into account the Supreme Court majority's fanatical enough devotion to abortion to ignore law and the Constitution.

For example, I need to explain why I think these arguments will work, after roughly 100,000 "Operation Rescue"-type cases raised almost the same arguments, only to see judges get away with ignoring them by censoring them: by keeping them from the

knowledge of juries, and of the public.

I need to explain why the Supreme Court would be afraid to overturn one puny state law whose indirect effect would stop *all* abortions, after the Supreme Court majority in July of 2000 overturned twenty state laws which merely banned the "partial birth"abortion.

First let me explain what it is about this legal approach that is stronger than anything that has been tried before. Second let me give you my scenario of the media battle from the initial publication of this article through the passage of the law, the "rescue", the jury trial, and the appeal. Then let me describe what may become the nuttiest jury trial in all of American history. After that I want to explain why the "necessity defense"-related arguments will finally work at the appellate level, after all these years of failure, if presented according to this initiative.

What Makes This Legal Approach Stronger Than Any Previous Approach

Although no legal approach is safe in the teeth of a court determined to violate laws and constitutions, this approach is very strong. But let's make sure the question is clear:

You say, "What is so earth-shattering about your legal arguments? You make a big deal about judges breaking the law on some obscure issue nobody ever heard of. Is that any more 'illegal' than the Roe v. Wade decision was in the first place? Roe was called unconstitutional by no less a critic than 4 U.S. Supreme Court justices! And the issue in Roe was as clear as the life of an innocent unborn baby! Who are you, to come along 29 years later, to expect abortion to fall over and die because YOU identify some pipsqueak judicial violation of law? 'Bubble zones' around the Murder Mills in which prayer is outlawed, and crushing skulls of half-born babies after you suck out their brains -- now THOSE are issues anyone can understand! Yet can you count how many care? Do not Christian prolife leaders regard all those court decisions as 'legal', requiring the obedience of every God-fearing Christian? What makes you think some little legal detail nobody ever heard of will suddenly raise Americans to their feet?"

In the first place, the fact that a legal issue is obscure is not necessarily a barrier when you are dealing with the public. Even though it is much more technical than merely a picture of dismembered babies, it's very technicality may assure the public, because the more technical and obscure and hard to understand is the explanation, the more it SOUNDS like a solid legal argument to them.

But the only thing about this issue which is obscure is the words used by courts to describe it. The issue itself is a part of everyday life. The popular Hollywood image of an out-of-control legalist who enforces obedience to the letter of the law even when great harm results, contrary to the spirit (purpose) of the law, is the image of a jerk crying out to be circumvented.

Another strong feature of this approach is that it points out the judicial attack on the Right to Trial by Jury. Americans are able to look at the slaughter of innocents and tell themselves, "this is tragic, but there is nothing we can do about it. It's the Law."

But Americans cannot look at the slaughter of the Right to Trial by Jury and tell themselves, "It's the law."

As average Americans learn that in a "rescue"trial, the jury is not told the only contested issue of the trial, but the judge takes that issue for himself, denying the accused his right to trial by jury, I trust Americans to say "that's not the law! Starting obeying the law, or we may start learning about impeachment!"As Americans further learn that the issue kept from the jury is a fact issue ("is killing that baby a 'serious injury'?") and the jury is the "trier of fact", I trust Americans to become alarmed.

I know it seems illogical, to expect Americans to become more alarmed about an attack on our Right to Trial by Jury, than by a deadly attack on 50 million unborn American babies. But the fact is Americans are blinded by legalism. Not understanding the Necessity Defense, but knowing Christians are supposed to be "law abiding", Americans will overlook the tragic, wicked effects of a law as long as they believe the law is "legal", or "legitimate". But "right to trial by jury"is a concept so familiar to Americans, such a defining right distinguishing our system of justice with tyrannies,

that a threat to it is understood by ALL Americans as illegal.

All the arguments we raise to attack previous abortion rulings fail to attack our general assumption that "our legal system"is just, if not ordained by God, but in those rare instances where it is wicked, we must still obey, and patiently "work through the system", because it is "the system"which we must revere, even more than human life itself. But the news that Right to Trial by Jury has already been stripped away from 100,000 prolifers has the power to alert Americans that "the system"requires more determined restoration than our patience. It may require impeachments.

The attack on juries is only one aspect of it. The central issue is even stronger. The Necessity Defense attacks ultra-legalism at its throat.

"Does any judge have authority to enact a ruling whose PURPOSE is murder?"Even without understanding the Necessity Defense, most Americans will surely shout "NO! A ruling that unintentionally causes great harm, we can understand, and patiently work through the system. But to deliberately cause great harm through a ruling, so that there will never be any will to correct the error? NO! That is against the law! Murder always has been, always will be, no matter what you rule, against the law!"

Explain to Americans that their intuitive answer is not just their imposition of a "higher law"upon "the law of the land", but that it is supported by the letter of The Necessity Defense, one of the foundations of "the law of the land", and I trust Americans to understand that Roe has no authority, and that law enforcers who illegally perpetuate the murders need to be removed.

I trust Americans, once alerted to the attacks on the Right to Trial by Jury, and on the very purpose of law which is to protect good and restrain evil, to be more alarmed now when they call court rulings "unconstitutional"yet still swear allegiance to them. It may be a contradiction, to say on the one hand that a ruling is unconstitutional, but on the other hand that we must submit to its authority over us. What authority can a ruling have which violates the very Constitution which gives all rulings their authority?

It's sort of the way Catholics regard official statements by their Pope. All Catholics regard them as "infallible", even though many Catholics, even many priests and Bishops, don't agree with them, and won't obey them! But were the Pope to cancel the Eucharist, he would go too far! Catholics would stop even calling his judgments "infallible"! They would say he is violating God's law! Not that there is any danger of the Pope making so obvious an error, but the Supreme Court has. I trust the time will be soon that Americans will acknowledge its rulings are not all "the law of the land".

This legal approach is stronger than previous approaches, not only because the legal points attack the heart of the legalism that grips the hearts of Americans, but because the Necessity Defense cannot even be discussed in news articles without attacking ultra-legalism. The implied philosophical premise of the Necessity Defense is that there is a higher PURPOSE for law, than its mere legalistic enforcement regardless of the situation. That purpose is to protect good, and restrain evil. That's why the operation of the Necessity Defense is that when any situation renders legalistic enforcement of any law evil, contrary to its own purpose, the legalistic enforcement of that law is automatically suspended.

This legal approach is stronger than previous approaches, not only because it cannot be discussed without undermining the grip of Legalism, but also because it is not some "higher philosophy"like the Bible, with no clear jurisdiction, in the minds of Americans, over the interpretation of American Law. Most Americans are not ready to look a Supreme Court Justice in the eye and tell him, on the strength of God's laws, their own reasoning, or the reasoning of Founding Fathers who died 200 years ago, that they are breaking the law.

The authority for this attack is not a "higher law"but "the law of the land". Furthermore, it is not some philosophical discussion of "the spirit of the law of the land", but it is a to-the-letter application of a fundamental, used-every-day ordinary law. Nothing can attack ultra-legalism so squarely as a law whose to-the-letter application makes ultra-legalism illegal.

What makes this legal approach stronger than previous approaches is that the law at its center cannot be simply repealed. Every police officer and emergency worker would have to go to jail, were they no longer protected by the Necessity Defense for barging into private homes at

the sound of screams, or taking any creative action to save life, the need for which was not previously foreseen by lawmakers and expressly permitted by law.

But couldn't courts repeal the amendment to the Necessity Defense which we propose? Couldn't they simply rule that the danger of "serious injury"should be judged by whether it is "legally recognized"as a serious injury, rather than by whether it is IN FACT an ACTUAL serious injury? No, they couldn't. The police would still have to arrest each other for any creative action to save life not previously foreseen by lawmakers and expressly permitted by law. To prohibit saving people from actual "serious injury", and allow people to be saved only from injuries recognized by law, would be to repeal the Necessity Defense. A reinvented "Necessity Defense"that exempts heroes from prosecution only when the letter of the law already exempts heroes from prosecution, adds no protection to that afforded by mindless, slavish, ultra-legalistic enforcement of the letter of the law.

The fact is that the Necessity Defense has ALWAYS been interpreted by police and courts as triggered by an ACTUAL threat of injury, not by injury already acknowledged by the letter of the law. The only exception being, of course, when the injury is abortion. Of course, to apply the law to some people and not to others is to violate the law. All our proposal does is apply, to the unborn, the same interpretation the courts and police already give everybody else. The courts and police can hardly say "we'll continue protecting heroes who save everybody else, and continue changing the meaning of the law's words when some hero tries to save a baby."That's enough hypocrisy to alert most Americans. Nothing will happen if I call judges on their hypocrisy. But were the Iowa Legislature to call them on their hypocrisy, Iowa judges, who come crying to the Legislature the first week of every session for more money, would just about have to start being consistent. And since it would be impossible for them to start prosecuting ordinary heroes by the interpretations by which they prosecute baby-saving heroes, they would just about have to start treating baby-saving heroes by the same respect they give every other hero.

Another thing making this approach stronger than previous approaches is the authority we can cite as a double check on our understanding that the Necessity Defense is triggered by ACTUAL injury, rather than by "legally recognized"injuries: the rulings of courts themselves! They disobey their own rulings when they take from juries this evaluation! So far as I can determine, appellate rulings on this point are unanimous! No court has said otherwise!

No court has EVER said that if you see someone in danger of serious injury, and the only way you can save him is by violating the letter of some minor law such as trespassing, or breaking a door, or speeding, etc., that if you want to stay out of jail you first have to call your lawyer to make sure the "injury"which your neighbor is about to suffer is defined by law as "serious"! And no court is ever GOING to say that!

Furthermore, NO court has ever DENIED that abortion is IN FACT a serious injury!

NO court has said the jury is incompetent to judge the FACT of whether abortion is a serious injury!

NO court has ever said it does not matter whether the "serious harm"being weighed was IN FACT a "serious harm"!

Here's what the appellate courts say: "How can it be legally [re]cognizable as a harm, if it is legally protected?"Interesting question for a talk show. But irrelevant in court, where legal recognition of "harm"has never had anything to do with application of the Necessity Defense, whose to-the-letter application protects heroes whether or not the "serious injury" they prevented was the goal of the law they violated. By what reasoning do Courts throw out centuries of precedent, and suddenly suggest legal recognition of harm is the key to whether to apply the Necessity Defense? By no reasoning. To rule contrary to centuries of precedent, (laws) without giving a justification, is to break the law. That is what "breaking the law"*means.* If there is a justification for not obeying the law, then that is not "breaking the law". That is what the Necessity Defense means.

This legal approach is stronger than previous approaches which rely on the Bible for authority that killing unborn babies is a crime, whether their brains are sucked out, their arms and legs wrenched off, or they are merely burned to death in acid. Because this approach explains to Americans steeped in ultra-legalism by what "law of the land"the superior jurisdiction of God's Laws

is acknowledged. The Necessity Defense explains that the purpose of all law is to protect good and prevent evil, which is the same message as Romans 13:1-7. This creates a legal need to define what is IN FACT good and evil, a need which Scripture can fulfill.

This legal approach is more educational than previous approaches because an explanation of the issue explains how judges have no authority to prevent heroes from saving unborn babies, AS A MATTER OF LAW.

The Media War

The Media War begins with this publication. This first article must be longer than articles about this plan which will follow in other media, because this first article must not only describe the bill itself, but explain how its passage is possible, and worth getting behind. Thus I expect this first hurdle to be the highest.

Will voters in House District 62 take the time to read, think about, and support this plan? Will voters express their support (for this and other less dramatic initiatives) by electing me? This would be remarkable because I am a Republican in one of the most heavily registered, for Democrats, district in Iowa. Yet the very difficulty of a Republican winning here is the reason why, if the race "heats up"and I begin to catch up, this initiative will begin to be reported even before the election.

If you elect me, you will be making a statement of support for this initiative, strong enough to impress politicians across Iowa that the initiative can attract strong Democratic as well as Republican support. That's why my election would generate a serious chance of passage of this initiative next year, on the 30th anniversary of Roe v. Wade.

(If I am not elected, it would be up to others to get behind it. Perhaps this initiative can come to the attention of enough others through my campaign, even if I lose. However, lawmakers who understand the issue will be rare, and if passage is not accompanied by mass education, it could fail in the courts and become a national precedent closing off the opportunity for all states.)

The second stage of the Media War will begin as the legislature begins to consider this initiative. The *usual* Public Relations concern is not that people understand the details of a measure, but only that people support a measure enough to encourage their lawmakers to pass it. But more will be required this time. Average people must not only support it, but be educated about its specifics, so that when it is later reviewed by the courts, judges will know they cannot fool the people with the details again.

Fortunately there are features about this initiative which will naturally push towards this result.

It was easy, all those "Operation Rescue"years, for judges to "censor"the most irrefutable legal arguments, by simply not publishing them. Especially at the appellate level, appeals judges control what the public knows about legal arguments, by putting their own spin on them in their rulings, or just leaving them out entirely. And of course if an appellate court wants to completely censor a particular case, all they have to do is refuse to hear the case. Published *opinions* are easily available on the internet, while copies of the *briefs*are only available if you are willing to go to the courthouse and pay 25 cents per page for them, after you decide which, of the mountain of briefs on technical matters, is worth reading. No wonder news reporters only bother reading the published opinions, if that much! (Besides, the briefs are only of value if you are interested in evaluating whether the opinions are rational or legal. If all you want to know is who the police are now going to arrest, the briefs are of no interest.)

That is how they got away with ignoring irrefutable legal arguments in some 100,000 cases where prolifers, arrested mostly for blocking doors during the Operation Rescue days, tried to inform jurors that according to the Necessity Defense, they were innocent. Helping the judges, in their mission to confuse, was the fact that the legal arguments swirling around the Necessity Defense were tangental to the case, or at least could easily be spun that way. Everybody knew the Christians were sitting in front of the abortion doors. Though it may have been spiritually laudable, it was obviously "against the law"in popular thinking. Attempts to explain that it was not, by invoking

little known legal principles, seemed like some great reach for an adequate loophole.

This initiative is not vulnerable to being trashed by any judge in this manner. This plan elevates the Necessity Defense arguments from a tangental side issue, to the *only* issue. This plan is not a law stating "it is now legal for individuals to prevent abortion by the use of nonviolent force."Surely such a law could be easily, and without controversy, overturned.

Instead, this initiative is a law stating "'serious injury' means that which is, *in fact, a serious* injury, which it is the jury's duty to determine."The public will read that statement, and ask "who would argue with that? But what does this have to do with abortion?"News articles that fail to explain the connection will not satisfy public curiosity. Reporters will *have* to explain the connection, and there is no way to explain the connection without explaining the necessity defense so clearly that everyone will understand it.

Many news reporters will surely do their best to spin the story so this phrase is barely reported and the public is only told the law would "make it legal for individuals to stop abortion by force."But the contrast between such a spin, and the actual sentence in the law, is so stark that they will not be able to hide it for long. Besides that pressure on pro-death reporters to tell the truth, there will be pressure from their secretly prolife peers who will explain the issue so that it is understandable. The competitive nature of the news business will pressure even the pro-death reporters to keep up.

Abortion rulings have already undermined the right to trial by jury, by removing from juries' knowledge the only contested issues of abortion cases. But in order to undo this initiative, the Supreme Court would have to acknowledge publicly it is doing that! The manner in which courts have censored the arguments of 100,000 individuals will not work when it is a state legislature, generating publicity about a controversial method of correcting the hypocrisy courtroom failure!

I think the public is capable of understanding that the determination of "serious injury"is a fact question, and that fact questions are for juries; and if you take the fact questions away from the jury, too, along with all the law questions, you take away the jury's authority to decide ANYTHING. I think even Supreme Court justices would be afraid to tell the public *plainly* that they no longer have a right to trial by jury, even if they generously limit loss of that right to abortion trials!

Further complicating media efforts to confuse the public about the issues, would be the Joint Resolution which would clearly explain them! (Particularly, the first two paragraphs.) In fact, when any hot issue can be so conveniently explained in so short a document, reporters are tempted to reprint the complete text of it. I would feel sorry for proabortion reporters, because they would hate to reprint anything that might make the issue clear, but would love to reprint a succinct official document to show they are on top of the story and covering it in detail.

Of course reporters would likewise not be able to resist quoting the Iowa Attorney General, who would take the lead in defending "rescuers"by these principles. Nebraska Attorney General Stenberg had this advantage, too, of course, and even though his stand against partial birth abortion had very wide popular support, he was nevertheless squashed by the courts. But the people of Nebraska were not well enough educated to see through the Supreme Court's plausible sounding concern that a partial birth abortion ban should have an unrestricted "health exception". People on prolife mailing lists understood the "health exception"easily became an excuse for the most ruthless abortionist to justify the most barbaric murder technique by citing the "health"concern of, say, morning sickness. But it was possible for Nebraska to enact the partial birth ban without educating the general public about the loopholes so loved by the judges.

It had seemed enough that a majority of legislators understood it, and that the general public understood merely that we were talking about no longer killing 9 month babies days short of natural birth. But it was not enough. The judges were able to fool the public in the details.

But by the time the Iowa Attorney General springs into action on the legal approach proposed here, Iowans will have become "fool"proof.

Besides that, the Iowa Attorney General would also act as a champion of the Right to Trial by Jury, the importance of which no Iowan needs to be convinced; and of the integrity of the Necessity Defense, the concept of which any human being understands and supports, though it "goes without saying"to the degree it is seldom discussed, so that the legal name for it is unfamiliar.

By the way, should Democrat Iowa Attorney General Tom Miller survive the 2002 election which will precede the Iowa Legislature's next opportunity to consider this initiative, our hope of a serious defense by him may not be dead just because he is a Democrat. When he ran for governor against Don Avenson in the Democratic primary, (Avenson won in the primary but lost in the general election and became a lobbyist), Miller's campaign billed him as prolife.

Assisting the legislature in its public relations effort will be the fact that supportive lawmakers needn't even necessarily take a position on abortion at all. Legislators will be able to very honestly say they are taking a stand for the integrity of the necessity defense, and for the integrity of the right to trial by jury. In truth, the legal inconsistencies created by Roe have undermined the integrity of many laws. In truth, "Operation Rescue"rulings are a serious attack on the right to trial by jury, by taking the ONLY contested issue of "Operation Rescue"trials, which is a fact issue, out of the hands of juries, leaving juries to judge neither the laws nor the contested facts of such cases. In truth, "Operation Rescue"rulings are a direct attack on the Necessity Defense, by prosecuting heroes for saving lives -- actions which are not crimes according to the letter of Iowa 704.10..

The Nuttiest Trial of American History?

Now the law has passed, a few "rescuers"have blocked the doors at an abortion center, U.S. Marshals have arrested them on FACE (Freedom of Access to Clinic Entrances) charges, and a federal jury trial has been set in either Iowa City or Des Moines.

How would such a trial go?

Keep in mind that the primary strategy of the prosecution will be to keep the jury in the dark about the Necessity Defense. Historically, as soon as juries understand the Necessity Defense, they agree killing a baby is a "serious injury", so saving a baby is not a public offense. So if jurors, in the cases we anticipate under this plan, learn of the defense, abortion will lose.

Think of it as a chess game, where the ONLY thing you care about is losing your king. You don't care who else dies.

In that spirit, the ONLY thing abortionists want, in court, is to keep the jury in the dark about the necessity defense. They don't care how many babies die. They don't care how many Christians get arrested. They don't care how much of their budget must be squandered on the most Machiavellian attorneys in town. But if the jury finds out about the Necessity Defense, business shuts down. Checkmate.

The publicity necessarily surrounding passage of the proposed clarification to 704.10 would make it virtually impossible for the Federal Court in Iowa City or Des Moines to find a jury which did *not* understand the Compulsion Defense.

Can you imagine the jury Voir Dire (pre-trial questioning, to identify and eliminate jurors prejudiced against either side):

"Did you know that the Compulsion Defense acquits someone who prevents a serious injury, such as abortion, by a relatively insignificant infraction of law, such as trespassing?"

"No, but I do now."

"Your honor, I move that this witness be struck [removed from the jury panel] for cause [because of his prejudice against the case]."

How would you do it? And since the voir dire occurs in the presence of the jurors you decide to keep, anything you say would educate your eventual jury.

This was not a problem for abortionists in previous "Operation Rescue"trials, because the necessity defense was so little reported that it didn't need to be asked about. It could be assumed jurors would never have heard of it. But the publicity surrounding passage of 704.10 would produce such understanding of the necessity defense that its mere legislative clarification would have produced public anticipation of nonviolent closing of abortion centers. The whole population of Iowa would likely understand most of the legal issues of the Necessity Defense, and how it applies to abortion, before the trial even begins. It would need to be asked about! Just one juror who understands the necessity defense would spell c-h-e-c-k-m-a-t-e!

With this background in mind, let's try to imagine your experience if you are called to serve on the poor jury.

First of all, as you are going in to the courthouse to receive your jury assignment, there would be several people lining up to hand you a "FIJA"flier. You would look at that thing and ask yourself, "what in tarnation is THAT?"You would open it and read how the only reason we have Freedom of Religion today, and a right to Trial by Jury, is because in 1670, Quaker preacher William Penn violated the king's law against every Christian denomination except the king's own Church of England. When he was arrested and tried, Penn pleaded with the jurors to judge, not the fact that Penn violated a law, but the fact the law itself was a violation of the Rule of Law among free men. The FIJA flier might also mention that at least Penn was not restrained by the judge from explaining his defense to the jury, but judges today don't allow juries to hear a word of any defense the judge doesn't like. You will read that "FIJA"stands for "Fully Informed Jury Amendment", which is a legislative effort in several states (including Iowa, where it once passed the House Judiciary committee) to amend state constitutions so that jurors are informed they have the legal right and duty (as well as ability) to weigh the law itself, and the application of the law to the situation, as well as the facts of the case. The initiative would also protect the right of defendants to explain legal questions to the jury.

Your next experience will be going into the courtroom and having the judge ask "Did any of you receive one of these FIJA fliers?"Some of you will say "yes", so the judge will require you all to affirm that the flier contains nothing but lies; the judge alone is the judge of the law, and that the jury is to judge only the facts. I don't remember what words I've heard judges use, but it's similar in mood to swearing allegiance to the judge's opinion of the flier, or else being ejected from the jury.

It may occur to you at that point to wonder why, if the FIJA fliers are that insidious, people are allowed to freely pass them out on the courthouse steps without fear of arrest! The reason, which you will never learn from the judge, is that if a judge dared to have them arrested, their trials would require one of the fliers to be submitted as evidence. The jury would then be required to be shown those fliers! There is the danger that the jurors might actually read them, perceive their merit, acquit those accused of passing them out, and create a public relations nightmare for the judges. Besides that, the trial would generate publicity which would educate potential future jurors, undermining judicial power.

Your next experience would be a week of "voir dire"in which the attorneys grill a thousand prospective jurors until they manage to find 12 who insist they have never heard any news stories about the "necessity defense"(which will make them curious about what they missed), besides swearing they don't believe the FIJA flier.

Your next experience will be the opening arguments of the prosecutor. Maybe half an hour.

The prosecutor will, as usual, want to spin the facts of the case as being whether or not the defendants were sitting in front of Planned Barrenhood's doors. The prosecutor will tell you those are the only facts you need to judge. He will promise to prove to you, beyond a reasonable doubt, that those lawbreaking "rescuers"were, indeed, sitting in front of those doors, and when you are convinced they were, it will be your duty to find them guilty.

Then it will be the defendant's turn for an opening argument. He may surprise the court by admitting freely that *of course, they were sitting in front of the doors,* so if the prosecutor is going to go to a lot of trouble just to prove *that,* he won't wind up with much worth bragging about. The defendant may say "Not only will I admit that's where we sat, but I will stipulate it. In other words, I will formally admit to the court that I was sitting in front of the doors, which will relieve the prosecutor of any need to bother to prove it. No sense wasting your time listening to some lawyer prove something everybody already knows. Besides, I'm afraid I'm going to have to appeal, and at $3 per double spaced page, I want the transcript to be short."

At that, the prosecutor might call for a "directed verdict", meaning a request for the judge to rule on the defendant's guilt or innocence right then and there, without allowing the trial to proceed a word further. He might say "Since The Court [officialese for "judge"] has already ruled on the law, ruling that sitting in front of the doors is a violation of the law, and since now the defendant has admitted to the facts which your ruling has defined constitute a violation, I call for a Directed Verdict."

The defendant would have the right to respond before the Judge rules. He might say "I have

pled innocent, and I have demanded my constitutional right to a trial by jury. If you proceed with a directed verdict, deciding all the issues yourself, not allowing the jury to hear my case, will you still tell the appeals judges that you have granted me a trial by jury?"

It will be a tough one, but the judge will probably let the trial proceed. Then the defendant will ask if he might continue with the remaining 25 of his 30 allotted minutes for his opening argument. He will then take about another minute to say "Although I have taken the actions which the prosecutor assumes make me a lawbreaker, I have pled innocent, and I consider myself innocent, for the noblest and most fundamental of legal reasons. So far I have not been given permission to explain, to you, those reasons. If you believe in God, I would appreciate your prayers, that before this case is over I will be given permission to explain them to you."Then he would sit down.

Then the prosecutor would call his first witness, a policeman who made some of the arrests. "Did you see the defendant sitting in front of the doors?"

Defendant: "Objection. Relevance. I have already stipulated I was there, so there is no need to prove what is already stipulated. What can be the purpose of going in this direction?"

You might happen to glance at the judge just at that moment, and spy little wisps of smoke coming out of his ears. But after an awkward silence, while the judge and prosecutor are wondering what is left to fill up enough trial time so that it will at least *seem* like a trial, the prosecutor might say "nothing further, your honor."

That is the official way to announce that you have no more witnesses to call. That would leave it the defense's turn to call his witnesses to establish facts.

Next the defendant would stand and say "Nothing further, judge."

Next on the agenda would be the closing arguments. The prosecutor would say the defendant sat in front of the doors, as he so freely admitted, so there is little for the jury to do but find him guilty. He would give a long, impassioned, eloquent speech about how laws ought to be obeyed. The "rule of law"ought to be respected. It can never be right to break the law. Into what kind of anarchy will America fall, if people think they have the right to decide for themselves whether or not a law ought to be obeyed?

Then a thought might occur to the prosecutor, and he might pull out his Bible one more time and tell the jury, "this is a very important case, and so I'm sure you will sympathize with my request of you, just one more time, to put your hand on this Bible and swear that you have never heard of the necessity defense, and that you condemn all that pappyclap about juries having the right, assumed by America's Founding Fathers, to judge the law."

Then it will be the defendant's turn for a closing argument. "I wonder if you have been curious about the fact that I agree with all the facts alleged by the prosecutor, and yet I am pleading innocent. Are you curious what defense exists in my mind, to explain why I consider myself innocent? Wouldn't you like me to tell you what that defense is? I, myself, would love to be able to tell you. True, the facts about which you have been told, are agreed to by both the prosecutor and myself. But there are other facts, about which you will not be told until after you have made your decision, about which the prosecutor and I do *not* agree. So the question before you is: if the jury is only allowed to learn the facts about which both parties agree, while the *contested* facts are tried by someone other than a jury, can you still say the trial is by jury? The corollary question for you is: if you were on trial, would you still feel you had your right to trial by jury, if you were not allowed to tell the jury your defense? And finally, can you be convinced beyond a reasonable doubt that I am guilty, when you know that you have not been told the only contested facts of the case?"Then he would sit down.

Then the prosecutor, who always has the first and last word just to make it fair, will have you swear on his Bible again, just to be sure. (Just as a warning, if you are in that situation: given the likely mood of the prosecutor at that point, don't even THINK about asking him what version it is.)

Then the judge will start talking.

He will give you his "instructions". "I am the judge of the law, and I have ruled that anyone who sits in front of the killing doors commits a crime. You are the judges of the facts, so ordinarily you would get to determine whether the defendants sat in front of the doors. But since the

defendants already admit it, the determination is made for you. There isn't anything in this case for you to judge. All you have to do is find them guilty."

The reader might think, "this doesn't look good for abortion. Where are abortionists going to find jurors that stupid? This isn't California. Jurors here are better educated. It looks as if abortionists may lose."

You might be right. But there is a down side to winning. If the defendant wins, the victory would be limited to Iowa. (Until other state legislatures get around to enacting similar laws.) Only by losing could the precedents bubble through the judiciary to free babies all across America.

So let's speculate how a lower court "defeat"would go.

Why Appeals would finally Succeed

Why would "necessity defense"-related arguments finally work, after all these years, if presented according to this initiative?

First in the mix would be the prestige of the Iowa Attorney General. His arguments might not be better than arguments presented to appeals courts in thousands of cases already, but they would be more likely read by the judges. (Judge Glenn Pille, in my case, ruled against letting me present the necessity defense to the jury, after telling me he had given my pretrial briefs on the subject -- whose contents are scattered through the following footnotes -- "a cursory reading".)

Not that state Attorney Generals have never before represented prolifers and failed. In fact, the current U.S. Attorney General, John Ashcroft, experienced some losses both as Missouri Attorney General (1976-1985) and Missouri Governor (1985-1993) in his legal battles against abortion. But his wins were bigger than his losses! (See Footnote 7.)

I don't think any attorney general has ever helped a rescuer present his Necessity Defense to a jury, however. Certainly no attorney general has ever done so with the assistance of a freshly passed state law clarifying that the necessity defense is a comparison of facts which should be heard by the jury!

Because the state Attorney General is involved, and because there is a major challenge to a federal law by a state legislature, the case would most likely be heard by the federal appeals court. (Appeals in past "rescue"cases were seldom heard.)

Attorney Generals with strong arguments have been stomped before. The way they got away with trashing Nebraska's partial birth ban was by invoking a plausible-sounding concern: a "health exception"to "protect"women. The general public understands the *result* of the decision: that the torturing to death of very late term babies has judicial blessing. But the passage of the law never required educating the public about the technical details of the legal arguments. So when the Supreme Court published its decision, with its plausible sounding concerns concerning which the people as a whole were unequipped to critique, the media war was lost. The respect of the Supremes remained more or less intact.

Iowa's Attorney General, pursuing this plan, would be in a stronger position.

Fantasy Arguments Before Appeals Courts

Introduction to these arguments: *the following exchange is portrayed as a verbal back-and-forth verbal exchange, like on a talk show. I realize that isn't allowed in federal appeals. In this section I'm simply summarizing some of the issues that might be raised through pre-trial briefs, in combination with the timed oral arguments in which verbal exchange is not between the parties, but between each party and the judges. You will also hear lawyers give each other website addresses to look up laws. I realize lawyers don't do that, but I'm half trying to present a realistic scenario, and half trying to explain the issues to non-lawyer readers. You will also read, here, more biting, overt sarcasm than you are likely to hear in court, but hey, this is MY fantasy. You will also find the spelling "persecutor". I know the "legally recognized" spelling is "prosecutor", but in*

abortion cases heretofore, "persecutor"is the spelling that resonates with the facts.

The Attorney General (AG) might begin, "I stand here astonished that the prosecution could so blatantly disregard Iowa law requiring that the Necessity Defense be weighed by the jury. Haven't the headlines, and the very existence of this case, and our arguments in the lower court, served sufficient notice upon the prosecution of the existence of Iowa's amended law? I cannot comprehend a prosecutor lifting himself so high above the law!"

The prosecutor might respond, "This is a federal case. Federal law governs federal cases. Iowa laws don't apply."

AG: "No federal rule or law defines the Necessity Defense. I looked it up. If the U.S. Code (USC) defined it, it would surely be in Title 18, Crimes and Criminal Procedure. I read the whole thing and I'm here to tell you, they forgot to put it in. Here, here's the website so you can search the USC for yourself: http://uscode.house.gov/usc.htm. In the absence of any definition of the Necessity Defense in federal law, I would think federal judges and prosecutors ought to respect Iowa's definition, in an Iowa case with Iowa defendants and facts, where the definition of the Necessity defense is the only contested issue of the whole trial!

Persecutor: "The federal definition of the Necessity Defense may not exist in the USC directly, but it is in the Annotated USC. (In the Annotated USC, each paragraph of actual law is followed by sentence summaries of cases that cited that law and became a precedent for how to apply that law in a particular situation.) And you aren't going to like this, but I gotta tell you, the Federal Case Law (opinions of courts) on the Necessity Defense, especially with regard to abortion, says the Necessity Defense doesn't apply when the harm you're trying to prevent is legal."

AG: "I know this will surprise you, but I've actually read those rulings. And here's what strikes me about them.

"First, court rulings are interpretations of laws. When a law changes, the old precedents, which had their authority from the old version of the law, no longer have any authority, and must give way to new precedents based on the new version.

"Second, the old precedents did not deliberately, overtly disregard the definitions of the Necessity Defense in state law. They ruled on details which were ambiguous in state laws. It is now being proposed that this Court deliberately, overtly disregard the ONLY law in its jurisdiction which defines the details upon which this case hinges. Would that not leave this Court somewhat lawless?

"Third, never did any federal judge ever overturn any state law defining the Necessity Defense. Nor has any federal judge ever suggested that his ruling is in conflict with any state law which has yet to be overturned!

"Fourth, federal case law prior to abortion cases agrees with Iowa's amended Necessity Defense, in saying the 'harms' weighed by the necessity defense are fact issues, for fact finders. (See Footnote 6 for more details.) Never has any court ruled that the 'harms' weighed by the necessity defense are NOT fact issues, for fact finders! Not even in the recent abortion cases, where courts have asked how a harm can be legally recognizable, if it is legal? Not even in THOSE cases have judges gone so far as to say that whether or not a 'serious injury' exists has nothing to do with facts!"

Persecutor: "Several state supreme courts have asked, 'how can abortion be [re]cognizable as a 'harm', when it is legal?, and after they asked that, they ruled that the lower courts were correct to keep the issue of the harmfulness of abortion away from the Fact Finders (the jury). NOT ONE appellate court has ruled otherwise. And now you're trying to tell this court that NO appellate court has ruled that the 'harm' of abortion is a question of law, rather than fact?"

AG: "Thank you for getting that right. Courts have only INSINUATED the harm of abortion is a legal issue, by asking 'how can abortion be [re]cognizable as a 'harm', when it is legal?' They could not clearly say it, because then their absurdity would be apparent to everyone. What could they say? 'we rule today that it is irrelevant, to a murder investigator, whether or not a human being was IN FACT killed,. Investigators are hereby ordered to concentrate on whether a human being was 'killed' as 'recognized by law'? When courts ask 'how can abortion be [re]cognizable as a

'harm', when it is legal?' the question that begs is 'what does that have to do with a harm which has been established as a fact, and which case law says must be weighed as a fact? Are you, the judges of only the law where there is a jury, going to announce that abortion does not, in FACT, harm anybody? Or are you going to now announce that this FACT issue should not be tried by the Triers of Fact (another name for juries)? Will you please stop ruling by insinuation, and rule plainly?'

"But they can't. Here's what an Appellate Court would have to say to address Iowa's concern: 'We rule today that we are going to stop letting juries judge the facts of the case; instead, we judges are going to decide the facts, along with the law, and just let the jury watch. But no one need worry; we're only going to do this in abortion cases. The rest of the time, we'll go ahead and let defendants have their right to trial by jury.'

"OR they could rule 'It is now the law that abortion does not, if fact, harm human beings.' If they do that, I wish while they're at it they would rule that summer does not, in fact, get too hot. It would sure help my air conditioning bill.

Persecutor: "I'm sorry the case law is not clear enough for you, but the fact is the Necessity Defense doesn't apply when a harm is legal. That's the law."

AG: "Even if it were, despite all the reasons I have given why it is not: let's say, for the sake of argument, that not just in case law, but in the USC itself, it said as plain as day, 'the Necessity Defense does not justify preventing an actual harm which is legal' . Or to state it more clearly, 'a hero may no longer save a human being from serious injury, unless the injury is legally recognized as serious.' Or suppose, even that appellate rulings have been that clear. In that hypothetical situation, here would be my argument:

"To apply the Necessity Defense only when the harm prevented is illegal is to repeal the defense in most of the situations it is needed. It is to say that there is no longer a defense for breaking down your neighbor's door to save him from a fire. Save a neighbor, go to jail. There is no longer a defense for breaking open a car door to pull out a crash victim as flames lick the underside of the hood. Were you in that car, and saw someone running over to save you, you would have to warn them away lest they be arrested for vandalism. There is no longer a Federal defense for protecting a human being from ACTUAL serious injury, unless the injury is not only actual and serious, but also legally recognized.

"(Last I checked, there are laws against setting fires, but there are no laws against fires, hurricanes, tornadoes, drought, lightning, or other Acts of God. Not that there lacks any judicial sentiment for arresting God; maybe the resistance comes from police unions, whose members would have to make the arrest.)

"To repeal the Necessity Defense as it applies to harms which are legal is to say there is no longer a defense for a policeman or fireman who barges on to private property to respond to a scream. They must all go to jail, leaving no one available to arrest prolifers. National Guard troops, Red Cross workers, and U.S. Marshals who respond to emergencies during natural disasters, tramping all over private property and invading people's privacy, all need to be slammed in jail. No law protects them from the laws which necessity presses them to violate.

"It has become clear that the Federal version of the Necessity Defense is not to be confused with the states' version. Although unfortunately it bears the same name, its substance is obviously entirely different.

"Therefore in the situation before us, when the actual serious harm of abortion has been prevented by selfless heroes, Iowa's Compulsion Defense, 704.10, protects them, and there is simply no federal statute which applies to the situation one way or the other. The fact that a federal defense does not apply to a situation cannot be construed to prevent a state defense from applying to a situation. Such a construction would be like saying Iowa cannot recognize Self Defense, because federal law prohibits burning flags. The two issues are completely unrelated, from the time the federal Necessity Defense was changed so it applies to almost no real life situation.

"You see, you cannot simply define the Necessity Defense as not applying to legal harms, without redefining the words 'Necessity Defense' to mean almost the opposite of what it means in every state law. Once the federal meaning of the phrase is unrelated to the states' meaning of the

phrase, federal judges can no longer expect their rulings on their limited defense to be applied to the entirely unrelated defense codified by states, just because they have the same name.

"Therefore, in the absence of any federal law covering emergency exemptions from laws in order to prevent ACTUAL (as opposed to 'legally recognized') serious injury, and in view of the fact that federal officers rely every day on some sort of legally undefined 'Necessity Defense' as traditionally defined by states, Federal Marshals in Iowa should acknwledge the authority of Iowa law to set the boundaries of what is their own sole defense, there being no federal law offering a competing definition."

Persecutor: "Your reasoning might apply to a new law or ruling which simply offers to define the Necessity Defense. But it does not apply to a new law or ruling which clearly refers to the traditional definition of the Defense and limits it only to illegal harms."

AG: "That's correct. There is that other thing a court or legislature may attempt to do: to repeal the Necessity Defense and begin jailing heroes, starting with law enforcement. Because of course you can't take the traditional definition of the defense and limit it only to illegal harms, without repealing it. Now if the Court would like to try that, I would find the result so entertaining that I would be tempted not to object. I would insist only that whatever law you create, be applied equally to all, as the 14th Amendment requires.

"I do not like to see heroes in law enforcement protected by the Necessity Defense, but not the heroes who save the unborn. This results in police persecuting fellow heroes denied the very defense which, denied police, would make police even more notorious 'criminals'!"

Persecutor: "Ours is not to understand, but to obey."

AG: "We are the ones who shape the law. We in this courtroom, and we voters who hold the ultimate power in America. If we don't understand it, what hope have we of sensible law? If we decline to understand it, we deserve to be ruled by madness!"

Persecutor: "We do not need to put jurors in the position of second guessing the U.S. Supreme Court. Roe v. Wade has already determined that the unborn are not persons, and therefore may be killed, and no one may save them."

AG: "To the contrary, Roe v. Wade did not treat the harmfulness of abortion as a law issue (a matter of legal recognition) at all, but as an issue of fact! In fact, every legal authority in America which has taken a position on the fact of whether abortion is a serious harm, has said that it is. (See Footnote 1 for more details.) And even Stenberg v. Carhart described the facts of two abortion methods as being 'gruesome' and 'repulsive'.

"Had Roe declared that the unborn are not human,"the Attorney General might say, "the justices would have some leg to stand on in keeping the defense from juries. But Roe wouldn't say it. More than that, they said they lacked competence to say it, and even more, they said doctors and preachers are more competent than they! Such a position irrefutably establishes the issue as, not a legal issue where they would be the world's leading experts, but a fact issue in which doctors are more knowledgeable than they, or even a spiritual question over which *even the Bible* has greater jurisdiction than they! How, after that, can federal appeals courts close the hole by making the very declaration -- that life doesn't begin until birth -- which Roe called itself incompetent to decide? Shall the lower appeals judges call themselves more competent than the U.S. Supreme Court judges?

"Stenberg v. Carhart even more clearly treated the 'harm' of abortion as a fact inquiry. It described as 'virtually irreconcilable points of view' the belief 'that life begins at conception and consequently that an abortion is akin to causing the death of an innocent child' and the opposing belief 'that a law that forbids abortion would condemn many American women to lives that lack dignity, depriving them of equal liberty and leading those with least resources to undergo illegal abortions with the attendant risks of death and suffering'. How could they say were incompetent to resolve such a dispute, if it were a matter of law? They are the world's experts in American law. They would simply rule on which legal position is right, and which one is wrong. They could only have said they couldn't manage that, if they were thinking of the evaluation of abortion, as murder versus as a right, as an evaluation of facts, not law. They could only have had such a low opinion of

their ability to resolve these matters if they not only considered these matters the domain of fact finders, but if they did not consider themselves *competent* fact finders.

"But although the Supreme Court feels incompetent to judge the facts, even the majority felt confident in calling the partial birth abortion 'gruesome'. Justice Ginsberg, concurring with the majority, wrote that it is 'distressing or susceptible to gruesome description.' Justice Stevens, also concurring with the majority, describes not only the partial birth abortion as gruesome, but also the D&E abortion as equally gruesome! 'Although much ink is spilled today describing the gruesome nature of late-term abortion procedures, that rhetoric does not provide me a *reason* to believe that the procedure Nebraska here claims it seeks to ban is more brutal, more gruesome, or less respectful of "potential life"than the equally gruesome procedure Nebraska claims it still allows.'

"And those were the majority opinions! Justice Scalia, in his dissent, wrote 'The method of killing a human child -- one cannot even accurately say an entirely unborn human child -- proscribed by this statute is so horrible that the most clinical description of it evokes a shudder of revulsion.' Justice Kennedy, dissenting, wrote 'The majority views the procedures from the perspective of the abortionist, rather than from the perspective of a society shocked when confronted with a new method of ending human life. Words invoked by the majority, such as "transcervical procedures," "[o]smotic dilators," "instrumental disarticulation," and "paracervical block," may be accurate and are to some extent necessary, ... but for citizens who seek to know why laws on this subject have been enacted across the Nation, the words are insufficient.' Justice Thomas, dissenting, wrote 'Today, the Court inexplicably holds that the States cannot constitutionally prohibit a method of abortion that millions find hard to distinguish from infanticide and that the Court hesitates even to describe.'

"The point of all this is that when the 'procedures' protected by the majority are attacked so maliciously as the most barbaric infanticide, and the majority makes not the slightest effort to deny it but some of the majority even agree, the reluctance of the majority to defend itself amounts to its concession that indeed, *as a matter of fact*, the abortions it defends *are* infanticide; they are the most cruel murder of innocent human beings.

"That is the answer for state supreme courts who question how abortion, being legal, can be 'cognizable as a harm'. The very ruling which legalizes the most barbaric of abortions, itself recognizes it as a *great* harm.

"Even the Majority justices in Stenberg v. Carhart, were they on the jury of this 'rescue' trial, and were they given the necessity defense, would have to agree that what the 'rescuers' prevented was a 'serious injury'. Who are you to say the defense is not even valid enough to present to the jury?

"The Iowa law was crafted to address a great, deadly hypocrisy in our courts. The Necessity Defense has ALWAYS been interpreted by police and courts as triggered by an ACTUAL threat of injury, not just by injury already acknowledged by the letter of the law. No court has ever said that if you see someone about to be seriously injured, that before you save him you have to call your lawyer to find out if the law recognizes the particular injury you are considering preventing as legally "serious"! No! It has never been "legal recognition" of a harm that has triggered the Necessity Defense, but ACTUAL harm!

"That is, never, until the 'serious injury' prevented was abortion.

"Of course, to apply the law to some people and not to others is to violate the law. All the new Iowa law does is apply, to heroes who save the unborn, the same interpretation the courts and police already give everybody else. Will you now say 'we'll continue protecting heroes who save everybody else, and continue changing the meaning of the law's words when some hero tries to save a baby'? **People will notice your hypocrisy. people will notice that you are applying the Necessity Defense differently to one group of people than you are to everybody else. A State Legislature has already noticed, and has drawn the attention of the nation to the hypocrisy. You simply cannot continue to enforce a double standard. It is against the law. It is against the 14th Amendment, which criminalizes a double standard in law enforcement, by protecting the**

right of all citizens to 'equal protection of the law'. When your violation of the 14th Amendment alarms an entire state legislature to the point of attempting to correct it, then if you continue to violate it, you are going too far. You may risk impeachment.

"The 14th Amendment is the law upon which Roe v. Wade claims to be based. If you feel bound to obey Roe v. Wade, you need to feel bound to obey the 14th Amendment, the source of Roe's authority.

"You cannot simply overturn the Necessity Defense. Every police officer and emergency worker would have to go to jail, were they no longer protected by the Necessity Defense for barging into private homes at the sound of screams, or taking any creative action to save life, the need for which was not previously foreseen by lawmakers and expressly permitted by law. If you put all the policemen in jail, there will be no one to arrest prolifers. This scheme cannot work.

"Nor can you overturn the amendment to Iowa's Necessity Defense which the Iowa Legislature has just made. All the amendment does is require courts to interpret the Defense the same way for baby-saving heroes, as it interprets the defense every day for every other life-saving hero. All the Iowa amendment does is require you to end the double standard, and obey the 14th Amendment. You cannot tell the Iowa legislature, 'No! We will NOT obey the 14th Amendment! We will CONTINUE our double standard!' A thief cannot continue stealing, after he is caught. The Iowa legislature has caught you. You cannot continue to break this law.

"Previous legal challenges have proceeded from the concession that every ruling of every court was legal, though it led to an evil result; so it was the challenge of legislatures to come up with a way that ended the evil result, and yet was still legal. This approach put the advantage, in the psychological war, with the courts. The burden was on the legislature to explain to the people the legality and legitimacy of its approach. It was a very difficult burden because the public perceives court rulings as the very definition of what is legal.

"What Iowa has done is different. It identifies the manner in which previous court rulings have been illegal, and stops the judicial violations and their evil results, in the same stroke. This puts courts, for the first time, rowing against the stream in the psychological war, if they continue to flout the law. For the first time, a legislature has accused a court not only of murder, but of violating the law, and has made such a persuasive case as to keep the people of Iowa behind them. Thus courts begin rowing, in this case, far downstream. Should they continue to flout the 14th Amendment, in full view of all the people, they will simply be washed away.

"Nor can you redefine the Necessity Defense for all heroes alike, ruling that the danger of 'serious injury' should be judged by whether it is 'legally recognized' as a serious injury, rather than by whether it is IN FACT an ACTUAL serious injury. If you did that, the police would still have to arrest each other for any creative action to save life not previously foreseen by lawmakers and expressly permitted by law. To prohibit saving people from actual 'serious injury', and allow people to be saved only from injuries recognized by law, would be to repeal the Necessity Defense. A reinvented 'Necessity Defense' that exempts heroes from prosecution only when the letter of the law already exempts heroes from prosecution, adds no protection to that afforded by mindless, slavish, ultra-legalistic enforcement of the letter of the law regardless of the situation.

"You just about have to start treating baby-saving heroes with the same respect you give every other hero."

An appeals judge may ask the Iowa Attorney General, "States may give more rights than Constitution, but not fewer. Every defendant may demand his right to Trial by Jury or to counsel of his choice, rights guaranteed in the Federal Constitution. States must honor at least those rights, and at their option, more, but not less. Shouldn't Iowa, therefore, protect the 14th Amendment right of a mother to an abortion? How can Iowa do less than defend the Constitution?"

The Iowa Attorney General might reply, **"Iowa remains willing to abide by the 14th Amendment right to an abortion as defined by Roe v. Wade. Iowa has, for these**

30 years, refrained from protecting unborn babies being slaughtered in their wombs, and will continue to do so. All these years, Iowa police have stood passively by, as nearly one million Iowans have been torn limb from limb, in obedience to the Supreme Court's interpretation of the 14th Amendment.

"However, Iowa has become concerned at the failure of its judges to obey the remainder of the 14th Amendment, which enjoins 'equal protection of the laws.' Every hero who saves life is exempt from prosecution for actions necessary to prevent 'serious injury', except heroes who save unborn babies. For those heroes alone, in violation of the 14th Amendment, judges have ruled that the 'serious injury' they prevent must be weighed, not according to whether it is ACTUAL injury, but according to whether it is *legally* defined, somewhere in law, as 'serious injury'.

"Fortunately Iowa was able to find a way to resolve this dilemma without violating the letter of any law: we do not violate Iowa 704.10, the Necessity Defense; nor do we violate abundant case law defining the weighing of harm as an issue of fact finding; nor do we violate the 14th Amendment's requirement to give our citizens 'equal protection of the laws'; nor do we violate the 14th Amendment right to an abortion, as created by Roe v. Wade.

"You have surely observed that the 14th Amendment is binding upon states, not upon individuals.

"You have surely observed that Roe v. Wade was very careful to state that it found Constitutional authority for abortion in the 14th Amendment.

"You have surely also observed that Roe v. Wade very definitely stated the Court was incompetent to determine the 'comparison of harms' necessary to apply the Necessity Defense, which is a 'second witness' to the fact that the Court did not anticipate that its ruling would ever be applied to the right of individual heroes to save lives.

"Therefore Iowa has been very careful to craft its amendment, to correct judicial noncompliance with the 14th Amendment, in such a way as to comply with the letter and spirit of all relevant law. It was not Iowa, but Roe v Wade, which created the absurd situation in which states are prevented from protecting unborn human beings, without similarly preventing individuals. But this is no more absurd than Roe's ruling that states may no longer criminalize the slaughter of unborn human beings, without questioning the states' premise for its former criminalization, that unborn babies are human beings with all the rights of born human beings.

"Having taken such pains to comply with the letter and spirit of all applicable law, to the point of standing helplessly by while the innocent are slaughtered; and having taken pains to correct judicial noncompliance with the 14th Amendment, Iowa respectfully requests you do not accuse Iowa of inattention to the law."

A judge might reply, "Alaska Statute 44.62.270 has, I believe, a sensible approach to the Necessity Defense. It reads 'It is the state policy that emergencies are held to a minimum and are rarely found to exist.' That strikes me as the sensible attitude towards an admittedly important law which, without restraint, encourages people to take the law into their own hands for the flimsiest excuse."

The AG could say: "Iowa law already discourages its application when the excuse is flimsy. It applies only when the hero's belief that serious injury is imminent is 'reasonable', which the jury will weigh.

As for Alaska's law, that is like saying 'It is the state policy that emergencies are held to a minimum and are rarely found to exist.' I mean, you can say it, but since when does law have jurisdiction over facts? To deliberately craft a law so that on the face of it, it is reluctant to acknowledge reality, only creates confusion, leaving several important questions unanswered. For example:

"(1) OK, so courts are not supposed to have an attitude of reluctance to acknowledge that an emergency justifies an exception to the mindless letter of the law. Well, is there any more objective way a judge might distingish between a situation that is an emergency, and one that is not, besides by his attitude? Like whether an actual serious injury may be prevented only at the expense of some unimportant law?

"(2) So if a policeman barges on to private property at the sound of a scream, violating the 5th Amendment prohibition against unlawful searches and seizures, is that an emergency? Shall we put the policeman in jail? Yes or no?"

What would the justices do with these arguments? They are too strong to ignore. They are too specific, and too many people would *know* the specifics, to sidestep them. By the time the case reached the federal appeals court, not only would virtually every Iowan understand the necessity defense's application to abortion, but likewise many Americans.

I've seen great ideas fail in court before. My imagination has been stretched to accommodate the possibility of a great extent of irrationality. But still, I cannot imagine how appeals judges could rule against babies, in this scenario. I would expect them to "fear the people"too much. But if they don't, I would expect "the people"to exhibit those qualities which make wiser tyrants "fear"them. (More about this dynamic shortly.) I would expect that if they rule against God again, after the issues have been made this clear to "the people", they will find their power and influence, and certainly their respect, seriously diminished.

I would then expect the Supreme Court to either refuse to hear the case, or hear it and then rule against the babies with some logic outrageous enough to finally animate Americans to pass the Human Life Amendment to the Constitution.

(The "Human Life Amendment"would be a Constitutional Amendment defining life as beginning at conception, defining people as "persons"from conception to natural death, and protecting the right to life of all "persons".

(A simpler approach, by Senator Bob Smith, would simply be an act of Congress, without amending the Constitution. Like the Human Life Amendment, it would declare unborn children to be "persons"as defined by the 14th Amendment to the Constitution, entitled to legal protection. Smith quotes Roe, as I have, "We need not resolve the difficult question of when life begins...the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer."Next, alluding to the distinction invented by Roe between a "person"(whose rights are protected by the 14th Amendment) and a "human being"(who, as of 1973, enjoys all the rights of a "person"only at the pleasure of the Supreme Court), Smith continues quoting: "If this suggestion of personhood is established, [our ruling]...of course, collapses, for the fetus' right to life is then guaranteed specifically by the [14th] Amendment."Then Smith quotes the 14th Amendment: "...nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."And "Congress shall have power to enforce, by appropriate legislation, the provisions of this article.")

What could the Supreme Court do? It declared itself incompetent in the first place; it has witnessed 30 years of violence as a result of its incompetence; it has avoided this very issue all these 30 years! What could it now say? "After 30 years of study we have determined that every other legal authority in America is wrong, along with almost every preacher and doctor. *In fact,* we know now, human life doesn't begin until after birth"!?

Could the Supreme Court Require Local Police to Protect Abortion?

Judges do amazing things with court orders. They make up laws that apply to just certain people. They make laws, for those people, which make things illegal for them which were not against any other law before the court order. In fact, that is what court orders *are.* So why couldn't some judge simply order Iowa's police to arrest door-blockers at Banned Parenthood?

Because (1) The judge wouldn't gain anything; (2) police routinely exercise great "discretion"whether, and to what extent, to enforce *laws and constitutions*, not to mention mere court orders; the same discretion is theirs to ignore court orders, and they use it freely, and no one peeps; and (3) justifying such an order on appeal would probably not be possible.

The judge wouldn't gain anything. An appeal of a court order forcing local police to arrest "rescuers" would produce the same issues that would be inevitably raised anyway upon the appeal of the jury trial of the "rescuers". It would only cause them to be raised earlier, and my guess is abortionists would prefer to delay moving out of the business as long as possible. Should a judge issue such an order, and even if the order is not appealed, the only effect on this initiative would be that local police would assist federal marshals to clear the abortion doors, so that fewer babies would be saved that first rescue. But from that point on, the jury trial, and the appeals, would proceed about the same as if there were no order.

Police have great "discretion"whether to enforce an order.

The Sheriff of Corpus Christi made headlines a decade ago when he refused to protect abortionists any longer. The city police forces took over.

In Des Moines, a decade ago when there were no more than half a dozen "rescues", there was a point where prolife County Prosecutor Sarconne lost interest in defending abortion. No problem; the city prosecutors were happy to fill the gap.

In about 1994, U.S. Attorney General Janet Reno seemed unsatisfied that state and local police were protecting abortionists sufficiently, so she posted U.S. Marshals 24 hours a day around abortion centers, for about a year.

Police exercise great discretion whether to get involved in a situation, and to what degree. Although if it is a situation where they like to be involved, they will tell you they have no choice. (They may even believe it.)

In early 1990, stunned that our meager "rescue" of only about 20 Christians was overwhelmed by bringing out 1/3 of the on-duty police, I interviewed Chief Moulder (I taped it) about such fanatical protection of abortion as to leave the rest of Des Moines under-protected. He answered that "his hands were tied". Police are absolutely obligated to respond to every complaint of a violation of law. I was surprised by such a claim, so I pressed him on that point, but he would not budge. Absolutely every time. If they don't pursue every single violation of law, it's only because it wasn't brought to their attention. Once a report is filed, (if they can find the perpetrator), they're on it.

About a week later, I was stumbling through city laws and discovered fortune telling was a simple misdemeanor. Sister Ann's garish sign on SE 14th had long troubled me. (Proverbs 14:34 Righteousness exalteth a nation: but sin is a reproach to any people.) And there was another fortune teller on Grand, about E. 16th, who not only had a large sign but an ad in the phone book. It occurred to me that proving there was actually fortune telling inside would require someone willing to go inside who would testify against them. But it was even a simple misdemeanor to *advertise* fortune telling! Slam dunk, I thought!

I marched right over to the police station, with another witness, and a phone book, to turn in

my report. I also had a copy of the law in case I might encounter a policeman who didn't know about it. A policeman wrote down the information. But he had a funny look for me, rather than a look of gratitude that someone had done their citizen duty and reported a crime. He didn't even offer me a "Crimestopper" reward.

A week later I noticed to my astonishment that Sister Ann was still in business! I investigated. I talked to the woman prosecutor who decides whether to pursue cases. Hmmm. Her job description, right there, should have been a clue. I wonder if Chief Moulder knew about her?

Amazingly, she decided not to pursue this one!~ Not for want of facts! Not for want of law! For want of what, then?

I conducted taped interviews with each of the city council members about the hypocrisy. Then for the rest of the year I badgered the city council, at each of their meetings, urging them to be more vigilant to enforce laws against sin, and less vigilant to enforce laws against saving lives. Finally, the week of Halloween, literally, in anger towards me, the city council repealed the law against fortune telling, while continuing its aggressive prosecution of "rescuers".

If any court tries to say police are obligated to pursue every violation of law, call me as a witness. I'll testify. I still have tapes of the interviews.

The remainder of this section is a scenario of how argument might proceed in appeals court if this initiative makes it that far. I could have inserted it in the overall scenario of how this initiative might proceed through the media wars, the nutty trial, and the appeal, but frankly this argument is even more convoluted, technical, and hard to follow than the rest of this article. I add it here only in the interest of trying to cover all bases.

(Information for this argument is taken from "Judicial Tyranny" by Samuel Francis, April 14, 1997. Vol. 13, No. 08, "The New American".)

Justifying, on appeal, an order requiring local police to enforce FACE, would probably not be possible.

If the federal prosecutor is feeling desperate enough, he might say

"Iowa is required to protect the right to abortion by the Incorporation Doctrine of the 14th Amendment. The 14th Amendment says 'No state shall make...any law which shall abridge the privileges or immunities of citizens....'

"As Justice Hugo Black explained in Adamson v. California (1947), 'no state could deprive its citizens of the privileges and immunities of the Bill of Rights'; hence the 14th Amendment 'incorporates' the Bill of Rights into the Constitution and applies it to the states, even though originally the Bill of Rights restrained only the federal government. As we all know, Abortion has been discovered under the Penumbra of the Bill of Rights, so by this logic the 14th Amendment requires states to enforce the right to abortion. Yet Iowa, in defiance of the 14th Amendment, has made a law which has abridged the privilege of abortion. Iowa ought to be arrested!"

The Iowa Attorney General might respond, "Iowa merely clarified the Compulsion Defense to make clear what unanimous case law already provides. All case law, which has taken a position on whether the Comparison of Harms should be treated as a matter of law or of fact, has said it should be treated as a matter of fact. Iowa legislators merely agreed with the courts. If you have a quarrel, it is not with the Iowa legislature, but with your own rulings. It should have been anticipated, that the children of an irrational ruling would be conflicting opinions.

"But I'm glad you brought that up, about the Incorporation Doctrine, which fantasizes that the 14th Amendment makes states subject to the latest judicial innovations on the Bill of Rights. You mentioned that justice Hugo Black explained it in 1947. He was describing a judicial tendency that began in 1925, in Gitlow v. New York, where it was imagined that states are now obligated to protect Freedom of Speech. But do you remember that Justice Black's 'total incorporation' Doctrine was in a dissent? And that the Court never affirmed the 'Doctrine'? And did you know that nine years earlier, in 1938, Black admitted in another ruling, that the Americans who enacted the 14th Amendment had no intention that it would subject states to judicial interpretations of the Bill of Rights? He wrote, 'The states did not adopt the [14th] Amendment with knowledge of its sweeping meaning under its present construction. No section of the Amendment gave notice to the people that, if adopted, it would subject every state law ... affecting [judicial processes] ... to censorship of

the United States courts.'

"It is true that while the Supreme Court as a whole has never endorsed Black's 'total incorporation' doctrine, it has, as the Oxford Companion to the Supreme Court of the United States expresses it, 'incorporated nearly all the individual components of the Bill of Rights under a doctrine called "selective incorporation."' But the evidence, that the Court does not treat the Doctrine as if it is the source of any authority, but rather is but a description of court tendencies, made after the fact, is how selectively the Court 'incorporates' rights. They just happen to correspond to liberal prejudices. For example, the court-created 'right' to abortion is incorporated; the constitutionally protected right to keep and bear arms is not.

"Legal scholar Raoul Berger, at Berkley and Harvard, writes in his authoritative "Government by Judiciary", about the debates over the adoption of the 14th Amendment by the 39th Congress, that the *"privileges and immunities" clause* of the 14th Amendment refers not to the Bill of Rights but to the language of Article IV, section 2 of the Constitution, which declares, 'The citizens of each state shall be entitled to all *privileges and immunities* of citizens in the several states.' Article IV could not have referred to the Bill of Rights, because (1) it was written years before the Bill of Rights, (2) it was about *states* giving citizens of other states the same rights as citizens of their own while the Bill of Rights was about making the *federal* government honor certain rights, (3) debates in the First Congress never associated the Bill of Rights with Article 4, and (4) early court decisions such as Corfield v. Coryell (1823) explicitly specified the 'privileges and immunities' to which the language of Article IV referred (largely the same rights later extended to the freedmen in the 1866 Civil Rights Act) and explicitly rejected the 'all-inclusive' interpretation of Justice Black.

"But I would say that other than the fact that the 14th Amendment never meant to drag the Bill of Rights onto the backs of states, and the Supreme Court has never consistently endorsed the doctrine, and the doctrine has been an excuse for the Court to expand its power beyond anything imagined before 1925 from busing, quotas, school district boundaries, abortion, Miranda warnings, probable cause for arrest, prison and asylum standards, libel, pornography, subversive speech, to the separation of church and state, and the fact that Iowa took no action to restrict abortion other than the indirect effect of clarifying our laws to agree with court rulings, you make a fair argument."

Never Give Up on the Power of Truth

I know how easy it is to despair because of how much a gullible public has already swallowed (a despair shared by those on all sides of most issues) but we owe our freedoms to the limits of that gullibility. The public can only be deceived so far. And when deceivers reach the limits of the public's capacity for being deceived, deceivers fear.

It is easy to be overly cynical, thinking "no matter how strong your legal arguments are, no matter how well the public understands them, no matter how much the public supports them, these Supremes are way beyond reason. They are demon possessed. NOTHING you can do or say will move them from abortion. Just give up!"

Giving up isn't God's plan for us. And God Himself encourages us, pointing out that the most unjust of human judges are vulnerable in two ways: they get tired of cases that keep coming back again and again and again, and they fear exceeding the limits of public tolerance.

Getting tired of the same case coming back again and again. Luke 18:1 And he spake a parable unto them to this end, that men ought always to pray, and not to faint; 2 Saying, There was in a city a judge, which feared not God, neither regarded man: 3 And there was a widow in that city; and she came unto him, saying, Avenge me of mine adversary. 4 And he would not for a while: but afterward he said within himself, Though I fear not God, nor regard man; 5 Yet because this widow troubleth me, I will avenge her, lest by her continual coming she weary me. 6 And the Lord said, Hear what the unjust judge saith. 7 And shall not God avenge his own elect, which cry day and night unto him, though he bear long with them? 8 I tell you that he will avenge them speedily. Nevertheless when the Son of man cometh, shall he find faith on the earth?

They "fear the people". Mark 11:27 And they come again to Jerusalem: and as he was

walking in the temple, there come to him the chief priests, and the scribes, and the elders, 28 And say unto him, By what authority doest thou these things? and who gave thee this authority to do these things? 29 And Jesus answered and said unto them, I will also ask of you one question, and answer me, and I will tell you by what authority I do these things. 30 The baptism of John, was *it* from heaven, or of men? answer me. 31 And they reasoned with themselves, saying, If we shall say, From heaven; he will say, Why then did ye not believe him? 32 But if we shall say, Of men; **they feared the people:** for all *men* counted John, that he was a prophet indeed. 33 And they answered and said unto Jesus, We cannot tell. And Jesus answering saith unto them, Neither do I tell you by what authority I do these things

"They feared the people."There is only so much insanity "the people"will tolerate from their tyrants. Here is another example of what it takes to make tyrants fear their people:

Mark 11:1 And he began to speak unto them by parables. A *certain* man planted a vineyard, and set an hedge about *it*, and digged *a place for* the winefat, and built a tower, and let it out to husbandmen, and went into a far country. 2 And at the season he sent to the husbandmen a servant, that he might receive from the husbandmen of the fruit of the vineyard. 3 And they caught *him*, and beat him, and sent *him* away empty. 4 And again he sent unto them another servant; and at him they cast stones, and wounded *him* in the head, and sent *him* away shamefully handled. 5 And again he sent another; and him they killed, and many others; beating some, and killing some. 6 Having yet therefore one son, his wellbeloved, he sent him also last unto them, saying, They will reverence my son. 7 But those husbandmen said among themselves, This is the heir; come, let us kill him, and the inheritance shall be ours. 8 And they took him, and killed *him*, and cast *him* out of the vineyard. 9 What shall therefore the lord of the vineyard do? he will come and destroy the husbandmen, and will give the vineyard unto others. 10 And have ye not read this scripture; The stone which the builders rejected is become the head of the corner: 11 This was the Lord's doing, and it is marvellous in our eyes? 12 And **they sought to lay hold on him, but feared the people: for they knew that he had spoken the parable against them:** and they left him, and went their way. (Also Luke 20:19, 22:2)

Here's my favorite: (after an angel miraculously delivered the apostles from prison)

Acts 5:22 But when the officers came, and found them not in the prison, they returned, and told, 23 Saying, The prison truly found we shut with all safety, and the keepers standing without before the doors: but when we had opened, we found no man within. 24 Now when the high priest and the captain of the temple and the chief priests heard these things, they doubted of them whereunto this would grow. 25 Then came one and told them, saying, Behold, the men whom ye put in prison are standing in the temple, and teaching the people 26 Then went the captain with the officers, and **brought them without violence: for they feared the people, lest they should have been stoned.**

We may put to rest the paranoia that the out-of-control Supreme Court justices can do ANYTHING by suggesting a few extreme things they might wish they could do. Do you think the Supreme Court could get away with an order prohibiting the Iowa Legislature from even *debating* the Necessity Defense? No, I don't think so. Do you think the Court could order the Iowa Legislature to disband and for laws to, instead, be passed by a King appointed by the Court?

I hope this illustrates for you how the Court really is limited by the tolerance of the people. There are really a great many things which the Court simply can't do, because the people won't tolerate it. Obviously laws and constitutions are inadequate to restrain them. But the tolerance of the people, shaped by the people's depth of understanding of how the laws that protect their freedom ought to operate, are the boundaries of every tyrant. That is why The Truth is so powerful, and why tyrants so fanatically suppress it.

Never give up on the power of Truth! Jesus proved it can stop the mouths of the most prejudiced of men! The most entrenched, secure dictator reaches a point where he "fears the people". The time for force is seldom; Jesus used force three times that we know of. (John 18:6, John 2:15, Luke 4:30) All the rest of the time, He used words. It is the Sword of Truth, not of steel, that cuts deepest.

Hebrews 4:12 For the word of God is quick, and powerful, and sharper than any twoedged

sword, piercing even to the dividing asunder of soul and spirit, and of the joints and marrow, and is a discerner of the thoughts and intents of the heart.

The Supreme Court, no less than the Sanhedrin of Jesus' day, "fears the people".

Footnote 1:

Every American Legal Authority which has taken a position on When Life Begins, has said it begins at conception.

(I didn't say religious authorites: I said American *legal* authorities.)

Footnote 1. LIFE BEGINS AT CONCEPTION. THIS IS AN UNCHALLENGED LEGAL FACT.

Among legal authorities who have taken a position on this issue, there is uncontested consensus. Stipulations that life begins at conception have been made by Governor Branstad (In his annual proclamation on the anniversary of Roe that defiantly proclaims its error), Presidents Reagan *(See footnote 1a)* and Bush, (who have been filling the Supreme Court with justices whom they expect will respect the right to life from conception), virtually every state legislature, whose decriminalization of abortion was only under the duress of Roe, (Including Iowa, whose first abortion laws were in 1838, 8 years before Iowa had a Constitution; Iowa's 1843 revision survived unchanged until January 22, 1973), the current Nebraska. Missouri. and Louisiana legislatures which continue to boldly proclaim the error of Roe, *(See footnote 1b) the Christian, Jewish, and many other Bibles,* (*See footnote 1c)* a virtual consensus of medical science, (as I am prepared to prove in testimony), and the majority of Americans *(See footnote 1d) (whose legal authority is expressed in the opening phrase of the Declaration of Independence, and whose legal "teeth" on this issue have been demonstrated by their ability to elect presidents determined to replace the justices who made America kill its unborn).*

Even Statements of Planned Parenthood, the complainant, through 1963, stipulate to the fact that life begins at conception, saying, "An abortion kills the Life of a baby after it has begun. It is dangerous to your life and health." (See footnote 1e)

An Alaskan Supreme Court Justice has emphatically denounced the error of Roe and declared the unborn to be both human and person. In Cleveland v. Municipality of Anchorage, Alaska, 631 P.2d 1073, 1084, he wrote:

"I empathize with the defendants' sorrow over the LOSS OF HUMAN LIVES caused by abortions. I believe the United States Supreme Court BURDENED THIS COUNTRY WITH A TRAGIC DECISION when it held in Roe...that the word "person, as used in the fourteenth amendment, does not include the unborn..., and that states cannot 'override the rights of the pregnant woman' by 'adopting one theory of life.'"(See footnote 1f)

Footnote 1a. A Public Law/Presidential Proclamation dated January 14, 1988 was quoted in State v. O'brien, 84 s.v.2d 187, 189 as follows: "'all medical and scientific evidence increasingly affirms that children before birth share all the basic attributes of human personality -- that they in fact are persons...' and the President has proclaimed the 'unalienable personhood of every American, from the moment of conception until natural death'".

President Reagan also affirmed the “compelling Interest of the several states to protect the life of each person before birth, and the unalienable right to life is found not only in the Declaration of Independence but also In the Constitution that every President is sworn to preserve. protect and defend. Both the Fifth and Fourteenth Amendments guarantee that no person shall be deprived of

life, liberty, due process of law.... In the 15 years since the Supreme Court's decision in Roe v. Wade, however, America's unborn have been denied their right to life."

Footnote 1b. Missouri #1.205, R.S.Mo.1986, states: "1) The life of each human being begins at conception"; 2) "unborn children have protectable interests In life, health, and well being"; and 3) Effective January 1, 1988 the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state..."

Louisiana LSA-R.S. 40:1299,35.0 reads "it is the intention of the Legislature of the State of Louisiana to regulate abortion to the extent permitted by the decisions of the United States Supreme Court. The Legislature does solemnly declare and find in reaffirmation of the longstanding policy of this State, that the unborn child is a human being from the time of conception and is, therefore, a legal person for purposes of the unborn child's right to life and is entitled to the right to life from conception under the laws and Constitution of this state. Further, the Legislature finds and declares that the longstanding policy of this State Is to protect the right to life of the unborn child from the time of conception by prohibiting abortion permissible only because of the decision of the United States Supreme Court and that, therefore, if those decisions of the United States Supreme Court are ever reversed. or modified or the United States Constitution is amended to allow protection of the unborn then the former policy of this State to prohibit abortions shall be enforced." LSA-R.S. 14:2(7) defines "person" as "...a human being from the moment of fertilization and implantation."

Nebraska 28-325. R.R.S. 1943, says "(1) That the following provisions were motivated by the LEGISLATIVE INTRUSION of the United States Supreme Court by virtue of its decision removing the protection afforded the unborn. Sections 28-325 to 28-345 are in no way to be construed as legislatively encouraging abortions at any stage of unborn human development, but it is rather an expression of the will of the people of the State of Nebraska and the members of the Legislature to PROVIDE PROTECTION FOR THE LIFE OF THE UNBORN CHILD WHENEVER POSSIBLE; (2) That the members of the Legislature expressly DEPLORE the destruction of the UNBORN HUMAN LIVES which has and will occur in Nebraska as a consequence of the United States Supreme Court's decision on abortion of January 22, 1973." !!!!! That's the most indignation I've ever seen in a law! But when that indignation is focused, by lawmakers, on the U.S. Supreme Court, what does that say about the threat to the Rule of Law posed by Roe?

Footnote 1c. The "Old Testament" of the Christian Bible, which is the Jewish Scripture, states: "For thou hast possessed my reins: thou hast put your hand upon me in my mother's womb. I will praise thee for I am fearfully and wonderfully made: marvelous are thy works; and that my soul knoweth right well. My substance was not hid from thee when I was made in secret, and curiously wrought in the lowest parts of the earth. Thine eyes did see my substance, yet being Incomplete; and in thy book all my members were written, when as yet there was none of them."Psalm 139:13-16.

While still in the womb, God knows people and sanctifies them: "Before I formed thee in the belly I knew thee; and before thou camest forth out of the womb I sanctified thee, and I ordained thee a prophet unto the nations.' Jeremiah 1:5.

While still in the womb, people already have a moral nature: "The wicked are estranged from *the* womb: they go astray as soon as they be born, speaking lies."Psalm 58:3.

The Christian New Testament adds: While still in the womb, God calls people to the ministry: "But when it pleased God, who separated me from my mother's *womb,* and called me by his grace, To reveal his Son in that I might preach him among the heathen..."Galatians 1:15~16

While still In the womb, God is able to fill people with the Holy Spirit: [John the Baptist] shall be great in the spirit of the Lord...and he shall be filled with the Holy Ghost, even from his mother's womb."Luke 1:15

While still in the womb, people are able to discern the voices of wonderful people: blessed art thou among women, and blessed is the fruit of thy womb. And whence is this to me, that the mother of my Lord should come to me? For, lo, as soon as the voice of thy salutation sounded in mine ears, the babe leaped In my womb for Joy.' Luke 1:42-44

Public laws (rulings by the President with authority only over the Executive Branch of the federal government) may have no compulsory force outside the executive branch of the federal government. But in an absolute vacuum of legal opinion about a fact, their statements have standing (they are worth considering), as the O'Brien court recognized (see footnote 2). Public law 5761 of January 14, 1988, Federal Register Vol. 53, #ll, declares the humanity of the unborn child and the compelling interest of the several states to protect the life of each person before birth."

If a state supreme court considers, to be worth considering, a public law's statements about when life begins, perhaps the statements of another public law, enacted not alone by the President but also by a Joint Session of Congress, should be worth considering, which acknowledge an authority which defines when life begins. Public law 97-280, October 4, 1982, 96 Stat. 1211, recognizes "both the formative influence the Bible has been for our nation, and our NATIONAL NEED TO STUDY AND APPLY the teachings of the HOLY Scriptures."If a president and a JOINT SESSION OF CONGRESS, the powers who appoint the members of the Supreme Court, declare the humanity of the unborn child and our national need to apply the teachings of the Holy Scriptures, perhaps the Holy Scriptures may be instructive for this court also. They foster no doubt about when human life begins. It begins BEFORE conception.

Footnote 1d. There has been wide debate over the interpretation of public opinion polls. The bottom line is that a clear majority of Americans, once they understand what they are being asked, believe Roe was in error and want that error reversed. I am prepared to prove this in testimony. My grounds for introduc1ng this testimony are not only that life begins at conception according to the premier legal authority of this land, "We the People", but also that their voice must be the standard in 'ordinary standards of Intelligence and morality', by which the court must evaluate whether the harm of killing the unborn is greater than the "harm"of trespassing.

Footnote 1e.Plan Your Children For Health And Happiness, Planned Parenthood Federation of America, 1963. (A booklet.) Source: Grand Illusions, tne legacy or Planned Parenthood, by George Grant, published by Wolgemuth S Hyatt, Brentwood IN, page 73. If we may assume the human condition of the unborn has not changed between 1963 and the present, then this STIPULATION of the complainant itself is still relevant.

Footnote 1f. Justice Dimond (concurring) continues his bitter analysis of Roe: 'I do not agree with the Court's conclusion that a state's Interest in potential life does not become 'compelling' until the fetus has attained viability. It stated its explanation for this conclusion as follows:

"With respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the womb. State regulation protective of fetal life after viability thus has both logical and biological justifications.'

~ "(410 U.S. at 163, 93 S.Ct. 731-32, 35 L.Ed.2d at 183) As Professor Tribe indicates, 'One reads the court's explanation several times before becoming convinced that nothing has Inadvertently been omitted. (Tribe, Forward to "The Supreme Court 1972 Term", 87 Harv.L.Rev. 1. 4 (1973](footnote omitted]). I agree with Professor Tribe when he states, 'Clearly, this (analysis] mistakes a definition for a syllogism', and offers no reason at all for what the Court has held.' (Id., quoting Ely, 'The Wages of Crying Wolf: A Comment on Roe v. Wad.', 82 Yale L.J. 920, 924 (1973] (footnotes omitted])."

("Syllogism"is defined in its best sense as a specific process of reasoning where bits of evidence are assembled into a conclusion, and in its worst sense as "subtle, tricky, or specious reasoning". "Specious"means intelligent sounding baloney. So when the Alaskan supreme court justice calls the Roe definition of "viability"not a definition at all, but rather a "syllogism"offering no reason for its existence, the clue that he means "syllogism"in its worst sense, that is a very refined way of saying it is a bunch of intelligent sounding baloney. If you think about it, the definition of the worst sense of "syllogism", specious reasoning, is another way of saying reasoning that has the appearance of being a syllogism in the best sense. That describes the "reasoning"of Roe, whose statements seem, well, connected, yet when you arrive at the end of them you wonder why it still doesn't quite make sense.)

(Justice Dimond, continuing:) "In effect, the Supreme Court -held that because there is am

consensus as to *when* human life begins it ant act as if it were proven that human life does not begin until birth so as to preserve to women the right to make their own decision whether an abortion takes a human life or not. It would make more sense to me if, in the face of uncertainty, any error made were side in favor of the fetus, which many believe to be human life.

"The development of a zygote into a human child is a continual, progressive development. No one suggests that the born child is not a human being. It seems undeniable, however, that human life begins before birth. As Professor Curran states:

"'[T]he fetus one day before birth and the child one day after birth are not that significantly or qualitatively different-in any respect; Even outside the womb the newborn child is not independent but remains greatly dependent on the mother and others. Birth in fact does not really tell much about the individual as such but only where the individual is--either outside the womb or still Inside the womb.' (C. Curran, Transition and Tradition in Moral Theology 209 (1919]). Similarly, viability does not mark the beginning of the truly human being.

"[V]iability again indicates more about where the fetus can live than what It is. The fetus immediately before viability is not that qualitatively different from the viable fetus. In addition viability is a very inexact criterion because it is intimately connected with medical and scientific advances. In the future It might very well be possible for the fetus to live in an artificial womb or even with an artificial placenta from a very early stage in fetal development.

"I join with those persons who believe that truly human life begins sometime between the second and third week after conception...."

Footnote 2:

Not even Roe v. Wade denies that life begins at conception.

The Hole in Roe through which Violence can Drain

The justices literally wrote that they were incompetent to know.

Can you imagine some young kid picking some group -- let's say, well, truck drivers -- and carrying his weapon into a truck stop and slaughtering everyone there. And then when he is arrested, can you imagine him saying, "Oh really? Gosh, I didn't know! I'm so terribly sorry! You can't mean it! You say they're Human Beings?!"

But then can you imagine the police then letting him go, saying, "Oh, you didn't know? Well never mind then. It wasn't your fault. Just don't do it again."

Does that seem like too much latitude to give someone responsible for murder? We give the Supreme Court far more.

The five justices who signed Roe literally said "Duh, we can't tell if they're human beings, so we'll decide whether to kill them without caring about that possibility." Yet we not only do not arrest them, or put them in jail, or even impeach them, but we keep them for our leaders! We obey them! Even after medical evidence pours in to inform them of what they could not tell, they keep right on killing, again and again, and we patiently wait for the day they are determined shall never come when they will acknowledge the new evidence! And while the Court on the one hand expects mercy because it "doesn't know", lower courts use their power to prevent the decision being made by juries, the more competent Judges of the Facts, who DO know.

No legal authority has yet challenged the statement of legal fact, that "life begins at conception", and therefore it merits the status of UNCONTESTED legal fact, as it were a STIPULATION of America's entire judicial system. Roe v. Wade never challenged this fact, though pressed to do so. Its ground for avoiding this issue was its INCOMPETENCE (through want of wisdom, it explained) to decide it. The court said: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, THE JUDICIARY, at this point in the development of man's knowledge, IS NOT IN A POSITION TO SPECULATE AS TO THE ANSWER."(410 U.S. 113, 159)

(Since when is the inability of human beings to achieve 100% consensus a reason for a court to not decide an issue? Isn't that what courts are for, to decide causes where the parties can't

come to agreement by themselves?)

The Supreme Court has yet to deal with this central issue, despite enormous pressure to do so from thousands of "rescue"cases where this is the key issue. It has so far acknowledged its incompetence to do so. We may presume that if the high court does not consider itself competent to decide when life begins, it will not very likely consider state supreme courts any MORE content to decide when life begins. Indeed, neither has any state supreme court yet directly challenged the majority assumption of "We The People"that life begins at conception.

The failure of courts to positively affirm that life begins at conception does not detract from the uncontested status of that legal fact. This failure exists because of a lack of competence. When lack of competence is the grounds for a court to avoid a decision, we do not then expect ANY decision, yea or nay. Therefore the court's failure to positively affirm that life begins at conception cannot be turned into evidence that the court is now competent to decide that question, or that the court HAS decided that question!

The Oregon Supreme Court even reported with approval a trial court's finding that Rescuers "had proffered sufficient evidence on all the elements of the choice of evils [Compulsion] defense, generally, to submit it to the jury."This report included "evidence offered by defendants in the form of expert opinion testimony that life begins at the time of conception."(State v. Clowes, 801 P.2d 789, 791 Or. 1990)

Were the justices really so unable to tell that what is a baby a minute after birth is not fundamentally changed from what it was a minute before? A human being with all the protection of the Constitution? Or were they evading responsibility for what they knew, talking like the Pharisees 2,000 years ago?

Matthew 21:23 And when he was come into the temple, the chief priests and the elders of the people came unto him as he was teaching, and said, By what authority doest thou these things? and who gave thee this authority? 24 And Jesus answered and said unto them, I also will ask you one thing, which if ye tell me, I in like wise will tell you by what authority I do these things. 25 The baptism of John, whence was it? from heaven, or of men? And they reasoned with themselves, saying, If we shall say, From heaven; he will say unto us, Why did ye not then believe him? 26 But if we shall say, Of men; we fear the people; for all hold John as a prophet. 27 And they answered Jesus, and said, We cannot tell. And he said unto them, Neither tell I you by what authority I do these things.

Stenberg v. Carhart doesn't dispute the FACTS, either. Here's the opening paragraph of the "Opinion":

"We again consider the right to an abortion. We understand the controversial nature of the problem. Millions of Americans **believe** that **life begins at conception and consequently that an abortion is akin to causing the death of an innocent child; they recoil at the thought of a law that would permit it.** Other millions fear that a law that forbids abortion would condemn many American women to lives that lack dignity, depriving them of equal liberty and leading those with least resources to undergo illegal abortions with the attendant risks of death and suffering. Taking account of these virtually irreconcilable points of view, aware that constitutional law must govern a society whose different members sincerely hold directly opposing views, and considering the matter in light of the Constitution's guarantees of fundamental individual liberty, this Court, in the course of a generation, has determined and then redetermined that the Constitution offers basic protection to the woman's right to choose. *Roe* v. *Wade,* "http://supct.law.cornell.edu/cgi-bin/sup-choice.cgi?410+113" (1973); *Planned Parenthood of Southeastern Pa.* v. *Casey,*"http://supct.law.cornell.edu/cgi-bin/sup-choice.cgi?505+833" (1992). We shall not revisit those legal principles. Rather, we apply them to the circumstances of this case."

Notice a few things about this opening. "causing the death of an innocent child" is treated as a matter of "belief". No attempt is made to consider whether the deaths are a FACT. The opposing "view", that not being allowed to kill their babies would rob women of "dignity", is treated as if it is equal in weight to the first "view", and as if two "virtually irreconcilable...sincerely held...points of view" cancel each other out, like two chess pieces "traded" and discarded, cleared out of the way so they no longer distract us from the battle before us, leaving our decisions simpler,

uncomplicated by their nagging cries.

The Court could not treat opposing views as capable of canceling each other out by their mere weight of popularity, if the Court were qualified to determine which "view" is supported by the FACTS. If, in FACT, abortion "causes the death of innocent children", then it is absurd to associate such carnage with "dignity". It is absurd to treat such murders as any kind of legally acceptable "choice". If the Court weighed the FACTS, then the two "views" would not be irreconcilable at all. The "view" that children die would govern the case, and the "view" that mothers cannot have dignity without murdering their babies would simply be laughed out of the courtroom.

This opening paragraph should prove the Court still refuses to take any position, "yea or nay", on the FACT of whether abortion kills innocent human beings, just as it did in Roe itself where it said "if the doctors and preachers can't agree when human life begins, how are WE supposed to figure it out?" (Those weren't the exact words but they are close.)

Footnote 3:

Judges Stopped Giving "Compulsion"to Juries to stop losing.

In 1979, the Cincinnati Law Review analyzed a 1978 case. The article contains a very profound paragraph. For the benefit of non-lawyers I would like to translate it, and then reprint it. Here is the translation:

After the judge ruled that the Necessity Defense could be weighed by the jury, the abortionist knew it was all over and dropped the charges. The abortionist knew that if the jury got to decide whether the harm of trespassing were justified in order to stop the greater harm of killing babies, that in order to do that, the defendant would have to be allowed to present evidence to the jury that human life begins at conception, so that abortion is the greatest of harms: murder. The abortionist knew it could not contradict such evidence. What could he say? The abortionist knew his only hope would be to talk about the harm of trespassing, and not allow anybody to mention the harm of murdering unborn babies! There was NO HOPE of persuading a jury to convict prolife door blockers, once they learned about the Necessity Defense. The abortionist knew if the case continued, he would not only lose, but if he appealed he would lose in the Supreme Court too, which would create a precedent allowing prolife doorblockers to block abortion doors as long as they liked, without fear of arrest! Once that happened, abortion centers would be shut down all over America! Rather than risk such a precedent, most abortionists are quick to dismiss their charges, after a judge rules that the jury can hear about the Necessity Defense. In fact, prolifers say openly they WANT to bring the issue of when life begins back to the Supreme Court, because that is the very issue which Roe v. Wade specifically said it lacked the competence to determine."

OK, ready? That was my translation. Now here is the original paragraph from the Law Review article, admitting there was NO sound legal reason for keeping the Necessity Defense from juries, but rather it was a matter of winning:

"After the court ruled that it would allow the [Necessity] Defense to go to the jury, the Women for Women Clinic dropped the prosecution. If the defense is permitted, evidence is introduced that life begins at conception. This evidence is rarely contradicted by the prosecution, which is merely proving the elements of criminal trespass. Rather than risk such a precedent, many clinics prefer to dismiss. In fact, defense counsel have admitted that their intent is to bring the abortion issue back before the United States Supreme Court to consider the very question of when life begins, an issue on which the Court refused to rule in Roe..."

From "Necessity as a Defense to a Charge of Criminal Trespass in an Abortion Clinic", 48 U.Cin.L.Rev. 501 (1979), in a footnote on page 502. The Cincinnati Law Review footnote analyzes the case of Ohio v. Rinear, No. 78999CRB-3706 (Mun. Ct. Hamilton County, Ohio, dismissed May 2, 1978)

To be fair, I should concede that although the law review article offers no legal justification for withholding the Necessity Defense from the Jury, it gave reasons which *sound* like legal

reasons. Perhaps you will find them interesting. They are worth addressing because not only to courts still quote this article, but its fuzzy thinking is repeated in news sound bites on the subject.

(1) Page 514: "Again, the legality of abortion provides the answer. One can see abortion as the taking of life or as the legal termination of pregnancy. The trespassers believe the first characterization; the law and the courts MUST accept the second. The law has taken the position that abortion causes no loss of life or that this potential of life is entitled to no legal protection before viability."

This may not add much to the fund of legal reasoning, but as an example of inspired rhetoric it should be required reading. First is the equation of "The Law"with Roe. That gives Roe a little more respect than, some would argue, it is entitled. Of course, NO authority, not Roe, not any other legal authority, has EVER said abortion causes no loss of life! The Roe justices specifically said they were too incompetent to figure it out. The author of this article HAD to know this phrase was a lie without the slightest trace of a penumbra of support. So the author says "or", in other words "or if you don't believe that, try this:"and then he states the ruling of Roe that babies shall have no legal protection. But because they are not "entitled"to protection? Come now. If Roe can't even tell whether babies are Human, how can they know to what babies are "entitled"? Let's just leave it at "they're not gonna get any protection."'

(2) The law review article said "When a court applies necessity, its balancing of the harms reflects society's consensus. Necessity is meant to justify action that society would clearly want to exonerate. Trespasses that interfere with constitutional rights do not fall within this purpose."

See how "legal"this sounds? Even while it suggests that the will of society is suddenly the ultimate authority on technical legal issues! Yet this "reasoning"offers itself as a "legal reason"for taking the determination of the Comparison of Harms AWAY from the representatives of the will of the people, the jury! This author might as well say the judge is there to give society what it wants, but the judge knows what society wants better than society knows. Hitler had similar prescience. The fact is the compelling common sense of justifying an insignificant harm for The Greater Good does not serve at the whim of any judge or panel of judges, or even of society. No, I don't suppose society wants to justify trespasses that interfere with constitutional rights. But society doesn't much like the elevation of murder into a so-called "constitutional right"! In other words, I'm sure there is consensus in society that trespass shouldn't interfere with *legitimate* constitutional rights. But there sure isn't consensus in society whether Roe has succeeded in turning murder of the innocent unborn into a *legitimate* Constitutional Right!

(3) The law review article said "The fact that these protests are the only means available at the moment to stop the abortion does not change the major purpose of the action which protesters and their lawyers admit is to change the law with regard to abortion."

This lie is so desperate that it contradicts its own testimony. It starts with the word "protest"instead of the word "rescue"which the defendants themselves use, and which describes what they do. It acknowledges these rescues "are the only means avaialbe at the moment to stop the abortion". Yet this fact "does not change the major purpose of the action"which the author informs us is something entirely different? How can the major purpose of an action be, not the result actually possible, but a result which may not be possible? And if there are indeed two "purposes"of the action, how is it measured which of the two is the "major"one, and why does it matter?

This "legal reason"is so strange that some explanation of its very existence may be in order. You see, the Compulsion defense says that the threatened "serious injury"should be "immanent". This "legal reason"tries to assure judges that the immanent murder of innocent babies doesn't count, because it is the long range goal of changing laws which is the "major"purpose.

(4) The article says "If American women are to be denied their constitutional right to safe abortions, the right can only be denied by a change to the Court's position or by a constitiutional amendment; it cannot be denied by those who seek to violate the laws in order to enforce their own ideas."

If the author really believes this, why is he so determined to violate the Necessity Defense laws to enforce his own ideas? "Violate the laws"plural? Roe is just one law, and the cost of its

existence is an attack on the laws of nearly every state legislature, without bothering to refute their position that life begins at conception so killing it is murder, and in many legal minds the Constitution itself. If the author is describing prolife door blockers, and if he wanted to be accurate, he would say "those who seek to violate *one of the laws which conflicts with all the rest"....*

This statement is not a legal reason at all. It is an alleged moral principle. It is the philosophy of kings and tyrants, that all human law must be obeyed, right or wrong. All humans are morally obligated to obey every wicked letter of every tyrannical law or be identified as "lawbreakers"and "criminals". This philosophy is like the "Divine Right of Kings"against which America's Founding Fathers rebelled. It violates the statement of Blackstone, the legal expert whose writings influenced not only England but helped inspire the Revolution, his books selling almost as fast as Bibles in the decade before the Revolution.

Blackstone said "A law which violates the laws of God is no law at all."That is the legal premise upon which America was founded. To abandon it is to abandon the foundation of the freedoms won in those days which are our inheritance.

Another of our Founding Fathers put it this way: "All acts of legislature [this applies to legislation by the judiciary, too] apparently contrary to natural right and justice are, in our laws, and must, in the nature of things, be considered void. The laws of nature ARE THE LAWS OF GOD, WHOSE AUTHORITY CAN BE SUPERCEDED BY NO POWER ON EARTH. A LEGISLATURE MUST NOT OBSTRUCT OUR OBEDIENCE TO HIM FROM WHOSE PUNISHMENTS THEY CANNOT PROTECT US! All human constitutions which contradict His laws, we are, In conscience, bound to DISobey!"That was the argument of George Mason, in 1771, as he argued against slavery before the General Court of Virginia.

God puts the principle this way: "We ought to obey God rather than men."Acts 5:29. In His fight against mindless legalism, Jesus explained the concept of "original intent"; that is, our duty to discern the purpose of a law as its authors originally intended it, instead of following the letter of the law in situations where not even its authors meant it to be applied. Matthew 9:16 No man putteth a piece of new cloth unto an old garment, for that which is put in to fill it up taketh from the garment, and the rent is made worse. 17 Neither do men put new wine into old bottles: else the bottles break, and the wine runneth out, and the bottles perish: but they put new wine into new bottles, and both are preserved The authors of trespassing laws never intended their laws to be applied to making it a crime to save life!

Footnote 4:

The "comparison of harms" between the rescue action and the threatened "serious injury" are a FACT issue, for JURIES.

That's what all courts say. ("Case law"is the term for rulings of supreme courts.) Case law already says the threatened "serious injury" means *actual* harm, or that harm which IN FACT is a real harm (See footnote 4) ? and juries, not judges, are supposed to judge the facts.

COMPARISON OF HARMS: THE ELEMENT THAT MATTERS

There are three elements of Compulsion ? three conditions that must be met before the defense may be considered appropriate. Of the three, the "comparison of harms"is the only one, as a practical matter, before the court, according to Klocker. (Actually Jesus made an even stronger statement about its importance, saying the element stands alone, without the necessity of meeting any other conditions.)

The Klocker court (City of St. Louis v. Klocker, 637 S.W.2d *174* Mo.App. 1982) explains, beginning on page 175: "...the defense is usually distilled into THREE ESSENTIAL ELEMENTS: '(1) the act charged must have been done to prevent a significant [harm); (2) there must have been no adequate alternative; (3) the harms caused must not have been disproportionate to the harm avoided.'.... The first two elements are factual determinations which MAY BE SATISFIED BY THE DEFENDANT'S REASONABLE BELIEF.... The third factor is a value determination. The defendant's belief is not necessarily relevant and certainly not controlling. The ACCEPTED NORMS OF SOCIETY determine the relative harmfulness of the two alternatives and the defense

is allowed if the harm done by the defendant in choosing the one alternative was less than the harm which would have been done if he had chosen the other."

In other words, the first two elements are relatively easy for me to prove. I only need to show a reasonable person, faced with the evidence which was before me, would agree that my motive was to prevent a significant harm, and I had no adequate alternative. I should be able to prove this handily by quoting governors, legislatures, and presidents, and even Supreme Court justices who have vilified Roe and defiantly declared the "inalienable PERSONH000 of the unborn". I can challenge the court and the jury to find these American leaders to not be worthy of being considered "reasonable".

The third element is where the rubber meets the road. Which is worse, abortion, or trespassing? This depends on one's understanding of abortion. IS IT THE KILLING OF UNBORN HUMANS, OR IS IT MERELY THE EXTRACTION OF UNDESIRABLE FLESH WHOSE LEGAL STATUS IS LESS THAN THAT OF ANIMALS? This is really the issue. It is virtually the ONLY issue. All other issues lead to this issue, and depend on this issue. Virtually NO one asserts that IF the unborn are human, killing them is a lesser crime than trespassing! But no court dares to declare the unborn are not human.

There was only one element of Compulsion in the fact situation Jesus presented: "is it lawful to do good?"

There was no imminent harm, unless you count the fact that the harm of being crippled for 18 years would have continued one more day had Jesus not acted right then.

Breaking the Sabbath law was not a last resort. Jesus did not go out of His way to avoid breaking the Sabbath law, a felony whose penalty was death. He even said he PREFERRED to do this work on this particular day.

Jesus deliberately, consciously, unnecessarily broke the law to demonstrate the point that NO law, no matter how great, must EVER be used to stifle good! And to set us free from mindless servitude to the letter of the law that is used by tyrants to oppress good people in violation of the spirit of the law!

Mark 3:1 And he entered again into the synagogue; and there was a man there which had a withered hand. 2 And they watched him, whether he would heal him on the sabbath day; that they might accuse him. 3 And he saith unto the man which had the withered hand, Stand forth. 4 And he saith unto them, Is it lawful to do good on the sabbath days, or to do evil? to save life, or to kill? But they held their peace. 5 And when he had looked round about on them with anger, being grieved for the hardness of their hearts, he saith unto the man, Stretch forth thine hand. And he stretched it out: and his hand was restored whole as the other. 6 And the Pharisees went forth, and straightway took counsel with the Herodians against him, how they might destroy him.

14 And the ruler of the synagogue answered with indignation, because that Jesus had healed on the sabbath day, and said unto the people, There are six days in which men ought to work: in them therefore come and be healed, and not on the sabbath day. 15 The Lord then answered him, and said, Thou hypocrite, doth not each one of you on the sabbath loose his ox or his ass from the stall, and lead him away to watering? 16 And ought not this woman, being a daughter of Abraham, whom Satan hath bound, lo, these eighteen years, be loosed from this bond on the sabbath day? 17 And when he had said these things, all his adversaries were ashamed: and all the people rejoiced for all the glorious things that were done by him. Luke 13:14-17

5 And answered them, saying, Which of you shall have an ass or an ox fallen into a pit, and will not straightway pull him out on the sabbath day? 6 And they could not answer him again to these things. Luke 14:5-6

Today Jesus might have said, "Thou hypocrite, which of you shall have a 14-year-old daughter [the age of consent in Iowa) at the door of a house full of legally partying youth whose parents are on vacation, and will not straightway block the door?"

What Jesus might have called the Legality of Doing Good, courts today call the element of whether the harm prevented is greater than the harm generated.

It is the element of Compulsion that matters.

But it cannot be decided by people who declare themselves incompetent to decide whether

the harm prevented is a great harm or no harm at all. Neither can it be decided by people who MISQUOTE such incompetents as having in fact said the harm prevented is no harm at all.

I don't like to be redundant, but it is time for this point to sink in: State supreme courts misquote Roe as having said abortion is legal, and hence not a harm. But the majority in Roe in fact declared themselves incompetent to decide whether abortion is a harm.

"COMPARISON OF HARMS"NOT FOR JUDGE ALONE TO DETERMINE.

Courts say the element of Compulsion, where the harm of blocking a door must be weighed against the harm of killing the unborn, must be decided objectively, not by the subjective belief of the accused.

But the phrases used by case law (the rulings of other courts, which are respected as "precedents") to describe this objective process do not leave the decision to the arbitrary, unjustified whims of a court fraternity out of touch with American values.

The court is supposed to apply "ordinary standards of reasonableness", (Pursley v. State, 730 S.W.2d 250, 251 Ark. App. 1987)

Another way of saying it is "ordinary standards of intelligence and morality"(Oregon RS 161.200[l]b; also Missouri RSMo #563.026 1978).

Or "accepted norms of society", (City of St. Louis v. Klocker, 637 S.W.2d *74* Mo.App. 1982).

If these standards mean anything, courts need to get in sync with the ordinary standards of intelligence and morality, the accepted norms of society, by which America has criminalized abortion for over a century and appears determined to criminalize again.

And who, of all the human beings present in a court, is most qualified to apply ordinary, accepted norms of intelligence and morality to the fact question before us, whether abortion is a "harm"? Why, the jury. Which, by the way, is supposed to be the judges of the facts.

Footnote 5:

God's Warning about Old Sayings

You've heard the old saying "the ends doesn't justify the means."Old Sayings are wonderful when they apply. But this one doesn't apply so often that to provide for those situations, they had to make up another Old Saying, nearly as popular, that says exactly the opposite: "The ends justifies the means."

Old Sayings require just a bit of intelligence to be useful. Their limitations should be understood. They are colorful ways of explaining complicated situations. But the explanation ought to fit the situation. The example ought to match the situation which the example is supposed to illustrate. Here's how God sees the result, when an example (or parable, or old saying, or proverb) is applied foolishly:

Proverbs 26:7 The legs of the lame are not equal: so is a parable in the mouth of fools

It can almost be funny to hear people quoting old sayings as if they were absolute truths, which may be applied to every situation without examination where they actually fit. So confident are they in the universality of their bit of wisdom that when the fit is bad, they have no clue. God compares them with a drunkard who doesn't even know when he is injured:

Proverbs 26:9 As a thorn goeth up into the hand of a drunkard, so is a parable in the mouth of fools.

Footnote 6:

How Courts Weasel Out of Giving Necessity Defense to Juries

"Is abortion the killing of a Human Being, which is a Serious Injury that outweighs the 'harm' of trespassing?"

This is the question before the court when a "Rescuer"appeals to the Compulsion Defense. (It is normally the ONLY contested issue before the court.)

It is a "fact issue". The court is supposed to decide whether abortion is IN FACT a serious injury. Juries are supposed to judge the facts.

Until a century ago juries were considered the judges of both law and fact. Today, in "rescue"trials, they are considered the judges of neither law nor fact. The only contested fact issue, and the law surrounding it, is not even made known to them.

How? Why?

State supreme courts, including Iowa's, have kept the fact issue out of the hands of juries by asking each other, "how can abortion be [re]cognizable as a 'harm', when it is legal?"

This seems a novel development in the history of logic, suggesting that anything which is legal is, in fact, harmless! Free speech is not only "legally recognizable", but even Constitutionally protected, big time! Yet does anyone allege any speech which is Constitutionally protected is also harmless?! Jill June (Planned Parenthood of Greater Iowa) certainly won't concede that MY speech is harmless!

The courts' question would make sense if the "comparison of harms" between the rescue action and the threatened "serious injury" were supposed to be decided as a matter of law, by a judge. But strong case law specifically says this is NOT a determination of law, for ivory tower legal experts, but a fact question for a jury which can apply "ordinary standards of reasonableness". (See footnote 4.)

I would love to explain to you the reasoning by which their odd question makes their duty clear to them. But unfortunately they provide no explanation, and I don't want to put words in their mouth.

So let's just analyze a few examples from scratch.

Notice that in all the examples considered earlier, the "harm caused"is a violation of a law, and the "serious injury"prevented is caused by something that is perfectly legal (as opposed to "self defense"which applies when the harm threatened is an illegal assault).

For example, it is not against the law for a pregnant woman to need hospital care in a hurry. It is not against the law for a fire to start in an engine and work its way into the driver's seat. It is not against the law for a dog to attack a toddler. It is not against the law for an ox to fall into a well.

But abortion is different. Abortion is not only legal, but it is legally protected.

But so are the "harms"in our examples.

The dog may be on a chain in his own yard and may have a perfect legally protected right to behave like a dog within the confines of his chain; and yet if a toddler strays where he has no legal right to stray, into the dog's area, the Compulsion Defense protects anyone who rushes in to save the child's life. Imagine! The dog is within his rights, and the child has gone where he has no right, and yet it is the dog which is restrained and the child protected!

The fire in the car may be following a course mandated by law. I don't know if there are such laws governing fire paths, but I know law determines many details of automobile design for the safety of passengers, even though it means a much less sturdy car in respect to its ability to survive a crash and drive again. But my point is that even if the fire path were mandated by law, that would not keep the Compulsion Defense from protecting someone who breaks into the car to rescue the occupants.

Even a pregnancy is legally protected. There are many laws governing safe medical treatment of pregnancy, and mandating leave from work for pregnancy. But just because the pregnancy is legally protected, doesn't keep its inevitable end, the medical attention-demanding contractions, from threatening "serious injury", which justifies speeding.

But abortion is different. In the example of the dog and the child, the dog's right to run is protected, but the harm of the dog eating the child is not specifically, directly protected; nor is the harm of the baby being born in the car specifically, directly protected. But it is the very harm of killing an unborn baby which is specifically, directly protected by Roe v. Wade.

Yes, Roe is very different than any previous American law. It prohibits states from protecting, from murder, what almost every state had agreed were innocent human beings. Roe said we shouldn't take that into account because not all doctors and preachers are unanimously, 100% agreed about "when life begins". But what does that do for respect for the rule of law, or at least the laws of the Supreme Court, to decriminalize what even 50% of doctors, preachers, and Americans believe is murder? But the figure is far higher than 50%. Polls ask whether Americans believe

abortion ought to be legal, and the results hover around 50%. Yet even most of those who want it legal will freely admit abortion kills an innocent human being! Even Planned Parenthood practically said that. (See footnote 1e.) I would like to see the results of a poll that asks "Do you believe an unborn baby is a human being from conception?"I expect the consensus would be overwhelming.

Yes, Roe is very different. But does it set aside Iowa's Compulsion Defense? No. The clarification of Compulsion proposed here is faithful to the letter of Roe. Fortunately the Supreme Court never ruled that individuals cannot protect the unborn! Furthermore, it is obvious, from the language of Roe's statement that preachers and doctors were better equipped, than they, to know when life begins, that the Roe justices *did not even anticipate* that individuals might attempt to save the unborn. Roe was simply not crafted to *address* the "comparison of harms"of Compulsion. The Roe justices plainly said they were not *competent* to address the "comparison of harms"of Compulsion. It is the height of arrogance for state supreme court justices to declare themselves competent to decide what the Roe justices admitted they were incompetent to decide, and it is the height of ignorance for them to maintain that the Roe justices already decided it. Roe never denied the unborn are precious human beings! They said they "couldn't tell", in the words of the Pharisees who similarly answered Jesus! (Matthew 21:23-27) Roe doesn't even apply to individuals! It only says *states* can't protect the unborn any more. It's focus on the 14th amendment proves it was absolutely limiting its ruling to what states could not do. The clarification of Compulsion proposed here IS faithful to the letter of Roe.

It may be argued that the solution proposed here is not faithful to the *spirit* of the Roe decision, although it is strange to argue that the spirit of a ruling differs from the letter of a ruling. It is an admission that the ruling was a mistake. But certainly it is reasonable to speculate that Justice Blackmun, the author of Roe, PROBABLY NEVER MEANT to allow individuals to save lives. In fact, this is the strongest thing that may be said, legally, against the clarification of Compulsion proposed here. But since when, in this generation of legalistic jury instructions which order juries to respect the letter of the judge's version of the laws, in this generation of an "evolving"constitution where "original intent"is a nearly forgotten concept, since when are courts concerned with the *spirit* of the Constitution or any other law?

The *spirit* of Roe creates the greatest conflict of law in American history. The Spirit of that decision is contrary to ancient precedent, the constitution, and the most basic purpose of government according to America's founding document, which is to protect the right to life, liberty, and the pursuit of happiness. Roe has no "spirit"worth being faithful to. It was built on lies: the actual woman in Roe was not raped, and the real life woman in Doe v. Bolton didn't even want an abortion and had no idea her lawyers were saying she did! Too many lives have been lost by these lies. If we can construct a solution that is faithful to the letter of the law, that is a better solution than obeying a law which is a crime, and it is a better solution than today's mess where decent people believe lives can be saved only by violently disobeying laws, and where even people who oppose violence admit that without violent "rescues"millions are dying.

Fortunately the Supreme Court has not ruled, yet, that preventing serious injury is no reason to break a law. But not only has it not yet ruled thus, such a ruling would create a crisis in the Rule of Law even more serious than Roe. Iowa's Compulsion Defense cannot be set aside, not even by Roe. It is centuries old. It was not invented by Iowa legislatures, but only copied, from the inescapable requirements of reason, by Iowa lawmakers.

The fact is, if you save a life, at the small cost of breaking a minor law, you are a hero, not a lawbreaker. What the Supreme Court thinks about the value of the life you save is irrelevant. What matters is whether that baby is, *in fact*, a human life.

What if the Supreme Court ruled specifically that a child who wanders within the chain of a mad dog cannot be saved by any individual? Then I would have to say "Save the child, and you break the law! Obey the law, and you commit a crime against God!"

What if the Supreme Court ruled specifically that an injured driver may not be rescued by any individual from a spreading fire, if the door is locked? Then I would have to say "Save the driver, and you break the law! Obey the law, and you sin against Heaven! Leave the law unchallenged, and you cut away the foundation of legal protection of your own life!"

But fortunately the Supreme Court never ruled that individuals cannot protect the unborn! Furthermore, it is obvious from the language of Roe's statement that preachers and doctors were better equipped, than they, to know when life begins, that the Roe justices *did not even anticipate* that individuals might attempt to save the unborn.

Were the stakes not so high, we might politely assume, in honor of what we speculate might be the *spirit* of this wicked ruling, that since it is wrong for states to save the unborn, then maybe it is wrong for individuals, too. But the lives of 50 million Americans have already been snuffed out over such words. The solution proposed here is faithful to the letter of the law, and that needs to be enough.

Footnote 7

U.S. Attorney General John Ashcroft

His first loss was when Roe was only 3 years young. Missouri enacted an early Parental Notification law, and Ashcroft, in his first year in office, tried to defend it. He lost. (Danforth v. Missouri, 1976.) But 7 years later, he took that same issue to the Supreme Court again, (by defending a new Missouri law), and this time he won (Missouri 188.028), along with forcing Missouri abortionists to have a second doctor present when aborting a baby past the age of "viability"(188.030.3), and forcing abortionists to submit a pathology report to the state for each abortion (188.047)! (It was a 1979 Missouri law; the case was Planned Parenthood v. Ashcroft, 482 US 476, 1983. He was joined in his defense by the U.S. Solicitor General, who was a Reagan appointee.) The only issue Ashcroft lost was a law requiring all abortions to be performed in accredited hospitals.

In 1986, Governor Ashcroft signed a bill limiting funds for abortions and defining human life as beginning at conception! (June 28 Chicago Tribune, "Missouri Limits Funds for Abortions") In 1989 that law was found constitutional by the U.S. Supreme Court. Webster v. Reproductive Health Services, 492 US 490 (1989). It was the first time since 1973 that not all the Supreme Court justices affirmed Roe. A lower appellate court had overturned the Missouri Legislature's declaration that life begins at conception. The Supreme Court reversed that overturning, ruling that it was OK for the Missouri legislature to believe life begins at conception, so long as they confine it to their "preamble"and don't actually do anything about it.

During that same year, after Governor Ashcroft had been appointing Missouri Supreme Court justices for four years, that court took up another Rescue case where the defendants pointed out that the Serious Injury of Abortion, which they had prevented, was now acknowledged as the taking of human life as a Matter of Law, by the State Legislature's declaration that human life begins at conception.

I don't know Ashcroft's personal reaction to this case, but when Ashcroft participated in the declaration of when life begins, he had to know it would be used in an Operation Rescue case.

Here's how the Court managed to evade the legislature's work: (State v. O'Brien, 784 S.W.2nd 187, 191 Mo.App. 1989), the court said the legislature's finding that life begins at conception "must be construed...in the light of"Roe. "When so construed, the finding and declaration of when life begins is qualified by, and subject to, the decisions of the Supreme Court which hold that a woman's right to an abortion remains a constitutiona1ly protected right. THE FINDING AND DECLARATION OF WHEN LIFE BEGINS AT CONCEPTION IS NOT ABSOLUTE."(sic)

Interesting how they could say that, when Roe had *avoided* deciding when life begins, and when that same year the Supreme Court agreed that Missouri had a right to take any position on when life begins that it liked!

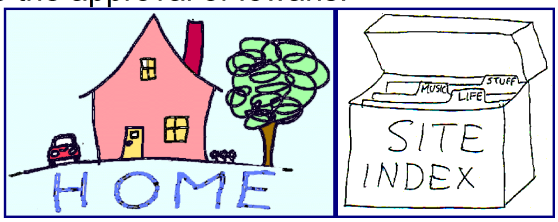
Perhaps the justices shared the misunderstanding of the scope of "constitutional protection"of many politicians and many of the general public. The Constitution *restrains government*. When the First Amendment "protected"speech and religion, it only said "*Congress* shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to

assemble, and to petition the Government for a redress of grievances."You see, the Constitution didn't even prevent *states* from doing any of those things. The only reason states don't do them now is that states saw how well it worked, and added the same language to their own constitutions. The only way Roe could twist the Federal Constitution into a document restraining states, on the subject of abortion, was by a strong appeal to the 14th Amendment, which obliges states to give rights to all the "persons"equally. "Persons"had to be redefined, too, of course, to exclude the unborn.

In all these definitions of "constitutional protection", nothing more is ever said, than that government will leave it alone. Government will not support religion, nor actively protect it Indeed, the worst nightmare of preachers is that government will decide to protect them! Because if government decides to protect one of them, that will put the others at a disadvantage. The same with speech, or the right of assembly.

In other words, "constitutional protection"of anything should never imply positive government protection of it from individuals. "Constitutional protection"restrains government only, not individuals. Yet the State v. O'Brien justices spoke as if "constitutional protection"of abortion should somehow restrain individuals. They said the "declaration of when life begins at conception is not absolute."(sic) As if their legally reasoning is as sloppy as their grammar, they take the statement of their state legislature, that life begins at conception, and deny that it is absolute, even though neither they themselves, nor Roe, nor Webster v. Reproductive Health Services, nor any other legal authority in America, has EVER refuted it.

Surely Attorney General Ashcroft has thought about these things, and will look forward to having stronger facts and arguments to make his case. Stronger facts, in the demonstration of actual nonviolence in the closing of an abortion center. Stronger arguments, in the stronger focus on the jury as finder of fact, and the establishment of the prevented Serious Injury as a fact issue. Not to mention stronger political pressure, because in Missouri, the application of declaring the personhood of the unborn to the use of the Necessity Defense to block abortion centers had not been before the public for its approval; but the passage of this clarification to Iowa 704.10 will require the approval of Iowans.



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