

MUNICIPAL COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY
CRIMINAL ACTION
DOCKET NO. C1771, ET SEQ.

STATE OF NEW JERSEY, *

V. *

APRIL 13, 1991

ALEXANDER LOCE, et als. *

DEFENDANTS. *

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B E F O R E: HONORABLE MICHAEL J. NOONAN

A P P E A R A N C E S:

PROSECUTOR: PAUL BANGIOLA, ESQ.
FOR THE STATE OF NEW JERSEY

RICHARD J. TRAYNOR, ESQ.
PATRICK J. MULLANEY, ESQ.
ROGER W. DALEY, ESQ.
FOR THE DEFENDANTS

SUZANNE HAUSER, C.S.R.

WILLIAM C. O'BRIEN ASSOCIATES

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT
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1 THE JUDGE: Please be seated, ladies and
2 gentlemen.

3 I understand we are having some problem
4 with the seating. Let's try and negate that
5 problem before we begin.

6 Obviously, the people who are standing
7 in the middle of the court room who are
8 blocking the people who are sitting, can't
9 stand in the middle.

10 So what I suggest is that you remove
11 yourselves from that aisle and we will try to
12 work something out here.

13 (Discussion takes place off the record.)

14 SUZANNE HAUSER, C.S.R., having been duly
15 sworn, agreed to serve as Court Reporter to
16 the following proceeding.

17 THE JUDGE: Okay, gentlemen, this is
18 State of New Jersey vs. Alexander Loce, et
19 al. I am going to read the -- I have the
20 complaints here, Counsel.

21 I am going to read the names of the
22 defendants into the record at this time
23 before we begin.

24 We have, as I said, Mr. Loce, who I
25 believe is present today; is that correct?

2 MR. MULLANEY: That's correct, your
3 Honor.

4 THE JUDGE: Before I begin, counsel, Mr.
5 Prosecutor and the defense counsel, please
6 put your appearances on the record.

7 MR. BANGIOLA: Paul M. Bangiola,
8 Morristown Municipal Prosecutor for the
9 State.

10 MR. MULLANEY: Patrick J. Mullaney.
11 I am at 1 Madison Avenue in Morristown. I'm
12 the attorney for Mr. Loce.

13 THE JUDGE: All right.

14 MR. TRAYNOR: Your Honor, please,
15 Richard Traynor of Morristown, New Jersey. I
16 represent the following defendants: Mr.
17 William Harrison, Mr. James McWilliams, Mr.
18 Christopher Moscinski, and Deborah Smaldore.

19 Judge, all of those defendants are
20 here, and I have occasion to address your
21 Honor with respect to the multiple defendants
22 as soon as the appearance are entered.

23 MR. DALEY: Roger Daley of 53 East
24 Brunswick Woods, East Brunswick, New Jersey,
25 representing Charles Matson, Neal Webster
and Daniel Lickteig.

1 THE JUDGE: All right, gentlemen, my
2 understanding is the following defendants are
3 involved in this incident that allegedly
4 occurred on September 8, 1990, specifically a
5 defiant trespass at the premises of 101
6 Madison Avenue, fourth floor.

7 Specifically, those named defendants in
8 the following complaints are John Adams of
9 Basking Ridge; Lisa Adams, Morristown; Lori
10 Chadwick, Frederick Harrison, Jeannie
11 Henderson, Tina Keail, k-e-a-i-l. What is
12 it?

13 MR. MULLANEY: Krail.

14 THE JUDGE: Krail. Daniel Lickteig.

15 We have Alex Loce, Tyrone Malone,
16 Charles Matson, James McWilliams, Christopher
17 Moscinski, Deborah Ann Smaldore, Ralph
18 Traphagen, Neal Webster.

19 Now, counsel, at some point I feel it's
20 important that affidavits are submitted by
21 counsel, affidavits by the named defendants,
22 waiving any concerns regarding any conflict
23 of interest.

24 Obviously, we have a limited number of
25 counsel, defense counsel, and we have many

1 defendants. So it is my understanding that
2 affidavits will be submitted waiving any
3 conflict of interest?

4 MR. TRAYNOR: Correct, your Honor. I
5 can represent to the Court with respect to
6 defendants other than Alex Loce, that all of
7 them are here or are on their way here and
8 will be here, with the one exception of Ralph
9 Traphagen and he can't be here,
10 involuntarily.

11 I will indicate to your Honor when the
12 other defendants arrive; in fact, two more
13 have arrived, Henderson and Malone.

14 In any event, I will get you the
15 consents and waivers during this day.

16 THE JUDGE: All right. Now, gentlemen I
17 understand that there have been some
18 stipulations entered in this matter, is that
19 correct, Mr. Prosecutor?

20 MR. BANGIOLA: Yes, your Honor.

21 If I may for the record, as your Honor
22 knows the charges against these various
23 defendants, and math wasn't my main subject
24 in school; so I don't know if we have all of
25 those named defendants accounted for as

1 having a lawyer here in the courtroom.

2 I understand that these attorneys have
3 represented that every single defendant you
4 named has retained these gentlemen to
5 represent them, and these gentlemen have
6 apprised all of them independently of their
7 rights under the Green case in which case,
8 your Honor, there should not be any
9 conflict.

10 THE JUDGE: Let's have response to that
11 issue.

12 MR. TRAYNOR: Yes, Judge. I can
13 represent to the court that these defendants
14 are aware that they're entitled to be
15 represented by separate counsel.

16 They are aware that there is one
17 counselor representing multiple defendants
18 and they consent and they waive.

19 They are all going to be here, present
20 here in the Court today and are going to
21 sign consent and waiver forms.

22 THE JUDGE: The defendants I have named
23 on the record are all being represented by
24 yourself and Mr. Mullaney and Mr. --

25 MR. DALEY: Daley.

1 MR. TRAYNOR: For the record, Judge, Mr.
2 Mullaney will be representing separately Mr.
3 Loce, and I will represent those defendants
4 that I named before and Mr. Daley will
5 represent the names he indicated, your Honor.

6 And for clarity we will submit all
7 those consent waiver forms to your Honor
8 during, sometime during this day.

9 THE JUDGE: Thank you. Mr. Prosecutor,
10 you may continue.

11 MR. BANGIOLA: Your Honor, the
12 defendants have stipulated to all elements of
13 the trespass offense.

14 THE JUDGE: All right. So if you have
15 any messages, write them down.

16 MR. BANGIOLA: Could I ask the Court,
17 could the door be closed?

18 THE JUDGE: Close the door now..

19 (Discussion takes place off the record.)

20 THE JUDGE: Gentlemen, I have one final
21 concern. The names of the defendants that
22 you on the record stated you were
23 representing, all those named, or all the
24 defendants have not been accounted for.

25 What I am asking you is this: You know

1 who all your defendants are. And are you
2 representing to the Court that all those
3 defendants that are named are, in fact,
4 represented by either yourselves or Mr.
5 Daley?

6 MR. TRAYNOR: That's correct, Judge.

7 THE JUDGE: All right, let's go.

8 MR. BANGIOLA: Returning to the
9 stipulation, your Honor, you have been
10 provided with a signed agreement stipulated
11 between counsel for the defendants and the
12 State.

13 In that stipulation the only named
14 defendant is Mr. Loce; and the other parties
15 are referred to in that stipulation. And
16 this deals with the facts which will provide
17 the State's case.

18 So it is very important that we be
19 absolutely clear at this point that we are,
20 where it says various another defendants, as
21 being represented by the gentlemen, the
22 whole colloquy that just occurred in the
23 court between your Honor and the various
24 defense counsels refers to those defendants.

25 For purposes of the stipulation these

1 defendants are stipulating the facts set
2 forth in the stipulation.

3 I turn now to those facts. In
4 particular, I turn to the fact that all of
5 the defendants have stipulated they were
6 correctly identified as individuals who were
7 charged in the summons.

8 That is, no hearings are necessary to
9 establish that a particular person was, in
10 fact, present on the premises on the date in-
11 question, when they were charged with
12 trespassing.

13 THE JUDGE: Counselor, the identity of
14 all defendants is stipulated at the scene, is
15 that correct?

16 MR. TRAYNOR: That's right, your Honor.

17 THE JUDGE: Next.

18 MR. BANGIOLA: The presence of all of
19 the defendants at the subject premises
20 through forcible entry is further stipulated
21 by the defendants.

22 MR. TRAYNOR: Defendants do agree to
23 that.

24 MR. MULLANEY: That's correct, your
25 Honor.

1 MR. BANGIOLA: All of the defendants
2 were apprised actually or constructively of
3 the fact that the property was one on which
4 they had no license or permission to be
5 present.

6 MR. TRAYNOR: We agree to that
7 stipulation.

8 MR. MULLANEY: Mr. Loce agrees to that,
9 your Honor.

10 MR. BANGIOLA: Furthermore, all other
11 elements of the offense of trespassing with
12 the exception of requisite criminal intent,
13 the mens rea required in any specific intent
14 of crime are stipulated by all defendants.

15 THE JUDGE: Counsel?

16 MR. MULLANEY: Yes, your Honor.

17 MR. TRAYNOR: We agree.

18 THE JUDGE: I just want to read the
19 charge into the record:

20 2C:18-3(b) - one or all defendants
21 being charged with the same offense, that
22 being criminal trespass and, specifically,
23 being a defiant trespass, reads as follows:
24 "A person commits a petit disorderly persons
25 offense if, knowing that he is not licensed

1 or privileged to do so, he or she enters or
2 remains in any place as to which notice
3 against trespass is given by actual
4 communication to the actor." That is
5 Subsection 1.

6 It is my understanding, gentlemen, the
7 stipulation is that actual communication was
8 given to all defendants in this case, that
9 they were not to trespass on the premises of
10 101 Madison, fourth floor, certain doctors'
11 offices; and that notwithstanding this
12 communication that was given to these
13 individuals, all defendants here named, they
14 did forcibly enter that premises.

15 MR. TRAYNOR: We agree to that Judge,

16 THE JUDGE: That's stipulated.

17 MR. MULLANEY: Stipulated, your Honor.

18 THE JUDGE: Continue Mr. Prosecutor.

19 MR. BANGIOLA: Turning to the
20 stipulation of the State, I first of all wish
21 to apprise the Court that in accordance with
22 the Victims Rights Statute of the State of
23 New Jersey, I have conferred with the young
24 woman who was involved in this incident, and
25 discussed the events of September 8 with this

1 young woman who I would like, for the record,
2 to be identified as Miss Z in order to
3 protect the privacy of this young woman; and
4 with her concurrence I represent to the Court
5 the following facts:

6 That on September 8, 1990, the date of
7 the charged criminal trespass against all of
8 these defendants, the young woman, Miss Z,
9 was the fiancée of the defendant, Alex Loce.

10 And the young woman, Miss Z, was eight
11 weeks pregnant at that time;

12 That Alex Loce was the biological
13 father of the fetus of the young woman at
14 that time.

15 And on September 8, 1990 this young
16 woman, Miss Z, did undergo an abortion
17 procedure at the location stated in the
18 complaint, at the time stated in the
19 complaint; and it was terminated by an act
20 of induced abortion by a medical doctor at
21 the time and place charged in the complaint.

22 And on that basis, your Honor, I ask for
23 findings of fact prior to any further conduct
24 by the State.

25 THE JUDGE: All right, gentlemen, do you

1 all agree to those stipulations as read by
2 the prosecutor?

3 MR. TRAYNOR: Yes, your Honor.

4 MR. MULLANEY: Yes, your Honor.

5 MR. DALEY: Yes, your Honor.

6 THE JUDGE: All right, then at this
7 juncture the identity of all defendants is
8 stipulated with respect to their being
9 present on the premises of 101 Madison
10 Avenue, fourth floor, doctors' office on
11 September 8, 1990.

12 The stipulation also includes that they
13 did, in fact, defiantly trespass upon that
14 property on the date, that notice was given
15 to them not to come onto the property.

16 They ignored that warning, that actual
17 communication; and they did, in fact,
18 forcibly enter the premises of 101 Madison
19 Avenue.

20 And, of course, I am talking not only
21 about Mr. Loce but all named defendants as
22 have been named in the record.

23 In addition, it is my understanding that
24 it is also stipulated and I so find as a
25 matter of fact that on September 8, 1990, the

1 date of this criminal trespass, it is
2 stipulated and is a matter of fact that is
3 recognized by this Court, that this woman
4 identified by the prosecutor as Miss Z, was,
5 in fact, eight weeks pregnant and that Mr.
6 Loce was, in fact, the biological father of
7 the fetus; and that on September 8, 1990 this
8 pregnancy was terminated by an act of induced
9 abortion by a medical doctor, at the time and
10 place charged by the State as being the time
11 and place of the charged trespass.

12 Gentlemen, those are the findings of
13 fact. They are stipulated to, you have all
14 agreed as officers of the Court.

15 All proofs of the state have been
16 stipulated to except establishing the charge
17 of or element of mens rea, or criminal
18 intent.

19 As you well know, this is a
20 quasi-criminal proceeding.

21 There must be criminal intent proved by
22 the prosecutor. However, the State,
23 obviously, cannot enter the mind of Mr. Loce
24 and I find that the State has met their
25 burden at this point as far as establishing

1 a prima facie case.

2 This court has to take into
3 consideration all the evidence in
4 determining whether there's mense rea. and I
5 am satisfied at this juncture that there's a
6 prima facie case established by the State;
7 that the State has submitted sufficient
8 proofs at this juncture to prove the offense
9 of defiant trespass in violation of
10 2C:18-3(b1) with respect to all defendants--
11 named herein.

12 And is that it. Mr. Prosecutor? Do you
13 now rest?

14 MR. BANGIOLA: Your Honor, based upon
15 the law as stated in State vs. Reyes, in
16 anticipation of a motion to dismiss at the
17 conclusion of the State's case which may or
18 may not be forthcoming, I, nonetheless, rest
19 the State's case, asserting that allowing the
20 State all inferences in its favor at this
21 juncture in the case, as provided by State v.
22 Reyes, a prima facia case of trespass
23 violation has been establish.

24 The State rests. Thank you.

25 THE JUDGE: Counsel?

1 MR. MULLANEY: At this point we would
2 like to present to the Court the proposition
3 of calling witnesses of whom we advised the
4 Court were going to be here testifying today.

5 They will be testifying as to the one
6 issue, one factual inquiry that this case
7 presents, and that is whether or not the
8 fetus with respect to which Mr. Loce was the
9 father; was in fact, a human being.

10 It is our contention that as the Court
11 is well aware this is a criminal prosecution.

12 Mr. Loce, and I think I speak for the other
13 defendants, will be raising specifically the
14 following defenses:

15 First, N.J.S. 2C:3-5, which is use of
16 force for the Protection of Other Persons.

17 We will also raise Use of Force for
18 Necessity and Other Justification, which is
19 N.J.S. 2C:3-2; Justification in Property
20 Crimes, which is N.J.S. 2C:3-10.

21 For purposes of establishing the record
22 that we are, we would like also to raise a
23 defendant's Right to Defend Life under
24 Section 1 of the New Jersey State
25 Constitution.

1 As to Mr. Loce specifically, we would
2 raise his constitutional rights under the
3 14th Amendment of the United States
4 Constitution, which, as a father, gives him
5 the fundamental constitutional right to
6 protect, defend and enjoy the company of
7 his progeny.

8 Finally, because of his special
9 relationship as father to this person, Mr.
10 Loce will be raising the defense of Use of
11 Force by Persons with Special
12 Responsibility, N.J.S. 2C:3-8.

13 It is our contention, your Honor, in
14 the criminal prosecution what is the most
15 protected fundamental right is the ability
16 to present witnesses, offering relevant
17 evidence tending to prove material facts in
18 one's own defenses.

19 Our specific intention is that the
20 status of Mr. Loce's progeny being a human
21 being is the material fact in this case.

22 And that in order to insure Mr. Loce of
23 his constitutional rights of a fair trial,
24 the witnesses should very definitely be
25 allowed to testify within their various

1 fields of expertise to prove that fact.

2 It is our further contention that beyond
3 logical relevance, this is an entirely legal
4 inquiry that any law, as to the legal
5 protection of the young unborn, is strictly
6 of constitutional dimension.

7 It strictly has to do with the
8 regulation of the privacy rights of a woman
9 by the state.

10 Mr. Loce is not the State. Mr. Loce is
11 not charged with infringement upon privacy
12 rights.

13 Mr. Loce is charged with trespass. Any
14 legal precedent on a constitutional basis
15 is, therefore, inapplicable to his action.

16 Therefore, I submit to the Court we are
17 dealing only with the issue of logical
18 relevancy and certainly in particular with
19 the defense of Other Persons Statute and the
20 Defense of Life Statute, it is a logically
21 relevant proposition to show a human being
22 is a person, and that a human being is life.

23 We submit to the Court that our expert
24 should be allowed to testify now and offer
25 testimony to prove that fact.

1 MR. TRAYNOR: On behalf of the
2 defendants I represent, I join in that offer
3 with the exception of two things in
4 particular that apply to Mr. Loce; that is to
5 say the statute dealing with special
6 responsibility and any rights he has under
7 the constitution as a father.

8 MR. DALEY: I join in Mr. Mullaney's
9 argument.

10 THE JUDGE: Thank you. Mr. Prosecutor?

11 MR. BANGIOLA: Your Honor, one of the
12 witnesses, I understand, for the defense is
13 going to be Mr. Loce. Mr. Loce is the
14 defendant.

15 I, obviously, have nothing to say about
16 Mr. Loce testifying. However, as far as
17 expert testimony I object on the ground of
18 irrelevance.

19 The issues in a criminal prosecution or
20 any other case brought before any court are
21 the issues presented by the law, not the
22 issues presented in the minds of philosophers
23 or geneticists or other persons whose facts
24 to be presented to the Court by actual eye
25 witness testimony or in the form of their

1 opinions, are relevant to what the law frames
2 for the Court to decide.

3 The issues before the Court are framed
4 not by what individuals believe is relevant
5 factually or morally or philosophically, but
6 by what the law presents to the Court as the
7 framework for this search for the truth as to
8 the events of September 8, 1990.

9 In that framework, the testimony of
10 experts is not relevant.

11 And the reason is because there was an
12 entirely legal action taking place in the
13 performance of this abortion on September 8,
14 1990.

15 Now the defendants contest the
16 underpinnings, the fundamental -- I won't
17 state their arguments, but being as fair as
18 I can to their arguments -- the
19 philosophical and moral underpinnings of the
20 law as presented here.

21 However, even if these defendants are
22 correct and a fetus eight weeks old on
23 September 8 was aborted, and even if their
24 expert testimony establishes that it was a
25 human life, the privilege of the doctor to

1 perform the abortion and the woman to receive
2 an abortion is absolutely established under
3 the present state of the Constitution of the
4 United States, as established and interpreted
5 by the Supreme Court of the United States.

6 Now these people I believe would argue
7 that this is a raw exercise of authority, a
8 bald exercise of authority. But courts, as
9 you know, your Honor, do possess, in
10 addition to the important essential moral
11 and legal bases for their decisions, they
12 also do possess raw coercive authority.

13 And in this area, there can be no doubt
14 that the simple authority of the United
15 States Supreme Court is in effect when a
16 woman is eight weeks pregnant and seeks to
17 have an abortion.

18 In this sense, your Honor, there would
19 be, for example, no argument that an
20 individual who sought to interfere with a
21 lawful execution would not be entitled to
22 interfere, based upon the undisputed fact
23 that the person to be executed was a human
24 being simply because the law by the time a
25 legal execution is occurring, has undeniably

1 privileged the entire procedure.

2 It has taken into account the
3 defendant's rights in remaining alive. And
4 it has, nonetheless -- and taken into
5 consideration the assertions of the
6 defendant through his counsel.

7 But nonetheless, the execution is
8 allowed to go forward.

9 In this sense, your Honor, the privilege
10 of the young woman, Miss Z in this case, to
11 have an abortion and the privilege of the
12 doctor to perform the abortion as a matter of
13 law is beyond question.

14 Now I am not an appellate judge, or a
15 constitutional scholar of stature, that I
16 would presume to offer my personal opinion on
17 this subject.

18 It is not relevant. And, frankly, just
19 as my opinion is not relevant, the opinion
20 of the experts here is not relevant. The
21 law is relevant.

22 And the law says that a person who is
23 eight weeks pregnant can have a legal
24 abortion no matter what the subject of the
25 abortion is defined to be.

1 For this reason, your Honor, I move
2 that this testimony of experts be barred.

3 THE JUDGE: All right, first of all,
4 gentlemen, this is not an abortion case.
5 This is a trespass case. Let's set the
6 record straight.

7 The defenses, and there are several
8 defenses that have been listed and placed on
9 the record, basically boil down to Defense of
10 Another 2C:3-5, states that use of force for
11 the protection of other persons, states that
12 subject to the provisions of this section and
13 of Section 2C:3-9, "...use of force upon or
14 toward the person of another is justifiable
15 to protect a third person, when..." and it
16 goes on to discuss the different
17 circumstances.

18 So the issue is, first of all, what is
19 a person? What is another? I mean we are
20 dealing with very, very, very important
21 questions.

22 And the force that was used in the
23 entry of 101 Madison Avenue in Morristown,
24 was the force that the defendants in this
25 case are defending against.

1 And they are saying, and the issue is
2 put to this Court, that they used that
3 force in defense of another.

4 Now we are faced with questions such as:
5 When does life begin? What is a person?
6 What is another? These are very, very
7 important questions.

8 In my reading of the cases, Roe v. Wade
9 and other following cases, they talk about
10 viability.

11 But they never answer the question; the
12 question has never been answered.

13 And I hope in this open forum, and this
14 is why we are here and why we have courts,
15 to answer questions like this that obviously
16 impact on our society.

17 It doesn't, it is not a question of
18 what is right, or what is wrong.

19 It is an issue of keeping everyone
20 educated, let everyone know what is going on
21 in the world; because obviously there's only
22 one Person who knows when life begins. That
23 Person is not going to come down here and
24 testify.

25 But I understand we have some experts

1 who are going to put some testimony on the
2 record.

3 No matter what happens I think it is
4 safe to say we will all benefit from this
5 testimony.

6 We will all learn something from this
7 testimony, and the courts that come after
8 this Court, the judges that come after this
9 Judge will make their rulings perhaps, if
10 there is another court, if there is another
11 judge.

12 But this, as I said, is a trespass
13 case; and few rights are more fundamental
14 than that of an accused to present witnesses
15 in his own defense.

16 State versus Harold, 183 N.J. Super.,
17 485 (App. Div. 1982).

18 The set of facts is very unique. This
19 is a unique case. People are interested in
20 this case.

21 The evidence that is proffered by the
22 defense is supposed to be relevant evidence.
23 Well, relevant evidence is defined in Rule
24 1(2), N.J.S. 2A:84A-3).

25 "... evidence having any tendency in

1 reason to prove any material fact." I am
2 going to allow testimony, at this juncture.

3 Any other motions that you wish to make
4 counsel, either prosecutor or defense
5 counsel, I will hear you.

6 But at this juncture I am going to
7 allow the testimony of the experts on the
8 issues that have been stated.

9 MR. BANGIOLA: I will just state my
10 continuing objection for the record and have-
11 no further objections at this time, your
12 Honor.

13 THE JUDGE: Thank you.

14 MR. MULLANEY: I would like to thank the
15 Court for its ruling, and I would also like
16 to point out that a ruling like that has been
17 a long time coming. Thank you.

18 At this point defense calls Mr.
19 Alexander Loce. Where would you like him to
20 testify?

21 THE JUDGE: Preferably near a
22 microphone.

23 Actually, if he was closer to the Court
24 Reporter; she would probably agree with
25 that.

1 All right, proceed.

2 A L E X A N D E R V. L O C E, having been
3 duly sworn to tell the truth, testified as
4 follows:

5
6 DIRECT EXAMINATION BY MR. MULLANEY:

7 Q Thank you, your Honor. Mr. Loce, will
8 you state your name and address for the record?

9 A My name is Alexander V. Loce. I reside at
10 80-11 162nd Street, Jamaica, New York.

11 Q Mr. Loce, do you recall or could you put
12 forth to the Court the events of September 7, 1990.

13 A I was very distraught. I tried to convince my
14 fiancée that her course of action was not the best
15 choice, that other --

16 Q What course of action are you speaking
17 of, Mr. Loce?

18 A Of aborting our child. I have -- received
19 assurances that individuals and groups would help
20 me to support our child, and as well as from the
21 director of the school that I am attending that I
22 would be given another job.

23 She still was very frightened and scared and
24 that's normal.

25 Failing to convince her of that point, I

1 sought legal action to save the life of our child.

2 Q Could you describe to the Court what
3 that action entailed?

4 A We -- I tried to seek relief. I am not that
5 familiar with legal terms. Someone please correct
6 me if I'm wrong -- with an junction.

7 Q A temporary restraining order?

8 A A temporary restraining order.

9 Q And to which court did you originally
10 appeal? The first court of the ...

11 A We were here in Morrystown.

12 Q Was it the Superior Court?

13 A We eventually --

14 Q Superior Court?

15 A We were in the Superior Court, yes.

16 Q Going back a ways, Mr. Loce, how did you
17 come to or why did you come to Morrystown?

18 A I came to Morrystown because my fiancée told
19 me that that is where the abortion was going to be
20 taking place.

21 I tried to convince her that there was a
22 better option.

23 Q Who did you contact when you came to
24 Morrystown?

25 A When I came to Morrystown I contacted some

1 individuals who were sensitive to my thoughts, some
2 individuals who said they could help me; and as
3 well as yourself, Mr. Mullaney.

4 I was directed to you and other lawyers.

5 Q Mr. Loce, are you familiar with the fact
6 that an application for a temporary restraining
7 order was made to both the Superior Court and the
8 Appellate Division of Superior Court in this
9 matter?

10 A That is correct.

11 Q Are you familiar with what the rulings
12 of those courts were, as to the temporary
13 restraining order asking to stop the abortion?

14 A We were denied relief, I believe that's the
15 way it would be phrased.

16 Q Could you tell the court what happened
17 after the Appellate Division?

18 A After our request was denied --

19 Q This is the Appellate Division.
20 There was one more stage.

21 A We -- I sought further, further legal action.
22 And we sat before the New Jersey State Supreme
23 Court?

24 Q That's correct. Do you recall the name
25 of the Justice who heard the case?

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A I'm sorry?

Q Was it Justice Robert Clifford?

A Yes, that's correct.

Q Could you tell the Court where your hearing was held in front of the Supreme Court?

A In his home. In his living room, I believe.

Q And what time of day was that?

A This was quite late at night and we finished at approximately 12:30 in the evening.

Q And what were -- what was your application to Justice Clifford? What relief were you seeking?

A We sought a temporary restraining order in order to present our case more fully.

Q What was the result of your application?

A The result of that was negative. The judge ruled in my fiancée's favor and she was allowed to have this medical procedure performed, the abortion.

Q Mr. Loce, to the best of your knowledge at that point was there any other legal remedy you may have taken?

A I felt that I was at my rope's end. There was no other recourse. I had taken all the legal steps that I could have and that the next day

1 everything would be finished.

2 Our child would have -- would die.

3 Q Mr. Loce, have you ever been convicted
4 of a crime?

5 A No, sir.

6 Q Have you ever engaged in criminal
7 activity?

8 A No, sir.

9 Q Could you describe to the Court what you
10 then did and why you did it on September 8, the
11 following day?

12 A With some individuals who showed sympathy for
13 me and for my child, our child, we proceeded to the
14 abortion clinic where the procedure would be held.

15 THE JUDGE: What date are you talking
16 about? Is this September 8?

17 THE WITNESS: This is September 8,
18 Saturday.

19 THE JUDGE: 1990?

20 THE WITNESS: 1990.

21 THE JUDGE: All right. Next question.

22 BY MR. MULLANEY:

23 Q Mr. Loce, what did you do? What did you
24 do physically at the abortion clinic?

25 A We entered the building as it opened. We saw

1 some doctors inside, who were surprised to see some
2 large number of people coming in the office,
3 rushing in.

4 I think I might even have brushed the
5 receptionist aside as we were running past.

6 Q What did you do once you were inside?

7 A Inside we sat down on the floor and we locked
8 ourselves together with handcuffs and bicycle
9 locks.

10 Q What was your intent in entering the
11 premises?

12 A My sole purpose in being there was to save
13 the life of our child.

14 Q Mr. Loce, did you go to any particular
15 area of the inside of the clinic?

16 A As we walked in, we were looking immediately
17 for the rooms where the abortions would take place.

18 We saw that there were four rooms directly in
19 front of us.

20 We sat down in a straight line blocking the
21 entrance to those rooms.

22 Q Who were you trying to influence by
23 entering the premise forcibly like that?

24 A I wanted to keep the doctors from being able
25 to perform an abortion on my fiancée.

1 Q Mr. Loce, have you ever been associated
2 with Operation Rescue?

3 A No.

4 Q You're not a frequent rescuer?

5 A I have never participated in a, quote, rescue
6 prior to this.

7 MR. MULLANEY: Thank you, your Honor.

8 No further questions.

9 THE JUDGE: Any cross-examination?

10 MR. BANGIOLA: No, no questions, your
11 Honor.

12 THE JUDGE: All right, thank you, Mr.
13 Loce. You may step down.

14 MR. TRAYNOR: Judge, I would like to at
15 this time represent to the Court that the
16 testimony of the other defendants would be
17 cumulative and redundant and that the intent
18 of the people who accompanied Mr. Loce were
19 of the same intent, that is to say to
20 forcibly prevent the happening of the
21 abortion.

22 MR. BANGIOLA: Those affidavits we are
23 supposed to get later in the day are starting
24 to look more and more important as the
25 stipulations of counsel mount up.

1 And I trust the implications in the
2 Green case are going to be thoroughly
3 explored as more facts dealing with the
4 individual defenses of -- I don't know
5 exactly the total number of defendants, but
6 as all of these individuals are apprised of
7 their rights in dealing with the important
8 factual stipulations, are covered in these
9 affidavits.

10 MR. TRAYNOR: Judge, what I am trying to
11 do is just as the stipulations were intended
12 to save the Court time, if we get thirteen
13 people up here to testify to their intent,
14 and I think that's the whole point of
15 stipulations which counsel has entered into
16 in other areas of this trial, and which we
17 have entered into.

18 THE JUDGE: I understand. The
19 prosecutor is concerned with the conflict of
20 interest, but the Court has addressed that
21 issue.

22 It's been represented to the Court that
23 these affidavits are forthcoming. There's a
24 clear stipulation that all named defendants
25 who have been named in the record forcibly

1 entered 101 Madison, much in the same way as
2 testified to by Mr. Loce, and they were all
3 together.

4 They all forcibly entered. That's my
5 understanding of the stipulation. And it is
6 also my understanding that there will now be
7 some sort of -- well, it has already been
8 testified to that the reason was to prevent
9 the abortion.

10 And the issue, really the only issue
11 left in the case, is whether or not this
12 forcible entry was justified under the law
13 in protection and defense of another.

14 And I understand, gentlemen, that you
15 have witnesses that will go to that issue at
16 this juncture?

17 MR. MULLANEY: That's correct, your
18 Honor.

19 THE JUDGE: Let's proceed.

20 MR. MULLANEY: At this time I would like
21 to call Dr. Jerome LeJeune to the stand.

22 THE JUDGE: Dr. LeJeune, you have to be
23 sworn in first.

1 J E R O M E L E J E U N E, M.D., Ph. D.,
2 having been duly sworn according to law, testified
3 as follows:

4 THE JUDGE: Doctor, I heard you
5 pronounce your own name and we butchered it.
6 So you may have a seat.

7 All right, you may proceed, counsel.

8
9 DIRECT EXAMINATION BY MR. MULLANEY:

10 Q Doctor LeJeune, could you please for the
11 record, state your name and how to spell it?

12 A Your Honor, my name is Jerome LeJeune.

13 Q We did butcher that one.

14 A Yes. I am a professor of fundamental genetics
15 in the Children's Hospital of Paris and the Faculty
16 of Medicine of Paris.

17 And I began as a pediatrician and then I
18 became a geneticist. Now I am a pediatrician and
19 a geneticist.

20 And in my consultation, which is probably the
21 biggest in the world for mentally retarded children
22 having difficulty due to a chromosomal mistake, we
23 examine every year 2000 children, and we have
24 record of 30,000 of them.

25 So our job is really to try to understand what

1 makes the nature of every human being; why some of
2 them are afflicted by constitutional difficulty,
3 and to try later to treat that, if we can, so that
4 we would be able to some day to bring them back to
5 normal; and to give them what nature has refused to
6 them.

7 Q Dr. LeJeune, could you please tell the
8 Court a little bit about your educational
9 background?

10 A As I said I was MD and PhD, and have been
11 always in Paris as a student.

12 And later when I finished my studying and I
13 got my degree in medicine and genetics, I was
14 representative of France in the United Nations
15 scientific committee on the danger of atomic
16 radiation, because I was geneticist.

17 And in that function, international function,
18 I came very often to the United States to go to the
19 UN and I met one professor of California Institute
20 of Technology.

21 And I was invited to give the first course of
22 human genetics in Cal Tech because in this highly
23 educated university they had not yet had any course
24 of human genetics.

25 They had a lot of course in fundamental

1 genetics. I was the first professor of fundamental
2 genetics in Cal Tech.

3 Q As part of your serving on this
4 committee, Doctor, did you have opportunity to go
5 to the Kremlin in Moscow and meet with Mr.
6 Brezhnev?

7 A Yes. That is as a geneticist, I was
8 vice-president of the Genetic Congress in Moscow
9 and I was known by my fellow professor of genetics
10 in Moscow and because I am a member of the
11 Pontifical Academy of Science and because I was a
12 member of the, of a special group that we had to
13 study of the dangers of atomic war I was sent by
14 the Pope, John Paul II, to Moscow.

15 It was around three days after Mr. Jaruzelski
16 had declared the war against people of Poland; in
17 other words, declared a state of war against its
18 own population.

19 And because we had prepared the reports about
20 the dangers of -- as a specialist I was only
21 speaking of the genetic dangers of the atomic war,
22 then the Holy Father wanted me to be presenting a
23 report to all the powers of the world who were
24 having the atomic power.

25 And so some of us of the Pontifical Academy

1 of Science went to America to see Mr. Reagan and
2 some came to France or England to China and India.
3 And I was sent by the Holy Father to see Mr.
4 Brezhnev.

5 And it was a very curious situation. But I
6 am not going to talk too much about that.

7 Q Dr. LeJeune, you have been credited with
8 the first discovery of the first chromosomal
9 abnormality in man.

10 Could you please tell the court about your
11 discovery of Down's Syndrome?

12 A Yes. Down's Syndrome is a very peculiar
13 disease in the sense that the baby who are born
14 with it owe their difficulty to an excess of
15 genetic material.

16 And it was long ago, nearly thirty years ago
17 that I discovered that they had an extra chromosome
18 and this chromosome is now known as number 21.

19 The classification of chromosome was not yet
20 established at that moment because it was the first
21 disease to be discovered to be due to this
22 chromosomal defect.

23 And those babies, in fact, suffer because
24 they have too much of those table of the law of
25 life which we call chromosomes.

1 And to make a very complex story short I
2 would say that inside the chromosomes are written
3 in a very special ribbon, which is DNA, all the
4 tricks of the trade to be a human being, if those
5 chromosomes are human chromosomes.

6 If they are chimpanzee chromosomes, all the
7 tricks to be a chimpanzee are written.

8 Q Doctor LeJeune, we are trying to qualify
9 you as expert at this point.

10 A Yes.

11 Q We will get into that in a minute. I
12 hate to cut you off because it's an interesting
13 story. For your discovery of Down's Syndrome did
14 you win any awards?

15 A Well, I had the honor of receiving the
16 Kennedy Prize from the hands of the late president
17 and, because of this discovery, and I got also the
18 William Allen Memorial medal in this country which
19 is the highest prize that you can get in genetics
20 in the world.

21 It is given by the American Society of Human
22 Genetics in this country. I received it in San
23 Francisco.

24 Q What year was that, Doctor?

25 A Oh, I am not good with the remembering the

1 times. It was, if I'm correct, around '62 or '64.
2 I think that the Kennedy Prize was '64.

3 Q Could you tell the court --

4 A That's -- I'm sorry. I don't remember.

5 Q Could you tell the Court of any other
6 boards or academies of which you're a member?

7 MR. BANGIOLA: I am prepared to
8 stipulated the witness as an expert in
9 genetics. Excuse me.

10 MR. MULLANEY: Your Honor, it is just
11 not that often we get someone with the
12 stature of Dr. LeJeune. But if the Court is
13 willing to recognize him, I offer the Court
14 Dr. LeJeune as expert in genetics and human
15 reproduction.

16 THE JUDGE: And prosecutor is willing to
17 stipulate that?

18 MR. BANGIOLA: Without objection.

19 THE JUDGE: The doctor who discovered
20 Down's Syndrome is an expert in genetics.

21 MR. BANGIOLA: Doesn't seem like much of
22 a stretch.

23 THE JUDGE: I will accept that
24 stipulation and I welcome you to the
25 Morristown Municipal Court.

1 THE WITNESS: Thank you, your Honor.

2 THE JUDGE: All right. You may
3 continue.

4 BY MR. MULLANEY:

5 Q Thank you, your Honor. Dr. LeJeune,
6 could you please describe the process of human
7 reproduction?

8 A It is a very long story, your Honor. Because
9 life is with us since millennia. But if life
10 continue from generation to generation each of us
11 has a very unique beginning, which is at the moment
12 that all the information necessary and sufficient
13 to be that particular human being, which we will
14 call later Peter or Margaret, depending on its own
15 genetic make-up, when this whole necessary and
16 sufficient information is gathered.

17 And we now know from experience both in
18 animals and now in human beings, that this moment
19 is exactly the moment at which the head of the
20 sperm having penetrated inside the ovum, then the
21 information carried by the father encounter in the
22 same recipient cell, the information carried or
23 transmitted by the mother; so that suddenly a new
24 constitution is spelled out.

25 It is very curious that biology and the

1 science of the law are speaking the same language.

2 From a person strongly willed and with good
3 health we'd say he has a felicitous constitution.
4 And from a state in which every person is protected
5 by the law we say it has an equitable constitution.

6 And exactly as in a free country no law can
7 be enforced if it has not been entirely spelled out
8 and voted for, we have the same process in biology,
9 that a new human being does not come into existence
10 until all the specifications which spell out its
11 own personal constitution are, have been there.

12 And the voting process even exists in biology,
13 which is the choice of the sperm.

14 Because there are maybe hundreds or thousands
15 or 10 thousands sperms swimming around one egg, and
16 one is elected. And that is a voting process.

17 And at the moment the human constitution is
18 entirely spelled out a new human being begins its
19 career.

20 That's not rhetoric. That's not fancy, or
21 hope of a moralist. It is just an experimental
22 phenomenon.

23 Q Dr. LeJeune, where is this information
24 specifically contained?

25 A This information is specifically contained in

1 two different support. One is DNA. DNA is a long
2 thread molecule. And to give you an impression,
3 your Honor, this flat ribbon is roughly comparable
4 to the tape that you could have in a tape recorder.
5 But it is very minute.

6 Inside the head of a sperm there's a long
7 thread of one meter, one yard, say. And this is so
8 tightly coiled in 23 little pieces that we call
9 chromosomes that the whole thing is inside the head
10 of the sperm and it is, the volume of it is upon
11 the point of a needle.

12 In the first place in so small a volume, all
13 the data which will spell out the way to build all
14 the proteins which will make the machine tool
15 inside the cells is entirely spelled out.

16 The same is true in the ovum, in which 23
17 little pieces of chromosomes one meter long all
18 together stay there until they receive the help of
19 the 23 from the father. Now that's part of the
20 information and it is a text book.

21 Most of the people will stop there and tell
22 you genetic information is carried by DNA.

23 That's perfectly true. But there's another
24 type of information the amount of which is even
25 much more important and much bigger, which is

1 inside the cell.

2 Inside the ovum there are, there have been
3 prepared billions of molecules highly specialized
4 who will recognize and be recognized by the signals
5 given by the genetic make-up.

6 And to make the thing understandable,
7 remember, that while you use a tape recorder if you
8 buy a mini cassette in which the music of an artist
9 such as Mozart is recorded, then if you put it in
10 your tape recorder, you will get a symphony.

11 But curiously on the tape there are no notes
12 of music, and inside your tape recorder there are
13 no musicians.

14 Nevertheless, by a special code written on
15 the tape, some information is given to your tape
16 recorder so that it will read it and it will make
17 the air moving by the loud speaker so that what is
18 coming to you is not the orchestra, not the
19 musicians, not evidence of music, but the genius of
20 Mozart.

21 That's the way life, the symphony of life, is
22 played. That is inside the egg, which receive the
23 tape band from father and which has its own tape
24 bands, and which makes 23 plus 23, 46 volumes of
25 the table of the law of life.

1 The cassette itself is a tape recorder and
2 inside the tape recorder, to build the tape
3 recorder you need an enormous amount of information
4 to know now to build the machine, how to use the
5 material, how to do the whole thing which is a tape
6 recorder.

7 Now when you speak about genetic information
8 you have to remember you have the long ribbon of
9 DNA which are the mini cassette of the symphony of
10 life, but you have the cell itself which is the
11 magnetiphone, which is a magnetiscope, which is the
12 tape recorder; and which has an enormous
13 information.

14 Because the tape recorder, to read a tiny
15 ribbon like this is a fantastic machine, extremely
16 complex.

17 Then to answer your question it's very
18 difficult to spell out the amount of information in
19 the first cell.

20 We can do it easily for the ribbon because we
21 know the number of betas, of bytes of information
22 which are there, some 50 billions, but inside the
23 egg the number is much much higher, and nobody for
24 the moment can measure it and can count it.

25 But we can say safely that when we look at the

1 Cray Two, this enormous computer that just -- we
2 just recently put another, the power of a Cray Two
3 is vanishing in smoke -- compared to the amount of
4 information which is inside one reproductive cell
5 once the fecundation has occurred.

6 Q Dr. LeJeune, fecundation being the
7 French phraseology for, what do we call it?

8 A Fertilization.

9 Q Once fertilization, once conception has
10 occurred, could you tell the Court is anything
11 added after that point?

12 Does Peter or Margaret come into being, so to
13 speak, through additional information?

14 A Well, that was a very interesting acquisition
15 of modern science. Because for a long time it has
16 been believed that the opinion that the mother, the
17 feeling of the mother, could do something to the
18 baby.

19 And we know now that everything is written
20 inside the first cell. I have to come back to this
21 concept of conception, because it is a very
22 remarkable fact that in all the languages coming
23 from Latin, we use the same word either to express
24 an idea which is come into our mind, or to a new
25 being coming into life.

1 We conceive an idea. We conceive a baby. A
2 baby is conceived. Conception do apply just as
3 well for defining what will animate a matter in a
4 human nature or what will animate your mind within
5 your idea.

6 And that is, so to speak, an extraordinary
7 description of reality which is at the very
8 beginning the information and the matter, so to
9 speak, the spirit and the body are so intimately
10 interwoven that we use the same word to say spirit-
11 animated by your ideas, or life of a new human
12 being animated by genetic property; conception.

13 Now this moment a new human being is conceived
14 is, really, as for the conception of a new
15 constitution, when the whole thing has been spelled
16 out.

17 Now we know and I think there's no
18 disagreement among biologists everywhere in this
19 world that after fecundation no new information
20 goes in.

21 Everything is there at the moment of the,
22 just at the moment after the entry of the sperm, or
23 it is not enough and it will fail.

24 Either the whole information for the human
25 being is there and the human being can develop and

1 organize, or it is not there and no human being
2 will develop at all.

3 Now nature has invented an extraordinary
4 device to tell us that nature do protect the
5 privacy of the very first stage of the human being.

6 The right of privacy is written in that way in
7 biology.

8 The egg is a little sphere of one millimeter
9 and a half as a diameter. But it is not naked. It
10 has some plastic bag around that we call from Latin
11 zona pellucida, because you can see through --

12 Q Would you spell that?

13 A Zona pellucida? I am sorry. I can't spell
14 in English.

15 MR. MULLANEY: We couldn't pronounce
16 your name either.

17 THE WITNESS: I can write it down.

18 MR. MULLANEY: Z-o-n-a
19 p-e-l-l-i-c-u-d-a?

20 BY MR. PEE:

21 A That's correct. And this very curious
22 plastic bag so to speak is, in fact, the perfect
23 control of the privacy of the new being because as
24 soon as the head of the sperm who got first was
25 able to burrow inside the zona pellucida, as soon

1 as the head comes inside, suddenly in a
2 micro-second, this lucida, this transparent
3 membrane becomes suddenly changed physically, and
4 it becomes entirely not permeable to any other
5 sperm.

6 It's a mechanism of an extraordinary
7 precision which prevents that many sperm could go
8 inside the one egg.

9 Because you need only one sperm to one egg to
10 build a human being or to build any other being, if
11 it is bi-sexual reproduction.

12 Q Dr. LeJeune, why would you say that the
13 fertilized egg, or would you say that the
14 fertilized egg, is a member of the human species?

15 A I would say it for a great number of
16 induction, scientific induction, and by some
17 experimental observation directly.

18 Q Could you explain those to the Court?

19 A Yes. For example when I spoke about the
20 chromosomes, it would be very long before we can
21 read all the information written on it.

22 You know that there's an enormous project
23 which is a human genetic project especially in this
24 country. It costs billions of dollars.

25 And it is supposed to read all the, what is

1 spelled out inside the chromosomes. We have not
2 yet achieved that.

3 We can read small segments but it is enough.
4 Then we are not in a position of reading the whole
5 table of the law of life which are inside the
6 volumes which are what is called the encyclopedia
7 of life.

8 But we know we have 23 volumes coming from
9 father and 23 from mother. And on the 46 of them
10 we can read what is written on the back of the
11 volume, so to speak, the name of the volume,
12 because the chromosomes have a form.

13 They have a given length, a given position of
14 the centromere (phonetic) and inside the little
15 head of the chromosome we can see little bands
16 which are typical of each part of our gender.

17 It is so simple, although it takes maybe one
18 year to be able to recognize all of it, that in a
19 month from now I will have to correct the
20 examination of cytogenetics in the University of
21 Medicine in Paris and I will show to some of the
22 students pictures of the chromosome of a
23 chimpanzee.

24 And on the picture was a chromosome of a man.

25 And the one who could not tell me this one is a

1 man, this one is a chimpanzee, would fail that
2 examination. It is that simple.

3 Q Doctor LeJeune, is it your testimony
4 that there's a physical difference between the
5 chromosomal make-up, a physical difference, of the
6 human being and every other species?

7 A Well, that's no doubt. There's no other
8 species which has the same chromosomal constitution
9 as human being.

10 But that is not true especially for us. It
11 is true for every species. We can look at the
12 chromosome of a chimp and say this one is a chimp.
13 This is a orangutan. This is gibbon and this is a
14 gorilla.

15 Each species has its own shape of chromosome
16 that we can recognize.

17 Q At what point in the human reproductive
18 process does human specificity exist?

19 A It exists at the beginning, that is the
20 fecundation, at fertilization, at conception.

21 Q Is it your testimony that if one were
22 able to observe a human fertilized egg having not
23 divided yet and one of a chimpanzee having not
24 divided yet, that there would be physical
25 differences?

1 A I have no doubt and very easy to recognize.
2 The only difficulty is that because there's only
3 one cell, if you look what is inside that cell you
4 will kill that cell. And I am not going to do that
5 in a human embryo, in a human being.

6 But I would have no reservation to do that
7 job with a fertilized egg of a mouse and it's done,
8 has been done repeatedly.

9 And you can look at the chromosome and see it
10 is a mouse and not a rat. It is as simple as that.
11 So it's not any longer inference, a deduction. It
12 is just plain observation.

13 Q Dr. LeJeune --

14 A But I would add just that if it was not true,
15 life would not be possible.

16 Q Why is that?

17 A Because if the first egg was not belonging to
18 a given species at the moment it is conceived, the
19 species would not exist at all.

20 And you would see that sometime an elephant
21 can begat a mouse and it does not happen. Then we
22 know by just common judgment that it has to be like
23 that.

24 Now science has the advantage today that not
25 only we can say by logic, well, sure it should be

1 like that; we can say now by looking at it, we are
2 sure it is like that.

3 Q Dr. LeJeune, could you tell us about the
4 Jeffry bar code and the process of methylation?

5 A Well, that is a very interesting piece of
6 information which dates from around four years now,
7 that a British gentlemen, Mr. Jeffries, invented
8 that there were a part of the chromosomes in which
9 the DNA was repetitive.

10 That is, the same sequence is repeated ten
11 times, twenty times, a hundred times.

12 And it is supposed now that those sequences
13 are a recognition system, how to build the nucleus,
14 how to have this long ribbon going around and not
15 being knotted, so to speak.

16 And, well, not to be too complex, what Mr.
17 Jeffries found was that because those repetitive
18 DNA, many change by mutation can occur in those
19 fragments without doing any harm because some of
20 the sequence will still be good and the race is
21 repeated.

22 And then they found a trick so that with a
23 special enzyme you could cut this DNA, have it
24 migrating on a special substrate and having it
25 recognized by a given probe that the result is --

1 the technique would be a little long to explain.

2 But the result is very obvious. It looks
3 very much like the bar code that you have in a
4 supermarket.

5 You know when you buy now something in the
6 supermarket, instead of writing the price and what
7 it is, there are various lines of various widths,
8 of various distances and with an optic reader.

9 You just go through the bars and it tells
10 inside the computer what is the product and what
11 you should pay for it.

12 Now the Jeffries system does exactly the same
13 thing, that is, having extracted the DNA, and
14 having looked at it with that technique you see the
15 bar code of the person.

16 And the demonstration by Jeffries was again,
17 the demonstration that what was inferred to be, was
18 correct; that is, each of us is absolutely unique,
19 that is the sequence of bands is absolutely typical
20 of the person you're looking at.

21 Q Doctor LeJeune, that's specific within
22 the species, as to an individual within a species?

23 A It is specific of the species, that's
24 correct. But it is specific of the individual.

25 Q So if I could frame the question?

1 A It is personal to an individual. It is so to
2 speak its identity card, which cannot be falsified
3 because you have this identity card written in each
4 of your cells.

5 In all of your cells it is always the same
6 pattern that you would get if you were looking at
7 it.

8 But this pattern is not only typical of each
9 of us. But if you look at the pattern of the DNA
10 by the Jeffrey's picture of dad and mom of this
11 person, we will see that this person has a sequence
12 of the bar code which is personal to this person.

13 But we will see that half of the bands were
14 present in Dad, and half, the other half was
15 present in Mom.

16 So that we can recognize at one glance beyond
17 any discrepancy in calculation that this person is
18 the progeny of those two persons.

19 And we can demonstrate that no other persons
20 in the world has exactly the same bar code.

21 Q At what point does that individuation
22 take place?

23 A Oh, that takes place at fecundation, at
24 fertilization, at conception. Because it just
25 tells us that the constitution of this person is

1 personal to this person.

2 Q Dr. LeJeune, is it your testimony that
3 we have at conception both species specificity and
4 a casting of the individual within the species?

5 A Yes. And I would say that very soon we will
6 build machine very comparable to the supermarket
7 with an electronic reader so that we will go
8 through the bar code and have the whole thing
9 studied by computer.

10 Just for the moment we look at it. But it
11 could be done by computer, exactly like in the
12 supermarket.

13 But the only thing that the biggest computer
14 will never tell us will be the price of the human
15 life.

16 Q Dr. LeJeune, based upon the empirical
17 data you presented do you have a conclusion as to
18 what exists at the moment of fertilization?

19 A Well, at the moment of fertilization what
20 exists is a pure novelty. It has never occurred
21 before.

22 It's a new constitution of a new personally
23 devised constitution for this person.

24 Q If you had to give it a name what would
25 you call it?

1 A I would call it a human because I know that
2 the whole information is human. I can read it. I
3 can see the dimensions and make up of the
4 chromosomes.

5 I can be sure it is human. Now I would say
6 it is a being because I know it is by its own
7 information that it will develop itself.

8 It just needs nurture and protection. It is
9 just what it needs. Then being human, it is a
10 human being.

11 I would not have any definition other than it
12 is a human being. But if I could say a word about
13 a second discovery, because what I felt in France,
14 the curious decision of the Supreme Court in
15 America.

16 I was surprised by one phrases which was that
17 it was not possible to reach agreement on when
18 human life begins.

19 But that was 18 years ago. And Jeffries
20 system was not known, and what was not known is now
21 the Sorimy (phonetic) and many others which I will
22 not quote all of them by their name which is the
23 methylation of DNA.

24 If I am allowed, your Honor, it is very
25 complex. It's scientific jargon. But it is

1 directly relevant to the notion what is a human
2 being at it's beginning and it dates from the last
3 four years and the developments of less than six
4 months ago.

5 And if I can say a word about it I will try
6 to make it rather clear if I can.

7 THE JUDGE: All right, Doctor. I would
8 like you in doing that to answer two
9 questions.

10 THE WITNESS: Yes, sir; your Honor.

11 THE JUDGE: Number one, in doing your
12 description I want you to tell this Court if
13 you can answer the question: What is a human
14 being; and when does a human being come into
15 existence? When does human life begin?
16 In that context if you can, answer those two
17 questions.

18 THE WITNESS: Well, I will start again
19 by the third one, your Honor, with your
20 permission, that human life never begins. It
21 continues because human cells are alive. And
22 we come from cells from our parents.

23 So that the continuity of life is no
24 question. And if you ask me when human life
25 did begin, you ask me when the first human

1 being came into existence.

2 Not me, not us, but our forerunners.

3 And that would be an evolution description
4 which I would be very interested to discuss
5 with you. But maybe it is too far back.

6 THE JUDGE: I will rephrase the
7 question.

8 When does each unique constitution come
9 into existence?

10 THE WITNESS: Then I will go back --

11 THE JUDGE: In the continuum?

12 THE WITNESS: Yes, the human
13 constitution happens at the moment the
14 genetic information coming from the father
15 goes in the cell which is ready to have it,
16 which is the female cell.

17 And once the zone pellucida has closed
18 entirely, the information is locked in. No
19 one can enter later. And all of it has to
20 be there.

21 To answer your question when does this
22 special constitution begin, it's very
23 simple; at the moment which is micro-seconds
24 of the change of the zona pellucida which
25 now is locking in this particular human

1 constitution which is a new being.

2 Now what is a human being? That's very
3 simple. A human being has to be human, has
4 to be a being. Then a human being is only a
5 member of our species.

6 An egg of a chimpanzee can't be a human
7 being because it is a chimpanzee being. But
8 everytime that genetic information is human,
9 everytime that this message which is at the
10 beginning of life which is alive and which is
11 life, as soon as this message is really a
12 human message then this life is a human life.

13 And if it is a being, this being is a
14 human being.

15 THE JUDGE: Next question.

16 MR. MULLANEY: Thank you, your Honor.

17 BY MR. MULLANEY:

18 Q Dr. LeJeune, could you describe as we go
19 through human development in the physical sense,
20 what happens to the level of information contained
21 in any one cell?

22 A That was a very complex subject, but when I
23 began my study in genetics, because it was
24 calculated that we have possibly 50 thousand genes
25 in one cell, then we have 50 thousand genes in this

1 little sphere of one millimeter and one-half which
2 is a fertilized egg.

3 Now if all of them was performing their duty
4 at the same time, the amount of energy would not
5 only play the symphony, it would seem to be
6 exploding.

7 It's simply impossible that all the genetic
8 information is dictating all that it knows at the
9 same time.

10 Exactly like in a company, in a polite
11 company when somebody is talking the others have to
12 listen.

13 Then they can interrupt and they can say what
14 they have. But if all of them are speaking
15 together, it doesn't work.

16 Q But Dr. LeJeune, everyone is there even
17 though they are not speaking; is that correct

18 A Yes, sure. Everything is there.

19 But now the order is to be given by another
20 instruction.

21 Now we come to the second level I wanted to
22 speak about, your Honor, because it was totally
23 unknown four years ago.

24 Which is that not only that this ribbon of
25 DNA has a message written letter by letter, piece

1 by piece, in the DNA and the sugar phosphor back
2 bone.

3 But this ribbon is not as dull on the tape as
4 the tape we put in the tape recorder.

5 Because superimposed to the basic information
6 there are some indication this part must be read
7 immediately, this part is to be read later.

8 And the way it is achieved is by methylation
9 of cytosine which is all on the piece of DNA.

10 Q Could you spell methylation, Doctor?

11 A I will write it down. Methylation of
12 cytosine, just to be clear.

13 But now, what it means is exactly what does a
14 good student do when preparing an exam? He has to
15 underline some parts of the book because he has to
16 know that immediately tomorrow.

17 And some parts he cross because he doesn't
18 want to learn it just now and he will come back to
19 it later.

20 Now it is what is meant by the methylation
21 processes, the message is well written and
22 everything is written to make a human being, to be
23 a human being.

24 But at the moment of fecundation part of the
25 DNA coming from father is underlined in the male

1 way and the DNA coming from mother is underlined in
2 the mother way.

3 And, therefore, the fantastic discovery was
4 never expected I may say ten years ago. Nobody
5 predicted it; that, in fact, father underlines
6 instructions to make immediately the membranes
7 inside which the embryo will develop itself, so to
8 speak, its space capsule; and to make the placenta
9 which is the body by which it will take the
10 nutrients from the vessels of mother.

11 That's underlined on the sperm, not on the
12 egg. But on the egg what is underlined is all the
13 tricks of the trade to make the spare pieces which
14 if they are put together will build an individual.

15 Now it is extraordinary because it was a
16 moving observation for geneticists to see that in
17 this one millimeter and a half sphere of living
18 being, this separation of the tasks which we see in
19 the ordinary life, building the hut and go hunting
20 that is typically of the man.

21 And the man in biology builds the membranes
22 which is the shelter and the placenta which is a
23 gathering food system.

24 On the other hand it is to the feminine
25 genius to underline the way how to manufacture a

1 baby.

2 And all that is written in the first cell.

3 Now what was the greatest consequence of the
4 discovery was that it is impossible and it is
5 definitely ruled out to make a genetic constitution
6 from one parent only.

7 That is, it is not possible in an egg to put
8 only two pronucleii coming from mother. It will
9 not be a human being. It will be a teratoma and it
10 will make spare pieces.

11 It will make skin, hair, teeth, some nervous
12 -- cells. But not at all build a form. There will
13 be no baby.

14 On the contrary if on an egg you remove the
15 maternal nucleus and you put two paternal nucleii
16 it will not be anyway a human being.

17 It will produce membranes and tiny placenta
18 it will make cysts and cysts and cysts and we call
19 it is a molar degeneration, a mole degeneration.
20 Molar degeneration.

21 And it needs absolutely to have on the first
22 cell this DNA underline by methylation of the male
23 way and the DNA methylated on the female, feminine
24 way to be a human being.

25 Now we come to an extraordinary observation

1 that the only cell in all my life in which those
2 two methylation systems from father and from mother
3 were present together inside one cell was in the
4 first cell which gave me life.

5 Because progressively at each division this
6 methylation is erased and replaced. And
7 progressively cells learn by a cascade of reaction
8 to specialize.

9 So that one will make nails, another will
10 make the brain, another will make the liver and
11 another will make the bones and another will make
12 the muscle.

13 For example, I read only two months ago, that
14 the male way of spelling is obligatory for
15 muscles. And muscles are, we know, much stronger
16 in males than in females.

17 But even in the female the information which
18 build the muscles has to be underlined in the --
19 coming from father -- in the paternal way and
20 remains that way so that muscles can be made.

21 And we are just beginning to understand that
22 in fact this way of underlining the message which
23 is different in father and in mother is the secret
24 that life is using, so that it can epitomize in one
25 cell which a mathematician would say it is reduced

1 at its simplest expression.

2 But everything it does, so that if you expand
3 the polynomials like a mathematician will do,
4 progressively, because everything was in the first
5 formula but you have to express it progressively,
6 cells will specialize and we will have this very
7 curious bi-pedal form that we have.

8 Q Doctor LeJeune, as the being develops
9 does it retain its individuality and its membership
10 in the human species?

11 A Totally. We, each of has never been a
12 chimpanzee. And we are not going to become one.

13 And the chimpanzee are the ones which has the
14 chromosomes closest to our own constitution is the
15 reason I take that example.

16 No baby goes through different species. It
17 belongs to its own species from the very beginning.

18 And that's true to every species. It's not a
19 special feature of humanity.

20 But what is written in the human fertilized
21 egg that is in a human zygote, in the human being
22 of one cell, what is written is this humanity.

23 Q Dr. LeJeune, at eight weeks how would
24 you describe that being?

25 A I would describe that being indeed as a human

1 being. But to tell the Court what it looks like, I
2 would say it's Tom thumb.

3 Q Tom Thumb?

4 A Tom Thumb. Because the human being at eight
5 weeks is the size of my thumb.

6 That is from the head to the rump, he measure
7 one inch. And if you were looking at one of them
8 having never seen anything about human embriology,
9 if I had an eight weeks human being in my fist you
10 would not see I had anything inside.

11 But if I was opening my hand you would see a
12 tiny human being with fingers, with toes, with a
13 face and with the palm prints you could read with a
14 microscope.

15 You would see the sex. And this story of Tom
16 Thumb, of the tiny human being smaller than the
17 thumb which has always enchant the young babies and
18 the great mothers, is not a fancy.

19 It is a truth. Each of us has been a Tom
20 Thumb in the womb of the mother, in this curious
21 shelter, in which only some red light, dim light
22 comes in, in which there is very curious noise, one
23 loud, and strong, and deep hammering which is the
24 heart of the mother and which bangs around a
25 decemperate (phonetic) of a counter bass.

1 And the other would be a very rapid, like the
2 maracas. And it will come from the heart of this
3 tiny human being.

4 And those two rhythms which we now can detect
5 with hydrophones are typical of the most primitive
6 music any human ear has ever heard, which is the
7 symphony of two hearts; the mother one like the
8 counter bass, 60 times per minutes; and the baby
9 one like the maracas like 150 per minute, 140 if it
10 is a boy, 160 if it is a girl.

11 Then this sympathy by two hearts is what
12 defines the true story of Tom Thumb. The poetry of
13 our forerunner was based upon observation.

14 All the mothers knew that there was an
15 underground shelter in which very tiny humans
16 smaller than the thumb are living a
17 quasi-miraculous life.

18 That's the reason why still now an old man
19 like me can speak about Tom Thumb in a court
20 without the people being laughing because they know
21 it is a true story.

22 Q Dr. LeJeune, what is the effect of an
23 abortion on an eight week human being?

24 A It kills a member of our species.

25 MR. MULLANEY: Dr. LeJeune, I have no

1 further questions. I would like to thank you
2 for myself, and my client, and probably most
3 of the people here, for coming to America and
4 adding to our factual base, and, hopefully
5 letting us write into our laws the values
6 that necessarily flow from the information
7 you have given us. Thank you.

8 THE JUDGE: Any cross-examination?

9 MR. BANGIOLA: Yes.

10 THE JUDGE: You're not done yet, Doctor.

11
12 CROSS - EXAMINATION BY MR. BANGIOLA:

13 Q Dr. LeJeune, I will say LeJeune and I'll
14 even repeat it if you will repeat orangutan.

15 You are an expert in human genetics. This is
16 your field of expertise, sir?

17 A Yes.

18 Q You're not a expert in law?

19 A No.

20 Q Or philosophy?

21 A Well, every human being is a philosopher.

22 Q Are you testifying today as an expert in
23 philosophy?

24 A No, no.

25 Q Are you testifying today as an expert in

1 ethics?

2 A No. I am speaking only about human
3 genetics.

4 Q Biology and law are speaking the same
5 language?

6 A Yes.

7 Q You said that?

8 A Yes, I did.

9 Q Now when you say biology and law are
10 speaking the same language what do you mean by that
11 statement?

12 A I mean by that statement that we use the same
13 concept to define what will make a population
14 holding together, which is a constitution and what
15 will make a company of cells holding together to be
16 an individual, to be a person.

17 It is a constitution. It is not by chance
18 that we use the same word in the law and in
19 biology.

20 Q Genetically, these members of the human
21 species identified by the Jeffries bar code, are
22 these members of the species, are they genetically
23 equal?

24 A There's no two things in nature which are
25 truly equal, as far as we know in biology.

1 Q Now --

2 A But they belong to the same species. That is
3 their specific constitution is identical. What is
4 different is their personal constitution. Each of
5 them is a person.

6 Q But no two things in nature are equal?

7 A I mean in living nature no two things are
8 absolutely equal. No two living systems are
9 observably equal.

10 That there are many small differences. But
11 if they belong to the same species they are built
12 according to the same constitution.

13 We can recognize a donkey from a horse. I
14 agree with that.

15 Q Well, even, you know, some people would
16 point to people they know and say that they can
17 tell a donkey from a horse by looking at those
18 people.

19 And some people would, as a matter of fact,
20 even refer to other human beings, members of the
21 species, as donkeys, from time to time.

22 And that's precisely the point I am making.

23 Isn't it true that just as in biology as when
24 biology and law speak the same language, isn't it
25 logical that law recognize the differentiation

1 between members of the same species?

2 MR. MULLANEY: Your Honor, I don't think
3 this is Dr. LeJeune's field, as to what law
4 should be.

5 THE JUDGE: I will allow it. It's
6 cross-examination. I assume the prosecutor
7 has his own strategy on cross-examination and
8 will link up his cross-examination to
9 something relevant.

10 MR. BANGIOLA: Yes.

11 THE WITNESS: Your Honor, I would just
12 answer that indeed the law sometimes do not
13 recognize evidence of biology.

14 For example, when slavery was accepted
15 by the Supreme Court of this country, that
16 negated that a black person was a human
17 being.

18 And it was just forgetting about what
19 was the zoological evidence at that time
20 that all the humans are members of the same
21 species, because it was already known at
22 that time. And you're perfectly right.
23 Sometimes law forget about speaking the same
24 language of biology.

25 But when law forget to speak the

1 language of biology it is the law which
2 makes the mistake. Because nature has a
3 solution.

4 Q Well, sometimes the law recognizes that
5 biological -- a difference. Let's not say a
6 biological difference.

7 Let's just say the law recognizes a
8 difference between the members of the same species.

9 And maybe you would even concede to me in
10 some cases those distinctions between two
11 individuals, the way the law looks at them, maybe
12 you would concede under some circumstances they
13 aren't mistakes.

14 For example, the way the law treats an
15 innocent man and the way the law treats a guilty
16 man.

17 They are both members of the same species.

18 A Yes.

19 Q You see my point? But law takes the
20 biological observation that you have made that
21 biologically they are members of the same species
22 but they are different.

23 And law applies it by applying different
24 treatment to the same individuals, members of the
25 same species, in a different way.

1 A Your Honor, it is very difficult to me.

2 THE JUDGE: Don't worry about it. One
3 of the jobs I do have here -- and believe me
4 if something is difficult for you it must be
5 very difficult.

6 One of my jobs, obviously, is I am the
7 judge of the law. Obviously, I would like
8 for the prosecutor to relate his
9 cross-examination to the issue at hand and
10 that issue, as I understand it, this doctor
11 is testifying as to what a human being is,
12 when that human life begins, whether or not
13 this fetus was a person, that would be a
14 person within the confines of the Statute of
15 Defense of Others.

16 I will give you lee-way, of course, as
17 it is cross-examination. But when you're
18 talking about the law, really, in any court
19 case, the witness is not held to know, a
20 witness' testimony is not relevant as to
21 what the law is.

22 I will decide what the law is. I would
23 like you to direct your cross-examination to
24 the issue at hand.

25 MR. BANGIOLA: I was merely picking up

1 on the observation this witness made about
2 biology and law speaking the same language.
3 Because it seemed to me that it is an
4 important distinction to be made and I will
5 just continue if I would.

6 BY MR. BANGIOLA:

7 Q Doctor, we human beings, we are more
8 than just the sum of our ammino acids and
9 chromosomes; aren't we?

10 A Well, we are what our genetic information is
11 making our self. That is written in the analysis
12 in the sequence of the DNA. But that is so
13 complicated to explain, that we generally say that
14 matter is animated.

15 And that is a very rapid definition of the
16 fact that what animates matter is not matter
17 itself.

18 Because matter cannot lead. But matter can be
19 alienated by the information. So that now matter
20 is behaving in the interest of the new being.

21 It is what genetics is. Now when you say
22 that somebody is recognized guilty it means it is a
23 difference.

24 But I do not know if there's any law in the
25 world who says that because you're guilty and you

1 will be executed, you're not a person.

2 I believe that all of the law recognize that
3 the guilty man is still a person, who nevertheless
4 will be killed by the law.

5 But law is not telling him that he's not any
6 longer a person.

7 And to come back to your question, because I
8 was thinking about it -- just too difficult for me
9 in the immediate moment.

10 But I would consider that if the law
11 recognize that the company can be a person, and can
12 be legally a person, I would be very surprised if
13 the same law is not able to see that the company of
14 cells which has this development which is unique in
15 the world is not also a person.

16 Q There are a few other things that go
17 into making a John or Mary than just the genetic
18 voices that you have described?

19 A Yes.

20 Q Is that what you said?

21 A No, I did not.

22 Q Well, you mentioned before the voices of
23 the genes speak in the fertilized egg?

24 A Yes. It was a rhetoric. They don't have
25 loud speakers. They don't speak, those voices.

1 But it's just they just give information to the
2 cells.

3 Q When have the voices spoken, all of
4 them?

5 A They speak one by one at the very beginning.
6 We know for example there's heat shock protein, a
7 protein which is produced when a shock of heat is
8 given to the cell.

9 This protein change at the very moment the
10 first cell splits in two cells. So we know that
11 expression of this particular voice is extremely
12 early.

13 It cannot be earlier than that because it is
14 just after conception has taken place.

15 Then from most of the other voices they have
16 not yet been recorded at what moment they do enter
17 in the symphony.

18 It will be in the extraordinary corpus of
19 embryology of the next 50 years. So I cannot tell
20 you exactly when each of us is reading and
21 executing its own music.

22 But we know for some that this particular
23 music begins and it is different of that of the
24 ovum, is different of the unfertilized egg.

25 It is different from the father and the

1 mother just at the moment it splits in two cells.

2 Now there's one peculiarity about those voices
3 which is -- but maybe I am too long, your Honor?

4 THE JUDGE: Next question.

5 BY MR. BANGIOLA:

6 Q When have all the voices spoken?

7 A When you have finished your life. When your
8 life is finished.

9 Because many genes will speak late in life,
10 for example, will express themselves for the sex.
11 For the sexual organs and the sexual maturation it
12 will express at 11 years.

13 For the complex power of your brain, all the
14 genes will have given their own partition at around
15 17 years of age.

16 And later you diminish your performance.
17 Seventeen years is the best of your brain.

18 And for neurologic disease some of them will
19 occur at 40 years, some of them will occur at 60
20 years.

21 Then you cannot ask a geneticist when all the
22 voice have played the symphony. All the voices
23 have been heard when the symphony is finished.

24 Q Is that, the sound of that symphony, is that
25 exclusively a genetic, a genetically determined

1 thing?

2 A Well, not entirely --

3 MR. MULLANEY: I object.

4 A Not entirely but for road accidents --

5 THE JUDGE: Doctor when there's an
6 objection I would ask that you refrain from
7 answering.

8 THE WITNESS: Yes.

9 THE JUDGE: Then I will hear the
10 objection and then I will instruct you
11 whether or not you are to continue answering
12 the question.

13 THE WITNESS: Yes.

14 MR. MULLANEY: I think what Mr.
15 Bangiola is getting at is adding some
16 elements into what Dr. LeJeune is an expert
17 in and has testified to.

18 I don't know it is within the scope of
19 what the direct examination was.

20 THE JUDGE: What is the objection?

21 MR. MULLANEY: Beyond the scope of
22 direct examination.

23 THE JUDGE: I'll allow the question. I
24 assume there's a direction in the
25 cross-examination. Continue.

1 MR. BANGIOLA: Yes, sir. You remember
2 my question?

3 THE WITNESS: No, you have to repeat it,
4 please.

5 THE JUDGE: Now this is when -- see, we
6 usually use a tape recorder and this is why I
7 really enjoy having a Court Reporter.

8 Would you read back the question,
9 please?

10 (Court Reporter reads back the pending...
11 question: Does that, the sound of that
12 symphony, is that exclusively a genetic, a
13 genetically determined thing?)

14 BY MR. BANGIOLA:

15 A It's exclusively determined by the genetic
16 constitution, not only by the DNA. But, as I said,
17 all the information in the tape recorder, after to
18 the fact that during life some modification will
19 occur which can be due to the surroundings, to the
20 food, to infection, to many different things, or to
21 accident.

22 For example, it is not written in the genetic
23 patrimony whether the plane I will take back to go
24 to Paris will crash or not.

25 But whether I will be a man, and this

1 particular man, in that plane, it is written in the
2 very egg from which I have hatched.

3 Q In the genetic sense of man?

4 A Yes.

5 Q In the genetic sense, in the biological
6 sense of man?

7 A Yes.

8 Q Those facts are determined?

9 A Yes.

10 Q There are other definitions of man, are
11 there not?

12 A They were not biological definition and
13 you're asking me what was the biological knowledge
14 that I could give.

15 And so I will not give any moral or any
16 sociological or any philosophical explanation of
17 man.

18 Q But there are such of which you're
19 aware?

20 A Yes.

21 Q Some who would define human being in
22 more expansive terms than simply a genetic one?

23 A Yes.

24 MR. BANGIOLA: No more questions.

25 THE JUDGE: Thank you for your

1 testimony, Doctor.

2 THE WITNESS: Thank you, your Honor.

3 (The witness is dismissed.)

4 THE JUDGE: I usually hold people in
5 contempt for such outbursts but I am in a
6 good mood today.

7 (Discussion takes place off the record.)

8
9 B E R N A R D N A T H A N S O N, M.D.,
10 having been duly sworn according to law,
11 testified as follows:

12 THE JUDGE: With respect to the speaking
13 and movement in my courtroom, this is a court
14 of law. It looks like someone's den with the
15 fireplace, but it is a court of law.

16 I expect silence so we can hear the
17 testimony, the direct examination and
18 cross-examination.

19 All right, you may begin, counsel.

20
21 DIRECT EXAMINATION BY MR. TRAYNOR:

22 Q Doctor Nathanson, please state your full
23 name and your address.

24 A Bernard N. Nathanson, M.D., 133 East 80th
25 Street, New York City.

1 Q And, Doctor, where are you licensed to
2 practice medicine?

3 A In New York and Pennsylvania.

4 Q What is your educational background?

5 A I was educated at Cornell University. I then
6 went to the McGill University Medical College in
7 Montreal, Canada.

8 Q What degree did you receive from Cornell
9 University?

10 A I did not receive a degree. It was
11 pre-medical education. I received a degree of M.D.
12 at McGill in 1949.

13 Q And did you do any post-graduate medical
14 training?

15 A Yes, I did. I had a year as a rotating
16 intern at the Michael Reese Hospital in Chicago, a
17 year as an assistant resident in surgery at the New
18 York Hospital Cornell Medical Center, a year as
19 assistant resident in urology at the New York
20 Hospital Cornell Medical Center; four years of
21 residency in obstetrics and gynecology at the
22 Woman's Hospital in New York City.

23 That residency was interrupted by two years
24 of service in the U.S. Air Force, during which time
25 I was chief of obstetrics and gynecology in the

1 Northeast Air Command.

2 And after this rather lengthy period of
3 training and service, I entered the private
4 practice of obstetrics and gynecology in New York
5 City at the end of 1957, substantially older than I
6 was when I started.

7 Q Doctor, what is your specialty?

8 A Obstetrics and gynecology.

9 Q Doctor, do you have a board
10 certification

11 A I do.

12 Q What is that?

13 A I was certified by the American Board of
14 Obstetrics and Gynecology in April 1960.

15 Q Do you have any hospital affiliations?

16 A I do.

17 Q And those are?

18 A I am senior attending obstetrician and
19 gynecologist at the Saint Vincent's Hospital Center
20 which is part of the New York Medical College.

21 I am senior obstetrician and gynecologist at
22 the St. Luke's Roosevelt Hospital, which is part of
23 Columbia University College of Physicians and
24 Surgeons.

25 I'm associate attending obstetrician and

1 gynecologist at the New York Hospital Cornell
2 Medical Center.

3 And I was chief of the obstetrical service at
4 the St. Lukes' Hospital for a period of five, four
5 or five years, from 1973 until the end of 1977.

6 Q Do you have any professional
7 associations?

8 A I do.

9 I am a member of the American Medical
10 Association, the New York State and County Medical
11 Societies.

12 I am a fellow of the American College of
13 Surgeons.

14 I am a fellow of the American College of
15 Obstetricians and Gynecologists; and a very lengthy
16 list of really quite minor, other organizations.

17 Q Have you published any writings in your
18 field?

19 A Yes, I have.

20 Q Could you give us some of those?

21 A I published, I believe, 15 or 16 scientific
22 articles, several books, and assorted other
23 material in the area of bio-ethics especially.

24 Q Have you published in the area of fetal
25 development and embryology and fetology?

1 A Yes, I have, and I have also lectured on this
2 in respect to my academic appointments.

3 Q Have you received any awards or honors
4 in your field?

5 A Well, yes. I have been appointed assistant
6 or clinical assistant professor of obstetrics and
7 gynecology at the Cornell University Medical
8 College which I currently hold.

9 I also hold a professorship at the New York
10 Medical College where I am clinical associate
11 professor of obstetrics and gynecology.

12 So I have professorships at two universities.

13 MR. TRAYNOR: I offer the doctor as an
14 expert witness in the field of obstetrics and
15 gynecology.

16 THE JUDGE: Any objection?

17 MR. BANGIOLA: No objection.

18 THE JUDGE: All right, the doctor will
19 be accepted as an expert in obstetrics and
20 gynecology.

21 You may proceed.

22 BY MR. TRAYNOR:

23 Q Doctor, in addition to indicating your
24 training in your chosen field, do you have any
25 training in abortion procedures and any practice,

1 any experience in that practice?

2 A Yes, I have -- and I say this immodestly, but
3 I probably have more experience in the area of
4 abortion and abortion technology than perhaps
5 anyone in this country, owing to the fact that I
6 was the director of the largest abortion clinic in
7 the United States for a period of two years; and
8 published early on in the medical literature,
9 scientific papers on techniques of abortion,
10 ambulatory abortion technology, complications of
11 abortion, and a whole range of issues dealing with
12 abortion and satellite issues.

13 Q Thank you, Doctor.

14 Doctor, would you describe the anatomy of the
15 female reproductive system?

16 A Yes. The anatomy proceeds from the vagina
17 which is the lowermost point of the female
18 reproductive system.

19 The uterus is the key organ. It is a
20 pear-shaped organ which has at its lower end the
21 cervix which resembles most closely, I suppose, a
22 bottle neck.

23 The uterus itself is the pear-shaped part.
24 It is really a hollow muscle which has a cavity
25 within it.

1
2
3
4
Emanating from the horns of the uterus on
either side are the fallopian tubes which are
simply conduits for the egg.

5
6
7
8
9
10
11
12
And at the outer limits of the fallopian
tubes on either side are the ovaries which are the
organs which manufacture or produce the egg which
is then subsequently popped out of the ovary,
caught by the tube, and if fertilization is to take
place it will take place in the tube itself, in the
outer portion of the tube, which is called the
ampulla.

13
14
Q All right, Doctor, what happens upon the
occurrence of pregnancy in the human being?

15
16
A Well, I will not repeat Dr. LeJeune's very
eloquent testimony.

17
18
I think you have all heard the conjunction of
the sperm and the egg detailed in rather beautiful
detail.

19
20
21
22
But following the process of fertilization
which occurs, as I say, in the ampulla of the tube,
the fertilized egg begins to cleave or divide.

23
24
And it reaches, it cleaves into two cells and
then four, and then eight, then sixteen.

25
When it reaches the sixteen-cell stage it is
called a morula.

1 And it is at this point, roughly three days
2 following fertilization, that the egg proceeds into
3 the uterus where it continues to divide and
4 organize.

5 And by the sixth day, dividing and
6 organizing, it is now in contact with the lining of
7 the uterus, the endometrium.

8 Again, division continues. The egg forms now
9 what is called a blastocyst.

10 That is the morula now organizes itself into
11 a cluster of cells at one end and a cavity at the
12 other, which is called the blastocyst cavity.

13 And as it forms a blastocyst, it then comes
14 into contact with the lining of the uterus.

15 As the organization of the human being
16 continues, there is formed an inner cell mass
17 within this blastocyst which is going to be the
18 future baby, or is actually the baby.

19 But it will be organized into a recognizable
20 unborn baby; and an outer layer of cells which is
21 called a trophoblast, which will form the placenta.

22 At about eight days following fertilization
23 this blastocyst begins to burrow into the lining of
24 the uterus.

25 And as it burrows, it begins to erode into

1 the maternal blood vessels in the wall of the
2 uterus, and begins to form a nexus with the mother,
3 chemically, and in other ways.

4 But it is at this point when the circulations
5 begin to interface, the circulations of the unborn
6 baby and the mother, and chemical messengers now
7 can go across that interface into the mother's
8 circulation and vice versa, that we can first pick
9 up the signals that the woman is pregnant, that
10 there is, in fact, an unborn baby within the
11 uterus.

12 Q At what point are we now in the
13 pregnancy?

14 A This is about eight or nine days following
15 fertilization.

16 We can begin to pick up what is called the
17 beta sub unit HCG. I apologize for that.

18 That is the pregnancy hormone, the pregnancy
19 chemical which we test for with pregnancy tests.

20 And it is at this point that we can confirm
21 without question that there's a growing, living
22 human being in the maternal uterus.

23 Q Can you describe the attachment to the
24 uterus and the housing of the newborn human in the
25 womb?

1 A Yeah, the trophoblast, this outer layer
2 around the blastocyst and the inner cell mass, is
3 an avaricious set of cells.

4 It goes scouting into the tissues of the
5 uterus for blood vessels. And it has the power to
6 open up maternal blood vessels.

7 And there is hemorrhage, small hemorrhage
8 around the baby as a result.

9 From the blood which is surrounding the child
10 now, the child begins to extract certain necessary
11 chemicals, and nutrients, and even oxygen; having
12 now exhausted its own stored-up oxygen and
13 nutrients.

14 So at this point at eight or nine days, as I
15 say, this nexus, this bridge is established between
16 the unborn baby and the mother.

17 And the baby begins to extract the nutrients
18 and oxygen from the mother at that point.

19 Q Is there anything that happens
20 hormonally in the mother at the time of pregnancy,
21 which changes her?

22 A Yes. Not only is the pregnancy hormone
23 elaborated but through a complex series of
24 interactions the pregnancy hormone acts back on the
25 pituitary gland of the mother, the little gland

1 which is situated at the base of the brain, to
2 inhibit any further changes in the lining of the
3 uterus which would normally develop as the
4 menstrual cycle goes on, were the mother not
5 pregnant.

6 That process is effectively paralyzed by the
7 hormones which emanate from the fetus.

8 Similarly, there's an organ formed on the
9 ovary of the pregnant woman called the corpus
10 luteum of pregnancy which elaborates hormones
11 designed to nourish the pregnancy, nourish the
12 unborn baby, supply it with more nutrients and more
13 oxygen.

14 Q Doctor, what are the stages of growth
15 and development of this new human being in the
16 womb?

17 A Well, we use words. But one should
18 understand that this is really a seamless
19 continuum.

20 We use the word zygote which you heard here, I
21 think, from Dr. LeJeune, which is to connote the
22 fertilized egg.

23 We use terms such as morula, the 16-cell --

24 Q Would you spell it, please?

25 A M-o-r-u-l-a. That connotes the 16-cell

1 stage of the developing human being.

2 We use the term called embryo which connotes
3 the developing human being from the morulus stage
4 up to about the end of the eighth week following
5 fertilization.

6 Then we use the term fetus which takes us
7 from the end of the eighth week or beginning of the
8 ninth week up to the time that the baby is
9 delivered, whenever that is.

10 Q Do those words you used change the
11 developing human being in any way?

12 A No, as I say they are really arbitrary
13 semantic distinctions. But they do not represent
14 anything substantive biologically.

15 I mean this is, as I say, a seamless
16 continuum and if you insist on putting a label on
17 this human being as it developed, but, well, you
18 can put the labels on but it is really like calling
19 someone a child or an infant or an adolescent or
20 an adult.

21 I mean it is the same human being simply at a
22 different stage in its development, that's all.

23 Q Doctor, would you describe the present
24 arsenal of instruments or probes or tools so to
25 speak, of your work, your profession, in treating

1 or in examining and caring for these developing
2 humans?

3 A Well, yeah, we have I guess starting about
4 1972 or '73, we began to develop a very
5 sophisticated arsenal of instruments designed to
6 study the development of the human being, in the
7 uterus; and designed also ultimately to diagnose
8 disorders and diseases of that human being; and
9 ultimately to treat that human being.

10 Those modalities include such things as ultra
11 sound examination. Now the ultra sound instrument
12 is an instrument which has a quartz crystal at its
13 business end.

14 And the quartz crystal vibrates at an
15 enormously high rate, sending out sound waves at
16 such a frequency that we cannot hear them.

17 Even dogs cannot hear them. No ear can
18 discern these sound waves.

19 As the sound waves proceed through the
20 pregnant woman's body, or any tissues for that
21 matter, they strike tissue interfaces, interfaces
22 for example, between fluid and solid or between
23 solid and bone, or various other structures.

24 But each structure in the human body,
25 including the unborn, has a distinct kind of

1 composition which will then yield distinct kind of
2 echoes as that sound wave strikes the interface.

3 Now as the sound waves strike that interface,
4 they are echoed back. And they are picked up in
5 the same business head of this instrument by a
6 sensor.

7 And the sensor will then translate these
8 echoes or communicate the echoes back to a
9 computer.

10 And the computer will recognize the echoes
11 and then assemble the echoes in a certain pattern.

12 And we can see from the pattern of the echoes the
13 picture of the unborn baby.

14 Now this technology dates back to the 1950s.
15 It is really not all that new.

16 But in 1976, there was a quantum leap forward
17 in the technology with the establishment or
18 development of what was called real time ultra
19 sound; which, in fact, did not, no longer gave us a
20 static picture of the echoes but allowed us to
21 watch the echoes at play.

22 In other words, it was really like a motion
23 picture. The echoes were being shown on a screen
24 and changing from moment to moment.

25 And at this point we began to really hone in

1 on exactly how the fetus or embryo or unborn baby
2 at any stage of its development moves, functions,
3 breathes, urinates, swallows, everything.

4 We now had the means at hand to trace that
5 unborn person from literally the very beginnings
6 right through until a change of address called
7 birth.

8 Now that technology -- by the way, it is now
9 in color. We can now see the flowing of blood
10 through the fetus, through the embryo, in red.

11 You can actually see the red on the screen as
12 the vessels transmit blood through the fetal
13 circulation.

14 That technology has allowed us now to proceed
15 into areas which we never could proceed into
16 before.

17 Q For example?

18 A Well, for example not only can we now trace
19 the physiology, the normal functioning of this
20 unborn patient, we can now diagnose its illnesses.

21 We can examine its anatomy. We can watch how
22 it functions. We can actually watch the little
23 valves in the heart as they flop up and down
24 pushing blood through the heart.

25 And if one of the valves is abnormal you can

1 see it on the ultra sound to correct it by the
2 appropriate surgery.

3 We have come to the point where not only can
4 we diagnose the illnesses of this unborn patient
5 from the very beginning, we can also treat it.

6 We can, for example, diagnose a goiter in
7 this embryo, a swelling of the thyroid gland. And
8 we can now inject thyroid hormone into the uterus
9 and watch the baby swallow the thyroid hormone and
10 cure its own goiter.

11 I guess the ultimate refinement of this
12 particular technology has come with fetal surgery.

13 Fetal surgery is being carried out at
14 selected centers across the country here, the most
15 prominent of which is in California, in San
16 Francisco, where Michael Harrison and his group are
17 doing fetal surgery on a regular basis.

18 And they have published a book on their
19 experiences. This is a medical text book called,
20 "The Unborn Patient" which is written by Harrison,
21 Golbus and Philly.

22 It was published first last year. A new
23 edition is out. This book details fetal surgery.
24 It is exclusively devoted to fetal surgery.

25 Q What is actually done in fetal surgery?

1 A Well, in fetal surgery, and this is done with
2 the aid of ultra sound examination, which makes the
3 diagnosis of the defect or disease in the child.

4 The mother is put to sleep. The abdomen of
5 the mother is opened surgically. Then the uterus
6 is opened.

7 The amniotic fluid is suctioned out. The
8 baby is pulled out of the uterus, the unborn baby
9 still attached by the umbilical cord.

10 And the unborn baby's abdomen or chest or
11 wherever the defect is, is incised surgically.
12 Then the surgeon will repair whatever defect it is.

13 If it is a big defect in the diaphragm of the
14 baby so that the intestines are coming up into the
15 chest -- this is called a diaphragmatic hernia,
16 which is a common reason to operate on these babies
17 -- the surgeon will then either suture, sew up the
18 defect or put in a piece of mesh which will bridge
19 the gap in the defect, sew it into place.

20 Then, having completed the surgery, the
21 incision in the baby is repaired, the baby is
22 replaced into the uterus.

23 The fluid is then put around the baby and the
24 uterus is sewn up. Then the mother's abdomen is
25 sewn up, and she is allowed then to proceed in the

1 pregnancy to at or near term.

2 Now it brings up a difficult question. Many
3 people insist that the definition of a human being
4 is when it is born. It is not a person or human
5 being until it is born.

6 Now this baby literally was born at this stage
7 of four and five months, during the surgery. It
8 was actually out of the abdomen, out of the
9 mother's body.

10 So the question is when the baby is put back
11 into the uterus and the uterus is sewn up and the
12 mother goes on to deliver at nine months, is this a
13 born again baby?

14 Q Doctor, what is fetology?

15 A Well, fetology is really just the whole
16 science and a very flourishing science, of the
17 development of the unborn baby, its diseases,
18 disorders, surgery.

19 It has flowered enormously. In fact, it has
20 proliferated beyond imagination in the last 20
21 years.

22 I recall that in 1972 I undertook to find out
23 how many papers had been published in the world's
24 literature on the fetus, and I think I counted
25 about 100 at that time, on fetal physiology and

1 anatomy.

2 Last year at the end of 1989 I went to the
3 Cumulative Index Medicus which is an enormous
4 volume which contains references to every single
5 paper published in the medical literature in the
6 world, in any language.

7 And I believe I counted some 4,000 articles
8 on the fetus at that time.

9 (A brief recess was observed.)

10 BY MR. TRAYNOR:

11 A When I was in medical school, we used a text
12 book called "Williams", which was in its eighth
13 edition.

14 "Williams" is like a human being. It has
15 multiple lives, just goes on and on. It's now in
16 its 18th edition.

17 In that eighth edition which I used in medical
18 school, there were about 30 pages devoted to fetal
19 physiology, to the functioning and the anatomy of
20 the fetus.

21 In the last edition, the 18th edition
22 published in 1989, about 40 percent of the book is
23 devoted to the fetus.

24 Of 700 pages about 300 pages are devoted
25 solely to the functioning and physiology of the

1 fetus.

2 So you can see that this is a science which
3 is blossoming and proliferating at an unprecedented
4 rate.

5 Q What has fetology allowed us to do to
6 study the development of fetology?

7 A Well, as I indicated we use ultra sound to a
8 great extent. We also use electronic fetal heart
9 monitoring.

10 This is an apparatus which is placed on the
11 mother's abdomen, and it is a sensor designed to
12 pick up the fetal heart rate moment by moment.

13 And it is tracked on a moving piece of paper.
14 So it look really like a squiggle across a very
15 long piece of paper or tape.

16 You can elicit definite reactions from a fetus
17 as reflected in changes in the heart rate. For
18 example, you can plays some Mozart.

19 I've tried "Eine Kleine Nacht Musik", which
20 it seems to like very well.

21 MR. BANGIOLA: I stepped out of the
22 room. I guess a missed a little bit. I
23 thought we were taking a break.

24 THE JUDGE: Your mean the part about
25 Mozart?

1 MR. BANGIOLA: I just came back in the
2 room.

3 THE JUDGE: You didn't miss anything.
4 Basically it's the question, we are still in
5 the area of fetal surgery and I think the
6 question that -- if you missed any question
7 I'm sorry, Mr. Prosecutor.

8 MR. BANGIOLA: I stepped from the room,
9 your Honor.

10 MR. TRAYNOR: Judge, I can just re-ask
11 the question. There's only basically one
12 question that I asked and --

13 THE JUDGE: Ask it again.

14 BY MR. TRAYNOR:

15 Q The question was, the development of
16 fetology and what that entails and what it permits
17 the doctor to do.

18 A I was indicating that we more or less
19 exhausted the subject of ultra sound and we were
20 now on another modality which we use by which we
21 could investigate the fetus, which is electronic
22 fetal heart monitoring.

23 And it basically tracks the fetal heart rate
24 moment by moment. And as I said you can expose the
25 fetus to a variety of stimuli, ranging from musical

1 ones such as Mozart and you get a certain pattern
2 of the fetal heart rate.

3 Then if you take Mozart off and you apply
4 heavy metal like Van Halen you will get a jump from
5 the fetal heart rate.

6 The baby will be let you know that it does or
7 does not like heavy metal.

8 THE JUDGE: All right, ladies and
9 gentlemen. I want to you refrain from
10 laughing, all right.

11 This is not -- this is not -- a stage
12 or a play being conducted where at certain
13 moments it is appropriate for the audience
14 to respond to the actors on stage.

15 This is a court of law. Dr. Nathanson
16 is testifying, and I would like him to be
17 able to testify without any response from
18 the court.

19 Continue.

20 BY MR. TRAYNOR:

21 A So we can elicit certain responses. Again,
22 you can honk an automobile horn and this is
23 frequently used in fetology in the investigation of
24 the fetus, and get another reaction.

25 So we depend a lot on electronic fetal heart

1 monitoring to refine for us the state of fetal
2 health, and tell us exactly how the baby is doing.

3 The unborn baby is constantly asking us,
4 really, how am I doing?

5 And we have to be able to respond to that
6 question with the appropriate tests and
7 investigations, particularly if we feel that the
8 baby is in some way jeopardized.

9 And these are the two major elements or major
10 modalities we use. We also have chemical tests, to
11 do this, the physical tests I have described.

12 But mostly we rely on ultra sound and fetal
13 heart monitoring to do our work for us.

14 Q Doctor, would you describe the
15 functioning of an embryo at eight weeks?

16 A Yeah, at eight weeks, you have really a
17 recognizable human being.

18 If you simply held it in your hand, as Dr.
19 LeJeune pointed out earlier, and looked at it, it
20 would be recognizably a person, a human being.

21 It has a brain which is now formed, although
22 it will continue to develop. And, indeed, the
23 brains of little babies, born babies and even young
24 children, continues to develop.

25 But the brain is there and it is developed

1 and it probably, by the way, is beginning to
2 elaborate a substance called Substance P, which is
3 the chemical messenger for pain.

4 It has its arms and legs, and even the fingers
5 and toes are now separate and distinct. It has an
6 external ear. It has a nose.

7 It is, in fact, as I say, quite obviously one
8 of us.

9 Q What is going on inside of its body in
10 terms of its functions?

11 A Well, it is really just a miniature person or
12 miniature human being. It is really functioning
13 just the way we function.

14 It is now beginning to excrete some urine.
15 The heart is beating and has been beating for at
16 least five weeks.

17 Circulation is going on. Brain waves have
18 been isolated from eight week babies. The Japanese
19 did this perhaps 30 years ago.

20 There's really nothing, nothing which we do
21 that that baby doesn't do, except that we do it on
22 a larger scale.

23 We are larger than life with respect to that
24 baby. But the baby is doing everything as we do.

25 Q Doctor, is the pre-born baby separate

1 from its mother?

2 A Yes, it is always a separate person. The
3 circulations are separate. They never mix.

4 And if they do mix it can be lethal to the
5 baby, or, in fact to the mother, too. But,
6 principally to the baby.

7 We know they are separate human beings from
8 immunological studies.

9 By that I mean this: The baby is composed,
10 remember, as Dr. LeJeune pointed out, repeatedly,
11 of elements, genetic elements, from both mother and
12 father.

13 Now it is housed temporarily as a kind of
14 tenant in the mother's body. But it does have
15 paternal genes and paternal chromosomal substance.

16 So in effect, it is another person. It is not
17 just the mother.

18 Now the white blood cells and the immune
19 system of the mother's body or anybody's body, have
20 the ability to recognize and distinguish self from
21 non-self.

22 And that really is the reason why our white
23 blood cells and our immune systems do not destroy
24 our own kidneys or our own hearts or our own
25 livers; because our white blood cells can recognize

1 self from non-self.

2 And when there's a foreign substance put into
3 one's body, the white blood cells will recognize it
4 and immediately attack it in an attempt to throw it
5 out, to get rid of it because it is foreign.

6 It's not self. Now when that pregnancy
7 implants and makes a nexus with the mother's
8 circulation so that chemical messengers are sent to
9 the various systems of the mother, the white blood
10 cells and, in fact, the entire immune system is
11 galvanized because it recognizes that there's
12 something in the mother's body, her body which is
13 non-self.

14 It is foreign. It is this baby who is a
15 foreign person to the mother.

16 And a concerted immune attack is focussed on
17 this baby, the intent being to expel the foreign
18 intruder.

19 It is recognized, as I say, as non-self.
20 However, over the eons obviously we have, we,
21 meaning all of us who have been unborn babies at
22 some point, we have erected a defense against this
23 attack.

24 We have what is called the trophoblast, this
25 layer of cells which constitutes our placenta, our

1 after birth.

2 And that is really a wall, an immunological
3 wall, behind which we can find sanctuary. It stops
4 the attack. And for the most part all of us
5 survive the attack.

6 Those who do not survive are expelled as
7 spontaneous miscarriages. We call them spontaneous
8 abortions.

9 Those are the people, the unborn babies who
10 did not survive the attack, they are cast out as
11 non-self, or foreign bodies.

12 But for the most part we do succeed in
13 repelling this attack and that's the reason why we
14 are all here today.

15 Q Doctor, it has been stipulated in this
16 trial that an abortion occurred on a pre-born of
17 eight weeks, an eight week embryo of one of the
18 defendants in this trial on September 8, 1990.

19 Would you tell the Court what happened in the
20 abortion, in the induced abortion?

21 A Yes. I think that almost all of us, and I am
22 including not only doctors but everyone, really
23 didn't understand what an abortion did to a baby
24 until in 1984 I set out to document precisely what
25 happened.

1 And to that end, I commissioned a friend of
2 mine who was working in an abortion clinic, to do
3 his abortions that Saturday under ultra sound,
4 continuous ultra sound observation, and to tape it.

5 So he did 25 or 30 abortions that day and
6 taped them all, using real time ultra sound on the
7 mother's abdomen.

8 He put the machinery on the mother's abdomen,
9 had a screen in front of him, and proceeded to do
10 these abortions. And he taped what happened.

11 Many of the tapes did not come out well. This
12 is a difficult technology at eight weeks, twelve
13 weeks, whatever it was.

14 But one tape did come out very well. And we
15 subsequently incorporated that tape into a film
16 called, "The Silent Scream."

17 Now the tape begins by showing the unborn baby
18 moving around in the womb in the amniotic fluid.
19 And by the way, babies begin to move at eight
20 weeks. That's the first time they start to move.

21 You can then see the doctor putting the
22 instruments up into the womb to dilate the cervix,
23 the neck of the womb.

24 And then in the same tape you can see the
25 doctor breaking the bag of waters and the water

1 flowing out. And then you see the suction
2 apparatus going up in the uterus.

3 And you see the baby moving away from the
4 suction apparatus. And then the suction is turned
5 on. This is a rather tremendous negative force of
6 suction, runs up to about 60 millimeters of mercury
7 which is a very high suction.

8 And with that suction as you watch on the
9 ultra sound tape you see the arms and the legs of
10 the baby being torn off and then the body being
11 ripped apart.

12 Now the head of this baby was too large to
13 suction out. So the doctor had to take a metal
14 instrument called a polyp forcep and reach into the
15 uterus, find the head -- and you can see this
16 really on the ultra sound tape -- put the forcep
17 around the head, and then close the forcep.

18 So you can actually see the head being
19 crushed on this ultra sound tape. Then the head
20 was removed in pieces.

21 Now this was all documented on this tape and
22 for the first time we had an accurate reproducible
23 and reliable record of what actually happens during
24 an early abortion.

25 Q Doctor, assuming that an abortion took

1 place as stipulated in this case and an abortion
2 took place.

3 What was the effect of that abortion on this
4 baby?

5 A Well, the effect of the abortion clearly was
6 a) to subject the baby to an unimaginable agony,
7 and b) to end its life in the most barbaric and
8 bloody manner possible.

9 MR. TRAYNOR: Cross-examine.

10
11 CROSS-EXAMINATION BY MR. BANGIOLA:

12 Q How many abortions have you personally
13 performed?

14 A With my own hands I have performed probably
15 5,000 or so. At the clinic of which I was the
16 medical director, over a two-year span there were
17 60,000 abortions done.

18 I didn't do them, but I was the boss, the
19 overseer. I probably supervised another 10,000
20 abortions done by residents and people in training.

21 So I probably have about 75,000 abortions in
22 my life.

23 Q And you were the founder of NARAL?

24 A Yes, I was.

25 Q And philosophically now you're opposed

1 to legalized abortion; is that correct?

2 A That is correct.

3 Q When were you legally, or were you
4 opposed to legalized abortion at any time when you
5 were performing 5,000 abortions?

6 A No, I was not. We did not have at that time,
7 the technology, which I have described here. We
8 had no appreciation of the fetus as a person.

9 We did not understand its functioning. It
10 was only when I left the abortion clinic at the end
11 of 1972 and took up my duties at St. Luke's
12 Hospital as chief of obstetrical service, when we
13 began to move in these new technologies which
14 allowed us for the first time to begin to see the
15 unborn baby.

16 And at this point the moral balance began to
17 shift. At this point, I had to, as a scientist,
18 begin to credit this unborn person with moral
19 weight. I could now see it, watch its reactions,
20 its functioning, diagnose its illnesses.

21 In short, it was now my patient. And it was
22 at this point in the early '70s that obstetrics in
23 general, obstetricians, the whole community of
24 those who take care of pregnant women, began to
25 understand that we are charged with a unique

1 responsibility, unique in all of medicine.

2 We treat two people simultaneously. And we
3 cannot, therefore, begin to decimate our patient
4 population. I mean we have a constituency here of
5 unborn babies.

6 And to set out to destroy our patient
7 population, our constituency, seemed to me to be
8 morally unsound, and medically and ethically
9 unacceptable.

10 Q You didn't know the implications of
11 performing 5000 abortions at any time while you
12 were performing them?

13 A Counselor, what comes out of the other end of
14 that suction machine is just a mound of ground
15 meat.

16 We had no knowledge really, no scientific
17 knowledge -- now clearly, viscerally, or
18 intuitively, we had a feeling there was something
19 within the uterus.

20 But until the advent of this technology of
21 ultra sound and electronic monitoring, fetoscopy
22 and all the other instrumentalities which allow us
23 to examine this child, we really didn't know what
24 we were doing.

25 We were operating, literally, in the dark.

1 In fact, an abortion is a blind procedure. You
2 don't see what you are doing.

3 You just put the suction instrument up into
4 the uterus, flip the switch and hope you are in the
5 right place and that the meat that came out is not,
6 is just ground baby and not maternal intestines or
7 something else.

8 So we just didn't know until the
9 instrumentality came into being.

10 Q You didn't know?

11 A No.

12 Q Doctor, the abortion debate has been
13 raging for a long time.

14 A That's correct.

15 Q And you were, as I understand it, in the
16 beginning of the abortion rights movement, you were
17 the leader; is that right?

18 A Yes, I was.

19 Q When would you say that your leadership
20 commenced?

21 A Probably I would date it back to 1964, with
22 the first rubella epidemic that I was involved in
23 in New York in which we started doing abortions.

24 And then in 1968, we began to organize the
25 National Association for Repeal of Abortion Laws

1 which is now the National Abortion Rights Action
2 League.

3 Q Now, if I had the benefit of hearing you
4 speak on abortion rights back then -- you were a
5 physician then?

6 A Yes, I was.

7 Q You were an obstetrician?

8 A Yes, I was.

9 Q And you were actively engage in
10 performing these abortions at the time?

11 A I was.

12 Q What would have been your argument then?

13 A Well, the argument would have been skewed
14 almost entirely --

15 Q I just asked you what would the
16 arguement be, Doctor?

17 A Pardon?

18 Q What would the argument be.

19 A I am trying, if you bear with me, counselor.
20 The argument would have been skewed entirely to the
21 maternal side.

22 That is to say that I would have argued the
23 cause of abortion purely on the basis of maternal
24 or womens' rights; that women should not be
25 compelled to carry a pregnancy to term unwillingly;

1 that they should not be forced into back alleys or
2 dangerous abortions.

3 You would not have heard a word from me about
4 the unborn patient, the unborn human being, simply
5 because we didn't know very much about them.

6 In fact, we knew virtually nothing in those
7 years.

8 And it was not until we began to get these
9 instruments when the whole specialty of fetology
10 began to flower, that the moral balance in the
11 abortion debate was restored; that there was
12 another side to it, fetal rights; the right not to
13 be destroyed in the most painful manner possible.

14 At that point, in 1974 when I began to
15 question the whole abortion ethic, that was the
16 time when we began to do this fetology and this
17 study.

18 Q When did you a separate from NARAL?

19 A Well, I published an editorial piece in the
20 New England Journal of Medicine in 1974, which was
21 called, "Deeper Into Abortion", in which, for the
22 first time I began to raise these questions about
23 the unborn patient and fetal rights.

24 And at this point the paper which I published
25 offended the NARAL enthusiasts and zealots. They

1 felt there was no other side of this argument.

2 And so they summoned me into what I suppose
3 could be described as a kangaroo court, stripped my
4 epaulets and stripes from me and cashiered me.

5 I was, in fact, asked to resign from NARAL,
6 and I did.

7 Q There was a debate going on even back in
8 1964; wasn't there?

9 A Counselor, there's a debate going on even
10 now. But, yes, in 1964, there was really no
11 organized debate.

12 Q Well, in fact there were laws against
13 abortion in 1964?

14 A Oh, yes, there were.

15 Q And you were in favor of changing those
16 laws?

17 A Absolutely.

18 Q In fact, you -- if laws can be looked at
19 as a representation of the moral climate in any
20 way, you were, in a sense, seeking to change that
21 climate and address yourself to the laws that were
22 in place at the time as an organized leader of
23 NARAL?

24 A I was not only addressing the laws, I was
25 actively promulgating their striking down.

1 Q And the people who wanted to preserve
2 those laws argued to you precisely what?

3 A Now there was no organized debate. There was
4 no opposition as it were. There was no organized
5 opposition at that time.

6 Q From 1964 to 1974 did you ever hear
7 someone argue that abortion should be illegal?

8 A Yes. The --

9 Q What were those arguments?

10 A The arguments centered around largely at that
11 time, let's say in the late '60s, religious and
12 moral and ethical strictures and considerations.

13 There was no organized, articulated argument
14 regarding the biological uniqueness and the
15 biological entity of the unborn patient.

16 Q Let me hear one specific argument you
17 heard in favor of preserving the abortion laws
18 between 1964 and 1974.

19 A I can't recall for you anything specific.

20 Q Did anyone ever argue to you at any time
21 during that period of time, did you ever even hear
22 expressed the view that abortion terminated a human
23 life?

24 A I cannot recall any specific instance in
25 which this was said to me.

1 Q Did you ever hear that?

2 A Until the early '70s when the pro-life groups
3 began to organize and began to set forth their
4 views in what I can only describe as an
5 organizational manner.

6 Q You never heard that argument in that
7 ten year period from any source?

8 A I have said to you that I can't recall it. I
9 did not say I deny it.

10 Q You said there were moral and religious
11 strictures expressed but you didn't tell us
12 specifically what you were talking about.

13 Would you tell us specifically what moral and
14 religious strictures were advanced as a reason
15 during this ten year period for preserving abortion
16 laws as they existed then?

17 A Yes. I think that any orthodoxy in any
18 religion prohibits abortions, ranging from the
19 Moslem traditions through orthodox Judaism, through
20 fundamentalist Protestantism and Roman Catholicism.

21 Q What were the arguments though? That is
22 what I am after. What were those arguments?

23 A The argument was, simply put, that abortion
24 is unethical and impermissible.

25 Q For what reason?

1 A Counselor --

2 Q What is, for what reason were those
3 people putting that argument forward?

4 A If you're asking me what I understand now I
5 can tell you. What I knew then, I don't know.

6 In other words, I don't recall ever having
7 heard an articulated debate on the subject between
8 let's say 1964, and probably the early '70s; when,
9 in fact, we began to get this new information about
10 the fetus.

11 All I can recall is that the arguments were
12 founded or based in religious beliefs and credos
13 from all corners of religion, not just simply
14 western. But as far as specifics, I can't tell
15 you.

16 Q But the ones you did hear you rejected
17 morally?

18 A I rejected them physically as well. And in
19 every other sense as well. It seemed to me that
20 the moral suasion here was on the side of the women
21 who were visible and visably suffered.

22 But when we opened a window into the womb,
23 with ultra sound particularly, then the unborn
24 patient also became visible, and we now had
25 conflicting and clashing rights which had to be

1 respected on both sides.

2 Q You didn't consider that those existed
3 before?

4 A No, I did not.

5 Q In any sense?

6 A No, I did not.

7 Q None of the arguments that you heard,
8 those moral and religious strictures in those ten
9 years you were either pro, in favor of legalized
10 abortion or actually performing abortions and
11 heading NARAL, none of those arguments in that
12 period ever triggered a reflection along those
13 lines?

14 A No. I was a scientist and I could only be
15 convinced with the scientific corpus of data and
16 nothing else.

17 MR. BANGIOLA: I don't have anything
18 else. Thank you very much.

19 THE JUDGE: Anything?

20 MR. MULLANEY: One question.

21 BY MULLANEY:

22 Q Doctor, why did you name the movie "The
23 Silent Scream."

24 A Well, in one frame of the film, the ultra
25 sound film we could see the mouth of the unborn

1 baby open. It was a dramatic moment, an arresting,
2 in fact a heart stopping moment.

3 It appeared that the child was grimacing and
4 almost appeared as if he or she wanted to scream.
5 Now clearly you can't scream in the womb. There's
6 no sound.

7 But it was a silent scream. It was a scream
8 of the most unimaginable agony anyone can envision.

9 MR. MULLANEY: Thank you.

10 MR. TRAYNOR: Judge, before Doctor
11 Nathanson leaves the witness stand, I would
12 offer through Dr. Nathanson, "The Silent
13 Scream", as demonstrable evidence.

14 It is a video. It's here. And we have
15 your Honor's VCR and television. I wonder
16 if your Honor would accept that as
17 demonstrable evidence visualizing what the
18 doctor has testified to?

19 THE JUDGE: Mr. Prosecutor?

20 MR. BANGIOLA: I don't know that we are
21 going to establish anything that's not
22 established by the doctor's testimony. He's
23 given us a graphic representation.

24 I don't, I personally don't feel the
25 need to view the video. In other words, I