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THE **ACLA** REPORT

Newsletter of the American Catholic Lawyers Association, Inc.

Lent 2000

ACLA SERVES ITS REPLY BRIEF IN THE OREGON RICO CASE

On January 26, 2000, the Association served its U.S. Ninth Circuit Court of Appeals brief in reply to the 138-page brief which the Planned Parenthood (abortion provider) plaintiffs and their lawyers filed in answer to the ACLA's opening brief in the matter of *Planned Parenthood of the Columbia/Willamette, et al., v. American Coalition of Life Activists, et al.* Readers of *The ACLA Report* know that this is the case in which a U.S. District Court jury in Portland, Oregon, awarded the plaintiffs an astounding \$107 million judgment on Feb. 2, 1999, after a one-month trial. The plaintiffs' claims are based on the 1970 Nixon - era Racketeer Influenced and

Corrupt Organizations Act (RICO), the 1994 Freedom of Access to Clinic Entrances Act (FACE), and their assertion that two anti-abortion posters disseminated by the defendant pro-life activists and a web site known as "The Nuremburg Files", created by a non-party in Georgia, are "true threats to inflict bodily harm" in light of the "climate" of violence against abortionists since March 10, 1993, the day of the slaying of Dr. David LaMond Gunn in Pensacola, Florida, by Michael Griffin -- an act which the Oregon defendants had absolutely nothing to do with.

(See "ACLA serves its reply", p. 2)

ACLA'S OPENING BRIEF SERVED IN BEDFORD "NEW AGE" SCHOOL DISTRICT APPEAL

On March 1, 2000, the Association served and filed its 96-page opening brief in the U.S. Second Circuit Court of Appeals in the matter of *Robert M. Altman, Victoria L. Altman, et al., v. Bedford Central School District, Dr. Bruce Dennis, et al.* Regular readers of *The ACLA Report* will recall that this is the case in which U.S. District Court Judge Charles L. Brieant, Jr., last year struck down certain practices of the affluent Bedford Central School District, in New York, as being

contrary to the Free Exercise and Establishment of Religion clauses of the First Amendment to the U.S. Constitution and Article I of the New York State Constitution. Subsequent to a non-jury trial in which ACLA West Coast Counsel James M. Bendell was the attorney for the plaintiffs, His Honor enjoined the public school district's annual Earth Day liturgy, its practice of playing audiotapes of prayers to the Earth to impressionable young children, its practice of

(See "Bedford - New Age", p. 3)

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ACLA SERVES ITS REPLY (from page 1)

Crucial in the ACLA's reply brief on behalf of Catholic appellants Donald J. Treshman and Monica Miller, Ph.D., are the errors in the U.S. District Court's formal instructions to the jury. Contrary to established 9th Circuit case law, the trial court's jury charge adopted a standard for determining if a "true threat" (as opposed to common American political hyperbole) was made which is based on both the standard applicable to alleged threats not against private citizens, but against the President of the United States, and on the common law theory of negligence usually applicable to auto accident and slip & fall cases. The result was that the jury was told by Judge Robert E. Jones that it must find that the defendant pro-lifers' January 1995 "Deadly Dozen List" poster, their poster protesting the abortions done by co-plaintiff Dr. Robert D. Crist, and the "Nuremburg Files" were in fact "true threats" even if the pro-lifers did not intend them to be threats, so long as the jurors believed that a "reasonable man" who saw these materials would consider them "true threats" in light of a "context of violence" against abortion providers in the U.S.A. and Canada! Even liberal secularist legal scholars and editorialists have seriously questioned Judge Jones' jury charge.

Indeed, His Honor – over strenuous defense objections – allowed into evidence hundreds of references to shootings, arsons, and clinic bombings unrelated to Mr. Treshman and the other defendants, robust anti-abortion statements made by some defendants long before the American Coalition of Life Activists and its posters even existed, testimony about arrests of some defendants for unrelated trespass incidents, and, probably most damaging of all, witness stand testimony by F.B.I. agents and U.S. Marshals, including the marshal assigned to the Portland Federal Courthouse, that in their opinion the posters were serious threats. The American Catholic Lawyers Association asserts that all of this is contrary to standards set by U.S. Supreme Court and U.S. Courts of Appeals rulings in other cases and the Rules of Evidence, which require a careful balancing of the possible value as

opposed to any prejudicial effect of proposed testimony at a trial.

Another sad effect of the Portland Federal court's jury charge applying the common "negligence" standard to alleged threats in the context of pure speech or political posters -- especially when coupled with that court's refusal to instruct the jury that members of a political association cannot be held liable for alleged threats unless it is found that each member specifically intended to promote an unlawful group aim of making threats – is that there can now be in American jurisprudence such an oddity as "extortion by negligence" since, in this Portland RICO suit, alleged extortion to stop the plaintiffs from continuing to do abortions is the 1950s Hobbs Act claim underlying the plaintiffs' RICO claims. The Association asserts that this, too, is contrary to long-standing U.S. case law.

Numerous other trial errors are contended in the ACLA's reply brief, including the District Court's failure to grant motions for mistrial after co-defense counsel Mark R. Peck advised the judge that he saw plaintiff Dr. Elizabeth Newhall laughing and chatting with three jurors, after Judge Jones cast doubt on (though only in jest, His Honor claims) the reliability of Dr. Monica Miller's testimony by comparing it to that of a "Clinton deposition" while the President's trial before the U.S. Senate was in progress, and after a juror pointed a pen at the defense table and told His Honor that she could not stand hearing the word "abortionist", a key word in this whole case, featured on CBS-TV's "60 Minutes" on a recent Sunday. Amusingly, it was Dr. Liz Newhall who testified that she thought that the phrase "The Deadly Dozen" really meant "The Dead Dozen"!

The Association asks for your unceasing prayers and financial backing for our appeal in the U.S. Ninth Circuit Court of Appeals. Right now, under the trial court's 1999 judgment and corollary injunction, our clients are forbidden to disseminate the "Deadly Dozen" and "Dr. Crist" posters or any materials resembling them or containing personal data about the plaintiffs. □

BEDFORD - NEW AGE (from page 1)

having pupils make paper cut-out or clay images of the Hindu elephant-headed deity Lord Ganesha, and its sale, in the Pound Ridge Elementary School's store, of "worry doll" talismans so that students could place them under their pillows at night to supposedly ward off bad dreams. However, Judge Briant declined to strike down various other specific practices which the ACLA asserts are also violations of the First and Fourteenth (right to privacy) Amendments and of the New York Public Health Law. Both the plaintiffs and defendants are appealing in the U.S. Second Circuit, in New York City.

Among the defendant school system's rather curious arguments on appeal is that it never really authorized its faculty to conduct the activities which Judge Briant ruled unconstitutional. This is despite the facts that the school district and its attorneys never raised this defense during pre-trial discovery or even at trial and that one of the Association's exhibits at trial was a videotape depicting defendant Superintendent Dr. Bruce Dennis publicly berating our clients at great length for opposing his district's New Age Movement, occult, and Eastern religion practices.

The controversial practices which the U.S. District Court did not ban include: the demonic card game, "Magic: The Gathering", the propagation of Yoga by a real live American Sikh guru at Fox Lane High School; having young pupils make cut-outs of the Aztec god, Quetzalcoatl, and telling them that some believe that this serpent god will return to the world in 2012; reading the life of the Gautama Buddha to the children, New Age meditation practices in which students are to close their eyes, dream of going to a land to which they have never been and which is theirs alone, and feel the "blue liquid" rise up in their bodies; "right brain" stimulation by a psychic, the use of intrusive personal journals, encouraging pupils to write poetry about "How God Messed Up", the unfortunately popular D.A.R.E. program, Fox Lane High School's Peer Facilitator program, and certain other "counseling" and psychological testing programs touching upon morally sensitive topics.

The harmful nature of the school activities the trial court allowed to stand was well brought out by the ACLA's two expert witnesses, Dr. William Coulson and a Jesuit priest stationed in Texas.

Dr. Coulson testified that D.A.R.E. is a total failure because through such videos as "Drugs and Your Amazing Mind", it reduces a child's decision on whether to use illegal drugs to nothing more than a "values clarification" process of adding up the potential "positives" and "negatives" of doing so, and because it brings an armed police officer into the classroom to showcase various illicit narcotics or hallucinogens which the impressionable children probably have never heard or thought of before. Dr. Coulson, a psychologist, also testified that the Bedford School District's "Yale Decision-Making Program" for 6th graders, its high school Peer Facilitator program, and other of its "counseling" programs closely resemble the Non-Directive Psychotherapy with which he and colleague Dr. Carl Rogers destroyed the Sisters of the Immaculate Heart of Mary years ago in that students' moral and religious beliefs are subjected to the "group dynamic" in which there may be no absolute rights or wrongs. (See the feature article on Dr. Coulson and the Sisters of the Immaculate Heart in the Jan. - Feb. 1994 issue of *The Latin Mass* magazine. In 1977, Dr. Coulson realized the harm he and Dr. Rogers had done.)

The ACLA's Jesuit expert gave crucial trial testimony as to the manner in which the Bedford District's policies not only violated the Catholic Faith of the plaintiff students, but even endangered them spiritually. For example, he testified that "right brain" stimulation of the students by the psychic (a lady who is a minister in the Life Spiritual Congregational Church) and its basic principle that our right brains are dormant and need to be "tapped" are key features of the New Age belief system which seek to "shut down thinking and deny reason in favor of a bogus mystical experience which is antithetical to Catholic belief".

(See "Bedford - New Age", p. 4)

BEDFORD - NEW AGE (from page 3)

Further, Father stated on the witness stand that practices such as having the children close their eyes and “feel the blue liquid rise up inside you” in a darkened classroom as they breathe deeply are aimed at emptying out their minds under hypnotic suggestion, which can expose them to malign and perhaps even demonic influences. He also testified that belief in Quetzalcoatl (crushed by Our Lady of Guadalupe in the 16th century!) is reviving nowadays, contradicting the Bedford District’s assertion that this pagan god is remote in time, and that Fox Lane High’s Earth Day ceremonies are akin to ~~Gaiaism~~ (Earth worship), a religion also reviving today.

Regarding “Magic: The Gathering (MTG)”, Mr. Bendell and ACLA President Christopher A. Ferrara state in the Association’s appellate brief: “The defendants insist that elementary school students ... have the right to engage in a ‘math game’ on school premises which features such concepts [on the playing cards] as human sacrifice, summoning demons from Hell, contracts with the devil, and tutorship by a vampire and a demon. They so insist despite the opinion of one of their own retained

psychiatrists that MTG might cause certain children to suffer ‘untoward reactions in the area of impulse control [and] contact with reality...’ In other words, students who play at summoning demons might do crazy things. ... Perhaps it is too much to ask that defendants learn the lesson of Columbine High School, exercise some common sense and simply ban MTG.” Interestingly, some of the ACLA’s plaintiff students were physically assaulted by other pupils for opposing MTG!

The major victory which the ACLA won at trial in 1999 indicates that the Federal courts may finally be applying the same “strict neutrality” standards to Eastern and pagan religious practices in America’s public schools as these courts have applied for decades – with ever increasing rigidity – to ban Christian, Jewish, and even “neutral” religious practices.

Please pray for the success of our appeal. The ACLA hopes that if the Triune God is to be banned from this nation’s public schools, then at least pagan “gods” and their cults should also be banned. □

REMEMBER THE ASSOCIATION IN YOUR WILL

The ACLA is always in need of funds to continue litigating its significant cases affecting the rights of Catholics in America. Tax-deductible donations from loyal Catholics like you make it possible for us to defend fellow Catholics who otherwise would be without vigorous legal representation in the courts. If you wish, you may also remember us in your last will by means of a simple clause such as: “I give, devise and bequeath the sum of _____ Dollars (\$ _____) to the **American Catholic Lawyers Association, Inc.**, for purposes of said association’s general funds.”

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