

RESEARCH PAPER

“THE LAST ABORTION CLINIC”

By Raney Aronson

Please note this is for internal use only – not to be published, as it has not been thoroughly fact checked. This information has been culled from original reporting done during research, newspaper articles/periodicals, and past interviews I conducted for “The Jesus Factor,” which we will undoubtedly choose to update for this film.

Additionally, for purposes of this research paper, I have adopted the following terminology: pro life/ opponents of abortion or pro choice. There are many other terms used, and while pro life and pro choice are also politically motivated titles, they seem to be the best choices for now – later in the process, we should discuss what we want to use for the broadcast.

The purpose of “The Last Abortion Clinic” is to explore abortion politics today by looking at both the national and the state level.

National

On a national level, the film will focus on the pro-life movement’s strategy to redefine when “life” and/or “personhood” begins with the eventual goal of undermining the ever-controversial 1973 Supreme Court decision, *Roe v. Wade*.

William Saletan, the author of “*Bearing Right: How Conservatives Won the Abortion War*” told us, “what is key to understanding what’s different about abortion politics today is that the Conservative movement has successfully shifted the debate from a woman’s right to choose to the right of the fetus – in other words her ‘unborn child’s’ rights.” This means, in essence, he explains, “now there is a competition between the woman or her ‘unborn child’ in terms of rights – and if a fetus is ultimately defined as a person then abortion rights will most certainly be up for grabs.”

Richard Land, in a 2004 interview, said, “we are trying to change the hearts and minds of Americans by talking about the unborn child as a person who deserves the same rights as all Americans, and by doing this we will capture the American spirit.”

States

With eight of nine U.S. Supreme Court Justices older than 65 and one seriously ill, much of the media attention is focused on what will happen to abortion rights once the court changes hands. As this has not yet happened, I think a more compelling way to look at abortion rights in our country now is through the prism of certain state’s actions – specifically Mississippi – to regulate access to abortion.

In Mississippi, in many ways, the fact that abortion is legal in America doesn’t translate into women having access to abortion. There is only one abortion clinic – in the state capital of Jackson – where women can actually obtain an abortion, and for many who don’t live in the city and have limited financial means, getting an abortion from that clinic is simply impossible.

“I’ve heard of stories of rural women throwing themselves down staircases, or taking herbs to terminate their pregnancies,” said Nsombi Lambright, executive director of the American Civil Liberties Union of Mississippi (we are in the process of finding a second expert source or primary source on this). And in our own reporting we’ve been told by reliable sources that some women, especially in the rural Delta region, now go to see midwives who will perform abortions illegally.

Not that anyone would expect Mississippi to be pro choice – but I believe it's still critical to look at what's happening there so we can explore what a state can do to regulate abortion under the current laws, especially after the passage of the 1992 Supreme Court decision *Casey vs. Planned Parenthood of Pennsylvania*. Take Missouri: in front of the legislature right now are eight different pieces of pro-life legislation – and one that if ultimately passed could shut down virtually every abortion clinic in the state but one.

STATE ACTION

The story of the Casey Decision

Important to note: in the early 1990s, when *Casey* was being argued, the fact that the court didn't overturn *Roe v. Wade* was the big story in the media – and what was lost by and large was what *Casey* did *instead* of overturning *Roe*. Many of those in the pro-choice movement also felt it was a victory – and in a sense it was, in their opinion: state-level regulations were of course better than *Roe* being overturned. What was barely mentioned, however, was a fundamental shift in the way the Supreme Court said the nation would view abortion as a result of this case.

Until *Casey*, and since *Roe*, abortion was a fundamental right in our country – and other than South Africa, we're the only country that has this fundamental right. With *Casey*, the court has moved away from the idea of upholding an individual's *fundamental* right to choose to a state's right to make laws "rationally related to a legitimate state interest." The important thing to note is that the power in terms of regulations went from national to state – perfectly timed for the Conservative Christian movement already working effectively to garner support on a grassroots level.

This decision gave enough latitude to defend almost any restriction as "legitimate state interest." In other words, if a state feels a restriction is appropriate, it can attempt to legislate it, as long as it is not an undue burden upon the woman seeking an abortion. And this explains why pro-choice activists do not want any restrictions regardless of how legitimate they may seem: because the practice of restriction opens "a very dangerous door," according to Kitty Kolbert, the American Civil Liberties Union attorney who represented Planned Parenthood in front of the Supreme Court.

In the film we will tell the story narratively of how *Casey* came about with Gov. Robert P. Casey at the helm and how the case made it to the U.S. Supreme Court, changing the landscape of abortion politics. For the research paper I will just explain the case and its holdings.

The case

The nature of the case was to challenge Pennsylvania's 1989 Abortion Control Act. The 1989 statute required that, except in medical emergencies: a) a woman wait 24 hours between consenting to and receiving an abortion; b) the woman be given state-mandated information about abortion and offered state-authored materials on fetal development; c) a married woman inform her husband of her intent to have an abortion; and d) minors' abortions be conditioned upon the consent provided in person at the clinic, of one parent or guardian, or upon a judicial waiver. In addition, physicians and clinics that perform abortions were required to provide to the state annual statistical reports on abortions performed during the year, including the names of referring physicians.

The holdings

The Court reaffirmed the validity of a woman's right to choose abortion under *Roe v. Wade* but announced a new standard of review that allows restrictions on abortion prior to fetal viability as long as they do not constitute an "undue burden" to the woman. A restriction is an "undue burden" when it has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion. Under this standard, only the husband-notification provision was considered an

undue burden and therefore unconstitutional. All other provisions were upheld as not unduly burdensome.

At first glance, when I read the *Casey* decision, I didn't understand the reality, for example, of the waiting period. It's a good example to look at in order to understand the decision – most abortion clinics only offer abortions one or two days a week. This means that a 24-hour waiting period can actually mean waiting for two or three days, or sometimes a week – meaning that the woman seeking an abortion will have to find a place to stay if she is from out of town.

Interestingly, while on its surface it doesn't seem like a very strict restriction, for the pro-life movement, the waiting period has been a huge victory in the states that instituted it. (See section on Mississippi.)

Looking at *Casey* is a way to actually understand the myriad ways that abortion is being restricted on a state level and how far-reaching those restrictions are for women with limited means.

The story of Mississippi

Mississippi is one of the only states in our country that has only one health center left that offers abortions. The center is in the state's capital, Jackson, and is simply called "Jackson Women's Health Organization."

The scene is reminiscent of the 1980s and early 1990s – the sidewalk and lawn outside the clinic are often crowded with pro-life protestors who try to stop women seeking abortions as they approach the clinic. Melody Miller, a loyal protestor, stands outside with her husband (whom she met on a Christian internet dating service) screaming in a high pitch, "Mommy, Mommy, please don't kill me." In half an hour on a Thursday afternoon during the time that the clinic offers abortions, I counted 24 women entering the clinic, and the parking lot was full.

Terri Herring, the president of the state's most powerful pro-life organization, "Pro Life Mississippi," said, "I won't rest until they're all closed." Two years ago, her organization moved next door to the only surviving abortion clinic other than the Jackson Women's Health Organization and succeeding in closing it a year ago. Now her organization is gearing up to move next door to the Jackson Women's Health Organization to attempt to close it.

The story of why there are so few clinics in Mississippi is worth telling, not just from the street level, but also through the lens of the legislation that Herring (almost single-handedly, leading Senators have told us) has lobbied for since the early 1990s. Herring admits that she almost looks down on clinic protestors, saying, "I'm not a clinic protester – I'm someone who goes to the legislature and demands restrictions for abortions!!"

With a conservative governor, Senate, and House, Mississippi has had an easy time getting restrictive legislation passed. In 2003 it enacted the nation's most sweeping conscience clause, allowing any health-care provider to refuse to provide any abortion-related service, including emergency referrals (sources: *Associated Press*, *NYTimes*).

Additionally, Mississippi is one of only two states (along with North Dakota) requiring the consent of both parents before a minor can get an abortion. It's one of two states, along with Texas, requiring that women seeking abortions be told, in contradiction of National Cancer Institute Findings, that abortion might increase their risk of breast cancer (sources: *Associated Press* & original reporting – but need to fact-check).

The governor, lieutenant governor and attorney general of Mississippi are pro life. The governor, Haley Barbour, issued an official proclamation designating the seven days leading up to the anniversary of *Roe v. Wade* as "a week of prayer regarding the sanctity of human life." According to the same proclamation, Barbour also ordered the placement of small white crosses on the lawn

of the State Capital “in memory of the unborn children who die each day in America.” The Mississippi House and Senate are both pro life; the Democratic and Republican party platforms are pro life; and the state has a criminal ban on abortion that would be triggered by the reversal of *Roe v. Wade*.

One of the more restrictive state requirements is that in order to receive an abortion, 24 hours must pass after counseling from a doctor or social worker. For the women coming from the rural parts of Mississippi, this restriction is especially difficult. “We see girls coming from the Delta, and we have to turn them out on the streets for 24 hours – it’s just pitiful. They sleep on under trash cans, or in their cars,” said a social worker at the clinic.

A 2000 study of Mississippi’s mandatory waiting period found the following, and thus explains why the pro-life movement sees this as such a victory: the abortion rate dropped by 16 percent in the year following enforcement. In South Carolina and Georgia, which did not have similar laws in effect, considerably smaller declines took place over the same time period. Moreover, in the year following enforcement, the proportion of abortions among Mississippi residents performed out of state increased from 19 percent to 25 percent, and the proportion performed after 12 weeks’ gestation rose from 10 percent to 15 percent.

Naturally, Herring sees the waiting period as a great success “What an effective law – we give these girls time to actually sit and think about taking another person’s life,” she said.

Amy Tuck, Mississippi’s lieutenant governor, says her work in Mississippi is practically done, “I am proud of our state – proud of our legislators – proud of our pro-life state identity.” When asked how the pro-life movement would attempt to shut down the last clinic, Tuck said, “I don’t know, but by Jesus’ name I promise we will do it.” Of all the state’s actions, she is most proud that “not one red cent of Mississippi state money goes towards abortions.”

Susan Hill, who was a social worker before *Roe* was passed and is now the director of the Jackson clinic, told the media she never knew it could get so bad. Since the other abortion clinic closed a year ago, they have been fighting to keep theirs open. She said, “we have clinics in other states – but Mississippi is bar none the most aggressive place to work. Our doctors and social workers are under the most pressure – and we worry about them every day they go to work.”

In December 2004 she told the AP: “Mississippi is like the rest of the country was before 1973.” She said that the women who arrive at her clinic “have that same look in their eyes now. They have to go through the same kind of struggles. The state and the protestors are determined to close us, and we’re determined to stay open. It’s the classic fight to the finish.”

The way we plan to approach this story from the pro-choice side is by looking not only at the Jackson clinic, where we have limited access (HBO is doing a film there currently and has an exclusivity agreement with the clinic itself, but not the director) but also through the border office of Planned Parenthood and at the Planned Parenthood clinic in Birmingham, Alabama, which offers abortions and has seen a marked increase in the number of women from Mississippi seeking abortions in Alabama.

Larry Rodick, the head of the Birmingham clinic as well as the supervisor for the entire region, said, “it’s like fighting a war, and we’re barely keeping alive here.” Describing the pro-life movement, he said, “they’re not unlike the terrorists – they’re just out to get us, and there’s not much we can do.” Part of the agreement with Planned Parenthood may be that we are unable to show where they are located – we are in talks with them right now and will talk to FRONTLINE before proceeding. Rodick put it this way: “if they know where we are, we will be targeted, and it is literally suicide for us.”

In addition to his clinic, there’s a small Planned Parenthood office on the border between

Mississippi and Alabama. A cramped 200-square-foot room, it's a place where women come to get emergency contraception (one of only three places that offer it in the state) as well as referrals to Planned Parenthoods in Alabama that actually do offer abortions.

We plan to talk to two nurses who have agreed (one with her face shown, one with her identity hidden) to talk to us about the realities of receiving an abortion in Mississippi. Other than that, there are literally no other representatives from the pro-choice side in Mississippi. NARAL, for example, told us they see no reason to have an office in Mississippi. "We're cutting our losses," they told us. "Mississippi, bluntly put, is a lost cause for us, and we'd just be hemorrhaging our valuable resources."

For the pro-life side, we will interview the governor and the lieutenant governor as well as the local leaders such as Terri Herring. In addition to interviews, we just obtained access to what is called a "crisis pregnancy center." These centers are set up to offer "alternatives" to abortions. The oldest center in Jackson is the Center for Pregnancy Choice run by Barbara Beavers, and she has given us full access to her clinic from late June to late July. While we were there, we saw many women and girls come in to the center, and in their exam they were shown by ultrasound their fetus, while the nurses talked to them about the sanctity of life.

Beavers told us, "the ultrasound is our greatest friend – when these girls can see it's a baby, then they just don't have the heart to kill!"

National: The National Landscape

In general during research, next to Mississippi, what has consistently intrigued me the most is the strategy of redefining life with the ultimate goal of overturning *Roe v. Wade*. I have decided just recently to pursue this as part of the story – so this section is less developed than Mississippi.

Richard Land, from the Southern Baptist Convention, told us in 2004, “we are determined to redefine to the American people that a fetus is a person – it’s an unborn child, and that child has a right to live despite what the mother wants.” The fact that the pro-life movement believes this is not new – what *is* new is that they are attempting to legislate it.

The conservative movement’s success has been wide-reaching, and as James Morone, a professor at Brown University and the author of *Hellfire*, said “they have the moral high ground – they are talking about life, and the pro-choice folks are talking about privacy. Clearly the pro-choice movement loses.”

With the new debate over life and with the knowledge that “values” matter, the Democrats have been slow to respond, if they do at all. Sen. Hillary Clinton took a different stance this winter, trying very hard to shift the debate and appeal to a more moderate base. She lauded religious conservatives on their success with teenage pregnancy, saying that she was not pro-abortion but still wanted to protect a woman’s right to choose. Something I found interesting from talking to Planned Parenthood, NARAL, and others is that they say it’s very difficult for them to motivate younger women. Most of the women they say they approach are unconcerned about their reproductive rights, assuming *Roe* will protect their right to have an abortion. Furthermore, as the Democratic Party seeks to find a middle ground, people at Planned Parenthood say they are starting to feel like “outcasts.”

Over the last few weeks we’ve put together a list as a way of understanding better what is happening specifically around reproductive and abortion rights. The reason I felt this was so important is that in all my reading I haven’t seen them together in one place. I think that while of course we cannot explore all of these actions, there are a few that are especially intriguing, and after the list you’ll see which ones I plan to focus on. I think an updated and fact-checked version could potentially be good for the website.

Executive Branch actions

President Bush restores the global gag rule on his first day in office (also the 28th anniversary of *Roe v. Wade* – January 22, 2001). The gag rule says that any international organization using federal funds cannot offer abortion as an option.

The President extends global gag rule to all international family planning programs (August 29, 2003).

Funding for “abstinence-only” programs is doubled in Bush’s 2001 budget (October 11, 2001). We’re looking at more-recent budgets.

The Bush administration announced funding and assistance for “embryo adoption” (July 25, 2002).

Embryos are granted the status of “human subject” by the HHS Committee on Human Research Protection (October 2002). This was under Tommy Thomson’s watch, and he is willing to talk to us about the administration’s reason for passing this.

Department of Justice Office on Violence Against Women omits emergency contraception from rape-treatment protocols (December 31, 2004). This means that when a woman is raped and seeks help from a hospital or the like she is not told she has the option to take the RU486. The Justice department told the press, “we changed the protocol to match the values of the majority of

Americans.”

U.S. Delegation to Economic Commission of Latin America and the Caribbean refuses to join a declaration reaffirming the Cairo consensus on population development because it objects to the use of phrases like “reproductive rights,” “reproductive health,” and families “in all their various forms”. They are the only delegation refusing to join (March 11, 2004).

LEGISLATION

House passes the “Child Custody Protection Act,” which would make it a federal crime to transport a minor across state lines for an abortion unless the parental involvement requirements of her home state have been met.

President Bush signs the (so-called) Partial Birth Abortion Ban (November 5, 2003). See longer explanation below.

President signs “Unborn Victims of Violence Act” into law (April 1, 2004). This is also known as the “Laci and Connors law,” and it essentially legislates that if you murder a woman who is pregnant, you can also be charged separately for killing a child (even if you did not know she was pregnant).

Amendment to budget includes “Abortion Non-Discrimination Act” This allows health-care entities to refuse to comply with existing laws and regulations pertaining to abortion. This gives the right to “refuse to give treatment” due to moral objections (November 20, 2004).

Up for debate: Child pain legislation act - law would say a woman after a certain number of weeks must sign a form accepting or rejecting anesthesia for the embryo prior to abortion, make the woman have to admit to causing pain to the embryo and another way to make a fetus equal a child person.

My idea is to trace the actions of the Conservative movement by their legislative successes, and in some cases failures since the beginning of President Bush's first term. Specifically I hope to look at the (so-called) Partial Birth Abortion Ban and the Laci-Connors law.

Partial Birth & the Laci-Connors Law

In a press release issued in 2003 by Randall Terry, founder of Operation Rescue (renamed “Operation Save America”), the partial-birth abortion ban was described as “a political scam but a public relations goldmine.” Terry said, “This bill, if it becomes law, may not really save a child’s life....but the major benefit of this bill is the debate that surrounds it.”

The pro-choice movement said that the very term “partial birth” was fabricated to inflame public debate as a potential ban on a particular medical procedure was introduced to the legislature. The medical procedure that the ban refers to is called “dilation and extraction” or “intact dilation and evacuation”. It is a standard procedure abortionists use to terminate a pregnancy after 13 weeks. In this procedure a fetus is extracted from the uterus either in pieces or intact. Previously it has been up to the physician performing the procedure to determine the safest technique for the procedure. Essentially, the ban made it illegal (until it was challenged by the states) for the fetus to be evacuated intact.

Aside from swaying public sentiment, the purpose of the legislation is two-fold: to redefine fetal status and to challenge the “undue burden” precedent established by the Casey decision. The pro-life side argued that because the fetus, when evacuated intact, is killed mostly outside the woman’s body that abortion rights do not apply.

The pro-choice side argued that dilation and extraction or evacuation is the standard post-thirteen-week abortion method and that a ban on that procedure would unduly burden women seeking abortions during the second trimester, when the courts have ruled abortion to be a legal option.

The national debate was triggered in 1992, when an Ohio physician presented a paper detailing the dilation and extraction procedure at a National Abortion Federation (NAF) meeting. After this conference, NAF's mailing list was infiltrated, and it was not long before a printed record of the conference proceedings were obtained by pro-life activists. One of the pro-life activists created a cartoon of the procedure that was then widely duplicated and distributed. National pro-life advocates seized upon the dramatic and seemingly simple graphic as a high-impact vehicle for their campaign for the "hearts and minds" of the American public.

Experts say this one piece of legislation has done more than any other to fuel a change in the language of the abortion debate from the rights of the mother to the rights of the fetus or the "unborn," and its (despite reversal in the courts) passage in the legislature has been a signal that the legislative tides may be swaying away from abortion rights. The ban is not in effect due to state challenges, but many experts say that the pro-life movement it did its job. "It shifted the debate – and Americans were forced to consider the grisly reality of abortion," said Herring.

Richard Cizik said, "the partial birth abortion ban act was reflective of the transitional change that's occurring, not just in the political movement of evangelicals but from an older generation of the religious right, to a younger generation. We are all holding the torch showing that life matters in America."

Restrictions on government-financed embryonic stem cell research employ the same arguments against terminating "fetal life" outside of the womb. And legislation such as the Unborn Victims of Violence Act of 2004 (otherwise known as the Laci-Conners law) goes a step further by considering the harm of a fetus within the womb a separate offense from the harm of the woman carrying the fetus, meriting equal punishment.

As a final note, I had my associate producer make a list of all pro-life appointments since the beginning of President Bush's first term. I am certain this won't make it into the film, but it could be a good way of opening up the discussion of appointments on the website. *These appointments have not been fact-checked.*

APPOINTMENTS

This is happening across the nation, and I'm only listing those judges considered to be pro life. I don't see this list making it into the film, but perhaps an edited list can be included on our website.

Texas Supreme Court Justice Priscilla Owens nominated to the Fifth Circuit Court of Appeals. She is openly pro life (May 9, 2001).

Law Professor Michael McConnell nominated to the 10th Circuit Court of Appeals. He is openly pro life (May 9, 2001).

District Court Judge Dennis Shedd nominated to the 4th Circuit Court of Appeals. He is openly pro life (May 9, 2001).

Lavenski Smith nominated to the Eighth Circuit Court of Appeals. He is the former executive director of the pro-life Rutherford Institute of Arkansas (May 22, 2001).

Judge Carolyn Kuhl named to the Fifth Circuit Court of Appeals. She is openly pro life (May 25, 2001).

Federal District Court Judge D. Brooks Smith selected for the Third Circuit Court of Appeals. Smith is openly pro life (September 10, 2001).

Louise Oliver appointed special assistant to the U.S. State Department Bureau of Population, Refugees and Migration. Oliver served as the president of the Harvard Law School's Society for Law, Life, and Religion, a pro-life organization (July 2002).

Patricia Funderburk Ware appointed the head the Presidential Advisory Council on HIV/AIDS (PACHA). She advocates for "abstinence-only" education (November 30, 2001).

Dr. Freda McKissic appointed to the CDC Advisory Committee on HIV and STD Prevention. She favors "abstinence-only" education rather than condom promotion (September 6, 2002).

Dr. Alma Golden selected to oversee Title X, nation's family planning program (October 7, 2002). Dr. Golden is a proponent of "abstinence-only" education and has been an active pro-life activist over the last decade. This appointment has far-reaching ramifications on the state level in terms of funding.

Texas Supreme Court Justice Priscilla Owens and Los Angeles Superior Court Judge Carolyn Kuhl are re-nominated to Circuit Courts of Appeals. They had all previously been rejected and are all pro life (January 7, 2003).

During a congressional recess, Alabama Attorney General William Pryor is appointed to the 11th Circuit Court of Appeals. He is strongly pro life (February 20, 2004).

James Leon Holmes appointed to U.S. District Court for Eastern District of Arkansas. He is the former president of Arkansas Right to Life (July 6, 2004).