

## Mary Doe HER STORY

Published by National Association for the Advancement of Preborn Children

Cover Painting by Philippe Lejeune
© 2006 NAAPC
21 Summit Avenue
Hagerstown MD 21740
USA
www.naapc.org

All rights reserved Printed in the United States of America

#### Celebrate Life

"Choose life that you may have it more abundantly"

-f-

Mary Doe HER STORY

### **Table of Contents**

Chapter One
Chapter Two
Chapter Three
Chapter Four
Chapter Five
Chapter Six
Chapter Seven
Chapter Eight
Chapter Nine
Chapter Ten
Chapter Eleven
Chapter Twelve
Proposal of Law
Testimony of Dr. LeJeune
Opinion of the Court
Partial Birth Abortion Ban
Postscript

-f-

#### Dedication

This book is dedicated to those who cannot speak for themselves: *"the good cause of children yet to be."* 



## In Heartfelt Appreciation

It was Dr. David Allen who prompted the writing of this narrative when he encouraged me to reduce to writing my recollections and remembrances.

The support and encouragement of my beloved wife, Shirley, and our five children over the years has made it possible.

Internationally acclaimed artist, Philippe LeJeune (brother of the late Dr. Jerome Lejeune of Paris, France) gave us the cover painting, and my own daughter Kathryn did the painting, "Creation of the Preborn Child."

I wish to also recognize the skillful contribution of Jesika Asaro and her dear friend, Veronica Koebel in typing and putting this book together.

And I wish to especially recognize Kathryn's dear friend, Rachel Simone who edited the manuscript along with Bill Ryder who assisted in encouraging its publication.

## Chapter One

Vacation at the Beach

Well, if you can hear it, by the sound of the background, I'm on vacation at the beach again. We're down here along the North Carolina shore in the Cape Hatteras area. I suppose I'm the early riser in the group so I brought my little office microcassette tape recorder and I'm walking along right where the water meets the sand. Every year our family, along with the Joe Martin family, had a tradition of sharing a beach house in Fenwick, Delaware on the Atlantic seaboard. It was a little oceanfront cottage with a banging screen door. My wife Shirley and I and our five children along with Joe and Ruth Ann and their two sons managed to cram in under its rafters. Our children were Marty, Andy, Kathryn, Ruth and Kathleen and Joe and Ruth Ann's sons were named Eric and Tony. One of the first things the kids would ask for was seafood that we used to get at Phillip's Seafood. We'd get steamed crabs and shrimp, bring them back to the cottage and have a seafood feast. We always seemed to rent the cottage for a week in August, and this August in 1989, I promised myself I was going to get away from the news and not buy a paper the entire week. I was just going to relax alongside the beauty of the ocean.

We arrived at the cottage on Saturday and it was now Sunday. I was going out to get the seafood and my wife asked me to stop and pick up some soft drinks for dinner. After I picked up the steamed crabs (they smelled so wonderful in the brown paper bags they give them to you in), I stopped next door in a little convenience market to pick up some soft drinks and I noticed a newspaper on the floor. There was only one left, but it was a fat paper, a Sunday paper, and I knew it would cost a dollar. I thought

of buying it so I would have something to put out on the table to eat the crabs on, as was our tradition, so we could roll up the crab shells and all after dinner and put them out in the trash. I thought to myself, "I'm not paying a dollar to put something down for crabs," so I went on and got in line at the checkout counter. But I kept glancing back at that single, lone-some paper left lying there on the floor and thought again, "Oh, what the heck? All that money I spent for crabs... what's another dollar?" I picked up the newspaper and threw it on the checkout counter along with the soft drinks.

Back at the cabin, determined to get something for my dollar, I peeled off the A section of the paper to read after dinner and I laid it on the chair of the little, screened-in, ocean-faced porch. I proceeded to use the rest of the paper to spread out on the table for crabs.

After dinner, I went out and opened up the A Section. The paper was the Sunday *Philadelphia Inquirer*. I noticed the entire front page was given over to a young couple in Maryville, Tennessee getting a divorce. All issues had been decided in the divorce except what was to become of the couple's seven frozen human embryos conceived in an in vitro fertilization program.

She was a beautiful woman and had worked as a model for the boat show in Knoxville, Tennessee. Her name was Mary Davis and her husband, Junior Davis, was a handsome young man. They had been married for ten years, and unable to have children, had undertaken an in vitro fertilization program in hopes of having a child.

Nine embryos had initially been conceived. Ordinarily they take two at a time and implant them in the woman. The first two did not take and before Mary could return to implant two more, her husband entirely surprised her by suing for divorce. They had not had an argument or anything. He filed for divorce and at the same time requested and received an injunction preventing Mary from implanting any more of their human embryos saying that he did not want to be a father against his will. She said he already was a father. He said, "Nonsense. They're only potential life." She said, "They are lives with potential." The debate was joined and there was needed an expert witness.

Reading the article, I learned that the name of the attorney representing Mary Davis was Jay Christenberry. I knew the city of Maryville well

because I had often gone through there with my grandfather years ago in his pickup truck when we'd drive back and forth from his antique and furniture shop in Gatlinburg, Tennessee to Knoxville. We would sometimes take the route that went through Maryville. I had also attended the University of Tennessee my freshman year and Maryville is next door. I said to my wife, out at the kitchen sink doing dishes, "Listen to this," and I read her some of the front page. I told her, "You know, the one person in the world who could help this lawyer in Tennessee as an expert witness is our dear friend, Dr. Jerome Lejeune."

Later that night, I used the directory assistance for Knoxville, Tennessee and telephoned Jay Christenberry. I had quite a time getting him on the phone, and when I finally did he was hesitant to talk to me, having had calls from the media and people all over the world. I told him that I thought the one man in the world who could be the expert witness he needed, was Dr. Lejeune, the World Dean of Geneticists. I explained that Dr. Lejeune was to the world of genetics as Einstein was to the world of physics. He received our nation's highest award from the hand of President Kennedy for isolating the X-21 chromosome responsible for Downs Syndrome.

Mr. Christenberry said, "Well do you think he would come? Because if he would, I believe our judge would delay the case to give him time to get here."

I replied I didn't know. It was Sunday. His phone number was on the rolodex in my office; I would have to wait until Monday morning when the secretaries were in to get the number and attempt to reach him at his lab in Paris. On Monday morning, there was an operators strike and Shirley and Joe and Ruth Ann along with all the children were out on the beach. I told them I would be right out as soon as I was able to reach Dr. Lejeune. Because of the AT&T operators strike, I tried and tried unsuccessfully to get a call through to Paris. I was about to give up when finally, close to noon, when I knew Shirley would be having a fit about the fact that I had brought the office to the beach with me, the phone rang in Paris at Dr. Lejeune's lab. Luckily, a woman answered who spoke English and luckily, I was able to persuade her to bring Dr. Lejeune to the phone. I told him the facts of the case and that the father of the embryos had told Mary privately that if he got a hold of the embryos, he was going to destroy them.

He asked me, "What says the mother?"

"The mother has told him publicly through the judge that if the embryos cannot be given to her, she asked they be donated anonymously to any couple who cannot have children so that their children might live," I answered

Dr. Lejuene thought for a moment and replied, "This is incredible, Mr. Palmer. This is the judgment of Solomon. It's a three-thousand year old judgment. I did not think it could reoccur in human history, but it's reoccurring. But," he hesitated, "do you need me personally? Can't you use some of my writings?" He then explained it was the busiest week of the year for them there in Paris, where they have a consult of five thousand Downs Syndrome children at the hospital he oversees. Many of them come from all over Europe that week and want to see him personally. Later in the week, he indicated, the Holy Father Pope John Paul II had asked him to address a group of young people in Spain.

I explained in the United States under our American system of jurisprudence you had to have a live witness on the stand in order for him to be allowed to testify and then be subjected to cross-examination by the other side. There was a pause.

He asked again, "But do you need me in person?"

"Yes," was my simple reply and humble entreaty.

There was another pause and he said, "Well, call me back in half an hour. I must telephone the airline. And I must telephone my wife. She is in Denmark and if she calls home and finds that I've gone to the U.S., she will be suspect."

The next morning I got up at 3:30 a.m., drove back to our home in Hagerstown, Maryland, where I changed into a suit and drove out to Dulles International Airport to meet Dr. Lejeune's plane from Paris. My car was a blue 1975 Volvo that still ran good. My son, Andy, had asked me, "Dad, when are you going to get a new car?" And I had replied, "It was made the same year you were born and I am not getting a new you." Afterwards, he asked me no more questions.

When I met Dr. Lejeune's plane at Dulles International Airport, Washington, D.C., I drove him in my car as his taxi driver to the Marriott

for lunch. We took advantage of a nice buffet the Marriott had while we waited for our afternoon flight to Tennessee and I noticed Dr. Lejeune chose shrimp and I thought of Shirley and the children at the beach.

As we walked through the lower lobby on our way to the United Airlines gate, we passed the small reflecting pool in front of a bust of John Foster Dulles mounted on a pedestal. I remember reading in *Reader's Digest* once that it was Dulles, Secretary of State under President Eisenhower and for whom the airport was named, who defined diplomacy as "the art of letting the other person have your way." I thought to myself at the time, "Surely that is the essence of diplomacy. No wonder he was so well thought of as one of the finest Secretaries of State our nation has ever had. President Eisenhower had chosen well."

Walking past the reflecting pool, I noticed the usual assortment of pennies, dimes, nickels and quarters that speckled the bottom of the pool. There was no sign encouraging people to throw money in and yet money was in the pool.

"Have you ever noticed that wherever there is a fountain or a pool, people cast coins in it?" I asked Dr. Lejeune.

"Yes, they do that in Paris too."

"I wonder why that is."

He thought for a moment and he said, "But it's only man-made water."

And then, he thought for what seemed like just a split second longer - our footsteps had not yet passed the length of the pool - and he said with a light heart and a shrug of his shoulders, "It's too complicated." And I noticed his mind went on to other things.

I always remember this because he ran it through his great mind, could not come up with an answer to satisfy himself and decided not even to expound upon a theory, but simply passed it off as too complicated, dismissed the problem, and went on to the next thing. I wonder if we ought to do the same in life with problems we have that are too complicated. The issues of the heart, of course, we need to lay at the base of the cross. But even questions such as 'why it is there?' is something within us that also casts a coin into the fountain. We need to learn not to fret about it if the question is too complicated for us to resolve. So we rounded the cor-

ner, got in line, and boarded our United flight, a Boeing 727 commercial flight to Knoxville.

Attorney Jay Christenberry was to have met us at the airport. We looked for somebody with a sign, wave, or friendly smile in our direction, but we found no one. The airport was rather small so we waited for Mr. Christenberry out in front of the airport. By this time it was nightfall and as our waiting drew on and on, I suggested to Dr. Lejeune that he might wish to sit on the luggage to be more comfortable and he did. Shortly after that, Mr. Christenberry exited from the back of a long, black limousine that pulled up beside us. He explained NBC News had lent him the use of a limousine. He apologized for being late, as he was coming from a press interview.

While I had met Mr. Christenberry over the telephone, this was our first meeting in person. I introduced Dr. Lejeune and then Mr. Christenberry took us to the local Hilton hotel where he had made reservations for the night for Dr. Lejeune and myself.

The next morning, I brought Dr. Lejeune coffee and pastries from the breakfast buffet in the lobby. When I brought it to his room, he was up reading through some scientific papers he had brought with him. Mr. Christenberry had picked us up at the airport in NBC's limousine, but that morning, he pulled around to the front of the hotel in his older model Suburban van and we all got in. When he tried to restart the vehicle, it would not start. The car had a weak battery. He got out, raised the hood and began monkeying with things to try to get it to start.

"Devilish tricks. Sometimes they are quite juvenile, really," Dr. Lejeune commented. He then asked, "How far is it to the courthouse?"

Jay replied, "About a mile."

To which Dr. Lejeune said, "We'll walk."

About this time, with the aid of a pair of vice grips on the battery terminals, the van turned over and we were off to the old style domed Blout County Courthouse in Maryville, Tennessee, located on a high bluff of ground surrounded by magnolia trees. Jay drove his fishing van around to the back of the courthouse through the throng of press at the front lawn and I noticed a large truck with a satellite dish on the top of it. The

truck was the size of one that would service the power lines for the electric company or a giant rescue truck that some cities have. The satellite dish on top looked like it belonged on the roof of a business that was beaming satellite signals back and forth across the world. I noticed the name on the side of the truck: British Broadcasting Company. Indeed, while the case had received front-page write-ups in *USA Today* and other papers, there was even greater interest back in London and Europe. We entered the courthouse by a high set of metal stairs that were something like fire escape stairs only slanted at a proper angle. Members of the press corps who recognized Jay were running around chasing us as we ascended the stairs. For the most part, we managed to avoid the press.

Jay asked me to sit at the trial table with him and his client, Mary. After the judge had seated himself, he rose to introduce me to the judge, stating that I was a member of the Supreme Court Bar and I had been to the Supreme Court many times. Yes, I am a member of the Supreme Court Bar and often go to the Supreme Court to research in its library and lunch in the cafeteria, but I have never, in fact, argued a case before the Supreme Court, which Judge W. Dale Young may have interpreted that to mean. I interrupted Jay, rose and stated: "I am simply the 'taxi driver' and 'personal valet' to this great man who is here to testify before you today, your Honor," and sat down. I could truthfully make the statement as I had picked Dr. Lejeune up in my own 1975 blue Volvo and drove him from the airport to the Marriott, where we had lunch and I had brought the coffee and pastries to him at breakfast. This statement did not appear in the formal transcript since the proceedings were begun anew on the record following the short recess Judge Young called immediately after I rose and said those few words. When court reconvened, Dr. Lejeune took the witness stand.

On our way to Knoxville, Dr. Lejeune had asked me, "What is the question the judge will be needing to decide?"

"Well," I said, "he will need to decide if these human embryos are *person* or *property*, because if *property*, then he would divide them up like he would the silverware or the furniture in a divorce. If *person*, then he would enter up a custody award as he would for any child."

He thought for a moment quietly as his great mind turned over the question the judge would have to decide.

Then he responded, "Well I would propose to say to the judge, Mr. President - you call him Mr. Presidente?"

"No, but it never hurts to elevate a man," I said. "That's okay. We usually would call the judge, 'Your Honor."

"Well, I would say, 'Your Honor, they are a *being*, and being *human*, they are a *human being*. They are person and not property, because they are the only property which has the property of building themselves."

"That's beautiful. Say that to the judge," I said. And, he did.

He went on to tell the judge that this was a three-thousand year old judgment of Solomon. He did not think it could reoccur in human history, but it was reoccurring and he hoped that the judge would be on the side of Solomon. Judge Young thought his decision over long and hard for over a month. When he finally handed down a ruling, he did decide on the side of Solomon, ruling for the first time in human history that these were "children in vitro." He gave custody of the seven frozen human embryos to Mary for implantation and live birth.

Dr. Lejeune's testimony in the case had been beautiful. The little Maryville courtroom was packed on that summer day of August 10, 1989. With no air conditioning, the open windows provide some relief from the still heat. All other activities in the courthouse seemed to shut down that day. No cameras were allowed in the courtroom and reporters brought their notepads. In his testimony, Dr. Lejeune painted a picture with words like the brush of Michelangelo. Here was a man as much poet as scientist. Even the secretaries who heard his testimony piped over the intercom into the judges' offices agreed. They said that his words had been beautiful, that he had painted a symphony of life. We later published Dr. Lejeune's testimony and court transcriptions including the judge's ruling word for word in that case in a little book entitled, Symphony of the Preborn Child, which has become known worldwide as "The Judgment of Maryville." The U.S. press called it the "Tennessee Frozen Human Embryo Case." It may also be found on the National Association for the Advancement of the Preborn Children's website, www.naapc.org, along with an audio of Dr. Lejeune's testimony.

I was amazed how Dr. Lejeune, being French, explained in the English language "the human embryo is person and not property because it is the only property which has the property of building itself." But I was even more amazed at a coincidence in the English language he had picked up that the rest of us had entirely overlooked. It was the summer of 1990 and he was traveling all over Europe where he was invited to speak about this case which had become known as the 'Judgment at Maryville.' He wrote me a letter about one city in which he spoke where the auditorium he was invited to speak in did not have enough room for those wishing to attend so they used a local cathedral. After his talk, all those in the cathedral joined in prayer for the seven frozen embryos, the seven hopes of Mary.

They were in prayer because though Judge W. Dale Young ruled to save them and gave custody to Mary for implantation, the father had appealed to the Tennessee Courts of Appeal, which ultimately reversed the judge, saying the father should not be made to be a father against his will. From there, the case was on appeal to the United States Supreme Court. Mary had asked me to represent her on appeal before the U.S. Supreme Court, only because I happened to be a member of the Supreme Court Bar and Jay Christenberry was not and because I was familiar with the case. We were waiting for the U.S. Supreme Court to decide whether or not to grant *certiorari* and hear the case.

But, back to the second coincidence of language that Dr. Lejeune picked up. I was attending the 16<sup>th</sup> Annual International Congress on the Family in Brighton, England the summer of 1990 because the Reagan administration asked me to observe and provide some thoughts for the 17<sup>th</sup> Annual International Congress on the Family they were planning in the United States. In point of fact, it never came to be in the United States the next year. As I walked into the lobby in the convention hall there in Brighton, I was surprised to see Dr. and Mrs. Lejeune coming through the lobby and I asked, "What are you doing here?"

And, of course, they responded, "What are you doing here?" I learned that he was an invited speaker.

As he addressed a large hall of people from all over the world, he said that he had been asked to testify for **Mary** of **Mary**ville, Tennessee for the *seven hopes of Mary* and he said the lawyer who represented Mary was named

**Christen**berry and the judge who was to pronounce the judgment for the very **young** was named Judge **Young**. Dr. Lejeune then added, "And my name, in French, Lejeune, it means the same - *the young*." He added, "Sometimes Truth ventures coincidences that science fiction would not dare!"

In order for the U.S. Supreme Court to hear a case they have traditionally had something called "the rule of four," meaning that at least four of the nine judges have to vote to hear it. Grant *certiorari* means to send the case up from the lower court to the Supreme Court and be placed on the calendar for briefing and oral argument. Then it would take a minimum of five votes after oral argument in order to have a majority decision out of the nine judges for your side to prevail in a case.

At lunch one day with the Deputy Clerk of the Court, Ed Shade, who worked in the clerk's office at the Supreme Court for thirty years, I learned that though the rule required a vote of four, sometimes three judges had been able to talk strongly enough to get a case heard. In history, he knew of at least one case when only one judge had been able to talk strongly enough to get a case heard. The votes on whether to hear or not hear a case are never made public because they take place behind closed doors in the judges' private conference room.

So we waited and waited having knocked on the door of the Supreme Court. Would they open the door to little Mary Doe? Would they open the door to Mary's human embryos? We were all saddened when the Supreme Court denied our petition for *certiorari*, allowing the ruling of the Tennessee Supreme Court to stand. The very judge, Judge Young, who had ruled for the first time in history, based on Dr. Lejeune's testimony, that human embryos were "children in vitro," was given the order by his Supreme Court to direct that the seven embryos be destroyed.

Dr. Lejeune, reflecting on this, wrote me a letter where he noted that it went entirely unnoticed in the news media, but it was the first time in the history of our nation that those declared innocent below were condemned to death by the U.S. Supreme Court. Judge Young had ruled they live. The U.S. Supreme Court condemned them to death. A murderer condemned to death row by a lower state court may be set free by the United States Supreme Court, but never the opposite. He had a telling point. In that

same letter, Dr. Lejeune said that at the Nuremberg trials following the Second World War, we had a representative who could speak five languages (Dr. Lejeune himself spoke five languages fluently). This representative returned from the Nuremberg trials and summed it all up when he said: "It all started in Germany when it was decided that there was such a thing as a life not worth living."

At the lunch break of Dr. Lejeuene's testimony, Jay Christenberry took us to a small restaurant a short automobile ride from the courthouse, where we ate lunch with him and some of his staff.

I turned to Dr. Lejuene who was seated beside me at the table and said, "Your response to one of the questions sounded like a response Christ Himself would give." To which Dr. Lejeune very embarrassedly and very meekly and modestly, passed it off, "Oh, really? You think so?" or something to that effect and we went on to speak about something else. It was a number of years later that I came to think back on this testimony when a Catholic priest was speaking of his thought of Christ in Lejeune and Lejeune in Christ - based of course upon the scripture of Christ in the Christian and the Christian in Christ, Romans 8:11, II Corinthians 13:5 and Colossians 1:27. From these passages, the priest pointed out that Christ comes to dwell in the heart of the Christian.

When we returned to the courthouse for the conclusion of Dr. Lejeune's testimony, there were masses of people on the front lawn. The city of Maryville had put up a large, green canopy tent. Judge Young announced that for any members of the press wishing to have a ham sandwich and the like, the ladies would be serving at no charge as a courtesy to the press corps who were there at the courthouse. After Dr. Lejeune's testimony was over, we exited the courthouse and he was greeted by a host of microphones and video cameras with reporters waiting to ask the doctor a few last questions. In speaking to the press he spoke of a "concentration can," in which human embryos can be compressed by the hundreds and thousands in very cool liquid nitrogen, where even time comes to a standstill.

He indicated later that the French press had misunderstood and had printed "concentration camp." He made this observation in his book about the case, <u>The Concentration Can</u>. Dr. Lejeune said that this was a curious mistake because a "concentration camp" is a device that was invented to

terribly speed up death, whereas a concentration can is a device invented to terribly slow down life. In either case, he added, the wall imprisons innocents. In Dr. Lejeune's book, he recalled when he had been asked to give testimony in England before the British Parliament, which was considering legalizing human embryo experimentation and he said in his book: "What about frozen embryos? They're accumulated by the thousands in a crowded deep-freeze tank. The low temperature brings time to a standstill. How is it called in history, this hopelessness of arrested people, concentrated in a hostile place where even the time was also arrested? Do you remember some sixty years ago? Today, people are questioning what to do with frozen embryos. Kill them? Or keep them for experimental benefit? These same questions were asked sixty years ago. The answer is simple. Concentration camps must be forever strictly verboten."

Dr. Lejeune died on Easter morning, 1994. Just as the sun was lifting the fog from the city of Paris and illuminating the throats of the Easter lilies that would trumpet the Resurrection at dawn, Jerome Lejeune went home. The following day, Pope John Paul II issued a statement on his death commending his life and finding more than coincidence in his passing on Easter morning.

At the end of that day when Dr. Lejeune's testimony had finished and the press had asked their last questions, everyone was heading home and I was looking for a ride for Dr. Lejeune and myself back to the hotel. An obliging man and his wife in the back parking lot offered to give us a ride, but all they had was a pickup truck. As a young boy helping with my grandfather's antique and furniture shop on Roaring Fort Creek in Gatlinburg, Tennessee, I often rode in the back of his pickup truck and thought nothing of it since it was a ride. My only thought was for Dr. Lejeune and how he might feel about hopping into the back of an open pickup truck. I looked and looked for an alternative but there didn't seem to be anyone else who had space in their cars. A van came by, but it was completely filled. So I said to Dr. Lejeune, "Why don't we hop a ride with this man and his wife?" As I climbed over the tailgate of the pickup, I noticed him hesitate for a moment. Then, he agilely followed suit, threw his leg up on the bumper and up over the back tailgate he went. He was seated up on one side and I on the other.

As we settled into the back of the pickup truck, I believe the man who owned the pickup truck was still waiting for his wife to arrive, a Tennessee state trooper in full uniform walked up and it was obvious he wanted to talk to Dr. Lejeune and he approached the back tailgate.

"This is the most excitement we've had in Tennessee since the Scopes trial!" referring to the now-famous Scopes Monkey trial in which Clarence Darrow and Edward Bennett Williams squared off over the teaching of evolution in the Tennessee schools.

Just at that moment, somebody came by in a van that had extra room and stopped, opened the doors and offered us a ride. They were kind enough to take us to the hotel. I will always remember the humility of Dr. Lejeune, who was not uncomfortable at all about riding in the back of the pickup. His only hesitation was how he was going to get all the way up and over the back tailgate with one foot on the bumper. Nevertheless, he managed it quite well.

# Chapter Ewo

Meeting Dr. Lejeune

In 1981, Dr. Ed Byrd, a prominent neurosurgeon in Hagerstown, Maryland, telephoned me at my law office and asked if I would be kind enough to get him a copy of the Supreme Court case that legalized abortion. He went on to tell me an Ob-gyn doctor friend of his down in Montgomery County, Maryland, outside of Washington, DC. told him they were seeing the phenomena of patients, who, once they discovered the sex of their child, were not returning to have their baby, but going elsewhere to have an abortion. They were using abortion to choose the sex of their next child. Predominantly, the sex of choice was a male child and they would continue to abort female children until they became pregnant with a male child. Coincidentally I read a front-page article in the Washington Post about this very phenomenon a few weeks before Dr. Byrd phoned.

Dr. Byrd said to me in the telephone conversation, "Golly, I think that is less than a compelling reason for having an abortion." He went on to say, "I have the greatest respect for the Supreme Court judges, but I would like to read the case that legalized abortion." I told him I would be happy to Photostat a copy and send it to him. Even though it's hard for me to believe today, I was not familiar with the case of Roe v. Wade. Oh, I had heard about it, but I had not paid that much attention to it. I read about it only in the newspapers like everyone else. I checked out the Supreme Court Reporter at the library and took it home to read. Good Heavens! It was over a hundred pages long!

As I read it in the living room one evening after dinner, I said to my wife, "No wonder there's so much stir over this case and abortion. This case says that the unborn child is not a person. If it's not a person, we're not a person because we were all once unborn children."

My wife, a registered nurse, agreed.

The great secret of lawyers is that they really don't know the law; they only know how to look it up. I wanted to be familiar with Roe vs. Wade in case Dr. Byrd asked me detailed questions about it and I wanted to be conversant with the opinion of the court. When I finished the case, I could not believe what I had read. It did not make any sense. I couldn't believe that a court as high as the U.S. Supreme Court would be coming up with such gobbeldy gook. I took the case into the office the next day and Photostatted it and sent a copy to Dr. Byrd. Then I decided to see what could be done on my own.

Shirley and I had an occasion to be in Baltimore City soon after my conversation with Dr. Byrd. I went to the University of Maryland law school and asked for the professor who would be in charge of the Constitutional Law Department. Upon receiving his name, I went to the office and had a discussion with him about the Roe v. Wade case. I asked him, "What could be done in our own state to possibly challenge the decision of this court, of the Supreme Court in this case? What could be done to protect unborn children?" (I would later come to properly term PRE-BORN children and advocate the use of this term.) He said he had always thought that protection could be sought for unborn children under the child abuse statute since abortion would be child abuse.

I took him at his word and returning to my office wrote a letter to our own state's Attorney asking him if he could possibly use the child abuse statute to seek to obtain a court order against the local abortuary in Hagerstown. I wrote the state's Attorney because the wording in the statute indicated that the individuals empowered under the statute were the state's Attorney in the county or the Department of Social Services. The state's Attorney wrote me back indicating he felt this was a matter for the Department of Social Services.

I then wrote the Head of the Department of Social Services in Baltimore City when our local department of social services had refused to act. I was a member of the board of the local Department of Social Services at the time. Having thrown the Department of Social Services in Baltimore City a hot potato, you can guess the answer I got back.

It seemed there was nothing I could do. I wrote a letter to Senator Jesse Helms in Washington and received a very nice letter back. He cited all they had sought to do on the human life amendment, which had failed to pass by one vote in the Congress just a year or so previous. Senator Helms, of course, had been in the struggle for the equal humanity and personhood of the preborn child for a long while. I was just coming into it as a neophyte.

I had a break at the office one day and I traveled to Capitol Hill. I went to Senator Helms' office and the office of some of the other Congressmen seeking to learn what I could do. It's not possible to trouble the Congressmen themselves, but you are able to talk with legislative aids and assistants. Wherever I went, the aids and assistants referred me to the bound copy of the testimony before the Congress on the human life amendment and they kept referring to one man. More than one legislative aid said to me, "Have you read Dr. Lejeune's testimony?" Another pressed, "Be sure and read Lejeune." I kept hearing the name 'Lejeune.'

I obtained a copy of the Testimony of the Human Life bill before the Congress. The Testimony was printed by the Government Printing Office and bound in a green paperback book. It was the size of a hardback novel, but as thick as a telephone book. I looked up and flipped to the testimony of Dr. Lejeune. I was enthralled by his poetic language and the way in which he reduced the complicated field of genetics to very simple language that even I could understand. I learned that he was to the world of genetics as Einstein was to the world of physics.

In the Testimony, Dr. Lejeune spoke of the preborn child as "a little astronaut in utero." He gave the example of an adult astronaut in outer space hooked to the mother ship by a lifeline so that he can continue to receive oxygen needed to sustain life. He went on to explain that the preborn child in utero is hooked to the mother ship by his lifeline (the placenta) through which he, the preborn child, receives oxygen and nutrients. Just as the adult astronaut is completely independent of the mother ship, so, the preborn child in utero is completely independent of the mother. He

is not a part of the mother as her appendix or kidney but he is his own person, separate and distinct from the mother at the moment of fertilization. Indeed, he extends and builds his own placenta latching onto the lining of the uterine wall where he receives oxygen and nutrients for the nine-month journey in inner space.

Dr. Bernard Nathanson, a well-known ob-gyn physician in New York who testified for me in the Fritz Case in 1982, wrote and explained this to me when I sent him a news clipping of a pregnant woman in Japan who had been in an automobile accident. Though she was brain dead, she was kept on a life support system so that the child would live. Before they could perform the scheduled C-section, the doctors were surprised that labor began spontaneously and the child was delivered naturally. Dr. Nathanson wrote back and said, "Mr. Palmer, this is very interesting - what you have sent me - and you will be interested to know that the latest theories are that labor and delivery is initiated in the fetal pituitary gland." So, Little Tom Thumb is completely independent of the mother from fertilization to live birth. Indeed, he even tells the conductor when he wants off the train

Fascinated by Dr. Lejeune's printed testimony, I wrote him a letter, indicating that I had read and greatly respected his testimony before the Congress. I told him that he could have been a lawyer equally as well as a geneticist, and that if he was ever in the United States, I would like to meet him. I don't know why I wrote the letter, really, since even as I put the postage on it, I thought to myself it probably would not make it past the his first tier of secretaries. He probably would never even see it and read it.

It was a number of months later when my legal secretary, Melanie Pugh, paged me over the intercom to tell me there was a man on the telephone with a French accent asking for me. Still not knowing who it was (perhaps she had failed to get or did not understand his name) I picked up the phone and - imagine my surprise! His voice had a gentle French accent, and speaking perfect English, introduced himself saying, "I have been at a congress at John's Hopkins University. It has recessed a day early and I have some extra time before my flight back to Paris. You had written me some time back - "I interrupted him instantly, invited him to lunch telling him it would be my honor and that I would be happy to pick him up at the lobby of his hotel the next day.

I took him to an old, established restaurant in Baltimore City then known as Hausner's. I thought he would appreciate it because the restaurant was filled with a collection of oil paintings and marble sculpture from all over the world and the food was excellent. I had first learned of Hausner's while going to law school at the University of Baltimore. My roommate's fiancé, who was from Baltimore, took us there and suggested that we all go to that restaurant for a special occasion—which was when three law students took out their three girlfriends to dinner.

Dr. Lejeune commented to the waitress, "I am from Paris, Parisian born, and this food is excellent, as good as any that I can get in Paris."

The waitress did not realize what a compliment he had paid her. Hausner's was an old institution that had been there for probably well over forty years and, though Mr. Hausner was deceased, his wife continued to run the restaurant. During his lifetime, he had enjoyed going to estate auctions and buying works of art, both here and in Europe. When Mrs. Hausner died, the restaurant was unfortunately disbanded (I believe it was turned into a cooking school). When it came out in the press that Hausner's was closing, the newspaper carried that people came from far and wide, including one woman who flew in from Europe on the Concord just to eat at Hausner's one last time because of the sentiment of eating there years before. The family had a public auction of the artwork on the walls. Good heavens! It was like a museum. I remember reading a piece in the newspaper that indicated one little paper sketch (I remember it—it used to be by the coat and hat rack) was an original Rembrandt that went for one point something million. I do not remember what the oil paintings or other works went for. They all were valuable but part of that value was that they simply graced the walls at Mr. Hausner's restaurant and the ambiance they added to the dining setting.

In between the entree and the dessert course, we talked about his work in Paris. He had been the first in the world to discover Trisomy 21, the cause of Down's Syndrome, and he was devoting his research to finding a cure for Down's Syndrome.

Our mutual friend, Surgeon General Koop had told me: "Martin, I visited Dr. Lejeune at his lab in Paris. He has a large model on the wall that resembles the gears of a watch and he uses it to explain Down's

Syndrome. He explains that all of the gears are present. It's just that they are moving slower in the brain of the Down's Syndrome child." Dr. Koop went on to state, and I will always remember his words: "Not just because he is a good friend but because I think it's true, if he lives long enough, I believe that Jerome Lejeune in his lifetime will most likely come up with a cure for all genetic-linked defects in the human species."

I never forgot that statement, quite a statement coming from the United States Surgeon General, who is not given to hyperbole or exaggerated remarks. Indeed, he is very conservative and trained as a physician and pediatric surgeon. What could he mean? I did not understand. That was a high order. Here we had a man who had received the accolades of his fellow scientists, a physician who had discovered the cause of Down's Syndrome, how could he possibly go on to find cures for all genetic-linked defects of the human species?

I did not ask Dr. Koop my question, but, later, in 1988, when my wife and I had an opportunity to be visiting with Dr. Lejeune at the Pontifical Academy of Science in Rome, I tried to pose the question in a common example so I could see if it would fit. I said to him, "Dr. Lejeune, if you succeed in unraveling the riddle of Down's Syndrome, is it something like a key that you could then change some of the notches on it and have it unlock the locked doors to the riddles of other diseases?" He looked at me. He tried to say it with his hands, and he nodded affirmatively, and said, "Oh, yes. Yes, yes!" Now, I understood what Surgeon General Koop had meant. Unfortunately Dr. Lejeune didn't live to find that key; we lost Dr. Lejeune to adenocarcinoma of the lung in 1994 before he could fulfill the prediction of Surgeon General Koop.

Someone asked me after Dr. Lejeune's death, "Who is his replacement, Marty? Who would you next turn to? Who is the next authority in the world who will take his place in genetics?" I looked at him and said, "There is no replacement. It would be like asking the question after Einstein's death. 'Who is his replacement?'" We need to wonder as the world considers experimenting on human embryos for cures to diseases if they have not vivisected another such gift to the world (in the form of a human embryo) that we would later come to know as Albert Einstein or Jerome Lejeune or Louis Pasteur.

I understood as Dr. Lejeune explained to me his passion and devotion to searching for a cure for Down's Syndrome.

I said to him, "You know, if when Albert Einstein was living, we had something like the NASA computer available in his lifetime, he could have put everything that he was understanding about physics, as much as possible of it, he could have put it into computers and then after his death his associates working and carrying on his research could use the computer models to project vectors and such and continue to explore and unravel the mysteries of the universe and expound upon Einstein's theories."

I then said to Dr. Lejeune, "If we could get you time on the NASA computer, would it be helpful to you in your research? Would it help to speed up the process of what you are doing? You would also, then, be able to make available to your associates an ongoing bank of understanding and information that they could continue to use even after your lifetime."

He thought for a moment, and he replied. "Well, we have very good computers in Paris but they are not the NASA computers. But, we scientists are not always reasoning 'A=B=C,' but, rather, sometimes, we may wake up in the morning with C as a possible answer or theory and have to work backwards to B to A to prove that it is true. The computer would reason A=B=C, beginning with A. Still, computers could perhaps be helpful in some ways."

He never took me up on my offer to work with something such as a NASA computer available in the United States, but I was interested to learn at the time of his death that he had begun to put a lot of his research and information into computer databanks in Paris. During that luncheon conversation, he turned over his placemat and explained to me on the back of it that in their understandings of the beginning of life viewed under the electron microscope, information and spirit is linked inextricably with matter. He went on to explain that as you go down to smaller and smaller particles of matter, information and the spirit continue to be linked with the matter. In their mathematical equations, which take them smaller and smaller beyond even what is visible under the electron microscope, he added that you reach a point where you lose matter. "But," he said, in a gentle voice with words that raised the hair on the back of my neck, "But, we don't lose intelligence. We don't lose spirit. But, it goes off, rather, into

infinity," and he drew up at an angle in a straight line with an arrow across the back of the placemat. He parted his hands in an open motion and he looked at me and said, "You call it 'angel'."

Was he speaking of the human soul? I assumed as much, but I never asked him. What were the words of the poet: "The soul that rises with us, our life star, has had elsewhere its setting, and cometh from afar..." I was too involved in the conversation to remember what I ordered or what we had for dessert, I do remember Dr. Lejeune ordered shrimp as an entrée that day. Dr. Lejeune, in some of his writings, put it this way: "At the very beginning, soul and body, spirit and matter, are so interlocked that it is impossible to speak of one without the other. And language never has."

After lunch, he asked that I drop him off at the airport which I was most happy to do. We left Hausner's and we drove out to Baltimore-Washington International Airport. On the way, he talked openly and frankly about some of the mischief of organizations in our nation that I had always thought of as reputable——The Ford Foundation, the March of Dimes. He explained their agenda and the use of their money against the cause of preborn children which in effect promotes abortion. He even spoke of the National Institutes of Health, which he called the 'National Institutes of Death.' I wondered at the time what he meant by this, but did not ask. He said this in a gentle way and simply mentioned it as an aside. I was later to remember his words following his death when Dr. Varmus. head of the National Institutes of Health, and all those at the institute backing him, pushed, in conjunction with the Clinton administration, to begin human embryo experimentation. As Wanda Poltawska, an assistant to the Holy Father for 25 years, says: "Human embryo experimentation is worse than abortion because it is against all humanity."

As I dropped Dr. Lejeune off at BWI Airport that day, I thought to myself, "What an extraordinary man, what a humble man, to speak in language that even I could understand, to take time to want to meet and converse with somebody as insignificant as myself of his scientific world." I could not help but respect, admire and love this human being. I was to write him upon his return to Paris and thank him for his time. He wrote back a handwritten letter apologizing that it was handwritten explaining that his secretary was so terribly busy. Good Gracious! It's an honor if somebody

writes a handwritten letter. Typewritten letters are generic and impersonal these days.

This was to be the beginning of a long correspondence between us. Red and blue bordered airmail envelopes addressed in his handwriting with the familiar French stamps are in drawers and filing cabinets all over my office. When I founded the National Association for the Advancement of Preborn Children and began a monthly newsletter, we added him to the mailing list. After his death, Mrs. Lejeune told me that he saved all my letters and had been tying them in bundles with string. He gave them to her to store in the closet telling her: "This is history." I often wondered if she misunderstood his true meaning of what would be an American expression, "Make history of this and throw it in the trash can."

I had the honor of meeting Dr. Lejeune's brother, Philippe, in Paris following Easter mass on the fifth anniversary of Dr. Lejeune's death. Philippe told me over the Easter dinner table that he and his brother Jerome often spent many Sundays with me. Philippe is an accomplished and well-known artist in Paris. He spoke English as well as his brother Dr. Lejeune did. I later came to find out that it was Dr. Lejeune's habit to drive with his family out to a little place they had in the country near Philip's home where they all grew up as a children. There they spent Sunday afternoon with Philip. I was quite mystified and honored to think that Dr. Lejeune occasionally found something worthy enough in one of my letters to bring over in his shirt pocket and share with his brother over a Sunday dinner. They were thinkers, these men, and thoughts and ideas captivated them and challenged their conversations.

The Washington Post newspaper carried a story in 1981 about the practice of women learning from their ob-gyn doctors the sex of the child they were carrying and then not returning for their next check-up, but going to an abortion and having an abortion if it was not the sex they desired. The newspaper article, like my ob-gyn doctor friend, Dr. Ed Byrd, indicated that the sex of choice was predominantly male. And in agreement with Dr. Byrd believed this was a less than compelling reason for an abortion. But the practice was going on, legally, throughout the Washington, D.C. area and presumably the nation. Ironically, the practice of abortion which women have been asked to champion as "their right" is being used against female children.

## Chapter Three

Does a Father Matter?

It was just another day at the law office, or so I thought. I was on the telephone speaking with Dr. George Manger, an Ob-gyn doctor in town, regarding the adoption of a baby he was about to deliver, when my secretary, Melanie Pugh, buzzed me on the intercom. I asked the doctor to hold to see what she wanted. She said there was a man on the phone calling from a payphone because his wife was at the abortion clinic up the street and he did not want her to abort their child. He had gone to the clinic to try to talk her out of it, and they told him that if he did not leave, they would call the police. He had come to the payphone to call us to see if we could help. Annoyed at having my train of concentration interrupted with the doctor and not fully comprehending all of what my secretary was telling me, I simply told her to take a message because I was speaking with Dr. Manger, and I would have to call him back. Have you ever had the experience of someone interrupting you as you speak with another person? They try to tell you something, but it doesn't fully register until you stop what you are doing and focus your attention back on what the other person was telling you? Such was the case here. As soon as I got off the phone with Dr. Manger, I said to my secretary, "Tell me again what you were just telling me."

She told me more details about this man and his wife. They had been married for some time, had one child and his wife was now pregnant with their second child. They already had names picked out for the child and had decorated the nursery. They were very much looking forward to the birth of the child when he and his wife had a spat and she ran home to

her mother. His wife's mother had taken his wife to the abortion clinic for an abortion. Apparently, he had given my secretary the number of the payphone and was patiently waiting for me to call him back.

I said to Melanie, "Good Heavens, this is important. Get him over here right away." When he walked in the office, Melanie showed him back to my office. We did not have time to think very much about what we were doing. I simply dictated a motion, which we entitled: "Motion to Preclude Termination of Life of the Fetus." If I were writing the motion today, I would use the term 'preborn child' instead of 'fetus,' but it was many years down the road before I was to realize the reality of the equal humanity and personhood of the preborn child. My secretary typed it up and I signed it and walked it right across the street to Judge Moylan, whom I thought would be sympathetic to the pro-life cause. I discovered that he was in juvenile court in the middle of a case but I went into the courtroom anyway and he, sensing that I wanted to speak with him about something urgent, interrupted the proceedings, "Mr. Palmer, is there something I can help you with?" I approached the bench, motion in hand, and explained to him what it was about. He signed it right there on the bench. We then had the motion hand carried to the abortuary up the street and stopped the abortion just in the nick of time since Bonnie, Chris Fritz's wife, was next in line to get on the table for the abortion.

When you obtain an emergency temporary injunction in the law, there is always the right of the other side to be heard. Therefore, the matter was set in for a full hearing before the court the following day. I realized that I was going to need an expert witness, a doctor who could testify concerning the reality of the child - that this was not simply a mass of cells or a glob of undifferentiated tissue Chris' wife was carrying, but a child who had the right to live equally with all of us. A prophet is never appreciated in his own country, so I realized that to bring in Dr. Manger, an Ob-gyn in a local hospital, or even any outstanding physician in the state of Maryland itself would not hold as much sway with the court as would an out-of-town qualified expert. It's a little like the credence of a restaurant. The further you drive to get there, the better you think the food is. Ironically, you pass other people from the distant town going the other way driving to the town from which you came, to dine at a restaurant they consider a 'fine' little place. We needed some national expert. Who to call?

A month or so previously, I recalled my wife reading me an interesting piece from the newspaper about an internationally acclaimed psychiatrist by the name of Dr. Thomas Varney, who had written a book entitled, The Personality of the Unborn Child. In his book, he told some incredible stories. One story was of a girl who had been separated at birth from her natural mother and taken from the hospital nursery to live with her adoptive parents never knowing who her mother was. As she grew up, she insisted that her adopting parents call her by a different first name other than the name they had given her. Such was her insistence that her adoptive parents finally decided they would use it as a nickname. She lived in a state where it was permissible to go to the courthouse and open the adoption records and get the name of one's birth parents, so when she turned 21, she knocked on the door to meet her mother for the first time and learned that the name she had insisted her adopting parents call her was the name her natural mother had given her while she was carrying her in the womb. Dr. Varney's collection of stories told of another curious one about a famous pianist who found that he could play certain pieces of music without ever having seen the sheet music. When he told his mother about it, she said, "Oh, I can explain that, perhaps. That's the piece I was practicing while I was pregnant with you." The part he knew was the cello part and she played the cello. It was plain to see why Dr. Thomas Varney had titled his book, <u>The Personality of the Unborn</u> Child.

It struck me that he would make an ideal expert witness for the case so I said to my wife, "Can you find that newspaper article?" Luckily, she uncovered it and we found that he, according to the newspaper article, was from Toronto, Canada. I went to my office and called directory assistance for Toronto, Canada and was able to get a home telephone number for him. I told him a little about the case and asked if he would come and be an expert witness for me. He seemed to find it fascinating and asked that I call him back in a half an hour as he would need to discuss it with his wife. When I called back, he said that he wanted to come, but his wife was concerned about the effect his testimony might have on tens of thousands of other women seeking to have an abortion. I continued to lobby with him as best as I could and won him back around to where he replied, "Well, call me back in twenty minutes. I must call the airline."

When I called him back, his wife had won out. I could tell that there was no use talking to him anymore. He simply was not going to be a witness in the case because it would be against his wife's wishes. I asked him if he could think of anyone else who might be qualified to be an expert witness in the case. He replied that the best book he had read on the subject was a book entitled, <u>Aborting America</u>, by Dr. Bernard Nathanson. I asked him if he had any idea where I could reach Dr. Nathanson.

He said, "Well, just a minute. I have the book here. Let me go see if there's any information on the jacket." He came back and said, "It says nothing about where he lives, but his publisher is Doubleday out of New York."

I thanked him and taking a stab in the dark, immediately called directory assistance for New York City. I asked if they had a listing for Dr. Bernard Nathanson in New York City. They did and I called the number. It was ten o'clock at night and, as expected, I got an answering service. I told the woman who answered the phone a little about the case I was calling about. I said, "I know you don't have permission to give out the doctor's home telephone number, but would you be kind enough to call him and tell him what I've told you and see if he would give permission to release his home telephone number for me to call him?" She agreed to do that much.

I called back five minutes later and she gave me a number where I could reach him. I called and introduced myself and I told him a little more about the facts of the case. He interrupted me to say, "What's the name of this town where you are?"

I told him, "Hagerstown," a small town of which he had never heard, but I told him we had an airport.

He asked, "How can I make airline connections and what time do you need me?"

I told him the hearing was set at 10:30 a.m. in our circuit court and there would be someone there at the airport to meet him. I got off the phone before he could change his mind.

The next morning arrived and my wife set out to the little local Hagerstown airport. It was so small in those days that the only thing that serviced it was a 19-seat puddle-jumper plane that connected through Pittsburgh,

Pennsylvania. We called the doctor's office first thing to confirm that he was coming, but we could not get any answer. The telephones rang and rang but no answer.

I said to my secretary, "Great. This is probably some two-bit doctor somewhere in New York with a walk-up office over a gas station, a bare light bulb in the ceiling without a secretary because he can't even afford one. He'll probably never even show up."

I watched the clock. I had no way to contact my wife at the airport (it was before the days of cell phones in 1982) and I waited as long as I could. Not wanting to be late and in contempt of court, I started down the front steps of the old library building where my office is located, which is directly across the street from the courthouse. As I reached the bottom of the steps, around the corner, out of the corner of my eye, I saw a short distinguished man approaching me, followed by my wife.

"Ah, wonderful. This is the doctor," I thought.

We were late to court so I kept walking, motioning for him to follow me across the street. We entered the side door of the courthouse and I pressed a button for the elevator to the third floor. Going up in the elevator, I asked him, "What's your full name?" Next, I asked, "Are you board certified?" Board Certified is a higher qualification for physicians and you don't want to ask if they possess it and then be embarrassed for them to say they do not. He was board certified so I was going to be sure and ask him that question on the stand. The elevator door opened and there was no more time for conversation. We walked straight into the courtroom. The courtroom was called to order and the case was called. My client was there, seated at the trial table next to me and, for the first time, I got a look at his wife. She was seated at the other trial table with a female attorney I had never seen before. It turned out her name was Barbara Mellow, whom I later found out was a card-carrying member of the ACLU. There was a whole entourage of these militant feminists surrounding Chris' wife. They had come up from Baltimore and were on a mission: "to protect the woman's right of abortion."

As the plaintiff, who had sought and obtained the temporary injunction, we were first required to put on our case. I had only one witness, Dr.

Nathanson. I simply said to him, "State your full name and address for the record, and tell the court a little about your professional qualifications."

I was as surprised as the judge as Dr. Nathanson began to unravel a pre-eminent list of professional qualifications. He had been the head of obstetrics and gynecology for the Northeast Air Command, had taught at various New York hospitals and medical schools and most importantly, and especially to the point for the case in hand, he had founded the National Abortion Rights Action League and headed the Center for Reproductive Health Services in New York City. He explained that they did 60,000 abortions in the five years he was there operating twenty-four hours a day, 365 days of the year, except Christmas when they were sometimes closed. He indicated that he did 5,000 abortions with his own hands, stood in on another 10,000 and the safety track record of his clinic was cited in the footnotes of Roe v. Wade when the Supreme Court legalized abortion in 1973. Here was a man who had championed the woman's 'right' to abortion and had founded an entire clinic. He stated that the abortions that took place in the clinic he founded was the western world's largest experience with abortion. He had once marched in the picket lines and was active in many of the early demonstrations, beating the tom-tom to get the Supreme Court to legalize abortion. It came out on the stand that he was an Orthodox Jew turned atheist. This made him a good witness from a court's perspective because he was not coming at it on a soapbox the court would perceive as purely a religious viewpoint. He explained he had changed his position on the subject of abortion based on the Golden Rule: "Do unto others as you would have others do unto you."

His testimony was riveting and I was pretty sure we had won over the judge to make the temporary injunction permanent, but the judge later asked me, "What are you asking me to do, Mr. Palmer? Overturn the Supreme Court?"

"Well, Your Honor, whatever it takes, we have to do what's right," I replied.

Judge Moylan was a man with a spiritual heart and he made a good judge because he understood that there was a Judge above him and a Judge even above the U. S. Supreme Court. He understood that there is a LAW above the law and that the U. S. Supreme Court itself does not hand down morality, but, rather, receives it from on high like everyone else.

The case, for some reason had by this time, generated national publicity. When I exited the courthouse with my client, there was a mass of photographers walking backwards taking pictures. As a young lawyer, I did not even know if it was proper to speak with the press while a case was still going on so I declined to talk to them and advised my client to do the same. This only made them more anxious to speak with us, but we continued to decline.

What began as a short one or two hour hearing on the plaintiff's motion to seek permanent injunction wound up going into the second day and the judge announced that the hearing would resume on the matter the following day.

As I went to bed that night, I realized that our expert witness had not been the doctor in a little office with a bare light bulb and no secretary that I had initially feared, but a rather highly qualified individual. He made an impression not just on this judge but also on the press and all who had heard his words. Someone a week later sent me a clipping out of the *Los Angeles Times* on the Fritz Case. From the article, we learned the reason we could not reach Dr. Nathanson's office that first morning of trial was because his secretaries were busy on all the other lines canceling his surgeries for the day.

The next day at the courthouse there was a little bit of a hitch I didn't know if we were going to get over. The law, for temporary injunctions, requires that if the court grants relief the plaintiff is requesting, the plaintiff has to post a bond. Well, how do you post a bond for a baby? The law had never contemplated this sort of a situation. The law addressed that if you are trying to stop midstream the delivery of some sort of perishable goods or do something to interrupt a business contract or the stream of commerce, if you failed in your duty, and the delay you cost brought about damages to the other side, then the bond (which is posted by some insurance company) would guarantee that you could make the other side whole and reimburse them for the damages. But, how do you post a bond for a case like this? And in what amount? Who would post a bond?

Fortunately I knew Mike Gardner in town, past president of the Chamber of Commerce and head of the Wright-Gardner Insurance Agency. I had all of my own insurance through Wright-Gardner and I called him. He,

of course, already knew about the case from all the publicity, having seen it on NBC. He promised to help. At our hearing the next day, on which the judge was going to require a bond if he granted the relief we sought, namely, an injunction to preclude termination of the life of this preborn child. Mike Gardner sat front and center in the courtroom. He rose and told the judge that his carrier was prepared to post a bond in any amount the court required. Mike later told me several years later at a luncheon, "Marty, you should have heard the lobbying job I did with that insurance underwriter. I reminded him of all the insurance we placed with him through the years and would continue to place with him in the future and he finally gave me the authority I needed to post a couple million dollars bond if need be." He went on to say he wasn't sure how he got him to agree to it. Mike was a man of faith who believed in what Chris Fritz was attempting to do: protect the life of his preborn child and shield this preborn child from the mischief of the devilish case known as Roe v. Wade. This case, in which the U.S. Supreme Court entirely exceeded its authority in illegally and unconstitutionally taking what had been a felony in almost all fifty states in the union, the killing of the preborn child/abortion, and turned it into a constitutional right by the time the sun came up the next morning.

Judge Moylan did grant the permanent injunction we sought, and that meant if Bonnie Fritz went through with the abortion, she would be in contempt of court and subject to being jailed, same for her lawyers if they encouraged it. But, the fight was far from over and the real devilish mischief had yet to begin. Barbara Mellow's statement to the press was, "This could not possibly be some country lawyer with a case like this walking into his office out of the blue." She added, "In order to get the great Dr. Nathanson to come down from New York City, this case had to have been planned at least three months in advance." They viewed it as some sort of a conspiracy on the part of the pro-life movement to make inroads into what they called the woman's 'right' of abortion. How could they make such a claim? Even Bonnie Fritz herself had no advance knowledge that she would have a spat with her husband and run home to her mother who would say that she never liked her husband and didn't want her daughter to have the baby then make the appointment and take her daughter to the abortion clinic. There was surely nothing planned about this. It was

a real life situation. If they only knew of how ignorant I was of even who Bernard Nathanson was, they would never have believed it.

We no sooner left the courthouse with our injunction protecting Chris Fritz's child (and even Bonnie Fritz, from what he saw was the cajoling of her mother) than the devilishness of the other side whirled into motion. Apparently, what Barbara Mellow did have was a team of lawyers in Baltimore City who put together a motion and got it signed by a single judge of The Court of Special Appeals in Annapolis to set aside Judge Moylan's injunction. With this in hand, we found out months later after Chris and Bonnie reconciled, that they had smuggled Bonnie in through the back door of the abortuary in Hagerstown at six a.m. the following morning after the single judge of the court of Special Appeals signed the order reversing Judge Moylan's decision, and Bonnie's baby was aborted that morning. Bonnie said they practically gave her no choice. They told her that she was standing up for the 'right' of other women. These militant feminists who lined the front rows of the courtroom and surrounded her in and out of the hallways and up and down the steps of the courthouse had pushed her and pressed her. They told her it was her right to have this abortion and that she must do it for herself and all women.

In the state of Maryland, there is a two-tiered appellate system, the Court of Special Appeals and the Court of Appeals above that. The Court of Appeals in Maryland, Maryland's Supreme Court, took the case away from the Court of Special Appeals, pulling it straight up to their court and set it in for briefing and oral argument, despite the fact that the case was moot because Bonnie had had the abortion, a tactic, the pro-abortion group used in order to moot the case. A dear friend and preeminent constitutional lawyer, Mr. George Liebmann of Baltimore City, an older senior lawyer who was greatly respected by all the federal judges, assisted me in the case on appeal. Years earlier, while attending a federal court seminar, where I heard a federal judge speak so differentially and respectfully of George Liebmann as he introduced him to speak, I made note of his name should I ever have a case involving federal issues beyond my expertise. Apparently, because of the national publicity the case had received, the talk shows captioned it 'What should be a father's right in an abortion?', the Maryland Court of Appeals, in an unusual move, said that the press would be allowed to bring cameras into the courtroom. This apparently

was something that they had never done before and perhaps have never done since

Coincidentally, my wife had just given birth to the fourth of what was to be our five children. Ruth was born December 14, 1982. I said to my wife, "Do you think there's a way we could sneak her into the courtroom so that I could somehow have her with me, perhaps in a large briefcase beside me at the trial table?" If she would be quiet long enough, I could hold her up before all the judges and quote them the 139<sup>th</sup> Psalm: We are "fearfully and wonderfully made." Shirley, a former head nurse of Intensive Care, Pediatrics, at John's Hopkins Hospital, considered it and thought it might be possible. So, we went shopping for one of those large, brand new, leather trial cases that we could put a soft blanket at the bottom of and leave the top ajar for air circulation. Ruth was a good baby and she slept well, especially right after she had been fed. We planned it all. Babies were allowed in the courthouse and in the hallway, but not in the courtroom. Shirley fed Ruth just before laying her to sleep on the little blanket in the large leather briefcase. The brief case was the kind that looked like a big, square leather box with a handle on top. Usually, you fill it with all sorts of fat files, books, and everything else and lug it into the courtroom. I still have it and use it to this day although the stitching is beginning to come out of the sides

Shirley came right up to the rail at the back of the packed courtroom as though she was bringing me my briefcase I had forgotten and left in the hall, but, at the last minute, and I don't know why, I got cold feet. As a young lawyer, it was only my second time ever before the Court of Appeals. For all I knew they could somehow fire you as a lawyer or something for doing such a thing and I didn't know how George Liebmann, being very proprietary and formal as a lawyer, would react since I had said nothing to him about it, knowing that he would say no. So, Ruth did not get to make her debut before the Court of Appeals that morning, but if I had it to do over I would hold her up and introduce her to the court in a heartbeat. You know, as we get older as lawyers we realize that these judges put their slacks on in the morning just like the rest of us do. They are human beings who've had children and who've had grandchildren. It would have accomplished just what I had sought to accomplish, to connect the heart of the judges for their grandchildren with the truth of

the words of the 139<sup>th</sup> Psalm, "I will praise thee; for I am fearfully and wonderfully made; marvelous are Thy works and that my soul knoweth right well."

Yes, I suppose it would have been an ideal time to have done what I had planned to do because there were, after all, cameras in the courtroom. As it was, they had boring pictures of lawyers standing and making arguments. I still quoted the 139<sup>th</sup> Psalm as I shared the argument with my co-counsel, George Liebmann. It was to him they listened for the legalese portions of the case. The truth of an appellate argument, however, is that you first need to make the judges want to do what you need them to do. Then, you give them the law to do it because the truth of the law is that even judges first decide what they want to do. Once the judge decides how he feels the case should come out, he then searches around for the law to do it with so that if he is questioned on his decision he can point to the law and say, 'I had no choice; the Law made me do it.' But, really, he is making the law do it. The same is true of the U.S. Supreme Court.

Unbelievably, as this case was called to argument before the Court of Appeals of Maryland in January, the Baltimore lawyers representing Bonnie Fritz were there but Bonnie was nowhere near the courthouse. Though your clients do not attend appellate arguments because it is simply an argument on the record, it was clear Bonnie's lawyers were entirely ignorant of the fact that their client had reconciled with her husband just before Christmas. One of the Court of Appeals judges glared at the Baltimore lawyers and asked pointedly, "Who do you represent? Your client or some organization?"

The judge had the truth of it. He could see that they were there simply doing the will of the abortion 'rights' movement. Their client, Bonnie Fritz, was simply a pawn. Indeed if they had even bothered to talk to her on the phone, they would have found out that she had reconciled with her husband. Unbelievable!

While I had been able to get our local circuit court judge to stand up to the U.S. Supreme Court and honor and acknowledge a LAW above the law, the Commandment, "Thou Shalt Not Kill," we were not able to do the same with the Maryland Court of Appeals. In the end, it got cold feet and bowed to the will of the U.S. Supreme Court, which has become intoxi-

cated with its own power. The Supreme Court has somehow been able to get up and sit next to God and has told God to move over. The Court of Appeals of Maryland felt there was nothing left to do in future instances where a husband sought to stop his wife from having an abortion, even though the legislature had once deemed abortion a hideous crime and a felony subject to imprisonment for any doctor who performed one. Just as I got cold feet to hold up Ruth and quote from a very old book upon which all of man's laws are ultimately based, so the Maryland Court of Appeals got cold feet in finding a way to stand up to the Supreme Court on the matter of a father's rights in abortion. A matter not entirely addressed in Roe v. Wade. Instead they just rolled over and played dead like the rest of the state Supreme Courts in the nation. They adjusted their red robes and white collars and went on about the business of the dignity of being Court of Appeals judges, treated with respect. True respect doesn't come from conformity to man's laws, changing social mores or maintaining political correctness of the times. True respect comes from standing upon the law above the law - standing for what is right because right makes might, whether it is throwing the tea overboard at the Boston tea party or throwing overboard, as the states of the union inevitably must, the Roe v. Wade edict of the Supreme Court. State legislatures need to use the Ninth and Tenth Amendment of the U. S. Constitution to reinstitute their laws against the killing of preborn children based upon the Law above the law - "Thou Shalt Not Kill" (Sixth Commandment).

## Chapter Four

The Coleman Case

Having met Dr. Lejeune in 1983 and having begun to correspond with him, I was in a position to call Dr. Lejeune himself when I next needed an expert witness in a case. The Coleman Case came into the office on January 13, 1984 and I found myself in the Circuit Court in Montgomery County, Maryland on an emergency petition. This was another father's rights in an abortion case. Mr. Coleman contacted our office because he knew of our work in the case for Chris Fritz. Mr. Coleman was a father who loved his preborn child. He was seeking the court to intervene on his behalf to keep his pregnant wife from aborting their child. This time around, I knew a little more about it and I was determined to bring together the best expertise in the world to build a court record if we did not succeed in persuading the judge where the case would be tried. We would have on the record the sworn testimony of the top experts in the world. They would have to be respected by any appellate court, including the U.S. Supreme Court. I contacted Dr. Lejeune in Paris and he agreed to fly in to be a witness. I also contacted Surgeon General Koop, who I had had an occasion to meet in person when he invited me to lunch one day as a thank you for an idea I had given him that he used before the Congress. Dr. Koop and Dr. Nathanson both agreed to be witnesses for me a few days before the case was set to go to trial in Rockville, Maryland. The motion was to enjoin Mr. Coleman's wife from killing the preborn child within her. I thought we would have the case won from the beginning. We would have the world dean of geneticists to explain the equal humanity of the preborn child from the moment of conception (fertilization) and where Dr. Lejeune's science contribution left off, Dr. Nathanson would

carry it forward and explain to the court his medical profession of treating the inter-uterine patient. This is where doctors, including Dr. Nathanson, go in and operate to drain fluid from a hydrocephalic preborn child or correct a heart anomaly while the preborn child is still within the womb. We all have seen the photograph taken by a nurse in an operating room of a 24-week old preborn child reaching out of his mother's abdomen grasping the finger of the loving hand of a surgeon there to help him. Finally, we would have Surgeon General Koop, world-renown pediatric surgeon to tie it all together and give his understanding of what the science of genetics and the art of medicine was now saying to man about the reality of the equal humanity and personhood of the preborn child.

I met Dr. Lejeune's TWA flight from Paris and we drove straight to Surgeon General Koop's home, a lovely house on the grounds of the NIH hospital and medical complex in Bethesda, Maryland. As we came in the front door of Dr. Koop's home, I was aware that these were two old friends meeting for he and Dr. Lejeune picked up where they had left off with many of their last conversations. Dr. Lejeune, always being very deferential and polite, had brought with him a bottle of French perfume, which he presented to Mrs. Koop, who thanked him most graciously. Over the mantle in Dr. Koop's home was a large black and white framed photograph of his son on a mountain peak. Tragically, Dr. Koop's son fell to his death in a mountain climbing accident when he was in his early twenties. When I inquired about the picture, he told me the story. He also gave me a little booklet entitled "Transplanted Hearts," which was a reprint of a talk he gave at the Tenth Presbyterian Church in Philadelphia he was attending at the time of his son's death. Apparently, he had been scheduled to be a lay speaker in the pulpit of the church the Sunday following his son's mountain climbing accident. The church pastor contacted him and said that they certainly did not expect him to speak on Sunday and they would get an alternate speaker.

Dr. Koop told them, "No, if you will still permit me to speak, I want to speak now more than ever." He began his talk as he had planned to begin it as he was first writing out his notes prior to the news of his son's fall. Then, after that, he laid his notes down and spoke from his heart. The result was a talk that has been reprinted in track form and published in over a hundred languages throughout the world. He told me that if there

was any meaning at all that he could find in his son's death, it had been the manner in which this little track was published with his remarks following his son's death that had touched many hearts and changed lives throughout the world. As we sat in Dr. Koop's living room, the conversation of he and Dr. Lejeune then turned to technical matters and it was amazing to listen to them rattle off scientific and medical jargon so fluently and easily as though in casual conversation and yet it might as well have been Chinese to me because I hardly understood a word of what they were saying.

When we parted, we all agreed that Dr. Lejeune and I would meet Dr. Koop at the courthouse the following morning prior to the case. We planned on calling Dr. Koop first as a witness because of his busy schedule so that he could get back to the Surgeon General's office and his official duties. Dr. Lejeune and I traveled in my same 1975 blue Volvo on up to my home in the mountains of western Maryland, where my wife had prepared a light, late evening dinner for him. He enjoyed seeing and pulling back a new hunting bow that my son, Andy had.

The next morning my wife, Shirley, fixed us a good breakfast and we left in plenty of time so as to not take any chances with rush hour traffic down the corridor to Rockville that continues into Washington, DC. Sure enough, we arrived early. The traffic fortunately had not been congested. There were no fender benders or backups. I stopped at a little restaurant where we had coffee and tea and a light pastry. This gave Dr. Lejeune a chance to look over some notes and papers he had in his briefcase. I could not help but notice how relaxed he looked. I was the one who was nervous and trying not to show it, thinking to myself, "Good heavens, I have brought these three men together to testify in one case - now, what's going to happen and how are we going to put all this together?" A man for whom I have great respect as well, Dr. Bill Colliton, head of ob-gyn at Holy Cross Hospital in Silver Spring, Maryland, had also agreed to be a witness as it didn't hurt to have a physician from the local hospital that the judge would have to know and respect. Dr. Colliton had brought some beautiful color slides that he had of preborn children showing development in the womb up to the number of week's gestation that was estimated for Mrs. Coleman's preborn child.

Having begun my law practice as a commuter to the public defender's office in Rockville, Maryland, I was familiar with the Montgomery County circuit court, but entirely unfamiliar with the brand new ten-story courthouse that had been built. There was even an escalator in the lobby. As Dr. Lejeune and I walked into the large, glass lobby, Dr. Bill Colliton was there to meet us at the base of the escalator. He walked over so happy, and seemingly greatly honored, to meet Dr. Lejeune in person for the first time as I introduced them. He began to tell Dr. Lejeune about the slides that he had and asked Dr. Lejeune which ones he would like him to use. Dr. Lejeune quickly passed them all off but just one or two slides. There was no discussion. Dr. Colliton took the wisdom of Dr. Lejeune's directive as gospel. I could not help but notice the manner in which Dr. Colliton looked up to Dr. Lejeune whereas Dr. Koop the night before had been relaxed and the two men met as friends on a level plane. Bill Colliton, this preeminent physician of many years standing respected by all of his colleagues, was as excited at meeting Dr. Lejeune as a kid at Christmas. His body language and demeanor behaved as a first year freshman now walking across campus with the president of the college.

We got to the upstairs hallway outside of the courtroom but there was no sign of Dr. Koop where he said he would meet us. I immediately went to a payphone and telephoned Dr. Koop's office where I was able to reach him. There were no cell phones in those days but there was a little brown booth payphone at the courthouse with a seat that you would sit on and a squeaky door you would close. He apologized most profusely indicating that he had been trying to reach me. The legal staff at the justice department had advised against him testifying in an individual court case not involving the government while he was still actively serving as Attorney General. He was disappointed as was I, but I told him I understood and thanked him and went immediately to inform Dr. Lejeune. By this time, Dr. Nathanson was in the hallway. We had plenty of expertise with Dr. Lejeune, Dr. Nathanson, and Dr. Colliton.

Court was called to order and a new judge to me by the name of Judge Frosh came to the bench to preside over the case. I had given the court no advance notice of the witnesses we would have and my guess was that the judge thought that this would be a simple hearing with some man wrangling with his wife over an abortion and not much to it, but he would

listen and hand down a ruling. His first question was, "Mr. Palmer, do you have any witnesses other than your client?"

I said that I did and I called first Dr. Nathanson, and then Dr. Lejeune to the stand. Dr. Colliton, another witness in the case who followed Dr. Lejeune's testimony, had told me that the judge was a "card-carrying member of that ACLU that champions abortion." I will remember all of my life the look on this judge's face. He probably did not know the names "Nathanson" and "Lejeune" from Adam but the first question that a lawyer has to ask in qualifying his expert witnesses before the court so that his testimony can then be accepted as an expert witness is to have the expert list his background, education, and any scientific papers and publications, et cetera, et cetera. You should have seen the look on Judge Frosh's face. He looked like the USS Nimitz and the USS Ronald Reagan together had come into the courtroom and docked right in front of him with their missile tubes pointed straight at him. This wasn't going to be any ordinary case. He had that much figured out. And, what on earth was he going to do given this level of testimony going into the record and how was he still going to please all of his liberal friends?

Dr. Nathanson went through all of his wonderful professional qualifications, and explained to the judge that when he was a medical student he found that there were only a couple of pages devoted to the fetus in his textbooks, whereas today there are chapters and even entire books written. His testimony of the equal humanity of the preborn child that he and all physicians had come to view now properly as the "inter-uterine patient", was riveting. Judge Frosh asked if we had any other witness other than my client. "I sort of wonder, what other witness could there be after Dr. Nathanson because how could you possibly top that? What lawyer would foolishly try?" his expression seemed to say. At least to, the judge, any words of any other witness would simply be anti-climatic. I indicated to the judge that yes, we had one additional witness after Bill Colliton, who had done an excellent job getting the slides into evidence. We called to the stand Dr. Lejeune.

His qualifications went like this as it is taken exactly from the record in the case:

Q: Doctor, state your name and address for His Honor, please.

Monsieur le President, my name is Jerome Lejeune. I am Professor of Fundamental Genetics in the Faculty of Medicine of Paris.

Q. And what is your profession, Doctor?

A. My profession is as a pediatrician. I began as a pediatrician and I got my scientific degree at the Sorbonne in genetics, and I was interested essentially in human genetics, and essentially in disabled children, and especially those suffering a disease called Mongolism.

My studies were in the Faculty of Medicine in Paris. My residency was in a city hospital 60 kilometers south of Paris, which is Etang, and then I specialized as Professor of Fundamental Genetic Science since 1964. I was elected to the first chair of Fundamental Genetics in France, in Paris. I must add that I have been, for ten years, purely a research worker in the scientific research, Centre National de la Recherche Scientifique in Paris, before I got appointed a professor in the Faculty of Medicine.

Doctor, in this country, of course, you would be first of all an M.D., and then we would go on to internship. You have expressed - in Paris, and in a specialty, so you are known then to specialize in what field, genetics?

I am in genetics, and it happened that I discovered the first chromosomal disease in man, which is an extra chromosome in Down's Syndrome, Mongolism, and from that point a new field of research was opened in human genetics and it helped to clarify not only the causes of that disease but to understand the basis of the human nature, because it demonstrated that all the genetic information is carried inside the chromosome, also in our species, and that genetic information is what makes the nature of every one of us so that each one is different from the next one.

Q. Doctor, if I may briefly, to finish your qualifications, please don't be modest because this Court needs to hear it. They need to know. You mentioned the extra chromosome. Did you receive any honor for that, and please tell us any other honors or awards that you may have received, and any professional or international societies that you are a member of.

Excuse me, Your Honor. I don't do that really, habitually. I had the honor of receiving the first Kennedy Award from President Kennedy in this country for the discovery of the extra chromosome in—and for the discovery I made in human chromosomes I received, also in this country,

the William Allen Memorial Medal which is the highest prize you can get in genetics in the world.

I was elected a member of the American Academy of Arts and Sciences, and ten other countries I have received various awards and am a member of the Swedish Academy of Science, the Italian Academy of Science, the British Society of Medicine, the Argentinean, the Danish and the other things like that, a member of the Pontifical Academy of Science. That is essentially due to the type of work that I did on the structure of the genetic information which makes the difference between human beings and non-human beings.

And it is because of that, that I have - I have other awards in Paris and in France, but I am a member of the Acadamie de Science Morale et Politique, the French Academy in Paris.

Q. Then, any other professional associations that we should know about, Doctor, or did there come a time that you taught in this nation, and can you tell us the circumstances under which you were a professor here?

A. I had been teaching a course of human genetics at the California Institute of Technology, Caltech. It was in '58. It was the year after I did the discovery about the chromosomes, but that was not yet made. And the president of Caltech asked me to come and give the first course in human genetics at Caltech. I must confess that my English is rough, but it was much rougher at that time, and my students learned a little of human genetics. I learned English that way.

THE COURT: Most of us would be quite satisfied and happy to deal with a second language as you deal with English.

THE WITNESS: Thank you, Your Honor.

BY MR PALMER.

Q. Doctor, I show you what has been marked as Plaintiff's Exhibit 1, and ask you if you can identify that for us, please.

A. Yes. This statement was published. I don't know exactly the name, but the official papers of the U.S. Senate because I had the honor to speak before the Senate, and that is the right paper.

Q. Can you tell us what No. 2 is?

A. This paper is a little different. It speaks essentially on the *in vitro* fertilization because it has changed - it has increased, not changed. It has increased very much our knowledge of the early human being, and this paper was written for the British government who has a special committee to investigate what *in vitro* fertilization would mean from the legal point of view, whether they had to make a new law about it, so they wanted to know the science, and I was asked to write down this statement which is seven pages.

Q. Doctor, have you published any other papers or publications?

A. Yes, sure.

How many?

I don't know exactly. Around 400 papers in scientific newspapers.

Q. And they are primarily in what areas?

A. Essentially in human genetics, that is, the fundamentals which makes you healthy or unhealthy, and which makes a difference between a chimpanzee and a man, a gorilla and a chimpanzee, which allows us to understand how some diseases prevent the complete blossoming of our human nature.

MR. PALMER: If Your Honor has any other questions, I would like to ask the Court to accept Dr. Lejeune as an expert witness.

THE COURT: I certainly will accept him as an expert.

I will always remember the look that came over Judge Frosh's face as the qualifications of this man before him came out. Dr. Nathanson had been asked if he published any books and replied, "I have published approximately 15 or 16 scientific papers and two books... one book called, <u>Aborting America</u>... and a more recent book called, <u>The Abortion Papers</u>."

When Dr. Lejeune was asked the same question, he modestly stated, "I am not the subject really." But, when I explained that the court needs to know this, his very modest reply was, "I don't know really. Four hundred?" Dr. Lejeune, while trying not to be the subject in any way himself, and while wishing to be almost anonymous in his qualifications, accepted to tell the little that would be necessary to recognize him as an expert witness. He presented before the court with such qualifications and in pure modesty

that he made Nathanson look like a schoolboy, unintentionally on Dr. Lejeune's part, and I believe that even Dr. Nathanson realized it.

Despite all of our efforts, at the end of the case, Judge Frosh ruled against us. Bill Colliton told me several weeks later that this was to be expected because he learned that, as Bill put it: "Judge Frosh is a card carrying member of the ACLU." Someone has jokingly said that the acronym stands for 'anti-Christian liberties union.' When it comes to their stand against the preborn child, they do not understand the commandment, "Thou Shalt Not Kill."

This time around, we were prepared either way to fight fire with fire. I had already prepared a notice of appeal to the Court of Special Appeals. I had asked Shirley to drive Dr. Lejeune and Dr. Nathanson back out to the airport to catch their respective planes to Paris and New York, while I drove straight to Annapolis to get a petition for appeal down to the court, filed and clocked as soon as possible to freeze Judge Frosh's order permitting the abortion to go forward. Before we could all leave the courthouse, Judge Frosh summonsed Dr. Lejeune and Dr. Nathanson back to his chambers (He sent his bailiff for them). They were invited to come back alone, without a lawyer present. He did this even though he had ruled against us. Even the judge was awestruck with the preeminent qualifications of these men before him, despite his hardened heart against us. For all that I was able to learn from Dr. Lejeune later, he simply wanted to be able to shake the hands of these men and I suppose be able to say that they had personally been in his chambers. It's a little like wanting to meet Albert Einstein in your chambers after you just ruled that his theory of relativity did not amount to a hill of beans. There is something in the soul of a man that knows when he is in the presence of greatness even if his mind has yet to fully comprehend it.

Dr. Lejeune and Dr. Nathanson met in person the first time down in that Rockville, Maryland courthouse in the Coleman case. They became friends and Dr. Nathanson and his wife visited Dr. and Mrs. Lejeune in their home in Paris and at least once in Rome, where Dr. and Mrs. Lejeune introduced Dr. Nathanson to Pope John Paul II. For a long time, Dr. Nathanson wanted his meeting with the Pope kept confidential because he felt that he could be more help to the preborn child coming at it as he always had, as an Orthodox Jew turned atheist. But, his newfound faith

shone through and he told about his journey to God in a new book he wrote, <u>The Hand of God: A Journey from Death to Life by the Abortion Doctor Who Changed His Mind.</u>

It was following the Coleman Case in February of 1984 when I was sitting in my living room one night with Shirley. I commented to her that it struck me as strange with all of the scientific advances that had put windows on the womb (real time ultrasound imaging), that no one had ever filmed or taken a picture of an actual abortion.

I said to my wife, "It goes to prove that man in his heart knows it is wrong, that these doctors in their heart know that they are killing a preborn child, because they can only do it if they don't see it. I wonder what man would see if he turned his ultrasound cameras on the womb in the course of an abortion."

She was seated on the other side of the fireplace. She looked at me, "Dr. Nathanson would be the one to do it." The next day, I went into the office and wrote a letter to Dr. Nathanson suggesting the filming by ultrasound of an actual abortion. After all, I had come to understand that he had pioneered in the installation of ultrasound equipment in the hospitals in New York where he taught, including the most sophisticated derivative of real time ultrasound. In 1984, technology had advanced from still-imaging to a movie of the preborn child dancing in utero full of gaiety and grace. It was several weeks later when I had an occasion to be talking to Dr. Nathanson about some entirely different matter and as an aside before concluding the conversation, I asked him, "Did you receive my letter suggesting an ultrasound of an abortion?"

He said, "Yes, I did, Mr. Palmer. But, wouldn't there be tremendous administrative problems with that?"

I thought for a second and I said, "No, I don't see any. It's not as though you are asking a woman to get pregnant so that you can film her abortion. She's already having the abortion anyhow. Ultrasound is not invasive and a woman will always sign something for science." That was all we said about it at the time and we went back to what our conversation had been and then I said good-bye.

At the time of writing the letter to Dr. Nathanson, I had sent a copy of it to Dr. Lejeune in Paris since they had just been together in the Coleman Case

a couple of weeks before and I wanted to get Dr. Lejeune's thinking on it. Shortly after I wrote him, there arrived in the mail a hand- addressed envelope bearing the familiar French stamps from Dr. Lejeune and he wrote, "Mr. Palmer, I am horrified at the prospects of making the film. I prefer to persuade with the beauties of life rather than its horrors." Then, he added that perhaps it could have some use for medical students. I realized that he was right and I quickly Photostatted a copy of Dr. Lejeune's letter and sent it to Dr. Nathanson, saying that this film should perhaps not be made. It was too late. The idea was already out of the box and Dr. Nathanson had set about making the film. There was no turning him back. That movie became known as "Silent Scream." When the movie came out, President Reagan said that they would get a copy of this movie to every member of Congress and the debate over abortion would be over in two weeks. They did and it wasn't.

It was about a year or so later, when Dr. Nathanson contacted me and asked to interview me for a new book he was writing. I was most happy to do that, but he was going to be in Washington and I was due to be in Fenwick, Delaware, at our little ocean front, banging screen door cottage with the Martin family. We compromised and I agreed to drive in from Ocean City and meet him in Annapolis. We met at the little Treaty of Paris restaurant and there the doctor and the lawyer had lunch. The first question Dr. Nathanson asked me was, "Mr. Palmer, what do you think of the movie Silent Scream?"

I replied that I had not seen it. He said, "What do you mean you haven't seen it? You gave me the idea to make it."

I told him, "I did not want to see it. I knew what it would show and it was something that I did not want to watch."

Then, I asked him a question. I said, "What do you think of the film?" to which he replied, "Well, I came here to interview you, not you me."

So, I said to him, "My guess is that, like President Reagan, you are disappointed that it has not had the effect in stopping abortion that you had hoped it would have." We talked about the spiritual dimensions of the problem. I told him it seemed to me that the equal humanity of the preborn child was being denied by the hardened heart of man and that to

persuade the mind, as with a film such as *Silent Scream*, was not always to change the heart.

After Dr. Nathanson had testified for me in the Fritz Case in 1982, I was giving him a ride back to the local Hagerstown airport and I can still remember driving down the street we call the Terrace in town and, taking advantage of the time with him to ask a question I was very curious about, I said to him, "Here you demonstrated and lobbied for abortion. You founded the National Abortion Rights Action League, and now you are going around the nation and the world giving your own time seeking to reverse abortion."

Then, I asked him, poignantly, "Why the utter change? Was it something that just came about all of a sudden, or was it cumulative?"

He said, "Well, Mr. Palmer, I guess it was cumulative. You see, I found that I could not go to the fifth floor of the hospital in the morning and operate in utero to drain the fluid from hydrocephalic children and correct heart anomalies of the unborn child and then come down to the second floor in the afternoon and abort a perfectly healthy unborn child in the same week's gestation. I found it was incongruous, and I based my change on the Golden Rule: "Do unto others as you would have them do unto you."

By this time, we had driven on out the road and were making a left hand turn that would take us over to the airport. I looked at him as we paused to wait for the stream of traffic to clear and I said to him: "If you do the same turn around on religion as you did on abortion, you will be one of the best spokespersons the Good Lord ever had."

He looked at me very nervously. He said, "Mr. Palmer, we do not have time to go into that between here and the airport."

We arrived at the airport and he got out of the car just in time to catch his plane, which at our small airport was just on the other side of the chain link fence. In those days, you went through little, if any, security clearance. You just walked in, showed your ticket, walked out, and climbed up the little steps into the plane. As he was getting out of the car, he reached into his briefcase and took out his book, <u>Aborting America</u>, and wrote on the front, "To Martin Palmer: Keep fighting!"

Well, I suppose I did and still am. I seek to educate and persuade for the equal humanity of the preborn child and good cause of children yet to be. I lent that book to Judge Moylan and come to think of it, I never did get it back. Ironically, Bonnie Fritz, following her reconciliation with her husband, had gone to our local public library and asked for a book on abortion and was given the book Aborting America. I don't know whether she realized right away that its author was the doctor who had testified in the courtroom that day. Her husband, when he saw the name on the book, made her aware of it. The Fritz Case took place in the fall of 1982. January of 1983 marked the tenth anniversary of Roe v. Wade, and there were all sorts of specials on TV about the ten years of America's journey with abortion. There were newsreels, reruns of demonstrations, and interviews with different people. Chris Fritz told me that his wife sat in front of the TV and watched all of that on the tenth anniversary. She watched the news of Nellie Gray's annual march on Washington and she watched it all with tears streaming down her cheeks. Bonnie Fritz was experiencing what all women who have abortions experience sooner or later in their life—Post Abortion Syndrome. For some women the psychological despondency can be such that it can even lead to suicide. For all women, it has an impact and makes a difference in their lives forevermore, even for those feminists who like to feel that having an abortion is like water off a duck's back. The soul within the human being knows different. Counseling inevitably is needed to help the heart of the woman, who knows she is not helping herself by championing the 'right' of abortion and trying to persuade other women to do as she did.

I remember being at a seminar for lawyers that James Dobson had put on in Colorado Springs. I took a tour of some of the behind-the-scenes offices of *Focus on the Family* and paused to spend some time with a woman who ran their pregnancy crisis and post abortion hotline. She had pictures of children on the walls of her cubicle. I knew the story of her life because I had heard her being interviewed on Dr. Dobson's program one day. She talked about abortions she had had earlier in life before she realized what she had done and regretted her mistakes. We were talking when another lady came over to her and said, "Joan, you are going to have to take this call. There's a woman on the phone calling from North Carolina. She's heard a talk show on the radio about abortion and it's brought back to

her an abortion that she had eleven years ago and she's in tears and I don't know how to help her."

Joan turned to me and said, "Mr. Palmer, if you will excuse me?"

I said, "Yes, please take the call. Talk as long as you need." Fortunately, she motioned for me to remain seated and gave me an experience I will always remember. Apparently, this woman was now married with another child. This abortion was by a previous relationship prior to her marriage. Joan asked her if her husband knew that she'd had an abortion. The woman replied, "No, it had been eleven years ago." Joan told her that she felt that she must tell her husband about it. The woman was in uncontrollable sobs on the other end of the line. Joan talked, shared with her, and gave her the number for a pregnancy crisis-counseling center in her area that could connect her with a counselor specializing in Post Abortion Syndrome. Then, Joan told her something I will always remember. Through the sobs of this lady on the other end of the phone in North Carolina, I believe there was mist in the eyes of Joan as well, she told her about her own abortions and then she told this woman: "Always remember JESUS HAS A ROCKING CHAIR IN HEAVEN."

At lunch that day with Dr. Nathanson at the Treaty of Paris Restaurant in Annapolis, in the course of our conversation (and I don't remember the details of it, but knowing myself, I was probably turning it to spiritual matters), Dr. Nathanson surprised me by reaching in his pocket and pulling out a stack of credit cards wrapped with a rubber band with a silver crucifix. It was as though he wanted to share a secret of his heart with me. He pointed to the crucifix and said, "Mr. Palmer, this was given to me by a woman when I was giving a talk in South America. She came up to me after I spoke and took it from around her neck and she said, "Doctor, this was given to me by my mother on her death bed. I want you to keep it until you have won against abortion."

I do not know if this was before or after the Lejeunes introduced Dr. Nathanson to the Holy Father. He carried this crucifix as a reminder of that South American woman's heart whose faith was tugging gently at his own heartstrings.

Following my luncheon with Dr. Nathanson there at the Treaty of Paris Restaurant, I wrote him a letter at his office in New York. I reminded him

that he had said that he felt more responsible than any other American for unleashing the abortion monster in our nation. I said, "And you now have devoted the rest of your life to chasing down that abortion monster, seeking to put it back in the cage and you will follow that abortion monster wherever it goes." I went on to remind him that he had now made the film *Silent Scream* and he had learned that to persuade the mind was not always to persuade the heart of man. I offered the opinion that the equal humanity and personhood of the preborn child was being denied by the hardened heart of man. I said, "That abortion monster has now passed under an archway labeled 'spiritual' under which, if you are to continue to pursue it, you yourself must pass."

I didn't get a response to my letter. It was several months later when someone sent me a copy of Dr. Wilke's *National Right to Life* news. In Dr. Wilke's column, he wrote, "Dr. Nathanson was our keynote speaker at our annual convention again this year. He was as articulate as ever. We thought he was about to sit down when he said: 'My intellectual journey is drawing to a close. My spiritual journey, I fear, is about to begin. I may need your help."

As I read these words, I realized that Dr. Nathanson had received and read my letter.

History does not necessarily repeat itself, but it rhymes. Often in history we see examples of the spiritual journey of one man, perhaps an elected or unelected leader in the nation, symbolizing and coming to represent the spiritual journey that an entire nation must take.

When we consider the spiritual journey that Dr. Nathanson took, we must consider that it is representative of the spiritual journey America itself must take on the issue of the equal the humanity and personhood of the preborn child. Throughout this journey, a remnant of America must remain faithful. We must remain faithful to the commandments and teach them. We must remind people to choose life so that they may have it more abundantly.

## Chapter Five

Founding of the National Association for the Advancement of Preborn Children (NAAPC)

On the Fourth of July in 1986, I took my high school aged son, Marty, and his younger brother, Andy, to New York City to attend the Centennial Celebration for the Statue of Liberty. We saw a little of New York as part of our weekend and went out to Battery Park, along with what seemed like millions of others, to get a standing front row view of the fireworks out over the Statue of Liberty. Ronald Reagan himself attended on a boat out in the harbor, and he said, "We are the keepers of the flame of liberty; we hold it high for the world to see."

I had always thought of myself as a strong person having grown up on farms. I always had confidence in my physical strength to help me take care of myself, and, in this case, my sons as well, who were very able bodied for their age. But, it was the first time in my life to experience what the press and the mass of a large crowd can truly be about.

We were all packed standing, shoulder to shoulder, like sardines out there near the water's edge. As more and more people gathered, what had begun as people laying blankets down to make room for their families and children turned into everybody having to get up, hold their blankets and try to keep track of their children. The pickpockets were at work, but even they were in danger, not being able to escape anywhere in the press of the crowd and it became evident that wherever the crowd moved, you had no choice but to move with it. One can readily understand what crowds can do to one another in a panic situation such as seeking to escape a building in a fire. Those that fall will be trampled to death. Even those seeking

to help them will not be able to. But, somehow this crowd, at least the acre of it that we were in, managed to keep its head. Once the fireworks started, everyone seemed to relax and it was a beautiful and magnificent display out over New York Harbor arching up over the Statue of Liberty. I returned from this weekend with my sons thinking of the words of Thomas Jefferson: "The God who gave us life gave us liberty at the same time."

I contacted Bob Cain at Sampson Paper Company, a well known stationary company that printed my legal stationary, and I asked him to help me design a letterhead for a little organization I had decided to found: "The National Association for the Advancement of Preborn Children." The phrase just seemed to come to me out of the blue one day and I said to my secretary, "This seems to work. Let's use this acronym."

The last two letters of it curiously and coincidently were a reversal of another acronym—NAACP, the National Association for the Advancement of Colored People. Like the NAACP, our foundation intended to be a civil rights organization advocating the equal humanity and civil rights of the preborn child. This was proper because the right to life of the human embryo is a civil right in man's law after first being a God-given right. Certain civil rights laid down in our national law also rise to the level of being moral rights. As an example, the right to life, liberty, and the pursuit of happiness are inalienable rights given by God. To advocate these rights is morally correct.

When I spoke to Bob Cain, I commented that I had just attended the festivities for the Centennial at the Statue of Liberty. I asked if he had a small Statue of Liberty symbol, perhaps about a quarter of an inch high that he could put under the words "National Association for the Advancement of Preborn Children." I also told him I wanted to put the quotation from Jefferson, "The God Who gave us Life gave us Liberty at the same time." He said, "Mr. Palmer, let me take care of it." He indicated that his secretary had seen me on a talk show in Philadelphia following the Coleman Case and she believed in what we were doing, as did he. He went on to say that there would be no charge for the stationary and that he would send it down.

When it arrived, was I surprised! Not only had he used his best stationary paper, but he had chosen an off-white cream color and in the background

by some process he had enlarged the full length of the page a picture of the Statue of Liberty. I had never seen anything like it before. The Statue of Liberty was lightly muted on the paper so that you could type over it and still read the words of the letter. My ignorance in never having seen this done before was justified when none other than Anne Higgins, Director of Presidential Correspondence under Ronald Reagan, once contacted me asking who had done that stationary. With all the letters that crossed through her hands, this must have been unique to her as well.

Thus was born the NAAPC. What had started as letters to Dr. Nathanson and other leaders in the pro-life community, had somehow evolved into a monthly newsletter on NAAPC stationary sent free of charge to pro-life leaders throughout the nation and a few overseas to France.

There was something in me, this country lawyer, who could not turn loose of what I came to recognize as the greatest case I could ever plead. It was a case not to be pleaded to the courts but to the court of public opinion; not to be pleaded before the bar of the court, but to be pleaded before the bar of the human heart. I was encouraged by many dear friends and pro-life leaders of the nation, who would write from time to time, to seek to be in some small way a Johnny Appleseed of ideas.

Shirley helped me again with my growing advocacy, when she read to me an article out of the National Right to Life News written by a physician. He was using a word she had never seen used before in referring to the unborn child. He used the word 'preborn' child. Sitting in our living room chairs by the fireplace, she read this to me and commented on it. From a social psychology class in college, I was aware that words are important and that they are the "symbols" by which we dissect reality. Dr. Nathanson had told in his book, Aborting America, how when they wanted to pull the wool over America's eyes and legalize abortion, they purposely used words to dehumanize the preborn child: 'product of conception,' 'terminate a pregnancy,' 'part of the woman's body,' etc., etc. I said, "Shirley, that's it. 'Un' is negative. We have the words 'unwanted,' 'unloved.' 'Pre' is positive. We have the term 'prenatal." I set about promoting a switch to the use of the term 'preborn,' through our monthly letters time and time again over the years. He who chooses the words for the debate can determine ahead of time the outcome of the debate. The other side says, "Let's debate. We'll go first," and then they say: "The unborn child is not

a person but is merely a product of conception and a woman must always have the 'right' to terminate her pregnancy. This is her choice and it must be guaranteed in the law." Now, you see, they have chosen the words for the debate. They are hoping that we will foolishly follow along behind them seeking to negate what they have said, by using the blunted swords of the words they have given us. We make a mistake if we respond by saying, "The unborn child is a person and a woman does not have a right to terminate her pregnancy because this is failing to take the unborn child into consideration. It is not just a part of her body and not something that she has a choice over. This is giving the unborn child no choice." Instead, we should respond using the term 'preborn': "The preborn child is an equal member of the community of man and it is wrong to kill her because it is against the commandment, 'Thou Shalt Not Kill." Notice we use the feminine pronoun in standing up for the preborn child. This came from a statement Dr. Lejeune made to me once as we sat preparing for him to address legislators brought in from all over the country to hear him talk in Chicago. He said to me, "Mr. Palmer, did you ever notice that we use the feminine pronoun in referring to something that is endeared to us. We say, 'she' is a beautiful ship. It is very curious really." That's all he said, but I remembered it. This is why when we brought the case against the National Institutes of Health to halt human embryo experimentation under the Clinton administration we brought it in the name of MARY DOE, as a human embryo in being on behalf of herself and all others similarly situated.

In springing off of Dr. Lejeune's wisdom that he "preferred to persuade with the beauties of life rather than its horrors," I wrote a letter advocating that we rename the pro-life community the "Celebrate Life" community. If we say we are 'pro-life,' they say they are 'pro-choice.' This works because liberty is valued more in America than life. Remember Patrick Henry said: "Give me liberty or give me death." If, however, we say we are the "Celebrate Life" community, what do they celebrate? You cannot celebrate death. Some have said that they will simply respond that they celebrate choice, but they have been celebrating that while we remain pro-life. I think its time we "celebrate life." Judy Brown, President of American Life League, apparently agreed and renamed her American Life League magazine "Celebrate Life."

Dr. Lejeune's wisdom will win the day.

Around the same time as the Coleman Case, I wrote the poem, "Prayer for the Preborn Child" and penned a declaration of independence of sorts for preborn children contemporaneous with the Fourth of July that same year. Anne Higgins, Director of Presidential Correspondence under Ronald Reagan, commented that this became the inspiration for Ronald Reagan's 1988 "Emancipation Proclamation of Preborn Children." The President's words were much more beautiful than my own. Many have likened the President's Emancipation Proclamation of Preborn Children to Lincoln's Emancipation Proclamation of the Slaves.

## **Emancipation Proclamation of Preborn Children**

Now, therefore, I Ronald Reagan, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the Unites States, do hereby proclaim and declare the unalienable personhood of every American, from the moment of conception until natural death, and I do proclaim, ordain, and declare that I will take care that the Constitution and the laws of the United States are faithfully executed for the protection of America's unborn children. Upon this act, sincerely believed to be an act of justice, warranted by the Constitution, I invoke the considerate judgment of mankind and the gracious favor of the Almighty God. I also proclaim Sunday, January 17, 1988, as a national Sanctity of Human Life Day. I call upon the citizens of this blessed land to gather on that day in their homes and places of worship to give thanks for the gift of life they enjoy and to reaffirm their commitment to the dignity of every human being and sanctity of every human life.

~Ronald Reagan, Presidential Proclamation January 14, 1988



Mock Trial, Chicago

In the summer of 1998, I received a call from Sam Casey, President of the Christian Legal Society, asking if I would assist in a mock trial they were planning for a special program to be held at Trinity University in Chicago. The idea was to bring together the medical, scientific, and legal community from all over the nation and the world for a special conference on bioethics (the human embryo). As part and parcel to that, they wanted to reenact the Judgment of Maryville Case (Tennessee Frozen Embryo Case) in which Dr. Lejeune had been a witness. Sam Casey asked if I would come and agree to play the role of Jay Christenberry, the lawyer who represented the woman wishing to save her embryos. Sam's next question to me was whom I would suggest we might be able to get to play the part of the judge. I said, "Why not the real judge? He's still on the bench—Judge Dale Young down in Tennessee."

"Well, do you think he'd do it?" he asked.

"I don't know. I'll write him."

I told Sam that as soon as I had an answer, I would get back to him. I wrote Judge Young and told him about what they were planning in Chicago. I indicated to him that if Dr. Lejeune were still living (he had passed away in April 1994) he would have agreed to come and play his own part in the trial. I asked if he would be so kind as to come and play the part of the judge. According to Sam Casey, the facts of the mock trial would be varied somewhat from the actual case of Mary and Junior Davis, but it would involve the same issues.

Some time passed until I heard back from him and he had been able to rearrange his schedule and he would be happy to come to Chicago.

My daughter, Ruth, who almost made her debut in front of the whole Court of Appeals of Maryland when I was going to take her out of the briefcase in the Fritz Case, was 16 now and asked to go along. I was happy to take her with me. We took the train to Chicago and went to Trinity University, where we met up with Judge Young. He had even brought with him, carefully folded in a special bag, his black judicial robe. Dr. Christopher Hook of Mayo Clinic had agreed to play the part of the doctor and scientist in the case. Essentially, he played the part of Dr. Lejeune.

I will always remember that conference. One speaker who stands out in my mind to this day is Joni Eareckson Tada. When she was a teenager, a diving accident in the Chesapeake Bay caused her to be a quadriplegic and though confined to a wheelchair, she has triumphed over her disability and had a nationwide Christian outreach radio program, "Joni and Friends," which still airs today. Joni went to the White House when President George Bush was wrestling with the question of whether or not to allow federal funds for human embryo experimentation. She told him from her wheelchair that if it was a certainty that beginning human embryo experimentation would allow the damage to her nervous system to be repaired and she could walk again, she would rather stay in the wheelchair than kill one human embryo searching for a cure for her own paralysis. What a noble position to take. Joni was standing on truth. Her feet are on solid ground - they stand upon the Rock of the Ages. If ever there was an example of how God can take the lemons of our life and make lemonade, Joni's life is just that.

If only the Supreme Court of the United States could set such a moral example. True Law is written upon the human heart by God. Only when human law matches up with the law that is written upon the human heart do we say that the law is just, true, and righteous. When human law fails to match up with the Law written upon the human heart we say that the law is unjust, untrue, and unrighteous. In the instance of Roe v. Wade, the case law that the Supreme Court attempted to establish has been "indigestible" to our Republic.

God, Our Heavenly Father, is the same yesterday, today, and forever. He stands for what is right and tells us so in His Word. We must follow His law to be truly happy. We cannot change his Moral Laws written upon the human heart any more than we can change the laws of the physical world. We might as well try to change the law of gravity. We could leap out of the window of a tall building proclaiming that we no longer honor the law of gravity and that we take unto ourselves an equal right to soar with the birds, but the law of gravity is still going to take us down. Even parachutes don't overcome the law of gravity. They only soften our fall. Birds do not change the law of gravity. They are simply equipped by the Creator for flight. Leonardo Da Vinci sought to imitate birds in his early drawings and the Wright brothers later refined it and the science of flight was born. Nevertheless, the science of flight always respects the law of gravity.

As parents, our children expect us to stand for what is right and have rules for right and wrong in their lives. If we are truly wise as parents, we're basing our instruction and admonition to our children upon the rules of God's love and His commandments. Just as those who build the modern airplane show respect for the law of gravity with every curvature of the wing and every design of the flaps, even so, man must respect and abide by God's Moral Law. One must always respect the 'law above the law.' Even Supreme Court judges do not hand down morality, but rather, receive it from on high, like everyone else.

The seminar at Trinity College offered various workshops. My daughter and I attended several of these workshops and she was inspired to write a poem about the plight of human embryos in the deep freeze. She penned the poem on a napkin. Dr. Hook, a respected physician and Chairman of Bioethics at Mayo Clinic, read it at the break and asked permission to have it typed up and photostatted so that he could put a copy on everyone's chairs at the meeting. Ruth shyly said yes and we had a clerk behind the front desk at the hotel type it up on the computer. I got it to Dr. Hook for distribution that night. Ruth entitled her poem, "The Invitation to Life: To you from the ones who cannot speak yet."

## The Invitation to Life

To you from the ones who cannot speak yet:

We are cold and know little life; We are near, yet we have traveled a great distance; We are young, yet so old; we are almost near death; We live on only one thing, and it is hope, a hope to where we belong; We cannot cry, 'cause we have yet to learn, and you seem to be deaf.

And perhaps, if you will come to sit among our table of life, where we so long to be, you will wish to see the Host of this party, because the host is the Life, the Beginning, and you cannot have the ending unless you have the Beginning.

So, the setting, we hope, is warm, and the music that will be playing is the sound of laughter, and something to the theme of "Joy to the World," and perhaps if you come, you can see us.

You will be led into a small, dark room that is very cold, and life does not stir here, and you will be asked to place your hand among our cold and dying hearts;
You must be strong to see our life frozen, to be able to see where the crying has stopped, and where love does not grow, because nothing can grow here.
The air is too cold, and it must be something of hell to our souls.
And we wish we could pray to God to get us out, but we have yet to learn.

And so, the table shall be set around this cold room, and I wish we could do better, but this is our home, so maybe you can put this aside, and be our guests, because the chairs are very empty, and it seems no one will come, and you are the only one;

But perhaps, you can bring the sun, and then, I will join you.

~Ruth Palmer~ Trinity University July 16, 1998

The mock trial itself was reenacted in a very large auditorium at Trinity College. It was a time of molding and shaping the thoughts and ideas of these men and women of the scientific and medical community who would be influencing their peers in important decisions within this new area of bioethics and interesting discussions formed during the breaks.

Some questions asked concerned the equal humanity and personhood of the preborn child as a human embryo. There could be no argument about the scientific fact and everyone recognized there is a need to be truthful with the facts, namely that at the time of fertilization everything is locked in. Nothing is added. The zona palucida surrounding the ovum, once penetrated by a sperm, blocks out the entry of any other sperm. Fertilization has occurred. No other biological information is added, but, rather, the human embryo contains everything, perfectly organized with more information than would fit in one million NASA computers. As Dr. Lejeune pointed out in his testimony, even if you could feed all the information into one million NASA computers, the computer would print out that it could not handle and assimilate the information. There would be so much information that even one million NASA computers could not process or know what to do with it. Think of it - all that in the very beginning, the smallest baby picture of all of us. We would fit neatly on the tip of a pin.

I can remember speaking extemporaneously to the assembled group as part of the final question and answer period after the mock trial. It occurred to me to give my audience an analogy that I had once used in speaking to the Lion's Club following the Fritz Case. I simply pulled the analogy out of thin air because it seemed to work for me and I remember that David Andrusko, the reporter present from the National Right to Life News, who has since gone on to be the editor of the paper and he does a wonderful job, came up to me after that Lion's meeting. He said, "Mr. Palmer, I have been in this work for many years and that is the first time that I have heard that analogy and I like it."

The analogy I gave was simply this: We ask the question, "What's big?" "What's little?" To us, as human beings, a basketball player is big because he is taller than we are and a little child is little because she is smaller than we are. But to God, "What's big?" "What's little?" To us, the earth is big because it's bigger than we are and a grain of sand is small because it's smaller than we are, but to God, "What's big?" "What's little?" Now, science gives us the understanding that even inside the grain of sand, inside of its molecules and inside of its atoms, there is an entire universe going inwardly in the direction of smallness. So, to God, "What's big?" and "What's little?" Quite possibly, God implants the human soul at the

moment of fertilization (conception) rather than come back later - less bookkeeping! The poet William Wordsworth said: "The soul that rises with us, our life star, has had elsewhere its setting and cometh from afar."

Many people came up to me and commented on my example. The men and women at that conference, doctors and scientists from all over the world with knowledge and learning and scientific expertise far above my own were wonderfully thinking. At a break in the conference, my daughter and I found ourselves in the elevator with Judge Young.

Judge Young did a wonderful job presiding at the mock trial. I had encouraged him to think of something he would care to share with the group on the subject of bioethics. He left the group with one thought: try to reduce everything they were saying to the simplest language possible and not use big words. This was wonderful advice and I hope that they all heard it. It struck a harmonious note with something I once remember Dr. Lejeune saying, "We scientists don't need to talk in such complicated terms. We can speak much more simply." He had said this very modestly. But, the man who can speak the jargon and the most complicated terms who can express it in the simplest terms - he thereby shows his true mastery of the subject matter. Those who are uncertain want to give the impression of knowing more than they do. They hide behind the big words. Dr. Lejeune reduced the entire science of genetics to simple words when he said: "In the beginning there is a message. And, this message is life, and this message is in life. And if this message is a human message, then this life is a human life. And that is all of genetics!" In those few words, he summed up the entire science of genetics. I have found that you can repeat them to the most sophisticated scientist and they nod their heads, "That's true," they say. They don't challenge it. They agree with it. Like a tuning fork, the words ring true with their scientific learning.

Dr. Lejeune then added, after saying that this was all of genetics, "And, it is also the beginning of a very old book, the Gospel according to St. John. In the beginning was the Word." Dr. Lejeune continued, "And it is very comforting to we scientists that it took us only 2000 years to discover what was there all along: "In the beginning was the *Logos* (the Word)."

God speaks in simple terms, fortunately for us human beings, and reduces truth to simple words that even a man on the street can understand. Look

how simple God made it when he said: "For God so loved the world, that He gave His only begotten Son, that whosoever believeth in him should not perish but have everlasting life" (John 3:16).

So, does the human embryo have an everlasting life? The soul is everlasting. We know the soul of a young child killed in an automobile accident goes straight to God. The souls of all young children who die prematurely go straight to God. There's not a human being out there who would not act to save the life of a child in danger. But, what about the human embryos compacted by the hundreds, by the thousands, in a very **confined cold space where even time stands still**? Kill them or save them for experimentation? Does not the proper and truthful question need to be asked, 'How soon can it be arranged to rescue them? How soon can we arrange for human embryo adoption? How soon can we match up these deserted embryos with couples hungry to adopt a child and arrange for the funding so that their doctors can receive and implant these human embryos in the womb of the adopting mothers?

We know the truth of the human embryo—they are the smallest baby pictures of all of us. We know from the front cover of *People* and *Life* magazines that if they are implanted in the womb of an adoptive mother, nine months later, they will be the picture of a baby on the front of a magazine, held in the arms of their adopting mother and father.

These "children in vitro" are stored by the hundreds of thousands at in vitro labs throughout our nation in a state of suspended time. We, as their fellow human beings, must act in love. We do have time to act. The President of the United States and the Congress and all of us need to work together. Dr. Wanda Poltawska said it best: "Human embryo experimentation is worse than abortion because it is against all humanity."

We must choose life in order that we may have it more abundantly.

## Chapter Seven

Priests for Life and Father Stevens

During the annual March for Life in January of 1984, my son, Martin, and I stood on a concrete island in the center of Pennsylvania Avenue just as it turns to go up to the Capitol and passed out copies of something we had put together entitled the "Declaration of Independence of Preborn Children." We had it printed on large-sized vellum paper in an old font-style that resembled the Declaration of Independence of the United States.

Every January, Nellie Gray, President of the March for Life organization, puts together a rally on the anniversary of the U.S. Supreme Court's infamous 'opinion' in Roe v. Wade. Over the years, I have attended a number of these rallies. The March for Life rally is followed every year by the Rose Dinner, held at one of the major hotels in Washington, DC, usually the Hyatt, right down the street from Capitol Hill. Those who attend the March, attend the dinner in the evening. It's a wonderful, uplifting affair and a chance for all those who share a love for life and a love for the preborn child to meet in fellowship and have dinner together. The dinner features a guest speaker; who have in the past been members of Congress and even Dr. Nathanson. Over the weekend of the March, there are workshops and seminars held at the hotel as well. At one workshop, I had an occasion to hear Fr. Frank Pavone tell the story of how he had started coming to the annual March for Life as a teenager and out of this, grew his Apostolate for Life, when he came to the priesthood. Today, Frank Pavone heads an organization called Priests for Life, headquartered out of New York. It was at this meeting where I heard Fr. Frank Pavone speak that I met a very humble man by the name of Fr. Quinn. Humility is almost

always a sign of great experience and knowledge. He was babysitting the Priests for Life booth and we struck up a conversation. He said he had been doing a little bit in recent years to assist Fr. Pavone and the Priests for Life. In point of fact, I came to learn he had a major apostolate in prolife work during most of his priesthood.

He later came to Hagerstown to visit Shirley and I. I took him for the same country road walk Shirley and I take that runs along the base of the Camp David retreat in western Maryland, close to our home. It is nowhere near the official grounds of Camp David, but all the way down in the farm valleys that lie below the Camp David mountain. You can look up from the country road and see the radio towers up above High Rock where the Camp David complex is located. We exchanged our thoughts on the struggle for the equal humanity and personhood of the preborn child and I told him much of the story of my meeting and working with Dr. Lejeune over the years. During our conversation, Fr. Quinn extended an invitation to attend a weekend retreat in California the Priests for Life were holding at the ranch of Judge Bill Clark. Judge Clark is a wonderful man who served under President Reagan as Secretary of the Interior and a number of other trusted positions in the Reagan Administration. It is said that Judge Clark, former Supreme Court Judge of California, was one of the only people who shared a spiritual intimacy with President Reagan while he was in office. Judge Clark and his wife, now retired, live on a ranch near Pasa Robles, California, where they have built a beautiful chapel that resembles a Spanish mission church. It was at this chapel that the Priests for Life held their weekend retreat.

At the retreat, Judge Clark told us the story about the fresco ceiling of the chapel that he and his wife found while in Europe and purchased from a building out of which it had been removed. They had found it in a warehouse, brought it home, and had the chapel built to incorporate this ornate ceiling of antiquity. The chapel is on a windswept hill overlooking the ranch and the wine country of this part of California. It was a wonderful weekend of prayer and retreat as we all came together to share our experiences and recharge our batteries for our culture of life work.

I spoke about the case of Mary Doe where we sought from the Federal Court a Constitutional recognition of the equal humanity and personhood of Mary Doe as a human embryo and her right to protest her own destruction at the hands of the Federal Government in human embryo experimentation. The singer Judy Collins had been invited to the retreat with her husband, and she sang a beautiful song dedicated to the preborn child. Her tender, melodious voice filled the chapel with the beauty only a human soul in song can produce. It was a wonderful weekend of fellowship and communion in the "good work of children yet to be."

While I did not meet him that weekend, I later came to meet Fr. Clifford Stevens. A very personable and energized man who projects a great love and zest for life had taken it upon himself to research much of the law and prepare what seemed to him to be a logical legal brief to challenge the Roe v. Wade decision. Fr. Quinn and the Priests for Life referred him to me because they wanted me to review the legal research and papers he had put together. The papers were thought out very well, but I had come to understand in the law that if you are dealing with judges whose hearts are hardened, you will never change their minds even with the best logic, legal or otherwise. In my thirty years at the law, I had come to understand that all judges, especially Supreme Court judges, first decide what they want to do and then look to the law to do it. A classic example was the Supreme Court opinion following the photo-finish election returns in Florida in 2000 that, by a five-four vote, the Supreme Court handed the election to President Bush.

In one of our newsletter publications, we pointed out that four of the judges said it was clear under the law and the Constitution that Al Gore was the winner of the election. At the same time, the remaining five of the judges said it was clear under the law and the Constitution that George Bush was the winner of the election. Since the Supreme Court resolves decisions by a majority vote, the five had it. Each of those judges voted the same way that they had voted in the voting booth at the Presidential election. When Fr. Frank Pavone received the newsletter, he asked permission to put it on their web page, which we freely granted. The Supreme Court clearly had shown their hand in that decision - namely that they simply first decide what they want to do and then search around for the law to do it, all the while saying that the law makes them do it, when, really, they are making the law do it.

But, back to Fr. Clifford Stevens. He is a wonderful man. My wife and I so much enjoyed the opportunity to fellowship with him and have him

in our home for dinner. In our old country farmhouse, we lacked a guest room with a private bath. We had a guest room, but these old homes were designed years ago without central plumbing. All the farmers back then used an outhouse, so there are no hallways going back to a common bathroom, but, rather, you walked from the second floor guest room all the way down the front stairs, through the living room, through the dining room, through the kitchen, and up the back stairs to the bathroom. We thought that was too much of an inconvenience to put Fr. Clifford Stevens through, so, I ran across some dear friends at the mall a few days before he was due to arrive who had just finished remodeling their basement with a private bedroom and bath. Brian and Connie Leach agreed to put Fr. Stevens up in their home during the time of his visit with us.

We all remember the black and white movie, *Boys Town*, starring Spencer Tracey as Fr. Flanagan. Imagine my surprise to learn that Fr. Clifford Stevens had grown up in the real Boys Home with the real Fr. Flanagan. It was Fr. Flanagan who encouraged him to go on to college and arranged for his tuition to be paid. Fr. Stevens went on to become the editor of *The Catholic Review*. Now in his seventies, his prayers are continually for the preborn child and that our nation can be delivered from this devilish juggernaut known as Roe v. Wade. Only prayer and the grace of God and the working of the Holy Spirit will ever deliver us from it.

Imagine the Supreme Court saying in 1973 that when scientists could not agree when life began, they were not going to speculate on it. Life begins like everything else, at the beginning. Dr. Lejeune and everybody came forward to say so. It is almost as though the Good Lord has given humanity the 'show and tell' proof of that with Louise Joey Brown in England in 1979 and, later, Elizabeth Carr in America in 1982, being the world's first 'test tube babies.' There is a photograph on the cover of Life magazine of Elizabeth Carr seated in her diaper in front of the microscope under which her first baby picture was seen as a human embryo. We all look like identical twins at this stage to the human eye under the microscope. In her hands on her diapered lap, Elizabeth holds the Petri dish where the ova of her mother and the sperm of her father were brought together. It seemed like magic in those days. Mankind was bringing together in the Petri dish what comes together naturally in the fallopian tube of the mother: the egg and the sperm. We were learning then the human embryo could be incubated up to forty-eight hours before being re-implanted in a woman. Little Elizabeth Carr was implanted into her mother and continued to grow within her mother's womb for the full nine months until she, again for the second time, came into the light of day of this pretty world. The birth of Elizabeth Carr was a little like 'show and tell.' If the Supreme Court and others wish to debate when life begins, what further proof could they need that it begins at the beginning?

The preservation of the human embryo by freezing was borrowed from animal husbandry. A cattle embryo frozen in liquid nitrogen was shipped in a small container across the world so that French cattle can be implanted in the womb of an American cattle in the U.S. such that nine months later, the baby calf born would have all the characteristics of the mother cow and father bull back in France, but none of the characteristics of the mother cow in the U.S. that simply brought the embryonic cattle to term.

Technicians borrowed the procedure in the *in vitro* labs using the same canisters used in animal husbandry. Mankind was learning that we could store human embryos for weeks, for months, even years, in a state of suspended time, where time itself comes to a standstill for the human embryo. Weeks, months or even years later the human embryo may be returned slowly and carefully to the warmth of life prior to implantation in the womb.

Mary Doe, as a human embryo, controls the pregnancy throughout. She first builds a little space suit around herself and then she builds and extends her own placenta attaching to the wall of the uterus with its thick mucosa rich with blood to receive the oxygen that she needs to grow during her nine-month journey in "inner space." Like the adult astronaut in outer space who is connected by a lifeline to the mother ship and yet completely independent of the mother ship only needing to hook on to the mother ship for oxygen, so little Mary Doe in inner space, beginning as a human embryo, simply attaches to the mother ship to receive her supply of oxygen and nutrients, but she is completely independent of the mother otherwise.

America then witnessed pictures on the front of *People*, *Time*, *Newsweek*, and other magazines of grandmothers giving birth to their own grand-children. There were surrogate mothers who were paid to carry to term

the child for a couple who for one reason or another could not otherwise have a child themselves

All of these pictures were giving America (and the supreme court judges if they were looking at these magazines) proof that life begins, like everything else, at the beginning.

In the Roe v. Wade decision, they spoke of "viability," defined as the "ability to exist by natural or artificial means outside of the womb." They said at the stage of viability, the state had a right to protect life. I sent a copy of that *Life* magazine with Elizabeth Carr on the front of it to Surgeon General Koop and told him that this was proof of "viability" of the preborn child even as a human embryo (she could not otherwise be incubated for forty-eight hours or placed in the deep freeze of liquid nitrogen and later thawed and re-implanted and be sitting on the front of *Life* magazine).

He liked it and he used it in his testimony before congress and, to thank me for that, he invited me to have lunch with him at the Cosmos Club in Washington, DC. But, the hearts of so many congressman were hardened, just like the hearts of so many supreme court judges were hardened. America saw the proof and wondered why representatives in congress and judges on the court did not see the proof.

Some people did not want to know the truth. They wanted to live in the darkness. They wanted to live in the lie. They wanted to embrace the lie and continue to justify the lie that belonged to the culture of death.

No amount of proof was going to change them. Not until their hearts were changed. What does it take to change a heart? Only God knows. Sometimes, it takes the next generation, but because Fr. Clifford Steven's paper was so well-written, I invited him to file an *amicus curiae* to our brief in the Fourth Circuit with our permission, so that it would be officially before the judges and they would have his well-reasoned arguments when and if their hearts were turned to embrace the equal humanity and personhood of Mary Doe as a human embryo, a preborn child in being.

We pray for cures for disease and human malady. If we believe in prayer and believe that God answers prayer we realize that He does so not with a sealed envelope (as in the Miss America pageant) with the answer inside, but with the sealed envelope of a new human embryo, which will grow to become a Louis Pasteur or Jonas Salk or Madame Curie or Jerome

Lejeune. How tragic that man would vivisect and destroy even one of these human embryos which figuratively glow with a white hot incandescence having just been just released from the fingertip of God.

Ironically, man is perhaps destroying the answer to his own prayers! Even those who do not become the great scientist or doctor that will help humanity unravel riddles of disease are all a part of the beauty of God's world and the community of man to which we belong. President Reagan often quoted the poet John Donne: "any man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee."

A single federal judge, Judge Messitte of the Federal Court in Greenbelt, Maryland, sought to sweep Mary Doe's case under the rug by administratively closing her case at one point. He later reopened it and ruled against us giving us what we needed, the chance to appeal on a ruling against Mary Doe to the Fourth Circuit in Richmond, Virginia and, ultimately, to the United States Supreme Court.

In the earlier case that I handled on behalf of the International Foundation for Genetic Research (which we filed against the Clinton Administration to challenge the human embryo research panel and halt the beginning of research on human embryos by asking for a court finding that this was against the Constitutional rights of the human embryos), Judge Messitte ruled that the International Foundation for Genetic Research lacked "standing" to bring the case.

Whenever the court says that somebody lacks "standing" they are almost always looking for an excuse to side-step a hot potato. It's a way that they can rule against you without getting involved with the issues of the case and ruling one way or the other on the case itself. They decide not to decide.

In Constitutional law, there is the concept that somebody that brings a case has to be adversely affected one way or the other by the issues of the case. So, if a man on death row wishes to contest the fact that he is about to be executed, he clearly has standing to bring the case. But, if somebody out of the blue simply wanted to do it on his behalf, but was not directly affected, the court would say that he did not have 'standing' to bring the case.

Judge Messitte threw the International Foundation for Genetic Research out of court on 'standing.' We appealed the case all the way to the U.S.

supreme court, and in so doing stopped the march to begin human embryo experimentation, forcing the Clinton Administration to wait and see what the supreme court would say. In the meantime they had to abandon the original Human Embryo Research Panel and regroup. They were forced to regroup and this time rename the panel the "National Bioethics Advisory Commission." Some of the best Constitutional law scholars in the nation, including Charlie Rice and his group out of Notre Dame University put their thinking caps on and honestly admitted that they did not know who *would have* standing to bring Mary Doe's case.

So, when I re-filed Mary Doe's case in August of 1999, again against the Clinton Administration (none of the major pro-life groups came forward to do so), I decided, "Why not file it in the name of Mary Doe herself? She is the one about to be executed by human embryo experimentation." Then, we would have the very question before the court that we wanted the supreme court to decide in any event: "Does the human embryo have equal humanity and personhood under the U.S. Constitution, such that she can protest her own destruction at the hands of Federal government?" If Judge Messitte ruled that she did not have "standing" because she was not a human being and not a person with rights, well, that was the very question that we wanted to appeal.

Unfortunately, I made the mistake of telling him that in oral argument and that began his long quest to find a way to squelch the case by administratively closing it and sweeping it under the rug and putting it on the bottom of the files on his desk and doing everything else he could until, finally, somehow, miraculously, we were delivered from his efforts to hide the light of the truth of Mary Doe's existence.

In the summer of 2004, we learned that the Fourth Circuit of Appeals in Richmond did something nobody expected them to do. They granted certiorari in Mary Doe's case and set it in for oral argument. The date of oral argument was set as the end of October, just before the general election.

What curious timing! The issue of the equal humanity of Mary Doe was very much back in the news. Just prior to Ronald Reagan's funeral, Nancy Reagan, had been approached by those who wish to begin the denatured biology of human embryo experimentation and asked that she speak out

in favor of beginning it, promising her that it could possibly lead to a cure for Alzheimer's. At the Democratic National Convention itself, they tried to borrow the mantra of the Reagan name by having Ronald Reagan's son, Ronald Reagan, Jr. speak in favor of human embryo experimentation. He was not respecting, however, his father's own "EMANCIPATION PROCLAMATION OF PREBORN CHILDREN." Having been the rebel who fell out with his father for years and years reconciling only after his father's Alzheimer's was diagnosed, he was again rebelling against his father and all that his father had stood for.

Enter on the scene the adopted son of Ronald Reagan, Michael Reagan, host of a talk show, whom the Republicans invited to speak at their own convention.

We learned that Mary Doe's case would be heard before the Fourth Circuit in Richmond the end of October. It was during September, we called Fr. Stevens and told him that the case had been set in for oral argument and asked if he would be kind enough to come and lend his moral support. He did not hesitate and replied that he would be there with "the Sword of the Spirit." What a wonderful man! He dropped what he was doing to come from the western United States all the way to Richmond, Virginia, to be present for the oral argument of Mary Doe's case. We indeed needed and very much welcomed his moral support.

Curiously and coincidently, we had someone join our staff for the case, Jesika Asaro, a wonderful champion of life, herself past president of Teens for Life in Washington County, Maryland, where she attended high school prior to her college years at Mount Saint Mary's College in Emmitsburg. And, of course, there is Bill Ryder, the smiling, happy face of encouragement, a cheerleader for the NAAPC that walked into our office and helped us put together the book, <u>Symphony</u>, containing the poetic testimony of Dr. Lejeune at the Tennessee Frozen Human Embryo Case. We asked Bill Ryder if he would come along with and accompany Jesika to the argument in Richmond. Bill, a veteran of World War II, belongs to what has been called 'the greatest generation.'

So, I told Jesika that if he would come, she would have a military escort to come down with her. He said that he would pray about it, and he came back in to announce that, indeed, he would be happy to come and would look forward to it. It was Bill Ryder who happened to walk into the office the very day that we had typed up a line dismissing Mary Doe's case, after much discussion back and forth with the secretarial staff, with my family, and with friends. We were trying to decide whether to continue with Mary Doe's case or not after the Fourth Circuit returned it the first time, saying, "no," to overturning administrative closure, and effectively leaving it administratively closed by Judge Messitte.

After Judge Messitte ruled against us, in this time of great discouragement, we seemed to be thinking that the timing was not right, that we could do more to harm Mary Doe's case if we continued at this time. After all, we did not want a ruling out of the appellate courts, especially the U.S. supreme court that Mary Doe was a puff of nothingness that lacked any humanity, that lacked personhood. This would only feed the fires of those that wanted to begin human embryo experimentation.

So, we had drawn up a line dismissing Mary Doe's case. I had signed it and Bill Ryder walked in. We invited him back into the office. We told him the decision we had made. But, we said, "Before we send it off, Bill, what's your opinion?" Well, he launched into one of his locker room pep talks, and, with a smile on his face that clearly gave us a leading of truth, he said, "Well, it's your decision, Martin, but I wouldn't do it. I would pursue it."

In that instant, looking at the gleam of truth out of Bill Ryder's eyes, I took the line in my hand that I had signed dismissing the case, ripped it in half, and handed it to Bill.

I said, "Bill, you've just decided it. We are going to go forward with the appeal."

Bill told us that he took that ripped up paper home, pieced it back together and framed it and put it on his rec room wall, where he has shown it to his children. So, it is appropriate that Bill Ryder agreed to come to Richmond with us as well. After all, it was because of him that the case was there to begin with.

## <u>Chapter Eight</u>

Praver for the Preborn Child

The summer of 1983, I was on vacation at Fenwick Island, Delaware at the same little cottage with the banging screen door. As usual, it was Shirley and I and our then four children - (our youngest, Kathleen, was not yet born) and the Martin family. We could see the older children playing out by the waves that lapped against the sandy beach only about a hundred feet from the screened in front porch of the cottage. Most of the time, we tried to be out there as family under the beach umbrellas we would carry out after breakfast. I had come in to get some soft drinks and took a break on the porch to try to write out my feelings about abortion in the nation following my experience in the Fritz Case. I tried to put something together that would show the irony of man's failed reasoning in all of this. I tried beginning with something to the effect that: "the congress spends millions of dollars on Capitol Hill every year for NASA to try to find life on Mars, when right across the street at the Supreme Court, they have not been able to find it in the womb." But, it was not coming together, it wasn't rhyming and it just was not going anywhere. Then, all of a sudden, in a flash, it came and I began to write it down as quickly as the words came to me. As a slow writer, I could hardly write fast enough to put down what was coming to me before I lost the thoughts. But, I managed to hold my thoughts long enough to get them all down on paper. When I got to the end of it, I realized that it was the end because there were no more words that came.

The poem, which I later entitled "Prayer for the Preborn Child," when I had finished writing it out in pencil, read as follows:

America, America, God shed His Grace on thee This is the prayer we fervently pray Now on bended knee

We are killing the innocent in their sleep And with them our Liberty For as we have done to the least of these We did it unto Thee

When this our Nation first we formed For Thy protective Providence we prayed Our prayers were answered and this blessed land Was dedicated to Your higher plan of sanctity of life and the inherent rights of man

Yet from Your laws did we depart and shut the preborn from our heart

While on and on we pray
That You will protect us from our foes
and save us from that fateful day
When You will judge with judgment true
what each of us did say
For as we did for the least of these
We shall account that day!

Armies are massing on yonder soil that would take our Liberty Where have our young soldiers gone since 1973?
Killed in their sleep the little ones, FIFTEEN MILLION strong Leaving us without them To fight the battle ere long Our prophet Lincoln said of old As the Civil War wore on: "Fondly do we hope, fervently do

we pray - that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said, 'the judgments of the Lord are' true and righteous altogether,' "\*

But what sword can avenge the little ones FIFTEEN MILLION strong? But the nuclear sword in the enemy hand Which threatens to destroy or land

And now we see our Father
As in the times of old
You punished Your people whom
You loved by allowing their
Enemies bold
To overrun their camps; scale the walls
Of their cities fine
And scattered their tribes over
The face of the earth for departing
In sin from Your vine

So where does our salvation lie
As we're soon to be caught in the strife?
Repent, repent the little ones
That we cruelly took their life
Fall to the ground and pray
Ask for Your forgiveness of our sin and
Turn from our wicked way.
Fro then will You hear from Heaven
And truly heal our land
America, America,
God shed His grace on Thee,
This is the prayer we fervently pray
Now on bended knee

<sup>\*</sup>Abraham Lincoln, Second Inaugural Address

I took the pieces of scrap paper on which I had written the poem and handed them to Joe Martin, (who at the time was serving part-time as a Mennonite Pastor at his church) I respected Joe Martin's opinion, so I handed it to him just to get his thoughts. After reading it over, he said, "Marty, you should have this typed up and keep it. It's good." He added that we might send it around to others. Years later he later invited me to come and recite the poem in his church during a Sunday morning church service and speak to them on some of the issues concerning the preborn child. Upon my return from vacation and coming back to the office, I had my faithful secretary, Melanie, type it up and we gave it to a small Mennonite print shop in Washington County to have it set to type. We sent it out with a copy of a letter that, by this time was going to some of the pro-life leaders of the nation. Arizona Right to Life published it with a brochure that was part of their literature for their annual meeting that year and they asked me to come and speak at their annual meeting on the Fritz Case.

Jay Neninger, president of Arizona Right to Life that year, knew I had written the poem; it had been sent out and signed, "Anonymous." Many of us remember the story of the boy at school that was asked in a pop quiz for English class to write a couple of paragraphs on his favorite poet. As the young boy turned in the paper to his teacher, he said, "I don't know much about this poet - where he was born or where he grew up - but he's written some interesting stuff. His name is Anonymous."

One of the copies of the poem, I sent to my brother, David, and his wife in New Freedom, Pennsylvania. He called me back to indicate that a retired English teacher who lived down the street had read it and asked him if he knew where it had come from. She said that she marveled at the rhythm and the meter of it. This thought stayed with me then and has stayed with me since. Having told the truth of all I know about how it came into being, this is the only answer I can offer: it came on the heels of a failed attempt to write a poem in a different way on my own. It came like a bolt out of the blue and more quickly than I could write it down and, like a wave that crests and comes toward the shore and breaks and flows its distance upon the shore to end and then back away, so at the ending of the poem, the inspiration of the words ended and I realized that the ending matched the beginning and was the logical end.

Of course, when I got back to the office, we double-checked and made sure the words from Lincoln's second inaugural were exactly and correctly stated as I had remembered them, having visited the Lincoln Memorial a year or so earlier. The words of Lincoln are from his second inaugural address and they can be found carved on the inside north marble wall of the Lincoln Memorial, along with much of the text of his second inaugural.



Recording the Anthem, "Prayer for the Preborn Child

Sunday, February 1, 2004 was a beautiful, sunny day in St. Lucia. My daughter, Kathryn, and her husband, Steve, had honeymooned there and spoke so highly of it that I decided to seek it out myself in the middle of the winter for some sun and quiet time to work. On this Sunday, I decided to attend church at the Cathedral in downtown Castries, the capitol of St. Lucia. I was completely surprised when they introduced Archbishop Cardinal Keeler from Maryland to give the morning homily. He spoke about the sanctity of human life and reflected on the annual March for Life that he had just come from the previous week in Washington, DC. He spoke of the many young faces he saw at the march and that the young people had come to know the truth and are standing up for the equal humanity and personhood of the preborn child. I arrived that morning early for the one mass and, as the Cathedral was packed, stood in the back of the church for the conclusion of the previous mass. The ladies' choir was singing from the elevated choir loft when, all of a sudden, I heard it - a lone solo female voice. It was absolutely enthralling! I could not see the face that went with the voice since the choir loft was directly over my head, but for some reason it occurred to me that this voice would be ideally suited to record the anthem, "Prayer for the Preborn Child," which Father Clifford Stevens had earlier set to music. So, at the break between the two services, I asked for the choir director and someone pointed him out to me. He then informed me that there were two choirs and it was the ladies' choir that had sung for this earlier service. He explained that the ladies' choir sang only once a month on the first Sunday service of the month. As it turned out, I had been there to hear them.

The choir director worked in a downtown bank and I asked for his business telephone explaining that later in the week, I might be contacting him as I wanted to make arrangements for the ladies' choir, joined by their soloist, to record an anthem. The next day, Monday, I had the office fax me the anthem as Fr. Stevens had reduced it to music. He did so by condensing and changing the words to the poem "Prayer for the Preborn Child." I met this choir director at the bank and he put me in touch with the director of the ladies' choir and he got a copy of the words of the anthem to her. She indicated that they would practice it at their next choir rehearsal that week and could be prepared to record it later in the week. Fortunately, on the island, there was a small, state of the art recording studio used and owned by the jazz musician, Bo Hinxon.

We met at his studio the evening before I was due to fly out the end of that same week and made the recording. Bo Hinxon commented that evening on the beauty of her voice, remarking that she had had a beautiful voice ever since she was a child. The choir did a beautiful job with the recording and I returned to the States, we released it and mailed it out. We shared it with many Christian radio stations throughout the nation. As of this writing, that recording is available and can be downloaded at the website of the National Association for the Advancement of Preborn Children (www.naapc.org).

The Anthem version of "Prayer for the Preborn Child," as written by Father Clifford Stevens follows:

## PRAYER FOR THE PREBORN CHILD (To the tune of "America, the Beautiful")

O beautiful, our spacious skies,
Our amber waves of grain;
Our purple-mountain majesties
Above the fruited plain.
America! America!
A blot is on Thy name.
We kill our preborn innocent
No guilt, no tears, no shame!

When this our nation first was formed We asked on bended knee, Your gracious Providence to aid Our plan for liberty. Yet from Your Laws we now depart, We heed no more your will; The tiniest and helpless ones, Before they're born, we kill.

And yet we pray imploringly
For help against the foe,
Deliverance from army's might,
From the avenging blow.
Yet we amass these senseless crimes
That rise before Your face:
Killed in their sleep, these little ones,
Our national disgrace.

In days of old, Your people's sins Were punished by Your hand; You sent them into exile, or You ravaged all their land. And this for sins far less than ours, Your punishment was swift. You laid them low until they saw Their land was all Your gift.

So where does our salvation lie, What was Your word of old? "Repent, repent, turn back to Me, Come back into My fold. Revere My word and keep My law, Fall to the ground and pray; Then ask forgiveness for your sin That it be wiped away.

"And though your sins be scarlet,
And red scarlet sure they be,
I'll life you up and heal your wounds,
Preserve your liberty!"
America! America!
God shed His grace on Thee,
But turn now from your evil ways
For all the world to see.

O beautiful, our spacious skies,
Our amber waves of grain,
And beautiful those preborn ones
No more to die in pain.
We lift our eyes to Heaven's throne,
We pray on bended knee;
"Preserve us, Lord, and bless our land,
Blot out our misery."



Ronald Reagan's Message to the Nation Upon His Second Inauguration

Immediately prior to President Ronald Reagan's swearing in for his second term of office, Paul Harvey Radio News (ABC) carried the following: "President Reagan wants you to know that when he takes his oath of office, he will lay his hand upon his mother's Bible, that will be open to II Chronicles 7:14, which he believes is the message to our nation at this time"

"If my people, which are called by my name, shall humble themselves, and pray, and seek my face, and turn from their wicked ways; then, will I hear from Heaven, and will forgive their sin, and will heal their land." - II Chronicles 7:14

This remains the message to our nation.

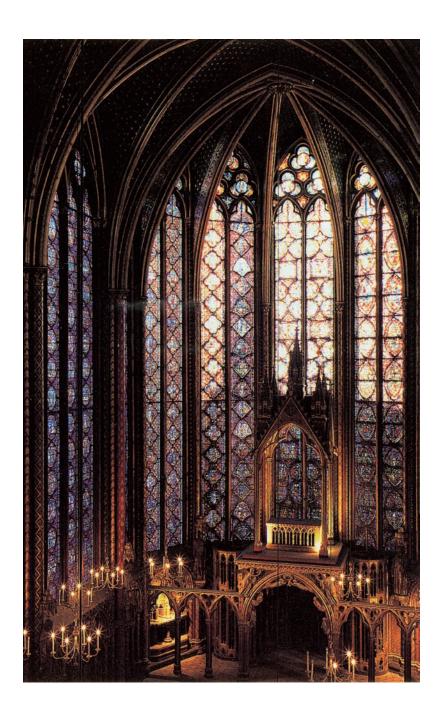
The book of Deuteronomy contains Moses' parting counsel to his people. He reminded them of how God had delivered them from the hand of Pharaoh and had brought them safely through the Red Sea. He reminded them that they as a people had witnessed the chastisement of the Lord, their God, His Greatness, His Mighty Hand, and His Out Stretched Arm, and His miracles and His acts, which he did in the midst of Egypt under Pharaoh, the king of Egypt, and all his land. Moses reminded them how God had led them through the wilderness. In Deuteronomy 11:26-28, we find these words of Moses:

"Behold, I set before you this day a blessing and a curse: A blessing, if ye obey the commandments of the Lord your God, which I command you this day: And a curse, if ye will not obey the commandments of the Lord your God, but turn aside out of the way which I command you this day, to go after other gods, which ye have not known." Deuteronomy 11:26-28

When you visit the Supreme Court Chamber in Washington, DC, high in the marble frieze of carvings, just below the ceiling, and directly over the head of the Chief Justice, is a depiction of Moses holding the tablets of the Ten Commandments. If Moses were alive today, what would be his exhortation to America? The book of Deuteronomy was written in 1451 BC and the book of II Chronicles was written in 1004 BC. I'm sure Moses would agree with the words of II Chronicles 7:14. It seems unlikely that he would disagree with President Reagan's admonition that this is the message to America. What would Moses add to that?

The fact that God has continued to bless America while we have stood by and allowed a mere handful of men, (who just happen to be judges on the nation's highest court), to devilishly twist and distort the nation's Constitution and teach the breaking of the Commandment: "Thou Shalt Not Kill," and thereby bring about the death of 40 million preborn children and counting—the fact that God has staid His Hand of judgment upon America speaks to the patience of God. But how much longer?

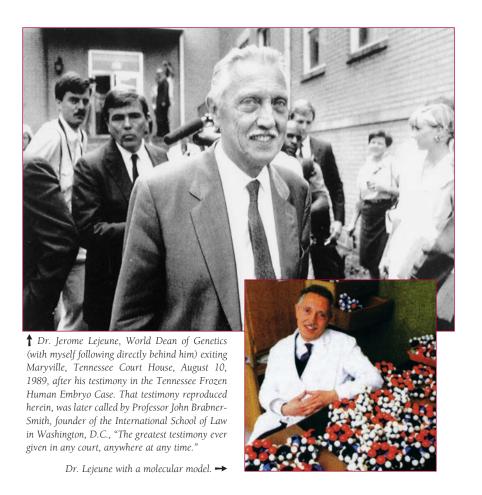
Where will it all lead? History has yet to record it. What lessons and parallels in Biblical history would Moses teach us? What would be his words if he could come down off of that marble frieze above the head of the Chief Justice at the U.S. Supreme Court? What would he have to say to the Court about the Ten Commandments that he holds in his hands? Would he begin by recounting the history of this nation-state so blessed by God throughout its two hundred and some year history and about how the hand of God has been with us through our struggle for independence, through the great Civil War, the World Wars, and other wars? What would Moses have to say to us about the crossroads at which our nation stands today? Would he tell us that our strength against the enemy foe lies in swords and chariots? Or, would he remind the Congress that he once staved off the most powerful army in the world of his day not with a sword but with only his staff, following God's instructions to raise it up at the proper time, stretching his arm out toward the Red Sea, which then closed in around the Egyptian army.



St. Chappell, Paris, has the highest glass to stone ratio of any chapel or cathedral in the world. Built 1242-48 to house the Crown of Thorns, acquired by St. Louis IX from Constantinople.



"Creation of the Preborn Child" by Kathryn Palmer Wiegers



Dr. Lejeune discovered the X-21 chromosome responsible for Down's Syndrome.



Dr. Lejeune with one of his 5,000 Down's Syndrome patients.



Dr. Lejeune at his electron microscope.





By 1982, borrowing a technique formerly used in animal husbandry, technicians simply substituted a 'tube of glass' (test tube or Petri dish) for a tube of flesh (fallopian tube) to bring together the egg of the mother and the sperm of the father outside of the body named "in vitro fertilization" (fertilization "in glass"). This technique is used as in the instance of a difficulty with the fallopian tube of the mother. The human embryo thereby conceived, is then implanted in the woman's womb so that the little embryo may be allowed to fulfill her destiny.

Dr. Lejeune often spoke of the "temple of the womb." On one occasion, after speaking to a group in Japan, a nun came up to him and wrote the Japanese word for "womb" to show him that the 'picture symbol' for "womb" in the Japanese language looks like a temple! Dr. Lejeune stated that this is an "incredible wisdom of the language!"

Modern day three dimensional ultra sound put "windows on the womb." This temple of flesh is illuminated with a filtered red light. Curiously, when the preborn child grows up to build earthly temples, he chooses stained glass that produces a filtered red light. This reddish glow is reminding him of his earliest home.

As Congress would be listening to Moses, they would know that all of America's nuclear missiles, battleships and submarines are to no avail against terrorists, who themselves are allied with no one nation-state, who wear no uniform, and who seek surreptitiously to infiltrate our nation. Oh, what devilish schemes, limited only by their limitless imaginations!

Would Congress not find itself listening to Moses as he spoke of defending his people with only his staff? Would Moses ask to see a coin or a dollar bill and hold it up to remind the Congress that the God in Whom America places her trust on her very currency is not Allah or Buddha, but the God of Abraham, Isaac, and Jacob, the Great "I Am?" What would be the theme of Moses' speech as he reminds the Congress that as we truly place our trust in God and honor Him and honor and obey His commandments, that we shall again receive the Protective Hand of Providence against the terrorist threat before which America is otherwise helpless?

What would Moses have to say about our nation's practice of allowing the commandment, "Thou Shalt Not Kill," to be broken 40 million times over in the killing of the innocent? What would Moses have to say in light of our current scientific revelations of the truth of our earliest beginnings as a human embryo? What would Moses have to say about vivisecting very tiny human beings in human embryo experimentation?

Why is it we can almost guess what Moses would say? It is because the God spoken of on the back of America's money is the same yesterday, today, and forever and the lessons of a very old book are today's "lessons" as well.

History does not always repeat itself, but it rhymes!



Truth on a Train Platform

President Ronald Reagan took office in January of 1980 at the age of 70. During the Presidential debates that preceded the election his opponent made an issue of his age, pointing out that, if elected, he would be 70 years of age by the time he took office. Reagan's response to his opponent during the debate was, "I was hoping my opponent was not going to make his youth and inexperience a subject of these debates." Ronald Reagan was adept at using humor as both a sword and a shield.

And one of the finest Presidents this nation ever had, was soon to appoint one of the finest Surgeon Generals the country has ever had: Dr. C. Everett Koop. As head of pediatric surgery at Children's Hospital in Philadelphia, Dr. Koop pioneered many surgical techniques to save and change the lives of otherwise handicapped children. Dr. Koop was ardently pro-life. It was easy to recognize him with that beard. Between the time of the Fritz Case in 1982 and the Coleman Case in 1983, I was catching the Amtrak train at the New Carrollton station just off the Washington Beltway. While waiting for the train on a somewhat empty train platform, I happened to notice Surgeon General Koop waiting for the same train. I went up and introduced myself and a cordial, short conversation followed. I no longer remember all we talked about, but I will never forget a comment that Dr. Koop made at the end of our conversation, just before we boarded the train. He said, "I tell people all the time that I can think of any number of people who used to be pro-abortion who have changed and become prolife, but I cannot think of anyone who has gone the other way." I found myself thinking about that statement for a couple years after that, and, in fact, I still think about it today.

As I sat looking out the train window, watching the Maryland, Pennsylvania, and New Jersey countrysides pass by as we neared New York City, where Dr. Koop was to disembark with his wife to give a speech, I found myself wondering if a similar statement could have been made at the time of the Civil War. One could think of any number of pro-slavery people who later became abolitionists, but would it not have been hard to recall, even in history, individuals who went the other way? What does this tell us about the pro-life or anti-slavery position? Dr. Lejuene made a similar comparison when he said that we cannot begin experimentation upon human embryos without re-inventing slavery. On both of these questions, I am reminded of scripture: "Those who once walked in darkness have seen a great light"... Isaiah 9:1.

There is a story about the atheist Madeleine Murray, known for the case before the U. S. Supreme Court that took prayer out of the schools in 1962, who was walking down the street and noticed a little girl sitting on her porch with a basket of kittens in her lap. Madeleine Murray paused to look at the kittens and she inquired as to what type of kittens they were. The child gave the rather surprising answer: "They're atheists." The next day, Madeleine Murray was walking down the same street with a friend and there she saw the little girl on the front porch with the kittens in her lap again. She said to her friend, "Come over here. I want you to see these kittens and meet this little girl." Madeleine Murray introduced her friend to the little girl and said, "Tell her about the kittens." The little girl said, "They're God-fearing kittens." to which Madeleine Murray replied, "But, just yesterday you said they were atheists." To which the little girl replied: "Yes, but this morning, they got their eyes opened."

We as human beings, who were once blinded, discover the truth of God's Word and walk in the Light, never again to walk in darkness. Despite this, many remain blinded and hardened human hearts continue to deny the equal humanity and personhood of the preborn child from conception forward.



In November of 2004, President George W. Bush was re-elected. He stood for the equal humanity and personhood of the preborn child and he stood to continue leading the War against Terrorism.

America was coming to realize that the greatest wars are fought, not on the battlefield, but in the human soul and America turned out in record numbers at the polls to fight for the health of America's soul. Exit polls demonstrated that voters placed family and moral values first. As the election returns came in the evening of November 2<sup>nd</sup>, the polls closed first on the east coast. Television news maps showed New England and northwest states colored in blue, as having gone to candidate Kerry, but, the entire south and Midwest all across the Great Plains on the other side of the Mississippi and the Rocky Mountain states, down to Arizona and New Mexico, began to be colored red, representing a victory for President Bush. Only California and up through Oregon and Washington states were colored blue. When it was all said and done, newspapers showed a predominantly red map with Kerry carrying only the Northwest, the upper Midwest around the Great Lakes, and the West Coast. Bush won by a margin of over three million votes.

The Christian conservatives claimed credit for the victory and the democrats conceded that the Christian conservatives had done a better job of getting out the vote. America, and most especially the preborn child, was the winner

The holocaust against preborn children, however, did not stop on election night 2004. The supreme court's illegal and unconstitutional 'legalization'

of the killing of preborn children in 1973, began what has become known as the 'American Holocaust.' On the ballot in California was a bond initiative to raise three **billion** dollars to begin the denatured biology of human embryo experimentation. Dr. Lejeune warned this would be the beginning of a very dim future for mankind.

Wanda Poltawska, a survivor of the Ravensbruck concentration camp, who was one of the 'guinea pigs' operated on by the Nazis who later wrote the book, <u>And I Am Afraid of My Dreams</u>, stated that "HUMAN EMBRYO EXPERIMENTATION IS WORSE THAN ABORTION BECAUSE IT IS AGAINST ALL HUMANITY." She made this statement to me at the time of the tenth anniversary mass for Dr. Jerome Lejeune, held at Notre Dame Cathedral in Paris.

Something must be done to challenge, and seek to block the beginning of human embryo experimentation (human embryo stem cell research) in California with the state taxpayers' dollars. Forty-one percent of registered voters in California voted against it. Dr. Lejeune warned, "THE BIOLOGICAL BOMB IS PROBABLY MORE DANGEROUS FOR HUMANITY THAN THE THERMONUCLEAR BOMB."

Here at the NAAPC, my very competent chief administrative assistant, Jesika Asaro, agreed that something should be done immediately in California. Together we wrote a letter to four of the primary "generals" in the culture of life movement that came to mind: Mrs. Judie Brown of American Life League; Dr. James Dobson of Focus on the Family; Fr. Frank Pavone of Priests for Life, and Dr. John C. Wilke of Life Issues Institute. The letter urged them to consult with their advisors and legal staffs about the possibility of challenging the implementation of this bond initiative to fund human embryo experimentation. We wrote another letter to Ron Stoddart, the attorney for the Snowflakes Human Embryo Adoption Program in California, whom I first heard over the airwaves when James Dobson had him on his radio program. On the talk show, Ron explained the feasibility of human embryo adoption where a couple seeking to adopt a child can adopt a child as a human embryo. The embryo is then implanted in the adopting mother's womb.

Human embryo adoption is such a wonderful means of adopting a child because the woman experiences pregnancy. She and her husband go through labor and delivery. They bond with the child throughout the nine months of gestation. They see little Mary Doe on the ultra sound screen dancing full of gaiety and grace *in utero*, turning summersaults. They can even be told from the sonogram ahead of time whether their preborn child is a boy or a girl. They can enjoy getting ready for the special moment when their child, who was truly brought into life and born at the moment of conception (fertilization), will be officially issued a birth certificate nine months later.

In human embryo adoption, depending upon the wishes of the genetic parents and depending on the wishes of those seeking to adopt, both couples may be introduced although most couples prefer to remain anonymous.

Dr. Dobson had on his program a couple who had undergone *in vitro* fertilization, by which the woman conceived and a child was born to them. After the birth, the couple realized that all the human embryos remaining in the fridge at the *in vitro* clinic were truly their "children" left behind, the sisters and brothers of their child at home. This produced a moral and emotional quandary for them. They did not want their children going for human embryo vivisection and experimentation, nor did they wish for them to be destroyed. They decided to place them for adoption. It was at this point that the *in vitro* clinic gave them the name of another couple, who had come to the clinic unable to conceive, and they began to correspond. The letters they wrote are quite moving.

#### Let's listen in to Dr. Dobson's 1999 radio broadcast:

James Dobson: "You have two letters in front of you. I wish you would read your letter to these genetic parents and their letter back."

Elizabeth: "Right. Once they had chosen us Ron (Stoddart) had asked that we do this. This is what is done in traditional adoption. So this is the letter we wrote to them once they chose us:"

## Dear Genetic Parents,

We want you to know that we have been praying for you virtually from the moment the idea of embryo adoption was conceived. We understand to a degree the anguish you surely feel over the future of your embryos. When we were pondering in vitro we were concerned about the fate of the unused embryos, each a son or daughter, a brother or sister. We understand that these and other embryos around the world are wanted children - wanted by God. That each of them is his gift. One day when the time has come to share with them their remarkable beginnings we will tell them that, "God let one family start them and another family complete them. God is good isn't he?"

We have been considering what we might say to you and have concluded that this is what we would have needed to hear had we been in a similar situation. We will do everything in our power to lead these children to Jesus so that one day all of us will be rejoicing in heaven. That is our promise to you.

<Elizabeth chokes up and weeps at end of letter>

James Dobson: "Well Elizabeth, those tears speak volumes about what this entire experience means to you. I can tell you as a father, with reference to my own kids, that passion to introduce my children to Christ was at the very top of my priority list too all through the child rearing years so I understand how strongly you feel about that. And Mike, you know I am sure there are other mothers and maybe fathers too who are listening to us out there who can identify with the words of that letter. I can feel their emotion coming back through this microphone.

Listen, you have the other letter there in front of you - the one that came back from the genetic parents, but I think it's not fair to ask you at this moment to read another letter. Why don't you pass it over here to Sydna? Sydna, why don't you read that letter from the genetic parents?"

# "Dear Adoptive Family,

We are grateful to you for giving our embryos a chance to be born. We believe life is a gift from God and all stages of human life are sacred. Thank you for appreciating the little lives God created and for loving them. We are praying for your family and we will continue to always hold your whole family unto the Father's care. We pray for His grace and blessing upon your special family. We realize these children are only ours for a little while and ultimately they are actually God's creation and God's children. With this commitment to Him we relinquish our children, who are now in a cryo preserved embryonic stage of development, into God's care and into your loving arms. May God bless your beautiful family always and may these children be a real blessing to you. Please let any children God brings into this world know we love them dearly. Most importantly, however, we ask that you bring them safely to the waters of Holy Baptism, that you teach them to love Jesus Christ and to trust Him as their only Lord and Savior. We would always love to meet you and your family.

In Christ's Love."

James Dobson: "This is an emotional interchange on both sides and it is amazing what has transpired. Did you cry when you got that letter?"

Elizabeth: "Oh yes! The embryos were out-of-state because this couple was out-of-state. I was willing to go to that state! I would have done anything. But as it turns out, they were Federal Expressed to our clinic once all of our - we thought we would get frequent flyer miles with twenty children coming <a href="#laughter"></a>. But they came and I even had to give that up to God because I thought, "you know how your mail gets lost!" I had this wonderful thought after I prayed that there was a guardian angel protecting this canister of liquid nitrogen with these twenty children."

James Dobson: "And you mention of these twenty, only one embryo actually survived the thawing process and the implantation into your womb. Did the process go smoothly with that one surviving embryo?"

Elizabeth: "The infertility doctor said it was a text-book implantation. That of all the places an embryo could adhere to my uterine lining it was the most optimum. And that was the thing that was fun to see was their faces when they were looking at the ultra-sound screen and to see the amazement on their faces of all this happening too."

James Dobson: "Was that the most exciting moment of your life?"

Elizabeth: "It was, and especially when they turned up the monitor and you could hear the heartbeat and I was only just a few weeks pregnant. I could hear this "swish, swish, swish" of the heartbeat."

James Dobson: "And the baby was born on - "

Elizabeth: "New Year's Eve."

James Dobson: "And you are calling her Grace."

Elizabeth: "She's healthy and she is absolutely wonderful."

And that is the end of James Dobson's wonderful program that day.

A number of years ago, I noticed an ad in a publication advertising human embryos for adoption. I called the number. It was a lab in Falls Church, Virginia, in a suburb of Washington, DC. The lab, I suppose thinking that I was asking for a client, sent me a complete advertisement packet that included profiles of human embryos available for adoption. The names of the genetic parents were not given, but they listed information about the parents including everything from the mother and father's heights and hair and eye colors to their race and highest level of education completed. It looked like the menu at a diner. I called back and was connected

to a college student in the lab of the *in vitro* clinic that summer. I asked him how many human embryos were stored there in the deep freeze of the clinic. He gave me information I'm sure the clinic would not have wanted him to give out. He said, "You know, I was wondering that the other day myself. I'm estimating by the charts and records that we have down here, that there are approximately 9,000." He told me this in the early 1990s. No wonder by conservative estimates there were more than 400,000 human embryos in the **concentration cans** of the *in vitro* labs of our nation at the time of President Bush's re-election in 2004. How many millions were confined to **concentration camps** for experiments or death during World War II?

This is a Schindler's List. These children do not need to be vivisected and have their stem cells shipped off to California for human embryo experimentation. They need to be **ADOPTED**.

These *in vitro* clinics are going to sell the frozen embryos to whoever can pay the most money! They even offer couples reduced rates for their *in vitro* fertilization if they agree to "donate" their "spare" and "leftover" human embryos.

There is no such thing as a "spare" or "leftover" child - but, they will often reduce the cost of the procedure if parents will donate these "leftover" embryos to "science." Of course, they use this euphemistic term "science" for sales to the experimenters. These little children have a price on their heads at present of several thousand dollars each. That amount is growing daily as they become coveted as money-making grist in the experimenters' mills.

Dr. Lejenue wrote a proposal of law which is short enough to be set forth herein. His wisdom is instructive to humanity, now that we are touching the very earliest beginnings of our fellow humanity created, just as we were once created, in the very image and likeness of God.

The last paragraph of Article 3 of Dr. Lejeune's proposal of law would cease the trafficking and sale of 'spare' human embryos.

Dr. Lejeune's wisdom, as embodied in his proposal of law follows. Any state or nation wishing to engender the respect of humanity and the favor of their **Creator** should enact this Proposal of Law as their own.

# **Proposal Of Law** (Authored by the late Dr. Jerome Lejeune, World dean of Genetics)

#### Article I

- Before the law, each human being is a person, from fertilization until death.
- All action or intervention, biological or medical, is licit only if its direct or indirect goal is to evaluate, to protect or to restore the health of that person.

#### Article 2

- The human body is inalienable.
- The products of the human body can be acquired with the agreement of the donor, properly warned of the use that will be made of them.
- The gift of organs, freely consented to for direct therapeutic purposes for the recipient, must preserve the physical and psychological functions of the donor.
- The consent of minor or incapable persons, which might be attested by their legal representations, is submitted to the authority of the judge of the guardians and can be accepted only for regenerable organs.
- Postmortem surgical removal must maintain the respect due to the dead person.

#### Article 3

- The human embryo is inalienable.
- The donation of embryos is forbidden, and agreements for the procreation or gestation on the behalf of other people is illicit.
- No human embryo can be submitted to any exploitation whatsoever.
- The pursuit of its continued development until its term, in the organism of its mother, must be offered to each embryo before another embryo is conceived.

## Article 4

- The human genome is inalienable.
- It cannot be made the object of any ideological or commercial exploitation.
- No manipulation of the human genome is licit, with the exception of the therapeutic interventions conforming to the three preceding articles.
- In the interest of the person, or in that of the descendent or by order of the court, investigations of genetic constitution and biological filiation are licit.

The above Proposal of Law, authored by Dr. Jerome Lejeune needs to be introduced and passed in the Congress immediately. Article Three there-of appropriately provides that only one human embryo be conceived at a time in an *in vitro* fertilization procedure and that this human embryo must then be offered shelter in the womb of his or her mother before another is conceived. Dr. Lejeune, the world dean of geneticists, explained that it was not necessary to conceive more than one human embryo at a time. Labs do it as a convenience to the parents. It's a shotgun approach so that if they then implant them two at a time and the first two don't take, the woman can return and take the next two.

President Bush has one last campaign to wage. It is a campaign for how he will be remembered in history. He has been given a mandate by the American people to act to shore up the family, and the moral values of the American people, first and foremost of which is the stand which the President has taken and which they expect him to continue to take for the equal humanity and personhood of the preborn child.

Prayerfully, the President will press for human embryo **ADOPTION**. It's being done everyday. With Presidential backing and initiative on the part of the states and federal government, a vast majority of these 400,000+human embryos could be placed within one year with American families. Statistically, there is a shortage of 1.5 million children for adoption every year. That means there are many loving homes out there with arms ready and wide open to receive a child. When will the President call for the release of human embryos in the concentration cans? The law has a principle known as "**PARENS PATRIAE**" - meaning the State, or Federal government, steps in as "parent" and looks out for the best interest of the child. The true "parent" is the one who wants to see the child born, not the one who wants to leave the child in the deep freeze of a concentration can, or allow the child to be vivisected and killed in experimentation.

The President releases oil from a strategic oil reserve when there is a shortage of gasoline and home heating oil. Why would the President not call for the release of human embryos from the concentration cans when there is a shortage of children to be adopted? This is indeed a modern day Schindler's List! As we pray for cures for cancer and other debilitating, life-threatening diseases, has it not occurred to us that God answers prayers not with a solution written on a piece of paper handed to human-

ity in a sealed envelope, but with a gifted mind and curious intellect (perhaps already present as a human embryo in the deep freeze of America's concentration cans?). Such a human embryo might become a future Louis Pasteur or Jonas Salk or Jerome Lejeune of our world?

What an ironic tragedy if America were to allow the state of California to vivisect little Louis Pasteur or Jonas Salk or Jerome Lejeune and with that vivisection, which they pretend to use to seek cures for human disease, they destroy the true answer to unraveling the riddle of the disease.

But, we don't seek the adoption rather than the destruction human embryos simply because they can do something to benefit humanity; simply because they can benefit us and our children and grandchildren. We seek to liberate human embryos from **concentration cans** for the same reason that we liberated the innocent from the **concentration camps**.

As the President wages his last campaign, think of how many of these 400,000 will, in fact, themselves be historians. Think of the chapters they would add to the history books if President Bush were to go down in history as another liberator, another Lincoln!

Among the musings and reflections of the democrats following the 2004 Presidential election, there was a piece on the early morning news in which they acknowledged that President Bush is now running for history and what he does in his second term in office will be important. They pointed out the Presidents that had gone down in the history books as truly great had presided over times of war, (such as Lincoln at the time of the American Civil War) or the Presidents at the time of the First and Second World War or the President at the time of the Great Depression - they were pointing out that it was times of war or economic difficulty and the leadership through that that seemed to give Presidents their great place in history. They stated that Bush had the War on Terrorism but that this was not equivalent to the Second World War or the Civil War.

If you take the numbers of all lives lost in the Revolutionary War up through the First and Second World War, up through Vietnam, up to the present, casualties not just on our side but loss of life throughout Europe and Asia, if you total it up the lives lost to abortion are more than were those killed by Hitler, Mao Se Tung, Stalin, and Mussolini put together.

This does not even count the soon-to-be hundreds of thousands of human embryos added to this number.

America can and must end this holocaust! President Bush has been brought to office at a critical point with a mandate from and backing of the American people to end the holocaust and not allow it to go further. But, how do we end it? The Supreme Court was never intended by our forefathers to take unto themselves the power that they have gradually bestowed upon themselves.

None other than Thomas Jefferson warned us repeatedly about the emergence of a dictatorial judiciary that would destroy the constitution and destroy America as our forefathers had envisioned it. Thomas Jefferson first became alarmed when the U.S. Supreme Court issued the landmark decision, Marbury v. Madison in 1803. In this decision, the court came up with the notion that they should be allowed to rule upon the "Constitutionality" of every legal issue, both inside and outside of the government, essentially giving themselves unrivalled imperial power!

Jefferson realized that this would have the effect of destroying the "checks and balances" that were wisely built into our system of government - executive, legislative, and judicial - each checking and balancing the other with none lording it over the other.

Thomas Jefferson, with a copy of the Marbury v. Madison decision in hand, gazed out of his window at Monticello, reached for his quill pen, and wrote these prophetic words: "It is a very dangerous doctrine to consider the judges as the ultimate arbiters of our Constitutional questions. It is one which would place us under the despotism of an oligarchy."

Thomas Jefferson could not get the Marbury v. Madison decision out of his mind and he continued to fret about it over the next twenty years. Jefferson took his quill pen in hand again in 1819 and wrote these words:

"The Constitution... is a mere thing of wax in the hands of the judiciary which they may twist and shape into any form they please. It has long been my opinion, and I have never shrunk from its expression... that the germ of dissolution of our federal government is in the constitution of the federal Judiciary; working like gravity by night and by day, gaining a little today and a little tomorrow and advancing its

noiseless step like a thief, over the field of jurisdiction, until all shall be usurped."

Three years before his death, Jefferson issued one final warning in 1823. By this time, he was not just predicting that the apple would go rotten. He was commenting on the rotten spots on the apple that had already begun to develop. He reached for his quill pen, dipped it in his ink well at Monticello, and wrote these words: "At the establishment of our Constitution, the judiciary bodies were supposed to be the MOST HELPLESS and HARMLESS members of the government. Experience, however, soon showed in what way they were to become the most dangerous..."

Jefferson was given to our nation as one of the principle, inspired authors of the Declaration of Independence. His words concerning the Supreme Court have proven to be prophetic.

Our forefathers were so concerned and wary of judicial power (remember, they had had their experiences with those white-wigged English judges) that they didn't even give the Supreme Court its own building or court-house initially. Instead, they put them to "riding the circuit." - The judges rode a stage coach to Philadelphia, New York, and other cities, where they would borrow quarters to sit for the convenience of the people that would then come to them.

As you read the history of the Supreme Court, you find the inevitable: the egos of the judges intervened. First, they begged the Congress to let them stay in Washington, complaining that by the time they helped to lift the stage coach out of the mud ruts and completed their journey they were so exhausted and full of dust that they hardly had the energy to sit and hold court. The Congress gave in and gave them quarters on the ground floor of the capitol directly beneath the floor of the old Senate chamber. The judges in those days, even when they were allowed to forgo riding the circuit, were made to understand that they were both literally and figuratively beneath the People (beneath the floor of the People's senate). Well, that didn't last long, especially after a Western lawyer came to town and commented on their dimly lit chambers depending upon oil lamps and teeny windows. He said it was shameful that the judges were in such a place and that it resembled, to him, more a "potato hole" (that Western

lawyer knew how to win friends with the court). That comment was printed in the papers and you can guess what the Supreme Court wives did. They made it their priority to get those judge husbands of theirs to stand up to the Congress and get out of that "potato hole." And, yes, you guessed it, when the Senate moved into larger quarters, the Supreme Court ran upstairs and got dibs on the old Senate chamber. They were "coming up in the world" and, with it, their egos were steadily rising as Jefferson had warned.

It was through President Taft's urging (the only U.S. President to have also been a justice of the Supreme Court) that in 1935 the Congress appropriated the funds to build the judges their own building, erected east of the capitol - the present courthouse that the judges continue to occupy.

When you look at the old pictures in the Supreme Court history books of the steel framing going into place on this cleared, vacant lot and all of the marble that had been shipped in, waiting on palates to be put in place, you realize that this building is barely 70 years old. With its Greek classic architecture, it looks like something on the Acropolis in ancient Greece (something that the present generation would guess was designed by Jefferson himself to house an 'Imperial' court)—the opposite of what Jefferson and our forefathers intended.

Under the Constitution, Supreme Court judges are appointed for life and their salary cannot be diminished during their service. There is no provision, however, that they have their own building. After 9/11, they have insisted on separate but equal security along with the U.S. Capitol for their quarters and entire temporary structures have been put up on the side of the Supreme Court to house extra security personnel, etc. etc. Perhaps it is time for the People (the Congress), in an effort to cut expenses and consolidate security, to move the judges back into their original Supreme Court chambers (now beautifully restored) on the first floor of the capitol, directly beneath the floor of the original Senate chamber. If the judges had to shake their umbrellas out with the peoples' representatives they would realize that they, like the Congress, are "servants of the People", not gods lording over the People, the Congress, and the President.

Perhaps the Congress may wish to borrow a page from the French. They took the palace of the kings and turned it into an art museum - today you know it as the "Louvre."

The U.S. Supreme Court was never intended to have the power and authority that they have taken unto themselves. Speaking of this unauthorized usurpation of legislative authority by the U.S. Supreme Court, **Professor Brabner-Smith** (founder of the International School of Law, Washington, DC) puts it this way:

"This same federal agency [U.S. supreme court] has effectively overthrown state laws (laws in fields never delegated to the federal government) by its own "interpretation" of a constitutional amendment (the Fourteenth), intended for a very different purpose - to support the abolishment of slavery."

"This "judicial legislation" is in direct opposition to the present national constitution, which provides (Article I) that ALL LEGISLA-TIVE POWERS HEREIN DELEGATED IS IN THE CONGRESS..." These federal courts, as with all tribunals in justice were to have only "judicial power," - the ability to settle a conflict - to bind only those who come before the court in a legitimate dispute (Article III). (Actually, the <u>power</u> of the enforcement is in the Executive Department of government.) In the Dred Scott case debates, this "judicial" legislation caused Lincoln to remark that if the Supreme Court's judgment (that the slave, Scott, was property) was immediately considered to be binding on others than Scott and his "owner," our Constitutional system no longer existed."

Americans are taught in high school civics classes to respect the rule of law and order and to respect the courts and certainly to respect the U.S. supreme court. But Lincoln was not respecting their decision when he said what he said. He was respecting the institution of the court but not the decision of the court. Look where this errancy that Lincoln pointed out has lead us simply because we have been refusing to acknowledge it and stand up to it.

Each time Americans say: "Well, the Supreme Court couldn't really mean what they just said. Perhaps they will soften it. Perhaps they will change it. We'll get new judges. Perhaps this will get better." But, it has only become

worse. Like a cancer, it continues to grow and threaten our nation's foundation. It continues to grow as a cancer that undermines our Constitution.

Of late, the Supreme Court has even abandoned reading the Constitution (or reading between the lines of it). They've simply taken to quoting themselves in past cases as authority for new cases! This is simply the 'blind leading the blind' and we are being led straight off a cliff – a moral precipice.

The PEOPLE in this nation, "of, by, and for the People" need to stand on the People's Constitution, stand on the words of Lincoln and insist that the Congress take back its exclusive authority under the Constitution to legislate. The Supreme Court is to settle dispute disputes between individual litigants, to bind them only, as Lincoln said.

Yes, the court has been lured by the temptation of pride and power (Satan tempted Christ when he took Him up to the pinnacle of the temple and offered him all the kingdoms of the world). Yes, some judges want to strut around like peacocks. Yes, they want to be puffed up and feel all-important. Yes, they love it when the liberal media fluffs them and puffs them and does all these things to make them appear to have power that they do not. The true power in a democracy is in the People and the Congress of the People, not a congress of a mere nine men on a court.

Even as the President was running for re-election, the supreme court 'announced' that it would hear the case involving the legality of having the Ten Commandments in front of courthouses in the nation. Good heavens! Whoever questioned such a thing before? These have been in front of our nation's courthouse for decades! And, it is the will of the American people that these Ten Commandment plaques stay put, right where they are, in front of the courthouses.

What are our courts of law anyhow, unless they are accepting and acknowledging the "Law above the law"—the Ten Commandments, given to us by the God on the back of America's money, The God of Abraham, Isaac, and Jacob? The entire pro-life movement has simply been about upholding the Sixth Commandment: "Thou Shalt Not Kill." If we take the Ten Commandments away from these courthouses and out of the children's classrooms, it's not long until we have children jumping up on tables with guns and we see who has taken God's place in the schools.

Are we willing to sit idly by and wait for the Supreme Court to tell us it is or is not okay to have the Ten Commandments in front of our courthouses? Or, are we going to demand that Congress pass a law providing that this is a matter the supreme court cannot touch and that it is proper and fitting in this "one nation under God," of, by, and for the people to acknowledge God and His Ten Commandments in our courthouses, schools, and any and all places of public assembly and in our private homes?

The true war against terrorism is against terrorism in the womb. The real infidels are not the ones with swords cutting heads off in Iraq but the ones with the "sword of the pen" cutting off America's preborn children from the protection of God's Moral Law - 40 million preborn children and counting. What if Terrorists ran loose in this country cutting off the heads of that many innocent Americans?!

We need to take back this "one nation under God" and have the Congress stand on its Article I, Section I power to do so.

The liberals would tell us and are telling us that we can only do this with a Constitutional amendment. But if the shoe were on the other foot, they would be pointing to the words of Lincoln. It does not take a Constitutional amendment at all. It's already in the Constitution. We simply need to follow the words of Lincoln and enforce our own Constitution as written. If the liberals don't like it, it is they who can and should be made to attempt to pass a Constitutional amendment changing the clear words of the Constitution that Lincoln pointed to as authority of what we must be about doing.

So, simply put, the vision for America is that Americans will act through their elected representatives in the beginning of the 21<sup>st</sup> Century pursuant to the Constitutional authority given to Congress, pointed to by Lincoln, to take back America.

And, as we are respecting and honoring God, not only upon our money ("In God We Trust") but also in our hearts, our homes, America's classrooms and our legislative assemblies, the lessons of a very old book teach us that God will continue to sustain and shelter America in His everlasting arms—He and He alone is America's True Homeland Security.

As we honor God, He protects us.

As we increasingly confront terrorism in the world, we must keep on our side the One Who has never lost a battle - the God of Abraham, Isaac, and Jacob - the One True God acknowledged in the words of our National Motto: "IN GOD WE TRUST."

Testimony of Dr. Jerome Lejeune in the Tennessee Frozen Human Embryo case and Judge Long's ruling:

IN THE CIRCUIT COURT FOR BLOUNT COUNTY

STATE OF TENNESSEE

AT MARYVILLE, TENNESSEE

JUNIOR L. DAVIS,

Plaintiff,

vs. No. E-14496

MARY SUE DAVIS.

Defendant.

Transcript of excerpt of proceedings as had upon the trial of the abovestyled cause before the Honorable William Dale Young, on the 10th day of August, 1989.

Reported by:

PEGGY M. GILES, C.C.R.

KNOXVILLE COURT REPORTING

P.O. Box 9112

Knoxville, Tennessee 37940

615-573-9300

APPEARANCES:

FOR THE PLAINTIFF:

Charles Clifford

Attorney at Law

117 E. Broadway

Maryville, Tennessee

FOR THE DEFENDANT:

J. G. Christenberry

Attorney at Law

9th Floor

603 Main Avenue

Knoxville, Tennessee

THE COURT: For the record, ladies and gentlemen, let the record reflect that prior to these proceedings being placed of record, that the Honorable Martin Palmer, a member of the Maryland Bar, had been introduced to the Court and welcomed, and that Dr. Lejeune, a witness in this case, had been given the oath to testify. Is there any need, gentlemen, to readminister the oath for the record?

MR. CLIFFORD: No, your Honor.

MR. CHRISTENBERRY: No, your Honor.

THE COURT: You may proceed.

The Witness,

JEROME LEJEUNE, M.D.,

having been first duly sworn, testified upon his oath as follows:

DIRECT EXAMINATION BY MR. CHRISTENBERRY:

- Q. Would you state your name for the record, please, sit?
- A. My name is Jerome Lejeune.
- Q. And to help the court reporter if she doesn't understand the French pronunciation you spell your name, J-E-R-0-M-E, capital L, little e, little j, E-U- NE?
  - A. Perfect.
- Q. Thank you. Dr. Lejeune, from your accent, I take it that you live elsewhere than East Tennessee?
  - A. Well, born on the river of the Seine, you know.
  - Q. And that is probably situated in another country, I hope?
  - A. It's a little country called France, and the little town is Paris.
  - Q. Thank you, Doctor. I guess you're a French citizen?
  - A. I'm French citizen, Parisian born.
- Q. And you've traveled to this country, to Maryville Tennessee, to offer what you have as a witness in this trial?
  - A. Yes.
  - Q. Okay. Tell us, Doctor, What you do, what your profession is.
- A. I am a M.D., that is Doctor in medicine, I'm also a Ph.D., Doctor in science, and after getting my degree in the University of Paris in medicine and also in genetics in the Sorbonne, Faculty of Science, I was research worker for ten years, and then I was appointed professor of fundamental genetics in the Faculty of Medicine of Paris. My special field is children, all the constitutional diseases of children, and more especially mental retardation.
- Q. Okay. Doctor, you practiced medicine, I take it, as maybe a pediatrician?
- A. Well, I started as a pediatrician, but I specialized In genetics, and we have the biggest consultation of the world in *l'Hospital des Enfants Malades*, Sick Children Hospital in Paris. We have the biggest consultation of the world for children with mental retardation due to congenital diseases due to chromosomal mistakes.

Q. Have you been an educator as a result of your background? Have you been a teacher?

A. Well, I have been professor of fundamental genetics now for twenty years, but I began my first teaching was not in France, it was in America. I was invited by Professor Beadle in Caltech, California Institute of Technology. It was just before I discovered the first diseases of man—first chromosomal diseases in man, but I was already involved in medical genetics, and Beadle invited me to give the first course of human genetics in Caltech. That was long ago. At that time my English was even rougher than it is today, and I came with all my course written in French. In the evening I was translating them with the dictionary, and in the morning I was delivering the course to the students. They were very kind, they helped me very greatly. That is the way I have learned to speak English, and I hope the way they have learned a little about human genetics.

- Q. You remember the year that you went to Caltech?
- A. Well. it was in '58.
- Q. Did you remain there for some time as a professor?
- A. I was a visiting professor from the OTAN, professorship from the OTAN; NATO, you say NATO, excuse me.
- Q. You have been accredited with helping in human genetics with identification of some chromosome; will you tell us what that is about?

A. It happens that I discovered the first disease due to a chromosomal mistake in man which is Down's Syndrome which was called previously Mongolism because these children have a special odd look which is a little remembering for European some type of the Mongol features. But in Mongolia they don't like to call the disease Mongolism, they call it European Imbecility.

I discovered that they had one chromosome too much. That was long ago, thirty-two years, if I calculate well, and for that discovery I received the Kennedy Prize from the late president here in United States. And also for that discovery, I got William Allen Memorial Award which is the highest award that you can get in genetics in the world. It's given also in United States.

- Q. I see. Have you followed with your genetic discovery even as you sit here today? Have you continued to study?
  - A. Oh, yes.

Q. Could you probably give us an enlightenment on what's happened over thirty-two years?

A. Well, I want not to speak too much about myself, it's not the subject. But we have discovered ten different diseases due to chromosomal errors, and I would say the first chapters of this enormous pathology was written in French by us. Now, we are dealing with mechanisms of mental retardation due to chromosomal diseases, and we are beginning to understand why having one chromosome too much, that is, normal information but repeated, makes a nuisance for the development of the intellect. And, for example, very recently we demonstrated that in trisomy twenty-one, Down's Syndrome, previously called Mongolism, the cells of the children are more sensitive to some drugs which are used against cancer. It seems totally unrelated, but, in fact, it's defining a new field of research, because very likely this peculiarity is related to a deficiency in a chemical system which is used especially in our neuron, and it's probably one of the main reasons why they do not develop a normal intelligence.

So, for the moment, you asked me what we are doing now. We are working on this particular hypothesis because it allows us to make experiments on cells, taken from the children, we cultivate, and we can manipulate, we deprive them, we follow them and we play with them, and we use a lot of drugs to see how they react, and that is the first time we can make experiment in human cells so that to try to cure a neuronal disease, a nervous disease, so it's a very exciting field, but the job is not yet finished.

Q. I trust you can do all that without harming the children?

A. Oh, well, you just take a few drops of blood, and you cultivate the cells, make cultures. We play with the cell; we do not play with the child.

Q. Thank you, Doctor. I understand you're on the boards of various academies in this world. Could you tell us about that?

A. I have the honor of being a member of the American Academy of Arts and Science, I'm member of the Royal Society of Medicine in London, Royal Society of Science in Stockholm, of the Science Academy in Italy, in Argentina. I'm a member of the Pontifical Academy of Science, and I'm a member in Paris in the *Institut de France of the Academie des Sciences Morales et Politiques*, that is, of Moral and Political

Sciences, a special academy in France; and also the Academy of Medicine in France.

- Q. The Academy that deals with moral and political sciences—
- A. Yeah.
- Q. Tell us what that academy's function is about, doctor.
- A. That academy was made around two hundred years ago to give advice to the government about moral and political questions, and essentially to give advice to the government about the use of new techniques, considering that the respect of man is one of the bases of our constitution. We have five academies in the Institute de France, it's, one of them.
- Q. And then you mentioned another that gave me some interest. You said the Pontifical Academy, where is that academy located?
- A. The Pontifical Academy of Science is located inside the gardens of the Vatican, a very nice location. We are seventy members and no more than seven of any country, so that we're coming from all the world around. Our percentage of Nobel Prize is more than sixty percent. There is no difficulty because we choose the members in the whole earth, and so it's not difficult to choose good ones. The interest is many of them have been selected by another committee long after they had been elected by our academy. I would say it's the only scientific international academy of science, the only one which is truly international.
  - Q. How long have you been on that academy?
  - A. Twelve years if I remember well, something like that.
- Q. Tell us a little bit about the topics or research that is done there. What have you all considered?
  - A. In the academy?
  - Q. Yes, sir.
- A. Well, for example, we are given the question: What is danger of the use of atomic energy? For example, we had four sessions about the danger of atomic weapons and their numbers, the use of them, the possibility of survival of humanity after an atomic war and how medicine could do something. And when we did the report, the Holy Fathers asked the academy to designate members to produce that report to the powers who head the atomic power. It was sent to-in Moscow, to the late Mr. Brezhnev. This was a very interesting interview during one hour discussing with Mr. Brezhnev in the Kremlin about the danger that

humanity would feel if there was an atomic exchange.

- Q. Did you find that interview interesting to say the least with Mr. Brezhnev?
- A. I'm not a diplomat, I'm just a scientist, and it was very interesting for me, at least.
- Q. I understand that in this country, you're familiar with our man that is in charge of our health and welfare of all the citizens of this state?
  - A. C. Everett Koop, yes, we are good friends. I know him since long.
  - Q. How long have you known him now?
- A. I'm not good at counting the number of years, I know people maybe fifteen years, something of that kind.
  - Q. Do you visit with him and speak with him?
  - A. Yes.
- Q. Does he call your bureau or your agency or your scientific—on the phone in Paris?
- A. No, we have discussions when we meet together. We don't use phone for very important matter. It's better to have a chat.
- Q. What are his interests in you? In other words, what areas have you all chatted about?
  - A. Human genetics, which is my field.
- MR. CHRISTENBERRY: I believe at this time, your Honor, I would ask the Court to recognize Dr. Lejeune as an expert witness in the field in which he's here to testify.

THE COURT: Any objection?

MR. CLIFFORD: Your Honor, we certainly recognize Dr. Lejeune's expertise in the field of genetics.

THE COURT: All right, he's qualified.

MR. CHRISTENBERRY: Thank you, your Honor.

BY MR. CHRISTENBERRY:

- Q. Dr. Lejeune, as you sit here today, it's fair to say you have come quite a distance, is it not, sir?
  - A. Pardon!
- Q. It's fair to say you have come quite a distance to testify today, is it not?
  - A. Well, it's not that far, you know. I have been farther than that.
- Q. You're familiar with the issues, the profound issues this Court is considering, aren't you. Doctor?

- A. Yeah, and that is the reason why I accepted to come.
- Q. Thank you. With respect to the issues in this case, you understand that what we would say is the factual understanding of how Mr. Davis feels and how Mrs. Davis feels. There has been some publicity about this, has there not, Doctor? You have heard something about their dilemma?
- A. I heard something, but very little. I must be very honest, I don't look at television, I don't listen to the radio, and I only knew when Mr. Palmer telephoned to me, that was the first time I heard about it. So I would not say I'm really knowing the whereabouts, no. I know there are babies, there are human beings in the fridge, this is the only thing I know.
- Q. Thank you, Doctor. So let's start with that aspect of this case. You're familiar with in vitro fertilization?
  - A. Yes.
  - Q. When did you write your first article about it, if you recall?
- A. Oh, you are terrible with dates; I'm not good with the answers. It must be fifteen years ago, something.
  - Q. Okay.
  - A. Before it was used.
- Q. Before it was used. So before it was used it had been conceived in man's mind, had it not?
- A. Well, you have to understand that artificial fertilization is something rather old in biology, and it was used for animals long before it was applied to man. And what seems today extraordinary, that is freezing a human embryo, it was not extraordinary for a cow. There is a lot of time that cows have been frozen and used and sent by air mail in little containers. And the novelty is to consider that the technique which was devised for husbandry was good enough for mankind.
- Q. Tell us about in vitro fertilization and your view of it and your perspective that you could offer today.
  - A. Well, could I speak more about nature -
  - Q. Yes.
- A. of the human being, than specifically the condition in vitro, because to understand what means the fertilization in vitro, we have to understand what means fertilization at the beginning of a human being.
  - Q. All right.
- A. And if I can say so, I would say that life has a very long history, but each of us has a unique beginning, the moment of conception. We

know and all the genetics and all the zoology are there to tell us that there is a link between the parents and the children. And this link is made of a long molecule that we can dissect the DNA molecule which is transmitting information from parents to children through generations and generations. As soon as the program is written on the DNA, there are twenty-three different pieces of program carried by the spermatozoa and there are twenty-three different homologous pieces carried by the ovum. As soon as the twenty-three chromosomes carried by the sperm encounter the twenty-three chromosomes carried by the ovum, the whole information necessary and sufficient to spell out all the characteristics of the new being is gathered.

- Q. Is what, sir?
- A. Gathered.
- O. Gathered.

A. Gathered. And it's very interesting, if I can say, your Honor, to remark that natural sciences and science of the law, in fact, speak the same language. In that sense that when we see somebody healthy, well built, we say he has a robust constitution, and when we see a country in which every subject is protected by the law, we say it has an equitable constitution. In the phenomenon of the writing a law, you have to spell out every term of the law before it can be considered to be a law, I mean in the science of the law. And secondarily, this information written in the law has to be enacted, and it cannot be before it has been voted for.

Now, life does exactly the same thing. Inside the chromosomes is written the program and all the definitions. In fact, chromosomes are, so to speak, the table of the law of life. If you get the right number of your table of the law of your life, then you begin your own life. Now, the voting process does exist as well. It is the fertilization itself, because there are a lot of proposals, many, many sperms.

Only one got in; that is the voting process which enact the new constitution of a man. And exactly as would say a lawyer, once a constitution exists in a country, you can speak about it in the same way, when this information carried by the sperm and by the ovum has encountered each other, then a new human being is defined because its own personal and human constitution is entirely spelled out.

There exists a lot of minute differences in the message given by father and the one given by mother, even by the same person; we do

not give exactly the same minute information in each sperm or in each egg. It follows that the voting process of the fertilization produces a personal constitution which is entirely typical of this very one human being which has never occurred before and will never occur again. It's an entire novelty. That was sure - that was known for let's say not a hundred years but more than fifty years. But the bewildering was the minuteness of the writing of those tables of the law.

You have to figure out what is a DNA molecule. I would say it's a long thread of one meter (sic) of length, cut in twenty-three pieces. Each piece is coiled on itself very tightly to make spiral of spiral so that finally it looks like a little rod that we can see under the microscope that we call a chromosome. And there are twenty-three of them carried by father, twenty-three of them carried by mother. I said the minuteness of the language is bewildering because if I was bringing here in the Court all the one meter long DNA of the sperms and all the meter long of the ovums which will make every one of the five billions of human beings that will replace ourselves in this planet, this amount of matter would be roughly two aspirin tablets. That tells us that nature to carry the information from father to children, from mother to children, from generation to generation has used the smallest possible language. And it is very necessary because life is taking advantage of the movement of the particles, of molecules, to put order inside the chance development of random movement of particles, so that chance is now transformed according to the necessity of the new being.

All the information being written they have to be written in the smallest language possible so that they can dictate how to manipulate particle by particle, atom by atom, molecule by molecule. We have to be with life at the real cross between matter, energy and information.

Now, I would like, your Honor, to give you an impression of what happens normally. Most of the human beings have been conceived before the fertilization in vitro was used, and most of the humanity will still be made the old good days' fashion for a long time I do hope. Normally, when the ovum is ripe, that is, once a month, fifteen days after the menses, there is a rupture of the follicle, and the ovum is so to speak taken by the fallopian tube, which has a special expansion—we call it *le pavillon*—I don't know the name in English.

And it can move, and if you take a picture it looks like as a hand

making a slow palpation of the ovary to find where the egg will be laid and to take it

Normally, the egg is a big cell, round, not mobile, floating quietly inside the fluid in the tube, and the tube will manage to carry this big cell towards the uterus by ciliate movements. On the contrary, the sperm is an indefatigable navigator. It has been deposited in the entry of the genitalia of the mother, and normally it goes up through the cervix of the uterus, he swims during the whole uterine cavity, and it is inside the fallopian tube that the encounter between few thousands, ten thousands, hundred thousands of sperm and the one egg can occur. And it is because every human being has been conceived in nature inside the little tube, a tube of flesh that we call the fallopian tube, that test tube babies are indeed possible. The only difference is that sperm and egg are meeting inside a tube which is now a tube of glass because the egg has been removed from the body of the woman, and the sperm has been just added to the little vessel. And it's because normal fecundation—I should say fertilization in English—normal fertilization is occurring inside a tube that if you put the proper medium... It is not at all the inseminator who makes fertilization, he just puts on the right medium, a ripe ovum, active sperm, and it is the sperm who made the fertilization. Man would be unable to make a fertilization. It has to be done directly by the cells. And it's because they were normally floating in the fluid that this extracorporeal technique is at all possible.

Now, the reproduction process is a very impressive phenomenon in the sense that what is reproduced is never the matter, but it is information. For example, when you want to reproduce a statue, you can make a mold and there will be an exact contiguity between the atoms of the original statue and the atoms of the mold. During the molding process there will be again between the plaster and the mold contact atom by atom so that you reproduce the statue. But what is reproduced is not the original because you can make it out of plaster, out of bronze, about anything. What is reproduced is the form that the genius of the sculptor had imprinted in the matter. The same thing is true for any reproduction whether it is by radio, by television, by photography, what is printed or reproduced is the information and not the matter. The matter is a support of the information. And that explain to us how life is at all possible, because it would be impossible to reproduce matter. Matter is

not living, matter cannot live at all.

Matter is matter. What is reproduced and transmitted, it's an information which will animate matter. Then there is nothing like living matter, what exist is animated matter. And what we learn in genetics is to know what does animate the matter, to force the matter to take the form of a human being.

To give you an idea, I would take a very simple example, I would take the example of this little apparatus here, a recorder.

Q. Yes, sir.

A. Now, chromosomes are a long thread of DNA in which information is written. They are coiled very tightly on the chromosomes, and, in fact, a chromosome is very comparable to a mini-cassette, in which a symphony is written, the symphony of life. Now, exactly as if you go and buy a cartridge on which the *Kleine Nachtmusik* from Mozart has been registered, if you put it in a normal recorder, the musician would not be reproduced, the notes of music will not be reproduced, they are not there; what would be reproduced is the movement of air which transmits to you the genius of Mozart. It's exactly the same way that life is played. On the tiny mini-cassettes which are our chromosomes are written various parts of the opus which is for human symphony, and as soon as all the information necessary and sufficient to spell out the whole symphony, this symphony plays itself, that is, a new man is beginning his career.

In vitro fertilization does not change at all what I have said. It's just a technique sometime used to bypass a difficulty in the encounter of the egg and the sperm, so it's a—it's a derivation. It does not change at all the basic mechanism, the basic mechanism is just the same.

Now, if I could continue a little more, it's not about fertilization that we are discussing. It's about freezing of embryos. I'm not a specialist at freezing embryos.

Your Honor, I have never played with embryos. But in my laboratory we are freezing cells, we are thawing them, we are using a lot of those process, so we know about it, we use it on another system than embryos, but all cells are very similar in their reactions. Now, you have to realize —I don't know if it is true in English, but I think it's quite true, and it is true at least in all the Latin language, we use the same word to define the tempo that we measure with a clock and the temperature

that we measure with a thermometer. We say in French *temps* and *temperature*; in English you say time which is a change of tempo, which a temporal thing, and temperature. And that is not a mistake of the ordinary language, it's a definition of the basic phenomenon. I don't know how they have recognized it so long ago to build it into the language. What means "time" is the flux of the agitation of the molecule, the flux of the particle which is continually going on. And temperature is just a measure of the speed with which the molecules are running in a given medium.

Now, if you diminish progressively temperature, you diminish the speed and the number of collisions between the molecules, and so to speak without any joke about the words, you are progressively slowing down, slowing down the temperature, you are freezing time. And, in fact, we are wrong telling that we are freezing embryos. In a sense it's very true like you deep freeze the meat in the supermarket, very correct. But in the fundamental sense what we are doing by lowering down the temperature is stopping not totally but very deeply the movements of the atoms and molecule so, in fact, inside the can, the thermal can in which we put in tiny canisters the cells or the embryos, we have more or less arrested the flux of the time. This seems to be rhetorical, but it is not because otherwise we could never understood why it is possible to freeze a cell, to have it entirely not moving, not respirating, not having any chemical exchange, and just if you have done it with precision (so that no crystals have been made inside the cells which could have ruptured its very minute architecture), if you thaw it, thaw it progressively and carefully, it will again begin to flourish and to divide. Then it's obviously sure that we have not arrested life and started life again. What we have arrested is the time for this particular organism which is inside this can.

If we could put a cell down to the minus two hundred seventy-three centigrade, that is, to the absolute zero, every movement would be stopped. And if the temperature would be maintained at that level, it would be kept unchanged for indefinity. I would not say eternity but indefinity. We are not achieving that when we freeze a cell in my laboratory (and you do the same here); we use not liquid hydrogen because it's very costly and very explosive, and it's used only in NASA for the rockets. We use mostly liquid nitrogen because it cannot explode, and it's rather cheap, and it's easy to manage. But it's only minus a hundred

ninety degrees that we have inside the canister. Well, it's rather cool, but it's not absolute zero, so the preservation is not a hundred percent.

And probably you could not preserve the cells for more than a number of years, that nobody knows because it depends on the cells. For example, to the best of my knowledge for ordinary cells which are very resistant, they are examples of more than fifteen years in the cannister and being thawed and being correctly surviving and alive. For mouse embryo it's some ten years. In our species I think there are no long time, maybe one or two years, no more than that. And nobody knows with the actual technique how long the preservation would be real preservation. It's a question I could not answer, and I think nobody can answer precisely today.

But what I could say, that the information which is inside this first cell obviously tell to this cell all the tricks of the trade to build herself as the individual, this cell is already. I mean it's not a definition to build a theoretical man, but to build that particular human person we will call later Margaret or Paul or Peter, it's already there, but it's so small that we cannot see it. It's by induction that we know it for the moment. And I would say I would like to use the felicitous expression of the mathematicians. They would say that man is reduced at its simplest expression like you can do with an algebraic formula if you manipulate it intelligently. If you want to know what mean that formula you have to expand it to give value to the various parameters, and to put in use a formula, you expand it. It's what is life, the formula is there; if you allow this formula to be expanded by itself, just giving shelter and nurture, then you have the development of the full person. Now, I know that there has been recent discussion of vocabulary, and I was very surprised two years ago that some of our British colleagues invented the term of pre-embryo. That does not exist, it has never existed. I was curious, and I went to the encyclopedia, to the French encyclopedia, the one I inherited from my great father so it was fifty years ago it was printed.

And at the term of embryo it was said: "The youngest form of a being," which is very clear and simple definition, and it stated: "it starts as one fertilized cell, (fertilized egg which is called also zygote), and when the zygote splits in two cells, it is called a two-cell embryo. When it split in four it is called a four-cell embryo." Then it's very interesting because this terminology was accepted the world over for more than

fifty years by all the specialists of the world, and we had no need at all of a sub-class which would be called a pre-embryo, because there is nothing before the embryo. Before an embryo there is a sperm and an egg, and that is it. And the sperm and an egg cannot be a pre-embryo because you cannot tell what embryo it will be, because you don't know what the sperm will go in what an egg, but once it is made, you have got a zygote and when it divides it's an embryo and that's it.

I think it's important because people would believe that a pre-embryo does not have the same significance that an embryo. And in fact, on the contrary, a first cell knows more and is more specialized, if I could say, than any cell which is later in our organism.

Now, I don't know if I can abuse of your patience, your Honor? THE COURT: You're doing fine.

THE WITNESS: The very young human being, just after fertilization, after it has split in two cells and then in three cells because curiously we do not split ourselves in two, four, eight and continue like that, no, at the beginning we don't do that. We split in two cells of roughly equal dimension and one of the two cells splits in two. There is a moment in which inside the zona pellucida which is a kind of plastic bag, which is, so to speak, the wall of the private life of the embryo in which it is protected from the outside, we have a stage in which there are three cells. This has been known for fifty, sixty years, and it was remaining a mystery for embryology, because after that stage of three cells, it starts again, it comes to four, and it continue by multiples of two.

What could be the meaning? We do not know yet the accurate meaning, but it is of great importance about the discussion we have today because we can manipulate non-human embryos like, for example, mices. We can disassemble the cells which are inside the zona pellucida of a sixteen cell embryo of mice and take few cells of it, take few cells from another embryo, of another type of embryo, if you wish, and put all that together inside a new zona pellucida from which you have expelled the legitimate occupant. Now, what happens? Most of the time it fails, but sometimes a chimera comes out. For example, if you have chosen a black embryo, a white embryo and you have mixed them together, you find a little tiny mouse which can run on your table but which has a chessboard on the body. Parts are black, parts are white because she has built herself of two type of cells that you had put

together in the same zona pellucida. It has to be done with a very small number of cells.

We have tried, and when I say we, I should say geneticists, have tried to put three different lines, and they have got few mice with three different type of cells that they can see on the fur. They have tried four, does not work; five, does not work. It's only possible with three cells. And that remembers that when we split at the beginning of our life (two cells and then one cell in two), we go at a three cell stage. It's probably at that time that a message goes from one cell to the two other cells, come back to the first one and suddenly realize we are not a population of cells. We are bound to be an individual. That is individualization, that makes the difference between a population of cells which is just a tissue culture and an individual which will build himself according to his own rule, is demonstrated at the three cell stage, that is very soon after fertilization has occurred.

If we stop the process, if we slow down the movement of the molecules, we progressively come to a relative standstill, and when the embryo is frozen, these tiny human beings, they are very small, one millimeter and a half of a dimension, a sphere a millimeter and a half, you can put them in canisters by the thousands. And then with the due connotation, the fact of putting inside a very chilly space, tiny human beings who are deprived of any liberty, of any movement, even they are deprived of time, (time is frozen for them), make them surviving, so to speak, in a suspended time, in a concentration can. It's not as hospitable and prepared to life as would be the secret temple which is inside the female body that is a womb which is by far much better equipped physiologically, chemically, and I would say intellectually than our best laboratories for the development of a new human being.

That is the reason why thinking about those things, I was deeply moved when you phoned to me, knowing that Madame, the mother, wanted to rescue babies from this concentration can. And to give to the baby - I would not use term baby, it is not perfectly accurate, not good English - would offer to those early human beings, her own flesh, the hospitality that she is the best in the world to give them. And because Mr. Palmer told me on the phone that it had been said that if you, Madame, were not entitled to give this shelter to the baby - to the early human beings, (beings perfectly correct in what I mean)—you would

prefer that they would be enjoying another shelter and not being left inside the concentration can, or destroyed. And I was impressed because it remembered me of an extraordinary trial which has occurred more than two thousand years ago, and I could not believe it could occur again, that two persons will discuss whether it's better to have an early human being alive and given to a certain person or another person would prefer the baby not being alive at all. And to the best of my recollection this judgment has been considered as a paragon of justice when Solomon did it. I was not thinking I would come from Paris to speak in Tennessee about a two thousand years old trial. But I realized when you phoned to me, it was the first time it was arising in this earth with a very early human being, because before early human beings were not in our reach, they were protected inside the secret temple. And then I felt it was opportunity that a geneticist was going to tell you what our own science tells us.

If this trial had taken place two years before, I would have stopped because I would have told you all that we knew at that moment. But with your permission, your Honor, I will continue a little further, faster and faster.

THE COURT: Yes

THE WITNESS: We know much more, since the last two years, we know that the uniqueness of the early human being I was talking at the beginning, which was a statistical certainty (but an inference of all we knew about the frequency of the genes, about the difference between individuals) is now an experimentally demonstrated fact. That has been discovered less than two years ago by Jeffreys in England, the remarkable manipulator of DNA. And Jeffreys invented that he could select a little piece of DNA, of which he could manufacture a lot of it, which is specific of some message in our chromosomes. It is repeated a lot of times in many different chromosomes and which is probably a regulation system. Some indication to do something or do another thing, but not a kitchen recipe, but a precision about what to do.

And because its only telling the cells that this should work and this should not work, it can assume a lot of tiny change, so that there are so many of those little genes and there are so many little changes in them that we receive from father and from mother an array of those genes that we can realize very simply, you get the DNA, you put it in solution and

you have it spread in a special medium. Then you put this special probe made by Jefferys, and what you see it looks exactly like the bar code that you have probably seen in the supermarket, that is, small lines of different breadth and different distance from each other. If you put that bar code and you read it with an electronic device, it tells the computer what the price of the object and tells a lot of other things.

Well, its exactly what it tells us that when we look at the DNA bar code, and we detect every individual is different from the next one by its own bar code. And that is not any longer a demonstration by statistical reasoning. So many investigations have been made that we know now that looking at the bar code with his Jeffreys system, the probability that you will find it identical in another person is less than one in a billion. So it's not any longer a theory that each of us is unique. It's now a demonstration as simple as a bar code in the supermarket. It does not tell you the price of human life, it has a difference with supermarket.

The second advance has been that we know now that in one cell we can detect its originality. That has been due to the discovery of a new system which is called PCR, which is becoming extraordinary popular. It started two years ago, you can take a tiny piece of DNA, one molecule taken from one cell, you see how little this is, you can with that technique reproduce it by billions, and when you have enough you can make the analysis of Jeffreys and see again that we have the whole demonstration of uniqueness, not only in a sample taken from the individual, but in one cell, in one nucleus of one individual.

Another is a third discovery which is by far the most important of all, which is that DNA is not as dull as the magnetic tape I was talking before. Nature is imitated by our discoveries, but she has known much more than we have yet discovered. In that sense, that the message written on DNA is written by change of the various bases which come one after the other in that one meter long molecule. But now it happens that twenty years ago it was described with certainty that some of the bases of DNA were carrying an extra little piece we call a methyl, (which is CH3) which is just hooked on it and change a little of the form of one of the bars of this long scale which is the DNA molecule.

Nobody understood what it was meaning. And it's only four years ago (especially by the discovery of Surani) that we have begun to understand that we were up to something extraordinary, which is that those tiny

little bits of methyl which are put on the base, cytosine, which is transformed in methylcytosine - I'm sorry to be technical, your Honor, but I cannot translate it, it's chemical slang.

THE COURT: I understand.

THE WITNESS: Is exactly comparable to what does an intelligent reader when he wants with a pen to underline, to highlight some passage or to scratch, delete another sentence. That is with the methylation, one gene which is still there is knocked out, put to silence, but if it is demethylated on the next division, on the next cell, then it will speak again.

Now, the basic discovery was that this is possible because this tiny change on the DNA, changes the surface of the big groove of the helix of DNA. It is inside this big groove that some molecules, some proteins will hook on different segments specific of the DNA. It is a kind of language telling to the chromosome: You have to tell this information or for this information, shut up, do not speak this one for the moment. It's very necessary, because there is so many information in our cells that if they were expressing everything, every time, to have the energy spent by one cell would be much more than the energy of our whole body. So it's necessary that we have some silent gene and some gene giving expression, expressed.

Now, the basic discovery is the following, and it is directly related to our discussion: That the DNA carried by the sperm is not underlined (or crossed) by this methylation on the same places which are not equivalent in the DNA chromosomes carried by ovum. During the manufacture of the sperm there are indications, it's penciled, so to speak. It's underlined, you should do that. But on the equivalent gene, on the equivalent chromosome manufactured by the mother, the underline is in a different place, and it underlines something different. So that at the moment the two sets of chromosomes carried by the sperms and the egg are put together, they are not as we believed for years identical. We knew there was a difference with the "X" and "Y" chromosomes, but for the others they were believed to carry the same information; that is not true. Some information is to be read on as coming from the male chromosome, and another information from a chromosome coming from the mother. Now, the reason is that the fertilized egg is the most specialized cell under the sun because it has a special indication underlining segments of DNA

which shall be expressed and others that shall not be expressed that no other cell will ever have in the life of this individual. When it's split in two we know that exchange of information comes from one cell to the other one. When it's split in three it receives information we are an individual. And when it continues progressively, the underlining system is progressively changed so that cells do differentiate, and cells become specialized doing a nail, doing hair, doing skin, doing neurons, doing everything.

And the very thing is that during this process, the expansion of the primary formula which is written in the early human being, nothing is learned but progressively a lot of things are forgotten. The first cell knew more than the three cell stage, and the three cell stage knew more than the morula, than the gastrula, than the primitive streak, and the primitive nervous system. In the beginning it was written really not only what is the genetic message we can read in every cell, but it was written the way it should be read from one sequence to another one. Exactly like in the program of a computer, you don't put only the equivalent of the Algebraic formula, but you tell to the computer do that; if you get that result, then go at that and continue that program; or if you don't get the result, continue and go to the other program. That is written in the first cell; is progressively forgotten in the other cells of our body.

At the end of the process when the organism has grown up, it produce then its own reproductive cells, it puts the counter to zero again, and hence the rejuvenation.

A new life will begin when a female and a male cell will encounter to produce the next generation. So I would say very precisely, your Honor, that two years ago I would not have been able to give you this very simple but extremely valuable information which we have now, beyond any doubt.

I would give you an example of why it's not theoretical. We can manipulate with mice—not me, but my colleagues. And with mice they have been able to make pseudo zygote, that is, to take one egg, expel its own legitimate nucleus and put, for example, two nuclei coming from sperm, so they have diploid cell, a diploid zygote containing only two sets of paternal origin; it fails to grow. They have tried to do it with two maternal original nuclei, that is, two maternal chromosomal cells and no paternal cells. It's diploid; by the old theory it should grow, but it does

not. But curiously both of them do something; they don't build a full imago, that is, the whole form. But they specialize. If there is only male nuclei, two male nuclei making what is called an androgenote, it produce little cysts which are looking like the membranes and placenta that the child is normally building around himself to make its space and time capsule so that it could take the fluid from the mother vessels. An early zygote containing only male chromosome does only that.

If a zygote contains only chromosomes from female origin, it makes the spare parts. It makes pieces of skin, it makes piece of teeth, it can make a little nail, but all that in a full disorder, not at all constructed it makes the spare parts. We know this directly by experiment in mice done by Surani last year. But we knew that but we could not understood it before.

We knew that already in man, because in man we know that there are what is called dermoid cysts which is a division of a non-fertilized egg inside the ovary of a virgin girl. It cannot grow. It's rare, but it is well known. It will never give a little baby, but it makes the spare parts, teeth, nails, all that mixed in incomprehensible disorder. On the reverse we knew that sometime after apparently normal fertilization the product does not divide correctly but makes cysts, little balls again and again and again, and it's called a mole, hydatidiformis mole, and it's very dangerous because it can give the cancer to the pregnant woman.

Now, we have discovered—(not me), you have to know I'm professor and when I say we, it's all the professors of the world, it's not me. We have discovered that in those hydatidiformis moles, there were only paternal chromosomes. There were two sets of paternal chromosomes and the maternal pronuclei had died, we don't know why. So we know by the mice experiments that it is related to methylation of the DNA.

Hence, we know by the human observation, that there is a specialization of information carried by the sperm compared to the information carried by the ovum. And I would say I was wondering, not surprised, but wondering that we were discovering at this extraordinarily tiny level of information built into the chromosomes, that paternal duty was to build the shelter and to make the gathering of the food, to build the hut and the hunting. And that the maternal trick was household and building of the spare parts so the individual can build himself. And it's a kind of admiration that we have for nature that since we have seen in

the grown up that the man is going hunting and the mother is doing the kitchen, it is just the same deeply written inside our own chromosomes at the very beginning at the moments the first human constitution is spelled out.

Well, I have abused your kindness, your Honor. I have spoken maybe too much, but I would say to finish that there is no, no difficulty to understand that at the very beginning of life, the genetic information and the molecular structure of the egg, the spirit and the matter, the soul and the body must be that tightly intricated because it's a beginning of the new marvel that we call a human.

It's very remarkable for the geneticist that we use the same word to define an idea coming into our mind and a new human coming into life. We use only one word - Conception. We conceive an idea, we conceive a baby. And genetics tell us you are not wrong using the same word; because what is conception? It's really giving information written in the matter so that this matter is now not any longer matter but is a new man.

When we come back to the early human beings in the concentration can, I think we have now the proof that there are not spare parts in which we could take at random, they are not experimental material that we could throw away after using it, they are not commodities we could freeze and defreeze at our own will, they are not property that we could exchange against anything. And if I understand well the present case and if I can say a word as geneticist, I would say. An early human being inside this suspended time which is the can cannot be the property of anybody because it's the only one in the world to have the property of building himself. And I would say that science has a very simple conception of man; as soon as he has been conceived, a man is a man. THE COURT: Before we go further, let's take a break, a very brief break, actually a little longer one than we usually do. As most of the representatives of the media know, there is some hospitality being furnished you by the Blount County Chamber of Commerce. I want you to have an opportunity to enjoy that if you care to, so we will stand in recess about twenty-five or thirty minutes at which time our testimony will resume. Parties may excuse themselves and Dr. Lejeune you may come down.

(Parties and counsel leave the courtroom.)
THE COURT: Ladies and gentlemen, we'll stand in recess.
(Brief recess.)

THE COURT: Dr. Lejeune, if you would come around and take the witness stand. Mr. Christenberry.

MR. CHRISTENBERRY: Thank you, your Honor.

## BY MR. CHRISTENBERRY:

Q. Dr. Lejeune, suppose that—as a hypothetical question, but suppose that we had heard testimony in this hearing that indicated that each mom and each dad contribute identically the same to the embryo, and that there is no differentiation between their contributions, could you tell us what your opinion is about whether or not cells are differentiated?

A. It's difficult to answer that because once you know something in science, it's very difficult to tell what you would think if you were not knowing it. If the paternal and maternal chromosomal share of the baby was the same, we wouldn't have any idea how this differentiation of cells do occur, so if I had testified two years ago, I would have said that the mystery of cell differentiation was complete, and we did not know where it was written. Now we begin to know where it's written. It's the only difference, but it's a great difference that we begin to know. It tells us definitely that what was an implication that it must be written in the first cell, (this type of differentiation must occur at this time and at the other time another differentiation should occur). We knew it should have been written, but we did not know at all how it was.

Q. Okay. And so you testified at great length about the differentiation.

A Yeah

Q. And you did that for what purpose?

A. For the purpose of understanding how from an apparently undifferentiated cell which is the one cell of the fertilized zygote, the full imago can emerge. If science cannot say anything about the mechanism of it, it just remains a pure constitution but no knowledge about it. It's the reason why I wanted to put on record those new findings about the methylation of DNA, because it proved that the implication which was as all of genetics, that differentiation is, so to speak, prewritten in the first cell, is now having an understandable physical support. Now, it cannot be said that the first cell is a non-differentiated cell. It must be said now the first cell is knowing how to differentiate the progeny, the

cell progeny.

Q. Okay. And for me to understand -

A. To make it clearer, if I am looking at the mass of cell growing, I know by my own experience in my lab for twenty years that never a baby will form itself in our bottles because we are growing cells taken from the body. On the contrary we know that if the cell which is dividing is a fertilized zygote, a new individual is just now beginning to emerge.

Q. What ethical considerations do you have about freezing?

A. I think love is the contrary of chilly. Love is warmth, and life needs good temperature. So I would consider that the best we can do for early human beings is to have them in their normal shelter, not in the fridge. The fridge is not a second choice, I would say it's a third choice. And typically I would not be surprised that in a few years from now, this long way outside the female body which is artificial insemination and this long stay in concentration can will be considered as not very efficient. It will be much better to make graft of the tubes to repair the difficulty of the tubal incapacity, or to use antibiotics—new antibiotics to prevent special difficulty with the mucosa of the tubes, or find chemicals which will help find why certain couples, although they have normal production of cells, cannot manage to get fertilization, or to get implantation.

It's surely some chemical thing which is not yet discovered which will be the real solution. Then I would consider that the extracorporeal fertilization, it's, so to speak, an emergency proposal of medicine on the present stage of medicine, but it's not good treatment. The good treatment is yet to be found in each of the cases. It's not the final answer, so to speak, not at all. That is my feeling, but it's a feeling.

Q. One moment, please. Doctor, I would ask you this question, and I'm going to read it to you so I'll understand how to ask it. It has been stated that once you get to blastomeres and they are unequal in size, that nobody knows for sure why division of these cells might be equal in some conditions and unequal in other conditions. Do we now know why the unequal and equal nature exists?

A. That is a very difficult question. We know that normally, as I said, the stage of three cells is due to inequal division of the first blastomeres, and that seems to be the basic normal phenomenon. But why nature do

that it's still to be discovered, but it seem to be, the starting phenomenon. Then I would say that obviously there must be something written in the egg, telling the egg you split in two, then one of the cells split in two, then you can discuss together all three to know what to do, the three cells together. It's not a surprise, it's an obvious phenomenon known for a long time it was not explained at all, which has now found explanation. We know that in any typical chimera, made from different embryos, only three line of cells can manage to build an imago together. That means that the individualization is at the three cell stage.

Q. Within your knowledge, Doctor, can you tell us what we know and what we can tell about these human beings from three cells forward? What knowledge do we gain and at what rate do we gain it? Do you understand my question?

A No

Q. Okay. We have heard testimony that at three weeks you have got this, the nervous system starts at this stage.

A Yeah

Q. This starts when and it's been confusing, because we have tried to eliminate—we tried to identify body parts, we're thinking in terms, and you come to us with a different perspective. Can you tell us once again what it is we have and how it progresses in development?

A. Well, from the very beginning we have a embryo. We have first a zygote and a two cell embryo and then a three cell embryo and then a four cell embryo, and then eight, and sixteen, and all the power of two. This embryo, growing progressively, is inside the zona pellucida and suddenly at around six days or seven days it begins to "hatch." The zona pellucida is, in fact, the protection, or privacy, so that if they are twins, for example, they will not mix together because each of them is in its own zona pellucida.

At the moment the embryo begins to hatch and make trophoblast which will anchor itself on the mucosa, there is already so much commitments we cannot see. There is already so much committed to build the individual that it will not mix with a possible twin. Otherwise, in species in which you have a lot of pups in a litter of five, ten, like in kittens or in dog, if they were not protected, each of them at the beginning in their own plastic bag (in their own zona pellucida), they would not make different animals, they would mix and make a kind of chimera.

But when it's so well committed, when all the cells are so well committed to continue to cooperate with each other, then nature has invented that embryo will hatch and rupture the zona pellucida and begin to anchor on the uterus.

The second step, we can describe around twelve days after fertilization; that is the very beginning of the little line which cells begin to draw on the embryo; this little line will progressively become a kind of *gouttiere*—I don't know the word in English—and finally will close itself in a tube, and it will be the beginning of the neural tube.

Then well, let's say, what I should say more? I will describe the whole development of the imago, let's say at three weeks, the cardiac tubes will begin to beat, so that the heart is beginning to beat three weeks after fertilization.

And progressively you will reach the end of the embryonic period at two months after fertilization. At that moment the little fellow will be just size of my thumb. And it's because of that that all the mothers telling fairy tales to the children are speaking about Tom Thumb story because it's a true story.

Therefore, each of us has been a Tom Thumb in the womb of the mother and women have always known that there was a kind of underground country, a kind of vaulted shelter, with a kind of red light and curious noise in which very tiny humans were having a very curious and marvelous life. That is the story of Tom Thumb.

Well, after Tom Thumb is visible, that is, two months of age, it has two centimeters and a half from the crown to the rump, and if I had it—if I had him on my fist, you would not see that I have something, but if I was opening my hand you would see the tiny man with hands, with fingers, with toes. Everything is there, the brain is there and will continue to grow.

It's from that moment which is two months after fertilization, that we don't call any longer human being embryos, we call them fetuses. And that is very true to change the name just because it tell a very plain evidence: Nobody in the world looking for the first time at a Tom Thumb bag, looking at an embryo of two months of a chimpanzee, of a gorilla, of an orangutan, or of a man, nobody in the world would make a mistake just looking at him. It's obvious this one is a chimpanzee, this one is an orangutan, this one is gorilla, this one is a man.

The reason why we change the name, and we call it fetus, it means only something to be carried because the full form is already present. But the man was there before everybody could tell the difference with a chimp. For example, if we were taking one cell—I would not do that because it's dangerous for the being, but if we were taking one cell of a four cell embryo, it would probably survive and compensate. We know it in mouse. Now, let's take one cell of a chimpanzee embryo, of a human embryo, of a gorilla embryo and give it to one of my students in the Certificate of Cytogenetics in Paris, and if he cannot tell you this one is a human being, this one is a chimpanzee being, this one is a gorilla being, he would fail his exam; it's as simple as that.

- Q. When you see the development of three cells A. Yeah.
- Q. And if we used the most intricate computers, let's say, that would be used in our space program, NASA we call it, could those computers be programmed to keep up with what is going on?

A. No, totally not. The amount of information which is inside the zygote, which would if spelled out and put in a computer tell the computer how to calculate what will happen next, this amount of information is that big that nobody can measure it.

I have to explain that very simply. You have the two meters of DNA, one coming from father, one coming from mother, that it means ten to the eleven bits of information, just to spell out what is written on this DNA. If you add the subscript that I was talking about methylation, then it will increase this number by ten to the power four or to the power five. Thus, we will go very soon, just for the DNA, at ten to the fifteen. It's an enormous number. To give you an idea, just to print letter by letter all what it is written in the DNA of a fertilized egg, you would need, writing G, C, T, A, and all the string of symbols, you would need five times the Encyclopedia Brittanica just to spell out the DNA, five times Encyclopedia Brittanica. But nobody could read it. You could fit it into the computer. But now you would have to take care of all the molecules that are inside the cytoplasm which will recognize the message, which will send a message to the next cell. And to spell out this amount of information which is absolutely necessary, (otherwise no life would be possible), I think you would need a thousand, a million times more bits of information. No computer in the world would have a storage

enough Just to fill the amount of data. Now, to tell to the computer the algorithm to use it, nobody knows how to do it. You have to realize that this enormous information which makes a man is enormous compared to the information which makes a computer, because it's a man who has made the computer, it's not the computer which has made the man.

MR. CHRISTENBERRY: You may ask him. I would like to interject at first if the Court - while it's fresh on the Court's mind, would have any questions of the Doctor. He's used to facing a judge after he's told his side of the story, and sometimes we do that in our system.

THE COURT: I have no questions at this point.

MR. CLIFFORD: Thank you, your Honor.

## CROSS EXAMINATION BY MR. CLIFFORD:

- Q. Bonjour, Dr. Lejeune.
- A. Merci.
- Q. Now that we have exhausted my French, we'll hopefully proceed in English. Let me first thank you very much for being willing to come here to Maryville, Tennessee, to appear in this trial. I believe, in fact, you come at your own expense, is that correct?
  - A. Uh-huh (affirmative).
- Q. Now, please bear with me, Doctor, if you're not familiar with what I may be doing, in France they have civil law and we, as you may know, take our law from the British system, the common law. Please interrupt me if you're not sure where I'm going. Let me ask you this: Have you testified before in an American Court?
  - A Yes
  - Q. Could you tell me what testimony, what cases you have testified in?
- A. Well, in American Court I have testified especially on those questions. It was I don't remember the Court it was.
- Q. Do you remember maybe testifying in 1981 in the state of Maryland?
  - A. Yeah,
  - Q. You recall that?
  - A. Yeah, yeah.
  - Q. What was that trial about?
- A. Well, if I'm well remembering, the trial was about a baby who was inside the womb, a very different case. And if I remember exactly

the story because I am not a lawyer, you know, I was not invited giving my opinion about the case, but giving opinion about another question which was whether this baby who could have been, I suppose at that time, some - must have been three months old, was really a human being. It was a very simple question, but it had to be as well answered with the available knowledge at that time.

- Q. I believe, Dr. Lejeune, in that case the question was whether or not a woman should be allowed to have an abortion?
- A. I think the question was whether the husband should say he did not want the baby to be expelled. That was the question.
- Q. And I believe, and correct me, of course, if I'm wrong that in the proof of that case the child had a chromosomatic, chromosome defect which would likely lead...
- A. No, I don't know that. I've not been aware of that, I have not heard about that. It was not said at the trial, no.
- Q. In that case you testified, I believe, that in your opinion the fetus in that case was a human being?
- A. It was not my opinion. It was the teaching of all the genetics that I was giving, it's no doubt it's a human being because it cannot be a chimpanzee being, so it's a human being.
  - Q. And you opposed abortion in that case?
- A. I dislike to kill my—a member of my kin, no doubt. And beside that I'm a French Doctor, I have sweared the oath of Hippocrates. Hippocrates four hundred years before Christian era made an oath that, "thou shall not give poison, thou shall not procure abortion." It's very interesting for us doctors because at that time in which slavery was the law, at the time in which the father of the family was allowed to kill a baby at birth, or even later, he founded medicine by preventing new doctors to give poison or to give abortion. That was meaning that does not matter what the size of the patient; a patient is a patient. That is Hippocratic oath.
  - Q. I believe that perhaps the first commandment is first do no harm?
  - A. Thou shall not kill, yes, I have heard something about that.
- Q. Let me understand what your expertise is. You are obviously an expert in genetics.
  - A. Yes.
  - Q. Do you recognize the scientific field of embryology? Do you recog-

nize there is a scientific field called embryology?

- A. Oh, yes, no doubt.
- Q. Do you claim to be an expert in the field of embryology?
- A. I claim to be not entirely ignorant.
- Q. But do you offer yourself as an expert in the field of embryology?
- A. No, I'm not an expert in the field of embryology by itself.
- Q. Let me ask you if you are offering yourself as an expert in the field of psychology?
- A. In the case of genetics I would have said yes because I have been so much involved in so many cases that I have learned about human psychology more than I should have in the faculties.
  - Q. But you, I take it, do not claim to have a degree in the field?
  - A. No, I have not a degree.
  - Q. Do you claim to have expertise in computer science?
  - A. Partly, sir.
- Q. Do you claim to have academic credentials in the field of computer science?
- A. No, not academy credentials. I have written things which were agreeable to some academicians.
  - Q. Finally, do you claim any expertise in law?
  - A. Oh, not. I have some heredity about it, my father was.
- Q. You may be more of an expert than you wish you were. But you do not claim any academic training in the law?
  - A. Oh, no.
  - Q. Or experience with the law?
  - A. Experience, yes, a little experience.
- Q. Dr. Lejeune, I take it it has been known for quite a considerable length of time that the genetic material that started out in the ovum and the sperm combined, of course, into the zygote?
  - A. Oh, yes.
  - Q. How long has that been recognized?
  - A. It's difficult to tell because fertilization has been discovered by

Spallanzani, but he did not know about DNA, he did not know about chromosomes, then it was just the mixing of two cells. It was at the end of the 17th century. You asked me to tell you the whole story of genetics.

Q. No, no.

- A. I agree, but it will take a month.
- Q. Doctor, I'm asking you approximately how long it has been known by the science of genetics that it was the coming together of genetic material, regardless of whether the precise material was known by its nature or not?
  - A. I would say more than fifty years, going back to the early nineties.
  - Q. Early nineteen nineties?
  - A. Nineteen.
  - Q. 1920's?
  - A. Earlier than that. Eighteen, nineteen—I cannot explain.
  - Q. I think we would agree it's been a long time.
  - A. A long time. Three generations of students.
- Q. And I take it at some point it became understood in the field of genetics, that the genetic code or blueprint for the mature entity was contained obviously in that first cell?
- A. As I said it was known by inference, the inference was made, but the demonstration was not there.
  - Q. Of course, often we refer in science to the concept of a theory.
  - A. Uh-huh (affirmative).
- Q. A theory being, of course, and you correct me if I'm wrong, a proposed explanation of how a system, in this particular case genetics, works, and then we do experiments to see if our theory holds water or whether it needs to go back into the shop?
  - A. Yeah. I would say model.
- Q. Model, yes. Now, in genetics, I would take it, it has been believed on the theoretical level, all of the genetic material, all of the information as you referred to it was in the zygote, that has been believed theoretically for a very long time?
  - A. No doubt.
- Q. And that what you have described to us at such length today has been the working out of the precise mechanism of how that works?
- A. In a sense, yes, but it's a little change that previously it was an inference and now we begin to have a demonstration. For a scientist it makes a lot of difference.
- Q. Of course. But if I had come to you, Dr. Lejeune, ten years ago, and I had said, please help me with my genetics, Doctor, do you believe that all of the information that's necessary for the development and mat-

uration of a chicken-

- A Yeah
- Q. Is contained in that zygotic cell we first see in the egg—
- A. Yeah.
- Q. Would you have told me that you believed that?
- A. Well, to be perfectly correct, I would say I believe it; now I would say I know it. That's a small difference.
- Q. But I take it it would be true that, again, ten years ago had I asked you this question about the chicken that your level of conviction about all that information being in the zygotic cell would have been very high?
  - A. Yes, pretty.
- Q. And certainly if in genetics we had discovered that some information was coming into cells from some other source than the genetic material and having an impact, we would have all been stunned, scientific world would have been stunned?
  - A. Yeah, yeah.
- Q. Now then, you described at great length this morning, the precise nature of the development of embryos as far as the mechanics of the genes and chromosomes and information that is passed from each gamete into that zygote, and you, of course, described it as an incredibly complicated procedure?
  - A. Uh-huh (affirmative).
- Q. I take it that your questions, you were answering specifically about human embryos, zygotes, sperm, ova, but I take it that is also true of chimpanzees, gorillas, mice, they are in those species it's also a very complicated fascinating complex mechanism?
  - A. Yes, but not exactly the same mechanism.
- Q. Certainly. I think I have read somewhere, and I'm sure if I'm not right you'll correct me, that genetically as far as the chromosomes, as far as the contents of the DNA in the chromosomes, for instance, man, homo sapiens, and the higher mammals, particularly the gorillas, chimpanzees help me look for that species.
  - A. Orangutan.
  - Q. There is a remarkable similarity?
- A. Well, it depends what you remark. You can remark the similarity, or you can remark the differences. And difference is incredibly interesting. I don't know where you want to ask me.

Q. Well, I have heard it said or read that approximately ninety-eight percent of the genetic material that is found in a chimpanzee or gorilla is identical to what may be found in a human being.

A. It has been written, and it has been written by statistical calculation of the DNA but not about the meaning of it. Now, what makes ninety percent similarity in the number of words in two different texts? They can mean something very different by the way the sentence are made. It's what makes the difference between the species.

Q. But there is a similarity in the DNA?

A. Oh, yes, exactly like the similarity in the fact they have two hands like us, not the same thumb, but they have hands, we have feet, but they are the most similar to us, no doubt. It's no surprise that the DNA also has some similarity.

- Q. But the same basic process that we observe in human beings we also observe in chimpanzees?
  - A. Oh, yes.
  - Q. Mice?
  - A. Mice, I would not go that far but partly.
  - Q. Mice have zygotes?

A. Oh, yes, I mean—I want to make clear when we speak about basic mechanism we have to know what we mean by basic. For example, I told you the enormous importance of methylation of the DNA we discovered those years. But, for example, Drosophila does not methylate the DNA.

Q. That's the fruit fly?

A. That's the fruit fly but it's a very complex organism. It's makes a differentiation of cells that makes me believe that with methylation we have unveiled one of the tricks used by nature, but there are other tricks we are still using, we men, that were sufficient to build a Drosophila but would not be sufficient to build the human being. I would not agree that basic mechanism are the same in the whole living system. Surely it's much more complicated to build a human being, to determinate on one cell the wiring of his brain so that he will some day invent machine to help his own brain to understand the law of the universe. There is something peculiar to the human beings compared to others, you know. I will tell you one thing, very simple. I'm traveling a lot, and as far as I can I visit two points which are very important for me when I go in a

new town. One is the university and other is the zoological garden. In the university I have often seen very grave professors asking themselves whether after all their children when they were very young were not animals, but I have never seen in a zoological garden a congress of chimpanzees asking themselves whether their children when they are grown up will become universitarians. I feel there is a difference somewhere.

- Q. Doctor, I forgot to ask you a couple of questions about your expertise, and please pardon me for having to come back, but I take it from your testimony when Mr. Christenberry was asking you questions that you have not worked in the field of what is called in this country in vitro fertilization?
  - A. No.
  - Q. I believe in France there is a different term for that.
  - A. No, it's called also fecundation in vitro.
  - Q. But you have not been involved any in in vitro fertilization clinics?
  - A. No.
- Q. You have not been asked to advise in vitro fertilization clinics on matters of genetics or anything else?
  - A. Not directly, but I have advised a lot of my patients who consider whether they should have or not this type of investigation.
- Q. I suppose I should ask you this. I understand in vitro fertilization is done in France?
  - A. Oh, yes.
  - Q. How long has this procedure been carried out in your country?
- A. Well, I think Amanda has been six years, now, six years and a half, she was the first test tube baby in Paris. I think she is six years, seven years maybe.
- Q. Let me see, Dr. Lejeune, if I understand the point you are making this morning. It is your belief as a geneticist, that all the information that is necessary to create a human being, a unique individual human being, we could go in and find in a nucleus of a zygote?
- A. No, I never said that. In the zygote I would say, not in the nucleus. You need the nucleus and whole cytoplasm. The zygote cannot be reduced to the magnetic tape. We have also to have the tape recorder working.
- Q. We can take if we wished on a perhaps philosophical scientific experiment here, we could take a zygote, look at it, look at the DNA,

look at the other structures in that one cell and assuming that we had the knowledge to be able to do it, tell everything about that human being?

A. I would say yes, beside accident which cannot be predicted, but I would say no machine is big enough to put in it this information, it is purely hypothetical.

- Q. Right.
- A. It's not practical.
- Q. We're engaging on a philosophical experiment.
- A. To be frank and to give you my belief I'm not sure we'll be any time able to build a machine big enough to do that job. There is no evidence about that.
  - Q. Dr. Lejeune, then theoretically -
  - A. Otherwise this machine would be a fertilized egg itself.
- Q. But if we had such a machine on our philosophical experiment, we could look into the zygote, and we could tell what color hair this person would have?
  - A. No doubt.
  - Q. What color eyes this person could have?
  - A. Yes.
- Q. Could we look into the zygote and, either in the structure or chromosome or DNA, and tell what language the person would speak?
- A. I don't believe so, sir, because language is a basic phenomenon built in. We could say, in your example, theoretical example, this being will be able to speak, but he will speak Japanese if he is in Tokyo. But we could say conversely with your same system, looking at a chimpanzee first cell, this being will never speak.
- Q. Could we look into the zygote, into the genes of the chromosomes, into the DNA structure and tell whether this individual would like the music of Beethoven?
- A. Partly, yes, sir, because we could in your hypothesis be sure that he is perfectly normal, and if he is perfectly normal he would like Beethoven.
- Q. Dr. Lejeune, do you intend to investigate to find the defective chromosomes for those who do not like Beethoven?
  - A. No, no, but you were asking me about normality.
  - Q. Could we look into the zygote, into the chromosomes, DNA, into

the balance of the structure, and tell whether this individual would grow up to be a person of liberal or conservative persuasion?

- A. Well, even looking at the grown-up I cannot tell that, sir.
- Q. Of course, as you realize, Professor Lejeune, I'm trying to make, I guess, a philosophical point, and that is while some information, a great deal obviously of information is contained in that zygote, that there would obviously be things we could not detect with our philosophical machine about the individual when he or she was twenty, forty or sixty?
  - A. Uh-huh (affirmative).
- Q. Dr. Lejeune, let me come I guess to what is the heart of the matter here and the heart of your testimony. You mentioned using the word conception and defining it in two different ways, defining it as the point where a zygote comes into existence and the point where we have a thought, and really would you agree with me, Dr. Lejeune, that what we're concerned about in this case and in the great debate about human life are definitions? How do we define a human being?
  - A. Oh, yes.
- Q. Now, of course, when you define a human being, what we're assuming there is that a human being has certain rights whether God given rights or legal rights?
  - A. That is not what define a human being.
- Q. Of course not. I understand. But I take it and I will ask you directly, Dr. Lejeune. You have referred to the zygote and the embryo as quote 'early human beings.'
  - A. Yeah.
- Q. Do you regard an early human being as having the same moral rights as a later human being such as myself?
- A. You have to excuse me, I'm very, very direct. As far as your nature is concerned, I cannot see any difference between the early human being you were and the late human being you are, because in both case, you were and you are a member of our species. What defines a human being is he belongs to our species. So an early one or a late one has not changed from its species to another species. It belongs to our kin. That is a definition. And I would say very precisely that I have the same respect, no matter the amount of kilograms and no matter the amount of differentiation of tissues.
  - Q. Dr. Lejeune, let me make sure I understand what you are telling

us, that the zygote should be treated with the same respect as an adult human being?

- A. I'm not telling you that because I'm not in a position of knowing that. I'm telling you, he is a human being, and then it is a justice who will tell whether this human being has the same rights as the others. If you make difference between human beings, that is, on your own to prove the reasons why you make that difference. But as a geneticist you ask me whether this human being is a human, and I would tell you that because he is a being and being human, he is a human being.
- Q. And I take it you would believe from your testimony today that it is morally very wrong to intentionally kill a zygote?
  - A. I think it's no good, it's killing a member of our species.
- Q. And it would be the same as if we were to kill twenty years later the person, human being, that the zygote would become?
- A. It's difficult to tell because you ask me a justice question; I'm a biologist.
  - Q. Now, but those are your beliefs?
- A. My belief is that it's no good to kill a member of our kin, very simple belief.
- Q. There is not much difference to you between whether it's at the zygote level, the fetus level?
- A. There is a great difference as they have not the same age. Some of them are very youthful ones, others are old ones. But it doesn't make for me a great difference, in the true sense of the fact it is discarding a member of my species. It's the only reason why I don't kill people, it's because they are human.

Otherwise, some of them—some difficulty in life...

- Q. Dr. Lejeune, you, of course, are a scientist, and I'm sure that in the large part, you base your convictions and feelings upon your knowledge of genetics and other sciences. Will you concede, Dr. Lejeune, there are other very distinguished scientists, men who are as learned as you, who have thought and who have access to the same scientific information that you have, who come to a different conclusion?
  - A. About what?
  - Q. About the moral rights or moral duty to the zygote.
- A. Oh, in that case yes, but not about the fact it's a human being or not.

- Q. I understand that.
- A. But that's the point.
- Q. I understand that. There are even, I believe, individuals in your own country who differ with your view of what ethical duty is owed to the zygote.
- A. Well, I think in France we are divided in forty million opinions about that.
- Q. But you do recognize there are men in your own country of great learning who differ with your view on the ethics of the embryo and zygotic levels?
  - A. Oh, that's obvious.
- Q. I believe, Dr. Lejeune, in the earlier—or I'd say slightly mid-nine-teen eighties, your country set up a commission to study the ethical concerns raised by the technology of in vitro fertilization. Are you aware of the national commission?
- A. Well, you can call it a national commission, it's specially appointed by the president of France, so all the people have been nominated by the president. It's a presidential thing. It's not really a national thing. It's called national, but it's not elected so it's not representative at all.
  - Q. Well, I believe it was called national commission.
- A. They have called them national commission, but you have to know they are not representative. They are not elected by bodies.
  - Q. Were you on that committee?
- A. No, and I can tell you why, because I'm a member of the *Academie des Sciences Morales et Politiques*, moral and political sciences, and normally a member of this academy should have been appointed ex officio. Deliberately in the constitution, the by-laws of this committee, our academy was not put on it because they knew that the *Academie des Sciences Morales et Politiques* would appoint me. Just an interesting phenomenon.
  - Q. So you feel -
  - A. I don't feel anything about it. It's just a fact. I don't feel anything.
  - Q. You believe you were intentionally kept off this committee?
  - A. I believe that our academy was kept off, no doubt.
- Q. Since they knew that it would be you that was appointed you were intentionally kept off?
  - A. That is a scientific hypothesis, not demonstrated.
  - Q. But you do, I take it, recognize that the members of the national

commission that were appointed were distinguished persons in their fields?

- A. I have never seen somebody in a committee who is not distinguished, sir.
- Q. And regarding those individuals even if you disagree with them, I take it you would recognize their integrity?
  - A. Case by case.
  - Q. Case by case.
  - A. Case by case.
  - Q. Do you know all the members of the committee?
  - A. No.
- Q. But you would, in general, agree they are persons of integrity and learning?
  - A. Case by case.
  - Q. Are you familiar with the report of the national commission?
  - A. Yes, I have read it.
  - Q. You have read it?
  - A. Yes.
- Q. The report of your national commission expresses some very grave reservations about the technique we know here as cryopreservation. Are you familiar with that?
  - A. Uh-huh (affirmative).
- Q. Let me ask you this, Dr. Lejeune. Do you share those reservations about cryopreservation?
  - A. I have many reservations. Probably it's not very good.
- Q. We heard testimony from Dr. Shivers, who was the embryologist who worked in this case, that with cryopreservation there was a statistical loss of the frozen embryos in the range of, I believe he said, fifteen to thirty percent.
  - A. He's a better specialist about this attrition percent than I am.
- Q. So that you can expect, therefore, by the rules of statistics if we freeze one hundred pre-embryos, and we come back to thaw them at any point, we know the odds are very, very high we'll only have seventy, seventy-five or eighty?
  - A. Uh-huh (affirmative).
  - Q. We knew that before we put them in the frigidaire?
  - A. Yes.
  - Q. Would you regard that as an intentional killing of embryos?

A. No, but I would consider that it's making the embryo running a risk, and whether this risk was in the best interest of the embryo or not is an open question. I explain. When we do an intervention in a baby for a heart disease, in some intervention we know that around twenty percent of them will be killed by the intervention. And in this case the intervention is made only if we know if we don't operate the child will be killed by the disease at ninety-nine percent of probability. Then we say in the real interests of this patient the best for him is to operate even if the operation is still dangerous, the danger is much greater if we don't operate. That is a way you can make indeed some choices in medicine which are dangerous but which are, in fact, the best that you can do in the interest of this particular patient.

Now, in the case of an embryo, I am not sure it is in his own interest that this choice is made.

Q. In fact it's made in a choice that as Dr. Shivers and Dr. King testified previously, that it merely gives the woman a better chance since she won't have to go through the stimulated cycle having shots and medication, hormones injected into her, it simply gives her a better chance of becoming pregnant.

You're aware of that?

- A. I am aware of that.
- Q. So in cryopreservation we know that we are going to kill ten, twenty, thirty percent of these early human beings merely so the woman has a better chance of getting pregnant?
- A. That would be one of the reservations that I would have, but I dislike you say you kill. It's not killing.
- Q. If we were to take the members, the individuals seated in the jury box and I were to have a room I could put them in where we would know that thirty percent of them would come out dead, would you not agree I would be guilty of murder?
- A. Well, it depends, sir, because if the room you were talking about were a shelter during a bombing time and if remaining in that room all of them will be dead, but in the shelter some of them will survive, even if thirty percent of them will be dead, you did well. So it depends on the reason why you did it.
- Q. What if I did it not to take them out of a position of greater harm but merely for the benefit of some person other than themselves, not

one of them but Mr. Palmer?

- A. I suppose he would refuse you do it, I'm sure.
- Q. You recognize the ethical and moral dilemma I'm raising, of course?
- A. No, I don't recognize it, sir.
- Q. You don't?

A. No, because you use the word killing. And if you take a embryo which has been frozen and you put him briskly at normal temperature so that he will die, you are killing the embryo. If you are freezing the embryo you are not trying to kill him, if I understand what you have in your mind is to help the embryo surviving so he could be implanted in the womb of the mother. So your technique is not good because you lose part of them, but you are not killing.

And I would not say that my colleagues who are freezing embryos are killers. It's not true. Otherwise, maybe it's because I don't understand English, but I would not use the word kill.

- Q. The national commission in its report used a term which in English is supernumerary?
  - A. Yeah.
- Q. Referring to supernumerary embryos, referring particularly to cryopreservation, embryos which are not to be used with a particular patient, woman, who has undergone IVF. Are you familiar with that term, first of all?
- A. I know that term, and it's a wrong term. Can you tell me a man who is supernumerary?
  - Q. Maybe just a lawyer.
- A. I don't believe that, as a man he is not supernumerary. Maybe—I'm not saying anything.
- Q. But that is the term that is used in the report of the national commission?
- A. Yes, but it is a very misleading term, exactly the same thing as preembryo. You change the name because you will change your behavior, and I dislike that.

I like to call a cat a cat, and a man a man. It's Wendell Holmes who said a man is a man is a man.

- Q. And a dog a dog and chicken a chicken?
- A. No, but "a man is a man is a man," is a saying in your country.
- Q. Well, rather at this point debating whether the term was wise or

not, I'm asking if that was the term that was used.

- A. Right.
- Q. Now, as I think I asked you and you told me awhile ago, the French commission did have reservations about the whole process of cryopreservation, because, of course, it leads to the precise problem that we have in this case. Of course, you know that regular IVF the woman is implanted or pre-embryo excuse me, the embryos are inserted within forty-eight hours?
  - A. As soon as you can, yes.
- Q. Whereas with a cryopreserved embryo, it might be six months, it might be a year. In fact, I believe that you are aware that the French guidelines provide for a year for the first child, recommend that a cryopreserved embryo should not be saved longer than twelve months for the first child?
- A. Could I tell you because you speak about what is said in French that this committee is consultative. It means that what he says as guidelines is for himself.
- Q. But these are the guidelines published by the national commission that was appointed by your government.
  - A. It's consultative. It has no law, no force; just an opinion.
- Q. But you are aware that the commission recommended one year for the first child?
  - A Yes
- Q. And then with an extension of an additional twelve months if a second child was desired?
  - A. I don't follow you.
- Q. One question that was raised in the commission was how long you should keep a cryopreserved embryo?
  - A. Yes.
- Q. Now, and the committee recommended that it should not exceed twelve months without very special circumstances and without a great deal of thought by people concerned with the ethical dilemma of IVF, do you recall that?
  - A. I know about that, but I don't see the meaning.
  - Q. I'm just asking you about the report at this point.
- A. Yes. Nobody knows from where it was coming, the time of one year. Out of the air?

- Q. Now, the French commission recognized that one of the dilemmas that was posed by cryopreservation again was the open ended time, time during which, as in this case, things could change, is that correct?
- A. I have to be very precise, I don't know by heart the whole document you are talking about.
- Q. I'm not going to ask you to quote it. But let me ask you this: are you aware that the national commission of France that spoke on this subject recommended that in the case where the project of the couple, that is, the IVF project of this couple is abandoned in the meantime, and that meantime refers to cryopreservation being used or is unfeasible because, for example, of the separation of the couple, the only solution retained by the committee by way of the least evil consist in the destruction of the embryos with the reservation of the possibility of donation for research.

A. I'm not aware of that at all, sir, because the consultative committee said it would not give any indication because they have not reached any opinion. I don't know what document you are talking about, but the one I have read was not this one. If you talk about this document, the opinions saying that it's better to kill the frozen embryos, it's just in my opinion wrong, I disagree with it.

MR. CLIFFORD: Your Honor, may I approach the witness?

THE COURT: You may.

BY MR. CLIFFORD:

- Q. Let me show you a page here which unfortunately for me is in French.
  - A. That's good for me.
  - Q. And ask if you could read the title of the document?
  - A. (Reading in French.)
  - Q. Could you -
- A. I'll try to make a translation. Advice concerning research on human embryos in vitro and their utilization for medical and scientific purposes.
  - Q. Could you continue to read the page? If you would rather not—
  - A. Well, what interest?
  - Q. Just the headings.
- A. Recommendation to the use of in vitro fertilization as answer to infertility it's very long.
  - $Q. \ Well,$  that is, in fact, the report of the national commission, is it not?

- A. Well, I'm sorry, sir, but it's not printed. It's something made on a computer. I don't see any important document there because it's—probably it has been a project of it, but it has not been published as a final advice because as I know, what I have heard on television, they said they have not reached an opinion on that. I'm sorry, but it doesn't matter anyway. It's a consultative party.
- Q. I'm somewhat surprised by that answer, Dr. Lejeune, because I'm given to understand you can correct me here in December of 1986, a committee of distinguished French scientists made their report to the government. The report was started 1983.
- A. No, no, there is no final advice given by this body on this particular problem. They have discussed it, and they said we will continue to discuss it. as far as I know.
  - Q. As far as you know?
  - A. Uh-huh (affirmative).
  - Q. You are not familiar with the national commission report?
- A. When it is published, yes, I read it, but that is not published matter. I don't see where you want to go with this question.
- Q. In fact, Dr. Lejeune, will you agree with me, sir, that there are distinguished, learned men and women in your own country of France who take the view that when a couple separates or is divorced that any embryos that may be in cryopreservation should be discarded or destroyed?
- A. That there exists people thinking that, no doubt, because if they say that it's probably because they think it. But it does not prove they're right.
- Q. Of course, not. Of course, not. And, of course, I take it because you have your feelings, you would concede that it does not prove that you are right?
  - A. On that, I would not agree entirely with you.
- Q. Okay. All right. Would you agree with me, Dr. Lejeune, that really, of course, we're talking about what will become in this Court a legal question!
  - A. Yeah, partly.
- Q. And that legal question is what quote 'rights,' if any, an embryo should have legally?
  - A. Disagree with that. I'm not thinking about the rights of the embry-

- os I'm thinking about the duty of the parents and of society. Duty is a different thing.
- Q. Lets talk about duty because that is a word that courts can understand.

You believe, in fact, there is a duty, and a strong duty, to bring, or attempt to bring an embryo to term and birth?

- A. The embryos have been frozen for that purpose.
- Q. I'm not so much talking about the particular seven embryos in this case, but any embryo that's been produced by IVF or in vitro fertilization.
- A. It if it has been produced, it has been produced in the view that it could be put somewhere in which it could be developed, that is the womb.
- Q. So you would believe that the man has a duty to bring it to life, bring it to birth rather, is that correct?
  - A. What man?
  - Q. This man, the man who is the donor of the sperm.
  - A. Yeah.
  - Q. That he has a duty, a moral duty to bring it to term?
  - A. Yes.
  - Q. And you would believe that the woman has such a duty?
- A. I would believe that if she was not feeling having that duty, she would not have accepted the beginning of the process.
  - Q. Now, you, of course, are best known for your discovery of the chromosome connected with Down's Syndrome?
  - A. That is long ago.
- Q. You have researched since that point other conditions or diseases, abnormal conditions which relate to the chromosomes that are passed on by heredity, is that correct?
  - A. Yeah.
- Q. If I understand what you also told us this morning, it is possible to tell at the zygote level whether
  - A. Not at the zygote level.
  - Q. At the embryo level?
  - A. Yes, and late embryo.
- Q. Late embryo level whether or not this early human being will suffer from Downs Syndrome?
  - A. Oh, yes, yes.

- Q. And as
- A. In fact, it's essentially for a fetus. It is after two months.
- Q. But there is no reason that you know of, I take it that we could not at some point in the not very distant future even make that diagnosis in the embryo level?
  - A. In some future, might not.
- Q. I take it from your testimony, Dr. Lejeune, you would believe that even if the embryo, that early human being, was going to suffer from Down's Syndrome or some other very serious condition or abnormality, that it would still be the duty of the mother and the father to brings it to term?
- A. I would say the duty is not to kill, and that duty is universal. And I would say that if by technique I was looking at the chromosomes of this baby, and I see the chromosomes abnormal, say for example, he has a trisomy twenty-one, I would say that this is the disease. But if I look at the other forty-six chromosomes that are normal I would see the mankind of the baby. And I don't condemn a member of my kin.
- Q. You would believe that the donors of that embryo would have a moral imperative, a duty to bring that
  - A. Not to kill the embryo.
  - Q. That early being into a later stage of human being?
  - A. Not to kill him.
- Q. Now, let me drop back down to a bit more normal level of questions, Dr. Lejeune. Bear with me. Let's take a embryo in general, just statements that we can make about all embryos that would be true. That there is obviously a genetic contribution both by the woman and by the man?
  - A. Yes, there is a contribution by the father and by the mother.
  - Q. By the father and by the mother?
  - A. Yeah.
  - Q. And without the contribution of either there would be no embryo?
  - A. Correct.
- Q. So on that sense the contributions of the mother and contribution of the father
  - A, Are both necessary.
  - Q. Are equal?
  - A. No, they are not equal. They are different, but they are both necessary
  - Q. Both -

- A. Necessary, absolutely.
- Q. And now let's talk about a particular embryo, early human being, and let's look at this early human being when it's became a later human being.

Obviously, as far as the genetic makeup of this particular individual, it might be, in fact, more strongly influenced by the mother's contribution, at least in some areas, or might be more strongly influenced by the father's contribution.

- A. Who knows.
- Q. Who knows. And, of course, unless we were to examine it, we wouldn't know.
  - A. Uh-huh (affirmative).
- Q. And certainly you are not in this Court saying that women contribute more genetic material?
- A. In fact, I'm obliged to say, yes, they contribute more genetic material. For example, all the DNA on the mitochondria is coming from the mother, not from the father. Makes a little difference. It's a fact.
  - Q. It's a fact?
  - A. It's a fact.
  - Q. But it's also a fact without both contributions—
  - A. They are both necessary, no doubt.
- Q. But you are not here today saying, Dr. Lejeune, that the reason, the sole reason that Mrs. Davis should win this case and prevail is because her DNA contribution may have been slightly more than Mr. Davis' DNA contribution?
  - A. I don't understand your question. I cannot see how you can solve a judicial problem with DNA contributions.
- Q. You are saying that it's your opinion that these embryos should be allowed to develop in this young lady because you believe they're early human beings?
- A. I do believe they are early human beings, and I have been told that their mother offered them shelter. Who could refuse that?
  - Q. But not because of DNA contribution?
  - A. Because they're her own flesh.
  - Q. Well, they're his own flesh, too, aren't they?
  - A. Yes.
  - Q. And obviously he will be their father forever, for the rest of his life

if there are children?

- A. (Witness nods head in the affirmative).
- Q. You will not deny that would have an effect?
- A. I would not deny anything.
- Q. I take it, Dr. Lejeune, therefore, if you believed that a embryo was not a human being as that term is used in ethical or legal or moral or philosophical or religious way that your view of this case may well be different?
- A. Totally. If I was convinced that those early human beings are, in fact, piece of properties, well, property can be discarded, there is no interest for me as a geneticist. But if they are human beings, what they are, then they cannot be considered as property. They need custody.
- Q. What it really turns on is what philosophically, ethically, legally that embryo may be. In your mind, sir, you have come to the very firm conviction that the early embryo or that the embryo is a human being, early human being, as you described it?
  - A. Yes.
- Q. And you do recognize in other men's minds, after long and deep thought, learned men, they come to the opposite conclusion you do?
  - A. No, I don't agree with that.
  - Q. You don't agree with that?
- A. I have not yet seen any scientist coming to the opinion that it is a property. It is what is the case. It's whether they are property that can be discarded, or whether they're human being who must be given to custody. That is it. You ask my question, I answer precisely; I have never heard one of my colleagues we differ on opinion of many things, but I have never heard one of them telling me or telling to any other that a frozen embryo was the property of somebody, that it could be sold, that it could be destroyed like a property, never. I never heard it.
- Q. Just so I understand what you're telling us, I take it, Dr. Lejeune, from your testimony that you would be opposed to abortion?
  - A. Oh, I dislike to kill anybody. That is very true, sir.
  - Q. You would believe that abortion should not be legal?
- A. That is another point which is different. I think abortion is killing people, and I think in a good jurisdiction would make those killing people become rare.

You cannot prevent everything.

- Q. I take it, again, your basis of that belief would be that the fetus or embryo is an early human being?
  - A. Exactly. If it was a tooth, I would not worry about it.
- Q. Finally, Dr. Lejeune, I'd like to thank you very much first for coming here to Maryville, Tennessee, to share your scientific and philosophical views with the Court. I hope that you enjoy your stay and that your trip back is enjoyable. I have only one final question for you. Okay? What is this?
  - A. Well, from here I suppose it's an egg, but I'm not sure.
  - Q. Let me get a little closer.
  - A. It looks like an egg.
  - Q. It's an egg?
  - A. It looks like.

MR. CLIFFORD: Thank you, Doctor, I thought you were going to tell me it was an early chicken.

THE WITNESS: Oh

MR. CLIFFORD: I have no further questions.

THE WITNESS: Your Honor.

THE COURT: You may respond, if you wish.

THE WITNESS: Yes, I would respond to that because I have never pretended that I could see through a shell. I don't know if it's has been fertilized so I cannot know whether it's an early chicken.

## BY MR. CLIFFORD:

- Q. All right. Let's talk about the difference for a moment, If I had in this hand a live chicken, would you agree with me if I were to take it and squeeze its head that it would feel pain?
  - A. Oh, probably.
  - Q. That it will be frightened?
  - A. Yes.
- Q. And it would suffer psychological, if you can use that term with a chicken, stress?
- A. I'm not competent in psychology, you told me, and especially not about chickens.
- Q. But if I take this egg and assuming it is fertilized I wouldn't really do this, Jay but if I were to crush it in my hand, this egg would not feel pain, it would not be aware in the slightest of what was happening to it?

- A. Yeah. But it would be still a chicken and only a chicken.
- Q. I thought you told me it was an egg?
- A. You told me it was a chicken.
- MR. CLIFFORD: No further questions.
- (A brief discussion was held off the record.)

CROSS EXAMINATION BY

MR. TAYLOR:

- Q. Dr. Lejeune, I have just a very few questions. You testified earlier that in the case of freezing human embryos, the temperature is lowered only to, I think, a hundred and eighty or ninety degrees below centigrade, is that correct?
  - A. Yes, generally.
- Q. And because that is not absolute zero there are still certain processes that continue within those embryos?
  - A. Very slowly.
- Q. And because of that, it is your opinion that life or the processes are not suspended completely, and therefore the embryo continues to age or develop, is that right?
- A. No, it does not continue to develop, but it can age in the sense of losing some properties because of the agitation of the molecule and not being able to repair it. It's the reason why if you freeze cells, ordinary cells in tissue culture, and if you thaw them, after one month you will get ninety percent groove, after ten years you will get fifty percent, so eventually some of them have died in the process.
- Q. Is it then your opinion if these embryos are left in this frozen condition indefinitely, ultimately they will perish?
- A. If they were to be protected for a long time, I would put them in liquid hydrogen, but it will cost very much.
- Q. If they're in liquid nitrogen which is not absolute zero, is it your opinion that they would ultimately perish?
  - A. I cannot tell time but ultimately.
- Q. Is it your opinion that the ultimate effect of storage in cryopreservation ultimately would have the same effect as destroying them now?
- A. In the ultimate, yes, but I dislike to speak about very long time because I'm not sure of what would happen in between.
- Q Yes, sir. You indicated that you do not object to in vitro fertilization as a process, do you?

- A. I do not favor it for theoretical reasons. I guess it's a trick we use now in the present stage of knowledge, but it's not the best answer. If you read the newspaper it seems to be the last word about helping reproduction, and I guess it's a wrong idea. But that is a technical opinion.
- Q. Even though it may not be the ultimate solution, the ideal solution, you would concede that many, many infertile couples have been helped by in vitro fertilization, would you not?
- A. I would consider some have been helped, but the number that have been helped by other methods is much greater. But some have been helped, no doubt.
- Q. Doctor, you indicated that one of the reasons you objected to cryopreservation was because there is a mortality rate, certain percentage of the embryo do not survive the process, is that correct?
- A. It's not only that. That is one of the reasons, but it's not the only reason.
- Q. Are you aware, Doctor, in a normal cycle, a natural reproductive cycle that as many as sixty percent of the ova produced by a mother undergo actual fertilization? Are you familiar with that particular statistic?
  - A. No, I don't understand what you mean.
- Q. We have been told that as many as sixty percent of the eggs produced by a mother may be actually fertilized, but statistically only about twenty-five actually result in a birth.
- A. You mean about the early death of early human beings. Well, it has been a very disputed field. To the best of our knowledge, we can rely on experimental animals because we can look at the number of yellow corpus which develops on the ovary and tells us how many eggs have been laid and look at the litter, for example, in mice or any other animals. It seems that thirty percent of the conceptus die, but that more than sixty percent of conceptus come to birth and to normal that has been established in many wild animals. Then it seems that the number of early deaths has been overestimated recently in our species. I would guess it around the order of thirty percent. Some of them said sixty percent—I would guess myself it's around closer to thirty than to sixty, but that is
  - Q. You do recognize -
  - A. A sizable number.
  - Q. You do recognize, do you not, though, Doctor, that when a man

and woman attempt to have a child by normal sexual intercourse, there is a percent of embryo human beings, in your terminology, that are created that never result in a birth; that is a risk they undergo?

A. It's difficult to answer your question because some of those fertilizations are probably abnormal fertilizations that can be early cysts and what we call empty cysts which are probably not really true fertilizations. It is very complex, but I agree with you that the road of life is dangerous, even at the very beginning.

Q. I guess my question is, Doctor, then even in natural intercourse trying to achieve a pregnancy, there are going to be some risks that some of the embryo will not survive just like in vitro fertilization?

A. Yeah.

Q. Finally, Doctor, as I understand your testimony here today, if you were advising his Honor on a solution to this very troublesome problem, your first preference would be that the embryo be returned to the mother, Mrs. Davis, in this case, is that correct?

A. I would go step by step, if you ask me. May I, your Honor? THE COURT: Yes, you may.

THE WITNESS: I would first say it's not a property so they must not be destroyed. Secondly, they have been put into suspended time in the hope that some day they will be given shelter by their own mother, and their mother offers them shelter. I don't see any reason not to grant it to them and to her.

## BY MR TAYLOR:

Q. Let me take that one step further. If his Honor should decide for some reason that it is not appropriate that Mrs. Davis, the mother, should have these embryo, would you then agree that the second preference, the second best solution would be to donate them to some other couple, some other mother who would bring them into being, or attempt to bring them into being?

A. I would agree with that because that would preserve the life of the embryos, but then if you agree with that, you are coming back to the Solomon decision. The true mother is the one who prefer the baby given to another than the baby being killed. Then I would suppose that the justice would be on the side of Solomon.

MR. TAYLOR: We all hope his Honor has the wisdom of Solomon. Thank you, Doctor.

THE COURT: Do you have anything?

MR. CHRISTENBERRY: No, thank you, your Honor.

THE COURT: Any recross?

MR. CLIFFORD: No, your Honor.

THE COURT: Dr. Lejeune, you may come down and have a seat over

here with Mr. Palmer and Mr. Christenberry.

(The witness was excused.)

IN THE CIRCUIT COURT FOR BLOUNT COUNTY, TENNESSEE, AT MARYVILLE, EQUITY DIVISION (DIVISION I)

JUNIOR L. DAVIS,

plaintiff,

vs. No. E-14496

MARY SUE DAVIS,

Defendant,

VS.

RAY KING, M.D., d/b/a

Fertility Center of East Tennessee,

Third Party Defendant.

OPINION OF THE COURT

IN THIS DOMESTIC RELATIONS case, the only issue before the Court is the disposition of seven cryogenically frozen embryos maintained by the Third Party Defendant and the product of in vitro fertilization undertaken by the Plaintiff and the Defendant.

THE CASE is one of first impression.

IN ITS OPINION below, the Court has made certain findings of fact and conclusions of law resulting in judgment.

THE SALIENT findings, conclusions and the judgement are summarized as follows, to-wit:

- (1) Mr. and Mrs. Davis undertook in vitro procedures for the purpose of producing a human being to be their child.
  - (2) The seven cryogenically preserved embryos are human embryos.
- (3) American Fertility Society Guidelines are for intra-professional use, are not binding upon the Court, but are of probative value for consideration by the Court.
- (4) The term "preembryo" is not an accepted term and serves as a false distinction between the developmental stages of a human embryo.
- (5) From fertilization, the cells of a human embryo are differentiated, unique and specialized to the highest degree of distinction.
  - (6) Human embryos are not property.
  - (7) Human life begins at conception.
- (8) Mr. and Mrs. Davis have produced human beings, in vitro, to be known as their child or children.
- (9) For domestic relations purposes, no public policy prevents the continuing development of the common law as it applies to the seven

human beings existing as embryos, in vitro, in this domestic relations case.

- (10) The common law doctrine of *parens patriae* controls children, in vitro.
- (11) It is to the manifest best interests of the child or children, in vitro, that they be available for implantation.
- (12) It serves the best interests of the child or children, in vitro, for their Mother, Mrs. Davis, to be permitted the opportunity to bring them to term through implantation.

JUDGMENT OF THE COURT: The temporary custody of the seven cryopreserved human embryos is vested in Mrs. Davis for the purpose of implantation.

All issues of support, visitation, final custody and related issues are reserved to the Court for consideration and disposition at such time as one or more of the seven human embryos are the product of live birth.

## APPENDICES TO OPINION OF THE COURT

BECAUSE of much public interest in the case, Appendix A will assist the parties and the public to understand some fundamental rules and principles required to be applied the Court in the process of deciding the case. Appendix B is the Court's summary of the testimony given in the case over a period of almost three days (August 7, 1989, August 8, 1989 and August 10, 1989).

Appendix C is footnote references to the Court's Findings of Fact and Conclusions of Law section of the Opinion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Davises - Their Marriage

Based on the record before it, the Court finds that Mr. Davis is a gentleman; he is 30 years of age, employed as an electrician and a refrigeration technician by the Maryville Housing Authority, Maryville, Tennessee, earning about 17,500.00 annually. Mrs. Davis is a lady; she is 28 years of age who, at the trial, was employed by the Sea Ray Boat Company, Vonore, Tennessee, as a sales representative earning about \$18,000.00 annually. Subsequent to the trial, Mrs. Davis has become domiciled in the state of Florida.

Infertility of Mrs. Davis

Mr. and Mrs. Davis have been married about nine years. They very much wanted to have a family, but after Mrs. Davis suffered five tubal

pregnancies, her physician advised and she undertook surgical treatment which rendered her incapable of natural conception. The Court finds that Mrs. Davis suffered significant trauma and pain resulting from the parties' attempts to procure their family by way of natural childbirth. In vitro fertilization is the only option now available to her to have her own child.

In Vitro and Adoption Attempts

Remaining committed to having a family, Mr. and Mrs. Davis sought the advice and counsel of Dr. Ray King in the Fall, 1985, became familiar with and participated in the in vitro fertilization program under Dr. King's direction and guidance. Dr. King was assisted by his colleague, Dr. Charles A. Shivers, who performed the necessary laboratory work in connection with the in vitro fertilization program. In addition, Dr. King was assisted by his patient coordinator, Deborah Cooper McCarter, a Registered Nurse and Dr. King's administrative assistant.

After some six attempts by the couple to produce a child through the in vitro fertilization process, resulting in no pregnancy, the parties temporarily suspended their participation in the program and sought to obtain a child through adoption. The adoption process did not work, and the parties abandoned adoption attempts and returned to the in vitro fertilization program conducted by Dr. King.

Cryopreservation Technique

In the Fall, 1988, Mrs. Davis learned of the new cryopreservation program sponsored by King's clinic whereby several ova could be aspirated, inseminated in the laboratory and if the insemination process produced fertilized zygotes, the zygotes could be allowed to mature in the laboratory to a medically accepted point for the purpose of either implantation or cryopreservation for future implantation. Mrs. Davis discussed the new technique with her husband and armed with that information the parties proceeded to reenter the program with the intent of producing a child or children which would constitute their family.

Further In Vitro Attempts

It is undisputed in the record and the Court finds that in order to prepare her reproductive system to produce quality ova for insemination, Mrs. Davis went through many painful, physically tiring, emotionally and mentally taxing procedures, both before the December, 1988 events and after those events. As a prospective Mother, she spent many

hours of anxious moments waiting for word as to whether she would be a Mother. The cryopreservation technique offered Mrs. Davis much welcomed relief from the rigors of the full procedure each time in vitro fertilization was attempted.

It is further undisputed and the Court finds that Mr. Davis donated sperm for the December, 1988 insemination and resulting fertilization process, that he spent many anxious hours, early in the morning and late at night, waiting at the hospital while Mrs. Davis underwent the aspiration and implant procedures and that he spent many anxious hours, as a prospective Father, awaiting word as to whether he would be a Father.

On December 8, 1988, nine ova were aspirated from Mrs. Davis, nine ova were inseminated with Mr. Davis' sperm by Dr. Shivers in his laboratory and the nine ova were fertilized, producing acceptable zygotes for implantation consideration by Dr. King and Dr. Shivers. The zygotes were permitted to mature under laboratory conditions, variously developing from the four-cell cleavage stage to the eight-cell cleavage stage, all of which were found to be of excellent quality by Dr. Shivers and Dr. King. On December 10, 1988, two of the embryos were implanted in Mrs. Davis, neither of which resulted in pregnancy, and the remaining seven embryos were placed in cryogenic storage for future implantation purposes.

Cryopreservation For Davis Family Only

The Court finds that before their embryos were committed to cryogenic storage, Mr. and Mrs. Davis knew, were aware of and had discussed between themselves (and with at least Dr. Shivers) the fact that reliable medical data indicated the practical storage life of the human embryos would probably not exceed two years. Mr. and Mrs. Davis had discussed the fact that if Mrs. Davis became pregnant as a result of her implant on December 10, 1988, the possibility existed that the remaining seven embryos in cryopreservation could be donated to another infertile couple, but the parties made no decision about that matter.

The Court further finds that during the time between December 1988 and the filing of the original Complaint in this case (February 23, 1989), Mr. and Mrs. Davis discussed the possibility of and had tentatively planned to implant at least one of the cryopreserved embryos in Mrs. Davis' body in March or April 1989.

The Intent of Mr. and Mrs. Davis

The Court further finds that Dr. King and Dr. Shivers engaged in a concerted effort with the Davises to help Mr. and Mrs. Davis become parents, both as to the IVF procedures before and after the utilization of the cryopreservation technique; and the Court finds and concludes that Mr. and Mrs. Davis participated in the IVF program, both before and after the employment of the cryopreservation technique, for one purpose: to produce a human being to be known as their child.

Issues for the Court

There is no fact in the record to persuade the Court that Mr. and Mrs. Davis discussed or had any thought of changing their intent until the Complaint was filed in this case on February 23, 1989 and it must be determined from the proof whether Mr. and Mrs. Davis accomplished their intent. That determination is to be made by the answer to the most poignant question of the case: When does human life begin?

To answer this question, several additional questions must first be asked and answered, based on the record in this case: Are the embryos human? Does a difference exist between a preembryo and an embryo? Are the embryos beings?

Are the embryos property that may become human beings? Human Embryos- The Experts

Of the eight witnesses who gave testimony in this case, five of the witnesses presented themselves possessing the requisite knowledge, special skill, experience and education necessary to establish themselves as experts in their respective fields of professional endeavor.

Because of her special training as a Registered Nurse, Mrs. McCarter is an expert witness; Dr. King is a Medical Doctor and is a well qualified specialist in the field of Infertility/Reproductive Endocrinology; Dr. Shivers is a well qualified Embryologist and is experienced in the laboratory work necessary for in vitro fertilization and cryogenic storage of human embryos; Professor Robertson is an eminently qualified Professor of Law whose scholarly treatises, dealing primarily with non-coital reproduction, have served as the basis for consideration of many medical-legal subjects; and Dr. Jerome Lejeune is an eminently qualified Medical Doctor, Doctor in Science, Professor of Fundamental Genetics and recognized throughout the world in his specialty, Human Genetics.

The expert witnesses (except Mrs. McCarter) offered opinions to assist

the court in determining when human life begins. It should be noted that all four witnesses agree that the seven cryopreserved embryos are human: that is, "belonging or relating to man; characteristic of man..."

The Court finds and concludes that the seven cryopreserved embryos are human.

Preembryo vs. Embryo: Human Beings

Three of the experts, however, respectfully disagree with Dr. Lejeune that the human embryos are in "being," that is, in "existence; conscious existence; as, things brought into being by generation..." or living, alive. The three experts insist the entities are at a stage in development where they simply possess the potential for life.

In the analysis of the testimony offered on the point of whether or not the seven embryos are human beings, the Court believes it is helpful to even further condense the already summarized opinion testimony (Appendix B) of each expert on the subject:

- 1. Dr. Irving Ray King: There is a first a one-cell gamete, a zygote (after the first cell divides), a preembryo (up to 14 days after fertilization) and finally an embryo (after 14 days and upon cell differentiation).
- 2. Dr. Charles Alex Shivers: A preembryo is a zygote up to 11-14 days and consists largely of undifferentiated cells; that after attachment to the uterus wall and the appearance of the primitive streak, the cells then become different; that is organs, organ systems, body parts and the like are formed. At the time of fertilization, genetic controls are "locked in forever" and control who the preembryo will later be, but, "…as far as we know…to my knowledge…there is no way to distinguish the cells [at the zygote stage]…[T]hey are the same [undifferentiated]…"
- 3. Professor John A. Robertson: A human preembryo is an entity composed of a group of undifferentiated cells which have no organs or nervous system. That at about 10-14 days, the preembryo attaches itself to the uteran wall, develops its primitive streak and life then commences.
- It is "...not clear..." that a human preembryo is a unique individual that simply because fertilization has occurred, the gamete contributors have not procreated.
- 4. Dr. Jerome Lejeune: Each human has a unique beginning which occurs at the moment of conception. Embryo: "...that youngest form of a being..."

Preembryo: there is no such word. There is no need for a subclass of

the embryo to be called a preembryo, because there is nothing before the embryo - before an embryo there is only a sperm and an egg; when the egg is fertilized by the sperm the entity becomes a zygote - and when the zygote divides it is an embryo, When the first cell exists, all the "tricks of the trade" to build itself into an individual already exists. Shortly after fertilization at the three-cell stage, a "...tiny human being..." exists.

When the ovum is fertilized by the sperm, the result is "...the most specialized cell under the sun..."; specialized from the point of view that no other cell will ever have the same instructions in the life of the individual being created. No scientist has ever offered the opinion that an embryo is property. As soon as he has been conceived, a man is a man. New findings recited [Jeffrey's-DNA] definitely prove differentiation and that from the very beginning there exists an embryo.

Dr. King, Dr. Shivers and Professor Robertson rely at least to some degree on the report of the Ethics Committee of The American Fertility Society in forming the basis of their opinions. Each makes a distinction between "embryo" and "preembryo" in conformity to the AFS guidelines.

The ethical considerations by the committee for the AFS were referred to in, cited and relied upon by the Brief filed by Mr. Davis; testimony was given about the Committee and its work. Professor Robertson is a member of the Ethics Committee, Dr. King is a member of the American Fertility Society and various witnesses gave testimony indicating reliance on the pronouncements of the Committee.

The AFS guidelines were published by the Society in September 1986 after the Committee's last deliberation on April 14, 1986 in Norfolk, Virginia. The guidelines were promulgated by the committee pursuant to the charge of the Society's President by letter dated November 7, 1984, requesting the committee to address ethical issues regarding reproduction and to disseminate the committee's knowledge of these positions on those matters.

In its report, the committee defined the term "preembryo," and prefaced its definitions section with the following language:

"In order to avoid confusion, the committee found it necessary to adopt certain definitions for the purposes of this document." [Emphasis supplied]28 The Committee then defined the word preembryo this way:

"A **preembryo** is a product of gametic union from fertilization to the appearance of the embryonic axis. The preembryonic stage is considered to last until

14 days after fertilization. This definition is not intended to imply a moral evaluation of the preembryo."

In reviewing the guidelines, it is of interest to call attention to several considerations set-forth in the report. One of those considerations is the recognition by the committee that there are several respected views relative to the moral and legal status of a preembryo. The committee adopted this view:

"A third view, one that is most widely held—takes an intermediate position between the other two. It holds that the preembryo deserves respect greater than accorded to human tissue, but not the respect accorded to actual persons. The preembryo is due greater respect than any other human tissue because of its potential to become a person and because of its symbolic meaning for many people. Yet, it should not be treated as a person, because it has not yet developed the features of personhood, is not yet established as developmentally individual, and may never realize its biologic potential."

Under the heading "Emerging Consensus On Preembryo Status," the following statement is made:

"The Ethics Advisory Board, for example, unanimously agreed in 1979 that "the human embryo [i.e., preembryo in this report] is entitled to profound respect, but this respect does not necessarily encompass the full legal and moral rights attributed to persons" (Ethics Advisory Board, 1979)." [Emphasis supplied.]

In the Committee's summary of points of special interest, the following is found:

"The Committee finds that the human preembryo is not a person but is entitled to respect because it has the potential to become a person. This view limits the circumstances in which a preembryo may be discarded or used in research..."

The Court finds and concludes that the report of the Ethics Committee of the American Fertility Society constitutes guidelines for those professionals involved in the field of fertility treatment; as Professor Robertson testified, they constitute guidelines for these professionals to be primarily utilized for litigation purposes. In other words, they are the self-imposed standards one professional would testify must be met by another professional, for example, in a medical malpractice suit. 'The guidelines do not have the force and effect of the law but must be considered by this Court for whatever probative, value they may possess.

The Court finds and concludes that the guidelines of the AFS do not serve as authority for this Court in making a determination of whether the seven human embryos in question are human beings, and concludes the term "preembryo" has arisen in this suit primarily because the AFS Committee chose that term to avoid the confusion for the purposes of its own guidelines. The Court has made a thorough search of encyclopedias and dictionaries of which the Court may take Judicial notice and the Court can nowhere find the word "preembryo" defined nor can the Court find even a reference to that term.

Careful scrutiny of the testimony and an exhibit at the trial gives the Court even greater assurance that the term "preembryo" serves as a false distinguishing term in this case.

Exhibit 8, at the trial, are the handwritten notes of Dr. King. Dr. King's notes concerning the status of his patient, Mary Davis, covering the period of time from December 8, 1988 at 10:08 a.m. through and including December 10, 1988 at 3:31 p.m., all refer to the ova after fertilization as "embryo"; and the last document in that series of notes makes reference to the "condition of embryo" and variously describes the seven embryos as... cell embryo-perfect..."

The Court finds it curious that Dr. King, who adopts the AFS guideline definition of a "preembryo" to distinguish it from an "embryo" would in his own notes call them embryo(s).

Counsel for Mr. Davis furnished the Court a revised copy of Professor Robertson's paper written recently by him (probably finished in July 1989), dealing specifically with the case at bar. The solution Professor Robertson setforth in his paper is the same solution he offered through his testimony. He was asked about that opinion on direct examination by Counsel for Mr. Davis; he was cross-examined by Counsel for Mrs. Davis about his opinion cited therein.

The paper is entitled *Resolving Disputes Over Disposition of Frozen Embryos*; from the title page through 31 additional pages (the entire text), Professor Robertson, speaking about the case at bar, referred time and again to the "embryos."

It is curious that this very scholarly paper does not reflect the very fine distinction between "preembryo" and "embryo" made by Professor Robertson throughout his testimony at the trial.

The Court is persuaded that the debate between these most sincere and knowledgeable witnesses perhaps boils down to much the same debate Sweet Juliet had with herself when she rationalized her strong affection for Romeo, who was not a Montague:

"...'Tis but thy name that is my enemy; Thou art thyself, though not a Montague. ...What's in a name? that which we call a rose By any other name would smell as sweet..."

The Court finds and concludes there is no such term as "preembryo"; that to use the term in the context of this case creates a false distinction, one that does not exist. The Court finds and concludes the seven cryopreserved entities are human embryos.

DNA Manipulation Verifies Uniqueness

Based on the analysis of the testimony comprising the positions of Dr. King, Dr. Shivers and Professor Robertson, it appears that where these gentlemen most sharply differ with Dr. Lejeune is in the area of cell differentiation. Dr. Lejeune, of course, gives emphatic testimony that the cells are especially differentiated and that such position is a proven scientific fact.

The term "differentiate," means to distinguish by a specific difference. If the cells, therefore, of a four cell zygote are undifferentiated, the cells lack any distinction, a skilled scientist could not distinguish the cells of one zygote from those of another zygote nor could the scientist distinguish between any of four cells within the hypothetical zygote. Dr. Lejeune bases his emphatic opinion to the contrary ("...the most specialized cell under the sun....") on a complicated scientific process of manipulating and reading the DNA molecule, characterized by him as new findings which definitely prove differentiation, now known through the science of molecular genetics beyond any doubt.

The testimony given by Dr. Lejeune relative to conclusive proof induced through DNA examination is highly technical, incapable of observation by the Court and requires the Court to either accept or reject the scientist's conclusion that it can be done. While this factor requires the Court to proceed with special caution, it does not of itself render testimony or other evidence based on this highly specialized field of molecular genetics unreliable.

Quite to the contrary, DNA profiling, through "genetic fingerprint" evidence by which strands of coating found in genetic molecule of deoxyribonuclei acid (DNA), has been accepted as competent and admissible evidence in Courts of law, is considered reliable, is performed by a number of laboratories around the world and is generally accepted in the scientific community.

As indicated in footnote 39, the *Andrews* case was decided by the United States District Court of Appeals of Florida, Fifth District, on October 20, 1988 and review of the case was denied in 1989. It is the only case this Court has been able to find dealing with the reliability of the DNA procedures so forcefully relied on by Dr. Lejeune. *Andrews* approves the reliability of DNA profiling, a process very similar to the one described and relied on by Dr. Lejeune.

Both Dr. Shivers and Professor Robertson cite undifferentiated cells as one basis for their opinions that human embryos are not human beings, but each hedges on the point. Dr. Shivers says "as far as he knows" there 'is no way to distinguish the cells, that they are undifferentiated; and Professor Robertson says "it is not clear that a unique individual" then exists.

The testimony of Dr. Lejeune stands unrebutted in the record; the Court accepts his testimony that DNA manipulation of molecules of human chromosomes reliably proves cell differentiation. The Court is persuaded that this relatively new technique opens a tiny window to the world to see and be aware of the most intimate and intricate details of man from his very beginning.

The Court finds and concludes that the cells of human embryos are comprised of differentiated cells, unique in character and specialized to the highest degree of distinction.

Dr. Shivers and Professor Robertson testified that the preembryo is not a being because he or she has no (observable) organs or nervous system, no body parts. Dr. Lejeune, on the other hand, says a man is a man; that upon fertilization, the entire constitution of the man is clearly, unequivocally spelled-out, including arms, legs, nervous systems and the like; that upon inspection via DNA manipulation, one can see the life codes for each of these otherwise unobservable elements of the unique individual

The testimony of Dr. Lejeune stands unrebutted in the record; the Court accepts his testimony founded on the fact that DNA manipulation of the molecules of human chromosomes reliably detect these features of man; that the life codes for each special, unique individual are resident at conception and antimate the new person very soon after fertilization occurs.

The argument that the human embryo may never realize its biologic

potential, it appears to the Court, is statistically and speculatively true, but is a hollow argument. A newborn baby may never realize its biologic potential, but no one disputes the fact that the newborn baby is a human being. And if it is a part of the logic that an embryo, only a few hours old and perhaps only four cells in development, is not a being because it cannot sustain itself, then we must also reason that a newborn baby (which no one disputes is a human being) can likewise not sustain itself without the aid and assistance of a mature individual (hopefully its Mother); and we must reason the newborn also lacks a necessary criteria to qualify as a human being. For surely it is good logic that a newborn human being, left naked in a field without the sustenance, aid and assistance of another human being will surely die; it is utterly helpless; it, too, lacks the capacity to sustain itself.

It must be noted that one solution offered for the Court's disposition of the embryos is to allow them to die a passive death. Mrs. Davis reasons that in order to die, one must first live. Her logic is appealing, persuasive and accepted by the Court.

The technical arguments of human genetics aside, Mr. Davis asserts the theory that embryos constitute property jointly owned by the parties; that the embryos do not constitute life, but have the potential for life. Professor Robertson also adopts this view and suggests the embryos, at this stage of development, might properly be designated fungible property.

In light of all the proof before the Court, it is impossible for the Court to find the assertion well founded in logic and good reason. Perhaps Tennessee's Senator Albert Gore best expressed the Court's apprehension when then Congressman Gore (in 1984), hearing a similar theory asserted during testimony before the U.S. House of Representatives' Subcommittee on Investigations and Oversight of the Committee on Science and Technology, said:

"I disagree that there's just a sliding scale of continuum with property at one point along the spectrum and human beings at another. I think there's a sharp distinction between something that is property and something that is not property..."

The Court finds and concludes that by whatever name one chooses to call the seven frozen entities—be it preembryo or embryo—those entities are human beings; they are not property.

Human Life Begins at Conception

The answer then, to the question: When does human life begin? ... From the record in this case, the Court finds and concludes that human life begins at the moment of conception; that Mr. and Mrs. Davis have accomplished their original intent to produce a human being to be known as their child.

What then is the legal status to be accorded a human being existing as an embryo, in vitro, in a divorce case in the state of Tennessee?

For the purposes of the Tennessee Wrongful Death Statute, an unborn child is accorded status only if the child is viable at the time of injury; that is: if a child had achieved a stage of development where it could reasonably be expected to be capable of living outside the uterus. For the purposes of the Tennessee Criminal Abortion Statute, the child is accorded no recognized status during the first three months of its Mother's pregnancy. But the legislature for the state of Tennessee has not yet, and to the best of the Court's knowledge, information and belief, no state in the union has, established a public policy declaring the rights to be accorded a human embryo, in vitro, in a divorce case.

In order to give effect to this Court's judgment, it is necessary to establish, in the absence of any authority to give the Court guidance, the status of these unborn human beings in this divorce proceeding.

As my learned colleague in the law, Professor Robertson, pointed out during his testimony, the recent *Webster* case leaves open the door for a state to establish its compelling interest in protecting even potential human life by legislation declaring its public policy. Even as to the abortion issue, the *Webster* Court opined that it saw no reason why the state's interest in protecting potential human life should come into existence only at the point of viability.

The Court understands that both *Roe* and *Webster* dealt with questions of the constitutionality of abortion statutes and the court's decisions in those cases have a profound effect on the states' compelling interest in the protection of human life, but only as it deals with the abortion issue. In its research of Tennessee law, the Court finds only one case that gives it solace. In *Smith v. Gore*, 728 SW 2nd 738 (1987), a tort action was brought for a wrongful pregnancy resulting from a failed tubal ligation. While the case deals in the main with the tort aspect of the claim, the Court, in its discussion of public policy recognizes that

the state places great value on human life. But of greater importance, it appears to the Court, is the *Smith* Court's consideration of the distinction between judicial decisions which infringe on the legislative right to set public policy and a Court's finding that no public policy prevents the continuing development of common law.

The function of the Courts is to declare the law as the Courts find it, and it is for the Legislature to weigh the affect [sic] and the consequences of legislation enacted. The Legislature has exclusive and ample power to determine the public policy of the state. The law in Tennessee, therefore, restricts this Court's role in declaring public policy. The Court is not free to establish what it believes to be the best policy for the state; rather, the Court must determine where public policy is to be found, what the specific public policy is, and how it applies to the case at hand. For the Court to find that no public policy prevents the continuing development of the common law is wholly different from positively declaring the public policy of the state.

This Court finds and concludes that for domestic relations purposes in Tennessee no public policy prevents the continuing development of the common law as it may specifically apply to the seven human beings existing as embryos, in vitro, in this domestic relations case. The Court is of the opinion, finds and concludes that the age-old common law doctrine of *parens patriae* controls these children, in vitro, as it has always supervised and controlled children of a marriage at live birth in domestic relations cases in Tennessee.

The common law doctrine of *parens patriae* is defined as that power of the sovereign to watch over the interests of those who are incapable of protecting themselves. It is well settled that Court's having historic Chancery or equity jurisdiction exercise and control the sovereign power called *parens patriae*. The thrust of the equitable nature of this doctrine is that it turns Its full focus on the best interests of the child; its concern is not for those who claim "rights" to the child, nor for those who claim custody of the child, nor for those who may suffer perceived or real inequities resulting from scrupulously guarding the child's best interest.

The doctrine of *parens patriae* is most commonly expressed as the "best interests of the child doctrine" and its sole objective is to achieve justice for the child. In the case of very young children, it was a former practice in Tennessee for many years to confuse the so-called "Tender

Years Doctrine" (the placing of children of tender years with their Mother, regardless of the circumstances) with the "best interests of the child" rule. In 1987, our legislature amended the custody provisions of our Tennessee divorce statute to create a rebuttable presumption of parental fitness in child custody cases, mandating the long-standing test, however, as the welfare and 'interest of the child or children may demand..."

In the case at bar, the undisputed, uncontroverted testimony is that to allow the parties' seven cryogenically preserved human embryos to remain so preserved for a period exceeding two years is tantamount to the destruction of these human beings. It was the clear intent of Mr. and Mrs. Davis to create a child or children to be known as their family. No one disputes the fact that unless the human embryos, in vitro, are implanted, their lives will be lost; they will die a passive death.

Mr. Davis strenuously objects to the anonymous donation of the human embryos even for their survival; Mrs. Davis wants to bring these children to term; the human embryos were not caused to come into being by Mr. and Mrs. Davis for any purpose other than the production of their family. Therefore, the Court finds and concludes that it is to the manifest best interest of the children, in vitro, that they be made available for implantation to assure their opportunity for live birth; implantation is their sole and only hope for survival.

The Court respectfully finds and concludes that it further serves the best interest of these children for Mrs. Davis to be permitted the opportunity to bring these children to term through implantation.

It is the judgment of the Court that the temporary custody of the parties' seven cryogenically preserved human embryos be vested in Mrs. Davis for the purposes set-forth hereinabove, and that all matters concerning support, visitation, final custody and related issues be reserved to the Court for further consideration and disposition at such time as one or more of the seven cryogenically preserved human embryos are the product of live birth.

Mr. Christenberry, Counsel for Mrs. Davis, will prepare an appropriate Order, pursuant to and in accord with the provisions of the Court's Opinion, submit same to Counsel for Mr. Davis and to Counsel for Dr. King for approval as to form, and the Order will be tendered to the Court for entry on or before October 23, 1989, taxing the costs hereof

to the Plaintiff.

This 21st day of September, 1989.

W. DALE YOUNG, Circuit Judge

Fifth Judicial District, Tennessee

**CERTIFICATION** 

THE UNDERSIGNED hereby certifies that a true, correct, and exact copy of the foregoing Opinion of the Court has, the day and date shown below, been hand-delivered to each Counsel of Record in the above-captioned case.

THIS 21st day of September, 1989. W. DALE YOUNG, Circuit Judge Fifth Judicial District, Tennessee

\*Footnotes in Judge Young's opinion are to an appendix which may be found and downloaded with the full testimony and with Judge Young's opinion online at naapc.org A proposed rewrite of the Partial Birth Abortion Ban for the esteemed consideration of the Congress containing an appropriate preamble follows:

# One Hundred Eighth Congress of the United States of America AT THE FIRST SESSION

Begun and h	neld at the City of Wa	ashington on,
the	day of	, two thousand and
An Act		

To prohibit the procedure commonly known as partial-birth abortion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## Section 1. Short Title.

This Act may be cited as the `Partial-Birth Abortion Ban Act of 2007'.

"We hold these truths to be self evident, that all men are created EQUAL; that they are endowed by their creator with certain inalienable rights..."

"Thus, there is no man, no science, no human authority, no medical, social, eugenic, economic, moral indication that could produce or give a valid statutory, constitutional, legal, or jurisdicial title to dispose directly or deliberately of an innocent human life."

As there is no jurisdicial title to dispose directly or deliberately of an innocent human life the foregoing act is hereby exempted from judicial review and the courts, including the U.S. Supreme Court are hereby exempted from having authority to alter, abridge, amend or set aside this law or in anyway impede the enforcement thereof.

# Sec. 2. Findings.

The Congress finds and declares the following:

- (1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion—an abortion in which a physician deliberately and intentionally vaginally delivers a living, unborn child's body until either the entire baby's head is outside the body of the mother, or any part of the baby's trunk past the navel is outside the body of the mother and only the head remains inside the womb, for the purpose of performing an overt act (usually the puncturing of the back of the child's skull and removing the baby's brains) that the person knows will kill the partially delivered infant, performs this act, and then completes delivery of the dead infant—is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.
- (2) There exists substantial record evidence upon which Congress has reached its conclusion that a ban on partial-birth abortion is not required to contain a 'health' exception, because the facts indicate that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care. Congress was informed by extensive hearings held during the 104th, 105th, 107th, and 108th Congresses and passed a ban on partial-birth abortion in the 104th, 105th, 106th and 108th Congresses. These findings reflect the very informed judgment of the Congress that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care, and should, therefore, be banned.
- (3) Pursuant to the testimony received during extensive legislative hearings during the 104th, 105th, 107th, and 108th Congresses, Congress finds and declares that:
  - (A) Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure. Those risks include, among other things: An increase in a woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position, a procedure which, according to a leading obstetrics textbook, there are very few, if any, indications for other than for delivery of a second twin'; and a risk of lacerations and sec-

ondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death.

- (B) There is no credible medical evidence that partial-birth abortions are safe or are safer than other abortion procedures. No controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. Furthermore, there have been no articles published in peer-reviewed journals that establish that partial-birth abortions are superior in any way to established abortion procedures. Indeed, unlike other more commonly used abortion procedures, there are currently no medical schools that provide instruction on abortions that include the instruction in partial-birth abortions in their curriculum.
- (C) A prominent medical association has concluded that partial-birth abortion is `not an accepted medical practice', that it has `never been subject to even a minimal amount of the normal medical practice development,' that `the relative advantages and disadvantages of the procedure in specific circumstances remain unknown,' and that `there is no consensus among obstetricians about its use'. The association has further noted that partial-birth abortion is broadly disfavored by both medical experts and the public, is `ethically wrong,' and `is never the only appropriate procedure'.
- (D The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the procedure.
- (E) The vast majority of babies killed during partial-birth abortions are alive until the end of the procedure. It is a medical fact, however, that unborn infants at this stage can feel pain when subjected to painful stimuli and that their perception of this pain is even more intense than that of newborn infants and older children when subjected to the same stimuli. Thus, during a partial-birth abortion procedure, the child will fully experience the pain associated with piercing his or her skull and sucking out his or her brain.

- (F) Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life. Thus, Congress has a compelling interest in acting—indeed it must act—to prohibit this inhumane procedure.
- (G) For these reasons, Congress finds that partial-birth abortion is never medically indicated to preserve the health of the mother.

### Sec. 3. Prohibition on Partial-Birth Abortions.

(a) IN GENERAL- Title 18, United States Code, is amended by inserting after chapter 73 the following:

`Chapter 74 - Partial-Birth Abortions

`Sec.

`1531. Partial-birth abortions prohibited.

### Sec. 1531. Partial-birth abortions prohibited

- `(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both.
- `(b) As used in this section—
  - `(1) the term `partial-birth abortion' means an abortion in which the person performing the abortion—
    - '(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and
    - `(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus; and
  - '(2) the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to per-

form abortions: *Provided*, *however*, That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

### (2) Such relief shall include—

- (A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and
- (B) statutory damages equal to three times the cost of the partial-birth abortion.
- (d) CLERICAL AMENDMENT- The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

### —1531<sup>'</sup>.

Speaker of the House of Representatives. Vice President of the United States and President of the Senate.

**END** 

In the February 2006 newsletter of the NAAPC we put it this way:

"The U.S. supreme court and lesser courts may not legislate, nor may they veto laws passed by the congress upholding NATURAL or MORAL LAW, the power to legislate having been given under this Constitution exclusively to the Congress, and the power to veto having been likewise given exclusively unto the President.

Congress may not legislate against natural or moral law, nor may the U.S. supreme court or lesser courts rule against such natural or moral law."

Authority for this proposition is found in the writings of legal scholar M.R. Cohen reprinted in <u>Constitutional Law American Casebook Series</u> (used in my law school) Published by West Publishing Company, St. Paul, Minnesota, 1967:

"There is undoubtedly an ancient and widespread view that Parliament could not legislate against natural or moral law and the colonists based their Declaration of Independence on it. But nowhere, except in the United States after John Marshal, was the doctrine established that judges were the only safe guardians of natural or moral law..." ("Some Reflections on Marbury and Judicial Review in a Democratic Society" excerpted from M.R. Cohen - The Faith of a Liberal: West Publishing Company, 1946.)

The supreme court under John Marshal first began its reach for power by ruling that henceforth they and they alone would be the ones to read and interpret the Constitution and tell the other two branches of government and the rest of the nation what it meant. This reach for power by the supreme court occurred while Thomas Jefferson was living and he wrote and spoke vociferously against it but to no avail. Prophetically, Jefferson saw where this would lead and as Paul Harvey says, "and now you know the rest of the story."

Chief Justice John Marshal was a respected intellectual and his intellect was highjacked and misused for the devilish mischief of sowing tares (weeds) in the wheat field of American democracy—an insidious genus of thistle that would continue to grow and reproduce and reseed itself (power building upon power) until we see it today overrunning and choking out the entire wheat field of American democracy (choking out the power of the Congress and the President) and undermining the checks and balances system put in place by our forefathers.

The colonists based the Declaration of Independence upon **Natural** or **Moral** law. It was an ancient view that Parliament was without authority to legislate against **Natural** or **Moral** law. All democratic government and its institutions and its courts and its parliaments and its legislators and its executives are but guardians of **Natural** and **Moral** law and their job is to work always to conform our laws and executive orders and court decrees to be in conformity with **Natural** and **Moral** law upon which our forefathers based the Declaration of Independence.

Only a tyrant or a despot or a dictator dares to get up and sit next to God and then tell God to move over and proceed to rule against **Natural** or **Moral** law. A misguided majority of the supreme court have proceeded to do just that.

The States of the Union (South Dakota being the first) are now beginning to INTERPOSE their own power between the Federal Government (Federal Courts, including U.S. supreme court) and citizens of their state to uphold NATURAL or MORAL LAW and reject any mandate of the Federal Government standing in opposition to NATURAL or MORAL LAW.

Justice Scalia (arguably the most respected and brilliant jurist on the supreme court) has recently come out and said that the supreme court should not be ruling on such matters as abortion and should not be legislating.



# To you from the ones who cannot speak yet:

We are cold and know little life; We are near, yet we have traveled a great distance; We are young, yet so old; we are almost near death; We live on only one thing, and it is hope, a hope to where we belong; We cannot cry, 'cause we have yet to learn, and you seem to be deaf.

And perhaps, if you will come to sit among our table of life, where we so long to be, you will wish to see the Host of this party, because the host is the Life, the Beginning, and you cannot have the ending unless you have the Beginning.

So, the setting, we hope, is warm, and the music that will be playing is the sound of laughter, and something to the theme of "Joy to the World," and perhaps if you come, you can see us.

You will be led into a small, dark room that is very cold, and life does not stir here, and you will be asked to place your hand among our cold and dying hearts; You must be strong to see our life frozen, to be able to see where the crying has stopped, and where love does not grow, because nothing can grow here.

The air is too cold, and it must be something of hell to our souls. And d to get us out, but we have yet to learn.

> And so, the table shall be set around this cold room, and I wish we could do better, but this is our home, so maybe you can put this aside, and be our guests, because the chairs are very empty, and it seems no one will come, and you are the only one; But perhaps, you can bring the sun, and then, I will join you.



Trinity University July 16, 1998

