Tuesday November 4th 2014

As of yesterday, the U.S. Supreme Court has denied the *Petition for Writ of Certiorari* in Jo Scott's case. I am not really disappointed, although I had hoped they would hear the case. They deny most *Petitions* just because the Supreme Court can't handle all those cases. And they don't even give you a reason or tell you who voted to hear it and who didn't.

Sometimes you have to call upon the legal system to **Do Right** even when you have no confidence that it will. Since the Court has made abortion legal it is not all that surprising that they aren't keen to protect the first amendment rights of anti abortion activists. They did rule against the Massachusetts buffer law last year in the McCullen case. Which encourages the Sidewalk Counsellors.

I am putting this *Petition* on the web site because it preserves a lot of information about the special law that was aimed at us. This is an early *pro se* version mainly written by me--Terry Sullivan--and Tony Massey. We did eventually get lawyers involved. Tom Brejcha and the Thomas More Society paid for the booklet and the filing fee and Rebecca Messall wrote the *Petition* which was denied. There was also an *amicus* brief filed by Mike Norton on behalf of *40 Days for Life*.

We have won a few legal victories through the years. But mainly we rely upon **Bearing Witness to the Truth** by **Nonviolent Direct Action**--*the power which is born of truth and love*. We have saved a lot of babies since we established a 5 day a week pro life picket and sidewalk counselling effort in front of Rocky Mountain Planned Parenthood in August 1989. And we are still out there.

No. 1481

In The Supreme Court of the United States

Jo Ann Scott Pro Se Petitioner

versus

State of Colorado Respondent

Petition for Writ of Certiorari

QUESTIONS PRESENTED

1. Whether C.R.S. 18-9-122 (2) is unconstitutional as applied to Jo Ann Scott, and facially unconstitutional because of the **vagueness** which resulted when the legislature added *detain, hinder,* and *impede* to *block* and *obstruct*.

2. Whether C.R.S. 18-9-122 (2) is unconstitutionally vague because **block** and **obstruct** are no longer **defined by location**--sitting down in front of the **door** or kneeling in the **driveway** and refusing to move--but instead have morphed into a prohibition against a Sidewalk Counselor walking along with an abortion customer and trying to talk or to leaflet, as illustrated by this case.

3. Whether the whole of C.R.S. 18-9-122, Sections 1-6 is **Unconstitutional** because of the **history of the law** which was pushed through the legislature by Planned Parenthood and NARAL--by the abortion industry generally--to target *sidewalk counselors* and inhibit *leafleting* and *free speech* on the public sidewalk. The *dissents* by Justices Scalia, Kennedy and Thomas in the *Hill* decision argue this better than we can. The *Hill* decision validated a bad law and we ask the Supreme Court to re-consider this decision.

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OPINIONS BELOW

Jo Ann Scott v. People of the State of Colorado, Denver District Court, 11CV4757, Decision rendered January 28, 2013 (App. #######) affirmed in part and reversed in part the conviction of the trial court.

JURISDICTION

The Colorado Supreme Court denied Certiorari on December 9, 2013,

and denied rehearing on January 14, 2014.

The United States Supreme Court has jurisdiction under 28 U.S.C § 1257 to hear this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First, Fifth, and Fourteenth Amendments United States Constitution,

Article II, Section 10 of The Colorado Constitution,

C.R.S. 18-9-122 (1-6)

C.R.S. 18-9-122 (2) and (3).

Statement Of The Case

Petitioner Jo Ann Scott is an experienced *sidewalk counselor* who has saved many babies from death by abortion by getting out on the sidewalk in front of Rocky Mountain Planned Parenthood in Denver five days a week since 1997. Not surprisingly, she has become the number one target of Planned Parenthood and NARAL and their allies in the police and judicial establishment of the City of Denver. The police here *aggressively serve and specially protect* Planned Parenthood by taking their counterfeit complaints at face value.

Ms. Scott is well aware of what she can and cannot do under the law--has learned it the hard way. She learned long ago to avoid physical contact with hostile abortion customers. But she also knows that the more upset a woman is on her way into an abortion clinic, the more likely she is to change her mind. That is why the effort has to be made to talk to customers even when the initial reaction is not friendly. After they get through cussing us out, they realize that they don't really want to put their kid in the trash. We have seen it happen more than once.

Not surprisingly, some of these customers call the police and make bogus complaints. The pro Planned Parenthood bias imposed upon the Police Department in the City of Denver almost guarantees that these complaints will be pursued however lacking in merit. Section 2 of CRS 18-9-122 specially lends itself to this policy because of its *vagueness*.

Ms. Scott is the only person ever convicted of violating both section (2) and section (3) of C.R.S. 18-9-122, the so-called *buffer* law, which was designed by Planned Parenthood and NARAL to target anti abortion sidewalk counselors and pushed through the Colorado legislature in 1993. As the **Legislative History** will show.

Planned Parenthood moved to this new fortress like compound in 2008. It has a high fence all around it and it was designed to minimize the chances of Sidewalk Counseling--talking quietly to incoming abortion customers. Over the past 25 years they have tried one remedy after another to insulate their customers from sidewalk counselors. Most of their abortion bound customers drive in to the parking lot and would be counselors can only communicate with them by raised voices at a distance. We are often a loud picket line because PP has shut down the alternative. However, customers still come in on foot for one reason or another--perhaps because they took a bus.

the encounter

On the morning of April 2nd 2010, Ms. Scott was on the sidewalk outside the fence which encloses the Rocky Mountain Planned Parenthood abortion clinic at 38th and Pontiac in Denver Colorado. When Laura Brown walked past Ms. Scott on her way into Planned Parenthood, Ms. Scott started walking along with her while offering an *Alternatives* leaflet and talking to her about abortion.

Ms. Brown had parked on 38th Avenue and not in the clinic parking lot. That was the reason that she had to walk past the protesters and on down the block to the driveway in the middle of the block on Pontiac Street. She later stated that she was not aware of the enclosed parking lot, although she had been to the clinic several times before and / or that she did not realize she was allowed to park there.

Ms. Scott and Ms. Brown walked side by side at a brisk pace for a short distance, until Ms. Brown walked through the driveway and onto the Planned Parenthood parking lot. The entire encounter was recorded on an overhead surveillance camera and lasted 26 seconds.

After she got inside, Ms. Brown called the police with the encouragement of Planned Parenthood Security.

She first said that she was **grabbed** by Jo Scott--a two handed grab--and also called nasty names. She also said she was *assaulted* and *attacked*. A Planned Parenthood executive--who just happened to be driving by when the two women were walking together--said she had seen the two handed grab. She later testified for the prosecution at the trial.

the ticket

Denver police Sergeant William Stanley, who responded to the call and who looked at the surveillance video the same day, did not see any *grab* and did not write a ticket. A detective who reviewed it later also concluded that there was not *probable cause* to justify a citation. But, six weeks later, on May 14th 2010, a citation was issued by a downtown detective--a typical procedure in Planned Parenthood cases.

Ms. Scott was charged with three counts of *harassment* under CRS 18-9-111 subsections (a), (c), and (h),

And one count of *Preventing Passage to a Health Care Facility* under C.R.S. 18-9-122 (2).

the trial Denver County Court Case 10M06438

At the trial, Complaining Witness Laura Brown backed away from the *grab* allegation and changed her testimony to an alleged *touch*. Which does not show up on the surveillance video or in the enlarged photographs made from the video.

She also backed away from her original complaint that Jo had called her nasty names. She testified instead that Ms. Scott had said *you don't have to do this . . . don't go in there . . . don't participate in a murder . . . they kill babies.* She said that Ms. Scott was calm and seemed concerned about where she--Ms. Brown--was going.

The jury acquitted Ms. Scott of the charge of *harassment by physical contact* after looking at the surveillance video a second time during their deliberations. They convicted her of *harassment by following about in a public place* and *harassment by offensively coarse language*. They also convicted her of something under CRS 18-9-122 (2) which says: *obstructs, detains, hinders, impedes, or blocks another person's entry to or exit from a health care facility*.

Based on these convictions, Judge Claudia Jordan sentenced Ms. Scott to 270 days in jail (180 suspended), two years unsupervised probation, 100 hours community service, and $ 1,700 in fines.

Extreme sentences for minor and doubtful offenses are part of a long established policy of Planned Parenthood friendly law enforcement in the City of Denver.

Ms. Scott then appealed to the District Court.

The *harassment* convictions were reversed by Judge Norman Haglund on appeal to the District Court. But Judge Haglund affirmed the conviction under CRS 18-9-122 (2) and ruled that the law is *Constitutional*--that it is not un Constitutional because of *vagueness*.

Ms. Scott appealed the District Court ruling to the Colorado Supreme Court. Which refused to grant a *Petition for Certiori* on December 09, 2013. (Case 2013SC155) On January 14, 2014, in response to a *Notice of Appeal* to the U.S. Supreme Court, the Colorado Supreme Court issued an order stating: ***To the extent the newly filed NOTICE OF APPEAL is a petition for rehearing, it is denied***.

That is the basis of this appeal to the U.S. Supreme Court.

In February 2014, Ms. Scott was re-sentenced in Denver County Court on the basis of the single conviction under 18-9-122 (2). The sentence is 180 days in jail, with 150 suspended. The 30 days became 30 days home detention with an ankle monitor. Also, she was given a year of supervised probation, and various costs, such as those involved for the ankle bracelet.

Was There a *touch* ? Does it matter ?

At trial, Complainant Laura Brown modified her original statement that Jo Scott had *grabbed* her and said that Jo had *touched* her on the arm. On cross examination, she halfway conceded that Ms. Scott had not *restrained* her.

The surveillance video does not show any touch, response to touch, change of pace or deviation of course by the complainant.

A Denver Police Sergeant testified at the trial that he reviewed the video at Planned Parenthood the day of the complaint and that he could not see any touch.

The jury viewed the video and acquitted Ms. Scott of the Harassment count involving physical contact. The District Attorney told the jury *I admit the touch is slight*. In his reply brief, the District Attorney later conceded: *The evidence as adduced at trial, however, differed substantially as to the nature of the physical contact*.

Judge Haglund's Decision District Court Case 11 CV4757

On page 17 of his January 28th 2013 **Order**, affirming Ms. Scott's conviction under CRS 18-9-122 (2), District Court Judge Norman Haglund says that *evidence was presented that Applicant actually touched Ms. Brown*. But he concedes that no touch is apparent: *The video was taken from such an angle that it is unclear when or how contact occurred*.

Or if it did. It is also *unclear* how such evidence meets the standard of *beyond a reasonable doubt*. Or how it can equal the *willful obstruction* which is invoked in Section 1 of CRS 18-9-122--the preamble to this law. Under the *unclear* standard of Section 2, an inadvertent and invisible *touch*--assuming there was one--is the same as **block** and **obstruct**, which are supposed to be limited by *willful*.

Judge Haglund did not stick with the ruling which he invokes on page 4 of his decision: *The lack of sufficient competent evidence to support a finding of a material fact, however, is a matter of law and falls within the court's powers on review*. *Gallegos* 533 P.2d at 248.

If there was a *touch*, it was not a *restraint*, as the complainant halfway conceded under cross examination at the trial. The video shows the complainant continuously walking at a fast clip, without breaking stride or hesitating, until she walks through the driveway.

Obviously, it was not logical for the jury to acquit Ms. Scott of *harassment by physical contact* and then find her guilty of *obstructs, detains, hinders, impedes, or blocks*, **IF**, as Judge Haglund argues on page 9 of his decision this law plainly means *OBSTRUCT*, which plainly means: *stepping in front of . . . physically grabbing or holding a person back, erecting barriers to prevent an individual from entering a facility*--some substantial and deliberate physical action.

In the absence of any instruction to the contrary, it **was** logical for the jury to assume that the allegations of the complainant were good enough for a conviction under a law which was **intended** to keep Sidewalk Counselors away from abortion customers. As Judge Haglund states on page 9 of his **Order**: *The situation in which Appellant acted is exactly the type of situation to which the legislature intended CRS 18-9-122 (2) to apply.* The **history of this law**, given later in this *Petition*, shows what that means.

Several years ago Ms. Scott was arrested and convicted under section 3 of this law, after Planned Parenthood employees, pretending to be abortion customers, made a complaint against her for approaching within 8 feet. This happened at the old Planned Parenthood abortion clinic at 20th and Vine within 100 feet of the door.

At 38th and Pontiac, the location of the new Planned Parenthood, the sidewalk is more than 100 feet from the door. So the 8 foot *bubble* law--Section 3--supposedly does not apply. But in this case they successfully used Section 2 in place of Section 3 to get a Sidewalk Counselor arrested just for getting close to an apparent abortion customer and trying to talk to her.

Judge Haglund's ruling is not logical either. On page 9 he says that CRS 18-9-122 (2) is *constitutional* because it prohibits **obstruct** or **block**, which means *stepping in front of . . . physically grabbing or holding a person back, erecting barriers to prevent an individual from entering a facility*.

The Judge neglects to notice that Jo Scott was not convicted of doing any of these things and that it was only the **vagueness** of *detain . . . hinder . . . impede* in this statute which justified the conviction for an invisible *touch* which was inadvertent if it happened at all. *Inadvertent touching* easily replaced the **willful obstructing** stipulated in the preamble of this law.

It is this *vagueness* which makes this law unConstitutional.

as stated above--

I. Review Is Warranted To Determine If C.R.S. 18-9-122 [2] Is Unconstitutional As Applied To Ms. Scott And / Or whether *Detain*, *Hinder*, and *Impede* are such *vague* terms that they lend themselves To Arbitrary Enforcement.

How else would you describe this ?

A related constitutional question is:

2. Whether C.R.S. 18-9-122 (2) is unconstitutionally vague because **block** and **obstruct** are no longer defined by location--sitting down in front of the **door** or kneeling in the **driveway** and refusing to move--but instead have morphed into a prohibition against Sidewalk Counselors approaching abortion customers to talk or leaflet, as illustrated by this case.

CRS 18-9-122 (2) passed in 1993 was superfluous. *Health care facilities* were already protected from people **obstructing** the entrance, along with pawn shops and court houses etc. and had no need of this very special legislation conspicuously supported by Planned Parenthood and NARAL. It was aimed at Sidewalk Counselors staying within what they supposed to be their First Amendment rights to rescue babies from abortion.

The old *loitering* law has become Denver Municipal Ordinance 38-86. If you *Obstruct* a *building entrance* and *disobey an order to move* from a *person with authority* you can be arrested under this law. Which, unlike CRS 18-9-122 (2), does not have *detain, hinder, impede* of *another person* without regard to where you are in relation to the entrance. Section (1) of this new law is *narrowly tailored* to target those who *protest or counsel* ***AGAINST*** *certain medical procedures* in front of *health care facilities*.

Even if this new law had been passed in good faith--it wasn't--it was entirely redundant and unnecessary. Except insofar as it was needed to help Planned Parenthood target Sidewalk Counselors. That is the obvious purpose.

Sidewalk Counselors arrested for trying to talk to abortion customers are assured that they have plenty of *protest alternatives*. They can write a letter to the editor, call in on the talk show or display a sign half a mile from the abortion clinic. The question should be raised as to whether the pro abortion forces did not have an abundance of *alternative* legal weapons before CRS 18-9-122 (2) was passed--whether it ever served any legitimate legal purpose.

In 1989-1990 hundreds of hymn singing *rescuers* were arrested under the old laws which specified that sitting down in front of the door or kneeling in the driveway and refusing to move would lead to an arrest and a conviction. The same laws which prohibited blocking the entrance to a church or a court house or a pawn shop applied to *health care facilities*. There was a time a few years back when the police would have raided such a *facility* and charged those operating it with a felony. Now this variety of homicide is classified as *health care* and the police give it special protection.

Not only were these *rescuers* arrested and hauled off to jail, in the absence of the special protection found in C.R.S. 18-9-122 (2), but *pain compliance* was used on completely nonviolent people to force them to walk. Then they often received severe sentences from NARAL influenced judges--10 times what any other sit in protestors would have received. Months in jail and thousands of dollars in fines.

The police in several cities used *pain compliance* against completely nonviolent *rescuers*, many of whom suffered lasting injuries, such as in the June 19th 1989 *rescue* in West Hartford Connecticut. A similar attack upon rescuers took place at an abortuary near Los Angeles. Senator William Armstrong later held hearings into these attacks on rescuers which received very little attention in the media. They documented the fact that entirely peaceful hymn-singing *rescuers* were violently handled by police in a number of cities where pro abortion forces control the court house, as they do in Denver.

The rescues had ended by 1993 when this law was passed. It was obviously redundant if aimed at *rescuers*. But the real intent of this law was to cripple Sidewalk Counseling. And it has at least halfway succeeded in doing that. Along with forcing Ms. Scott to stay home with an ankle bracelet and to be aware of the jail time *suspended* on condition that she not fall afoul of these nebulous ordinances, this kind of law enforcement scares off many others. Which was just what the legislature **intended**.

HISTORY OF THE LAW

III. Review is warranted as to whether C.R.S. 18-9-122 (1-6) Is **Unconstitutional** because of the History of this Law which was pushed through the Legislature by the abortion industry, by Planned Parenthood and NARAL and their political allies, in order to target Sidewalk Counselors and inhibit speaking and leafleting in front of abortion clinics.

The legislature may as well have enacted a statute subjecting oral protest, education, or counseling near abortion clinics to criminal penalty. . . . The purpose and design of the statute--as everyone ought to know and as its own defenders urge in attempted justification --are to restrict speakers on one side of the debate: those who protest abortions. [Justice Kennedy's dissent in *Hill v. Colorado* 530 U.S. 703, 768 (2000)]

In his article in the 2003 Harvard Law Review, Professor Alan Chen says the majority in the *Hill* decision upheld this law even though *everyone in Colorado knew that the state adopted the bubble law solely to restrict anti-abortion protestors*. [254] Despite the bubble law's formal neutrality, as discussed earlier, *there was strong reason to doubt the sincerity of the legislature's stated purposes. [255] . . . There is powerful evidence that the legislature's principal or only concern was anti-abortion protestors.* [Page 17 / 56 *Statutory Speech Bubbles, First Amendment Overbreadth, and Improper Legislative Purpose,* 38 Harv. C.R.-C.L. L. Rev 52 (2003)]

Actually, this law was aimed at Sidewalk Counselors rather than *protestors*. Sidewalk Counselors usually carry no signs, try to talk quietly to abortion customers walking into the *clinic* on the public sidewalk, and get them to take an *Alternatives* leaflet. The issue of displaying signs was a distraction from the real issue. Even small signs are designed to be read 10 to 20 feet away. Of course Sidewalk Counselors sometimes walk up to people while wearing a sign.

Section 3 makes crimes of *leaflet . . . education . . . counseling* within 8 feet of someone who is within 100 feet of the door of a *health care facility*. How did *education* get to be a crime ? It is one on the assumption that **ignorance is bliss** when women are going into Planned Parenthood to do something about which they want to know as little as possible. They wish to remain *uneducated*. And Planned Parenthood wishes them to remain *uneducated*.

narrowly tailored

This law was aimed at sidewalk counselors trying to operate within what they naively supposed to be their First Amendment rights to rescue babies from abortion by talking and leafletting--aka Sidewalk Counseling. This law was designed to limit those rights as narrowly as possible--to negate them actually. And it has, as Ms. Scott's case illustrates. In a sense the law is *narrowly tailored*. Like a scope sighted sniper rifle which has the Sidewalk Counselor in the legal cross hairs. Section 2 has a different defect. It is more like a cluster bomb in the way it impacts whatever a Sidewalk Counselor is likely to do-- *detains . . . hinders . . . impedes*.

The April 20th 1993 edition of the *Rocky Mountain News*, under the headline: **Romer signs abortion bubble bill into law** has a photo of Representative Diana Degette and Governor Roy Romer of Colorado when he signed this law the day before. Pat Blumenthal, the Executive Director of Colorado NARAL is among those standing behind the Governor. The *Denver Post* and the *Colorado Springs Gazette Telegraph* have articles of the same date cited by Alan Chen in footnotes 109 and 110 of his 2003 Harvard Law Review article.

Gary Jamieson, an associate director of Planned Parenthood of the Rocky Mountains said: *We're thrilled that Colorado has taken this strong step to protect the safety of patients and medical staff*. Now they can be safe from *leaflet . . . education . . . counsel*. A subhead says **Abortion-rights forces say law lets them take offensive**. Which is just what they did under this and other laws, resulting in many arrests of Sidewalk Counselors at Planned Parenthood. This is not the only law which is used against Sidewalk Counselors. But it was specially designed to encourage biased law enforcement and to target those trying to save babies from abortion.

Governor Romer said: *this bill prevents the harassment of someone entering an abortion clinic*. As illustrated by Jo Scott's case. She walked along with Laura Brown while trying to talk to her and was charged with three counts of *Harassment* and one of *detain-hinder-impede*. *Harassment* is defined as leafletting and talking--any attempt by sidewalk counselors to communicate with abortion customers. Representative Degette called the new law *the only significant pro-choice bill to pass in Colorado since 1967*.

Is *pro-choice* the same as *viewpoint neutral* ?

The preamble of CRS 18-9-122 addresses the *right to protest or counsel* ***AGAINST*** *certain medical procedures*. Which discredits the pretence that this law is *viewpoint neutral*. As Justice Scalia argued on page 4 of his dissent in the *Hill* case: *We know what the Colorado legislators were taking aim at . . . for they set it forth in the statute itself*. On page 2 Scalia says: *the Court today continues and expands its assault upon their individual right to persuade women contemplating abortion that what they are doing is wrong. Because, like the rest of our abortion jurisprudence, today's decision is in stark contradiction of the constitutional principles we apply in all other contexts, I dissent*. [Justice Scalia's dissent in *Hill v. Colorado*, joined by Justice Thomas 530 U.S. 703, 768 (2000)] He further says: [at 753] *There is apparently no end to the distortion of our First Amendment law that the Court is willing to endure in order to sustain the restriction upon the free speech of abortion opponents.*

The bogus pretence that this law really was designed to protect *Health Care Facilities* in general was used by the *Hill* court to argue that the law is *content neutral* and *viewpoint neutral*: "The Court ruled that CRS 18-9-122 is *not a regulation of speech* but *a regulation of the places where some speech may occur* . . . the speech in question is not *content based*." *Content neutral* is a basic requirement for any regulation of speech. [Scalia / Thomas *dissent* in *Hill* case 6-28-2000 page 1] In fact the law was clearly aimed at anti abortion sidewalk counselors. That was the only reason for this law. This law covers hospitals where abortions are performed, as well as free standing abortion clinics. But mostly it only applies to the clinics because of the difficulty Sidewalk Counselors have in identifying abortion customers going into a busy hospital.

It was pushed through the legislature in 1993 by *pro choice* political forces. Everyone who testified for this law at the legislature was affiliated with NARAL or Planned Parenthood or the abortion industry. With one exception--a fellow whose testimony was subsequently used to support the pretence that this law really was aimed at protecting *Health Care Facilities* in general and not just abortion clinics.

Numerous abortion providers attended the bill signing, including Boulder abortionist Warren Hern. His affidavit in the *Hill* case states that the original 8 foot ordinance in Boulder was pushed by NARAL in 1986 when Leslie Durgin was Mayor of Boulder and director of the Boulder Valley Women's [abortion] Clinic. [Exhibit B Affidavit filed in *Hill v. Colorado* 93-CV-1984 in Jefferson County District Court] She testified when the Denver City Council passed their version of the 8 foot ordinance in 1991. She later became a *senior vice president* of Rocky Mountain Planned Parenthood. And met with the staff members who set up Jo Scott's arrest under section 3 of this law in 2007.

The only witness not connected with Planned Parenthood, NARAL, or the abortion industry to testify in favor of this law during the 1993 hearings was **Mark Simon**, *a disability rights advocate*. Mr. Simon is confined to a wheel chair and he testified that he had undergone numerous surgeries. And that he would have been upset if anyone had confronted him on his way into the hospital for one of these surgeries. He did not testify that anyone ever had.

baboon liver transplant

Mr. Simon also told two stories about people being attacked on their way to get health care: 1. a man receiving a baboon liver transplant in Pittsburgh was *beset* by animal rights protestors. 2. a man was knocked out of his wheelchair by anti-Medicaid protestors in Florida. In his 2003 Harvard Law Review article, Professor Alan Chen went to the trouble to research these stories as best he could. See footnotes 113 and 114. He did find a story about a group protesting baboon liver transplant, although nothing about a confrontation with the transplantee. He did not find any record of the other story.

One obvious remedy for incidents like these, assuming they really occur, is to make it illegal to knock someone out of a wheel chair. Which is not addressed by the Colorado Buffer Law's prohibitions of *leaflet . . . education . . . counseling* or even its prohibitions of *detain . . . hinder . . . impede*.

Mark Simon's testimony was recycled as a notarized affidavit in the *Hill* case. It is part of the record of that case as found in the Jefferson Country Court in Golden Colorado. The judge used it as a **fig leaf of camouflage** to show that CRS 18-9-122 really was designed to protect *Health Care Facilities* in general rather than places where abortions are performed and that the law is therefore *content neutral* and *viewpoint neutral*. And that is how it was used thereafter as the *Hill* case went through the Colorado courts and on to the U.S. Supreme Court. It provides a very slender support for the claim that this law was not aimed at anti abortion Sidewalk Counselors.

Representative Diana Degette, the bill's sponsor, said *I was very grateful for the witness who testified that protest can take other forms of expression: anti-Medicaid, anti-animal experimentation, and so on*. [Chen 121] Which presents a **contrast** with her other statement that the new law was *the only significant pro-choice bill to pass in Colorado since 1967*. The pretence that this law applies to *Health Care Facilities* in general led to its restrictions being analyzed *under the time, place, or manner analysis, which applies only to content-neutral laws*. [Chen 15 = 52-53] The majority decision in the *Hill* case went along with this pretence.

This law was never designed to protect *health care facilities*. It was designed to attack what would otherwise be constitutionally protected activities outside of abortion clinics. The way this law has been used against Ms. Scott illustrates the original intent of the law. As Judge Haglund said: *The situation in which Appellant acted is exactly the type of situation to which the legislature intended CRS 18-9-122 (2) to apply.* [as quoted earlier]

This case is typical of many Planned Parenthood cases in which anti abortion defendants have been charged despite little or no evidence to sustain the charge. There is a Planned Parenthood friendly standard of law enforcement which prevails in the City of Denver. They get deluxe service from the police and the City Attorney and the District Attorney and the judges, whose careers depend upon the NARAL dominated wing of the Democratic Party.

Extreme sentences for minor and doubtful offenses, like the one in this case, are part of a long established policy, which has led to 150 arrests over the past 25 years, most of them for *disturbing the peace* by talking too loud. Pastor Harvey Baynes and Bishop Robert Zeiger were arrested for preaching at 20th and Vine. Ken Scott was arrested for *air trespass*--leaning over the fence. Most of these cases ended with a dismissal or an acquittal or were won on appeal. But pro life activists were constantly harassed by this kind of arbitrary law enforcement. And instead of just being handed tickets they were hauled off to jail in handcuffs and kept there half the night until they were able to post bond.

under color of the law

Planned Parenthood and NARAL sponsored *Neighbors Meetings* attended by police officials, representatives of the Mayor's office and the City Attorney's office and State legislators, where *neighbors*--Planned Parenthood supporters--were encouraged to make complaints against *protestors*. The *protestors* were not invited to these meetings and did not even know they were taking place until they found out about them a few years later through *discovery* in a section 1983 lawsuit filed against Planned Parenthood and the City of Denver. Who were routinely attacking the First Amendment rights of pro life activists *under color of the law*. That phrase accurately describes what they were doing. They recruited *neighbors* to make complaints because they could almost never get abortion customers to make complaints and follow through if they had to go to court and start off by admitting what they were doing that morning. Despite the relentless *pro choice* propaganda, people are still deeply ashamed of having an abortion.

There are police officers who perceive that the chance of promotion is enhanced if they serve the Planned Parenthood program of special law enforcement. There are other police officers who resist becoming errand boys for Planned Parenthood because they are personally pro life or because they recognize that they are being pushed to bend the law. While other laws, like *harassment*, have to be bent to target Sidewalk Counselors, CRS 18-9-122 does not. Because it was designed to do just that.

Most of us are aware that the stork does not bring judges to the bench, and that the process by which they arrive there is political, even while everyone tries to pretend that it isn't. The judges whose careers depend upon Democratic mayors and governors are under a lot of pressure to go along with the attack upon Sidewalk Counselors. The situation is similar to the one that prevailed in the South in the 1960s when the Segregationist wing of the Democratic Party controlled the court house, and which produced a similar bunch of bogus arrests *under color of the law*, as Section 1983 of Title VII of the 1965 Civil Rights Act aptly describes it. President Kennedy appointed 5 of the worst segregationist judges ever to sit on the federal bench--scofflaw judges who bent the law into a pretzel to preserve the racial status quo in the South. [cf. *Kennedy Justice*] The State courts and the Municipal courts were worse.

When pro life Democratic Governor Robert Casey of Pennsylvania was denied the opportunity to address the 1996 Democratic National Convention, he said: *the Democratic National Committee has become a wholly owned subsidiary of NARAL*. That bias seriously affects law enforcement policy in the City of Denver where this same group controls the court house establishment. And it explains why this law has been passed and upheld despite its glaring constitutional defects. The effort to perpetuate racial segregation was a moral cancer at the very heart of Southern law enforcement. The necessity of defending the doctrine that **abortion is medicine** is having the same effect today at all levels of the law.

The Justice Department has the same agenda at the national level. In 2011 it filed Civil FACE cases against Sidewalk Counsellors in several states including Colorado. On June 2nd 2011, the same morning Jo Scott was given her ridiculously harsh sentence by Denver County Judge Claudia Jordan for *impeding* and *harassing*, Ken and Jo Scott were handed a *Summons* in a civil lawsuit filed by the Obama Justice Department on behalf of Rocky Mountain Planned Parenthood.

This lawsuit sought a permanent injunction to keep *protestors* 25 feet away from the driveway and from the property line. On the grounds that people trying to hand out leaflets at the driveway were *impeding*, which is more or less the same thing as **obstructing**. In effect, these Justice Department lawyers attempted to import the nebulous standard of *detain, hinder, impede* into the FACE law. If you try to pass out leaflets at the driveway, you are *impeding* / **obstructing**. Ms. Scott, with her other sentence hanging over her, made a plea bargain and paid heavy penalties to get out of this one. Ken Scott fought it and won with the help of pro bono lawyers, after a lengthy proceeding.

It illustrates the degree to which NARAL subservient legal authorities at both the national and the local level are willing to operate *under color of the law* like those governors and mayors and judges who became *scofflaws* 50 years ago in order to perpetuate racial segregation and keep Southern Negroes disenfranchised. The wife of the current Attorney General is part owner of an abortion clinic.

the attack on leafletting

Like other Sidewalk Counselors, Ms. Scott offers an **Alternatives** leaflet to incoming abortion customers. It has addresses and phone numbers for *crisis pregnancy* centers, homes, and adoption agencies. She also offers leaflets like *The First Nine Months*, which has the Lennart Nilsson fiber optic photos of fetal growth and development.

Through the years, Ms. Scott and others have distributed these leaflets outside of Planned Parenthood on a daily basis. Surviving out there under the scrutiny of surveillance cameras and a politicized police force mandates that she do none of the things she is falsely accused of doing.

And hundreds of babies have been saved from abortion since the daily Sidewalk Counseling effort was launched in 1989. On December 26th 1999, three babies were born on the same day to three different women we had Sidewalk Counselled at 20th and Vine. To us it is a baby saved. To Planned Parenthood it is $ 500 lost and the justification eroded that *these abortions are necessary*. That is why Sidewalk Counselors like Jo Scott are their number one target. That is why this law was passed to protect the abortion industry--to reduce the number of escapes.

Leafletting is an essential part of Sidewalk Counseling. Which is targeted by Section 3 of the Colorado *8 foot buffer* law. As is well argued by Justice Kennedy on pages 18 to 23 of his *dissent* in the *Hill* case. As he says on page 17: *the law forecloses peaceful leafletting*. In this case, Section 2 is being used to stop leafletting. The *vagueness* of both conduct and location created by a free floating and undefined prohibition of *detain . . . hinder . . . impede another person* means that any near approach to an abortion customer by a Sidewalk Counselor is targeted by this law.

The case law on **leafletting** cited on pages 18-23 of the Kennedy *dissent* includes *Meyer v. Grant Lovell v. City of Griffin Schneider v. State (Town of Irvington) Thornhill v. Alabama Carlson v. California Martin v. City of Struthers McIntyre v. Ohio Elections Commission*.

The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. Lovell v. City of Griffin, 303 U.S. 444. 452 (1938). *The streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place*. *Schneider v. State (Town of Irvington)*,. 308 U.S. 147, 163 (1939) You can *protest abortion* by writing a letter to the editor or calling the talk show. What you can't do is rescue an abortion bound baby from the trash bucket at Planned Parenthood. That is what Sidewalk Counselors do. And, as the Hasidic saying tells us: *If you save one child, you save the world*.

The First Nine Months

Pamphlets have proved most effective instruments in the dissemination of opinion. *Martin* quoting *Scneider* [Kennedy *dissent* 22-23]. Which is especially true in respect to a leaflet such as ***THE FIRST NINE MONTHS***. Which shows via the fiber optic photos of Lennart Nilsson the reality of the embryo child which the abortion industry hides behind phrases like *fetal tissue* and *two tablespoons of fluid*. It isn't just an *opinion* that the embryo child is a **baby**. It is a **fact** which is being deliberately concealed from abortion bound women. That concealment is facilitated by using the newspeak term *Health Care Facility* to describe what is actually an *abortuary*. Like calling Auschwitz a **Recycling Center**.

They have to deny not only the humanity of the embryo child but the very existence of a live human body. Does a *blob of tissue* have fingers and toes ? A 10-week-old embryo does. Whether she is a citizen or not and whether she has a soul, there is a live body. Which is why the abortion industry cannot tolerate Sidewalk Counselors showing their customers the truth about what they are doing.

It is well said that *Truth is the first casualty in war*. And the war against *unwanted* babies also requires a strenuous effort by abortion providers to shield abortion customers from the truth about what they are about to do. Not surprisingly, they have no use for the *Sidewalk Counselors* who deprive them of both revenue and self justification by turning women away from abortion. *Bearing witness to the truth* is the primary thing that real Christians are called to do. The systematic suppression of the truth leads to every kind of evil.

Schneider made clear that while citizens may not enjoy a right to force an unwilling person to accept a leaflet, they do have a protected right to tender it. [Kennedy dissent in *Hill* page 18] Which is the issue that was obscured in the testimonies in favor of the anti leafletting section of this law.

There is a routine mis-statement of this issue, with no evidence to support it--customers are **forced** to accept leaflets. If someone does **force** you to accept a pro life leaflet or a political flyer or a dry cleaning coupon, your remedy is to drop it in the next trash receptacle you come to. Or even to just drop it on the sidewalk if you are not afraid of the littering laws. How to refuse a proffered leaflet is a basic city skill that most of us have mastered. Beyond that, there are various laws which can be invoked when we are **forced** to do anything. If you are kidnapped and **forced** to read something, you have a whole new case. The pretence that people are the helpless victims of *leafletting* supposedly justifies this law. As if Sidewalk Counselors under the suspicious scrutiny of surveillance cameras and Security Officers would be free to **force leaflets** on people if they could only come within 8 feet without fear of arrest. This law does not require consent to a leaflet but rather **prior consent before the attempt to leaflet**.

The effective distance for leafletting is two arm lengths--about 4 feet. Even the majority in the *Hill* case acknowledged that the 8 foot buffer impacts the opportunity to leaflet. Just as it was designed to do. Especially the **Alternatives** leaflet and especially *The First Nine Months*. Which both pose a serious danger to the mindset of an abortion bound woman. Together they tell her: 1. Yes, **it** does look like a baby. 2. There are good alternatives to putting your baby in the trash.

Spitting from 8 feet

The Colorado *Response* to the original *Hill Petition* argues that the law was necessary because of demonstrations which featured *surrounding, crowding, yelling at, grabbing, pushing, shoving, hitting, and spitting*. They don't explain why the law neglected to include *hitting and spitting* etc. in the list of prohibited actions. This is a dishonest propaganda caricature. Which has nothing to do with the real intention of this law-- *In order to prevent hitting and spitting we have to ban education, leafletting and counseling within 8 feet.* Actually, *spitting* can be done from 8 feet away with a little practice. But there is nothing in this law to keep you from getting closer. It is *leafletting*, not *spitting*, which is prohibited by this law.

In the rescues of 1989-1991 some 50,000 *rescuers* maintained an exemplary nonviolent discipline. It was as good as the discipline of those 20,000 who participated in the sit in movement in the spring of 1960, aimed at racially segregated lunch counters, which launched the Civil Rights movement. And much better than the discipline of the later movement, which steadily eroded. The same mainstream media which had given sympathetic support to the Civil Rights movement ignored the *rescuers* when it didn't smear them.

This document caricatures the QUESTION PRESENTED FOR REVIEW as whether the Colorado Supreme Court was correct in holding that this law *restricts aggressive, threateningly close approaches*. In fact, it restricts all approaches indiscriminately. These qualifiers are not in the law and could hardly be defined if they were. One basketball player may engage in *aggressive, threateningly close approaches* to another basketball player. But the referee only blows the whistle if he actually *fouls* the other player. But, supposedly, the criminal laws which have been on the books for 100 years were not adequate to protect abortion customers from sidewalk counselors who engaged in *aggressive* education, leafletting and counseling. Despite surveillance cameras, security guards and 10 times as many police officers present as anyone else could get. These nebulous and undefined terms were necessary to justify a law which is full of them.

The Colorado *Response* also invokes *dangerous physiological responses in medical patients* as the reason for the new law. Which is obviously true in a way. Abortion customers are liable to get upset if they have to walk past Sidewalk Counselors and abortion protestors. On the other hand, that may turn them away from having the abortion. That result means much less *danger* to the other *medical patient* caught up in this procedure. Whose *health* will be gravely compromised if they go through with it.

Should there not be some *balancing of rights* in this situation ? Under the law, parents have only a limited right to decide what is best for their children. They are liable to wind up in court if they decide to feed them nothing but carrots. Under the abortion laws they have an unlimited right to decide that the kid is better off dead. And no one can question that decision. At considerable risk to herself, the Sidewalk Counselor steps into that gap.

Today we are all **forced** not just to accept abortion but to pay for it. Someone **forced** to take a leaflet will soon recover. While someone subjected to the **force** of abortion--the extreme violence of abortion--will not soon recover. Once in a while there is violence outside the abortion clinic. But every day there is violence inside. What else would you call it ? *Reproductive Health Care* ? Is it less **violent** because the victim is so tiny and so helpless ?

The First Amendment, our cases illustrate, protects [citizens] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing. Meyer v. Grant, 486 U.S. 414, 424 (1988) *Urgent, important, and effective speech can be no less protected than impotent speech, lest the right to speak be relegated to those instances when it is least needed. McIntyre v. Ohio* Elections Commission, 514 U.S. 334, 347 (1995) [Kennedy dissent in *Hill* page 24] *Urgent, important, and effective speech* on the sidewalk in front of an abortion clinic has saved many babies. That is the issue in this case. Most of those nominally opposed to abortion avoid the dangerous duty which Sidewalk Counselors accept as the effective way to save babies. There are many who will speak out from a safe distance. Deliver a banquet speech or call the talk show. But babies bound for an appointment inside one of these *Reproductive Health Clinics* are not safe, and those who are serious about trying to rescue them cannot put Safety First either. Sidewalk Counseling provides a kind of **stress test** for the First Amendment as to whether it is really worth anything.

some other rights--

It isn't just the Constitutional rights of *protestors* to **Leaflet** and **SIDEWALK COUNSEL** which are at stake in this case. Also at stake is the right of the preborn child to a last minute advocate who might get her a *stay of the execution* scheduled for that morning. In the absence of any other protection, the right to arrive at her birthday without being dismembered and put in the trash bucket at Planned Parenthood, has come to depend upon a **SIDEWALK COUNSELOR** whose right to attempt a *rescue* has also been trashed by Planned Parenthood friendly law enforcement.

What is also at stake, is the right of a pregnant woman to be offered **alternatives** to a *choice* which leads to 20 years of nightmares. A *choice* dictated by her boy friend and by the pressures of an economy which mandates a long postponing of child bearing. A woman *chooses* to have an abortion for the same reason that a fox chews off her foot to escape from a trap. The Sidewalk Counselor tries to help her find a better way to escape from the trap.

Her boy friend leads her into the abortion clinic while her parents come along behind for *support*. She is bawling. But it is *Her Choice*. It is a necessary sacrifice for her to hold onto a career which is the foundation of the luxurious American lifestyle. The number of American women who arrive at age 40 without having any children has doubled in the last 40 years.

The woman pushed to kill her own child by her boy friend and her parents and her career has the right to hear from someone who might talk her out of it and save her from a life time of regret and the nightmares that come from killing your own kid.

We applaud those who keep their friends from driving drunk. We should also applaud those who risk arrest to try and keep people from doing something that will destroy one life and seriously damage another.

the right to privacy

The **Right to Privacy**, lurking in the shadow of an Amendment, first announced by *Griswold v. Connecticut*, morphed into a woman's Right to Choose what she wished to do with her own body. Which means the right to do whatever with the body of her pre born baby. Pay someone to get rid of that *fetal tissue* she is carrying. It has become an absolute right which trumps any rights which might otherwise be assigned to the unborn baby. Like the right to a birthday.

As Professor Charles Lugosi argued in 2001, abortion has become a **Sacred Cow** to which everything else must be sacrificed. [University of Denver Law Review] The feminists argue that: *If men could get pregnant, abortion would be a sacrament*. There is some truth in that. Which explains why war is holy. The feminists have made abortion a sacrament--the foundation of Women's Liberation. Even though women in general oppose abortion more than men--a basic fact you will never learn from the media or the feminists. It may be that you *have to pay the price for freedom*. In the case of abortion, someone else is forced to pay the price for your freedom.

The right of a pregnant woman to be **let alone** as she approaches an abortion clinic cannot be squared with the right of the preborn child to be **let alone** in what would be the safe sanctuary of her mother's womb were she a *wanted* child. Being *unwanted* has become a death sentence even while millions of couples who want to adopt babies find none to adopt. That is one of the things a Sidewalk Counselor tries to tell an abortion customer.

A man in his own home with his own child arguably has a *right to privacy*. But, if he begins to abuse that child, his neighbors have not only the right but the obligation to interfere. But it is otherwise with that **Right to Privacy** which seems even to allow a pregnant woman to keep drinking and then give birth to a baby who suffers for life from fetal alcohol syndrome. There is even a serious legal question as to whether a man who deliberately causes a miscarriage can be charged with murder.

Not surprisingly, the **Right to Privacy** also trumps the rights of those who persist in believing that abortion is murder, not medicine. And who act as if they really believed that by doing their best to prevent abortions. That is what this case is about.

a difference of opinion

Is abortion medicine or is it murder ? Is there some simple legal way to resolve this *difference of opinion* ? Is there anyone who is neutral and objective about abortion ? Whose life has not been impacted directly or indirectly by abortion ? What is now a **right** was a **crime** within living memory. It is not surprising that many people have not adjusted to the new view. The Romans exposed *unwanted* infants to die and it was a crime to rescue them. But the early Christians did it anyway.

Abortion has created a deep division in American society. It is unlikely that there can be any legal resolution. In the 1960s the American Civil Rights movement and the anti Vietnam war movement set an example to the world of how **nonviolent direct action** could be a way to work through a deeply divisive issue.

There are those who oppose the violence of abortion by violence. There are others who draw upon the example of the 1960s Civil Rights Movement and who try to employ the varieties of **nonviolent direct action** to oppose abortion. Laws which refuse to make that distinction, which suppress nonviolence, promote violence. That is what CRS 18-9-122 does.

There is no legal protection left for the preborn baby in America. Not surprisingly, those who refuse to call abortion *medicine* and persist in calling it *murder* are treated as outlaws. The ultimate question is who is really outside **The Law**. It is the whole of American society, not just the Supreme Court, which will have to answer that question.

For the foregoing reasons,

Petitioner Jo Ann Scott asks that the Petition for a Writ of Certiorari be Granted.

_____

[April 2014] date: _____

Jo Ann Scott
Pro Se Petitioner