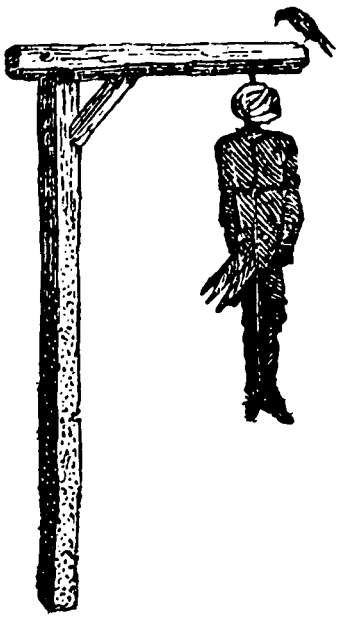

Paying them to weave the rope to hang us

Some, in our democracy, are more equal than others, and when the left dislikes a law the peoples' representatives have passed, it sues in San Francisco where the law is malleable and judges cooperative, charges Rolls-Royce-level legal fees, and then demands the people who've just been raped pay the bill. And guess what? Said peoples' representatives answer: fine, no problem.

By GREGORY SANFORD

IT WAS JUST a three-inch filler in the *Sacramento Bee:* "$2 million to eight lawyers." A small window, but an unusually well-placed one, through which to view the degraded farce that California's legal system has become. The bare bones are these: taxpayers have been forced to pay nearly $2 million in legal fees to American Civil Liberties Union and other attorneys whose lawsuit was used to plow under California's parental consent for minors' abortion law. Forcing taxpayers to pay the ACLU to subvert our democratic process, it turns out, is more or less a matter of routine. SB 291, the bill authorizing the payment, passed the Legislature with only four "no" votes in either house. (GOP Assemblymembers Steve Baldwin, Lynne C. Leach, Curt Pringle, and Bruce Thompson voted "no." Not voting were Republicans Jim Battin and Tom McClintock and Democrat Senator Ralph Dills.) Every other legislator voted "yes" on the bill signed by Governor Pete Wilson October 3. *And* a legislative analysis of SB 291 listed Attorney General Dan Lungren in "support," with no opposition.

Republican support was essential because SB 291 was an "urgency" measure requiring a two-thirds "yes" vote to pass (as such it would take effect as soon as signed into law, rather than waiting for January 1). The *Sacramento Bee* report said "fees of $1,930,261 were set by the same San Francisco judge who ruled that the parental consent law was unconstitutional after a four-week trial in 1994." The fees, which do not cover later appellate work against parental consent, also do not include taxpayer costs of the attorney general's defense of the statute.

Judges + ACLU + Legislators = Watch Your Wallet

Let us digest for a minute what is going on here. First, we have the by-now routine betrayal of trust by the state's appellate judges who trample the law they swear to serve. The case involved here, *American Academy of Pediatrics v. Lungren,* has been thoroughly analyzed in these pages.* For the present, I will, for anyone unfamiliar with the case, limit comment to a single quotation from Justice Brown's dissent: "The fundamental flaw running throughout [George's *Lungren* opinion] is the utter lack of deference to the ordinary constraints of judicial decisionmaking — deference to state precedent, to

*See, in *CPR's* September/October 1997 issue, "The Arrogance of Ron George" by *CPR* legal issues correspondent Mark S. Pulliam and "A Decision Utterly Lacking in Deference," excerpts from Justice Janice Rogers Brown's *Lungren* dissent. In *CPR's* July/August 1996 issue, see Pulliam's "Snatching Defeat from the Jaws of Victory," and "The View from the Bench," an exclusive *CPR* interview with the Dishonorable Chief Justice Ronald M. George. — *editor*

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federal precedent, to the collective judgment of our Legislature, and, ultimately, to the people we serve."

Second, we have the ACLU, the elite vanguard troops of a movement whose great spiritual awakening came 30 years ago slopping with the hogs at Woodstock, an organization so alienated from the American people that 1988 Democrat presidential nominee Michael Dukakis's candidacy was largely destroyed by the single revelation that he had been an ACLU member. Not content merely to mount repeated assaults on free enterprise, religion, the family, democracy, and rule of law, this group proceeds to rob the very people it has raped, so as to reward itself for its generous services.

THIRD, IRONICALLY, WITHIN days of approving SB 291, 38 Republican legislators, including many who voted *for* the ACLU award, signed a letter to the attorney general commending his "commitment to restoring the right to parental involvement in a minor's abortion decision." How can such things be? One source in the Capitol said legislators, who vote on thousands of bills each session, regularly cast votes on legislation relying upon bill summaries or often upon no more than assurances of authors that a measure is "noncontroversial." Some of these Republicans, the source said, "would certainly have opposed this measure if they had known what it contained." That seems a bit thin as an excuse, especially since the practice of forcing taxpayers to reimburse ACLU attorneys' fees is not new. Similar legislation has passed previously after courts have erased other inconveniences enacted by the legislative and executive branches. Also, a bill analysis available to all Assembly Republicans clearly indicated that SB 291 included the $2 million payment. In the Senate, however, things were different.

A running battle has been waged all year between Senate Democrat Leader Bill Lockyer and GOP senators over Republican staff positions Lockyer has refused to fill. These staffers, had they been hired, would be available to prepare GOP bill analyses, independent of the official summaries coming from the Office of Senate Floor Analyses. Lockyer says Republicans don't need their own analyses, that the "non-partisan" official summaries are perfectly adequate. But Republicans dislike depending for critical information upon an office the Democrats control, all their protestations of non-partisanship notwithstanding.

Lockyer, however, wouldn't bend — then along came SB 291, an innocuous bill introduced by Democrat Senator Byron Sher to pay specific legal costs for judgments and claims filed against California. It contained no ACLU payout provision when it was voted out of the Senate 38-0. In the Assembly, however, a late amendment added the ACLU money. A handful of GOP Assemblymembers noticed the outrage and, as noted above, voted no.

But back in the Senate, all mention of the payout was somehow eliminated from the final version that members received of Bill Lockyer's "non-partisan," "unbiased" analysis. An original 291 analysis, written by an Office of Floor Analyses employee, *does* state that "$1.9 million" is included for "attorneys' fees" and interest in the case of "*American Academy of Pediatrics, et al v Daniel E. Lungren*" — but *not* the version that reached the floor, whereupon GOP senators provided the extra votes the "urgency" measure required. Later, when the two contrary summaries of 291 came to light, the Office of Floor Analyses suggested a computer "glitch" must have occurred, gulping exactly the sentences about the ACLU and nothing whatever more. Hmmm.

If dishonest tactics were employed in the Senate to secure 291's passage, it would only be consistent with everything else about this tawdry business, sabotaging the democratic process to eliminate, at no matter what cost, parental consent. The law by which the ACLU boodle was awarded (Code of Civil Procedure section 1021.5) specifies that, before such an award can be made, a legal action must result "in the enforcement of an important right affecting the public interest" and further requires that it confer a "significant benefit ... on the general public or a large class of persons." And who do you suppose is entrusted to decide whether these criteria have been met? As reported in the *Sacramento Bee*, "the same San Francisco judge who ruled that the parental consent law was unconstitutional." So how much more polluted can a convenient little computer glitch make this already putrid pool?

AT BOALT HALL and California's other elite lawyer factories one may hear lectures explaining that "law" is a delusion the exploiting classes invent to keep the people down, that the only reality in social organization is power, and that thus the proceedings within court rooms, legislative chambers, classrooms, newsrooms — anyplace where, ostensibly, truth and good are to be separated from lies and evil — that such proceedings are all farce masking an endless struggle where the only real determinant of outcome is brute strength. This is the view of life that brought us World War II. As we blithely tramp into this morbid night, none can say we were not told where we are headed. CPR

Rallying Cry

A Call to Defend the First Amendment

by Pat Nolan

Amidst assaults on free speech in the guise of "campaign reform" and on freedom of association through an attack on the Boy Scouts, an effort to lay siege to the First Amendment's religious freedom guarantees could not be far behind. It wasn't.

THE INK was hardly dry on the U.S. Supreme Court's June 25, 1997, *City of Boerne v. Flores* decision, which struck down the federal Religious Freedom Restoration Act (RFRA), when government officials across the nation began to restrict religious activities. In the *Boerne* case, the Court ruled that the city of Boerne's historic preservation ordinance could prohibit a local church from expanding its sanctuary because the ordinance applied to all property owners, secular and religious alike. *Essentially, the Court allowed the city's desire to promote tourism to supersede the local congregation's need for a church large enough to worship together.*

• Immediately after the Court issued its decision, local prosecutors in Pennsylvania served notice on 20 Christian day care centers that they were in violation of local ordinances which prohibit discrimination in hiring on the basis of religion. The government lawyers cited the *Boerne* decision in court documents to justify their unprecedented interference in church activities.

• In California, death row inmates were told they could no longer take their Bibles to Bible study. And when the religious volunteers tried to bring in their Bibles, they were told that they could not bring them in either. So, we have inmates attending Bible studies, but without any Bibles!

• In Texas, two school children were disciplined for wearing rosaries. The school administrator claimed that they were gang symbols.

• In Michigan, the State House passed a "mini-RFRA" for the people of Michigan, but with a joker in the deck: the bill defines "persons" as all residents of the state who are not lawfully incarcerated. In other words, if this bill becomes law, prisoners will officially be "non-

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