

The Pacific Legal Foundation

by Jim Christie

Only a few years ago prospects for the Sacramento-based Pacific Legal Foundation, the country's oldest "conservative" public interest law firm, hardly seemed promising. In 1986, PLF president and CEO Ronald Zumbrun decided to indulge in deficit spending to continue unpopular land use and takings litigation. The legacy of judicial activism from the 1960's and 70's was also hardly conducive to staff morale, recalls Zumbrun: "Our biggest problem over the years had been that the courts had presumed government was always correct."

That was, he says, "until *Nollan*." *Nollan v. California Coastal Commission*, one of the cases for which Zumbrun leveraged \$300,000 in 1986, went in 1987 to the United States Supreme Court, which agreed with PLF that government agencies could not demand property as a condition for issuing permits. "Any time you lose in the Supreme Court, it is significant," says Ralph Faust, the commission's chief counsel, of the case. "It changed the way we do business."

Others, noting PLF's partisan ties, say the firm was simply in the right place at the right time. "The commission's leaning toward granting permits isn't so much because of *Nollan*, but because of [Republican Governors] Deukmejian and Wilson" providing conservative appointees, says Oakland sole practitioner Joe Brecher, who works on retainer for the Sierra Club Legal Defense Fund, a longtime PLF opponent. But a win means precedent. And as Faust says, the case "raised a lot of money."

PLF's budget today stands at about \$4 million, twice what it was in 1986 and a quantum leap from the \$110,000 Zumbrun launched the firm with in 1973. And now, coupled with precedents from *Nollan* and its 1992 sister case, *Lucas v. South Carolina Coastal*

Council, PLF hopes a blitz of amicus filing against wetlands and endangered species regulations will stake out new legal territory for the property rights movement.

The opening shot came in August 1993, in *Sierra Club v. Kern County*, which is still waiting to be heard. PLF sided with the county when the Sierra Club sought to prevent the state Fish and Game Commission from dropping the Mojave Ground Squirrel from its threatened species list. The proposed "delisting," the first of its kind in the state since the Endangered Species Act of 1973, would open up considerable acreage in Kern County for development.

"Wetlands and endangered species regulations, although they have been around for years, have not been developed in their full regulatory glory," explains PLF trustee Thomas May, a partner in the San Diego firm of Luce, Forward, Hamilton & Scripps. "Every time you see a new regulatory wave, there are more and more property rights activists." In other words, more potential clients and donors, which is a boon to the property rights movement but which leads opponents to counter that PLF's amicus strategy is just marketing fodder for business interests, which will amount to little in court if resources and talent are not focused. "The extent of their impact has been difficult to tell because they have been involved in so many cases indirectly," says Joel Reynolds, senior attorney in the Los Angeles office of the National Resources Defense Council.

And not just involved in land use cases. PLF has fought for term limits and against affirmative action, rent controls, gays in the military, and state university and bar fees directed to political activities. William Rusher, the retired publisher of *National Review* and a PLF trustee, recalls, "We recently represented a high school student who wanted to set up a Rush Limbaugh Club at school." The matter was quickly resolved. After a visit by PLF attorneys to the governing board of Alcalanes Union High School in Orinda, California, student Kurt Busboom won permission to set up the club on campus.

But it is land use that pays PLF's bills. And with more and more regulations on private property, PLF, says May, will no longer be dismissed as a tool of "rapacious developers." With \$4 million in the bank, PLF will surely be able to con-

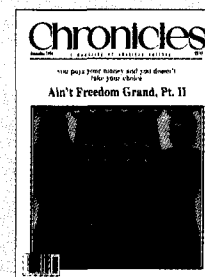
tinue its work. An image makeover is much more problematic. Even so, PLF has come far since the dark days before *Nollan*. "We have the experience, the legal precedent weapons, and the courts are listening to us," says Zumbrun. "We can do more in the next 20 years than we did in the past 20 years because we have a base and a springboard."

Indeed, the property rights movement gained important ground last June when the United States Supreme Court ruled in its favor in a crucial land use and property rights case in which PLF was named as a friend of the court. In a 5 to 4 decision, the Court in *Dolan v. City of Tigard* placed new limits on the ability of governments to require developers to set aside property for environmental uses. Writing for the majority, Chief Justice Rehnquist said, "We see no reason why the takings clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment, should be relegated to the status of a poor relation."

Turnabout is fair play, and the official reaction of attorneys in environmental groups echoed the dejection at PLF circa 1986. John Echeverria, general counsel of the Audubon Society, called the ruling "an extraordinary intrusion by the court into the authority of local government. It elevates the interest of property owners over the interest of the community as a whole."

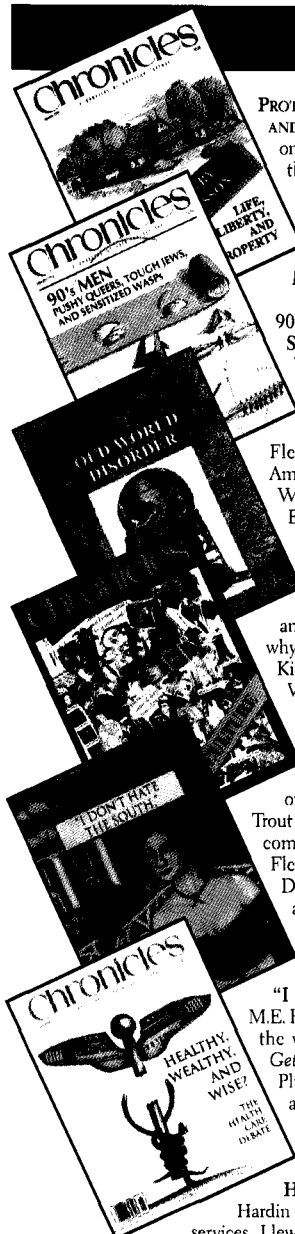
Jim Christie writes from Seattle, Washington.

For Immediate Service
CHRONICLES
NEW SUBSCRIBERS
TOLL FREE NUMBER



1-800-877-5459

1994 IN REVIEW



PROTECTED BY SMITH & WESSON: LIFE, LIBERTY, AND PROPERTY—January 1994—Thomas Fleming on the home as one's castle, Roger D. McGrath on the virtue of armed communities, and Richard Maxwell Brown on the "no duty to retreat" doctrine in American law. Plus Samuel Francis on the new populism and a review of Walter Laqueur's *Black Hundred: The Rise of the Extreme Right in Russia*.

90's MEN: PUSHY QUEERS, TOUGH JEWS, AND SENSITIZED WASPS—February 1994—Chilton Williamson, Jr., on the syphilization of American manhood, Harold O.J. Brown on the importance of sports, Paul Gottfried on the stereotypical Jewish male, and Thomas Fleming on the extermination of manliness in American culture. Plus Martin Mawyer on William Weld's empowerment of Queer Nation, and E. Christian Kopff's "Real Men's Studies."

OLD WORLD DISORDER—March 1994—W. Bruce Lincoln on the burden of Russian history, Curtis Cate on the United Nations and Third Balkan War, and Thomas Fleming on why Europe needs to grow up. Plus R. Cort Kirkwood on the Presidential Commission on Women in the Military and a review of Samuel Francis's *Beautiful Losers: Essays on the Failure of American Conservatism*.

POP CULTURE—April 1994—George Garrett on the sorry state of popular culture, Paul A. Trout on the 40th anniversary of *Fahrenheit 451* (with commentary from Ray Bradbury), and Thomas Fleming on tuning out technology. Plus R.H.W. Dillard on Federico Fellini, Bill Kauffman on rock and roll, Samuel Francis on *Star Trek* and the cultural elite, and William Norman Grigg on the new race war.

"I DON'T HATE THE SOUTH"—May 1994—M.E. Bradford on Donald Davidson, Fred Chappell on the writer's responsibility, J.O. Tate on the film *Gettysburg*, and William Pratt on Andrew Lytle. Plus Thomas Fleming on Southern chauvinism and Samuel Francis on the anniversary of *Brown v. The Board of Education*.

HEALTHY, WEALTHY AND WISE? THE HEALTH CARE DEBATE—June 1994—Garrett Hardin on why discrimination is needed in health care services, Llewellyn H. Rockwell, Jr., on the AMA, Yuri N. Maltsev on the Soviet experience with socialized medicine, Thomas Fleming on the lack of a real health care debate, and Robert Weissberg on the death of natural causes.

FORBIDDEN FRUITS: THE NEW PURITANISM—July 1994—Thomas Fleming in praise of sex and violence, Samuel Francis on anarcho-tyranny, Philip Jenkins on the New Puritanism, and Sarah J. McCarthy on anti-harassment and speech crime laws. Plus Chilton Williamson, Jr., on the violent West and Wayne Allensworth's review of Vladimir Zhirinovskiy's *The Last Drive to the South*.

AMERICAN DILEMMAS—August 1994—Murray N. Rothbard on life in the Old Right, Eugene D. Genovese on black autonomy, Joseph Brown on "the other black history," and Bill Kauffman on Senator J. William Fulbright. Plus Thomas Fleming on equality vs. privilege and Samuel Francis on secessionist fantasies.

AFTER LITERACY: EDUCATION IN POSTCIVILIZED AMERICA—September 1994—John Lukacs on civilization vs. culture, Michael Gorman on technovandals and the future of libraries, Theodore Pappas on the nagging problem of plagiarism, and Stephen A. Erickson on the politics of education. Plus Thomas Fleming on the education of liberals and John Dombrowski on politically incorrect research.

THE YELLOW (BELLIED) PRESS—October 1994—Philip Jenkins on our free and gutless press, Erwin Knoll on the "liberal" media, Terry Przybylski on the *Chicago Tribune*, Alex N. Dragnich on Yugoslavia and the Western media, and Ewa M. Thompson on Russia and the American press. Plus Samuel Francis on the abortion gambit.

AIN'T FREEDOM GRAND, PT. II—November 1994—*Chronicles* interviews former California governor Jerry Brown, Richard Winger on restricting ballot access, Jeffrey Tucker on the third-party option, and Wayne Allensworth on the religious right. Plus Tomislav Sunic on video politics and Paul Foster's "Memoirs of a Reagan Hack."

KEEPING THE FAITH: LIFE IN POST-CHRISTIAN AMERICA—December 1994—Philip Jenkins on the radicalism in the Episcopal Church, Thomas Fleming on the case for religious boycotts, Thomas Molnar on the National Conference of Catholic Bishops, and John Patrick Zmirak on AIDS and the wrath of God. Plus Jacob Neusner on the left's hijacking of Judaism and Sanford Pinsker on affirmative action and the Lubavitcher Rebbe.

BACK ISSUE ORDER FORM

1 to 4 issues \$6.00 each; 5 to 9 issues \$3.50 each; 10 or more issues \$2.50 each (postage and handling included)

Date	Qty.	Cost	Date	Qty.	Cost
January 1994	_____	_____	July 1994	_____	_____
February 1994	_____	_____	August 1994	_____	_____
March 1994	_____	_____	September 1994	_____	_____
April 1994	_____	_____	October 1994	_____	_____
May 1994	_____	_____	November 1994	_____	_____
June 1994	_____	_____	December 1994	_____	_____
			Total Qty.	_____	Total \$ _____
Name _____					
Address _____					

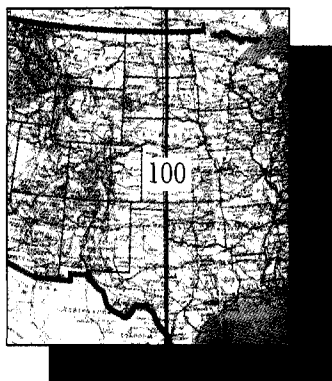
MAIL WITH CHECK TO: CHRONICLES * 934 NORTH MAIN STREET * ROCKFORD, IL 61103

by Chilton Williamson, Jr.

The Great Portcullis

In the third week of August someone pushes the button and brings summer to an end in the Mountain West, though beautiful weather and Indian summer lie ahead. Typically the change comes with the discharge of a powerful thunder cell, seemingly no different from any other electrical storm but collapsing into a gray leaden overcast instead of propelling itself onward through crystalline skies. The rains continue for a day or two, then cease. The skies clear, and nothing appears changed. But everything has changed.

Early in August, the birds begin to leave: some of the songbirds first, then the Canadian geese in military formation, and eventually the sandhill cranes, high-flying and confused as smoke, gathering only to twist apart again, cranking their rachitic cries distantly out of a cyanic sky. Pale underbodies nearly invisible against the sun's glare, they beat raggedly away toward the bosques of the Rio Grande south of Albuquerque, toward Mexico. By Labor Day Mexican, Basque, and Indian herders are driving the sheep down from the alpine meadows into the hills above the creeks and rivers, for sorting and then for trucking to their winter range. Early last September I went with the Thoman family to Kendall Bridge on the upper Green River 15 miles below the Green River Lakes. We slept over the night at camp and in the morning rode horseback up to a grassy park where Bill Thoman, his son Dick, and Dick's wife Susie, with the help of a pair of Indians, had arranged the steel panels trucked in by pickup to form a series of pens and a funnel of wire fence drawing to them. The herders drove the sheep at the funnel where they milled and climbed on one another, bleating, while Dick and Susie and their seven-year-old son Ben walked through them from the funnel's neck to its mouth, flailing at the animals with their coats to drive the flock more closely together still into the funnel as the Indians stood watching the dogs work and I sat my horse and now and then pushed back a straggler.



As the sheep passed singly along the narrow corridor formed by the panels, Bill worked the gate to deflect them into one or another of the pens: wethers, ewes, the large strong bucks, and the runty ones to be castrated. We seized the animals behind the front legs, threw them, sat them on their rumps like teddy bears, and held them while Dick twisted the tails off, and, operating with a penknife, slit the scrota and tore out the testes with his fingers; after he stepped aside, Mickey Thoman injected the sheep in the inner thigh with penicillin and daubed a disinfectant on the wounds, and Mary retrieved the sundered parts in a pan for lamb fries. When Dick had finished notching ears the herders pushed the bloodied sheep into the hills again, and we drove the bucks down to Kendall Bridge where the truck waited, a semi coupled to an aluminum stock trailer. The aspen jetted from the ground like yellow gas flames streaked with green, the parks bristled with the golden frost-killed grass, and beyond the meandering Green the northern abutment of the Wind River Range stood hugely in cross section, blocks of pink granite thrusting above a pedestal of black timber, tilting against a suddenly overcast sky, waiting for snow. That night a cold torrential rain fell driven by a shrieking wind; at dawn the tents were frozen stiff and a thick fog packed the valley. Driving home, I saw that the highest peaks—Gannett, Coolidge, Fremont—had received a dusting of snow, and by the time I arrived in Kemmerer late that afternoon the great and silent stillness of fall had embraced the town. Tom Eliot to the contrary, April is not the cruelest month.

The first snow, usually in the initial

week of September, draws into the parched ground within hours, and for weeks afterward the sky remains remote and intensely blue. Out on the desert hunters pursue the wily antelope whose dark and globular eyes can read the number on your hunting permit from a distance of half a mile and whose sole means of defense is flight, at speeds to 40 miles an hour. Their tan and white coats make them fairly easy to spot at a distance; after selecting for height of horn above the ear, curve, and thickness, the hunter begins a stalk on his quarry that can last hours, or all day. He creeps up dry washes on hands and knees, crouches movelessly in excruciating positions behind small clumps of sagebrush, and crawls on his belly to the shaly verges of canyons over a carpet of prickly pear that deposits its fiery spines in the palms of his hands, in his chest, stomach, and legs before he has a chance to pull the trigger. Once while chasing a splendid buck I almost stepped on a large badger playing possum in the brush. Since I was too far from the prey for a shot and didn't want to spook him by appearing over the rise between us, I sat for a time with my rifle across my knees watching the badger, who presently opened one eye and then shut it quickly to convince me of the actuality of his demise. A wilderness of deep basins walled by steep cliffs striped red and white, mesas buttressed by masses of gray, green, and cream-colored clay like the fossilized feet of giant pachyderms, smooth golden hills separated by folds of lavender shadow, and juniper breaks growing upon islands of red sandstone rock—the desert stretches in every direction to the horizon and the far blue mountain ranges that triangulate it. The lone hunter, hearing the wind pass slant across his ears, observing the dust devils run twisting over the sagebrush plain, and feeling in his bones the acute emptiness of fall, knows that he is precisely that: alone.

Before the Wyoming Game and Fish Department split the deer and elk seasons from each other ten years ago, moving up the deer hunt to the first two weeks of October, I made a fishing trip to western Montana every fall before returning home for elk camp. By early