IN THE SUPREME COURT OF IOWA

No. 15-1375

DONNA JEAN HOLMAN

Appellant

vs.

STATE OF IOWA

Appellee

Johnson County No. SMSM067310
Appeal from the ruling of Judge Stephen C. Gerard, II

APPELLANT'S PROOF BRIEF

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2. Did trial court err, prosecuting a "threat" which was not alleged to be physical but was at most intellectual, spiritual, and a statement of facts which were true independently of defendant?

3. Does it still violate the *Canon of Judicial Ethics* (a ground of removal from the bench under Rule 52.10(1)(b)) for a judge to "disregard or overlook serious arguments", neither addressing them or even indicating he has read them?

4. Has the unanimous verdict of all four court-recognized finders of facts – juries, expert witnesses, state legislatures, and Congress (in 2004) – that all unborn babies are humans/persons from fertilization, finally invoked *Roe v. Wade's* ruling that the establishment of this fact requires states to protect the unborn, leaving Planned Parenthood without the "clean hands" needed for standing to sue for interference with its killings?

ROUTING STATEMENT

This case is a good candidate for Supreme Court review, containing, as it does, substantial issues of first impression, (Rule 6.1101(2)(c)) not addressed previously by this Court, including a federal question over which there is conflict (created by subsequent federal law) between state supreme courts, including this one, and the U.S. Supreme Court.

STATEMENT OF THE CASE

On November 1, 2006, a Complaint was issued against me alleging 3rd Degree Harassment, Iowa 708.7(1)(b), of Planned Parenthood staff and customers, and Disorderly Conduct, Iowa 723.4(2). On the 2nd, trial was set for January 26, 2007.

My last attorney, Bill Monroe, explains what happened next:

> On January 26, 2007, Defendant was found guilty of Harassment 3rd Degree and Disorderly Conduct, both Simple Misdemeanors, by the Honorable Karen Egerton. Among other parts of the Court's dispositional Order, the Court Ordered Defendant to have no Contact with "any employees of Planned Parenthood". Also handwritten on the bottom of page one of the Order was language to the effect that this No Contact was extended for "5 yrs from the date of this order." ....The Docket entries viewable at Iowa Courts online make clear that this 5 year No Contact

> Order was part of the sentence for the charge of Harassment.
>
> On November 16, 2011, the Johnson County Attorney Office filed a Motion to Extend this No Contact Order. Also on November 16, [2011], the Honorable Stephen Gerard II granted this motion.[1] ("Motion to Correct (Vacate) Illegal Order", filed August 8, 2014) (App. 18)

The November 16, 2011 order was on "Form 4.14", which includes the statement, "Defendant has been provided with reasonable notice and opportunity to be heard." (App. 16) But the ruling against me was granted on the same day the motion by "the State" was made. Nothing in the record counters my recollection that I received no notice of any kind whatsoever, of any opportunity to "be heard"; the only notice I received was after the ruling, telling me I that I had lost at the ex parte hearing.

August 8 and 22, 2014. Two years and nine months later, on August 22, 2014, Judge Stephen C. Gerard II denied our August 8, 2014 "Motion to Correct (Vacate) Illegal Order". We had argued that the 2011 extension was "illegal" because it was ex parte for no reason. (App. 18)

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1 The order was overbroad because it told me to stay away from "all employees, contract workers, volunteers, patients of Planned Parenthood, and anyone accompanying them". It was impossible for me to know who all those people were so I could obey the order.

Judge Gerard's August 22 response (App. 21) was that because a relevant procedural law does not explicitly say anything about my right to defend myself in court, therefore I must not *have* any such right, so *he* had a legal right to schedule and rule ex parte.

September 5, 2014. Through my attorney I filed a motion September 5 questioning the August 22 ruling that I didn't have any right to defend myself.

September 23, 2014. Again arguing from the silence in Iowa 664A.8 about my right to attend my own hearing, Judge Gerard ruled in his September 23 ruling/response that his ruling nearly 3 years ago was not an "illegal order". (App. 25)

However, Gerard did acknowledge that *State v Olney,* No. 13-1063, 6/24/14 (Ia.Ct.App. 2014) established, by relying on Rule 1.1509, that a litigant deprived of a hearing could

> "move the court to dissolve, vacate or modify the no-contact order and that, if supported by evidence on the merits, the district court had the authority to vacate, reconsider or terminate the no-contact order pursuant to Rule 1.1509.... [So] This court will...treat the Defendant's Motion as a request for a hearing on the merits as to whether the Defendant continues to pose a threat to the safety of the Protected Party."

In other words, Gerard proposed a do-over: a de novo review on the merits of the need for the injunction. Gerard set that hearing for October 31, 2014.

Gerard thus shifted the hearing focus from whether I have any Constitutional right to defend myself in court, to whether an 80-year-old unarmed woman is so credible a *physical* threat to Planned Parenthood staff as to merit court intervention to protect the latter.

That shift created a correspondingly dramatic shift in the nature of evidence it became relevant for me to submit. Accordingly, I wrote a new brief which I filed October 21, 2014. (App. 27)

Judge Gerard completely ignored my brief. He did not address its arguments, or even acknowledge its existence. He deprived me of any right to be heard through my brief as positively as he had previously deprived me of any right to be heard in person.

After a series of continuances and a scheduled November 7, 2014 hearing at which Judge Gerard did not show up, my right to

trial gave way to a ruling based not even on briefs but on three affidavits from each side.

Gerard did not rule until July 14, 2015. He made exactly the same argument about Iowa law's silence about my right to defend myself in court that he had September 23, 2014.

He said my

> "criminal history clearly proves that the Defendant continues to present a threat to the safety of the Protected Party in this case, the Planned Parenthood Clinic in Iowa City, Iowa." (App. 88 -document begins p. 86)

But nothing in what he cited from the record supported any scenario of danger I posed to the *physical* safety of anyone at Planned Parenthood, much less to Planned Parenthood itself.

STATEMENT OF THE FACTS

Our August 8, 2014 brief (App. 18) explained what is wrong with not allowing a defendant to attend her own trial:

> The granting of this Motion [to renew the 5-year injunction] without giving the Defendant the fundamental rights of Notice and the Opportunity to be Heard when there was no need for such expediency was also error in that this was an unauthorized and unnecessary ex parte contact with the Court. See Iowa Court Rules 32:3 5(b) and 51.29. Expediency was not required because the No Contact

> Order issue was not set to expire until January 26, 2012, which means the Court had at least 71 days to contemplate the County Attorney's Motion. Under such circumstances, the Defendant's fundamental right to Notice and the Opportunity to be heard demanded respect.
>
> Additionally, it was also improper [to not consider] that Defendant [had served the maximum] 30 day jail sentence. The acts of the legislature are presumed correct. The Iowa legislature decreed that a 30 day jail sentence was the maximum punishment. Serving this 30 day jail sentence should therefore logically be presumed to have rehabilitated the Defendant. ("Motion to Correct (Vacate) Illegal Order", SMSM067310, August 8, 2014, App. 18)

Not only had I served 30 days in jail, but I was also forced to pay out over $5,000[2], not counting the cost of the psychiatric evaluation which I was ordered to undergo but which the judge said did not meet her criteria which she added after the evaluation. (I was originally ordered to have a psychiatric evaluation and to submit to "any treatment recommendation". After I did, by a California therapist[3], Judge Egerton ruled June 1, 2007, (App. 13) that it was a mere "psychological" evaluation[4] and I needed a

2 I was fined $250, $80 surcharge, $50 court costs, charged $3,500 for a bond which was never returned, $1,000 bond on appeal which was never returned [Bond order Jan 31, 2007], $90 for witness fees, $50 for contempt of court for remaining silent at a hearing, $231 for parking my van in front of Planned Parenthood in Red Oak because of the mistaken idea that the Iowa City injunction applied in Red Oak, $50 for an appeal request which was denied, and $100 for my lawyer's travel to Iowa City. If there are any errors in this list it is probably because I don't know why I was charged some of these things.

3 Heather H. Freyone Mechanic, Ed.D., was a "Licensed Marriage, Family Therapist, CA #31905, and a Registered and Certified Clinical Nurse Specialist, #441" according to her report in the record.

4 Psychology.wikia.com says a "psychiatric evaluation" can involve "psychologists", "nurses", and "therapists". http://psychology.wikia.com/wiki/Psychiatric_evaluation Heather was a nurse and a

"psychiatric" evaluation, by a physician licensed in Iowa. I gave up trying to meet Egerton's evolving criteria and Egerton jailed me.)

I argued January 3, 2008 in a Motion Nunc Pro Tunc for Reconsideration of Sentence:

> [Don't I have] the basic right to refuse "medical help?" I believe psychiatry to be a pseudoscience on par with astrology[5], fortune telling, and palm reading. Must I be punished for my refusal to recognize psychiatry as a legitimate medical science? What gives this court the right to order medical help for which I have no need or desire? Is it not "my body, my choice?" Must I also ingest mind altering prescribed psychotropic drugs to satisfy this court order? [The order was to submit to "any treatment recommendation".] Does this court routinely order psychiatric evaluations for misdemeanor convictions? ...It is unjust for this court to...forbid me from performing my

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therapist.

5 The U.S. Supreme Court held precisely the same view in *Daubert v. Merrell Dow Pharmaceuticals* (92-102), 509 U.S. 579, 593 (1993). The Court said, "Ordinarily, a key question to be answered in determining whether a theory or technique is scientific knowledge that will assist the trier of fact will be whether it can be(and has been) tested. "Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry." Green, at 645. See also C. Hempel, Philosophy of Natural Science 49 (1966) ("[T]he statements constituting a scientific explanation must be capable of empirical test"); K. Popper, Conjectures and Refutations: The Growth of Scientific Knowledge 37 (5th ed. 1989) ("[T]he criterion of the scientific status of a theory is its falsifiability, or refutability, or testability")." Popper's book compares psychiatry with astrology. Popper was a contemporary of Einstein and Freud, and he felt challenged to articulate the difference between their two disciplines. He was impressed that Einstein's Theory of Relativity made a risky prediction: that at the next eclipse, an astronomer could see stars on the other side of the sun because the sun's gravity would bend their light around it. It proved true. By contrast, Freud made no predictions. Certainly no testable ones. His therapy consisted of making untestable claims about the effect of past events on present mental states. Popper compared the scientific approach in astronomy with the claims of astrology which escape repudiation, not by passing rigorous tests, but by being so vague that nobody can figure out what to test. In dozens of thorough, eloquent pages, Popper illustrated how that is exactly the *modus operandi* of psychiatry. And Popper's arguments were the arguments chosen by the U.S. Supreme Court to explain its establishment of its new criteria for Expert Witnesses. See more overview at http://saltshaker.us/AmericanIssues/ChildAbuse/Junk%20Science%20Case.htm. See book excerpts at http://saltshaker.us/AmericanIssues/ChildAbuse/Popper.htm.

> ministry to the pre-born...ordering me to get a psychiatric examination, and obey psychiatric advice. (App. 14)

My attorney cited an additional authority in a related action:

> [This] was an improper ex parte Order that was entered without giving Ms.[6] Holman her fundamental Constitutional right to Notice and the Opportunity to be heard. *State v. Seering,* 701 N.W.2d 655, 665-66 (Iowa 2005) ("At the very least, procedural due process requires notice and opportunity to be heard in a proceeding that is adequate to safeguard the right for which the constitutional protection is invoked.")(citation and internal quotation marks omitted). (Case SMSM017078, South Lee County, "Notice of Issues of Concern and Withdrawal", filed April 8, 2014.)

(This was in a parallel case that was generated when Planned Parenthood, the "Protected Party", complained to the South Lee County court in Keokuk that I had violated the Johnson County injunction. In Keokuk. That case, SMSM017078, was finally dismissed on the ground that the Johnson County injunction did not indicate jurisdiction in Keokuk.)

Judge Gerard's August 22 response was that because a law does not explicitly say anything in its text about the right of anyone

6 Although I appreciate my attorney's help and have little criticism of him, I wish he wouldn't call me "Ms." The appellation was invented to help when the writer or speaker doesn't know whether the woman he designates is married. He knows I am married. It has also come to be used by women who don't want to reveal whether they are married, a purpose I do not share and which may not always be honorable. I am grateful for my marriage. I love my husband. I don't want to disavow my marriage any more than I want to disavow my grandchildren, or any of the children led away to slaughter.

charged with it to defend himself in court against the charge, therefore I must not *have* any such right, so *he* had a legal right to rule ex parte:

> The procedure for extending a no contact order is set forth in Iowa Code Section 664A.8. No requirement for notice and hearing prior to the court considering a motion to extend is included in the statute. The Defendant's assertion that the extended No Contact Order entered on November 16, 2011 is an illegal order is without merit. (Ruling on Motion to Vacate No Contact Order, August 22, 2014)[7] (App. 21)

Here is Iowa Code 664A.8, which, like most laws, does not explicitly say either that a defendant has a right to attend his own trial, or that he does not:

> 664A.8 Extension of no-contact order.
> Upon the filing of an application by the state or by the victim of any public offense referred to in section 664A.2, subsection 1 which is filed within ninety days prior to the expiration of a modified no-contact order, the court shall

7 Judge Gerard continued, "Furthermore, the Defendant was personally served with a copy of the November 16, 2011 Order on November 16, 2011, and only now, nearly three years later, complains about the Order. Accordingly, Defendant's Motion should be denied." Gerard repeated this complaint in his July, 2015 ruling. Although he did not treat this point as dispositive, in case it should be so treated in the future I would respond that authority for objecting to a flagrant violation of basic due process rights is found in Iowa Code chapter 822, Postconviction Procedure. One of its grounds for relief is that "1. Conviction or sentence violates Iowa or United States Constitution". I had assumed that not allowing a defendant to be present at her own trial to defend herself, through not granting a perfectly reasonable and justified continuance, would make the proceeding unconstitutional, violating Due Process. A summary of Chapter 822 posted by the Iowa Bar Association says the "usual claim is conviction was in violation of U.S. Constitution or Iowa Constitution or laws". "PCR must be filed within three years of final conviction/decision...." The Bar Association article is posted at: That made the deadline November 16, 2014, a deadline of which I was well aware, and had written to my attorney suggesting he cite it, although he chose not to.

> modify and extend the no-contact order for an additional period of five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's family. The number of modifications extending the no-contact order permitted by this section is not limited.

September 5, 2014. Through my attorney I filed a motion September 5 challenging the August 22 ruling that I didn't have any right to defend myself. Not at that time mentioning Due Process requirements of the Iowa and U.S. Constitution, my attorney cited *State v Olney,* No. 13-1063, June 24, 2014 (Iowa Court of Appeals 2014), which he attached. He wrote:

> ...notice or hearing is necessary in the context of a No Contact Order issued per Iowa Code section 664A.8....no facts were pled by the State of Iowa that would have excused the ex parte application....[Olney said] "no-contact order is analogous to an injunction (page 6-7)...Iowa R.Civ.P. 1.1507 [has] provisions for notice and waiver of notice by the court (page 7)." (App. 22)

Here is the court rule to which he referred:

> Iowa R.Civ.P. 1.1507 Notice.
> Before granting a temporary injunction, the court may require reasonable notice of the time and place of hearing therefor to be given the party to be enjoined. When the applicant is requesting that a temporary injunction be issued without notice, **applicant's attorney must certify to the court in writing either the efforts which have been**

> **made to give notice to the adverse party or that party's attorney or the reason supporting the claim that notice should not be required.** Such notice and hearing must be had for a temporary injunction or stay of agency action pursuant to Iowa Code section 17A.19(5), to stop the general and ordinary business of a corporation, or action of an agency of the state of Iowa, or the operations of a railway or of a municipal corporation, or the erection of a building or other work, or the board of supervisors of a county, or to restrain a nuisance.

The "state's" motion to extend the no contact order did *not* request a "temporary injunction without notice". Neither did it allege any "efforts...to give notice" to me. Neither did it "claim that notice should not be required." It was entirely Judge Gerard's idea to issue me a permanent 5-year injunction without giving me notice to be heard as the law requires, on the "Form 4.14" provided him which claimed, as I said earlier, that "Defendant has been provided with reasonable notice and opportunity to be heard." (App. 16)

Judge Gerard never, in any subsequent writing, acknowledged the regard expressed in this rule, cited by my attorney, for the right of defendants to defend themselves in their own trials whenever possible, or in Rule 1.1509 which limits the reach of ex parte injunctions to 10 days, giving the excluded party the right

afterward to quickly cure the exclusion with a proper hearing. The "comment" on amendments to Rules 1.1505, 1.1506, 1.1507, and 1.1509 states:

> Concern has been raised regarding the issuance of temporary injunctions without a hearing or notice to the adverse party, and the subsequent difficulty in scheduling a hearing to dissolve, vacate or modify the injunction. The amendment to rule 1.1507 puts the burden upon the applicant to certify that he or she has either made an attempt to provide notice or has legitimate reasons for not providing notice. The amendment to rule 1.1509 provides once the temporary injunction has been issued, the adverse party may then file a motion to dissolve, vacate or modify the injunction, **which shall be heard within ten days**....
> *Iowa Court Rules 4th Edition, June 2009 Supplement*

September 23, 2014. Again arguing from the silence in 664A.8 about my right to attend my own trial, Judge Gerard argued in his September 23 ruling/response that his ruling nearly 3 years ago was not an "illegal order" because *Olney* "did not find that the order extending the no-contact order was illegal or that Section 664A.5 or .8 required a hearing." Why would the Court of Appeals regard Gerard's ex parte hearing in my case as any more "illegal", Gerard reasoned, than it regarded the ex parte hearing in *Olney*'s case? (App. 25)

Even though Gerard himself explained the difference, that the only reason the *Olney* court ruled in Olney's absence was that Olney couldn't be located, (he was served notice at his last known address but he had moved. In my case, by contrast, I have lived in the same home for many years whose address is embedded in the court record), Gerard said our cases are alike: "The facts in *Olney* are somewhat similar to the facts in this case." In other words, a hearing held ex parte because the defendant can't be located is "somewhat similar" to a hearing held ex parte because the judge feels no pressure to let the defendant attend.

Without acknowledging his own error, Gerard acknowledged my right to be heard, later. He acknowledged that *Olney* established, by relying on Rule 1.1509, that a litigant deprived of a hearing could

> "move the court to dissolve, vacate or modify the no-contact order and that, if supported by evidence on the merits, the district court had the authority to vacate, reconsider or terminate the no-contact order pursuant to Rule 1.1509.... [So] This court will...treat the Defendant's Motion as a request for a hearing on the merits as to whether the Defendant continues to pose a threat to the safety of the Protected Party."

I explained in my October 21 brief (App. 27) that when the issue was whether I should be allowed at my own trial, all I could talk about that would be relevant, was Constitutional Due Process, Court rules, and cases like *Olney.* The nature of aborticide was as irrelevant as it would be at a trial over owning too many cats. But with the issue shifted to whether I am such a Superwoman that at the age of 80 I still "threaten the safety", of people performing a particular activity, so seriously that they require court protection, it became relevant to submit evidence that the activity they are performing is now legally recognizable as "murder"; because the safety of murderers, while they are murdering, is not legally protectable. When a plaintiff in a lawsuit is partly responsible for the turbulence the suit seeks to remedy, the plaintiff does not have the "clean hands" necessary to have standing to sue. The business of killing legally recognizable human beings without necessity or due process makes the plaintiff the cause of all efforts to save those lives – efforts which, so long as they fall short of "serious injury", are made legal by Iowa 704.10.

My brief was thus titled, “Motion to challenge standing of protected party to participate in hearing or to receive legal protection.” I began “Planned Parenthood is not entitled to legal protection from me, and therefore has no standing to participate in the hearing set by Judge Gerard’s September 23 [2014] order.”

Judge Gerard completely ignored that brief. He did not address its arguments, or even acknowledge its existence. That failure to address serious arguments of the defendant, along with the arguments themselves which he failed to address, are the most important portions of my appeal.

On October 8, 2014, my attorney asked for a continuance. On October 10, Gerard rescheduled trial for November 7.

On November 7, Judge Gerard didn’t show. Judge Lewis’s order that day, continuing the hearing to January 16, 2015, claimed that Assistant Attorney General Rachel Zimmermann appeared at the hearing. If she did, it was ex parte at some other time or place than was scheduled for our hearing, because no one showed there except me and my attorney. (I had thought when a party doesn’t

show, they lose, but it was not to be.)

When my attorney received the continuance, he had a conflict with the time ordered, and moved for another continuance.

Without my blessing, he also gave up my right not only to face my accusers, but to even be present to testify: “perhaps a personal presence hearing is not necessary and...the parties could instead simply submit written arguments....instead of a holding a hearing with oral arguments....”

That was not only a disappointment but a surprise, especially since the basis of my March 13, 2007 appeal (SMSM067310) was “violations of due process, right to confront witnesses....”

Judge Gerard obliged. There were three affidavits on each side, and no oral arguments, or even further briefs. On July 14, 2015 Gerard repeated his September 23, 2014 argument (App. 25) about Iowa law’s silence about my right to defend myself in court, and his complaint that I had “waited” until only 3 months before the Postconviction Procedure’s 3-year deadline. (See footnote 7)

He said my “criminal history clearly proves that the

Defendant continues to present a threat to the safety of the Protected Party in this case, the Planned Parenthood Clinic[8] in Iowa City, Iowa." In support of that finding he cited a "criminal history" that fails to suggest that the "threat" he means is remotely physical.

> "[she has] no intention of stopping her activities as an anti-[aborticide] protester...to communicate to women why they should not kill their children....[and I want to] speak to those who wish to enter [Planned Parenthood; I was] convicted of criminal trespass....[and in the view of Planned Parenthood staff I] display hostility against Planned Parenthood...." (App. 88 – ruling begins p. 86)

One final fact perhaps worth noting is that I suffered false arrest November 15, 2006, in the beginning of this case. I was arrested for violating a no contact order of which I had not been informed. I was served with notice of it while I was in jail.

The order itself is dated later on the same day as the preliminary hearing setting the trial date – November 2, but it is file stamped the 7th. It ordered me 25 feet away from Planned Parenthood's "parking area".

8 I hate calling Planned Parenthood's killing centers "clinics". "Clinic" is a word that is supposed to describe a place that helps make people well – not a place that kills them.

On November 15 I was arrested for violating the Order of Protection of which I had never been informed. While I was in jail on the 16th, the Sheriff came to the jail and served me with the notice of what I had just violated. This is shown by the fact that the "Violation of Harrassment (sic) or stalking protective order" filed on the 16th is actually dated the 15th, (App. 4) even though the docket shows nothing on the 15th. That the service to me was on the 16th, is affirmed by the docket entry for the 23rd, "Personal service by JCSD on 11/16/06". (App. 4) The docket shows that on the 27th the state filed motion to dismiss the "violating no contact order", and on the 28th the docket says "Dismissed cost to the state".

The violation notice says "item #5 states the defendant must stay more than 25 feet away from the driveway or parking area... the sidewalk [that I was on] is less than 10' from the parking area."

ARGUMENT

1. Ex Parte without necessity.

How it was preserved. My objection to not being allowed at my own 2011 trial was the subject of my 2014 motions, and the fact

that I was not so allowed was undisputed by the judge in his 2014 and 2015 rulings.

Scope and Standard of Appellate Review. "Abuse of discretion" describes Judge Gerard's disposal of my right to attend my own trial merely because a related procedural law does not explicitly reinforce constitutional guarantees of that right. Those grounds are "plainly untenable" and his reasoning was "unreasonable". "Abuse of discretion - Court's exercise of its discretion in deciding a motion rests on plainly untenable grounds or its abuse of discretion is clearly unreasonable." *State v. Powell*, 684 N.W.2d 235 (Iowa 2004).

"De Novo" may be the appropriate standard of review since the right to attend one's own trial is a constitutional issue, and because an injunction is an equity proceeding.

"De Novo – Constitutional questions such as search and seizure and constitutional rights under the Iowa and United States Constitutions are reviewed de novo in light of the totality of the circumstances shown by the record." *State v. Turner,* 630 N.W.2d

601, 606 (Iowa 2001). "Actions in equity (probate and guardianship)." *In re Guardianship of B.J.P.,* 613 N.W.2d 670 (Iowa 2000).

My contentions and reasons for them. The right of a defendant to attend his own trial is nullified by ex parte hearings, which makes them unconstitutional when there is no emergency or necessity and they are not temporary. The right to attend one's own trial is embedded in the Iowa and U.S. Constitutions, in the very definition of the word "trial", and in the expectation of every American heart contemplating justice. To rule oblivious of this right is not merely an astonishment; it is not merely unconstitutional; it is grounds for removal from the bench, according to Rule 52.10(1)(b).

> Code of Judicial Conduct Chapter 51 3.(A)(4) A judge should accord to every person who is legally interested in a proceeding, or that person's lawyer, *full right to be heard* according to law, and except as authorized by law, *neither initiate nor consider ex parte* or other communications concerning a pending or impending proceeding.....
>
> 52.10(1) Initial inquiry. Upon receipt of a complaint a determination shall be made whether or not the complaint is of substantial nature and involves matters which could

> be grounds for a charge within the jurisdiction of the commission to make application to the supreme court:
> a. To retire a judicial officer or employee for permanent physical or mental disability which substantially interferes with the performance of his or her duties.
> b. To discipline or remove a judicial officer or employee for persistent failure to perform duties, habitual intemperance, willful misconduct in office, conduct which brings the judicial office into disrepute, or a substantial violation of the canons of judicial ethics.

It is hard to know what more to say about this. To state the case, which I did in the previous section, should be to argue it; it should be so obvious that any argument should "go without saying".

664A.8 doesn't say I *don't* have a right to defend myself, so I would have thought the burden would be on Gerard to explain why I didn't, in light of the 6th Amendment to the *U.S. Constitution*, sections 9 and 10 of the *Iowa Constitution*, and the expectation in the heart of every American that "right to trial" includes the right to attend one's own trial. Or to explain some "compelling government interest" for depriving me of my fundamental Constitutional Due Process rights.

2. Spiritual "threats" not prosecutable. Is a "threat"

prosecutable, which is not alleged to be physical but appears to be at most intellectual or spiritual? And where the truthfulness of the words alleged to be "threatening" has never been challenged or said to depend on words or actions of the defendant?

How the issue was preserved. The fact that all these years of actions against me are based on a finding that I threaten all these people, even though no one describes the threat as physical but rather in intellectual and spiritual terms, is clear in Judge Gerard's rulings against me November 2006, January 2007, November 2011, and April 2015. I preserved my objection to prosecution for non-physical "threats" by pleading innocent in all those circumstances.

The fact that my objection was to the charge that my words were specifically *physically* threatening should go without saying, since physical threats are the only kind of threats that are constitutionally prosecutable.

Scope and Standard of Appellate Review. "Abuse of discretion" is surely involved when widely believed statements about this life and the next, which no one has alleged to be untrue,

and which would be just as true if I had never been born, are erroneously called "threats" and prosecuted as such. *State v. Powell*, 684 N.W.2d 235 (Iowa 2004). (See previous quote.)

"De Novo" may be the appropriate standard of review since the redefinition of undisputed statements of facts as prosecutable "threats" makes prosecutable what the First Amendment could not more clearly protect.

This broadside against Freedom of Speech is therefore a Constitutional issue. "De Novo – Constitutional questions such as search and seizure and constitutional rights under the Iowa and United States Constitutions are reviewed de novo in light of the totality of the circumstances shown by the record." *State v. Turner,* 630 N.W.2d 601, 606 (Iowa 2001).

It is also an equity proceeding; de novo review is merited in "Actions in equity (probate and guardianship)." *In re Guardianship of B.J.P.,* 613 N.W.2d 670 (Iowa 2000).

My contentions and reasons for them. Even if every word of Judge Gerard's description of my "threats" were true, they do not

on their face describe the kind of physical threat which is prosecutable under American law. If intellectual and spiritual threats are now prosecutable, Freedom in America has a serious problem.

It should go without saying that a prosecutable "threat", in America, must be a physical threat or it must be left alone by courts. But there was a disconnect between me and Judge Gerard through all this. In his mind the spiritual challenge Americans call "Truth" "threatens" Planned Parenthood. In fact, Truth "threatens" all tyranny, and all lies. But Truth's intellectual and spiritual threats, unlike physical threats, are not only not prosecutable, they are protected as among the most fundamental of rights by the First Amendment, and are universally held as central to the Freedoms which distinguish and preserve our nation. Judge Gerard, apparently not noticing this distinction, wrote down that I – and the content of my speech – am a "threat" to people.

The "State's" motion to extend the no contact order, filed November 16, 2011, claims "The State believes Defendant

continues to pose a threat to the victim's safety." This is one of those times where the absurdity is most striking of a single hireling attorney claiming to speak for an entire state! I challenge Naeda Erickson to find even *one* person in this great state, including himself, (or herself?) or any judge, who seriously believes I have ever "pose[d] a threat to the...[physical] safety" of anyone! And if someone could actually be found who could imagine a scenario in which I am a threat to someone's safety, could that strange person also imagine that such a threat would be abated simply by telling me to stay 25 feet away from my "victim"? If I intend to hurt somebody, which would send me to jail for the rest of my life, (since I am already 80 years old) does the Court think throwing in an extra 30 days is going to be a disincentive?

That is, unless the "safety" of the "victim" in the mind of the "state" and of the judge is not physical, but is the "victim's" *spiritual* "safety". But if that is their concern, why don't they acknowledge that my warnings cannot put people in *greater* danger, but the opposite: if heeded they will completely *spare* them

from *any* danger?

Perhaps *psychological* "safety" is on the "state's" and on the Court's mind. As *Daubert v. Merrell Dow Pharmaceuticals* (92-102), 509 U.S. 579, 593 (1993) affirms, (see footnote 5), psychiatry has little concern for establishing what is actually true, and the *last* thing a psychiatrist concerns himself with is *spiritual* danger – such as Hell.

But if the Court deems Planned Parenthood's mental health so fragile as to render it "unsafe" upon the mere *hearing* of spiritual truths believed by most Christians, why wasn't the psychiatric evaluation (App. 13) ordered for my "victim" instead of for me?

American courts have no jurisdiction over spiritual "threats".

The idea of any 80-year-old unarmed woman being such a physical threat to relatively young healthy murderers that the murderers should require court protection is certifiably insane – meriting the psychiatric evaluation which Magistrate Karen D. Egerton ordered me to take. Anyone who responds to unwelcome

allegations by physically suppressing them rather than by even trying to persuasively refute them is at high risk of veering dangerously out of touch with reality.

Throughout American law, the kind of threats which are criminalized are universally understood to be *physical* threats.

> Threat: In criminal law. A [physical] menace; a declaration of one's purpose or intention to work [physical] injury to the person, property, or rights of another. A threat has been defined to be any [physical] menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free, voluntary action which alone constitutes consent. Abbott. See *State v. Cushing*. 17 Wash. 544. 50 Pac. 512; *State v. Brownlee*, 84 Iowa, 473, 51 N. W. 25; *Cote v. Murphy*, 159 Pa. 420, 28 Atl. 190, 23 L. R. A. 135, 39 Am. St. Rep. 6S6. (*Online Black's Law Dictionary* 2nd Edition.)

Black's Law Dictionary doesn't *say* only a *physical* threat is prosecutable, because it shouldn't need to. It should go without saying. Everybody already knows it. If perceived *spiritual* warnings were prosecutable our First Amendment would mean nothing.

Also not specified in this law dictionary definition is the "reasonable man" standard; if others are paranoid about me, that doesn't make *me* a criminal. It only makes *them* due for psychiatric

evaluation. However, I get the impression that I must be physically frightening indeed by the "everybody who is important" standard.

No witness in the record testifies that I have ever been a *physical* threat to anybody. Here are the worst things said about me in the record that made people uncomfortable over the years:

> Continued to scream loudly...patients being harassed [verbally, presumably] *(Voluntary statement of Shirley Morris to police, November 1, 2006)*
>
> The elderly lady met me at the car and followed me and stayed by my side while I was outside....She told me not to go in that they were killing babies in there. She said how the aborticide worked and tried to get me to take pamphlets from her. She said 'Thou shalt not murder' and that my baby wanted to live. She kept talking and when I got inside she continued yelling. My friend asked her several times to go away and that she did not know why we were here but the lady said she knows what they do in there. (*Voluntary statement to police, name redacted, November 1, 2006)*
>
> The second we stepped out of the car, an older woman started to **verbally** attack us. "They kill babies in there! They take their arms and legs and grind them! You're a murderer! They didn't ask to die! etc..."...The woman continued to scream once we were inside. (*Voluntary statement, name redacted, November 1, 2006)*
>
> Patients were agitated to get in, banging on the door. Protester was yelling stating patient was "a murderer". Patient was very upset and crying. I really didn't pay attention to what protesters were saying for I feared for the

> safety of all of us at the door. All I remember was "murderer". (*Voluntary statement of Justine Sansa, Planned Parenthood staffer, November 1, 2006*)
>
> Around 7:50 am a patient was at our door waiting to come in – myself and co-worker went to unlock the door and could hear a female protester yelling at the patient and friend "thou shalt not murder" "you're killing your baby" "You're a mom – don't kill your baby". As I let the patient in they continued to yell at the patient where the staff and others in the clinic could hear. (*Voluntary statement of Tracy Goetz, Planned Parenthood staff, November 1, 2006*)
>
> Harassment 3rd Degree – personal contact in violation of 708.7(1)(b)...engage in personal and physical contact with another with the intent to alarm and annoy the other....The defendant approached the victims and began following them as they walked to the door. As she followed she yelled at them and shoved pamphlets at them. They told her multiple times to leave them alone and she continued to yell and push the pamphlets at them. The victims advised they were alarmed and annoyed by the defendant's actions. (*Complaint, November 1, 2006.* App. 3)

None of these allegations should be considered as proved, since I was not allowed to cross examine the witnesses to challenge the errors in their reports, which was one of my complaints in my application for discretionary review which this court denied in 2007. These accusations contain several very subjective terms.

"Shoved pamphlets at them" compared with "offered

pamphlets" does not describe distinct physical actions but rather the response some have, though not all, to the offer. This subjectivity took its toll on courtroom time:

> [The charge] says "pushing pamphlets at people." Who told you? Discussion of pamphlets "shoved at people." Questions about written statements – hand pamphlets – verbally told "shoved?" "Pushed?" [Policeman] will not identify names of statements that say "shoved." (Parties to bench. Review copies of statements held by officer and Defendant and compare copies and language as each having the same copies.) [Policeman] identifies a specific statement that says "pushed" [but no witness statement that says] "shoved".... Discussion of pamphlets being pushed/shoved. Unable to controvert without confronting witnesses [which the judge did not allow]. (Judge's notes on the January 26, 2007 trial, filed January 31.) (App. 9 – transcript begins p. 5)

Likewise, "Screamed" and "yelled" compared with "talked" do not assure us of different volume levels; certainly it is called "screaming" or "yelling" if someone talks at full volume to someone a foot away, and in that situation we reasonably impute strong, usually negative emotion to the speaker. But it is common knowledge that in a "protest" situation, as the Complaint worded it, a clear, resonant voice is needed to be understood over the usually considerable distances and traffic noise. To use the words

"screaming" or "yelling" in that situation tells more about how well a message is hitting home, than about the acoustical properties of the message.

"Yelling" connotes a louder volume than "talking". When it describes talking from a distance, it is neutral about the emotional state of the speaker. "Screaming", by contrast, has a strong connotation of emotional agitation in the speaker combined with maximum volume and such undisciplined use of the vocal cords as to cause a flutter that makes speech actually more difficult to understand. There are no clues in the record that the use of the word "screaming" has any more to account for it than the general habit of our culture to call a message we don't like "screaming" if the volume is only slightly elevated. However, I will concede that at my age a slight gravelly tremor has developed in my voice which is there whether I am talking loudly or softly.

Anyone who wants to know more than these subjective words can view the videotape that was entered into evidence January 26, 2007. I did not "scream" as some alleged. Videos do not lie.

The second phrase in the preceding Complaint (App. 3) is a loose statement of the elements of *Iowa Code* 708.7(1)(b). "Annoy" is not actually one of its elements. (If it were, almost everybody would be in jail.) "Physical contact" is an optional element, but none of the "voluntary statements" alleges any physical contact. The fact that I was charged with 3rd degree harassment and not 1st or 2nd degree, "threat to commit a forcible felony" and "threat to commit bodily injury", **proves that no one thought I was about to *physically* hurt anybody.**

708.7(1)(b) doesn't even require physical contact; it can be "personal contact", which is satisfied if two people are merely in "visual...proximity". Since that element alone would put everyone in jail, we need to seriously consider the other element: "intent to threaten, intimidate, or alarm". Several say they "felt threatened", but no one said I threatened anybody *physically,* a fact affirmed, I say again, by the charge of *3rd* degree harassment.

Did I "intimidate" anyone? Only one person used that word, but more about that later. I don't think I look very intimidating

when I look in the mirror. Maybe if I were a young 6' athlete wearing body piercings and gang colors I might intimidate people just by talking to them, or my disapproval might intimidate them if I were in a position of authority over them. With neither of those I don't think "intimidated" would be the right word for what anyone felt because of me. People pretty generally had contempt for me. I doubt if anyone can be "intimidated" by someone they have contempt for, who poses no tangible threat.

That leaves "alarm".

This element may qualify as being Constitutionally Vague, in that it certainly can't be prosecutable when it merely informs people of facts which are true and which would still be true even if the messenger did not exist. The following trial notes reveal that even when no "protesters" (we call ourselves "sidewalk counselors" and "missionaries to the preborn") are present, patients are sufficiently disturbed by "the nature of the business" that it is necessary for abortionist staff to "console" patients:

> Defendant questions witness [who works for Planned Parenthood] on whether the nature of the business can be

> traumatic for patients. Witness comes into contact with patients. Talks to patients. Some people can be stressed. [Even with no protesters outside.] There are times when witness will console patients. (Judge's notes on the January 26, 2007 trial, filed January 31. App. 7 – transcript begins p. 5)

In American justice, evidence that I told the truth *has* to be a defense against the charge that I alarmed somebody. Before this charge can legitimately, legally, and constitutionally stand, there has to be an allegation that what I said is not true, or that it would be made true only by my present or future actions. Then I would have to be allowed to present evidence that what I said was already true, and it has to be the burden on the State to prove I raised a False Alarm – the only kind of alarm which can be prosecutable.

If my message was already true, then its recipients' strong negative emotional reaction to mere truth marks them as immature, and probably as fools, although the latter charge might be too strong since their ignorance is at least intentional. But when millions are willfully ignorant about whether they are committing murder, America faces a very serious, very grave spiritual problem.

No Court can, therefore, logically or legally rule on such a

case, without addressing whether the "alarm" raised was false, or true. When an "alarm" is true, the correct word is "warning". No law criminalizes giving a "warning", and the perversion of any law to such a result would constitute an unconstitutional application.

My evidence that the substance of my message that unborn babies are humans/persons – which was prosecuted as "3rd degree harassment" – has been true independently of myself, and is legally recognizable as true, is laid out in my October 21, 2014 brief. I can't imagine how anyone can possibly refute it. However, I will be most interested in the efforts of any legally trained person who tries.

Until then, my theory must remain unchallenged that the only way it has been possible for aborticide to remain "legal" all these years, and especially since 2004, has been to suppress evidence – to not allow me to attend my trial, to prosecute undisputed statements of fact as "threats", to ignore my October 21 brief, and to ignore the fact that all four court-recognized finders of fact have unanimously "established" what *Roe v. Wade* said must be established for legal abortion to end. To suppress

evidence is to ignore reality. The habit produces candidates for psychiatric evaluations.

In fact, should this Court perpetuate the pattern of suppression of evidence which manifested in my case in not being allowed to question witnesses, not being allowed to attend my own trial, not acknowledging much less addressing my most important arguments, and which my brief explains has been typical of aborticide jurisprudence, that will only confirm the truth of my message, by this principle from the *Tryal of John Peter Zenger* (1735) which established Freedom of the Press in America, and established the principle that evidence that a statement is true ought to be a defense against the charge that it is libel or slander (just as, I argue today, it ought to be a defense against the charge that it is "harassment"): "The suppressing of evidence ought always to be taken for the strongest evidence."

Truth can certainly "threaten" the comfort of those who deny it and those who must adjust to it. That was acknowledged by the judge in the Zenger trial. When Zenger tried to prove that

everything he published was true, the judge ruled that was irrelevant; it was "libel", whether it was true or not, and in fact proving it true would make it even *more* of a stain on the character of the royal governor.

But Zenger's attorney didn't think the jury would consider it irrelevant. He calculated that the jury would obligingly convict if they thought Zenger's accusations false, but might acquit if they thought them true. But the judge had prohibited evidence that they were true, which is why Zenger's lawyer showed their verity by the principle, "The suppressing of evidence ought always to be taken for the strongest evidence." (Fortunately judges then at least allowed juries to hear arguments about the law, or we might not have Freedom of the Press today.)

Below are additional accusations of the "alarm" I raised, and the efforts to keep patients "safe" from my...my what? Not "safe" from any physical danger; but **"safe" from the content of my message.** And what is the method for keeping patients "safe"?

Walking patients in is a ruse. It doesn't shield them from my

message, unless they are talking over me, which they were not. Its only conceivable purpose is groupthink validation – having the nearest person to the patient being one who sees nothing wrong with killing your baby. Plus there is the implication that walking patients in wouldn't happen without some rational purpose involving patient "safety", and the only rational purpose would be to help fight me off should I suddenly morph into some manner of credible physical threat for which no evidence was alleged or theory proposed.

> Could hear loud yelling – horrible things – at the two girls....Observed that Donna was even closer to the two girls, approximately an arm's length away....both girls were very upset. They both appeared very nervous, very scared, shaking. The patient was crying... "Why are they doing this to us?"...the billboard had a gruesome picture. [Staff went out front to] watch for other patients coming in-wanted them to be safe. Walked people out to their cars and escorted them in. Could still hear the Defendant yelling, "Thou shalt not murder!"....The Defendant's tone was very serious and it would make your skin crawl. Very upsetting to hear it – horrifying – very loud – very direct – very uncomfortable....It was very scary inside the clinic....**Defendant would look at people directly in their eyes** – yelling directly at them – approaching them in a direct manner but maintaining a slight distance. The two girls were very frightened by the Defendant's behavior....Police made sure that everyone was OK-safe and

> would handle the situation....Witness did not like what Donna was saying....Did not see Donna physically touching people...."Thou shall not murder!" "You are a mom. You are killing your baby!" **Witness does not agree with that statement**....When security there in the past – has been allowed to talk to patients. That day she was yelling at patients....They appeared to be absolutely threatened. Witness felt threatened....At one point, the shouting was directed toward the witness. (The Planned Parenthood director.) Witness felt that it was very intimidating to her. ...Defendant shouting personally at her, "Shirley Morris, you are going to hell!" Made the hair on the back of her neck stand up. Very intimidating to have someone call her by her name. It rattled her, even at her age and her experiences. Cannot imagine what it must have been like for those two girls. Defendant was probably three feet from her. (From judge's notes on the January 26, 2007 trial, filed January 31. App. 5-7)

Well OK, someone used the word "intimidate". But our videotape of the incident was entered into evidence. You will not find me calling Shirley Morris by name, because I did not know her name, or that she worked at Planned Parenthood, much less that she was its director. Neither will you hear me telling anyone they will go to Hell. I don't know if they will. I pray they won't. It is largely to save them from Hell that I minister.

The video evidence in the record shows that I did not harass the Jane Doe listed in the complaint. I merely spoke to her and

offered her a brochure. The evidence shows that she lied in her complaint. She did not tell me several times to "go away." I did not "verbally attack" her as she alleges in her statement. I did not scream as she and other witnesses allege. Videos do not lie.

Content-based restrictions. When speech is prosecuted as "threats to safety" which are not even alleged to threaten anyone's *physical* safety but which only articulate *beliefs* shared by about half of society and hated by the other half, the prosecution is called an unconstitutional "content-based restriction" which regulates speech according to its subject matter or viewpoint.

Not even prosecution of threats against the life of the President are permitted, unless they are "true threats", and not mere "political hyperbole". *Watts v. United States*, 394 U.S. 705, 708 (1969). See also *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982); *Planned Parenthood v. American Coalition of Life Activists*, 290 F.3d 1058 (9th Cir. 2002) (en banc), cert. denied, 539 U.S. 958 (2003) (the "Nuremberg Files" case); *Virginia v. Black*, 538 U.S. 343, 360 (2003) ("Intimidation in the constitutionally

proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of **bodily** harm or **death**.").

Even "advocacy of the use of force or of law violation" is protected unless "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). See also *Stewart v. McCoy*, 537 U.S. 993 (2002) (Justice Stevens' statement accompanying denial of certiorari).

Content-based restrictions of speech other than advocacy or threats are presumptively invalid. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992) They must pass "strict scrutiny"; they must be necessary "to promote a compelling interest," and they must be "the least restrictive means to further the articulated interest." *Sable Comms. of Cal., Inc. v. Federal Comms. Comm'n*, 492 U.S. 115, 126 (1989) ("The Government may . . . regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the

articulated interest.")

"Fighting words" "which by their very utterance inflict injury or tend to incite an immediate breach of the peace" are prosecutable; ie. "epithets or personal abuse" that *"are no essential part of any exposition of ideas"*. *Chaplinsky v. New Hampshire,* 315 U.S. 568, 572 (1942). No one has alleged either that my words have incited physical violence, or are ever likely to, or that my words are not essential to expressing my ideas.

Ideas, like "They are killing babies in there", "Thou shalt not murder", a physical description of the aborticide process, "the babies didn't ask to die", "You're a mom – don't kill your baby", are the heart of the complaint against me. It is my motivating ideology – my opinion – my Biblical perspective – that the "rationale" of the Court's no contact order targets. "A content-based speech restriction is one that regulates 'speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.'" *Galena v. Leone*, 638 F.3d 186, 199 (3d Cir. 2011)

The purpose of the no contact order is to "suppress, disadvantage, or impose differential burdens upon speech because of its content." *Turner Broad. Sys. v. Federal Comms. Comm'n*, 512 U.S. 622, 642 (1994) "The question in every case is whether the words used . . . create a clear and present danger. . . ." *Schenck v. United States*, 249 U.S. 47, 52 (1919)

Schenck is not talking about a spiritual danger, or an intellectual danger, or a psychological danger, but a *physical* danger. Although it is written in my case that my message threatens the "safety" of people, no one seriously imagines anyone becomes physically unsafe when I get closer than 25 feet from them. Such statements should be recognized as absurd.

As for the charge of **disorderly conduct**, an element of 708.7(1)(b) is "raucus", which means "behaving in a very rough and noisy way...strident...hoarse...harsh...raucus laughter...a raucus crowd"[9]. I doubt if that is an appropriate word for a focused, non-physical message with which many agree, delivered with no more volume needed than to bridge the distances involved. Another element is

9 Merriam-Webster.com. http://www.merriam-webster.com/dictionary/raucous

occurrence outside a "public building" which means "a building that belongs to a town or state, and is used by the public".[10] Planned Parenthood is not owned by any government.

3. Disregarding or Overlooking Serious Arguments.

How it was preserved. The fact that Judge Gerard completely ignored the serious and relevant arguments of my October 21, 2014 brief is clear from reading my brief and his April, 2015 ruling.

Scope and Standard of Appellate Review. "De Novo" may be the appropriate standard of review since the right to have a judge's ruling bear some relation to the law, facts, and arguments of the case is a constitutional issue, being bound up in the meaning of the word "trial" and encompassed by the phrase "due process"; and because an injunction is an equity proceeding.

"De Novo – Constitutional questions such as search and seizure and constitutional rights under the Iowa and United States Constitutions are reviewed de novo in light of the totality of the

10 Collins Dictionary, http://www.collinsdictionary.com/dictionary/english/public-building. Also see https://en.wikipedia.org/wiki/Public_Buildings_Act "The Public Buildings Act of 1926, also known as the Elliot-Fernald Act, was a statute which governed the construction of federal buildings throughout the United States...." The U.S. Code defines "public building" as "suitable for use...by one or more federal agencies...." 12 categories are listed of federally owned facilities. Privately owned buildings are not on the list. 40 USCS § 3301 (5)

circumstances shown by the record." *State v. Turner,* 630 N.W.2d 601, 606 (Iowa 2001). "Actions in equity (probate and guardianship)." *In re Guardianship of B.J.P.,* 613 N.W.2d 670 (Iowa 2000).

Contentions and Reasons. Does it still violate the *Canon of Judicial Ethics* (a ground of removal from the bench under Rule 52.10(1)(b)) for a judge to "disregard or overlook serious arguments" of defendants, neither addressing them, nor indicating he has read them, nor giving "reasons for" ignoring them?

Judge Gerard utterly disregarded my serious, irrefutable, and in fact dispositive October 21, 2014 arguments. He not only did not address or respond to them, he did not even mention their existence.

Utter disregard of serious, irrefutable, and in fact dispositive arguments. Every time an American Court shows no sense of obligation to address serious arguments of litigants, confidence in American justice takes a hit. What is the point of seeking justice in an American Court, to the extent arguments and evidence in the record, prepared at tremendous expense and investment of time,

are not addressed – neither refuted nor affirmed – and not even read?

> Canon #19: In disposing of controverted cases, a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.
>
> It is desirable that Courts of Appeals in reversing cases and granting new trials should so indicate their views on questions of law argued before them and necessarily arising in the controversy that upon the new trial counsel may be aided to avoid the repetition of erroneous positions of law and shall not be left in doubt by the failure of the court to decide such questions....

Courts have not yet squarely addressed questions about the legality of aborticide to the satisfaction of a clear majority of Americans. My case presents courts an opportunity to resolve those lingering disputes and heal America, which will end the lawbreaking. It is America Herself which will suffer, if Courts gloss over these unanswered questions one more time. It can only tempt Conscience's cry for justice to press for satisfaction *outside* legal channels, as long as legitimate questions cannot be addressed

through legal channels.

What Canon 19 articulates is not some remote fringe option of American law. It articulates a universal requirement of reason. There can be no intellectual interaction between human beings except to the extent they are "responsive" to each other.

This kind of responsiveness to ideas is modeled throughout the Bible. Willingness to respond to all criticism, and even to change positions in response to sound argument, was modeled by Jesus (Matthew 15:22-28). It was His accusers who modeled clinging to positions they were no longer able to explain or justify in the face of overwhelming contrary evidence, (Matthew 21:23-46), leaving suppression of evidence by force ("shooting the messenger") the only response they would accept.

According to the Bible, to rule before examining the whole case is "folly". Proverbs 18:13 says "He that answereth a matter before he heareth it, it is folly and shame unto him." God's laws provide the right of the accused to defend himself, and for his defense to be heard. John 7:51 "Doth our law judge any man,

before it hear him, and know what he doeth?" It should go without saying that God's intention is that the defendant's *entire* defense be "heard". Ruling upon hearing a fraction of the arguments and evidence is like building a house when you have only a fraction of the blueprints.

The Bible characterizes as "wicked" those judges who don't care enough to examine the entirety of the cases brought before them by "unimportant" people: Proverbs 29:7 "The righteous considereth the cause of the poor: but the wicked regardeth not to know it." God warns of the consequences of such apathy: Proverbs 21:13 "Whoso stoppeth his ears at the cry of the poor, he also shall cry himself, but shall not be heard."

4. Legal Recognizability of aborticide as murder.

How the issue was preserved. My argument that since at least 2004 aborticide has been legally recognizable as murder, and that the safety of murderers while they are murdering is not legally protectable, was laid out and preserved in my Motion of October 21,

2014.

Scope and Standard of Appellate Review. "De Novo" may be the appropriate standard of review since abortion is alleged by all courts to be a constitutional right, making a legal challenge to that allegation a constitutional issue, and because an injunction is an equity proceeding.

"De Novo – Constitutional questions such as search and seizure and constitutional rights under the Iowa and United States Constitutions are reviewed de novo in light of the totality of the circumstances shown by the record." *State v. Turner,* 630 N.W.2d 601, 606 (Iowa 2001). "Actions in equity (probate and guardianship)." *In re Guardianship of B.J.P.,* 613 N.W.2d 670 (Iowa 2000).

Contentions and Reasons. Has the unanimous verdict of all four court-recognized finders of facts – juries, expert witnesses, state legislatures, and Congress (in 2004) – that all unborn babies are humans/persons from fertilization, finally invoked *Roe v. Wade's* finding that the establishment of this fact requires states to protect the unborn, leaving Planned Parenthood without the "clean

hands" needed to have standing to sue for interference with its killings?

If that much consensus of fact finders is insufficient to establish a fact, can any fact ever be established?

As my arguments document, the aborticide which is the principal business of the Protected Party [Planned Parenthood] has been legally recognizable as murder since at least 2004 when the final category of court-recognized Finders of Facts made it unanimous that all preborn babies are humans/persons from "conception" [by which they all meant fertilization, although some doctors have since redefined "conception" to mean "implantation"], and murderers are not legally entitled to protection while they are murdering, nor do they have standing in an equitable action to apply for protection.

This became relevant, as my brief explains, when Judge Gerard switched the issue from whether his ex parte hearing was illegal, to "whether the Defendant continues to pose a threat to the safety of the Protected Party". Now it is relevant whether "the

Protected Party" has any standing to request relief, in view of its own contribution to the harms about which it complains. My argument becomes relevant, that the activity which "the Protected Party" wants this Court to protect has been legally recognized as murder [killing a human being without necessity or due process] since at least 2004, according to the unopposed consensus of all four court-recognized finders of fact: juries, expert witnesses, state legislatures, and Congress; and of course the premeditated killing of humans/persons is criminalized by our laws as murder.

I did not invent my arguments in a vacuum. They are the culmination, concluding with a 2004 federal law, of as many as 100,000 cases (according to an old Operation Rescue estimate) of aborticide prevention by otherwise law-abiding citizens, mostly Christians obeying Biblical teachings, who went to court for preventing aborticide, and almost universally argued the Necessity Defense despite it being rejected by what emerged as the consensus of state supreme courts, including this Court in *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637 (1991). The facts

and arguments motivating me are not the exclusive fabrication of wild eyed fringe kook radical fanatics, but are established by American leaders who include Congressmen, presidents, and Supreme Court Justices.

In fact, my arguments find no fault with *Roe v. Wade,* or with any U.S. Supreme Court decision, but rather explain how the consensus of state supreme courts, on these issues, are in violation of *Roe*, at least since 2004 when federal law triggered a key ruling of *Roe*.

I incorporate by reference the complete argument in that brief. Here is a summary, which is not a substitute for it:

Roe v. Wade says what must be established for legal aborticide to end, and for state courts to defend the lives of preborn babies:

> **"If** this suggestion of **personhood [of preborn babies] is established,** the...case [for legalizing aborticide], of course, collapses, for the **fetus' right to life is then guaranteed** specifically by the [14th] Amendment." *Roe v. Wade,* 410 US 113, 156

Here is where federal law in 2004 "establishes" it, legally recognizing the preborn as humans.

> 18 USC§1841(d) ...the term **"preborn child"** means a child

> in utero, and the term "child in utero" or "child, who is in utero" **means a member of the species homo sapiens, at any stage of development,** who is carried in the womb.

Next is where *Roe* equates "recognizably human" with 14th Amendment "persons". This disposes of any legalistic claim that federal law doesn't meet Roe's requirement because it uses a different word – as if some "humans" are not "persons".

> These disciplines variously approached the question [of when life begins] in terms of the point at which the embryo or fetus became "formed" or **recognizably human, or in terms of when a 'person' came into being,** that is, infused with a 'soul'... *Roe v. Wade* 410 U.S. 113, 133 (1973)

Iowa law says my actions can't be prosecuted as a "public offense" if their intent was to prevent "serious injury" to babies who have been legally recognizable as persons and as humans since at least 2004. I can't even be prosecuted for violating the letter of criminal laws, by actions which prevent *mere serious injury.* Much less can I be prosecuted for actions which were never alleged to violate any statute, requiring a Court of Equity to identify any wrong, and which have in fact saved lives – a fact never disputed, and affirmed by the prosecution of me for interfering with those

killings. (That is, had we not driven away a single killing customer, it is hard to imagine why Planned Parenthood would spend such resources on prosecuting me.)

> *Iowa Code* 704.10 Compulsion. No act, other than an act by which one intentionally or recklessly causes physical injury to another, **is a public offense** if the person so acting is **compelled** to do so by another's threat or menace of **serious injury,** provided that the person reasonably believes that such injury is imminent and can be averted only by the person doing such act.

The principal activity of the Protected Party can't legally be protected since it became legally recognizable as murder. My October 21, 2014 brief presents this argument. I ask that it be finally addressed and responded to. I ask that it be *squarely* addressed.

I ask this, fully cognizant of the resistance human beings have to evidence challenging entrenched assumptions, no matter how obvious it becomes that they are wrong – no matter how impossible it becomes to assert that they are correct. Only to illustrate my appreciation of how much I ask of you, and not as part of any legal argument, do I reprint the following example of

such intractability:

> MRC TV: In your opinion, were [your children] human beings before they were born?
>
> Wasserman Schultz: You know, I believe that every woman has the right to make their own reproductive choices.
>
> MRC TV: But what did you believe about your children?
>
> Wasserman Schultz: That I had the right to make my own reproductive choices, which I was glad to have and which I was proud to have.
>
> MRC TV: So were they human beings? Just yes or no.
>
> Wasserman Schultz: They're human beings today, and I'm glad I had the opportunity to make my own reproductive choices, as – a right that every woman has and should maintain.
>
> http://eaglerising.com/25576/democrat-leader-says-her-kids-werent-human-beings-while-in-her-womb/

Conclusion: I ask for reversal of the Johnson County injunction against me.

I ask for a speedy decision, because I am 80 years old, desirous of liberty before I die (to state what no one has alleged is untrue, where it will save lives), and I don't know God's "deadline" for me. I therefore ask this Court to resist the temptation to delay its decision until after next November when the injunction will expire, in order to rule the case moot. It will not be moot anyway,

because it will surely be automatically renewed for another five years, and because of the following additional relief I ask, for which the facts of my case cry out.

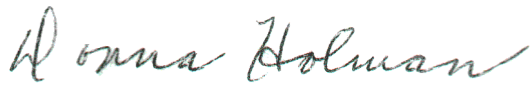
I ask some sort of censure or correction or restraint of Judge Gerard – if not removal from the bench as Iowa law suggests – in order to end the chilling effect on my liberty of knowing that any time in Iowa City my enemies can trump up another case and bring it to Judge Gerard who, if left on the bench uncensured, will be confirmed in his power to not allow legal arguments of defendants to influence his decisions, and in his power to not even allow defendants to be present at their own trials.

I ask your ruling clarifying that "threats" and "harassment" are not prosecutable if they involve only mental and spiritual allegations whose truth no one contests and which a majority of Americans believe, and do not involve any physical danger. I ask this clarification because Judge Gerard is not the only American, and probably not the only judge, to be confused about this. This misunderstanding of the nature of Freedom of Speech creates a

chilling effect on our First Amendment freedoms.

Finally, I ask that you rule on the fact that since at least 2004, abortion has been legally recognizable as murder according to all four court-recognized finders of facts, and that murderers have no standing in courts of equity to apply for relief from information about their actions. I ask this so that America may be healed.

I ask, and pray, that you will speedily and *squarely* address these arguments.



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Oral Argument: I do not request oral arguments.

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Donna Holman

_____ _____December 24, 2015_____

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A copy of this brief was transmitted to the Iowa Attorney General by efiling it with the Iowa Supreme Court, pursuant to 16.317(1)(a)(2), on December 24, 2015.

Donna Holman

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Signature Date