

# Trial-By-Jury Script.

(Summary: “Can a prolifer shoot an abortionist, and get a TRIAL BY JURY?” script for an October 1, 2009 video press release on video sites such as Youtube and on its home page, [www.Saltshaker.US/Scott-Roeder-Resources.htm](http://www.Saltshaker.US/Scott-Roeder-Resources.htm). This explains with humor, and in language anyone can understand, how our project is not to endorse what Scott Roeder had to do, but to endorse giving a Christian his constitutional right to a trial by jury. It explains what courts have been doing all these years to keep abortion “legal” all these years: deny 100,000 Christians their Constitutional right to a Trial (of the only seriously contested issue of their cases) By Jury. “*Nothing can be more illegal than what courts have done all these years to keep abortion ‘legal’.*” It explains how courts have maintained an appearance of a right to trial by jury, and how Dave Leach’s proposed legal strategy will strip courts of that pretense, pressuring Scott’s judge, and all future judges, to finally allow the jury to be told what the trial is all about – and how that will end abortion. The roles of 2 lawyers and 2 news reporters are played by two girls ages 8 and 10. The red and blue script are their parts.)

Reporter at news desk: **Can a prolifer shoot an abortionist, and get his right to a Trial by Jury?**

Dave: No lawyer expects Scott Roeder to get *what average citizens* would call a “Trial By Jury.” I am trying to help him get one. If he gets one, there is a reasonable possibility he could be found innocent.

Reporter at news desk: [Sign behind reporter: Pee Wee TV] **Dave Leach is a friend of Scott Roeder. Roeder sits in the Sedgewick County Jail for killing late term abortionist Dr. George Tiller May 31 while Tiller was ushering in his church. Leach has been writing to Scott Roeder about a possible legal defense.**

*Right to trial by jury normally denied – sole contested defense – will stop abortion*

Dave: I think the average citizen expects that the jury will judge the contested issues of the trial, and the defendant’s defense. But most lawyers understand that in any abortion prevention trial, the defense is ruled “inadmissible” and the defendant is ordered not to say a word to the jury about his only defense.

In abortion prevention trials, the only seriously disputed issue is NOT what the *defendant* did – blocking the door, burning it down, shooting through it – but whether the abortions on the other side of the door are unthinkable harmful enough to justify stopping them.

This sole trial issue is decided by the judge before the trial starts. I think most citizens would call that “trial by a judge”, not “trial by a jury”.

Reporter on location: **Won’t Scott Roeder have a trial? And won’t a jury be at the trial?**

Dave: Yes, and the trial Scott Roeder gets will be a wonderful exercise of democracy, by the standards of Iran or China. But can *Americans* call it a trial by jury, where the judge decides, all by himself, that your defense is no good, and won’t let you tell the jury about it? Where the judge just lets the jury judge what everyone agrees to anyway? Wouldn’t you call it “busy work”, to let the jury “decide” facts upon which both parties already agree?

Reporter on location: **They can’t do that. They won’t do that. They’ll let Scott Roeder present his defense to the jury. Of course they will. This is America!**

Dave: Ask any lawyer who knows about trials of Christians who have prevented abortion. In the past 100,000 cases, judges ordered the accused not to say a single word, *literally*, to the jury about their only defense. In Scott Roeder’s case, the prosecutor has called 182 witnesses to present evidence which I don’t expect Scott Roeder to even deny: that Scott Roeder shot a church usher during a church service. But Scott Roeder will be ordered not to explain *why* he shot that church usher – because of the usher’s unthinkable brutality when he *wasn’t* in church, which Scott Roeder could no longer stand by and allow to continue.

Reporter on location: **This trial isn’t about what Dr. Tiller did. What Tiller did was legal. It’s about what Scott Roeder did. Scott Roeder committed murder.**

Dave: This trial is not about what either Scott Roeder did, or what Tiller did. This trial is about what the judge is going to do. *Is* the judge going to allow the only defense, and the only contested issue of the trial, to be decided by the jury? Or is he going to decide it all by himself, and just give the jury some busy work that doesn’t have anything to do with the trial issues so it will *look* like Scott Roeder’s trial is by a jury?

There is nothing more illegal than what courts have done all these years to keep abortion “legal”.

The 1973 Supreme Court case, *Roe v. Wade*, made abortion legal, but the justices did not deny that abortion is, *in fact*, murder. They literally wrote that not one judge in America is smart enough to tell. Well, *juries* are smart enough to tell. Juries are supposed to be judges of the facts. That’s what judges tell juries during every trial. But judges in 100,000 cases have kept the judges of the facts from judging the one single issue of abortion prevention cases, which is whether abortion is, *in fact*, so unthinkably harmful that preventing it is justified. The Necessity Defense is a legitimate defense in America, found in the laws of every state. It asks the jury to balance the harm Scott Roeder caused against the much greater harm which Scott Roeder prevented. If the jury finds that Scott Roeder *in fact* prevented far greater harm, then what Scott Roeder did was just as legal as what Tiller did. It is not yet illegal in America to stop genocide.

Reporter at news desk: Leach has published his complete proposed brief at [www.Saltshaker.US](http://www.Saltshaker.US) under the headline, “Can a prolifer shoot an abortionist, and still get a trial (of the only contested issue of the case) by jury?”

*Necessity Defense defined*

Reporter at news desk: The defense which Leach says could set Scott Roeder free is called the Necessity Defense. It says you can’t go to jail for causing a little harm that was necessary to prevent a great harm. The classic example is that it is OK to break down your neighbor’s door to save him from a fire. Or, it may be OK to speed to the hospital, if your wife is having a baby in the back.

Professor Noedal: (Dave, with Bill Clinton hair and Grocho Marx nose and mustache. Text over: “Professor Noedal, Hardnoks School of Law”) The Necessity Defense compares the harm caused, in this case shooting a late term abortionist, with the harm prevented, in this case killing thousands more babies beyond the 60,000 which George Killer publicly boasted of tilling.

*Necessity is the sole issue – judges unqualified to decide it – juries judge facts*

In most cases of abortion prevention, the dispute is whether abortion is *in fact* harmful enough to justify its prevention. That requires the jury to weigh evidence of “when life begins”, a fact question which *Roe v. Wade* said no judge in America is qualified to address. [Text over: “We need not resolve the difficult question of when life begins. ...the judiciary...is not in a position to speculate as to the answer.” *Roe v. Wade*, 410 U.S. 113, 159 (1973)] But juries *are* in a position to weigh the *factual* evidence. Judges call juries the judges of the facts. Yet in abortion prevention trials, judges call the fact question of whether abortion is a harm, a “question of law”, and beginning about a century ago, judges began saying judges alone are qualified to “judge the law”. But this raises an important question: when the only contested issue of a trial is a dispute which the judge classifies as a “question of law”, does a man still have a Constitutional right to trial by jury?

Reporter at desk: We interviewed Rocky Panznfire, the lawyer retained by late term abortionist Larry Carwash. Larry’s Lawyer Panznfire disputes Leach’s claim that Christians are denied their right to trial by jury.

Reporter on location: How would you reply to the charge that 100,000 Christians have been denied their constitutional right to a trial by jury, in order to keep abortion legal?

Panznfire: (Dave, made up like gangster, Text over, “Mr. Panznfire”) Hih hih hih hih.

Reporter: Could you be more specific?

Panznfire: Dats da taught dat makes me sleep sweet at night! Uh, I mean, foiget I said dat. Strike dat. Here, let me strike it foi youse. [Shoots. Scream.] Uh, here’s my true meaning. Ain’t da prolife trials long? Don’t dey call da parade of da witnesses? Don’t dey make da arguments, an present da evidence, an pay attoineys to argue wid each udda? What youse mean, da defendant ain’t allowed to defend himself before da joyry? If dey ask for da joyry dey gets one! (Bloody, shaking hand reaches up from below camera lens, grabs it, and pulls down camera, serving as transition)

Reporter: Thank you, Mr. Panznfire. (turns to camera) We’ve been talking with the lawyer of the famous late term abortionist, Larry Carwash.

Reporter at news desk: Thank you, Bright Eyes. Let’s get Dave Leach’s reaction to Larry’s lawyer,

## Panznfire.

*Trials are by jury in appearance only*

Dave: Thank you for allowing me to answer Liar's Liar, Pants on fire. It's true, prolife trials LOOK like real jury trials. They are just as expensive as if they were real. The prosecutor in Scott Roeder's case has already announced he will call 182 witnesses. For what? To put on a weeks-long dog and pony show to prove what Scott Roeder doesn't even care about disputing: that Scott Roeder shot the late term abortionist. Meanwhile, proliferers aren't allowed to present *their* defense to the jury. And no one *familiar* with prolife trials expects that Scott Roeder will be allowed to present *his* defense to the jury, *either*. Which is that he prevented the murder of thousands of human beings with souls just like yours and mine, who cry out to God as their bodies are mauled. If the accused isn't allowed to explain to the jury the only contested issue of the trial, how can you call it a trial BY JURY?

## Part 2: How Scott Roeder's Trial Could Go

*Juries, given the issue, acquit*

Reporter at desk: 1992 was probably the last year a judge let an abortion prevention defendant explain her defense to the jury. They found her innocent. (Text over: **But the jury was overturned on appeal. City of Wichita v. Tilson, 510 U.S. 976 (1993)**)

Professor Noedal: (Text over: "Professor Noedal, Hardnoks School of Law") When juries were told to compare the harm of blocking a door with the harm of killing 30 babies that day, juries agreed that saving lives was more important than keeping a business open. Judges must not have liked that, because they started censoring the defense.

*Reasons for censoring the only defense*

Reporter at desk: **But this CEN-sor-ship of the Ne-CE-ssi-ty Defense in prolife cases has been for very good reasons, according to Larry's Lawyer Panznfire.**

Panznfire: It dint take long fer da judge ta wise up. Only 6 years afta da baby killin stahted, heas what da law news sez. [Holds up comic book upside down. Text over: *Cincinnati Law Review*, U.Cin.L.Rev. 501 (1979), footnote on page 502]: "Afta da coit ruled dat it would allow da defense to go to da jury, da unwanted baby disposal soivice dropped da prosecution. If da defense is poimitted, evidence is intraduced dat life begins at con – concept – concepty [off camera female voice says "conception"] Looks off camera] I knew dat! [shoots off camera, sound of scream. Looks back at comic.] conception." [To camera:] Dat means, when youse mudda an youse old man makes youse. [Look back at comic.] "Dis evidence is rarely contradicted by da persecution, which is merely provin da elements a da criminal trespass." [To camera:] Course, da reason da unwanted baby disposal soivice don't give da evidence dat life begins *later* dan da conception, is becuse dere ain't none!

Reporter on location: **But why would the prosecutor dismiss the charges just because the judge lets the jury know what the trial is about?**

Panznfire: Are you kiddin? Here, see if dis law news can make youse git it: "Radder dan risk such a precedent, many clinics prefoi to dismiss. In fact, defense counsel have admitted dat der intent is to bring da abortion issue back befoi da United States Supreme Coit to considah da very question of when life begins, an issue on which da Coit refused to rule in Roe..." Don't youse sees how evil dat would be in George Killer's tase?

Reporter: **Why would it be bad for the Supreme Court to rule on when life begins? Doesn't the election of Obama prove that a majority of Americans agree its just a blob of tissue until after birth?**

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Panznfire: Da people *ain't* agreed dat da evidunce shows da baby ain't a *human*, da people is just agreed dat dey don't *care* about da evidunce. Da coit might decide "life begins" earlier dan viability, maybe even at da conception. But da coit might still require da states to allow da baby killin if dat would be better for da mental healt of da muddas. But *dat* would staht da fight ova whedda one human

being outa die if dat will stop anuda human being from being depressed, an dat fight might not go our way.

But da wise ting dat might happen is dis boid Scott Roeder might not ask da higher coit ta rule on when da baby toins da human, but might ask do coit to rule dat da joiry oudda hear da defense when da defense is da only ting foi da joiry to hear. An dat would put da Family outa woik.

Reporter on location: [Even if the jury \*hears\* the issue of these trials, won't juries still convict? Hasn't Obama's election proved the majority is determined to kill unborn babies even if they see proof they \*are\* just as human as you and me?](#)

Panznfire: Well, dat may be, but da *whole* jury has ta believe beyond da reasonable doubt dat da accused has no reasonable defense. If even one boid on da jury ain't soiten, da Christian walks. Now, how ya goin ta convict da Christian, if *half* da jury is soiten dat da life begins at da baby makin? Listen, bright eyes: da only hope of da baby killer is ta let da jury talk about da harm of closin da office, and *not* allow da jury to even *tink* about da harm a killin da babes! Why, if da jury tinks about dat, da unwanted baby disposal soivice will lose! An if da Supreme Coit *tinks* about it, da Christians will hold revivals in front a da killin doors and shut us down!

Grim violent scenario unwarranted

Reporter on location: [Dave Leach, if Scott Roeder is found innocent, won't trigger happy Christians all over America start shooting up abortion clinics, while police sit on their hands? And after \*abortionists\* are all dead, won't Christians start slaughtering every women who has had an abortion?](#)

Dave: (Laughs) No mother has ever had, or will have, reason to fear any such action, whose purpose has never been to punish, but to stop murder. As for abortionists, if this defense succeeds in being heard by the jury, no one will ever again have any *reason* to slay one single abortionist. Because it will be possible to stop abortion by just sitting in front of their doors, with little risk of arrest. Abortionists will be *unemployed*, but *safe*.

Not about endorsing Scott Roeder, but right to trial by jury

Reporter on location: [So you want Americans to endorse Scott Roeder's murder of a doctor?](#)

Dave: I don't ask anyone to endorse doing what Scott Roeder had to do. I pray that Americans will endorse giving this man his constitutional right to a trial, BY JURY, of the only contested issue of the case, so that *no one will ever again* have to do what Scott Roeder had to do.

Scott Roeder's chances – either way, abortion ends

Reporter on location: [Even if the jury heard this defense, do you really think a jury would decide that killing an abortionist is justified to keep him from killing more babies?](#)

Dave: It's hard to say. The jury might think abortion is terrible, but not terrible enough to justify as much violence as Scott Roeder committed. I doubt of *most* abortionists *would* seem barbaric enough to a jury to justify killing them.

But Tiller *was* the most outrageous abortionist in America.

If the jury decides Scott Roeder was justified, it will be only because George Tiller's abortions were especially heinous. 5 Supreme Court justices expressed revulsion about them. Here's how the Supreme Court described the abortions that were Tiller's specialty:

(Read from paper) "First, a doctor delivers the baby until only its head remains inside the mother. (Text over: "First, a doctor delivers the fetus until its head lodges in the cervix.") Second, the doctor proceeds to stab the baby's skull with scissors, or crush it with forceps... (Text over: "Second, the doctor proceeds to pierce the fetal skull with scissors or crush it with forceps.") ... and vacuum the fast-developing brain of her unborn child, a child assuming the human form. (Text over: "and vacuum the fast-developing brain of her unborn child, a child assuming the human form." Gonzalez v. Carhart, 550 U.S. 124 (2007)

I think what set Tiller apart from every other late term abortionist is the baptisms and funerals he sold for the babies he slaughtered. He sent their amniotic fluid to his preacher and paid him to mix holy water with it and call it a baptism. He also charged mothers for funerals. He sold urns to mothers to take home the ashes of the unwanted infants they had paid to have their **lives snuffed** out.

Who holds baptisms and funerals for blobs of tissue? Tiller made **\$100** million for his 60,000

barbaric murders, treating his victims as having no more of a human soul than a tonsil. He made more millions from his baptisms and funerals, treating his victims as souls with human dignity made in the Image of God and worthy of our reverence!

Tiller let the world know *he* knew his victims were human beings! *Tiller* might provoke a jury to justify stopping him, but I don't think an ordinary abortionist would, which is another reason that even if Scott Roeder walks, it won't be a legal green light for more shootings.

But even if Scott Roeder gets life in prison, if this strategy can force the judge to let the jury know about this defense, even in Scott Roeder's case, the light will turn green for *nonviolent* abortion prevention, such as blocking doors. If Christians can block doors without fear of arrest, abortion will end.

*Admitting to alleged facts versus pleading guilty: what is new about this defense*

Reporter: What is your "strategy"? Is it for Scott Roeder to admit he shot Dr. George Tiller? But Scott Roeder pled innocent.

Dave: Yes, the strategy I propose includes Scott Roeder admitting that he shot George Killer, while still insisting he IS innocent, and still demanding a trial by jury. The fact that Scott Roeder killed someone, doesn't keep him from having a defense.

What if you are on trial for kidnapping, because you broke into your neighbor's house and dragged out his daughters, and the judge orders you not to explain to the jury that you dragged them out to save their lives because their house was on fire?

What if you are on trial for murder, and the judge orders you not to explain to the jury that the man you killed had just broken into your daughter's bedroom and was attempting to rape her?

What if the judge ruled in *those* cases that the Necessity Defense is a question of law, and the jury is not qualified to judge the law?

Reporter: But are you saying Scott Roeder has admitted to you that he actually did kill Dr. Tiller?

Dave: He hasn't said. But it doesn't matter. He doesn't want the trial to be about what *he* did, but about what *Tiller* did. And the way to do that, is to admit that the facts alleged about what he did are basically correct. That will save the jury having to judge what everyone agrees to, and leave them to judge the only contested issue of the trial: Scott Roeder's defense. That is what I have urged Scott Roeder to do, which I don't think has ever failed before, because I don't think it's ever been tried. I hope he will offer to stipulate to the facts alleged against him. I hope he will say "sure I did it, but I am innocent, because the harm I caused is nothing compared with the harm I prevented. And I want a trial by jury." When that happens, the real trial will begin, but this time it will be the judge on trial.

*Trial scenario*

Reporter: So help me understand your scenario. The trial begins. The jury can't hear evidence supporting the Ne-CES-si-ty Defense, because the judge has already ruled, in obedience to all PRE-cedent, that they *must not be told*. The jury doesn't need to *hear* evidence that Scott Roeder *shot* George Tiller, because Scott Roeder has already STIP-u-la-ted that he *did*. So what will the jury *hear*?

Dave: Exactly. There will be no weeks-long dog and pony show of 182 witnesses to prove what Scott Roeder already stipulates. Stipulating to the alleged facts will isolate the sole contested issue of the trial. The judge needs to make the public think he is giving Scott Roeder his constitutional right to trial by jury, but how can he, if he decides the sole contested issue of the trial himself and doesn't allow the jury to hear about it? It will be as if there is this huge neon sign hanging from the middle of the room asking, "when the judge calls the sole contested issue of a trial "a matter of law", and decides it by himself, does the accused still have a constitutional right to a trial by jury?"

Reporter: So how do you think it will go? Lay it out for me.

Dave: I'm not *sure*, of course. But here's how it COULD go. I suppose the prosecutor will try to present a month's worth of evidence, but won't go many minutes before the defense lawyer will say "Objection. Relevance. Defendant has already said that he shot and killed Dr. George Tiller. The jury can make no use of additional details about who saw it, or what investigators documented. Such superfluous information is, therefore, irrelevant to any inquiry the jury needs to make."

Perhaps the judge will say “Then the defendant admits his guilt?”

To which the lawyer will respond, “The defendant emphatically asserts his innocence. The proving of guilt requires not only that it be proved *what* a defendant did, but that what he did has no legal defense. You know the legal defense which the defendant asserts, and we have asked that the jury may hear it, so that defendant may have his right to trial by jury.” (This last sentence may be objected to or interrupted, but it doesn’t matter.)

So after an hour or so of stammering and mumbling, the prosecution will have to close his case, and the defense lawyer might talk less than a minute. He might say something like this:

“Proverbs 18:13 says He that answereth a matter [or judges a case] before he heareth *it*, [or, before he hears both sides of the case] *it is* folly and shame unto him.

“You will not be allowed to hear the defendant’s side of this case. There is only one contested issue in this case, which is a fact issue, but I have been ordered not to tell you what it is. I don’t see how it is possible for you to believe, ‘beyond a reasonable doubt’, that the defendant is guilty, before you are allowed to hear his defense. Therefore, not being allowed to *present* my case, I have no choice but to now *rest* my case.”

## *Part 3 What could go wrong*

*Dave, talking to camera in back yard in front of geodesic with goats*

It has been a pleasure working with Vanessa and Lexi, who helped me film part one and part two of this series, and who will return in part 4 and briefly in part 5. They are also talented musicians. They are my students at my Family Music Center in Des Moines. They both play violin, and sing. Lexi is also learning guitar, and Vanessa is also learning clarinet.

In this part I want to frankly explain the hypocrisy of the legal establishment when it deals with Christians who have taken physical action to prevent abortion. I want to explain with how much determination we should expect lawyers and judges to violate their own rules and customs in order to deprive Scott Roeder of a meaningful trial by jury.

This will help you understand why the risks of discussing legal strategy before trial must be taken, and why even non attorneys, like you and me, must discuss these legal issues, before trial.

As for the risks of publicly discussing trial strategy before trial, I have 3 answers:

1. If the prosecutor had 100 years to respond to the legal arguments I discuss, she wouldn’t be able to refute them. Not because they are so great, but because *Roe v. Wade* is so vulnerable, for several more reasons which I, with the help of Lexi and Vanessa, will explain more fully in Part Four. In fact, if I thought *Roe v. Wade* could ever, in a million years, be shown to be a righteous decision based on sound reasoning, I wouldn’t oppose it.

2. Whether arguments are irrefutable or not has little effect, in abortion prevention trials. There have been plenty of irrefutable arguments raised in the previous 100,000 abortion prevention trials, which were just swept into a judicial corner. They were not *refuted*, but *ignored*. Not squarely addressed, but given a glancing blow if mentioned at all.

So if the prosecutor automatically wins by her power to sweep away a defense without the necessity of intelligently refuting it, what additional advantage can we give her, by telling her ahead of time precisely *which* arguments she will be sweeping into a corner?

Every lawyer you ask about it considers the prosecution’s case a slam dunk even without this information. So if we keep this information secret, we deprive the prosecutor only of being able to slam her dunk a wee bit harder, while we deprive the Right to Trial by Jury in America of its only hope of rescue though public pressure inspired by public education.

3. What does Scott Roeder have to lose? What will his *currently* available strategy offer, if I just stay out of it and content myself with giving lessons to delightful students like Vanessa and Lexi?

Does his currently available strategy offer any hope of avoiding the weeks-long dog and pony show of calling 182 witnesses to prove what Scott will surely not seriously contest, while Scott sits there, bored out of his mind because not one word is allowed to be said about the real issues, or about anything important, such as the 60,000 infant corpses which preceded George Killer's? Definitely not.

Does his currently available strategy create any opportunity to educate America about the unthinkable harm of abortion, and the destruction of the Rule of Law by calling abortion "legal"? Definitely not.

Does his currently available strategy offer any realistic hope of resulting in any fewer years in prison than life? Well, I think people are looking into strategies that can reduce his sentence to 15 years, but at his age the difference is not overwhelming, and even that is a long shot. My perception of Scott is that he offered the rest of his life in prison to save thousands of babies, and would quickly trade a long shot at freedom after 15 years for a long shot at saving *millions* of babies, an end to abortion in America, public education, deliverance from a sham trial, ... and freedom for himself after a *couple* of years.

*Why even non attorneys need to talk about this now.*

But I'm not Scott Roeder's attorney. In fact, I'm not an attorney at all. Shouldn't I at least wait until the trial is over to talk about it, and let people learn whatever I want them to learn, by watching the trial?

The problem is that abortion prevention trials are literally over before jury selection begins. Before the trial, the prosecutor makes a motion for the judge to order the defendant not to explain his defense to the jury – not to even say a word about it. It is called an "In Limine" motion. It eliminates the defendant's right to defend himself before the jury.

Then the judge grants the prosecutor's motion, which he almost has to do, because all state Supreme Courts agree he should!

The public needs to understand how this works, because only the public can shine a light on that judicial corner where judges classify the sole issue of a trial as a "question of law" so they can decide it without the jury's knowledge. We will wait until Hell freezes over, if we wait for judges to give up *this* power, and we will wait nearly as long before attorneys, who have to try their cases before judges, will publicly rebel against this abuse of judicial discretion.

*What could go wrong? What WILL go wrong if the public isn't watching?*

Obviously there are many things that could go wrong which I haven't thought of yet. But there are a few possibilities I have been warned about already.

Remember that my proposed strategy includes Scott Roeder admitting to the facts written by the prosecutor in the formal charges, about what Scott did to George Tiller. That would make the parade of 182 witnesses, to "prove" what Scott already admitted, irrelevant. That would leave Scott's defense – the Necessity Defense which says Scott's action was necessary to prevent the unthinkably greater "harm" of literally sucking the brains out of several thousand more babies – the only contested issue of the trial. Which would leave the judge without his desperately needed pretense of a Trial by Jury, if he follows state Supreme Court precedent and rules Scott's only defense inadmissible.

If Scott submits to the judge, in writing, a description of the facts he admits are true, and if the description is identical to what the prosecutor alleged in the formal charges, then as nearly as I can tell, that is called a "stipulation", and it relieves the court of the expense and time of having to prove those facts in court. Normally, stipulations are encouraged by judges.

*Prosecutor won't join in stipulation? Judge won't accept stipulation? Judge will equate stipulation with plea of guilty and cancel the trial, leaving no possible appeal?*

**But I've been told that the prosecutor will not agree to stipulate to these facts!**

Now I can appreciate how little the prosecutor would like to give up her dog and pony show of 182 witnesses to prove what Scott does not contest. But how can the prosecutor not agree to a "stipulation", unless after Scott says the prosecutor's description is correct, the prosecutor says "No it's

not!”?!

This threat is just a little beyond me to visualize! Although should it actually happen, I would consider it the most entertaining event in American history since President Bush called Islam a “religion of peace”!

But should such a bizarre thing happen, I hope the public will understand how irregular that would be, by routine court rules.

Normally, stipulations are encouraged by courts. This is from the definition of “stipulations” found in West’s Encyclopedia of Law: (Text over: the following) *“Courts look with favor on stipulations because they save time and simplify the matters that must be resolved.... parties to an action can stipulate as to an agreed statement of facts on which to submit their case to the court.”*

The Necessity Defense is called an “Affirmative Defense”. Wikipedia explains that the very reason it is called an “affirmative defense” is because the defendant usually must “affirm that the facts asserted by the plaintiff are correct”. If prosecutors could prevent a defendant from pleading an Affirmative Defense simply by not agreeing with the facts which she herself has already asserted in the charges, then I suppose it would be impossible for anyone to ever plead a defense of any kind, but that would make the prosecutor look pretty ridiculous!

However, I haven’t heard that it is impossible, yet, in America, for defendants to assert Affirmative Defenses, despite the fact that every prosecutor would surely *make* it impossible, were it within their power!

**I’ve also been told that the judge won’t *accept* the stipulation; that the judge will equate admission to the alleged facts with admission of guilt, and cancel the trial, leaving no basis for any possible appeal!**

Now let me get this straight. *It is so routine, in courts of law, for a defendant to **affirm** the facts as alleged by the prosecutor in the course of presenting mitigating circumstances, that that is where “Affirmative Defenses” get their name? And yet in an abortion prevention trial a judge won’t let the defendant assert any kind of Affirmative Defense if he affirms the facts as alleged by the prosecutor?*

This very well could happen in Scott’s abortion prevention trial, if the public isn’t watching, because legalizing abortion generally requires a suspension of reason and law. But it would be outrageously irregular.

Not only MAY the prosecutor’s facts be admitted without foreclosing a trial, but often facts MUST be admitted before there can BE a trial!

Here is how the Journal of the American Academy of Psychiatry and Law Online puts it: (<http://www.jaapl.org/cgi/content/full/36/1/143>) “an affirmative defense, such as not guilty by reason of insanity or self defense, **requires the defendant to admit to the facts of the alleged crime**, it nonetheless disputes the prosecution's claim that a crime has been committed. The government still must prove its case beyond a reasonable doubt.”

Here’s how Wikipedia puts it: “Affirmative defenses operate to limit, excuse or avoid a defendant's criminal culpability...even though the factual allegations of the plaintiff's claim are admitted or proven. In fact, **the defendant usually must affirm that the facts asserted by the plaintiff are correct in asserting his own defense**; hence, "affirmative" defenses.

Here’s how a news article at TheStreetSpirit.org puts it: (<http://www.thestreetspirit.org/June%202005/arcata.htm>) “**To prove oneself not guilty by reason of necessity, the defendant admits he violated the law but proves by a preponderance of the evidence that this happened:** (1) to prevent a significant evil, (2) with no adequate alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief in the necessity, (5) with such belief being objectively reasonable, and (6) under circumstances in which he did not substantially contribute to the emergency.

A comment on a blog has no authority except to show this understanding is common enough to

make it into internet comments, but for what it's worth, here is a comment on a blog: "self-defense is an "affirmative defense" for the charge of murder. Now, **in order to make an affirmative defense, one has first to admit to the facts.**" [<http://www.haloscan.com/comments/levi9909/623410931136973149/>]

Affirmative Defenses are where you tell "the REST of the story". You say, "Judge, everything the prosecutor said I did is absolutely correct. But it is only half the story. Let me tell you about a few more facts which the prosecutor wasn't in the mood to mention."

Here is how the Law Encyclopedia puts it: "**Any one of these affirmative defenses must be asserted by showing that there are facts in addition to the ones in the [charges] and that those additional facts are legally sufficient to excuse the defendant.**"

Here is how Wikipedia puts it: "...**an affirmative defense requires an assertion of facts beyond those claimed by the plaintiff...**"

Here is how Black's Law Dictionary, 4<sup>th</sup> Edition, puts it: "New matter [facts beyond those alleged by the prosecutor] constituting a defense; **new matter which, assuming the complaint to be [factually] true, constitutes a defense to it.**" Carter v. Eighth Ward Bank, 33 Misc. 128, 67 N.Y.S. 300

Will the judge indeed answer, "I do not want to *hear* any other facts; ergo, there *are* no other facts. You may now make your pre-sentencing statement"? The judge would have to break a lot of well worn habits. It is routine for a Necessity Defense trial to *begin*, not to *end*, by admitting to the prosecutor's factual allegations.

*The legal effect of the mitigating facts is awkward enough to put into words, that nearly opposite descriptions, of the legal effect of the mitigating facts, are correct: from "the defendant must admit his guilt" to "there is no guilt".*

So here are two definitions of the operation of the Necessity Defense that sound like they contradict each other. The first is found in a news article. The second is found in Black's Law Dictionary:

**"To prove oneself not guilty by reason of necessity, the defendant admits he violated the law but ..."** (<http://www.thestreetspirit.org/June%202005/arcata.htm>)

Black's Law Dictionary, 4<sup>th</sup> Edition:

"Necessity is not restrained by law; since what otherwise is not lawful necessity makes lawful. Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum. 2 Inst. 326."

"Necessity overrules the law. Necessitas vincit legem. Hob. 144; Cooley, Const. Lim. 4<sup>th</sup> Ed. 747."

"Necessity overcomes law; it derides the fetters of laws. Necessitas vincit legem; legum vincula irridet. Hob. 144.

### *What WILL Happen*

I could find no references anywhere that suggest a trial is over once the defendant with an Affirmative Defense admits the prosecutor's factual allegations.

However, I do expect something to happen similar to what these legal minds have told me.

If Scott Roeder admits the prosecutor's factual allegations, or stipulates to them, the judge may say (especially if there is no informed public watching), "Well then there is nothing for the jury to hear. I have already ruled against your defense, in the manner required by appellate precedents. I must now find you guilty."

Scott or his attorney could respond, "First may we present our Offer of Proof?"

An Offer of Proof is evidence you want to put in the court record even if the judge has ruled it inadmissible, so it will be there for the Appellate Judge to consider on appeal. The judge has to allow it.

I don't see how this would eliminate the opportunity for appeal! The Offer of Proof would be part of the trial record for the Appellate court to review. So would all the briefs, and transcripts of the hearings. The pretrial ruling against the Necessity Defense will certainly be appealable.

I don't see anything undesirable about the judge finding Scott guilty without even calling a jury. I think that would be a magnificent public education event. It would be an honest admission that in abortion prevention trials, there is no Right to Trial by Jury of the sole contested issue of the case.

In fact, if public pressure is inadequate to force Scott's judge to uncensor Scott's only trial issue and only defense, dismissal of the jury is the RIGHT thing to pray for. The alternative is a jury "deciding" the admitted facts, which would be DISASTROUS to the cause of abortion, because it would supply the judge with his APPEARANCE of a Trial by Jury, leaving the public to yawn at our technical arguments about the DE FACTO denial of trial by jury. The Status Quo would just have one more notch on its gun. Stare Decisis would dig in a little deeper; in fact, a lot deeper, having successfully withstood the little bit of public exposure we have already achieved.

Notice also all these dictionary definitions talk about mitigating FACTS. It may be routine for judges to rule on the admissibility of defenses, calling them questions of LAW, but they are in fact mitigating facts. Judges ought to allow juries to judge the facts.

I would be misleading if I give the impression that I expect any trial strategy to have a very predictable outcome. Any time you have to reason with another human being, you are taking a gamble. If you think we Americans in this generation have learned to reason better than our ancestors, just look at our divorce rate.

Our minds get in ruts, and it takes huge effort to pull them out.

The public has been told for 37 years that abortion is legal because the Supreme Court decided it is. For me to come along and say nothing can be more illegal, than what has been necessary all these years to keep abortion "legal", takes a movement of the public mind to even hear the evidence, a thing which seldom happens. But at least the public mind is not in the rut of having assumed all these years that trial by jury ought not to exist in abortion prevention cases. That is a startling new idea. To the contrary, the public mind has been in the rut all these years of assuming abortion prevention defendants have always had a right to trial by jury. So you have two ruts struggling against each other, to pull each other out. So there is hope, with the public. Reasoning with the public is like driving along two ruts four feet apart from each other. Your wheels are six feet apart, so sometimes your left wheels are stuck in the rut while your right wheels are free, and sometimes it's the other way.

But attorneys are a different matter. All four of their tires fit comfortably in their ruts. Not only have they accepted abortion's legality, they have known, and accepted all these years, that in abortion prevention trials the defendant's only defense does not, and ought not, be revealed to the jury.

It is also difficult for many attorneys to grasp the concept of anyone like me, who is not an attorney, offering anything useful to the discussion.

In fact, Lawyer Land even has a rule against letting anyone pull lawyers out of their ruts. They call it "Stare Decisis".

According to the rule of Stare Decisis, if abortion is *in fact* genocide, that fact is irrelevant because abortion has been going on for such a long time that it will be too disruptive to change it.

According to Stare Decisis, preserving the status quo is more important than stopping genocide. How the Civil Rights movement ever overcame the hurdle of stare decisis, I'll know when I get to Heaven. I don't think stare decisis ever comes up when judges are ready to change laws and Constitutions. It just comes up when you ask judges to change *their* rulings.

So here I come, offering to pull America out of her genocidal ruts, dreaming about Scott Roeder stipulating to the facts alleged by the prosecutor, about what the defendant did, while at the same time still insisting on a jury trial over the facts alleged by the defendant, about what the abortionist did that had to be stopped.

I say, "when the jury isn't told about the defendant's defense, that is a de facto denial of trial by jury."

An attorney answers, "You have to stop saying you aren't getting trial by jury. You want Scott

to *waive* trial by jury, by stipulating to the facts. You can't waive trial by jury, and then complain that you no longer have a trial by jury"

I explain "I propose stipulating only to the facts about what the defendant did, in order to end the parade of 182 witnesses proving what no one disputes, but which marches on for the sole purpose of satisfying the public that a jury trial was granted. Then I propose alleging other facts, about the harm which the defendant prevented."

The attorney answers, "Oh, so you're arguing the Necessity Defense. But that's been argued a thousand times and failed. What makes you think you have better arguments than all the rest?"

I admit, that is a very good question. Do you think I am not intimidated by it? Who am I, to offer America a tow rope? My only college degree is in playing trumpet.

I know all of you can relate to being surrounded by evils far beyond your ability to even imagine healing. So if their victims ask your help, you say, "Oh, I am not qualified to fight that battle. I am just called to go to church, tithe, and listen passively to others."

So what makes me so out of touch with reality that I keep pulling on mountains?

What can make you unrealistic enough to want to pull with me?

The promises of God.

**Mat 21:21** Jesus answered and said unto them, Verily I say unto you, If ye have faith, and doubt not, ye shall not only do this *which is done* to the fig tree, but also if ye shall say unto this mountain, Be thou removed, and be thou cast into the sea; it shall be done. 22 And all things, whatsoever ye shall ask in prayer, believing, ye shall receive.

I too struggle between two ruts. In one rut, I ask, who am I, to offer to pull America out of her genocidal rut?

In the other rut, I ask, Who am I, to question God? If God promises that if I will just pull with what little might I have, He will pull with me, who am I to mutter over my shoulder "No you won't!" on my way to the TV set?

How dare I ignore the cries of fellow human beings with the excuse that I am powerless to help them anyway, even if I try? How will I stand before God with that excuse, as He reminds me of His glorious promise which I refused to believe?

So here is my answer to any lawyer that asks how I can presume to offer better arguments than the thousand arguments before which have failed to persuade the judge to let the jury in on the defendant's defense:

If there have been a thousand arguments which have been true, the thousand and first time is *not* the time to quit. Lies cannot withstand truths perpetually beating upon them. If abortion has already been weakened by a thousand irrefutable arguments, this may be the time it's going to fall.

"I don't know if my arguments are any better. I have seen arguments in the past which *should* have been good enough to persuade the judge.

"I haven't seen anyone else offer the arguments I offer, but maybe people have. All I know is that I have read the excuses given by state supreme courts for not allowing juries to hear the trial issue, and I find their reasoning embarrassing. They reason as if no one has presented to them the arguments I present, but maybe people have, and the judges just ignore them.

"But the bottom line for me, as I contemplate whether it is time for me to give up and go in a corner and practice my scales on my trumpet, is not whether my arguments will end abortion this time, but whether they are true. As long as they are true, as nearly as I can determine, I have a responsibility before God to keep pulling the mountain of genocide.

I must swing my hammer of truth and justice and freedom at the tinsel of tyranny until nothing is left.

# Part 4

Legal Debate: Right to present one's defense, "Defense of Others" only justifies preventing Unlawful Force, Abortion is Constitutionally Protected, Imminence

Reporter at News Desk: We have assembled a panel of top legal experts, to discuss Dave Leach's charge that judges do not allow juries to participate meaningfully in abortion prevention trials. On my right we have Ivy True, (Text over: "Ivy True, Junior Partner, Hardnox School of Law", played by Vanessa) Deputy Counsel, Hartnox School of Law. Glad to have you, Ivy.

Ivy: Thank you. Glad to be here.

Reporter: And to Ivy's right, we have Dave Leach. Not you again, Dave. (Text over: Dave Leach, Senior Counsel, Hartnox School of Law)

Dave: Likewise, I'm sure.

Reporter: And on my left, we have Ima Crook, Junior Partner, who is in the country illegally. Welcome, Ima. (Text over: Ima Crook, Junior Partner, Panznfire & Family.)

Ima (Lexi): Thank you, I'm sure.

Reporter: And on Ima's left, the one, the only, the personal lawyer of late term abortionist Larry Carwash, Larry's lawyer Panznfire! Let's all give a warm welcome to Larry's liar Panznfire!

Everyone, enthusiastically: Liar's Liar, Pants on fire!

Reporter: Ivy, why don't we start with you?

*Right to present "theory of his defense"*

Ivy (Vanessa): The Kansas Supreme Court said "...a defendant is entitled to present the theory of his or her defense." That's all we're asking for Scott Roeder. (Text over: "State v. Walters, No. 92,592, Sept 21 2007")

Ima (Lexi): But the defendant shouldn't be allowed to present a defense that the judge thinks is dumb. The same ruling adds, "However, the right to present a defense is subject to statutory rules and case law interpretation of the rules of evidence and procedure." And the rules are pretty clear that the Necessity Defense is a question of law, and only judges can judge the law. (Lexi holds arms akimbo in triumph, nodding once)

Panznfire: Yih. (Lexi looks at Panznfire, who gives her a high 5. She gives one back, and he responds in agony. This routine follows every time Lexi speaks.)

Ivy (Vanessa): The ruling also says "the exclusion of evidence that is an integral part of that theory violates a defendant's fundamental right to a fair trial."

Dave: The judge won't just censor "evidence that is an integral part of that theory", but the whole theory.

*"Defense of Others" specifies prevention only of "unlawful harms"*

Ima (Lexi): You're asking the judge to allow a defense which isn't even in Kansas law. The Defense of Others law only allows you to prevent a harm that is *unlawful*. If something that is legal is murder, you have to let it keep on murdering people, if you live in Kansas. The law only says you can use force when "such force is necessary to defend...a third person against...imminent...UNLAWFUL force." (Text over: "21-3211(a) A person is justified in the use of force...when...such force is necessary to defend ...a third person against...imminent...unlawful force.")

Panznfire: Yih.

Dave: By specifying it is legal to prevent *unlawful* harm, Kansas law does not repeal the centuries of Common Law which make it legal to prevent *lawful* harm.

Wharton, the reference for lawyers, explains that self defense is against an unlawful attack, while the Necessity Defense protects against conditions that are lawful. (Text over: "It is therefore essential to self-defense that it should be a defense against a present unlawful attack, while necessity may be maintained through destroying conditions that are lawful." (Criminal Law, Section 126, 128.)

If there were never a Necessity Defense, reason would demand it be created because there are emergency situations where it would cause serious harm to obey normally very fine laws.

Lexi: The only fact that really matters is that abortion is legal. That is a fact which you cannot wish

away. You can't go around stopping what you personally think is harmful, when our laws say it is STOPPING those things that is harmful, and expect to stay out of jail!

Panznfire: Yih.

Dave: We are not asking the Court to justify stopping abortion because *we personally* think abortion is unthinkably harmful. We are asking the *jury* to justify stopping abortion if *they* agree that any reasonable person, after they have seen the evidence we have seen, would think abortion is unthinkably harmful.

It can never be the *deliberate* intent of laws to murder the innocent, without causing the Rule of Law to self destruct. Our laws must accommodate the recognition of all who save lives as heroes.

Lexi: Scott Roeder is no hero! He murdered a doctor who never did anything illegal, while he was ushering in church! Scott Roeder is a terrorist!

Panznfire: Yih.

Vanessa: Roe only made abortion legal; Roe did not make abortion harmless, nor can it.

Dave: The abortions which Scott stopped were arguably legal, yet so barbaric that 5 Supreme Court justices shuddered over their brutality. Their legality did not lessen their unthinkable harmfulness. The Necessity Defense keeps the prevention of unthinkable harm from being against *any* law.

*Abortion is "Constitutionally Protected"*

Lexi: But state supreme courts agree that juries can't be told about the Necessity Defense. The courts ask, "How can abortion be recognized as a 'harm', when it is constitutionally protected?" How can you expect Scott Roeder's judge to ignore overwhelming precedent which orders him to keep the jury ignorant of Scott Roeder's defense, even if it IS the only contested trial issue? (High 5's)

Vanessa: We agree that will be a difficult choice for a judge.

Dave: Whether to obey the overwhelming precedent of state supreme courts not to allow Scott Roeder's only issue to be tried by a jury, or to obey the overwhelming consensus of the U.S. Supreme Court, Roe v. Wade, the constitution, the will of the people, and the expectation of average Americans, that Scott Roeder must have a real Trial By Jury because this is America, not Iran.

Vanessa: That's the contradiction in American law created by Roe v. Wade. The right to abortion collides with the right to a real Trial by Jury. They can't both stay on the road.

Dave: In order to keep abortion "constitutionally protected" all these years, abortion preventers have been denied their constitutional right to a trial by jury, all these years.

Lexi: But in 1973 the Constitution switched from protecting the right to trial by jury to protecting the right to abortion. The Supreme Court is the supreme law of the land. You can't replace its authority with your personal legal theory and call yourself a law abiding citizen.

Panznfire: Yih.

Ivy (Vanessa): All we are asking is for the judge to obey *Roe v. Wade*. The state supreme courts have disobeyed *Roe v. Wade* in calling the Necessity Defense a "question of law". Roe said whether abortion is harmful is a fact question.

Dave: Roe treated the question of when life begins as a fact issue, which preachers and doctors could better answer than themselves. Had the justices regarded the question as a question of law, they would have considered *themselves* the world's experts on the question. Roe said not one single American judge is qualified to answer this fact question.

Everything about Roe demands that this fact question be answered by a jury, not a judge. Roe even *looks forward* to this event, even prophesying that when it finally happens, the days of legalized abortions will be over, as Roe "collapses". (Text over: If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment. Roe v. Wade: 410 U.S. 113)

Roe never said *individuals* may not stop abortion. Roe only banned *states* from stopping abortion.

Vanessa: All we are asking is for the judge not to usurp the jury's authority to judge the sole issue of Scott Roeder's case, which is a fact issue.

Dave: Abortion is legal, and yet at the same time abortions, and especially Tiller's partial birth

abortions, remain as inhumane as anything our U.S. prosecutors hung war criminals for at the Nuremburg trials. Does Roe v. Wade make it suddenly a criminal action to prevent this barbaric, civilization-destroying harm?

90% of American citizens will say it does. Suddenly, with the shifting winds of a court ruling, what had been universally vilified is now respectable and legitimate.

But this public reaction proceeds not from reason, or respect for the Rule of Law, but from Fear of Law. The fact is that what *was* barbaric *remains* barbaric. Law lacks the authority to make evil good. To make the cruel tender. To make hate love. To make dark light. To make a hero a terrorist. Laws may change; facts do not.

Vanessa: **When laws make crimes legal, laws destroy themselves. When laws stop protecting liberty for even the least of us, they raise up tyrants to prey on those least able to defend themselves.**

*Roe withdrew "personhood" only from pre-viability babies*

Ima (Lexi): **But we don't KNOW abortion hurts anybody. In the face of that uncertainty, shouldn't a woman have a right to do what she chooses with her own body? That's why Roe v. Wade made abortion legal.**

Panznfire: **Yih.**

Ivy (Vanessa): **When Roe v. Wade said they didn't know if a womb baby is a human being, they were talking about babies up to 2 months. Even Roe v. Wade established that babies old enough to live outside the womb are human beings with a Constitutional Right to Life. Those are the babies George Tiller specialized in killing.**

Lexi: **Killing THOSE babies was made legal by Doe v. Bolton, which came out at the same time as Roe v. Wade. It said abortions of babies about to be born should be allowed when that would help the "well being" of the mothers. (Panznfire begins frantically trying to get Lexi's attention.) For example, shouldn't we let a mother kill her baby, if that will make her happy?**

Vanessa: **A man once said, "da coit (Panznfire buries head in hands) might allow da baby killin if dat would be better for da mental healt of da muddas. But *dat* would staht da fight ova whedda *one* human being ouda die ta stop *anoda* human being from being depressed."**

*Imminence*

Lexi: **The law says the harm you want to prevent must be imminent, before it is OK to stop it. But Scott Roeder stopped Tiller a full day before Tiller was going to do any abortions.**

Panznfire: **Yih.**

Dave: "Imminence" is so vaguely defined in case law that if you broke down your neighbor's door to save him from a fire, some prosecutor would say **YOU** should have waited until the fire had actually started burning his hair. **You** should at LEAST have waited until the fire was in the room!

**You** should have waited until unthinkable harm was at least THAT "imminent".

But if anyone cares about saving lives, then "imminence" needs to be defined in a way that permits lives to be saved *when there is opportunity* to save lives. Requiring Scott Roeder to wait until the next day when the abortions were resuming only requires Scott Roeder to wait to act until the window of opportunity for acting has closed, because Tiller's office was a fortress. Imminence therefore should be defined as the nearness in time to the *closing of the window of opportunity* to prevent serious harm. Scott Roeder's window of opportunity was extremely brief. He saved lives the only time he could.

Part Five: A Few Reasonable People who Consider Abortion "Murder", Besides Jesus.

Lexi: No reasonable person on the jury is going to let a terrorist out of jail.

Panznfire: **Yih.**

Vanessa: We don't know what Scott Roeder's jury will do, if it learns of the defense. But

Missouri lawmakers are fairly reasonable. They passed a law that says “The life of each human being begins at conception...unborn children have protectable interests In life, health, and well being”. (Text over: Missouri #1.205, R.S.Mo.1986)

Dave: Nebraska legislators are somewhat reasonable, and they passed a law declaring it was the “will of the people of the State of Nebraska and the members of the Legislature to PROVIDE PROTECTION FOR THE LIFE OF THE UNBORN CHILD WHENEVER POSSIBLE; (2) That the members of the Legislature expressly DEPLORE the destruction of the UNBORN HUMAN LIVES which has and will occur in Nebraska as a consequence of the United States Supreme Court's decision on abortion of January 22, 1973.” (Text over: Nebraska 28-325. R.R.S. 1943)

Vanessa: President Bush is considered reasonable enough to appoint justices to the Supreme Court. When he signed the act outlawing the kind of abortions which George Tiller never stopped doing, Bush said, (Text over: Partial Birth Abortion Ban Act of 2003) “a terrible form of violence has been directed against children ... The best case against partial birth abortion is a simple description of what happens and to whom it happens. It involves the partial delivery of a live boy or girl, and a sudden, violent end of that life.”

Dave: Bush continued, “Our nation owes its children a different and better welcome....the practice is widely regarded within the medical profession as unnecessary, not only cruel to the child, but harmful to the mother, and a violation of medical ethics. ...*The facts about partial birth abortion are troubling and tragic, and no lawyer's brief can make them seem otherwise.* ... [We need] compassion and the power of conscience..... This right to life cannot be granted or denied by government, because it does not come from government, it comes from the Creator of life. ...We're asked to honor our own standards, announced on the day of our founding in the Declaration of Independence. We're asked by our convictions and tradition and compassion to build a culture of life, ...when we look to the unborn child, *the real issue is not when life begins, but when love begins.*”

President Reagan enacted a public law which was quoted as authority in a Missouri appellate ruling. Reagan's law said "all medical and scientific evidence increasingly affirms that children before birth share all the basic attributes of human personality -- that they in fact are persons...from the moment of conception until natural death [whose] unalienable right to life is found not only in the Declaration of Independence but also In the Constitution that every President is sworn to preserve, protect and defend.” (Text over: Reagan's proclamation was enacted January 14, 1988, and quoted in State v. O'Brien, 784 S.W.2nd 187, 191 Mo.App. 1989)

Vanessa: Supreme Court justices are reasonable persons, sometimes. Five of them were horrified by the kinds of abortions Tiller never stopped doing.

Dave: Justices Stevens and Ginsburg, concurring with the majority, wrote:

“[I doubt if the abortion method used by George Tiller is] more brutal, more gruesome, or less respectful of “potential life” than the equally gruesome procedure [which the law still allows].” (Stenberg v. Carhart (99-830) 192 F.3d 1142)

Justice Scalia, in his dissent, wrote

“The method of killing a human child -- one cannot even accurately say an entirely unborn human child -- proscribed by this statute is so horrible that the most clinical description of it evokes a shudder of revulsion.”

Justice Kennedy, dissenting, wrote

“The majority views the procedures from the perspective of the abortionist, rather than from the perspective of a society shocked when confronted with a new method of ending human life. Words invoked by the majority, such as ‘transcervical procedures,’

‘[o]smotic dilators,’ ‘instrumental disarticulation,’ and ‘paracervical block,’ may be accurate and are to some extent necessary, ... but for citizens who seek to know why laws on this subject have been enacted across the Nation, the words are insufficient.”

Justice Thomas, dissenting, wrote

“Today, the Court inexplicably holds that the States cannot constitutionally prohibit a method of abortion that millions find hard to distinguish from infanticide and that the Court hesitates even to describe.”

Vanessa: There are other elements of this defense, but this is the one upon which the others hinge. Is abortion the killing of unborn humans? Or merely the extraction of undesirable tissue with less status than animals? This is really the issue. It is almost the only issue. All other issues lead to this issue, and depend on this issue.

The Necessity Defense is so ancient, Jesus used it in the Bible. He showed us what is the important element of this defense.

There was no “imminent” harm, unless you count the fact that the harm of being crippled for 18 years would have continued for one more day had Jesus not acted on that very day.

There were alternatives to “breaking the Sabbath”, which was a capital crime, but Jesus rejected them. He could have healed on *any* other day.

Jesus was on trial. The Supreme Court of the day, the Sanhedrin, was prosecuting Him for healing on the Sabbath, which they ruled was forbidden “work”.

He invoked only one element of the Necessity Defense: “Is it lawful to do good?”

Jesus deliberately, consciously, unnecessarily broke the law to demonstrate the point that *no* law, no matter how great, must *ever* be used to stifle good! And to set us free from mindless servitude to the letter of the law that is used by tyrants to oppress good people in violation of the spirit of the law.

And he entered again into the synagogue; and there was a man there which had a withered hand. 2 And they watched him, whether he would heal him on the sabbath day; that they might accuse him. 3 And he saith unto the man which had the withered hand, Stand forth. 4 And he saith unto them, Is it lawful to do good on the sabbath days, or to do evil? to save life, or to kill? But they held their peace. 5 And when he had looked round about on them with anger, being grieved for the hardness of their hearts, he saith unto the man, Stretch forth thine hand. And he stretched it out: and his hand was restored whole as the other. 6 And the Pharisees went forth, and straightway took counsel with the Herodians against him, how they might destroy him.

Dave: Whether you believe abortion is murder is probably going to come down to whether you believe the Bible is the Word of God. If you believe New Agers like Edgar Cayce, you will believe abortion is *not* murder because the soul doesn’t enter the body until, at the earliest, two weeks before birth.

Reporter at desk: We break into this debate to bring you breaking news about some of the shocking things said at Scott Roeder’s last Bible study. Here is \_\_\_ on the scene.

Reporter on location: Yes, \_\_\_. The things that were said here are indeed shocking. Some of the people here – if indeed it is appropriate to call them “people” instead of simply “terrorists” – were actually quoting from the Bible. Here is what they were saying:

Luke 1:41 says when John the Baptist had been in the womb only 6 months, he heard the voice of Jesus’ mother and leaped for joy. This is something which a tumor cannot do. (Text over: Luk 1:41 And it came to pass, that, when Elisabeth heard the salutation of Mary, the babe leaped in her womb...)

Psalm 139:13-16 describes how God was watching you and me growing in the womb, back before our bodies even had arms or legs. (Text over: Psa 139:16 but with your own eyes you saw my body being formed.)

Jeremiah 1:5 says God offers each of us a purpose for life, at least by the moment of conception, before our bodies begin forming. (Text over: Jer 1:5 Before I formed thee in the belly I knew thee; and

*before thou camest forth out of the womb I sanctified thee, and I ordained thee a prophet unto the nations.)*

Jeremiah 19:5 says a parent murdering her own baby is so horrible it never even entered God's mind! (Text over: *Jeremiah 19:5 They have built also the high places of Baal, to burn their sons with fire for burnt offerings unto Baal, which I commanded not, nor spake it, neither came it into my mind:)*

Proverbs 24:10-12 shows God expects us to rescue those being led away to slaughter. Only governments, and murderers protected by governments, murder their victims at a time and place convenient for them. (Text over: *Proverbs 24:11 Don't hesitate to rescue someone who is about to be executed unjustly. 12 You may say that it is none of your business, but God ...will reward you according to what you do.)*

The FBI is investigating charges. We are following this story and will certainly keep you posted. Now back to you, \_\_\_\_.

Reporter at desk: Thank you, \_\_\_\_\_. Now back to our debate in progress.

Dave: No one says it is wrong to use force to save a *born* child from being killed by someone. But hardly anyone dares to justify force to save an *unborn* child from being aborted – not even people who know an unborn child is just as much a human being, with just as much a soul who cries out to God for mercy as its body is being mauled by the unrighteous. Why this difference? Not because of reason. Not because of Scripture.

But because of fear of law.

Partly because they don't want to go to jail or be called "extremists" for defying the legal interpretations of the Pharisees. Partly also because have forgotten, or don't understand, our country's rich history of brave individuals who have restored the Rule of Law by standing against authorities who have usurped and perverted law. This generation is afraid righteous individual resistance can only lead to anarchy, when it is the *absence* of resistance to tyranny which leaves tyrants to oppress whomever they please, creating legal anarchy.

We believe America's Rule of Law will be restored as Americans remember, and understand, our rich heritage of Scripture-based resistance to legal tyranny. We believe juries will act to permit the saving of unborn lives, once the legal basis for their authority to act is explained to them. We believe Americans across America will likewise rise up to defend the unborn, once they understand the perversion of law that was necessary to make abortion "legal", and that nothing can be more illegal than what courts have done all these years to keep abortion "legal".

Panznfire (to Ima): Say somtin.

Ima: I can't seem to find any fault in what they say. Can we afford to buy the TV network?

Panznfire: (uncertain, pulls out wallet, turns it upside down, shakes it, nothing comes out.) Well I got somtin ta say! (Panznfire angrily pulls out pistol from suit pocket. Lawyer pulls out Bible, holding it so camera can see "Holy Bible" on the cover. Panznfire, terrified, drops pistol and raises hands. Lawyer opens Bible and thrusts it in the direction of Panznfire, facing so Panznfire can read it. He acts like he's been shot. "I've been hit!" Lawyer flips pages and thrusts again. "Oh, me heart! You got me in me heart!" clutches hand over heart. Lawyer flips pages and thrusts a third time. Panznfire recoils, gasps in death, staggers, figure blurs in and out, explodes, unblurs to reveal a preacher holding a Bible. "Brothers and Sisters, I stand before you today, living proof that Jesus is willing to forgive absolutely ANYBODY! Let me tell you my story, for it will definitely encourage you!"

Roe barred *states* from protecting what the *justices* couldn't tell were human beings, but the Supreme Court can *never* rule that *individuals* cannot protect what *juries* agree are human beings.

Making murder legal created a problem *which has no solution* short of making murder *illegal* again. Because life is even *more* sacred than laws, constitutions, and the will of societies. When any law, Constitution, or society becomes a threat to life, life must be chosen over its enemies.

The fact is, the compelling common sense of justifying an insignificant harm to save lives ought never bow to the whim of any judge, panel of judges, society, or even carelessly applied "constitutional rights".

Normally, Americans all agree that the Necessity Defense should not justify interference with constitutional rights. But Americans are divided about elevating murder into a so-called “constitutional right”, especially since it is nowhere in the Constitution. Besides, there are all kinds of Constitutional Rights which become harmful in various situations, at which time the Necessity Defense justifies interfering with them.

Roe made abortion legal; Roe did not make abortion harmless, nor can it. A judge’s power, as the judge of the law, to declare murder “legal”, ought never be an excuse to steal a jury’s power, as the judges of the facts, to declare abortion “harmful”, especially after Roe declared no American judge is qualified to answer that question. **Americans tolerate Roe v. Wade because they think it makes abortion legal. But nothing can be more illegal than what courts have done to keep abortion “legal”. Not just once, but 100,000 times!**