

CAUSE NO. 2071353

STATE OF TEXAS

vs.

DAVID ROBERT DALEIDEN

§ IN COUNTY CRIMINAL COURT

§

§ AT LAW NO. 11

§

§ HARRIS COUNTY, TEXAS

MOTION TO QUASH

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Defendant in the above entitled and numbered cause, by and through his attorneys of record, and requests this Honorable Court to quash the charging instrument in the instant case number; and in support thereof would show this Honorable Court the following:

I. BACKGROUND

On August 5, 2015, Texas Lt. Governor Dan Patrick made a formal request that Planned Parenthood be investigated for potential criminal wrongdoing. The request was made following his viewing of an undercover video released by the Center for Medical Progress that was filmed at Planned Parenthood Gulf Coast ("PPGC"), which demonstrated "the gruesome and barbaric work of Planned Parenthood and what appears to be its profiteering from selling body part from aborted babies." (Exhibit "A"). Following the Lt. Governor's request, the Harris County District Attorney's Office ostensibly investigated PPGC. The 232nd Grand Jury reportedly was investigating PPGC in the fall of 2015.

However, at the close of the 2015 term, no action had been taken in the investigation of Planned Parenthood. A grand jury "hold over" order was drafted by the Harris County District Attorney's office and presented to the judge of the 232nd Court for entry on December 16, 2015. (Exhibit "B"). However, in that order, the prosecutor failed to specifically state or articulate any particular individual or entity that the grand jury would be holding over to investigate. The order

recites boilerplate language set forth in Section 19.07 of the Texas Code of Criminal Procedure, but, due to the lack of specificity, it is otherwise deficient.

On January 5, 2016, lawyers representing Mr. Daleiden in a different case, *Nat'l Abortion Fed'n v. Center for Medical Progress*, N.D. Cal., case no. 3:15-cv-3522 (“*NAF v. CMP*”), received a letter from counsel for Plaintiff, National Abortion Federation, alerting Mr. Daleiden’s counsel that certain video evidence covered by a Temporary Restraining Order (“TRO”) in that case had been produced to the grand jury. (Exhibit “C”). The defendant believes and is informed that the National Abortion Federation was notified of the contents of Mr. Daleiden’s grand jury production by Planned Parenthood Gulf Coast. Defendant also believes and has been informed that, throughout the instant grand jury proceedings, prosecutors provided some or all of the evidence produced to the grand jury—including the TRO videos and other material produced by Daleiden—to the ostensible target of the investigation, Planned Parenthood Gulf Coast.

On January 14, 2016, Defendant David Daleiden appeared in person and testified before the now “hold over” 232nd grand jury that was presumably investigating PPGC. Following this testimony, on January 25, 2016, the Harris County District Attorney’s Office announced via press release that the “hold over” grand jury returned indictments, not against PPGC, which it had presumably been previously investigating, but against Mr. Daleiden and Ms. Sandra Merritt. In direct violation of Texas law, the indictments were immediately made available to the public for download on the internet.

In the days after the charges were made public, Planned Parenthood held an invitation-only press conference. At that press conference, Mr. Josh Schaffer, counsel for Planned Parenthood, boasted that he “explicitly pushed prosecutors” to charge Mr. Daleiden and Ms.

Merritt, citing the revelation of Ms. Merritt's identity by Mr. Daleiden in a deposition in a Los Angeles state court case, *Stem Express, LLC v. Center for Medical Progress*, Ca. Sup. Ct., Cty of Los Angeles, case no. BC 589145. See David Ingram & Jilian Mincer, *How Planned Parenthood's accusers became the accused*, REUTERS, (Feb. 3, 2016, 8:00 AM), <http://www.reuters.com/article/us-plannedparenthood-texas-lawyer-insigh-idUSKCN0V60AZ> (Exhibit "D"). Coincidentally, the deposition of Mr. Daleiden—referenced by Mr. Schaffer—did not occur until December 30, 2015, two weeks after the "hold over" order was entered and after the 232nd grand jury was sent home for the holidays, which on its face indicates that information concerning Mr. Daleiden and Ms. Merritt was not something the Grand Jury considered during its initial investigation, which further indicates that Mr. Daleiden and Ms. Merritt were not the Grand Jury's original targets, but became the target after the expiration of the Grand Jury's term.

Mr. Schaffer further stated that during the grand jury proceedings, he and prosecutors maintained a "dialogue . . . about the details of the case, and kept that going throughout." *Id.* Schaffer further stated that prosecutors confided in him that the grand jury's focus had "shifted" to Daleiden throughout the course of the investigation, *Id.*; that the grand jury never took an up-or-down vote on a bill for PPGC, the entity whose crimes they were charged to investigate¹, *Id.*; and that prosecutors did not call a single witness from PPGC before the grand jury. *The Latest: No vote on charges against Planned Parenthood*, ASSOCIATED PRESS, (Feb. 3, 2016, 8:00 AM), <http://www.washingtontimes.com/news/2016/jan/26/the-latest-activists-accused-of-using-fake->

¹ Though Schaffer stated that prosecutors told him that the grand jury was never asked to vote on charges against Planned Parenthood Gulf Coast ("PPGC"), the press release from the District Attorney's Office asserted affirmatively that, "This grand jury cleared PPGC of breaking the law." Exhibit "E".

[license/?page=all](#) (Exhibit “E”). However, throughout the investigation, prosecutors did not provide similar insight about the Grand Jury proceedings to Mr. Daleiden’s counsel, which they customarily and ethically would have, had Mr. Daleiden been a target of the Grand Jury’s investigation during its original term.

The instant charge against the defendant—for violation of TEX. PEN. CODE 48.02, the unlawful offer to purchase human organs—is invalid because it was not rendered during the charging grand jury’s original term, and the grand jury failed to comply with, or otherwise exceeded the authority they were granted pursuant to the vague and ambiguous “hold over” order executed on December 16, 2015. In addition to the instant charge being void, cumulative violations of the Texas Code of Criminal Procedure, as listed above, have impugned the integrity of the grand jury process and warrant that the instant charge be quashed.

II. TEXAS LAW

The Grand Jury, the impartial body, which the Texas Constitution has designed to act as a screen between the rights of the accused and the prosecuting power of the State, is not a mere form that can be capriciously substituted or invented. Just as the verdict of a petit jury that returns a verdict after it has been discharged is not a valid verdict but merely the act of a collection of individuals who had previously been members of the jury, a purported indictment returned by a grand jury without authority is not a valid indictment. Any such indictment returned by that collection of individuals cannot confer jurisdiction over any criminal defendant. *See Perryman v. State*, 102 Tex. Crim. 531, 533, 278 S.W. 439, 440 (1925); *Ex parte Wynne*, 772 S.W.2d 132, 134-35 (Tex. Crim. App. 1989); *Ex parte Edone*, 740 S.W.2d 446, 447 (Tex. Crim. App. 1987).

The Texas Code of Criminal Procedure provides, in relevant part, as follows:

[T]he judge of the district court in which said grand jury was impaneled may, by the entry of an order on the minutes of said court, extend, from time to time, *for the purpose of concluding the investigation of matters then before it*, the period during which said grand jury shall sit, for not to exceed a total of ninety days after the expiration of the term which it was impaneled, and all indictments pertaining thereto returned by the grand jury within said extended period shall be as valid as if returned before the expiration of the term.

Tex. Code Crim. Proc. Ann. Art. 19.07 (Vernon 2015). (Emphasis added).

The “hold over” order in the instant case failed to state what matter(s) the grand jury would to continue to investigate. A “hold over” order written in such a vague fashion is ambiguous. As the Court of Appeals has held, a “potentially ambiguous” extension order under Section 19.07 “impermissibly broaden[s] the grand jury’s authority,” and fails to authorize continued investigation of additional matters by that grand jury. *State v. Flournoy*, 187 S.W.3d 621, 623 (Tex. App. 2006). Such ambiguity requires, at the very least, the trial judge to hold a hearing to determine whether a motion to quash should be granted as to each indictment issued during the extended term. *Id.* at 624 (“We find that Judge Keeling should have held a hearing to determine whether the motion to quash should have been granted as to each case.”).

A presumption of regularity cannot control in the case now before the court because the order does not disclose or set forth, with any specificity or generality, the matter(s) needing further investigation. It must be presumed, and will be otherwise demonstrated, that the investigation of Planned Parenthood was the matter originally being investigated by the grand jury when its term ended in 2015. In 2016, after the signing of the order, and at least in part as a result of the defendant’s Grand Jury testimony, a new investigation resulted, and the Grand Jury ultimately indicted the defendant. The resulting indictments were and are not authorized or permitted by the order obtained by the prosecutor shepherding these cases, and therefore for this reason alone, the charging instrument should be quashed.

Additionally, it is well settled that no person may disclose the existence of an indictment as it is to be kept secret until the defendant is in custody or has been released on bond pending trial. The Texas Code of Criminal Procedure Article 20.22(b) provides that “if the defendant is not in custody or under bond at the time of the presentment of indictment, the indictment may not be made public and the entry in the records of the court relating to the indictment must be delayed until the *capias* is served and the defendant is placed in custody or under bond.” Therefore, the charges were to remain confidential until Mr. Daleiden’s surrender to the authorities. The press release by the Harris County District Attorney’s Office along with the public disclosure of the charges—on the internet the same day the indictment was released—clearly violated the protections afforded Mr. Daleiden under the Texas Code of Criminal Procedure.

Case and statutory law provides that grand jury proceedings are secret. The duty to maintain Grand Jury secrecy applies not only to the grand jury members who take an oath of secrecy, but to the prosecutors who have a statutory duty to keep the Grand Jury proceedings secret. *See* TEX. CRIM. PRO. CODE ANN. ART. 19.34; *See also, Stern v. State ex. Rel. Ansel*, 869 S.W.2d 614, 623 (Tex. App.—Houston [14th Dist.] 1994, *writ denied*). The Texas Code of Criminal Procedure places great importance upon maintaining the secrecy of what transpires before the Grand Jury. Standing behind the Code is the common law rule that the proceedings of the Grand Jury are secret. After a lengthy analysis the *Stern* court wrote, “we hold that prosecutors have both a *clear statutory* and a common law duty to keep secret the proceedings of the grand jury.” *Id.* at 623.

The Josh Schaffer press conference, on behalf of PPGC, wherein Mr. Schaffer explicitly states he was kept abreast of the Grand Jury’s happenings by someone from the prosecutor’s

office clearly proves the secrecy of these proceedings were severely compromised. Additionally, the fact that the prosecutor held a press conference, stating the findings of the Grand Jury, and then publicly released copies of the indictments online the very same day—well before Mr. Daleiden had been brought in for the charges—give further evidence that the duty to keep the proceedings secret was breached. To further demonstrate collusion with the pro-abortion lawyers, an attorney for the National Abortion Foundation, Mr. Derek Foran, announced to the world via *The New York Times* that he had insider information and “learned about the indictments in Texas about a half-hour before they were publicly announced.” See Barry Meier, *Unfamiliar Terrain for Corporate Lawyer in Planned Parenthood Drama* (Jan. 29 2016), *The New York Times*, Business Day, page 4. (Exhibit “F”)

Because these solemn duties and laws were intentionally violated or at the very least intentionally neglected, the validity and integrity of the grand jury process is invalid and the charging instrument must be quashed.

III. CONCLUSION

The Grand Jury acted without proper authority, which renders the charges brought against Mr. Daleiden legally invalid. The prosecutors, or other persons in a similar situation, systematically leaked Grand Jury information to an unauthorized person(s). There is no justifiable basis for this conduct and granting this motion is the only appropriate remedy. Based on the aforementioned reason(s), the charging instrument in the instant case should be quashed pursuant to the Texas Code of Criminal Procedure, and the due course of law provision of the Texas Constitution. The cumulative actions listed herein to Mr. Daleiden’s detriment and in violation of his due process rights under Article 1, Sections 13, 14 and 19 of the Texas Constitution and have caused him irreparable harm.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that this Honorable Court will immediately schedule this matter for a hearing, grant Defendant's motion, and order the indictment against defendant to be quashed.

Respectfully submitted,

Terry W. Yates & Associates

By: 

Terry W. Yates
State Bar No. 22142600
Jared Woodfill
State Bar No. 00788715
6750 West Loop South, Suite 845
Bellaire, Texas 77401
Phone: 713-861-3100
Fax: 713-621-0000
E-Mail: tyates@yateslawoffices.com

Thomas Brejcha,
Peter Breen,
Thomas More Society
A public interest law firm
19 S. LaSalle St., Ste. 603
Chicago, Illinois 60603
Phone: 312-782-1680
Fax: 312-782-1887
E-Mail: tbrejcha@thomasmoresociety.org;
pbreen@thomasmoresociety.org

**ATTORNEYS FOR DEFENDANT
DAVID ROBERT DALEIDEN**

CERTIFICATE OF SERVICE

This is to certify that on APRIL 14, 2016, a true and correct copy of the above and foregoing document was served on the Harris County District Attorney's Office by electronic mail, facsimile transmission and/or hand delivery.


Terry W. Yates

CAUSE NO. 2071353

STATE OF TEXAS

vs.

DAVID ROBERT DALEIDEN

§ IN COUNTY CRIMINAL COURT

§

§ AT LAW NO. 11

§

§ HARRIS COUNTY, TEXAS

ORDER ON MOTION TO QUASH

On _____, 2016, came on to be heard defendant's Motion to Quash, and said motion is hereby GRANTED.

JUDGE PRESIDING

EXHIBIT “A”



LT. GOVERNOR DAN PATRICK ASKS HARRIS COUNTY D.A. TO IMMEDIATELY OPEN A CRIMINAL INVESTIGATION OF PLANNED PARENTHOOD IN TEXAS

AUSTIN - Lt. Gov. Dan Patrick made the following statement regarding the fifth video made public involving activities related to Planned Parenthood:

"A fifth undercover video has been released by the Center for Medical Progress discussing the gruesome and barbaric work of Planned Parenthood and what appears to be it's profiteering from selling body parts from aborted babies. In this video, taped at the Houston Planned Parenthood Center, the Gulf Coast Director of Research, Melissa Farrell, discusses selling entire aborted fetuses for profit.

"Her quote, 'If we alter our process, and we are able to obtain intact fetal cadavers, then we can make it part of the budget.'

"As a result, this morning I am asking Harris County District Attorney Devon Anderson to immediately initiate a criminal investigation of Planned Parenthood.

"We recently held a hearing in the Texas Senate Health and Human Services Committee to begin our own discovery of the facts involving this issue. Planned Parenthood did not accept an invitation to testify.

"This newest video makes it clear it is time for prosecutors to launch a criminal investigation in Harris County immediately."

Categories: News (<https://www.ltgov.state.tx.us/category/news/>)

Office of the Lieutenant Governor

EXHIBIT “B”

EXHIBIT “C”

From: Mitchell, Anshu [mailto:MITCHELL_ANSHU@dao.hctx.net]
Sent: Wednesday, January 06, 2016 12:02 PM
To: Murphy Klasing; 'Katie Short'
Cc: Hervey, Melissa; Chandler, Inger
Subject: RE: NAF TRO

Hi Murphy

The grand jury is willing to accommodate Mr. Daleiden and convene on January 14th at 1:00p.m., so please tell him to make his flight arrangements as soon as possible. And could you please let me know when that is confirmed?

With regard to the videos, we are not going to destroy anything, but we have no problem returning the flash drives to you. Just let me know when you are available and we can meet up to get them back to you.

We intend to retain copies of everything given to us pursuant to our grand jury subpoena except those listed as protected, namely:

- 1) 08 PPGC Ann Schutt-Aine\1\FNND0569_20150419155634
- 2) 08 PPGC Ann Schutt-Aine\2\FNPB0298_20150420154515
- 3) 03 PPGC Cassie Reed\1\FNND0569_20140406085921
- 4) 03 PPGC Cassie Reed\1\FNND0569_20140406090359
- 5) 03 PPGC Cassie Reed\1\FNND0569_20140406093224
- 6) 03 PPGC Cassie Reed\1\FNND0569_20140406100051

- 7) 03 PPGC Cassie Reed\1\FNND0569_20140406102917
- 8) 03 PPGC Cassie Reed\2\FNND0569_20140406180446

Additionally, you will recall that Melissa Hervey had notified you that we were providing copies of what you had given us to both Josh Schaffer and Randy Schaffer; therefore, you will need to contact them to obtain those copies as well. Let me know if you need contact information for them.

Finally, no one from the Harris County District Attorney's Office turned over any information to NAF.

Thanks

Sunni

From: Murphy Klasing [<mailto:mklasing@wkpz.com>]
Sent: Wednesday, January 06, 2016 9:16 AM
To: Mitchell, Anshu; 'Katie Short'
Subject: NAF TRO

Sunni: See the letter attached that you may not have yet received. It appears someone from the DA's office turned over this information to NAF, which concerns me only because of the nature of Grand Jury investigations.

Nevertheless, these videos were provided inadvertently. They were disclosed due to a misunderstanding of the content of the disk between myself and Mr. Daleiden. There was no intent by either of us to forward any content that was subject to the TRO.

Therefore, please destroy all copies of the videos indicated in the letter and send me confirmation that such videos have been destroyed so that we all remain compliant with the Court's Order.

Thanks, Murphy Klasing.

Murphy S. Klasing



Trusted Legal Advisors Since 1976

*Shareholder
Licensed to Practice Law in Texas,
Oklahoma and West Virginia*

11 Greenway Plaza, Suite 1400
Houston, Texas 77046
T. (713) 961-9045
F. (713) 961-5341

mklasing@wkpz.com
www.wkpz.com
AV Peer-Review Rated by Martindale-Hubbell®

This communication and any attachments to it are confidential and intended solely for the use of the person to whom they are addressed. If you have received this e-mail in error, please notify us by telephone immediately at (713) 961-9045, and you are notified that any disclosure, distribution, or the taking of any action in reliance on the contents of this information is prohibited. Nothing in this message may be construed as a digital or electronic signature of any employee of Weycer, Kaplan, Pulaski & Zuber, P.C. ("WKPZ"). WKPZ automatically blocks e-mails containing objectionable language or suspicious content. Messages sent to WKPZ should be considered received only if confirmed by a return receipt. The IRS does not allow the use of informal tax advice, such as this communication, to avoid tax penalties. WKPZ expressly reserves and maintains any attorney-client privilege or work-product protections in this communication.

EXHIBIT “D”

World | Thu Jan 28, 2016 7:56am EST

Related: U.S., HEALTH

How Planned Parenthood's accusers became the accused in Texas case

BY DAVID INGRAM AND JILIAN MINCER



A sign is pictured at the entrance to a Planned Parenthood building in Houston. Picture taken August 31, 2015.
REUTERS/LUCAS JACKSON

An aggressive legal strategy pursued by U.S. women's healthcare provider Planned Parenthood may have been critical in turning the tables on opponents who were seeking to prosecute it in Texas for allegedly profiting from sales of aborted fetal tissue.

In a surprise move disclosed on Monday, a grand jury in Harris County not only cleared Planned Parenthood's Gulf Coast affiliate but also indicted the two anti-abortion activists, David Daleiden and Sandra Merritt, who had prompted the probe in the first place.

They have both been charged with using fake driver's licenses and Daleiden for violating Texas' prohibition on the purchase and sale of human organs - the same law he accused Planned Parenthood of breaking - when he sent an email to Planned Parenthood seeking to buy fetal tissue. Their lawyers say they have done nothing wrong.

ADVERTISING

Planned Parenthood's legal strategy was in some ways similar to how corporations facing major white-collar criminal investigations often cooperate closely with prosecutors to try to influence the outcome.

From the start, Planned Parenthood and its Houston lawyer Josh Schaffer settled on a strategy of cooperating with investigators, said Rochelle Tafolla, a spokeswoman for the affiliate. It included volunteering documents and encouraging prosecutors to interview employees, as well as giving prosecutors tours of the Houston facility, according to Schaffer.

"We certainly began the process as suspects of a crime, and the tables got turned and we ended up victims of a crime," Schaffer told Reuters in an interview.

Schaffer was retained by Planned Parenthood last summer when Texas officials demanded it face a criminal investigation after the anti-abortion activists posted videos online purporting to show the organization's employees discussing the sale of aborted fetal tissue, which is illegal in the United States if done for a profit.

The videos produced by Daleiden's Center for Medical Progress were secretly filmed at Planned Parenthood clinics, such as its Houston facility, and including at least one conversation in a restaurant. Planned Parenthood said it has done nothing wrong and commissioned an outside study that said the videos had been deceptively edited.

According to Planned Parenthood, officials have cleared it of wrongdoing in 12 U.S. states in the wake of the allegations.

STARTED A DIALOGUE

Schaffer said very soon after he was hired he began a dialogue with prosecutors in Harris County, which includes much of Houston, about the details of the case, and kept that going throughout.

The office of Harris County District Attorney Devon Anderson declined an interview request. Anderson said in a statement on Monday: "All the evidence uncovered in the course of this investigation was presented to the grand jury. I respect their decision on this difficult case."

A Republican who has been the Houston area's prosecutor since 2013, Anderson last summer pledged a "thorough investigation" and a prosecution to the full extent of the law "should we find that laws were broken." Campaign material from her 2014 race for district attorney described her as a "proud, pro-life Texan mother of two."

Although what happened during the grand jury's secret deliberations may never be known, Schaffer said it did not vote on whether to indict Planned Parenthood.

That is because the grand jury's focus shifted to a case against the anti-abortion campaigners, Schaffer said on a conference call with reporters, citing information he said he received from a prosecutor.

Planned Parenthood said that Daleiden and Merritt used fake driver's licenses in April 2015 when they posed as executives from a fictitious company to secretly film conversations at the Houston facility. That led to the charges they used fake government documents with the intent to defraud.

One critical juncture in the case may have occurred when Planned Parenthood gave law enforcement an important tip: Merritt's true name, according to Schaffer.

Her identity remained unknown from the time she visited Planned Parenthood with a fake California driver's license until about December when Daleiden revealed it during a deposition as part of a separate civil lawsuit in state court in Los Angeles, Schaffer said.

As part of his strategy, Schaffer said he explicitly pushed prosecutors to charge Daleiden and Merritt.

"I made the argument regarding the charges that the grand jury returned," Schaffer said in the interview, "but I did not have to make them very forcefully because it was self-evident to the prosecutors that they engaged in this conduct."

PROTECTING SOURCES

Peter Breen, a lawyer on Daleiden's defense team, said the grand jury misapplied Texas law, indicting the two under an anti-fraud statute meant to be used against identity thieves, not against people trying to uncover wrongdoing.

Terry Yates, a Houston lawyer representing Merritt and Daleiden, told reporters the grand jury's indictments "are legally and factually insufficient and are not going to hold up under the weight of the law."

Daleiden, who says he uses journalistic techniques, could not have cooperated with Texas authorities' as extensively as Planned Parenthood without surrendering his rights as an investigator, Breen said. He needed to protect his sources and methods, including Merritt's name, and he posted what relevant information he had online, the attorney said.

"Numerous law enforcement and legislative bodies across the country have reached out to David," Breen said. "He has done everything he can to cooperate with their investigations."

Breen said he did not want to speculate as to why an investigation that began focused on Planned Parenthood suddenly turned on its accusers instead, but he said the district attorney should use her authority to drop the charges.

(Reporting by David Ingram and Jilian Mincer in New York; Additional reporting by Jon Herskovitz in Austin; and Ruthy Munoz in Houston; Editing by Amy Stevens and Martin Howell)

EXHIBIT “E”

(/)



POLITICS

Mitt Romney knocks Donald Trump in robocal...



POLITICS

Obama pressed to respond to Iranian missile...



POLITICS

Dana Rohrabah lawmaker: Na...

2016 Annual Letter

Bill & Melinda Gates explain how time & energy can change the world.

○ ○

HOME (/) \ NEWS ()

The Latest: No vote on charges against Planned Parenthood

By - Associated Press - Tuesday, January 26, 2016

AUSTIN, Texas (AP) - The Latest on the indictment of two anti-abortion activists who made an undercover video of Planned Parenthood (all times local):

3:35 p.m.

**SIGN UP FOR
BREAKING NEWS ALERTS**

enter address...

Submit

0

Tweet

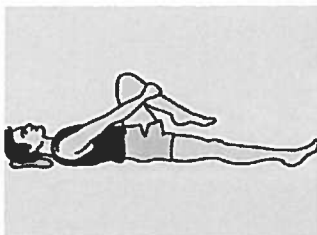
0

Share

G+1

Email

Ads by Adblade (/ / www.adblade.com)



(http://ads.primalhealthip.com/base.c=21&key=e2718038ca0f1f1a16afd2

**This 1 Easy Exercise
Destroys High Blood
Sugar?**

(http://ads.primalhealthip.c=21&key=e2718038ca0f1f1a16afd2



(http://autooverload.com/hilarious-photos-you-need-to-see/?

utm_source=adblade&utm_medium=[EncodedAdbladeTracker]

**Most Random Hilarious
Photos Captured Online**
(http://autooverload.com/hilarious-photos-you-need-to-see/?
utm_source=adblade&utm_medium=[EncodedAdbladeTracker]



NOW AND THEN

(http://badbearmedia.com/13-celebrity-puberty-wins/?

**13 Child Stars Who Have
Changed Over The Years**
(http://badbearmedia.com/celebrity-puberty-wins/?
utm_medium=referral&utm_source=

utm_medium=referral&utm_source=

YOU MIGHT ALSO LIKE



**These pro-gun celebrities
may shock you**

(/multimedia/collection/pro-gun-celebrities-you-didnt-realize/)



**Quiz: SCOTUS 101: How
much do you know about
the Supreme Court?**

(/quiz/2016/feb/22/scotus-how-much-do-you-know-about-u/)

(/quiz/2016/feb/22/scotus-how-much-do-you-know-about-u/)

An attorney for Planned Parenthood says prosecutors in Houston told him that a grand jury never voted on possible criminal charges against the nation's largest abortion provider.

Josh Schaffer said Tuesday that no one from Planned Parenthood testified to the grand jury that cleared a Houston clinic of wrongdoing. The panel instead indicted two anti-abortion activists who made undercover videos that accused Planned Parenthood of illegally selling fetal tissue for profit.

David Daleiden and Sandra Merritt are accused of using fake California driver's licenses to infiltrate the clinic. Daleiden was also indicted on a misdemeanor count related to purchasing human organs.

Schaffer says Planned Parenthood officials did speak to law enforcement but didn't know if those interviews were ever considered by the grand jury.

1:55 p.m.

An attorney representing one of the indicted anti-abortion activists who made undercover videos about Planned Parenthood says the two plan to voluntarily turn themselves in to Texas authorities.

Murphy Klasing says David Daleiden and Sandra Merritt, who live in California, plan to come to Houston's Harris County Jail, where they will be processed and allowed to post bond.

The attorney, who represents Daleiden, says he doesn't know when that will happen.

Both activists face a charge of tampering with a governmental record, a felony. Daleiden was also indicted on a misdemeanor count related to purchasing human organs.

Daleiden's attorney says he plans to plead not guilty to the charges.

10:30 a.m.

Two anti-abortion activists who made undercover videos about Planned Parenthood are accused of using fake driver's licenses to infiltrate the group.

Indictments made public Tuesday allege that David Daleiden and Sandra Merritt each used California driver's licenses they knew were false "with the intent to defraud and harm another."

Both of them face a charge of tampering with a governmental record, a felony. Daleiden was also indicted on a misdemeanor count related to purchasing human organs.

The videos alleged that Planned Parenthood illegally sold fetal tissue to researchers for profit.

The Houston grand jury that indicted the two also investigated Planned Parenthood but concluded that the abortion provider committed no wrongdoing.

Offers and Articles

Ads by Adblade (/www.adblade.com)



Most popular concealed carry pistols

(/multimedia/collection/most-popular-concealed-carry-pistols/)



Child stars: Then and now

(/multimedia/collection/child-stars-then-and-now/)



21 best guns for home protection

(/multimedia/collection/21-best-guns-home-protection/)



These celebrities are devoutly Christian – and you probably didn't realize it

(/multimedia/collection/christian-celebrities/)



Bang for your buck: Best handguns under \$500

(/multimedia/collection/bang-your-buck-best-handguns-under-500/)

Is America's 2nd largest private employer in trouble?

(<http://pro1.moneymappress.com/476791/?ad=hl>)

(<http://pro1.moneymappress.com/476791/?ad=hl>)

BEST OF TWT VIDEO

EXHIBIT “F”

BUSINESS DAY

Unfamiliar Terrain for Corporate Lawyer in Planned Parenthood Drama

By BARRY MEIER JAN. 29, 2016

Last July, Derek F. Foran, a partner at the large corporate law firm Morrison & Foerster, got an alert that an abortion rights organization was desperately seeking help.

A little-known anti-abortion group had ignited a political storm by releasing secretly recorded videotapes showing what it claimed was a Planned Parenthood official discussing the sale of fetal body parts. The group's director said in interviews that the tapes were part of an undercover investigation that included meetings of a national organization representing abortion providers, and promised more disclosures.

The organization, the National Abortion Federation, had trouble finding a law firm to represent it pro bono. Morrison & Foerster, which previously handled abortion-rights cases, received the request and emailed lawyers at the firm about the inquiry. Mr. Foran raised his hand and, soon after, secured a court order stopping the group from releasing information from the organization's meetings.

It is not unusual for major laws firms to take on pro bono cases. But for Mr. Foran, a commercial litigator in San Francisco, who had never worked on an abortion-related lawsuit, his involvement has turned into a full-time job and a wild ride.

The case took a surprising turn this week when the director of the anti-abortion group, the Center for Medical Progress, and an associate were indicted in Texas for using fake driver's licenses. And while a lawsuit filed by Planned Parenthood against the Center for Medical Progress has received more attention, it was the earlier case brought by Mr. Foran that was the first legal counterattack against the anti-abortion advocates.

"I don't like bullies," Mr. Foran, who was born and raised in Ireland, said in an interview this week. "And these guys were not only trying to bully women, they were trying to bully poor women."

On Monday, the director of the Center for Medical Progress, David Daleiden, and an associate, Susan S. Merritt, were indicted by a grand jury in the Houston area on criminal felony charges of tampering with a government record; specifically, creating phony California driver's licenses. Mr. Daleiden was also charged with trying to buy human organs, a misdemeanor.

The charges against them represented a turnabout because the Texas grand jury had initially investigated Planned Parenthood for possible wrongdoing. Mr. Daleiden and Ms. Merritt insist the actions they took, including the creation of false identities, were part of a legitimate journalistic investigation of what they described as the "abortion industry."

Their group's videotapes led to lawmakers' calls to investigate Planned Parenthood and cut off its public funding. And after initial disclosures, Mr. Daleiden said his group had made hundreds of hours of secret recordings and planned to regularly release more videotapes.

At the end of July, when the National Abortion Federation filed its lawsuit

in a federal court in San Francisco, several videos had been released. Among other things, the lawsuit asked a judge to temporarily bar Mr. Daleiden's group from releasing footage shot at the federation's meetings because they infiltrated them by falsely posing as executives of a company that procured fetal tissue. They had also signed confidentiality agreements, agreeing not to divulge anything about the meeting, a practice that the abortion federation said it adopted to protect participants from harassment by anti-abortion groups.

Mr. Foran, who pulled together a team of Morrison & Foerster lawyers and summer associates, said that compiling an initial complaint didn't require extensive research because Mr. Daleiden was vocal about the techniques he used.

"I turned on Fox News and they were open right away about what they did," said Mr. Foran, 45, who moved to the United States in 1993 soon after meeting his future wife, then an American student spending a year in Dublin studying Irish folklore.

Mr. Foran, whose typical adversaries are other commercial litigators, found himself squaring off against a different breed of legal adversary — lawyers whose life's work is defending anti-abortion organizations. These lawyers say that the Center for Medical Progress said it had done nothing wrong and had brought to light crimes committed by Planned Parenthood.

A group of anti-abortion lawyers at an organization called the Life Legal Defense Foundation issued a statement in July saying that it had worked with the Center for Medical Research to expose what it described as Planned Parenthood's trafficking in fetal body parts. In the release, Mr. Daleiden thanked the group for "their initiative and foresight in consulting on and helping to develop this project."

Catherine Short, a lawyer at Life Legal who represents Mr. Daleiden, added that officials of the National Abortion Federation invited him to their

conference because they were eager to meet executives of what they thought was a new company procuring fetal tissue.

“They got an email encouraging them,” to attend a conference, she said in an interview this week. Ms. Short did not respond to subsequent emails asking if Life Legal discussed the creation of fake driver’s licenses with Mr. Daleiden.

Despite Mr. Foran’s initial efforts to prevent the release of more tapes, some of the material found its way into public view. In October, after a court allowed the release of tapes to a congressional committee, videos appeared on a website associated with Charles C. Johnson, a blogger.

Ms. Short and other lawyers representing the Center for Medical Progress employed strategies to try to stop discovery by Mr. Foran. One of them was an unsuccessful attempt to have the action halted under a California state law that protects activists from lawsuits intended to chill advocacy on public policy issues. Such actions are known as strategic lawsuits against public participation, or Slapp suits.

Also, when Mr. Foran sought the testimony of Mr. Daleiden and another defendant on the Center for Medical Progress’s board, both invoked the Fifth Amendment privilege against testifying. Mr. Daleiden subsequently dropped that stance and was deposed, but his testimony is under seal. The other defendant, Troy Newman, president of the anti-abortion group Operation Rescue, resigned from the center’s board when Mr. Daleiden was indicted.

After legal jousting, the Center for Medical Progress was also required to produce emails between its officers and financial supporters describing its undercover operation before it became public. Those documents also remain under seal.

Mr. Foran, who said he learned about the indictments in Texas about a half-hour before they were publicly announced, plans to press ahead with his lawsuit.

“Our lawsuit is not about pro-choice versus pro-life,” he said. “What you can’t do is defraud people, lie and go about manufacturing tales. These guys are accountable under the law just like everybody else.”

A version of this article appears in print on January 30, 2016, on page B1 of the New York edition with the headline: Unfamiliar Terrain for Lawyer in Planned Parenthood Drama.

Related Coverage

1. **Lawyers Assail ‘Runaway Grand Jury’ in Indictments of Abortion Opponents JAN. 27, 2016**



2. **Indictment Deals Blow to G.O.P. Over Planned Parenthood Battle JAN. 26, 2016**



3. **A Charged Blend of Law and Politics in a Texas Planned Parenthood Case JAN. 26, 2016**



4. **2 Abortion Foes Behind Planned Parenthood Videos Are Indicted JAN. 25, 2016**



Trending



1. **How the G.O.P. Elite Lost Its Voters to Donald Trump**
2. **Google and Apple: the High-Tech Hippies of Silicon Valley**



3. **Belgium Frees Man Charged With Terrorism, Renewing Search for Airport Attacker**



4. **Op-Ed Columnist: Trade, Labor, and Politics**



5. **Ted Cruz Names Friends, but Silence From G.O.P. Brass Deafens**



6. **Op-Ed Columnist: Republican Self-Destruction**



7. **Op-Ed Contributor: Lin-Manuel Miranda: Give Puerto Rico Its Chance to Thrive**



8. **Fight**



9. **Ethereum, a Virtual Currency, Enables Transactions That Rival Bitcoin's**



10. **Pakistan in Mourning as Toll From Lahore Suicide Bombing Rises**

[View More Trending Stories »](#)