

Liberty Counsel to Appeal 'Flawed, Unjust' Jury Verdict Awarding Planned Parenthood \$2M

Liberty Counsel will appeal the verdict in the multimillion-dollar civil lawsuit against Sandra Merritt for her undercover investigation of Planned Parenthood's trafficking of human baby body parts. From the beginning, the court severely restricted the evidence, and at the end gave instructions to the jury that instructed them how they should rule on critical issues. The jury decided in favor of the abortion giant on each count, including RICO (Racketeer Influenced and Corrupt Organizations), and awarded more than \$2 million in damages.

The case was heard by San Francisco's U.S. District Court Judge William Orrick III, who is the founder of the Good Samaritan Family Resource Center that houses the Planned Parenthood of Northern California facility in its complex. In 2017, the defense requested that Orrick recuse himself from the case and he refused.

Merritt and colleague David Daleiden, the founder of Center for Medical Progress (CMP), produced videos in 2015 exposing Planned Parenthood's illegal trade in aborted baby body parts after a 30-month undercover operation. The videos showed top-level Planned Parenthood executives haggling over prices of aborted baby body parts and discussing how they change abortion procedures to obtain more intact organs.

However, throughout the six-week trial, Judge Orrick specifically influenced the way the jury considered the issues and blocked them from watching the recorded conversations on the undercover videos. Orrick also told members of the jury

they couldn't look at this as a First Amendment case, where freedom of speech and the press could be considered as a defense. However, Merritt and Daleiden acted according to the parameters of California recording law and no other citizen journalist or journalism organization has ever been charged with a crime for undercover recordings made in the public interest.

Before the jury retired to consider a verdict, Orrick gave them a 110-page jury instruction, which, in part, instructed the jury that:

- The case is not about Planned Parenthood's illegal or unethical conduct. Orrick repeated this instruction just about every day throughout the trial and every time the defense managed to get any evidence admitted about PP's conduct.

- The First Amendment is not a defense in this case.

- The court already determined that defendants are liable for trespass.

- The court already determined that defendants breached certain contracts.

- Planned Parenthood had no duty to investigate whether defendants' claims about who they were and what they were doing were true.

- Whether a conversation is "sensitive" or "confidential" is not relevant to recording claims.

- The jury cannot consider the content of videos themselves to determine whether defendants had reasonable belief that Planned Parenthood was committing crimes.

- The court tells jury that security upgrades are among the types of damages that may be "directly caused by defendants' acts." The court does not tell jury that they cannot award any damages arising from the publication of the videos themselves

(those are indisputably barred by First Amendment, but the jury was not so instructed).

Liberty Counsel's Chief Litigation Counsel Horatio Mihet said, "There are numerous legal errors that render the jury verdict flawed and unjust. We will appeal this decision and seek a new trial in front of a different judge. Ms. Merritt has yet to have her day in a fair court, and we are confident that when she does, she will prevail." {eo}

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