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"Legal no-man's land"

A firsthand account of Rev. Walter Hoye's sentencing

News from the Trenches

(Editor's Note: Although California Catholic Daily published an account of Rev. Walter Hoye's sentencing in our edition of Friday, Feb. 20, we believe this first-person account provides additional insight into what happened in the courtroom. This commentary was provided to us courtesy of Gibbons J. Cooney of San Francisco.)

Today I joined a number of people from the Bay Area pro-life community, as well as people from as far away as Minnesota and Texas, at the Alameda County Superior Court to show our support for the heroic Pastor Walter Hoye as he was sentenced by Judge Stuart Hing. Some of what follows describes my own reactions, and I will do my best to describe the outcome, although it is quite complicated.



The courtroom was packed. It has only 60 seats, and there were at least another 80-100 people in the hallway. A few of us arrived around 11:30 and were able to get in, although the hearing itself did not begin until around 2:30. As we waited in the hallway, we sang some hymns. A few pro-abortionists arrived, and on hearing our hymns started chanting in opposition.

I realized as never before what an impoverished world they live in, because while we were singing "We Shall Overcome" and "Onward Christian Soldiers" and "Get Behind Me Satan!" and other hymns of Christian civilization, the only thing they could come up with was, "Not the Church, not the state, women will decide their fate." I honestly do not mean this in a condescending or patronizing way, but that struck me as very sad.

Another thing happened while we were waiting. A pro-abortion lady kept trying to push her way to the front, past people who had been waiting for at least two hours. She did not succeed, but for a while caused a little bit of a ruckus. She ended up right in front of me and a pro-life woman. Both of us were standing there praying silently -- not on our knees or with any show at all (we had both forgotten our rosaries!) or even moving our lips. I don't see how anyone could have known we were praying. But after less than two minutes next to us, she suddenly announced she was uncomfortable and left.

I'll now describe what happened inside, to the best of my recollection. I was praying, not taking notes, and I'm not a trained reporter, but I believe this is accurate. I apologize in advance for any mistakes.

Inside the courtroom, Walter was represented by Alison Aranda and Michael Millen of the Life Legal Defense Foundation. The prosecutor made his case, and asked that Walter receive the maximum sentence: two years in prison, and a \$4,000 fine. He said if Walter would promise to stay away from the clinic in question, his office was prepared to accept probation. Ms. Aranda, her voice breaking, said it would be an injustice for Mr. Hoye to be "sentenced to anything....," then, fighting back tears, she paused, got control of herself, and said "...for exercising his first amendment rights to freedom of speech!"

Judge Hing then spoke. He said that before today's sentencing hearing he had already been convinced that Walter was a very decent man. He said that the many letters he had received from supporters of Walter convinced him more than ever of Walter's basic goodness. He then made the point that the history of civil disobedience in our

country (and he cited the Underground Railroad, the Civil Rights movement of the 1960s and some demonstrations against the Vietnam War) does not protect those who violate what they consider to be unjust laws, but that those who practice the civil disobedience must hope that their witness inspires others to change the laws.

Judge Hing asked Walter if he would promise not to violate the stay-away order and would accept probation with this condition for three years. At that moment you could have heard a pin drop. I was thinking, praying: "Man, do it. Let's go. We'll fight another day."

Those who know Walter know that his gentle voice seldom rises above a whisper.

He said: "No, your Honor."

At that moment I thought of Elijah, where we learn that the voice of God was not in the earthquake or in the storm, but in the barely moving breeze. That barely audible "No, your Honor" carried as much weight as anything I have heard in my life.

Michael Millen concluded Walter's defense. He was logically and rhetorically magnificent. He pointed out that no abortion clinic "patient" was even a party to the charges against Walter. There was not a single "patient" in the courtroom. He pointed out if the bubble ordinance "protects" anyone, it protects the abortion clinic escorts and their "right" to censor Walter's message. He reminded the Judge that he (Judge Hing) had seen the videos of Walter having his path and signs blocked by the abortion clinic escorts, not the other way around.

Judge Hing then gave his ruling, and here is where things got confusing. Since Walter had already said he would not abide by the stay-away order, I was sure the judge would be sentencing Walter to jail time, maybe the whole two years. I did not see how he couldn't. Instead, he sentenced Walter to 30 days jail time, but said it could be done as some kind of community service. He fined Walter \$1,130. He sentenced Walter to three years of probation, during which time Walter was not to approach within 100 feet of the clinic in question, a condition Walter had already said he would not accept. Did this mean Walter was free?

At this point, one of Walter's friends, Dion Evans, erupted in outrage at this ruling based on an obviously unjust law, and was escorted out of the courtroom by the bailiffs. Dion is a very big and strong man, and thank heaven there was no violence. We rose and left the courtroom, singing "We Shall Overcome." Outside the courtroom, someone asked me, "What went on in there?" I said, "Ask someone else, because I'm not sure I understand. It turns out I was not the only one."

We waited for some clarification of the sentence, and to see if Walter could appear, and after a good while someone came out and said counsel were still in chambers and that the judge was "refusing to accept Walter's refusal." Nobody, even the attorneys, understood this. It's apparently a novel legal approach: The judge had asked Walter if he would promise to abide by the stay-away order and Walter said no. The judge then ruled, and asked Walter if he would abide by the ruling. Walter again said no. But the ruling had been made and here is where the judge "refused to accept Walter's refusal." Apparently, the one thing Judge Hing did not want to do was to sentence Walter to jail time.

One of Walter's attorneys explained to us that probation is like a contract: both parties have to agree to the conditions. Walter did not agree to the conditions but the judge gave it to him anyway. Apparently the "refusal to accept Walter's refusal" meant the judge was going to try and impose the probation on Walter. If I understand correctly, Walter's attorneys said to the judge, well, that's illegal, you can't do that. One of the attorneys also told us even the prosecutor had said: "My opponent is right, you can't do that." Later Michael Millen said we seem to be in a legal no-man's land here. It's uncharted territory. There will be some sort of a follow-up hearing on March 20. Finally, Walter and his wife Lori appeared, to hugs, applause from his friends and admirers.

Mark Shea often says "sin makes you stupid." I myself have written: "The corruption of reason is one of the logical consequences of legalized abortion." I believe this strange day in court, with a judge tied in knots because

of an obviously unconstitutional law, proves this once again.

But the bottom line is: Walter is a free man. He's sentenced to 30 days of community service, but his entire life is community service. He has not renounced his principles at all, in any way. And he said very clearly twice he will not accept a law that abridges his constitutional right to freedom of speech. What a man.

-- **Gibbons J. Cooney**

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