

Fall 2003

In Memoriam: In Memory of Spurgeon LeRoy "Roy" Lucas Jr.

Bill Baird

Pro Choice League

Follow this and additional works at: http://docs.rwu.edu/rwu_LR

Recommended Citation

Baird, Bill (2003) "In Memoriam: In Memory of Spurgeon LeRoy "Roy" Lucas Jr.," *Roger Williams University Law Review*: Vol. 9: Iss. 1, Article 1.

Available at: http://docs.rwu.edu/rwu_LR/vol9/iss1/1

This In Memoriam is brought to you for free and open access by the Journals at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

In Memoriam

In Memory of Spurgeon LeRoy “Roy” Lucas Jr.

Bill Baird* (with Joni Scott)**

Roy Lucas’s essay, *New Historical Insights on the Curious Case of Baird v. Eisenstadt*, is a thorough and fresh look at a legal challenge I planned in detail from the outset. The essay states that I did not put up much of a defense. That was part of my strategy – to take a “judicial dive” to ensure that I would lose in the lower courts and be heard by the Supreme Court.

My commitment to bringing a test case before the Supreme Court in order to legalize birth control and abortion arose from an incident that occurred in 1963. While clinical director for EMKO Pharmaceuticals, a birth control manufacturer, I was coordinating research at Harlem Hospital when a young, unmarried African American mother of nine staggered into the corridor. She was drenched in blood from the waist down due to an eight-inch piece of wire coat hanger imbedded in her uterus. She died from this self-inflicted injury.

I was outraged that this woman was deprived of not only the right to an abortion, but to birth control as well. Subsequently, in 1964, I established the first birth control and abortion clinic in the United States. I also converted a 25-foot truck into a mobile “Plan Van” classroom, teaching birth control and abortion to the poor in

* Founder and co-director of the Pro Choice League, Inc., Huntington, NY. For information, visit ProChoiceLeague.com.

** Co-director of the Pro Choice League, Inc.

New York areas such as Harlem, Bedford Stuyvescent, and Hempstead. From 1965 to 1969, I began challenging anti-birth control and abortion statutes in New York, New Jersey, Massachusetts, and Wisconsin.

It was my firm belief that all citizens, regardless of age or marital status, had a right to privacy in governing their reproductive destinies. At that time, the motto of my non-profit Parent's Aid Society was, "To be wanted and loved is every child's birth-right." My opposition at that time included government officials, religious forces, public apathy and, surprisingly, many "allies."

Some believe that Planned Parenthood initially tried to sabotage *Baird v. Eisenstadt*. Certainly there is evidence in support of that. Hazel Sagoff, executive director of Planned Parenthood League of Massachusetts (PPLM), stated in a June 29, 1967 letter to one of my supporters, "We are told by our lawyers, experts in constitutional law, that there is no violation of constitutional rights in the present law. They tell us, and we agree, that the only way to liberalize the current law is through the process of filing a bill in the Legislature and working for its passage. . . . The Planned Parenthood League of Massachusetts has no official position on abortion which is not part of our program"

On December 16, 1967 the Harvard Graduate Bulletin wrote that a Planned Parenthood official said, "There is nothing to be gained by action of this kind." Planned Parenthood President Dr. Alan Guttmacher was also quoted: "Baird has been overenthusiastic and . . . every couple seeking birth control information should go to a doctor." Another member of PPLM, who did not want to be identified, said that Planned Parenthood could live with the present law and that "Baird's efforts are an embarrassment to our group." These undermining statements greatly undercut the financial and moral support that I might have received from individuals and groups.

During the years I was seeking to legalize birth control and abortion, my life and Roy Lucas's intersected many times. Our work was featured in the February 27, 1970 issue of *Life* magazine in a story called, "Abortion Comes out of the Shadows." *Life* focused on my Wisconsin arrest. In December of 1969, I had given a lecture at Northland College in Ashland, Wisconsin. I left the state and a warrant was issued for my arrest. My crime was displaying "obscene objects," namely birth control and abortion de-

vices. Shortly thereafter, I returned to face the music and to challenge the Wisconsin law, which was similar to that of Massachusetts. Thus, if the Supreme Court rejected *Baird v. Eisenstadt*, this Wisconsin challenge may have given me another chance.

An amusing aside is an unanticipated incident at Wisconsin's Oshkosh Airport. As the plane landed, police waited on the runway to arrest me. I decided to involve the media in breaking the law. Quickly removing an intrauterine device (IUD) from my birth control display board, I fastened it to my tie with a paperclip. As I descended the aircraft steps, media photographed the arrest. Little did they realize that they were also taking pictures of my makeshift IUD tie clip. By publishing the photos of me wearing the IUD on my tie, they broke the same law as I, which stated that it was a crime to "print, publish or display any means whatsoever of birth control or abortion devices." Roy thought that was a very funny story and said I should teach a course on "creative law."

Life displayed a photograph of a young, handsome Roy Lucas and stated:

In April, Attorney Lucas and several hundred plaintiffs will ask a federal court to void an 1828 New York State law which permits abortions only to save the life of the mother. Among Lucas' arguments: the statute is vaguely worded; it violates both medical and marital privacy; it favors the rich; it is based on religion; it subjects women to "cruel and unusual punishment" and deprives them of their freedom—to decide whether or not to bear children—without due process of law.

Life also reported that "hundreds of thousands of girls find their way to quacks and charlatans who are the frightening models of abortion folklore. Some women attempt the job themselves. Last year 350,000 women needed hospital care after botched abortion attempts. More than 8,000 of them died."

After the *Life* piece Roy was interviewed by William F. Buckley, Jr. on a November 5, 1972 PBS airing of *Firing Line*. Roy was unafraid of exposing religious interference in the abortion struggle, informing the audience, "I have noticed the statistical correlation between the religion of the judges and the outcome of the cases, and I have had a few cases that involved problems where I

thought that I would have been in better shape if the judge had been a different religion.”

In *Baird v. Eisenstadt*, Chief Justice Warren Burger seemed to have some strange vendetta against me. Perhaps he, too, thought that I was corrupting the morals of youth, as so many accused me of doing during that time. Burger attacked my credentials even though I was a clinical director for a respected pharmaceutical firm and educated physicians about EMKO’s birth control pharmacology. The Chief Justice labeled me a “quack,” “officious intermeddler,” “common busybody,” “mountebank,” and a “street corner peddler.”

Roy was involved in all three of my Supreme Court cases, *Baird v. Eisenstadt*, *Baird v. Bellotti I* and *Baird v. Bellotti II*. In fact, in a twist of fate, Roy filed a brief for *Roe v. Wade* with the Supreme Court one day after the State of Massachusetts filed its appeal in *Baird v. Eisenstadt*. He was convinced that this coincidence – and in particular this famous quote from Justice Brennan’s *Baird* opinion: “If the right of privacy means anything, it is the right of the individual to be free from unwarranted governmental intrusion into matters so fundamental as to decide whether to bear or beget a child.” – helped *Roe* to succeed.

Our most intense work together was on *Baird v. Bellotti I*, in 1976, and *Baird v. Bellotti II*, in 1979. The legal questions involved challenged us to interpret the definitions of childhood and maturity and to examine the limits of minors’ rights. We discerned that some states by statute permitted a minor to consent to treatment of venereal disease, drug addiction, or alcoholism or to give birth without parental involvement. Also up for debate was whether or not the Constitution and Bill of Rights should apply equally to minors. In *Baird v. Bellotti II*, one of the Justices agreed with us, stating, “The Bill of Rights is not for adults only.”

An October 10, 2003 e-mail from Roy informed me, “*Baird* article accepted by law review!” I responded, “Please take care of yourself Roy. You are truly one of America’s great treasures. I just wish our movement had some of the loyalty imbedded in it that our opposition has in helping their fighters. We will prevail!”

The November 7, 2003 *New York Times* ran a quarter page obituary headlined, “Roy Lucas, 61, Legal Theorist Who Helped Shape *Roe* Suit.” Tragically, on November 3, 2003, just weeks before his 62nd birthday, my “soul brother” (as he called me) of over

thirty years passed away. Eerily, on that same day and unaware of his death, Joni Scott, co-director, with myself, of the Pro Choice League, Inc., felt compelled to do a web search on Roy. She discovered he was preparing a petition for writ of certiorari for the Second Amendment right to bear arms case *Silveira v. Lockyer*. The main parties working on *Silveira*, stunned by the sudden loss of their friend and colleague, contacted us after receiving this news.

We were told that Roy had finished the bulk of his work on that case and decided to visit Prague to see friends. Soon after his arrival, a sudden heart attack extinguished the life of one of the nation's brightest torches for freedom. Whether the cardiac failure was due to his battle with cancer that began in 1996 or to the resultant financial hardship we may never know.

Ironically, Roy had been finally emerging from a dark period of economic duress during which time he produced enlightened works, including the following essay on *Baird v. Eisenstadt*.

Roy's sister and only remaining relative, Mary E. Lucas, has been in close contact with us since I called her after receiving the sad news. Throughout his life, she said, Roy pursued all of his goals with unrelenting drive and focus. A Mensa and Phi Beta Kappa member, Roy graduated in the upper two-percent of his class at New York University Law School. While a Rotary Foundation Fellow in England and Scotland he met his now ex-wife Uta Landy, who became the first director of the National Abortion Federation (NAF). Roy's multitalented background appeared in the millennium edition of *Who's Who in America*.

While Roy's greatest genius emerged from his legal palette, from which he applied creative concepts to existing areas of the law, he was a true Renaissance man who took a road less traveled. From 1986-1995, accompanied by his pet collie Michelangelo, he traveled widely and produced about 500 oil and egg tempera paintings of wilderness landscapes from over 200 North American national parks.¹ I lost touch with Roy during his "artist years." Then, in 1999, I was elated when told that he was in Florida working on an abortion clinic case; his legal expertise was sorely needed by our movement. In March of that year we held our first Right to Privacy Day celebration at Boston University Law School

1. Some of Roy Lucas's paintings can be viewed at http://artroots.com/art/art_14_index.html#L (under "Rhett Lucas").

in honor of the 27th anniversary of *Baird v. Eisenstadt*. Unable to attend with other honorees, such as former U.S. Senator Joseph Tydings, who argued *Baird* before the Supreme Court, we read a letter that Roy had sent in his stead. He wrote in part, "I have been your friend some thirty years now . . . Quite frankly, I was far more excited by the *Baird v. Eisenstadt* decision than by *Roe v. Wade*. After *Baird*, *Roe* was a foregone conclusion . . ." He concluded that *Baird* was "cited and relied upon by courts in Canada, Ireland, Australia and others around the world."

In 2001, Roy tried hard to mask his desperate financial circumstances, until finally his pride caved in. The stem cell transplant that had put his cancer into remission had also left him drained and flat broke. On November 11, 2001 he wrote, "I do have enough food for maybe three weeks. I am really exhausted by all of this." He further confided, "You can tell I am unusually angry tonight and frustrated because I feel deserted by the movement." The once dynamic, optimistic man I had known for decades was succumbing to his unfortunate plight. Shortly thereafter he wrote, "My whole life [I've been] doing stuff that does not particularly benefit or support me. I do this for the future of a civilization that is still in the stone-age . . ."

Alarmed by the depressed tone of these communications, Joni and I decided to visit Roy in Washington, D.C. After the six-hour drive from Huntington, Long Island, I was overjoyed to see my old friend. We took him out to dinner because he had little food in the house, and he brought home most of his meal, no doubt to have something to eat for a couple of days. Leaving his pantry filled, we reassured Roy that we would help him as much as possible.

After that visit, Roy's spirits seemed to lift. His frequent e-mails were laden with renewed optimism and he was able to focus on research and writing again. I could tell he was returning to his old, humorous self when he wrote to Joni regarding an article on which he was working entitled, "Potter Stewart in the Mist." With humor he said the former Supreme Court Justice was "a nice man who thought poor people should eat cake."

We recognized that Roy's pride prevented him from reaching out to others for help, including his sister, to whom he was already indebted for years of sacrifice during his illness. After numerous phone calls and letters to friends and movement people across the country, appealing to them to support Roy's vital National Archive

and Library of Congress research and writing, enough money was raised to keep the wolves at bay.

As his funds started to dwindle, Roy half-jokingly began talking about his “disaster plan” of backpacking west and living off the land as an outdoorsman. Roy told me this story: Once, while painting in the wild, he was confronted by a large bear. Convinced the bear wanted to eat him for lunch, he quickly grabbed a can of paint fixative from his portable easel. He ran to the nearest climbable tree, the animal in hot pursuit. Roy sprayed the bear in the eyes, causing him to drop from the tree with a thud and run away. I reassured Roy that he was more valuable to humanity doing research and writing.

Roy fell behind in his rent and was threatened with eviction. Fearing he would be thrown out into the cold, winter streets, our immediate goal became finding inexpensive housing in the D.C. area where he could continue his projects. We also knew that Roy needed to live close to where he was doing research, because he seemed to be weakening; even walking a block or two left him breathless. Finally, due to a truly fortuitous meeting, he secured a little carriage house conveniently located directly behind the Library of Congress. There, he often worked fourteen-hour days eagerly digging through the private papers of Supreme Court Justices.

On New Year’s Day 2002 I told Roy that this was going to be his year. He mailed his work to national pro-choice leaders and, after waiting months for responses that never came, he became disheartened again. On March 30, 2002 he e-mailed me expressing his frustration. “I feel as if I’m invisible. I’m trying to do something worthwhile with my late years, but the rest of the world is totally ignoring me, like the *Twilight Zone*.”

Joni and I felt that these “feminist” leaders were shortsighted at best, and sexist at worst. Invalidating a pioneer like Roy only hurts our cause. His expertise should have been valued. He communicated, “I *do* feel abandoned by others almost completely, almost ganged up on in the worst time of need, but I know you have worked very hard and have not abandoned me at all.”

Many of Roy’s former students contacted Mary Lucas upon learning of his death. They expressed how fond they were of her brother and how fortunate they had been to have him as a teacher and friend. I only hope that young law students will not avoid pub-

lic interest law, and opt instead to practice in more profitable areas, because of wanting to avoid a fate like Roy's. Rather, I would like to see society and movement members honor and respect those pioneers whose efforts contributed to the enhancement of a freer nation.

Roy's legal footprints cannot be erased and are firmly imbedded in history. I am sure that future historians and legal experts will recognize his impressive achievements for the rights of millions. He will be missed as deeply, however, as a friend and a brother. In a Christmas card we received from Mary Lucas on December 17, 2003 she wrote, "During this holiday season I think how fortunate Roy was in having such true and loyal friends as you are." She confided, "I am having a hard time getting any holiday spirit – I just feel such a void that I can't fill."

Joni, myself and many others who truly understood Roy feel that same void. The best way to honor his memory is to not merely believe in freedom, but to act towards the goal of a truly freer society here and throughout the world. A single candle *can* light the darkness, as Roy accomplished by applying his creative and visionary abilities.