

# STEVE GEY—A LAW PROFESSOR WITH A COMMITMENT TO JUSTICE

SANDY D'ALEMBERTE\*

Reviewing Steve Gey's exceptional career as a lawyer and scholar, we are struck with how remarkably diverse his work has been. Most of his colleagues at the College of Law know of his nationally recognized scholarship, his reputation as a teacher, his performance as a good citizen of the law school and the university,<sup>7</sup> and even his role as a legal analyst for national television. But another aspect of his life—his work as a lawyer for important causes, frequently working on a pro bono basis—is less well known.

Steve was already deeply involved in pro bono work when he was recruited to the faculty.<sup>8</sup> From his early days with the New York firm Paul, Weiss, a firm renowned for its consistent record of pro bono work, Steve took on important issues, devoting himself to challenging capital post-conviction work.<sup>9</sup> Unlike many law professors who push for academic credit for their briefs or other work as lawyers, Steve has a strong belief that law faculty should be recognized and rewarded with tenure and promotion only for truly academic work: teaching, scholarship, and service to the school.

The reward Steve generally received came in taking on and advancing an issue that he felt was important. In a few cases, he and the lawyers litigating civil rights issues received attorney's fee awards. Steve referred to these occasions as times when recalcitrant public officials, refusing to recognize the constitutional claim he advanced, had decided instead to buy him "a new German car."

I do not know how many new German cars Steve has earned during his career, but his list of important litigation far exceeds his collection of automobiles.

For several organizations, Steve became the "go to" person on significant issues. Steve has been a long time member of the American Civil Liberties Union legal panel that helps screen cases, litigating or negotiat-

---

\* President Emeritus and Professor, Florida State University College of Law.

7. Steve has served on virtually every important committee at the College of Law and found time to serve the university as well. He was a very well-regarded Chair of the Honorary Degree Committee of FSU.

8. Steve was the first faculty member Associate Dean Don Weidner and I recruited when I became Dean. After we interviewed Steve, Don said, "He didn't believe a thing we said about FSU's potential." Happily, he did, and he has contributed greatly.

9. Steve has received recognition, including a citation from the Association of the Bar of the City of New York for his pro bono work on behalf of death row inmates seeking relief in capital post-conviction proceedings.

ing many of them himself. Steve's work in education and litigation has drawn praise from the ACLU of Florida.<sup>10</sup>

In addition to his regular ACLU work, Steve repeatedly represented the Feminist Majority Foundation, an organization active in the advancement of women's rights. Although Steve's original involvement with the organization came when I asked for his help in a case involving protests at a women's health clinic, the *Madsen* case before the U.S. Supreme Court<sup>11</sup>, Steve's work for Eleanor Smeal and other leaders of this organization continued long after I had ceased to handle active cases for them. Eleanor Smeal writes of Steve's work now and in the past<sup>12</sup>:

Whenever our national clinic defense project called for help, from the time of the *Madsen* case in 1994 until very recently, Steve responded quickly and brilliantly. . . . Sometimes he provided key ideas and legal strategy; other times he quickly wrote *amici* briefs for Supreme Court cases.

Most recently, we contacted Steve in the summer of 2007 about providing legal assistance to the Oakland Pro-Choice Network as they

---

10. Howard Simon, the Executive Director of ACLU of Florida, writes:

The American Civil Liberties Union of Florida sponsors a CLE Lawyers Conference each year—usually in Key West. Prof. Gey has been a speaker at several of our Key West conferences. He is widely regarded within ACLU circles (and, of course, in many other places) as the person to consult on the jurisprudence involving the intersection of government and religion. I have frequently consulted Steve on numerous church-state issues, and he has always been the wonderful teacher, counselor and always generous with his time.

In addition, Prof. Gey was co-counsel with then ACLU of Florida Legal Director Andy Kayton in *Garcia v. Reyes*, 698 So. 2d 257 (Fla. 1997), arguing that a child had a constitutionally protected liberty interest that would permit the child to recover damages for his father's wrongful imprisonment.

11. *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994). I handled the trial of this case, working closely with Kathy Spillar and Susan England and the incredible clients who had resisted sustained harassment without help from the police or sheriff. When we obtained an injunction, I felt comfortable defending it before Florida appellate courts; but, when the U.S. Supreme Court accepted jurisdiction, I went to Steve for help on the brief and the oral argument preparation.

12. Eleanor Smeal's account of Steve's work for the Feminist Majority Foundation includes some of the details about his past work:

Steve served as Counsel of Record, co-authoring the brief of the Feminist Majority Foundation, National Women's Law Center, National Abortion and Reproductive Rights Action League (NARAL), and Women's Legal Defense Fund as *Amici Curiae* in Support of Respondents in *Schenck vs. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997).

In 2005, Steve worked closely with us again as our Counsel of Record leading a team of researchers at the Florida State University College of Law and drafting the Feminist Majority Foundation's *amicus* Brief (along with other *Amici Curiae* Planned Parenthood Federation of America, Inc., Medical Students for Choice, National Abortion Federation, National Coalition of Abortion Providers and Physicians for Reproductive Choice and Health) in support of respondents in *Scheidler v. NOW* and *Operation Rescue v. NOW*, 547 U.S. 9 (2006).

Steve also wrote, along with Susan A. England, the Feminist Majority Foundation's Brief in Opposition to the Petition for Writ of Certiorari in *Raney v. Aware Woman Center for Choice, Inc.*, 224 F.3d 1266 (11th Cir. 2000).

worked to fine tune a safety buffer zone ordinance and put it to the Oakland City Council for a vote. . . . Steve returned our call immediately and offered his help. Within a few hours he had reviewed the ordinance, e-mailed back his suggested edits and directly reached out to offer his legal advice to the local organizers of the Oakland Network as well as the Oakland City Council members sponsoring the ordinance.

With Steve's quick and brilliant guidance as one of the, if not the, foremost experts in clinic buffer safety zones and injunctions throughout the country, the ordinance was reworked and, we are happy to say, it was passed unanimously by Oakland's City Council this past December.

Eleanor Smeal's assessment of Steve's work is a good summary of his activities in this area of the law: "Because of Steve Gey's efforts, women's health clinics, workers and clinics are safer and the clinics are far more accessible. Women's rights and fundamental freedoms were advanced and protected."

It is not surprising that some of Steve's litigation work, including some very comprehensive *amicus* briefs, has been in cases that touched on the areas of his constitutional scholarship, particularly the religion clauses of the First Amendment. Steve has worked to uphold the separation of church and state. He advocated the position of the State of Washington in *Locke v. Davey*,<sup>13</sup> in which the Court upheld the state's denial of scholarship money for a devotional theology degree, and he successfully opposed Florida's use of state dollars to fund sectarian schools in *Bush v. Holmes*.<sup>14</sup>

Some of Steve's notable work has opposed attempts by religious groups to attack the teaching of evolution. In *Kitzmiller v. Dover Area School District*,<sup>15</sup> parents of school children and a science faculty member challenged the school district's policy of requiring that "intelligent design" be taught in the district schools and, in the same general arena, Steve supported the Georgia parents who challenged the placement of an evolution disclaimer sticker on biology books in *Selman v. Cobb County School District*.<sup>16</sup>

But Steve's work has never been limited to these and other academic freedom issues. From the time that he was in practice in New York, Steve has been very concerned about the administration of capital punishment. He has worked on capital post-conviction cases, including a case I argued in the United States Supreme Court, *Herrera v. Collins*,<sup>17</sup> where we sought to employ federal habeas for a claim of actual innocence. Steve reviewed the brief and helped moot the argument, posing the sort of unfriendly questions we might expect from Justice Scalia and others. Sadly,

---

13. 540 U.S. 712 (2004).

14. 919 So. 2d 392 (Fla. 2006).

15. 400 F. Supp. 2d 707 (M.D. Pa. 2005).

16. 390 F. Supp. 2d 1286 (N.D. Ga. 2005).

17. 506 U.S. 390 (1993).

Steve's insights were too accurate: The Supreme Court rejected Herrera's petition although a majority of the Court left open the possibility for a future claim of actual innocence. Steve also participated in *Monroe v. Blackburn*,<sup>18</sup> *Copeland v. Dugger*,<sup>19</sup> and *Nixon v. State*,<sup>20</sup> all without compensation.

One more realm of Steve's pro bono activities—his political work—deserves mention because it does not fit very neatly into any of the other pieces being prepared for this tribute. Though Steve has never been much attracted to life on the hustings, he has used his scholarship to craft political arguments for at least one prominent jurist who faced significant opposition in a merit retention election. The judge was Rosemary Barkett, the first woman Supreme Court justice in Florida, who was appointed to the court in 1986. In 1992, Justice Barkett was in a statewide election for retention facing some very vocal and hostile opposition, largely from people who disapproved of her positions on criminal justice issues, including capital punishment. Steve was able to develop a series of position papers for Justice Barkett that were built around a close analysis of the positions she had taken, positions that were well-grounded and well within the realm of judicial traditions.

Later in 1992, when Justice Barkett was appointed to the federal Eleventh Circuit Court of Appeals, she asked Steve to participate in her preparation for confirmation, clear evidence of the value she placed on his counsel and judgment. Judge Barkett has said that

Steve's contributions were invaluable during both the merit retention and the confirmation process. He was able to be dispassionate and analytical when legal opinions were being distorted and misrepresented and respond with such clarity and professionalism. He was instrumental in getting the academic community involved in responding and clarifying issues for the press and the public.

As students have gathered to honor Steve Gey, they often talk about the inspiring way that he taught them constitutional law. A big part of that inspiration is the model that Steve provides of a life that has been dedicated to solid scholarship, energetic teaching, and robust advocacy.

---

18. 748 F.2d 958 (5th Cir. 1984).

19. 565 So. 2d 1348 (Fla. 1990).

20. 857 So. 2d 172 (Fla. 2003).