

A RESPONSE TO SARAH BLUSTAIN AND *MOTHER JONES*
FROM HAROLD CASSIDY

Sarah Blustain broke my heart. In her article published in the January-February edition of *Mother Jones* under the title “In the Name of the Mother” (Pp. 42-45; 64-66), Sarah got the most important facts completely wrong.

Before I address what Sarah did wrong, let me first discuss what she did right and why I am responding to her at this belated date.

Sarah never hid from me – and she doesn’t attempt to hide it from *Mother Jones* readers – that she disagrees with me on many aspects of the abortion issue. She is pro-abortion and I am not. Yet, she wrote of an adversary with civility and respect. She is, in some ways, a model of decorum who brings to the debate a civility not normally witnessed in discussions of these matters. More than one commentator observed this very fact about Sarah’s article in *Mother Jones*. As a result, she has made her own contribution to this national debate; that matters of such importance and passionate disagreement can be the subject of civilized discourse.

She was able to achieve that tone in large measure because she is a gifted writer. She is charming and disarming. She has the talent to engage the reader. With such a great gift comes great responsibility. With such power to persuade, comes the power to influence. Such a gift must be used to advance justice, never injustice. So with it comes the duty to faithfulness to the true facts. So I count it no indiscretion on my part to point to her errors.

I originally did not plan to take the time to write this response. When an editor of *Mother Jones*, Michael Mechanic, wrote an editorial quoting some of Sarah’s most egregious and offensive mistakes of fact, I was moved to respond, but resisted.

However, this week, a funeral service was held for Dr. Bernard Nathanson and he was laid to rest. Dr. Nathanson was one of my experts in a Federal suit referenced by Sarah in her article. Her misstatement of facts concerning that suit went to the very heart of Dr. Nathanson’s testimony and his contributions to that case. I owe it to him to correct the misstatements about the facts concerning that case and explain his role in it.

In “In the Name of the Mother,” Sarah Blustain reported that:

“In 2005, with Cassidy’s guidance, South Dakota passed one of the nations’s most restrictive counseling laws. Its language – lifted directly for Cassidy’s legal writings – compels providers to tell women they are taking the life of a ‘whole, separate, unique, living human being.’” (P. 44).

Actually, the law required the physician to inform the mother that “an abortion terminates the life of a whole, separate, unique, living human being.” It is the physician, not the mother, who

terminates the life of the human being.

Sarah immediately, thereafter, goes on to state that:

“The law, which Planned Parenthood is challenging in Federal Court, has inspired imitators in Missouri and North Dakota, with loose interpretations introduced in Indiana and Kansas.

These bills are not backed by mainstream scientific findings.”
(P.44).

This statement, quoted by Mike Mechanic, is not only false, but it is the complete opposite of the true facts. The lawsuit to which she refers is *Planned Parenthood of Missouri, North Dakota and South Dakota, et al v. Governor Rounds, Alpha Center, et al*. In that case, I represented four Intervenor, and all of the scientific evidence was on our side of the case. All of it. Planned Parenthood provided no scientific evidence to refute what we submitted. That case was the subject of a reported opinion written by an *en banc* panel (all eleven judges) of the United States Court of Appeals for the Eighth Circuit. In that Court Opinion reported at 530 F.3d 724 (8th Circuit 2008) (*en banc*), the United States Court of Appeals held that South Dakota’s requirement that the abortion doctor disclose to the pregnant mother that the procedure he proposed to perform, that the “abortion will terminate the life of a whole, separate, unique, living human being,” was a statement of scientific fact – not a “statement of ideology,” as claimed by Planned Parenthood – and that it was a true statement of scientific fact based upon the record before the Court. On remand, the District Court, who had originally ruled in favor of Planned Parenthood, entered a judgment compelling Planned Parenthood to make that precise disclosure, in writing, to women considering an abortion. That issue has been resolved in that case.

On our side of the case we had Dr. Bruce Carlson, the preeminent human embryologist from University of Michigan, whose human embryology texts are used in medical schools around the country and in other parts of the world. We had our expert molecular biologist, Dr. David Mark, the brilliant scientist who discovered drugs that treat cancer, distributed and used around the world. We had our expert neonatologist, Dr. Ola Saugstad, from Oslo, Norway, the most recent recipient of the YIPPO award given to only one neonatologist in the world only once every five years. We had as our obstetrician, Dr. T. Murphy Goodwin, the head of Obstetrics and Gynecology at University of Southern California School of Medicine. We had one of the leading human geneticists who did research in Paris on genetic diseases. We had other experts as well. And we had the testimony of Dr. Bernard Nathanson, which I shall review shortly.

These experts explained the science that unequivocally demonstrates that the human embryo is a complete human being, discussing scientific literature and research about the mechanisms that regulate gene expression and other matters not widely known by lay persons.

On the other side of the case, Planned Parenthood offered no scientific testimony to refute any of our evidence. Instead they essentially admitted that the human embryo is a complete,

separate, unique member of the species *Homo sapiens*. But their attorneys argued that the term “human being” was inappropriate because it had a connotation that incorporated a value judgment about the value of the life of the member of the species. However, and sadly for Planned Parenthood, but happily for justice, when I questioned them under oath in depositions, Planned Parenthood’s State Director, its Medical Director, two of the physicians who perform abortions at Planned Parenthood, and two of their main experts all admitted that the term “human being” was a proper term to use to refer to a “member of the species *Homo sapiens*,” especially when speaking to a lay person. Two of them said it was the only term they would use. Thus, even though they built their entire legal argument on the claim that the disclosure was not true and accurate, the disclosure was so true and accurate that ultimately six of their most important witnesses were forced to admit the truth of it.

The only expert that Planned Parenthood produced who attempted to make a “scientific” sounding argument that the embryo was not a whole, separate, unique, living human being, was a molecular biologist who taught at Princeton, one Lee Silver. Dr. Silver and I had crossed paths on prior occasions. In the early 1990's we both served on the New Jersey Bioethics Commission. Beginning at about that time, Dr. Silver started focusing on bioethic issues and ultimately became the leading proponent of human cloning for reproductive purposes. He started writing books promoting his concepts, and shortly after 2000 he appeared as an expert witness on the other side of one of my cases. In that case, he expounded his personal philosophy that a human embryo or fetus, in his judgment, is not a human being until he or she achieves the age of “sentience.” This was his personal view, not a precept of science. I deposed him for an entire day in that case.

Dr. Silver later published another of his books in which he wrote that “the problem with (Cassidy’s) strategy is that it’s brilliant and effective” and it “pulls the rug out from under secular opponents.” (*Challenging Nature*, Lee M. Silver, Harper Collins, 2006, Pp. 117-118).

Silver submitted a report in the Federal Case involving South Dakota’s Informed Consent Case, and again he expressed his philosophical view that “sentience” was necessary for a member of the species to be a “human being.” I deposed him one day in that case, at Princeton University. Under oath, he stated unequivocally that his opinion in the prior case, *Acuna*, was totally wrong. He stated his view was illogical and, therefore, he changed his opinion in the South Dakota case. He stated that he no longer had any opinion and his thinking was in a state of “evolution.”

His testimony was nonsense and he ultimately was forced to admit it.

As to Sarah, it was an egregious omission for her to fail to disclose that we already won that issue in that federal lawsuit. It was an egregious misstatement of fact to claim that that disclosure is “not backed by mainstream scientific findings.” We had all of the evidence. Planned Parenthood had none. Six of their most important witnesses ultimately admitted we were correct. The problem with Sarah making a serious error of this nature is that in today’s world it is constantly repeated throughout the internet, starting with Mike Mechanic.

That brings me to Dr. Nathanson because, alas, Sarah's misleading denials that science supports the conclusion that the human embryo is a whole, separate, unique, living human being, in the biological sense, is reminiscent of, although perhaps not deliberately so, and a return to, misleading statements made by an earlier generation.

Dr. Bernard Nathanson provided testimony in the South Dakota Case. He was the last surviving founder of N.A.R.A.L., the organization created in the 1960's to promote legalized abortion. Dr. Nathanson testified under oath that:

“There were a number of key tactics that we adopted in order to win the public debate in support of legalized abortion. ... One tactic we used was to denigrate and suppress all scientific evidence that supported the conclusion that human embryos and fetuses are separate human beings. Those in the abortion industry understood that as a purely biological fact, that human embryos and fetuses are separate human beings. The tactic we used to suppress this information included the practice of denying what the abortion industry knew was true... that the human embryo and fetus is, as a matter of biological fact, a human being...

Scientists know that the human fetus/embryo is a separate human being. This is not a value judgment and it has nothing to do with the separate legal question of whether the law extends legal rights to this particular class of human beings.” Declaration of Dr. Bernard Nathanson, dated June 21, 2005.

I will never forget the day, more than three years later, in September, 2008, when I went to Dr. Nathanson's residence in Manhattan with a camera crew. He was in failing health and had to use a wheel chair to get around. He agreed to film his last statement on this topic to be aired as we saw fit.

He was frail. His voice was raspy, sounding like a man at the end of his life. We filmed his statement as he tried to sit erect on a couch in his parlor. He started by stating:

“I am the last surviving founding member of N.A.R.A.L., the organization that helped bring legalized abortion to America.”

He then went on, in his raspy voice, to tell how he and the others deliberately tried to mislead the courts and all of America by denying that an abortion kills a whole, unique, living human being.

It was one of his last heroic acts to help correct the course of our nation.

One of his family members, his best friend, tried to talk him out of taping his statement. His

friend urged, “You are saying you were a liar.”

Dr. Nathanson, quietly, in his raspy voice, said “I was.”

The friend then urged him not to tape the film, arguing that he will be remembered as a liar. Dr. Nathanson, his voice particularly heavy, responded:

“I have to be.”

I cannot let his courage go unnoticed. This _business of those who support abortion denying that an abortion kills a human being must come to an end. For Sarah to say there is no scientific evidence to support South Dakota’s law, when she knows we won that issue in the U.S. Court of Appeals, is too egregious to ignore. It is too reminiscent of the conduct to which Dr. Nathanson confessed, and which he later fought against with his dying breath.

Ironically, an expert in a case I am about to try in New Jersey, one Laurent Delli-Bovi, a physician on the Board of Directors of Planned Parenthood of Massachusetts, recently testified in depositions that she agrees that an abortion will terminate the life of a whole, separate, unique, living human being. Apparently some in the abortion community no longer have an appetite to litigate that issue with us any longer. Instead, she adopted a new and bizarre position: although abortion kills a human being, we need not disclose that fact to women because everyone knows that is true. We went from total denial of the fact, and that no one believes it is true, to everyone knowing it is true, apparently overnight. Only, of course, Sarah Blustein doesn’t think it is true. Or Mike Mechanic. And apparently those at *Mother Jones*.

Sarah’s misstatement of the facts gets worse. I debated whether I should even bring up the next point because this letter is already too long. But I think I must.

Sarah wrote (P. 44) that in 2008 the American Psychological Association found “no evidence sufficient to support the claim that an observed association between abortion history and mental health was caused by abortion.” She went on to leave the impression that there is no basis to conclude that an abortion places a woman at increased risk for psychological harm including depression, suicide ideation and suicide.

What she failed to disclose is that all of the studies, and those on both sides of the debate, agree that if a woman wants her child, is coerced, or is ambivalent about giving up the child she is carrying, the abortion will place the pregnant mother at increased risk for depression, suicide ideation and suicide. The APA and the experts for the abortion providers in the various lawsuits, admit this fact. Sarah ignores these admissions.

The saddest part of this is that abortion doctors, such as those at Planned Parenthood in Sioux Falls, South Dakota, and the clinics for which Dr. Delli-Bovi is testifying, do not screen for coercion or so-called “wantedness.” They do the abortion for all of the women including those they admit

will be placed at significant risk for psychological harm. Based upon the information we have found over the years involving hundreds of thousands of women, these are probably the majority of women who have abortions. The point is that this risk to this large percentage of women is not even in dispute. In South Dakota, Planned Parenthood personnel testified that they do abortions on all the women who call them for a consultation. A clerk schedules surgery over the phone without an assessment of their circumstance, and they require the women to sign a consent and pay for the abortion before they ever see a so-called counselor. These unlicensed “counselors” testified that at least 25% of the women are tearful, cry, and even “bawl” in the “counseling” sessions, but Planned Parenthood does the procedure anyway, despite the fact they are at risk. They never disclose that those who would prefer to keep their child or who are coerced are at significant risk.

But those are the women over whom there is no dispute: the abortion industry agrees they are at risk. The dispute is over those women who are not ambivalent and who are not being coerced. The abortion providers claim that the dozens of studies that report data that indicates that abortions place a woman at increased risk for psychological harm are flawed in that they do not adequately screen for “wantedness” and “coercion.” Aside from the fact that most abortion clinics themselves do not screen for “wantedness” and “coercion,” thereby rendering the distinction moot, they ignore the fact that lack of coercion and so-called “wantedness” makes an abortion safe is really only a hypothesis. Worse still, there is strong evidence to the contrary. When Dr. Ferguson published his study in 2006, in which he followed women for 25 years, the APA determined that it could no longer rely upon its review of the literature done about 20 years earlier. Too many studies demonstrated the risks of harm done by abortion. Ferguson concluded that women who had abortions were far more likely to suffer from major depression and suicide ideation compared to women who carried children to term, or women who had never been pregnant. The authors of the APA report, tried to discredit the Ferguson study and many others by claiming that failure to screen for coercion and wantedness made the studies flawed.

Ferguson had, in fact, screened for “wantedness” and “coercion” and published a subsequent journal article after the APA report came out. In it he demonstrated that even among women who were not among the group who “wanted” the child, or the group of “coerced” women, the risk of major depression and suicidal ideation was significantly greater among the women who had abortions.

This continued refusal to acknowledge the risks of abortion does not advance the interests of women. It defeats them. A choice is not a true choice unless it is truly voluntary and informed.

The 230 page grand jury report made public by Court Order last month in Philadelphia, concerning the criminal conduct of abortion doctor Kermit B. Gosnell, M.D. is a ringing condemnation of the state officials in Pennsylvania that failed to protect women in that state because political correctness dictated that abortion doctors should not be regulated lest it interfere with the women’s right to an abortion. As a result of the failures of the Department of Health, the Board of Medical Examiners and Governor Ridge, diseases were unnecessarily widely spread among women, women were tied down and forced to have abortions they didn’t want, two women were killed, and

numerous late term babies were born alive and murdered by Dr. Gosnell. The idea that women do not need a measure of protection against bad practices at abortion clinics is antithetical to the rights of those women.

On Monday, March 7th, I will start a trial in which I represent the family of a 21 year old college woman who suffered from a major depression following an abortion she didn't really want, who hung herself. She left a suicide note that read in part: "Now I can be with my unborn child."

As Dr. Nathanson tried to teach us, it is time for America to stop denying the truth about these matters.