OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: JAYNE BRAY, et al., Petitioners

v. ALEXANDRIA WOMEN'S

HEALTH CLINIC, et al.,

CASE NO: 90-985

PLACE: Washington, D.C.

DATE: October 6, 1992

PAGES: 1-49

ALDERSON REPORTING COMPANY

1111 14TH STREET, N.W.

WASHINGTON, D.C. 20005-5650

202 289-2260

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - - - - - - - - - - - - - - -X

JAYNE BRAY, et al., :

Petitioners :

v. : No. 90-985

ALEXANDRIA WOMEN'S :

HEALTH CLINIC, et al. :

- - - - - - - - - - - - - - - - - - -X

Washington, D.C.

Tuesday, October 6, 1992

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:02 a.m.

APPEARANCES:

JAY ALAN SEKULOW, ESQ., Washington, D.C.; on behalf of the Petitioners.

JOHN G. ROBERTS, JR., ESQ., Deputy Solicitor General, Department of Justice, Washington, D.C.; on behalf of the United States, as amicus curiae, supporting the Petitioners.

DEBORAH A. ELLIS, ESQ., New York, New York; on behalf of the Respondents.

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

C O N T E N T S

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument first this morning in number 90-985, Jayne Bray versus Alexandria Women's Health Clinic.

Mr. Sekulow.

ORAL REARGUMENT OF JAY ALAN SEKULOW

ON BEHALF OF THE PETITIONERS

MR. SEKULOW: Mr. Chief Justice, and may it please the Court:

Through the misapplication of section 2 of the Ku Klux Klan Act of 1871, the U.S. District Court for the Eastern District of Virginia now monitors State trespass action. It has been our position from the outset of this litigation that this case should not be in Federal court.

The Fourth Circuit holding rests on two faulty legal premises. First, an opposition to abortion constitutes invidious discrimination against women, and secondly, the district court further compounded its error by misapplying this Court's jurisprudence with regard to the constitutional right to interstate travel by finding that petitioners' conduct would have an effect on interstate travel and thereby purposely violating the right to interstate travel.

The Fourth Circuit's position goes a long way in

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

making 1985(3) the general Federal tort law that this Court has long counseled against. There is redress available, and that is in the Virginia Commonwealth courts. In fact, the circuit court in Norfolk, Virginia has issued injunctions which prohibits blockades and prohibit trespass activity.

The law does offer redress. This is not a case where redress is unavailable. It is. State court injunctions whose provisions mirror those of the Federal court here in significant areas have been upheld in numerous State courts on appeal.

This is a case of statutory construction and statutory interpretation. The question presented is, does section 2 of the Ku Klux Klan Act of 1871 cover the petitioners' activities? Our position is that it does not, and the Fourth Circuit is wrong and should be reversed.

In order for there to be a violation of section 2 of the act, there must be established, as this Court held in Griffin, a class-based, invidiously discriminatory animus behind the conspirators' actions. Here, the class has been defined as women seeking abortion. Simply put, women seeking abortion is not a valid class.

A class should be defined by who people are, not something they would like to do or an activity they would

like to engage in. Respondents' class theory converts any group seeking to engage in any activity or conduct into a class, again creating a general Federal tort law.

Both the district court and the Fourth Circuit Court of Appeals entered over a dozen specific findings of facts dealing with the motivation or purpose of the petitioners' activities; yet despite these specific factual findings, the lower court came to the illogical conclusion of law that opposition to abortion constitutes invidious class-based discrimination against women.

That proposition has already been rejected by this Court in finding that classifications based on pregnancies do not constitute, per se, violations of equal protection and do not constitute invidious discrimination. That was in Geduldig.

This is especially so here, since the record establishes clearly what motivates the petitioners' conduct, and that is their opposition to the activity of abortion. This is not a case where the petitioners are using their opposition of abortion as a pretext to some type of gender discrimination.

The petitioners did not engage in their conduct, or nor would have they engaged in their conduct because of its effect on women. It is because of their opposition to abortion that these petitioners are motivated.

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

Petitioners simply do not engage in the type of activity and do not conduct their activities with the invidious discriminatory animus required by section 2 of the Ku Klux Klan Act of 1871.

As I said, there's redress available. This is not a case where redress has been unavailable. Petitioners have been the subject of State court injunctions in other parts of the country.

There's also an issue I think that's equally important here, and that is the scope of the protections under section 1985(3), which is section 2 of the act -- of the Ku Klux Klan Act. There was a limiting amendment drafted by Representative Willard. The purpose of it was to mark a boundary with regard to the overall scope of the act.

Concerned over possible creations of a general Federal tort law, the drafters of the limiting amendment required that there not just be a deprivation of a right, but there be a deprivation of equality, of equal privileges and immunities, or equal protection of the law.

Thus, for a denial to be actionable pursuant to the act, to be a conspiratorial objective, the conspirators must seek to permit to some what they deny to others. Here, there's been no denial of equality. The scope of the petitioners' protest affects all involved in

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

the abortion process.

As this Court recognized in Novotny, section 2 of the Ku Klux Klan Act itself is a remedial provision. It provides a remedy in damages. The rights, privileges, and immunities that it protects are to be found elsewhere.

Here, the respondents have asserted that petitioners violated their constitutional right to interstate travel. They base this assertion on the theory that by simply being engaged in interstate travel and having that right affected by petitioners' conduct, that the petitioners thereby purposely violated the respondents' constitutional right to interstate travel.

That theory of the respondents would turn any potential automobile accident involving an out-of-State driver into an interstate travel claim, because it would have an effect on interstate travel, and I would point out that the Fourth Circuit in its findings of fact held that petitioners' activities, if they were to have been engaged in, would have had an effect on interstate travel. They did not ever find under a finding of fact that there was a purposeful violation of interstate travel.

Our position is that the Fourth Circuit and the district court greatly expanded this Court's jurisprudence with regard to interstate travel. First, this is not a case where the petitioners discriminated against in-State

residence versus out-of-State residence concerning access to the abortion clinic. Respondents conceded this during the previous argument.

Secondly, this Court's cases in the plain language of the statute itself require that for there to be an interstate travel violation there has to be a purposeful deprivation of the right. The purpose, as found by the district court and affirmed by the Fourth Circuit Court of Appeals here was that the petitioners engaged in their activities in order to express their opposition to abortion, not -- no findings of fact that there was purposeful deprivations of the right to interstate travel.

In fact, as I said, the trial court itself only held that petitioners, if they were to have engaged in their activities, would have had only an effect on interstate travel. There is no finding that here there was a purposeful action taken in deprivation of the right.

It is important to note again that in drafting the legislation the 42nd Congress made the determination in the concept of the limiting amendment that they were going to look at the issue through the lens of motivation and not impact. As I said, the language of itself, the statute itself requires that there must be a purposeful violation of the interstate travel right.

The question in one sense would be, did the petitioners conduct their activities for the purpose of depriving respondents of their right to travel? The record below supports that they did not.

The trial court's detailed findings of fact establishes what the animus and motivation of Jayne Bray and the other petitioners -- yes, Justice Stevens.

QUESTION: May I just ask you one question? You said that there was no district court finding with regard to intent to interfere with travel. I have before me the finding that petitioners engaged in this conspiracy for the purpose, either directly or indirectly, of depriving women seeking abortions and related medical and counseling services of the right to travel.

MR. SEKULOW: The court --

QUESTION: Isn't that a finding of fact?

MR. SEKULOW: No. That was a conclusion of law. The finding of fact here states -- and it's on page 22(a) of the joint -- the petition's appendix -- states, rescue demonstrations -- paragraph 28 specifically. Rescue demonstrations, by blocking access to clinics, therefore have the effect of obstructing and interfering with interstate travel of these women. The test, however, is that there must be purposeful activity, that their aim must have been not a mere consequence of it, which is

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

what the -- where the illogical conclusion of law took place here.

QUESTION: But the district judge did draw the inference and stated in his conclusions of law that that was the purpose.

MR. SEKULOW: Yes. However, our position is that his -- that Judge Ellis, that the district court's findings of fact clearly cut against that, Justice Stevens, because his specific finding on right to travel talks about effect, and there is a difference between purpose and effect.

1985(3), section 2 of the Ku Klux Klan Act, requires that there be a purposeful deprivation of the right, not an impact, and that's what the motivation -- the view of what the motivation has to be on. What is it that motivated these petitioners? Here, it was clearly their opposition to the activity of abortion.

Mr. Chief Justice, I'd like to reserve the rest of my time for rebuttal.

QUESTION: Very well, Mr. Sekulow. Mr. Roberts, we'll hear from you.

ORAL REARGUMENT OF JOHN ROBERTS, JR.

ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE SUPPORTING THE PETITIONERS

MR. ROBERTS: Thank you, Mr. Chief Justice, and

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

may it please the Court:

The United States appears in this case not to defend petitioners' tortious conduct, but to defend the proper interpretation of section 1985(3). As this Court explained in Griffin, the language of that section covering conspiracies whose purpose is to deprive people of equal protection or equal privileges and immunities, means that the conspirators must be motivated by a, quote, class-based invidiously discriminatory animus, end quote.

If a group of conspirators assault someone carrying a picket sign because they don't believe there should be a First Amendment right to picket, they certainly are guilty of a tort and they interfere with that individual's exercise of constitutionally protected rights, but in no sense do they deprive him of equal protection or equal privileges and immunities simply because they assault him and not everyone else.

But if the conspirators come upon a picketer and assault him because he's black and they don't believe that blacks should have equal First Amendment rights, then they satisfy the class-based invidiously discriminatory animus requirement.

That is not what is going on here. Petitioners do not interfere with respondents' rights because respondents are women. Petitioners do what they do

because they're opposed to an activity, the activity of abortion. They target their conspirators not because of who they are, but because of what they are doing. Respondents now seem to recognize this. In their brief on reargument they say that this is, quote, unlike the usual section 1985(3) case, end quote.

But it is not a section 1985(3) case at all, and the reason is that section 1985(3) is not concerned simply with the deprivation of Federal rights, however fundamental, however important. It is concerned with the discriminatory deprivation of Federal rights, and petitioners are perfectly nondiscriminatory, nondiscriminating, in their opposition to abortion.

Respondents' answer to this argument is that only women can exercise the right to an abortion, and therefore petitioners' antiabortion activities have a discriminatory impact on women. People intend the natural consequences of their acts, and therefore respondents argue, you can infer from the discriminatory impact that petitioners have a discriminatory purpose.

A few examples will show that the logic of that doesn't hold up. Consider, for example, an Indian tribe with exclusive fishing rights in a particular river. A group of ecologists get together who are opposed to fishing in the river, because they think it disturbs the

ecology. They interfere with the Indians' rights.

The impact of their conspiracy is on a particular Indian group, but it would be quite illogical to infer from that they have any animus against Indians. They're opposed to fishing in the river, not Indians, even though only Indians can fish in the river. Petitioners are opposed to abortion, not women, even though only women can exercise the right to an abortion.

Another example. Suppose a group of men and women get together who are opposed to the draft and they interfere with registration. The direct impact of their conspiracy will be felt only by men, since only men are eligible for the draft. But, again, it would be quite wrong to infer from that impact that the conspirators have any animus against men. They're opposed to the draft, not men, even though only men are eligible for the draft.

This Court has, in fact, already rejected respondents' logic in the Geduldig case. There Justice Stewart, writing for the Court 3 years after he wrote for the Court in Griffin, explained that classifications based on pregnancy are not the same as gender discrimination, even though only women can become pregnant. Accepting respondents' argument that activities in opposition to abortion are the same as gender discrimination, because only women can have abortions, would require overruling

the rationale of Geduldig.

The decision below should be reversed for an independent reason, the reason that petitioners did not act with the purpose of interfering with respondents' right to interstate travel. This is respondents' logic. One, petitioners' purpose is to block access to abortion clinics. Two, some of those seeking access to the abortion clinics come from out of State. Three, petitioners know this. And four, therefore petitioners' purpose is to interfere with people from out of State getting access to the abortion clinics.

That confuses purpose, which is what the statute requires in plain terms, with incidental effect, which is insufficient under the statute. For example, under respondents' logic, consider a typical picket line. The union's purpose is to keep the customers out of a particular establishment. Some of the customers are black. The union knows this.

Under respondents' logic, you would say that the union's purpose is to keep out black customers, but that's an inaccurate statement of their purpose, just as it is an inaccurate statement of petitioners' purpose to say that they keep people from --they want to keep people from out of State from gaining access to the abortion clinics.

Last year respondents' counsel said it would be

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

silly -- his word, silly -- to argue that the petitioners care whether the people come from out of State or not. But if the people don't -- if the petitioners don't care whether the people are from out of State or not, you cannot say that their purpose is to keep out of Staters from obtaining access to the abortion clinic.

This Court's decisions on the right to travel recognize this distinction. The Court has found that right implicated only when there has been discrimination between residents, on the one hand and nonresidents or newcomers on the other, as in Shapiro against Thompson, or Dunn v. Blumstein.

QUESTION: Mr. Roberts, was there discrimination in the Griffin case?

MR. ROBERTS: The allegations were that the -- part of the motivation of the conspirators were to keep out of State civil rights workers from traveling on the interstate highways. The Court did not articulate in that case what would satisfy a claim under the right to travel. It indicated a number of points that were open to the plaintiffs to prove on remand, and then said this evidence and other evidence might suffice to show a right to travel.

So it may be that they would have made a discrimination claim in that case -- in that case, making

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

it to be like the Guest case, where the specific allegation was that there was a right to interfere with interstate travel as such.

Both because there is no class-based invidiously discriminatory animus in this case, and because petitioners did not interfere with the purpose of interfering with the right to travel, the decision below should be reversed.

Thank you.

QUESTION: Thank you, Mr. Roberts.

QUESTION: Counsel, may I just ask one question? Did the municipality here of Alexandria, or any State officials, make a submission to the district court that their own law enforcement authorities were being overwhelmed?

MR. ROBERTS: There is an amicus brief before this Court from the Falls Church community saying that their resources were inadequate to deal with this particular predicament.

QUESTION: Did the Falls Church municipality make any request of the Governor of the State of Virginia for assistance?

MR. ROBERTS: I'm not aware that there was any such -- such request.

QUESTION: And did the Governor make any

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

assistance -- request to the Attorney General of the United States for assistance?

MR. ROBERTS: I'm not aware. This was done, of course, in an injunctive capacity, so there wasn't a particular incident to respond to. So there wouldn't have been any of those sorts of requests.

The ability, of course, of the Federal Government to respond to such a situation is dealt with under section 3 of the act, entirely independent of the section before the Court today.

Thank you.

QUESTION: Thank you, Mr. Roberts. Ms. Ellis, we'll hear now from you.

ORAL REARGUMENT OF DEBORAH A. ELLIS

ON BEHALF OF RESPONDENTS

MS. ELLIS: Thank you, Mr. Chief Justice, and may it please the Court:

Like the black students in Little Rock in 1957 who faced angry mobs as they walked up to the entrance of integrated schools, the women in this case, many of whom came from other States to Falls Church, Virginia, faced angry, intimidating mobs who physically obstructed their freedom of movement, blocking streets, parking lots, entrances, and exits.

This case presents the Court with an issue that

arises infrequently but is vitally important: whether Federal law -- Federal law prohibits a mob from nullifying the constitutional rights of a class.

Section 1985(3) was enacted, as Representative Shellabarger explained in 1871, to provide a remedy against conspirators who trampled into dust the newly acquired political rights of the freedmen. This Court's section 1985(3) jurisprudence has strived both to give effect to congressional intent and to avoid making the statute into a Federal tort law.

Far from being mere torts, the acts of petitioners here are part of a nationwide systematic conspiracy to use force to deny women in America the equal protection of the laws, to do precisely what Congress sought to prevent in enacting section 1985(3).

All of the four elements that this Court has required to make out a section 1985(3) claim were proved here --

QUESTION: Excuse me. Suppose the same thing were done to prevent unionization? I mean, suppose you have a right-to-work group that nationwide seeks to prevent unionization? Would -- that would fit the description you've just given. Would that be covered by this statute?

MS. ELLIS: Well, Your Honor, in Scott this

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

Court held that that kind of class-based animus is not cognizable under 1985(3).

QUESTION: Well, then what you've just said is not enough for a violation of 1985(3). The mere fact that your --

MS. ELLIS: I'm sorry, Your Honor, in this Court --

QUESTION: In organized fashion you seek to prevent people from exercising a constitutional right is -- is not alone enough.

MS. ELLIS: I'm sorry, I misspoke, Your Honor. In Scott, this Court recognized that animus against union activities or economic classes are not sufficient to form a class under 1985(3). Here --

QUESTION: Yet that is a right, the right to organize.

MS. ELLIS: Okay, assuming that this Court has held that antiunion animus is sufficient to form a class, then I do believe that blocking people from an activity that only that group can engage in does suffice to prove class-based animus, especially when the right they seek to block is a constitutional right of a class, an important constitutional right that only that class has, and especially as in this case, when this Court recently recognized in Planned Parenthood v. Casey that that right

is necessary in order for that class to be equal citizens.

In this case, the two elements of the conspiracy -- of section 1985(3) are not at issue, the conspiracy and the act in furtherance of the conspiracy. Although there's no dispute about those elements, I would like to note that the mob characteristics of this case are particularly important. Congress enacted section 1985(3), called the Ku Klux Klan Act, because it understood that mobs could deprive individuals of rights in a way that single -- single individuals cannot.

The petitioners here, who operate systematically in large groups nationwide, are a much closer analog to the Ku Klux Klan than the two conspirators that this Court recognized could violate section 1985(3) in Griffin, for example.

Because there's no dispute about the conspiracy in the act, I will focus on the other two elements, that the conspiracy be motivated by class-based animus, and here, that the independent right, the right to travel, be violated.

To begin with class-based animus, we must first show that women are a protected class, and indeed, neither the petitioners nor the Solicitor General dispute that women are a class under 1985(3). The broad text and legislative history of section 1985(3) dictate that

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

conclusion.

Instead, petitioners and the Government argue that here only a subset of women are affected. That subset distinction is false. Discrimination usually occurs against the subset of a class that is exercising its rights. For example, those who blocked African-American citizens from entering integrated schools targeted only some citizens but demonstrated invidious racial animus against an entire class.

The requirement of class-based animus was created by this Court in Griffin v. Breckenridge in order to prevent section 1985(3) from becoming a Federal tort law. Animus should not be confused with personal malice or hostility, especially because much of discrimination against women throughout history has been benign.

More specifically, womens' reproductive capacity has served as the benign rationale to deny women a host of equal opportunities, as this Court has recognized many times, most recently in Johnson Controls and in Casey.

Respondents admit that there are two kinds of class-based animus. In most situations, the conspirators deny to the class a right that is available to all, but here there is class-based animus for a different reason: because petitioners engaged in unlawful behavior that denies a right that is available only to the class.

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

This case is a particularly strong example of class-based animus, as I was saying before, because a right blocked here has been judicially recognized to be indispensable for the equality of the class. If equal protection of the law means anything, it must encompass knowing behavior to take away a liberty right that only the protected class has.

In Casey, this Court recognized that abortion is a unique act, and that women must have control over their reproductive lives in order to be equal and autonomous citizens.

QUESTION: What -- let me go back to that statement, that it must cover an effort to take away a right that only the protected class has.

What do you do with the hypothetical that Mr. Roberts gave us of an Indian tribe that has only -- has exclusive fishing rights and ecologists seek to stop the fishing? That fits exactly the description you've just given us. This is the only class that has the rights, and you're seeking to prevent those rights from being exercised. How -- are you saying that, indeed, in Mr. Roberts' example, that would be a violation of this statute?

MS. ELLIS: I think that would show class-based animus --

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

QUESTION: It would.

MS. ELLIS: If -- yes, Your Honor, although I don't think that a ruling in this case would need to reach that precise conclusion, because in this case we're only asking the Court to recognize that class-based animus is present when a constitutional right is taken away. So --

QUESTION: But it seems to me you're fighting the hypothetical. The hypothetical is, ecologists want to protect fish. They don't care who's fishing.

MS. ELLIS: Uh-huh.

QUESTION: So you changed the hypothetical. If you stick with the hypothetical, then what's your answer?

MS. ELLIS: I'm sorry, Your Honor, I didn't mean to change the hypothetical. I do agree that --

QUESTION: I mean, because there's just -- it's common sense, we know there's no animus against Indians, so what result in that case?

MS. ELLIS: They are depriving Indians of a right that only that class has. Class-based animus would be present.

This Court has not required personal malice or hostility. For example, the segregationists were blocking the entrance to an integrated school, and doing that because they opposed the activity of integration, not because they opposed blacks as a class. I believe this

Court would find class-based animus.

QUESTION: Well, that's -- it seems to me, that definition of animus is a legal fiction.

MS. ELLIS: I do not believe so, Your Honor. I believe that if a class has -- if there's a constitutional right that only that class has, that that must violate equal protection to take away that right.

Now, of course, in the fishing hypothetical, the class there is not exercising a constitutional right. They're exercising only an activity that that class wishes to engage in. This Court does not need to go that far in answering this case.

This case presents the question of a class such as women or African-American citizens trying to get into an integrated school exercising a fund -- an important constitutional right, and in this particular case, a constitutional right that the joint opinion in Casey recognized is crucial for women to be equal and autonomous citizens.

QUESTION: Of course, the school case is on the other end of the spectrum because there it was clear that there was an animus against people by reason of their race, an animus, a hostility.

MS. ELLIS: No, Your Honor, many segregationists say that they oppose not the black race, but they oppose

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

the activity of integration, and even if they said that they loved the class but opposed -- physically obstructed the entrance of black children into Central High in Little Rock, I believe this Court should find class-based animus there, as it should here. I believe that taking away a right that only that class has must violate the animus requirement for section 1985(3).

The Solicitor General relies on Geduldig to argue that no class-based animus exists. Geduldig was decided in 1974 when this Court's gender-based equal protection standard was still evolving.

Geduldig differs dramatically from this case, because there the Court was asked to interpret the Constitution to provide mandatory benefits.

As recognized by Chief Justice Rehnquist in the 1977 Nashville Gas Company v. Satty decision, Geduldig by its own terms is limited to cases dealing with the distribution of benefits, not the imposition of burdens.

Here, women are asking for statutory protection from the complete denial of their rights, and they are not seeking any monetary or other benefits.

As this Court recently reaffirmed in Casey, the denial of womens' reproductive rights denies women the ability to control their destiny.

Turning to the right to travel, the independent

right violated here, the right to travel here was violated in the most blatant way possible -- by actual, physical obstruction of movement.

Griffin is the only other case where this Court has addressed the right to travel under section 1985(3). The facts here track the unanimous decision of Griffin in three important ways, and in one way this case is much stronger than Griffin.

First, in both cases the defendants physically obstructed travel, although not at a State border. Here, in Griffin, there was a single episode of obstruction of travel on a public highway. Here, there was a pattern of blockades at a clinic in Falls Church, Virginia, less than 10 miles from the D.C. and Maryland borders.

The court below found that petitioners engaged in the conspiracy, as Justice Stevens noted before, for the purpose, either directly or indirectly, of depriving women of the right to travel.

Second, in Griffin the Court remanded to determine if there had been actual or intended interstate travel. And here there was a factual finding by the Court that a substantial number of respondents, in fact, engaged in interstate travel.

As the Griffin case came to this Court, there was very little evidence of interstate travel. In fact,

the Solicitor General's brief in that case, which was filed on behalf of those people who had been deprived of their rights, noted in footnote 6 that they believed there had been no allegations of interference with interstate travel. That is why this Court, in Griffin, allowed the plaintiffs on remand to elect -- to prove some connection with interstate travel in a variety of ways.

QUESTION: Ms. Ellis, just out of curiosity because I don't remember, which side did the Solicitor General take in the Griffin case?

MS. ELLIS: The Solicitor General, in that case, took the side of the black plaintiffs who had been beaten up.

QUESTION: So they asked for an expansive interpretation of the statute.

MS. ELLIS: They did, Your Honor. And they said in that case that equal protection of the laws should be interpreted broadly to -- even if interstate travel wasn't violated, that because the plaintiffs there had been beaten up, their equal protection of the laws had been violated.

Third, in both Griffin and this case, the defendants blocked the travel, not because they cared about the travel per se, as we had said last time, but because they wanted to stop the activities the plaintiffs

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

were traveling for. In Griffin it was civil rights activities, and here it was to exercise the right to privacy.

So this case tracks Griffin in the three ways of physical obstruction, actual interstate travel, and the fact that in both cases the people were traveling in order to exercise other constitutional rights.

Significantly, however, this case is stronger than Griffin because in Griffin there were only two conspirators, and here there was a mob. And as I've mentioned before, Congress was particularly concerned, in enacting section 1985(3), about the fact that mobs could deprive individuals of equal protection of the law in a way that a sole person cannot.

Nonetheless, the Solicitor General insists that respondents are opening a Pandora's box because, he argues, there's no showing that petitioners purposefully interfered with respondents' right to travel. Well here, of course, petitioners did physically block respondents' right to travel. There can be no more blatant obstruction of the right of travel. In this Court's -- in most of this Court's other travel cases, such as Shapiro v. Thompson, there is no direct interference with the right to travel. Only in Griffin and in this case was there physical obstruction.

The petitioners -- the Solicitor General's argument can be accepted only if this Court takes an unnaturally narrow view of the right to travel under section 1985(3) so that it is only violated when the defendants block only interstate travelers, and when they block them with the sole purpose to prevent crossing straight -- State lines.

That was not the case in the unanimous decision of Griffin v. Breckenridge, and yet this Court held the right to travel could be violated. This case is on all fours with Griffin.

QUESTION: Griffin, of course, involved unquestioned discrimination against -- an animus against a class, blacks, right? I mean that was just not an issue at all -- at all in Griffin.

MS. ELLIS: It was not an issue, Your Honor, because they inferred the animus from the fact that they beat them up. There was -- in Griffin in note 10, the Court said that animus should not be confused with scienter.

QUESTION: Well that's right, but they --

MS. ELLIS: And that also should not --

QUESTION: The purpose here was discrimination against blacks, the purpose in Griffin.

MS. ELLIS: That was -- that purpose was

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

inferred from the fact that they beat them up.

QUESTION: And that's a part of it.

MS. ELLIS: They did not say that they hated blacks.

QUESTION: Well that's -- that's a big issue here.

MS. ELLIS: That's right, Your Honor.

QUESTION: Whether it is, indeed, a class of women that is the object of the activity, or whether a class of those seeking or assisting in abortion.

MS. ELLIS: Your Honor --

QUESTION: So I -- you know, I think that's a big difference between the two cases.

MS. ELLIS: Your Honor, there is no doubt that petitioners' purpose is to stop the activity of abortion. Abortion is a constitutional right of a class of women. That is the same as petitioners' -- if petitioners' were trying to block an integrated school, trying to block an activity that is a constitutional right of black citizens.

In doing that, they would also block other people coming into the school; they would block the teachers and block parents, custodians, just as here petitioners block others coming into the abortion clinic. Nevertheless, it is clear that the animus is directed towards women.

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

QUESTION: That's not the proper analog. It seems to me the proper analog is blocking everybody from going into the school, and then saying in blocking everybody you're also blocking blacks.

MS. ELLIS: I agree with that, Your Honor, that is a proper analog.

QUESTION: And you think that that would be a violation --

MS. ELLIS: I think --

QUESTION: If you said we don't want anybody to go to school?

MS. ELLIS: I think if the segregationists in Little Rock said that our object is to block anyone from going into this integrated school because the school is integrated, yes, Your Honor, I think that is class-based animus. In fact, I think many segregationists did try to do that. They didn't want anyone going into those integrated schools.

QUESTION: Yes, because the school is integrated.

MS. ELLIS: That's right.

QUESTION: But not because they don't want people to go to school.

MS. ELLIS: That's right. And here they're blocking because they don't --

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

QUESTION: The assertion here is that they're blocking because they don't want people to provide or receive abortions.

MS. ELLIS: That's right, Your Honor. And it's exactly parallel. There they did not want the class to exercise their constitutional right to an integrated education. Here, they do not want the class to exercise their constitutional right to an abortion.

QUESTION: In the one case it's because of race. In this case it remains to be established whether it's because of sex.

MS. ELLIS: Well, Your Honor, I think that the problem is it's always difficult to define -- to divine the actual malice or animosity that is motivating someone. That's why the Court said in Griffin that the class-based animus requirement should not be confused with a requirement of personal hostility.

We do not know what was in the heart of the segregationists. All we know is that they tried to block a constitutional right that that class has. Similarly, we do not know what is in the heart of petitioners, but we do know that they have a conceded purpose to block women from exercising a constitutional right.

While we believe that the violation of the right to travel is clearly sufficient to justify the injunction

below, there are three other ways this injunction can be sustained.

First, respondents made a privacy claim which was not ruled on the court -- ruled on by the courts below.

Second, section 1985(3) jurisdiction is also sustained by petitioners' avowed purpose to hinder and prevent local authorities from enforcing the law, in violation of the second clause of section 1985(3), a claim which is proved below, but not fully briefed.

At this point, I would like to answer Justice Kennedy's question that you posed to opposing counsel. In this case, Your Honor, trial testimony has shown that between the time the complaint was filed and the time of the trial, that a blockade occurred at a Maryland clinic. And at that clinic the police could not guarantee safe passage to the patients who tried to get into the clinic, even though they had called on all the resources of the county and the State police.

QUESTION: Did you say the issue of interference was raised below?

MS. ELLIS: Of hindrance? The issue of hindrance, Your Honor, was proved below, but it was not fully briefed.

QUESTION: And it wasn't -- and it wasn't in the

complaint, was it?

MS. ELLIS: No, Your Honor. The complaint is alleged, though, a violation of section 1985(3) generally.

QUESTION: Yes, yes. And you say it was -- you say it was litigated below?

MS. ELLIS: I'm sorry. It was proved below. The evidence showed a hindrance of the State police, of the local police.

QUESTION: But there were no findings of the district court with that -- in that respect.

MS. ELLIS: Well, the findings -- there were findings, not specifically directed towards a hindrance claim, but there findings --

QUESTION: And there was no -- but there was no conclusion of law that the second clause was violated.

MS. ELLIS: That's right.

QUESTION: And it was not addressed in the court of appeals.

MS. ELLIS: No, it wasn't, Your Honor. However, Your Honor, we do believe that under rule 15(b), the pleadings, of course, are amended to conform with the evidence, and that this question, should the Court choose to reach it, is fairly subsumed within the Fourth Circ -- question here, which was was the jurisdiction of the Federal court substantial enough to justify the

injunction.

QUESTION: You want us to find that there was a purpose of hindrance?

MS. ELLIS: I think, Your Honor, the more appropriate case -- the more appropriate course in this instance would be to remand for full briefing on hindrance. But I do believe there is evidence in the record, should the Court want to address that question.

Finally, even if none of the section 1985(3) claims ultimately prevail on their merits --

QUESTION: What if we -- what if we reject your claims other than the hindrance claim, we just don't say anything about it? Let's assume we just don't say anything about hindrance, but otherwise you lose, is the case over?

MS. ELLIS: Your Honor --

QUESTION: I suppose -- I suppose the mandate would say, is remanded for further proceedings consistent with what we held.

MS. ELLIS: I think at the minimum the case should be remanded for briefing -- I'm sorry, for a decision on the privacy claim, which was alleged and briefed, but never addressed by either of the courts below. Here --

QUESTION: Oh, I thought it was addressed by the

district court.

MS. ELLIS: No, Your Honor, the court decided not to reach that claim. It discussed it --

QUESTION: It thought it was problematic, I guess.

MS. ELLIS: It did say it was problematic, but it decided not to adjudicate --

QUESTION: Well, what about the hindrance claim?

MS. ELLIS: Pardon?

QUESTION: What about the hindrance claim? You say that the proper thing to do would be to remand on that.

MS. ELLIS: Mm-hum, I believe so, Your Honor, and I believe in any case that there is enough -- that the hindrance and the privacy claims are substantial enough so that jurisdiction exists and the injunction could be sustained on the pending State law claims which the Court found to be violated.

QUESTION: If the basis for our rejection of your other claims is the lack of -- in our view the lack of having established animus, then the hindrance claim is over as well.

MS. ELLIS: Your Honor, we have reconsidered our position on that.

QUESTION: Oh, you have reconsidered your

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

position on that.

MS. ELLIS: We have reconsidered our position on that.

QUESTION: Last time, you said it would have been over as well.

MS. ELLIS: That's right, we did, Your Honor, and on reflection we have reconsidered our position on that. We believe that there are strong reasons that class-based animus should not be required for the hindrance claim because the class-based animus requirement was created by this Court in Griffin out of concern for not Federalizing section 1985(3) into a tort law.

Those same concerns do not exist with the hindrance claim, and we would say that this is more like Kush v. Rutledge, the case where this Court found no requirement of class-based animus for section 1985(2), and in Kush this Court also emphasized that in Griffin the Court was only addressing the clause of section 1985(3) --

QUESTION: Well, it may be -- even if you're right, there might still be a question of whether the protestors have the purpose of overwhelming city -- city police.

MS. ELLIS: That's right, Your Honor, but that was proved at trial. There was actually evidence in the record showing that one of their exhibits asked to have

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

thousands of -- 1,000 or 1,500 people come because when that many people come there are too many people for the police to arrest --

QUESTION: Well, there may be evidence in the record to support a finding, but the finding hasn't been made.

MS. ELLIS: Well, Your Honor, in footnote 4 of the district court's opinion, the court talked about how the activities of petitioners overwhelmed the Falls Church police department and talked about a specific example.

QUESTION: That's the effect. There's no difference between purpose and effect. I mean, that's a common theme throughout your argument. The footnote you're referring to said that the effect was to overwhelm, but we're talking here about purpose. The statute requires that it be the purpose, doesn't it?

MS. ELLIS: Right, and there is evidence --

QUESTION: And there's no finding on that, is there?

MS. ELLIS: There's no finding on that. There is evidence in the record, though, to support that finding.

For the little children in Little Rock, this Court said in Cooper v. Aaron that the vitality of constitutional principles cannot be allowed to yield

simply because of disagreement with them. Congress enacted section 1985(3) so that the mob no more than the State could nullify constitutional rights.

Like the plaintiffs in Griffin, women here invoke the core coverage of section 1985(3) so that they may be able to exercise their constitutional rights under the protection of the rule of law.

Thank you.

QUESTION: Just to clarify one thing in my own mind, was the injunction entered here as a preliminary injunction, or was it a final injunction?

MS. ELLIS: It was a permanent injunction that expired at a definite time. It has since been extended on five separate occasions and now is set to expire on January 8, 1993.

QUESTION: But as initially entered it was a final injunction.

MS. ELLIS: It was. The trial court consolidated the hearing -- the final hearing with a preliminary hearing.

QUESTION: The question I have is, I don't quite understand why you say that there's no danger with respect to the hinder clause of turning this provision into a general tort law and therefore we don't need to import the animus requirement. Surely, any time anyone bribed a

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

policeman or conducted all sorts of activities that would impair law enforcement, wouldn't that be -- wouldn't that come under this provision?

MS. ELLIS: I think, Your Honor, it would have to be for the purpose of depriving an equal protection of the laws, and so I don't think bribing a policeman would come under --

QUESTION: Well, no, you're eliminating an animus requirement.

MS. ELLIS: Right.

QUESTION: You don't -- it doesn't have to be class-based. All you have to do is try to stop a policeman from protecting somebody else's rights, isn't that right, so that would uniformly be covered.

MS. ELLIS: No, Your Honor, I think that hindrance should apply to acts that attempt to take away the equal protection of the laws by hindering the local authorities. It cannot just apply to bribing a policeman. The statute requires both --

QUESTION: Why not? You bribe him to do something. That is, to deprive someone of activity that he'd otherwise provide. I mean, that's the purpose of bribing.

MS. ELLIS: That is clearly not what Congress was concerned about --

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

QUESTION: Well, I'm sure that's true.

MS. ELLIS: -- in enacting section 1985(3).

QUESTION: I'm sure that's true, but I don't see how you avoid that without importing into the hindrance clause the same class-based animus requirement that you have imported into the other clause.

MS. ELLIS: I think the best way to avoid that is to require that you be hindering the police for the purpose of interfering with Federal constitutional rights, just as this Court has required a violation of the independent right under the first clause of 1985(3). I think that you'd also want to make sure that it was for the purpose of interfering with Federal constitutional rights, which I think is well-supported by the text of --

QUESTION: Not State constitutional rights? How can you eliminate State rights? Why do you limit the text just to Federal constitutional rights?

MS. ELLIS: Well, I think that either would be an acceptable course for this Court.

QUESTION: Do you think so?

MS. ELLIS: This Court has so far only specifically protected Federal constitutional rights under 1985(3). That, of course, is an open question.

QUESTION: Thank you, Ms. Ellis. Mr. Sekulow, you have 11 minutes remaining.

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

REBUTTAL REARGUMENT OF JAY ALAN SEKULOW

ON BEHALF OF PETITIONERS

MR. SEKULOW: Thank you, Mr. Chief Justice. Briefly, first, reliance on Kush v. Rutledge with regard to the hindrance claim is misplaced because the legislation requires, under the prevent and hinder clause, the same word equal. The amendment process required equal to be added. The word equal, in the statute, was where the animus language derived from, and that clearly has to be here.

I understand they're now trying to pull away from their previous admission on that point, but Kush v. Rutledge certainly doesn't point to that. In fact, Justice Stevens, in finding the claim could proceed under 1985(2) there noted that, specifically, the same language in 85(2) was not present in 85(3).

Secondly, the defendants or the petitioners' hearts were read, if you will, by the district court here, what their purpose was. The court stated -- the district court found it is undisputable that all defendants share a deep commitment to the goals of stopping the practice of abortion and reversing its legalization.

There is no animus against the class of women; it is an opposition to a specific activity. Secondly, to view animus in the way respondents have would be -- using

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

an example, if, in fact, there was a disagreement or an opposition to affirmative action by a particular group, and that would -- if their view were to carry the day, would have an effect on affirmative action.

But to translate that effect into an invidious discriminatory animus, that that now means that the group that was gaining the benefit of the affirmative action project is now the target of their animus, would be incorrect unless it was some type of pretext for the objection.

For instance, in the school example that was given if, in fact, desegregation -- the integration of the school took place -- in the situation that was referred to in Little Rock there, it was clear that the objection -- the opposition was not to children going to school, it was the opposition of children going to school with black children. The modus -- the motive, the animus in that case clearly was the opposition to blacks going to the schools.

I'd also state that our position is that Satty certainly does not support the position on discriminatory -- invidious discrimination, because Satty was a title 7 case. This Court has required invidious discriminatory animus. Clearly here the animus, as I said, is to the opposition of abortion. The fact that it

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

has an effect on women seriously mischaracterizes the nature of the dispute, and also, I think, mischaracterizes the nature of the issue presented to this Court.

This Court, in Casey, did not state that the right to abortion was essential to equality. I think that's important here. The fact that the -- this Court's jurisprudence with regard to reproductive freedom has had an effect on women's ability to participate equally in the Nation, in the social life of the country, does not become the legal equivalent of there now being an invidious discriminatory animus.

And I think Casey, to the contrary, clearly does not support the proposition that opposition to abortion constitutes invidious discrimination against women.

First, throughout its abortion jurisprudence this Court has not found the right to exist under the equal protection clause, which would be the normal place to find restrictions being reviewed as invidiously discriminatory under the equal protection analysis. That's not what this Court has chose to do.

Secondly, I think significantly, that the Court's opinion in Casey points to the issue that opposition to an activity does not constitute invidious discrimination against women. Specifically in the joint opinion it is stated:

Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy even in its earliest stage. Some of us, referring to members of the Court, as individuals find abortion offensive to our most basic principles of morality.

If men and women of good conscience can sincerely disagree over this issue, then how can opposition to abortion constitute per se invidious discrimination against women? It cannot.

The Court also recognized in Casey, specifically, that abortion is a unique act. And it said it is fraught with consequences for others, and included in those others was the life or potential life of the unborn child, the woman who undergoes the procedures, her family, and her spouse.

The Court further went on in Casey to recognize that there is, and I'm going to quote again:

As with abortion, reasonable people have differences of opinion. One view is based on such reverence -- excuse me -- for the wonder of creation that any pregnancy ought to be welcome and carried to full term, no matter how difficult it will be to provide for the child and ensure its well-being.

Another is that the inability to provide for the nurture and care of the infant is cruelty to the child and anguish to the parents. These are intimate views with intimate, infinite variations, and they are deep personal in character.

That -- those statements from the joint opinion in Casey clearly, unequivocally, do not support the proposition that opposition to abortion is the legal equivalent, per se, invidious discrimination against women. And I think, clearly, it cuts the other way. What this Court recognized in Casey is that the issue of abortion is one of profound national debate.

QUESTION: Of course, this case involves more than opposition to abortion.

MR. SEKULOW: I think not. Their opposition --

QUESTION: But don't you think your clients did something more than just let -- let it be known that they were opposed to abortion? Didn't they try, specifically, to interfere with people who crossed a State line to get abortions? That's more than opposition.

MR. SEKULOW: First, that -- I think that's the ultimate opposition to abortion, is interfering with abortion as the animus, the activity of abortion. It is their opposition, and it is unequivocal that that is their opposition. They seek to deter women.

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

And, of course, opposition is not for the purpose of keeping out of State people versus in State people. Clearly, that's not supported by this record, Justice Stevens.

But their opposition --

QUESTION: Well, would it be supported if all of the patients in the clinic came from out of State?

MR. SEKULOW: No, it would not. Because that is not the purpose of their activity. Now if it was -- I won't even speculate. But the truth here is that the animus is -- as this Court recognized, that men and women of good conscience will disagree on this issue -- these petitioners obviously take the position, and are opposed to the act, the conduct, as this Court said in Casey, of abortion.

QUESTION: They're opposed to an act that only members of the class can engage in.

MR. SEKULOW: They are -- precisely. And if that's the case, which it is only --

QUESTION: Which is entirely unlike the Indian example, because anybody can fish.

MR. SEKULOW: I don't think so. Because I think they're directly comparable. The fact that only women can exercise the right points to the fact that there cannot not be a denial of equality. And that is clearly required

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

by the statute here. Plus the scope of the petitioners' conduct is aimed at the entire process of abortion. It is opposition to an activity of abortion. That's what is at issue here, and everyone involved in that process.

Thank you -- yes, Mr. Justice --

QUESTION: But the State causes of action --

MR. SEKULOW: There were claims here under the -- under trespass and --

QUESTION: Does the injunction rest on that?

MR. SEKULOW: Yes, there was independent grounds, the court said, for the injunction under State grounds.

QUESTION: So what would be do if we agree with you about the injunction?

MR. SEKULOW: I think that this Court would remand it to the -- back to the Fourth Circuit for determination whether there was sufficient subject matter jurisdiction. Our position is that the right to travel claim is so insubstantial not to confer it, but the issue that the injunction rests upon, and upon which attorneys' fees were issued, was the claim under 42 USC section 1985(3), which is the lineal descendant of section 2 of the Ku Klux Klan Act.

Thank you.

QUESTION: Thank you, Mr. Sekulow. The case is

submitted.

(Whereupon, at 10:57 a.m., the case in the above-entitled matter was submitted.)

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202)289-2260
(800) FOR DEPO

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of: Case No. 90-985

JAYNE BRAY, ET AL., Petitioners v. ALEXANDRIA WOMEN'S HEALTH CLINIC, ET AL.

---

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Lora M. May

(REPORTER)