

## Pacific Legal Foundation on the wrong side of history

by *Bill Berkowitz*

Partially funded by conservative foundations, legal advocacy group fights for re-segregation of America

In early December several hundred pro-affirmative action demonstrators carrying signs reading "Fight for Equality" gathered outside the U.S. Supreme Court to witness to an historic occasion. For the first time since the ground breaking 1954 *Brown v. Board of Education*, when the Supreme Court ruled against separate but equal in America's public schools, the justices were hearing a case that could test that landmark ruling.

According to the Associated Press, the Supreme Court heard arguments in two cases testing when race may be used as a basis for assigning students to public schools. "The school policies in contention...are designed to keep schools from segregating along the same lines as neighborhoods," the AP reported. In Seattle, Washington, "only high school students are affected," while the Louisville, Kentucky "plan applies system-wide."

The Seattle Times pointed out that in attendance at the proceedings were the widow of Thurgood Marshall -- "the first African-American Supreme Court justice who, as a young lawyer, argued and won the landmark school-integration case *Brown v. Board of Education* in 1954," Sen. Edward Kennedy, D-Mass., "who co-authored a brief supporting the Seattle and Louisville, Ky., school districts' use of race in assigning students to schools," and John Heyburn II, the U.S. district judge "who ruled in the Louisville case, showed up to see what the court thought of his ruling."

In its brief to the court, the Seattle school district pointed out that "The plan has prevented the re-segregation that inevitably would result from the community's segregated housing patterns and that most likely would produce many schools that might be perceived as 'failing.'" (For more on the arguments see [ScotusBlog](#).)

The Bush administration is siding with "parents who are suing the school districts, much as it intervened on behalf of college and graduate students who challenged affirmative action policies before the Supreme Court in 2003," AP reported.

The Pacific Legal Foundation (PLF), a Sacramento, California-based anti-affirmative action legal organization is aiding the Seattle parents hoping to have that city's school integration plan scuttled, and is part of the team fighting Louisville's school district. The foundation submitted legal briefs to the Supreme Court supporting challenges to the integration plans.

"The impact of the decisions in these two cases is going to transcend Louisville and Seattle because there are

many school districts around the country, according to studies, that continue to use race in one degree or another in the assigning of kids to schools," said Harold Johnson, a Pacific Legal Foundation attorney. "There isn't the academic support for these social engineering policies. They may make some people feel good, but we don't see the evidence that they are raising achievement levels."

Founded in 1973, in recent years, the PLF has been at the hub of battles against affirmative action. A PLF press release stated: "On March 5, 1973 government regulators found a foe; mainstream Americans found a friend; freedom in America found new meaning. On that day, Pacific Legal Foundation was established turning the voices that wouldn't be heard into the voices that couldn't be silenced. Since then, PLF has filled the void and has proven itself as a potent representative in the courts for Americans who have grown weary of overregulation by big government, over-indulgence by the courts, and excessive interference in the American way of life."

In October of last year, as a way of honoring the accomplishments of Ward Connerly and marking the 10-year anniversary of Proposition 209 -- the California initiative prohibiting racial preferences in public education -- the PLF sued the Berkeley school district, "alleging its school assignment policy violates" the proposition. Paul Beard, the lead lawyer for the case, called Connerly, a wealthy African American businessman who has spearheaded anti-affirmative action initiatives around the country, "the spokesperson for racial equality, in our viewpoint."

"In 2001, PLF represented Connerly's American Civil Rights Institute (ACRI) and provided pro-bono counsel to then California Governor Pete Wilson in a successful effort to expand the scope of Prop. 209," Diversity News' Jennifer Millman recently reported.

According to ExxonSecrets.org, PLF received initial financial support from initial financial support came from members of the California Chamber of Commerce and J. Simon Fluor of the Fluor Corporation's oil, nuclear and mineral dollars. Since 1998, PLF has received more than \$100,000 from ExxonMobil.

Between 1985 and 2005, the PLF received more than \$5 million in grants from right wing foundations. Unlike most mainstream press reports on the Supreme Court hearing, which were satisfied to identify the Pacific Legal Foundation as a conservative legal group and leave it at that, Jennifer Millman took a closer look at the organization's funding stream.

She found that amongst the organizations consistent and largest benefactors were five influential and aggressive right wing foundations: the Scaife Family Foundations, the Castle Rock (Coors) Foundation, the now-defunct John M. Olin Foundation, and the Lynde and Harry Bradley Foundation.

The following are excerpts from Millman's report:

## Scaife Family Foundations

The Scaife Family Foundations -- Sarah Scaife, Carthage and Allegheny -- are funded by industrial tycoon Richard Mellon Scaife, who inherited \$200 million from his mother in the 1960s. He was a presidential appointment of the U.S. Advisory Commission for Public Diplomacy during the Reagan and first Bush administrations.

Scaife gave former U.S. attorney general Edwin Meese \$1.9 million to start PLF. Between 1985 and 2005, Scaife gave more than \$4.5 million to PLF. He is the primary supporter of the Heritage Foundation, of which he is a trustee and Meese a former staff member.

Scaife funds Connerly's ACRI, [Linda] Chavez's CEO [Center for Economic Opportunity - Equal Opportunity Foundation], and the Center for Individual Rights, which together comprise the triumvirate leading the campaign to end affirmative action. Other major grant recipients include the National Association of Scholars, co-author of Prop. 209 -- which banned affirmative action in California -- and the Manhattan Institute for Public Policy Research. UCCR Vice Chair Abigail Thernstrom, a Manhattan Institute senior fellow, is on the board of the Equal Opportunity Foundation, which directs funding for CEO.

## Castle Rock Foundation

Coors Brewing Company's support for anti-gay groups led to a 10-year boycott led by AFL-CIO in 1977. Pressured to reform, Coors began funding Black and Latino groups through the Adolph Coors Foundation and became one of the first companies to offer domestic-partner benefits to employees in 1995. In 1993, the Coors family created the Castle Rock Foundation to separate the Coors name from its conservative agenda. The Castle Rock and Adolph Coors Foundations have the same board of directors, the same staff and the same address.

Coors co-owner Joseph Coors founded and financed the conservative Heritage Foundation, which later received most of its support from Richard Mellon Scaife. Coors was a Heritage trustee until March 2003. Ambassador Holland Coors, President Reagan's appointment to the National Year of the Americas, has been on the board since 1998.

Major grant recipients include the Heritage Foundation, the National Association of Scholars and the Institute for Justice, which was founded by anti-affirmative-action leader Clint Bolick, a disciple of ultraconservative U.S. Supreme Court Justice Clarence Thomas. Castle Rock gave PLF \$340,000 between 1985 and 2005.

## John M. Olin Foundation

The New York-based John M. Olin Foundation grew out of a family-owned chemical and munitions manufacturing business. The foundation, which dissolved in 2005, was charged with spending all assets within a generation of Olin's death, lest its mission be altered. Grant recipients included CEO, the Heritage Foundation, the National Association of Scholars and the Manhattan Institute. Specifically, Olin funded the research of CEO founder Linda Chavez and former Secretary of Education William Bennett.

When former Olin Foundation President [the late] Michael Joyce left to run the Bradley Foundation, William Simon, who was secretary of the treasury [under] Nixon and Ford, took over. Joyce had worked under Simon at a neoconservative think-tank prior to joining Olin, and it was Simon who asked him to take the helm at Bradley. Olin gave PLF \$669,000 between 1985 and 2005.

## Bradley Foundation

The Allen-Bradley Company, a manufacturer of electronic and radio equipment, was one of the last major Milwaukee-based companies to racially integrate, which it did only under legal pressure. In 1968, the company had 7,000 employees, only 32 of whom were black and 14 Latino. When the Allen-Bradley company was sold in 1985, the name of the foundation was changed to the Lynde and Harry Bradley Foundation to separate the company name from its conservative cause.

Bradley is the principal supporter of [Ward] Connerly's ACRI [American Civil Rights Institute]. ACRI co-chair Thomas Rhodes is on the Bradley board of directors...

The foundation gives to the Institute for Justice, where founder Clint Bolick drafted a federal bill to eliminate affirmative action. Other major grant recipients include the Heritage Foundation, the National Association of Scholars and the American Enterprise Institute...Bradley gave PLF \$327,000 between 1985 and 2005.

Recently, the PLF was asked by the Michigan Civil Rights Initiative Committee, the campaign organization that sponsored Proposal 2 -- the Michigan anti-affirmative action initiative that was successful in November's election -- to defend the measure against legal challenges. Looking ahead to any potential legal battle over Proposal 2, Alan W. Foutz, a lawyer with the Pacific Legal Foundation, said, "We think that most of the arguments to be hurled at it already have been thoroughly vetted and rejected by the courts."

Fighting to re-segregate America is not the only battlefield for the PLF, Scott Silver, the executive director of Wild Wilderness, pointed out in an email exchange. The organization "is the anchor of the wise-use

property rights movement. They are a well funded legal hit shop that routinely litigates on a broad range of anti-social, anti-democratic and anti-environmental issues.

"Unlike conservative think tanks supported by the usual suspects -- Scaife, Coors, Bradley, ExxonMobil -- PLF delivers much more than merely white-papers and op-eds written with the hope of slowing shifting public opinion, perception and policy," Silver added. "PLF earns its retainer by delivering law suits against such things as Equal Rights, Endangered Species and Clean Air."

"Anti-environmental from the start," ExxonSecrets.org pointed out, "PLF's early actions supported the use of DDT, the use of herbicides in national forests, and the use of public range land without requiring an environmental impact review." The organization "also supported at least six pro-nuclear power cases before the early eighties while accepting funding from Pacific General Electric (PGE), a utility which has gained a great deal through the development of nuclear power in the Pacific Northwest.

"In the nineteen-eighties PLF won several cases that are considered landmarks by those working on property rights issues today: Nollan v the California Coastal Commission and First Church, both Supreme Court victories which provide precedence for the takings litigation pursued today...In October 2003, PLF Vice President M. David Stirling had an Op-Ed published in which he defended President Bush's environmental record and condemned former President Clinton for endorsing the Kyoto Protocol."

"When PLF wins a legal battle, the harm occurs almost immediately and may be felt for decades," Scott Silver noted. "In the case of species extinction and global warming, the harm may last forever."

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