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I. Introduction

The case *Roe v. Wade* sparked the flame igniting the idea of the protection of a fetus.¹ Nevertheless, modern fetal protection laws differ because the issue of a woman’s choice is not at the heart of the debate, in many cases, because in a great many cases, the fetus is murdered by a third party.² In April of 2003, ABC News reported that with the exception of medical complications, murder was the primary cause of death in pregnant women.³ Although fetal protection laws differ from state to state, each seems to share a common goal of protecting the mother and unborn fetus from harm committed by third parties.⁴ The killing of a pregnant woman and her unborn child has been defined as femicide⁵ and feticide,⁶ respectively.

The murder of Lacy Peterson and her unborn child reignited the flame surrounding the issue of fetal protection.⁷ The world was also shocked when it was reported that Mark Hacking

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¹ RESERVE.
⁴ RESERVE.
of Utah was arrested and charged with the aggravated murder of his pregnant wife Lori Hacking. Many were astonished in 1999, prior to the Peterson and Hacking cases, when news reports revealed that professional athlete Ray Carruth was charged with conspiracy to murder his pregnant girlfriend and unborn child because of her refusal to have an abortion. In 2002, Paul Nino Tarver of Ohio was convicted of aggravated murder of his unborn child and felonious assault of the mother of the child. And in Texas in May of 2004, Gerardo Flores was convicted of two counts of capital murder and sentenced to life in prison for causing the death of his two unborn children. But can feticide be committed by a mother of her own fetus? This article will explore this question. This article will also address the differences in infanticide laws across the country while analyzing the aforementioned highly publicized cases.

II. Feticide Defined?

As stated above, feticide is defined as the killing of an unborn child. The problem is determining whether a fetus is defined as a person. Otherwise, the argument arises of whether the killing of a fetus can be defined as a crime. So how is “life” defined?

In Roe v. Wade, the Supreme Court defined viability as “the period at the end of the second trimester of pregnancy when the fetus is capable of surviving outside of the womb.”

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13 Sandra L. Smith 41 Wm and Mary L. R. at 1851.
there is quickening, which is defined as the period prior to viability when the mother first feels the fetus move in the womb usually between the sixteenth and eighteenth week of pregnancy.\footnote{Sandra L. Smith 41 Wm and Mary L. R. at 1855.} At common law, this was the period when the fetus was first considered alive and killing a quickened fetus was homicide, but not murder.\footnote{Sandra L. Smith 41 Wm and Mary L. R. at 1856.}

### III. Feticide Laws/Fetal Protection Laws

Most states have a separate statute with punishment for the crime of feticide, while other states include punishment for the crime in their manslaughter or murder statutes.\footnote{FETICIDE LAWS, \url{http://members.aol.com/abtrbng/feticide.htm}, last visited 2/6/2006.} In Massachusetts, South Carolina, and Oklahoma, common law murder has been applied to the killing of a fetus.\footnote{FETICIDE LAWS, \url{http://members.aol.com/abtrbng/feticide.htm}, last visited 2/6/2006 citing Commonwealth v. Cass, 392 Mass. 799, 467 N.E.2d 1324 (1984); State v. Horne, 319 S.E.2d 703 (S.C. 1984); and Hughes v. State, 868 P.2d 730 (Okl.Cr. 1994). See also, Commonwealth v. Lawrence, 404 Mass. 378, 536 N.E.2d 571 (1989) (holding that "a viable fetus was a 'human being' for purposes of common law murder.").}

Minnesota and California statutes classify the killing of a fetus as murder.\footnote{FETICIDE LAWS, \url{http://members.aol.com/abtrbng/feticide.htm}, last visited 2/6/2006.} The law in Minnesota represents the most radical treatment of the killing of a fetus because it applies at the time the fetus is conceived.\footnote{See Minnesota Code § 609.266.2691 (1986).} The Minnesota statute has been reviewed by the Minnesota court system in \textit{State v. Merrill}.\footnote{450 N.W.2d 318 (1990).}

In Merrill, . . .

In California, the classic case of \textit{Keeler v. Superior Court of Amador County},\footnote{87 Cal.Rptr. 481, 470 P.2d 617 (1970).} set the tone for punishment of the crime of
infanticide. In the Keeler case, a husband kneed his wife in the abdomen while confronting her for becoming pregnant with another man’s child. The husband indicated to his wife that he was going to stomp the baby out of her. The woman was 35 weeks pregnant when she arrived at the hospital. The emergency room health care providers performed a cesarean procedure, which produced a stillborn child with a fractured skull. California’s Penal Law § 187 defined murder as “the unlawful killing of a human being, with malice aforethought.” Mr. Keeler was charged with murder pursuant to § 187. In a 5-2 decision, the California Supreme Court held that § 187 could not apply to the Keeler case because the child was not born alive. Up until that time, the crime committed in the Keeler case was classified as feticide, “which was not a crime under California law.” As such, California amended § 187 as a result of the Keeler decision. Since § 187 was amended it has been upheld by the California Supreme Court applying the crime of murder to the killing of a fetus as young as seven weeks old.

In general, states can be divided into those adopting a born alive rule and those that punish defendants convicted of killing a fetus that is not born alive.

The origination of the common law born alive rule can be
traced to England and is premised on the medical technology of the 16th Century. The common law born alive rule set forth that live birth, regardless of the age of the fetus, was the moment when actual life could be observed from a clinical standpoint. It was difficult for early medical technology to distinguish between death from natural causes and injuries inflicted on the fetus while still in the womb. This law was continued in the 17th Century and it was generally held that the killing of an unborn fetus was not murder. This common law born alive rule was continued in the 18th Century as well. Many American states adopted the born alive rule.

A North Carolina court considered applying the born alive rule in *State v. Beale*. Mr. Beale was indicted for the murder of his wife and unborn child when he fired a shotgun at his wife. The North Carolina Supreme Court held that the state’s murder statute did not include the killing of an unborn viable fetus, although the court previously recognized a viable fetus as a person for the purpose of construing the state’s wrongful death statute. The

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court held that the state’s criminal statute specifically excluded a fetus as a victim and noted that the legislature could have amended the murder statute to correct this problem, but it did not.\textsuperscript{40}

Courts in Alabama, Kentucky, Maryland, New Jersey, New York and Texas maintain the “born alive” and have held, in addition, that if a fetus is injured prior to birth and then dies, the offender may be charged with homicide.\textsuperscript{41} Then some states require the fetus reach a certain stage of development.\textsuperscript{42}

As stated above, the issue of determining whether a fetus is a human being sparks the fire fueling the debate surrounding the abortion controversy.\textsuperscript{43} Twenty-six states permit homicide charges in deaths of fetuses.\textsuperscript{44} The laws in 14 states set forth that an individual may be charged with murder of a fetus at any stage of development.\textsuperscript{45} While the laws in the remaining 12 states, including California, state that the fetus must reach a certain stage of development before an individual may be charged with its murder.\textsuperscript{46} In California, a fetus must only pass the embryonic stage – approximately 7 or 8 weeks.\textsuperscript{47}

Nine conservative Republican senators have backed legislation that would allow federal homicide or manslaughter charges to be filed against an individual who kills a fetus while committing another violent federal crime.\textsuperscript{48} In 2001, the House of Representatives approved similar legislation by a vote of 252 to

\textsuperscript{40} State v. Beale, 376 S.E.2d 1, 4 (N.C. 1989).
\textsuperscript{41} Sandra L. Smith 41 Wm and Mary L. R. at 1850.
\textsuperscript{42} Sandra L. Smith 41 Wm and Mary L. R. at 1851.
\textsuperscript{44} Michael Doyle, Fetal Death Charges Add Fuel to Fire.
\textsuperscript{45} Michael Doyle, Fetal Death Charges Add Fuel to Fire.
\textsuperscript{46} Michael Doyle, Fetal Death Charges Add Fuel to Fire.
\textsuperscript{47} Michael Doyle, Fetal Death Charges Add Fuel to Fire.
\textsuperscript{48} Michael Doyle, Fetal Death Charges Add Fuel to Fire.
172. However, the debate regarding abortion rights has muddied the waters and it is unclear whether the proposed legislation will become law. The National Organization for Women believed the bill was an attempt to elevate fetal rights over a woman’s right to abortion.

IV. Cases Involving Fathers or Other Third Parties Killing or Causing Harm to a Fetus

A. State of California v. Scott Lee Peterson

1. BACKGROUND – FACTS

On Tuesday, December 23, 2002 the search began for a woman who was eight months pregnant and reported missing from her home on Covena Avenue in La Loma, Modesto, California. The missing woman later became adoringly known as Laci Denise Peterson who was 27 years old. Laci’s husband became infamously known as Scott Peterson and was later convicted of Laci and their unborn son. Scott told police that he went on a fishing trip on Tuesday, December 23, 2002 and that Laci indicated that she was going to go grocery shopping and walk the dog. People reported seeing Laci in the park at about 10:00 a.m. Tuesday morning. The Peterson’s neighbor reported that she spotted the Peterson’s dog at about 10:30 a.m. on Tuesday and that

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49 Michael Doyle, Fetal Death Charges Add Fuel to Fire.
50 Michael Doyle, Fetal Death Charges Add Fuel to Fire.
51 Michael Doyle, Fetal Death Charges Add Fuel to Fire.
54 Dugan and Sly, Woman Vanishes on Walk.
55 Dugan and Sly, Woman Vanishes on Walk.
56 Dugan and Sly, Woman Vanishes on Walk.
the dog’s leash was attached and muddy. The neighbor returned the dog to the Peterson’s yard never thinking anything was wrong. Laci last spoke to her mother, Sharon Rocha at approximately 8:30 p.m. on December 23, 2002. Scott reported that he attempted to contact Laci on her cell phone upon completing his fishing trip, but he was not able to contact her. Scott further reported that when he arrived home, he found Laci’s automobile in the driveway and her purse in the house. Scott called Laci’s father and Laci’s father called the police. Police officials immediately went into the park to search for Laci despite the darkness. The Stanislaus County Sheriff’s Department dispatched pilots, helicopters, searchlights and heat-sensing devices. Firefighters who searched Dry Creek in inflatable rafts with water rescue equipment; police on horseback and bicycle and canine units were also dispatched in the initial search that began on Tuesday evening and continued into Wednesday, December 24, 2002. However, Laci could not be found.

Laci Peterson formerly Laci Rocho grew up in Modesto and graduated from a Modesto area high school in 1993. Laci and Scott met while they were students at California State Polytechnic University in San Luis Obispo, California. At the time Laci was reported missing, she was a substitute teacher. Laci and Scott lived at their home on Covena Avenue about two

57 Dugan and Sly, Woman Vanishes on Walk.
58 Dugan and Sly, Woman Vanishes on Walk.
60 Dugan and Sly, Woman Vanishes on Walk.
61 Dugan and Sly, Woman Vanishes on Walk.
62 RESERVE.
63 Dugan and Sly, Woman Vanishes on Walk.
64 Dugan and Sly, Woman Vanishes on Walk.
65 Dugan and Sly, Woman Vanishes on Walk.
66 Dugan and Sly, Woman Vanishes on Walk.
67 Dugan and Sly, Woman Vanishes on Walk.
68 Dugan and Sly, Woman Vanishes on Walk.
69 Dugan and Sly, Woman Vanishes on Walk.
Laci was described as cheerful and friendly. Family and friends reported that Laci took daily walks a short distance from her home to East La Loma Park in the Dry Creek Regional Park. Scot Peterson was born on October 24, 1971 in San Diego, California. Scott was the youngest of his parents’ seven children. It is reported that Scott enjoyed a normal happy childhood. Scott’s father was a sportsman who enjoyed hunting, fishing and golf and he shared these hobbies with Scott and his other sons. Scott learned the value of community service in school and was reported as someone who helped others. Scott became a good golfer and made the golf team at University High in San Diego. Scott briefly played golf at Arizona State University, but eventually ended up at Poly Tech where he met Laci. Scott and Laci met one day when Scott worked as a waiter at the Pacific Café. They became friends and quickly fell in love. Scott and Laci opened a restaurant together in San Luis Obispo. The restaurant was called The Shack and was a popular hangout for college students. Scott and Laci sold the restaurant two years later and move to Modesto to be closer to family.

As of December 30, 2002, more than 600 volunteers

70 Dugan and Sly, Woman Vanishes on Walk.
71 Dugan and Sly, Woman Vanishes on Walk.
distributed leaflets, answered phones searched portions of the park and river in an effort to find Laci. Authorities even questioned registered sex offenders and offenders on parole who had a history of violence who lived in the La Loma neighborhood. Nevertheless, there were no breaks. At some point FBI officials arrived at the Peterson home. The FBI took the Peterson’s vehicle, which included Laci’s Land Rover and Scott’s F-150 Pickup. Police brought in a bloodhound, but the bloodhound led authorities away from Dry Creek, which is where it was believed Laci disappeared. In addition, the handler of the bloodhound indicated that Laci left her home in a car, not on foot. A woman reported that she heard screams at about 10:15 a.m. on Christmas Eve in the area of the park. Scott provided authorities with a receipt from the Berkeley Marina where he reported that he was fishing when his wife disappeared. At the time authorities would not confirm whether Scott Peterson had been asked to take a polygraph.

Meanwhile, a burglary occurred at the home across the street from the Peterson home around the same period of time that

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85 Michael G. Mooney, *Search Presses on, But No Trace, Breaks*.
86 Michael G. Mooney, *Search Presses on, But No Trace, Breaks*.
87 Patrick Giblin, *FBI Joins Inquiry into Woman’s Disappearance*.
88 Patrick Giblin, *FBI Joins Inquiry into Woman’s Disappearance*.
89 Patrick Giblin, *FBI Joins Inquiry into Woman’s Disappearance*.
91 Patrick Giblin, *FBI Joins Inquiry into Woman’s Disappearance*.
Laci went missing. Authorities contemplated the idea that maybe Laci interrupted the burglary. At that time, police did know the exact day and time of the burglary – they only knew that it occurred around Christmas while the homeowners were out of town. However authorities determined that the burglary had nothing to do with Laci’s disappearance because the burglary took place between 4 and 7 a.m. on December 26, 2002, which was several days after Laci had already been reported missing.

All were so desperate for answers that psychics, tarot card readers and pet communicators began to speculate about what caused Laci’s disappearance. However, law enforcement officials believed the information provided these individuals was too general and in some cases inaccurate.

At some point in the investigation, officials began definitively looking at Scott as a suspect in the disappearance of Laci. Officials determined that Scott attended California State Polytechnic University in San Luis Obispo, California at the same time as Kristin Smart, who disappeared on May 25, 1996. In addition, Scott denied a report that he was having an affair and that he took out a $250,000.00 life insurance policy on Laci the

96 Ty Phillips, *Burglary Suspects Didn’t Take Woman*.
97 Ty Phillips, *Burglary Suspects Didn’t Take Woman*.
summer prior to her disappearance.\textsuperscript{102} After this information was revealed, Laci’s family began to distance themselves from Scott.\textsuperscript{103} It was reported that Laci’s father asked Scott if he was having an affair and Scott denied that he was having an affair.\textsuperscript{104} Early in the investigation, Scott retained criminal defense attorney, Kirk McAllister.\textsuperscript{105} Those close to Laci maintained that she opened the drapes in her home every morning.\textsuperscript{106} An unidentified family member stated that she did not think Laci made it through the night because if she were alive on the morning of December 23, 2002, she would have opened the drapes.\textsuperscript{107} In addition, investigators did not believe that Laci left her home voluntarily because most of her cell phone, purse and other such belongings were still at her house; and she would have taken these items if she left the house voluntarily.\textsuperscript{108}

Then when the nation thought it had heard it all regarding this sensational story, Amber Frey, a 28-year-old Fresno woman revealed that she had, in fact, had an affair with Scott.\textsuperscript{109} Ms. Frey reported that she met Scott on November 20 just prior to Laci’s disappearance and Scott told her that he was not married.\textsuperscript{110} Ms. Frey reported that when she learned who Scott was Laci’s

\textsuperscript{102} Ty Phillips, Peterson Eyed for Link to Missing Student.
\textsuperscript{103} Ty Phillips, Peterson Eyed for Link to Missing Student.
\textsuperscript{104} Ty Phillips, Peterson Eyed for Link to Missing Student.
\textsuperscript{105} Ty Phillips, Peterson Eyed for Link to Missing Student.
\textsuperscript{106} Ty Phillips, Peterson Eyed for Link to Missing Student.
\textsuperscript{107} Ty Phillips, Peterson Eyed for Link to Missing Student.
husband, she immediately contacted the police. Ms. Frey was eliminated as a suspect. Brent Rocha, Laci’s older brother, reported that Scott admitted to him that he was having an affair with a Fresno woman. Police finally revealed Ms. Frey’s identity because reporters were beginning to contact her. Ms. Frey worked as a massage therapist in Fresno. She was single and had a 23-month-old daughter at the time she met Scott. Scott met Ms. Frey’s daughter. Reportedly, Ms. Frey was hurt when Scott told her that he had to go out of town for the Christmas holiday. Scott told Ms. Frey that he was going to Paris and that his job required that he travel frequently.

Scott began to conduct television interviews in an effort to contradict suspicions that he had killed Laci. On one occasion more than 12 media vans had set up outside of the Peterson home. However, Scott’s actions were contradicting his story. He was observed at a New Year’s Eve vigil for Laci, laughing and smiling.

116 Louis Galvan, Daughter Fooled by Peterson, Father Says.
117 Louis Galvan, Daughter Fooled by Peterson, Father Says.
118 Louis Galvan, Daughter Fooled by Peterson, Father Says.
119 Louis Galvan, Daughter Fooled by Peterson, Father Says.
121 Ty Phillips, Peterson Tackles Rumors, Reports.
Although Scott tried to explain the $250,000.00 life insurance policy, the reason the drapes were closed and the cuts on his hands, he made statements such as “she was amazing – she is amazing.” When Scott was asked about his baby boy that was due within weeks, Scott replied “that was, it’s so hard.” Scott also stated that he told Laci about the affair because the guilt was eating him up. Experts stated that Scott’s eyes often shifted to the side when he was asked a difficult question. Experts also opined that his change of past-tense to present tense when speaking of his wife and child was also a tell-tell sign of deception. Nick Flint, President of the Behavior Analysis Training Institute in Santa Rosa, California stated that the more Scott talked the better if was for the investigation. Mr. Flint states that people have a tendency to talk when they are trying to hide the truth. Mr. Flint teaches interviewing and deception-detection techniques and instructs his students on how to look for the misuse of tense and other deception. Mr. Flint states that grief is the hardest emotion to fake. Then Scott traded in Laci’s Land Rover for a 2002 Dodge pickup and it was not yet confirmed that she was dead. Since that transaction, however, the Land Rover was returned to Laci’s mother. Authorities returned to the Peterson home and hauled away approximately 50 bags of evidence during their 10-hour search. Authorities also confiscated

122 Ty Phillips, *Peterson Tackles Rumors*, Reports.
123 Ty Phillips, *Peterson Tackles Rumors*, Reports.
130 Ty Phillips, *Peterson Suspicious in Eyes of Experts*.
132 *Police Search Peterson Home, Confiscate New Truck*. 
the new Dodge pickup. By all accounts, it appeared as if the State were getting the case ready for trial. A detective reported that they take measurements so that they can put items back in their proper place during trial.

Although the whereabouts of Laci were not yet certain, statistics indicated that if Laci had been killed, it was likely that she was killed by someone close to her. According to the California Department of Justice, more than 63% of victims of homicide knew their attacker. This is why officials usually initiate their investigation by investigating family members when they suspect a homicide has occurred. As such, it only follows that investigators ultimately focused their investigation on Scott Peterson. According to California homicide statistics, approximately 46% of victims were related to their killers and nearly 7% of victims were killed by their spouse. According to several studies on marriage, including a 1998 study conducted by the Center of AIDS Prevention Studies at the University of California at San Francisco, nearly 1/5 of spouses will have affairs during their marriage, although few end in homicide. However, Laci’s case added an additional component – she was pregnant. Laci was due to give birth to her son on February 10, 2003.

135 Patrick Giblin, Probe of Peterson House continues for Second Day.
137 Patrick Giblin, Homicide Victims Usually Know Killer.
138 Patrick Giblin, Homicide Victims Usually Know Killer.
139 Patrick Giblin, Homicide Victims Usually Know Killer.
140 Patrick Giblin, Homicide Victims Usually Know Killer.
141 Patrick Giblin, Homicide Victims Usually Know Killer.
142 Patrick Giblin, Homicide Victims Usually Know Killer.
According to a 2001 study conducted by the American Medical Association, the leading cause of death of a pregnant woman is homicide.\(^{143}\) Researchers randomly studied 247 cases of pregnant women who died and found that 50 of them were murdered.\(^{144}\) Generally, pregnant women do not engage in risky activities and are engaging in safe, healthy activities, so their deaths would most likely be as a result of something out their control.\(^{145}\)

As time went on with no sign of Laci, investigators began to believe that Laci was the victim of homicide.\(^ {146}\) Jeanette Sereno, an attorney and assistant professor of criminal justice at California State University, Stanislaus opined that if there was an arrest, the individual would likely be charged with a double homicide and the possibility of the death penalty.\(^ {147}\) Although the law varies in many states, “California law defines murder as the unlawful killing of a human being or a fetus with malice aforethought.”\(^ {148}\) “The unborn child must pass the embryonic stage – between 6 and 8 weeks.”\(^ {149}\) “Anyone convicted of more than one first or second degree murder is eligible for special circumstances, which can include the death penalty.”\(^ {150}\) Ms. Sereno states that an individual takes the chance of harming a woman of child bearing years because that individual assumes the risk of the possibility that the woman may be pregnant.\(^ {151}\) With Laci, it was clearly obvious that she was pregnant because she was nearly full term and any homicidal act against her would be with full knowledge that two

\(^{143}\) Patrick Giblin, *Homicide Victims Usually Know Killer.*

\(^{144}\) Patrick Giblin, *Homicide Victims Usually Know Killer.*

\(^{145}\) Patrick Giblin, *Homicide Victims Usually Know Killer.*


\(^{148}\) Ty Phillips, *Double Homicide Charge Likely.*

\(^{149}\) Ty Phillips, *Double Homicide Charge Likely.*

\(^{150}\) Ty Phillips, *Double Homicide Charge Likely.*

\(^{151}\) Ty Phillips, *Double Homicide Charge Likely.*
deaths would be involved.152

East Bay Area Regional Park police notified the Modesto Police that two bodies were discovered near Point Isabel Regional Shoreline.153 One of the bodies belonged to a female and was found the day after two people walking their dog discovered the body of a full-term male child.154 The baby was found approximately one mile north of where the female body was found.155 The bodies were found in the same area where Scott claimed he went boating on the day of Laci’s disappearance.156 Investigators will have to rely on DNA testing to determine the identities of the two bodies, since there was no fingerprint or dental evidence.157 In the meantime, a human bone was found was found in the area of Berkeley Marina.158 After weeks of testing the bodies, tests confirmed that the bodies were those of Laci and her unborn son, Connor.159 Sources confirmed that when Laci’s body

was found, it was missing her head and feet. In addition, it was reported that most of her torso was missing and there were no organs, skin. Two forensic pathologist offering differing opinions on whether the body was mutilated before or after being dumped in the San Francisco Bay. New York forensic pathologist, Dr. Michael Baden believed the body was mutilated before it was placed in the Bay. Dr. Baden opined that a body has the ability to stay together pretty good under water. Dr. Baden stated that marine animals do not have a tendency to chew through tough ligaments and that although extremities separate in water, it is not common for this to occur in four months. Dr. Baden stated that this type of separation would take years to occur. On the other hand, Santa Clara Coroner, Dr. Gregory Schmuck, opined that it was perfectly natural for such separation to occur because the body could have encountered boat propellers or feeding animals.

2. ARREST – TRIAL

A week later, FBI agents and San Diego law enforcement officials arrested Scott Peterson as he drove near Torrey Pines Golf Course in La Jolla, California in a Mercedes-Benz on April 18, 2003. It was reported that Scott had $15,000.00 in cash with
him and his hair and goatee appeared to have been dyed.\footnote{169} However, Scott stated that his hair was bleached as a result of swimming in a friend’s pool.\footnote{170} No doubt prosecutors intended to prove that Scott attempted to conceal his identity because he intended to flee the country after killing Laci and his unborn son.\footnote{171} Scott plead not guilty to two capita murder charges during his arraignment.\footnote{172} At this arraignment, Scott also requested the court appoint him an attorney due to his inability to afford one.\footnote{173} Prosecutors intend to argue that both killings were premeditated.\footnote{174} Under California law, when an individual is charged with capital murder, he or she is not eligible for bail if there is a great presumption of guilt.\footnote{175} Judges must weigh the safety of the public, the seriousness of the charge, the defendant’s criminal record and the defendant’s probability of being present for trial when considering the issue of bail.\footnote{176} The guideline bail for accused murders in Stanislaus County is no bail.\footnote{177} Assistant District Attorney Carol Shipley opined that in her 12 years of experience, she was not aware of any instance where bail was set for a defendant accused of capital murder.\footnote{178} There was speculation about whether Scott could get a fair trial in Modesto. However the prosecutor vowed that he would oppose any motion to have the

\begin{itemize}
\item John Cote, \textit{Source: Warrant for Peterson Hair}.
\item John Cote, \textit{Source: Warrant for Peterson Hair}.
\item John Cote, \textit{Scott Peterson Charged with 2 Counts of Murder}.
\item John Cote, \textit{Defense Team Set}.
\item John Cote, \textit{Defense Team Set}.
\item John Cote, \textit{Defense Team Set}.
\item John Cote, \textit{Defense Team Set}.
\end{itemize}
Experts speculated about whether jurors would be able to close their minds to television media information and render a fair verdict. The prosecutor decided that he would seek the death penalty. The decision was made after consulting with Laci’s family, the prosecution team as well as the defense team. California law allows the prosecutor to seek the death penalty when an individual is charged with more than one murder. It is reported that within weeks of Laci’s disappearance, the prosecution offered Scott a deal to take the death penalty off the table if Scott led them to the bodies. Experts stated that they never heard of a case where prosecutors offered a plea deal to a suspect prior to the suspect’s arrest, although prosecutors could have made the offer to induce Scott into making incriminating statements on wiretaps.

The death of Baby Girl Vogt over 35 years ago led to the California law allowing Scott Peterson to be charged with the murder of his unborn son, Connor. As stated above, Baby Girl Vogt died stillborn after her 8-month pregnant mother, Teresa Keeler was attacked by ex-husband, Robert Harrison Keeler. Physicians testified that they were reasonably certain that the fetus was viable and as such, Mr. Keeler was charged with murder. However, Associate Justice Stanley Mosk in the Supreme Court

179 John Cote, Defense Team Set.
180 John Cote, Defense Team Set.
182 John Cote, DA Wants Death Penalty.
183 John Cote, DA Wants Death Penalty.
185 John Cote, Peterson Rejected Deal in January.
187 Michael Doyle, Fetal Death Charges Add Fuel to Fire.
188 Michael Doyle, Fetal Death Charges Add Fuel to Fire.
opinion that Mr. Keeler could not be found guilty of murder because the fetus was not a human being within the meaning of the statute. In response to this decision, outraged California legislators updated the statute to include killing a fetus. Many also believe this case is very similar to People v. Bunyard, a case tried in 1981. Like the Peterson case, Jerry Bunyard’s wife was pregnant with their first child; Mr. Bunyard was also having an affair; and he killed his wife and their unborn child. Bunyard and his wife Elaine were married 3 years. Elaine was a nurse’s aide and was due to give birth within days of her death. Mr. Bunyard was not excited about the arrival of the baby. It was reported that Mr. Bunyard wanted a divorce, but was afraid that his wife would “take him for everything he had.” So Mr. Bunyard hired a friend to kill Elaine in exchange for $1,000.00. Mr. Bunyard’s accomplice worked out a deal with the prosecution and received a 25-year sentence in exchange for his testimony against Mr. Bunyard. Although California law provides for a death sentence on a finding of murder for hire, the prosecution opted instead to convict Mr. Bunyard under the legislation that resulted from the Keeler case. Experts have stated that it would take a great deal of compelling evidence to prove that both murders were committed with the premeditation and malice required for a death sentence because it is hard to prove premeditation when there are no

189 Michael Doyle, Fetal Death Charges Add Fuel to Fire.
190 Michael Doyle, Fetal Death Charges Add Fuel to Fire.
191 RESERVE.
193 Garth Stapley, Peterson Charges Mirror ‘81 Trial.
194 Garth Stapley, Peterson Charges Mirror ‘81 Trial.
195 Garth Stapley, Peterson Charges Mirror ‘81 Trial.
196 Garth Stapley, Peterson Charges Mirror ‘81 Trial.
197 Garth Stapley, Peterson Charges Mirror ‘81 Trial.
198 Garth Stapley, Peterson Charges Mirror ‘81 Trial.
199 Garth Stapley, Peterson Charges Mirror ‘81 Trial.
Experts speculated that it would be hard for a jury to return a verdict of guilty on anything more than manslaughter, which would allow a sentence of no more than 11 years. Experts opined that even if it could be shown that Scott killed Laci, cut off her head and dumped the body in the river, it would still not be enough to prove premeditation. Nevertheless, Scott could still be found guilty of murdering his unborn son. If the baby were still alive, Scott would have a duty to try to save the baby by calling 911. Scott’s failure to do so could be found to show a conscious disregard for the life of his son.

Los Angeles defense attorney Mark Geragos took over as Scott’s defense attorney. Up until that time, Scott was represented by a court appointed attorney because Scott indicated that he could not afford an attorney at his arraignment. Mr. Geragos told the court that he was retained by Scott’s family. It was estimated that the Scott’s defense would cost the county more than $1 million.

Apparently Scott rented a private mailbox at The UPS Store on December 23 prior to Laci’s reported disappearance. The private mailbox came to the attention of a Postal Service worker after receiving a notice that the six-month rental contract

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201 Mareva Brown, *DA Goes for Death*.
202 Mareva Brown, *DA Goes for Death*.
203 Mareva Brown, *DA Goes for Death*.
204 Mareva Brown, *DA Goes for Death*.
205 Mareva Brown, *DA Goes for Death*.
207 Peterson Gets New LA Attorney.
208 Peterson Gets New LA Attorney.
209 Peterson Gets New LA Attorney.
210 Peterson Gets New LA Attorney.
had expired. Although Scott’s family explained that the Scott must have gotten the mailbox for use with his fertilizer sales, it was reported that the Scott’s application for the mailbox did not refer to his employment with the fertilizer company and listed his home address rather than his employer’s address.

Toxicology reports indicate that Laci had caffeine in her system when she died, but her unborn son did not. This could lead to a suggestion that the baby was born before he was killed and would assist in Scott’s defense. However, St. Louis County Chief Medical Examiner, Dr. Mary Case opined that she has never seen an unborn child with measurable amounts of caffeine in its system and that such caffeine levels just would not show up in a fetus.

Jury selection in the trial began on March 4, 2004. The prosecution began its opening statement on June 1, 2004. The trial lasted 23 weeks and 184 witnesses testified. Scott’s attorney asserted in his closing argument that the prosecution had not introduced any direct evidence that Scott killed anyone and asked the jury to put aside their feelings about Scott and weigh only the evidence. The prosecution told the jury that Scott was the only person who could have killed Laci and Connor. During the trial,

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212 John Cote and Garth Stapley, Source: Peterson Rented Private Mailbox Dec. 23.
214 John Cote and Garth Stapley, Caffeine Found in Peterson’s Body.
216 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
217 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
the judge dismissed juror no. 7 for doing her own research on the case during the trial. 219 The judge also dismissed juror no. 5, a doctor and lawyer who was the jury foreman, but no reason was given for the dismissal. 220 Juror no. 5 was replaced with juror no. 6 who was a firefighter. 221 Reporters indicated that he took few notes during the trial and at times appeared bored. 222 The six men-six women jury began deliberating on November 3, 2004. 223 The judge instructed the jury that it could convict Scott Peterson of first-degree murder, which carried the possibility of the death sentence or life without parole or second-degree murder, which carried the possibility of two 15 years to life sentences. 224 The judge explained that the jury could convict Scott of first-degree murder only if it found that intent to kill and premeditation were present. 225 The judge further explained that second-degree murder meant that Scott killed Laci and her unborn child, but did not plan the killings. 226

After three days and a total of 11 ½ hours of deliberations, the jury convicted Scott Peterson of first-degree murder with special circumstances. 227 On March 16, 2005, the judge upheld the jury’s recommendation and sent Scott to death row at San Quentin State Prison. 228

Meanwhile, Scott’s mother filed a claim against Laci’s

219 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
220 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
221 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
222 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
223 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
224 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
225 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
226 Peterson Guilty of Murder, Jury Faces Life-or-Death Decision.
228 Jury Recommends Death for Peterson, Victim’s Stepfather Says, ‘Justice Was Served.'
estate requesting $35,000.00 for maintaining Laci and Scott’s home during the time Laci was missing. Experts reported that this action was novel since law only allows creditor’s to seek payment for debts incurred prior to a person’s death – not after. Also, a judge ruled in favor of Sharon Rocha awarding her the $250,000.00 life insurance proceeds from the policy Scott took out on Laci. California law provides that when a person kills his or her spouse, that person gives up his or her rights to inherit from the deceased spouse’s estate.

Laci’s family voiced support for legislation that would categorize the killing of a fetus a federal crime. The bill was introduced in the House of Representatives and reintroduced in the Senate entitled the Unborn Victims of Violence Act. Lawmakers have been working toward this legislation for several years. This law would allow the federal government to charge individuals with killing a fetus if the fetus dies during the commission of a federal crime. California and 25 other states have laws allowing defendants to be convicted of murder when found guilty of killing a fetus between 6 and 8 weeks old. The federal version of the law is intended to protect a fetus at any stage

230 Garth Stapley, *Peterson’s Mom Files $35K Claim*.
of development. In 1999 and 2001 the House passed this legislation but it was not approved by the Senate. Of course, this legislation has revitalized the Roe v. Wade debate.

B. State of Utah v. Mark Hacking

1. BACKGROUND—FACTS

The State of Utah was recently presented with the unfortunate opportunity to test its fetal protection laws in the case of the State of Utah v. Mark Hacking. However, as will be seen below, the State of Utah was not able to apply its fetal protection laws to Mark Hacking’s case due to lack of physical evidence. The controversy began on July 19, 2004 at approximately 10:07 a.m. when Mark Hacking contacted police and reported that his wife, Lori Hacking was missing and that she had not returned home from a morning jog. Lori’s car was found near the area where she normally went on her morning jog. Apparently, Mark called some of Lori’s friends at approximately 10:00 a.m. indicating that Lori was missing. Mark purchased a new mattress at approximately 10:23 a.m. and contacted the police again at approximately 10:46 a.m. indicating that he found Lori’s

238 Michael Doyle, Laci Peterson Kin Back Bill on Killing Fetuses.
239 Michael Doyle, Laci Peterson Kin Back Bill on Killing Fetuses.
240 Michael Doyle, Laci Peterson Kin Back Bill on Killing Fetuses.
241 RESERVE.
242 RESERVE.
car at the park. However, police detectives found Lori’s car keys and wallet in her purse at home. Detectives discovered that Lori’s car seat and mirror’s were adjusted for a large man.

Mark Hacking was born April 24, 1976 and was the fifth of seven children in a Mormon family. Mark grew up in Orem, Utah. Mark’s father was a pediatrician. Mark and Lori were described as high school sweethearts and married on August 7, 1999. It was reported that earlier in Mark and Lori’s relationship, Mark was expelled from a church mission trip after the church learned that Mark seduced a young woman in the church. Mark hid this secret relationship from Lori and he also kept his consumption of alcohol and tobacco use from Lori. Apparently, when Mark returned home from the mission trip, he was treated for depression. At the time of the affair, Lori and Mark had been dating for about three years. Lori worked as an assistant stock broker.

There were reports that Lori was 5 weeks pregnant at the
time of her disappearance.\textsuperscript{257} Apparently, Lori told friends that had
taken a home pregnancy test that revealed that she was pregnant.\textsuperscript{258}
Mark admitted to police that his wife was pregnant, but Lori’s
mother, Thelma Soares stated that Lori never told her that she was
pregnant.\textsuperscript{259} A convenience store video camera captured the image
of Mark when he visited the store at approximately 1:30 a.m.
on July 19.\textsuperscript{260} The video tape showed Mark driving away from the
store in Lori’s car.\textsuperscript{261} Prior to discovering the existence of the video
tape, Mark told police that he was asleep at that time.\textsuperscript{262} The
convenience store video tape also revealed that Lori and Mark
visited the store at approximately 9:30 p.m. on July 18.\textsuperscript{263} During
that visit, Mark gestured to the clerk so that the clerk would not
tell Lori that Mark was frequently in the store buying cigarettes.\textsuperscript{264}
Meanwhile, later on the evening of July, 19, Mark called police to
a hotel in Salt Lake City where he had rented a room.\textsuperscript{265} The
police encountered Mark running around outside of the hotel

\textsuperscript{257} Tape Shows Mark After Alleged Murder, Fox News.com, available at
\textsuperscript{258} Mark Hacking Told Jailers He Used Alias, Fox News.com, available at
\textsuperscript{259} DA: Hacking Allegedly Admitted Killing Wife, CNN.com, available at
\url{http://www.cnn.com/2004/LAW/08/03/hacking/index.html}, last visited
\textsuperscript{260} Tape Shows Mark After Alleged Murder, Fox News.com, available at
\textsuperscript{261} DA: Hacking Allegedly Admitted Killing Wife, CNN.com, available at
\url{http://www.cnn.com/2004/LAW/08/03/hacking/index.html}, last visited
\textsuperscript{262} Tape Shows Mark After Alleged Murder, Fox News.com, available at
\textsuperscript{263} Tape Shows Mark After Alleged Murder, Fox News.com, available at
\textsuperscript{264} Tape Shows Mark After Alleged Murder, Fox News.com, available at
\textsuperscript{265} Families Urge Focus on Finding Lori Hacking, CNN.COM, available at
visited 8/4/2006. See also Tape Shows Mark After Alleged Murder, Fox
News.com, available at \url{http://www.foxnews.com/story/0,2933,127848,00.html},
naked and took him to a psychiatric hospital where Mark was admitted for observation and psychiatric care. Mark was admitted to the same psychiatric hospital where he worked as an orderly.

2. **ARREST – SENTENCING**

Although Lori’s body had not yet been found, police arrested Mark just prior to his scheduled release from the psychiatric hospital and charged with aggravated murder. At that time, formal charges had not been filed. A judge set Mark’s bail at $500,000.00 cash. Prior to Mark’s arrest police found a mattress in a garbage dumpster near the Hackings’ apartment that matched the serial number on a box spring detectives seized from the Hackings’ apartment. In addition authorities found human blood on a knife in the bedroom and blood on their headboard of the couple’s bed and the bedrail. This blood matched blood

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found in Lori’s car.  

At the time of his arrest, Mark made no admission of guilt. Nevertheless, it was reported that Mark told a patient in the psychiatric hospital that he killed Lori while she slept and threw her body in garbage dumpster. In addition, Mark told his brothers, Scott and Lance Hacking that he shot Lori in the head while she slept then placed her body and the .22-caliber gun in separate garbage dumpsters at about 2:00 a.m. on July 19. Since Scott made the statements while he was a patient in the psychiatric hospital, Scott’s attorney indicated that he would use a mental illness defense to combat the charges.  

Detectives uncovered what they believed was the motive for Lori’s murder. Lori and Mark had been making plans to move to North Carolina so that Mark could attend medical school. Lori’s co-workers reported that the Friday prior to Lori’s disappearance, Lori was seen sobbing after a telephone conversation with the medical school administrator who notified Lori that Mark was not enrolled in the school. In addition, Mark dropped out of the University of Utah in 2002, so he did not have a bachelor’s degree and could not have been accepted into any medical school. Apparently, Mark’s father and brother, Scott are physicians; and Mark’s brother Lance is an electronic engineer.

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277 Hacking’s Attorney to Challenge Confession.
278 Hacking’s Attorney to Challenge Confession.
279 Hacking’s Attorney to Challenge Confession.
280 Hacking’s Attorney to Challenge Confession.
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282 Hacking’s Attorney to Challenge Confession.
Many believed that Mark suffered a great deal of pressure to obtain professional success.\textsuperscript{283} It is believed that Lori discovered Mark’s deception and confronted him causing Mark to feel as if his house of cards was crashing down around him.\textsuperscript{284} Lori worked from 7 a.m. to 4 p.m. while Mark worked from 3 p.m. to midnight.\textsuperscript{285} Investigators found a letter in the Hackings’ apartment written by Lori in which she stated that she hated coming home from work and that she did not want to spend the rest of her life with Mark unless things changed.\textsuperscript{286}

After Lori’s body still had not been found, the prosecution decided it would file first degree felony murder charges against Mark, which could carry a sentence of five years to life in prison.\textsuperscript{287} Furthermore, the prosecution was not able to substantiate a homicide charge for Lori’s unborn child because it was unable to confirm that Lori was pregnant.\textsuperscript{288} Mark was also charged with three counts of obstructing justice, which carries a sentence of one to 15 years in prison.\textsuperscript{289}

After two months of intensive search efforts including sifting through 3000 tons of garbage in a 20-foot deep landfill,
Lori’s body was found on October 1, 2004. Although the prosecution’s case was strengthened by the discovery of Lori’s body, the medical examiner was unable to determine whether Lori was pregnant. Lori’s family including Mark expressed relief after learning that Lori’s body was found.

Notwithstanding Mark’s confession to family members and others that he killed Lori in her sleep, Mark’s lawyers entered a plea of not guilty on Mark’s behalf at the arraignment hearing on October 30, 2004. However, the case was later brought to a close when Mark Hacking admitted that he shot Lori in the head while she slept. The judge sentenced Mark to six years to life in prison, which is the only penalty allowed under Utah law. The mandatory minimum sentence of five years to life was increased to six years to life because Mark used a firearm during the commission of the crime. It will be left up the Utah parole board to determine if Hacking will ever be set free.

The prosecution was not able to the apply Utah’s fetal...
©2005 APPLICATION OF THE PARENTAL ALIENATION SYNDROME DEFENSE. 33

protection law because of insufficient evidence. Nevertheless, in Utah, an individual may be charged with murder for the killing of a fetus of any stage of development. As stated above, it was reported that Lori was approximately 5 weeks pregnant and the prosecution would have pursued the charge if there was evidence that Lori was pregnant.

V. Case Involving Mothers Killing or Causing Harm to Their Own Fetus

VI. CONCLUSION

As stated above, currently 26 states have fetal protection laws. In addition, there have been serious efforts to enact a federal version of the laws. Due to the recent upsurge of violence toward pregnant women ranging from harm committed by husbands and fathers to harm committed by individuals seeking to steal the baby from the mother’s womb, it seems inevitable that more states will enact fetal protection laws in the future.

299 RESERVE.
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