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# Commentary

## Abortion on Trial†

### Miranda Kennedy††

The confederate flag still flies high over the county government complex in the northern Florida city of Ocala, where Dr. James Scott Pendergraft was convicted in February, 2001 of federal charges of attempted extortion, conspiracy, and mail fraud.<sup>1</sup> In an almost unprecedented attack on an abortion provider through the criminal justice system, local officials in Ocala collaborated with federal prosecutors to shut down Pendergraft on the grounds that he conspired with a colleague to extort money from the city and county governments.<sup>2</sup> Pendergraft, an African-American late-term abortion provider who owns five Florida clinics, faced a maximum sentence of thirty years in jail and the loss of his medical license.<sup>3</sup> In the spring of 2001, the doctor was sentenced to almost four years in jail.<sup>4</sup>

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Editors' Note: In the citations for the Commentary section, we tried to note the most accessible version of each source. If an article was available both in a newspaper archive that requires readers to pay for its articles, and available in full on a cost-free website, we provided the cost-free website.

† A version of this piece, co-authored by Hillary Frey, first appeared in *The Nation Magazine* on June 18, 2001. Kennedy and Frey are both journalists who heard about Dr. Pendergraft's case through their connections to the feminist community.

†† Producer, *Democracy Now!*; B.A., *summa cum laude*, University of Dublin, Trinity College, 1998. Kennedy also reported on the Pendergraft case for *Ms. Magazine*, Pacifica Radio's *Democracy Now!*, and *Free Speech Radio News*.

1. Rick Cundiff, *Pendergraft Sentenced to 46 Months*, OCALA STAR BANNER, May 25, 2001, available at <http://www.righttofight.org/OcalaStarBannerArticles/may25.htm> [hereinafter Cundiff, *Pendergraft Sentenced*]; Frank Stanfield, *Abortion Doctor, Associate Guilty*, ORLANDO SENTINEL, Feb. 1, 2001, available at <http://www.righttofight.org/OrlandoSentinelArticles/guilty.htm> [hereinafter Stanfield, *Guilty*].
2. Frank Stanfield, *Defender: Physician is Being Persecuted*, ORLANDO SENTINEL, Jan. 31, 2001, available at <http://www.righttofight.org/OrlandoSentinelArticles/persecution.htm> [hereinafter Stanfield, *Persecuted*].
3. Stanfield, *Persecuted*, *supra* note 2.
4. Cundiff, *Pendergraft Sentenced*, *supra* note 1.

Pendergraft was denied his request for bail pending appeal, and sent to the Atlanta federal penitentiary in July until his appeal hearing, which took place the following February.<sup>5</sup> After seven months in jail, he and his colleague Michael Spielvogel were released pending the appeal. Even as the appeal of his unusual case looms, Pendergraft continues to be virtually ignored by both the pro-choice community and the rest of the country. The medical and feminist mainstreams, two necessary and natural allies, have offered little support throughout Pendergraft's trial. Fellow abortion providers, divided by fear and fierce competition, have mostly turned a blind eye to his case. "Nobody I've heard suggests that he's not a top doctor and a caring guy," explains Susan England, an Orlando attorney who carefully followed Pendergraft's case. "But the community of providers is in denial. They have to be in denial or they won't get up in the morning."<sup>6</sup>

It may have something to do with Pendergraft's personality. In a climate where a heads-down approach is the safest and most acceptable route for abortion providers, Pendergraft is a shameless marketer, taking full-page ads in the phone book, purchasing local radio spots, and placing his name on highway billboards and specially made condom packages.<sup>7</sup> Furthermore, when he opened the Orlando clinic in 1995, three providers were already operating there,<sup>8</sup> although the vast majority of U.S. counties have no abortion providers at all.<sup>9</sup> "People feel I bullied my way into Orlando," Pendergraft admits, but he is quick to point out that there is great demand for his low-cost late-term procedures.<sup>10</sup>

During Pendergraft's trial, members of the local NAACP, the local National Organization for Women (NOW), and his defense committee (The Right to Fight Defense Committee) were his only support in the courtroom and the only activists talking to the press or raising funds for

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5. Rick Cundiff, *Pendergraft, Spielvogel Convicted*, OCALA STAR BANNER, Feb. 2, 2001, available at <http://www.righttofight.org/OcalaStarBannerArticles/Pendergraftguilty.htm>.
  6. Interview with Susan England, Attorney, at her offices in Orlando, Fla. (Apr. 6, 2001).
  7. Anthony Bianco, *About Extortion or Abortion? The Federal Case Against Florida's Busiest Abortionist*, BUS. WK. ONLINE, Oct. 9, 2000, available at [http://www.righttofight.org/OtherMedia/businessweek\\_article.htm](http://www.righttofight.org/OtherMedia/businessweek_article.htm); Interview with Diana Bellomo, Administrator, Ocala Women's Center, in Ocala, Fla. (Apr. 7, 2001); Interview by Debbie Lang, Revolutionary Worker reporter, with Dr. James Pendergraft (June 3, 2001), available at <http://www.rwor.org/a/v23/1100-99/1105/pendergraft.htm> [hereinafter Interview by Debbie Lang]; Interview with Dr. James Pendergraft, Abortion Provider, Orlando Women's Health Center, in Orlando, Fla. (Apr. 7-8, 2001) [hereinafter Interview with Dr. James Pendergraft].
  8. Telephone and email interviews with Patricia Baird-Windle, clinic owner and author of "Targets of Hatred: Anti-Abortion Terrorism" (March 20-25, 2001); Interview with Dr. James Pendergraft, *supra* note 7.
  9. Press release, National Organization for Women (NOW), National Organization for Women Supports Florida Doctor Under Attack from Federal Government, Asks Reno to End Harassment (Jan. 2, 2000) (on file with author), available at <http://www.righttofight.org/StatementsofSupport/NOW-STATEMENT.htm>.
  10. Interview with Dr. James Pendergraft, *supra* note 7.

his case.<sup>11</sup> Major national organizations with resources and clout were slow to speak out about Pendergraft's case. Patricia Ireland, President of NOW at the time of the trial, believes many groups representing providers saw Pendergraft as a lightning rod and did not initially grasp the implications of his case.<sup>12</sup> "I think the trial made a lot of people finally recognize that there was this alliance among the public officials in the county—the FBI agent, the police chief, and the anti-abortion churches that are doing the harassment," she said.<sup>13</sup> At the NOW Emergency Action for Women's Lives in Washington, D.C. last April, where close to 10,000 people rallied for reproductive rights, Ireland introduced Pendergraft to a cheering crowd as "one of the brave men who keeps our rights accessible."<sup>14</sup> But many groups that shared the stage with Pendergraft at the rally—such as Planned Parenthood, the Feminist Majority Foundation, The National Abortion and Reproductive Rights Action League (NARAL), and Physicians for Reproductive Choice and Health—refused to sign the petition supporting him.<sup>15</sup>

Even now, a year after his conviction, Pendergraft's defense committee is trying to publicize his story, and get more support from feminist and medical groups.<sup>16</sup> But the process has been slow and difficult; while Dr. Pendergraft languished in jail, there was no "news hook," no way for him to reach the public.

The pro-choice community's overcautious approach to Pendergraft's case speaks to the culture of fear and aversion surrounding abortion issues. It also signals a stigma against abortion providers so great that even advocates of choice back away from contentious cases. Furthermore, reproductive rights groups are continually overtaxed by anti-choice and government attacks, leaving them few resources and little energy for grassroots action and individual casework.<sup>17</sup> Although anti-choice malpractice suits and targeted restrictions against abortion clinics have

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11. Telephone interview with Sangeeta Pati & Tracie Stern, Members, Right to Fight Defense Committee for Dr. James Pendergraft (Mar. 15, 2001); Interview with Elizabeth Van, Volunteer, at the Ocala Women's Health Center in Ocala, Fla. (Apr. 7, 2001).

12. Interview with Patricia Ireland, Former President, NOW, at the Emergency Action for Women's Lives in Washington D.C. (Apr. 22, 2001).

13. *Id.*

14. *Id.*

15. *Supporters of Women's Rights Stand with Dr. James Pendergraft*, SOUTH MARION CITIZEN, Dec. 21, 2000, at 6.

16. Letter from Right to Fight Defense Committee for Dr. James Pendergraft (Feb. 7, 2001) available at <http://www.righttofight.org/howtohelp.htm> (requesting support for Dr. Pendergraft during his trial).

17. Interview with Patricia Ireland, *supra* note 12.

become fairly commonplace, mounting criminal charges against an abortion doctor is a new form of attack.<sup>18</sup>

So what happened to Dr. Pendergraft? The prosecution charged that Pendergraft and his business consultant Michael Spielvogel acted illegally by offering, in the course of settling a lawsuit they brought against city and county officials in 1998, to sell Pendergraft's embattled Ocala clinic to the local government for what the prosecution deemed was an exorbitant sum.<sup>19</sup> The basis for that lawsuit came from Spielvogel, who claimed that Marion County Commissioner Larry Cretul had threatened to bomb Pendergraft's Ocala clinic before it opened,<sup>20</sup> violating the Freedom of Access to Clinic Entrances (FACE) law.<sup>21</sup> But the U.S. government, in its counter-suit, denied that FACE had ever been violated by the county or any commissioners, and focused on the charge that Pendergraft conspired with Spielvogel to extort money from the county by bringing suit under FACE.<sup>22</sup> Pendergraft maintains his innocence, saying he never conspired with Spielvogel, and that the government's charges against him stem from personal anti-abortion agendas.<sup>23</sup> "They weren't interested in getting the truth," he says defiantly, "[t]hey were interested in getting me."<sup>24</sup>

The judge and prosecution frequently claimed during Pendergraft's trial that the charges were only about extortion, not about abortion.<sup>25</sup> But Pendergraft's attorneys disagree, and point to a number of irregularities and conflicts of interest that may have prejudiced the outcome of the case. The two principal witnesses against Pendergraft, Commissioner Cretul and Marion County attorney Virgil Wright, are members of the First Baptist Church of Ocala, a decidedly "pro-life" institution whose

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18. *Jury Deliberates Fate of Abortion Doc*, ORLANDO SENTINEL, Jan. 31, 2001, available at <http://www.righttofight.org/OrlandoSentinelArticles/Jurydeliberatesfate.htm>; Katha Pollitt, *Anti-choice Intimidation*, THE NATION, Dec. 11, 2000, available at <http://www.righttofight.org/Other-Media/nation.htm>.

19. Cundiff, *Pendergraft Sentenced*, *supra* note 1.

20. *Id.*

21. See Pedro Ruz Gutierrez, *Co-defendant Takes Blame in Abortion-Clinic Case*, ORLANDO SENTINEL, Jan. 25, 2001, available at <http://www.righttofight.org/OrlandoSentinelArticles/Take-the-Blame.htm> [hereinafter Gutierrez, *Takes Blame*]; Frank Stanfield, *Clinic Protection Needed, Doctor Says*, ORLANDO SENTINEL, Jan. 27, 2001, available at <http://www.righttofight.org/OrlandoSentinelArticles/Clinicprotection.htm> [hereinafter Stanfield, *Clinic Protection*].

22. 8 U.S.C. § 248 (1994); Cundiff, *Pendergraft Sentenced*, *supra* note 1, at 6A.

23. Pedro Ruz Gutierrez, *Prosecutor: Abortion Doctor Tried to Get Payoff*, ORLANDO SENTINEL, Jan. 4, 2001, available at <http://www.righttofight.org/OrlandoSentinelArticles/Provider-tried-to-get-payoff.htm>; Stanfield, *Clinic Protection*, *supra* note 21; Gutierrez, *Takes Blame*, *supra* note 21; Interview with Larry Colleton, Dr. James Pendergraft's Defense Attorney, at his offices in Orlando, Fla. (Apr. 7, 2001); Interview with Susan England, *supra* note 6; Interview with Dr. James Pendergraft, *supra* note 7.

24. Interview with Dr. James Pendergraft, *supra* note 7.

25. Rick Cundiff, *Pendergraft Cites Racism in Appeal*, OCALA STAR BANNER, June 4, 2001, available at [http://www.righttofight.org/OcalaStarBannerArticles/pendergraft\\_cites\\_racism.htm](http://www.righttofight.org/OcalaStarBannerArticles/pendergraft_cites_racism.htm) [hereinafter Cundiff, *Racism*]; Frank Stanfield, *Verdict Won't Close Clinics, Doctor Vows*, ORLANDO SENTINEL, Feb. 2, 2001, available at [http://www.righttofight.org/OrlandoSentinelArticles/verdict\\_wontcloseclinics.htm](http://www.righttofight.org/OrlandoSentinelArticles/verdict_wontcloseclinics.htm); Interview with Larry Colleton, *supra* note 23; Interview with Susan England, *supra* note 6; Interview with Dr. James Pendergraft, *supra* note 7.

4,500 congregants were urged to protest Pendergraft's arrival in Ocala.<sup>26</sup> Pam Piersante, the FBI agent who worked with the U.S. Attorney to prosecute Pendergraft, was also in a compromising position. Piersante attends the Queen of Peace Catholic Church in Ocala, where many clinic protesters are members.<sup>27</sup> Her priest, Patrick O'Doherty, wrote to Pendergraft mournfully querying, "Doctor, how can we honor you since the services you provide are 'death' to children and as you know sometimes 'death to mothers'? God wants you to stop doing abortions."<sup>28</sup>

The jury consisted of four women and eight men, all white but one, and most of retirement age.<sup>29</sup> Even the jury selection process may have been stacked against Pendergraft, explains defense attorney Larry Colleton. "The judge limited our ability to ask questions. I think maybe 6 or 7 of the 100 questions we proposed were asked. I don't think we really ever got to know the people who were selected, and that hurt."<sup>30</sup> What's more important, observes Susan England, jurors' religious affiliations and abortion views were deemed irrelevant to the trial. "The examination of prospective jurors amounted to 'what's your name, address and phone number. Don't care if you're pro-choice or anti-choice, do you think you can render a fair decision? Thank you.'"<sup>31</sup>

All this begs the question: was it possible for Pendergraft to get a fair trial, one which had "nothing to do with abortion," in a city where the community's last abortion clinic was burned to the ground in 1989, and no one was ever charged?<sup>32</sup> Or for that matter in Marion County, "God's country," a place where popular state license plates with "Choose Life" scrawled in child-like writing were designed by a County Commissioner?<sup>33</sup> "Were the authorities sexist, consumed by religious bias, incompetent, or something more sinister?" asks long-time Floridian and feminist clinic owner Patricia Baird-Windle.<sup>34</sup> Ocala Women's Center

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26. Interview with Larry Colleton, *supra* note 23; Interview with Sangeeta Pati & Tracie Stern, *supra* note 11; Interview with Elizabeth Van, *supra* note 11. *See also* Letter from Edward Johnson, Pastor, First Baptist Church of Ocala (Fla.), to Dr. James Pendergraft (Jan. 16, 1998) (on file with author).
27. Interview with Larry Colleton, *supra* note 22; Interview with Sangeeta Pati & Tracie Stern, *supra* note 11; Interview with Elizabeth Van, *supra* note 11; Letter from Patrick J. O'Doherty, Friar, Queen of Peace Catholic Church (Ocala, Fla.), to Dr. James Pendergraft (Mar. 13, 1998) (on file with author); Press Release, Right to Fight Defense Committee for Dr. James Pendergraft, Outrageous Verdict of Guilty for Abortion Provider Amidst Discriminatory Government Conduct (Feb. 1, 2001) (on file with author), available at <http://www.righttofight.org/OtherMedia/pressrelease20101.htm>.
28. *See* Letter from Patrick J. O'Doherty to Dr. James Pendergraft, *supra* note 26.
29. Interview with Larry Colleton, *supra* note 23.
30. *Id.*
31. Interview with Susan England, *supra* note 6.
32. Bianco, *supra* note 7; Cundiff, *Pendergraft Sentenced*, *supra* note 1; Interview with Diana Belomo, *supra* note 7; Interview with Dr. James Pendergraft, *supra* note 7.
33. Bianco, *supra* note 7; Cundiff, *Pendergraft Sentenced*, *supra* note 1; Jeanne Malmgren, *Car Tag Frenzy—On Our Plates*, ST. PETERSBURG TIMES, Dec. 28, 1998, at 1D; Interview with Dr. James Pendergraft, *supra* note 7.
34. Interviews with Patricia Baird-Windle, *supra* note 8.

administrator Diana Bellomo, a life-long Ocala resident, is sure of the answer: "When you come to a city like this, where nothing is ever going to change, where they disliked him before he ever came here, you know it's going to be unfair."<sup>35</sup>

Abortion is especially rancorous ground in Florida, home to the first killing of an abortion doctor by an anti-abortion protester in 1993,<sup>36</sup> and to noisy protests outside abortion clinics across the state.<sup>37</sup> In this hostile atmosphere, the 45-year-old Pendergraft, with his high-profile chain of full-service clinics, is perceived as a public pest. He probably provides more abortions in his five clinics than any other doctor in the state, if not the country.<sup>38</sup> His Orlando clinic alone performs about 5,000 procedures a year.<sup>39</sup> Pendergraft advertises his clinics aggressively, undercuts costs set by other providers, speaks openly about the harassment he faces, does his rounds in a bulletproof vest and owns a firearm.<sup>40</sup> After the abortion doctor Barnett Slepian was murdered in Buffalo in 1998, Pendergraft told ABC News, "Abortion is worth dying for."<sup>41</sup> He still firmly believes in his work. "It's worth it to me to fight," he says. "You got a lot of people being scared out of this business. But I'll fight until I don't have anything, 'cause I came from nothing."<sup>42</sup>

The son of a mortician and a nurse, Pendergraft grew up in rural North Carolina. He decided on medical school at the encouragement of an aunt he was close to, whose illegal abortion made her infertile.<sup>43</sup> This experience helps explain why he takes his calling seriously. Unlike most abortion doctors, Pendergraft is board-certified as an obstetrics/gynecologist and completed a specialty fellowship in maternal fetal medicine and high-risk obstetrics.<sup>44</sup> Nationwide, approximately 1500 physicians have such advanced training.<sup>45</sup> "[Pendergraft] was unequivocally one of the best doctors I ever worked with, in a variety of ways: medical and surgical techniques, handling of uncommon conditions, and sensitivity to women's needs," says Patricia Baird-Windle, who hired Pendergraft a decade ago to perform abortions in her Melbourne clinic.<sup>46</sup>

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35. *Id.*

36. Jeff Kurneth, *2 Killed at Pensacola Abortion Clinic*, ORLANDO SENTINEL, July 30, 1994, at A1.

37. *Pensacola Abortion Clinics May Get Buffer Zone*, ORLANDO SENTINEL, Jan. 14, 1995, at D10.

38. Sangeeta Pati & Dr. James Pendergraft, *Statements at Right to Fight Press Conference at Empire State Building* (Nov. 15, 2000) (on file with author) (recounting his remarks to ABC News).

39. Interview with Diana Bellomo, *supra* note 7; Interview with Dr. James Pendergraft, *supra* note 7.

40. Interview with Debbie Lang, *supra* note 7.

41. Interview with Dr. James Pendergraft, *supra* note 7.

42. *Id.*

43. *Id.*

44. Curriculum Vitae for James S. Pendergraft IV, M.D., available at <http://www.righttofight.org/Curriculumvitae.htm>.

45. Interview with Dr. James Pendergraft, *supra* note 7; Interview with Sangeeta Pati, at the Emergency Action for Women's Lives in Washington, D.C. (Apr. 22, 2001).

46. Interviews with Patricia Baird-Windle, *supra* note 8.

At his Orlando and Tampa clinics, Pendergraft performed medically necessary abortions up to the twenty-eighth week of pregnancy. Despite the sensationalizing of late-term procedures, abortions after twenty-five weeks are performed rarely and only under extreme circumstances, such as if there is a severe fetal abnormality or if the woman's life is in danger.<sup>47</sup> Because these high-risk procedures are medically complicated and politically charged, only a handful of doctors perform them worldwide.<sup>48</sup> Pendergraft estimates that five percent of his patients travel to his late-term clinics from South America, Europe, and even the Middle East, having heard about his services on the Internet or by word of mouth.<sup>49</sup>

Pendergraft's Ocala Women's Center is a surreal sight along the strip mall that runs through the city. Pastel pink with an American flag flying from a thirty-foot pole, the clinic would stand out among the auto-repair shops and IHOPs even if it wasn't surrounded by protesters. Greater Ocala is an old agricultural community of 46,000, dotted with Southern Baptist churches, and firmly entrenched in the Dixiecrat code: serve your own constituency and represent good Christian values.

African Americans make up about twenty percent of the city's population, and eleven percent of Marion County's.<sup>50</sup> Not too far from Pendergraft's clinic is West Ocala, the black section of town. A striking contrast to the rolling hills that have lured many retirees to the area, shabby bungalows, boarded up buildings and faded stores line the highway. The NAACP office sits among them, a small house distinguished only by a hand-painted sign. As recently as March 2001, local civil rights groups asked the county council once again to remove the confederate flag from county buildings.<sup>51</sup> Yet even after state capital buildings in Florida, South Carolina, Georgia, and Alabama took down that relic of their confederate past, the city of Ocala refused to do so.

Pendergraft encountered various obstacles to operating abortion clinics over the years, but in Ocala he says there was a concentrated, official effort to keep him out of town. Shortly after he purchased the building in September 1997, the Board of Marion County Commissioners sent him a letter asking him to "reconsider" opening, citing the "controversy" an abortion clinic would bring to Ocala's "family-oriented com-

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47. See, e.g., NATIONAL ABORTION FEDERATION, ABORTION AFTER 12 WEEKS FACT SHEET, *available at* [www.prochoice.com](http://www.prochoice.com); ALAN GUTTMACHER INSTITUTE, INDUCED ABORTION, *available at* [http://www.agi-usa.org/pubs/fb\\_induced\\_abortion.html](http://www.agi-usa.org/pubs/fb_induced_abortion.html); PHYSICIANS FOR REPRODUCTIVE CHOICE AND HEALTH, A CURRENT OVERVIEW OF ABORTION IN THE UNITED STATES, *available at* <http://www.prch.org/abslides.pdf>.

48. PHYSICIANS FOR REPRODUCTIVE CHOICE AND HEALTH, *supra* note 47.

49. Interview with Dr. James Pendergraft, *supra* note 7.

50. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2000 CENSUS, *available at* [http://www2.census.gov/census\\_2000/datasets/demographic\\_profile/Florida/2kh12.pdf](http://www2.census.gov/census_2000/datasets/demographic_profile/Florida/2kh12.pdf).

51. Telephone interview with Adora Obi Nweze, Ocala NAACP Organizer, (Apr. 24, 2001); Interview with Elizabeth Van, *supra* note 11.

munity.<sup>52</sup> Pendergraft received hundreds of similar letters from other citizens, and thousands of parishioners signed a petition asking him not to come.<sup>53</sup>

The Board's letter especially worried Michael Spielvogel, a former real-estate broker who had recently begun helping Pendergraft manage his business. Spielvogel spoke with Marion County Commissioner Larry Cretul about selling the clinic building to the local government.<sup>54</sup> This way, he and Pendergraft would thwart danger and Ocala citizens could stop their crusading. But the plan backfired. Shortly after that discussion, Cretul went to the Ocala police, suspicious that Spielvogel might be trying to extort money by selling the building for a profit.<sup>55</sup>

Despite Spielvogel's reservations, Pendergraft planned to open his clinic in the spring of 1998. But one evening in January of that year, Pendergraft finished work to find Spielvogel on the phone with Commissioner Cretul in a clinic office, flushed and upset. Afterwards, Spielvogel told Pendergraft Cretul had threatened, "what happened in Alabama is nothing compared to what's going to happen in Ocala," referencing the 1997 bombing of a Birmingham abortion clinic.<sup>56</sup> "I told him, 'If you're scared, call the FBI,'" recalls Pendergraft.<sup>57</sup> It turns out he already had. A month later, the FBI informed Pendergraft and Spielvogel that it would not be investigating Larry Cretul.<sup>58</sup>

That phone call, which resulted in the FACE lawsuit against Larry Cretul and Marion County almost a year later,<sup>59</sup> haunted Pendergraft. Until then, he hadn't worried about much but the usual—hiring staff, drawing patients—when it came to setting up in Ocala. The fact that the FBI refused to investigate what amounted to a bomb threat was troubling, and Pendergraft began to have second thoughts about opening the clinic. If everyone in Ocala, including the FBI, was against him, maybe it was a bad idea to go there.<sup>60</sup>

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52. Rick Cundiff, *Pendergraft Takes the Stand*, OCALA STAR BANNER, Jan. 26, 2001, available at <http://www.righttofight.org/OcalaStarBannerArticles/pendergrafttakesthestand.htm>; Letter from Larry Cretul, Commissioner, Marion County (Fla.), to Dr. James Pendergraft (Oct. 8, 1997) (on file with author).

53. Interview with Larry Colleton, *supra* note 23; Interview with Dr. James Pendergraft, *supra* note 7.

54. Interview with Larry Colleton, *supra* note 23.

55. Rick Cundiff, *One Pendergraft Lawyer Charges Racial Overtones*, OCALA STAR BANNER, Jan. 31, 2001, available at <http://www.righttofight.org/OcalaStarBannerArticles/racialovertones.html> [hereinafter Cundiff, *Racial Overtones*].

56. Rick Cundiff, *FBI Agents Testify During Pendergraft Trial*, OCALA STAR BANNER, Jan. 12, 2001, available at [http://www.starbanner.com/articles/breaking\\_news/725.shtml](http://www.starbanner.com/articles/breaking_news/725.shtml); Interview with Larry Colleton, *supra* note 23; Interview with Dr. James Pendergraft, *supra* note 7.

57. Interview with Dr. James Pendergraft, *supra* note 7.

58. Interview with Larry Colleton, *supra* note 23.

59. Interview with Larry Colleton, *supra* note 23; Interview with Dr. James Pendergraft, *supra* note 7.

60. Interview with Dr. James Pendergraft, *supra* note 7.

Pendergraft understood from Spielvogel, who had spoken to Cretul a handful of times, that the government was still interested in buying him out. Pendergraft sent Cretul a letter in February requesting that if an offer was to be made to purchase the building, it be made then, and that all communication on the matter be addressed to Spielvogel.<sup>61</sup> No deal was struck, and Pendergraft opened to a fanfare of protest in June.<sup>62</sup>

Clinic owner Baird-Windle contends, "Going into Ocala was not a wise move. It was waving a red flag at a bunch of bulls in a miniscule market with good service available only 35 miles away [in Gainesville]."<sup>63</sup> She may have a point. Since opening day, protesters have stood along the perimeter of its parking lot each day of the week that abortions are performed. Protesters have taken to shouting at workers and patients while waving signs that read "Abortion Kills: God Calls It Murder" and "Ocala's Auschwitz [sic]."<sup>64</sup> Around fifteen protesters comprise what they call a "mass unit," offering prayer and "sidewalk counseling" to women entering the clinic.<sup>65</sup> Two months after the clinic opened, the Alpha Center for Women set up shop next door, a "Christian pregnancy center" that offers free pregnancy tests and recommends adoption.<sup>66</sup> All of this controversy, says Pendergraft, only reinforces that going to Ocala was not about profit. "I saw a lot of patients [in Orlando] coming from Ocala, and I knew patients had to drive a long way to get the services they could have had right in their own community."<sup>67</sup> Although the clinic serves three counties, it only performed about 500 procedures last year.<sup>68</sup>

Not long after opening, Pendergraft asked Marion County and Ocala law enforcement to provide off-duty police officers to protect his patients and staff. Both departments denied his request.<sup>69</sup> So Pendergraft filed a lawsuit against the county, city, and various individuals in December 1998 and, at the advice of his then-attorney, Roy Lucas, added a violation of FACE law based on the threat Larry Cretul had supposedly made to Michael Spielvogel.<sup>70</sup> In February 1999, after Pendergraft and Spielvo-

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61. Interview with Larry Colleton, *supra* note 23; Interview with Dr. James Pendergraft, *supra* note 7.

62. Rick Cundiff, *Pendergraft Saw Possible 'Conspiracy,'* OCALA STAR BANNER, Jan. 27, 2001, available at <http://www.righttofight.org/OcalaStarBannerArticles/possibleconspiracy.htm> [hereinafter Cundiff, *Conspiracy*].

63. Interviews with Patricia Baird-Windle, *supra* note 8.

64. Rick Cundiff, *Crowds Picket as Doctor's Trial Begins*, OCALA STAR BANNER, Jan. 3, 2001, available at <http://www.starbanner.com/News/rependergraft0103.shtml>.

65. Interview with Reverend Ed Martin, at the Ocala Women's Center in Ocala, Fla. (Apr. 7, 2001).

66. Telephone interview with Receptionist, Alpha Center for Women, Ocala, Fla. (Apr. 7, 2001).

67. Interview with Diana Bellomo, *supra* note 7.

68. Interview with Diana Bellomo, *supra* note 7; Interview with Larry Colleton, *supra* note 23; Interview with Dr. James Pendergraft, *supra* note 7.

69. Cundiff, *Conspiracy*, *supra* note 62.

70. *Id.*

gel filed affidavits attesting to Cretul's threat,<sup>71</sup> Marion County Attorney Virgil Wright set up a settlement conference between himself, Pendergraft and Lucas. He was suspicious enough of Spielvogel and Pendergraft to have the conference taped by the FBI.<sup>72</sup>

Lucas had proposed a \$6 million settlement to Wright before the conference.<sup>73</sup> But during the meeting, Wright said that any settlement over \$100,000 was out of the question. Lucas knew this figure would not even cover Pendergraft's initial investment in the clinic building, let alone compensate him for lost work, and held up a newspaper headlining a similar settlement of \$107 million for a clinic in Oregon.<sup>74</sup> The characteristically brazen Pendergraft added that he would be happy to take the case to trial. He said, "Let the jury decide, the facts are the facts. We will bankrupt the county."<sup>75</sup> Though Pendergraft says this was the bombastic language of deal making, not a threat, the prosecution used it again and again to allege extortion.<sup>76</sup>

A grand jury indicted Pendergraft on charges of conspiracy to extort (with Michael Spielvogel) and mail fraud on June 13, 2000.<sup>77</sup> The prosecution's evidence? To convict Pendergraft on the conspiracy charge, the prosecution relied on Pendergraft's letter to Larry Cretul in which he offered for the last time to discuss the building's sale. The letter amounted to conspiracy because it was routed to Spielvogel, as well.<sup>78</sup> The attempted extortion charge was based on the tape of the settlement conference, during which Pendergraft threatened to bankrupt Marion County.<sup>79</sup>

After petitioning unsuccessfully to relocate out of Ocala, the trial began in January 2001 at a courthouse less than two blocks from Pendergraft's clinic. In addition to the troublesome jury selection, there was a series of disturbing details from the proceedings. Tracie Stern, an activist with Refuse & Resist!, attended the trial from start to finish. "The prosecution portrayed Pendergraft the way they like to portray abortion providers—as this money-grubbing doctor who doesn't care about women," says Stern, who led an ad hoc Pendergraft defense committee.<sup>80</sup> "The judge didn't play fair with the defense attorneys, and [U.S. prose-

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71. Rick Cundiff, *Lies Are Revealed at Pendergraft Trial*, OCALA STAR BANNER, Jan. 25, 2001, available at <http://www.righttofight.org/OcalaStarBannerArticles/Lies-revealed.html>.

72. Cundiff, *Conspiracy*, *supra* note 62.

73. Interview with Larry Colleton, *supra* note 23.

74. Interview with Larry Colleton, *supra* note 23; Interview with Dr. James Pendergraft, *supra* note 7.

75. *Id.*

76. Rick Cundiff, *Spielvogel Takes Stand in Pendergraft Trial*, OCALA STAR BANNER, Jan. 24, 2001, available at <http://www.righttofight.org/OcalaStarBannerArticles/spielvogeltakesthestand.htm>.

77. Cundiff, *Pendergraft Sentenced*, *supra* note 1; Interview with Larry Colleton, *supra* note 23; Interview with Dr. James Pendergraft, *supra* note 7.

78. Interview with Larry Colleton, *supra* note 23.

79. Cundiff, *Racial Overtones*, *supra* note 55.

80. Interview with Sangeeta Pati & Tracie Stern, *supra* note 11.

cuting attorney Mark] Devereaux was consistently belittling and belligerent. They were counting on conservative Ocala to bring them the verdict they wanted.”<sup>81</sup>

To make matters worse, racism clearly affected this case, both inside the courtroom and out. “Racism here is more of a factor than you first realize,” says Elizabeth Van, an Ocala Women’s Center volunteer escort who has lived in Ocala for three years. “Other places don’t share that complacency of strength. Here it’s not just acceptable, it’s expected.”<sup>82</sup> Until the local NAACP branch took interest late in the trial, Pendergraft and his two attorneys were the only African-Americans in the courtroom, save the black juror. Maybe it shouldn’t have surprised anyone when Devereaux twice described Pendergraft as having “shucked and jived” on the witness stand.<sup>83</sup> Although this racist characterization made headlines in the Ocala Star-Banner<sup>84</sup> and pushed the outraged defense to demand a public apology, Devereaux insists that this was not a racial slur.<sup>85</sup>

Of the twenty-six questions the federal appeals court judges asked during Pendergraft’s appellate hearing this past February, sixteen focused on the “shuck and jive” remark. Nevertheless, activists and lawyers familiar with the case wonder if the remark is only a blatant example of the bias that Pendergraft encountered in Ocala, and further warn that if the political implications of Dr. Pendergraft’s conviction are not made clear, the consequences will be served on abortion providers nationwide. “The message here is if they want to get you, they can,” says Susan England. “Providers have been frightened off in a variety of ways—they’ve been murdered, they’ve been harassed—and this is a new version. The success here is a monument to what to do.”<sup>86</sup>

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81. *Id.*

82. Interview with Elizabeth Van, *supra* note 11.

83. Cundiff, *Racism*, *supra* note 25; Interview with Dr. James Pendergraft, *supra* note 7; Interview with Elizabeth Van, *supra* note 11.

84. Cundiff, *Racial Overtones*, *supra* note 55.

85. Telephone interview with Mark Devereaux, Assistant U.S. Attorney (April 13, 2001).

86. Interview with Susan England, *supra* note 6.