Women and Children First

By Deborah H. Wald

The California Supreme Court has long distinguished itself as a court that cares deeply about children. It has repeatedly made groundbreaking decisions that protect our state's children in new ways. The same-sex marriage case decided by the court last week fits solidly within this context.

For example, in 1968 — long before the issues raised by assisted reproduction were commonly addressed in our courts and legislatures — the California Supreme Court ruled that a husband who consented to his wife's insemination with a donor sperm, in hopes of conceiving a child, "knows that such behavior carries with it the legal responsibilities of fatherhood" and is responsible for supporting the child. *People v. Sorensen*, 68 Cal.2d 280 (Cal. 1968). This decision of the court, protecting marital children born through donor insemination, was visionary in its day and has since been widely followed by courts throughout the country.

More recently, in *Johnson v. Calvert*, our Supreme Court broke new ground when it found that where a husband and wife combine their egg and sperm to conceive a child in vitro, and that child is subsequently gestated for them by a surrogate, the wife — not the surrogate — is the legal mother of the child. The court clearly thought long and hard about what was going to be best for children conceived through surrogacy: "the interests of children, particularly at the outset of their lives, are '[un]likely to run contrary to those of adults who choose to bring them into being.' (Internal citation omitted.) Thus, '[h]onoring the plans and expectations of adults who will be responsible for a child's welfare is likely to correlate significantly with positive outcomes for parents and children alike.'" *Johnson v. Calvert*, 5 Cal.4th 84 (Cal. 1993).

In 1997, in a courageous decision authored by Chief Justice Ronald M. George, the court struck down a statute that would have prevented minors from obtaining abortions without parental consent. The court found that respect for minors' emotional needs, as well as appreciation of the actual long-term consequences of an unwanted pregnancy, required that girls be allowed to make their own decisions on whether to terminate a pregnancy. *American Academy of Pediatrics v. Lundgren*, 16 Cal.4th 307 (Cal. 1997). This decision illustrates that the California Supreme Court has historically not been afraid to issue controversial decisions in order to protect California's children.

Then, in *Nicholas H. v. Superior Court*, the court found that a man could become a full legal father through his voluntary assumption of the responsibilities of parenthood, even if that man knew he was not the child's biological father and did not adopt the child. In an expansive reading of Family Code Section 7611(d) — which provides that a man is presumed to be a father if he receives a child into his home and openly holds the child out as his natural child — the court held that proof of biological non-paternity does not trump an established father-child relationship. In this landmark decision, the court made clear its commitment to protecting children's relationships with the people the children see as parents, whether or not such relationships are based on genetics. *In re Nicholas H.*, 28 Cal.4th 56 (Cal. 2002).

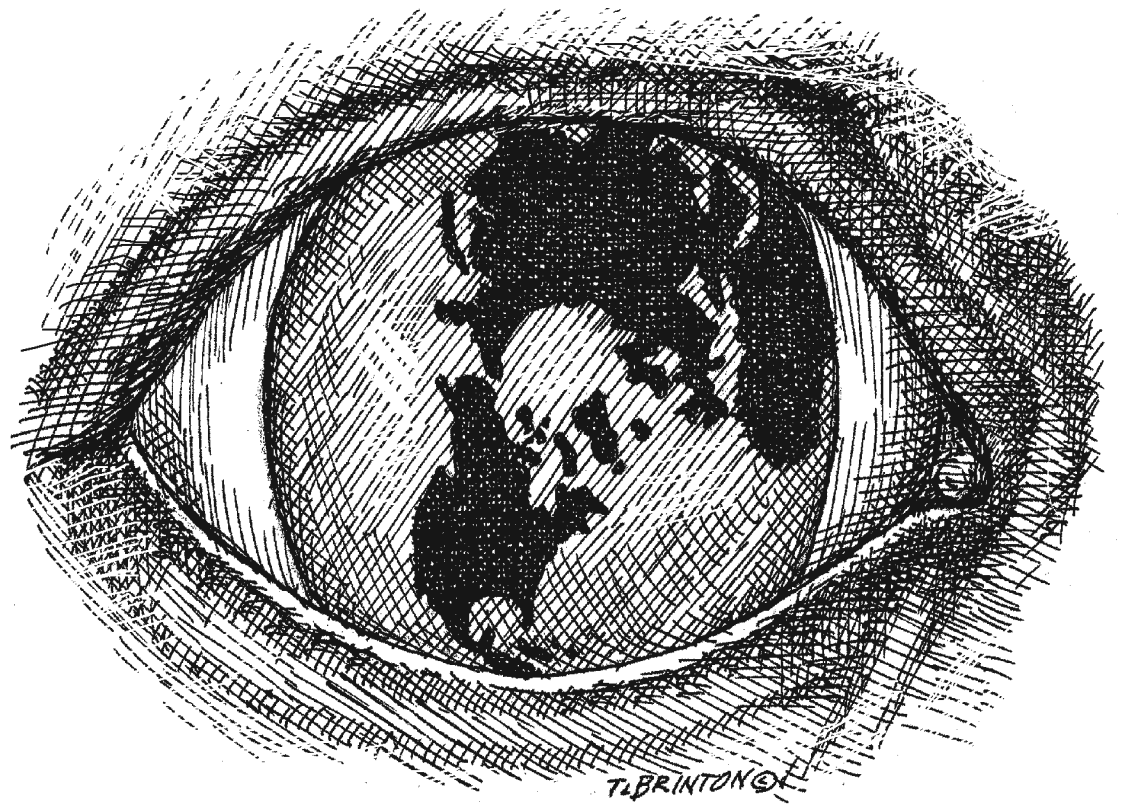
Finally, in *Elisa B. v. Superior Court*, the California Supreme Court held that two women who have a child together within the context of a committed, lesbian relationship are both natural mothers of the child if certain circumstances are met. In so holding, the court found that: "The paternity presumptions are driven, not by biological paternity, but by the state's interest in the welfare of the child and the integrity of the family. … Declaring that Elisa cannot be the twins' parent and, thus, has no obligation to support them because she is not biologically related to them would produce a result similar to the situation we sought to avoid in *Nicholas H.* of leaving the child fatherless." *Elisa B. v. Superior Court*, 37 Cal.4th 108 (Cal. 2005).

And now, the court has found that children of same-sex couples have a right to have their families treated with the same dignity and respect bestowed on marital families by our society. "Extending access to the designation of marriage to same-sex couples will not deprive any opposite-sex couple or their children of any of the rights and benefits conferred by the marriage statutes, but simply will make the benefit of the marriage designation available to same-sex couples and their children. … [T]he exclusion of same-sex couples from the designation of marriage works a real and appreciable harm upon same-sex couples and their children." *In re Marriage Cases*, 2008 DJDAR 7079 (May 15, 2008). This decision fits solidly within the decisions of the court discussed above, and is a logical next step in the court's efforts to assure that all children in California are treated with care and respect by the courts.

The California Supreme Court consists of six Republicans and only one Democrat. George, frequently described as a moderate Republican, is certainly not a gay rights activist. But the justices of our Supreme Court have a long and proud history of being fierce defenders of children, and they appear to recognize that marginalizing families hurts children. And hurting children is something our high court won't tolerate.

Deborah Wald is the founder of the Wald Law Group, a family law practice in San Francisco. She is an adjunct professor at the University of San Francisco School of Law, and co-chair of the National Family Law Advisory Council for the National Center for Lesbian Rights.

For Nigerian Victims of Human Rights Abuses, a Day in Court



By Dan Stormer and Jennie Green

Ten years ago Nigerian security forces opened fire on peaceful demonstrators on an offshore barge in the oil-rich Niger Delta, killing two men and injuring at least two more.

Coincidentally, on May 28, the 10th "anniversary" of the killings, the ChevronTexaco Corporation held its annual general meeting in San Francisco.

The connection between the two events is that Chevron, through its subsidiary Chevron Nigeria Limited, participated in the 1998 attacks on the protestors. When Larry Bowoto, who sustained critical injuries in the attack, spoke at the annual general meeting and called for the corporation to "give up violence as a way of doing business," his pleas were met with harsh criticism by chairman and CEO David O'Reilly, who declared Bowoto a "criminal."

However, it is Chevron's participation in human rights violations that is outside of the law. Currently plaintiffs in the Northern District of California and San Francisco County Superior Court have brought two civil cases in their attempt to hold the company accountable for its role. Trial dates are set for August and September: After 10 years of defendants' legal motions and protracted discovery, the plaintiffs will finally have their day in court.

On May 25, 1998, a group of villagers began a peaceful protest on board a Chevron barge known as the Parabe Platform. The protests focused on Chevron's destruction of the environment and traditional fishing and farming practices of the local communities. Chevron officials acknowledged in a report to the U.S. Embassy that the villagers were unarmed and the situation remained calm. After more than a day of negotiation, on May 27, 1998, the protestors agreed to leave the platform the following morning. However, early on May 28, 1998, when the protestors were just waking up, Chevron helicopters arrived at the platform carrying soldiers and police led by Chevron security personnel. Even as the helicopters descended, the security forces fired teargas and live ammunition at the villagers.

Chevron knew that the Nigerian government security forces had a record of human rights violations. Nevertheless, Chevron Nigeria Limited paid the Nigerian police and military who attacked the villagers and transported the security forces to the platform. Chevron Nigeria Limited also supervised the activities on the platform.

After the attack, a number of protestors were locked in a small container on the Chevron platform and held without food or water while Chevron Nigeria officials looked on. The protestors were subsequently taken in Chevron boats to jails onshore where they were imprisoned, tortured and beaten by the police and military.

The parent company in California closely monitored, controlled and directed Chevron Nigeria's activities. Chevron U.S. facilitated and approved payments to the security forces, and determined security policies for Chevron Nigeria. During the protest, Chevron U.S. had extensive communication with Chevron Nigeria, and the demands made by the protestors were communicated to Chevron management in the United States.

In the case of *Bowoto v. Chevron*, the claims of the Nigerian villagers rest on a well-established line of cases against corporations for human rights violations, under the Alien Tort Statute, also known as the Alien Tort Claims Act. Adopted as part of the Judiciary Act of 1789, the Alien Tort Statute allows non-U.S. citizens to sue in U.S. courts for violations of the "law of nations" or customary international law, or of a treaty of the United States. The statute has been used successfully to bring claims for human rights violations against former government officials, private persons and multinational corporations.

In 1979, Paraguayan citizens Joel and Dolly Filártiga filed claims under the then-obscure Alien Tort Statute for the politically motivated torture and murder of 17-year-old Joelito Filártiga, Joel's son and Dolly's brother. In the 2nd Circuit, they sued Americo Peña-Irala, the inspector general of police who had personally tortured Joelito Filártiga to death and then fled attempts to bring him to justice in Paraguay and resettled in New York.

The Filártigas argued that international law, in light of the post-Nuremberg emergence of international human rights law, is applicable to individuals as well as states. In 1980, the 2nd Circuit ruled in favor of the plaintiffs, holding that official torture is prohibited by the law of nations, and that since international law is part of U.S. common law, Article III of the Constitution allows adjudication of tort claims arising outside of the United States.

Throughout the 1980s and early 1990s, the cases brought under the Alien Tort Statute were against officials of recognized governments, including not just those who physically committed the abuses, but those who were in positions of command and control, such as the former dictator of the Philippines Ferdinand Marcos, the former dictator of Haiti Prosper Avril, and the former minister of defense of Guatemala Hector Gramajo.

Then, in 1993, Bosnian and Croatian women sued the self-proclaimed Bosnian-Serb leader Radovan Karadžic for genocide, war crimes, crimes against humanity, torture and other human rights violations committed in Bosnia-Herzegovina in the early 1990s. In 1995, the 2nd Circuit held that Karadžic, even as a private person, could be held liable under the Alien Tort Statute for his complicity in certain international human rights violations such as genocide, war crimes and crimes against humanity. It also held that he could be liable for torture and arbitrary detention, which, under international law, required state action because he was complicit with the recognized Yugoslav state.

In 1996, Burmese villagers sued the California-based Unocal Corporation on behalf of victims of forced labor, and rape and other torture. Unocal was a joint venture partner in a natural gas pipeline project that relied on forced labor extracted by the brutal Burmese military. In March 1997, the Central District of California held that Unocal could be held liable for forced labor, the modern equivalent of slavery, and for other violations that were carried out by the military with the complicity of the corporation.

The Unocal case successfully settled in 2005, with compensation provided to the plaintiffs and a humanitarian fund established for other victims from the region of the pipeline project.

Subsequent decisions on other Alien Tort Statute cases have given significant attention to the question of when an individual or corporation could be held liable for aiding and abetting the violation by another, and which principles of joint venture and agency liability apply.

In the Chevron case in August 2007, Judge Susan Illston added her voice to those who found that a corporation could be held liable for aiding and abetting an international law violation, even those that by definition had a state action requirement. She also found evidence that Chevron's personnel "were directly involved" in this attack, and concluded that the evidence would allow a jury to find not only that Chevron assisted the soldiers knowing that they would attack the protestors, but also that Chevron actually agreed to the military's plan.

A jury trial is scheduled in the federal case for September 2008. Chevron is also facing a California state court claim for violation of California fair business practices law. That trial, set for August 2008, could result in a court order ending Chevron's involvement in practices that led to the 1998 attack and to other incidents of abuse involving the Nigerian security forces in the service of Chevron. It is likely that more than 20 Nigerian villagers will come to San Francisco to testify, when they will, after 10 long years, finally face Chevron in court.

Dan Stormer, of Hadsell, Stormer, Keeny, Richardson & Renick, and **Jennie Green**, of the Center for Constitutional Rights, are part of the legal team representing the plaintiffs in *Bowoto v. Chevron*.