

Ovitz paid Pellicano \$75,000 to collect "embarrassing" information on, among other reporters, Anita Busch, who was then writing pieces for the *Los Angeles Times*. "It was an extraordinarily difficult time for the company and for me," explained Ovitz at the trial. But he claims ignorance of Pellicano's hard-ball tactics, which include, prosecutors say (according to *Reuters*), leaving a dead fish "with a rose in its mouth and a note saying 'Stop' on Busch's shattered car windshield."

Ovitz showed no remorse at the trial. He straightforwardly said that he needed to find a way to make the bad press go away lest his company, Artists Management Group, which was then open to bids, be devalued by it. "All I wanted was a graceful exit from the business and to leave people with jobs," he said.

Busch, who took the stand after Ovitz, recounted her troubles that followed his hiring of Pellicano: computer viruses, tampered-with phone lines, and a couple of death threats. She also recalled a man "with a sickening smile" who drove at her menacingly and then sped off after lifting his "middle finger" at her.

Pellicano, who is acting as his own attorney, grilled Busch, who sobbed intermittently during her testimony. "Surrounded by two boxes of tissues," *Reuters* reported, Busch inadvertently caused chuckles in the courtroom as she described a meeting with her *Times* editor and an attorney for the paper, Karlene Goller. She asked them for advice on how to handle and identify the threats. To laughter, Busch, speaking to Pellicano, said that Goller "suggested calling you." CPR



## The Law

### Beyond trampling property rights

*The Coastal Commission 'advances' to a willingness to risk even human life.*

J. DAVID BREEMER

**T**HE CALIFORNIA COASTAL COMMISSION was created to address coastal land-use issues of statewide significance, while allowing local governments to continue making day-to-day permitting decisions. The Commission was also charged with balancing property rights and economic reality with environmental concerns. Unfortunately, The Commission long ago abandoned its original mission. Rather than focusing on large projects in sensitive areas, the Commission has engaged in a campaign to micromanage all private land use along the coast and to override local governments that approve development as being in the best interests of the community. The Commission is driven by an obsession with environmental and aesthetic purity along the coast.

The Commission's current attack on a decades-old, bluff fence in Torrance Beach, California, aptly illustrates just how far The Commission will go to stop locally approved construction. Indeed, in the bluff fence dispute (in *Burke v. California Coastal Commis-*

*sion*) The Commission is willing to risk even public safety and to scuttle long-standing compromises between private rights and public property to advance its utopian vision of a more pristine coastline.

The coastal bluffs at Torrance Beach, near Palos Verdes, rise from a popular sandy strip of beach to a bluff top. There sit modest residential homes built approximately 40 years ago. The face and bottom of the bluffs, which are the private property of the homeowners, are unstable. In the late 1950s, a youth died in a bluff cave-in. In 1965, another youth died and one was injured after they left the beach to climb the bluff. Last year, the California Geological Survey confirmed that the bluffs remain an active landslide area.

After the 1960s bluff injuries, a chain-link fence was built at the bluff bottom, on Martin Burke's land and adjacent property, to stop people from trespassing on

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*J. David Breemer is a principal attorney with Pacific Legal Foundation.*

the bluffs. Numerous credible persons, including Los Angeles County lifeguards, have declared in writing that the fence was erected before 1973, the year in which the Coastal Commission was born. Local permits were obtained at the time, and The Commission soon approved other fences immediately connected to Burke's.

**I**N THE 1970s, a dispute arose between the City of Torrance and the bluff property owners about the public's right to use the sandy land at the toe of the bluffs. The property owners claimed the area was private, but the City disagreed. A preliminary compromise was soon negotiated by Burke in which the property owners would give the public an easement to use the sandy area in return for the permanent right to keep the fence separating the public from the bluffs. The State Lands Commission then became involved and eventually agreed to the compromise.

The property boundary agreement was formally signed in 1988 by the property owners, the City, the State Lands Commission, the state Attorney General's Office, and Governor George Deukmejian, on behalf of the people of California.

For approximately the next 17 years, the Coastal Commission never objected to the fence or challenged

the compromise with the state that had allowed it.

But ... what the Commission ignores one day can turn out to be the target in its self-defined environmental mission the next. Burke found this out the hard way in 2005 when he sought to repair the fence. Unexpectedly, the City referred him to the Coastal Commission. The Commission in turn told him, for the first time, that the fence was illegal development because no one had obtained its approval before it was built. It demanded that Burke seek a permit from the Commission.

Burke objected. After all, the governor of the state of California had signed an agreement allowing the fence, and the property owners had given up a valuable piece of beachfront property in return for the right to keep the fence. But when threatened with enforcement action, Burke filed an application. During the permit process, Burke provided extensive evidence showing that the fence predated the existence of the Commission and was therefore outside its authority. He provided the Commission with the original news reports of the deaths and injuries on the bluffs. Nevertheless, The Commission voted to deny a permit for the fence. It's reasons? It claimed the fence harmed public views of the bluff and that its unsightliness deterred public use of the nearby sandy area.

# The Sacramento Club

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Of course, such reasoning isn't new for The Commission. It has a troubling history of interfering with private property based on subjective ideas of what looks good and bogus public beach access claims. In 1987, the Supreme Court rebuked the agency for engaging in a "plan of out and out extortion" in trying to force a couple to give the agency beachfront land in return for a permit to build a three-bedroom home. The Commission demanded the land on the basis that the proposed home interfered with existing public beach access, but when Pacific Legal Foundation sued, the court found this to be untrue.

More recently, the Commission attempted to deny construction of a home on a 40-acre ocean front lot because the house would interfere with views looking *from the sea to land*. Again, it took a PLF lawsuit to put the Commission in its place, resulting in a court holding that the Commission was engaged in a plan to subordinate private property rights to the views of passing boaters.

**W**HILE THE Commission's public views and access playbook may be standard for permit denials, its application to Burke's case is especially remarkable. For in Burke, The Commission is not only subverting property rights to its idea of a prettier view; it is willing

to risk human life. When the fence was not there, people died on the bluffs; since it was built, there have been *no injuries*. But to the Commission, continued public safety is apparently less important than an unobstructed public view of the bluffs. The Commission's suggestion that the fence undermines public use of the sandy beach near the fence is equally divorced from reality. After all, the public would have no right to use that area if not for the 1988 agreement in which the state and city agreed to the fence. In a real way, it is the fence that afforded the public any access at all.

When Burke sued the Coastal Commission, a Los Angeles Superior Court upheld The Commission's action, paving the way for the fence to come down and the public once again trespass on the bluffs. But PLF has since appealed this dangerous decision to the California Court of Appeals. The Commission's subjective beliefs about views cannot be allowed to trump public safety, expose property owners to unnecessary liability from trespassers, or undermine valid contracts between the state and property owners that benefit both the public and private owners. Common sense must prevail. The Commission must be told to keep its hands off the fence. As long as the Commission continues unnecessarily and unlawfully trampling on Burke's property rights and local concerns, PLF will be there to put The Commission back in its rightful place. CPR



## A Closer Look

### So what does Obama really believe?

*Black Liberation Theology is not an idea peculiarly held by Reverend Jeremiah Wright.*

MICHAEL S. FREDENBURG

**A**S IN past presidential races, the religious affiliation and beliefs of the major presidential candidates have become front and center issues. In particular the views of Barack Obama's particular brand of Christianity have been called into question due to his long membership in

Reverend Jeremiah Wright's Trinity United Church of Christ (TUCC).

One truth about Christianity is that the number of

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*Michael S. Fredenburg covers social issues policy and politics for California Political Review.*