

GAO

Report to the Ranking Minority Member,
Subcommittee on Crime, Committee on
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ABORTION CLINICS

Information on the Effectiveness of the Freedom of Access to Clinic Entrances Act



General Government Division

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The Honorable Charles E. Schumer
Ranking Minority Member
Subcommittee on Crime
Committee on the Judiciary
House of Representatives

The 1980s and early 1990s brought escalating levels of violence to abortion clinics across the country. In response, Congress passed the Freedom of Access to Clinic Entrances Act of 1994 (FACE),¹ which made it a federal offense to engage in violent or obstructive conduct intended to interfere with people seeking or providing reproductive health services. Abortion clinic violence remains an issue of national concern.

In response to your request, this report provides information on (1) the occurrence of abortion clinic incidents² before and after FACE, as reported to us by representatives of clinics that abortion rights groups identified as having experienced relatively high levels of incidents before the enactment of FACE;³ (2) views regarding FACE and its effectiveness from representatives of these clinics, selected police departments and U.S. Attorney offices, and other representatives from the Department of Justice (DOJ), the Bureau of Alcohol, Tobacco and Firearms (ATF), national abortion rights organizations, and national anti-abortion organizations; (3) efforts by local and federal law enforcement agencies following the enactment of FACE, and satisfaction with these agencies; and (4) any court cases pertaining to FACE and the courts' rulings in those cases.

To provide this information, we surveyed representatives of 42 clinics that had experienced relatively high levels of incidents before FACE according to data collected by abortion rights groups, a sample of 15 police departments that serve the areas where those clinics are located, and 36 U.S. Attorney offices whose districts include those clinics. We based our sampling plan on clinics that reportedly experienced relatively high levels of violence before FACE; therefore, the views we obtained are illustrative, rather than representative of all groups in the country. Our survey results

¹P.L. 103-259, codified at 18 U.S.C. 248.

²These incidents include picketing, hate mail, harassing calls, blockades, invasions, vandalism, burglary, arson, attempted arson, bombings, attempted bombings, bomb threats, assault, stalking, and death threats. Not all these incidents are necessarily violations of FACE.

³Throughout this report, we use the term "abortion clinics" or "clinics" to refer to facilities that perform abortions. Although FACE also applies to hospitals, physicians' offices, as well as other family planning and reproductive health service facilities, our study focused on abortion clinics because they reportedly accounted for the majority of incidents.

are not generalizable to all clinics, police departments, and U.S. Attorney offices. In doing our work we also interviewed other officials from DOJ and ATF and representatives of national abortion rights and anti-abortion organizations. We identified lawsuits that pertained to FACE by reviewing legal databases and DOJ information.

Results in Brief

Our analysis of clinic survey responses indicated that most of the clinics experienced fewer types of incidents during the 2 years preceding our survey (April 1996 through March 1998) than they had in the 2 years prior to the passage of FACE (June 1992 through May 1994). The types of incidents that declined included blockades, vandalism, invasions, bomb threats, death threats, assaults, and stalking. Most of the clinic respondents said that picketing continued to occur but involved fewer and more peaceful protesters.

Most of those we contacted believed that FACE had an effect on clinic incidents. Respondents from 35 of the 42 clinics we surveyed credited FACE with deterring or reducing abortion clinic incidents. Respondents from 21 of the 36 U.S. Attorney offices we surveyed thought that FACE had positively affected incidents, including deterring or reducing their occurrence. Most of the other officials whom we interviewed from DOJ and national abortion rights organizations also felt that FACE has been a deterrent to clinic violence, particularly blockades. Representatives of the police departments that we contacted were less consistent in their views. The representative of one anti-abortion organization expressed the view that FACE caused more extreme violence because it has driven peaceful protesters away. In addition to FACE, factors such as prosecution and penalties under other federal laws and local injunctions were cited as helping to reduce clinic incidents.

Most police department respondents told us their departments had taken steps to better prepare officers and clinics for potential incidents following the enactment of FACE. Representatives of 9 of the 15 police departments we contacted said their officers had received training pertaining to abortion clinics, and 12 said their departments had conducted outreach and education with clinics since FACE became law. About half reported engaging in prevention activities, such as assigning officers to clinic entrances during all hours of operation and increasing patrols at high-risk times.

Representatives of 31 of the 36 U.S. Attorney offices we surveyed reported that their districts had established abortion violence task forces, and 29 reported accomplishments that included improved coordination and communication. Nearly all the U.S. Attorney respondents whose districts had task forces reported that meetings were typically attended by representatives of federal and local law enforcement agencies.

Most clinic respondents were satisfied with both local and federal law enforcement. Thirty-three of the 42 clinic respondents were generally satisfied with the protection provided by local law enforcement, and 32 were generally satisfied with their relationship with local law enforcement. Clinic respondents who observed negative aspects of local law enforcement most often cited poor response to incidents and poor enforcement of laws. Thirty of the 42 clinic respondents were generally satisfied with federal law enforcement, often citing good communication, proactive steps, and good response to and investigation of incidents.

We identified 46 criminal and civil cases pertaining to FACE that were either completed or pending as of September 11, 1998. Many of these cases raised constitutional challenges to FACE. These challenges, which included charges that FACE violates the freedom of speech and religious protection in the First Amendment, were all ultimately unsuccessful. Convictions were obtained in most of the reported⁵ criminal FACE prosecutions, and civil remedies were obtained in most of the civil lawsuits in which a FACE violation was alleged.

Background

FACE was enacted on May 26, 1994. The act gave the federal government a new tool for investigating and prosecuting abortion-related violence and disruptions. It established federal criminal penalties and civil remedies for “certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services.” FACE also prohibited the damage or destruction of property that belongs to a reproductive health care facility. Appendix I contains the text of FACE in its entirety.

FACE not only sought to protect the rights of those seeking or providing abortion services, it also sought to protect the rights of anti-abortion protesters in expressing their views. The act states that it must not be construed to prohibit any expressive conduct, including peaceful picketing

⁵Reported decisions are those that have been published and a decision has been rendered on at least part of the case.

or other peaceful demonstration, protected by the First Amendment. Thus, circumstances dictate whether such actions as picketing violate the law. For example, peaceful, nonobstructive picketing on public property would not violate FACE; obstructive or threatening picketing on clinic property could be found to violate the act.

Criminal and civil FACE cases can be initiated in different ways and result in different penalties. Criminal FACE prosecutions may be brought only by the Attorney General of the United States, and only if an alleged FACE violation has already occurred. The act sets out criminal penalties of fines, imprisonment, or both, depending on the nature of the violation and whether it is a first or subsequent offense. For example, in cases of nonviolent physical obstructions, first-time offenders can receive a maximum sentence of 6 months' imprisonment and a \$10,000 fine. If bodily injury results from an offense, regardless of whether it is a first or subsequent offense, the maximum sentence is 10 years; and if death results, the maximum sentence is any term of years or life imprisonment. Civil actions may be brought by the Attorney General of the United States; the Attorney General of any state on behalf of anyone who is injured or may be injured by a violation of FACE; or any aggrieved person involved in providing, obtaining, or seeking to provide or obtain reproductive health services.⁴ Courts have the discretion to award appropriate relief, including injunctions, damages, attorneys' fees, and costs of suit.

The Attorney General has vested in DOJ's Civil Rights Division the federal government's civil and criminal enforcement authority to bring cases in court under FACE and other federal statutes that can be applied to abortion clinic violence. According to a high level DOJ official, the Civil Rights Division has often investigated and brought cases in collaboration with U.S. Attorneys' offices in the field, and occasionally U.S. Attorneys' offices have brought cases on their own. However, all civil and criminal charging decisions must be approved by the Assistant Attorney General for Civil Rights.

In August 1994, shortly after two murders took place outside an abortion clinic in Florida, the Attorney General formed a federal task force to investigate the possible existence of a national conspiracy against reproductive health care providers and to coordinate federal enforcement activities. The task force consisted of representatives from DOJ's Criminal Division, Civil Rights Division, Federal Bureau of Investigation (FBI), and

⁴A corporation can qualify as an aggrieved person and thus have standing to bring suit. Planned Parenthood of Southeastern Pennsylvania v. Walton, 1997 WL 734012 at *2, 3 (E.D. PA).

United States Marshals Service; and ATF. This task force played an important role in the early implementation of FACE, according to a high-level DOJ official. The task force prompted the first criminal prosecution under FACE and made federal prosecutors across the country more aware of the applicability of other preexisting federal criminal statutes to clinic violence. The Attorney General's task force went out of existence in early 1997 after its lead prosecutors concluded that it lacked sufficient evidence to prove the existence of a national conspiracy beyond a reasonable doubt.

In January 1995, following shootings at clinics in Massachusetts and Virginia, the President instructed DOJ to take certain steps to address clinic violence. He instructed DOJ to direct (1) each United States Attorney to immediately head an abortion violence task force of federal, state, and local law enforcement officials; and (2) each U.S. Marshal to consult with clinics regarding communications with law enforcement agencies. The task force was to formulate plans to address clinic security. The Attorney General followed the President's order with a memorandum outlining the task forces' responsibilities, including developing plans to address abortion clinic security, coordinating law enforcement efforts relating to abortion violence, assisting local law enforcement in responding to abortion clinic incidents, and ensuring that cases that could be tried under FACE are filed appropriately.

The Attorney General's memo also lays out in general terms federal and local law enforcement responsibilities regarding abortion clinic violence. It states that "violence against abortion providers is, in the first instance, a violation of state and local law and the duty to prevent such crime and investigate and prosecute it when it occurs falls primarily to state and local officials, where they are able to deal effectively with it. However, the federal government has an important role in assisting state and local authorities and bringing to bear federal tools and resources" The memo states that clinics in need of assistance should be advised to first contact their local police departments.

In mid-1997, due to concerns that clinic violence had increased and federal coordination had declined, the Acting Assistant Attorney General for Civil Rights established an Abortion Violence Working Group. The group was formed to promote communication and coordination among federal law enforcement components and agencies involved in investigating and prosecuting abortion violence cases. Comprising senior representatives of DOJ's Civil Rights Division, Executive Office for United States Attorneys

(EOUSA), the FBI, the Marshals Service, and senior representatives of ATF, the group reportedly meets every 5 to 6 weeks to share information, coordinate law enforcement and litigation strategies, and formulate plans to respond to perceived threats to providers of reproductive health services.

Objectives, Scope, and Methodology

Our report objectives were to provide information on (1) the occurrence of abortion clinic incidents before and after FACE, as reported to us by representatives of clinics that abortion rights groups identified as having experienced relatively high levels of incidents before the enactment of FACE; (2) views regarding FACE and its effectiveness from representatives of these clinics, selected police departments and U.S. Attorney offices, and other representatives from DOJ, ATF, three national abortion rights organizations, and two national anti-abortion organizations; (3) efforts by local and federal law enforcement agencies following the enactment of FACE and clinic, U.S. Attorney office, police department, abortions rights group, and anti-abortion rights group representatives' satisfaction with these agencies; and (4) any court cases pertaining to FACE and the courts' rulings in those cases.

To obtain information from clinics on changes in the occurrence of clinic incidents, we conducted structured telephone interviews with a judgmental sample of representatives of 42 abortion clinics identified as having experienced relatively high levels of violence during the 2-year period prior to the passage of FACE. Three national abortion rights groups used data they had collected during the 1993 and 1994 time frame to identify these clinics for us. During the interviews with clinic representatives, we listed types of incidents that the clinics might have experienced, and we asked whether each type of incident had occurred at the clinic in either of the two time periods we were studying. We asked only whether each incident had occurred, not how many times it occurred. Furthermore, we did not ask respondents whether each type of incident they experienced was a violation of FACE, for this would have required a legal assessment. (See app. II for the questionnaire we used to interview clinic representatives and their aggregate responses to these and other questions.)

To obtain the views of representatives from abortion clinics, police departments, U.S. Attorney offices, and others regarding the effectiveness of FACE and the efforts of federal and local law enforcement following the enactment of FACE, we conducted structured telephone interviews with

representatives of 42 abortion clinics and 15 police departments selected from a stratified sample of the 40 departments that serve the locations of the clinics we contacted. In addition, we sent questionnaires to the 36 U.S. Attorneys who serve the federal judicial districts in which the clinics we contacted were located. We also interviewed other officials at DOJ, ATF, and representatives of three national abortion rights organizations and two anti-abortion organizations. We reviewed studies and documents related to FACE and abortion clinic violence. (See app. II through app. IV for copies of our survey instruments. See app. V for a listing of the organizations we contacted during our review.)

Because we did not draw a representative sample of abortion clinics, police departments, and U.S. Attorney offices, the results of our structured surveys represent only the clinics, police departments, and U.S. Attorney offices we contacted. Nevertheless, these survey results are useful for better understanding the implications of FACE. In responding to open-ended survey questions, respondents provided narrative answers that sometimes involved more than one theme or topic. Consequently, when we categorize and discuss responses in this report, the number may appear to exceed the total number of respondents. (See app. VI for further information on our survey methodology.)

We took the following steps to identify cases in which FACE was litigated and the courts' rulings in those cases:

- We obtained from DOJ a summary of all the criminal prosecutions and civil lawsuits it had initiated or completed pertaining to FACE as of September 11, 1998.
- We conducted a search of WESTLAW and LEXIS databases to identify any reported decisions under FACE.
- We consulted the National Abortion Federation's Quarterly Report⁶ on legal issues relating to abortion and a listing of FACE cases compiled by the National Organization for Women Legal Defense and Education Fund.

We conducted our work from December 1997 through August 1998 in accordance with generally accepted government auditing standards. We received comments on a draft of this report from DOJ and the Department of the Treasury. These comments are summarized at the end of this letter.

⁶First Amendment Issues Affecting Abortion Providers and Their Attorneys: Report for First Quarter 1998, the National Abortion Federation, Washington, D.C. (1988).

Clinic Respondents Reported Experiencing Fewer Types of Incidents in Past 2 Years

Most of the 42 clinic representatives we interviewed reported experiencing fewer types of incidents during the 2-year period before we began our interviews (April 1996 through March 1998) than they had during the 2-year period before the May 1994 enactment of FACE (June 1992 through May 1994). Many respondents also indicated that the frequency of incidents had decreased, as did severity, particularly the severity of picketing.

Although clinics' experiences with anti-abortion incidents varied, representatives of almost all these clinics told us they experienced picketing and hate mail or harassing phone calls during both time periods. In addition, their responses indicated declines in the number of clinics experiencing blockades, vandalism, invasions, bomb threats, death threats, assaults, and stalking of clinic staff or family members. For example, 27 of the 42 respondents told us their clinics had experienced blockades during the 2 years prior to FACE; 6 said they had experienced blockades during the most recent 2 years. Thirty-six respondents told us of vandalism at their clinics during the first time period; 19 reported vandalism in the more recent period. Table 1 identifies the number of clinic respondents who reported specific types of incidents as occurring in each of the two time periods we studied.

Table 1: Number of Clinics Experiencing Specific Types of Incidents During 2-Year Period Preceding FACE (June 1992 Through May 1994) and 2-Year Period Preceding GAO Survey (April 1996 Through March 1998)

Type of incident	Clinics reporting incident occurred before FACE (6/92 to 5/94)	Clinics reporting incident occurred more recently (4/96 to 3/98)	Change in number of clinics reporting incident
Blockades	27	6	-21
Vandalism	36	19	-17
Invasions	25	10	-15
Bomb threats	29	14	-15
Death threats	31	16	-15
Assault	23	10	-13
Stalking	25	12	-13
Burglary	6	2	-4
Arson	5	1	-4
Hate mail/ harassing calls	40	37	-3
Bombings	2	0	-2
Attempted arson	5	4	-1
Attempted bombings	2	1	-1
Picketing	41	42	+1

n=42

Source: GAO survey of selected clinics.

We also asked clinic respondents whether any other incidents had occurred at their clinics during these two time periods. Twenty-four of the 42 respondents described additional incidents, including butyric acid attacks⁷ and cases of suspicious packages.

In addition to asking representatives whether their clinics had experienced each type of incident during the two time periods, we asked whether, in general, incidents were more or less frequent in the 2 years preceding our survey compared to the 2 years preceding the passage of FACE. Thirty-four respondents indicated that overall, they had seen a pronounced change in the frequency of incidents at their clinics, noting decreases in the following types of incidents: hate mail or harassing phone calls (19), picketing (17), blockades (16), invasions of their clinics (14), vandalism (13), and stalking (11). At a few clinics, however, respondents thought that these types of incidents had become more frequent.

⁷Some anti-abortion activists have squirted, sprayed, or injected this intensely noxious industrial chemical in clinics to temporarily shut down clinic operations. Butyric acid can damage property and cause nausea and respiratory problems.

We also asked representatives of these clinics whether incidents were more or less severe in the 2 years preceding our survey compared to the 2 years preceding the passage of FACE. Of 35 respondents who indicated that overall, they had seen a pronounced change in the severity of incidents at their clinics, 26 said that picketing was less severe in the more recent 2-year period than it had been during the 2 years prior to FACE; 3 said that it was more severe. Of those explaining how picketing had become less severe, one respondent told us that picketers were very aggressive and verbally abusive prior to FACE, but that events are now quieter and take the form of “prayer vigils.” Another said that protestors are still picketing, but they do so in fewer numbers and they follow the rules. Ten respondents said that hate mail or threatening phone calls had become less severe, but 1 thought that this type of incident had increased in severity.

Many Had Positive Views of FACE; Others Had Mixed Views

For the most part, representatives of the clinics and U.S. Attorney offices we surveyed thought that FACE had made a difference, often citing its deterrent effect. Representatives of the three national abortion rights groups and one of the anti-abortion groups we contacted expressed similar views. A representative of the other anti-abortion group said that his group was not affected by FACE because its members do not engage in activities that would violate the act. Clinic respondents, DOJ officials, and representatives of national abortion rights groups said that other factors in addition to FACE, such as local injunctions, other federal laws, and improved clinic security measures, also may have reduced incidents. Police department respondents expressed divergent views about FACE’s effectiveness. A small number of respondents from the U.S. Attorney offices, police departments, and clinics we contacted during our review believed that FACE did not have an effect on clinic incidents. Some said that incidents had already declined before FACE was enacted, and others mentioned specific weaknesses of the act.

Many View FACE Positively and See It Reducing Incidents

Most clinic and U.S. Attorney office respondents believed that FACE had a positive effect on clinic incidents, often citing its deterrent effect. Others we contacted, including DOJ and ATF officials and representatives of three national abortion rights and one anti-abortion group, expressed the same belief, particularly regarding blockades. In addition, U.S. Attorney office respondents and DOJ officials described strengths of FACE, such as the additional tools it provides federal agents for investigating and prosecuting clinic incidents.

Thirty-seven of the clinic representatives we interviewed believed that FACE had an effect on violent or disruptive incidents at their clinics, and 35 described that effect as reducing or deterring incidents. For example, one respondent said that violent demonstrators were given only a “slap on the wrist” before FACE, but FACE made them realize that consequences can be more severe. Another respondent whose clinic had been involved in a FACE prosecution credited FACE with ending what he described as a cycle in which some protestors endlessly engaged—blockading, being arrested, spending a few days in jail, and then blockading again. Five clinic respondents credited FACE with increasing support or awareness of local law enforcement. For example, one respondent explained that as a result of FACE, local authorities more seriously enforced clinic-related violations of the law.

Of the 36 U.S. Attorney office representatives surveyed, 21 believed that FACE had an effect on clinic violence or disruptions in their districts. In describing the effect of the act, 15 respondents said that FACE, or federal actions taken as a result of FACE, had reduced or deterred incidents. A representative from 1 U.S. Attorney office stated that his district’s prosecutions of 12 individuals in 3 separate physical obstruction cases resulted in removing the violators from the streets and appeared to have deterred similar illegal conduct by others. In his view, FACE, in conjunction with state and local enforcement efforts, appeared to have reduced the number of illegal protestors to a core group of offenders who were unlikely to be easily deterred.

Twenty-three of the 36 U.S. Attorney office respondents believed that FACE enhanced local law enforcement’s ability to protect clinics from violence, and 27 believed it enhanced federal law enforcement’s ability to do the same.

Representatives of 27 U.S. Attorney offices cited strengths they saw in FACE. Eight respondents focused on the flexibility FACE provides or the additional federal tools it offers. These respondents cited federal restraining orders and injunctions and the law’s flexibility that allows for bringing either civil or criminal causes of action. Seven respondents saw the act’s strength in its establishment of federal authority. For example, one respondent explained that FACE allows for intervention in an area that was previously outside federal jurisdiction. To a lesser extent, respondents cited other strengths of FACE, including the additional attention it has brought to the issue of clinic incidents, its harsher penalties, and the communication it promotes among law enforcement agencies.

DOJ officials we contacted said that FACE has been a significant tool that has allowed the federal government to undertake investigations, prosecutions, and civil actions in an area in which it previously had limited criminal authority and no authority to pursue civil remedies. FACE, in effect, gave the FBI jurisdiction to investigate abortion clinic violence and, in so doing, allows the use of FBI resources to augment ATF's continued role in investigating clinic arsons and bombings. Also, according to DOJ officials, the existence of FACE, as well as the prosecutions that result from it, deters such incidents as massive disruptions and blockades. They said that civil actions brought under FACE can result in civil remedies, including injunctive relief, damages, and penalties. An official in the Special Litigation Section of DOJ's Civil Rights Division stated that civil cases often lead to an injunction and offered the opinion that federal court injunctions have been effective in reducing incidents. Civil injunctions can provide relief, such as establishing a "buffer zone" around a clinic entrance that demonstrators may not enter, or banning excessive noise during a clinic's hours of operation.

ATF officials with whom we spoke indicated that FACE has made a difference by making a large dent in "more minor" incidents, such as blockades. They believe FACE has deterred more minor crimes because it attacks violators in the pocketbook by imposing substantial federal penalties. For example, prior to FACE, it would not have been a federal offense to throw a "stink bomb" or acid into a clinic; FACE made this a federal violation with a potential fine of up to \$10,000. ATF officials added, however, that if a clinic incident involves an arson or bombing with no injuries or fatalities, FACE penalties are weak compared to those provided under the federal statute governing arson and explosives.⁸ In such cases, prosecutors may choose not to prosecute under FACE.

Representatives of two of the national abortion rights organizations we contacted viewed FACE as a major factor in deterring anti-abortion violence and saving lives, and a representative of a third abortion rights organization said that FACE had deterred blockades. The head of one group expressed the view that without FACE, violence would have continued to skyrocket. The head of another group stated that the penalties of FACE and the threat that federal law enforcement could show up at any time have deterred blockades. She noted that even though the number of blockades was falling before FACE was passed, it declined even further because of FACE. According to these organizations, blockades that occur now involve fewer people and fewer clinics.

⁸18 U.S.C. 844.

A representative from one of the two national anti-abortion groups we contacted said that FACE has had a “chilling effect” on the number of people willing to be involved in anti-abortion activities. He added that FACE has “raised the pricetag for participation” because many are not willing to risk federal charges and prosecution despite their commitment to the anti-abortion cause. He attributed a decline in his group’s anti-abortion actions to FACE. A representative from the other anti-abortion organization we contacted said that FACE had not affected his group’s activities because the group does not organize protests, nor does it support activities that would violate FACE. Nevertheless, this organization is opposed to FACE because it believes FACE targets pro-life activists’ free speech.

Factors Other Than FACE Also Seen as Reducing Clinic Incidents

Representatives of clinics we surveyed, DOJ officials, police department representatives, and a national abortion rights study⁹ acknowledged that factors other than FACE also played a role in reducing anti-abortion incidents at clinics. They identified a variety of factors, including local injunctions, other federal statutes, strong local law enforcement, and clinic security measures, as having an effect on clinic incidents.

When asked whether factors other than FACE had an effect on incidents, most clinic respondents indicated that there were factors in addition to FACE that had an effect on incidents at their clinics. Among the 31 respondents who expressed this view, 11 cited other legal actions, such as local injunctions that were in place prior to the passage of FACE. Ten respondents thought that negative reactions to violence had caused a reduction in clinic incidents. As examples, they said that people with anti-abortion views do not want to be associated with the violent actions of extremists and that press coverage of the more heinous acts decreased public support for the anti-abortion position. Seven respondents credited their local law enforcement agencies with reducing clinic incidents, and four said that other state or federal laws decreased clinic violence.

Alleged perpetrators of clinic incidents have been prosecuted under federal statutes other than FACE. Although DOJ officials believed FACE had reduced clinic incidents, they found it difficult to isolate the effects of FACE on convictions because FACE has been used in conjunction with other statutes. One official described FACE as “one of an arsenal of statutory weapons available.” Depending on the case, federal prosecutors may find it more effective to use statutes that carry heavier penalties, such as the

⁹1997 Clinic Violence Survey Report conducted by the Feminist Majority Foundation (1998).

federal statute governing arson and explosives, in addition to or in place of FACE.

Although we did not ask representatives of police departments to identify factors other than FACE that affected clinic incidents, several nevertheless provided information on this subject. Three respondents believed that their departments' strong response to clinic incidents before FACE was enacted prevented future incidents. Three others explained that injunctions or other court orders prior to FACE curtailed incidents in their communities.

In a report of its 1997 clinic violence survey, the Feminist Majority Foundation credited several factors, in addition to FACE, with reducing clinic violence. The report stated that FACE, increased clinic security, better law enforcement, and community mobilization all worked toward mitigating violence at abortion clinics.

Police Expressed Mixed Views About the Effect of FACE

Police department respondents' views regarding the effectiveness of FACE did not exhibit a clear pattern. Of 15 respondents, 10 said they were knowledgeable about FACE and, therefore, could answer questions about it. Three said they believed FACE had the effect of ending blockades, reducing protest activity, or "calming things down." Three of the four respondents who said FACE had not affected incidents explained that serious incidents at clinics in their jurisdictions had already stopped before FACE was passed. Three respondents told us they did not know whether FACE affected incidents in their jurisdictions.

Nine of these 10 police department respondents described a variety of strengths they saw in the act. Among the strengths they cited were that FACE provides a level of consistency, recognizes a nationwide problem, and deters illegal activity by most protestors. One respondent told us that the greatest effect of FACE is that it deters illegal activity by most protestors because "reasonable people" are afraid of violating federal laws. Another respondent explained that being able to prosecute cases at a federal level under FACE was the tool they needed because the local district attorney had not been willing to prosecute anti-abortion activists.

Some Believe FACE Has Not Had Intended Effect, and Some Cite Weaknesses

Although many of the people we contacted shared positive views of FACE, some did not think FACE had reduced clinic incidents, in part because incidents were already down prior to May 1994, when the act was passed.

In addition, some described weaknesses in the act, despite their belief that it had reduced clinic incidents.

Representatives of 9 of the 36 U.S. Attorney offices we surveyed believed that FACE had not affected violent or disruptive incidents in their districts for a variety of reasons. Three respondents, for example, explained that FACE had no effect because incidents in their districts were either rare or nonexistent. Another explained that incidents had already declined prior to FACE because of civil judgments and a tough state law covering interference at clinics.

Twenty of the 36 U.S. Attorney office respondents cited weaknesses of FACE, although most of the 20 had also identified strengths of the act. Of those citing weaknesses, nine noted that penalties available under FACE are relatively weak. Some commented on weak misdemeanor penalties, and others compared FACE's penalties to stiffer treatment available under other applicable statutes. Four respondents cited weaknesses that had to do with FACE not clearly delineating the roles of law enforcement agencies. As one U.S. Attorney office representative stated, "Local law enforcement agencies get confused over when to call federal law enforcement and who retains what jurisdiction." Another expressed the view that it would be helpful to have a state law to complement federal jurisdiction and give more alternatives to state and local police.

All 10 of the police department respondents who said they were knowledgeable about FACE noted weaknesses in the act, with half focusing on weaknesses with its enforcement. One respondent explained that the day-to-day workings of FACE are left up to the local police, although, in the respondent's view, the police have no authority to enforce it. Four of the 10 respondents expressed the view that FACE had not affected clinic incidents in their jurisdictions, but 3 explained that serious problems had already stopped before FACE was passed.

Only 5 of the 42 clinic respondents indicated that FACE did not affect clinic incidents and 3 expressed the belief that FACE actually led to more threatening and violent incidents. One respondent explained that the extreme fringe, frustrated by a decline in overall numbers of protests and protestors, has taken more threatening and violent actions. This view was shared by a representative of one of the national anti-abortion organizations we contacted, who believed that FACE has actually caused more extreme clinic violence because it has driven peaceful protestors away.

Law Enforcement Efforts Following Enactment of FACE

At the local level, representatives of most of the police departments we surveyed said their departments had taken steps to better prepare officers or clinics in their jurisdictions to respond to incidents since FACE was enacted. At the federal level, most judicial districts we surveyed had established abortion violence task forces and achieved positive results, according to representatives of U.S. Attorney offices.

Police Report Doing Training, Outreach, and Prevention to Reduce Incidents

Representatives of most of the 15 police departments we surveyed reported their departments had been involved in a variety of efforts to respond to and reduce clinic incidents since FACE was passed. Most reported their officers received training about clinic incidents and that their departments conducted outreach or education efforts with clinics in their jurisdictions. In addition, close to half also told us of steps their departments had taken to prevent incidents from occurring at clinics.

According to police department respondents, officers in nine of the departments we surveyed received training regarding abortion clinic violence, although the content and participants varied. The type of training differed by department and included such topics as a review of constitutional rights and applicable local ordinances, civil disobedience arrests, managing blockades, and dealing with protestors who go limp. Departments also differed regarding which officers were trained. For example, one respondent told us all sworn officers were trained, but another reported training only supervisors. Others said only officers in units that respond to clinic incidents received training. Departments also differed in when their training was provided. For example, one police department respondent told us that most patrol officers in his department were trained “five or six years ago.” On the other hand, another respondent told us uniformed officers and detectives in his department were trained annually.

Twelve police department respondents said that since FACE was passed, they had conducted outreach or education with clinic staff about what to do in the event of violence or disruptions. Nine described efforts designed to improve communication with clinic staff, including five who said their departments had assigned specific officers to serve as liaisons with clinics. Seven respondents told us of their departments’ efforts to improve clinic security and described a variety of formal and informal measures. For example, one respondent told us that officers from his department go to clinics and offer physical and personal security advice. Another said that officers trained clinic staff on how to spot suspicious packages.

In addition to the outreach and education efforts reported by police department respondents, seven told us their departments had taken special steps to prevent violence or disruption at clinics since the passage of FACE. Five reported they increased patrols at clinics during high-risk times, such as the anniversary of *Roe v. Wade*¹⁰ or on Saturdays, when the most demonstrators are present. One respondent told us that as a proactive measure, his captain recently began assigning two officers to every clinic in the jurisdiction during their hours of operation, posting one officer at each clinic's front door and one at the back.

**Most U.S. Attorneys
Contacted Reported
Positive Results From Task
Forces**

Most of the U.S. Attorney offices we contacted said that their districts had an abortion violence task force, and almost all believed that these groups had produced positive results, most frequently in the area of increased communication and coordination with other agencies. Most districts formed their task forces around the same time, but the number of meetings held varied by district. According to most U.S. Attorney respondents, these meetings were typically attended by representatives of both federal and local law enforcement agencies.

Representatives of 31 of the 36 U.S. Attorney offices we surveyed reported that their districts had an abortion violence task force. Eighteen of these respondents indicated their task forces were established in January 1995—the month in which the President instructed DOJ to direct U.S. Attorneys to immediately head such a task force. Ten respondents told us their districts had established task forces prior to 1995. Of the three respondents reporting that their task forces were established after January 1995, one said the task force was established in March 1995. The other two respondents said their task forces were established in early 1998.

Twenty-nine of the 31 U.S. Attorney office respondents who said their districts had task forces told us they had seen particularly positive results from these groups. According to 25 of these respondents, their task forces resulted in increased communication or coordination within the law enforcement community or with clinics. For example, one respondent told us that in addition to significantly increasing all levels of communication, the task force also helped to coordinate federal enforcement efforts with state and local prosecutors to identify and implement the most effective response to a given situation. Nine respondents reported that their task

¹⁰410 U.S. 113 (1973). This decision of the Supreme Court of the United States held that states could not ban abortions in cases where the fetus was not yet viable.

forces established procedures for responding to clinic incidents. Four told us that a greater awareness of FACE or abortion clinics' problems resulted from their task forces, and six said that fewer incidents occurred as a result of these groups.

Responses from the U.S. Attorney offices we surveyed showed a wide range in the frequency of task force meetings. One respondent said that although her district had established a task force, it had not held any formal meetings. In contrast, 2 respondents said their task forces had met 15 times. The median number of times that task forces had reportedly met was four.

U.S. Attorney representatives from the 31 districts with task forces said that task force meetings were typically attended by representatives of the U.S. Attorney's office, the FBI, and the U.S. Marshals Service. Twenty-seven said that ATF representatives typically attend task force meetings, 29 said that local law enforcement representatives typically attend, and 14 said that clinic representatives typically attend. Twenty-nine of the U.S. Attorney respondents indicated their task forces have procedures for sharing information or coordinating efforts with federal law enforcement agencies, and 30 indicated they have procedures for doing the same with local law enforcement agencies.

Law Enforcement Efforts Generally Viewed Favorably

Clinic and U.S. Attorney office respondents generally viewed both local and federal law enforcement agencies favorably. Most clinic respondents were satisfied with the protection provided by local law enforcement, with their relationship with local law enforcement, and with the arrests that were made. Most were also satisfied with federal law enforcement regarding anti-abortion activities that took place at their clinics. However, several clinic respondents and representatives of three national abortion rights groups expressed some dissatisfaction with local and federal authorities.

Most Clinics and U.S. Attorneys Contacted Generally Satisfied With Local Law Enforcement Efforts

Most representatives of the clinics and U.S. Attorney offices we surveyed were satisfied with local law enforcement efforts regarding FACE during the 1996 to 1998 time period. All 42 clinic respondents told us that local law enforcement had been contacted regarding at least 1 type of incident. Most respondents were generally satisfied when we asked about their overall impressions of local law enforcement in terms of clinic protection, relationship with the clinic, and arrests, as well as their experiences

regarding specific types of incidents. Most U.S. Attorney office representatives also reported general satisfaction with the local law enforcement agencies in their districts.

Thirty-three of the 42 clinic respondents said they had been generally satisfied with the effectiveness of local law enforcement in protecting their clinics over the past 2 years. Most often, they pointed to their satisfaction with how local law enforcement responded to calls or incidents. Nineteen of the respondents' comments fell into this category, which included statements about local law enforcement's quick response, willingness to define limits for protestors, and strong presence during blockades and picketing. Sixteen noted law enforcement's good or serious attitude, including remarks about understanding the severity of the problem or understanding clinics' needs. Twelve respondents highlighted the proactive aspect of local law enforcement's protection. For example, one respondent told us that the police had provided personal and physical plant security training to clinic staff, and another said that local law enforcement had participated in the clinic's security planning. One respondent explained that a police officer is present at the clinic on the days that abortions are performed and when picketers are present. Another told us of a panic button that links the clinic to the police department. Ten respondents spoke of good communications or relationships with local law enforcement.

Clinic respondents also reported general satisfaction with their relationship with local law enforcement and the appropriateness of arrests made over the past 2 years. Thirty-two of the 42 clinic respondents told us they were generally satisfied with their clinics' relationships with local law enforcement. Of 35 respondents who answered our question about the appropriateness of arrests made by local law enforcement, 19 indicated that they were satisfied. Seven of the 42 respondents indicated that the question about arrests was not applicable to their clinics.

Thirty-four clinic respondents said they had observed particularly positive aspects of local law enforcement actions, with half describing positive responses to calls or incidents. For example, one respondent told us that the police had intervened between clinic staff and demonstrators and helped bring about peaceful resolutions to incidents. Another explained that the police department had created a strong presence during blockades and picketing and sent a strong message that breaking the law would not be tolerated. Nine respondents described proactive steps local authorities had taken. For example, one respondent said that the police

randomly drop by and check in with clinic staff. Another reported that the police had scheduled a meeting with representatives of both sides of the issue. When the anti-abortion faction did not attend, the police scheduled separate meetings with each side. Nine respondents described a good attitude on the part of local law enforcement, and eight talked about good communication or relationships between clinics and their local law enforcement agencies.

For the most part, clinic respondents told us they were also satisfied when local law enforcement was contacted about specific types of incidents that occurred at their clinics during the past 2 years, although satisfaction varied by incident. For example, 8 of the 10 respondents who said local law enforcement had been contacted about invasions at their clinics in the past 2 years said they were generally satisfied with local law enforcement's response; only 5 of the 10 who reported local law enforcement was contacted about stalking were generally satisfied. See table 2 for information on clinic respondents' satisfaction when local law enforcement was contacted about different types of incidents.

Table 2: Clinic Respondents' Satisfaction With Local Law Enforcement, by Type of Incident (April 1996 Through March 1998)

Type of incident	Number reporting contact with local law enforcement	Level of satisfaction		
		Generally satisfied	Neither satisfied nor dissatisfied	Generally dissatisfied
Picketing	41	30	4	7
Hate mail/harassing calls	22	13	4	5
Blockades	6	4	1	1
Invasions	10	8	0	2
Vandalism	17	12	3	2
Burglary	2	0	0	2
Arson	1	1	0	0
Attempted arson	4	2	1	1
Bomb threats	12	9	2	1
Assaults	10	7	2	1
Stalking	10	5	3	2
Death threats	12	7	4	1

n=42

Source: GAO survey of selected clinics.

All of the police department representatives we surveyed indicated that their departments would respond to all of the types of incidents we asked about in our survey. One respondent noted that his department generally would not respond to picketing if it simply involved someone holding a sign on public property.

All the representatives of the U.S. Attorney offices we surveyed expressed general satisfaction with the way in which at least some of the local law enforcement agencies protected clinics over the past 2 years. Thirty-two respondents said they were generally satisfied with the effectiveness of all or most local law enforcement agencies in protecting clinics in their districts. Four reported general satisfaction with some of their districts' local law enforcement agencies.

Some Cite Dissatisfaction With Local Law Enforcement

Although most representatives of clinics we surveyed told us they were generally satisfied with several dimensions of local law enforcement, some indicated they were dissatisfied with local law enforcement responses, including arrests. Representatives of two of the national abortion rights groups we contacted expressed concern over the uneven enforcement of FACE at the local level, as did a representative of one national anti-abortion group.

Most of the 42 clinic respondents said they were generally satisfied with the effectiveness of local law enforcement in protecting their clinics over the past 2 years, yet 7 respondents told us that they were generally dissatisfied with this aspect of local law enforcement. Five of these respondents explained they were dissatisfied because of poor response on the part of local law enforcement, including slow response or even a lack of response. Other reasons respondents cited for their dissatisfaction included that response or enforcement varied by individual officer. Five clinic respondents said they were generally dissatisfied with their clinics' relationships with local law enforcement. Again, these respondents mostly (4) pointed to local law enforcement's poor response as the cause of their dissatisfaction.

Of 35 respondents who answered our question about the appropriateness of arrests made by local law enforcement, 9 reported being dissatisfied. Some reasons included local law enforcement failing to strictly enforce local ordinances or failing to make arrests when respondents believed arrests were warranted.

Fourteen clinic respondents said they had observed particularly negative aspects of local law enforcement's actions over the past 2 years, although 8 of these respondents also told us of particularly positive actions they had observed. Eight of the respondents providing negative comments described poor response or enforcement on the part of local law enforcement. For example, one respondent described an incident in which fuel was spread on the clinic's floor, but no fire was set. Although the clinic had experienced arson twice before, the respondent said it took 2 calls and 25 minutes before the police, located 4 blocks away, responded to the calls. Another respondent told us that upon responding to incidents, officers had suggested the clinic would not have these problems if it closed.

A representative of one of the national abortion rights organizations we contacted expressed the view that local authorities' enforcement of FACE was relatively poor until the past year. In her opinion, as local authorities have witnessed the same anti-abortion activists repeatedly breaking the law, they have taken a more serious and professional approach to clinic violence.

Representatives of the other two national abortion rights organizations with whom we spoke expressed concerns that local law enforcement has been uneven in its enforcement of FACE. The head of one of these groups stated that in some cities local law enforcement has done an excellent job, but in other locations local enforcement of FACE has been a problem. She believed that there are communities where local law enforcement lacks the commitment to enforce FACE.

A representative of one of the national anti-abortion organizations with whom we spoke also believed that FACE has not been evenly enforced. In his view, some police do not charge protestors or call in federal authorities if the police officer's ideology is pro-life. In other cases, he believed that pro-life advocates are sometimes unfairly arrested for actions such as kneeling on a public sidewalk and praying.

According to representatives of the police departments we surveyed, their departments enforce the law regardless of the personal views of their officers. Eleven of the 15 respondents indicated that police officers' personal ideologies or religious beliefs about abortion did not interfere with their carrying out their duties when violent or disruptive incidents occurred at abortion clinics. Of the four who indicated that they had encountered problems, all said they had found ways to avoid these

officers' involvement with clinics. For example, one respondent told us of an officer who had refused to intervene at a clinic because of religious beliefs. The officer was subsequently disciplined and not allowed to respond to future clinic incidents. A respondent from another police department said that officers who have alerted the department that their religious beliefs would make it difficult to respond to a clinic have been assigned other duties.

Federal Law Enforcement Agencies Generally Viewed Positively

Most of the representatives of the clinics and U.S. Attorney offices we surveyed said that, overall, they were satisfied with federal law enforcement efforts. To a lesser extent, so were the representatives of police departments we surveyed. Most clinic respondents had observed particularly positive federal efforts that often involved good communication. Also, for the most part, clinic respondents said they were satisfied with their experiences with federal law enforcement regarding specific incidents at their clinics. Representatives of the three national abortion rights groups we contacted expressed positive views of federal authorities, but they also voiced some concerns.

Thirty of the 42 clinic respondents said that they were generally satisfied with federal law enforcement regarding anti-abortion activities, and 30 said they had observed particularly positive aspects of federal law enforcement. Most often, respondents described good communication efforts, with 16 providing responses that fell into this category. For example, one respondent told us that federal law enforcement kept the lines of communication open by just calling to see how things were going at the clinic. Thirteen respondents made positive observations having to do with proactive steps such as federal agents helping the clinic establish its security system. Ten respondents cited responses to and investigations of incidents as positive aspects of federal law enforcement.

For most types of incidents about which clinics contacted federal law enforcement during the past 2 years, clinic respondents said they were generally satisfied with federal law enforcement. Thirty of the 42 respondents told us that federal law enforcement had been contacted about at least 1 type of incident during the past 2 years. The relative number of clinics that were satisfied varied depending on the type of incident. For example, 9 out of the 12 who reported that federal law enforcement had been contacted about picketing said they were generally satisfied. However, two of the five respondents who said federal authorities had been contacted about assaults said they were generally

satisfied. Table 3 shows clinic respondents' satisfaction with federal law enforcement when contacted about different types of incidents.

Table 3: Clinic Respondents' Satisfaction With Federal Law Enforcement, by Type of Incident (April 1996 Through March 1998)

Type of incident	Number reporting contact with federal law enforcement	Level of satisfaction		
		Generally satisfied	Neither satisfied nor dissatisfied	Generally dissatisfied
Picketing	12	9	2	1
Hate mail/harassing calls	18	12	4	2
Blockades	5	3	1	1
Invasions	4	3	0	1
Vandalism	4	2	1	1
Burglary	1	1	0	0
Arson	1	1	0	0
Attempted arson	4	4	0	0
Bomb threats	8	6	2	0
Assaults	5	2	1	2
Stalking	7	4	2	1
Death threats	10	8	1	1

n=42

Source: GAO survey of selected clinics.

Representatives of the police departments and U.S. Attorney offices we surveyed were generally satisfied with federal law enforcement. Eight of the 15 police department respondents said their departments had called federal authorities regarding incidents at clinics in their jurisdictions, and 5 of these 8 told us they were generally satisfied with the support they received from federal law enforcement. The remaining three respondents said they were neither satisfied nor dissatisfied. Thirty of the 36 U.S. Attorney office respondents reported being generally satisfied with all or most federal law enforcement agencies regarding anti-abortion activities directed at clinics in their district. Of the remainder, five said they were generally satisfied with some federal law enforcement agencies, and one did not know.

Representatives of the three national abortion rights organizations we contacted voiced praise for, as well as some concerns about, federal authorities. According to the head of one group, federal efforts to identify

and protect clinics and doctors most at risk have saved lives. She further pointed to improved federal law enforcement reaction to clinic violence since the 1995 Oklahoma City bombing. However, she expressed concern about some federal agents and her belief that some are on the anti-abortion side. Since reporting specific concerns to DOJ, she believes this situation has improved. The head of another group stated that FACE has saved lives and reduced violence where aggressively enforced, but it has not been uniformly and appropriately enforced. She believes this problem exists at all levels of enforcement, including federal law enforcement agencies and U.S. Attorney offices. She further criticized DOJ for not pursuing more FACE cases. A representative of the third group we contacted said that federal law enforcement did not aggressively enforce FACE in the first years following the enactment of FACE. However, as federal law enforcement's experience with clinic violence grew, so did its effectiveness. She observed that some federal agents have a strong commitment to enforce FACE regardless of their beliefs about abortion.

Court Rulings in FACE Cases

Constitutional arguments have been raised in most of the reported FACE cases we identified, but they have ultimately proven unsuccessful. Constitutional challenges have included charges that FACE violates the freedom of speech and religion protections in the First Amendment.

FACE creates both criminal penalties and civil remedies against those who use force, threats of force, or physical obstruction to interfere with persons obtaining or providing reproductive health services. We identified a total of 46 criminal and civil cases that were either completed or pending as of September 11, 1998.¹¹ In 15 of the 17 criminal cases we identified, defendants pled guilty or were found guilty of FACE violations. Many of the 29 civil cases we identified resulted in civil remedies, including injunctive relief. Appendix VII contains summaries of these cases.

Constitutionality of FACE Upheld

The constitutionality of FACE has been challenged in various courts and on many grounds beginning on the day of its enactment. Constitutional arguments were raised in 24 of the 28 reported cases we identified but, ultimately, the courts all have found FACE to be constitutional. Although two district court decisions did hold FACE unconstitutional, they were

¹¹We identified a total of 46 cases—28 reported and 18 unreported or pending cases. Of the 28 reported cases, 8 are criminal cases and 20 are civil lawsuits. Of the 18 unreported or pending cases, 9 are criminal and 9 are civil. Unreported cases are court decisions that have not been published.

reversed on appeal.¹² To date, the U.S. Supreme Court has declined to review any of the U.S. courts of appeals' decisions upholding FACE. Constitutional challenges were raised in all 8 of the reported criminal cases we identified and in 16 of the 20 reported civil lawsuits we identified. We could not identify whether constitutional challenges were raised in the unreported or pending cases because we had limited information on these cases.

Opponents have challenged the constitutionality of FACE on a number of grounds. For example, they have argued that Congress lacked the authority under the Commerce Clause to pass such a statute. This provision of the Constitution gave Congress the power to regulate interstate commerce. The courts have consistently held that the enactment of FACE was a valid exercise of the commerce power. The courts reasoned that because Congress rationally determined that violence at reproductive health facilities affects interstate commerce, Congress had the authority to regulate that activity.¹³

Some First Amendment challenges to FACE have been based on freedom of speech. Courts have held that FACE was "content neutral" because it did not outlaw conduct for expressing an idea but rather sought to protect safety and interstate commerce.¹⁴ Furthermore, the act explicitly stated that nothing shall be construed to interfere with the exercise of protected First Amendment rights.¹⁵ Courts have also held that FACE was "viewpoint neutral," as it sought to protect access to all reproductive health services, including both abortions and services connected to carrying a fetus to term.¹⁶ Also, arguments that FACE was unconstitutionally overbroad and vague and, thus, had a "chilling effect" on peaceful activities have been unsuccessful.¹⁷

Other First Amendment challenges have been based on the "Free Exercise of Religion" clause. Courts have determined that FACE has been applied

¹²United States v. Wilson, 880 F. Supp. 621 (E.D. Wis. 1995), rev'd 73 F.3d 675 (7th Cir. 1995), reh'g en banc denied, 1996 U.S. App. LEXIS 2870 (7th Cir. Feb. 21, 1996), cert. denied, 117 S. Ct. 47 (1996); Hoffman v. Hunt, 923 F. Supp. 791 (W.D. N.C. 1996), rev'd, 126 F.3d 575 (4th Cir. 1997), cert. denied, 118 S. Ct. 1838 (1998).

¹³United States v. Dinwiddie, 76 F.3d 913, 920-921 (8th Cir. 1996).

¹⁴American Life League, Inc. v. Reno, 47 F.3d 642, 649 (4th Cir. 1995).

¹⁵18 U.S.C. 248 (d).

¹⁶American Life League, 47 F.3d at 649.

¹⁷Terry v. Reno, 101 F.3d 1412, 1421 (D.C. Cir. 1996).

neutrally towards all religions, as it sought only to punish violent, forceful or threatening conduct without regard to expressive content or viewpoint.

FACE has been challenged on grounds that it violated other constitutional amendments, too. Opponents have argued that the penalties imposed by FACE were excessive and, thus, violated the Eighth Amendment proscription against excessive fines. These challenges have consistently been dismissed due to the charges not being “ripe,” that is, not ready for the courts to address. Courts have also struck down arguments that by enacting FACE, Congress exceeded its authority under the Fourteenth Amendment and, thus, usurped powers reserved to the states by the Tenth Amendment.¹⁸

Criminal Prosecutions Have Resulted in Fines and Prison Sentences

In 15 of 17 criminal cases, defendants pled guilty or were found guilty of FACE violations. Of the remaining two cases, one resulted in the defendant receiving pretrial diversion, and one case is ongoing.

Criminal FACE cases have involved prosecution for activities ranging from nonviolent physical obstruction of clinic entrances to the use of force or threatening conduct. The criminal prosecutions we identified generally resulted in fines, incarceration, or both. The nature of the activity prosecuted and the sentence received varied considerably. For example, in one case a defendant was found guilty of throwing a bottle at a doctor’s car when the doctor attempted to enter the clinic property. The defendant was sentenced to 1 year in prison followed by 1 year of supervised release with the special condition that he stay at least 1,000 feet from any abortion clinic. The defendant was also ordered to pay restitution to the doctor for damage to the car.¹⁹ In another case, a defendant found guilty of fatally shooting a doctor and shooting two escorts—one fatally—was sentenced to life in prison without parole.²⁰

Criminal FACE charges may be brought in conjunction with charges of a violation of another federal statute. For example, other federal statutes DOJ has used in conjunction with FACE include the arson and explosives statute, which, among other things, prohibits threatening to use fire and

¹⁸Planned Parenthood Association of Southeastern Pennsylvania v. Walton, 949 F. Supp. 290, 294-295 (E.D. Pa. 1996).

¹⁹U.S. v. Bird, 124 F.3d 667 (5th Cir. 1997).

²⁰U.S. v. Hill, 893 F. Supp. 1034 (N.D. 1994), 893 F. Supp. 1039 (N.D. Fla. 1994), 893 F. Supp. 1044 (N.D. Fla. 1944), 893 F. Supp. 1048 (N.D. Fla. 1994). This case was also prosecuted locally and resulted in the imposition of the death penalty.

explosives to damage a building (18 U.S.C. 844); the statute prohibiting solicitation to commit a crime (18 U.S.C. 373); and the statute prohibiting the use of interstate commerce to communicate a threat (18 U.S.C. 875).²¹

In addition to charging FACE violations, one of the eight reported cases also included a federal charge for knowingly using and carrying a firearm during a crime of violence (in violation of 18 U.S.C. 924(c)). According to summary case information provided by DOJ, four of the nine unreported or pending cases included additional federal charges, such as a violation of the arson and explosives statute.

Civil Lawsuits Have Led to a Variety of Remedies

We identified 29 civil lawsuits involving FACE—17 brought by DOJ against alleged FACE violators and 12 brought by private parties. In 14 of the 17 lawsuits DOJ brought against alleged violators, the courts awarded injunctive relief, damages, and/or civil penalties; in the remaining 3 lawsuits, no decision had been rendered as of September 11, 1998. The other 12 lawsuits were brought by private parties, including anti-abortion activists challenging the constitutionality of FACE and abortion clinics filing civil actions against alleged FACE violators. In one case, *Greenhut v. Hand*, the court noted that FACE was being invoked to penalize threats against an anti-abortion volunteer.²²

Civil lawsuits initiated by DOJ have involved a range of offenses, including clinic obstruction, the use of physical force outside abortion clinics, and verbal threats to clinic staff and to physicians. Relief has included preliminary and permanent injunctions, damages, and civil penalties. Various remedies have been imposed depending on the nature of the activity litigated. For example, in 1 lawsuit where 35 defendants were charged with blocking the entrances to an abortion clinic for several hours, the court granted a preliminary injunction prohibiting the defendants from entering clinic property and later granted a motion for summary judgment and a permanent injunction.²³ In another lawsuit, defendants stalked an abortion clinic doctor and his wife and gathered on a weekly basis near their home and chanted, shouted, and displayed signs protesting abortion. In this case, the court granted a preliminary

²¹In some prosecutions of abortion-related violence, DOJ has elected to bring charges solely under federal statutes that carry heavier penalties than FACE, according to DOJ officials. We did not include information on these cases in our report because the scope of our case review was limited to FACE violations.

²²996 F. Supp. 372 (D. N.J. 1998).

²³*U.S. v. Roach, et al.*, 947 F. Supp. 872 (E.D. Pa. 1996).

injunction, which became permanent, prohibiting the defendants from demonstrating, congregating, or picketing within 45 feet of the intersection near the doctor's home, coming closer than 15 feet of the doctor or his wife, or driving within 3 car lengths of their cars.²⁴

Agency Comments

We requested comments on a draft of this report from the Attorney General and the Secretary of the Treasury or their designees. DOJ provided us suggested clarifications and technical comments, which we incorporated into the report where appropriate. The Department of the Treasury provided written comments stating that it was unaware of any evidence that FACE has supplemented ATF's role in investigating arson and bombing cases by giving the FBI jurisdiction to investigate abortion clinic violence, and that ATF's response to arson and bombing incidents has not changed since the enactment of FACE. We did not intend to suggest that FACE changed ATF's jurisdiction in bombing and arson incidents at abortion clinics. Nevertheless, FACE did give the FBI a role in these types of incidents, and we revised the report to clarify this point. Treasury's comments also stated that ATF sees no advantage to the FACE statute when it applies to arson and explosives cases because a violation of FACE is usually a misdemeanor charge. This reiterates a point we addressed in the report that ATF views FACE penalties as weak for arson and explosives incidents that do not involve injury or death.

We are sending copies of this report to the Chairman of your Subcommittee, the Chairmen and Ranking Minority Members of the Senate and House Committees on the Judiciary, the Chairmen and Ranking Minority Members of the Senate Committee on Governmental Affairs and the House Committee on Government Reform and Oversight, the Attorney General of the United States, and the Secretary of the Treasury. Copies also will be made available to others upon request.

²⁴U.S. v. White, 893 F. Supp. 1430 (C.D. Cal. 1995).

The major contributors to this report are listed in appendix XIII. If you or your staff have any questions concerning this report, please contact me or Evi Rezmovic, Assistant Director, on (202) 512-8777.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard M. Stana".

Richard M. Stana
Associate Director
Administration of Justice Issues

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Abbreviations

ATF	Bureau of Alcohol, Tobacco and Firearms
DOJ	Department of Justice
EOUSA	Executive Office for United States Attorneys
FACE	Freedom of Access to Clinic Entrances Act of 1994
FBI	Federal Bureau of Investigation
ORICO	Oregon Racketeer Influenced and Corrupt Organizations Act
RICO	Racketeer Influenced and Corrupt Organizations Act

Freedom of Access to Clinic Entrances Act of 1994

108 STAT. 694

PUBLIC LAW 103-259—MAY 26, 1994

Public Law 103-259
103d Congress

An Act

May 26, 1994
[S. 636]

To amend title 18, United States Code, to assure freedom of access to reproductive services.

Freedom of
Access to Clinic
Entrances Act of
1994.

18 USC 248 note

18 USC 248 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Access to Clinic Entrances Act of 1994".

SEC. 2. PURPOSE.

Pursuant to the affirmative power of Congress to enact this legislation under section 8 of article I of the Constitution, as well as under section 5 of the fourteenth amendment to the Constitution, it is the purpose of this Act to protect and promote the public safety and health and activities affecting interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services.

SEC. 3. FREEDOM OF ACCESS TO CLINIC ENTRANCES.

Chapter 13 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 248 Freedom of Access to Clinic Entrances.

"(a) PROHIBITED ACTIVITIES.—Whoever—

"(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

"(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

"(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship,

shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent

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Freedom of Access to Clinic Entrances Act
of 1994

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or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

“(b) PENALTIES.—Whoever violates this section shall—

“(1) in the case of a first offense, be fined in accordance with this title, or imprisoned not more than one year, or both; and

“(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with this title, or imprisoned not more than 3 years, or both; except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than \$10,000 and the length of imprisonment shall be not more than six months, or both, for the first offense; and the fine shall be not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

“(c) CIVIL REMEDIES.—

“(1) RIGHT OF ACTION.—

“(A) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services, and such an action may be brought under subsection (a)(2) only by a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship or by the entity that owns or operates such place of religious worship.

“(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

“(2) ACTION BY ATTORNEY GENERAL OF THE UNITED STATES.—

“(A) IN GENERAL.—If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, the Attorney General may commence a civil action in any appropriate United States District Court.

“(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent—

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“(i) in an amount not exceeding \$10,000 for a non-violent physical obstruction and \$15,000 for other first violations; and

“(ii) in an amount not exceeding \$15,000 for a nonviolent physical obstruction and \$25,000 for any other subsequent violation.

“(3) ACTIONS BY STATE ATTORNEYS GENERAL.—

“(A) IN GENERAL.—If the Attorney General of a State has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, such Attorney General may commence a civil action in the name of such State, as *parens patriae* on behalf of natural persons residing in such State, in any appropriate United States District Court.

“(B) RELIEF.—In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory damages, and civil penalties as described in paragraph (2)(B).

“(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

“(1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

“(2) to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, occurring outside a facility, regardless of the point of view expressed, or to limit any existing legal remedies for such interference;

“(3) to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this section, or to preempt State or local laws that may provide such penalties or remedies; or

“(4) to interfere with the enforcement of State or local laws regulating the performance of abortions or other reproductive health services.

“(e) DEFINITIONS.—As used in this section:

“(1) FACILITY.—The term ‘facility’ includes a hospital, clinic, physician’s office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.

“(2) INTERFERE WITH.—The term ‘interfere with’ means to restrict a person’s freedom of movement.

“(3) INTIMIDATE.—The term ‘intimidate’ means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

“(4) PHYSICAL OBSTRUCTION.—The term ‘physical obstruction’ means rendering impassable ingress to or egress from a facility that provides reproductive health services or to or from a place of religious worship, or rendering passage to or from such a facility or place of religious worship unreasonably difficult or hazardous.

“(5) REPRODUCTIVE HEALTH SERVICES.—The term ‘reproductive health services’ means reproductive health services provided in a hospital, clinic, physician’s office, or other facility, and includes medical, surgical, counselling or referral services

Appendix I
Freedom of Access to Clinic Entrances Act
of 1994

PUBLIC LAW 103-259—MAY 26, 1994

108 STAT. 697

relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

“(6) STATE.—The term ‘State’ includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”.

SEC. 4. CLERICAL AMENDMENT.

The table of sections at the beginning of chapter 13 of title 18, United States Code, is amended by adding at the end the following new item:

“248. Blocking access to reproductive health services.”.

SEC. 5. SEVERABILITY.

18 USC 248 note.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any other person or circumstance shall not be affected thereby.

SEC. 6. EFFECTIVE DATE.

18 USC 248 note.

This Act takes effect on the date of the enactment of this Act, and shall apply only with respect to conduct occurring on or after such date.

Approved May 26, 1994.

LEGISLATIVE HISTORY—S 636 (H.R. 796):

HOUSE REPORTS: Nos. 103-306 accompanying H.R. 796 (Comm. on the Judiciary) and 103-488 (Comm. of Conference).

SENATE REPORTS: No. 103-117 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD:

Vol. 139 (1993): Nov. 16, considered and passed Senate.

Nov. 18, H.R. 796 considered and passed House.

Vol. 140 (1994): Mar. 17, S. 636 considered and passed Senate, amended, in lieu of H.R. 796.

May 5, House agreed to conference report.

May 12, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 30 (1994):
May 26, Presidential remarks.

Questionnaire Used to Interview Abortion Clinic Representatives

GAO ID# _____

**FACE Telephone Interview with Clinic Directors
April 14, 1998**

Before calling, make sure the following information and the information for question 1 is filled in.

Name: _____

Title: _____

Clinic: _____

Telephone: _____

(Ask to speak with the person with whom you scheduled the interview. Then proceed.)

Hello. This is _____ from the U.S. General Accounting Office. We recently scheduled this time to conduct an interview about the Freedom of Access to Clinic Entrances Act, or FACE. Is this a good time to proceed with the interview? *Wait for answer).*

If this is not a good time:

When would be a good time for me to call you back?

(Date and Time if rescheduling is needed)

Before we begin, I'd like to remind you that GAO will take steps to safeguard the privacy of your responses. Survey results will be reported in summary form for all respondents and our report will not contain the name of your clinic.

I will be asking you specific questions about your experiences and perceptions. Since the interview is lengthy, please restrict your answers to the questions being asked. At the end of the interview, you'll have the opportunity to share information you think might be important, but that we did not cover.

Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives

In addition, you may find it helpful to refer to the information we faxed you along with the letter describing this study. For example, I'll be asking you about incidents that may have happened at your clinic during two distinct time periods--June 1992 through May 1994, and April 1996 through March 1998. These time periods are specified in the information we sent to you. *(If the respondent wants to look for the information, give him or her a minute or two, but if he or she does not find it within a couple minutes, assure him or her that it is not necessary in order to proceed.)*

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

GAO ID# _____

[The numbers contained in brackets represent the number of respondents who selected that response option.]

I. Our first set of questions has to do with your knowledge of FACE and incidents at your clinic in general.

1. First, may I just confirm that you have been associated with this clinic *[use appropriate term: for/since]* *[fill in length of time from scheduling script]?*

12 (average) years _____ months (or: since _____)
month, year

2. Prior to being notified about our survey, were you aware of the Freedom of Access to Clinic Entrances Act, or FACE?

Yes [40]
No [2]

3. Would you say that you are "very knowledgeable," "moderately knowledgeable," or "not knowledgeable" about what activities are legal or illegal under FACE?

Very knowledgeable [15] ---> **Read statement below**
Moderately knowledgeable [25] ---> **Read statement below**
Not knowledgeable [2] ---> **Read statement below**

So you know, in brief, FACE makes it a federal offense to engage in violent, threatening, obstructive, or destructive conduct that is intended to injure, intimidate, or interfere with persons seeking or providing reproductive health services.

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

II. Next I have some questions about particular incidents that may have occurred at your clinic.

4. I'd like to refer you at this point to the list of incidents you should have received along with the letter from us. Do you have this list handy?

Yes []
No [] --> **read list of incidents**

As you think about incidents that may have happened at your clinic, I'd like you to decide which category each incident best fits under and respond only for that category. For example, if someone attempted to bomb your clinic in the past, that particular incident should be considered an attempted bombing, but not also a bomb threat. However, it is also possible that two incidents occurred simultaneously. For example, some members of an opposition group may have been picketing while others were blockading the clinic entrances. If this occurred, you would respond for both incidents. Is this clear? *[If not, repeat and/or explain the above.]*

First I would like to ask you about **picketing at your clinic.**

5. During the 2 years prior to the passage of FACE (June 1992 through May 1994), did picketing ever occur at your clinic?

Yes [41]
No [1]
[Don't know] [0]

6. In the past two years (April 1996 through March 1998), did picketing ever occur at your clinic?

Yes [42]
No [0] --> **skip to question 7**
[Don't know] [0] --> **skip to question 7**

- A. In the past 2 years, were the local police or other local law enforcement ever contacted because of picketing at your clinic?

Yes [41]
No [1] --> **skip to question 6.B**
[Don't know] [0] --> **skip to question 6.B**

Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [30]
Neither satisfied nor dissatisfied . . . [4]
Generally dissatisfied [7]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement (for example, the FBI) ever contacted because of picketing at your clinic?

Yes [12]
No [30] --> *skip to question 7*
[Don't know] [0] --> *skip to question 7*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [9]
Neither satisfied nor dissatisfied . . . [2]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

Now I would like to ask you about **hate mail and harassing phone calls**.

7. During the 2 years prior to the passage of FACE (June 1992 through May 1994), did your clinic ever receive hate mail or harassing phone calls?

Yes [40]
No [2]
[Don't know] [0]

Appendix II
Questionnaire Used to Interview Abortion
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8. In the past two years (April 1996 through March 1998), did your clinic ever receive hate mail or harassing phone calls?

Yes [37]
No [5] --> *skip to question 9*
[Don't know] [0] --> *skip to question 9*

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of hate mail or harassing phone calls?

Yes [22]
No [15] --> *skip to question 8.B*
[Don't know] [0] --> *skip to question 8.B*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [13]
Neither satisfied nor dissatisfied ... [4]
Generally dissatisfied [5]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of hate mail or harassing phone calls at your clinic?

Yes [18]
No [17] --> *skip to question 9*
[Don't know] [0] --> *skip to question 9*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [12]
Neither satisfied nor dissatisfied ... [4]
Generally dissatisfied [2]
[Don't know] [0]
[Other] [0] --> *describe*

Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives

Now I would like to ask you about **blockades, or efforts to obstruct clinic entrances.**

9. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did blockades ever occur at your clinic?

Yes [27]
No [15]
[Don't know] [0]

10. In the past two years (April 1996 - March 1998), did blockades ever occur at your clinic?

Yes [6]
No [36] --> *skip to question 11*
[Don't know] [0] --> *skip to question 11*

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of blockades?

Yes [6]
No [0] --> *skip to question 10.B*
[Don't know] [0] --> *skip to question 10.B*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [4]
Neither satisfied nor dissatisfied ... [1]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of blockades at your clinic?

Yes [5]
No [1] --> *skip to question 11*
[Don't know] [0] --> *skip to question 11*

Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [3]
Neither satisfied nor dissatisfied . . . [1]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

Now I would like to ask you about **invasions, or efforts by disruptive individuals to enter the clinic building during clinic operation.**

11. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did invasions ever occur at your clinic?

Yes [25]
No [17]
[Don't know] [0]

12. In the past two years (April 1996 - March 1998), did invasions ever occur at your clinic?

Yes [10]
No [32] --> *skip to question 13*
[Don't know] [0] --> *skip to question 13*

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of invasions at your clinic?

Yes [10]
No [0] --> *skip to question 12.B*
[Don't know] [0] --> *skip to question 12.B*

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [8]
Neither satisfied nor dissatisfied . . . [0]
Generally dissatisfied [2]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of invasions at your clinic?

Yes [4]
No [6] --> *skip to question 13*
[Don't know] [0] --> *skip to question 13*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [3]
Neither satisfied nor dissatisfied . . . [0]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

Now I would like to ask you about **vandalism**.

13. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did your clinic ever experience vandalism?

Yes [36]
No [6]
[Don't know] [0]

14. In the past two years (April 1996 - March 1998), did your clinic ever experience vandalism?

Yes [19]
No [23] --> *skip to question 15*
[Don't know] [0] --> *skip to question 15*

Appendix II
Questionnaire Used to Interview Abortion
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A. In the past 2 years, were the local police or other local law enforcement ever contacted because of vandalism?

Yes [17]
No [2] --> *skip to question 14.B*
[Don't know] [0] --> *skip to question 14.B*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [12]
Neither satisfied nor dissatisfied ... [3]
Generally dissatisfied [2]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of vandalism at your clinic?

Yes [4]
No [15] --> *skip to question 15*
[Don't know] [0] --> *skip to question 15*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [2]
Neither satisfied nor dissatisfied ... [1]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives

Now I would like to ask you about **burglary and break-ins**.

15. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did your clinic ever experience a burglary or a break-in?

Yes [6]
No [36]
[Don't know] [0]

16. In the past two years (April 1996 - March 1998), did your clinic ever experience a burglary or a break-in?

Yes [2]
No [40] --> *skip to question 17*
[Don't know] [0] --> *skip to question 17*

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of a burglary or break-in?

Yes [2]
No [0] --> *skip to question 16.B*
[Don't know] [0] --> *skip to question 16.B*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [0]
Neither satisfied nor dissatisfied ... [0]
Generally dissatisfied [2]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of a burglary or break-in?

Yes [1]
No [0] --> *skip to question 17*
[Don't know] [0] --> *skip to question 17*
missing 1

Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied	[1]	
Neither satisfied nor dissatisfied	[0]	
Generally dissatisfied	[0]	
[Don't know]	[0]	
[Other]	[0]	--> <i>describe</i>

missing 1

Now I would like to ask you about **arson**.

17. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did your clinic ever experience arson?

Yes	[5]	
No	[37]	
[Don't know]	[0]	

18. In the past two years (April 1996 - March 1998), did your clinic ever experience arson?

Yes	[1]	
No	[41]	--> <i>skip to question 19</i>
[Don't know]	[0]	--> <i>skip to question 19</i>

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of arson at your clinic?

Yes	[1]	
No	[0]	--> <i>skip to question 18.B</i>
[Don't know]	[0]	--> <i>skip to question 18.B</i>

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied	[1]	
Neither satisfied nor dissatisfied	[0]	
Generally dissatisfied	[0]	
[Don't know]	[0]	
[Other]	[0]	--> <i>describe</i>

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

B. In the past 2 years, was federal law enforcement ever contacted because of arson at your clinic?

Yes [1]
No [0] --> *skip to question 19*
[Don't know] [0] --> *skip to question 19*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [1]
Neither satisfied nor dissatisfied ... [0]
Generally dissatisfied [0]
[Don't know] [0]
[Other] [0] --> *describe*

Now I would like to ask you about **attempted arson**.

19. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did anyone ever attempt arson against your clinic (not including actual arson you may have mentioned earlier)?

Yes [5]
No [37]
[Don't know] [0]

20. In the past two years (April 1996 - March 1998), did anyone ever attempt arson against your clinic (not including actual arson you may have mentioned earlier)?

Yes [4]
No [38] --> *skip to question 21*
[Don't know] [0] --> *skip to question 21*

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of attempted arson at your clinic?

Yes [4]
No [0] --> *skip to question 20.B*
[Don't know] [0] --> *skip to question 20.B*

Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [2]
Neither satisfied nor dissatisfied . . . [1]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of attempted arson at your clinic?

Yes [4]
No [0] --> *skip to question 21*
[Don't know] [0] --> *skip to question 21*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [4]
Neither satisfied nor dissatisfied . . . [0]
Generally dissatisfied [0]
[Don't know] [0]
[Other] [0] --> *describe*

Now I would like to ask you about **bombings**.

21. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did your clinic ever experience a bombing?

Yes [1]
No [41]
[Don't know] [0]

22. In the past two years (April 1996 - March 1998), did your clinic ever experience a bombing?

Yes [0]
No [42] --> *skip to question 23*
[Don't know] [0] --> *skip to question 23*

Appendix II
Questionnaire Used to Interview Abortion
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A. In the past 2 years, were the local police or other local law enforcement ever contacted because of bombings?

- Yes [0]
- No [0] --> *skip to question 22.B*
- [Don't know] [0] --> *skip to question 22.B*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

- Generally satisfied [0]
- Neither satisfied nor dissatisfied . . . [0]
- Generally dissatisfied [0]
- [Don't know] [0]
- [Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of bombings at your clinic?

- Yes [0]
- No [0] --> *skip to question 23*
- [Don't know] [0] --> *skip to question 23*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

- Generally satisfied [0]
- Neither satisfied nor dissatisfied . . . [0]
- Generally dissatisfied [0]
- [Don't know] [0]
- [Other] [0] --> *describe*

Appendix II
Questionnaire Used to Interview Abortion
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Now I would like to ask you about **attempted bombings**.

23. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did anyone ever attempt a bombing against your clinic (not including actual bombings you may have mentioned earlier)?

Yes [2]
No [40]
[Don't know] [0]

24. In the past two years (April 1996 - March 1998), did anyone ever attempt a bombing against your clinic (not including actual bombings you may have mentioned earlier)?

Yes [1]
No [41] --> *skip to question 25*
[Don't know] [0] --> *skip to question 25*

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of attempted bombings of your clinic?

Yes [1]
No [0] --> *skip to question 24.B*
[Don't know] [0] --> *skip to question 24.B*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [1]
Neither satisfied nor dissatisfied ... [0]
Generally dissatisfied [0]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of attempted bombings of your clinic?

Yes [0]
No [1] --> *skip to question 25*
[Don't know] [0] --> *skip to question 25*

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [0]
Neither satisfied nor dissatisfied . . . [0]
Generally dissatisfied [0]
[Don't know] [0]
[Other] [0] --> *describe*

Now I would like to ask you about **bomb threats, such as a phone call or letter, indicating that the clinic would be bombed.**

25. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did your clinic ever receive bomb threats (not including actual bombings or attempted bombings)?

Yes [29]
No [13]
[Don't know] [0]

26. In the past two years (April 1996 - March 1998), did your clinic ever receive a bomb threat?

Yes [14]
No [28] --> *skip to question 27*
[Don't know] [0] --> *skip to question 27*

- A. In the past 2 years, were the local police or other local law enforcement ever contacted because of a bomb threat?

Yes [12]
No [1] --> *skip to question 26.B*
[Don't know] [1] --> *skip to question 26.B*

Appendix II
Questionnaire Used to Interview Abortion
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1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [9]
Neither satisfied nor dissatisfied . . . [2]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of a bomb threat at your clinic?

Yes [8]
No [6] --> *skip to question 27*
[Don't know] [0] --> *skip to question 27*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [6]
Neither satisfied nor dissatisfied . . . [2]
Generally dissatisfied [0]
[Don't know] [0]
[Other] [0] --> *describe*

Now I would like to ask you about **assaults**.

27. During the 2 years prior to the passage of FACE (June 1992 - May 1994), were you or was any member of your staff assaulted in connection with his/her work at the clinic, or were any clients assaulted while seeking services?

Yes [23]
No [19]
[Don't know] [0]

**Appendix II
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28. In the past two years (April 1996 - March 1998), were you or was any member of your staff assaulted in connection with his/her work at the clinic, or were any clients assaulted while seeking services?

Yes [10]
No [32] --> *skip to question 29*
[Don't know] [0] --> *skip to question 29*

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of assault?

Yes [10]
No [0] --> *skip to question 28.B*
[Don't know] [0] --> *skip to question 28.B*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [7]
Neither satisfied nor dissatisfied ... [2]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of assault?

Yes [5]
No [5] --> *skip to question 29*
[Don't know] [0] --> *skip to question 29*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [2]
Neither satisfied nor dissatisfied ... [1]
Generally dissatisfied [2]
[Don't know] [0]
[Other] [0] --> *describe*

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

Now I would like to ask you about **stalking**.

29. During the 2 years prior to the passage of FACE (June 1992 - May 1994), were you or was any member of your staff or their families stalked--that is, followed to school, work, or other places?

Yes [25]
No [17]
[Don't know] [0]

30. In the past two years (April 1996 - March 1998), were you or was any member of your staff stalked?

Yes [12]
No [30] --> **skip to question 31**
[Don't know] [0] --> **skip to question 31**

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of stalking?

Yes [10]
No [2] --> **skip to question 30.B**
[Don't know] [0] --> **skip to question 30.B**

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [5]
Neither satisfied nor dissatisfied ... [3]
Generally dissatisfied [2]
[Don't know] [0]
[Other] [0] --> **describe**

B. In the past 2 years, was federal law enforcement ever contacted because of stalking?

Yes [7]
No [5] --> **skip to question 31**
[Don't know] [0] --> **skip to question 31**

Appendix II
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1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied	[4]	
Neither satisfied nor dissatisfied . . .	[2]	
Generally dissatisfied	[1]	
[Don't know]	[0]	
[Other]	[0]	--> <i>describe</i>

Finally, I would like to ask you about **death threats**.

31. During the 2 years prior to the passage of FACE (June 1992 - May 1994), did anyone threaten to kill you or any member of your staff, their families, or any clients?

Yes	[31]	
No	[11]	
[Don't know]	[0]	

32. In the past two years (April 1996 - March 1998), did anyone threaten to kill you or any member of your staff, their families, or any clients?

Yes	[16]	
No	[26]	--> <i>skip to question 33</i>
[Don't know]	[0]	--> <i>skip to question 33</i>

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of death threats?

Yes	[12]	
No	[4]	--> <i>skip to question 32.B</i>
[Don't know]	[0]	--> <i>skip to question 32.B</i>

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

Generally satisfied [7]
Neither satisfied nor dissatisfied . . . [4]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

B. In the past 2 years, was federal law enforcement ever contacted because of death threats?

Yes [10]
No [6] --> *skip to question 33*
[Don't know] [0] --> *skip to question 33*

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

Generally satisfied [8]
Neither satisfied nor dissatisfied . . . [1]
Generally dissatisfied [1]
[Don't know] [0]
[Other] [0] --> *describe*

33. Are there any other types of violent or disruptive incidents your clinic has experienced that we have not covered?

Yes [] --> *what?*
No [] --> *skip to question 42*

(If respondent mentions more than one "other type of incident," record only one here and ask about another "other type of incident" in question 36.)

34. Did [*type of incident given in question 33*] happen during the two years prior to FACE?

Yes []
No []
[Don't know] []

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

35. Did [*type of incident given in question 33*] happen within the past 2 years?

- Yes []
- No [] --> **skip to question 36**
- [Don't know] [] --> **skip to question 36**

A. In the past 2 years, were the local police or other local law enforcement ever contacted because of [*type of incident given in question 33*]?

- Yes []
- No [] --> **skip to question 35.B**
- [Don't know] [] --> **skip to question 35.B**

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with local law enforcement's response?

- Generally satisfied []
- Neither satisfied nor dissatisfied ... []
- Generally dissatisfied []
- [Don't know] []
- [Other] [] --> **describe**

B. In the past 2 years, was federal law enforcement ever contacted because of [*type of incident given in question 33*]?

- Yes []
- No [] --> **go to question 33**
- [Don't know] [] --> **go to question 33**

1. Would you say that you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement's response?

- Generally satisfied []
- Neither satisfied nor dissatisfied ... []
- Generally dissatisfied []
- [Don't know] []
- [Other] [] --> **describe**

[The previous series of questions (33 - 35b1) was repeated until the respondent answered "no" to question 33.]

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

III. In the next section, I'm going to ask you to think about changes in the frequency and severity of incidents that have occurred at your clinic and in law enforcement's response. Specifically, please think about the 2-year period prior to the passage of FACE (June 1992 - May 1994) compared to the most recent 2-year period (April 1996 - March 1998).

42. Overall, when you think about the 2-year period prior to the passage of FACE compared to the most recent 2-year period, would you say that there has been a pronounced change in the frequency of incidents at your clinic?

- Yes [34]
- No [8] --> skip to question 43
- [Don't know] [0] --> skip to question 43

A. With which types of incidents has there been a pronounced change in frequency?

B. Would you say that [incident type listed in A] in the past 2 years has been more or less frequent, compared to 2 years prior to FACE?

(check one)

(list each incident type in the spaces below)

more frequent less frequent

Hate mail/ Harassing Phone calls	2	19
Picketing	3	17
Blockades	1	16
Invasions	1	14
Vandalism	1	13
Stalking	1	11
Bombing	1	9
Death Threats	0	8
Assault	1	4

Note: Incidents were listed above only if cited by at least 10 percent of the respondents.

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

43. Overall, when you think about the 2-year period prior to the passage of FACE compared to the most recent 2-year period, would you say that there has been a pronounced change in the severity of incidents at your clinic?

- Yes [35]
 No [7] --> *skip to question 44*
 [Don't know] [0] --> *skip to question 44*

A. With which types of incidents has there been a pronounced change in severity?

B. Would you say that [*incident type listed in A*] in the past 2 years has been more or less severe, compared to 2 years prior to FACE?
 (check one)

C. In what ways would you say the severity of [*incident type listed in A*] has changed?

(list each incident type in the spaces below)

more less
severe severe

(describe)

Picketing	3	26	
Hate Mail/ Threatening Calls	1	10	
Blockades	1	5	
Harassment	2	4	
Vandalism	1	4	

Note: Incidents were listed above only if cited by at least 10 percent of the respondents.

Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives

44. Overall, when you compare the most recent 2-year period with the 2-year period prior to the passage of FACE, would you say that the way in which **local** law enforcement has handled clinic incidents has been better over the past 2 years, worse over the past 2 years, or has not changed?

Better over the past 2 years [19]
Worse over the past 2 years [3]
Has not changed [19] ---> *skip to question 45*
[Don't know] [1] ---> *skip to question 45*
[No basis to judge] [0] ---> *skip to question 45*

A. Please describe how it is [*choose the proper term: better / worse*]:

45. Overall, when you compare the most recent 2-year period with the 2-year period prior to the passage of FACE, would you say that the way in which **federal** law enforcement has handled clinic incidents has been better over the past 2 years, worse over the past 2 years, or has not changed?

Better over the past 2 years [18]
Worse over the past 2 years [0]
Has not changed [20] ---> *skip to question 46*
[Don't know] [1] ---> *skip to question 46*
[No basis to judge] [2] ---> *skip to question 46*

A. Please describe how it is [*choose the proper term: better / worse*]:

IV. Next I would like to ask some general questions about your perceptions of FACE.

46. Overall, do you believe the FACE Act has had an effect on violent or disruptive incidents at your clinic?

Yes [37]
No [5] --> *skip to question 47*
[Don't know] [0] --> *skip to question 47*

A. What effect do you believe FACE has had?

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

47. Overall, do you believe that factors other than FACE have had an effect on violent or disruptive incidents at your clinic?

Yes [31]
No [10] --> *skip to question 48*
[Don't know] [1] --> *skip to question 48*

A. What other factors, and what effect do you believe they've had?

V. Finally, I have a few questions about your overall impressions of law enforcement.

First, I would like to ask about your clinic's involvement with local law enforcement.

48. Overall, over the past 2 years, would you say you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with the effectiveness of local law enforcement in protecting your clinic?

Generally satisfied [33] --> *why?*
Neither satisfied nor dissatisfied [2]
Generally dissatisfied [7] --> *why?*
No contact with local law enforcement [0]
[Don't know] [0]
[Other] [0] --> *describe*

49. Overall, over the past 2 years, would you say you have been "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" that appropriate arrests have been made regarding incidents at your clinic?

Generally satisfied [19]
Neither satisfied nor dissatisfied [7]
Generally dissatisfied [9] --> *why?*
[Don't know] [0]
[Not applicable] [7]

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

50. Overall, over the past 2 years, would you say you are "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with your clinic's relationship with local law enforcement?

Generally satisfied [32]
Neither satisfied nor dissatisfied [5]
Generally dissatisfied [5] --> **why?**
No contact with local law enforcement . . [0] --> **skip to question 53**
[Don't know] [0]
[Other] [0] --> **describe**

51. Overall, over the past 2 years, have you observed particularly positive aspects of local law enforcement's actions?

Yes [34] --> **describe**
No [8]

52. Overall, over the past 2 years, have you observed particularly negative aspects of local law enforcement's actions?

Yes [14] --> **describe**
No [28]

Now I would like to ask you some questions about your clinic's experiences with federal law enforcement.

53. Overall, over the past 2 years, would you say you were "generally satisfied," "neither satisfied nor dissatisfied," or "generally dissatisfied" with federal law enforcement regarding anti-abortion activities directed at you, your clinic, staff, or clients?

Generally satisfied [30]
Neither satisfied nor dissatisfied [4]
Generally dissatisfied [3] --> **why?**
No contact with federal law enforcement [4] --> **skip to question 56**
[Don't know] [0]
[Other] [1] --> **describe**

**Appendix II
Questionnaire Used to Interview Abortion
Clinic Representatives**

54. Overall, over the past 2 years, have you observed particularly positive aspects of federal law enforcement's actions?

Yes [30] ---> **describe**
No [8]

55. Overall, over the past 2 years, have you observed particularly negative aspects of federal law enforcement's actions?

Yes [2] ---> **describe**
No [36]

56. Is there any other information you would like to tell us or any questions you have about our study?

57. As part of our study, we would also like to speak with municipal or county law enforcement officials in your area. Could you tell me who you think would be the most knowledgeable about incidents at your clinic or other abortion clinics that might be located in your community?

Thank you very much for your participation. It is possible that we may need to follow up with you on a question or two at a later date. Would this be a problem? *[If the respondent says 'yes' or indicates any important information about follow up, write it down and note it in the log!]*

If you have any questions in the future about this study, please feel free to call me. My name, again, is *[give your first and last name]*, and my telephone number is *[give your direct extension]*.

Questionnaire Used to Interview Police Department Representatives

GAO ID# _____

Local Law Enforcement Telephone Interview

Hello. My name is _____, and I'm with the U.S. General Accounting Office. At the request of Congress, we are conducting a study of abortion clinic violence. May I please speak with the police chief, or is there someone else responsible for handling incidents at clinics with whom I might speak? *[Obtain name and title from receptionist. Make sure you have appropriate title for the person you are contacting, and use the title when you address him or her. For example, "Chief Williams," "Lieutenant Johnson," or "Officer Lee." If the person identified is not available, try to determine a time when he or she will be in.]*

When you have the right person on the phone, proceed with:

Hello. My name is _____, and I'm with the U.S. General Accounting Office--GAO--the investigative agency of the U.S. Congress. At the request of Congress, we are conducting a study of the Freedom of Access to Clinic Entrances Act, otherwise known as FACE, that was passed by Congress in May, 1994. You should have received a faxed letter from us recently describing the study. Have you received our letter? *(If the person is unaware of such a letter, offer to fax it to him/her before you proceed. However, it is not necessary in order to conduct the interview.)*

I need to speak to someone in your department who can provide information about any violent or disruptive incidents at abortion clinics to which your department may have responded during the past 2 years. I will be asking how clinic incidents that occurred prior to FACE compare to incidents during the past 2 years as well as questions about department practices.

**Appendix III
Questionnaire Used to Interview Police
Department Representatives**

A. Are you the best person for me to speak with? (If not, determine who in the department is most knowledgeable about FACE and attempt or arrange a time to speak with her/him.)

Yes [] ---> **continue**

No [] ---> **who is?** (record information below)

_____ (record name and title)

Phone: _____

FAX: _____

Obtain/confirm the following information:

Name: _____ Title: _____

Unit/Department: _____

Telephone: _____

B. I'd like to conduct a structured interview with you that should take about 20 minutes. Do you have time to speak with me now?

Yes [] ---> **skip to question 1**

No []

C. When would be a good time for me to call you back?

_____ date, time

**Appendix III
Questionnaire Used to Interview Police
Department Representatives**

GAO ID# _____

[The numbers contained in brackets represent the number of respondents who selected that response option.]

Before we begin, I would like to remind you that we will not release any information identifying your department or any abortion clinics in your jurisdiction. Our report will contain primarily summary information. If we decide to cite individual responses, we will not identify your department or provide information that could connect a response to a particular department.

1. How long have you been involved with handling abortion clinic violence or disruptions in your jurisdiction?

(average) 9 years, _____ months or since _____
(range: 2 to 20 years)

2. Currently, how many abortion clinics are located in your jurisdiction? *[Interviewer: if respondent asks, instruct respondent not to include hospitals or doctors' offices that also perform abortions--we want only clinics if possible.]*

(average) 9
(range: 1 to 99)

Don't know [0] ---> **skip to question 3**

- A. Does the number refer just to clinics, or does it also include other providers, such as hospitals or doctor's offices?

Just abortion clinics [15]
Abortion clinics plus other providers . . [0]

3. About how many abortion clinic incidents has your department responded to in the past 2 years--that is, April 1996 through March 1998?

(median) 12 ---> **If zero, skip to question 5**
(range: 2 to 240)

Don't know [] ---> **go to question 4**

**Appendix III
Questionnaire Used to Interview Police
Department Representatives**

4. I would like to read you a list of types of incidents. For each type, please indicate whether your department has responded to such an incident at an abortion clinic in your jurisdiction in the past 2 years (April 1996 through March 1998). (*Read incident types and check one answer in each row.*)

	<u>Yes</u>	<u>No</u>	<u>Don't Know</u>
1. Picketing at clinics	[14]	[1]	[0]
2. Hate mail/harassing phone calls	[8]	[7]	[0]
3. Blockades, or efforts to obstruct clinic entrances [3]		[12]	[0]
4. Invasions, or efforts by disruptive individuals to enter the clinic building during clinic operation.	[4]	[11]	[0]
5. Vandalism	[6]	[8]	[1]
6. Burglary or break-ins	[2]	[13]	[0]
7. Assault against clinic staff or clients	[4]	[11]	[0]
8. Stalking, or following clinic staff or their families to school, work, or other places	[3]	[11]	[1]
9. Bomb threats against the clinic	[6]	[9]	[0]
10. Death threats against clinic staff or clients	[2]	[13]	[0]
11. Attempted bombings	[0]	[15]	[0]
12. Attempted arson	[1]	[14]	[0]
13. Arson	[1]	[14]	[0]
14. Bombing	[1]	[14]	[0]
15. Other incidents (<i>Specify</i>)	[6]	[9]	[0]

Note to interviewer: Before proceeding, compare the respondent's answer to the answer to question 3. If the respondent indicated that the department responded to incidents, but no incident types were given, follow-up with him or her.

5. Are there any types of incidents, from the list I just read, to which your department would generally not respond? (*Note to interviewer: If necessary, read list again. If question 4 was skipped, read list to respondent so that he/she can answer this question*).

Yes	[1]	
No	[14]	----> skip to question 6
[Don't know]	[0]	----> skip to question 6

A. Which types, and why?

**Appendix III
Questionnaire Used to Interview Police
Department Representatives**

6. Overall, when you think about the 2-year period prior to the passage of FACE (June 1992 through May 1994) compared to the most recent 2-year period (April 1996 through March 1998), would you say that there has been a pronounced change in the frequency of incidents at clinics in your jurisdiction?

- Yes [10]
 No [5] --> *skip to question 7*
 [Don't know] [0] --> *skip to question 7*

A. With which types of incidents has there been a pronounced change in frequency?

B. Would you say that [*incident type listed in A*] in the past 2 years has been more or less frequent, compared to 2 years prior to FACE?
(check one)

(list each incident type in the spaces below)

	<u>more</u> frequent	<u>less</u> frequent
Picketing	0	5
Blockades	0	4
Vandalism	0	4
Assault	0	3
Bomb Threats	0	3
Threats	0	2

Note: Incidents were listed above only if cited by at least 10 percent of the respondents.

**Appendix III
Questionnaire Used to Interview Police
Department Representatives**

7. Now, I'd like you to think about how the severity of incidents may have changed, rather than how often they occurred. Overall, when you think about the 2-year period prior to the passage of FACE (June 1992 through May 1994) compared to the most recent 2-year period (April 1996 through March 1998), would you say that there has been a pronounced change in the severity of incidents at clinics in your jurisdiction?

- Yes [10]
 No [5] --> **skip to question 8**
 [Don't know] [0] --> **skip to question 8**

A. With which types of incidents has there been a pronounced change in severity?

B. Would you say that [*incident type listed in A*] in the past 2 years has been more or less severe, compared to 2 years prior to FACE?
 (check one)

C. In what ways would you say the severity of [*incident type listed in A*] has changed?

<i>(list each incident type in the spaces below)</i>	<u>more</u> <u>severe</u>	<u>less</u> <u>severe</u>	<i>(describe)</i>
Picketing	2	6	
Blockades	0	3	

Note: Incidents were listed above only if cited by at least 10 percent of the respondents.

**Appendix III
Questionnaire Used to Interview Police
Department Representatives**

8. Does your department have any written policies or guidance specific to abortion clinic incidents?

Yes [4] ---> ***request a copy***
No [11]

9. Have officers in your department received any training regarding abortion clinics?

Yes [9]
No [6] ---> ***skip to question 10***
[Don't know] [0] ---> ***skip to question 10***

A. Could you describe:

- (1) What type of training has been provided?
- (2) Who has provided the training?
- (3) Who has received the training?
- (4) When was the training provided? (*Note to interviewer: Possible responses could be a specific date, "annually", or "every few years".*)

10. Have you found that it is difficult for any officers to enforce the law when it comes to violent or disruptive incidents at abortion clinics because of their personal ideologies or religious beliefs about abortion?

Yes [4]
No [11] ---> ***skip to question 11***
[Don't know] [0] ---> ***skip to question 11***

A. How do you deal with this situation?

11. Since the passage of FACE in May 1994, has your department ever conducted any outreach or education efforts with abortion clinic staff about what they should do in the event of violence or disruptions?

Yes [12]
No [3] ---> ***skip to question 12***
Don't know [0] ---> ***skip to question 12***

**Appendix III
Questionnaire Used to Interview Police
Department Representatives**

A. Please describe these efforts.

12. Since the passage of FACE, has your department taken *[choose the proper term: any/any other]* special steps to help prevent violence or disruption at clinics?

- Yes [7]
- No [8] ---> **skip to question 13**
- Don't know [0] ---> **skip to question 13**

A. What special steps has your department taken?

13. Under what circumstances would your department call federal authorities regarding incidents at abortion clinics?

14. During the past 2 years, that is, April 1996 through March 1998, has your department called federal authorities regarding incidents at abortion clinics?

- Yes [8]
- No [7] ---> **skip to question 16**

15. Overall, over the past 2 years, would you say you have been "generally satisfied", "neither satisfied nor dissatisfied", or "generally dissatisfied" with the support you received from federal law enforcement?

- Generally satisfied [5]
- Neither satisfied nor dissatisfied [3]
- Generally dissatisfied [0] ---> **describe**

16. Is there an Abortion Violence Task Force in your federal judicial district?

- Yes [2]
- No [3] ---> **skip to question 19**
- Don't Know [10] ---> **skip to question 19**

**Appendix III
Questionnaire Used to Interview Police
Department Representatives**

17. Are you, or is anyone else in your department involved with the Task Force?

- Yes [1]
- No [1] ---> **skip to question 17.B**
- Don't Know [0] ---> **skip to question 17.B**

A. *(If yes)* How does information shared with or resulting from the task force meetings get communicated to the rest of your force?

B. *(If no)* Is your department informed of information resulting from task force meetings, and how?

18. Have you seen anything particularly positive result from the Task Force?

- Yes [1] --> **go to A**
- No [1] --> **go to B**

A. *(If yes)* What?

B. *(If no)* Why not?

19. Would you say that you are "very knowledgeable," "moderately knowledgeable," or "not knowledgeable" about what activities are legal or illegal under FACE?

- Very knowledgeable [2]
- Moderately knowledgeable [8]
- Not knowledgeable [5] ---> **skip to question 23**

20. Is there anything about FACE that you find difficult to enforce?

- Yes [1]
- No [6] ---> **skip to question 21**
- [Don't know] [3] ---> **skip to question 21**

A. What would that be?

**Appendix III
Questionnaire Used to Interview Police
Department Representatives**

21. I'd like you to think about any strengths or weaknesses you see in the FACE Act.
- A. What do you see as strengths of the FACE Act?
 - B. What do you see as weaknesses of the FACE Act?
22. Overall, do you believe the FACE Act has had an effect on violent or disruptive incidents in your jurisdiction?
- Yes [3]
 - No [4] --> *skip to question 22.B*
 - [Don't know] [3] --> *skip to question 23*
- A. What effect do you believe FACE has had?
 - B. Why do you think it hasn't had an effect?
23. Is there any other information about FACE or clinic violence or disruption that you would like to share with us?

Thank respondent and end interview

Questionnaire Used to Interview U.S. Attorney Office Representatives

GAO

United States General Accounting Office

Survey of U.S. Attorney Offices About the Freedom of Access to Clinic Entrances Act (FACE)

At the request of Congress, GAO is conducting a study of the Freedom of Access to Clinic Entrances Act of 1994, otherwise known as FACE. As part of our study, we are interested in surveying U.S. Attorneys' offices in selected districts. Please ensure that the person most knowledgeable about your district's involvement with FACE completes this three-page questionnaire. Please type your responses or write clearly. If necessary, you may attach additional pages. If you do, identify the question number and write the name of your district on each page. Please fax the completed questionnaire by June 22, 1998 to both Lori Weiss (GAO) at (213) 830-1101 and Brenda Baldwin White (EOUSA) at (202) 514-8340. If you have questions, you may call Lori Weiss at (213) 830-1066.

U.S. Attorney District: _____

Person Completing Questionnaire:

Name: _____

Title: _____

Telephone Number: (_____) _____

[The numbers contained in brackets represent the number of respondents who selected that response option.]

1. Are you aware of any violent or disruptive incidents that have occurred at abortion clinics in your district since the enactment of FACE in May 1994?

Yes [26]
 No [10]

2. Is there an Abortion Violence Task Force in your district?

Yes [31] --> (Continue.)
 No [5] --> (Go to question 10.)

3. When was the task force first established?

_____/_____/_____ 10 before 1/95
 Month Year 18 during 1/95
 3 after 1/95

4. How many times has the task force met since it was established?

Median: 4 Range: 0 - 15

5. When did the task force last meet?

_____/_____/_____
 Month Year

6. What individuals or organizations typically attend task force meetings? (Check all that apply.)

- Senior Assistant U.S. Attorney [29]
- USAO Victim/Witness Coordinator [9]
- USAO Law Enforcement Coordinator [12]
- FBI [31]
- U.S. Marshals Service [31]
- ATF [27]
- Local law enforcement from jurisdictions that have clinics [29]
- Clinic representatives [14]
- Other (Please specify) [12]

**Appendix IV
Questionnaire Used to Interview U.S.
Attorney Office Representatives**

7. Does the task force have any procedures for sharing information and/or coordinating efforts among local and federal law enforcement? *(Check all that apply.)*

- Yes, with local law enforcement [30]
- Yes, with federal law enforcement. . . . [29]
- No, with neither [1]

8. Does the task force have any procedures for communicating with clinic operators in your district?

- Yes [30]
- No [1]

9. Have you seen anything particularly positive result from the Task Force?

Yes [29] --> What? _____

No [2] --> Why not? _____

10. Overall, do you believe that FACE has enhanced, decreased, or had no effect on local law enforcement's ability to protect clinics in your district from violence?

- Enhanced [23]
- Decreased [0]
- Had no effect [10]
- Don't know [3]

11. Overall, over the past 2 years, how satisfied have you been with the effectiveness of local law enforcement in protecting clinics in your district?

- Generally satisfied with all or most local law enforcement agencies [32]
- Generally satisfied with some local law enforcement agencies [4]
- Generally dissatisfied with most or all local law enforcement agencies . . . [0]
- No contact with local law enforcement agencies [0]
- Don't know [0]

12. Overall, do you believe that FACE has enhanced, decreased, or had no effect on federal law enforcement's ability to protect clinics in your district from violence?

- Enhanced [27]
- Decreased [0]
- Had no effect [8]
- Don't know [1]

13. Overall, over the past 2 years, how satisfied have you been with federal law enforcement regarding anti-abortion activities directed at clinics in your district?

- Generally satisfied with all or most federal law enforcement agencies [30]
- Generally satisfied with some federal law enforcement agencies [5]
- Generally dissatisfied with most or all federal law enforcement agencies [0]
- Don't know [1]

14. What do you see as the strengths and weaknesses of FACE?

Strengths: 27 Responses

Weaknesses: 20 Responses

15. Overall, do you believe that FACE has had an effect on violent or disruptive incidents in your district?

- Yes [21]
- No [9]
- Don't know . . . [6] --> (go to question 17.)

16. Please explain your response.

17. Please provide any additional comments you may have concerning FACE and clinic violence.

Thank you very much for your cooperation!

Organizations Contacted During Our Review

We conducted structured interviews with representatives of 42 abortion clinics and 15 police departments. Because of concerns about possible future incidents at abortion clinics, we assured representatives of these clinics and police departments that we would not report their names or locations. We contacted the following additional organizations during our review:

Federal Departments

Department of Justice

Executive Office for United States Attorneys

Civil Rights Division

Federal Bureau of Investigation

U.S. Marshals Service

U.S. Attorney Offices:

Northern District of Alabama

Southern District of Alabama

District of Arizona

Eastern District of Arkansas

Central District of California

Eastern District of California

District of Colorado

District of Columbia

Middle District of Florida

Northern District of Florida

Central District of Illinois

Southern District of Illinois

Northern District of Indiana

Southern District of Iowa

District of Kansas

Eastern District of Michigan

Western District of Michigan

District of Minnesota

Western District of Missouri

District of Montana

District of Nebraska

District of New Hampshire

District of New Jersey

Western District of New York

Western District of North Carolina

District of North Dakota

District of Oregon

Appendix V
Organizations Contacted During Our Review

Eastern District of Pennsylvania
District of Rhode Island
District of South Carolina
Eastern District of Tennessee
Northern District of Texas
Southern District of Texas
Eastern District of Virginia
Eastern District of Wisconsin
Western District of Wisconsin

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

**Abortion Rights
Organizations**

Feminist Majority Foundation
National Abortion Federation
Planned Parenthood Federation of America

**Anti-Abortion
Organizations**

National Right to Life Committee
Operation Rescue

Others

Police Executive Research Forum
Alan Guttmacher Institute¹

¹A nonprofit corporation for reproductive health research, policy analysis, and public education.

Survey Methodology

In order to obtain information on the first three research objectives, we surveyed representatives from three groups: abortion clinics, local police departments, and U.S. Attorney offices. We conducted structured telephone interviews with the first two groups and arranged for the Executive Office for United States Attorneys (EOUSA) to send a survey to the third group.

To obtain views of clinic representatives, we contacted clinics that reportedly had experienced relatively high levels of violence or disruption prior to the passage of FACE. We believed that such clinics were in a position to be particularly affected by the act. To get a better perspective on how key parties viewed the effects and enforcement of FACE, we also surveyed representatives from local police departments and U.S. Attorney offices whose jurisdictions covered the locations of the clinics included in our study.

Data Collection

Our staff, who had been trained in telephone interviewing skills, conducted the structured telephone interviews. The training covered general telephone interviewing techniques, as well as information specific to the surveys.

To determine whether clinic and police department respondents believed that abortion clinic incidents had increased, decreased, or stayed the same since the passage of FACE in May 1994, we chose two specific time periods of equal length for respondents to compare. The first time period was the 2 years preceding FACE (June 1992 through May 1994), and the second was the most recent 2-year period at the time we began our interviews (April 1996 through March 1998).

All survey questions that asked the respondent to characterize his or her response along a continuum utilized a three-point scale. For example, in question 3 on the clinic survey, the respondent was asked whether he or she was “very knowledgeable,” “moderately knowledgeable,” or “not knowledgeable” about what activities are legal or illegal under FACE. In question 6A1 on the same survey, the respondent was asked whether he or she was “generally satisfied,” “neither satisfied nor dissatisfied,” or “generally dissatisfied” with law enforcement’s response to picketing.

Abortion Clinics

We asked three national abortion rights groups to use data they had collected prior to FACE in order to help us identify clinics that had

experienced relatively high levels of violence and/or disruption during the 2 years prior to the act's passage. (See app. V for the names of these national groups.)

In identifying clinics, representatives of these groups considered their 1993 and 1994 incident data on clinics that had provided such data to them, as well as their knowledge of incidents at other clinics. They agreed on 45 clinics as having “high violence” before FACE. Most of these clinics had experienced at least three different types of incidents in the 1- to 2- year period prior to FACE. At our request, they included reproductive health service facilities that perform abortions, but not doctors’ offices or hospitals.

According to a national reproductive health organization and one of the national abortion rights groups we contacted, there are roughly 900 clinics in the country, but these estimates include some doctors’ offices. Because the clinics in our sample were selected judgmentally—and therefore subject to potential selection bias—and not selected using probability sampling from a known universe, our clinic survey results cannot be generalized either to all abortion clinics nationwide, or to all abortion clinics that experienced high violence during the June 1992 through May 1994 period.

The three national abortion rights groups faxed a joint letter to all abortion clinics in our sample. The letter alerted the clinics to the upcoming study and encouraged them to participate. We followed up with our own letter and then called clinic representatives to schedule a telephone interview. To ensure the anonymity of the clinic respondents, we discarded the cover page of each survey form upon completion of our study. Because the cover page was the only page that contained identifying information on respondents, its removal ensured that a link could not be made between respondents’ identities and their survey responses.

We sought to interview the person who had the most knowledge of incidents that occurred at the clinic during the time periods of interest. We interviewed 15 clinic directors; 10 administrators; and 17 other representatives, including owners, presidents, managers, and security directors. On average, representatives with whom we spoke had been with the clinic for 12 years.

We used a structured interview format to interview abortion clinic representatives. The interview included both close-ended and open-ended questions, and each interview lasted about 1 hour.

Two of the 45 clinics selected had closed; our resulting sampling frame consisted of 43 clinics. We completed interviews with representatives from 42 of these 43 clinics, for a response rate of 98 percent. (The one nonrespondent clinic could not provide a staff member who had been there long enough to answer our questions.)

Police Departments

We identified 40 local police departments that served the 42 clinics we surveyed. We developed 3 strata from which we selected our sample of 15: (1) departments with which clinic respondents were satisfied; (2) departments with which clinic respondents were dissatisfied; and (3) departments whose jurisdiction covered multiple clinics in our sample, and those clinics differed in their level of satisfaction with the department. We determined satisfaction on the basis of the clinic respondent's answers to clinic survey questions regarding effectiveness in protecting the clinic, making appropriate arrests, and the clinic's relationship with the department (questions 48, 49, and 50 from the clinic interview instrument).

We selected all five of the police departments where clinic respondents reported dissatisfaction with local law enforcement, the two departments with jurisdiction over multiple clinics in our sample where local law enforcement received mixed ratings, and eight randomly selected departments where clinic respondents said they were satisfied with local law enforcement on all of the applicable questions.¹

We completed interviews with all 15 of the local law enforcement agencies we selected, for a 100 percent response rate. As with the clinic interviews, we ensured local law enforcement respondents' anonymity by discarding information that could be used to identify them, thereby severing the link between respondents' identities and their survey responses. On average, the respondents we spoke with had been involved with handling abortion clinic violence and disruption for 9 years.

¹In some cases, the respondent answered "not applicable" to the question asking whether appropriate arrests were made. In such cases, our decision on whether to include the police department in our sample was based on clinics' responses to the other two questions regarding effectiveness in protecting the clinic and the clinic's relationship with the department.

U.S. Attorney Offices

We identified 36 U.S. Attorney offices with judicial districts that included the clinics we surveyed. EOUSA reviewed our instrument for appropriate language and clarity and e-mailed the survey to all 36 U.S. Attorney offices in our sample. It included a cover memorandum explaining the study and requesting that the appropriate person complete and return the survey to us. We telephoned nonrespondents to encourage participation and obtained a 100 percent response rate.

Sample Selection and Response Rate

Table VI.1 summarizes the selection of potential respondents and response rates obtained for all three surveys.

Table VI.1: Survey Sample Selection and Response Rates

Group surveyed	Number selected for sample	Response rate (percent)	Selection process
Clinics	43	98	Identified jointly by three national abortion rights groups
Police departments	15	100	Sample selected from the departments that serve the 42 participating clinics
U.S. Attorney offices	36	100	Included all U.S. Attorney offices with jurisdiction over the 42 participating clinics

Source: GAO survey of selected clinic, police department, and U.S. Attorney office representatives.

Analysis

In analyzing the three surveys, we computed descriptive statistics on the close-ended survey responses, and we conducted a systematic content analysis of the open-ended survey responses.

For the content analysis of the open-ended responses, two staff members reviewed all the narrative responses to a particular question and mutually agreed on response categories. Then, two staff members, at least one of whom had not worked on developing the categories, independently placed responses into the appropriate response categories. Any discrepancies were discussed and resolved.

The number of narrative response categories varied by question, as did the number of responses in each of the categories. In general, we have reported the response categories that were the most frequent or common.

Because of the way we selected our samples, the results of our structured surveys are not generalizable to the universes of clinics, police departments, or U.S. Attorneys in the country. Reported responses to the surveys are illustrative rather than representative; statements represent only the views of the individual respondents.

Nonsampling Errors

We took steps to minimize nonsampling errors.² Draft questionnaires were designed by social science survey specialists and reviewed by representatives of organizations who were knowledgeable about both the subject matter and the terms used by the respondents. The three national abortion rights groups reviewed the clinic questionnaire, and EOUSA reviewed the instrument for the U.S. Attorneys. The clinic interview was pretested with two abortion clinic representatives, and the local law enforcement interview was pretested with two police departments.

We kept in mind that the national abortion rights groups hold a position on the issue of abortion, and their input did not cause us to make any substantive changes to our instrument. However, the groups were in a position to offer useful advice on words and phrases that would be best understood by the abortion clinics. The groups also encouraged the participation of the abortion clinic representatives in the study, which reduced nonresponse bias.

We took steps to minimize nonresponse bias by following up with potential respondents to encourage them to participate. We obtained a 100 percent response rate from the police department interviews and U.S. Attorney surveys and a 98 percent response rate from the clinic interviews.

All data were double-keyed and verified after data entry, and computer analyses were double-checked against hand-tallies of key information. All computer programs were also checked by a second independent programmer.

²Because we do not generalize our survey findings to a larger population, it is not appropriate to calculate sampling errors for this study. However, the practical difficulties of conducting any survey may introduce other types of errors, commonly referred to as nonsampling errors. For example, differences in how a particular question is interpreted or in the sources of information that are available to respondents can introduce unwanted variability into the survey results.

Summaries of Cases Brought Under the Freedom of Access to Clinic Entrances Act of 1994

This appendix contains summaries of reported and unreported or pending cases brought under the Freedom of Access to Clinic Entrances Act of 1994 (FACE). The summaries of reported cases are based on the text of written decisions and additional information from the Department of Justice (DOJ) that updated the status of these cases. We based our summaries of unreported or pending cases on information provided by DOJ. We were not able to identify cases relating to actions brought by private parties in unreported or pending status because no central databases exist for identifying this information.

Criminal Cases Prosecuted by the Department of Justice

Reported Criminal Cases: United States Courts of Appeals Decisions

1. United States v. Bird, 124 F.3d 667 (5th Cir. 1997), cert. denied, 118 S. Ct. 1189 (March 9, 1998).

The defendant, an abortion protestor, was charged under FACE with use of force and threat of force for throwing a bottle through a window of a car being driven by an abortion provider and making death threats. The jury returned a guilty verdict, and the district court sentenced the defendant to imprisonment for 1 year, followed by 1 year of supervised release with the special condition that he stay at least 1,000 feet from any abortion clinic. The defendant was also required to pay restitution to the doctor for damage to the car. On appeal, the defendant challenged the constitutionality of FACE; however, he did not contest his guilt under FACE. The court of appeals affirmed the district court's opinion. It held that FACE was a legitimate regulation of interstate activity having substantial effect on interstate commerce; that the defendant lacked standing to advance a claim that FACE was unconstitutional because it protected certain relationships, but failed to protect others; and that FACE was neither overbroad nor vague. The court also held that the special condition that the defendant stay at least 1,000 feet away from abortion clinics did not violate the First Amendment. The Supreme Court denied a petition to review the court of appeals' decision.

2. United States v. Brock, et al., 863 F. Supp. 851 (E.D. Wis. 1994), mandamus denied sub nom., Hatch v. Stadtmuller, 41 F.3d 1510 (7th Cir. 1994) (table) (unpublished order), aff'd sub nom., United States v.

Soderna, 82 F.3d 1370 (7th Cir. 1996) cert. denied sub nom., Hatch v. United States, 117 S. Ct. 507 (1996).

Six defendants were charged with violating FACE for physical obstruction of a Milwaukee, WI, clinic. The complaint was based on an affidavit that stated that the defendants blockaded both doors to the clinic with automobiles, to which they secured themselves using cement and steel devices. The defendants argued that FACE was constitutionally infirm because it was a content-based regulation of expressive activity and because it was vague and overbroad. They requested a jury trial. The district court held that FACE was not unconstitutional and that it was neither a content-based restriction of speech nor vague or overbroad. Although FACE itself was silent on the issue of whether a jury trial was required, the court determined that the defendants were not entitled to a jury trial because the maximum possible sentence constituted a “petty offense.” The defendants were convicted of violating FACE. Fines and incarceration terms of various lengths were imposed, the maximum being 6 months. The defendants appealed their convictions, raising a variety of constitutional questions. The court of appeals affirmed, holding that FACE did not exceed Congress’ constitutional authority to regulate interstate commerce; that FACE did not violate the defendants’ First Amendment rights; that FACE’s proscription against obstruction of facilities was not unconstitutionally vague, so as to violate the First Amendment; and that the defendants were not entitled to a jury trial. The Supreme Court denied a petition to review the court of appeals’ decision.

3. United States v. Unterburger, Olson 97 F.3d 1413 (11th Cir. 1996), cert. denied, 117 S. Ct. 2517 (1997).

The defendants were charged under FACE with physical obstruction of an abortion clinic in Lake Clark Shores, FL, for chaining themselves to the main entrance of the clinic. Because the defendants had no prior convictions under FACE and the alleged offense involved “exclusively a nonviolent physical obstruction,” the defendants faced a maximum prison term of 6 months and a maximum fine of \$10,000. The defendants requested a jury trial, but the district court agreed with the magistrate judge that the charged offense was not sufficiently serious to trigger the constitutional right to a jury trial. Both defendants were convicted and sentenced to time served during pretrial detention and supervised release. The defendants appealed. The court of appeals affirmed, holding that FACE did not violate the First or Tenth Amendments, as FACE was both content and viewpoint neutral and was not unconstitutionally vague or overbroad.

The court also held that a sentence of 6 months and a fine of \$10,000 constituted a “petty offense,” and thus the defendants were not entitled to a jury trial. The Supreme Court denied a petition to review the court of appeals’ decision.

4. United States v. Weslin, et al., 964 F. Supp. 93 (W.D. N.Y. 1997), ___ F.3d ___, 1998 WL 537941 (2nd Cir. N.Y. Aug. 25, 1998).

The 11 defendants, anti-abortion activists, were charged with violating FACE for blocking the entrances to a reproductive health facility in Rochester, NY. One of the defendants moved to dismiss the charges on the grounds that FACE violated the First Amendment. The defendant argued that FACE was an impermissible content-based regulation because it was aimed at speech and expressive conduct intended to prevent persons from providing or obtaining reproductive health services. The Court held that FACE did not violate the free speech or free exercise clause of the First Amendment and that FACE did not exceed Congress’ authority to regulate interstate commerce.

Two of the 11 defendants were sentenced to 4 months in prison, and 2 other defendants were sentenced to 2 months in prison. The remaining seven defendants were sentenced to time served, supervised release, and community service. All of the defendants were ordered to pay \$105 restitution for the damage to the clinic doors.

The defendants filed an appeal. The court of appeals affirmed, holding that FACE was constitutional under the Free Speech clause of the First Amendment and the Commerce Clause.

5. United States v. Wilson, 880 F. Supp. 621 (E.D. Wis. 1995), rev’d 73 F.3d 675 (7th Cir. 1995), reh’g en banc denied, 1996 U.S. App. LEXIS 2870 (7th Cir. Feb. 21, 1996), cert. denied, 117 S. Ct. 47 (1996).

Six defendants were charged under FACE with blockading the doors of a Milwaukee, WI, clinic using a method similar to the one used in Brock. The district court held that FACE exceeded Congress’ power to legislate under the Commerce Clause. The court also held that because FACE was invalid under the Commerce Clause, it violated the Fourteenth Amendment because it was an impermissible regulation of private conduct. The court of appeals reversed, holding that FACE was constitutional under the Commerce Clause as a regulation that substantially affected interstate

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commerce. The Supreme Court denied a petition to review the court of appeals' decision.

The bench trial concluded on May 27, 1997. On April 30, 1998, the court found the defendants guilty of violating FACE as charged. One of the six defendants was sentenced to 167 days' confinement. No jail time was imposed at sentencing for the other five defendants. All the defendants were ordered to pay restitution to the clinic in the total amount of \$1,759.04. Two of the defendants filed appeals.

6. United States v. Wilson and Hudson, __ F.3d __, 1998 WL 452342 (7th Cir. Wis. Aug. 6, 1998).

The defendants were convicted on April 24, 1997, under FACE and conspiracy to commit a violation of FACE, for positioning themselves inside vehicles and blocking the front and rear entrances to the Wisconsin Women's Health Care Center. This was the second obstruction at the same clinic, see United States v. Wilson, 73 F.3d 675 (7th Cir. 1995). One defendant was sentenced to 120 days in prison and ordered to pay a fine of \$1,500 and restitution of \$454.97. The other defendant was sentenced to 24 months in prison and ordered to pay a fine of \$3,000 and restitution of \$454.97. Additionally, he was ordered to serve 3 years' supervised release following incarceration. As a special condition of his supervised release, he was also required to participate in a mental health treatment program. The defendants appealed. The court of appeals affirmed the district court's opinion. It held that FACE did not violate the First Amendment rights to freedom of speech and freedom of association. The court also held that the defendants' conspiracy convictions did not violate the First Amendment and that the district court did not abuse its discretion by requiring one defendant to participate in a mental health program as a condition of supervised release.

Reported Criminal Cases:
United States District
Court Decisions

1. United States v. Hill, 893 F. Supp. 1034 (N.D. Fla. 1994), 893 F. Supp. 1039 (N.D. Fla. 1994), 893 F. Supp. 1044 (N.D. Fla. 1994), 893 F. Supp. 1048 (N.D. Fla. 1994).

On July 29, 1994, a doctor and two escorts were shot while outside of the Ladies Center clinic in Pensacola, FL. The doctor and one escort were killed, and the other escort was wounded. The defendant was charged with intentionally injuring and interfering with individuals who had been providing reproductive health services. He was also charged with

knowingly using and carrying a firearm during a crime of violence for which he may be prosecuted in federal court, in violation of 18 U.S.C. 942(c). The defendant moved to dismiss the indictment, alleging that FACE was unconstitutional and that its vagueness precluded escorts from being considered “providers of reproductive services.” The district court held that Congress had the power under the Commerce Clause to enact FACE. The court also held that FACE, in light of its purpose and legislative history, included a doctor’s escort in the definition of “provider,” at least where, as here, the escort was performing his or her duties at the time of the alleged violation of the act. In a subsequent decision, the district court entered an order granting the government’s motion to exclude evidence offered by the defendant on the “necessity” or “justification” defense (which excuses criminal conduct committed in order to prevent an imminent greater harm). The court held that the defense could not be applied to justify averting acts that have expressly been declared by the Supreme Court to be constitutional and legally protected.

The defendant was convicted of violating FACE with death resulting and was sentenced to life without parole. A local murder prosecution resulted in imposition of the death penalty. The defendant withdrew his federal appeal.

2. *United States v. Lucero and Lacroix*, 895 F. Supp. 1419 (D. Kan. 1995), 895 F. Supp. 1421 (D. Kan. 1995).

The defendants were charged with interfering by physical obstruction with persons obtaining or providing reproductive health services in violation of FACE after blocking the entrances to a clinic in Wichita, KS, where abortions were performed. The defendants’ conduct amounted to “exclusively a nonviolent physical obstruction,” subjecting the defendants to a maximum term of imprisonment of 6 months and a maximum fine of \$10,000 for the first offense. The United States moved for a nonjury trial of the defendants. The district court held that the maximum penalty that could be imposed on the defendants exceeded the statutory definition of “petty offense”—one that carries a maximum penalty of no more than 6 months’ imprisonment and a \$5,000 fine—and thus, the defendants were entitled to a jury trial. The defendants moved for dismissal of the charges on the ground that FACE was unconstitutional under the Commerce Clause and the First Amendment. The district court held that FACE was not unconstitutional, as it was content and viewpoint neutral and Congress acted within its power to regulate interstate commerce.

Both defendants were found guilty after a jury trial, and each was sentenced to 6 months' incarceration and 1 year supervised release.

**Unreported or Pending
Criminal Cases**

The nine summaries in this section were prepared by DOJ.

1. United States v. Blackburn (D. Mont.).

The defendant was indicted on May 19, 1995, for making threatening telephone calls to numerous clinics that provided abortion services. The defendant was charged with six counts of violating FACE and six counts of violating 18 U.S.C. 844(e), threatening to use fire and explosives to damage a building. On October 26, 1995, the defendant pled guilty to one count of FACE and one count of 844(e). The defendant was sentenced on February 21, 1996, to 5 years' probation with mandatory psychological treatment.

2. United States v. Cabanies (W.D. Okla.).

The defendant pled guilty to entering a clinic in Warr Acres, OK, on January 24, 1998, and physically assaulting the clinic's only doctor. Prior to entering the clinic, the defendant had been protesting outside the building. The defendant pled guilty to one FACE violation. The defendant was sentenced to 3 months in prison to be followed by 3 years' supervised release with a special condition of 90 days' home detention. The defendant was also ordered to pay \$700 restitution to the doctor for medical expenses.

3. United States v. Embry (W.D. Ky.).

The defendant pled guilty to telephoning a bomb threat to a Women's Choice Clinic in Indianapolis, IN, on January 4, 1994, in violation of FACE. The defendant was sentenced to 2 years' probation and ordered to perform 100 hours of community service.

4. United States v. Hart (E.D. Ark.).

The defendant was charged with two FACE violations for abandoning two Ryder trucks in front of the Little Rock Family Planning Services and Women's Community Health Center clinics on September 25, 1997, in a manner as to communicate a credible bomb threat to the clinics' staff. Each truck obstructed vehicular access to the respective clinic's parking

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areas. Several businesses and residences near the clinics' locations were evacuated for several hours while bomb and arson experts investigated the trucks.

5. United States v. Lang (N.D. Ala.).

The defendant was charged with a FACE violation after threatening to kill a doctor during a telephone call to a TV reporter on January 8, 1995, in Huntsville, AL. The defendant received pretrial diversion on February 24, 1995.

6. United States v. Mathison (E.D. Wash.).

The defendant was indicted in Yakima, WA, for making a series of threatening calls, some interstate, to an anti-abortion counseling and referral service on December 31, 1994. The defendant was charged with a violation of FACE and a violation of 18 U.S.C. 875, use of interstate commerce to communicate a threat. In these calls, the defendant stated he had a gun and threatened to kill as many office workers as he could find. The defendant pled guilty to the FACE count on June 6, 1995. Sentencing on August 31, 1995, resulted in 5 years probation with 30 days' home detention and 10 weekends' confinement, as well as mandatory substance abuse treatment. The defendant did not appeal his conviction.

7. United States v. McDonald (D. N.M.).

The defendant pled guilty on June 24, 1996, to chaining clinic doors shut on January 2, 1995, and setting fire to the same clinic on February 24, 1995, in violation of FACE and arson statutes. The defendant was sentenced to 30 months in prison on October 22, 1996.

8. United States v. Priestley (D. Or.)

The defendant pled guilty on September 27, 1995, to an unrelated arson charge in Eugene, OR, as well as a threat to commit arson at a clinic in Grants Pass, OR, on January 19, 1995, in violation of FACE. The defendant was sentenced to 58 months in prison on April 9, 1996.

9. United States v. McManus (D. Mass).

The defendant pled guilty to two counts of FACE and two counts of 18 U.S.C. 844(e), threatening to use fire and explosives to damage a building, for making threatening telephone calls on May 21, 1996, to the Planned Parenthood in Worcester, MA, and to the Repro Associates in Brookline, MA. On March 24, 1997, the defendant was sentenced to 27 months in prison and 2 years' supervised release.

Civil Lawsuits
Initiated by the
Department of Justice
and Private Parties

Reported Civil Cases:
United States Courts of
Appeals Decisions

1. American Life League v. Reno, 855 F. Supp. 137 (E.D. Va. 1994), aff'd, 47 F.3d 642 (4th Cir. 1995), cert. denied, 116 S. Ct. 55 (1995).

The plaintiffs brought an action challenging the constitutionality of FACE. They argued that Congress lacked the authority to enact FACE. They also argued that FACE violated the Free Exercise of Religion clause of the First Amendment, was unconstitutionally vague, and was overbroad because it prohibited protected First Amendment expression. The district court dismissed the case. The plaintiffs appealed. The court of appeals affirmed the dismissal. It concluded that FACE was within Congress' authority to regulate commerce because Congress rationally concluded that reproductive health services affect interstate commerce and that FACE was reasonably adapted to permissible ends. The court also concluded that FACE did not violate the First Amendment's Free Speech Clause because FACE was content and viewpoint neutral and targeted unprotected expression. The court ruled that the liquidated damages provision did not subject anyone to damages caused by protected expression and was therefore constitutionally valid. It also concluded that FACE was neither overbroad nor vague and did not violate the Free Exercise clause of the First Amendment. The Supreme Court of the United States denied a petition to review the court of appeals' decision.

2. Cheffer v. Reno, No. 94-611-CIV-ORL-18 (M.D. Fla. July 26, 1994), aff'd, 55 F.3d 1517 (11th Cir. 1995).

Anti-abortion activists brought suit challenging the constitutionality of FACE. The district court dismissed the plaintiffs' claims. The court of appeals affirmed, finding that FACE withstood the plaintiffs' constitutional challenges. Specifically, the court found that FACE constituted a valid exercise of Congress' power under the Commerce Clause and did not infringe on state sovereignty under the Tenth Amendment. The court also found that FACE was not content or viewpoint based, was not unconstitutionally vague or overbroad, did not violate the appellants' First Amendment rights, and did not threaten any of their lawful expressive activities. The court declined to review the plaintiffs' claim that the act violated the Eighth Amendment by imposing excessive fines on the basis that the claim was not ripe, that is, not ready for the court to address.

3. Cook v. Reno, 859 F. Supp. 1008 (W.D. La. 1994), vacated, 74 F.3d 97 (5th Cir. 1996).

The plaintiffs were anti-abortion demonstrators who sought to enjoin the use and implementation of FACE. The district court denied the plaintiffs' request for a preliminary injunction, finding that they did not have a substantial likelihood of success on the merits. In its ruling, the district court rejected all of the plaintiffs' constitutional challenges and found FACE narrowly tailored to its purpose of curbing violence without burdening freedom of speech. The government moved to dismiss the plaintiffs' suit for lack of standing, a jurisdictional requirement that the plaintiffs are entitled to have the court decide the merits of the case. According to the government, the plaintiffs' complaint was carefully worded to refer only to peaceful, nonconfrontational activities. Thus, the government asserted that the plaintiffs failed to allege that they intend to participate in any activity that will violate FACE. The district court, concurring with the government's reading of the plaintiffs' complaint and finding that FACE was constitutional, dismissed the plaintiffs' suit for lack of standing. The plaintiffs appealed this ruling. The court of appeals held that the district court improperly considered the merits of the demonstrators' claim when deciding the issue of standing and rejected the plaintiffs' request that the matter be remanded to a different trial judge. The court of appeals vacated the district court's judgment and remanded this suit for further proceedings after the plaintiffs have been provided with an opportunity to amend their complaint.

4. Hoffman v. Hunt, 923 F. Supp. 791 (W.D. N.C. 1996), rev'd 126 F.3d 575 (4th Cir. 1997), cert. denied, 118 S. Ct. 1838 (May 26, 1998).

Anti-abortion activists brought action seeking a judgment that a North Carolina statute prohibiting obstruction of health care facilities violated their First Amendment rights. The district court determined that North Carolina law enforcement officers threatened the plaintiffs with arrest for attempting to distribute literature to persons entering clinics and for merely being present at clinics. The plaintiffs later amended their complaint to add a claim challenging the constitutionality of FACE. The district court held that the North Carolina law violated the First Amendment because it was unconstitutionally vague and overbroad, both on its face and as applied. Similarly, it held that FACE was impermissibly vague and overbroad and that Congress lacked the authority to enact FACE under the Commerce Clause, as not all forms of reproductive health services affect interstate commerce. The court of appeals reversed the district court's decision. It held that although the North Carolina statute, on its face, was neither vague nor overbroad, law enforcement officers exceeded their authority in threatening the plaintiffs with arrest for attempting to distribute literature to persons entering clinics and merely being present at clinics. The court of appeals also held that Congress acted within its authority under the Commerce Clause in enacting FACE and that the statute did not violate the First Amendment. The Supreme Court of the United States denied a petition to review the court of appeals' decision.

5. Terry v. Reno, No. 94-1154 (D. D.C. Nov. 21, 1995), aff'd, 101 F.3d 1412 (D.C. Cir. 1996), cert. denied, 117 S. Ct. 2431 (1997).

The plaintiffs were anti-abortion activists who filed suit challenging the constitutionality of FACE both on its face and "as applied or threatened to be applied" to them. The district court granted the government's motion for judgment on the pleading. The court ruled that Congress had the power to enact the statute under the Commerce Clause and that it did not violate the First Amendment. The district court also ruled that FACE did not violate principles of due process or equal protection and that the plaintiffs' Eighth Amendment claims were not ripe. The court of appeals affirmed the judgment of the district court. It held that in enacting FACE, Congress did not exceed its Commerce Clause power, that the statute was compatible with freedom of speech under the First Amendment, and that FACE was not overbroad or unconstitutionally vague. The Supreme Court of the United States denied a petition to review the court of appeals' decision.

6. United States v. Dinwiddie, 885 F. Supp. 1286 (W.D. Mo. 1995), 885 F. Supp. 1299 (W.D. Mo. 1995), aff'd in part, remanded in part, 76 F.3d 913 (8th Cir. 1996), cert. denied, 117 S. Ct. 613 (1996).

The Attorney General brought a civil action seeking a temporary restraining order and permanent injunction alleging that an abortion protestor's conduct directed at a Kansas City, MO, abortion clinic violated FACE. The district court found that the defendant violated FACE by obstructing, using physical force against, and threatening to use physical force against a number of Planned Parenthood's patients and members of its staff. The court issued a permanent injunction prohibiting the protestor from being within 500 feet of an entrance of any facility in the United States that provides reproductive health services except for the purposes of engaging in legitimate personal activity that could not be remotely construed to violate the statute.

On appeal, the defendant argued that the "motive requirement," which limits application to those who obstruct, threaten, or use force "because [the victim] is or has been, or in order to intimidate [the victim] from, obtaining or providing a reproductive health service," transformed FACE into a content-based statute, as it punished only abortion-related expressive conduct. The court ruled that this type of restriction was quite common and prevented random crimes committed in the vicinity of abortion clinics from being federalized. The court of appeals held that FACE was within the commerce power of Congress, was not inconsistent with the First Amendment, and not overbroad or vague. In ruling that FACE was not vague, the court articulated definitions for several terms in the statute. It said the following nonexhaustive and nonconclusive factors can be used to determine whether a statement constitutes a threat: the reaction of the recipient and other listeners to the statement; whether the statement was communicated directly to the victim; if similar statements had previously been made to the victim; and whether the victim had a reason to believe the speaker had a propensity to engage in violence. It also upheld the permanent injunction, with some modifications, ruling that portions of the injunction were inconsistent with the First Amendment, such as the prohibition of certain types of nonthreatening speech and other forms of expression. However, it said a permanent injunction that is more limited in scope would be constitutional. The Supreme Court of the United States denied a petition to review the court of appeals' decision.

7. Woodall v. Reno, 47 F.3d 656 (4th Cir. 1995), cert. denied, 115 S. Ct. 2577 (1995).

The plaintiffs, a demonstrator and an anti-abortion women's organization, alleged that they pray peacefully in front of abortion clinic entrances and nonviolently discourage access to the entrances. The plaintiffs raised a challenge on constitutional grounds to FACE. The district court dismissed their complaint and the plaintiffs appealed. The court of appeals rejected the plaintiffs' claim that FACE violated the First Amendment or was vague and overbroad and affirmed on the reasoning of the opinion in American Life League, a decision the court handed down on the same day as Woodall. The plaintiffs also argued that FACE was unconstitutional because it allowed the Attorney General to seek injunctive relief if he/she had reasonable cause to believe that a person might be injured by conduct violating FACE, and thus it constituted prior restraint. Because they were not subject to an injunction under FACE at the time, however, the court ruled that their claim was being raised prematurely. The Supreme Court of the United States denied a petition to review the court of appeals' decision.

Reported Civil Cases:
United States District
Court Decisions

1. Council for Life Coalition v. Reno, 856 F. Supp. 422 (S.D. Cal. 1994).

The plaintiffs brought an action for declaratory and injunctive relief seeking to enjoin the enforcement of FACE on a variety of constitutional and statutory grounds. The court held that FACE did not infringe the plaintiffs' rights under the First and Fifth Amendments, and Congress had full authority to enact FACE under the Commerce Clause. The defendant's motion to dismiss the complaint was granted. The plaintiffs' motion for a preliminary injunction was denied because the plaintiffs failed to state a claim upon which relief could be granted.

2. Greenhut v. Hand, 996 F. Supp. 372 (D. N.J. 1998).

The plaintiff was a volunteer for an anti-abortion organization. The defendant left a telephone message at the plaintiff's residence that stated "Hello, Janet. Get your murderers away from abortion clinics now or you will be killed." About 1 hour and 15 minutes later, the defendant left a second message that stated, "Janet, get your pro-lifers away from our clinics or we will kill you." Criminal charges were brought against the defendant and on December 11, 1995, she pled guilty to one count of making terroristic threats in violation of a New Jersey statute. Subsequently, the plaintiff filed this civil action seeking relief against the

defendant under FACE. The district court noted that FACE was being invoked to penalize threats directed against an anti-abortion volunteer. The defendant contended that the plaintiff had not satisfied two elements under FACE; namely, the plaintiff was not providing “reproductive health services” and the defendant did not act with the requisite intent. The district court held that FACE covered the plaintiff’s activities, since her organization provided emotional support and guidance to pregnant women, and other courts ruled that FACE was not limited to medical services. The court also held that the defendant had the requisite intent to impede, interfere with, or intimidate the plaintiff from furnishing reproductive health services. The court awarded the plaintiff \$10,000 in statutory damages under FACE.

3. *Lucero v. Trosch*, 904 F. Supp. 1336 (S.D. Ala. 1995), 928 F. Supp. 1124 (S.D. Ala. 1996), aff’d in part, vacated in part, and remanded, 121 F.3d 591 (11th Cir. 1997).

A physician and a health care clinic sued an anti-abortion activist for violation of FACE and for private nuisance based on statements the defendant made to the physician on a television show at which they appeared together as guests. The defendant moved to dismiss the complaint on the grounds that it failed to state a claim upon which relief could be granted. The court held that a reasonable jury could have found that the anti-abortion activist’s statements to the physician that he “should be dead” and that the activist would kill the abortion doctor if he had a gun in his hand were threats of force for purposes of FACE even though the speaker did not expressly tell the physician that he was going to kill him at some future time. The court also held that FACE was not unconstitutional and that statements made during the television show did not constitute actionable private nuisance to the physician’s clinic under Alabama law. In a subsequent decision, the district court held that the activist’s statements did not constitute “threats of force” that were violative of FACE.

The physician and health care clinic also sued abortion protestors for their protest activities held outside the clinic. The court of appeals held that (1) the provisions of a preliminary injunction enjoining the defendants from congregating, picketing, praying, loitering, patrolling, demonstrating, or communicating with others orally, by signs, or otherwise, within 25 feet of the clinic did not seem unreasonable and does not burden speech more than necessary to preserve the patients’, doctors’, and staff’s right to enter the clinic; (2) a provision of a preliminary injunction enjoining the defendants from approaching, congregating, picketing, patrolling,

demonstrating, or using bullhorns or other sound amplification equipment within 200 feet of the residences of the clinic's staff operated as a generalized restriction on protesting and thus was unconstitutional under the First Amendment; (3) a provision enjoining the defendants from blocking or attempting to block, barricade, or obstruct the entrances, exits, or driveways of the residences of the clinic staff; and inhibiting or impeding or attempting to impede the free ingress and egress of persons to any street providing the sole access to the residences of clinic staff did not burden speech more than was necessary to serve the state's significant interest in promoting the free flow of traffic on public streets; and (4) a provision enjoining the defendants from knowingly being within 20 feet of any person seeking to obtain or provide clinic services was unconstitutional because it burdened speech more than was necessary to serve the significant government interests. On the basis of these rulings, the case was remanded so that the district court would revise the preliminary injunction.

4. Milwaukee Women's Medical Center, Inc., and United States v. Brock et al., 1998 WL 228158 (E.D. Wis. April 30, 1998).

This civil lawsuit arose out of the Milwaukee Clinic blockade for which the defendants were criminally prosecuted in United States v. Brock, 863 F. Supp. 851 (E.D. Wis. 1994), mandamus denied sub nom., Hatch v. Stadtmuller, 41 F.3d 1510 (7th Cir. 1994) (unpublished order), aff'd sub nom., United States v. Soderna, 82 F.3d 1370 (7th Cir. 1996) cert. denied sub nom., Hatch v. United States, 117 S. Ct. 507 (1996). This was DOJ's only FACE lawsuit prosecuted both criminally and civilly.

The clinic filed a civil action against the defendants seeking (1) a declaration that the defendants violated FACE, (2) injunctive relief, and (3) statutory damages. The parties agreed to stay the matter pending resolution of the criminal proceedings. On December 20, 1994, approximately 1 month after the criminal convictions were obtained, DOJ intervened in the civil FACE lawsuit. The suit sought a declaratory judgment, a permanent injunction enjoining the defendants from blocking access to the clinic, and \$5,000 in statutory damages against each defendant as well as separate awards for punitive damages. The presiding district court judge stayed this case for almost a year pending the outcome of appellate and Supreme Court review of his decision in United States v. Wilson, 880 F. Supp. 621 (E.D. Wis. 1995), a criminal FACE prosecution in which he had declared the statute unconstitutional. The Seventh Circuit ultimately reversed the district court's decision, and the Supreme Court

denied a petition to review the court of appeals' decision. United States v. Wilson, 73 F.3d 675 (7th Cir. 1995); cert. denied Wilson v. United States, 47 S. Ct. 117 (1996).

The court (1) granted summary judgment and issued a declaratory judgment in the clinic's and the government's favor against six of eight defendants stating that the defendants violated FACE; (2) awarded compensatory damages in the total amount of \$5,000, for which the defendants were each jointly and severally liable; and (3) issued a permanent injunction enjoining the defendants from rendering impassable the entry to and exit from the clinic or rendering passage to or from the clinic unreasonably difficult or hazardous. The court rejected the claim for punitive damages, holding that the peaceful obstruction of entrances did not warrant the imposition of punitive damages. At the time of our review, the case remained pending against the other two defendants.

5. Planned Parenthood of the Columbia/Wilmette, Inc. et al. v. American Coalition of Life Activists, et al., 945 F. Supp. 1355 (D. Oregon 1996).

The plaintiffs filed suit against the defendants alleging violations of FACE and the Racketeer Influenced and Corrupt Organizations (RICO) Act and a similar provision of Oregon law, the Oregon Racketeer Influenced and Corrupt Organizations Act (ORICO). The individual plaintiffs were doctors who performed abortions; the two corporate plaintiffs operated clinics and provided health services, including abortions. The defendants included associations that oppose abortions and individuals from the associations. The plaintiffs alleged that the defendants conspired to violate FACE by intending to injure, threaten, and intimidate the plaintiffs through the dissemination of posters that accused individual abortion providers of murder and provided their descriptions, addresses, and phone numbers. The plaintiffs alleged that the defendants violated FACE by threatening, injuring, and intimidating them because they provided reproductive health services. The district court held that (1) the defendants were subject to personal jurisdiction in Oregon, (2) FACE was within Congress' power under the Commerce Clause, (3) FACE did not violate the First Amendment, and (4) the plaintiffs adequately stated RICO and ORICO claims against all but one of the defendants.

6. Planned Parenthood of Southeastern Pennsylvania v. Walton, 949 F. Supp. 290 (E.D. Pa. 1996), 1997 WL 734012 (E.D. Pa. Nov. 14, 1997), 1998 WL 88373 (E.D. Pa. Feb. 12, 1998).

The plaintiff, a reproductive counseling association, brought action under FACE against a number of anti-abortion activists for obstructing access to the plaintiff's Philadelphia, PA, clinic. The district court held FACE to be constitutional. It concluded that (1) FACE did not violate the First Amendment, (2) Eighth Amendment Cruel and Unusual Punishment claims were not ripe, and (3) enactment of FACE was within Congress' authority under the Fourteenth Amendment and the Commerce Clause. In a subsequent action, the defendants challenged the plaintiff's ability to bring suit under FACE, claiming that they lacked standing. The district court held that under the plain language of FACE, the plaintiff corporation qualified as a "person involved in providing or seeking to provide . . . services" within the meaning of the statute and thus had standing to bring an action under FACE. On February 12, 1998, the court granted the plaintiff's motion for summary judgment, granted a permanent injunction, and awarded statutory damages.

7. Riely v. Reno, 860 F. Supp. 693 (D. Ariz. 1994).

The plaintiffs filed suit to challenge the constitutionality of FACE. The defendants moved for dismissal on the grounds that the plaintiffs' claims were not ripe for review and on the alternative grounds that their complaint failed to state a claim upon which relief could be granted. The district court found that the plaintiffs failed to state a claim upon which relief could be granted. The court found (1) that Congress acted within its authority under the Commerce Clause when it enacted FACE, (2) that FACE did not impermissibly regulate protected expression or burden religion, (3) the plaintiffs failed to show that FACE was vague or overbroad, (4) the punishments imposed and statutory damages allowed by FACE did not violate the Eighth Amendment prohibition against cruel and unusual punishment and excessive fines, and (5) finally, having found that FACE did not violate the First, Fourth, Fifth, Eighth, or Tenth Amendments, that the enforcement of FACE by state officials did not violate the Fourteenth Amendment.

8. United States v. Lindgren, et al., 883 F. Supp. 1321 (D. N.D. 1995).

The Attorney General brought a civil action against abortion protestors alleging that the defendants violated FACE during their anti-abortion efforts relating to a clinic in Fargo, ND. The district court found that the protestors blockaded the clinic using an immobilized car with people attached to it and made verbal threats to clinic staff members on several occasions. The court issued a preliminary injunction in light of the substantial probability of success on claims of FACE violations. The injunction prohibited, among other things, one defendant from coming within 100 feet of the clinic, its staff, and their homes, and the other defendants from blocking the clinic or entering onto the clinic's property. The preliminary injunction was made permanent by agreement of the parties.

9. United States v. Lynch and Moscinski, No. 95 Civ. 9223 (S.D. N.Y. Feb. 26, 1996) (issuing permanent injunction), aff'd 1996 U.S. App. LEXIS 32729 (2d Cir. Dec. 11, 1996), cert. denied, 117 S. Ct. 1436 (1997), 952 F. Supp. 167 (S.D. N.Y. 1996) (dismissing criminal contempt charges).

The Attorney General filed a lawsuit alleging that the defendants violated FACE by blocking access to an abortion clinic in Dobbs Ferry, NY. The court issued a permanent injunction prohibiting the defendants and anyone acting in concert with them from impeding or obstructing access to the clinic. The defendants contended on appeal that the district court should have accepted a defense to the injunction based upon "natural law." Specifically, the defendants argued that the FACE statute protected the taking of innocent human life and was therefore contrary to natural law. The court of appeals affirmed the judgment of the district court, declining to invalidate FACE on the basis of natural law principles. The Supreme Court denied a petition to review the court of appeals' decision.

DOJ subsequently secured a civil contempt finding and sought a criminal contempt finding, which was rejected by the district court. DOJ appealed the district court's decision on the criminal contempt motion. That appeal was pending before the Second Circuit.

10. United States v. McMillan, 946 F. Supp. 1254 (S.D. Miss. 1995).

The Attorney General filed a civil action against the defendant, the founder and executive director of Christian Action Group, an anti-abortion organization, alleging three instances of threats and obstruction. The court denied the defendant's motion to dismiss the lawsuit on the grounds that

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FACE was constitutionally infirm. It found that Congress validly enacted FACE pursuant to its powers under the Commerce Clause and Section 5 of the Fourteenth Amendment. The court found that the defendant endorsed the use of force and violence as a means to protest against abortion. The court further found that the plaintiff had a substantial likelihood of showing that the defendant has committed three violations of FACE. The court granted a preliminary injunction prohibiting the defendant from, among other things, being within 25 feet of the Jackson Women's Health Organization. The parties agreed to a permanent injunction incorporating the terms of the preliminary injunction and adding a 15-foot buffer zone at a second clinic. The Attorney General moved for civil contempt for a violation of the injunction at a second clinic. No decision had yet been issued on this matter.

11. United States v. Roach, et al., 947 F. Supp. 872 (E.D. Pa. 1996).

The Attorney General filed a civil action against 35 defendants, alleging that they blocked clinic entrances at the Reproductive Health and Counseling Center in Upland, PA, in violation of FACE. The district court held that Congress enacted FACE pursuant to its authority under the Commerce Clause and the Fourteenth Amendment and that the statute did not chill First Amendment freedom of speech or religion as it was enacted by Congress or as applied in this case. The court granted a preliminary injunction prohibiting the defendants and anyone acting in concert with them from, among other things, entering or remaining on the private property of the clinic. On May 5, 1998, the court granted the motion for summary judgment and granted a permanent injunction.

12. United States v. Scott, 919 F. Supp. 76 (D. Conn. 1996), 958 F. Supp. 761 (D. Conn. 1997), 975 F. Supp. 428 (D. Conn. 1997).

The Attorney General and the State of Connecticut filed a civil action alleging that the defendants repeatedly used force, threats of force, and physical obstruction against the staff, escorts, clients, and companions of clients at a reproductive health facility located in Bridgeport, CT. The defendants moved to dismiss on grounds that FACE was unconstitutional. The district court held that FACE was a constitutional exercise of Congress' authority under the Commerce Clause. The court subsequently ruled that FACE was constitutional under the First Amendment; that the United States and Connecticut did not violate the dual sovereignty doctrine by jointly filing action; that FACE was not overbroad or vague; that injunctive relief was constitutional; and that one of the defendants, Stanley G. Scott, had

violated FACE. The court issued a permanent injunction prohibiting Scott from, among other things, approaching within 15 feet of the clinic's front entrance, coming within 5 feet of any person providing or receiving reproductive health services who indicated that he/she wished to be left alone, or coming within 5 feet of any vehicle containing such a person. The United States obtained one finding of civil contempt against Scott for which he was assessed \$200. In subsequent rulings, the court ordered a modification of the injunction to expand the buffer zone around the clinic entrance in light of Scott's repeated violations of the injunction and issued a finding of contempt against Scott, assessing him a fine of \$300.

13. United States v. White, et al., 893 F. Supp. 1423 (C.D. Cal. 1995).

The Attorney General filed a motion for a preliminary injunction pursuant to FACE. The complaint requested that the court enjoin the defendants and all individuals acting in concert with them from, among other things, using force or threats of force in violation of the statute to interfere with or intimidate the physician who was the target of the defendants' activities or the physician's wife. The defendants moved to dismiss the complaint on constitutional grounds. The court held that Congress had the authority under the Commerce Clause to enact FACE, that the Fourteenth Amendment did not preclude Congress from legislating in the area of clinic violence, and that FACE did not violate the defendants' First Amendment rights. The court granted the motion for a preliminary injunction. The preliminary injunction, which became permanent by agreement of the parties, prohibited the defendants from, among other things, demonstrating, congregating, or picketing within 45 feet of the intersection near the doctor's home; coming closer than 15 feet of the doctor or his wife; or driving within 3 car lengths of their cars.

Unreported or Pending
Civil Lawsuits Initiated by
the Department of Justice

We prepared the following summaries for United States v. Alaw, United States v. Burke, and United States v. Operation Rescue National, et al. based on information contained in complaints or court orders that DOJ provided to us. DOJ prepared the other six summaries in this section.

1. United States v. Alaw, No. 1:98 CV01446 (D.D.C.).

Groups of individuals blocked and physically obstructed access to all the entrances of a clinic that provides comprehensive reproductive health services in Washington, D.C., on January 24, 1998. The Attorney General filed a civil FACE lawsuit against 17 defendants on June 9, 1998, seeking

both preliminary and permanent injunctions, statutory damages, and civil penalties. On August 19, 1998, a motion was filed to have the court approve consent decrees with two of the defendants.

2. United States v. Brown, No. 3-97CV1423-R (N.D. Tex.).

A Texas man communicated a threat to a staff person of a Dallas, TX, abortion clinic: "I've been in Oklahoma, Atlanta and Washington, D.C. taking care of business, and now I'm here to take care of business." The Attorney General filed a civil FACE lawsuit against the defendant on June 13, 1997. The Department of Justice obtained a permanent injunction, by agreement with the defendant, prohibiting the defendant from coming within 50 feet of the clinic.

3. United States v. Burke, No. 98-2319-JWL (D. Kan.).

The Attorney General filed a civil action against the defendant on July 14, 1998, alleging that the defendant, an abortion protestor, violated FACE during his anti-abortion efforts at a reproductive health care center located in Overland Park, KS. The district court first issued a preliminary injunction on July 17, 1998, and then on July 31, 1998, a permanent injunction, prohibiting the defendant from committing criminal trespass and engaging in conduct that violates FACE. Specifically, the defendant was enjoined from, among other things, obstructing access to the clinic and physically abusing persons working at or using services at the clinic. The Attorney General moved for civil contempt for the defendant's alleged violation of the preliminary injunction.

4. United States v. Gregg, et al., 97 Civ. 2020 (JCL) (D. N.J.).

On three different dates, groups of individuals blockaded an Englewood, NJ, abortion clinic by, among other things, sitting and lying in front of clinic's front entrance. The Attorney General filed a civil FACE lawsuit against 30 defendants on April 18, 1997, alleging obstruction. On December 22, 1997, DOJ obtained a preliminary injunction prohibiting the defendants from obstructing access. Discovery was concluded and the parties are preparing pre-trial motions.

5. United States v. McDaniel, et al., 96 Civ. 9202 (JES) (S.D. N.Y.).

A group of individuals blockaded a New York City abortion clinic by pushing their way into the clinic and locking themselves together in front

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of the clinic's doors and elevators. On December 6, 1996, the Attorney General filed a civil FACE lawsuit against the 10 blockaders, alleging obstruction. A jury found all defendants liable for violating the statute. (This was DOJ's first civil FACE lawsuit to go before a jury.) The court issued a permanent injunction prohibiting the defendants and those acting in concert with them from impeding or obstructing access to the clinic. The judge assessed civil penalties ranging from \$1,000 to \$22,000 against seven defendants and found that three defendants did not have sufficient assets to permit the imposition of civil penalties.

6. United States v. Menchacha, et al., No. 96 Civ. 5305 (SS) (S.D. N.Y.).

A group of individuals conducted a blockade of a Dobbs Ferry, NY, abortion clinic by sitting in the driveway and entrance to the clinic's parking lot. DOJ filed a civil FACE lawsuit against four blockaders on July 17, 1996, alleging obstruction. The court issued a permanent injunction prohibiting the defendants and anyone acting in concert with them from, among other things, coming within 15 feet of the clinic's property.

7. United States v. Operation Rescue National, et al., No. C3-98-113 (S.D. Ohio).

Between July 13 and July 19, 1997, Operation Rescue organized and directed a week-long campaign protesting abortion in the Cincinnati/Dayton areas. During this campaign, groups of individuals blocked entrances and physically obstructed access to three clinics in the Cincinnati/Dayton area. The Attorney General filed a civil FACE lawsuit against Operation Rescue National and individual defendants on March 23, 1998, seeking both permanent and preliminary injunctions, statutory damages, and civil penalties.

8. United States v. Smith, No. 4:95-CV-0025 (N.D. Ohio) (6th Cir. 1997).

Beginning in the summer of 1994, an Ohio man engaged in a series of unlawful activities directed at a reproductive health doctor and his family. These included attempting to run the doctor off the road with his truck, pantomiming the act of shooting the doctor outside his home, telling the doctor's teenage stepdaughter that the doctor "was dead," and, along with other anti-abortion demonstrators, surrounding the car of the doctor's wife, who worked as his receptionist, outside one of the doctor's offices.

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The Attorney General filed a civil FACE lawsuit on January 4, 1995, alleging use of force, threats, and obstruction by the defendant. DOJ obtained, by agreement with the defendant, a temporary restraining order and a preliminary injunction, respectively, in January and February 1995. In August 1996, DOJ obtained a finding of criminal contempt against the defendant for violating the preliminary injunction by verbally threatening the doctor outside a clinic in Youngstown, Ohio. The court imposed a fine of \$1,500. The defendant appealed the conviction; the Court of Appeals for the Sixth Circuit denied that appeal in December 1997. This case went to trial between January 21 and February 3, 1997. DOJ was awaiting a decision.

9. United States v. Tomanek, No. 3:95-CV-0881-T (N.D. TX).

A Dallas, TX, man engaged in a pattern of conduct in which he made intimidating phone calls and statements to the staff of an abortion clinic at their homes and outside the clinic, and, on one occasion, chased the clinic doctor in his car. The Attorney General filed a FACE lawsuit against the defendant on May 11, 1995, alleging threats and obstruction. The trial took place between February 24 and February 28, 1997. DOJ was awaiting a decision.

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