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FOR IMMEDIATE RELEASE:
Thursday, January 18, 1990

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The following statement was issued today by the National Right to Life Committee in response to release of a "report" by the pro-abortion advocacy group "People for the American Way" concerning the appointment of pro-life individuals to various positions within the Bush Administration. It may be attributed to Douglas Johnson, NRLC legislative director.

"Naturally, President Bush has appointed people who share his anti-abortion position to certain key policy-making health spots, just as he has appointed an Attorney General who supports his views on strong enforcement of drug laws. The real gripe of People for the American Way is that the American people rejected the pro-abortion presidential candidate in 1988.

"If Bush had lost the election, and the National Right to Life Committee now issued a shrill 'report' that President Dukakis had appointed pro-abortion-rights advocates to health policy posts, the press would universally regard it as a non-story."

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NEWS

People For The American Way ACTION FUND

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FOR RELEASE: January 18, 1990

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PEOPLE FOR REPORT: BUSH ALLOWING ANTI-CHOICE GROUPS TO ESTABLISH ABORTION LITMUS TEST FOR ADMINISTRATION

Administration guilty of "Reproductive McCarthyism"

Washington, DC ------

A report released today by the People For the American Way Action Fund accused President George Bush of allowing Far Right anti-choice politics to dominate a broad range of issues confronting his Administration. The report, "Government by Litmus Test: George Bush, the Far Right and Abortion," said that the Bush administration was practicing "reproductive McCarthyism."

"George Bush has let the Far Right use abortion as a wedge into a broad range of issues," said Action Fund President Arthur J. Kropp. "With Bush's support, and in pursuit of their narrow ideological agenda, the Far Right has torpedoed appointments, subverted policy and corrupted science. Bush ushered the Far Right into the Administration to demonstrate his fidelity to the anti-choice cause. Now they are beginning to reveal their broader agenda."

"One year into the Bush era, abortion has proved to be a pivotal issue for this Administration," says the report. Among the incidents cited in the report:

* Candidates for virtually any job touching remotely on abortion can expect to be grilled by the Right for their views on the issue -- even medical professionals under consideration for nonpolitical research jobs, or nominees for legal services.

* The Justice Department, through the Solicitor General's office, has filed *amicus* briefs asking the Supreme Court to overturn the *Roe v. Wade* decision legalizing abortion, even though the states bringing these cases have not asked the Court to overturn *Roe*.

* Dr. Louis Sullivan, Bush's choice for Secretary of Health and Human Services, was forced to go before anti-abortion rights groups and legislators and recant his alleged support for

* With anti-choice activists installed in nearly all top positions at Health and Human Services, the department is impeding progress in crucial medical research by banning federal funds for programs that depend on fetal tissue.

* The President himself has vetoed four major spending bills because of provisions for federal funding of some abortions. In one case, the foreign aid bill, no federal money would have been used to finance or even promote abortions. In all cases, the President held up vast sums of money for programs important to his domestic and foreign policy goals because of a handful of abortion-related provisions the right wing considered abhorrent.

The Far Right anti-choice leaders installed in various Administration posts have shaped a variety of public policy issues -- many completely unrelated to abortion -- with their narrow ideological views:

* A brochure on condom use to prevent AIDS was blocked, on the grounds that it did not adequately stress the importance of abstinence and monogamy;

* A survey of Americans' sexual habits considered vital to any AIDS education effort was similarly held up by HHS; and

* A widely praised HHS report focusing on the problem of suicide by homosexual youth was disavowed by Secretary Sullivan under pressure from Rep. William Dannemeyer (R-CA), a noted opponent of gay rights.

"The consequences of these acts are clear and far-reaching," the report says. "These incidents indicate not so much a secret 'conspiracy' by the Right to wield power disproportionate to its numbers, but rather a case of the Administration bending to extremist pressures for the sake of political expediency.

"By placating the Right on this and other social issues," the report continues, "the White House has -- at least for now -- silenced a restive, possibly divisive faction within its party. But in doing so, it has become a far more ideological Administration than its public statements and image-making would have us believe. Unfortunately, to the detriment of millions of Americans, the Bush administration has chosen to pursue the politics of reproductive McCarthyism."

For copies of the report, contact People For the American Way's Communications Department at the contact number above.

People For the American Way is a 285,000-member nonpartisan constitutional liberties organization active in the defense of reproductive rights.

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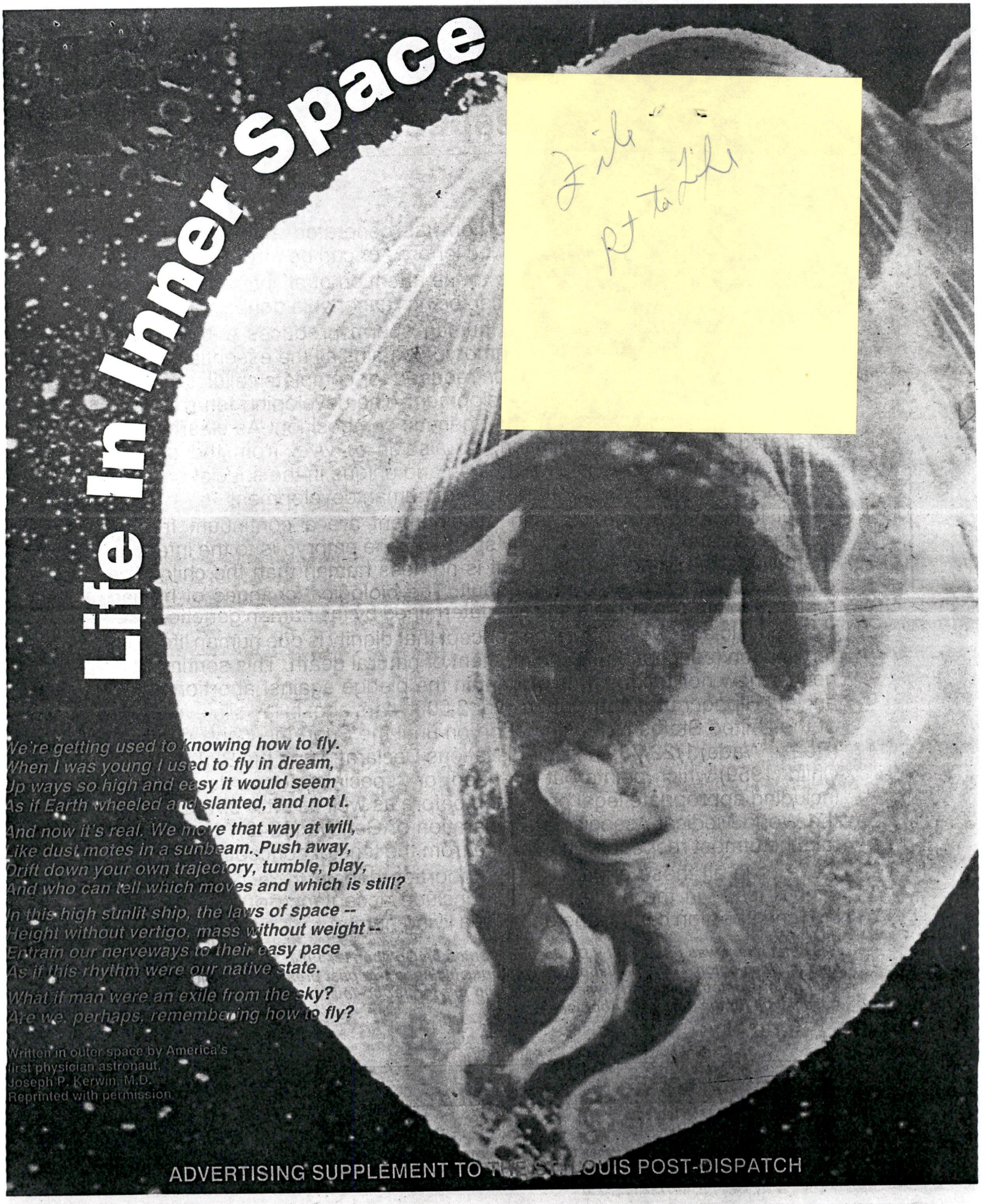
The report also said the anti-abortion activists at HHS undermined a crucial AIDS education effort by blocking distribution of a brochure on condom use because it did not agree with their views on monogamy, stopped a survey on sexual activity to be used in planning AIDS prevention programs and forced Sullivan to disavow recommendations in an HHS report on youth and suicide.



on "The Utmost Respect for Human Life"

The continuing debate on abortion has generated an atmosphere in which the biological facts may be ignored or can be forgotten.

As physicians, we wish to bring to the attention of all interested parties scientific facts about which there can be no reasonable doubt.

A human ovum fertilized by a human sperm produces a biologically identifiable human embryo. That embryo contains all the essential biological material and genetic information required for complete cellular maturation, human tissue and organ development. The developing fetus is not a sub-human species with a different genetic composition. As clearly demonstrated by *in vitro* fertilization, so also in *in vivo,* from the time of fertilization, the embryo is alive, human and unique in the special environmental support required for that stage of human development.

Individual human growth and development are a continuum from a precise starting point. Biologically speaking, the embryo is to the infant as the child is the to adult. The infant is not less human than the child. The child is no less human than the adult. The biological changes of human maturation are predictable and are determined by the human genetic code.

As physicians, we support the concept that dignity is due human life from fertilization (conception) to the moment of natural death. This sentiment is neither new nor unique. It is evident in the pledge against abortion in the ancient Hippocratic Oath written over 2,000 years ago, in laws in every one of the United States restricting abortion until the Supreme Court decision (Roe v. Wade) 1/22/73; the United Nations Declaration on the Rights of the Child (1959) which points out the need for "special safeguards and care including appropriate legal protection before as well as after birth"; and in the World Medical Association Declaration of Geneva (1948) "I will maintain the utmost respect for human life from the time of conception."

We urge all those engaged in the abortion debate to recognize that a central issue in the discourse must include acceptance of the fact that induced abortion causes the death of a living human.

(This statement was released by Dr. Joseph Stanton on October 12, 1984, at a press conference held in Washington, D.C. The list of 65 signatories includes two past presidents of the American College of Obstetricians and Gynecologists and the former co-founder of NARAL, the National Association for the Repeal of Abortion Laws.)

Photographs on Pages 1s and 8s by Lennart Nilsson
Photograph on 7s used with permission, Handbook on Abortion, Hayes Pub. Co.

"The care of human life and happiness, and not their destruction, is the first and only object of good government." — Thomas Jefferson

"In an opinion of just over 51 pages, Justice Blackmun, writing for a majority of seven Justices, employed the right of privacy to strike down the abortion laws of most states and to set severe limitations upon the states' power to regulate the subject at all. From the beginning of the Republic until that day, January 22, 1973, the moral question of what abortions should be lawful had been left entirely to state legislatures. The discovery this late in our history that the question was not one for democratic decision but one of constitutional law was so implausible that it certainly deserved a 51-page explanation. Unfortunately, in the entire opinion there is not one line of explanation, not one sentence that qualifies as legal argument. Nor has the Court in the 16 years since ever provided the explanation lacking in 1973. It is unlikely that it ever will, because the right to abort, whatever one thinks of it, is not to be found in the Constitution.

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"Attempts to overturn Roe will continue as long as the Court adheres to it. And, just so long as the decision remains, the Court will be perceived, correctly, as political and will continue to be the target of demonstrations, marches, television advertisements, mass mailings, and the like. Roe, as the greatest example and symbol of the judicial usurpation of democratic prerogatives in this century, should be overturned. The Court's integrity requires that. But even if the case is relegated to the dustbin of history where Dred Scott and Lochner lie, the right of privacy and the judicial techniques and attitudes it represents are likely to remain. A more fundamental rethinking of legitimate judicial power than the mere demise of Roe would signify is required."

— **Robert H. Bork** in "The Tempting of America — the Political Seduction of the Law," Free Press, a division of Macmillan Inc., New York,1989, (©1990).

"Stare decisis is a cornerstone of our legal system, but it has less power in constitutional cases, where, save for constitutional amendments, this Court is the only body able to make needed changes. ... We have not refrained from reconsideration of a prior construction of the Constitution that has proved 'unsound in principle and unworkable in practice.' ... We think the Roe trimester framework falls into that category.

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"The key elements of the Roe framework — trimesters and viability — are not found in the text of the Constitution or in any place else one would expect to find a constitutional principle."

★★★★★

"In the second place, we do not see why the State's interest in protecting potential human life should come into existence only at the point of viability, and that there should therefore be a rigid line allowing state regulation after viability but prohibiting it before viability ..."

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"To the extent indicated in our opinion, we would modify and narrow Roe and succeeding cases.

— **Chief Justice William Rehnquist** writing in the Webster Decision (from the Slip Opinion)

"The authorities in support of the medical/scientific fact that human life begins at conception are virtually endless. See e.g., Nelson, Textbook of Pediatrics 234 (7th ed. 1959) ('The child's life begins with fertilization of the ovum'). See also, authorities cited in Walker and Puzder, State Protection of the Unborn After Roe v. Wade: A Legislative Proposal, 13 Stetson L. Rev. 237, 243-44, n. 17 (1984). As such, Amici submit that the unborn should be afforded full personhood under the Constitution. However, the question as concerns the Statute is whether a State legislature is constitutionally permitted to acknowledge the medical/scientific fact that human life begins at conception. If Roe prohibits such recognition even in non-abortion contexts (as the lower courts both held), or if Roe was based on the presumption that human life does not begin at conception, then clearly Roe was erroneously decided and should be reversed. A decision which precludes the law from recognizing a relevant truth can only serve as a veil for injustice."

— **Andrew Puzder, J.D.,** brief Amici Curiae of Doctors For Life, Missouri Doctors For Life, Missouri Citizens For Life, Missouri Nurses For Life, and Lawyers For Life Inc. in support of appellants in the Webster case.

JAN. 22, 1973 — JAN. 22, 1990

(17th anniversary of Roe v. Wade decision)

"From the outset of my administration, I have repeatedly stated my deep personal concern about the tragedy in America of abortion on demand. As a nation, we must protect the unborn."

— President George Bush

DID YOU KNOW THAT:

— The Supreme Court abortion decisions allow abortions during the entire 9 months of pregnancy from conception right up to birth.

— At a rate of 4,000 per day, there are 1.5 million unborn babies killed by abortionists in the USA every year, most of them for purely social reasons.

— Pregnant teen-agers can be counseled and aborted by total strangers without their parents' consent and — in most states — without their parents' knowledge.

— All medical facts indicate human life begins at conception.

"...I will maintain the utmost respect for under threat, I will not use my medical kno Declaration of Geneva — 1948

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ıan life from the time of conception; even dge contrary to the laws of humanity."

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hani Khan, M.d.
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ıs Link, M.D.
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Frederick R. Zivnuska, M.D.

ional signers of the Respect For Life Statement

on "The Utmost Respect for Human Life"

The continuing debate on abortion has generated an atmosphere in which the biological facts may be ignored or can be forgotten.

As physicians, we wish to bring to the attention of all interested parties scientific facts about which there can be no reasonable doubt.

A human ovum fertilized by a human sperm produces a biologically identifiable human embryo. That embryo contains all the essential biological material and genetic information required for complete cellular maturation, human tissue and organ development. The developing fetus is not a sub-human species with a different genetic composition. As clearly demonstrated by *in vitro* fertilization, so also in *in vivo,* from the time of fertilization, the embryo is alive, human and unique in the special environmental support required for that stage of human development.

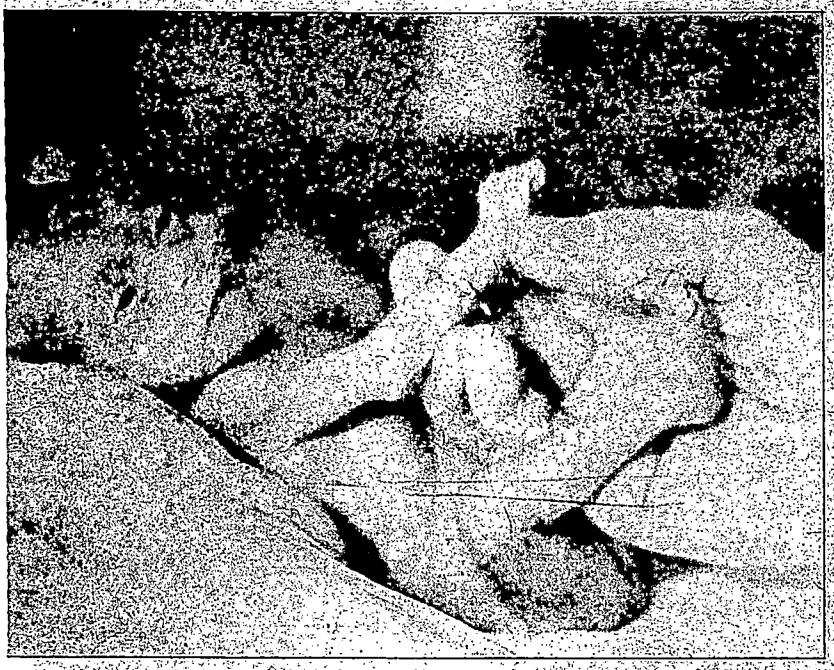
Individual human growth and development are a continuum from a precise starting point. Biologically speaking, the embryo is to the infant as the child is the to adult. The infant is not less human than the child. The child is no less human than the adult. The biological changes of human maturation are predictable and are determined by the human genetic code.

As physicians, we support the concept that dignity is due human life from fertilization (conception) to the moment of natural death. This sentiment is neither new nor unique. It is evident in the pledge against abortion in the ancient Hippocratic Oath written over 2,000 years ago, in laws in every one of the United States restricting abortion until the Supreme Court decision (Roe v. Wade) 1/22/73; the United Nations Declaration on the Rights of the Child (1959) which points out the need for "special safeguards and care including appropriate legal protection before as well as after birth"; and in the World Medical Association Declaration of Geneva (1948) "I will maintain the utmost respect for human life from the time of conception."

We urge all those engaged in the abortion debate to recognize that a central issue in the discourse must include acceptance of the fact that induced abortion causes the death of a living human.

(This statement was released by Dr. Joseph Stanton on October 12, 1984, at a press conference held in Washington, D.C. The list of 65 signatories includes two past presidents of the American College of Obstetricians and Gynecologists and the former co-founder of NARAL, the National Association for the Repeal of Abortion Laws.)

Photographs on Pages 1s and 8s by Lennart Nilsson
Photograph on 7s used with permission, Handbook on Abortion, Hayes Pub. Co.



Most babies this size — 24 weeks gestation — are still unborn, and therefore can be killed by abortionists for no reason other than the wish of the mothers

This is Kelly Thorman, three weeks after birth. Born 3/10/71, Toledo, Ohio. She surprised her mother by being born very prematurely ... at 21 weeks gestation — just a little over 4½ months of pregnancy. Note the nurse's wedding band on Kelly's forearm. *(With permission, Handbook on Abortion, Willke, Hayes Pub. Co.)*

The American Medical Association on Abortion

An Anatomy of Contrasting Policy Statements

What is Abortion?

1859 — The slaughter of countless children; no mere misdemeanor or no mere attempt upon the life of the mother, but the wanton and murderous destruction of her child; such unwarrantable destruction of human life.

1871 — The work of destruction; the wholesale destruction of unborn infants.

1967 — The interruption of an unwanted pregnancy.

1970 — A medical procedure.

Who Should Perform Abortions?

1871 — It will be unlawful and unprofessional for any physician to induce abortion or premature labor ... and then always with a view to the safety of the child — if that be possible.

1970 — Abortion should be performed only be a duly licensed physician and surgeon in an accredited hospital.

Who Are Physician Abortionists?

1871 — Men who cling to a noble profession only to dishonor it: false brethren; educated assassins, These modern Herods; these men who, with corrupt hearts and blood-stained hands, destroy what they cannot reinstate, corrupt souls, and destroy the fairest fabric that God has ever created ... under the cloak of that medical profession; monsters of iniquity.

1967 — Conscientious practitioners performing therapeutic abortions for reasons other than those posing a threat to the life of the mother; equally conscientious physicians who believe that all women should be masters of their own reproductive destinies and that the interruption of an unwanted pregnancy, no matter what the circumstances, should be solely an individual matter between the patient and the doctor.

What Should Be Done To Physician Abortionists?

1871 — The members of the profession should shrink with horror from all interaction with them professionally or otherwise; these men should be marked as Cain was marked: They should be made the outcasts of society. It becomes the duty of every physician in the United States to resort to every honorable and legal means in his power to crush out from among us this pest of society.

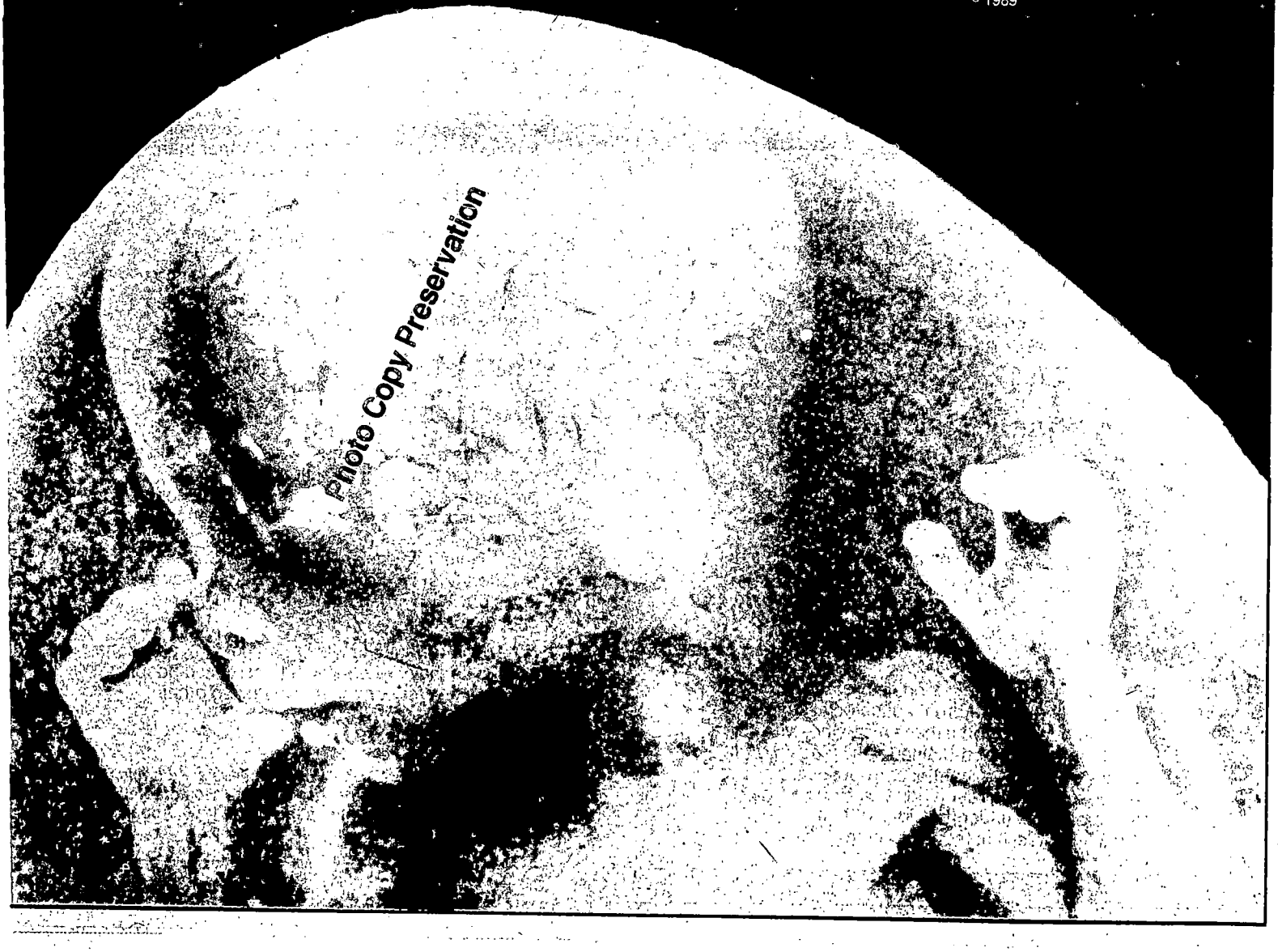
1970 — They should be allowed to perform abortions as long as they are done in an accredited hospital acting only after consultation with two other physicians. *

* Brennan, William, Ph.D., *Medical Holocausts: Exterminative Medicine in Nazi Germany and Contemporary America*, Boston, New York and Houston, Nordland Publishing International Inc., 1980, Appendix pp.331 and 332.

Voice From the Womb
(Job 7.6)

My days are swifter than a weaver's shuttle,
And are spent without hope. Before the thread
Of my short life is spun, the thing I dread
Has come upon me. All alone I huddle,
Helpless; for I am neither strong nor subtle
As those who will be glad when I am dead.
They hunt for me to take away my head,
They pour my lifeblood out into a puddle;
I am cut off before I reach the loom.
No one will wait to see how I will look
Stretched on the frame. (They say there is no room)
Too proud to read the illustrated book
Prepared for weavers by the great Designer,
They say that fewer threads make fabric finer.

Philip Rosenbaum



Right to Life file

TO: Chief of Staff John Sununu

FROM: Congressman Chris Smith (225-3765)

DATE: Thursday, October 5, 1989, 2:30 p.m.

Attached is the document which you requested in our telphone conversation earlier this afternoon, along with supportive documents.

Thank you for your consideration of this request.

News Release
From the Office of Press Relations
Agency for International Development Washington, D.C. 20523

#27
FOR IMMEDIATE RELEASE
Wednesday, June 7, 1989

CONTACT: Jerry Lipson
202-647-4274

USAID REPROGRAMS 1989 FUNDS RESERVED FOR U.N. AGENCY

The U.S. Agency for International Development (USAID) announced today that it is allocating to other family planning agencies $5 million originally budgeted for the United Nations Fund for Population Activities (UNFPA).

The funds will augment USAID-supported family planning activities in Africa, Asia and Latin America.

This decision is consistent with President Bush's strong support for voluntary family planning, and firm opposition to policies and practices that involve coercion.

Funds budgeted for UNFPA were first shifted in 1985 after a determination that it participated in the management of a program of coercive abortion and involuntary sterilization through its assistance to the population program of the People's Republic of China. That determination was sustained after a challenge in the Federal courts.

The shift followed Congressional action through the Kemp-Inouye-Helms amendment which bars U.S. assistance to organizations that support or participate in the management of programs of coercive abortion or involuntary sterilization.

(more)

USAID officials have maintained that support for UNFPA would be resumed if there were significant changes in its activities in China, or in the China population program.

"Unfortunately, no significant changes in the nature of the China population program or in UNFPA's assistance to China have occurred which would warrant resumption of U.S. support for UNFPA," said USAID Deputy Administrator Jay F. Morris.

Morris noted that the U.S. is the world's largest international supporter of family planning, devoting $244 million in fiscal 1988 to population activities in 90 nations, up from $190 million in 1981. This ammounts to 40 percent of all donor support for family planning in developing counties.

The U.S. has spent nearly $2 billion on international family planning programs since 1981, Morris added.

Funds which would have gone to UNFPA will be used to support contraceptives, contraceptive development and safety testing, family planning management training and family planning services delivery through indigenous PVOs.

Noting that a new five-year population agreement between UNFPA and the Chinese is proposed for 1990, Morris expressed hope that "the door is left open for a new Chinese program which is rooted in voluntarism."

-0-

THE WHITE HOUSE

WASHINGTON

May 5, 1989

Dear Henry:

Thank you for your letter of April 18 on pro-life issues which my Administration will face in the coming months.

I do support the Mexico City Policy as it relates to abortion. As you noted, this Policy allows funds to organizations which agree to provide contraceptive services but refrain from promoting abortion. I also agree that there should be no funding for the United Nations Fund for Population Activities (UNFPA) so long as it supports programs involving compulsory abortion.

However, at the same time, let me reaffirm my strong support for family planning programs which do not condone or encourage abortion.

Sincerely,

The Honorable Henry J. Hyde
House of Representatives
Washington, D.C. 20515

Washington Memo

A Publication of
The Alan Guttmacher Institute
September 27, 1989 (W-15)

Newsletter of the "research" affiliate of Planned Parenthood Federation

■ Advances for Abortion Funding In Senate, p. 1

■ UNFPA Ban, Mexico City Policy Under Fire, p. 2

Busy Senate Week Ends with Abortion Funding Victories, But Spending Bill Vetoes Loom

With only one week to go before the end of the fiscal year, Senate abortion opponents have backed down from two major confrontations, moving two key abortion funding measures another crucial step forward without challenge. The fiscal 1990 appropriations bill for the District of Columbia, as passed first by the House and now by the Senate, would restore the District's ability to use its own locally raised revenues for abortions. The Senate version of the appropriations bill for the Departments of Labor and Health and Human Services (HHS), meanwhile, now includes federal funding for abortions in cases of rape and incest, in addition to when the woman's life is endangered.

During Senate consideration of the Labor-HHS bill (H.R. 2990), several anticipated amendments to gut the Title X family planning program also did not materialize as they had last year, although several provisions related to AIDS were added. The only abortion-related amendment that has been added to a spending measure on the Senate floor this year was a compromise provision to the bill for the Department of Housing and Urban Development (HUD) to protect anti-abortion demonstrators. Meanwhile, the Bush administration, also seeking to hedge the abortion question, apparently has decided not to use an upcoming U.S. Supreme Court case to ask the Court to overturn *Roe v. Wade*.

Voice Votes Approve Funding

For the first time in several years, the House of Representatives voted on August 2 to allow the District of Columbia to decide whether to use its own funds to pay for abortions (see *Washington Memo*, W-14, August 22, 1989). When the Senate considered the bill on September 14, instead of attempting to strike funding for the District as they had done in the past, abortion opponents led by Sen. Gordon Humphrey (R-N.H.) let the bill move forward without a fight, claiming that President Bush will exercise his veto if abortion funding is included. The bill now goes to a House-Senate conference committee, but since there is no difference between the House and Senate versions on abortion, it is not expected to be an issue in the conference committee, and the bill, including the abortion funding provisions, should be on the president's desk shortly.

Meanwhile, on September 21, the Senate took up H.R. 2990, the mammoth DHHS spending bill. Virtually without discord the week before, the Senate Appropriations Committee had added federal funding for abortions for poor women in cases of rape or incest. Supporters of abortion rights again expected abortion opponents to attempt to delete this provision, but once again they predicted a presidential veto and allowed the provision to slip by on a voice vote.

As in past years, many other amendments to the DHHS bill focused on federal AIDS prevention and treatment efforts. (The bill includes $1.6 billion under the Public Health Service Act for research on and treatment of HIV.) Early in the debate the Senate unanimously adopted an amendment offered by Sen. Alan Cranston (D-Calif.). Similar to language agreed to in previous years, the compromise measure would allow references to safer sex and ways of preventing AIDS in AIDS prevention and educational material, while at the same time prohibiting materials which "promote" sexual activity, either homosexual or heterosexual, or intravenous drug use.

Still, resisting some members' efforts to tone down their impact, the Senate also adopted three other AIDS-related amendments by overwhelming margins, including a ban on federal funds for programs that provide free syringes for drug addicts unless President Bush certifies that they will not encourage drug use, another to withhold money from states unable to certify they are making a "good faith" effort to notify spouses of those infected with HIV and another to prohibit the production and distribution of materials to school-age children which speak of homosexuality as "normal, natural or healthy."

DHHS Funding Levels Set

Despite these skirmishes, members of the Senate are clearly choosing their battles this year. Thus, funding levels set by the appropriations panels tended to be left intact on the Senate floor. The Title X family planning program retained the $4 million increase given it by the Appropriations Committee, bringing the fiscal 1990 level to $142 million. The Adolescent Family Life program was carried forward at last year's level of $9.5 million. Funding for the Maternal and Child Health Block Grant would be increased under the Senate bill to $564.3 million, while the Social Services Block Grant would remain constant at $2.7 billion. And, the National Institute of Child Health and Human Development, which funds federal research into contraceptive development, would receive a healthy increase of $25 million over last year's figure of $425.5 million.

So far, then, the only abortion-related issue to spark debate on the Senate floor this year was a provision added by Sen. William Armstrong (R-Colo.) to the HUD bill. The Armstrong amendment was patterned after a measure added in the House by Rep. Robert Walker (R-Pa.). The Walker amendment, which was adopted by the House on July 20 by voice vote, would deny certain federal funds to municipalities whose law enforcement officers had been convicted of unnecessary force against "nonviolent civil rights demonstrators."

When he introduced his amendment, Rep. Walker attempted to portray it as a civil rights measure. However, the amendment clearly was intended to pertain to antiabortion demonstrators arrested while trying to block access to abortion clinics. A letter in support of the amendment that circulated in the House was signed by a number of antiabortion organizations — including Operation Rescue, which organizes many of the clinic demonstrations, the American Life League and the Pro-Life Action League — and not a single major civil rights group.

When the HUD bill came before the Senate, Sen. John Heinz (R-Pa.) took strong issue with the Walker amendment, charging, among other things, that the provision would deny federal funding to cities whose law enforcement officers had been convicted of unnecessary force decades ago. After a forceful statement against the Walker amendment by Sen. Arlen Specter (R-Pa.), a modified version passed on a voice vote. The compromise, which now moves to the conference committee with the House bill, would require municipalities to adopt and enforce a policy prohibiting the use of excessive force against nonviolent civil rights demonstrators.

Bush Administration on *Roe*

Finally, the Bush administration apparently is also backing away from a major abortion-related confrontation. On September 22, the Justice Department announced it would not present oral arguments in any of the three abortion-related cases pending before the Supreme Court this term. Last year, the Reagan Justice Department, in *Webster v. Reproductive Health Services*, presented oral arguments urging the Court to overturn *Roe v. Wade*. While the Bush administration announced that it will file a brief in the case from Minnesota, which involves a law requiring minors to notify both their parents before having abortions, it is unclear whether that brief will argue for a complete reversal of *Roe* or urge the Court to uphold the law without reconsidering its landmark 1973 ruling.

Senate Votes Renewed Support For UNFPA as House Hearing Examines Mexico City Policy

Actions in the House and Senate last week could lead to major breakthroughs for the U.S. international family planning and population assistance program. In its first record vote relating to reproductive rights this year, the Senate initiated a move to restore the U.S. contribution to the United Nations Population Fund (UNFPA) starting in fiscal 1990. And for the first time, the Reagan-Bush administrations' Mexico City policy was the subject of a House hearing, which could serve as the basis for reversing the policy legislatively in the near future.

UNFPA, China and U.S. Pop Aid

When the Senate Appropriations Committee considered H.R. 2939, the fiscal 1990 appropriations bill for foreign assistance, which contains funding for overseas family planning aid, Sen. Barbara Mikulski (D-Md.) offered an amendment to require that at least $15 million be earmarked for UNFPA. In addition, Subcommittee Chairman Patrick Leahy (D-Vt.) recommended to the committee that overall funding for population programs be increased 10 percent over the current level to $220 million, the first significant increase proposed in five years. There was no opposition to the funding recommendation, but substantial debate ensued over the UNFPA amendment.

Since 1985, the administration has made no contribution to UNFPA. The controversy involves charges of coercion in the family planning program of the People's Republic of China and the fact that China remains one of about 140 UNFPA-recipient countries. In 1985, former Rep. Jack Kemp au-

Washington Memo

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thored an amendment to the foreign aid appropriations bill that prohibits U.S. funding of an organization that "supports or participates in the management of a program of coercive abortion or involuntary sterilization." Even though a review by the Agency for International Development (AID) found *UNFPA's* program in China to be completely voluntary and have nothing to do with abortion, the Reagan administration chose to interpret the Kemp provision to mean that UNFPA will not be eligible for U.S. support until *China's* program is totally vindicated or UNFPA withdraws from China altogether.

When the Bush administration announced in June that it, too, would not contribute to UNFPA, and as a member of UNFPA's governing council it voted against China's new five-year agreement with UNFPA (despite the incorporation of certain significant changes intended to address stated U.S. concerns), it was clear that the new administration would never fund UNFPA unless Congress required it to do so (see *Washington Memo*, W-11, June 19, 1989).

Sens. Mikulski and Leahy, joined by a bipartisan group of 35 other senators, sent a letter to the president over the summer expressing their disappointment with his decision to shun UNFPA in spite of its crucial and unique role in providing family planning and population assistance to developing countries. Mikulski concluded that there was sufficient dissatisfaction in the Senate to take the initiative in the Appropriations Committee to challenge the administration's position. She dealt with the legitimate concerns over the issue of coercion by stipulating in her amendment that no U.S. funds given to UNFPA may be used to support the China program, and that the U.S. funds must be held in a segregated account to ensure this arrangement.

UNFPA Executive Director Nafis Sadik wrote to Sen. Leahy in response to the claim that a U.S. contribution to UNFPA "frees up" other UNFPA monies to aid China, therefore providing indirect U.S. support to China's program. She pointed out that the new China agreement provides for $57 million over the next five years, which is the exact amount that will be spent whether or not the U.S. rejoins UNFPA. As a result, she said, a U.S. contribution should not be construed as having any effect on the China program, directly or indirectly.

Sen. Mark Hatfield (R-Oreg.) reconfirmed this point during the committee debate. He also clarified with Mikulski that because the Senate bill proposes an increase in population program funding, the UNFPA earmark would not be at the expense of ongoing AID-funded population projects. Mikulski's amendment passed by a vote of 15-12, despite the strong opposition of the administration.

When the bill went to the Senate floor on September 20, subcommittee ranking minority member Sen. Robert Kasten (R-Wis.) first expressed his support for the funding increase for population aid, calling it "crucial" for developing countries. He then attacked the Mikulski amendment with an amendment of his own intended to negate hers. At first, it appeared he would succeed when a Mikulski motion to table his amendment failed on a tie vote. Then, Majority Leader George Mitchell (D-Maine), who supported Mikulski, switched his vote in order to be able to call for reconsideration of the question. (Senate rules allow a member who voted on the winning side to move for reconsideration.) On the second time around, with all senators voting this time, Kasten was defeated by 52-48.

The next step is for a House-Senate conference committee to meet over H.R. 2939, where UNFPA will be a major issue. The House conferees, led by Leahy's counterpart Rep. David Obey (D-Wis.), have the option of accepting the Mikulski amendment, rejecting it or compromising. The conference committee will convene within the next couple of weeks.

Hearing on Mexico City Policy

The Mexico City policy, in effect by administrative flat since 1984, prohibits the transfer of U.S. population funds to any foreign nongovernmental organization that provides any services or information related to abortion *with its own funds*. Foreign governments, however, are exempted. Although the policy has been at the center of numerous legislative battles on both the House and Senate floors, and is pending as an issue in the foreign aid authorizing legislation, it has never been evaluated and discussed in depth in a congressional hearing.

Finally, at the persistent urging for more than a year of Reps. Chester Atkins (D-Mass.) and Olympia Snowe (R-Maine), a hearing on the policy was held on September 21 by the House Foreign Affairs Subcommittee on International Organizations, chaired by Rep. Mervyn Dymally (D-Calif.). (Atkins and Snowe are the original cosponsors of H.R. 720, a bill that would overturn the policy by amending the Foreign Assistance Act to prohibit the imposition of restrictions on the overeas family planning program, restrictions that cannot be imposed on the domestic program under Title X of the Public Health Service Act. H.R. 720 has now accumulated 111 cosponsors and the endorsement of more than 50 major national organizations.)

The policy was defended at the hearing by Rep. Christopher Smith (R-N.J.), AID Assistant Administrator Richard Bissell and the National Conference of Catholic Bishops. Bissell reaffirmed the Bush administration's commitment to the policy. He asserted that the administration still views family planning as a "high priority" but said that the policy is necessary in order to fully separate abortion from family planning. He explained that the policy cannot be applied to foreign governments because the U.S. must "accommodate their sovereign prerogatives."

Bissell argued that the policy is not really as stark as its opponents contend, pointing out that it does allow the provision of abortion information if a series of specific criteria are met. Rep. Atkins responded that these criteria are written so that a woman must be the equivalent of a U.S.-trained lawyer in order to formulate the precise question to ask so she can obtain full information about her health care options. He movingly recounted his recent experiences in Bangladesh, where the women are desperately poor, illiterate and often

intimidated by coming into a clinic from their rural village many miles away. Atkins made it clear that AID's legalistic loophole may sound compassionate on paper, but it bears no relation to the reality of conditions in developing country family planning programs.

Through her questioning, Rep. Snowe established that the policy did not respond to any particular problem that AID had discovered in the overseas family planning program prior to 1984. Moreover, she could not elicit from Bissell the name of any professional international family planning organization that had indicated to AID that it believed the policy was beneficial to the population assistance program. Rep. Peter Kostmayer (D-Pa.) pressed Bissell repeatedly on how he would feel if such information were withheld from his daughter. Bissell had no answer. Rep. Atkins wondered if the policy represents a "sincere commitment to family planning" or an effort to "[satisfy] a political constituency."

Key witnesses condemning the policy's effect on overseas family planning programs were Faye Wattleton, president of Planned Parenthood Federation of America (PPFA), Pramila Senanayake, assistant secretary general of International Planned Parenthood Federation (IPPF) and Turkiz Gokgol, Turkey representative for the Pathfinder Fund. IPPF was the first organization faced with the policy, and it turned down U.S. funds because it could not agree to the U.S. terms. Pathfinder did agree to the policy, along with most other groups, in order to continue to be able to provide family planning services but, as with most the others, has gone on record as strongly opposing the policy nonetheless. And PPFA's international division, Family Planning International Assistance, continues to receive AID funds to provide family planning services overseas without imposing the policy under the terms of ongoing litigation (see *Washington Memo*, W-4, March 1, 1988).

All made compelling arguments reflective of their individual circumstances about how the policy is both bad medicine and bad politics. Gokgol explained that because abortion is legal in Turkey, the policy requires AID-funded family planning clinics there to choose between complying with Turkish law or the current U.S. administration's abortion policy. Wattleton described the various and insidious ways in which the policy has undermined the effectiveness of the overseas family planning program, including the morale of family planning workers and most importantly the confidence of women clients in the services they receive. Senanayake, representing the largest private health care organization in the world dedicated for decades to preserving the health and lives of women and their families, recounted the needless deaths of hundreds of thousands of women annually due to septic, illegal abortion and proclaimed, "We are the true prolifers."

The extensive and comprehensive hearing record on the Mexico City policy may serve as an important basis for further legislative action towards reversing the policy in the near future. And, the combination of heightened consciousness around the negative impact of this policy and the insistence of the Senate and key House leaders that the U.S. rejoin the UNFPA may mark the beginning of a new determination in Congress to restore the basic integrity and respect of the U.S. international population assistance program.

Notes

■ A nine-year challenge to the tax exempt status of the Roman Catholic Church was dismissed September 6 by a three-judge panel of the U.S. Court of Appeals for the Second Circuit. The panel ruled that the Abortion Rights Mobilization (ARM) did not have legal standing to bring suit against the Internal Revenue Service and the Treasury Department for granting the tax exemption; ARM had contended that the church participated in electoral politics to advance its antiabortion views, a violation of federal law regulating the activities of tax exempt groups. In 1982, a federal judge allowed the case to continue against the federal government but dismissed the church itself as a defendant, although, in 1986, a different federal judge cited two church organizations for contempt and threatened to fine each $50,000 a day for refusing to turn over to ARM church documents it wanted to use in its case. However, the fines were suspended pending the ruling by the Second Circuit on the question of standing. ARM can now appeal the decision to the full appeals court or take it to the U.S. Supreme Court.

■ Finding that "human life begins at the moment of conception," a Tennessee state court judge has awarded temporary custody of seven fertilized frozen embryos to the woman who produced the eggs. In doing so, the court rejected the efforts of the woman's husband, who had donated the sperm, to prevent the embryos from being implanted. By declaring the embryos to be "children," the decision could have far-ranging implications for new reproductive technologies such as the in vitro fertilization technique. The couple had sought several times to become pregnant through in vitro fertilization, but since, have decided to divorce. Meanwhile, the embryos have remained frozen. Arguing that this was her last chance to bear children, the wife contended that she has the right to choose to bring a pregnancy to term, while her husband, who plans to appeal the court's decision, maintained that the four-to-eight cell eggs were not children but joint property and that he should not be forced to become a father against his will. While deciding for the wife, the judge also declared that child support, permanent custody and visitation rights would not be decided until after a birth occurred.

Los Angeles Times
MONDAY, JUNE 25, 1990

CALIFORNIA ELECTIONS

Backing of Abortion Rights No Guarantee of Victory at Polls

ABORTION: String of Defeats for Proponents

By DANIEL M. WEINTRAUB
TIMES STAFF WRITER

SACRAMENTO—After taking credit for two highly visible electoral wins last fall, abortion-rights advocates have suffered a string of defeats in legislative races that appear to show that favoring legal abortion does not automatically enhance a candidate's chances for success in California.

Anti-abortion activists, in fact, contend that recent election results demonstrate that candidates who clearly communicate their opposition to abortion can pick up votes in Republican races and in some sectors of the Democratic Party.

Supporters of abortion rights acknowledge that the issue is not a "magic bullet" that by itself can defeat a candidate who has other advantages or elect a person burdened with other political baggage.

"It's not a miracle issue," said Robin Schneider, director of the Abortion Rights Action League's Southern California office. "It is very important with a large number of voters. But it can't just pull a candidate from the loser's column into the winner's column."

The recent results have done nothing yet to alter the makeup of the Legislature, where abortion-rights advocates enjoy more clout than they have for years. State lawmakers are expected to approve a budget for the fiscal year beginning July 1 that for the first time in a decade will have no restrictions on the use of taxpayer dollars to pay for abortions for poor women.

But this year's returns have shown that abortion-rights supporters may find it difficult to routinely duplicate the strength they demonstrated in special elections last year, when they were able to concentrate their firepower on one race at a time and focus the voters' attention on abortion. In regular elections and with politicians running for statewide office, other issues, including the candidates' gender, have proven to be just as important to voters as their stand on abortion.

In the June 5 California primary, abortion was a prominent issue in eight Assembly races. Anti-abortion candidates won seven of those races.

In the Republican race for lieutenant governor, abortion was the only major issue separating state Sens. Marian Bergeson and John Seymour, two little-known lawmakers from Orange County.

Bergeson stood firm on her long-held position opposing abortion. Seymour, however, abandoned his anti-abortion stand and decided to back a woman's right to abortion and the concept of government funding for the procedure. Bergeson won with 55.2% of the vote.

Continued from A3

This undercurrent was not visible, however, in the Democratic race for governor, where former San Francisco Mayor Dianne Feinstein was perceived as the stronger defender of abortion rights and easily defeated Atty. Gen. John K. Van de Kamp, who pledged to support legal abortions even though he personally opposes the practice.

These skirmishes have set the stage for the November elections, when abortion rights will be highlighted in the races for lieutenant governor and attorney general, and a freshman Orange County assemblyman will try to keep his seat after being targeted for defeat by a national abortion-rights organization.

It has been nearly a year since the U.S. Supreme Court's Webster decision opened the door for states to regulate abortion. That shift intensified interest in legislative elections and awakened activists on both sides of the issue who had seen little need for political activity since the court in 1973 stopped states from regulating abortions.

In California's first special election after the July 3 Webster decision, Republican Tricia Hunter, a nurse from Bonita and an abortion-rights supporter, swept past several anti-abortion foes to win the 76th District Assembly seat. In December, Democrat Lucy Killea of San Diego won a special election in a Republican-dominated state Senate district after the Catholic bishop of San Diego banned her from receiving Communion because of her advocacy of abortion rights.

Nationwide, supporters of legalized abortion heralded the two contests as evidence that even conservative voters would elect candidates who back abortion when given a clear choice on the ballot.

But since Killea's victory, the trend has turned.

In a special election to fill the 31st Senate District seat earlier this year, anti-abortion Republican Frank Hill won that party's nomination over a well-financed abortion-rights advocate. Hill triumphed even though he was campaigning under the cloud of an FBI corruption investigation. He later won the runoff easily to capture the seat.

On June 5, abortion-rights groups targeted two incumbent assemblymen for defeat: Republican Gil Ferguson of Newport Beach and Democrat Pete Chacon of San Diego.

Ferguson's opponent was Phyllis Badham, the daughter of a well-known former congressman. Chacon ran against Celia Ballesteros, a lawyer and former city councilwoman. Both challengers were able to raise and spend about as much money as the incumbents.

Although incumbent legislators generally are difficult to defeat, the results in these two races were just as lopsided as would have been expected had the abortion issue never been raised. Ferguson and Chacon both won by margins of more than 20%.

Elsewhere, anti-abortion Assembly members Cathie Wright (R-Simi Valley) and Dominic Cortese (D-San Jose) won easily against candidates who supported abortion rights.

Republican Paula Boland, who began the 33th District race in the San Fernando Valley as the least-known of three major candidates, and the only one to oppose abortion, was nominated. In the 58th District, Long Beach physician Seymour Aiban ran a well-financed campaign that stressed his support for abortion rights. But he lost the GOP nomination to Huntington Beach Mayor Tom Mays, who opposes abortion.

In the 30th District in the San Joaquin Valley, anti-abortion Republican Gerald G. Hurt defeated Bob Whalen after a campaign in which the Fresno Bee said the "only public difference between the two was over the abortion issue."

The only victory for abortion-rights supporters was the renomination of Assemblywoman Hunter. But Hunter just barely defeated under-financed challenger Connie Youngkin, a nurse who has spent time in jail for helping the anti-abortion group Operation Rescue blockade abortion clinics.

Brian Johnston, director of the National Right to Life Committee's Western region, said the results are evidence that the anti-abortion side has recaptured the political momentum.

"When a pro-life candidate goes against a pro-abortion candidate and stands squarely on the issue, the pro-life candidate wins," Johnston said.

Abortion rights advocates, however, point out that other factors played a role—the "gender vote," for example. The Los Angeles Times Poll showed, for instance, that three out of every five Republican women who said they support keeping abortion legal voted for Bergeson, even though she opposes that position. The implication is that many women were motivated to vote for Bergeson simply because she is a woman.

Now both sides are looking toward the fall. Both candidates for governor, Republican U.S. Sen. Pete Wilson and Democrat Feinstein, support abortion rights. But Feinstein maintains that abortion rights can best be protected by a woman governor.

There are very distinct differences, however, in the abortion views of the lieutenant governor and attorney general candidates. Republican Bergeson will face Democratic Lt. Gov. Leo T. McCarthy, who supports abortion rights. For attorney general, voters will choose between Republican Dan Lungren, a former congressman who opposes abortion, and Democrat Arlo Smith, the San Francisco district attorney who supports abortion rights.

At the legislative level, the race likely to attract the most interest will be Garden Grove Republican Curt Pringle's attempt to hold his Assembly seat against Democrat Tom Umberg. The National Abortion Rights Action League (NARAL) has named Pringle one of its "NARAL Nine"—a group of politicians across the country targeted for defeat.

"Pringle is critical in our scheme," said Schneider of the California Abortion Rights Action League. "We know it is important to threaten incumbents. But it's also important to win against incumbents. If we can do that on the strength of the [abortion] issue, that ratchets up our political power."

Champs-Elysees Becomes Sea of Wheat for a Day

PARIS—The Champs-Elysees, the most famous street in Paris, was transformed into a giant field of golden wheat Sunday during an eye-catching promotion for French agriculture.

An army of 1,500 farmers laid down sections of turf, creating a wheat field containing 3,600 tons of grain across a long stretch of the avenue starting at the Arc de Triomphe, then mobilized a fleet of tractors to harvest it.

Police estimated that more than 300,000 gathered along the avenue.

—*Associated Press*

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To: Reporters
From: Nancy Myers, Communications Director
Re: One Year After Webster: Where Are We Now?
Date: Monday, June 25, 1990

It has been nearly one year since the U.S. Supreme Court issued its decision in the Webster case, allowing the states latitude to limit abortions. Since the Supreme Court today issued more positive rulings on abortion and euthanasia, it seems appropriate to reflect on the past 12 months.

Much has been written in the media about the surge of activity by pro-abortion groups, and while pro-lifers have gotten less press, we've certainly been just as, if not more, active, than those who advocate abortion.

Three main areas have been watched as indicative of shifts on the abortion issue: polls, state legislative action and elections. Following are factsheets on trends in those areas, as well as press releases on today's three decisions. Some of the highlights:

1. **Polls:** Public opinion has not changed since the Webster decision. People who strongly advocated abortion still strongly advocate it; people who wanted to limit abortion still do; and roughly the same amount of people are ambivalent about this issue as one year ago.

Most important in public opinion is the strength of single issue voting on abortion. And poll after poll shows that pro-lifers continue to enjoy a small but significant edge among those who consider abortion the single most important voting issue. And a number of post-Webster elections show the irrefutable strength of pro-life single-issue voting.

2. **State Legislative Action:** More states have considered pro-life legislation during the past year than in any other year since the 1973 decisions legalizing abortion on demand, Roe v. Wade and Doe v. Bolton. Most importantly, more pro-life laws (four as of June 25) have been enacted in the past 12 months than in any other single year since Roe and Doe. Several of these laws, most notably in West Virginia, were passed specifically because of increased pro-life activism and political clout since the Webster decision.

3. **Elections:** An unbelievable amount of media attention has been given to a small number of races won by pro-abortion

(continued)

candidates. Even races in which there were no pro-life candidates have been touted as pro-abortion victories! The convention wisdom has been: if the pro-abortion candidate wins, the key issue was abortion; if the pro-life candidate wins, the key issue was anything but abortion.

The statistics show, however, that solidly pro-life candidates (incumbents and challengers) continue to fare extremely well against their pro-abortion opponents. And recent primary results in many states are very encouraging, especially in Pennsylvania, where abortion advocates vowed to "change the face of the Pennsylvania legislature" and came away with nothing.

I hope the enclosed factsheets and data are helpful as you write Webster anniversary stories, and in general as you cover the abortion issue over the summer.

And now I'd like to ask a favor of all of you. If any of you get the urge to write something into a story about an all-male or nearly all-male legislature passing or considering a pro-life bill, **just say no.** A few facts:

*the majority of the leadership of the pro-life movement is women. Fully 70 percent (38 of 54) of the National Right to Life Committee's board of directors are women; 13 of the 21 (62 percent) NRLC senior staff, including myself, are women.

*the grassroots of the pro-life movement is largely made up of women. More than 60 percent of the delegates at last week's National Right to Life Convention were women. Most of the grassroots state lobbyists are women.

*the demographic group most in favor of keeping abortion legal is **men** between the ages of 35 and 45 (Washington Post, October 7, 1989).

And regardless of the data, both men and women are entitled to speak out on all the life issues, including abortion, precisely because they involve vulnerable human lives, both male and female. The reason that millions of women and men are involved in the pro-life movement is that we firmly believe killing innocent human lives through abortion, infanticide or euthanasia is wrong. It's that simple.

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For immediate release:
June 25, 1990

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SUPREME COURT
AFFIRMS RIGHT TO LIFE
OF PEOPLE WITH DISABILITIES

The nation's largest right-to-life organization hailed Monday's Supreme Court decision affirming that states are justified in protecting incompetent patients against denial of food and water by others.

In a 5-4 ruling, the Supreme Court ruled in Cruzan v. Missouri Department of Health that Nancy Cruzan may not be starved to death.

The Court affirmed that states may assert an unqualified interest in the protection of life, thereby rejecting the argument of guardians that the value of life is measured by its quality.

"The Court has rightly rejected arguments that the quality of life is more important than protecting human life itself," said Dr. John Willke, president of the National Right to Life Committee. "No matter how profound a person's disabilities, he or she must not be deprived of the most basic care," added Dr. Willke. "For Nancy Cruzan, it means that she will not be deprived of food and water."

"The individual interests at stake are both particularly important and more substantial than mere loss of money," the majority of justices wrote in their opinion. "Here Missouri has a general interest in the protection and preservation of human life."

"In Cruzan, the Court recognized that parents have legitimate rights and interests in their children," said James Bopp, general counsel of the National Right to Life Committee. "However, these rights do not extend to deciding that their children would be better off dead."

The National Right to Life Committee is the nation's largest pro-life group, with affiliates in all 50 states and more than 3,000 chapters nationwide.

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SUPREME COURT RULINGS
MAJOR VICTORY FOR PARENTS AND UNBORN CHILDREN

The nation's largest pro-life group called two Supreme Court rulings on abortion a major victory for both parents and unborn children.

The U.S. Supreme Court reaffirmed Monday in Hodgson v. Minnesota and Ohio v. Akron Center for Reproductive Health that parental involvement laws are constitutional.

"This is an important victory for both parents and unborn children," said Dr. John Willke, president of the National Right to Life Committee. "The Supreme Court has not only upheld the constitutionality of parental involvement laws, but the Court has also left open the door for direct protection of unborn children against abortion."

In her concurring opinion, Justice Sandra Day O'Connor restated the views that she expressed in the 1983 Akron and 1986 Thornburgh cases that any laws that serves legitimate purposes will be upheld.

The only flaw the Court found in either law was Minnesota's requirement that both, rather than only one parent, be notified without a judicial bypass. However, the Court upheld the two-parent requirement as long as minors could seek court permission instead.

The Minnesota law contains such a provision, and so the law will go back into effect.

The Court implied, in fact, that laws requiring notification of one parent, even without a judicial bypass, would be constitutional.

"These rulings clearly encourage state legislatures to pass new legislation to protect the rights of parents," added Burke Balch, state legislative director of the National Right to Life Committee. "Polls show parental involvement laws have the strong support of the American people. The rulings also encourage the attorney generals of a number of states to go back to court to put into effect parental notice laws that have been previously struck down."

"In the Ohio case, the Court sent a strong message to the ACLU and lower courts that they can no longer use far-fetched reasoning to strike down reasonable parental involvement laws," added James Bopp, general counsel of the National Right to Life Committee. "The Court has sent a clear message to prevent that sort of nitpicking."

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FACTSHEET:
PUBLIC OPINION, PRE- AND POST-WEBSTER

Comparing polls from before and after the July 3, 1989 Webster decision shows three important trends: public opinion has not changed, most Americans continue to oppose abortion on demand, and pro-lifers vote single issue in greater numbers than pro-abortion people.

***PUBLIC OPINION ON ABORTION HAS NOT CHANGED**

Roughly the same percentage of people, even a few percent more, are pro-life than before Webster. A good way of seeing this is to compare polls asking the same questions. CBS/New York Times regularly polls regarding the issue. The question reads:

Which of these comes closest to your view:

1. Abortion should be generally available to those who want it.(In September 1989 and previously, the poll reads "... legal as it is now")
2. Abortion should be available but under stricter limits than it is now. (in September 1989 and previously: "... be available in cases of rape, incest, or threat to the life of the mother.)
3. Abortion should not be permitted at all. (Same wording pre-September 1989).

The table below shows that people who want limits on abortion have nearly half or a majority of the population throughout this period. In fact, pro-life support has been growing gradually since the Webster decision, most notably in the category of people who believe that abortion should not be permitted at all.

CBS News/New York Times Poll 1989-1990

Abortion should be:	Jan 89	Apr 89	Sept 89	Jan 90
available to all	48%	51%	43%	39%
available but stricter	43	40	40	40
not permitted	9	9	13	18

***MOST AMERICANS REJECT MOST ABORTIONS**

Despite how Americans respond to general abortion questions, most Americans strongly oppose abortion, especially as a means of birth control. This has been true both before and after Webster. Americans also support limits on abortion funding and support parental and spousal involvement in the abortion decision.

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By opposing abortions for the reasons mentioned above, **most Americans reject the reasons that most abortions are performed.** A 1990 Boston Globe poll shows that Americans favor laws similar to one passed by the Idaho legislature which would prevent abortion as a means of birth control. Those who support such a ban total 48 percent of those polled, while those who oppose restrictions totalled 43 percent. Interestingly, while both men and women favor such restrictions, women support such measures slightly more than men do. While 46 percent of men support a ban on abortion as birth control, fully 50 percent of women support such a ban.

A February 7, 1990 Wirthlin Group poll also demonstrated that "when the issue is debated on circumstances (under which abortions take place) a majority of Americans are pro-life." According to the poll, 52 percent of Americans favor either: a) banning all abortions; b) banning abortion except to save the life of the mother; or c) banning abortion except those to save the mother's life or in the cases of rape or incest.

An October 1989 Cox News Service poll also shows that most Americans want to limit abortions in most circumstances. For instance, 53 percent of those polled believe that abortion should not be allowed if the reason is "that the woman cannot afford to have the child." Respondents show even greater opposition (57 percent) if the reason is that the woman is unmarried and does not want to marry the father.

***PRO-LIFERS CONTINUE TO BE MORE COMMITTED TO VOTING SINGLE ISSUE**

Pre-Webster polls show that prior to Webster pro-life candidates usually enjoyed a 3 to 7 percent net increment from pro-life single issue voters; pro-lifers are quite willing to cross party lines to vote for a candidate. The best pre-Webster example is the election of President George Bush, who received a net increment of five percent of the total electorate just on the strength of his pro-life position.

Since the Webster decision, single issue voters have increased while pro-abortion single issue voters have remained about the same. Gallup polls taken in both 1979 and 1989 show the strength of pro-life single issue voters. In 1979 only one percent of those who opposed overturning Roe v. Wade, versus 12 percent of those who wanted Roe v. Wade overturned, voted single issue; in 1989, the pro-abortion single-issue voters totaled only 8 percent, while 27 percent of pro-lifers called abortion their single most important voting issue. Over the entire sample, 4.1 percent more people vote pro-life single issue than pro-abortion single issue.

A December 1989 Wirthlin Group poll is even more telling. Wirthlin states, "Fully 29 percent of Americans say that it is either extremely (15 percent) or very likely (14percent) that the abortion issue alone would determine their vote on election day if a candidate's position on the issue was different from their own." While 27 percent of those advocating abortion vote single issue, 32 percent of pro-lifers vote according to the candidate's position. Moreover, women are much more likely to vote single issue pro-life than pro-abortion. Of all women voters, 21 percent are single issue pro-life voters: only 14 percent are pro-abortion single issue voters, giving pro-life candidates a **seven** percent net gain on the abortion issue among women voters. That's some gender gap!

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FACTSHEET:
STATE LEGISLATIVE ACTION
1989-1990

In the 12 months since the Supreme Court's Webster decision, more states have considered pro-life legislation than in any other year since the 1973 Supreme Court decisions legalizing abortion--Roe v. Wade and Doe v. Bolton. Hundreds of pro-life bills were introduced in nearly every one of the 44 states in session this year.

And, as with any type of legislation, many bills are introduced for each one that receives committee consideration; still fewer are brought to the floor, and only a handful pass legislatures.

The single most important statistic of this year: more pro-life laws have been enacted in the year since Webster than in any other single year since Roe v. Wade.

The pro-life legislation passed this year:

PENNSYLVANIA: On November 17, Governor Robert Casey signed the Abortion Control Act of 1989, after the bill passed the House (October 24) and the Senate (November 14). The law limits abortions after 24 weeks; provides for spousal notice, informed consent and a 24-hour waiting period; bans sex selection abortions; and regulates fetal tissue research. The 24-week limit on abortions is the most restrictive in the country; no other state has an operative law limiting post-viability abortions.

SOUTH CAROLINA: In February, the House and Senate passed a parental consent bill, which Governor Carroll Campbell signed February 28.

WEST VIRGINIA: For the first time since the 1970s, the West Virginia legislature amended the state budget to limit state taxpayer funding of abortion.

INDIANA: In early 1990, the Indiana House and Senate overwhelmingly passed a law providing subsidies for the adoption of special needs children, which helps foster adoption as the positive alternative to abortion.

Some of the other significant pro-life legislative actions:

MICHIGAN: Both houses of the state legislature passed a parental

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consent bill, which Governor James Blanchard vetoed February 23. Michigan pro-lifers are now completing a petition initiative to bring the law before the legislature, which would veto-proof the measure should the legislature pass it again. The initiative needs about 192,000 signatures; already, activists have gathered 272,000 and will file the petition July 6.

IDAHO: In March, both the House and the Senate passed a law preventing abortion as a means of birth control. Governor Cecil Andrus vetoed the bill March 30, bowing to the hollow threats of pro-abortion extremists and abandoning his pro-life position.

WISCONSIN: The General Assembly January 30 passed a parental consent bill. The measure was then stalled in a Senate committee chaired by an abortion advocate.

MISSISSIPPI: In February, the Mississippi House and Senate passed similar versions of an informed consent bill, but the bill died in conference committee. A clinic regulations bill passed both houses, but was vetoed by Governor Ray Mabus in April.

LOUISIANA: The legislature is still considering a bill to limit abortion. The House passed the bill June 14, and the Senate is scheduled to consider the matter Tuesday, June 26.

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FACTSHEET:
POST-WEBSTER ELECTIONS

Principled pro-life candidates have done extremely well in post-Webster elections, despite media attention to a handful of races won by abortion advocates last summer.

From the July 3 Webster decision until the end of 1989, there were 13 special elections to fill state legislative seats; nine were won by pro-life candidates. Abortion was a prominent issue in 10 of those races; pro-life candidates won six of the 10. Included among the pro-life wins were two elections--one in Missouri and one in Alabama--on the **same day** as a win by pro-abortion candidate Tricia Hunter in California.

And the news for pro-life candidates is getting better and better. Pro-lifers fared better than expected in recent primaries in Pennsylvania, California, Texas and other states.

Some of the primary highlights:

CALIFORNIA: State Senator Marian Bergeson captured the Republican nomination for lieutenant governor over pro-abortion state Senator John Seymour. Mr. Seymour flipped on the abortion issue to pro-abortion after Webster; abortion was virtually the only issue separating the candidates.

Several California state legislative primaries also featured abortion as an issue. The California Pro-Life Council mobilized voters and distributed literature for numerous candidates, including: Tom Mays, a pro-life candidate who won the Republican nomination for an open seat in Assembly District 58 and Paula Boland, who won the Republican nomination for the open seat in Assembly District 38. All incumbents endorsed by the Council and targeted for defeat by pro-abortion groups won nomination, including: Dominic Cortese (District 24), Cathy Wright (District 37, Gil Ferguson (District 70), and Peter Chacon (District 79).

IDAHO: Pro-life voters displayed impressive strength in the May 22 primaries. Pro-life candidate Roger Fairchild won the Republican nomination; he will face pro-abortion Governor Cecil Andrus. Pro-life candidates also won key state legislative races.

KENTUCKY: Pro-life Congressman Romano Mazzoli won the Democratic nomination over two challengers, both of whom campaigned strongly on the abortion issue.

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MONTANA: Pro-life candidate Allen Kolstad won the Republican nomination for the U.S. Senate race over pro-abortionist Bruce Vorhauer in a four-way race. Mr. Vorhauer spent about $250,000 of his own money in the race.

PENNSYLVANIA: Pro-life candidates were victorious in almost every race in the May 15 primaries. Most notable among the wins was the renomination of Steven Freind, who is the number one target of the National Abortion Rights Action League "NARAL Nine."

In the gubernatorial primaries, pro-life single-issue voters showed their strength. Pro-life Governor Robert Casey won the Democratic nomination by a 77-23 margin over Philip Berg, his pro-abortion challenger. And pro-life political novice Marguerite Luksik nearly pulled off an upset in the Republican primary, by receiving a stunning 46 percent, compared with 54 percent to the pro-abortion Republican-endorsed front runner, Barbara Hafer.

Before the primaries, pro-abortion groups vowed to "change the face of the Pennsylvania legislature," but they came away with nothing. In fact, pro-lifer Tom Armstrong unseated nine-term pro-abortion incumbent Kenneth Brandt to win the Republican nomination in District 98.

SOUTH CAROLINA: In a race dominated by the abortion issue, pro-lifer Henry McMaster won the Republican nomination June 12 for lieutenant governor over pro-abortionist Sherry Martschink.

TEXAS: With 61 percent of the vote, pro-life candidate Clayton Williams easily won the Republican nomination for governor March 13. Mr. Williams and pro-lifer Kent Hance together won more than 76 percent of the total vote; the two pro-abortion candidates received only 23 percent of the vote. Jack Rains, who flip-flopped to pro-abortion, came in dead last with only 9 percent of the vote.

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D.C. seen losing fight on abortion

By John E. Smith
THE WASHINGTON TIMES

The head of the House Appropriations panel on the District said yesterday that he expects the D.C. government to lose its fight again this year for the right to use local revenue to fund abortions for poor women.

Rep. Julian Dixon, California Democrat and a leading pro-choice advocate, predicted both the House and Senate would approve language in their fiscal 1991 D.C. appropriations bills that would allow the city to use locally raised dollars to pay for abortion. But he said he expected President Bush to veto such bills — as he did twice last year — and force Congress to retreat from its position.

"I don't want him to do it," Mr. Dixon said. "I hope I'm wrong."

Mr. Dixon's comments came at the end of a day of testimony by D.C. residents on the $4.8 billion District budget proposed for next year. The House panel is expected to hold another public hearing next week before voting on the budget bill.

Earlier in the day yesterday, a pro-life activist urged the panel to cut off all funds in the budget that could be used "for the killing of innocent children."

Nellie Gray, president of March for Life, told the House Appropriations subcommittee on the District that abortion funding was not a home-rule concern. But Mr. Dixon later disagreed.

Under current law, the District can use public dollars to fund abortions only in cases in which a mother's life is endangered. The bill Congress had approved last year would have put no restrictions on the use of local tax dollars for abortions — although the limits on federal funds would have remained in force — but the president's repeated vetoes forced legislators to scale back that law.

Rep. Julian Dixon predicts another veto on District abortion funding.

About a dozen D.C. residents testified before the subcommittee yesterday, with most criticizing the District government because of the quality of such areas as education and cable television.

Others came to plead for funding of programs. One such plea that seemed to attract some support on the panel came from Donald L. Brown, president of Children's Hospital.

Mr. Brown and others requested that the panel add $5 million to the budget for next year to help create a National Child Protection, Trauma and Research Center to cope with the increasing problems of child abuse and neglect in society.

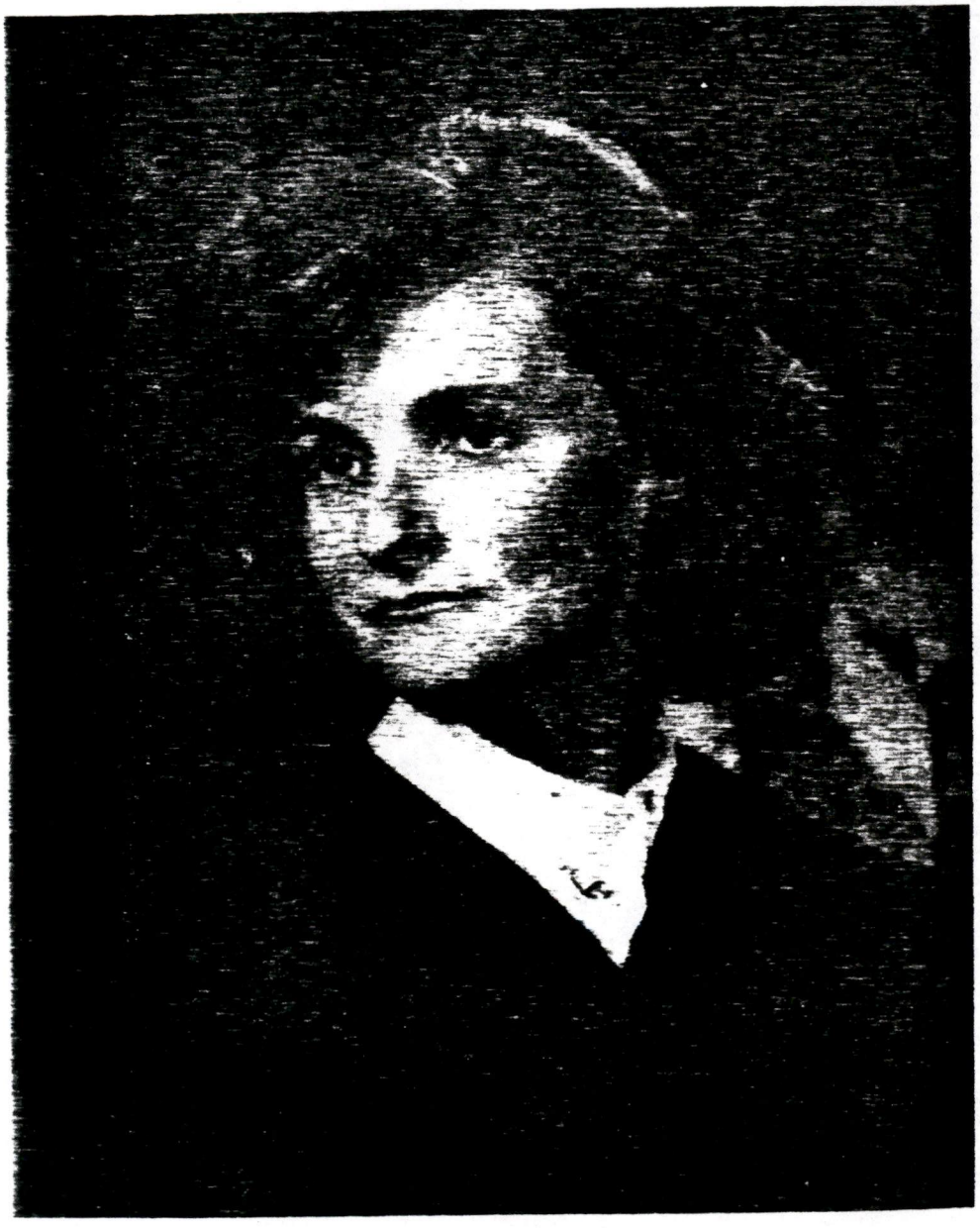
Under the proposal outlined to the lawmakers yesterday, the center would be built with about $19 million in federal funds that would be more than matched in private money. While the budget is tight, Mr. Dixon said he would make his "best effort" to find money for the plan.

Rep. Stan Parris, Virginia Republican and a frequent critic of District government, also spoke to the panel. He told his congressional colleagues the city needs to "focus on fundamentals" in deciding how to allocate its increasingly tight resources.

"It is not always an issue of money," he said. "In some cases, it is an issue of commitment, procedures and process."

JUNE 22, 1990 WASHINGTON TIMES

JUDGE EDITH JONES



HONORABLE EDITH HOLLAN JONES

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Edith Hollan Jones

Circuit Judge
Fifth Circuit
8631 U.S. Courthouse
515 Rusk Avenue
Houston, TX 77002
(713) 221-9484
Appointed in 1985
by President Reagan

Born: 1949

Education Cornell Univ., B.A., 1967-71; Univ. of Tex., J.D. with Honors, 1974, Order of the Coif, Research Editor, Tex. L. Rev.

Private Practice Andrews & Kurth, 1974-85

Professional Associations A.B.A. (Corporation, Business and Banking Law Committee; Subcommittee on Business Bankruptcy); Tex. Bar Assn.; Houston Bar Assn.

Political Activities General Counsel, Republican Party of Tex., 1982-83

Media Coverage

The January 6, 1986 Legal Times described Jones as an "unknown quantity . . . whose entire legal career had been spent at Houston's Andrews & Kurth — Treasury Secretary James A. Baker III's old law firm," where she specialized in commercial and bankruptcy litigation.

Lawyers' Evaluation

Courteous; very pro-proseuction; a moderate in other matters.

Specific Comments: "Was an excellent lawyer." "Doesn't care about criminal law. Just cares about affirming convictions." "Doesn't appreciate subtle points of constitutional procedure." "Well regarded, but criminal defense bar doesn't like her."

JUDGE EDITH HOLLAN JONES

A Personal Profile

By
Jane E. Jackson

Judge Edith Hollan Jones, if you ask her former law clerks, is intellectual, conservative, hardworking and funny. Funny? Yes, this jurist has got a great sense of humor which she undoubtedly needs as an Article III Judge, wife and mother of two young boys. Her great intellect and keen sense of humor have served her well since her 1985 appointment to the United States Court of Appeals for the Fifth Circuit. She was one of the youngest members of this esteemed group when she assumed office, however, she has quickly found her way and is making her mark.

At the youthful age of forty, how has she come so far and done so well? She is very smart, comes the answer from those who know her, and her work days begin at five a.m., when most of us are still asleep.

Judge Jones was always an outstanding student. She graduated fourth in her class from Alamo Heights High School in San Antonio, where she was awarded a National Merit Scholarship. She went on to attend Cornell University in New York and was on the Dean's list. After graduating from Cornell, she entered the University of Texas Law School and became an editor of the *Texas Law Review*. She also distinguished herself in law school by receiving the highest grade ever given in her constitutional law class taught by renowned professor and author Charles Alan Wright. It was also in law school that she met and later married Sherwood O. "Woody" Jones. She and her husband now have two sons, Andrew, 10 and David, 7.

Judge Jones began practicing law in 1974 with the Houston based firm of Andrews and Kurth. Her law practice concentrated on bankruptcy, litigation of all kinds and appellate work. She successfully tried several cases and argued appeals at the state and federal levels. She is remembered fondly by her former colleagues as a true intellectual who would coolly stand down more experienced opposing counsel with humor and her ability to outwork and outthink them. Tenacious, as a trial lawyer she was assigned twelve trials within a six month period and won them all, boasts a former partner. She is also described by colleagues at Andrews and Kurth as someone who always spoke her mind to associates and senior partners alike. While speaking one's mind may not appear the safest way to partnership, brilliance helps considerably. Hers was undeniable. When she came up for partner in 1982 there was no doubt that she would make it, related an Andrews and Kurth senior partner.

She is particularly well-versed in world affairs and is said to have had friendly arguments with law partner Jim Baker, now Secretary of State Jim Baker. She could argue politics with the best of them and always had all the facts at her fingertips, recalls one observer. Persuasive in her views, she is known to have changed more than a few minds by an argument's end. When she took the bench in 1985, she left behind an extensive list of victories both at the trial and appellate court levels, as well as many friends at Andrews and Kurth.

She has carried her humor and intellect to the bench. Former law clerks describe her as someone who is well-respected and intellectually able to hold her own. She encourages give and take and is receptive to criticism. Characterized as intellectually honest, if precedent dictates, she comes to a result in an opinion that she may hate, says a former law clerk. She also fosters a sense of camaraderie in her clerks and goes to great pains

to make them feel comfortable. This includes packing them in her [illegible] for birthday lunches.[1] There are also occasional holiday dinners and her now famous Annual Fajita Barbecue.

Her former clerks enjoy recounting her ability to cut through the mirrors and smoke during oral arguments. Impatient with lawyers who try to divert attention from core issues, she will often stop an advocate in midsentence and move right to the dispositive issue. No one can pull the wool over her eyes, says one former law clerk. Another clerk tells of the time a lawyer weakly argued that a district court's order was not being final and thus that the Fifth Circuit could not hear the appeal, to which the judge retorted: "Not a final order? Give me a break." The lawyer wisely went on to another point.

There is a now legendary story regarding oral arguments that is illustrative of her tenacity and sense of humor. During the fall of 1986, the court was sitting *en banc* to hear a hotly contested and significant case. The gallery was packed with law clerks, interested spectators, and with lawyers waiting their turn to argue. The judges had agreed to allow the lawyers fifteen uninterrupted minutes before questioning. However, only a few minutes into the arguments and well before the fifteen minutes were up, Judge Jones piped up with a question. As she interrupted the lawyer to pose her query, a lawyer, who did not know that he was sitting directly in front of Jones' law clerks, leaned toward a colleague and said, "That's the one I warned you about 'Barracuda Jones'." Knowing Her Honor's lighter side, the clerks reported the incident to her, resulting in a good laugh by all. However, she has not forgotten the incident, and she was later presented a painting of a barracuda complete with a brass plaque entitled "Barracuda Jones" which hangs on a wall in her office.

Her former clerks also speak with admiration of her ability to "turn a phrase"—a talent she has used to express both humor and outrage. In *Bell v. Lynaugh*, 858 F.2d 978 (5th Cir.1988), a case which dealt with an eleventh hour petition for writ of habeas corpus requesting a stay of execution, Judge Jones minced no words when in her special concurring opinion she called petitioner's counsel's conduct in filing the petition less than one week before the scheduled execution date "inexcusable according to ordinary standards of law practice." She further admonished that "his motive in late-filing must have been to play 'chicken' with the state and federal courts on the eve of execution." She expressed particular outrage in the *Herceg v. Hustler Magazine Inc.*, 814 F.2d 1017 (5th Cir.1987) case, where a fourteen-year-old boy died as a result of engaging in a practice called autoerotic asphyxia, the procedures for which were detailed in *Hustler* magazine. The Fifth Circuit held that the magazine was entitled to first amendment protection and that the imposition of civil liability for damages that resulted from publication of the magazine article violated the First Amendment. Concurring and dissenting, Judge Jones agreed with the result in the case due only to certain procedural errors by the plaintiff. Her dissent, however, was strongly worded and eloquent:

> "What disturbs me to the point of despair is the majority's broad reasoning which appears to foreclose the possibility that any state might choose to temper the excesses of the pornography business by imposing civil liability for harms it directly causes. Consonant with the first amendment, the state can protect its citizens against the moral evil of obscenity, the threat of civil disorder or injury posed by lawless mobs and fighting words, and the damage to reputation from libel or defamation, to say nothing of the myriad dangers lurking in commercial speech.' Why cannot the state then fashion a remedy to protect its children's lives when they are endangered by suicidal pornography? To deny this possibility, I believe, is to degrade the free market of ideas to a level with the black

1. However, known as a "white knuckle" driver, Judge Jones is certain to deliver her clerks back from these jaunts alert for afternoon briefing.

market for heroin. Despite the grand flourishes of rhetoric in many first amendment decisions concerning the sanctity of 'dangerous' ideas, no federal court has held that death is a legitimate price to pay for freedom of speech."

She authored the opinion in the highly publicized case of *United States v. Merkt*, 794 F.2d 950 (5th Cir.1986), holding that the lower court convictions of Merkt and her codefendant were not barred by their First Amendment claims, although they had maintained they were religiously motivated in transporting illegal El Salvadorians into the United States. In affirming the convictions she stated:

> "appellants 'do it yourself' immigration policy even if grounded in sincerely held religious conviction is irreconcilably, voluntarily and knowingly at war with the duly legislated border control policy."

Some of her other opinions include *King v. Lynaugh*, 850 F.2d 1055 (5th Cir.1988), where Jones held, affirming a lower court opinion, that a defendant was not constitutionally entitled to question jurors during voir dire concerning possible misconceptions about Texas parole law. In the *In Re Timbers of Inwood Forest Associates, Ltd.*, 808 F.2d 363 (5th Cir.1987), case, a hotly contested dispute regarding creditor's rights in bankruptcy cases, she wrote a lengthy dissenting opinion arguing the meaning of "adequate protection" for creditors in bankruptcy cases.

Her lighter side was evident in the *Dornhecker v. Malibu Grand Prix Corp.*, 828 F.2d 307 (5th Cir.1987), case, a Title VII action brought by a former employee for sexual harassment against Malibu Grand Prix Corporation. She began the opinion, "The behavior of a co-worker at the Malibu Grand Prix Corporation proved too racy for Marvelle Dornhecker." In addition to admiring her writing skills and tremendous mental capacity, Judge Jones' law clerks are unanimously very fond of her.

Judge Jones' professional accomplishments notwithstanding, the most important facet of her life is her family. A committed wife and mother, she goes to great lengths to spend time with husband, Woody and sons Andy, 10 and David, 7. Rising at five a.m. to read briefs and write opinions helps to ensure more family time. Her husband, a partner at Hirsch and Westheimer in Houston, and an accomplished lawyer in his own right, is said to spend significant time with the children, and somehow, with their busy lives, they have raised two fine young men.

An accomplished parent, lawyer and now judge, where will she go from here? Anywhere she wants, say her admirers. If those whose lives she has touched, personally or professionally, have anything to say about it, there is no stopping her.

Fifth Circuit Cases by Edith Jones

Bell v. Lynaugh, 858 F.2d 978 (5th Cir. 1988). [Note: cert. denied, 109 S. Ct. 3262 (1988), reh'g denied, 110 S. Ct. 223 (1989)].

Berry v. Peterson, 887 F.2d 635 (5th Cir. 1989). [Note: reh'g denied, (1989)].

Coastal Corp. v. Texas Eastern Corp., 869 F.2d 817 (5th Cir. 1989).

Herceg v. Hustler Magazine, Inc., 814 F.2d 1017 (5th Cir. 1987).
[Note: cert. denied, 485 U.S. 959 (1988)].

King v. Lynaugh, 850 F.2d 1055 (5th Cir. 1988).
[Note: cert. denied, 109 S. Ct. 1563 (1989)].

Lay v. Anderson, 837 F.2d 231 (5th Cir. 1988).

Legros v. Panther Services Grp., 863 F.2d 345 (5th Cir. 1988).
[Note: appeal dismissed, 874 F.2d 953 (5th Cir. 1989)].

Lelsz v. Kavanaugh, 807 F.2d 1243 (5th Cir. 1987).
[Note: reh'g denied, 815 F.2d 1034].

Martin v. Parrish, 805 F.2d 583 (5th Cir. 1986).

Overson v. City of Austin, 871 F.2d 529 (5th Cir. 1989).

Stokes v. Bullins, 844 F.2d 269 (5th Cir. 1988).

Streetman v. Lynaugh, 812 F.2d 950 (5th Cir. 1987).
[Note: reh'g denied, 818 F.2d 865].

Valdes v. Leisure Resource Grp., Inc., 810 F.2d 1345 (5th Cir. 1987).

Waltman v. International Paper Co., 875 F.2d 468 (5th Cir. 1989).

January 26, 1990

A PROPOSAL FOR REFORM OF DEATH PENALTY PROCEDURES

By: Edith H. Jones*

The death penalty continues to make news. Congress has recently authorized it for certain drug related offenses.[1] Public opinion polls show overwhelming support for capital punishment.[2] Texas's death row currently houses over 300 inmates, and that population rises by 30 to 40 each year. But a troubling irony overhangs the public's evident desire to enforce capital punishment laws: hardly any executions are being carried out. In Texas, seven inmates were executed in 1988 and 1989. Since the Supreme Court officially reinstated the death penalty in 1976,[3] only 121 executions have been carried out nation-wide, while 2,200 individuals have been sentenced to death.

As judges and lawyers, it is our duty to enforce the laws duly enacted by the legislature. We are also bound to respect the pronouncements of the Supreme Court regarding the constitutionality of the imposition of the death penalty. At present, however, we serve neither the public nor the Constitution by current trends, which effectively convert a sentence of death into a life sentence on death row[4] -- a cruel and unusual punishment if there ever was one.

In this article, I hope to explain the causes of the inordinate delays in our capital punishment procedures

in Texas and to set forth a tentative proposal that would avoid much of the delay in post-conviction proceedings while affording effective representation for capital defendants.

Three caveats to this discussion are necessary. First, Congress is now considering the report of the Powell Commission, a committee formed by Chief Justice Rehnquist and headed by former Justice Powell,[5] which proposed to eliminate redundant post-conviction petitions in capital cases in those states that agree to fund counsel for habeas proceedings.[6] Whether Congress and the state of Texas will enact the Powell Commission recommendations is currently uncertain. While I personally support these proposals, my suggestions might be adopted more quickly and without enabling legislation; in any event, they would not conflict with those proposals. Second, my suggestions, being procedural and organizational in nature, do not comment on or prejudge individual cases or the unanswered questions in death penalty jurisprudence. Finally, while my suggestions deal specifically with the enforcement of the death penalty in Texas, the problems and solution may well merit some consideration by other jurisdictions.

I.

CAUSES OF DELAY

We should first identify where delays occur in capital proceedings. In the 50 cases that it studied, the Powell Commission found that an average of over eight years elapsed from the commission of a capital crime to

execution.7/ As the Powell Commission's table shows, one-half of that time was consumed by post-conviction -- and predominantly by federal post-conviction -- proceedings:

SUMMARY OF DEATH PENALTY LITIGATION
STATISTICS BASED ON 50 CASES FROM FLORIDA,
TEXAS, ALABAMA, MISSISSIPPI, AND GEORGIA

Average times crime to:	*Months*
Conviction	13
End of state direct appeal	40
Direct certiorari review by U.S. Supreme Court	47
Execution	106
Valid sentence to:	
End of state direct appeals	27
Certiorari denied on direct review	34
Execution	93
Total time:	
State collateral	9
Federal collateral	38
All collateral	47

This table does not explain the reasons for delay, but it indicates where organizational innovations may be useful in shortening cases.

The reasons for delay are several, but on examination they are not immutable. Capital criminal procedure is the same as that in ordinary criminal cases, where trial and appeal are followed by state and federal habeas corpus proceedings designed to uncover constitutional flaws in the state's case. There is no precise res judicata doctrine in post-conviction proceedings, a circumstance that produces multiple habeas petitions as counsel for death row inmates is moved to attempt to obtain such relief as each execution date nears.

The feature of capital cases least amenable to regulatory measures is the continuing evolution and uncertainty of Supreme Court death penalty jurisprudence. Other rules of criminal procedure and habeas corpus, although occasionally complex and foreign to a civil trial lawyer, are fairly well-settled. The immediate consequence of intensive High Court scrutiny of capital cases is the need for a skilled death penalty defense cadre who can keep abreast of new developments. Texas does not lack such attorneys, although their forces could probably be more effectively deployed. Given such skilled counsel, and assuming that the Supreme Court's case law will not likely require reevaluation of a deluge of Texas cases at one time, our system can adjust to this uncertainty.

Delay has become inherent in Texas collateral proceedings because the defendant must initiate a request for habeas relief, and neither state nor federal law prescribes a time limit following conviction in which he must do so. The state's only means to encourage the initiation of collateral proceedings is to request the convicting court to set an execution date shortly after the Supreme Court refuses certiorari. Thirty days' notice of execution is required by state law.[8/] Although the convicting courts often set execution dates a mere 30 days in advance, to spur habeas proceedings, this is rarely enough time, on the first petition, to permit preparation by defense counsel or thorough and adequate review by state and

federal courts. As a result, often to the outrage of an uncomprehending public, a series of execution dates, delayed each time by stays or continuances, then ensues. Docket control by execution date is both inefficient and unnecessarily cruel to the defendant.

The third source of delay, broadly speaking, lies in the difficulty of obtaining counsel to represent death penalty inmates in post-conviction proceedings.[9/] According to the Texas Appellate Practice and Educational Resource Center, about half of the state's death row inmates are in the post-conviction stage. The vast majority are indigent. Texas does not routinely compensate counsel for post-conviction proceedings in state court, but the federal Criminal Justice Act authorizes payment for federal collateral proceedings.[10/] Self-evidently, the lack of remuneration discourages attorneys from representing capital defendants in the state habeas proceeding that is required before federal collateral review can be had.

Lack of remuneration has not proved to be an insuperable barrier to obtaining counsel, however. For many years, dedicated criminal defense attorneys such as Will Gray and Carolyn Garcia skillfully represented death row inmates pro bono publico. In five years on the bench, having participated as a panel member in 20-30 capital cases, I have never seen a defendant suffer from lack of legal counsel, nor have I known any defendant to be executed

without benefit of representation by counsel, except by his choice.

But it must be recognized that the growing death row population requires increased counsel resources, while the present system discourages the appointment of counsel. The Texas Bar Association recruited 75 leading civil firms to represent death penalty defendants. Its efforts to realize on this and on other volunteer talent are hindered by the unrealistic time restraints produced by employing execution dates as a means of docket control. There is room for doubt whether defendants are best served by recruiting volunteers from civil trial practice, who are often totally unaccustomed to criminal law and procedure.[11/] In any event, both the recruiting of volunteer lawyers at the last minute, after an execution date is impending, and the "learning curve" the civil attorneys must master, are reflected in added delays.

A fourth cause of delay is abusive trial tactics by capital defense counsel. Although, as has been shown, they often represent defendants under difficult circumstances, some attorneys' zealousness to deter the imposition of the death penalty shades into tactics that are not professional. I use the term "abusive tactics" advisedly. In my definition, this includes deliberate withholding of petitions for filing at the last minute (within two weeks or less of the scheduled execution date); deliberately including issues that were barred or waived in

state court; deliberately characterizing issues as constitutional simply to confuse the courts; and filing successive petitions for purposes of delay only. Our court has previously warned that such tactics may call for sanctions,[12] or may constitute an "abuse of the writ" leading to outright dismissal of a federal habeas petition.[13]

The final reason that capital cases take so long to adjudicate rests with the courts themselves. I do not know why it takes an average of two to three years for a capital sentence to be resolved on direct appeal in the state system. My impressions of the post-conviction process are clearer. State courts, federal district courts and even the Fifth Circuit do not always treat post-conviction capital cases with appropriate expedition. An impending execution date, or a successive petition, often speeds the decisional process, but the frequent, human reaction of most judges is to defer a decision if any element of a case raises doubts, or to grant a temporary stay for further consideration. The result of our judicial inefficiency is that capital cases often remain pending on our dockets longer than they should.

II.

RESOURCES AVAILABLE TO REDUCE DELAY

Death penalty adjudication can be improved significantly for both defendants and the public with resources already available in Texas. First among these is

the Texas Appellate Practice and Educational Resource Center, headquartered at the University of Texas School of Law and established to coordinate the defense of capital cases in Texas. The Resource Center has received grants exceeding $1,000,000 annually from the federal government to discharge its responsibilities.[14/] It is well-staffed by attorneys eminently familiar with capital punishment law and procedure. The defense capacity of the Resource Center is expanded by volunteer law firms from Texas and throughout the country. Further, the Resource Center, concentrating its efforts on post-conviction proceedings, usually cooperates with the attorneys who represented a defendant at trial and through direct appeal. In my experience, the Resource Center's work has been of generally high quality.

A second resource is the staff of the Texas Attorney General's office who specialize in representing the state in capital cases. They, too, furnish an excellent work product that is vital to the courts' efforts.

Without belaboring the point, other sources of expertise include the Texas Court of Criminal Appeals and the State Bar, both of which have recognized special obligations in death penalty cases. Finally, while neither state nor federal courts, apart from the Fifth Circuit,[15/] currently have rules to expedite capital cases, neither do their procedures prevent the implementation of such rules.

III.

THE PROPOSAL

The purpose of this proposal is to encourage cooperation and docket control efforts among the parties responsible for death penalty cases -- the Attorney General and county prosecutors, defense counsel, and the courts. By providing more lead-time on execution dates and a schedule of proposed executions in advance of those dates, the Resource Center will be able to evaluate cases and recruit counsel more easily for post-conviction proceedings. Concerns about delay, abuse and inadequate representation should dramatically subside. In short, the public interest, including the interest in providing competent representation for capital defendants, will be served. The basic framework of my suggestion should secure these goals even though portions of it may have to be adjusted to accommodate particular cases or legal developments.

1. The Texas Attorney General's office should prepare and distribute a list of proposed execution dates covering some or all of the death row inmates whose convictions have been affirmed on direct appeal to the Texas Court of Criminal Appeals and for which the court's mandates have been issued. The schedule should set approximately four to six executions per month, commencing six months to one year from the date it is published.

2. The list should be furnished to all convicting courts in the state and to the Resource Center.

3. Local district attorneys should implement the list by requesting the scheduled execution dates,[16] and the convicting courts should cooperate.

4. In major counties, such as Harris and Bexar, from which a number of capital cases originate, particular docket problems may result because the same prosecutors or courts handled several cases. A solution of assigning teams of prosecutors or coordinating execution dates so that no individual court is unfairly burdened seems easily feasible here.

5. Upon receiving the list, the Resource Center should immediately obtain counsel for such defendants as have none. It may be expected that a large number of these defendants will already have filed a first habeas petition,[17] in which case representation exists or at least the issues have been framed. If a defendant who has already completed one round of post-conviction review is set for execution, the scope of issues that may legitimately be raised in his behalf narrows radically;[18] hence, defense counsel's opportunities for legal challenge diminish. It appears highly unlikely that the Resource Center will have to obtain as many as 72 counsel per year,[19] because a number of cases are already pending in the court system with counsel.

The certainty of the scheduled execution date, combined with the lack of an immediate deadline, should significantly enhance the willingness of civil firms to

volunteer for these cases. Alternately, civil firms might substitute their financial resources for their direct participation; and a fund could be established for capital defense representation utilizing the combined resources of the State Bar, the Resource Center and private firms.

6. The state convicting court, upon setting the requested execution date, should fix a briefing schedule for the parties, which might afford them between three and six months to resolve the issues before it.20/ If a successive habeas petition is at issue, the shorter period should amply suffice, while six months might be required for a complex first habeas petition. The state court must expedite its own procedures to accommodate this timetable, to which both parties should also be rigorously bound. Strict adherence to the schedule ensures that the Texas Court of Criminal Appeals and the federal courts will have an opportunity to resolve the issues presented before the initial execution date expires.

7. The Texas Court of Criminal Appeals should review and resolve each capital case habeas petition within one to three months after review is sought. In many cases the court now routinely denies relief with a one-sentence order, so this constraint is not so severe as it may appear.

8. Federal district courts should place post-conviction capital cases among their top priorities and should aim to resolve them, with or without hearing, within one month after they are filed. This schedule will

necessitate expedited briefing. A possibility that comes to mind is allowing the petitioner to rely on his state court materials, cutting and pasting arguments on those issues that are within the federal court's jurisdiction, and supporting them with minimal additional briefing. A one-month schedule should be adequate, because district court hearings on capital cases are rare; and when they are held, they usually last no more than one or two days. At present, district courts routinely dispose of successive petitions, with supporting written memoranda, within 24 hours after the parties' briefing is concluded. Allowing up to 30 days thus does not imply that this time will always, or often, be required, for the governing principle is one of expedition.

9. The Fifth Circuit will continue to resolve capital cases in as short a time as possible to accommodate review by the United States Supreme Court. The Fifth Circuit often writes opinions in these cases in less than 48 hours before an execution date. Although the schedules I have proposed ought to afford the Fifth Circuit more time for reflection, this is certainly not their guiding purpose.

10. It may be objected that this proposal is too draconian or, more likely, too lenient, as it would take over four years to conclude all the currently pending capital cases. My response is that we must start somewhere. In due course, the system would become more current under this proposal.

IV.

CONCLUSION

By implementing a controlled schedule for executions, with a window of time to enable defense counsel to be located and to exhaust post-conviction remedies, the principal procedural obstacles to enforcement of Texas's death penalty will be removed. There should remain little excuse for delay by capital counsel, because the Resource Center will no longer be "sand-bagged" by thirty-day notices of execution. Moreover, state and federal courts possess the tools to enforce briefing and trial schedules that will conclude these cases promptly in the post-conviction stages. Our procedures have heretofore suffered from lack of coordination and cooperation. As a result, the public views the death penalty as a farce, manipulated at will by lawyers and the courts. Respect for our legal system and for the public's perception compels all the interested parties -- prosecution, defense, state and federal courts -- to combine forces in ensuring that capital punishment is applied fairly and carried out within a reasonable time after conviction.21/

*/ The Honorable Edith H. Jones, Circuit Judge for the Fifth Circuit Court of Appeals. My thanks to my law clerks Jerry Mitchell and Sylvan Lang who assisted in the preparation of this article.

1/ Anti-Drug Abuse Act of 1988, Title VII, 21 U.S.C.A. § 848(e) (West Supp. 1989).

2/ Murchison, Capital Punishment Gets Large Vote of Approval, The Texas Lawyer, Feb. 2, 1987, at 6 (estimating that 86% of U.S. population supports capital punishment) (citing Media General-Associated Press poll); Wall Street J., Jan. 19, 1990, at 1, col. 5 (reporting that 71% favor the death penalty for murder).

3/ See **Jurek v. Texas**, 428 U.S. 262, 96 S. Ct. 2950, 49 L.Ed.2d 929 (1976); **Gregg v. Georgia**, 428 U.S. 153, 96 S. Ct. 2909, 49 L.Ed.2d 859 (1976).

4/ In 1988, the NAACP found that although 101 executions had occurred since 1973, another 2/3 of that number, 62 inmates had committed suicide or died of natural causes while on death row. NAACP Legal Defense and Educational Fund, Inc., Death Row, U.S.A. (Aug. 1, 1988) (compilation of death row statistics).

5/ Chief Judge Clark of the Fifth Circuit and the Honorable Barefoot Sanders, Chief District Judge from Dallas, are members of the committee.

6/ Ad Hoc Committee on Federal Habeas Corpus In Capital Cases, Committee Report and Proposal, reprinted in 135 Cong. Rec. S13,471, 13,481-486 (daily ed. Oct. 16, 1989).

7/ Id.

8/ Tex. Code Crim. Proc. Ann. art. 43.14 (Vernon Supp. 1990).

9/ They are constitutionally entitled to court-appointed counsel through trial and direct appeal. **Murray v. Giarratano**, _____ U.S. _____, 109 S. Ct. 2765, 2769, 106 L.Ed.2d 1 (1989) (citing **Douglas v. California**, 372 U.S. 353, 83 S. Ct. 814, 9 L.Ed.2d 811 (1963)).

10/ 18 U.S.C.A. § 3006A (West Supp. 1989).

11/ See Bagwell, Letter To The Action Group On Post Conviction Capital Representation, reprinted in Letter To The Editor, The Ala. Lawyer, Nov. 1989, at 292-93.

12/ **Franklin v. Lynaugh**, 860 F.2d 165, 166 (5th Cir. 1988); **Bell v. Lynaugh**, 858 F.2d 978, 985-86 (5th Cir. 1988) (Jones, J., specially concurring), cert. denied, 109 S. Ct.

3262 (1989); **Brogdon v. Butler**, 824 F.2d 338, 343-44 (5th Cir.) (Clark, C.J., concurring), cert. denied, 483 U.S. 1040, 108 S. Ct. 13 (1987).

13/ **Prejean v. Smith**, 889 F.2d 1391, 1405 (5th Cir. 1989), petition for cert. filed, No. 89-6148 (Nov. 29, 1989); see also **Woodard v. Hutchins**, 464 U.S. 377, 379-80, 104 S. Ct. 752, 753-54, 78 L.Ed.2d 541 (1984) (Powell, J., concurring).

14/ See 1989 REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES at 61.

15/ See 5th Circuit Local Rule 8 and accompanying Internal Operating Procedure.

16/ See Tex. Code Crim. Proc. Ann. art. 43.14 (Vernon Supp. 1990).

17/ See supra text accompanying notes 9-10.

18/ The doctrines of procedural bar, **Harris v. Reed**, _____ U.S. _____, 109 S. Ct. 1038 (1989); **Teague-bar, Teague v Lane**, _____ U.S. _____, 109 S. Ct. 1060 (1989); and Successive Writ and Abuse of the Writ, 28 U.S.C.S. § 2254 Rule 9(b) (1978), all limit the repetitive or delayed filing of federal issues.

19/ This demand would result only if the state scheduled six executions per month for the first twelve months of the program, and none of the defendants had counsel.

20/ The Powell Commission suggested that six months would be sufficient time to allow for post-conviction proceedings after the appointment of compensated, competent counsel.

21/ See generally Powell, Commentary-Capital Punishment, 102 Harv. L. Rev. 1035 (1989).

Taking Points: Why Senator Rudman Should Support Reappointment of Basile Uddo to LSC Board

1. *Professor Uddo's strength is that he enjoyed broad-based support among the Legal Services actors. While generally supporting conservative reforms be always insisted on thoughtful analysis prior to supporting any action. Also he often was responsible for making salutary changes in regulation that had the votes to pass in less acceptable forms. For example, Professor Uddo was responsible for the amendment to the attorney fee recapture regulation that limited recapture to only those fees in excess of $100,000 thereby tailoring the rule to the real abuses.*

2. *Senator Rudman has commented favorably upon Professor Uddo's diligence. In particular at one set of congressional hearings he indicated that Professor Uddo was on the right track with his committee studying national and state support centers, which committee was short-circuited by the Board before its work was done.*

3. *Professor Uddo has worked closely with and has the respect of the ABA SCLAID Committee. That committee credited him with important contributions to the development of the ABA Standards for Providers of Legal Services to Indigent Clients.*

4. *Professor Uddo has never been viewed as being controlled by any group or interest, and therefore was considered the most independent member of the Board.*

5. *Professor Uddo could work well with the current Board in its effort to minimize conflict and dispute both among its members and with congress. He was never responsible for antagonzing any faction of the Board even when he disagreed with them. This quality is consistent not only with the current Board's approach, but also with the Bush administration's overall philosophy and expressed goal of a less contentious LSC.*

6. *On the other hand, while Tom Smegal was a dedicated member of the Board he is a lightening rod for conservatives. He never supported any conservative reform and did create antagonism on the Board. Also, Tom was viewed simply as the organ of the traditional LSC grantee apparat.*

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MATERIALS ON ABUSE OF "RAPE" EXCEPTION

February 6, 1990

Dear Member of Congress:

We are enclosing several packets of informational material which may be helpful to you and your staff in evaluating a number of abortion-related issues which may come before the House this year.

A five-page NRLC factsheet, "Right-to-Life Issues in Congress," provides brief summaries of major abortion-related legislation, and notes the positions of the National Right to Life Committee (NRLC) on these issues. NRLC is the nation's major pro-life organization, representing about 3,000 local chapters. Among the issues covered in the factsheet are the "Freedom of Choice Act" (HR 3700), the Hyde Amendment, the Title X reauthorization bill (HR 930), the Mexico City Policy, funding of the UNFPA, and funding of fetal-tissue transplantation.

Another packet deals with one of the most controversial abortion-related proposals of the 1989 session-- an amendment to the HHS appropriations bill, sponsored by Rep. Barbara Boxer, which would have required federal funding of abortion based on claims of rape and incest (including "statutory rape"). President Bush vetoed the bill, citing the vague and sweeping language of the Boxer Amendment as an invitation to abuse. In response, some pro-abortion polemicists claimed that the President had "insulted all women" for implicitly suggesting that some women would falsely claim their pregnancies resulted from rape in order to obtain a government-funded abortion. However, no less a feminist than Gloria Steinem has argued that "to make abortion legal only in cases of rape and incest would force women to lie," as documented in the enclosed packet. Moreover, Norma McCorvey, the plaintiff in the 1973 Roe v. Wade case which legalized abortion on demand, in 1987 admitted that she had fabricated her rape claim in the belief that it would help her obtain a legal abortion.

Another major issue of 1989, likely to be revisited, was whether to restore U.S. funding to the United Nations Population Fund (UNFPA). On Nov. 19, the President vetoed a foreign operations appropriations bill in order to prevent such funding. Since then, The New York Times (Nov. 21) has reported that Chinese provincial officials are "aggressively enforcing a new law" mandating sterilization and/or abortion for retarded persons, provoking the liberal Hartford Courant to editorially call upon "the United Nations to withdraw its support for China's population-control efforts until human-rights reforms are enacted" (Dec. 2).

During the 1989 debate, Congressman Chet Atkins told the House that "the UNFPA has been the clearest, most consistent voice against the coercive programs in China" (Congressional Record, Nov. 16, 1989, H 8830). Mr. Atkins's statement was completely at variance with the public record. In

fact, from 1979 to date, top UNFPA officials have consistently praised China's population-control policies and vigorously denied that China employs coercion.

Like her predecessors, current UNFPA Executive Director Nafis Sadik energetically defends China's population policies, which she describes as "purely voluntary" (CBS Nightwatch, Nov. 22) (transcript available).

We are enclosing a copy of a letter we sent on Dec. 22 to Mr. Atkins, requesting that he back up his floor statement by citing any statements by UNFPA officials condemning China's coercive policies. Mr. Atkins has not responded to the letter, or otherwise produced statements to validate his remarkable claim..

On another point: In recent weeks, some pro-abortion advocates have suggested that the American right-to-life movement advocates laws similar to those which were in effect in Romania under the late dictator Ceausescu. In fact, the Romanian laws were radically different from the laws which were in effect in the United States prior to Roe v. Wade, and radically different from the types of laws advocated by the National Right to Life Committee. Among other critical distinctions, the Romanian laws prohibited contraceptives and directed criminal penalties at women who procured abortions-- neither of which is advocated by NRLC.

These points are discussed in greater detail in the enclosed letter by NRLC President John Willke, M.D., which was published in the Jan. 26 Washington Post. Also included are a number of documents which rebut pro-abortion polemical claims regarding the incidence of abortion and abortion-related deaths in the U.S. before and after Roe v. Wade.

Finally, we are enclosing a booklet containing a compilation of all key abortion-related roll call votes for 1989, and another compilation covering House votes for the years 1983-88.

We will be providing you with more in-depth information on specific issues as they mature. If you desire further documentation on any of the issues discussed in this packet, please do not hesitate to contact us at 626-8820.

Sincerely,

Douglas Johnson
Legislative Director

Susan A. Smith
Associate Legislative Director

Please note: Congressional offices already receive the twice-monthly National Right to Life News on a complimentary basis. However, any staffperson who handles abortion-related issues and who not been receiving this publication, should contact the NRLC Federal Legislative Office at 626-8820.

Washington Post, Wednesday, September 9, 1987

'Jane Roe' Recants Rape Claim

Associated Press

The woman whose case prompted the landmark Supreme Court decision legalizing abortion says she falsely claimed to have been raped in hopes of winning an exemption from Texas law banning the operation.

The new account by Norma McCorvey, who was called "Jane Roe" in the 1973 abortion case Roe vs. Wade, came during an interview with WUSA-TV here. The station released a partial transcript last night.

"I found out I was pregnant through what I thought was love," McCorvey said. "I told [a doctor] that I wanted an abortion, that I did not want to carry the child for economic reasons."

Despite her claim to have been raped, she was unable to obtain an abortion. McCorvey had the child, which was given up for adoption.

She said she repeated the rape story later because she was "bitter, very bitter," and then allowed two lawyers to take her case to the Supreme Court.

Rape was never an issue in the Supreme Court case, in which the justices declared that women have a constitutional right to abortion on demand. McCorvey's lead lawyer in the case, Sarah Weddington, said the issue of rape had no bearing on the outcome.

McCorvey and Weddington were interviewed for a documentary, "Searching for Justice: Three American Stories," to be broadcast Sunday evening.

Cincinnati Enquirer June 26, 1989

Child from Roe vs. Wade located; she is 19 and staunchly anti-abortion

BY ROCHELLE SHARPE
Gannett News Service

LOS ANGELES — The child at the center of the *Roe vs. Wade* case was recently located and told that her conception led to the Supreme Court's landmark abortion decision, according to an adoption search consultant.

The child, now 19, is presumably the biological daughter of Norma McCorvey, the Texas woman who used the pseudonym Jane Roe to challenge her state's restrictive abortion laws.

A college student, she lives in a Seattle suburb with her adoptive mother and is staunchly anti-abortion, according to Toby Hanft, the adoption search consultant who met the child and told her about McCorvey.

"I'm sure it's her," said Hanft, who runs a business in San Francisco that reunites adoptees with their biological parents. "The stats — her date of birth, weight, time of birth — are all the same."

She was mortified

The child was mortified when she learned the identity of her biological mother, Hanft said. At first, though, "she didn't know who Jane Roe was."

Sitting in a hotel restaurant with the young woman, her adoptive mother, her boyfriend and her best friend, Hanft said she explained the *Roe vs. Wade* case, then handed the girl a *People* magazine story about McCorvey.

"She looked at it, and it sunk in," Hanft said. "She threw it down and ran out of the room."

"It was horrible," Hanft said. "Imagine your mother not wanting you so much that she went to the Supreme Court to get rid of you."

The young woman was located by the *National Enquirer,* which announced in its June 20 edition that it had found McCorvey's daughter.

Wanted to find child

McCorvey said earlier in the year that she wanted to find the child she had relinquished for adoption. Although she originally sought an abortion, she never got one because her lawsuit challenging the Texas law took three years to make it to the Supreme Court.

Neither McCorvey nor her lawyer would say whether the *National Enquirer* had found her child, complaining, instead, that the article was filled with inaccuracies. They refused to say what was untrue.

"I don't wish to comment on the story because it is so full of falsehoods," McCorvey said. "I still want to find my child I gave up for adoption. If I do find her, it will be in a private place and it will in no way be associated with the *National Enquirer.*

"It's such a sensitive issue. Maybe some damage has been done to the woman who may or may not be my child. I don't want to hurt her or my child in any way."

Gloria Allred, a California attorney who has befriended McCorvey, said: "She's never had a blood test. There is no conclusive evidence."

Hanft said she got involved in the case after the *National Enquirer* asked her to serve as an intermediary in the reunion. Although she said she dislikes the newspaper and never reads it, she decided to help because she thought she could cushion the shock.

"I did it because it was a choice — either they would show up at her door with a photographer and blow her away or I could explain it to her," she said.

Before she went to Seattle, Hanft said she talked at length with McCorvey, sometimes six or seven times a day.

Alive and well

McCorvey told Hanft to tell her daughter she was glad she had not had the abortion and was happy to know the girl was alive and well, the adoption consultant said. Although she said she was still pro-choice, she promised to stop participating in abortion rights marches, Hanft said, and instead work for liberalizing adoption laws.

Hanft said she has yet to talk to McCorvey about the restaurant meeting because the activist hasn't returned her phone calls.

INQUIRY

Topic: WOMEN

Gloria Steinem, 51, is co-founder of Ms. magazine and a spokeswoman for the U.S. feminist movement. Her articles have appeared in many publications, including New York *magazine, where she was a founding editor. Steinem, author of* Outrageous Acts and Everyday Rebellions, *was interviewed for* USA Today *by free-lance writer* ***Lee Michael Katz.***

Gloria Steinem

Women often grow more radical with age

USA TODAY: You were a pioneer of the USA's women's movement, and are consistently listed as one of the world's most influential women. Is that a difficult reputation to live up to?

STEINEM: It is when one has so little influence. It's a comment on how few powerful women there are in the world or in this country or both, that I would be named one of the most powerful, because I have only the power of persuasion.

USA TODAY: Your mother's mental illness seems to have been traumatic for you. Did that propel you to strive hard for success?

STEINEM: In a way that may be different from what your question implies, because my mother was not mentally ill. She was defeated by a biased world.

USA TODAY: What happened to her?

STEINEM: Her fate was not uncommon for women. In fact, it's so usual for women that we almost have to consider how a man would respond to it to understand how unjust it is. What if a man had his name and identity taken away from him — the work that he loved the most, all of his friends, and had to live in isolation? Naturally he would be depressed and perhaps enter a fantasy world by way of escape, which is what my mother did. I saw what injustice toward women can cost in terms of my mother. She was a newspaper writer who had to write under a man's name because the bias was so great against a woman's byline. Nonetheless, she worked her way up to be the Sunday editor of a major Midwestern newspaper.

USA TODAY: During President Reagan's second term, do you expect the progress made in women's rights to go downhill?

STEINEM: I don't think it can get worse. Reagan hasn't been as bad as he could possibly be. He certainly is a known quantity, as far as equality on sex and race is concerned.

USA TODAY: Why do you claim that the president is an enemy of women?

STEINEM: Because he stands opposed to almost every measure of equality that women want: the Equal Rights Amendment, reproductive freedom, equality in education, sports. He is very pro-military, and that distributes our tax dollars towards death and not towards life. This is a special problem for women who, because of our childbearing capacities, require more medical care. But majority support for issues of equality continues to grow, and we have defeated him in a lot of areas. But any place where by executive action, he can stop funding a program or ignore or change regulations, he's attempted to do so.

USA TODAY: Haven't you lost the momentum to pass the Equal Rights Amendment?

STEINEM: Our basic error was accepting a seven-year ratification deadline. Most constitutional amendments have had no deadline.

USA TODAY: Why did it fail?

STEINEM: Because the state legislatures are, in many cases, more conservative than the states in which they sit. It was only a few years ago that the last states ratified the anti-slavery amendments. If we had waited to pull out of Vietnam until we had the state legislatures, we might still be there.

USA TODAY: Isn't there a general perception that the women's movement has lost its steam?

STEINEM: Well, that's been true for 15 years. The women's movement has been pronounced dead every Tuesday at tea time.

USA TODAY: Aren't you worried that on college campuses more young women seem more concerned about what dress to wear than the ERA?

STEINEM: That's just not true. The main problem young women have is that they don't think there is a problem. But that is a function of youth. It means their dreams have not been taken away from them. They assume that they can do whatever they want to do. The women's movement is the one social movement in which you grow more radical with age.

USA TODAY: What did you think of the Cathleen Crowell Webb rape case, in which she recanted her testimony?

STEINEM: On pure instinct, I'd say she is now telling the truth. I empathize with the problems which caused her to lie in the first place because if a society punishes women for having sex and punishes women for having children out of wedlock, then it will encourage women to lie, just as the administration's suggestion to make abortion legal only in cases of rape and incest would force women to lie. I tend to believe her now. The governor did not. It sometimes sounded as if he and others were trying to cover up for the legal system, to take the middle road: "Don't exonerate him, but set him free."

USA TODAY: What do you mean when you say that the single most important focus of the women's movement around the world is reproductive freedom?

STEINEM: The only functional difference between women and men is women's ability to give birth. Men have a desire to control that, whether it's an individual man who wants to determine the paternity of his child, or a nation that wants to decide how many workers and how many soldiers it should have, and perhaps also what class and what race should increase more than others. Whatever the motive, it's the desire to control women as the most basic means of production and the means of reproduction. That is the root of women's inequality.

USA TODAY: Does it concern you that the burden of contraception is still on women, since there's no pill for men?

STEINEM: I am very concerned. One of the reasons for the initial revolt against the pill was that it put the burden totally on women and it was a danger to their health.

USA TODAY: Twenty-five years after the pill's debut, have expectations of women's sexual roles changed?

STEINEM: Although there's been substantial change, there are fewer, but some, men who still think that sexual activity before marriage is fine but not for their wives — or that extramarital activity is fine for them but not for their wives.

USA TODAY: Is the 1980s man still sexist?

STEINEM: Of course. It would be impossible to be born

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On "rape/incest" issue

November 8, 1989

Letters to the Editor
The Washington Post
1150 15th Street, N.W.
Washington, D.C. 20071

Dear Editor:

In her essay attacking President Bush's veto of the Health and Human Services appropriations bill, Brooklyn District Attorney Elizabeth Holtzman suggests that the President believes that women commonly fabricate claims of rape. ("A Veto That Came With an Insult," Nov. 1) But that is not what the President said. Rather, he argued that establishing a government policy of providing abortion "benefits" based on claims of rape might engender just such a problem.

Although Holtzman believes that the President's concern is based on "antiquated and sexist stereotypes," there is ample empirical evidence that the President is right. Can Holtzman be unaware that the Roe v. Wade case itself involved a fraudulent claim of rape? The plaintiff, Norma McCorvey, fabricated a story that she had been gang raped at a circus, in the mistaken impression that this would permit her to obtain a legal abortion in Texas. Not until 1987 did she reveal that the baby was actually conceived "through what I thought was love." (Post, Sept. 9, 1987.) (The child, her life saved by the Texas abortion law, was born and adopted, and is now a 19 year old.)

Perhaps Holtzman should also compare notes with radical feminist guru Gloria Steinem, who in a 1985 interview with USA Today said that "to make abortion legal only in cases of rape and incest would force women to lie."

Up until 1988, Pennsylvania's Medicaid program funded abortions for women who claimed they had been raped, without any requirement for reporting of the purported assault to a law enforcement agency. Under this law, abortion clinic personnel issued thinly veiled public invitations for women to simply state that they'd been raped, and the state ended up funding an average of 36 abortions a month based on such unsubstantiated claims. In 1988 the legislature added a requirement for reporting the rape to a law enforcement agency, and the average dropped to less than three abortions per month.

Unborn children are the immediate victims of the abortion policy which Holtzman in effect advocates (providing a free abortion to any woman who is willing to check off a box marked "rape"). But the policy would also contribute to the very problem regarding which Holtzman rightly expresses concern-- the unwarranted skepticism with which some law enforcement personnel and jurors greet genuine rape victims. If abortion-related

false rape claims become commonplace, skepticism regarding rape claims in general will become more pervasive, to the detriment of the real victims of sexual assault.

Sincerely,

Susan A. Smith
Associate Legislative Director

enc.

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WOULD THE "BOXER AMENDMENT" ENCOURAGE FRAUD?

February 6, 1990

President Bush vetoed the original FY 1990 Labor/HHS appropriations bill (HR 2990) because it included the Boxer Amendment, which would have loosened restrictions on federal funding of abortion. The President objected to the proposed weakening language on grounds that "it would be difficult to limit to the few cases of actual rape or incest, and could have the unintended consequence of allowing the taking of countless other lives of unborn children well beyond the few cases argued as reasons for the proposed legislative change."

The National Abortion Rights Action League subsequently published an ad calling the President's position "insulting," arguing that "the integrity of women has been impugned by your search for 'safeguards' to assure that women could not falsely claim rape or incest." The following items may be helpful in evaluating such demagoguery.

GLORIA STEINEM

Radical feminist Gloria Steinem said in an interview in USA Today (May 20, 1985):

> "[T]he administration's suggestion to make abortion legal only in cases of rape and incest would force women to lie." (attached)

NORMA McCORVEY

Norma McCorvey, who as "Jane Roe" was the plaintiff in the 1973 Roe v. Wade case which legalized abortion on demand, in 1987 admitted that she had fabricated her rape claim in the hope that it would help her obtain a legal abortion. "I found out I was pregnant through what I thought was love...I did not want to carry the child for economic reasons," McCorvey said. McCorvey did not obtain an abortion. Her daughter-- whose life was saved by the Texas anti-abortion law later struck down by the Supreme Court-- was adopted, and is now a 19-year-old college student who "is staunchly anti-abortion." (See attachments.)

SECRETARY LOUIS SULLIVAN

In his Oct. 10, 1989 letter to Congress, HHS Secretary Louis Sullivan wrote:

> "An onerous responsibility for legal judgment would be placed upon State Medicaid programs, the Department, and health care providers if this [rape/incest] language is accepted... a state would need to prove to the Federal government that a rape or incest had occurred."

PENNSYLVANIA'S EXPERIENCE WITH A LOOSE "EXCEPTION CLAUSE"

February, 1985, Pennsylvania won a five-year court struggle, and a law went into effect prohibited state funding of abortion except in cases of life endangerment, rape, or incest. There was no reporting requirement for the rape/incest claims. Pro-abortion spokespersons made thinly veiled public comments, noting that a mere verbal assertion of rape qualified a Medicaid-eligible woman for a state-funded abortion. By mid-1988, the state was funding an average of 36 abortions a month based on such rape claims (excluding incest).

Effective July, 1988, the Pennsylvania legislature changed the law to require that rape or incest be reported to a law-enforcement agency or, in the case of a minor victim of incest, to a child protection agency. The number of rape-based abortion claims dropped more than tenfold, to an average of three (3) per month.

Because the Boxer Amendment would provide the option of reporting to a "public health service," which could be interpreted by a court to include an abortion clinic or telephone counseling service, it is likely in practice to result in the kind of abuse which occurred in Pennsylvania from 1985-88.

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THE "BOXER AMENDMENT"--
OPENING THE FLOODGATES TO TAX-FUNDED ABORTIONS

February 6, 1990

SUMMARY: The "Boxer Amendment"-- approved by the House on October 11, 1989, but not enacted due to President Bush's veto of the original FY 1990 DHHS/Labor appropriations bill (HR 2990)-- could have resulted in federal funding of tens of thousands of abortions annually. Moreover, it could have the legal "side effect" of forcing states to fund abortion on demand with state funds.

DISCUSSION: This is the "Boxer Amendment" abortion language approved by Congress as part of the original FY 1990 Labor/HHS appropriations bill (HR 2990), which was vetoed by President Bush. (A subsequent replacement bill, HR 3566, extended the Hyde Amendment, which appears here underscored.)

> None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. [Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.][1]

The Boxer Amendment could result in large-scale tax funding of abortions which are not genuinely related to forcible rape or to incest. In considering these problems, one must keep in mind that such language would be construed not only DHHS, but also by federal judges carefully selected by pro-abortion legal strategists. Recall that the Hyde Amendment was subjected to four years of multiple legal attacks, and was twice enjoined nationwide, before being upheld 5-4 by the Supreme Court in 1980. New language-- particularly vague language-- will invite new litigation, with potentially disastrous results.

Regarding the Boxer Amendment:

1. The term "rape" is not defined. Unless the term "forcible rape" is substituted, the result would be that any Medicaid-eligible female who becomes pregnant outside the bounds of a state's age-of-consent law would automatically qualify for a federally funded abortion. There are at least 29,000 pregnancies a year in females under age 15, and at least 383,000 a year in females age 15-17. The age of consent varies from state to state, and is as high as 18 years in some states.

2. Boxer requires that claims of rape or incest be "reported promptly" to a "public health service". What is a "public health service"? An abortion

clinic? The telephone counseling services operated in many major cities by "feminist health" groups? A rape crisis center? A hospital? A federal judge might include all of these, and more.[2]

3. The term "promptly reported" is not defined. Under the Carter Administration, this term was originally defined as "within 60 days." There is obviously potential here for grave abuse. (Some states have abortion funding laws which require reporting of forcible rape to a law enforcement agency within 48 hours, if the victim is physically able to report, and which require reporting of incest to a child protection agency.)

4. Most importantly: 30 states currently fund abortion only to save the life of the mother. Addition of <u>any</u> rape exception would make federal law inconsistent with the laws of these 30 states (and perhaps some other states as well). If the courts follow the precedent of a 1980 ruling by the U.S. Court of Appeals for the Third Circuit, the result of this inconsistency would be that <u>the laws of these states would be struck down in their entirety, thereby compelling these states to pay for ABORTION ON DEMAND with state funds.</u>[3]

In 1980, Congress responded to the Third Circuit decision by adding a "states' rights" clause to the Hyde Amendment, guaranteeing the right of states to exclude abortions from their Medicaid programs to the degree they believed appropriate. However, this clause was dropped as superfluous in 1984, since there were no longer rape/incest exceptions in federal law.

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[1]As Secretary Louis Sullivan pointed out in an Oct. 10, 1989 letter to Congress, the second (bracketed) sentence is superfluous, since the Hyde Amendment already permits anti-implantation drugs and devices, and already permits termination of ectopic pregnancies.

[2]In February, 1985, Pennsylvania won a five-year court struggle, and a law went into effect prohibited state funding of abortion except in cases of life endangerment, rape, or incest. There was <u>no reporting requirement</u> for the rape/incest claims. Pro-abortion spokespersons made thinly veiled public comments, noting that a mere verbal assertion of rape qualified a Medicaid-eligible woman for a state-funded abortion. By mid-1988, the state was funding an average of <u>36 abortions a month</u> based on such rape claims (excluding incest). Effective July, 1988, the Pennsylvania legislature changed the law to require that rape or incest be reported to a law-enforcement agency or, in the case of a minor victim of incest, to a child protection agency. In addition to deterring fraud, the purpose was to protect the victims from further abuse and to assist in apprehending the perpetrators of these heinous crimes. <u>The number of rape-based abortion claims dropped more than tenfold, to an average of three (3) per month.</u>

[3]Two 1978 Pennsylvania laws prohibited state funding of abortion, under Medicaid, except to save the life of the mother. But the Federal restriction approved by Congress for FY 1979 included exceptions for rape and incest, as well as the life-endangerment exception. The Third Circuit ruled that this inconsistency invalidated both Pennsylvania laws in total. The ruling had the effect of requiring Pennsylvania to pay for <u>abortion on demand</u> with 100% state funds. See <u>Roe v. Casey</u> [623 F. 2nd 829 (1980).]

See page 2

STATEMENT BY

JAMES O. MASON, M.D., Dr.P.H

ASCISTANT SECRETARY FOR HEALTH

DEPARTMENT OF HEALTH AND HUMAN SERVICE

BEFORE THE

SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

APRIL 2, 1990

FOR RELEASE ONLY UPON DELIVERY

Mr. Chairman and Members of the Subcommittee:

Good morning. I am pleased to be here to discuss the moratorium on the use of Federal funds for fetal tissue transplantation research.

Human fetal tissue has been used in biomedical research for many years. More recently, researchers have explored transplantation of fetal tissue in patients with Parkinson's disease, diabetes, and Alzheimers. It is this transplantation of human fetal tissue from induced abortions-- as distinguished from other fetal tissue research -- which is the subject of the Federal moratorium.

Ethical concerns are not new in the area of fetal tissue research. In response to accounts of research abuses that affected a variety of human subjects, the Congress passed the National Research Act (P.L. 93-348) in 1974. This Act established the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research to study medical and social research activities and to recommend regulatory standards. The Commission's recommendations led to the adoption by the Department in 1975 of comprehensive regulations to protect human research subjects, including pregnant women and their fetuses.

In the fall of 1987, the Director of the National Institutes of Health (NIH), submitted a request to the Department for approval of a research protocol to transplant human fetal tissue into patients with Parkinson's disease.

On March 22, 1988, the Assistant Secretary for Health withheld approval of the NIH protocol to allow for a study of its ethical, legal and scientific implications. He directed the NIH to constitute a special advisory panel and to make recommendations on whether, and under what circumstances, the research ought to be undertaken. He further established a moratorium on Federal funding of research involving implantation of human fetal tissue from induced abortions into human subjects.

The moratorium did not apply to other research uses of fetal tissue. Untouched by the moratorium were many research applications of fetal tissue, ranging from basic biochemistry to AIDS, sickle cell anemia, and Sudden Infant Death Syndrome. The NIH has continued to fund research using fetal tissue and cells not involving transplantation of human tissue from induced abortions into human recipients.

The NIH convened a panel to examine the human fetal tissue transplantation issue. The panel, which consisted of over twenty expert non-Federal consultants, concluded that fetal tissue transplant research was "acceptable public policy" provided that additional safeguards were imposed. They recommended that there be anonymity between donor and recipient and that special consent procedures be employed to ensure that the decision to have an abortion is made independent of the decision to donate the tissue to research. Debate was heated and resulted in a number of dissenting and concurring statements accompanying the final report of the NIH advisory panel. The dissenting members of the panel opposed fetal tissue transplants on the grounds that the research posed an incentive for future abortions and it placed the Government in complicity with the abortion procedure.

The NIH Director's Advisory Committee endorsed the recommendations of the majority of the panelists and recommended lifting the moratorium. The NIH Director endorsed the recommendations of the advisory committee and requested that the Secretary and the Assistant Secretary for Health lift the moratorium and allow the NIH to develop guidelines adhering to the safeguards recommended by the Human Fetal Tissue Transplantation Panel.

After completing our review of the relevant materials, including the report of the transplantation research panel, and consulting the senior officials within the Department and the Administration, the Secretary and I reached a number of conclusions. Both the Administration and the Congress have made it clear that this Department in particular should not be funding activities which encourage or promote abortion. The so-called Hyde Amendment, the recently promulgated Title X abortion regulations, and the statutory prohibitions in Titles X and XX of the Public Health Service Act have left little doubt as to the prevailing policy on this question. In this regard, it is significant that 18 of the 21 members of the NIH Fetal Tissue Transplantation Panel agreed to begin their Report with the following statement: "It is of moral relevance that human fetal tissue has been obtained from induced abortions."

After carefully reviewing all of the materials, the Secretary and I are persuaded that one must accept the likelihood that permitting the human fetal research at issue will increase the incidence of abortion across the country. We are particularly convinced by those who point out that most women arrive at the abortion decision after much soul searching and uncertainty. Providing the additional rationalization of directly advancing the cause of human therapeutics cannot help but tilt some already vulnerable women toward a decision to have an abortion.

The proponents of fetal tissue transplantation research acknowledge that a strict wall would have to be erected between the abortion decision and the decision to donate fetal tissue to research. While such a distinction may be easy to theorize, I doubt that such a neat separation can be accomplished. For example, because there is often a need to utilize post-mortem tissue promptly, it may be necessary to consult pregnant women before the abortion is actually performed. This will potentially influence the decision-making process, despite the safeguards recommended by the NIH Advisory Panel. In addition, should the research efforts in question prove successful, a greater need for aborted fetuses could result.

For these reasons, the Secretary and I believe that a decision to lift the moratorium would be inconsistent with the Administration and Congressional imperatives discussed above. Accordingly, after consideration of the Report of the NIH Fetal Tissue Transplant Research Panel, the proceedings attendant to its development, and other statutory and ethical considerations, the Secretary concluded to continue the moratorium of March 22, 1988, indefinitely. After reviewing this matter with the Office of the General Counsel, we are satisfied that there is no statutory mandate requiring Departmental support of such research.

We recognize the potential benefits in biomedical knowledge to be gained from continuing human fetal tissue transplantation research. Interest in such research continues in the private sector, and thus, whatever biomedical knowledge that can be obtained from this research, can be obtained without a direct Federal subsidy.

The Department, through the NIH, has a longstanding commitment to sponsoring innovative research approaches to diabetes, Parkinson's and other diseases. Many different avenues are being explored to prevent, treat, and cure these disabling conditions.

As just one example for a potential treatment of Parkinson's and Alzheimer's, investigators sponsored by the NIH are studying biological implants in animals, not of fetal tissue, but of genetically modified skin cells. These modified cells are genetically engineered to secrete vital growth factors or other therapeutic agents that may restor or replace the functions that have been lost. The skin cells come from the host, making them immunologically compatible, and they can be grafted directly into the brain.

For the treatment of diabetes, researchers sponsored by NIH are transplanting the insulin-producing pancreatic islet cells from adult cadavers into both animals and humans. These studies seek to determine how to treat these pancreatic cells to preserve

their functioning and to prevent rejection by the host. The Public Health Service continues to pursue many different alternative research opportunities unaffected by the moratorium which show promise for treating the diseases mentioned above.

Extending the moratorium was not an easy decision. The Secretary and I are staunch supporters of biomedical research. In the case of fetal tissue transplantation research, however, these research objectives conflicted with Administration policy that seeks to ensure the protection of all human life.

HHS NEWS

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOR IMMEDIATE RELEASE
Thursday, Nov. 2, 1989

Contact: PHS Press Office
(202) 245-6867

HHS Press Office
(202) 245-6343

STATEMENT BY LOUIS W. SULLIVAN, M.D.
SECRETARY OF HEALTH AND HUMAN SERVICES
NOVEMBER 2, 1989

I have today informed the National Institutes of Health that I am continuing indefinitely the limited moratorium on federal funding of research in which human fetal tissue from induced abortions is transplanted into human recipients. This action does not affect funding of other research involving fetal tissue.

The moratorium was put into effect in March, 1988, by then Assistant Secretary for Health Robert E. Windom, M.D., who asked for review of "a number of questions, primarily ethical and legal," which had not previously been satisfactorily addressed.

It is clear that research involving use of fetal tissue from induced abortions for human transplantation could potentially produce health benefits, and I do not in any way discount the importance of this fact. But this is an issue which requires careful consideration not only of the potential benefits and hazards of such research, but also profound consideration of those moral and ethical elements which must never be divorced from the highest purposes of medical research. It is my conclusion that in the specific area of transplantation to humans involving fetal tissue from induced abortions, it is not appropriate that federal support be provided.

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THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D. C. 20201

November 2, 1989

Dr. William F. Raub
Acting Director
National Institutes of Health
Room 124, Building 1
900 Rockville Pike
Bethesda, Maryland 20205

Dear Dr. Raub:

I have completed my review of the relevant materials relating to fetal tissue transplantation research and I have consulted with senior officials of the Department. On the basis of my review, I have decided to continue the moratorium on Federal funding of research in which human fetal tissue from induced abortions is transplanted into human recipients.

A number of considerations have persuaded me to continue the moratorium. First, both the Administration and the Congress have made it clear that this Department in particular should not be funding activities which encourage or promote abortion. The so-called Hyde Amendment, the recently promulgated Title X abortion regulations, and statutory prohibitions in Titles X and XX of the Public Health Service Act have left little doubt as to prevailing policy on this question. In this regard, it is significant that 18 of the 21 members of the NIH Human Fetal Tissue Transplantation Panel agreed to begin their Report with the following statement: "It is of moral relevance that human fetal tissue has been obtained from induced abortions." After carefully reviewing all of the materials, I am persuaded that one must accept the likelihood that permitting the human fetal research at issue will increase the incidence of abortion across the country. I am particularly convinced by those who point out that most women arrive at the abortion decision after much soul searching and uncertainty. Providing the additional rationalization of directly advancing the cause of human therapeutics cannot help but tilt some already vulnerable women toward a decision to have an abortion.

The proponents of fetal tissue transplantation research acknowledge that a strict wall would have to be erected between the abortion decision and the decision to donate fetal tissue to research. While such a distinction may be easy to theorize, I doubt that such a neat separation can be accomplished. For

example, because there is often a need to utilize post-mortem tissue promptly, it may be necessary to consult pregnant women before the abortion is actually performed. This will potentially influence the decisionmaking process, despite the safeguards recommended by the NIH Advisory Panels. In addition, should the research efforts in question prove successful, a demand for aborted fetuses could be created. Pressure would then be created to produce more fetal tissue.

For all of these reasons, I believe that a decision to lift the moratorium would be inconsistent with the Administration and Congressional imperatives discussed above. I, however, note that interest exists in the private sector in continuing such research. Thus, whatever biomedical knowledge that may be obtained from such research can be obtained without Federal subsidization.

Moreover, I am satisfied, after reviewing this matter with the Office of the General Counsel, that there is no statutory mandate requiring Departmental support of such research. The principal legal authority for the Department's support of research involving the transplantation of human fetal tissue is Section 301 of the Public Health Service (PHS) Act. As you know, that section vests broad discretionary authority in the Secretary in determining what kinds of research the Department will or will not support, and it is not unusual to make these decisions based on a mix of scientific, social, policy, and ethical reasons. For example, a number of years ago, it was decided to prohibit the funding of most prisoner research, and this was done principally because of ethical considerations.

Furthermore, the only legislation specific to this issue is found in Section 498 of the PHS Act which has as its focus the prohibition of certain kinds of live fetal research. Certainly nothing in that legislation or its legislative history requires the Department to fund fetal research. Thus, I am proceeding on the assumption that I have considerable latitude in dealing with this issue.

The question then becomes one of whether the decision not to fund research involving the transplantation of human fetal tissue is within the sound exercise of my discretion.

The Department has been no more successful than the Congress in developing consensus on this issue. It has been studied and restudied. Most recently we have had a "Report of the Human Fetal Tissue Transplantation Research Panel," and a "Report of the Advisory Committee to the Director, National Institutes of Health." Despite all of this review and analysis, the debate on this issue continues to be intense and often bitter. In addition, I am aware that the legal debate surrounding the

recently decided Supreme Court decision of Webster v. Reproductive Health Services has raised anew issues implicating the rights of fetuses, leaving unsettled just where the balance in this complicated mix of rights will eventually rest.

Accordingly, as an exercise of the statutory discretion vested in me, and after consideration of the above-referred-to Reports, the proceedings attendant to their development, and other statutory and ethical considerations, I conclude that I should continue the moratorium of March 22, 1988, indefinitely. In taking this action, I am cognizant not only of the extensive review undertaken by the Panel and the Committee, but also of the extensive opportunity provided to the public to express its opinion and enter into this decisionmaking process.

Sincerely,

Louis W. Sullivan, M.D.
Secretary

N.I.H.

To:

From: Douglas Johnson

Re: Dr. Leon Rosenberg

Date: June 18, 1990

A newsletter called "The Pink Sheet," which monitors the Food and Drug Administration, reports that Leon E. Rosenberg, MD, is the "current favorite choice" of DHHS Secretary Sullivan to head the FDA.

Dr. Rosenberg, a geneticist who is also dean of the Yale University School of Medicine, has taken a high profile as a defender of legal abortion. For example, he was one of the lead amici on a brief submitted to the Supreme Court in 1989 in defense of Roe v. Wade (see attachment).

In 1981, Dr. Rosenberg was a lead witness in opposition to Sen. Helms's Human Life Bill, which would have defined unborn children as legal "persons" from the time of conception, for the purpose of allowing states to protect them from abortion. Arguing for "a pluralistic view which makes women and couples responsible for their own reproductive decisions," Dr. Rosenberg testified that there was no scientific basis for such a law. He said:

> Some people say that life begins at conception; but others say that life begins when brain function appears, or when the heart beats, or when a recognizable human form exists in miniature, or when the fetus can survive outside the uterus, or when natural birth occurs, or when brain development is completed at two years of age. [...] I have no quarrel with anyone's ideas on this matter, so long as they are held out not as scientific truths, but as personal beliefs based on personal judgments.

It is noteworthy that while the phrase "or when brain development is completed at two years of age" appeared in Dr. Rosenberg's typed statement submitted to the subcommittee, Rosenberg did not include it in his oral testimony-- and his entire printed statement was later omitted from the published hearing record. Apparently Rosenberg realized that, in context, the phrase implied that there was no objective, non-"religious" basis for treating infanticide as a crime.

#######

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No. 88-605

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

WILLIAM L. WEBSTER, *et al.*,
Appellants,

v.

REPRODUCTIVE HEALTH SERVICES, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals for the Eighth Circuit

AMICI CURIAE BRIEF OF 167 DISTINGUISHED SCIENTISTS AND PHYSICIANS, INCLUDING 11 NOBEL LAUREATES, IN SUPPORT OF APPELLEES †

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Testimony of

Leon E. Rosenberg, M.D.

before the Senate Subcommittee on the Separation of Powers

April 24, 1981

Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity to testify before you concerning Bill S.158. I am a professor of Human Genetics, of Pediatrics, and of Internal Medicine and Chairman of the Department of Human Genetics at the Yale University School of Medicine. Nearly 25 years ago I completed my formal education as a physician at the University of Wisconsin, after which I undertook residency training in Internal Medicine at Columbia University and at Yale. My research training was obtained subsequently at the National Institutes of Health. For the past 20 years I have worked as a researcher, and clinician and teacher. I have been elected to membership in such professional societies as the Association of American Physicians, the American Pediatric Society, the American Society of Biological Chemists, and the American Academy of Arts and Sciences. I am a past president of The American Society of Human Genetics, and have served the National Institutes of Health first as a member of the Metabolism Study Section and currently as a member of the Advisory Council of the National Institute of Arthritis, Diabetes and Digestive and Kidney Diseases. Today, however, I represent none of these institutions or organizations. Rather, I speak as a concerned citizen, husband, and father of three children, who, by the great good fortune of living in this free country, has been provided the opportunity to devote my career to the care of the sick, the pursuit of scientific truth, and the dissemination of knowledge.

The crux (or, if you will, the heart) of the bill before you is the statement in Section 1 which states "that present day scientific evidence indicates a significant likelihood that actual human life exists from conception." I must respectfully but firmly disagree with this statement for two reasons: first, because I know of no scientific evidence which bears on the question of when actual human life exists; second, because I believe that the notion embodied in the phrase "actual human life" is not a scientific one, but rather a religious, metaphysical one. For these reasons, and because I am convinced that the clinical implications of this bill are fundamentally counter to the best interests of the people of the United States, I must oppose this legislation.

With your permission I would like to examine each of these conclusions in turn. There is no reason to debate or to doubt the scientific evidence indicating that conception is a critical event in human reproduction. When the egg is fertilized by the sperm, a new cell is formed that contains all of the genetic information needed to develop ultimately into a human being. This cell has several fundamental properties: it is organized and complex; it can take energy from its environment; it can grow and develop, and it can divid. These are the properties of all living cells. Their presence proves incontrovertibly that the fertilized human egg is a living cell with the potential for human life. But, in my view, there is an enormous difference between the potential for human life and, to repeat the critical phrase in Section 1 of this bill, "actual human life." To exercise this potential, the fertilized egg must travel to the uterus, be implanted in the uterine wall, and undergo millions and millions of cell divisions leading to the development of its head, skeletal system, limbs and vital organs. To be sure, this sequence of events depends on the genetic program present in each cell

of the developing embryo and fetus. As surely, the sequence depends on the environment offered by the mother. Without the genetic "blueprint" of the fetal cells, human development cannot be initiated; without the protection and nutrition provided by the mother's tissues, the genetic blueprint cannot be followed to completion. This absolute dependence of fetus on mother lasts normally for nine months, after which the birth process abruptly separates mother from child.

When does this potential for human life become actual? I do not know. Moreover, I have not been able to find a single piece of scientific evidence which helps me with that question. That does not mean that nothing has been written on the subject. Some people say that life begins at conception; but others say that life begins when brain function appears, or when the heart beats, or when a recognizable human form exists in miniature, or when the fetus can survive outside the uterus, or when natural birth occurs, or when brain development is completed at two years of age. In 1967, Dr. Joshua Lederberg, a Nobel laureate in genetics wrote the following: "Modern man knows too much to pretend that life is merely the beating of the heart or the tide of breathing. Nevertheless he would like to ask biology to draw an absolute line that might relieve his confusion. The plea is in vain. There is no single, simple answer to 'when does life begin?'....In contemporary experience, life in fact never begins--it is a continuum from generation to generation." I have no quarrel with anyone's ideas on this matter, so long as they are held out not as scientific truths, but as personal beliefs based on personal judgments.

If such beliefs are not scientific, you might say, just why can't they be made scientific? My answer is that science, per se, doesn't deal with the complex quality called "humanness" any more than it does

professional judgments.

Some minutes ago I said I had three reasons for opposing this bill. Thus far I have discussed only those dealing with scientific evidence and the scientific method. My third reason is based on my clinical experience and judgment. I believe that this bill has implications both far-reaching and counter to the health interests of our people. This bill, if enacted into law, will prohibit the use of such commonly employed contraceptives as the intrauterine devices because they prevent uterine implantation and, thereby, act against the fertilized ovum which has, by legal decree, been made a person. This bill will protect a conceptus that has no possibility of realizing its human potential. Here I refer to the formation of a hydatid mole, a grape-like cluster of potentially malignant cells which represents an accident of reproductive biology. This mole must be removed surgically before it becomes invasive. But such surgery would be prohibited by this law because the mole begins as a fertilized human ovum. Finally, this bill will stop all amniocentesis used for prenatal diagnosis of such genetic disorders as anencephaly or Tay-Sachs disease. This, I believe, would be a sad loss to families who have been using this procedure in rapidly increasing numbers to give them the confidence to undertake and complete a pregnancy with a higher than usual chance of a poor outcome. Since amniocentesis carries a very small, but finite risk of miscarriage, no physician would be willing to carry it out and risk, in turn, being charged with manslaughter or murder.

with such equally complex concepts as love, faith, or trust. The scientific method depends on two essential things--a thesis or idea, and a means of testing that idea. Scientists have been able to determine, for instance, that the earth is round or that genes are composed of DNA because, and only because, experiments could be performed to test these ideas. Without experiments there is no science; no way to prove or disprove any idea. I maintain that concepts such as humanness are beyond the perview of science because no idea about them can be tested experimentally. In discussing this matter with a number of scientific colleagues, I found a similar view. Let me quote from two distinguished people. Dr. Lewis Thomas, a leading medical scientist, philosopher and author observed that "....whether the very first single cell that comes into existence after fertilization of an ovum represents, in itself, a human life, is not in any real sense a scientific question and cannot be answered by scientists. Whatever the answer, it can neither be verified nor proven false using today's scientific knowledge. It is therefore in the domain of metaphysics: it can be argued by philosophers and theologians, but it lies beyond the reach of science." Dr. Frederick Robbins, pediatrician, virologist, and Nobel laureate in Medicine responded as follows: "the question of when life begins is not, in essence, a scientific matter. Rather it is one that evolves complicated ethical and value judgments. In fact, I doubt whether the health sciences can shed much light on such moral questions." If I am correct in asserting that the question of when actual life begins is not a scientific matter, then, you may ask, why have so many scientists come here to say that it is? My answer is that scientists, like all other people, have religious feelings to which they are entitled. In this instance, I believe they have faile o distinguish between their personal biases and their