HB

65

STATE OF ALASKA
1997 LEGISLATIVE SESSION

(H) Publish Date: 2/21/97

vision Date:
e: "An act relating to partial-birth abortions."

Sponsor: Representative Kott
Requester: (H) STA

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1831

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ( )	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
105 GF/Program Receipts						
037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 97) cost: $ **

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would make performing a "partial-birth abortion" in Alaska a class C felony offense. It creates a new crime, and may result in additional cases and additional work for the Public Defender Agency. Although (presumably) only physicians would be prosecuted and it would be highly unusual for a physician to be a public defender client, other persons could be prosecuted as aiders or abettors. There is even the potential that people who form an agreement to have such an procedure outside the state could be prosecuted under the conspiracy laws. However, without an accurate prediction of the numbers of prosecutions expected, fiscal impact is impossible to quantify.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4614
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 2/19/97

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Rev: 11/96

FISCAL NOTE(S)

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Version: HB 65
(H) Publish Date: 2/21/97

Revision Date:
Title: Relating to partial-birth abortions
Sponsor: Kott
Requester: House State Affairs

Dept. Affected: Health and Social Services
BRU: Medical Assistance
Component: Medicaid Non-Facility
COMPONENT SERIAL NO. 229
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: 30.0

ANALYSIS: (Attach a separate page if necessary)

The Division assumes that a partial-birth abortion refers to a third trimester abortion of a viable fetus, and therefore does not believe this bill would have any effect on the cost of abortions for the Medicaid and General Relief Medical Assistance Programs. There would be no way to identify a partial-birth abortion procedure on a medical claim form, but the division believes that facilities in Alaska, and those out-of-state facilities commonly used by Alaskans, do not perform third trimester abortions.

Prepared by: Nancy Weller
Division: Medical Assistance
Phone: 465-3355
Date: 01/16/97

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 2/5/97

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FISCAL NOTE(S)

Parental Notification Legislation Guide

AMERICANS UNITED FOR LIFE

343 S. Dearborn Street
Suite 1804
Chicago, IL 60604-3816
312. 786-9494
312. 786-2131, *fax*

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August 1995

Introduction

The overwhelming majority of Americans, according to all reliable polling data, support parental involvement laws for teenagers considering abortion. Its public policy and practical benefits even appeal to those who label themselves as "pro-choice," positioning it as a law that makes "common sense."

To help you create winning legislation in your state, Americans United for Life has developed a model for the Parental Notice of Abortion Act featuring the following elements:

- That no physician may perform an abortion upon a minor or incompetent unless the physician performing the abortion has given forty-eight hours notice to one parent or the legal guardian of the minor or incompetent
- That a violation of this Act is a Class A misdemeanor
- Exceptions to the notice requirement when a medical emergency exists or when notice is waived by the person entitled to notice
- For parental notice bypass through the courts
- That this bill is effective ninety days after becoming law

AUL's legislative guide includes talking points to help you respond to difficult questions most often asked by opponents. These talking points can be used for media interviews, debates and other educational forums.

While the model bill can be used in its current form, we recognize that individual States may want to tailor the parental notification bill to meet their specific legal and social needs. If you need assistance in drafting and supporting your state's parental notification legislation, contact AUL's senior legislative counsel (312) 786-9494.

Parental Notification Model Bill

AN ACT concerning parental notice of abortion.

Be it enacted by the People of the State of _____, represented in the General Assembly:

Section 1. Short Title.

This Act may be cited as the Parental Notice of Abortion Act.

Section 2. Legislative Purpose and Findings.

(a) The legislature finds that:

(1) Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences.

(2) The medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature.

(3) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related.

(4) Parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning the child.

(5) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion.

(6) Parental consultation is usually desirable and in the best interests of the minor.

(b) The General Assembly's purpose in enacting this parental notice law is to further the important and compelling State interests of:

(1) Protecting minors against their own immaturity.

(2) Fostering family unity and preserving the family as a viable social unit.

(3) Protecting the constitutional rights of parents to rear children who are members of their household.

(4) Reducing teenage pregnancy and unnecessary abortion.

Section 3. Definitions.

For purposes of this Act:

(a) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known by the defendant to be pregnant. Such use or prescription is not an abortion if done with the intent to a) save the life or preserve the health of an unborn child, b) remove a dead unborn child, or c) deliver an unborn child prematurely in order to preserve the health of both the pregnant woman and her unborn child.

(b) "Actual notice" means the giving of notice directly, in person or by telephone.

(c) "Constructive notice" means notice by certified mail to the last known address of the parent or guardian with delivery deemed to have occurred 48 hours after the certified notice is mailed.

(d) "Coercion" means restraining or dominating the choice of a minor female by force, threat of force, or deprivation of food and shelter.

(e) "Emancipated minor" means any person under eighteen years of age who is or has been married or who has been emancipated.

(f) "Incompetent" means any person who has been adjudged a disabled person and has had a guardian appointed for her under the State Probate Act.

(g) "Medical emergency" means a condition that, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(h) "Neglect" means the failure of a parent to supply a child with necessary food, clothing, shelter, or medical care when reasonably able to do so or the failure to protect a child from conditions or actions that imminently and seriously endanger the child's physical or mental health when reasonably able to do so.

(i) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a child.

(j) "Physician" means any person licensed to practice medicine in all its branches under the _____ Medical Practice Act.

(k) "Sexual abuse" means any sexual conduct or sexual penetration as defined in Section of the Criminal Code of the State of _____ and committed against a minor by an adult family member as defined in this Section or a family member as defined in Section _____ of the Criminal Code.

Section 4. Notice of One Parent Required.

(a) No person shall perform an abortion upon an unemancipated minor or upon an incompetent unless that person has given at least forty-eight hours actual notice to one

parent or to the legal guardian of the pregnant minor or incompetent of his or her intention to perform the abortion. The notice may be given by a referring physician. The person who performs the abortion must receive the written statement of the referring physician certifying that the referring physician has given notice. If actual notice is not possible after a reasonable effort, the person or his or her agent must give forty-eight hours constructive notice.

Section 5. Alternate Notification.

(a) If the minor patient declares in a signed written statement that she is a victim of sexual abuse, neglect, or physical abuse by either of her parents or her legal guardian, then the attending physician shall give the notice required by this Act to a brother or sister of the minor who is over twenty-one years of age, or to a stepparent or grandparent specified by the minor. The doctor who intends to perform the abortion must certify in the patient's medical record that he or she has received the written declaration of abuse or neglect.

Any physician relying in good faith on a written statement under this Section shall not be civilly or criminally liable under any provisions of this Act for failure to give notice.

Section 6. Exceptions.

Notice shall not be required under Section 4 or 5 of this Act if:

(a) The attending physician certifies in the patient's medical record that a medical emergency exists and there is insufficient time to provide the required notice, or;

(b) Notice is waived in writing by the person who is entitled to notice, or;

(c) Notice is waived under section 9.

Section 7. Coercion Prohibited.

A parent, guardian, or any other person shall not coerce a minor to have an abortion performed. If a minor is denied financial support by the minor's parents, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor shall be deemed emancipated for the purposes of eligibility for public-assistance benefits, except that such benefits may not be used to obtain an abortion.

Section 8. Reports.

A monthly report indicating the number of notices issued under this law, the number of times in which exceptions were made to the notice requirement under this section, the type of exception, the minor's age and the number of prior pregnancies and prior abortions of the minor shall be filed with the Department of Public Health on forms prescribed by the Department. No patient names are to be used on the forms. A compilation of the data reported shall be made by the Department on an annual basis and shall be available to the public.

Section 9. Procedure for Judicial Waiver of Notice.

(a) The requirements and procedures under this Section are available to minors and incompetent persons whether or not they are residents of this state.

(b) The minor or incompetent person may petition any circuit court for a waiver of the notice requirement and may participate in proceedings on her own behalf. The petition shall include a statement that the complainant is pregnant and is unemancipated. The court shall appoint a guardian ad litem for her. Any guardian ad litem appointed under this Act shall act to maintain the confidentiality of the proceedings.

[Drafter's Note: Because of concern for confidentiality, unless a judicial decision or ot state law requires it, it might be better to say: "the court *may* appoint a guardian ad litem for her."]

The circuit court shall advise her that she has a right to court-appointed counsel and shall provide her with counsel upon her request.

(c) Court proceedings under this Section shall be confidential and shall ensure the anonymity of the minor or incompetent person. All court proceedings under this section shall be sealed. The minor or incompetent person shall have the right to file her petition in the circuit court using a pseudonym or using solely her initials. All documents related to this petition shall be confidential and shall not be available to the public. These proceedings shall be given precedence over other pending matters to the extent necessary to ensure that the court reaches a decision promptly. The court shall rule, and issue written findings of fact and conclusions of law, within forty-eight hours of the time that the petition was filed, except that the forty-eight-hour limitation may be extended at the request of the minor or incompetent person. If the court fails to rule within the forty-eight-hour period and an extension was not requested, then the petition shall be deemed to have been granted, and the notice requirement shall be waived.

(d) If the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian. If the court does not make the finding specified in this subparagraph or subparagraph (e) of this section, it shall dismiss the petition.

(e) If the court finds, by clear and convincing evidence, that there is a pattern of physical, sexual, or emotional abuse of the complainant by one or both of her parents, her guardian, or her custodian, or that the abortion is in the best interest of the complainant, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian. If the court does not make the finding specified in this subparagraph or subparagraph (d) of this section, it shall dismiss the petition.

(f) A court that conducts proceedings under this Section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence and the judge's findings and conclusions be

maintained. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect and understanding of the minor.

(g) An expedited confidential appeal shall be available, as the Supreme Court provides by rule, to any minor or incompetent person to whom the circuit court denies a waiver of notice. An order authorizing an abortion without notice shall not be subject to appeal.

(h) No filing fees shall be required of any pregnant minor who petitions a court for a waiver of parental notification under this Act at either the trial or the appellate level.

Section 10. Appeal Procedure.

The Supreme Court is respectfully requested to establish rules to ensure that proceedings under this Act are handled in an expeditious and confidential manner and to satisfy the requirements of federal courts.

[Drafter's Note: This section should be drafted to comport with whatever procedure the State uses to establish appeals procedures. If the legislature has this authority, those procedures should be included in the legislation.]

Section 11. Penalties.

(a) Any person who intentionally performs an abortion with knowledge that or with reckless disregard as to whether the person upon whom the abortion is to be performed is an unemancipated minor or an incompetent without providing the required notice is guilty of a _____.

(b) Failure to provide persons with the notice required under this Act is *prima facie* evidence of failure to provide notice and of interference with family relations in appropriate civil actions. Such prima facie evidence shall not apply to any issue other than failure to inform the parents or guardian and interference with family relations in appropriate civil actions. The civil action may be based on a claim that the act was a result of simple negligence, gross negligence, wantonness, willfulness, intention, or other legal standard of care. The law of this State shall not be construed to preclude the award of exemplary damages in any appropriate civil action relevant to violations of this Act. Nothing in this Act shall be construed to limit the common law rights of parents.

(c) Any person not authorized to receive notice under this Act who signs a waiver of notice under subsection (b) of Section 6 is guilty of a _____.

(d) Any person who coerces a minor to have an abortion is guilty of a _____.

Section 12. Severability.

The provisions of this Act are declared to be severable, and if any provision, word, phrase, or clause of the Act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this Act.

Section 13. Right of Intervention.

The General Assembly, by joint resolution, may appoint one or more of its members who sponsored or co-sponsored this Act, as a matter of right and in his or her official capacity, to intervene to defend this law in any case in which its constitutionality is challenged.

Parental Notification Talking Points

- **Parental notification laws increase teenage sexual responsibility.**

  During the four and one-half years the Minnesota parental notice law was in effect and enforced (August 1, 1981, to March 2, 1986), teen abortion and pregnancy rates dropped substantially, and the teen birth rate continued its slow decline (*American Journal of Public Health*, March 1991).

- **Parental notification laws ensure that a teenager talks with those who know her best—her parents—about a decision that will affect her for the rest of her life.**

  Because nearly 80 percent of abortions performed on teenagers occur in outpatient clinics, a girl is unlikely to have the benefit of conferring with a trusted family physician about her decision.

  For those girls who fear parental reprisal or abuse, parental notification laws provide an exemption from the law for girls who are abused by their parents or guardians.

- **Parental notification laws ensure that parents have the opportunity to discuss their daughter's medical history with a physician and that they in return have their questions answered about the abortion procedure and follow-up care.**

  Parental notification may reveal medical history information that would otherwise remain unknown to the abortion provider.

- **Parental notification laws recognize the traditional rights of parents to direct the rearing of their children.**

  Parental notification is required before virtually all non-emergency surgical procedures besides abortion.

- **Parental notification laws are supported by the majority of Americans no matter what their position on abortion.**

  Seventy-three percent of Texans favored passage of parental notification legislation, according to a Harte-Hanks Inc. survey conducted by the University of Texas in April 1995. The poll showed 75 percent of Caucasians supported parental notification, as did 70 percent of Hispanics surveyed and 60 percent of African-Americans.

Seventy-nine percent of Republicans, 70 percent of Democrats and 68 percent of independents supported parental notice, and 62 percent of Texas liberals polled said they supported a parental-notification law.

In Iowa, 81 percent of adult Iowans favor a parent's right to know a minor's intent to consider an abortion. A poll conducted in January 1995 by the *Des Moines Register* reports that all significant demographic and geographic groups strongly support a parental notice bill. Men and women offered about the same degree of support. Parents of children under eighteen supported parental notice by about 81 percent. Even Iowans who say they are generally pro-abortion support parental notice by a ratio of almost three to one.

According to a poll of the Colorado electorate in February 1994, registered voters supported parental notification by 80 percent.

Parental Notice Myths and Facts

■ Myth

Most teens tell their parents anyway. The government can't mandate healthy family communication where it doesn't already exist.

Fact

Studies indicate that less than half tell their parents. And many of those who don't exaggerate their parents' reaction. In one county in Minnesota, for example, during a sixteen-month period, only 4 percent of minors who went through the bypass expressed fear of physical abuse; only 5 percent expressed fear that their parent would prevent the abortion. (Brief of cross-petitioners, at 9-10, nn. 5 & 7, *Minnesota v. Hodgson*, 110 S.Ct. 2729, 1989.) The most common objection by minors to notification was concern about upsetting their parents and "not wanting to ruin a good relationship." (*Id.* at 11.) Clearly, exaggerated adolescent fear is not a good reason of stripping parents of their right to rear their children.

■ Myth

An estimated 12 percent of teens do not even live with their parents. Notifying the parents of these teens will be impossible and totally unrelated to the teen's health.

Fact

This legislation recognizes that many family situations are less than ideal. Under section 5, if a parent is not providing care for the minor, an alternative notification procedure is provided. Under section 6, the parent may waive her or his right to notice, and under section 9, a minor may obtain an exemption from the law by going through a brief court procedure.

■ Myth

Mandatory notification will force desperate teens to obtain dangerous illegal abortions.

Fact

Twenty-four States have working parental notice or consent laws. Only one case–that of Becky Bell in Indiana–has been suggested to involve an unsafe abortion, and even that case is wholly undocumented. The autopsy report

(publicly released) failed to show any induced abortion. Is it good public policy to base a law—or not to enact one—on an isolated, unproven case?

Myth

Mandatory notification will force many teens to go out of state to obtain an abortion.

Fact

Migration to obtain an abortion is *not* a reason for not enacting a parental involvement law, it is a reason *for* enacting more parental involvement laws.

In June 1995, the Alan Guttmacher Institute (AGI) released a study which argued that after June 1993, when Mississippi's parental-consent law went into effect, more minors crossed State lines to obtain an abortion. (Henshaw, *The Impact of Requirements for Parental Consent On Minors' Abortions in Mississippi*, Family Planning Perspective, Vol. 27, No. 3, p. 120, May/June 1995.)

AGI reports that in 1992 in Mississippi, 7,550 women had abortions and in 1993, 5,550 women had abortions. This constitutes a drop of 2,000 abortions performed, without regard to age.

In June 1993, the Mississippi parental consent law went into effect. No other abortion law took effect in 1993. AGI reports that from January to May 1993, the ratio of teenage abortions to adult abortions was 0.126. After the law became effective, the ratio of teenage to adult abortions fell 16 percent to 0.106 from July to December 1993. (June was not included because the law became effective mid-month.)

AGI found that in 1993, 1,462 Mississippi women (adult and minor) had abortions in a neighboring state. It does not reveal a comparable number for 1992. Based upon that figure, AGI argues that many teenagers left Mississippi to have abortions in neighboring States. However, AGI admits that even if some teenagers migrated to obtain an abortion, "all the States bordering on Mississippi were enforcing parental involvement requirements in 1993." (*Id.* at 122.) Therefore, even in the event of migration, the abortion doctor was required to seek parental consent in Louisiana and Alabama, or give parental notice in Tennessee and Arkansas. Thus, as more States enact and enforce parental involvement statutes, parental rights and minors' health protection will continue to expand.

■ Myth

Mandatory notification will expose teens to the anger of abusive parents.

Fact

Under this parental notice model, any teen who states that she has been abused or neglected will be exempted from the notification requirement. As noted above, teens often exaggerate their parent's reaction.

In addition, this model will make it more likely that the minor who is being abused or neglected will get the help they need. Under most State laws, doctors who become aware of abuse claims must report the abuse allegation to public officials who will conduct an anonymous investigation. The parent will never know how the information was obtained, but perhaps the child will finally get the help they deserve. Contrast this to the situation without a parental notice law, in which the abused or neglected minor obtains the abortion and returns to the negative family situation without anyone knowing either of her follow-up medical or psychological needs or of the horrible abuse she continues to endure.

■ Myth

Mandatory notification laws deter minors from obtaining abortions which results in higher birthrates among teens.

Fact

The Minnesota experience proves otherwise. During 1981 to 1986 when the Minnesota parental notice law was initially in effect, the *pregnancy* rate for teens fell *20.5 percent*, the *abortion* rate fell *27.4 percent*, and the *birth* rate fell *12.5 percent*. The fall in the birth rate began prior to enactment of the law, but elevated noticeably after enactment of the law.

Minnesota's experience illustrates that the birth rate fell due to a reduction in pregnancy rates, not an increase in abortions.

There is more evidence of the effect of parental involvement laws on teen pregnancy and abortion rates. According to the *Lincoln Journal-Star*, (2/20/93): "Girls seventeen and younger had 23 percent fewer abortions last year (1992) than during the year before..." This compares to a 9 percent decrease for all age categories. The article also states that, "The notification law apparently has not resulted in more teenagers having babies."

■ Myth

Parental notice and consent simply delay teens from getting abortions until the second trimester, when abortion is more dangerous.

Fact

This myth is directly contrary to data from both Minnesota and Missouri. In both States, the *number* of first trimester abortions for teens declined so much that it increased the overall *percentage* of abortions performed in the second trimester, but there was no increase in the *number* of second trimester

abortions. (Rogers, et al., *Impact of the Minnesota Parental Notification Law on Abortion and Birth*, Am. J. Pub. Health, Vol. 81, No. 3, at 196, March 1991.)

In addition, according to a recent report published in the *American Journal of Obstetrics and Gynecology*, a five-year study resulted in a finding that there was no increase in the complication rate as compared to the first trimester. (Jacot, et al., *A Five-Year Experience with Second-Trimester Induced Abortions: No Increases in Complication Rate as Compared to the First Trimester*, Am. J. Obstet Gynecol, Vol. 168, No. 2, at 633, February 1993.)

■ **Myth**

There is no evidence that abortion results in serious psychological problems for minor or adult women.

Facts

The personal testimony of thousands of women shows that many women do experience severe post-abortion psychological problems.

An in-depth 1990 study by psychologist Catherine Barnard has demonstrated that no fewer than 19 percent of women who have had abortions suffer from "diagnosable post-traumatic stress disorder (PTSD)" a psychological dysfunction which can severely limit a person's ability to engage in normal relationships and work. (Barnard, "The Long-Term Psychological Effects of Abortion," Portsmouth, N.H.: Institute for Abortion Recovery and Research, 1990.)

Several researchers have demonstrated that due to their more immature developmental stage, adolescents are at higher risk of suffering severe psychological problems from abortion, an elevated risk of suicide, and entering into a cycle of deliberately seeking replacement pregnancies. (Franz, "Differential Impact of Abortion On Adolescents and Adults," Adolescence, 1992, 27(105)161-172; Campbell, "Abortion in Adolescence," Adolescence, 1988, 23:813-824.)

■ **Myth**

Teens can obtain most medical procedures and treatments without parental notice.

Fact

The general common law rule still remains that teens must obtain parental consent for medical treatment, except in cases of life-threatening emergencies. The most often-cited example is ear piercing. However, just about any medical treatment given to a minor must be authorized by a parent. Over the past twenty years, States have legislated specific exceptions, but the general rule remains in force. In most cases, the exceptions only allow non-surgical treatment to be performed without parental involvement. Abortion is surgery.

■ Myth

Most teens are mature enough to make their own decisions.

Fact

If this were true, why are rates of adolescent pregnancy exploding? Also, according to child psychologist J. Piaget and B. Inhelder in their book *The Psychology of the Child* (1969), young teens often have difficulty assessing long-term consequences and generally have a very narrow and egocentric view of their problems. Teens are also more susceptible to pressure from their boyfriends and peers and need the guidance of an adult who cares most about *their* well being, not the feeling of their boyfriend or their image. To anyone with teenage children, this is not surprising news. Parental involvement is needed to give the minor some perspective.

The question is not simply maturity, it is also one of responsibility. As long as a teenager is not emancipated, her parents are responsible for her upbringing and medical care. When a teen is injured by abortion, the parent gets the bill for the follow-up care, not to mention the anguish of healing their daughter's psychological scars. If doctors can exclude parents from major events in their minor daughter's lives which may have long-term consequences, the job of parenting will be much more difficult.

■ Myth

The American Medical Association and some medical professionals recommended against mandatory parental notice.

Fact

Most doctors—as opposed to the AMA establishment—know that the minor's medical history is most reliable when a parent relates it. Further, it is in the minor's best interest when the parent cares for the minor in the aftermath of medical care. In another example, the American Academy of Pediatrics recently reported that 51 percent of members (765 out of 44,000 members) surveyed were opposed to one-parent notice of abortion. (Fleming and O'Connor, *Adolescent Abortion: Views of the Membership for the American Academy of Pediatrics*, Pediatrics, Vol. 91, No. 3, at 561, March 1993.) However, no matter how caring and compassionate, the doctor is not ultimately responsible for the mental and physical health of the minor. Her parents are.

State Parental Involvement Statutes

August 1995

State	Type	Citation	Status
Alabama	One-parent consent Judicial bypass	Ala.Code § 26-21-1 *et seq.* (West 1992)	Upheld in *Ex parte Anonymous*, 531 So.2d 901 (Ala. 1988); in force
Alaska	One-parent consent No judicial bypass	Alaska Stat. §18.16.010 (1994)	Probably unconstitutional under *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976); see Op. Alaska att'y gen. (Oct. 21, 1976)
Arizona	One-parent consent Judicial bypass	Ariz.Rev.Stat.Ann. §§ 36-2152, 36-2153 (1993)	Held unconstitutional in *Planned Parenthood v. Neely*, No. Civ. 89-489, TUC ACM (D. Ariz. Sept. 14, 1992)
Arkansas	One-parent notice 48-hour waiting period Judicial bypass	Ark.Code Ann. §§ 20-16-801 *et seq.* (1991)	In force
California	One-parent consent Judicial bypass	Cal. Health & Safety Code § 25958 (West Supp. 1995)	Struck down on state constitutional grounds in *American Academy of Pediatrics v. Lungren*, 26 Cal. App. 4th 479, 32 Cal. Rptr. 546 (1994), *review granted* by Cal. Sup. Ct.
Colorado	One-parent consent No judicial bypass	Colo.Rev.Stat. § 18-6-101(1) (1990)	Held unconstitutional in *Foe v. Vanderhoof*, 389 F. Supp. 947 (D. Colo. 1975)
Connecticut	No law		
Delaware	One-parent notice 24-hour waiting period Judicial bypass	Delaware HB 179 (1995)	Effective 1995
District of Columbia	No law		
Florida	No law		Previous law struck down on state constitutional grounds, *In re T.W.*, 551 So.2d 1186 (Fla.1989), and later repealed
Georgia	One-parent notice 24-hour waiting period 72-hour notice by mail Judicial bypass	Ga. Code Ann. § 15-11-110 *et seq.* (1994)	Upheld in *Planned Parenthood Ass'n v. Miller*, 934 F. 2d 1462 (11th Cir. 1991); in force
Hawaii	No law		
Idaho	Two-parent notice 24-hour waiting period No judicial bypass	Idaho Code § 18-609(6)(1987)	Probably unconstitutional under *Hodgson v. Minnesota*, 497 U.S. 417 (1990)
Illinois	One-parent notice 48-hour waiting period Judicial bypass	PA 89-18 (6/1/95)	Preliminary injunction issued in *Zbaraz v. Ryan*, No. 84 C 771, June 8, 1995, pending promulgation of judicial bypass rules by Illinois Supreme Court

State	Type	Citation	Status
Indiana	One-parent written consent Judicial bypass	Ind. Code Ann. § 16-34-2-4 (Burns 1993)	In force; see *In re T.H.* 484 N.E.2d 568 (Ind. 1985); *In re T.P.*, 475 N.E.2d 312 (Ind. 1985)
Iowa	No law		
Kansas	One-parent notice Judicial bypass Eight-hour waiting period	Kan. Stat. Ann. §§ 65-6704 65-6705 (1992)	In force
Kentucky	One-parent written consent Judicial bypass	Ky. Rev. Stat. § 311.732 (Michie 1994 Supp.)	In force
Louisiana	One-parent consent Judicial bypass	La. Rev. Stat. Ann. § 40:1299, 35.5 (West 1992), U.S. amended by HB 2088 (1995)	Consent law upheld in *Margaret S. v. Treen*, 597 F.Supp. 636 (E.D. La. 1984), *aff'd* without discussion of this point 794 F.2d 994 (5th Cir. 1986); consent law was modified by HB 2088 (1995). In Aug. 1995, a federal court ruled that the consent law may continue to be enforced, but the state may not enforce the 1995 modification which allows judicial notice to the parents or guardians of minors seeking a judicial bypass
Maine	Adult family member or one-parent 24-hour notice, unless counseled by doctor 48-hour notice by mail Judicial bypass	Me. Rev. Stat. Ann. tit. 22 § 1597-A (1992 & 1994 Supp.)	In force
Maryland	One-parent notice waivable at physician's discretion	Md. Health-Gen.Code Ann. § 20-103(c)(1) (1994)	In force
Massachusetts	Two-parent written consent Judicial bypass	Mass. Gen. Laws Ann. ch. 112, § 12 S (1983)	Injunctive relief denied in *Planned Parenthood League of Massachusetts v. Bellotti*, 499 F. Supp. 215 (D. Mass. 1980), *aff'd in part, vacated in part on other grounds and remanded*, 641 F. 2d 1006 (1st Cir. 1981); in force
Michigan	One-parent consent Judicial bypass	Mich. Comp. Laws Ann. § 722.901 *et seq.* (West 1993 & 1995 Supp.)	Upheld in *Planned Parenthood of Mid-Michigan v. A.G. of Michigan*, No. D91-0571-AZ (Circuit Court, Kalamazoo County, March 29, 1991; August 5, 1992; March 29, 1993; April 29, 1994); in force
Minnesota	Two-parent notice 48-hour waiting period Judicial bypass	Minn. Stat. Ann. § 144.343 (West 1989)	Upheld in *Hodgson v. Minnesota*, 497 U.S. 417 (1994); in force
Mississippi	Two-parent written consent Judicial bypass	Miss. Code Ann. § 41-41-51 *et seq.* (1993)	Upheld in *Barnes v. Mississippi*, 992 F.2d. 1335 (5th Cir. 1993); *cert. denied* by U.S. Supreme Ct., 114 S. Ct. 468; state constitutional challenge rejected, *Pro-Choice Miss. v. Fordice*, No. G 94-374-W4, Hinds Co. Cir. Ct., (Aug.18, 1995). No immediate appeal filed; in force

State	Type	Citation	Status
Missouri	One-parent written consent Judicial bypass	Mo. Ann. Stat. § 188.028 (Vernon 1983 & 1995 Supp.)	Upheld in *Planned Parenthood Ass'n of Kansas City, Mo. v. Ashcroft*, 462 U.S. 476 (1983), *T.J. v. Webster*, 792 F 2d. 734 (8th Cir. 1986); in force
Montana	One-parent notice Judicial bypass	1995 Mont. Laws ch. 469	Effective 10/1/95; challenged in *Wickland v. Salvagni* (U.S. Dist. Ct. Montana) (CV93-92-BU-JFB)
Nebraska	One-parent 48-hour notice Judicial bypass	Neb. Rev. Stat. § 71-6901 *et seq.* (1994 Supp.)	In force
Nevada	One-parent notice Judicial bypass Waiting period-response to notification by certified mail	Nev. Rev. Stat. § 442.255, 442.2555 (Michie 1991)	Held unconstitutional in *Glick v. McKay*, 616 F. Supp. 322 (D. Nev 1985), *aff'd* 937 F. 2d 434 (9th Cir. 1991)
New Hampshire	No law		
New Jersey	No law		
New Mexico	One-parent consent No judicial bypass	N.M. Stat. Ann. § 30-5-1(C) (Michie 1994)	Probably unconstitutional under *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976)
New York	No law		
North Carolina	One-parent consent Judicial bypass	N.C. HB 481 (1995)	Effective Oct. 1, 1995
North Dakota	Two-parent written consent Judicial bypass	N.D. Cent. Code, §14-02.1-03.1 (1991)	In force
Ohio	One-parent 24-hour notice Judicial bypass	Ohio Rev. Code Ann. § 2919.12 (Anderson 1993)	Upheld in *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990); in force; as-applied challenge, rejected, *Cleveland Surgi-Center v. Jones*, 2 F. 3d 686 (6th Cir. 1993), *cert. denied*, 114 S.Ct. 696 (1994)
Oklahoma	No law		
Oregon	No law		
Pennsylvania	One-parent informed consent Judicial bypass	Pa. Cons. Stat. Ann. tit. 18 § 3206, (Purdon 1995 Supp.)	Upheld in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S. Ct. 2791
Rhode Island	One-parent consent Judicial bypass	R.I. Gen. Laws § 23-4.7-6 (1989)	In force
South Carolina	One-parent or grandparent consent Judicial bypass	S.C. Code Ann. 44-41-30 *et seq.* (1994 Supp.)	In force
South Dakota	One-parent notice 48-hour waiting period No judicial bypass	S.D. Codified Laws § 34-23A-7 (1994)	Held unconstitutional in Planned *Parenthood, Sioux Falls Clinic v. Miller*, 860 F.Supp. 1409 (D. S.D. 1994); *aff'd* ___ F.3d ___ (8th Cir., Aug. 31, 1995) (Docket No. 94-3326) (A.G. is deciding whether to seek Supreme Court review)

State	Type	Citation	Status
Tennessee	One-parent consent Judicial bypass	Tenn Code Ann. § 37-10-301 *et seq.* (1991), as revived and re-enacted by S.B. No. 1340 (1995)	Upheld in *Planned Parenthood Ass'n of Nashville v. Sundquist*, No. 92 C 1672, Circuit Court of Davidson County, Tennessee, July 6, 1995; *but see Planned Parenthood Ass'n of Nashville, Inc. v. McWherter*, 716 F.Supp. 1064 (M.D. Tenn. 1989), *vacated*, 945 F.2d 405 (6th Cir. 1991) (questioning adequacy of judicial bypass rule under prior statute)
Texas	No law		
Utah	Two-parent notice No judicial bypass	Utah Code Ann. § 76-7-304(2) (1995)	Upheld as applied to immature minors , *H.L. v. Matheson*, 450 U.S. 398 (1981); in force
Vermont	No law		
Virginia	No law		
Washington	No law		
West Virginia	One-parent 24-hour notice 48-hour notice by mail Judicial bypass	W. Va. Code. Ann § 16-2 F-1 *et seq.* (1995)	In force
Wisconsin	One-parent or adult family-member consent Judicial bypass	Wis. Stat. Ann. § 48.375 (1994 Supp.)	In force
Wyoming	One-parent 48-hour written notice and consent Judicial bypass	Wyo. Stat. § 35-6-118 (1994)	In force

Parental involvement statutes require consent by or notice to a parent(s) or a legal guardian. A few States allow consent by or notice to another person, including: grandparent (Delaware, Illinois, North Carolina, Ohio, South Carolina), adult sibling (Ohio), adult family member or foster parent (Maine, Wisconsin), adult who is concerned about minor's best interest and is not associated with the abortion provider (Kansas), and licensed mental health professional not associated with an abortion provider (Delaware).

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Newspapers, columnist admit error on partial-birth abortion

PRO-FAMILY PROGRESS

by Scott DeNicola

The 104th Congress' fight to end partial-birth abortion failed in the U.S. Senate on Sept. 26, but the pro-life cause can take heart that the battle over American public opinion may not be lost. The media are finally reporting the facts about the procedure.

Citizen reported in March that major newspapers had repeated myths and untruths about partial-birth abortion fed to them by the pro-abortion lobby ("What happened to the facts?" March 25, 1996, pp. 1-4). But only days before the U.S. House of Representatives voted to override President Clinton's veto of a ban on partial-birth abortion, two major newspapers looked anew at the controversial practice.

On Sept. 15, *The* (New Jersey) *Record* included a front-page story entitled "The Facts on Partial-Birth Abortion." Two days later, the *Washington Post* offered its own front-page version: "Harsh Details Shift Tenor of Abortion Fight."

The Record's feature not only refuted the pro-choice claim that "the procedure is reserved for pregnancies that have gone terribly awry," but lamented that many newspapers have so blindly printed the error in their pages. One example is the media's willingness to treat as fact the National Abortion Federation's claim that there are only 500 partial-birth abortions performed in the U.S. each year—all for legitimate health concerns.

The Record found otherwise:

[I]nterviews with physicians who use the method reveal that in New Jersey alone, at least 1,500 partial-birth abortions are performed each year, three times the supposed national rate. Moreover, doctors say only a "minuscule amount" are for medical reasons.

The *Post* reported last December that the partial-birth abortion procedure is used "when the mother's life is at stake and/or the fetus is severely malformed."

Nine months later, the paper reversed itself by declaring that "the majority of these abortions are performed on normal fetuses" instead of those with deformities. The article added that, in most cases, the health of the woman having a partial-birth abortion "is not in jeopardy."

One week after the front-page admission, liberal *Washington Post* columnist Richard Cohen likewise renounced his support of partial-birth abortion.

"I was . . . led to believe that these late-term abortions were extremely rare and performed only when the life of the mother was in danger or the fetus was irreparably deformed," Cohen wrote. "I was wrong."

Douglas Johnson, legislative director for the National Right to Life Committee in Washington, D.C., calls *The Record* and *Post* articles significant breakthroughs, but he realizes that his work isn't done.

"Many papers are still holding onto the [pro-abortion] side's discredited assertions," Johnson said. □

Congress protects marriage

Citizen readers were among those who persuaded Congress to pass the Defense of Marriage Act (DOMA)—a critical tool in allowing states to restrict the definition of marriage to a union between one man and one woman ("What's wrong with this picture?" April 22, 1996, pp. 1-4).

DOMA sailed through the House of Representatives on July 12, passing by a 342-67 margin. The legislation also passed easily (85-14) in the Senate two months later. (The Senate took another pro-family step the same day when it voted down, by the narrowest of margins, the Employment Non-Discrimination Act—legislation that would have added "sexual orientation" to the list of characteristics protected under federal civil-rights laws.)

Although reluctant to anger the homosexual voting bloc, President Clinton signed DOMA into law Sept. 21 at 12:50 a.m.—well after most newspapers' deadlines.

The 104th Congress also overturned President Clinton's directive to allow abortions in military hospitals, ende[d] taxpayer support for pornography on military bas[es], prohibited computer-simulated child porn, restricted porn on the Internet, established a national registry for sex offenders, reformed welfare and passed a $5,000 tax credit for adoption.

"These are remarkable achievements," said Gary Bauer, president of Family research Council in Washington, D.C.. "Now the question is, will the next Congress add to these accomplishments, or will liberal activism prevail? All of us—by our action or inaction—will help decide the outcome."

Ohio welcomes a new school-choice city

Cleveland joined Milwaukee in August to become the country's second city offering education vouchers.

Cleveland's school-choice plan goes one step further than Milwaukee: Vouchers are good at private *and* religious schools. Milwaukee's plan is restricted to nonreligious schools only ("Here's $2,500; Pick a School," November 1990, p. 10).

Newsrack-porn restrictions upheld

Citizen lauded El Cajon, Calif., city councilman Bob McClellan in January 1995 for spearheading statewide legislation that prohibited the sale of pornography from unsupervised vending machines ("Hometown hero of the year," pp. 1-3). Shortly after the legislation passed, porn producers filed for and were granted an injunction that prevented the law from taking effect.

But on Sept. 11 this year, the 9th Circuit Court of Appeals upheld the newsrack-porn law in a unanimous ruling. Vendors found guilty of violating the law could be sentenced to up to one year in jail, fined $2,000, or both. □

9/19/96 Wall St. Journal

Partial-Birth Abortion Is Bad Medicine

By Nancy Romer, Pamela Smith, Curtis R. Cook and Joseph L. DeCook

The House of Representatives will vote in the next few days on whether to override President Clinton's veto of the Partial Birth Abortion Ban Act. The debate on the subject has been noisy and rancorous. You've heard from the activists. You've heard from the politicians. Now may we speak?

We are the physicians who, on a daily basis, treat pregnant women and their babies. And we can no longer remain silent while abortion activists, the media and even the president of the United States continue to repeat false medical claims about partial-birth abortion. The appalling lack of medical credibility on the side of those defending this procedure has forced us—for the first time in our professional careers—to leave the sidelines in order to provide some sorely needed facts in a debate that has been dominated by anecdote, emotion and media stunts.

Since the debate on this issue began, those whose real agenda is to keep all types of abortion legal—at any stage of pregnancy, for any reason—have waged what can only be called an orchestrated misinformation campaign.

First the National Abortion Federation and other pro-abortion groups claimed the procedure didn't exist. When a paper written by the doctor who invented the procedure was produced, abortion proponents changed their story, claiming the procedure was only done when a women's life was in danger. Then the same doctor, the nation's main practitioner of the technique, was caught—on tape—admitting that 80% of his partial-birth abortions were "purely elective."

Then there was the anesthesia myth. The American public was told that it wasn't the abortion that killed the baby, but the anesthesia administered to the mother before the procedure. This claim was immediately and thoroughly denounced by the American Society of Anesthesiologists, which called the claim "entirely inaccurate." Yet Planned Parenthood and its allies continued to spread the myth, causing needless concern among our pregnant patients who heard the claims and were terrified that epidurals during labor, or anesthesia during needed surgeries, would kill their babies.

The latest baseless statement was made by President Clinton himself when he said that if the mothers who opted for partial-birth abortions had delivered their children naturally, the women's bodies would have been "eviscerated" or "ripped to shreds" and they "could never have another baby."

That claim is totally and completely false. Contrary to what abortion activists would have us believe, partial-birth abortion is *never* medically indicated to protect a woman's health or her fertility. In fact, the opposite is true: The procedure can pose a significant and immediate threat to both the pregnant woman's health and her fertility. It seems to have escaped anyone's attention that one of the five women who appeared at Mr. Clinton's veto ceremony had five miscarriages after her partial-birth abortion.

Consider the dangers inherent in partial-birth abortion, which usually occurs after the fifth month of pregnancy. A woman's cervix is forcibly dilated over several days, which risks creating an "incompetent cervix," the leading cause of premature deliveries. It is also an invitation to infection, a major cause of infertility. The abortionist then reaches into the womb to pull a child feet first out of the mother (internal podalic version), but leaves the head inside. Under normal circumstances, physicians avoid breech births whenever possible; in this case, the doctor intentionally causes one—and risks tearing the uterus in the process. He then forces scissors through the base of the baby's skull—which remains lodged just within the birth canal. This is a partially "blind" procedure, done by feel, risking direct scissor injury to the uterus and laceration of the cervix or lower uterine segment, resulting in immediate and massive bleeding and the threat of shock or even death to the mother.

None of this risk is ever necessary for any reason. We and many other doctors across the U.S. regularly treat women whose unborn children suffer the same conditions as those cited by the women who appeared at Mr. Clinton's veto ceremony. Never is the partial-birth procedure necessary. Not for hydrocephaly (excessive cerebrospinal fluid in the head), not for polyhydramnios (an excess of amniotic fluid collecting in the women) and not for trisomy (genetic abnormalities characterized by an extra chromosome). Sometimes, as in the case of hydrocephaly, it is first necessary to drain some of the fluid from the baby's head. And in some cases, when vaginal delivery is not possible, a doctor performs a Caesarean section. But in no case is it necessary to partially deliver an infant through the vagina and then kill the infant.

How telling it is that although Mr. Clinton met with women who claimed to have needed partial-birth abortions on account of these conditions, he has flat-out refused to meet with women who delivered babies with these same conditions, with no damage whatsoever to their health or future fertility!

Former Surgeon General C. Everett Koop was recently asked whether he'd ever operated on children who had any of the disabilities described in this debate. Indeed he had. In fact, one of his patients—"with a huge omphalocele [a sac containing the baby's organs] much bigger than her head"—went on to become the head nurse in his intensive care unit many years later.

Mr. Koop's reaction to the president's veto? "I believe that Mr. Clinton was misled by his medical advisers on what is fact and what is fiction" on the matter, he said. Such a procedure, he added, cannot truthfully be called medically necessary for either the mother or—he scarcely need point out—for the baby.

Considering these medical realities, one can only conclude that the women who thought they underwent partial-birth abortions for "medical" reasons were tragically misled. And those who purport to speak for women don't seem to care.

So whom are you going to believe? The activist-extremists who refuse to allow a little truth to get in the way of their agenda? The politicians who benefit from the activists' political action committees? Or doctors who have the facts?

Dr. Romer is clinical professor of obstetrics and gynecology at Wright State University and chairman of obstetrics and gynecology at Miami Valley Hospital in Ohio. Dr. Smith is director of medical education in the department of obstetrics and gynecology at Chicago's Mt. Sinai Medical Center. Dr. Cook is a specialist in maternal fetal medicine at Butterworth Hospital, Michigan State College of Human Medicine. Dr. DeCook is a fellow of the American College of Obstetricians and Gynecologists. The authors are founding members of the Physicians' Ad Hoc Coalition for Truth, which now has more than 300 members.

Notable & Quotable

From "Splitting Up," an essay on divorce by Joseph Adelson, professor of psychology at the University of Michigan, in the September issue of Commentary:

Without exception, when one compares children from intact families with children from one-parent families where a divorce has taken place, the data offer cause for deep alarm:

- Children in such [divorced] situations are twice as likely to drop out of high school, and are much more likely to do poorly in reading, spelling, and mathematics.
- Such children are two to three times more likely to have emotional or behavior problems. They rate higher on dependency, anxiety, and aggressiveness, and lower on self-control. They rate low in peer popularity.
- They also score low in physical health and well-being.
- They show substantially higher crime rates. According to one study reported by Popenoe, "60 percent of rapists, 72 percent of adolescent murderers, and 70 percent of long-term prison inmates come from fatherless homes."
- They suffer much higher rates of both physical and sexual abuse, in the latter case most often carried out by the mother's boyfriend. Single mothers report being much more violent toward their children than do mothers in intact families.

Sustaining Partial-Birth Abortion

The Senate will vote today on whether to sustain President Clinton's veto of a bill that would ban partial-birth abortions, or as it is known medically, intact dilation and evacuation. Partial-birth abortion isn't exactly about the abortion issue as it is commonly understood. Until recently, the abortion battle was mainly about relatively early term pregnancies, when the fetus is no more than three inches long and rather easily vacuumed from the womb with a method known as aspiration. Partial-birth abortion is about pregnancies from the fifth month onward, and as such puts us into a different realm of political, medical and cultural concerns.

Both houses of Congress enacted bans on partial-birth abortions, with the Senate voting 55 to 44. Mr. Clinton vetoed the ban in the Rose Garden, surrounded by women who said they'd had later-term abortions only for medical reasons. The expectation is that there aren't 67 Senators willing to override the veto, so the ban will fail. But the issue's visibility has had one salutary result. Up till now the abortion debate, if you'll pardon the metaphor, has managed to ignore the 800-pound gorilla in the room. For the first time, people are also talking about the fetus, not about women alone. A fetus may or may not be human, but on the other hand, it's not nothing. At 20 weeks of gestation, when the partial-birth abortion debate begins, a fetus is about nine inches long and is clearly becoming human.

When the partial-birth abortion matter first arose in the House, choice advocates such as Planned Parenthood asserted that the procedure—making an incision or punctured hole in the skull and withdrawing the contents so that the collapsed head can be pulled through the cervix—was "extremely rare and done only when the woman's life is in danger or in cases of extreme fetal abnormality." That turns out to be untrue.

No official records are kept on later-term abortions. But to their credit some newspapers have produced stories on a little-discussed area of the abortion business without the heavy reporter bias that normally attends this subject. Last week Ruth Padawer of the Record newspaper of Bergen County, N.J., reported that a clinic in Englewood said it used the method in about half the 3,000 abortions it did between weeks 20 and 24. Asked about this by the Record, a spokeswoman for Planned Parenthood Federation of America said its widely printed estimate of 500 nationally a year referred only to the time frame in the opposition's depiction of what she called "Gerber babies," that is, abortions beyond 24 weeks. What's now clear is that the incidence of these later-term abortions is significant, not "rare."

And contradicting the impression left by the Rose Garden event, a physician at the Englewood facility said most of the second-term abortions done there are for other than medical reasons: "We have an occasional amnio abnormality, but it's a minuscule amount. Most are Medicaid patients, black and white, and most are for elective, not medical reasons. . . . Most are teenagers." That is, the procedure is often used as a method of birth control, or more accurately, social control.

On Sept. 17 the Washington Post's Health section published "Late Term Abortions: Who Gets Them and Why" by David Brown. Our 100 Senators should feel some obligation to read this account before they vote, so they cannot claim later not to have understood the subject.

In his Rose Garden veto with the women, Mr. Clinton said they "represent a small, but extremely vulnerable group." The women, that is. He said, "They all desperately wanted their children. They didn't want abortions. They made agonizing decisions only when it became clear that their babies would not survive. . . ." The Post piece reports that all these women were patients of the same Los Angeles doctor, the late James T. McMahon, who specialized in very late term abortions (at least 24 weeks) of pregnancies with various complications, from anencephaly of the brain (29 cases) and spina bifida (28) to the surgically correctable cleft lip (9 cases). The mother's problem listed most often by Dr. McMahon was depression.

The McMahon spectrum of medical necessity is worthy of debate. But it is not the norm. After interviews with many other practitioners, the Post article concluded: "These doctors say that while a significant number of their patients have late abortions for medical reasons, many others—perhaps the majority—do not." And indeed, a Sept. 19 article on this page by four obstetricians suggested that even the claims of medical necessity are overdrawn.

* * *

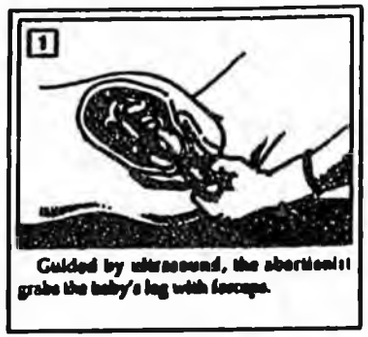
We entirely doubt that most Americans would support abortions past 20 weeks for no better purpose than birth control. Releasing a baby for adoption is always an honored alternative, especially given the disgusting nature of such abortion procedures. The chief alternative to intact dilation and evacuation is called dismemberment and evacuation—cutting the fetus into pieces inside the womb, usually after it's been killed by injection or cutting the umbilical cord. The basic issue is for what purpose later-term abortion should be allowed, or more pointedly, whether society has a right to put restrictions on *any* kind of abortion.

We believe it would be a good thing if 67 members of the U.S. Senate stepped forward and asserted that societal right to define limits by overriding President Clinton's veto. The debate so far has made clear that the pro-choice movement has been guilty of a lot of dissembling. At the very least, they could support measures to restrict later-term abortion to cases of clear or at least arguable medical necessity, as pro-life groups have worked to facilitate adoption. Instead, out of fear of losing the debate over early-term abortions, the pro-choice lobby has chosen to defend elective practices that should shock civilized sensibilities.

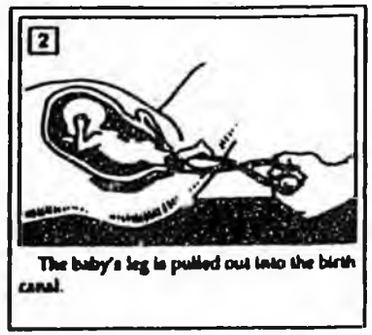
By that logic, all the rest of us are supposed to say, oh well, we guess nobody is allowed to talk about this, and walk away from the obscene reality of these post-20-week abortions. And that is precisely what our Senators will do after today's vote: Simply walk away from the subject. Really, there ought to be limits to the demands of expediency, even allowing for the currently low standards of life in our politics.

BACKGROUND INFORMATION

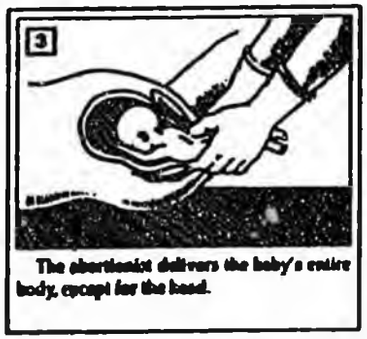
PARTIAL-BIRTH ABORTION



Guided by ultrasound, the abortionist grabs the baby's leg with forceps.

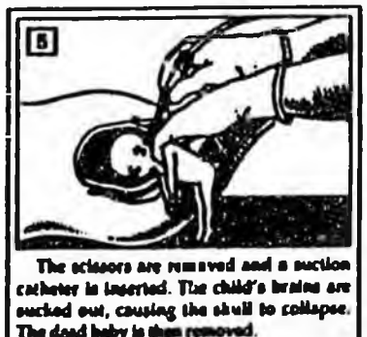


The baby's leg is pulled out into the birth canal.



The abortionist delivers the baby's entire body, except for the head.

The abortionist jams scissors into the baby's skull. The scissors are then opened to enlarge the hole.



The scissors are removed and a suction catheter is inserted. The child's brains are sucked out, causing the skull to collapse. The dead baby is then removed.

PARTIAL-BIRTH ABORTION— COLD BLOODED KILLING

For the past two years, the National Right to Life Committee has undertaken a major effort to educate Americans about the growing use of an abortion technique called "D&X." D&X is a partial-birth, brain suction abortion procedure and is nothing less than cold-blooded killing. It is used to kill babies between 18 and 39 weeks of gestation.

When this kind of abortion is performed, the abortionist removes all but the head of the living baby from the mother's womb. The back of the baby's head is next stabbed with a pair of scissors. Finally the brains are suctioned out to collapse the head making it easier to remove the now dead baby from the mother's womb.

Two years ago, NRLC distributed over six million brochures that attacked partial-birth brain suction abortion and depicted the brutal D&X method. We were immediately attacked by many pro-abortion groups, including the National Abortion Federation.

In this current legislative session of the 104th Congress, legislation that outlaws brain suction abortion methods will be introduced. It is now being drafted by Representative Charles Canady of Florida. With the strong support of grassroots pro-lifers, NRLC is prayerfully hopeful that a bill prohibiting the killing of a living baby can be passed.

Second Trimester Abortion: From Every Angle

Fall Risk Management Seminar

September 13-14, 1992
Dallas, Texas

Dr. Martin Haskell's
paper on how to do
the partial-birth abortion,
with interviews attached.

Presentations, Bibliography & Related Materials

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Dilation and Extraction for Late Second Trimester Abortion

Martin Haskell, M.D.

Presented at the National Abortion Federation
Risk Management Seminar, September 13, 1992

INTRODUCTION

The surgical method described in this paper differs from classic D&E in that it does not rely upon dismemberment to remove the fetus. Nor are inductions or infusions used to expel the intact fetus.

Rather, the surgeon grasps and removes a nearly intact fetus through an adequately dilated cervix. The author has coined the term *Dilation and Extraction* or *D&X* to distinguish it from dismemberment-type D&E's.

This procedure can be performed in a properly equipped physician's office under local anesthesia. It can be used successfully in patients 20-26 weeks in pregnancy.

The author has performed over 700 of these procedures with a low rate of complications.

BACKGROUND

D&E evolved as an alternative to induction or instillation methods for second trimester abortion in the mid 1970's. This happened in part because of lack of hospital facilities allowing second trimester abortions in some geographic areas, in part because surgeons needed a "right now" solution to complete suction abortions inadvertently started in the second trimester and in part to provide a means of early

second trimester abortion to avoid necessary delays for installation methods. The North Carolina Conference in 1978 established D&E as the preferred method for early second trimester abortions in the U.S.[2, 3, 4]

Classic D&E is accomplished by dismembering the fetus inside the uterus with instruments and removing the pieces through an adequately dilated cervix.[5]

However, most surgeons find dismemberment at twenty weeks and beyond to be difficult due to the toughness of fetal tissues at this stage of development. Consequently, most late second trimester abortions are performed by an induction method.[6, 7, 8]

Two techniques of late second trimester D&E's have been described at previous NAF meetings. The first relies on sterile urea intra-amniotic infusion to cause fetal demise and lysis (or softening) of fetal tissues prior to surgery.[9]

The second technique is to rupture the membranes 24 hours prior to surgery and cut the umbilical cord. Fetal death and ensuing autolysis soften the tissues. There are attendant risks of infection with this method.

In summary, approaches to late second trimester D&E's rely upon some means to induce early fetal demise to soften the fetal tissues making dismemberment easier.

PATIENT SELECTION

The author routinely performs this procedure on all patients 20 through 24 weeks LMP with certain exceptions. The author performs the procedure on selected patients 25 through 26 weeks LMP.

The author refers for induction patients falling into the following categories:

Previous C-section over 22 weeks
Obese patients (more than 30 pounds over large frame ideal weight)
Twin pregnancy over 21 weeks
Patients 25 weeks and over

DESCRIPTION OF DILATION AND EXTRACTION METHOD

Dilation and extraction takes place over three days. In a nutshell, D&X can be described as follows:

Dilation
MORE DILATION
Real-time ultrasound visualization
Version (as needed)
Intact extraction
Fetal skull decompression
Removal
Clean-up
Recovery

Day 1 - Dilation

The patient is evaluated with an ultrasound, hemoglobin and Rh. Hadlock scales are used to interpret all ultrasound measurements.

In the operating room, the cervix is prepped, anesthetized and dilated to 9-11 mm. Five, six or seven large Dilapan hydroscopic dilators are placed in the cervix. The patient goes home or to a motel overnight.

Day 2 - More Dilation

The patient returns to the operating room where the previous day's Dilapan are removed. The cervix is scrubbed and anesthetized. Between 15 and 25 Dilapan are placed in the cervical canal. The patient returns home or to a motel overnight.

Day 3 - The Operation

The patient returns to the operating room where the previous day's Dilapan are removed. The surgical assistant administers 10 IU Pitocin intramuscularly. The cervix is scrubbed, anesthesized and grasped with a tenaculum. The membranes are ruptured, if they are not already.

The surgical assistant places an ultrasound probe on the patient's abdomen and scans the fetus, locating the lower extremities. This scan provides the surgeon information about the orientation of the fetus and approximate location of the lower extremities. The tranducer is then held in position over the lower extremities.

The surgeon introduces a large grasping forcep, such as a Bierer or Hern, through the vaginal and cervical canals into the corpus of the uterus. Based upon his knowledge of fetal orientation, he moves the tip of the instrument carefully towards the fetal lower extremities. When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity. The surgeon then applies firm traction to the instrument causing a version of the fetus (if necessary) and pulls the extremity into the vagina.

By observing the movement of the lower extremity and version of the fetus on the ultrasound screen, the surgeon is assured that his instrument has not inappropriately grasped a maternal structure.

With a lower extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities.

The skull lodges at the internal cervical os. Usually there is not enough dilation for it to pass through. The fetus is oriented dorsum or spine up.

At this point, the right-handed surgeon slides the fingers of the left had along the back of the fetus and "hooks" the shoulders of the fetus with the index and ring fingers (palm down). Next he slides the tip of the middle finger along the spine towards the skull while applying traction to the shoulders and lower extremities. The middle finger lifts and pushes the anterior cervical lip out of the way.

While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down.

along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

Reassessing proper placement of the closed scissors tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening.

The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.

The surgeon finally removes the placenta with forceps and scrapes the uterine walls with a large Evans and a 14 mm suction curette. The procedure ends.

Recovery

Patients are observed a minimum of 2 hours following surgery. A pad check and vital signs are performed every 30 minutes. Patients with minimal bleeding after 30 minutes are encouraged to walk about the building or outside between checks.

Intravenous fluids, pitocin and antibiotics are available for the exceptional times they are needed.

ANESTHESIA

Lidocaine 1% with epinephrine administered *intra-cervically* is the standard anesthesia. Nitrous-oxide/oxygen analgesia is administered nasally as an adjunct. For the Dilapan insert and Dilapan change, 12cc's is used in 3 equidistant locations around the cervix. For the surgery, 24cc's is used at 6 equidistant spots.

Carbocaine 1% is substituted for lidocaine for patients who expressed lidocaine sensitivity.

MEDICATIONS

All patients not allergic to tetracycline analogues receive doxycycline 200 mgm by mouth daily for 3 days beginning Day 1.

Patients with any history of gonorrhea, chlamydia or pelvic inflammatory disease receive additional doxycycline, 100mgm by mouth twice daily for six additional days.

Patients allergic to tetracyclines are not given propiylactic antibiotics.

Ergotrate 0.2 mgm by mouth four times daily for three days is dispensed to each patient.

Pitocin 10 IU intramuscularly is administered upon removal of the Dilapan on Day 3.

Rhogam intramuscularly is provided to all Rh negative patients on Day 3.

Ibuprofen orally is provided liberally at a rate of 100 mgm per hour from Day 1 onward.

Patients with severe cramps with Dilapan dilation are provided Phenergan 25 mgm suppositories rectally every 4 hours as needed.

Rare patients require Synalogos DC in order to sleep during Dilapan dilation.

Patients with a hemoglobin less than 10 g/dl prior to surgery receive packed red blood cell transfusions.

FOLLOW-UP

All patients are given a 24 hour physician's number to call in case of a problem or concern.

At least three attempts to contact each patient by phone one week after surgery are made by the office staff.

All patients are asked to return for check-up three weeks following their surgery.

THIRD TRIMESTER

The author is aware of one other surgeon who uses a conceptually similar technique. He adds additional changes of Dilapan and/or laminaria in the 48 hour dilation period. Coupled with other refinements and a slower operating time, he performs these procedures up to 32 weeks or more.[10]

SUMMARY

In conclusion, Dilation and Extraction is an alternative method for achieving late second trimester abortions to 26 weeks. It can be used in the third trimester.

Among its advantages are that it is a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia.

Among its disadvantages are that it requires a high degree of surgical skill, and may not be appropriate for a few patients.

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Published by the AMA →

NEWS

Published by the American Medical Association/515 North State Street/Chicago, Illinois 60610/(312) 464-50
Barbara Bolsen, Edit

July 11, 1995

Material on Dr. Martin Haskell

The Hon. Charles T. Canady
Chairman, Subcommittee on the Constitution
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Bldg.
Washington, D.C. 20515-6216

Dear Representative Canady:

We have received your July 7 letter outlining allegations of inaccuracies in a July 5, 1993, story in American Medical News, "Shock-tactic ads target late-term abortion procedure."

You noted that in public testimony before your committee, AMNews is alleged to have quoted physicians out of context. You also noted that one such physician submitted testimony contending that AMNews misrepresented his statements. We appreciate your offer of the opportunity to respond to these accusations, which now are part of the permanent subcommittee record.

AMNews stands behind the accuracy of the report cited in the testimony. The report was complete, fair, and balanced. The comments and positions expressed by those interviewed and quoted were reported accurately and in-context. The report was based on extensive research and interviews with experts on both sides of the abortion debate, including interviews with two physicians who perform the procedure in question.

We have full documentation of these interviews, including tape recordings and transcripts. Enclosed is a transcript of the contested quotes that relate to the allegations of inaccuracies made against AMNews.

Let me also note that in the two years since publication of our story, neither the organization nor the physician who complained about the report in testimony to your committee has contacted the reporter or any editor at AMNews to complain about it. AMNews has a longstanding reputation for balance, fairness and accuracy in reporting, including reporting on abortion, an issue that is as divisive within medicine as it is within society in general. We believe that the story in question comports entirely with that reputation.

Thank you for your letter and the opportunity to clarify this matter.

Respectfully yours,

Barbara Bolsen

Barbara Bolsen
Editor

Attachment

American Medical News transcript - page 1

Relevant portions of recorded interview with Martin Haskell, MD:

AMN: Let's talk first about whether or not the fetus is dead beforehand...

Haskell: No it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress -- intrauterine stress during, you know, the two days that the cervix is being dilated. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. And so in my case, I would think probably about a third of those are definitely are (sic) dead before I actually start to remove the fetus. And probably the other two-thirds are not.

AMN: Is the skull procedure also done to make sure that the fetus is dead so you're not going to have the problem of a live birth?

Haskell: It's immaterial. If you can't get it out, you can't get it out.

AMN: I mean, you couldn't dilate further? Or is that riskier?

Haskell: Well, you could dilate further over a period of days.

AMN: Would that just make it... would it go from a 3-day procedure to a 4- or a 5-?

Haskell: Exactly. The point here is to effect a safe legal abortion. I mean, you could say the same thing about the D&E procedure. You know, why do you do the D&E procedure? Why do you crush the fetus up inside the womb? To kill it before you take it out?

Well, that happens, yes. But that's not why you do it. You do it to get it out. I could do the same thing with a D&E procedure. I could put dilapan in for four or five days and say I'm doing a D&E procedure and the fetus could just fall out. But that's not really the point. The point here is you're attempting to do an abortion. And that's the goal of your work, is to complete an abortion. Not to see how do I manipulate the situation so that I get a live birth instead.

AMN, wrapping up the interview: I wanted to make sure I have both you and (Dr.) McMahon saying 'No' then. That this is misinformation, these letters to the editor saying it's only done when the baby's already dead, in case of fatal demise and you have to do an autopsy. But some of them are saying they're getting that information from NAF. Have you talked to Barbara Radford or anyone over there? I called Barbara and she called back, but I haven't gotten back to her.

Haskell: Well, I had heard that they were giving that information, somebody over there might be giving information like that out. The people that staff the NAF office are not medical people. And many of them when I gave my paper, many of them came in, I learned later, to watch my paper because many of them have never seen an abortion performed of any kind.

AMN: Did you also show a video when you did that?

Haskell: Yeah. I taped a procedure a couple of years ago, a very brief video, that simply showed the technique. The old story about a picture's worth a thousand words.

AMN: As National Right to Life will tell you.

Haskell: Afterwards they were just amazed. They just had no idea. And here they're rabid supporters of abortion. They work in the office there. And...some of them have never seen one performed...

Comments on elective vs. non-elective abortions:

Haskell: And I'll be quite frank: most of my abortions are elective in that 20-24 week range... In my particular case, probably 20% are for genetic reasons. And the other 80% are purely elective...

An Abortion Rights Advocate Says He Lied About Procedure
DAVID STOUT
New York Times, Late Edition - Final ED, COL 01, P 12
Wednesday February 26 1997

WASHINGTON, Feb. 25 - A prominent member of the abortion rights movement said today that he lied in earlier statements when he said a controversial form of late-term abortion is rare and performed primarily to save the lives or fertility of women bearing severely malformed babies.

He now says the procedure is performed far more often than his colleagues have acknowledged, and on healthy women bearing healthy fetuses.

Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, said he intentionally misled in previous remarks about the procedure, called intact dilation and evacuation by those who believe it should remain legal and "partial-birth abortion" by those who believe it should be outlawed, because he feared that the truth would damage the cause of abortion rights.

But he is now convinced, he said, that the issue of whether the procedure remains legal, like the overall debate about abortion, must be based on the truth.

In an article in American Medical News, to be published March 3, and an interview today, Mr. Fitzsimmons recalled the night in November 1995, when he appeared on "Nightline" on ABC and "lied through my teeth" when he said the procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged.

"It made me physically ill," Mr. Fitzsimmons said in an interview. "I told my wife the next day, 'I can't do this again.' "

Mr. Fitzsmmons said that after that interview he stayed on the sidelines of the debate for a while, but with growing unease. As much as he disagreed with the National Right to Life Committee and others who oppose abortion under any circumstances, he said he knew they were accurate when they said the procedure was common.

In the procedure, a fetus is partly extracted from the birth canal, feet first, and the brain is then suctioned out.

Last fall, Congress failed to override a Presidential veto of a law that would have banned the procedure, which abortion opponents insist borders on infanticide and some abortion rights advocates also believe should be outlawed as particularly gruesome. Polls have shown that such a ban has popular support.

Senator Tom Daschle of South Dakota, the Democratic leader, has

suggested a compromise that would prohibit all third-trimester abortions, except in cases involving the "life of the mother and severe impairment of her health."

The Right to Life Committee and its allies have complained repeatedly that abortion-rights supporters have misled politicians, journalists and the general public about the frequency and the usual circumstances of the procedure.

"The abortion lobby manufactures disinformation," Douglas Johnson, the committee's legislative director, said today. He said Mr. Fitzsimmon's account would clarify the debate on this procedure, which is expected to be renewed in Congress.

Mr. Fitzsimmons predicted today that the controversial procedure would be considered by the courts no matter what lawmakers decide.

Last April, President Clinton vetoed a bill that would have outlawed the controversial procedure. There were enough opponents in the House to override his veto but not in the Senate. In explaining the veto, Mr. Clinton echoed the argument of Mr. Fitzsimmons and his colleagues.

"There are a few hundred women every year who have personally agonizing situations where their children are born or are about to be born with terrible deformities, which will cause them to die either just before, during or just after childbirth," the President said. "And these women, among other things, cannot preserve the ability to have further children unless the enormity -- the enormous size of the baby's head -- is reduced before being extracted from their bodies." A spokeswoman for Mr. Clinton said tonight that the White House knew nothing of Mr. Fitzsimmons's announcement and would not comment further.

In the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus that is 20 weeks or more along, Mr. Fitzsimmons said. "The abortion-rights folks know it, the anti-abortion folks know it, and so, probably, does everyone else," he said in the article in the Medical News, an American Medical Association publication.

Mr. Fitzsimmons, whose Alexandria, Va., coalition represents about 200 independently owned clinics, said coalition members were being notified of his announcement.

One of the facts of abortion, he said, is that women enter abortion clinics to kill their fetuses. "It is a form of killing," he said. "You're ending a life."

And while he said that troubled him, Mr. Fitzsimmons said he continued to support this procedure and abortion rights in general.

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Statement of Brenda Pratt Shafer, R.N.

Before the

Subcommittee on the Constitution

Committee on the Judiciary

U.S. House of Representatives

Hearing on The Partial-Birth Abortion Ban Act (HR 1833)

March 21, 1996

Mr. Chairman and honorable members of the Judiciary Committee, I am Brenda Pratt Shafer. I am here before you, at the request of the Committee, to relate to you my experience as an eyewitness to what is now known as the partial-birth abortion procedure.

I am a registered nurse, licensed in the State of Ohio, with 14 years of experience. In 1993, I was employed by Kimberly Quality Care, a nursing agency in Dayton, Ohio. In September, 1993, Kimberly Quality Care asked me to accept assignment at the Women's Medical Center, which is operated by Dr. Martin Haskell. I readily accepted the assignment because I was at that time very pro-choice. I had even told my teenage daughters that if one of them ever got pregnant at a young age, I would make them get an abortion. They disagreed with me on this, and one of them even wrote an essay for a high school class that mentioned how we differed on the issue.

So, because of the strong pro-choice views that I held at that time, I thought this assignment would be no problem for me.

But I was wrong. I stood at a doctor's side as he performed the partial-birth abortion procedure-- and what I saw is branded forever on my mind.

I worked as an assistant nurse at Dr. Haskell's clinic for three days-- September 28, 29, and 30, 1993.

On the first day, we assisted in some first-trimester abortions, which is all I'd expected to be involved in. (I remember that one of the patients was a 15-year-old-girl who was having her third abortion.)

On the second day, I saw Dr. Haskell do a second-trimester procedure that is called a D & E (dilation and evacuation). He used ultrasound to examine the fetus. Then he used forceps to pull apart the baby inside the uterus, bringing it out piece by piece and piece, throwing the pieces in a pan.

Also on the first two days, we inserted laminaria to dilate the cervixes of women who were being prepared for the partial-birth abortions-- those who were past the 20 weeks point, or 4½ months. (Dr. Haskell called this procedure "D & X", for dilation and extraction.) There were six or seven of these women.

On the third day, Dr. Haskell asked me to observe as he performed several of the procedures that are the subject of this hearing. Although I was in that clinic on assignment of the agency, Dr. Haskell was interested in hiring me full time, and I was being given orientation in the entire range of procedures provided at that facility.

I was present for three of these partial-birth procedures. It is the first one that I will describe to you in detail.

The mother was six months pregnant (26½ weeks). A doctor told her that the baby had Down Syndrome and she decided to have an abortion. She came in the first two days to have the laminaria inserted and changed, and she cried the whole time. On the third day she came in to receive the partial-birth procedure.

Dr. Haskell brought the ultrasound in and hooked it up so that he could see the baby. On the ultrasound screen, I could see the heart beating. As Dr. Haskell watched the baby on the ultrasound screen, the baby's heartbeat was clearly visible on the ultrasound screen.

Dr. Haskell went in with forceps and grabbed the baby's legs and pulled them down into the birth canal. Then he delivered the baby's body and the arms-- everything but the head. The doctor kept the baby's head just inside the uterus.

The baby's little fingers were clasping and unclasping, and his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks that he might fall.

The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp.

I was really completely unprepared for what I was seeing. I almost threw up as I watched the doctor do these things.

Mr. Chairman, I read in the paper that President Clinton says that he is going to veto this bill. If President Clinton had been standing where I was standing at that moment, he would not veto this bill.

Dr. Haskell delivered the baby's head. He cut the umbilical cord and delivered the placenta. He threw that baby in a pan, along with the placenta and the instruments he'd used. I saw the baby move in the pan. I asked another nurse and she said it was just "reflexes."

I have been a nurse for a long time and I have seen a lot of death-- people maimed in auto accidents, gunshot wounds, you name it. I have seen surgical procedures of every sort. But in all my professional years, I had never witnessed anything like this.

The woman wanted to see her baby, so they cleaned up the baby and put it in a blanket and handed the baby to her. She cried the whole time, and she kept saying, "I'm so sorry, please forgive me!" I was crying too. I couldn't take it. That baby boy had the most perfect angelic face I have ever seen.

I was present in the room during two more such procedures that day, but I was really in shock. I tried to pretend that I was somewhere else, to not think about what was happening. I just couldn't wait to get out of there. After I left that day, I never went

back. These last two procedures, by the way, involved healthy mothers with healthy babies.

I was very much affected by what I had seen. For a long time, sometimes still, I had nightmares about what I saw in that clinic that day.

That's why, last July, I wrote a letter to Congressman Tony Hall of Dayton, in support of the bill, telling what I had seen. And that led to me being asked to tell others what I 'd seen, just as I am doing here today.

Mr. Chairman, since I wrote that letter to Congressman Tony Hall, I have been subjected to some strange attacks on my credibility, and I would like to address these briefly.

Last July 12, I sat in the audience as the full Judiciary Committee debated this legislation, and I heard Congresswoman Schroeder read a letter from Dr. Haskell to the Judiciary Committee (also dated July 12) in which he said, "I have examined our records and found no evidence of a Brenda Shafer working for us during 1993."

Fortunately, I had previously provided the Constitution Subcommittee with the pertinent payroll records from Kimberly Quality Care, including their invoice to Dr. Haskell's clinic. After these documents were circulated, Congresswoman Schroeder withdrew that particular allegation, explaining it away as resulting from confusion over my married name. But it seemed peculiar to me at the time that neither she nor her staff had contacted me, or the subcommittee staff, to request documentation, before she basically called me a liar in front of everybody. But there was much more of that sort of thing to come.

In his July 12 letter, Dr. Haskell said also said that my account was "inaccurate," because "she describes procedures at 26 1/2 weeks and 25 weeks... This is contrary to my own self-imposed and established limit of 24 weeks." But in recent times I've seen an article published in *American Medical News* for July 5, 1993-- just a few months before I worked for him-- in which Dr. Haskell said that he performs the procedure "up until about

25 weeks," which conflicts with his letter to the Judiciary Committee.

Also, in Dr. Haskell's 1992 paper describing the partial-birth procedure, "Dilation and Extraction for Late Second Trimester Abortion," which you have all seen, he wrote, "This author routinely performs this procedure on all patients 20 through 24 weeks LMP [i.e., from last menstrual period] with certain exceptions. The author performs the procedure on selected patients 25 through 26 weeks LMP." Keep in mind that this 26½-week little boy had Down syndrome, so this was a "selected patients" case.

Later, I learned another letter had been produced by Dr. Haskell's operation, dated July 17, this one signed by Christie Gallivan, a nurse. This letter was cited by opponents of the bill before and during the House and Senate floor debates, and was even entered into the *Congressional Record* by Senator Barbara Boxer.

In this letter, Christie Gallivan acknowledged that I had worked at the clinic for three days, but went on to claim that since I was a temporary nurse, I "would not have been present" at such a procedure-- *or,* then again, in the alternative, that if I *did* see such a procedure, then my memory must be faulty, or else that I must be deliberately "misrepresenting" what I saw.

Well, as I've said from the beginning, although I was assigned by a temporary agency, Dr. Haskell needed another surgical nurse-- I was told that he was having a hard time keeping them-- and he seemed to be interested in hiring me on a permanent basis. He wanted me to observe the procedure.

Christie Gallivan was the surgical nurse and she spent those three days giving me an "orientation," as it says on the Kimberly Quality Care invoice. But what is striking to me is how blatantly inconsistent Nurse Gallivan's letter is, not only with what I saw, but with what Dr. Haskell himself has written and said elsewhere.

Christie Gallivan wrote, "Dr. Haskell does not use ultrasound in the performance of second-trimester procedures." Then she went on, regarding my account, "Therefore, her entire description of her experience with viewing the second-trimester abortion, which

includes Dr. Haskell using the ultrasound while doing this procedure, is clearly questionable."

Yet, in Dr. Haskell's paper explaining how he performs the procedure, he clearly states that the surgical assistant "places an ultrasound probe on the patient's abdomen and scans the fetus, locating the lower extremities." And a little further on, referring to the forceps, he wrote, "When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity."

So when Christie Gallivan writes that I could not have seen a baby moving, you can evaluate that statement in the light of her other statements on these points on which there is such a clear written record. And, you should notice that she never tries to explain, in this letter, why anyone should believe that these babies supposedly don't move. I've been given a copy of a transcript of the tape-recorded interview with Dr. Haskell conducted by the *American Medical News* in June, 1993-- only three months before my time at his clinic-- in which he explicitly acknowledged that most of these babies are alive when he pulls them out.

On November 17, I testified before the Senate Judiciary Committee. Senator Kennedy asked me why it had been reported, in a nursing newsletter, that I was employed by the National Right to Life Committee. As replied, and I tell you know, I've never been a member of, or a donor to, that organization, and certainly in no sense an employee.

Certainly, since last summer I have cooperated with National Right to Life in their efforts to make my experience more widely known, because I think it's important that people know the truth about this matter. But National Right to Life has not paid me for anything, and nobody else has paid me for anything in connection with this subject either, beyond reimbursing travel and accommodation expenses. By the way, the editor of the nursing newsletter subsequently retracted the erroneous claim.

Most recently, I got a copy of a letter sent to a constituent by Congresswoman Lynn Rivers of Michigan, written in longhand, in which this distinguished member of

Congress claimed that I "was unwilling to testify under oath or submit herself to cross-examination in front of Congress-- even though she was sitting in the hearing room while testimony was being taken."

Of course, Mr. Chairman, that is all pure fiction. By the time I heard of your bill and wrote my letter to Congressman Hall, on July 9, you had already concluded the hearing on your legislation. I was present for the July 12 markup, and spoke with various members of the committee and the press informally, but of course there was no opportunity for me to formally testify on that occasion, although I certainly would have welcomed the opportunity.

In November, when Senator Hatch invited me to testify before the Senate Judiciary Committee, I accepted immediately and without qualification. During the question period, Senator Kyl asked me if I would be willing to testify to these things under oath and I replied, "Yes, sir. I would. Or under a lie detector or anything else I need to do." [Senate hearing record, p. 63] And I tell you the same thing.

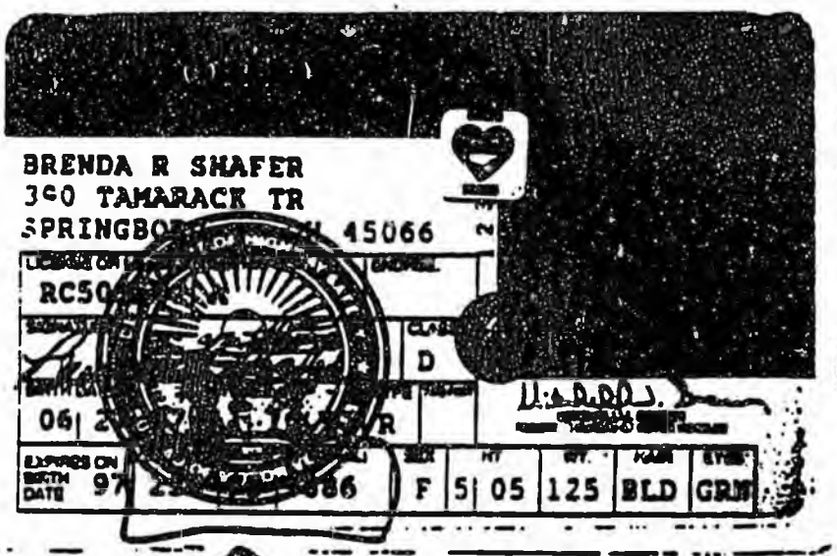
Mr. Chairman, thank you for indulging me in unburdening myself on these points. It is been frustrating to hear, and hear of, these attacks on my truthfulness, and not be able to respond.

It is still amazing to me that certain individuals who hold high elective offices, offices for which I hold great respect, have been so willing to publicly spread this kind of blatant misinformation about me, without making the slightest effort to investigate or look at any of the documentation.

Mr. Chairman, these people who say I didn't see what I saw-- I wish they were right. I wish I hadn't seen it. But I did see it, and I will never be able to forget it. That baby boy was only inches, seconds away from being entirely born, when he was killed. What I saw done to that little boy, and to those other babies, should not be allowed in this country.

Thank you.

Pratt is Brenda Shafer's maiden name. Below are her social security number and RN license number listed on her Ohio driver's license and Ohio Board of Nursing card, respectively. Both numbers are listed on the bill submitted by the nursing agency to Dr. Haskell's clinic. Nurse Shafer worked as an assistant nurse at Dr. Haskell's abortion clinic for three days in September, 1993, an experience she described in a letter to Congressman Tony Hall and in the attached testimony.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BRENDA R SHAFER
License Number: RN [illegible]170[illegible]
SSN: [illegible]92-[illegible]
has met the requirements of the Law Regulating the Practice of Nursing, is fully licensed and is entitled to practice nursing in OHIO as a REGISTERED NURSE until AUGUST 31, 1997.

KQC Staffing

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INVOICE DATE 10/01/93

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SERVICES	$ 476.00
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TOTAL DUE ►	$ 476.00

410.00

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ACCT.# - 219 002 01735

To ►
WOMENS MED+ CENTER
ATTN: CHRIS
1401 E. STROOP ROAD
DAYTON, OH 45429

REMIT TO
KIMBERLY QUALITY CARE, INC.
P.O. BOX 60410
CHARLOTTE, N.C. 28260

PATIENT NAME WOMENS MED+ CENTER

PLEASE CALL WITH QUESTIONS CONCERNING THIS INVOICE.

	PERFORMED BY	SKILLS	LICENSE NO.	DATE	Days	TIME FROM	TIME TO	NO. OF HOURS	RATE	AMOUNT
1	PRATT, BRENDA	REGNUR		9 28 93	1	1030	1500	4 50	20 00	90 00
2	PRATT, BRENDA	REGNUR		9 29 93	1	930	1730	8 00	20.24 00	KD 192 00
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KIMBERLY QUALITY CARE — EMPLOYEE TIME CARD

EMPLOYEE NAME (Last Name, First Name) Pratt, Brenda

SOCIAL SECURITY NO. WRITE CLEARLY 236-22-[illegible]

LICENSE NO 21-7060

CLIENT NAME (Last Name, First Name) WMC

OFFICE USE ONLY (FACILITY) 1735

DAY	DATE	CIRCLE SHIFT WORKED	AREA WORKED	TIMES IN	TIMES OUT	TOTAL HOURS TO BE BILLED AND PAID	CLIENT MUST SIGN EACH DAY
SAT		1 2 3					
SUN		1 2 3					
MON		1 2 3					
TUES	9/28	1 2 3	✓	1030	3p	4½	orientation
WED	9/29	1 2 3	✓ orientation	9:30	5:30	8	
THUR	9/30	1 2 3	✓	9:30	5:30	8	
FRI		1 2 3					

EMPLOYEE SIGNATURE [signature]

TOTAL 20½

CLIENT MUST SIGN TO INSPECT HRS

BILLABLE EXPENSE | TRAVEL - NO BILL | CHECK NUMBER | INSTANT PAY NUMBER

I AGREE TO TOTAL HOURS AND HAVE READ AND AGREE TO TERMS AND CONDITIONS ON REVERSE SIDE

KQC 2/93

••• CRITICAL •••

••• CRITICAL •••

PYHC35 10/06/93
CO/DIV: 17 219-002

KIMBERLY QUALITY CARE
P A Y R O L L R E G I S T E R
KIMBERLY QUALITY CARE, INC.

PERIOD ENDING 10/01/93
PAY DATE 10/08/93

HOURS	CURRENT PERIOD GROSS	CURRENT PERIOD DEDUCTIONS	YEAR TO DATE TOTALS	CHECK
TOTAL REGULAR SICK SICK EARNED		FICA-O FIT SIT DIS ADVANCE OTHER		FICA-O FIT SIT YTD NET PAY

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			.00		.00											270.57

PRATT, DEBORA			224-92-9654	04	M											

PATIENT NAME | HOURS | RATE | M.E DATE | PAYOR

THE WOMEN'S MEDICAL CENTER,
Dayton, July 17, 1995.

DEAR CONGRESSWOMAN SCHROEDER: I am a registered nurse and have worked since July, 1993, in the Dayton office of Dr. Martin Haskell. In this capacity, I was the nurse that supervised the training of Brenda Pratt during her brief temporary employment at the Women's Medical Center of Dayton. As you know, we initially conducted a search of our employment records under the name "Brenda Shafer," as this was the name she signed to the letter which was given to us. When provided with the correct last name, we did in fact find the record of her three-day employment at our Dayton facility.

The information provided by Ms. Pratt as to our practices at the Women's Medical Center of Dayton is largely inaccurate. First, she describes Dr. Haskell performing one 25-week and one 26-week abortion procedure. Dr. Haskell does not perform abortions past 24 weeks of pregnancy. This is a self-imposed limit to which he has scrupulously adhered throughout the time I have worked for him.

Second, Dr. Haskell does not use ultrasound in the performance of second-trimester procedures. We use ultrasound only to determine the pregnancy's gestation. Therefore, her entire description of her experience when viewing a second-trimester abortion, which includes Dr. Haskell's using the ultrasound while doing the procedure, is clearly questionable.

Finally, at no point during a dilatation and extraction or intact D&E is there any fetal movement or response that would indicate awareness, pain or struggle. Ms. Pratt absolutely could not have witnessed fetal movement as she describes. We do not train temporary nurses in second trimester dilatation and extraction, since it is a highly technical procedure and would not be performed by someone in a temporary capacity. If, indeed, Ms. Pratt entered the operating room at any point during D&X procedure, she clearly either is misrepresenting what she saw or remembers it incorrectly.

If you have any further questions, please feel free to contact our office.

Sincerely,

CHRISTIE GALLIVAN, RN.

NATIONAL RIGHT TO LIFE committee, Inc.
Suite 500, 419 7th Street, N.W.
Washington, D.C. 20004-2293 — (202) 626-8800 (FAX) 737-9189 or 347-5807
(202) 626-8820

Partial-Birth Abortions: A Closer Look

By Douglas Johnson
NRLC Federal Legislative Director

September 11, 1996

The final version of the Partial-Birth Abortion Ban Act (HR 1833) was approved by the U.S. Senate by a vote of 54-44 on December 7, 1995, and by the U.S. House of Representatives on March 27, 1996, by a vote of 286-129. On April 10, 1996, President Clinton vetoed the bill. The House is expected to vote on whether to override the veto on or about September 19, 1996. If two-thirds of the House votes to override, the Senate also will vote on whether to override.

Opponents of the bill, including President Clinton and his subordinates, have propagated a number of myths regarding the partial-birth abortion procedure and the bill. These myths include the assertions that partial-birth abortions are very rare and are performed only in extreme circumstances involving serious fetal deformities or threat to the life of the mother; that the bill would jeopardize the lives or health of some women; and that anesthesia given to the mother kills the fetus/baby or renders her pain-free before the procedure is performed. Some of this misinformation -- especially the claim that the procedure is used mostly in cases of severe "fetal deformity" -- has been uncritically adopted as factual by some journalists, columnists, and editorialists.

Yet, these claims are contradicted by the past writings and recorded statements of doctors who have performed thousands of partial-birth abortions, and by other available documentation, including authoritative medical information gathered by the House Judiciary Committee and the Senate Judiciary Committee. This factsheet relies heavily upon such primary sources. For copies of documents cited here, contact the NRLC Federal Legislative Office at (202) 626-8820, fax (202) 347-3668.

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• What is a partial-birth abortion, and what is the Partial-Birth Abortion Ban Act (HR 1833)?

The Partial-Birth Abortion Ban Act (HR 1833) would prohibit performance of a **partial-birth abortion**, except in cases (if there are any) in which the procedure is necessary to save the life of a mother. The complete text of the bill is attached to this factsheet.

The bill defines a "partial-birth abortion" as "an abortion in which the person performing the abortion partially vaginally delivers a *living* fetus before killing the fetus and completing the delivery." [emphasis added] Abortionists who violate the law would be subject to both criminal and civil penalties, but no penalty could be applied to the woman who obtained such an abortion.

This procedure is generally used ***beginning at*** 20 weeks (4½ months) into pregnancy, and "routinely" to at least 24 weeks (5½ months). It has often been used much later-- even into the ninth month. The *Los Angeles Times* accurately and succinctly described this abortion method in a June 16, 1995 news story:

> The procedure requires a physician to extract a fetus, feet first, from the womb and through the birth canal until all but its head is exposed. Then the tips of surgical scissors are thrust into the base of the fetus' skull, and a suction catheter is inserted through the opening and the brain is removed.

In 1992, Dr. Martin Haskell of Dayton, Ohio, wrote a paper that described in detail, step-by-step, how to perform the procedure. ["Dilation and Extraction for Late Second Trimester Abortion."] Dr. Haskell is a family practitioner who has performed over 1,000 such procedures in his walk-in abortion clinics. **Anyone who is seriously seeking the truth behind the conflicting claims regarding partial-birth abortions would do well to start by reading Dr. Haskell's paper, and the transcripts of the explanatory interviews that Dr. Haskell gave in 1993 to two medical publications, *American Medical News* (the official AMA newspaper) and *Cincinnati Medicine.*** [All are available from NRLC.]

Here is how Dr. Haskell explained a key part of the abortion method:

> With a lower [fetal] extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities. The skull lodges at the internal cervical os [the opening to the uterus]. Usually there is not enough dilation for it to pass through. The fetus is oriented dorsum or spine up. At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and "hooks" the shoulders of the fetus with the index and ring fingers (palm down).... [T]he surgeon takes a pair of blunt curved Metzenbaum

> scissors in the right hand. He carefully advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.... [T]he surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening. The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents." ["Dilation and Extraction for Late Second Trimester Abortion," pages 30-31.]

Dr. Haskell also wrote that he "routinely performs this procedure on all patients 20 through 24 weeks LMP [i.e., from 4½ to 5½ months after the last menstrual period] with certain exceptions," these "exceptions" involving complicating factors such as being more than 20 pounds overweight. Dr. Haskell also wrote that he used the procedure through 26 weeks [six months] "on selected patients." [p.28] He added, "Among its advantages are that it is a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia." (p. 33).

In sworn testimony in an Ohio lawsuit on Nov. 8, 1995, Dr. Haskell explained that he first learned of the method when a colleague

> described very briefly over the phone to me a technique that I later learned came from Dr. [James] McMahon where they internally grab the fetus and rotate it and accomplish-- be ***somewhat equivalent to a breech type of delivery.*** [emphasis added]

Dr. James McMahon, who died in 1995, used essentially the same procedure ***thousands*** of times, and to a much later point in pregnancy-- even into the ninth month. Other abortionists also employ the procedure, as discussed below.

• Aren't "third trimester" abortions rare? At what stage in pregnancy do partial-birth abortions occur? Are these babies "viable"?

It appears that the substantial majority of partial-birth abortions are performed late in the *second* trimester -- that is, before the 27-week mark -- but usually after 20 weeks (4½ months). There is compelling evidence that the overwhelming majority of these pre-week-27 partial-birth abortions are performed for purely "social" reasons.

In an attempt to "filter out" this documentation, many opponents of the bill attempt to narrow the debate to only *third-trimester* partial-birth abortions procedures -- that is, to abortions performed beginning in the 27th week [seventh month] of pregnancy. Some journalists and commentators have readily adopted this "filter." **However, there is really**

no non-ideological justification for adopting this "third trimester" demarcation. It has no basis in the text of the Partial-Birth Abortion Ban Act (HR 1833), which bans partial-birth abortion at *any point* in pregnancy. Nor, contrary to some popular misconceptions, is there any basis in current Supreme Court constitutional doctrine or in neo-natal medical practice for adopting a "third trimester" demarcation.

Under the Supreme Court's doctrine, "viability" is regarded as the constitutionally significant demarcation. In *Planned Parenthood v. Casey* (1992), the Supreme Court explicitly disavowed the "trimester framework" of *Roe v. Wade (1973)*, and reaffirmed that "viability" is (in the Court's view) the constitutionally significant demarcation. "Viability" is the point at which a baby born prematurely can be sustained by good medical assistance. **Currently, many babies are "viable" a full three weeks before the "third trimester." Therefore, most partial-birth abortions kill babies who are already "viable," or who are at most a few days or weeks short of viability.**[1]

(Even at 20 weeks, the baby is seven inches long on average. And, as discussed below, at a March 21 congressional hearing leading medical authorities testified that the baby by this point is very sensitive to painful stimuli.)

At least one partial-birth abortion specialist, the late Dr. James McMahon, regularly performed the procedure *even after* 26 weeks-- even into the ninth month. In 1995, Dr. McMahon submitted to the House Judiciary Constitution Subcommittee a graph and explanation that explicitly showed that he aborted ***healthy*** ("not flawed") babies ***even in the third trimester (after 26 weeks of pregnancy).*** Dr. McMahon's own graph showed, for example, that at 29 or 30 weeks, ***one-fourth*** of the aborted babies had no "flaw" however slight. **Underneath the graph, Dr. McMahon offered this explanation:**

> **After 26 weeks, those pregnancies that are not flawed are still non-elective. They are interrupted because of maternal risk, rape, incest, psychiatric or pediatric indications.** [chart and caption reproduced in June 15 hearing record. page 109]

In an interview with Constitution Subcommittee Counsel Keri Harrison, Dr. McMahon

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[1]According to the landmark survey of neonatal units in the National Institute of Child Health and Human Development Neonatal Research Network, conducted in 1987 and 1988 by Dr. Maureen Heck, et al, babies born at 23 weeks had on average a 23% chance of survival. rising to 34% at 24 weeks, and 54% at 25 weeks. See "Very Low Birth Weight Outcomes of the National Institute of Child Health and Human Development Neonatal Network," *Pediatrics*, May 1991.

explained that "pediatric indication" referred to underage mothers, not to any medical condition of the mother or the baby.

- **Is the baby alive when she is pulled feet-first from the womb?**

American Medical News reported in 1993, after conducting interviews with Drs. Haskell and McMahon, that the doctors "told *AM News* that the majority of fetuses aborted this way are alive until the end of the procedure." On July 11, 1995, *American Medical News* submitted the transcript of the tape-recorded interview with Dr. Haskell to the House Judiciary Committee. The transcript contains the following exchange:

> **American Medical News:** Let's talk first about whether or not the fetus is dead beforehand.
>
> **Dr. Haskell:** No it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress-- intrauterine stress during, you know, the two days that the cervix is being dilated [to permit extraction of the fetus]. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. **And so in my case, I would think probably about a third of those are definitely are [sic] dead before I actually start to remove the fetus. And probably the other two-thirds are not.**

In an interview quoted in the Dec. 10, 1989 *Dayton News*, Dr. Haskell conveyed that the scissors thrust is usually the lethal act: "When I do the instrumentation on the skull... it destroys the brain tissue sufficiently so that even if it (the fetus) falls out at that point, it's definitely not alive," Dr. Haskell said. [For further evidence on this issue, see the next section.]

Brenda Pratt Shafer, a registered nurse from Dayton, Ohio, stood at Dr. Haskell's side while he performed three partial-birth abortions in 1993. In testimony before the Senate Judiciary Committee (Nov. 17, 1995), Shafer described in detail the first of the three procedures--which involved, she said, a baby boy at 26½ weeks (over 6 months). According to Mrs. Shafer, the baby was alive and moving as the abortionist

> delivered the baby's body and the arms-- everything but the head. The doctor kept the baby's head just inside the uterus. The baby's little fingers were clasping and unclasping, and his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks that he might fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp.

Under HR 1833, in any case in which a baby dies *before* being partly removed from the uterus -- whether of natural causes or by an action of an abortionist -- the subsequent removal of that baby is *not* a **partial-birth abortion** as defined by the bill.

- **Does anesthesia given to the mother kill the baby?**

Many prominent defenders of partial-birth abortion have publicly insisted that the unborn babies are killed by anesthesia given to the mother, ***prior to*** being "extracted" from the womb. For example, syndicated columnist Ellen Goodman wrote in November, 1995, that if you listened to supporters of the ban, "You wouldn't even know that anesthesia ends the life of such a fetus before it comes down the birth canal." NARAL President Kate Michelman said, "The fetus, is, before the procedure begins, the anesthesia that they give the woman already causes the demise of the fetus. That is, it is not true that they're born partially. That is a gross distortion, and it's really a disservice to the public to say this." [KMOX-AM, St. Louis, Nov. 2, 1995]

Likewise, Planned Parenthood distributed to Congress a "fact sheet" signed by Dr. Mary Campbell, Medical Director of Planned Parenthood of Metropolitan Washington, which stated, "The fetus dies of an overdose of anesthesia given to the mother intravenously....This induces brain death in a fetus in a matter of minutes. Fetal demise therefore occurs at the beginning of the procedure while the fetus is still in the womb."

However, when this statement was read to Dr. Norig Ellison, the president of the 34,000-member American Society of Anesthesiologists (ASA), he testified, "There is absolutely no basis in scientific fact for that statement....I think the suggestion that the anesthesia given to the mother, be it regional or general, is going to cause brain death of the fetus is without basis of fact." [Senate Judiciary Committee hearing record J-104-54, Nov. 17, 1995, p. 153]

Subsequently, in attempting to defend their "fetal demise" claims, pro-abortion advocacy groups disseminated new claims that the late Dr. James McMahon had utilized exceptionally massive doses of narcotic anesthesia before performing his abortions, and that these massive doses would indeed kill a fetus. But in testimony before the House Judiciary Constitution Subcommittee on March 21, 1996, Dr. David J. Birnbach, president-elect of the Society for Obstetric Anesthesia and Perinatology, testified:

> In order to cause fetal demise, it would be necessary to give the mother dangerous and life-threatening doses of anesthesia." [...] Although there is no evidence that this massive dose will cause fetal demise, there is clear evidence that this excessive dose could cause maternal death. [House Judiciary Committee hearing record no. 73, pages 140, 142]

• Since the baby is still alive when "extracted" from the womb, does she feel pain?

Dr. Norig Ellison, president of the American Society of Anesthesiologists (ASA), wrote to the Senate Judiciary Committee:

> Drugs administered to the mother, either local anesthesia administered in the paracervical area or sedatives/analgesics administered intramuscularly or intravenously, will provide little-to-no analgesia [pain relief] to the fetus. [Senate Judiciary Committee, Nov. 17, 1995 hearing record, page 226]

On March 21, 1996, the House Judiciary Subcommittee on the Constitution conducted a public hearing on "The Effects of Anesthesia During a Partial-Birth Abortion." Four leading experts in the field testified that the fetuses/babies who are old enough to be "candidates" for partial-birth abortion possess the neurological equipment to respond to painful stimuli, whether or not the mother has been anesthetized. Opponents of the bill were unable to produce a single medical witness willing to testify in support of the claims that anesthesia kills the fetus or renders the fetus insensible to pain. [See House Judiciary Committee Hearing Record No. 73, March 21, 1996.)

Dr. Jean A. Wright, associate professor of pediatrics and anesthesia at the Emory University School of Medicine in Atlanta, testified that recent research shows that by the stage of development that a fetus could be a "candidate" for a partial-birth abortion (20 weeks), the fetus "is more sensitive to pain than a full-term infant would be if subjected to the same procedures," Prof. Wright testified. These fetuses have "the anatomical and functional processes responsible for the perception of pain," and have "a much higher density of Opioid (pain) receptors" than older humans, she said.

Dr. David Birnbach, president-elect of the Society for Obstetric Anesthesia and Perinatology, testified, "Having administered anesthesia for fetal surgery, I know that on occasion we need to administer anesthesia directly to the fetus because even at these early ages the fetus moves away from the pain of the stimulation." [hearing record, page 288]

At a hearing before the same panel on June 15, 1995, Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, testified, "The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain." After analyzing the partial-birth procedure step-by-step for the subcommittee, Prof. White concluded: "Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure." [House Judiciary Committee hearing No. 31, June 15, 1995, page 70.]

Prof. Jean Wright concluded, "This procedure, if it were done on an animal in my institution, would not make it through the institutional review process. The animal would be more protected than this child is." [hearing record, page 286]

- **Does the bill contain an exception for life-of-the-mother cases?**

HR 1833 explicitly provides that the ban "shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury," if "no other medical procedure would suffice for that purpose."

[Some pro-abortion advocacy groups have insisted that exception does not apply to disorders associated with pregnancy, since "pregnancy" per se is not a disorder or disease. House Judiciary Committee Chairman Henry J. Hyde (R-Il.) commented that this reading "is absurdly convoluted, and violates standard principles of statutory construction." In a June 7 letter, even President Clinton has acknowledged that the bill "provides an exception to the ban on this procedure only when a doctor is convinced that a woman's life is at risk."]

Under HR 1833, an abortionist could not be convicted of a violation of the law ***unless the government proved, beyond a reasonable doubt, that the abortion was <u>not</u> covered by this exception.*** (In addition, of course, the government would have to prove, beyond a reasonable doubt, all of the other elements of the offense-- that the abortionist "knowingly" partly removed a baby from the womb, that the baby was still alive, and that the abortionist then killed the baby.)

It is noteworthy that none of the five women who appeared with President Clinton at his April 10 veto ceremony required a partial-birth abortion because of danger to her life. As one of the women, Claudia Crown Ades, said in a tape-recorded April 12 radio interview on WNTM (Mobile, AL):

> "My procedure was elective. That is considered an elective procedure, as were the procedures of Coreen Costello and Tammy Watts and Mary-Dorothy Line and all the other women who were at the White House yesterday. All of our procedures were considered elective." [Complete tape recording available on request.]

[Two of the women said that *if* their babies had died natural deaths within their wombs, it could have placed them at risk. But the removal of a baby who dies a natural death, whether by foot-first extraction or in any other manner, is not an abortion and has nothing to do with the bill. Professor Watson Bowes, Jr., of the University of North Carolina, co-editor of the *Obstetrical and Gynecological Survey*, has stated that weeks would pass between the baby's natural demise and the development of any resulting risk to the mother.]

• What reasons has President Clinton given for vetoing HR 1833?

On December 7, 1995, before the Senate had even voted on final passage of the bill, chief opponent Sen. Barbara Boxer (D-Ca.) took the floor to make an unqualified statement that President Clinton would veto the bill. On December 8, White House Press Secretary Michael McCurry said unequivocally that the President would veto the bill because "it would represent an erosion of a woman's right to choose."

However, when President Clinton next publicly addressed the issue in a February 28 letter to key members of Congress (after a national poll found 71% support for the ban), he took different tone, although the legal bottom line was unchanged. Mr. Clinton wrote of having "studied and prayed about this issue... for many months," of finding the procedure "very disturbing," and of seeking "common ground... that respects the views of those--including myself-- who object to this particular procedure," while defending *Roe v. Wade*. But the "common ground" that Mr. Clinton proposed tracked the language offered by Sen. Boxer on December 7, and endorsed by the National Abortion and Reproductive Rights Action League (NARAL) as a "pro-choice vote." The Boxer/NARAL amendment would have allowed partial-birth abortion to be performed without any limitation whatever until "viability," and also "after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman." (The Senate rejected this gutting amendment.)

The Boxer/Clinton language must be read in the light of *Doe v. Bolton*, the 1973 companion case to *Roe v. Wade*, in which the Supreme Court said that "health" must encompass "all factors-- physical, emotional, psychological, familial and the woman's age-- relevant to the well-being of the patient." Given this expansive definition of "health," adding the word "serious" has no legal effect, since Mr. Clinton proposes to leave entirely up to each abortionist to decide whether "depression" or some other "health" concern is "serious."

In a June 7 letter to leaders of the Southern Baptist Convention, Mr. Clinton said that he favored banning the procedure with an exception for "cases where a woman risks death or serious damage to her health," but not for cases involving "youth" or "emotional stress." But in his formal veto message on the bill, Mr. Clinton referred to a "health" exception as required by *Roe v. Wade*. Mr. Clinton, a former teacher of constitutional law, knows full well that these two positions are inconsistent, because if *Roe/Doe* applies to partial-birth abortions, then even after "viability," the exception must indeed cover "emotional" health.

In his June 7 letter, President Clinton asserted that "the medical community... broadly supports the continued availability of this procedure where a woman's serious health interests are at stake." However, the American Medical Association (AMA) Legislative Council voted *unanimously* to recommend endorsement of the bill, with one member

explaining that the procedure was "not a recognized medical technique." (The full AMA Board of Trustees was divided on the bill and ultimately took "no position.") Of the five medical doctors who serve in Congress, four voted for the bill, including the only family practitioner/gynecologist.

• How often are partial-birth abortions performed?

There are at least 164,000 abortions a year after the first three months of pregnancy, and 13,000 abortions annually after 4½ months, according to the Alan Guttmacher Institute (*New York Times*, July 5 and November 6, 1995), which is an arm of Planned Parenthood. These numbers should be regarded as *minimums*, since they are based on *voluntary reporting* to the AGI. (The Centers for Disease Control reported that in 1993, over *17,000* abortions were performed at *21* weeks and later– and the CDC acknowledges that the reports that it receives are incomplete.)

No one really knows how many late abortions are done by the partial-birth procedure. The Center for Reproductive Law and Policy told *The New York Times*, "The number of procedures that clearly meet the definition of partial birth abortion is very small, probably only 500 to 1,000 a year." (March 28, 1996) **Even if such figures were accurate, the legislation would be urgently needed. If a new virus swept through neo-natal units and killed 500 or 1,000 premature babies, it would be a top news story -- not dismissed as too "rare" to be of consequence. For each human being at the pointed end of the scissors, a partial-birth abortion is a 100% proposition.**

Moreover, the numbers may be considerably higher-- perhaps thousands per year. Dr. Martin Haskell and the late Dr. James McMahon spent years trying to convince other abortionists of the merits of the procedure -- that was the purpose of Dr. Haskell's 1992 instructional paper (see page 3), which was distributed by the National Abortion Federation. a lobbying group for abortion clinics. For years, Dr. McMahon was director of abortion instruction at the Cedar-Sinai Medical Center in Los Angeles. In addition, he invited other doctors to visit his abortion clinic for a period of days to learn the procedure. Also. *The New York Times* reported on Nov. 6, 1995:

> "Of course I use it, and I've taught it for the last 10 years," said a gynecologist at a New York teaching hospital who spoke on condition of anonymity. "So do doctors in other cities."

It is not known how many other abortionists have adopted the method, but a few have made themselves known. On March 19, 1996, Dr. William Rashbaum of New York City wrote a letter to Congressman Charles Canady (R-Fl.), stating that he has performed 19,000 late-

term "procedures," and that he has performed the procedure that HR 1833 would ban "routinely since 1979. This procedure is only performed in cases of later gestational age."

In 1995, Dr. Martin Haskell filed a lawsuit challenging a state abortion-regulation law. In that proceeding, two other doctors filed affidavits affirming that they perform the same procedure as Dr. Haskell -- and that's just in Ohio.

• For what reasons are late-term abortions usually performed?

There is no evidence that the reasons for which late-term abortions are performed by the partial-birth abortion method are any different, in general, than the reasons for which late-term abortions are performed by other methods -- and it is well established that the great majority of late-term abortions do not involve any illness of the mother or the baby. They are purely "elective" procedures-- that is, they are performed for purely "social" reasons.

In 1987, the Alan Guttmacher Institute (AGI), an affiliate of the Planned Parenthood Federation of America (PPFA), collected questionnaires from 1,900 women who were at abortion clinics procuring abortions. Of the 1,900, "420 had been pregnant for 16 or more weeks." These 420 women were asked to choose among a menu of reasons why they had not obtained the abortions earlier in their pregnancies. Only two percent (2%) said "a fetal problem was diagnosed late in pregnancy," compared to 71% who responded "did not recognize that she was pregnant or misjudged gestation," 48% who said "found it hard to make arrangements," and 33% who said "was afraid to tell her partner or parents." The report did not indicate that any of the 420 late abortions were performed because of maternal health problems. ["Why Do Women Have Abortions?," *Family Planning Perspectives*, July/August 1988.]

Also illuminating is an 1993 internal memo by Barbara Radford, then the executive director of the National Abortion Federation, a "trade association" for abortion clinics:

> There are many reasons why women have late abortions: life endangerment, fetal indications, *lack of money or health insurance, social-psychological crises, lack of knowledge about human reproduction, etc.*" [emphasis added]

Likewise, a June 12, 1995, National Abortion Federation letter to members of the House of Representatives noted that late abortions are sought by, among others, "very young teenagers...who have not recognized the signs of their pregnancies until too late," and by "women in poverty, who have tried desperately to act responsibly and to end an unplanned pregnancy in the early stages, only to face insurmountable financial barriers."

In her article about late-term abortions, based in part on extensive interviews with Dr. McMahon and on direct observation of his practice (*Los Angeles Times Magazine*, January 7, 1990), reporter Karen Tumulty concluded:

> If there is any other single factor that inflates the number of late abortions, it is youth. Often, teen-agers do not recognize the first signs of pregnancy. Just as frequently, they put off telling anyone as long as they can.

According to Peggy Jarman, spokeswoman for Dr. George Tiller, who specializes in late-term abortions in Wichita, Kansas:

> About three-fourths of Tiller's late-term patients, Jarman said, are teen-agers who have denied to themselves or their families they were pregnant until it was too late to hide it. [*Kansas City Star*]

• For what reasons are *partial-birth* abortions usually performed?

Some opponents of HR 1833, such as NARAL and the Planned Parenthood Federation of America (PPFA), have persistently disseminated claims that the partial-birth abortion procedure is employed only in cases involving extraordinary threats to the mother or grave fetal disorders. For example, NARAL President Kate Michelman wrote in a Scripps Howard News Service op ed published June 16, 1996. "Late-term abortions are only used under the most compelling of circumstances-- to protect a woman's health or life or because of grave fetal abnormality....nearly all abortions are performed in the first trimester." PPFA said in a press release that the partial-birth abortion procedure is "done only in cases when the woman's life is in danger or in cases of extreme fetal abnormality." (Nov. 1, 1995)

However, claims such as these are inconsistent with the writings and recorded statements of the three doctors who are most closely identified with the procedure: Dr. Martin Haskell, Dr. James McMahon, and Dr. David Grundmann.

Reasons for Partial-Birth Abortions: Dr. Martin Haskell

In his 1992 paper, Dr. Martin Haskell, who has performed over 1,000 partial-birth abortions, described the procedure as "a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia." Dr. Haskell, a family practitioner who operates three abortion clinics, wrote that he "**routinely** performs this procedure on **all** patients 20 through 24 weeks" (4½ to 5½ months) pregnant [emphasis added], except on women who are more than 20 pounds overweight, have twins, or have certain other complicating factors.

For information on why Dr. Haskell adopted the method, the 1993 interview in *Cincinnati Medicine* is very instructive. Dr. Haskell explained that he had been performing dismemberment abortions (D&Es) to 24 weeks:

> But they were very tough. Sometimes it was a 45-minute operation. I noticed that some of the later D&Es were very, very easy. So I asked myself why can't they all happen this way. You see the easy ones would have a foot length presentation, you'd reach up and grab the foot of the fetus, pull the fetus down and the head would hang up and then you would collapse the head and take it out. It was easy. . . . Then I said, "Well gee, if I just put the ultrasound up there I could see it all and I wouldn't have to feel around for it." I did that and sure enough, I found it 99 percent of the time. Kind of serendipity.

In 1993, the *American Medical News*-- the official newspaper of the AMA-- conducted a ***tape-recorded*** interview with Dr. Haskell concerning this ***specific*** abortion method, in which he said:

> **And I'll be quite frank: most of my abortions are elective in that 20-24 week range. . . . In my particular case, probably 20% [of this procedure] are for genetic reasons. And the other 80% are purely elective.**

In a lawsuit in 1995, Dr. Haskell testified that women come to him for partial-birth abortions with "a variety of conditions. Some medical, some not so medical." Among the "medical" examples he cited was "agoraphobia" (fear of open places). Moreover, in testimony presented to the Senate Judiciary Committee on November 17, 1995, ob/gyn Dr. Nancy Romer of Dayton (the city in which Dr. Haskell operates one of his abortion clinics) testified that three of her own patients had gone to Haskell's clinic for abortions "well beyond" 4½ months into pregnancy, and that "none of these women had any medical illness, and all three had normal fetuses."

Brenda Pratt Shafer, a registered nurse who observed Dr. Haskell use the procedure to abort three babies in 1993, testified that one little boy had Down Syndrome, while the other two babies were completely normal and their mothers were healthy. [Nurse Shafer's testimony before the House Judiciary subcommittee, with associated documentation, is available on request to NRLC.]

Reasons for Partial-Birth Abortions: Dr. James McMahon

The late Dr. James McMahon performed thousands of partial-birth abortions, including the third-trimester abortions performed on the five women who appeared with President Clinton

at his April 10 veto ceremony. Dr. McMahon's general approach is illustrated by this illuminating statement in the July 5, 1993 edition of *American Medical News*:

> "[A]fter 20 weeks where it frankly is a child to me, I really agonize over it because the potential is so imminently there. I think, 'Gee, it's too bad that this child couldn't be adopted.' On the other hand, I have another position, which I think is superior in the hierarchy of questions, and that is: 'Who owns the child?' It's got to be the mother.'"

In June, 1995, Dr. McMahon submitted to Congress a detailed breakdown of a "series" of over 2,000 of these abortions that he had performed. He classified only 9% (175 cases) as involving "maternal [health] indications," of which the most common was "depression."

Dr. Pamela E. Smith, director of Medical Education, Department of Obstetrics and Gynecology, Mt. Sinai Hospital, Chicago, gave the Senate Judiciary Committee her analysis of Dr. McMahon's 175 "maternal indication" cases. Of this sample, 39 cases (22%) were for maternal "depression," while another 16% were "for conditions consistent with the birth of a normal child (e.g., sickle cell trait, prolapsed uterus, small pelvis)," Dr. Smith noted. She added that in one-third of the cases, the conditions listed as "maternal indications" by Dr. McMahon really indicated that the procedure itself would be seriously risky to the mother.

Of Dr. McMahon's series, another 1,183 cases (about 56%) were for "fetal flaws," but these included a great many non-lethal disorders, such as cleft palate and Down Syndrome. In an op ed piece written for the *Los Angeles Times*, Dr. Katherine Dowling, a family physician at the University of Southern California School of Medicine, examined Dr. McMahon's report on this "fetal flaws" group. She wrote:

> Twenty-four were done for cystic hydroma (a benign lymphatic mass, usually treatable in a child of normal intelligence). Nine were done for cleft lip-palate syndrome (a friend of mine, mother of five, and a colleague who is a pulmonary specialist were born with this problem). Other reasons included cystic fibrosis (my daughter went through high school with a classmate with cystic fibrosis) and duodenal atresia (surgically correctable, but many children with this problem are moderately mentally retarded). Guess they can't enjoy life, can they? In fact, most of the partial-birth abortions in that [McMahon] survey were done for problems that were either surgically correctable or would result in some degree of neurologic or mental impairment, but would not harm the mother. Or they were done for reasons that were pretty skimpy: depression, chicken pox, diabetes, vomiting. ["What Constitutes A Quality Life?," *Los Angeles Times*, Aug. 28, 1996]

Over one-third of McMahon's 2,000-abortion "series" involved neither fetal nor materna' health problems, however trivial.

In Dr. McMahon's interviews with *American Medical News* and with Keri Harrison, counsel to the House Judiciary Subcommittee on the Constitution, Dr. McMahon freely acknowledged that he performed **late second trimester** procedures that were "elective" even by *his* definition ("elective" meaning without fetal or maternal medical justification).

After 26 weeks, Dr. McMahon claimed that all of his abortions were "non-elective" – but his definition of "non-elective" was very expansive. His written submission stated:

> ***"After 26 weeks [six months],*** those pregnancies that are not flawed are still non-elective. They are interrupted because of maternal risk, rape, incest, ***psychiatric or pediatric indications*** " [emphasis added] ["Pediatric indications" was Dr. McMahon's terminology for young teenagers.]

Reasons for Partial-Birth Abortions: Dr. David Grundmann

Dr. David Grundmann, the medical director for Planned Parenthood of Australia, has written a paper in which he explicitly states that he uses the partial-birth abortion procedure (he calls it "dilatation and extraction") as his "method of choice" for abortions done after 20 weeks (4½ months), and that he performs such abortions for a broad variety of social reasons. [This paper, "Abortion After Twenty Weeks in Clinical Practice: Practical, Ethical and Legal Issues," and associated documentation. is available from NRLC.]

Dr. Grundmann himself described the procedure in a television interview as "essentially a breech delivery where the fetus is delivered feet first and then when the head of the fetus is brought down into the top of the cervical canal. it is decompressed with a puncturing instrument so that it fits through the cervical opening."

In the 1994 paper, Dr. Grundmann listed several "advantages" of this method, such as that it "can be performed under local and/or twi-light anesthetic" with "no need for narcotic analgesics," "can be performed as an ambulatory out-patient procedure," and there is "no chance of delivering a live fetus." Among the "disadvantages," Dr. Grundmann wrote, is "the aesthetics of the procedure are difficult for some people; and therefore it may be difficult to get staff." (Dr. Grundmann also wrote that "abortion is an integral part of family planning. Theoretically this means abortions at any stage of gestation. Therefore I favor the availability of abortion beyond 20 weeks.")

Dr. Grundmann wrote that in Australia, late-second-trimester abortion is available "in many

major hospitals, in most capital cities and large provincial centres" in cases of "lethal fetal abnormalities" or "gross fetal abnormalities," or "risk to maternal life," including "psychotic/suicidal behavior." **However, Dr. Grundmann said, his Planned Parenthood clinic *also* offers the procedure after 20 weeks for women who fall into five additional "categories": (1) "minor or doubtful fetal abnormalities," (2) "extreme maternal immaturity i.e. girls in the 11 to 14 year age group," (3) women "who do not know they are pregnant," for example because of amenorrhea [irregular menstruation] "in women who are very active such as athletes or those under extreme forms of stress i.e. exam stress, relationship breakup...," (4) "intellectually impaired women, who are unaware of basic biology...," (5) "major life crises or major changes in socio-economic circumstances. The most common example of this is a planned or wanted pregnancy followed by the sudden death or desertion of the partner who is in all probability the bread winner."**

• Is a partial-birth abortion ever the only way to preserve a mother's physical health?

President Clinton and pro-abortion advocacy groups have made strenuous efforts to persuade the public that partial-birth abortions are necessary to protect the lives or health of pregnant women. and many journalists have uncritically accepted this claim at face value. However. these claims are coming under increasingly sharp challenge from prestigious medical experts. and from women who have given birth to babies in circumstances such as those cited by President Clinton.

The sort of cases highlighted by President Clinton-- third-trimester abortions of babies with disorders incompatible with sustained life outside the womb-- account for a small fraction of all the partial-birth abortions. Confronted with identical cases, most specialists would never consider executing a breech extraction and puncturing the skull. Instead, most would deliver the baby alive, sometimes early, without jeopardy to the mother-- usually vaginally-- and make the baby as comfortable as possible for whatever time the child has allotted to her.

In an interview published in the August 19 edition of *American Medical News*, former Surgeon General C. Everett Koop said, "I believe that Mr. Clinton was misled by his medical advisors on what is fact and what is fiction in reference to late-term abortions. Because in no way can I twist my mind to see that the late-term abortions as described-- you know, partial birth, and then destruction of the unborn child before the head is born-- is a medical necessity for the mother. It certainly can't be a necessity for the baby."

Dr. Koop. a world-renown pediatric surgeon, was asked by the *American Medical News*

reporters whether he had ever "treated children with any of the disabilities cited in this debate? For example, have you operated on children born with organs outside of their bodies?" Dr. Koop replied, "Oh, yes indeed. I've done that many times. The prognosis usually is good. There are two common ways that children are born with organs outside of their body. One is an omphalocele, where the organs are out but still contained in the sac... the first child I ever did, with a huge omphalocele much bigger than her head, went on to develop well and become the head nurse in my intensive care unit many years later."

In addition, in the summer of 1996, an organization called Physicians' Ad Hoc Coalition for Truth (PHACT) began circulating material directly challenging President Clinton's claims. As of early September, PHACT reportedly consisted of over 230 physicians, mostly professors and other specialists in obstetrics, gynecology, and fetal medicine. In an advertisement published in August, the PHACT physicians said:

> Congress, the public-- but most importantly women-- need to know that partial-birth abortion is never medically indicated to protect a mother's health or her future fertility.

The PHACT doctors also referred directly to the specific medical conditions that affected some of the women who appeared with President Clinton at his April 10 veto ceremony, such as hydrocephalus (excessive fluid in the head), and commented:

> We, and many other doctors across the United States, regularly treat women whose unborn children suffer these and other serious conditions. Never is the partial-birth procedure medically indicated. Rather, such infants are regularly and safely delivered live, vaginally, with no threat to the mother's health or fertility.

At a July 24 briefing on Capitol Hill, PHACT member Dr. Curtis Cook, an ob/gyn perinatologist with the West Michigan Perinatal and Genetic Diagnostic Center (616-391-3681), said that partial-birth abortion

> is never necessary to preserve the life or the fertility of the mother, and may in fact threaten her health or well-being or future fertility. In my practice, I see these rare, unusual cases that come to most generalists' offices once in a lifetime-- they all come into our office. We see these every day....The presence of fetal disabilities or fetal anomalies are not a reason to have a termination of pregnancy to preserve the life of the mother-- they do not threaten the life of the mother in any way....[and] where these rare instances do occur, they do not require the death of the baby or the fetus prior to the completion of the delivery.

Also present at the July 24 briefing were several women who, while pregnant, had learned

that their unborn babies were afflicted with conditions similar or identical to those cited by President Clinton, but who gave birth to their babies alive. One of the women, Jeannie French of Oak Park, Illinois, distributed a July 17 letter that she and several other women sent to President Clinton, asking for a meeting so that he could learn about the medical alternatives to partial-birth abortion. Ms. French wrote:

> In recent months, I have had the opportunity to get to know many women who've carried and given birth to children with fatal conditions from anacephaly, encepaloceles, Trisomy 18, hydrocephaly, and even a rare disease called body stalk anomaly, in which internal organs develop outside a baby's body. We gave birth to our children knowing that their serious physical disabilities might not allow them to live long.... You say that partial-birth abortion has to be legal for cases *like ours*, because women's bodies would be 'ripped to shreds' by carrying their very sick children to term. By your repeated statements, you imply that partial-birth abortion is the *only or the most desirable response to children suffering severe disabilities* like our children... This message is so wrong!... Will you meet with us personally, and hear our stories?

Ms. French got a brief letter of response from two White House scheduling aides, who said that "the tremendous demands on the President will not give him the opportunity to speak with you and your group.... Your continued interest and support are deeply appreciated."

• What about President Clinton's statement that for some women, the only alternative to partial-birth abortion is to "rip your body to shreds"?

President Clinton has repeatedly justified his veto by referring to cases in which the baby suffers from advanced hydrocephaly (head enlargement). Speaking in Milwaukee on May 23, President Clinton suggested that Bob Dole or others who would deny a partial-birth abortion in such cases are saying "it's okay with me if they ripped your body to shreds and you could never have another baby."

But this is medical nonsense. Medical specialists commonly deal with cases of severe hydrocephaly by a procedure called cephalocentesis, in which a needle is used to withdraw the excess fluid (but *not* the brain), reducing the head size so that normal delivery of a live baby can occur. An eminent authority on such matters, Dr. Watson A. Bowes, Jr., professor of ob/gyn (maternal and fetal medicine) at the University of North Carolina, who is co-editor of the *Obstetrical and Gynecological Survey*, wrote to Congressman Charles Canady:

> Critics of your bill who say that this legislation will prevent doctors from performing certain procedures which are standard of care. such as cephalocentesis (removal of fluid from the enlarged head of a fetus with the most severe form of hydrocephalus) are mistaken. In such a procedure a needle is inserted with ultrasound guidance through the mother's abdomen into the uterus and then into the enlarged ventricle of the brain (the space containing cerebrospinal fluid). Fluid is then withdrawn which results in reduction of the size in the head so that delivery can occur. This procedure is not intended to kill the fetus. and, in fact, is usually associated with the birth of a live infant.

(Note: Cases of hydrocephaly accounted for less than 4% of Dr. McMahon's partial-birth abortions, according to his submission to the House Judiciary Committee.)

- **What about the small minority of cases that *do* involve "serious fetal deformity"?**

It is true that *some* partial-birth abortions -- a small minority -- involve babies who have grave disorders that will result in death soon after birth. But these unfortunate members of the human family deserve compassion and the best comfort-care that medical science can offer-- not a scissors in the back of the head. In some such situations there are good medical reasons to deliver such a child early, after which natural death will follow quickly.

Dr. Harlan Giles. a professor of "high-risk" obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures up until "viability." However, in sworn testimony in the U.S. Federal District Court for the Southern District of Ohio (Nov. 13. 1995), Prof. Giles said:

> [After 23 weeks] I do not think there are any maternal conditions that I'm aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated. In my experience for 20 years, one can deliver these fetuses either vaginally. or by Cesarean section for that matter, depending on the choice of the parents with informed consent. . . But there's no reason these fetuses cannot be delivered intact vaginally after a miniature labor, if you will, and be at least assessed at birth and given the benefit of the doubt. [transcript, page 240]

In a partial-birth abortion, the abortionist dilates a woman's cervix for three days, until it is open enough to deliver the entire baby breech, except for the head. When *American Medical News* asked Dr. Martin Haskell why he could not simply dilate the woman a little more and remove the baby without killing him, Dr. Haskell responded:

> The point here is you're attempting to do an abortion... not to see how do I manipulate the situation so that I get a live birth instead. [*American Medical News* transcript]

Under closer examination, it becomes clear that in some cases, the primary reason for performing the procedure is not concern that the baby will die in utero, but rather, that he/she will be *born alive*, either with disorders incompatible with sustained life outside the womb, *or* with a *non-lethal* disability. (Again, in Dr. McMahon's table of partial-birth abortions performed for "fetal indications," the largest category was for Down Syndrome.)

Viki Wilson, whose daughter Abigail died at the hands of Dr. McMahon at *38 weeks*, said:

> I knew that I could go ahead and carry the baby until full term, but knowing, you know, that this was futile, you know, that she was going to die... I felt like I needed to be a little more in control in terms of her life and my life, instead of just sort of leaving it up to nature, because look where nature had gotten me up to this point. [NAF video transcript, page 4.]

Tammy Watts, whose baby was aborted by Dr. McMahon in the 7th month, said:

> I had a choice. I could have carried this pregnancy to term, knowing everything that was wrong. [Testimony before Senate Judiciary Committee, Nov. 17, 1995]

Claudia Crown Ades, who appeared with President Clinton at the April 10 veto, said:

> My procedure was elective. That is considered an elective procedure, as were the procedures of Coreen Costello and Tammy Watts and Mary Dorothy-Line and all the other women who were at the White House yesterday. All of our procedures were considered elective. [Quotes from taped appearance on WNTM, April 12, 1996]

In a letter opposing HR 1833, one of Dr. McMahon's colleagues at Cedar-Sinai Medical Center, Dr. Jeffrey S. Greenspoon, wrote:

> As a volunteer speaker to the National Spina Bifida Association of America and the Canadian National Spina Bifida Organization, I am familiar with the burden of raising a significantly handicapped child. . . . The burden of raising one or two abnormal children is realistically unbearable. [Letter to Rep. Hyde, July 19, 1995]

• Is there a more "objective" term for the procedure than "partial-birth abortion"?

Some opponents of the Partial-Birth Abortion Ban Act (HR 1833) insist that anyone writing about the bill should say that it bans a procedure "known medically as intact dilation and evacuation." But when journalists comply with this demand, they do so at the expense of accuracy. The bill itself makes no reference whatever to "intact dilation and evacuation" abortions. More importantly, the term "intact dilation and evacuation" is *not* equivalent to the class of procedures banned by the bill.

The bill would make it a criminal offense (except to save a woman's life) to perform a "partial-birth abortion," which the bill ***would define— as a matter of law—*** as "an abortion in which the person performing the abortion partially vaginally delivers a ***living*** fetus before killing the fetus and completing the delivery." [emphasis added]

In contrast, the term "intact dilation and evacuation" was invented by the late Dr. James McMahon, and until recently, was idiosyncratic to him. It appeared in no standard medical textbook or database, nor anywhere in the standard textbook on abortion methods, *Abortion Practice* by Dr. Warren Hern. Because "intact dilation and evacuation"[2] is not a standard, clearly defined medical term, the House Judiciary Constitution Subcommittee staff (which drafted the bill under Congressman Canady's supervision) rejected it as useless for purposes of defining a criminal offense. Indeed, it is worse than useless– a criminal statute that relied on such a term would be stricken by the federal courts as "void for vagueness."

Although there is no clear definition of the term, we know enough to say that it is inaccurate to equate "intact dilation and evacuation" abortions with the procedures banned by HR 1833, since in his writings Dr. McMahon clearly used the term "intact dilation and evacuation" so broadly as to cover certain procedures which would ***not*** be affected at all by HR 1833 (e.g., removal of babies who are killed entirely in utero, and removal of babies who have died entirely natural deaths in utero). Indeed, at least one of the specific women highlighted by opponents of HR 1833 had various types of "intact D&E" abortion procedures that were ***not*** covered by HR 1833's definition of "partial-birth abortion."

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[2]The term "*intact* dilation and evacuation" should not be confused with "dilation and evacuation," which is a procedure commonly used in second-trimester abortions, involving *dismemberment* of the fetus/baby *while still in the uterus*. The bill does not apply to "dilation and evacuation" abortions at all.

[In his 1992 instructional paper, Dr. Haskell referred to the method as "dilation and extraction" or "D&X"-- noting that he "coined the term." When the bill was drafted, the term "dilation and extraction" did not appear in medical dictionaries or databases.]

The term chosen by Congress, **partial-birth abortion**, is in no sense misleading. In sworn testimony in an Ohio lawsuit on Nov. 8, 1995, Dr. Martin Haskell-- who has done over 1,000 partial-birth abortions, and who authored the instructional paper that touched off the controversy over the procedure-- explained that he first learned of the method when a colleague

> described very briefly over the phone to me a technique that I later learned came from Dr. McMahon where they internally grab the fetus and rotate it and accomplish-- be ***somewhat equivalent to a breech type of delivery.*** [emphasis added]

• Are the five line drawings of the procedure circulated by NRLC accurate, or misleading?

The AMA newspaper *American Medical News* (July 5, 1993) interviewed Dr. Martin Haskell and reported:

> Dr. Haskell said the drawings were accurate "from a technical point of view." But he took issue with the implication that the fetuses were "aware and resisting."

Professor Watson Bowes of the University of North Carolina at Chapel Hill, co-editor of the *Obstetrical and Gynecological Survey*, wrote in a letter to Congressman Canady:

> Having read Dr. Haskell's paper, I can assure you that these drawings accurately represent the procedure described therein.... Firsthand renditions by a professional medical illustrator, or photographs or a video recording of the procedure would no doubt be more vivid, but not necessarily more instructive for a non-medical person who is trying to understand how the procedure is performed.

On Nov. 1, 1995, Congresswoman Patricia Schroeder and her allies actually tried to prevent Congressman Canady from displaying the line drawings during the debate on HR 1833 on the floor of the House of Representatives. But the House voted by nearly a 4-to-1 margin (332 to 86) to permit the drawings to be used.

- **Does the bill contradict U.S. Supreme Court decisions?**

The Supreme Court has never said that there is a constitutional right to kill human beings who are mostly born.

In its official report on HR 1833, the House Judiciary Committee makes the very plausible argument that HR 1833 could be upheld by the Supreme Court without disturbing *Roe*. In *Roe*, the Supreme Court said that "the word 'person,' as used in the Fourteenth Amendment. does not include the unborn." Thus, under the Supreme Court's doctrine, a human being *becomes* a legal "person" upon emerging from the uterus. But a partial-birth abortion does not involve an "unborn fetus." A partial-birth abortion, by the very definition in the bill, kills a human being who is partly born. Indeed, a partial-birth abortion kills a human being who is four-fifths across the 'line-of-personhood' established by the Supreme Court.

Moreover, in *Roe v. Wade* itself, the Supreme Court took note of a Texas law that made it a felony to kill a baby "in a state of being born and before actual birth," and the Court did not disturb that law.

Thus, the Supreme Court could very well decide that the killing of a mostly born baby, even if done by a physician, is not protected by *Roe v. Wade*.

IRENE S. LOHKAMP, M.D.
BOARD CERTIFIED IN FAMILY PRACTICE

1200 AIRPORT HEIGHTS DRIVE, SUITE
ANCHORAGE, ALASKA 9
TELEPHONE: (907) 272-
FAX: (907) 272-

February 16, 1997

Regarding: H.B. 65

Dear Representative Kott:

I am a physician in private practice specializing in family medicine. I agree that partial birth abortions should be outlawed in Alaska as stated in Section 18.16.050. This is not the only method available for inducing abortion in the 2nd and 3rd trimester.

As you already know, this procedure is used in late term pregnancy just prior to and beyond gestational age viability. It probably is not successful earlier because the baby's sinews are too delicate to tolerate the traction required to pull the lower extremities and trunk out of the uterus and vaginal canal. The baby is intentionally rotated into breach position, extracted through the birth canal, with the head last remaining within the canal (often forcibly held within) to perform the cranial evacuation that terminates the baby's life functions.

This procedure has met with profound controversy by medical professionals and the general public alike because of its shocking violence and appearance of being infanticide. With extraordinarily rare exceptions, the procedure is not the sole method of achieving late term abortion. There are other methods available which have been practiced for many years before this procedure was developed. These are as safe, and possibly safer, for the mother. Banning partial birth abortions would still preserve the health of the mother and be protective of her rights.

Please sustain a ban on partial birth abortion in Alaska.

Sincerely yours,

Irene Lohkamp MD

Irene Lohkamp, M.D.

Robert G. Thompson, M.D., F.A.C.O.G.
Reproductive Surgeon - Society of Reproductive Surgeons
Diplomate - American Board of Obstetrics and Gynecology
Catherine A. Thompson, R.N., M.S.N.
Advanced Nurse Practitioner

FAX: (907) 465-2819

March 7, 1997

The Honorable Pete Kott
Representative - State of Alaska
Juneau, Alaska

ATTENTION: George Dozier — Re: House Bill 65
Partial Birth Abortion

Dear Sirs:

I am sending this letter in support of your HB 65 which outlaws "partial birth abortions" as specified in the bill. I've reviewed the bill and the arguments of other physicians, including those of the American College of Obstetrics and Gynecology, Physicians Ad Hoc Coalition for the Truth (PHACT), Doctors Susan Lemagie, Cynthia Brook, and Jan Whitefield.

I feel that the testimony of the PHACT is, in fact, the most accurate with regards to the conflicts and issues expressed by the present forces opposed to the bill; there are procedures that are much safer, including the use of prostaglandin medications.

While the use of prostaglandins takes more time, it stresses the patience of the abortionist, it is imminently more safe, and has had more significant peer review, literature, research, and medical data to support its application in appropriate circumstances. The restrictions in House Bill 65 are very specific, and in my opinion, as well as those of the physicians of the PHACT, those specifications do not encompass other abortion procedures as they are currently practiced.

A Professional Corporation, 4001 Dale Street, Suite 117, Anchorage, Alaska 99508
(907) 562-5328, FAX (907) 562-4563, Fertility (907) 562-3562

Once again, however, with regards to the specifications of the abortion procedure as specified, there are no known situations which have been published or peer reviewed for which this procedure would be necessary, nor is it taught in any obstetric or gynecologic residency program in the United States, to the best of my knowledge and that of the professors and physician members of the PHACT.

In summary, I hope you will continue on your course to ensure passage of this bill. There are far safer procedures when medically indicated that pose less of a threat of infection, retained products of conception, uterine perforation, hemorrhage, or death to the patient.

If I can be of further assistance in clarifying these issues, please contact me at your earliest convenience,.

Thank you,

Sincerely,

MD

Robert G. Thompson, M.D., FACOG
Reproductive Surgeon

JOSEPH D. RIEDERER, M.D.
4500 NO. DOUGLAS
JUNEAU, ALASKA 99801
TELEPHONE 907 - 586-3500

March 6, 1997

Representative Pete Kott
State of Alaska
FAX#465-2819

RE: House Bill #65

Dear Representative Kott:

I had hoped to testify on House Bill #65 but I will be out of Juneau at the next hearing. I was present on March 5.

My name is Joseph Riederer. I have been a Juneau physician since 1961. I am not a specialist in OB-GYN; however, a major part of my practice was obstetrics from 1961-77 and I attended perhaps 2000 deliveries, and from that time, have continued to do some C-section and laparoscopic OB and GYN care from 1977-96. I am writing in support of House Bill #65. I would have like to have testified against the use of partial birth abortion as a medical procedure. I believe it is unspeakably inhumane to carry this procedure out on what is frequently a viable infant.

This type of medical procedure, that is, a partial birth abortion, is not even listed or discussed or described as a medical procedure in any of the current OB-GYN references that I can find. For instance, the seven volume authoritative reference on Gynecology and Obstetrics by Sciarra, does not even discuss surgical intervention for late term abortions in this manner.

It has been argued that this is a necessary option for the health and safety of the mother. This is not verified by any respected medical authority that I can find. There are multiple procedural complications to the mother in any abortion procedure. That includes certainly uterine perforation, or rupture, sepsis, bleeding after the procedure, and incompetent cervix, sterility, andpsychological trauma, etc. All of this is in addition to the fetal death. People certainly need to figure out before the 2nd or 3rd trimester if abortion is an option or not if you believe an abortion is a necessity.

The proposed definition of this Bill is specific and no other medical procedure

would be restricted or affected by banning partial birth abortion. The language is clear and specific.

I hope that House Bill #65 will be enacted. Thank you for this consideration.

Sincerely,

Joseph D. Riederer

Joseph D. Riederer, M.D.

PHACT

Physicians' Ad Hoc Coalition for Truth

FOUNDING MEMBERS

Hon. Tom A. Coburn, M.D.
Family Practitioner, Obstetrician
Member, U.S. House of Representatives (OK-2)

Nancy Romer, M.D.
Fellow, American College of Obstetricians & Gynecologists
Clinical Professor, Ob/Gyn
Wright State University
Chairman, Dept. of Ob/Gyn,
Miami Valley Hospital, OH

Pamela Smith, M.D.
Director of Medical Education
Dept. of Obstetrics & Gynecology
Mt. Sinai Medical Center,
Chicago, IL
Member, Association of
tors of Ob/Gyn

mes Jones, M.D.
rofessor/Chair, Ob/Gyn
New York Medical College
Chair, Ob/Gyn
St. Vincent's Hospital &
Medical Center, NYC

Curtis R. Cook, M.D
Maternal Fetal Medicine
Butterworth Hospital
Michigan State College of
Human Medicine

Joseph L. DeCook, M.D
Fellow, American College of
Obstetricians & Gynecologists

William Stalter, M.D
Clinical Associate Professor,
Obstetrics & Gynecology
Wright State University, OH

Bernard Nathanson, M.D.
Visiting Scholar
Center for Clinical &
Research Ethics
Vanderbilt University

1150 South Washington Street
[illegible]0
ndria, VA 22314
703) 683-5004

Communications Counsel:
Gene Tarne, Michelle Powers

FOR IMMEDIATE RELEASE

FOR INFORMATION CONTACT:
Gene Tarne/Michelle Powers 703/683-5004

FORMER SURGEON GENERAL KOOP SEPARATES MEDICAL FACT FROM FICTION ON PARTIAL-BIRTH ABORTIONS

KOOP: THE PARTIAL-BIRTH ABORTION IS "IN NO WAY...A MEDICAL NECESSITY"

ALEXANDRIA, VA -- In a wide ranging interview with the American Medical News, former Surgeon General C. Everett Koop expressed his opposition to partial-birth abortions and declared that they are not medically necessary.

The former Surgeon General was asked about President Clinton's recent veto of a bill to ban partial-birth abortions and claims regarding the medical need for them. Following is Dr. Koop's response, reported in the August 19th issue of American Medical News:

> **"I believe that Mr. Clinton was misled by his medical advisers on what is fact and what is fiction in reference to late-term abortions. *Because in no way can I twist my mind to see that the late-term abortion as described -- you know, partial-birth, and then destruction of the unborn child before the head is born -- is a medical necessity for the mother.* It certainly can't be a necessity for the baby. So I am opposed to ... partial birth abortions."**

Asked "have you ever treated children with any of the disabilities cited in the debate? For example, have you operated on children with organs outside of their bodies," Koop responded:

> **"Oh, yes indeed. I've done that many times. The prognosis is usually good. [With an] omphalocele...organs are out but still contained in the sac composed of the tissues of the umbilical cord. I have been repairing those since 1946...In fact, the first child I ever did, with a huge omphalocele much bigger than her head, went on to develop well and become the head nurse in my intensive care unit many years later."**

Dr. Koop's remarks echo over three hundred other medical professionals -- leaders in the fields of obstetrics, gynecology and perinatology -- who have joined the Physicians' Ad-hoc Coalition for Truth to help Americans and Congress understand that partial-birth abortion is never medically necessary, and in fact can threaten a mother's health and safety.

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The Physicians' Ad-hoc Coalition for Truth (PHACT), with over three hundred members drawn from the medical community nationwide, exists to bring the medical facts to bear on the public policy debate regarding partial birth abortions. Members of the coalition are available to speak to public policy makers and the media. If you would like to speak with a member of PHACT, please contact Gene Tarne or Michelle Powers at 703-683-5004.

FACT SHEET: PARTIAL-BIRTH ABORTIONS MEDICALLY NECESSARY?

Those who oppose the Partial Birth Abortion Ban Act (HR 1833) sometimes claim that partial birth abortions are necessary to preserve a mother's health or future ability to have children. The medical evidence to the contrary is overwhelming:

-- Dr. Pamela E. Smith, Director of Medical Education, Department of Obstetrics and Gynecology, Mt. Sinai Hospital, Chicago testified before the U.S. Senate: "There are absolutely no obstetrical situations encountered in this country which require a partially delivered human fetus to be destroyed to preserve the life or health of the mother." [Senate hearing record, p. 82].

--Dr. Harlan R. Giles, a professor of "high-risk" obstetrics and perinatology at the Medical College of Pennsylvania, performs abortions by a variety of procedures up until "viability." In sworn testimony in the U.S. Federal District Court for the Southern District of Ohio (Nov. 13, 1995), Professor Giles said:

> [After 23 weeks], I don't think there are any maternal conditions that I'm aware of that mandate ending the pregnancy that also require that the fetus be dead or that the fetal life be terminated. In my experience for 20 years, one can deliver these fetuses either vaginally, or by Cesarean section for that matter, depending on the choice of the parents with informed consent. . . But there's no reason these fetuses cannot be delivered intact vaginally after a miniature labor, if you will, and be at least assessed at birth and given the benefit of the doubt. [transcript, p. 240].
>
> ...
>
> And I cannot think of a fetal condition or malformation, no matter how severe, that actually causes harm or risk to the mother of continuing the pregnancy. I guess one extremely rare example might be a partial hydatidiform mole. But that's a one in a million situation. In most cases mothers [are] carrying an abnormal fetus such as with Down's syndrome, anencephaly, the absence of a brain itself, dwarfism. Other severe even lethal chromosome abnormalities, those mothers if you follow their pregnancy have no higher risk of pregnancy complications than for any other mother who's progressing to term for a delivery. [transcript 241-42]

--Some claim partial birth abortion is needed when a baby suffers from severe hydrocephalus (enlargement of the head due to excess fluid on the brain). But an eminent authority on such

matters, Dr. Watson A. Bowes, Jr., professor of obstetrics and gynecology at the University of North Carolina, and co-editor of the *Obstetrical and Gynecological Survey*, wrote to Congressman Canady:

> Critics of your bill who say that this legislation will prevent doctors from performing certain procedures which are standard of care, such as cephalocentesis (removal of fluid from the enlarged head of a fetus with the most severe form of hydrocephalus) are mistaken. In such a procedure a needle is inserted with ultrasound guidance through the mother's abdomen into the uterus, and then into the enlarged ventricle of the brain (the space containing cerebrospinal fluid). Fluid is then withdrawn which results in reduction of the size in the head so that delivery can occur. This procedure is not intended to kill the fetus, and, in fact, is usually associated with the birth of a live infant.

--Dr. James Jones, chairman of the department of obstetrics and gynecology at the New York Medical College, has stated that he "can't think of any situation where you would have to carry out a specific, direct attack on the fetus." With regard to the partial birth procedure, he said that he "can't imagine that being an indicated procedure for the saving of a life or well-being of the mother." [*Catholic New York*, 5/2/96]

--In an article in the *American Medical News* ["Outlawing abortion method," 11/20/1995], Dr. Warren Hern, late-term abortion provider and author of the nation's most widely used textbook on late-term abortions said of the partial birth procedure: "You really can't defend it. . . . I would dispute any statement that this is the safest procedure to use." He noted that turning the fetus to a breech position is "potentially dangerous," and added: "You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that."

--The American Medical Association's legislative council voted unanimously to recomend that the AMA endorse the Partial Birth Abortion Ban Act. While the entire AMA remained neutral on the act, the council concluded that the procedure is "not a recognized medical technique," "almost does not exist in the medical literature," and is a "basically repulsive" procedure. [*Congress Daily*, 10/10/95, p. 1].

PHACT

Physicians' Ad Hoc Coalition for Truth

September 18, 1996

FOUNDING MEMBERS

Hon. Tom A. Coburn, M.D.
Family Practitioner, Obstetrician
Member, U.S. House of Representatives (OK-2)

Nancy Romer, M.D.
Fellow, American College of Obstetricians & Gynecologists
Clinical Professor, Ob/Gyn
Wright State University
Chairman, Dept. of Ob/Gyn,
Miami Valley Hospital, OH

Pamela Smith, M.D.
Director of Medical Education
Dept. of Obstetrics & Gynecology
Mt. Sinai Medical Center,
Chicago, IL
Member, Association of Professors of Ob/Gyn

James Jones, M.D.
Professor/Chair, Ob/Gyn
New York Medical College
Chair, Ob/Gyn
St. Vincent's Hospital & Medical Center, NYC

Curtis R. Cook, M.D.
Maternal Fetal Medicine
Butterworth Hospital
Michigan State College of Human Medicine

Joseph L. DeCook, M.D.
Fellow, American College of Obstetricians & Gynecologists

William Stalter, M.D.
Clinical Associate Professor,
Obstetrics & Gynecology
Wright State University, OH

Bernard Nathanson, M.D.
Visiting Scholar
Center for Clinical & Research Ethics
Vanderbilt University

1150 South Washington Street
Suite 230
Alexandria, VA 22314
(703) 683-5004

Communications Counsel:
Gene Tarne, Michelle Powers

Dear Member of Congress:

We write to you as founding members of the Physicians' Ad-hoc Coalition for Truth (PHACT), an organization of over three hundred members drawn from the medical community nationwide -- most ob/gyns, perinatologist and pediatricians -- concerned and disturbed over the medical misinformation driving the partial-birth abortion debate. As doctors, we cannot remember another issue of public policy so directly related to the medical community that has been subject to such distortions and outright falsehoods.

The most damaging piece of medical disinformation that seems to be driving this debate is that the partial-birth abortion procedure may be necessary to protect the lives, health and future fertility of women. You have heard this claim most dramatically not from doctors, but from a handful of women who chose to have a partial-birth abortion when their children were diagnosed with some form of fetal abnormality.

As physicians who specialize in the care of pregnant women and their children, we have all treated women confronting the same tragic circumstances as the women who have publicly shared their experiences to justify this abortion procedure. So as doctors intimately familiar with such cases, let us be very clear: *the partial-birth abortion procedure, as described by Dr. Martin Haskell (the nation's leading practitioner of the procedure) and defined in the Partial-Birth Abortion Ban Act, is never medically indicated and can itself pose serious risks to the health and future fertility of women.*

There are simply no obstetrical situations encountered in this country which require a partially-delivered human fetus to be destroyed to preserve the life, health or future fertility of the mother. Not for hydrocephaly (excessive cerebrospinal fluid in the head); not for polyhydramnios (an excess of amniotic fluid collecting in the woman); and not for trisomy (genetic abnormalities characterized by an extra chromosome).

Our members concur with former Surgeon General C. Everett Koop's recent statement that "in no way can I twist my mind to see that [partial-birth abortion] is a medical necessity for the mother."

As case in point would be that of Ms. Coreen Costello, who has appeared several times before Congress to recount her personal experience in defense of this procedure. Her unborn child suffered from at least two conditions: "polyhydramnios secondary to abnormal fetal swallowing," which causes amniotic fluid to collect in the uterus, and "hydrocephalus", a condition that causes an excessive amount of fluid to accumulate in the fetal head.

The usual treatment for removing the large amount of fluid in the uterus is a procedure called amniocentesis. The usual treatment for draining excess fluid from the fetal head is a procedure called cephalocentesis. In both cases the excess fluid is drained by using a thin needle that can be placed inside the womb through the abdomen ("transabdominally"--the preferred route) or through the vagina ("transvaginally.") The transvaginal approach however, as performed by Dr. McMahon on Ms. Costello, puts the woman at an increased risk of infection because of the non-sterile environment of

the vagina. Dr. McMahon used this approach most likely because he had no significant expertise in obstetrics and gynecology. After the fluid has been drained, and the head decreased in size, labor would be induced and attempts made to deliver the child vaginally. Given these medical realities, the partial-birth abortion procedure can in no way be considered the standard, medically necessary or appropriate procedure appropriate to address the medical complications described by Ms. Costello or any of the other women who were tragically misled into believing they had no other options.

Indeed, the partial-birth abortion procedure *itself* can pose both an immediate and significant risk to a woman's health and future fertility. To take just one example, to forcibly dilate a woman's cervix over the course of several days, as this procedure requires, risks creating an "incompetent cervix," a leading cause of future premature deliveries. It seems to have escaped anyone's attention that one of the five women who appeared at President Clinton's veto ceremony who had a partial-birth abortion subsequently had five miscarriages.

The medical evidence is clear and argues overwhelmingly against the partial-birth abortion procedure. Given the medical realities, a truly pro-woman vote would be to end the availability of a procedure that is so potentially dangerous to women. The health status of women and children in this country can only be enhanced by your unequivocal support of H.R. 1833.

Thank you for your consideration.

Sincerely,

Nancy G. Romer, M.D
FACOG
Clinical Professor
Department of Obstetrics and Gynecology
Wright State University;
Chairman, Dept. of Ob/Gyn
Miami Valley Hospital, OH

Curtis R. Cook, M.D.
Maternal Fetal Medicine
Butterworth Hospital
Michigan State College of Human Medicine

Pamela E. Smith, M.D.
Director of Medical Education
Dept. of Obstetrics and Gynecology
Mt. Sinai Medical Center
Chicago, IL;
Member, Association of Professors of Ob/Gyn

Joseph L. DeCook, M.D.
FACOG
Holland, MI

PHACT

Physicians' Ad Hoc Coalition for Truth

1150 South Washington Street
Suite 230
Alexandria, VA 22314
(703) 683-5004

Communications Counsel:
Gene Tarne, Michelle Powers

FOUNDING MEMBERS

Hon. Tom A. Coburn, M.D.
Family Practitioner,
Obstetrician
Member, U.S. House of Representatives (OK-2)

[illegible]ncy Romer, M.D.
[illegible]low, American College of Obstetricians & Gynecologists (FACOG)
Clinical Professor, Ob/Gyn
Wright State University
Chairman, Dept. of Ob/Gyn, Miami Valley Hospital, OH

Pamela Smith, M.D.
Director of Medical Education
Dept. of Obstetrics & Gynecology
Mt. Sinai Medical Center, Chicago, IL
Member, Association of Professors of Ob/Gyn

James Jones, M.D.
Professor/Chair, Ob/Gyn
New York Medical College
Chair, Ob/Gyn
St. Vincent's Hospital & Medical Center, NYC

[illegible] M.D.
Maternal Fetal Medicine
Butterworth Hospital
Michigan State College of Human Medicine

Joseph L. DeCook, M.D.
Fellow, American College of Obstetricians & Gynecologists (FACOG)

William Stalter, M.D.
Clinical Associate Professor, Obstetrics & Gynecology, Wright State University, OH

Bernard Nathanson, M.D.
Visiting Scholar
Center for Clinical & Research Ethics, Vanderbilt University

GENERAL MEMBERS
(updated 9/17)

Bob Christmas, M.D.
FACOG
Marietta, GA

Eugene Rudd, M.D.
FACOG
Bristol, TN

Kathy Santi, M.D.
Port Orange, FL

James Long, M.D.
FACOG
West Point, GA

Edward Hannigan, M.D.
Director, Dept. of Obstetrics and Gynecology, University of TX Medical Branch at Galveston

Denis Cavanagh, M.D.
Professor, Obstetrics and Gynecology, University of FL at Tampa

James R. Freeman, M.D.
FACOG
Lawrenceville, GA

[illegible] B. Dieterich, M.D.
FACOG
Clinical Instructor,
Washington University
School of Medicine
St. Louis, MO

Donovon Hanson, M.D.
FACOG
Clinical Professor,
University of Washington,
Seattle

David W. Adcock, II, M.D.
Ob/Gyn
Moultrei, GA

Camilla Hersh, M.D.
Ob/Gyn
Vienna, VA

Hoyt C. Dees, M.D.
Ob/Gyn
Atlanta, GA

Robert B. Albee, Jr., M.D.
Ob/Gyn
Atlanta, GA

Donna Harrison, M.D.
FACOG
Berrien, MI

Brayden Richmond, M.D.
JFACOG
Helen Keller Hospital
Tuscumbia, GA

Elizabeth Street, M.D.
FACOG
Marietta, GA

Lewis J. Marola, M.D.
Chairman, Dept. of Obstetrics and Gynecology,
St. Clare's Hospital
Schenectady, NY

Linda M. Gourash, M.D.
Developmental Pediatrician
Pittsburgh, PA

Sook Mie Choi, M.D.
Ob/Gyn
Mishawaka, IN

Lawrence Burdge, M.D
FACOG
Perry, GA

Joan Stapleton, M.D.
Anesthesiologist
Wellsley, MA

Thomas J. Giblin, M.D.
Ob/Gyn
Wellsley, MA

William F. Colliton, M.I
FACOG
Clinical Professor,
Obstetrics and Gynecolo
The George Washington
University Medical Cent
Washington, D.C.

Leslie Hansen, M.D.
Ob/Gyn
Charlotte, NC

Thomas J. Kennedy, M.I
A.P.M.C.
OB/GYN
Metairie, LA

Brad Fields, M.D.
FACOG
Jonesboro, AR

Frank Giglio, M.D., P.A.
FACOG
Clinical Assistant Profess
Dept. of OB/GYN, Texas
University Medical Branc
Beaumont, TX

Hugh Gavin Grimes, M.I
Assistant Clinical Profess
Dept. OB/GYN,
Northwestern University
Chicago, IL

James G. Linn, M.D.
Chairman, Dept. OB/GYI
St. Mary's Hospital,
Assistant Clinical Profess
OB/GYN, Medical Colleg
of Wisconsin, Milwaukee

James R. Dillon, M.D.
FACOG
Former Director of
Obstetrics at St. Francis
Hospital, Evanston, IL
Former clinical instructor of
OB/GYN at Loyola
University, Stritch School
of Medicine, Chicago, IL

Jerome L. Sinsky, M.D.
FACOG
Escondido, CA

Jerry A. Wittingen, M.D.
Clinical Associate Professor
of OB/GYN, Michigan state
College of Human Medicine
Grand Rapids, MI

Julie A. Mickelson, M.D.
OB/GYN
Milwaukee, WI

Kamal M. Behnam, M.D.
FACOG
Clinical Professor, Dept.
OB/GYN, W.Va University
School of Medicine,
Morgantown, W.VA

Mark G. Lewis, D.O.
OB/GYN
Obstetrics Coordinator
Family Practice Residency
St. Joseph's Medical Center
South Bend, IN

Matthew J. Bulfin, M.D.
OB/GYN
Fort Lauderdale, FL

Michael Soderling, M.D.
FACOG
West Bend, WI

Ted E. Fogwell, M.D., P.A.
OB/GYN
Dallas, TX

Thaddeus A. Figlock, M.D.,
P.C.
OB/GYN
Taunton, MA

Thomas Theocharides,
M.D.
OB/GYN
Elkhart, IN

J. Michael Fite, M.D.
FACOG
Fort Worth, TX

Adam B. Blinkley, M.D.
OB/GYN
Clinical Instructor, Dept of
OB/GYN at Michigan State
University College of
Medicine
Grand Rapits, MI

Lawrence Dunegan, M.D.
Pediatrician
Pittsburgh, PA

Herb Atkinson, M.D.
OB/GYN
Bridgman, MI

Bennie P. Nobles, M.D.
OB/GYN
Metairie, LA

Leonard E. Marotta, M.D.
FACOG
East Syracuse, NY

Frank Zarka, M.D.
OB/GYN
San Jose, CA

John J. Choby, M.D.
OB/GYN
North Wales, PA

Mark T. Karnes, D. O.
FACOG, OB/GYN Surgery
Muskegon, MI

Harvey T. Huddleston,
M.D.
Associate Professor of
Clinical Obstetrics and
Gynecology,
Head of Section,
Urogynecology/Pelvic
Reconstructive Surgery,
LSU School of Medicine

David V. Foley, M.D.
Clinical Professor of
OB/GYN, Medical College
of Wisconsin

William R. Dorsey, D.O.
FACOG
Chairman Section
OB/GYN,
Grandview/Southview
Hospital, OH
Centerville, OH

Matthew J. Barulich, M.D.
FACOG
Carson City, NE

Karin E. Shinn, D.O.
Assistant Attending, Coney
Island Hospital; Clinical
Instructor, St. Georges
Medical School, Grenada,
West Indies; Adjunct
Clinical Instructor, New
York College of
Osteopathic Medicine, Old
Westbury, NY

Brendan Mitchell, M.D.
OB/GYN
Shawnee Mission, KS

Peter B. Greenspan, D.O.
FACOG; Assistant Clinical
Professor, Dept of
OB/GYN, Truman Medical
Center, University of
Missouri, Kansas City
Schol of Medicine; Asst.
Professor, University of
Health Science, College of
Osteopathic Medicine
Lee's Summit, MO

Anne B. Ward, M.D.
OB/GYN
Chicago, IL

John M. Dodge, M.D.
FABOG, FACOG
Texarcana, TX

Karen Rainer, M.D.
OB/GYN; Asistant
Director, Perinatology,
Bayfront Medical Center,
St. Petersburg, FL

Matthew Anderson, M.D.
OB/GYN
Burlington, IA

Gordon Blake Clark, M.D.
FACOG
Lexington, MO

Rajendra M. Ratnesar,
M.D.
FACOG
Clinical Asst. Instructor,
Stanford University
Castro, CA

Joe A. Cloud, M.D.
FACOG
Russellville, AR

Michael R. Waatkins, M.D.
FACOG; Clinical Asst.
Profesor of OB/GYN,
Medical University of S.C
Spartanburg, SC

Albert M. Bringardner,
M.D., FACOG
Sr. Vice President, Medical
Affairs, Lake Hospital
System, OH

Karl H. Johansson, M.
OB/GYN
Oroville, CA

Christopher Roberts, M.D
OB/GYN
Joplin, MO

Howard Roberts, M.D.
OB/GYN
Joplin, MO

Robert Weeldreyer, M.D.
FACOG

L. Carl Jurgens, M.D.
DABOG
Holland, MI

Calvin J. Siegers, M.D.
FACOG

Kirk Tyler, M.D
FACOG

James Girard, M.D.
OB/GYN

, OB-GYN

'avid J. Young. M.D.
.nternal Medicine
Holland. MI

Theresa IShedenhelm. M.D.
Family Physician
Muskegon. MI

J.M Lackey M.D. P.A.
FACOG
Pocatello. ID

Jeffrey Keenan. M.D.
FACOG
Director. Division of Reproductive Endocrinalogy & Infertility. Department of Obstetrics & Gynecology. University of Tennesse Medical Center; Associate Professor. Dept. OB/GYN. University of Tenessee Medical Center
Knoxville . TN

John James DeMarco. M.D.
'GYN
:ne. PA

Robert LaCava
FACOG
Bennetsville. SC

Roalph G. Ryan. M.D.
Cardiologist
Muskegon. MI

Michael Draper. M.D.
OB/GYN: Instructor
Bowman Gray School of Medicine
Salt Lake City. UT

J.M. Arrunategui. M.D. P.C.
OB/GYN
Clinical Assistant Professor. Elizabeth General Medical. St. Elizabeth Hospital
Elizabeth. NJ

Je Zabielski. M.D.
O. GYN
ottsdale. AZ

FACOG

Harley A. Grim. M.D
OB/GYN
Cincinnati. OH

Grace Valente. M.D.
OB GYN
Macon. GA

Robert Swan. M.D.
OB/GYN.Female Caner. GYN Oncologist. Dir GYN/ONC St. Johns Mercy Med. Center. St. Lewis University
Grover. MO

Robert Plambeck M.D.
FACOG: Chairman of OB/GYN Department at Bryan Memorial Hospital
Lincoln. NE

John Murphy. M.D.
OB/GYN
Associate Professor.
University of IL School of Medicine

James O'Connor. M.D.
FACOG
Gloucester. VA

Vincent J. McPeak. M.D.
OB/GYN

William J. Polzin. M.D.
OB/GYN Maternal-Fetal Medicine
Cincinnati. OH

Dorothy Roels M.D.
Corpus Christi. TX

Gustav K. Barkett. D.O.
FACOG
Muskegon. MI

Dominick A. Caselnova. M.D.
FACOG
Dade City. FL

P.A. JFACOG
Katy. TX

Lawrence J. Smith. M.D.
OB/GYN
Goshen. IN

James R. Van Curen. M.D.
OB/GYN
Goshen. IN

Kenneth D. Petersen. M.D.
OB/GYN
Goshen. IN

Fred A. Simon. M.D.
OB/GYN
Goshen. IN

Steven A. Roth. M.D.
FACOG
Inverness. FL

David Meyer. M.D. P.C.
OB/GYN
Holland. MI

Ralph P. Miech. M.D. Ph.D.
Associate Professor Dept. of Pharmacology. Physiology. & Biotechnology. Brown University School of Medicine. Providence
E. Providence. RI

Richard Switzer. M.D.
Internalist & Pediatrician
Grandville. MI

John Heffron
Clinical Professor of OB/GYN Creighton University. Omaha
Omaha. NE

Angelica M. Zaid. M.D.
OB/GYN
Encinitas. CA

Robert F. Scanlon. Jr., M.D.
Huntington. NY

Walter B. Hull. M.D.
OB/GYN
Assistant Professor. Ohio State University. Columb Dublin. OH

Alan Murnane. M.D.
FACOG
Associate Chairman. Dep of OB/GYN. St. Vincent Medical Center. Toledo
Volunteer Clincial Associate Professor
Dept. OB/GYN Medical College of Ohio. Toledo

Frank C. Morrone. M.D.
OB/GYN
Dallas. TX

Antohony J. Linn. M.D.
Milwaukee. WI

David A. Rueff. M.D.
FACOG
Clinical Instructor.
University of TN Hospital
Knoxville. TN

Steven A. Foley. M.D.
FACOG
Indianapolis. IN

Thomas A. Noone. M.D.
FACOG
Haddonfield. NJ

Douglas John Doty. M.D.
Anesthesiology
Holland. MI

James F. Hartman. MD
OB/GYN
Denver. CO

Fernand H. Prussing. M.D
FACOG
Assistant Clinical Professo of OB/GYN. UCLA
Downey. CA

J. Shun Young. M.D.
OB/GYN
Chief of Staff of Obstetrics at Jacksonville Hospital
Jacksonville. AL

J.W. Bryant, M.D.
OB/GYN
Springfield, OH

Michael W. Sullivan, M.D.
OB/GYN
Eau Claire, WI

J. Frederick Walk, M.D.
OB/GYN
Winchester, VA

Steve Calvin, M.D.
FACOG
Maternal-Fetal Medicine Specialist, High-Risk Obstetrics, University MN
Minneapolis, MN

Joseph Harmon, M.D.
OB/GYN
South Bend, IN

Laura Langley, M.D. P.A.
OB/GYN
Orange, TX

E. Peter Anzaldo, M.D.
OB/GYN; Assoc. Clinical Professor, Dept.of OB/GYN, University of California at Irvine
Irvine, CA

Loren Wanner, M.D.
FACOG
Blusston, IN

Rafael E. Vicens, M.D.
FACOG
Humacao, PR

Robert Lowden, M.D.
Arlington, WA

Joseph Kevehel, D.O
FACOG; Professor of OB/GYN Chairman of Dept. of OB/GYN
Oklahoma State University College of Osteopathic Medicine, Tulsa
Tulsa, OK

G[illegible]. Forcier, M.D.
F[illegible]OG
[illegible] Grove Village, IL

James Hanser, M.D.
OB/GYN
Fairfield, CA

James Presley, M.D.
OB/GYN
Vero Beach, FL

Edward J. Mila Prats, M.D.
P.A.
OB/GYN
Port St. Lucie, FL

John Sand, M.D.
OB/GYN
Ellensburg, WA

Kathi A. Aultman, M.D.
P.A. FACOG
Department Chairman, OB/GYN at Orang Park Medical Center
Orange Park, FL

Frank D. Setzler, Jr., D.O.
FACOG
Palestine, TX

Richard R. Temple, M.D.
FACOG
Rhinebeck, NY

Windsor A Holt, M.D.
OB/GYN
Raleigh, NC

Lance Radbill, D.O.
FACOG
Birmingham, AL

Daniel Voss, M.D.
Obstetrics
Georgetown, TX

Robert E. Hedican, M.D.
FACOG
Clinical Faculty, Black Hawk Area Fmily Practice Program, Waterloo, IA

Harry C. Beaver, M.D
FACOG; Clincal Professor OB/GYN, George Washington University School of Medicine and Health Sciences
Annandale, VA

William L. Toffler, M.D.
Family Practice Associate Professor of Family Medicine, Director of Education, Dept. of Family Medicine Oregon Health Sciences University, Portland

John D. Holmes, M.D. P.C.
OB/GYN
Mesa, AZ

Thomas Ritter, M.D.
FACOG
St. Joseph, MI

Timothy Dindoffer, M.D.
FACOG
West Bloomfield, MI

James L. Gildner, M.D.
FACOG
President Elect, Medical Staff, Memorial Medical center, Medical Director, Women and Infants Services, Springfield Dept. of Public Health; Clinical Assoc., Dept of OB/GYN, Department of Family Practice, Springfield Illinois University School of Medicine
Springfield, IL

Gerald Corcoran, M.D.
Family Physician; Assistant Professor of Family and Community Medicine, UMASS Medical School
Needham, MA

Robert C. Laliberte, M.D.
FACOG
Past Chairman, Dept. of OB/GYN, Phoenix Indian Medical Center
Phoenix, AZ

Tom Whalen, M.D.
OB/GYN
St. Louis, MO

Kurt R. Finberg, M.D.
OB/GYN
Bakersfield, CA

Dirk T. Carlson, M.D.
FACOG
Boise, ID

James Starr, M.D
OB/GYN; Associate of the American Coo[illegible]
OB/GYN
Phoenix, AZ

James J. Delaney, M.D.
OB/GYN; Associate Clin[illegible] Professor of OB/GYN at t[illegible] University of Colorado Health Science Center
Highlands Ranch, CO

J. Michael Davidson, M.D
FACOG
Forence, SC

J. Kenneth Davis, M.D.
OB/GYN
Associate Clinical Professor at the Northeast Ohio Universities College of Medicine
Akron, OH

Richard Robie, M.D.
OB/GYN
Wiloughby, OH

Albert M. Bringardner, M.D.
FACOG
Senior VP Medical Affairs, Lake Hospital System
Painesville, OH

William M. Petty, M.D.
OB/GYN
Gynecologic Oncology
Portland, OR

Michele P. Johnson, M.D.
OB/GYN
Abilene, TX

Nathan Hoeldtke, M.D.
OB/GYN
Tocoma, WA

FACOG
Associate Professor of
Clinical OB/GYN.
Uniformed Services.
University of Health
Sciences. F. Edward Hebert
School of Medicine.
Bethesda. MD

Steve Adam. M.D.
FACOC
Florence . SC

Paul S. Kruger. M.D.
OB/GYN
Watertown. NY

Bane Travis. M.D.
OB/GYN

Eugene J. Sweeney. M.D.
MPH
FACOG
Rye Beach . NH

Jerry S. Putman. M.D.
OB/GYN
Tyler. TX

Robert E. Rathe. Jr.. M.D..
P.A
OB/GYN
New Braunfels. TX

Fred A. Williams. M.D.
FACOG
Pairs. TX

Simon Solano. M.D.
OB/GYN
Springfield. VT

Donna L. Schmitz. M.D.
Pediatrics
Milwaukee. WI

Stephen T. Torday. M.D.
OB/GYN
Fountain Valley. CA

Clifford Sherwood. M.D.
FACOG
Colorado Springs. CO

[illegible]
Clinical Care Associate
Doylestown Women's
Health Center. University of
Pennsylvania Health System
Doylestown. PA

Marica Bohn Rhelil. M.D.
OB/GYN
Beckley. WV

Marshall W. White. Jr.
M.D.
OB/GYN
Hamilton. MT

Edward M. Sullivan. M.D.
OB/GYN
Clinical Professor of
OB/GYN. Thomas
Jefferson University
Medical School
Media. PA

Marshall D. Matthews.
M.D. FACOG
Moses Lake . WA

Julio Guerra. M.D.
OB/GYN
Paris. TN

Harvey T. Huddleston.
M.D.
OB/GYN. Associate
Professor of Clinical
OB/GYN Lousiana State
Univ. School of Medicine.
Department of OB/GYN
Director. Division of
Benign Gynecology
Head of Section.
Urogynecology/Pelvic
Reconstructive Surgery.
L.S.U. School of Medicine.
Dept. OB/GYN L.S.U.
Medical Center-Shreveport
Shreveport. LA

Thomas B. Lebherz. M.D.
OB/GYN; Professor
Emerinus. Dept. OB/GYN.
UCLA School of Medicine
Los Angeles. CA

[illegible]
Bismarck. ND

Donald T. Green. M.D.
FACOG
Montgomery. AL

Edward C. Ryan. M.D..
S.C.
FACOG
Orland Park. IL

Don Gambrell. Jr.. M.D
FACOG
Clinical Professor of
Endocrinology and
OB/GYN. Dept. of
Physiology and
Endocrinology Medical
College of Georgia.
Augusta. GA

James Guenther. D.O.
FACOG
Lancaster. OH

Laurence Burns. D.O.
OB/GYN
Grand Rapids. MI

Miles J. Murphy. M.D
OB/GYN
Grand Rapids. MI

John G. Hartmann. M.D
OB/GYN
Grand Rapids. MI

Stephen A Hickner. M.D
OB/GYN
Grand Rapids. MI

Timothy F. Murphy. M.D.
OB/GYN
Grand Rapids. MI

Scott Farhart. M.D.
FACOG
PA

David T. McKnight.M.D.
OB/GYN
Murfreesboro. TN

Paul E. Jarrett. Jr.. M.D.
OB/GYN
Indianpolis. IN

Thomas C. Christianse
M.D
OB/GYN
Joliet. IL

Paul A. Capelli. M.D
FACOG
Kenosha. WI

J. Peter Forney. III. M.I
P.A
OB/GYN
New Braunfels. TX

Hans E. Geisler. M.D.
FACOG
Gyn Oncology & Gyn
Surgery
Clinical Staff. Dept.
OB/GYN. Indiana
University Medical Cen
Indianapolis. IN

Marrgaret C. Nordell. M

Robert M. St. John. M.I
FACOG
Butte. MT

Pete Verrill. M.D.
FACOG
President Elect. Medical
Staff. Winter Haven
Hospital
Winter Haven. FL

Joseph Pastorek. M.D.
Lousisiana State Univ.
Dept. OB/GYN &
Infectious Disease Sectio
Medical Center
New Orleans. LA

Robert B. Albee Jr. M.D.
FACOG
Dunwoody. GA

Jerry M. Obritsch. M.D.
OB/GYN
Bismarck. ND

Stephen R. Belton. M.D.
OB/GYN
San Jose. CA

Gary L. Forster, M.D.
FACOG
Clincial Instructor, Rush Medical College, Chicago
Elk Grove Village, IL

Myles Dorio, M.D.
FACOG
Woodcliff Lake, NJ

Sid Crosby, M.D.
AAFP
Jacksonville, AL

Carol Miller, M.D.
FACOG
Endicott, NY

Thomas W. Spanks, M.D.
FACOG
Baton Rouge, LA

William Treat, M.D.
FACOG
San Diego, CA

Noel T. Carlson, DO
Anesthesiologist
Holland, MI

Lenita C. Massey, M.D.
OB/GYN
Richardson, TX

Joseph A. Zavaletta, M.D.
OB/GYN
Brownsville, TX

Margaret Gary, M.D.
FACOG
Norfolk, VA

Barbara Falamo, M.D.
FACOG
Export, PA

Thomas Falamo, M.D.
Pathologist
Export, PA

Robert Kenneth Clark, M.D. FACOG
Chairman, Dept. of OB/GYN, Southwest Medical Center, Oklahoma City, OK

Marvin Eastlund, M.D.
FACOG
Fort Wayne, IN

William D. Lawrence, M.D.
FACOG
Phoenix, AZ

Gregory Polito, M.D.
Urologist
Whittier, CA

Neil Jouvenat, M.D.
OB/GYN
Yorba Linda, CA

Christina Cirucci, M.D.
OB/GYN
Richmond, VA

Gary W. Smith, M.D.
OB/GYN
Hagerstown, MD

Don Russell, M.D.
Pediatric Immunology
Asheville, NC

Tim Durkee, M.D
OB/GYN
Elk Grove, IL

Edward C. Hall, M.D.
OB/GYN
Volunteer Assistant Clinical Professor, Dept. of OB/GYN, University of Cincinnati College of Medicine
Edgewood, KY

Richard D. Hockett, M.D
FACOG
Clinical Assistant Professor, Dept of OB/GYN, University of South Dakota
Mitchelle, SD

James Matheson, D.O.
FACOG
Vermillion, OH

Joseph P. Narins, M.D.
FACOG
Greensboro, NC

Beverly A. McMillan, M.D.
FACOG
Jackson, MS

Mary Lee Lobach, M.D.
OB/GYN
Clinical Assistant Professor, Dept of Family Medicine, Duke University Medical Center, Durham, NC

David Lobach, M.D., PhD
Durham, NC

Lloyd Burns, M.D.
FACOG
Greenboro, GA

John P. Curlin, M.D.
OB/GYN
Jackson, TN

Joel R. DeKoning, M.D.
OB/GYN
Wausau, WI

Jeffrey J. Barrows, D.O.
FACOG
Belle Fontaine, OH

J. Douglas Morrison, M.D.
FACOG
Tempe, AZ

Ralph Wiegman, M.D.
FACOG
Grand Prairie, TX

Richard Goddard, M.D.
FACOG
Travis AFB, CA

Andrew Steele, M.D.
JFACOG
Travis AFB, CA

D. Scott Wiersma, M.D.
JFACOG
Travis AFB, CA

George Vick, M.D.
OB/GYN
Knoxville, TN

Leo J. Holmstén, M.D.
FACOG
Senior Attending OB/G Genessee Hospital, Rochester, NY

Joe McIlhaney, Jr., M.D
FACOG
Austin, TX

Raymond Jennett, M.D
OB/GYN
Director Emeritus, Divi of Reproductive Medici St. Joseph's Hospital an Medical Ctr.
Phoenix, AZ

Larry G. Johnson, M.D.
OB/GYN
Loveland, OH

Donovan. D. Hanson, M P.S.
OB/GYN
Clinical Assistant Profes University of Washingto Medical director, Pregna Help Medical Center, Seattle

Michael Goodin, M.
Pediatrician
Long Beach, CA

Marie T. Sohner, M.D.
FACOG
Tomball, TX

Michael A. Rodriguez, M.D.P.A.
OB/GYN
Tomball, TX

Arie Fischbach, M.D.
OB/GYN
Minot, ND

Otto A. Carabbe, Jr., M.D
OB/GYN
Staten Island, NY

John Gerlach, M.D.
Milwaukee, WI

M.D.
OB/GYN
Associate Professor of OB/GYN. Division of Maternal & Fetal Medicine, University of Southern California;
Director of Maternal & Fetal Medicine, Good Samaritan Hospital, CA
Monrovia, CA

Kyle A. Rasikas, M.D.
Assistant Clinical Professor, Dept. of Internal Medicine, Michigan State University;
Co-Director, Michigan Medical Specialists, Lipid Disorder Center
Grand Rapids, MI

Gerard M. DiLeo, M.D.
FACOG
Chief of Staff, Cloumbia Lakeview Regional Medical Center, Mandeville, LA

Thomas L. Gray, M.D.
COG
Memphis, TN

Raymond J. Jaglowski, M.D.
Byron Center, MI

Roy Stringfellow, M.D.
FACOG
Colorado Springs, CO

Edward Lundlad
FACOG
Colorado Springs, CO

Michael Doell
OB/GYN
Colorado Springs, CO

Mark Lindstrom, D.O.
Family Practitioner
Milwaukee, WI

James C. Glenn, M.D.
OB/GYN
Amarillo, TX

Gynecologic Oncology
Hartford, CT

Frank Wilson,
M.D.[LMO1]
OB/GYN
Natick, MA

W.A. Krotoski, M.D., PhD., MPH
Medical Director, USPHS (Ret)
Baton Rouge, LA

Richard M. Thorne, M.D., P.C.
OB/GYN
Salem, OR

Richard G. Mourvic, M.D.
OB/GYN
Clinical Professor, Loyola University School of Medicine
Chicago Heights, IL

Anthony Culotta, DDS
Washington, DC

Margaret Culotta Norton, DDS
Washington, DC

Mark G. Campbell, M.D., MHA
Grand Rapits, MI

Karyn Grimm Herndon, M.D
OB/GYN
Director, Medical Education, Dept. of OB/GYN, Evanston Hospital; Instructor, Northwestern Medical School
Evanston, IL

James W. Stough, M.D.
Gynecologist
Winfield, IL

Carl Christman, M.D.
OB/GYN
Assistant Professor, University of Kansas School of Medicine, Wichita, KS

James M. Burkhead III, M.D.
OB/GYN
Houston, TX

Harold Chotiner, M.D.
FACOG
Reno, NV

Dr. James P. Hartley, M.D.
OB/GYN
Bethesda, MD

William J. Hogan, M.D.
OB/GYN
Rockville, MD

Patrick Marmion, M.D.
OB/GYN
Fellow, American College of Preventive Medicine;
Director, OH/KY/IN Perinatal Program
Cincinnati, OH

Steve Nickisch, M.D.
JFACOG
Clinical Faculty, University of North Carolina
Asheville, NC

David Kawasaki, M.D.
OB/GYN
Mission Viejo, CA

Laurie Scott, M.D.
FACOG
Assistant Professor, Dept. of OB/GYN, Southwestern Medical Center, Dallas
Boca Raton, FL

Lawrence C. Cairns, M.D.
FACOG
Stevensville, MI

Mark Harrison, M.D.
FACOG
Fairfax Station, VA

J. Michael Rollins, M.D.
FACOG
Clinical Assistant Professor, Dept. of OB/GYN, West Virginia University
Morgantown, WV

Ronald P. Blake, M.D
Family Practice
Stevensville, MI

Marc G. Meininger, M.
OB/GYN
Sunnyside, WA

Jonathan P. Daniels, M.
OG/GYN
Yankton, SD

Mark Neerhof, D.O.
OB/GYN
Assistant Professor, OB/GYN, Northwestern University, Chicago;
Member, American Coll of Osteopathic OB/GYN Society of Perinatal Obstetricians
Deerfield, IL

Charles Hanes, M.D.
FACOG
Mobile, AL

Douglas D. Boyette, M.D
FACOG
Rocky Mount, NC

James Napier, M.D.
Assistant Clinical Profes
Neurology, Case Western Reserve
Cleveland, OH

Philip Hulsman, M.D.
FACOG
Louisville, KY

Mary L. Davenport, M.D
FACOG
Oakland, CA

Albertine E. Omani, M.D
OB/GYN
Oakland, CA

Stephen M. Crane, M.D.
Family Practice
Oakland, CA

Richard R. Romanowski, M.D.
OB/GYN
Williamsville, NY

Michael T. Valley, M.D.
OB/GYN
Assistant Professor of
VGYN
acksonville, FL

Bradley G. Beck, M.D.,
M.S.
Fellow, American College
of Preventative Medicine
Clinical Associate
Professor, University of
Texas Medical Branch;
Clinical Associate
Professor, Wright State
University

Don L. Marketto, Jr., M.D.
FACOG, FACS
Las Cruces, NM

John F. McLeay, M.D.
FACS
Clinical Professor of
Surgery, Creighton
University
Omaha, NE

James V. Ortman, M.D.
stant Professor of
linical Medicine,
reighton University
Omaha, NE

Delwyn J. Nagengast, M.D.
Associate, Family Practice,
University of Nebraska
Medical Center
Omaha, NE

Michael Sullivan, III, M.D.
Omaha, NE

Herbert Reese, M.D.
FACS
Omaha, NE

John H. Chain, M.D.
NE

Dennis Weisenberger, M.D.
Omaha, NE

Michael G. Skoch, M.D.
ct Assistant Professor,
uuly Medicine, U. of
braska Medical center
Omaha, NE

Peter R. DeMarco, M.D.
Omaha, NE

Thomas W. Hilgers, M.D.
Omaha, NE

J. Thomas Fitch, M.D., P.A.
San Antonio, TX

John G. Saint, M.D.
Springfield, IL

Ann J. Yadusky, M.D.
OB/GYN
Raleigh, NC

Philip Horner, M.D.
ABFP
Farmington, NH

Timothy F. Murphy, M.D.
FACOG
Assistant Professor
OB/GYN
Michigan State University
College of Human Medicine
Grand Rapids, MI

David Hager, M.D.
FACOG
Professor, University of
Kentucky, Dept of
OB/GYN, College of
Medicine
Lexington, KY

Terrence A. Pheifer, M.D.
FACOG
Clinical Associate
Professor, OB/GYN
University of Washington
Kirkland, WA

PHACT

Physicians' Ad Hoc Coalition for Truth

"...They will rip your bodies to shreds and you could never have another baby even though the baby you were carrying couldn't live."
-- President Clinton, as to why partial birth abortion must remain available.

The Physicians' Ad-hoc Coalition for Truth (PHACT) about partial-birth abortion brings together experts in the fields of obstetrics and gynecology, perinatology and fetal and maternal medicine for one purpose: to bring the medical facts to bear on the public policy debate over partial-birth abortion.

As practitioners and teachers of a medical specialty that must, at all times, be responsible for the well-being of two patients -- mother and child -- we feel compelled to take this course of action in order to counter the very widespread and dangerous misstatements, misperceptions and outright distortions surrounding this procedure.

The most serious such distortion is the claim, now endorsed by President Clinton, that a partial-birth abortion can be *medically necessary* to protect the health of a women carrying a child diagnosed with severe genetic disabilities, and to also protect that woman's future fertility and ability to carry other children.

There is no medical basis for such an assertion. Given the many potential risks the procedure entails for the mother, far from ever being medically indicated, partial-birth abortion is actually *counter*-indicated. Far from ever being a medical necessity, partial-birth abortion is not even a procedure recognized by the medical community, including the American College of Obstetricians and Gynecologists. Statements by practitioners of partial-birth abortion indicate that the vast majority of such procedures are elective in nature. There is only one reason to ever consider the partial-birth abortion procedure "necessary:" to ensure the delivery of a dead child rather than a living one.

Because of the dangers posed to women, the distortions regarding the so-called "medical necessity" of partial-birth abortion must not be allowed to stand. Already we have seen the harm done to women by other false statements made by those who defend partial-birth abortions. Proponents of partial-birth abortion have claimed, for example, that the anesthesia given the woman kills the child in her womb even before the procedure begins. Though leading experts in the field of anesthesiology have repeatedly denounced this claim, the media have repeated it often enough to frighten some pregnant women in need of surgery. The medical community's efforts to dispel this lie have gone largely unreported.

As members of the Physicians' Ad-hoc Coalition for Truth (PHACT) about Partial-Birth Abortion, we will take every opportunity presented to correct the misinformation and educate the public as to the medical facts regarding the partial-birth abortion procedure. We ask our fellow professionals in the field of journalism and communications in particular to give these facts the attention they deserve by reporting them in a clear, evenhanded and objective fashion.

7/24/96

Nancy Romer, M.D.
Fellow, American College of Obstetricians & Gynecologists
Clinical Professor, Ob/Gyn
Wright State University
Chairman, Dept. of Ob/Gyn,
Miami Valley Hospital, OH

Pamela Smith, M.D.
Director of Medical Education
Dept. of Obstetrics & Gynecology
Mt. Sinai Medical Center,
Chicago, IL
Member, Association of Professors of Ob/Gyn

James Jones, M.D.
Professor/Chair, Ob/Gyn
New York Medical College
Chair, Ob/Gyn
St. Vincent's Hospital & Medical Center, NYC

Curtis R. Cook, M.D.
Maternal Fetal Medicine
Butterworth Hospital
Michigan State College of Human Medicine

Joseph L. DeCook, M.D.
Fellow, American College of Obstetricians & Gynecologists

William Stalter, M.D.
Clinical Associate Professor,
Obstetrics & Gynecology
Wright State University, OH

Bernard Nathanson, M.D.
Visiting Scholar
Center for Clinical & Research Ethics
Vanderbilt University

1150 South Washington Street
Suite 230
Alexandria, VA 22314
(703) 683-3004

Communications Counsel:
Gene Terns, Michelle Powers

PHACT

Physicians' Ad Hoc Coalition for Truth

FOUNDING MEMBERS

Hon. Tom A. Coburn, M.D.
Obstetrician/Gynecologist
Member, U.S. House of Representatives (OK-2)

Nancy Romer, M.D.
Fellow, American College of Obstetricians & Gynecologists
Clinical Professor, Ob/Gyn
Wright State University
Chairman, Dept. of Ob/Gyn,
Miami Valley Hospital, CH

Pamela Smith, M.D.
Director of Medical Education
Dept. of Obstetrics & Gynecology
Mt. Sinai Medical Center,
Chicago, IL
Member, Association of Professors of Ob/Gyn

James Jones, M.D.
Professor/Chair, Ob/Gyn
New York Medical College
Chair, Ob/Gyn
St. Vincent's Hospital & Medical Center, NYC

Curtis R. Cook, M.D.
Maternal Fetal Medicine
Butterworth Hospital
Michigan State College of Human Medicine

Joseph L. DeCook, M.D.
Fellow, American College of Obstetricians & Gynecologists

William Staber, M.D.
Clinical Associate Professor,
Obstetrics & Gynecology
Wright State University, OH

Bernard Nathanson, M.D.
Visiting Scholar
Center for Clinical & Research Ethics
Vanderbilt University

1150 South Washington Street
Suite 230
Alexandria, VA 22314
(703) 683-5004

Communications Counsel:
Gene Tarne, Michelle Powers

SCIENCE FACT VS. SCIENCE FICTION:

DOCTORS REPORT THE MEDICAL FACTS ABOUT PARTIAL-BIRTH ABORTION

"People deserve to know that the partial-birth abortion is never medically indicated either to save the health of a woman or preserve her future fertility."
-- *Dr. Nancy Romer, FACOG, Chairman, Dept. of Obstetrics and Gynecology, Miami Valley Hospital, Ohio*

(Following are highlights from a July 24 Congressional Briefing by the Physicians' Ad-hoc Coalition for Truth (PHACT) about partial-birth abortion):

On the Claimed "Medical Necessity" of this Procedure:

"I am insulted to be told that I am tearing women's bodies apart by not doing this procedure. I am not. ...As physicians, we can no longer stand by while abortion advocates, the President of the United States and newspapers and television shows continue to repeat false medical claims to members of Congress and to the public."
-- *Dr. Nancy Romer*

"This procedure is currently not an accepted medical procedure. A search of medical literature reveals no mention of this procedure and there is no critically evaluated or peer review journal that describes this procedure. ...There is currently also no peer review or accountability of this procedure. It is currently being performed by a physician with no obstetric training in an outpatient facility behind closed doors and no peer review."
-- *Dr. Nancy Romer*

On Claims that Unborn Children with Certain Disabilities Must be Aborted by the Partial-Birth Method to Preserve Their Mother's Health or Fertility.

In vetoing the Partial-Birth Abortion Ban, President Clinton showcased the stories of 5 women who, he said "had to make a life-saving — certainly, health saving — but still tragic decision" to have partial-birth abortions, given the severe disabilities suffered by the children they carried. He said that "their own lives, their health, and in some cases their capacity to have children in the future were in danger" on account of these children. Six weeks later, the President defended the necessity of partial-birth abortion on the grounds that, without it, these women would be "eviscerated," their bodies "ripped...to shreds and you could never have another baby, even though the baby you were carrying couldn't live." The conditions suffered by the aborted children included: hydrocephalus, polyhydramnios, Trisomy 13, and anencephaly.

Responding to these specific claims, medical experts from PHACT made clear:

1. "[T]hese are honest women who were sadly misinformed and whose decision to have a partial birth abortion was based on a great deal of misinformation."
-- *Dr. Joseph DeCook*

2. "[T]he presence of *fetal disabilities or fetal anomalies* are not a reason to have a termination of pregnancy to preserve the life of the mother."

-- Dr. Curtis Cook

3. Regarding "a *genetic abnormality* where there is an extra chromosome or a *Trisomy*...These abnormalities do not pose a risk to the mother per se, do not require early delivery, and can be safely delivered vaginally by methods that we use on a regular basis."

-- Dr. Curtis Cook

4. Regarding "*hydrocephalus*...excessive cerebral-spinal fluid... that causes a very large-shaped head in proportion to the rest of the body. ...These patients can be safely delivered by cesarean section. They can even be delivered safely vaginally. We can do that by first decompressing some of the fluid around the baby's head. ...Again, the baby can be delivered safely, without a risk to the mother, and without a risk to her fertility."

-- Dr. Curtis Cook

5. Regarding "*polyhydramnios*...an excessive amount of amniotic fluid around the baby. ...They can be delivered vaginally, safely, and in the need for it in such situations, a cesarean section can be performed."

-- Dr. Curtis Cook

On Claims for the "Safety" of the Partial-Birth Abortion Procedure

-- *"[The procedure] sounds like science fiction. It ought to be science fiction!"*

-- *"It is a maverick medical procedure made up by maverick doctors for the purpose of delivering a dead fetus."*

-- Dr. Joseph DeCook

1. "Dilation [forcible opening] of the cervix" -- the first step -- risks creating the condition of "incompetent cervix," which is "the main cause of subsequent infertility." It also risks "infection of the mother" given that the uterus is a "non-sterile environment" exposed by dilation.

-- Dr. Joseph DeCook

2. "Podalic version" -- reaching into the uterus to pull the baby feet first through the cervix -- the second step-- is a very dangerous procedure," "frightening" because of the chance that it might "rupture" or "tear the uterus." This is the "reason this was abandoned 30 or more years ago."

There is also the danger of "perforating the uterus" with the instrument used to grab the baby's leg.

-- Dr. Joseph DeCook

3. The third step of partial-birth abortion --"putting the scissors through the cortical magnum, spread them and out comes the brain" -- is extremely dangerous given that this step exposes "sharp shards of bone," which, if scraped against the uterus, with its "immense blood supply" would cause "deep shock in 3 or 4 minutes" and would "totally pump out [the mother's] blood supply in ten minutes."

-- Dr. Joseph DeCook

NANCY G. ROMER, M.D.
1126 South Main Street
Dayton, Ohio 45409
Telephone 222-0297

Douglas Johnson
National Right to Life

May 28, 1996

Dear Mr. Johnson,

This is in reference to our conversation in regards to the 60 Minutes program on late term abortions. Lisa Binns of 60 Minutes called me on Friday April 26 and we spoke for approximately 45 minutes. I made several points in regard to late term abortions:

1. A handicapped fetus is not a threat to the mother's life. Ms. Binns suggested that a fetus with anencephaly has a higher risk of intrauterine death and this presents a risk to the mother. I told her that intrauterine fetal death under any circumstances is not a medical emergency and can be treated in a few days. Once the fetus dies partial birth abortion ban does not apply.

2. If a mother has a serious medical condition what is required is separation of the fetus from the mother not fetal death. This can be accomplished in several ways, either through induction of labor or cesarean section.

3. There are safe alternatives to partial birth abortion. I FAXed her a copy of Dr. Warren Hearn's article where he described his method of second trimester terminations. He injects the fetal heart with digoxin on day two to allow fetal death. On day three he documents fetal death and again now that the fetus is dead the law no longer applies. I can fax this article to you if you do not have it.

While I was out of the country May 1-10 Ms. Binns called to speak to me. I returned her call on May 14. She said she had a quick question. "Do you personally know of any physicians who would electively terminate a healthy fetus in a healthy mother past viability." I answered yes that I personally had a patient that Dr. Haskell had done an abortion on at 26 weeks. She argued that was not really viable and we debated viability. She then asked "Do you personally know of any physician who terminated a healthy fetus in a healthy mother at term?" I said Dr. McMahon had reported terminating babies with cleft lip and cleft palate. She suggested these were not healthy. I said they were not PERFECT but arguably healthy. Then I said " So what your asking is do I personally know of

any physician who has terminated a PERFECT baby in a PERFECT mother at term? The answer is no."

I hope this is of some help to you and apologize for taking so long to respond. If I can be of further help or answer any questions please don't hesitate to call.

Sincerely,

Nancy G. Romer, M.D.

PHACT

Physicians' Ad Hoc Coalition for Truth

FOUNDING MEMBERS

Hon. Tom A. Coburn, M.D.
Family Practitioner, Obstetrician
Member, U.S. House of Representatives (OK-2)

Nancy Romer, M.D.
Fellow, American College of Obstetricians & Gynecologists
Clinical Professor, Ob/Gyn
Wright State University
Chairman, Dept. of Ob/Gyn, Miami Valley Hospital, OH

Pamela Smith, M.D.
Director of Medical Education
Dept. of Ob/Gyn
Mt. Sinai Medical Center, Chicago, IL
Member, Association of Professors of Ob/Gyn

James Jones, M.D.
Professor/Chair, Ob/Gyn
New York Medical College
Chair, Ob/Gyn
St. Vincent's Hospital & Medical Center, NYC

Curtis R. Cook, M.D.
Maternal Fetal Medicine
Butterworth Hospital
Michigan State College of Human Medicine

Joseph L. DeCook, M.D.
Fellow, American College of Obstetricians & Gynecologists

William Holler, M.D.
Clinical Associate Professor, Obstetrics & Gynecology
Wright State University, OH

Denis Cavanagh, M.D.
Professor, Ob/Gyn
University of South Florida College of Medicine, Tampa
FACOG

1150 South Washington Street
Suite 230
Alexandria, VA 22314
(703) 683-5004

Communications Contact:
Gene Tuma, Michelle Fenner

January 29, 1997

Fredric D. Frigoletto, Jr. M.D.
President of the Executive Board
American College of Obstetricians and Gynecologists

Dear Dr. Frigoletto:

We write to you on behalf of the hundreds of doctors nationwide who are members of the Physicians' Ad hoc Coalition for Truth (PHACT). PHACT was formed to address expertly one issue: partial-birth abortion. While the coalition includes physicians from all medical specialties, the vast majority of its members are obstetricians and gynecologists. Of these, a sizeable number are also Fellows of the American College of Obstetricians and Gynecologists (ACOG).

With this in mind, we are writing to express our surprise and concern over a recent statement issued by ACOG, dated January 12, 1997, on the subject of partial-birth abortion. Surprise, because those of us who are fellows were never informed that ACOG was even investigating this subject, with the goal of issuing a public statement, presumably on behalf of us and the others within ACOG's membership. And concern, because the statement that was issued, by endorsing a practice for which no recognized research data exist, would seem to be violating ACOG's own standards.

Let us address the latter concern — content -- first.

The statement correctly notes at the outset that the procedure in question is not recognized in the medical literature. The same, it should be noted, can be said of the name you have chosen to call it — "Intact Dilatation and Extraction," or "Intact D&X" -- and all the other names proponents of this procedure have concocted for it. We have closely followed the issue of partial-birth abortion — again, it is the *only* issue PHACT addresses — and the term Intact Dilatation and Extraction is new to us and would appear to be unique to you. The late Dr. James McMahon, until his death a leading provider of partial-birth abortions, called them "Intact Dilation and Evacuation (Intact D&E)" while another provider, Dr. Martin Haskell of Ohio, calls them "Dilation and Extraction (D&X)." Planned Parenthood, for example, calls them D&X abortions, while the National Abortion Federation prefers Intact D&E, so there is no agreement, even among proponents of this procedure, as to what to call it. Indeed, in its January, 1996 newsletter, ACOG then referred to it as "intact dialation (sic) and evacuation." Your new coinage would seem to be a combination of these various "names" floating about, but to what end is not clear. What is clear is that none of these terms, including your own "Intact D&X" can be found in any of the standard medical textbooks or databases.

It is wrong to say, as your statement does, that descriptions, at least the description in last year's Partial-Birth Abortion Ban Act, are "vague" and "could be interpreted to include elements of many recognized" medical techniques. The description in the federal legislation is very precise as to what is being proscribed and is based on Dr. Haskell's own descriptions. Moreover, the legislation is so worded as to clearly distinguish the procedure being banned from recognized obstetric techniques, and recognized abortion techniques, such as D&E, which would be unaffected by the proposed ban.

By far, however, the most disturbing part of ACOG's statement is the assertion that "An intact D&X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of the mother."

On what possible basis does ACOG make this rather astounding assertion?

Many of our members hold teaching positions or head departments of obstetrics and gynecology or perinatology at universities and medical centers. To our knowledge there are no published peer-reviewed safety data regarding the procedure in question. It is not taught as a formally recognized medical procedure. We can think of no data that could possibly support such an assertion. If ACOG or its "select panel" has such data, we would, as teachers and practicing ob/gyns, certainly like to review it.

The best that your statement does to back this claim is the very vague assertion that "other data show that second trimester transvaginal instrumental abortion is a safe procedure." While this may be true, it is, as surely you must be aware, totally beside the point. Such data may exist regarding, e.g., second trimester D&E abortion, but this is irrelevant to the fact that no similar data, at least to our knowledge, exists with respect to partial-birth abortion (or, as you prefer, "intact D&X" or whatever other medical-sounding coinage supporters of this procedure may use). To include such an assertion that can only refer to second trimester abortion procedures *other* than partial-birth is deceptive and misleading at best.

ACOG clearly recognizes that in no circumstances is partial-birth abortion the only option for women. In other words, ACOG agrees that there are other, *medically recognized*, and standard procedures available to women other than partial-birth abortion. Given ACOG's acceptance of this medical fact, your claim that a totally unrecognized, non-standard procedure, for which no peer-reviewed data exist, can nonetheless be the safest and most appropriate in certain situations, simply defies understanding.

If ACOG is truly committed to standing by this claim, then it would appear to be violating its own standards by recommending the use of a procedure for which no peer-reviewed studies or safety data exist.

In contrast, our research of the subject leads us to conclude that there are no obstetrical situations that would necessitate or even favor the medically unrecognized partial-birth abortion procedure as the safest or most appropriate option. Indeed, we have concerns that this procedure may itself pose serious health risks for women.

Ordinarily, we would agree that the intervention of legislative bodies into medical decision making is usually inappropriate. However, when the medical decision making *itself* is inappropriate, and may be putting women at risk by subjecting them to medically unrecognized procedures, then the intervention of a legislative body, such as the U.S. Congress, may be the only way to protect mothers and infants threatened by the partial-birth abortion procedure.

In addition to these concerns over the content of the statement, we are also concerned as to the procedure by which it came to be issued.

As mentioned, the vast majority of PHACT members are specialists and sub-specialists (i.e. perinatologists) in obstetrics and gynecology, and many of these are also fellows of ACOG. After them, our membership consists largely of family practitioners and pediatricians. Former Surgeon General C. Everett Koop, perhaps the nation's leading pediatric surgeon, has been associated with PHACT and his public statements on partial-birth abortion are in agreement with PHACT. Our membership is open to any doctor, regardless of his or her political views on the larger question of abortion rights, precisely because our focus is strictly on the medical realities that relate to this procedure. (In fact, doctors who are pro-choice have publicly stated their opposition, on medical grounds, to the use of this abortion method).

We cannot recall receiving any notification whatsoever that the American College of Obstetricians and Gynecologists was even reviewing the issue of partial-birth abortion toward the end of issuing a statement of policy. We cannot recall ever being informed that ACOG was going to convene a "select panel" to accomplish this. We find it unusual that PHACT, a coalition of doctors formed for no other reason than to investigate medical claims made about partial-birth abortion, was not invited to participate in these deliberations. Those of us who are fellows of ACOG were kept completely in the dark as to what ACOG's leadership was doing in regard to this issue.

In truth, this statement is the product of a panel — whose membership ACOG has not made public — that was working behind closed doors and with no real participation from ACOG's membership itself. In crafting this statement, ACOG simply ignored its own members. There is the danger that in issuing this statement, ACOG is giving the larger public the impression that the statement somehow represents the thinking of its members on this subject. It does not. ACOG members had no knowledge of this statement until it was issued as a *fait accompli*.

In conclusion, this statement clearly does *not* represent a consensus among the nation's obstetricians and gynecologists as to the safety or appropriateness, under any circumstances, of the partial-birth abortion method. We ask you to provide the medical data, research and all other relevant materials which could possibly have led to such an assertion. We ask that you also make available the names of those on the select panel who arrived at such a conclusion. We would also ask that the leadership of ACOG officially withdraw this statement until the matter at issue — partial-birth abortion — has been subject to a thorough and open discussion among the members of ACOG and those doctors in related specialties who have significant knowledge regarding this issue. We look forward to your response.

Sincerely:

Dennis Cavanagh, M.D.
Professor of Ob/Gyn
Director, Division of Ob/Gyn
University of South Florida
College of Medicine
FACOG

Curtis Cook, M.D.
Maternal-Fetal Medicine
Michigan State College
of Human Medicine
FACOG

Joseph DeCook, M.D.
Ob/Gyn
FACOG

Don Gambrell Jr., M.D.
Clincal Prof. of Endocronology
and Ob/Gyn
Medical College of Georgia,
Augusta
V. President, South Atlantic Assoc.
of Ob/Gyns
FACOG

Hans E. Geisler, M.D.
Gyn-Oncology and Gyn Surgery
Clinical Staff, Dept. of Ob/Gyn
Indiana University Medical Center
FACOG

Nancy Romer, M.D.
Clinical Prof., Ob/Gyn
Wright State University
Chairman, Dept. of Ob/Gyn
Miami Valley Hospital, OH
FACOG

Pamela Smith, M.D.
Director of Medical Education
Dept. of Ob/Gyn, Mt. Sinai
Medical Center, Chicago
Member, Assoc. of Professors of
Ob/Gyn
FACOG

William Stamer, M.D.
Clinical Assoc. Prof., Ob/Gyn
Wright State University
FACOG

Stephen H. Cruikshank, M.D.
Nicholas J. Thompson Professor and Chairman
Department of Obstetrics and Gynecology
Wright State University, OH

PHACT

Physicians' Ad Hoc Coalition for Truth

FOR IMMEDIATE RELEASE CONTACT: Gene Tarne/Michelle Powers
703/683-5004

THE CASE OF COREEN COSTELLO

Partial-birth abortion was* not a medical necessity *for the most visible "personal case" proponent of procedure.

Coreen Costello is one of five women who appeared with President Clinton when he vetoed the Partial-Birth Abortion Ban Act (4/10/96). She has probably been the most active and the most visible of those women who have chosen to share with the public the very tragic circumstances of their pregnancies which, they say, made the partial-birth abortion procedure their only medical option to protect their health and future fertility.

But based on what Ms. Costello has publicly said so far, her abortion was not, in fact, medically necessary.

In addition to appearing with the President at the veto ceremony, Ms. Costello has twice recounted her story in testimony before both the House and Senate; the *New York Times* published an op-ed by Ms. Costello based on this testimony; she was featured in a full page ad in the *Washington Post* sponsored by several abortion advocacy groups; and, most recently (7/29/96) she has recounted her story for a "Dear Colleague" letter being circulated to House members by Rep. Peter Deutsch (FL).

Unless she were to decide otherwise, Ms. Costello's full medical records remain, of course, unavailable to the public, being a matter between her and her doctors. However, Ms. Costello has voluntarily chosen to share significant parts of her very tragic story with the general public and in very highly visible venues. Based on what Ms. Costello *has* revealed of her medical history -- of her own accord and for the stated purpose of defeating the Partial-Birth Abortion Ban Act -- doctors with PHACT can only conclude that Ms. Costello and others who have publicly acknowledged undergoing this procedure "are honest women who were sadly misinformed and whose decision to have a partial-birth abortion was based on a great deal of misinformation" (Dr. Joseph DeCook, Ob/Gyn, PHACT Congressional Briefing, 7/24/96). Ms. Costello's experience does not change the reality that a partial birth abortion is never medically indicated -- in fact, there are available several alternative, *standard* medical procedures to treat women confronting unfortunate situations like Ms. Costello had to face.

The following analysis is based on Ms. Costello's public statements regarding events leading up to her abortion performed by the late Dr. James McMahon. This analysis was done by Dr. Curtis Cook, a perinatologist with the Michigan State College of Human Medicine and member of PHACT.

"Ms. Costello's child suffered from 'polyhydramnios secondary to fetal swallowing defect.' In other words, the child could not swallow the amniotic fluid, and an excess of the fluid therefore collected in the mother's uterus. Because of the swallowing defect, the child's lungs were not properly stimulated, and an underdevelopment of the

FOUNDING MEMBERS

Hon. Tom A. Coburn, M.D.
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Pamela Smith, M.D.
Director of Medical Education
Dept. of Obstetrics & Gynecology
Mt. Sinai Medical Center,
Chicago, IL
Member, Association of
sors of Ob/Gyn

James Jones, M.D.
Professor/Chair, Ob/Gyn
New York Medical College
Chair, Ob/Gyn
St. Vincent's Hospital &
Medical Center, NYC

Curtis R. Cook, M.D.
Maternal Fetal Medicine
Butterworth Hospital
Michigan State College of
Human Medicine

Joseph L. DeCook, M.D.
Fellow, American College of
Obstetricians & Gynecologists

William Slatter, M.D.
Clinical Associate Professor,
Obstetrics & Gynecology
Wright State University, OH

Bernard Nathanson, M.D.
Visiting Scholar
Center for Clinical &
Research Ethics
Vanderbilt University

1150 South Washington Street
: 230
xandria, VA 22314
(703) 683-5004

Communications Counsel:
Gene Tarne, Michelle Powers

lungs would likely be the cause of death if abortion had not intervened. The child had no significant chance of survival,.but also would not likely die as soon as the umbilical cord was cut.

"The usual approach in such a case would be to reduce the amount of amniotic fluid collecting in the mother's uterus by serial amniocentesis. Excess fluid in the fetal ventricles could also be drained. Ordinarily, the draining would occur 'transabdominally.' Then the child would be vaginally delivered, after attempts were made to move the child into the usual, head-down position. Dr. McMahon, who performed the draining of cerebral fluid on Ms. Costello's child, did so 'transvaginally,' most likely because he had no significant expertise in obstetrics/gynecology. In other words, he would not be able to do it well transabdominally -- -- the standard method used by ob/gyns -- because that takes a degree of expertise he did not possess.

Ms. Costello's statement that she was unable to have a vaginal delivery, or, as she called it, 'natural birth or an induced labor,' is contradicted by the fact that she did indeed have a vaginal delivery, conducted by Dr. McMahon. What Ms. Costello had was a breech vaginal delivery for purposes of aborting the child, however, as opposed to a vaginal delivery intended to result in a live birth. A cesarean section in this case would not be medically indicated -- not because of any inherent danger -- but because the baby could be safely delivered vaginally."

.....

The Physicians' Ad-hoc Coalition for Truth (PHACT), with over three hundred members drawn from the medical community nationwide, exists to bring the medical facts to bear on the public policy debate regarding partial birth abortions. Members of the coalition are available to speak to public policy makers and the media. If you would like to speak with a member of PHACT, please contact Gene Tarne or Michelle Powers at 703-683-5004.

-###-

Partial-Birth Abortion: It's the *Only* Correct Term

By Douglas Johnson
NRLC Federal Legislative Director

You may have read in the paper that President Clinton vetoed a bill "outlawing late-term abortions" or "banning a medical procedure called intact dilation and evacuation." But actually, Congress never passed such a bill.

Rather, Congress passed - - and President Clinton vetoed - - a bill to ban partial-birth abortion (unless necessary to save a mother's life). The bill (HR 1833) defines partial-birth abortion, for purpose of the U.S. criminal code, as "an abortion in which the person performing the abortion partially vaginally delivers a *living* fetus before killing the fetus and completing the delivery." [emphasis added]

The bill does *not* contain any reference to the gestational age of the fetus/baby. From available evidence, it appears that the partial-birth abortion method is generally used after 20 weeks (4½ months) - - often much later. However, there are indications that the method at times has been used earlier - - and the bill bans the practice of partial-birth abortion at any point in pregnancy.

The phrase "outlawing late-term abortions" is doubly misleading, because methods of "late-term" abortion, other than the partial-birth method, would be unaffected by HR 1833.

In the interests of objectivity, the press should use the term that Congress has defined as a matter of law - - partial-birth abortion. That is the practice that the press has followed on other controversial issues. For example, most media outlets refer to the 1993 congressional ban on certain "assault weapons," even though manufacturers of such weapons and opponents of the ban use other terminology to refer to some or all of the firearms affected by that legislation.

Some opponents of HR 1833 insist that anyone writing about the bill should say that it bans a procedure "known medically as intact dilation and evacuation." But when journalists comply with this demand, they do so at the expense of accuracy. The bill itself makes no reference whatever to "intact dilation and evacuation" abortions. More importantly, the term "intact dilation and evacuation" is not equivalent to the class of procedures banned by the bill.

The term "intact dilation and evacuation" was invented by the late Dr. James McMahon. When HR 1833 was introduced in June, 1995, the term did not appear in the standard medical textbooks and databases, nor does it appear anywhere in the standard textbook on abortion methods, *Abortion Practice* by Dr. Warren Hern.

It is clearly inaccurate to equate "intact dilation and evacuation" procedures with the abortions banned by HR 1833. In his writings, Dr. McMahon used the term "intact dilation and evacuation" to cover any procedure that resulted in an intact cadaver. This included partial-birth abortion procedures - - but it also included procedures to remove the bodies of babies who had died *natural* deaths *in utero*, and procedures to remove the bodies of babies who had been *deliberately* killed *in utero*, neither of which is a partial-birth abortion as defined by the bill.

[The term "*intact* dilation and evacuation" should not be confused with "dilation and evacuation" (D&E), which is a procedure commonly used to perform second-trimester abortions, involving *dismemberment* of the baby *while still in the uterus*. The bill does not apply to this method at all.]

Because "intact dilation and evacuation" is not a standard, clearly defined medical term, the House Judiciary Constitution Subcommittee legal staff (which drafted the bill under Congressman Canady's supervision) rejected it as useless for purposes of defining a criminal offense. Indeed, it is worse than useless - - a criminal statute that relied on such a term would be stricken by the federal courts as "void for vagueness."

The term chosen by Congress, partial-birth abortion, is in no sense misleading. In sworn testimony in an Ohio lawsuit on Nov. 8, 1995, Dr. Martin Haskell - - who has done over 1,000 partial-birth abortions, and who authored the 1992 instructional paper that touched off the national controversy over the procedure - - explained that he first learned of the method when a colleague "described very briefly over the phone to me a technique that I later learned came from Dr. McMahon where they internally grab the fetus and rotate it and accomplish - - he *somewhat equivalent to a breech type of delivery.*" [emphasis added]

Dr. Haskell said that he "coined" the term "dilation and extraction" (D&X) to refer to this method of abortion. However, Dr. Haskell also used the same term to apply to procedures to remove babies already dead - - which are not partial-birth abortions. The term "dilation and extraction" does not appear in medical dictionaries.

Some journalists cite the National Abortion Federation (NAF) as "authority" for the assertion that "intact dilation and evacuation" is the "medical" term for the procedure that HR 1833 would ban. NAF is a lobbying organization for abortionists and abortion clinics that pay their dues.

NAF has a history of disseminating blatant misinformation with respect to partial-birth abortions. In a tape-recorded 1993 interview with *American Medical News*, Dr. Haskell specifically rebutted several of the claims that were being made by NAF officials at that time (e.g., NAF falsely claimed that the fetuses are dead *before* being "extracted;" that the procedures were done mainly in extreme medical cases, etc.). Dr. Haskell explained: "Well, I had heard that they were giving that information.... The people that staff the NAF office are not medical people.... Here they're rabid supporters of abortion. They work in the office there. And... some of them have never seen one performed..."

When questioned about Dr. Haskell's recorded remarks, Barbara Radford, at that time the executive director of NAF, "acknowledged that the information her group was quoted as providing was inaccurate," *American Medical News* reported (July 5, 1993).

In summary, it is a strange kind of "objectivity" that sets aside the term for a criminal offense that has been adopted and explicitly defined by the U.S. Congress, and substitutes a non-equivalent, pseudo-medical term promoted by the very special-interest group that would be "regulated" by the legislation.

The Wall Street Journal, 10/14/96

Letters to the Editor

Abortions of Healthy Babies

Alexander Sanger's Oct. 2 Letter to the Editor in response to our Sept. 19 editorial-page article is a perfect example of why we, as doctors, felt the need to establish the Physician's Ad Hoc Coalition for Truth (PHACT) to correct the many medical distortions surrounding the partial-birth abortion procedure.

Mr. Sanger's charge that the term "partial-birth abortion" is "made up" and appears nowhere in the medical literature is equally true of the term he prefers: "intact dilation and evacuation." Contrary to his assertion, this is not the medical term for partial-birth abortion. Rather, it was coined by the late Dr. James McMahon, until his recent death a leading provider of partial-birth abortions. In contrast, another leading partial-birth abortion provider, Dr. Martin Haskell of Ohio, has his own personal name for this technique—"D&X," for "Dilation and Extraction." What both terms have in common is that neither appear in any standard medical textbook, dictionary or database. Neither do they appear in the nation's standard textbook on abortion methods, "Abortion Practice" by Dr. Warren Hern (in fact, Dr. Hern has expressed reservations as to the safety of the procedure that would be banned by H.R. 1833).

Thus, because the term "intact dilation and evacuation" is not a standard medical term, and because Dr. McMahon's idiosyncratic usage of it was so broad as to cover procedures not affected by the language of H.R. 1833 (e.g. removal of children who have died naturally or been killed in utero), it is inappropriate both to use the term in the legislation and to equate so-called "intact D&E" abortion with "partial-births" abortions. In crafting legislation to ban this particular procedure, it was crucial to employ terminology distinguishing it from techniques that are standard in abortion practice. The term "partial birth-abortion" encompasses both legislative and descriptive concerns.

Mr. Sanger asks, "What would they recommend" if the mid-trimester uterus needs emptying? Every medical school and every training program in America would agree that amniocentesis and/or cephalocentesis followed by induction of labor with prostaglandin or pitocin is the accepted Standard of Care—the most physiologic and safest method of mid-trimester delivery. It is by far preferable to partial-birth abortion, a two-and-a-half-day, potentially dangerous procedure unsupported by any safety data in the medical literature.

In fact, we would ask Mr. Sanger to produce evidence of safety or preference for the "intact D&E" procedure over existing and proven safe procedures. ("Intact D&E" should not be confused with "dilation and evacuation" [D&E], a procedure commonly used in second-trimester abortions involving the dismemberment of the fetus in utero and which is, of course, unaffected by H.R. 1833).

As to Mr. Sanger's charge that we "irresponsibly advance the argument" that most partial-birth abortions are "purely elective," we do not: Dr. Haskell does. In an interview with American Medical News, Dr. Haskell volunteered the information that of the partial-birth abortions he performs, "80 percent are purely elective." In materials he submitted to Congress, Dr. McMahon included "indications" such as maternal depression, young age of mother, sickle cell trait, and a host of other conditions associated with the birth of perfectly normal infants. No partial-birth abortion is ever medically indicated, and recent investigative reports by the Washington Post and the Bergen (N.J.) Record confirm what PHACT and other supporters of H.R. 1833 have been saying all along: Most partial-birth abortions are performed on healthy mothers with healthy babies.

Finally, Mr. Sanger's assertion that anencephaly and "400 other types of catastrophic anomalies" cannot be detected prior to 20 weeks is categorically false. Many of us make our living detecting just such anomalies in ultrasound examinations performed between 16 and 20 weeks' gestation.

We again stand by our statement that there is no obstetrical situation that requires the willful destruction of a partially delivered baby to protect the life, health or future fertility of a woman.

NANCY G. KOMISA, M.D.,
CURTIS R. COOK, M.D.,
PAMELA E. SMITH, M.D.,
JOSEPH L. DECOOK, M.D.
Physicians' Ad Hoc Coalition for Truth
Alexandria, Va.

* * *

Partial-birth abortion is a moral matter of the most obvious kind. The effort to sterilize it with a technical name is itself reprehensible. The demands of morality are most apparent where the order of nature is clearest and hence most clearly demands respect. It may be that morality has a bad name partly because the natural order has been too long obscured by the pretensions of technology. But deified technology is increasingly becoming recognized for the idol that it really is, and nowhere can the frustrated order and intentions of nature—from the Latin *nascor*, "to be born"—be more manifest than in a human birth brutally cut off in its very moment of accomplishment. This is more true, not less, when the name given to the act betrays studied coldness. (Is this not what we elsewhere refer to as being "cold blooded"?) One should be no more surprised at finding an "emotional charge" in the name used here than with the names of those now highly exalted crimes known as "rape" and "incest."

It should also be noted in reply to Mr. Sanger that this discussion is not, in its most important aspect, about the consequences or circumstances of partial-births abortion, although both friends and foes of abortion often speak as if it were. The essential issue here is the intrinsic character of the procedure itself. If nothing can be weighed, judged and named according to its intrinsic character, then nothing can be weighed, judged or named at all.

SEAN D. COLLINS
Professor of Philosophy, Theology and Liberal Arts
Thomas Aquinas College
Santa Paula, Calif.

The Wall Street Journal, Thursday, September 19, 1996, A22

Partial-Birth Abortion Is Bad Medicine

By Nancy Romer, Pamela Smith, Curtis R. Cook and Joseph L. DeCook

The House of Representatives will vote in the next few days on whether to override President Clinton's veto of the Partial Birth Abortion Ban Act. The debate on the subject has been noisy and rancorous. You've heard from the activists. You've heard from the politicians. Now may we speak?

We are the physicians who, on a daily basis, treat pregnant women and their babies. And we can no longer remain silent while abortion activists, the media and even the president of the United States continue to repeat false medical claims about partial-birth abortion. The appalling lack of medical credibility on the side of those defending this procedure has forced us—for the first time in our professional careers—to leave the sidelines in order to provide some sorely needed facts in a debate that has been dominated by anecdote, emotion and media stunts.

Since the debate on this issue began, those whose real agenda is to keep all types of abortion legal—at any stage of pregnancy, for any reason—have waged what can only be called an orchestrated misinformation campaign.

First the National Abortion Federation and other pro-abortion groups claimed the procedure didn't exist. When a paper written by the doctor who invented the procedure was produced, abortion proponents changed their story, claiming the procedure was only done when a women's life was in danger. Then the same doctor, the nation's main practitioner of the technique, was caught—on tape—admitting that 80% of his partial-birth abortions were "purely elective."

Then there was the anesthesia myth. The American public was told that it wasn't the abortion that killed the baby, but the anesthesia administered to the mother before the procedure. This claim was immediately and thoroughly denounced by the American Society of Anesthesiologists, which called the claim "entirely inaccurate." Yet Planned Parenthood and its allies continued to spread the myth, causing needless concern among our pregnant patients who heard the claims and were terrified that epidurals during labor, or anesthesia during needed surgeries, would kill their babies.

The latest baseless statement was made by President Clinton himself when he said that if the mothers who opted for partial-birth abortions had delivered their children naturally, the women's bodies would have been "eviscerated" or "ripped to shreds" and they "could never have another baby."

That claim is totally and completely false. Contrary to what abortion activists would have us believe, partial-birth abortion is *never* medically indicated to protect a woman's health or her fertility. In fact, the opposite is true: The procedure can pose a significant and immediate threat to both the pregnant woman's health and her fertility. It seems to have escaped anyone's attention that one of the five women who appeared at Mr. Clinton's veto ceremony had five miscarriages after her partial-birth abortion.

Consider the dangers inherent in partial-birth abortion, which usually occurs after the fifth month of pregnancy. A woman's cervix is forcibly dilated over several days, which risks creating an "incompetent cervix," the leading cause of premature deliveries. It is also an invitation to infection, a major cause of infertility. The abortionist then reaches into the womb to pull a child feet first out of the mother (internal podalic version), but leaves the head inside. Under normal circumstances, physicians avoid breech births whenever possible; in this case, the doctor intentionally causes one—and risks tearing the uterus in the process. He then forces scissors through the base of the baby's skull—which remains lodged just within the birth canal. This is a partially "blind" procedure, done by feel, risking direct scissor injury to the uterus and laceration of the cervix or lower uterine segment, resulting in immediate and massive bleeding and the threat of shock or even death to the mother.

None of this risk is ever necessary for any reason. We and many other doctors across the U.S. regularly treat women whose unborn children suffer the same conditions as those cited by the women who appeared at Mr. Clinton's veto ceremony. Never is the partial-birth procedure necessary. Not for hydrocephaly (excessive cerebrospinal fluid in the head), not for polyhydramnios (an excess of amniotic fluid collecting in the women) and not for trisomy (genetic abnormalities characterized by an extra chromosome). Sometimes, as in the case of hydrocephaly, it is first necessary to drain some of the fluid from the baby's head. And in some cases, when vaginal delivery is not possible, a doctor performs a Caesarean section. But in no case is it necessary to partially deliver an infant through the vagina and then kill the infant.

How telling it is that although Mr. Clinton met with women who claimed to have needed partial-birth abortions on account of these conditions, he has flat-out refused to meet with women who delivered babies with these same conditions, with no damage whatsoever to their health or future fertility!

Former Surgeon General C. Everett Koop was recently asked whether he'd ever operated on children who had any of the disabilities described in this debate. Indeed he had. In fact, one of his patients—"with a huge omphalocele [a sac containing the baby's organs] much bigger than her head"—went on to become the head nurse in his intensive care unit many years later.

Mr. Koop's reaction to the president's veto? "I believe that Mr. Clinton was misled by his medical advisers on what is fact and what is fiction" on the matter, he said. Such a procedure, he added, cannot truthfully be called medically necessary for either the mother or—he scarcely need point out—for the baby.

Considering these medical realities, one can only conclude that the women who thought they underwent partial-birth abortions for "medical" reasons were tragically misled. And those who purport to speak for women don't seem to care.

So whom are you going to believe? The activist-extremists who refuse to allow a little truth to get in the way of their agenda? The politicians who benefit from the activists' political action committees? Or doctors who have the facts?

Dr. Romer is clinical professor of obstetrics and gynecology at Wright State University and chairman of obstetrics and gynecology at Miami Valley Hospital in Ohio. Dr. Smith is director of medical education in the department of obstetrics and gynecology at Chicago's Mt. Sinai Medical Center. Dr. Cook is a specialist in maternal fetal medicine at Butterworth Hospital, Michigan State College of Human Medicine. Dr. DeCook is a fellow of the American College of Obstetricians and Gynecologists. The authors are founding members of Do Physicians' Ad Hoc Coalition for Truth, which now has more than 300 members.

The New York Times, Thursday, September 26, 1996, A27

Why Defend Partial-Birth Abortion?

By C. Everett Koop

HANOVER, N.H.

The debate in Congress about the procedure known as partial-birth abortion reveals deep national uneasiness about abortion 23 years after the Supreme Court legalized it. As usual, each side in the debate shades the statistics and distorts the facts. But in this case, it is the abortion-rights advocates who seem inflexible and rigid.

The Senate is expected to vote today on whether to join the House in overriding President Clinton's veto of a bill last April banning partial-birth abortion. In this procedure, a doctor pulls out the baby's feet first, until the baby's head is lodged in the birth canal. Then, the doctor forces scissors through the base of the baby's skull, suctions out the brain, and crushes the skull to make extraction easier. Even some pro-choice advocates wince at this, as when Senator Daniel Patrick Moynihan termed it "close to infanticide."

The anti-abortion forces often imply that this procedure is usually performed late in the third trimester on fully developed babies. Actually, most partial-birth abortions are performed late in the second trimester, around 26 weeks. Some of these would be viable babies.

Pro-choicers twist the medical facts.

But the misinformation campaign conducted by the advocates of partial-birth abortion is much more misleading. At first, abortion-rights activists claimed this procedure hardly ever took place. When pressed for figures, several pro-abortion groups came up with 500 a year, but later investigations revealed that in New Jersey alone 1,500 partial-birth abortions are performed each year. Obviously, the national annual figure is much higher.

The primary reason given for this procedure — that it is often medically necessary to save the mother's life — is a false claim, though many people, including President Clinton, were misled into believing this. With all that modern medicine has to offer, partial-birth abortions are not needed to save the life of the mother, and the procedure's impact on a woman's cervix can put future pregnancies at risk. Recent reports have concluded that a majority of partial-birth abortions are elective, involving a healthy woman and normal fetus.

I'll admit to a personal bias: In my 36 years as a pediatric surgeon, I operated on newborns as tiny as some of these aborted babies, and we corrected congenital defects so they could live long and productive lives.

In their strident effort to protect partial-birth abortion, the pro-choice people remind me of the gun lobby. The gun lobby is so afraid of any effort to limit any guns that it opposes even a ban on assault weapons, though most gun owners think such a ban is justified.

In the same way, the pro-abortion people are so afraid of any limit on abortion that they have twisted the truth to protect partial-birth abortion, even though many pro-choice Americans find it reasonable to ban the procedure. Neither AK-47's nor partial-birth abortions have a place in civil society.

Both sides in the controversy need to straighten out their stance. The pro-life forces have done little to help prevent unwanted pregnancies, even though that is why most abortions are performed. They have also done little to provide for pregnant women in need.

On the other side, the pro-choice forces talk about medical necessity and under-represent abortion's prevalence: each year about 1.5 million babies have been aborted, very few of them for "medical necessity." The current and necessarily graphic debate about partial-birth abortion should remind all of us that what some call a choice, others call a child.

C. Everett Koop was Surgeon General from 1981 to 1989.

Some Second Thoughts on Partial-Birth Abortions

From "A New Look At Late-term Abortion," by syndicated columnist Richard Cohen, September 24, 1996: [In a June, 1995 column] I also was led to believe that these late-term abortions were extremely rare and performed only when the life of the mother was in danger or the fetus irreparably deformed. I was wrong.... my *Washington Post* colleague David Brown looked behind the purported figures and purported rationale for these abortions and found something other than medical crises of one sort or another. After interviewing doctors who performed late-term abortions and surveying the literature, Brown-- a physician himself-- wrote: "These doctors say that while a significant number of their patients have late abortions for medical reasons, many others-- perhaps the majority– do not".... In the latter stages of pregnancy, the word abortion does not quite suffice; we are talking about the killing of the fetus-- and, too often, not for any urgent medical reason....Late-term abortions once seemed to be the choice of women who, really, had no other choice. The facts now are different. If that's the case, then so should be the law.

From a column by Newsweek Senior Editor Jonathan Alter, "The Fight Over Partial-Birth Abortion Illustrates the Practical Limits of Unflinching Principle," October 7, 1996: When the partial-birth-abortion debate took shape last year, pro-choice groups insisted the procedure was extremely rare. The number 500 to 600 was tossed around, with the president and others explaining that it was reserved for heart-wrenching cases involving women whose tests show severely deformed fetuses or whose health was at risk. Not so. When deemed medically appropriate, it is used much more commonly-- perhaps several thousand times a year... The *Washington Post* surveyed physicians and found that most of those patients receiving partial-birth abortions were young, poor, single women without health problems. They simply wanted abortions, and in the second trimester it is sometimes the recommended procedure, though pro-life former surgeon general C. Everett Koop says this type of abortion is never truly medically necessary. If progressives listen raptly to Koop on tobacco, they at least owe him a hearing on obstetrics.

From "Sustaining Partial-Birth Abortion," an editorial in the Wall Street Journal for September 26, 1996: Partial-birth abortion is about pregnancies from the fifth month onward, and as such puts us into a different realm of political, medical and cultural concerns.... When the partial-birth abortion matter first arose in the House, choice advocates such as Planned Parenthood asserted that the procedure-- making an incision or punctured hole in the skull and withdrawing the contents so that the collapsed head can be pulled through the cervix-- was "extremely rare and done only when the woman's life is in danger or in cases of extreme fetal abnormality." That turns out to be untrue. No official records are kept on later-term abortions. But to their credit some newspapers have produced stories on a little-discussed area of the abortion business without the heavy reporter bias that normally attends this subject. Last week Ruth Padawer of the Record newspaper of Bergen County, N.J., reported that a clinic in Englewood said it used the method in about half the 3,000 abortions it did between weeks 20 and 24.... We entirely doubt that most Americans would support abortions past 20 weeks for no better purpose than birth control. Releasing a baby for adoption is always an honored alternative, especially given the disgusting nature of such abortion procedures.

Despite abortion lies, doublespeak goes or

CAL THOMAS

Also last year, pro-abortion groups claimed that anesthesia takes the life of the unborn child before the procedure in which its brains are sucked out.

The admission by a prominent abortion advocate that he lied about the number of babies killed during the procedure called "partial-birth abortion" is surprising only in its candor. Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, said he misled the public because he feared the truth would damage the abortion rights cause.

Recalling a November 1995 appearance on ABC's "Nightline," Fitzsimmons said, "[illegible] through my teeth" when claiming the procedure was rarely used and that only women who sought [illegible] abortions were those whose lives were in danger, or whose unborn children were severely damaged. President Clinton used nearly identical language in explaining his veto of a bill that would have outlawed the procedure.

The White House says it will take another look at the matter in light of Fitzsimmons's comments. But the administration is lock-step with the abortion rights movement, so look for more doublespeak. President Clinton frequently says he wants to make abortions "safe, legal and rare," but has done nothing to limit the procedure even in the most extreme of circumstances, such as partial-birth abortion.

Legal abortion was conceived in a lie. Norma McCorvey, "Jane Roe," claimed to have been raped. She later admitted lying in order to [illegible] her case more comp[illegible]ng to the Supreme Court. The justices who made abortion legal believed testimony that thousands of women were dying from illegal abortions, a "fact" asserted by the National Abortion Rights Action League (NARAL), but later acknowledged to be false by top NARAL official Dr. Bernard Nathanson, who was at the time operating the nation's largest abortion clinic in New York.

To maintain a policy of abortion on demand, proponents have had to continue telling lies. Planned Parenthood, which consistently argues for maintaining the abortion status quo, once told a different story. In 1965 a Planned Parenthood pamphlet called "Plan Your Children" said of family planning: "Is it abortion? Definitely not. An abortion kills the life of a baby after it has begun. It is dangerous to your life and health. It may make you sterile so that when you want a child you cannot have it. Birth control merely postpones the beginning of life." Was Planned Parenthood lying then, or is it lying now?

On Dec. 11, 1993, NARAL's Kate Michelman was quoted in the Philadelphia Inquirer as saying, "We think abortion is a bad thing. No woman wants to have an abortion." Five days later a NARAL statement claimed that Michelman "has never said — and would never say — that 'abortion is a bad thing.'" But reporter Jodi Enda taped the interview and stood by the quote.

Sandra Cano, the "Mary Doe" in Roe's companion case, Doe vs. Bolton, stated that she never wanted an abortion and signed paperwork she thought was related to a divorce she sought from an abusive husband. The American Civil Liberties Union lawyer that Cano believed was helping with her divorce claimed that her client applied for an abortion but was turned down. Cano says she was lied to and that the lawyers handling the case did not explain to her what was happening and why.

During the partial-birth abortion debate last year, in which proponents claimed it is rarely done, the Bergen County Record reported that doctors in one New Jersey clinic perform 3,000 abortions annually, half of them the partial birth variet Rather than admit the trut abortion proponents attacke the professionalism of the r porter.

Also last year, pro-abo tion groups claimed th anesthesia takes the life the unborn child before th procedure in which i brains are sucked ou Though many physicians d nied the claim, the medi continued to spread th falsehood as if it were tru as if that would someho make the procedure mor ethically tolerable.

Then there are the dail lies told to women that thei unborn child is not a baby just tissue, and that havin an abortion will solve th problems that lead them t seek one. And let's not forge the lie about no one bein available to care for the chil or the woman after birth.

Another bill needs to b introduced immediately tha would outlaw partial-birt abortions before the publi forgets that Fitzsimmon has added his name to growing list of pro-abortio liars.

Cal Thomas is a nationally syndicated columnist.

Some doctors see lies behind reasons for late-term abortions

MIKE ROYKO

Leading abortion advocates are circling their wagons, and poor Ron Fitzsimmons, once one of them, seems to have been shoved outside the tight circle.

Fitzsimmons is the conscience-stricken head of the National Coalition of Abortion Providers who now admits he took part in telling Americans the big lie about so-called partial-birth abortions.

During the national debate on the late-term brain-sucking procedure, Fitzsimmons was one of many pro-abortion spokespersons and media dupes who assured the nation that almost all late-term abortions were done to preserve the health of the mother or because the fetus had serious abnormalities.

Now, Fitzsimmons said, "I lied through my teeth;" and that most late-term abortions were done for the same reason as early abortions – because women wanted to end pregnancies.

Fitzsimmons' confession was barely out of his mouth when he was whopped by fellow abortion advocates, who held a news conference to say, in effect, that he was being truthful when, he now says, he was lying. But now he is lying when he says he is finally being truthful.

Typical was Kate Michelman, president of the National Abortion and Reproductive Rights Action League. She said: "If he thinks he lied, that's his problem to deal with. We have not lied."

Gloria Feldt, president of Planned Parenthood Federation of America, said Fitzsimmons had been "mixing up gestation with procedure."

Whatever the heck that means.

While they squabble about who did or didn't lie, let's listen to someone else for once – genuine physicians, rather than the pro-abortion lobbyists and other non-

"Most of the time, there is nothing wrong with the baby or the mother," she said. "People have known about this for a decade.

"There is a clinic in New Jersey that said of the 3,000 abortions it did last year, 1,500 were late-term.

"So we went from being told that only 200 a year were being done in the entire country to one clinic saying it does 1,500 a year. Obviously, the actual number is in the thousands.

"The media believe what they want to believe. And because a lot of doctors who have testified in support of the partial-birth ban have been pro-life, the knee-jerk response is that it is a pro-life/pro-choice thing.

"There's been all this propaganda that it is done only because women need it. So people said: 'If my wife needs to have this to save her life, she should have it.' The problem is that it is not this procedure versus your wife's life.

One of the arguments for the late-term procedure is that it helps a woman preserve her fertility. Smith describes that as "fantasy."

The future-fertility risk was one of the excuses offered by President Clinton when he vetoed the bill that would have outlawed the procedure.

Clinton said: "There are a few hundred women every year who have personally agonizing situations where their children are born or are about to be born with terrible deformities which will cause them to die either just before, during or just after childbirth.

"And these women, among other things, cannot preserve the ability to have further children unless the enormous size of the baby's head is reduced before being extracted from their bodies."

Which is bunk, according to Dr. Nancy Romer, chairman of obstetrics at Miami Valley Hospital in Dayton and a clinical professor at Wright State University.

"I don't understand that argument about fertility at all," she said. "We have no idea what happens to women who have this procedure down the road. We don't have a clue. There is no scientific evidence that shows that procedure will preserve the fertility of women."

As for the propaganda campaign that led Clinton to veto the bill outlawing the procedure, Romer believes she understands it:

"Those who opposed the legislation have a much broader agenda, and that is to have totally unrestricted access to abortion. They will defend abortion rights blindly, regardless of the facts of the matter. Any legislation, if it's anti-abortion, they are against it.

"They don't think, 'Is this procedure appropriate, who is doing it and why are they doing it?' They don't care about the details. They won't acknowledge the truth of what we are saying because it defeats their larger agenda."

So the whole battle is going to be fought in Congress one more time. And if a bill passes and gets to Clinton's desk, maybe he can ask the CIA or the FBI to find out who is telling the truth before he makes any more somber pronouncements.

oooo

Mike Royko is a columnist for the Chicago Tribune.

LEGISLATIVE INFORMATION OFFICE
119 N. CUSHMAN, SUITE 101
FAIRBANKS, AK 99701
452-4448

DATE: March 7, 1997

Please accept the enclosed original(s) of written testimony for the

House Judiciary Cmte teleconference scheduled on 3-7-97. A copy of this testimony was transmitted to your committee via fax.

Thank you,

Christi Zauerl
Hors Rep

To The Alaska State Legislature

Please enter into the record my testimony to the **House Judiciary Committee** on **HB 65**, dated March 7, 1997.

Since the 1960's, we've all witnessed a steady decline in the moral standards of our country. Then, with the passage of Roe v Wade, a Pandora's box was literally opened up.

In our quest for "freedom" I believe those individuals who passed Roe v Wade lost their sense of determining right from wrong. Abortion at any stage of pregnancy is repugnant, but this partial birth abortion procedure is beyond belief. We as a nation are being strangled by "Our Freedoms". When will it end?

AFTER reading and or seeing pictures in which that tiny, helpless little human is being yanked out of the safe haven of his or her mother's womb by someone who supposedly has dedicated their life to the healing arts (not the killing arts). Having that "person" - and I use the term loosely - deliver all but that little baby's head and proceeds to cut open the back of the skull with blunt scissors, inserting a device that literally sucks out the baby's brain.

Those of you who are not in favor of passing this bill, are you able to sleep at night? If you have children, are you able to look at them and NOT think about how those other precious, tiny innocent victims of partial birth abortions met their demise? If you say that you are unaffected, I feel very sorry for you.

Please take a step in 'righting' a wrong by trying to put the lid back on this Pandora's box by saying **YES** to the passage of this bill.

Sincerely,

Linda G. Smith

Linda G. Smith
P. O. Box 3726
Palmer, Ak 99645
(907) 746-7232

ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE House Judiciary
COMMITTEE NAME

COMMITTEE ON HB65 DATED 3/2/97
BILL/SUBJECT

I thank you that I can express my vote on this bill. I support it because it is murder whether or not the baby's head is in the birth canal or has taken it's first breath. I wonder what situation would require the need for such a procedure where ceasarian section has been available and would seem safer than the partial birth abortion? I just can't express my heart adequately how cruel and gruesome this is, how I can not understand that it is different from infanticide.

I have had my own children and am trained as an RN, (six live births, one set of twins), and am as against this procedure as anyone could be.

Thank you!

SIGNED [signature]
TESTIFIER

self
REPRESENTING (OPTIONAL)

1759 A Gilmore Dr. Fbks AK 99712 457-22[illegible]
ADDRESS/PHONE NUMBER

ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE House Judiciary
COMMITTEE NAME

COMMITTEE ON HB 65 DATED March 7, 1997
BILL/SUBJECT

See attached letter

SIGNED Ron Cray
TESTIFIER

REPRESENTING (OPTIONAL)

1103 John Kalinias Fbks AK 99712
ADDRESS/PHONE NUMBER
907-488-6321

My name is Ann Cray and I am a mother of four children, two living grandchildren, two grandchildren who have died, and another that is in my daughter-in-law's womb. I have experienced the joy of holding two tiny babies that were born prematurely. Jessie was 2 pounds, two ounces and seven and a half months into gestation when he was delivered by caeserian section. Christian was one pound, one ounce and seven months into gestation when he was delivered.

Have any of you even seen let alone held a two to three pound baby? I have, and one thing I'll never forget is how sweet and precious these perfectly developed babies were, with their tiny little toes and fingers, with their tiny little mouths looking like they were trying to whistle, and their tiny little eyes looking all around.

Have you ever had a three pound baby look at your face and listen to you while you were holding them and talking to them? I have, and I will never forget it. I remember when Christian or Jessie would cry, you could see by their faces that they were crying but you did not hear them because they were so little. There was no sound.

Because of my experience of having watched my tiny grandbabies, there is no doubt in my mind that babies go through alot of pain during partial birth abortions or any abortion for that matter. These babies may have been tiny but they were still human beings with feelings and a need to be cuddled and loved. I was not holding some embryo, some piece of tissue, or fetus but a living baby, a tiny human being.

I wish you could all go to the neo-natal intensive care unit at Providence hospital in Anchorage and see these babies and how tiny and sweet and precious they are. They deserve a chance at life too.

I am asking you to support HB65 and ban partial birth abortions. I know in my heart that if you could only see these babies you would not want them to go through an abortion of any type. They are just so sweet.

Ann Cray
1103 JOHN KALINAS
FBKS. AK 99712
907-488-6821

3-6-97

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE ON HB65 DATED March 7, 1997:

My name is Ruth Ewig and I am a mother and an advocate of the Right to Life at all ages including the pre-born babies and the elderly. I completely without any hesitation support HB65, a bill banning the hideous partial birth abortions.

There is something wrong with this picture. We hear on the news of the public outcry to protect laboratory rats, yet the killing of baby humans is not worthy of defense or media coverage. Right now animal rights groups are breaking Alaskan law to protect wolves. This is front page news. What about the baby humans? This month's LIFE magazine features animals that are endangered. What about the endangerment of the value of HUMAN life? Today there was coverage in the newspaper of dogs dying while on the Yukon Quest. Just consider the public outcry if the owner of a Yukon Quest dog decided to jab scissors into the dogs head, and suck out its brains in order to kill it.

Recently in our local newspaper (February 28, 1997) an article reported that an alleged murderer could be found guilty of a double murder because he had killed a woman who was pregnant. If this is the case then what about abortion also being murder?

I am ashamed and embarrassed that the Alaskan Medical Association is opposing the right to life. The newsletter advises members, our medical experts, to oppose HB65 "because [it] interferes with the physician/patient relationship and [will] criminalize activities...engaged by physicians." A physician treating a pregnant woman has TWO patients. Doctors who execute their patients, morally are criminals. Physicians are supposed to save lives and should have led the charge to stop the killing.

Research has proven that these babies in the womb can hear their mother's voice, and other familiar voices. They can feel pain and do feel pain when they are aborted. When the procedure is done you may not hear the screams because their heads are still inside the vagina but the physician and nurses can see the baby struggling as their arms and legs wave around.

It doesn't take a medical degree to realize that human life is being destroyed. The AMA should be advising physicians to refuse to participate in this American holocaust. Since abortion was legalized in 1972, 32,000,000 babies have been killed. In dollar bills we would consider that quite a bit of money.

I would like to express my appreciation to the legislators down there who have the courage to help put our state in a position to lead the nation back to understanding right from wrong. We need gatekeepers like you to help us get off this slippery slope.

Thank you for this opportunity.

SIGNED Ruth Ewig

2325-30th Avenue, Fairbanks, AK 99701

ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Judiciary
COMMITTEE NAME

COMMITTEE ON HB 65 DATED 3/7/97
BILL/SUBJECT

All abortions are morally and ethically wrong. The partial-birth abortion procedure, however, is a particularly egregious type of abortion not only because it kills a viable unborn baby but because it is potentially very dangerous for the mother.

Consider the dangers inherent in p.b. abortion. A woman's cervix is forcibly dilated over several days, which risks creating an incompetent cervix, the leading cause of premature deliveries. It is also an invitation to infection, a major cause of infertility. A p.b. abortion is essentially a breech birth, something physicians avoid whenever possible. But in this case it is done intentionally at great risk to the mother's uterus. The abortionist then forces scissors through the baby's skull which remains lodged just within the

SIGNED Peggy Seeley
TESTIFIER

Interior Right to Life
REPRESENTING (OPTIONAL)

P.O. Box 61661 Fairbanks AK 99706
ADDRESS/PHONE NUMBER

479-5902

birth canal - again risking injury to the uterus and laceration of the cervix or lower uterine segment. This could result in immediate and massive bleeding and the threat of shock or even death to the mother.

None of this risk is ever necessary for any reason, as many OB/GYN's have verified. If vaginal delivery is not possible, a doctor performs a Caesarean section. But in no case is it necessary to partially deliver an infant through the vagina, and then kill the infant.

Former Surgeon General C. Everett Koop, has testified that the p-6 procedure is never medically necessary for either the mother & certainly not the baby. Women who thought they underwent p-6 abortions for "medically necessary" reasons have been tragically misled. Ron Fitzsimmons exec. director of the National Coalition of Abortion Providers, used the N.Y. Times that he had on ABC's Nightline last week that p-6 abortions are rare.

I am very disappointed that the Alaska State Medical Assn. is opposing HB 65. According to the Jan/Feb 1997 "Heartbeat," the Committee stated it is improper to legislate medical treatment which should be left to good science & appropriate medical care." No abortion, but especially the p-6 abortion is "good science" or "appropriate medical care." In fact, it is perverted & dangerous science & medical malfeasance.

My name is Anna Scheller and I am a resident of Fairbanks. Thank you for taking the time to read my testimony in support of HB 65, the Ban on Partial Birth Abortion. I urge the legislature to vote in favor of the ban. I believe this issue transcends party lines and even the abortion debate. That a doctor may deliver a baby's body outside the mother, cut a hole in the base of the infant's skull, then vacuum the child's brain out is inhumane and gruesome. If such a procedure were applied to the offspring of animals, the outcry would be great, yet it is done to children who could survive birth. We are a country that fights child abuse, will not buy products if they have been tested on animals, but we will pull a child from it's mother's womb and kill it before it can take a breath. If we will prosper as a state, as a country, we must begin fulfilling our responsibility to protect those who cannot speak out for themselves. Those who believe abortion should not be restricted under any circumstance are blind to the truth of the procedure. I believe to support the HB 65 is the only reasonable course of action for people who seek to protect the quality of life for all people. The reason I must submit this written testimony instead of speaking at a mike is because I have 5 young children who would have to sit with me during the teleconference. My husband and I were concerned that medical testimony in favor of HB 65 would be emotionally terrifying to them.

To those who sponsored this bill, you are courageous. May you continue to fight on behalf of those who cannot defend themselves.

Faxed 2-20-97

Thank You! Peterkin for Sponsoring this!

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs committee on HB65 "An Act relating to partial-birth abortions." A listen-only teleconference was held on 2-20-97.

My name is Ruth Ewig and I reside at 2325-30th Avenue. I am in complete support of HB65 and there were at least 600 of us up here in the Tanana Valley, one year and a half ago, and probably more at this time.

Thank you for caring enough about human life to have written this bill which bans partial-birth abortions. I am hopeful that bills such as this which are traveling through the legislative process represent the cutting edge of a swing in the state and hopefully the nation toward morality, thus reversing the "decay of a nation."

Representative James, thank you for your courageous stand in preventing supporters of these deaths of pre-born babies from badgering our witnesses. Those who continue to insist that it is the woman's choice need to be required to state just what choice we are talking about. It would be too embarrassing to verbalize protecting the medical procedure of killing the baby after most of it has been delivered.

Thank you to legislators who have the discernment and foresight to get us off this "slippery slope" to destruction that we are on with our different killing procedures such as partial birth abortions. Partial birth abortion represents destruction of the helpless and the weak.

I support this bill also because of the attitudes that develop in the hearts and souls of physicians who repeatedly destroy human life. Surely, they become quite insensitive to what they are doing after repeatedly killing babies. Each step makes the next step a little easier and we are already moving into euthanasia, "medically assisted suicides" and the next phase, attacks on the elderly.

Vote YES to ban partial birth abortions. It is long overdue. Please contact me if there is more that I can do to help.

Sincerely yours,

Ruth Ewig

Ruth Ewig

2/20/97

452-5538 phone/fax

DRAFT

HOUSE JUDICIARY STANDING COMMITTEE
March 7, 1997
1:08 p.m.

HB 65 - PARTIAL-BIRTH ABORTIONS

Number 1404

CHAIRMAN GREEN indicated that the committee would consider HB 65, "An Act relating to partial-birth abortions." He noted that this was a procedure to abort a child before it clears the birth canal by the insertion of a sharp instrument, probably scissors into the back of a skull. He added that version B of this bill, dated 3/4/97 was before the committee.

Number 1451

REPRESENTATIVE PETE KOTT came forward to testify on HB 65 as sponsor to this legislation. He stated that this legislation was a fairly simple measure and it does one thing. It prohibits what has been termed "partial birth abortions" from occurring in Alaska. Partial birth abortions involve a series of steps which are horrible, unconscionable and smacks in the face of hideousness. He stated that these techniques are gruesome and he noted that he had provided written documentation of the same, along with the sponsor statement. He stated that the technique enumerated in the sponsor statement was obtained from a Dr. Martin Haskell enumerated in a 1992 paper provided to the National Abortion Federation. This bill does not in any way restrict abortions from occurring in Alaska but rather a type of procedure that is used.

REPRESENTATIVE KOTT stated that partial birth abortions occur anywhere from nineteen weeks through to full term. "Essentially one relies on the cervical entrapment of the head to help keep the baby in place while the insertion is made to complete the process." He stated that the committee has before it a committee substitute that he felt captured the intent of the legislature as it relates to this particular measure. He felt that enough substantiating documentation provided by members of the medical community that suggest that this procedure is not a necessity to save the life of a mother. "There will also be some discussion on whether or not the procedure is performed in an abundance of the cases. I think that you will hear and bear out some facts that this is not a procedure that is rarely used. In fact, just this past week, with I believe with the reintroduction of a bill in Congress, a Ron Fitzsimmons, the Executive Director for the National Coalition of Abortion Providers, said that he mislead the public because he feared the truth would damage the abortion rights cause. This was in relationship to the number of times this procedure was used and the reasons for using it."

DRAFT

Number 1745

GEORGE DOZIER, Aide to Representative Kott, came forward to testify on HB 65. He read a statement into the record.

"At the outset, I would like to discuss, just briefly, federal constitutional requirements in the abortion context. As everyone knows, the seminal case addressing the constitutionality of abortion in the United States is Roe v Wade, 410 US 113. Generally, the Court held as follows:

"1. The fourteenth amendment includes a right to privacy, and this right is broad enough to include the right to obtain an abortion. Roe, 410 US, at 177.

"2. This right is not absolute and may be limited by states' legitimate interest in safeguarding women's health, maintaining proper medical standards, and protecting potential human life. Roe, 410 US, at 177.

"3. Applying these principles, the Court arrived at the following conclusions. During the first trimester, the state, essentially, may not interfere in a woman's decision to obtain an abortion. Roe, 410 US, at 183. From the end of the first trimester, the state may regulate abortion to safeguard the health of the mother. From the point of viability, the state may proscribe abortions, except where necessary to preserve the life and health of the mother. Roe, 410 US, at 183.

"4. It may be noted that the Roe Court specifically and expressly rejected an argument that a pregnant woman is '...entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she chooses.' Roe, 410 US, at 177.

"The most recent Supreme Court opinion discussing abortion is Planned Parenthood v. Casey, which can be found at 505 U.S. 833; 120 L Ed 2d 674 (1992). In Casey, the Court found that states have a substantial interest in potential human life, and that this extends throughout the pregnancy. Casey, 120 L Ed 2d, at 714. Indeed, this interest is characterized as 'profound'. Casey, 120 L. Ed 2d, at 715. The Court found that its opinions subsequent to Roe had undervalued this interest of states in potential human life, 120 L Ed 2d, at 711, and as a consequence, it rejected the rigid trimester system first articulated in Roe. Casey, 120 L Ed 2d, at 710. Instead, it divided pregnancies into two periods--- pre-viability and viability.

"According to the Casey Court, during that first period, in which the baby is not viable, states may not place an 'undue burden' on a woman's right to decide whether to terminate a pregnancy. It defined 'undue burden' as regulations that have the purpose or effect of placing a substantial obstacle in the path of a woman

seeking an abortion of a nonviable fetus. 120 L Ed 2d, at 715.

"During the second period, in which the baby is viable, the constitutional standard is different. As stated by the court, in quoting from Roe: '...subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.' Casey, 120 L Ed 2d, at 716.

"To summarize: First, the state has a substantial interest in potential human life which extends throughout the pregnancy. Second, prior to viability, the state can not place an undue burden on the right to pregnancy, which means placing a substantial obstacle in the path of a woman seeking an abortion. Third, after viability, the state may regulate abortion, and even prohibit them, except where necessary to protect the life or health of the mother.

"Since partial birth abortions span the last part of the pre-viability stage and into the viability stage, HB 65 is specifically designed to cover both stages. Hence, it must be analyzed with respect to both standards. HB 65 more than meets these standards.

"First, with respect to pre-viability abortions, HB 65 does not place an undue burden on the right to chose an abortion. That is to say, it does not place a substantial obstacle, either by intent or in effect, in the path of a woman seeking an abortion. After all, it does not proscribe abortions per se. It merely makes one particular form of abortion, and a particularly egregious form at that, illegal. All other forms of abortion remain open to pregnant women. The fact that this does not place a substantial obstacle in the path of women seeking abortion is clear. The Director of Public Health in Alaska testifying before the State Affairs Committee a couple of weeks ago testified that partial birth abortions, as defined by the bill, have not been performed in Alaska. Thus, the question must be asked: Does HB 65, which proscribes a procedure which, thus far, is not done in Alaska, place a substantial obstacle in the path of a woman seeking an abortion? The answer, by definition, is clearly no. The procedure is not available anyway.

"In that regard, can it really be a substantial obstacle to require abortionists to conform to the standards of abortion practice already present and accepted by practitioners in Alaska. That, to my mind, is no obstacle at all, let alone a substantial one.

"In short, all options presently available to women to obtain abortions remain unaffected. There is no obstacle, and thus, the first standard---that which applies to pre-viability stage---is clearly satisfied.

"The second standard, which applies to viable babies, is also

satisfied. As I previously indicated, during the period of viability, the Supreme Court recognizes that the state may regulate or even proscribe abortions, except where necessary to preserve the life or health of the mother. HB 65 does not ban abortions during this period; it merely bans a particular procedure. Thus, it is more of a regulation of abortion than a proscription. And, the state is free to regulate, except where necessary to preserve the life and health of the mother. HB 65 contains an express exception applicable to the life of the mother. It does not mention health. However, it does not need to expressly mention health for the following reasons:

"First, all forms of abortion present in Alaska remain in effect. If the mother's health requires an abortion, she continues to have recourse to those procedures. Her health is protected.

"Second, even when partial birth abortions become available in Alaska, their ban would not adversely impact maternal health. The Committee was provided with voluminous material clearly establishing that fact. For instance, as Dr. Pamela Smith, who is the Director of Medical Education, Department of Obstetrics and Gynecology at Mt. Sinai Hospital in Chicago. testified before the US Senate: 'There are absolutely no obstetrical situations encountered in this country which require a partially delivered human fetus to be destroyed to preserve the life or health of the mother'. Similarly, Dr. James Jones, who is chairman of the Department of Obstetrics and Gynecology at the New York Medical College, stated, regarding partial-birth abortions, that he 'can't imagine that being an indicated procedure for the saving of a life or well-being of the mother.' Although the America Medical Association (AMA) has remained neutral on the issue, its Legislative Council voted unanimously to recommend that the AMA endorse the federal partial birth ban. In so doing, it stated that the procedure is basically repulsive and is not a recognized medical technique. Again, the former Surgeon General of the United States, Dr. C. Everett Koop stated: '...In no way can I twist my mind to see that the late-term abortion as described---you know, partial-birth, and then destruction of the unborn child before the head is born---is a medical necessity for the mother.' Similarly, Dr. Warren Hern, who wrote the Horn Book on late term abortions, stated in an article in American Medical News: 'You really can't defend it... I would dispute any statement that this is the safest procedure to use.' He stated further: 'You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that.'

"I won't bore you with more opinions. There are plenty in the materials that have been provided. The point is that partial-birth abortions are not necessary for the health of the mother.

"In summary, the Legislature can conclude that partial birth abortions are not necessary to preserve the health of the mother,

and indeed may even be inimical to the health of the mother. No express exception is needed, since all other procedures remain available.

"Thus, both the pre-viability and the post-viability standards required by Casey are satisfied. That being the case, all that is required is that there be some rational basis for HB 65. And, there are several permissible state interests that are advanced by HB 65. Indeed, the State has compelling interests in preventing such procedures. Let me suggest but a few.

"First, delivering a baby just to the very cusp of constitutional personhood and then killing it, just inches away from being completely born, is cruel. Indeed, Dr. Isada, who spoke against HB 65 before the House State Affairs Committee, described one aspect of partial birth abortion---sticking scissors into the baby's skull---as gruesome. The state has a very strong interest in protecting human life from such cruel and gruesome actions. If the state can prevent cruelty to animals, it certainly can do the same thing for human life.

TAPE 97-33, SIDE A
Number 000

"Second, partially delivering a baby ---or, I should say almost entirely delivering a baby---and then killing it tends to mix the roles of obstetrician and abortionist. The former are healers, and they are perceived as such by the general public. Abortionists, in the overwhelming number of cases, ---for instance I refer you to Dr. Haskill's statement that 80% of his partial birth abortions are elective---are not healers. They perform some other function. By mixing these two opposing roles, there is great danger that public confidence in the medical profession will be undermined.

"Third, bringing a baby right to the very edge of complete birth and then sucking its brains out is inherently disrespectful of human dignity.

"Fourth, the state has a legitimate and compelling interest in drawing a clear distinction between legal abortion and infanticide. Partial birth abortions blur that distinction. Furthermore, it may be noted that the difference between a viable baby who has just emerged from the womb and a viable baby who is almost out of the womb is negligible. But for a few inches they are the same. To permit the killing of one and forbid the killing of the other is ludicrous and will breed disrespect for the law. So fine a distinction, carrying such dire consequences, can not but be scoffed at by Alaska's people.

"Hence, in my opinion, partial birth abortions are fully constitutional under the guidelines established by the United States Supreme Court. I would like to turn now to some of the

specific arguments that have been made thus far against the constitutionality of HB 65.

"First, it has been argued that HB 65 creates an undue burden because partial birth abortions are the safest alternative. This, of course, is an assertion of fact, and the alleged fact is extremely dubious. This Committee has been provided with an abundance of materials indicating that partial birth abortions are not necessary for maternal health and further indicating that partial birth abortions, in themselves, present a risk to maternal health.

"It also has been argued that the Supreme Court, in Planned Parenthood v. Danforth, held unconstitutional an abortion statute which proscribes the use saline amniocentesis, in part because such a prohibition would force women to use more dangerous methods. On the surface, this argument has a certain appeal. After all, HB 65, like Danforth, involves the proscription of a defined abortion procedure. However, Danforth is clearly distinguishable, on at least three grounds. First, HB 65, unlike the Danforth statute, does not force women to use procedures which are less safe than partial birth abortions. Second, the Danforth court emphasized that the proscribed method was the most prevalent available, and that another safe method was not yet available. Here, with HB 65, the proscribed method is not yet used in Alaska and other, safe, methods are available. Third, Danforth predates Casey and thus its analysis focused on whether the statute advanced maternal health. This was during the period in which states' interest in protecting potential human life was undervalued. Casey changed all of that. Now, unlike when Danforth was decided, it is recognized that the state's interest in human life may be asserted throughout pregnancy. HB 65 does just that, and it may be expected that the right to assert that interest would be weighed in any constitutional challenge. Danforth, quite simply, is distinguishable.

"In the past it also has been argued that the only Court to review a ban similar to HB 65 invalidated it, because for some women the prohibited procedure would be safer than other available techniques. The case is Women's Medical Professional Corp v. Voinovich, 911 F. Supp. 1051 (S.D. Ohio 1995). The Court in that case, within the context of deciding whether to issue a preliminary injunction and prior to a full trial, held that D&X was safer than other methods; and, because D&X was more available than induction methods, which require hospitalization, a proscription on D&X was a substantial burden. The Court in that case was certainly entitled to make its findings. This Committee has an equal right to make findings of fact, and ample evidence has been presented to it to base a contrary finding concerning safety. Moreover, this Committee reasonably can not find, given the previous testimony of the Public Health Director, that partial birth abortions are more prevalent than any other methods in Alaska. In Alaska, partial

birth abortions, thus far, have not been performed. Our state, fortunately, seems to lag behind the rest of the United States in adopting undesirable conduct.

"It also has been argued that the definition of partial-birth abortions is overbroad because it could encompass procedures other than partial birth abortions. It is true that statutes which are so broad as to sweep within their coverage not only properly proscribed acts but also constitutionally protected acts are unconstitutional. The definition employed in HB 65, however, is not of that nature. It does not overlap other alternative methods. They are clearly distinct and clearly outside the coverage of HB 65. It is also argued that the definition is vague. Vague statutes, particularly those that impose criminal liabilities, are unconstitutional. However, HB 65's definition is not vague. It is clear and precise. It establishes definitively what is proscribed. Persons of common intelligence easily can understand what is prohibited and thus there will not be a chilling effect. Proponents of this argument may have in mind the definition used in the statute examined by the court in Voinovich. There, the court---and I think quite rightly--- concluded that there was an overlap and that the statute was vague. But, the definition of D&X employed in that case does not in the slightest resemble HB 65's definition. I can quote the Ohio definition for you. 'The termination of a human pregnancy by purposely inserting a suction device into the skull of a fetus to remove the brain. "Dilation and extraction procedure" does not include either the suction curettage procedure of abortion or the suction aspiration procedure of abortion.' The court found that this definition overlaps normal D&E procedure (because both may involve inserting a suction device into the skull) and because D&E is not excluded as suction curettage or suction aspiration. Further, the Voinovich Court noted that in analyzing statutes for vagueness, the absence of a mens rea requirement is somewhat persuasive. In fact, it relied on this concept in finding another portion of the Ohio law unconstitutionally vague. In HB 65, it may be noted that there is an express mens rea.

"Concerns regarding vagueness are misplaced. This bill does not resemble, in any respect, the statute considered by the Voinovich court. It is clear and precise, and it does not overlap any other abortion procedure. It is such as to apprise people of common intelligence what is being prohibited, and there is no reason to believe that it will have a chilling effect on constitutionally protected acts. Finally, since it is clear, there is no danger of arbitrary or discriminatory enforcement.

"Finally, it is argued that the privacy clause of the Alaska Constitution would be violated by HB 65. The Alaska Supreme Court has not yet decided an abortion case using this constitutional provision. What we do know is that, although the right is broader than the privacy right found by the US Supreme Court in the US

Constitution, it is not absolute. And, certainly, the right to privacy is not violated when an alleged infringement is justified by a legitimate and compelling governmental interest.

"Although the Alaska Constitution's right of privacy is deemed to be broader than that of the United States Constitution, it does not reach everywhere and cover all things. Essentially there is a two step analysis that is required. First, it must be determined if the conduct in question is within the scope of the amendment. Then, and only then, it must be determined if the alleged infringement bears a fair and substantial relation to a compelling governmental interest.

"First, does partial-birth abortions fall within the scope of the amendment? The Alaska Supreme Court has determined that this issue is resolved by answering two questions: (1) Does the person have an actual (that is, subjective) expectation of privacy concerning the conduct? (2) Is the expectation one that society is prepared to recognize as reasonable? If both questions are answered in the affirmative, the conduct falls within the scope of the privacy amendment. Hilbers v Muni. of Anchorage, 611 P. 2d 31 (1980).

"In Alaska, as with the rest of the United States over the last quarter century, many people have been conditioned to perceive abortion as part of the culture. Indeed, the Casey Court made much of that fact in discussing whether or not it would be appropriate to abandon the central tenants of Roe. Given this state of affairs, it would not surprise me that some would have a subjective expectation a privacy right to engage in even this gruesome procedure. But, is subjective expectation something that we as a society are prepared to recognize as reasonable? I think not. In my opinion, for the reasons I have discussed at length in this testimony, society is not even close to recognizing as reasonable any such assertion of a privacy right to obtain a partial-birth abortion. Hence, this procedure falls outside the scope of the amendment.

"Even assuming, arguendo, that partial-birth abortions are within the scope of Alaska's constitutional right to privacy, society's hands are not tied. As previously stated, the right is not absolute. An alleged 'infringement' is permissible if it bears a fair and substantial relationship to a compelling governmental interest.

"I respectfully submit to you that Alaska has a compelling state interest in protecting babies, who are almost born, who are mostly outside the bodies of their mothers, from having their brains sucked out. I also submit that the government has a compelling interest in protecting public confidence in the medical profession by not blurring the roles of healer and abortionist. I also suggest to you that the government has a compelling interest in protecting the almost born from this cruel, gruesome, and

undignified death. Accordingly, HB 65 does not run afoul Alaska's right to privacy.

"In conclusion, HB 65 will pass constitutional muster."

Number 960

BACHAR BEN'ISRAEL testified via teleconference from Moose Creek in support of HB 65. She stated that she was confused about when this type of abortion would be conducted in regards to how developed the fetus was. She said she was appalled to understand that this procedure was conducted on full term babies after delivery, that the procedure involved the suctioning of brain tissue and stated that this was beyond her imagination. Unless a mother's life is in danger this procedure should not be allowed and added that it reminded her of the undesirable during the Nazi Holocaust.

Number 1101

AMY SKILBRED, Alaska Civil Liberties Union, came forward to testify in opposition to HB 65. She referred to her testimony entitled, "State Interference In Private Medical Decisions." She noted that some of those present have children and that she has two children. She spoke to a baby's pre-term development by stages and the fact that parents look forward to birthing this child, along with all the anticipation involved, fixing up the nursery, etc. She asked those present to imagine going in for a routine prenatal visit and finding out that the unborn child they treasure will not live long after it is born, if it will survive this long. With this tragic news barely understood it is then advised with the mother's condition, age or medical history that terminating the pregnancy is recommended. What if then they learn that the medical procedure, with possibly the lowest risk in that mother's specific medical circumstances, is not an option, not an option because it is against the law. Imagine how the mother and family will feel at a moment like this, the moment that a law not based on science but on politics prohibits an individual and their doctor from using the best medical procedure under the circumstance. This moment is a dangerous moment for our democracy.

MS. SKILBRED continued that all citizens of this country and state have a constitutional right to privacy. It is hard to think of privacy more profound than a patient's right to choose his or her course of treatment in a medical emergency. HB 65 would violate this most fundamental right by replacing a doctor's medical advise and a patient's decision whether or not to follow that advise with politically motivated statutes. A law substituting religious beliefs for science, a law penned and promoted by those who would place compassion for a child that cannot live over concern for a mother's health. Surely those whose compassion lies with the unborn can understand the suffering a mother feels when she is loosing a child she wanted and loved, or a father for that matter.

Compounding this trauma is the fear of imminent danger to a woman's own body. This is a perilous situation for women, when they are loosing a child that they carry. This is an excruciating situation, physically and emotionally.

MS. SKILBRED noted that to further complicate this situation with some arbitrary and vague statutory prohibition is simply unconscionable. To deny appropriate medical treatment in this situation is a violation of the mother's rights, her rights as an individual, as a patient and as an American. Our courts have refused to allow such a profound violation of individual privacy rights. Neither will this violation of individual rights stand. Indeed, very similar attempts have failed. Nevertheless, she urged the committee at this point to stop this dangerous interference with medical treatment before it moves one step closer to passage.

MS. SKILBRED offered that one of the things people should consider is if this legislation was to pass and a suit is brought against a doctor for using such a procedure in Alaska she asked what happens to the patient's privacy rights then. When the state decides to prosecute a treating physician, if laws such as HB 65 allows state prosecution of a doctor performing a medical procedure, the patient and the patient's once confidential, medical record and medical history are destined to become exhibit one. How else will a court determine if a doctor prosecuted by the state under this bill before them was performing a procedure that was necessary.

Number 1380

REPRESENTATIVE GREEN asked if the baby's head were to slip beyond the cervical control, is the doctor still entitled to drive the scissors into its skull.

MS. SKILBRED stated that she was not a doctor and she thought the way in which the procedure has been publicized any normal person would think it gruesome. They are not taking about healthy Gerber Babies who are just about to be delivered that are eight and 1/2 months along even if the birth mother did not want it.

Number 1468

CHAIRMAN GREEN stated that he thought it had to do with the mother's health rather than the baby. He understood the procedure that as long as the baby's head is still cervically preventing it from being born, if in fact "that wasn't that type, for example, I've talked to some people who had their babies on the way to the hospital. They delivered so quickly that you might not be able to stop the baby's birth even though you've made a breach condition." If the baby is born, this situation has gone beyond the need to help the mother. He asked what happens once the baby is viable.

MS. SKILBRED responded that these procedures are usually induced.

This isn't a situation where someone is on their way to have a baby, but they are in the hands of a physician before the process is induced. She can't respond to some of these questions in part as opposed to what the sponsor has stated, the bill's wording is vague. If the process is really D&X's, then it's D&X's, if it's really D&E's, then it's D&E's. It isn't clear from this bill what the process is.

Number 1526

REPRESENTATIVE PORTER stated that any malpractice case is not a patient's privacy subject to being violated.

MS. SKILBRED stated that she believed it could be.

Number 1540

REPRESENTATIVE BERKOWITZ stated that in a civil situation, when a patient brings suit against a doctor and puts at issue the treatment, the doctor/patient confidentiality is breached. This is a circumstance where essentially the state is prosecuting, the state is charging a doctor. There is not necessarily collusion between the state and the woman who has had the abortion. In which case, the doctor wouldn't be entitled, because of confidentiality, to prepare their case.

MS. SKILBRED added that the woman may not want to participate in a case like that.

Number 1584

REPRESENTATIVE CROFT noted that in previous testimony it was stated that the exception was to protect the life and the health of the mother. This law just says life. He asked in her opinion and the organization she represents, is it constitutional if it doesn't say "or health."

MS. SKILBRED responded that she could provide him with a written response at a later time. She said that this might address one of the issues, it might not address all the constitutional issues that this bill might have.

Number 1650

CHAIRMAN GREEN asked that if this legislation is intended to protect the life of the mother, it was his understanding, that breach condition babies are a very high risk birth as compared to the normal, head first birth. It seemed to him that when a doctor goes in and manipulates the baby from the normal head down position into a feet down position, that doctor is creating a breach condition which increases the risk of damage, he thought that they were working in the wrong direction, literally. They are incurring

a higher risk by inverting the baby. It seemed to him that this was not unlike trying to take a Christmas tree out the door the wrong way. He didn't know how this could be considered in the best interest of the mother.

MS. SKILBRED responded that they could either decide that doctors based on their knowledge, training and abilities are not the people who should decide what is in the best interest of their patient, but a legislative body should decide what's in the best interest of a woman or they could decide that doctors who have the information about a woman's condition, her age, her health, her medical background, are the ones who are best suited to decide what procedure should be used. She respectfully suggested that they should leave it to the doctors to decide. There are numerous law suits against doctors for not doing the right thing, but she didn't think Alaska should legislate what the procedures are that doctors should use.

Number 1700

CHAIRMAN GREEN asked if she could think of any other type of manipulation that would be preferable to invert the baby for delivery, rather than to try...

MS. SKILBRED stated that after having vaginally delivered two children she said it would be an uncomfortable situation to do anything but the way children should be born. She didn't know that someone would be better off having a caesarean birth to pull out what might be a viable but soon to die baby. She thought they should look at the mother as well and to let her, along with her physician make a decision.

Number 1750

CHAIRMAN GREEN stated that the reason he asked was that one of his daughters has two children, the first one, a girl, was five and 1/2 pounds. Because she was in a breach position and unable to be turned around, they took the baby caesarean because of the risk of trying to deliver in the wrong direction. Her physician felt that even a baby nearly half as big in the wrong direction was a higher risk than a caesarean section. It seemed incongruous to him that a doctor would reverse a normal situation in the interest of protecting the mother.

MS. SKILBRED again stated that she wasn't a physical but that a doctor in this situation might decide that this is in the best interest of the mother. She noted that a caesarean section is major surgery.

Number 1847

DR. PETER NAKAMURA, Director, Division of Public Health, Department

of Health and Social Services came forward to testify on HB 65. He stated that the primary problem with the bill is that they're legislating medical practice, a clinical practice. They're not deciding here whether an abortion should be done or not done. He thought that the bill says they're at the point where a determination is made and an abortion will take place, now what procedure should be used. This is a decision which should be left between a physician and their patient. This is not something that should be legislated. Each situation is different. He outlined these for the committee.

DR. NAKAMURA stated that if an abortion is needed to be performed then there are all types of patients. There may be a patient who has an underlying medical problem like a heart condition and perhaps this is the reason an abortion had to take place since the stress of delivery would have been too great. The patient might have leukemia or another terminal illness. It would be necessary to abort because of chemotherapy treatments. Once a decision is made then the doctor needs to decide which is the safest procedure for this child. The most difficult and complicated procedure is to allow a pregnancy to go to term. There are a large number of complications in this instance. If an abortion is decided upon a procedure needs to be established. Saline injections have been used to induce labor, but is traumatic on the patient, takes a longer time and has other complications. He noted these complications.

DR. NAKAMURA noted that another option could be a C-Section but this is major surgery where the patient has to be anesthetized, hospitalized and an operation is performed to remove the fetus. There are other ways an abortion can be induced, such as with chemicals, or through the use of hormones. Quite often hormones don't work because in the early stages of pregnancy, the uterus doesn't respond which means that the patient is left in a hospital or in an uncomfortable situation for a longer duration of time until another choice for a procedure is taken. It takes a large amount of medication to induce labor at this early stage, prior to the viability of the fetus and quite frequently it fails. The doctor is best able to determine when this viability is. The definition under the previous statutes was 150 days.

DR. NAKAMURA addressed the options of either D&X or D&E. Both of these procedures are somewhat similar in that the doctor dilates the cervix, then the non-viable fetus is extracted. This is a pretty traumatic procedure. The D&X procedure is one that was designed to be more physiologically acceptable to many patients because sometimes the mother would still like to hold the fetus. If the fetus doesn't have a genetic abnormality it would still look like a baby. It was for this purpose that this procedure was designed.

DR. NAKAMURA paraphrased a statement to respond to which was,

"Partial birth abortions are cruel and gruesome." He stated that it's also cruel and gruesome to subject the mother to an additional stress that she doesn't have to be exposed to, such as other procedures or for instance in the case of a child with significant genetic defects. If it is known that the fetus will not survive and the mother is required to go to full term and deliver. This would be pretty cruel and gruesome in itself. All abortions are kind of gruesome but there's a purpose for them to take place, sometimes it's psychological and sometimes it's physical.

DR. NAKAMURA again referred to an argument against this procedure and stated that if they look at the fact that partial birth abortions as inherently disrespectful of the dignity accorded human life, he said he wasn't sure how to respond to that one. He thought in this case they're talking about whether an abortion should be done or not be done. As stated previously, the comparable procedures can actually be more gruesome than a D&X in itself. He assumed that the bill relates to D&X because he's heard so often the description of a needle stuck into the back of the brain and the contents aspirated.

Number 2163

CHAIRMAN GREEN again asked if this procedure was ultimately for the protection of the mother.

DR. NAKAMURA responded that yes, this procedure was for the protection of the mother.

Number 2238

CHAIRMAN GREEN asked if this could happen in the case of a normal baby.

DR. NAKAMURA noted that this wouldn't be the case if it's going to be called an abortion. Once the baby is viable this procedure would not be undertaken unless it's to save the life of the mother. He said this decision would be made between the physician and the mother. He couldn't imagine a situation where this procedure would be used unless it happened to be an instance of a hydro-cephalic infant and to preserve the health and the future ability of this mother to have babies. Then this procedure might be used.

CHAIRMAN GREEN noted his concern that if this is going to be a demise of the baby to save the mother's life, he asked why the baby would have to be aborted if it's healthy, it sounds like it would still fit this category, but if it does have to be killed, to be killed in this manner, the doctor is saying that unless it's a hydro-cephalic there are other ways that might be more traumatic to the mother.

DR. NAKAMURA stated that if the mother is pregnant and the infant

is viable, the only time that this baby would be aborted would be to save the life of the mother or perhaps prevent a significant, serious, harmful affect on her health.

CHAIRMAN GREEN added that the first consideration might be whether the baby is viable to save both.'

Number 2306

DR. NAKAMURA responded yes, he would assume so. A caesarean could be a choice. He went on to paraphrase the statement that partial birth abortion tends to blur the distinction between constitutional persons and non-persons and between infanticide and legal abortions. He stated that he didn't know what is meant by this statement. He also quoted, "A partial birth abortion, because of their gruesome nature and because they incorporate two separate roles of physicians and the role of the healer and the role of the abortion, tend to undermine the public confidence in the medical profession." He noted that the reason the physicians are doing these abortions is that in the past, prior to the time that they were made legal, they were done by others. When they were done by others there was a lot of unfortunate outcomes. He noted a hospital in Texas that only administered to woman with complications from illegal abortions.

Number 2412

REPRESENTATIVE PORTER asked in regards to the distinction between a D&E and a D&X, on the second page of the bill, line 13, he said he didn't have any problem with this language and asked if it would eliminate a D&E.

DR. NAKAMURA responded that it would eliminate almost everything. He stated that he had never done an abortion. He needed to ask other physicians what this language meant. To them it means that this virtually could eliminate all abortions because there is no way they can assure that a baby will not be delivered, even during a suction aspiration of a fetus and not be alive. In reality it could eliminate all abortions.

REPRESENTATIVE CROFT stated that he'd like to get more to the point of these procedures being done either pre-viable or viable for a malformed baby or to protect the life of a healthy mother, but he stated that if they would have the doctor return, these questions could wait.

TAPE 97-33, SIDE B
Number 000

DEBRA JOSLIN, Chair, District 35, Republican Party of Alaska, testified next via teleconference from Delta Junction. She shared a story of a woman who gave birth to a child with multiple

impairments. After many surgeries this child is alive and well, lives in Alaska and is a joy to his mother. If this woman was asked if this child should not have lived, the answer would have been no. When this child was born there was no such thing as legalized abortion, or partial birth abortions. If there had been that option, if the doctors has presented this option, the woman might have consented to this procedure.

MS. JOSLIN referred to an article in the "Wall Street Journal," titled, "Partial Birth Abortion is Bad Medicine," written by several obstetric-gynecologists. This article contains some of the truths about partial birth abortions. She said she would send this article to the committee.

Number 0043

BARBARA RAWALT, Financial Chair, District 35, Republican Party of Alaska, testified next via teleconference from Delta Junction. She added that she was also testifying as a parent and as a grandparent. She urged passage of HB 65. She referred to testimony by Mr. Fitzsimmons, the oft quoted pro-choice spokesman, who supported both the variety and the necessity of this procedure and recently admitted that his previous statements were a lie. He admitted that this procedure is not rare, it affects not just a few hundred woman as previously stated, but 300,000 to 500,000 women per year in the United States who have this procedure done. As to the necessity, he stated that this procedure was not limited to hopelessly deformed babies as was previously stated, but that most of these procedures were performed on an elective basis, on healthy babies.

MS. RAWALT urged the committee to vote yes on HB 65 in order to stop this barbarous procedure.

Number 0191

SHARYLEE ZACHARY announced that she had submitted written testimony to the committee. She referred to Section 1, (6) and (7), which states how this procedure undermines the public confidence in the medical profession. She believed that a majority of medical physicians and health care providers are honest, upright and have the sincere desire to help and heal people. However, the medical profession has "cut it's own throat" in the area of "credibility." It has allowed many physicians to perform unjustified abortions and then look the other way when those same doctors falsify the patient's records with statements about it being a medical necessity, when in fact the abortion was done as an elective procedure. In other words this is a pre-arranged convenience for the mother and a financial benefit for the doctor and/or the clinic.

MS. ZACHARY said, in the last year or two, several medical

professionals have given national testimony that there are just a few cases of partial birth abortions which have been done to save the lives of the mother. The media has gone overboard in emphasizing that testimony and unfortunately many people have believed those doctors. The media and certain politicians have also largely ignored those people providing testimony regarding the thousands of unnecessary partial birth abortions.

MS. ZACHARY said, in the past few weeks, a prominent physician has brought forth testimony that he lied. She questioned how we could trust doctors and other health care professionals, who know this to be true and yet keep quiet. If this is their ethic, in this area, what is to keep them from falsifying other areas of medical care for the sake of convenience and financial gain.

Number 0289

KATHLEEN HOFFMAN testified next via teleconference from Kenai. She appreciated all the work the committee had done on HB 65 as we surely want to rid our state of this partial birth abortion. She referred to an infant that she worked with when she was in nurse's training. She is in favor of HB 65.

Number 0358

VIRGINIA PHILLIPS, testified as a Spokesperson for American Indians and Alaska Natives, National Right to Life. She stated that she is the Chair, District 2, Republican Party of Alaska testified next via teleconference from Sitka. She was appalled what this procedure did to the woman. It is ridiculous to say that it is necessary for the life or health of the mother, there are other easier things to do to get rid of the baby. This procedure needs to be outlawed. If people attempted to do this procedure on a rat, animal rights activists would say it was inhumane. She asked for humane treatment of women and to stop them from being victimized by the partial birth abortion.

TERESA LUNDY, Medical Transcriptionist, testified next via teleconference from Sitka. She is speaking for the (Indisc.) community in Sitka because a lot of people couldn't attend the meeting today. She questioned the ability of people from the medical community to defend and endorse this abortion procedure. She referred to earlier testimony on the D & X procedure and testimony that the D & E procedure had to do with taking the non-viable infant and aborting the child. She reminded the witness that he is misinformed; the D & E procedure is a gruesome dismemberment type of abortion procedure. After a period of time the baby tissue becomes toughened as the baby develops. She referred to written testimony on the D & X extraction method by Dr. Martin Haskell. The doctor invented this D & X procedure because it was an alternative to dismemberment.

MS. LUNDY asked the committee to endorse HB 65. It is imperative that the Alaska Legislature set the standard to not allow this abortion procedure in this state. She was concerned that there was no ethical concern regarding abortion. Eliminating partial birth abortions does not interfere with reproductive rights or right to privacy concerns. She urged the committee to see that ethical standards were set in stone by passing HB 65.

Number 0358

SALLY APOXIDAK testified next via teleconference from MatSu. She was appalled about today's testimony. She asked the committee to look at the bigger picture in terms of abortion. She was in favor of the contents of HB 65.

Number 0612

ART HIPPLER, Executive Director, Alaska Right to Life, testified next via teleconference from MatSu. He referred to the testimony given by Mr. Dozier. His organization supports HB 65. He offered $500, out of his pocket, to the first person who provides unambiguous evidence of one single case where this procedure was medically necessary to save the life or the fertility of the mother.

ERNIE LINE testified next via teleconference from MatSu. He said there have been no partial birth abortion procedures performed in Alaska, according to Mr. Dozier. He assumed that the committee knew how many doctors in Alaska were qualified to perform this procedure.

CHAIRMAN GREEN said he did not know. When he asked if this information was known by other members of the committee or witnesses, no one answered.

MR. LINE completely agreed with the doctor who testified that legislators should not practice medicine. He asked the committee, before they pass HB 65 or SB 12, to consider the women who might need to abort these fetal anomalies or else to provide for them when they are infant anomalies.

Number 0769

NIKKI SULLIVAN said she done post abortion counseling and provided education for women who have been through the abortion experience. She has had national training in Denver at the Post Abortion Counseling and Education Institute. She referred to testimony about the protection of the mother and the viability of the baby. These women suffer the same degree of trauma after the abortion as they experience during the abortion. She could not think of anything more traumatic than a partial birth abortion. She is a proponent of informed consent, every woman has the right to know

what is going on with her body and what an abortion consists of.

Number 0884

KRISTIN HOCK informed the committee that she was eight and half months pregnant. She was not planning to terminate this pregnancy, but if she chose to, then she would have a legal right to do so in some states. If we propose partial birth abortions for convicts, who are on death row, there would be an outcry saying it was cruel and inhumane treatment, it did not respect people and their dignity. She referred to the U.S. Constitution and urged the committee to value the right of protection of life and liberty by banning partial birth abortions.

Number 1009

TRICIA BONNEY, Nurse, said the whole purpose for partial birth abortions is for the mother's health. She said the argument, regarding infant anomalies, is not viable in opposing HB 65. She said this procedure is not taught in medical schools, and questioned how it could be considered a necessary medical procedure. She felt this procedure was inhumane and referred to previous testimony against partial birth abortions. She urged the committee to support HB 65.

Number 1149

TOM GORDY agreed with the testimony given by Mr. Dozier and said more facts have come out this week about partial birth abortions. People who support abortion will lie to keep things going. He was here to speak against this procedure; called partial birth abortions by Congress or D & X, short for dilation and extractions, others have called it D & E, but medical literature does not have a name for it because it is not a recognized legitimate medical procedure. He said there are probably no doctors qualified to do this procedure as it is not a licensed procedure.

MR. GORDY said he would like to call it partial birth infanticide. He referred to a nurse who worked for Dr. Haskell, the doctor who invented this procedure and her experience of watching this procedure. This woman had originally supported abortion, but has changed her stance since seeing this procedure. This procedure is the murdering of a defenseless baby.

MR. GORDY referred to a woman who had complications in her pregnancy in the sixth month, which is the time when Dr. Haskell says he performs most of these procedures. Labor was induced, the baby was treated in the neo-natal unit of the hospital and is alive today. He said a mother's life does not need to be threatened, the baby can be pulled out and survive outside of the mother through care and nurturing.

DRAFT

MR. GORDY testified that 300 physicians, primarily obstetricians, united to oppose this procedure after President Clinton opposed the partial birth abortion ban. They declared that it is never medically necessary. Dr. Haskell said that 80 percent of partial birth abortions are elective. Dr. McMann, who has performed 2,000 partial birth abortions, said 22 percent of the partial birth abortions that he has performed for maternal indications were for depression, not for physical threats.

MR. GORDY stated that this procedure is morally and ethically wrong. It is time to say, no, to this type of cruel procedure. He urged the committee to pass HB 65.

Number 1475

DAVE ROGERS, Lobbyist, Alaska Woman's Lobby, said his organization opposes HB 65. They acknowledged that information and beliefs on this subject are contradictory, but wanted to present information to the committee. Partial birth abortion is not a medical term, the procedure that is being addressed in HB 65 is call dilation and extraction of D & X, or sometimes called intact dilation and extraction. This procedure is used in the second and third trimesters. Doctors, who they have talked to, have said they have rarely met a patient who did not want, and was not completely bonded to their baby by the third trimester, nor have they known a health care provider who was not equally concerned about the health of the baby in the third trimester. This procedure is not a procedure to be undertaken lightly. Many involve wanted pregnancies that go tragically wrong when a woman's life or physical health is endangered and the fetus develops abnormalities which will cause them to die just before, during or just after life. Finally, this procedure is the safest available for some women. It carries lower risks of pervading the uterus, lacerating the cervix and the birth canal or causing maternal hemorrhage than certain alternative procedures. They were also told that D & X is less physically stressful and less toxic than other methods.

MR. ROGERS said, if these findings are valid, this proper medical procedure, which may be the safest and most appropriate choice among several techniques in some cases, should not be the subject of a restrictive law which will take away from the physician's exercise of discretion and unduly burden a woman's right to chose, by arbitrarily and narrowly limiting her access to the procedures her doctors consider best for her.

MR. RODGERS said, as is always the case in this arena, professional judgement and individual consideration must govern actions taken over the broad and complex spectrum of medical possibilities. Families and their physicians must be permitted to make the difficult decisions posed by the situation. He said HB 65 is unnecessary, can hurt Alaskan women and only serves to further polarize concerned Alaskans. For these reasons the Alaskan Women's

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Lobby strongly opposes HB 65.

Number 1661

SID HEIDERSDORF suggested that the baby is turned around, to be delivered feet first, so that it will not scream before the procedure is completed. He referred to Mr. Fitzsimmons and a New York Times article which quoted him as saying that he lied, because telling the truth would damage the abortion rights cause. He felt Mr. Fitzsimmons told the truth because he realized he was defending the indefensible. He felt that people who are supporting partial birth abortions were defending it because if you face the truth it will somehow collapse the abortion edifice. Abortion is supported by the Supreme Court decision and there is little that the state could do. This is a step the state could take to acknowledge that there is some kind of justifiable restrictions which could be placed on certain abortion procedures.

MR. HEIDERSDORF asked the committee not to be influenced by arguments that the state should stay out of medical practice. He reminded the committee of the practices of doctors in Nazi Germany and said there are certain things that should be outlawed. In every profession there are certain amount of people that operate on the fringes; they must be controlled and guided by state laws. He did not care how many of these things were done and what they are done for. This procedure must simply not be allowed. If we want to maintain some type of claim to be civilized, we have to take some steps to control things that are happening which should clearly be condemned.

Number 1917

REPRESENTATIVE BERKOWITZ referred to the analogy and felt it was an unfair comparison to make and was outside the bounds of this discussion. There is common ground, there should be debate about issues like this, but when you invoke issues that are hateful as that one, you destroy the possibility of dialogue.

MR. HEIDERSDORF used this point to attempt to show that within his lifetime, he has seen this situation occur in a civilized society where we say this should have been stopped. Because people testified that the state should stay out of medical practice, he felt it was a legitimate thing to show his point of view that there are certain procedures that should be stopped.

Number 2098

CHAIRMAN GREEN closed public testimony.

REPRESENTATIVE PORTER said, it would be helpful in his understanding of this bill, if someone could explain the difference between a D & C, a D & E and a D & X. He referred to Section 2(c)

and said he thought it described what he thought was a partial birth abortion. If this was done with the intent to expose a portion of a live fetus outside the body of the mother and then terminate it, he thought it would eliminate the things that Dr. Nakamura was referring to.

REPRESENTATIVE CROFT asked if it was the intention to have this bill apply to pre-viable fetuses.

REPRESENTATIVE KOTT answered, yes. He felt this was clear in the opening statement. He added that some of the discussion handled by Dr. Nakamura was premature in addressing certain issues.

REPRESENTATIVE KOTT said he wanted to make some comments on today's testimony and would try to respond to Representative Porter's concerns. Clearly, an abundance of information has been presented regarding this particular practice, whether it is used in the state or not. He had no evidence to show that it would be done in this state, this bill is a preventative measure. The definition of the procedure in Section 2(c) was extracted from the Congressional version of a similar bill. This definition is not something that he created, it is not a novel idea. This language was formed by a number of scholarly individuals in the medical community as well as the legal profession. He felt this definition was extremely clear about what it is that we are attempting to prohibit.

REPRESENTATIVE KOTT referred to letters from Dr. Thompson and Dr. Ritter (Ph.) who are premier experts in the field of obstetrics. These doctors have not performed any abortions. He expressed concern with Dr. Nakamura's testimony as he has not..."

TAPE 97-34, SIDE A
Number 0000

REPRESENTATIVE KOTT continued...he said it was just brought to his attention that the committee did not have Dr. Thompson's letter, but Dr. Lokiemp's (Ph.) and Dr. Ritter's (Ph.) letter, two premier experts in the field. He would also provide a letter from Dr. Riederer, a Juneau practitioner. All three of them have concluded that there are other procedures as safe as this particular measure. It alarms him when testimony commences with, "I spoke with an abortionist, a medical doctor." It gives more credence to the situation when you have actual testimony, in the written form or in person, where the person who articulates their own experience. He questioned those sources, the qualifications of the person who testifies. He referred to the question of whether the state should invoke legislative authority on how the medical community practices by saying it has been done in the past. In some circumstances, the best solution to a medical problem would be for the doctor to assist in a suicide that is not condoned in the state. So, we are, in fact, evoking some practices and eliminating others in the state.

DRAFT

Number 0227

CHAIRMAN GREEN said if you get ten doctors in the room and how you might get ten different opinions. He asked why there was such a disparity in opinion. Some say this procedure is absolutely necessary to protect the life of the mother, others say there are other ways.

REPRESENTATIVE KOTT answered that it is a perplexing problem and he would want to turn to the experts in the field. There is a substantial amount of literature by people who have performed this procedure and have in many cases testified, under oath. He assumed they were telling the truth, he gave them the benefit of the doubt. He thought in those types of cases, you have to turn to the experts for the truth. There is an abundance of information that suggests that this particular procedure is not the only procedure that is available to save the life of the mother.

Number 0444

CHAIRMAN GREEN referred to testimony that this procedure was done to save the life of the mother or because of severe abnormalities and then there was testimony saying that 80 percent of these would live normal, happy lives if they lived. He asked who wasn't telling the truth.

REPRESENTATIVE KOTT said you have testimony from one side that has hands-on experience and the other side from a group which most of the experience comes from a second party or from reading the literature. He said the committee would have to draw their own conclusions why there is this wide disparity between what is being said.

REPRESENTATIVE CROFT expressed curiosity of why HB 65 does not allow the procedure to be performed to protect the health of the mother. He referred to the sponsor's statement that he was more comfortable with written testimony and pointed out a letter from Sherrie Richey, the first and only Alaskan perinatologist. Perinatology is a specialty in maternal fetal medicine. She says that partial birth abortion is a procedure virtually always chosen because it is the safest way to terminate a pregnancy complicated by lethal fetal abnormality or a life threatening maternal complication. He did not mean to get into a debate, but we have conflicting medical evidence about whether this is the safest procedure for the health of the mother. He asked what the difficulty was with allowing the expert, the person treating that woman, to determine if this is required to protect her health. For the legislature to make a determination outlawing it and not allowing an exception for the health is our, not completely informed, decision that it can never be the best method to protect the health.

Number 0640

REPRESENTATIVE KOTT said that when you get into the definition of what constitutes protecting the health of the mother, you discover, at least in the literature that he has researched, that it opens up a pandora's box. About anything you can conceive as being unhealthy, can be used to protect the mother's health.

REPRESENTATIVE CROFT clarified that he is concerned that the health issue would be chosen to allow for an elective procedure.

REPRESENTATIVE KOTT felt that, in many cases, it would be the case. He reminded the committee that the American Medical Association's legislative council voted unanimously to ban this particular procedure. He stated that he is not the expert, he is turning to the experts. The association is a group of qualified people who make various decisions and express them.

REPRESENTATIVE CROFT said, in order for this legislation to go out without any proviso for the health of the mother, he had to be absolutely convinced that this is never a procedure that could best protect the mother's health. If it could be the best procedure, then we ought to allow it to be. When there is conflicting testimony, he would leave it to those people to determine what is best.

DRAFT

HOUSE JUDICIARY STANDING COMMITTEE
March 10, 1997
1:20 p.m.

HB 65 - PARTIAL-BIRTH ABORTIONS

Number 151

THEDA PITTMAN testified to via teleconference from Anchorage, Alaska. She made reference to the statement made by Mr. Dozier, legislative aide to Representative Pete Kott, relating to the court cases he cited. Ms. Pittman advised members that the compound of his presentation was a report on the cases themselves and what he said was actually quite good; however, one would have to "tear the paper" off at that point; discard his editorial comments and actually compare the casework to the bill in order to understand the many, many problems of HB 65.

MS. PITTMAN stated that essentially, although it was possible to ban an abortion after viability, it would be necessary to take into account that the court cases provided that the determination of viability must rest with the doctor. And also the determination of the danger to the life or the health of the woman must rest with the doctor, and that the particular procedure must rest with the doctor, as well.

MS. PITTMAN stated that as for viability, abortion was not performed on a healthy woman with a healthy fetus. She noted that the editorial comments on the bill created the illusion that in the seventh, eighth or ninth month, a pregnant woman would get up one morning and suddenly decide not to be pregnant. After viability, abortions were not preformed on healthy women, with a healthy fetus; hence, there was no need for HB 65.

Number 267

CHAIRMAN GREEN advised members public testimony would now be closed on HB 65. He asked that the prime sponsor, Representative Pete Kott address the committee.

Number 342

REPRESENTATIVE PETE KOTT, Prime Sponsor, HB 65, advised members that Representative Porter had previously requested information regarding the various methods of partial-birth abortion. He advised members one method was the suction curettage/aspiration, which was a method typically employed during the first trimester; however, had been used up to the 15th week of pregnancy. Representative Kott explained that the abortionist mechanically dilates the opening of the uterus, inserts a vacuum device into the uterus, and removes the baby through negative suction.

REPRESENTATIVE KOTT explained that a second type was known as D & E, which stood for dilation and evacuation. The cervix was dilated slowly, over a one or two day period, by the insertion of laminaria, and a suction curettage is inserted through the cervix and the baby is removed. He noted that frequently, the baby's head and torso were too large to be removed in that manner, and consequently, the abortionist dismembers the baby by the use of suction curettage or forceps. Representative Kott expressed that sometimes the size of the head, because it was too hard to be removed in the womb, would be decompressed either by crushing it, or inserting a suction device and removing the contents, which then allows for its removal. He added that that was a common second trimester abortion. Representative Kott stated that again, with both procedures he had mentioned, there was no life.

REPRESENTATIVE KOTT advised members that the third method was what was termed installation/induction procedures, where the abortionist injects a substance, usually a saline solution, or combination of prostogladen and urea. He explained that that was injected into the amniotic cavity, or prostogladen suppositories placed into the vagina. The mother then goes into labor, and the dead fetus is expelled.

Number 571

CHAIRMAN GREEN noted that Representative Kott was making reference to a "dead fetus", and asked if those method were only used if the fetus was dead, or did the procedure, itself, kill the fetus.

REPRESENTATIVE KOTT advised members that the fetus, he would suspect in some circumstance, would already be dead; however, the intent was to extract, or eliminate a fetus or pregnancy of a woman.

REPRESENTATIVE KOTT advised members that the fourth method involved a hysterectomy, which was a caesarian section preformed before term, or hysterotomy, which was the removal of the entire uterus. He pointed out that those methods were seldom used.

REPRESENTATIVE KOTT informed members that the last method was dilation/extraction, known as D & X. He explained that dilators were inserted in the cervix for two days, and on the third day, the abortionist removes the dilators and ruptures the membranes, which he suspected was a rupture of the water bag, and with the use of forceps, the baby was delivered, except for the head; scissors would be inserted in the baby's skull, and spread in order to make the opening larger, at which time a suction catheter was inserted and the contents of the skull evacuated. Representative Kott advised members that with the skull depressed, the baby would be completely delivered. He expressed that as noted by the court, the primary distinction between the D & X procedure, and the D & E procedure, was that the D & E procedure resulted in dismemberment

and piece by piece removal of the fetus from the uterus, and the D & X procedure resulted in a fetus being removed, basically, in tact except for a portion of the skull contents, which would be suctioned out after the head was placed next to the opening of the uterus. Representative Kott explained that the D & X procedure was a more broad term, coined by Dr. McMahon, as killing the baby, or fetus, and then removing it, often times head first, as opposed to what Dr. Haskell had coined as a partial birth procedure, where the baby was actually spun around and delivered feet first. He pointed out that the fetus, in both cases, would be dead, which was where they got into the difference of the D & X procedure, as coined by Dr. Haskell.

REPRESENTATIVE KOTT stated that it could be noted that the term D & X, as used by the court in Voinovich, was not a recognized medical term. He pointed out that again, it was coined by Dr. James McMahon, who used it to describe procedures, not within the definition of partial-birth abortion, as used in the proposed legislation.

REPRESENTATIVE KOTT advised members that the definition of partial-birth abortion, as used in HB 65, did not overlap with other abortion methods. He noted that with suction curettage-aspiration, the baby was not partially vaginally delivered and then killed. Representative Kott explained that with the D & E procedure, the baby was partially delivered before it was killed. HB 65 required that before the procedure fell within the scope of the bill. With installation type methods, the baby would be vaginally delivered, but only after the death in the womb. He noted that in rare cases, the baby survived delivery, and therefore could not be legally killed because that would result in a substantial problem for the abortionist.

REPRESENTATIVE KOTT explained that HB 65, by way of contrast, required that the abortionist partially, vaginally, deliver a live fetus and then kill the baby before complete delivery of the fetus. He noted that with the hysterectomy and hysterotomy procedure, there was no vaginal delivery, partially or otherwise.

REPRESENTATIVE KOTT expressed that as stated by Dr. Joseph Riederer, who was the premier expert in Juneau who had delivered 2000 plus Juneau babies, that "The proposed definition of the bill is specific, and no other medical procedure would be restricted or affected by banning partial-birth abortion. The language is clear and specific." Representative Kott noted that was a quote from the Doctor's written testimony.

Number 988

CHAIRMAN GREEN asked if the baby was dead before it was removed if that would be a D & X procedure, and if still alive when the body of the fetus came out and actually had the shears inserted in the

head, if that was a different procedure.

REPRESENTATIVE KOTT stated that that was what Dr. Haskell coined as a D & X, which was later referred to, and coined now as partial-birth abortion, and not to be confused with Dr. McMahon's procedure.

CHAIRMAN GREEN asked if the procedure only dealt with dead fetuses.

REPRESENTATIVE KOTT agreed that it did.

Number 1033

REPRESENTATIVE BRIAN PORTER explained that that entire body of information was what he wanted in order to make sure he understood prior to voting on the proposed legislation. He noted that the definition of partial-birth abortion, that appeared in the bill, excluded, and was not meant to include in any way, any of the other procedures described by Representative Kott. Representative Porter stated that only when a portion of the physical fetus was exposed, outside of the mother's body, and a live fetus, that it was then killed and the extraction completed.

REPRESENTATIVE KOTT advised members that would be correct. Representative Kott pointed out that there were particular views of resident experts around the state, who had all suggested that the procedure used was not a medical necessity for the purpose of the health of the mother. He added that the particular practice used, could not be found in any medical books, or medical school teachings. Representative Kott stated that as far as he knew, the practice was not being utilized in the state of Alaska, and the proposed legislation was a preemptive strike to ensure that it would not occur. He pointed out that HB 65 would not restrict as woman's right to choice.

Number 1170

CHAIRMAN GREEN advised members that if they would only expect to see the procedure take place in order to protect the life of the mother, that he could not understand why one would be able to go in and forcibly turn the baby around, so that it would come out feet first, and insert the scissors after the baby was essentially delivered. He stated it appeared to him that delivery, in that procedure, was basically completed, and then the baby would be killed, rather than delivering it normally. Chairman Green expressed that he had a real problem with that.

Number 1212

REPRESENTATIVE CROFT noted that a member of the public who testified on HB 65, bet committee members $500, that the procedure was never necessary to save the life of the mother. He asked

Representative Kott if that was a true and accurate statement.

REPRESENTATIVE KOTT stated that in his opinion, he did not believe it was based on the various medical reviews he had researched.

REPRESENTATIVE CROFT asked if the procedure was necessary in order to save the health of the mother.

REPRESENTATIVE KOTT felt that if the procedure was used to save the health of the mother, it would dilute the entire intent, because he felt there was a broad definition of health. He noted that arguably, anyone who performed the procedure under that guise, could legitimately establish, before the court, that there was a health issue.

REPRESENTATIVE CROFT advised members that was part of his confusion. He understood Mr. Dozier's testimony, and the testimony of Representative Kott, to be that because the procedure was never necessary to save the health of the mother, that a health exception was not necessary. And if it was believed that the procedure was never necessary to save the life of the mother, why was that exception included.

REPRESENTATIVE KOTT reiterated that it was his humble opinion that the procedure was not necessary to save the life of the mother, based on the literature from the experts who had written commentary on the procedure.

REPRESENTATIVE CROFT pointed out that the draft committee substitute states members were being asked to adopt language which stated, "partial-birth abortions are not necessary to preserve the life, or health of pregnant women." He expressed that if they made that legislative finding, why was the exception included at all.

GEORGE DOZIER, Legislative Aide to Representative Kott, advised members that the reason for including the finding, was because HB 65 mirrored the definition as set out in the federal legislation that had been vetoed. He noted that that legislation had been re-introduced, and suspected that in light of events over the past couple of weeks, that it would stand a much better chance of not being vetoed this time. Mr. Dozier explained that by including the life provision in the proposed legislation, it would make Alaska statutes consistent with what he felt would be federal law.

Number 1400

REPRESENTATIVE CON BUNDE advised members that he was troubled with the same contradiction of the findings. He noted that not many legislators were doctors, and it was found that it was not necessary to preserve life, and then it states that the procedure could not be done unless it was necessary to save life, which to him, was an absolute contraction. Representative Bunde pointed out

that either the legislature did not know what it was talking about, and that finding should be removed, or it would be necessary to delete Section 2; one or the other.

REPRESENTATIVE PORTER advised members that it would be his intent to support the removal of Section 1 because he did not feel any of that section supported the proposed legislation, and had ramifications past the intent of HB 65 that he did not want to contemplate.

REPRESENTATIVE PORTER stated with respect to Section 2, he felt he could support if he understood it correctly. He advised members he would be interested in hearing from the sponsor, or Mr. Dozier, what impact the wording of Roe, regarding the phrase, "the life or health of the mother", would have on leaving some reference for health in the proposed legislation.

MR. DOZIER advised members that Roe was a case which involved the prohibition of, basically, all types of abortions. He explained that subsequent cases, including Casey, also involved an absolute prohibition of all types of abortion, in certain circumstances. Mr. Dozier pointed out that both cases indicated that the states could regulate abortions, except as necessary to preserve the life, and health of the mother.

MR. DOZIER advised members that the proposed legislation, unlike Roe and Casey, did not involve a prohibition of abortion, per sa, even for a short period of time, such was the case in Voinovich. Mr. Dozier explained that HB 65 prohibited the use of one particular procedure, and consequently, the life and health of the mother was already protected by what was already in place.

CHAIRMAN GREEN noted that Representative Porter had suggested the removal of Section 1, with Section 2, then, becoming Section 1. He asked Mr. Dozier if he saw any adversity if that amendment was offered and should pass.

REPRESENTATIVE KOTT reminded members that the draft committee substitute had not yet been adopted by the committee, and if Representative Porter would like to strike Section 1, the draft committee substitute could be set aside and adopt the original bill because that did not have the Section 1 language as was in the draft proposal. He advised members that he did not feel striking Section 1 would be substantially detrimental to the bill, adding that he felt it would add some credence if there was a challenge before the courts at some later point in time.

REPRESENTATIVE CROFT moved to adopt CSHB 65 (JUD), Version B, as the committee's working document.

REPRESENTATIVE JEANNETTE objected.

REPRESENTATIVE ROKEBERG agreed with the position expressed by Representative Porter. He asked if members voted against adoption of the draft committee substitute, would that bring them back to the original version, or the State Affairs committee substitute.

CHAIRMAN GREEN suggested that they adopt the draft committee substitute and then move on to strike Section 1.

REPRESENTATIVE KOTT stated that it was his belief that the original bill before members did not include Section 1 of the committee substitute.

CHAIRMAN GREEN clarified that if the draft committee substitute was not adopted, that they would be, then, considering the original bill, HB 65, Version E.

REPRESENTATIVE ROKEBERG supported Representative Porter's position, and also pointed out that there was other language in the findings that he felt could generate some undue discussion. He advised members that he would be voting against the adoption of the draft committee substitute.

REPRESENTATIVE CROFT advised members that he also had trouble with the legislative findings; however, he would prefer to start, and would vote to start from the draft committee substitute, and then decide whether or not they wanted to amend it to remove Section 1, and amend Section 2 in other respects. He noted that while the language was inconsistent on the life or health provision, between Sections 1 and 2, he thought the findings brought out an important aspect of the bill. Representative Croft pointed out that even with just the life part, they were in effect, finding that partial-birth abortions were not necessary to preserve the health of pregnant women, when it is not allowed as an exception. He felt the finding clarified what was actually being done. Representative Croft stated that he would like to keep the findings in, for discussion purposes, and possibly at the end of deliberations, members might decide to remove them.

REPRESENTATIVE PORTER felt that if the bill included the exception relating to the life of the mother, he did not feel it was appropriate to have a finding that it was an unnecessary conclusion, noting that there were no doctors on the panel. Representative Porter advised members that the reason he was hesitant about all of the findings, was that they all appeared to have the potential to be interpreted as a position on abortion, as opposed to a position on partial-birth abortion. Representative Porter stated that from that standpoint, he did not believe they added any benefit to the intent of the proposed legislation.

Number 1861

REPRESENTATIVE JAMES agreed that the findings were not relevant to

the issue. She stated that in reading the original bill, it was very clear to her what it meant, and felt it was totally sufficient in its form. For that reason, she would be voting against adoption of the draft committee substitute.

CHAIRMAN GREEN requested a roll call vote: In favor: Representatives Croft, Berkowitz and Green. Opposed: Representatives Bunde, Porter, Rokeberg and James. Adoption of CSHB 65(JUD) failed, 4 to 3.

CHAIRMAN GREEN pointed out that members would now have before them the original version of HB 65.

Number 1929

REPRESENTATIVE CROFT advised members that the findings that were not adopted, stated that the legislature found the procedure was not necessary to save the life or health of the mother. He expressed that it was clearly inconsistent the way it was, and the committee chose not to adopt it. However, he felt they could have consistently adopted it as an implicit finding that they would make to say, "The legislature finds that these procedures are not necessary to save the health of the mother.", either that, or the health of the mother was not important to them, which he felt the second would be unlikely.

REPRESENTATIVE CROFT advised members that what they were saying, being non-doctors, was that the procedure was not necessary to save the health of the mother. He stated that Mr. Dozier said as much, although in his written presentation, he stated that Roe had an exception where the life and health of the mother was threatened, and that Casey, specifically said that "the state may prescribe abortion, except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother". Representative Croft expressed that that was the federal standard that was adopted by Casey. Because health was not included in the version the committee adopted, he would offer, with the permission of the Chair, two amendments, of which one would place "health" back in the bill, and the second would limit the prohibition to the third trimester.

REPRESENTATIVE CROFT felt that what upset most people, and it did him, was the idea that those partial-birth abortions would be done on healthy women, with healthy babies in the third trimester, that would be ended with no medical justification. He saw no justification for that. Representative Croft pointed out that the bill before them, the original version, had no limitation in that direction; that it applied to any abortion from the first week of pregnancy and did not provide an exception for health.

REPRESENTATIVE CROFT stated that if Roe and Casey specifically said you would have to provide protection for the life or health of the

mother, that they would be doing something clearly unconstitutional by enacting something that soley protected life. He noted that Mr. Dozier disagreed, and the reason he had requested a copy of his written statement, was because he wanted to inquire more into what the rationale was for leaving it off. Representative Croft stated that Mr. Dozier stated that because the state had never conducted the procedure, it could not be necessary to save health. He noted that Mr. Dozier could clarify, if necessary; however, read from the prepared statement as follows: "Thus, the question must be asked, does HB 65, which prescribes a procedure, which thus far is not done in Alaska, place a substantial obstacle in the path of a woman seeking an abortion. The answer by definition is no." In other words, Representative Croft stated, that because it had never been needed in the state, it never could be needed in the state.

REPRESENTATIVE CROFT pointed out that there were many medical procedures not done in the state of Alaska. For example, he believed that complicated open heart surgery was not done in Alaska. Representative Croft did not feel any member of the committee, member of the legislature, or any rationale person would say there was no time that procedure was not necessary to preserve someone's health, or in some cases, life. To him, the argument simply confused whether the state had ever done it, with whether it could ever be necessary. Representative Croft pointed out that it was clearly unconstitutional for the early portions of the pregnancy, and did fit with what the federal constitution required in the late portions, in Casey.

REPRESENTATIVE CROFT expressed that the second rationale related for excluding health, that members could just conclude from what they know and through testimony they heard, that it was not. He stated that even setting aside the argument that it had not been done, in the state, so it could not ever need to be done, he did not consider a good argument. Representative Croft pointed out that members could say that, "we, as seven non-doctors" would conclude that a woman never needed the procedure to preserve her health. He felt that judgment was best left to the doctor and the patient. Representative Croft noted; however, chat there was also substantial testimony which went the other way. He stated that the only way they could delete the "of health" language was if members were convinced, to a moral certainty, that it never was. Representative Croft explained that as a non-doctor, he would have difficulty ever having that level of certainty, adding that there was certainly enough conflicting information to say that, in some professional opinions, including some that treat women in Alaska, that it sometimes was necessary. Because Representative Croft did not know the answer, he felt the exception should be included in the bill

REPRESENTATIVE PORTER advised members that they had been discussing legislative findings, and pointed out that there were not any, which was just established by a vote. He stated that the reference

to what the legislature intended by those findings was off the table, and irrelevant.

Number 2300

REPRESENTATIVE CROFT moved to amend HB 65, page 1, line 6, following the first occurrence of "life", insert: or health, and following the word "mother", delete [whose life], and insert who.

REPRESENTATIVE PORTER objected for the purpose of discussion.

REPRESENTATIVE CROFT advised members that it was a constitutional requirement, that they were simply acting unconstitutionally if the language was not included. He added that secondly, they would also be acting dispassionately if the proposed legislation would not allow a woman, whose pregnancy was going to cause her health problems, to make the choice of what to do, based on the sound medical judgment that she could obtain, that the legislature would be acting cruelly. Representative Croft stated that to his knowledge, the partial-birth procedure was not in the state of Alaska, but if it were, and the judgment of the woman and her health professional determined it was needed, that it could be done in the state. He noted that the reason members discuss legislative findings, though out of the present version, was that by not including health, members would be substituting their judgment for the judgment of health professionals, which would result in saying, "The constitution requires that you be given the right to protect your life or health, but we've done the work for you, because we found out that this is never needed for health." Representative Croft pointed out that members did not have the qualifications to do that, and would not be aware of the individual situation, and did not know enough about all the medical generalities, or specifics of a diagnosis.

REPRESENTATIVE CROFT stated that more importantly, why were they not doing that with life. He advised members that if they were as confident that the procedure was never necessary to protect life, why was that exception included. Representative Croft suggested that it was because there were situations where that would be needed.

Number 2408

REPRESENTATIVE PORTER spoke against the proposed amendment. He advised members that he came with an open question in his mind regarding the issue of including "health" in the bill to make it constitutional. He pointed out that he was satisfied with the explanation given by Mr. Dozier that that portion of the decision in Roe, must have to do with the life or health, was on a different plane, which was precisely why he did not want the findings to be a part of the proposed legislation. Representative Porter pointed out that they were only dealing with partial-birth abortions, and

he felt it was a distinct enough separation from the issues of Roe to make a consideration of the life of the mother; not the general term "health" that could be one word that would subvert the entire intent of the proposed legislation, to not be unconstitutional at all. For those reasons, Representative Porter would vote against Amendment 1.

Number 2465

REPRESENTATIVE BERKOWITZ hoped that Representative Porter was still maintaining an open mind. He noted that he had asked Legislative Legal what they had to say about that issue, and they stated that in relation to the "health" amendment, ... [Tape auto-reverse to Side B].

TAPE 97-35, SIDE B

Number 000

REPRESENTATIVE BERKOWITZ .... quote by Legislative Legal: ..."contain exceptions, based not only on preserving the pregnant woman's life, but also her health." Representative Berkowitz stated that Legislative Legal had a more objective perspective than Mr. Dozier, because, with all due respect, Mr. Dozier was an advocate on behalf of proposed legislation. He pointed out that comments in the past on the efficacy of good lawyering, would say that there was a difference between saying that health was a constitutional requirement, and health was not a constitutional requirement.

REPRESENTATIVE PORTER stated that he would like to see the Legislative Legal opinion; however, not having had the opportunity to read the document, with only one sentence being referred to, that it would be difficult to respond to.

REPRESENTATIVE BERKOWITZ advised members he would have been happy to have provided the information to members, but he had only just recently received it.

CHAIRMAN GREEN called a five minute recess for the purpose of providing committee members a copy of the document Representative Berkowitz referred to. The meeting recessed at 2:09 p.m., and was reconvened at 2:11 p.m.

Number 079

CHAIRMAN GREEN pointed out that members had reviewed the document referred to by Representative Berkowitz, and asked if there was any other discussion of committee members.

REPRESENTATIVE ROKEBERG wondered if Mr. Dozier would want to comment on the memorandum, because he felt it was an opinion of

defensibility, more than a constitutional issue.

CHAIRMAN GREEN asked that Mr. Dozier approach the witness table.

REPRESENTATIVE ROKEBERG further stated that the opinion was not only defensible, but constitutional, and that was the issue before members, as to whether the word and concept of "health" was a fatal defect in the draft of the legislation. He asked that Mr. Dozier respond if the absence of the word "health" would be constitutionally defensible, or if it was a constitutional flaw, and not defensible.

MR. DOZIER expressed that he had not yet read the opinion provided by Legislative Legal; however, in his opinion, the absence of the word "health" was very defensible. He pointed out that members would have to look at the specific procedure that the bill addressed, by using two different standards. One was the viability standard, or the pre-viability standard, and the other standard was the period after which the baby became viable. Mr. Dozier advised members that in the pre-viability stage of the pregnancy, that determining whether or not a given regulation was constitutional, or not, that one would have to look whether there was an undue burden. He pointed out that the Supreme Court had defined that very explicitly to mean placing a substantial obstacle in the path of a women who was attempting to make a decision about abortion.

MR. DOZIER pointed out that "health" was already protected, in the state of Alaska, and if abortion was needed to preserve a woman's health, that the proposed legislation would not take anything from that; there was no substantial obstacle. He noted that that was the pre-viability stage. The viability stage of the pregnancy had a different test, which was even more lenient to governmental regulations, and one could say, "no abortions at all, period. Can't use abortion practice A, procedure D, procedure C;" et cetera, et cetera, as long as there was an exception for health and the life of the mother. Mr. Dozier advised members that in the case before them, they were not doing that. What members would be endorsing, was that the particular procedure referred to in the bill, could not occur in the state of Alaska. Mr. Dozier continued to point out that everything in place would remain in place and, consequently, a provision for the health of a mother currently existed.

Number 230

REPRESENTATIVE BERKOWITZ stated that it appeared to him that if there already was provision for health of the mother, that there should be no objection to reinserting "health of the mother" back into the bill. He expressed that that was done, at a regular time, to reaffirm what the legislative intent was. Representative Berkowitz felt it was important that HB 65 reflect the present legislature would not do anything to jeopardize the health, or the

life, of a pregnant mother. He thought that by including the word "health", they would being underscoring what Mr. Dozier conceded was already a part of present law.

Number 255

CHAIRMAN GREEN expressed that there were two attorney members on the House Judiciary Committee, and those members, having consulted with several other attorneys, that it appeared that the issue was a decision matter, rather than a requirement. He noted that he could understand the reason for including the language for health purposes, and could understand the desire to not include it because of the possibility that it would create a confusion, if not an absolute problem. Chairman Green stated that what he would like to enter into the record, was that it was an opinion, and a matter of conjecture among attorneys, just as the procedure itself, was a matter of conjecture among the medical people. Chairman Green pointed out that members had heard from influential people, and high ranking members of the medical profession, who had stated that it was absolutely not necessary. Friday, the committee heard from Dr. Nakamura, who stated that he thought there could be times when it might be necessary.

CHAIRMAN GREEN felt that what the committee was faced with was a conjectural situation, as to whether or not "health" should be included in the proposed legislation, as well as the "life endangerment; and whether or not the particular procedure addressed, would be the only ramification to protect the mother's life. His feeling on the issue was that neither were necessary.

CHAIRMAN GREEN stated that if the House Judiciary Committee, and the present legislature, wanted to pass a ban on the procedure addressed in HB 65, through an avenue of escape because of the necessity for the protection of the life only; not for health, or psychologic reasons, et cetera; that it would certainly be in the purview of the legislature to do so, adding that he felt it would withstand legal muster.

REPRESENTATIVE BUNDE felt that one of the concerns that people had who were particularly opposed to partial-birth abortion, or any abortive procedure, was that a woman might choose to undergo the procedure on a whim, or because it could cause her some mental distress, or whatever. He thought that by adding the word "health", after "life" on line 6, in both instances, would read; "mother whose life, or health is endangered by the physical disorder, illness or injury, ...". Representative Bunde pointed out that they were not considering a notion where someone could claim mental duress; but a serious health problem.

CHAIRMAN GREEN countered Representative Bunde's analogy regarding non-medical, and stated that ulcers were also a result of stress which was a physical disorder that could be brought about by the

attitude of a mother.

REPRESENTATIVE BUNDE expressed that it had been found that ulcers were brought on by a particular bacteria, not by stress; however understood the point Chairman Green was making.

CHAIRMAN GREEN stated that it was yet conjectural, that there was an attitude that prevailed among the medical profession, that if one could keep their spirits up, one would heal faster.

REPRESENTATIVE ROKEBERG expressed his appreciation of the discussion that was taking place. He stated that while sitting, indulging in medical expertise, members should know what they were talking about when, obviously, they did not; however, stated that that was okay, and that's why they were where they there.

REPRESENTATIVE ROKEBERG advised members that in reviewing the record and considering the testimony provided by Dr. Coop [Ph], that said he saw no reason for the procedure if, in fact, the health of the mother was jeopardized, that there were other alternatives. He further stated that while reading the testimony of Dr. Ritche, which reflected that only in the case of a very complicated pregnancy, if there was lethal fetal abnormality, or life threatening, maternal medical complication, that the procedure under discussion would not even be contemplated from a medical view point. Representative Rokeberg expressed that if there were no other arguments that might overcome his concern relating to the constitutionality of omitting the word "health", that he would be voting against the amendment.

Number 468

REPRESENTATIVE JAMES advised members that she was completely comfortable with existing language, and pointed out that the intent of Roe v. Wade, which indicated that law could not prohibit abortion, because of the life or health of the mother, was not included in the proposed legislation because it dealt with one specific procedure. She advised members that she would also vote against the amendment.

CHAIRMAN GREEN asked if the objection was still maintained on the adoption of Amendment 1. Representative Porter and Rokeberg maintained their objection, and a roll call vote was taken. In favor: Representatives Bunde, Croft and Berkowitz. Opposed: Representatives Porter, Rokeberg, James and Chairman Green. Amendment 1 failed adoption, 4 to 3.

Number 507

REPRESENTATIVE CROFT moved to adopt Amendment 2; page 1, line 11, following the word "means", delete [an], and page 1, line 11, following the word "means", insert, a third trimester.

DRAFT

Representative Porter objected.

REPRESENTATIVE CROFT explained that the issue that had been the most troubling for everyone, and the most troubling for him, was the idea that a partial-abortion procedure could be done on a healthy baby in the late stages of the pregnancy. Amendment 2 would address that specific concern, making it illegal when done in the third trimester. Representative Croft felt the amended language would go a long way towards curing the constitutional concerns. He pointed out that none of the committee members were experts, even the attorney members, but stated that in his humble opinion, without both of the amendments, or certainly without either one, he would confidently tell the committee that the law would not be upheld in a court of law, if enacted in its present form, and would be overturned as a violation of constitutional rights.

CHAIRMAN GREEN asked if Representative Kott found, through his research, that there was viability earlier than the start of the third trimester.

REPRESENTATIVE KOTT advised members that was what he discovered during his research of the entire issue, that there was viability prior to the beginning of the seventh month.

CHAIRMAN GREEN stated that if the bill was enacted in its present form, that there could be viable babies/fetus, that would be subject to the type of abortion addressed in the bill.

REPRESENTATIVE KOTT advised members that would be correct. He added that he felt the bill would withstand constitutional muster without Amendment 2. Representative Kott noted that they now had two conflicting views, as he suspected there would be many conflicting views, depending on who a person talked to, and what side of the issue they stood on.

REPRESENTATIVE BERKOWITZ reiterated that the bill was unconstitutional in its present form, and he was fully confident that when it got to the courts, which it would, the courts would confirm that position.

Number 662

REPRESENTATIVE JAMES pointed out that this was her fifth legislative session, and she had been a member of the House Judiciary Committee for two years. She expressed that while sitting on the House Judiciary Committee, she had seen legal opinions submitted on both sides of an issue; it is constitutional, it is not constitutional. Representative James provided an example whereby the legislature passed legislation that would phase out the longevity bonus program. Two legal opinions were presented, with one stating that it would definitely be unconstitutional, and the

other said it was not. That law was challenged, went to court, and was found to be constitutional. Representative James felt that to second guess the courts on the issue before members, was not the issue. The issue before her was whether or not to prohibit a gruesome procedure, and whether or not it would make good sense to allow it to occur, where a baby is partially delivered, and then killed before completely taken from the uterus. That, to her, was not acceptable, and she felt members had heard plenty of testimony that indicated there were other methods. Representative James pointed out that they had just heard testimony which reflected that the procedure was used as an elective on healthy babies, and that was what HB 65 was attempting to do; to prohibit the use of that specific procedure for electives.

REPRESENTATIVE JAMES stated with respect to Amendment 2, separating it to the third trimester would not necessarily address viability. She did not believe viability could be separated by saying, "third trimester". Representative James pointed out that viability in court cases prior to now, had a different connotation than a third trimester. She expressed that she would be voting against Amendment 2.

REPRESENTATIVE PORTER maintained his objection to adoption of Amendment 2.

CHAIRMAN GREEN requested a roll call vote. In favor: Representatives Bunde, Croft and Berkowitz. Opposed: Representatives Porter, Rokeberg, James and Chairman Green. Amendment 2 failed adoption, 4 to 3.

Number 1000

REPRESENTATIVE JAMES moved to report CSHB 65(JUD) out of committee, with individual recommendations and attached fiscal notes. Representative Bunde objected.

REPRESENTATIVE BUNDE advised members that he had a great deal of empathy for a number of the folks who had testified who were pro-life, and felt disenfranchised because of Roe v. Wade. He did not feel, at any time, that the legislation before them would address that case, or change anything. Representative Bunde expressed that from that point of view, those people deserved some level of comfort that their point of view was being addressed.

REPRESENTATIVE BUNDE pointed out that the other side of that argument did not accomplish much, because it would not get to Roe v. Wade, and for those who viewed the proposed legislation as the first step to make abortion illegal, was a delusion. Representative Bunde recognized that it was unfortunate that some of the issues members had to face had heavy, philosophical connotations. He expressed that as in many of those other issues, it came down, for him, to practical application; what would he do

if he were in those shoes. Representative Bunde stated that for him, if his wife were to face a life-threatening pregnancy, he would absolutely want her, and counsel her to have access to an abortion to save her life. He stressed that he would not trade his wife for an unborn child; personal, philosophical statement.

CHAIRMAN GREEN asked if Representative Bunde was speaking to partial-birth abortion, or abortions, in general.

REPRESENTATIVE BUNDE stated that he was speaking to any abortion.

CHAIRMAN GREEN asked that he keep his comments to the issue of partial-birth abortion, which was what the bill was addressing.

REPRESENTATIVE BUNDE stated that if a partial-birth abortion was what it would take to save his wife's life, he would accept it, and encourage it. However, he stated that when he did that, he was allowing himself that privilege, and he would then have to allow other people their philosophical approach to the situation, and how they would make those decisions. Representative Bunde advised members that he was sympathetic, and understanding of those who felt that abortion was wrong, partial-birth abortion. Having said all that, Representative Bunde expressed that he would not keep the bill from moving forward; however, pointed out that if enacted, and was challenged, overturned by the courts, or appeared at all in any way to challenge Roe v. Wade, that he would work against it.

CHAIRMAN GREEN asked if there was anyone else that wished to discuss the issue of partial-birth abortion.

REPRESENTATIVE JAMES felt it was very important, that when making a decision of the type of legislation presently before the committee, that it was a specific procedure that would become illegal. And a specific procedure that was very gruesome, and according to all of the testimony, and all of the investigations that she had had the ability to read and understand, was that it was not a necessary procedure. She expressed that they had included the caveat, that in case it was a procedure necessary to save the life of the mother, that it was a procedure that could be used. Representative James advised members that she agreed with Representative Bunde, that the life of the mother was over and above the life of an unborn child. However, stated that in any event, she felt they should not stray from the fact, that what the proposed legislation did was restrict one specific abortion procedure, and not in any way, shape or form, reduce any ability for anyone to get an abortion under current conditions. Representative James felt it was very important to make that clear.

REPRESENTATIVE BERKOWITZ stated that during testimony, members had heard a lot of what he considered as being fairly sanctimonious, moralizing about abortion, in general; however, he would restrict his comments soley to the question of what he termed, late term

abortions because that was the procedure that was at issue. He felt members, unwillingly, become the vehicles for inflammatory language which served to divide people of good will by succumbing to terms with something like partial-birth abortion. Representative Berkowitz pointed out that it was a procedure, a medical procedure, and doctors, every doctor he'd known, took a Hippocratic oath, not to do anything that would jeopardize the health or well being of a person. It seemed to him that when members circumscribe the procedures available to a doctor, they would be limiting the ability of a doctor to treat a patient. Representative Berkowitz stressed that he knew of no other procedure the state of Alaska had banned, much less, attached a C felony to. Representative Berkowitz felt they were taking an undo step forward; it was not a question in his mind of just limiting a medical procedure, it was also chipping away at abortion rights. He believed that was an unfortunate step to take, and was sorry members were being used as a vehicle for something that was divisive, pointing out that it was a procedure that had never been performed in the state of Alaska. Yet, it would cause a great deal of consternation, in the general public, and a great deal of outcry, because people felt so passionately about it. Representative Berkowitz stated that rather than letting a symbolic bill just die on the vine, the members had chosen to go forward with it, and he regretted that and would be voting against passage of the bill.

CHAIRMAN GREEN reminded members that there were drugs used in other places, and procedures used in foreign countries that were not acceptable in the state of Alaska, so he thought to limit a specific abortion procedure, would not create a problem of attempting to decide whether it would one's spouse, or the baby that lived. He stated that if it was necessary in order to protect the mother, that he would never, ever trade his wife for an unborn child. Chairman Green noted that, by the same token, he would not sacrifice that child on a "maybe" diagnosis, because he would also hold the life of the child in high regard. Chairman Green reiterated that they were not addressing the issue of abortion, but one specific procedure that would be banned in the state. He expressed that that was what members should keep focused on, not the total idea of abortion.

Number 1200

CHAIRMAN GREEN noted that there had been objection, and asked if the objection was maintained. The objection was maintained, and Chairman Green requested a roll call vote: In favor: Representatives Bunde, Porter, Rokeberg, James and Chairman Green. Opposed: Representatives Croft and Berkowitz. CSHB 65(JUD) was moved out of the House Judiciary Committee by a vote of 5 to 2.

REPRESENTATIVE BUNDE expressed that he had a bill up in the House Finance Committee, and asked that he be excused.

Alaska State Legislature
House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE, CHAIRMAN
MILITARY & VETERANS AFFAIRS, CHAIRMAN
COMMUNITY & REGIONAL AFFAIRS
RESOURCES
INTERNATIONAL TRADE / TOURISM
LEGISLATIVE COUNCIL

INTERIM:
10928 EAGLE RIVER ROAD, SUITE 141
EAGLE RIVER, AK 99577
PHONE (907) 694-8944 45
FAX 694-8949

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-3777
FAX (907) 465-2819

SPONSOR STATEMENT
HB 65

Partial-birth abortions, which typically occur in late-term pregnancies, involve the following steps: First, the abortionist locates the baby's leg and pulls it into the birth canal; Second, the entire baby is delivered except the head; Third, scissors are inserted into the live baby's head and the hole enlarged; Fourth, a suction catheter is inserted into the hole and the baby's brains are sucked out, thereby collapsing the skull; Finally, the dead baby is completely removed.

In testimony before the US House of Representatives Judiciary Committee, Nurse Shafer described her experience of partial-birth abortions as follows:

> "...His little fingers were clasping together. He was kicking his feet. All the while his little head was still stuck inside. [The doctor takes] a pair of scissors and insert[s] them into the back of the baby's head. Then he opened the scissors up. Then he stuck the high-powered suction tube into the hole and sucked the baby's brains out."

This gruesome and hideous procedure, which but for a few centimeters would be punishable as infanticide, would be outlawed by HB 65, as unworthy of civilized people. Such behavior coarsens our society, undermines people's trust in the medical profession, and blurs the legal distinction between abortion and homicide.

HB 65 makes it a felony for a person to perform a partial-birth abortion, except where necessary to save the life of the mother. While leaving intact the right to all other types of abortion procedures, HB 65 punishes the abortionist but not the mother.

Partial-birth abortions are not something that we need in the State of Alaska. Your support of HB 65 is urged.

Representative Pete Kott

Alaska State Legislature
House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE, CHAIRMAN
MILITARY & VETERANS AFFAIRS, CHAIRMAN
COMMUNITY & REGIONAL AFFAIRS
RESOURCES
INTERNATIONAL TRADE / TOURISM
LEGISLATIVE COUNCIL

INTERIM:
10926 EAGLE RIVER ROAD, SUITE 141
EAGLE RIVER, AK 99577
PHONE (907) 694-8945
FAX 694-8949

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-3777
FAX (907) 465-2619

SECTIONAL ANALYSIS
HB 65

Section 1: Makes partial-birth abortions illegal, except where necessary to save the life of the mother; exempts the mother from prosecution; defines "partial-birth abortion as the act of partially vaginally delivering a living fetus before killing it and completing the delivery.

Representative Pete Kott

SENATE COMMITTEE REPORT

DATE: 3/21/97

FURTHER: Judiciary

DATE TURNED IN TO OFFICE: 4/1/97

State Affairs Committee considered HOUSE BILL NO. 65 am

"An Act relating to partial-birth abortions."

8 PHONES

and recommends:

| | be **replaced** with ____ CS _____ (_____)

| | adopt **previous** ____ CS _____ (_____)

| | attached amendment(s)

| | adopt Letter of Intent by _____ Committee

| | further referral to the _____ Committee

Senate Bill:
| | same title
| | new title

House Bill:
| | same title
| | technical change
| | new: SCR#_____

Testimony should be returned to

SIGNING DO PASS	DP	OTHER RECOMMEND			
Mike Miller					
Ward Ward					
		MACKIE	V	NR	
CHAIR: Lyda Green					

do not pass - Public Testimony r allowed - should be returnd to st. affairs for a public hearing.

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):* House

Department	Date	Zero	Fiscal
Health + Social Services		✓	
DOL		✓	

| | **APPROPRIATION -- no fiscal note** Previous Committee Report(s) **scal notes accompanying Governor's bill**

ALASKA STATE LEGISLATURE
HOUSE BILL NO. 65

HISTORY IN THE HOUSE

1997

1/13 Read first time and referred to: STA Jud

2/21 STA RPT CS( ) New Title
4 DP 1 DNP 1 NR Ø AM
1 FN 1 0FN Previous FN

3/12 Jud RPT CS( ) New Title
2 DP 1 DNP 3 NR Ø AM
FN 0FN 1 Previous FN

RPT CS( ) New Title
DP DNP NR AM
FN 0FN Previous FN

3/19 Read second time
CS( ) Adopted

3/19 Amended

3/19 Held - Advance 3/20

3/20 Advanced

3/20 Read third time

Return to second for specific amendment

3/20

PASSED	EFD Same ___ or
Yeas 24	Yeas
Nays 10	Nays
Excused 6	Excused
Absent Ø	Absent

Intent adopted

Reconsideration
Reconsideration not taken up

PASSED ON RECON.	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

Intent adopted

3/20 Reported correctly engrossed
Signed by Speaker, to the Senate

Suzi Lowell
Chief Clerk of the House

HISTORY IN THE SENATE

1997

3/21 Read first time and referred to: STA, JUD

RPT( ) CS DP NR DNP AM
New Title Same Title Previous FN
FN 0FN To

RPT( ) CS DP NR DNP AM
New Title Same Title Previous FN
FN 0FN To

RPT( ) CS DP NR DNP AM
New Title Same Title Previous FN
FN 0FN To

Rules Calendar( ) CS AM Other
New Title Same Title Previous FN
FN 0FN

Read second time

CS Adopted ( ) New Title
Amended Advanced

Read third time

Letter of Intent adopted
Return to second for specific amendment

PASSED	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

Reconsideration
Reconsideration not taken up

PASSED	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

Reported correctly engrossed
Signed by President, to the House

Secretary of the Senate

HOUSE STATE AFFAIRS STANDING COMMITTEE
February 6, 1997
8:00 a.m.

* HOUSE BILL NO. 65
"An Act relating to partial-birth abortions."

- BILL POSTPONED

ADDITIONAL
INFORMATION FOR
H B 65

HOUSE STATE AFFAIRS STANDING COMMITTEE
February 20, 1997
8:21 a.m.

HB 65 - PARTIAL-BIRTH ABORTIONS
The first order of business to come before the House State Affairs Standing Committee was HB 65, "An Act relating to partial-birth abortions."

Number 027

REPRESENTATIVE PETE KOTT, Alaska State Legislature, stated the intent of HB 65 was clear. There were comments made during the testimony that needed to be clarified, especially the comments surrounding the constitutionality of the bill by the attorney general's staff. He called on George Dozier, Jr., Legislative Assistant to Representative Pete Kott, to cover the finer points of the bill.

Number 045

GEORGE DOZIER, JR., Legislative Assistant to Representative Pete Kott, stated that the House State Affairs Standing Committee took testimony from two attorneys regarding the constitutionality of the bill. Janet Crepps, The Center for Reproductive Law and Policy, indicated that HB 65 was "patentably unconstitutional." Kristen Bomengen, Department of Law, indicated that the bill was unconstitutional. "Madame Chair, I am confident that both of these individuals testified in good faith, and honestly and sincerely believed that they are correct in their assessment of HB 65." Mr. Dozier, Jr. was equally confident that both of these attorneys in their assessment were incorrect. House Bill 65 was not unconstitutional either under the federal constitution or the state constitution.

MR. DOZIER, JR. explained that the Fourteenth Amendment included a right to privacy, and that this right was broad enough to encompass a woman's decision to obtain an abortion. The court also held that the right to decide to have an abortion was not absolute. The right was limited by the legitimate interest of the state or to protect potential human life. The Roe v. Wade court indicated th the state could not interfere with a woman's decision to obtain an abortion during the first-trimester. However, after the first-trimester it could regulate to protect the woman's health, and after viability the state could regulate or proscribe abortion, except where necessary for the life or health of the mother. The Roe court specifically and expressly rejected an argument that "a pregnant woman is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she chooses."

MR. DOZIER, JR. further explained that the court found the state had a substantial interest in potential human life in the Planned Parenthood v. Casey case. The interest extends throughout the pregnancy. The court also found that the opinions subsequent to the Roe v. Wade case undervalued the state's interest in potential human life. Consequently, the Casey court rejected the rigid trimester system established by the Roe court. It instead divided the pregnancy into two periods: pre-viability and viability. The

Casey court indicated that during the pre-viability period the states could not place an "undue burden" on a woman's right to decide to terminate a pregnancy. The Casey court defined the term "undue burden" as regulations that either had the purpose or the effect of placing a substantial obstacle in the path of a woman seeking the abortion of a non-viable fetus. The Casey court indicated that "subsequent to viability the state in promoting its interest in the potentiality of human life may if it chooses regulate and even proscribe abortion, except where necessary, in appropriate medical judgement for the preservation of the life or the health of the mother." In summary: First, the state had a substantial interest in potential human life that extends throughout a pregnancy. Second, prior to viability the state could not place an undue burden on the right to pregnancy, which means placing a substantial obstacle in the path of a woman seeking an abortion. Third, after viability the state could regulate abortion or even prohibit abortion, except where necessary for the life or the health of the mother.

MR. DOZIER, JR. further stated that since partial-birth abortions span the last part of the pre-viability stage and extended all the way through the viability stage, HB 65 was designed to cover both periods. Hence, it must be analyzed with regards to both standards. He declared, "With all due respect, House Bill 65 more than meets those standards". House Bill 65 did not place an undue burden on the right to choose an abortion. It did not place a substantial obstacle either by intent, or in effect, in the path of women seeking abortions. It did not proscribe abortion, per say. It merely made one particular type of an abortion illegal. And, "I may add, a particularly egregious form." He further stated, "All other forms of abortion remain open to pregnant women." As the testimony from Dr. Peter Nakamura, Department of Health and Social Services, indicated, partial-birth abortions have not been performed in Alaska and would probably never be performed in the state. Thus, "Does House Bill 65, which prescribes an abortion which is not done in Alaska, place a substantial obstacle in the path of women seeking abortions in Alaska?" The answer by definition was, "No." The procedure was simply not available anyway. Was it really a substantial obstacle to require abortionists to conform to the standards already present and accepted? he wondered "That to my mind is no obstacle at all, let alone a substantial one." In short, all of the options presently available to women to obtain an abortion remain unaffected. Therefore, the first standard, applied to pre-viability pregnancies, was clearly satisfied.

MR. DOZIER, JR. further explained the second standard that applied to viable babies was also satisfied. He reiterated, the Supreme Court recognized that the state could regulate or even proscribe an abortion, except where necessary to preserve the life or health of the mother. House Bill 65 did not ban an abortion during this period, it merely banned a particular procedure. Therefore, it was more of a regulation than a proscription. House Bill 65 also contained an expressed exception applicable to the life of the mother. It did not mention the health of the mother for the following reasons: All forms of abortions presently in Alaska remain in effect, and a ban would not adversely impact the health of the mother as numerous evidence indicates. There were no

obstetrical situations which require a partial-birth abortion to preserve the life or the health of the mother. In addition, Representative Kott indicated that the American Medical Association (AMA) voted-unanimously-to recommended the endorsement of the federal partial-birth ban. "In so doing it stated that the procedure was repulsive and is not a recognized medical technique." The former Surgeon General, C. Everett Koop, stated that "in no way can I twist my mind to see the late-term abortion as described, you know, partial-birth and then destruction of the unborn child before the head is born is a medical necessity for the mother." He reiterated partial-birth abortions were not necessary for the health of the mother.

MR. DOZIER, JR. further stated that the legislature could conclude that partial-birth abortions were not necessary to preserve the health of the mother, and indeed could be inimicable to the health of the mother. Therefore, the pre-viability and the post-viability standards required by the Casey decision were satisfied. In addition, there were several permissible and compelling state interests that were advanced by HB 65. He cited, the cruelty and the gruesome act of sticking scissors into a baby's head. The state had a very strong interest in protecting human life from such cruel and gruesome actions. He also cited, a partial-birth abortion tended to mix the roles of physician and abortionist. A physician was considered a healer, while an abortionist was not considered a healer. He was concerned that in mixing these two opposing roles there would be a great danger that public confidence in the medical profession would be undermined. He also cited, a partial-birth abortion was inherently disrespectful of human life and dignity. In addition, the state had a vital interest in drawing a clear distinction between a legal abortion and infanticide. The partial-birth abortion blurred that distinction. "In my opinion, partial-birth abortions are fully constitutional under the guidelines established by the United States Supreme Court."

MR. DOZIER, JR. turned to the arguments made by Ms. Janet Crepps and Ms. Kristen Bomengen. Ms. Crepps argued that HB 65 created an undue burden because partial-birth abortions were the safest procedure. He called that statement questionable. The committee members had been provided with an abundance of materials indicating that partial-birth abortions were not necessary for the health of the mother and actually presented a risk to her. Ms. Crepps also argued that the Supreme Court in the Planned Parenthood v. Danforth case held that the use of saline amniocentesis was unconstitutional because it forced the doctor to use a more dangerous method. And, HB 65 involved the proscription of a defined abortion procedure like in Danforth . However, Danforth he stated, was clearly distinguishable on three different grounds. First, HB 65 did not force women to use procedures that were less safe than partial-birth abortions. Second, the Danforth court emphasized that the proscribed method was the most prevalent available. In HB 65 the proscribed method was not even used in Alaska and other safe methods were available. Third, the Danforth court predated the Casey court; therefore, the analysis focused on whether the state advanced maternal health. The Casey court changed all that. Now, it is recognized that the state's interest could be asserted

throughout a pregnancy. He declared, "House Bill 65 does just

that. And, it may be expected that the right to assert that interest by the state would be weighed in any constitutional challenge. Danforth , quite simply, is distinguishable." Ms. Crepps further argued that the only court to review or ban a similar procedure in HB 65 invalidated it because for some women the prohibited procedure would be safer than other available procedures that was in the Women's Medical Professional Corporation v. Voinovich court case. The court held that D&X was safer than other methods and because it was more available than induction methods, its proscription was a substantial burden and therefore, unconstitutional. The House State Affairs Standing Committee had ample evidence to base a decision on safety. "Indeed the only medical testimony presented suggesting a need for a D&X procedure or partial-birth was presented by two doctors who clearly were not talking about partial-birth abortions. They appeared to be talking about late-term abortions in general." Moreover, the House State Affairs Standing Committee could not find, given the testimony of the Public Health Director, that partial-birth abortions were more prevalent than any other method in the state of Alaska. "In Alaska partial-birth abortions are simply not being done right now." Finally, Ms. Crepps argued that the privacy clause of the Alaska State Constitution would be violated by HB 65. "I don't know how she can be so certain about this," he declared. The Alaska Supreme Court had not yet decided an abortion case using this constitutional provision. The right was broader than the privacy right found by the court in the U.S. Constitution, but it was not absolute. And, "Certainly the right to privacy is not violated when an alleged abridgement is justified by a legitimate and compelling governmental interest." He stated, the government had a compelling interest to protect almost-born babies and to protect public confidence in the medical profession by not blurring the roles of physicians and abortionists. The government also had a compelling interest to protect the almost-born from this cruel, gruesome and undignified death.

MR. DOZIER, JR. stated that Ms. Bomengen argued that the D&X procedure was the safest method; so, it was subject to constitutional challenge. He reiterated that there was amble evidence presented to the committee members that indicated D&X was not the safest procedure. Ms. Bomengen also argued that the definition was broad because it could encompass procedures other than partial-birth abortions. The definition in HB 65 does not overlap alternative methods. Ms. Bomengen also argued that the definition was vague. The definition in HB 65 is clear and precise. It establishes definitively what is proscribed, and persons of common intelligence can easily understand what is prohibited. "Thus there will not be a chilling affect. I think Ms. Bomengen has in mind a definition that was used in the statute examined by the court in Voinovich back in Ohio." The court, quite rightly, concluded that there was an overlap and that the statute was vague. But, the definition employed in the Ohio case does not resemble the definition in HB 65. "The termination of a human pregnancy by purposefully inserting a suction devise into the skull of a fetus to remove the brain, dilation and extraction procedure does not include either (indisc.--coughing) procedure of abortion of the suction aspiration procedure of abortion." The court found

that this definition overlapped a normal D&E procedure because both involved inserting a section devise into the skull. Furthermore,

the absence of the mental component of a criminal statute was somewhat persuasive. In HB 65 there was no expressed mental component; the required state of mind was knowingly. Ms. Bomengen's concerns regarding vagueness were misplaced. House Bill 65 does not resemble, in any respect, the statute considered by the Voinovich court. House Bill 65 was clear, precise and did not overlap any other abortion procedure. Finally, because it is clear there is no danger of arbitrary or discriminatory enforcement.

MR. DOZIER, JR. concluded that in his judgement House Bill 65 would pass constitutional muster.

Number 465

REPRESENTATIVE ETHAN BERKOWITZ asked Mr. Dozier to distinguish between a partial-birth abortion and a late-term abortion?

Number 470

MR. DOZIER, JR. replied that a partial-birth abortion could be either a pre-viable or a post-viable abortion. A partial-birth abortion could be a late-term abortion also. House Bill 65 did not proscribe late-term abortions; it only proscribed a certain procedure.

Number 476

REPRESENTATIVE BERKOWITZ stated that Mr. Dozier, Jr. indicated the two doctors that testified described a late-term abortion.

Number 478

MR. DOZIER, JR. replied, "Yes." That was what they had in mind. Dr. Nakamura also indicated that they were referring to late-term abortions.

Number 486

REPRESENTATIVE BERKOWITZ stated that the doctors who would be guided by this law were confused thereby satisfying the vagueness issue. He asked Mr. Dozier, Jr. to respond.

Number 490

MR. DOZIER, JR. referred the committee members to page 1, lines 11-13, and read "(c) In this section, `partial-birth abortion' means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery." He asked Representative Berkowitz what was unclear about that definition?

Number 499

REPRESENTATIVE BERKOWITZ replied that the doctors who were to be guided by the law and who testified interpreted it as a ban on

their procedures that they had practiced. Yet, Mr. Dozier, Jr. indicated that the procedures that they practiced did not constitute a partial-birth abortion. Yet, the fact that they were

confused chilled their actions. Therefore, the bill was void for vagueness.

MR. DOZIER, JR. wondered if that was a question or a comment.

Number 509

CHAIR JAMES asked Representative Berkowitz if his comment was also his position?

REPRESENTATIVE BERKOWITZ replied that was his question.

CHAIR JAMES stated that Mr. Dozier, Jr. already answered that question. He believed it was very clear. She asked Representative Berkowitz if he believed it was unclear?

Number 512

REPRESENTATIVE BERKOWITZ replied he believed it was unclear. He believed if the bill was rewritten it could be clearer.

Number 514

CHAIR JAMES asked Representative Berkowitz to explain what was not clear.

Number 515
REPRESENTATIVE BERKOWITZ replied there were several issues unclear. First, the legal history that Mr. Dozier, Jr. recited described the procedures in terms of pre-viability and viability thereby injecting the new term "living." Second, doctors who were to be guided by the statute interpreted it in such a way that their actions would be banned thereby creating a chilling effect.

Number 526

REPRESENTATIVE BERKOWITZ asked Mr. Dozier, Jr. why the term "living" was not being used and instead the terms "pre-viability" and "viability?"

Number 530

MR. DOZIER, JR. replied because the term "viability" was irrelevant to what was being proscribed in HB 65. The bill was constitutional regardless of whether it was applied to a pre-viable fetus or a viable fetus.

MR. DOZIER, JR. further stated that there were certain practical difficulties when applying a partial-birth abortion early on. For example, the fetal tissue would be too tender to manipulate.

Number 545

REPRESENTATIVE BERKOWITZ asked Mr. Dozier, Jr. if there was a legal

definition of the term "living?"

Number 547

MR. DOZIER, JR. replied he thought Representative Berkowitz was suggesting that the definition was too vague because the bill did not define the term "living." A statute passed constitutional due process muster if it was certain enough so that it would apprise people of common intelligence of what was being made illegal. "I don't think that there is a doctor alive, let alone a man, woman, or child alive in the United States that doesn't know what living is. I don't think that living is necessary to be defined." For example, the bill would not apply to a dead fetus in a mother's womb. But, if the fetus was still alive and partially delivered vaginally then killed, the bill applied.

Number 565

REPRESENTATIVE BERKOWITZ stated Mr. Dozier, Jr. indicated that the Voinovich court made finding of fact.

Number 566

MR. DOZIER, JR. replied, "Yes, I did."

REPRESENTATIVE BERKOWITZ further stated that the court indicated the partial-birth procedure was safe or could be the safest method.

Number 569

MR. DOZIER, JR. replied, "I don't believe that the court actually made that determination." The case was a request for an injunction. The court had to decide if it was likely that once this matter went to a full trial that the plaintiff would prevail in court. The court issued the injunction. He did not know if the issue went to full trial, however. The legal history was not available.

Number 587

REPRESENTATIVE BERKOWITZ said he misunderstood when Mr. Dozier, Jr. stated, "In all candor the finding of fact." He asked Mr. Dozier, Jr. for a copy of his testimony.

MR. DOZIER, JR. replied he did not have a copy of his testimony; he was referring to written notes only.

REPRESENTATIVE BERKOWITZ stated his written notes would be fine.

MR. DOZIER, JR. replied he had private notations written on the pages.

Number 596

CHAIR JAMES stated she would not compel Mr. Dozier, Jr. to give Representative Berkowitz his notes. A tape recording of the meeting was available.

REPRESENTATIVE BERKOWITZ stated he did not care to have his private notes. A computer print out would be fine.

CHAIR JAMES stated her decision had been made. She reiterated a

tape recording of the meeting was available.

REPRESENTATIVE BERKOWITZ noted for the record the cooperation of Mr. Dozier.

Number 602

REPRESENTATIVE MARK HODGINS moved that HB 65 move from the committee with the attached fiscal note(s) and individual recommendations.

Number 604

REPRESENTATIVE BERKOWITZ objected.

REPRESENTATIVE BERKOWITZ stated that the bill as it was written constituted an unwarranted governmental intrusion that abridged the rights of Alaskan women, doctors and families. This was not an abortion issue, it was a medical issue. In addition, testimony before the U.S. Congress indicated the medical necessity for this procedure. And, no one disputed the gruesome fashion of this procedure. There was no testimony, however, before the House State Affairs Standing Committee that indicated this was how the procedure was performed. The sponsor relied on the testimony of Nurse Shafer, of which, information indicated that her credibility was questionable. He found it difficult that the committee members would accept, without question, the testimony given in another body. Moreover, this issue was also a question of faith. There were many different position of faith. He read a list of churches that supported this type of procedure. "For me this was a question of faith in that I have faith in the constitution. And, I believe the constitution adequately circumscribes the procedures that are in question here." He urged the committee members to make a fair inquiry into what this issue was about. He reiterated this was not a question of an abortion, but of a medical procedure. He further stated that if the bill was well written there were ways he could support it. He also stated that this was a reason why a dialogue needed to occur between the members of the majority and the minority; there were middle grounds and alternatives.

Number 654

CHAIR JAMES asked Representative Berkowitz if he was insinuating that the dialogue did not happen?

Number 655

REPRESENTATIVE BERKOWITZ replied, "I just caution that when the minority is silenced it tends to result in a tyranny of the majority."

Number 658

CHAIR JAMES asked Representative Berkowitz if he was suggesting that the minority was silenced?

Number 660

REPRESENTATIVE BERKOWITZ replied, "I fell that I have been silenced in this committee." And, he also felt that given proper time he could have elicited testimony that would have helped him to rewrite the bill.

CHAIR JAMES replied let's get back to the point. Let's get back to Representative Berkowitz's distress of the bill.

REPRESENTATIVE BERKOWITZ further stated that the bill was void for vagueness. It would not pass constitutional muster. It endangered the health and well being of Alaskan women unnecessarily. It was not even practiced here in Alaska. "I think this is an exercise in political grand standing that we ought not be engaged in."

The record reflected the arrival of Representative Al Vezey at 9:00 a.m.

Number 664

CHAIR JAMES stated that she would vote to pass the bill out of the committee because it prohibited a gruesome procedure that was available when the life of the mother was at stake. The bill only prohibited the procedure when it was elected by the mother. It did not necessarily involve a threat to life of the mother.

CHAIR JAMES called for a roll call vote. Representatives James, Dyson, Hodgins, Ivan and Vezey voted in favor of the motion. Representative Berkowitz voted against the motion. House Bill 65 was so moved from the House State Affairs Standing Committee.

HOUSE JUDICIARY STANDING COMMITTEE
March 5, 1997
1:05 p.m.

HOUSE BILL NO. 65
"An Act relating to partial-birth abortions."

- SCHEDULED BUT NOT HEARD

HOUSE JUDICIARY STANDING COMMITTEE
March 7, 1997
1:08 p.m.

HB 65 - PARTIAL-BIRTH ABORTIONS

Number 1404

CHAIRMAN GREEN indicated that the committee would consider HB 65, "An Act relating to partial-birth abortions." He noted that this was a procedure to abort a child before it clears the birth canal by the insertion of a sharp instrument, probably scissors into the back of a skull. He added that version B of this bill, dated 3/4/97 was before the committee.

Number 1451

REPRESENTATIVE PETE KOTT came forward to testify on HB 65 as sponsor to this legislation. He stated that this legislation was a fairly simple measure and it does one thing. It prohibits what has been termed "partial birth abortions" from occurring in Alaska. Partial birth abortions involve a series of steps which are horrible, unconscionable and smacks in the face of hideousness. He stated that these techniques are gruesome and he noted that he had provided written documentation of the same, along with the sponsor statement. He stated that the technique enumerated in the sponsor statement was obtained from a Dr. Martin Haskell enumerated in a 1992 paper provided to the National Abortion Federation. This bill does not in any way restrict abortions from occurring in Alaska but rather a type of procedure that is used.

REPRESENTATIVE KOTT stated that partial birth abortions occur anywhere from nineteen weeks through to full term. "Essentially one relies on the cervical entrapment of the head to help keep the baby in place while the insertion is made to complete the process." He stated that the committee has before it a committee substitute that he felt captured the intent of the legislature as it relates to this particular measure. He felt that enough substantiating documentation provided by members of the medical community that suggest that this procedure is not a necessity to save the life of a mother. "There will also be some discussion on whether or not the procedure is performed in an abundance of the cases. I think that you will hear and bear out some facts that this is not a procedure that is rarely used. In fact, just this past week, with I believe with the reintroduction of a bill in Congress, a Ron Fitzsimmons, the Executive Director for the National Coalition of Abortion Providers, said that he mislead the public because he feared the truth would damage the abortion rights cause. This was in relationship to the number of times this procedure was used and the reasons for using it."

Number 1745

GEORGE DOZIER, Aide to Representative Kott, came forward to testify on HB 65. He read a statement into the record.

"At the outset, I would like to discuss, just briefly, federal constitutional requirements in the abortion context. As everyone

knows, the seminal case addressing the constitutionality of abortion in the United States is Roe v. Wade , 410 US 113. Generally, the Court held as follows:

"1. The fourteenth amendment includes a right to privacy, and this right is broad enough to include the right to obtain an abortion. Roe , 410 US, at 177.

"2. This right is not absolute and may be limited by states' legitimate interest in safeguarding women's health, maintaining proper medical standards, and protecting potential human life. Roe , 410 US, at 177.

"3. Applying these principles, the Court arrived at the fol conclusions. During the first trimester, the state, essent may not interfere in a woman's decision to obtain an aborti Roe , 410 US, at 183. From the end of the first trimester state may regulate abortion to safeguard the health of the From the point of viability, the state may proscribe aborti except where necessary to preserve the life and health of t mother. Roe , 410 US, at 183.

"4. It may be noted that the Roe Court specifically and expressly rejected an argument that a pregnant woman is '...entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she chooses.' Roe , 410 US, at 177.

"The most recent Supreme Court opinion discussing abortion is Planned Parenthood v. Casey , which can be found at 505 U.S. 833; 120 L Ed 2d 674 (1992). In Casey , the Court found that states have a substantial interest in potential human life, and that this extends throughout the pregnancy. Casey , 120 L Ed 2d, at 714. Indeed, this interest is characterized as 'profound'. Casey , 120 L. Ed 2d, at 715. The Court found that its opinions subsequent to Roe had undervalued this interest of states in potential human life, 120 L Ed 2d, at 711, and as a consequence, it rejected the rigid trimester system first articulated in Roe . Casey , 120 L Ed 2d, at 710. Instead, it divided pregnancies into two periods--- pre-viability and viability.

"According to the Casey Court, during that first period, in which the baby is not viable, states may not place an 'undue burden' on a woman's right to decide whether to terminate a pregnancy. It defined 'undue burden' as regulations that have the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. 120 L Ed 2d, at 715.

"During the second period, in which the baby is viable, the constitutional standard is different. As stated by the court, in quoting from Roe : '...subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.' Casey , 120 L Ed 2d, at 716.

"To summarize: First, the state has a substantial interest in potential human life which extends throughout the pregnancy. Second, prior to viability, the state can not place an undue burden

on the right to pregnancy, which means placing a substantial obstacle in the path of a woman seeking an abortion. Third, after viability, the state may regulate abortion, and even prohibit them, except where necessary to protect the life or health of the mother.

"Since partial birth abortions span the last part of the pre-viability stage and into the viability stage, HB 65 is specifically designed to cover both stages. Hence, it must be analyzed with respect to both standards. HB 65 more than meets these standards.

"First, with respect to pre-viability abortions, HB 65 does not place an undue burden on the right to chose an abortion. That is to say, it does not place a substantial obstacle, either by intent or in effect, in the path of a woman seeking an abortion. After all, it does not proscribe abortions per se. It merely makes one particular form of abortion, and a particularly egregious form at that, illegal. All other forms of abortion remain open to pregnant women. The fact that this does not place a substantial obstacle in the path of women seeking abortion is clear. The Director of Public Health in Alaska testifying before the State Affairs Committee a couple of weeks ago testified that partial birth abortions, as defined by the bill, have not been performed in Alaska. Thus, the question must be asked: Does HB 65, which proscribes a procedure which, thus far , is not done in Alaska, place a substantial obstacle in the path of a woman seeking an abortion? The answer, by definition, is clearly no. The procedure is not available anyway.

"In that regard, can it really be a substantial obstacle to require abortionists to conform to the standards of abortion practice already present and accepted by practitioners in Alaska. That, to my mind, is no obstacle at all, let alone a substantial one.

"In short, all options presently available to women to obtain abortions remain unaffected. There is no obstacle, and thus, the first standard---that which applies to pre-viability stage---is clearly satisfied.

"The second standard, which applies to viable babies, is also satisfied. As I previously indicated, during the period of viability, the Supreme Court recognizes that the state may regulate or even proscribe abortions, except where necessary to preserve the life or health of the mother. HB 65 does not ban abortions during this period; it merely bans a particular procedure. Thus, it is more of a regulation of abortion than a proscription. And, the state is free to regulate, except where necessary to preserve the life and health of the mother. HB 65 contains an express exception applicable to the life of the mother. It does not mention health. However, it does not need to expressly mention health for the following reasons:

"First, all forms of abortion present in Alaska remain in effect. If the mother's health requires an abortion, she continues to have recourse to those procedures. Her health is protected.

"Second, even when partial birth abortions become available in Alaska, their ban would not adversely impact maternal health. The

Committee was provided with voluminous material clearly

establishing that fact. For instance, as Dr. Pamela Smith, who is the Director of Medical Education, Department of Obstetrics and Gynecology at Mt. Sinai Hospital in Chicago, testified before the US Senate: 'There are absolutely no obstetrical situations encountered in this country which require a partially delivered human fetus to be destroyed to preserve the life or health of the mother'. Similarly, Dr. James Jones, who is chairman of the Department of Obstetrics and Gynecology at the New York Medical College, stated, regarding partial-birth abortions, that he 'can't imagine that being an indicated procedure for the saving of a life or well-being of the mother.' Although the America Medical Association (AMA) has remained neutral on the issue, its Legislative Council voted unanimously to recommend that the AMA endorse the federal partial birth ban. In so doing, it stated that the procedure is basically repulsive and is not a recognized medical technique. Again, the former Surgeon General of the United States, Dr. C. Everett Koop stated: '...In no way can I twist my mind to see that the late-term abortion as described---you know, partial-birth, and then destruction of the unborn child before the head is born---is a medical necessity for the mother.' Similarly, Dr. Warren Hern, who wrote the Horn Book on late term abortions, stated in an article in American Medical News : 'You really can't defend it... I would dispute any statement that this is the safest procedure to use.' He stated further: 'You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that.'

"I won't bore you with more opinions. There are plenty in the materials that have been provided. The point is that partial-birth abortions are not necessary for the health of the mother.

"In summary, the Legislature can conclude that partial birth abortions are not necessary to preserve the health of the mother, and indeed may even be inimical to the health of the mother. No express exception is needed, since all other procedures remain available.

"Thus, both the pre-viability and the post-viability standards required by Casey are satisfied. That being the case, all that is required is that there be some rational basis for HB 65. And, there are several permissible state interests that are advanced by HB 65. Indeed, the State has compelling interests in preventing such procedures. Let me suggest but a few.

"First, delivering a baby just to the very cusp of constitutional personhood and then killing it, just inches away from being completely born, is cruel. Indeed, Dr. Isada, who spoke against HB 65 before the House State Affairs Committee, described one aspect of partial birth abortion---sticking scissors into the baby's skull---as gruesome. The state has a very strong interest in protecting human life from such cruel and gruesome actions. If the state can prevent cruelty to animals, it certainly can do the same thing for human life.

TAPE 97-33, SIDE A
Number 000

"Second, partially delivering a baby ---or, I should say almost

entirely delivering a baby---and then killing it tends to mix the roles of obstetrician and abortionist. The former are healers, and they are perceived as such by the general public. Abortionists, in the overwhelming number of cases, ---for instance I refer you to Dr. Haskill's statement that 80% of his partial birth abortions are elective---are not healers. They perform some other function. By mixing these two opposing roles, there is great danger that public confidence in the medical profession will be undermined.

"Third, bringing a baby right to the very edge of complete birth and then sucking its brains out is inherently disrespectful of human dignity.

"Fourth, the state has a legitimate and compelling interest in drawing a clear distinction between legal abortion and infanticide. Partial birth abortions blur that distinction. Furthermore, it may be noted that the difference between a viable baby who has just emerged from the womb and a viable baby who is almost out of the womb is negligible. But for a few inches they are the same. To permit the killing of one and forbid the killing of the other is ludicrous and will breed disrespect for the law. So fine a distinction, carrying such dire consequences, can not but be scoffed at by Alaska's people.

"Hence, in my opinion, partial birth abortions are fully constitutional under the guidelines established by the United States Supreme Court. I would like to turn now to some of the specific arguments that have been made thus far against the constitutionality of HB 65.

"First, it has been argued that HB 65 creates an undue burden because partial birth abortions are the safest alternative. This, of course, is an assertion of fact, and the alleged fact is extremely dubious. This Committee has been provided with an abundance of materials indicating that partial birth abortions are not necessary for maternal health and further indicating that partial birth abortions, in themselves, present a risk to maternal health.

"It also has been argued that the Supreme Court, in Planned Parenthood v. Danforth , held unconstitutional an abortion statute which proscribes the use saline amniocentesis, in part because such a prohibition would force women to use more dangerous methods. On the surface, this argument has a certain appeal. After all, HB 65, like Danforth , involves the proscription of a defined abortion procedure. However, Danforth is clearly distinguishable, on at least three grounds. First, HB 65, unlike the Danforth statute, does not force women to use procedures which are less safe than partial birth abortions. Second, the Danforth court emphasized that the proscribed method was the most prevalent available, and that another safe method was not yet available. Here, with HB 65, the proscribed method is not yet used in Alaska and other, safe, methods are available. Third, Danforth predates Casey and thus i analysis focused on whether the statute advanced maternal health. This was during the period in which states' interest in protecting

potential human life was undervalued. Casey changed all of that. Now, unlike when Danforth was decided, it is recognized that the state's interest in human life may be asserted throughout

pregnancy. HB 65 does just that, and it may be expected that the right to assert that interest would be weighed in any constitutional challenge. Danforth , quite simply, is distinguishable.

"In the past it also has been argued that the only Court to review a ban similar to HB 65 invalidated it, because for some women the prohibited procedure would be safer than other available techniques. The case is Women's Medical Professional Corp v. Voinovich , 911 F. Supp. 1051 (S.D. Ohio 1995). The Court in that case, within the context of deciding whether to issue a preliminary injunction and prior to a full trial, held that D&X was safer than other methods; and, because D&X was more available than induction methods, which require hospitalization, a proscription on D&X was a substantial burden. The Court in that case was certainly entitled to make its findings. This Committee has an equal right to make findings of fact, and ample evidence has been presented to it to base a contrary finding concerning safety. Moreover, this Committee reasonably can not find, given the previous testimony of the Public Health Director, that partial birth abortions are more prevalent than any other methods in Alaska. In Alaska, partial birth abortions, thus far , have not been performed. Our state, fortunately, seems to lag behind the rest of the United States in adopting undesirable conduct.

"It also has been argued that the definition of partial-birth abortions is overbroad because it could encompass procedures other than partial birth abortions. It is true that statutes which are so broad as to sweep within their coverage not only properly proscribed acts but also constitutionally protected acts are unconstitutional. The definition employed in HB 65, however, is not of that nature. It does not overlap other alternative methods. They are clearly distinct and clearly outside the coverage of HB 65. It is also argued that the definition is vague. Vague statutes, particularly those that impose criminal liabilities, are unconstitutional. However, HB 65's definition is not vague. It is clear and precise. It establishes definitively what is proscribed. Persons of common intelligence easily can understand what is prohibited and thus there will not be a chilling effect. Proponents of this argument may have in mind the definition used in the statute examined by the court in Voinovich . There, the court---and I think quite rightly--- concluded that there was an overlap and that the statute was vague. But, the definition of D&X employed in that case does not in the slightest resemble HB 65's definition. I can quote the Ohio definition for you. 'The termination of a human pregnancy by purposely inserting a suction device into the skull of a fetus to remove the brain. "Dilation and extraction procedure" does not include either the suction curettage procedure of abortion or the suction aspiration procedure of abortion.' The court found that this definition overlaps normal D&E procedure (because both may involve inserting a suction device into the skull) and because D&E is not excluded as suction curettage or suction aspiration. Further, the Voinovich Court noted that in analyzing statutes for vagueness, the absence of a

mens rea requirement is somewhat persuasive. In fact, it relied on this concept in finding another portion of the Ohio law unconstitutionally vague. In HB 65, it may be noted that there is an express mens rea.

"Concerns regarding vagueness are misplaced. This bill does not resemble, in any respect, the statute considered by the Voinovich court. It is clear and precise, and it does not overlap any other abortion procedure. It is such as to apprise people of common intelligence what is being prohibited, and there is no reason to believe that it will have a chilling effect on constitutionally protected acts. Finally, since it is clear, there is no danger of arbitrary or discriminatory enforcement.

"Finally, it is argued that the privacy clause of the Alaska Constitution would be violated by HB 65. The Alaska Supreme Court has not yet decided an abortion case using this constitutional provision. What we do know is that, although the right is broader than the privacy right found by the US Supreme Court in the US Constitution, it is not absolute. And, certainly, the right to privacy is not violated when an alleged infringement is justified by a legitimate and compelling governmental interest.

"Although the Alaska Constitution's right of privacy is deemed to be broader than that of the United States Constitution, it does not reach everywhere and cover all things. Essentially there is a two step analysis that is required. First, it must be determined if the conduct in question is within the scope of the amendment. Then, and only then, it must be determined if the alleged infringement bears a fair and substantial relation to a compelling governmental interest.

"First, does partial-birth abortions fall within the scope of the amendment? The Alaska Supreme Court has determined that this issue is resolved by answering two questions: (1) Does the person have an actual (that is, subjective) expectation of privacy concerning the conduct? (2) Is the expectation one that society is prepared to recognize as reasonable? If both questions are answered in the affirmative, the conduct falls within the scope of the privacy amendment. Hilbers v Muni. of Anchorage , 611 P. 2d 31 (1980).

"In Alaska, as with the rest of the United States over the last quarter century, many people have been conditioned to perceive abortion as part of the culture. Indeed, the Casey Court made much of that fact in discussing whether or not it would be appropriate to abandon the central tenants of Roe . Given this state of affairs, it would not surprise me that some would have a subjective expectation a privacy right to engage in even this gruesome procedure. But, is subjective expectation something that we as a society are prepared to recognize as reasonable? I think not. In my opinion, for the reasons I have discussed at length in this testimony, society is not even close to recognizing as reasonable any such assertion of a privacy right to obtain a partial-birth abortion. Hence, this procedure falls outside the scope of the amendment.

"Even assuming, arguendo , that partial-birth abortions are within

the scope of Alaska's constitutional right to privacy, society's hands are not tied. As previously stated, the right is not absolute. An alleged 'infringement' is permissible if it bears a fair and substantial relationship to a compelling governmental interest.

"I respectfully submit to you that Alaska has a compelling state interest in protecting babies, who are almost born, who are mostly outside the bodies of their mothers, from having their brains sucked out. I also submit that the government has a compelling interest in protecting public confidence in the medical profession by not blurring the roles of healer and abortionist. I also suggest to you that the government has a compelling interest in protecting the almost born from this cruel, gruesome, and undignified death. Accordingly, HB 65 does not run afoul Alaska's right to privacy.

"In conclusion, HB 65 will pass constitutional muster."

Number 960

BACHAR BEN'ISRAEL testified via teleconference from Moose Creek in support of HB 65. She stated that she was confused about when this type of abortion would be conducted in regards to how developed the fetus was. She said she was appalled to understand that this procedure was conducted on full term babies after delivery, that the procedure involved the suctioning of brain tissue and stated that this was beyond her imagination. Unless a mother's life is in danger this procedure should not be allowed and added that it reminded her of the undesirable during the Nazi Holocaust.

Number 1101

AMY SKILBRED, Alaska Civil Liberties Union, came forward to testify in opposition to HB 65. She referred to her testimony entitled, "State Interference In Private Medical Decisions." She noted that some of those present have children and that she has two children. She spoke to a baby's pre-term development by stages and the fact that parents look forward to birthing this child, along with all the anticipation involved, fixing up the nursery, etc. She asked those present to imagine going in for a routine prenatal visit and finding out that the unborn child they treasure will not live long after it is born, if it will survive this long. With this tragic news barely understood it is then advised with the mother's condition, age or medical history that terminating the pregnancy is recommended. What if then they learn that the medical procedure, with possibly the lowest risk in that mother's specific medical circumstances, is not an option, not an option because it is against the law. Imagine how the mother and family will feel at a moment like this, the moment that a law not based on science but on politics prohibits an individual and their doctor from using the best medical procedure under the circumstance. This moment is a dangerous moment for our democracy.

MS. SKILBRED continued that all citizens of this country and state have a constitutional right to privacy. It is hard to think of privacy more profound than a patient's right to choose his or her

course of treatment in a medical emergency. HB 65 would violate this most fundamental right by replacing a doctor's medical advise and a patient's decision whether or not to follow that advise with politically motivated statutes. A law substituting religious beliefs for science, a law penned and promoted by those who would place compassion for a child that cannot live over concern for a

mother's health. Surely those whose compassion lies with the unborn can understand the suffering a mother feels when she is loosing a child she wanted and loved, or a father for that matter. Compounding this trauma is the fear of imminent danger to a woman's own body. This is a perilous situation for women, when they are loosing a child that they carry. This is an excruciating situation, physically and emotionally.

MS. SKILBRED noted that to further complicate this situation with some arbitrary and vague statutory prohibition is simply unconscionable. To deny appropriate medical treatment in this situation is a violation of the mother's rights, her rights as an individual, as a patient and as an American. Our courts have refused to allow such a profound violation of individual privacy rights. Neither will this violation of individual rights stand. Indeed, very sim lar attempts have failed. Nevertheless, she urged the committee at this point to stop this dangerous interference with medical treatment before it moves one step closer to passage.

MS. SKILBRED offered that one of the things people should consider is if this legislation was to pass and a suit is brought against a doctor for using such a procedure in Alaska she asked what happens to the patient's privacy rights then. When the state decides to prosecute a treating physician, if laws such as HB 65 allows state prosecution of a doctor performing a medical procedure, the patient and the patient's once confidential, medical record and medical history are destined to become exhibit one. How else will a court determine if a doctor prosecuted by the state under this bill before them was performing a procedure that was necessary.
Number 1380

REPRESENTATIVE GREEN asked if the baby's head were to slip beyond the cervical control, is the doctor still entitled to drive the scissors into its skull.

MS. SKILBRED stated that she was not a doctor and she thought the way in which the procedure has been publicized any normal person would think it gruesome. They are not taking about healthy Gerber Babies who are just about to be delivered that are eight and 1/2 months along even if the birth mother did not want it.

Number 1468

CHAIRMAN GREEN stated that he thought it had to do with the mother's health rather than the baby. He understood the procedure that as long as the baby's head is still cervically preventing it from being born, if in fact "that wasn't that type, for example, I've talked to some people who had their babies on the way to the hospital. They delivered so quickly that you might not be able to stop the baby's birth even though you've made a breach condition." If the baby is born, this situation has gone beyond the need to

help the mother. He asked what happens once the baby is viable.

MS. SKILBRED responded that these procedures are usually induced. This isn't a situation where someone is on their way to have a baby, but they are in the hands of a physician before the process is induced. She can't respond to some of these questions in part as opposed to what the sponsor has stated, the bill's wording is

vague. If the process is really D&X's, then it's D&X's, if it's really D&E's, then it's D&E's. It isn't clear from this bill what the process is.

Number 1526

REPRESENTATIVE PORTER stated that any malpractice case is not a patient's privacy subject to being violated.

MS. SKILBRED stated that she believed it could be.

Number 1540

REPRESENTATIVE BERKOWITZ stated that in a civil situation, when a patient brings suit against a doctor and puts at issue the treatment, the doctor/patient confidentiality is breached. This is a circumstance where essentially the state is prosecuting, the state is charging a doctor. There is not necessarily collusion between the state and the woman who has had the abortion. In which case, the doctor wouldn't be entitled, because of confidentiality, to prepare their case.

MS. SKILBRED added that the woman may not want to participate in a case like that.

Number 1584

REPRESENTATIVE CROFT noted that in previous testimony it was stated that the exception was to protect the life and the health of the mother. This law just says life. He asked in her opinion and the organization she represents, is it constitutional if it doesn't say "or health."

MS. SKILBRED responded that she could provide him with a written response at a later time. She said that this might address one of the issues, it might not address all the constitutional issues that this bill might have.

Number 1650

CHAIRMAN GREEN asked that if this legislation is intended to protect the life of the mother, it was his understanding, that breach condition babies are a very high risk birth as compared to the normal, head first birth. It seemed to him that when a doctor goes in and manipulates the baby from the normal head down position into a feet down position, that doctor is creating a breach condition which increases the risk of damage, he thought that they were working in the wrong direction, literally. They are incurring a higher risk by inverting the baby. It seemed to him that this was not unlike trying to take a Christmas tree out the door the

wrong way. He didn't know how this could be considered in the best interest of the mother.

MS. SKILBRED responded that they could either decide that doctors based on their knowledge, training and abilities are not the people who should decide what is in the best interest of their patient, but a legislative body should decide what's in the best interest of a woman or they could decide that doctors who have the information

about a woman's condition, her age, her health, her medical background, are the ones who are best suited to decide what procedure should be used. She respectfully suggested that they should leave it to the doctors to decide. There are numerous law suits against doctors for not doing the right thing, but she didn't think Alaska should legislate what the procedures are that doctors should use.

Number 1700

CHAIRMAN GREEN asked if she could think of any other type of manipulation that would be preferable to invert the baby for delivery, rather than to try...

MS. SKILBRED stated that after having vaginally delivered two children she said it would be an uncomfortable situation to do anything but the way children should be born. She didn't know that someone would be better off having a caesarean birth to pull out what might be a viable but soon to die baby. She thought they should look at the mother as well and to let her, along with her physician make a decision.

Number 1750

CHAIRMAN GREEN stated that the reason he asked was that one of his daughters has two children, the first one, a girl, was five and 1/2 pounds. Because she was in a breach position and unable to be turned around, they took the baby caesarean because of the risk of trying to deliver in the wrong direction. Her physician felt that even a baby nearly half as big in the wrong direction was a higher risk than a caesarean section. It seemed incongruous to him that a doctor would reverse a normal situation in the interest of protecting the mother.

MS. SKILBRED again stated that she wasn't a physician, but that a doctor in this situation might decide that this is in the best interest of the mother. She noted that a caesarean section is major surgery.

Number 1847

DR. PETER NAKAMURA, Director, Division of Public Health, Department of Health and Social Services came forward to testify on HB 65. He stated that the primary problem with the bill is that they're legislating medical practice, a clinical practice. They're not deciding here whether an abortion should be done or not done. He thought that the bill says they're at the point where a determination is made and an abortion will take place, now what procedure should be used. This is a decision which should be left

between a physician and their patient. This is not something that should be legislated. Each situation is different. He outlined these for the committee.

DR. NAKAMURA stated that if an abortion is needed to be performed then there are all types of patients. There may be a patient who has an underlying medical problem like a heart condition and perhaps this is the reason an abortion had to take place since the stress of delivery would have been too great. The patient might

have leukemia or another terminal illness. It would be necessary to abort because of chemotherapy treatments. Once a decision is made then the doctor needs to decide which is the safest procedure for this child. The most difficult and complicated procedure is to allow a pregnancy to go to term. There are a large number of complications in this instance. If an abortion is decided upon a procedure needs to be established. Saline injections have been used to induce labor, but is traumatic on the patient, takes a longer time and has other complications. He noted these complications.

DR. NAKAMURA noted that another option could be a C-Section but this is major surgery where the patient has to be anesthetized, hospitalized and an operation is performed to remove the fetus. There are other ways an abortion can be induced, such as with chemicals, or through the use of hormones. Quite often hormones don't work because in the early stages of pregnancy, the uterus doesn't respond which means that the patient is left in a hospital or in an uncomfortable situation for a longer duration of time until another choice for a procedure is taken. It takes a large amount of medication to induce labor at this early stage, prior to the viability of the fetus and quite frequently it fails. The doctor is best able to determine when this viability is. The definition under the previous statutes was 150 days.

DR. NAKAMURA addressed the options of either D&X or D&E. Both of these procedures are somewhat similar in that the doctor dilates the cervix, then the non-viable fetus is extracted. This is a pretty traumatic procedure. The D&X procedure is one that was designed to be more physiologically acceptable to many patients because sometimes the mother would still like to hold the fetus. If the fetus doesn't have a genetic abnormality it would still look like a baby. It was for this purpose that this procedure was designed.

DR. NAKAMURA paraphrased a statement to respond to which was, "Partial birth abortions are cruel and gruesome." He stated that it's also cruel and gruesome to subject the mother to an additional stress that she doesn't have to be exposed to, such as other procedures or for instance in the case of a child with significant genetic defects. If it is known that the fetus will not survive and the mother is required to go to full term and deliver. This would be pretty cruel and gruesome in itself. All abortions are kind of gruesome but there's a purpose for them to take place, sometimes it's psychological and sometimes it's physical.

DR. NAKAMURA again referred to an argument against this procedure and stated that if they look at the fact that partial birth

abortions as inherently disrespectful of the dignity accorded human life, he said he wasn't sure how to respond to that one. He thought in this case they're talking about whether an abortion should be done or not be done. As stated previously, the comparable procedures can actually be more gruesome than a D&X in itself. He assumed that the bill relates to D&X because he's heard so often the description of a needle stuck into the back of the brain and the contents aspirated.

Number 2163

CHAIRMAN GREEN again asked if this procedure was ultimately for the protection of the mother.

DR. NAKAMURA responded that yes, this procedure was for the protection of the mother.

Number 2238

CHAIRMAN GREEN asked if this could happen in the case of a normal baby.

DR. NAKAMURA noted that this wouldn't be the case if it's going to be called an abortion. Once the baby is viable this procedure would not be undertaken unless it's to save the life of the mother. He said this decision would be made between the physician and the mother. He couldn't imagine a situation where this procedure would be used unless it happened to be an instance of a hydro-cephalic infant and to preserve the health and the future ability of this mother to have babies. Then this procedure might be used.

CHAIRMAN GREEN noted his concern that if this is going to be a demise of the baby to save the mother's life, he asked why the baby would have to be aborted if it's healthy, it sounds like it would still fit this category, but if it does have to be killed, to be killed in this manner, the doctor is saying that unless it's a hydro-cephalic there are other ways that might be more traumatic to the mother.

DR. NAKAMURA stated that if the mother is pregnant and the infant is viable, the only time that this baby would be aborted would be to save the life of the mother or perhaps prevent a significant, serious, harmful affect on her health.

CHAIRMAN GREEN added that the first consideration might be whether the baby is viable to save both.'

Number 2306

DR. NAKAMURA responded yes, he would assume so. A caesarean could be a choice. He went on to paraphrase the statement that partial birth abortion tends to blur the distinction between constitutional persons and non-persons and between infanticide and legal abortions. He stated that he didn't know what is meant by this statement. He also quoted, "A partial birth abortion, because of their gruesome nature and because they incorporate two separate roles of physicians and the role of the healer and the role of the

abortion, tend to undermine the public confidence in the medical profession." He noted that the reason the physicians are doing these abortions is that in the past, prior to the time that they were made legal, they were done by others. When they were done by others there was a lot of unfortunate outcomes. He noted a hospital in Texas that only administered to woman with complications from illegal abortions.

Number 2412

REPRESENTATIVE PORTER asked in regards to the distinction between

a D&E and a D&X, on the second page of the bill, line 13, he said he didn't have any problem with this language and asked if it would eliminate a D&E.

DR. NAKAMURA responded that it would eliminate almost everything. He stated that he had never done an abortion. He needed to ask other physicians what this language meant. To them it means that this virtually could eliminate all abortions because there is no way they can assure that a baby will not be delivered, even during a suction aspiration of a fetus and not be alive. In reality it could eliminate all abortions.

REPRESENTATIVE CROFT stated that he'd like to get more to the point of these procedures being done either pre-viable or viable for a malformed baby or to protect the life of a healthy mother, but he stated that if they would have the doctor return, these questions could wait.

TAPE 97-33, SIDE B
Number 000

DEBRA JOSLIN, Chair, District 35, Republican Party of Alaska, testified next via teleconference from Delta Junction. She shared a story of a woman who gave birth to a child with multiple impairments. After many surgeries this child is alive and well, lives in Alaska and is a joy to his mother. If this woman was asked if this child should not have lived, the answer would have been no. When this child was born there was no such thing as legalized abortion, or partial birth abortions. If there had been that option, if the doctors has presented this option, the woman might have consented to this procedure.

MS. JOSLIN referred to an article in the "Wall Street Journal," titled, "Partial Birth Abortion is Bad Medicine," written by several obstetric-gynecologists. This article contains some of the truths about partial birth abortions. She said she would send this article to the committee.

Number 0043

BARBARA RAWALT, Financial Chair, District 35, Republican Party of Alaska, testified next via teleconference from Delta Junction. She added that she was also testifying as a parent and as a grandparent. She urged passage of HB 65. She referred to testimony by Mr. Fitzsimmons, the oft quoted pro-choice spokesman, who supported both the variety and the necessity of this procedure

and recently admitted that his previous statements were a lie. He admitted that this procedure is not rare, it affects not just a few hundred woman as previously stated, but 300,000 to 500,000 women per year in the United States who have this procedure done. As to the necessity, he stated that this procedure was not limited to hopelessly deformed babies as was previously stated, but that most of these procedures were performed on an elective basis, on healthy babies.

MS. RAWALT urged the committee to vote yes on HB 65 in order to stop this barbarous procedure.

Number 0191

SHARYLEE ZACHARY announced that she had submitted written testimony to the committee. She referred to Section 1, (6) and (7), which states how this procedure undermines the public confidence in the medical profession. She believed that a majority of medical physicians and health care providers are honest, upright and have the sincere desire to help and heal people. However, the medical profession has "cut it's own throat" in the area of "credibility." It has allowed many physicians to perform unjustified abortions and then look the other way when those same doctors falsify the patient's records with statements about it being a medical necessity, when in fact the abortion was done as an elective procedure. In other words this is a pre-arranged convenience for the mother and a financial benefit for the doctor and/or the clinic.

MS. ZACHARY said, in the last year or two, several medical professionals have given national testimony that there are just a few cases of partial birth abortions which have been done to save the lives of the mother. The media has gone overboard in emphasizing that testimony and unfortunately many people have believed those doctors. The media and certain politicians have also largely ignored those people providing testimony regarding the thousands of unnecessary partial birth abortions.

MS. ZACHARY said, in the past few weeks, a prominent physician has brought forth testimony that he lied. She questioned how we could trust doctors and other health care professionals, who know this to be true and yet keep quiet. If this is their ethic, in this area, what is to keep them from falsifying other areas of medical care for the sake of convenience and financial gain.

Number 0289

KATHLEEN HOFFMAN testified next via teleconference from Kenai. She appreciated all the work the committee had done on HB 65 as we surely want to rid our state of this partial birth abortion. She referred to an infant that she worked with when she was in nurse's training. She is in favor of HB 65.

Number 0358

VIRGINIA PHILLIPS, testified as a Spokesperson for American Indians and Alaska Natives, National Right to Life. She stated that she is

the Chair, District 2, Republican Party of Alaska testified next via teleconference from Sitka. She was appalled what this procedure did to the woman. It is ridiculous to say that it is necessary for the life or health of the mother, there are other easier things to do to get rid of the baby. This procedure needs to be outlawed. If people attempted to do this procedure on a rat, animal rights activists would say it was inhumane. She asked for humane treatment of women and to stop them from being victimized by the partial birth abortion.

TERESA LUNDY, Medical Transcriptionist, testified next via teleconference from Sitka. She is speaking for the (Indisc.) community in Sitka because a lot of people couldn't attend the

meeting today. She questioned the ability of people from the medical community to defend and endorse this abortion procedure. She referred to earlier testimony on the D & X procedure and testimony that the D & E procedure had to do with taking the non-viable infant and aborting the child. She reminded the witness that he is misinformed; the D & E procedure is a gruesome dismemberment type of abortion procedure. After a period of time the baby tissue becomes toughened as the baby develops. She referred to written testimony on the D & X extraction method by Dr. Martin Haskell. The doctor invented this D & X procedure because it was an alternative to dismemberment.

MS. LUNDY asked the committee to endorse HB 65. It is imperative that the Alaska Legislature set the standard to not allow this abortion procedure in this state. She was concerned that there was no ethical concern regarding abortion. Eliminating partial birth abortions does not interfere with reproductive rights or right to privacy concerns. She urged the committee to see that ethical standards were set in stone by passing HB 65.

Number 0358

SALLY APOXIDAK testified next via teleconference from MatSu. She was appalled about today's testimony. She asked the committee to look at the bigger picture in terms of abortion. She was in favor of the contents of HB 65.

Number 0612

ART HIPPLER, Executive Director, Alaska Right to Life, testified next via teleconference from MatSu. He referred to the testimony given by Mr. Dozier. His organization supports HB 65. He offered $500, out of his pocket, to the first person who provides unambiguous evidence of one single case where this procedure was medically necessary to save the life or the fertility of the mother.

ERNIE LINE testified next via teleconference from MatSu. He said there have been no partial birth abortion procedures performed in Alaska, according to Mr. Dozier. He assumed that the committee knew how many doctors in Alaska were qualified to perform this procedure.

CHAIRMAN GREEN said he did not know. When he asked if this

information was known by other members of the committee or witnesses, no one answered.

MR. LINE completely agreed with the doctor who testified that legislators should not practice medicine. He asked the committee, before they pass HB 65 or SB 12, to consider the women who might need to abort these fetal anomalies or else to provide for them when they are infant anomalies.

Number 0769

NIKKI SULLIVAN said she done post abortion counseling and provided education for women who have been through the abortion experience. She has had national training in Denver at the Post Abortion

Counseling and Education Institute. She referred to testimony about the protection of the mother and the viability of the baby. These women suffer the same degree of trauma after the abortion as they experience during the abortion. She could not think of anything more traumatic than a partial birth abortion. She is a proponent of informed consent, every woman has the right to know what is going on with her body and what an abortion consists of.

Number 0884

KRISTIN HOCK informed the committee that she was eight and half months pregnant. She was not planning to terminate this pregnancy, but if she chose to, then she would have a legal right to do so in some states. If we propose partial birth abortions for convicts, who are on death row, there would be an outcry saying it was cruel and inhumane treatment, it did not respect people and their dignity. She referred to the U.S. Constitution and urged the committee to value the right of protection of life and liberty by banning partial birth abortions.

Number 1009

TRICIA BONNEY, Nurse, said the whole purpose for partial birth abortions is for the mother's health. She said the argument, regarding infant anomalies, is not viable in opposing HB 65. She said this procedure is not taught in medical schools, and questioned how it could be considered a necessary medical procedure. She felt this procedure was inhumane and referred to previous testimony against partial birth abortions. She urged the committee to support HB 65.

Number 1149

TOM GORDY agreed with the testimony given by Mr. Dozier and said more facts have come out this week about partial birth abortions. People who support abortion will lie to keep things going. He was here to speak against this procedure; called partial birth abortions by Congress or D & X, short for dilation and extractions, others have called it D & E, but medical literature does not have a name for it because it is not a recognized legitimate medical procedure. He said there are probably no doctors qualified to do this procedure as it is not a licensed procedure.

MR. GORDY said he would like to call it partial birth infanticide. He referred to a nurse who worked for Dr. Haskell, the doctor who invented this procedure and her experience of watching this procedure. This woman had originally supported abortion, but has changed her stance since seeing this procedure. This procedure is the murdering of a defenseless baby.

MR. GORDY referred to a woman who had complications in her pregnancy in the sixth month, which is the time when Dr. Haskell says he performs most of these procedures. Labor was induced, the baby was treated in the neo-natal unit of the hospital and is alive today. He said a mother's life does not need to be threatened, the baby can be pulled out and survive outside of the mother through care and nurturing.

MR. GORDY testified that 300 physicians, primarily obstetricians, united to oppose this procedure after President Clinton opposed the partial birth abortion ban. They declared that it is never medically necessary. Dr. Haskell said that 80 percent of partial birth abortions are elective. Dr. McMann, who has performed 2,000 partial birth abortions, said 22 percent of the partial birth abortions that he has performed for maternal indications were for depression, not for physical threats.

MR. GORDY stated that this procedure is morally and ethically wrong. It is time to say, no, to this type of cruel procedure. He urged the committee to pass HB 65.

Number 1475

DAVE ROGERS, Lobbyist, Alaska Woman's Lobby, said his organization opposes HB 65. They acknowledged that information and beliefs on this subject are contradictory, but wanted to present information to the committee. Partial birth abortion is not a medical term, the procedure that is being addressed in HB 65 is call dilation and extraction of D & X, or sometimes called intact dilation and extraction. This procedure is used in the second and third trimesters. Doctors, who they have talked to, have said they have rarely met a patient who did not want, and was not completely bonded to their baby by the third trimester, nor have they known a health care provider who was not equally concerned about the health of the baby in the third trimester. This procedure is not a procedure to be undertaken lightly. Many involve wanted pregnancies that go tragically wrong when a woman's life or physical health is endangered and the fetus develops abnormalities which will cause them to die just before, during or just after life. Finally, this procedure is the safest available for some women. It carries lower risks of pervading the uterus, lacerating the cervix and the birth canal or causing maternal hemorrhage than certain alternative procedures. They were also told that D & X is less physically stressful and less toxic than other methods.

MR. ROGERS said, if these findings are valid, this proper medical procedure, which may be the safest and most appropriate choice among several techniques in some cases, should not be the subject of a restrictive law which will take away from the physician's exercise of discretion and unduly burden a woman's right to chose,

by arbitrarily and narrowly limiting her access to the procedures her doctors consider best for her.

MR. ROGERS said, as is always the case in this arena, professional judgement and individual consideration must govern actions taken over the broad and complex spectrum of medical possibilities. Families and their physicians must be permitted to make the difficult decisions posed by the situation. He said HB 65 is unnecessary, can hurt Alaskan women and only serves to further polarize concerned Alaskans. For these reasons the Alaskan Women's Lobby strongly opposes HB 65.

Number 1661

SID HEIDERSDORF suggested that the baby is turned around, to be delivered feet first, so that it will not scream before the

procedure is completed. He referred to Mr. Fitzsimmons and a New York Times article which quoted him as saying that he lied, because telling the truth would damage the abortion rights cause. He felt Mr. Fitzsimmons told the truth because he realized he was defending the indefensible. He felt that people who are supporting partial birth abortions were defending it because if you face the truth it will somehow collapse the abortion edifice. Abortion is supported by the Supreme Court decision and there is little that the state could do. This is a step the state could take to acknowledge that there is some kind of justifiable restrictions which could be placed on certain abortion procedures.

MR. HEIDERSDORF asked the committee not to be influenced by arguments that the state should stay out of medical practice. He reminded the committee of the practices of doctors in Nazi Germany and said there are certain things that should be outlawed. In every profession there are certain amount of people that operate on the fringes; they must be controlled and guided by state laws. He did not care how many of these things were done and what they are done for. This procedure must simply not be allowed. If we want to maintain some type of claim to be civilized, we have to take some steps to control things that are happening which should clearly be condemned.

Number 1917

REPRESENTATIVE BERKOWITZ referred to the analogy and felt it was an unfair comparison to make and was outside the bounds of this discussion. There is common ground, there should be debate about issues like this, but when you invoke issues that are hateful as that one, you destroy the possibility of dialogue.

MR. HEIDERSDORF used this point to attempt to show that within his lifetime, he has seen this situation occur in a civilized society where we say this should have been stopped. Because people testified that the state should stay out of medical practice, he felt it was a legitimate thing to show his point of view that there are certain procedures that should be stopped.

Number 2098

CHAIRMAN GREEN closed public testimony.

REPRESENTATIVE PORTER said, it would be helpful in his understanding of this bill, if someone could explain the difference between a D & C, a D & E and a D & X. He referred to Section 2(c) and said he thought it described what he thought was a partial birth abortion. If this was done with the intent to expose a portion of a live fetus outside the body of the mother and then terminate it, he thought it would eliminate the things that Dr. Nakamura was referring to.

REPRESENTATIVE CROFT asked if it was the intention to have this bill apply to pre-viable fetuses.

REPRESENTATIVE KOTT answered, yes. He felt this was clear in the opening statement. He added that some of the discussion handled by Dr. Nakamura was premature in addressing certain issues.

REPRESENTATIVE KOTT said he wanted to make some comments on today's testimony and would try to respond to Representative Porter's concerns. Clearly, an abundance of information has been presented regarding this particular practice, whether it is used in the state or not. He had no evidence to show that it would be done in this state, this bill is a preventative measure. The definition of the procedure in Section 2(c) was extracted from the Congressional version of a similar bill. This definition is not something that he created, it is not a novel idea. This language was formed by a number of scholarly individuals in the medical community as well as the legal profession. He felt this definition was extremely clear about what it is that we are attempting to prohibit.

REPRESENTATIVE KOTT referred to letters from Dr. Thompson and Dr. Ritter (Ph.) who are premier experts in the field of obstetrics. These doctors have not performed any abortions. He expressed concern with Dr. Nakamura's testimony as he has not..."

TAPE 97-34, SIDE A
Number 000

REPRESENTATIVE KOTT continued...he said it was just brought to his attention that the committee did not have Dr. Thompson's letter, but Dr. Lokiemp's (Ph.) and Dr. Ritter's (Ph.) letter, two premier experts in the field. He would also provide a letter from Dr. Riederer, a Juneau practitioner. All three of them have concluded that there are other procedures as safe as this particular measure. It alarms him when testimony commences with, "I spoke with an abortionist, a medical doctor." It gives more credence to the situation when you have actual testimony, in the written form or in person, where the person who articulates their own experience. He questioned those sources, the qualifications of the person who testifies. He referred to the question of whether the state should invoke legislative authority on how the medical community practices by saying it has been done in the past. In some circumstances, the best solution to a medical problem would be for the doctor to assist in a suicide that is not condoned in the state. So, we are, in fact, evoking some practices and eliminating others in the state.

Number 0227

CHAIRMAN GREEN said if you get ten doctors in the room and how you might get ten different opinions. He asked why there was such a disparity in opinion. Some say this procedure is absolutely necessary to protect the life of the mother, others say there are other ways.

REPRESENTATIVE KOTT answered that it is a perplexing problem and he would want to turn to the experts in the field. There is a substantial amount of literature by people who have performed this procedure and have in many cases testified, under oath. He assumed they were telling the truth, he gave them the benefit of the doubt. He thought in those types of cases, you have to turn to the experts for the truth. There is an abundance of information that suggests that this particular procedure is not the only procedure that is available to save the life of the mother.

Number 0444

CHAIRMAN GREEN referred to testimony that this procedure was done to save the life of the mother or because of severe abnormalities and then there was testimony saying that 80 percent of these would live normal, happy lives if they lived. He asked who wasn't telling the truth.

REPRESENTATIVE KOTT said you have testimony from one side that has hands-on experience and the other side from a group which most of the experience comes from a second party or from reading the literature. He said the committee would have to draw their own conclusions why there is this wide disparity between what is being said.

REPRESENTATIVE CROFT expressed curiosity of why HB 65 does not allow the procedure to be performed to protect the health of the mother. He referred to the sponsor's statement that he was more comfortable with written testimony and pointed out a letter from Sherrie Richey, the first and only Alaskan perinatologist. Perinatology is a specialty in maternal fetal medicine. She says that partial birth abortion is a procedure virtually always chosen because it is the safest way to terminate a pregnancy complicated by lethal fetal abnormality or a life threatening maternal complication. He did not mean to get into a debate, but we have conflicting medical evidence about whether this is the safest procedure for the health of the mother. He asked what the difficulty was with allowing the expert, the person treating that woman, to determine if this is required to protect her health. For the legislature to make a determination outlawing it and not allowing an exception for the health is our, not completely informed, decision that it can never be the best method to protect the health.

Number 0640

REPRESENTATIVE KOTT said that when you get into the definition of what constitutes protecting the health of the mother, you discover,

at least in the literature that he has researched, that it opens up a pandora's box. About anything you can conceive as being unhealthy, can be used to protect the mother's health.

REPRESENTATIVE CROFT clarified that he is concerned that the health issue would be chosen to allow for an elective procedure.

REPRESENTATIVE KOTT felt that, in many cases, it would be the case. He reminded the committee that the American Medical Association's legislative council voted unanimously to ban this particular procedure. He stated that he is not the expert, he is turning to the experts. The association is a group of qualified people who make various decisions and express them.

REPRESENTATIVE CROFT said, in order for this legislation to go out without any proviso for the health of the mother, he had to be absolutely convinced that this is never a procedure that could best protect the mother's health. If it could be the best procedure, then we ought to allow it to be. When there is conflicting

testimony, he would leave it to those people to determine what is best.

HOUSE JUD BASIS -22 - 03/07/97

HOUSE JUD BASIS -22 - 03/07/97

HOUSE JUDICIARY STANDING COMMITTEE
March 10, 1997
1:20 p.m.

HB 65 - PARTIAL-BIRTH ABORTIONS

Number 151

THEDA PITTMAN testified to via teleconference from Anchorage, Alaska. She made reference to the statement made by Mr. Dozier, legislative aide to Representative Pete Kott, relating to the court cases he cited. Ms. Pittman advised members that his presentation was a report on the cases themselves and what he said was actually quite good; however, one would have to "tear the paper" off at that point; discard his editorial comments and actually compare the casework to the bill in order to understand the many, many problems of HB 65.

MS. PITTMAN stated that essentially, although it was possible to ban an abortion after viability, it would be necessary to take into account that the court cases provided that the determination of viability must rest with the doctor. And also the determination of the danger to the life or the health of the woman must rest with the doctor, and that the particular procedure must rest with the doctor, as well.

MS. PITTMAN stated that as for viability, abortion was not performed on a healthy woman with a healthy fetus. She noted that the editorial comments on the bill created the illusion that in the seventh, eighth or ninth month, a pregnant woman would get up one morning and suddenly decide not to be pregnant. After viability, abortions were not preformed on healthy women, with a healthy fetus; hence, there was no need for HB 65.

Number 267

CHAIRMAN GREEN advised members public testimony would now be closed on HB 65. He asked that the prime sponsor, Representative Pete Kott address the committee.

Number 342

REPRESENTATIVE PETE KOTT, Prime Sponsor, HB 65, advised members that Representative Porter had previously requested information regarding the various methods of partial-birth abortions. He advised members one method was the suction curettage/aspiration, which was a method typically employed during the first trimester; however, had been used up to the 15th week of pregnancy. Representative Kott explained that the abortionist mechanically dilates the opening of the uterus, inserts a vacuum device into the uterus, and removes the baby through negative suction.

REPRESENTATIVE KOTT explained that a second type was known as D & E, which stood for dilation and evacuation. The cervix was dilated slowly, over a one or two day period, by the insertion of laminaria, and a suction curettage is inserted through the cervix and the baby is removed. He noted that frequently, the baby's head and torso were too large to be removed in that manner, and

consequently, the abortionist dismembers the baby by the use of suction curettage or forceps. Representative Kott expressed that sometimes the size of the head, because it was too hard to be removed in the womb, would be decompressed either by crushing it, or inserting a suction device and removing the contents, which then allows for its removal. He added that that was a common second trimester abortion. Representative Kott stated that again, with both procedures he had mentioned, there was no life.
REPRESENTATIVE KOTT advised members that the third method was what was termed installation/induction procedures, where the abortionist injects a substance, usually a saline solution, or combination of prostogladen and urea. He explained that that was injected into the amniotic cavity, or prostogladen suppositories placed into the vagina. The mother then goes into labor, and the dead fetus is expelled.

Number 571

CHAIRMAN GREEN noted that Representative Kott was making reference to a "dead fetus", and asked if those method were only used if the fetus was dead, or did the procedure, itself, kill the fetus.

REPRESENTATIVE KOTT advised members that the fetus, he would suspect in some circumstance, would already be dead; however, the intent was to extract, or eliminate a fetus or pregnancy of a woman.

REPRESENTATIVE KOTT advised members that the fourth method involved a hysterectomy, which was a caesarian section preformed before term, or hysterotomy, which was the removal of the entire uterus. He pointed out that those methods were seldom used.

REPRESENTATIVE KOTT informed members that the last method was dilation/extraction, known as D & X. He explained that dilators were inserted in the cervix for two days, and on the third day, the abortionist removes the dilators and ruptures the membranes, which he suspected was a rupture of the water bag, and with the use of forceps, the baby was delivered, except for the head; scissors would be inserted in the baby's skull, and spread in order to make the opening larger, at which time a suction catheter was inserted and the contents of the skull evacuated. Representative Kott advised members that with the skull depressed, the baby would be completely delivered. He expressed that as noted by the court, the primary distinction between the D & X procedure, and the D & E procedure, was that the D & E procedure resulted in dismemberment and piece by piece removal of the fetus from the uterus, and the D & X procedure resulted in a fetus being removed, basically, intact except for a portion of the skull contents, which would be suctioned out after the head was placed next to the opening of the uterus. Representative Kott explained that the D & X procedure was a more broad term, coined by Dr. McMahon, as killing the baby, or fetus, and then removing it, often times head first, as opposed to what Dr. Haskell had coined as a partial birth procedure, where the baby was actually spun around and delivered feet first. He pointed out that the fetus, in both cases, would be dead, which was where they got into the difference of the D & X procedure, as coined by Dr. Haskell.

REPRESENTATIVE KOTT stated that it could be noted that the term D & X, as used by the court in Voinovich , was not a recognized medical term. He pointed out that again, it was coined by Dr. James McMahon, who used it to describe procedures, not within the definition of partial-birth abortion, as used in the proposed legislation.

REPRESENTATIVE KOTT advised members that the definition of partial-birth abortion, as used in HB 65, did not overlap with other abortion methods. He noted that with suction curettage-aspiration, the baby was not partially vaginally delivered and then killed. Representative Kott explained that with the D & E procedure, the baby was partially delivered before it was killed. HB 65 required that before the procedure fell within the scope of the bill. With installation type methods, the baby would be vaginally delivered, but only after the death in the womb. He noted that in rare cases, the baby survived delivery, and therefore could not be legally killed because that would result in a substantial problem for the abortionist.

REPRESENTATIVE KOTT explained that HB 65, by way of contrast, required that the abortionist partially, vaginally, deliver a live fetus and then kill the baby before complete delivery of the fetus. He noted that with the hysterectomy and hysterotomy procedure, there was no vaginal delivery, partially or otherwise.

REPRESENTATIVE KOTT expressed that as stated by Dr. Joseph Riederer, who was the premier expert in Juneau who had delivered 2000 plus Juneau babies, that "The proposed definition of the bill is specific, and no other medical procedure would be restricted or affected by banning partial-birth abortion. The language is clear and specific." Representative Kott noted that was a quote from the Doctor's written testimony.

Number 988

CHAIRMAN GREEN asked if the baby was dead before it was removed if that would be a D & X procedure, and if still alive when the body of the fetus came out and actually had the shears inserted in the head, if that was a different procedure.

REPRESENTATIVE KOTT stated that that was what Dr. Haskell coined as a D & X, which was later referred to, and coined now as partial-birth abortion, and not to be confused with Dr. McMahon's procedure.

CHAIRMAN GREEN asked if the procedure only dealt with dead fetuses.

REPRESENTATIVE KOTT agreed that it did.

Number 1033

REPRESENTATIVE BRIAN PORTER explained that that entire body of information was what he wanted in order to make sure he understood prior to voting on the proposed legislation. He noted that the definition of partial-birth abortion, that appeared in the bill, excluded, and was not meant to include in any way, any of the other

procedures described by Representative Kott. Representative Porter

stated that only when a portion of the physical fetus was exposed, outside of the mother's body, and a live fetus, that it was then killed and the extraction completed.

REPRESENTATIVE KOTT advised members that would be correct. Representative Kott pointed out that there were particular views of resident experts around the state, who had all suggested that the procedure used was not a medical necessity for the purpose of the health of the mother. He added that the particular practice used, could not be found in any medical books, or medical school teachings. Representative Kott stated that as far as he knew, the practice was not being utilized in the state of Alaska, and the proposed legislation was a preemptive strike to ensure that it would not occur. He pointed out that HB 65 would not restrict as woman's right to choice.

Number 1170

CHAIRMAN GREEN advised members that if they would only expect to see the procedure take place in order to protect the life of the mother, that he could not understand why one would be able to go in and forcibly turn the baby around, so that it would come out feet first, and insert the scissors after the baby was essentially delivered. He stated it appeared to him that delivery, in that procedure, was basically completed, and then the baby would be killed, rather than delivering it normally. Chairman Green expressed that he had a real problem with that.

Number 1212

REPRESENTATIVE CROFT noted that a member of the public who testified on HB 65, bet committee members $500, that the procedure was never necessary to save the life of the mother. He asked Representative Kott if that was a true and accurate statement.

REPRESENTATIVE KOTT stated that in his opinion, he did not believe it was based on the various medical reviews he had researched.

REPRESENTATIVE CROFT asked if the procedure was necessary in order to save the health of the mother.

REPRESENTATIVE KOTT felt that if the procedure was used to save the health of the mother, it would dilute the entire intent, because he felt there was a broad definition of health. He noted that arguably, anyone who performed the procedure under that guise, could legitimately establish, before the court, that there was a health issue.

REPRESENTATIVE CROFT advised members that was part of his confusion. He understood Mr. Dozier's testimony, and the testimony of Representative Kott, to be that because the procedure was never necessary to save the health of the mother, that a health exception was not necessary. And if it was believed that the procedure was never necessary to save the life of the mother, why was that exception included.

REPRESENTATIVE KOTT reiterated that it was his humble opinion that the procedure was not necessary to save the life of the mother,

based on the literature from the experts who had written commentary on the procedure.

REPRESENTATIVE CROFT pointed out that the draft committee substitute states members were being asked to adopt language which stated, "partial-birth abortions are not necessary to preserve the life, or health of pregnant women." He expressed that if they made that legislative finding, why was the exception included at all.

GEORGE DOZIER, Legislative Aide to Representative Kott, advised members that the reason for including the finding, was because HB 65 mirrored the definition as set out in the federal legislation that had been vetoed. He noted that that legislation had been re-introduced, and suspected that in light of events over the past couple of weeks, that it would stand a much better chance of not being vetoed this time. Mr. Dozier explained that by including the life provision in the proposed legislation, it would make Alaska statutes consistent with what he felt would be federal law.

Number 1400

REPRESENTATIVE CON BUNDE advised members that he was troubled with the same contradiction of the findings. He noted that not many legislators were doctors, and it was found that it was not necessary to preserve life, and then it states that the procedure could not be done unless it was necessary to save life, which to him, was an absolute contraction. Representative Bunde pointed out that either the legislature did not know what it was talking about, and that finding should be removed, or it would be necessary to delete Section 2; one or the other.

REPRESENTATIVE PORTER advised members that it would be his intent to support the removal of Section 1 because he did not feel any of that section supported the proposed legislation, and had ramifications past the intent of HB 65 that he did not want to contemplate.

REPRESENTATIVE PORTER stated with respect to Section 2, he felt he could support it if he understood it correctly. He advised members he would be interested in hearing from the sponsor, or Mr. Dozier, what impact the wording of Roe , regarding the phrase, "the life or health of the mother", would have on leaving some reference for health in the proposed legislation.

MR. DOZIER advised members that Roe was a case which involved the prohibition of, basically, all types of abortions. He explained that subsequent cases, including Casey , also involved an absolute prohibition of all types of abortion, in certain circumstances. Mr. Dozier pointed out that both cases indicated that the states could regulate abortions, except as necessary to preserve the life, and health of the mother.

MR. DOZIER advised members that the proposed legislation, unlike Roe and Casey , did not involve a prohibition of abortion, per se, even for a short period of time, such was the case in Voinovich .

Mr. Dozier explained that HB 65 prohibited the use of one particular procedure, and consequently, the life and health of the mother was already protected by what was already in place.

CHAIRMAN GREEN noted that Representative Porter had suggested the removal of Section 1, with Section 2, then, becoming Section 1. He asked Mr. Dozier if he saw any adversity if that amendment was offered and should pass.

REPRESENTATIVE KOTT reminded members that the draft committee substitute had not yet been adopted by the committee, and if Representative Porter would like to strike Section 1, the draft committee substitute could be set aside and adopt the original bill because that did not have the Section 1 language as was in the draft proposal. He advised members that he did not feel striking Section 1 would be substantially detrimental to the bill, adding that he felt it would add some credence if there was a challenge before the courts at some later point in time.

REPRESENTATIVE CROFT moved to adopt CSHB 65 (JUD), Version B, as the committee's working document.

REPRESENTATIVE JEANNETTE objected.

REPRESENTATIVE ROKEBERG agreed with the position expressed by Representative Porter. He asked if members voted against adoption of the draft committee substitute, would that bring them back to the original version, or the State Affairs committee substitute.

CHAIRMAN GREEN suggested that they adopt the draft committee substitute and then move on to strike Section 1.

REPRESENTATIVE KOTT stated that it was his belief that the original bill before members did not include Section 1 of the committee substitute.

CHAIRMAN GREEN clarified that if the draft committee substitute was not adopted, that they would be, then, considering the original bill, HB 65, Version E.
REPRESENTATIVE ROKEBERG supported Representative Porter's position, and also pointed out that there was other language in the findings that he felt could generate some undue discussion. He advised members that he would be voting against the adoption of the draft committee substitute.

REPRESENTATIVE CROFT advised members that he also had trouble with the legislative findings; however, he would prefer to start, and would vote to start from the draft committee substitute, and then decide whether or not they wanted to amend it to remove Section 1, and amend Section 2 in other respects. He noted that while the language was inconsistent on the life or health provision, between Sections 1 and 2, he thought the findings brought out an important aspect of the bill. Representative Croft pointed out that even with just the life part, they were in effect, finding that partial-birth abortions were not necessary to preserve the health of pregnant women, when it is not allowed as an exception. He felt the finding clarified what was actually being done. Representative

Croft stated that he would like to keep the findings in, for discussion purposes, and possibly at the end of deliberations, members might decide to remove them.

REPRESENTATIVE PORTER felt that if the bill included the exception relating to the life of the mother, he did not feel it was appropriate to have a finding that it was an unnecessary conclusion, noting that there were no doctors on the panel. Representative Porter advised members that the reason he was hesitant about all of the findings, was that they all appeared to have the potential to be interpreted as a position on abortion, as opposed to a position on partial-birth abortion. Representative Porter stated that from that standpoint, he did not believe they added any benefit to the intent of the proposed legislation.

Number 1861

REPRESENTATIVE JAMES agreed that the findings were not relevant to the issue. She stated that in reading the original bill, it was very clear to her what it meant, and felt it was totally sufficient in its form. For that reason, she would be voting against adoption of the draft committee substitute.

CHAIRMAN GREEN requested a roll call vote: In favor: Representatives Croft, Berkowitz and Green. Opposed: Representatives Bunde, Porter, Rokeberg and James. Adoption of CSHB 65(JUD) failed, 4 to 3.

CHAIRMAN GREEN pointed out that members would now have before them the original version of HB 65.

Number 1929

REPRESENTATIVE CROFT advised members that the findings that were not adopted, stated that the legislature found the procedure was necessary to save the life or health of the mother. He expressed that it was clearly inconsistent the way it was, and the committee chose not to adopt it. However, he felt they could have consistently adopted it as an implicit finding that they would make to say, "The legislature finds that these procedures are not necessary to save the health of the mother.", either that, or the health of the mother was not important to them, which he felt the second would be unlikely.

REPRESENTATIVE CROFT advised members that what they were saying, being non-doctors, was that the procedure was not necessary to save the health of the mother. He stated that Mr. Dozier said as much, although in his written presentation, he stated that Roe had an exception where the life and health of the mother was threatened, and that Casey , specifically said that "the state may prescribe abortion, except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother". Representative Croft expressed that that was the federal standard that was adopted by Casey . Because health was not included in the version the committee adopted, he would offer, with the permission of the Chair, two amendments, of which one would place "health" back in the bill, and the second would limit the

prohibition to the third trimester.

REPRESENTATIVE CROFT felt that what upset most people, and it did him, was the idea that those partial-birth abortions would be done on healthy women, with healthy babies in the third trimester, that

would be ended with no medical justification. He saw no justification for that. Representative Croft pointed out that the bill before them, the original version, had no limitation in that direction; that it applied to any abortion from the first week of pregnancy and did not provide an exception for health.

REPRESENTATIVE CROFT stated that if Roe and Casey specifically sa you would have to provide protection for the life or health of the mother, that they would be doing something clearly unconstitutional by enacting something that soley protected life. He noted that Mr. Dozier disagreed, and the reason he had requested a copy of his written statement, was because he wanted to inquire more into what the rationale was for leaving it off. Representative Croft stated that Mr. Dozier stated that because the state had never conducted the procedure, it could not be necessary to save health. He noted that Mr. Dozier could clarify, if necessary; however, read from the prepared statement as follows: "Thus, the question must be asked, does HB 65, which prescribes a procedure, which thus far is not done in Alaska, place a substantial obstacle in the path of a woman seeking an abortion. The answer by definition is no." In other words, Representative Croft stated, that because it had never been needed in the state, it never could be needed in the state.

REPRESENTATIVE CROFT pointed out that there were many medical procedures not done in the state of Alaska. For example, he believed that complicated open heart surgery was not done in Alaska. Representative Croft did not feel any member of the committee, member of the legislature, or any rational person would say there was no time that procedure was not necessary to preserve someone's health, or in some cases, life. To him, the argument simply confused whether the state had ever done it, with whether it could ever be necessary. Representative Croft pointed out that it was clearly unconstitutional for the early portions of the pregnancy, and did fit with what the federal constitution required in the late portions, in Casey .

REPRESENTATIVE CROFT expressed that the second rationale related for excluding health, that members could just conclude from what they know and through testimony they heard, that it was not. He stated that even setting aside the argument that it had not been done, in the state, so it could not ever need to be done, he did not consider a good argument. Representative Croft pointed out that members could say that, "we, as seven non-doctors" would conclude that a woman never needed the procedure to preserve her health. He felt that judgment was best left to the doctor and the patient. Representative Croft noted; however, that there was also substantial testimony which went the other way. He stated that the only way they could delete the "of health" language was if members were convinced, to a moral certainty, that it never was necessary. Representative Croft explained that as a non-doctor, he would have difficulty ever having that level of certainty, adding that there was certainly enough conflicting information to say that, in some

professional opinions, including some that treat women in Alaska, that it sometimes was necessary. Because Representative Croft did not know the answer, he felt the exception should be included in the bill.

REPRESENTATIVE PORTER advised members that they had been discussing

legislative findings, and pointed out that there were not any, which was just established by a vote. He stated that the reference to what the legislature intended by those findings was off the table, and irrelevant.

Number 2300

REPRESENTATIVE CROFT moved to amend HB 65, page 1, line 6, following the first occurrence of "life", insert: or health , and following the word "mother", delete [whose life], and insert who .

REPRESENTATIVE PORTER objected for the purpose of discussion.

REPRESENTATIVE CROFT advised members that it was a constitutional requirement, that they were simply acting unconstitutionally if the language was not included. He added that secondly, they would also be acting dispassionately if the proposed legislation would not allow a woman, whose pregnancy was going to cause her health problems, to make the choice of what to do, based on the sound medical judgment that she could obtain, that the legislature would be acting cruelly. Representative Croft stated that to his knowledge, the partial-birth procedure was not in the state of Alaska, but if it were, and the judgment of the woman and her health professional determined it was needed, that it could be done in the state. He noted that the reason members discuss legislative findings, though out of the present version, was that by not including health, members would be substituting their judgment for the judgment of health professionals, which would result in saying, "The constitution requires that you be given the right to protect your life or health, but we've done the work for you, because we found out that this is never needed for health." Representative Croft pointed out that members did not have the qualifications to do that, and would not be aware of the individual situation, and did not know enough about all the medical generalities, or specifics of a diagnosis.

REPRESENTATIVE CROFT stated that more importantly, why were they not doing that with life. He advised members that if they were as confident that the procedure was never necessary to protect life, why was that exception included. Representative Croft suggested that it was because there were situations where that would be needed.

Number 2408

REPRESENTATIVE PORTER spoke against the proposed amendment. He advised members that he came with an open question in his mind regarding the issue of including "health" in the bill to make it constitutional. He pointed out that he was satisfied with the explanation given by Mr. Dozier that that portion of the decision in Roe , must have to do with the life or health, was on a different

plane, which was precisely why he did not want the findings to be a part of the proposed legislation. Representative Porter pointed out that they were only dealing with partial-birth abortions, and he felt it was a distinct enough separation from the issues of Roe to make a consideration of the life of the mother; not the general term "health" that could be one word that would subvert the entire intent of the proposed legislation, to not be unconstitutional at

all. For those reasons, Representative Porter would vote against Amendment 1.

Number 2465

REPRESENTATIVE BERKOWITZ hoped that Representative Porter was still maintaining an open mind. He noted that he had asked Legislative Legal what they had to say about that issue, and they stated that in relation to the "health" amendment, ... [Tape auto-reverse to Side B].

TAPE 97-35, SIDE B
Number 000

REPRESENTATIVE BERKOWITZ referenced the memorandum by Legislative Legal Counsel which stated: "The amendment that would add 'health' considerations as an exception to the prohibition of partial-birth abortions would bring the bill in line with the U.S. Supreme Court requirement that abortion prohibitions or restrictions on the procedures that may be used, even after viability, must contain exceptions based not only on preserving the pregnant woman's life but also her health. Representative Berkowitz stated that Legislative Legal had a more objective perspective than Mr. Dozier, because, with all due respect, Mr. Dozier was an advocate on behalf of proposed legislation. He pointed out that comments in the past on the efficacy of good lawyering, would say that there was a difference between saying that health was a constitutional requirement, and health was not a constitutional requirement.

REPRESENTATIVE PORTER stated that he would like to see the Legislative Legal opinion; however, not having had the opportunity to read the document, with only one sentence being referred to, that it would be difficult to respond to.

REPRESENTATIVE BERKOWITZ advised members he would have been happy to have provided the information to members, but he had only just recently received it.

CHAIRMAN GREEN called a five minute recess for the purpose of providing committee members a copy of the document Representative Berkowitz referred to. The meeting recessed at 2:09 p.m., and was reconvened at 2:11 p.m.

Number 079

CHAIRMAN GREEN pointed out that members had reviewed the document referred to by Representative Berkowitz, and asked if there was any other discussion of committee members.

REPRESENTATIVE ROKEBERG wondered if Mr. Dozier would want to

comment on the memorandum, because he felt it was an opinion of defensibility, more than a constitutional issue.

CHAIRMAN GREEN asked that Mr. Dozier approach the witness table.

REPRESENTATIVE ROKEBERG further stated that the opinion was not only defensible, but constitutional, and that was the issue before members, as to whether the word and concept of "health" was a fatal

defect in the draft of the legislation. He asked that Mr. Dozier respond if the absence of the word "health" would be constitutionally defensible, or if it was a constitutional flaw, and not defensible.

MR. DOZIER expressed that he had not yet read the opinion provided by Legislative Legal; however, in his opinion, the absence of the word "health" was very defensible. He pointed out that members would have to look at the specific procedure that the bill addressed, by using two different standards. One was the viability standard, or the pre-viability standard, and the other standard was the period after which the baby became viable. Mr. Dozier advised members that in the pre-viability stage of the pregnancy, that determining whether or not a given regulation was constitutional, or not, that one would have to look whether there was an undue burden. He pointed out that the Supreme Court had defined that very explicitly to mean placing a substantial obstacle in the path of a women who was attempting to make a decision about abortion.

MR. DOZIER pointed out that "health" was already protected, in the state of Alaska, and if abortion was needed to preserve a woman's health, that the proposed legislation would not take anything from that; there was no substantial obstacle. He noted that that was the pre-viability stage. The viability stage of the pregnancy had a different test, which was even more lenient to governmental regulations, and one could say, "no abortions at all, period. Can't use abortion practice A, procedure D, procedure C;" et cetera, et cetera, as long as there was an exception for health and the life of the mother. Mr. Dozier advised members that in the case before them, they were not doing that. What members would be endorsing, was that the particular procedure referred to in the bill, could not occur in the state of Alaska. Mr. Dozier continued to point out that everything in place would remain in place and, consequently, a provision for the health of a mother currently existed.

Number 230

REPRESENTATIVE BERKOWITZ stated that it appeared to him that if there already was provision for health of the mother, that there should be no objection to reinserting "health of the mother" back into the bill. He expressed that that was done, at a regular time, to reaffirm what the legislative intent was. Representative Berkowitz felt it was important that HB 65 reflect the present legislature would not do anything to jeopardize the health, or the life, of a pregnant mother. He thought that by including the word "health", they would be underscoring what Mr. Dozier conceded was already a part of present law.

CHAIRMAN GREEN expressed that there were two attorney members on the House Judiciary Committee, and those members, having consulted with several other attorneys, that it appeared that the issue was a decision matter, rather than a requirement. He noted that he could understand the reason for including the language for health purposes, and could understand the desire to not include it because of the possibility that it would create a confusion, if not an

absolute problem. Chairman Green stated that what he would like to enter into the record, was that it was an opinion, and a matter of conjecture among attorneys, just as the procedure itself, was a matter of conjecture among the medical people. Chairman Green pointed out that members had heard from influential people, and high ranking members of the medical profession, who had stated that it was absolutely not necessary. Friday, the committee heard from Dr. Nakamura, who stated that he thought there could be times when it might be necessary.

CHAIRMAN GREEN felt that what the committee was faced with was a conjectural situation, as to whether or not "health" should be included in the proposed legislation, as well as the "life endangerment; and whether or not the particular procedure addressed, would be the only ramification to protect the mother's life. His feeling on the issue was that neither were necessary.

CHAIRMAN GREEN stated that if the House Judiciary Committee, and the present legislature, wanted to pass a ban on the procedure addressed in HB 65, through an avenue of escape because of the necessity for the protection of the life only; not for health, or psychologic reasons, et cetera; that it would certainly be in the purview of the legislature to do so, adding that he felt it would withstand legal muster.

REPRESENTATIVE BUNDE felt that one of the concerns that people had who were particularly opposed to partial-birth abortion, or any abortive procedure, was that a woman might choose to undergo the procedure on a whim, or because it could cause her some mental distress, or whatever. He thought that by adding the word "health", after "life" on line 6, in both instances, would read; "mother whose life, or health is endangered by the physical disorder, illness or injury, ...". Representative Bunde pointed out that they were not considering a notion where someone could claim mental duress; but a serious health problem.

CHAIRMAN GREEN countered Representative Bunde's analogy regarding non-medical, and stated that ulcers were also a result of stress which was a physical disorder that could be brought about by the attitude of a mother.

REPRESENTATIVE BUNDE expressed that it had been found that ulcers were brought on by a particular bacteria, not by stress; however understood the point Chairman Green was making.

CHAIRMAN GREEN stated that it was yet conjectural, that there was an attitude that prevailed among the medical profession, that if one could keep their spirits up, one would heal faster.

REPRESENTATIVE ROKEBERG expressed his appreciation of the discussion that was taking place. He stated that while sitting, indulging in medical expertise, members should know what they were talking about when, obviously, they did not; however, stated that that was okay, and that's why they were where they were.

REPRESENTATIVE ROKEBERG advised members that in reviewing the record and considering the testimony provided by Dr. Koop [Ph], that said he saw no reason for the procedure if, in fact, the

health of the mother was jeopardized, that there were other alternatives. He further stated that while reading the testimony of Dr. Ritche, which reflected that only in the case of a very complicated pregnancy, if there was lethal fetal abnormality, or life threatening, maternal medical complication, that the procedure under discussion would not even be contemplated from a medical view point. Representative Rokeberg expressed that if there were no other arguments that might overcome his concern relating to the constitutionality of omitting the word "health", that he would be voting against the amendment.

Number 468

REPRESENTATIVE JAMES advised members that she was completely comfortable with existing language, and pointed out that the intent of Roe v. Wade , which indicated that law could not prohibit abortion, because of the life or health of the mother, was not included in the proposed legislation because it dealt with one specific procedure. She advised members that she would also vote against the amendment.

CHAIRMAN GREEN asked if the objection was still maintained on the adoption of Amendment 1. Representative Porter and Rokeberg maintained their objection, and a roll call vote was taken. In favor: Representatives Bunde, Croft and Berkowitz. Opposed: Representatives Porter, Rokeberg, James and Chairman Green. Amendment 1 failed adoption, 4 to 3.

Number 507

REPRESENTATIVE CROFT moved to adopt Amendment 2; page 1, line 11, following the word "means", delete [an], and page 1, line 11, following the word "means", insert, a third trimester . Representative Porter objected.

REPRESENTATIVE CROFT explained that the issue that had been the most troubling for everyone, and the most troubling for him, was the idea that a partial-abortion procedure could be done on a healthy baby in the late stages of the pregnancy. Amendment 2 would address that specific concern, making it illegal when done in the third trimester. Representative Croft felt the amended language would go a long way towards curing the constitutional concerns. He pointed out that none of the committee members were experts, even the attorney members, but stated that in his humble opinion, without both of the amendments, or certainly without either one, he would confidently tell the committee that the law would not be upheld in a court of law, if enacted in its present

form, and would be overturned as a violation of constitutional rights.

CHAIRMAN GREEN asked if Representative Kott found, through his research, that there was viability earlier than the start of the third trimester.

REPRESENTATIVE KOTT advised members that was what he discovered during his research of the entire issue, that there was viability prior to the beginning of the seventh month.

CHAIRMAN GREEN stated that if the bill was enacted in its present form, that there could be viable babies/fetus, that would be subject to the type of abortion addressed in the bill.

REPRESENTATIVE KOTT advised members that would be correct. He added that he felt the bill would withstand constitutional muster without Amendment 2. Representative Kott noted that they now had two conflicting views, as he suspected there would be many conflicting views, depending on who a person talked to, and what side of the issue they stood on.

REPRESENTATIVE BERKOWITZ reiterated that the bill was unconstitutional in its present form, and he was fully confident that when it got to the courts, which it would, the courts would confirm that position.

Number 662

REPRESENTATIVE JAMES pointed out that this was her fifth legislative session, and she had been a member of the House Judiciary Committee for two years. She expressed that while sitting on the House Judiciary Committee, she had seen legal opinions submitted on both sides of an issue; it is constitutional, it is not constitutional. Representative James provided an example whereby the legislature passed legislation that would phase out the longevity bonus program. Two legal opinions were presented, with one stating that it would definitely be unconstitutional, and the other said it was not. That law was challenged, went to court, and was found to be constitutional. Representative James felt that to second guess the courts on the issue before members, was not the issue. The issue before her was whether or not to prohibit a gruesome procedure, and whether or not it would make good sense to allow it to occur, where a baby is partially delivered, and then killed before completely taken from the uterus. That, to her, was not acceptable, and she felt members had heard plenty of testimony that indicated there were other methods. Representative James pointed out that they had just heard testimony which reflected that the procedure was used as an elective on healthy babies, and that was what HB 65 was attempting to do; to prohibit the use of that specific procedure for electives.

REPRESENTATIVE JAMES stated with respect to Amendment 2, separating it to the third trimester would not necessarily address viability. She did not believe viability could be separated by saying, "third trimester". Representative James pointed out that viability in court cases prior to now, had a different connotation than a third trimester. She expressed that she would be voting against

Amendment 2.

REPRESENTATIVE PORTER maintained his objection to adoption of Amendment 2.

CHAIRMAN GREEN requested a roll call vote. In favor: Representatives Bunde, Croft and Berkowitz. Opposed: Representatives Porter, Rokeberg, James and Chairman Green. Amendment 2 failed adoption, 4 to 3.

Number 1000

HOUSE JUD BASIS -14 - 03/10/97

REPRESENTATIVE JAMES moved to report CSHB 65(JUD) out of committee, with individual recommendations and attached fiscal notes. Representative Bunde objected.

REPRESENTATIVE BUNDE advised members that he had a great deal of empathy for a number of the folks who had testified who were pro-life, and felt disenfranchised because of Roe v. Wade . He did not feel, at any time, that the legislation before them would address that case, or change anything. Representative Bunde expressed that from that point of view, those people deserved some level of comfort that their point of view was being addressed.

REPRESENTATIVE BUNDE pointed out that the other side of that argument did not accomplish much, because it would not get to Roe v. Wade , and for those who viewed the proposed legislation as the first step to make abortion illegal, was a delusion. Representative Bunde recognized that it was unfortunate that some of the issues members had to face had heavy, philosophical connotations. He expressed that as in many of those other issues, it came down, for him, to practical application; what would he do if he were in those shoes. Representative Bunde stated that for him, if his wife were to face a life-threatening pregnancy, he would absolutely want her, and counsel her to have access to an abortion to save her life. He stressed that he would not trade his wife for an unborn child; personal, philosophical statement.

CHAIRMAN GREEN asked if Representative Bunde was speaking to partial-birth abortion, or abortions, in general.

REPRESENTATIVE BUNDE stated that he was speaking to any abortion.

CHAIRMAN GREEN asked that he keep his comments to the issue of partial-birth abortion, which was what the bill was addressing.

REPRESENTATIVE BUNDE stated that if a partial-birth abortion was what it would take to save his wife's life, he would accept it, and encourage it. However, he stated that when he did that, he was allowing himself that privilege, and he would then have to allow other people their philosophical approach to the situation, and how they would make those decisions. Representative Bunde advised members that he was sympathetic, and understanding of those who felt that abortion was wrong, partial-birth abortion. Having said all that, Representative Bunde expressed that he would not keep the bill from moving forward; however, pointed out that if enacted, and was challenged, overturned by the courts, or appeared at all in any

way to challenge Roe v. Wade , that he would work against it.

CHAIRMAN GREEN asked if there was anyone else that wished to discuss the issue of partial-birth abortion.

REPRESENTATIVE JAMES felt it was very important, that when making a decision of the type of legislation presently before the committee, that it was a specific procedure that would become illegal. And a specific procedure that was very gruesome, and according to all of the testimony, and all of the investigations that she had had the ability to read and understand, was that it was not a necessary procedure. She expressed that they had included the caveat, that in case it was a procedure necessary to

save the life of the mother, that it was a procedure that could be used. Representative James advised members that she agreed with Representative Bunde, that the life of the mother was over and above the life of an unborn child. However, stated that in any event, she felt they should not stray from the fact, that what the proposed legislation did was restrict one specific abortion procedure, and not in any way, shape or form, reduce any ability for anyone to get an abortion under current conditions. Representative James felt it was very important to make that clear.

REPRESENTATIVE BERKOWITZ stated that during testimony, members had heard a lot of what he considered as being fairly sanctimonious, moralizing about abortion, in general; however, he would restrict his comments soley to the question of what he termed, late term abortions because that was the procedure that was at issue. He felt members, unwillingly, become the vehicles for inflammatory language which served to divide people of good will by succumbing to terms with something like partial-birth abortion. Representative Berkowitz pointed out that it was a procedure, a medical procedure, and doctors, every doctor he'd known, took a Hippocratic oath, not to do anything that would jeopardize the health or well being of a person. It seemed to him that when members circumscribe the procedures available to a doctor, they would be limiting the ability of a doctor to treat a patient. Representative Berkowitz stressed that he knew of no other procedure the state of Alaska had banned, much less, attached a C felony to. Representative Berkowitz felt they were taking an undo step forward; it was not a question in his mind of just limiting a medical procedure, it was also chipping away at abortion rights. He believed that was an unfortunate step to take, and was sorry members were being used as a vehicle for something that was divisive, pointing out that it was a procedure that had never been performed in the state of Alaska. Yet, it would cause a great deal of consternation, in the general public, and a great deal of outcry, because people felt so passionately about it. Representative Berkowitz stated that rather than letting a symbolic bill just die on the vine, the members had chosen to go forward with it, and he regretted that and would be voting against passage of the bill.

CHAIRMAN GREEN reminded members that there were drugs used in other places, and procedures used in foreign countries that were not acceptable in the state of Alaska, so he thought to limit a specific abortion procedure, would not create a problem of

attempting to decide whether it would one's spouse, or the baby that lived. He stated that if it was necessary in order to protect the mother, that he would never, ever trade his wife for an unborn child. Chairman Green noted that, by the same token, he would not sacrifice that child on a "maybe" diagnosis, because he would also hold the life of the child in high regard. Chairman Green reiterated that they were not addressing the issue of abortion, but one specific procedure that would be banned in the state. He expressed that that was what members should keep focused on, not the total idea of abortion.

Number 1200

CHAIRMAN GREEN noted that there had been objection, and asked if

the objection was maintained. The objection was maintained, and Chairman Green requested a roll call vote: In favor: Representatives Bunde, Porter, Rokeberg, James and Chairman Green. Opposed: Representatives Croft and Berkowitz. CSHB 65(JUD) was moved out of the House Judiciary Committee by a vote of 5 to 2.

REPRESENTATIVE BUNDE expressed that he had a bill up in the House Finance Committee, and asked that he be excused.

REPRESENTATIVE ROKEBERG requested a brief at-ease.

CHAIRMAN GREEN called a brief at-ease at 2:37 p.m. The meeting reconvened at 2:41 p.m.