The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, for tomorrow and its needs we do not pray, but keep us, guide us, strengthen us, just for today. Help us to live in day-tight compartments by being faithful and obedient to You in this new day You have given us. Yesterday is a memory and tomorrow is uncertain. But today, if we live it to the fullest, will become a memorable yesterday and tomorrow will be a vision of hope. A great life is an accumulation of days lived, one at a time, for Your glory and by Your grace. Anything is possible if we take it in day-sized bites. Help us make today a day to love You, serve You, and be an encourager of others around us. One day to live, it will go so fast; Lord, make it a good memory, before it's past. In Our Lord's name. Amen.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

PARTIAL-BIRTH ABORTION BAN

The PRESIDENT pro tempore. Under the previous order, 9:30 a.m. having arrived, the Senate will now resume consideration of H.R. 1833, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortion.

The Senate resumed the consideration of the bill.

MOTION TO COMMIT WITH INSTRUCTIONS

The PRESIDENT pro tempore. Under the previous order, the Senator from Pennsylvania [Mr. SPECTER] is recognized to make a motion to commit with the time until 12:30 p.m. equally divided and controlled between the Senator from New Hampshire [Mr. SMITH] and the Senator from Pennsylvania [Mr. SPECTER].

Mr. SPECTER. I thank the Chair. I thank the distinguished President pro tempore.

Mr. President, on behalf of Senators JEFFORDS, SNOWE, CAMPBELL, KASSEBAUM, SIMPSON, and COHEN, I move to commit H.R. 1833 to the Committee on the Judiciary with instructions to hold not less than one hearing on this bill and report the bill with amendments, if any, back to the Senate within 19 days.

The motion to commit with instructions is as follows:

MOTION TO COMMIT WITH INSTRUCTIONS

Mr. SPECTER (for himself, Mr. JEFFORDS, Ms. SNOWE, Mr. CAMPBELL, Ms. KASSEBAUM, Mr. SIMPSON, and Mr. COHEN) moves to commit the bill H.R. 1833 to the Committee on the Judiciary with instructions to hold not less than one hearing on such bill and report the bill, with amendments (if any), back to the Senate within 19 days.

Mr. SPECTER. Mr. President, I have selected a bare minimum amount of time, which is really only a 9-day commitment from today, November 8, until November 17 when the Senate will go out of session under a previously announced recess period by the majority leader. And then there would be an additional 10 days while the Senate is in recess, from November 17 to November 27, for a total of 19 days. But the effective period of this referral, as I say, will only be for 9 days.

After considerable thought, I have abbreviated the referral period to this very short time to emphasize to everyone the importance of the issue and the need to have very prompt consideration and to allay any concern or reject any argument that this referral is being made to, in effect, defeat the bill.

Mr. President, I submit that this kind of consideration and this kind of a hearing is really indispensable because of the very complex matters which are involved in this issue. I would enumerate them as humanitarian considerations, medical considerations, statutory interpretation considerations, and constitutional considerations.

The humanitarian considerations have been broached to a significant extent in terms of the circumstances of the mother and the circumstances of the fetus with considerable doubt as to what actually occurs during these so-called late-term abortions. It is a very complicated picture as to what pain and suffering is sustained by the fetus, a subject which requires our very thorough consideration because of the very serious humanitarian implications on pain and suffering to the fetus during the course of this medical procedure.

The matter has had a very, very brief hearing in the House of Representatives—as I understand it, for less than a full day.

Mr. President, I ask unanimous consent that at the conclusion of my statement the full transcript of the hearing before the House of Representatives may be printed in the RECORD so that everyone in the Senate who will be considering this matter in the course of the next day or two, or however long it takes, will have an opportunity to see the brevity of those hearings and the impossibility of consideration of the many complicated issues which are involved in this matter.

The PRESIDING OFFICER (Mr. ISRAEL). Without objection, it is so ordered.

(See exhibit 1.) Mr. SPECTER. Mr. President, there is no question about the chilling effect...
of this medical procedure. It is something that, I submit, has to be understood thoroughly on all sides.

I say candidly that I am not sure what my ultimate judgment would be on this kind of a medical procedure if, as some claim, it is really infanticide. I have had a 15-year career as a district attorney being very much concerned about the issue of homicide, which takes many forms. And, if we genuinely have an issue— the killing of an infant—that is something which existing law does not tolerate, and that is something which has to be considered very, very carefully on the basic question of whether there is an infant where the medical procedures would take the life of the infant, or whether we do not have an infant in the contemplation of the law. And that is something which has to be considered carefully.

There has been considerable controversy as to just what the medical circumstances are with the children who are involved. One case, which I have had referred to me through the media, involved a fetus where the brain had grown outside the skull so that on the face of it involved not a question of whether the baby would die, not a question of whether the fetus would die, but only a question of when and how.

Other matters that I have heard about involve situations where the mothers and the fathers were desperately interested in saving the pregnancy but the medical facts were such that there was such severe brain damage and heart damage that there really was not a live human being.

There will doubtless be considerable discussion on the floor of the Senate today about the status of the fetus on these medical procedures. I suggest that while argument and debate are a very important part of our process, a more important part of our process involves the hard medical facts as to what is involved. That really requires medical testimony as opposed to the kinds of arguments which are traditionally made on the Senate floor. Those arguments have real value, but they have to be evaluated and judged in the context of what the hard medical evidence is. On this date of the record, at least from the House side, there is not much to go on. So that I think this is a matter which cries out for that kind of a hearing and the establishment of the evidence to enable the Senate to make a judgment.

I find it, candidly, a little hard to understand the procedures which brought this legislation to the floor without a hearing by the Judiciary Committee. But facing the procedural posture of this matter, the remedy is to move from the decision of the majority leader to having consideration by the full Senate as to what is the appropriate course. It is rumored that this is going to be a close vote. I do not know whether that is true or not. But if we send this matter to committee for hearings, we may be saving considerable time because if the vote is close on a motion to commit as to having a simple majority, I think it is fair to say it is unlikely there would be the 60 votes present to cut off debate. So that prompt action by the Senate in sending the matter to committee may well save us time, not only in the long run but in the short run as well.

Beyond the considerations of humane treatment for the fetus and the mother, we then come to very, very complex questions of statutory interpretation which I submit have not been thought through by the proponents of this bill in the House or by the hasty action that it went through in the House and the heavily emotionally charged context.

According to the information provided to me, there is a real question as to the interpretation of this statute in the broader terms of how a fetus is delivered. Subsection (b) provides that a partial-birth abortion is defined as "an abortion in which the person performing the abortion, by using force or the use of force or the threat of force, partly vaginally delivers a living fetus before killing the fetus and completing the delivery."

On a note, a statutory interpretation—and again, candidly, I think this needs further verification and further analysis—this definition of the prohibition established in H.R. 1833 would not apply to (i) abortions performed by C section or hysterectomy, that is, where the fetus is not extracted vaginally, and it would not apply either to abortions in which the fetus is acted upon prior to being moved into the birth canal.

So what we may realistically be doing here is to be legislating in a halfway manner in the area of vaginal delivery of the child or of dealing with the issue which ought to be dealt with in terms of effective legislation, if this is, indeed, an issue with which we feel we ought to deal.

Subsection (c) then establishes an affirmative defense to the prosecution of a physician performing a partial-birth abortion if it is established by a preponderance of the evidence that the physician reasonably believed that "the partial-birth abortion was necessary to save the life of the mother; and no other procedure would suffice for that purpose."

As a matter of statutory interpretation, there are very complex issues involved where you provide for an affirmative defense as opposed to making those elements a part of the prosecutor's case. In a criminal case, the Government has the burden of proving beyond a reasonable doubt all of the elements in a prosecution, and it may well be that this language is ineffective or the fault of the Secretary of the Senate.

There are many items which have been affirmative defenses such as alibi, not being present at the time the offense was committed, which have been incorporated into the prosecutor's affirmative duty to show beyond a reasonable doubt all elements of the offense. There is no indication that any consideration has been given on that issue by the subject by the House of Representatives.

The constitutional issues are present here because the Supreme Court of the United States has held that the States may prohibit an abortion in late term—"may prohibit a procedure except where it is necessary in an appropriate medical judgment for the preservation of the life or health of the mother," language from Roe versus Wade.

That involves making the life of the mother an affirmative defense, and it also opens a broader context as to whether the health of the mother would be an exception to the prohibition against the State's eliminating late-term abortions.

This is a very shorthanded description, in the course of having a relatively limited amount of time available for this issue in this Chamber because of our crowded calendar, but these are matters which could be taken on some detail in the course of the 9 days between now and the 17th, when the Senate is in session or when the Judiciary Committee may see fit to interrupt the recess process. And I can speak for myself. I would be glad to have this matter which we feel is necessary on a hearing or hearings so that these matters may be inquired into and we may legislate, if at all, in a rational way.

There is another consideration involved here that I do not intend to dwell on, but that is the consideration which is articulated so frequently in this Chamber. That is the appropriate area of legislation for the Federal Government in terms of federalism generally and in terms of the 10th amendment, where Members of this body are proud to pull from their vest pocket the 10th amendment which specifies that all matters not expressly given to the Congress are reserved to the States.

Subsection (a) provides:

Whoever, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years or both.

It raises a real question basically as to whether this is a matter appropriately for the Congress. Provisions of the criminal law are traditionally left to the States. Recently, the Supreme Court of the United States in the Lopez case largely limited the authority of the Congress of the United States to legislate in areas where areas which have long been viewed as areas where the Congress had authority. So that we do have State legislatures ready, willing, and able to act affirmatively on the subject.

On this date of the record, I do not know what States, if any, have moved to legislate on late-term abortions. But
I think it ought to be at least mentioned with whatever degree of emphasis we choose to make on it that as to the Federal considerations which are involved here.

Customarily, when you have issues involving jurisdiction, our pattern has been to move a little fast over constitutional considerations, as we have been known to move a little fast over constitutional considerations, leaving those matters ultimately for the courts.

But there is a matter of overwhelming importance on the constitutional issue of life of the mother, or health of the mother, and especially where even the most restrictive interpretations on abortion have always carved out an exception for life of the mother, this statute does not do that.

This statute purports to have it raised only as an affirmative defense, which is very different from even under the restrictive interpretations of when an abortion may be performed excepting life of the mother.

Then the issue of jurisdiction, again, not often focused on the floor of either the Senate or the House of Representatives, is worthy of consideration.

But Mr. President, that the fundamental considerations really here involve the humanitarian considerations: What is actually happening to the fetus? Is the fetus subjected to pain and suffering? If so, is there a way that the legislation could encompass a procedure which would eliminate that pain and suffering? What are the humanitarian considerations involved for the life of the mother?

If it is determined medically that it is preferable to have the fetus acted upon vaginally, as opposed to alternatives which are apparently not covered by the statute, a C section, hysterotomy, or where action is taken on the fetus prior to removal from the birth canal, would the Constitution of the United States rush to judgment to criminalize a medical procedure which is in the vaginal channel as opposed to a hysterotomy or C section or action prior to the entry of the fetus into the vaginal channel, where those matters are really matters for the medical profession as opposed to the Congress? At least should not the Congress be formed as to the intricacies of these matters before we pass judgment on a matter of this great importance?

**Hearing on Partial-Birth Abortion Before the House of Representatives, Subcommittee on the Constitution, Committee on the Judiciary, June 15, 1995**

The subcommittee met, pursuant to notice, at 10:23 a.m., in room 2237, Rayburn House Office Building, Hon. Charles Canady (chairman of the subcommittee) presiding. Present: Mr. Canady, chairman; Mr. Inglis, Sensenbrenner, Hoke, Goodlatte, Colorado.

Mr. CANADY [presiding]. The subcommittee will come to order. I am pleased to have the opportunity to hold this hearing to examine the partial-birth abortion procedure. We will hear primarily from medical experts today. They will describe the partial-birth abortion procedure. Dr. Haskell and Dr. McMahon have paid close attention to the intricacies of these matters, so we will be proceeding in the knowledge that the practitioner completing the procedure feels pain.

We invited two of the abortionists who specialize in the partial-birth abortion procedure to testify, that is, the baby undergoing this procedure feels pain. We invited two of the abortionists who specialize in this type of abortion. They agreed to testify. But apparently, after further consideration, they found that their position was a position they did not wish to express themselves about today. I am very disappointed to report that both practitioners canceled at the last minute.

The hearing focuses on partial birth abortion because while every abortion sadly takes a human life, this method takes that life as the baby emerges from the mother’s womb while the baby is in the birth canal. The difference between the partial-birth abortion procedure and homicide is a mere theoretical one.

A fundamental principle on which our country was founded is that we are endowed with the inalienable right to life. Roe v. Wade, the Supreme Court decision that improperly muddied the waters concerning when a person is a person, has been discredited by the Court.

Dr. Robert Jones, former State's Attorney in Alabama, once said, "We need never fear the doctrine of Roe v. Wade. For we already possess the power to assist and protect both mother and child." The decision that Roe v. Wade made is a significant blow to the American dream. It is a serious threat to the very idea of human life.

The National Abortion Federation letter implies that partial-birth abortions are performed only in unusual circumstances. Neither Dr. Haskell nor Dr. McMahon claims that this technique is used only in limited circumstances. In fact, they have been involved in advocating this procedure for well over a decade. Dr. Haskell prefers the method from 20 to 26 weeks into the pregnancy. Dr. McMahon uses the method throughout the entire pregnancy. In fact, a previous National Abortion Federation memo to its members counsels them not to apologize for this legal procedure, and states, "Your job is to educate the public to the fact that when only 7-10% of women have late abortions, life endangerment, fetal indications, lack of money or health insurance, social, psychological crises, lack of knowledge about human reproduction, etc., etc., is the issue.

It is my hope that we can have a candid debate on the realities of this procedure without disinformation or euphemisms. I believe that when they are informed about the truth about the procedure, my colleagues who value the dignity of human life and believe in common decency, will agree with me that partial-birth abortion is inhumane and should be banned.

Mr. FRANK.

Mr. FRANK. Mr. Chairman, I have very strong views on this. But given the importance of this particular to women, I am going to yield my time today in the U.S. Congress, the gentlewoman from Colorado.

Mrs. SCHROEDER. I want to thank the ranking member for yielding. I mean that very sincerely, because as the senior woman in this House, this is a day I had dreaded. I see us really talking about women’s rights. I think what we are doing here today is bad medicine, it’s bad law, it’s bad public policy, and it’s intrusive Government at its very, very worst.

What this bill is doing is saying that doctors should put aside their best medical judgment in favor of some political judgments made in Washington. We in Washington do not know of any other area where we go in and legislatively mandate medical practices. In other words, some of the written testimony that we have are really doing is legislatively mandating malpractice.

First of all, the partial-birth procedure is not a medical term. It is a misnomer. We all know that what people are really trying to get at here is the fundamental right of women to receive medical treatment that has been determined to be safest and best for them. That is the essence. That is a constitutional right. That right has
beaten around for more than 20 years. Today we are moving to try and tamper with that. Today we are going to try and make a procedure sound so terrible and so awful that only doctors who are demons would consider doing it. This is almost re-inventing witchcraft of a sort, trying to see women as witches. Well, let’s talk about this.

There are very, very, very few of these procedures. These procedures are heartbreak procedures. These are procedures that any body wants to engage in. But sometimes everything goes wrong. Everything goes wrong and it is fatal. But we let the doctor, to sit down and make hard choices. I do not think we want the Government in Washington taking those choices away.

When we seek to listen to those women who had to make these hard choices, they came to them by medical science. Things that we thought were progressive. Things such as amniocentesis and many of the procedures now that tell us more about what is happening along the different markers of birth. I must ask, are we going to do away with all of this.

When we seek to listen to women that are sitting here in this hearing. Can you start doing all of that. Do you want to see liver transplants? Do you want to see heart transplants? Do you want to see that with almost any medical procedure. All banned. But I must say that you could do everything that I think will happen. One of the fundamental questions is, one to, to health care, and to be treated fully as an adult.

I must say again, as the only woman, what a sad day this is. I hope that the women in America will wake up, realize what is happening. Your rights are at stake today. My rights are at stake today. Physicians’ rights are at stake today. If we want the physicians to treat us to deal with their best medical judgment and not have political judgments hanging over their heads. It is the day to day to draw the line in the sand and say, “No more.” It’s our choice. It is not politicians’ choice. I thank the gentleman from Massachusetts again for bringing this.

Mr. CANADY, Mr. Hyde.

Mr. HYDE. Well, I thank the chairman. It’s always instructive to hear the gentlelady from Massachusetts with her.

She cited some tragic examples of children born with deformities who were aborted because of that. When I hear cases like that I have to think what Vicky Wilson, who had a woman who had taken phallitide. He was born without arms, legs, with one eye, a little lump of flesh left in an ally in London. She was found by a bobby, and taken to a home run by an eccentric, wealthy woman called The Guild of the Brave Poor Things. Little Terry was there until he was aged 10, when he was adopted by a couple in Britain who had lost their own three children, had been taken away from the mother by the court. She was adjudicated an unfit mother, but she was fit enough to adopt Terry, and her husband, and unemployed war veteran. They became quite a family. Terry wrote a book of his life called Giants: 10 miles in a wheelchair. Prince Phillip comes to visit occasionally to get his spirits bolstered, because this little grotesque lump of flesh was so grateful that he has been able to live. At least he is not exterminated, which is what abortion is, even though he was a little lump of flesh. I think of Gregory Wattin, whom I watched by cerebral palsy, could not speak, pointed his mother permitted him to live, at least his premier of the Ninth Symphony in the Guild of the Brave Poor Things. Terry wrote a book of his life called Giants: 10 miles in a wheelchair. Prince Phillip comes to visit occasionally to get his spirits bolstered, because this little grotesque lump of flesh was so grateful that he has been able to live. At least he is not exterminated, which is what abortion is, even though he was a little lump of flesh. I think of Gregory Wattin, whom I watched by cerebral palsy, could not speak, pointed

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Mr. CANADY. Let me tell the members of the audience that we appreciate your being here, and I am going to say at the outset that I am not going to be at least punishing, you would be punishing the woman in a logical sense if she has participated in a murder. You certainly would not be empowering her to an extent if you are empowering others to sue, and for psychological damages.

That is just the other great inconsistency we have here. We have been told on the conservative side that we should return things to the States. This is a matter the States have full jurisdiction over right now. This is not anything presented by the Federal Government. I am not talking constitutionally now. I am talking about the matter of public policy.

How can people who talk about how they want to return things to the States now come and say we’re going to have this Federal statute regulating abortion. The States are full of these women who are basically in the majority in a State think this is a bad thing and they have a way to do it constitutionally, then they can do it. In some States, provisions like this do exist. The argument for doing it on the Federal level is, that there are some States that have chosen to do it. We are told that the State has no business exercising their judgment in this regard. I understand that. I have never claimed there could not be two Americans with different views, but tell me, don’t come to me on the one hand and say, “We’re for State’s rights. We are going to undo this Federal monolith.” And then for the first time in my memory, injunctive immediate decision.

So I think that this is flawed in several regards. I would just reaffirm what the gentleman from Colorado was not just trying to make any decision for anybody. We are respecting the individual integrity of this very difficult decision, and therefore, I hope that this legislation does not go anywhere.

Mr. CONYERS. Mr. Chairman. Mr. CANADY, Yes. Mr. CONYERS. I would like to make a comment or two.

Mr. CANADY. Well, you will be recognized in turn, Mr. Inglis has been here. I will recognize him now. We’ll come back to you.

Mr. CONYERS. Thank you. Mr. Inglis, Mr. Chairman. I start any comments I make by saying this. That’s now on the probably one of the most volatile issues that we can possibly face. I always have a discussion by indicating compassion for the victims of abortion that are walking around today. The fact is, there are a lot of victims of abortion that are alive. They are the woman that were deceived, and now realize that they wish they had not had an abortion.

If we look in our families, somewhere in the family a history of abortion, a sister, a mother, a cousin, an aunt. Somebody in almost every family has had an abortion. That is why this is such a huge tragedy.

So I start anything I say by way of compassion for the victims of abortion who are walking around today, that are still dealing with the guilt of what they now realize they did. With that opening, I would also say that I am really quite disappointed. I thought we might have found some common ground here. I thought that there wouldn’t be any difficulties from this type of legislation. I guess I’m too Pollyanna. I thought the gentlelady from Colorado, for example, would say well surely this is a case where we don’t have to make any decision that this procedure and one that we should not make legal.

But I guess I am finding out just how radical the other side is on this issue. It’s a really interesting thing to see the radical nature of someone who would defend a procedure in which a baby within inches of life and then sucking it out of the body in almost every family has had an abortion. That is why this is such a huge tragedy.

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But I guess I am finding out just how radical the other side is on this issue. It’s a really interesting thing to see the radical nature of someone who would defend a procedure in which a baby within inches of life and then sucking it out of the body in almost every family has had an abortion. That is why this is such a huge tragedy.
But what we are doing here today is continuing a strategy, an obvious one, of limiting abortion rights since we can’t—we don’t have the support or the legal justification for the other. This is not about what is the best thing to do for women, it is about who is going to be in control of how we do our job of helping women. Well here we have the opportunity to take away what is clearly not only an unhappy decision, but a wrong decision, to be allowed to do what we think is expedient to promote the concept of aborting a human being. I am very grateful that you decided to do it.

I also want to make a quick observation regarding the State that I come from, Ohio, where we recently outlawed or made this specific procedure illegal. It was the right thing to do there. It will be the right thing to do here. We have a responsibility to act responsibly.

I am particularly looking forward to the testimony of Dr. White, who is one of this Nation’s pre-eminent neurosurgeons. He is from Cleveland. I mentioned him particularly, because I am interested in not only what he has to say about the ability of a fetus to experience pain, but also because I have a personal experience with my own father who is also a neurosurgeon, I won’t say how many years ago, to protect all of those that are involved.

Finally, the other observation I would like to make is that I am particularly appalled at this procedure for the reasons that have been described. Many of you have heard of this procedure that can only take place, that only takes place after the 20th week, and usually takes place much later than that. I have been consistently opposed to any abortions that would take place in the second or third trimesters, except under the most extraordinary circumstances to save the life of the mother. So I look forward to this hearing, Mr. Chairman. Thank you.

Mr. CANADY. The gentleman’s time is expired. Mr. Goodlatte.

Mr. Goodlatte. Thank you, Mr. Chairman. I very much appreciate you holding today’s hearings. I appreciate your courage in addressing this issue, because I think it’s an issue that every American should be aware of and think about. Undoubtedly, frankly, I am appalled that there would be objection to not being willing to ban a procedure like this, that if the doctor would bring that to a committee of this panel, if all deliver, would clearly have the full protection of the law.

Mr. Frank and Ms. Schroeder have spoken eloquently about a woman’s right to choose. You know, if there were only one right involved, if there were only one life involved, I think there would be nobody in this room who would have any objection to that. But it involves the responsibility of Government, and responsibility of every one of us to have Government intervene when there is more than one right involved. We do have to act responsibly in protecting those who can not protect themselves.

One of the individuals on the other side mentioned bringing this up about what could be the most unhappy decision that not only a woman, but hopefully a man too, might be involved. If that is the case, I think this is a procedure that is going to be absolutely devastating. Well here we have the opportunity to take away what is clearly not only an unhappy decision, but a wrong decision, to be allowed to do what we think is expedient to promote the concept of aborting human beings. I am very grateful that you decided to do it.

Finally, Mary Ellen Morton, a nurse specializing in neonatal care will testify. Mrs. Morton has developed a program on neonatal and pediatric pain control that she presents as part of her care profession for the past 5 years. She has been the recipient of several honors and 5 awards and has been the recipient of several honorary doctorate degrees and visiting professorships. Fourth, we will hear from Ms. Tammy Watts, who has had personal experience with abortion.
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show you the similarities between this procedure and the procedures that are used by obstetricians not to destroy the baby’s life, but to save the baby’s life. Breastfeeding is when the buttocks or the feet are coming first. This area here is the bottom of the womb of the cervix. Normally, when you are trying to deliver a premature baby, you may be breech, which you would like to do is to have the bag of waters intact around the baby, because that serves two things. One, it keeps the baby alive while you are pulling the baby out. It also serves to keep the cervix open, so that the head does not get trapped.

When you do partial-birth abortion, however, because you want the head to be trapped, you don’t want the bag of waters there, particularly when the baby is premature. You want the head free to deliver the baby alive.

You then grab the feet. If the infant is very small, you would use the forceps that are there. If the infant is larger, you would probably put your hand in, the same way we would do if we did an internal podalic version, grab the feet and start to pull the baby down in that position into the baby’s body.

Normally when I do this with the intention of delivering the baby alive, I like to have the back toward the mother’s bladder, which would be a more normal position. You would be free once the head gets to the level of a cervix to flex the head and deliver the baby safely. When doing a breech abortion, you want the baby here in this position, so that you can have access to the neck. Again, when you are delivering a breech baby, cervi- cal dilation is not the standard technique. It’s a complication that we basically handle by either cutting the cervix with a certain kind of incision to release the head, or by doing a ce-sarian section sometimes. Especially if it’s a large baby and that doesn’t work.

With the abortion technique that we are describing today, however, you want the head up, so the bag of waters is the uterus gets passed there and slips out, then his status changes from an abortus to a living person. So what you do is to make sure that the baby does not move the few inches that is required is you hold your hands here. Basically, when you want to deliver the baby live, you use your hands in this position to buttress the baby. Again, you usually have an assistant up here pressing and flexing the mother’s ab- domen to deliver the head.

But when you do partial-birth abortion technique, you are steering the baby so that the baby won’t slip out. Then you take the Metzenbaum scissors, which are the scissors here. Put them in the back of the baby’s head. Push them in to try to sever the cord, the spinal cord, open the scissors up to create a hole big enough to put a catheter in. You then put the catheter in and suck out the baby’s brains. That way, the baby is dead. When the baby comes out that ends the abortion technique.

Of course when you are doing this to deliver a live baby, the differences are primarily at the level of the cervix. If by change you do a breech delivery, the head slips through, the surgeon will encounter the dreadful complication of delivering a live baby. The surgeon must therefore act quickly to ensure that the baby does not manage to move the inches that are legally required to transform its status from one of an abortus to the baby as a human being. Included in this scanty amount of data, there is a report of a hemorrhagic complication that required 100 units of blood to sta- bilize the mother, and a report of a cardiac complication that required 6 weeks of antibiotic therapy.

I have also been shown a copy of a letter dated June 12, signed by the executive direc- tor of the National Abortion Federation. This memo makes a number of remarkable claims that abortion specialists are quite sub- stantiated. First, it makes claims that are flatly inconsistent with the recorded statements made by physi- cians who specialize in performing these pro- cedures. One example was made by Dr. Martin Haskell, who wrote a monograph explaining in detail how to perform this type of procedure, which was distributed by the National Abortion Federation in Philadelphia. I will also refer to statements made by Dr. James McMahon in various interviews and in written materials that he has distributed.

The National Abortion Federation letter states that fetal demise is virtually always induced by the combination of steps taken to prepare for the abortion procedure. But in interviews with the American Medical News, quoted in an article published on July 5, 1993, edition, both Dr. Haskell and McMahon said that the majority of fetuses aborted this way are alive in the end of the procedure. Dr. Haskell himself further elaborated in an interview published December 10 in the Dayton News, that none of the scissors that accomplished the lethal act. I quote him, “When I do the instrumentation of the skull, it destroys the brain suffi- ciently so that the fetus is dead at that point, it’s definitely not alive.”

Professor Watson Bowes of the University of North Carolina at Chapel Hill, a promi- nent authority on maternal medi- cine, and coeditor of the Obstetrical and Gynecological Survey, reviewed Dr. Has- kell’s article and noted that Dr. Haskell made a number of assertions about the procedure, with other procedures that do induce fetal death within the uterus. Professor Bowes concurred that the fetuses are indeed alive at this point after they are performed. The National Abortion Federation letter also claims that the drawings of the partial-birth procedure distributed by Congressman Canady and others are highly imaginative and misleading. But Dr. Haskell himself validated the accuracy of these drawings, as re- ported in the American Medical News, again I quote. “Dr. Haskell said the drawings were accurate from a technical point of view, but he took issue with the implication that the fetuses were alive at the point.”

Professor Bowes also reviewed the draw- ings and wrote that they are an accurate repre- sentation of the procedure described in the article by Dr. Haskell. I would invite the members of the subcommittee to review the drawing of the fetal breech extraction method that I have attached to my written testimony, reproduced from Williams Obstetrics, a standard text- book. You can see that the method described by Dr. Haskell is an adaptation, or I would rather say, a variation of the fetal breech extraction and that the textbook drawings are strikingly similar to the disputed draw- ings of the partial-birth procedure. I would also like to refer to the subcommittee to examine an accurate model of a fetus at 20 weeks and the Metzenbaum surgical scissors that are used in this procedure, and decide for yourselves who is being misleading.

The National Abortion Federation letter also suggests that these partial-birth abor- tions are commonly done in a variety of un- usual circumstances, such as when the life of the mother is at grave risk. I have practiced obstetrics and gynecology for 15 years and I work with indigent women. I have never en- countered a case in which it would be nec- essary to deliberately kill the fetus in this manner in order to save the life of the moth- er.

There are cases in which some acute emer- gency occurs during the second half of preg- nancy that makes it necessary to get the baby out fast, even if the baby is too pre- mature to survive. This would include for ex- ample, HELLP syndrome, a severe form of pregnancy-induced hypertension and may be sudden. But no doctor would employ the partial-birth method of abortion, which as Dr. Haskell carefully describes, takes 3 days. Indeed, Dr. McMahon also lists maternal condi- tions such as sickle cell trait, uterine prolapse, depression and diabetes as indica- tions for this procedure, when in fact, these complications are the ones that are associated with the birth of a totally normal child.

The National Abortion Federation letter of June 12 also states, “This is not a different surgical procedure; this statement is erroneous. The D&E procedure in- volves dismemberment of the fetus inside the uterus. It is cruel and violent, but it is quite distinct in some important respects from the partial-birth method. Indeed, Dr. McMahon himself has provided to this sub- committee a fact sheet, that he sends to other physicians in which he goes into a de- tailed discussion of the distinctions between intrauterine dismemberment procedures, which he calls disruptive D&E, and the pro- cedure that he performs, which he calls in- tact D&E.

This brings us to another important point. That is that the term you have chosen, partial-birth abortion, is being heralded by some as safer alternatives to D&E. But ad- vances in this type of technology do not solve the problem. They only compound it. In part because of its similarity to obstet- ric techniques that are designed to save a baby’s life and not destroy it, this procedure produces a moral dilemma that is even more acute than that encountered in dismember- ment techniques. These techniques are away from being declared a legal person by every state in the union. The urgency and se- riousness of these matters therefore require appropriate legislative solutions. You.

Mr. CANADY. Doctor, if you could summa- rize and continue another one or two or another couple of minutes, I’d appreciate it.

Dr. SMITH. I’ll just summarize by saying partial-birth abortions are being heralded by some as safer alternatives to D&E. But ad- vances in this type of technology do not solve the problem. They only compound it. In part because of its similarity to obstet- ric techniques that are designed to save a baby’s life and not destroy it, this procedure produces a moral dilemma that is even more acute than that encountered in dismember- ment techniques. These techniques are away from being declared a legal person by every state in the union. The urgency and se- riousness of these matters therefore require appropriate legislative solutions. You.

Mr. CANADY. Thank you, Dr. Smith. Dr. Robinson. I will point out before Dr. Robin- son’s testimony that the two doctors, McMahon and Haskell that Dr. Smith re- ferred to in her testimony, were the doctors we had invited and who had agreed to appear for this hearing, but who canceled at the last minute. We wanted to give them the oppor- tunity to be here to testify and explain the procedure. But they were.

Mrs. SCHROEDER. If the Chairman will yield, I think one of the reasons that we have to be very honest about this, is doctors have been harassed and sometimes don’t feel very secure in this environment that we live in. And so they have canceled and we want to make sure that they can testify.

Mr. CANADY. Thank you. Dr. Robinson. Statement of J. Courtland Robinson

Dr. ROBINSON. I would like to thank the Chairman and the members of the sub- committee for inviting me to be here today. My name is J. Courtland Robinson, associate professor on the full-time faculty in the De- partment of Gynecology at the Johns Hopkins University School of Medi- cine, and a joint appointment with the...
Johns Hopkins School of Hygiene and Public Health.

I have been involved in all aspects of reproductive health care for women for over 40 years and have been involved in obstetric and gynecological care, with an extra interest in family and sterilization. I am here on behalf of the National Abortion Federation, the nation's professional association of abortion providers.

My experience with abortion began in the 1960's, when as a house officer at the Columbus Presbyterian Medical Center in New York City, I watched women die from abortions that were poorly done. Over a 10-year period when in training at the medical center, many women died before our eyes. Many survived only with aggressive pelvic surgery. On occasion I have had to hold women's hands.

These are not events learned from books, but reality that I painfully experienced and witnessed. This experience with poorly performed abortions was further extended during my 11 years as a medical missionary with the Presbyterian Church while I worked and taught in Korea.

At Lutheran General and Cook County Hospital, we were already doing legal first and second trimester abortions before the Roe versus Wade decision came down. We did about 1,000 a year. When this legal situation ended, we were second only to some other centers in the nation.

At that time, the method of management of second-trimester abortions was saline induction. When the saline failed, it was often necessary to have an evacuation in order to meet the patient's needs in a safe and timely manner. I have performed abortions in different settings, and have performed second-hormone abortions using different techniques, depending upon the clinical situation.

When a woman is faced with a need to terminate a pregnancy, the physician can manage the surgical procedure using a number of techniques, hydromanagement, saline, urea, prostoglandins, potassium, suction, D&C, D&E. We have used different techniques over the years as our skill and understanding of basic physiology has become clearer. As in all of medicine we develop techniques which are more appropriate, study the long-term impacts, and determine which is safer.

The physician needs to be able to decide, in consultation with the patient and her husband, what procedure to use. She needs to take into account specific physical and emotional needs, what is the appropriate methodology. The practice of medicine by committee is neither good medicine nor good abortion care.

This legislation appears to be about something you are referring to as partial-birth abortion. I am now beginning to learn a little about what you think it means, but I did not know it until a few days ago. Never in my career have I heard a physician who provides abortion care refer to any techniques as a partial-birth abortion. That is not what we do.

When an intact fetus is removed in the process of abortion, as is sometimes done, fetal demise is induced either by an artificial or natural means or through the combination of steps taken as the procedure is begun. Thus, in no case is pain induced to the fetus. If neurologic development at the stage of the abortion being performed ever made this possible, which in the vast majority of cases it does not, analgesia and anesthesia given to the woman would prevent any pain that may be perceived by the fetus.

So when I read in your legislation that you seek to, "Ban an abortion in which the person performing the abortion, by suction, or otherwise, vaginally delivers a living fetus before killing the fetus and completing the delivery," my reaction is that you are banning something that does not happen. To say partially vaginally delivers is vague, not medically oriented, just not correct. In any normal second trimester abortion done by any method, you may have a point at which a part, an inch of cord, for example, of the fetus passes out of the cervical os, before it is complete, but this does not mean you are performing a partial birth.

I have seen the sketches that have been passed around. I have read your description about what you think it means, but I did not understand what you mean or how you mean it. I am sure that your concern is genuine, I am sure that this vagueness is intentional. I, as a physician, do not understand what you mean or how you mean it.

The words of the legislation are equally inflammatory. No one doing this procedure is trying to injure the fetus. I have to wonder what you are trying to ban with this legislation. It sounds to me as if you are trying to leave any late abortion open to question. How is this a way of action, and in fact, a criminal violation. To force doctors to affirmatively prove that they have not somehow violated such a law cannot be the intention of physicians who have performed abortions for years who are experts in the field, look at this legislation and do not understand what you mean and what you are trying to do. It seems to me that this vagueness is intentional. I, as a physician, cannot countenance a vague law that may or may not cut off an appropriate surgical option.

Women present to us for later abortions for a number of reasons, including congenital anomalies, of which I have a few pictures if necessary. I can tell you from my long experience that women do not appear and ask for any abortion, particularly those that I saw doing the work and particularly a later abortion, cavalierly or lightly. They want an answer. It is a serious and difficult decision and has been for centuries for women to make. It is important that they have a correct reason for ending a pregnancy, or to punish her because circumstances prevented her from obtaining an abortion earlier. It is my place to treat my patient, a woman with a pregnancy she feels certain she cannot continue, to the best of my ability. That includes selecting the most appropriate surgical technique using my skill and knowledge developed from experience, to determine what method is safest for this woman at all times and in all circumstances.

Some of you have already told me that you believe the name did not exist until someone created it. You fear what you do not understand. This is the procedure itself. You are talking about a brain operation on a fetus who could have reached an age where I would be called upon to operate on the one conducting pain. Some authorities feel that fetuses at this age can perceive pain to a greater degree than the adult. So I would like to come before you expressing that within the framework of the fetus, his nervous system, pain can be perceived and appreciated.

Now, I am not an obstetrician. But as I view and understand the particular procedure, the compression, the pulling, the distortion must be a painful experience for the fetus as it is advanced into the birth canal. Before any of this is done is the procedure itself. You are talking about a brain operation on a fetus who could have reached an age where I would be called upon to operate on the one conducting pain. Some authorities feel that fetuses at this age can perceive pain to a greater degree than the adult. So I would like to come before you expressing that within the framework of the fetus, his nervous system, pain can be perceived and appreciated.

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When I found out I was pregnant on Octo-
ber 10, 1994, it was a great day, because on
the same day, my nephew, Tanner James
Gilbert was born. We were doubly blessed.

When I found out I was pregnant, I was
flooded with the whole variety of emotions, scared, happy, excited, the whole thing. We immediately started mak-
ing our plans. We talked about names, what kind of baby it would be, a boy or a girl. We told everyone we knew, and I was only 3 weeks pregnant at the time.

It was my heart. Almost as soon as my pregnancy was confirmed, I started getting really sick. I had severe morning sickness, and so I took some time off of work for the next 3 months. As the pregnancy progressed, I had some spotting, which is common, but my doctor said to take disability leave from work and take things 1 month at a time.

During that leave, I had a chance to spend a lot of time with my newborn nephew, Tan-
er, and his mom, Melanie, my sister-in-law. I watched him grow day by day, sharing all the news with my husband. We made our plans, excited by watching Tanner grow.

"This is what our baby is going to be like."

Then I had more trouble in January. My husband and I had gone out to dinner, came back, and when I started having contractions. They lasted for about a half an hour and then they stopped. But then the doctor told me that I should stay out of the water. I was very disappointed that I couldn’t share my pregnancy with the people at work, let me watch my greatest joy grow.

I kept growing, and we made our normal plans, everything that prospective parents do.

I had had a couple of earlier ultrasounds which turned out fine. I took the alpha-fetoprotein test, which is supposed to show fetal anomalies, anything like we were looking for.

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I kept growing, and we made our normal plans, everything that prospective parents do.
pass some day that I would find out why it happened, and I think it is for this reason. I am supposed to be here to talk to you and say, you can't take this away from women and do it to them. It is so important that we be able to make these decisions, because we are the only ones who can.

We made another painful decision shortly after that. Dr. McMahon said, "This will be very difficult, but I have to ask you. Given the anomalies Mackenzie had on this and the fact that there is a program at Cedars-Sinai which is trying to find out the cause for why this happens, they would like to accept her into this program." I said, "I know what that means, autopsies and the whole thing. We don't need to do that. I wonder if we could not do this? If I can keep one family from going through what we went through, it would make her life have more meaning. So they are doing the testing now. Because Dr. McMahon does the procedure the way he does, it made the testing possible.

I can tell you one thing after our experience, I know more than ever that there is no way to judge what someone else is going through. Until you have walked a mile in my shoes, don't pretend to know what this was like, or even try to understand what someone else is going through. Everybody has got a reason for doing what they have to do. Nobody should be forced into having to make the wrong decision. That's why you'll be doing if you pass this legislation. Let doctors be free to treat their patients in the way they think is best, like my doctor did for me. I understand this legislation would make my doctor a criminal. My doctor is the furthest thing from a criminal in the world. Many times I have called him my angel. They say there are angels working around the world protecting us, and I know he is one. If I was not led to Mr. McMahon, I don't know if I would have lived through this. I can't imagine where we would be without him. He saved my family, my mental stability, and my life. I could not have made it through this without him and I know there are a great many women out there who feel the same.

I have still got my baby's room and her memory cards from her memorial service. Her foot and hand prints. Those are good things and good memories, but she's gone. The best thing I can do for her is continue this fight. I would want you to do. For her, for Mackenzie, I respectfully ask you to reject this legislation. Thank you.

Mr. CANADY. Thank you, Ms. Morton.

Statement of Mary Ellen Morton

Ms. MORTON. Mr. Chairman, members of the committee, thank you for the opportunity to testify. With your permission, could I use slides to illustrate my testimony?

Mr. CANADY. Certainly.

Ms. MORTON. Could we lower the lights? Thank you. My name is Mary Ellen Morton. I am 42 years old, and I am a challenge to doctors and to you to think of the notion that unborn babies would not feel agonizing pain before they are reduced to human rubble during the partial-birth abortion procedure.

Now I have practiced as a nurse for 12 years. Nine of those have been in the neonatal intensive care units. Taking care of babies like this little neonate.

[Slide.]

Now a neonate is defined as a baby that is born, whether premature or full term, until the third week of age. If you see, this little baby is about 1½ pounds. He falls right into the time line of when this partial-birth abortion procedure is routinely done. There general appearance, their color actually deteriorates because they deoxygenate their blood when they are in severe pain. We also see posture motor response, which is not normal. It's almost as though when they are exhibiting a pain stimulus.

Now this little girl, Sarah, she's under a pound. She is only 427 grams with 434 grams being 1 pound. When she was born at 23 weeks gestation, it required that she have a medication called Adavan, which is like valium. They were very concerned that she was on a fentanyl drip at different points. That is actually a pain killer for the discomfort of all the technology.

This is a little bit older. As you see, it was very important to even swaddle her while she's on a breathing machine there. It was important for her parents to put a tape into her isolet, where she could be nurtured by the parents verbally. We even gave a pacifier, so she can suck on something that is providing breathing tube. We also play internal womb sounds to these babies to kind of console them.

Now here she is several years ago with the same little doll. As you can see, she has grown quite a bit. But nurses have known that for years, that babies that have adequate pain control and they have people, whether it is just the nurses or adoptive parents, whoever is caring for the child, to give them emotional care. They feel better. They gain weight better. They have less incidence of inner-cranial bleeds. We see a lot of good outcomes.

Now unequivocally as Dr. White has said, the research has shown that these premature babies, they possess full sensation. This is a summary of the research that has been done. I just want to show you that this validates what nurses have always known for years. I have already told you a few of these, eye rolling, breath holding, jitteriness, eye squeezing, chin lip quivering, limb withdrawal. We also see physiological changes. Their heart rates will fall in pain. Or small babies, it will go down. Their oxygen levels, they also have stress hormones that go off the wall. Cortisol, adrenalin, will increase during pain.

Now this is Kelly Thorman of Toledo, OH, born in 1971. As you see, she doesn't require much sophistication of external life support. In the 1970's, there probably wasn't very much.

[Slide.]

This is her at 368 grams. That is three-quarters of a pound. That is her nurse's wedding ring on her wrist.

[Slide.]

Now as depicted on the front of Life Magazine. This is a baby that is the same age and weight as Kelly Thorman, the baby I just showed you. I have to ask, what is the difference? Both of these babies, whether inside or outside the womb, can perceive pain and experience it. But the difference is, the baby outside the womb is required to have humane care inside of the hospital. But this baby inside of the womb can be pulled violently down into a breech position, partially outside the womb, can perceive pain and experience it. What is it that I have discovered over the 12 years of taking care of them?

[Slide.]

We use just kind of sums it up for you. But basically, we see differences in their vocalizations. There's different kinds of cries. Even your small babies can actually moan, they can actually express situations. We see chin quivering, eye squeezing, we see eye rolling, all kinds of brow bulge, a square chin when they are experiencing pain activity. We see differences in their sleep wake cycles. We see a lack of consolability. Their sucking ability changes when they are being subjected to this procedure. There general appearance, their color actually deteriorates because they deoxygenate their blood when they are in severe pain. We also see posture motor response, which is not normal. It's almost as though when they are exhibiting a pain stimulus.
the bottom. But you know, as a premature neonate at the bottom and also as a pre-schooler, do you know that she can experience the same things. She can bleed, digest, swallow, and be fed as near. This baby can feel pain at both stages in her life. In fact, at both of these stages in her life, she had a learned response to pain. I will show you one of the reasons I know this.

[Slide]

This baby on his 3-month birthday, when he reached about 3½ pounds.

Mr. Hyde. Thank you, Ms. Morton. There’s a vote taking place on the floor. If you could close your remarks in about a minute or two, we are going to have to go to the floor to vote.

Ms. Morton. I am closing right now. This is the last statement. This baby, before he has been born, it requires that we warm his heel as you see on your right heel. After doing this several times to these babies, they actually know when that pain response is coming, because they will start to become agitated. Their heart rates will race when we put the warm pack on.

In closing, as a nurse and as also a mother, I am honestly surprised that this abortion procedure could be permitted on these babies. I believe that I have shown that there is unmistakable humanity. I hope with proposed legislation before you, that it will stop that.

Thank you.

Mr. Canady. Thank you, Mrs. Morton. I want to thank all the members of this panel. As you are aware, a vote taking place on the floor of the House. The members of the subcommittee must go to the floor to vote. We will return and reconvene as soon as the vote is concluded. The committee will now stand in recess.

[Recess]

Mr. Canady. The subcommittee will come to order. I apologize to our panel for the interruption. I will also tell you that the subcommittee will have to conclude its proceedings somewhat in advance of 1 o’clock due to the fact that the full Judiciary Committee has a meeting scheduled at that time. I regret that, I wish we could have an extended session here of questions, but that is not going to be possible.

In light of that, I would like to at this point recognize Mr. Hyde. We’re going to switch from abortion at this point and let Mr. Hyde have the floor with questions at this point. Then when it would have been Mr. Hyde’s turn, it will be my turn, Mr. Hyde.

Mr. Hyde. Mr. Canady, thank you for that gesture. Dr. White, I have yet to find a doctor who performs abortions that calls himself an abortionist. They all say they specialize in reproductive health. I have racked my brain and I try to find something reproductive about abortion. It is contrary, reproductive. Of course health is irrelevant for the fetus that is being aborted. It just seems ironic that this is the surgery that dares not speak its name.

Dr. Robinson. I have read over the years, about how many abortions have you performed?

Dr. Robinson. I really have great difficulty going back to 1953 when in New York City, we didn’t do them except under rather limited and special conditions when a committee of four or five physicians would get together and have vote concerning was this a reasonable reason for this abortion, this procedure to interrupt this pregnancy, just as we had committees to decide whether a woman could have her tubes tied or not. This was all done by vote of the group.

In Korea, since I was working with the Presbyterian Church, I was active in teaching, therefore others in the community were doing the same.

When I came back in 1961 or 1971, then at City Hospital I began getting involved in it. I can’t give you any sense. It has not been a major job. On the other hand, I have on many occasions introduced myself at church meetings as an abortionist.

Mr. Hyde. Thank you, Dr. Robinson. Mrs. Morton. Dr. Robinson. Oh, yes. Mr. Hyde. You care the first then.

Dr. Robinson. I am an abortionist. Mr. Hyde. That is an interesting juxtaposition.

Dr. Robinson. Well, we have Christian crusaders. We have the Christian inquisition in Spain. We have a lot of Christian militant. We have lots of Christians—

Mr. Hyde. Some more nominal than others, I daresay.

Dr. Robinson. I daresay.

Mr. Hyde. I have read a statement by Dr. Bernard Nathanson one of the founders of the modern abortion movement and who ran the biggest abortion clinic in New York for years. He said that he can’t escape the notion, he said, can’t escape the notion that I have presided over 50,000 deaths. Do you think your record could equal that?

Dr. Robinson. I doubt it.

Mr. Hyde. Or is Dr. Nathanson ahead of you?

Dr. Robinson. I doubt if that number—on the other hand, the thing he left out of his statement is that he found 50,000 women who were incredibly pleased.

Mr. Hyde. Who are these?

Dr. Robinson. Incredibly pleased with the outcome.

Mr. Hyde. No doubt.

Dr. Robinson. One of the pleasures of doing abortions is that no longer do I have to go to a committee. When women leave on the occasions that I have been involved or where the units do, these are very happy women.

Mr. Hyde. Do you ever find them remorse sets in? Do you ever find women who have had an abortion are troubled by it in later years?

Dr. Robinson. I find remorse occurs in many women. I do a hysterectomy in women and I think careful studies have indicated that grieving over this issue, as Koop said many years ago as Surgeon General, that this isn’t any more common than anybody else. It is an event in life.

Mr. Hyde. You have said that you have spent in your medical experience, you have witnessed women who have died from botched abortions. We are aware of that happening. The procedures are there. The mortality rate for the unborn in abortions is 100 percent though. Isn’t it?

Dr. Robinson. It better be.

Mr. Hyde. It better be.

Dr. Robinson. Yes.

Mr. Hyde. Thank you Doctor. I have no more questions.

Mr. Canady. Thank you, Mr. Chairman. I would like to continue, Dr. Robinson, with a couple questions for you.

Dr. Robinson. Dr. Marny Haskell prefers an abortion technique which he calls dilation and evacuation. Dr. James McMahon prefers a similar technique which he calls dilation and extraction. The same basic technique has also been called interuterine cranial decompression. Are you familiar with the abortion techniques that are used by Dr. Haskell and Dr. McMahon that he referred to by these particular terms?

Dr. Robinson. I must confess, Mr. Chairman, I don’t know what is these terms. I had never heard anything about this at all. I am in an academic center in which varying issues are discussed. I was totally unaware that this even existed.

Mr. Canady. Well that was a week ago. So you didn’t know anything about the subject you came to testify on today until starting a week ago?

Dr. Robinson. I know a lot about abortion. I know a lot about the attempts to describe what I am doing. But as a medical piece of information, this is not widely known. It is not generally known. It has not been published in literature. It has not been published in scientific journals and it has even been mentioned in throw-away journals.

Mr. Canady. Let me ask you this. Would you consider yourself to be familiar, have any familiarity with the subject now? You have been expressing opinions on it.

Dr. Robinson. I am very familiar with the subject right now.

Mr. Canady. OK. Very good. Glad to hear that. Now are you familiar with the paper by Dr. Haskell entitled, Second Trimester DNX 1988 and Beyond, which was presented as part of the National Abortion Federation’s Second Trimester Abortion From Every Angle Risk Management Seminar held in September of 1992?

Dr. Robinson. As I have testified before, I did not attend that particular meeting of NAF. I was not present. I have not seen that presentation.

Mr. Canady. Oh. You have not seen Dr. Haskell’s publication on that subject at all?

Dr. Robinson. I have not seen what he has published.

Mr. Canady. Have you consulted any other literature on this subject?

Dr. Robinson. There is no published literature as to what we consider the normal medical literature. If I did a Med-LIne search, I would not find this term anywhere in the Med-LIne search covering about 6,000 medical journals.

Mr. Canady. What term is that?

Dr. Robinson. Med-LIne search, it’s a wacko.

Mr. Canady. No. no, no. You said you would not if you did a Med-LIne search find this term.

Dr. Robinson. The term being used in the legislation.

Mr. Canady. I refer to some other terms. Dilatation and extraction, intact dilatation and evacuation, interuterine cranial decompression. What about those terms?

Dr. Robinson. If I was to look up the word dilatation and extraction, a standard D&E, 1988 and Beyond, it would likely be one of the safer methods of accomplishing a second trimester abortion. With that I am familiar with and have done it.

Mr. Canady. Dilation and extraction?

Dr. Robinson. D&E.

Mr. Canady. OK. Let me ask you this. Now a letter has been sent out by the National Abortion Federation in which you were quoted as saying that the drawings in some materials that I distributed, which are identical to those drawings on the posters, had little relationship to the truth or to medicine.

Now in your prepared testimony, which you submitted to the subcommittee, you said I have seen the sketches that have been passed around. They are medically inaccurate and not designed to advance proper understanding of a surgical procedure. Rather, they are designed to be upsetting and inflammatory to the lay person. Now there you said they were medically inaccurate. When you were giving your testimony a few minutes ago, I thought you said something a little different than what is in your written statement. Could you tell me what your current view is of these?

Dr. Robinson. I apologize to the committee. Coming down here I took advantage to read what I had prepared and did a little more research.

Mr. Canady. I have no problem with people changing their minds if they get additional...
Dr. ROBINSON. It is specifically used by I think that should be quite obvious that I can assume that doctors break laws that they know they are not supposed to be breaking. So if you are asking me a question that is illegal, I don’t want to do something that is against the law when they have another alternative to help that person if they don’t want to be pregnant. MS. MORTON. Yes. Dr. Smith. I would like to ask you a question. First of all, I don’t know how the people who do this are practicing. I don’t know that most of the times when women ask about abortion, and people do come to me and talk to me about it, they don’t usually go in saying I want a particular procedure. They usually go in saying I don’t want to be pregnant any more, or in a particular case if they find out that they have a baby that is incompatible with life, they generally don’t ask you, do you do D&Es? MS. WATTS. Dr. White. The answer is yes. MS. WATTS. Dr. WHITE. Dr. Smith. MS. WATTS. Dr. WHITE. Yes. Again. Dr. Smith. MS. WATTS. Dr. WHITE. For patients, I heard Ms. Morton make too, was that the fetus, the baby, feels pain. That is true with regard to other procedures besides this one, I assume? That the fetus would feel pain? DR. WHITE. I so testified. MS. WATTS. Dr. White. The answer is yes. MS. WATTS. Dr. WHITE. You are saying the babies, that it would undergo any other surgical procedures. MS. WATTS. Dr. WHITE. Would also feel pain? MS. WATTS. Yes. They certainly do.
Mr. FRANK. Will the gentleman yield?

Mr. INGLIS. No. No. I am going with the question. I have got another question. I am very interested in, and understand I am running back and forth between two sub-committees, but I understand that Dr. Robinson, you testified that partial birth is a misnomer, that this is not really what it is. I want to ask you, still referring for the difference between the child let’s say on these charts that is—I am not a medical expert, but I assume it’s about 5 inches, maybe less than that, that difference.

In other words, when the child is once delivered, which is a matter of inches I take it, you can explain to me the difference in your opinion, between the child that has been delivered and the difference between the child whose head is still in utero?

Dr. ROBINSON. Actually, I am not clear what difference you are looking for.

Mr. INGLIS. You said that there was not a—

Dr. ROBINSON. We have in our tradition we have other terms. I am surprised the word that has been given to the patient, to the woman. I have listened to the nurse testify as to what instinctively she has learned. In other words, when the child is once delivered, I have read some of the literature, although it’s not an area that I spend a great deal of time at. I have listened to the nurse testify as to what instinctively she has learned. In other words, when the child is once delivered.

Mr. HOKE. Dr. Robinson, you testified that partial birth is a misnomer, that this is not really what it is. I want to ask you, still referring for the difference between the child let’s say on these charts that is—I am not a medical expert, but I assume it’s about 5 inches, maybe less than that, that difference.

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much better for a woman who was seeking abortion. Is that correct?

Dr. Smith. No. First of all, there has been no proof that this procedure is safe for anybody.

Mrs. Schroeder. Wait a minute. Let me take back my time. That was not my question. My question is: is there such a child as we, in a sense, say this is safer for the woman, would you still want this to pass? You still want to outlaw this procedure?

Dr. Robinson. I already have said that this is not scientific. I mean, you are going to violate science.

Mrs. Schroeder. I mean we have two big views of what science really is. We are hearing about pain. My understanding, birth is also painful for babies. But is it? I think that we should do as we—Dr. Robinson, I understand you had some slides. Is that correct?

Dr. Robinson. Just pictures of congenital anomalies such as has already been adequately discussed here. I don’t think it would necessarily enhance the proceedings. It would prolong it. They are simply standard pictures of babies in very poor shape.

Mrs. Schroeder. Because of the interest. I think it is very important that we have some balance.

Dr. White, when you were talking about humanity comes from a brain. Does that mean if a baby does not have a brain then this procedure would be OK? Is that then no human?

Dr. White. Well, even the anencephalic child has a brain stem. While we have a great deal of difficulty defining brain death, as we do in adults, in children and certainly in infants, it is not true that under ordinary circumstances, a child would be born or would be at term age without and even a brain stem. I mean it is not impossible, but I mean the thing is, in general, the anencephalic child has a brain stem. Therefore, there is a brain.

Going to your question, would I consider this appropriate under those circumstances, that is, with the brain stem retained. My answer would be no.

Mrs. Schroeder. And then what if it were a mole? Well, never mind.

Dr. Smith. He doesn’t know what a mole is.

Mrs. Schroeder. I guess I feel a lot of pressure because the Chairman doesn’t want me to ask questions. But I have got many questions.

Mr. Spector. Mr. President, how much remains on my side?

The PRESIDING OFFICER. The Senator has 8-1/2 minutes.

Mr. Spector. I thank the Chair and yield the floor to my distinguished colleague from New Hampshire.

Mrs. Feinstein addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Who yields time to the Senator from California?

Mr. Spector. How much time would the Senator—5 minutes.

Mrs. Feinstein. I will do my best.

Mr. Spector. We have a number of Senators who have already requested time. I yield the Senator 5 minutes.

I say to my distinguished colleague from California that I wish we had more time, but we have many requests. I think it is important to hear the intentions of those in opposition who wish to respond. But I do yield 5 minutes to the Senator from California.

Mrs. Feinstein. I thank the Senator.

Mr. President, I rise to support the motion to commit to the Judiciary Committee, as the only woman in the U.S. Senate on the Judiciary Committee. This is a matter which basically affects women, and I think it really is appropriate to have the hearings that have been requested and to come to grips with some of the problems that are inherent in this legislation.

I would like to give you my major reasons for suggesting that hearings in the Judiciary Committee are appropriate.

I believe that the language in this bill is unduly vague. It is not based on medical terminology. The bill holds a doctor criminally liable for a procedure that is defined not in medical terms but in a description devised by legislators. I think we need to come to grips with that and find out exactly which procedures would be impacted by this legislation.

Second, Roe versus Wade already provides for States to legislate in the third trimester. And, in fact, 41 States already have statutes on the books which govern abortions in the third trimester. There are also very strong writings and beliefs that this bill would violate the Constitution. I think that is worthy of a hearing.

Finally, there is a very real human dilemma in this. Unfortunately, the genetic code which carries out God’s creation is sometime’s tragically faulty. And this produces heartbreaking circumstances in which children have developed in the fetus without brains, children have developed with the brain outside of the skull, children develop without eyes or ears, whose stomachs are hollow, and the materials having to do with intestines and bladder are created outside of the physical structure of the individual.

When we consider the nature of these heartbreaking pregnancies, these very dire circumstances, which must also consider the life and health of the mother. So I believe very strongly that this is the correct action to take, to have these hearings and to report this bill back to this body within a specified period of time.

Let me just very quickly speak to certain issues. In 1973, in Roe versus Wade, the Supreme Court established a trimester system to govern abortions. In that system, in the first 12 to 15 weeks of a pregnancy, when 95.5 percent of all abortions occur, and the procedure is medically the safest, the Government may not place an undue burden on a woman’s right to an abortion.

In the second trimester, when the procedure in some situations poses a greater health risk, States may regulate abortion, but only to protect the health of the mother. This might mean, for example, requiring that an abortion be performed in a hospital or performed by a licensed physician.

In the later stages of pregnancy, at the point the fetus becomes viable and is able to live independently from the mother, Roe recognizes the State’s strong interest in protecting potential human life. On that basis, States are allowed to prohibit abortions, except in cases where the abortion is necessary to protect the life or health of the woman. I repeat, the life or the health of the woman.

Contrary to the many myths put forward by opponents, abortion in the later stages of pregnancy is extremely rare and performed almost exclusively under the most tragic of circumstances—protect the life or health of a woman who very much
wanted that pregnancy, or in the case of a severe and fatally deformed fetus.

As I said, 41 States have enacted laws restricting abortions in the later stages of pregnancy. Even when such abortions have been restricted, States have virtually every case, made exceptions to protect the life and the health of the mother.

States such as Alabama, Arkansas, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Missouri, Nebraska, Nevada, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Utah—all these States, and many more, have recognized the crucial need to consider risks to a woman’s health, in addition to risks to a woman’s life, in balancing the important considerations of both the fetus and the mother. To do otherwise would be to fail to accord consideration to the safety and well-being of our Nation’s women. To do otherwise would be callous, and cruel.

Counsel chosen to remain silent on the issue—most likely because these abortions are so rare and considered so tragic, that new laws are not necessary to interfere with what many believe is a medical decision between a woman and her doctor.

THE FEDERAL GOVERNMENT SHOULD NOT BE STEPPING IN HERE

There are several compelling reasons why the Federal Government should not step in and interfere in this medical decision between a doctor and a patient.

First, there is no need to. Except in the rarest of cases, abortions late in the pregnancy simply do not occur, and when they do, as I have said, it is due to the most tragic of circumstances. Only one-half of 1 percent of all abortions are performed after the 20th week of pregnancy. Fewer than four one-hundredths of 1 percent (.04) occur in the third trimester, and nearly all of these are prone to severe fetal abnormalities or grave risks to the health or life of the pregnant woman.

Many of the people pushing this legislation profess to believe in States’ rights, and keeping government off our backs. Why, then, do they suddenly think Big Brother should step in when the issue is abortion? Roe versus Wade gave States the authority to regulate and even ban abortion after viability. Why, then, is there a compelling need for the Federal Government to interfere?

Let’s be candid. Although this Congress has seen a host of back-door efforts to restrict women’s access to abortions, this legislation represents a direct, and blatant, challenge to Roe versus Wade. Proponents of this measure openly admit that this is a strategic milestone in the road toward making abortion illegal in this country. If this measure passes and is enacted, it will be a significant victory for the antichoice forces.

THIS IS A MEDICAL DECISION

Finally and most importantly, the reason politicians should stay out of this is because this is a medical decision, not a political one. It is important to remember that in the heart-breaking cases where medical intervention in pregnancy is warranted—these were wanted pregnancies. The decision to have an abortion for these women and their families was one that they desperately tried to avoid. And the Federal Government has no business making that decision any harder on these families. Take the case of Viki Wilson.

Viki Wilson is a nurse who lives in Fresno, CA, with her husband, Bill, an emergency room physician, and their two children, Jon and Kaitlyn. Viki and Bill very much wanted more children and she became pregnant in August 1993 with a baby girl.

After what seemed to be a normal, healthy pregnancy filled with baby showers, a freshly painted nursery, and family members touching Viki’s stomach to feel the baby kick, Viki received a diagnosis that her beautiful baby girl had a fatal deformity, known as encephalocoeles—a condition where the brain forms outside the skull and is always, unconditionally, fatal.

Viki and Bill would have done anything on Earth to save their baby girl, whom they named Abigail. But she had no chance of survival.

Viki was warned that, if she continued the pregnancy, she risked rupturing her uterus, or causing a massive infection that would leave her unable to have more children consulting with their physicians, Viki and Bill decided that the safest thing to do was to abort the pregnancy.

An abortion at this late stage of pregnancy is not easy, and Viki’s doctor recommended a procedure known as intact dilation and evacuation. In layperson’s terms, it means attempting to induce cervical dilation artificially and removing the fetus intact. In cases such as Viki’s, the deformed head of the fetus is too large to pass through the cervix, and fluid had to be extracted in order to complete the delivery safely.

This abortion procedure saved Viki Wilson’s health and perhaps her life. It is the same procedure that opponents of abortion have called a “partial birth abortion,” in order to mislead people into believing that a live and healthy fetus is being disposed of. Nothing could be further from the truth.

After Viki Wilson’s story was published, I received a letter from a constituent of mine who had been through a similar tragedy. She wrote:

My husband and I lost our baby on March 10, 1995. Our baby was diagnosed with a hereditary diaphragm . . . preventing its heart and lungs from growing normally. My husband and I had to make the most devastating decision of our lives during my 19th week of pregnancy. This baby was our first child, and we had made so much preparation for its birth. The doctors gave us two choices: terminate the pregnancy, or continue the pregnancy with surgery in utero, understanding that the baby could only live for a few weeks under life support after birth . . . My health was at risk if I carried to term and my baby would not live for even one month on this earth.

This woman needed the same procedure that Viki Wilson had, the same procedure that this bill would outlaw.

And a woman named Karen Ham became critically ill during her second trimester and had to be flown 450 miles to a clinic in Colorado for an abortion necessary to save her life. When she arrived, she was in shock and about to go into cardiac failure.

This body is attempting to legislate a complicated medical decision without even so much as an adequate public hearing on the matter. I listened to Senator SMITH on the floor some months ago. It was the first time I had seen photos depicted on C-SPAN full screen. With all due respects, I believe that his presentation was one-sided and fully misleading. If this legislation is to go forward, it is essential that the Judiciary Committee hold hearings on this bill to ascertain criminal liability for doctors who perform this late-term procedure.

We need to hear from the experts—the doctors and other health professionals, and from the parents who have been through this procedure.

There are many health risks that women can face during pregnancy, risks that could worsen during pregnancy, requiring a late-term abortion: heart disease, cancer, diabetes, just to name a few. These risks cannot be dismissed as we consider legislation that would ban what may be the only medically safe option to terminate a pregnancy.

S. 959 REPRESENTS A DIRECT CHALLENGE TO ROE VERSUS WADE

Every Senator in this Chamber should make no mistake about what this bill is: This bill is a direct challenge to Roe versus Wade.

Roe versus Wade firmly established that after viability, abortion may be banned as long as an exemption is provided in cases where the woman’s life or health is at risk. This provision was explicitly reaffirmed by the Court in Planned Parenthood versus Casey.

This bill is unconstitutional on its face because it allows for no exception in the case where the banned procedure may be necessary to protect a woman’s health. Even further, the bill holds the doctor criminally liable unless he or she can prove that the procedure was the only one that would have saved a woman’s life. The doctor must go to court to prove this. This places an undue burden on access to late-term abortions to save a woman’s life under Roe versus Wade.

The Smith bill also ignores the viability line established in Roe and reaffirmed in Casey. The bill would criminalize use of a particular abortion procedure, virtually without exception, even before fetal viability. This again constitutes an undue burden—prohibiting a procedure that for some women would be the safest in light of their medical condition.
The proponents of this bill know quite well the challenges to Roe this legislation presents. That is their intent. The magnitude of this bill is enormous for the long-term preservation of safe and legal abortion in this country. It will have indirect and direct effects on the lives of women facing tragic and health-threatening circumstances. This bill needs to be considered thoroughly before it is brought to the floor for a vote.

I urge my colleagues to vote for the motion to commit S. 939 to the Senate Judiciary Committee for hearings.

I would like to enter into the RECORD a letter written to the American Medical Association by a San Francisco physician, David Grimes.

The PRESIDING OFFICER. The Senator’s time has expired.

MRS. FEINSTEIN. May I have 1 minute?

Mr. SPECTER. The Senator may. Let me say we are going to have to proceed on a limited basis. I already have requests from about 10 Senators to speak. The Senator may have 1 additional minute.

MRS. FEINSTEIN. I thank the Senator. I would like to enter a letter into the RECORD from a physician, an obstetrician, a surgeon, who served as chief of the Abortion Surveillance Branch at the Centers for Disease Control in Atlanta, where he did some preliminary work in evaluating third-trimester abortions, and finds this issue to be largely a smokescreen for those opposed to abortion. He points out the rarity of these abortions. He points out that in a study in Atlanta, the rate of third-trimester abortions was 4 per 100,000 abortions. I think this letter provides some accurate and vital testimony.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:


Re H.R. 1833/S. 939.

ROSS RUBIN, J.D., Legislative Counsel, American Medical Association, Chicago, IL.

DEAR MR. RUBIN: As a member of the AMA and a long-time provider of abortions, I write to express my concern about the implications of the bill. I understand that the AMA has a history of opposing abortion, and I believe that the American people are sick and tired of politicians doing just this: Ducking and weaving and dodging. The All shuffle, that is what is in the Senate. And let us not face reality, do not make the tough choice, do not give us a recorded vote, do not come out here and vote your conscience; shuffle it off to committees.

I originally thought that the Senator from Pennsylvania was going to make it a 45-day motion, which would have taken us to December 23, which means it would have taken us into the next year. Then he surprised us, I suppose, in this element of surprise which is so common here, and he brought it back to December 7, 19 days, where he says we will report the bill with amendments, if any. Of course, what he does not say is they could report the bill with a recommendation to defeat it. He does not point that out.

This is dilatory. It is an act of cowardice. It is a refusal to face reality, to face the issue. That is what this is about.

I want to make it very clear to my colleagues, I may lose on this motion today. I hope not. I think when we get finished with the debate you will know why I hope not. But if I do, and this motion carries, I want my colleagues to understand that we are going to vote on this. We will vote on it on the next bill that comes in here if it is an hour after this, a day after this, a week after this, a month after this. The next time I can get this amendment attached, it is going on and we are going to vote on it because I am not going to let the U.S. Senate back off from going on record on this issue.

Not tomorrow, not after some hearings. We have already had hearings. The House has had hearings. The House had a subcommittee markup, a committee markup, a report. We have had all of that. We have had a debate. Senator BOXER and I debated last night on two national programs.

Mr. SMITH. Mr. President, I yield whatever time I may consume to myself.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. SMITH] is recognized.

Mr. SMITH. Mr. President, I rise in opposition to Senator SPECTER’s motion to refer H.R. 1833 to the Committee on Judiciary.

Make no mistake about what this motion is. Let us not kid ourselves. It is a motion made by the opponents of the bill that is intended to get the bill off the Senate floor, to get it out of the public spotlight, to spare the full membership of this body from having to face up to the grisly reality of partial-birth abortions. That is what this motion is all about. Nothing else.

They do not want to see what happens in this grisly, disgusting procedure. They do not want the American people to see it. That is why they want to move this bill off the floor and send it back to Judiciary.

But frankly, Mr. President, the American people are sick and tired of politicians doing just this: Stepping on the gas and weeping and dodging. The All shuffle, that is what it is here in the Senate. Let us not face reality, do not make the tough choice, do not give us a recorded vote, do not come out here and vote your conscience; shuffle it off to committees.

I originally thought the Senator from Pennsylvania was going to make it a 45-day motion, which would have taken us to December 23, which means it would have taken us into the next year. Then he surprised us, I suppose, in this element of surprise which is so common here, and he brought it back to December 7, 19 days, where he says we will report the bill with amendments, if any. Of course, what he does not say is they could report the bill with a recommendation to defeat it. He does not point that out.

This is dilatory. It is an act of cowardice. It is a refusal to face reality, to face the issue. That is what this is about.

I want to make it very clear to my colleagues, I may lose on this motion today. I hope not. I think when we get finished with the debate you will know why I hope not. But if I do, and this motion carries, I want my colleagues to understand that we are going to vote on this. We will vote on it on the next bill that comes in here if it is an hour after this, a day after this, a week after this, a month after this. The next time I can get this amendment attached, it is going on and we are going to vote on it because I am not going to let the U.S. Senate back off from going on record on this issue.

Not tomorrow, not after some hearings. We have already had hearings. The House has had hearings. The House had a subcommittee markup, a committee markup, a report. We have had all of that. We have had a debate. Senator BOXER and I debated last night on two national programs.

Mr. SMITH. Mr. President, I yield whatever time I may consume to myself.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. SMITH] is recognized.

Mr. SMITH. Mr. President, I rise in opposition to Senator SPECTER’s motion to refer H.R. 1833 to the Committee on Judiciary.

Make no mistake about what this motion is. Let us not kid ourselves. It is a motion made by the opponents of the bill that is intended to get the bill off the Senate floor, to get it out of the public spotlight, to spare the full membership of this body from having to face up to the grisly reality of partial-birth abortions. That is what this motion is all about. Nothing else.

They do not want to see what happens in this grisly, disgusting procedure. They do not want the American people to see it. That is why they want to move this bill off the floor and send it back to Judiciary.

But frankly, Mr. President, the American people are sick and tired of politicians doing just this: Stepping on the gas and weeping and dodging. The All shuffle, that is what it is here in the Senate. Let us not face reality, do not make the tough choice, do not give us a recorded vote, do not come out here and vote your conscience; shuffle it off to committees.

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Everybody knows what happens here, especially the opponents. They know what happens here in this process. I am going to show you what happens here in this process in a few moments. Everybody knows what happens, and you will notice the opponents do not talk about what we are talking about here. We are talking about here is broad legal concepts, legalese,” I hear from the Senator from Pennsylvania. This is not legalese.

Three inches from the head coming into this world is the rest of the baby’s body, 3 inches and maybe 3 or 4 seconds, the difference between when that needle or if that needle, Mr. President, is injected into the head of that child. That is what we are talking about here, I say to my colleagues. That is what the issue is. That is why nobody wants to talk about it on the other side. Of course, they do not want to talk about it because it is a horrible, grisly, grotesque, gruesome killing of a child that is 3 inches from completion through the birth canal.

So 3 inches and 3 seconds before that happens, you insert the scissors in the neck, you open up a wound, you insert the catheter and you suck the brains out. But for 3 more seconds and 3 more inches, there is under the full protection of the Constitution of the United States and, as the Senator from Pennsylvania pointed out, under the protection of the law. Three seconds and 3 inches; 3 seconds and 3 inches.

The opponents voted down an effort to send the matter back to the Rules Committee and did the job the American people sent them here to do in the House of Representatives 288 to 139—288 to 139. The House of Representatives had the courage to face this issue. It was debated, they had hearings, they had markups, subcommittee and full committee hearings, votes, full floor debate, committee report.

As if the American people would not know, the opponents here do not know what is going on. Does anybody really believe some Senator is going to change their vote as a result of 19 more days? Give me a break.

I have been called an extremist for pointing this out, I say to my colleagues—an extremist. It was said on the floor yesterday, not directly attributed to me, but it was said on the floor that those of us who support this bill are extremists. Senator KENNEDY said it. Senator BOXER said it. Others have said it.

Well, here is a list of some of those extremists: The Democratic leader in the House, RICHARD GEPHARDT; Democratic Whip WHID BONIOR; Representative REPRESENTATIVE LEE HAMILTON, ranking Democrat on International Relations; Representative DAVID OBEY, ranking Democrat on Appropriations; Representative JOHN MOAKLEY, ranking Democrat on the Rules Committee; Representative JOHN LAFAULCE, ranking Democrat on the Small Business Committee; Representative PATRICK KEN}-
method of abortion, which, as Dr. Haskell carefully describes, takes 3 days."

It is all a phony argument. It is a phony argument to keep from getting to the facts of what is happening.

I say to my friends who claim to be pro-choice and go back to the basic issue here: 3 inches, 3 seconds. That is what we are talking about, the difference between living and dying.

What is the difference, Senator Specter? It is the difference between a child whose head is in the womb 3 inches from birth, 3 seconds from birth, and a child whose head is removed from the womb, 3 inches and 3 seconds later? Who are we to say that one should live and one should die? What is the difference?

Mr. SPECTER. Does the Senator yield for a response to a question?

Mr. SMITH. I yield for a response to that particular question.

Mr. SPECTER. The difference is the standard of life established by the laws of the United States as determined by State assemblies, by Congress, and permitted by the courts.

How does that differ upon a C section? Or how does that differ before the child has entered the vaginal cavity or the vaginal canal?

Does the Senator from New Hampshire say that those late-term abortions are satisfactory? There you have a situation where you do not have the 3 inches which you talk about but you have reaching the fetus the same substantive contents, through a C section.

I ask the Senator to address that question. If you reach the fetus through a C section or you reach the fetus some other way before the fetus comes into the vaginal cavity, does that make it satisfactory in terms of the Senate from New Hampshire?

Mr. SMITH. No.

The issue here is whether or not this is a chilling matter. It is engaging in the particular procedure that we are talking about.

This procedure, when a child is that close to being born, whether or not this is not a cruel procedure to use against a child that is born, with feeling. That is the issue here.

Mr. SPECTER. If the Senator would yield for one final question on this subject, would the Senator not prefer a statute which dealt with a late-term fetus, in the same medical condition which also precluded a C section?

Mr. SMITH. The answer to that question is yes, but that is not what we are talking about here.

Mr. SPECTER. You may have that if it is referred back to the Judiciary Committee.

Mr. SMITH. I am smarter than that. I know what will happen when it goes back to the Judiciary Committee. I know full well what the Senator's position is.

The issue here is whether or not this type of abortion, and indeed whether it is an abortion—is that what we define as an abortion—a child that is brought purposely into the birth canal, 90 percent of which comes into the world with only 10 to 15 percent of the child still remaining in the birth canal, whether or not that is a birth or not. So we talk about partial birth.

Mr. INHOFE. Would the Senator yield to a couple of questions before yielding, would the Senator read a statement from the registered nurse I discussed yesterday? I want to have that read before I make a comment.

Mr. SMITH. We have that and are happy to provide that to the Senator from Oklahoma.

Mr. INHOFE. If the Senator would not mind reading the statement of Brenda Shafer.

Mr. SMITH. This is a nurse named Brenda Pratt Shaffer, an RN who assisted Dr. Haskell in performing abortions, in the clinic, or at least assisted a doctor who performed this. She was so overcome by what she saw that she basically
Mr. SPECTER. I am not getting involved now, as to whether I take it personally or not. But it has not just been this lawyer. It is the whole profession. It is the whole profession that somehow comes into disrepute, not just when we are talking about tort reform or product liability or medical malpractice—we are talking about the Constitution.

How about those nine lawyers across the street, the Supreme Court of the United States? How about Justice Thomas? Did Justice Thomas ever need a lawyer? How about all those pro-life lawyers whom this Senator has supported because, as a matter of principle, they are lawyers and they have some useful function to perform?
So, when the comment is made that this Senator is engaged in legalism—and now, Mr. President, I will go to my time because I want to respond to the Senator from New Hampshire—I am just a little concerned, candidly, about some of the things Mr. Specter is saying.

When the Senator from New Hampshire says that the Senator from Pennsylvania does not even want to look to see this, he is wrong. As soon as he puts his chart up, I go down and take a look at it.

When the Senator from New Hampshire says, I don’t care what Senator Specter says about—legal jargon, I would say to the Senator from New Hampshire two things. First of all, he ought to be concerned about the Constitution. If he wants to call that legal jargon and minimize it, that is up to him. But these are not unimportant matters.

And when the Senator from New Hampshire says that there are people who do not want to come out and want to vote, I object to that. I do not call the Senator from New Hampshire an extremist. I do not get involved in those pejorative, name-calling terms. But I do expect that there be an accurate representation, that I am not talking legalese when I start off and I say the first two considerations that I have are the humanitarian matters and the matters of the medical procedure. That is before I get to the Constitution, before I get to statutory interpretation. Not that those matters are insubstantial.

I have heard the Senator from New Hampshire say “grisly” three times and “grotesque” four times and “brutal” and “grotesque” and “sickening.”

This Senator is very concerned about that. This Senator also witnessed the birth of his two sons, and this Senator held the placenta of his older son right after his son was born. And this Senator has a grandchild. And, like the Senator from Oklahoma, I believe that the failure of this body to hold hearings on this legislation represents an appalling disregard for the life and health of the mother.

I am concerned that all of a sudden we are saying we do not need to have hearings on this very significant piece of legislation. We have heard that the House has had hearings. The House had debate. The House heard the proponents and the opponents of this legislation. One place where this was the U.S. Senate. We are two distinct bodies, and we are entitled to hold our own hearings, to make our own decisions, to ask our own questions on this very, very important question.

To hear the debate, at times I think that people actually believe that women casually and blithely make this decision about having an abortion under any circumstances. It is a difficult decision, but even more so when we are talking about late-term abortions. They are rare. They are exceptional. They are there because a woman’s health is in danger. So it makes this decision all the more tragic. And it certainly is a nightmare for the woman. It is not something that she just does casually.

I think it is unfortunate that many have made this sort of impression about women and about this legislation. Twenty-two years ago the U.S. Supreme Court issued a landmark decision in the form of Roe versus Wade. It carefully crafted and balanced that decision, and said that a woman’s interest in making the decision about her reproductive right was paramount. But it also said that imposed a liability; that the States had the right to prohibit abortion so long as they allowed an exception for when a woman and her health is in danger. That is an important exception that this legislation does not allow. No matter what the Senator from New Hampshire says, it does not allow it. Oh, sure. Offer it as an affirmative defense. Once the doctor performs this procedure the doctor is going to be in court and then he has to prove that. That burden of proof is going to be enormous.

So that is what we are talking about. There is no exception for the doctor making that medical decision. So now we are saying in this climate today where the doctors have already been killed on the issue of abortion—with death threats, intimidation, and harassment—they are now saying you are going to face criminal prosecution because you performed a procedure in order to save the life of the mother. That is what we are saying in this legislation.

I think they say, “Well, what are the alternatives to this?”—what is it that we should be discussing in the hearings—but what are the alternatives? It is easy for them to say the alternative is a Caesarean section, which interestingly enough has four times the risk of death, or induce labor, or potentially a life threatening disorder such as cardiogenic edema, a hysterectomy, which means a woman cannot have any more children.

So that is what we are talking about in terms of tradeoff in this legislation—the life and health of the mother in order to avoid criminal and civil prosecution of her doctor. That is how this legislation is structured. I hope that we will give this matter serious regard and hearings because the United States is uniquely implored to determine what should be properly a decision made between the doctor and his or her patient on what is a very, very critical decision for a woman having to make in these rare instances. I emphasize that these are rare instances. And when the Senator from New Hampshire says, “Well, these are elective procedures, that 80 percent are elective,” let us talk about that. There is no medical definition for “elective.” It is only when someone has to make the decision that is final.

For example, if a person had a heart attack and they are in a coma and somebody performed CPR, that is not...
eleven, because they were not invol-
olved in the decision. But if a person
goes to a doctor and the doctor said
you have a serious heart condition, if
you do not go tomorrow to the hospital
and have surgery, you will die, that is
eleven because that person has made
decisions for you.

So I think that there has been a lot
of misrepresentation. This is a serious
issue. We should have hearings. I can-
not understand why anybody would be
afraid of the facts. Why are we so afraid
of the facts? Why are we so concerned
that we cannot in opposition have hearings and hear the facts, and everybody have a chance to speak be-
fore the legislative committee?

So I urge the Members of this Senate
to support the motion made by the
Senator from Pennsylvania.

Mr. SPECTER. Mr. President, how
much time remains?

The PRESIDING OFFICER. Forty-
eight minutes.

Mr. SPECTER. Mr. President, I yield
5 minutes to the distinguished Senator
from Vermont, Senator JEFFORDS.

The PRESIDING OFFICER. The Sen-
ator from Vermont [Mr. JEFFORDS] is
recognized.

Mr. JEFFORDS. Mr. President, I rise
today in support of the motion to com-
mit the bill before us to the Judiciary
Committee, and in defense of the con-
stitutional right to privacy, as well as
to protect the sanctity of human life.

This bill has not been considered by
any Senate committee, nor have Sen-
ators had the benefit of learning more
about this bill from Senate hearings. It
passed the House less than a week ago.
I suggest that we need more time to
study the broad-ranging implications
of this bill. This motion suggests a
time limit of 19 days, a very short time
considering the complexity of this issue.
But at least we will have an op-
portunity to learn more about what
this procedure is, and why it is being
utilized.

Mr. President, for the committee to
consider and hold hearings on this far-
reaching bill is of critical importance.
I am disturbed by the misinformation
that is floating around about this bill.
This bill outlines a particular late-
term abortion procedure subjecting the
doctor who performs it to both crimi-
nal and civil suits. It matters not
whether a procedure is medically nec-
necessary to save the life or health
of the woman. That is the critical ques-
tion here.

We all need to be clear about what
effectively is that we are not voting on
today. We are not voting on whether or
not we protect the sanctity of human life. We are not voting on whether or not
we will intercede between pregnant women
and their doctors to determine what
medical treatment is. Nor are we so con-
sciously medically and ethically appro-
priate for all women in all circum-
cumstances. No. The women who have
had these procedures speak passion-
ately about their children, their fami-
lies, and their sorrow at losing their
pregnancy.

They also speak patiently in defense
of keeping this procedure, this best of
different options for them and their
baby. They will live within this safe,
available, and legal. Their lives were,
and their lives are at stake.

This is an unprecedented intrusion
into the practice of medicine. Congress
has never before acted to ban any med-
cal procedures. The American College
of Obstetrics and Gynecologists, in
writing about the bill—and I quote them:

'...does not support H.R. 1833, the Partial-
BIRTH ABORTION BAN Act of 1996. The college
finds it very disturbing that Congress would take
any action that would supersede the
medical judgment of trained physicians and
criminalize medical procedures that may be
necessary to save the life of the woman.'

Twenty-two years ago, the U.S. Su-
preme Court handed down a landmark
decision, Roe versus Wade. The Court’s
decision established, under the right to
privacy, a woman’s right of self-deter-
mination in matters regarding her
reproductive decisions. The American
College of Obstetrics and Gynecologists,
in writing about the bill—and I quote them:

'The court’s decision, Roe versus Wade. The Court
wisely left restrictions on postviability abortions up
to the States. This strikes me as quite
consistent with much of the legislation
we have recently considered on many
other matters, choosing to leave regu-
lation to the States.'

Roe versus Wade had a caveat,
though, about these State-imposed
viability restrictions. States may
not—not under any cir-
cumstances outlaw abortions necessary
to preserve the life or health
of the woman.

Also, subsequent Supreme Court de-
cisions have held that States may not
outlaw using specific abortion proce-
dures in cases that endanger the wom-
an’s life or health.

These court decisions and, in my
view, decency and common sense dic-
tate that doctors must be able to
use whatever procedure will, in their
professional judgment, be safest for
their patients.

This is a basic tenet of the practice
and regulation of medicine in this
country.

The PRESIDING OFFICER. The Sen-
ant’s time has expired.

Mr. JEFFORDS. There are expert
professional licensing boards, accredi-
tation councils, and medical associa-
tions that guide doctors’ decision-
making in the complicated and dif-
ficult matters of life and death. Let us
continue to leave it to the profes-
sionals.

The PRESIDING OFFICER. Who
yields time?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. Who
yields to the Senator from Nebraska?

Mr. EXON. Will the Senator yield?

The PRESIDING OFFICER. Does the
Senator from New Hampshire yield
time? Who yields time to the Senator
from Nebraska?

Mr. SMITH. I yield to the Senator
from Nebraska.

The PRESIDING OFFICER. The Sen-
aor from Nebraska is recognized.

Mr. EXON. I thank the Chair and I
thank my friend, I have been following
this debate with great and keen inter-
est, and I have listened to the
‘Nightline’ program last night that
featured Senator BOXER and Senator
SMITH. I have listened to the debate
this morning as much as I could.

After the remarks of my friend by my
great friend and colleague from
Vermont, it leads me to ask this ques-
tion which is troubling to this Senator.
I have heard lots of remarks about peo-
ple who are not in this Senate, in fact,
who are not here. We are not voting
on whether or not a person is pro-
criminalize medical procedures that may be
necessary to save the life of the woman.

We are voting on whether or not a person
is pro-life, or pro-choice spectrum, anyone is
always totally comfortable with their
position. But we have to make these
decisions, and therefore I think this is
a very important vote.

As a father of three and a grand-
father of eight, I have experi-
enced with regard to family and to fam-
ily values that I hold very, very dear.
From the very beginning on abortion, I
have held, rightly or wrongly, that I
was not in support of abortion except
to save the life of the mother. I under-
line that, save the life of the mother—
or in promptly reported cases of rape
or incest.

Now, a lot of people disagree with
me, but at least that has been my posi-
tion from the beginning all the way
through these 25 years. What I come
back to is the matter of conscience
that I am very much dedicated to. So I
ask the question of my friend and col-
league from New Hampshire with re-
gard to the saving life of a mother.

I have heard the Senator from
New Hampshire say on numerous occasions
that if the life of the mother is in jeop-
dardy, under the procedures that we are
debating right now, there are provi-
sions in the bill that would allow the
doctor to proceed even with this late-
term abortion, call it what you will,
doctor could do that if the doctor
determined that the only procedure that would likely save
the life of the mother if, indeed, the
life of the mother was in danger.
Would the Senator from New Hampshire please explain to me if I have this correctly interpreted because it will be a key factor in the way I vote on this matter.

Mr. SMITH. I respond to the Senator from Nebraska by saying that the Senator has it exactly right. There is a life-of-the-mother exception here. I will specifically refer to it in a moment. I would just say that in this process, this partial-birth abortion process, a lot of the medical experts that we have have indicated it is a very rare opportunity when the mother’s life would be in danger, but if it is, we take care of that, and I will point that out in a second.

However, the issue here is that where you forcibly stop a birth by not allowing the head to be delivered, it would just seem to me, if the mother’s life was threatened at that point, you would allow the baby to be born. Whatever happens to the baby after that, if your focus is on the mother, then let the baby be born. I cannot see how keeping the baby from being born and then going through the process that we have already described here helps or enhances the mother’s health or life.

Mr. EXON. If I might interrupt then, if I can. I think the Senator is saying, since for all practical purposes under the procedure outlined the birth has already taken place and therefore the mother’s life could not be more in danger by allowing the head to emerge into the world—in other words, at this particular point it is not a test of whether or not the mother’s life is in danger?

Mr. SMITH. At that point. Were that to be the case, then there are provisions here, and let me specifically refer to it so that the Senator will not have any concerns.

If it were to be the case—and I cannot imagine where it would be, but were it to be the case in subsection (e) of the bill that we have here, it says that if a doctor reasonably believes that a partial-birth abortion is necessary to save the life of the mother, then he or she, that doctor, simply proceeds and cannot be convicted of the violation of the law, simple as that. So the life of the mother exception is there.

Again, I just want to point out that where you have a procedure that takes a period of 3 days, including dilation and extraction, and all the things in preparation for this, the preparation is for the abortion so this is not an emergency as has been described on the floor by others in the sense there is some immediacy to save the life of the mother. Were there to be a complication—I am not a doctor, I do not want to interfere with the doctor-patient—this is a matter that the doctor would deal with and simply would not be convicted.

We have the right of self-defense. If someone broke into your home and you shot them, somebody could accuse you of murder, but you certainly were within your rights to do what you did to protect yourself, as a mother would be within her rights to protect her rights should this child, fetus, whatever, be an immediate threat to her life. We protect that.

Mr. EXON. I thank my friend for that explanation, and I thank him for yielding time to allow us to make sure I understood what I thought I understood. After listening to the Senator, I think that he has given me a satisfactory explanation of the legitimate concern in this Senator’s mind.

Mr. SMITH. I think the President pro tempore has asked the Senator to respond to it so that the Senator will not have it.

The PRESIDING OFFICER. Who yields time?

Mr. SMITH. Madam President, no one else at the moment is interested in time. How much time is remaining?

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from New Hampshire has 47 minutes, 48 seconds.

Mr. SMITH. Madam President, I yield myself whatever time I may consume.

I just want to respond to a couple of points; they are minor points at this point in the debate. But in response to Senator SPECTER regarding this motion, we received a copy of a motion to continue it. We came here today on the floor expecting to see that. Then it was changed to 19. It was crossed out. I will accept the Senator from Pennsylvania’s word that he changed his mind or overruled his staff. But this Senator received information from the Senator’s staff that said 45 days, which would have delayed the bill on to the next year.

But regardless, in any case, the issue here is still dilatory and it is also the issue of killing the bill. You would have to not have any sense of humor whatsoever to not realize what is going on here.

There was a press conference yesterday with Kate Michelman.

Question: “Do you have any read on the breakdown on the Judiciary Committee if it goes to the Judiciary Committee?” [That is the bill.] “And does it differ from the Senate as a whole? Do you have a better shot at getting the kind of changes you might want in it?”

Michelman: “Which is our goal, is to have it end there.”

Question: “What is the read on the committee?”

Michelman: “So the committee, the constitution of the Judiciary Committee and where we hope to see the demise of this legislation really is a mirror of the Senate as a whole. There is a tip of the hat, I think, to the committee that I don’t remember the whole committee—but I would say it’s going to be very close, a very close vote. But it does give me some very important rational arguments, presenting some expert testimony that we won’t have the opportunity to do if this bill comes up today in such a rush, a mad rush to pass this legislation.

“So I think there’s a great chance of, again, having a more moderating influence over the House-passed legislation if we can get it to the committee to do this.”

In other words, it is to kill the bill. That is all there is to it. I respect the right of the Senate to defeat the bill. I respect that. Of course, I do. That is democracy. But I would also like to have Senators step up to the plate and vote yes or no.

I am going to again repeat that this Senate will vote on this before we go out for the Thanksgiving recess. We will do it on one of the days, on Bosnia, or on anything else that comes hear. The next vote that comes through here that I can get this on, it is going on if this thing goes to committee. We are going to vote on it because I want Senators on record either saying yes to this procedure or no to this procedure.

We are going to have that vote. I make that commitment. I promise you we will have this vote. So I am hopeful that we are not going to have this thing referred to committee to basically repeat a process that has been going on for weeks and weeks and weeks, months in the House of Representatives.

There has been plenty of materials written and plenty of studies, been plenty of hearings—a hearing in the House, markup, committee meetings, and so forth. So that is not the issue. If we were going to use as a prerequisite in the U.S. Senate not voting on anything that has never had a hearing, we could reduce the votes around here dramatically, believe me, probably by as much as 75 percent, because about 75 or 80 percent of our votes are on things we never had hearings on. So when it comes to something like this, one of the most important issues of our time, we want to shuffle it off to committee and try to kill it, because that is exactly what the goal is here as stated by Kate Michelman and other opponents on this bill.

Madam President, at this time I yield whatever time the Senator may consume to the Senator from Indiana. Mr. SPECTER addressed the Chair.

Mr. COATS. I thank the Senator for yielding.

I wonder if my colleague from Pennsylvania has a question or—

Mr. SPECTER. No.

Mr. COATS. I would be happy to yield for a question.

Mr. SPECTER. I would be glad to withdraw my request for recognition.

Mr. COATS. Madam President, I think the Senator from Illinois was right in his comments on New Hampshire for yielding. I had asked him for some time, and I appreciate the opportunity to speak to this issue.

This is not a pleasant issue to debate on the Senate floor. It is not a confrontation issue to debate on the Senate floor, but we are not elected to come here just to discuss and debate pleasant issues. We are likely to face some
of the most difficult issues that the country has to face, face them honestly and openly, and in the end cast our position either for or against.

There probably is no issue that is potentially more divisive and certainly more relevant to the issue of inclusion and the weakening of our society than abortion.

Senator before they vote to fully understand the medical procedure, to think about the even the most outspoken, courageous, forward leaders of the movement for inclusion takes such a firm stand against inclusion of the weakest in our society.

And I think that is a debate that we have to pursue and continue. However the debate today is not on that issue. The debate today is on a much more specific medical procedure. It has been well-discussed on the floor, well-documented on this floor. It is difficult to discuss, difficult to view the graphic illustration of the procedure itself. Yet I think it is necessary. I will not repeat that graphic discussion.

But that is incumbent on every Senator before they vote to fully understand the medical procedure involved, fully understand just exactly what is taking place surgically and medically in the partial-birth abortion, or whatever term any Senator wants to place on this procedure. You do not have to call it partial-birth abortion. You do not have to label it at all. But it is extraordinarily important. I believe, for everyone to at least avail themselves of an understanding of what is taking place here medically, what the procedure is, because I think an understanding of this procedure, regardless of what label you give it, has to do more than just give us pause. It forces us to ask ourselves some very basic questions concerning whether or not we, as a society, have an obligation to state in law whether or not we conducted or support such a procedure.

If we have all done this in another country, we would not be standing here labeling it as a violation of human rights. If it were done in a war, we would call it a crime against humanity. But here we are trying to calmly, rationally discuss a procedure which many have called the description of which many have called descent into almost barbarism.

Madam President, I do not believe this is just another skirmish in the running debate between left and right. I believe this is an issue that raises some of the most basic questions that ought to be asked in any democracy: Who is my neighbor? Who is my brother? Who do I define as inferior and cast out of the human family? What is the value of a human life? How do I value in both law and in love? I do not believe this should be a matter of ideology. I think it is a matter and a question of humanity. It should not be a matter of what constituency I represent. It is not just a decision on behalf of our Nation's politics, but a matter of our Nation's soul and how our Nation will be judged by God and by history.

In this body, we can agree and disagree on other matters of social policy, yet I think we ought to come together and agree on this: That a born child should not be subject to violent and to death. Surely, there is no disagreement on that. The question is, should an unborn child be subject to the same protection? I hope that at least in this body we could come together, Republicans and Democrats, liberals and conservatives, and begin to define those situations in which we can agree on this. We know that we have a scriptural injunction is let your yea be yea and your nay be nay. Do we not have to commit is simply an unwillingness to take a stand, to let people know where you stand.

There is nothing that is going to be gained by committing this to a committee that they can study it and which many have called descent into an abyss of committee consideration that we know will paper over and delay for an unknown point in the future. There is no lack of information available to Members. There are no unanswered questions outstanding relative to this procedure.

So the motion to commit is what it is: It is a procedure to allow us to avoid dealing with an uncomfortable subject. Everyone needs to know that a motion to commit is simply an unwillingness to take a stand, to let people know where you stand.

There is nothing that is going to be gained by committing this to a committee that they can study it and which many have called descent into an abyss of committee consideration that we know will paper over and delay for an unknown point in the future. There is no lack of information available to Members. There are no unanswered questions outstanding relative to this procedure. All the materials are available for people to look at and to discuss and to examine and to form a conclusion over.

Let us have some courage to stand on our convictions one way or the other. Those who have spoken on the floor both for and against this procedure speak out of conviction. I am not here to question their motives. I accept their convictions. But we are not elected to avoid expressing that conviction by our vote. If cynicism exists in our electorate, it is because we keep playing these games.

The scriptural injunction is let your yea be yea and your nay be nay. Do we not at least have the courage to let our yea be yea and our nay be nay on the most fundamental question and issue probably facing this body, the very issue of the meaning of life? Are we going to take a pass? Are we going to say that is too tough for us to take? Are we going to say it is politically too sensitive?

Now, if we have learned anything about the opinion of the electorate toward this elected body, it is that it has
almost gotten to the point of dangerous cynicism about our ability to stand up and say what we believe and accept the consequences of that. I think what the public is looking for are some people with conviction one way or another, who are willing to stand up in front of the crowd and say, ‘Look, this is what I believe. If you support that, I would like your vote. If you do not support that, that is fine, my life does not begin or end on whether or not I am elected to this office or any other office. Whether or not I am elected to this office or any other office, my life does not begin or end on an election to the U.S. Senate or any other office. My life begins and stands on tough issues and not to avoid the consequences of those decisions.

This is a test of a just civilization. I think it is a standard by which each of us is judged as well.

Madam President, I thank the Senator from New Hampshire for the time.

I yield the floor.

Mr. SPECTER. Madam President, before going to my colleague from Michigan, I want to make a few comments in response to what has been argued in opposition to the pending motion. I agree with a good bit of what the distinguished Senator from Indiana just had to say, and I think that it is necessary to draw a line. I am prepared to do that. I must say that this Senator is not unwilling to take a stand. This Senator is not unwilling to have the courage of my convictions. I understand, if I have been elected, to take stands on tough issues and not to avoid expressing my views. And I concur that on the meaning of life, life does not begin or end on an election to the U.S. Senate. I have lost my share of elections, and I am prepared to do so in the future if my constituents do not agree with my views. I intend to express them forcefully and forthrightly.

But I point to the calendar here—if I may have the attention of the Senator from Indiana—as to what happened. This is not a matter of delay. This is not a matter to kill this bill in the Judiciary Committee. Whatever may be said by others—and the Senator from New Hampshire has quoted a Miss Michelman, who is not on the committee, and the idea to commit was ARLEN SPECTER’s idea. My staff had a lot of ideas, like for 45 days, but we all know that sometimes Senators make their own decisions as to how we are going to proceed. The Senator from New Hampshire has tickles, and I am tickled. Occasionally, it is healthy and helpful for Senators to make decisions instead of staffers.

So when the Senator from Indiana talks about sending this to an abyss, delay it until some unknown time in the future, that is not what is going to happen here. Under the express terms of the motion to commit, it has to be reported back, really, what is in 9 days of the life of the Senate. We would go out on recess on the 17th, so it is 9 days from today that we will be in session and 10 days when we come back, and it has to be reported back, in the interim, during Thanksgiving week, we will have hearings on that. I am prepared to do that in the Judiciary Committee. But it will be back in this Chamber, so that when the Senator from Indiana talks about the meaning of life, I am prepared to come to terms with that.

I would just like to know what the medical profession says about the pain and suffering, what the medical profession says about alternatives, if it is a C section, if it is not in the vaginal canal. I am not prepared to accept the debate on ‘‘Nightline.’’ I have been on ‘‘Nightline,’’ and sometimes on ‘‘Nightline’’ not with a lot of useful information when it is accomplished. So when you have the sequence of events in the House of Representatives—this is really quite a sequence—I think we ought to focus on it.

This bill was introduced on June 14 in the House. The next day they had a 2 1/2-hour hearing and did not get some medical experts on the other side of the issue. They marked it up the same day. That is on June 15. Then we know what our congressional schedule has been. It has been hectic, to put it mildly. We did have some time off in August and in September, and October we have been fully occupied on the reconciliation bill and the budget. Then it came up on November 1, where they voted. That is the state of the record. Now it comes to this body and we are asked to pass upon it without any hearing having been held. I have taken a look at the rules of the Senate—rule XIV and rule XV recently talked about, and essentially in the Senate that we have had no hearings on a bill. It used to be mandatory that the bill be referred under rule XXV. And now there is more latitude under rule XIV. But I question the propriety, or at least the wisdom if not the propriety, of putting this bill on the calendar for this kind of action. But I am not going to delay.

Mr. COATS. Will the Senator yield for an observation?

Mr. SPECTER. Yes, on the time of Senator SMITH.

Mr. COATS. My only observation is that the Senator indicated that a 45-day procedure is only 8 days of Senate time. But in the U.S. Senate could an institution take 45 days to accomplish 9 days of work. I understand that is how this process works.

I thank the Senator for his explanation of the terms of the way this bill will be handled.

Mr. SPECTER. I thank my colleague from Indiana for those comments. I think we are entirely too dilatory around here. We had an issue that came to my Judiciary subcommittee on the Bureau of Alcohol, Tobacco and Firearms, and we had some problems with the Justice Department getting the witnesses in. We got them in and were promised that if we could find hearing days, we did it. We are about ready to issue a report. I think we ought to move with dispatch.

I am prepared to see us work on the Thanksgiving recess to come to terms here. When the Senator from New Hampshire says he may get a vote on it, he may or may not. This may be a matter of filibuster. I suggest we will not lose any time in this commitment.

I yield 5 minutes to the Senator from Michigan.

How much time remains on our side?

The PRESIDING OFFICER. The Senator has 36 minutes. There are 26 minutes on the other side.

The Senator from Michigan is recognized.

Mr. LEVIN. I thank my friend from Pennsylvania. I, too, think the Senate should vote, but only after there has been a reasonable length of time, and a few weeks is a reasonable length of time for the Judiciary Committee to consider and to report back to us on a number of very, very important issues in this case.

Under this bill, the Congress would be imposing a determination not of when an abortion may be performed, but of how it may be performed. The procedure addressed by this bill would be prohibited from being used even in the second trimester.

So this is a question of whether or not we should make a particular procedure criminal, whenever it is used. There are a number of important issues. Why have the States—with, I think, one exception—not criminalized this procedure? Under Roe versus Wade, States are given the authority to regulate abortions in the third trimester, except they cannot prohibit an abortion where the life or the health of the mother is at risk. Why have 49 States not made this particular procedure illegal, even in the third trimester?

The States are the place where Roe v. Wade says that abortion should be regulated in the third trimester, and yet with, I think, one exception States have left this particular procedure legal.

Now, this bill not only makes illegal and criminal a procedure that is not made criminal in all but one State, this bill leaves legal other procedures which can be used in the third trimester.

Are those other procedures as safe for the mother? Are those other procedures in any way better or safer than the one under the second trimester

What are those other procedures? Why are they left legal, although at least...
Mr. LEVIN. I simply say that there are a number of very important issues for which we should have at least some guidance and witnesses in a report from the Judiciary Committee. This is not a case of trying to evade an issue. It is a case of trying to deal with an issue of great importance and to be sure that a bill testifying on some very, very critical issues and some excruciatingly difficult issues for everyone.

In the situation we are discussing, the Supreme Court has ruled that the Constitution and Government may not criminalize abortions that are necessary to save the life of the mother. In the context of this bill Congress cannot constitutionally criminalize the abortion procedure at issue if such abortion were necessary to save the life of the mother.

The CRS memo explains it this way: In Patterson and Martin [the leading cases authorizing affirmative defenses in criminal cases], the Court held that the legislature was fully within its legislative authority to establish all of the elements of the underlying offense, and that the defenses were essentially affirmative defenses to a defendant. As one commentator has indicated, a key factor in the Court's holding in Patterson was that the state could have obtained a conviction proscribing the abortion procedure because it could result in increased risk to a woman's health. That is, the Congress may not enact regulations that make abortion a criminal offense in general; the affirmative defense approach is allowed, the vagueness of the bill's affirmative defense language requiring the defendant to prove that no other procedure would suffice, leaves it unclear how a physician defendant would prove that no other procedure except intact D and E would have sufficed. What if the physician defendant could have performed another procedure that would have doubled the risk of death to the mother? Does that suffice? Under the bill before us, the measure of how much greater risk another procedure would or could impose on the mother's life in order not to suffice?

I don't think doctors facing criminal charges when acting to save a woman's life should face such uncertainties. But what do experts think? What does the Judiciary Committee think? Is it worth taking a few weeks to find out?

There is a number of serious issues raised by this legislation. We should send this bill to the Judiciary Committee for prompt hearings and report back. We should then vote. The impact of this legislation is potentially too grave to do less.


Hon. ROBERT DOLE, Majority Leader, U.S. Senate, Washington, DC.

Dear Mr. Leader: This letter represents the Department's views opposing a bill that would ban what it calls "partial-birth abortions." This legislation violates constitutional standards recently reaffirmed by the Supreme Court. Further, the bill fails to make adequate exception for preservation of a woman's health. Even in the post-viability period, when the government interest in the woman's health is at its weightiest, that interest must yield both to preservation of a woman's life and to preservation of a woman's health. Planned Parenthood v. Casey, 112 S. Ct. 2791, 2804, 2821 (1992). This means, first of all, that the government may not deny access to abortion to a woman whose life or health is threatened consistent with a health standard that means the government may not regulate access to abortion in a manner that effectively "require[] the mother to bear an increased medical risk" in order to "preserve a small fraction of the embryo's life" (Planned Parenthood v. Casey).

An American Medical Association study of doctors and their views on H.R. 1833, a bill introduced by Senator Mitchell, shows that "most doctors consider cases that would ban what it calls "partial-birth abortions." This legislation violates constitutional standards recently reaffirmed by the Supreme Court. Further, the bill fails to make adequate exception for preservation of a woman's health. Even in the post-viability period, when the government interest in the woman's health is at its weightiest, that interest must yield both to preservation of a woman's life and to preservation of a woman's health. Planned Parenthood v. Casey, 112 S. Ct. 2791, 2804, 2821 (1992). This means, first of all, that the government may not deny access to abortion to a woman whose life or health is threatened consistent with a health standard that means the government may not regulate access to abortion in a manner that effectively "require[] the mother to bear an increased medical risk" in order to "preserve a small fraction of the embryo's life" (Planned Parenthood v. Casey).

(Congressional Research Service)
the provision does not actually except even life-threatening pregnancies from the statutory bar. Cf. Casey, 112 S. Ct. at 2804 (even in post-viability period, abortion restriction must "contain exceptions for pregnancies which endanger a woman's life or health"). Instead, the provision would require a physician facing criminal charges to carry the burden of proof regarding any exception. The Supreme Court has indicated that the evidence, both that pregnancy threatened the life of the woman and that the method in question was the only one that could save the woman’s life, was a prerequisite to the risk of criminal sanction regardless of the circumstances under which they perform the outlawed procedure, the statute un- doubtedly imposed a chilling effect on physicians’ willingness to perform even those abortions necessary to save women’s lives.

Sincerely,
ANDREW FOIS,
Assistant Attorney General.

EXHIBIT 1
LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, November 6, 1995.

To: Senator Carl Levin, attention: Peter Levine.
From: American Law Division.
Subject: Validity of requiring a defendant to bear the burden of persuasion regarding a constitutionally mandated defense.

This is to respond to your rush request to evaluate the validity of requiring a defendant to bear the burden of persuasion regarding a constitutionally mandated defense.

It would appear, however, that the cases of Patterson and Martin can be distinguished. In Patterson and Martin, the Court specifically noted that the legislature was fully within its legislative authority to establish all the elements of the underlying offense, 15 and that the defenses were established as affirmative grants to a defendant. 16 As one commentator has indicated, a key factor in the Court’s holding in Patterson was that the state could have constitutionally criminalized and punished the crime in question as a result of the medical procedure provided. 17 Thus, the question arises as to whether the Congress has the authority to pass S. 939 without including a defense for a “partial-birth abortion” which is necessary to save the life of a mother.

It would appear that Congress does not have the authority to punish a person for performing a “partial-birth” abortion which is necessary to save the life of a mother. In the case of Roe v. Wade, the Supreme Court held that the “privacy” interest of the Constitution limited the ability of a state to restrict a woman’s ability to have an abortion during the first two trimesters, and provided that even in the third trimester a state could not impose a statute banning partial-birth abortion that is necessary to preserve her life and health. Consequently, it would appear that Congress could not pass a statute banning “partial-birth” abortions where such an abortion was necessary to save the life of the mother.

As the government would appear to be constitutionally required to include an exception for abortions to save the life of the mother, it can be argued that it is a required element of the government’s case, and that the reasoning of Patterson and Martin does not apply. Consequently, should a court find that Patterson and Martin are distinguishable, it would appear that the government would be under an obligation to carry the burden of proof in order to prove that a partial-birth abortion was not necessary to save the life of a mother, and that a requirement that a defendant carry such a burden would be unconstitutional.
and the experts about its impact and ramifications.

Because, make no mistake, this bill has dangerous, far-reaching, and precedent-setting implications.

Madam President, this is the first time in our Nation's history that Congress is even attempting to get involved in telling physicians what medical procedures are and are not acceptable. And this is the first time in our Nation's history that Congress is considering banning an abortion procedure. This bill directly challenges the Supreme Court ruling, Roe versus Wade. And this bill carries with it severe consequences for the women of this country whose health and lives will be compromised, and possibly even sacrificed, to further the agenda of an extreme few.

I cannot imagine the U.S. Senate would railroad this bill through without a thorough hearing. Surely, I am not the only Member of this body who could defend the notion that a bill with this intent is not worthy of a committee hearing. I am not the only Member of this Senate with questions, concerns, and reservations.

I do not want to get into the details of this bill. We have all seen the graphic photographs; we have heard the vivid and controversial stories. But what many of us haven't seen or heard are the tragic stories of the women who have lived through the tragedy of a difficult pregnancy, or of a life-threatening complication which required the procedure. And, many of us have not had the benefit of the facts—as presented by the doctors and health professionals who can set the record straight.

I have heard women who had no choice but to give up a baby they desperately wanted to have. I have listened to their tragic stories. And, I have heard from doctors who are angry and offended by the misrepresentation of facts and mischaracterization of a life-saving, emotionally traumatic medical procedure.

That is what is at issue here today; we have the ability to ensure access to accurate and complete information. We need the right thing, and let the public and all the Members of this body have a real opportunity to look at this bill, and examine what it will mean for doctors, for women, their lives and their health.

I urge my colleagues to vote for the Specter motion to commit, so that we can have the opportunity to fully understand what this bill means for our Nation. Madam President, it is the right thing to do.

I yield my time back to the Senator from Pennsylvania.

Mr. SMITH. How much time is remaining?

The PRESIDING OFFICER. The Senator from New Hampshire has 26 minutes and 30 seconds; the other side has 25 minutes.

Mr. SMITH. In just a moment I will yield to the Senator from Ohio.

I yield 5 minutes for a question from Washington while she is here if she wishes to respond and answer a question on my time, I am happy to have her do it.

Does the Senator from Washington support an abortion for the purpose of sex selection? If a woman wanted to have an abortion because she was having a female baby, would the Senator from Washington say that she has a right to do that?

Mrs. MURRAY. I will comment on the time of the Senator from New Hampshire and respond to the question that that is not what is being debated on this floor.

The procedure that we are debating is a medical procedure that is done at the end of a pregnancy or midterm of a pregnancy when a woman's life is at stake. That is a critical decision that we have not had the information on to make a decision at this time.

Mr. SMITH. Assume she wants to make that decision, which you say she has the right to do because it is a female baby, is that all right?

Mrs. MURRAY. I respond to my colleague, the legislation in front of us has to do with women making a decision because of a medical procedure that is involved, not because of sex.

Mr. SMITH. I am willing to respond to the Senator from Washington back on my time. She did not answer my question, of course, which is typical in this debate. This is not a medical procedure that deals with the life of a woman. This is a medical procedure—it is a procedure that takes the life of a child.

We have had all kinds of testimony here on the Senate floor saying how one can explain to me—how one has explained to me—why preventing a fetus from being born, literally restraining the fetus from coming into the world, how that helps the life or protects the life of the mother? I am intrigued by the fact that no one will answer that question. Senator BOXER refused to answer it last night on "Nightline," and we see it not answered again today on the floor.

I will, at this time, yield 5 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Madam President, I have had the opportunity to listen to this debate on the last 2 days. I will try very briefly to respond to a couple of comments that have been made on the other side.

Yesterday, the senior Senator from Massachusetts very eloquently said the proponents of this bill employ terminology that is not recognized by the medical community. He said that the term "partial-birth abortion" is not found in medical school textbooks or in medical schools. I would say he is absolutely correct. I guess he and I come to a different conclusion, though, as to what relevance this has.

The Senator is correct. This procedure does not have an official medical name. The medical schools do not have a name for it. The medical textbooks do not have a name for it and doctors do not call it by that name. That really is exactly the point. The reason medical authorities do not have a name for it and the reason schools do not teach it is because the procedure is so inappropriate, so medically unnecessary, so bad that the medical community never had a reason to name it.

The doctors, the healers, will not even give it a name. They will not put it in their textbooks. They will not describe it in their medical journals. It is so bad, in fact, that in September the American Medical Association, council on legislation, described the procedure as "basically repulsive," and voted unanimously this procedure was "unrecognized medical practice." That is why the procedure should clearly be banned.

Let me turn to another point that has been brought up by my friend and colleague from Maine as well as my distinguished colleague from New Hampshire, that has to do with the affirmative defense issue.

It was stated earlier today by my colleague from Maine that having the affirmative defense in this bill creates an enormous burden on the State. It is the State's burden on the defendant. I respectfully disagree. It does not create an enormous burden. In fact, we have over 30 examples in the code, in the Federal Code, where the affirmative defense is used.

I know, as a former prosecutor at the State level and county level, it is used in virtually every State in the Union. The burden it places on the defense is a very, very low burden. It says, basically, in those instances where the defense has a unique capability of knowing and understanding the facts of what this defense would be, it is peculiarly in the knowledge of that person, that they then, after the prosecution has proven everything beyond a reasonable doubt, they have to prove by a preponderance of the evidence, the defendant does, which basically means it is more likely than not, that the procedure was in fact reasonable.

If you do not do it this way and if you place it into the statute, do not have an affirmative defense but put the exception in the statute, what it means is the prosecution would have to prove beyond a reasonable doubt that the partial-birth abortion was not necessary to save the life of the mother and would have a great burden on the defense. I respectfully disagree. It does not create an enormous burden. In fact, we have over 30 examples in the code, in the Federal Code, where the affirmative defense is used.
stretches, really been reaching to try to justify this procedure. Maybe a more fair way of describing their argument is not that they were trying to justify the procedure—because I really did not hear very much of that, if any of that—but rather that we just should not talk about it, we just should not deal with it.

My reaction to that, to my pro-choice friends, is simply this. Even if you are pro-choice, is there some limit to what a civilized society will accept? Is there something that you view as so bad, so repulsive that in limited cases we say no, you simply cannot do this?

Let me just say that we spent a lot of time on this floor. I think my colleague from New Hampshire did a great job of stripping away the rhetoric and getting to the facts of this procedure. I would like to do the same thing about this motion to commit. Let no one who comes on this floor in the next hour and dayative any misconception about what this vote is about. This is not a procedural vote. It may be technically a procedural vote but what it really is, is a vote on the merits. This is the vote. This is the defining moment. As we vote, I would simply ask my colleagues to recall—particularly my colleagues on the other side of the aisle—one of my favorite quotes.

Madam President, I ask unanimous consent for 1 additional minute? The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator is recognized for 1 additional minute.

Mr. DEWINE. Hubert Humphrey, in 1977, defined the proper role of Government. This is what he said. I think, when you listen to this, it summarizes very well what this debate is all about.

It was once said that the moral test of government is how that government treats those who are in the dawn of life, those who are in the twilight of life, and those in the shadow of life—the sick, the needy, the handicapped.

That is what this debate and vote is all about. This is a vote that we will be casting on the merits. It is not just a procedural vote. This vote will determine whether or not this bill moves forward or does not.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Madam President, I agree totally with the Senator from Ohio, there should be no misconception what this vote is about. And it is not to eliminate the bill. It is to send it to committee where there has been no hearing, and to do so for 9 days plus another 10-day recess. That is what the vote is about.

I agree totally with the Senator from Ohio about having a civilized society. What we are trying to do is to figure out what is an appropriate course in terms of humanitarian considerations on the one hand, and the decision earlier today about whether there was an exception for the life of the mother. I submit that the answer given by the Senator from New Hampshire to the question by the Senator from Nebraska was not correct. A number of Senators have raised this with me in the interim.

I have sent for the statute which shows how it is an exception. In the current bill there is not an exception for the life of the mother. It is an affirmative defense, which is totally different. The way you provide an exception for the life of the mother is the way it was done in Public Law 103-333, on September 30, 1994.

None of the funds appropriated under this Act shall be expended for any abortion except [then some irrelevancies] that such procedure is necessary to save the life of the mother * * *. That is the way to provide an exception on the life of the mother, not by having it as an affirmative defense.

Before yielding to the distinguished Senator from Kansas, Madam President, I inquire as to how much time remains?

The PRESIDING OFFICER. The Senator from Pennsylvania has 23 minutes. Mr. SPECTER. How much time would the Senator from Kansas like?

Mrs. KASSEBAUM. Madam President, if I could, I would like 4 minutes.

Mr. SPECTER. So granted.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 4 minutes.

Mrs. KASSEBAUM. Madam President, I heard earlier today on the floor that those of us who would support the amendment to commit to the Judiciary Committee are not willing to take a stand. I would like to just say that I do not believe that is the case. This has always been a very difficult and troubling issue. But most of us have taken a stand. For myself, I have always believed abortion should be legal. I also think there should be restrictions. But I have always been very concerned when the life of the mother and the health of the mother are at stake.

In Kansas, we have a law which bans third trimester abortions except for the health and the life of the mother. I do not have a problem with that personally, and I support the Kansas law, but there is an exception for the life and the health of the mother. Those are rare cases, and they should be rare cases.

It was debated here earlier between Senator ERSKINE and Senator SMITH about whether there really is an exception for the life of the mother. I would suggest there is not an exception for the life of the mother. There is an affirmative defense after the doctor has been charged with criminal action. The burden of proof then would be on the doctor, as I understand it, at that point. So there is not an exception. There is merely a matter of legal procedure with affirmative defense.

I believe that is an important distinction, Madam President, because I think we here in the Congress cannot get into trying to determine medical procedures, no matter how tragic it appears. That should be left to the medical community, and with the consultation of the mother, the family, and the doctor.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SMITH. Madam President, I yield 5 minutes to the distinguished Senator from Texas, Senator GRAMM.

The PRESIDING OFFICER. The distinguished Senator from Texas, Senator GRAMM.

Mr. GRAMM. Madam President, let me thank you for the recognition.

I want to begin by congratulating our dear colleague, the senior Senator from New Hampshire. I want to thank him for his leadership on this issue.

I first spoke on this issue when I came over to the floor of the Senate to speak on another issue. The distinguished Senator from New Hampshire was talking about partial-birth abortions. He was explaining how the process worked in its total gruesome details, and another Senator rose and talked about how offended that Senator was by the description that Senator SMITH had given. I felt compelled at that point to make what I think is the relevant point. If we are offended by the description of this brutal, violent act that the Senator's bill seeks to stop in America, should we not also be offended that the act is occurring? If the description of this violent act is offensive to us, then the fact that it is happening to living babies should be doubly offensive to us.

I think this is a very fundamental issue. Madam President. We have all heard the distinguished Senator from New Hampshire describe the partial-birth abortion, but it really comes down to this: This is a baby that is several inches away from the protection of the law. This is a baby that is in the process of being delivered. Only its head remains in the birth canal. It is several inches away from being protected by the law and by the Constitution as currently interpreted by the courts. And at this very moment, when the decision is life or death, this abortion process occurs which terminates the life of the child and crushes its skull. This is a process that I believe is offensive to any civilized society. So the issue we are debating here, it seems to me, can be reduced down to a simple issue. This is an act that any civilized society should find offensive. Even those who support allowing this to occur are offended by its description.

I believe America and the civilized world should be offended by the fact that it is occurring in our country. I think no civilized society can condone this action. I think it is very clear that if this bill is sent to the committee, it is going to be killed. We have an opportunity, since the House has acted by an overwhelming vote, to adopt this bill and to send it to the President.

I want to urge my colleagues to vote against the effort to send this bill to a

S16788 CONGRESSIONAL RECORD — SENATE November 8, 1995
It is not used because a woman at the
sex selection. It is not used as a whim.

It is used in the most tragic cir-
stances. It is not used for sex selec-
tion. It is not used in the United States of America. That is the
time.

If it is hard for us to talk about in
the environment of the greatest delib-
erative body in the history of the world, it seems to me that it ought to be
hard for us to continue to condone. I do not condone it. I want it to stop.

And that is why I am going to vote for
the Smith bill. That is why I am going to vote against this motion to kill it.

I believe this bill should be passed, and socialized nation should say no to these partial-birth abortions.

Thank you, Madam President.

Mr. SPECTER. Madam President, if
the Senate from California seeks rec-
ognition, she may have 5 minutes of
our time, or more, if you will let me inquire how much time remains.

The PRESIDING OFFICER. The Sen-
ator has 20 minutes and 40 seconds.

Mr. SPECTER. I yield 5 minutes to
the Senator.

The PRESIDING OFFICER. The Sen-
ator from California is recognized.

Mrs. BOXER. Thank you very much, Madam President. I want to thank the Senator from Pennsylvania for offering
us this very sensible amendment.

We are never in this Senate voted
to outlaw a medical procedure. We have never, never voted to outlaw a
medical procedure. When I was debat-
ing this issue with the Senator from New Hampshire, yes, we voted to out-
law the mutilation of the genitails of a
girl. We voted a sense of the Senate. I
was glad to do that. That is a battery;
that is not a life-saving procedure. We have never voted to ban a life-saving
procedure. And if that is what we are going to do, we are going to become
physicians, and we are going to go
down that slope.

We ought to have a hearing and have
people who know what they are talking about appear before the Judiciary Com-
nittee, which is very fairly divided be-
tween people who vote pro-choice and
people who vote anti-choice.

So what is before us is a bill to out-
law a medical procedure that is rare,
that is used in the most tragic cir-
cumstances. It is not used for sex sele-
cion.

Let me repeat that. It is not used for
sex selection. It is not used as a whim.
It is not used because a woman at the
end of her pregnancy said, “You know,
maybe I shouldn’t have done that.”

It is a dangerous procedure, a late-
term abortion. It is a rare thing that
happens. To make it look like it is a
whim is a great disservice to the fami-
lies of this country, deeply religious
families that are faced with these terrible circumstances.

In Roe v. Wade, the judges in their
wisdom knew that late-term abortion
was a different situation, and so they
gave the States authority to regu-
late late-term abortion. And what are
we doing? We are stepping right in, big
brother. And of course, it was most of
my friends on the other side who said let the States decide everything else.
They even voted to repeal nursing home standards, Federal nursing home
standards because the States know bet-
ter. But now they are saying we are
going to step over all of these State
laws and get into the operating room
and tell a doctor that he or she cannot use an emergency procedure.

There is no exception in this bill for
life of the mother. I tell my friends to
turn to page 3. We have made exception for life of the mother before in Med-
icaid funding. This is an affirmative
defense. In other words, you arrest the
doctor, charge him if he uses the pro-
cedure, and then you tell him:

Oh, yes, Doctor. By the way, when you are in court, you can use as a defense the fact
that this was your only choice, and you have to show a preponderance of evidence and
and that there was no other procedure.

Very nice. Very nice way to treat
someone who has just saved a life. My
friend from Ohio quoted Hubert Hum-
phrey. I love Hubert Humphrey. I just
got a Hubert Humphrey award. I am so
proud of that. The shadow of life, we
must think of someone in the shadow of
life, and a woman whose life is
threatened is in the shadow of life. Whether that call comes in to any Sen-
ator from Pennsylvania, or to anyone
who wants to say anything about it, think about it, that it is your daughter. I am
a grandma, and we have a lot of grand-
as and grandpas here. It is your baby;
it is your daughter who is going to
have a child, and the doctor calls in the middle of the night and says, “There is a
horrible emergency. If I do not end
this pregnancy, you will lose your
child”—your baby.

I got a call yesterday during the de-
bate from a woman from Santa Bar-
bara, California, and a senator who
said, “I have a baby”—yes, she is 36 and she got pregnant—“she is always going
to be my baby, and we had to make
that horrible choice.”

People like Viki Wilson, a registered
nurse, a practicing Catholic, and her
husband, a practicing physician, were
the parents of two children and planning a
third. In the 8th month of pregnancy,
they found out the baby’s brain was
growing outside the skull. The brain was twice the size of her actual head
and lodged in Viki’s pelvis.

May I have unanimous consent for 2
additional minutes off Senator Spec-
ter’s time.

The PRESIDING OFFICER (Mr.
THOMPSON). Without objection, it is so
ordered.

Mrs. BOXER. The brain was twice the
size of her actual head and lodged in
Viki’s pelvis, causing pressure on what
little brain the baby had. If Viki had
been able to go the full 9 months,
Abigail would have been born with a
name for the baby—Viki’s cervix
could not have expelled Abigail. Viki’s
cervix would have torn or ruptured
causing massive hemorrhages and pos-
sible infection, and, yes, Viki would
have died. If Viki was your daughter and
Viki was your daughter and the call
in, you would say to the doctor, “Did you do everything? Are you sure?
Did you check? Did you doublecheck?
Is there another way? Can we save the
baby? Can we do an operation to save
the baby?” And if the answer came
back no, I believe in my heart, subject
to anyone who wants to say anything
different, that, yes, you, as a United
States Senator, would say, “By the
grace of God, save my child.”

The PRESIDING OFFICER. The Sen-
ator’s 2 minutes have expired.

Mrs. BOXER. We should support the
Senator from Pennsylvania. He is ra-
tional about this. Let us bring forward
the people who know about this and
then let us vote.

I thank my friend.

Mr. PELL. Mr. President, in recent
weeks, there has been much press atten-
tion given to a heretofore obscure procedure used to terminate late-term
pregnancies. With this attention has
come substantial public distress and
alarm regarding the nature of this pro-
cedure, a discomfort that indeed, I
share and understand. I must certainly
agree that the procedure, as described
by the proponents of the pending legis-
lation, is repugnant on its face and one
that is hopefully reserved to in only
the rarest circumstances.

But today as the Senate considers
legislation to ban the use of this pro-
cedure, we must make sure that our
deliberations are thoughtful, reasoned,
and considered.

It is very unfortunate that we are
here debating this bill without having
the benefit of the normal, established
procedure of committee referral, hear-
ings, and review from which a com-
prehensive record would have evolved
detailing the pros and cons of the many
issues of this and controversial issues at
stake. This is particularly troubling
because the issue at hand is so divisive
and charged with emotion that, absent
a thorough airing of the issues in-
volved, it would be all too easy to
relinquish a position on doctrinaire cer-
titude and defiantly declare normal
victory regardless of whether or not it
is appropriate public policy.

The Senate has a long and estab-
lished tradition of careful deliberation
precisely because of its rules and pro-
cedures for large and difficult issues with thorough and adequate re-
view. It is only rarely that we cir-
cumvent those procedures and then
only when the matters are non-controversial and relatively non-complex.

Here, the bill was introduced and not referred to any Senate committee. Consequently, no hearings have been held on the bill despite a myriad of questions that need to be answered about the bill’s provisions. These include: What are the alternatives? What are the ramifications for other abortion procedures? What is the current vague definitions in the bill? Is it wise or desirable to create a Federal criminal statute governing medical procedures? I believe that it would be premature to attempt to come to a conclusion on whether to support or oppose this legislation without having the answers to these and other troubling questions.

Therefore, I intend to support the motion to refer this legislation to the Judiciary Committee. Senator Craig has expressed my concern that the Senate will not have the opportunity to review this legislation. I mean that this bill will be thoroughly reviewed and made the subject of public hearings to discuss the issues involved. At that point, the Senate will have a much more adequate record than it does now upon which to decide the reasoned and careful decision that is incumbent upon us as elected representatives to make.

Mr. KERRY. Mr. President, the U.S. Government is one of the least intrusive governments in the world. We pay the lowest taxes of any industrialized country. We have a constitution that guarantees an extensive list of freedoms upon which the government cannot infringe. Many believe that one of the causes of the 1994 election results was a desire by the public to minimize government’s role in the everyday lives of its citizens. Yet Senators have brought a bill to the floor that would require women to risk their lives.

Perhaps this bill do not understand the issue at hand. The Supreme Court has ruled that abortions are legal. It is completely legal for a woman who wants to have an abortion to obtain the services of a doctor and have a safe legal abortion. Now we as a legislature are going to start decreeing to both pregnant women and their physicians which procedures a woman can choose? This is not our role. We are not obstetricians, and we should not insert ourselves in this picture.

Yet proponents of this bill come to the floor to introduce legislation that would force women whose lives are most at danger, whose fetuses are usually malformed in some way, to either endure the painful and life-threatening procedure of birth or to endure another form of abortion that may be more dangerous or painful. This is tantamount to torture and I am appalled that we are standing here debating this issue.

But I know why we are here. In fact, every Member of this body knows why we are here. We are here because abortion opponents are exploiting this painful, rare surgical procedure to try to convince the public that all abortions are similar to this procedure.

Mr. President, any surgical procedure is disgusting if described to a layman. I could stand here and describe any number or legal medical procedures and probably convince someone out there that the procedure sounds terrible and wrong. But describing and discussing the procedure if performed late in the pregnancy is not my job. I could also stand here and describe the horrible details of a birth of a malformed fetus that kills both the fetus and the mother and does so in the worst and most chilling fashion. But describing and discussing this procedure if performed late in the pregnancy is not my job.

Mr. President, proponents of this bill hope that this bill and the proceedings surrounding it will further stigmatize abortion and humiliate women who have had or who may someday have legal abortions. They also hope to chip away one piece at a time at the constitutional right to terminate a pregnancy. This is an unbecoming effort.

I believe that the public knows more and is more perceptive than this bill’s proponents think. I urge my colleagues to stand in opposition to this bill. Send it to the Judiciary Committee when it can be properly analyzed.

Mr. CRAIG. Mr. President, there are very few issues that provoke the kind of passionate debate abortion policy continues to provoke. It’s unfortunate the debate has deteriorated into pro-choice and pro-life labels because, in reality, it is a hugely significant conflict over when life begins and what life comprises. That’s why it divides people along unpredictable lines; even in my State of Idaho, people of like political beliefs can take different positions on this issue.

I mention this because today we are dealing with an aspect of the abortion issue that even causes divisions among those who generally find abortion acceptable. What we have in the House Representatives just a few days ago demonstrated this. The overwhelming vote in support of the bill included many who usually identify themselves as pro-choice.

Let me repeat that: Even those who accept abortion found this particular procedure so objectionable they voted in favor of banning it.

A ban is an extraordinary step for Congress to take—but then, this is an extreme and hideous abortion procedure. We’ve heard it described in detail; we’ve seen diagrams that those performing this procedure have certified to be accurate. And Mr. President, I have seen strong men and women look away, to avoid dealing with the reality of this procedure.

I urge any of my colleagues who have reservations about this bill to take the time to understand exactly what’s involved. Then you will understand why even abortion proponents draw the line here.

To put it simply, we’re talking about causing and then stopping a delivery, to kill a baby mere inches and seconds before he or she is protected by our laws as a living human being.

Some would like to defend this procedure by claiming it is only used when the life of the mother is at stake or when the baby is shown to have genetic deformities. However, the testimony of Dr. M. Haskell, who originated the technique, estimated as many as 80 percent of the procedures he performed were elective, not for genetic or life-saving reasons.

It’s important to note that this bill contains an exception for situations in which the life of the mother truly is at stake and no other procedure can save it. Those who are honestly worried about this issue should be reassured. But it’s also important to note that this procedure is hardly risk-free to the mother: medical professionals agree it poses dangers to both the lives and the future reproductive health of the women involved.

Mr. President, we all are thankful for today’s life-saving advances in medical technology. It’s appalling to think this particular procedure twists those advances in a legalistic game, with a human life in the balance.

In closing, I urge all my colleagues not to let political labels blind them to the facts. This radical, barbaric procedure goes much too far. Let’s draw the line here, now, and pass the Partial-Birth Abortion Ban Act.

Mr. ABRAHAM. Mr. President, during the debate over the partial-birth abortion ban, opponents have made claims about this procedure and this legislation that simply are not supported by the facts. I ask unanimous consent that a fact sheet by the National Right to Life entitled “Partial-Birth Abortions: A Look Behind the Misinformation” and a letter from Barbara Bolen of the American Medical News along with the accompanying material be printed in the RECORD.

To prevent objection, the material is ordered to be printed in the RECORD, as follows:

PARTIAL-BIRTH ABORTIONS: A LOOK BEHIND THE MISINFORMATION

(Congress is currently considering legislation that would place a national ban on the partial-birth abortion method (H.R. 1833, S. 939). The bill was approved by the House Judiciary Committee on July 18. Pro-abortion lobbying groups have made claims regarding this abortion method, and about the legislation, that are contradicted by substantial evidence. Yet, some of these erroneous claims have been uncritically adopted by various editorial commentators and reporters. This factsheet addresses some of the major disputed issues. All documents quoted in this factsheet may be obtained from the National Right to Life Committee, Federal Legislative Office, (202) 626-8820.)

WHAT TYPE OF ABORTION IS BANNED BY H.R. 1833, S. 939?

H.R. 1833 is sponsored by Congressman Charles Canady (R-FL) and 156 co-sponsors. The companion bill, S. 939, is sponsored by Senator Bob Smith (R-NH). The
purposes of the legislation is to ban those abortions that are performed by (1) partially delivering a living fetus into the vagina, and then (2) killing him or her. Under the bill, this would involve killing a human fetus they could only be used if there was no other way to save a woman’s life.

The bill is aimed at the basic method described by Dr. Miriam Haskell of Dayton, Ohio, and Dr. James McMahon of Los Angeles—and by some other abortionists who have not chosen to widely publicize the fact.

The Los Angeles Times accurately described this abortion method in a June 16 news story: “The procedure requires a physician to separate the fetus from the womb and then cut into the base of the fetal skull, and a suction catheter is inserted through the opening and the brain is removed.”

In 1992, Dr. Haskell wrote a paper on this abortion method which targeted late-term members of the National Abortion Federation (those being abortionists and abortion clinics). The paper (“Dilation and Extraction for Late Abortion Procedures”) described in detail, step-by-step, how to perform the procedure, which Dr. Haskell said that he employed beginning at 20 weeks—4½ months into the pregnancy—through 24 weeks into pregnancy. (Dr. McMahon uses essentially the same procedure to a much later point—in some cases, to 40 weeks, which is also late term.)

Dr. Haskell’s “how-to-do-it” paper was obtained and published by the National Right to Life Committee. The National Abortion Federation at a June 22 meeting quickly claimed that NLRC was making distorted claims about the procedure. During the course of investigating this controversy, the American Medical News—the official newspaper of the American Medical Association—in 1993 conducted taped-recorded interviews with both Dr. McMahon and Dr. Haskell. These interviews, originally were quoted in an article titled “Semi-birth” ends late-term abortion procedure,” which appeared in the July 5, 1993 edition of American Medical News. The American Medical News article is often considered one of the best accounts of the late-term legislation; the article is cited several times in this fact sheet.

Recently, for the first time, the National Abortion Federation and Dr. Haskell attempted to disavow some of the most revealing quotes from the article. In response, on July 11, 1995, American Medical News reissued transcripts of the portions of a tape-recorded 1993 interview to prove that Dr. Haskell was indeed quoted accurately on certain key points (e.g., that “80%” of the partial-birth-abortions “are performed” and that fetuses are usually alive when the procedure is performed on them.

**ACTIONS BY THE AMERICAN MEDICAL ASSOCIATION**

On September 23, the national Council on Legislation of the American Medical Association (AMA) voted unanimously to recommend AMA endorsement of the Partial-Birth Abortion Ban Act (H.R. 1833). (Congress Daily, Oct. 10.) The Council on Legislation is made up of about 12 physicians of different specialties, who are charged with studying proposed federal legislation with respect to its impact on the practice of medicine. According to an October 23 letter from AMA headquarters in Chicago, “The AMA Board of Trustees requested that the Council (not take a position on H.R. 1833 at this time.”

**THE CASE OF VIKI AND ABIGAIL WILSON**

Critics of the bill have relied heavily on the personal account of Viki Wilson, whose unborn daughter Abigail died at the hands of Dr. McMahon during the ninth month of the pregnancy. Abigail’s brain had developed partly outside of her skull. Setting aside for the moment all that might be said about the ethics of what was done to Abigail, the procedure utilized in this case, if performed as Dr. McMahon described it (without disavowing his later testimony), would have endangered the baby’s life. H.R. 1833 allows a physician to utilize the defined procedure on the basis of a reasonable belief that no alternative medical intervention would save the mother’s life.

**HOW MANY PARTIAL-BIRTH ABORTIONS ARE PERFORMED?**

Dr. Haskell said in his 1992 paper that he begins using the procedure at 20 weeks (4½ months). There are 13,000 abortions annually after 4½ months, according to the Alan Guttmacher Institute of the New York Times, July 5, 1995), which should be regarded as a conservative estimate. The National Abortion Federation now says that Drs. McMahon and Haskell have performed about 450 such abortions every year.

Both practitioners have been enthusiastic advocates for the method; Dr. Haskell’s technique has been copied by several abortionists, and Dr. McMahon is director of abortion training at a major teaching hospital. There is no way to know how many other abortionists now use the method, but without any precise information on the procedure, the numbers cannot be calculated.

**SHOULD THE PROCEDURE BE CALLED THE “PARTIAL-BIRTH ABORTION METHOD,” OR BY SOME OTHER TERM?**

In his 1992 paper, Dr. Haskell referred to the method as “dilation and extraction” or “partial-birth abortion.” But the legislation, however, that nomenclature is rejected by Dr. McMahon, who refers to the method as “intact dilation and evacuation” and (in an interview in the 1993 American Medical Association magazine in 1993) as “intracranial cranial decompression.” There are also some variations in the procedure as performed by the two doctors. Haskell’s approach is based on Dr. McMahon’s approach as “a conceptually similar technique.”

Some critics of the bill, such as the National Abortion Federation (a trade association of abortion providers) complain that the term “partial-birth abortion” is “a non-medical term,” is “inaccurate,” and is “offensive and upsetting.” They also insist that it is “vague.” It is quite evident, however, that NAF’s problem with the term “partial-birth abortion” is not that it is too vague, but precisely that it is much too explicit. They prefer euphemistic pseudo-medical jargon that conveys nothing substantive regarding the nature of the procedure. However, none of the terms that the abortion practitioners prefer would be workable as a legal definition. The bill creates a legal definition—“partial-birth abortion”—and would ban any variation of that method—no matter what new idiosyncratic name any abortionist may invent to refer to it—so long as it is “an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.”

Congress establishes such legal definitions all the time—often in ways not entirely pleasing to the industries or practices being regulated. For example, by act of Congress, firearms that incorporate certain specified features are now legally defined as “assault weapons,” even though manufacturers, gunsmiths, and users refer to these same firearms in other fashions. Likewise, if H.R. 1833 is enacted, abortions that involve partial vaginal delivery of a live baby, followed by killing, will be legally defined as “partial-birth abortion.” The bill specifies that for late-term abortions would continue to prefer a term that is not so explicitly descriptive.

Beyond the legal point, the term “partial-birth abortion” is accurate and in no way misleading. In explaining how to perform the procedure in his 1992 instruction paper, Dr. McMahon wrote: “In an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.”

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Dr. J. Courtland Robinson, a self-described “abortionist” who testified on behalf of the National Abortion Federation at a June 15 hearing before the House Judiciary Constitution Subcommittee, said, “In my career I have heard a physician who provides abortion refer to any abortion as a ‘partial-birth abortion’…” But Dr. Robinson’s objection seems a mere quibble in light of his later testimony; “In our tradition we have never referred to abortions as ‘partial-extraction’ was not used. This is a standard term in obstetrics that we use for delivering. That term could have been used.

Professor Watson Bowes of University of North Carolina at Chapel Hill School of Medicine, co-editor of the Obstetrical and Gynecological Survey and author of the textbook on maternal and fetal medicine, wrote in a letter dated July 11, 1995: “The term ‘partial-
.birth abortion’ is as accurate as applied to the procedure described by Dr. Martin Haskell in his 1992 paper entitled ‘Dilation and Extraction for Late Second Trimester Abortion,’ distributed by the National Abortion Federation to its members. . . There is no standard medical term for this method. The method, as described by Dr. Haskell in his paper, involves dilation of the uterus through the base of the skull, after which a suction catheter is inserted to remove the brain of the fetus. This results in collapse of the fetal skull to facilitate delivery of the head. This description is nothing misleading about describing this procedure as a ‘partial-birth abortion,’ because in most of the cases the fetus is partially born while alive and then dies as a direct result of the procedure . . .

**In what circumstances are partial-birth abortions performed?**

*Misinformation:* The New York Times (June 19, 1995): “[H.R. 1833/S. 939 is] a bill to outlaw abortions (all the way to 40 weeks, inclusive), making that number of weeks a legal standard that is technically accurate, and added: ‘That is exactly probably what is occurring at the hands of the two physicians involved.’

**Critique:** Alleged by the progress of H.R. 1833 in Congress, lobbying groups representing the abortion industry and pro-abortion advocacy groups have recently claimed that the partial-birth abortion method is used mainly in rare circumstances involving danger to the life of the mother or very grave disorders of the fetus. Many editorialists and columnists (e.g., Ellen Goodman, Richard Cohen) have uncritically embraced such claims. So have some reports, such as those quoted above. Indeed, the NPR assertion that the procedure is used ‘only . . . if fetuses have severe abnormalities and no chance of survival’ is an even more egregiously erroneous statement than the claims made by the abortion-clinic lobby itself.

In truth, there is ample documentation to establish that many, if not most, partial-birth abortions do not involve ‘severe abnormalities and no chance of survival’ or danger to the life of the mother.

**In what circumstances did Dr. Haskell’s portrayal of the partial-birth abortion procedure differ from the way the procedure was presented to the members of the House of Representatives?**

*Misinformation:* In my particular case, probably 20% [of this procedure] are for genetic reasons. And the other 80% are purely elective.

**Critique:** This single statement from Dr. Haskell’s paper engendered considerable controversy, the American Medical News—the official newspaper of the AMA—conducted a tape-recorded interview with Dr. Haskell, in which he said: ‘In my particular case, probably 20% [of this procedure] are for genetic reasons. And the other 80% are purely elective.’

*Dr. James McMahon—who has performed at least 2,000 of these procedures—told American Medical News that he also uses the method to perform ‘non-elective’ abortions (all the way to 26 weeks, which is full term). In materials provided in June to the House Judiciary Constitution Subcommittee, Dr. McMahon revealed that his description is ‘too small and expansive. For example, he listed ‘depression’ as the largest single ‘maternal indication’ for such so-called ‘non-elective’ abortions. Dr. McMahon’s materials also show that he uses the method to destroy ‘flawed fetuses,’ and, in fact, is usually associated with the birth of a live infant . . . [Also], the technique of the partial-birth abortion could be extended to remove a fetus that had died in utero of natural causes or accident. Such a procedure would not be covered by the definition in your bill, because it involves partially delivering a live fetus and then killing it.”

*Are the drawings of the partial-birth abortion method circulated by NRLC accurate?*

*Misinformation:* On June 12, the National Abortion Federation—an association of abortion providers—sent a letter to House members in which NAF claimed—on the authority of Dr. J. Courtland Robinson of Johns Hopkins Medical School—that the drawings on the front of the package were distributed by Congressman Canady in a letter to House members were ‘highly imaginative’ and ‘misleading.’ These drawings had been approved by the National Right to Life Committee.

**Critique:** Three days after the mailing of these drawings, Dr. McMahon revealed that the information was tested for accuracy before the House Judiciary Constitution Subcommittee, representing the National Abortion Federation. However, under questioning from subcommittee chairman Rep. Charles Canady, Dr. Robinson admitted he had not to that day even read Dr. Martin Haskell’s unique 1992 paper describing how to perform the procedure. Questioned by Mr. Canady about the drawings—which were displayed in poster size next to the witness table—Dr. Robinson agreed that they were ‘technically accurate,’ and added: ‘That is exactly probably what is occurring at the hands of the two physicians involved.’

Moreover, American Medical News (July 5, 1995) reported: ‘Dr. Haskell said the drawings were accurate ‘from a technical point of view.’ But he took issue with the implication that the procedures were ‘opportunistically killing a fetus.’

Professor Watson Bowes of the University of North Carolina at Chapel Hill, wrote in a letter to Congressman Canady: ‘Having read the description of the procedure that these drawings accurately represent the procedure described therein. Furthermore, Dr. Haskell is reported as saying that the illustrations were accurate ‘from a technical point of view.’ Firsthand renditions by a professional medical illustrator, or photographs of actual performances of the procedure would no doubt be more accurately and obviously more instructive for a non-medical person who is trying to understand how the procedure is performed.

Is the ‘baby already dead before being pulled into the birth canal during the procedure?’

In the partial-birth abortion method, a woman visits the abortion clinic on three successive days. On the first two days, her cervix (the opening to the uterus) is mechanically dilated with materials called lambs. The baby is removed the third day. American Medical News reported in 1993, after conducting interviews with Drs. Haskell and McMahon, that the doctors ‘told American Medical News that they believed the assert that the partial-birth abortion is a specialized procedure that is used in the latter stages of pregnancy to abort fetuses with severe abnormalities for which surgery is technically impossible.‘

**Critique:** The New York Times (June 19, 1995) reported: ‘Without more facts, we are not going to judge the situation.’

The bill contains a provision under which a woman visiting the abortion clinic on three successive days. On the first two days, her cervix (the opening to the uterus) is mechanically dilated with materials called lambs. The baby is removed the third day. American Medical News reported in 1993, after conducting interviews with Drs. Haskell and McMahon, that the doctors ‘told American Medical News that they believed the assertion that the partial-birth abortion is a specialized procedure that is used in the latter stages of pregnancy to abort fetuses with severe abnormalities for which surgery is technically impossible.‘
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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 August 11, 1995, interview quoted in the Oct. 10, 1989 Dayton News, Dr. Haskell again conveyed that the scissors thrust is usually the lethal act: "When I do the instrumentation on the skull I * * * 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.

On July 27, 1995, Brenda Pratt Schafer, R.N., sent a letter Congressman Tony Hall (D-Ohio), in which she related her experience as a nurse whose agency assigned her to work at Dr. Martin Haskell's clinic. In her letter, Schafer wrote: "Dr. James McMahon states that narcotic analgesic medications given to the mother will induce 'a medical coma' in the fetus. This 'is a neurological, fetal psychiatric' This statement suggests a lack of understanding of maternal/fetal pharmacology. It implies the distribution of analgesic medications given to a pregnant woman result in blood levels of the drugs which are less than those in the mother. Having cared for pregnant women who for one reason or another required surgical procedures in the second trimester, I know that they were often heavily sedated or anesthetized for the procedures, and the fetuses did not die... Although it is true that an analgesic medication given to the mother will reach the fetus and presumably provide some degree of pain relief to such a fetus, this renders the procedure pain free would be very difficult to document. I have performed in utero procedures on fetuses in the second trimester, and the response of the fetuses to painful stimuli, such as needle sticks, suggest that they are capable of experiencing pain.

The fetuses are generally alive at the time of their 'extraction' is further supported by the account of an eyewitness very sympathetic to Dr. McMahon: Dr. Dru Elaine Carlsson, director of Genetic Counseling at Cedars-Sinai Medical Center in Los Angeles. In a June 27, 1995 letter to Congressman Henry Hyde opposing the Partial-Birth Abortion Act, Carlson wrote: "I refer Dr. McMahon a large number of families, I have gone to his facility and seen for myself what he does and how he does it * * * Essentially he provides analgesia for the mother that removes anxiety and pain and as a result of this medication the fetus also is sedated. When the cervix is open enough for a safe delivery of the fetus he uses ultrasound guidance to gently deliver the fetal body up to the shoulders and then very quickly and expertly performs what is called a cephalic presentation, that is, the removal of cerebrospinal fluid from the brain causing instant brain herniation and death." [emphasis added]

It is impossible to reconcile eyewitness accounts such as those of Nurse Schafer and Dr. Carlson with the claim made by NAF in a submission to the House Judiciary Constitution Subcommittee. Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at the University of Washington School of Medicine, said: "The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain. Prof. White's account of the procedure step-by-step and concluded: "Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure."

**DOES THE BILL CONTRADICT SUPREME COURT PRECEDENTS?**

In written testimony submitted to the House Judiciary Constitution Subcommittee, Dr. Robert White, a professor of both obstetrics/gynecology and pediatrics at the University of North Carolina at Chapel Hill School of Medicine, testified that he believed that the Partial-Birth Abortion Ban Act could be upheld under existing Supreme Court precedents that block most government limitations on abortion. "The spectre of partially delivering a fetus, and then suctioning her brains, may mix the physician's independent roles at childbirth and abortion in such a way as to particularly shock the conscience... It is possible that at least some of the fetuses killed by partial-birth abortions are constitutional persons. The Supreme Court in Roe v. Wade held that the word 'person,' as used in the Fourteenth Amendment, does not include the fetus... However, Prof. Smolins's complete testimony is available on request.

However, pro-abortion advocacy groups insist that even the partial-birth abortion procedure is completely protected by Roe v. Wade. If this is true, it will be news to a lot of people—and it is a powerful argument for re-examining Roe v. Wade.

ENDNOTES

[1] Unfortunately, some lawmakers and some other observers demonstrate bias or "denial mechanisms" that resist exposure even to impeccable documentation. For example, Dr. Vaccaro, in his July 22 House Judiciary Committee meeting in which many of the documents quoted herein were cited and circulated, Associated Press reporter Nita Lelyveld wrote, "Opponents of the bill say the scissors method is very rare if it exists at all." Actually, however, not even the National Abortion Federation has been audacious enough to suggest that the "scissors method" may not "exist at all." Dr. Haskell's readily available paper, which has been provided to other reporters, refers five times to the use of scissors. For example, Dr. Haskell writes, "the surgeon forces the scissors into the base of the fetal skull..." The scissors involved are Metzenbaum surgical scissors, which is about seven inches long.

[2] Some press accounts have mistakenly reported that the 1995 abortion rate is only third-trimester abortions. In fact, the bill would ban use of the partial-birth abortion method in either the second or the third trimester of pregnancy. It is noteworthy that there is a dispute over how many third-trimester abortions, by all methods, are performed every year. Associated Press Medical News (July 5, 1996) reported, "Former Surgeon General C. Everett Koop, MD, estimated in 1984 that 4,000 third-trimester abortions are performed annually. The abortion federation claims the number is less than 500.

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organization nor the physician who complained about the report in testimony to your committee has contacted the reporter or any editor of AMNews to complain about it. AMNews is 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. We know that the story in question comport entirely with that reputation.

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

Respectfully yours,
BARBARA BOLSEN,
Editor.

Attachment.

AMERICAN MEDICAL NEWS TRANSCRIPT

AMN. Let’s talk first about whether or not the fetus is dead beforehand... HASKELL. No, it’s not. 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 in that situation, I would think patently abiding a third of those 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 risk?

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 5-day?

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, abortion procedure. But that’s the thing 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. He point here is you’re attempting to do an abortion. And that’s your goal of your work. It’s a legal abortion. Not to see how do I manipulate the situation so that I get a live birth instead.

AMN. Wrapping up the interview, I want 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 when the baby’s already dead, you wouldn’t be doing the procedure and you wouldn’t be doing an autopsy. But some of them are saying they’re getting that misinformation from NAF. Have you talked to Barbara Radford or anybody in that official capacity and you called back, but I haven’t gotten back to her.

HASKELL. Well, I had heard that they were giving that information, somebody over there in the legislative society in general. We believe that they have false information.

AMN. Did you also show a video when you did the procedure?

HASKEL. 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 abortion industry. 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.

(From the American Medical News, July 5, 1995)

SHOCK-TACTIC ADS TARGET LATE-TERM ABORTION PROCEDURE—FOES HOPE CAMPAIGN WILL SINK FEDERAL ABORTION RIGHTS LEGISLATION

(By Diane M. Gianelli)

WASHINGTON.—In an attempt to derail an abortion-rights bill maneuvering toward a congressional showdown, opponents have launched a full-scale campaign against late-term abortion.

The centerpiece of the effort are newspaper advertisements and brochures that graphically illustrate a technique used in second- and third-trimester abortions. A handful of newspapers have run the ads so far, and the National Right to Life Committee has distributed 4 million of the brochures, which were inserted into about a dozen other papers.

By depicting a procedure expected to make most readers squirm, the campaign sponsors hope to convince voters and elected officials that a proposed federal abortion-rights bill is so extreme that states would have no authority to protect the lives of infants—even on potentially viable fetuses.

According to the Alan Guttmacher Institute, a research group affiliated with Planned Parenthood, about 10% of the estimated 1.6 million abortions done each year are in the second and third trimesters.

Barbara Radford of the National Abortion Federation denounced the ad campaign as disingenuous, saying its “real agenda is to outlaw virtually all abortions, not just late-term ones... It’s misguided.”

But the campaign is still eliciting an impact, reporting scores of calls from congressional staffers and others who have seen the ads and brochures and are asking pointed questions about the procedure depicted.

The Minneapolis Star-Tribune ran an ad May 12, on its op-ed page. The anti-abortion group Minnesota Citizens Concerned for Life paid for it.

In a series of drawings, the ad illustrates a procedure called “dilation and extraction.” Or D&X, in which forceps are used to remove second- and third-trimester fetuses from the uterus intact, with only the head remaining inside the uterus.

The surgeon then shown jamming scissors into the skull. The ad says this is done to create an opening large enough to insert a catheter that will be used while at the same time making the skull small enough to pull through the cervix.

“Do these drawings shock you?” the ad reads. “They certainly, but we think you should know the truth.”

The ad quotes Martin Haskell, MD, who described the procedure at a September 1992 abortion conference. “I personally have performed 700 of them. It then states that the proposed “Freedom of Choice Act” now moving through Congress would legalize abortion at all stages and would lead to an increase in the use of this grisly procedure.”

ACCURACY QUESTIONED

Some abortion-rights advocates have questioned the ad’s accuracy.

A letter to the Star-Tribune said the procedure shown “is only performed after fetal demise and in order to save the life of the mother.” And the Morrisville, Vt., Transcript, which said in an editorial that it allowed the brochure to be in- sected, said its paper feared legal action if it refused, quoted the abortion federation as providing similar information.

The fetus is dead 24 hours before the picture procedure is undertaken, the editorial stated.

But Dr. Haskell and another doctor who routinely used the procedure for late-term abortions told AMNews that a fetus aborted this way are alive until the end of the procedure.

Dr. Haskell said the drawing were accurate “...and I’ve seen it and of view.” But he took issue with the implication that the fetuses were “awake and resisting.”

Radford also acknowledged that the information on the group was quoted as being accurate. She has since sent a letter to federation members, outlining guidelines for discussing the matter. Among the points:

Do not apologize for discussing a legal procedure.

No abortion method is acceptable to abortion opponents.

The language and graphics in the ads are disturbing to some readers. “ Much of the negative reaction, however, is the same reaction that might be invoked if one were to listen to a surgeon describing step-by-step almost any other surgical procedure involving blood, human tissue, etc.”

LATE-ABORTION SPECIALISTS

Only Dr. Haskell, James T. McMahon, MD, of Los Angeles, and a handful of other doctors who perform the D&X procedure, which Dr. McMahon refers to as “intact D&E.”

The more common late-term abortion methods are the classic D&E and induction, which usually involves injecting digoxin or another substance into the fetal heart to kill it, dilating the cervix and inducing labor.

Dr. Haskell, who owns abortion clinics in Connecticut and New Jersey, performs late-term abortions: “I have not performed D&Xs for late abortions out of necessity. Local hospitals did not allow inductions past 16 weeks, and he had no place to keep patients overnight while doing the procedure.

But the classic D&E, in which the fetus is broken apart inside the womb, carries the risk of perforation, tearing and hemorrhaging, he said. So he turned to the D&X, which he says is far less risky to the mother.

Dr. McMahon acknowledged that the procedure he, Dr. Haskell and a handful of other doctors use makes some people queasy. But he defends it. “Once you decide the uterus must be emptied, you then have to have 100% allegiance to maternal care. There’s no justification to doing a more dangerous procedure because somehow this doesn’t offend you sensibilities as much.”

BROCHURE CITY—N.Y. CASE

The four-page anti-abortion brochures also include a graphic depiction of the D&X procedure. But the cover features a photograph of a 16-month-old Ana Rosa Rodriguez, whose right arm was severed during an abortion attempt when her mother was 7 months pregnant.

The child was born two days later, at 32 to 34 weeks’ gestation. Ana Rosa, of New York, was convicted of assault and performing an illegal abortion. He was sentenced to up to 29 years in prison for this and another related offense.

New York law bans abortions after 24 weeks, except to save the mother’s life. The
brochure states that Dr. Hayat never would have been prosecuted if the Federal “Freedom of Choice Act” were in effect, because the act would invalidate the New York statute.

The proposed law would allow abortion for any reason until viability. But it would leave it up to individual practitioners—not the state—to define that point. Postviability abortions, however, could not be restricted if done to save a woman’s life or health, including emotional health.

The abortion federation’s Radcliff called the Hayat case “an aberration” and stressed that the vast majority of abortions occur within the first trimester. She also said that later abortions are done for reasons of fetal abnormality or material health.

But Douglas Johnson of the National Right to Life Committee called that suggestion “blatantly false.”

“The abortion practitioners themselves will admit the majority of their late-term abortions are as said, “These Dr. Haskell are just trying to reach others how to do it more efficiently.”

NUMBERS GAME

Accurate figures on second- and third-trimester abortions are scarce because a number of states don’t require doctors to report abortion statistics. For example, one-third of all abortions are said to occur in California, but the state has no reporting requirements. The Guttmacher Institute estimates there were nearly 168,000 second- and third-trimester abortions in 1988, the last year for which figures are available.

About 60,000 of those occurred in the 16- to 20-week period, with 10,660 at week 21 and beyond, the institute says. Estimates were based on actual gestational age, as opposed to last menstrual period.

There is particular debate over the number of third-trimester abortions. Former Surgeon General C. Everett Koop, MD, estimated in 1984 that 4,000 are performed annually. The abortion federation puts the number at 300 to 500. Dr. Haskell says that “probably Koop’s numbers are more correct.”

Dr. Haskell said he performs abortions “up until about 25 weeks” gestation, most of them elective. Dr. McMahon does abortions throughout the second trimester, but he said he won’t do an elective procedure after 26 weeks. About 80% of those he does after 21 weeks are nonelective, he said.

EXPERIENCES

Dr. McMahon admits having mixed feelings about the procedure in which he has chosen to specialize.

“I have two positions that may be internally inconsistent, and that’s probably why I fight with this all the time,” he said.

“I do have moral compunctions. And if I see a case that’s later, like 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.”

Dr. McMahon says he doesn’t want to “hold patients hostage to my technical skill. I can say, ‘No, I won’t do that,’ and then they’re stuck with either some criminal solution or some other desperate maneuver.”

Dr. Haskell, however, says whatever qualms he has about third-trimester abortions are “technical reasons, not for emotional reasons of fetal development.”

“I think it’s important to distinguish the two,” he says, adding that his cut-off point is within the viability threshold noted in Roe v. Wade, the Supreme Court decision that legalized abortion. The decision said that point usually occurred at 28 weeks “but may occur earlier, even at 24 weeks.”

Viability is generally accepted to be “somewhere between 25 and 26 weeks,” said Dr. Haskell. “It just depends on who you talk to.”

“We don’t have a viability law in Ohio. In New York they have a 24-week limitation. That’s what they believed. If someone’s body tells me I have to use 22 weeks, that’s fine. . . . I’m not a trailblazer or activist trying to constantly press the limits.”

case histories

Whether the ad and brochures will have the full impact abortion opponents intend is yet to be seen.

Congress has yet to schedule a final showdown on the issue. Although the bill has already passed through the necessary committees, supporters are reluctant to move it for a full House and Senate vote until they are sure they can win.

In fact, House Speaker Tom Foley (D, Wash.) has said he wants to bring the bill for a vote under a “closed rule” procedure, which would prohibit consideration of amendments.

But opponents are lobbying heavily against Foley’s plan. Among the amendments they wish to offer one that would allow, but not require, states to restrict abortion—except to save the mother’s life—after 24 weeks.

MA. MOSELEY-BRAUN. Mr. President, today, as it has been since the landmark 1973 Supreme Court Decision of Roe versus Wade, the concept of reproductive freedom is under assault.

Choice is a matter of freedom. Choice is a constitutional right. Choice is a barometer of equality and a measure of fairness. Choice is central to our liberty. While I do not believe in abortion, I do believe, fundamentally, in choice.

In spite of the fact that the majority of the American people embrace the freedom to choose reproduction, the efforts to use Government intervention as a bar to the right to choice have taken on a new ferocity. And today, some in the Senate would prevent Senators and citizens alike from the chance to even hold hearings on the latest assault on a woman’s right to choose.

The newest assault is H.R. 1833/S. 939, an unconstitutional, vague ban on a rare medical procedure used to terminate pregnancies late in the term, when the life or health of the mother is at risk, and or when the fetus has severe abnormalities.

The procedure is that is the intended focus of this bill involves giving anesthesia to a mother over a period of days while gradually dilating her cervix—the fetus dies during the first dose of anesthesia—then draining the brain fluid after death so that the cervix is forced to withstand less trauma as the fetus is removed, preserving the woman’s ability to conceive.

H.R. 1833/S. 939 would make it a criminal offense to perform certain types of late term abortions. A doctor who performed such an abortion would face up to 2 years in prison and fines.

The doctor and the hospital or clinic where he or she worked would also be liable for civil action brought by the father of a fetus or the maternal parents of the woman if she was under 18.

Instead of providing an exception for cases where the banned procedure is used to save the life of the mother, doctors would be required, after being rea- sonable the process, before the procedure. No other method would save the woman’s life.

Before I talk about the constitutional and policy implications of H.R. 1833/S. 939, I want to tell the story of Vikki, she is from Naperville, in my home State of Illinois.

Vikki and her husband were expecting their third child. At 20 weeks she went for a sonogram and was told by her doctor that she and her child were healthy. She named the boy Anthony.

At 32 weeks Vikki took her two daughters with her to watch their brother on the sonogram. The technician did not say a word during the sonogram and then asked Vikki to come upstairs to talk with the doctor. Vikki thought maybe it was because the baby was breach. She is a diabetic and any complications could be serious.

The doctor was too busy to see Vikki, but called at 7 a.m. the next morning to say that the femurs—leg bones—seemed a little short. He assured her that there was a 99 percent chance that nothing was wrong, but she did need to come in for a level 2 ultrasound.

Vikki and her husband found out that their child had no brain. There were eight abnormalities in all.

Vikki had to make the hardest deci- sion of her life. This is how she explained it: “I had to remove my son from life support—that was me.”

For Vikki, the hardest thing for a parent to do is to watch her child hurt. It is hard enough just watching a child get teased at the bus stop.

The procedure took four visits to the doctor. She received anesthesia on the first two visits. Her husband was with her the first night. She knew he was gone. This was before the procedure to remove the fetus took place.

Having an D&E procedure was par- ticularly important because Vikki wanted to know if this was something that she would pass on to her two daughters.—With a D&E an autopsy can be performed.—Luckily, it was just one of those things and her girls will be able to have children of their own.

Vikki’s D&E was the closest thing for her body to natural birth. She was able to preserve her fertility, and I am happy to say is now 30 weeks pregnant.

The baby looks fine.

I wanted to tell my colleagues that story, because it is true, it is about a real woman, and it is about a family handling an awful, horrible situation in the best way they know how.

This is the kind of case where my colleagues want to substitute their judgement for the judgement of the family and their doctor.
Now what are the implications for banning these abortions, beyond the affect that it would have on the lives of women like Vikki and their families?

Doctors are going to be too scared to perform legal abortions and medically necessary procedures because of the threat of criminal or civil prosecution. H.R. 1833/S. 939 is vague. The definition of abortions covered under this legislation is “partial-birth.” That is a term used for its shock value, not its medical value. There is no such medical term and doctors cannot agree on what the legislation is intended to ban.

Women are going to face life and health risks as well as the loss of fertility as they undergo more dangerous procedures. H.R. 1833/S. 939 is dangerous. If a doctor chooses to perform an abortion covered by this bill, it is because he or she considers the procedure to be the most medically sound for the woman. By choosing to arbitrarily define a type of procedure as illegal, but not others, regardless of which procedure most protects the life, health, and fertility of the woman, Congress is micro-managing decisions best made in a doctor’s office.

Women’s constitutional rights will be taken away. H.R. 1833/S. 939 is unconstitutional. Under Roe versus Wade and Planned Parenthood versus Casey, the Supreme Court standard is that a state may not prohibit post-viability abortions necessary to preserve the life or health of a woman. Under H.R. 1833/S. 939, there is an exception only for life and then only by way of an affirmative defense.

While H.R. 1833/S. 939 is focused on late-term abortions, doctors who perform early-term abortions by the loosely defined means covered by the bill are subject to the same liability. Choosing to have an abortion when the fetus is not yet viable is clearly a constitutionally protected right under Roe versus Wade.

These are some of the policy implications of H.R. 1833/S. 939. This threat to a doctor’s ability to care for his or her patient, disregard of a woman’s health, and attack on a woman’s constitutional rights are all part of a broader attack on choice.

The 104th Congress has already seen a dramatic erosion in the right of a woman to choose.

First came the Hyde amendment. Poor women were limited in their reproductive choices because Government funds were not available for payment of their health care. Their rights became more than their pocketbooks could protect.

Then came the battle of parental notification. Very young women were limited in their reproductive choices, except in cases of rape or incest, because of their age—not their condition—teens became the victims of bad timing and thus the State asserted a right to intervene.

Then came the war in the military—women by virtue of their own decision, or that of their spouse, to serve their country, would be limited in their reproductive choices.

Then came the Assault on Reproductive Rights. First they came for poor women and I did not speak out—because I was not a poor woman. Then they came for the teenagers and I did not speak out—because I was no longer a teenager. Then they came for women in the military and I did not speak out—because I was not in the military. Then they came for women in the federal government and I did not speak out—because I did not work for the government. Then they came for the doctors and I did not speak out—because I was not a doctor. Then they came for me—and there was no one left to speak out for me.

What we are faced with here today is another attempt to erode a woman’s right to make the decisions as long as they allowed exceptions for cases in which a woman’s life or health is endangered.

Let me repeat—as long as they allowed exceptions for cases in which a woman’s life or health is endangered.

And despite the apparent unconstitutionality of this legislation, the Senate has not held hearings on the subject. The Senate has not held hearings on the subject. And not in the Labor and Human Resources Committee.

I find the Senate’s lack of hearings on this issue deeply disturbing for another reason as well. Not since prior to Roe versus Wade has there been efforts to criminalize a medical procedure in this country. But that’s exactly what this bill does.
This legislation is an unprecedented expansion of congressional regulation of women’s health care. Never before has Congress intruded directly into the practice of medicine by banning a safe and legal medical procedure that is absolutely vital to protect the health or lives of women.

In effect, the Senate is clearly attempting to substitute congressional judgment for that of a medical doctor regarding the appropriateness of a medical procedure.

As quoted in the New York Times, one doctor said: “I don’t want to make medical decisions based on congressional language. I do not want to be that vulnerable. And it is not what I want for my patients.” He is right.

This legislation sets new, frightening precedents for congressional action to limit on a wide range of medical procedures. It is open to even wider legal interpretations that may have an even broader impact on women’s lives.

Burgess of one of the bill, doctors across the Nation may interpret the language differently at the expense of the health and life of the mother involved.

Now, some of my colleagues may rise to insist that the legislation somehow contains an exception for the life of the mother. However, this is simply untrue, and I urge my colleagues not to be misled by this rhetoric.

As it now reads, the legislation only provides doctors with a so-called affirmative defense. I say so-called because there is nothing affirmative about this law for doctors. And there is no genuine defense allowed for them under this legislation because the guilty verdict is rendered the moment they attempt the medical procedure.

It means that a doctor cannot avoid criminal prosecution if he or she uses their best medical judgment and decides that it is necessary to perform a legal medical procedure that is absolutely necessary to save the lives of women.

Is induced labor, which carries its own potentially life-threatening risks such as cardiac edema—really an option? Are hysterectomies, which leave women permanently unable to conceive—really an option? Are induced labor, which carries its own potentially life-threatening risks such as cardiac edema—really an option? Are hysterectomies, which leave women permanently unable to conceive—really an option?

In the end, this legislation would order doctors to set aside the paramount interests of the woman’s health, and to trade-off her health and life and future fertility in order to avoid the possibility of criminal prosecution.

The Senate over the years has conducted a lot of hearings on the subject of abortion. The other body has done the same. There is nothing unique about this bill except to approach toward what really amounts to third trimester abortions, something that I have trouble understanding why anybody would fight.

I remind my colleagues that on February 10, 1964, the other body overwhelmingly voted in favor of the Civil Rights Act of 1964, a sweeping landmark civil rights bill—one that I would have voted for had I been here at the time. Then-Senate majority leader Mike Mansfield placed the bill on the Senate Calendar, just like this one was. A motion was made to refer the bill to the Judiciary Committee. The Senate rejected the motion. Why? Because it was sincerely believed that such a repeal would kill a landmark civil rights bill.

Today, the strategy for killing the pending measure is the same—send it to the Judiciary Committee. As a matter of procedure, if the Senate could take up the sweeping Civil Rights Act in 1964, why not the Senate Calendar, it can today do the same with a bill that addresses one aspect of the whole abortion issue.
My present purpose in mentioning the procedural precedent of the 1964 Civil Rights Act is not to engage in a comparison of the rights at stake then and the ones at stake in the Chamber today.

I understand that there are strong views on both sides of the underlying issue. I respect those who disagree with my views on this issue. But many of us believe that the rights of the unborn present important enough issues to justify a procedure allowing the Senate to vote and then set the moment of Division of 1833. There is, indeed, Senate precedent for doing so if the cause is urgent enough.

I believe the cause is sufficiently urgent, and I ask my colleagues to keep in mind we are talking about one particular abortion procedure that kills the fetus in the most heinous way by sucking the brain out of the baby. It is hard for me to understand why anybody would fight this bill. We are not even talking about the entire framework of abortion rights here, but just one procedure.

Let me also say that if I had my way, we would abolish all late-term abortions except to save the life of the mother. There are studies between 13,000 and 20,000 of those abortions a year. I think morally it is very difficult to justify that type of a thing.

One final thing. As the chairman of the Judiciary Committee, I must correct a misstatement being expressed here. The Clinton administration and other opponents of this bill claim that this bill is unconstitutional because it permits a doctor to justify a partial-birth abortion only as an affirmative defense to a prosecution. The fact that the bill provides the exception required by the case law in an affirmative defense does not unduly burden the right to an abortion.

Many of our constitutional rights arise as affirmative defenses. Many of the protections of the Bill of Rights—freedom of speech, freedom of religion, freedom of assembly, freedom of petition, the right to bear arms, freedom from unreasonable searches and seizures, the right to grand jury, the right against double jeopardy, the right against self-incrimination, the right to a speedy trial, the right to indictment, the right to assistance of counsel—sometimes can only be raised as a defense to a prosecution. Indeed, any one of us may be innocent of a crime and prosecuted and make our claim of innocence only as a defense in court.

To claim that the right to an abortion is not protected by an affirmative defense demeans the explicit protections of the Bill of Rights, and it raises abortion above any right mentioned in the Constitution.

The PRESIDING OFFICER. The Senator has spoken for 5 minutes.

Mr. Hatch. I ask unanimous consent that I be given another minute.

Mr. Smith. I yield 1 minute.

Mr. Hatch. Accordingly, I will vote against the motion to commit to the Judiciary Committee this bill that I believe is fully legal under the true meaning of the Constitution and under the Supreme Court's current abortion jurisprudence.

To me it is amoral, except to save the life of the mother, to kill these infants in this way. We are talking about children after 20 weeks in the mother's womb, most of whom are capable of living outside the womb. We are not talking about when the spirit comes into the body or any of the other questions that have arisen concerning the abortion issue. We are talking about fully developed children.

Now, I can understand both sides of the abortion issue. I know how sincere are those who are on the other side. But on this issue I have trouble understanding the logic that they are using. I know my colleague from Pennsylvania is sincere in his motion here today, but I do not see any reason why we need to go to that motion. I think we ought to vote up or down. Everybody understands this issue. We ought to face it right here and now.

I yield the floor.

Mr. Feingold addressed the Chair. The PRESIDING OFFICER. Who yields time to the Senator from Wisconsin?

Mr. Specter. How much time remains?

The PRESIDING OFFICER. The Senator has 13 minutes 47 seconds.

Mr. Specter. I yield 5 minutes to the Senator from Wisconsin.

Mr. Feingold. I thank the Senator from Pennsylvania.

Mr. President, I support the motion to commit this bill to the Judiciary Committee for hearings before the Senate acts upon this measure. And I want to particularly thank the senior Senator from Pennsylvania and the junior Senator from California for their leadership in trying to do the right thing on this issue, making sure that there is a proper hearing in the Judiciary Committee on the matter.

This bill, as it is currently drafted, would criminalize the actions of physicians who perform medical procedures which they believe may be necessary to save the life or protect the health of their patient. It is a very serious matter that the Senate ought not to act upon without deliberation and consideration.

There have been no Senate hearings on this measure. The chairman of the Judiciary Committee refers to hearings on abortion as a general subject. But there have been no hearings on this particular and very difficult topic. The bill before us was simply placed on the Senate Calendar.

Unfortunately, there has been a fair amount of misinformation communicated concerning the nature of the procedure being considered. There has been little focus by the proponents of the bill on the risk to the health of women if this alternative is not available, the types of health problems that compel late-term abortions in the first place, and the important question of the constitutional implications of withholding access to a procedure that may, in fact, be necessary to save the life or preserve the health of a pregnant woman facing a tragic pregnancy.

Mr. President, let me stress that I have very grave reservations about the wisdom of this body acting upon a measure that would insert the Federal Government into the delicate process of physicians as to what medical procedures are appropriate in a particular case.

In just this last Congress we had an extensive and heated debate over whether Congress or the Federal Government ought to be designing a national health care system. Yet today many of the very same individuals who argued strenuously against the Federal Government's role in health care policies are at loggerheads over how we would criminalize the actions of physicians as to what medical procedures are appropriate in a particular case.

For example, Mr. President, we need to know what alternatives, if any, would be available to women who must have a late-term abortion. What are the increased risks for these alternatives? Will women be forced to go out of state, or to bear children? Those are just a couple of the
questions that, at a minimum, must be asked before the Senate acts upon this measure. It is also important that a record be developed which sets out the reason why late-term abortions are performed in the first place. It is estimated we are talking about roughly 600 abortions annually that take place under the most dire circumstances.

Now, some of the proponents of this legislation have distorted the debate by asserting that the majority of late-term abortions are elective, misleading media to imply that the termination of pregnancy at this stage is somehow by choice. In fact, these abortions take place only when the life or health of the woman is at risk. We need to be fully aware of the pain and suffering that is endured by these families when a much-wanted pregnancy turns into a nightmare. We need to be careful that the Federal Government does not make these tragic situations even more difficult and painful for these families.

Mr. President, let me also say that if the motion to commit this bill to the committee fails, I will support amendments to be offered that will make it clear that this legislation is not to be construed to prohibit any physician from performing any medical procedure which the physician in his or her medical judgment determines necessary to preserve the life or health of a woman.

At a minimum, no physician should be placed in a position where he must sacrifice the life or health of his patient, because the Federal Government has chosen to substitute its judgment for professional medical judgment.

I yield the floor.

Mr. ASHCROFT addressed the Chair. The PRESIDING OFFICER. The Senator from Missouri.

Mr. SMITH. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 6 minutes 28 seconds.

Mr. SMITH. I will yield 4 minutes to the Senator from Missouri.

Mr. ASHCROFT. Thank you.

Abortion is, and always has been, one of the most divisive moral issues of our day. It strikes at the very core of who we are as a people and as a nation. It challenges us to define life and to measure liberty—difficult things both. But it is an issue that will not go away and one of us civil debate and reasoned discourse. And so I rise to speak today in tempered tones about the untended terror of partial-birth abortions.

Lest there be any confusion, what we are talking about is an abortion procedure that allows a child to be partially removed from the mother’s womb only to have its skull crushed and brain extracted by a doctor pledged to “do no harm.”

What message do we send by allowing this slaughter of innocents to continue? What does it say about who we are? What does it say about the moral condition of America when people of faith are unfaithful to the most vulnerable among us? I would suggest that a nation that allow this mindless brutality to continue is a nation out of touch with the most basic dictates of humanity.

The procedure in question is so cruel and so inhumane as to defy rational, reasoned support. Advocates of partial-birth abortions are attempting to defend the indefensible—and they cannot. So, instead, they raise the specter of infanticide, the barbaric, the incoherent and, obfuscate with absurdity. We are almost tempted to forget that which we are debating. This amendment is not about the right of choice, it is about the right of this Nation to act in a manner befitting its founding. It is about the right of America to say that it will not allow the brutality of partial-birth abortions to continue.

Over 30 million lives have perished since Roe versus Wade became the law. It is incomprehensible to me that there is not more partial-birth abortions. We do not need hearings to say, “No more partial-birth abortions.”

The procedure in question is so cruel and so inhumane as to defy rational, reasoned support. Advocates of partial-birth abortions are attempting to defend the indefensible—and they cannot. So, instead, they raise the specter of infanticide, the barbaric, the incoherent and, obfuscate with absurdity. We are almost tempted to forget that which we are debating. This amendment is not about the right of choice, it is about the right of this Nation to act in a manner befitting its founding. It is about the right of America to say that it will not allow the brutality of partial-birth abortions to continue.

The question is simple: Do we want to continue to allow that procedure or do we want to outlaw it? The American people clearly want the latter. They overwhelmingly oppose this barbarism. They know to be true that which we are forced to debate. Namely, that this procedure has no place in a civilized society.

A final point. There is a legitimate place for hearings. They can be important. They can be illustrative. They can be used for probing areas of uncertainty. Mr. President, there is no uncertainty here. We do not need hearings to determine that partial-birth abortions are the monstrous, barbaric, and hideous destruction of human life. We do not need hearings to say, “No more partial-birth abortions.”

The House of Representatives passed this measure with 288 votes. Let us lend our voice to their cause. For our party must be about more than a higher standard of living. It must also be about a higher standard of character.

The task before us is a simple one. It is to reaffirm humanity, reject brutality, and ban partial-birth abortions. I yield the floor and reserve the remainder of the time.

Mr. SPECTER addressed the Chair. The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, in the absence of any other Senator seeking recognition, permit me to summarize briefly, and I yield myself 2 minutes, reserving the remainder of the time for others.

What we have here is a bill which has been placed on the calendar in an unusual way. Until relatively recently, the provisions of rule XVI of the Senate require a referral to committee. That has been changed by an interpretation of rule XIV, but I question the propriety and especially the wisdom of having this matter proceed without having a hearing.

In the House of Representatives, the bill was introduced on June 14 and one day later, there was a hearing, and on the same day there was a markup. Very limited testimony was presented. The House was then engaged virtually continuously on the budget matters, except for the August recess. They took the matter up on November 1, and they passed the bill. Then it came to the Senate, and now we are on November 8, just 7 days later, when action is requested on this bill without any hearing in the Judiciary Committee.
I have made a motion for referral to committee on a very limited basis, really for 9 days, between today, November 8, and November 10 when the Senate is scheduled to go out of session, and then the extended time over the recess for more days, from November 17 until November 27.

There are very important considerations which we need to inquire into on humanitarian grounds. The question has been raised of an anesthetic, which has to be fairly taken up, a very substantial controversy on the medical evidence, complex issues on medical procedures, as well as the humanitarian concept, and then the formulation of the law itself, since this statute can be circumvented in a number of ways on medical procedures through C section or otherwise.

Mr. President, how much time remains?

The PRESIDING OFFICER. Two minutes thirty seconds.

Mr. SMITH. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two minutes twenty-five seconds.

Mr. SMITH. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two minutes twenty-five seconds.

Mr. SMITH. I yield the remainder of my time to the only physician in the U.S. Senate, Dr. Frist.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. Frist. Mr. President, I rise today in support of the partial-birth abortion ban and against the motion to refer this bill to committee. I have had the opportunity over the last several weeks to consult with a number of my colleagues in obstetrics and gynecology, and with those at academic health care centers and tertiary health care centers who would most likely be faced with performing this procedure. And I can say after these consultations that I know of no doctor who uses or approves of this procedure as described in this bill.

Among these colleagues that I contacted are people who perform abortions in the third trimester under very selected circumstances, and they have told me that they condemn this procedure. They tell me that it is an unnecessary procedure and has no place in the medical armamentarium.

Mr. President, it is understandable that over the last 2 days a number of people have come forward for the life of the mother. But this bill provides for the mother. It only requires a doctor to show that he or she reasonably believed that this procedure was necessary to save the mother’s life. I will repeat, this bill does not endanger the life of a mother in any way. I do not want new laws. As a physician, I can tell you that physicians do not want new laws dictating their practice in any way. No physician does. But this procedure is so brutal, so uncalled for, so inhumane, and so unnecessary that this ban is justified.

We have broad bipartisan support for this bill, both pro-life and pro-choice, and I think that shows this is an important issue that goes beyond the debates of pro-life and pro-choice. We have that support because the partial-birth abortion procedure, as described specifically in the bill, deeply offends our sensibilities as human beings, and as people who care for one another and feel people deserve to be treated with respect, dignity, and compassion.

The PRESIDING OFFICER. The Senator’s time has expired. The Senator may ask for additional time with consent.

Mr. Frist. I ask unanimous consent for an additional 1 minute.

Mrs. BOXER. Reserving the right to object, and I will not object. I want to make sure that I can ask my friend a question before he gets the additional minute. I ask unanimous consent to make it a 2-minute request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. I say to my friend, he said he talked to a lot of doctors—gynecologists and obstetricians. Is he aware that the American College of Obstetricians and Gynecologists has written a letter to Senator DOLE objecting very strenuously to this bill?

Mr. Frist. Yes, he is.

Mrs. BOXER. I thank the Senator. Mr. Frist, this procedure, as described, is a brutal procedure. It is a procedure that I consider inhumane, as do a number of people, including obstetricians. I just got off the telephone with one who, again, performs abortions in the third trimester. He told me, point blank, that “it is unnecessary.”

Those of us who oppose this procedure do care deeply about women, about their health care, and about the horrific circumstances and situations they face. But how can we answer to our children, to our patients, to our constituents, and to others if we continue to allow babies to be aborted through this unnecessarily brutal partial-birth abortion ban?

Mr. President, it is with compassion, but with steadfast resolve, that I register my support for the partial-birth abortion ban.

The PRESIDING OFFICER. The Senator from Pennsylvania has 2 minutes 30 seconds.

Mr. SPECTER. Mr. President, I express my very high regard for the distinguished Senator from Tennessee, whom I have met with in the Senate. I can understand the consultations which he has had, but I emphasize as forcefully as I can that consultations that anyone has are not the same as having hearings. The Senate has had no hearings. The House had only one limited hearing, and the pending motion is a very limited one, for 9 working days in the Senate, from today, November 8, until November 17, including the weekend and then the recess period. I think the comprehensive statement made by Senator to Senator DOLE from the American College of Obstetricians and Gynecologists, who wrote to Senator DOLE on November 6.

I ask unanimous consent that this be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:


Hon. ROBERT DOLE, Majority Leader, Washington, DC.

DEAR MAJORITY LEADER DOLE: The American College of Obstetricians and Gynecologists (ACOG), an organization representing more than 40,000 physicians dedicated to improving women’s health care, does not support HR 1833, the Partial-Birth Abortion Ban Act of 1995. The College finds very disturbing that Congress would take any action that would supersede the medical judgment of trained physicians and criminalize medical procedures that may be necessary to save the life of a woman. Moreover, in defining what medical procedures doctors may or may not perform, HR 1833 employs terminology that is not even recognized in the medical community—demonstrating why Congressional opinion should never be substituted for professional medical judgment.

Thank you for considering our views on this important matter.

Sincerely,

RALPH W. HALE, MD, Executive Director.

Mr. SPECTER. Mr. President, I ask unanimous consent that the opinion of the U.S. Department of Justice that the pending legislation is unconstitutional be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:


Hon. ROBERT DOLE, Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: This letter represents the Department’s views on H.R. 1833, a bill that would ban what it calls “partial-birth abortions.” This legislation violates constitutional standards recently reaffirmed by the Supreme Court. Specifically, the bill fails to make an adequate exception for preservation of a woman’s health. Even in the post-viability period, when the government’s interest in regulation abortion is at its weightiest, that interest must yield both to preservation of a woman’s life and to preservation of a woman’s health. Planned Parenthood v. Casey, 112 S. Ct. 2791, 2804, 2821 (1992).

This means, first of all, that the government may not deny access to abortion to a woman whose life or health is threatened by pregnancy. Id. It also means that the government may not regulate access to abortion in a manner that effectively “require[s] the mother to bear incurable risk” in order to serve a state interest. Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 769 (1986) (invalidating restriction on doctors’ choice of abortion procedure because could result in increased risk to woman’s health). That is, the government may not impose regulations that make the abortion procedure more dangerous to the woman’s health.

Mr. Frist is from the American College of Obstetricians and Gynecologists, who wrote to Senator DOLE on November 6.
of the cases" in which the ban would be relevant at all, see Casey 112 S. Ct. at 2830 (discussing method of constitutional analysis of abortion restrictions), its operation would be inconsistent with the constitutional standard. It has been reported that doctors performing this procedure believe it often poses fewer medical risks for women in the late stages of pregnancy. If this is true, then it is likely that in a "large fraction" of the cases in which the procedure actually is used, it is the technique most protective of the woman's health. Accordingly, a prohibition on the method, in the absence of an adequate exception covering such cases, impermissibly would require women to "bear an increased medical risk" in order to obtain an abortion.

H.R. 1833 would provide for an affirmative defense to criminal prosecution or civil claims when a partial-birth abortion is both (a) necessary to save the life of the woman, and (b) the only method of abortion that would serve that purpose. This provision will not cure the bill's constitutional defects. First, as discussed above, the provision is too narrow in scope, as it fails to reach cases in which a woman's health is at issue. Second, the partial-birth abortion actually excepts life-threatening pregnancies from the statutory bar, cf. Casey, 112 S. Ct. at 2804 (even in post-viability period, abortion restrictions must "contain[] exceptions for pregnancies which endanger a woman's life or health"). Instead, the provision would require a physician facing criminal charges to carry the burden of proving, by a preponderance of the evidence, both that pregnancy threatened the life of the woman and that the method in question was the only one that could save the woman's life. By exposing physicians to the risk of criminal sanction regardless of the circumstances under which they perform the so-called procedure, the statute undoubtedly would have a chilling effect on physicians' willingness to perform even those abortions necessary to save women's lives.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

Mr. SPECTER. Mr. President, on a matter of this enormous import, where we are about the meaning of life, as articulated by the Senator from Indiana earlier, we ought to have a hearing in a limited period of time. We ought not to rely upon hearsay statements that are brought to the floor of the House, where we do not have an opportunity to question and elicit more detailed information.

We ought not allow "Nightline," as urged by some on the floor of this body, to substitute for deliberations by the U.S. Senate. This is a matter which could have been brought to the floor at any earlier time, and certainly for the world's greatest deliberative body, it is not asking too much to have a very brief period of time—some 19 days—for the Judiciary Committee to hold hearings, report this matter back, and then the Senate could express its will in accordance with Senate procedures.

The PRESIDING OFFICER. The controlled time has expired.

Mr. SPECTER. Has all time expired on my inquiry, Mr. President?

The PRESIDING OFFICER. The time for controlled debate has expired.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SMITH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

Mrs. BOXER. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to call the roll.

The clerk continued with the call of the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mrs. BOXER. Mr. President, I object.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Objection is heard. The clerk will continue to call the roll.

The clerk continued with the call of the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, that I be allowed to speak for 5 minutes as if in a quorum call, and that the business of the Senate will then return to a quorum call and to its present state.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Mr. President, reserving the right to object—I will not object—I want to make sure from my friend that morning business is nothing about the pending bill.

Mr. PRESSLER. It is nothing about the pending bill.

Mrs. BOXER. I shall not object.

The PRESIDING OFFICER. Without objection, it is so ordered, and the Senator from South Dakota [Mr. PRESSLER] is recognized to speak as if in morning business for 5 minutes.

AIR SERVICE OPPORTUNITIES IN CONTINENTAL EUROPE

Mr. PRESSLER. Mr. President, I rise today to discuss existing and emerging opportunities for United States passenger and cargo carriers. These opportunities include not only serving destinations within Europe, but also points beyond such as the Middle East and Asia-Pacific markets. As the British continue to refuse to open their skies to our carriers, developments in other countries represent alternatives that are increasingly attractive and are taking on greater significance.

Unfortunately, recent negotiations with the United Kingdom seeking to liberalize our air service relationship with that country have hit an impasse. At this time, it is unclear whether that impasse is insurmountable. As is often the case with the British, the primary sticking point is our request for greater access to London Heathrow Airport, the main hub of British Airways. Access to Heathrow is particularly important to our carriers since it is an international gateway connecting service opportunities beyond the United Kingdom to markets virtually worldwide.

Another key and often overlooked aspect of this limitation of our right for full liberalization of air cargo services between and, importantly, beyond our two countries. Currently, the ability of our cargo carriers to serve the United Kingdom, load additional freight there, and fly on to other countries is severely limited by the United States-United Kingdom bilateral aviation agreement. British negotiators continue to reject our requests for fully liberalized air cargo opportunities, despite a March 1994 recommendation by the House of Commons Transport Committee to that effect. What does all this mean?

The answer to that question is contained in the insights of one aviation authority who wrote recently "If airlines and passengers are free agents. If extra capacity is not developed at Heathrow, the airport will not be able to satisfy demand and airlines will expand their business at continental airports." The author added "If airlines are denied entry to London, growth at Heathrow, many will choose Paris, Frankfurt, or Amsterdam."

Mr. President, this is not rhetoric. It is not a threat by U.S. interests designed to gain negotiating leverage. To the contrary, the author of these quotes is BAA plc, the British company that owns and operates Heathrow as well as other United Kingdom airports. BAA is very perspicacious. Obviously, BAA recognizes that in today's global economy, the long-term consequence of protecting one's air service market amounts to little more than the stimulation of competitive opportunities elsewhere. One need only look across the English Channel to continental Europe to confirm that already is taking place.

There was a time when geographic factors and the limited range of commercial aircraft made the United Kingdom the international gateway of opportunity. That market has been seriously eroded by other United States carriers. United States carriers can and will look to the European Continent for new gateway airport opportunities. Today, I wish to discuss a few of these emerging, existing, and potential air service opportunities.

First, there is tremendous growth in international passenger traffic at Amsterdam's Schiphol Airport. This is