

The Abortion Distortion

What the 'pro-choice' people have done to law, medicine, and language

SHANNEN W. COFFIN

THE legal battle in three separate federal trials that have followed President Bush's signing of the Partial Birth Abortion Ban Act in November 2003 illustrates how the abortion-rights lobby perverts the law, co-opts the medical profession, and debases the very language we speak. By controlling and distorting the debate in these ways, abortion advocates hope to prevent the American public from learning the stark truth about abortion practices—especially the abhorrent partial-birth method, in which a doctor delivers a living child until its legs and torso are hanging outside the mother and then pierces the child's skull with a sharp instrument and vacuums out its brains.

Even before the act was signed into law, lawyers for Planned Parenthood, the ACLU, the Center for Reproductive Rights, and the National Abortion Federation filed suit in federal courts in New York, Nebraska, and San Francisco, arguing that it was unconstitutional. On June 1, Judge Phyllis Hamilton entered an injunction in the San Francisco case permanently prohibiting the enforcement of the statute against doctors and clinics affiliated with Planned Parenthood. (The separate Nebraska and New York decisions are expected in late summer or early fall.)

Mr. Coffin, a Washington, D.C., lawyer, is a former deputy assistant attorney general for the civil division of the Justice Department. In that capacity, he coordinated litigation in the three recently concluded trials defending the partial-birth-abortion ban and argued the position of the government in *Northwestern Memorial Hospital v. Ashcroft*.

To support their arguments in these three cases, pro-abortion groups offered the sworn testimony of doctors from abortion clinics and major hospitals, who asserted that partial-birth abortion was medically necessary to protect the health of women with certain medical conditions or whose unborn children suffered certain developmental "anomalies."

In order to test these doctors' claims, government lawyers served subpoenas on the hospitals where the testifying doctors performed abortions, seeking medical records relating to those abortions. Sensitive to the need to protect the identity of the doctors' patients, however, the government said that the hospitals could delete any identifying information (name, address, age, etc.) about the women involved in the abortions. The hospitals still refused to produce the documents and, employing a variety of absurd legal theories, went to court to prevent their release. Northwestern Memorial Hospital in Chicago, for instance, argued that the records could not be released because they were privileged from disclosure under both state and federal law. This claim was belied by the numerous contexts in which the government regularly receives medical records in federal lawsuits (such as disputes over Medicare billing by a hospital). Nevertheless, a Chicago lower-federal-court judge agreed with the hospital, based in part on a hitherto unrecognized federal "abortion records" privilege.

The government appealed, sensibly arguing that federal judges should not invent new protections peculiar to abortion records and that, in any event, the federal medical-privacy law—known as HIPAA—did permit the release of anonymous medical records in this lawsuit. The United States Court of Appeals agreed with the government that the lower court had both misread federal-privacy law and had wrongly created a federal "abortion" privilege. By sleight-of-hand, the court nevertheless prevented the government from obtaining the records by concluding that a privacy right of an unspecified origin outweighed what the judges considered to be the marginal relevance of the documents.

This decision is extraordinary for several reasons. First, the appeals court concluded that this mysterious "privacy right" protected abortion records but not other

medical records. That privacy right—though not recognized by Congress in HIPAA—derived, according to the court, mostly from the sensitive nature of a woman's abortion decision, as if this decision were somehow deserving of greater legal protection than the myriad other difficult medical decisions a human being makes in a lifetime. Second, although numerous other courts had previously concluded that privacy rights were not affected when patients' names and other identifying information were removed from medical records sought in lawsuits, this court reasoned that no amount of ID-scrubbing could stop this alleged invasion of privacy. Finally, the court demanded that the government satisfy a heightened standard of relevance never before seen in the law. Indeed, when questioning a Justice Department lawyer about the government's need for the documents, one federal judge skeptically asked: "And on this the fate of the Republic hinges?"

Nor has the law alone been suborned to the needs of the abortion lobby. The medical academy and the practice of medicine have been drafted as well. In June 2000, when Nebraska's partial-birth-abortion ban was upheld by the Supreme Court, one of the most serious pieces of evidence to show that this abortion method had no medical value was that it was not taught in any medical school. Since then, major medical schools, such as Northwestern, Columbia, and Cornell, have added partial-birth abortion to their clinical teaching. The support by those schools of the most extreme method of abortion doesn't stop there, however. Faculty at the same schools lined up to challenge the federal ban in court, testifying that partial-birth abortion was "fantastic" and "a miracle."

Despite the apparent contradiction, the medical establishment has gone to great lengths to defeat any laws designed to protect human life by regulating abortion and its methodology. The American College of Obstetricians and Gynecologists, an otherwise esteemed group of practitioners, weighed in against legislation banning partial-birth abortion in a "policy statement" provided to Congress. In it, ACOG concluded that partial-birth abortion "may be" the most appropriate method in certain circumstances, even though the group could not identify any such circumstances. That finding speaks not to the medical

experience of ACOG's members, but to the politics of its leadership.

This politics-disguised-as-medicine approach to the abortion debate is especially disturbing when coupled with tactics of intimidation that would make Tony Soprano proud. The few doctors who have regularly testified in favor of the abortion ban know the marginalization in the medical community that comes with dissenting from abortion ideology. When reaching out to potential witnesses, government lawyers learned of the professional intimidation suffered by those doctors who considered testifying. Doctors were told by superiors and colleagues that it would not be in their best professional interests to cooperate with the government. As one government witness testified at trial, "I wouldn't view it as a career-enhancing move, being here today."

For all the perversion of law and of medicine, the most transparent distortion is found in the language the abortion industry uses to shield itself from public scrutiny. Supporters of abortion rights can never bring themselves to admit that their opponents are "pro" anything, and consequently label the pro-life movement "anti-choice." At the same time, abortion advocates will tell you that they are not "pro-abortion" at all. Instead, they believe in the "freedom to choose," as if that choice had nothing to do with the fate of a human life.

When it came to the partial-birth-abortion lawsuits, the manner in which the proponents of abortion spoke in defense of the "procedure" was telling in its clinical sterility. Lawyers for the National Abortion Federation and Planned Parenthood avoided certain terminology to a point that would be comical were it not so serious. When questioning one of the plaintiff doctors about her views on the abortion technique, one National Abortion Federation lawyer accidentally referred to the practice as "partial-birth abortion," but quickly corrected himself by substituting the medical terminology regularly used by the abortion lobby ("intact dilation and evacuation"), which prompted this response from the judge: "You won't get sick if you say the words."

More disturbing, however, was the cold manner in which practitioners of partial-birth abortion described how they accomplished their objective of killing the

unborn child. Careful to avoid admitting that they crushed the partially born infant's skull and removed the brain, doctors instead testified that they "reduced" the "fetal calvarium" to allow "completion of delivery." One doctor testified that in performing the abortion he "separated" the "fetal calvarium" from the body, which, one must admit, does sound less disturbing than "decapitated a partially born child with a pair of scissors." Doctors, describing the most common mid- to late-term abortion method, in which an unborn child is pulled apart piece by piece, spoke of "disarticulation," but avoided any mention of "dismemberment," since that might discomfort middle-of-the-road abortion-rights supporters.

The war of words is important in the struggle over abortion rights. Doctors who have performed thousands, if not hundreds of thousands, of abortions among them testified in horrifying detail to the manner in which they bring about "termination of pregnancy." One said that his objective was to "safely and efficiently empty the uterine cavity, rendering the woman unpregnant." By using terms like "unpregnant," "evacuating the uterus," or "disarticulation of the fetus," these doctors succeed in concealing the fact that they are in the killing business. But just as sterile, clinical language can protect and preserve abortion, language—plain and simple language—can expose the truth of these abhorrent practices, as one of the Justice Department lawyers eloquently demonstrated in his closing arguments. In answering the charge that having a ban on partial-birth abortion was like having an "elephant in the room" when a doctor is performing an abortion, he responded that there is no "elephant in the room. . . . There is a baby."

With the assistance of an informed public, the practices of law and medicine can likely recover from the last 30 years of distortion. First, though, the pro-life movement has to recapture the language. At the recent "March for Women's Lives" in Washington, D.C., supporters of abortion rights, when confronted with the most ardent of their political opposition, chanted, "Lies! Lies! Lies!" But as the recent legal battles demonstrate, the abortion-rights movement is not afraid of distortion of the truth, but of the truth itself.

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■ REAGAN

Final Scene

A service at the National Cathedral

MATTHEW SCULLY

A FEW days before the state funeral for Ronald Reagan, some of his old aides were talking up an idea they thought would show just the right spirit: They proposed that at noon on June 11, as services began at Washington National Cathedral, the flags then at half-mast across America and the world be dramatically raised again. This would symbolize the new beginning President Reagan gave our country, and that optimism for which we should all remember him. It was a case of carrying the good cheer one step too far, though, and happily nothing came of this little inspiration. This was a day for accepting the end of things, and with full honors saying goodbye to, as the opening prayer put it, "our brother Ronald."

Settling in at the cathedral, I had a fine view of the five American presidents seated up front—our brothers Jerry, Jimmy, George, Bill, and George W.—and it was touching, throughout the service, to see them singing along with the hymns and praying for one of their own. In the spirit of the day, I found myself admiring former President Carter in particular, this good Christian man who at 79 still teaches Sunday school, and who, I suppose, was doing his works of charity long before anyone outside of Plains ever heard of him. Some pleasantries with Al Gore, by chance seated directly in front of Karl Rove, confirmed my impression of a serious man who still lives under a serious burden—although on this day, as on the day he conceded in December 2000, he carried it with a dignity that deserves our respect. You could see Bill Clinton's good side, too, in the slightly boyish, deferent-

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