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Joseph R. Stanton, M.D.

Testimony given before the Connecticut state legislature November 13, 1981.

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Americans United for Life, Inc.
230 N. Michigan Ave., Suite 915
Chicago, Illinois 60601
(312) 263 - 5029

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I appreciate the opportunity of appearing before you. In October, 1973, The Boston Herald headlined the story, "43 Defective Babies Allowed to Die." At that time, I wrote a short commentary, "Death With A Whimper in New Haven." In the intervening years, a substantial literature has developed. Indeed, there now exist books and chapters in books devoted to justifying infanticide–the killing of newborn infants by direct or indirect acts–as a medical practice. When we discuss infanticide we are talking about euthanasia of newborn human beings.

At a large pediatric ethical conference in Sonoma, California in 1974, 17 of 20 participants agreed that the doctor could take direct action to end the life of a self-sustaining infant.[1] James Rachels in an article in the ***New England Journal of Medicine*** in early 1975 suggested that the A.M.A.'s ethical strictures against killing were outmoded, and suggested that there was no significant ethical difference between killing and letting die. [2]

In response to the excellent series of articles in ***The Hartford Courant*** on the practice of infanticide at Yale-New Haven Hospital,[3] I wrote to Governor O'Neill and the Attorney General of Connecticut asking for a full and formal investigation. I stated then and I believe that infanticide is presently illegal in every one of the fifty states, and starving a child to death is also actionable under the child abuse law. I believe that legislative vigilance is necessary and proper to protect "unwanted" or congenitally defective human life at birth from so called humane killing by active or passive means.

In the marvelous introduction to the book, ***Abortion and Social Justice,***[4] George Huntston Williams, the Hollis Professor of Divinity Emeritus at Harvard, quotes from a

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famous epistle from the second century written to a pagan lawyer, named Diognetus, by an unnamed Christian. After quoting extensively from that letter, Williams writes: "Among the marks of the Christians within Roman imperial society was their abhorrence of the then common practice of casting out offspring by abortion, by exposure, or by selling them into slavery."[5]

Today, we are witnessing the development of marvelous new technology where curative or ameliorative procedures have been carried out on fetuses in utero in order to assure that the post-natal life of that individual will be healthier. Our neonatal care nurseries, with the regionalization of neonatal care and increasingly sophisticated technology, daily save younger and younger premature babies. This is the positive side of medical care. The paradox to which I draw your earnest attention is that as our technology increases, a dark side of medicine, death as a treatment option for afflicted newborns, arises.

I believe the threat of infanticide is part of the evil fruit of the Supreme Court abortion decisions, ***Roe v. Wade*** [6] and ***Doe v. Bolton*** [7]. Its logic is expressed as follows: If you can kill before birth a perfectly normal healthy fetus at 20, 22, or 24 weeks by abortion simply because it is unwanted, why should you protect a handicapped child at birth?

Joseph Fletcher writes: "It is reasonable to describe infanticide as post-natal abortion....Furthermore, infanticide is passive. An infant cannot put an end to its own life. This makes it allocide not suicide. Its variables are only (1) with respect to the euthanasiast's choice of direct or indirect means; and (2) whether it is done within the context of terminal illness or some other adverse state."[8]

John Fletcher, writing in the ***New England Journal of Medicine***, asks, "How should physicians and parents now understand their obligation to care for the defective newborn in the light of arguments for genetically indicated abortion after amniocentesis?"[9] John Fletcher believes you ***can*** tolerate the destruction of defective fetuses before birth, but hold the line

and defend the right to life of handicapped newborns after birth.

Dr. Milton Heifetz, speaking of those newborns who could not live without medical care and even with medical care would live only a "sub-human existence," writes: "We must evaluate what can coldly be termed the salvage value. This factor is vital in our decision making. What kind of child will result? Will life be one continuous form of agony? Will life be meaningful to any degree? What is meaningful and to whom?"[10] Later, Heifetz explains that the newborn does not possess human qualities, but is an organism with a potential for human qualities, qualities which are as yet nonexistent.[11]

He continues: "Is life at birth more significant than at the second, fourth or sixth month of pregnancy? It is not. True, it is closer to gaining the attributes of man, but, as yet, it has only the potential for those qualities. If this difference is true for the normal newborn, how much less significant is it for the newborn who doesn't even have this potential?"[12] You see, in Heifetz's words, the malignant dehumanization of the unwanted unborn child spreads to the born handicapped child.

The awesome fact is that infanticide has been in and out of human experience since the dawn of recorded history. The father in Roman law had the power to murder his children under the concept "patria potestas."[13] In Sparta, frail or defective infants were left exposed to the elements to die. The same practice was followed by the Eskimos. Infanticide and child abandonment were common in the industrial revolution in England. In China, the killing of female offspring or their abandonment was widespread as late as the 1800's.[14]

Let us examine some of the evidence for the advancement of the concept of infanticide in modern society.

You will recall the famous Kennedy Conference report in the early 1970's. [15] It caused widespread discussion at the time. A mongoloid child was born in John Hopkins hospital with a duodenal atresia – that is atrophy of a small segment

of the duodenum as it leaves the stomach. No food can get out of the stomach. Untreated, the child will die. Treatment is by what the newspapers called a twenty minute operation. You open the abdomen, take a loop of small bowel below the obstruction, and join it with a new opening to the stomach. You short circuit the obstruction and close the abdomen. In the Hopkins case, a decision was made not to treat only because the child had Down's Syndrome or Mongolism. A sign was placed on the baby's crib – "Do Not Feed." The child lived for fifteen days until it died.

Of the Hopkins case, Joseph Fletcher writes:

> The physicians in charge believed that direct euthanasia is wrong, that doing it indirectly, though undesirable, was morally tolerable. Hoping that the newborn would die of dehydration and starvation in three or four days, they wheeled it off into a corner where it lay dying for fifteen days, not three or four. Some form of ***direct termination*** would have been far more merciful as far as the infant, nurses, parents and some of the physicians were concerned. In that case, indirect was morally worse than direct - if, as I and most of us would contend, the good and the right are determined by human well-being. Indirect euthanasia did no good at all in that case, but lots of evil. [16]

The identical handicap has occurred in other mongoloid babies in American hospitals, and they too have been allowed to die.

In "The Way We Die," Dempsey writes as follows:

> Doctors don't talk much about infanticide, and, for obvious reasons, hospitals don't specify euthanasia as the cause of death. Thus, no one knows how many deformed, brain-damaged and poor-risk "preemies" who might be coaxed into life are allowed to die, or are chloroformed outright.

and further:

> When almost everyone was born at home, infanticide was rarer. But the hospital, by its very sterility, gives a curious sanction to such deaths. It speaks for society. When a parent does not want the damaged child, or when a physician decides that the world needs no more monsters, the hospital staff not infrequently omits the usual feeding orders. Starvation is seen as more merciful than outright suffocation. Yet it takes a long time for even a newborn baby to starve.
>
> A few years ago, in a Chicago hospital, such a mongoloid was rejected by its parents; although physicians could have saved his life, parental consent would have been necessary for the operation that would make it possible for him to ingest milk. Instead, the baby was placed in a side room where its cries would not offend others. Nurses, torn by this decision, went in from time to time to hold and rock the infant as they might any normal baby. They did this for the eleven days it took the child to die.[17]

Newborn Siamese twins were recently transferred by court order from Lakeview Hospital in Danville, Illinois to the Children's Memorial Hospital in Chicago. At birth, the doctor instructed the nurse not to resuscitate them. The babies surprised everyone with the vigor of their fight for life. In the chart was entered the note, "Do not feed in accordance with the parents' wishes."[18]

Professor John A. Robertson has recently analyzed this specific case and the law in The Hastings Center Report, October, 1981.[19] He writes:

> In any event, a custom among physicians to violate a criminal law does not in and of itself modify the law. Physician custom does determine the standard of care in malpractice cases because the law sets no other standard of practice as it does here with the criminal laws against homicide and child abuse. Neither physician custom nor previous non-prosecution can override those

laws. The Danville case has now alerted everyone that "the law hath slept but is not dead," and can awake alive and kicking if they choose to ignore the legal rights of the handicapped infant.

Reporting on a case from England, August 8th of this year, the ***Chicago Tribune*** headlined an article, "Court Condemns Baby Girl To Live." Overruling the decision of parents to allow their Down's Syndrome daughter to starve to death, Lord Justice Tempelman said, "We are asked to condemn her to life because we cannot be certain we should condemn her to death."[20]

Dr. Anthony Shaw probably fired the opening gun for American acceptance of infanticide by neglect in the non-treatment of defective newborns in the article, "Doctor, Do We Have a Choice?" in the ***New York Times*** Sunday Magazine in 1972.[21] Death, as an option in the treatment of the newborn, was brought out in the open in companion pieces in the ***New England Journal of Medicine*** written by Dr. Shaw,[22] and Doctors Raymond S. Duff and A.G.M. Campbell.[23] Although infanticide is presently forbidden by the laws of every one of the 50 states, Duff and Campbell suggest that these laws be changed.[24]

This is but a partial citation of an increasing body of material, medical reports and books, and symposia where helpful, life saving treatment is withheld because a quality of life judgment, a social judgment of the worth of a newborn or a strain on parental bonds becomes the determinant factor.

Listen now to Professor Victor G. Rosenblum of Northwestern University Law School. Incidentally, Professor Rosenblum has a son, Josh, who is retarded. Rosenblum writes:

> Modern advocacy of infanticide betrays an hostility toward and fear of the disabled. When the defective newborn is left to die, something vital dies within us all, our sense of justice, our self respect, our mission as human beings. When that child is left to die, we become idolators of the plastic, the cosmetic, the illusory and the

> elitist. When, on the other hand, we help that child to live, we affirm our capacity to love, our respect for human differences, our dedication to the democratic values of heterogeneity as instruments of creative achievement.[25]

In response to the question, "How shall we respond to malformed babies?" Jean Rostand, the French biologist, rather prophetically wrote:

> Above all, I believe a terrible precedent would be established if we agree that life could be allowed to end because it was not worth preserving, since the notion of biological unworthiness, even if carefully circumscribed at first, would soon become broader and less precise. After first eliminating what was no longer human, the next step would be to eliminate what was not significantly human, and, finally, nothing would be spared except what fitted a certain level of humanity.[26]

He further comments, "I would almost measure society's degree of civilization by the amount of effort and vigilance it imposes on itself out of pure respect for life."[27]

In considering extensions of the mentality that would tolerate infanticide, Rostand further writes:

> If eliminating "monsters" became common practice, lesser defects would come to be considered monstrous. There is only one step from suppression of the horrible to suppression of the undesirable. If it became customary to thin out the ranks of people over 90, those in their 80's would begin to seem very decrepit, and then those in their 70's. Little by little the collective mentality, the social outlook would be altered. Any physical or mental impairment would diminish the right to live. Each passing year, each stress, each illness would be felt as an exclusion; the sadness of aging and deteriorating would be combined with a kind of shame at still being there.[28]

Such may yet become the pressures on the aged and infirm if the impulse toward tolerating infanticide is not arrested.

The Down's Syndrome children are but one group of the impaired. What about others without mental impairment? In the United States and in England, as the technology of helping children born with myelomeningocele through reparative surgery improves, there is a move to withhold surgery from some of these children in the name of the quality of their lives.

The Lancet is the leading British medical journal. An editorial, November 24, 1979, written by a pediatric surgeon was titled, "Nontreatment of Defective Newborn Babies."[29]

Early in the editorial, he writes: "Even with the splendid words of Pope John Paul II, in his sermon in Phoenix Park on the sacredness of human life ringing in our ears, God (I am a Christian) asks us to be merciful. This does not include forcing a half man to eke out a miserable existence when it is our power to end it."[30] Incredibly, the half man he talks about is a newborn paralyzed from the waist down. He then details how a colleague "let slip the information that it takes at least 30 cc. of intravenous air to produce fatal embolus."[31] He calls the newborn only "potential," and states that "potential is fulfilled by the capital of love that parents invest in him after birth."[32]

Who does he propose for subjects of "treatment" by nontreatment? "Among 'treatable' infants are those with severe spina bifida and hydrocephalus, babies with more severe chromosome disorders, and even straight-forward Down's Syndrome, and babies with rubella syndrome."[33]

What is this new treatment? "I offer the baby careful and loving nursing, water sufficient to satisfy thirst, and increasing doses of sedative."[34] The sedative is chloral hydrate. What happens with this treatment? Babies starve to death, or become so weak and sedated they die of dehydration.

Here is how Jerome Lejeune, [35] the discoverer of the genetic defect Trisomy 21, or Down's Syndrome, responds to ***the Lancet*** proposal for destroying the handicapped child.

> In your introduction to an unsigned paper on "Non-treatment of Defective Newborn Babies" (Nov. 24, p. 1123) you state that "the editorial view was that the balance of benefit lay in anonymity." Balance of benefit to whom? To the anonymous children's physician nursing to death babies with Trisomy 21 and mourning them so tactfully thereafter? Or to the hospital in which such a mortuary facility is replacing a treatment ward? Or to you, Sir, indulging yourself in an anti-medicine scoop without revealing its source? Or to all three, because infanticide is still a criminal offense in civilized countries?
>
> The whole history of medicine is at hand to answer any unknown death-doctor. Those who delivered humanity from plague and rabies were not those who burned the plague-stricken alive in their houses or suffocated rabid patients between two mattresses. Health by death is a desperate mockery of medicine.
>
> Victory against Down syndrome, i.e., curing children of the ill effect of their genetic overdoses may not be too far off, if only the disease is attacked, not the babies. The length of the road to be covered before such an achievement cannot be predicted, but at least wounded parents have the right to know that life-doctors still exist and that we will never give up.[36]

Now all of the push for infanticide is coming under the aegis of the quality of life and cost control. We should not really be surprised. Eleven years ago, a frank editorial in a major American medical journal said we would reach this point. The only real surprise is that we have reached it so quickly. The editorial, entitled "A New Ethic for Medicine and Society" speaks of medicine's changing role in society "as the problems of birth control and birth selection are extended inevitably to death selection and death control whether by the individual or by society."[37]

Ladies and gentlemen, infanticide and the poisoning of "quality of life" ethics have already badly corrupted the organizations of law and medicine both here and in England. It is very

dubious that corrective actions will come from the elites of either profession, that is, from the official organizations of law or medicine.

The protection of the unborn child and the child born handicapped lies, then, in the consciences, and the dedication and actions of legislators and simple citizens. I call for perseverance in the defense of all life, for rededication to those noble impulses of the human spirit that reject killing actively or passively as an acceptable solution to what can be admittedly difficult problems.

Dr. Robert Zachary of England, who has been caring for spina bifida babies for 30 years, writes:

> Under no circumstances would I administer drugs to cause the death of a child. There is no doubt that those who are severely affected at birth will continue to be severely handicapped. But I conceive it to be my duty to overcome that handicap as much as possible and to achieve the maximum development of their potential in as many aspects of life as possible - physical, emotional, recreational, and vocational - and I find them very nice people.[38]

John Donne wrote in 1624:

> No man is an island, entire of itself; every man is a piece of the continent, a part of the main; if a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friends or of thine own were, any man's death diminishes me, because I am involved in mankinde; and therefore never send to know for whom the bell tolls; it tolls for thee.[39]

Whenever an innocent human life ends, even if it be in the sophisticated setting of a pediatric ward of a university hospital, where a decision is made to not treat, and to sedate and starve to death a defenseless, handicapped newborn - each time and every time - the bell tolls.

ENDNOTES

1. Jonsen, et al, *Critical Issues in Newborn Intensive Care: A Conference Report and Policy Proposal,* 55 ***Pediatrics*** 756 (1975).
2. Rachels, *Active and Passive Euthanasia,* 292 ***New Eng. J. Med.*** 75 - 80 (1975).
3. *The Hartford Courant,* June 14 - 27, 1981.
4. T.W. Hilgers and D. Horan, ***Abortion and Social Justice*** ix (1980).
5. *Id* at x.
6. 410 U.S. 113 (1973).
7. 410 U.S. 179 (1973).
8. Joseph Fletcher, *Infanticide and the Ethics of Loving Concern* in Kohl, ***Infanticide and the Value of Life*** 17 (1978).
9. John Fletcher, *Abortion, Euthanasia and Care of Defective Newborns* 292 ***New Eng. J. Med.*** 75 - 78 (1975).
10. M. Heifetz & C. Mangel, ***The Right to Die*** 51 (1975).
11. *Id.*
12. *Id.*
13. *See* note 4 *supra.*
14. *See generally:* V. Rosenblum and M. Budde ***Infanticide: Selected Historical and Cultural Considerations,*** (1981) unpublished article); M. Piers, ***Infanticide: Past and Present*** (1978).
15. Report of the Joseph P. Kennedy Foundation Int'l. Symposium on Human Rights, Retardation and Research (Oct. 16, 1971). For an extended version of the Johns Hopkins case study, *see* Gustafson, *Mongolism, Parental Desires and the Right to Life,* 16 ***Perspectives in Biol. and Med.*** 529 (1973).
16. Joseph Fletcher, ***Humanhood: Essays in Biomedical Ethics*** 142 (1979).
17. D. Dempsey, ***The Way We Die*** 102 - 103 (1975).
18. *A.M.A. News,* Oct. 9, 1981.
19. Robertson, *Dilemma in Danville,* 11 ***Hastings Center Report*** 5 (1981).
20. *Chicago Tribune,* Aug. 8, 1981 at Sec. 3 p. 17.
21. *New York Times,* Jan. 30, 1973, Magazine sec.
22. Shaw, *Dilemmas of Informed Consent in Children,* 289 ***New Eng. J. Med.*** 885 - 890 (1973).

23. Duff and Campbell, *Moral and Ethical Dilemmas in the Special Care Nursery,* 289 ***New Eng. J. Med.*** 890 - 894 (1973).
24. *Id.*
25. V. Rosenblum, ***Infanticide and the Handicapped Newborn*** (Brigham Young Univ. Press, In Press).
26. J. Rostand, ***Humanly Possible*** 89 - 92 (1973).
27. *Id.*
28. *Id.*
29. *Lancet,* Nov. 24, 1979 at 1123 - 24.
30. *Id.*
31. *Id.* at 1124.
32. *Id.*
33. *Id.*
34. *Id.*
35. Dr. Jerome Le Jeune is Chairman of the Department of Fundamental Genetics at the University of Paris. Currently he is engaged in research into possible therapies for the condition of Down's Syndrome.
36. *Lancet,* Jan. 5, 1980 at 49.
37. *A New Ethic for Medicine and Society,* 113 ***Calif Med.*** 67 - 68 (1970).
38. *British Medical Journal,* Dec. 1977 at 1460 - 62.
39. J. Donne, ***Devotions upon Emergent Occasions*** no. 6 (1624).