

STUDIES IN LAW & MEDICINE

**Defending
“The Silent Scream”**

**A Rejoinder to
Planned Parenthood**

By:
Thomas L. Jipping

An Educational Publication of
Americans United for Life, Inc.

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DEFENDING "THE SILENT SCREAM"

A REJOINDER TO PLANNED PARENTHOOD

Thomas L. Jipping*

INTRODUCTION

The pro-abortionists are on the defensive. Their most recent flurry targets the film "The Silent Scream," narrated by Bernard N. Nathanson, M.D., depicting a suction abortion filmed with realtime ultrasound imaging. Although former National Organization for Women president Judy Goldsmith has said that the film "is nothing for pro-choice activists to fear,"¹ they have been unusually pre-occupied with the task of discrediting it. The pro-abortionists and their allies are busy getting their message out - examples include Dena Kleiman's article "Debate on Abortion Focuses on Graphic Film" appearing in the *New York Times* on January 25, 1985,² Pat Swift's "Womanscope" column appearing in the *Buffalo News* on March 14, 1985,³ and Claudia Wallis' article "Silent Scream" appearing in *Time* magazine on March 25, 1985.⁴

The most substantive effort to date has been produced by the Planned Parenthood Federation of America. In a memorandum dated February 1985, the group's Vice President for Medical Affairs, Louise B. Tyrer, M.D., made plain Planned Parenthood's motivation for criticizing the film: "The intent [of the film] is to try to focus public attention in the abortion debate on the fetus and away from any concern or compassion for women in need of abortion services. . . . [R]ather than permitting the debate to center around the fetus, it is up to us to direct the focus to the woman and her problems." To that end, Planned Parenthood convened "a panel of physicians who are medical experts from various disciplines . . . to view and critique the film 'The Silent Scream.'" This monograph responds to and rebuts those criticisms.

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I. GENERAL OBSERVATIONS

A. The Memorandum

Dr. Tyrer stated in her memorandum accompanying the critique: "We need to reiterate that public opinion polls consistently support the fact that the majority favor [sic] a woman's right to choose abortion in consultation with her physician." The polls that Dr. Tyrer cites, however, show support for something that does not exist - "a genuine medical consultation for some health-related condition."⁵ Recognizing this, Senator Paul Laxalt stated on June 27, 1983: "I suggest that it is time to retire the slogan that abortion should be 'A decision between a woman and her doctor.' For it is nothing more than an attempt to cloak with the prestige of the healing profession a practice which has nothing to do with healing. And it is a device for concealing the manner in which the assembly-line abortion industry actually functions."⁶

Opinion poll results depend entirely upon the precise nature of the specific questions asked. Raymond J. Adamek, Ph.D., a professor of sociology at Kent State University, conducted a comprehensive investigation of popularly cited opinion polls on abortion and published his findings in 1982. He concluded: "It would appear, then, that the middle majority approves of less than ten percent of the legal abortions currently taking place in the United States."⁷ He went on to state that "only a minority approves of abortion beyond the first three months."⁸ Finally, Dr. Adamek summarized: "Our review of major public opinion polls on abortion and of detailed analyses of these polls by various social scientists indicates that a majority of Americans . . . are, however, closer to the pro-life ideology regarding abortion than they are to the prochoice ideology."⁹

B. The Critique

Not only is Planned Parenthood's interpretation of opinion polls questionable, but so is the composition of the panel it assembled to critique "The Silent Scream." That panel did not constitute an objective, unbiased perspective toward abortion. Indeed, at least two of the panelists - Drs. William Rashbaum and Ming-Ning Yeh - actually worked for Dr. Bernard Nathanson, performing abortions at the Center for Reproductive and Sexual Health (CRASH) in New York City.¹⁰

The critique fails to include references, citations to outside authority, or quotes. Rather, it labels general conclusory statements as "accurate medically accepted facts," again with no supporting authority. The bulk of the critique covers non-medical issues, outside the expertise of Planned Parenthood's physicians.

In addition, the critique falls short in its brief, cursory treatment of many substantive points. This rejoinder does not address every point raised, but the documentation presented herein demonstrates thoroughly the shallow and deceptive nature of the critique.¹¹ It focuses on specific points or contentions made in the film and specifically rebuts Planned Parenthood's criticism of these points.

II. SPECIFIC REBUTTALS

A. Medical Issues

1. Fetal pain

The Planned Parenthood critique states: "Without a cerebral cortex . . . pain impulses cannot be received or perceived."

Even a readily available source like the *Encyclopedia Americana* illustrates the falsehood of this statement in the critique. It is the thalamus, not the cortex, in the brain that is principally involved in pain sensation: "Impulses of pain are the only sensory impulses that terminate in the thalamus, and it is believed that the thalamus contains the body's 'pain center.'" ¹² In a summary of the medical evidence concerning fetal pain, Vincent J. Collins, M.D., renowned expert in pain research, stated: "The critical neurological structure in the brain for pain sensation and response is the thalamus [T]he presence of a functioning cortex is not necessary to pain sensation."¹³

More specifically, medical experts do in fact conclude that the preborn child feels at least some pain at about 12 weeks of age - the age of the baby whose death is depicted in "The Silent Scream." In their 1980 text *The Development of the Brain*, Professors Stanislav Reinis and Jerome M. Goldman of the University of Waterloo wrote: "By 10.5 weeks, the palms of the hands are responsive to light stroking with a hair, and at 11 weeks, the face and all parts of the upper and lower extremities are sensitive to touch. By 13.5 to 14 weeks, the entire body surface, except for the back and top of the head, is sensitive to pain."¹⁴ Dr. Collins, a professor of anesthesiology at the University of Illinois, observed that "[a]s early as eight to ten weeks gestation, and definitely by thirteen and a half weeks, the human fetus experiences organic pain."¹⁵ He is in accord with other medical experts. Dr. William

Matviuw, a Fellow of the American College of Obstetricians and Gynecologists, stated: "By 13½ weeks, organic responses to noxious stimuli occur at all levels of the nervous system, from the pain receptors to the thalamus."¹⁶ Likewise, Dr. Thomas Sullivan, a pediatric neurologist, concluded: "It is clear that a fetus responds to noxious stimuli as early as eight weeks By 13½ weeks, the fetal response is aversive, not merely reflexive. Thus, the fetus perceives organic pain by at least 13½ weeks of gestation."¹⁷

In February 1984, twenty-six physicians from the fields of obstetrics/gynecology, pediatrics, and maternal and fetal medicine joined in a letter to President Ronald Reagan which stated in part: "Mr. President, in drawing attention to the capability of the human fetus to feel pain, you stand on firmly established ground."¹⁸ The signatories included two past presidents and six Fellows of the American College of Obstetricians and Gynecologists and the president of the New York State Medical Society.

It is clear that the medical evidence not only disproves Planned Parenthood's claim that the cortex is even needed for pain sensation but also affirmatively shows that the preborn child feels pain even at 12 weeks of age.

2. Fetal development

The critique states: "A fetus of 12 weeks cannot in any way be compared to a fully formed functioning person. At this stage only rudiments of the organ systems are present."

The statement that a human being at 12 weeks of age is not as developed or as mature as a human being at six months or five years of age is absolutely true; indeed, it is self-evident. The full process of development begins at conception and encompasses 45 generations of cell division, 41 of which are completed before birth and the final four not until adulthood.¹⁹ But at each stage of development, the individual is clearly a human being and it is simply untenable to assert that a human being at one stage of development "cannot in any way be compared to" a human being at another.

Differentiation by level of development and maturation in no way changes the fact that each individual has been a living human being since conception, a fact established irrefutably by science. The First International Conference on Abortion, meeting in Washington, D.C., in 1967, issued this statement: "The majority of our group [19-1] could find no point in time between the union of sperm and egg . . . and the birth of the infant at which point we could say that

this was not a human life The changes occurring between implantation, a six-weeks embryo, a six month fetus, a one-week old child, or a mature adult are merely stages of development and maturation."²⁰ More recently, Dr. Micheline M. Mathews-Roth, an associate professor at the Harvard Medical School, stated in testimony before a U.S. Senate subcommittee that "it is scientifically correct to state that an individual human life begins at conception . . . and that this developing human always is a member of our species at all stages of its life."²¹

Additionally, the critique inaccurately states that at 12 weeks "only rudiments of the organ systems are present." The organ systems are present by eight weeks and are functioning by eleven weeks.²² Dr. Ronan O'Rahilly, an embryologist at the University of California at Davis, stated that at eight weeks "95 percent of the known structures, features, and organs, from tiny nerves to fingers and muscles, are there."²³ Indeed, from the onset of pregnancy, the fetus controls the changes that take place in the intra-uterine environment.²⁴

The living human being whose death is depicted in "The Silent Scream" was about 12 weeks old, about three inches tall, and had a beating heart, a functioning brain, hands, feet, a stomach secreting gastric juices, and even fingerprints. The film visually illustrates the falsity of attempts to cast the preborn child as just a blob of tissue, a tadpole-like creature with no human features or qualities. Planned Parenthood making another such attempt in its critique is only self-defeating.

3. The fetus as patient

In "The Silent Scream" Dr. Nathanson quotes from Williams' text, *Obstetrics*, which describes the fetus as being amenable to intra-uterine therapy and, in fact, as a second patient. The critique states that this statement from the medical textbook used in the film is merely intended to promote interest and research to improve the health of the mother and the "autonomous newborn," and that Dr. Nathanson "implies that Williams considers the fetus as the primary patient." The words on the printed page, which the viewer can read for herself on the screen, clearly state that the fetus is the *second* patient - meaning, of course, that there is a first patient, namely, the mother of the child. No implication is necessary. Williams states this unequivocally.

What the critique does not mention, when it asserts that the pregnant woman is "the thrust of attention of the text," is that the

eighth edition of Williams' *Obstetrics* that Dr. Nathanson used when he was a medical student devoted just 22 of 750 pages to the preborn child. The 16th edition (1980) of the text used in the film, however, contains at least 270 pages devoted to the preborn child.²⁵ In addition, the separate medical specialty of fetology, non-existent 10 years ago, has virtually exploded and also acknowledges the separate existence of two patients - mother *and* preborn child.²⁶

The late Sir Albert William Liley, world-renowned research professor in fetal physiology at the Postgraduate School of Obstetrics and Gynecology at the University of Auckland, New Zealand, wrote: "This then is the fetus we know and indeed we each were. This is the fetus we look after in modern obstetrics, the same baby we are caring for before and after birth, who before birth can be ill and need diagnosis and treatment just like any other patient."²⁷

B. Non-Medical Issues

1. The fetus as a person

The critique asks: "Is it appropriate to refer to the fetus as an unborn child, a miniature human being?" Its answer: "No. Constitutionally, a fetus has no rights of personhood."

This criticism fails for at least two reasons. First, Planned Parenthood unfortunately confuses medical and legal terms and, as a result, completely fails to address the film's reference to the fetus as an unborn child. Second, this contention that the fetus has no constitutional rights of personhood ignores both the legal community's rejection of the validity of the Supreme Court's decision announcing this doctrine and the recognition given the fetus as an individual with rights by other areas of the law.

As discussed above, science establishes conclusively that the individual member of the human species (the human being) begins life at conception.²⁸ Regardless of any legal rights that may be deemed to inhere before birth, the fetus is a living human being. As such, it is entirely appropriate to refer to the fetus as a human being or an unborn child because that is exactly what science tells us the fetus is.

The critique's claim that, under the Constitution, a fetus has no rights of personhood is a legal rather than a scientific claim. Only with respect to abortion has the Supreme Court said that the preborn child has no legal rights. The case in which the Court announced this surprising new doctrine, *Roe v. Wade*,²⁹ has been thoroughly denounced by both pro- and anti-abortion legal scholars alike. Professor John Hart

Ely, Dean of the Stanford Law School and himself pro-abortion, wrote this about the Court's finding of non-personhood: "The Court notes that most constitutional clauses using the word 'person' . . . appear to have been drafted with postnatal beings in mind. (It might have added that most of them were plainly drafted with *adults* in mind, but I suppose that wouldn't have helped)."³⁰ John D. Gorby, a professor of law at the John Marshall Law School observed that "one would certainly expect the Court to have carefully and thoroughly studied and analyzed the scope of constitutional personhood as well as the nature of the unborn to determine on the most rational basis possible whether the unborn falls within that scope . . . [T]he Court did no such thing."³¹

In other areas of the law, the preborn child has long been recognized as an individual with rights. More than 150 years ago, the high court of Massachusetts said in the case of *Hall v. Hancock*: "A child [in the womb] is taken to be a person in being for many purposes. He may take by descent; by devise . . . or under the statute of distributions . . . and generally for all purposes where it is for his benefit And it was stated [in a 1782 case] as a fixed principle, that wherever such consideration would be for his benefit, a child [in the womb] shall be considered absolutely born."³² In the case of *William v. Marion Rapid Transit*, the Ohio Supreme Court in 1949 adopted the following statement by the New Jersey high court as authoritative: " 'If the common law protects the rights of the unborn child and if every intendment in the law is favorable to him, the inference is inevitable that such unborn child is a person and possesses the rights that inhere in a person even though he is incapable himself to assert them.' "³³ In the 1953 case of *Kelly v. Gregory*, a New York court stated: "We ought to be safe in this respect in saying that legal separability should begin where there is biological separability. We know something more of the actual process of conception and foetal [sic] development now than when some of the common law cases were decided; and what we know makes it possible to demonstrate clearly that separability begins at conception."³⁴

The rationales for denying legal rights to the unborn have been consistently abandoned.³⁵

Prosser and Keeton's *Handbook on the Law of Torts*, commonly used in law schools throughout the country, states that "medical authority has long recognized that an unborn child is in existence from the moment of conception, and for many purposes its existence is recognized by the law. It has been accorded legal status for various purposes in equity, criminal law, property law, and tort law."³⁶

In 1971, William J. Maledon published an extensive review of how the law of property, tort, equity, and crimes treated the preborn child. He noted the steady progress in these areas toward recognition of the preborn child as an individual with rights and asked: "Is the unborn child any less a person when, instead of being killed by an automobile, he is killed by a doctor in the performance of an abortion? Seldom has the law been confronted by such an obvious contradiction."³⁷

2. The necessity of abortion

Planned Parenthood criticizes "The Silent Scream" for generating sympathy for the fetus and asks: "What about the woman who needs an abortion? . . . The film ignores the plight of the woman seeking abortion." This must be corrected "by reminding people of the horrors to which women were subjected when abortion was illegal . . ."

An essential distinction to be made here is between "needs" and "wants." Assuming that a woman truly *needs* an abortion in the situations where a pregnancy results from rape or incest and where a pregnancy carried to term would threaten her life, less than 2% of the more than 1.5 million abortions currently performed each year in the United States are needed. Even a leading pro-abortion spokesman like Dr. Irving Cushner of the U.C.L.A. Medical School has the honesty to admit: "Something on the order of 2 percent of all of the abortions in this country are done for some clinically identifiable entity - physical health problem, amniocentesis and identified genetic disease or something of that kind. The overwhelming majority of abortions in this country are performed on women who for various reasons do not wish to be pregnant at this time."³⁸ Nor can Planned Parenthood legitimately allege "contraceptive failure" as a reason why abortions are "needed." Nearly two-thirds of women who have abortions made no effort to use contraception.³⁹

Planned Parenthood suggests that, should abortion be made illegal, thousands of women will die each year. In fact, Dr. Nathanson, as the founder of what is now the National Abortion Rights Action League, spread that spectre in the late 1960s and early 1970s in an effort to get abortion legalized. Now, however, he freely admits that those figures on abortion-related deaths were absolutely false.⁴⁰ In addition, United States Public Health statistics show that the number of annual maternal deaths from *all* abortions - legal, illegal, and spontaneous (miscarriage) - declined steadily from about 300 in the 1950s to 160 by 1967 and to just 36 by 1973.⁴¹

Experience since 1973 shows that, despite Planned Parenthood's rhetoric, "safe" does not automatically follow from "legal." Investi-

gations of abortion mills like the *Chicago Sun-Times*' published in November 1978⁴² and experiences by members of Women Exploited by Abortion are graphic evidence to the contrary.

This anomolous situation of unsafe yet legal abortion⁴³ has been virtually mandated by the Supreme Court itself. In its original decision legalizing abortion, the Court ruled that a state may not regulate abortion even to safeguard maternal health during the first trimester, when some 90% of abortions are performed. This is a literal invitation for unscrupulous entrepreneurs. No other area of medical practice is so protected from any state regulation,⁴⁴ whether aimed at the abortion procedure itself or at ensuring that the woman's choice is preserved through full disclosure of relevant information.

Dr. Matthew Bulfin, a practicing obstetrician/gynecologist in Florida and a Fellow of the American College of Obstetricians and Gynecologists, studied over a 7½ year period those of his patients who had undergone abortions. He discovered that 20% of them suffered physical or mental complications "of such magnitude or duration as to be considered significantly disabling."⁴⁵

Dr. Richard Moutvic, twice chairman of the department of obstetrics and gynecology at Chicago's St. James Hospital and a professor at the Stritch School of Medicine at Loyola University has concluded that "induced abortion at any stage of pregnancy poses a definite and substantial threat of impairment of the woman's procreative potential . . . It is important to remember . . . that the very nature of the abortion procedure entails certain risks which are inescapable, given present technology . . . It is my firm medical conclusion that current, approved abortion procedures, properly performed, significantly threaten a woman's future ability to successfully bear children, a conclusion abundantly supported by the medical literature."⁴⁶

3. The abortion videotape

The critique states that "an uncomplicated first-trimester abortion usually takes less than ten minutes to perform" and charges that the videotaped abortion in the film "seemed to go on for a very extended period of time."

To prove this claim false, one need only view "The Silent Scream" and clock the segments depicting the ultrasound view of the abortion to demonstrate that it did not go on for "a very extended period of time." The entire raw videotape of the suction abortion runs just 10 minutes, 39 seconds⁴⁷ and the portion utilized in "The Silent Scream" runs less than seven minutes after Dr. Nathanson says "let's move to the action."

4. The late - term abortions

Without any evidence supporting its claim, Planned Parenthood simply states that the dead fetuses in disposal containers that are flashed on the screen "are actually stillborns . . . rather than aborted fetuses." These photographs highlight the fact that abortion in the United States is legal until the day of birth and that late-term pregnancies are legally aborted. It also shows how the pro-abortionists attempt to avoid this disturbing reality.

The photographs in the film depict events in early 1982 when the Martin Container Corporation repossessed a 20 foot storage container used by Malvin Weisberg's Los Angeles county pathology lab to store fetuses from area abortion clinics. The abortions here had been performed by Drs. Gordon Goei and Scott Ricke at the Inglewood Hospital abortion facility. When autopsies of the dead babies were ordered in March 1982, the district attorney estimated that there were 17,000 bodies in that container and that some of them were as old as 30 weeks.⁴⁸

This criticism by Planned Parenthood is especially unfortunate since the facts surrounding these photographs were so easily obtained.

5. The number of abortions

The critique states that past estimates of the number of illegal abortions in the United States prior to nation-wide legalization in 1973 have ranged from 200,000 to 1,200,000. This is true. For example, a 1958 Planned Parenthood conference report stated that these numbers were "as low as 200,000 and as high as 1.2 million . . . [T]here is no objective basis for the selection of a particular figure between these two estimates."⁴⁹ In spite of this, however, the critique arbitrarily says that the more reliable figure is at the higher end of that range.

Thomas W. Hilgers, M.D., a professor of obstetrics and gynecology at the Creighton University School of Medicine has completed a comprehensive and scientific study of the subject, utilizing verified data on maternal deaths from abortions. He concluded that the most likely average annual figure for illegal abortions in the pre-legalization era is 98,000.⁵⁰ Dr. Nathanson said in the film that the figure for 1963 was 100,000.

The critique claims that the number of abortions "has risen little since abortion was legalized." This is false. Professor Hilgers concluded in his study: "With legalized abortion, there has been an exponential increase in the total number of abortions each year in the United States, in the range of 6 to 11-fold from the prelegalization era. This increase is directly attributable to the legalization of

abortion."⁵¹ Likewise, the figures from the Alan Guttmacher Institute, Planned Parenthood's own research arm, show that there were approximately 750,000 abortions performed in 1973 and more than 1.5 million performed in 1980.⁵² Dr. Nathanson said in the film that the figure for 1973 was 750,000 and for 1983 was 1.5 million.

6. Informed consent

The critique states: "Planned Parenthood takes great care to advise and counsel women and their partners of the various options for managing an unwanted pregnancy They are given a written fact sheet detailing the potential complications that can occur with abortion For those who wish further information about the fetus and its developmental stages, this information is provided. To require that women receive such information . . . when they do not wish it is punitive. The Supreme Court has declared that such requirements go beyond the bounds of information required for informed consent."

Even if Planned Parenthood's claim is true, this information is given to only 5% of women who undergo abortions. Only about 80,000 (or about 5%) of the more than 1.5 million abortions performed annually in this country are performed in Planned Parenthood clinics. But actual experience shows that efforts to ensure informed consent have been consistently opposed by groups like Planned Parenthood. In the 1983 case of *Akron v. Akron Center for Reproductive Health*,⁵³ for example, Planned Parenthood filed a brief supporting those urging the Supreme Court to uphold a lower court invalidation of informed consent provisions. The Court did just that, declaring unconstitutional ordinances requiring that information about the stage of pregnancy, physical and emotional complications of abortion, development of the preborn child, and alternatives to abortion be given to women before abortions were performed. These measures are clearly necessary to ensure that informed consent is provided. Nevertheless, the Court said: "It remains primarily the responsibility of the physician to ensure that appropriate information is conveyed to his patient, depending on her particular circumstances [R]ecognition of the State's interest in ensuring that this information be given will not justify abortion regulations designed to influence the woman's choice between abortion and childbirth."⁵⁴ The Court apparently ignored the intent of the regulations to ensure that informed consent existed, not to unduly influence an already informed choice. Indeed, nowhere in its opinion did the Court show how this information was being used "to influence the woman's informed choice between abortion and childbirth."

Planned Parenthood went even further recently when it filed

a brief in *Diamond v. Charles* supporting those who would deny the state even the power to require that doctors inform their patients when they have prescribed abortifacient⁵⁵ drugs or devices for them. This opposition to measures that would ensure informed consent belies the "pro-choice" rhetoric of the pro-abortionists.

The state, nevertheless, has an important interest in ensuring informed consent.⁵⁶ The Supreme Court has also recognized an important interest of the state in protecting preborn life. Even though the Court has said that this interest is compelling (strong enough to justify certain regulations) only after the baby is viable (able to live outside the womb),⁵⁷ Justice Sandra Day O'Connor has correctly recognized in dissent that this interest does not depend on the stage of pregnancy but exists from conception.⁵⁸ As such, there is no principled reason for excluding the state so completely from the abortion context.

CONCLUSION

"The Silent Scream" is sound, accurate medically and in every other way. Planned Parenthood's critique is a collection of unfounded, unsupported, misleading, ignorant statements that prove nothing in themselves. If this is Planned Parenthood's best refutation, it only lends credibility to that which it would discredit. Such a flurry casts doubt on Judy Goldsmith's assertion that the film "is nothing for pro-choice activists to fear."

There could perhaps be no more significant support for the film's accuracy than the sworn affidavit of Dr. Ian Donald, former Regius Professor of Obstetrics at the University of Glasgow, the inventor of ultrasound and the world's foremost authority on its use and interpretation. That statement reads in part: "I the undersigned Ian Donald . . . having had experience in the development and exploitation of diagnostic ultrasound from 1955 onward until 1981, the last four years of which were much taken up with filming fetal activity at various stages of pregnancy . . . have studied Dr. Nathanson's videotape not less than four times and affirm that I am of the opinion that the fetal activities depicted by ultrasound realtime scanning in this film are not faked, nor the result of artifact, intentional or otherwise."⁵⁹

NOTES

1. Judy Goldsmith, debate with Rev. Jerry Falwell, National Press Club, Washington, D.C., 12 February 1985.

2. This piece purports to be a news article on the debate over the contention made in "The Silent Scream" that a preborn child feels pain. Its bias, however, is clear. The article utilizes more than *four times* as much space to make its case against the existence of fetal pain than it allows for the other side of the argument. It quotes four physicians for the no-pain side but only one - Dr. Nathanson - claiming the existence of fetal pain. The result of this tactic, of course, is to leave the impression that the entire scientific community opposes Dr. Nathanson's contention. This is hardly the case at all. See notes 14 - 18 below and accompanying text.

In contrast to this heavy-handed attempt at persuasion-through-news, Stephen Chapman's *Chicago Sun-Times* column of March 17, 1985 quotes two physicians disputing Nathanson's claim and one physician, one textbook, and one journal article supporting it. This more evenly reflects the debate that exists over the issue.

3. See this author's rejoinder to Ms. Swift's column appearing in the *Buffalo News* on May 30, 1985 and its reprint in the *Congressional Record*, 18 June 1985, E2850.

4. Claudia Wallis, "Silent Scream: Outcry Over Antiabortion Film," *Time*, 25 March 1985, 62.

5. Sen. Orrin Hatch (R-Utah), floor debate on Senate Joint Resolution 3, *Congressional Record*, 27 June 1983, S9078. Senator Hatch went on to say that such a consultation is "a very rare occurrence indeed."

Dr. Nathanson has had perhaps more experience with abortion than anyone. While he was director of the Center for Reproductive and Sexual Health (CRASH) in New York City, at least 60,000 abortions were performed. He has personally performed at least 5,000 abortions and supervised the performance of 10,000 more. The Supreme Court has called him "a widely experienced abortion practitioner." *Planned Parenthood v. Ashcroft*, 462 U.S. 476,489 (1983). With that experience, Dr. Nathanson has testified before a U.S. Senate subcommittee that "[a] doctor does not participate in the making of the [abortion] decision except in very restricted circumstances - perhaps 1 percent of all abortions, or less." *Congressional Record*, 27 June 1983, S9124.

6. Sen. Paul Laxalt (R-Nevada), floor debate on Senate Joint Resolution 3, *Congressional Record*, 27 June 1983, S9125.

7. Raymond J. Adamek, *Abortion and Public Opinion in the United States* (Washington, D.C. : National Right to Life Education Trust Fund, 1982), 5. See also Judith Blake, "The Supreme Court's Abortion Decisions and Public Opinion in the United States," *Human Life Review* 4 (Winter 1978): 69.

8. Adamek, 5.

9. Adamek, 10.

10. CBS Morning News conducted a debate on the merits of "The Silent Scream" on March 4, 1985 (5 physicians against the film, 3 for it). Dr. Richard Berkowitz, a member of the CBS panel opposing the film, also worked for Dr. Nathanson at CRASH. See Bernard N. Nathanson, "The Peaceful Snooze of CBS Morning News," *National Right to Life News*, 11 April 1985.

11. This rejoinder addresses nine of the 18 points raised in the Planned Parenthood critique. For responses to other points, see Richard D. Glasow, "Criticism of 'The Silent Scream' Falls Apart Under Scrutiny," *National Right to Life News*, 2 May 1985, and *Documenting Abortion From the Victim's Point of View* (Washington, D.C. : National Right to Life Education Trust Fund, 1985).

12. *Encyclopedia Americana*, International ed., s.v. "brain."

13. Vincent J. Collins et al., *Fetal Pain and Abortion: The Medical Evidence*, Studies in Law & Medicine, no. 18 (Chicago: Americans United for Life Legal Defense Fund, 1985), 6. See also Vincent J. Collins, *Principles of Anesthesiology* (Philadelphia: Lea & Febiger, 1976), 906-932.

14. Stanislav Reinis et al., *The Development of the Brain: Biological and Functional Perspectives* (Springfield, IL: Charles C. Thomas, 1980), 232.

15. Dr. Collins' affidavit is published in the *Congressional Record*, 27 June 1983, S9103.

16. Dr. Matviuw's affidavit is published in the *Congressional Record*, 27 June 1983, S9104.

17. Dr. Sullivan's affidavit is published in the *Congressional Record*, 27 June 1983, S9104.

18. See Collins et al., 1.

19. Albert William Liley, "A Day in the Life of the Fetus," in *New Perspectives on Human Abortion*, ed. Thomas W. Hilgers et al. (Frederick, MD: University Publications of America, 1981), 29.

20. Jack C. Willke, *Handbook on Abortion*, 1979 ed. (Cincinnati: Hayes Publishing Co., 1979), 9.

21. Senate Subcommittee on the Separation of Powers, Committee on the Judiciary, *The Human Life Bill*, 97th Cong., 1st sess., 1981 (hearings, 23 April 1981), vol. 1, 17.

22. See E. Blechschmidt, "Human Being From the Very First," in *New Perspectives on Human Abortion*, ed. Thomas W. Hilgers et al. (Frederick, MD: University Publications of America, 1981), 6-28; Bart T. Heffernan, "The Early Biography of Everyman," in *Abortion and Social Justice*, ed. Thomas W. Hilgers et al. (1972; reprint, Thaxton, VA: Sun Life, 1980), 3-25; L.B. Arey, *Developmental Anatomy*, 7th ed. (Philadelphia: W.B. Saunders, 1975); Landrum Shettles et al., *Rites of Life: The Scientific Evidence for Life Before Birth* (Grand Rapids, MI: Zondervan Publishing House, 1983); Robert Rugh et al., *From Conception to Birth: The Drama of Life's Beginnings* (New York: Harper & Row, 1971); Gary Bergel et al., *When You Were Formed in Secret* (Elyria, Ohio: Intercessors for America, 1980); C. Everett Koop, "The Right to Live," *Human Life Review* 1 (Fall 1975): 70.

23. Sharon Begley and John Carey, "How Human Life Begins," *Newsweek*, 11 January 1982, 39.

24. See Albert W. Liley, "The Foetus in Control of His Environment," in *Abortion and Social Justice*, ed. Thomas W. Hilgers et al. (1972; reprint, Thaxton, VA: Sun Life, 1980), 27-36; *The Human Life Bill*, Appendix, 32-42 (statement of Dr. Liley).

25. Joe Klein, "Born Again: How An Abortion Crusader Became a Right-to-Lifer," *New York*, 7 January 1984, 44.

26. For an outline of recent developments in the field of fetology and the study of the fetus, see Bernard N. Nathanson, *The Abortion Papers: Inside the Abortion Mentality* (New York: Frederick Fell Publishers, 1983), 111-175.

27. John Lippis, *The Challenge to be Pro-Life* (Washington, D.C. : National Right to Life Education Trust Fund, 1982), 3.

28. Authoritative statements of this fact abound. For example, the late Dr. Andre E. Hellegers, a professor of obstetrics and gynecology at the Georgetown University Hospital and past president of both the Perinatal Research Society and the Society for Gynecologic Investigation has stated in testimony: "I do not believe there is any question when biological human life begins. It is at conception, by which I mean when the sperm fertilizes an ovum. To say that it begins at any other time is biological nonsense." (Senate Subcommittee on the Constitution, Com-

mittee on the Judiciary, *Legal Ramifications of the Human Life Amendment*, 98th Cong., 1st sess., 1983, 185).

Likewise, Dr. Jerome Lejeune, a professor of fundamental genetics at the Medical College of Paris, stated in testimony: "So we are entirely sure, beyond any discussion, that the individual which is splitting itself in many cells at the very beginning is a human being . . . The scientific fact that it is a human being cannot be disputed." "To accept the fact that after fertilization has taken place a new human has come into being is no longer a matter of taste or of opinion. The human nature of the human being from conception to old age is not a metaphysical contention, it is plain experimental evidence." (*The Human Life Bill*, vol. 1, 18, 10).

In accord was Dr. Hymie Gordon, chairman of the department of medical genetics at the Mayo Clinic, who stated in testimony: "But now we can say, unequivocally, that the question of when life begins - is no longer a question for theological or philosophical dispute. It is an established scientific fact. Theologians and philosophers may go on to debate the meaning of life or the purpose of life, but it is an established fact that all life, including human life, begins at the moment of conception." (*The Human Life Bill*, vol. 1, 13).

See also *The Position of Modern Science on the Beginning of Human Life* (Fredericksburg, VA: Scientists for Life, 1975) and sources cited therein; *The Beginning of Human Life*, Studies in Law and Medicine, no. 10 (Chicago: Americans United for Life); note 21 above.

29. 410 U.S. 113 (1973).

30. John Hart Ely, "The Wages of Crying Wolf: A Comment on *Roe v. Wade*," *Yale Law Journal* 82 (1973): 925-26. See also Victor G. Rosenblum, *Abortion, Personhood and the Fourteenth Amendment*, Studies in Law and Medicine, no. 11 (Chicago: Americans United for Life, 1981); Dennis J. Horan et al., "The Legal Case for the Unborn Child," in *Abortion and Social Justice*, ed. Thomas W. Hilgers et al. (1972; reprint, Thaxton, VA: Sun Life, 1980), 105-141. For a more philosophical perspective on the question of personhood, see Robert E. Joyce, "When Does a Person Begin?" in *New Perspectives on Human Abortion*, ed. Thomas W. Hilgers et al. (Frederick, MD: University Publications of America, 1981), 345-356; Clifford E. Bajema, *Abortion and the Meaning of Personhood* (Grand Rapids, MI: Baker Book House, 1974).

31. John D. Gorby, *The "Right" to an Abortion, the Scope of Fourteenth Amendment "Personhood," and the Supreme Court's Birth Requirement*, Studies in Law and Medicine, no. 5 (Chicago: Americans United for Life). For other critiques of *Roe*, see Robert Byrn, "An American Tragedy: The Supreme Court on Abortion," *Fordham Law Review* 41 (1973):807; Charles Rice, "The Dred Scott Case of the Twentieth Century," *Houston Law Review* 10 (1973): 1059; Harry Wellington, "American Law Rules and Constitutional Double Standards," *Yale Law Journal* 83 (1973): 297-311; Richard Epstein, "Substantive Due Process By Any Other Name: The Abortion Cases," *Supreme Court Review* 1973: 159; Joseph

O'Meara, "Abortion: The Court Decides a Non-Case," *Supreme Court Review*, 1974: 337; Robert Destro, "Abortion and the Constitution: The Need for a Life-Protective Amendment," *California Law Review* 63 (1975): 1250; James F. Csank, "The Lords & Givers of Life," *Human Life Review* 3 (Spring 1977): 75; John Noonan, "Raw Judicial Power," *Human Life Review* 8 (Winter 1982): 71; Hadley Arkes, "Abortion: The Court Wasn't Persuasive," *Human Life Review* 9 (Spring 1983): 95; Archibald Cox, *The Role of the Supreme Court in American Government* (New York: Oxford University Press, 1976), 113-114; John Noonan, *A Private Choice: Abortion In America in the Seventies* (Toronto: Life Cycle Books, 1979), Inquiries 2-5; Stephen Krason, *Abortion: Politics, Morality, and the Constitution* (Lanham, MD: University Press of America, 1984); citations in *Congressional Record*, 21 September 1981, S10195.

32. *Hall v. Hancock*, 32 Mass. 255,258 (March Term, 1834).

33. *William v. Marion Rapid Transit*, 152 Ohio 114, 87 N.E.2d 334,338 (1949).

34. *Kelly v. Gregory*, 282 A.D. 542, 125 N.Y.S.2d 696,697 (1953). See also *Bonbrest v. Kotz*, 65 F.Supp. 138 (D.D.C. 1946); *Smith v. Brennan*, 31 N.J. 353, 157 A.2d 497 (1960); *Gleitman v. Cosgrove*, 49 N.J. 22, 227 A.2d 689 (1967); William J. Maledon, "The Law and Unborn Child: The Legal and Logical Inconsistencies," *Notre Dame Lawyer* 46 (Winter 1971): 359 n.76 case citations.

35. Speiser, *Recovery for Wrongful Death* § 4:37, at 559 (2d ed. 1975).

36. Prosser et al. *Handbook on the Law of Torts* §55, at 367-68 (5th ed. 1984).

37. William J. Maledon, "The Law and the Unborn Child: The Legal and Logical Inconsistencies," *Notre Dame Lawyer* 46 (Winter 1971): 369.

38. *Congressional Record*, 27 June 1983, S9078. See also Fred E. Mecklenburg, "The Indications for Induced Abortion: A Physician's Perspective," in *Abortion and Social Justice*, ed. Thomas W. Hilgers et al. (1972; reprint, Thaxton, VA: Sun Life, 1980), 37-56.

39. This statistic comes from Luella Klein, M.D., vice president of the American College of Obstetricians and Gynecologists (cited in the *Washington Post*, 23 January 1983, A12). In "Abortion Chic: The Attraction of 'Wanted-Unwanted Pregnancies,'" (*The Village Voice*, February 4-10, 1981) Leslie Savan wrote: "The majority of abortions are not due to contraceptive failure. Statistics vary: one study by demographer Kristin Luker found that of 500 women receiving abortions only 6 percent had been using a consistent contraceptive in the month

they conceived; another study found that only 20 per cent were using any form of birth control. The easy availability of abortion makes it more likely that women will use a contraceptive incorrectly or not at all, risking pregnancies they don't intend to complete."

40. Bernard N. Nathanson, *Aborting America* (Toronto: Life Cycle Books, 1979), 193.

41. Thomas W. Hilgers et al., "Abortion Related Maternal Morality: An In-Depth Analysis," in *New Perspectives on Human Abortion*, ed. Thomas W. Hilgers et al. (Frederick, MD: University Publications of America, 1981), 82. See also Jack C. Willeke, "Those Back Alley Abortions," *National Right to Life News*, 16 May 1985.

With an interesting perspective from a long-time ob/gyn practice in the inner city of Chicago, the late Dr. Jasper F. Williams, Sr., stated in testimony: "Before the abortions were made legal, I saw few people die from illegal abortions. Since they have become legal, I have seen more die than before If this Congress passes some resolutions that make them illegal again, they are still going to do them. I agree that is the case. However, they have had a little bit more experience, and we have made greater advances in the science of medicine. Our antibiotics are a little better, and the equipment they use is better. Therefore, there will not be any increase in morbidity or mortality if abortions are made illegal again." (Senate Subcommittee on the Constitution, Committee on the Judiciary, *Constitutional Amendments Relating to Abortion*, 97th Cong., 1st sess., 1981 (hearings, 19 October 1981), 266.)

42. The series "The Abortion Profiteers" is reprinted in the *National Right to Life News*, Special Edition, February 1979.

43. Despite the pro-abortionists' claim that legalization would dramatically reduce the number of annual abortion-related maternal deaths, the steady downward trend in this figure (see note 41 above and accompanying text) has leveled off since nationwide legalization in 1973. See Kaunitz et al., "Causes of Maternal Mortality in the United States," *Obstetrics and Gynecology* 65 (May 1985): 605.

44. The Tenth Amendment to the United States Constitution reserves to the states broad powers to protect the health and welfare of their citizens. Traditional constitutional jurisprudence makes clear that these powers extend to regulation of the medical profession. *Barsky v. Board of Regents*, 347 U.S. 442, 449 (1954); *Whalen v. Roe*, 429 U.S. 589, 603 n.30 (1977). The Supreme Court has never explained why these sound, well-established principles should not apply in the abortion context as well.

45. Mathew J. Bulfin, "Complications of Legal Abortion: A Perspective From Private Practice," in *New Perspectives on Human Abortion*, ed. Thomas W.

Hilgers et al. (Frederick, MD: University Publications of America, 1981), 145.

46. Dr. Moutvic's affidavit is published in the *Congressional Record*, 28 June 1983, S9270. See also Thomas W. Hilgers, "The Medical Hazards of Legally Induced Abortion," in *Abortion and Social Justice*, ed. Thomas W. Hilgers et al. (1972; reprint, Thaxton, VA: Sun Life, 1980), 51-85; Ann Saltenberger, *Every Woman Has the Right to Know the Dangers of Legal Abortion* (Glassboro, NJ: Air-Plus Enterprises, 1982); David Mall et al., eds., *The Psychological Aspects of Abortion* (Washington, D.C.: University Publications of America, 1979); Richard A. Watson, "Urologic Complications of Legal Abortion," in *New Perspectives on Human Abortion*, ed. Thomas W. Hilgers et al. (Frederick, MD: University Publications of America, 1981), 135-144; Alfred Kotasek, "Medical Consequences of Induced Abortion and Its Effect on Subsequent Pregnancy," *Human Life Review* 2 (Spring 1976): 118.

47. Bernard N. Nathanson, interview in *Public Occurrences*, vol. 1, no. 1, 15.

48. *The American Holocaust* (Palm Springs, CA: Center for Documentation of the American Holocaust, 1983).

49. *Congressional Record*, 27 June 1983, S9077.

50. Thomas W. Hilgers et al., "An Objective Model for Estimating Criminal Abortions and Its Implications for Public Policy," in *New Perspectives on Human Abortion*, ed. Thomas W. Hilgers et al. (Frederick, MD: University Publications of America, 1981), 171, 178.

51. Hilgers et al., 178.

52. *Congressional Record*, 28 June 1983, S9255. In testimony before a U.S. Senate Subcommittee, the late Jasper F. Williams, Sr., M.D., a practicing obstetrician/gynecologist and chairman of the department of obstetrics and gynecology at Chicago's Bernard Hospital said: "There are an estimated 1.5 to 2 million abortions performed each year in the United States. Many of them are not reported, although we are supposed to be in an age of legal abortions." (*Constitutional Amendments Relating to Abortion*, 266).

53. 462 U.S. 416 (1983). For a critique of the *Akron* decision, see John Noonan, "Akron: A Pragmatic Politician's Parody of Solomon," *Human Life Review* 9 (Summer 1983) and its reprint in the *Congressional Record*, 28 June 1983, S9276.

54. 462 U.S. at 443-44.

55. An abortifacient is "an agent which causes abortion." *Dorland's Illustrated Medical Dictionary*, 25th ed., 4.

56. *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416,445 (1983); *Planned Parenthood v. Danforth*, 428 U.S. 52,67 (1976).

57. *Planned Parenthood v. Ashcroft*, 462 U.S. 476,482 (1983); *Roe v. Wade*, 410 U.S. 113,164-65 (1973).

58. *Akron*, 462 U.S. at 459 (O'Connor, J., dissenting).

59. Bernard N. Nathanson, "The Peaceful Snooze of CBS Morning News," *National Right to Life News*, 11 April 1985. See also *The Silent Scream* (Anaheim, CA: American Portrait Films Books, 1985).