

# Cardinals Reject Section Two Of Buckley Amendment

(Special to The Wanderer)

WASHINGTON — Four U.S. Cardinals, testifying before Sen. Birch Bayh's Subcommittee on Constitutional Amendments, rejected the language of section two of Sen. James Buckley's proposed Human Life Amendment, in open hearings on March 7th.

The section in question reads as follows: "This article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother."

As John Cardinal Cody remarked, "The Senator's proposal here, as it stands, I don't think would be justified on moral grounds." Cardinal Cody stressed, however, that he personally would want to study the language further and would prefer not to be interpreted as making a "definite judgment here today."

Cardinal Manning said that he did not think the language of Sen. Buckley's proposal at this point

would be "appropriate" for a constitutional amendment.

More guardedly, Cardinal Medeiros of Boston said that he could not endorse the Buckley wording "if direct taking of life, the intentional taking of life to save the mother," is what is in question.

Cardinal Krol of Philadelphia, president of the National Conference of Catholic Bishops and the chief spokesman among the four Cardinals, agreed with what Cardinal Medeiros had said (both in his prepared testimony and in answer to questions) and added that the Catholic Conference had "studied the various bills" and drafted the principles submitted by the Cardinals in prepared testimony "on the basis of what we have seen." Cardinal Krol further stated that the Catholic Conference wanted the wording of whatever amendment is eventually drafted to contain "in some way or another" a reference to the terminology of "direct" versus "indirect abortion" — terminology

(Continued on Page 10)

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(Continued from Page 1)

which has become classic in Catholic moral theology.

The Cardinals' answers on this point were elicited with some difficulty by Sen. Marlow Cook of Kentucky. Evidently, the Cardinals had hoped to continue their previous policy of neither opposing nor endorsing any of the existing amendment proposals, and hence they were loathe to be drawn out on this subject. Because their answers were nuanced and perhaps subject to different interpretations, the full text of the questions and answers should be consulted. The following is a complete, unofficial transcript of this portion of the hearings.

Sen. Cook: Cardinal Medeiros, I would like to pose some questions to you, to see if they fit within the confines of your discussion with the chairman relative to the life of the mother. For instance — and the reason I do this is that I'm trying to find the confines of your remarks to the chairman — for instance: if continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if the pregnancy were terminated. Where would that fit in your discussion with the chairman?

Card. Medeiros: If I understand that, Senator, again I invoke that principle that the pregnancy cannot be terminated, no matter what the danger, unless it is indirectly and unintentionally. . . . The pregnancy could not be terminated through an abortion, through an operation, to save the life of the mother except in an indirect and unintentional way. . . .

Sen. Cook: Well, then, let me give you the second one and see where that — well, it would fit in the same category — that it would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated.

Card. Medeiros: I think the principle would apply, Senator, if I understand your question.

Sen. Cook: I think, with your answer to those two, then, I . . . Do you agree with the language of Section 2 of Sen. Buckley's Senate Joint Resolution 119: "This article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother"?

Card. Medeiros: I believe that that's the same problem, isn't it, calling for an abortion. I don't recall the exact wording of Section 2 of the Senator's proposal. . . .

## Promotes Religious Life

(Continued from Page 1)

Religious life. Personally, I am sure that the Religious life is more and more important for the world today. We have the feeling that mankind needs a spirituality because we are in a world in which there is a lack of spirituality.

"The Sisters of the Consortium," he continued, "want to maintain authenticity of Religious life, to develop life of the spirit and to communicate this spiritual life. Social service is only one of the goals of the Religious life."

In answer to a question from the press on how one could describe human service as wrong, Fr. G. H. Duggan, professor of theology at Marist Seminary, New Zealand, replied that secularism put the accent more on human and temporal services than on the spiritual, and it was the emphasis which was wrong.

Fr. Regis Barwig, prior at the Monastery of Our Lady, Oshkosh, Wis., said that the meeting had both a positive and a negative result. The members of the Consortium who are entirely loyal to the Holy See, he said, believed in a life lived in community and prayer, and for them the habit was very important as a sign of the second coming of Christ.

He also said that there was increasing interest in other parts of the world in the Consortium.

Negatively, he said, the meetings had considerably disturbed some people.

"Our purpose was to present actual differences. An organization such as this is divisive and this is a positive thing: by emphasizing our differences they can be recognized and discussed so that we can come to terms with them. We need polarization."

Subsequently, Fr. Barwig explained to an RNS correspondent that polarization was not caused by the fact of being extremely liberal or extremely conservative. "We come to knowledge by discussion. There is nothing wrong with

Sen. Cook: Well, I would like to give that language. . . .

Card. Medeiros: . . . but the principle, I think, is the same, Senator.

Sen. Cook: to all four of the witnesses and get their reaction to it.

Card. Medeiros: Yes.

Sen. Cook: Section 2 of Sen. Buckley's resolution says: "This article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother." Now, as far as the organization for which you speak, the bishops throughout the Nation, is that or is that not acceptable?

Card. Medeiros: Once again, Senator, if direct taking of life, the intentional taking of life to save the mother, is what you have in mind there, it is not licit.

Sen. Cook: Your Eminence, you're getting as bad as we members of Congress. (Laughter) I would like to ask you . . . really . . . I wonder if we can get a definitive, affirmative answer as to its acceptability or its nonacceptability as appropriate language in a constitutional amendment to be passed on by the Congress. Would it be acceptable, or would it not be acceptable?

Card. Medeiros: Senator, I said I could not endorse any wording that would allow for abortion as abortion.

Sen. Cook: Cardinal Cody, how does that language strike you?

Card. Cody: Well, since we're not going to make the decisions here today, I think it needs further study.

Sen. Cook: Well. . .

Card. Cody: And Cardinal Medeiros has indicated a very, very definite understanding about direct and indirect abortion. The Senator's proposal here, as it stands, I don't think would be justified on moral grounds. However, this is something that I would not — at least for myself — I would not want to make a definite judgment here today. I would have to study it, meditate over it, and come to some conclusion on the basis of Catholic teaching.

Sen. Cook: Cardinal Manning?

Card. Manning: Well, I would remark first of all, Senator, that the situation is quite academic, that the situation where the presence of pregnancy is a threat to the life of the mother is a very,

very rare circumstance today, because there is so much scientific expertise to provide other means of remedying the situation. Go back to our principle: the direct killing of an innocent life for any purpose is immoral.

Sen. Cook: Then, whether I agree with your phrase, whether it is or is not "academic," then you do not agree that the language would be appropriate for a constitutional amendment?

Card. Manning: I do not agree that it would be.

Sen. Cook: Cardinal Krol?

Card. Krol: I agree with what Cardinal Medeiros said, and I think that his reference on p. 2, the point right after paragraph three, addresses itself to the question. (Reads) "As for an amendment which would generally prohibit abortion but permit it in certain exceptional circumstances, such as when a woman's life is considered to be threatened, the Catholic Conference does not endorse such an approach in principle and could not conscientiously support it." (For the complete text of Card. Medeiros' prepared testimony see *The Wanderer*, March 14th, p.6.) Now, this is a reference. . . . We have studied, if I may say this, Senator, the various bills; and based on what we have seen, we have prepared this set of principles, which we offer to you for guidance and hopeful solution. May I add a further note? Cardinal Manning has said the question is quite academic, and I would respectfully submit there are a variety of things that are being flashed. They sometimes are called the "horror cases" . . .

(Cardinal Krol's reply was interrupted at this point as the hearings were adjourned for ten minutes, so that the Senators could vote on the floor. After the recess, Sen. Cook resumed his questioning.)

Sen. Cook: . . . We're all faced with this situation, and that's the situation of draftsmanship. . . . What I'm really trying to do is, within the parameters of the proposals that we have before this committee, one being the Helms resolution and the other being the Buckley resolution, is that it does help — and it helps in this record — to get as solid an answer as we really can. And to that extent, I proposed that question; and I may say that in the testimony that is part of the record of yesterday, this presented a problem to Sen. Helms. He said that he thought that this constituted a weakness in the Buckley resolution. These are his words, not mine nor Sen. Buckley's. In his words, when a life was in jeopardy, or if lives were in jeopardy, an unborn child and a mother, he felt that no one had the right to make a distinction that the value of one life was superior to the value of the other. Now, in relation to the language of the Buckley amendment, I'm sure that you are not — Mr. Chairman, that's almost verbatim what Sen. Helms said. Could I have a reaction from you all relative to the Helms amendment, which says, "Neither the United States nor any State shall deprive any human being of life on account of illness, age, or incapacity," as opposed to the language of the Buckley amendment? Now, this has to presuppose, pursuant to all of your testimony, that from the moment of conception, this is a human being that is entitled to all of the rights and privileges of a human being as presented in the Bill of Rights under the Constitution. And I'm wondering if you all might individually tackle that problem in relation to the Buckley proposal and in relation to the Helms proposal.

(Card. Krol answered for all four.)

Card. Krol: Senator, we have done this in the framework of the direct and indirect — directly intended — indirectly intended. We have done it in the affirmation of Cardinal Medeiros. Actually, our overall position on this . . . is that a constitutional amendment is the only effective means to restore . . . protection of the life of the unborn. We believe that such an amendment should establish a clear affirmation of that right, and we do not recommend that the amendment should immediately move into the area of exceptions. We have dealt with the mother-child case, which Cardinal Manning pointed out (as have many responsible scientists) is an academic one. . . . We have dealt with that through the principles of the directly intended and the indirect, and we suggest (and we are ready to help in any way that we can) that these principles be

reflected in the language of the amendment in some way or another, "directly intended." . . . Practically, that means that we maximize the protection of both the mother and the child, without violating either or showing any preference for either. . . .

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The interpretation of this transcript is beset with difficulties, no matter which Cardinal's answer one takes.

Cardinal Medeiros, for example, seems to take an "insofar as" approach. Insofar as the Buckley language would countenance "direct abortion" in a medical emergency, Cardinal Medeiros seemed to say, the language could not be endorsed. However, Michael Uhlmann, chief spokesman for Sen. Buckley on right-to-life matters, claims that the Buckley wording was intended to have the legal effect of permitting, in practice, only those operations which the Church would characterize as "indirect abortion" — cases such as the cancerous uterus and the ectopic pregnancy. Uhlmann further states that there are moral-philosophical reasons to avoid using the direct-indirect terminology in the amendment itself. The ectopic or tubal pregnancy, Uhlmann says, does not exactly fit the direct-indirect distinction unless you go behind the distinction itself to the fundamental moral premise on which it is based (namely, that one must try to save as much life as possible). In support of this view, Uhlmann cites the authority of Prof. Germain Grisez. Now, if Uhlmann is correct (which may or may not be a big "if"), then it belongs to the competency of legal experts to say whether or not the Buckley language would have the effect of permitting, in practice, only indirect abortion. Whereupon a further "if": if the legal experts were to agree that the Buckley language has only this intended effect, would Cardinal Medeiros be prepared to endorse it? His own answer suggests that possibility.

Cardinal Krol's answer, however, seems to rule out such a possibility. The Krol answer suggests (a) that the Buckley language had already been studied in all aspects by the Catholic Conference and found wanting, (b) that the Conference will oppose any exception clause on draftsmanship grounds, and (c) that the Conference is determined to have the direct-indirect terminology reflected in the text of any amendment it might be prepared to support.

This insistence of a reflection of the direct-indirect distinction may be a new development in the bishops' thinking on amendment language. In June of last year, a lawyers' committee working for the bishops (USCC Committee on Law and Public Policy) drafted language in which the distinction is at best only implicitly present. It reads as follows:

"1) The right to life being unalienable, the faking of unborn life within the United States and all territory subject to the jurisdiction thereof is hereby prohibited.

"2) The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

Now, it is well known that the bishops have in mind to propose their own amending language at a later stage of the Senate hearings. It is not known, however, whether the bishops already have in hand the exact wording they intend to endorse, or whether that wording is substantially identical to the draft quoted above. However, if the bishops' thinking is still substantially in line with the draft of June, 1973, it is worth noting that the new amendment proposal of Notre Dame law professor Charles Rice (see *The Wanderer*, Feb. 7th, 1974, p. 5) is very similar in form and yet at the same time more explicit with respect to the direct-indirect terminology desired by Cardinal Krol. The Rice proposal reads as follows:

"1) Abortion is hereby prohibited within the United States and all territory subject to the jurisdiction thereof. As used in this article, abortion means the intentional destruction of unborn human life, which life begins at the moment of fertilization.

"2) Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

In summary, then, the testimony of the four Cardinals on March 7th did amount, on its face, to a rejection of Section 2 of the Buckley amendment. However, it may still be an open question whether the bishops would reverse this judgment, if it could be shown by legal authorities that the Buckley wording would have only and precisely the effect claimed by Mr. Uhlmann.