

3/27/75

New Slant In Bayh Hearings

By W. H. MARSHNER

WASHINGTON, D.C. — Senate hearings on the human life amendments resumed Monday, March 10th, under the gavel of Sen. Birch Bayh (D., Ind.), and under the shadow of the Edelin verdict. Bayh, who has been studiously noncommittal throughout the yearlong inquest, dropped hints for the first time that an amendment protecting fetal life "after viability" would probably enjoy his support. Reference to the Edelin case was made by all five of the morning's witnesses: Senators Buckley (R., N.Y.), Packwood (R., Ore.), and Helms (R., N.C.), followed by lawyers Robert Byrn and Harriet Pilpel.

Sen. Buckley's brief remarks addressed the heart of the pro-life concern: the recognition that permissive abortion entails a new ethic in which the legal protection traditionally accorded to human

life is made contingent upon utilitarian judgments as to the "value" or "meaningfulness" of that life. Buckley praised Bayh for his "painstaking and . . . successful attempts to make sure that no important fact or theory or opinion has been omitted from these hearings," as a result of which Buckley went on to characterize the hearings as "a model of fairness, objectivity and reasonableness."

Senatorial courtesy required some such remark, of course, but many pro-life observers felt that this praise was overly fulsome. The Bayh hearings have been long, many would say, but not necessarily comprehensive — and certainly not incisive, thanks to the bumbling and rather fixated way in which Birch Bayh asks questions.

Sen. Buckley had to catch a plane to New York, hence departed immediately after reading his prepared remarks. After him came Sen. Robert Packwood, the most outspoken population alarmist in the Senate. Already before the Supreme Court's Black Monday decisions, Packwood had introduced legislation to permit abortion-on-demand at the Federal level. As a leader in the field therefore, his testimony before the Bayh subcommittee could be taken as a harbinger of current and future strategies on the pro-abortion side.

Packwood's prepared remarks stuck to familiar ground. He enumerated the religious, medical, and professional organizations which have endorsed legalized abortion, stressed that the issue was "freedom," and deplored the efforts of those who seek to limit this alleged freedom by "imposing a sectarian view" upon the Nation. But the impact of the Edelin verdict was clear toward the end of his statement, as Packwood noted very gingerly that the Supreme Court has not resolved the "responsibility of the State or the doctor to sustain the potential of a potentially viable fetus resulting from the abortion procedure."

Sen. Bayh moved in to explore this point in the questioning. "Is there a point in pregnancy beyond which abortion should be prohibited?" he asked. Packwood replied that there is a point of

viability, alluded to in the Edelin case in Boston, but Packwood concluded that the time for prohibition comes *after* the abortion. Bayh persisted: "Could you accept such a point prior to the abortion?" Packwood said that he would be reluctant to "impose his personal views." Rather he stood by the terms of the Supreme Court decision, but added: "I would recognize the right to life of a fetus after abortion."

Sen. Jesse Helms was the third witness of the morning. His testimony began with a scholarly attack on the Supreme Court decisions as incompetent of constitutional interpretation. He cited the published strictures of Berkeley's John T. Noonan, Harvard's John Hart Ely, Yale's Harry Wellington, and Notre Dame's Charles Rice. Next Helms attacked the decisions subverting the democratic process. "*Roe vs. Wade*," he said, "has reduced the American people to a state of helplessness in dealing with abortions. The American taxpayer is now compelled to pay for abortions through Medicaid — and yet he does not pay for normal deliveries. State after State has seen its laws regulating abortions condemned by a small handful of judges appointed for life who are answerable to no one. Arizona, Connecticut, Florida, Georgia, Iowa, Kentucky, Maryland, Michigan, Montana, Rhode Island, South Carolina, Texas, Utah, and Wyoming have seen their statutes on abortion declared unconstitutional. The State of Minnesota has seen its municipal hospitals forced to perform abortions. New York and Pennsylvania have been compelled to fund abortions."

Finally the Senator explained and defended his own proposed

amendment (S.J. Res. 6) as "a great improvement over every other proposal that I have seen." Excerpts from this explanation of the Helms Amendment will be published in a forthcoming issue.

Senators Bayh and Fong (R., Haw.) then attempted to question Helms on the degree of regulatory power over abortion which his amendment would leave to the several States. But the North Carolinian was not prepared to be pressed on details. The resulting oral exchange was both unsatisfactory and misleading, although Helms did make it clear that his intention was to exclude all abortions except those done to save the mother's life. The suggestion that other exceptions (for rape and incest) might be left up to the discretion of the States by the Helms approach was a slip of the tongue on the Senator's part, plainly at variance with his written statement. Most members of the press recognized this snafu for what it was and did not report the oral exchange. The *National Catholic News Service* (NC), however, not only reported the slip but featured it. The result was a grave distortion of Sen. Helms' real views and a disservice to the pro-life cause. The Senator's office is expected to issue a clarification.

When the senators had finished, the Bayh subcommittee was free to return to the point where its hearings had left off last year. After a long train of religious and medical witnesses, the hearings had turned to the constitutional lawyers. The March 10th session was to explore the side effects of a mandatory human life amendment, that is the consequences of a Federal abortion prohibition on other aspects of constitutional law, tort law and the inheritance law. Of that, more in a later issue.

LOOKING FOR THE "CATHOLIC" IN CATHOLIC EDUCATION?

Magdalen College offers an excellent liberal arts undergraduate education to men and women who want to develop intellectually, morally and spiritually.

For further information, contact:

DR. PETER V. SAMPO
Magdalen College D — Bedford, N.H. 03102