Abortion Research: One Step Forward

By WILLIAM H. MARSHNER

WASHINGTON — Rep. Paul Rogers (D., Fla.), chairman of the powerful Health and Environment Subcommittee of the House, to which all health authorization bills are referred and to which, therefore, HEW, NIH, and all the rest of Washington's vast medical-governmental complex must come with outstretched hands — Paul Rogers went on record Thursday, June 5th, as opposing the use of family planning research monies to develop or improve abortion techniques.

The Rogers statement was the culmination of a delicate political effort by pro-life congressmen to restrict Federal expenditures for abortion despite the hostile, anti-life atmosphere of the 94th Congress. Thursday's action was the first time the abortion issue had surfaced in the House this year, and prognostications were grim for the passage of any anti-abortion restrictions, thanks to the Senate Democratic leadership's destruction of the Bartlett amendment in April.

The Rogers statement came in the course of a colloquy arranged by Cong. Robert Bauman (R., Md.) and Henry Hyde (R.,Ill.) during floor debate on H.R. 4925, an omnibus health-services bill which included authorization for the Federal family-planning program (Title X). A colloquy is a way of establishing legislative intent without changing the actual wording of the bill. In this case, the bill (H.R. 4925) provided money for research into the biomedical and "contraceptive development" fields. HEW has used this provision in the past to pay for prostaglandin research (e.g., Prostin F2 Alpha, now being marketed by Upjohn for second trimester abortions). Congressmen Bauman and Hyde, working with the U.S. Coalition for Life, had prepared an amendment to outlaw such research, which read as follows:

> **"provided that nothing in this Act shall authorize the conduct of research, or making of grants or contracts therefor, which research has as its purpose or principal effect the development or modification of techniques of performing abortions."**

Through advance publicity in right-to-life circles, this amendment had come to be known as the Hyde amendment, in tribute to the man who finally agreed to introduce it after a number of so-called pro-life Democrats refused to move. When subsequent political consultation revealed, however, that the chances of passage were very "iffey," Bauman and Hyde decided to see if the amendment's purpose could be achieved through the colloquy technique. Rather surprisingly, the floor manager of the bill (Rogers) proved cooperative.

Before the actual text of the colloquy is cited, it is necessary to explain that one of the main reasons anti-abortion legislation is in trouble in Congress is because the other side has discovered an infallible way of sabotaging it. I refer to the argument that a prohibition on abortion will interfere with "family planning." Here is how the argument works.

Mr. X introduces an abortion prohibition (say, an amendment to some bill). He makes a speech talking about the importance of safeguarding human life.

Mr. Y then asks the gentleman when, in his opinion, human life begins.

"At fertilization," says Mr. X, or words to that effect.

"Then your amendment would prohibit the IUD and the morning after pill," objects Mr. Y.

If Mr. X tries to duck this objection, he is accused of introducing "hopelessly vague" language; if he admits that the objection is correct, he is denounced for interfering with the sacred cow, family planning; if he denies that the objection is sound, then he is accused of being inconsistent on when human life begins. It is very prickly trilemma. It was used with great effectiveness last year to defeat the Roncallo amendment, and this year it was used again, by Teddy Kennedy, to defeat the Bartlett amendment. Plainly, there is not going to be another pro-life victory until this trap is circumvented.

It may well be, however, that Bauman and Hyde have found a way of turning the tables. If family planning is a sacred cow, while abortion is a hot potato, politically, then Congress ought to be willing to protect the sacred cow from the hot potato. In 1970 Congress passed the Dingell amendment to Title X, which prohibited use of funds for abortion "as a method of family planning." Obviously, the intent of Congress at that time, Bauman argued, "was to enforce a wall of separation between family planning and abortion, between contraception and the taking of life, between prevention of pregnancy and the termination of pregnancy." In light of that congressional intent, already expressed in public law (the Dingell amendment), the ball can be put in the other court: if Mr. Y seriously believes that the IUD is a form of abortion, then Mr. X can ask him whether he agrees with the intent of Congress that abortion is not an acceptable method of family planning. If he says, "Yes," then he must concede that the IUD is not an acceptable method. If he says, "No," then Mr. X can ask him if he believes that HEW ought to obey the law. Mr. Y will have to say "Yes" to that, whereupon, Mr. X can point out that since the law clearly forbids HEW to pay for abortion as a method of family planning, and since HEW pays for IUDs, then if Mr. Y seriously believes that the IUD is a form of abortion, then he must concede that what HEW is doing is already illegal! This no member of Congress is likely to admit.

Bauman developed some of the above argument in his opening speech on June 5th. The strategy of using the "wall of separation" between family planning and abortion as a pro-life weapon was central to the entire colloquy that followed. Here is the text of the colloquy, including Mr. Hyde's follow-up remarks:

Mr. Bauman. The question pertains to section 1004 in the sense family planning is used there. Is it the committee's intention that this is to include abortion as a method of family planning?

Mr. Rogers. No. It is specifically stated in the basic law, which is continued in this extension, that abortion is not an appropriate method of family planning. The gentleman is correct

Mr. Bauman. The gentleman is referring to section 1008 of the current statute, which contains a prohibition offered by the gentleman from Michigan (Mr. Dingell) some years ago?

Mr. Rogers. That is correct.

Mr. Bauman. The section reads:

None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

Mr. Rogers. That is correct.

Mr. Bauman. So I can conclude that in the kind of research we are discussing in section 1004 would not include research on abortion techniques?

Mr. Rogers. As a method of family planning, that is correct.

Mr. Bauman. I would like to pursue that a little further. In 1971 the conference report which accompanied the HEW Appropriations Act made the statement:

> The Committee of Conference is agreed that in population research, the prohibition in Title I of abortion as a method of family planning should not be construed so as to prevent scientific research into the causes of abortion and its effects.

I would like to inquire about the phrase "causes of abortion." I understand that this permits research into such areas as the causes of spontaneous abortion, the possible harmful effect of certain drugs on the fetus, the social factors that may dispose women to seek abortions, and so forth.

But I would like to be clear that this language does not allow the HEW to pursue research or grant contracts for research whose purpose or principal effect would be to develop new techniques for performing abortions. Would I be correct in assuming that this language does not allow such research?

Mr. Rogers. As a method of family planning, I think that would be the correct phrase.

Mr. Bauman. But I am correct in the assumption?

Mr. Rogers. That is correct, as a method of family planning.

Mr. Bauman. So there is a distinction between studying the causes of abortion and inventing new causes for abortion; would that be a fair distinction?

Mr. Rogers. That is correct, research intended to develop new causes of abortion for use for family planning purposes would be inappropriate.

Mr. Bauman. In that case, I can rest assured that this section 1004 does not require the offering of my amendment, since the import of my amendment is already included in the law?

Mr. Rogers. This is correct, as a method of family planning.

Mr. Murphy of New York. Mr. Chairman, will the gentleman yield?

Mr. Bauman. I yield to the gentleman from New York.

Mr. Murphy of New York. Does the gentleman consider that family planning and birth control are synonymous expressions? If the gentleman would respond to the question whether or not there is an inclusion or an exclusion in this language in the use of abortion as a method of birth control.

Mr. Bauman. The gentleman from Maryland would have to respond that family planning can include birth control, but in my understanding family planning is a much broader phrase including programs other than birth control

My major concern is that this bill would authorize grants for abortion as a method of family planning or birth control which I believe is prohibited by the present section 1008 of the law.

Mr. Rogers. If the gentleman will yield further, we have said in that respect there has been no abortion included in family planning under this legislation.

Mr. Hyde. Mr. Chairman, will the gentleman yield?

Mr. Bauman. I yield to the gentleman from Illinois.

Mr. Hyde. Mr. Chairman, I should like to join my colleague from Maryland (Mr. Bauman) in thanking the distinguished chairman of the Subcommittee on Public Health and Environment for his clarification of the legislative intent in this important area of family planning research. I think the chairman has made an important statement of intent which should guide HEW.

I think it is beyond question that, if Federal funds are to be expended in the area of contraceptive development, then those funds should be spent for family planning techniques that are broadly acceptable to our people. Now if anything has become obvious in the last 2 years, Mr. Chairman, it is the fact that abortion is not broadly acceptable. It is bitterly divisive. Therefore, it is clearly in the interest of sound public policy to use Federal research funds to favor only those avenues of research which seem likely to lead to safe, morally acceptable techniques of contraception in the proper sense of the word. I believe that the clarification of intent we have heard today will achieve that purpose by requiring a cutoff of Federal funds from any avenue of research which is clearly leading not to contraception but to abortion in the accepted, medical sense of that term.

Now, obviously we cannot specify in advance which chemicals, drugs, agents, devices, and so forth are in fact abortive. That is not a legislative question but a scientific question. In my understanding, it will be the responsibility of the Secretary of HEW to determine the scientific evidence and to refuse funding to a specific project if and when the evidence becomes decisive that the drug or device or technique involved is in fact abortive. This is no different from the procedure we use in any area where legislation seeks to control drugs or other potentially harmful substances.

Moreover, I think there is a perfectly straightforward way the Secretary can arrive at this determination. New avenues of research are routinely discussed in the technical journals related to reproductive biology and family planning care. I refer to such journals as *Contraception*, the *IPPF Medical Bulletin, Child and Family Quarterly, Family Planning Perspectivies*, and many others. Research scientists who receive grants customarily notify their professional colleagues of what they are working on through the pages of these journals. Certainly the Secretary can refuse funding to any research whose purpose or principal effect or expected benefit is described in these sources as the modification or development of a technique of performing abortions or as the modification or development of an abortifacient drug or device. In this way, Mr. Chairman, we would not be dealing with an arbitrary bureaucratic judgment but with what the medical and scientific community itself says about the nature of its work.

I realize that there are many difficult, unresolved questions in this area of what is actually family planning and what is abortion. I realize that doctors use some medical terms in slightly differing senses, and that sometimes the mode of operation of a fertility control agent is unknown. Congress cannot solve these problems in advance. I hope the day will come soon when Congress will give us a new legal definition of the term "abortion" by passing a human life amendment that will put an end to the callous killing of innocent, unborn human beings. But today we are dealing only with the medical definition of abortion. I know that there has been some attempt to change or becloud the definition of this term even in scientific usage. Therefore, I should like to add this final comment.

Mr. Chairman, I believe that medical usage is and should be a scientific usage, fully in accord with the facts. Therefore, when I say that the Secretary of HEW is free to follow accepted medical usage in the interpretation of section 1004 of this act, that does not mean that he or anybody else is free to ignore scientific facts. I shall be watching this process very closely. If at any time, I discover evidence that government agencies are altering medical terminology or inventing new terminology not in keeping with facts but solely to serve some deceptive, semantic purpose, to disguise abortion as contraception or vice versa, then I shall denounce such practices and seek legislative remedies against them. That is a "truth in labeling" issue, and I am sure that my colleagues will support me in that cause, especially since this kind of honesty and clarity is absolutely necessary if the fundamental distinction or wall of separation between family planning and abortion is to be preserved and the problem of abortion in our society is to be eliminated.