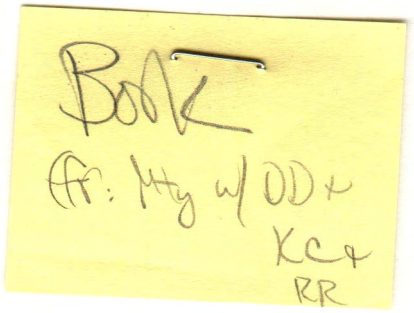
Book
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RR

Dan Danner

August 14, 1987

BORK:

- GM has finished the Roger Smith Op-Ed and he is reviewing on vacation. Expect sign-off today.
- Still waiting for three additional editorials for

  -- Mel Laird
  -- Paul Oreffice
  -- Richard Madden

- POTUS letters going out.
- NAW sent Dehmlow letter to 45,000 and also doing polling with two calls in each key state.
- Jerry Rapp outlining key business in target states.
- Discussed Amo Houghten and NY CEO's.
- AGC doing recess target phone calls.
- Chamber will do targeted phone calls. Will also do TV show if we want.
- CSE mailing talking points to 30,000. Also working on George Mason Op-Ed.
- McKevitt working on small business and James Herr.
- Wayne Valis reviewing AEI Board.
- Council for National Policy outlined and beginning "action plan."

C/S/E

MEMORANDUM

TO: RICHARD FINK

FROM: JEROME ELLIG

RE: BORK NOMINATION

DATE: 8/3/87

SUMMARY: JUDGE BORK AND THE BUSINESS COMMUNITY

Many of Judge Robert Bork's opinions will likely be well-received in the business community. In his principal field of specialization, antitrust, he favors much less restrictive enforcement because he believes that many currently illegal practices actually benefit consumers. He does not share the ingrained hostility toward "big" business evident in many previous judges. He believes in general that businesses can grow and remain large only if they are satisfying their customers. He recognizes that cooperation among competing businesses as well as many agreements between manufacturers and retailers can benefit consumers. Bork also realizes that laws against "predatory pricing" and "price discrimination" are more likely to let competing businesses stifle competition than protect consumers.

Likewise Bork's knowledge of economics gives him a keen appreciation of the role of advertising, which complements his view that advertising is a form of speech protected by the First Amendment.

His economic and legal writings suggest that Bork will help get government off the backs of business. He will expose much of current antibusiness law as misguided. Bork's devotion to carrying out congressional intent will not keep him from offering sound economic critiques of policies which he would nevertheless uphold as constitutional. However, his actual rulings on labor and regulatory issues may be less popular with business groups, because in many of those cases it is clear that Congress intended to sacrifice general business/consumer interests to other objectives, such as pleasing organized labor or narrow groups of consumers. Nevertheless, his written opinions may ultimately prompt Congress to reexamine the effects of legislation.

Finally, although Bork personally believes that the size and scope of the federal government must be reduced, business groups favoring constitutional amendments limiting spending or taxes may

view him as lukewarm on the issue because he has also questioned whether such amendments could realistically accomplish their stated goals in the modern political and legal environment.

THE ECONOMICS OF JUDGE BORK

Because of his doctrine of original intent, Bork's statements and decisions on economic issues are diverse. Where he finds that statutory language or legislative history indicates that Congress intended to promote "economic efficiency" -- that is, an economy giving consumers the types of goods and services they want the most at the lowest prices -- he has written and/or ruled in favor of efficiency. In these cases, his sophisticated understanding of economics leads him to favor greater freedom for business and consumers, and he could be expected to try to lead the Supreme Court in that direction.

However, where he believes that Congress intended to pursue other objectives, the other objectives have taken precedence. In some of these cases he might be expected to point out why a law or practice is economically unsound while at the same time upholding it on the grounds of original intent.

ANTITRUST

The economic issue on which Bork has written and commented most extensively is antitrust, for it was his specialty even before he took up constitutional law. His study of the legislative history of antitrust led him to conclude that Congress' overriding goal in passing antitrust laws was economic efficiency, or "maximization of consumer welfare." He discards other objectives, such as "fairness" or preserving many small businesses even when larger competitors would better serve consumers. In order to follow congressional intent, therefore, he believes that courts must apply economic theory to ascertain which business practices diminish and which ones enhance consumer welfare.[1]

Bork's general argument is that many business practices currently considered illegal can actually benefit consumers. Consequently, the scope of antitrust laws should be dramatically reduced if they are to remain true to congressional intent. Highlights of his antitrust writings:

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[1]Bork, The Antitrust Paradox (1978), pp. 50-89; Bork, "Legislative Intent and the Policy of the Sherman Act," 9 J. Law and Econ. 7 (1966).

Corporate Size

Corporations which become large through internal growth can only remain large if they are doing a superior job of giving consumers what they want. Economists have demonstrated that neither vertical nor conglomerate mergers give firms any more opportunity to extract "monopoly prices" than they had before such mergers. Corporations which grow through horizontal mergers and acquisitions are also vulnerable to competition if they fail to serve their customers adequately. Therefore, the only case in which corporate growth should be illegal is that of new horizontal mergers which leave no substantial competitors in an industry.[2]

As this view demonstrates, Bork displays no hostility toward "big" businesses merely because they are big. Large size may, in fact, be a sign that a company is serving the public well.[3] He is only concerned when all major rivals in an industry clearly seek to create a monopoly by merging.

Vertical Restraints

Vertical restraints such as resale price maintenance and market division can lower costs of producing and distributing goods.[4] Like vertical mergers, they cannot by themselves lead to monopoly. "Analysis shows that every vertical restraint should be completely lawful," Bork notes in his 1978 book, The Antitrust Paradox.[5]

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[2]The Antitrust Paradox, pp. 198-262.

[3]See, for instance, Brozen, Concentration, Mergers, and Public Policy (1982).

[4]Telser, "Why Should Manufacturers Want Fair Trade?" 3 J. Law and Econ. 86 (1960); Gould and Preston, "Resale Price Maintenance and Retail Outlets," 32 Economica 302 (1965); Marvel and McCafferty, "Resale Price Maintenance and Quality Certification," 15 Rand J. Econ. 346 (1984); Marvel and McCafferty, "The Welfare Effects of Resale Price Maintenance," 28 J. Law and Econ. 363 (1985).

[5]The Antitrust Paradox, pp. 288. See also Bork, "The Rule of Reason and the Per Se Concept: Price Fixing and Market Division, Part I," 74 Yale Law J. 775 (1965); "The Rule of Reason and the Per Se Concept: Price Fixing and Market Division, Part II," 75 Yale Law J. 373 (1966); "A Reply to Professors Gould and Yamey," 76 Yale Law J. 731 (1967); "Resale Price Maintenance and Consumer Welfare," 77 Yale Law J. 950 (1968); "Vertical Restraints: Schwinn Overruled," 1977 Sup. Ct. Rev. 171.

Among the business community, this position might seem to benefit only manufacturers, who would have the freedom to impose various restraints on their distributors and retailers in order to help their product more effectively compete with other products. However, "full service" distributors and retailers who exert a great deal of effort promoting the products they sell would also benefit, for legalization of all vertical restraints would help a manufacturer give all sellers of its products incentives to promote as well as stock the products. On the other hand, the types of businesses which would rather cut prices than provide sales and service support for consumers would be displeased.

Horizontal Cooperation

Horizontal cooperation among firms in the same industry to divide markets or fix prices can likewise benefit consumers, but they may also harm them if the firms engaging in them restrict industry output. Such agreements should therefore be legal when (1) the group of firms still faces competition from other firms or groups of firms, and (2) the firms can demonstrate that the agreements lower costs or make possible production of products which would not otherwise be produced.[6] Bork's position on this issue implies less restriction of efficient business practices.

Predation

Economists have shown, and the Supreme Court has recognized, that predatory pricing is unlikely to be tried and virtually guaranteed to fail.[7] Bork cautions that laws against predatory pricing encourage another type of predatory behavior: competitors respond to price cuts by taking each other to court for "predatory pricing." Part of the problem with current antitrust laws, he points out, is that so many economically efficient practices are illegal that businesses are tempted to use antitrust laws to hobble more efficient competitors.[8]

Bork's stricture against use of the legal system to preserve specific businesses rather than promote efficiency might provoke displeasure in some small businessmen who would like the chance

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[6]The Antitrust Paradox, p. 279.

[7]According to the Court, "There is a consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful." See Prehearing Brief of the FTC before the ITC hearing on 64K and 256K computer chip imports, April 25, 1986, p. 3.

[8]The Antitrust Paradox, pp. 134-35 and 347-64.

to legally challenge larger, more efficient firms who undersell them. However, most businessmen would presumably like to be freed from the danger of having to defend their price cuts in court.

Price Discrimination

Charging different buyers different prices not based on cost differences may in some cases harm consumers. However, attempting to identify these cases in the real world is so difficult that society is probably better off not expending the enormous resources on litigation necessary to find out.[9] As in the case of "predatory pricing," Bork's view on this subject would reduce government's opportunity to second-guess businesses' pricing decisions.

ECONOMICS AND THE FIRST AMENDMENT

On several occasions as an appeals court judge, Bork has stated that First Amendment guarantees apply to forms of speech sometimes regarded as "economic" rather than "political," such as advertising.[10] Prior to his appointment to the bench, he publicly defended even advertising containing no information because it at least makes consumers aware of the existence of a product. He believes consumers should receive no more or no less information than they demonstrate they are willing to pay for by purchasing products.[11]

In Quincy Cable TV v. FTC, Bork agreed that the First Amendment prohibits the Federal Communications Commission from mandating that cable television stations carry specific programs.

LABOR

Bork's rulings on labor issues follow his doctrine of "original intent." Where the law makes clear that Congress intended to do something other than promote economic efficiency, he has sided with congressional intent. As a result, he has ruled in favor of labor where statutes or legally valid regulations favor labor, and in favor of management where statutes or legally valid regulations favor management.[12]

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[9] The Antitrust Paradox, pp. 382-401

[10] FTC v. Brown and Williamson Tobacco Corp.

[11] See AEI Roundtable, Advertising and the Public Interest (1976).

[12] Oil Chemical Atomic Workers International v. NLRB; Black v. Interstate Commerce Commission; IBEW v. NLRB; Northwest Airlines v. Airline Pilots International.

REGULATORY AGENCIES

Here too original intent takes precedence over economic efficiency. Deregulation-minded regulators have found their initiatives overturned when Bork felt regulators were circumventing the law rather than carrying it out.[13] What mattered was not the desirability of a policy, but rather its consistency with the legislation which created the regulatory department or agency.

In his writings on antitrust, Bork contends that heavily regulated industries and occupations often become government-enforced cartels. Where feasible, he says, antitrust enforcement should discourage all levels of government from enforcing cartels.[14]

Recently-deregulated industries, such as airlines, trucking, and railroads, should find this approach to regulation quite heartening--but principally because it indicates the level of Bork's economic understanding, for Bork would not allow antitrust to prevent a regulatory body from doing anything which it clearly has statutory authority to do. As a result, professions and industries comfortable with regulation may be displeased, but they have little to worry about as long as the statutory language establishing the regulatory body gives that body the right to do whatever it is doing.

BALANCED BUDGET AMENDMENT

Bork has opposed calling a constitutional convention to propose a balanced budget amendment because he believes the scope of such a convention could not be limited to that issue. Though convinced of the need to restrain government spending--not just deficits--he has expressed doubts about whether an amendment would actually accomplish its purpose or merely back Congress into making poor decisions and create a nightmare of litigation.[15]

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[13] Associated Gas Distributors v. FERC; Global Van Lines v. ICC; Independent U.S. Tankers Owners Committee v. Dole; United Mine Workers v. MHSA.

[14] The Antitrust Paradox, p. 407.

[15] Bork, "Would a Budget Amendment Work?", Wall Street Journal (Apr. 4, 1979); AEI Forums, Taxpayers' Revolt: Are Constitutional Limits Desirable? (1978).

THE WHITE HOUSE

WASHINGTON

August 14, 1987

MEMORANDUM FOR KEN CRIBB

FROM: CARL ANDERSON

SUBJECT: Bork Event on September 23, 1987

Pursuant to your request, I am outlining my thoughts for the September 23, 1987 event on Judge Bork and am attaching suggested invitees from the various OPL constituencies.

The nomination of Judge Robert Bork symbolizes for the overwhelming majority of Americans, their views of representative government and a limited judiciary. The audience for the September 23 event should reflect this fact and be comprised of a representative cross-section of Americans, for example, business, labor, different ethnic groups etc. The core invitation list will be comprised of the individuals listed to receive this weeks Presidential support letter. OPL will follow up between now and labor day to monitor the activities of those organizations who receive the President's letter. In addition, we will add representatives of organizations who have acknowledged public support of Judge Bork, for example, the Knights of Columbus, Hispanic Chamber of Commerce as well as those conservative organizations which comprise the 721 and Library Court groups.

Since the hearings begin on September 15, the September 23 event gives us time to assess the impact of the testimony and rally the troops. Given the fact that we may face a somewhat fluid situation by mid-September, I would suggest that we not issue invitations to the event until the week of September 8. Additionally, those individuals who will join the President on the dais will help cast the image of the event and should be determined the week of the September 23 event.

THE WHITE HOUSE

WASHINGTON

August 14, 1987

MEMORANDUM FOR CARL A. ANDERSON, ACTING DIRECTOR, OFFICE OF PUBLIC LIAISON

FROM: DAN DANNER, SPECIAL ASSISTANT TO THE PRESIDENT, OFFICE OF PUBLIC LIAISON

SUBJECT: Suggested Invitees to September 23, 1987 Briefing on Judge Bork

This is my first cut at suggested invitees for the September 23rd event. These are the business groups that are being the most helpful on the issue at present. I reserve the right to massage this list as events unfold.

Mr. Louis H.J. Dehmlow
Chairman of the Board
National Association of
Wholesaler-Distributors

Mr. Dirk Van Dongen
President
National Association of
Wholesaler-Distributors

Mr. Stanley Gault
Chairman of the Board
National Association of Manufacturers

Mr. Alexander B. Trowbridge
President
National Association of Manufacturers

Mr. Oliver H. Delchamps, Jr.
Chairman of the Board
U.S. Chamber of Commerce

Dr. Richard Lesher
President
U.S. Chamber of Commerce

Mr. Dana Heustis
President
Associated General Contractors
of America

Mr. Hubert Beatty
Executive Vice President
Associated General Contractors
of America

Mr. David Koch
Chairman of the Board
Citizens for a Sound Economy

Mr. Richard H. Fink
President
Citizens for a Sound Economy

Mr. John C. Jones
President
Associated Builders and Contractors

Mr. Charles E. Hawkins, III
Vice President
Associated Builders and Contractors

Mr. Richard DeVos
President
Council for National Policy

Mr. Jack Wilson
Executive Director
Council for National Policy

Mr. Wayne H. Valis
President
Valis Associates

THE WHITE HOUSE

WASHINGTON

August 14, 1987

MEMORANDUM FOR T. KENNETH CRIBB, ASSISTANT TO THE PRESIDENT FOR DOMESTIC AFFAIRS

FROM: LINDA L. AREY, DEPUTY DIRECTOR FOR PUBLIC LIAISON

SUBJECT: SEPTEMBER 23 EVENT

I would like to suggest that the President address Concerned Women for America on the subject of Judge Bork. CWA will be in Washington for their annual convention, and are expected for a White House briefing on September 24, and the members will arrive on September 23. This organization is always supportive of President Reagan, and began work in support of Judge Bork's nomination as soon as it was announced. CWA would provide an audience of enthusiastic, supportive and energetic women to which the President could deliver his message.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR CARL A. ANDERSON, SPECIAL ASSISTANT AND ACTING DIRECTOR, OFFICE OF PUBLIC LIAISON

FROM: RUDY BESERRA, ASSOCIATE DIRECTOR, OFFICE OF PUBLIC LIAISON

SUBJECT: Bork Briefing

Following is the list of groups I recommend be included in the invitation list for the briefing. The briefing will serve to either solidify existing support or convince those who are undecided.

Hector Baretto
President
Hispanic Chamber of Commerce

Harry Pachon
President
National Assn. Latino Elected Officials

Luis Nunez
President
National Puerto Rican Coalition

Mario Diaz
Chairman
American G.I. Forum

Manuel Oliverez
President
National Image, Inc.

Steve Denlinger
President
Latin American Manufacturers Assn.

Armando Lago
President
Ibero American Chamber of Commerce

Luis Ferre
Former Governor of Puerto Rico

Jose Antonio Font
President
Cuban American Foundation

Carlos Perez
Concerned Citizens for America

Cathi Villapando
Former White House Hispanic Liaison

H. Pultz Martinez
RNC National Committeeman

George Rodriguez
LULAC

Tony Valencia
President, Mexican American Foundation

Dionicio Morales
President, Mexican American Opportunity Foundation

Rita Di Martino
Chairman, National Council of La Raza

Manuel Sepulveda
President, Hispanic Businessmens' Assn. of Southern Ca.

Angel Gaitan
President, Latino Peace Officers Assn.

David Gomez
President, Hispanic Officers Command Assn.

Eli Rodriguez
President, Mexican American Organization of Texas

Dr. Alba Moesser
Chairperson of the National Center of Hispanic Women

Dr. Luis Queral
Director of the Maryland Hispanic Chamber of Commerce

Mr. Carlos Salman
Chairman of the Republican Party of Dade County, FL.

Ms. Patricia Asip
Manager of Marketing, J.C. Penney

Mr. Jose Manuel Casanova
U.S. Director for the Inter-American Development Bank

Mr. Luis Del Rio
Executive Vice President, United Schools of America

Mr. Nestor Navarro
Developer

Mr. Tirso Del Junco, M.D.

Mrs. Alicia Casanova

Mr. Victor Rivera
Private Enterprise Development Corp.

Mr. Mario Aguero
Commissioner, Copyright Royalty Tribunal

Ms. Donna Alvarado
Director, ACTION

THE WHITE HOUSE

WASHINGTON

August 14, 1987

MEMORANDUM FOR T. KENNETH CRIBB, JR.
ASSISTANT TO THE PRESIDENT FOR DOMESTIC AFFAIRS

FROM: LINAS KOJELIS, SPECIAL ASSISTANT TO THE PRESIDENT FOR PUBLIC LIAISON

SUBJECT: Invitees to September 23 Bork Event

A representative from each of the following groups should be invited to attend the Bork briefing on September 23rd because of their ability to mobilize grass roots support through newsletters and telephone contact. In addition the ethnic groups pass along information to their daily ethnic newspapers which reach 1000's of readers.

Ms. Zinta Arums
Director of Public Relations
Joint Baltic American National Committee

Mrs. Anna Faltus
Washington Representative
Czechoslovak National Council

Mr. Ojars Kalnins
Public Relations Director
American Latvian Association

Mrs. Casimira Lenard
Director, Washington Office
Polish American Congress

Ms. Eugenia Ordynsky
Director
Russian American Information Center

Mr. Radi Slavoff
Executive Director
National Republican Heritage Groups Council

Mr. Myron Wasylyk
Director
Ukrainian Information Service

Mr. Lee Bellinger
President
Conservative Action Foundation

Mr. Peter Flaherty
Chairman
Citizens for Reagan

Mr. Jack Stevens
Executive Director
Citizens for America

Mr. Jack Wilson
Executive Director
Council for National Policy

THE WHITE HOUSE

WASHINGTON

August 14,1987

MEMORANDUM FOR CARL A. ANDERSON, SPECIAL ASSISTANT TO THE PRESIDENT AND ACTING DIRECTOR, OFFICE OF PUBLIC LIAISON

FROM: RUDY BESERRA, ASSOCIATE DIRECTOR, OFFICE OF PUBLIC LIAISON

SUBJECT: Individual supporters of Judge Bork

Attached is a list of those who have expressed their support for Judge Bork. These individuals are influential within their communities and can serve to advocate the administration's position on Judge Bork.

Next week more names will be added to the list.

THE WHITE HOUSE

WASHINGTON

Armando Lago
Ibero American Chamber of Commerce

Luis Ferre
Former Governor of Puerto Rico

Jose Antonio Font
President, Cuban American Foundation

Carlos Perez
Concerned Citizens for America

Cathi Villapando
Former White House Hispanic Liaison

H. Pultz Martinez
RNC National Committeeman

George Rodriguez
LULAC

Tony Valencia
President, Mexican American Foundation

Dionicio Morales
President, Mexican American Opportunity Foundation

Rita Di Martino
Chairman, National Council of La Raza

Manuel Sepulveda
President, Hispanic Businessmens' Assn. of Southern Ca.

Angel Gaitan
President, Latino Peace Officers Assn.

David Gomez
President, Hispanic Officers Command Assn.

Eli Rodriguez
President, Mexican American Organization of Texas

Dr. Alba Moesser
Cahirperson of the National Center of Hispanic Women

Dr. Luis Queral
Director of the Maryland Hispanic Chamber of Commerce

Mr. Carlos Salman
Chairman of the Republican Party of Dade County, FL.

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Ms. Patricia Asip
Manager of Marketing, J.C. Penney

Mr. Jose Manuel Casanova
U.S. Director for the Inter-American Development Bank

Mr. Luis Del Rio
Executive Vice President, United Schools of America

Mr. Nestor Navarro
Developer

Mr. Tirso Del Junco, M.D.

Mrs. Alicia Casanova

Mr. Victor Rivera
Private Enterprise Development Corp.

Mr. Mario Aguero
Commissioner, Copyright Royalty Tribunal

Ms. Donna Alvarado
Director, ACTION

THE WHITE HOUSE

WASHINGTON

August 13, 1987

MEMORANDUM FOR CARL A. ANDERSON, SPECIAL ASSISTANT TO THE PRESIDENT AND ACTING DIRECTOR OF PUBLIC LIAISON

THROUGH: LINAS KOJELIS, SPECIAL ASSISTANT TO THE PRESIDENT, OFFICE OF PUBLIC LIAISON

FROM: RUDY BESERRA, ASSOCIATE DIRECTOR, OFFICE OF PUBLIC LIAISON

SUBJECT: Status report on Hispanic support for Judge Bork

Obtaining Hispanic support for Bork requires a multifaceted approach, one which we are pursuing vigorously. We fully expect unprecedented Hispanic support for Judge Bork.

Following is a partial list of major Hispanic groups in support of Judge Bork:

1. The United States Hispanic Chamber of Commerce has written a statement of support for Judge Bork that we will receive by 3:00 p.m., 8/13. Copy of statement is attached.

2. The Ibero-America Chamber of Commerce and its president, Armando Lago, have expressed support for Judge Bork. Their Board will meet Sept. 6, to make a final determination. Mr. Lago indicated to me that he forsees a positive statement in support of Judge Bork. I would recommend a meeting with some of the key Board members and White House staff to buttress Mr. Lago's efforts.

3. The Mexican-American Foundation and its president, Dionicio Morales have expressed their support for Judge Bork. I am expecting to receive by 8/14 a copy of their statement in support of Judge Bork and will send that to you. The Mexican-American Foundation is the largest Hispanic organization in California.

4. The Latino Peace Officers Assn. in Los Angeles and its president, Manuel Gaitan have expressed support for Judge Bork. This group is the largest Hispanic Peace Officers association in the country. We expect a letter of support by 8/19.

5. The Hispanic Officers Command Assn. in Los Angeles and its president, David Gomez, have also expressed support for Judge Bork. This group is comprised of peace officers at the command level. Again, we expect a letter of support by 8/19.

6. The Hispanic Businessmens Council of Southern California and its president, Manuel Sepulveda, have expressed support for Judge Bork. This group is the most influential Hispanic business group in Southern California. Letter of support coming by 8/18.

7. The Mexican American Organization of Texas and its President, Eli Rodriguez, are in support of Judge Bork. This is the largest and most influential Mexican American community based group in Texas. Letter by 8/19.

8. Carlos Perez, President of Concerned Citizens for Democracy, is in full support of Judge Bork. He is willing to utilize his radio station for broadcasts in support of Judge Bork. Mr. Perez is a very prominent Cuban-American in Florida and he is mobilizing other Cuban leaders in supporting Judge Bork.

9. Tony Valencia, President of the San Diego based Mexican American Foundation is in support of Judge Bork. The organization will provide a letter of support by this Friday, 8/14.

Just as importantly are the groups which are undecided or are nuetral on the nomination. (In many cases, a draw is as valuable as a win). The following is a status on those groups:

1. The National Puerto Rican Coalition and its president, Louis Nunez will come out neutral on the nomination issue.

2. The Latin American Manufacturers Assn. will be neutral on the issue.

3. The National Assn. of Latino Elected Officials will come out neutral on the issue.

4. Due to my efforts, the American G.I. Forum will not issue a statement until they can meet with you or Ken Cribb in early September. My attendance at their national convention in Seattle this past weekend was crucial in convincing them of the need to give the Administration an opportunity to air its views.

5. The same holds true for the National Council of La Raza, one of the largest Mexican American groups in the country.

Additionally, several prominent Hispanics have come on board in support of Judge Bork and I will be forwarding that list to you by close of business tomorrow.

The momentum is on our side and we will continue to keep on top of this important issue. A follow-up memo will be prepared tomorrow.

AS DICTATED OVER THE TELEPHONE

August 13, 1987

U.S. HISPANIC CHAMBER OF COMMERCE

Press Release

USHCC PRESIDENT ENDORSES ROBERT H. BORK

KANSAS CITY, MO. 8/13/1987

Hector Baretto, President of the United States Hispanic Chamber of Commerce, endorses President Reagan's nomination of Robert H. Bork to the Supreme Court.

"My endorsement comes after careful review of Bork's qualifications and philosophy," says Baretto.

Baretto says that Bork is what America needs because he is not a political judge. Baretto believes Bork will adhere and support the constitution.

Bork, a mainstream jurist, has been in the majority in 94% of the cases he has heard. The Supreme Court has never reversed any of his opinions. He has never advocated or rendered a judicial decision unsympathetic to minority plaintiffs. He has consistently upheld the right of civil rights plaintiffs who have been victims of race and sex discrimination.

End of press release

NEWS RELEASE

U.S. HISPANIC CHAMBER OF COMMERCE

FOR IMMEDIATE RELEASE

Contact: Ana Brito
4900 Main
Kansas City, MO 64112
(816) 531-6363

(Kansas City, MO., August 13, 1987) -- Hector Barreto, President of the United States Hispanic Chamber of Commerce, endorses President Reagan's nomination of Robert H. Bork to the Supreme Court.

"My endorsement comes after careful review of Bork's qualifications and philosophy," says Barreto.

Barreto says that Bork is what Americans need because he is not a political judge. Barreto believes Bork will adhere and support the Constitution.

Bork, a mainstream jurist, has been in the majority in 94 percent of the cases he has heard. The Supreme Court has never reversed any of his opinions. He has never advocated or rendered a judicial decision unsympathetic to minority plaintiffs. He has consistently upheld the rights of civil rights plaintiffs who have been victims of race and sex discrimination.

XXX

NATIONAL
JEWISH
COALITION

Chris Gersten
Executive Director

August 13, 1987

Mr. Carl Anderson
Acting Director
Office of Public Liaison
The White House
Washington, D.C. 20500

Dear Carl Mr. Anderson:

I thought you would be interested in the attached statement from the National Jewish Coalition on the Bork nomination.

Regards,

Chris Gersten

Chris Gersten
Executive Director

(202) 547-7701
415 SECOND STREET, N.E.
SUITE 100
WASHINGTON, DC 20002

NATIONAL JEWISH COALITION
STATEMENT ON BORK NOMINATION

The National Jewish Coalition commends President Reagan's historic decision to nominate Judge Robert Bork to succeed retiring Justice Lewis Powell on the Supreme Court.

Bork posesses all the necessary intelligence, insight, and professional experience to serve on the bench with distinction. A former law professor at Yale, Bork received the American Bar Association's highest rating--"exceptionally well qualified"--to serve as a federal judge. During his five years on the U.S. Circuit Court, he has distinguished himself as a Constitutional scholar and a thoughtful and respected jurist.

Judge Bork is superbly qualified to join the Supreme Court. Retired Chief Justice Warren E. Burger, who supports confirmation for Bork, has said that he could not recall a nominee "better qualified than Judge Bork." Bork has voted in the Court of Appeals' majority in 94 percent of the cases he has heard since serving on the Court. None of his more than 100 majority opinions written for the court has been overturned by the Supreme Court.

Those who oppose Bork are seeking to change the norms that for two centuries have been followed in confirming Presidential judicial nominations. Under these norms, a nominee recognized to possess integrity and to be professionally competent is granted Senate approval, regardless of his judicial or political philosophy. The challenge to the Bork nomination comes from a desire to retain a politicized Court. By exploiting the Bork nomination for these narrow political and ideological reasons, liberals and Democrats are undermining the confirmation process.

Judge Bork is eminently qualified to serve in the post to which he has been named: neither ideology nor political opportunism should prevent him from doing so.

THE WHITE HOUSE

WASHINGTON

August 12, 1987

MEMORANDUM FOR T. KENNETH CRIBB, ASSISTANT TO THE PRESIDENT FOR DOMESTIC AFFAIRS

FROM: MILDRED J. WEBBER, ASSOCIATE DIRECTOR, OFFICE OF PUBLIC LIAISON

SUBJECT: Participating Organizations for the Bork Event

As we prepare for the September 23 Bork Event, I believe the following conservative organizations should be represented as they have been working very hard of behalf of his nomination:

--National Law Enforcement Council

--United Families of America

--Citizens for America

--National Association of Pro-America

--Free the Eagle

--Council for National Policy

--Free Congress Foundation

--The Heritage Foundation

--The GREAT Commission

--American Conservative Union

--National Association of Evangelicals

--Citizens for Reagan

--National Right to Work

--American Legislative Exchange Council

--The Conservative Digest

--Association of Christian Schools

--National Right to Life

--Liberty Alliance

--Washington Legal Foundation

--Leadership Action

--Concerned Women of America

--Black PAC

--National Forum Foundation

--Family Research Center

--National Association of Christian Schools

--Eagle Forum

--National Center for Public Policy Research

--Americans for Tax Reform

--The Conservative Caucus

--Gun Owners of America

--Competitive Enterprise Institute

THE WHITE HOUSE

WASHINGTON

August 14, 1987

MEMORANDUM FOR T. KENNETH CRIBB, JR.
ASSISTANT TO THE PRESIDENT FOR DOMESTIC AFFAIRS

FROM: CHARLOTTE DE MOSS CD
DEPUTY ASSOCIATE DIRECTOR FOR PUBLIC LIAISON

SUBJECT: Suggested Invitees for Bork Briefing on September 23, 1987

We should consider inviting representatives from the following organizations to the briefing on September 23. Each is involved in educational and promotional activities on behalf of the Bork nomination.

American Coalition for Life

Christian Action Council

Concerned Women for America

Eagle Forum

Focus on the Family

Liberty Federation

National Association of Evangelicals

We should also consider including a representative from the Southern Baptist Convention.

THE WHITE HOUSE

WASHINGTON

August 11, 1987

MEMORANDUM FOR LINDA AREY, SPECIAL ASSISTANT TO THE PRESIDENT AND DEPUTY DIRECTOR, OFFICE OF PUBLIC LIAISON

FROM: RUDY BESERRA, ASSOCIATE DIRECTOR, OFFICE OF PUBLIC LIAISON

SUBJECT: Hispanic support for the Bork nomination

1. This past weekend I attended the annual G.I. forum convention in Seattle where I persuaded the new president, Mr. Diaz, to delay issuance of their resolution on Judge Bork. I am currently arranging a series of meetings for the leadership of this organization with W.H. staff. The leadership has agreed to give the administration an opportunity to state its views before deciding on a final resolution.

2. The Hispanic Chamber of Commerce will soon release a statement endorsing Judge Bork's nomination. This office has worked closely with the Chamber on various initiatives of the administration and they have been generally supportive.

3. Meetings between White House staff and leaders of influential Hispanic organizations are being planned for the near future. I hope to capitalize on the momentum that the Hispanic Chamber of Commerce's announcement will give us.

4. Have arranged for a meeting with Martin Barrillas of the RNC to organize a hispanic media effort in support of Judge Bork. Mr. Barillas produces radio spots for the RNC which target hispanic audiences.

5. I am obtaining the list of past LULAC national presidents and state directors. I will provide those who are supportive of Judge Bork and influential in their community with the proper national forum to make their support widely known.

THE WHITE HOUSE

WASHINGTON

August 6, 1987

MEMORANDUM FOR T. KENNETH CRIBB, JR., ASSISTANT TO THE PRESIDENT FOR DOMESTIC AFFAIRS

FROM: DAN DANNER, SPECIAL ASSISTANT TO THE PRESIDENT, OFFICE OF PUBLIC LIAISON

SUBJECT: Update on Business Community Bork Activities

Tomorrow you will meet with key Washington business leaders that have been helpful with the Bork nomination. Their principals will soon receive a letter from the President requesting assistance, and these representatives will be ready to give you specific commitments regarding actions their groups will undertake.

Attendees at August 7, 1987 meeting
Roosevelt Room, 9:45 a.m.
Re: Bork nomination

Wayne H. Valis
Valis Associates

Nicholas E. Calio
Vice President, Government Relations
National Association of Wholesaler-Distributors

James D. McKevitt (Mike)
Webster, Chamberlain, Bean and McKevitt

Richard Fink
President
Citizens for a Sound Economy

John R. Gentille
Associated General Contractors of America

THE WHITE HOUSE

WASHINGTON

August 3, 1987

MEMORANDUM TO CARL A. ANDERSON, SPECIAL ASSISTANT TO THE PRESIDENT AND ACTING DIRECTOR, OFFICE OF PUBLIC LIAISON

THROUGH: LINAS KOJELIS, SPECIAL ASSISTANT TO THE PRESIDENT, OFFICE OF PUBLIC LIAISON

FROM: RUDY BESERRA, ASSOCIATE DIRECTOR, OFFICE OF PUBLIC LIAISON

SUBJECT: Hispanic support for the Bork nomination

1. Counter the LULAC position paper by providing a forum for State leaders of LULAC, such as Herb Fernandez of New Mexico; Jess Quintero, Washington, D.C.and Bert Salinas of Texas to state their views in opposition.

2. Provide materials such as fact sheets etc. to Rudy Beserra so that they can be distributed at the upcoming G.I. Forum (8/5-9) convention in Seattle. Furthermore, provide political support in the form of phone calls..etc. to the leadership of G.I. Forum in order to persuade them to remain nuetral on the nomination issue.

3. Contact past presidents of major hispanic organizations and bring them to the White House in an effort to garner their support of, at a minimum, a fair hearing of Judge Bork.

4. Use the previously submitted Hacer proposal group to rally support for the Bork nomination.

5. Initiate a media program utilizing Hispanic radio stations. Have supporters of Judge Bork speak on these radio stations using, if need be, interviews conducted and organized by the RNC.

6. Use the scheduled National Puerto Rican Coalition Meeting as a possible forum for support.

7. Target the top 6 hispanic organizations in the country. Provide them with information and political support in order to get them behind the Bork nomination.

THE WHITE HOUSE

WASHINGTON

SCHEDULE PROPOSAL July 20, 1987

TO: HECTOR IRASTORZA, DEPUTY ASSISTANT TO THE VICE PRESIDENT FOR SCHEDULING

FROM: CARL A. ANDERSON, SPECIAL ASSISTANT TO THE PRESIDENT AND ACTING DIRECTOR OF THE OFFICE OF PUBLIC LIAISON

REQUEST: Vice President to meet with the Hispanic Association for Corporate Responsibility (HACER) group in Washington, D.C.

PURPOSE: To support the Hispanic leadership's promotion of minority agreements within the corporate sector.

BACKGROUND: The Association of HACER represents a commitment by the six major Hispanic organizations in the country to promote a united effort in enhancing Hispanic participation in mainstream American business. This group was responsible for negotiating the 1984 national agreement with the Adolph Coors Brewery. The group also stresses the President's legislative agenda designed to increase minority business opportunities within the corporate sector.

This event will have a major positive impact on the minority business community, especially since one half of the 600,000 new minority businesses that were started in 1986-87 are Hispanic-owned.

PREVIOUS PARTICIPATION: None

DATE: Open DURATION: 15 minutes

LOCATION: Roosevelt Room

PARTICIPANTS: RAUL YZAGUIRRE, President/CEO, the National Council of La Raza, and Chairman of HACER

ED BERNALDEZ, National Chairman, American G.I. Forum

JAKE ALARID, former National Chairman, American G.I. Forum

ANNABELLE JARAMILLO, National President, National Image

OSCAR MORAN, President, League of United Latin American Citizens (LULAC)

AUGUSTIN DE GOYTISOLO, Chairman of the Board, Cuban National Planning Council

HECTOR BARRETO, President, U.S. Hispanic Chamber of Commerce

FORMER GOVERNOR JERRY APODACA, President, HACER

GIL VAZQUEZ, Monitoring Agent, HACER/Coors Agreement

OUTLINE OF EVENTS: The participants will be briefed prior to the Vice President's arrival. The Vice President then welcomes the group, makes 10-minute remarks, and photos are taken.

REMARKS REQUIRED: 15-minute remarks

MEDIA COVERAGE: TBD

RECOMMENDED BY: Carl Anderson

PROJECT OFFICER: Rudy Beserra, x2657

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NRL news

July 30, 1987

Pro-Abortion Senate Democrats Plot To Defeat Bork Nomination

Photo Credit: Glen Stubbe, Washington Times

Sen. Joseph Biden (D-Del.), center, confers with Sen. Edward Kennedy (D-Mass.), left, and Patrick Leahy (D-Vt.).

NARAL, NOW Also Attack Bork

See page one

National Right To Life NEWS

"The Pro-Life Newspaper of Record"

Vol. 14 No. 14 July 30, 1987 Official Publication of the National Right to Life Committee Price $1.00

Index:

Judge Bork a "Neanderthal," New NOW President Says

By Dave Andrusko

PHILADELPHIA, PA - - Eleanor Smeal's hand-picked successor promises that the National Organization for Women's first action will be to "stop the confirmation" of Judge Robert Bork, chosen by President Reagan to fill the Supreme Court vacancy created by the retirement of Lewis Powell.

Molly Yard, elected by a comfortable margin July 18, called Judge Bork "a Neanderthal. I don't know why he's still around." Yard, formerly NOW's political director, said "we are not going to take someone on the court who is going to reverse [legal abortions]." Ms. Yard, who is in her mid-seventies, added "We're going to fight every inch of the way to keep him from being confirmed."

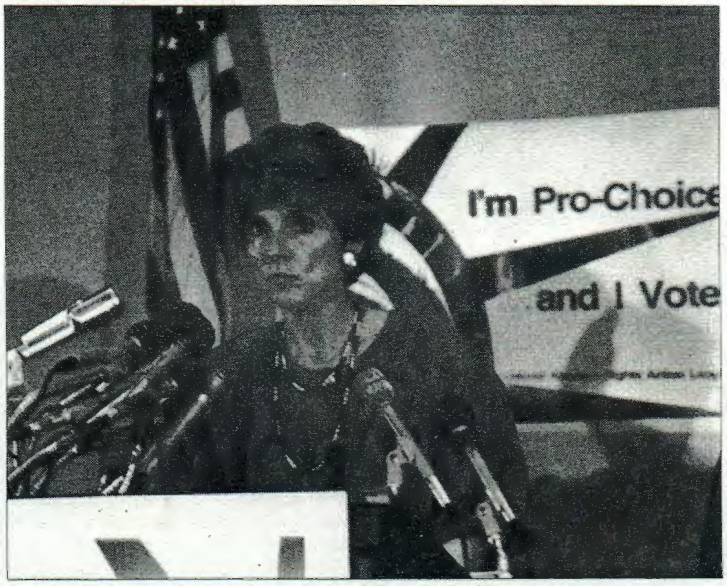
Yard also called for the impeachment of President Ronald Reagan.

Yard was opposed by Noreen Connell, president of New York NOW, in what was largely a rehash of the divisive fight two years ago between factions loyal to the 47-year-old Smeal and to then-NOW president Judy Goldsmith, who Smeal in 1983 had designated as her successor. Smeal chose not to run for another term this year, and instead will be "leaving to make a nationwide barnstorming tour using celebrities, entertainers and a media campaign to urge feminist candidates to run for office in 1988," according to the **Philadelphia Inquirer.**

Smeal, not surprisingly, said Yard's 940-629 victory over Connell was a vote of confidence in her much ballyhooed promise in 1985 to take the woman's movement "back into the streets."

Only one presidential candidate (announced or prospective) was invited

(See Now Attacks, p. 9)



Kate Michelman, NARAL's Executive Director, at a press conference promising an all-out effort to defeat Supreme Court nominee Robert Bork.

NARAL Vows All-out War to Defeat Nomination of Bork

By Dave Andrusko

WASHINGTON, D.C. - - The National Abortion Rights Action League (NARAL) has vowed to launch a massive grassroots campaign to defeat President Ronald Reagan's nomination of Judge Robert Bork to replace Justice Lewis Powell Jr., who announced his retirement from the Supreme Court June 26.

In her July 11 keynote address announcing "unequivocal opposition" to Bork delivered at NARAL's national convention, executive director Kate Michelman warned, "We are about to enter the fight of our lives."

Although Judge Bork has never issued a ruling on abortion, pro-abortion groups were galvanized into action when Mr. Reagan nominated the widely respected member of the U.S. Circuit Court of Appeals for the District of Columbia. Their attack on the 60-year-old Bork has been spurred by his well publicized philosophy of judicial restraint and his, by now, equally well-known observation that *Roe* "is, itself, an unconstitutional decision, a serious and wholly unjustifiable usurpation of State legislative authority."

Michelman pledged an all-out lobbying campaign to defeat Bork's nomination and put pro-abortion senators on notice that NARAL expects them to actively oppose Bork. "To all the supporters of choice in the Senate, we say, 'Don't turn your backs on America's mothers, sisters, wives, and daughters,' " Michelman warned. "You will do us an unspeakable injustice if you allow Robert Bork to be a Supreme Court justice."

At a press conference wrapping up the organization's three-day national convention held July 10-12 in Washington, Michelman promised not only to defeat Judge Bork "but the philosophy for which he stands." Michelman, who was cheered repeatedly by NARAL delegates, drew sustained applause when she described NARAL's objective as preventing "a judge with an 18th century judicial philosophy from shaping our lives into the 21st century."

> ***"You will do us an unspeakable injustice if you allow Robert Bork to be a Supreme Court justice."***
>
> **Kate Michelman NARAL**

The comments of Jo Ellen Pasman were typical of the eight representatives from NARAL affiliates around the country who spoke at the press conference. Pasman, the execu-

(See NARAL, p. 9)

Death and Due Process In New Jersey

By Thomas J. Marzen

As a result of a pair of recent decisions rendered by the New Jersey Supreme Court, Nancy Ellen Jobes may well be dead or dying as this article is read.

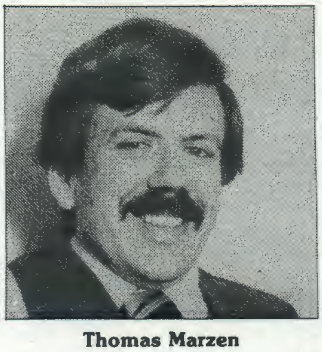
Those who defend her (non) treatment will say she died of "natural" causes - - "natural," that is, to arid regions devoid of food and water sufficient to sustain life.

But Nancy Ellen, who will hunger and thirst, will not die in some faraway desert. She will die in an air-conditioned room in a Twentieth Century bed, its sheets changed daily. The means to sustain her life will be readily available.

There will be a cafeteria down the hall stocked well enough to feed dozens each day. A pitcher of ice water will probably lie on her bedside table.

She does not have to die. Indeed, that she would not die is precisely the "problem" for those who do not want this "biologically tenacious" woman around. The dilemma for those who would prefer the severely cognitively-impaired to be dead, is that were Mrs. Jobes merely provided food and fluids, she would continue to live... indefinitely.

But the New Jersey Supreme Court found a "solution," a final solution for patients such as Nancy Jobes and Hilda Peter. Simply redefine the tubes through which they are fed and hydrated as "medical treatment," brand them a High-Tech intruder in the natural order, and then order the tubes withdrawn.



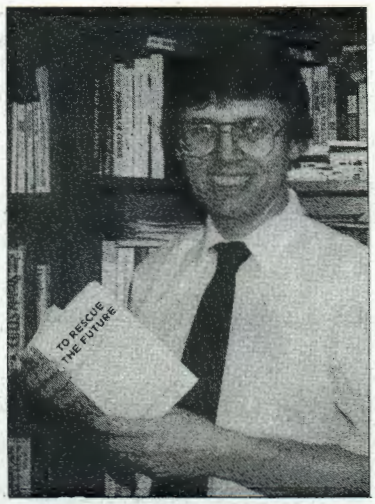
Thomas Marzen

Never mind, of course, that the "food and fluids" to be withheld are practically indistinguishable from infant formula. Never mind that the technology involved in producing the tube that is to be withdrawn is no more complex than that involved in producing the nipple on a baby bottle.

(See New Assault, p. 8)

EDITORIALS

The Washington Post To The Rescue



With the retirement of Justice Lewis Powell Jr. and the recurrence of Justice Harry Blackmun's prostate cancer making possible a revisiting of the notorious *Roe v. Wade* decision, abortion champions can be forgiven if their rhetoric goes off the deep end. Listening to their lamentations, reversing *Roe* would represent nothing less than the end of life as they know it rather than the chance for life for millions of babies. Yet even if the NARALs and the NOWs can not contain themselves, cooler heads are at work. They realize that to have a realistic chance of defeating so extraordinarily competent a replacement as Judge Robert H. Bork, it simply will not do (as did reigning Senate demagogue Edward Kennedy) to dredge up Watergate, images of Nazi stormtroopers, and "back alley abortionists." Even so unyielding a pro-abortion partisan as Sen. Robert Packwood is unwilling to go that far, knowing such assaults may boomerang. In an address to the National Abortion Rights Action League Packwood gently chided Kennedy for his apoplectic attack on a man Packwood recognized to possess a formidable intelligence. No, the effort to undermine Bork must be more subtle, seemingly thoughtful, with just a tinge of factual accuracy. Someone had to take up the challenge and that someone is the editorial page of the **Washington Post.**

In a series of well-written editorials that began a few days after Bork was nominated by President Reagan, the **Post** has been positioning itself to oppose Bork for the "best" of reasons. Unlike those who grovel at the feet of the abortion establishment, such as presidential aspirant Sen. Joseph Biden (D-Del.), the **Post** grasped that just jumping into the fray - - opposing Bork before he even has a chance to open his mouth - - seriously depreciates the value of your criticism. Instead, the **Post** is gradually trying to make the case that Bork's principled commitment to judicial restraint may have its place . . . provided it isn't allowed to get in the way of protecting abortion on demand!

Thus, for example, in the **Post's** July 19 lead editorial, the point is conceded that many excellent jurists have espoused judicial restraint and indeed, that judicial activism "cuts both ways" (that is, such a philosophy can be used to reach decisions diametrically opposed to those favored by the **Post**). Why did the **Post** bother to say a kind word about judicial restraint? Glad you asked. Because sophisticated opponents of Bork who support abortion are keenly aware of two realities. First, that once a man of Bork's considerable intellect and powers of persuasion is allowed to articulate what he believes the judiciary's role to be and why, the American public may well take a liking to it. And second, drawing Bork into a debate over the morality of abortion is not only improper but - - worse - - would open a Pandora's Box for a committee littered with "personally opposed" pro-abortion Democrats. (Imagine their discomfort as Ellie Smeal defends the "necessity" of post-viability abortion-by-dismemberment.) Thus, opposition certainly must not be framed as a referendum on abortion or even on the philosophy of judicial restraint per se but rather, in the **Post's** words, "on the lengths to which Judge Bork would carry it" [i.e., judicial restraint]. And when does judicial restraint go too far? When it would reignite controversies which the **Post** says have been largely settled. Believe it or not, the issue of abortion is supposedly such a controversy! Since we will hear variations of this arguments in the months to come, it is useful to analyze how the **Post** reaches such an outlandish conclusion. On the one hand, the **Post** suggests that because overturning *Roe* would return the debate largely to the state legislatures and because the American public supposedly is now far more supportive of legalized abortion than it was in 1972, it is silly, if not downright ignorant, to trot out yet again back alley abortionists. Prospects post-*Roe* are "not nearly so bleak or dramatic as many of Judge Bork's opponents are claiming." (Do you feel a "but" coming? You're right.) But, on the other hand, the **Post** asks, in effect, why bother? What end would it serve? Returning the debate to the states, we're told, would serve merely to "reopen the debate in dozens of state legislatures [which] would prolong and exacerbate a conflict **that is ou the threshold of resolution** (my emphasis)." This more-in-sadness-than-anger ploy may, in fact, be sincere. But one can only ask if the **Post** really believes that we have reached a rolling consensus on abortion in favor of the status quo? Can its editorial writers really be that far out of touch?

The **Post's** editorial writer does offer evidence - - of a sort - - for his conclusions, which to rebut properly would take pages of this edition. Let me make just a couple of observations.

Taking our inability to win state referenda as evidence of public acceptance of abortion represents such a selective reading of the facts, it nearly takes your breath away. Pro-life referenda have failed for a whole host of reasons. Most referendum involve cutting off public funding of abortion. Although most people are in agreement with us, we run into trouble because our opposition uses its endless financial resources to murky the waters. Over and over, thanks to their ability to air blatantly inaccurate ads on television, abortion proponents usually succeed at portraying the referendum as an up or down vote on **abortion**, not **funding**, which is hard to counter when you don't have their millions to get back on the tube. Moreover, our opponents often employ the most rankly racist arguments, conjuring up visions of millions of babies born to "welfare mothers" - - to the popular mind minority babies (although in fact far more babies are born to white mothers who are on public assistance than to non-white women). Etc., etc.

Second, if you were the **Post** and trying to prove that, unless *Roe* is reversed, ever more acceptance of abortion is inevitable, you would think you would at least make a passing reference to what is taking place in the 50 states, the most direct reflection of popular feelings on abortion or any other topic. How many thousands of pro-life measures have been proposed? How many hundreds have been passed, only to be shot down by the courts? How many, these considerable obstacles notwithstanding, are still on the books? Surely, an honest complete reading of the events of the past half-dozen years is that in the statehouses around this country, pro-life momentum has been rapidly building. (In that respect, please see Leslie Bond's excellent state legislative roundup on pages six and seven.) Finally, to offer up pro-abortion gains in the last election, as did the **Post**, as evidence the issue is "on the threshold of resolution," you better ask yourself whether candidates who explicitly ran either pro-abortion or pro-life fared better or worse because of their abortion stance. Only the politically naive ask whether the candidates won or lost. Those who are interested in understanding rather than scoring debating points know that there is simply no getting around the fact that, generally speaking, in most areas of the country, a candidate is markedly better off because he or she is pro-life rather than pro-abortion. (See David N. O'Steen's essay in **Window on the Future**, titled "The 1986 Elections: What Happened?)")

There will be many clever attempts to undermine Judge Bork's nomination; on that you can depend. But to use as a ruse the specious argument that *Roe* is sacrosanct because that abortion as a political issue is pretty much settled, is surely among the weakest. As pro-lifers have asked many times before, if the American public is so resoundingly "pro-choice," why in the world do abortion proponents dread making their case before the people's representatives? The reason is obvious: going through the courts is easy work, hours are good, and they don't have to convince but a handful of judges. The liberal **New Republic**, which disagrees strongly with us on abortion, had it right in its July 27 issue. Writing of the liberal penchant to bypass the legislative branch, the editorial concludes, "But dependence on the judiciary to find a rights umbrella for every policy has become an addiction. If the Court is destined to become dominated by more conservative justices, it will be better for liberals if those justices prefer restraint [as Bork does] to activism. And if liberals have to learn to persuade democratically elected legislatures of the merits of their social policies, that well be better for liberalism too."

dha

Problem Solving At NRL News

One of the promises I made myself when I first became editor was to write a couple of columns a year explaining some of the relevant nitty gritty details about how **NRL News** operates. Not because I thought it would make for spellbinding reading, but because I feel a bond with the hundreds of thousands of you who have and are subscribing to the "pro-life newspaper of record." This publication is intended to service your needs as grassroots pro-lifers; the more you know about how we operate and what we're trying to accomplish, the better I can address your needs when we are falling short of the mark. This column is a first effort to make amends for breaking that promise.

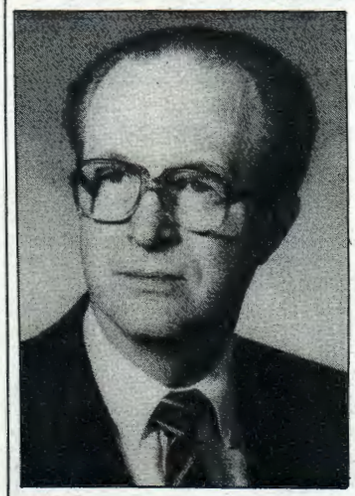
What I'd like to talk about briefly may seem awfully mundane. And I guess it is, but that doesn't make the topic any the less critically important. **NRL News's** job is to educate and motivate people who have devoted a considerable portion of their lives to saving the defenseless. What could be more obvious than if you are having difficulties in receiving your paper, we, at this end, are failing our first responsibility? About a year ago, we went through our entire system of processing new subscriptions, renewals, and complaints. We had had a spate of unhappy letters, and we couldn't figure out what the glitch was. Finally, we found the weakness; it was obvious, it was painfully embarrassing. But the exercise of starting from square one really paid off. Judging by the number of complaints, we are providing far better service to our 130,000+ readers than ever before.

But the number of complaints alone can be very misleading. Most of our readers are extremely nice people, many of whom would consider it "unprolife" to "complain" about something as "insignificant" as a subscription problem. Yet if you receive only two of every three papers - - or worse - - you're deprived of the information you need to be the most effective advocate possible for the babies, and we've flunked the most elementary test of any

(See NRL News, p. 10)

From the President's Desk

By J.C. Willke, M.D.



What Did *Roe v. Wade* Really Do?

You've heard a lot lately about the Supreme Court decisions of 1973 on abortion. There were two - - *Roe v. Wade* and *Doe v. Bolton*. Sometimes we assume everyone knows everything about them and their effects. Let me go over a few facts about the rulings and their consequences to refresh ourselves.

Numbers: In the last few years, there have been over 1,550,000 abortions and over 3,600,000 live births annually in the U.S. We are told that as many as 10 percent to 15 percent more abortions are actually done but not reported for reasons of privacy, simple non-reporting, tax evasion, etc. Assuming some non-reporting then, we can reasonably state that almost every third baby conceived in America is killed by abortion.

Another way to look at the number of abortions is by length of gestation, or age, of the developing baby who is killed. According to official figures from the Centers for Disease Control, in 1983 90.5 percent of the abortions performed were done within the first three months and are classified as early abortions. Nine and one half percent were done in the 4th month or later. These "late abortions" totaled 143,000 annually.

To bring these huge figures down to a number that can be grasped, there are over 4,000 abortions done daily and of these there is one "late" abortion done every four minutes.

Reasons: As for reasons why they are performed, abortions are divided into "hard cases" and all the rest. Hard cases include those abortions done when the pregnancy results from assault rape or from incest, to prevent the death of the mother, and when there is severe fetal disability. These hard cases account for only 1 percent or less of all abortions. The other 99 percent are done for socio-economic reasons. These include that the mother is unmarried, she is poor, this is not her husband's child, she has too many children already, she wants to finish her education or continue her career, or she has a non-threatening health problem, etc.

Until Birth

Abortion, under the U.S. Supreme Court decisions of 1973, *Roe v. Wade* and *Doe v. Bolton*, is legal until birth, in all 50 states not just for the "hard cases" but for socio-economic reasons as well. The Court ruled that abortion could be performed on demand during the first three months. From that point until "viability," the Court said that states may pass legislation but only to more adequately protect the health of the mother. (Ironically, the Court has been so eager to guarantee abortion on demand, that it has eliminated virtually all of the measures passed to protect women.)

From viability until birth, the Court has held that

> A state is forbidden to "proscribe" [forbid] abortion anytime prior to birth if in the opinion of "one licensed physician" an abortion is necessary to preserve "the life or health of the mother." (*Roe v. Wade*.)

Her health? - - what did the Court mean by health? The Court clearly and expansively defined "health " in *Doe v. Bolton* when it stated that

> ". . .The medical judgment may be exercised in the light of all factors - - physical, emotional, psychological, familial, and the woman's age - - relevant to the well-being of the patient. All these factors may relate to health."

In *Roe v. Wade* the Court held that pregnancy would impair a woman's "health" when it would

> "Force upon a woman a distressful life and future"; produce "psychological harm"; "tax mental and physical health by child care"; bring the distress "associated with the unwanted child"; "bring a child into a family already unable psychologically or otherwise to care for it"; bring the "continuing difficulties and stigma of unwed motherhood."

So "health," as defined by the Court, means social or economic distress of the mother. The only requirements remaining are that the mother must request the abortion, a licensed doctor must do it, and the killing must be completed inside the womb.

The overall effect then of *Roe* and *Doe* was to sweep away any and all legal protection for the baby in all 50 states and throughout the nine months of pregnancy. They took what for the previous 200 years had been a state function and "federalized" it. It reduced the baby to the status of "property" of the "owner" (mother) and created for her a brand new basic constitutional right - - the right to have her developing baby killed.

Let me document this point by quoting from a U.S. Senate Judiciary Committee's report, June 1983.

> Thus the Judiciary Committee observes that no significant legal barriers of any kind whatsoever exist today in the U.S. for a woman to obtain an abortion for any reason during any stage of her pregnancy. (P. 22, **Abortion: Questions & Answers)**

Viability: What is viability? Viability is the age at which a baby can survive outside the womb, with or without medical support. When I was in medical school 40 years ago, viability was at 30 weeks (out of the 40 weeks of pregnancy). Fifteen or 20 years later, the age of viability was down to 25 weeks. Today it is pushing 20 weeks. There are now five survivors who were born between 20 and 22 weeks - - roughly half-way through a normal pregnancy. There have now been five survivors who weighed less than one pound at birth and all of them are essentially normal children.

Will babies be "viable" even earlier in the pregnancy? Yes, as surely as night follows day. As more and more sophisticated life-sustaining technology becomes available, we will save younger and younger preemies. When we get an artificial placenta, who knows at what age a premature baby may be saved.

What then really is "viability"? It is a measure of the sophistication of the external life support systems around the baby and the smarts of the doctors and nurses. Viability says nothing at all about the baby's rights, his humanness, personhood, etc.

The Court's rationale about viability is nonsense, and as Supreme Court Justice Sandra Day O'Connor has written "is on a collision course with itself." The entire concept of viability and abortion "rights" is rooted in long abandoned misinformation and should be totally erased from the law books.

Conclusion

Any senator or presidential candidate who supports the Supreme Court decisions is supporting:

Abortion-on-demand in all fifty states for social and economic reasons } until birth

We must also assume that they support the subsequent U.S. Supreme Court decisions clarifying issues left open by the original decisions. These include that (1) abortions are permissible for minors without parental consent; (2) wives may obtain abortions without their husband's knowledge or permission; (3) states may not require a 24-hour "cooling off" period; (4) states may not require humane disposal of fetal remains; and (5) states may not enforce laws to assure informed consent.

Let your senators and presidential candidates know what they are supporting when they support the Court's decisions on abortion and tell them that:

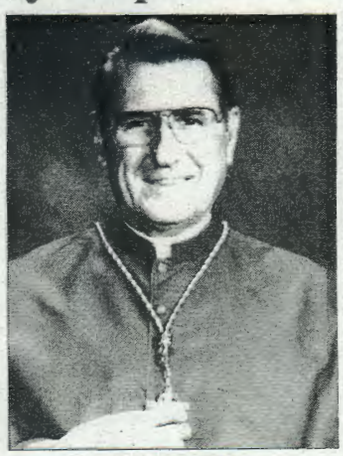
SOMETHING MUST BE DONE!

Cardinal John J. O'Connor

Down the Slippery Slope

I'm back again with my "consistent ethic of death." So far, I have little evidence that anybody's paying attention to my formulation: certainly not the New Jersey Supreme Court.

For a long time I've been arguing that abortion is the key to a "slippery slope." Kill the preborn and anybody becomes vulnerable. Nobel Prize winners have already argued that parents should have several days after the baby's birth to determine whether or not the baby should be put to death. That's called *infanticide*. What we used to call in our arrogance the "heathen Chinese" allegedly practiced infanticide all the time, and we were horrified. I don't recall any "heathen Chinese" Nobel Prize winner encouraging it!



Cardinal John O'Connor

At any rate, my argument has been that the retarded, the wheel-chaired, the cancer-ridden, and all sorts of other "useless" or annoying persons would one day be put out of their misery - - which really means we

(See Slippery Slope, p. 10)

NRLC Sending "Eclipse of Reason" to Congress, Supreme Court, White House, and Governors

By Dave Andrusko

National Right to Life is sending a copy of the remarkable new film, **Eclipse of Reason**, to every member of Congress and the Supreme Court, the White House, and all 50 governors. NRLC President J.C. Willke, M.D., announced the donation at a special briefing for reporters held July 24 at the Dirksen Sente Office Building in Washington.

The distribution comes at a time when *Roe v. Wade* is under increased public scrutiny, and when several abortion-related issues are pending before Congress.

Produced by obstetrician/gynecologist Dr. Bernard Nathanson, the film employs state-of-the-art fiberoptic technology to show the actual dismemberment of a four-and-one-half-month-old preborn baby. Nathanson, a co-founder of the National Abortion Rights Action League, has completely reversed himself on the abortion issue and is recognized as a powerful witness for the rights of unborn babies.

Willke told reporters that more than ever the abortion issue dominates the headlines. "Whether we are talking about amending the so-called Civil Rights Restoration Act to render it neutral on abortion, or preventing our tax dollars from subsidizing abortions overseas, or confirming Supreme Court justices who are faithful to the Constitution's history and text, all these actions require congressmen and senators to understand the full sweep of abortion in this country," he said.

Dr. Bernard Nathanson, in a still from his new film, "Eclipse of Reason."

"Even after fourteen years, relatively few people know that babies can be aborted up until the day of delivery," Willke said. Turning to the reporters, he asked, "How many of you know that over 120,000 babies are killed after the first trimester - - one every four minutes?"

NRLC's 50 state affiliates are vigorously promoting this extraordinary new educational tool to ensure that the reality of ghastly late-term abortions becomes known to every American.

Eclipse of Reason chronicles the horrible death of one of these babies in graphic but scientifically accurate terms. The film is a successor to the hugely influential **Silent Scream** which sent shock waves through the abortion establishment two years ago.

The new film deals with late abortions - - abortions after the end of the third month of pregnancy. The film incorporates footage of the abortion of a four-and-one-half-month-old unborn child, shot simultaneously from outside and inside the uterus, using fiberoptic technology.

In a full-page commentary on a preliminary version of the film, **Newsweek** (Feb. 2) called it ". . . disturbingly stark and may prove harder for critics to dismiss as misleading."

"The film shows the brutal killing of a living, recognizable member of the human family," Willke said. "It scientifically depicts the reality of abortion in a way that has never before been possible."

"Anyone who wants to understand *Roe v. Wade*, must see this film," said NRLC Public Affairs Director Kay James. "Any member of Congress should view this film with an open mind, before acting in defense of *Roe v. Wade*."

Pro-lifers look forward to facilitating the widest possible distribution of Dr. Nathanson's new film. NRLC's 50 state affiliates are vigorously promoting this extraordinary new educational tool to ensure that the reality of ghastly late-term abortions becomes known to every American.

Tucson Abortionist May Lose License for "Gruesome and Shocking" Behavior, Faces 20 Charges of Misconduct

By Leslie Bond

TUCSON, AZ - - Amid allegations of conduct which even his own attorney agreed were "gruesome and shocking," abortionist P. Scott Ricke had his medical license suspended June 28. Facing 20 charges involving the mishandled abortion of a seven-month-old unborn infant and an illicit sexual encounter with an abortion patient, he also faces possible permanent loss of his license pending a full hearing before the Arizona Board of Medical Examiners August 5-7.

Ricke's emergency suspension was enacted by a unanimous vote of the medical board after state Assistant Attorney General Michael J. Cianci, Jr., produced evidence that the abortionist presented an "unnecessary and immediate danger to the public health and safety." In addition to the charges he presently faces, in the past Ricke has been cited by the medical examiner's board for his billing practices, his handling of a tubal-ligation case, and for performing an abortion after hours when no other staff members were present.

"Dr. Ricke cannot be allowed to continue to practice even for another week or two weeks," Cianci said.

Before the medical board made its decision, Ricke's attorney, Dan Cavett, had tried to convince the members that to suspend his client's license would be a violation of Ricke's right to due process. According to the **Arizona Daily Star**, Cavett admitted that the charges against Ricke were "gruesome and shocking" and merited a full investigation, but said that the allegedly mishandled abortion was undoubtedly "less traumatic" than had been reported.

The allegations are, indeed, gruesome.

According to media accounts a review of the medical records revealed that Ricke attempted the abortion in question February 7 thinking that the unborn child was 18 to 22 weeks old. Apparently, an unlicensed physician working at Ricke's abortion facility had misdiagnosed the unborn infant's gestational age, later determined to be between 28 and 30 weeks.

After the abortion had begun, the body of the partially dismembered unborn child reportedly became "stuck" in the woman's uterus. According to the **Tucson Citizen**, Ricke then had a staff member drive the woman - - with part of her unborn child's head partly out of her body - - to Tucson General Hospital. Ricke allegedly arrived there an hour later and finished the abortion.

Ricke violated a number of state laws, according to news stories, including one requiring abortionists to use the method of abortion most likely to produce a live birth when the unborn child is viable and another requiring that a second doctor be present during the abortion of a viable unborn infant to care for the child if he or she does in fact survive. Because of the incident, Ricke reportedly later gave up his privilege to practice medicine at Tucson General.

Ricke's behavior exhibited "medical incompetence and a profound lack of medical judgment," said Dr. David Pent, the consultant to the medical board who reported on the incident.

In the other case in question, Ricke allegedly had sex with a former patient, behavior which is widely thought to be unethical.

According to the patient involved, who asked not to be identified, shortly after Ricke performed an abortion on her, he inquired about her personal life and said he wanted to have a relationship with her. After exchanging telephone calls, Ricke allegedly went to the 25-year-old woman's house and had sex with her.

According to board investigator Robin King, the woman said she was uncomfortable with the situation but "felt powerless to say no to him" in her confused emotional condition.

Before having sex with the woman, Ricke had reportedly instructed her in writing not to have intercourse for seven days. His encounter with the woman reportedly took place less than a week after her abortion.

Ricke's suspension also came in the wake of an investigation launched just two weeks before, after the dismembered bodies of several aborted unborn babies were discovered in an apartment complex dumpster and traced to his Tucson abortion facility. Ricke paid a female employee extra money to dispose of the babies bodies, but he claims that he did not know where she was taking them.

"I just asked her to empty the trash," Ricke told the **Star**. "She takes it out somewhere, but I didn't know exactly where."

Officials called the dumping of the babies' bodies "sloppy practice" but said that apparently no law had been broken unless the babies are determined to have been over the age of 20 gestational weeks.

The dumping of the babies' bodies was not a factor in Ricke's suspension, officials said.

West Virginia Abortion Facility Loses Lease, Will Not Relocate

By Leslie Bond

WHEELING, WV - - Wheeling Medical Services, Inc., one of two abortion facilities in the state of West Virginia, has lost its lease and has closed its doors.

According to clinic director Janet Schafer, a decision was made to close rather than relocate after an apparently negative evaluation of "the potential for growth and diversification of the clinic in this community."

"They said the 'climate' in the community made it difficult to reopen," said Wanda Franz, NRLC board member from West Virginia. "And they were right. The climate - - the people in West Virginia - - do **not** want to have an abortion facility in their community." According to Mrs. Franz, polls show that almost 70% of West Virginians favor passing a Human Life Amendment to protect the unborn.

The closing of the Wheeling Medical Services abortion facility is the result of a "termination-of-lease notice" delivered to the facility April 1 by Market Center, Inc., the corporation which owns the Riley Building, in which the clinic has been located since it opened in the mid-1970s. According to the Wheeling **Sunday News Register**, when Market Center president Arch W. Riley Sr. was asked about the decision, he said, "The lease was up. We have other uses for the floor."

"Some of the other tenants had written letters to the editor, and many chose not to renew their leases in the building," Mrs. Franz explained. "They considered it offensive to consider abortion 'business as usual,' and this had a significant impact." By last year, Mrs. Franz said, approximately 40% of the Riley Building was vacant.

Wanda Franz, Ph.D.
NRLC Vice President

The closing of the Wheeling abortion facility leaves one other abortion clinic in the state, Mrs. Franz said. But prolifers are aware of at least six hospitals that provide abortions, and many doctors perform abortions in their private offices, she said.

"But the people of West Virginia do not support abortion," she stressed. "This is not a place where people feel that abortion is a 'solution.' This is a place where people feel that problems can be worked out."

Mrs. Franz said pro-lifers will commemorate the closing of the Wheeling clinic with an ecumenical service cosponsored by the Wheeling right to life chapter and the Knights of Columbus.

Multi-Million Dollar Suits Filed in Indiana After Teen Abortions

By Leslie Bond

Two separate multi-million dollar lawsuits have been filed in the Marion County, Indiana Superior Court against Planned Parenthood of Central Indiana and the Indianapolis Women's Center, following abortions performed on teenagers.

Pro-life attorney John R. Price filed the lawsuits June 22 on behalf of Elizabeth A. Garrison, whose 15-year-old daughter has been under psychiatric care since undergoing an abortion at the Indianapolis Women's Center, and Kathleen A. Kitchen, an 18-year-old woman who claims that Planned Parenthood pressured her into having an abortion last year.

In the first case, the suit alleges that the Indianapolis abortion facility and abortionist James R. Brillhart, Sr., performed an "improper and illegal" abortion on Mrs. Garrison's teenage daughter without obtaining parental consent required by Indiana law.

According to Mr. Price, Mrs. Garrison knew her daughter was pregnant and called the Woman's Center to tell them, first, that her daughter did not have permission for an abortion and, second, that the girl might come in with her older sister posing as her parent. Abortion facility personnel assured her that the abortion would not take place, Mr. Price said.

But on May 11 the girl did undergo an abortion at the facility, the suit asserts. Two weeks later, she was admitted to the psychiatric ward at Community North Hospital in Indianapolis, where she is still a patient. Doctors there have traced her psychological problems to guilt stemming from the abortion, Price said.

Mrs. Garrison is seeking $2 million in punitive damages and an unspecified amount to cover her daughter's medical expenses resulting from the abortion.

In Miss Kitchen's case, the suit claims that Planned Parenthood and two of its employees, counselor Rhonda Gerson and executive director Delbert Culb, "wholly breached" their duty of care by pressuring the young woman into having an abortion without informing her of the possible medical complications.

According to attorney Price, Miss Kitchen's mother, Wallis B. Renner, knew her daughter had certain birth defects which the girl's doctor had said could cause serious physical problems and even death if she were to undergo an abortion. (See **NRL News** 10/23/86.) Knowing that Planned Parenthood had been trying to schedule an abortion for her daughter, Mrs. Renner obtained two court orders forbidding the organization or its employees to counsel or arrange for an abortion for the young woman.

But Planned Parenthood defied the court orders and began contacting Miss Kitchen several times a day, finally scheduling an out-of-state abortion for May 17, 1986, Mr. Price said. For several days following the abortion, Miss Kitchen suffered serious side effects and was admitted to a hospital emergency room May 27. It is still not known whether Miss Kitchen will ever be able to bear children, Price said.

Last year, Mrs. Renner filed suit against Planned Parenthood for its involvement in her daughter's abortion and its alleged defiance of the court orders. However that suit was dropped about two months ago, following a decision handed down by the Boone County Circuit Court. The court ruled that the injunctions against Planned Parenthood and its employees violated their right to free speech, and that Miss Kitchen had obtained permission for the abortion from her father, her non-custodial parent. Miss Kitchen filed her own suit a few weeks later.

Miss Kitchen is suing for $1 million in punitive damages and $50,000 for pain and suffering.

Trial dates for the two cases have not been set, Mr. Price said.

But on May 11 the girl did undergo an abortion at the facility, the suit asserts. Two weeks later, she was admitted to the psychiatric ward at Community North Hospital in Indianapolis, where she is still a patient. Doctors there have traced her psychological problems to guilt stemming from the abortion, Price said.

NRL News Special State Legislative Roundup

Taking the Battle for Life to the 50 State Legislatures

By Leslie Bond

Editor's note. As difficult as it may be for pro-lifers to believe, some commentators actually argue against reversing ***Roe*** *on the grounds that our society has reached some sort of de facto consensus on abortion. (See editorial, page 2). This implies that nothing is happening out there in the states.*

As this article by Leslie Bond demonstrates, nothing could be further from the truth. Pro-lifers are actively, passionately, successfully involved in reversing the legal and legislative climate to return a respect for human life.

Pro-life Gov. Rudy Perich with NRLC At-Large Director Marice Rosenburg. Perich signed a fetal disposal bill, whose passage stemmed from the discovery of thirteen bodies of aborted babies in a dumpster outside a Minnesota abortion clinic.

Fourteen years ago, overturning the U.S. Supreme Court's *Roe v. Wade* decision seemed like an impossible dream - - or at least something which would take decades to achieve. But as the Supreme Court and public opinion swing more and more to the pro-life side, right to lifers throughout the nation are gearing up to prepare for the day when the people, through their elected state officials, are once again free to protect the lives of the preborn babies.

Pro- and anti-life proposals currently before the state legislatures run the gamut, ranging from pro-life efforts to stop state funding of abortion to anti-life attempts to pass legislation allowing the starvation deaths of incompetent patients. But perhaps the hottest topic this year has been the issue of teen pregnancy. And while pro-lifers are striving to help the unborn **and** their young mothers, anti-life forces are fighting just as hard to see to it that their own "solutions" to the problem receive legislative sanction.

Parental Consent/Notification

Two of the most successful pro-life initiatives to assist pregnant teens are parental consent and notification laws. Parental **consent** laws require that a minor girl's parents give their permission before she undergoes an abortion, while parental **notification** laws demand that her parents be informed of their daughter's intention to abort.

Because of U.S. Supreme Court decisions, parental consent bills must allow for a "judicial override" of parental involvement if a judge determines either that the girl is mature enough to make her own decision or that an abortion would be in her "best interest." Parental notification bills usually include a judicial override provision as well.

Two states - - *Alabama* and *Arizona* - - recently passed parental consent bills which have already been signed into law. (See **NRL News** 7/16/87.) In Arizona, the legislation will probably take effect sometime in August, while the Alabama bill will go into effect 90 days after being signed by state governor Guy Hunt.

According to Brian Johnston, NRLC Western Coordinator, a number of parental consent measures were proposed in both houses of the *California* legislature this year, including some watered-down versions offered by pro-abortionists. However the only proposal which was still alive when the legislature went into summer recess was a bill proposed by pro-life assemblyman Philip Wyman which passed as part of another measure after much debate June 25, Johnston said.

Currently, the bill is before the Senate Health and Human Services Committee, where it will not be acted upon until the legislature reconvenes August 19.

Similar measures have passed handily on the senate floor in past years. The pivotal figure in the health committee this year is state senator Henry Mello, Johnston said.

A parental notification bill was signed into law in *Georgia* April 14 but a federal judge issued a temporary restraining order in June which prevented the measure from taking effect July 1 as scheduled. Preliminary hearings were held July 16 and 17, and a briefing to determine whether a preliminary injunction will be leveled against the bill has been set for August 3.

In *North Carolina* a parental consent law passed on the house side by a whopping 70 - 28 vote May 27 and is currently before a state senate judiciary subcommittee. According to Emma O'Steen, NRLC secretary and board member, five well-respected members of the medical community testified in favor of the bill before the subcommittee July 15. It is expected that the bill will be brought before the full judiciary committee July 30.

Parental consent legislation is also pending in *Pennsylvania*, where it is included in a comprehensive pro-life bill called the Abortion Control Act of 1987, introduced by state representative Stephen Freind. Carefully drafted to meet the restrictions set up by the U.S. Supreme Court in its 1985 *Thornburgh* decision, which struck down much of the Pennsylvania Abortion Control Act of 1982, the new bill also includes informed consent and paternal notification provisions, and requires the presence of a second physician during the abortion of a viable unborn child. The bill has been referred to committee on the house side and will not be acted upon until the legislators return from summer recess in the fall.

Parental consent is already in effect in *Massachusetts*. But last year a state court ruled that parents could not attend their minor daughter's judicial override hearing, even though they might have information about their child's mental or physical health which would be vital to the abortion decision. Legislation which would reinstate parents' rights to attend the override hearings is currently awaiting a third reading on the house side before it is dealt with in the Senate.

Several other states' attempts to pass parental consent or notification measures ended unsuccessfully. Included in this list are *Florida, New Hampshire, Oklahoma, Maryland, South Carolina, South Dakota, Wisconsin, Kansas, New Mexico,* and *New York*.

School-Based Clinics, "Teen Pregnancy" Bills

Pro-lifers in at least five states - - *Washington, California, Missouri, Oklahoma,* and *Illinois* - - scored major victories this year in the mounting counter-offensive against school-based clinics and other programs which funnel girls to abortion clinics when they become pregnant.

In *Minnesota*, for example, pro-lifers managed to identify and stop indirect attempts to fund school-based clinics in legislation dealing with job training, community health services, welfare reform, education, family life and "dropout prevention" to name just some. According to Jackie Schwietz, co-executive director of Minnesota Citizens Concerned for Life, pro-lifers removed all attempts to fund school-based clinics from bills passed this year.

In *Washington* school-based clinic funding legislation failed to get out of committee in either house, and attempts to attach the funding to other legislation also ended unsuccessfully. In *California*, a bill which would have funded the clinics indirectly by granting tax credits to organizations which donated funds to foundations supporting school-based clinics, is in a state of "suspended animation," thanks to the efforts of pro-lifers, according to Brian Johnston. Proponents of the clinics, are now considering legislation which would directly fund the clinics, and pro-lifers are working against such efforts, he said.

In *Missouri*, pro-lifers successfully amended legislation setting up a "coordinating council" to study the health needs of children to exclude abortion and school-based clinics from the "scope" of the council's study. Pro-lifers had feared that the coordinating council (or task force) would be used to encourage officials to institute school-based clinics and other programs to promote abortion among teens.

Similarly, in *Oklahoma* legislation creating a teen pregnancy task force was successfully amended to ensure that induced abortion and/or school-based clinics would not be among the recommendations of the task force when they make their report. That bill eventually died in the house, in part because the hidden pro-abortion agenda of its proponents had been unveiled, according to Anthony Lauinger, chairman of Oklahomans for Life and NRLC board member.

Pro-lifers in *Illinois* took the fight against school-based clinics one step further by passing legislation in both houses which expressly prohibits performing, counseling for, or referring for abortions on school grounds. Currently, that bill is awaiting the signature of Illinois governor James Thompson, who must sign or veto it within 60 days of receiving the bill. At this time it is not certain which way the governor will go on the bill, according to Illinois Pro-Life Coalition Lobbyist, Ralph Rivera.

Three states successfully fought off comprehensive pro-abortion "teen pregnancy" bills this year, and one - - In *Maine* - - was even able to win financial support for pro-life hotlines and other projects. (See **NRL News** 6/18/87.) In *Iowa*, the importance of electing pro-life governors was proven May 8 when pro-life governor Terry Branstad vetoed a teen pregnancy bill, in part because it "would not prohibit the use of grants to fund abortion." Pro-abortion forces attempted to override the veto May 9 but failed by a narrow margin.

In *Ohio*, a pro-abortion teen pregnancy bill was defeated in committee and referred back to a subcommittee after pro-lifers pointed out that the bill would have allowed for the referral, promotion, and performing of abortion. Susan Smith, legislative director for Ohio Right to Life, said pro-lifers are now working to have protective pro-life language inserted into the bill when the legislature reconvenes in the spring.

Abortion Funding

Other pro-life battles focused on the fight to end state funding of abortion.

In *Michigan*, pro-lifers led a hugely successful grassroots petition drive which netted almost a half a million signatures and allowed them to bring an initiative to ban public funding of abortion directly to the state legislature. The measure passed in June by large majorities in both houses. (See **NRL News** 7/16/87.)

Because of a special provision in the Michigan constitution, the anti-funding legislation could not be vetoed by the

(Continued next page)

State Legislation

From p. 6

governor, who has been a major stumbling block to pro-life legislation in the past. Currently, pro-abortionists are challenging a provision of the initiative which allows it to go into effect immediately rather than next spring. A hearing before the state court of appeals was held July 22, and a decision on when the funding ban will take effect is expected shortly, said Luke Wilson, newsletter editor for Right to Life of Michigan.

In *California*, legislators were successful for the ninth session in a row in removing state funding for abortion from the state budget unless the pregnancy is the result of rape or incest or the life of the mother is in danger. For the ninth time in a row the American Civil Liberties Union has challenged the funding regulations. In past years, state courts have repeatedly ruled that the banning of the funding was unconstitutional. However, this year the state supreme court has fewer stridently pro-abortion justices and pro-lifers hope that the court will uphold the funding ban.

Currently, the court challenge is before the California state court of appeals, but the Department of Health Services has petitioned the state supreme court to handle the case directly. That petition is now before the state high court.

In **North Carolina**, governor James Martin has included in his budget proposal a provision which restricts public funding of abortion to cases of rape, incest, or when the life of the mother is in danger. Because this would greatly reduce the number of publicly funded abortions, the proposal also seeks to cut abortion funds by about 75%. The governor's budget proposal will be considered by a joint appropriations committee at the end of the legislative session.

According to Emma O'Steen a date has not yet been set for the close of the session, and it is uncertain how the appropriations committee will view the governor's proposed funding cuts. However, pro-lifers have been making steady progress over the last few years in the fight to end state-funded abortions, she said.

In *Missouri* a proposal to fund abortions for women who become pregnant as a result of rape or incest never made it out of committee, thanks in part to pro-life committee chairman Russell Goward. In *Florida* a proposal which would have prohibited state employees from using their health insurance benefits to pay for abortions failed in a house subcommittee in April.

Late-Term Abortions

Attempts to regulate or minimize the number of late-term abortions have been a topic of legislative debate in three states: *Pennsylvania*, *Illinois*, and *Texas*.

In a major legislative victory, pro-lifers in Texas passed the first abortion regulation measure there since the 1973 *Roe v. Wade* decision. (See **NRL News** 7/16.) The bill, which was signed by state governor Bill Clements on June 17, restricts third trimester abortions to situations in which the life of the mother is in danger, the physical or mental health of the mother is threatened, or the unborn child has a "severe and irreversible abnormality" identified through reliable diagnostic procedures.

In *Illinois*, pro-lifers in the house introduced a bill which would prohibit abortion on a viable unborn child unless the abortion is performed in a hospital where life support systems are available. The bill foundered when its original sponsor fell ill, but it was eventually amended onto another bill which passed in both houses and has been sent to the governor.

In *Pennsylvania*, a section of the Abortion Control Act of 1987 requires a second doctor to be present during the abortion of a viable preborn infant. This bill is in committee on the house side.

Infanticide

The widespread problem of the selective non-treatment (including not feeding) of infants born with disabilities catapulted to national attention with the 1982 death of Baby Doe. Much has been done to restore protection to these children but much more remains to be done. Nowhere is this more clear than in *California*, where state senator Joseph Montoya has introduced a bill which would finally bring the state into compliance with the federal anti-infanticide amendments to the Child Abuse Prevention and Treatment Act of 1984.

(The federal law requires that disabled infants receive medical treatment in all but a few very narrowly-defined circumstances and that they always continue to receive food and water.)

Currently the California bill has passed through one state senate committee, and will now have to go through a second committee before it reaches the floor. According to Janet Carroll, associate legislative director for NRLC, the California Medical Association opposes the bill and has already attempted to attach amendments to the legislation which would essentially gut the proposal. The state Department of Social Services has also proposed a number of amendments which pro-lifers have found unacceptable, Mrs. Carroll said. These amendments have been sent to the federal Health and Human Services department to see if they would serve to fulfill the requirements of the Child Abuse Amendments.

As of this writing, HHS has not responded to the proposed amendments to the state law.

Since the Child Abuse Amendments passed, two other states - - Pennsylvania, and Indiana - - also have not qualified for federal funds for varying reasons, and therefore are not required to come into compliance with the federal law. However, Indiana and Pennsylvania already have statutes on the books prohibiting infanticide.

Wrongful Birth, Wrongful Life

Two states, *Pennsylvania* and *Illinois*, are currently working on legislation to prevent "wrongful birth" or "wrongful life" suits. Wrongful birth suits are usually brought by the parents of a child born with a disability, who claim that but

(See State Breakthroughs, p. 8)

State Breakthroughs

From p. 7

for the 'negligence' of a doctor who failed to test for the disability and/or recommend abortion, the child would never have been born. Wrongful life suits are similar, but they are brought on behalf of the child him or herself.

In Pennsylvania, legislation which would ban such suits is currently in committee on the house side. In Illinois, an amendment to the state's "conscience clause" which would protect physicians who conscientiously object to the genetic testing and recommending abortion from being sued has passed in both houses and is currently before governor Thompson.

Fetal Disposal

In the wake of the grisly discovery of 13 bodies of aborted babies in a dumpster behind a *Minnesota* abortion clinic, pro-lifers there succeeded this year in passing a law to ensure the humane disposal of the bodies of unborn babies killed by abortion. Passed overwhelmingly in both the house and senate and signed by pro-life Gov. Rudy Perpich, the bill defines a dignified manner of disposal as cremation, burial, or a manner designated by the commissioner of health, according to Jackie Schwietz.

Euthanasia

Pro- and anti- euthanasia proposals have been another flashpoint in a number of states, and pro-lifers have been working around the clock to protect the lives of the medically dependent.

In *Illinois* the senate defeated a "definition of death" bill May 14 and the house put a proposed Uniform Determination of Death Bill on "Interim Study" May 22, effectively defeating that measure for this session. Both of these proposals would have defined death as "either" the cessation of circulatory and respiratory function "or" the cessation of brain activity, rather than the cessation of **both** of these life-functions, making them unacceptable to pro-lifers.

In *Oklahoma*, pro-lifers scored a major victory with the passage of the "Nutrition and Hydration Act for Incompetent Patients Act," which restores the presumption that incompetent patients want to receive food and water. (See **NRL News** 6/18.)

In *Washington*, pro-lifers won an initial victory in the battle against euthanasia, but the fight is far from over. There, pro-life legislators in the senate had added protective provisions to the Amendments to the Natural Death Act - - including a requirement that food and water be continued even when medical treatment was stopped - - only to have them stripped away on the house side. The senate voted not to concur with the house version, but in a last minute switch, the bill's main sponsor voted on the majority side in order to be able to bring the bill up again when the legislature reconvenes in January.

Because of the maneuver, the bill will already be in its third reading and can be voted on almost immediately. Pro-lifers plan to continue their educational efforts in order to maintain the vote not to concur on the senate side.

Pro-lifers in both *Massachusetts* and *North Dakota* have worked against living will legislation this session. In Massachusetts, the legislation passed on a voice vote in the house and has been sent to the senate side, where it has not yet been put on the legislative calendar, according to Massachusetts Citizens for Life legislative director Kathleen Whynot. In *North Dakota*, pro-lifers successfully defeated a proposed living will bill.

In *Florida*, pro-euthanasists tried to amend the Life Prolonging Procedures Act in order to allow the withdrawal or witholding of food and water from patients. The proposed amendments passed in a house subcommittee in late April, but failed in the full committee. The successful defeat of the pro-euthanasia legislation was largely due to the efforts of the Florida Catholic Conference, said Jean Doyle, executive director of Florida Right to Life and NRLC board member.

Other Measures

Several other pro-life measures are or have been under consideration in a number of states.

In *Missouri*, for example, pro-lifers were instrumental in the success of the "Special Needs Adoption Tax Credit Act," a bill which provides a tax credit of up to $5,000 for expenses incurred by families who adopt a special needs child. Missouri Right to Life threw their support behind the bill because "the promotion of adoption is crucial to any alternative-to-abortion program," according to MRL legislative director Samuel Lee. The legislation will become effective January 1, 1988.

In *Pennsylvania*, a proposal to provide $2 million in funding for pro-life projects is currently before a house committee, while in *Rhode Island* a bill to require the reporting of post-abortion complications to the state Deparment of Health made it through the legislature only to be vetoed by pro-abortion governor Edward DiPrete July 1.

New Assault On Elderly

From p. 1

The difference, apparently, for the Court is that babies have future potential while Nancy Ellen Jobes, diagnosed to be in a "persistent vegetative state," was judged never again likely to interact significantly with others or her environment.

This condition, though it deprives Nancy of the power to do most anything, paradoxically bestows on others the power to do everything. With a wave of a physician's stethoscope, a moment of familial agonizing, and the sound of a judicial mallet, a plastic tube that was before a conduit for sustenance is transformed into an Indicia of Indignity; food and fluids that before maintained her life are henceforth poison to the exercise of her "Right to Die."

This essay examines in some detail the June 24, 1987 decisions of the New Jersey Supreme Court in the cases of *In the Matter of Nancy Ellen Jobes* and *In the Matter of Hilda M. Peter*. In New Jersey at least, a family member may now order that food and fluids no longer be administered to patients like Nancy Jobes and Hilda Peter.

Moreover, compounding the tragedy, the Court has held that the nursing homes such as the ones in which these two women reside, must permit this since they did not have the foresight to inform the families that they would not permit patients to die of hunger and thirst on their premises.

In the Matter of Kathleen Farrell

The Court also delivered a third opinion in the case of Kathleen Farrell. Mrs. Farrell had "Lou Gehrig's" disease, which leaves the mind intact but which causes muscles to degenerate. She was on a respirator but ultimately decided it should be withdrawn.

Although she died before the New Jersey Supreme Court resolved the matter, it had been decided by a lower court that as a competent adult, Mrs. Farrell could have the respirator withdrawn even if this would result in her death. It is not entirely clear whether Mrs. Farrell directly intended her death or merely to reject a "burdensome" form of treatment - - the respirator.

In the Matter of Hilda M. Peter

In *Peter*, the court found that Hilda Peter had left "clear and convincing" evidence she wished to be deprived of food and fluids before she collapsed, was resuscitated, and diagnosed to be in a persistent vegetative state with no prospect of returning to cognitive sapience. Peter had designated Eberhard Johanning, her live-in friend, as her medical decisionmaker under New Jersey's Durable Power of Attorney law, and had instructed him to withhold treatment, he claimed, in such a situation.

Nine "reliable hearsay witnesses" (since when is hearsay evidence "reliable"?) also testified to her "disinclination" to submit to artificial feeding and hydration.

There are two notable aspects to this case, apart from the Court's easy acceptance of general directives and "disinclinations" as clear and convincing evidence of intent to die from lack of food and fluids.

First, in its 1985 decision, *In the Matter of Claire Conroy*, the Court held that elderly nursing home patients who would die within one year could only have treatment withdrawn if: a) there were clear and convincing evidence that this is what the patient wanted; b) in the absence of such evidence, the **benefits** of continued life were outweighed by the **burdens** of treatment, **measured soley in terms of the degree of intractable pain it caused:** and c) some combination of evidence of the patient's intent and a finding that the treatment imposed intractable pain.

Since the Court found in the Peter case that there was clear and convincing evidence of patient intent, it need not have proceeded further. Nevertheless, the Court took the occasion to hold that *Conroy's* emphasis on life-expectancy was irrelevant for those in "persistent vegetative states," presumably because such people might live indefinitely.

Instead, the Court held that the "focal point should be the prognosis as to the reasonable possibility of return to cognitive and sapient life, as distinguished from the forced continuance of biological vegetative existence." In other words, the strict benefits/burdens calculus of *Conroy* was jettisoned in favor of a strictly "quality of life" standard for those in "persistent vegetative states." The Court invoked the case of Karen Ann Quinlan as precedent **instead** of *Conroy*. It took the *Quinlan* holding, which allowed **respirators** to be withdrawn, and extrapolated that to allow the withdrawal of **food and water** from patients determined to be in a persistent vegetative state.

(See New Jersey, p. 9)

NOW Attacks Bork

From p. 1

Eleanor Smeal (left) with her successor, Mollie Yard, the new president of NOW.

to address NOW - - Congresswoman Patricia Schroeder (D-Colo.), who in her speech all but formally announced she will run.

Yard said NOW will vigorously back Schroeder, who has formed an exploratory committee. Schroeder reportedly raised over $350,000 in checks and pledges after she spoke to the convention. No other presidential candidate were invited, even though all of the Democratic candidates oppose any constitutional amendment to reverse *Roe* (See **NRL News**, July 2, 1987, p. 1)

Schroeder, too, took shots at Judge Bork, charging that "Bork is trying to undo everything America stands for, trying to move into our bedrooms . . ." etc., etc.

At a special "Emergency Session" called to discuss how to kill the nomination, the strategy seemed to have three parts. First, speakers called on NOW members to lobby their senators. Organizers argued that defeating Bork was "eminently doable" because there had been fewer immediate pledges of support for Bork from moderate Democrats than there were last year for associate justice William Rehnquist when Mr. Reagan nominated him to become the new Chief Justice.

NOW members were also encouraged to carry out well publicized rallies in the home states of all members of the Senate Judiciary Committee, which is scheduled to hold confirmation hearings for Judge Bork beginning Sept. 15.

Great stock was also placed in the possibility of impeaching Ronald Reagan for various allegations having to do with the Iran-Contra arms controversy, an opinion shared by virtually no one else in the known galaxy.

But Yard's relatively easy victory did nothing to paper over the profound disagreement within NOW over Smeal's confrontational tactics, willingness to expend much of the organization's resources on revitalizing the ERA, and routine trashing of a list of targets such as the Pope and Jerry Falwell. Yard showed no sign she intends to change NOW's course: NOW plans to picket the Vatican Embassy in Washington to protest the Catholic Church's position on abortion, among other things.

"We intend to keep abortion safe and legal in this country," Yard said.

New Jersey Court

From p. 8

It should also be noted that the Court hinted broadly that the benefits/burdens calculus of *Conroy*, at least insofar as it excluded "quality of life" factors other than intractable pain, might well be overruled in future litigation, thus casting a pall over the single most protective element in *Conroy*. It concluded that *Conroy* should be distinguished from *Peter* and *Jobes* because Claire Conroy, although "extremely confused," was not entirely incompetent, as Hilda Peter and Jobes were both held to be. Thus the Court made unmistakably clear that quality of life factors were the principle bases it used to justify giving Jobes and Peter altogether different treatment than Claire Conroy.

(In a footnote, the Court implied that the *Conroy* standard, in its now uncertain form, would continue to be applied to those who fall short of a "persistent vegetative state," such as most patients with Alzheimer's disease and advanced senility.)

Second, the *Peter* Court held in essence that New Jersey's Durable Power of Attorney statute, which was originally intended to permit one to appoint another to manage one's money and property after incompetence, could also be used to appoint another to make one's medical decisions. In this regard, the *Peter* decision will be invoked in other states. To the extent it is followed, it will transform the Durable Power of Attorney laws on the books of all the states into surrogate "living will" laws without the need to pass new legislation.

In the Matter of Nancy Ellen Jobes

Nancy Ellen Jobes lapsed into what the Court held to be a "persistent vegetative state" as result of lack of oxygen during delivery of her dead unborn child, following an automobile accident. Because she was unable to swallow, a tube was inserted into Mrs. Jobes's small intestine through which food and fluids were provided.

After 5 years, her husband and parents requested that the tube be withdrawn. The nursing home balked, and litigation ensued.

Ultimately, the New Jersey Supreme Court held that the right of a patient such as Nancy Jobes in an "irreversible vegetative state" to refuse life-sustaining treatment - - including food and fluids - - may be exercised by the "patient's family or close friend."

Unlike what the Court concluded in *Peter*, there was no "clear and convincing" evidence of Nancy's treatment wishes. But the Court had already held in *Peter* that patients such as Nancy were not subject to the *Conroy* test; they were to be treated instead like Karen Ann Quinlan. Hence, the Court delegated decisionmaking to her family to exercise their "substituted judgment" - - that is, their guess as to what Nancy would have chosen under the circumstances.

No standards or procedures were established for such "substitute judgments" to assure that the projected patient wishes rather than family self-interest would dominate the family's "substitute" decision. Indeed, it would seem difficult if not impossible to apply any objective standard to evaluate family decisionmaking in view of the inherently subjective nature of any "substituted judgment." All parties to such a decision were deemed civilly and criminally immune if they acted in "good faith."

There are two other notable features to the *Jobes* opinion.

First, the decision is suffused with an idealized and romanticized notion of the "family" that is intelligible only in the context of the conclusion the court reached. It is almost as though the court had never heard of divorce, wife or child abuse, geographical dislocation, on intra-familial conflict - - not to mention the interest of heirs in a large estate and in avoiding the economic and emotional costs of caring for a relative with a disability.

Moreover, the Court seemed to naively assume that the "family" will make such a decision in a vacuum, whereas in fact the physician more often effectively makes the decision, a circumstance reinforced by the Court by its holding that the physician may in effect choose which member of the family to consult.

(It should be noted that a $900,000 judgment for damages to Mrs. Jobes had been awarded prior to the time legal efforts were made to withdraw her feeding tube. It is also unknown how much, if any, life insurance will be payable when Mrs. Jobes dies.)

Second, the decision effectively orders nursing homes and hospitals to disregard any ethical objections they might have in permitting their patients to starve to death, at least where there is no prior expressed policy against allowing starvation. The state interest in "protecting the ethical integrity of the medical profession" is simply not discussed in the context - - although the Court's citations to numerous authorities that approve of withholding food and fluids implies that ethical qualms should not be taken seriously. *Jobes* thus adds to a growing body of case law (including *Bouvia*, *Requena*, and *Rodas*) requiring health-care facilities to permit their patients to die of dehydration and nutrition on the premises.

The Future

These newest decisions of the New Jersey Supreme Court point out several important trends.

First, they underscore the growing tendency of the courts to regard those with severe mental disabilities as a special category whose lives warrant even less procedural and substantive protection than the terminally ill. Although limited so far to those in "persistent vegetative states" or in "comas," it seems probable that these lax standards will eventually be extended to encompass those with less severe mental disabilities.

Second, they point out the futility of simply opposing legislation in this area. The decisions essentially held that existing law already warrants the enforceability of "living wills" and "durable power of attorney" appointment even if legislatures do not act specifically to authorize them.

Third, the decisions emphasize growing judicial confidence that the paths the courts have chosen are acceptable to the population as a whole - - which has not (with the sole exception of the recent Oklahoma nutrition/ hydration statute) successfully attempted to establish any other standards through legislative action. Hence, the bold willingness of Court even to force health-care facilities to comply with decisions to deprive patients of food and fluids necessary to sustain life against the care-giver's will.

Finally, the decisions add significantly to the body of case-law in this area which constitutionalize aspects of the "right to die." As a consequence, the Jobes and Peter verdicts indicate that the door is closing on the possibility of passing legislation to fully protect the "right to life" of those with serious disabilities or terminal illnesses.

NARAL

From p. 1

tive director of NARAL's California affilate, described the vote on Bork as the "very most important vote in their [California's two senators] careers."

Pasman promised to create "Santa Ana conditions" for Democrat Alan Cranston and Republican Pete Wilson. "That means if they oppose Robert Bork's confirmation, the strong winds of our support will uplift them." However if they vote to confirm Bork, Pasman threatened, "they had better be prepared for a scorcher."

Another speaker announced that the campaigns of various Democratic candidates for President had already been approached about opposing the confirmation of Bork.

Interestingly, several speakers undercut their oft-repeated claim that "public opinion for choice consistently passes 75 percent." For example, Frances Sheehan, executive director of NARAL of Pennsylvania, announced that if *Roe* were overturned, "our legislature is waiting with bated breath for the opportunity to turn back the clock for women" - - i.e., pass legislation protecting the lives of unborn babies.

As reported in the July 2 issue of **NRL News**, none of the seven announced or anticipated Democratic candidates support any of the three NRLC-sponsored constitutional amendments to overturn *Roe v. Wade*.

By contrast, six of the seven Republican candidates support at least one of these protective amendments.

ATTENTION:

When you have finished this issue of **NRL News**, pass it on to a friend and encourage them to subscribe to **NRL News**. *You* are our best tool to build circulation.

FROM THE READERS

Not a "Catholic" Issue

To the Editor,

A substantial number of members of our Church are concerned about the problem of abortion in our country. As Christians, we are disturbed over the disregard for God's clear word in the Bible commanding reverence for human life, and prohibiting such atrocities as the killing of unborn babies by artificial abortion. We have read published material from your organization and feel that you share our concerns.

Somehow the media seem to have promoted the misunderstanding that only Roman Catholics are aroused over this issue. We would like people to know that we Lutherans also respect God's divine commandments! We have dedicated this year's Easter offering from our Church to the Right to Life movement, in the hope that it will make a significant contribution to the cause of saving these innocent lives.

We have chosen you as a national organization in the hope that the gift might have a further use - - in publicizing the fact that many Lutheran Church members share this concern. It would make us happy if not only the gift were useful to the cause, but if our Church and this offering would be of some use to you in encouraging others like us to so express their convictions and to add their gifts.

Enclosed is our church treasurer's check for the total of this year's Easter offering in our congregation.

Sincerely,
Dean L. Swenson, Pastor
Emmanuel Lutheran Church

NRL News and You

From p. 2

newspaper: getting our product into our readers' hands. My guess is we're doing quite a good job... but I wish to do as near perfect a job as our small staff can accomplish. **Please:** write or call us if you are having difficulties.

Just a couple of generalizations. Most of our readers' problems stem from a very few basic sources. For example, a reader ignores the early renewal notices and sends in his $16 at the last possible moment. Understand: it costs **a lot** of money to process a file with over 130,000 names. We can only do it once a month. If your check comes in just after the processing cycle is completed for the month, your name will be dropped from our mailing list, and it will not be back on for another month. This makes us sad and our readers mad. So. . .please send in your checks just as soon as you receive that first renewal. Second, people justifiably get angry when they receive multiple copies of the paper. **Very** simple solution. Send us all the labels with instructions which one(s) to delete.

Third, our readers get upset when gift subscriptions to libraries don't seem to be arriving. There are many reasons for that - - most of them typically having to do with problems at the library's end. But, again, the point is not to assess blame or avoid responsibility but to clear up the problem. Write or call us the first moment you suspect your library is not getting **NRL News**.

Finally, as this issue and our last one demonstrate beyond question, these are **very** exciting days to be a pro-lifer. You simply must not be without the kind of in-depth news we've been publishing recently. And on that note, let me just put in a small pitch for us. Every publication in the world had financial woes in the summer. Everyone's mind is elsewhere. But, at the risk of sounding overly dramatic, death never takes a summer holiday. We need your help, and the best way we know of utilizing your strength is to keep you up to date on Judge Bork, and the so-called "Civil Rights Restoration Act," and the successes we achieved this session around the country in the state legislatures. **This is no time to be without NRL News.** If you haven't renewed your subscription or given a couple to friends, relatives, schools, or ministers, today is the day.

Thanks,
Dave

national RIGHT TO LIFE NEWS

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Slippery Slope

From p. 3

should stop letting them make us miserable, or even inconvenience us.

As far as I can see, the New Jersey Supreme Court decision on June 25, 1987, has gone a long distance down the slippery slope and made my "consistent ethic of death" frighteningly plausible.

Nancy Jobes is not terminally ill. It is argued that she is in a "persistent vegetative state" (although there is disagreement about this among expert witnesses). But medically she is not in fact in a coma. She has not signed a "living will." She is suffering brain damage because of an operation. Her family argued that she is in an irreversible vegetative state and petitioned the court to remove her feeding tube. The court ruled that the tube could be removed and ordered the nursing home to cooperate. Nancy is in her early 30s.

Nancy Jobes' case was one of three decided by the same court on June 25. The precedents set by the Jobes case are frightening. They include requiring medical facilities to cooperate in starving a patient by removing all food and hydration, without the right of conscientious objection or of transfering the patient; broadening the circumstances under which food and hydration may be withdrawn; allowing the use of substituted judgement by friends and family members.

If you're not scared, I am! Maybe because I'm getting older. Maybe because a number of people I love are helpless. Maybe because my uncharitable mind can think of all sorts of reasons why family and friends may want to get rid of somebody. As I understand the N.J. Supreme Court decision in the Jobes case, food and hydration are being placed in the category of *medical* treatment, and "medical treatment" may be denied or withdrawn from a patient who has never made any advance request for such withdrawal.

I cannot accept the notion that food and hydration constitute medical treatment simply because they may be given, in certain instances, by artificial means under medical supervision. Food and water are the basics of life. To categorize them as "medical," as though they were similar to surgery or drugs, in my judgment is clearly inappropriate. (When I visited the starving people in Ethiopia, I could hardly have imagined that providing them with food and water, even though artificially brought in from the Western world at tremendous expense, would be considered "medical" treatment.)

I take for granted, of course, that if not now, certainly in the near future the state itself will be able to decide who lives, who dies. Sounds horrifyingly familiar.

Reporting by some of the media has been completely predictable, perfectly in accord with the contempt for human life which has become a hallmark of our society, and certainly consistent with my "consistent ethic of death." It's all in the name of "compassion," and the Court decision has guaranteed our "right to die." (Why in the world are we so stuffy about out-and-out suicide? Why are police officers always risking their own lives to keep people from jumping off buildings? Or is it only a matter of time?)

The court did not so rule in the Jobes case but recognized that Alzheimer patients and the "senile elderly" could have food and hydration terminated under certain circumstances.

Given **Catholic New York's** printing schedule, the Fourth of July will be a several days old memory before this column appears, but I am actually writing it on July 4th and reminding myself that a lot of people died in defense of our extraordinary declaration that *everyone* has an inalienable, because God-given, right to life - - *the* fundamental right. For a long, long time in this country we have believed, and "we" certainly has included our courts, that goverment exists to defend, to protect human life.

I have been sad all day today, sad that it is the Fourth of July and that it doesn't seem to make a difference in our sense of life; sad because there seemed to be such wonderful promise just one year ago when we celebrated so joyously the century of the Lady of Liberty in the harbour. Liberty is the second right named in the Declaration of Independence; the pursuit of happiness is the third. Isn't it any longer "self-evident" that you can be neither free nor happy unless you're alive?

Reprinted from the **Catholic New York.**

ACTION BOX

Immediate Action Required

PRO-ABORTION GROUPS LAUNCH ALL-OUT ASSAULT TO BLOCK SUPREME COURT NOMINEE

The entire pro-abortion movement is throwing all of its resources into a multi-million dollar campaign to block Senate confirmation of President Reagan's nominee to the U.S. Supreme Court, Robert Bork (see stories, page 1).

Pro-abortion groups fear the Bork will cast the deciding vote to overturn *Roe v. Wade*, the notorious 1973 decision which legalized abortion on demand. In 1981, Bork called *Roe* "an unconstitutional decision."

Pro-abortion senators are prepared to use obstructionist tactics, including a filibuster, in a no-holds-barred effort to keep Bork off the Supreme Court. Under Senate rules, it requires 60 votes (out of 100 senators) to shut off a filibuster ("invoke cloture").

The Bork nomination will first be considered by the 14-member Senate Judiciary Committee. The chairman of the Judiciary Committee, Sen. Joseph Biden (D-De.), who is running for president, is opposing Bork in order to curry favor with pro-abortion activists within the Democratic Party. Biden has already indicated that he will delay committee hearings on Bork until September!

OUTCOME IN DOUBT

The outcome of this confirmation battle cannot be predicted. It is crucially important that U.S. senators receive massive amounts of mail in support of Bork. An all-out grassroots mobilization should begin now, and continue until Senate has taken final action on the nomination - - which may not be until October or later!

Use telephone trees, church bulletins, letters to newspaper editors, and so forth, to get the word out to like-minded citizens.

● You should write to your two U.S. Senators at this address:

Senator _____
Senate Office Building
Washington, D.C. 20510

● Your letters to your senators should be in your own words. The following points may assist you in formulating your letters:

1. KEY POINT: *Robert Bork is* **extremely well qualified** *to serve on the Supreme Court. He is one of the nation's most distinguished constitutional scholars. Since 1981, he has served with distinction on the U.S. Court of Appeals for the District of Columbia - - the nation's second most powerful court. When nominated to the Court of Appeals, Bork received the highest possible rating from the American Bar Association - - "exceptionally well qualified." The Senate* **unanimously** *confirmed Bork to the Court of Appeals in 1982. None of his judicial opinions have ever been reversed by the Supreme Court.*

2. *Bork believes that Supreme Court justices abuse their power when they invent new "constitutional rights," not mentioned in the Constitution, in order to advance their policy preferences. Bork has described the* **Roe v. Wade** *decision as "unconstitutional" because there is no real basis in the Constitution for the Court's decision to deny states the power to restrict or prohibit abortion.*

3. *The pro-abortion movement won legal abortion by Supreme Court decree. They recognize that if* **Roe v. Wade** *is overturned, our elected representatives will respond to public sentiment by curbing abortion on demand.*

● Please send a short letter (about 200 words) in support of Bork to the "letters to the editor" column of your local newspaper. In the letter, encourage other citizens to write to your senators in support of Bork.

● Please send copies of any responses which you receive from your senators, and any editorials or articles discussing the Bork nomination (or your senators' positions on Bork) to:

Douglas Johnson
Legislative Director
National Right to Life Committee
419-Seventh Street, Northwest
Suite 402
Washington, D.C. 20004

● If you can do more, write also to the three Democratic senators who are running for President:

Senator Joseph Biden (D-Delaware): The chairman of the Judiciary Committee, he has promised to lead opposition to Bork.

Senator Paul Simon (D-Illinois): A member of Judiciary Committee, he has already publicly opposed Bork.

Senator Albert Gore, Jr. (D-Tennessee): He has not yet taken a position on Bork.

For up-to-date reports on developments in Washington, call the NRLC Legislative Update recording line: (202) 393-LIFE

*** denotes member of Senate Judiciary Committee**

ALABAMA
* Howell Heflin (D)
Richard Shelby (D)

ALASKA
Ted Stevens (R)
Frank Murkowski (R)

ARIZONA
* Dennis DeConcini (D)
John McCain (R)

ARKANSAS
Dale Bumpers (D)
David Pryor (D)

CALIFORNIA
Alan Cranston (D)
Pete Wilson (R)

COLORADO
William Armstrong (R)
Timothy Wirth (D)

CONNECTICUT
Christopher Dodd (D)
Lowell Weicker, Jr. (R)

DELAWARE
* Joseph Biden, Jr. (D)
William Roth, Jr. (R)

FLORIDA
Lawton Chiles (D)
Bob Graham (D)

GEORGIA
Wyche Fowler, Jr. (D)
Sam Nunn (D)

HAWAII
Daniel Inouye (D)
Spark Matsunaga (D)

IDAHO
James McClure (R)
Steve Symms (R)

ILLINOIS
Alan Dixon (D)
* Paul Simon (D)

INDIANA
Richard Lugar (R)
Dan Quayle (R)

IOWA
* Charles Grassley (R)
Tom Harkin (D)

KANSAS
Bob Dole (R)
Nancy Kassebaum (R)

KENTUCKY
Wendell Ford (D)
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John Breaux (D)
J. Bennett Johnston (D)

MAINE
William Cohen (R)
George Mitchell (D)

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Barbara Mikulski (D)
Paul Sarbanes (D)

MASSACHUSETTS
John Kerry (D)
* Ted Kennedy (D)

MICHIGAN
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MISSISSIPPI
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John Melcher (D)

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J. James Exon (D)
David Karnes (R)

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NORTH DAKOTA
Kent Conrad (D)
Quentin Burdick (D)

OHIO
John Glenn (D)
* Howard Metzenbaum (D)

OKLAHOMA
David Boren (D)
Don Nickles (R)

OREGON
Mark Hatfield (R)
Bob Packwood (R)

PENNSYLVANIA
John Heinz (R)
* Arlen Specter (R)

RHODE ISLAND
John Chafee (R)
Claiborne Pell (D)

SOUTH CAROLINA
Ernest Hollings (D)
* Strom Thurmond (R)

SOUTH DAKOTA
Thomas Daschle (D)
Larry Pressler (R)

TENNESSEE
Albert Gore, Jr. (D)
Jim Sasser (D)

TEXAS
Lloyd Bentsen (D)
Phil Gramm (R)

UTAH
Jake Garn (R)
* Orrin Hatch (R)

VERMONT
* Patrick Leahy (D)
Robert Stafford (R)

VIRGINIA
John Warner (R)
Paul Trible (R)

WASHINGTON
Brock Adams (D)
Daniel Evans (R)

WEST VIRGINIA
* Robert Byrd (D)
John Rockefeller, IV (D)

WISCONSIN
Robert Kasten, Jr. (R)
William Proxmire (D)

WYOMING
* Alan Simpson (R)
Malcolm Wallop (R)

Justice Blackmun Treated For Cancer Recurrence

By Dave Andrusko

The Mayo Clinic says that the prognosis is "excellent" for Supreme Court Justice Harry Blackmun, who is now being treated on an outpatient basis for prostate cancer. The 78-year-old Blackmun, best known as the author of the notorious *Roe v. Wade* decision, "is undergoing treatment, which is not incapacitating and is short-term," according to a press release distributed by Mayo Clinic.

Doctors at the clinic removed Blackmun's prostate gland in 1977 when it was found to be cancerous. The report from the Mayo clinic described Blackmun's latest problem as a "small and localized" recurrence.

Speculation about Blackmun's health took on added interest in light of the recent retirement of Justice Lewis Powell. Press inquiries began when it was learned that Blackmun would not make his annual appearance at the summer conference of judges of the U.S. Court of Appeals for the Eighth Circuit where he was scheduled to deliver an address July 18.

Toni House, a spokeswoman for the Supreme Court, said that the cancer was detected during a recent examination following the close of the Court's 1986-87 session, which ended June 26. She declined to say when exactly the cancer was detected or what form Blackmun's treatment had taken.

Interviewed by the **New York Times**, Ms. House said that Blackmun was preparing for speeches and working on Court business for the fall session, which will open Oct. 5. Such information suggests that doctors - - or at least Blackmun - - believe he will be physically ready by then.

Justice Harry Blackmun

Prostate cancer is not unusual in older men. According to information provided by the American Cancer Society, 1 in 11 men will develop prostate cancer sometime during their life, making it the third most common cancer in men, behind skin cancer and lung cancer.

The society estimates that some 96,000 men will be diagnosed this year as having prostate cancer and that 27,000 of them will die from it.