

Memo on legislation on fetal research.

9-10-73

abortion

Draft Memo

I have been deeply concerned about the haste with which ,  
a bill to prohibit experimentation on human fetuses, has been rushed  
through legislative consideration without a careful examination of all  
of its implications. Certainly no testimony has been offered to suggest  
that there are impending evils about to be perpetrated which would require  
such hasty legislative action.

I will not repeat arguments that have already been presented about  
the potential importance of research on fetal specimens for medical  
advances that may be of utmost importance improving the health of future  
born children.

My concerns have to do with unforeseen and possibly unintended side-  
effects of this legislation whose actual impact on the conduct of research  
is very difficult to analyze. As far as I know, this is the only legislation  
that would make a crime of acts not out of their actual character but  
only when done in the context of experimentation. I am not aware of any  
part of this law, or any other, that places any statutory hinderance on the  
use of live-fetuses for propaganda, instruction, or even entertainment.  
To single out experimentation as the context of criminal action is a  
remarkable precedent for legislative body to take in expressing its opinion  
of the value of medical research. If there are specific acts that ought to  
be prohibited, then they should be defined in terms of the damage that they  
do rather than because the person responsible for them is interested in  
enlarging human knowledge and the possible control of disease rather than  
other lawful aims.

Recognizing the very great importance of continued research on fetal  
tissue specimens, committee members have reportedly assured researcher witnesses

that the bill is not intended to impede studies along these lines.

However, the language of the bill leaves any investigator of human fetal tissues in a very difficult situation since he has no way of knowing what will be regarded as experimentation, nor of the procedures he is expected to follow prior to the death of the fetus, at which time it is asserted he would be allowed to obtain tissue samples. For example, would not the very act of listening for the fetal heart beat in order to achieve compliance with the legislation be an act of experimentation within the meaning of the law? Indeed, since many behavioral science investigators are being enjoined to follow the same procedures in survey work as their laboratory colleagues, the mere counting of aborted fetuses or other collection of descriptive statistics, might be likewise regarded as forbidden experimentation.

If the legislature indeed means to make a special case of forbidding acts for research purposes but not for others, it certainly should make a more careful inquiry as to the grounds which will define certain behavior as criminal, and other as lawful.

I urge you to delay final action on this bill until all its implications have been carefully examined so that the legislator's acts correspond to its knowledgeable will. If there were any prospect of significant confrontations with its asserted central purpose, within the State of California, the mere fact that the bill has proceeded this far is likely to be an effective deterrent during the period of further examination. I do not believe there is any substance to this concern but if there is, the very fact that the matter has been brought up should *quash* any fears on the subject.