

THE WHITE HOUSE
WASHINGTON

December 14, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN *EK*
SUBJECT: PARTIAL-BIRTH ABORTION

Some news on the partial-birth abortion front (especially apropos in light of the President's remarks on Friday):

1. Todd Stern just discovered that the American College of Obstetricians and Gynecologists (ACOG) is thinking about issuing a statement (attached) that includes the following sentence: "[A] select panel convened by ACOG could identify no circumstances under which [the partial-birth] procedure . . . would be the only option to save the life or preserve the health of the woman." This, of course, would be disaster -- not the less so (in fact, the more so) because ACOG continues to oppose the legislation. It is unclear whether ACOG will issue the statement; even if it does not, there is obviously a chance that the draft will become public. (The AMA last week decided to continue to take no position on the partial-birth issue.)

2. Sen. Daschle's staff is working on a legislative proposal that would prohibit all post-viability abortions, with a tight exception for life and health. Note that this proposal applies to all post-viability abortions, not just to partial-birth abortions. Note also, however, that it applies to no pre-viability abortions, even if they are partial-birth. Daschle's staff may use our language to define the health exception ("serious adverse health consequences"); they may try, however, to do something that sounds even stricter.

Daschle's staff hopes that this proposal will provide cover for pro-choice Senators (who can be expected to support it) and that it will refocus the debate from the partial-birth procedure to late-term abortions generally. I think the pro-lifers will not give up the partial-birth focus: (1) the politics of it have become too good; (2) it gives them a wedge into pre-viability abortions; and (3) it points the way toward future campaigns against other abortion procedures. They will point out that Daschle's proposal does nothing to stop pre-viability partial-birth abortions (recall that many of these abortions are done between 20 and 24 weeks) -- and that it is inadequate for this reason. Of course, they may respond to Daschle's proposal by also supporting a ban on post-viability abortions generally.

Given the President's prior positions and statements, he of course should support the Daschle proposal. He also should continue to support a ban on partial-birth abortions (including pre-viability partial-birth abortions), so long as there is an adequate health exception.