

# Call It "Partial-Birth Abortion" — It's the Law!

By Douglas Johnson  
NRLC Federal Legislative Director

WASHINGTON (June 16) - - You may have read in the paper that both houses of Congress have approved a bill "banning a medical procedure known as intact dilation and extraction," or words to that effect.

But actually, Congress never passed such a bill.

Rather, the House and Senate have given preliminary approval to a bill (HR 1122) to ban **partial-birth abortion** (unless necessary to save a mother's life). (The House must vote again on the bill to approve minor amendments made by the Senate, before it is sent to President Clinton, who says he will veto it.)

However, whenever the media uses the term chosen by Congress, **partial-birth abortion**, some opponents of the Partial-Birth Abortion Ban Act object because, they argue, "it is not a medical term."

Many journalists have been receptive to such pressure. Some recent wire service accounts of the congressional debate on the Partial-Birth Abortion Ban Act, for example, referred only to "certain late-term abortions" and contained no mention of the term "partial-birth abortion," and no description whatever of the type of abortion that would be banned by the measure.

A recent *Associated Press* dispatch, headlined "Bill Titles Can Be Distortions," claimed, "Partial-birth' is the nonclinical name for a procedure known more scientifically as 'dilation and extraction.'"

That sort of comment is itself a distortion. When such mischaracterizations of the bill appear in the press, they should be challenged by knowledgeable pro-lifers on the grounds discussed below.

First, the term **partial-birth abortion** is now a *legal term of art*. That is, **partial-birth abortion** has been adopted by numerous state legislative bodies as the "official" *legal term* to refer to a very specific and carefully defined method of killing partly born human beings. As of this writing, 13 states had enacted bills to ban **partial-birth abortion**, and it appears that several others may do so before the end of the year.

Second, the term **partial-birth abortion** is *not* equivalent to any of the terms of pseudo-medical jargon that pro-abortion groups insist are the proper "medical" or "clinical" terms.

Third, the term **partial-birth abortion** is not a "distortion" of reality, nor is the term in any way misleading. Rather, the term **partial-birth abortion** accurately conforms to terminology in related areas of law and medicine.

These points are expanded on below.

## Partial-Birth Abortion: A Legal Term of Art

As of June 16, 1997, 13 states have already made it illegal to perform a **partial-birth abortion**, and three more such bills are awaiting action by governors.

In addition, lopsided majorities of both houses of Congress have voted to put the term **partial-birth abortion** into the U.S. Criminal Code.

All of these bills define **partial-birth abortion** in essentially the same way: an abortion in which the living baby is partly delivered before being killed. The proposed federal bill (HR 1122), which has served as the basic model for the

state bills, would define **partial-birth abortion** as "an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery."

It is hard to see what justification journalists have for denigrating the legal terminology enacted in law by elected legislators, and substituting terms preferred by some pro-abortion advocacy groups. After all, several years ago when Congress defined certain firearms as "assault weapons," that is what they became - - in law and in the media - - even though manufacturers and users of such firearms prefer other terms.

The real reason that pro-abortion advocates dislike the term **partial-birth abortion**, of course, is that it gives the layperson a clear picture of how this type of abortion is performed. As Bear Atwood, president of the New Jersey chapter of the National Organization for Women (NOW), put it, "The whole term, 'partial-birth abortion' gives people pause." (*AP*, June 2)

Thus, pro-abortion advocates want to conceal the brutal reality behind a smokescreen of unintelligible pseudo-medical jargon.

However, the abortionists who perform partial-birth abortions, and their lobbyists, disagree among themselves as to what the "correct" jargon term should be. Indeed, various opponents of the bill have insisted on at least three *different* pseudo-"medical" terms: "intact dilation and evacuation," "dilation and extraction," and "intact dilation and extraction."

Before Congressman Charles Canady (R-Fl.) introduced the Partial-Birth Abortion Ban Act in June, 1995, his staff researched the matter and found that none of those terms appeared in any medical dic-

tionary, nor in the Medline computer database, nor even in the standard textbook on abortion methods, *Abortion Practice* by Dr. Warren Hern.

The term "intact dilation and evacuation" (or "intact D&E") was invented by the late Dr. James McMahon, who is generally credited with developing the abortion method. But the national controversy over partial-birth abortion really began in 1993, when NRLC obtained a copy of a paper written in 1992 by Ohio abortionist Dr. Martin Haskell, in which Dr. Haskell explained step by step how to perform the procedure. In the paper, Dr. Haskell said that he had "coined" the term "dilation and extraction" or "D&X" to refer to the method.

McMahon, however, explicitly repudiated the use of the term "dilation and extraction" in a 1993 interview with *American Medical News*, saying, "I don't use the term D&X. . . . I think D&X has been defined in a way we don't want to embrace."

Besides being idiosyncratic terms, both "intact D&E" and "D&X" were very "blurry" terms. McMahon and Haskell never offered anything approximating rigid definitions of their coined terms. Because "intact dilation and evacuation" and "dilation and extraction" are not standard, clearly defined medical terms, Congressman Canady rejected them as useless for purposes of defining a criminal offense. A criminal statute that relied on such murky terms would be struck down by the federal courts as "void for vagueness."

[The term "intact dilation and evacuation" should not be confused with "dilation and evacuation" (D&E), which is a procedure commonly used to perform second-trimester abortions, involving *disemberment* of the baby *while still in the uterus*. HR 1122 does not apply to this method at all.]

### **The Abortionists' Pseudo-Medical Terms Are Not Equivalent to "Partial-Birth Abortion"**

It is simply *inaccurate* for journalists to graft abortionists' jargon

terms onto the Partial-Birth Abortion Ban Act, because none of the so-called "medical" terms is equivalent to the definition of **partial-birth abortion** contained in HR 1122. The definition of **partial-birth abortion** is in some respects narrower and in some respects broader than the abortionists' terms, as explained below.

To understand these distinctions, it is first important to grasp exactly how a partial-birth abortion is typically performed. The abortionist pulls a *living* baby feet-first out of the womb and into the birth canal (vagina), except for the head, which the abortionist purposely keeps lodged just inside the cervix (the opening to the womb).

The abortionist then punctures the base of the skull with a surgical instrument, such as a long surgical scissors or a pointed hollow metal tube called a trochar. He then inserts a catheter (tube) into the wound, and removes the baby's brain with a powerful suction machine. This causes the skull to collapse, after which the abortionist completes the delivery of the now-dead baby.

The terms "intact dilation and evacuation" and "dilation and extraction" were sometimes used by Dr. McMahon and Dr. Haskell, respectively, to refer to certain procedures that are *not* banned by the Partial-Birth Abortion Ban Act, and shouldn't be banned. For example, both abortionists used their terms to refer to procedures in which they removed babies who had died natural deaths *in utero*. Such a procedure is not an abortion of any kind.

On the other hand, some variants of partial-birth abortions - - that is, some abortions involving the partial delivery of a living baby who is then killed - - would not have been considered "intact dilation and evacuation" procedures by Dr. McMahon or "dilation and extraction" procedures by Dr. Haskell, because they used those terms to refer to their own specific variations, and not to other specific techniques for killing partly born babies.

In other words, the McMahon and Haskell terms *overlap* with the class of abortions that would be banned by the Partial-Birth

Abortion Ban Act, but the abortionists' terms are not congruent with the definition of **partial-birth abortion** in the bill.

On January 12, 1997, the executive board of the American College of Obstetricians and Gynecologists (ACOG) (an organization strongly opposed to all anti-abortion legislation), adopted a "statement of policy" which defined a procedure it called "intact dilatation and extraction" - - in effect, a hybrid term drawn from both of the McMahon and Haskell terms cited above. However, ACOG's definition does not agree with either of the other abortionists' terms, nor with the definition of **partial-birth abortion** found in the bill.

The ACOG statement defined "intact dilatation and extraction" as containing "all of" a list of "elements." Among the components of the "ACOG definition" were "*partial* evacuation of the intracranial contents of a *living* fetus to effect vaginal delivery of a dead but otherwise intact fetus." [emphasis added]

Read literally - - which is the way that criminal laws *must* be read - - this definition would not even apply to the typical partial-birth abortion described in Dr. Martin Haskell's 1992 instructional paper.

The ACOG definition covers only procedures in which the brain is "partially" removed from a "living" fetus. But medical experts agree that, in most cases, the thrust of the surgical scissors (or other instrument) into the baby's skull would kill the baby, and this occurs *before* the abortionist inserts a suction tube to remove the brain. ["When I do the instrumentation on the skull . . . it destroys the brain tissue sufficiently so that even if it (the fetus) falls out at that point, it's definitely not alive," Dr. Haskell explained in an interview with the *Dayton Daily News*, published Dec. 10, 1989.] In some cases the baby may indeed survive the skull-puncturing long enough to be killed by the brain-removal - - but it would be practically impossible for the government to prove that this had occurred in any given case, after the fact.

Moreover, typically the brain is then *entirely* removed, not "partially" removed.

Thus, most partial-birth abortions would not even be covered by the ACOG definition.

### **The Term "Partial-Birth Abortion" Conforms to Other Legal and Medical Usage**

The term chosen by Congress, partial-birth abortion, is in no sense misleading. In sworn testimony in an Ohio lawsuit on Nov. 8, 1995, Dr. Martin Haskell - - who authored the 1992 instructional paper that touched off the national controversy over the procedure - - explained that he first learned of the method when a colleague "described very briefly over the phone to me a technique that I later learned came from Dr. McMahon where they internally grab the fetus and rotate it and accomplish - - be *somewhat equivalent to a breech type of delivery.*" [emphasis added]

However, some of those who have objected to the term "partial-birth" insist that the phrase implies that the abortion procedures at issue are usually performed at full term, or nearly full term - - which is only rarely the case. This objection confuses "full-term" with "birth," but those are two completely different things, both legally and in common parlance.

A full-term pregnancy is 40 weeks. As NRLC has emphasized since the Partial-Birth Abortion Ban Act was introduced in June, 1995, *most* partial-birth abortions are performed in the fifth and sixth months (20 to 26 weeks LMP, i.e., after the mother's last menstrual period). Generally, the partial-birth abortion method is not used before 20 weeks. A baby who is expelled alive from the womb at this stage (for example, in a spontaneous miscarriage) has indeed been legally "born." If a baby at 20 weeks or later (1) is expelled completely from the mother, and (2) shows even the briefest signs of life - - attempts to breathe, movement of voluntary muscles, etc. - - legally a *live birth* has occurred. Just about everyone will agree that such a live-born but "pre-viable" baby is protected by the Constitution and state homicide laws during her brief life outside the womb.

Obstetricians and perinatologists confirm that even during this immediate "pre-viability" range of 20 through 22 weeks, if a baby is expelled or removed completely from the uterus, she will usually gasp for breath for some time. (Thus, the victim of a partial-birth abortion is indeed only "inches from her first breath" when the surgical scissors penetrates her skull, just as NRLC has said in various literature.)

Moreover, even at 20 to 23 weeks, such a child typically will move and will have a heartbeat - - which sometimes continues for an hour or more after birth - - as the infant struggles to hold on to life.

Beginning at 23 weeks, the baby has a substantial chance for survival, which rapidly climbs to over 80% by 26 weeks (still considered the second trimester).

**In summary: if a fetus/baby at (say) 21 weeks is spontaneously expelled alive, or if the head accidentally emerges during an attempted partial-birth abortion, a legal "live birth" has occurred - - even though that baby is not yet considered "viable."**

**Thus, there is nothing inaccurate or misleading about saying that the same living baby, entirely delivered into the birth canal *except for the head*, is "partly born." Nor is it inaccurate or misleading to call such a delivery, when performed as an abortion method, a "partial-birth abortion," which is what the various legislative bodies have done.**

Moreover, large numbers of physicians are quite comfortable with the term partial-birth abortion. For example, the Physicians' Ad Hoc Coalition for Truth, a group of nearly 600 physicians (predominantly professors and other specialists in ob/gyn) embraces the term and has defended it as accurate.

President Clinton has also repeatedly used the term "partial-birth abortion."

### **Terminology: "Late-Term Abortions" is Murky and Misleading**

Sometimes, the bill has been referred to as simply restricting "late-term abortions." This usage is murky and can be misleading. The bill does *not* contain any reference to the gestational age of the fetus/baby. From available evidence, it appears that the **partial-birth abortion** method is generally used after 20 weeks (4-1/2 months). However, there are indications that the method at times has been used somewhat earlier - - and the bill bans the practice of **partial-birth abortion** at any point in pregnancy.

When supporters of abortion such as President Clinton or NARAL say "late-term," they are using the phrase as code for "third trimester." But the vast majority of the abortion procedures prohibited by the Partial-Birth Abortion Ban Act are performed in the **fifth and sixth months** of pregnancy, *not* in the third trimester. Most of the lawmakers who oppose the Partial-Birth Abortion Ban Act tell their constituents that they generally oppose "late-term" abortions, without (in most cases) explaining that their usage of the term does not apply to the fifth and sixth months.

When the media uses the phrase "late-term" to apply, without distinction, both to bills that apply *mainly* to the fifth and sixth months and to bills that apply *not at all* in the fifth and sixth months, the media thereby obscures profound policy differences. Some pro-abortion lawmakers find such murkiness politically helpful, but when journalists engage in such unnecessary imprecision, they do a disservice to their readers or viewers.

They should just call it what the law calls it - - **partial-birth abortion**.