NATIONAL RIGHT TO LIFE: GULLIBLE TREATMENT OF TRUMPED UP "STUDY" ON FETAL PAIN ISSUE SHOULD EMBARRASS J.A.M.A. AND SOME JOURNALISTS

This is an update from the National Right to Life Committee, 202-626-8825, issued Thursday, August 25, 2005, at 4 PM EDT. For further updates on this subject, watch http://www.nrlc.org/abortion/fetal_pain/index.html

This memo offers a number of points of information regarding the article "Fetal Pain: A Systematic Multidisciplinary Review of the Evidence," published in the August 24 edition of the Journal of the American Medical Association (JAMA). Any of the material below, if not otherwise attributed, can be attributed to NRLC Legislative Director Douglas Johnson (Legfederal@aol.com), who prepared this memorandum.

BASIC OBJECTIONS

1. The JAMA article was produced by pro-abortion activists. There is no new laboratory research reported in the article -- it is merely a commentary on a selection of existing medical literature. The authors purport to show that there is no good evidence that human fetuses feel pain before 29 weeks (during the seventh month). The authors' conclusion (which was predetermined by their political agenda -- see below) is disputed by experts with far more extensive credentials in pain research than any of the authors. These independent authorities say that there is substantial evidence from multiple lines of research that unborn humans can perceive pain during the fifth and sixth months (i.e., by 20 weeks gestational age), and perhaps somewhat earlier.

2. For example, Dr. Kanwaljeet S. Anand, a pain researcher who holds tenured chairs in pediatrics, anesthesiology, pharmacology, and neurobiology at the University of Arkansas, said in a document accepted as expert by a federal court, "It is my opinion that the human fetus possesses the ability to experience pain from 20 weeks of gestation, if not earlier, and the pain perceived by a fetus is possibly more intense than that perceived by term newborns or older children." Read Dr. Anand's complete statement entered in federal court, summarizing the scientific evidence, here. In a USA Today article (August 25), Dr. Anand predicted that JAMA's publication of the article would "inflame a lot of scientists who are . . . far more knowledgeable in this area than the authors appear to be."

3. A similar review published in September 1999 in the British Journal of Obstetrics and Gynaecology (the leading ob-gyn journal in the UK) concluded: "Given the anatomical evidence, it is possible that the fetus can feel pain from 20 weeks and is caused distress by interventions from as early as 15 or 16 weeks." (Article available in PDF format here.)

4. The JAMA authors arrive at their "conclusion" through a highly tendentious methodology that could, for the most part, also be used to argue that there is no proof that animals really feel pain and no proof that premature newborn humans really feel pain (although the authors do not address those subjects). There are innumerable state and federal laws intended to reduce the

suffering of animals, even though it is impossible to "prove" that their "experience" of pain is subjectively the same as that of the lawmakers who have enacted these regulations.

THE EVIDENCE FROM PREMATURELY BORN INFANTS

5. Infants born as early as 23 or 24 weeks now commonly survive long term in neonatal intensive care units. Neonatologists confirm that they react negatively to painful stimuli -- for example, by grimacing, withdrawing, and whimpering. When they must receive surgical procedures, they are given drugs to prevent pain. Yet, the JAMA authors assert that there is no credible evidence of fetal pain until 29 weeks -- which is five or six weeks later. If these babies feel pain in the incubator, then they also feel pain in the womb. If the newborn at 23 weeks demonstrates aversion to pain and needs protection from pain, the same is true of the 24-week (or 25-week, 26-week, 27-week, or 28-week) unborn child.

6. As Dr. Paul Ranalli, a neurologist at the University of Toronto, commented on the paper: "Across the nation, Neonatal Intensive Care Units (NICUs) are full of bravely struggling preemies . . . The only difference between a child in the womb at this stage, or one born and cared for in an incubator, is how they receive oxygen -- either through the umbilical cord or through the lungs. There is no difference in their nervous systems. Their article sets back humane pediatric medicine 20 years, back to a time when doctors still believed babies could not feel pain." In testimony before a congressional committee in 1996, Dr. Jean A. Wright, then a pediatric pain specialist at Emory University, said: "Preterm infants who are born and delivered at 23 weeks of gestation show very highly specific and well-coordinated physiologic and behavioral responses to pain which is just like older infants." (Even the paper notes in passing, "Normal EEG patterns have been characterized for neonates as young as 24 weeks' postconceptual age.")

THE VIOLENCE OF ABORTION METHODS USED

7. The gross trauma inflicted on the unborn human by abortion methods used in the fifth and sixth months far exceed anything that would be done to a premature newborn at the same stage of development. The most common abortion method, the so-called "D&E," involves tearing arms and legs off of the unanesthetized unborn child, then crushing the skull. (Click here to see a series of professional medical school illustrations of this method.) Thousands of times annually, the partial-birth abortion method is used, which involves mostly delivering the living premature infant, feet first, and then puncturing the skull with scissors or a pointed metal tube (to see medically accurate illustrations of this method, click here). To review material presented to Congress by leading anesthesiologists and other medical experts with varying positions on legal abortion, click here.

THE ORIGINS OF THE PAPER

8. The so-called "study" was produced by pro-abortion activists and a well-known practitioner of late abortions -- but, with a few notable exceptions, that readily available information was omitted or greatly minimized by mainstream media outlets that initially covered story on August

23 and 24, including ABC World News Tonight, the Associated Press, and the New York Times.

9. The lead author of the article, Susan J. Lee, who is now a medical student, was previously employed as a lawyer by NARAL, the pro-abortion political advocacy organization (Knight Ridder, August 24).

10. One of Lee's four co-authors, Dr. Eleanor A. Drey, is the director of the largest abortion clinic in San Francisco (San Francisco Chronicle, March 31, 2004, and Knight Ridder, August 24, 2005). According to Dr. Drey, the abortion facility that she runs performs about 600 abortions a year between the 20th and 23rd weeks of pregnancy (i.e., in the fifth and sixth months). (San Francisco Chronicle, March 31, 2004) Drey is a prominent critic of the Partial-Birth Abortion Ban Act, and a self-described activist. (In a laudatory profile in the newsletter of Physicians for Reproductive Choice and Health, September 2004, it was noted that "much of Dr. Drey's research centers on repeat and second-trimester procedures . . .," and quotes Drey as saying, "I am very lucky because I get to train residents and medical students, and I really do feel that it's a type of activism.") Drey is also on the staff of the Center for Reproductive Health Research and Policy (CRHRP) at the University of California, San Francisco -- a pro-abortion propaganda and training center. Much of this information was available through even a very cursory Google search, and some of it was provided to journalists who contacted NRLC about the embargoed JAMA paper on August 22-23, but few saw fit to mention these connections in their initial reports.

11. However, one reporter (Knight Ridder's Marie McCullough) did contact JAMA editor-in-chief Catherine D. DeAngelis regarding the ties of Lee and Drey. McCullough reported that DeAngelis "said she was unaware of this, and acknowledged it might create an appearance of bias that could hurt the journal's credibility. 'This is the first I've heard about it,' she said. 'We ask them to reveal any conflict of interest. I would have published' the disclosure if it had been made." (Knight Ridder, August 24, 2005) A day later, DeAngelis told USA Today that the affiliations of Drey and Lee "aren't relevant," but again said that the ties should have been disclosed. If she really thought the affiliations were not relevant, why would she say that they should have been disclosed? If a review of the same issue by doctors employed by pro-life advocacy groups had been submitted or published, would those affiliations have been ignored by journalists?

12. Dr. David Grimes, a vice-president of Family Health International, has been relied on by CNN, the New York Times, and some other media as a purported expert to defend the paper. Dr. Grimes has made pro-abortion advocacy a central element of his career for decades. (During the time he worked for the CDC in the 1980s, his off-hours work at a local late-abortion facility sparked protests from some pro-life activists. In 1987, a year after he left the CDC, Grimes testified that he had already performed more than 10,000 abortions, 10 to 20 percent of those after the first trimester.) In addition, Grimes was previously the chief of the Department of Obstetrics, Gynecology and Reproductive Sciences at the San Francisco General Hospital -- the very same institution where author Drey directs the abortion clinic.

THE FINDINGS OF A FEDERAL COURT

13. In 2004, the U.S. District Court for the Southern District of New York received extensive testimony regarding fetal pain from experts on both sides, including doctors who perform many late abortions, as part of a legal challenge to the Partial-Birth Abortion Ban Act. Although the subsequent opinion struck down the ban as inconsistent with a 2000 U.S. Supreme Court ruling (this is being appealed), the court made certain formal "findings of fact," among these: "The Court finds that the testimony at trial and before Congress establishes that D&X [partial-birth abortion] is a gruesome, brutal, barbaric, and uncivilized medical procedure. Dr. Anand's testimony, which went unrebutted by Plaintiffs, is credible evidence that D&X abortions subject fetuses to severe pain. Notwithstanding this evidence, some of Plaintiffs' experts testified that fetal pain does not concern them, and that some do not convey to their patients that their fetuses may undergo severe pain during a D&X." (This illustrates that abortionists will not raise the question of pain, at any stage of pregnancy, unless they are required to do so.)

UNBORN CHILD PAIN AWARENESS ACT (S. 51, H.R. 356)

14. The obvious purpose of the authors of the JAMA paper was to damage the prospects for the Unborn Child Pain Awareness Act (S. 51, H.R. 356). This bill would require that abortion providers give women seeking abortions after 20 weeks after fertilization (22 weeks gestation) certain basic information on the substantial evidence that their unborn children may experience pain while being aborted, and advise them regarding any available methods to reduce or eliminate such pain. The bill explicitly states that the abortion provider may offer his or her own opinions and advice regarding the question, including discussion of any risks to the mother of methods of reducing the pain of the unborn child. The authors, in their final paragraph, explicitly oppose any requirement that abortionists raise the pain issue in any fashion, at least during the fifth and sixth months.

15. It is noteworthy, however, that in January, 2005, NARAL President Nancy Keenan issued a statement that NARAL "does not intend to oppose" the bill, because "pro-choice Americans have always believed that women deserve access to all the information relevant to their reproductive health decisions." (A complete reproduction of the NARAL statement is available here.)

16. Spokepersons for some groups of abortion providers say that they object to the Unborn Child Pain Awareness Act because it would require that abortionists recite a "script" advising women who are seeking abortions after 22 weeks gestational age (20 weeks from fertilization) that there is "substantial evidence" that abortion will inflict pain (the bill also explicitly says that the abortionist may also offer whatever opinions he or she wishes regarding the issue and the risks of any optional pain relieving methods). But in truth, abortion providers, like the authors of the paper, object not just to a "script" but to any requirement whatever that women be provided with any information on the subject. They have also objected to laws enacted in Arkansas and Georgia that require only the provision of printed information prepared by the state health agencies, and to a Minnesota law that merely requires that the abortionist tell the woman "whether or not an anesthetic or analgesic would eliminate or alleviate organic pain to the unborn child caused by the particular method of abortion to be employed and the particular medical benefits and risks associated with the particular anesthetic or analgesic." Apparently,

the abortionists are taking the paternalistic stance that women are incapable of evaluating such information and giving it whatever weight they think it deserves.

ADMINISTERING ANESTHESIA OR ANALGESICS

17. The authors of the JAMA paper say that "no established protocols exist for administering anesthesia or analgesia directly to the fetus for minimally invasive fetal procedures or abortions." (p. 952) Yet, some abortions are performed by administering toxins into the amniotic sac (or even directly into the fetal heart) with a needle, precisely guided by ultrasound. Moreover, in cases of women carrying multiple unborn humans, abortionists sometimes engage in "selective reduction," in which some of the fetuses are killed by stabbing them directly in their hearts with a needle guided by ultrasound. One suspects, therefore, that any current lack of methods of safely administering pain-reducing drugs to a fetus in utero relate more the fact that abortionists just don't care about fetal pain and have not developed such methods, rather than to any insurmountable technical obstacles. In any case, under the Unborn Child Pain Awareness Act, a woman considering an abortion after 20 weeks gestational age would be given information on the current state of the art, including the abortionist's own assessment of any risks, to evaluate as she sees fit.

18. Paul Ranalli, a neurologist at the University of Toronto, reports, "Experts from Britain and France have proposed safe and effective fetal anesthesia protocols. (Ranalli cites the 1997 Working Party Report on Fetal Pain by the UK's Royal College of Obstetrics and Gynecology and "La douleur du foetus," Mahieu-Caputo D, Dommergues M et al, Presse Med 2000; 29:663-9, recommending Sulfentanyl 1 ug/kg and Pentothal 10 ug/kg.) Ranalli also writes that the JAMA paper itself "includes experimental animal evidence that suggests an effective intra-amniotic needle injection could spare the fetus pain, without the need to give the mother any additional anesthetic" (citing material on JAMA p. 952, column 1).

NUMBERS OF ABORTION AT ISSUE

19. According to the JAMA paper, relying on a CDC report, about 1.4 percent of the abortions performed in the U.S. are performed at or after 21 weeks gestational age. If so, that would be over 18,000 abortions annually nationwide -- hardly inconsequential to anyone concerned with inflicting pain on a sentient young human. (Note: That figure omits abortions performed at 20 weeks gestational age.) It is worth noting that the CDC reports are very incomplete. Indeed, the report itself makes it clear that the CDC received no abortion reports from California -- so none of the 600 abortions performed annually at 20-23 weeks in Dr. Drey's abortion clinic are reflected in the CDC figures.